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**The rights and experiences of LGBTI refugees in
Europe: a comparative study of procedures and
practices in Italy and Sweden**

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This thesis is submitted for obtaining the Master's Degree in International Humanitarian Action and Conflict. By submitting the thesis, the author certifies that the text is from her hand, does not include the work of someone else unless clearly indicated, and that the thesis has been produced in accordance to proper academic practices.

Abstract

The main problem of this thesis was the comparative analysis of the procedures in place in Sweden and Italy for the reception and support of LGBTI asylum seekers fleeing from war. The aim was to understand if the Swedish and Italian asylum and social systems are supporting and protecting the rights of LGBTI asylum seekers equally, also by uncovering how these procedures affect individuals. The method used to carry out this study was analysis of secondary documents. Queer and migration research, as well as reports, were used to provide a general framework to the issue, while country-specific data was sought in current domestic legislation and country reports carried out by local and international NGOs invested in LGBTI and migrants rights. The gathered information was examined from a descriptive, critical and constructive perspective, and placed within a prevailing comparative framework. Indeed, at the core of the study, lies a comparison between procedural differences in Sweden and Italy concerning the reception and protection of LGBTI asylum seekers who flee war. It was found that in Sweden and Italy people seeking refuge from war torn countries have much higher possibilities to be granted asylum than any other group of migrants. However, with regards to LGBTI asylum seekers from other countries, the social and asylum system of both are structurally violent in that the exclusion and discrimination against sexual minority refugees is the standard. In fact, LGBTI asylum seekers face similar challenges related to their intersectional identity in Sweden as well as Italy, although to different degrees: compared to Italy, Sweden has more standard procedures set in place that help queer asylees have a better experience. Nevertheless, neither systems hold up to the standard they should as consistent reports describe unlawful practices that violate humanitarian law and breach of Article 3 of the European Convention of Human Rights. Ultimately, LGBTI asylum seekers appear to have virtually no control over any aspect of their application or experience in the asylum and social system in Sweden as well as Italy. Therefore, rather than experiencing a newfound freedom, in entering the Italian and Swedish democratic spaces, these individuals simply experience a different kind of oppression.

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1.0. Introduction

This thesis will explore the experiences of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI)¹ asylum seekers fleeing war and seeking refuge in Italy and Sweden, by analysing the practices and procedures in place in these receiving countries.

Because of the regime of power of “national heteronormativity”, with their multiple identities related to sexual orientation or gender identity, the status of asylum seekers and their ethnicity, queer migrants “challenge and disrupt practices that remain normed around racialized heterosexuality” (Luibhéid, 2008:174). Consequently, individuals who belong to this minority group are more vulnerable to violence compared to cis asylum seekers in the asylum and social system of the receiving country (Magnarin, 2012:65). Indeed, queer asylum seekers are susceptible to re-traumatisation and exposed to economic and accommodation marginalisation that can have a direct detrimental impact on their application (Borgqvist, 2016:46-48).

The comparison between the two European countries is an interesting one. In the “ILGA Rainbow Europe ranking”², over the 49 European countries Italy and Sweden rank in very distant positions: Sweden is ranked 10th and Italy sets as 32nd (Rainbow Europe, 2019). Whether the general advancement of LGBTI rights in policy is also translated into specific procedures that benefit LGBTI asylum seekers will be the object of the discussion and analysis. However, official data on sexual minority asylum seekers is impossible to come by partly because, just like many gender-related issues, it is generally underrepresented in statistics, but also due to the fact that gathering such data can violate confidentiality and raise data protection issues (FRA, 2017:2).

¹ For convenience, in this thesis LGBTI asylum seekers / asylees will also be referred to as sexual minority or queer asylum seekers / asylees.

² The ILGA-Europe Country Rankings are based on “how the laws and policies of each country impact on the lives of LGBTI people.” An updated ranking can be accessed at <https://rainbow-europe.org/country-ranking>

1.1. Relevance to Humanitarian Action and Conflict

During times of turmoil, LGBTI people experience levels of exclusion and brutality much higher than other groups (Human Dignity Trust, 2015:4-5). Indeed, at the best of times, LGBTI persons are a vulnerable group but during natural disasters, widespread violence and conflict, the additional pressures on society amplify sentiments of homophobia and intolerance aggravating this vulnerability (Human Dignity Trust, 2015:4-5). This is very relevant to the humanitarian field, as aid and reconstruction programs still have much to improve when it comes to including the vulnerabilities and needs of LGBTI people in their programmes (Human Dignity Trust, 2015:4). In addition, during post-conflict arises the possibility to address structural conditions that allow the criminalisation of LGBTI identities and sexual orientations through internationally informed or internationally funded programmes (Human Dignity Trust, 2015:4). Therefore, if the humanitarian sector is to improve its programme designing and gain more awareness on its strategic role to advance the human rights agenda, humanitarian studies need be steadily invested in the examination of how conflict affects this minority group.

The aim of this study is to understand the challenges encountered by LGBTI asylum seekers during the application process in the two European countries of Italy and Sweden. Chapter 2 presents the research questions. Chapter 3 looks at previous literature on the subject and highlights a gap in the research. Chapters 4 and 5 provide the theoretical background and methodological premises for the analysis. Chapters 6 and 7 will respectively analyse the Swedish and Italian asylum and social systems, and final conclusions will be discussed in chapter 8.

2.0. Research Questions

The primary research question of this thesis is the following :

- Are Sweden and Italy equally supporting and protecting the rights of LGBTI asylum seekers?

To bring about an answer as clear as possible to this primary research question, two sub-questions were identified. The first sub-question focuses on understanding procedures in place in the asylum and social systems in regards to LGBTI asylum seekers and refugees:

- What are the procedures in place in Sweden and Italy for the reception and support of LGBTI asylum seekers fleeing from war?

The second subquestion aims at uncovering how these procedures affect individuals by putting them at the centre:

- What is the experience of LGBTI asylum seekers and refugees within the Swedish and Italian asylum and social systems?

Successfully answering these operational sub-questions will provide knowledge on the practices of institutions, governments and organisations, and the repercussions not only on applicant's well-being - mental, emotional and physical - but also on the outcome of the application.

3.0. Literature review

The topic of LGBTI refugees and asylum seekers is analysed and discussed in the scholarship of various fields of research in the past years, especially after the refugee crisis in 2015. These multidisciplinary studies include, but are not limited to, legal scholarship, queer and gender studies, and migration studies.

Research with a legal focus tend to highlight two main issues surrounding the legal framework for LGBTI asylum seekers: implementation of LGBTI rights, and procedural issue in the asylum systems. With regards to the protection and implementation of the human rights of people who belong to sexual minority groups, authors agree on the fact that “European state practice is below the standards required by international and European human rights and refugee law” and that LGBTI persons are too often denied asylum and sent back to their country of origin where they might have little to no freedom of expression or even well-founded fear for their safety (Biekša, 2011:1556). In this regard, using Germany as an example, Witschel examines in detail how state practices amount to a violation of Article 3 of the European Convention of Human Rights and the consequent denial of equal protection of law for LGBTI asylees (Witschel, 2017). There is also great interest in procedural problems surrounding LGBTI asylum cases and the relative refugee status determination procedure. The issues concern mainly credibility assessment, late disclosure, unreliable country of origin information, and reception. The credibility assessment, the “burden of proof and the misclassification issue” are discussed time and time again with particular attention to transgender asylum seekers as they can present “blurred social and biological paradigms” from a judicial perspective (Jenkins, 2009:68).

Migration scholarship includes research of many disciplines such as globalisation, ethnic studies, postcolonial and public health studies (Luibhéid, 2008:169-170). More recently, it has begun to investigate the impact of sexuality and gender identity on migratory processes (Cantù, 2009:26) and their role in the relations of power of international migration. This is a topic further expanded on in queer migration studies, a

discipline which “subverts conventional categorisations and theorisations of gender and sexuality” (Mai & King, 2009:297). Indeed, the intersection between the individual’s gender identity and sexual orientation, and the larger national and international dynamics of power is arguably the main focus of queer migration studies. Fixed definitions of sexuality and gender identity are regarded as fictional - because gender and sexuality are fluid elements of the subject’s identity (Cantù, 2009:22) - and a tool to reinforce dynamics of power rooted in colonialist and capitalist expansion, racism and heterosexism (Luibhéid, 2008, p.180). Queer migration studies highlight how, in challenging both the expected immobility of national and sexual citizenship, and the “straight/gay” dichotomy (Mai & King, 2009:297), queer migrants who seek freedom to express their identity and sexuality find themselves entangled in a new systems of inequality rather than liberated (Luibhéid, 2008:170).

When it comes to country-specific studies on the topic of queer migration, a lot of research has been done on the American continent. Indeed, there are studies on LGBTI asylum seekers in Canada (Murray, 2014; Lee & Brotman, 2011), in the USA (Luibhéid, & Cantù, 2005) and Latin America - Brasil (Vartabetian, 2018) and Mexico (Cantù, 2009).

Very little is to be found on European countries, and the current situation in Italy is severely lacking research. In fact, despite numerous attempts on different platforms and using a wide range of key words, I was only able to find one thesis on the topic:

- “Migranti LGBTQ. Percorsi di vita sui confini” (*LGBTQ Migrants. Lives on the border*) by Laura Magnarin.

There are a few considerations to make about this thesis. Firstly, as the title suggests, the object of this paper are LGBTI migrants in general, although it does include the experiences and challenges of asylum seekers and refugees. Secondly, the fact that this thesis is in Italian limits its audience greatly.

Research and scholarship on LGBTI asylees in Sweden, seems equally absent. Only one study focused on the topic was found:

- “Understanding Structural Violence through the Intersectionality Theory; A thematic analysis of Gay Refugee’s Experience of Oppression and Marginalisation in Sweden” by Julius Borgqvist.

Country specific academic research on LGBTI asylum seekers is still largely missing in academia. This gap should be addressed especially in times where migration has become a very hot topic in mainstream media and policymaking in the European Union (EU). Indeed, an in depth country specific analysis of the asylum and social system can help understand if members of the EU are holding up to the standards they should and, consequently, if the EU is guaranteeing human rights. Furthermore, comparative analysis between member States can help understand what gaps exist between member States and why, pinpoint the best procedures and detect the most problematic practices. This seems particularly pertinent in current times, where xenophobia and intolerance appear to be on the rise as terrible man-made humanitarian crises unfold, creating what the populist divisive discourse has been consistently calling an ‘invasion’ of refugees. In the current political climate it is important for academia to invest more of its resources to give voice and space to vulnerable groups, investigating their challenges and bitter realities. The conversation on how the status quo can be challenged must be encouraged for an increased guarantee of human rights and consequent improvement of society.

4.0. Theoretical background

This study relies on two theories, mainly: the intersectionality theory (Crenshaw, 1989), which was born in the late 80s into the realm of feminist studies and has become one of the foundations of identity studies; and the theory of structural violence, elaborated by Johan Galtung (1969) who is considered the father of peace and conflict studies by many.

4.1. Intersectionality theory

The intersectionality theory was first elaborated by Kimberlè Crenshaw in 1989 to understand the systematic oppression of African-American women in the United States. Originally, the theory was used to analyse how the multiple overlapping identities of individuals related to gender and ethnicity - and later, class - play an active role in the complex forms of systemic oppression they experience (Crenshaw, 1989:1244-1245). By tracing these categories that define an individual's identity to their intersections, the theory aims to disrupt a societal tendency of seeing such categories as separate entities and noncommunicating compartments (Crenshaw, 1989:1244-1245). While the intersectionality theory was originally born within feminist studies and mainly focused on feminist issues, since its origins scholars have used the intersectional analysis in a wide range of fields of study including queer theory (Jaffer, 2012). More and more categories have been added to the original gender and ethnicity: sexual orientation, age, and ability among many others. Indeed, criticisms to the theory regards precisely the notion of 'categories', in two ways: first of all, they are fluid and fluctuating therefore it is hard to measure and quantify oppression (Lutz, 2011:80); secondly there is the question on the number of categories that one should consider to carry out a reliable analysis. Crenshaw included 3 categories but not all scholars agree. Yuval-Davis, for instance, claims that this depends on the historical moment and that, in any case, categories are not additive but mutually constitutive (Yuval-Davis, 2011: 4).

Keeping these critical notions in mind, from a theoretical standpoint this study is going to use the intersectionality theory as a base to argue that, because of their intersectional

identity as refugees and LGBTI persons, queer asylum seekers and refugees are more vulnerable and marginalized in the Swedish and Italian asylum and social systems. Therefore, procedures need to be better designed to meet these different needs.

4.2. Theory of Structural Violence

The notion of ‘structural violence’ was coined by Johan Galtung and used to refer to the kind of violence that is not committed by any one identifiable actor but that is “built into the structure and shows up as unequal power and consequently as unequal life chances.” (Galtung, 1969:170-171). According to the theory of structural violence, resources such as income, education and, most importantly, “power to decide on the distribution of such resources”, are unevenly distributed among individuals in society (Galtung, 1969:171). Furthermore, Galtung stresses the importance of the element of ‘avoidability’ as a determining condition to establish if violence is structural or not. In the author’s words, “if people are starving when this is objectively avoidable, then violence is committed, regardless of whether there is a clear subject-action-object relation.” (Galtung, 1969:171). Indeed, while personal violence is easier to address because “it is more ‘visible’, it shows” and it is perceivable by the individual as a dynamic alteration from normality, structural violence *is* the static normality that the individual is inadvertently immersed in day to day because it is ingrained in the system that they navigate and therefore essentially invisible (Galtung, 1969:172-173).

Distinguishing between interpersonal and structural violence is important to create awareness and address the causes of social injustice. In fact, when action is only directed against intended violence it may end up focusing only on the symptoms, thus failing to address the cause because it is “catching the small fry and letting the big fish loose” (Galtung, 1969:172). The idea of the ‘invisibility’ of structural violence implies that if the violence were more tangible it could be stopped and, therefore, that its invisibility allows its repetition. However, Winter (2012) reversed this dynamic arguing that it is the repetition of the violence that makes it invisible in the first place. When it comes to LGBTI asylum seekers, there are power balances in place that cause for this minority group to be affected by structural violence in the asylum and social systems of

the countries that host them. Indeed, sexual minority asylum seekers are at the mercy of asylum systems that are not designed to meet their specific needs, and this directly affects the quality of their life and their possibilities. This exposure is naturally exacerbated by their complex aforementioned intersectional identity. In fact, as we will see in the analysis section, their multiple identities of non caucasian LGBTI individuals seeking asylum, makes them vulnerable to heteronormativity, homophobia and racism embedded in the asylum and social system of the receiving country.

The theory of structural violence by Galtung was conceived in the late 60s within the scope of Peace and Conflict studies. Both these theories have been widely used and applied to different fields of research. Because of the common themes and underlying assumptions surrounding power distribution and inequality, these theories have often been combined under the name of ‘structural intersectionality’ (Crenshaw, 1995). Today, these theories constitute the main discussions on social justice and equity taking place on mainstream platforms.

5.0. Methodology and material

The decision to focus on this issue was dictated both by personal and academic reasons. From an academic standpoint, there is a need to deepen the research and knowledge on the LGBTI experience in general, and the experience of LGBTI asylum seekers and refugees in particular. The personal reasons relate to the fact that I, the author, am of Italian origin and currently residing and studying in Sweden. Therefore, not only do I have a personal interest in learning more about both countries, I am also critically interested in gaining a broader understanding on how two Western and ‘developed’³ countries can differ in providing protection and support to minorities.

What follows is the description of the methodological choices of the thesis, as well as the choice of material, and its use.

The method I used to carry out this study was analysis of secondary documents. Research within the scope of queer and migration studies were especially significant to provide a general framework to the issue, and two reports were equally important sources of data on the current progression of LGBTI rights:

- the 2018 update of “State-Sponsored Homophobia” by ILGA and Lucas Ramón Mendos, for an overview of LGBTI rights across the world; and
- the 2019 “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People” by ILGA-Europe, for an overview of LGBTI rights in Europe.

In face of a general lack of previous country-specific academic studies on LGBTI asylum seekers in my countries of interest, I decided to rely on two main sources of material: current domestic legislation and country reports carried out by local and international NGOs invested in LGBTI and migrants rights. The study of the relative national legislation provided a legal framework that provided a better understanding of the line of action in the respective governments and institutions. This is especially relevant for accountability in the wider context of international and humanitarian law.

³ I am aware that the use of words such as ‘western’ and ‘developed / developing’ can often be problematic because politically and historically charged with imperialist and colonialist notions.

However, it was NGO reports and journalistic articles that provided a realistic account of how the law is enforced and its consequences. Articles from international and Italian papers - Reuters, The Guardian, La Stampa, La Repubblica, Il Post - were referred to, while some of the most important reports included:

- the 2018 updated AIDA country reports on Italy and Sweden;
- “La Montagna e la Catena” by Laura Pozzoli and Raffaele Lelleri; and
- “LGBTI asylum seekers in Sweden” by Oxford Research.

Official statistics on the topic of sexual minority refugees were impossible to find due to the difficult relation “between government secrecy and confidentiality” (May, 2010:75). Relying exclusively on documentary research can be problematic in that both writing and reading are selective processes that imply decisions informed by the political, economic and social environment of the people who take them (May, 2010:215). Therefore, in using secondary material, this thesis could have potential bias because my choices on which material to use implied the exclusion of other sources. Evidently, the same reasoning applies to the information I have selected or discarded. I have done my best to avoid such biases, however I am aware that I am not immune to the political, economic and social environment that surrounds me.

The gathered information was examined from a descriptive, critical and constructive perspective, and placed within a prevailing comparative framework. The descriptive method was used to illustrate the characteristics of each, while the critical and constructive methods were applied to highlight the strengths and weaknesses. Nevertheless, at the core of the study, lies a comparison between procedural differences in Sweden and Italy concerning the reception and protection of LGBTI asylum seekers who flee war. Some argue that, because of the current globalized world we live in, the national organisation can no longer be a valid reference point for scientific comparative research (Beck and Sznaider 2006: 4). Indeed, this might appear to be more true for two countries which are both part of the same superstructure - namely, the European Union. After all, Italy and Sweden abide to the same EU laws, provisions and policies, so what would the point of such a comparison be? I argue that this actually makes the comparison more relevant. By analysing two apparently close systems, we can get an insight on the “peculiarities of the local experience” and question the “forms and

consequences of general processes” (May, 2010:246). In this thesis, the comparison will be addressed in the final conclusions, where the identified problems and good practices analysed in previous sections were effectively compared to discuss what needs to be improved to help LGBTI asylum seekers overcome the challenges they currently face.

The research was carried out with the awareness that the subject discussed is an extremely broad one that comprises numerous areas of interest. Topics such as LGBTI rights, international migration and related international and domestic legislation are extremely vast and could only be examined to the extent allowed by the purposes of this research. Furthermore, as a white, middle class, heterosexual woman, I am aware that I discuss societal issues surrounding sexual identity and ethnicity from a privileged perspective. Indeed, the fact that my intersectional identity (Crenshaw, 1989) fits ‘the norm’ means that I am discussing challenges and traumas that I will never understand fully on a personal level. Nonetheless, it is important for everyone to educate themselves on the structural oppression experienced by minorities in order to participate in the advancement of equal rights. Furthermore, humanitarians need to be more invested in how current conflicts are affecting minorities. By focusing on LGBTI asylum seekers, this thesis wants to expand on an area that is yet left rather unexplored by humanitarian studies. In doing so, it will hopefully provide a valuable contribution to the expansion of the boundaries of this field of study.

6.0. Analysis - LGBT asylum seekers and refugees in Sweden

This chapter analyses the situation of LGBTI refugees in Sweden. Section 6.1. will examine the applications for protection in Sweden in 2018 with the support of relevant statistics. Section 6.2 will present Swedish domestic law on asylum in general and LGBTI asylum seekers in particular. Section 6.3 will analyse the actual procedures in place and the experiences of sexual minority asylees in Sweden, which will then lead to the discussion in section 6.4.

6.1. Asylum seekers in Sweden

In 2018 Sweden received 21,502 applications for protection, 66.1% of which ended in rejections while the remaining 33.9% can be divided between refugee (19.1%), subsidiary protection⁴ (12.7%) and humanitarian protection (2.1%) (Williams & Hallstedt, 2019:7). The table below provides a very clear overview of the total applications and granting of protection status at first instance in Sweden in 2018 :

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	21,502	17,389	5,990	3,985	665	20,680	19.1%	12.7%	2.1%	66.1%

What follows is the the breakdown of the total numbers by countries of origin as of 28 December 2018 (Williams & Hallstedt, 2019:7):

⁴ According to Art.2(f) of [Directive 2011/95/EU](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011L0095:EN:HTML) a third-country national or a stateless person is eligible for subsidiary protection when they do not qualify as a refugee but there is consistent reason to believe that if the person concerned returned to their country of origin or country of habitual residence, they would be at serious risk of suffering harm. Article available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011L0095:EN:HTML>

Syria	2,709	1,638	345	2,610	40	430	10.1%	76.1%	1.2%	12.6%
Iraq	1,369	1,622	660	210	65	3,105	16.3%	5.2%	1.6%	76.9%
Iran	1,257	1,489	735	10	15	1,285	35.9%	10.3%	3.2%	50.6%
Georgia	1,156	364	0	0	0	975	0%	0%	0%	975
Eritrea	873	558	710	55	20	160	75.1%	5.8%	2.1%	17%
Afghanistan	805	1,072	1,420	715	165	4,940	19.6%	9.9%	2.3%	68.2%
Stateless	765	844	305	120	60	465	32.1%	12.6%	6.3%	49%
Uzbekistan	765	672	20	5	0	250	7.3%	1.8%	0%	90.9%
Somalia	735	738	425	55	20	810	32.4%	4.2%	1.5%	61.9%
Albania	616	168	0	5	0	480	0%	1%	0%	99%

Source: Applications – Migration Agency; Decisions – Eurostat.

The above statistics were crossed with the data available in the “ILGA State-Sponsored Homophobia 2019” report and the Uppsala Conflict Data Program in the table below:

	war or conflict ⁵	criminalisation of consensual same-sex sexual acts ⁶	protection and recognition of LGBTI people ⁷
Syria	YES	YES	/
Iraq	YES	de facto	/
Iran	NO	YES (max penalty: death)	/
Georgia	NO	NO	some protection, no recognition
Eritrea	NO	YES	/
Afghanistan	YES	YES (max penalty: death)	/
Uzbekistan	NO	YES (male only)	/
Somalia	YES	YES (max penalty: death)	/
Albania	NO	NO	some protection, no recognition

Out of nine countries of origin four are currently facing war or internal conflicts, and they all criminalise same-sex consensual intimacy in their domestic law. In the three UN

⁵ Source: UCDP - Uppsala Conflict Data Program. Accessible at <https://ucdp.uu.se/>

⁶ Source: ILGA State-Sponsored Homophobia 2019 Available at: https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

⁷ Source: ILGA State-Sponsored Homophobia 2019 Available at: https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

This table was created by the author of this thesis

Member States of Iran, Afghanistan and Somalia, the maximum penalty is death. As for Iraq, since the fall of the Islamic State non-heteronormative sexual orientations and gender identities are not officially criminalised, but in practice they are still persecuted through other criminal provisions such as “public indecency” or “prostitution” (Mendos & ILGA, 2019). The aim of the table is to highlight possible connections between these migratory flows, the rights of LGBTI people in the countries of origin, and the internal politics of said countries. However, a lack of data on LGBTI asylees in Sweden unfortunately prevents from drawing any definitive evidence-based conclusions on how these correspondences might be interconnected. Indeed, while the Swedish Association for Gays and Lesbians (RFSL) reported working with around 70 cases of LGBTI asylum seekers in 2012, the Swedish asylum authorities do not keep any official statistics (ILGA, 2013:209) because it is illegal to register people’s sexual orientation (Ahldén & Thorén, 2017). Nonetheless, an analysis of the procedures and experiences surrounding sexual minorities can be carried out starting from the analysis of the Swedish national legislation, which is the object of the next section.

6.2. Swedish domestic law

In Sweden the status of aliens⁸, including asylum seekers, is regulated by the Aliens Act (2005)⁹, with a number of amendments. According to this document, a refugee is an alien who is forced out of their country of nationality because of well-founded fear of persecution on ground of, among other things, gender and sexual orientation, regardless of whether the threat is posed by the official authorities or by non-state actors from whom authorities are unable to offer protection (Aliens Act, 2005:3). Furthermore, the Aliens Act considers a “person otherwise in need of protection” an alien who “needs protection because of an external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses” (2005:4). This definition closely follows the 1951 Refugee Convention, with the explicit inclusion of sexual orientation as a ground for seeking asylum. Another important aspect of the Aliens Act is that it allows for new circumstances to prevent the

⁸ The Act uses the word ‘alien’ to refer to the a person who does not possess Swedish citizenship.

⁹ The Act became effective from 31 March 2006. The English version of the document does not include the changes that were made from 2010.

enforcement of a deportation decision. Therefore, upon rejection, an asylum seeker has the right to claim new circumstances that would increase the risk of persecution in the country of origin (Oxford Research, 2017:8).

The reception of asylum seekers is determined in the Law on Reception of Asylum Seekers and others. In 2016, in response to the so called '2015 refugee crisis', this law was amended effectively limiting rights. Firstly, permanent residence permits for people in need of protection were revoked and substituted with a temporary permit. These could either be renewed provided that the reasons for asylum still persisted, or refugees could apply for a permanent permit only if they can support themselves. Secondly, residence permits based on refugee status were reduced to three years maximum (Oxford Research, 2017:8-9). These restrictions were striking for a country that has long prided itself for being very open and generous on asylum, but reflective of the concern over immigration that has grown among the Swedish public in recent years (Skodo, 2018).

Despite the fall in numbers - 36,531 protection applications in 2017 (Migrationsverket, 2017) against the aforementioned 21,502 of 2018 - activists working with LGBTI asylees report it has become increasingly harder to obtain protection in Sweden (Ahldén & Thorén, 2017). Such austerity measures are associated by these volunteers with the 2015 migration wave, but appear rather suspicious especially in the face of the rise in popularity of a anti-immigration and nationalist party during the 2018 Swedish election. These correspondences make one question if the lawful independence of the Migration Agency from the Swedish Parliament and Government (Williams & Hallstedt, 2019:13) is a factual reality or not. Perhaps the analysis in the following section will shed some light on this issue.

6.3. The Swedish asylum and social system

The legal framework regarding the identification of vulnerable asylum seekers and their needs is part of the 1994 Law on the Reception of Asylum Seekers (LMA). Accordingly, the Migration Agency is continuously working to improve LGBTI

persons' experience of the asylum system by, for example, improving the format of the LMA cards in order to avoid creating registration obstacles for transgender people, allowing self-identification when it comes to the registration of gender identity in the Authority's register and securing safe accommodation (Williams & Hallstedt, 2019:67). Indeed, standards for the reception of vulnerable asylum seekers created by the Migration Agency specifically include "persons vulnerable to harassment or exploitation due to sexual orientation, gender identity or gender expression" (Williams & Hallstedt, 2019:39). This is because this minority group of people can experience harassment from other homophobic or transphobic refugees in accommodation facilities (Williams & Hallstedt, 2019:67). For this reason, the Migration Agency has established three special centres for up to 45 vulnerable people in Stockholm, Gothenburg and Malmö in an attempt to avoid having to place sexual minority asylum seekers in regular reception centres (Williams & Hallstedt, 2019:65).

When regular centres are not enough, asylum seekers can be hosted in private accommodation. In fact, in the Swedish asylum system any Swedish private individual with no criminal record can become an accommodation provider if they possess the facilities. However, many cases of discrimination, abuse and sexual assault against specific minorities that occur in such private facilities often remain unknown to the police and the Migration Agency (Oxford research, 2017:19). To avoid such instances, a close collaboration with RFSL, sometimes helps to find other suitable solutions for LGBTI persons such as smaller private accommodation in strategic locations within the reach of or in medium-sized cities where activities and healthcare targeted at LGBTI people are available (Williams & Hallstedt, 2019:39). However, given that the Swedish approach to asylum seekers accommodation for decades has been based on a "solidarity principle" whereby all municipalities are expected to accommodate asylum seekers (Williams & Hallstedt, 2019:57), proximity to a city and especially to LGBTI organisations and services is not always an option. Reception centres are often in more remote locations and the resulting geographical isolation is very problematic for queer asylees. On the one hand, authorities expect them to participate in the Swedish LGBTI community as a way to prove their sexual orientation and gender identity; on the other the low allowance that they receive makes it very hard for sexual minority refugees to

pay the entry fees to events or transport tickets to reach venues that would help them integrate in the Swedish queer scene (Borgqvist, 2016: 47-48).

In this way, LGBTI refugees are “set up for failure” by the system as this economic marginalisation can severely affect the asylum process, in addition to hampering their access to healthcare. Indeed, despite being guaranteed access to emergency healthcare and to specialised treatments in case of torture and trauma, asylum seekers have limited access in practice (Williams & Hallstedt, 2019:65). For example, specialised healthcare for transgender applicants such as sex reassignments therapy is not covered by Swedish law. Therefore, not only are the waiting times for health-related appointments and procedures very long due to prioritisation of people with Swedish citizenship and permanent personal number, in addition the related costs are completely up to the asylee to pay (Oxford Research, 2017:22).

The “credibility issue” is one of the main reasons for rejection of applications made on grounds of gender identity and sexual orientation. This issue strongly characterises these kinds of application because, in the eyes of the Swedish asylum system, the applicant is perceived as heterosexual until proven otherwise (Borgqvist, 2016:39-40). In 2017, newspapers reported the case of two lesbian women from Kenya and Uganda who were denied asylum because they were not “lesbian enough”, upon failing what a news outlet called the “homotest” (Ahldén & Thorén, 2017). Indeed, through a series of generic but direct questions on their sexuality and past experiences, applicants are expected to prove the veracity of their claim during the interview with the case handler. This is extremely problematic for refugees who find it very hard and re-traumatizing to define themselves as gay due to internalized homophobia and stigma from their home countries. This is why, where applicable, asylum seekers conceal their gender identity or sexual orientation and claim for refugee status based on conflict (Borgqvist, 2016:39-40). An LGBTI asylum seeker reported feeling understandably confused and startled when asked very personal questions regarding her sexuality such as if she described herself as homosexual or lesbian (Ahldén & Thorén, 2017). These are topics that in some circumstances people do not openly discuss even with close friends, but somehow during their interviews asylees are forced to do so in front of strangers, with such high

stakes, and often with no prior preparation on what to expect. It is cruelly ironic, therefore, that the application of the above mentioned LGBTI asylum seeker was rejected upon her second interview because she was more comfortable with discussing her story. Contrary to her first interview, she knew what to expect and prepared accordingly. However, her newfound ability to tell her story made her appear incoherent - and consequently, not credible - in the eyes of the Migration Agency (Ahldén & Thorén, 2017).

The Migration Agency says that it is continuously working on improving its system to assess the quality of the examination of LGBTI asylum applications. Furthermore, the Swedish Refugee Advice Centre has pointed out that special attention should be given to the particularly vulnerable position of minors making claims based on their LGBTI identity or sexual orientation, and to the enhancement of legal representative's LGBTI expertise (Williams & Hallstedt, 2019:67). Asylum seekers are granted free legal assistance from the first instance of the normal procedure, however, legal representatives appointed by the Migration Agency or the respective court are not required to have specialized knowledge in asylum and migration law, or to search information on the country of origin (Oxford Research, 2017:10). Given that a lack of proof on discriminatory cases in the country of origin is the main cause for rejection, and that in 2018 the designation of unqualified legal counsel was exposed by a Swedish Radio journalistic investigation (Williams & Hallstedt, 2019:27-28), the quality of these legal representatives is crucial. On the possibility of being represented by someone of the interested person's choosing - that is, a professional who is specialised in LGBTI cases and migration law, some sources claim that asylum seekers will often be granted the possibility by the Migration Agency (Williams & Hallstedt, 2019:27-28), while others suggest that asylees are to consider themselves lucky if it so happens (Ahldén & Thorén, 2017).

Implementing staff training is arguably one of the most effective strategies to reduce LGBTI asylum seeker's exposure to structural violence. In 2018, a special working group at the Migration Agency looked into vulnerable groups as part of the transposition of the recast Asylum Procedures Directive into Swedish law (Williams &

Hallstedt, 2019:39). Of all the figures concerned with an asylum process, interpreters appear to be the most problematic both from a practical and psychological perspective. In fact, during the interview process - virtually the foundation of the applicants credibility assessment - LGBTI refugees have to “come-out” in front of an interpreter who often shares their same cultural background and, therefore, could potentially be homophobic or transphobic. Moreover, the applicant has no guarantee on the quality of the service as interpreters have been reported missing important interviews of applicants, or not translating everything that the applicants is saying (Oxford Research, 2017:15-22). Nonetheless, the asylee is forced to entrust these figures with delivering key and delicate information to the case handlers (Borgqvist, 2016:41-43). While interpreters need to attend seminars to standardise the relevant terminology, research carried out by the European Council on Refugees and Exiles has pointed out the lack of a formal system that would insure the quality of interpretation (Oxford Research, 2017: 22). The interview is the only chance for the asylee to be heard and sometimes interpreters are more of an obstacle than a bridge, as reported by one LGBTI applicant who recollects ten miscommunications between her and the interpreter during one interview (Ahldén & Thorén, 2017).

Another final, important issue in the Swedish asylum system is the disproportionate focus on the laws of the country of origin at the expense of the cultural and societal context. The Migration Agency often seems to “miss the point”, and one testimony describes it fails to understand that the lack of discriminatory laws in the home country does not equal an absence of discrimination and homophobia in society (Borgqvist, 2016:44). Two considerations come to mind in this regard: firstly, it should be noted that even when anti-discrimination laws are in place in the home country, they might not be enforced in practice; secondly, homophobia and transphobia are often deeply rooted in cultural norms which cannot be changed as fast as the introduction of a new law. Therefore, basing the safety of an applicant’s home country only on existing laws is either convenient or naive for Swedish officials. This is one of the biggest problems in the implementation of Swedish asylum law. In fact, depending on the country of origin, troubling patterns of success or failure of the application have been identified whereby claimants from Macedonia and Serbia are generally categorised as “unfounded

cases” because there are legal frameworks in place to protect LGBTI persons, whereas if the country of origin is Syria or Somalia, in most cases final decisions will be fast and positive (Oxford Research, 2017: 11). While the ground of a “manifestly unfounded cases” is unlawful, experienced RFSL activists claim that decisions taken by the Migration Agency are completely arbitrary and that “all answers can be wrong” (Ahldén & Thorén, 2017). Indeed, administrators and decisions makers admit it is close to impossible to determine if the applicant’s answers were satisfactory or not, and managers tend to place the blame of the high rates of rejection of LGBTI applications to the high staff turnover and general disorganisation (Ahldén & Thorén, 2017). There is no question that the Migration Agency does not have an easy job, however the levels of structural violence experienced by queer asylum seekers might be connected to the hard fact that there are approximately only 35 trained LGBTI specialists (Ahldén & Thorén, 2017) in the Migration Agency across all of Sweden.

6.4. Discussion

There are numerous discrepancies between Swedish national legislation and policies, and how Swedish institutions implement them. Among cases of unsafe accommodation, dubious questioning and difficulties in accessing healthcare, the example that clarifies this most clearly is the unlawful prioritisation of certain nationalities and the de facto recognition of “safe countries”. Indeed, the Migration Agency seems to heavily rely on the absence of criminalisation in the country of origin’s law to grant or deny refugee status, failing to consider cases based on the individual’s experience. Officers have reported their work in the Migration Agency being “all about the numbers” where the pressure to increase production and the political threat to low budgeting take a toll on the quality of the work and, ultimately, on the asylum seekers (Ahldén & Thorén, 2017). The condition is further worsened by a shortage of qualified staff such as interpreters, whose job is of crucial importance in the accurate report of the applicant’s experience. In this light, it is no surprise if LGBTI refugees report experiencing “many layers of oppression” (Borgqvist, 2016:48) in the Swedish asylum system which disappoints the initial perception of Sweden as an example of human and minority rights protection and the safest place for queer refugees (Oxford Research, 2017:23). Overall, this

discrepancy between the high standard of delivery promised “on paper” and the reality of the facts, is perhaps the biggest characteristic of the Swedish asylum system. Nonetheless, the government is currently dealing with a proposal meant to strengthen sexual minority applicant’s rights (Williams & Hallstedt, 2019:67) and established organisations such as RFSL have a long history and strong enough voice to lobby for the rights of LGBTI asylum seekers and refugees.

7.0. Analysis - LGBTI asylum seekers and refugees in Italy

This chapter will analyse the situation of LGBTI refugees in Italy. First by examining the applications for protection in Italy in 2018 in section 7.1. Secondly, Italian national legislation on refugees in general and LGBTI refugees in particular will be described and analysed in section 7.2. The legal framework will help to better understand the actual procedures and experiences and LGBTI asylees and refugees undergo in Italy in section 7.3., which will finally lead to the discussion on this country in section 7.4.

7.1. Asylum seekers in Italy

In 2018 the number of migrants arriving to Italy by boat was 23,370. When compared to the data of the previous two years, this shows a decrease in the trend of the flux of migrants. In fact, in 2017 a reported 119,369 arrived in Italy by sea, while in 2016 it was 181,436, demonstrating a reduction of more than an 80% (Ministero dell'Interno, 2018). Even with the alleged 20,000 migrants that Interior Minister Matteo Salvini prevented from disembarking with his “closed ports”¹⁰ approach (Indini, 2018), the numbers of 2018 are still strikingly lower. The table below provides a very clear overview of the total applications and granting of protection status at first instance in Italy in 2018 :

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	53,596	98,369	7,096	4,319	20,014	56,002	7%	5%	21%	59%

As for nationalities, among the top countries of origin of asylum seekers in Italy were: Nigeria, Bangladesh, Pakistan, Senegal, Mali, Gambia, Ukraine, Côte D'Ivoire, El Salvador, Morocco, Guinea (CIR Rifugiati, 2018:8). The detailed data is illustrated in the table by the 2018 immigration report by CIR rifugiati:

¹⁰ In 2018, on more than one occasion Italian Interior Minister Matteo Salvini prevented NGOs carrying migrants to enter Italian ports to allow migrants to disembark on safe land. More on the topic in section 8.2. of this thesis.

	Gennaio	Febbraio	Marzo	Aprile	Maggio	Giugno	Luglio	Agosto	Totali
Nigeria	1.063	709	740	508	623	771	498	212	5.124
Bangladesh	613	710	660	435	499	439	325	200	3.881
Pakistan	693	576	669	436	537	616	604	377	4.508
Senegal	417	363	396	312	254	288	205	78	2.313
Mali	454	347	250	227	222	317	225	59	2.101
Gambia	420	304	310	203	191	167	124	53	1.772
Ucraina	233	278	270	226	276	260	193	115	1.851
Costa D'Avorio	296	246	211	164	153	253	186	57	1.566
El Salvador	128	132	156	113	100	157	185	133	1.104
Marocco	176	151	199	138	164	163	136	128	1.255
Guinea	314	231	188	150	116	195	124	42	1.360

Source: Ministero dell'Interno, updated October 2018

I used the above data to cross it with the data available in the “ILGA State-Sponsored Homophobia 2019” report and the Uppsala Conflict Data Program in the following table to highlight possible connections between these migratory flows, the rights of LGBTI people in the countries of origin, and the internal politics of said countries.

	war or conflict ¹¹	criminalisation of consensual same-sex sexual acts ¹²	protection and recognition of LGBTI people ¹³
Nigeria	YES	YES	/
Bangladesh	/	YES	/
Pakistan	/	YES	/
Senegal	/	YES	/
Mali	YES	NO	no protection, no recognition
Gambia	/	YES	/
Ukraine	YES	NO	little protection, no recognition
Côte D'Ivoire	/	NO	no protection, no recognition

¹¹ Source: UCDP - Uppsala Conflict Data Program. Accessible at <https://ucdp.uu.se/>

¹² Source: ILGA State-Sponsored Homophobia 2019 Available at: https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

¹³ Source: ILGA State-Sponsored Homophobia 2019 Available at: https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

This table was created by the author of this thesis

El Salvador	/	NO	little protection, no recognition
Morocco	/	YES	/
Guinea	/	YES	/

Except for Mali, Côte D'Ivoire, El Salvador and Ukraine, where consensual same-sex sexual acts are legal but have little to no explicit protection or recognition, all of the listed countries criminalise same-sex sexual intimacy to some degree, either directly or through other criminal provisions such as “public indecency” or “prostitution” (Mendos & ILGA, 2019). Naturally, the fact that non-heteronormative sexual orientations and gender identities are legal, by no means automatically translates in the country being safe for LGBTI persons; for example in Ukraine consensual same-sex sexual acts are legal but homophobia and transphobia is still incredibly widespread (Human Rights Watch, 2018). Moreover, such acts are punishable with the death penalty in Pakistan and Nigeria, which are both UN Member States (Mendos & ILGA, 2019:15-16). Unfortunately, a lack of data on LGBTI asylees in Italy prevents from drawing any definitive evidence-based conclusions on how these correspondences might be interconnected. Nonetheless, it is a useful tool to put the available data into perspective.

7.2. Italian domestic law

In Italy, the right to asylum is guaranteed by Article 10 comma 3 of the Italian Constitution (*art.10(3) della Costituzione Italiana*) to those individuals whose democratic freedom is hindered in the country or origin.¹⁴ This article of the Constitution is rather generic and was apparently forgotten until 1997, when a ruling of the Italian Court of Cassation appointed the ordinary tribunal as the deciding body to grant asylum (UNHCR). Nonetheless, the specifics of what qualifies an individual as a refugee are described in detail in the Decree-law n. 18/2014¹⁵. Article 8, on the reasons

¹⁴ art.10(3) della Costituzione Italiana: “Lo straniero, al quale sia impedito nel suo paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica, secondo le condizioni stabilite dalla legge.”

¹⁵ DECRETO LEGISLATIVO 21 febbraio 2014, n. 18 is available in Italian at <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2014:18>

for persecution, names sexual orientation and gender identity under the section “belonging to a particular social group”. Decree-law n. 142/2015¹⁶ establishes all the procedures relative, for example, to housing, healthcare and detention, and there are no specifics to be found on gender identity or sexual orientation. As one can see, these are all decree-laws because, to this day, the Italian national legislature does not include laws regarding asylum (UNHCR). Therefore, there are several decree laws¹⁷ that regulate the issue. Nevertheless, regardless of national legislature, under the Geneva Convention, the EU legislation and the UN Convention Relating to the Status of Refugees, Italy must guarantee asylum. However, the reliance on decree laws which are usually created in the face of a specific urgency or emergency factually means that it was the European legislatures who forged the way the asylum system works in Italy, and each government has different political views on the subject of immigration.

In this regard it is important to mention, Decree law n.113/2018 also known as “security decree law” (*decreto sicurezza*) vehemently wanted by the Interior Minister Salvini. With the exception of national security, this decree-law put in place some drastic changes to the Italian asylum system effective from 5 October 2018. For the purposes of this thesis, I will only list those that, in my opinion, could have the greatest impact on LGBTI asylees.

First of all, this decree-law abolished the grounds of humanitarian protection, which was previously granted by the Chief of the Immigration Office of the Police to specific cases that did not qualify either as asylum or subsidiary protection (Lanni, 2018). From autumn 2018, those migrants who do not qualify for asylum or subsidiary protection can only apply for specific temporary permits which have a maximum duration of one year (Bove, 2019:37) and fall outside the scope of international protection (Lanni, 2018). Secondly, this decree law drastically reformed the reception system mainly in two ways: it now excludes persons who have applied for humanitarian protection prior to the

¹⁶ DECRETO LEGISLATIVO 18 agosto 2015, n. 142 is available in Italian at <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2015:142>

¹⁷ A comprehensive list overview of the legal framework up-to-date as for 31 December 2018 is downloadable at <https://reliefweb.int/report/italy/aida-2018-update-italy>

decree law (Lanni 2018), and only allows asylum seekers to access first reception centres and CAS (Emergency Accommodation Centres) which are the facilities that host asylum seekers during their first application process (Bove, 2019:15). The last change I will mention is the introduction of a “new detention ground for persons held in hotspots and first reception centres for the purposes of establishing or verifying identity or nationality, which is potentially applicable to most, if not all, asylum seekers.” (Bove, 2019:15).

The dispositions adopted by Decree law 113/2018 are the result of the perception of migration as a threat to national security (AIP, 2019) and it is the expression of the general xenophobia that permeates the current Italian political climate. Indeed, with the rise to power of right-wing Minister of Interior Matteo Salvini, 2018 saw his xenophobic and anti-immigration political discourse becoming mainstream. Since August 2018, the Italian government has threatened multiple times to return to Libya people rescued at sea (Bove, 2019:26) and indeed newspapers reported that as of July 2018, 100 migrants saved at sea were in fact sent back (Giacalone, 2018). It is appalling that Italy continues to treat Libya as a safe country to which asylum seekers can be redirected or “sent back”, given the political instability and violent clashes in the country (Hayden, 2018 & Mughrabi, 2019) and the consistent reports on the inhumane conditions in detention centers and refugee camps, where refugees and migrants face torture, sexual violence, extortion and other serious violations (Mughrabi, 2019). UNHCR has expressed concern on the rising numbers of racist and xenophobic hate crimes in 2018 but the Italian political elite denies all accountability (De Luca, 2018).

The changes introduced by Decree law 113/2018 should not influence the decisions regarding LGBTI asylum seekers who are fleeing from war as - one could presume - these individuals should straightforwardly qualify for the status of refugees. However, there is a large portion of asylum seekers, and LGBTI asylum seekers, whose condition is not as “simple”. In fact, a quick look at the statistics reveal that in 2018 humanitarian protection constituted the 25% of asylum applications (Lanni, 2018) and 70% of the permits given (AIP, 2019). Humanitarian protection constituted the majority of permits granted, therefore its abolition through Decree law 113/2018 will unequivocally shrink

the number of asylees that will benefit from a residency permit and consequently damage the most vulnerable groups. The following section will describe and analyse the Italian asylum and social system, also keeping in consideration the aforementioned changes introduced by Decree law n.113/2018.

7.3. The Italian asylum and social system

A starting point with the Italian asylum system is the accessibility to the asylum procedure, which already appears to be a sore spot. Not only is adequate information on the procedures not provided with consistency to asylum seekers (Bove, 2019:77), in addition, in 2018 reports of denial of access to the asylum procedure continued (Bove, 2019:14). In fact, different Questure (Immigration Office of the Police) hampered the registering of applications in various ways such as limited opening days or hours, or the unlawful requirement of a domicile (Bove, 2019:14). Other than being unlawful, such practices expose asylum seekers to risks of arbitrary arrest and deportation (Bove, 2019:30) since, where Questure prevent access to the procedure, they do not provide any document as proof of the intention of the concerned migrants. Moreover, a delay in accessing the procedure hampers the possibility for sexual minority asylees to benefit from important services, as explained by a transgender refugee:

“The possibility to undergo sex reassignment surgery is closely linked to the outcome of the application for international protection, therefore waiting times for a trans asylee further lengthen the already long sex reassignment process.”

(Il Grande Colibrì, 2016)¹⁸

This situation is further worsened by the fact that often NGOs too might be inaccessible due to insufficient funding or geographical reasons (Bove, 2019:78).

When LGBTI refugees finally do access the asylum procedure, they have to deal with a system that has no set procedure in place to identify vulnerable persons (Bove, 2019:64). On the matter of vulnerable groups, the “Guidelines of the Ministry of Health for the identification, rehabilitation and psychological treatment of refugees survivors of torture, rape or other forms of psychological, physical and sexual violence” do mention

¹⁸ Translated from the original Italian article by the author of this thesis.

LGBTI people as a group with specific needs, and especially underline the struggles that trans and intersex people could face in healthcare (Ministero della Salute, 2017:20-21). However, this is only a guideline and an informative document whose scope does not go any further than explaining why LGBTI asylees need special consideration. As far as the asylum system goes, the only vulnerable groups for whom there seem to be more defined procedures in place are children, survivors of torture and victims of trafficking (Bove, 2019:64-66). The consequences of this shortcoming hit queer asylum seekers in their possibility to safely access all services they should be entitled to, from healthcare to accommodation. For instance, among the minority groups who need particular accommodation arrangements, Decree law 142/2015 mentions people who have endured serious psychological, physical and sexual violence for reasons connected to their gender identity or sexual orientation (Ministero della Salute, 2017:21). However LGBTI persons are vulnerable to violence, discrimination and abuse within the asylum accommodation system regardless of their personal history. Moreover, the report highlights another unlawful and highly problematic practice:

“According to the practice recorded in 2016, 2017 and 2018, even though by law asylum seekers are entitled to material reception conditions immediately after claiming asylum and undergoing initial registration (*fotosegnalamento*), they may access accommodation centres only after their claim has been lodged (*verbalizzazione*). This implies that, since the *verbalizzazione* can take place even months after the presentation of the asylum application, asylum seekers can face obstacles in finding alternative temporary accommodation solutions. Due to this issue, some asylum seekers lacking economic resources are obliged to either resort to friends or to emergency facilities, or to sleeping rough.” (Bove, 2019:82-83).

In such circumstances queer asylees find themselves forced to conceal their gender identity or sexual orientation. Indeed, there are numerous reported cases of discrimination and abuse in the system, for example: a terrified gay refugee who had to make up an imaginary girlfriend in the face of the suspicions of the heterosexual men he was forced to share a room with (Pozzoli & Lelleri, 2009:37) and a lesbian woman who received extremely intrusive questions from a doctor who finally advised her to see a

psychotherapist because of her sexuality (Magnarin, 2012:100). While reception centres are the most frequently used type of accommodation (Bove, 2019:93). For people whose gender identity is not “invisible” things are even harder, especially when the accommodation system is based on the division men / women. For example, a transgender refugee declared not belonging to either of these categories yet it was suggested he solve this problem by hiding his breasts which were still noticeable since he had not undergone surgery yet (Il Grande Colibrì, 2016). These degrading and dehumanising experiences are indicative of the level of structural violence that refugees with intersectional identities are forced to endure in the Italian system (Magnarin, 2012:87). In fact, LGBTI refugees also face institutional racism.

Once again, it all boils down to what one can conceal in order to safely navigate the system and ethnicity is not one of those things. Certain queer refugees say that while homophobia takes the form of comments or jokes, racism manifests itself in the exclusion from services, rights and society in general (Pozzoli & Lelleri, 2009:24-25). In 2017, for example, mayors of the region of Lombardy and members of the political party *Lega Nord*, issued fines to private persons who offered accommodation to migrants without prior notification to the municipality (La Repubblica, 2017). Furthermore, until 2011 a regional normative of Friuli-Venezia Giulia established the exclusion from integrated social services of non-EU nationals residing of the region (Meltingpot.org, 2011). According to Pozzoli and Lelleri, the staff of these services aimed at migrants prove unable to fully grasp the seriousness of certain situations, and do not take the necessary precautions to protect the privacy of LGBTI asylum seekers (Pozzoli & Lelleri, 2009:22) which can be a threat to their safety. Ultimately, services specifically directed to foreigners are often designed with a heterosexual perspective, therefore services specifically aimed at sexual minority asylees are perceived by the often temporary and underpaid staff as a superfluous expensive optional for second class citizens (Magnarin, 2012: 97-99). Better working conditions could at least prevent service providers from feeling resentful towards their target population but, in truth, only adequate staff training could truly help LGBTI asylum seekers have a better experience within the Italian asylum and social systems. The staff of the CNDA (National Commission for the Right of Asylum) by law must undergo regular refresher

courses and trainings on subjects including country of origin information, interview techniques and inclusion (Bove, 2019:20), but it is not clear what kind of training is expected from integrated social services and healthcare providers.

Racism is also experienced in the context of LGBTI NGOs. In fact, Italian members of the queer community manifest their prejudice towards migrants in the form of racial fetishism and xenophobia (Pozzoli & Lelleri, 2009:27-29). Nonetheless, NGOs in Italy continue to be at the forefront of the fight for LGBTI asylees' rights, often making up for the State's shortcomings and the faults of the system. For instance, asylum seekers are not entitled to free legal advice and representation during the first instance of their procedure, thus applicants receive support for advisors and lawyers financed by NGOs (Bove, 2019:46). Other services that organisations offer are psychological support, practical guidance, and mediation with social services. Some also offer free healthcare services such as anonymous HIV tests and even safe LGBTI-only accommodation.

Organisations, particularly LGBTI organisations, are also the main centre of queer asylees' social life (Pozzoli & Lelleri, 2009:15-16) because perceived as the only space where their non-heteronormative identity and orientation is welcomed and celebrated. Depending on the cultural background, internalized homophobia and personal views, this makes some feel seen and empowered. However, some queer asylum seekers end up avoiding these spaces for fear of "the label" (Pozzoli & Lelleri, 2009:21). Indeed, rather than bridge their integration in Italian society, queer organisations can further isolate LGBTI refugees and asylees into a bubble (Pozzoli & Lelleri, 2009:17-18). This also depends on individual and cultural perceptions of LGBTI identities and sexual orientations. Practitioners working with migration issues, in fact, report that often refugees' and asylees' experience of being LGBTI is less political - as in not related to the public sphere or legal rights - but rather connected to the privacy of intimate relationships (Pozzoli & Lelleri, 2009:38-39). This is reflective of how the "labels" referring to identity and sexuality are increasingly "westernised" (Murray 2014:14) and indicative of the fact that services for migrants should put the individual in the center rather than the categories that the individual might or might not fit.

7.4. Discussion

The Italian asylum and social system appears to be very challenging for LGBTI refugees. In 2018, illegal practices aimed at obstructing migrant's access to the asylum procedure have continued, and services such as accommodation and healthcare can only be accessed once the application is filed. It goes without saying that this state of affairs, along with other unlawful bureaucratic obstacles, constitutes abuse and puts LGBTI asylees at an even higher risk of discrimination and violence on Italian territory. Moreover, the lack of specific procedures for the identification of vulnerable people further increases sexual minority asylum seekers' exposure to possible discrimination and abuse. Indeed, due to their intersectional identity of LGBTI persons and migrants, queer asylees experience homophobia and racism both within the asylum and social Italian system. The structural violence and institutional racism they experience forces them to perform "identity surfing", in that in any situation they are constantly forced to choose and perform the identity that will avoid the most amount of stigma and exclusion (Pozzoli & Lelleri, 2009:26). In this context, NGOs tend to become the main reference point for LGBTI asylum seekers both from a practical and social perspective. Despite the limited resources and funding, organisations push for the rights of queer asylum seekers and try to make up for the institutions' shortcomings by providing useful services. However, sexual minority asylees do not always find themselves completely at ease in the social milieu of the NGOs as sometimes Italian LGBTI persons express prejudice and racism towards them. Furthermore, asylees and organisations might have diverging interpretations of the LGBTI identity. Consequently, preoccupied with having to fit under a certain western label and the lifestyle it entails, some asylees steer away from LGBTI organisations altogether.

There is no question that illegal practices should be prosecuted by law and cease to exist, and that the rights of LGBTI refugees and all migrants at large are being infringed. However, the degree to which this affects each individual varies greatly depending on the country of origin, past experiences and expectations for the future.

8.0. Final Conclusions

In Europe, people coming from wartorn countries have much higher possibilities to be granted asylum than any other group of migrants (Witschel, 2017:1049) and Sweden and Italy are no exception. Applicants from Syria or Somalia are, in fact, granted asylum more often and faster than other applicants in Sweden. This adversely affects all LGBTI individuals who seek refuge from other countries that are not facing conflict. These individuals “face discrimination and degrading circumstances over a broad range of contexts both legal and social within the context of their asylum seeking” (Witschel, 2017:1050).

Based on my analysis, LGBTI asylum seekers seem to be facing very similar challenges in Sweden as well as Italy - although perhaps to different degrees - because neither systems hold up to the standard they should and unlawful practices have been reported in both. The Swedish system appears to have standardised procedures and practices set in place for the reception and case-handling of LGBTI persons while Italy seems to have a “case by case” approach. This is probably the result of many factors, national legislation among them. Indeed, while Sweden has specific asylum laws, Italy only has decree laws which, by definition, are created in face of an urgent matter. Furthermore, by national law the Swedish Government is prohibited from influencing the decisions of the Migration Agency (Williams & Hallstedt, 2019:13). While it was already noted that this independence might only be formal, in Italy no such thing exists given that most recently the Minister of Interior Salvini has directly interfered with the asylum system. In fact, not long ago the Minister proposed to issue a decree aimed at fining NGOs for each person rescued at sea and brought onto Italian territory. The OHCHR has harshly condemned this bill - and previous decree laws - as they severely undermine human rights of migrants (OHCHR, 2019). Nothing can justify such inhumane political programs, but the fact that Italy is confronted with a much larger influx of migrants compared to Sweden should be considered when analysing procedural failures such as Italy’s shortage of accommodation. Naturally, this only applies to practical shortcomings because the true causes of the structural violence that sexual minority

asylum seekers experience have very little to do with numbers. Indeed, Sweden has a long history of advancement of LGBTI rights and it is currently ranked 10th in the “Rainbow Europe Ranking” (Rainbow Europe, 2019). Arguably, it is for this reason that this country appears to be supporting queer asylees more effectively: contrary to what happens in Italy, asylum seekers are granted free legal advice, an allowance, and more attention with regards to safe accommodation. None of the above-mentioned areas are devoid of problems but they are some step forwards compared to the Italian system nonetheless. The “safe country of origin” concept is a very problematic one in both countries. Although the concept is not applicable in Sweden, it is used in practice in the unlawful rejection of applicants from countries such as Macedonia because those applications are deemed “manifestly unfounded” (Williams & Hallstedt, 2019:27; Bove, 2019:51). According to Italian legislation, a country of origin can be considered safe when within “the application of the law within a democratic system and the general political situation, it can be shown that, generally and constantly, there are no acts of persecution” (Bove, 2019: 75). However, there currently is no official list of such countries. Both Sweden’s de facto “safe country of origin” application and Italy’s record of sending asylum seekers back to Libya despite the numerous reports of violation of human rights, are violation of humanitarian law and breach of Article 3 of the European Convention of Human Rights.

LGBTI asylum seekers suffer more structural violence due to their intersectional identity in both Italy and Sweden during various stages of their application. In Italy, the obstacles start from the submission of the application, and are pervasive in the healthcare, social and accommodation systems due to homophobia and racism. The system is structurally violent in that the exclusion and discrimination against these sexual minority asylees is the standard to which, fortunately, exist some exceptions. The accommodation system is a clear example whereby queer asylees either need to share the same spaces with other homophobic or transphobic asylum seekers, or are forced to sleep in the street due to overcrowded accommodation. Both options are dangerous to the individual’s safety and symptomatic of a system that does not appreciate - and perhaps even disregards - the specific struggles and dangers of individuals whose identities and orientations fall out of the “heteronormative rule”.

In Sweden, there are no reports of homophobia and racism as such, but the lack of preparation and understanding by the staff makes it so that LGBTI asylees become victims of structural violence nonetheless. The unavailability of specialised and qualified interpreters weighs on the applicants not only psychologically, but potentially hindering the strength of their case. The application system appears extremely problematic and traumatizing with queer applicants carrying the burden of proof and expected to freely talk about their gender identity or sexual orientation in front of a group of strangers - the interpreter, case handler, and decision-maker - after having lived in stigma and fear all their life.

The “forced coming out” and the fact that applicants are perceived “straight until proven otherwise” (Borgqvist, 2016:40) is reflective of the heteronormative perspective that shapes the system both in Italy and Sweden. It is a perspective that tries to measure, quantify and qualify the ambiguous and inconsistent. Indeed, being part of a sexual minority group is ambiguous in that it involves self-identification and possible inconsistency of gender identity or sexual orientation over time (Oxford Research, 2017:12). Therefore, the mechanisms with which these systems try to determine and label, cannot be anything else but problematic.

Ultimately, the power imbalances in place in the asylum process in both countries are so great that LGBTI asylum seekers have virtually no control over any aspect of their application or experience in the asylum and social system. In entering these “safe democratic spaces”, rather than shifting from “repression” to “liberation”, these individuals end up experiencing “restructured inequalities” (Luibhéid, 2008:170). In fact, unless their country of origin is undergoing an internationally acknowledged war or conflict, the responsibility on the legitimacy is entirely on these applicants’ shoulders, which allows for receiving institutions to justify repressive and exclusionary immigration control systems.

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