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# MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

“Bureaucratic Violence Faced by SOGI Asylum Applicants in Austria:  
The Politics, Procedure, and Consequences of the Asylum System”

verfasst von / submitted by

Moiz Rehan

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of  
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*“... scholarship can be an act of love, that the war between head and heart can finally be undeclared in the territory of my own body.” (Hess, 2009, p.18)*

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## **Chapter 1: Introduction**

*"Sie sind nicht homosexuell" – "You are not gay"<sup>1</sup>*

This statement was made by an official at the Federal Office of Immigration and Asylum (BFA) in Austria to an 18-year-old gay Afghan asylum claimant in 2018 whose asylum claim on the basis of his sexual orientation was denied and who was subsequently deported. This event sparked international protest against the treatment of LGBTQ (lesbian, gay, bisexual, transgender, and queer) asylum claim applicants in Austria and captures the burden of proof placed on LGBTQ asylum applicants to prove that they are worthy of claiming asylum. Such instances of the denial of asylum claims on the basis of stereotypical and racist understandings of sexual orientation and gender identity is what initially inspired me to write this thesis. However, upon further research, I learned that the violence faced by LGBTQ asylum claimants is not simply caused by this burden of proving their sexual orientation or gender identity but also by the institutionalized bureaucracy that places them at the risk of violence at all points during the processing of their asylum claims.

According to ILGA World's latest report on state-sponsored homophobia, 78 countries in the world still criminalize people based on their sexual orientation and five apply the death penalty to such cases (European Union Agency for Fundamental Rights, 2017, p. 2). Studies have shown that LGBTQ refugees experience severe and prolonged trauma prior to migration, including psychological abuse, physical and sexual assault, corrective rape, forced conversion therapy, blackmail, and public shaming (Alessi et al., 2020, p. 14). In addition to experiencing

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<sup>1</sup> Wiener Zeitung. "Asylwerber - 'Sie Sind Nicht Homosexuell.'" *Österreich Politik - Nachrichten - Wiener Zeitung Online*, Wiener Zeitung, 15 Aug. 2018, [https://www.wienerzeitung.at/nachrichten/politik/oesterreich/982897\\_Sie-sind-nicht-homosexuell.html](https://www.wienerzeitung.at/nachrichten/politik/oesterreich/982897_Sie-sind-nicht-homosexuell.html)

victimization, LGBTQ individuals living in such countries may have to conceal their identities or temper their gender nonconforming behavior in order to protect themselves from being targets of violence and any attempts to seek assistance may be ignored or met with further abuse, forcing many LGBTQ individuals to flee in search of safety and protection (Alessi et al., 2020, p. 14). For some SOGI asylum claimants, premigration experiences include not only persecution based on their sexual orientation or gender identity but also experiences of war or political instability (Alessi et al., 2020, p. 14).

Hence LGBTQ individuals have very valid reasons for fleeing their countries of origin and applying for asylum elsewhere for their survival. This thesis firstly explores the legal framework, process, and requirements for claiming asylum on the basis of sexual orientation and gender identity in EU countries with a special focus on Austria. The EU Qualification Directive (2011/95/EU) which defines the criteria for international protection, expressly mentions sexual orientation and gender identity as possible reasons for persecution (Article 10) (European Union Agency for Fundamental Rights, 2017, p. 2) and therefore, valid reasons to apply for asylum. Although a significant number of LGBTQ people have fled to the European Union over the years, government agencies do not provide official statistics regarding the number of asylum claims filed based on sexual orientation or gender identity (Alessi et al., 2021, p. 176). Yet through the work of researchers who have conducted extensive interviews with SOGI asylum claimants as well as other stake holders involved in the asylum field such as lawyers, NGOs, and mental health professionals, I attempt to understand the intersectional complexity of violence faced by the SOGI asylum claimants during the asylum process.

It is also important to place the issue of LGBTQ individuals seeking asylum within the contemporary political context in the European Union. On one hand, there is an increasingly progressive LGBTQ equality agenda with European countries claiming to be modern because of

their support for LGBTQ individuals. While on the other hand, asylum claimants and refugees have become increasingly politicized within Western countries resulting in strategies aimed to prevent the arrival of migrants to Europe (Danisi et al., 2021, p. 10). LGBTQ individuals applying for asylum in European countries find themselves caught in the middle of this civilizational discourse and need to navigate socio-political systems built upon Western imperialism while also demonstrating a genuine threat to their well-being in the countries of their origin. This act of translating their identities so they can become legible to the judges determining the outcome of their asylum claims will be explored in detail in this thesis.

I build upon literature as well as an interview with a successful asylum claimant in Austria in this thesis to explicitly highlight the intersectional nature of violence faced by LGBTQ individuals during the asylum process (Danisi et al., 2021, p. xiii) as well as the obstructive asylum bureaucracy that can prevent asylum claimants from accessing basic welfare, accommodation, educational, and employment opportunities (Lloyd, 2003, p. 338). Another important lens is that of legal violence which highlights how certain laws (un)intentionally cause violence for those who are most marginalized in a given society. Asylum law, in particular, has been critiqued as assuming a white, male, and heterosexual asylum seeker, who escapes public, political, or religious persecution (Llewellyn, 2021, p. 209) and I explore the various challenges faced by SOGI asylum claimants who must navigate heteropatriarchal and white supremacist societies that either explicitly or implicitly center white, male, and heterosexual experiences (Llewellyn, 2021, p. 210). SOGI claimants are, therefore, ‘doubly’ isolated (Danisi et al., 2021, p. 11) in their host communities as both asylum claimants as well as members of a SOGI minority group and face unique challenges that will be explored in this thesis.

My goal through this thesis is to humanize SOGI asylum claimants who navigate their precarious asylum processes with resilience but are often subjected to multiple levels of violence.

To this end, I underline the emotional and mental toll of the asylum process on LGBTQ individuals in this thesis who face many kinds of isolation. SOGI claimants are frequently affected by serious psychological trauma and mental health conditions – including recurrent depression, panic disorder, generalized anxiety disorder, and PTSD among others – on account of the persecution they suffered in their home countries (Danisi et al., 2021, p. 11) as well as on account of the racist discrimination from the LGBTQ community in the host country and lack of support from their diaspora communities or other refugees which might be quite queerphobic (Alessi et al., 2020, p. 13; Danisi et al., 2021, p. 11). Within this context, I will highlight the important work done by NGOs who provide a sense of community as well as legal and psychological support for asylum seekers as they navigate life in their host communities.

This thesis, therefore, aims to provide a starting point to understand the legal, bureaucratic, interpersonal, and psychological violence faced by LGBTQ individuals applying for asylum in European countries, particularly in Austria. The irony, of course, is that the purpose of the asylum system is to protect individuals from persecution that they face in their country of origin and offer a “safe” space (Llewellyn, 2021, p. 210). Yet, every step of the asylum adjudication process often makes unreasonable expectations of asylum claimants; expectations that they will feel able to be entirely open, and give full, consistent, and lucid accounts of their SOGI and experiences of persecution (Danisi et al., 2021, p. 12). The aim of the thesis is certainly not to victimize SOGI asylum claimants further but rather to highlight that the very system that is meant to protect LGBTQ individuals is often violent towards them and that the asylum law and procedures must put the needs of asylum claimants first and foremost. Only by understanding the complexity of the challenges faced by SOGI asylum claimants can they be humanized in the eyes of civil society and policy makers which can provide necessary impetus to improve the existing asylum system to make it less racist, less queerphobic, and less violent.

## **Research Questions and Organization of Chapters**

The main questions guiding this thesis are the following: what kinds of legal, bureaucratic, interpersonal, and psychological violence is faced by LGBTQ individuals who claim asylum on the basis of their sexual orientation and/or gender identity (SOGI) in EU countries, particularly in Austria? How do SOGI asylum claimants translate their identities to the asylum adjudicators in order to “prove” their worthiness of being granted asylum? What are the challenges to integration in Austria for SOGI asylum claimants and what resources are available particularly through NGOs to deal with these challenges?

The thesis is organized in a number of chapters that aim to answer the above questions. In Chapter 2, I provide the definitions I use in this thesis, define the theoretical frameworks of Intersectionality and Queer Theory which this thesis is based on and also share some of the critiques of these frameworks. I describe the methodology of using Ethnographic Interviews and the challenges I faced while trying to conduct interviews for this thesis. I also talk about my own positionality as a researcher working on this topic to be as transparent as possible and to be honest about my own stake in the topic and the various privileges I embody in writing this thesis.

Chapter 3 describes the basis of asylum within International Law and gives an overview of the conventions that are meant to guide the asylum system within the European Union as well as Austria. I also briefly describe the history of asylum and migration within Europe and the politicization and racialization of refugees that has become a cornerstone of Austrian politics. In Chapter 4, I provide an overview of the political and legal history of asylum in Austria, the organization of the asylum process, the major acts and laws that govern asylum in Austria as well as an overview of the relevant asylum organizations in Austria.

Chapter 5 and 6 are guided by the contributions of my interviewees to explore various issues that have been highlighted in the literature related to SOGI asylum claims such as the basis on which LGBTQ individuals can apply for asylum within the European system; the problematic tools of determining vulnerability and the need for SOGI asylum claimants to prove their queerness. In order to be granted asylum, SOGI applicants have to conform to western standards of queerness which often mandate them to be visibly queer and translate their queerness in a way that fits the narrative and stereotypes already established by asylum adjudicators regarding what being a lesbian, gay, trans, bisexual, or queer individual means and what LGBTQ individuals are supposed to look and behave like.

Chapter 7 shifts the focus to various bureaucratic measures that are designed to deny and deter asylum applicants from gaining international protection. I explain the bureaucratic violence embedded at various moments during the asylum claim process particularly the violent tools of dispersal, detention, and deportation used by the Austrian government against SOGI asylum claimants that also serve to deter future migrants from applying for asylum. I also briefly explain appeal procedures that are available to asylum applicants whose applicants are initially rejected.

Chapter 8 highlights the challenges faced by SOGI asylum claimants in accessing accommodation and housing as well as the right to education and work during and after the asylum process. I also provide more details about the toll that the asylum process takes on the mental health of asylum claimants and the resilience and resourcefulness with which SOGI asylum claimants deal with these challenges. Finally, I provide a conclusion in Chapter 9 and share some recommendations from the literature on how to improve the asylum system and make it more humane towards SOGI claimants.

## **Chapter 2: Theoretical Framework and Methodology**

I start this chapter by providing some of the definitions I use in this thesis as well as the debate surrounding the use of the term “asylum seeker” which made me instead opt for terms such as “SOGI asylum claimants” or “LGBTQ individuals who apply for asylum”.

### **Terminology**

#### **Refugee:**

“Article 1(A)(2) of the Convention defines refugees as someone who: owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (Danisi et al., 2021, p. 8).

#### **Asylum:**

Asylum is understood as the protection that a State grants on its territory or in some other place under the control of its organs to a person who comes to seek it (Gil-Bazo, 2015, p. 1) - asylum is different from refugee status, as the former constitutes the institution for protection itself while the latter refers to one of the categories of individuals who benefit from such protection (Gil-Bazo, 2015, p. 2).

### LGBTQ vs Queer:

The acronym LGBTQ stands for Lesbian, Gay, Bisexual, Transgender, and Queer and it is often extended to include I and A which stand for Intersex and Asexual individuals. The term “queer” is an umbrella terms that encompasses any identity that exists outside the cis-gendered, heteronormative understandings of sexual orientation and gender identity.

### LGBTQ Asylum Seeker vs. SOGI Asylum Claimant:

When I initially conceived the idea for this thesis, I used the term “LGBTQ asylum seeker” in the topic to denote the group of individuals whose asylum experience I seek to understand. However, upon further research through the literature, I discovered that both the terms “LGBTQ” and “asylum seekers” in this context may have a problematic and unintended effect of associating certain politics with this group. I came to realize that ‘asylum-seeker’ is now a term that is often used pejoratively, and “immediately conjures up cheat, liar, criminal, sponger—someone deserving of hostility by virtue not of any misdemeanor, but simply because he or she is an ‘asylum-seeker’” (Schuster, 2003, p. 244). The term ‘asylum seeker’ has become negatively loaded in political and public debates and is rightly seen as dehumanizing by many people, so there have been calls to replace it with ‘people seeking asylum’ (African Rainbow Family 2017) (Danisi et al., 2021, p. 13). Hence, inspired by these critiques of the term “asylum seeker”, I use the terms people seeking asylum or asylum claimants throughout this thesis.

Another important terminological debate within the literature is whether to adopt characteristics (sexual orientation, gender identity, etc.) or identities (gay, lesbian, trans, etc.) as the key focus of the analysis (Danisi et al., 2021, p. 13). I am inspired by Danisi et. al. who chose a characteristic, as opposed to an identity-focused analysis in their book *Queering Asylum in Europe*,

because a focus on certain identities and the use of terms such as ‘LGBT’ creates a greater risk of replicating Westernized concepts of personhood for individuals claiming asylum. Instead, focusing on certain characteristics and using terms such as SOGI (sexual orientation and/or gender identity) reflects, or aims to consolidate, a more universal and cross-cultural basis for discussion, more sensitive to an intersectional approach to SOGI asylum (Danisi et al., 2021, p. 14). Hence I use the term “SOGI asylum claimant” as the default term to denote individuals who claim asylum on the basis of their non-normative gender identity and/or sexual identity.

## **Theoretical Framework**

In this section, I provide a critical discussion on Intersectionality and Queer Theory – the two theoretical frameworks that ground this thesis firmly in an anti-racist, anti-queerphobic, and anti-imperialist academic tradition, and also provide a brief introduction to the framework of bureaucracy as legal violence.

### **Intersectionality**

What is intersectionality? Intersectionality is thrown around in academic and political circles as a sign of the “postmodern, queer times” (Taylor, 2010, p. 40) that we live in today. In some ways, intersectionality has become a victim of its own success, a value that is universally espoused, mainstreamed to the point of being taken for granted, and assumed to be now fully entrenched beyond feminist discourse (Danisi et al., 2021, p. 67). Therefore, it is important to understand the historical development of the concept of intersectionality as well as the dynamic

debates that surround this concept in contemporary literature. The concept emerged out of Black feminist critique of the lack of race in feminist theorizing (Taylor, 2010, p. 38) and the term itself is often attributed to Crenshaw (1993) who mapped the margins of black women's employment experiences in the US, noting the ways that identity politics frequently conflated and dismissed differences between and within groups (Taylor, 2010, p. 43).

In her critical work "Intersectionality's Definitional Dilemmas", Patricia Hill Collins refers to intersectionality as a field of study that is situated within the power relations that it studies, as an analytical strategy that provides new angles of vision on social phenomena, and as critical praxis that informs social justice projects. (Collins, 2015, p. 1). I use Collin's definition of intersectionality as a starting point for my own understanding and application of this methodology: "the term intersectionality references the critical insight that race, class, gender, sexuality, ethnicity, nation, ability, and age operate not as unitary, mutually exclusive entities, but as reciprocally constructing phenomena that in turn shape complex social inequalities (Collins, 2015, p. 2). In addition, "intersectionality examines social formations of multiple, complex social inequalities (Collins, 2015, p. 5). It is within this definition that I situate the experience of SOGI asylum claimants and the challenges they face at the bureaucratic, legal, social, and cultural levels – for example in instances where decision-makers appear unable to recognize that lesbian women claiming asylum have been persecuted on the basis of both their gender and their sexuality (Danisi et al., 2021, p. 67).

Intersectionality encompasses an understanding of race, class, and gender as well as sexuality, nation, ethnicity, age, and ability as valuable categories of analysis (Collins, 2015, p. 12) – however, it must be noted that these categories are best understood in relational terms rather than in isolation from one another (Collins, 2015, p. 14). Collins argues that actualizing human rights

means transcending the limitations of a strictly legal statement of human rights (Collins, 2015, p. 16). Employing an intersectional lens on sexual orientation and gender identity asylum claims leads to some very important questions: what types of pain and suffering are appropriate for bringing forth a human rights claim? In what ways do questions of human dignity matter? (Collins, 2015, p. 16). Moreover, particularly relevant to my research on the experiences of SOGI asylum claimants is the importance and applicability of intersectionality as critical praxis for improving the bureaucratic procedures that embody particular kinds of violence for SOGI claimants. Collins provides examples of intersectionality as critical praxis being applied in diverse fields such as local and grassroots youth activism in Oakland, California to deal with complex social inequalities, and the example of Simon Fraser University's Intersectionality Based Policy Analysis (IBPA) initiative that aims to generate research on how to best adapt Canadian health policy to serve the needs of diverse demographics (Collins, 2015, p. 16).

Another useful definition of intersectionality is provided by Yvette Taylor in her work "Complexities and Complications: Intersections of Class and Sexuality": "intersectionality refers to the mutually constructed nature of social division and the ways these are experienced, reproduced and resisted in everyday life" (Taylor, 2010, p. 38). Taylor also defines the parameters of a successful intersectional practice as one that explores relational and reinforcing exclusions and inclusions, the first steps of which are to identify and name these (Taylor, 2010, p. 38). Taylor bases her research on the experience of working class lesbians in order to counter the over-reliance of LGBT research on samples of fairly privileged, white, middle-class groups (Taylor, 2010, p. 38) while also trying to illuminate the theoretical complexities of intersectionality and its research application. In particular, Taylor argues for connecting the material, subjective, embodied, and spatial dimensions of class and sexuality by stating that while we are all implicated in class and

sexuality, these categories have more power, purchase and even pain for some more than others (Taylor, 2010, p. 42).

Taylor discovers the emotional and emotive meanings of class during her research which challenges the reduction of analysis to mere categories and descriptors (Taylor, 2010, p. 45). She highlights the significance of the historical roots and experiences of her research participants, the faculties and amenities they had access to while growing up and their intersections of class, their sexuality, and (lack of) privilege in the lives of her working-class lesbian interlocutors. Taylor's respondents were frequently evaluated through classed locations, as where they came from often stood for and indicated what they could be – a judgement enforced in school, both in the playground and more formally in the classroom (Taylor, 2010, p. 49). Within the interaction of 'coming-out' about both a stigmatized sexual identity and a 'deviant' class position, many of Taylor's respondents simply 'slipped out of the system' and therefore, were forced to navigate a very challenging life path (Taylor, 2010, p. 49).

The burden of such self-fulfilling prophecies, biases, and stereotypes also shapes the experiences of SOGI asylum claimants whose claims are evaluated based on both a stigmatized SOGI as well as the deviant position of being an asylum seeker. Taylor asks the following questions regarding the respondents in her research: who can resource and achieve mobility, subject-hood, and even 'ordinariness'? How should these claims be understood and situated within intersectional methodologies? (Taylor, 2010, p. 49). And finally, how can a better understanding be achieved of how much these individuals have moved, what they have lost or gained in their travels, and more importantly the disturbing upheavals and everyday efforts in "getting by" (Taylor, 2010, p. 51). All of these questions are also highly relevant in understanding what SOGI claimants endure during the asylum process.

Power relations and social inequality have also always been so central to intersectional knowledge projects (Collins, 2015, p. 7). This is why intersectionality is an indispensable tool for deconstructing and analyzing the asylum process as it affects SOGI claimants because the inequalities they face should be seen as more than simply a list of ‘additions’ but as multiple constitutive, complex, and complicated phenomena (Taylor, 2010, p. 37). However, intersectionality faces a particular definitional dilemma — it participates in the very power relations that it examines and, as a result, must pay special attention to the conditions that make its knowledge claims comprehensible (Collins, 2015, p. 3). Collins underscores that knowledge — including knowledge aimed at better understanding intersectionality—is socially constructed and transmitted, legitimated, and reproduced (Collins, 2015, p. 3). This idea is really crucial for research that aims to uncover social and political inequalities because it requires the researcher to be cognizant of their own privileges and how that impacts their work and interaction with the people they are working with. In the section “Positionality” later in this chapter, I refer to my own positionality as a researcher which is directly inspired by my understanding of applying an intersectional lens to research work.

Another reason why intersectionality is so applicable to the topic of SOGI asylum claimants is because historically, intersectional scholars have concerned themselves with critiquing the racist and essentializing power relations embedded within the Western perception of the “Other”. For example, in 1991, Isabelle R Gunning used the term ‘arrogant perception’ for Western descriptions of other ‘cultural practices’ such as female genital mutilation (FGM), suggesting that Western feminists’ “articulations of concern over the contemporary practice of genital surgery in third world nations are often perceived as only thinly disguised expressions of racial and cultural superiority and imperialism’ (Gunning 1991, p. 212)” (Danisi et al., 2021, p. 69). While protection of women has become a signifier of cultural and moral superiority in the

West, so has the protection of LGBTQ individuals. Danisi et al. re-write Gayatri Spivak's most famous quote to describe European asylum as "[straight] white men [and white women] saving brown women [and queer people] from brown men" (Danisi et al., 2021, p. 69). The commonality of gender oppression and homophobia is disguised by attributing abuse to "Other" cultures (Danisi et al., 2021, p. 70) while erasing the West's role in perpetuating and institutionalizing homophobia and patriarchy through imperialism and colonization historically and also present-day instances of sexism and queerphobia within their own borders.

Furthermore, intersectionality can help us understand the context and agency of members of marginalized groups that must navigate systems rooted in Western imperialism and heteropatriarchy (Danisi et al., 2021, p. 71). Unsurprisingly, LGBTQ individuals who apply for asylum in Western countries, often intentionally play the trope of needing protection from their "uncivilized" country of origin where they are persecuted by the "civilized" Western state because they know that this will work to make their case stronger in front of judge who already has pre-conceived notions of Western superiority (Danisi et al., 2021, p. 71). This act of translating their stories to fit into a Western narrative itself simultaneously reifies and subverts "racial and cultural othering" (Danisi et al., 2021, p. 70) which will be further explored in Chapter 6 and needs to be critically analyzed through an intersectional lens.

The interplay of class, race, and sexuality is often a matter of great debate within intersectionality research and also invites doubt regarding intersectionality's applicability from color-blind academics within Europe particularly, as I experienced first-hand while working on this thesis (I discuss this event in the Epilogue section at the end of this thesis). In the United States, for example, the racial formation of color-conscious racism has relied on a deep-seated logic of segregation that was applied to all aspects of social structures and cultural representations

(Collins, 2015, p. 4). However, class is still often elevated as the sole explanation for social inequality, leaving race and gender as descriptive interlopers and conveniently erasing racism (Collins, 2015, p. 13). For the purposes of this thesis, I adopt a race-conscious approach since the experiences of SOGI asylum claimants from non-Western countries are highly impacted by their racialization – a theme that is prevalent in the literature and also in the interviews that I conducted.

Finally, two common critiques of intersectionality are that it carries the risk of creating and affirming a larger number of categories than previously without enhancing understanding or the means to address inequality. Additionally, it may entrench an identity-based approach at the expense of socio-economic analysis (Danisi et al., 2021, p. 68) – both of these are valid and do require a conscious effort on the part of the researcher to attempt to deconstruct inequality in a way that can lead to propositions on how to reduce it. The researcher must also recognize that both identity and socio-economic analyses may impact an individual's lived experience particularly the lives of SOGI asylum applicants who are discriminated based upon their identities and who subsequently cannot access socio-economic resources because of their perceived Otherness within heteronormative and racist institutions.

## **Queer Theory**

Another theoretical framework that has influenced the development of this thesis is queer theory. 'Queer research' can be any form of research positioned within conceptual frameworks that highlight the instability of taken-for-granted meanings and resulting power relations (Browne & Nash, 2010, p. 4). Queer theory challenges the normative social ordering of identities and subjectivities along the heterosexual/homosexual binary as well as the privileging of heterosexuality as 'natural' and homosexuality as its deviant and abhorrent 'other'. Many queer

theorists argue, in concert with various feminist, gay, and lesbian scholars that normative understandings of sexuality (and gender) are central, organizing principles of society, social relations and social institutions and are designed to preserve this hegemonic ordering (Browne & Nash, 2010, p. 5). As a theory and methodology, 'Queer' has been associated with explorations of difference and the contestation of rigid categories and normalizing discourses and practices, speaking instead of the fluidity of spaces and identities in the process of always 'becoming' (Taylor, 2010, p. 40). Queer scholarship, then, in its contemporary form is anti-normative and seeks to subvert, challenge and critique a host of taken for granted 'stabilities' in our social lives (Browne & Nash, 2010, p. 7) that are socially, legally, and historically produced (Danisi et al., 2021, p. 74).

Of particular relevance to this thesis is how queer theorists challenge Western understandings of sexuality which, according to Foucault, are based on the concept of identity – this distinction between practice or behavior and identity is one that has a particular significance in relation to SOGI asylum (Danisi et al., 2021, p. 75). Danisi et al. highlight three ways in which queer theory helps us understand how Western conceptions of sexuality can harm SOGI asylum applicants during the asylum process. Firstly, Western concepts and labels may not capture the ways in which SOGI claimants understand and express their sexual orientation and gender identity and queer theorists show that sexual identity is fluid and subject to change during the course of a lifetime (Danisi et al., 2021, p. 76). Second, the Western model of sexuality conflates sexual conduct and sexual identity in decision-making and fails to recognize the complexities of sexual identity – SOGI claimants may be expected to be 'out and proud' and conform to Western stereotypes of what it means to be LGBTQ (for example, visiting gay bars, participating in lesbian and gay groups and Gay Prides, etc.) (Danisi et al., 2021, p. 76). Third, persecution on grounds of

sexuality is often linked to how gender is performed, demonstrating the links between gender and sexuality that Butler has so powerfully demonstrated (Danisi et al., 2021, p. 76).

Queer theorists are also increasingly interested in the relationship between sexuality and ‘race’ and how raciality is often silenced within queer discourse and practice – the Western concept of queer sexuality centers the experiences of white queer people and therefore, already contains racism (Danisi et al., 2021, p. 77). Hand in hand with an intersectional approach, queer theory also questions the way in which “acceptance” and “tolerance” for gay and lesbian subjects have become a barometer by which the right to and capacity for national sovereignty is evaluated – as evidenced in Jasbir Puar’s work. As Puar argues, LGBTQ rights are used to reinforce boundaries between a ‘civilized’ and ‘uncivilized world’, with religious values in particular constructed as ‘backward’. In this way, LGBTQ human rights discourses play a critical role in defining a racialized Other whose lack of progress is proved by their rejection of sexual and gay equality (Danisi et al., 2021, p. 78).

With regard to the asylum process, the perceived incompatibility between ‘Muslim’ and ‘gay’ affiliations makes it particularly difficult for LGBTQ Muslim individuals to secure international protection due to the expectation that they either reject their religion to be truly LGBTQ or refrain from being LGBTQ to be truly religious (Danisi et al., 2021, p. 79). Decision-makers often perceive religion, non-Western religions in particular, as patriarchal and homophobic, and religious believers are therefore viewed as backward, irrational, and bound by tradition – asylum claimants are expected to embrace progress and separate themselves from the ‘backward non-West’ (Danisi et al., 2021, p. 79).

Queer refugees have to leave their country of origin due to their sexuality and asylum spaces in the host country, such as refugee camps or accommodation centers also shape the ways

in which they can live out their sexual orientation and gender identity – this interplay between how spaces are sexually structured and how space is constitutive in shaping sexuality is also a concern with queer theory (Danisi et al., 2021, p. 80). Certain spaces are marked as ‘refugee spaces’, whereas others are marked as ‘LGBTQ spaces’, often leaving SOGI refugees feeling out of place in most spaces (Danisi et al., 2021, p. 81) and contributing to feelings of stress and isolation that they are already experiencing due to the daunting bureaucracy involved in the asylum process.

### **Bureaucracy as Legal Violence**

Similar to the work of R. Lewis and C. Llewellyn, I also use the framework of “legal violence” to show how the bureaucracy imposed upon SOGI asylum claimants itself constitutes and normalizes violence. In her work, R. Lewis shows how the burden of proof is discharged within the political asylum process in a way that renders lesbian migrants deportable subjects and calls attention to how the political asylum system operates as a site of legalized violence by which queer female migrants of color are differentially deprived of the resources needed to make credible asylum claims (Lewis, 2014, p. 12). Using the framework of legal violence established by Menjívar & Abrego, C. Llewellyn argues that grounding analysis of immigration law in immigrant experiences exposes “the law’s underside” (Llewellyn, 2021, p. 204) and that individuals living with “tenuous legal statuses” experience more harm than previously observed in any other point in history and for any other migrant groups (Llewellyn, 2021, p. 204). In this context, immigration law does more than serve as an exclusionary practice; it enacts physical, material, emotional, and psychological violence and limits incorporation into society (Llewellyn, 2021, p. 204). Using the analytical framework of legal violence, therefore, captures the suffering that results from and is

made possible through the implementation of the body of laws that delimits and shapes individuals' lives on a routine basis (Llewellyn, 2021, p. 204). This idea of bureaucracy as violence is central to my understanding of the asylum process and as I will show in the later chapters, impacts the lives of SOGI asylum claimants on every step during the asylum process in Austria.

### **Use of Ethnographic Interviews**

While the bulk of this thesis builds upon literature and secondary sources on the bureaucratic violence faced by SOGI asylum claimants, I did attempt to include interviews from successful queer asylum claimants and NGOs involved in supporting SOGI asylum claimants in Vienna to provide a real life account of the asylum process as it happens in Austria and to further humanize the people who go through this process. Between January and June 2022, I worked as a staff member at the Villa Vida Café which proudly serves as a hub for the queer community in Vienna. The Café is housed in the Türkis Rosa Lila Villa<sup>2</sup>– a building that started as a housing project for LGBTQ people in Vienna in 1982 and to this day, provides housing for vulnerable queer people including queer refugees. In the same building is also the office for Queer Base<sup>3</sup>, an NGO that supports SOGI asylum claimants and refugees in Austria. After several attempts at trying to interview someone from Queer Base, I was able to meet and interview an employee at this NGO and learn about their work in supporting queer asylum applicants in Austria.

Also, through my job at Villa Vida Café, I tried finding queer asylum claimants I could interview who had received a positive decision on their asylum claims in Austria. I did not want to

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<sup>2</sup> Türkis Rosa Lila Villa, <https://dievilla.at/tipp-verein>.

<sup>3</sup> Queer Base, <https://queerbase.at/>

interview someone who was going through the process currently for the fear of negatively impacting their mental health since such a conversation can be potentially quite triggering. With the help of my boss at the Café, Denise Van De Cruze, I reached out to a group of queer refugees in Vienna. Three people initially showed interest in being interviewed for my thesis but ultimately, two of them declined to be interviewed citing mental health concerns and I was only able to conduct one interview with someone who has gone through the asylum process in Austria. Ethically speaking, autobiographical interviews carry with them particular emotional dynamics, where painful memories may come up and interviewees may not just remember but also re-experience past suffering (Skinner, 2012, p. 112). Therefore, both due to time constraints in writing this thesis and for the sake of not negatively impacting people's mental health that were not ready to talk about painful and triggering migration experiences, I chose to not look for further "collaborators" for my thesis. Both The interview with the queer asylum claimant in Vienna still provides a very valuable perspective on the process that greatly validates my learnings from the literature while also humanizing the people who go through the asylum process. Below, I briefly describe how I imagined the interviews I conducted as a collaboration between me and the interviewees, my choice of conducting them as semi-structured interviews, as well as some ethical considerations that guided my interview process.

### **Imagining Interviewees as Collaborators:**

"Rather than assuming that respondents had the experience – and I had the theory" (Taylor, 2010, p. 45), I imagined the interviewees as collaborators for this thesis project to try and mitigate the power dynamic that is inherently part of conducting ethnographic interviews. I informed my "collaborators" about this approach at the beginning of the interviews to make them more comfortable during the interview process. Since an interview is an interactional event in which

each of the participants ‘mutually monitor each other’s talk’ (Skinner, 2012, p. 145), I tried my best to feel comfortable during the interviews myself and openly shared my stake and positionality related to this topic which I will discuss in the “Positionality” section. I attempted to enhance rapport through personal disclosures and reciprocity which can be given by, for example, personal disclosures or conveying the attitude and actions of a friend rather than a researcher (Skinner, 2012, p. 147).

### **Conducting Semi-Structured Interviews:**

However, I am also aware than an interview conducted in the context of research is inherently different from a friendly conversations as ‘an interview is not a normal conversation; the rules are different and so are the expectations’ – interviews are ‘conversation with a purpose’ (Skinner, 2012, p. 55). While an interview “may be ‘conversational’, it cannot be considered to be a ‘naturally occurring’ conversation (Skinner, 2012, p. 146). Moreover, people engaging in friendly conversations don’t usually have an explicit agenda to cover (Spradley, 2016, p. 56) while such an agenda, i.e. seeking particular information or a perspective from the interviewee, does exist during an interview. Inspired by the texts from J. Skinner and J. Spradley, my approach towards the interviews was to carry on a friendly conversation while introducing a few ethnographic questions (Spradley, 2016, p. 58) to get a deeper understanding of my collaborators’ lived experience as it related to the asylum process in Austria.

At the most basic level, an interview is quite literally ‘an inter-change of views’ to varying degrees and a privileged conversation with the Other (Skinner, 2012, p. 9) – it a conversation that coproduces and cocreates knowledge (Skinner, 2012, p. 8). The qualitative research interview, in particular, is themed and seeks to understand the actor’s understandings of their life world, their interpretations, meanings, and narrations. (Skinner, 2012, p. 9). A structured (informal or semi-

structured) interview which has more open-ended questions on the research themes and can involve supplementary questions relating to the answers, is conducted more as a conversation and is supposed to be more natural and egalitarian in the relationship between the interviewer and interviewee (Skinner, 2012, p. 8). Moreover, an interview has the potential to give us access to the life world of the respondent, to articulate lived meanings, to make the invisible visible, not just in exploring the subject's consciousness, but in gaining insight into their deliberations, perspectives, viewpoints, and understandings...verily, their life stories past, present, and future (Skinner, 2012, p. 10).

During the interviews I conducted, I chose a semi-structured interview format in which I introduced my research topic to the interviewees and asked some open-ended questions from the participants as "open-ended questions are more invitational and devolved to the interviewee: they can elicit a more free narrative and are one means of devolving agency to the interviewee" (Skinner, 2012, p. 23). One possible format for semi-structured autobiographical interviews is the following: during the first phase of the autobiographical narrative interview, the interviewer does not intervene in the narration and provides only limited responses; once the interviewee indicates that the story is finished, the interview moves to a second stage, when some additional questions concerning the interviewee's biography; during the third and last phase, the researcher asks about motives for certain decisions and poses more explicit questions relating to the theme of the research project (Skinner, 2012, p. 108). While I did not explicitly stick to this format, the way that I conducted the interviews is quite close to this sequence where I started with open-ended questions, letting the interviewee share whatever they wanted to share in terms of their experiences with the asylum process in Austria (whether as an applicant or a someone supporting asylum applicants), and then I asked more explicit questions based on what the interviewees shared with me.

While I did not explicitly design interview questions based on the following definitions of different kinds of interview questions, I was nevertheless inspired to think of how different kinds of questions can elicit different depths of information from the interviewees:

- Descriptive questions enable a person to collect an ongoing sample of an informant's language (Spradley, 2016, p. 60). A special kind of descriptive question is called a "grand tour question" - it is asked, not in a simple statement, but with repeated phrases, expanding on the basic question (Spradley, 2016, p. 62).
- Structural questions enable the ethnographer to discover information about domains, the basic units in an informant's cultural knowledge. They allow us to find out how informants have organized their knowledge (Spradley, 2016, p. 60).
- Contrast questions enable the ethnographer to discover the dimensions of meaning which informants employ to distinguish the objects and events in their world (Spradley, 2016, p. 60)

Interviews with individuals who have gone through the asylum process can reflect the premigration emotional discourses, practices, and embodied feelings that had shaped earlier identification processes and which can continue to affect their postmigration subjectivity (Skinner, 2012, p. 109) – however, I do believe that the interviewees are agentic in shaping their own narrative. I also believe that it's important to have an understanding between the realist and the constructivist understandings of biography (Skinner, 2012, p. 110) – the former treating biography as an integral part of social reality directly reflecting people's thoughts, plans, and actions (Skinner, 2012, p. 110) and the latter arguing that narratives are performances fully dependent on the interview situation and certain characteristics of the interviewer, such as gender, age, and cultural background (Skinner, 2012, p. 110). The more extreme constructivist view deprives

autobiographical narration of its pivotal epistemic power (Skinner, 2012, p. 110) which is why I believe that interviewees have the agency to present and shape their own narratives but it is my responsibility as the interviewer to make sure that I create a space where the interviewees can feel comfortable sharing their truth without fear of judgment particularly when it comes to sensitive and personal topics such as migration history and sexual orientation.

### **Issues Concerning Interviews:**

It is important to keep in mind that interviews in a research setting are not always guaranteed to provide a factual, realistic depiction of the issue that the research seeks to understand. Because, the interview narrative is language-based, it is open to the difficulties of translation, interpretation, and gender bias (Skinner, 2012, p. 10). My interpretation of the information shared by my collaborators is certainly affected by own biases and perspectives and while I have tried my best in the process of writing this thesis to be mindful of such biases, it is inevitable that my own political views and perspective on the asylum system as bureaucratic violence will influence my interpretation of the interviews.

Moreover, there are contentious assumptions being made that the interview is an accurate revelation of the interviewed self, that there is coherence in the narrative, as well as stability and accuracy about the reconstructions of experiences from memories (Skinner, 2012, p. 12). Not only are these factors relevant to the interviews I conducted, but they are also applicable to the interviews that SOGI asylum applicants go through. During such interviews, SOGI applicants are expected to provide coherent narratives about their life experiences while they might be under duress and psychological stress. In summary, while interviews are crucial to understanding the lived experiences of SOGI asylum claimants, we must keep in mind that there are a number of factors that influence the ability of interviewees to present a coherent narrative even when talking

about themselves. This does not mean that they are being untruthful or dishonest but rather that, the format of the interview, the questions asked, or their current psychological state itself might not be most conducive to them sharing their story in an accurate manner.

In terms of ethical considerations and issues, anonymity is essential for protecting the safety and identity of the interviewees. Therefore, both of my “collaborators” are kept anonymous as is common practice in social science research (Skinner, 2012, p. 112). As mentioned earlier in this section, interviewees can experience triggering emotions and reexperience past suffering during the interview – ‘harm’ may occur when participants are made vulnerable to perceiving failures in their lives and that those who take part in research ought to be able to live easily with the stories that they tell and not feel worse about any aspect of their life or experience as a result of taking part in research (Skinner, 2012, p. 144). Therefore, it is my ethical duty of care as the researcher in the qualitative research interview is to prevent harm to my participants (Skinner, 2012, p. 144). To this end, I shared at the beginning of the interview that the conversation can be paused or stopped at any moment if the interviewee needs a break. Moreover, I tried my best to listen to my collaborators without judgement and also affirmed what they were saying through my own life experience to help them feel safer during the interview process and to develop a collaborative relationship.

### **Positionality**

I identify as a gay/queer, cis-gender, Muslim man. I identify/am treated as person of color. I have been through numerous bureaucratic procedures as an international student/immigrant myself in the U.S., France, Switzerland, Poland, and Austria. I have high education with relative

financial stability and ease of geographical mobility. I am aware that I occupy a relatively privileged position despite my various identity markers.

I believe that it is pertinent under an intersectional framework for me to be transparent about my positionality and the various privileges and biases I embody. This provides context for my stake in this research project, helps me negotiate issues of sameness and difference with the lives of people who I am writing about (Taylor, 2010, p. 45), and also hopefully prevents harm to my collaborators during the interview process as I explicitly shared my own positionality with them at the beginning of the interviews. However, I also recognize that while being transparent about one's positionality is in service of the long-standing feminist declaration of the 'personal as political', the full realisation of intersectionality requires a move beyond individual researchers' reflexivity and a move towards empirical exploration (Taylor, 2010, p. 45). This means that the aim of any sound research project should be to provide an empirically grounded and thoroughly insightful, critical overview of the topic at the hand which I aim to provide throughout the rest of this thesis.

## **Chapter 3: Describing and Analyzing Asylum in International Law**

### **International Law Applicable to Asylum**

The first vantage point that I would like to describe and analyze regarding the asylum process is the right to asylum which is enshrined within international law.

- Article 14 of the Universal Declaration of Human Rights states: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>4</sup>
- This right to asylum is elaborated in The 1951 Convention Relating to the Status of Refugees (Refugee Convention): “Article 1(A)(2) of the Convention defines refugees as someone who: owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Danisi et al., 2021, p. 8).<sup>5</sup>
- Article 33(1) of the 1951 Refugee Convention codifies the principle of *non-refoulement* which prohibits the expulsion or return of refugees and asylum-seekers if their life or freedom is in danger based on their race, religion, membership of a social group, political opinion, or nationality.

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<sup>4</sup> The United Nations Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>5</sup> The 1951 Refugee Convention. <https://www.unhcr.org/1951-refugee-convention.html>

- The New York Declaration for Refugees and Migrants by the UN General Assembly in 2016 also reaffirms the ‘right to seek asylum’ and freedom of an individual to leave or return to their country.<sup>6</sup>
- Article 18 of the Charter of Fundamental Rights of the European Union also provides that as per the rules of the Geneva Convention and 1967’s protocol, the right to Asylum is guaranteed.<sup>7</sup>
- In 1993, the Vienna Declaration and Programme of Action also reaffirmed the right to seek and enjoy asylum in other countries and the right to return to their own country.<sup>8</sup>
- While referring to the Universal Declaration of Human Rights as the cornerstone of International Human Rights Law, the UNHCR’s 2012 SOGI Guidelines state that ‘all people, including LGBTI individuals, are entitled to enjoy the protection provided for by international human rights law on the basis of equality and nondiscrimination’.<sup>9</sup>

As evidenced from above, there is a plethora of international law treaties that codify the right to asylum for everyone including people who are persecuted on the basis of their SOGI. The 1951 Refugee Convention along with the 1967 Protocol Relating to the Status of Refugees were developed in the aftermath of World War 2 and the atrocities of the Holocaust and have been adopted into the asylum policies within the European Union. The Common European Asylum System (CEAS) is a system designed to set minimum standards across the EU member states with regard to different aspects of asylum, especially the standards for the reception of claimants for

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<sup>6</sup> New York Declaration for Refugees and Migrants.

[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_71\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf)

<sup>7</sup> Charter of Fundamental Rights of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

<sup>8</sup> Vienna Declaration and Programme of Action. <https://digitallibrary.un.org/record/183139?ln=en>

<sup>9</sup> UNHCR - UN High Commissioner for Refugees 2012 Guidelines on international protection no. 9: Claims to refugee status based on sexual orientation and/or gender identity. <http://www.unhcr.org/509136ca9.pdf>

international protection, the qualification of third-country nationals or stateless persons as beneficiaries of international protection, and the procedures for granting and withdrawing international protection (Danisi et al., 2021, p. 8). Various directives from the European Parliament and the European Council such as the EU Directives 2011/95/EU on qualification for international protection (Qualification Directive), 2013/32/EU on asylum procedures (Procedures Directive), and 2013/33/EU on reception conditions (Reception Directive) are all meant to harmonize the asylum procedures within EU countries – however, significant differences exist within EU member states regarding the implementation of these directives based on the local socio-political context within a particular EU state.

Another important instrument of policy that is relevant to asylum procedures within the EU are the *Dublin Regulations* (or simply ‘Dublin’). This agreement was first introduced in 1990 not as EU legislation, but as part of international law together with the Schengen Convention which allows for free movement of persons within the EU area. ‘Dublin’ regulates which nation-state is responsible for an asylum application depending on the asylum seeker’s first point of entry to the EU. The Convention laid down the principle that any application for asylum submitted to a member country of the European Union (EU) should be assessed by one country only (Rosenberger et. al, 2018, p. 33). By default, the State of first entry becomes the competent and responsible State for processing the asylum claim (Wieland & Alessi, 2021, p. 408). As we shall see in the following chapters, the Dublin regulation is one of the main EU policy instruments that impacts the lives of asylum claimants within Europe and subjects them to various kinds of bureaucratic violence.

While scholars such as Gil-Bazo state that “the development of the law on asylum is inextricably bound up with the general development towards the greater recognition and protection

of the human rights and fundamental freedoms of the individual by international law', including on the right to asylum as a human right (Gil-Bazo, 2015, p. 4), it is important to note that it is within the specific implementation of the international law regarding asylum within a particular country that we can trace the instances of "legal violence" (which has been discussed in the Theoretical Framework chapter). Moreover, "International law is not rules. It is a normative system" (Gil-Bazo, 2015, p. 12) and also that "asylum is an expression of State sovereignty" (Gil-Bazo, 2015, p. 5) which means that states can take liberties in the specific ways that they design and implement asylum policies and can subject asylum applicants to particular kinds of racial and xenophobic discrimination.

In the following section, I briefly share the work of Elizabeth Schuster who discusses the ways that migrants particularly those applying for asylum have become politicized and racialized in Western countries particularly within Europe. This provides context for the subsequent chapter in which I discuss the history and organization of the asylum system in Austria.

### **How Asylum is Politicized and Racialized in the West**

In "Common Sense or Racism? The treatment of asylum-seekers in Europe", Liza Schuster interrogates some of the underlying assumptions of asylum policies in Europe, arguing that assertions of the "need for control", which translate into the differential treatment of asylum-seekers in particular, are expressions of racism at the heart of European states (Schuster, 2003, p. 233). Schuster argues that while European liberal democracies share a commitment to granting asylum to those in need for protection, they are now moving closer and closer to preventing people

from applying for asylum, a right articulated in Article 14 of the Universal Declaration of Human Rights (cited in the section above). The introduction of “Transit Zones”, in co-operation with the United Nations High Commissioner for Refugees (UNHCR), located around the external borders of the EU in countries such as Albania, Croatia, Romania, and the Ukraine are an example of measures to prevent people from traveling to the countries in which they want to seek asylum (Schuster, 2003, p. 234).

While migration, particularly labor migration welcomed by European states in the wake of the Second World War to aid in rebuilding efforts, is an essential part of European history, the present day narrative around migrants has shifted to a sense of insecurity cause by migrants. This sense of insecurity is caused in part due to the impact of globalization, shifts in employment patterns, and the unravelling of safety nets provided by the European welfare states, and derives also from a rhetoric of siege and invasion (Schuster, 2003, p. 235). Two groups of migrants, in particular, are deemed dangerous and problematic by European governments and media: asylum-seekers and undocumented migrants, who are rarely distinguished in public discourse (Schuster, 2003, p. 236). These migrants are particularly worrying for governments because they challenge control – either because they evade controls by entering outside of ‘normal’ migration channels as undocumented migrants or because as asylum-seekers, they claim the right to remain in a country until their claim is processed, a right guaranteed by Article 33 of the 1951 Convention (Schuster, 2003, p. 236). The Convention places an obligation on states to consider any application for asylum made on their territory, however ill-founded (Schuster, 2003, p. 236) which is in direct conflict with the desire of European countries to control their borders.

European states want to differentiate between acceptable migrants such as ‘civil war refugees’ (as a result of various conflicts within and outside of Europe) (Schuster, 2003, p. 237) or

‘economic migrants’ (those with skills desired by European states who apply for residence permits) (Schuster, 2003, p. 240) and non-acceptable migrants such as asylum-seekers who do not wait for permission and their claim to enter is based on their needs, not those of the country they seek to enter (Schuster, 2003, p. 240). Their need for control is based on the presumption that states must protect certain common goods that are finite and cannot be extended to all – such concerns focus on material goods (welfare, housing, education, health care), abstract goods such as the identity of the receiving country and its citizens, and on a state’s need to be seen as in control of its borders (Schuster, 2003, p. 241). European politicians can, therefore, easily create spirals of fear based around the threat of migrants, particular the unwanted kind such as asylum claimants, coming in to deplete the welfare resources and polluting national identities for their own political gain.

Moreover, the stigma against individuals applying for asylum lies in the fact that they have not waited to be selected but have taken their future into their own hands: they have arrived in EU states uninvited and unsolicited (Schuster, 2003, p. 246). Hence, the state penalizes those who exercise their right to apply for asylum by stripping them of all other identities save that of ‘asylum-seeker’, someone without rights, someone to be excluded (Schuster, 2003, p. 246) – this dehumanizing aspect of the asylum application process is especially highlighted in this thesis especially in the analysis of procedures and restrictions that asylum applicants must go through. The dehumanization is as much about justifying the horrible treatment of SOGI asylum claimants as much as it about deterring asylum claims – both themes which are explored in later chapters.

By applying for asylum, the asylum applicants become stripped of all their other identities – which is ironic since so much of the asylum process, especially for SOGI applicants, concerns proving one or other aspects of their identity, on the basis of which they are applying for asylum.

Hence, the asylum system not only isolates the applicants from the rest of the host country but also isolates them from living life on their own terms. Only when the state has decided that someone is in fact a refugee does that person have the right to reclaim those other core parts of him/herself (Schuster, 2003, p. 246) – however, this process is also complicated as the stigma against asylum seekers may persist beyond being granted asylum especially due to racism and other forms of discrimination that they can be subjected to in the host community – a theme explored more fully in Chapter 8.

It is also important to mention that EU states continue the unequal treatment of certain groups based on ethnicity, nationality, gender, and class (Schuster, 2003, p. 244) – particularly towards the descendants of those migrants who come from countries previously colonized by European states. The same kinds of discriminations are also faced by asylum claimants particularly on racialized grounds. As Schuster argues, “just as race is socially and politically constructed, so too is racism” (Schuster, 2003, p. 244) – the discriminatory and dehumanizing treatment of asylum seeker has become a cornerstone of asylum policies, a theme explored in subsequent chapters particularly in the context of Austria. I would also extend Schuster’s argument that gender (men vs. women) and class complicate the analysis of state racism (Schuster, 2003, p. 245) to include the categories of sexual orientation and gender identity (including trans and non-binary people) and suggest that all of these factors come together in different combinations to create a hierarchy of the excluded in the asylum system (Schuster, 2003, p. 246) in which SOGI asylum claimants are particularly vulnerable to racist and heteronormative asylum policies.

Before analyzing sexual orientation and gender identity as one of the bases of applying for asylum (Chapter 5) and the burden of proof that is placed upon SOGI asylum applicants to prove their identities (Chapter 6), I first want to zoom in on the political and legal history of asylum in

Austria, the organization of the Austrian asylum system, and major laws and acts applicable to asylum in the next chapter. I will return to the focus on Austria in Chapter 7 in which I provide a full breakdown of the asylum process and the various sites of bureaucratic violence embedded within the system.

#### **Chapter 4: History and Organization of The Asylum Process in Austria**

In this section, I share a brief history of migration and asylum in Austria, a summary of the major laws concerning asylum, as well as an outline of the asylum process which will be explored in detail in later chapters with particular focus on moments of bureaucratic violence faced by SOGI asylum claimants. It should be noted that in general, Austria like Germany and Switzerland, follows an exclusive model of citizenship regime, which makes it hard for immigrants to gain naturalization or political membership (Rosenberger et al., 2018, p. 29). The literature shows that immigration and asylum are salient, contested, and hence politicized issues on the Austrian public

and political agenda (Rosenberger et al., 2018, p. 30) – migrants and refugees have become political tools for those seeking power.

### **Political and Legal History of Migration/Asylum in Austria**

Historically, Austria has refused to act as a country of immigration (Rosenberger et al., 2018, p. 29). However, events from the last century such as the World Wars and other conflicts in the region forced Austria to open its borders. Post-war Austria took in refugees – most notably from Hungary in 1956, from Czechoslovakia in 1968, from Poland in 1980–81, and from former Yugoslavia in the 1990s, always with the intention of the refugees’ speedy return to their country of origin as soon as the turmoil there had passed (Rosenberger et al., 2018, p. 29). The same was the case with Turkish labor migrants who were invited into the country between 1945-73 under the “guest worker system” with the intention that they would leave as soon as their labor was not required which was not the case as these migrants settled in Austria and built a life for themselves and their families (Rosenberger et al., 2018, p. 29).

Beginning in 1972, Austria started to take in non-European asylum seekers, mainly because of an international quota system and pressure from NGOs (Rosenberger et al., 2018, p. 30). An example of how migrants have been politicized in Austria can be seen by how since the 1980s, the Austrian far-right Freedom Party (FPÖ) has used asylum seekers as scapegoats, defaming them as “economic refugees” who came to steal Austrians’ jobs (Genner, 2012, p. 99). FPÖ has insisted that such asylum seekers do not deserve refugee status and has advocated for the non-integration of new immigrants in order to send them back more easily (Rosenberger et al., 2018, p. 30).

This reflects the general trend in Austrian asylum policy which is one that is increasingly restrictive, prohibitive, and often subordinates humanitarian concerns to national interests (Funk and Stern 2010, 259). Rosenberger et. al write that over the last few decades, increasingly restrictive asylum laws have been introduced which were intended to lead to a decline in asylum applications, a noticeable decrease in the number of approvals and also an increased use of deportation to deal with “unwanted migration” – making Austria less attractive to asylum seekers seems to be the priority of these laws (Rosenberger et al., 2018, p. 31). How these laws and resulting legal structures inflict violence towards migrants and asylum seekers under the lens of “legal violence” will be explored in detail in later chapters.

In addition, it must be noted that a majority of the Austrian voting population holds a negative stance towards migrants and has supported tough and restrictive immigration and asylum policy for decades (Friesl et al., 2010, p. 9). At the same time, a study on behalf of the UNHCR examined the knowledge, attitudes, and prejudices of Austrians regarding asylum seekers and refugees in 2011: more than half of those interviewed associate something positive with asylum seekers. Personal contact with people seeking asylum was primarily the result of neighborhood proximity or work. Distrust of asylum seekers, however, was noticeable as well: 47% of those interviewed associated asylum abuse, criminality, and abuse of the welfare system with asylum seekers (Rosenberger et al., 2018, p. 43). Hence, it is within this political context that laws in Austria concerning asylum claimants have become increasingly restrictive and punitive and have been aimed at deterring people from seeking asylum.

### **Major acts and laws concerning asylum:**

The following is a brief summary of the history of development of the Austrian asylum and migration system from 1960-2015 which is published in a report by the European Migration Network titled “The Organization of Migration and Asylum Policies in Austria” (European Migration Network, 2015, p. 27-29). The details of the history of the development of the Austrian asylum system can be found in this report. The specific laws and legal structures/organizations that are relevant to this thesis will be explored in conjunction with the testimonies from my interviewees in the next chapters.

**Table 2: Development of the Austrian Asylum and Migration System 1960–2015**

<b>Phase</b>	<b>General legal trends</b>	<b>Specific measures</b>	
Labour Migration (1960–1968)	Migration policy as economic component dictated by the labour market	1961	Raab-Olah-Agreement on the recruitment of temporary “guest workers”
		1964	Recruitment Agreement with Turkey
		1966	Recruitment Agreement with Yugoslavia
		1968	First Austrian Asylum Act
From Labour Migration to Family Migration (1969–1984)	Tightening of political measures	1969	Passport Act
		1975	Act Governing the Employment of Foreigners introducing a system of step access to different types of permits
Increased migration (1985–1992)	New stricter immigration policies and laws	1987	The Ministry of the Interior takes over the responsibilities of the Ministry of Social Affairs regarding aliens’ policy
		1990	Introduction of quota system for work permits

		1991	Asylum Act introduces the principles of “safe third-countries” and “safe country of origin”
		1991	Creation of a new Federal Asylum Office responsible for asylum applications
Evolution of the Austrian Aliens Law (1993–2015)	Attempts to manage migration more efficiently through creating several “channels of immigration”, new advisory bodies, targeted legislation and major administrative restructuring	1993	Aliens Act which tightened up regulations regarding the entry and residence of aliens
		1993	Residence Act signals the start of a controlled immigration system
		1997	New Aliens Act, known as “Integration Package” due to focus on promotion of integration instead of new immigration
		1998	Principle “integration before citizenship” was also introduced into the amendment of the Citizenship Act
		2002	Amendments to the Aliens Act: compulsory “integration courses”
		2003	Amendments to the Asylum Act: acceleration of the asylum proceedings
		2005	Aliens Law Package 2005: comprehensive legislative reform to implement EU directives and strengthen measures against irregular immigration
		2007	Integration Platform established
		2007	Asylum Court established; replaces the Independent Federal Asylum Review Senate
		2009	Amendments to Asylum Act introduce residence location restrictions for asylum-seekers and tightened custody pending deportations
		2010	National Action Plan for Integration adopted on the basis of the Integration Platform
		2011	Aliens Law Package 2011: Points-based Red-White-Red Card introduced to facilitate immigration of highly qualified migrants; replaces previous quota system
		2011	State Secretariat for Integration supported by an Advisory Board on Integration and an Expert Council for Integration established
		2014	Federal Office for Immigration and Asylum established; replaces Federal Asylum Office
		2014	Asylum Court dissolved; competences transferred to Federal Administrative Court

		2014	Integration agendas transferred from Interior Ministry to Foreign Ministry; name change to Federal Ministry for Europe, Integration and Foreign Affairs reflects new competences
		2014	Migration Council for Austria established to devise a comprehensive immigration strategy for Austria
		2015	Amendment to the Rights of Aliens Act 2015: harmonization with the recast of the Reception and Procedures Directive

As can be seen from the above timeline, the development of asylum legislation in Austria has been quite complicated with multiple Asylum and “Aliens” Acts passed in the last few decades as well as numerous amendments to these acts which were aimed at tightening the regulations regarding the entry and residence of aliens and asylum seekers. Details about two specific legislations pertaining to asylum, quoted in the European Migration Network report, are shared below as examples of the kind of bureaucracy that has become normalized within the asylum procedure in Austria:

### **Asylum Act 1997**

With the accession of Austria to the EU in 1995, the Asylum Act was revised in 1997 in order to include the Schengen Agreement and to harmonize with the 1990 EU Dublin Convention (European Migration Network, 2015, p. 22). Following are some of the measures introduced with the Asylum Act 1997:

- Suspension of the protection from deportation in case of subsequent applications in asylum procedures
- Registration requirement for asylum-seekers during the admission procedure, if a negative decision regarding their application for international protection is probable

- **Acceleration of removal procedures with regard to asylum-seekers who have committed a criminal offence**
- **Requirement for asylum-seekers to stay within the boundaries of a designated district**
- **Tightened and extended detention pending removal**
- Issuance of so called “Aliens’ and Convention Passports” for stateless persons and beneficiaries of subsidiary protection
- Introduction of an identity card for third-country nationals
- Measures against so called “convenience marriages”
- Specific age assessment techniques in cases of doubted minority age (European Migration Network, 2015, p. 24)

### **Aliens Law Package 2011**

The Aliens Law Package 2011 and included the:

- Introduction of a quota system for third-country nationals by a catalogue of criteria and the so called Red-White-Red Card for highly qualified immigrants or key workers
- **Introduction of language requirements for third-country nationals prior to entry to Austria (“German prior to immigration”)**
- Tightening of the Integration Agreement
- **New performance deadline of two years**
- Establishment of free legal advice in asylum and return proceedings
- **Tightening of detention pending removal**

- **Obligation to cooperate**, which demands from asylum-seekers to stay one week at the respective initial reception center (European Migration Network, 2015, p. 24)

Notwithstanding the xenophobic term “aliens” to denote migrants which is commonly used in legislations concerning foreigners, we can trace how the asylum system has increasingly become more hostile towards those applying for asylum through the two examples shared below. The parts in bold, in particular, reflect tightening of various restrictive and potentially violent measures such as detention pending removal, the mandate to stay within a particular area during the application process, as well as accelerated removal procedures – such restrictions are exemplary of the kind of bureaucratic violence recounted by my collaborators and will be discussed in conjunction with their testimonies in later chapters.

Despite attempts at harmonization with EU directives, such as through the Aliens Law Package in 2005, Austria has placed “integration” at the forefront of their migration policies. The principle of “integration before citizenship” codified through the 1998 amendment to the citizenship act and the compulsory integration courses introduced in 2002, call to mind the obligation placed upon migrants to conform to Austrian cultural standards with a particular emphasis placed on sufficient German language abilities and a knowledge of Austrian history and culture (European Migration Network, 2015, p. 22). The net effect of these laws is a hostile environment for migrants and asylum applicants who face the threat of deportation and return to their countries of origin if they do not meet these integration requirements.

### **Overview and Outline of the Asylum Process in Austria**

It is pertinent to note that between 2015 and 2022, 258,505 persons applied for asylum in Austria (Asylstatistik Mai 2022, p. 2). Since 2015, the highest numbers of person applying for

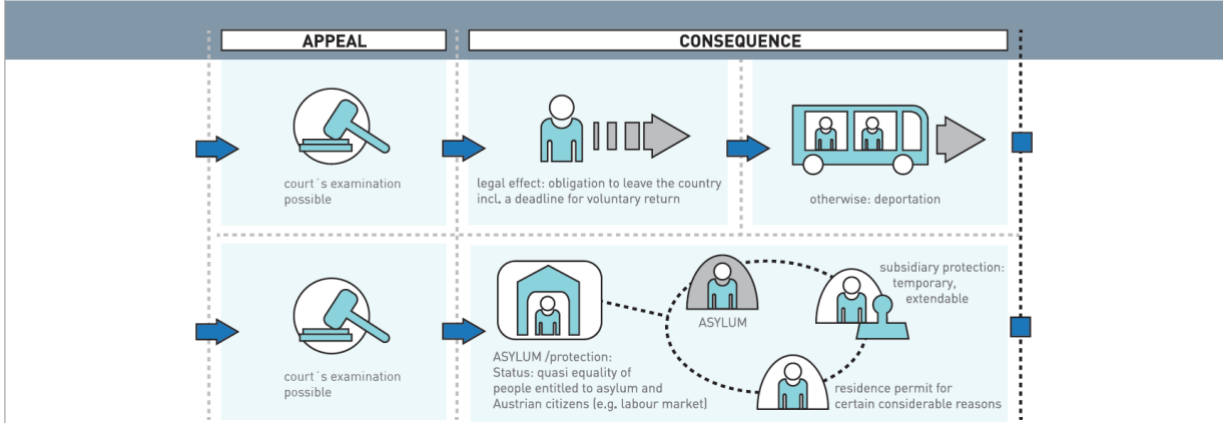
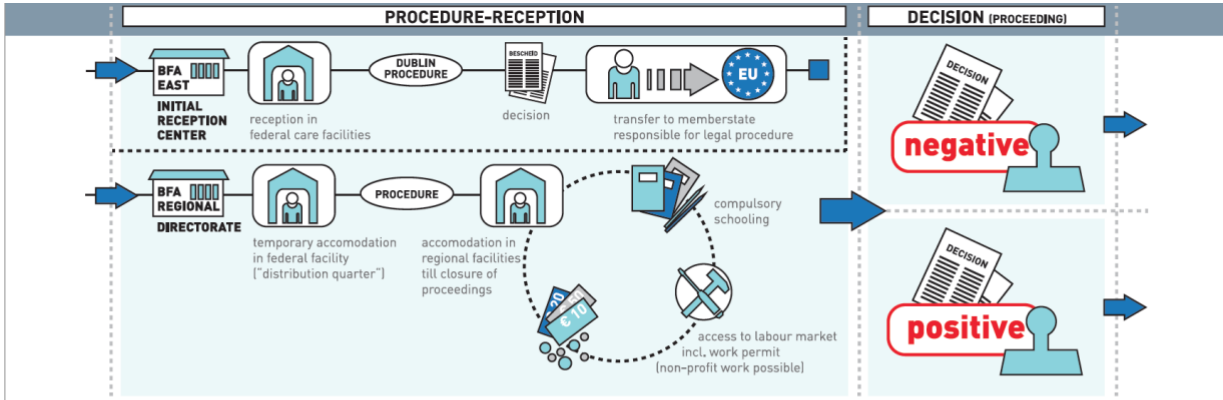
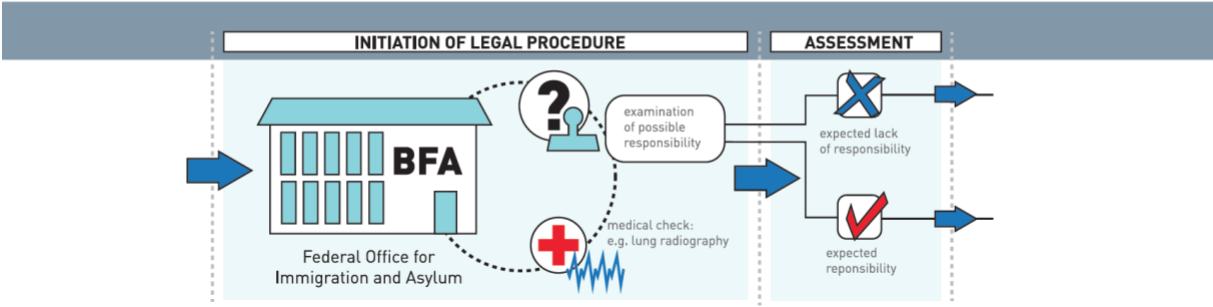
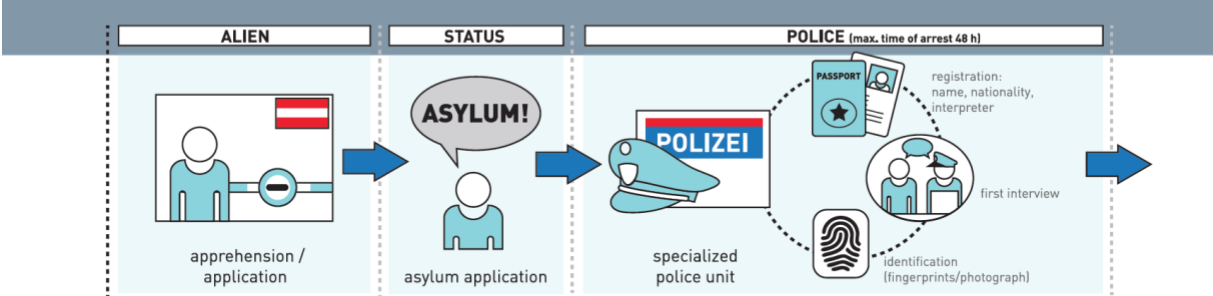
asylum have come from Syria, Afghanistan, Iraq, Pakistan, and Iran. In 2015 alone, Austria had approximately 1000 asylum applications per 100,000 people (Alessi et al., 2020, p. 13) and 47% of all concluded proceedings in 2015 were ultimately negative while 37% of the final decisions were positive (Rosenberger et al., 2018, p. 37). Between January and May 2022, there were 5,780 positive and 7,505 negative asylum decisions which reflects the significantly smaller percentage of positive versus negative decisions. While data about asylum applicants applying on the basis of their sexual orientation or gender identity is not explicitly available, studies have shown that a significant percentage of asylum applications in EU countries are lodged by SOGI applicants. For details about asylum statistics, reports published by the Federal Ministry of the Interior can be consulted as an analysis of asylum statistics is outside the purview of this thesis.

To contextualize contributions of my collaborators regarding the asylum process in Austria, I would like to share a brief outline of the asylum procedure in Austria published by the Federal Ministry of the Interior<sup>10</sup>, specific details of which will be shared later on. I will also share details about some particular organizations related to the asylum process here to further contextualize the experience of Adam and other asylum applicants in Austria.

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<sup>10</sup> Federal Office for Immigration and Asylum (BFA), Asylum Procedure.  
[https://www.bfa.gv.at/402/files/01\\_Broschueren/Informationsbroschuere\\_Asylverfahren\\_in\\_Oesterreich\\_EN.pdf](https://www.bfa.gv.at/402/files/01_Broschueren/Informationsbroschuere_Asylverfahren_in_Oesterreich_EN.pdf)

# ASYLUM PROCEDURE IN AUSTRIA



While the above graphic presents a relatively straightforward outline of the asylum procedure, the actual process is complex and precarious, and subjects asylum applicants particularly SOGI asylum applicants to unique forms of bureaucratic violence. Some noteworthy details from the graphic above are that the application for asylum is lodged at a police station, the asylum proceedings are coordinated by the BFA or the Federal Office of Immigration and Asylum, the Dublin procedure is applied in the early stages of the application process and can result in deportation, accommodation is provided during the asylum procedure with restrictions on the mobility of the applicants, and negative decisions can be appealed but can result in deportation if the appeal is not granted. Following is an explanation about some of the organizations that are involved in the asylum process which will contextualize the in-depth analysis of the asylum procedure in the later chapters.

### **Relevant Asylum Organizations in Austria:**

The Austrian aliens and asylum law belongs mainly within the Federal State's sphere of authority (European Migration Network, 2015, p. 10) while in later stages of the asylum procedure the provinces are competent to provide housing, food, medical insurance, etc. (European Migration Network, 2015, p. 17). Of particular relevance to the asylum proceedings are the following organizations/authoritative bodies – a critical commentary on the role of these organizations will be provided in the next chapter:

### **BFA/Federal Office for Immigration and Asylum**

The *Bundesamt für Fremdenwesen und Asyl* or the Federal Office for Immigration and Asylum was established on January 1, 2014 under the responsibility of the Federal Ministry of the Interior and is the first instance authority in asylum procedures (European Migration Network, 2015, p. 15). The BFA is the determining authority responsible for examining applications for

international protection and competent to take decisions at first instance as well as for residence permits on exceptional humanitarian grounds and certain Aliens' Police proceedings (asylkoordination, Österreich, 2019, p. 16). Further responsibilities of the BFA include:

- Granting and withdrawal of refugee status and subsidiary protection status
- Imposing return decisions, entry bans and enforcement orders
- Granting residence permits in cases of exceptional circumstances
- Issuance of documents related to asylum proceedings
- Decisions on detention pending removal and more lenient measures
- Procurement of return certificates
- Execution of the Federal Basic Welfare Support as federal authority
- Voluntary returns (European Migration Network, 2015, p. 15)

### **The Police Station/Polizei**

As mentioned in the outline of the asylum process above, the initial asylum application must be lodged at a police station. Police officers and the police administrations of the provinces have been designated an important role in the implementation of tasks in the field of asylum and migration. These include:

- Prevention of irregular entries of aliens
- Surveillance of the residence of aliens
- Issuance of certificates of non-objection
- Implementation of repatriation and transit of aliens

- Prevention and termination of criminal offences under the Aliens Police Act (European Migration Network, 2015, p. 15)

### **Appeals in the Court System**

Within the Austrian system, different courts are responsible for different kinds of appeals related to the asylum procedures:

- The Federal Administrative Court decides on appeals against the decisions of the Federal Office for Immigration and Asylum
- The provincial administrative courts in particular decide on appeals against decisions related to the Settlement and Residence Act, including the issuance of residence permits provided therein
- The Administrative High Court and the Constitutional Court decide on appeals against decisions of the Federal Administrative Court and the provincial administrative courts (Federal Ministry of Justice, 2014: 14–15) (European Migration Network, 2015, p. 17)

### **UNHCR and NGOs**

The United Nations High Commissioner for Refugees (UNHCR) heads an UN agency with a branch office in Vienna, which was opened in 1951, the founding year of UNHCR (European Migration Network, 2015, p. 17). The UNHCR has unrestricted access to all reception centers in Austria whereas access to all other legal advisers and NGOs to the reception buildings is not allowed, based on the argument that it would disrupt the private life of other asylum seekers

(Asylkoordination, Österreich, 2019, p. 101). In case of a negative decision in an asylum case and the order of deportation, UNHCR has to be notified. Hence, the UNCHR plays an important role in Austria's asylum system and is intended to provide an external foresight on asylum proceedings and the treatment of asylum applicants in Austria.

In addition, a number of NGOs are working to support vulnerable asylum-applicants and migrants in Austria, such as Asyl in Not, Asylkoordination, Caritas, Diakonie Flüchtlingsdienst, Flüchtlingsprojekt Ute Bock, helping hands, Integrationshaus, Austrian Red Cross, Verein menschen.leben, Verein Menschenrechte Österreich, Volkshilfe Österreich, Queer Base, and others (European Migration Network, 2015, p. 18). Several organizations are also conducting research in the field of asylum and migration such as the Ludwig Boltzmann Institute of Human Rights, the Austrian Human Rights Institute, the UNHCR, the International Organization for Migration and various universities (European Migration Network, 2015, p. 18). While my second interviewee provided insight into the work of Queer Base, the work of these other non-profits to support LGBTQ asylum applicants would be an excellent continuation of this research.

## **Chapter 5: Applying for Asylum**

In an effort to treat my interviewees as collaborators, I center their contributions as the general guideline of explaining the various issues embedded within the asylum process in European countries, with a particular focus on Austria. I will keep the identity of my collaborators anonymous and assign them pseudonyms while also hiding any other descriptive information such as country of origin, age etc. that can be linked to them. Even though I only have two interviewees, the richness of perspective and experiences shared by them offers a very insightful and critical lens onto the asylum process. In order to contextualize their contributions, I will share my learnings from secondary literature as well as information about the Austrian asylum procedures including details about certain laws and organizations that monitor the asylum process in the later chapters. While sharing the contributions from my interviewees, I share direct quotes and also paraphrase what they said and provide the time-stamp linked to that contribution from the transcript of the interview. The transcripts of the interviews are not attached to this thesis to further protect the identity of my collaborators. I transcribed the interviews using the Descript software that automatically transcribed the interview audio files, which I corrected for errors afterwards. However, some grammatical or textual errors within the interview transcript are still expected.

My first collaborator, Adam, identifies as a non-binary individual, uses they/them pronouns, and is of African origin. My second collaborator, Lisa, uses she/her pronouns, and is one of the core employees at Queer Base in Vienna, Austria. I use contributions from both of them to describe the various stages of the asylum process, explain issues that have also been raised within the secondary literature regarding the adjudication of asylum claims, as well as the ways that asylum claimants navigate these issues.

## **Fleeing Persecution and Applying for Asylum: Adam's Story**

Adam comes from a religious country and was involved in an activist group in their country starting in 2013 that advocated for the rights of queer individuals (Adam, 04:00-05:00). Their work received a lot of attention locally and internationally but it also attracted attention from the society, the government, and the families of the activist group resulting in a constant attack to the safety of the group members starting in 2015 (Adam, 06:00). Through Adam's experience of leaving their country of origin and applying for asylum in Austria, the first aspect of the asylum process that I would like to highlight is the following: who can claim asylum according to the international law and on what basis?

As mentioned in an earlier chapter, the 1951 Refugee Convention makes express reference to five grounds on the basis of which the 'well-founded fear of persecution' can be invoked: 'race', religion, nationality, membership of a PSG (particular social group) and political opinion (Danisi et al., 2021, p. 256). The literature shows that there is now a legal dogma that SOGI asylum generally applicants fall within the PSG category and their ground to claim international protection is exclusively characterized by their SOGI, but not by their political activism, religious beliefs, ethnicity, or other aspects of their lives (Danisi et al., 2021, p. 258).

In the EU context, the key source in this regard is Article 10(1)(d) of the Qualification Directive: a group shall be considered to form a particular social group where in particular: – members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and – that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society (Danisi et al., 2021, p. 258). The characteristic will often be one which is innate, unchangeable, or which is otherwise

fundamental to identity, conscience, or the exercise of one's human rights. (Akin, 2017, p. 459). Moreover, the relevant criteria include two tests: the 'fundamental characteristic test' and the 'social recognition test' (Danisi et al., 2021, p. 258) – the impact of this test is that asylum claims by those individuals are often denied who are not visible within a given society or are not “out” enough to be perceived as part of a particular social group by society (Danisi et al., 2021, p. 259). This test has negative implications for bisexual claimants who are often assumed to be able to choose between heterosexuality and homosexuality or for those claimants who have had heterosexual relationships in the past (Danisi et al., 2021, p. 261, 262).

### **Persecution and Vulnerability**

What counts as “persecution” on the basis of which an individual can claim asylum is also a contested question. According to Article 9(1) of the EU Qualification Directive, for an act to constitute persecution, it needs to: (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a) (Danisi et al., 2021, p. 264). “A severe violation of basic human rights”, therefore, qualifies persecution. Physical or psychological violence, legal and administrative measures that are discriminatory in themselves or are applied in a discriminatory manner, and discriminatory criminal sanctions tend to be considered as severe human rights violations by decision-makers (Danisi et al., 2021, p. 265).

However, what qualifies as a severe violation of basic human rights is up to interpretation across countries and even within the same country – for example, in some places such as the UK,

the criminalization of same-sex conduct, police violence, and social stigma is sometimes not enough to qualify as persecution (Danisi et al., 2021, p. 265). It is important to note that the criminalization of same-sex conduct, even without actual prosecution, can facilitate blackmail, discrimination, and harassment in the country of origin ((Danisi et al., 2021, p. 268). Some decision makers also require persecution to have already happened in the country of origin to accept the application for asylum rather than allow for the future risk of persecution to be reason enough to apply for asylum (Danisi et al., 2021, p. 267). However, human rights organizations have argued that under human rights law, the fear of being persecuted because of one's sexual orientation or gender identity should hold the same weight as experiencing actual persecution (Wieland & Alessi, 2021, p. 413).

Another approach present within the asylum framework is that of the “vulnerability” of certain groups of individuals – the logic of vulnerability argues quite simply that vulnerable groups of people should be granted asylum. However, the literature shows that uncritically designating certain groups as particularly vulnerable carries the risk of essentializing them as powerless victims and blaming them for their shortcomings or perceived inability to help themselves (Wieland & Alessi, 2021, p. 408). The vulnerability narrative may be stigmatizing because it erases agency, downplays resilience, and obscures the structural nature of vulnerability of these individuals (Wieland & Alessi, 2021, p. 408) particularly for SOGI asylum applicants whose vulnerability is a direct consequence of a stigmatized existence due to institutional and societal factors rather than as a consequence of their own actions. Hence, it is crucial to both destigmatize the label of vulnerability and encourage critical reflection of the role of economic, social, legal, and political systems in rendering some individuals and groups more vulnerable than others (Wieland & Alessi, 2021, p. 407).

Within this context of the persecution and vulnerability framework, Adam's attempt at seeking asylum can be better understood from the perspective of asylum authorities in Austria as well as from a genuine human rights perspective. Adam shared that their house in their country of origin was ransacked 4 or 6 times by the police in one month, that they were arbitrarily arrested, and also subjected to other kinds of violence (Adam, 11:00). It was within such circumstances that members of the activist group fled the country and applied for asylum through collaborations with LGBTQ organizations in other countries. Adam applied for asylum in Austria in 2017 through collaboration with a partner organization in Salzburg called the Salzburg Global Seminar. Adam mentioned that although Austria was not their first choice and is not usually an easy place to access for foreigners, because of their working relationship with the organization in Salzburg, it was relatively easy for them to come to Austria (Adam, 09:00).

The following section details Adam's actual experience of applying for asylum in Austria, the bureaucracy involved in the first few steps of the asylum process, and Adam's experiences with such bureaucracy. I also bring in the testimony from Lisa, the employee at Queer Base, and how their work attempts to support SOGI asylum applicants from the start of the asylum process in Austria.

### **First Steps to Apply for Asylum** **Adam's Experience and the Bureaucracy Involved**

*"I had time to think whether I should apply for asylum or not, which is, also part of my privilege. And then I decided to apply. I know seeking asylum is a human right. I am also an advocate and activist that works on human rights and specifically on LGBTI (rights). As a human being, me having the autonomy and the ability to conjure a space*

*where I see myself as safe is my human right. But with all these bureaucracies and all these difficulties, be it the racism, be it all forms of discrimination that is instigated by white supremacy...seeking asylum is such a dehumanizing experience personally for me.”*

(Adam, 10:00-12:00)

Adam shared that their experience of seeking asylum in Austria was dehumanizing because of the various forms of discrimination they had to face during the process. At the same time, they are also aware of their own privilege and the opportunity to apply for asylum. It is important to note that the experiences of individual asylum seekers may differ based on the type of oppression that they face as a result of their intersectional identities and the relative amount of privilege and resources that they possess to deal with such oppression (Hulko, 2009). However, even for someone like Adam who was involved in activism that dealt with contentious situations involving the government, the asylum process in Austria was starkly traumatizing.

According to Austrian law, if a third-country national wishes to obtain asylum status in Austria he/she has to enter the federal territory – pursuant to Art. 17 para 1 Asylum Act, an application for international protection has to be lodged exclusively in Austria (European Migration Network, 2015, p. 46). Of course, the first step in this process would be to apply for a visa in the country of origin – for most asylum applicants, obtaining a visa to enter Austria might not be possible and therefore, they might enter the country irregularly. Once within the territory of Austria, the application for asylum is lodged at a police station. Adam lodged their asylum application at a police station in Salzburg and for them, this was the first instance of bureaucratic violence they faced:

*“You come here, and you have this preconceived assumption of like, you know, how they (Austria) also promote themselves as a safe space for queer bodies. I remember the*

*people that were facilitating and helping me to seek an asylum here. I asked them like, okay, so what is the procedure? How do I seek an asylum? And then they're like, well, you go to police station. and I was like gagged. Because my lived experience, with law enforcement and police is violence. And I was really like triggered and I couldn't believe that I had to go to the police station to talk about the violence that the other police did on my body, my mind, my spirit, you name it.” (Adam, 12:00-13:00)*

Even at the first step of the asylum process in Austria, SOGI asylum claimants might face retraumatization as studies have shown that for LGBTQ people especially, encounters with the police and law enforcement in their countries of origin can be a violating experience. The fact that the asylum application has to be lodged at a police station is not ideal for such people who might have just escaped persecution from similar law enforcement authorities that subject LGBTQ people to violence such as house searches, bodily harm, and blackmail.

From the moment, the applicant lodges their application for asylum, the application is effective (Art. 17 para 1 Asylum Act) and the third-country national enjoys ‘de facto protection against deportation’ (Art. 12 para 1 Asylum Act) (European Migration Network, 2015, p. 46). The police officers carry out a first interrogation in order to ascertain the third country national’s identity, identify his/her itinerary if this has not already been carried out, and if he/she has reached at least 14 years of age (Art. 42 para 1 Federal Office for Immigration and Asylum Procedures Act in connection with Art. 19 para 1 Asylum Act). This interrogation does not refer to the specific reasons of the third-country national’s flight which have to be identified later on by officials of the Federal Office for Immigration and Asylum (European Migration Network, 2015, p. 47).

Adam shared their experience during this first interrogation:

*“I can't even imagine coming into this space which is absolutely strange and absolutely constructed not to see you as a human being and then you are dropped into such a violent space and there's no mental health support in that. So, all the things that we have to do, you just have to do it yourself. So that's the first like, you know, shock moment. And then I remember it took eight hours of an interview, of developing the first application. Often times the police stations also work in a standard (way), and they didn't have, a queer person applying for Ethiopia in Austria. They had to really navigate different kind of things. So that's why it took like eight hours to fill out the application.” (Adam, 13:00-14:00)*

Adam’s testimony highlights the stress that SOGI asylum claimants might have to face during the first interview at the police station particularly if they arrive from a country that the police officers do not have any knowledge or prior experience of. During the first interview at the police station, the asylum applicant’s passport is taken away by the police which essentially renders them stateless and the applicant is now under the responsibility of the Austrian government (Adam, 15:00). On the basis of the initial interview by the police, the BFA will make a prognosis decision, the first step of which is the admission procedure.

## **Admission Procedure**

### **Ineligibility:**

During the admission procedure, the lodging of an asylum application in Austria is considered inadmissible if:

- The asylum-seeker can find protection against persecution in another state within the meaning of Art. 4 and 4a of the Asylum Act
- Another state is responsible for the examination the application for asylum, especially if this is the case according to the provisions of the Dublin III Regulation (European Migration Network, 2015, p. 47)

Moreover, a person is also considered ineligible for asylum status if they constitute a danger to national security or if they have been convicted of certain crimes (or another reason according to Art. 6 Asylum Act), if the reason for granting asylum are not given anymore (or another reason according to the cessation clauses in Art. 1 section C of the Geneva Convention on Refugees), or if the person has the center of their vital interests in another country (European Migration Network, 2015, p. 54).

### **Initial Reception Center and Medical Examination:**

However, if the third-country national is entitled to stay, they have to present themselves within 14 days at an Initial Reception Center or at a regional directorate of the Federal Office for Immigration and Asylum (European Migration Network, 2015, p. 47). There are three initial reception centers in Austria: in Traiskirchen (Lower Austria), in Thalham (Upper Austria) and at the Vienna Airport (European Migration Network, 2015, p. 47). After their initial admission to a reception center, a medical examination of asylum seekers is usually conducted within 24 hours which includes a physical examination including vital signs, skin lesion, injuries, including Tuberculosis (TBC) X-ray, and questions about their medical history (asylkoordination, Österreich, 2019, p. 91).

From the moment the asylum procedure has been admitted the third-country national obtains a Residence Permit Card (Art. 13 para 1 Asylum Act) also known as a white card (Adam, 18:00). This Residence Permit Card is valid until an enforceable decision is rendered and serves as proof of lawfulness of residence in the federal territory (Art. 51 Asylum Act) (European Migration Network, 2015, p. 53). Recognized refugees have a permanent right of entry and stay in the federal territory (European Migration Network, 2015, p. 53).

### **Initial Timeline, Subsidiary Protection, and Residence Permit for Humanitarian Reasons**

According to the General Administrative Procedures Act (AVG), decisions have to be taken within 6 months after the application for international protection has been submitted. Within 20 calendar days, the BFA has to decide whether it intends to reject the application as inadmissible due to the responsibility of another Member State under the Dublin Regulation, the existence of a safe third country or for being a subsequent asylum application, or to dismiss the application for other reasons (asylkoordination, Österreich, 2019, p. 22).

If Austria is responsible, the Federal Office for Immigration and Asylum examines whether the asylum applicant is to be considered as a refugee under the Geneva Convention on Refugees or entitled to subsidiary protection or if the application has to be rejected (European Migration Network, 2015, p. 48). Persons with subsidiary protection status are granted a so-called “card for persons eligible for subsidiary protection (Art. 52 para 1 Asylum Act) – this card serves as proof of identity and lawfulness of residence in the federal territory (European Migration Network, 2015, p. 53). Residence permits can also be issued to third-country nationals for exceptional circumstances and are known as residence permits for humanitarian reasons (Art. 54 to 57 Asylum Act) (European Migration Network, 2015, p. 55).

## **Basic Welfare Support and Housing**

According to the report by asylkoordination, Österreich, asylum seekers are entitled to Basic Care by the Federal State immediately after lodging the asylum application until the final decision on their asylum application. Basic Care conditions do not apply in detention or where alternatives to detention are applied. Asylum applicants subject to Dublin procedures are entitled to basic care provisions until their transfer to the Member State responsible for the examination of the asylum application is executed. Even after a final negative decision on the asylum application, the law provides for Basic Care until departure from Austria. However, people arriving in Austria with a visa might not be entitled to Basic Care due to the precondition of having “sufficient means of subsistence” for the purpose of obtaining a Schengen visa (asylkoordination, Österreich, 2019, p. 75-76). Furthermore, EU and EEA (European Economic Area) citizens are excluded from the basic care (asylkoordination, Österreich, 2019, p. 77).

During the first interview with the police, asylum seekers have to declare whether they hold resources or income and are obliged to contribute to the basic care of the federal state they reside in. As a result, up to €840 per person can be withheld by the police when a person asks for asylum and is found to carry such an amount of money – in the first half of 2019, around €74,000 was seized from 795 applicants (asylkoordination, Österreich, 2019, p. 77).

During the admission procedure, the Federal State is responsible for basic care, in later stages of the asylum procedure the provinces are competent to provide housing, pocket money, medical insurance, etc. (European Migration Network, 2015, p. 51). Basic welfare support involves pursuant to Art. 6 para 1 Basic Welfare Support Agreement the following benefits and services:

- Accommodation and provision of food
- Monthly pocket money for applicants in organized reception facilities and for unaccompanied minors but not in cases of individual accommodation
- Medical examination and health care
- Measures for persons in need of nursing care
- Information, counselling, and social support concerning their stay in Austria and voluntary return
- Costs of transport in the case of transfers and official summons
- Travel expenses for school attendance and supply of school requisites for pupils
- Return travel costs and a single payment by way of interim financial assistance in the event of voluntary return to the country of origin in special cases (European Migration Network, 2015, p. 50)

In addition, every asylum applicant who receives Basic Care also has health insurance and treatment that is not covered by health insurance may be paid, upon request, by the federal provinces' departments for Basic Care or the Ministry of Interior. If Basic Care is withdrawn, asylum seekers are still entitled to emergency care and essential treatment (asylkoordination, Österreich, 2019, p. 91). While the provisions of this Basic Care seem generous enough, it must be noted that this Basic Care comes with dehumanizing restrictions for asylum applicants and SOGI persons, in particular, face unique challenges including the threat of violence at the asylum reception centers due to queerphobia.

### **Restrictions on the Freedom of Movement and Residence**

The freedom of movement of asylum applicants is severely curtailed during the asylum process and is another example of bureaucratic and dehumanizing violence that they might be subjected to. In the first admissibility procedure, applicants received a green card or a procedure card which indicates the tolerated stay in the district of the reception center of the state – violations of this restriction of movement may be punished with fines varying between €100 and €1,000 or with detention of up to 2 weeks if payment of the fine cannot be enforced (asylkoordination, Österrerrich, 2019, p. 82).

Asylum seekers whose application is admitted to the regular procedure, such as in the case of Adam, receive the white card, which is valid until the final decision on the application and allows free movement in the entire territory of Austria (asylkoordination, Österrerrich, 2019, p. 82). However, since 1 November 2017, applicants are only allowed to reside in the federal province assigned to them. In Adam's case, the application was lodged in Salzburg and they were granted residence initially in Salzburg only. Consecutive breaches of the residence restriction are punishable by an administrative fine of up to €5,000 or a three-week non-custodial sentence (asylkoordination, Österrerrich, 2019, p. 82).

### **Violence Faced by SOGI Applicants at Reception Centers**

Asylum seekers can be accommodated in reception centers where they receive €40 pocket money per month along with catering for food – Adam mentioned that they don't know how they existed with this amount of money and survived in the beginning (Adam, 34:00). Asylum applicants can also be placed in reception centers where they cook for themselves, in which case they receive between €150 and 200 per month mainly in cash (asylkoordination, Österrerrich, 2019, p. 78). Basic Care can also be provided for asylum seekers in private rented accommodation. In this case asylum seekers receive €365 monthly in cash (asylkoordination, Österrerrich, 2019, p. 78).

An additional €150 per year for clothes in vouchers is also granted to asylum applicants (asylkoordination, Österrerrich, 2019, p. 78).

For Adam, the prospect of staying at a reception center that hosts all kinds of asylum applicants including heterosexual applicants, even from the same countries, that might be queerphobic is yet another moment of violence that can affect SOGI applicants.

*“And then, I had to go to a camp, a regular camp where like, heterosexuals are also seeking asylums, which are majority from a space, which is like similar to mine, meaning there is a lot of queerphobia. Yeah, so it's also like another shocking reality. In the mix of that reality is also, the work of Queer Base, which is really advocating for queer asylum seekers to have a specific space where we are not like, you know, mingling with the, with the general asylum seeking populations.*

*Because at the regular camp, it's like guaranteed violence...when your sexual orientation expression, when your gender identity expression is very visible and for a person like me, because I identify as, also as a non-binary person that like, you know, present in a very, fluid way.” (Adam, 15:00-17:00)*

Adam highlights how the threat of violence from other asylum applicants is imminent at the regular reception centers when SOGI applicants present their sexual orientation or gender identity in non-normative ways. Studies also show that SOGI asylum applicants refugees from Middle East, North Africa, as well as and Central and South Asia experienced harassment and physical assault by other refugees in migration camps in Austria and the Netherlands (Alessi et al., 2020, p. 14). SOGI claimants may experience discrimination, verbal and physical violence, not only at the hands of other claimants, but also of security personnel, administrative staff and interpreters (Danisi et al., 2021, p. 345). Moreover, dependence on strangers for housing during the asylum

process could have mixed results, for example, yielding unexpected acts of kindness or, alternatively, exposing participants to exploitation and abuse (Alessi et al., 2020, p. 19) particularly with the expectation of returning this kindness with sexual favors. In this context, the testimony from Lisa, my second collaborator who works at Queer Base in Vienna highlights the work that Queer Base has been doing to support SOGI asylum applicants particularly helping them to secure safer housing during the asylum procedure.

### **Queer Base and Safer Housing for Queer Asylum Applicants**

According to Lisa, Queer Base started as an activist group in Vienna to welcome and support LGBTQ refugees in 2011. This group of activists recognized that navigating the asylum requires you to be on “the tip of your toes” (Lisa, 04:00) and through networking and professionalizing their activism, they could support asylum applicants in a better way. Lisa shared the following event that prompted Queer Base to become more professionalized and recognize the importance of safer housing for queer asylum applicants:

*“In January 2015, a former client of ours was killed. She was a sex worker from Turkey in the asylum procedure...(She) was making her money through sex work and she was killed by a client. And we were just in this shock of, you know, mourning and, uh, anger, where we then stood on the, on the stoops of the city council and said, this is a problem that is not going to be solved, that we offer places for people to sleep in our library like here. So, this is one of the basic things is safe housing.*

*That's what was the first aim: to provide places where people don't have to fear to be outed. Don't have the fear to be, uh, prosecuted again by people with, with whom they live with. And then we*

*also started to provide legal advice, everything on a volunteer basis, on the run.”* (Lisa, 05:00-07:00)

The literature on the nature of protest culture in Austria particularly with regards to asylum also points towards heavy reliance on individual cases – rather than protesting against asylum policy in general, protest emerges on the level of implementation when a particular asylum applicant is affected by the issue on a personal level (Rosenberger et al., 2018, p. 44). Following the death of the queer asylum applicant from Turkey and the protests demanding safer housing for SOGI asylum applicants, Queer Base started a cooperation with another NGO in Austria called Diakonie to provide group apartments to SOGI asylum applicants in Vienna and in other parts of Austria. Over time, Queer Base has come to provide social counseling, community work, and support to help people come out isolation and to deal with their mental health baggage (Lisa, 08:00). According to Lisa, when you are at safer housing, you don't have to hide what is on your phone, who you are bringing home, or if you go to a gay party or something so it is at least one less thing to be anxious about (Lisa, 19:00). Hence, group housing for SOGI asylum applicants protects from a constant fear of queerphobic violence from asylum applicants in a government reception center.

It is within this context of Queer Base's efforts that Adam also managed to secure an apartment in Salzburg with some other SOGI asylum applicants after spending three weeks at the initial reception center (Adam, 19:00). However, Adam shared that for the people renting out these apartments to queer asylum applicants, their utmost interest is how much money they make out of our bodies (Adam, 20:00). In addition, Adam also recounted the abuse that they faced by the person who rented out the apartment:

*“I remember for instance, in our apartment, the person, who runs the housing used to be like, you know, there is no boundary, there's no privacy for us. I remember, like, there were like times, uh, she would come and then like, you know, check if we wash our dishes properly. If we clean the house properly, if we fold our clothes properly in our closet. And, you know, it's like, all of these kinds of things, it is like, I'm a fucking grown ass person. And then I cannot imagine myself. Uh, being controlled like that.” (Adam, 20:00-21:00)*

Adam recounts (Adam, 22:00-27:00) the dehumanizing feeling of having their privacy invaded at any given time by the person renting out the apartment. They were taken out of a violent space to be exposed to another kind of violence. Moreover, within the group apartment, people came from many different cultural backgrounds and were at different levels of acceptance of even their own queerness. However, it was still easier to navigate this space than being at the initial reception center. They also shared that while staying at that apartment, they had to comply with the restrictions of the white card: they had to be back at the apartment by 10 PM and if they wanted to leave Salzburg and go to Vienna, they had to apply for a special permission which means that their whole life was under constant control and surveillance.

This chapter has shown that queer asylum applicants exist in a very precarious environment and are at risk of abuse and violence from the moment they apply for asylum. When they lodge their application for asylum at the police station, they are at risk of retraumatization by the police due to a potential violent history with law enforcement in their country of origin. If they are not placed in detention and/or deported due to the Dublin regulation which itself is a violent process, they are then transferred to initial reception centers where they might face life-threatening violence at the hands of other queerphobic asylum applicants. Even if they manage to secure private housing, they might be at risk of abuse from the people renting out the housing who could

manipulate and control the lives of these asylum applicants in very dehumanizing ways. The potential for violence exists at every step of the process even before the personal interview with the BFA which is the basis on which asylum decisions are made. The next chapter explores how the personal interview is also a site of bureaucratic violence for SOGI applicants based on evidence from the literature and from Adam's experience. I also share how Queer Base supports asylum applicants as they prepare for the potentially life-changing personal interview.

## **Chapter 6: Telling Your Story - Proving Claims Based on Sexual Orientation and Gender Identity**

*“...when you are a traumatized person, waiting (to know) whether your pain is worthy enough for your safety to be approved, it does a lot of things for on you.” (Adam, 24:00-25:00)*

After waiting for five months at the reception center, Adam had their personal interview with the BFA (Adam, 33:00). This interview is the moment in the asylum procedure where the BFA interrogates the asylum applicant regarding the specific circumstances on the basis of which they are applying for asylum. All asylum seekers must undergo a personal interview, provided that they have legal capacity to do so (asylkoordination, Österreich, 2019, p. 24). As explained in the previous chapter, the most basic requirements of persecution and the vulnerability must be met for asylum to be granted. This chapter explores how SOGI applicants such as Adam navigate the personal interview in which they must prove that they face persecution specifically based on their membership of a particular social group related to their sexual orientation or gender identity.

All throughout the chapter, it is possible to see that intentionally or unintentionally, the law will reflect and reproduce inequality, and will disproportionately impact the most marginalized, sometimes in violent and traumatic ways (Llewellyn, 2021, p. 209). And asylum law, in particular, assumes a white, male, and heterosexual asylum seeker, who escapes public political or religious persecution (Llewellyn, 2021, p. 209) and therefore, the law itself marginalizes SOGI asylum applicants from non-Western countries. The irony, of course, is that the purpose of the asylum system is to protect individuals from persecution that they face in their country of origin and offer a “safe space” (Llewellyn, 2021, p. 210). Adam also stated that, “the Global North thinks they are a safe space for queer people to exist but that’s a lie and a fairytale” (Adam, 52:00) because the reality of existing as a queer person of color in the global north is one of constant discrimination and violence.

The report published by the OHCHR in October 2018 following a mission in Austria indicates that interviews conducted by the police and the BFA take place in an atmosphere of mistrust, whereby the authorities focus on the identification of Dublin cases rather than on the identification of vulnerability. The report also stated that there was generally little cooperation among different actors, including governmental entities and a broad range of civil society organizations working with migrants in vulnerable situations (asylkoordination, Österreich, 2019, p. 58). It is within these circumstances that already assume guilt, that asylum applicants must navigate the bureaucracy, racism, and legal violence embedded in the personal interview.

### **Legal Assistance and Interpreters during the personal interview**

Before explaining the various issues present for SOGI asylum applicants within the personal interview, it is important to mention the kind of assistance provided by the Austrian state as well as by organizations such as Queer Base during the personal interview process. Legal assistance from the state can be requested prior to the personal interview or in the case of a rejection of the asylum application by the BFA, in which case the applicant must make an appointment which is scheduled within 72 after having been notified by the BFA of the intention to reject the asylum application (asylkoordination, Österreich, 2019, p. 29). Moreover, the provision of § 29 (4) AsylG, according to which the asylum seeker must have at least 24 hours to prepare for the hearing with the assistance of the legal adviser is not applied very strictly in practice (asylkoordination, Österreich, 2019, p. 42). The literature shows that the current legal aid-system does not meet the needs of asylum seekers as the organizations that receive funding for legal assistance are not committed to the protection of the rights of asylum seekers due to their cooperation with the Ministry of Interior (asylkoordination, Österreich, 2019, p. 30).

Until 2019, there were a few NGOs who were being sponsored by the government for the purpose of legal assistance but since 2019, the establishment of the Federal Agency for Supervision and Support Services (Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU-G) has replaced the role of NGOs. This new Federal Agency is placed in charge of providing legal assistance to asylum seekers in first and second instance as of January 2021 (asylkoordination, Österreich, 2019, p. 12). However, this means as of 2021, NGOs no longer receive funding for the purpose of legal assistance which can be assumed to be more in the interests of the asylum applicants (asylkoordination, Österreich, 2019, p. 30) rather than the agency that is funded by the same government that does not want to grant asylum to those who are applying for it.

Lisa mentioned that Queer Base supports SOGI asylum applicants even before they arrive in Austria as many people reach out to them and ask about the possibility and the procedure of asylum (Lisa, 21:00). After they arrive in Austria and apply for asylum, Queer Base supports the applicants with legal assistance during the first interview at the police station as well as during the personal interview. Lisa mentioned that,

*“If people (applying for asylum) have the chance to talk to somebody who is a peer that, embraces you, that is encouraging you, and (if) you have the space to build your own voice and find your own wordings on how you want to talk about your sexuality, your gender identity and, just also for somebody to be there with them, it makes such a big difference.”* (Lisa, 10:00)

Such kind of support, provided by Queer Base, is indispensable for SOGI asylum applicants who might be dealing trauma or other mental health challenges. It is also important to note that during the personal interview, interpreters are provided by the BFA and cover most of the

languages, however, there are no standards for the qualification of interpreters in asylum procedures (asylkoordination, Österrich, 2019, p. 24).

Adam also mentioned that a translator was provided for them during their interview with the BFA but there is no protocol regarding whether the interpreter is homophobic or not or what their priorities are (Adam, 28:00). The report by asylkoordination shows that asylum applicants often realize that the interpreter made mistakes in the translation or the transcript when the applicants receive a negative first instance decision and a legal adviser explains them the details of the transcript (asylkoordination, Österrich, 2019, p. 25). The fate of the SOGI asylum applicant, therefore, rests on their ability to recount traumatic experiences that show that they are indeed facing a genuine threat of persecution due to their sexual orientation and gender identity, all the while hoping that the interpreter provided by the BFA will truthfully and honestly translate the nuances of what the applicant is saying during the interview.

### **Telling your story during the personal interview**

Studies have shown that SOGI migrants face unique difficulties while navigating the asylum process, including securing legal representation, completing the persecution narrative and disclosing extremely private information (Kahn & Alessi, 2018, p. 28). There is evidence of a negative psychological impact of constructing the persecution narrative, which is essential to the applicant's asylum claim during a time of transition and instability (Kahn & Alessi, 2018, p. 28) and that many asylum applicants face the stress of not being ready to tell their pre-arrival stories of persecution (Llewellyn, 2021, p. 206). Many SOGI applicants spend a significant amount of time hiding their sexuality and within the personal interview, they are expected to tell their stories

quickly and coherently but they are not always ready to recount their persecution or to disclose their sexual orientation (Llewellyn, 2021, p. 208).

### **Credibility**

There is an expectation placed upon asylum applicants to provide a credible claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed (UNHCR 1998, para. 11). This includes internal credibility (consistency within the testimony) and external credibility (consistency between the testimony and publicly known information) (Danisi et al., 2021, p. 295). Credibility is the basis of all asylum applications but is particularly difficult to ascertain in SOGI and gender-based claims, where persecution is likely to be undocumented, take place in private and often at the hands of family and other nonstate actors (Danisi et al., 2021, p. 295). Besides being expected to reach a ‘perfect’ degree of ‘dramatic’ narrative, the level of detail and consistency required of claimants is often also unreasonable in light of their personal circumstances (Danisi et al., 2021, p. 302).

### **Challenges for Lesbian Applicants**

In general, gay men tend to experience more public forms of persecution by police or state actors, whereas lesbian women tend to experience more private forms of persecution at the hands of family or people known to them (Alessi et al., 2020, p. 15) which can make it difficult for lesbian applicants to generate burden of proof. In 2013, there were reports of gay asylum claimants in the UK filming themselves having sex to prove their claim and because of the successful use of such pornographic evidence in a number of recent gay asylum cases, many lesbian asylum seekers now feel that immigration officials will not believe that they are lesbians unless they film themselves having sex with another woman (Lewis, 2014, p. 6). Moreover, until very recently,

lesbian asylum claims were typically dismissed on the grounds that a lesbian can avoid the risk of harm by being discreet in her conduct (Lewis, 2014, p. 7). What drives the contradictory production of lesbian invisibility and hyper-sexualization in the UK asylum process is the heteronormative assumption that it is possible for women to be ‘voluntarily discreet’ (Lewis, 2014, p. 8) – the political asylum system, therefore, reproduces norms of sexual citizenship according to which responsibility for proving sexuality is shifted to the claimant, and which pose particular challenges for lesbian asylum seekers (Lewis, 2014, p. 10)

### **Effect of trauma on credibility**

In asylum claims, decision-makers tend to ignore factors such as the effect that trauma and the passage of time can have on memory of painful events (Danisi et al., 2021, p. 282). Individuals who have been exposed to prolonged abuse and violence are particularly vulnerable to retraumatization when they are forced to discuss or relive the experiences that precipitated the initial trauma (Kahn & Alessi, 2018, p. 24). Lisa mentioned the very difficult challenge for SOGI asylum applicants to recognize the “treasure” within their traumatic experiences of sexual assault and rape (Lisa, 49:00) to convince the BFA judges that they are indeed under threat of persecution because the applicants might still be dealing with feelings of shame and negative self-worth and might not have recovered from the trauma of the abuse that they have suffered. Studies have shown that there are psychological consequences involved in disclosing sexual abuse – negative reactions may be mitigated, however, when adults feel that they have control of their story and to whom they reveal it (Kahn & Alessi, 2018, p. 33) which makes it even more important for SOGI asylum applicants to have the time and support they need to recount their stories, in their own words and on their own terms.

### **Timing of Revealing SOGI as basis of asylum claim**

Lisa mentioned that during the first few years of Queer Base's activities, many gay asylum applicants from Iraq and Syria who were escaping the war and Da'esh did not mention their sexual orientation at the beginning of their asylum application (Lisa, 22:00-23:00). When their initial applications were rejected, these applicants reached out to Queer Base and got the support to try and apply again for asylum on the basis of their SOGI but the system prevented them from doing so because of their previous negative decision. This aspect of adding information regarding SOGI after an initial negative decision was taken to the European Court which decided that all the reasons of flight of the asylum applicant have to be taken into consideration even if the applicants did not mention some of them during the first application (Lisa, 24:00) – this is something that only changed in 2021, before which SOGI asylum applicants who initially did not apply for asylum in Austria on the basis of SOGI could not reveal this information later on during the process.

Moreover, the extent to which sexual orientation and/or gender identity are even viewed as reasonable cause for seeking asylum has been based on limited country-of-origin information used by EU immigration officials to determine the sociocultural and political climate of the countries from which LGBTQ refugees originate (Alessi et al., 2020, p. 15). If the information provided by asylum applicants does not match the information used by EU immigration officials based on their own country reports and stereotypes, their asylum claims can be denied.

### **Conforming to Western, Cis-, Heteronormative Standards of Sexuality**

The literature on personal interviews points overwhelmingly to the presence of racialized and colonialized scripts of victimhood in addition to rigid understandings of sexuality (Akin, 2017,

p. 458), the hardships of conforming to the notion of what immigration adjudicators believe an LGBTQ person looks like (Alessi et al., 2020, p. 18), the use of adjudicators' own assumptions about sexuality (Llewellyn, 2021, p. 203) as well as their personal views, biases, stereotypes on sexuality, gender, and race that results in negative decisions such as in a number of cases monitored by the OHCHR that were denied asylum by the BFA (asylkoordination, Österreich, 2019, p. 25).

Adjudicators expect applicants to conform to white, western norms of sexuality, including gender nonconformity and place emphasis on the centrality of coming out stories – both of which have been critiqued as a colonialist project intended to use LGBTQ rights as a marker of progress and legitimation globally (Llewellyn, 2021, p. 203). The literature points to the tendency of asylum adjudicators to maintain a public/private binary when considering the experiences of SOGI asylum applicants, and to conflate sexual orientation and gender identity (Wieland & Alessi, 2021, p. 412). Numerous examples of problematic negative decisions that are based on Western notions of sexual orientation and gender identity include the case *MKN v. Sweden* (2013) in which the state denied asylum to an Iraqi gay man who stated his intention to continue living with his wife failing to account how sociocultural conditions in the country of origin as well as subsequent shame and humiliation forces some SOGI applicants into silence (Wieland & Alessi, 2021, p. 412); and the case of *F. v. the United Kingdom*, in which the state dismissed the asylum claim of an Iranian asylum applicant on the basis that same-sex partners would not be persecuted by the Iranian state if discreet about their activities (Wieland & Alessi, 2021, p. 413).

The stereotypes and norms that dictate SOGI asylum cases include expectations of a 'coming out' narrative, involvement with LGBTQ activism, attendance at LGBTQ social and nightlife spaces, familiarity with LGBTQ culture, being sexually active according to the self-

identified SOGI, and not ever having had heterosexual partners or children (Danisi et al., 2021, p. 304). Conversely, meeting all these stereotypes too neatly may be seen as a sign of fabrication or dramatization. Decision makers are influenced by their first ‘visual impression’ of the claimants including the claimants’ clothes and demeanor with an inclination to believe more ‘camp’ or effeminate male claimants and more ‘butch’, masculine-presenting female claimants (Danisi et al., 2021, p. 304) – both of which are stereotypical understandings of what a gay male or female person looks or behaves like.

### **Proving SOGI Identity: Self-Identification or Not**

*“How do I prove that I'm gay? Like with trans people? It is most of the time, a little bit easier, because if you are gender nonconforming, especially coming from a conservative or restrictive country, it's mostly very obvious because it's written over their bodies. For being gay, for being lesbian, for being - it's like, what is it?” (Lisa, 11:00-12:00)*

While it is recognized that self-perception and self-identification should be at the center of analysis of a SOGI applicant’s claim, officials also argue that there has to be some kind of independent standard of proof, requiring additional questions; it is not enough for a claimant to say that they are gay and from a country where there is criminalization of same-sex acts (Danisi et al., 2021, p. 285) since this can potentially lead to an abuse of the asylum system by non-SOGI individuals claiming to belong to a SOGI minority group. While this seems like a well-intentioned logic, in practice, SOGI asylum applicants face the heavy burden of having to prove their sexual or gender identity to state officials during asylum hearings by providing evidence of victimization in their country of origins through police reports and letters from people they know, by conforming to

stereotypical presentations of how immigration adjudicators and judges may expect LGBTQ people to behave; by documenting their engagement in the LGBTQ community in the host country through photos, and by disclosing private details of their sex lives (Wieland & Alessi, 2021, p. 410). Following are some more issues identified in the literature regarding the pressure put upon SOGI asylum applicants to prove their identity as well as various factors that influence the decision made by asylum authorities:

### **1. Visibility Requirement:**

The literature points to the presence of “the visibility requirement” which assumes that conspicuous homosexuals have fundamentally different identities than inconspicuous homosexuals – this belief is grounded in a performance-as-identity model suggesting that identity is determined by behavior rather than by immutable characteristics (Fadi, 2005, p. 913). The “performative model” of identity suggests that someone cannot be eligible for asylum on the grounds of sexual orientation unless he manifests his orientation through his appearance, clothes, body language, demeanor, behavior, and habits (Fadi, 2005, p. 920). However, the performativity model contravenes the immutability standard because it relies on variable social and cultural perceptions of what actions characterize homosexuality (Fadi, 2005, p. 920).

### **2. Covering and Reverse Covering**

The notion of homosexual covering means the day-to-day pressure placed upon homosexual people, particularly in situations where their safety is compromised, to act "normal" rather than "queer" – gay individuals alter their conduct displaying only gender typical traits to avoid visibility and therefore, a threat to their safety (Fadi, 2005, p. 915). Reverse covering, on the other hand, captures the experience that individuals face when they are required to meet stereotypical expectations of their sexual orientation or gender identity in the case of SOGI asylum applicants (Kahn & Alessi, 2018, p. 25) so they can be taken seriously by asylum adjudicators who would

otherwise not accept their claims. SOGI individuals, therefore, face a constant pressure to either cover or reverse cover according to the place and context in order to survive particularly when it comes to performing their queer SOGI during asylum proceedings.

### **3. Religion and SOGI Claimants**

Asylum decision makers frequently assume that religious beliefs are incompatible with belonging to a SOGI minority (Danisi et al., 2021, p. 306). This problem is particularly evident in the UK. Home Office questions often require Muslim and Christian SOGI claimants to explain an assumed tension between their religious and SOGI identities assuming both that certain world religions have a single position on these issues and also that individual believers are able to reconcile different aspects of their identity in a tidy package (Danisi et al., 2021, p. 306).

In reality, studies have shown that SOGI asylum applicants have various kinds of relationships with their religious identities and that religion and belonging to a SOGI minority group are in no way incompatible. For some SOGI individuals, religious identity could serve as a source of resilience during their migration experiences while for others, there was a need to distance themselves from their religion, which was often precipitated by traumatic experiences inflicted by religious leaders or communities because of their sexual orientation or gender identity (Alessi et al., 2021, p. 176). For some SOGI asylum claimants, however, religion and/or spirituality which exists outside the boundaries of organized religion can facilitate connection to cultural identity when desired, aid in adaptation to new environments, and help build social networks (Alessi et al., 2021, p. 181).

### **4. Having a Same Sex Partner**

Studies have shown that having a same-sex partner was beneficial for credibility assessment purposes, even if this was simply a sexual partner willing to confirm the claimant's alleged sexual orientation (Danisi et al., 2021, p. 307). There are heteronormative expectations placed upon such a relationship: the standard of length and longevity according to heterosexual relationships, the presence of a strong emotional and physical connection between the partners and remembering critical dates in a relationship (Danisi et al., 2021, p. 308). Such an expectation to have a partner is understandably perceived as unfair (Danisi et al., 2021, p. 309) as this is another way that queer sexuality is equated with the act of having sex or a relationship with a same sex partner.

## **5. Bisexuality**

It is important to note that bisexuality, the possibility of sexual attraction to both genders (if a gender binary is considered to be the norm), is still misunderstood by asylum adjudicators who do not understand it as its identity (Danisi et al., 2021, p. 315). Often times, there is a pressure placed upon bisexual individuals to “choose” a side – whether to be with a man or a woman. Asylum authorities can deny claims arguing that a bisexual individual can just go back to their country and be in a heterosexual relationship to avoid persecution. Therefore, to avoid skepticism on the part of decision-makers, it is not surprising that some bisexual individuals misrepresent themselves as gay or lesbian (Danisi et al., 2021, p. 315).

## **6. Class and Education Level of the Applicant**

Some decision-makers willingly recognize that claimants' educational background has an impact on the quality and cogency of their testimony – ‘middle-class’ claimants can potentially present their cases much more confidently than claimants from more disadvantaged socio-economic backgrounds with lower literacy (Danisi et al., 2021, p. 319). Educational achievement is often intertwined with social class, religious, national and cultural backgrounds in inextricable

ways (Danisi et al., 2021, p. 320) and therefore, is a marker of intersectional difference of privilege within asylum applicants even from the same country.

While a higher education could benefit an asylum applicant in some instances, in others educational attainment can be used to deny risk of persecution (Danisi et al., 2021, p. 320) on the grounds that such an individual can go back and access resources and employment opportunities granted to them because of their higher education.

## 7. Age

Finally, age may also play a role in SOGI claims, with older claimants potentially being more experienced and self-confident in their dealings with asylum adjudicators or being more resilient and resourceful during the asylum process (Danisi et al., 2021, p. 320). However, ‘older’ claimants – especially women – can be expected to return to their home countries and live alone because no-one will question their lack of children or a partner as they have already lived in their countries of origin for a longer period of time (Danisi et al., 2021, p. 321).

### **Kinds of evidence and questions expected from SOGI claimants:**

In light of the factors that influence the decisions made by asylum adjudicators, it is also worth noting the kinds of evidence that SOGI applicants are expected to provide to support their claims – detailed testimonies on intimate matters, written evidence such as relevant certificates and documents (Danisi et al., 2021, p. 286), statements by NGOs supporting SOGI asylum applicants (Danisi et al., 2021, p. 287), evidence that shows the claimants’ willingness to integrate into the local queer scene (Danisi et al., 2021, p. 294), and even medical evidence such as reports

diagnosing PTSD (Danisi et al., 2021, p. 289). In most of the EU countries, the evidence of a sexual nature (such as video recordings and pictures of sexual intercourse) is no longer submitted or expected, rightly recognizing SOGI claimants' rights to dignity and privacy (Danisi et al., 2021, p. 290). However, some studies such as Lewis, 2014 still point to the expectation of such evidence in certain countries such as the UK. Problematic, inaccurate, and dehumanizing practices such as sexual arousal tests applied by Czech authorities in 2010 to test asylum applicants who claimed to be gay (Akin, 2017, p. 459) are also increasingly criticized but still might be used in some countries.

In addition, SOGI asylum claimants are also expected to answer probing questions regarding their sexual orientation, gender identity, and behavior. Trans claimants in Germany reported feeling particularly disturbed by intimate questions about the degree of gender-affirming interventions they had undergone (Danisi et al., 2021, p. 291). Some highly inappropriate questions being asked during certain asylum interviews were also highlighted in the media, including 'When x was penetrating you did you have an erection?' and 'What is it about the way men walk that turns you on?' (Danisi et al., 2021, p. 292). Another demeaning and humiliating form of evidence that is expected, while not routinely required, was for claimants to display scars (Danisi et al., 2021, p. 293).

### **Positive Power of Stereotypes and Agency**

*"If we talk about stereotypes, we usually talk about them in a, in a bad sense. Like, it's not something we should do. But at the same time, we all use stereotypes all the time. And we can also use them in an emancipatory way."* (Lisa, 45:00-46:00)

Unfortunately, but unsurprisingly, as SOGI claimants become aware of the power of SOGI stereotypes, they may find it expedient to adapt their behavior to conform to those stereotypes when attending interviews and hearings (Danisi et al., 2021, p. 305). This process of adding a “rainbow splash” is an effort to translate their sexuality or gender identity to become readable in a Western context (Akin, 2017, p. 458). This act of translation demonstrates that asylum seekers do not necessarily occupy a passive and victimized position in need of saving or liberation – in contrast, they are active participants in this process, and eager to mobilize all their resources to communicate their case better (Akin, 2017, p. 471). It also reflects the limited set of choices that SOGI asylum applicants have in front of them as they must, to some extent, conform to the adjudicators’ limited understanding of sexual orientation and gender identity so their asylum claim can be taken seriously.

The literature also shows that authorities tend to find it easier with trans people to assess their asylum claims, particularly trans people who are in some stage of medical transition, because there is a visible presentation of their “queerness”. Ironically, it is the medicalization and the pathologization of trans bodies that allows trans or gender non-conforming applicants to demonstrate that they are indeed trans (Danisi et al., 2021, p. 301).

Adam shared their experience of how their visible gender non-conformity influenced their asylum interview:

*I mean, the questions in the asylum (interview) are so stupid, right? Like you are sitting in front of another human being and basically work through their stereotypes of being a queer person, like saying look at me going to each pride and taking photos. I'm queer, look at me, having glitter makeup.*

*Queerphobia works in a box and in stereotypes. When you run away to have a safe space for you, you also again have to work with these stereotypes that put you in danger in the first place...For me to have a nose ring and lip rings in my country would automatically get me killed.*

*And then sadly, here during this interview, it's one of the easiest things for the person to decide whether I'm queer or not. It's fucked up on so many levels because it's this idea of homogenizing, who we are as a human being, while our sexual orientation and gender identity is a very insignificant part of who we are. (Adam, 39:00-41:00).*

Adam also shared that because their activism work in their country of origin was in a large part online and gained a lot of attention globally, they had had “pages and pages of evidence and of the work we do... publications done by Newsweek and the Guardians etc.” (Adam, 32:00). It was for these reasons that Adam’s asylum case was approved within three weeks of the personal interview – their own agency and capacity to document the violence they faced as well as the unintentional visible conformity to stereotypes of queerness through their piercings and make-up helped make their asylum case stronger and led them to gain asylum in Austria.

This chapter has summarized how deeply Western notions of sexual orientation and gender identity influence asylum adjudicator’s decisions regarding SOGI asylum applicants, particularly from non-Western countries. Officials of the BFA are offered training sessions providing targeted information on vulnerable groups (asylkoordination, Österreich, 2019, p. 60) by both organizations such as Queer Base (Lisa, 12:00) and others such as UNHCR. However, there is clear evidence within the literature that asylum procedures are meant to deter asylum applicants from applying for asylum through a reliance on bureaucratically violent procedures. The next

chapter highlights some of these bureaucratic instruments that normalize violence against asylum applicants. In chapter 8, I highlight the challenges faced by asylum applicants particularly SOGI asylum applicants even after they are granted asylum due to the racism and xenophobia they experience in their lives as queer refugees of color.

## **Chapter 7: Denying and Deterring Asylum Claims**

It is clear from the socio-legal literature on asylum that states are more concerned with denying and deterring asylum than protecting the well-being of those who are fleeing persecution in hopes of finding a safer life elsewhere. Asylum adjudicators, for example, use inconsistencies and contradictions in personal interviews to deny international protection, rather than seeking clarification from claimants through more sensitive questioning (Danisi et al., 2021, p. 312). Adjudicators' epistemic resources are privileged over claimants' resources allowing decision-makers to arbitrarily and ambiguously misinterpret asylum applicants' experiences, cultures, and countries (Danisi et al., 2021, p. 324). Following are some of the instruments utilized by decision makers to deny asylum claims that are frequently applied to SOGI asylum applicants.

### **1. Discretion Requirement**

The so-called 'discretion requirement' is the idea that a SOGI claimant may be sent back to the country of origin and be 'discreet' about or 'conceal' their SOGI to avoid persecution (Danisi

et al., 2021, p. 272). This can be seen as sending claimants ‘back to the closet’: in practical terms it means “the claimant has not lived openly as gay before, so there is nothing against him continuing to live like that (Danisi et al., 2021, p. 277). However, the discretion requirement has increasingly been repudiated as grounds for denying asylum claims following a series of Supreme Court verdicts in Europe ruling that people cannot be compelled to hide their sexual orientation (Akin, 2017, p. 460).

## **2. Internal Relocation Alternative**

The ‘internal relocation alternative’ refers to the possibility of asylum claimants being returned to their country of origin and moving to a different part of it where they may be able to avoid the risk of persecution (Danisi et al., 2021, p. 278). Many Afghan nationals have seen their asylum application rejected at first and second instance on the grounds that other internal protection alternatives were available (asylkoordination, Österreich, 2019, p. 12).

## **3. Accelerated Asylum Procedure**

Within Austria law (Art. 27a Asylum Act), legal provisions allow for an accelerated procedure for certain groups of applicants to have their asylum decisions within five months (European Migration Network, 2015, p. 49):

- Asylum-seekers from safe third-countries
- Asylum-seekers who represent a danger to public peace and order
- Asylum-seekers who have tried to mislead as to their true identity, citizenship or authenticity of their documents

- Asylum-seekers who have not submitted reasons for persecution
- Asylum-seekers whose submission regarding their security threat is obviously not accurate
- Asylum-seekers against whom a legally enforceable return decision, expulsion or exclusion order has been issued before their application for asylum
- Asylum-seekers who, despite their obligation, refuse to provide fingerprints

Here, “accelerated asylum procedure” is really just a euphemism for denying asylum to applicants who do not meet certain criteria set by the Austrian government and can be applied to applicants who do not have enough time to develop their story or to seek appropriate legal assistance to make a stronger asylum claim.

#### **4. Dublin Regulation**

The Dublin Regulation, as mentioned earlier in this thesis, is used to determine which EU state is responsible for the handling of an asylum claim based on how they entered EU territory and where they were fingerprinted, for example. As of August 2019, Austria has implemented 967 Dublin transfers. The main countries receiving outgoing transfers from Austria were Italy (428), Germany (273) and France (48) (asylkoordination, Österreich, 2019, p. 34). However, the decision to send SOGI asylum seekers back to States of first entry under Dublin can have life and death consequences for them (Wieland & Alessi, 2021, p. 419). Examples of such cases include a gay man seeking asylum in Austria who feared that his case under Dublin would lead Austria to force him to return to Hungary, a State that has been shown not to be as accepting and affirming of LGBTQ individuals as (Wieland & Alessi, 2021, p. 414).

In another example, the asylum claim of a transgender woman seeking to stay in Austria was halted when it was discovered that she had been fingerprinted in Croatia. One of her biggest concerns related to the possibility of not being able to access gender affirming medical services in a country generally hostile to transgender people (Wieland & Alessi, 2021, p. 414). Transgender asylum seekers, in particular may face a lack of access to gender-affirmative health care should they be required to leave cities like Amsterdam or Vienna for less trans-affirmative countries within the European Union, under Dublin (Alessi et al., 2020, p. 22). In addition, for some individuals who have family or friends in a certain EU country, being forced to return to the State of first entry without having social support can also lead to deleterious consequences, such as a lack of work and housing opportunities, exacerbation of mental health problems, and an elimination of the social connections that are fundamental for helping asylum seekers integrate into host countries (Wieland & Alessi, 2021, p. 416).

It should be noted that some individuals who fear a forced return under Dublin may try to hide for 18 months in the preferred country of asylum because if an individual cannot be located and transferred within this timeframe, the State wherein the individual currently resides becomes responsible for processing the asylum claim (Article 29, Reg 604/13). However, during these 18 months, individuals are unable to benefit from social assistance or work legally to support themselves (Wieland & Alessi, 2021, p. 415).

## **5. Forced and Voluntary Return**

Forced return refers to cases where a person is forcibly removed from Austria for a certain reason such as removal according to Dublin, while voluntary return to the country of origin, transit, or another third country based on the free will of the returnee is either independent or assisted (European Migration Network, 2015, p. 59).

Third-country nationals whose application for international protection has been rejected as well as asylum-seekers who are in need and willing to return can be offered return assistance which involves necessary expenses for the return trip (Art. 12 para 1, Federal Basic Welfare Support Act) (European Migration Network, 2015, p. 60) while the law also states conditions that allows forced return such as an applicant's illegal entry into Austria.

### **Deterring Asylum Claims – Deportation, Detention, and Dispersal**

The literature also points towards various ways that potential asylum applicants are deterred from applying for asylum. Airline carriers are expected to stringently check passengers' documents before departure to deflect pressure from the immigration authorities in the country of destination (Zetter et al., 2003, p. 24). Visa restrictions are also amongst the most effective of measures for reducing the number of applications from specific nationalities (Zetter et al., 2003, p. 27). Once within the territory of the country, asylum applicants are subjected to violently bureaucratic procedures, many of which have already been described in this thesis, making the process difficult and challenging and therefore, unappealing to future asylum applicants.

Three of the most violent procedures that asylum applicants are subjected to: deportation, detention, and dispersal have become 'normalized' and 'essential' instruments in the ongoing attempt to control or manage immigration to European countries (Bloch & Schuster, 2005, p. 491). Deportation is an explicit form of exclusion from the territory of the state and detention is both 'enclosure' within a camp or prison, and exclusion from the receiving society. While dispersal takes away asylum seekers' freedom to choose where they settle in the receiving country which removes them from kinship and other social networks as well as community organizations that are known to be crucial in the early stages of settlement (Bloch & Schuster, 2005, p. 493). The

following is an explanation of the deleterious consequences of each of these procedures on asylum applicants with particular focus on Austria.

### **Detention**

The goal of detention as practiced in Europe today cannot be seen as anything other than arbitrary, unless its goal is the unacceptable one of deterring potential asylum-seekers from entering EU states to seek refuge (Schuster, 2003, p. 249). In Britain, France, Germany, and Italy individuals are sometimes detained on arrival, sometimes after initial rejection of their claim and before their appeal has been heard, and not always as claimed at the end of the process (Schuster, 2003, p. 249). It must be noted that human rights organizations do not always have access to these detention centers where the conditions that asylum applicants are subjected to might be potentially hazardous for their physical and mental health (Schuster, 2003, p. 250).

A total of 4,849 persons were detained in Austria throughout 2019 (asylkoordination, Österreich, 2019, p. 102) There are 4 main detention centers currently operating in Austria: Vordernberg, Styria; Police Apprehension Centers (PAZ) Vienna Hernalser Gürtel, PAZ Vienna Rossauer Lände and Familienunterbringung Vienna Zinnergasse (asylkoordination, Österreich, 2019, p. 102). In practice, asylum seekers are subject to detention mainly under Dublin procedures and persons who submit a follow-up asylum application are detained as well (asylkoordination, Österreich, 2019, p. 102).

Detention may be ordered by the BFA to secure a return procedure, for example if a “risk of absconding” exists and detention is proportionate (asylkoordination, Österreich, 2019, p. 103). Since September 2018 asylum seekers can further be detained if they are considered as a threat to the public order or security. However, as of March 2020, there was still no mechanism to identify

vulnerable people in detention centers, which is a serious issue that was also highlighted by the mission report of the OHCHR in October 2018 (asylkoordination, Österrerrich, 2019, p. 109).

The BFA has to review the lawfulness of detention every 4 weeks. After 4 months, the Federal Administrative Court (BVwG) must review the lawfulness of detention and there is also a possibility to submit an appeal to the BVwG against a detention order (asylkoordination, Österrerrich, 2019, p. 110). If the detention or its duration are recognized as unlawful, the asylum applicant is entitled to a financial compensation of €100 for each unlawful day in detention (asylkoordination, Österrerrich, 2019, p. 111).

It is clear that such treatment of people, especially those who are vulnerable and traumatized, is only possible by distancing oneself from the human beings on the receiving end, by thinking of them as less deserving of respect (Schuster, 2003, p. 254) – detention measures assume culpability even before decisions about asylum might have been made and are therefore, a violation the dignity and freedom of asylum applicants.

## **Deportation**

In the early 1990s, the compulsory removal of asylum seekers was introduced in Austria as a measure of migration control (Rosenberger et al., 2018, p. 38) enabled in part by the Safe Third Countries Regulation (Drittstaatenregelung) which allowed Austria to return asylum applicants to a safe third country under Dublin (Rosenberger et al., 2018, p. 33). Protection in a safe third country is deemed to exist if a procedure for the granting of refugee status in accordance with the Refugee Convention is available to the person in a country where he or she is not exposed to persecution or serious harm, and the person is entitled to reside in that country during such procedure and has

protection there against deportation to the country of origin, provided that the person (asylkoordination, Österreich, 2019, p. 69).

Before 1990, deportation was only enforceable in accordance with prohibitions on the right to stay based on there being a danger to public order and safety (Rosenberger et al., 2018, p. 38). With the amendment of the Aliens Police Act of 1990, expulsion (Ausweisung) was introduced and aligned to the legality of entry and stay (without a residence permit) (Rosenberger et al., 2018, p. 38). Between 1991 and 1999, there were 85,795 deportations in total. This corresponds to a figure of over 9500 deportations annually. The peak occurred in 1996 with 10,996 deportations (Rosenberger et al., 2018, p. 38).

Under the most recent Austrian legislation, deportations can increasingly be implemented while asylum proceedings are still pending (Rosenberger et al., 2018, p. 40) and before the immigration authorities have taken a legally binding decision on the asylum application (Rosenberger et al., 2018, p. 41). However, there also exists the possibility according to the Aliens Police Law that if the authorities state that an expulsion is not enforceable for factual reasons, asylum seekers are granted temporary toleration status (Rosenberger et al., 2018, p. 41).

### **Dispersion**

The rationale behind dispersion, the procedure under which asylum applicants are distributed throughout various parts of a country with restrictions on their mobility, is that it offers a means of sharing out the burden imposed by asylum-seekers, because left to their own devices asylum-seekers would concentrate together in particular localities, such as major cities or around ports, creating social problems and concentrating costs on a few local authorities (Bloch & Schuster, 2005, p. 506). Dispersion in countries such as Britain and Germany has led to people being placed in areas in which there are no community or support networks, in which often they are the only

visibly different foreigners and in which they become targets for abuse and violence (Schuster, 2003, p. 247). Such restrictions also exist within Austria and the lack of resources and community networks in other parts of Austria is one of the reasons that Adam worked with Queer Base to be transported to Vienna early on during their asylum procedure.

### **Appeals**

In case of a negative decision on an asylum application in Austria, applicants do have some options for legal recourse to appeal their decisions. Appeals against a negative first instance decision have to be submitted within 4 weeks of the receipt of the decision and the whole asylum file is forwarded by the BFA to the Federal Administrative Court (BVwG) (asylkoordination, Österrerrich, 2019, p. 25) (European Migration Network, 2015, p. 49). Within 2 months following the lodging of an appeal, the BFA may decide to modify the decision that is being challenged, meaning it can decide either to annul, reject or change its initial decision (asylkoordination, Österrerrich, 2019, p. 26) In cases, where the BFA refrains from modifying its decision, it forwards the appeal to the Court (asylkoordination, Österrerrich, 2019, p. 26). However, it must be noted that not only can appeal procedures sometimes take longer than 6 months but asylum applicants may also face difficulties to access constitutional appeals which cost €240 (asylkoordination, Österrerrich, 2019, p. 28).

Despite navigating all these bureaucratic instruments that are designed to deter and deny asylum applications, SOGI asylum applicants who receive international protection and refugee status still have to navigate a very difficult life as they are pushed to the margins of Western, white, heteronormative societies as well as queer spaces that are also dominated by white supremacy. The next and final chapter before the conclusion, explains challenges that SOGI asylum applicants including Adam had to face, as they begin to live their lives as queer refugees.

## **Chapter 8: Life As an SOGI Asylum Claimant in the Host Country**

*“Salzburg, you know, it's very white, it's very bougie, high class and it's in your face that you are not welcome. I mean, if you are here, maybe you can be a black opera singer, we can celebrate you, an artist, that would be celebrated. But other than that, maybe you can just be also like, the insignificant (person) behind the facade that runs this beauty.*

*So, when you are also manifesting in this reality, just existing you know, the way people see you is so violent, is so degrading and dehumanizing. You would just walk on the streets and, and then like, you know, you just find yourself, you are the only person walking on that street (that looks like you).” (Adam, 42:00)*

It should be noted that asylum applicants who are recognized as refugees in Austria obtain a residence permit valid for three years which is prolonged to an unlimited residence permit if the situation in the country of origin has not changed (asylkoordination, Österreich, 2019, p. 113). Refugees are further entitled to naturalization after six years of lawful and uninterrupted residence in Austria, which includes the period of stay during the asylum procedure (European Migration Network, 2015, p. 57). Immediately following the approval of an asylum claim, however, applicants have four months to become independent from the welfare system and find a job and housing – within this period of time within this period of times, “you are basically dropped into a system that literally designed and constructed not to see you” (Adam, 34:00-35:00). Adam mentioned how once their asylum application was approved and they had only four months to become independent, “looking for a house, looking for job was a nightmare” (Adam, 35:00). This

chapter describes some of the challenges that asylum applicants face even after they have received refugee status – even though they have now been granted relative safety, they still are burdened with discrimination as they try to access accommodation, employment, and a sense of community in the host country.

### **Discrimination in the Housing Market**

It is generally difficult for anyone to find affordable and acceptable housing in larger cities, but SOGI refugees face multiple layers of discrimination in the housing market (Danisi et al., 2021, p. 369) including racism (Danisi et al., 2021, p. 371) and transphobia if they are visibly trans or gender non-conforming (Danisi et al., 2021, p. 369). Adam shared the following incident of racism that they faced when trying to find housing in Salzburg:

*“And then there was an appointment to see the house. Me and my friend, we went to see the house. And then through that process, we ran into one of the neighbors inside the lift. And she was like why are you here? Like, who are you?*

*And we said, why are you asking us? And, you know, she's the concerned neighbor. And then we just told her, we are about to rent an apartment here. And then we talked with the person (renting the apartment), we saw the place, and then we were like, okay, we'll get back to you if we can afford it and all these kinds of things.*

*And then the next day he called and said, when you came, the neighbor saw you. And they said they don't want in their floor. They don't want, people like you. And we were like, what do you mean? People like us? They said like black and refugee.” (Adam, 36:00- 38:00)*

Adam's experience is unfortunately not rare. The literature on housing discrimination against SOGI asylum applicants shows that they contend with multiple levels of discrimination including racism, homophobia and/or transphobia, xenophobia, and even religious discrimination. Because of the discrimination SOGI claimants experience in shared accommodation or when trying to find housing on their own, most participants in one study thought that opening centers for only the LGBTQ community is one of the best ideas (Danisi et al., 2021, p. 372). Hence, housing provided by NGOs like Queer Base in Vienna contributes significantly in offering a sense of safety and stability of queer refugees who might otherwise be prevented from accessing safe and affordable housing.

### **Access to Labour Market**

The right to work and to freely choose one's work is recognized as fundamental to human existence – however, in many EU countries, asylum claimants are prevented from working for some or all of the period that they are waiting for a decision on their application (Danisi et al., 2021, p. 402). In order to survive, many SOGI asylum applicants turn to sex work or other forms of work under the table in which they can be exploited by being underpaid and subjected to denigrating work conditions with no alternative but to accept these conditions.

In the Austrian context, asylum applicants have access to the labour market after three months from the admittance to the asylum procedure after which the employer can apply for a work permit through the AMS or the Public Employment Service according to the general conditions of the Act Governing the Employment of Foreigners (European Migration Network, 2015, p. 58) (asylkoordination, Österreich, 2019, p. 88). Even after the waiting period of three months, work permits for asylum-seekers can only be issued within quotas and only for seasonal work such as touristic or gastronomic activities or activities within the agriculture and forestry

sector (European Migration Network, 2015, p. 58) which tend to not be very well-paying or stable employment options. Recognized refugees and beneficiaries of subsidiary protection, on the other hand, are exempted from the Act Governing the Employment of Foreigners and have legally free access to the labour market (European Migration Network, 2015, p. 58). To be successfully integrated in the labour market, however, there are still many obstacles for refugees to overcome including language barriers, lack of qualifications and/or lack of proof thereof (asylkoordination, Österreich, 2019, p. 123) as well as potential for discrimination from potential employers along racist, queerphobic, or xenophobic grounds – examples of such instances of discrimination have been shared in many studies (see Llewellyn, 2021, p. 208).

It should be noted that as soon as a person takes up employment, they are normally registered for and covered by social insurance which is composed of health, pension, and accident insurance (European Migration Network, 2015, p. 68).

### **Access to Education**

In principle, children who are third-country nationals residing legally in Austria obliged to attend school in accordance with the Law on Schooling Obligation (European Migration Network, 2015, p. 70). For older refugees, the universities are also as long as they fulfil the admission requirements including German language competency. (European Migration Network, 2015, p. 70).

### **Challenges to Integration in the Host Community**

Studies have shown that following migration, SOGI asylum applicants and refugees may experience homophobia and transphobia by other refugees and members of their diaspora community as well as racism and xenophobia by the mainstream and the LGBTQ host community

(Wieland & Alessi, 2021, p. 410). The threat of violence from queerphobic asylum applicants in initial reception centers has been discussed in this thesis before. For similar reasons of queerphobic, SOGI refugees may also be shunned out of or face violence from diaspora communities from their countries of origin.

On the other hand, a number of scholars have also emphasized the marginalization and exclusion of people of color in white gay and lesbian communities particularly for women and trans people (Akin, 2017, p. 464). Participants in one study, conducted to understand the experience of queer refugees in Vienna and Amsterdam, encountered discrimination based on race, religion, and immigration status (Alessi et al., 2020, p. 13) particularly facing anti-Muslim discrimination in Vienna by LGBTQ community members (Alessi et al., 2020, p. 20). While a study on the experience of queer refugees in the US by Llewellyn illustrates why SOGI asylum applicants might be reluctant to find “allies” in the LGBTQ community of the host country: they enter the USA as people of color, and in the case of the asylum applicants in this study, they are racialized as black and encounter racism, often for the first time in their lives as race is constructed and policed differently in their countries of origins (Llewellyn, 2021, p. 206).

Ager and Strang, 2008 have developed a framework to conceptualize the domains of successful refugee integration which include: facilitators (language, safety, and stability), social connections (social bridges, bonds, and links), and markers and means (employment, housing, education, and health) (Alessi et al., 2020, p. 14). Scholars have also highlighted the complex task of maintaining a cohesive identity in both queer and religious spaces and managing the oppression that comes about by occupying these social locations (Alessi et al., 2020, p. 14). Adam explained how this process of trying to integrate in this new environment and maintain their own authentic sense of self was for them:

*“You know, the obligations of this constant negotiation, it's really exhausting to my spirit, to my mental health, and to my physical health as well... You need to be authentic to yourself, but you need to be also safe.*

*And at the same time, the mechanisms, and the capacity that queerphobia also created, have consumed my entire existence...and my ability to access systems like education, food, health, you name it.” (Adam, 47:00-50:00)*

The combined effect of all these factors can take a toll on SOGI refugees, particularly on their mental health during and after the asylum process. The next section highlights the mental health challenges faced by Adam as well as the efforts of Queer Base to mitigate these challenges and support SOGI refugees.

### **Mental Health Challenges for Asylum Seekers**

*“For some people, depending on the intersectional aspects, they really need more time to start living in a gay environment, and have more things to prove than somebody who was a gay activist and has a portfolio. For someone who has never lived openly as a queer person, that time can be very important.” (Lisa, 34:00)*

Studies have shown that SOGI refugees may be retraumatized by the asylum process, in which they must not only recount their experiences of violence and persecution, but also must disclose their SOGI before they may be psychologically stable and physically safe and, therefore, when they are most vulnerable (Kahn & Alessi, 2018, p. 24). Asylum claimants, particularly those

who have experienced sexual violence and torture, have a heightened risk of mental health problems such as PTSD, severe depression, isolation, and feelings such as shame and helplessness (Hopkinson et al. 2017; Longacre et al. 2012; Reading and Rubin 2011). SOGI migrants may arrive in the host country with mental health problems such as anxiety, depression, posttraumatic stress disorder, and complex trauma syndromes (Kahn et al., 2018, p. 316). These problems may be exacerbated by the difficulties of resettlement such as securing housing, learning a new language, and establishing economic stability (Kahn et al., 2018, p. 316).

Studies also demonstrate that sexual minorities have a higher prevalence of mental health disorders (e.g., depression and anxiety) than do heterosexuals (Kahn et al., 2018, p. 317) which may be explained, in part, by their greater exposure to prejudice and discrimination, commonly referred to as minority stress (Kahn et al., 2018, p. 317). Moreover, uncertainty about the processing times of the asylum application can also cause distress for the asylum applicants (Llewellyn, 2021, p. 207). In 2019, the average duration of the asylum procedure at first instance amounted to 2.3 month, compared to 6.6 months at the beginning of 2018 and 14 months at the beginning of 2017 (asylkoordination, Österreich, 2019, p. 22) which reflects a trend towards faster processing times that might not provide asylum applicants with enough time to prepare for the personal interview and could exacerbate existing mental health conditions.

Within this mental health context, Adam shared their own experience of how the asylum process affected their mental health:

*“When I was in Salzburg I was literally depressed and everything like, you know, I remember (being) in a very foggy state. Salzburg is such a beautiful city and everything, but my memory is so foggy because I was so depressed and everything was dark, literally, my vision is dark.*

*And you know, the majority of that pain is also sourced also from the white queer communities that I naively taught coming from Ethiopia, (would be like) family but that's not the case. (Adam, 53:00)*

This state of facing discrimination from both the normal public as well as from within the local LGBTQ community may intensify feelings of isolation. Emerging practice-based evidence also suggests that SOGI refugees may feel uncomfortable with mental health treatment that relies on Western notions of health and well-being (Kahn et al., 2018, p. 316). Hence, the work of NGOs such as Queer Base that try to provide mental health support through an intersectional approach that affirms the various identities of the SOGI refugees becomes crucial:

*“So, so what we then started is, is like, um, social counseling, community work, bringing people out of isolation, all this mental health baggage that they come with after years of not being able to show their own selves to other people.” (Lisa, 09:00)*

*“For me, the important thing is getting people out of the isolation. What is making them more vulnerable is if they don't have any chance to talk to anybody. Especially adding up like being black, being from a country like Uganda or in Nigeria and stuff. Also, Pakistan, there are certain intersectional points that you are just like, if you don't have this surrounding where this infrastructure (exists), it's really tough.” (Lisa, 18:00)*

*“To have these spaces (is very important) where you can meet people from your own country, talk to them in your own language and see that you are not the only one in this struggle. And this combination of having social counseling, community, and legal advice altogether is what makes queer base and its people strong.” (Lisa, 19:00-20:00)*

*“What we tried to do, which was really hard also during COVID is to offer stuff like, going on hikes, playing volleyball, doing swim courses and so on because we know that physical, activities also are helpful if you don't want to go mad.” (Lisa, 35:00)*

*“And at the same time, I also know that for many people, spirituality, religion is also one of these. That helps them to go through very hard times.” (Lisa, 38:00)*

The above excerpts indicate the holistic approach that Queer Base takes to provide mental health support for SOGI refugees including a safe community space to interact with peers and to come out of isolation, activities to help them integrate into the local community, counseling, as well as opportunities for refugees to connect with their own culture and religion. It is worth mentioning that many other NGOs in Vienna are also operating to support asylum applicants. Asylkoordination Österreich, for example, focuses on public relations and sensitization to the plight of asylum seekers, but also coordinates various humanitarian organizations, including education and training for counselors for refugees while Forum Asyl deals with ensuring protection for refugees, the interests of asylum seekers, as well as representing their needs (Rosenberger et al., 2018, p. 33). The NGO Diakonie offers among other services psychotherapeutic treatment to refugees having experienced violence, war, torture and rape (European Migration Network, 2015, p. 68). The work of such NGOs to support asylum applicants and refugees in Austria would be an excellent continuation of this research topic.

Despite all the challenges faced by SOGI asylum applicants and refugees, studies reflect that queer migrants show exceptional resilience in navigating the challenging process of arriving in the host country, going through the asylum process, and starting a new life from scratch. The

literature shows crucial factors such as utilizing community and legal services, receiving support from significant others and friends, doing whatever it takes, and giving back (Alessi, 2016, p. 203) that contribute to such resilience which can be conceptualized as survival in the context of significant adversity (Alessi, 2016, p. 205). It is within the strength and courage with which SOGI migrants navigate their challenging lives that we can find proof of their humanity. Asylum policies, therefore, must be adapted to respect the most basic human rights of these individuals who are simply in search of a life of dignity in new country without the fear of persecution.

## **Chapter 9: Conclusion and Recommendations for Improving The Asylum Process**

The purpose of this thesis has been to humanize those LGBTQ individuals who leave their countries under dire circumstances and search for safety and survival in a new place. This thesis has shown the complexity of the bureaucratic procedures that shape the asylum process in EU countries particularly in Austria and the legal violence embedded within these bureaucratic

procedures that SOGI asylum applicants are subjected to. Grounding my work in the theoretical frameworks of intersectionality and queer theory, I have attempted to show that SOGI asylum applicants exist on the brink on many political and social issues; between Western countries' claim to support and promote LGBTQ rights and also the demonization and politicization of refugees by right wing politicians in Western countries today; between the various forms of persecution they may face in the countries of origin and the grueling and dehumanizing asylum process they have to go through to prove that their pain and suffering is worthy of granting them protection; between facing queerphobia and violence from other refugees and members of the diaspora community and facing racism and discrimination from both the local heterosexual and LGBTQ communities along xenophobic and racist grounds.

The contributions of my collaborators, Adam and Lisa, provide insight into the experiences of non-Western SOGI asylum applicants in Austria and the various challenges they face as well as the resources and support that is available to them through the work of NGOs such as Queer Base. While concrete policy recommendations are outside the research purposes of this thesis, the following section highlights some of the recommendation with the literature on how to make the asylum process more humane for applicants and to reduce the risk of legal and bureaucratic violence followed by a section detailing the limitations of this thesis as well as the areas which can be elaborated in future research.

### **Recommendations from the literature:**

At the most fundamental level, reconceptualizing asylum policy will require a shift in focus from fraud to protection, from assuming illegitimacy to ensuring human rights for all (Llewellyn, 2021, p. 210). Danisi et al make some concrete recommendations to address two broad problems within asylum policy: systematic and structural issues that require legal and policy reforms,

including changes to asylum reception conditions and procedures as well as recommendations to address concerns that these systems are arbitrary and that decision-making in all countries is worryingly inconsistent (Danisi et al., 2021, p. 443). Recommendations must deal with the tension between protecting the human rights of persecuted individuals within a hostile environment where asylum is politicized while also promote the welfare of asylum applicants without invoking racist and disempowering discourses of victimhood and vulnerability (Danisi et al., 2021, p. 443). Some of the most important recommendations made by Danisi et al. that governments should follow to improve the asylum system are the following:

- Introduction of humanitarian tools to allow asylum applicants to reach Europe safely such as humanitarian admission programs including humanitarian visas (Danisi et al., 2021, p. 444)
- Creating checks and balances so that asylum adjudication agencies are immune from the “politics of the day” and can deliver human rights compliant decisions (Danisi et al., 2021, p. 447)
- Investigating and minimizing unofficial quotas regarding certain countries, the applicants from which are subjected to more rigorous inspections and whose applicants are denied at a higher rate (Danisi et al., 2021, p. 447)
- Publishing rigorous and up-to-date statistics on different types of asylum claims and their outcomes, including, SOGI based claims to ensure transparency and accountability of the asylum system (Danisi et al., 2021, p. 448)
- Ensuring appropriate training and qualifications for decision makers and case workers to deal with SOGI asylum applicants as well as sensitivity trainings for unconscious bias (Danisi et al., 2021, p. 448)

- Updating the country of origin knowledge on a regular basis, particularly as it applies to on-the-ground situation for LGBTQ individuals (Danisi et al., 2021, p. 450)
- Trying to find a balance in the processing times of asylum applications so that applicants have enough time to prepare but also so that they are not left waiting in a distressing state of uncertainty for months on end (Danisi et al., 2021, p. 451)
- Keeping in mind that some countries even within the EU might not be safe for SOGI minorities and hence, ensuring that Dublin transfers do not put the lives of SOGI applicants in danger or reduce their access to crucial resources such as affirming health care for trans individuals
- Making interview techniques less intimidating and asking appropriate questions to prevent the risk of retraumatization as much as possible (Danisi et al., 2021, p. 452)
- Establishing a protocol and training for the interpreter provided to ensure accurate translation of the asylum applicant's testimony (Danisi et al., 2021, p. 453)
- Providing adequate legal representation and assistance (Danisi et al., 2021, p. 454)
- Recognizing multiple and intersecting grounds for claiming protection which would better recognize the many factors and identities that are the basis for persecution (Danisi et al., 2021, p. 456)
- Abolishing the use of the discretion requirement and the internal relocation alternative (Danisi et al., 2021, p. 457)
- Providing SOGI specific accommodation during the asylum process or increasing funding for NGOs providing such accommodation (Danisi et al., 2021, p. 461)
- Abolishing the use of detention or reducing it to be used in only the most extreme cases to protect the human rights of asylum applicants (Danisi et al., 2021, p. 462)

- Providing sufficient resources to asylum applicants so they are not forced into poverty which could make them vulnerable to exploitation (Danisi et al., 2021, p. 463)
- Providing robust health care to asylum applicants which should include mental health support, sexual health resources, and hormonal treatment for trans applicants and refugees (Danisi et al., 2021, p. 463)
- Allowing asylum applicants to access the labor markets according to the EU Reception Directive which in principle means that any job should be accessible to asylum claimants after 6 months of filing a claim (Danisi et al., 2021, p. 463)

These recommendations provide a comprehensive but not an exhaustive list of changes that need to be made in the asylum system to make it more humane and human rights compliant. In the final section of this thesis, I share some of the limitations of this work as well as areas of extending the research in the future.

### **Limitations and Areas of Further Research**

The most significant limitation of this thesis is the small number of people who were interviewed to share their experiences with the asylum process in Austria. The results of this research can be made more robust by designing and implementing ethnographic interviews with more people who have been through the asylum process. This will allow more perspectives on the various issues within the asylum system particularly the bureaucratic violence that is embedded within the system to be highlighted. Due to reasons mentioned in Chapter 2, interviewing individuals who have been through the asylum process can be potentially triggering and retraumatize them. Therefore, any future research requires a lot of time to develop a strong rapport

with potential interviewees so they can feel safe and so that the risk of retraumatization can be minimized.

Another limitation of this thesis is that it only focuses on the work of one NGO in Austria, Queer Base. Highlighting the work of the NGOs supporting SOGI asylum applicants and refugees in Austria is a great extension of this research which can also explore the effects of the asylum process for caseworkers and caregivers who are supporting asylum applicants. ‘

Potential interviews with government authorities and people working at the UNHCR could also enrich this research by adding the perspective of the “other” side in trying to understand the priorities of decision makers and asylum adjudicators as well as the people from UNHCR who are tasked to ensure human rights compliancy within the Austrian asylum process.

The lack of original policy recommendations is another limitation of this thesis. The research can be extended in a comparative direction by comparing asylum systems in Austria and other EU countries in order to generate better policy recommendations – however, such work requires tremendous resources as well as time.

## **Epilogue: Academic Racism Incident**

An incident that is directly related to the writing process of this thesis and which made the importance and relevance of this work even more clear to me. I made a presentation about my thesis process in the Master's Thesis Seminar in June 2022 to share my progress regarding the thesis with the professor who was leading this class and the other master's students in the EMGS program. I included a slide about "My Positionality" in order to be transparent about my own identity and privileged position which included the same information about myself that is shared at the beginning of this Positionality section. To me, these identity markers are integral to my sense of self and I have spent years reconciling these various identities. They are also the reason why I chose this thesis topic as I am genuinely interested in how bureaucratic procedures affect members of marginalized groups such as queer migrants.

Once I finished my presentation and opened the floor for questions, the professor went straight ahead and said things like "you mentioned that you are 'colored' in your presentation but that is wrong - I am also colored because I'm white - you're basing your work in racist American scholarship - I wish academics would stop using the word race in academia because that is what is causing racism - most Viennese go to tan under the sun so they can get a skin color like yours". I

handled the situation with calm and humor because unfortunately, this is not the first time, I have been gaslighted for talking explicitly about race in Europe. In fact, I also studied in France and the racial politics of color blindness is something I have dealt with often there. I responded to the professor calmly and said, "I would love to stop talking about race but unfortunately racism still exists and so we can't ignore it". I should mention that this is all happening in a classroom with other thesis students and they tried their best to support me also.

Once, the professor had spent enough time trying to erase my racial identity, he then said, "you mentioned that you identify as Muslim but are you practicing or religious? Because if you're not religious, you don't have the right to identify as Muslim". This also deeply disturbed me as I have spent a long time trying to reconcile being gay and Muslim - particularly living in the Islamophobic world that we live in today. I identify as Muslim because it is a political and cultural identity for me. I responded to him and explained why I still identify as Muslim even though at this point, this had nothing to do with my presentation and just felt like the professor was sharing his personal racist views about my identity.

The fact that I had this conversation in a master's level class in a program that aspires to be about the study of the globalization process which should inherently mean understanding the political power embedded in institutions, deeply shocked me. Especially after I had just presented about the mental and emotional toll that the asylum process takes on LGBTQ asylum seekers when they have to constantly fight for their identities to be recognized. What happened is ironic and reflective of the same kind of discrimination faced by SOGI asylum applicants that I'm writing this thesis about. This incident really is a clear example of the color blindness and racism that permeates western academic tradition. Thankfully, I received a lot of support from the other master's students, my thesis supervisor, as well as the program administration. As I begin to

describe the complex nature of the international laws and bureaucratic procedures that dictate the lives of SOGI asylum claimants, I hope my work can be seen as a continuation of the same conversation that occurred during that Master's Thesis Seminar.

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## **Abstract**

Through the critical lenses of intersectionality and queer theory, this master thesis explores the various kinds of legal, bureaucratic, interpersonal, and psychological violence faced by individuals who claim asylum on the basis of their sexual orientation and/or gender identity (SOGI) in EU countries, particularly in Austria. Based on interviews and the existing literature on the asylum system, this thesis shows that SOGI asylum applicants must navigate the liminal space between many political and social issues. Such issues include: Western countries' claim to support LGBTQ rights and their demonization of refugees; persecution in the countries of origin and the dehumanizing asylum process in host countries; and queerphobia from other refugees as well as discrimination from heterosexual/LGBTQ communities in the host countries along xenophobic and racist grounds. The aim of the thesis is to humanize asylum applicants and to offer recommendations on improving asylum laws and procedures to ensure the human rights of asylum applicants.

## **Zusammenfassung**

In dieser Arbeit sollen durch den Blick einer kritischen Brille der Intersektionalität und Queer-Theorie die verschiedenen Arten von Gewalt auf rechtlicher, bürokratischer, psychologischer und zwischenmenschlicher Ebene mit denen Personen, die aufgrund ihrer sexuellen Orientierung und/oder Geschlechtsidentität (SOGI) in EU-Ländern, insbesondere Österreich, Asyl beantragen, betrachtet werden. Auf der Grundlage von Interviews und aktueller Literatur zum Asylsystem zeigt diese Arbeit, dass SOGI-Asylbewerber\*innen sich im Grenzbereich zwischen vielen politischen und sozialen Feldern bewegen müssen. Themen, die in diesem Wirkungszusammenspiel verhandelt und aufgezeigt werden: Die vermeintliche Unterstützung von LGBTQ-Rechten westlicher Länder, und die zugleich vorherrschende Dämonisierung von Flüchtlingen; Verfolgung in den Herkunftsländern und das menschenverachtende Asylverfahren in den Aufnahmeländern sowie Queerphobie durch andere Flüchtlinge und die Diskriminierung durch heterosexuelle/LGBTQ-Gemeinschaften in den Aufnahmeländern aus fremdenfeindlichen und rassistischen Gründen. Das Ziel dieser Arbeit ist es, Asylbewerber\*innen als Menschen in den Mittelpunkt zu rücken und Empfehlungen zur Verbesserung der Asylgesetze und -verfahren zu geben, um die Menschenrechte von Asylbewerber\*innen zu gewährleisten.