



# What is a credible narrative?

Subjective credibility assessments in SOGI  
asylum determination in European asylum  
courts (Focus: Germany)

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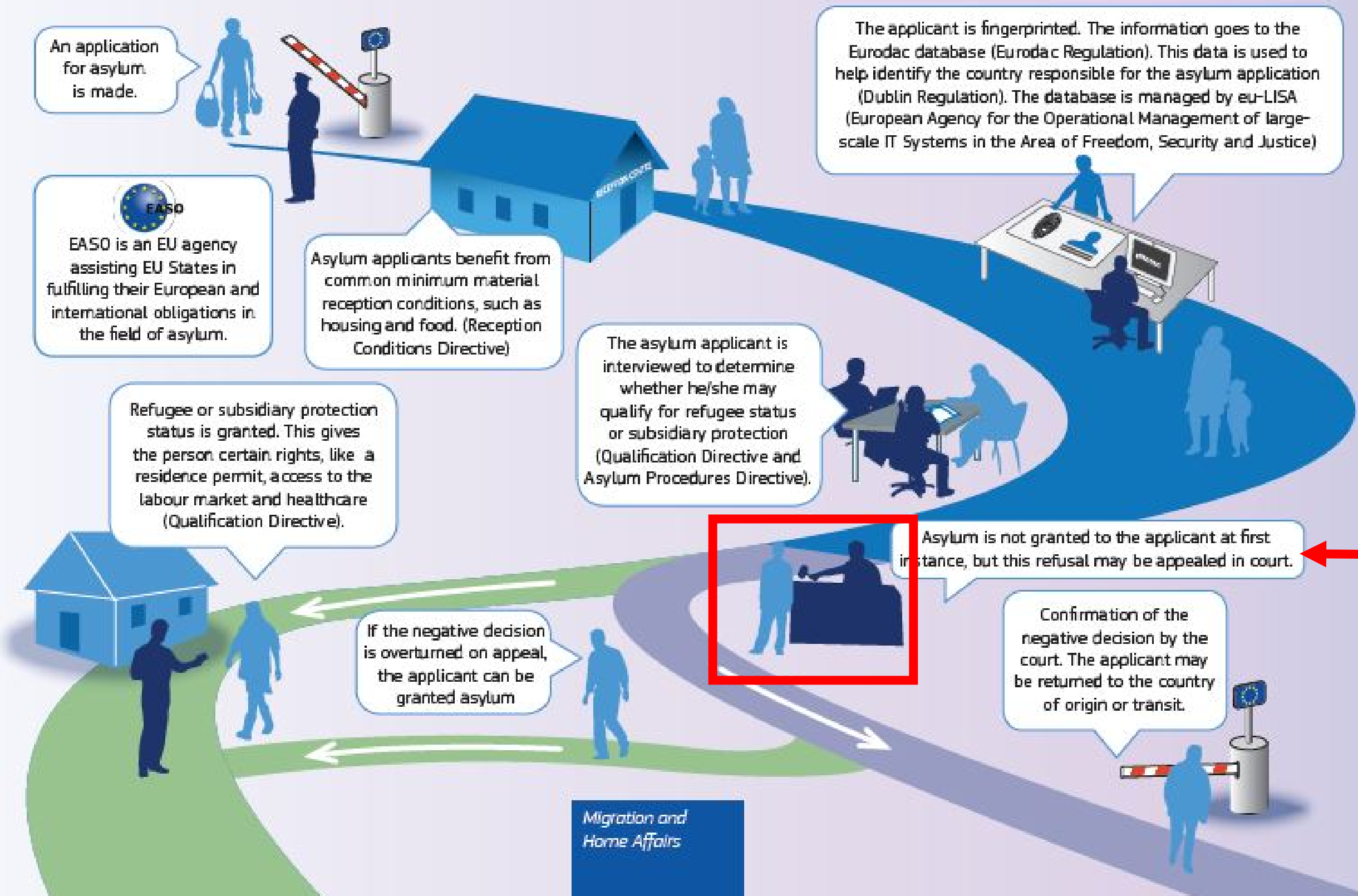


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# THE COMMON EUROPEAN ASYLUM SYSTEM (CEAS)

Asylum is granted to people fleeing persecution or serious harm



EU Charter of Fundamental Rights -  
Article 47: „ Right to an effective  
remedy and to a fair trial”



**ASYFAIR**

From: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet\\_-\\_the\\_common\\_european\\_asylum\\_system\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet_-_the_common_european_asylum_system_en.pdf)

# ASYFAIR Research Methods

*Research Focus:*

*(In)Consistency in legal procedures*

- **Legal Ethnographies (~850)**
- **Statistical data collection (>600)**
- **Interviews (>80)**
- **Online Survey**



# Disclaimers



- ASYFAIR does **not exclusively** focus on SOGI claims
- We observed **few** SOGI cases
- The ethnographic examples in this presentation **do not reflect** the views of the ASYFAIR research team

# Obligations in Credibility Assessments

## Decision makers

- **Fair procedure:** allow opportunities to explain discrepancies
- Take into account **personal features** and circumstances
- Assessments are based on COI and evidence, **not subjective** understandings

## Asylum seekers

- Narratives should be **detailed** and internally **consistent** throughout the proceedings
- Narratives are **consistent with country information (COI)**
- Corroborate narratives with **evidence**

In BERLIT, U., DOERIG, H. & STOREY, H. (2015) Credibility Assessment in Claims based on Persecution for Reasons of Religious Conversion and Homosexuality: A Practitioners Approach. International Journal of Refugee Law, 27, 649-666.

# CJEU, 2 December 2014 (Homosexuality II)

- ‘**Discreet Examination**’: consider sensitive nature of questions concerning sexuality
- Credibility **cannot** be assessed negatively just because
  - Sexual orientations are not revealed **from the outset**
  - Asylum seekers refuse or struggle **to reveal intimate aspects** of their lives
- **Impermissible** assessments:
  - Detailed questions about the **sexual activities**
  - Requesting any **images of sexual acts**
  - Carrying our **medical research** into the sexual orientation of an asylum seeker

In BERLIT, U., DOERIG, H. & STOREY, H. (2015) Credibility Assessment in Claims based on Persecution for Reasons of Religious Conversion and Homosexuality: A Practitioners Approach. International Journal of Refugee Law, 27, 649-666.

# Judges' Subjectivity in Credibility Assessments: Ethnography

“Subjective assessments are **highly personal** to the decision-maker, dependent on **personal judgment**, perceptions, and disposition, and often lacking an articulated logic. They are very **difficult to review** and are likely to be **inconsistent** from one decision-maker to another.”

(Kagan, M. 2010. Refugee Credibility Assessment and the Religious Imposter Problem: A Case Study of Eritrean Pentecostal Claims in Egypt. Vanderbilt Journal of Transnational Law, 1179-1234.)

- “I am surprised with the population boom in some African countries, considering that so many of the asylum seekers from there **claim to be** homosexuals”. (Germany October 2018, male judge, >45yo)
- “Refugee protection due to homosexuality requires **that I am convinced that you are significantly shaped by a homosexual identity** [*homosexuell geprägt*], but I have my **doubts...**” (Germany October 2019, male judge, <45yo)

# Judges' Subjectivity & "Western Lens": Ethnography

Assessments may be based on the culturally biased understanding of sexual orientation, which may affect the judges' assessment of credibility, and may have direct bearing on the judges' understanding of the risk involved in a persons' deportation. (also see Thebault, D. and Rose, L. 2018. What Kind of Christianity? A v Switzerland. Oxford Journal of Law and Religion, 7, 543-550.)

ASYFAIR case 298 (Germany, October 2019): male judge, <45yo – male appellant, <30yo, no legal representative

- “Now, you tell me that you had sex with someone who collected garbage all day. That’s not very **appetising** [*appetitlich*].... I can imagine that after a day of work, without a shower, and without a change of clothes,... at a landfill site,... that this is not particularly nice. **I find this hard to believe.**” - The appellant replies: “We are **not like Europeans.**”
- [Disbelief in judge’s voice] “Just so I understand: you started to have sex with a colleague, after you watched **pornography** in the car together?”
- [Judge has a stern tone, like a school teacher] “So **why** would you have homosexual intercourse with someone on a landfill site, where other people are, and where you could be **discovered?**” - The appellant tries to explain that **there was no other place they could have met.**



# Judges' views of Relationships

ASYFAIR case 165 (Germany, October 2018): male judge, ~45yo – male appellant, <30yo, female legal representative, ~45yo

- “So you were with your partner for 10 years. But you decided to just leave him, and leave the country? **After all you have gone through together**, you just leave him behind? ... **I find this very hard to believe!**” - The appellants tries to explain the reasons his partner stayed behind, and that they are currently not in touch because they had a “fight” (hints on infidelity?)
- “So, after 10 years, you just say ‘I don’t care’. I find this **dispassionate** [*leidenschaftslos*]. [the judge shrugs] But this is more of a comment now.”
  - The lawyer retorts: “These are matters of the heart [*Herzensangelegenheiten*]! **Gay people are also allowed to look for a new partner.**”

# ‘Eyes of the persecutor’ Test

Rather than assessing the credibility and sincerity of an asylum seeker..., assessments should be based on the **persecution that arises in the eyes of the persecutor in the COO**, from the “**observable [or ascribed]** behaviours that lead the persecutor to perceive that the victim is a member of the **targeted group.**”

(Kagan, M. 2010. Refugee Credibility Assessment and the Religious Imposter Problem: A Case Study of Eritrean Pentecostal Claims in Egypt. *Vanderbilt Journal of Transnational Law*, 1179-1234 – page 1222-3)

**Suggestion:** This test refocuses assessments to elements of persecution as per country of origin information, rather than credibility assessments.

# Other Suggestions

## Take into account

- Socio-cultural factors (e.g. arranged marriages)
- Real-life experiences may differ from the judges' expectations

## Judges

- Receive training
- Do not employ stereotypes ('active members of the gay scene')
- Focus on persecution in COO, rather than credibility

**Gill N, Good A** (eds)(2018). *Asylum Determination in Europe Ethnographic Perspectives.*, Palgrave Macmillan. OPEN ACCESS

Hambly, J., & Gill, N. (2020) Law and Speed: Asylum Appeals and the Techniques and Consequences of Legal Quickening. *Journal of Law and Society*, 47(1), 3-28. OPEN ACCESS

Hynes, J, Gill, N, Tomlinson, J. (2020) In defence of the hearing? Emerging geographies of publicness, materiality, access and communication in court hearings. *Geography Compass*. OPEN ACCESS

**Gill N, Rotter R, Burridge A, Allsopp J** (2017). The limits of procedural discretion: Unequal treatment and vulnerability in Britain's asylum appeals. *Social and Legal Studies*. OPEN ACCESS

**Burridge A, Gill N** (2017). Conveyor-Belt Justice: Precarity, Access to Justice and Geographies of Legal Aid in Asylum Appeals. *Antipode*, 49, 23-42.

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