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Asylum for persecuted homosexuals in the Republic of Korea

Andrew Wolman

Two recent successful claims for asylum suggest that the Republic of Korea may be prepared to serve in the future as an important country of asylum for those suffering persecution due to their sexual orientation.

While Korean society has certainly become more accepting of differing sexual orientations over the last fifteen years, many elements of Korean society remain quite conservative, and open affirmations of homosexuality are rare. Nevertheless, gays and lesbians have equal rights and are protected by anti-discrimination law,¹ and two relatively high-profile asylum cases in recent years have resulted in gay men being granted asylum in Korea.

The first case involved an asylum seeker from Pakistan, a married attorney from Lahore with four children. He had been arrested and detained briefly in Pakistan, and had also been subjected to blackmail and intimidation by family members and people around him. His application for refugee status in Korea was rejected by the Ministry of Justice in June 2009 and the claimant then filed an appeal, which was heard by the Seoul Administrative Court.

The court found the claimant's personal statement to be coherent and persuasive, and granted him asylum, concluding that if he were returned to Pakistan he would have a "high possibility of being persecuted by Muslims and the Pakistani government because he was gay". The court explicitly explained that persecution could come from either the government itself or from private actors. In addition to the claimant's testimony, the court's conclusion was based largely on Country of Origin Information from foreign jurisdictions – specifically, a UK Border Agency report on Pakistan that said Pakistani police officers frequently blackmail homosexuals, as well as a Canadian Refugee and Immigration Committee report detailing instances of persecution of gays

in Khyber and Lahore. The court also noted clauses in both Pakistani law and Islamic law criminalising homosexual behaviour.

In 2011, another claim of sexual orientation-based persecution was presented to the same court by a Nigerian asylum seeker. Here the claimant stated (and the court accepted as credible) that the Nigerian government had rejected him from a government job because he was gay, and had denied him compensation when his house was demolished in an urban planning project because of his sexual orientation. When he protested at the lack of compensation, a group of people tried to attack him at his house. The Seoul Administrative Court ruled in favour of the appellant, basing its opinion largely on an analysis of Country of Origin Information compiled from foreign sources, including a Canadian Immigration and Refugee Board report, an Australian Refugee Appeal Tribunal research report, a US State Department human rights report, an Amnesty International report and others. The court also took into account the fact that Nigerian law criminalises homosexual relationships.

Taken together, these two cases show a distinct openness to allowing asylum based on sexual orientation. The court fully accepted the credibility of the claimant in each instance. In the case of the Pakistani asylum seeker, it even went out of its way to stress that the fact that the claimant was married and had children did not mean he was not gay, and that this was not unusual behaviour in the Pakistani context. The court also had no trouble locating Country of Origin Information from reputable sources that gave credence to the claimants' fears of persecution.

The judges also declined to address other potential arguments that are sometimes used to deny asylum in other parts of the world. For example, neither ruling addressed the possibility that the claimant might be able to avoid persecution by living in a different part of his home country or by hiding his sexual orientation, although in the Nigerian claimant's case the court did state that "if a person cannot express his sexuality due to the fear of being persecuted, it can be regarded as a sort of persecution", thus implying that it would be inappropriate to return someone to a country where they could remain secure only by disguising their sexuality.

The importance of these two single cases to Korean refugee law should not be overstated. However, these decisions are significant in that they show that, despite being relatively new to refugee jurisprudence, the Korean judiciary is willing to grant asylum based on sexual orientation persecution to applicants coming from countries that are considered to be hostile to gays.

Andrew Wolman *amw247@yahoo.com* is Associate Professor, Graduate School of International and Area Studies, at the Hankuk University of Foreign Studies, Seoul, Korea.

1. With the exception of men in the military.