

LGBTI asylum claims: the Central and Eastern European perspective

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Recent research indicates that CEE countries still lag far behind the rest of Europe in their asylum practices in relation to LGBTI asylum claims. Low levels of awareness, lack of guidance and cultural hostility are jeopardising asylum seekers' prospects for fair treatment.

Research published in 2011 found that authorities in the Central and Eastern Europe (CEE) region only occasionally have to deal with LGBTI asylum claims. The Fleeing Homophobia project of COC Netherlands and VU University Amsterdam¹ found that since 1997 the average number of claims on this ground per year is two in Bulgaria, three or four in the Czech Republic, five or six in Hungary, two or three in Poland and three in Lithuania. In comparison, there were 1,100 LGBTI asylum claims considered between 2008 and 2010 in Belgium. However, there are no official data since the CEE countries do not keep separate statistics on LGBTI claims, let alone disaggregating the statistics with respect to lesbian, gay, bisexual, transgender or intersex status.

All of the CEE countries are signatories of the 1951 Refugee Convention and its 1967 Protocol, and all – except Belarus – are members of the Council of Europe and States Parties to the European Convention of Human Rights (ECHR). Moreover, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia (and in the near future Croatia) are members of the European Union. The 1951 Refugee Convention, EU law and ECHR case-law all offer protection to asylum seekers and refugees. Yet procedures for granting refugee status to LGBTI asylum seekers seem to be far from consistent in this region of the world.

Moreover, none of the CEE countries has any official guidelines on how to handle LGBTI asylum claims – and there are no specialised national NGOs providing legal and social support for LGBTI asylum seekers in the CEE region. Asylum officials

demonstrate low awareness of the specific nature of persecution against LGBTI individuals and often demonstrate biases against this social group. The low number of LGBTI asylum claims in the region may therefore be attributed to the general homophobic and transphobic climate, which makes it far from a dream destination for those persecuted on the basis of their sexual orientation or gender identity.

Criminalisation

A noticeable trend in CEE countries is that LGBTI applicants are, on the whole, only granted asylum if same-sex acts and/or self-identification as lesbian, gay, bisexual or transgender are criminalised in their country of origin. Unfortunately, in most CEE countries, granting a positive asylum decision requires evidence of actual enforcement of such laws, thereby running counter to UNHCR's guidance that laws prohibiting same-sex relations, even if irregularly, rarely or never enforced, could lead to an intolerable predicament for an LGBT person amounting to persecution. The Lithuanian and Polish authorities state that merely the existence of such laws would be considered as persecution; however, practice in Poland is that enforcement of the law is essential for recognition of LGBTI claims.

Credibility assessment

Most CEE countries require evidence over and above the applicant's statement about her or his sexual orientation or gender identity. The Fleeing Homophobia project's final report revealed that many CEE asylum authorities demand medical certificates and other medical documents, usually issued by sexologists, psychologists or psychiatrists.

The obscure practice of ‘sexodiagnostic examination’ was conducted in the Czech Republic between 2008 and 2010, and included an interview with a sexologist plus so-called ‘phallometric testing’². This practice was not only unnecessary but also contrary to the prohibition of inhuman and degrading treatment and in contravention of the right to privacy. After international criticism by the Fundamental Rights Agency of the European Union, UNHCR and other human rights organisations and institutions,³ the practice of phallometry was abandoned by the Czech authorities.

However, in Slovakia an expert opinion is still required in order to establish sexual orientation and/or gender identity of anyone claiming asylum on these grounds. In particular, sexual orientation is determined in the course of a sexological interview. Again, this practice contravenes UNHCR’s guidelines which state that officials should rely on the applicant’s statements alone where there is a lack of Country of Origin Information.



In Bulgaria the marital or parental status of LGBTI applicants is sufficient to deny granting refugee protection. Bulgarian asylum authorities also ask intrusive questions concerning the number of sex partners, favourite sexual positions or sexual contacts

with persons of the opposite sex. In Hungary any delay in revealing sexual orientation in the first phase of the asylum procedure is a negative factor in the credibility assessment. Moreover, heterosexual relationships and children born out of them are also considered grounds for questioning the credibility of lesbian and gay asylum seekers.

Discretion requirement

CEE national asylum authorities often use the argument of being able to conceal one’s sexual orientation or gender identity in the country of origin in order to judge claims to be unfounded. The Hungarian Office of Immigration and Nationality noted with regard to one LGBTI asylum case that “even if criminal sanctions against homosexuals or homosexual behaviour are in force [in Algeria], the sexual orientation can be practised in a hidden, discreet way, in order to prevent possible attacks”. Similarly, a Pakistani asylum seeker’s case before the Polish Office for Foreigners was rejected because, according to the authorities, the applicant was able to “escape” to other parts of his country. In the justification of its decision, the Office for Foreigners referred to the British Home Office report on the situation of LGBT in Pakistan, which states that “if he lives as homosexual discreetly there should be no reason for him to experience harm from the rest of the society”. In contrast, UNHCR’s guidelines emphasise that LGBTI people should be equally entitled to enjoy their right to express their identity and associate with others, and that concealment of sexual orientation and/or gender identity should not be required to prevent the risk of persecution.

Inconsistent rulings

Two cases of homosexual Ugandan asylum seekers were recently decided by the Polish authorities. The first applicant claimed to have been beaten, tortured and humiliated in Uganda because of his orientation. In spite of his sexual orientation, he was married and had biological children. The second applicant had been caught having homosexual intercourse in a park and was arrested, during which time, he claimed, he was subjected to

physical and psychological violence; he was released after ten days but expected a criminal sentence of imprisonment for seven years or even the death penalty. Both applicants' claims for protection were refused in the first instance of the asylum proceedings. In both cases the Head of the Office for Foreigners decided that the situation in Uganda did not pose a real risk of persecution on the basis of sexual orientation. In the case of the first applicant the decision was reversed in the second instance by the Refugee Board which concluded that the mere existence and execution of the provisions penalising homosexual acts may be sufficient to grant a refugee status. In the second case the Refugee Board held that the claimant's homosexual orientation was not effectively established notwithstanding the sexologist's medical certificate and the material presented by the applicant. (This decision was later reversed by the administrative court).

Conclusion

CEE countries are bound by international standards concerning refugees and asylum seekers. Nevertheless, the practice of their national asylum authorities concerning LGBTI claims definitely falls below these standards. Given the low number of LGBTI asylum seekers in the CEE region, national

asylum authorities appear to lack expertise in dealing with such claims and might easily err both in assessment of individual circumstances of the applicants and the objective situation in their country of origin. This reality should encourage all stakeholders – government officials and human rights NGOs – to cooperate more closely in order to exchange information and good practices.

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The article draws on the results of the Fleeing Homophobia project. Final report at: <http://tinyurl.com/Fleeing-Homophobia-report>

1. Carried out in cooperation with the Hungarian Helsinki Committee, Avvocatura per i diritti LGBTI/Rete Lenford and the European Council on Refugees and Exiles.
2. "Phallometry measures changes in genital blood flow in response to sexually explicit visual and audio stimuli using electrodes attached to the genitalia." www.unhcr.org/4daed0389.pdf
3. UNHCR's Comments on the Practice of Phallometry in the Czech Republic to Determine the Credibility of Asylum Claims based on Persecution due to Sexual Orientation, April 2011 <http://tinyurl.com/ORAM-phallometry-report>