

HENRIQUE DA SILVEIRA ZANIN

**FLEEING PERSECUTION: A STUDY ON LGBTQI+ ASYLUM IN  
EUROPE AND GERMANY**

Master's Dissertation

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UNIVERSITY OF SÃO PAULO

SCHOOL OF LAW

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Dissertation presented to the Examining Board of the Graduate Program in Law, Faculty of Law, University of São Paulo, as a partial requirement for obtaining the title of Master of Human Rights, under the guidance of Associate Professor Dr. Antonio Rodrigues de Freitas Junior. This study was financed in part by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior, Brazil (CAPES) – no. 01/2021.

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# APPROVAL SHEET

HENRIQUE DA SILVEIRA ZANIN

## FLEEING PERSECUTION: A STUDY ON LGBTQI+ ASYLUM IN EUROPE AND GERMANY

Dissertation approved by the Examining Board of the Graduate Program in Law, Faculty of Law, University of São Paulo, as a partial requirement for obtaining the title of Master in Human Rights.

### Examining Board

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Prof. Dr. Antonio Rodrigues de Freitas Júnior (USP)

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*To those who experienced compound marginalisation  
due to their immutable personal characteristics.*

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Peço venia e escrevo essa sessão em português, especialmente ao público do meu país Brasil, universidade, família e amigos.

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Eu sou porque nós somos. Eu consegui porque nós conseguimos juntos. Meu muito obrigado.

*Injustice anywhere is a threat to justice everywhere.*

*(Martin Luther King Jr., Letter from the Birmingham Jail)*

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## **ABSTRACT**

In a world that still persecutes, marginalises and discriminates LGBTQI+ individuals, and asylum seekers and refugees are denied rights and have their basic humanity violated, this dissertation intended to understand whether the German government develops asylum policies specifically tailored to the needs of LGBTQI+ asylum seekers and refugees and whether the literature has addressed the implementation of such policies across the European continent. LGBTQI+ asylum is a rather new field of research, as the first judicial decisions on that matter are from the 1990s. Among the European states, Germany has been more open to asylum than other states in the continent and has received the world's highest number of asylum seekers between 2010 and 2019, which justifies the interest in researching the asylum policies in place in that state beyond investigating the European scenario in general. The research was developed through a qualitative approach, combining theoretical and empirical analyses, as well as a systematic literature review and an interview with the director of the German LGBTQI+ asylum programme. Among the categories created herein, we observe that there are similarities between Europe and Germany regarding the focus of the literature on infrastructure, training and advice, stereotypes, and NGO support. Germany seems to have a structured programme specifically created to meet LGBTQI+ asylum seekers and refugees' needs, but states in general still seem to lack social inclusion policies, as discrimination, homophobia, transphobia, and xenophobia are generalised social issues that permeates many European states. This dissertation hopes such a summary of European good practices and literature suggestions is taken into consideration by states around the world in order to make sure they are addressing LGBTQI+ asylum in an appropriate manner that respects individuals' personal characteristics and humanity.

**Keywords:** asylum seekers; LGBTQI+ persons; asylum policies; Germany; Europe.



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## RESUMO

Em um mundo que ainda persegue, marginaliza e discrimina pessoas LGBTQI+, e solicitantes de refúgio e refugiados têm seus direitos negados e sua humanidade básica violada, esta dissertação pretendeu entender se o governo alemão desenvolve políticas de asilo especificamente adaptadas às necessidades dos requerentes de asilo e refugiados LGBTQI+ e se a literatura aborda a implementação de tais políticas em todo o continente europeu. O asilo LGBTQI+ é um campo de pesquisa recente, já que as primeiras decisões judiciais sobre o assunto são da década de 1990. Entre os estados europeus, a Alemanha tem se mostrado mais aberta ao assunto do que outros estados do continente e recebeu o maior número de solicitantes de refúgio do mundo entre 2010 e 2019, o que justifica o interesse em pesquisar as políticas de asilo vigentes naquele estado além de investigar o cenário europeu em geral. A pesquisa foi desenvolvida por meio de uma abordagem qualitativa, combinando análises teóricas e empíricas, além de revisão sistemática da literatura e entrevista com a diretoria do programa alemão de asilo LGBTQI+. Entre as categorias criadas nessa dissertação, observamos que há semelhanças entre Europa e Alemanha no que diz respeito ao foco da literatura em infraestrutura, treinamento e assessoria, estereótipos e apoio de ONGs. A Alemanha parece ter um programa estruturado especificamente para atender às necessidades de requerentes de asilo e refugiados LGBTQI+, mas os estados europeus em geral ainda parecem carecer de políticas de inclusão social, pois discriminação, homofobia, transfobia e xenofobia são questões generalizadas que permeiam muitos deles. Esta dissertação espera que esse resumo das boas práticas europeias e sugestões da literatura seja levado em consideração por estados de todo o mundo, a fim de garantir que o asilo LGBTQI+ seja abordado de maneira adequada, que respeite as características pessoais e a humanidade da pessoa humana.

**Palavras-chave:** solicitantes de asilo; pessoas LGBTQI+; políticas de asilo; Alemanha; Europa.

ZANIN, H. S. **Auf der Flucht vor Verfolgung: Eine Studie zum LGBTQI-Asyl in Europa und Deutschland.** 2022. 169 p. Master of Sciences (Menschenrechte) — Juristische Fakultät, Universität São Paulo, São Paulo, 2022.

## **ABSTRAKT**

In einer Welt, in der LGBTQI-Personen immer noch verfolgt, ausgegrenzt und diskriminiert werden und in der Asylsuchenden und Flüchtlingen Rechte verweigert und ihre grundlegende Menschlichkeit verletzt wird, soll diese Dissertation verstehen, ob die Bundesregierung eine Asylpolitik entwickelt, die speziell auf die Bedürfnisse von LGBTQI-Asylsuchenden zugeschnitten ist Flüchtlinge und ob sich die Literatur mit der Umsetzung solcher Politiken auf dem gesamten europäischen Kontinent befasst hat. LGBTQI-Asyl ist ein relativ neues Forschungsgebiet, da die ersten Gerichtsentscheidungen zu diesem Thema aus den 1990er Jahren stammen. Unter den europäischen Staaten war Deutschland gegenüber Asyl aufgeschlossener als andere Staaten des Kontinents und hat zwischen 2010 und 2019 die weltweit meisten Asylsuchenden aufgenommen, was das Interesse rechtfertigt, die in diesem Staat geltende Asylpolitik über die Untersuchung hinaus zu erforschen das europäische Szenario im Allgemeinen. Die Forschung wurde durch einen qualitativen Ansatz entwickelt, der theoretische und empirische Analysen sowie eine systematische Literaturrecherche und ein Interview mit dem Leiter des deutschen LGBTQI-Asylprogramms kombiniert. Unter den hier geschaffenen Kategorien stellen wir fest, dass es Ähnlichkeiten zwischen Europa und Deutschland gibt, was den Fokus der Literatur auf Infrastruktur, Ausbildung und Beratung, Stereotypen und NGO-Unterstützung betrifft. Deutschland scheint über ein strukturiertes Programm zu verfügen, das speziell auf die Bedürfnisse von LGBTQI-Asylsuchenden und Flüchtlingen zugeschnitten ist, aber Staaten im Allgemeinen scheinen immer noch keine Strategien zur sozialen Eingliederung zu haben, da Diskriminierung, Homophobie, Transphobie und Fremdenfeindlichkeit allgemeine soziale Probleme sind, die viele europäische Staaten durchdringen. Diese Arbeit hofft, dass eine solche Zusammenfassung europäischer bewährter Praktiken und Literaturvorschläge von Staaten auf der ganzen Welt berücksichtigt wird, um sicherzustellen, dass sie das LGBTQI-Asyl in angemessener Weise angehen, die die persönlichen Merkmale und die Menschlichkeit von Einzelpersonen respektiert.

**Schlüsselwörter:** Asylsuchende; LGBTQI-Menschen; Asylpolitik; Deutschland; Europa.

## LIST OF ABBREVIATIONS

AT – Austria

BAMF – *Bundesamt für Migration und Flüchtlinge*

BASE – Bielefeld Academic Search Engine

BE – Belgium

CAPES – COORDENAÇÃO DE APERFEIÇOAMENTO DE PESSOAL DE NÍVEL SUPERIOR

CEAS – Common European Asylum System

CH – Switzerland

CJEU – Court of Justice of the European Union

CoE – Council of Europe

DE – Germany

DK – Denmark

DOAJ – Directory of Open Access Journals

EASO – European Asylum Support Office

ECtHR – European Court of Human Rights

ES – Spain

EU – European Union

FR – France

FRA – European Union Agency for Fundamental Rights

GB – The United Kingdom

GR – Greece

HIV/AIDS – Human immunodeficiency virus/Acquired immunodeficiency syndrome

ILGA – International Lesbian, Gay, Bisexual, Trans and Intersex Association

IT – Italy

LGBTQI+ – Lesbian, gay, bisexual, transgender, queer, and intersex persons, among other gender- and sexual-diverse identities

LSVD – *Lesben- und Schwulenverband in Deutschland*

NGO – Non-governmental organisation

NL – The Netherlands

NO – Norway

PACE – Parliamentary Assembly of the Council of Europe

PT – Portugal

RS – Serbia

SE – Sweden

SOGIESC or SOGI – Sexual orientation, gender identity and expression, and sex characteristics

TR – Turkey

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

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## INTRODUCTION

*Creating uniform or stereotypical groups of others is almost a prerequisite to maintaining a clear differentiation between them and the 'normal' majority, but in the process silences the voices of the less powerful members of these groups.*

*(Laura Smith-Khan, Different in the same way: Language, diversity, and refugee credibility p. 396)*

According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association, consensual same-gender sexual acts are still illegal in 68 United Nations member states; 31 member states impose legal barriers to freedom of expression of sexual orientation, gender identity and expression, and sex characteristics (“SOGIESC”, “SOGI” or “sexual orientation and gender identity”); and 41 impose legal barriers to the registration or operation of sexual orientation-related civil society organisations. On the other hand, only nine United Nations member states provide for constitutional protection against discrimination based on sexual orientation; 52 member states, or 27%, provide for broad protections against discrimination based on sexual orientation and gender identity; and 42 provide for criminal liability for offences committed on the basis of sexual orientation and gender identity (INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, 2020).

The worldwide occurrence of LGBTQI+ persons suffering violence and having crimes committed against them every day is higher than one would understand bearable (BORRILLO, 2010; COWIE, 2018), as society perception towards LGBTQI+ persons causes violence rates to escalate (UPPALAPATI et al., 2017).

Lesbian, gay, bisexual, transgender, and intersex individuals, among other gender- and sexual-diverse identities, are herein normalised as “LGBTQI+”, as this is the abbreviation preferred by the United Nations High Commissioner for Refugees (“UNHCR”)<sup>1</sup> in its guidelines and reports on this diverse social group whose rights are systematically violated by different means. We emphasise that the term LGBTQI+

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<sup>1</sup> See UNHCR’s “Working with lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in forced displacement”, 2021. Available from: <<https://www.refworld.org/docid/4e6073972.html>>. Access on: 18 Apr. 2022.

throughout this dissertation encompasses all queer identities, either in terms of sexual orientation, gender identity or sexual characteristics.

This reality is also present in Europe, as LGBTQI+ individuals in the continent also face their own share of discrimination, as research confirms. The most comprehensive European research on LGBTQI+ individuals was held in 2019 and showed that 58% of respondents experienced harassment in the last five years and 5% had been physically or sexually attacked. Respondents attribute this scenario, for example, to poor development of laws and policies for social inclusion, as well as negative public discourse by politicians (EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, 2020), which is in line with the findings from O'Nions (2014) and Steiner (2000) on the latter matter.

On a similar note, politicians and the media also contribute to marginalisation of asylum seekers and refugees, as well as to the harsh response towards newcomers and their rights, by encouraging xenophobia and root prejudice towards these populations in Europe (WHITTAKER, 2006). The rise of far-right governments (STEINER, 2000) and the poorly managed influx of individuals seeking international protection in the 2010s have contributed to the negative perception towards migrants in genera (O'NIONS, 2014) and to violations of human rights by European states and their agents (GAMMELTOFT-HANSEN, 2011).

The literature reports several cases of asylum seekers and refugees in Europe who were treated with hostility, physical and psychological violence, were not provided adequate protection, information, basic rights, specialised personnel and services (ZAUN, 2017). Furthermore, a number of European states allocate asylum seekers in isolated, remote or inaccessible places, impose mandatory detention and confinement, so torture, refoulement and other violations of rights, even when questioned or spoke out, remains a matter of state's word against the victim's. Due to the absence of proper complaint mechanisms, officers or inter-state accountability, which could prevent, or at least mitigate, such violations, disrespect of international obligations happens regularly (GAMMELTOFT-HANSEN, 2011), even though the legal framework, either national or international, should comply with human rights norms and take action to protect their inhabitants' freedoms and rights, especially vulnerable ones, and guarantee equality (RAMOS, 2018).

LGBTQI+ asylum more specifically is a rather new field of research. The first decisions on that matter are from the 1990s, due to a certain consolidation of the

LGBTQI+ movement after the Stonewall Uprising, catalysing a demand for rights in Europe and the United States of America. Gammeltoft-Hansen (2011, p. 230) argues that casting light on a situation “may create a political impetus for accountability beyond legal and institutional barriers”. Accordingly, we believe and hope this dissertation may help raise awareness on the vulnerability of LGBTQI+ asylum seekers and refugees, as well as understanding and disseminating the good practices and policies developed by European states regarding this part of their population, especially in Germany, the state that has accepted the highest number of asylum seekers in the last decade of 2010-2019.

Among the European states, Germany has been more open to asylum than other states in the continent. Actually, it is the most open state among all industrial states (O’NIONS, 2014): it has received the world’s highest number of asylum seekers between 2010 and 2019 (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2020). The state has also maintained a more generous welfare support for asylum seekers when compared to its neighbours (ZAUN, 2017). These facts, as one may imagine, attracts new asylum applicants to the state, including LGBTQI+ asylum seekers (LANGLEY, 2015). Only in the city-state of Berlin, the local NGO *Schwulenberatung* Berlin reported in 2016 the existence of approximately 3,500 LGBTQI+ asylum seekers and refugees (MIS, 2016).

On the other hand, German newspapers and NGOs report that LGBTQI+ asylum seekers and refugees face discrimination, verbal and physical violence by personnel or other individuals who also live in those accommodation centres. Between August and December 2015, at least 95 cases of violence against LGBTQI+ asylum seekers and refugees were reported (“Berlin opens Germany’s first major gay refugee centre”, 2016; MIS, 2016). The *Lesben- und Schwulenverband in Deutschland* has also reported that three similar incidents happened in a certain week in 2020 (“*Ausgangsbeschränkungen verschärfen LSBTI-feindliche Gewalt*”, 2020).

Taking into consideration the high number of asylum seekers and refugees in Europe, especially in Germany, the reported violations of asylum seekers and refugee’s rights, the particular vulnerability of LGBTQI+ individuals and the rather recent, still growing scholarship both on LGBTQI+ individuals and LGBTQI+ asylum, this dissertation therefore asks the following questions: has the German government developed any asylum policy specifically tailored to the needs of LGBTQI+ asylum seekers and refugees? Have the literature on LGBTQI+ asylum cited, criticised or

recommended the implementation of policies or any good practices in the European context? And what are the similarities and differences regarding the literature remarks about Germany and other European states regarding LGBTQI+ asylum policies? These questions are going to be the guidelines for the development of this dissertation.

If such policies are not being developed or are poorly implemented, this dissertation also serves the purpose of calling out the states to do so, for the extreme vulnerability in which LGBTQI+ asylum seekers and refugees may find themselves. As stated by Whittaker (2006), the current diversity of migrants calls for consistent and planned actions, especially in the chief hosting states, as in Germany's case. The strategy of using research as a means to reach public interest is also supported by Jung (2015), who affirms that research-based actions on LGBTQI+ asylum seekers and refugees may create change in public opinion, practices and policy. Literature findings demonstrate scarce production on LGBTQI+ issues embedded in scientific databases (ZANIN, 2019), which seems to corroborate Jung's statement, since this part of the population, if not stressed enough, has been put in a subaltern position. Therefore, addressing LGBTQI+ asylum in the academy, as we propose in this dissertation, contributes to raising awareness and improving the quality of services provided by the states (FERREIRA, 2011).

Taking into account that cultural diversity is indispensable to humanity, that migration is a means for constructing a more solidary and diverse planet, besides being a human right (FREITAS JÚNIOR; BOUCINHAS FILHO; TORRES, 2017), and that mass migratory movements call for a planned handling (WHITTAKER, 2006), it is therefore crucial that the scientific community conducts researches to address issues related to LGBTQI+ asylum seekers and refugees.

Faced with the problem and the aforementioned justifications, this dissertation therefore has the following objectives of (i) understanding the German involvement in the development of asylum policies specifically tailored to the needs of LGBTQI+ individual, (ii) assessing literature's comments, critiques and recommendations on the elaboration of such policies both in the German and European contexts to understand similarities and differences in the way this issue is addressed, (iii) disseminating good practices in LGBTQI+ asylum policies developed by European states, and (iv) helping raise awareness of LGBTQI+ vulnerability within the asylum system. As specific objectives, this dissertation intends to (i) perform a systematic literature review on European and German LGBTQI+ asylum policies, (ii) conduct an interview with the

personnel responsible for the German LGBTQI+ asylum programme in order to understand what is developed by the state, (iii) conduct a documentary research on any existing German LGBTQI+ asylum resources, and (iv) create a conversation between the literature on LGBTQI+ asylum in Germany and the aforementioned interview.

Taking into account the high number of asylum seekers and refugees received by Germany during the last decade and the state's social and economic characteristics, this dissertation thus hypothesised that the German asylum system has adapted itself to the presence of marginalised groups such as LGBTQI+ asylum seekers and their specific needs within the asylum system, which would cover not only basic rights, but also proper social integration. Other European states, on the other hand, might not have the same apparatus for welcoming LGBTQI+ asylum seekers and refugees, as their very numbers of asylum seekers in general may not be as significant as in the German state in order to start a specific programme, taking into account also the financial burden. It was also hypothesised that the existence of a German LGBTQI+ asylum programme may be due to a historical reparation policy due to the extermination of vulnerable individuals, including around 15,000 gay men, during holocaust (HEGER, 1994). Furthermore, we also hypothesised that articles discussing LGBTQI+ asylum policies would be scarce, as the matter only started being addressed in the 1990s from a judicial perspective.

This dissertation is structured as follows: the first piece is composed of this Introduction to the research we developed and its justification, objectives and problem. Chapter 1 addresses the access to rights, or the lack thereof, by LGBTQI+ individuals and how history played a role to shape up the LGBTQI+ movement decades ago, after the Stonewall Uprising. It then comments on the European LGBTQI+ scenario post-Stonewall and theorises on gender and sexuality before mentioning the different ways LGBTQI+ rights have been violated from a historical perspective and providing tools on how to change the current reality. Chapter 2 discusses forced displacement today and its constant politicisation by politicians and the media, then focusing on the asylum policies and legislation in Europe. It then comments on the LGBTQI+ people and why they are seen as a vulnerable group, especially in the asylum context, before commenting on LGBTQI+ individuals as a particular social group from the UNHCR perspective. Chapter 3 starts with an introductory note on the evolution of human rights and how it is expanding to be an inclusive and multicultural paradigm, then giving an

overview of rights and protection to LGBTQI+ with the principle of equality and non-discrimination. It also emphasises the importance of acknowledging one's intersectionalities and how is the European framework of protection to LGBTQI+ individuals. Chapter 4 focuses on the empirical research about European LGBTQI+ asylum policies, detailing down the research design, search engines and databases used and how the documents were retrieved and selected. It then discusses each state found in the systematic literature review and combines different methods – the systematic literature review, an interview with the German LGBTQI+ asylum programme director, and document analysis – to create a dialogue about Germany. We list the issues addressed by the literature in the European LGBTQI+ asylum context and comment on the good practices and suggestions given by the literature on that matter for both Europe and Germany, mentioning also the differences and similarities observed in the documents retrieved. Lastly, Chapter 4 is followed by our Conclusions on LGBTQI+ asylum in Europe and in Germany.

## CHAPTER 1 – LGBTQI+ INDIVIDUALS AND THEIR ACCESS TO RIGHTS

*Why has so much hatred and energy been spent by our culture on the persecution of people for sexual orientation, race, religion, and national origin? Society is evidently terrified of diversity.*

*(Robert Foss, The demise of the homosexual exclusion: New possibilities for gay and lesbian immigration, p. 475).*

### 1.1 FIGHTING FOR THE RIGHT TO BE ONESELF: A (NOT SO) RECENT HISTORY

When reading the next Section, it is important to understand the historical context in which facts have happened. At times, the words “gay”, “homosexual”, “homosexuality” are used, but, as a matter of fact, they ought to be read as encompassing all LGBTQI+ individuals, as we describe in Section 1.2.

This is due to the use of these terms just after Stonewall, despite it not meaning that only homosexual men were included, quite the contrary, as “[t]he group understood itself as part of a larger revolutionary context and formed the core of the queers, who at that time aimed ‘to change oppressive social structures’” (WOLTER, 2018, p. 42).

#### 1.1.1 Stonewall, the needed catalyst

The struggle for rights and social recognition of western LGBTQI+ individuals is often depicted from the “Stonewall Uprising” onwards. The 1969 New York City was permeated by sodomy laws, which defined sexual relations to be heterosexual and marital only, making sexual relations between persons of the same gender illegal (ESKRIDGE, 2009).

But that event would only happen because of the pre-existing movement for equal rights based on civil disobedience, social, legal appeal and similarities to other marginalised groups, such as racial-ethnic groups, that was organised in the 1950s,

after the end of the Second World War. The labour moment – for being composed by a class treated unjustly – and the 1895 anarchist advocacy for freedom to love whoever one wants also influenced the LGBTQI+ moment (BRONSKI, 2012).

Police repression of LGBTQI+ individuals and venues was commonplace. On the 27th of June 1969, police raided the Stonewall Inn, a bar in the Greenwich Village neighbourhood that was usually frequented by the LGBTQI+ community. They shut down the bar, but locals refused to leave and were then arrested. That day triggered demonstrations and confrontations between LGBTQI+ activists and the police that lasted at least three days, as the crowd gathered in front of the Stonewall Inn with signs and posters demanding respect and rights. This moment is seen as the cornerstone of the modern LGBTQI+ rights (POINDEXTER, 1997).

The Stonewall Uprising – which according to Bronski (2012, p. 164) is incorrectly called a riot by many, for “[t]he events at Stonewall were not riots, but sustained street altercations of raucous, sometimes violent, resistance” –, seems to have been the catalyst for a counter movement for LGBTQI+ rights, acceptance and political strength that would later embody the current LGBTQI+ agenda (LEE, 2013).

After the Uprising, LGBTQI+ politics helped shape the movement as LGBTQI+ individuals strengthened their social and political identities, as in the 1950s and 1960s states were yet to have an organised LGBTQI+ movement (DONNELLY, 2013). LGBTQI+ influence on mainstream culture was used to openly discuss the LGBTQI+ agenda more than ever in the press, films, TV, magazines, books (BRONSKI, 2012).

### **1.1.2 The European LGBTQI+ panorama in the twentieth century**

The European debate on LGBTQI+ issues thrived before Stonewall, although the Uprising would be a world catalyst for the LGBTQI+ fight for rights, prompting improvements on this agenda. The German physician and sex researcher Magnus Hirschfeld (1868-1935) may have been a pioneer on human sexuality of the twentieth century in Europe. His work defended that homosexuality was inherent to human sexuality, laws against it should be extinguished and that it should be researched rather than repealed. Hirschfeld changed his focus from the political to a scholarly sphere, having organised the Scientific Humanitarian Committee that would try to repeal Section 175 of the Imperial German Penal Code, which considered homosexuality a criminal offense. His most memorable works, *The Transvestites* (*Die*



*Transvestiten*) and *The Homosexuality of Men and Women (Die Homosexualität des Mannes und des Weibes)* were published in 1910 and 1914, respectively (BULLOUGH, 2003).

In 1919, he founded the Institute of Sexual Science in Berlin, where he conducted several researches on “[...] sexuality, established a marriage counsellor service, gave out advice on contraception, helped solve sex problems, and continued his prolific writing” (BULLOUGH, 2003, p. 70). In 1933, however, the Nazi government broke into his institute and destroyed all his materials and life-time research collection. After that, and for not being broadly acknowledged by his peers due to the fact that he was a homosexual, his work was then forgotten altogether (BULLOUGH, 2003). Only in the late 1960s, Hirschfeld’s work was revisited and rediscovered by the gay liberation movement, being his activism and relevance within the homosexual movement recognised (DOSE, 2014).

After the Second World War and due to the rise of far-right movements, the panorama of repression of non-conforming citizens was a reality, causing anti-LGBTQI+ laws to also become harsher (CARTER, 2005). On the other hand, homosexual organisations were established in Europe, such as the Danish Furbundet af 1948 (“The League of 1948”) in 1948 and the Dutch Cultuur en Ontspanningscentrum (“Centre for Culture and Leisure”) in 1946, aimed primarily at fighting against criminalised homosexuality (FADERMAN, 2015).

At that moment of history, sovereign states such as Belgium, Denmark, France, Iceland, Italy, Luxembourg, Monaco, Poland, San Marino, Sweden, Switzerland, Turkey and the Vatican City had already decriminalised same-gender sexual activity. It should be emphasised that Belgium, France, Luxembourg and Monaco had decriminalised homosexual activity while still in the seventeenth century, while Italy, the Netherlands, San Marino, Turkey and the Vatican City had done that in the eighteenth century. These states were, then, followed by Greece in the twentieth century, at the beginning of the 1950s (INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, 2019). While still in the 1960s, Bulgaria, Czech Republic, Germany, Hungary, Slovakia and the United Kingdom (in England and Wales) decriminalised same-gender sexual activity. In the 1970s, after the Stonewall Uprising, Austria, Croatia, Finland, Malta, Montenegro, Norway, Slovenia and Spain walked the same path of decriminalisation (INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, 2019).

In the 1980s, for example, a LGBTQI+ organisation called “Stonewall”, in a clear reference to the New York gay movement, was founded in the United Kingdom by Michael Cashman, a gay activist that fought against Margaret Thatcher’s Section 28, an anti-LGBTQI+ legislation. Cashman would later become a congressman himself and keep fighting for LGBTQI+ rights in Europe (MARTEL, 2018). The Stonewall Uprising was also a propagated topic within Germany, for example. Universities and political networks, would provide German university students, writers and activists with strategies and images with which they could identify (SWEETAPPLE, 2018).

Other sovereign states also followed the decriminalisation and rights recognition path while still in the twentieth century. Liechtenstein, Portugal, and the United Kingdom (in Scotland and Northern Ireland) decriminalised homosexual activity in the 1980s, while Albania, Belarus, Bosnia and Herzegovina, Cyprus, Estonia, Ireland, Latvia, Lithuania, Moldova, North Macedonia, Romania, Russia, Serbia and Ukraine walked that path in the 1990s. Denmark placed first in recognising same-gender unions in the 1980s, being then followed by France, the Netherlands, Norway, Spain (only in Catalonia and Aragon regions) and Sweden in the 1990s (INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, 2019). Decriminalisation of homosexuality in other remaining sovereign states was widely conquered in 1993 due to pressure from the Council of Europe, although the everyday-life in some states, such as Russia, for instance, may show not much has changed for LGBTQI+ individuals (MARTEL, 2018).

Other rights, such as the right to marry, adopt and not to be discriminated against were also gradually recognised by the European Court of Human Rights and the Tribunal of Justice of the European Union, whose case-law on LGBTQI+ issues is cited in Chapter 3. No less important was the removal of homosexuality from the International Statistical Classification of Diseases of the World Health Organization in 1990, after decades of being considered a sin by Christians and a mental disorder by medicine (whose concepts were borrowed from the Church) (BURTON, 2018) – although “sexual orientations are constructed as essences we purportedly have, and some are normalized and exalted while others are pathologized and repressed” (CARASTATHIS, 2016, p. 110). These facts corroborate Beger’s (2000) statement on the relevant achievements of the last three decades of the twentieth century in the European LGBTQI+ agenda. The author also points out the importance of the

European Union as a legal and political arena that still thrives when it comes to LGBTQI+ issues.

## 1.2 THEORISING SEXUALITY AND GENDER IDENTITY

Despite the importance of the Stonewall Uprising as a symbol of LGBTQI+ resistance, the history of repression and marginalisation of these individuals began centuries before this particular event and is intertwined with the history of sexuality. It is not possible, therefore, to understand the history of LGBTQI+ movements without analysing the history of sexuality. It is also not possible, furthermore, to understand sexuality without analysing the close connection it carries with repression and power, as sex and power did not multiply apart from each other, but in the same spaces of discussion (FOUCAULT, 1978).

Analysing the first and second centuries, Foucault understands that moral reflexion was already present when it came to addressing sexual activity. The author cites that physicians and philosophers supported fidelity, marital sexual activity and abstention, as legislative measures would push for protection of marriage and for favouring the family. This would be part of a bigger project on raising moral standards thought by political powers. The author, however, understands these efforts were not systematic in those times, but rather sporadic (FOUCAULT, 1986).

The real legal framework and institutional support would then be given by Christian societies, as the author defines Catholic and Protestant states, around the seventeenth century (FOUCAULT, 1986). Borrillo (2010) corroborates this understanding when he affirms homophobia is closely linked not only to the sexual discourse created by the Judeo-Christian religious heritage, but also to the Greco-Roman history and the patriarchal system imposed in that society. With respect to religious roots, Martel (2018) understands that the Orthodox Church and the English Protestantism have also helped shape western conception regarding sexual behaviour and gender, being religious beliefs an obstacle to the recognition of LGBTQI+ rights until today.

Foucault explains that talking about sex became more and more controlled in the seventeenth century, with the institutionalisation of marital sexuality, decency, in what he would consider the first rupture in the history of sexuality, perhaps derived from the medieval Christianity. The subject was condemned to silence and repression,

as Catholic and Protestant churches condemned the use of certain words and expressions deemed indecent or scandalous (FOUCAULT, 1978).

Regarding the advent of repression in that century, Foucault remembers it coincides with the inception of capitalism, that is to say, the history of sexuality was thus transported to the history of the modes of production. The author points out sex was incompatible with work imperatives, as time should be employed in work-related purposes. Therefore, as the eighteenth century came, a series of labour-related issues were tackled by the government, so sex could be controlled by the public discourse and be useful. Matters such as “birth-rate, the age of marriage, the legitimate and illegitimate births, the precocity and frequency of sexual relations, the ways of making them fertile or sterile, the effects of unmarried life or of the prohibitions, the impact of contraceptive practices” were to be analysed, therefore, in the first time in history a given society was to be deemed powerful by the manner its inhabitants made use of sex (FOUCAULT, 1978, p. 25–26).

One may see the connexion between sex and power by the way educators and parents would approach children with such a theme, sometimes teaching, sometimes imposing discourses on sex (FOUCAULT, 1978). Heterosexuality is not within each and every new-born, but rather is taught repeatedly through crafted codes created by the society itself, albeit held as natural codes (BENTO, 2006).

This hierarchised, articulated relation of power explained by Foucault was also used by innumerable institutions of the eighteenth century, such as pedagogy, economy, medicine, biology, ethics and political criticism. Medicine, for instance, focused on excess, then on frauds against procreation, and later on crimes against nature and indecencies, as so-called. This expansion via different ways of exploring and analysing discourses on sex vested the topic in a secular and rational perspective, diversifying the discourses and breaking their unity (FOUCAULT, 1978).

But these institutions' primary objective was to expel “from reality the forms of sexuality that were not amenable to the strict economy of reproduction: to say no to unproductive activities, to banish casual pleasures, to reduce or exclude practices whose object was not procreation”. It was accomplished by creating legal sanctions against sexual perversions, annexing certain sexual activities to mental illness and teaching, or imposing on children sexual rules to be followed (FOUCAULT, 1978, p. 36).

These legal sanctions gave rise to the idea of domestic privacy: a place where non-normative practices could be performed without being deemed illegal. But this same privacy for being queer behind closed doors had its price, since “[b]y assigning sexuality to a private sphere, it prevented any public acknowledgment or discussion of almost all sexual activity. Thus it laid the groundwork for same-sex [sic] sexual behaviours and identities to be hidden and even considered shameful” (BRONSKI, 2012, p. 26). In the nineteenth century, sexuality was already confined into homes, being presumably associated to family and reproduction. In sum, homosexuality was condemned as a violation of marriage, reproduction customs and of the natural law itself, as also defined by canonical codes as a forbidden act. Intersex persons were also treated as criminals because they confounded the laws and gender role assigned to oneself (FOUCAULT, 1978).

However, discourses on sex did not rarefied, but multiplied, as the isolation of peripheral sexualities also contributed to their consolidation. One, however, must consider the effects subjugation produced:

A proliferation of sexualities through the extension of power; an optimisation of the power to which each of these local sexualities gave a surface of intervention: this concatenation, particularly since the nineteenth century, has been ensured and relayed by the countless economic interests which, with the help of medicine, psychiatry, prostitution, and pornography, have tapped into both this analytical multiplication of pleasure and this optimisation of the power that controls it (FOUCAULT, 1978, p. 48).

Therefore, the second rupture happened in the twentieth century, as the mechanisms of repression started to lose their power and resistance arose from sex repression. In that moment, a relative tolerance towards some practices was adopted, such as regarding extramarital and prenuptial relations (FOUCAULT, 1978). But the concepts on homosexuality stayed, as Bronski affirms. The author says some laws, or parts of laws that did not address sodomy and other non-conforming practices would then be disregarded or revoked, while the excerpts addressing homosexuality, for example, would be kept in force (BRONSKI, 2012).

The twentieth century initiated a process of sexual heterogeneities (FOUCAULT, 1978). In the United States, for example, immigration, metropolises and the First World War shaped citizens to be more tolerant towards ethnic, religious and racial differences. Mass consumption, on the other hand, tried to reinforce gender roles, as the state adopted the “Children’s Day”, and boys were to receive guns and

other military toys, while girls were to receive toys linked to motherhood and house appliances. In the United Kingdom, Baden-Powell was idealising the Boy Scouts movement in 1907, by adapting a military training manual (BRONSKI, 2012).

Those movements corroborate Foucault (1978) and Bento's (2006) theses on the way children are taught about sexuality. And as stated by Bronski (2012, p. 112), "[i]n the first three decades of the twentieth century, moral degeneration [...] and the threat of homosexuality needed to be combated". The society within which the LGBTQI+ individuals live their lives until today still is, however, a heteronormative society. As Borrillo (2010) stated, homosexuals are not always rejected, but nobody is shocked by the fact that they do not enjoy the same rights as heterosexuals, in what the author calls a modern homophobia, because of its secular and non-theological character, favoured by what Foucault (1978) explained as the branching of the sex discourses to medicine, pedagogy, among others areas.

Beger affirms that the state itself is the first agent to cause exclusion. Even when some rights are granted to LGBTQI+ individuals, they are only enjoyed by those who benefit from being part of other racial, gender or class hierarchies (BEGER, 2000), an example of intersectional discrimination – a concept elaborated by Crenshaw (1989), discussed in Chapter 3 – which Butler (2004) used to explain that being a woman, poor and black created a novel, greater level of marginalisation.

Both the queer theory and the subaltern studies develop intersectional studies on gender, class, social group and other personal or group characteristics to advance the agendas thereof. Bento (2006, p. 81) explains that queer politics are based on the very instability of identities, organised on the assumption that sexuality is "[...] a device; the performative character of gender identities; the subversive scope of performances and sexualities outside of gender norms; the body as a biopower, manufactured by precise technologies."

Queer means to rethink the question of identity in such a way as to dissociate it from the clear dichotomy between man and woman or between gender and sex. Etymologically speaking queer means something wrong, or simply, something that is going the opposite way, or is distorted. [...] Queer is not only therefore to be seen through different sexual practices and gender roles, but it has to be rethought of also in connection with a political story telling (GRŽINIĆ, 2003, p. 63).

Gender is understood as a preconceived role, a process through which the individuals understand themselves pertaining to a role that already exists according to

cultural and temporal norms that define “man”, “woman”, “gender” and “sex”. Anything out of it would be considered culturally unintelligible and could not exist under the current social construction that operates through repetition of the imposed heterosexuality, gender hierarchy, gendered and sexed bodies. Hence the marginalisation and rejection of anyone whose desires and identity do not comply with heterosexual expressions by “male” or “female” bodies, for its symbolic existence threatens the continuity of the hegemonic thinking on these issues (BUTLER, 1993).

Therefore, the society works “as if equality for lesbians and gays could be accommodated within the existing social order without significantly undermining heterosexual privilege” (BEGER, 2000, p. 258). But that statement is not true for intersex, transgender and transsexual individuals, as well as transvestites and other non-conforming identities, as they do not fit in a gendered society, even though all standards used to measure and prepare transgender individuals for surgical interventions are adopted from what society considers to be man and woman, that is to say, from “the defence of the natural heterosexuality of bodies” (BENTO, 2006, p. 23).

On the correlation between homosexuals and gender non-conforming individuals, Bento (2006, p. 81) remembers that “gay and lesbian organisations uses sexuality as an element of unity on the construction of a collective identity, being the gender issue, on the other hand, places as one more attribute, not the only one capable of explaining inequalities and production of marginalisation”. The author therefore asks, in this sense, how could one understand the gender and sexuality performances and transgender individuals’ demands to be acknowledged when they do not share any commonalities with “biological men and women”? (BENTO, 2006, p. 85).

Homosexual identity, therefore, cannot represent all queer identities as an universalisation (BUTLER, 1993). But even homosexuality, which defies gender roles, but not society’s imposed gendered body, is considered immoral by large groups of people (DONNELLY, 2013), used in preaching to corroborate family-related topics in the western world (FOUCAULT, 1978) and can be understood as part of a subaltern group.

Beyond its original meaning, a counter-hegemonic movement composed by the proletariat against the elites that hold the capital (GRAMSCI, 1992), the concept around subalternity was used in the Indian decolonial movement of the 1970s (GUHA,

1982; SCHWARZ, 2001) and to theorise the struggles women from developing countries undergo when dealing with patriarchy and imperialism (SPIVAK, 2010).

Subaltern groups are always subject to the activity of ruling groups, even when they rebel and rise up; only 'permanent' victory breaks their subordination, and that not immediately. In reality, even when they appear triumphant, the subaltern groups are merely anxious to defend themselves (GRAMSCI, 1992, p. 55).

Eventually, this perspective of repression caused by the hegemonic power was expanded to encompass new groups of individuals, whose experiences of exclusion, discrimination and injustice are, however, rather diverse. Commenting on this novel perspective on subaltern groups, Spivak (2010) stresses that simply being a member of an ethnic marginalised group is not enough to be considered a subaltern. Such denomination is reserved to groups or classes oppressed by authoritarian states, excluding economic practices or discriminatory policies, often marginalised by dominant culture and stripped from the rights they should be entitled to enjoy (SANTOS, 2018).

Such would be the property of repression, that which distinguishes it from the prohibitions maintained by simple penal law: repression functions well as a sentence to disappear, but also as an injunction to silence, affirmation of non-existence; and consequently states that of all this there is nothing to say, to see, to know (FOUCAULT, 1978, p. 4).

Santos (2018) emphasises that after the end of colonialism, the apparatus of repression continued to exist through other denominations, such as neocolonialism, racism, xenophobia, state action against immigrants, asylum seekers and so-called terrorists. This continuity, according to the author, is only possible due to the existence of old international law and human rights structures (SANTOS, 2018). As power relations are built on processes of exclusion and inclusion reinforced through institutions (AGUSTÍN, 2013), it is vital that such structures be reimagined in order to protect vulnerable groups.

### 1.3 VIOLATIONS OF HUMAN RIGHTS

Despite human dignity being inherent to each and every human being, what should be enough to protect one from discrimination, as well as ensure minimum surviving standards (RAMOS, 2020), the reality does not comply with such a maxim.



To the contrary, LGBTQI+ persons are constantly denied basic rights, being marginalised due to non-conforming sexual orientation and gender identity (DONNELLY, 2013). The origin and reinforcement of this hatred towards LGBTQI+ individuals seem to have different roots, not only religious beliefs, as the last Section already dwelled upon, but also so-called principles, protection of culture, anti-western nationalism and colonial heritage (HOLLEY, 2015), despite Donnelly's (2013) affirmation on the impossibility of historical and cultural practices justify violations of human rights, for instance.

When European explorers went to the Americas and Africa, their rigorous norms on how men and women should portray themselves were disseminated throughout the continents (BRONSKI, 2012). Since European gender standards failed to comprehend the native peoples' cultures (CAMPBELL, 2014), several non-normative practices native Americans and Africans used to have were therefore invalidated and prohibited. The English Protestantism above all played a crucial role in shaping social behaviour and thought abroad, which includes sexual behaviour, as sexual relations were reserved for married couples in European societies. Hence the existence of sodomy laws, both in Americas and Africa, to prevent nonmarital sexual relations whatsoever. But as the history went, they were changed to specifically prohibit homosexual activity, as already pointed out (BRONSKI, 2012).

These sodomy laws are still today a legacy of colonial culture. It is supported by different scholars that the British colonial rule left a trace of repression and marginalisation of LGBTQI+ persons behind, which can be verified by the number of states that make up the Commonwealth that still criminalises LGBTQI+ practices (BRUCE-JONES, 2015; HAN; O'MAHONEY, 2014; IBRAHIM, 2015). And because "[t]he education of colonial subjects complements their production in law" (SPIVAK, 2010, p. 57), LGBTQI+ individuals are still denied access to basic services and social rights, being subjected to persecution by public and private parties (MAKIA, 2019). Even laws not enforced anymore, but still in force, can subject LGBTQI+ individuals to psychological persecution (GOODMAN, 2012). One can conclude, therefore, that colonialism is a threat to human rights in general, being decolonisation a path for all peoples to enjoy basic rights (DONNELLY, 2013).

Moreover, as Tabak and Levitan (2014, p. 9) found out, even in more progressive environments, the "pervasive social stigma and deeply held biases against sexual minoritised groups have continued to lead to severe identity-based violence,

including murder". In this same path, LaViolette (2010) affirms violent acts against sexual minoritised groups, as the author defines LGBTQI+ individuals, are often committed by private parties, not by state agents, and may include acts such as assault, rape, torture, pressuring the individual to conform to social rules regarding gender roles. These issues were previously addressed by Butler (2004), when the author deals with the violence that emerges from having LGBTQI+ individuals in the society.

The desire to kill someone, or killing someone, for not conforming to the gender norm by which a person is "supposed" to live suggests that life itself requires a set of sheltering norms, and that to be outside it, to live outside it, is to court death. The person who threatens violence proceeds from the anxious and rigid belief that a sense of world and a sense of self will be radically undermined if such a being, uncategory[s]able, is permitted to live within the social world. The negation, through violence, of that body is a vain and violent effort to restore order, to renew the social world on the basis of intelligible gender, and to refuse the challenge to rethink that world as something other than natural or necessary. This is not far removed from the threat of death, or the murder itself, of transsexuals in various countries, and of gay men who read as "feminine" or gay women who read as "masculine" (BUTLER, 2004, p. 34).

These findings therefore corroborate the understanding that LGBTQI+ persons are still in a position of social vulnerability, understood herein as the lack of political and economic power, as well as civil rights, associated to the unequal social relations produced and shared throughout history (RESENDE; RIBEIRO, 2017).

Concerning the European continent, it has seen progress on the LGBTQI+ agenda throughout the last decades, as stated by Beger (2000). But this fact does not mean the continent as a whole already provides for a safe, welcoming and inclusive environment for a marginalised group such as the LGBTQI+ community. In 2018, for instance, 34 European states still required mental health diagnosis before changing identity documents, violating gender self-determination principles and reinforcing stigma and discrimination towards transgender people (TRANSGENDER EUROPE, 2018). When it comes to the recognition of rights, 16 European United Nations member states, or 33% of the 48 European United Nations member states, recognise same-gender marriage; 18, or 37%, recognise partnership of and joint adoption by same-gender couples; and 20, or 42%, authorise second parent adoption by same-gender couples (INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, 2020).

These numbers may seem high when compared to other less developed regions of the globe, however, when they are isolated, one can see the numbers do not even represent half of the United Nations Member States that make up the continent. When it comes to transgender and intersex individuals, the lack of protection seems even more severe (TOBLER, 2014). Among other reasons, this may be due to the current rise of far-right movements in the world, which also happens in Europe. Denmark, Austria and Belgium, for example, have seen the rise of far-right parties; Switzerland's Swiss People's Party (*Union Démocratique du Center*) has proved to be homophobic; Ukraine, Serbia, Moldova systematically dodge recognising LGBTQI+ rights; Russia increased the number of decrees to suppress LGBTQI+ activity (MARTEL, 2018); Germany's far-right party *Alternative für Deutschland* was the most voted party in the eastern part of Germany in 2019 (BRADY, 2020); Polish Catholic and Orthodox churches still play important roles in diminishing LGBTQI+ protection within the state's borders (MARTEL, 2018), which even established so-called "LGBT-Free Zones", areas in which LGBTQI+ individuals were not welcomed and laws have been passed to ban the so-called "homo-propaganda", for the existence of LGBTQI+ individuals allegedly offend religious beliefs in Poland (DEM CZUK, 2021; KOROLCZUK, 2020).

Because of that, it is possible to find several studies that conclude LGBTQI+ individuals still face discrimination and stigma when they try to access employment, housing, health care among other social rights within the European context (FLAGE, 2019; JOVANOVIĆ, 2020; SHERRIFF et al., 2019; TRADES UNION CONGRESS, 2017; YILMAZ; DEMIRBAŞ, 2015; YILMAZ; GÖÇMEN, 2016).

#### 1.4 CHALLENGING THE STATUS QUO

Faced with this panorama of marginalisation and life-threatening situations, how can states and individuals make the everyday life of LGBTQI+ individuals less risky and painful? How to keep improving, or create policy standards instead of decreasing protection and recognition of rights, whereas some states and other political actors subsidise the exclusion of certain groups of individuals? Which means would LGBTQI+ individuals have to resist, and further, overcome hostility and repression?

On this subject, it is important to address the difficulty of establishing and promoting services for a population still regarded as ill or dangerous by some (LEE,

2013). Donnelly (2013) affirms, furthermore, that states should act accordingly upon the differences between social groups, though the author finds it difficult to point out how this could be done when some still perceive LGBTQI+ individuals, in sum, as less deserving of humanity. Other authors would focus on what could be done through the implementation of affirmative policies, here understood as actions taken to enhance women and marginalised groups representation in educational, employment, cultural environments, from which these groups have been systematically excluded (FULLINWIDER, 2018). Bucci (2013) understands that such policies must aim at modifying the structures that reproduce inequality, realising rights and organising economic and social spheres, while Gomes and Silva (2003) complements this concept by adding the importance of rendering equality a reality, not just a juridical concept, which is only possible by neutralising all types of discrimination, a topic discussed in Chapter 3.

With respect to this matter, the literature is in line with international law, as international conventions have urged states to adopt affirmative actions, or “special measures”, for correcting any disparities and inequalities through special, temporary and progressive measures (INTERNATIONAL LABOUR ORGANIZATION, 1958; UNITED NATIONS, 1965, 1979). That means these measures aim to ensure equal enjoyment of rights for vulnerable groups that would not be able to access such rights and would cease to exist when their objectives are achieved. Literature also speaks of “positive state action”, as the states have the obligation to bring equality to their citizens and protect their rights and freedoms, even when such rights are threatened by a private party (BAYEFKY, 2016). Bell (2003), however, regrets that state positive action remains a supplementary step, although affirmative actions should walk hand-in-hand with the non-discrimination legislation. Piovesan (2008, 2018) reinforces that simple prohibition of certain conducts is also not enough for guaranteeing and creating real equality for marginalised groups, that depends on the coordinated action of introducing such policies while prohibiting exclusion.

Addressing specifically LGBTQI+ affirmative actions, Bondarenko (2014) understands they are not yet as well developed as ethnicity-based affirmative actions, which have been discussed for the past 30 years. Despite being limited in scope and range, policies for LGBTQI+ individuals are still difficult to be implemented, for the public opinion towards LGBTQI+ issues oscillates. They are available, therefore, only

in certain jurisdictions, usually within a broader scope of inclusion policies (BONDARENKO, 2014).

Several studies on affirmative actions focus specifically on actions regarding education and employment. The literature understands these policies would create role models for the whole community where these actions are to be implemented (DAVIS, 2017). Regarding education, a study points out that the implementation of affirmative actions may increase up to 1.2 more years of education for students of a marginalised group (KHANNA, 2020). They may also increase student body diversity when developed within colleges and universities (BROWN JUNIOR, 2015). With respect to employment and LGBTQI+ individuals, in turn, it is suggested that affirmative actions be focused on promoting affirmative human resources departments and diversity trainings (SINGH; MENG; HANSEN, 2014); creating an inclusive non-discrimination legislation (REED, 2013); implementing recruitment and hiring policies, domestic partnership benefits, equitable family and medical leaves, inclusive health insurance benefits, equitable restroom access, abolishing gender-based dress codes, creating gender-affirming policies, and disseminating equal employment opportunity policies (NELSON, 2012).

Besides the importance of affirmative actions for mitigating the effects of exclusion and marginalisation, literature also points out other theoretical means to promote change within society. Donnelly (2013) supposes that emphasising the suffering of the LGBTQI+ individuals might help mobilising social change and tolerance. Borrillo (2010) corroborates this understanding, stating the first steps in promoting change should be focusing in showing how obnoxious is to discriminate one's sexual orientation, gender identity or ethnicity, for example. The pedagogical process should encompass schools and professionals such as physicians, judges, police officers, since these professions have dealt closely with LGBTQI+ repression. Then, the state should provide for criminal laws to specifically address LGBTQI+ violence and discrimination and discourage these offenses (BORRILLO, 2010). The theories developed by both authors seem, however, a distant possibility with the growing far-right movements around the world (MARTEL, 2018).

Another way to promote change would be interpreting old documents differently, thus facilitating social change. The interpretation of "sex" in diverse instruments as if "sexual orientation and gender identity" was, for example, could create a positive effect in domestic levels of jurisdiction, although it depends on political will and, moreover,

most international bodies are not authorized to make authoritative interpretations (DONNELLY, 2013). A similar opinion was given by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, which in its Opinion No. 12197 suggested that “gender” be mainstreamed as the correct terminology in official documents (PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, 2010).

Foucault (1978, p. 5), in turn, sees repression fundamentally linked to power, knowledge and sexuality, thus understanding that society is not going to free itself from it without “a transgression of laws, a lifting of prohibitions, an irruption of speech [...] and a whole new economy in the mechanisms of power will be required”. Regarding the proper environment in which society should focus its efforts for enhancing culture change, Beger (2000) believes the legal sphere offers a better prospect than politics, for the latter is still mainly biased towards heterosexuality. The legal sphere would be important for the constitution, regulation and consolidation of sexuality, influencing equality and social justice, as “[...] a battlefield on which socially intelligible identity spaces and human diversity are fought for, and, thus, also created, cemented, changed and re-institutionalised” (BEGER, 2000, p. 265).

And last, but not least, it is relevant to acknowledge the role scholars and the academia as a whole, as well as sexual freedom, decolonial, queer and anti-racist movements play – as happened in the German cities of Berlin, Frankfurt, Hamburg and Leipzig, among other European urban centres, for example – in pushing for culture change, implementation and development of policies for marginalised groups (SWEETAPPLE, 2018).

## CHAPTER 2 – MIGRATION AS A HUMAN RIGHT

*[...] animosity against immigrants has historically and contemporarily included discriminatory and racist policies and laws.*

*(Mariela Olivares, Narrative reform dilemmas, p. 1091)*

### 2.1 FORCED DISPLACEMENT IN THE TWENTY-FIRST CENTURY

The twenty-first century has started with high figures of forced displaced persons. Despite the difficulty of calculating the size of the flood of migrants, throughout the last 10 years alone at least 100 million people have fled home to refuge themselves either outside or within their states' borders. The numbers have never dropped ever since 2011: in fact, they have more than doubled from 2011 to 2019 (from 38,5 to 79,5 million people), especially due to conflicts and humanitarian crises in Syria, South Sudan, Ukraine, Myanmar, Venezuela, Afghanistan, Iraq, Libya, Somalia, Africa's Sahel region, Central African Republic, Ethiopia, Democratic Republic of the Congo and Yemen (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2020a).

The term "forced displaced person" comprises internally displaced, Venezuelans displaced abroad, asylum seekers and refugees. The internally displaced are those who fled persecution, but stayed within the states' borders, thus needing help to reach sanctuary. These people stay ignored in their own land and are not encompassed by international law, depending on UNHCR or NGOs willing to help them out (WHITTAKER, 2006). Venezuelans displaced abroad refers to the Venezuelan people spread across the globe who have not applied for asylum, but are likely in need of protection due to the Venezuelan crisis they have fled (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2020b).

Asylum seekers and refugees, in turn, are the research object herein addressed, as refugee protection is understood as a cornerstone of human rights law (GAMMELTOFT-HANSEN, 2011). The term refugee was first used by the League of Nations to deal with stateless people from Austro-Hungarian, Ottoman and Russian empires after the First World War, in what may have been the emergence of an

international consensus on the responsibility bore by the whole international system for protecting refugees (STEINER, 2000). Refugees may be described as individuals already recognised under the Convention Relating to the Status of Refugees (“Refugee Convention”) 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 his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1951).

The Refugee Convention has 145 parties and most of them possess its own system of refugee protection. The convention itself is considered the most important document on international refugee law (STEINER, 2000) and puts forth a version of the definition of refugee that is outdated, as it only comprised European refugees forcefully displaced during or after the Second World War. After the war and because other world crises created more refugees all around the globe, the definition was updated by the Protocol Relating to the Status of Refugees (“1967 Protocol”), broadening the definition when removing the time limitation (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1967b).

The convention does not comprise the international understanding in one single document, being merely the beginning of the states’ obligations towards refugees. Hence the absence of reception conditions, admission. It also does not oblige a state to declare one’s status, nor stipulates any socio-economic burdens. However, it must provide protection from expulsion, or the right to non-refoulement, that is to say, when the asylum seeker arrives at the state’s borders, they are not going to be sent back to the place where they may be persecuted. This provision stems from the 1933 Convention Relating to the International Status of Refugees (O’NIONS, 2014).

The non-refoulement principle is often referred to as the ‘cornerstone’ or ‘centrepiece’ of the international refugee protection regime. Short of a right to be granted asylum, the guarantee that no refugee will be sent back to a place where he or she will be persecuted constitutes the strongest commitment that the international community of states has been willing to make to those who are no longer able to avail themselves of the protection of their own government (GAMMELTOFT-HANSEN, 2011, p. 44).

The use of the term “persecuted” in the definition of refugee without further elaboration led the international law scholarships to dwell on its use. It is understood



to be the systematic denial of human dignity, rights and freedoms that stems from consistent abuse and intolerance that was not prevented by the state's innate obligation to protect – being the states, in some cases, the own perpetrator of abuses and violation of basic rights. It is also important to highlight that no violation of human rights can be explained or mitigated by religious and cultural aspects. Discrimination on its own does not offer grounds for refugee status recognition, but is usually cited as part of being persecuted. The “well-founded fear”, in turn, may relate to the level of safety and rights deterioration that leaves one with no other option but fleeing the situation to another country (WHITTAKER, 2006).

When one's refugee status is recognised, they will receive the same treatment as nationals of that given country, including their basic rights, such as housing, property, employment programmes, other welfare benefits and freedom of movement. Asylum seekers, on the other hand, are those who have sought protection, but it has not yet been recognised, only being entitled to certain guarantees due to their transit to another state. Their status is yet to be examined and compared to the standards defined by the Refugee Convention and the 1967 Protocol. This assessment shall be made without any discrimination. This intermediate status, however, must also include the protection from expulsion (WHITTAKER, 2006).

Due to globalisation and new possible ways to enable migration and flight from persecution, this century has seen the development of policies for better controlling migration influx, even beyond state's physical borders (GAMMELTOFT-HANSEN, 2011). Despite that, migration rights, either due to economic reasons or persecution, stem from freedom and dignity principles, thus coating migrants with social and human rights (FREITAS JÚNIOR; BOUCINHAS FILHO; TORRES, 2017), which have been systematically disrespected by states and their agents.

The importance of addressing the root causes for migratory movements, especially for undocumented migration is relevant and a possible way to change this reality of increasing numbers of forced-displaced persons every year. O'Nions (2014) states that, as of now, states have been focused on border control and surveillance, and policies, accordingly, have been narrow and counterproductive. The paradox, therefore, persists: states portray themselves as representatives of human rights that create communities with common values, but in the end they still have the discretionary right to decide who enters their territories (GILL; GOOD, 2019).

## 2.2 ASYLUM POLICY IN THE EUROPEAN CONTINENT

Since the change of focus in constitutional and international law from the states to the human being, new scholarships have emerged to study these areas that were shaped based on human rights principles and norms. The literature on international human rights law deals with human rights protection in all spheres of life, such as civil, political, social, economic and cultural rights, whereas international refugee law deals with refugee protection, refugee status declaration, refugee entrance in the host country. International humanitarian law, in turn, deals with human rights protection in war contexts. These areas, however, complement and influence each other, as they stem from the same historical roots. As a consequence, refugee matters are first a human rights problem, as the right to seek and enjoy asylum stems from human rights norms (RAMOS, 2020) provided for in Article 14 of the 1948 Universal Declaration of Human Rights, which reads “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution” (UNITED NATIONS, 1948). Further stipulations on asylum were later made by the 1967 Declaration on Territorial Asylum for further clarification, as follows:

[...] 1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States. 2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes. 3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1967a).

The Refugee Convention is therefore to be analysed combined with human rights instruments and norms, so the human protection is also observed when a refugee flees persecution and enters another state’s borders, in what can be perceived as an international human rights approach to the international refugee law (PIOVESAN, 2001) and their right to have rights (ARENDRT, 1973). Broadly speaking, refugee law is concerned with supporting refugees in their stay in a foreign state after fleeing persecution, while international human rights law “is primarily concerned with securing varying degrees of constitutional human rights protection within individual nation-states” (BRUCE-JONES, 2015, p. 105).

Corroborating this contemporary understanding, a number of European conventions correlate human rights to refugee rights when the latter is addressed. The Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”) prohibits torture and other inhuman or degrading treatment or punishment, while Article 5 cites the right to liberty and security. Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7 to the European Convention expressly prohibit refoulement (EUROPEAN COURT OF HUMAN RIGHTS, 2013). In the same sense, Articles 18 and 19 of the Charter of Fundamental Rights of the European Union (“EU Charter”) provided for the right to asylum and protection from refoulement, in compliance with the principles in the Refugee Convention its 1967 Protocol. The EU Charter specifically lists second generation rights and has a wider coverage than the European Convention (O’NIONS, 2014).

Another issue that must be dealt with is the use of the word asylum in the European Union (“EU”) context. Battjes (2006) agrees asylum and protection that stems from the Refugee Convention cannot be equated. But the author also remembers that in the context of the European Union, the Treaty Establishing a Constitution for Europe stipulates the offer of appropriate status to asylum seekers in need of it, including a durable solution and the access to secondary rights (COUNCIL OF THE EUROPEAN UNION, 2005). Therefore, the word asylum within this context encompasses refugee, subsidiary and temporary protection (BATTJES, 2006). Because of that is possible to find European Union and also German documents that only mentions asylum and not refugee protection, being important to remember the definition brought by Battjes in light of the Treaty Establishing a Constitution for Europe, as this dissertation is going to use a similar definition when asylum issues are addressed from this point on.

And asylum in Europe has been a contested subject due to external and internal events, especially since the 1980s, when efforts to co-operation on immigration and asylum issues began to be discussed. At that same time, some states introduced restrictive policies domestically, usually motivated by a so-called “anti-immigrant political climate” (O’NIONS, 2014). In the 1990s’, the Kosovo crisis, wars in the former Yugoslavia, the end of the Cold War and the development and convenience of transport were crucial to elevate the population of asylum seekers and refugees concentrated in the European continent (STEINER, 2000).

These waves of asylum seekers showed up when Europe was introducing internal changes to create common frontiers for freedom of movement of people, services and goods, through the 1985 Schengen Agreements. As these agreements also made stipulations on European harmonisation of asylum standards and the control of external borders, the existence of asylum seekers and refugees moving freely from one state to another has shown downsides that would disadvantage strong regulators with better social benefits for this population, such as Germany. During that time, Western Germany welcomed most of the applicants from the German Democratic Republic and the Soviet Union for political reasons: by recognising their refugee status, the country was also showing the international community these states were violating their people's rights. Germany and other strong regulators then proposed that asylum seekers should be distributed across Europe according to each state's capacity, to ensure responsibility-sharing among the European states (ZAUN, 2017).

In 1990, the Dublin Convention (subsequently substituted by the Dublin II Regulation in 2003, and the Dublin III Regulation in 2013) sought to mitigate this issue, implementing asylum processing mechanisms and directives that would affirm, in sum, that a state responsible for the entry of the asylum seeker in Europe should also be held liable for their application and processing (EUROPEAN COMMISSION, 2016). This mechanism aimed at reducing asylum abuse and achieving the desired common policy (CHERUBINI, 2014), as states were incentivised to improve their border control (ZAUN, 2017). The first regulation and its successors were criticised for violating asylum seekers' rights due to the still discrepant levels of protection in different European states, causing delays or the complete non-processing of asylum seekers' applications when they were transferred to other states with less efficient and implemented apparatuses (LAVRYSEN, 2012).

The Dublin Convention was followed by the Treaty on European Union ("Treaty of Maastricht"), signed in 1992 (amending the 1957 Treaty Establishing the European Economic Community, or "Treaty of Rome"; subsequently amended by the 1997 Treaty on the Functioning of the European Union, or "Treaty of Amsterdam", the 2001 Treaty of Nice and the 2007 Treaty of Lisbon), which formally created the European Union and also introduced common asylum policies, despite the so-called hesitant move of the member states to limit their own policies for immigration (CHERUBINI, 2014). The Treaty of Maastricht clearly stipulated in Articles K1, items 1 and 2, and K2, item 1, that member states of the European Union shall regard asylum policy matters as an

area of common interest that “shall be dealt with in compliance with the e with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention relating to the Status of Refugees of 28 July 1951 and having regard to the protection afforded by Member States to persons persecuted on political grounds” (COUNCIL OF THE EUROPEAN UNION; COMMISSION OF THE EUROPEAN COMMUNITIES, 1992, p. 132).

The Treaty of Amsterdam proposed the gradual implementation of the Common European Asylum System (“CEAS”) – despite the late implementation of the European Asylum Support Office (“EASO”) in 2011 – to increase cooperation on the asylum agenda and support the member states under particular pressure (EUROPEAN ASYLUM SUPPORT OFFICE, 2016a).

[...] [T]he desire for a common asylum system thus appears founded on justice, fairness and solidarity. The objective of providing a common standard and uniform system throughout Europe, including the pooling of resources and information, should enable fairness whilst simultaneously reducing inefficiency. The international humanitarian standards were considered by the Council to be central to the common approach (O’NIONS, 2014, p. 76).

More recent discussions on the theme happened in the Council of the European Union (“the Council” or “European Council”), however, the half implementation of the CEAS seems to be causing the so-called refugee crisis in Europe combined with the high influx of asylum seekers of the 2010s (ZAUN, 2017). The Treaty of Lisbon (amending the Treaty of Maastricht and the Treaty of Rome) redesigned the asylum matters, while confirming its common nature and creating new and specific stipulations, as provided for in Article 78 of the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union:

#### Article 78

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising: (a) a uniform status of asylum for nationals of third countries, valid throughout the Union; (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection; (c) a common system of temporary protection for displaced persons in the event of a massive inflow; (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary

protection; (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member (COUNCIL OF THE EUROPEAN UNION, 2012).

Despite the discussion on asylum standardisation being present in all documents cited above, it was not broadly implemented by the member states, which is regrettable, as other European discussions are closely linked to migration issues. There have been critics stating that these stipulations would create a “fortress Europe”, making it difficult for asylum seekers to access protection. However, the harmonisation plans has also promoted a modest improvement on European internal standards, especially within weak regulated states, which seems to demonstrate the treaties are following a path that may improve the European asylum system (ZAUN, 2017).

This seems to be an important step forward, since it is argued that human rights protection within the asylum system of less developed states is often poorly developed, hence violations of asylum seekers’ rights happen more frequently (GAMMELTOFT-HANSEN, 2011). The European asylum system problems are unfortunately not yet solved. Even in Germany, literature shows immigration and foreign politics tend to be more restrictive, as extreme-right politicians would want them to (KOOPMANS; STATHAM, 1999). In 2015, Europe received almost 1.1 million asylum seekers through the Mediterranean Sea, almost five times the number from 2014. At least 3,771 persons died or are missing trying to access the European continent through this same route (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2020c). Recognition rates in this century have gone down, while NGOs and the European Court of Human Rights (“ECtHR”) criticised states for their flawed asylum systems that circumvent the European standards and provide poor reception (ZAUN, 2017). Furthermore, the literature still reports detention of asylum seekers is (TABAK; LEVITAN, 2014; TAN, 2011), illegal interceptions and dismissal of boats bringing asylum seekers through the Mediterranean high seas (GAMMELTOFT-HANSEN, 2011), among other violations of rights (JUNG, 2015).

### **2.2.1 The politicisation of asylum-seeking**

The 1951 Refugee Convention itself is understood as a starting point to understanding refugee protection, but due to its nature, it does not declare one’s

status: granting asylum or declaring one's refugee status depends on the receiving state. Therefore, asylum issues involve political factors, such as domestic laws, international, moral and also so-called universal norms, causing its increasing politicisation, especially after the rising number of asylum seekers in Europe from the 1990s on (O'NIONS, 2014).

Actually, the own existence of refugees in today's world is due to political upheaval (WHITTAKER, 2006), as the asylum seekers themselves remain embedded between politics, law, state policies and human rights norms (GAMMELTOFT-HANSEN, 2011). Even terms such as "persecution" and "well-founded fear", which constitutes the core of asylum-seeking, are politicised for not being defined under the 1951 Refugee Convention or by the United Nations High Commissioner for Refugees whatsoever. Surely there is a broad understanding of persecution being a persistent pattern of abuse, intolerance and violation of rights, and well-founded fear may be defined as the fear of being persecuted, but a host state might be unwilling to acknowledge the source state's responsibility for violating one's rights, for instance (WHITTAKER, 2006).

It is also worth mentioning that the fluid use of terms such as "immigrant", "refugee" and "asylum seeker" are often purposefully mixed up, especially by journalists and parliamentarians, despite the composition of the three groups being distinct (STEINER, 2000). In the same way, politicians stand by the importance of a homogenic national community to avoid security issues and culture fragmentation, while the media covers criminality and illegitimacy regarding asylum seekers in order to portrait the whole immigration scheme under the same report, which is especially convenient during economic crises and moments of political uncertainty. This misguided concept of asylum-seeking was naturalised within the European continent, adding that the more generous the asylum system is, the more impaired the national interest would become (O'NIONS, 2014).

Due to the politicisation of asylum matters, there is a speech supported and propagated by some political parties that affirms a vast majority of asylum seekers would actually not be persecuted individuals, but opportunistic immigrants who tries to abuse the asylum system with illegitimate application to take advantage of European social benefits (STEINER, 2000). As a response to high migration influx, the focus of the more recent European harmonisation procedures to prevent irregular immigration – to which the purposefully usage of incorrect terms by politicians and by the media

may have contributed –, has been the tightening of migration control, regulation, reduction of processing time, restriction of benefits and rights enjoyed until the refugee or asylum claim is processed (GAMMELTOFT-HANSEN, 2014).

As asylum seekers are put in the same group as irregular migrants, governments tend to hijack the immigration debate altogether, failing to protect refugees and also violating human rights (O'NIONS, 2014). Because the judicial sphere is less prone to absorb anti-immigration ideas, it is an important mechanism through which European states have accepted asylum seekers in. Germany, for example, is said to have an active judiciary defending the rights of foreigners, despite the debates within the political arena (STEINER, 2000).

### 2.3 LGBTQI+ ASYLUM SEEKERS AS A PARTICULARLY VULNERABLE GROUP

International law is equality-, justice- and diversity-oriented, due to its dedication to the social welfare state and human rights protection (RAMOS, 2018). In order to adapt itself to the environment and political moment and thus protect certain populations, the refugee definition has been broadened by the Organisation of African Unity in 1969 to include that

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1969).

In the same way, the 1984 Cartagena Declaration expanded the refugee definition to include flight due to “generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order” (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1984).

LGBTQI+ persecution, however, was not included in the core motivations for flight addressed by the 1951 Refugee Convention, and in no other subsequent convention. But because these individuals are denied rights, face discrimination and fear harsh criminal penalties due to their sexual orientation and gender identity, fearing or facing persecution by the state, its agents or private parties, it was later understood, gradually, that the category “membership of a particular social group”, as provided for



in Article 1A(2) of the Refugee Convention, should include LGBTQI+ individuals through a human rights approach to the Refugee Convention, as already discussed. According to the current UNHCR guidelines, membership of a particular social group is defined as

[...] a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. 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 (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2012, p. 12).

The first asylum claims based on sexual orientation or gender identity seem to date from the 1990s, perhaps because of certain consolidation of the LGBTQI+ movement and demand for rights. The Canadian 1991 claim to refugee by a Uruguayan gay man based on sexual orientation was denied due to lack of documentary evidence on the behaviour of Uruguayan state officials towards LGBTQI+ individuals, but was followed by several decisions that declared one's refugee status or granted asylum from the United States, Canada itself and from some European states, such as Belgium, France, Finland, Germany, the Netherlands and the United Kingdom (LAVIOLETTE, 2009, 2010). Despite the long path between the Refugee Convention and the first declarations of refugee status based on sexual orientation or gender identity, it is not a surprise it took so long, as Chapter 1 makes clear when addressing the formation of the LGBTQI+ movement. Despite that, declaring refugee status was still a disputed subject, due to specificities of the LGBTQI+ individuals, such as assessment of credibility, well-founded fear and the definition of persecution itself. Since the 1990s, literature has been contributing thoroughly to the development of the theme.

On the persecution subject, Goldberg (1993, p. 606) listed possible ways through which LGBTQI+ individuals may be persecuted, such as

harassment and assault, involuntary institutionalisation and electroshock and drug "treatments", punishment under laws that impose extreme penalties including death for consensual lesbian or gay sexual relations, murder by paramilitary death squads, and government inaction in response to criminal assaults against lesbians and gay men.

Well-founded fear of being persecuted is also disputed, due to the difficulty to assess it in real life events, as there is lack of world information and reports on the

LGBTQI+ persecution in several countries. It is important to highlight, however, discrimination against LGBTQI+ individuals per se would not grant refugee status, although it is an often present element when it comes to deliberate persecution of LGBTQI+ individuals (WHITTAKER, 2006), which can be perpetrated by both private and state actors. Goodman (2012) affirms that even when national laws that criminalises LGBTQI+ conducts are not enforced, they could still put LGBTQI+ individuals in psychological distress that could be interpreted as an element that stems from persecution. But the own criminalisation of same-gender activity in a given state is also not often interpreted as persecution, being necessary to use data to support such a claim, which, as stated before, is rarely at hand. The continuity aspect, or the cumulative suffering discrimination could cause is reinforced by Shah (2013), also remembering that the individual could have been harmed in the future if they have not fled, which is also the current understanding of the UNHCR according to the Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01) (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2002a).

On the credibility issue, scholarship points out applicants are expected to present evidence and a story that conforms to western characteristics – usually stereotyped – attributed to LGBTQI+ individuals (JUNG, 2015; MILLBANK, 2004; MURRAY, 2014) without considering that some LGBTQI+ asylum seekers' characteristics and lived experience may exceed the hegemonic frameworks through which LGBTQI+ individuals are analysed (LUIBHÉID, 2008). Ultimately, they must also satisfy their adjudicator's understanding of LGBTQI+ sexuality and identity, as the application is going to be analysed by an officer with their own idea of how a lesbian trans woman, an intersex or a non-binary person, to illustrate, should behave (MILLBANK, 2009).

[...] [W]hen testing the credibility of the claimant's story, immigration officials and judges often assume that all queer people engage in cross-gender identification or that they immediately engage a gay public life upon arrival in the new country by frequenting gay establishments. Queer asylum seekers are thus assumed to be 'out' in a particularly recognisable way associated with white middle-class Western-style commercialism and consumerism, and if they are not their credibility is deemed severely questionable (JUNG, 2015, p. 312).

In sum, only those who can perform recognised forms of being LGBTQI+ are granted asylum or have their refugee status declared (SABSAY, 2012), again marginalising those who do not limit themselves to binary self-identification (BRUCE-JONES, 2015). Furthermore, even if the applicant identifies with those characteristics, they might still reject behaving in such a way due to their internalised fear of persecution. For living closeted does not generate proof that can be used in one's asylum claim, it also leaves adjudicators to rely on other aspects but the applicant's own lived experience of fear (MAROUF, 2008). Due to that, having concrete proof of one's identity, past relationships, medical records, hormonal therapy, for instance, is relevant when applying for asylum (LAVIOLETTE, 2014).

During the ongoing development of the LGBTQI+ asylum scholarship, two asylum decisions, the first from the High Court of Australia, then reinforced by the UK Supreme Court, were crucial to the discussion on well-founded fear for abolishing the discretion requirement (HIGH COURT OF AUSTRALIA, 2003; UNITED KINGDOM SUPREME COURT, 2010), that is to say, the argument used by some states that asylum seekers should conceal their sexuality and gender non-conforming expressions in order to not be persecuted in their state of nationality (GRAY; MCDOWALL, 2013). The decisions were criticised by one part of the literature (HATHAWAY; POBJOY, 2012), but praised by another (GOODMAN, 2012; MILLBANK, 2009, 2012). Among other arguments, Hathaway and Pobjoy affirmed the decisions generalised the danger in being gay (as they may have meant "LGBTQI+" or "queer"), as it could always give rise to a refugee status claim, being necessary to draw a line and only protect the actions considered integral to sexual orientation (as they may have meant "sexual orientation and gender identity") and not those deemed peripheral. Replying to Hathaway and Pobjoy, Millbank (2012, p. 500) affirmed "sexual orientation extends beyond mere private sexual conduct, and articulate the importance of equality – both as between gay and straight people in the state of origin and between sexuality claims and other categories of claimants", also remembering that LGBTQI+ people are secretive about their relationships and identity as a result of an oppressive society and not exactly by choice (MILLBANK, 2009).

In Europe, Bruce-Jones (2015) reports that applicants' bodies would be inspected in "visceral ways" and sexual desire had even been measured through visual stimuli and electrodes. Asylum seekers feel they need to render verbal accounts of their sexual relations and relationships, often providing photos and videos of such

intimate moments. Border guards would be insensitive and intimidating, and there would be lack of privacy for giving statements about the reasons to seek asylum. Asylum seekers would often be confronted for having children or having already been in a heterosexual relationship.

It is also relevant and current to question whether could queering asylum help the world rethink LGBTQI+ migration and to recognise the roots it has in colonialism: “[...] taking claimants’ stories at their word would perhaps be considered more transformative, perhaps even queer, in refusing to re-inscribe systems of power that stagnate other forms of systemic violence and colonial relations” (BRUCE-JONES, 2015, p. 127). The author states as LGBTQI+ criminalisation has colonial origins, the international community should fulfil its duty in addressing the role colonialism, especially from English colonial laws – as already addressed in Chapter 1 –, plays in today’s migration panorama (BRUCE-JONES, 2015).

Nevertheless, not only former colonies are tied to structural prejudice: it is important to remember that the recent German history is also embedded in prejudice against LGBTQI+ individuals. The Nazi regime banned gay and lesbian organisations, closed bars and research centres, prosecuted offenders of the German sodomy legislation, castrated convicted offenders and imprisoned gay men in its concentration camps. After the Second World War, they continued to be persecuted by the German authorities under the same Paragraph 175 of the German criminal code, which was enacted in 1871 to punish homosexuality and revisited by the Nazis. The Nazi revision was upheld in 1957 by the German Supreme Court, which argued the legislation and prejudice already existed before the Nazi regime. Paragraph 175 was only repealed in 1969 (HEGER, 1994). Because of that, rethinking and queering asylum and refugee matters, as Bruce-Jones suggests, is also relevant to get rid of any historically rooted prejudice in Germany.

Even some of the recent European documents on asylum and immigration show bias or shy away from addressing sexual orientation and gender identity issues. The Directive 2013/32/EU of the European Parliament and of the Council (“Common Procedures Directive”) refers to sex as if it was referring to gender throughout the document (COUNCIL OF THE EUROPEAN UNION; EUROPEAN PARLIAMENT, 2013a), although the Directive 2011/95/EU of the European Parliament and of the Council (“Qualification Directive”) had already used the correct denominations (COUNCIL OF THE EUROPEAN UNION; EUROPEAN PARLIAMENT, 2011).

Article 21 of the Directive 2013/33/EU of the European Parliament and of the Council (“Reception Standards Directive”) exemplifies no less than 13 specific situations of vulnerability, but sexual orientation and gender identity. This seems to constitute a grave problem when it comes to the special reception needs LGBTQI+ asylum seekers may need, especially when claiming refugee status based on sexual orientation or gender identity. Article 2(k) of the Reception Standards Directive, however, clarifies that special reception is conceded to vulnerable individuals as provided for in Article 21, which might prevent LGBTQI+ asylum seekers from being granted special reception (COUNCIL OF THE EUROPEAN UNION; EUROPEAN PARLIAMENT, 2013b).

Although providing bibliographical information on LGBTQI+ asylum seekers in its most recent book on judicial analysis, including referring to them as vulnerable individuals (EUROPEAN ASYLUM SUPPORT OFFICE; INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES, 2021), the European Asylum Support Office (“EASO”) still do not provide, according to its website, training on other vulnerable groups but children, since its focus to-date would be activities related to that vulnerable group (EUROPEAN ASYLUM SUPPORT OFFICE, 2016b). All these documents mentioned above corroborates the need to systematically address LGBTQI+ matters in public and legislative spaces in order to have their rights heard and more carefully thought about.

#### 2.4 UNHCR: LGBTQI+ INDIVIDUALS AS PART OF A SOCIAL GROUP

UNHCR directly addressed the inclusion of LGBTQI+ individuals as part of a particular social group for the first time in 2002, 51 years after the Refugee Convention, at least nine years after the first decision of the Canadian claim to refugee status based on sexual orientation.

Legitimising the understanding of LGBTQI+ individuals as part of a particular social group, UNHCR published documents that suggest guidelines to be followed when dealing with such asylum seekers, namely the Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01) (“Guidelines No. 1”), the Guidelines on International Protection No. 2: “Membership of a Particular Social group” within the context of Article 1A(2) of the

1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02) (“Guidelines No. 2”), the 2008 UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (“2008 Guidance Note”) – later updated and substituted by the Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (“Guidelines No. 9”) –, as well as the 2011 Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, later updated in 2019 (“Handbook”) (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2002b, 2002a, 2008, 2012, 2019).

The Guidelines No. 1 first mentioned in its Items 14-17 how could discrimination constitute a legitimate reason for fleeing persecution, as well as mentions sexual orientation and sexual practices as a reason one is persecuted. It also affirms “[r]efugee claims based on differing sexual orientation contain a gender element” (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2002a, p. 4), which is not accurate, but delineates the beginning of the stipulations in this sense.

The Guidelines No. 2 acknowledges that being part of a particular social group was being “invoked with increasing frequency in refugee status determinations, with States having recognised [...] homosexuals, as constituting a particular social group for the purposes of the 1951 Convention” (as it may have meant “LGBTQI+” or “queer individuals”) (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2002b, p. 2) and provides stipulations and guidelines that should be observed for doing so.

The 2008 Guidance Note was praised by the LGBTQI+ asylum scholarship, since it was the first time UNHCR had developed a specific and thorough document on LGBTQI+ asylum. It states that physical and sexual violence, harassment, intimidation, threats and more in a certain level can be considered persecution, as well as can happen when access to basic rights such as education, health and judiciary are denied. Despite that, the 2008 Guidance Note was considered rather incomplete and poorly discussed with stakeholders before its publishing. LaViolette (2010) affirms the 2008 Guidance Note failed to correctly and in-depth address the existing correlation between sexual orientation and gender identity for asylum purposes, associated gender issues only to lesbian women, as it was not relevant for other LGBTQI+ individuals, failed to emphasise the difference between discrimination and persecution,

failed to address intersex and bisexuality, and explored poorly the protection on the state of nationality.

The 2008 Guidance Note also approached without greater depth the asylum detention of LGBTQI+ individuals. It is crucial to talk about such a topic, as LGBTQI+ are particularly more vulnerable within detention centres, as it is difficult to identify the individuals members of the LGBTQI+ social group. Because of that, there is still little international law development in this matter, as there is also little data on LGBTQI+ individuals in detention centres, as some prefer to hide their identity within such places. Within these places, LGBTQI+ asylum seekers may experience increased vulnerability to physical and sexual harassment, violence, verbal abuse, threats, social and physical isolation, lack of access to medical services, hormonal therapy and mental health care and subjection to solitary confinement, being recommended other measures to be adopted other than detention. The first international ruling on LGBTQI+ detention in an immigration context happened in 2012 by the European Court of Human Rights in *X v. Turkey*. It decided that segregating LGBTQI+ detainees violated human rights and their access to detention centre services (EUROPEAN COURT OF HUMAN RIGHTS, 2012; TABAK; LEVITAN, 2014).

It is also relevant to remember not only LGBTQI+ asylum seekers persecuted on the grounds of sexual orientation or gender identity may be subjected to immigration, but also LGBTQI+ asylum seekers persecuted on other Refugee Convention grounds. Their identification as a LGBTQI+ person, however, is sufficient to include them in the LGBTQI+ asylum seekers social group and trigger prejudice and vulnerability, as described above.

Different from the Guidelines No. 2, whose purpose was to discuss membership of a particular social group, which included “homosexuals” in its interpretation of the Article 1A(2) of the Refugee Convention, the main purpose of the Guidelines No. 9 is solely to discuss and theorise claims to refugee status based on sexual orientation and gender identity. The document shows preoccupation with content, definition and correct use of terms and expressions that characterise the LGBTQI+ community. As it was published in 2012, it already discusses the theme in a more contemporary approach and complements the 2011 Handbook (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2012).

The Handbook, as already mentioned, do not mention LGBTQI+ individuals throughout the book whatsoever, not even in the chapters addressing persecution,

discrimination and the membership of a particular social group, where it was decided to only reinforce examples on race, religion and nationality. The Handbook, however, was reissued in 2019 with a specific foreword mentioning the inclusion thereof. Such an inclusion, however, only incorporated the Guidelines No. 1, 2 and 9, among other documents, as annexes at the end of the book (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2019).

Besides the thorough theorisation and reporting on the LGBTQI+ community and the claim to refugee status based on sexual orientation and gender identity in the Guidelines No. 9, it is also important and relevant that UNHCR acknowledges the inherent limitation in defining terms by recommending membership of a particular social group to be read and interpreted in an evolutionary manner (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2002a), which can be transported to the terms used in the Refugee Convention as a whole, reinforcing the human rights approach to the cornerstone of International Refugee Law.



## CHAPTER 3 – A FRAMEWORK OF RIGHTS AND PROTECTION

*In historical research as in contemporary politics, the categories 'homosexual' and 'immigrant' must not be constructed as mutually exclusive.*

*(Andrew Shield, 'Suriname – Seeking a Lonely, Lesbian Friend for Correspondence': Immigration and Homo-emancipation in the Netherlands, 1965–79, p. 247)*

### 3.1 THE EVOLUTION OF HUMAN RIGHTS CONCEPTS

#### 3.1.1 The inception of western human rights

The evolution of human rights can be observed from different perspectives, by means of sets of historical facts towards contemporary concepts. Literature suggests the concept of human rights is a modern construction and it would be based on modern seventeenth century natural law theory (BOBBIO, 1996), or even older, with the conquest of freedom represented in the English Great Charter of Freedoms of 1215 (COMPARATO, 2019), or with the original inception of the natural law theory in Socrates' work in the fifth century BC, later developed by Plato and Aristotle and subsequently by Christian thinkers, especially by Thomas Aquinas (STRAUSS, 1990). In other words, knowing that history is composed of a temporal thread, it would be possible to trace a long line of facts that would be connected, in some way, to the western concept and evolution of human rights. In spite of this, we decided to address the ideas of this Chapter from the seventeenth century on, since it may be a safe point from where the theory of human rights was based (IBHAWOH, 2013).

Traditional natural law and modern natural law theories parted ways mainly from the works of Hobbes. The latter appealed to natural reason – which was theorised by Hugo Grotius in the search for a secular and autonomous assumption of people's rights – as a central object of thought, defending the existence of a universally valid rational right. Even though modern natural law did not express itself through declarations of rights, it would already address universal natural rights inherent to humankind, apart from the creation of civil society and states (BOBBIO, 1996). Natural law in its modern

sense was embodied by Samuel von Pufendorf in a system with non-contradictory premises and conclusions, as Pufendorf provided the sovereign state with secular legitimacy, presenting it as an institution created by the people to achieve social peace, and which had the absolute right to determine and implement the most appropriate measures for that purpose (WIEACKER, 1996). Pufendorf's work was continued by other jurists and philosophers, among them Christian Thomasius, who would theorise the separation between law and morality, defend the secularity of the state and religious freedom, in the search for a more systematic secularisation than the one proposed by Pufendorf (BLOCH, 1980; HOCHSTRASSER, 2000). Bobbio (1947) adds that it is undeniable that Thomasius was also a precursor of fundamental rights, as he advocated for the religious freedom, which would later culminate in the struggle for conquering other freedoms. Furthermore, the systematisation proposed by Pufendorf, inspired by Grotius and Hobbes, later refined by Thomasius and other scholars, would permeate the future codification in the eighteenth and nineteenth centuries in Europe (GIERKE, 1950), and it is possible, even today, to perceive the modern natural law theory inspiration in the general section of European codes and other codes inspired by the European legal system (WIEACKER, 1996).

The very existence of an absolute, sovereign and indivisible state would also have contributed to the development and affirmation of fundamental rights – and the later so-called human rights – through liberal revolutions that sought to break free from the absolutist regime (PECES-BARBA, 1982). In the meantime, contract theories would seek to theorise a new principle of democratic legitimacy, grounding the origins of civil society and the legitimacy of governors before the consent of the governed (FERNÁNDEZ, 1983). In Rousseau's work, for example, one can find the important concept of general will, defined by him as the common interest of society, while in Locke's work – whose political theory would also have inspired the theory of fundamental rights – one can find the concern to establish restrictions to the eventual abuse of power by the governor (RILEY, 2006). However, it is Kant (1993) in his *Grounding for the Metaphysics of Morals*, of 1785, who would affirm that the human, as a rational being, exists with an end in itself, not as a means, which is the basic notion of human dignity, thus reaffirming Enlightenment concepts, such as freedom and reason. These same Enlightenment concepts would be the basis for the American and French Revolutions and the respective Declarations inspired by those. Not by chance, scholars attribute the genesis of western human rights to these two historical

moments, stating that such revolutions were relevant to the creation of human rights (HUNT, 2008).

Modern natural law theory, however, developed itself and also shattered simultaneously due to secularisation and legal affirmation, as the vision of a law other than one written in codes and constitutions lost its meaning, changing the centre of the search for the rights from reason to the legislation as a way of safeguarding the rights of individuals in a given society. This refutation of the principles of natural law would have been reinforced by post-Kantian works, with natural law transforming itself in human rights after the First World War (SEIDLER, 2018). As a consequence of the overlapping demands for national sovereignty and the claim for rights that are inherent to all peoples, these same rights were then protected only as national rights, enforced only within the states' borders, also mitigating their natural law characteristics (ARENDR, 1973).

The 1848 French Constitution attempted to address certain social and economic rights existing in the texts of 1791 and 1793, but the full realisation of such inclusion in national states only took place with the 1917 Mexican Constitution and the 1919 German Constitution (the so-called Weimar Constitution), in fact, in periods around the end of the First World War. The Mexican Constitution was the first in history to elevate political and individual rights to the quality of fundamental rights, followed by the Weimar Constitution with similar parameters. Despite some social progress in the constitutions of the nineteenth and early twentieth centuries, the real consolidation of what is called human rights in today's world would begin in 1945, after the serious human rights violations of the Second World War and the Holocaust, as the latter annihilated more than 20 million lives of Jews, gay men and other marginalised groups (BAUMAN, 2000; HEGER, 1994). The Nuremberg trials, which took place from 1945 to 1946, reinforced the desire of a victorious west to revisit the natural rights of the human being. Thus, a set of universal human rights standards were then developed from 1946 on (ZALAUQUETT, 1981).

The Second World War meant the rupture of human rights and the post-war period represented the reconstruction of these pillars with an ethical foundation centred on human dignity. Such rights were born as a counter power of the individual in the face of the strength of the state and the private sector (FERRAJOLI; VITALE, 2002). Therefore, the cornerstone of the western human rights framework would be created in 1948: the Universal Declaration of Human Rights ("Universal Declaration"), adopted

by the United Nations on December 10, 1948, enabling the systematic universalisation of a wide range of human rights and promoting the observance of an irreducible ethical minimum built on human dignity, peace and the principles of universality and indivisibility, as the starting point of a new movement of human rights (PIOVESAN, 2019).

The universality is based on the extension of human rights and the unique need to be human to be entitled to protection (ARENDR, 1973). The indivisibility, in turn, would be characterised by the systematic nature of human rights, as violating one right, either civil, political, economic, social or cultural, would violate the whole, since the fragility of a right leads to the fragility of all others (FREITAS JÚNIOR; PIOVESAN, 2011). Hanna Arendt (1973), in a parallel sense would claim that the violation of one person's rights would be comparable to the violation of the rights of the whole of humanity. Corroborating these thoughts, Cançado Trindade (1998, p. 120) comments on the so-called "integral importance of human rights", since the author understands there is no sense in categorising human rights as more or less essential, for all of them are as indivisible as certainly is the human being entitled to those.

### **3.1.2 The international framework and globalisation**

Also in the 1940s, the world experienced technological advancement, social development, expansion of the means of communication and transportation and growth of global transactions. States would then seek the construction of external policies of openness and proximity, which would strengthen international law. The first organisations with the purpose of protecting the human rights of vulnerable populations would also be born in this context, adopting a perspective oriented to international law (AFSHARI, 2007). With respect to international law, the Universal Declaration contributed to the emergence of a system of international instruments and actors aimed at protecting human rights, in which the aforementioned international organisations are included. International organisations would also contribute to global constitutionalism: relations between states, states and the people, as well as states and international organisations would favour and legitimise – or delegitimise – the national constitutions, since they should obey minimum parameters of human rights (CANOTILHO, 2002). This same international cooperation is responsible for advances in international human rights law, as several international courts were founded aiming

at protecting rights, repairing victims and promoting regional integration and international supervision (TRINDADE, 2010).

Other advances in international law include instruments subsequently approved by the United Nations, on social rights, asylum, legal protection for marginalised groups, forms of degrading treatment, among others (UNITED NATIONS, 2019), corroborating the alleged expansion of human rights in the international scope. Regarding the domestic sphere in a broad sense, western law would incorporate guiding principles of human rights (PIOVESAN, 2019). Protection of human rights became the basis of modern western constitutions and human dignity would then be present in most of the western constitutions enacted after the Second World War, with particular origin in the German constitutional law (BOBBIO, 1996). Bobbio's findings corroborate Canotilho's (2002) on the strengthening of constitutional law in the face of human rights expansion in the international level.

The consolidation of human rights as an independent scholarship and a global purpose to be pursued suffers setbacks that arise from two main issues: globalisation and the legitimacy of human rights themselves as thought through a western perspective. The intensification of interactions at international level and transnational practices as just pointed out erode states' sovereign capacity of organising and controlling the existing domestic agenda of policies (FREITAS JÚNIOR, 2002; SANTOS, 2005), and due to this inability to manage policies there is a constant increase in poverty and decrease in minimum conditions to survive in the face of globalisation (BAUMAN, 1999).

Dahrendorf, when addressing such a topic proposes the repositioning of states at the important role as influencers of the economy and providers of society in general. Despite that, the author agrees with the understanding that globalisation brings social disintegration and a lack of political confidence in leaders at the expense of global economic competitiveness (DAHRENDORF, 1996). Corroborating, Kahn-Freund (1974) would say that in fact the law-making is not able to keep up with the rapid advance of society, so that there would always be a mismatch, or delay, between legislation and everyday life, the latter therefore remaining unprotected in a way. Economic and financial globalisation also influence the universalisation of the human rights agenda, as it is challenging to speak of universal rights in the same context of universal violations thereof (MBAYA, 1997). As Sousa Santos (2009, p. 17) summarised, "never so many have been integrated by the way they are excluded".

A similar discourse exists from the perspective of decolonisation. Between the 70s and the 90s there had been waves of democratisation – or re-democratisation in some cases – that occurred in Europe, Latin America and in the African and Asian continents. The anti-colonial struggle for self-determination of peoples would have a significant impact on the idea of universal human rights, since colonised peoples would have been the first to use the language of human rights born in the west to seek for their own rights before the imperialists (IBHAWOH, 2013). In fact, colonised peoples in Africa and Asia have influenced the expansion of western human rights by appropriating the idea in their struggle for freedom, nevertheless, in the 1970s they would have come to understand that such human rights were nothing but cultural imperialism in the face of several still existing forms of western authoritarianism over territories in the African and Asian continents (BURKE, 2010).

Therefore, the universality of such rights continues to be challenged. Universalists, in short, reaffirms the value of human dignity as a greater good, and that there would be an ethical minimum of rights that should be protected by human rights in any context, as reported by Piovesan (2019). This theory, however, would fail to take into account all the problems already listed in this Section, regarding globalisation, western hegemony upon other states and regions and the coincidence of positions for human rights endorsers and abusers, which creates a false legitimacy for acting in unlawful ways (MESSER, 1997). The relativist scholarship, in turn, would think about human rights from the local perspective regarding social, cultural, moral, political and economic aspects. This theory is mentioned by several studies, mainly under aspects that take into account the Asian and African peoples (DONNELLY, 2007; IMANI, 2009; POLLIS; SCHWAB, 1979). It could be said, however, that there are common characteristics between the west and, for example, the Asian continent. Still, the dissertation defence of a supposedly great dichotomy between Asian and European values would do little to strengthen human rights by causing confusion about what, then, would be the normative basis for freedom and democracy (SEN, 1997).

Despite this discussion, Messer (1997) affirms that western human rights in their origin would no longer represent the complete and current concept of the term, since they are not anymore thought of in a way that would favour some peoples over others. In corroboration, it should be noted that, despite its birth, the doctrine of human rights is in constant evolution and expansion throughout the world, having been adopted by several non-western states (MITOMA, 2014).

### 3.1.3 Human rights as an inclusive, multicultural asset

Ultimately, globalisation also favoured the rapprochement between diverse peoples, cultures and states. These social ties provided for the discussion on social movements and recognition of rights to those bound by cultural, racial and social vulnerabilities. Contemporary doctrine has focused on creating new theories and solutions that would favour dialogue, combination of efforts and a diverse approach to rights. Santos (1997) suggests we overcome the debate between universalism and relativism so that a new multicultural trend could be formed, based on a cosmopolitan approach to human rights, which would be based on the dialogue between cultures, remembering that they all have conceptions regarding human dignity, although expressed in different ways. This same openness to dialogue proposal is reinforced by a scholarship that claims respect for diversity is the core of human rights, and that such respect may create the proper conditions to celebrate a multicultural approach to human rights (BIELEFELDT, 2000; FREITAS JÚNIOR, 2001; TRINDADE, 2010).

Also with a view to a more heterogeneous model of human rights, Messer would theorise that this plural theory claims that human rights have multiple origins, are constantly evolving, have a similar hard core and seek adherence at all social levels. Based on it, it would be necessary to understand when and how international human rights should consider the local cultural understandings on what ought to be protected, this being therefore an educational proposal for human rights (MESSER, 1997). It is because of the respect for diversity and the multicultural approach to human rights that vulnerable social groups are then brought to the centre of human rights discussion, since being part of a social group should not revoke one's right to have rights (RAMOS, 2005). This notion of equality that respects one's singularities supports the development of policies that stand up for vulnerable social groups (SANTOS; NUNES, 2003). In the same sense,

the value of diversity, combined with the rights to equality and difference, invokes the transition from general and abstract equality to a plural concept of concrete dignities. In multiculturalism, it is necessary to ensure the right to existential diversity, without discrimination, hostility and intolerance, to compose a society that is revitalised and enriched by respect for plurality and diversity, celebrating the right to

difference, in the search for the egalitarian and emancipatory construction of rights (PIOVESAN, 2013, p. 328)<sup>2</sup>.

Donnelly also states that because of this multiculturalism approach, dominant practices and political ideas around the world have thus been substituted, ending slavery, including women and non-whites and fighting all types of discrimination, which have been happening at international, regional and domestic levels simultaneously. The author also systematises three tools to overcome discrimination against vulnerable social groups: toleration, equal protection and multiculturalism. The first approach is to require others to tolerate, without positively valuing the other group; the second, to actively ensure all groups enjoy the same rights they all are entitled to, such as services, opportunities and goods; and the third, multiculturalism, is to positively value diversity, celebrating, preserving and fostering differences (DONNELLY, 2013).

In line with the development of the multicultural approach, Ramos (2020) recalls that the 1993 Vienna Conference urged states to develop programs that systematically implement policies for all kinds of human rights, in which actions directed towards vulnerable groups would be encompassed. This explicit international recognition of vulnerable groups' rights would not have happened, however, without the fight such groups endured throughout decades (DONNELLY, 2013).

### 3.2 THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION

International law in the twentieth century – especially since the 1940s, as already discussed herein –, came to be informed by the principles of equality, access to justice and respect to diversity due to the establishment of the welfare state and the international protection of human rights, being the latter, in turn, informed by the principles of liberty, equality and dignity (RAMOS, 2020), as well as by non-discrimination, a principle that is common to International Humanitarian Law, International Refugee Law and International Law of Human Rights (TRINDADE, 2010).

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<sup>2</sup> Originally in Portuguese: “o valor da diversidade, aliado aos direitos à igualdade e à diferença, invoca a transição de uma igualdade geral e abstrata para um conceito plural de dignidades concretas. No multiculturalismo, há que assegurar o direito à diversidade existencial, sem discriminação, hostilidade e intolerância, a compor uma sociedade revitalizada e enriquecida pelo respeito à pluralidade e diversidade, celebrando o direito à diferença, na busca da construção igualitária e emancipatória de direitos.”



The United Nations Charter of 1945 adopted equality and non-discrimination clauses, crystallising the principle as part of international law. Among its provisions, equality and non-discrimination are mentioned in articles 1(2), 1(3), 13(2), 55, 55(3), 76(3), 73(4), by means of expressions such as “equal rights”, “human rights and fundamental freedoms for all”, “without distinction as to race, sex (sic), language, or religion” and “equal treatment”, for example (UNITED NATIONS, 1945). In the same sense, the Universal Declaration of 1948 set forth many provisions that encompass the principles of equality and non-discrimination throughout its texts, as expressed by the terms “equal in dignity and rights”, “everyone is entitled to all the rights and freedoms”, “without distinction of any kind, such as race, colour, sex (sic), language, religion, political or other opinion, national or social origin, property, birth or other status”, “all are equal before the law”, “without any discrimination”, “equal protection of the law”, “equal protection against any discrimination”, “everyone has the right”, “no one shall be subjected to”, “everyone is entitled in full equality” among many other excerpts (UNITED NATIONS, 1948). Several international covenants included similar excerpts, as did the Convention on the Elimination of All Forms of Racial Discrimination, the Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 1965, 1966a, 1966b, 1979).

Despite these sets of words inferring the equality of all individuals, the contemporary philosophical thought emphasises that one should not imply such equality exists per se, as individual and group needs ought to be taken into account for granting more benefits to those less privileged when rights are given (BOBBIO, 1996; DWORKIN, 2002; RAWLS, 2005). Therefore, the rationale behind the concept of equality discussed by the contemporary world is still associated with the Aristotelian concept of justice, in which equals should be treated equally and unequals unequally (CRISP, 2000).

Equality and non-discrimination are fundamental to the international protection of human rights and also a condition for the full exercise of rights by all individuals. Equality also imposes a social burden on international law, as the parties must assess whether a law would impact the vulnerable groups disproportionately (RAMOS, 2018). Discrimination, in turn, can be described as unequal treatment of equals, a breach of the principle of equality that carries with it an idea of unfairness and disadvantage

(HYDER, 1968). Therefore, “equality means the absence of discrimination, and upholding the principle of non-discrimination between groups will produce equality” (WEIWEI, 2004, p. 7). Due to that symbiotic relationship between these concepts, they are treated as two sides of the same principle (BAYEFESKY, 2016).

Analysing the principle of equality and non-discrimination as a whole, Bell (2003) separates three main areas of interest: a) equality as non-discrimination, which advocates that all irrelevant characteristics be disregarded, thus changing society over time; b) substantive equality, which determines positive actions and fair participation for all; and c) equality as diversity, which deals with the tensions between different grounds of discrimination and how to accommodate diversity within equality policy-making. Piovesan (2019), in turn, theorises equality in conceptions that are similar to Bell’s approach: a) formal equality, which means everyone is equal before the law; b) material equality informed by social justice principles; and c) material equality informed by identity issues, as gender, sexual orientation, age, ethnicity etc.). Further corroborating these interpretations, Bayefsky (2016) studies this principle of international law through four different areas of importance: first, a) the methods of protecting equality and prohibiting discrimination; second, b) the discriminatory intention and c) justified distinction, both concerned with how and when differentiation of treatment is needed; and third, d) special measures of protection and affirmative state action, which are aimed at achieving equality and protecting vulnerable groups. All these theories seem to converge as for the attention paid to similar areas of the equality and non-discrimination principle, namely the importance of having laws provide for equality regardless of individual or group characteristics, acknowledging vulnerable groups and creating measures to protect such groups.

On the existence of such a principle in international covenants, Weiwei (2004) believes the existence of these documents and norms do not mean the system is functioning and satisfactory and all people enjoy equal rights and are protected against discrimination. The protection is diminished if these covenants are not ratified by the states, if they stipulate reservations that limit the scope of the document or if no effective enforcement mechanisms are put in place by the countries at the national level. Advancements on discrimination against vulnerable groups are uneven, composed of several non-binding declarations and do not encompass all vulnerable groups, for example, people living with HIV/AIDS (WEIWEI, 2004).

As for asylum seekers, LGBTQI+ individuals and also LGBTQI+ asylum seekers, two international covenants stand out with regard to equality and non-discrimination: the Refugee Convention and the Yogyakarta Principles. The former includes a non-discrimination clause both in Article 3 of the Refugee Convention (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1951) and in the Introductory Note by the Office of the United Nations High Commissioner for Refugees of 2010, as follows:

Convention provisions, for example, are to be applied without discrimination as to race, religion or country of origin. Developments in international human rights law also reinforce the principle that the Convention be applied without discrimination as to sex (sic), age, disability, sexuality, or other prohibited grounds of discrimination (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 2010, p. 3).

The literature on asylum states that the ideal of equality calls for more open asylum policies (STEINER, 2000), as the growth of this population around the globe also increases the demand for equality and non-discrimination (O'NIONS, 2014).

Whether a moral obligation towards asylum seekers derives from a state's previous involvement in foreign policy or simply from a recognition of our global interconnectedness depends on how we define equality: either as a political virtue that only applies among people who are bound by the same political path or as a pre-political virtue that applies between human beings that do not share membership of the same polity (O'NIONS, 2014, p. 18).

Concerning LGBTQI+ individuals, the Yogyakarta Principles – which have no binding authority – also stipulate, especially in their Principle 2, the rights to equality and non-discrimination as reproduced below:

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status (INTERNATIONAL COMMISSION OF JURISTS, 2007, p. 11).

The document demands that states embody these principles in their constitutions, adopt legislative measures and other actions, such as training and programmes of education, to eliminate discrimination, taking into account intersectional discrimination. The Principle 23, concerning the right to seek asylum, also demands states to not discriminate asylum seekers in the basis of their sexual orientation or gender identity (INTERNATIONAL COMMISSION OF JURISTS, 2007). The Principle 23 was complemented by the Yogyakarta Principles Plus 10 in 2017, including among other stipulations that states shall protect asylum seekers from discrimination and other harm committed on grounds of sexual orientation and gender identity during reception, housing and detention procedures (INTERNATIONAL COMMISSION OF JURISTS, 2017).

Since evolution of equality provisions and new measures and solutions are triggered by social changes (BELL, 2011), international bodies have been progressively trying to protect LGBTQI+ asylum seekers against discrimination. The Human Rights Committee, for example, stated that the principles of the International Covenant on Civil and Political Rights shall be applied without discrimination, either against citizens or aliens, cis-heterosexual or LGBTQI+ individuals (TABAK; LEVITAN, 2014). A long path towards real equality among individuals still needs to be walked, albeit a considerable mobilisation concerning vulnerable groups' rights has been happening in the twenty-first century.

### 3.3 THE IMPORTANCE OF AN INTERSECTIONAL APPROACH

The inception of the intersectionality theory is situated within the American black feminist discourse of the nineteenth century, when Anna Julia Cooper described that experiences of black women were harsher than white women's, though the latter were used as a common paradigm for the problems of being a woman (CARASTATHIS, 2016), in a false universalisation that highlights some members of a minoritised group and marginalises others, as later discussed by Butler (1993) when addressing, as an example, the impossibility of gay men being representative of all queer identities. But it was Kimberlé Crenshaw, years after Cooper, who coined the term and addressed intersectional discrimination as a means through which several discriminatory grounds intersect to form a unique, personal experience:

Discrimination, like traffic through an intersection, may flow into one direction and it may flow into another. If an accident happens at an intersection, it can be caused by cars travelling from any number of directions, and sometimes, from all of them. Similarly, if a black woman is harmed because she is in the intersection, her injury could result from sex (sic) discrimination or race discrimination (CRENSHAW, 1989, p. 149).

This uniqueness, however, is not in a rare sense, but in the sense that the intersectional discrimination suffered by a person was tailored to target her and her unique identity markers, specifically, that is to say, it is a discrimination based on the combination of different aspects that make up her identity as a person (MASSELOT; BULLOCK, 2013). Intersectional discrimination may also account for different ways through which discrimination and historical inequalities equals in a harsher experience of discrimination and marginalisation for entire groups of individuals (KANTOLA; NOUSIAINEN, 2009). In this sense, intersectionality can be addressed at three different levels: individual, group and institutional levels: groups can be discriminated against in intersectional terms – structural discrimination –, while minoritised intersectional organisations also may suffer discrimination when addressing policies, for example – systemic discrimination (AGUSTÍN, 2013).

It is important, however, to distinguish intersectional discrimination from multiple discrimination and its subdivisions. Multiple discrimination occurs against an individual on more than one ground and can be divided into two categories: additive discrimination, which is the hypothesis that an individual can be discriminated against on one ground in a given situation, and on another in a second situation; and compound discrimination, which is the discrimination against an individual on different grounds in the same situation, inflating the discrimination experience and creating a compound effect. The concept presented for compound discrimination is closer to the concept of intersectional discrimination, but the two are not interchangeable, since the intersectional discrimination presents an unique experience of discrimination that cannot be untangled and separated in different single grounds, which can be made in situations of multiple discrimination in a general sense (MASSELOT; BULLOCK, 2013).

When intersectional discrimination is addressed within LGBTQI+ studies, it should be emphasised that due to the origins of this social group and the heterogeneous subgroups that it is composed of, the forms and layers of discrimination that affect its different individuals, letters and subgroups are rather diverse. Therefore,

it is necessary to use a queer intersectional approach in order to understand the experiences of LGBTQI+ individuals in their heterogeneity. For example, the everyday life of a urban middle class LGBTQI+ person is different from the life of a LGBTQI+ individual living in another location or from another social class, which is a classification ultimately used by the public administration for determining the LGBTQI+ individuals who should be tolerated by the society and those who are labelled as insane, criminals or terrorists, for example (BUENO-HANSEN, 2018). Consequently, it is fundamental to employ an intersectional approach that finds common interests and acknowledges the limits of similarities within such a group, also giving particularly marginalised members or subgroups more voice (AYOUB, 2019).

In the asylum context, due to intersectional discrimination, being a LGBTQI+ asylum seeker can add up to an experience of sustained violation of human rights, which deserves proper research and humane policies to be discussed. Works report that LGBTQI+ in detention centres, especially transgender women and gender non-conforming gay men are more vulnerable to violence than heterosexual, gender conforming asylum seekers (TABAK; LEVITAN, 2014), which demonstrates being a transgender woman or a gender non-conforming gay man adds up to a more vulnerable situation within detention centres than that of heterosexual asylum seekers and even other subgroups of the LGBTQI+ social group, for example, lesbian, gay and bisexual individuals. Because of that, Bruce-Jones (2015, p. 126) argues it is essential to be careful with the credibility assessment of LGBTQI+ asylum seekers, not only about their narrative on “sexuality, but intersectional identity, global geopolitical power relations, and the history of colonialism [...]”. Cruells and Coll-Planas (2013) agree the intersectional approach offers a more comprehensive reading of the structural problems, but warn that it must be designed in such a way it does not jeopardise achievements of single axis policies, either men-women or LGBTQI+ equality.

#### 3.4 EUROPEAN FRAMEWORK FOR THE PROTECTION OF LGBTQI+ INDIVIDUALS AGAINST DISCRIMINATION

The European continent is not only inserted in the global system of human rights – composed of the Universal Declaration, international covenants –, but also in a regional human rights system that complements the former, founded after the atrocities of the Second World War. The Council of Europe was founded in 1949, encompassing

47 European states and the already mentioned Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in 1950 (“European Convention”), explicitly prohibiting discrimination on any grounds, although the examples provided for in Article 14 are silent on gender identity and sexual orientation – as is Article 1 of the Protocol No. 12 to the European Convention (EUROPEAN COURT OF HUMAN RIGHTS, 2013a).

The European human rights system is perceived today as the most mature of regional systems, presenting the highest level of human rights judicialisation through the ECtHR (PIOVESAN, 2019). The court was merged with the European Commission on Human Rights in 1998, when Protocol No. 11 to the European Convention entered into force, both being substituted by a permanent ECtHR that provides decisions regarding case admissibility and on its merits. ECtHR acknowledges the right not to be discriminated against is not only violated when states treat equals unequally, but also when states fail to treat unequals differently, respecting their differences (TOBLER, 2014).

In order to support the European Convention and protect vulnerable groups and individuals, the European Social Charter was established in 1961 and revised in 1996. The decisions of its monitoring body, the European Committee of Social Rights, must be respected by the states concerned (COUNCIL OF EUROPE, 1996) and includes a discriminatory complaint regarding harmful and stigmatising portraits of homosexuals in educational materials which had to be withdrawn from schools by the state party involved (*International Centre for the Legal Protection of Human Rights v Croatia*) (EUROPEAN COMMITTEE OF SOCIAL RIGHTS, 2009). Case law of the ECtHR on LGBTQI+ affairs, in turn, encompasses examples of remarkable decisions that settle precedents for transgender rights (*X v Germany; PV v Spain; Goodwin v The United Kingdom*), decriminalisation of homosexual behaviour (*Dudgeon v The United Kingdom; Norris v Ireland; Modinos v Cyprus*), asylum seekers’ right to be protected against ill-treatment (*B and C v Switzerland*), right to a private life (*Smith and Grady v The United Kingdom*), legalisation of same-gender relationships (*Vallianatos and Others v Greece; Oliari and Others v Italy*), right to freedom of association (*Bączkowski and Others v Poland; Alekseyev v Russia*), right not to be discriminated against (*Bączkowski and Others v Poland; Alekseyev v Russia; Pajić v Croatia*), right to adopt (*Frette v France*) (EUROPEAN COURT OF HUMAN RIGHTS, 1979, 1981, 1988, 1993, 1996, 2000, 2002, 2007, 2011, 2013b, 2015, 2021).

The Parliamentary Assembly of the Council of Europe (“PACE”) relies on the work of committees, sub-committees and rapporteurs on several matters that cross the themes addressed herein, such as the Committee on Equality and Non-Discrimination, Committee on Migration, Refugees and Displaced Persons, Steering Committee on Anti-Discrimination, Diversity and Inclusion, Special Representative of the Secretary General on Migration and Refugees. The PACE has adopted important resolutions and recommendations concerning such individuals, such as the Recommendations 1470 of 2000 (on the inclusion of sexual orientation on the prohibited grounds for discrimination and revocation of all legislative provisions that imprisoned homosexual consenting adults), 1474 of 2000 (on the situation of homosexual asylum seekers and their partners, urging states to adopt criteria and guidelines concerning this population and review their policies on social rights), 1915 of 2010 (on measures to combat discrimination on grounds of sexual orientation and gender identity), 2021 of 2013 (on the intensification of compliance with and training against homophobia and transphobia) and Resolution 1728 of 2010 (on the provision of legal remedies to LGBTQI+ victims and legal recognition of their partnerships) (PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, 2000a, 2000b, 2010a, 2010b, 2013).

Furthermore, there is a second system that overlaps the European human rights system and also encompasses equality and non-discrimination provisions, formed by the European Union treaties, directives, acts and regional bodies. Whereas the primary role of the ECtHR was to protect human rights, equality and non-discrimination were not comprised within the core principles of the internal market of the European Union (VASILJEVIĆ, 2015). Policies concerning such principles were adopted by the Treaty of Rome, although their sole focus was equal pay for men and women in the labour market (COUNCIL OF THE EUROPEAN UNION, 2012). The reason for the adoption was not because of feminist ideals, but a concern that some countries could have a competitive advantage if their female labour force was cheaper (HYMAN et al., 2012). Only in the 1970s, coinciding with the year the International Labour Organization adopted the Declaration on Equality of Opportunity and Treatment for Women Workers, this provision was turned into directives on equal pay and equal treatment, whose aims were “the elimination of all discrimination on grounds of sex (sic)” and “equal treatment for men and women as regards access to employment” (COUNCIL OF THE EUROPEAN COMMUNITIES, 1975, 1976). Then, immigration, racial violence and xenophobia led to the adoption of the Race Relations Act of 1965, extended to



work-related issues in 1968, aiming to curb all acts and forms of discrimination (HYMAN et al., 2012).

The Treaty of Maastricht did not expand equality and non-discrimination to spheres other than employment, but it was transported to the core principles of the European Union as the treaty recalls that the European Union is founded on respect for equality and human rights (COUNCIL OF THE EUROPEAN UNION; COMMISSION OF THE EUROPEAN COMMUNITIES, 1992). In the meantime, the European Parliament adopted the Resolution on equal rights for gays and lesbians in the EC in 1994, calling out states to respect and observe human rights of such a population (EUROPEAN PARLIAMENT, 1998). In 1997, the Treaty of Amsterdam finally addressed non-discrimination beyond the employment framework and based on several grounds in its Article 19, namely “sex (sic), racial or ethnic origin, religion or belief, disability, age or sexual orientation”, also calling the Council to take appropriate action to combat discrimination (COUNCIL OF THE EUROPEAN UNION, 2012). This provided civil society actors with new means to fight against discrimination before the European Union (AGUSTÍN, 2013) and two directives dealing with racial and ethnic discrimination outside the labour market and with all Article 19 grounds within the employment field were passed after the adoption of the Treaty of Amsterdam. In the same year, the Council also decided to establish a community action programme to combat discrimination that would last five years through transnational cooperation with civil society. Both Directives 2000/43/EC and 2000/78/EC and the Council Decision 2000/750/EC address indirect discrimination – that “shifts the focus from formal equal treatment towards an examination of the effects in practice of rules/procedures on different groups” (BELL, 2003, p. 95) – and acknowledge multiple discrimination, although affirming only women are often victims of it (COUNCIL OF THE EUROPEAN UNION, 2000a, 2000b, 2000c). Other directives tackling discrimination grounds would be adopted in the next years, as the 2006/54/EC on discrimination between men and women in employment and the 2004/113/EC on discrimination on grounds of sex (sic) to the goods and services industry.

Another important instrument of the European Union framework of rights, the EU Charter, was adopted as a binding instrument when the Treaty of Lisbon entered into force in 2009. Because of that, “[a]ny discrimination based on any ground such as sex (sic), race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth,

disability, age or sexual orientation shall be prohibited” and all equality provisions of the Charter shall be observed (COUNCIL OF THE EUROPEAN UNION, 2012).

The European Union also has a judicial body, the Court of Justice of the European Union (“CJEU”), whose case law on LGBTQI+ affairs also encompasses landmark cases that extended the scope of sex (sic) equality to discrimination against transsexuals (*P v S and Cornwall County Council*), recognised the same-gender married partner as a spouse (*Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others*; ), reaffirmed the asylum seekers’ right to a private life and human dignity (*A, B, C v Staatssecretaris van Veiligheid en Justitie; F v Bevándorlási és Állampolgársági Hivatal*), recognised that a term of imprisonment which sanctions homosexual acts in the country of origin constitutes an act of persecution (*X, Y, Z v Minister voor Immigratie en Asiel*) (COURT OF JUSTICE OF THE EUROPEAN UNION, 1996, 2008, 2013, 2014, 2018).

As stated by Schiek (2005, p. 431), “[...] equality directives endeavour to engender civilised behaviour among citizens in their non-state centred activities through law, in other words, they aim to ensure a civil society which is inclusive and diverse rather than exclusive and particular”. However, it is also important to balance these packages of rights with policy measures that encourage social change (DE WITTE, 2010). Therefore, in the 2000s the European Union Agency for Fundamental Rights (“FRA”) was created to address intersectional categories of vulnerable groups, in which transgender persons and migrants have been inserted in since the beginning (LOMBARDO; VERLOO, 2009). FRA published important reports on non-discrimination, homophobia and transphobia, LGBTQI+ rights and discrimination on grounds of sexual orientation and gender identity (EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, 2011, 2020). The European Union also started supporting and funding non-governmental organisations that work with intersecting inequalities at the EU level, creating the opportunity to bring their expertise into policymaking (LOMBARDO; VERLOO, 2009). But Christoffersen (2020) believes that the interests of marginalised groups with intersectional marginalising characteristics are often hampered by the low status they occupy before the state.

These more recent interactions may have contributed to the adoption of the report “Tackling multiple discrimination: practices, policies and laws”, which finally addressed multiple discrimination directly with concept, causes and recommendations (EUROPEAN COMMISSION, 2007). Applying such a model enables coherent legal

interpretation where multiple grounds of discrimination are present (CRUELLES; COLL-PLANAS, 2013). Nevertheless, literature and case law prove intersectional cases cannot be brought before the CJEU, as it decides the cases in light of the single axis approach, even when multiple discrimination is present, analysing each dimension without taking into account how they interact with each other (AGUSTÍN, 2013; CENTER FOR INTERSECTIONAL JUSTICE, 2019; CHEGE, 2012; KANTOLA; NOUSIAINEN, 2009; LOMBARDO; VERLOO, 2009; MERCAT-BRUNS, 2018; NARDOCCI, 2018; VASILJEVIĆ, 2015). The ECtHR, on the other hand, has already decided on intersectional discrimination cases, although the term was not used or acknowledged (CENTER FOR INTERSECTIONAL JUSTICE, 2019). The literature, however, insists the intersectional approach should still be implemented and enforced.

All the arguments point toward using an intersectional approach as a way to tackle the shortcomings of the concept of multiple discrimination. At least two large advantages can be identified from adopting an intersectional approach. In the first instance, an intersectional analysis provides grounds to understand various discrimination experiences and in doing so, it allows discriminations which have remained hidden and unnoticed under previous anti-discrimination approaches to be disclosed and revealed. [...] In addition to this, enhancing the understanding of an intersectional analysis of discrimination will result in a more encompassing and effective policies to combat all forms of discrimination, including those that result from intersectional disadvantages. In other words, the use of an intersectional approach would allow the reform and re-shaping of existing anti-discrimination legal frameworks which could be applied to the largest section of population, in ways that multiple discrimination could not reach (MASSELOT; BULLOCK, 2013, p. 13–14).

Despite some efforts, the advancement of equality and non-discrimination on the grounds of gender identity and sexual orientation in Europe are, to some extent, stagnated (AGUSTÍN, 2013). Vasiljević (2015) observes EU directives have no great impact on private parties, there is lack of positive measures to correct inequalities and a backlog of pending cases in some European states when it comes to access to justice via the Council of Europe. EU member states are yet to adequately transpose anti-discrimination provisions to their domestic legal systems, although a formal commitment to do so has already been made (DE WITTE, 2010). Also in this regard, there is no guarantee on how adequate is the transposition happening, and more, whether the states are going to effectively implement them (HYMAN et al., 2012), as measures and policies concerning LGBTQI+ individuals are still contentious in some member states and applied unevenly across the European Union (COLL-PLANAS, 2011). Moreover, it is also important to stress out that notwithstanding the gradual

adoption thereof, there are still significant gaps, especially regarding intersexual and transgender individuals (TOBLER, 2014).

## CHAPTER 4 – EUROPEAN LGBTQI+ ASYLUM POLICIES: LITERATURE DISCUSSION AND THE GERMAN FEDERAL PROGRAMME

*So the entire system works in a way that it, or I would say, worked in a way that it kind of made lives very hard for LGBTI refugees and asylum seekers.*

*(German LGBTQI+ Asylum Programme Director,  
Interview I)*

### 4.1 RESEARCH DESIGN

This research is situated in a multidisciplinary framework, combining literature on human rights, LGBTQI+ rights, migration, asylum, international studies, public studies and international law scholars. Its main objectives are to understand the German involvement in the development of asylum policies specifically tailored to the needs of LGBTQI+ individuals and if the literature has been focused on commenting, criticising or recommending the elaboration of such policies both in the German and European contexts to understand similarities and differences in the way this issue is addressed.

Due to the complexity of the themes addressed herein, it would not be reasonable to rely on a single methodology to reach decent findings and answers. Therefore, it was developed through a qualitative approach, combining theoretical and empirical analyses, as well as a systematic literature review and an interview.

As regards LGBTQI+ asylum policies in Europe and Germany, we conducted a systematic literature review, as this method is useful for analysing and bringing together large bodies of documents, mapping out uncertainty and certainty areas, as well as areas in which there is little or no relevant research done. It is also important to keep in mind that single studies often must be understood in its own context, hence the need to combine diverse studies and findings to analyse patterns and a crystallised understanding on a given topic (PETTICREW; ROBERTS, 2006). As stated by Crossan and Apaydin (2010), a systematic review removes subjectivity of data collection, since it uses a predefined method to select documents that are going to be

analysed. The next stages of the systematic literature review proposed by this dissertation are addressed in the next Section.

As for the empirical analysis, we conducted a case study to comprehend the specificities of German policies for LGBTQI+ asylum seekers and refugees. A case study consists of a detail-oriented methodology that intends to solve one, or only a few objectives (YIN, 2014). It is described as a methodology suitable for an in-depth and comprehensive investigation of an issue, for example an organisation, program, group, event, phenomena etc. (HARRISON et al., 2017), and that is why it is therefore suitable for analysing the German policies for LGBTQI+ asylum. We used an interview and document analysis as methods to collect data on the German asylum policies. We interviewed the director of the German LGBTQI+ asylum programme to better understand the German programme using open questioning techniques to allow the respondent to discuss the theme more freely and collect more details of their answers (YIN, 2014). After an email and a phone call to the programme to understand the initiative and schedule the interview, it occurred in August 2021 via video call, lasting around 45 minutes. No previous questions made by the interviewer via email were answered in written form, but the director of the German LGBTQI+ asylum programme allowed us to make various questions about the programme in the video. The interview was recorded with the consent of the parties, then transcribed and is attached in its entirety as Appendix A to the end of this dissertation. The document analysis was performed with the documents concerning the German programme found on the Queer Refugees Germany and the Federal Office for Migration and Refugees (“BAMF”) websites. These different sources were then merged to create a meaningful dialogue that we captured in Section 4.2.2 of this dissertation.

#### **4.1.1 The common standards of the systematic research**

Since the objectives of this dissertation encompass the assessment of knowledge production on European LGBTQI+ asylum policies, a systematic literature review was conducted in order to understand the state of the art regarding this theme and help disseminating LGBTQI+ policies, either those idealised by the literature or those already implemented by European states.

The scope of the search was to find original work published in the form of articles, theses, dissertations, books and book chapters, reports and other documents

that would comment on or suggest LGBTQI+ asylum policies in Europe or in European states, hereinafter referred to as documents and articles as a group. This guideline thus excluded review papers, as the purpose of this systematic review is to create a bibliographic panorama of original research on that matter. The areas of knowledge searched varied from one database to another, but included social sciences (which encompasses, according to the search engines, anthropology, political science, education, geography, communication, public health and sociology, according to the databases surveyed) and law, since the objects of study analysed herein are inserted in a multidisciplinary field of study not compatible with the other options given by the search engines used. The databases were chosen out of convenience based on scope, reach, and ease of access. All searches were made throughout June 2021. More information on each of them will be provided in the following sessions.

The keywords were looked up in English and German when no specific Section of this Chapter describes otherwise. However, results in other languages were not disregarded, but analysed via translating tools. The searches used the keywords below through different arrangements in order to find documents that would represent this dissertation's purposes. From this point on, they are going to be presented in brackets and in lower-case letters to facilitate recognition when they are mentioned in the text, as they are numerous:

- (i) [affirmative policy], [affirmative action], and [*positive maßnahmen*], [*affirmative maßnahmen*], searched in their singular and plural forms in an attempt to connect LGBTQI+ asylum to policies and actions created to enhance marginalised groups representation in diverse environments, from which these groups have been systematically excluded, as defined by Fullinwider (2018);
- (ii) [asylum] and [asyl], as both a general matter and an excerpt of asylum seeker and *Asylbewerber*;
- (iii) [asylum policy], [refugee policy], and [asylpolitik], [*flüchtlingspolitik*], searched in their singular and plural forms, to refine the scope of the documents this dissertation was searching for, as a body of legislative measures concerning asylum and refugee matters;
- (iv) [europe], [european] and [*europa*], [*europäisch*] as the place or nationality in which these policies are or had been implemented;

- (v) [germany], [german] and [*deutschland*], [*deutsch*] as already stated in item iv;
- (vi) [lgbt] and [*lsbt*] as the basis of the acronym for the lesbian, gay, transgender, transvestite, intersex community, both in English and German, as well as other expressions of sexual orientation, gender identity and sexual characteristics;
- (vii) [queer], as understood by Luibhéid (2008) as those who identify themselves as LGBTQI+ and also those whose practices and identity do not fit in the hegemonic acronym;
- (viii) [refugee] and [flüchtling], searched in their singular and plural forms as the research object;
- (ix) [sexual minoritised] and [sexuelle minderheit], searched in their singular and plural forms, as other areas of knowledge do not use the acronym LGBT and its variations frequently; and
- (x) [sexual orientation] and [sexuelle orientierung], as part of sexual orientation, gender identity and sex characteristics.

The word gender and the expression gender identity in its entirety were not used because the results directed towards research exclusively on women. The expression sex characteristics is used less often, so the results would be unreliable, therefore also not being used herein.

Since some sets of keywords, like those listed below, were used to represent the same objects of research in different ways, they were not used together, but separately, one word of each group per search, generating different sets of searches:

- (i) [refugee], [asylum], [asylum policy], [asylum policies], [refugee policy], [refugee policies], [*asyl*], [*asylpolitik*], [*flüchtling*], [*flüchtlingspolitik*];
- (ii) [lgbt], [queer], [sexual minoritised], [sexual orientation], [*sexuelle minderheit*], [*lsbt*], [*sexuelle orientierung*];
- (iii) [affirmative action], [affirmative actions], [affirmative policy], [affirmative policies], [*affirmative maßnahmen*], [*positive maßnahmen*]; and
- (iv) [europe], [european], [german], [germany], [*deutsch*], [*deutschland*], [*europa*], [*europäisch*]



The plural and similar forms that start with the same radical (like asylum and asylum seeker, Europe and European, German and Germany, Europa and *Europäisch*) were substituted by an asterisk (\*), as all databases used supported its use to substitute characters, and accents and italic were removed, resulting in the following English and German keywords: [affirmative action\*], [affirmative polic\*], [asylum polic\*], [asylum\*], [europe\*], [german\*], [lgbt\*], [queer\*], [refugee\*], [refugee polic\*], [sexual minorit\*], [sexual orientation\*] and [affirmative maßnahmen], [asyl\*], [asylpolitik], [deutsch\*], [europa\*], [fluchtling\*], [fluchtlingpolitik], [lsbt\*], [queer\*], [positive maßnahmen], [sexuelle minderheit\*], [sexuelle orientierung\*].

As fragments of these subjects are already widely researched from different perspectives and fields of study, it would be rather difficult to gather systematic information regarding the specific topic discussed herein when looking up keywords such as [refugee\*] or [sexual orientation\*], either alone or together, only to illustrate. Due to that fact, the keywords were rearranged in each database so the results would be as reliable and feasible as possible, as each of the next subsections describes. It is also important to mention different databases behave in, are operated by and are designed through different means, being sometimes possible to conduct searches with several keywords in one engine, not being possible, however, to do the same in another.

#### 4.1.1.1 University of São Paulo's Portal

The first search engine used for retrieving information was the University of São Paulo's Portal (*Portal de Busca Integrada* in Portuguese), which is an institutional search engine available for staff, student body and faculty, which gathers information from a wide range of 312 databases (UNIVERSIDADE DE SÃO PAULO, 2021). The general search engine was used and the two areas of knowledge described in the previous Section did not change.

The keywords [refugee\*] and [sexual orientation\*] looked up together in any part of the articles were found in 4.295 results, for example, and were not analysed because they would not address the matters approached by this research directly. The same happened to [refugee\*], [sexual orientation\*], [german\*] (1.316 results); [refugee\*], [queer\*], [german\*] (494 results); [asylum\*], [sexual orientation\*], [german\*] (1.177

results); [asylum\*], [queer\*], [german\*] (436 results), among other combinations, as it was already expected.

The search subsequently moved on to more complex sets of keywords, using those described in the previous Section, in the following combination, aimed to find articles that dwell upon asylum policies to assist LGBTQI+ asylum seekers and refugees: [asylum\*] or [refuge\*], [lgbt\*] or [queer\*] or [sexual minorit\*] or [sexual orientation\*], [german\*], [affirmative action\*] or [affirmative polic\*]. The search brought 427 results. The next search was then altered to focus more on asylum as a whole, rather than in asylum seekers and refugees as individuals: [asylum\*], [lgbt\*] or [queer\*] or [sexual minorit\*] or [sexual orientation\*], [german\*], [affirmative action\*] or [affirmative polic\*]. This search found 147 results, the lesser quantity of results so far, which could be read as a more specific set of documents found.

At that point, we had already perceived the occurrence of several results containing the keyword [sexual orientation\*] that actually did not represent the results that would be adequate to this research as a whole. Six out of 10 documents on the first page of results were actually general remarks on asylum and non-discrimination clauses, such as “[...] because of their gender, sexual orientation, religion, race, language [...]”, “[...] religious beliefs, sexual orientation, mental ability and physical ability [...]”, and “[...] gender, just as religious belief, sexual orientation, age, class [...]”. Therefore, we decided to stop using such a term, which came to be represented by the other three terms identifying LGBTQI+ persons [lgbt\*], [queer\*] and [sexual minorit\*].

The next search was made as follows: [asylum\*], [lgbt\*] or [queer\*] or [sexual minorit\*], [german\*], [affirmative action\*] or [affirmative polic\*]. This search appeared to be less focussed in generic definitions of asylum, finding 65 results, but no mention was made to policies or any other term that would describe a greater body of measures concerning asylum matters as this dissertation would want the selected articles to do. Therefore, another search was performed without the keywords [affirmative polic\*], [affirmative action\*] and [asylum\*], all substituted by [asylum polic\*] and [refugee polic\*], since this dissertation, at all times, tried to find the most coherent documents with regard to policies, actions and measures specifically designed to serve the interests of LGBTQI+ asylum seekers and refugees. The search [asylum polic\*] or [refugee polic\*], [lgbt\*] or [queer\*] or [sexual minorit\*], [german\*] found 47 results, including a review paper, a newspaper article and a medical article that were not retrieved. As it was the most assertive search thus far, it was used as the standard

search for the next databases that could support such a format of search. This last search was also remade after substituting [german\*] by [europe\*], and 70 results were found, two being review papers and other two newspaper articles. The remaining documents from these two last searches were saved for the next phase. The two searches merged into only one in German – [asylpolitik] or [fluchtlingpolitik], [lgbt\*] or [lsbt\*] or [sexuelle minderheit\*], [deutsch\*] or [europa\*] – found three documents, all saved for the next phase. Duplicates were disregarded immediately and the remaining documents were saved to undergo the analyses described in Section 4.1.2.

The retrieved documents were found on the following collections and databases: Academic Law Reviews (LexisNexis), Annual Reviews, Directory of Open Access Journals (DOAJ), ERIC (U.S. Dept. of Education), Érudit Journals, HAL (CCSD), JSTOR Archival Journals, OneFile (GALE), Oxford Journals (Oxford University Press), Project MUSE, Sage Journals (Sage Publications), Springer, Wiley Online Library.

#### 4.1.1.2 CAPES Portal

The most successful searches were repeated on the CAPES' Portal (*Portal de Periódicos Capes* in Portuguese), which looks for documents in a wide range of more than 45 thousand scientific publications among more than 260 collections and databases (COORDENAÇÃO DE APERFEIÇOAMENTO DE PESSOAL DE NÍVEL SUPERIOR, 2021). The results are going to be presented without mentioning newspaper articles and review book chapters and papers, as they are usually present in very small numbers and are not of this dissertation' interest. Following the same knowledge areas as in the last search engine, the search [asylum polic\*] or [refugee polic\*], [lgbt\*] or [queer\*] or [sexual minorit\*], [german\*] or [europe\*] found 92 results and the German version found three results, all of them compiled for the next phase after duplicates were disregarded.

The documents were retrieved from the following collections and databases: Advanced Technologies & Aerospace Database, Annual Reviews, Applied Social Sciences Index & Abstracts, Arts & Humanities Citation Index (Web of Science), Directory of Open Access Journals (DOAJ), ERIC (U.S. Dept. of Education), Materials Science & Engineering Database, Materials Business File, Materials Research Database, OneFile (GALE), Oxford Journals (Oxford University Press), PMC (PubMed)

Central), Project MUSE, Sage Journals (Sage Publications), Scopus (Elsevier), Social Sciences Citation Index (Web of Science), Sociological Abstracts, Sociological Abstracts, SpringerLink, Taylor & Francis Online, Wiley Online Library.

#### 4.1.1.3 Dedalus

Dedalus is the University of São Paulo's bibliographic database in which it is possible to see all scientific production from students, alumni and faculty. The tool does not offer support for symbols (quotation marks, asterisks etc.) and since it only stores documents from the own University, the searches were also performed in Portuguese through Dedalus' advanced search engine.

No results were found using the following combination of keywords: [asylum policy], [lgbt], [german] – also in German and Portuguese [asylpolitik], [lsbt], [deutsch] and [política de asilo], [alema] – and its variations that included the keywords [refugee policy], [queer], [sexual minoritised], [europe], [fluchtlingspolitik], [sexuelle minderheit], [europa], [política de refúgio], [minoría sexual]. The searches were then simplified to [refugee], [lgbt]; [alemanha], [lgbt]; [alemanha], [queer], which were also unsuccessful. The search [alemanha], [refúgio], in turn, found three results: one interview, one working abstract from a seminar and a master's dissertation whose area was foreign to this research, the three of them being disregarded.

#### 4.1.1.4 HeinOnline

HeinOnline is a database that compiles more than 192 million pages of legal content, including European databases, such as the European Centre for Minority Issues and English Reports (HEINONLINE, 2021). The main search was performed in English and German, but just one result was found and collected. More generic searches, such as [asylum\*] or [refugee\*], [lgbt\*] or [queer\*] or [sexual minorit\*], [german\*] or [europe\*] could not be used, as it found 6,315 results. Then, [asylum policy] or [refugee policy], [lgbt] or [queer], [german] or [europe] found and 86 documents, which were collected after dismissing newspaper articles, review papers and indexes.

The documents were retrieved from the following collections and databases: American Bar Association Journals, Civil Rights and Social Justice, Core U.S.

Journals, Criminal Justice Journals, Criminal Justice & Criminology, Federal Register Library, International & Non-U.S. Law Journals, Law Journal Library, Legal Classics, Most-Cited Law Journals, Women and the Law (Peggy), World Constitutions Illustrated

#### 4.1.1.5 DART-Europe Portal

DART-Europe is a portal operated through a partnership between several research libraries that compiles theses and dissertations from more than 568 universities in 29 European countries (DART-EUROPE, 2021). Hence the portal was chosen to be one of the search engines used to retrieve documents for this systematic research.

No results were found for the main search performed in the other databases in English and German, [asylum polic\*] or [refugee polic\*], [lgbt\*] or [queer\*] or [sexual minorit\*], [german\*] or [europe\*]. The search was then simplified to [german\*], [lgbt\*], [asylum\*], also in German and without success in both languages. Because it was a more targeted and relevant portal to this dissertation, we insisted on the search with other keywords in smaller combinations. However, the portal did not allow the searcher the selection of desired areas of knowledge, which makes the search less customised to our objectives.

The search [europe\*], [asylum\*] or [refugee\*], for example, came back with more than 400 results. The search [german\*], [asylum\*], in turn, found 27 results, but several were from foreign areas to this dissertation, thus not contributing to the objectives already outlined. Therefore, the documents were analysed and only seven documents were retrieved, for they belong to subjects encompassed by social sciences or law areas of knowledge. The search [german\*], [lgbt\*] or [sexual minorit\*] or [queer\*] found 17 results, 16 from distant areas of knowledge, therefore none being retrieved. In this same sense, [german\*], [sexual orientation\*] found four results and one was retrieved; [asylum\*], [lgbt\*] or [queer\*] or [sexual minorit\*] found three results and one was retrieved. No results were found for [german\*], [sexual minorit\*]; [europe\*], [asylum\*] or [refugee\*], [lgbt\*] or [queer\*] or [sexual minorit\*]; [europa\*], [asyl\*], [lgbt\*] or [lsbt\*] or [queer\*] or [sexuelle minderheit\*]; [deutsch\*], [lgbt\*] or [lsbt\*] or [queer\*] or [sexuelle minderheit\*]. The search [asylum\*], [sexual minorit\*], found one result that did not correlate to this dissertation. Notwithstanding the lack of results thus far, the last three searches were more fruitful: nine results were retrieved from

[deutsch\*], [asyl\*] or [fluchtling\*], but five had their access restricted only to their universities; three results were collected from [asyl\*], [lgbt\*] or [lsbt\*] or [queer\*] or [sexuelle minderheit\*]; and two more documents were collected from the search [europe\*], [asyl\*], [lgbt\*] or [queer\*] or [sexual minorit\*]. Duplicates were disregarded and the remaining documents retrieved from DART-Europe Portal were grouped for further analysis.

The results were found in the following collections and databases: DDF, ePrints Soton, Glasgow University Theses, LSE Theses Online, Northumbria Research Link, UCL Discovery, University of Gloucestershire Research Repository, VŠKP.

#### 4.1.1.6 Bielefeld Academic Search Engine

BASE – Bielefeld Academic Search Engine, is a search engine created by a German university, the Bielefeld Universität. It indexes more than 270 million documents from more than 8,9 thousand content providers, including documents from European countries (BIELEFELD ACADEMIC SEARCH ENGINE, 2021). The search engine does not read certain symbols and marks, so double keywords were avoided.

The first search was simplified to [asylum\*] or [refugee\*], [polic\*], [lgbt\*] or [queer\*], [german\*] or [europe\*], finding 248 results composed of diverse types of documents and areas, as the search engine does not allow any type of sorting. The first page of results was promising, as eight out of 10 documents addressed Europe or a European country, asylum and LGBTQI+ individuals in their titles. Because of that, it was decided the results should be analysed at this first phase, despite the large number of documents found. However, all German searches – namely [asyl\*] or [fluchtling\*], [lgbt\*] or [lsbt\*] or [queer\*], [deutsch\*] or [europa\*]; [asylpolitik] or [fluchtlingpolitik], [lgbt\*] or [lsbt\*] or [queer\*], [deutsch\*] or [europa\*] – came back with no results.

Because this search engine indexes a great number of documents, less specific searches were imprecise. For example, [asylum\*] or [refugee\*], [lgbt\*] or [queer\*] found 313,025 results. After disregarding duplicates, documents retrieved from BASE were grouped for further analysis.

The results were found in the following collections and databases: Aalborg University Publications, Adelphi University Special Collections: Digital Collections, American University Washington College of Law, Centre pour la Communication

Scientifique Directe, City University of New York: CUNY Academic Works, Croatian Digital Theses Repository (National and University Library in Zagreb), Directory of Open Access Books (DOAB), Directory of Open Access Journals (DOAJ), German National Library of Science and Technology, GettDigital (Gettysburg College Digital Collections), IRIS Università degli Studi di Bologna, JSTOR, Leiden University, Lund University Publications Student Papers, North Dakota State University: Digital Horizons, Oxford University Press, Repositori Universitat Jaume I, Repository of Bjelovar University of Applied Sciences, Sabanci University Research Database, Sage Publications, Springer, The University of Milan: Archivio Istituzionale della Ricerca, The University of Utah: J. Willard Marriott Digital Library, UCL Press, Università degli Studi di Verona: Catalogo dei Prodotti della Ricerca, Université de Lausanne, Université Paris Descartes, Université Paris Diderot, University of Alabama at Birmingham: UAB Digital Collections, University of Bristol: Bristol Research, University of Gothenburg: GUPEA, University of Illinois Press, University of Lethbridge Digitalised Collections, University of Malta, University of Sussex: Sussex Research Online, Uppsala University.

#### **4.1.2 Selection of documents for the final cut**

After the results from the multiple databases were retrieved, they underwent a pre-analysis in order to check whether there were any duplicates left, any documents that were from research areas foreign to those stipulated above or published as review articles, as these criteria should have already been met. Then, the remaining 309 documents were analysed based on their abstracts, tables of content, introduction and conclusions, so we could understand whether LGBTQI+ asylum and refugee policies and experiences in Europe or in any specific European state were addressed by them at any level – either domestic, regional, or international. Asylum seekers and refugee's experiences would mean that the documents that focused on the way asylum seekers or refugees were treated during their stay in accommodation centres or when undergoing asylum procedures were also considered, as we consider that the way an asylum seeker or refugee is treated or perceives treatment towards them is also part of the policies scope proposed hereby. Europe was analysed based on its geographical contours, encompassing articles that addressed any of the member states of the Council of Europe.

On a side note, this phase of searches showed that documents from the 1990s and early 2000s had an immature approach to the theme, discussing whether sexual orientation and gender identity could be considered valid grounds for asylum, as one could already imagine based on the previous knowledge presented in previous chapters. Nevertheless, those texts were considered and transported to the next phase when the minimal requirements of area of knowledge and scope were met. We actually had second thoughts concerning a temporal limitation, but we decided to let those texts be examined closer in the next phase, as they could potentially unveil valuable information.

After the aforementioned analysis, 65 were selected following the aforementioned guidelines. One of the documents retrieved was an edited volume composed of five chapters written by different authors on different correlated subjects. Because of that, we decided to treat it as five different documents in our following analysis, hence considering the existence of 69 documents instead of 65, as the edited volume itself was disregarded and the five separate chapters were taken into account. The 69 documents were read in their entirety and it was noted that 5 of them discussed European LGBTQI+ asylum from a theoretical standpoint only, without any empirical discussion, comments or suggestions, being therefore disregarded. The final cut analysed in this Section is therefore made up of 64 documents.

As one could already imagine based on the aforementioned information, no texts before 2010 made the final cut due to the lack of maturity of the discussions around the theme studied herein. It is relevant to mention that the results discussed next are not representative of an exhaustive account on asylum policies implemented or discussed across Europe, but what was filtered by the criteria rigorously adopted and applied for retrieving research material in this dissertation. Some aspects and characteristics not found in the documents will however be also discussed below, since the lack of certain information on regions, groups of individuals or specific policies is as valuable to this analysis as are the documents that were actually found and retrieved.

The presentation and analysis of data discussed next were first separated by state or regions, depending on the research object of the documents collected in the systematic literature review. Germany was discussed in a separate Section that compiled the literature review with the interview conducted with the German LGBTQI+ asylum programme director and document analysis to create a thorough dialogue.



Next, the discussion section focuses on the systematic literature review alone, and lastly, final remarks on European LGBTQI+ asylum are made based on the general research findings.

## 4.2 PRESENTATION AND ANALYSIS OF DATA

### 4.2.1 European LGBTQI+ asylum policies: a systematic literature review

#### 4.2.1.1 Austria

The only article found that discussed asylum policies in Austria comments on how intersecting characteristics play a decisive role both in the asylum process and in the attempts of asylum seekers and refugees to integrate in the European society. As an example it mentions the pervasive islamophobia that some LGBTQI+ asylum seekers from the Middle East, North Africa, and Central and South Asia experience when they arrive in Austria. Due to that, it is suggested that asylum officers and legislators pay more attention to intersecting characteristics, revisit specific asylum procedures for LGBTQI+ individuals due to their vulnerabilities and provide training on discriminatory behaviours towards LGBTQI+ asylum seekers to all people who somehow provide services to these populations (ALESSI et al., 2020).

#### 4.2.1.2 Belgium

Four articles were found and account for diverging opinions on the current situation regarding LGBTQI+ asylum seekers in the country. Despite two articles addressing LGBTQI+ individuals in general, a third one addresses gay asylum seekers only and a fourth only encompasses lesbian, gay and bisexual asylum seekers. It was understood that Belgium has been advancing in the protection of LGBTQI+ asylum seekers and maintains instruments to guide the work around sexual orientation and gender identity as grounds for granting refugee status. The country also trains its protection officers and interpreters regularly, providing them with gender-related documents and information that comes from researchers that work in partnership with the government. It is clearly suggested that other states create a unit to deal with sexual orientation and gender identity cases and to be in contact with local LGBTQI+

associations, making collaboration easier for the creation of the guidelines and training sessions (HAMILA, 2019). In that sense, it is also suggested that LGBTQI+ awareness is promoted to all interested parties in the asylum system, both inside and outside the hearing room (SCHUTZER, 2012). One innovative action created by the country is the relocation of perpetrators of homophobic and transphobic behaviours to other reception facilities, which takes the burden out of LGBTQI+ asylum seekers and puts it back in those who committed it (JANSEN, 2013).

On the other hand, the third article understands that local mechanisms and policies could be reformed so gay applicants (this article only addresses gay asylum seekers and refugees specifically) can undergo a fair asylum application, which would include expanding the notions of what is it to be gay outside of the western-centric perspective and changing the way interviews are conducted and interpreters are provided, as they may also be homophobic and knowing precisely what was said by the asylum seeker is crucial to the process. An interesting point made by the author is the suggestion of providing asylum seekers with more opportunities to be connected digitally and how this could contribute to the way these asylum seekers could connect to their communities, network and form their own identities in the new state (DHOEST, 2019).

#### 4.2.1.3 Denmark

The only article that addressed LGBTQI+ asylum in Denmark focused its analysis on how the system does not acknowledge LGBTQI+ vulnerabilities, thus rendering applicants even more exposed to violence. It also mentioned that this lack of specialised support is called equality in the country, as they would be treating everybody the same way, which characterises a misconception on how the system should look like for vulnerable groups (CANNING, 2019).

#### 4.2.1.4 Europe and the European Union

Many articles were written addressing the whole European Union asylum system and the European continent. Among the 15 articles discussed in this Section, two broadly included the states part of the Council of Europe, whereas the other 13 discussed the European Union common asylum standards. Articles in this Section

addressed several aspects of the asylum system in Europe and the European Union and struggles of the LGBTQI+ community throughout the process.

There were mentions and criticism of the western definitions of what it is to be LGBTQI+ and how sexuality and gender identity are performed in the society, as well as how stereotypes play a role during LGBTQI+ asylum (DANISI; FERREIRA, 2021). The two articles about the Council of Europe and the Strasbourg Court went on to criticise the jurisprudence of the Court, which still uses a narrow and binary reading of LGBTQI+ individuals' sexual and gender expressions, disregarding altogether human fluidity (FERREIRA, 2021; WIELAND; ALESSI, 2020). Also on stereotypes, two of the 15 articles addressed lesbian asylum seekers and refugees specifically and state that there are many challenges regarding lesbian visibility in the asylum system (LEWIS, 2013), and that naming lesbians and gays separately instead of a generic "gay people" or "homosexuals" may contribute to the recognition of the gendered differences in the asylum system (MILLBANK, 2013). Lastly, we are remembered that when faced with

[...] leaders and movements openly opposed to all forms of diversity, it is essential to recognize the difference by banishing stereotypes and prejudices that, after having been used to maintain structures of oppression within our societies, survive in asylum procedures and are used to abandon the most vulnerable people<sup>3</sup> (DÍAZ, 2019, p. 288).

Regarding training and sensitisation of asylum officials, interviewers and interpreters in the asylum system – sometimes addressed as expert advice and counselling (AUSTIN, 2012) – some texts pointed out the importance of specialised personnel throughout the process. One article mentioned that training should encompass not only LGBTQI+ experiences with discrimination, differences between gender identity and sexual orientation, history, terminologies, but also LGBTQI+ cross-cultural knowledge, being mindful, however, that the knowledge could lead to stereotyping (LAVIOLETTE, 2013). The main idea on providing cultural sensitisation was corroborated by a second article (ANDRADE et al., 2020). The two remaining articles went on to defend that the European Asylum Support Office should promote training, guidelines and good practices on LGBTQI+ asylum, to make sure domestic authorities would follow a consistent LGBTQI+ asylum policy (FERREIRA et al., 2020;

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<sup>3</sup> Originally in Spanish: "[...] líderes y movimientos abiertamente contrarios a toda forma de diversidad, es imprescindible reconocer la diferencia desterrando estereotipos y prejuicios que, tras haber sido utilizados para mantener estructuras de opresión en el seno de nuestras sociedades, perviven en los procedimientos de asilo y son utilizados para desamparar a las personas más vulnerables."

JANSEN, 2013). Even though interpreters and interviewers should receive such training, they were also mentioned separately by at least three articles due to the need for more flexibility regarding the interview, which can make asylum seekers hesitant in sharing their story when they don't trust the people in the room due to their gender or suspect the interpreter, usually from their same cultural background, is not properly translating their thought due to plain discrimination. Therefore, the literature recommends that asylum seekers themselves should be able to choose the gender of their interpreter and interviewer (DANISI; FERREIRA, 2021), have a confidential, private and appropriate interpretation service (ANDRADE et al., 2020) and allow asylum seekers to appoint their own interpreter paid by the state, including the right to ask for a replacement in case they have concerns about the one provided at first (FERREIRA et al., 2020).

The importance of placing LGBTQI+ asylum seekers in a category among applicants with special reception needs was also emphasised by four articles due to the lack of appropriate reception and accommodation conditions, as well as overall support (AUSTIN, 2012; FERREIRA et al., 2018, 2020; JANSEN, 2013). These very same reception, accommodation and other infrastructural conditions – or the lack thereof – were often mentioned by the articles that make up this Section, at least in seven of them. Among those, many recount violence acts suffered by asylum seekers and refugees in accommodation centres, including verbal, physical and sometimes sexual abuse, social exclusion (FERREIRA, 2018a; JANSEN, 2013) or their concerns regarding their safety and lack of appropriate infrastructure in detention and reception centres (DANISI; FERREIRA, 2021; FERREIRA et al., 2018), sometimes due to being housed in the countryside, far away from LGBTQI+ communities, usually located in capital cities (JANSEN, 2013). These articles recommend that LGBTQI+ asylum seekers be given the opportunity to be housed with other LGBTQI+ individuals (FERREIRA et al., 2020), trans persons be provided the needed support including with hormonal therapy (ANDRADE et al., 2020; FERREIRA et al., 2020), that complaint systems be put in place, or in use whenever they already exist – as in many EU states – but are not enforced, that LGBTQI+ asylum seekers be housed close to where they are more likely to find social support (DUSTIN; HELD, 2021) and that LGBTQI+-sensitive reception facilities be created across member states (FERREIRA, 2018a).

As regards the country of origin, five articles discussed how the notion of safe country of origin, and the misuse and low quality of such information is problematic to

correctly assess LGBTQI+ asylum seekers' application (DANISI; FERREIRA, 2021; FERREIRA, 2018a). The articles found defend the understanding that refugee status should be granted to those who come from places where sexual orientation and gender identity are criminalised (JANSEN, 2013), that the "EASO should ensure that Member States' asylum and judicial authorities make better use of existing resources in decision-making and develop its COI [country of origin] resources by including specific legal and social data on SOGI minorities" (FERREIRA et al., 2020, p. 9), and reject the establishment of EU common lists of safe countries of origin (FERREIRA, 2018a) and the concept of a safe country altogether (FERREIRA et al., 2020).

The importance of providing information to asylum seekers regarding the possibility of claiming international protection based on the persecution on grounds of sexual orientation or gender identity was mentioned at least three times. Such an information should be provided in different moments, languages, and accessible terminology (FERREIRA et al., 2018, 2020), as "[w]ithout that information, many SOGI asylum seekers may either seek to lodge an asylum claim based on other aspects of their experience of persecution or not lodge an asylum claim at all, thus jeopardising their chances of obtaining international protection" (FERREIRA, 2018a, p. 33). This situation is also linked to the lack, or absence of data on LGBTQI+ asylum, so it was also advised that the EU and member states collect such data (BEGAZO, 2019; FERREIRA, 2018a; FERREIRA et al., 2020).

Other more procedural issues were also addressed, although in less quantity, as follows: sharing of the burden of proof between asylum seekers and public authorities (ANDRADE et al., 2020; FERREIRA, 2018a; FERREIRA et al., 2018); ensuring application will not be fast-tracked, which could cause more harm than good, as the asylum seeker is often still traumatised by the asylum system and there is a short amount of time for a lawyer to work on their favour (AUSTIN, 2012); and urging the EU to not consider a late disclosure of sexual orientation or gender identity as damaging to one's credibility in their asylum application (FERREIRA et al., 2020).

The promotion of social integration measures, including social, psychological, legal, as well as those to improve access to higher education, labour market and training (ANDRADE et al., 2020) and social support from one another (DUSTIN; HELD, 2021) were mentioned as suggestions to the EU, among the following topics: the wording around sexual orientation, gender and gender identity, being suggested that recitals make it clear that the documents address also sexual characteristics and

gender expression whenever any of the aforementioned terms are cited (FERREIRA, 2018a; FERREIRA et al., 2018; LAVIOLETTE, 2013), as well as naming lesbians and gay men separately, paving the way for the recognition of an invisible, gendered difference in the asylum system (MILLBANK, 2013). It is also important to be mindful of intersectionalities in LGBTQI+ asylum claims (DUSTIN; HELD, 2021; FERREIRA, 2021) and connect the LGBTQI+ asylum seekers with NGOs and organisations so they can provide support (ANDRADE et al., 2020). These organisations seem to play an important role in the success of their claims and the EU should provide more funding to such initiatives, while also collaborating with them in different areas, building the capacity of activists and organisations around the world (FERREIRA et al., 2020).

Despite often operating with minimal or no funding, and on a largely voluntary basis, LGBTQI+ groups and organisations frequently support claimants through the whole asylum journey and beyond, and the support they offer is enormous and wide-ranging: they give general legal advice, prepare claimants for interviews and appeal hearings, write support letters and collect other evidence for their claims (such as country of origin information), accompany claimants to interviews and court hearings, act as witnesses in hearings, find solicitors with expertise on SOGI claims, help cover the legal costs, and of course provide emotional support – all of which may contribute to a positive outcome of the claim. This suggests that it is crucial to make independent SOGI support available to claimants (DUSTIN; HELD, 2021, p. 207).

In more general lines, it is suggested that the EU addresses wider issues of discrimination and violence also beyond the asylum system (ANDRADE et al., 2020) and that it calls upon member states to include in their domestic legislations to define the social groups and include LGBTQI+ asylum seekers in it explicitly (BEGAZO, 2019).

#### 4.2.1.5 France

The two articles found that discourses on the French LGBTQI+ asylum scenario critique different aspects of the asylum system. First, there seems to be a lack of information and data on LGBTQI+ asylum seekers and refugees in the country, something that we have already addressed in other contexts of this research, which seems to occur deliberately, as the country discourages individuals to apply for international protection by adopting restrictive welfare and labour support. Yet, it does have a category of special protection related to vulnerable LGBTQI+ asylum seekers in its system (GIAMETTA, 2020).

The second article focuses on the relationship between the organisations and NGOs providing support to LGBTQI+ asylum seekers and how they also became a part of the asylum administration themselves, by being in charge of certain administrative responsibilities and even implementing policies of suspicion similar to those used by the state in order to assign volunteers to some asylum seekers, while leaving other with no support, which the article calls "micro-politics of support" (CESARO, 2021).

#### 4.2.1.6 Greece

The article found on Greek asylum context goes beyond accommodation struggles asylum seekers face to also discuss innovative approaches and their rights in general. The article is critical of the Greek asylum system, mentioning that state policies are restrictive, thus excluding and marginalising asylum seekers and refugees. Besides discussing accommodation issues, the article mentions asylum seekers' right to the city, to difference and to information as basic rights and argues for their right to self-organise housing facilities, which is part of a Greek project that includes self-organised LGBTQI+ spaces with positive outcomes. Lastly, the article also proposes a new vision beyond the legal and legislative norms that "is based on activist, political and social relations that highlight collective agency" (TSAVDAROGLOU et al., 2019, p. 126), which falls under the "Promoting Social Integration" pillar outlined by us.

#### 4.2.1.7 Italy

Italy was addressed by three articles on LGBTQI+ asylum policies with regard to different issues. There seem to be no record keeping on LGBTQI+ asylum seeking in Italy, nor about family reunification of LGBTQI+ families or partners, which could demonstrate how important would be the creation of local projects to support such a category of applicants (CARTABIA et al., 2010). Furthermore, LGBTQI+ asylum seekers are not placed in any special category, nor their intersectional characteristics are acknowledged to make sure their rights are not violated (MATHESON, 2019). Then, they undergo a series of dehumanising experiences in a heteronormative asylum system where they constantly fear to be outed, experience mental and physical health issues, homophobia, transphobia and racism (DUSTIN; HELD, 2021).

It seems, however, that LGBTQI+ organisations play an important role in informing authorities, requesting arrangements and making sure their rights are respected throughout the asylum process, whenever they are in the picture (DUSTIN; HELD, 2021). Some also provide anti-violence accommodation voluntarily and provide psychological and legal advice to LGBTQI+ asylum seekers (CARTABIA et al., 2010).

#### 4.2.1.8 The Netherlands

Five articles in total addressed asylum policies for LGBTQI+ individuals in the Netherlands. Two of them criticised how the western standards for what it is to be an LGBTQI+ individual (HERTOGHS; SCHINKEL, 2018) play a role in the asylum process in the country:

[...] an asylum claim is denied because the applicant's appearance and story do not fit stereotypes of what an LGBT individual is assumed to look like, act like, know about and experience in their home country. Others have been denied because the applicants were not familiar with the laws on homosexual behaviour or with the gay and lesbian bars in their countries of origin. Applicants who are married to a person of another sex or who have children have also been denied because they do not fit conventional notions of being queer or trans (MCNEAL; BRENNAN, 2021, p. 172).

It is problematic that the country do not indicate who should fall within the category of vulnerable LGBTQI+ individuals (MIDDELKOOP, 2013), being suggested by another article that specific asylum policies for vulnerable groups, especially LGBTQI+ individuals, be re-examined (ALESSI et al., 2020).

As regards accommodation, it is worth emphasising that sometimes LGBTQI+ individuals are housed together (MCNEAL; BRENNAN, 2021), but no attention to intersectional characteristics is paid, which is highly recommended by an article (ALESSI et al., 2020).

In order to examine the asylum applications, information on the country of origin is usually provided by organisations voluntarily, even though some judges used such information to corroborate stereotypes about the countries of origin (MCNEAL; BRENNAN, 2021). The Dutch asylum system acknowledges, however, that LGBTQI+ people cannot be expected to hide their sexual orientation or gender identity upon return (BATTJES, 2013).

Other guiding suggestions provided concern training to all of those who provide services in the asylum system, providing fund to organisations that offer support to



LGBTQI+ asylum seekers so they can expand their services when the state itself cannot provide such aid (ALESSI et al., 2020) and, on a procedural level, shifting the focus of credibility to whether the actors of persecution perceive the applicant as an LGBTQI+ individual instead of expecting them to provide elements of their persecution (MIDDELKOOP, 2013).

#### 4.2.1.9 Norway

Similar situation concerning the western LGBTQI+ identity narrated in the last Section is again addressed in the Norwegian context.

[...] Norwegian immigration officers' perceive credible asylum seekers as those who are capable to reflect upon their own sexual orientation or gender identity and use Westerns identity categories to substantiate their claim. Norway can be a safe haven for queer asylum seekers, but merely those who adhere Norway's homonormative understanding of sexual identity and gender identity. [...] In doing this, the Norwegian state risk to reproduce and reinforce a hierarchy for types of sexualities and types of migrants (TORVIK, 2017, p. 84).

Such a position was observed in this article through judgements and their justifications, while adding that the Norwegian restrictive asylum policy is maintained by filtering desired LGBTQI+ individuals versus those who would not represent western stereotypes.

#### 4.2.1.10 Portugal

The three articles that discuss the asylum situation for LGBTQI+ individuals in Portugal briefly narrates the current status and then focus on providing suggestions to the Portuguese LGBTQI+ asylum policy.

Portugal was praised for accepting self-identification as LGBTQI+ and for not adopting any discretionary arguments regarding return to the country of origin (FERREIRA, 2016). It was also observed that asylum seekers are able to request their interviewer to be of a particular gender, and that when such a request is not possible, they are paired with an interviewer of the asylum seeker's gender (FERREIRA, 2011). However, no special training regarding LGBTQI+ asylum was identified and no information on the possibility of applying for international protection based on sexual

orientation and gender identity persecution was found in the brochures provided (FERREIRA, 2011, 2018b).

As suggestions for improving the Portuguese asylum system for LGBTQI+ individuals, the article mentions the importance of acknowledging the specific hardship LGBTQI+ asylum seekers endure regarding internal relocation, due to discrimination and violence, the quality improvement of the country of origin reports used by the Portuguese authorities and recognising the criminalisation of LGBTQI+ as persecution per se, and the improvement of the specialised legal services provided (FERREIRA, 2016). Also interesting to mention that organisations and academics in Portugal are increasingly dedicating their attention to LGBTQI+ asylum, which will ultimately raise more awareness and improve the quality of the services provided locally (FERREIRA, 2011).

#### 4.2.1.11 Serbia

In the Serbian context, the only article retrieved in the search parameters focused its analysis on the experience of LGBTQI+ asylum seekers with accommodation and how they end up experiencing violence due to their LGBTQI+ status, as the only categories sorted by the Serbian authorities to avoid violence in accommodation centres are nationality and religion (BADALI, 2019).

#### 4.2.1.12 Spain

The only article found addressing the Spanish context criticises how LGBTQI+ asylum seekers are analysed through stereotypes, leading to unsuccessful applications: “‘Queer (in)credibility’ functions as a coherent and solid narrative that conforms to the cis-heteronormative and racialising borders of asylum (re)produced by Spanish jurisprudence” (PEREGO, 2021, p. 146).

#### 4.2.1.13 Sweden

The five articles found for Sweden focused primarily on specialised support and infrastructure for LGBTQI+ asylum seekers. One of the articles addressed only lesbian,

gay and bisexual asylum seekers, whereas the others addressed LGBTQI+ asylum seekers in general.

The impact of heteronormative and western concepts around LGBTQI+ individuals were again mentioned as a means to select the “desirable” individuals in the asylum system (BURZAN, 2016; MIR, 2019), which may cause violence and vulnerability to the other LGBTQI+ asylum seekers (CANNING, 2019). The country, however, seems to offer training to its asylum officers, even though it is suggested that the training is done more often, that asylum officers rotate less to other positions and that it includes questioning style, which is a major issue in the Swedish LGBTQI+ asylum process (MIR, 2019). The federal migration agency deploys efforts outside the hearing room to make sure to promote LGBTQI+ awareness to all interested parties in the asylum process (SCHUTZER, 2012), also pointing out it is continuously working on improving the asylum system and the quality of LGBTQI+ examination, which includes attention to vulnerable groups in the system (MATHESON, 2019).

No reports of homophobia or racism were pointed out, but lack of preparation, good interpretation services (MATHESON, 2019), and inadequate accommodation and healthcare (MIR, 2019) were mentioned. Another recurring discussion concerns the location where LGBTQI+ asylum seekers are placed, usually in remote, isolated locations, which the state is trying to avoid by having partnerships with local LGBTQI+ organisations to find suitable accommodations closer to cities where activities and healthcare for LGBTQI+ individuals are available (MATHESON, 2019).

Lastly, it is also suggested by one article that research on this topic separate sexual orientation from gender identity, so experiences of different LGBTQI+ groups of asylum seekers can be analysed separately (MIR, 2019).

#### 4.2.1.14 Switzerland

The article on Swiss LGBTQI+ asylum retrieved in the research mentioned that LGBTQI+ individuals were always included in the ground of persecution due to membership to a particular social group, however point out the absence of recurrent reports and a continuous framework on LGBTQI+ asylum in the country. It was also mentioned that an action plan should not be expected soon (ZIEGLER, 2016).

#### 4.2.1.15 Turkey

Four articles on Turkish LGBTQI+ asylum policies were found in the research. One of them addressed only lesbian asylum seekers and the heteronormative standards they have to conform to, continuously tailoring “their narratives and performances to conform to certain ‘lesbian types’ prioritized by asylum authorities” (SARI, 2020, p. 1).

It was also mentioned that Turkish asylum officers are being trained to handle LGBTQI+ asylum claims, and are in close cooperation with local organisations (CRAGNOLINI, 2013). However, there is still discrimination against and hate speech towards LGBTQI+ people (SCHOENHUBER, 2018) and an LGBTQI+ secret shelter and free HIV tests were provided by the public administration (LOWNDES; POLAT, 2020). They also have a local LGBTQI+ solidarity network, the public administration has a social inclusion unit that employs migrants to work on gender and LGBTQI+ issues with the wider community, and the article points out the benefits of using local government creativity rather than implementing a one-size-fits-all approach (LOWNDES; POLAT, 2020).

#### 4.2.1.16 The United Kingdom

Thirteen articles addressing LGBTQI+ asylum in the United Kingdom were found, the biggest number besides the articles on the German and European policies in general. One article specifically addressed bisexual individuals, another lesbians and two more focused on lesbians, gays and bisexual asylum seekers and refugees. The other nine articles broadly discussed LGBTQI+ asylum. Generally, we can say the main issues addressed were training, interviews and interpreters, country of origin information and the LGBTQI+ concealment discussion.

First of all, there is lack of data on LGBTQI+ asylum claims in the United Kingdom (GIAMETTA, 2020), which justifies another article’s suggestion on the collection and publication of such data, including the outcomes of LGBTQI+ claims (WAGNER, 2016). The state recognises LGBTQI+ individuals as vulnerable asylum seekers (GIAMETTA, 2020) and that discretion is persecution (OLSEN, 2016), but a construction around concealment of sexuality and gender identity seems to still linger in the UK asylum system when decisions mention people “living openly” (WESSELS,

2012). There's also little information about countries of origin, especially when subgroups are analysed separately, like bisexual and transgender individuals, lesbians (WAGNER, 2016), as well as no evidence about intersex individuals' experiences (DUSTIN, 2018). This lack of information about different populations shows that some characteristics can impact the application of certain groups and therefore intersectionality should inform the decision-making process (DUSTIN; HELD, 2018). As mentioned by one of the articles, "power losses occur at every level of their identities as asylum seekers, as women and as lesbians" (CHARLTON, 2018, p. 58). Another, in turn, recommends the federal agency for migration to keep discouraging the use of stereotypes in determining credibility in asylum claims (WAGNER, 2016), whereas two others suggest that shifting the focus of credibility to how actors of persecution would perceive the applicant as an LGBTQI+ individual instead of expecting them to prove they have been persecuted could be a way to solve this dilemma (DUSTIN, 2018; RABOIN, 2016).

On general lines, the state adopts restrictive access to labour and welfare support (GIAMETTA, 2020), there are recounts of asylum seekers suffering physical and verbal harassment due to their sexuality or gender identity (TACCHETTI, 2018) and asylum seekers are accommodated in dispersed regions of the state where they are not able to access LGBTQI+ networks and specialised healthcare (DUSTIN; HELD, 2021). Based on these scenarios, articles suggest the state should educate its officers (DUSTIN; HELD, 2018; SCHUTZER, 2012; WAGNER, 2016), which already seems to occur, but has not improved the problematic line of questioning and requesting evidence from asylum seekers (BRUCE-JONES, 2015; RABOIN, 2016; TACCHETTI, 2018).

#### **4.2.2 LGBTQI+ asylum seekers and refugees in Germany**

As discussed in the research design Section, information about German asylum policies was collected from the systematic literature review, an interview with the director of the German LGBTQI+ asylum programme and documents about the programme found online on its website. These different sources were then merged to create a meaningful dialogue that we could capture in this dissertation.

The German programme for LGBTQI+ asylum seekers and refugees ("Programme") is called Queer Refugees Germany (Queer Refugees *Deutschland*)

and was formalized in 2019, some years after the so-called crisis after a high number of asylum seekers arrived in the country and applied for international protection. It's a federal programme formally created by the LGBTQI+ organisation LSVD (*Lesben- und Schwulenverband in Deutschland*) in partnership with the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, "BAMF") with the mandate "to network the structures existing throughout Germany as well as refugee LGBTQI+ activists and to support them in their work", also providing training, information, contact points and network opportunities (QUEER REFUGEES GERMANY, 2018).

The project therefore provides general guidelines and advice to the *Bundesländer*, how the provinces are called locally, as they are responsible for the local policies, accommodation and costs related to asylum seekers (ZAUN, 2017), which may be another problem when trying to standardise the approach to LGBTQI+ asylum:

Programme Director: [...] we have the **website, we have mapping of information, we have every now and then new material about LGBTI refugees and asylum seekers in Germany** [...] as you know Germany has 16 provincial states, and **every provincial state is independent** when it comes to running their own project, they are not dependent on federal agencies. Yes, that's it, that's a lot of things for which people seek us. We are trying our best to keep up. Sometimes it's **frustrating** [...] (our emphasis) (oral information)<sup>4</sup>.

The Programme Director also makes it clear that the Programme is innovative, comprehensive and unique in the European context, and seems to be interested in publicising their best practices:

Interviewer: [...] So, I know you have already mentioned, but there are no other projects in the federal level to deal with LGBTI refugees, right? That's the only project.

Programme Director: No, in Germany no. [...] people need to know that, this project is one of a kind, I didn't know that we I joined it, I was like "I am getting a job, I am working for LGBTI people". But the experience has shown that **such kind of projects don't exist. Germany is one of the countries that has it and I haven't come across any other country that has a project of this scale.** They all have local, like regional. The Netherlands has it, Denmark is working on it, Sweden is working on it as well. There are a couple of local

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<sup>4</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

projects in Spain, in France too. But **we have that, so what we can do is to make it public** [...] (our emphasis) (oral information)<sup>5</sup>.

Concerning the systematic literature review, 15 articles out of the total of 64 articles found were about German LGBTQI+ asylum policies, among which one addressed only lesbian asylum seekers' issues specifically and a second one discussed asylum matters pertaining to lesbians, gays and bisexual individuals only. The other 13 documents addressed LGBTQI+ asylum in general. The way some issues were addressed in the German LGBTQI+ asylum context have already been discussed by several other documents, while others were unique to this group of articles.

Starting with the lack of information on LGBTQI+ asylum, which is already a recurring topic at this point of this dissertation, information on sexual orientation and gender identity is not collected in the regular asylum application or as part of health surveys, which impacts the possibility of creating tailored health services for LGBTQI+ asylum seekers and refugees and impact directly in the visibility of this group before the society and migration authorities (GOTTLIEB et al., 2020). In the same sense, LGBTQI+ asylum application rejections are also only estimates because, as already stated, the BAMF. Nevertheless, research indicates lesbian asylum seekers would suggest they face specific challenges within the asylum system (TSCHALAER, 2021).

About data in general, the Programme Director shares that they also don't have data about LGBTQI+ asylum applications, but would like to implement measures to collect it. Nevertheless, the German ministers would need to approve such an implementation and currently do not even let the programme disclose the majority of internal numbers they collect:

Interviewer: [...] Do you disclose the final numbers or is not a data that I could have? Because I think it's so interesting to compare the so-called refugee crisis with this current year.

Programme Director: We have in mind to disclose that, but **we can't give it to people**, we are not allowed to, we don't even disclose it to the ministers because they don't ask us to disclose that. What we do is, we come up with some pie charts and some explanation of how the queries look like, so what we can do, and we have that in mind for this year [...] we have that, so what we can do is to make it public, **we will mainly put categories in it**, like the gender identity box, then the sexual orientation box, and most of the time we don't know the sexual orientation, so it's usually written unknow. There are people who never disclose sexual orientation or gender identity to us, they just say that they belong to the LGBTI group [...]. We are also thinking, **but I don't**

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<sup>5</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

**know if it's possible**, we have to talk about it to the ministers. [...] Maybe that's doable, let's see (our emphasis) (oral information)<sup>6</sup>.

As it is possible to see in the excerpt, the Programme Director seems to have ideas they want to execute, which may not be in their mandate and be denied by the German ministers. They, however, shared some of the data they produced internally about queries per year and number of people who reached out to them directly:

Programme Director: [...] So there has been **more than 1300 people who contacted** us throughout these 3 years. It's a long list of people and almost 60% of them are already inside Germany, fled to Germany and are living here, going through their asylum processes. [...] And this perception that the number of queries coming those years would be higher than queries coming up this time and period actually that's wrong. We have internal statistics, **the number of queries coming this year [2021] are the highest so far**. We have more than 500 queries already and it's the third quarter of this year. And last year [2020], we had 534 queries. The year before [2019] was like 200 and something. **So the number of queries is actually rising every year**, internally and externally, so the international refugees are contacting us, but their number is lower, not that high. They make up 40%, that was last year, but from the overview for this year, we see 60 to 70% of queries come from people in Germany and not outside of Germany. We will see what the statics will say in the end of this year (our emphasis) (oral information)<sup>7</sup>.

Despite mentioning the possibility of producing some charts and disclosing information in a near future, it doesn't seem it was ever done, possibly due to a denial from the German ministers. Even the numbers mentioned above concerning queries and people who reached out to the programme couldn't be found publicised on the Queer Refugees Germany nor in the Federal Office for Migration and Refugees websites.

Still regarding the information piece, the articles pointed out there is a lack of information for LGBTQI+ asylum seekers when they arrive about all matters, including the application on grounds of LGBTQI+ persecution and where to find support, thus leaving many LGBTQI+ asylum seekers isolated from social integration (TSCHALAER, 2020c) and also legal support (TSCHALAER; HELD, 2019), even though an article acknowledged there's good, though limited, legal practice in the country (TSCHALAER, 2021). Some local administrations use accessories with the rainbow

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<sup>6</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>7</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.



flag and phrases like “queer refugees welcome” in an innovative and simple attempt to enhance confidence and trust (GLUNS, 2018), but another article reports that information in general is not provided in different languages and racial prejudice is present (TSCHALAER, 2020a).

Apparently contradicting what was presented in the aforementioned article, the Programme’s mandate seems to be focused on providing information via multiple channels, but also seems worried about the lack of specialised information provided to LGBTQI+ asylum seekers and refugees:

Programme Director: We do the counselling and counselling not as such people come to us and talk to us regarding problems as refugee status or asylum seeking process. We do that, but not only that. We offer it only to the people who are really new to Germany. They arrive to us formally [...] So one of the things is **we counsel people through email**, those living outside and wanting to be informed about the official process of asylum seeking in Germany, and then we also have **WhatsApp and Facebook**, so many people write to us. [...] Other than that we have the **website, we have mapping of information, we have every now and then new material about LGBTI refugees and asylum seekers in Germany** [...] we have talked about this, that **BAMF should be asking about gender identity and SOGI applications specifically** (our emphasis) (oral information)<sup>8</sup>.

They have resources for LGBTQI+ asylum seekers in multiple languages and are mindful of where the current asylum seekers and refugees are coming from with explanations on their rights and how to navigate the German asylum system.

Programme Director: [...] we are talking about very sensitive issues regarding traumatisation, abuse and everything around it and providing shelter to those. So these are two different aspects, **many people don’t know their rights**, so we have a short **guide for LGBTI refugees and asylum seekers in 11 languages** which are most spoken languages within the asylum systems at the moment. They always change, because sometimes you have an influx from one country, other times from another country, for example we have to come up with Turkish and Spanish in the last two years. Because there were people coming from Central America as well as from South American countries. And we thought okay, we need to have explanation in their language too. We are now working on a small booklet about the right of trans migrants and newly arrived people we didn’t say refugees or asylum seekers, because it **applies to everybody who is new to Germany** (our emphasis) (oral information)<sup>9</sup>.

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<sup>8</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>9</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

Such guide was also found on the Programme website<sup>10</sup> with several other resources in at least eight languages. Such resources include information for refugees, asylum seekers, organisations, and supporters about the legal system, translators and interpreters, and LGBTQI+ people in the world<sup>11</sup>. Lastly, an article suggested that “[i]nformation leaflets for LGBTQI+ people seeking asylum need to be provided in all federal states at registration, interview, and in all reception and accommodation centres alongside immediate access to independent legal, social, and psychological support” (TSCHALAER; HELD, 2019, p. 1), which may solve the contradicting information provided by the literature and by the Programme Director.

As regards western LGBTQI+ definitions and stereotypes, many articles agree that LGBTQI+ asylum seekers and refugees are measured against western concepts and definitions of what and how sexuality and identity are performed (DUSTIN; HELD, 2018; GOLEMBE et al., 2020; HELD, 2019; MOLE, 2020; TSCHALAER, 2020b). Similarly, the Programme Director mentions that frequently the language asylum seekers and refugees use to describe themselves as LGBTQI+ is diverse.

Programme Director: [...] most of the time we don't know the sexual orientation, so it's usually written unknown. **There are people who never disclose sexual orientation** or gender identity to us, they just say that they belong to the LGBTI group, but the language is different all the time (our emphasis) (oral information)<sup>12</sup>.

It is also worth mentioning that many stereotypes surround an LGBTQI+ asylum seeker from different lenses that intersect with each other, as pointed out by the Programme Director in this excerpt:

Programme Director: So **there's a lot of violence happening**, which could be interpreted as “normal fights” among refugees, but there's also a very local way of treating LGBTI refugees “oh these are refugees, they fight”, things like that. Or “oh, **they are migrants, they are all like that**”. So this cliché painting it does happen [...] there are cultural traditions, we know that, where **LGBTI people are not considered humans**, where they are considered sin and

<sup>10</sup> Available from: <<https://www.queer-refugees.de/short-guide/>>. Access on: 26 March 2022.

<sup>11</sup> Available from: <<https://www.queer-refugees.de/material-2/>>. Access on: 26 March 2022.

<sup>12</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

mentally ill people, and abusing them is actually okay [...] (our emphasis) (oral information)<sup>13</sup>.

Another relevant point mentioned by many articles is the acknowledgement of and respect for LGBTQI+ asylum seekers and refugees' intersecting characteristics, in order for them to be treated with equity according to their needs, be it regarding their gender, ethnic and religious backgrounds (DUSTIN; HELD, 2018, 2021, 2021; GOLEMBE et al., 2020; GOTTLIEB et al., 2020; HELD, 2019; TSCHALAER; HELD, 2019).

The special needs of LGBTQI+ asylum seekers and refugees regarding healthcare, social support and trained asylum officers, in addition to the disrespect for their intersecting characteristics and the need to comply with western identities reinforce the need to include LGBTQI+ asylum seekers and refugees as a vulnerable group when they apply for international protection (GOLEMBE et al., 2020; TSCHALAER, 2020a). On that same matter, a third article went on to state that “[w]ithin Germany’s asylum system, LGBTQI+ people seeking asylum belong to the least visible and most vulnerable group. LGBTQI+ people seeking asylum remain often unrecognised and invisible in the asylum system unless they specifically come forward and out themselves” (TSCHALAER; HELD, 2019, p. 2), which is also corroborated by the Programme Director:

Programme Director: What has been decided for the last 4, 5 years is that if somebody comes out – **coming out is a must**, because they don't ask about your sexual orientation or gender identity –, so [...] **the system requires you to come out in each and every step regardless of your insecurities, regardless of your mental state, regardless of your previous history of coming out**. So accepting that as a trauma is one of the things that is hard for the system to understand. System is always “you're an LGBTI person, why don't you come out?” and like, they don't want to. They would like to come out, but **they would like that space to come out, not just come out to people who are all strangers to me, you never know if somebody is just going to hit you in the face** and you have no idea what the person went through in their country while coming out to people (our emphasis) (oral information)<sup>14</sup>.

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<sup>13</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>14</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

Due to that vulnerability, the Programme Director mentions that they have been trying to include some measures in the regulation of accommodation centres, even though they are only able to give advice and cannot interfere with the administration of accommodation centres themselves, thus possibly receiving some backlash from the provinces:

Programme Director: [...] physical abuse is a no go, violence against women and children is a no go and we are studying explicitly putting LGBTI people in the, I don't know what to call it in English, the *Leitbild*, it's something you see in all refugee centres, posted everywhere, that you're not supposed to drink alcohol, consume drugs or be violent against each other, and specifically mentions children and women, and we are **asking to explicitly mention LGBTI persons** as well. And that's where **sometimes they say "why should we do it, why should we highlight it?"** [...] (our emphasis) (oral information)<sup>15</sup>.

Issues concerning access to basic services, reception conditions and accommodation were the most debated by the German articles, being mentioned by nine of them. The literature remembers that LGBTQI+ asylum seekers and refugees are usually accommodated in reception centres with many other individuals from different backgrounds sharing the common spaces and also a dormitory. LGBTQI+ asylum seekers and refugees may experience loneliness and social isolation, discrimination and hate crimes committed not only by other asylum seekers but also by the staff (HELD, 2019; TSCHALAER, 2020c), which suggests that accommodation should be closely supervised (WITSCHHEL, 2018). About that situation, the Programme Director comments that they are executing new guidelines in partnership with the provinces, but still do not know whether it is going to improve the situation of LGBTQI+ asylum seekers and refugees.

Interviewer: Just so I can get a better picture about what you said on LGBTI people staying with LGBTI people, is it common to hear about abuses and violence within the centres?

Programme Director: How should I answer that? It's a, **we don't have statistics, but there have been incidents**, where people reported that [...] and most of the times people don't come up that they got hate or abused verbally because I am gay or trans, because **they don't feel secure to tell everybody about that**. [...] If it's going to work or not, we are going to see, we are in the middle of the process, things are changing, things are happening, nobody is sitting idle, but it's going to take a lot of time because it's, once again, federal and provincial issues. Second thing is, inside the asylum centres, you are put with the people who are usually from the same

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<sup>15</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

country. During the so-called crisis, there were like 5 people, 6 people in one room. It's not the same anymore, it's 2 people, 3 people, but **still you don't have any privacy, rooms are very small, I must say that, you have communal bathrooms, communal kitchens**. You're not supposed to cook, there are no cooking facilities. You will get your breakfast, you will get your lunch, you will get your dinner, all through catering companies, and your food habit will be taken care of. A lot of refugees don't have pork or things like that in the cultural backgrounds of people, because when they come from mostly from muslim countries they don't eat pork. So it's taken care of, but at the same time, **LGBTI people have to stay with non-LGBTI persons, and then they face the same traumatisation, they go through the same issues they have been going through in their home countries with these people. So the German system works not proactively**, rather it works when things are done. So proactively, now some of the refugee centres are taking proactive measures, asking us about what they should be doing about LGBTI refugees. [...] say they are not feeling happy about their situation in the refugee centre, they can be isolated to another area if it's possible. If it's not, they can send the person to another asylum centre, and the other asylum centre might be more equipped with isolating people from other population, so they don't get in trouble. So **that's a structural issue** (our emphasis) (oral information)<sup>16</sup>.

Another issue mentioned by two articles is that LGBTQI+ asylum seekers are constantly housed in rural areas where they are unable to access their community and specialised medical and psychological treatment (DUSTIN; HELD, 2021; TSCHALAER; HELD, 2019). The Programme Director acknowledges the situation is problematic, but seems not allowed to interfere, as again, it revolves around the German legislation and competent jurisdiction:

Programme Director: So Germany is a federal country, the responsibility to take your case is a federal responsibility. But to give you **housing and space is actually a provincial responsibility**. So the provinces are independent in how they are actually going to house refugees in Germany, and then furthermore how they are going to house LGBTI refugees strategically. So generally, it doesn't matter in which state you applied for asylum, your application goes to BAMF and then the BAMF decides. Nobody knows how, it's a secret, I don't know. **They can send you to any province, it's a structural issue**. So if someone applied for asylum in Berlin, they might be sent to Hamburg, somebody who did that in Nordrhein-Westfalen, might be sent to Saarland. Somebody who did it in München might be sent to Sachsen or Sachsen-Anhalt. So that **creates a lot of fear, that creates a lot of tension, that creates a lot of insecurity** and people don't know what to do. "I applied for asylum in Berlin, I should be staying in Berlin, what are they putting me in a bus and sending me to another space?". It's something which is **not helpful** [...] (our emphasis) (oral information)<sup>17</sup>.

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<sup>16</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>17</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

As provincial governments act upon this matter independently, two articles details Berlin administration's actions to best house LGBTQI+ asylum seekers and refugees. One focus on the permission given to asylum seekers and refugees to spend 20% more on rent and how the province provided a number of flats to house asylum seekers and refugees with special need of protection (EL-KAYED; HAMANN, 2018). Berlin also have LGBTQI+ accommodation centres where LGBTQI+ individuals can find better access to social services adequate healthcare, including psychological support, even though information on sexual orientation and gender identity keeps not being collected (GOTTLIEB et al., 2020).

On the COVID-19 pandemic, an article remembers that LGBTQI+ asylum seekers may have special needs in the field of health and sexual care, which elevate their risks in case they are exposed to the virus. Being locked in with their aggressors would also not contribute to their mental health and social isolation, therefore recommending that LGBTQI+ asylum seekers and refugees "be assigned single rooms in reception and accommodation camps, or assigned safe LGBTQI+ housing, so as to minimise risks of violence and stigmatisation" (TSCHALAER, 2020a, p. 1). Regarding violence in accommodation centres, the Programme Director added some words, highlighting it is a difficult and blurry situation to know when an LGBTQI+ person is being bullied:

Programme Director: But in the last few months I would say, **because of Covid-19, there was a lot of verbal and physical abuse among the refugee** groups and most of the times people don't come up that they got hate or abused verbally because I am gay or trans [...] and we are nowadays and in the last three years, I know now that **asylum centres are very cautious about it**, being casual about such kind of things, they are not casual anymore. Most of the asylum centres we have been to, and we have been to at least 63 in the last 3 years [...] they are not casual anymore, **they ask us what we can do**, and the best thing is that everybody, according to the constitutional law, who gets abused physically, they have the right to report it to the police (our emphasis) (oral information)<sup>18</sup>.

Another relevant and recurring topic in six articles was the training, sensitisation and expert advice on LGBTQI+ asylum to asylum officers and staff at accommodation centres. Articles suggest all those involved in the asylum process should be trained and sensitised to: acknowledge gender, gender identity and sexuality are different

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<sup>18</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

concepts (TSCHALAER; HELD, 2019), understand identity and sexuality from a queer theory perspective, (DUSTIN; HELD, 2018), recognise state and non-state violence lesbians are subjected to, avoid stereotypes in regard to race, gender and homosexuality, recognise and do not reproduce colonial and imperialistic narratives (TSCHALAER, 2021), be able to address gender- and LGBTQI+-based violence (TSCHALAER, 2020a), and engage in general awareness activities to combat discrimination (GLUNS, 2018). The Programme Director also comments on the issues addressed in such trainings conducted by the Federal Programme and how diverse are the ways they work, conducting sensitisation workshops for accommodation centres and asylum officers:

Programme Director: [...] we do **sensitisation workshops** with the **workers inside refugee centres** [...] around LGBTI issues, how workers should act about it, how they can **talk to people without being disrespectful** to LGBTI persons and give them that sense of security that they can talk about their problems, that they can come out. And since last year, we have been also sensitising Asylverfahrensberatung, which in English would be **asylum process counsellors**. Those counsellors are appointed by the Federal Office for Migration and Refugees and there we also go **at least twice every quarter**, at least. At maximum we have been there four times. [...] So those are the sensitisation workshops, so we provide information on **why LGBTI people flee**, as people sometimes come from countries where the legal situation is okay, but the society is actually against LGBTI people. Or maybe the other way around, the society is okay with them but it's illegal to be a LGBTI person in these countries. But still they have to flee for their lives (our emphasis) (oral information)<sup>19</sup>.

It is also important that asylum seekers feel comfortable to openly discuss their sexuality and gender identity during their interviews, which is not possible without sensitised authorities and interviewers, for example (TSCHALAER; HELD, 2019). The country is slowly creating a framework of support for LGBTQI+ asylum seekers (TSCHALAER, 2020b), which includes the possibility of requesting a special officer trained in LGBTQI+ issues to be the interviewer, even though not every applicant has this information (DUSTIN; HELD, 2021). The Programme Director also showed preoccupation with the interviews, and justified that the Programme works with the BAMF to provide support to interviewers and translators.

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<sup>19</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

Programme Director: [...] you always get a translator, or interpreter, from the same **cultural and language background**. So that's also one of the problems we are asking the **federal government to do something about the interpreters, sensitise** them, they **don't use the correct words** for LGBTI people, they don't know the terminologies. They use words that are a bit **abusive**, so if you listen to an abusive word, your mind ceases and goes "**don't talk about your LGBTI situation, this person is not right**". And then they make up a story, tell a story that is not true and everybody sees through that and they get a negative answer. And then you have to go against that negative decision in the courts, and it takes years to get a positive answer then (our emphasis) (oral information)<sup>20</sup>.

Another topic mentioned regarding training is that it is still not easy to find the right people to engage in such a project like the Programme due to its specificity.

Programme Director: [...] they granted us the project, but the government was changing so they gave us the project for 18 months, but **4 months were used to find the right people**. That's difficult because **you don't have degrees in these things**, it's a new thing that people are talking about it, people like you are doing your master's thesis, when **I wanted to do my master's thesis on this that was not relevant**, like 4 years ago. So yes, they came with the project and they chose us and we started the project (our emphasis) (oral information)<sup>21</sup>.

The pandemic also seems to have affected the way training and advice is given by the Programme to asylum officers and accommodation centre staff in general, as the Programme Director mentions how the work was done before the pandemic, but assures the work in general is still happening.

Programme Director: [...] So those workshops **before the Corona pandemic used to be 4 to 5 hours** long in which we sensitised people [...] **Covid-19 has changed a lot how things are done** all around the world so, I don't have to mention that, but our work is still going on. [...] Last year we had [...] an **online workshop** with them and **hopefully if the permissions allow us**, we will have another workshop in the last week of October (our emphasis) (oral information)<sup>22</sup>.

Articles advocated for the social inclusion of LGBTIQ+ asylum seekers and refugees and recommended initiatives to foster their integration to the German society

<sup>20</sup> German LGBTIQ+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>21</sup> German LGBTIQ+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>22</sup> German LGBTIQ+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.



be promoted (GOLEMBE et al., 2020; GOTTLIEB et al., 2020; TSCHALAER; HELD, 2019), including their right to be able to work (FELLNER; NOSSEM, 2018), to live closer to cities with LGBTQI+ support systems (DUSTIN; HELD, 2021), and to equal rights and inclusion (GOTTLIEB et al., 2020).

In the COVID-19 context, it was also mentioned that lockdown measures left LGBTQI+ asylum seekers and refugees more isolated, as social activities, especially from LGBTQI+ organisations and community groups were halted. Due to that, it was suggested that accommodation centres maintain free and stable internet connection to allow for social integration and reduce isolation (TSCHALAER, 2020a).

The Programme Director also discussed social integration by partnering with LGBTQI+ activists to drive empowerment workshops both online and in person:

Programme Director: Then we have a **group of LGBTI activists**, who are either migrants, asylum seekers or refugees, doesn't matter which category according to the law they have, we also conduct workshops with them, which are the **empowerment workshops**. [...] So they are a group of around 30 people who are from different countries, from Mexico to Indonesia [...] (our emphasis) (oral information)<sup>23</sup>.

This need for support is sometimes found in the organisations that advocate for LGBTQI+ asylum seekers and refugees, as discussed above. Therefore, it is relevant that the asylum system contributes to this connection between individuals and organisations supporting them. It is known that many LGBTQI+ organisations provide counselling and help LGBTQI+ asylum seekers disclose their identities (GLUNS, 2018), advocate for the establishment of LGBTQI+ accommodation centres (HELD, 2019) and that all these efforts may contribute to a successful application (DUSTIN; HELD, 2021). Nevertheless, such organisations are usually underfunded (TSCHALAER; HELD, 2019) and, as comments the Programme Director, understaffed too, which is a reality not only for the organisations, but also for the Federal Programme itself:

Programme Director: [...] we have a lot of things to do **but we are only two people working full-time** and there are two other people who engage voluntarily. So it's a team of 4 people currently bringing new developments to the project. [...] So since the so-called refugee crisis started in 2015 up until 2017 there were lots of people contacting LSVD about their sexuality, gender

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<sup>23</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

identity, refugee and asylum status. And it's **not a very big organisation**, there are a few very hard-working and very committed people who are behind it, that's why it has been running for almost 13 years now (our emphasis) (oral information)<sup>24</sup>.

This connection between the Programme and other organisations is also clear in the following excerpt, where the Programme Director mentions they send LGBTQI+ asylum seekers and refugees to be assisted by other partner organisations in person when they reach out already in Germany:

Programme Director: They arrive to us formally and are located in the vicinity of Cologne, Bonn and Düsseldorf. It's easier for us. All the people who are not in the vicinity, **we send them to one hundred different organisations looking all across Germany for LGBTI refugees and asylum seekers.** [...] There are **some organisations working on the ground who we know**, so we can only help people within Europe, to some extent **to send them to the local organisations**, we can't help them acquire visas, we can't help them with airplane or provide any kind of monetary aid, and we also inform people about the Dublin Treaty regulation, which is a huge issue in Europe [...] (our emphasis) (oral information)<sup>25</sup>.

On the Programme is also possible to find a page that lists all partner organisations in Germany, divided in three categories ("Meeting places for LGBTQI+ refugees", "Counselling for LGBTQI+ refugees" and "Representation and networking")<sup>26</sup>. The individuals accessing the page can type their ZIP code and find the organisations that are closer.

It is therefore suggested that the Federal Office for Migration and Refugees support such organisations and provide funds to help them offer their services, especially during the pandemic, when all activities have decreased or ceased to exist (TSCHALAER, 2020a).

With regard to more procedural items, some articles mentioned the need to review country of origin information (TSCHALAER, 2021; TSCHALAER; HELD, 2019; WITSCHHEL, 2018), ensuring application will not be fast-tracked, as it hinders the work organisations and lawyers are doing with LGBTQI+ asylum seekers and refugees due to the lack of time to prepare the case and let the individual settle down in the new

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<sup>24</sup> German LGBTQI+ Asylum Programme Director. **Interview I.** [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>25</sup> German LGBTQI+ Asylum Programme Director. **Interview I.** [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

<sup>26</sup> Available from: <<https://www.queer-refugees.de/organizations/>>. Access on: 28 March 2022.

country (DUSTIN; HELD, 2021) and replacing the clustering system to a case-by-case analysis that acknowledges individuals experiences (TSCHALAER; HELD, 2019; WITSCHHEL, 2018). Literature also mentioned that LGBTQI+ offices should be established in all *Bundesländer* to allow for asylum seekers and refugees to file a complaint when facing discrimination and harassment throughout their asylum processes (TSCHALAER; HELD, 2019).

On a more general note, two articles reminded that the political climate towards asylum seekers and refugees and issues like racism is not the most favourable currently across Europe (HELD, 2019; WITSCHHEL, 2018), impacting the experiences of the asylum seekers and refugees in Germany, which should generate a legal and social reform to support such a population, especially in times like in the middle of a pandemic (TSCHALAER, 2020a).

Lastly, the Programme Director mentions that they are working on changes, for example, partnering with the German Family Ministry, but acknowledges that real change may take a while to be perceived.

Programme Director: So the entire system works in a way that it, or **I would say worked in a way that it kind of made lives very hard for LGBTI refugees and asylum seekers**. But systematically and step by step we are also working with the Family Ministry regarding protection within the refugees centres all around Germany. We are also working with BAMF, I told you. We are also trying to give a lot of consultation to local governments, provincial governments. For example, we live in Nordrhein-Westfalen, we have close ties with the Nordrhein-Westfalen government and **they invite us, they talk to us, they arrange meetings and they do value our advice**. But **putting that into legislation takes a lot of time. But we are hopeful that the things we have done for the last three years and the things we are at the moment doing, I guess it will take 10 more years until the situation is totally changed**. And it takes a lot of time, it take governments to change even the rules (our emphasis) (oral information)<sup>27</sup>.

The Programme Director's statement would suggest that changing the status quo is not easy, but in three years of the Programme the German scenario on LGBTQI+ asylum seems to have already changed, which is corroborated by the literature cited in this Section.

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<sup>27</sup> German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.). The full interview is transcribed in Appendix A of this dissertation.

#### 4.3 DISCUSSION ON THE SYSTEMATIC LITERATURE REVIEW

All the information collected from the systematic literature review was then re-analysed and grouped into categories in order to provide insights on the topics discussed by the 64 articles gathered by this research. Issues that were addressed by at least two articles gained their own categories, whereas those addressed by only one article were put in the category “Others”. The following categories were created:

- (i) Information: how, when and what type of information is – or should be – provided to asylum seekers and refugees about their rights when arriving to a new state;
- (ii) NGO support: how asylum seekers and refugees are redirected and connected with organisations and non-governmental institutions, and what their scope of work with these individuals is;
- (iii) Data collection: how and what type of information is collected from LGBTQI+ asylum seekers and refugees, if any;
- (iv) Stereotypes: remarks about the presence of stereotypes while asylum seekers and refugees are being evaluated during the asylum process regarding how LGBTQI+ individuals should perform their identity and sexuality, as well as how they are seen from western eyes;
- (v) Legal advice: concerns the legal support provided for LGBTQI+ asylum seekers and refugees by the receiving state;
- (vi) Interview: excerpts regarding the interview process during the asylum process, choice of interviewer and interpreter, types of questions asked and questioning style, when not related to the need for training and advice;
- (vii) Training and advice: mentions to the presence – or absence – of training, sensitisation or expert advice specifically for LGBTQI+ asylum issues, provided to any asylum stakeholders, like accommodation centres, asylum officers, interviewers and interpreters;
- (viii) Vulnerabilities: concerns LGBTQI+ asylum seekers and refugees’ vulnerabilities within the asylum process and the need for – or existence of – specialised procedures to support them;

- (ix) Infrastructure: discussions about accommodation centres, reception conditions and how basic services are – or should be – provided to LGBTQI+ asylum seekers and refugees by the receiving state;
- (x) Country of origin: how the concept around country of origin is – or should be – addressed by Europe and European states themselves to better support LGBTQI+ asylum seekers and refugees and how this information is gathered and used;
- (xi) Social inclusion: programmes, projects and other ways that LGBTQI+ asylum seekers and refugees are – or should be – supported so they can integrate and feel included in the receiving country's society;
- (xii) Intersectionalities: remarks about the acknowledgement and respect for intersecting characteristics within the asylum system – or the lack thereof;
- (xiii) Asylum procedures: includes remarks about procedural steps relevant to LGBTQI+ asylum seekers and refugees, such as fast-tracking their asylum application, late disclosure of LGBTQI+ status, how the burden of proof in the asylum process is shared, concealment of their identities.

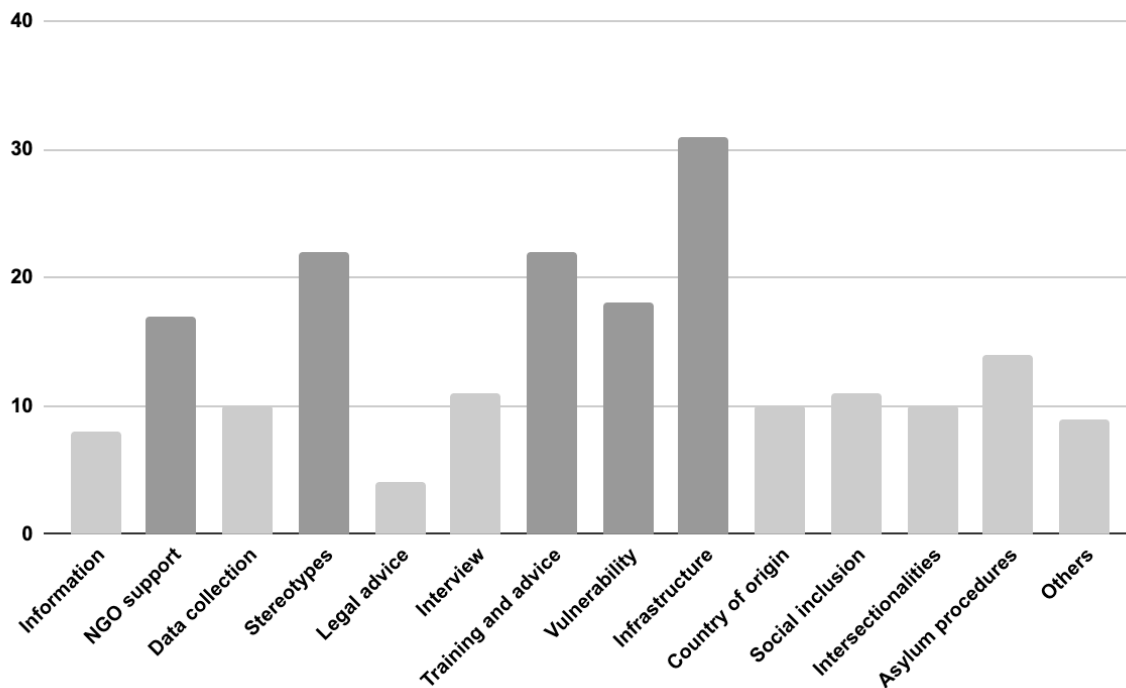
Based on the aforementioned categories, the articles were allocated in Table 1, below. It should be mentioned that the number of mentions does not align with the total number of documents analysed, as some articles study more than one state.

**Table 1** – States and number of LGBTQI+ asylum matters addressed per category

	AT	BE	DK	CoE	FR	DE	GR	IT	NL	NO	PT	RS	ES	SE	CH	TR	GB	
<b>Information</b>				3		4					1							<b>8</b>
<b>NGO support</b>				2	1	6		2	1		1			1		2	1	<b>17</b>
<b>Data collection</b>				3	1	2		1							1		2	<b>10</b>
<b>Stereotypes</b>		1		6		6		1	2	1			1	2			2	<b>22</b>
<b>Legal advice</b>						2					1			1				<b>4</b>
<b>Interview</b>		1		2		2					1			1		1	3	<b>11</b>
<b>Training and advice</b>		2		5		6			1		2			3		1	2	<b>22</b>
<b>Vulnerabilities</b>			1	5	1	3		1	2		1			2			2	<b>18</b>
<b>Infrastructure</b>		1	1	6		9	1	2	1			1		3		2	3	<b>30</b>
<b>Country of origin</b>				4		2			1		1						2	<b>10</b>
<b>Social inclusion</b>		1		1	1	6	1										1	<b>11</b>
<b>Intersectionalities</b>	1			1		5		1	1								1	<b>10</b>
<b>Asylum procedures</b>				6		2			2		1						3	<b>14</b>
<b>Others</b>				5		3										1		<b>9</b>

**Source:** elaborated by the author.

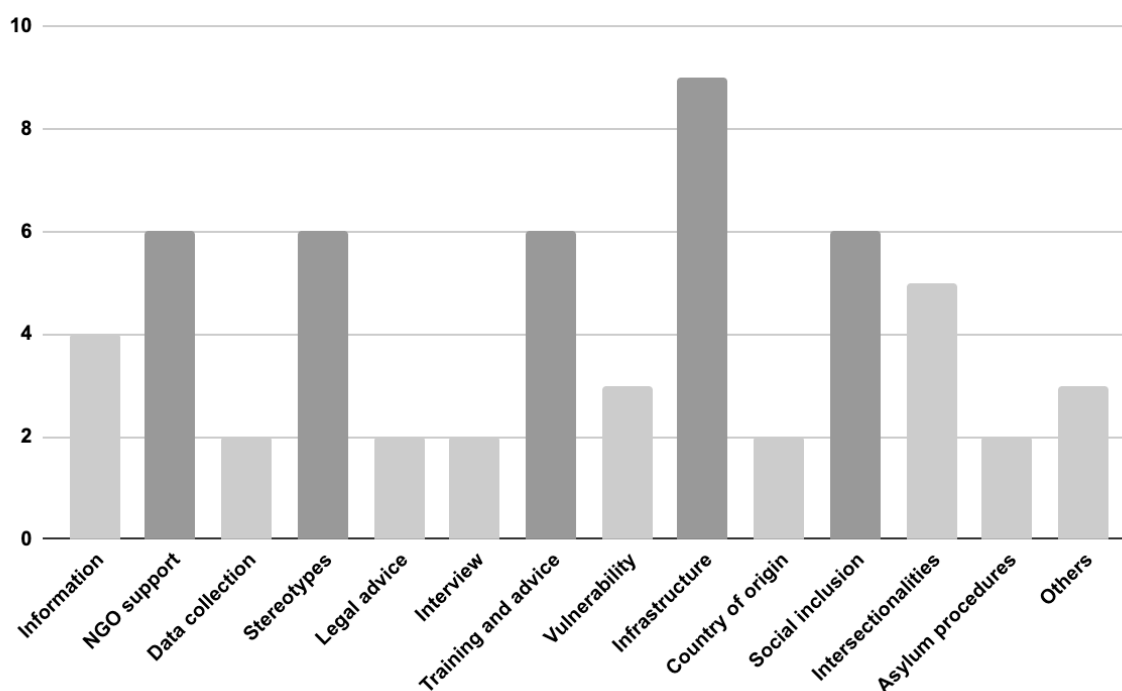
The majority of articles (15,7%) found in the systematic review focus their analyses on the infrastructure provided to LGBTQI+ asylum seekers and refugees, which encompasses in this dissertation discussions about reception conditions, infrastructure at accommodation centres and how basic services are – or should be – provided. This category was followed by articles that addressed training, sensitisation or expert advice specifically for LGBTQI+ asylum issues (11,2%), and the presence of stereotypes during the asylum process regarding how LGBTQI+ individuals should perform their identity and sexuality (11,2%). The fourth category concerns their vulnerabilities within the asylum process and the need for specialised procedures to support them (9,1%), followed by non-governmental organisations' support for LGBTQI+ asylum seekers and refugees (8,6%). Figure 1 below illustrates the number of articles addressing the subjects encompassed by each category.

**Figure 1** – Number of documents that addressed each category

**Source:** elaborated by the author.

Concerning stereotypes, for instance, a critique made by the article on Norway LGBTQI+ asylum reminds that many states are looking for a certain LGBTQI+ profile and only desires to welcome those who meet their westernised criteria: “Norway can be a safe haven for queer asylum seekers, but merely those who adhere Norway’s homonormative understanding of sexual identity and gender identity” (TORVIK, 2017, p. 84). Gill and Good (2019) corroborates that there is a paradox when it comes to accepting LGBTQI+ asylum seekers and refugees in European states, as they portray themselves as representatives of human rights that create communities with common values, but in the end they still have the discretionary right to decide who enters their territories.

It is also interesting to point out that the articles about the German scenario match four out of the five most addressed categories mentioned above, including the order the first three appears (even though there’s a tie for “Training and advice”, “Social Inclusion”, “NGO Support” and “Stereotypes” in the articles about German asylum). Figure 2 illustrates the numbers about the German scenario separately.

**Figure 2** – Number of documents about Germany that addressed each category

**Source:** elaborated by the author.

The only change observed in the German scenario was the presence of the category “Social Inclusion” among the five most mentioned categories – an issue discussed by six articles – and the absence of the category “Vulnerabilities”, with three mentions in articles about Germany. The similarities between the overall analysis and the German scenario seem to corroborate the understanding around the main focus of current LGBTQI+ asylum literature being on issues like the infrastructure of accommodation centres, reception conditions and basic services; the provision of training, sensitisation and expert advice to all stakeholders; and the presence of stereotypes regarding LGBTQI+ identity during the asylum process. It is also worth mentioning that even though Germany has a structured programme for LGBTQI+ asylum seekers and refugees, the state still seems to lack better inclusion policies so asylum seekers can in fact participate in society actively and be able to create relationships with their own communities.

The category “Others”, which encompasses matters that were only addressed in the context of one state or region, was used both by articles about Europe and Germany. The majority of these articles critique the wording of the legislative norms



around asylum and recommend changes to make them more inclusive and mindful of hurtful wording. Such a remark around wording and the incorrect denomination of different personal characteristics related to sexual orientation and gender identity was also posed in Chapters 2 and 3, when specific legislative documents were analysed, and is therefore corroborated by this dissertation.

A second issue also broadly addressed in the category “Others” is the persisting discrimination against LGBTQI+ individuals, migrants, and Muslims both in the asylum system and in their everyday lives. This fact shows that the states are not yet in a place where their LGBTQI+ asylum policies goes beyond the asylum context, thus confirming the importance of creating policies to promote social inclusion, as homophobia, transphobia and xenophobia are generalised social issues that still permeates many European states and must be therefore combated (VASILJEVIĆ, 2015). Long-term solutions, however, will only be found when the root causes of migration in all of its forms are tackled (O’NIONS, 2014).

In addition to the documents that addressed the European continent or the European Union as a whole, 17 states were also encompassed. It is worth noticing that besides Turkey, those states sit in Northern, Southern and Western Europe, so it would be beneficial to find more studies about Eastern European countries<sup>28</sup>, which were not found by this research.

As regards the groups addressed in each articles, four of them only addressed matters related to lesbian asylum seekers and refugees, one only addressed matters related to bisexual individuals and two others studied lesbians, gay and bisexual individuals only. The rest of the articles focused on addressing LGBTQI+ or queer individuals in general. This data is relevant, as the vast majority of studies regarding LGBTQI+ individuals are about gay men (ALESSI et al., 2020; JANSEN, 2013; WAGNER, 2016), so finding studies that acknowledge the specific struggles experienced by other populations in the acronym are not only welcome, but needed.

Another problematic point is the absence of studies focusing exclusively on trans individuals, whose gender non-conforming characteristics may produce even more marginalisation (BENTO, 2006). This is “a clear indicator of the limited access of transgender people to international protection due to the high degree of stigmatization,

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<sup>28</sup> All classifications according to the United Nations Geoscheme for Europe. Available from: <<https://unstats.un.org/unsd/methodology/m49/>>. Access on: 26 May 2022.

pathologisation and persecution that these people suffer in different countries due to their gender identity” (LAFUENTE, 2014, p. 365)<sup>29</sup>. As points out Butler (1993), the homosexual identity cannot represent all queer identities as an universalisation. Future research would therefore benefit from having more studies specifically addressing lesbians, bisexual and transgender asylum seekers and refugees so their unique experiences and struggles are analysed to provide for policy development and policy change.

Based on the systematic literature review, we can observe that some LGBTQI+ asylum programmes seem to innovate in the way they approach the matter, as those were not mentioned in the context of other countries in this research, like relocating perpetrators of homophobic and transphobic behaviours to other reception facilities (Belgium), using accessories with the rainbow flag and phrases like “queer refugees welcome” to enhance confidence and trust (Germany), letting asylum seekers and refugees with special need of protection spend 20% more on rent (Germany), being able to request a special interviewer trained to conduct LGBTQI+ interviews (Germany), allowing LGBTQI+ asylum seekers to self-organise their housing facilities collectively (Greece), accepting self-identification as LGBTQI+ (Portugal), promoting LGBTQI+ awareness to all parties involved in asylum issues (Sweden), employing migrants to work on gender and LGBTQI+ issues with the wider community (Turkey), creating and maintaining a secret shelter for LGBTQI+ asylum seekers and refugees (Turkey), discouraging the use of stereotypes in determining credibility in asylum claims (UK). Even though the aforementioned initiatives are attributed to the states directly, some are actually developed in local and provincial contexts only – for example the 20% higher rent allowance from Berlin, Germany and the employment of asylum seekers and refugees, and creation of a secret shelter in Şişli, Turkey – as local, municipal, provincial governments are usually competent to deal with certain aspects of asylum law, as comment the Programme Director of the German program and the literature (ZAUN, 2017). As one of the articles mentions, there are advantages in using local government creativity instead of a one-size-fits-all approach to asylum (LOWNDES; POLAT, 2020).

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<sup>29</sup> Originally in Spanish: “claro indicador del limitado acceso de las personas transgénero a la protección internacional debido el alto grado de estigmatización, patologización y persecución que sufren estas personas en diferentes países por su identidad de género”.

Furthermore, the literature also makes suggestions that could be implemented by the programmes in order to make them more mindful of LGBTQI+ asylum seekers and refugees' needs. Those were summarised and compiled below in the same order presented in Table 1. Suggestions that belong to the same category were merged into one unique item.

- (i) Providing basic LGBTQI+ asylum information in several languages and channels.
- (ii) Supporting NGOs that work with LGBTQI+ asylum; providing funds to help them offer their services; collaborating with them in different areas; building the capacity of activists and organisations around the world; connecting LGBTQI+ asylum seekers with LGBTQI+ asylum organisations so they can be supported from the beginning of their asylum application.
- (iii) Collecting and publishing data on LGBTQI+ status; asking for LGBTQI+ status as part of health surveys to enable creating tailored health services for LGBTQI+ asylum seekers and refugees.
- (iv) Being mindful of how western stereotypes and how sexuality and gender identity are seen by the society play a role during LGBTQI+ asylum.
- (v) Improving the specialised legal services provided.
- (vi) Providing asylum seekers with a confidential, private and appropriate interpretation service; allowing them to appoint their own interpreter paid by the state; allowing the change of such a person when the asylum seeker is not satisfied with them.
- (vii) Providing training and sensitisation to all of those who provide services in the asylum system, not only about LGBTQI+ experiences with discrimination, differences between gender identity and sexual orientation, history, terminologies, but also LGBTQI+ cross-cultural knowledge.
- (viii) Suggesting that the European Asylum Support Office promote training, guidelines and good practices on LGBTQI+ asylum; making sure domestic authorities follow a consistent LGBTQI+ asylum policy; recognising and not reproducing colonial and imperialistic narratives in the asylum system.

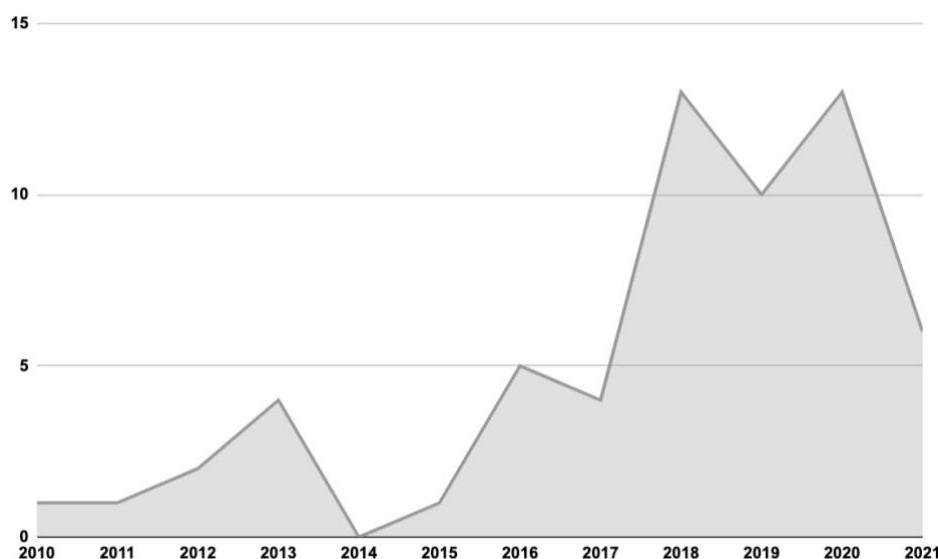
- (ix) Placing LGBTQI+ asylum seekers in a category among applicants with special reception needs; acknowledging the discrimination and violence they may undergo; calling upon EU member states to include in their domestic legislations the definition of social groups and LGBTQI+ individuals explicitly.
- (x) Providing all trans individuals with tailored health services, like hormonal therapy; housing LGBTQI+ asylum seekers and refugees with other LGBTQI+ individuals; accommodating LGBTQI+ individuals closer to where they are more likely to find social support; assigning LGBTQI+ individuals to single rooms when LGBTQI+ accommodations do not exist; creating LGBTQI+-sensitive reception facilities across all EU member states; closely supervising accommodation centres to avoid inappropriate behaviour; establishing LGBTQI+ offices to allow for asylum seekers and refugees to file a complaint when facing discrimination and harassment throughout their asylum process.
- (xi) Improving the quality of the country of origin information used by asylum officers; rejecting the establishment of EU common lists of safe countries of origin; granting international protection to those who come from places where non-cisheteronormative sexual orientation and gender identity are criminalised.
- (xii) Providing asylum seekers with more opportunities to be connected digitally; having stable internet connection in accommodation centres; improving access to higher education, labour market, training; promoting social support from one another and collective agency; promoting initiatives to foster their integration to the society; generating a legal and social reform to support such a population.
- (xiii) Being mindful of intersectionalities in LGBTQI+ asylum claims.
- (xiv) Sharing the burden of proof with asylum seekers; ensuring application will not be fast-tracked, which could cause more harm than good, as the asylum seeker is often still traumatised by the asylum system and there is a short amount of time for a lawyer to work on their favour; urging the EU to not consider a late disclosure of sexual orientation or gender identity as damaging to one's credibility in their asylum application; shifting the focus of credibility to whether the actors of persecution

perceive the applicant as an LGBTQI+ individual instead of expecting them to provide elements of their persecution; replacing the clustering system to a case-by-case analysis that acknowledges individual experiences.

- (xv) Naming LGBTQI+ groups separately instead of a generic “gay people” or “homosexuals”, addressing gender identity and sexual orientation also separately to contribute to recognition and gendered differences in the asylum system, acknowledging that gender, gender identity and sexuality are different concepts; improving the wording around sexual orientation, gender and gender identity, being suggested that recitals make it clear that the documents address also sexual characteristics and gender expression whenever any of the aforementioned terms are cited.
- (xvi) Suggesting that the EU addresses wider issues of discrimination and violence also beyond the asylum system, engaging in general awareness activities to combat discrimination.

There is also relevant information that can be observed based on the period of publication of the articles analysed, which clearly corroborates literature’s rising interest in discussing LGBTQI+ asylum, as Figure 3 illustrates next.

**Figure 3** – Number of documents published per year



**Source:** elaborated by the author.

Figure 3 considers the five articles that were taken out of the edited volume as one publication (as the book itself was published in its entirety) and since all data was collected in June 2021, it could justify the drop seen for that year, even though so many other factors, like the COVID-19 pandemic, could have played a role, which is not going to be analysed in-depth by this dissertation. Nevertheless it is relevant to mention that this constant and increasing academic involvement with and attention to LGBTQI+ asylum contributes to raising awareness and improving the quality of services and policies developed by the states (FERREIRA, 2011).

#### 4.4 FINAL OBSERVATIONS ON EUROPEAN LGBTQI+ ASYLUM POLICIES

This systematic literature review, interview with the German LGBTQI+ asylum programme director and document analysis were done so we could understand the German involvement in the development of asylum policies specifically tailored to the needs of LGBTQI+ individuals and whether the literature has been focusing its studies on such a topic both in the German and European contexts to understand similarities and differences in the way the issue is addressed.

Even though the literature seems to be absorbed with infrastructural matters and the provision of basic services to LGBTQI+ asylum seekers and refugees both in the German and European contexts in general, there is also a great need to evolve from the general focus on LGBTQI+ policies to those tailored to specific populations within the acronym. Tailoring policies to and respecting the special needs of, for example, transgender individuals and lesbians, would create a more equitable experience that benefits specific groups, thus improving the very own infrastructural piece, so richly addressed by the literature.

Not only it is necessary to acknowledge the different groups that make up the LGBTQI+ social group, but also one's unique characteristics that intersects with one another, which seems to be constantly disregarded in the asylum application in different locations in the European context, not only in everyday life, but also during the judicial process.

We see, however, that the LGBTQI+ community as a whole is yet to be respected and acknowledged as one particular social group in many societies that perpetrates systemic violations, which includes physical and psychological violence,

lack of privacy and health care access, lack of information and support from the asylum officers and deficient services provided by non-governmental organisations that keep trying to show up for LGBTQI+ asylum seekers with little to no funding from federal governments, just to mention a few. This lack of acknowledgement is seen from the very asylum application as LGBTQI+ data is not collected, a reality in all countries researched, as stated by the literature. The lack LGBTQI+ data directly impact state's willingness to create tailored programmes to support LGBTQI+ asylum seekers and refugees, which in a sense seems almost convenient, we observe.

On the German context, both the publication year of the articles, with a higher trend in 2019-2020, and the creation of the programme in 2019 seems to negate the hypothesis that Germany could have created such a programme as a historical reparation to the gay lives lost during holocaust, as data points to the simple reaction to a large influx of LGBTQI+ asylum seekers and refugees into the state from 2015 onwards, which rising numbers of LGBTQI+ asylum seekers and refugees seeking for help year by year since the programme was launched, according to the German LGBTQI+ asylum programme director.

On the other hand, this research found out that there is interest from the literature to publicise and promote good practices that can be followed by different asylum systems when they are willing to tailor the asylum experiences to different groups of asylum seekers and refugees so their unique or group characteristics are respected. The numbers of articles addressing the theme were indeed low, but not as low as this researcher would assume.

Some articles and the German LGBTQI+ asylum programme director account for some innovations and improvements in the LGBTQI+ asylum system found in different states, being sometimes developed only in specific local contexts, when the municipalities, provinces or regions are allowed to do so, like in Germany (Berlin) and Turkey (Şişli). The literature has also issued many recommendations so the asylum process be less harmful to human rights and more welcoming to LGBTQI+ asylum seekers and refugees specifically.

It is also worth mentioning that even though Germany has a structured programme for LGBTQI+ asylum seekers and refugees, the state still seems to lack better inclusion policies so asylum seekers can in fact participate in society actively and be able to create relationships with their own communities. Nevertheless, not only in Germany, but across Europe, the literature points out the existence of xenophobia,

homophobia and transphobia towards asylum seekers and refugees, which confirms there is so much more to be done, both within and outside the asylum system, when it comes to the social inclusion of LGBTQI+ individuals.



## CLOSING REMARKS

*The need to address root causes of undocumented migration is paramount as it is the only way to make long-term changes [...]. To date such discussions have been subsumed into questions of border control and surveillance; consequently policies have been narrow and contradictory, sometimes resulting in unintended, counterproductive consequences.*

*(Helen O’Nions, Asylum - a right denied: a critical analysis of European asylum policy, p. 204).*

The rights of LGBTQI+ individuals are still violated regularly in Europe. This researcher decided to open this closing Chapter with this statement, to make sure the message is coming across clearly and loudly.

History shows that the LGBTQI+ movement has become more consolidated and strengthened around and after the Stonewall Uprising, even though Europe already had such an agenda way before, with Hirschfeld’s pioneering work, which evolved slowly and steadily to the legalisation of LGBTQI+ status in European states. However, LGBTQI+ rights and protection are only found in around a third of European United Nations Member States. The rise of far-right national movements has also contributed to such a retraction of rights and current research confirm that despite the advances on the LGBTQI+ agenda, this social group still experiences violence, discrimination and marginalisation.

Asylum seeking in Europe, in turn, are currently contested matters, especially after the large influx of asylum seekers and refugees that arrived in the continent around 2015. Faced with this situation, European states were unable to properly manage and accommodate those newcomers, causing the so-called “refugee crisis”, an issue largely scrutinised and addressed by the media and politicians, while asylum seekers and refugees themselves remain embedded between politics, law, state policies and human rights norms.

LGBTQI+ and asylum issues intersect when LGBTQI+ asylum seekers and refugees are denied rights, treated poorly and have their rights violated throughout the asylum process. Since the first LGBTQI+ asylum claims happened in the 1990s, the

theme is not yet largely debated, which justifies the existence of this dissertation. Even though European states have been creating norms to reach this population of individuals, some seem to not reach local realities and the persisting gaps hinders the capacity of LGBTQI+ asylum seekers and refugees to enjoy their rights fully.

In this scenario of scarce production on that matter, it is important to acknowledge and foster the role academia plays in discussing and raising awareness to policies and services provided by states and organisations.

We conducted a systematic literature review after compiling articles that address LGBTQI+ asylum in Europe and specifically in Germany and proceeded to interview the German LGBTQI+ asylum programme director and conduct a document analysis to create a meaningful dialogue about the state's policies on that matter. The aim was to answer our research questions on the development of asylum policies specifically tailored to the needs of LGBTQI+ individuals and the literature focus on commenting, criticising or recommending the elaboration of such policies. Our intent was to understand the German involvement in the development of asylum policies specifically tailored to the needs of LGBTQI+ individuals, assess literature's comments, critiques and recommendations on the elaboration of such policies both in the German and European contexts to understand similarities and differences in the way this issue is addressed, disseminate good practices in LGBTQI+ asylum policies developed by European states, and help raise awareness of LGBTQI+ vulnerability within the asylum system. It is relevant to mention that our findings are not representative of an exhaustive account on LGBTQI+ asylum policies implemented or discussed across Europe, but result of the rigorously adopted criteria for retrieving research material in this dissertation.

Among the 13 categories created after the analysis of the 64 articles that made the final cut, we observe that there are similarities between the overall analysis in Europe and the German scenario. It seems the main focus of the LGBTQI+ asylum literature about this continent is on Infrastructure, Training and advice, Stereotypes, and NGO support, according to the definitions and guidelines created by this dissertation. As differences, we point out that in the German scenario the category Social inclusion stood out next, whereas Vulnerabilities was more discussed in the European general context.

Germany seems to have a structured programme specifically created to meet LGBTQI+ asylum seekers and refugees' needs, but it is also clear that there is much

to be done to guarantee the message, policies and guidelines are reaching the different stakeholders that participate in the asylum process, especially in a place like Germany, where provincial and local entities participate in management of the asylum agenda. It is also worth mentioning that the state still seems to lack inclusion policies so asylum seekers enjoy their rights and rebuild their social bonds. The issue with inclusion policies seems to persist throughout other states, too, with mentions to social rights, digital connection, counselling and community access. This finding partially confirms our initial hypothesis on the existence of a structured programme for LGBTQI+ asylum seekers in Germany, even though the social inclusion piece seems to be insufficient and can be improved.

The hypothesis about the limited number of articles due to previous literature findings on similar areas and the novelty of the theme also seems to stand, as only 309 articles were found, then reduced to 64 that addressed asylum policies for LGBTQI+ individuals or LGBTQI+ asylum experiences in Europe or in any specific European state at any level, either domestic, regional, or international. This fact only corroborates the importance of addressing LGBTQI+ asylum in academia.

This dissertation also hopes to fulfil its purpose of calling out when such policies are poorly implemented across Europe, urging states to do their part in creating consistent and planned actions, especially in chief hosting states, like Germany, for the extreme vulnerability in which LGBTQI+ asylum seekers and refugees may find themselves. Furthermore, there is a problem that goes way beyond the asylum system itself and is closely connected to the societies and how they interact with these groups of individuals. Social inclusion policies and education are therefore needed not only in the asylum system and for asylum seekers and refugees themselves, but for the broader society that insists on marginalising groups deemed not worthy of rights. Discrimination, homophobia, transphobia, and xenophobia are generalised social issues that permeates many European states and are yet to be addressed. One must remember: the existence of tailored, even innovative, asylum policies for LGBTQI+ individuals in some states does not mean general acceptance and social inclusion of this population.

Lastly, we hope such a summary of European good practices and literature comments, critiques and suggestions is taken into consideration by states around the world in order to make sure they are addressing LGBTQI+ asylum in an appropriate

manner that respects asylum seekers and refugees' intersectionalities, sexual orientation, gender identity, and ultimately, their humanity.

## REFERENCES

AFSHARI, R. On historiography of human rights reflections on Paul Gordon Lauren's *The evolution of international human rights: visions seen*. **Human Rights Quarterly**, v. 29, n. 1, p. 1–67, 2007.

AGUSTÍN, L. R. **Gender equality, intersectionality and diversity in Europe**. New York: Palgrave Macmillan, 2013.

ALESSI, E. J. et al. A qualitative exploration of the integration experiences of LGBTQ refugees who fled from the Middle East, North Africa, and Central and South Asia to Austria and the Netherlands. **Sexuality Research and Social Policy**, v. 17, n. 1, p. 13–26, 2020.

ANDRADE, V. L. et al. **Queering asylum in Europe: a survey report**. Brighton: University of Sussex, 2020. Available from: <<https://osf.io/kn6af>>. Access on: 23 Apr. 2021.

ARENDT, H. **The origins of totalitarianism**. New York: Harvest Books, 1973.

Ausgangsbeschränkungen verschärfen LSBTI-feindliche Gewalt. **Lesben- und Schwulenverband in Deutschland**, 9 Apr. 2020.

AUSTIN, D. W. Sexual orientation and gender identity. **The International Lawyer**, v. 46, n. 1, p. 447–462, 2012.

AYOUB, P. M. Intersectional and transnational coalitions during times of crisis: the European LGBTI movement. **Social Politics**, v. 26, n. 1, p. 1–29, 2019.

BADALI, J. J. Migrants in the closet: LGBT migrants, homonationalism, and the right to refuge in Serbia. **Journal of Gay & Lesbian Social Services**, v. 31, n. 1, p. 89–119, 2019.

BATTJES, H. Accommodation: sur place claims and the accommodation requirement in Dutch asylum policy. In: SPIJKERBOER, T. (Ed.). **Fleeing homophobia: sexual orientation, gender identity and asylum**. London: Routledge, 2013. p. 82–97.

BATTJES, H. **European asylum law and international law**. Leiden: Martinus Nijhoff Publishers, 2006.

BAUMAN, Z. **Globalização: as consequências humanas**. Rio de Janeiro: Jorge Zahar, 1999.

BAUMAN, Z. **Modernity and the Holocaust**. Ithaca: Cornell University Press, 2000.

BAYEFSKY, A. F. The principle of equality or non-discrimination in international law. In: FARRIOR, S. (Ed.). **Equality and non-discrimination under international law**. The library of essays on international human rights. London: Routledge, 2016. v. 2, p. 71–104.

BEGAZO, M. G. The membership of a particular social group ground in LGBTI asylum cases under EU law and European case-law: just another example of social group or an independent ground? In: GÜLER, A.; SHEVTSOVA, M.; VENTURI, D. (Eds.). **LGBTI asylum seekers and refugees from a legal and political perspective: persecution, asylum and integration**. Cham: Springer International Publishing, 2019. p. 165–184.

BEGER, N. J. Queer readings of Europe: gender identity, sexual orientation and the (im)potency of rights politics at the European Court of Justice. **Social & Legal Studies**, v. 9, n. 2, p. 249–270, 2000.

BELL, M. The principle of equal treatment: widening and deepening. In: CRAIG, P.; DE BÚRCA, G. (Eds.). **The evolution of EU law**. Oxford: Oxford University Press, 2011. p. 611–639.

BELL, M. The right to equality and non-discrimination. In: HERVEY, T. K.; KENNER, J. (Eds.). **Economic and social rights under the EU Charter of Fundamental Rights: a legal perspective**. Oxford: Hart Publishing, 2003. p. 91–110.

BENTO, B. **A reinvenção do corpo: sexualidade e gênero na experiência transexual**. Rio de Janeiro: Garamond, 2006.

Berlin opens Germany's first major gay refugee centre. **The Local Germany**, 23 Feb. 2016.

BIELEFELD ACADEMIC SEARCH ENGINE. **What is BASE?** Available from: <<https://www.base-search.net/>>. Access on: 15 Dec. 2020.

BIELEFELDT, H. “Western” versus “Islamic” human rights conceptions?: a critique of cultural essentialism in the discussion on human rights. **Political Theory**, v. 28, n. 1, p. 90–121, 2000.

BLOCH, E. **Christian Thomasio, un intelectual alemán sin miseria**. Madrid: Aguilar, 1980.

BOBBIO, N. **Il diritto naturale nel secolo XVIII**. Torino: Giappichelli, 1947.

BOBBIO, N. **The age of rights**. Cambridge: Polity Press, 1996.

BONDARENKO, A. Between a rock and a hard place: why rational basis scrutiny for LGBT classifications is incompatible with opposition to LGBT affirmative action. **Brooklyn Law Review**, v. 79, n. 4, p. 1703–1743, 2014.

BORRILLO, D. **Homofobia: história e crítica de um preconceito**. Belo Horizonte: Autêntica, 2010.

BRADY, K. Was steckt hinter dem Rückgang der AfD in Deutschland? **Deutsche Welle**, 11 Oct. 2020.

BRONSKI, M. **A queer history of the United States**. Boston: Beacon Press, 2012.

BROWN JUNIOR, H. C. A crowded room or the perfect fit? Exploring affirmative action treatment in college and university admissions for self-identified LGBT individuals. **William & Mary Journal of Women and the Law**, v. 21, n. 3, p. 603–667, 2015.

BRUCE-JONES, E. Death Zones, Comfort Zones: Queering the Refugee Question. **International Journal on Minority and Group Rights**, v. 22, n. 1, p. 101–127, 2015.

BUCCI, M. P. D. **Fundamentos para uma teoria jurídica das políticas públicas**. São Paulo: Saraiva, 2013.

BUENO-HANSEN, P. The emerging LGBTI rights challenge to transitional justice in Latin America. **International Journal of Transitional Justice**, v. 12, n. 1, p. 126–145, 2018.

BULLOUGH, V. L. Magnus Hirschfeld, an often overlooked pioneer. **Sexuality and Culture**, v. 7, n. 1, p. 62–72, 2003.

BURKE, R. **Decolonization and the evolution of international human rights**. Philadelphia: University of Pennsylvania Press, 2010.

BURTON, N. When homosexuality stopped being a mental disorder. **Psychology Today**, 18 Sep. 2018.

BURZAN, M. **TogEthered at LiQa': experiences and sociality of queer of colour asylum seekers in Malmö**. Master's Thesis—Lund: Lund University, 2016.

BUTLER, J. **Bodies that matter: on the discursive limits of "sex"**. New York: Routledge, 1993.

BUTLER, J. **Undoing gender**. New York: Routledge, 2004.

CAMPBELL, M. B. Gender, colonialism, and the queerness of dreams: seventeenth-century dreamwork. **Journal of Medieval and Early Modern Studies**, v. 44, n. 1, p. 187–213, 2014.

CANNING, V. Degradation by design: women and asylum in northern Europe. **Race & Class**, v. 61, n. 1, p. 46–63, 2019.

CANOTILHO, J. J. G. **Direito constitucional e teoria da constituição**. 6. ed. Coimbra: Almedina, 2002.

CARASTATHIS, A. **Intersectionality: origins, contestations, horizons**. Lincoln: University of Nebraska Press, 2016.

CARTABIA, M. et al. **Legal study on homophobia and discrimination on grounds of sexual orientation and gender identity**. Milan: European Union Agency for Fundamental Rights, 2010.

CARTER, D. **Stonewall: the riots that sparked the gay revolution**. New York: St. Martin's Press, 2005.

CENTER FOR INTERSECTIONAL JUSTICE. **Intersectional discrimination in Europe: relevance, challenges and ways forward**. Brussels: European Network Against Racism, 2019.

CESARO, S. The (micro-)politics of support for LGBT asylum seekers in France. In: MOLE, R. C. M. (Ed.). **Queer migration and asylum in Europe**. London: UCL Press, 2021. p. 216–237.

CHARLTON, R. S. **Manufacturing realities – power imbalance in lesbian asylum seeker appeals**. Master's Thesis—Copenhagen: Aalborg University, 31 May 2018.

CHEGE, V. The European Union anti-discrimination directives and European Union equality law: the case of multi-dimensional discrimination. **ERA Forum Journal of the Academy of European Law**, v. 13, n. 2, p. 275–293, 2012.

CHERUBINI, F. **Asylum law in the European Union**. London: Routledge, 2014.

CHRISTOFFERSEN, A. Barriers to operationalizing intersectionality in equality third sector community development practice: power, austerity, and in/equality. **Community Development Journal**, v. 55, n. 1, p. 139–158, 2020.

COLL-PLANAS, G. **Combating homophobia: local policies for equality on the grounds of sexual orientation and gender identity. A European white paper**. Barcelona: Ajuntament de Barcelona, 2011.

COMPARATO, F. K. **A afirmação histórica dos direitos humanos**. 13. ed. São Paulo: Saraiva, 2019.

COORDENAÇÃO DE APERFEIÇOAMENTO DE PESSOAL DE NÍVEL SUPERIOR. **Portal Periódicos CAPES**. Available from: <[http://www-periodicos-capes-gov-br.ez1.periodicos.capes.gov.br/index.php?option=com\\_pcollection&Itemid=105](http://www-periodicos-capes-gov-br.ez1.periodicos.capes.gov.br/index.php?option=com_pcollection&Itemid=105)>. Access on: 13 Dec. 2020.

COUNCIL OF EUROPE. **European Committee of Social Rights**. Available from: <<https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights>>. Access on: 7 Apr. 2021.

COUNCIL OF THE EUROPEAN COMMUNITIES. **Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women**. Available from: <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0117:EN:HTML>>. Access on: 6 Apr. 2021.

COUNCIL OF THE EUROPEAN COMMUNITIES. **Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions**. Available from: <<http://data.europa.eu/eli/dir/1976/207/oj/eng>>. Access on: 6 Apr. 2021.



COUNCIL OF THE EUROPEAN UNION; COMMISSION OF THE EUROPEAN COMMUNITIES (EDS.). **Treaty on European Union**. Luxembourg: Office for Official Publications of the European Communities, 1992.

COUNCIL OF THE EUROPEAN UNION; EUROPEAN PARLIAMENT. **Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted**. Available from: <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>>. Access on: 25 Feb. 2021.

COUNCIL OF THE EUROPEAN UNION; EUROPEAN PARLIAMENT. **Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)**. Available from: <<http://www.bloomsburycollections.com/book/eu-immigration-and-asylum-law-a-commentary>>. Access on: 25 Feb. 2021a.

COUNCIL OF THE EUROPEAN UNION; EUROPEAN PARLIAMENT. **Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)**. Available from: <<http://data.europa.eu/eli/dir/2013/33/oj/eng>>. Access on: 25 Feb. 2021b.

COUNCIL OF THE EUROPEAN UNION. **Council Decision 2000/750/EC of 27 November 2000 establishing a community action programme to combat discrimination (2001 to 2006)**. Available from: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133113>>. Access on: 6 Apr. 2021c.

COUNCIL OF THE EUROPEAN UNION. **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**. Available from: <<http://data.europa.eu/eli/dir/2000/43/oj/eng>>. Access on: 6 Apr. 2021b.

COUNCIL OF THE EUROPEAN UNION. **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**. Available from: <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0078&from=DE>>. Access on: 6 Apr. 2021a.

COUNCIL OF THE EUROPEAN UNION. **Treaty Establishing a Constitution for Europe**. Luxembourg: Office for Official Publications of the European Communities, 2005.

COUNCIL OF THE EUROPEAN UNION. **Treaty on the Functioning of the European Union**. Available from: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>>. Access on: 18 Feb. 2021.

COURT OF JUSTICE OF THE EUROPEAN UNION. **A, B, C v Staatssecretaris van Veiligheid en Justitie**, 2 Dec. 2014. Available from:

<<https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140162en.pdf>>. Access on: 6 Apr. 2021.

COURT OF JUSTICE OF THE EUROPEAN UNION. **F v Bevándorlási és Állampolgársági Hivatal**, 25 Jan. 2018. Available from: <<https://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d503ae5d0bb6b34005ac68ec94a6a25734.e34KaxiLc3eQc40LaxqMbN4PaNuQe0?text=&docid=198766&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1158899>>. Access on: 6 Apr. 2021.

COURT OF JUSTICE OF THE EUROPEAN UNION. **P v S and Cornwall County Council**, 30 Apr. 1996. Available from: <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?isOldUri=true&uri=CELEX:61994CJ0013>>. Access on: 6 Apr. 2021.

COURT OF JUSTICE OF THE EUROPEAN UNION. **Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others**, 5 June 2008. Available from: <<https://curia.europa.eu/juris/document/document.jsf?jsessionid=6ED2B03AFEF359589D0CCE6D71EDBA1F?text=&docid=204504&pageIndex=0&doclang=PT&mode=req&dir=&occ=first&part=1&cid=4898318>>. Access on: 6 Apr. 2021.

COURT OF JUSTICE OF THE EUROPEAN UNION. **X, Y, Z v Minister voor Immigratie en Asiel**, 7 Nov. 2013. Available from: <<https://curia.europa.eu/juris/document/document.jsf?text=&docid=144215&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=528900>>. Access on: 6 Apr. 2021.

COWIE, S. Violent deaths of LGBT people in Brazil hit all-time high. **The Guardian**, 22 Jan. 2018.

CRAGNOLINI, G. Lesbian, gay, bisexual and transgender refugees: challenges in refugee status determination and living conditions in Turkey. In: SPIJKERBOER, T. (Ed.). **Fleeing homophobia: sexual orientation, gender identity and asylum**. London: Routledge, 2013. p. 98–120.

CRENSHAW, K. Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. **University of Chicago Legal Forum**, v. 1989, n. 1, p. 139–167, 1989.

CRISP, R. (TRAD.). **Aristotle's Nicomachean Ethics**. Cambridge: Cambridge University Press, 2000.

CROSSAN, M. M.; APAYDIN, M. A Multi-Dimensional Framework of Organizational Innovation: A Systematic Review of the Literature: A Framework of Organizational Innovation. **Journal of Management Studies**, v. 47, n. 6, p. 1154–1191, 2010.

CRUELLES, M.; COLL-PLANAS, G. Challenging equality policies: The emerging LGBT perspective. **European Journal of Women's Studies**, v. 20, n. 2, p. 122–137, 2013.

DAHRENDORF, R. Economic opportunity, civil society and political liberty. **Development and Change**, v. 27, n. 2, p. 229–249, 1996.

DANISI, C.; FERREIRA, N. Queering asylum... or human rights in Europe? **ADiM Blog**, Editorial, 2021.

DART-EUROPE. **The DART-Europe E-theses Portal**. Available from: <<http://www.dart-europe.eu/contributors/list.php>>. Access on: 15 Dec. 2020.

DAVIS, G. K. Creating a roadmap to a LGBTQ affirmative action scheme: an article on parallel histories, the diversity rationale, and escaping strict scrutiny. **National Black Law Journal**, v. 26, n. 1, p. 43–84, 2017.

DE WITTE, B. From a “Common Principle of Equality” to “European Antidiscrimination Law”. **American Behavioral Scientist**, v. 53, n. 12, p. 1715–1730, 2010.

DEMCZUK, A. E. The discriminatory legalism strategy and hate speech cases in Poland. The role of the Commissioner for Human Rights in fighting discrimination. **Annales Universitatis Mariae Curie-Skłodowska**, v. 27, n. 2, p. 127–148, 2021.

DHOEST, A. Digital (dis)connectivity in fraught contexts: The case of gay refugees in Belgium. **European Journal of Cultural Studies**, v. 23, n. 5, p. 784–800, 2019.

DÍAZ, F. DE A. P. Credibilidad de los solicitantes de asilo y estereotipos heterosexistas: en busca del “refugiado LGBTI por antonomasia”. **Cuadernos Electrónicos de Filosofía del Derecho**, v. 39, p. 271–291, 2019.

DONNELLY, J. The relative universality of human rights. **Human Rights Quarterly**, n. 29, p. 281–306, 2007.

DONNELLY, J. **Universal human rights in theory and practice**. 3. ed. Ithaca: Cornell University Press, 2013.

DOSE, R. **Magnus Hirschfeld: the origins of the gay liberation movement**. New York: Monthly Review Press, 2014.

DUSTIN, M. Many rivers to cross: the recognition of LGBTQI asylum in the UK. **International Journal of Refugee Law**, v. 30, n. 1, p. 104–127, 2018.

DUSTIN, M.; HELD, N. ‘They sent me to the mountain’: the role space, religion and support groups play for LGBTIQ+ asylum claimants. In: MOLE, R. C. M. (Ed.). **Queer migration and asylum in Europe**. London: UCL Press, 2021. p. 184–215.

DUSTIN, M.; HELD, N. In or out? A queer intersectional approach to ‘Particular Social Group’ membership and credibility in SOGI asylum claims in Germany and the UK. **GeniUS - Rivista di studi giuridici sull’orientamento sessuale e l’identità di genere**, v. 5, n. 2, p. 74–87, 2018.

DWORKIN, R. **Sovereign virtue: the theory and practice of equality**. Cambridge: Harvard University Press, 2002.

EL-KAYED, N.; HAMANN, U. Refugees’ access to housing and residency in German cities: internal border regimes and their local variations. **Social Inclusion**, v. 6, n. 1, p. 135–146, 2018.

ESKRIDGE, W. **Gaylaw: challenging the apartheid of the closet**. Cambridge: Harvard University Press, 2009.

EUROPEAN ASYLUM SUPPORT OFFICE; INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES. **Judicial analysis - Vulnerability in the context of applications for international protection**. Luxembourg: Publications Office of the European Union, 2021.

EUROPEAN ASYLUM SUPPORT OFFICE. **EASO history**. Available from: <<https://easo.europa.eu/about-us/easo-history>>. Access on: 11 Oct. 2020a.

EUROPEAN ASYLUM SUPPORT OFFICE. **Vulnerable Groups**. Text. Available from: <<https://www.easo.europa.eu/asylum-support-training/vulnerable-groups>>. Access on: 25 Feb. 2021b.

EUROPEAN COMMISSION. **Country responsible for asylum application (Dublin Regulation)**. Text. Available from: <[https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en)>. Access on: 18 Feb. 2021.

EUROPEAN COMMISSION. **Tackling multiple discrimination: practices, policies and laws**. Luxembourg: Office for Official Publications of the European Communities, 2007.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS. **International Centre for the Legal Protection of Human Rights v Croatia**, 30 Mar. 2009. Available from: <[https://hudoc.esc.coe.int/eng/#{%22fulltext%22:\[%2245/2007%22\],%22sort%22:\[%22ESCPublicationDate%20Descending%22\],%22ESCStateParty%22:\[%22HRV%22\],%22ESCDclIdentifier%22:\[%22cc-45-2007-Assessment-en%22\]}>](https://hudoc.esc.coe.int/eng/#{%22fulltext%22:[%2245/2007%22],%22sort%22:[%22ESCPublicationDate%20Descending%22],%22ESCStateParty%22:[%22HRV%22],%22ESCDclIdentifier%22:[%22cc-45-2007-Assessment-en%22]}>)>. Access on: 7 Apr. 2021.

EUROPEAN COURT OF HUMAN RIGHTS. **Alekseyev v Russia**, 11 Apr. 2011. Available from: <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Aleksyev%20v.%20Russia%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-101257%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Aleksyev%20v.%20Russia%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-101257%22]}>)>. Access on: 1 Apr. 2021.

EUROPEAN COURT OF HUMAN RIGHTS. **B and C v Switzerland**, 17 Feb. 2021. Available from: <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22b%20and%20c%20v%20Switzerland%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-206153%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22b%20and%20c%20v%20Switzerland%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-206153%22]}>)>. Access on: 1 Apr. 2021.

EUROPEAN COURT OF HUMAN RIGHTS. **Bączkowski and others v Poland**, 24 Sep. 2007. Available from: <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22B%20C%20czkowski%20v%20Poland%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-80464%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22B%20C%20czkowski%20v%20Poland%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-80464%22]}>)>. Access on: 1 Apr. 2021.

EUROPEAN COURT OF HUMAN RIGHTS. **Dudgeon v United Kingdom**, 22 Oct. 1981. Available from: <<https://www.hr->



EUROPEAN COURT OF HUMAN RIGHTS. **X v Germany**, 11 Oct. 1979. Available from: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22x%20v.%20germany%22\],\[%22respondent%22:\[%22DEU%22\],\[%22itemid%22:\[%22001-104181%22\]}}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22x%20v.%20germany%22],[%22respondent%22:[%22DEU%22],[%22itemid%22:[%22001-104181%22]}}). Access on: 1 Apr. 2021.

EUROPEAN PARLIAMENT. **Resolution on equal rights for gays and lesbians in the EC**. Available from: <https://eur-lex.europa.eu/legal-content/ET/TXT/?uri=CELEX:51998IP0824>. Access on: 8 Apr. 2021.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. **A long way to go for LGBTI equality**. Luxembourg: Publications Office of the European Union, 2020. v. 2.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. **Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States: summary of findings, trends, challenges and promising practices** Luxembourg Publications Office of the European Union, , 2011. Available from: <https://primarysources.brillonline.com/browse/human-rights-documents-online/homophobia-transphobia-and-discrimination-on-grounds-of-sexual-orientation-and-gender-identity-in-the-eu-member-states;hrdhrd99920009>. Access on: 8 Apr. 2021.

FADERMAN, L. **The gay revolution: the story of the struggle**. New York: Simon & Schuster, 2015.

FELLNER, A. M.; NOSSEM, E. K. The politics of (dis-)location: queer migration, activism, and coalitional possibilities. **Gamma: Journal of Theory and Criticism**, v. 25, p. 61–77, 2018.

FERNÁNDEZ, E. El contractualismo clásico (siglos XVII y XVIII) y los derechos naturales. **Anuario de Derechos Humanos**, n. 1983, p. 59–100, 1983.

FERRAJOLI, L.; VITALE, E. **Diritti fondamentali: Un dibattito teorico**. Bari: Gius.Laterza & Figli Spa, 2002.

FERREIRA, N. An exercise in detachment: the Council of Europe and sexual minority asylum claims. In: MOLE, R. C. M. (Ed.). **Queer migration and asylum in Europe**. London: UCL Press, 2021. p. 78–108.

FERREIRA, N. et al. **32 recommendations to the European Commission on the new EU LGBTI+ Equality Strategy**. Brighton: University of Sussex, 2020.

FERREIRA, N. et al. **The reform of the Common European Asylum System: Fifteen recommendations from a Sexual Orientation and Gender Identity Perspective** Brighton University of Sussex, , 2018. Available from: <https://osf.io/preprints/socarxiv/pkfr/>. Access on: 23 Apr. 2021.

FERREIRA, N. **Portuguese refugee law in the European context: the case of sexuality-based claims** *International Journal of Refugee Law*, 2018b.

FERREIRA, N. **Questionnaire European Research Project Fleeing Homophobia, seeking safety in Europe - Best practices on the (legal) position of LGBT asylum seekers in the EU member states**. Amsterdam: Vrije Universiteit Amsterdam, 2011.

FERREIRA, N. Reforming the Common European Asylum System: enough rainbow for queer asylum seekers?. **GenIUS - Rivista di studi giuridici sull'orientamento sessuale e l'identità di genere**, v. 5, n. 2, p. 25–42, 2018a.

FERREIRA, N. Refugees and asylum seekers in Portugal: an assessment and the case of LGBTI individuals. **Le Monde Diplomatique**, Paris, 10 Jan. 2016.

FLAGE, A. Discrimination against gays and lesbians in hiring decisions: a meta-analysis. **International Journal of Manpower**, v. 41, n. 6, p. 671–691, 2019.

FOSS, R. The Demise of the Homosexual Exclusion: New Possibilities for Gay and Lesbian Immigration. **Harvard Civil Rights-Civil Liberties Law Review**, v. 29, p. 439–445, 1994.

FOUCAULT, M. **The history of sexuality. Volume 1: an introduction**. New York: Pantheon Books, 1978.

FOUCAULT, M. **The history of sexuality. Volume 3: the care of the self**. New York: Pantheon Books, 1986.

FREITAS JÚNIOR, A. R. A difícil harmonia entre multiculturalismo e direitos humanos. **Revista de Direitos Difusos**, v. 2, n. 9, p. 1117–1122, 2001.

FREITAS JÚNIOR, A. R. Os direitos sociais como direitos humanos num cenário de globalização econômica e de integração regional. In: PIOVESAN, F. (Ed.). **Direitos Humanos, Globalização e Integração Regional**. São Paulo: Max Limonad, 2002.

FREITAS JÚNIOR, A. R.; BOUCINHAS FILHO, J. C.; TORRES, D. B. **Migração, trabalho e direitos humanos**. São Paulo: LTr, 2017.

FREITAS JÚNIOR, A. R.; PIOVESAN, F. Direitos humanos na era da globalização: o papel do 3º setor. In: GARCIA, M.; PIOVESAN, F. (Eds.). **Teoria Geral dos Direitos Humanos**. São Paulo: Revista dos Tribunais, 2011.

FULLINWIDER, R. Affirmative Action. In: ZALTA, E. N. (Ed.). **The Stanford Encyclopedia of Philosophy**. Palo Alto: Stanford University Press, 2018.

GAMMELTOFT-HANSEN, T. **Access to asylum: international refugee law and the globalisation of migration control**. Cambridge: Cambridge University Press, 2011.

GAMMELTOFT-HANSEN, T. International refugee law and refugee policy: the case of deterrence policies. **Journal of Refugee Studies**, v. 27, n. 4, p. 574–595, 2014.

German LGBTQI+ Asylum Programme Director. **Interview I**. [June 2021]. Interviewer: Henrique da Silveira Zanin. Berlin, 2021. 1 .mkv file (45 min.).

GIAMETTA, C. New asylum protection categories and elusive filtering devices: the case of 'Queer asylum' in France and the UK. **Journal of Ethnic and Migration Studies**, v. 46, n. 1, p. 142–157, 2020.

GIERKE, O. **Natural law and the theory of society: 1500 to 1800**. Cambridge: Cambridge University Press, 1950.

GILL, N.; GOOD, A. **Asylum determination in Europe: ethnographic perspectives**. Cham: Springer, 2019.

GLUNS, D. Social services for vulnerable groups in Germany. **LoGoSO Research Papers**, n. 3, p. 1–18, 2018.

GOLDBERG, S. B. Give me liberty or give me death: political asylum and the global persecution of lesbians and gay men. **Cornell International Law Journal**, v. 26, n. 3, p. 605–623, 1993.

GOLEMBE, J. et al. Experiences of minority stress and mental health burdens of newly arrived LGBTQ\* refugees in Germany. **Sexuality Research and Social Policy**, v. 17, n. 4, p. 1–11, 2020.

GOMES, J. B. B.; SILVA, F. D. L. As ações afirmativas e o processo de implementação da igualdade efetiva. **Cadernos do Centro de Estudos Judiciários**, v. 24, p. 86–153, 2003.

GOODMAN, R. Asylum and the concealment of sexual orientation: where not to draw the line. **New York University Journal of International Law and Politics**, v. 44, n. 2, p. 407–446, 2012.

GOTTLIEB, N. et al. Health and healthcare utilization among asylum-seekers from Berlin's LGBTIQ shelter: preliminary results of a survey. **International Journal of Environmental Research and Public Health**, v. 17, p. 4514, 2020.

GRAMSCI, A. **Selections from the prison notebooks**. 11. ed. New York: International Publishers, 1992.

GRAY, A.; MCDOWALL, A. LGBT refugee protection in the UK: from discretion to belief? **Oxford Forced Migration Review**, n. 42, p. 22–25, 2013.

GRŽINIĆ, M. Queer politics: identity, sexuality and Europe: „queer“. **Identities: Journal for Politics, Gender and Culture**, v. 2, n. 2, p. 63–85, 2003.

GUHA, R. On some aspects of the historiography of colonial India. In: GUHA, R. (Ed.). **Subaltern studies I: writings on South Asian history and society**. Delhi: Oxford University Press, 1982. p. 1–8.

HAMILA, A. Les persécutions liées à l'orientation sexuelle : un « nouveau » motif pour octroyer le statut de réfugié en Belgique ? **Politique et Sociétés**, v. 38, n. 1, p. 157–177, 2019.

HAN, E.; O'MAHONEY, J. British colonialism and the criminalization of homosexuality. **Cambridge Review of International Affairs**, v. 27, n. 2, p. 268–288, 2014.



HARRISON, H. et al. Case study research: foundations and methodological orientations. **Forum Qualitative Sozialforschung**, v. 18, n. 1, 2017.

HATHAWAY, J.; POBJOY, J. Queer cases make bad law. **New York University Journal of International Law and Politics**, v. 44, n. 2, p. 315–389, 2012.

HEGER, H. **The men with the pink triangle: the true, life-and-death story of homosexuals in the Nazi death camps**. Boston: Alyson Publications, 1994.

HEINONLINE. **About**. Available from: <<https://heinonline.org/HOL/Welcome#>>. Access on: 21 Apr. 2021.

HELD, N. Sexual orientation and gender identity claims of asylum in Germany: intersectional legal, social and methodological challenges. In: KÜPPERS, C. (Ed.). **Refugees & Queers: Forschung und Bildung an der Schnittstelle von LSBTTIQ, Fluchtmigration und Emanzipationspolitiken**. Bielefeld: transcript Verlag, 2019. p. 53–80.

HERTOGHS, M.; SCHINKEL, W. The state's sexual desires: the performance of sexuality in the Dutch asylum procedure. **Theory and Society**, v. 47, n. 6, p. 691–716, 2018.

HIGH COURT OF AUSTRALIA. **Appellant S395/2002 v Minister for Immigration and Multicultural Affairs**, 9 Dec. 2003. Available from: <<http://eresources.hcourt.gov.au/showCase/2003/HCA/71>>. Access on: 14 Oct. 2020

HOCHSTRASSER, T. **Natural law theories in the early enlightenment**. Cambridge: Cambridge University Press, 2000.

HOLLEY, E. International anti-LGBT legislation: how nationalistic cultural warfare supports political motivations. **Tulane Journal of Law and Sexuality**, v. 24, p. 179–202, 2015.

HUNT, L. **Inventing human rights: a history**. New York: Norton, 2008.

HYDER, K. H. **Equality of treatment and trade discrimination in international law**. Heidelberg: Springer, 1968.

HYMAN, R. et al. Introduction: social regulation of diversity and equality. **European Journal of Industrial Relations**, v. 18, n. 4, p. 279–292, 2012.

IBHAWOH, B. Commemorating human rights: exploring origins, episodes, and historicity in constructing a human rights timeline. **Peace and Conflict: Journal of Peace Psychology**, v. 19, n. 4, p. 338–348, 2013.

IBRAHIM, A. LGBT rights in Africa and the discursive role of international human rights law. **African Human Rights Law Journal**, v. 15, n. 2, p. 263–281, 2015.

IMANI, N. O. R. Critical impairments to globalizing the western human rights discourse. **Societies Without Borders**, v. 3, n. 2, p. 270–284, 2009.

INTERNATIONAL COMMISSION OF JURISTS. **The Yogyakarta Principles plus 10: additional principles and state obligation on the application of international human rights law in relation to sexual orientation and gender identity**. Berlin: International Commission of Jurists, 2017.

INTERNATIONAL COMMISSION OF JURISTS. **The Yogyakarta Principles: principles on the application of international human rights law in relation to sexual orientation and gender identity**. Berlin: International Commission of Jurists, 2007.

INTERNATIONAL LABOUR ORGANIZATION. **Convention C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**. Available from: <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111)>. Access on: 14 Apr. 2021.

INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION. **State-sponsored homophobia**. Geneva: ILGA, 2020.

JANSEN, S. Fleeing homophobia, asylum claims related to sexual orientation and gender identity in Europe. In: SPIJKERBOER, T. (Ed.). **Fleeing homophobia: sexual orientation, gender identity and asylum**. London: Routledge, 2013. p. 1–31.

JOVANOVIĆ, M. Лгбт особе у србији: између формалног прихватања и неформалног одбацивања. **Tm-Technisches Messen**, v. XLIV, n. 1, p. 139–157, 2020.

JUNG, M. Logics of Citizenship and Violence of Rights: The Queer Migrant Body and the Asylum System. **Birkbeck Law Review**, v. 3, n. 2, p. 305–335, 2015.

KAHN-FREUND, O. On uses and misuses of comparative law. **The Modern Law Review**, v. 37, n. 1, p. 1–27, 1974.

KANT, I. **Grounding for the metaphysics of morals**. Indianapolis: Hackett Publishing, 1993.

KANTOLA, J.; NOUSIAINEN, K. Institutionalizing intersectionality in Europe. **International Feminist Journal of Politics**, v. 11, n. 4, p. 459–477, 2009.

KHANNA, G. Does affirmative action incentivize schooling? Evidence from India. **The Review of Economics and Statistics**, v. 102, n. 2, p. 219–233, 2020.

KING JR, M. L. **Letter from the Birmingham Jail**. San Francisco: Harper San Francisco, 1994.

KOOPMANS, R.; STATHAM, P. Ethnic and civic conceptions of nationhood and the differential success of the extreme right in Germany and Italy. In: GIUNI, M.; MCADAM, D.; TILLY, C. (Eds.). **How social movements matter**. Social Movements, Protest, and Contention. Minneapolis: University of Minnesota Press, 1999. p. 225–251.

KOROLCZUK, E. The fight against ‘gender’ and ‘LGBT ideology’: new developments in Poland. **European Journal of Politics and Gender**, v. 3, n. 1, p. 165–167, 2020.

LAFUENTE, J. D. El derecho de asilo por motivos de orientación sexual e identidad de género. **Revista de Derecho Político**, v. 1, n. 89, p. 345–388, 2014.

LANGLEY, A. Was ist so toll an Deutschland? **Deutsche Welle**, 2 Sep. 2015.

LAVIOLETTE, N. 'UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity': a Critical Commentary. **International Journal of Refugee Law**, v. 22, n. 2, p. 173–208, 2010.

LAVIOLETTE, N. Independent human rights documentation and sexual minorities: an ongoing challenge for the Canadian refugee determination process. **The International Journal of Human Rights**, v. 13, n. 2, p. 437–476, 2009.

LAVIOLETTE, N. Overcoming problems with sexual minority refugee claims: is LGBT cultural competency training the solution? In: SPIJKERBOER, T. (Ed.). **Fleeing homophobia: sexual orientation, gender identity and asylum**. London: Routledge, 2013. p. 189–216.

LAVIOLETTE, N. Sexual orientation, gender identity and the refugee determination process in Canada. **Journal of Research in Gender Studies**, v. 4, n. 2, p. 68–123, 2014.

LAVRYSEN, L. European asylum law and the ECHR: an uneasy coexistence. **Goettingen Journal of International Law**, v. 4, n. 1, p. 197–242, 2012.

LEE, M. G. Between Stonewall and AIDS: initial efforts to establish gay and lesbian social services. **Journal of Sociology and Social Welfare**, v. 40, n. 3, p. 163–186, 2013.

LEWIS, R. Deportable subjects: lesbians and political asylum. **Feminist Formations**, v. 25, n. 2, p. 174–194, 2013.

LOMBARDO, E.; VERLOO, M. Institutionalizing Intersectionality in the European Union?: policy developments and contestations. **International Feminist Journal of Politics**, v. 11, n. 4, p. 478–495, 2009.

LOWNDES, V.; POLAT, R. K. How do local actors interpret, enact and contest policy? An analysis of local government responses to meeting the needs of Syrian refugees in Turkey. **Local Government Studies**, p. 1–24, 2020.

LUIBHÉID, E. Queer/migration: an unruly body of scholarship. **GLQ: A Journal of Lesbian and Gay Studies**, v. 14, n. 2–3, p. 169–190, 2008.

MAKIA, D. To be gay and African: addressing the gross human rights violations of homosexuals in Cameroon and Uganda, and legislative remedies for their mistreatment. **William & Mary Journal of Race, Gender, and Social Justice**, v. 25, n. 3, p. 681–708, 2019.

MAROUF, F. E. The emerging importance of social visibility in defining a particular social group and its potential impact on asylum claims related to sexual orientation and gender. **Yale Law & Policy Review**, v. 27, n. 1, p. 47–106, 2008.

MARTEL, F. **Global gay: how gay culture is changing the world**. Cambridge: The MIT Press, 2018.

MASSELOT, A.; BULLOCK, J. Stuck at the cross-road: intersectional aspirations in the EU anti-discrimination legal framework. **Australian and New Zealand Journal of European Studies**, v. 2013, n. 1, p. 3–16, 2013.

MATHESON, G. **The rights and experiences of LGBTI refugees in Europe: a comparative study of procedures and practices in Italy and Sweden**. Master's Thesis—Uppsala: Uppsala University, 2019.

MBAYA, E. R. Gênese, evolução e universalidade dos direitos humanos frente à diversidade de culturas. **Estudos Avançados**, v. 11, n. 30, p. 17–41, 1997.

MCNEAL, K. E.; BRENNAN, S. F. Between homonationalism and islamophobia: comparing queer Caribbean and Muslim asylum seeking in/to the Netherlands. In: MOLE, R. C. M. (Ed.). **Queer migration and asylum in Europe**. London: UCL Press, 2021. p. 162–183.

MERCAT-BRUNS, M. Multiple discrimination and intersectionality: issues of equality and liberty. **International Social Science Journal**, v. 67, n. 223–224, p. 43–54, 2018.

MESSER, E. Pluralist approaches to human rights. **Journal of Anthropological Research**, v. 53, n. 3, p. 293–317, 1997.

MIDDELKOOP, L. Normativity and credibility of sexual orientation in asylum decision making. In: SPIJKERBOER, T. (Ed.). **Fleeing homophobia: sexual orientation, gender identity and asylum**. London: Routledge, 2013. p. 154–175.

MILLBANK, J. From discretion to disbelief: recent trends in refugee determinations on the basis of sexual orientation in Australia and the United Kingdom. **International Journal of Human Rights**, v. 13, n. 2, p. 391–414, 2009.

MILLBANK, J. Gender, Sex and Visibility in Refugee Claims on the Basis of Sexual Orientation. **Georgetown Immigration Law Journal**, v. 18, n. 1, p. 71–110, 2004.

MILLBANK, J. Sexual orientation and refugee status determination over the past 20 years: unsteady progress through standard sequences? In: SPIJKERBOER, T. (Ed.). **Fleeing homophobia: sexual orientation, gender identity and asylum**. London: Routledge, 2013. p. 32–54.

MILLBANK, J. The right of lesbians and gay men to live freely, openly, and on equal terms is not bad law: a reply to Hathaway and Pobjoy. **New York University Journal of International Law and Politics**, v. 44, n. 2, p. 497–528, 2012.

MIR, R. P. **Respect for fundamental rights in credibility assessment of LGBTIQ+ asylum seekers in Sweden**. Master's Thesis—Gothenburg: University of Gothenburg, 2019.

MIS, M. Gay rights group to open centre for LGBT asylum seekers in Berlin. **Thomson Reuters Foundation**, 22 Jan. 2016.

MITOMA, G. 'The character of contemporary history': human rights history and early modern violence. **History**, v. 99, n. 336, p. 549–565, 2014.

MOLE, R. C. M. Queer Russian asylum seekers in Germany: worthy refugees and acceptable forms of harm? In: FIDDIAN-QASMIYEH, E. (Ed.). **Refuge in a moving world: tracing refugee and migrant journeys across disciplines**. London: UCL Press, 2020. p. 273–288.

MURRAY, D. A. The (not so) straight story: Queering migration narratives of sexual orientation and gendered identity refugee claimants. **Sexualities**, v. 17, n. 4, p. 451–471, 2014.

NARDOCCI, C. Equality & non-discrimination between the European Court of Justice and the European Court of Human Rights. Challenges and perspectives in the religious discourse. **University of Milano-Bicocca School of Law Research Paper**, v. 18, n. 12, p. 1–22, 2018.

NELSON, R. H. Affirmative action for LGBT applicants and employees: a proposed regulatory scheme. **Hofstra Labor and Employment Law Journal**, v. 30, n. 1, p. 179–217, 2012.

O'NIONS, H. **Asylum - a right denied: a critical analysis of European asylum policy**. Surrey: Ashgate, 2014.

OLIVARES, Mariela. Narrative Reform Dilemmas. **Missouri Law Review**, v. 82, p. 1089–1140, 2017.

OLSEN, P. T. **The inclusive guise of "gay" asylum: a socio- legal analysis of sexual minority asylum recognition in the UK**. Ph.D Dissertation—Edinburgh: University of Edinburgh, 2016.

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE. **Committee Opinion No. 12197, Discrimination on the basis of sexual orientation and gender identity**. Available from: <<https://pace.coe.int/en/files/12801/html>>. Access on: 14 Apr. 2021.

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE. **Recommendation 1470 (2000) - Situation of gays and lesbians and their partners in respect to asylum and immigration in the member states of the Council of Europe**. Available from: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16822&lang=en>>. Access on: 8 Apr. 2021a.

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE. **Recommendation 1474 (2000) - Situation of lesbians and gays in Council of Europe member states**. Available from: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16829&lang=en>>. Access on: 8 Apr. 2021b.

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE. **Recommendation 1915 (2010) - Discrimination on the basis of sexual orientation and gender identity**. Available from: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17854&lang=en>>. Access on: 8 Apr. 2021a.

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE. **Recommendation 2021 (2013) - Tackling discrimination on the grounds of sexual orientation and gender identity**. Available from: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20011&lang=en>>. Access on: 8 Apr. 2021.

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE. **Resolution 1728 (2010) - Discrimination on the basis of sexual orientation and gender identity**. Available from: <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17853>>. Access on: 8 Apr. 2021b.

PECES-BARBA, G. **Tránsito a la modernidad y derechos fundamentales**. Madrid: Mezquita, 1982.

PEREGO, A. (Des)haciendo fronteras: Latin American LGBTIQ\* asylum seekers in Spain in the process of credibility assessment. In: MOLE, R. C. M. (Ed.). **Queer migration and asylum in Europe**. London: UCL Press, 2021. p. 132–161.

PETTICREW, M.; ROBERTS, H. **Systematic reviews in the social sciences**. Oxford: Blackwell Publishing, 2006.

PIOVESAN, F. Ações afirmativas no Brasil: desafios e perspectivas. **Estudos Feministas**, v. 16, n. 3, p. 887–896, 2008.

PIOVESAN, F. **Direitos humanos e justiça internacional: um estudo comparativo dos sistemas regionais europeu, interamericano e africano**. 9. ed. São Paulo: Saraiva, 2019.

PIOVESAN, F. **Direitos humanos e o direito constitucional internacional**. 18. ed. São Paulo: Saraiva, 2018.

PIOVESAN, F. Igualdade, diferença e direitos humanos: perspectivas do constitucionalismo latino-americano à luz dos sistemas global e regional de proteção. In: JUBILUT, L. L.; BAHIA, A. M. F.; MAGALHÃES, J. Q. (Eds.). **Direito à Diferença: Aspectos Teóricos e Conceituais da Proteção às Minorias e aos Grupos Vulneráveis**. São Paulo: Saraiva, 2013. v. 1p. 303–330.

PIOVESAN, F. O direito de asilo e a proteção internacional dos refugiados. In: ARAÚJO, N.; ALMEIDA, G. A. (Eds.). **O direito internacional dos refugiados - uma perspectiva brasileira**. Rio de Janeiro: Renovar, 2001. v. 1p. 27–64.

POINDEXTER, C. C. Sociopolitical antecedents to Stonewall: analysis of the origins of the gay rights movement in the United States. **Social Work**, v. 42, n. 6, p. 607–615, 1997.

POLLIS, A.; SCHWAB, P. **Human rights: cultural and ideological perspectives**. New York: Praeger, 1979.

QUEER REFUGEES GERMANY. **Project: Queer Refugees Germany**, 2018. Available from: <<https://www.queer-refugees.de/the-project/>>. Access on: 25 Mar. 2022

RABOIN, T. Exhortations of happiness: Liberalism and nationalism in the discourses on LGBTI asylum rights in the UK. **Sexualities**, v. 20, n. 5–6, p. 663–681, 2016.

RAMOS, A. C. **Curso de direito internacional privado**. São Paulo: Saraiva Educação, 2018.

RAMOS, A. C. **Curso de direitos humanos**. 7. ed. São Paulo: Saraiva, 2020.

RAMOS, A. C. **Teoria geral dos direitos humanos na ordem internacional**. Rio de Janeiro: Renovar, 2005.

RAWLS, J. **Political liberalism**. New York: Columbia University Press, 2005.

REED, A. A Pro-Trans Argument for a Transexclusive Employment Non-Discrimination Act. **American Business Law Journal**, v. 50, n. 4, p. 835–874, 2013.

RESENDE, C.; RIBEIRO, L. P. Breve ensaio sobre o conceito de vulnerabilidade social: **Percorso Acadêmico**, v. 7, n. 14, p. 378–400, 2017.

RILEY, P. **The Cambridge companion to Rousseau**. Cambridge: Cambridge University Press, 2006.

SABSAY, L. The emergence of the other sexual citizen: orientalism and the modernisation of sexuality. **Citizenship Studies**, v. 16, n. 5, p. 605–611, 2012.

SANTOS, B. S. **Construindo as epistemologias do sul: para um pensamento alternativo de alternativas**. Buenos Aires: Consejo Latinoamericano de Ciencias Sociales, 2018.

SANTOS, B. S. **Democratizar a democracia: os caminhos da democracia participativa**. 4. ed. Rio de Janeiro: Civilização Brasileira, 2009.

SANTOS, B. S. **Globalização: fatalidade ou utopia?** 3. ed. Porto: Afrontamento, 2005.

SANTOS, B. S. Por uma concepção multicultural de direitos humanos. **Revista Crítica de Ciências Sociais**, n. 48, p. 11–32, 1997.

SANTOS, B. S.; NUNES, J. A. Introdução: para ampliar o cânone do reconhecimento, da diferença e da igualdade. In: SANTOS, B. S. (Ed.). **Reconhecer para libertar: os caminhos do cosmopolitismo multicultural**. Rio de Janeiro: Civilização Brasileira, 2003. p. 25–68.

SARI, E. Lesbian refugees in transit: The making of authenticity and legitimacy in Turkey. **Journal of Lesbian Studies**, v. 24, n. 2, p. 140–158, 2020.

SCHIEK, D. Broadening the scope and the norms of EU Gender Equality Law: towards a multidimensional conception of equality law. **Maastricht Journal of European and Comparative Law**, v. 12, n. 4, p. 427–466, 2005.

SCHOENHUBER, M. P. The European Union's refugee deal with Turkey: a risky alliance contrary to European laws and values. **Houston Journal of International Law**, v. 40, n. 2, p. 633–670, 2018.

SCHUTZER, M. Bringing the Asylum Process out of the Closet: Promoting the Acknowledgment of LGB Refugees Note. **Georgetown Journal of Gender and the Law**, v. 13, n. 3, p. 669–708, 2012.

SCHWARZ, H. Subaltern studies: radical history in the metaphoric mode. In: LUDDEN, D. (Ed.). **Reading subaltern studies: critical history, contested meaning, and the globalisation of South Asia**. Delhi: Permanent Black, 2001. p. 304–339.

SEIDLER, M. Pufendorf's moral and political philosophy. In: ZALTA, E. (Ed.). **The Stanford Encyclopedia of Philosophy**. Stanford: Stanford University Press, 2018.

SEN, A. **Human rights and Asian values**. New York: Carnegie Council on Ethics and International Affairs, 1997.

SHAH, B. LGBT Identity in immigration. **Columbia Human Rights Law Review**, n. 45, p. 100–215, 2013.

SHERRIFF, N. et al. Co-producing knowledge of lesbian, gay, bisexual, trans and intersex (LGBTI) health-care inequalities via rapid reviews of grey literature in 27 EU Member States. **Health Expectations**, v. 22, n. 4, p. 688–700, 2019.

SHIELD, A. D. J. 'Suriname – Seeking a Lonely, Lesbian Friend for Correspondence': Immigration and Homo-emancipation in the Netherlands, 1965–79. **History Workshop Journal**, v. 78, n. 1, p. 246–264, 2014.

SINGH, A.; MENG, S.; HANSEN, A. "I am my own gender:" resilience strategies of trans youth. **Journal of Counseling & Development**, v. 92, n. 2, p. 208–218, 2014.

SMITH-KHAN, L. Different in the Same Way? Language, Diversity, and Refugee Credibility. **International Journal of Refugee Law**, v. 29, n. 3, p. 389–416, 2017.

SPIVAK, G. C. Can the subaltern speak? In: MORRIS, R. C. (Ed.). **Reflexions on the history of an idea: can the subaltern speak?** New York: Columbia University Press, 2010. p. 36–114.

STEINER, N. **Arguing about asylum: the complexity of refugee debates in Europe**. New York: St. Martin's Press, 2000.

STRAUSS, L. **Diritto naturale e storia**. Genova: Il Melagnolo, 1990.

SWEETAPPLE, C. (Ed.). **The queer intersectional in contemporary Germany: essays on racism, capitalism and sexual politics**. 1. ed. Gießen: Psychosozial-Verlag, 2018.

TABAK, S.; LEVITAN, R. LGBTI migrants in immigration detention: a global perspective. **Harvard Journal of Law and Gender**, v. 37, n. 1, p. 1–45, 2014.



TACCHETTI, M. **Que(e)rying asylum. An ethnographic study on the discursive and non-discursive construction of LGBT asylum seekers in the UK.** Ph.D Dissertation—Leicester: University of Leicester, 2018.

TAN, V. **UNHCR urges states to avoid detaining asylum-seekers.** Geneva: United Nations High Commissioner for Refugees, 12 May 2011. Available from: <<https://www.unhcr.org/news/makingdifference/2011/5/4dcbef476/unhcr-urges-states-avoid-detaining-asylum-seekers.html>>. Access on: 12 Oct. 2020.

TOBLER, C. Equality and non-discrimination under the ECHR and EU Law: a comparison focusing on discrimination against LGBTI persons. **Zeitschrift für ausländisches öffentliches Recht und Völkerrecht**, v. 74, p. 521–561, 2014.

TORVIK, Y. G. **Safeguarding borders, or safeguarding queers?** Master's Thesis—Paris: Sciences Po, 2017.

TRADES UNION CONGRESS. **The cost of being out at work LGBT+: workers' experiences of harassment and discrimination.** London: Trades Union Congress, 2017. Available from: <<https://www.tuc.org.uk/sites/default/files/LGBTreport17.pdf>>. Access on: 20 Sep. 2020.

TRANSGENDER EUROPE. **Trans Rights Europe Map & Index 2018.** Berlin: Transgender Europe, 14 May 2018. Available from: <<https://tgeu.org/trans-rights-map-2018/>>. Access on: 13 Oct. 2020.

TRINDADE, A. A. C. **A proteção internacional dos direitos humanos e o Brasil.** Brasília: Editora da Universidade de Brasília, 1998.

TRINDADE, A. A. C. **International law for humankind: towards a new jus gentium.** Leiden: Martinus Nijhoff Publishers, 2010.

TSAVDAROGLOU, C. et al. Acts for refugees' right to the city and commoning practices of care-tizenship in Athens, Mytilene and Thessaloniki. **Social Inclusion**, v. 7, n. 4, p. 119–130, 2019.

TSCHALAER, M. Between queer liberalisms and Muslim masculinities: LGBTQI+ Muslim asylum assessment in Germany. **Ethnic and Racial Studies**, v. 43, n. 7, p. 1265–1283, 2020b.

TSCHALAER, M. **The effects of COVID-19 on queer asylum claimants in Germany.** Bristol: University of Bristol, 2020a.

TSCHALAER, M. Victimhood and femininities in Black lesbian asylum cases in Germany. **Journal of Ethnic and Migration Studies**, 2021.

TSCHALAER, M. **Waiting for LGBTQI+ asylum seekers in Germany: a form of state control and resistance** *Association for Political and Legal Anthropology*, 15 Sep. 2020c. Available from: <<https://politicalandlegalanthro.org/2020/09/15/waiting-for-lgbtqi-asylum-seekers-in-germany-a-form-of-state-control-and-resistance/>>. Access on: 23 Apr. 2021.

TSCHALAER, M.; HELD, N. **Queer asylum in Germany: better visibility and access to legal and social support needed for LGBTIQ+ people seeking asylum in Germany**. Bristol: University of Bristol, 2019.

UNITED KINGDOM SUPREME COURT. **HJ (Iran) v Secretary of State for the Home Department**, 7 July 2010. Available from: </en/case-law/uk-supreme-court-7-july-2010-hj-iran-v-secretary-state-home-department-2010-uksc-31>. Access on: 14 Oct. 2020.

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS. **Convention on the Elimination of All Forms of Discrimination against Women**. Available from: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>. Access on: 29 Mar. 2021.

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS. **International Convention on the Elimination of All Forms of Racial Discrimination**. Available from: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>. Access on: 29 Mar. 2021.

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS. **International Covenant on Economic, Social and Cultural Rights**. Available from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Access on: 29 Mar. 2021a.

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS. **International Covenant on Civil and Political Rights**. Available from: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Access on: 29 Mar. 2021b.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Cartagena Declaration on Refugees**. Available from: <https://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>. Access on: 14 Oct. 2020.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Convention and protocol relating to the status of refugees**. Geneva: United Nations High Commissioner for Refugees, 2010.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Convention Relating to the Status of Refugees**, 28 July 1951.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Declaration on Territorial Asylum**. Available from: <https://www.refworld.org/docid/3b00f05a2c.html>. Access on: 23 Feb. 2021a.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Global Trends: Forced Displacement 2019**. Copenhagen: UNHCR Global Data Service, 2020. Available from: <http://www.unhcr.org/refugee-statistics>. Access on: 19 Sep. 2020.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the**

**Status of Refugees (HCR/GIP/02/01).** Available from: <<https://www.unhcr.org/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html>>. Access on: 23 Feb. 2021a.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Guidelines on International Protection No. 2: “Membership of a Particular Social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02).** Available from: <<https://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html>>. Access on: 15 Oct. 2020b.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.** Available from: <<https://www.unhcr.org/509136ca9.pdf>>. Access on: 14 Oct. 2020.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Handbook on procedures and criteria for determining refugee status and guidelines on international protection.** Geneva: UNHCR, 2019.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **OUA Convention Governing the Specific Aspects of Refugee Problems in Africa.** Available from: <<https://www.unhcr.org/about-us/background/45dc1a682/oua-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>>. Access on: 14 Oct. 2020.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Operations Portal: Mediterranean Situation.** Available from: <[http://data2.unhcr.org/en/situations/mediterranean#\\_ga=2.31669630.1915884942.1602081189-684899799.1599149476](http://data2.unhcr.org/en/situations/mediterranean#_ga=2.31669630.1915884942.1602081189-684899799.1599149476)>. Access on: 12 Oct. 2020c.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Persons who are forcibly displaced, stateless and others of concern to UNHCR.** Available from: <<https://www.unhcr.org/refugee-statistics/methodology/definition/>>. Access on: 8 Oct. 2020b.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **Protocol Relating to the Status of Refugees,** 31 Jan. 1967b.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. **UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity.** Available from: <<https://www.unhcr.org/uk/lgbti-claims.html>>. Access on: 14 Oct. 2020.

UNITED NATIONS. **Convention on the Elimination of All Forms of Discrimination against Women.** Available from: <<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>>. Access on: 24 Nov. 2020.

UNITED NATIONS. **International Convention on the Elimination of All Forms of Racial Discrimination.** Available from:

<<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>>. Access on: 24 Nov. 2020.

UNITED NATIONS. **Multilateral treaties deposited with the secretary-general**. Available from: <<https://treaties.un.org/doc/source/titles/english.pdf>>. Access on: 30 Oct. 2020.

UNITED NATIONS. **United Nations Charter**. Available from: <<https://www.un.org/en/about-us/un-charter/full-text>>. Access on: 26 Mar. 2021.

UNITED NATIONS. **Universal Declaration of Human Rights**. Available from: <<https://www.un.org/en/universal-declaration-human-rights/>>. Access on: 11 Oct. 2020.

UNIVERSIDADE DE SÃO PAULO. **Portal de Busca integrada USP**. Available from: <<http://buscaintegrada.usp.br/primolibrary/libweb/action/dlDisplay.do?vid=USP&afterPDS=true&docId=>>>. Access on: 15 Dec. 2020.

UPPALAPATI, E. A. et al. International regulation of sexual orientation, gender identity and sexual anatomy. **Georgetown Journal of Gender and the Law**, v. 18, n. 3, p. 635–710, 2017.

VASILJEVIĆ, S. Equality, non-discrimination and fundamental rights: old habits die hard! In: VINKOVIĆ, M. (Ed.). **New developments in the EU and national labour law**. Osijek: Josip Juraj Strossmayer University of Osijek Faculty of Law, 2015. p. 177–194.

WAGNER, N. B is for bisexual: the forgotten letter in UK sexual orientation asylum reform. **Transnational Law and Contemporary Problems**, v. 26, n. 1, p. 205–227, 2016.

WEIWEI, L. **Equality and non-discrimination under international human rights law**. Oslo: Norsk senter for menneskerettigheter, 2004.

WESSELS, J. HJ (Iran) and HT (Cameroon) - Reflections on a new test for sexuality-based asylum claims in Britain. **International Journal of Refugee Law**, v. 24, n. 4, p. 815–839, 2012.

WHITTAKER, D. J. **Asylum seekers and refugees in the contemporary world**. London: Routledge, 2006.

WIEACKER, F. **A history of private law in Europe**. Oxford: Clarendon Press, 1996.

WIELAND, R.; ALESSI, E. J. Do the challenges of LGBTQ asylum applicants under Dublin register with the European Court of Human Rights? **Social & Legal Studies**, v. 20, n. 10, p. 1–21, 2020.

WITSCHHEL, M. A. Human rights in times of crisis: Article 3 prevails-examining how LGBTQ asylum seekers in the European Union are denied equal protection of law. **American University International Law Review**, v. 32, n. 5, p. 1047–1078, 2018.

WOLTER, S. A. Queer and (anti)capitalism I: refusing complicity: a theoretical introduction from an activist perspective. In: SWEETAPPLE, C. (Ed.). **The Queer Intersectional in Contemporary Germany: Essays on Racism, Capitalism and Sexual Politics**. Gießen: Psychosozial-Verlag, 2018. p. 25–66.

YILMAZ, V.; DEMIRBAŞ, H. B. Türkiye büyük millet meclisi'nde lezbiyen, gey, biseksüel ve trans (LGBT) hakları gündeminin ortaya çıkışı ve gelişimi: 2008-2014. **Alternative Politics**, v. 7, n. 2, p. 230–256, 2015.

YILMAZ, V.; GÖÇMEN, İ. Denied citizens of Turkey: experiences of discrimination among LGBT individuals in employment, housing and health care. **Gender, Work & Organization**, v. 23, n. 5, p. 470–488, 2016.

YIN, R. K. **Case study research: design and methods**. Los Angeles: Sage Publications, 2014.

ZALAUQUETT, J. **The human rights issue and the human rights movement: characterization, evaluation, propositions**. Geneva: Commission of the Churches on International Affairs, 1981.

ZANIN, H. Discussions on social rights: access to work and public policies for sexual and gender minorities. **Revista do Curso de Direito Unifor**, v. 10, n. 1, p. 46–58, 2019.

ZAUN, N. **EU asylum policies: the power of strong regulating states**. Cham: Springer, 2017.

ZIEGLER, A. R. Human rights of lesbian, gay, bisexual, trans and intersex (LGBTI) persons in Switzerland: a legal analysis of weaknesses in the Swiss legal system according to ILGA-Europe's Rainbow Index. In: ZIEGLER, A. R.; KÜFFER, J. (Eds.). **Les minorités et le droit: mélanges en l'honneur du professeur Barbara Wilson**. Zürich: Schulthess, 2016. p. 165–174.

## APPENDIX A – INTERVIEW TRANSCRIPT

Interview with the German LGBTI asylum programme director, held in Berlin in August 2021 via video call.

1 **INTERVIEWER:** I will just go from  
2 the beginning, thank you very much  
3 for having me because it is probably  
4 more important than ever to hear  
5 from you, because this is exactly the  
6 type of work that we will develop:  
7 seeing how LGBT people are  
8 treated when they arrive here.  
9 Based on that, I prepared the  
10 questions and everything, so, if you  
11 want me I can ask you and you  
12 answer it.

13 **INTERVIEWEE:** It is fine, you can  
14 ask the questions and I will let you  
15 know what I know around the  
16 answers.

17 **INTERVIEWER:** Okay.

18 **INTERVIEWEE:** You are going to  
19 record that, right?

20 **INTERVIEWER:** Yes, that would be  
21 my first question actually if it's okay  
22 to record it.

23 **INTERVIEWEE:** Yes, sure, sure.

24 **INTERVIEWER:** Okay, so let's start  
25 with the organisation itself. What's  
26 your position, how many people you

27 work with, how exactly is the  
28 apparatus you have with you?

29 **INTERVIEWEE:** Okay, I work for the  
30 Queer Refugees Deutschland  
31 Project. It's funded by the Federal  
32 Office for Migration and Refugees,  
33 it's a federal project, we have a lot of  
34 things to do but we are only two  
35 people working full-time and there  
36 are two other people who engage  
37 voluntarily. So it's a team of 4  
38 people currently bringing new  
39 developments to the project. The  
40 project has a couple of things that I  
41 will explain to you. We do the  
42 counselling and counselling not as  
43 such people come to us and talk to  
44 us regarding problems as refugee  
45 status or asylum seeking process.  
46 We do that, but not only that. We  
47 offer it only to the people who are  
48 really new to Germany. They arrive  
49 to us formally and are located in the  
50 vicinity of Cologne, Bohn and  
51 Dusseldorf. It's easier for us. All the  
52 people who are not in the vicinity,  
53 we send them to one hundred

54 different organisations looking all  
55 across Germany for LGBTI refugees  
56 and asylum seekers. So one of the  
57 things is we counsel people through  
58 email, those living outside and  
59 wanting to be informed about the  
60 official process of asylum seeking in  
61 Germany, and then we also have  
62 WhatsApp and Facebook, so many  
63 people write to us. And in the last  
64 three years, the project started on  
65 1st of November of 2019. And  
66 formally it will end this year, unless  
67 we get funding for more years. So  
68 there has been more than 1300  
69 people who contacted us throughout  
70 these 3 years. It's a long list of  
71 people and almost 60% of them are  
72 already inside Germany, fled to  
73 Germany and are living here, going  
74 through their asylum processes.  
75 That's one part of it. The second  
76 part is that we do sensitisation  
77 workshops with the workers inside  
78 refugee centres. So those  
79 workshops before the Corona  
80 pandemic used to be 4 to 5 hours  
81 long in which we sensitised people  
82 around LGBTI issues, how workers  
83 should act about it, how they can  
84 talk to people without being  
85 disrespectful to LGBTI persons and  
86 give them that sense of security that  
87 they can talk about their problems,

88 that they can come out. And since  
89 last year, we have been also  
90 sensitising *Asylverfahrensberatung*,  
91 which in English would be asylum  
92 process counsellors. Those  
93 counsellors are appointed by the  
94 Federal Office for Migration and  
95 Refugees and there we also go at  
96 least twice every quarter, at least. At  
97 maximum we have been there four  
98 times. Covid-19 has changed a lot  
99 how things are done all around the  
100 world so, I don't have to mention  
101 that, but our work is still going on. So  
102 those are the sensitisation  
103 workshops, so we provide  
104 information on why LGBTI people  
105 flee, as people sometimes come  
106 from countries where the legal  
107 situation is okay, but the society is  
108 actually against LGBTI people. Or  
109 maybe the other way around, the  
110 society is okay with them but it's  
111 illegal to be a LGBTI person in these  
112 countries. But still they have to flee  
113 for their lives. Then we have a group  
114 of LGBTI activists, who are either  
115 migrants, asylum seekers or  
116 refugees, doesn't matter which  
117 category according to the law they  
118 have, we also conduct workshops  
119 with them, which are the  
120 empowerment workshops. Last year  
121 we had two workshops and also an

122 online workshop with them and  
123 hopefully if the permissions allow  
124 us, we will have another workshop  
125 in the last week of October. So they  
126 are a group of around 30 people  
127 who are from different countries,  
128 from Mexico to Indonesia, so a lot of  
129 countries. Other than that we have  
130 the website, we have mapping of  
131 information, we have every now and  
132 then new material about LGBTI  
133 refugees and asylum seekers in  
134 Germany in cooperation with  
135 organisations who are also working  
136 within Germany. Sometimes these  
137 organisations are localised, as you  
138 know Germany has 16 provincial  
139 states, and every provincial state is  
140 independent when it comes to  
141 running their own project, they are  
142 not dependent on federal agencies.  
143 Yes, that's it, that's a lot of things for  
144 which people seek us. We are trying  
145 our best to keep up. Sometimes is  
146 frustrating because you can't help  
147 people who are trapped in countries  
148 you don't even know about. You can  
149 send them to seek advice and it's a  
150 trap. There are some organisations  
151 working on the ground who we  
152 know, so we can only help people  
153 within Europe, to some extent to  
154 send them to the local  
155 organisations, we can't help them

156 acquire visas, we can't help them  
157 with airplane of provide any kind or  
158 monetary aid, and we also inform  
159 people about the Dublin Treaty  
160 regulation, which is a huge issues in  
161 Europe, because most people when  
162 they enter Europe they do it through  
163 South, so Greece, Italy, Spain, but  
164 they want to go to countries like  
165 Germany, or the Netherlands or  
166 Sweden or Norway. So we also  
167 inform people beforehand to please  
168 be aware of this European  
169 regulation, to read about it if you  
170 want to come to Germany. And  
171 Germany is already a landlock, the  
172 only way you can enter Germany is  
173 through other countries or you can  
174 enter Germany through plane, it's  
175 more like Canada. Or you cross the  
176 US border or flight, there's no other  
177 way. So yes, that's what we are  
178 doing, and I am honoured and  
179 sometimes I feel really humbled  
180 about it as this is something that  
181 actually has not been done in the  
182 federal scale yet.

183 **INTERVIEWER:** That's true. When I  
184 heard about the project and what  
185 Germany was doing I was thrilled,  
186 because I thought this is so  
187 important and specific for our  
188 community that I was really happy  
189 actually and thought we need to talk



190 more about it. So you were here  
191 from the beginning, from the project  
192 started, right?

193 **INTERVIEWEE:** Yes.

194 **INTERVIEWER:** So how did it start?  
195 When I imagine that time, that year,  
196 I really imagine a situation in which  
197 there was a lot of refugees coming  
198 and so the government decided to  
199 do something about it? So, how did  
200 it start?

201 **INTERVIEWEE:** Well, that's actually  
202 really internal, but anyways, it's not  
203 a secret. So the LSVD is the first  
204 website that pops out, because it's a  
205 federal organisation and people try  
206 to contact them. So since the so-  
207 called refugee crisis started in 2015  
208 up until 2017 there were lots of  
209 people contacting LSVD about their  
210 sexuality, gender identity, refugee  
211 and asylum status. And it's not a  
212 very big organisation, there are a  
213 few very hard-working and very  
214 committed people who are behind it,  
215 that's why it has been running for  
216 almost 13 years now. And they  
217 came up with the idea that a project  
218 just for refugees was needed. So  
219 the board members and employees  
220 came up with this project. So  
221 officially the project had very  
222 different meaning, it's two lines  
223 about empowerment, sensitisation,

224 it's about information. And they  
225 applied for it to the Federal Office for  
226 Migration and Refugees and they  
227 granted us the project, but the  
228 government was changing so they  
229 gave us the project for 18 months,  
230 but 4 months were used to find the  
231 right people. That's difficult because  
232 you don't have degrees in these  
233 things, it's a new thing that people  
234 are talking about it, people like you  
235 are doing your master's thesis,  
236 when I wanted to do my master's  
237 thesis on this that was not relevant,  
238 like 4 years ago. So yes, they came  
239 with the project and they chose us  
240 and we started the project. The first  
241 thing we did was to name the project  
242 very simply, so everybody could  
243 understand what it is about queer  
244 refugees in Deutschland. And this  
245 perception that the number of  
246 queries coming those years would  
247 be higher than queries coming up  
248 this time and period actually that's  
249 wrong. We have internal statistics,  
250 the number of queries coming this  
251 year are the highest so far. We have  
252 more than 500 queries already and  
253 it's the third quarter of this year. And  
254 last year, we had 534 queries. The  
255 year before was like 200 and  
256 something. So the number of  
257 queries is actually rising every year,

258 internally and externally, so the  
259 international refugees are  
260 contacting us, but their number is  
261 lower, not that high. They make up  
262 40%, that was last year, but from the  
263 overview for this year, we see 60 to  
264 70% of queries come from people in  
265 Germany and not outside of  
266 Germany. We will see what the  
267 statistics will say in the end of this  
268 year. And that's how it started, it was  
269 quite fun and trusting and at the  
270 same time it gives up the feeling that  
271 we are doing something very good  
272 for the community, we are giving it  
273 back, we are trying our best to make  
274 lives of people easier in Germany,  
275 and sometimes people comeback,  
276 we don't have any follow up people,  
277 we can't, but people do tell us,  
278 sometimes they come back to say  
279 "my case got accepted, thanks to  
280 you, now I can start my language  
281 process, my life here and thanks a  
282 lot", so those messages we receive,  
283 we feel really happy we feel like "ok,  
284 at least one life has been saved",  
285 But I don't know what has happened  
286 to anyone. So yes, that's a very  
287 rewarding job in a way, but  
288 sometimes also exhausting,  
289 because there are people stuck in  
290 situations that you cannot do  
291 anything about.

292 **INTERVIEWER:** Right. You were  
293 talking about the queries. Do you  
294 disclose the final numbers or is not  
295 a data that I could have? Because I  
296 think it's so interesting to compare  
297 the so-called refugee crisis with this  
298 current year.

299 **INTERVIEWEE:** We have in mind to  
300 disclose that, but we can't give it to  
301 people, we are not allowed to, we  
302 don't even disclose it to the  
303 ministers because they don't ask us  
304 to disclose that. What we do is, we  
305 come up with some pie charts and  
306 some explanation of how the  
307 queries look like, so what we can do,  
308 and we have that in mind for this  
309 year, is to develop another pie chart  
310 from the statistics and then we will  
311 come up with a booklet next year. If  
312 the project is funded further, we  
313 might come up with a small booklet  
314 and write down the experiences  
315 from the past 3 years to be  
316 accessible to everybody. Because  
317 people need to know that, this  
318 project is one of a kind, I didn't know  
319 that we I joined it, I was like "I am  
320 getting a job, I am working for LGBTI  
321 people". But the experience has  
322 shown that such kind of projects  
323 don't exist. Germany is one of the  
324 countries that has it and I haven't  
325 come across any other country that

326 has a project of this scale. They all  
327 have local, like regional. The  
328 Netherlands has it, Denmark is  
329 working on it, Sweden is working on  
330 it as well. There are a couple of local  
331 projects in Spain, in France too. But  
332 we have that, so what we can do is  
333 to make it public, we will mainly put  
334 categories in it, like the gender  
335 identity box, then the sexual  
336 orientation box, and most of the time  
337 we don't know the sexual  
338 orientation, so it's usually written  
339 unknow. There are people who  
340 never disclose sexual orientation or  
341 gender identity to us, they just say  
342 that they belong to the LGBTI group,  
343 but the language is different all the  
344 time. We are also thinking, but I  
345 don't know if it's possible, we have  
346 to talk about it to the ministers. If we  
347 just can take excerpts from different  
348 emails we kept, where the situation  
349 within the home country has been  
350 described, omitting every detail  
351 about the person, just omit  
352 everything that can lead to the  
353 person, and then just tell about the  
354 situation, what it's going on. Maybe  
355 that's doable, let's see.

356 **INTERVIEWER:** I think it's also  
357 important to show how LGBTI  
358 people are treated in other places, it  
359 would probably be good. So, I know

360 you have already mentioned, but  
361 there are no other projects in the  
362 federal level to deal with LGBTI  
363 refugees, right? That's the only  
364 project.

365 **INTERVIEWEE:** No, in Germany  
366 no. Local projects are always there,  
367 like in Berlin: LSVD Berlin-  
368 Brandenburg, that's one of the  
369 project, then you have  
370 *Schwulenberatung* Berlin, then you  
371 a couple of others there, so I think  
372 Berlin has the most projects in  
373 Germany, but it's all based in Berlin  
374 and maybe Brandenburg areas, not  
375 other regions.

376 **INTERVIEWER:** I think I've heard  
377 some news about LGBTI refugee  
378 centres in Berlin, I believe they have  
379 a different form of sheltering LGBTI  
380 people, but I didn't know how would  
381 it work, but now I get it. There's a  
382 federal level, in which you are, and  
383 there's the state level, regional level  
384 actions and project.

385 **INTERVIEWEE:** Yes.

386 **INTERVIEWER:** Ok. Let me see, we  
387 talked a lot, I think I covered  
388 everything I should. There's just one  
389 more generic and subjective  
390 question. What you think about the  
391 main problems that LGBTI refugees  
392 find when they arrive here? We  
393 know they have problems in their

394 countries of origin, but what about  
395 Germany, what problems they find  
396 here in your opinion, dealing with  
397 them directly.

398 **INTERVIEWEE:** Okay. That has two  
399 aspects. One is the structure  
400 aspect, like how the distribution of  
401 refugees is done in Germany. And  
402 the other one is more about the  
403 human impact, how other people  
404 treat them. It's overlapping, but it  
405 has the most consequences in our  
406 experience. So Germany is a  
407 federal country, the responsibility to  
408 take your case is a federal  
409 responsibility. But to give you  
410 housing and space is actually a  
411 provincial responsibility. So the  
412 provinces are independent in how  
413 they are actually going to house  
414 refugees in Germany, and then  
415 furthermore how they are going to  
416 house LGBTI refugees strategically.  
417 So generally, it doesn't matter in  
418 which state you applied for asylum,  
419 your application goes to BAMF and  
420 then the BAMF decides. Nobody  
421 knows how, it's a secret, I don't  
422 know. They can send you to any  
423 province, it's a structural issue. So if  
424 someone applied for asylum in  
425 Berlin, they might be sent to  
426 Hamburg, somebody who did that in  
427 Nordrhein-Westfalen, might be sent

428 to Saarland. Somebody who did it in  
429 München might be sent to Sachsen  
430 or Sachsen-Anhalt. So that creates  
431 a lot of fear, that created a lot of  
432 tension, that creates a lot of  
433 insecurity and people don't know  
434 what to do. "I applied for asylum in  
435 Berlin, I should be staying in Berlin,  
436 what are they putting me in a bus  
437 and sending me to another space?".  
438 It's something which is not helpful,  
439 we have talked about this, that  
440 BAMF should be asking about  
441 gender identity and SOGI  
442 applications specifically to isolate  
443 SOGI people and put them or send  
444 them to places where the asylum  
445 centres are SOGI friendly. If it's  
446 going to work or not, we are going to  
447 see, we are in the middle of the  
448 process, things are changing, things  
449 are happening, nobody is sitting  
450 idle, but it's going to take a lot of time  
451 because it's, once again, federal  
452 and provincial issues. Second thing  
453 is, inside the asylum centres, you  
454 are put with the people who are  
455 usually from the same country.  
456 During the so-called crisis, there  
457 were like 5 people, 6 people in one  
458 room. It's not the same anymore, it's  
459 2 people, 3 people, but still you don't  
460 have any privacy, rooms are very  
461 small, I must say that, you have

462 communal bathrooms, communal  
463 kitchens. You're not supposed to  
464 cook, there are no cooking facilities.  
465 You will get your breakfast, you will  
466 get your lunch, you will get your  
467 dinner, all through catering  
468 companies, and your food habit will  
469 be taken care of. A lot of refugees  
470 don't have pork or things like that in  
471 the cultural backgrounds of people,  
472 because when they come from  
473 mostly from muslim countries they  
474 don't eat pork. So it's taken care of,  
475 but at the same time, LGBTI people  
476 have to stay with non-LGBTI  
477 persons, and then they face the  
478 same traumatisation, they go  
479 through the same issues they have  
480 been going through in their home  
481 countries with these people. So the  
482 German system works not  
483 proactively, rather it works when  
484 things are done. So proactively, now  
485 some of the refugee centres are  
486 taking proactive measures, asking  
487 us about what they should be doing  
488 about LGBTI refugees. What has  
489 been decided for the last 4, 5 years  
490 is that if somebody comes out –  
491 coming out is a must, because they  
492 don't ask about your sexual  
493 orientation or gender identity –, so  
494 somebody comes out and say they  
495 are not feeling happy about their

496 situation in the refugee centre, they  
497 can be isolated to another area if it's  
498 possible. If it's not, they can send  
499 the person to another asylum  
500 centre, and the other asylum centre  
501 might be more equipped with  
502 isolating people from other  
503 population, so they don't get in  
504 trouble. So that's a structural issue.  
505 The other issues is that the system  
506 requires you to come out in each  
507 and every step regardless of your  
508 insecurities, regardless of your  
509 mental state, regardless of your  
510 previous history of coming out. So  
511 accepting that as a trauma is one of  
512 the things that is hard for the system  
513 to understand. System is always  
514 you "you're a LGBTI person, why  
515 don't you come out?" and like, they  
516 don't want to. They would like to  
517 come out, but they would like that  
518 space to come out, not just come  
519 out to people who are all strangers  
520 to me, you never know if somebody  
521 is just going to hit you in the face and  
522 you have no idea what the person  
523 went through in their country while  
524 coming out to people. It doesn't  
525 matter if it was done like with force  
526 or violence, they have to accept  
527 their SOGI situation, so that's one  
528 thing in the interviews: you always  
529 get a translator, or interpreter, from

530 the same cultural and language  
531 background. So that's also one of  
532 the problems we are asking the  
533 federal government to do something  
534 about the interpreters, sensitise  
535 them, they don't use the correct  
536 words for LGBTI people, they don't  
537 know the terminologies. They use  
538 words that are a bit abusive, so if  
539 you listen to an abusive word, your  
540 mind ceases and goes "don't talk  
541 about your LGBTI situation, this  
542 person is not right". And then they  
543 make up a story, tell a story that is  
544 not true and everybody sees  
545 through that and they get a negative  
546 answer. And then you have to go  
547 against that negative decision in the  
548 courts, and it takes years to get a  
549 positive answer then. So the entire  
550 system works in a way that it, or I  
551 would say worked in a way that it  
552 kind of made lives very hard for  
553 LGBTI refugees and asylum  
554 seekers. But systematically and  
555 step by step we are also working  
556 with the Family Ministry regarding  
557 protection within the refugees  
558 centres all around Germany. We are  
559 also working with BAMF, I told you.  
560 We are also trying to give a lot of  
561 consultation to local governments,  
562 provincial governments. For  
563 example, we live in Nordrhein-

564 Westfalen, we have close ties with  
565 the Nordrhein-Westfalen  
566 government and they invite us, they  
567 talk to us, they arrange meetings  
568 and they do value our advice. But  
569 putting that into legislation takes a  
570 lot of time. But we are hopeful that  
571 the things we have done for the last  
572 three years and the things we are at  
573 the moment doing, I guess it will  
574 take 10 more years until the  
575 situation is totally changed. And it  
576 takes a lot of time, it take  
577 governments to change even the  
578 rules. And we are talking about very  
579 sensitive issues regarding  
580 traumatisation, abuse and  
581 everything around it and providing  
582 shelter to those. So these are two  
583 different aspects, many people don't  
584 know their rights, so we have a short  
585 guide for LGBTI refugees and  
586 asylum seekers in 11 languages  
587 which are most spoken languages  
588 within the asylum systems at the  
589 moment. They always change,  
590 because sometimes you have an  
591 influx from one country, other times  
592 from another country, for example  
593 we have to come up with Turkish  
594 and Spanish in the last two years.  
595 Because there were people coming  
596 from Central America as well as  
597 from South American countries. And

598 we thought okay, we need to have  
599 explanation in their language too.  
600 We are now working on a small  
601 booklet about the right of trans  
602 migrants and newly arrived people  
603 we didn't say refugees or asylum  
604 seekers, because it applies to  
605 everybody who is new to Germany.  
606 And that will be published hopefully  
607 soon, in a few weeks in 11  
608 languages. So there's a lot going on  
609 and I am happy about it.

610 **INTERVIEWER:** Just so I can get a  
611 better picture about what you said  
612 on LGBTI people staying with non-  
613 LGBTI people, is it common to hear  
614 about abuses and violence within  
615 the centres?

616 **INTERVIEWEE:** How should I  
617 answer that? It's a, we don't have  
618 statistics, but there have been  
619 incidents, where people reported  
620 that, sometimes it even linked to the  
621 highest of the refugee crisis, it even  
622 went into the media. But in the last  
623 few months I would say, because of  
624 Covid-19, there was a lot of verbal  
625 and physical abuse among the  
626 refugee groups and most of the  
627 times people don't come up that  
628 they got hate or abused verbally  
629 because I am gay or trans, because  
630 they don't feel secure to tell  
631 everybody about that. So there's a

632 lot of violence happening, which  
633 could be interpreted as "normal  
634 fights" among refugees, but there's  
635 also a very local way of treating  
636 LGBTI refugees "oh these are  
637 refugees, they fight", things like that.  
638 Or "oh, they are migrants, they are  
639 all like that". So this cliché painting it  
640 does happen and we are nowadays  
641 and in the last three years, I know  
642 now that asylum centres are very  
643 cautious about it, being casual  
644 about such kind of things, they are  
645 not casual anymore. Most of the  
646 asylum centres we have been to,  
647 and we have been to at least 63 in  
648 the last 3 years, that's a lot, I don't  
649 know how I managed that. Because  
650 we were asked visit at least 4 every  
651 year, or one every quarter, and once  
652 we started it in 2018, I remember  
653 2019 and now 2020, up until March  
654 15 we have already visited 15  
655 asylum centres, so almost every  
656 month we were visiting 3 asylum  
657 centres. That's a lot sometimes I  
658 would go, other times my colleagues  
659 would be there. So they are not  
660 casual anymore, they ask us what  
661 we can do, and the best thing is that  
662 everybody, according to the  
663 constitutional law, who gets abused  
664 physically, they have the right to  
665 report it to the police. With verbal

666 abuse can still be interpreted in  
667 different ways, like how to tackle  
668 verbal abuse, it's not easy actually,  
669 but people are also working on it.  
670 The German constitutional law is not  
671 that rigid about verbal abuse. I think  
672 that's also, maybe it's a  
673 contradiction, I don't know that, but  
674 physical abuse is a no go, violence  
675 against women and children is a no  
676 go and we are studying explicitly  
677 putting LGBTI people in the, I don't  
678 know what to call it in English, the  
679 *Leitbild*, it's something you see in all  
680 refugee centres, posted  
681 everywhere, that you're not  
682 supposed to drink alcohol, consume  
683 drugs or be violent against each  
684 other, and specifically mentions  
685 children and women, and we are  
686 asking to explicitly mention LGBTI  
687 persons as well. And that's where  
688 sometimes they say "why should we  
689 do it, why should we highlight it?",  
690 and I am like, "yes, if you are going  
691 to make things visible it has pros  
692 and cons", of course. Highlighting it  
693 means there are cultural traditions,  
694 we know that, where LGBTI people  
695 are not considered humans, where  
696 they are considered sin and  
697 mentally ill people, and abusing  
698 them is actually okay, like in cultures  
699 where there's a tendency to hit

700 animals, other cultures don't do that.  
701 It's how you perceive things, your  
702 perception of the pain. There are  
703 cultures who cut trees for no good  
704 reason, but there are cultures who  
705 pay homage to trees for keeping  
706 their environment clean, for keeping  
707 it beautiful, for giving them food, life  
708 and everything, for making the water  
709 clean, it's just the perception of how  
710 we see things. Same goes for  
711 people. So I think that it's something  
712 debatable, that people can talk  
713 about and see what they want to do  
714 inside their refugee centres,  
715 because then it's a provincial thing,  
716 not federal, so we usually do not  
717 insist on things, we give them our  
718 suggestions and if they like it, it's up  
719 to them, if they don't like, it's the duty  
720 of the provincial government to take  
721 care of this, yes.

722 **INTERVIEWER:** Thank you very  
723 much, I ran out of questions, but if I  
724 bump into some question or issue I  
725 think we should discuss I will  
726 definitely reach out, and that's it, we  
727 will keep in touch, I am already  
728 following the organisation's social  
729 pages so we can be in touch and I  
730 can be aware of the work you are  
731 putting up. Thanks you very much.

732 **INTERVIEWEE:** Stay healthy and  
733 keep in touch. Bye-bye.



734 **INTERVIEWER:** Bye-bye.

