

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	209
Land:	Gaza og Vestbredden
Kilde:	Lifos
Titel:	Spr og svar - forholdene for homoseksuelle i Palæstina
Udgivet:	6. december 2013
Optaget på baggrundsmaterialet:	30. juli 2014

2013-12-06

Fråga-svar

Palestinska områdena. Situationen för homosexuella

Fråga

Hur är situationen för homosexuella personer på de palestinska områdena?

Svar

International Lesbian, Gay, Bisexual, Trans and Intersex Association – ILGA (2013):

Some LGBTIQ Palestinians seeking asylum in Israel have been blackmailed by the Israeli Secret Service who threatened to out them to their families if they did not cooperate. (s. 19)

- - -

The British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force in Gaza.²²⁵

Section 152(2) of the Code criminalizes sexual acts between men with a penalty of up to 10 years.²²⁶

This Code was in force also in Jordan till 1951 and in Israel till 1977, before they adopted their own Penal Codes. Note that in the West Bank (including East Jerusalem), however, the Jordanian Penal Code of 1951, largely modified in 1960 is in force, having no prohibition on sexual acts between persons of the same sex. (s. 68)

US Department of State (2013) ang. lagstiftning, praxis och diskriminering på Västbanken och Gaza:

Societal Abuses, Discrimination, and Acts of Violence
Based on Sexual Orientation and Gender Identity

Palestinian law, based on the 1960 Jordanian penal code, prohibits consensual same-sex sexual activity, although in practice the PA did not prosecute individuals suspected of such activity. Societal discrimination based on cultural and religious traditions was commonplace, making the West Bank and Gaza challenging environments for lesbian, gay, bisexual, and transgender (LGBT) persons. Some Palestinians claimed PA security officers and neighbors harassed, abused, and sometimes arrested LGBT individuals because of their sexual orientation. NGOs reported Hamas also harassed and detained persons due to sexual orientation. (s. 77)

En västerländsk utlandsmyndighet i Jerusalem som vill vara anonym uppgav i september 2013 att jordanska Penal Code från 1951 (modifierad 1960), som tillämpas på Västbanken, inte uttryckligen kriminaliserar sexuella handlingar mellan personer av samma kön. Samtidigt konstateras dock att ingen lag på Västbanken skyddar de homosexuellas rättigheter. Arbete pågår med att ta fram en ny strafflag, men sannolikt kommer det dröja innan den är klar. Enligt uppgift finns det i ett utkast till lagen en artikel som skulle kriminalisera sexuella handlingar mellan personer av samma kön. I praktiken skulle denna lag endast gälla i Västbanken, eftersom Hamas kontrollerar Gaza.

European Commission (2013):

Concerning LGBT rights, Palestinian law, based on the 1960 Jordanian penal code, prohibits homosexual activity, although in practice there are no reports of the PA having prosecuted individuals suspected of such activity. Societal discrimination based on cultural and religious traditions is commonplace. (s. 7)

UD (2012):

Rättsläget vad gäller kriminalisering av homosexualitet på Västbanken är oklart. I praktiken förefaller homosexualitet vara avkriminaliserat, men det finns inget uttryckligt rättsligt skydd för homosexuellas rättigheter. Utarbetandet av en ny straffrättslig lagstiftning pågår och det återstår att se hur denna kan komma att avhjälpa oklarheterna. Homosexualitet är kriminaliserat i Gaza.

Homo- och bisexualitet utgör ett socialt tabu och homosexuella är socialt marginaliserade på de palestinska områdena. (s. 22)

Sveriges Generalkonsulat i Jerusalem uppgav följande vid en intervju i oktober 2012:

Bland andra potentiellt hotade kategorier i Gaza ingår Hbtq-personer. Homosexuella och lesbiska personer kan inte komma ut med sin sexuella läggning i Gaza.¹⁰⁵ (s. 22)

Den israeliska webbaserade tidningen The Times of Israel (2012) rapporterar om en homosexuell man från Nablus (Västbanken) som söker asyl i Israel. Han uppgav till en israelisk domstol att han riskerar att dödas om han deporteras tillbaka.

A gay Palestinian man appealed to the High Court of Justice on Thursday to overturn the Interior Ministry's decision to refuse him residency status, saying he risks death if he returns to the West Bank.

The Muslim resident of Nablus claimed that deportation to the Palestinian territories would result in his detention and torture by the Palestinian security forces and persecution by his family because of his sexual orientation.

His petition testified that Palestinian police had arrested, tortured and severely beaten him because he is openly gay. Most members of his family have disowned him, and those who haven't have warned him by phone to never come home, he stated.

The man has lived in Tel Aviv — widely hailed as one of the most gay-friendly cities in the world — with his partner for the last decade. The couple say that the Interior Ministry has repeatedly rejected their petition to legalize the Palestinian's residence in Israel.

Brittiska Home Office (2012) har gjort en sammanställning av information från olika källor. Ett utdrag därifrån:

20.03 The undated Palestine page of the website GlobalGayz.com, accessed 20 February 2012, stated that, "Male homosexuality is illegal in Gaza, with laws dating to the British Criminal Code Ordinance of 1936, and it is

reported to be legal in the West Bank but there are conflicting reports. Palestine has no civil right laws that protect LGBT people from discrimination or harassment.” [32a] “Further, —Recently, a handful of LGBT-organizations have arisen to aid LGBT Arabs and Palestinians, all of which are headquartered in Israel: Jerusalem Open House, Black Laundry, Aswat (‘Voices’) for women. Same-sex marriages, civil unions or domestic partnerships are not remotely given legal recognition in Gaza or the West Bank.” [32a]

20.04 An updated 2011 version of the book by former Guardian Middle East editor, Brian Whitaker, —Unspeakable love: Gay and lesbian life in the Middle East, initially published in 2006, noted, —For Palestinians who face persecution in the West Bank and Gaza, the usual escape route is to Israel, where sexual relations between men have long been legal.” [27a] (Chapter 1, p39) Further, —Estimates of the number of gay Palestinians who have quietly – and usually illegally – taken refuge in Israel range from 300 to 600.” [27a] (Chapter 1, p 41) (s.111)

Immigration and Refugee Board of Canada (2011) skriver om situationen för homosexuella och även om palestinier som på grund av sin sexuella läggning söker asyl i Israel.

Palestinian attitudes

Aswat, a Haifa-based advocacy group for Palestinian lesbians, explains that sexual orientation is a taboo topic in Palestinian society and that homosexuality is viewed as a "shameful deviation" (Aswat n.d.). Similarly, Nowhere to Run: Gay Palestinian Asylum-Seekers in Israel, a 2008 report published by Tel Aviv University's Public Interest Law Program, characterizes Palestinian societal views towards homosexuality as "hostile" (Kagan and Ben-Dor Mar. 2008, 10). The report provides details on the situation of gay Palestinians seeking asylum in Israel, saying they are "persecuted in the Occupied Territories by militant groups, Palestinian security forces and members of their own families," but excluded from applying for asylum in Israel because of their nationality (ibid., 5, 7).

Human Rights Watch (2011):

Hamas police continued to harass, detain, and in some cases torture people suspected of "morality" offenses,

including homosexuality and extra-marital sex, and to arbitrarily close or restrict businesses that allowed unmarried and unrelated men and women to "mix."

Israeliska dagstidningen Haaretz (2010) skriver om en palestinsk, homosexuell man som har väddat till en israelisk domstol om att inte sändas tillbaka till Västbanken. Detta skulle, menade han, innebära att han riskerar att dödas för sin sexuella läggning eller anklagas för att vara israelisk kollaboratör. De israeliska myndigheterna uppger att det finns en reell risk för palestinier att förföljas på grund av sin sexuella läggning och att de också riskerar att dödas för att de misstänks ha samarbetat med Israel.

The Palestinian, in his 20s, maintains that his life is threatened because of his sexual orientation and because he has been marked by Palestinians as having cooperated with Israel.

- - -

A native of Nablus, he fled his home at 12 and came to Israel as a result of violence and abuse at the hands of his father. At one point he worked as a male prostitute in Tel Aviv's Gan Hahashmal. Six months after living in Israel, he returned to his family in Nablus.

In the PA he was arrested by Palestinian intelligence who suspected him of collaborating with Israeli security forces. He says that he was jailed, tortured and abused until he was forced to admit such collaboration.

Following his forced confession he was jailed at a facility near the Muqata'a for what he says was two years, waiting for a death sentence to be carried out for alleged treason.

The young Palestinian petitioned the High Court through attorney Yohanna Lerman, a public defender, said that during IDF operations he managed to escape and was asked to identify those who jailed and abused him openly, exposing his own identity.

Following his exposure to the Palestinians as appearing to "collaborate" with Israeli forces, he was granted temporary permits to stay in Israel by the Shin Bet. During his stay in Israel the young Palestinian was arrested and jailed for his involvement in acts of violence and theft.

The committee evaluating the degree to which Palestinians are at risk for alleged collaboration with Israel decided in November that the young man was not

at risk. The committee also said that he failed to meet his commitment to avoid illegal activities, which in turn threatens public safety.

The state argued in response to the High Court petition that many Palestinians who have claimed similar risk to their lives for collaboration are actually threatened because Palestinian society considers their behavior to be "morally degenerate."

Human Rights Watch (2010) ang. en homosexuell man i Gaza som suttit fängslad i över ett år utan rättegång:

Although the morality code's enforcers enjoy impunity for their abuses, several inmates of Gaza's central prison appear to be guilty of nothing but bad luck. We met a mother of three children who couldn't produce a marriage certificate, was accused of committing adultery - with her husband - and was jailed despite her testimony that her family has prevented her from obtaining the necessary documents because they disapprove of her marriage. A 19-year-old man - whose father won't hire a lawyer to defend him - has been in jail without trial for more than a year because he is gay.

GlobalGayz (ej daterad) ang. motsägelsefull information om lagstiftning m.m.:

Palestine is a tormented and divided 'territory', not a recognized country. The topic of LGBT rights in Palestine remains one of the more taboo issues in the region. Male homosexuality is illegal in Gaza, with laws dating to the British Criminal Code Ordinance of 1936, and it is reported to be legal in the West Bank but there are conflicting reports. Palestine has no civil right laws that protect LGBT people from discrimination or harassment. The Palestinian political organizations, both secular and fundamentalist, tend to avoid the issue of LGBT-rights. Recently, a handful of LGBT-organizations have arisen to aid LGBT Arabs and Palestinians, all of which are headquartered in Israel: Jerusalem Open House, Black Laundry, Aswat ("Voices") for women. Same-sex marriages, civil unions or domestic partnerships are not remotely given legal recognition in Gaza or the West Bank. Gay Palestinians frequently seek refuge in Israel fearing for their lives, especially fearing death from members of their own families

BBC har i sin serie *Secret Lives - Middle East Taboos* gjort ett reportage om homosexuella palestinier som flytt till Israel. Bland annat intervjuas en palestinsk man som uppger att han fängslades och misshandlades på grund av sin sexuella läggning.

Länk till reportage: <http://www.youtube.com/watch?v=UUwmT0eJi9U>

(Hämtad 2013-11-19)

En rapport skriven av två forskare, Michael Kagan & Anat Ben-Dor, vid Tel Avivs universitet 2008, handlar om homosexuella palestinier som söker asyl i Israel. Rapportens abstract:

In the Occupied Palestinian Territories, some gay men face torture and potentially lethal violence at the hands of PA security forces, members of their own families, and armed militant groups. Brutal repression of homosexuality by a wide array of actors in Palestinian society puts an unknown number of people at risk, and represents an important violation of human rights for people living in the Occupied Territories.

Meanwhile, Israel prohibits these people from even filing asylum applications, simply because of their nationality. The United Nations has intervened in a few cases to promote resettlement of gay Palestinian men to third countries, but the UN refugee office in Jerusalem has generally cooperated with Israel in excluding Palestinians from the asylum system.

Israel has increasingly recognized equal rights for gays, lesbians and trans-gendered people and has taken substantial steps in recent years to implement the right to seek asylum. Asylum claims based on sexual orientation are becoming increasingly routine in international refugee law. If respect for the rights of gay men in the Occupied Territories does not improve, and if the State of Israel's current refusal to receive Palestinian asylum-seekers does not change, innocent people will be put in mortal danger. Israel's continued refusal to consider asylum claims from gay Palestinians violates the general rule of international law – recognized by Israel's High Court – against returning a foreigner to a territory where his or her life or freedom may be in danger. Under international law, no state may discriminate by nationality with regard to refugee protection.

This report analyzes evidence that gay Palestinians are at risk of severe human rights violations in PA-controlled areas and analyzes Israel's obligations to asylum-seekers under international law. It then makes recommendations as to how Israel and the United Nations can better protect gay Palestinian asylum-seekers.

Rapportens titel är *Nowhere to Run - Gay Palestinian Asylum-Seekers in Israel*. Den publicerades april 2008.

Länk:

http://www.law.tau.ac.il/Heb/_Uploads/dbsAttachedFiles/Nowhere.pdf

(Hämtad 2013-11-19)

Konsulterade källor

Sökning har gjorts i följande databaser och söktjänster:

Lifos

Ecoi.net¹

Refworld²

Dow Jones Factiva³

Google

Denna sammanställning av information/länkar är baserad på informationssökningar genomförda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

European Commission, *Implementation of the European Neighbourhood Policy in Palestine Progress in 2012 and recommendations for action [...]*, 2013-03-20

http://www.ecoi.net/file_upload/1226_1364374083_2013-progress-report-palestine-en.pdf

(Hämtad 2013-11-18)

GlobalGayz, *Palestine, Middle East*, ej daterad

<http://www.globalgayz.com/middle-east/palestine/>

(Hämtad 2013-11-21)

Haaretz, *Court: Palestinian persecuted for homosexuality can stay in Israel*, 2010-01-10

¹ <http://www.ecoi.net/about>

² <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

³ <http://www.dowjones.com/factiva/index.asp>

<http://www.haaretz.com/print-edition/news/court-palestinian-persecuted-for-homosexuality-can-stay-in-israel-1.261101>

(Hämtad 2013-11-19)

Home Office, *Occupied Palestinian Territories. Country of Origin Information (COI) Report*, 2012-05-01

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/OPT/OPTCOImay12.pdf?view=Binary>

(Hämtad 2013-11-21)

Human Rights Watch, *In Gaza, Prisoners Twice Over*, 2010-06-27

<http://www.hrw.org/news/2010/06/27/gaza-prisoners-twice-over>

(Hämtad 2013-11-18)

Human Rights Watch, *World Report 2011*, 2011-01-24

http://www.ecoi.net/local_link/153344/254944_en.html

(Hämtad 2013-11-18)

Immigration and Refugee Board of Canada: *Treatment of sexual minorities; state protection and services available*, 2011-02-16

http://www.ecoi.net/local_link/160616/264046_en.html

(Hämtad 2013-11-18)

International Lesbian, Gay, Bisexual, Trans and Intersex Association - ILGA, *State Sponsored Homophobia. A world survey of laws: Criminalisation, protection and recognition of same-sex love*, 2013-05-01

http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf

(Hämtad 2013-11-18)

Migrationsverket, *Västbanken & Gaza - säkerhet / myndighetsskydd*, 2013-02-22. Lifos 29558

The Times of Israel, *Gay Palestinian to court: Deport me and I'll be killed*, 2012-05-25

<http://www.timesofisrael.com/gay-palestinian-to-hcj-boot-me-and-theyll-kill-me/>

(Hämtad 2013-11-19)

UD, *Mänskliga rättigheter på de ockuperade palestinska områdena 2011*, 2012-06-30. Lifos 28126

US Department of State, *2012 Country Reports on Human Rights Practices - Israel and the occupied territories*, 2013-04-19. Lifos 30265

Övriga källor

Västerländsk utlandsmyndighet i Jerusalem, e-post, september 2013