



www.msk-stimul.eu

The LGBT-group STIMUL (Moscow)

LGBT+ refugees in Russia

(The Russian Federation's Compliance with Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

**Submitted to the Committee against Torture (CAT) in relation to the consideration of
List of issues prior to reporting (LOIPR)**

The 70 Session (26 Apr 2021 - 28 Apr 2021)

Introduction

1. The LGBT-group “Stimul” is a Russian civic initiative created in 2015 with the aim of fighting for equal rights and ensuring human dignity regardless of sexual orientation and gender identity. Our main activities are providing legal aid to victims of hate crimes or discrimination and representing their interests in police and courts. We also monitor human rights violations, assist LGBT-refugees and do international advocacy, including the individual applications to the ECHR and the UN HRCttee. Currently, our lawyers deal with more than 50 legal cases. In 2017-2018, “Stimul” submitted its observations to the UN CAT and the UN CESCR, in 2020 – to the UN HRCttee and the UN CEDAW.

The scope of the problem

2. Article 3 of the Convention stipulates the following: “1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

3. The present document identifies several issues concerning the compliance of the Russian Federation with the above article that, in our opinion, require pressing clarification from the Russian authorities. Accordingly, we kindly ask the Committee to include the described topic to one degree or another in the forthcoming *List of Issues prior to reporting* and ask the Russian Federation a number of questions in this regard.

Prevalent insecurity of LGBT-refugees in the Russian Federation

4. One of the main problems that we, as well as a number of other organizations working with refugees in recent years, have identified is the total mistreatment by the Russian authorities of LGBT-people seeking asylum. We do not know a single legal case when Russia would give asylum to a person because he or she is afraid of returning to their homeland due to their sexual orientation or gender identity.

5. The indicated problem hides several layers at once. We illustrate them with a number of legal cases that our organization continues to follow. In this regard, we are attaching a relevant information note to this document, which briefly sets out the legal situation of our applicants, and describes explanations given by the migration services and courts when refusing to grant asylum. **We kindly draw your attention to the fact that the information offered to you, by virtue of its delicacy, is confidential; therefore, please do not publish Annex online.**

6. In all of the cases we cited, the applicants arrived in the Russian Federation from countries where voluntary homosexual relations between adults are punishable by a prison term, and sometimes (in the case of Sudan or Nigeria) by the death penalty. The relevant provisions are included in the national Criminal Codes and, more importantly, are applied in practice. The applicants in these cases are mainly from Central Asian countries (Uzbekistan, Turkmenistan), as well as from Africa (Sudan, Nigeria, Cameroon). Furthermore, all of the mentioned countries are traditionalist and religious ones, which is why LGBT minorities are persecuted there by society as well; most applicants alleged harassment even within their families. All these risks were clearly underlined by the applicants when they applied to the Russian migration services for asylum. However, in all the cases we have cited in Annex No. 1, the Russian authorities ignored the applicants' allegations, without giving any slightest assessment of the countries' oppressive legislation.

7. It can be seen from the materials that for the Russian authorities there was no difference at what point the migrants applied for asylum. This could be immediately upon arrival in Russia or several years later; it could be at the time of a person's legal stay on the territory of the RF (as there was a valid visa or patent for a job) or it could be when an applicant already violated immigration laws. An applicant could bring his sexual partner for an interview or just limit himself to a general statement of the impossibility of living freely in his native country - the arguments of the Russian authorities for all the applicants, who were so individual and had left so different countries, were the same.

8. The analysis shows that the authorities, as a rule, referred to the following arguments. Firstly, the authorities constantly provide irrelevant country information, in general words citing the achievements of a particular country or quoting the Wikipedia information about its geographical particulars; at the same time, the authorities bypass the situation of the LGBT community in the region. Secondly, the authorities always emphasize that nothing threatens the applicants' relatives who remained in the country (although it is strange to say the opposite - as they are not LGBT). Thirdly, the authorities say that the applicants did not participate in their country in military, political or religious organizations, which is also not relevant to LGBT issues. Fourth, the authorities often demand from the applicants some documented evidence of the criminal proceedings instituted against them for sodomy or the corresponding judicial sentences, although it is obvious that in such case the applicants would hardly have successfully reached Russia. Fifth, as can be seen from the case descriptions, the courts, when considering complaints about refusals of the migration services, use the same phrasing, often repeated word for word; unfortunately, Russian judges do not have an individualized approach to human dignity. Sixth, the courts ignore the case law of international bodies - such as the ECHR or the UN CAT / HCRtte.

9. Finally, as a rule, the authorities say that the applicants do not belong to a separate social group that is protected by refugee law, or that such association does not constitute a basis for protective measures. This, in our opinion, is an obvious systemic problem of Russian legislation.

10. In the wording of the Russian Law “On Refugees” (1993), “a refugee is a person who is not a citizen of the Russian Federation and who, due to well-founded fears of becoming a victim of persecution on the grounds of race, religion, citizenship, nationality, association with a particular social group, or political opinion is outside the country of his nationality and cannot use the protection of this country or does not want to use such protection due to such fears; or cannot or does not want to return to it because of such fears”.

11. If we interpret the notion of a “particular social group” in favor of LGBT applicants, then undoubtedly this includes LGBT people as a fully formed and self-sufficient social group that, alas, has long been discriminated in many societies. However, the Russian authorities, after more than a quarter of a century after the adoption of the quoted law, are in no hurry to include LGBT people in this definition or use this norm very selectively (although, we repeat, we do not know a single case of successful LGBT asylum in the RF). At the same time, the Russian migration legislation does not have clear criteria by which it would be possible to determine how and in which cases LGBT migrants can count on refugee status, or at least on temporary asylum.

12. “Temporary asylum” is also included in the 1993 Law. According to Article 12, it can be granted to a foreign citizen for a year if the person has no reason to be recognized as a refugee, but cannot be expelled from the territory of the RF for humane (or humanitarian) reasons. However, the Russian authorities equally do not provide temporary asylum for LGBT migrants, not seeing in their cases those “humane incentives” (even if the expelled person is at risk of corporal punishment or the death penalty). While other countries in their migration practices are already moving away from the principle of “criminal prosecution risks”, replacing it with a broader and more democratic test while assessing threats to LGBT migrants¹, we are still - and so far unsuccessfully - trying to connect in the eyes of the authorities repressive and discriminatory LGBT legislation with the need to give asylum because of this, at least temporarily.

13. The refusals of the migration services, supported by the Russian courts, lead to the fact that these applicants remain in the Russian Federation in a semi-underground state, do not have the right to work, receive medical assistance; they can be detained, placed to confinement and finally sent to their hazardous motherland. With great difficulty, some of them manage to move to a country that is more tolerant towards LGBT people, but most of the applicants, specified in Annex, continue to live in Russia.

14. In the recent 8th report to the HRCte, the Government relied on draft federal legislation on asylum in the Russian Federation; this embraces the draft Federal Law “On Granting Asylum in the Russian Federation”. However, it would not be superfluous to note that the authorities are silent about the long history of work on this draft law, which, it seems, will never be completed. The draft was prepared in the spring of 2014. According to the open sources, from May 14 to May 29, 2014, the draft was the object of a public discussion on a special government website,

¹ The UK Supreme Court, for example, in its decision in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department* marked a clear departure from the ‘risk of criminal prosecution’ approach as outlined in this Court’s jurisprudence of ten years ago. In its landmark judgment of 7 July 2010, that Court held, unanimously, that the ‘reasonably tolerable test’ of ‘being discreet’ was objectionable because no heterosexual person would find such constraints on being open about their sexual orientation to be reasonably tolerable. In 2012, the United Nations High Commissioner for Refugees published Guidelines on International Protection in this area. Those Guidelines affirm that sexual orientation and/or gender identity are fundamental aspects of human identity that no person should be required to suppress. The UNHCR notes numerous decisions in multiple jurisdictions that confirm that respect for fundamental human rights cannot be consistent with the requirement that a person conceal an aspect of his or her identity. The Court of Justice of the European Union in *Minister voor Immigratie en Asiel v. X, Y and Z* also endorsed this principle.

from May 29, 2014 to June 4, 2014, it successfully passed an independent anti-corruption expertise. Thus, by the summer of 2014, the relevant text, in fact, was already complete to be submitted to the parliament.

15. However, the competent authorities constantly delay even this first step. It should be noted that for many years the coordinating body formed to ensure synchronized actions of the interested executive bodies for the implementation of the state migration policy has been the Government Commission on Migration Policy. For a long time the discussion of this bill was repetitively ignored at the meetings of this Commission (chaired by Mr. Igor Shuvalov). On October 3, 2018, by directive No. 2123-r of the Prime minister of the RF, Dmitry Medvedev, a new composition of the Commission was adopted (chaired by Mr. Anton Siluanov), but in 2019 no further steps were taken.

16. We stress with regret that the situation with the draft law “On Granting Asylum” remains unresolved. In view of the above, we invite the Committee to note with grave concern this 4-year unmoving situation with the adoption of this law, which is not even submitted to the State Duma, and to strongly request its quick adoption.

Suggested Questions to the RF for the List of Issues prior to reporting

We respectfully ask the Committee to request further information from the Russian Federation on the following issues regarding treatment of LGBT+ refugees and asylum seekers:

17. Please describe the progress made towards adopting the draft law “On Granting Asylum” (2014). Please inform the Committee whether the relevant draft contains explicit provisions about sexual orientation and gender identity as the cause for protection and non-refoulement of LGBT individuals.

18. Similarly, please comment whether the provisions of the law “On Refugees” (1993), i.e. norms about “a particular social group”, embrace LGBT community. Please also indicate whether the provisions of this law, namely “humane incentives” (*из гуманных побуждений*), permit to grant asylum to an LGBT migrant from a country where is a criminal prosecution for same-sex relations.

19. Please comment on the nonexistence of LGBT migrants who successfully received asylum in the RF. In this respect, please provide information on: (a) the number of applications lodged by LGBT asylum seekers before the Russian migration services; (b) the number of cases where the temporary asylum or refugee status was granted to LGBT applicants. Regarding the cases where the relevant applications were rejected, please report on measures taken to ensure strict compliance with the principle of non-refoulement of LGBT asylum seekers in law and in practice. What guarantees exist, in law and in practice, against possible refoulement of LGBT individuals who may be exposed to a violation of their rights under article 3 of the Convention in the country of return?

20. Please indicate whether authorities, adjudicating asylum claims, have an effective instrument to consistently comply with the non-refoulement principle. In that regard, please indicate whether there are any written criteria or adopted guidelines for them to deal with the applications lodged by LGBT individuals. Please provide information on the model assessment of risks in those cases, including the assessment of the penal legislation in the countries concerned.