

Legal Violence and (In)Visible Families: How Law Shapes and Erases Family Life in SOGI Asylum in Europe

Carmelo Danisi* and Nuno Ferreira†

ABSTRACT

Studies on the Refugee Convention have paid very limited attention to the notion of family and family rights of asylum claimants in connection with asylum claims based on sexual orientation and gender identity (SOGI). Drawing on the notion of ‘legal violence’, this article demonstrates the injurious cumulative effect that a heteronormative, homonormative and Western-centered formulation and implementation of asylum and refugee law has on SOGI claimants when it comes to intimate and family relationships. By relying on a solid body of primary and secondary data, it explores the invisibility of SOGI claimants and refugees’ families and how that invisibility is normalized by European legal frameworks, such as the Dublin (III) Regulation and Family Reunification Directive. To end this ‘legal violence’ and reconnect asylum systems with the lived experiences of SOGI claimants, a principled approach based on human rights and specifically the right to respect for family life is suggested.

KEYWORDS: asylum, family life, children, SOGI, legal violence, Common European Asylum System

1. LOVE AND MARRIAGE . . . YOU CAN’T HAVE ONE WITHOUT THE OTHER¹

Ideas about love, family life, sexual activity and childbearing are historically and socially produced and differ considerably across societies, communities, sexualities and genders.² Such notions are pervasive in our lives to such an extent that they become ingrained in every aspect of the social and legal fabric. While this much has been well studied, a much more neglected topic is how these notions impact on the international protection system. How do these notions affect asylum claims and their adjudication by public authorities? In particular, what happens when these notions have an impact on

* Research Fellow and Adjunct Professor of International Law at University of Bologna (Italy), email: carmelo.danisi2@unibo.it

† Professor of Law, University of Sussex (UK); email: N.Ferreira@sussex.ac.uk.

1 Reference to lyrics of song ‘Love and Marriage’, popularised by Frank Sinatra and Dinah Shore in the 1950s.

2 Weston, *Families We Choose: Lesbians, Gays, Kinship* (1997).