Assessing asylum claims of trans and gender non-conforming claimants (NOT INCLUDED IN VIDEO)

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This paper aims to reflect on trans asylum and gender non-conforming applicants and the position they occupy in current refugee law and practice. In the first part, the paper will offer an overview of international refugee law with a special focus on the ‘particular social group’ grounds for discrimination, a taxonomy in which gender identity related reasons for application are usually included. The paper will proceed to examine the current literature on trans asylum seekers as belonging to a particular social group and to critique the criteria for such inclusion. I will problematize the way the assessment of persecution is attempted in gender diverse applicants’ claims and I will argue for the right to asylum on the grounds of both gender identity and expression. I will explore the need for a complementary narrative and practice based, rather than strictly identity-based approach to gender identity and expression related asylum claims based on the impact of gender non-conformity in the country of origin, as Berg and Millbank suggest (2013). In this light, I will propose a refined framework for refugee status determination for trans and gender non-conforming asylum seekers that does not reproduce strictly identitarian, rights-based, westernized frameworks in order to assess persecution of applicants on the basis of non-conforming gender identity and expression.

Keywords: Transgender, gender nonconformity, particular social group, refugee law

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Invariably ‘discreet’? Refugee status determination in Germany and France and the intricacies of ‘discretion’ reasoning

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One of the most controversial issues concerning sexuality-based asylum claims in recent years has been ‘discretion’ reasoning—the notion that a claimant can avoid persecution by behaving ‘discreetly’. Though often challenged, such reasoning has remained resilient in the English-speaking common law jurisdictions, upon which research has mainly focused to date. This paper broadens the debate by undertaking a detailed exploration of ‘discretion’ reasoning in sexuality-based asylum claims in Germany and France, two of the major European civil law jurisdictions. In the first part, the paper demonstrates that in very different forms ‘discretion’ logics have traditionally also affected sexuality-based asylum claims in each of these jurisdictions. The second part of the paper explores the effects that the Europeanization of asylum and the rejections of the ‘discretion’ requirement by the UK Supreme Court in 2010 and the Court of Justice of the European Union in 2012 and 2013 have had on established French and German jurisprudence. The analysis reveals that rather than ending ‘discretion’ reasoning in Germany and France, these developments have transformed it, such that it persists in a different shape. Much like in the common law jurisdictions, with all of its problematic implications, ‘discretion’ reasoning remains deeply entrenched and resistant in German and French decision-making practice concerning sexuality-based asylum claims.

Keywords: Refugee status determination, sexuality-based claims, discretion reasoning, Germany, France

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Subjective judicial assessments of SOGI claims at German asylum courts

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Drawing on ethnographic observations at German asylum court hearings, the paper discusses how credibility and a ‘credible narrative’ are assessed by German asylum judges in asylum determination, with a particular focus on SOGI cases.

For a long time, anthropologists criticised the Global Northern lens by which a credible narrative of one’s biography is characterised by a linear progression of time, critical self-reflexion, and rationalisation. Similarly, European authorities involved in refugee determination – including asylum courts - are preoccupied with identifying incoherencies, discrepancies and ‘untruths’. Little attention is given to socio-cultural idiosyncrasies, such as cyclical progression of time: for example, those who are unable to coherently present a linear chronology of their biography are dismissed as “non-credible”, and thus not entitled to refugee protection in Europe. Similarly, asylum seekers who base their claim on sexual orientation may often be dismissed for not fitting into the Global Northern perception of what it means to be LGBTQI+, and our research has shown that SOGI claims are often reduced to sexual activity and public displays of one’s sexual orientation, as well as the ability to ‘critically reflect’ on the persecution SOGI claimants may face in their country of origin. In my presentation I attempt to shed light on the problematic use of credibility in SOGI claims that are assessed by Global Northern standards and definitions.

Keywords: Asylum courts; asylum adjudication; credibility, SOGI claims, Germany

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