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The Federal Administrative Court in Austria overturned a negative decision and granted refugee protection to an Afghan national who had applied for international protection on the grounds that his sexual orientation would not be tolerated in Afghanistan. The court consulted recent COI reports and concluded that the LGBTIQ community in Afghanistan was already subjected to significant societal violence before the Taliban takeover and there had been reports of unlawful killings and physical attacks directed at the LGBTIQ community.

Similarly in Germany, regional courts decided on several cases of LGBTIQ based on consultations of recent COI reports. The Administrative Court of Leipzig overturned a negative decision and an Iraqi national, who applied for international protection on the grounds of being homosexual, was granted refugee protection. The court referred to recent COI and found that homosexuals in Iraq were subjected to human rights violations and discrimination.

Likewise, the Regional Administrative Court of Darmstadt granted international protection to a homosexual man from Iran, the regional administrative court of Cottbus granted protection to a homosexual Algerian applicant, and the regional administrative court of Hamburg granted refugee status to homosexual applicants from Ghana and Guinea, noting that LGBTIQ applicants were at serious risk of physical or psychological violence and being persecuted by both state and non-state actors if returned to their country of origin. The Regional Court of Saarland also granted refugee status to a woman from Morocco on grounds of her sexual orientation. The court based its decision on COI which showed that homosexuality is punishable by Article 489 of the Penal Code with a prison sentence and fine, and this is actually applied in practice.

Country of origin information (COI) plays an important role in the assessment of LGBTIQ asylum applications in EU+ countries and it is frequently used as evidence in first and second instance procedures. In 2023, the EUAA updated its COI Research Guide on LGBTIQ to assist practitioners.

Therefore the court considered the woman to be a member of a particular social group who would be at considerable risk of prosecution and punishment if returned to her home country.

Furthermore, the Regional Administrative Court of Halle granted refugee status to a homosexual Georgian national, finding that the Georgian authorities were unwilling or unable to effectively protect LGBTIQ persons.

The CNDA in France granted refugee protection to an Iranian national due to the risk of persecution by the national authorities and the applicant's father if returned to Iran due to his sexual orientation. The court recalled that homosexuality was criminalised in Iran and could be punished by flogging, detention and the death penalty and that the persecution was not carried out solely by the national authorities but also by individuals (through honour crimes) and health institutions (with forced gender reassignment surgery and conversion therapy).

Furthermore, the CNDA granted refugee protection to an applicant from Uganda, noting the promulgation of the national Ugandan Anti-Homosexuality Act of May 2023. The court referred to COI which established that homosexual individuals were already at risk of persecution before the act was adopted. In addition, the CNDA held that homosexual persons constituted a particular social group and granted refugee status to LGBTIQ applicants from Burundi and Myanmar.

The Administrative Court of Latvia annulled an expulsion order against a homosexual applicant from Iran whose second subsequent application had been accepted for an examination in substance. Based on COI, the court noted that there was a real risk of being exposed to inhuman or degrading treatment.

Credibility assessments

Credibility assessments also play a key role in determining whether to grant international protection to LGBTIQ applicants and courts scrutinised practices to ensure that persecution based on SOGIESC is accurately assessed.

An applicant from the Democratic Republic of the Congo appealed against a decision refusing international protection, arguing that, according to updated COI on LGBTIQ rights in her country, she would be forced to live her sexual orientation in a hidden manner. However, the Administrative Tribunal in Luxembourg confirmed the negative decision since the court found that the applicant's story lacked credibility and plausibility due to the contradictory versions of her statements. In addition, the claims were not subject to serious conditions originating from non-private actors but perpetuated by private actors.

The Court of the Hague rejected the appeal of a Nigerian woman due to a lack of credibility of her claims based on sexual orientation. According to the court, the applicant's assertions were inconsistent and vague, which undermined her credibility and prevented her from persuading the court that she was eligible for asylum. The asylum claim was thus rejected by the court as being unfounded.

CALL in Belgium annulled an inadmissible decision which rejected a subsequent application lodged by an Iraqi national who claimed to be a homosexual only in his fifth request and submitted evidence for this claim in his ninth subsequent application. The council stated that it

cannot be inferred that an applicant lacks credibility from the fact that he did not immediately declare that he was homosexual in his initial application and showed reluctance to disclose intimate details about his life. The council also pointed out that homosexual orientation should not be proved, but that it was sufficient to believe that it was plausible.

In Italy, the Tribunal of Salerno granted refugee protection to an applicant from Senegal, finding his claims about persecution due to sexual orientation to be credible. According to the court, the applicant made an effort to substantiate his statements, it considered the application to be coherent and it found that it was plausible that the applicant was reticent to report his sexual orientation during the first hearing as he had become aware of his sexual orientation only once arrived in Italy.

Procedural guarantees

Other court decisions reiterated that determining authorities must conduct procedures in a way that enables applicants to exercise their rights efficiently, including during the personal interview. For example, the Tallinn Administrative Court of Estonia annulled a decision of the Police and Border Guard Service (PBGS) concerning a Russian transgender applicant from Crimea on the grounds of numerous procedural shortcomings. The court ordered the authorities to reconsider the applicant's case after it found that they had failed to: indicate the factual and legal basis for their decision, assess the special procedural needs of the applicant, present their reasoning and draw logical conclusions from COI, assess the risk of persecution by private individuals besides the risk of persecution by the state authorities, assess the grounds for the application cumulatively (transgender identity, citizenship and political opinion), and assess the risk of persecution upon a return without downplaying this factor on the basis that the applicant could conceal his political opinions. Moreover, the court ruled that the mere fact of filling in a statement of vulnerability may not be sufficient to assess the special procedural needs of an LGBTIQ person diagnosed with depression.

The same court in Estonia also annulled a PBGB decision due to procedural violations in a case of a Russian transgender man diagnosed with autism and ADHD. The court noted that the PBGB had failed to conduct an appropriate assessment of the applicant's special needs and to provide him with the necessary support during the proceedings.

A national of Sierra Leone had applied for international protection on the grounds of his sexual orientation but received a negative decision. The Administrative Court of Athens in Greece held that the 17th Independent Appeals Committee had failed to assess the statements and evidence on the medical condition of the applicant suffering from schizophrenia. The court also noted that the committee had not addressed the applicant's claims about deficiencies with interpretation during his personal interview with the Regional Asylum Office.

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