

‘Not A Sufficient Reason’: LGBTQ asylum seekers in the Russian asylum system

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Abstract

This article provides an analysis of the Russian asylum system with a specific focus on its treatment of LGBTQ asylum seekers. I analysed existing literature on the Russian asylum system and examined asylum decisions from first-instance and second-instance immigration authorities and appeal decisions issued by the Basmanny district court of Moscow and the Moscow city court. While there seems to be no unified approach as to whether LGBTQ asylum seekers constitute a particular social group in the sense of the UN Refugee Convention, there is a consistent trend of refusing international protection to LGBTQ asylum seekers at all levels. The relevant bodies either ignore the systematic persecution LGBTQ persons face in the countries of origin or simply dismiss the arguments put forward by the applicants and conclude that there is no proof of the existence of personal risks in case of return. Such an approach further pushes the applicants into a semi-underground existence.

Keywords: migration, asylum, LGBTQ asylum seekers, Russian Federation

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Introduction

The experiences of LGBTQ asylum seekers have been documented in different national contexts, both in European host countries and outside of Europe. Findings suggest that LGBTQ asylum seekers arriving in Europe encounter targeted violence throughout and after their journey and are vulnerable to violence from other refugees and immigration officials.¹ Studies focusing on the experiences of asylum

¹ E Alessi *et al.*, ‘Traumatic Stress Among Sexual and Gender Minority Refugees from the Middle East, North Africa, and Asia Who Fled to the European Union’, *Journal of Traumatic Stress*, vol. 31, issue 6, 2018, pp. 805–815, <https://doi.org/10.1002/jts.22346>.

seekers arriving from the Democratic Republic of Congo to Uganda demonstrate how violence based on sexual orientation and gender identity intersects with wider political violence.² As one respondent put it, ‘sexual violence is not only on the body, there is violence within the law, violence within the services, and violence across, in all arenas’. In Lebanon, scholars identify the same issues of physical and emotional trauma as well as violence from security services, other refugees, and host communities, but also a lack of access to services and economic opportunities.³ Inequality of access resulting from discrimination also emerges from the study of Syrian LGBTQ refugees’ experiences in Türkiye, which explains how discrimination hampers not only access to housing, work, health, and social services, but also endangers physical safety.⁴ While the existing research allowed for the formulation of policy responses to the specific risks facing LGBTQ individuals, there are significant gaps in this area of forced migration studies, which calls for further research, especially with a focus on other national contexts.

If one thinks about a possible safe haven for LGBTQ individuals fleeing homophobic violence in their home countries, Russia is not the most likely destination that immediately comes to mind. The country’s recent history has been marked by the adoption of the ‘gay propaganda’ law in 2013, intensification of official homophobic rhetoric, and spiralling violence against the LGBTQ community. The development of hate crime legislation has led to a growing number of violent incidents towards LGBTQ persons being registered,⁵ although accurate statistical data is lacking. Moreover, the law has been widely used by non-state homophobic militant groups to justify violence and harassment against LGBTQ people and activists, while the state failed to provide adequate protection to victims of such crimes.⁶ These trends culminated in a full-scale anti-gay

² K McQuaid, “‘There is violence across, in all arenas’: Listening to Stories of Violence Amongst Sexual Minority Refugees in Uganda’, *The International Journal of Human Rights*, vol. 24, issue 4, 2020, pp. 313–334, <https://doi.org/10.1080/13642987.2017.1347342>.

³ H Myrntinen, L Khattab and C Maydaa, “‘Trust no one, beware of everyone’: Vulnerabilities of LGBTI refugees in Lebanon’, in J Freedman, Z Kivilcim and N Ö Baklacioğlu (eds.), *A Gendered Approach to the Syrian Refugee Crisis*, 1st Edition, Routledge, London, 2017, pp. 61–76.

⁴ Z Kivilcim, ‘Lesbian, Gay, Bisexual and Transsexual (LGBT) Syrian Refugees in Turkey’, in J Freedman *et al.*, pp. 26–41.

⁵ A Kondakov, ‘The Influence of the “Gay-Propaganda” Law on Violence Against LGBTIQ People in Russia: Evidence from Criminal Court Rulings’, *European Journal of Criminology*, vol. 18, issue 6, 2021, pp. 940–959, <https://doi.org/10.1177/1477370819887511>.

⁶ Human Rights Watch, ‘License to Harm: Violence and Harassment Against LGBT People and Activists in Russia’, HRW, 15 December 2014, retrieved 23 April 2021, <https://www.hrw.org/report/2014/12/15/license-harm/violence-and-harassment-against-lgbt-people-and-activists-russia>.

purge launched by law enforcement officials in Chechnya, one of Russia's North Caucasus republics, where dozens, and possibly hundreds, of men were rounded up on suspicion of being gay, held in secret detention centres and tortured by state agents.⁷

Despite the worsening of the situation in terms of rights and freedoms for the LGBTQ community, LGBTQ refugees continue to seek asylum in Russia for reasons that vary for each person. In many cases, Russia is the only country to which they can obtain a visa comparatively easily and without numerous administrative barriers. Many asylum seekers come to Russia on a student visa and subsequently abandon their studies due to the inability to pay student fees. In 2018, thousands of asylum seekers arrived during the FIFA World Cup on a 'Fan ID'; it was a much easier, faster, and safer way to leave their countries than trying to reach Europe.⁸ While some see Russia as a country of transit on their way to Europe, others mistakenly believe Russia to be a European Union country and expect to encounter similar policies toward LGBTQ individuals as in the EU. Still others choose to go to Russia because of pre-existing social ties with other migrants and with family and friends, since such networks tend to facilitate migration.⁹

Methodology

This article is based on an analysis of the Russian legislation governing the legal status of asylum seekers and refugees, asylum decisions issued by immigration officials (first and second instance), and first-instance appeal decisions issued by the Basmanny district court of Moscow and second-instance appeal decisions issued by the Moscow city court. It is important to note that asylum decisions issued by the immigration authorities are not publicly available. Moreover, while the decisions issued by Moscow courts are published on their websites, it is not possible to search for decisions related to LGBTQ asylum claims. Therefore, I draw on the decisions that were available to me during my work at Civic Assistance Committee, a Russian NGO that provides legal and humanitarian assistance to migrants and refugees.

⁷ Human Rights Watch, 'Russia: New Anti-Gay Crackdown in Chechnya', HRW, 8 May 2019, <https://www.hrw.org/news/2019/05/08/russia-new-anti-gay-crackdown-chechnya>.

⁸ P Merzlikin, 'Nowhere to Turn: Thousands of Refugees Came to the 2018 World Cup through FIFA's FAN ID System', *Meduza*, 24 May 2019, <https://meduza.io/en/feature/2019/05/24/nowhere-to-turn>.

⁹ M J Miller and S Castles, *The Age of Migration: International Population Movements in the Modern World*, Palgrave Macmillan, Hampshire, 2019, p. 65.

For this purpose, I use twelve decisions issued by different relevant authorities: one decision issued by the Directorate for Migration Affairs of the Main Directorate of the Ministry of Internal Affairs (UVM GU MVD) in the city of Moscow (first-instance migration authority for Moscow), one decision issued by the UVM GU MVD of the Moscow region (first-instance migration authority for the Moscow region), two decisions issued by the Main Directorate for Migration Affairs of the Ministry of Internal Affairs, or GUVM MVD, of the Russian Federation (second-level migration authorities for appeals), five decisions issued by the Basmanny district court of Moscow (first-instance court), and three decisions issued by the Moscow city court (second-instance appeal court). All decisions were issued in 2019.

For the purpose of this paper, I will use the term ‘asylum-seeker’ rather than ‘refugee’. Although the definition of ‘refugee’ is present in the national legislation governing the granting of asylum, positive decisions are practically non-existent. The term ‘refugee’ is used in relation to a person who has been granted refugee status.

In the remainder of the paper, I first provide an overview of the Russian legal frameworks governing the granting of asylum, setting specific asylum procedures, and defining the rights and duties of refugees and asylum seekers. To do this, I draw on the existing research on the topic and on the materials published by the NGOs working with asylum seekers in Russia. Next, I examine how sexuality-based asylum cases are examined within the national asylum system, followed by a brief conclusion.

Russia as a country of asylum

National Legal Frameworks Governing the Granting of Asylum

Russia acceded to the 1951 *Convention Relating to the Status of Refugees* (also known as Geneva Convention) and the related 1967 *Protocol* in 1993. Under the Russian Constitution, ‘generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system’ (art. 15). In 1993, the provisions of the Geneva Convention were transposed into the Russian *Law on Refugees* (Law No. 4528-I of 19.02.1993). The law has been amended several times since then, most recently in 2020. It governs the main aspects related to the granting of asylum: different types of protection, criteria for the determination of refugee status, relevant asylum procedures, appeal procedures, and the rights of foreign nationals and stateless persons during the status determination procedure and the appeal stages.

While the definition of ‘refugee’ contained in the law is compatible with the 1951 Convention, the Law itself has several provisions that contradict the spirit and aim of the Convention.¹⁰ First, article 2.2, defining the scope of the law, excludes those who have fled their country of origin ‘for economic reasons or due to hunger, epidemic, or natural or man-made emergencies.’ This provision precludes the possibility of protection for, for example, environmental refugees.¹¹ Second, the law denies substantive examination to asylum seekers if they arrive from a country where they could have claimed asylum (art. 5.1(5)), without setting any mechanisms to examine if they had a real possibility to apply for asylum there or whether it is possible for them to re-enter this country. Additionally, grounds for the denial of substantive examination go beyond those enumerated in the Convention and include, for instance, the existence of criminal proceedings against the person seeking asylum for committing *any* crime on the territory of Russia (art. 5.1(1)). Finally, there is no clear provision that explicitly prohibits *refoulement* of refugees, the only possibility to protect an asylum seeker from *refoulement* being, in practice, a request for interim measures per Rule 39 of the Rules of the European Court of Human Rights (ECtHR).

The *Law on Refugees* introduces another form of protection for those who cannot be deported ‘for humanitarian reasons’ (art. 12.2(2)): temporary asylum. A person granted temporary asylum has the same rights as a recognised refugee under the Russian legislation. However, this status is granted for a period of less than a year and has to be regularly renewed. In reality, there is an expectation that a person granted temporary asylum will either apply for other forms of permanent residency during the validity period of a temporary asylum certificate or will return to their country of origin once the situation is stabilised. Moreover, asylum seekers whose applications for temporary asylum are under consideration have no access to social protection benefits.¹² Access to social services is also dependent on the ability of the asylum seeker to obtain a temporary registration certificate (migration registration), which constitutes a major issue for most migrants in

¹⁰ A Afshar, ‘Refugees in Russia: The Law on Refugees and its Implementation’, *Journal of Refugee Studies*, vol. 18, issue 4, 2005, pp. 468–491, <https://doi.org/10.1093/refuge/fei041>.

¹¹ N Myers, ‘Environmental Refugees in a Globally Warmed World’, *BioScience*, vol. 43, issue 11, 1993, pp. 752–761, <https://doi.org/10.2307/1312319>.

¹² E Yu Burtina, E Yu Korosteleva, and V I Simonov, *Russia as a Country of Asylum: Report on the Implementation of the 1951 Convention Relating to the Status of Refugees by the Russian Federation*, Civic Assistance Committee, 2015, retrieved 16 May 2021, p. 95, https://refugee.ru/wp-content/uploads/2016/06/doklad_ENG.pdf.

Russia, including individuals recognised as refugees.¹³ Nevertheless, the limited term and volume of rights of temporary asylum seem to make granting asylum more acceptable for the authorities.

The Evolution of the Asylum System

The national asylum mechanisms were set up by the Russian authorities to address a flow of asylum seekers after the dissolution of the USSR in 1991, which was a new phenomenon for a post-Soviet state. Many residents of former Soviet republics fled their countries for reasons ranging from armed conflicts to persecution or exclusion as members of minority groups.¹⁴ This reality was reflected in the first edition of the *Federal Law on Refugees* that included persecution based on language as grounds for asylum (which clearly implied Russian-speaking minorities, mostly ethnic Russians, living in other former Soviet states). However, the entry into force of the Law of 1997 was followed by a sharp decline in refugee numbers from 237,720 in 1997 to 1,852 in 2004.¹⁵ The latter number radically differs from the number of people considered by the United Nations High Commissioner for Refugees (UNHCR) as people ‘of concern’, excluding internally displaced persons (118,299 by the end of 2004). Several factors contributed to the fall in the number of refugees: the duration of refugee status and ease with which it can be lost, the introduction of visa requirements for many citizens from the Commonwealth of Independent States (CIS), and the introduction of simplified naturalisation procedures for certain large categories.

In recent years, the situation has been steadily worsening, even according to official statistics. Moreover, it is becoming increasingly difficult to access reliable statistics on the issue due to the 2016 migration services reform, which abolished the Federal Migration Service (FMS) and transferred their responsibilities to the Ministry of Internal Affairs (MVD). However, it is obvious that the total number of people who have succeeded in obtaining refugee status in the Russian Federation is very small compared to the number of people who are in need of international protection. According to official statistics, only 114 people were granted refugee status in 2011; 94 in 2012; 40 in 2013; 254 in 2014 (this increase being due to

¹³ V Agadjanian, E Gorina, and C Menjívar, ‘Economic Incorporation, Civil Inclusion, and Social Ties: Plans to Return Home Among Central Asian Migrant Women in Moscow, Russia’, *International Migration Review*, vol. 48, issue 3, 2014, pp. 577–603, <https://doi.org/10.1111/imre.12117>.

¹⁴ Afshar, p. 470.

¹⁵ United Nations High Commissioner for Refugees, *2004 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-Seekers, Stateless and Other Persons of Concern to UNHCR*, UNHCR, 2005, p. 11, <https://www.unhcr.org/statistics/unhcrstats/42b283744/2004-global-refugee-trends-overview-refugee-populations-new-arrivals-durable.html>.

the Russian military intervention in Ukraine); 112 in 2015; 39 in 2016; 33 in 2017; 30 in 2018; 23 in 2019; and 28 in 2020.¹⁶ These statistics demonstrate that the total number of people who are granted refugee status in the Russian Federation is disproportionately low in relation to the number of people who are in need of international protection, and every year, fewer and fewer asylum seekers are granted refugee status.

Obtaining temporary asylum remains an option for those seeking protection, and, according to statistics, it is granted more frequently than refugee status. The temporary status offers the same rights to its holder as the refugee status (right of residence, right to receive medical care, right to work, etc.), but it is granted for a period of maximum of one year and can be revoked at the end of this period, which is a common practice and creates a situation of instability for the refugees. In 2020, 6,014 temporary asylum certificates were issued, of which 5,383 were granted to Ukrainian citizens. The privileging of asylum seekers from Ukraine as compared to individuals from other countries is a result of influence-seeking in the Russian geopolitical neighbourhood.¹⁷ Ukrainian citizens also constitute the majority of newly naturalised Russian citizens in 2020: 409,549 out of 656,347.¹⁸ For other categories of asylum seekers, chances of obtaining even temporary status remain slim.

Finally, despite numerous technical amendments, national frameworks regulating asylum have changed little since their creation and have not kept up with developments in this area, especially in relation to the incorporation of gender-sensitive approaches and recognition of LGBTQ asylum-seekers.

Transformation of the Russian Politics of Sexuality and LGBTQ Rights

The processes and changes happening within the Russian asylum system and their impact on LGBTQ asylum seekers need to be placed within the context of the Russian politics of sexuality. Since 2013, Russian political discourses and policies regarding LGBTQ rights have undergone significant transformations, with scholars describing this period as ‘Russia’s year of political homophobia’.¹⁹ In June 2013, the new legislation adopted by the State Duma (Russian Parliament), which introduced amendments to several federal laws with the purpose of banning

¹⁶ Civic Assistance Committee, *On the Imitation of Asylum System in Russia: Statistics for 2020 and Brief Analysis* (In Russian), 2021, p. 8.

¹⁷ I Kuznetsova, ‘To Help “Brotherly People”? Russian Policy Towards Ukrainian Refugees’, *Europe-Asia Studies*, vol. 72, issue 3, 2020, pp. 505–527, <https://doi.org/10.1080/09668136.2020.1719044>.

¹⁸ *Ibid.*, p. 14.

¹⁹ D Healey, *Russian Homophobia from Stalin to Sochi*, Bloomsbury Publishing, London, 2017.

the so-called ‘propaganda of non-traditional sexual relations’, became a symbolic articulation of the Russian government’s policy of hatred towards the LGBTQ community.²⁰ According to observers, the adoption of the new legislation has contributed to the rise in homophobic violence by far right movements—such as Occupy Pedophilia—as well as harassment and attacks on gay people with almost total impunity, creating an atmosphere of fear for the LGBTQ community.²¹

Importantly, this transformation has been discursively linked to the ‘traditional values’ narratives, promoted by the Russian government both domestically and abroad, and has become one of the most significant manifestations of this discourse domestically.²² While Russia has been attempting to gain international recognition for ‘traditional values’ in order to promote the culturally relativist understanding of human rights, the government’s turn to political homophobia at the domestic level was not only the reflection of this rhetoric, but became central to the nation-building narratives. The LGBTQ rights discourse has been portrayed as inherently non-Russian and contrary to Eastern Orthodox Christianity, a symbol of the perceived Western decline. Given the place that this rhetoric has come to occupy in the Russian political discourse, it comes as no surprise that the Russian migration system and courts generally fail to grant asylum to LGBTQ asylum seekers. Moreover, Russia’s use of the ‘moral sovereignty’ claim, which Wilkinson describes as the idea that ‘human rights are contingent on the observation [...] of local traditional values, which are seen to represent the values of the majority’, suggests that each country has the right to its own interpretation of human rights, including the rights of its minority groups.²³

Sexuality-based Asylum Claims in the Russian Asylum System

Failure to Address Sexuality-based Asylum Claims

In recent decades, changes in attitudes and perceptions towards issues related to sexual orientation and gender identity (SOGI) in host societies have led to the development of case law related to sexuality-based asylum claims in different

²⁰ A Kondakov, ‘The Censorship “Propaganda” Legislation in Russia’, in L R Mendos (ed.), *State-Sponsored Homophobia*, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Geneva, 2019, pp. 213–215, p. 214.

²¹ A Luhn, ‘Russian Anti-Gay Law Prompts Rise in Homophobic Violence’, *The Guardian*, 1 September 2013, <http://www.theguardian.com/world/2013/sep/01/russia-rise-homophobic-violence>.

²² C Wilkinson, ‘Putting “Traditional Values” into Practice: The Rise and Contestation of Anti-Homopropaganda Laws in Russia’, *Journal of Human Rights*, vol. 13, issue 3, 2014, pp. 363–379, p. 365, <https://doi.org/10.1080/14754835.2014.919218>.

²³ *Ibid.*

jurisdictions. For example, while in Canada the first claim related to sexual orientation was made in 1991, in 2004 there were 1,351 decisions concerning sexuality-based asylum claims.²⁴ In 1994, the Toboso-Alfonso case marked the beginning of the recognition of sexual orientation as grounds for asylum in the United States.²⁵ In May 1999, France recognised that the notion of a social group in the context of asylum law may encompass LGBTQ people.²⁶ Finally, the changing practice at the European Union level led to the adoption in 2004 of the EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, stipulating that ‘depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation’. At the international level, the adoption of the 2002 Guidelines on International Protection against Gender-Related Persecution was the first time the international text made reference to sexual orientation in the context of the right to asylum. However, it was not until 2008 that the UN High Commissioner for Refugees directly addressed the issue by publishing the UNHCR *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. This was followed by the UNHCR *Guidelines on International Protection No. 9* in relation to claims based on SOGI in 2012. These international texts, although non-binding, indicate a change in how SOGI-based asylum claims are processed.

These developments have not been incorporated into the Russian asylum system. First, neither sexual orientation nor gender identity is mentioned in Russian asylum-related regulations or official documents. The existence of LGBTQ asylum seekers and the specific problems they face have not been recognised by state officials, which results in the absence of official data on such claims. The Ministry of Internal Affairs does not collect statistical data on the number of applications filed or on the percentage of positive decisions with regard to asylum applications related to sexual orientation.

It is interesting that the analysis of decisions concerning LGBTQ asylum claims reveals that, while it is clear that there is a unified practice at all levels of authorities charged with making decisions on asylum claims of not granting either refugee status or temporary protection to LGBTQ asylum seekers, certain aspects of such

²⁴ N laViolette, ‘“UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity”: A critical commentary’, *International Journal of Refugee Law*, vol. 22, issue 2, 2010, pp. 173–208, p. 175, <https://doi.org/10.1093/ijrl/eeq019>.

²⁵ V Neilson, ‘Homosexual or Female: Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Claims’, *Stanford Law & Policy Review*, vol. 16, 2005, pp. 417–444.

²⁶ C Kobelinsky, ‘Gay Asylum: Intimacy Case Law in the French Court of Asylum’, *Droit et Société*, vol. 82, issue 3, 2012, pp. 583–601, <https://doi.org/10.3917/drs.082.0583>.

decisions differ. For instance, the text of the decisions of the Basmanny district court shows that there is some confusion as to whether the refusal should be based on the fact that the applicants could not prove that they were personally persecuted due to their sexual orientation (the decisions concerning the cases of A. and M. seem to accept that in general, LGBTQ persons face certain risks in Sudan—see below), or that being part of the LGBTQ community cannot be considered as grounds for asylum at all because the LGBTQ community is not considered a social group in the sense of the Convention. At the same time, the wording of the decision issued by the first-instance immigration authority of Moscow (in the case of B.) seems to imply that the LGBTQ community should be considered a social group in the sense of the Convention.

According to NGO reports, there have been no instances of refugee status or temporary asylum being granted on the territory of the Russian Federation due to persecution based on sexual orientation or gender identity.²⁷ The Russian Federation systematically refuses to grant asylum to this category of asylum seekers, even in situations where a risk of persecution emanates from the state. According to the NGO Stimul, the refusal to grant asylum varied neither depending on the personal circumstances of the applicants nor on the circumstances of the filing of an application (whether the applicants resided in the country legally, and whether they entered recently and applied for asylum within a few days upon their arrival or applied after a few years of living in Russia irregularly). Despite this general trend, there is no unified approach in the reasoning of the different relevant bodies when it comes to LGBTQ asylum claims.

This emerges not only in relation to how these authorities treat the notion of ‘social group’, but in their reasoning concerning the existence of well-founded fear for LGBTQ persons in the countries of origin.

Reasoning Applied by Relevant Authorities Regarding the Existence of ‘Well-founded Fear’

One of the elements that emerge from the analysis of the first-instance decisions issued by the immigration officials relates to the country-of-origin information analysis conducted during the examination of asylum claims. In a first-instance decision issued by the immigration authorities on 16 October 2019, concerning a gay Nigerian man, the analysis based on country-of-origin information does not mention that homosexual activities are illegal under Nigerian legislation and in some states are punishable by death under sharia law. It provides information on the ethno-linguistic composition of Nigeria, enumerates its major cities, and

²⁷ The LGBT-group STIMUL, *LGBT+ Refugees in Russia*, 2020, p. 2, retrieved 16 June 2022, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/INT_CAT_ICS_RUS_44605_E.pdf.

mentions other country characteristics that are not related in any way to the case under examination. Another decision issued on 29 January 2019, concerning a gay asylum seeker from Cameroon, does not contain any country-of-origin information and simply states that membership in a particular social group by itself ‘does not constitute a sufficient reason’ for granting asylum, without even mentioning that Cameroonian laws criminalise homosexuality. In other decisions, with regards to Sudanese nationals, the immigration officials briefly note that the applicant considers it dangerous to return to his home country because of the existence of repressive legislation criminalising same-sex relationships; however, they continue that ‘not only is Sudan a party to many international human rights treaties, it also actively cooperates with the international community in this area’ (in the cases of A. and M.). This demonstrates that Russian migration services systematically fail to adequately examine the risks facing members of the LGBTQ community in the countries of origin.

Table 1: Decisions issued by the first-level migration authorities: The Directorate for Migration Affairs of the Main Directorate of the Ministry of Internal Affairs in the city of Moscow and in the Moscow region

Name	Country of origin	Decision includes relevant country analysis (situation of LGBTQ persons)	Decision directly or indirectly admits the existence of risk for LGBTQ persons in the country of origin	Decisions contains an analysis of the applicant's circumstances in light of the country's LGBTQ rights situation	Sexual orientation as grounds for asylum
B.	Cameroon	No. However, the short summary of the applicant's claim includes some relevant country information; he specifically cited the relevant law during the interview. ‘The applicant based his claim on [...] his membership in the LGBT community, which is criminalised in Cameroon by article 347/1 “criminalization of sexual intercourse”.’	No	No	Yes ‘Membership in a particular social group (non-traditional sexual orientation) does not constitute a sufficient reason for granting asylum on the territory of the Russian Federation.’
C.	Nigeria	No. The country analysis describes the country's geographical position, its ethnic and religious composition, and some provisions from the Family Code.	No	No	Not clear ‘The fact that the applicant fears persecution by the citizens of Nigeria due to his sexual orientation cannot be considered a defining criterion for granting him refugee status in the Russian Federation.’

Table 2: Decisions issued by the second-level (appeal) migration authorities: Main Directorate for Migration Affairs of the Ministry of Internal Affairs (GUVM MVD)

Name	Country of origin	Decision includes relevant country analysis (situation of LGBTQ persons)	Decision directly or indirectly admits the existence of risk for LGBTQ persons in the country of origin	Decisions contains an analysis of the applicant's circumstances in light of the country's LGBTQ rights situation	Sexual orientation as grounds for asylum
A.	Sudan	No. The country analysis describes an overall difficult political situation in Sudan and the government's efforts to overcome political instability.	Yes. 'The circumstances provided by the applicant reveal that the real reason for applying for asylum is his desire to reside in a country where persons of non-traditional sexual orientation are not prosecuted. However, refugee status in the Russian Federation cannot be granted solely on the basis of such circumstances.'	No. It is mentioned that 'despite being a person of non-traditional sexual orientation, the applicant managed to obtain a national ID and leave the country without any obstacle', which seems to imply that he therefore did not face any risks.	Not clear. 'The applicant did not cite convincing facts of persecution in his country based on his race, religion, citizenship, nationality, political beliefs, or membership in a social group.'
M.	Sudan	No. However, the short summary of the applicant's claim includes some relevant country information; he specifically cited the relevant law during the interview. 'According to the applicant, sodomy is a crime in Sudan and is prosecuted in accordance with article 148 of the Penal Code. The punishment ranges from beatings to the death penalty.'	Yes (identical to the above)	No (identical to the above)	Not clear (identical to the above)

The analysis of decisions issued by the Basmanny district court of Moscow (following the appeal of the first-instance decisions issued by the immigration authorities and the brief one-month appeal procedure to the highest body of the Ministry of Internal Affairs that usually results in the rejection of the appeals) demonstrates a different approach. Five court decisions—concerning two asylum-seekers from Cameroon, two from Sudan, and one from Nigeria—provide identical argumentation, with only personal information and specific circumstances of each case being different. While in each of these cases the court recognises the existence of repressive and discriminating legislation against LGBTQ individuals, it argues that 'the existence of a country's consistent pattern of gross, flagrant, or mass human rights violations in itself is not a sufficient reason for concluding that the person concerned would be in danger of being subjected to torture if returned to his or her home country' (for instance, in the case of S.). In all five decisions, the Court cites a judgment by the Committee against Torture issued on 27 November 2014, in the case of *Abed Azizi v. Switzerland*. It concludes by stating that the applicants did not provide sufficient evidence that they personally

‘face a foreseeable and real risk of being subjected to torture and ill-treatment if returned to [their] homeland.’ None of these cases provides a thorough analysis of the applicants’ personal circumstances.

Table 3: Decisions issued by the Basmanny district court of Moscow (first-instance court)

Name	Country of origin	Decision includes relevant country analysis (situation of LGBTQ persons)	Decision directly or indirectly admits the existence of risk for LGBTQ persons in the country of origin	Decisions contains an analysis of the applicant's circumstances in light of the country's LGBTQ rights situation	Sexual orientation as grounds for asylum
A.	Sudan	No. The court cites excerpts from the applicant's interview.	Possibly yes. The court cites the applicant's interview, where he talks about the existence of criminal prosecution of LGBTQ persons in Sudan, and states that, nevertheless, the applicant failed to prove the existence of personal threats, thus possibly admitting the overall situation of LGBTQ persons in Sudan is not safe.	No. It is mentioned that 'despite being a person of non-traditional sexual orientation, the applicant managed to obtain a national ID and leave the country without any obstacle', which seems to imply that he therefore did not face any risks.	Yes. 'Membership in a particular social group (non-traditional sexual orientation) in itself does not constitute a sufficient reason for granting asylum on the territory of the Russian Federation.'
M.	Sudan	No. The court cites excerpts from the applicant's interview.	Possibly yes (identical to the above)	No (identical to the above)	Yes (identical to the above)
Mb.	Cameroon	No. Only based on excerpts from the applicant's interview.	Possibly yes. The court cites the applicant's interview, where he talks about the existence of criminal prosecution of LGBTQ persons in Cameroon, and states that, nevertheless, the applicant failed to prove the existence of personal threats, thus possibly indirectly admitting the overall situation of LGBTQ persons in Cameroon is not safe.	No	Not clear
S.	Nigeria	No. Only based on excerpts from the applicant's interview.	Possibly yes. The court cites the applicant's interview, where he talks about the existence of criminal prosecution of LGBTQ persons in Nigeria, and states that, nevertheless, the applicant failed to prove the existence of personal threats, thus possibly indirectly admitting the overall situation of LGBTQ persons in Nigeria is not safe.	No	Not clear
B.	Cameroon	No. Only based on excerpts from the applicant's interview.	Possibly yes (identical to the above)	No	No (identical to the above)

Table 4: Decisions issued by the Moscow city court (second-instance court)

Name	Country of origin	Decision includes relevant country analysis (situation of LGBTQ persons)	Decision directly or indirectly admits the existence of risk for LGBTQ persons in the country of origin	Decisions contains an analysis of the applicant's circumstances in light of the country's LGBTQ rights situation	Sexual orientation as grounds for asylum
A.	Sudan	No	No	No	Not clear
M.	Sudan	No	No	No	Not clear
Mb.	Cameroon	No	No	No	Not clear

Despite these different approaches, both administrative immigration authorities and courts either ignore the systematic persecution facing LGBTQ persons in their countries or simply dismiss the arguments put forward by applicants and conclude that they cannot prove the existence of personal risks in case they return to their home countries. In both cases, the result is a refusal to grant asylum.

Conclusion

This paper highlighted the structural drawbacks of the Russian asylum system and how they create significant challenges for LGBTQ asylum seekers. First, while Russia acceded to the 1951 Geneva Convention and incorporated its definition of ‘refugee’ into its national legislation, the *Law on Refugees* contains provisions that unnecessarily limit its scope by excluding asylum seekers who are charged with committing any kind of criminal offense in Russia or denying substantive examination to asylum seekers if they arrive from a country where they could have claimed asylum. Moreover, the number of people who obtain asylum or temporary asylum status in Russia is significantly lower than the number of persons of concern. This suggests unwillingness by Russian authorities to grant protection to asylum seekers coming to Russia unless there is a political interest at stake.

LGBTQ asylum seekers face particular challenges in the process of seeking protection in Russia. First, the country’s asylum system has not incorporated recent developments concerning asylum claims related to sexual orientation. This question has been addressed only by courts during the examination of individual cases. The analysis of first-instance decisions issued by immigration officials demonstrates that Russian migration services systematically fail to adequately examine the risks facing members of the LGBTQ community in their countries of origin. As a rule, they do not refer to relevant legislation of the countries of origin that criminalises same-sex relationships. At the same time, the Basmany district court of Moscow, while issuing appeal decisions, indirectly recognises

the criminalisation and discrimination of LGBTQ people in the countries of origin but does not adequately examine the existence of personal risks in each individual case. This reluctance results from the overall weakness of the Russian asylum system and the pervasive state homophobia.

The decisions reviewed in this paper do not provide sufficient material to analyse the application of the concept of ‘membership in a particular social group’, which is one of the necessary elements of asylum grounds. However, the practice of the Russian criminal justice system gives some indications of a possible approach. In Russian courts of different levels, the LGBTQ community is rarely recognised as a social group in the context of criminal prosecution, making it difficult for rights groups to build a hate crime claim.²⁸ Thus, this approach is likely to be employed in examining asylum cases.

The refusals of the migration services to carefully examine the claims of LGBTQ asylum seekers, supported by the Russian courts, result in a situation where LGBTQ applicants are forced to remain in the Russian Federation in a semi-legal state. There has been no instance of a person obtaining refugee status or temporary protection in Russia because of persecution based on sexual orientation or gender identity. Without a refugee or temporary asylum status, asylum seekers do not have the right to work and are forced to work irregularly, which places them at risk of exploitation. Upon the termination of the examination of their asylum claim (which lasts for up to three months), they lose the possibility to obtain a migration registration, which is the prerequisite for obtaining social services, including healthcare. They can be detained, placed in confinement, and finally returned to their countries where they face a real risk of persecution and even death.

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²⁸ A A Kondakov, ‘Javlajutsja li LGBT social’noj gruppoj?: Sociologicheskie kriterii ponjatija dlja sudebnyh interpretacij’ (‘Is the LGBT Community a “Social Group”? Sociological criteria for understanding court interpretations’), *Sravnitel’noe konstitutsionnoe obozrenie*, vol. 6, issue 121, 2017, pp. 131–144, <http://doi.org/10.21128/1812-7126-2017-6-131-144>.