

The sexual asylum story

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Queer Spaces

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As an EU member state, Germany is required to comply with the laws and policies set forth in the Common European Asylum System. In Germany, the right to asylum is enshrined in the German Basic Law (*Grundgesetz*) and is granted to anyone who can establish a well-grounded fear of political persecution due to their race, religion, nationality, political views, or their membership of a particular group. The latter includes individuals who have fled their countries due to their sexual orientation and/or gender identity. For most asylum applicants, their asylum claim will be decided mainly on the basis of the evidence they verbally present at the interview, and how they present it. It is thus a particularly nerve-wracking moment for gay and queer applicants (as well as all others—of course). During the interview, the applicant must convince the “decision maker” first, of their sexual orientation and/or gender identity

and second, how their membership of such a “special group” renders them subject to persecution on the part of the state (not so much on the part of non-state actors). The purpose of the interview is to decide whether an applicant is really “gay,” “lesbian,” “trans,” or “bisexual.” In order to test the truthfulness of their claim, the decision maker or judge assesses the accuracy of their sexual asylum story. In the German context, this means to prove that your sexual orientation and/or gender identity is “fateful and irreversible” (in the wording of the German LGBT asylum law), through a very accurate narration of biographical events as well as detailed descriptions of the experienced episodes of violence on the part of the state, community, and the family. “The sexual asylum story is everything,” says Ibrahim Mokdad, an LGBTQI+ activist from Lebanon who gained refugee status in Germany in 2015. “Your asylum story needs to be well prepared and tailored to the institutional expectations around sexuality and gender identity. The decision maker has to believe that you are gay so you have to tell them your story so they can understand,” Mokdad says. Indeed, refugee protection seems to be most readily available to those whose sexuality reflects an idealized sexual orientation and gender identity discourse. Rzouga, a non-binary Tunisian refugee in Germany and queer activist, tells me that the successful “sexual asylum story” must reflect an “international image of *the* gay” as “flamboyant” and “outspoken”. For Rzouga, asylum seekers who can “confirm and protect the queer image of Europe” are more successful with their asylum claims. According to them, institutional expectations around homosexuality and queerness in Germany neatly reproduce a globalized discourse on gay and queer identities:

A credible gay person is a person who is super relaxed to speak to them [the decision-maker/translator] about when he last had sex and how it was. The sexual part of the asylum interview and your affiliation with organizations and groups and circles is— it’s a big part of how credible you are as a gay person. [...] So, the perfect profile will be gay enough for their standards. That is someone who is in a gay organization here and used to be in gay organizations in their home country. So that would be the best profile for them because then they’re having criteria of what a gay person is and what a gay life is.

Rzouga’s own “sexual story” resonates with a globalized queer lifestyle that is steeped in liberal assumptions around sexual freedom, the right to privacy, and the public visibility of love, sex, and affection. They became a human and LGBTQI+ rights advocate in Tunisia at a very young age and are well-known within the Tunisian queer

scene. Rzouga has a strong social media presence and has participated in international collaborations such as a photo exhibit in Paris called “Where Love is Illegal” and they regularly perform as a drag queen. Rzouga recalls their asylum interview as being “unproblematic” as they have “never been the kind of person who cannot express themselves, or open up, or really tell the story.” Like Rzouga, the other LGBTQI+ refugees I interviewed who made successful asylum claims were all assigned male at birth, well-educated, and they all came from activist backgrounds. Moreover, they have all successfully tailored their “sexual asylum stories” to institutional expectations around sexuality and gender identity as per the advice from queer refugee organizations in Germany.

In fact, as Moira Dustin and Nina Held, who currently research queer asylum in Germany and the UK at the University of Sussex, argue, the most intelligible LGBT asylum stories conform to Western stereotypes about a particular “gay lifestyle” that includes visiting gay bars, participating in lesbian and gay groups, and Gay Prides. Such a Western model of sexuality represents a typical white-middle-class gay identity that presumes clear boundaries between hetero- and homosexuality and requires public expression of private and sexual behavior. The model of Western homosexuality is thus racialized and relies on culture-specific stereotypes which need to be confirmed through the sexual asylum story.

While Germany is currently working towards creating a more inclusive LGBTQI+ asylum system through providing gender and sexuality training to a very small fraction of its decision makers, gay and queer asylum seekers who have internalized the silences around topics of sex and sexuality and/or who might not have come out at the time of the asylum interview remain marginalized. For instance, a gay asylum seeker whom I call Ali, who was born in Somalia and grew up in a Kenyan refugee camp, finds it very difficult to speak about his homosexuality. “In my community,” he says, “if they found out [that he was gay], they would kill me.” Ali fled to Germany in 2017, leaving behind his wife and two children. He has a hard time speaking about his sexuality to immigration officials, doctors and psychiatrists and was terrified about revealing his sexuality during the asylum interview to the Somali translator, who was well-known to the Somali refugee community as someone who holds conservative views on marriage and the family. Ali feels that the translator’s negative attitudes toward his homosexuality, combined with his felt shame and fear of talking openly about his sexuality, contributed to the rejection of his asylum claim.

Ali's case is by no means an exception. In many cases, LGBTQI+ asylum seekers are not only confronted with homophobic translators but also with immigration officials who lack the necessary awareness around gay and queer topics and who are thus more likely to use invasive methods of questioning. Although the Court of Justice of the EU established in 2014 that questions about the asylum applicant's sex life were not permissible, gay, lesbian, trans, and intersex asylum applicants are often expected to be able to mobilize painful—and for some shameful—memories regarding their desires and sexual activities. A study carried out by the Cologne Refugee Council in 2018 confirms this. The study shows that gay asylum applicants were unlawfully asked about who was acting more female or male during sex, who was more active during the act, and whether or not anal penetration was painful. Not only are these questions unlawful, as according to UNHCR (United Nations High Commissioner for Refugees) guidelines, but they also suggest a very Western and heteronormative-dominated imagination of gay sex, where one partner is expected to assume the dominant role of the penetrating partner—otherwise translated into men's domination over women.

The performativity of gay masculinities

The success of the “sexual asylum story,” however, further lies in the performativity of homosexuality and gender identity. For instance, Walid, a non-binary refugee from Tunisia, recalls their friend being asked by a decision maker to walk in front of them so they could assess their sexuality/gender identity. Another non-binary friend, Walid remembers, wore make-up and a dress for the asylum interview and got rejected because their appearance was deemed not credible. “The question of how to present your queerness or gayness is central in a context where the decision maker is actively looking for reasons to reject your asylum claim,” says LGBTQI+ commissioner Danijel Cubelic, who coordinates the antidiscrimination and LGBTQI+ programs of the city of Heidelberg. For Rzouga, the performative dimension of the asylum process is rather delicate:

For them [decision makers] it's usually like this: You're not gay enough, so you are not gay, or, you are gayer than the standard, so you are faking it and you're not being gay. I wore make-up on the day of my interview and presented a certain gender expression which could have played against me. The decision maker could easily have said: "You could not be wearing make-up at 10 in the morning, so you are not being yourself and this is fake and you just like doing it for the sake of the interview and you are not gender non-binary."

Rzouga was lucky to have been interviewed by a decision maker who "really knew what non-binary is and knew the difference between a drag queen and a trans person." Not everyone, however, has the privilege of being questioned by a sensitized decision maker. The above-mentioned study carried out by the Cologne Refugee Council also shows that approximately 23% of LGBTQI+ asylum cases in Germany are evaluated based on stereotypical assumptions around gender identity, sexual orientation, and gender expression. In fact, seven out of forty study participants claim that their asylum cases were rejected because they did not "look" gay or trans. An administrative court case from 2016 confirms such findings. There, the judge rejected a young Iranian's asylum appeal because his homosexuality was deemed not credible. The decision states that the asylum applicant lacked a credible gay/queer appearance (the claimant was wearing nail polish and make-up in court). For the judge, the use of make-up and nail polish seemed exaggerated and thus not credible.

The use of stereotypical Western imaginings of gay/queer sex, along with the expectation that gay/queer people perform their identity through the use of rainbow-coded fashion styles constitute—to a significant extent—the epistemological framework within which "truth" is established, validated, and legitimized. Drawing on Foucault's theory of biopower and Judith Butler's of gender performativity, one could argue that the discursive technologies used by authorities in the context of the asylum interview are geared toward producing a gay (not necessarily queer) body that aligns with an easily-readable matrix of Westernized gay identity requiring public expression of private and sexual behavior. Moreover, such stereotypical expectations of gay identity not only illustrate the humanitarian limits of refugee protection but also reaffirm colonial assumptions of Islamic barbarism (pinkwashing).

Legality at the crossroads of sexuality, masculinity and Islam

The above-discussed sexual asylum stories highlight the central role of sexual regimes around gayness, sex, and masculinities in the construction of the legal and illegal. Indeed, the sexual asylum story reveals how sexual regimes in the asylum context always function in relation to hierarchies of gender, class, race, and cultural geopolitics. The narratives and performances constructed to confirm the ideal sexual asylum story evince a specific ideal of victimhood that is lodged at the nexus of state-mandated heteronormativity and a liberal ideology of universal sexual freedom. Indeed, the need for protection finds its legitimacy through the imagery of the asylum applicant's stereotypically gay body, mind, and soul, which is in danger in their "homophobic" country of origin and thus deserving of care. While such imagery humanizes the asylum applicant, in that it allows for cultural proximity for the purpose of including the individual within the framework of human rights, it simultaneously validates the dehumanization and racialization of the "other" as anti-gay, backward, and outright cruel.

At the same time, the twelve LGBTQI+ court cases which I retrieved through the databank of the administrative courts in Germany, sourced by applying a sensitive keyword search that included the terms *homosexuality*, *asylum*, *transgender*, *intersex*, *bisexual*, and *lesbian*, further illustrate the humanitarian limits of liberal LGBT (not necessarily Q and I) protection claims. These rely on very stereotypical representations of LGBTQI+ victimhood in asylum discourse, which privilege those who can effectively prove their disassociation from Islamic barbarism, if not Islam altogether. In other words, successful asylum claims generally require generating a racist, colonialist discourse that impugns the nation-state from which the asylum seeker comes. While to impugn the asylum seeker's place of origin may well be a necessity for the purpose of asylum, it is problematic if it serves to confirm the moral and political superiority of the West through the myth of the ideal victim. In order to avoid the cookie-cutter victimhood framework that refers to idealizations around "Us" and "Them," Europe must adopt a reflexive approach to queer asylum that allows for

recognizing its own stereotypes in regard to homosexuality, race, and gender, so as not to reproduce colonial and imperialistic narratives of vulnerability, sex, and desire through Eurocentric asylum regimes.

Note

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Further Reading

- Dustin, Moira, and Nina Held, „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* 2 (2018): 74-87.
- Giametta, Calogero, *The Sexual Politics of Asylum*. (Abingdon and New York: Routledge, 2017).
- Juss, Satvinder, „Sexual orientation and the Sexualisation of Refugee Law.“ *International Journal on minority and group rights* 22:1 (2015): 128-153.
- Puar, Jasbir K, *Terrorist assemblages: Homonationalism in queer times*. (Durham NC: Duke University Press, 2017).
- Shakhsari, Sima, „The queer time of death: Temporality, geopolitics, and refugee rights.“ *Sexualities* 17:8 (2014): 998-1015.
- El-Tayeb, Fatima. „‘Gays who cannot properly be gay’: Queer Muslims in the neoliberal European city.“ *European Journal of Women’s Studies* 19: 1 (2012): 79-95.
- Tschalaer, Mengia, “Between queer liberalisms and Muslim masculinities: LGBTQI+ Muslim asylum assessment in Germany.” *Ethnic and Racial Studies* (2019) DOI: 10.1080/01419870.2019.1640378

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