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EU ELITES AND THE MULTICULTURAL SOCIETY

Despite some improvements in legal protection for gay men and women in Ukraine since the 2014 Maidan Revolution, the intense homophobic social situation, although it has abated to a certain degree in recent years, still presents a serious problem. Although persecution and employment discrimination on the grounds of sexual orientation are technically illegal in Ukraine, it has been widely recognized that aside from protecting Gay Pride events in major cities, Ukrainian authorities have been loth to assure the safety of their gay citizens and to prosecute homophobic hate crimes, to the effect that the large majority of gay Ukrainians feel it necessary to hide their sexual orientation from family, friends, colleagues, and employers. It has been largely accepted that legislative progress on lgbt rights has been enacted primarily to comply with EU regulations in order for Ukraine to obtain visa free travel for its citizens. It does not reflect any significant improvement on the social level. In practice, the daily life of gay Ukrainians continues to be difficult and at times dangerous.

In light of this continuing situation for gay men and women in Ukraine, and in light of Ukrainians' ability to travel freely within the EU for a period of 90 days without a visa, it would seem reasonable to posit that some gay Ukrainians are considering travelling to the EU and claiming asylum, so that they can remain, work, and even marry there. Positive results of such a decision are, in fact, possible, but the nature and stipulations of EU asylum law relating to lgbt should be carefully considered before taking such a step. Consider also that if asylum is granted, it can be removed if the asylee voluntarily returns to his home country before he attains citizenship in his new country; this can take as long as ten years. Moreover, if the applicant has travelled outside Ukraine, his asylum application should be based upon events occurring after his last return home.

The legal instruments covering asylum for lgbt in the EU are the 1951 Geneva Convention on Refugees, and the 2004 Qualifications Directive of the European Union, which stipulate asylum for those suffering persecution, or a well founded fear of such, on the grounds of sexual orientation. “Well founded fear,” however, is generally understood as implying imminent danger.

Many gays and even many gay organizations misunderstand this aspect of the law: “Well founded fear is not meant, in most countries, to cover someone who has successfully hidden his sexual orientation out of fear of persecution. Just being gay in an intensely homophobic environment is frequently not sufficient cause for asylum. There must be persecution or at least a strong likelihood of discovery and probable persecution. Unfortunately, the law frequently does not afford protection for someone who has hidden himself in a deep, dark closet, despite his obvious suffering.

One way of dealing with such a problem is that the applicant, once in his intended country of asylum, “comes out” as gay and thereby establishes himself as such, frequenting gay clubs and joining gay institutions. Once this is done, the adjudicating board can’t legally demand he return to his home country and go back into the closet. He can also credibly claim that people in his home country now know that he is gay and he will therefore be subject to persecution if he returns. Once he applies for asylum, his permission to stay is extended until his case is adjudicated, giving him more time to establish his gay credentials.

Understandably, the asylum system for gay applicants is plagued by a good deal of fraud, people who are not homosexual claiming to be so in order to claim asylum. Examiners are, therefore justifiably suspicious. This situation does not, however, justify officials’ asking invasive questions concerning detailed descriptions of intimacies, or subjecting the applicant to medical examinations or other forms of pseudo psychological and physical tests. The applicant should remember that the principal criterion for asylum is not whether he or she is gay,

but rather whether he or she has been persecuted, or has a well founded reason to fear persecution, because of real or perceived homosexuality. In fact, the applicant need not be gay; he needs simply to be perceived as such. Any attempt to subject the applicant to indecent, invasive questioning or testing should be reported through the applicant's legal council assigned to him, under EU law, when he registers for asylum.

That homosexuality is legal in Ukraine, and that the formalities of protection have been authorized, are only tangentially relevant to an asylum claim on sexual orientation grounds. Since homosexuality is legal in Ukraine, Ukraine may be categorized in some asylum countries as "safe." This categorization may occasion a more detailed examination of the applicant's claim, but it will not in any sense disqualify the applicant. EU law is clear that the grounds for asylum need not be state initiated. Persecution or danger from non state actors, even members of the applicant's own family, if the state refuses or neglects to protect the applicant and prosecute the perpetrator, is considered justifiable grounds. There have been constant reports from Ukraine of the authorities' neglecting or even outright refusing to prosecute perpetrators of violence against lgbt, or even threatening them themselves. Therefore, claims of lack of protection are likely to be deemed credible.

A major consideration is the decision concerning in which country in the EU the applicant chooses to lodge his claim. EU regulations demand that he lodge his claim in the first country in the EU he enters. Unless a Ukrainian wishes to remain in Poland, Slovakia, or Hungary, none of which are particularly welcoming for gays or for asylum applicants in general, he should not exit by land through these countries. He best fly directly to Germany, France, or another more gay friendly EU country. An airport transit country, as long as the applicant doesn't actually go through immigration in that country, doesn't count.

Although all countries of the EU are bound by the same international laws and EU Directives concerning asylum, there is little uniformity as to the interpretation and application of those laws and

Directives. Even within the same country, the various adjudication boards may have differing interpretations of the legal instruments. Much of the variation is related to differing standards of credibility from one board to another, and, frankly sympathy towards lgbt applicants. Moreover, standards of persecution vary; some adjudicating boards will accept constant verbal abuse as persecution, while others will require physical violence.

There is not necessarily a correlation between the tolerance toward gays in the society in general and the attitudes of the adjudication boards. Italy, for example, is not particularly accepting towards homosexuality, but has been quite liberal in adjudicating gay asylum cases, while the UK, where gays are more completely normalized, has a spotty record on accepting gay cases. If a gay man or woman is considering asylum and does not have a compelling reason to select one EU country over another, some internet research and even telephonic conversations with the gay organizations in the possible countries of asylum may be advisable.

Another consideration concerns the conditions under the asylum applicant has to live during the time his case is pending. Some countries or regional adjudication boards will allow asylum applicants to live independently if they have sufficient funds or contacts that will house them, but in most countries, now, applicants must at least sleep every night in centers of varying comfort and sanitation. The principal danger here, however, is that the gay asylum seeker may be forced to sleep every night and spend much of his day with other asylum seekers with claims on other persecution grounds and who may very well be intensely homophobic, even violently so. Some, but very few districts, have special centers for gay applicants or allow gay applicants to live independently to avoid problems of homophobia within the centers.