

I WANT TO BE FREE!



A legal review of asylum cases of LGBTQI youth and nine stories about Sweden.

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**A legal review of asylum cases of LGBTQI youth
and nine stories about Sweden.**

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We also want to extend our deepest gratitude to all members of Newcomers Youth for your engagement. You are our heroes and the heart and soul of Newcomers Youth.

A big thank you also goes to our dedicated youth workers and volunteers. Your efforts are priceless.

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Preface

The right to asylum is vital, necessary and self-evident. But the road - from the escape, through the asylum process, to a residence permit, is far from easy. For LGBTQI people who are seeking asylum, that road is paved with even more uncertainties. This report is based on the experiences of young LGBTQI people who have applied for asylum in Sweden. The report combines these experiences with a legal study on how credibility assessments are made during the asylum process. The contrast between harsh legal assessments and young people's own experiences highlights the impossible task the Migration Agency has: to assess who truly is an LGBTQI person and who is not.

The media has reported on the credibility assessments, standardised forms, offensive questions and insensitive treatment. Assessments in which well-known LGBTQI profiles are not being approved. The Swedish Migration Agency states, in the latest annual report for 2019, that they have chosen to put the main focus on efforts aimed at broadening and deepening the knowledge among employees in the operational work. Yet, we stand here knowing that many of our members have had their applications rejected and live in fear of being deported to countries where they cannot live freely. Many are children or adolescents who have just turned 18. This should not be acceptable under the rule of law.

We know that assessments are made without sufficient knowledge and with heteronormative perceptions of gender identity and sexuality, which determine the future and life of the youth. The exploration and formulation of one's sexuality and gender identity is a deeply personal experience, an experience that cannot be standardised, an experience without a one-size-fits-all description.

RFSL Ungdom has, since 1999, worked for the rights of LGBTQI youth, their right to their own identities and to their own life. We want to create a world where all young LGBTQI people are, live and express themselves as they see fit. This is not the world we live in today. For LGBTQI asylum seekers, the requirements and assessments from the Swedish Migration Agency and the Migration Courts are a concrete obstacle. A small step on the way to our vision is to improve these requirements and assessments. Legal certainty must apply to everyone. Everything else is discriminatory.

Jêran Rostam
President of RFSL Ungdom

Introduction

I want to be free. Words that we often hear from our members. Freedom from oppression and freedom to just be. These are multifaceted and significant words. They are about the inner journey and the feeling of accepting yourself and finding a community where you can be safe, and at the same time, about the freedom and space to be who you are and who you want to be. They are also about the asylum process - about the bureaucracy and all within it, which is hard to understand. Many times unjust. That which conditions freedom, but never the right to it.

This report is developed to draw attention to the situation of Newcomers Youth's target group. In Newcomers Youth and RFSL Ungdom, we have a unique insight into the situation because we have membership activities for the target group, but also legal expertise of an employed asylum lawyer and political advocacy work and activism from the board of RFSL Ungdom.

What is Newcomers Youth?

Newcomers Youth is RFSL Ungdom's project for children and young people who are asylum seekers, newly arrived or undocumented people in Sweden. We have existed since 2016, and the activities include social meeting places, lectures, creative workshops, annual summer camps, counselling and legal advice.

About the report

The report contains stories from nine youth who are members of Newcomers Youth. Throughout the whole report, we will follow these youths and hear their perspective on what it was like to seek asylum in Sweden and how it has been for them. These are not just their personal stories; these are also nine stories about Sweden and how Swedish society has received them. The judicial part of the report is a legal review of twenty-nine asylum cases concerning LGBTQI youth.

The stories of the youth

During the spring of 2020, all the members of Newcomers Youth got the opportunity to be interviewed for this report. The nine people selected have been interviewed digitally for about two hours. They were asked a total of fifteen questions about what it is like to experience the asylum process in Sweden as a young LGBTQI person. The names of the participants have been changed.



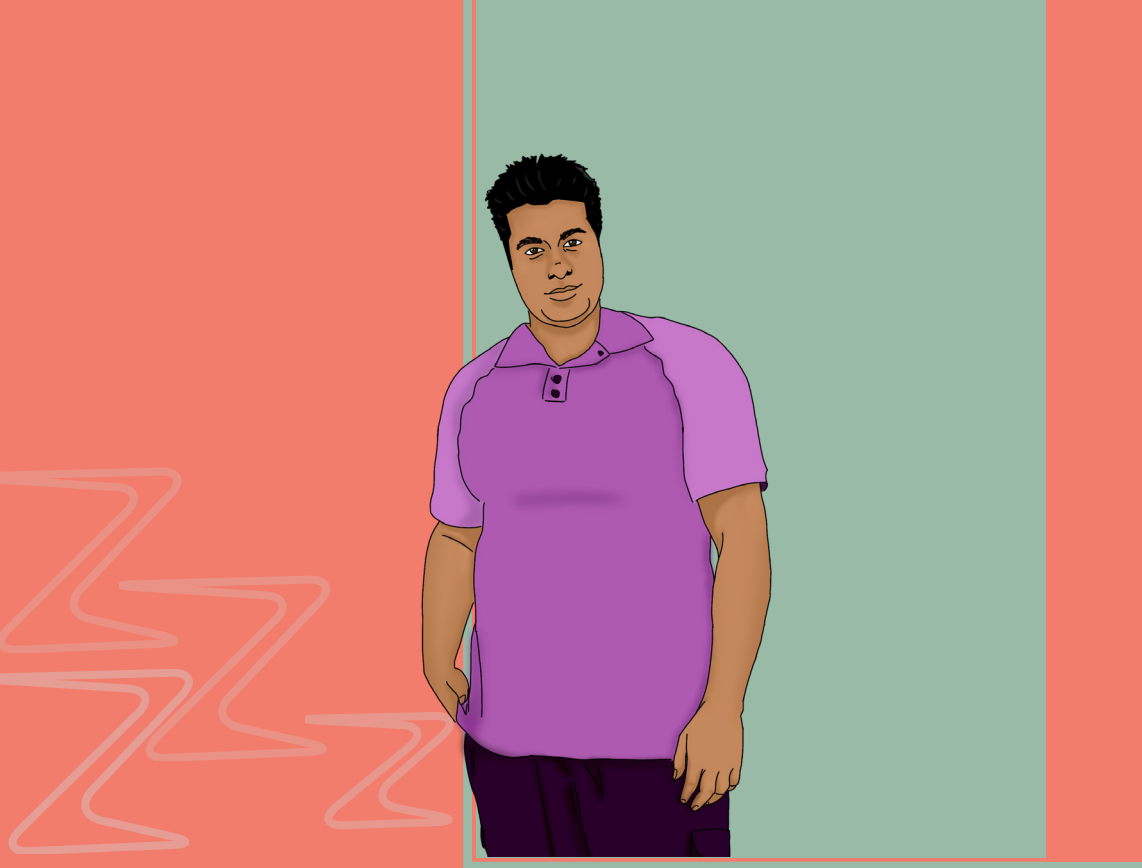
Sara, 25, Morocco

My first memory of Sweden is the ice-cold wall of air on my way out of Arlanda airport. I remember that I was very confused and lost because Stockholm is so big; I didn't speak the language, all that in combination with difficult instructions, which did not make the situation easier.



Maria, 22, Ethiopia

My first memory of Sweden is when I came with the family as a twelve-year-old. When we arrived at Arlanda airport, we didn't have any money and couldn't speak the language. I remember that a taxi driver from the same country helped us with transportation to the Swedish Migration Agency.



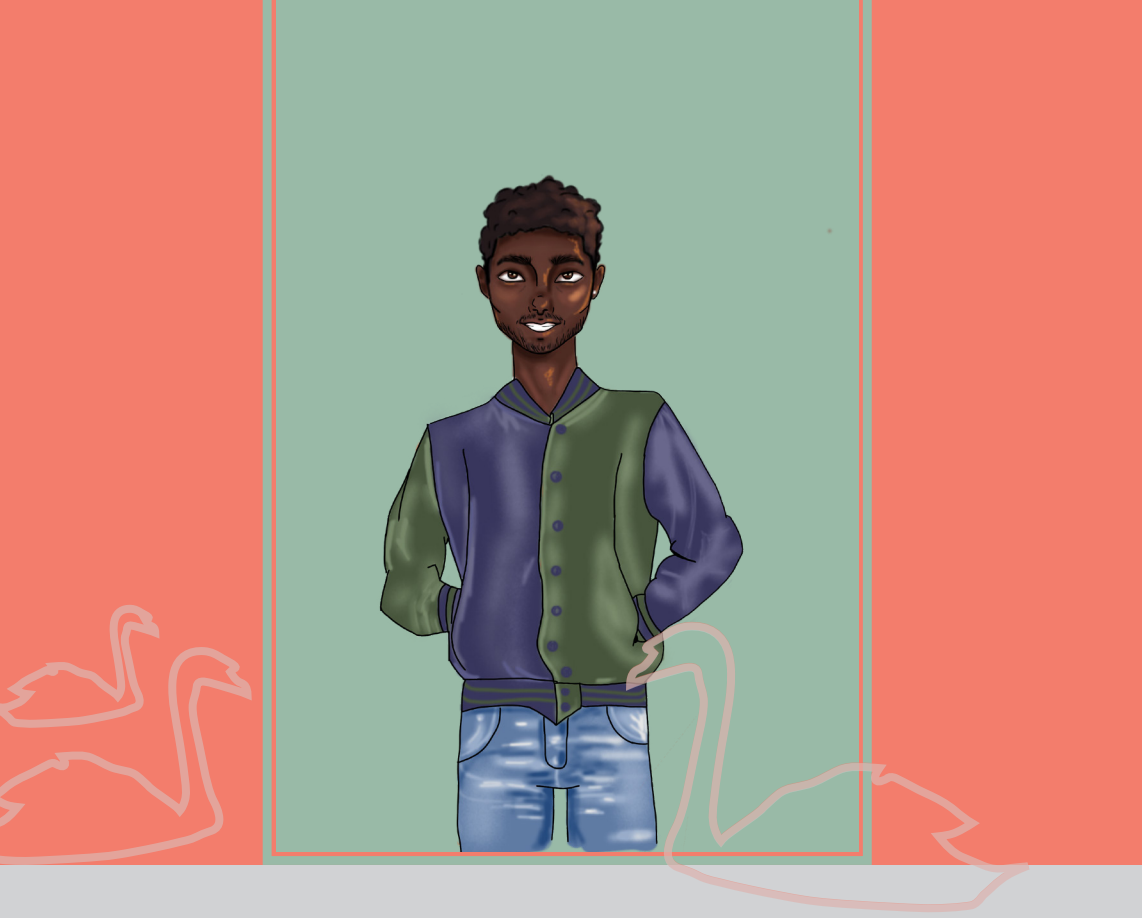
Mohammed, 19, Afghanistan

I remember that, upon arrival in Malmö, I was very tired, and it was difficult to find my way around the train station. It was a great relief to come to a country where people can love who they want and be able to live openly as an LGBTQI person. In my home country, one can be punished with death.



Abdullah, 22, Afghanistan

My first memory of Sweden is being turned away by two police officers when I slept in a garage for bicycles in Malmö. I tried to explain to police officers that it was cold, wet and that it was impossible to sleep out on the street. I remember trembling when I tried to talk to them. They laughed at me and said: Welcome to Sweden, it is cold every day. I was completely shocked by this treatment. That night I spent out on the street, in the rain and cold.



Paul, 27, Rwanda

I remember being terrified when I arrived, and nothing went as I had imagined. I lost my passport at the central station. I was so shocked by how helpful people were. When I didn't have any money left, two women helped me to enter the subway. I had travelled to a country I knew nothing about.



Sofia, 29, Northern Macedonia

My first memory of Sweden was when I was escorted to one of the arrival accommodations of the Migration Agency, where I was to spend five days. I remember how uncomfortable it was for me as a trans woman, to share the room with five men.



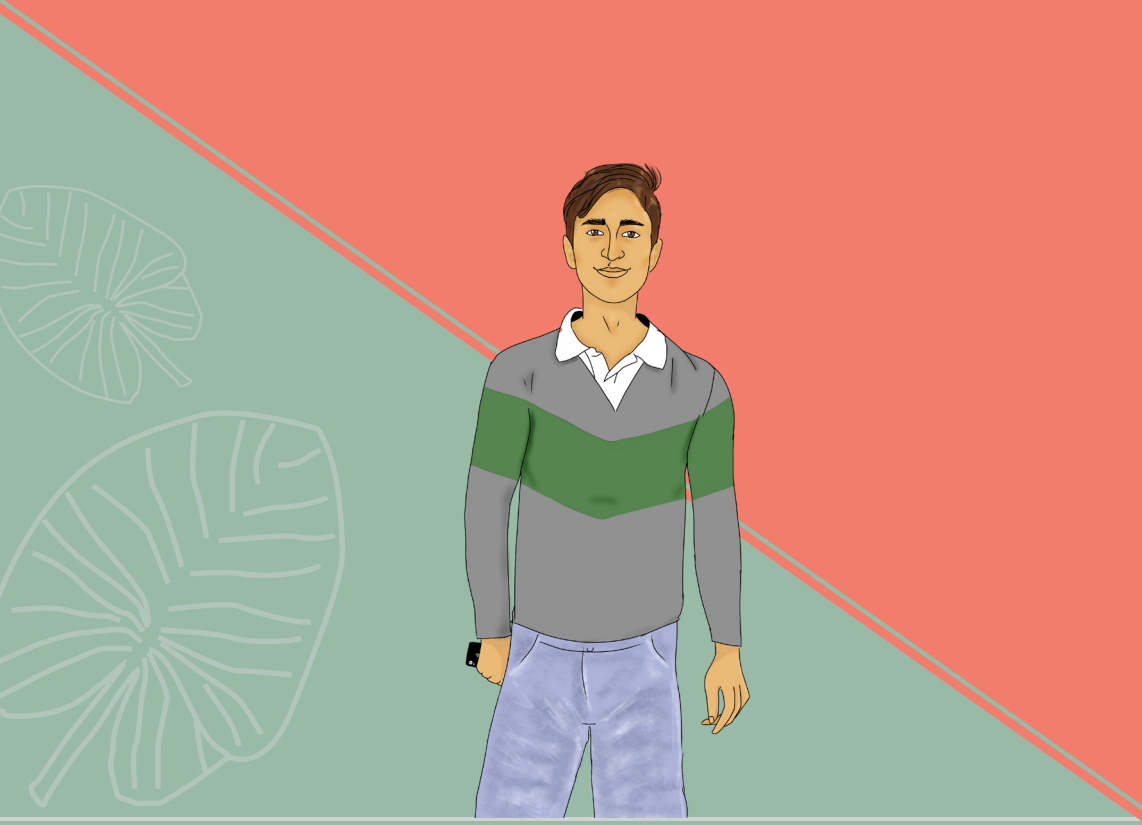
Ali, 27, Iraq

I remember that I was very lost and confused when I arrived, I didn't speak the language, and I was on my own. I had to use my phone to translate sentences and call acquaintances who guided me to the Migration Agency.



David, 23, Morocco

When I arrived, I remember that I got a booklet with ten pages of material in Arabic, where there was information about the asylum process. I then had an interview for an hour with a case officer. I was very tired and dizzy because I barely got to rest or adapt to everything.



Hammodi, 21, Afghanistan

My first memory of being in the country was very emotional. I remember feeling an incredible relief when I arrived when the long journey was finally over. What I did not know was that it was just the beginning of a new lengthy journey.



Abdullah's story

Abdullah came to Sweden from Afghanistan during the autumn of 2015, full of hope for a safe and secure life.

In Afghanistan, Abdullah grew up in a small village with his family. His father suddenly passed away when Abdullah had just turned twelve, which forced him to quit his studies. He was forced to take on the adult role when he should have gone to school. It was very difficult to find a job in the village where Abdullah lived, and it made him desperate enough to take on any job in order to support his family.

At the age of fifteen, Abdullah and his family were forced to flee the country because Abdullah had had a relationship with the neighbour's daughter.

He managed to flee to Kabul on the day when he was confronted by the people in the village. Abdullah's family fled the country with the help of human traffickers who took them to Iran, hoping for a better and safer life.

Iran is the worst country I have ever lived in. We Afghans were ill-treated and faced a lot of racism from both Iranians and the regime. I remember meeting a lot of mothers who lost their young sons when the regime forced them into war against the terrorist organisation ISIS.

One week after Abdullah arrived in Turkey, he lost contact with his family and never heard from them again. When the border police attacked the Afghans, who were trying to flee the country, he lost his mother and siblings.

During Abdullah's journey, the most traumatising memory was crossing the border between Turkey and Greece.

Eighty people had gathered at the border with Greece to board a boat with a maximum capacity of twenty people. The human traffickers forced all eighty people to board the boat.

There were fifty-six life vests on the boat, which was not enough for everyone. I was very quick to grab a life vest. I remember that the boat collected a lot of water and how terrified all the people were. The boat eventually sank. I remember everything went so fast. There were so many bodies of people who had drowned, floating in the water. Then came the rescue from Greece.

When Abdullah arrived in Sweden, he was accompanied by an Afghan man he had met in Turkey. During the journey, the man helped Abdullah both financially and with translation.

On the evening of October 12, 2015, they arrived at Malmö train station. It was cold and raining in the city, something Abdullah was not used to. Abdullah fell asleep on a bench at the train station and was later woken up by security guards who kicked him out of the station. He then moved to a parking lot for bicycles, where he fell asleep under a roof, but he was kicked out of there too by two policemen.

I tried to explain to the police officers that it was cold, wet and that it was impossible to sleep out on the street. I remember trembling when I tried to talk to them. They laughed at me and said: Welcome to Sweden, it is cold every day. I was completely shocked by this treatment. That night I spent out on the street, in the rain and cold.

Upon his arrival to Stockholm, Abdullah experienced difficulty finding his way around, as he did not yet master the Swedish language. He had to ask around to find his way to the Migration Agency.

In Stockholm, Abdullah ended up in transit accommodation for a week because he needed to give fingerprints and provide other information that the Migration Agency registered. Abdullah was later moved to an HVB home (residential care homes for children and young adults) in Solna, where he lived for two years.

I did not like living at the HVB-home at all. Far too much trouble, people were depressed, and it was clear that many suffered from PTSD. There were days when windows were smashed, and people broke down. I felt really bad living there. I was lucky never to end up in some conflict, as I am generally a calm person. I was busy mastering the Swedish language and being a part of a theatre group. I had the best grades in my class and, sometimes, I had the opportunity to fill in as an interpreter for some young people.

After living in Sweden for two years, Abdullah got a rejection from the Migration Agency. The agency had,

because of a refusal to do an age test, stated that Abdullah was an adult, even though he was still seventeen years old at the time. The day when the rejection came, Abdullah received a notice that he would be moved to a small town in northern Sweden and that he was expelled from the HVB home without any warning or anywhere to stay during the weekend.

On the weekends, Abdullah used to rehearse for the theatre production in which he was one of the main actors. This was the first weekend that Abdullah didn't show up to the theatre group.

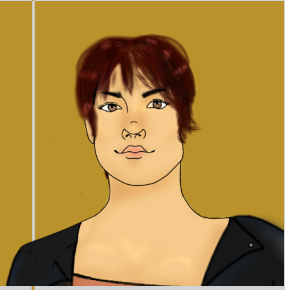
I remember how the director anxiously called me several times, as it really wasn't like me not to show up for rehearsal. When I explained what had happened, she insisted that I stay with her to be able to perform in the show. For a year and a half I got to live with this kind woman, who also covered all my expenses.

When Abdullah thinks about his asylum process, many thoughts and feelings come up. He received a total of three rejections from the Migration Agency and got his case tried again after an impediment of enforcement was filed.

I received three rejections during my asylum process. I could not feel comfortable during the interviews; back then, I was constantly afraid that I would answer wrongly. It was very psychologically stressful, and I had many suicidal thoughts during this heavy period. I found comfort through the Swedish church, where I met a gay priest. It was then, and there I started feeling more comfortable with my sexual orientation. He helped me get answers to

many of my questions about LGBTQI. All of a sudden, I started questioning if I really was heterosexual. I got help to get in touch with RFSL Ungdom, where I got to attend the meeting place and meet other young people like me, which felt great.

Abdullah finally got a three years residence permit in February 2020, which he is relieved about. He has plans to start his own business, launch a Youtube channel and lecture about LGBTQI issues.



Sara's story



Sara fled her life in Morocco, where she, because of her sexual orientation, feared for her safety. She arrived in Sweden in the winter of 2017. She remembers it was cold and that the ice-cold wall of air met her on her way out of Arlanda. The Migration Agency in Solna (a suburb to Stockholm) was the first place she went to. In Solna, she was asked to go to Märsta (an urban area one hour from Stockholm) to live in temporary accommodation.

I remember that I was very confused and lost because Stockholm is so big, I didn't speak the language, and that in combination with difficult instructions did not make the situation easier.

When Sara arrived at the accommodation in Märsta, she received sheets and hygiene items. She shared a room with eleven women who slept in bunk beds.

I remember that I was the youngest in the room. As soon as I arrived there, I regretted coming to Sweden. It smelled bad and was psychologically stressful to be in the centre. I have never seen such a room in my life; it was not human. I felt like a criminal in prison.

After a few days in the centre, Sara was moved to a small town in northern Sweden. She explains that she didn't feel safe in northern Sweden, where she lived in housing for vulnerable women. The women at the accommodation were heterosexual, which made Sara feel uncomfortable.

At the new accommodation, Sara ended up in a conflict with two women after they found out about her sexual orientation. They said ugly words passing Sara's room and made her feel bad about herself. One day when Sara stood up to them, she was attacked and assaulted by the women. When Sara told the staff what had happened, she got no help because the man who was in charge of the accommodation had a relationship with one of the women who had assaulted her.

During this period, Sara tried to commit suicide. She overdosed with pills and woke up at the hospital the following day.

I needed to be independent. I felt mentally and physically ill. All I could think about was that I regretted applying for asylum in Sweden. This must have been the worst period of my life.

When Sara was moved to southern Sweden, things finally started getting better. She could be herself and come in contact with several LGBTQI organisations.

During the interview process, Sara had good prerequisites since her case officer was specialised in LGBTQI cases. During the first interview, Sara was assigned an interpreter who was homophobic and wouldn't even look at her when she spoke. She felt uncomfortable talking about her sexuality and about what she had been through in front of the interpreter. For the second interview, she was assigned an interpreter who didn't speak the same dialect as her. Arabic dialects differ a lot.

I needed to think about every word I said in Arabic in order to make the interpreter understand what I said and not to be misunderstood. But it didn't go well because the language barrier was too big, and both interpreters were homophobic.

After a few days, when Sara asked for her investigation protocol, she found many errors in the translation and many statements that were not correct. Sara contacted her case officer to change the protocol, which was very stressful for her.

In the first interview, I was asked many general questions, and in the second one, I got to go into more detail about my thoughts and feelings to portray a picture of what I have been through. It was very hard to go into details about everything. I didn't want to put on a pity party and was completely honest about everything.

When Sara looks back at everything she has been through, she has mixed feelings. According to her, the long waiting for a decision was the most stressful part of it.

In the beginning, everything was about waiting. I felt bad, I took medication, I had sleeping problems, and I couldn't study or work. I didn't feel normal like other people my age. You wake up, you eat and sleep again. It felt like everyone who had residency was worth something, and those who didn't were not worth anything at all.

Sara eventually got in touch with RFSL Ungdom. From RFSL Ungdom, she got a ticket for Stockholm Pride. That is a summer she will never forget.

If it wasn't for RFSL Ungdom, I wouldn't have made it through during the asylum process. They helped me get legal advice prior to my interviews, helped me read letters, understand the asylum process, and were there to support me all the way. I also got to go to their meeting place for young LGBTQI newcomers, where we got to do a lot of activities and meet other members. It felt unbelievably good to have a place where I could take a break from the hardships. During my first Pride celebration, I was very emotional, and many thoughts were racing around in my head. That day, my life changed. I felt normal, seen by people and felt solidarity among people. The parade was magical. But at the same time, in the back of my head, I thought about whether I would get to stay or not. What will happen later?

After the long wait, Sara finally got her residence permit. Now she can focus on her well-being and her future. She says she's proud of who she is and that now it is possible to look forward to the future.





David's story



David fled his life in Morocco, where he feared for his safety because of his sexual orientation.

I had a lot of problems in Morocco because of my sexual orientation. I lived in an honour context, and it was strict at home. Also, I will never forget the day when it came to my family that I am gay. My own stepbrother stabbed me in the stomach because I brought shame to the family. He tried to kill me.

David fled to Dubai, hoping to escape his difficult situation. But even there, David's stepbrother could threaten his safety. The stepbrother told everyone around David about his sexual orientation, which resulted in him again having to flee again.

He arrived in Sweden in the winter of 2019. When he arrived, David looked for a police officer who helped him to a room where he had to answer some questions. Later, he was sent to the Migration office, where he gave fingerprints and submitted information.

I remember that I received a booklet with ten pages of material in Arabic, where there was information about the asylum process. I then had an interview with a case officer for about an hour. I remember being very tired and dizzy because I barely got to rest or adapt to everything.

David got to sleep in an accommodation at Telefonplan (an urban area outside Stockholm), where he stayed for two days before he was to move further to Boden (a town in Northern Sweden). David had hoped that everything would be better now.

I felt so good when I got to come to Sweden, where I could finally be myself. I didn't need to be scared that someone was after me. But it was hard to live openly gay in a small town like Boden. I lived with three other men with whom I didn't feel comfortable because they came from the same culture as me and, adding to that, were heterosexual. I received a lot of offensive comments, and there was no one to help me.

During this period, David was very active with looking for a job and finally found one in Värnamo. He moved there hoping to improve his situation. What he did not know was that he would be deceived by the man who gave him the job. David had to do an unpaid internship for three weeks. When he started working, he did not get paid for two months.

It was horrible conditions, and I really struggled to change my situation. Eventually, my boss found out about my sexual orientation, and that was when he started treating me badly and hitting me on several occasions. In the end, he threw me out onto the street.

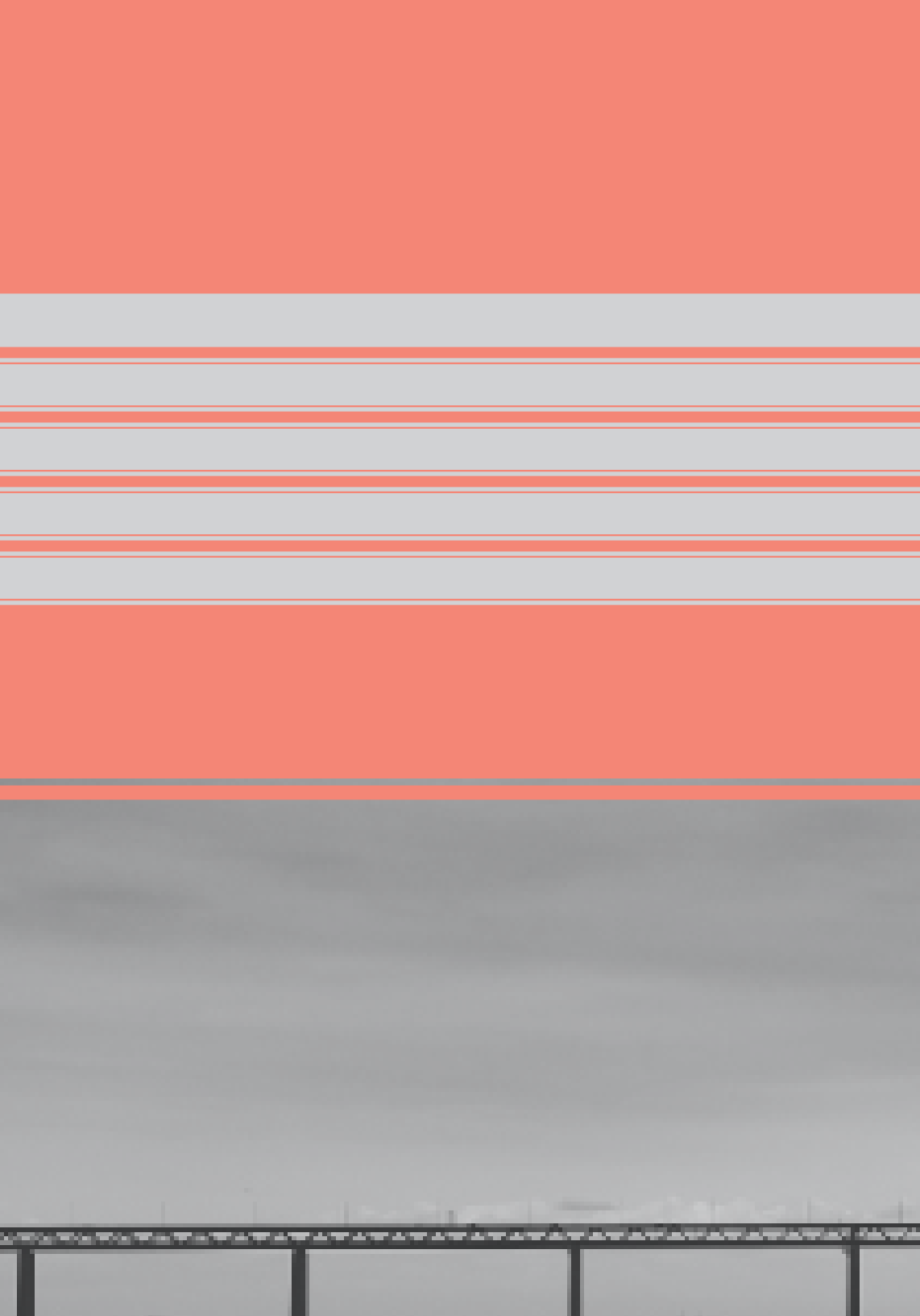
When David became homeless, he sought help from the Migration Agency, but didn't receive the help he needed. The Migration Agency tried to move David to a small town again, which he refused because of how badly he was treated by people in Boden.

Today, David lives at a friend's house in Arboga (a town two hours from Stockholm).

I am worried about the future because I don't even know what is going to happen tomorrow. I don't know where I am going to live. I don't know whether I will get to stay in the county or not. I take it one day at a time and try to survive.

So far, David has had one interview and is waiting for another one from the Migration Agency, and he has no clue when it is going to happen.

I don't know much about the asylum process because I am still new in Sweden. But I got support from RFSL Ungdom. I discovered RFSL Ungdom in Boden when I found some brochures one day. I went home to look up the organisation and registered as a member. Today, I have the opportunity to come to Stockholm, to go to the meeting place, and meet others like me.



We have read three of our members' stories and will now move on to the legal study. Why mix together these perspectives? Why not do a legal study separately? Doesn't it get confusing? Yes, that is correct; and that is precisely why we have chosen to put together a report with both perspectives. The report reflects the two parallel realities that our members live in: the experienced and the legal.





The use of credibility criteria in asylum cases of LGBTQ youth

**A legal review of decisions
by the Swedish Migration Agency and
verdicts by the Swedish Migration Courts**

LGBTQ or LGBTQI?

RFSL Ungdom is a youth organisation for the rights of gay, bisexual, transgender, queer and intersex people. The abbreviation for the group is LGBTQI people. Despite this, the term LGBTQ will be used in the review. The Migration Agency and the Migration Courts use the abbreviation LGBTQ and do not include intersex people in their work with LGBTQ issues. Therefore, it would be misleading to use the abbreviation LGBTQI in their work. For this reason, and despite the fact that RFSL Ungdom includes intersex people in LGBTQI context, the abbreviation LGBTQ will be used.

¹ Intersex is a medical diagnosis when a person's body doesn't fall under gender determination terms according to the norms of the society. This may include which chromosomes a person has, the level of sex hormones or the appearance of genitals.

Summary

The assessment of credibility is central in all types of asylum cases. In LGBTQ cases focus can be on determining whether the applicant is credible in their information on sexual orientation and/or gender identity - if they do or do not belong to the group of LGBTQ people, and therefore risk persecution if returned to the home country. The most common criteria the Migration Agency uses in credibility assessments, when it comes to LGBTQ people are level of detail, the criterion of consistency and general trustworthiness, and the realism criteria.

Gothenburg University has developed scientific support for decision-making to help the Migration Agency staff make correct decisions on good grounds. However, the application of these criteria doesn't follow the recommendations of the support for decision making- regarding both the criteria and the way they are applied. This review shows that there are types of cases and assessments that aren't mentioned in the support for decision-making and where these criteria are inappropriately applied according to this review. The application of the criterion of level of detail, the criterion of consistency, the criterion of general trustworthiness and the realism criterion in LGBTQ cases, as well as other cases where internal processes and identity journeys must be accounted for, is problematic from a perspective of norm-criticism. The applications of the general trustworthiness criterion and the realism criterion are common in the assessments, despite the fact that the support doesn't recommend their application for decision making.

Introduction

Since 2016, Newcomers Youth has been giving legal advice to those seeking asylum, newly arrived and undocumented people. Since the beginning, the project has employed an asylum lawyer, and the legal advice is free. In 2018, Newcomers Youth developed the concept of “interview training”, where a lawyer goes through what an asylum investigation, focused on LGBTQ grounds and belonging to a group, looks like.

The experiences we collected supporting our members before the asylum investigation, reading through the reports after rejection decisions, and/or preparing them for oral statements in court, are that it is very difficult for an LGBTQ person to achieve to be believed, even though they come from the countries where there is a risk of persecution for LGBTQ people, and this risk is generally not being questioned by the Migration Agency and the Migration Courts. The focus of the assessment is whether or not they belong to the LGBTQ community, and many of those that we have supported have experienced not being believed. The Migration Agency and the Migration Courts consider that they couldn't prove they belong to the LGBTQ community. Even if the young adults have gotten help from Newcomers Youth, and that they sometimes also have a dedicated public counsellor and/or a contact person.

The questions for concluding if a person belongs to the LGBTQ community or not often concern emotions and internal processes, which the Migration Agency and the Migration Courts consider to be something that an

LGBTQ person should have processed and, therefore, should be able to discuss. The questions can also be to share the experiences of relationships or dreams about the future connected to one's sexual orientation or gender identity. Even though the young adults were able to answer questions about how they realised their sexual orientation or gender identity, about any past relationships and dreams of the future, the decisions are often stating that they still weren't sufficiently detailed. This has initiated a question in the field, in particular in the legal and political work related to asylum and LGBTQ; what is detailed enough? What does the research say about this credibility criterion? How common is it that rejection is based on precisely this criterion? What are other criteria are common within the assessment of these cases?

There is some research on this topic within the right to asylum and even other types of studies, but more is needed. Based on Newcomers Youth experiences the legal application faces major challenges to make these types of assessments and judgements completely legally certain. The core of the existing legal research on the subject should therefore be to examine how the legal certainty could be guaranteed- provided that the asylum process, as it is today, is a system that will persist. The aim of this review is to contribute to knowledge in the field, by answering questions such as, which credibility criteria are applied and how they are applied in the asylum process in LGBTQ cases.

Appointed by the government in 2018, the Migration Agency has been an LGBTQ strategic authority, which

should promote the equal rights of LGBTQ people through its work.

In the latest annual report from 2019 The Migration Agency lists the ways of trying to achieve this goal, for example, increasing efforts to broaden and deepen the knowledge of the employees who work with operational activities, and doubling the capacities for educating staff working with the asylum process. The Migration Agency has also revised the administrative support for LGBTQ cases within the asylum process. The system of so-called LGBTQ specialists was removed at the turn of the year 2019-2020, and with this, all decision-makers will be responsible for the quality in LGBTQ cases. According to the Migration Agency, the change aims to ensure a more long-term sustainable way of providing predictable and uniform decision-making with high legal quality. Since 2018, RFSL Ungdom, together with RFSL, has had dialogue meetings with the Migration Agency with a focus on increasing the quality of the agency's work. These meetings are a part of the development work of the Migration Agency. The Migration Agency has also participated in the program of RFSL Ungdom during Stockholm Pride, as well as in Newcomers Youth's international project Not Alone in Europe.

The aim of this review is to study the application of the credibility criteria in LGBTQ cases. In dialogue with the Migration Agency that has been ongoing for the last two years, RFSL Ungdom has come to understand that there is a will from the authorities for a legally certain and secure asylum process for everyone.

² The Migration Agency (2019) Årsredovisning (Annual report)

When it comes to legal application and legal aspects of the situation for the target group of RFSL Ungdom, there are problems that are not only national, which will be outlined later. Our hope is that the discussion on how these cases can be assessed with legal certainty will be welcomed by the Migration Agency and other agents and that this study will contribute to positive legal development.

The assessment of LGBTQ asylum cases

The difference between LGBTQ cases and other types of asylum cases, is that the main focus of the assessment often lies in whether or not the person belongs to the group of LGBTQ people. To simplify, for the asylum seeker, who often doesn't have a deeper understanding of the asylum process, the authority as an instance determines whether or not the asylum seeker has proven to be an LGBTQ person. The conditions that enable such an assessment to be based scientifically and on the method of legal certainty, are challenging to say the least. What follows is a review of how the assessment functions.

No matter what reasons a person has for seeking asylum, it is the asylum seeker who has the burden of proof, for example, the responsibility of proving the possibility of being persecuted or providing other reasons for protective treatment, if they were to return to their homeland.

The key evidence in an asylum process is a spoken narrative – the asylum seeker's oral statement given during the asylum investigation. As a result of the

principle of free production of evidence in Swedish law, there are no obstacles that would prevent the other evidence from being submitted. All of the evidence is evaluated before the decision, including the oral statement. When assessing the credibility of the oral statement, different criteria are used to determine whether the asylum seeker has made it probable that they would need to be subjected to protective treatment if they were to be deported to the country against which the person's case is being tried.

During the asylum investigation, an asylum seeker must account why they need protection. When a person is applying for asylum for political reasons, they are expected to be able to explain their political engagement and opinions; the same applies for religious reasons such as conversion. The same principles apply when it comes to the risk of persecution due to sexual orientation or gender identity. As an asylum seeker, you need to prove the probability of belonging to the group of lesbian, gay, bisexual, transgender or queer people, and because of this, you risk persecution in your home country. The difficulty arises when it comes to the ability to prove the probability of belonging to the group. The officers of the Migration Agency work based on UNHCR guidelines, international and domestic practices and other legal sources to make correct decisions, but also on the internal policy documents to assist legally secure assessments. An example of such an internal policy document is the legal position applicable to the examination of LGBTQ cases in the asylum process. In this document, there are binding guidelines that staff, who work with the asylum processes at the Migration Agency (primarily case officers and decision-makers), take into account for each case where these matters have emerged or may emerge.

From the judicial position of Migration Agency

The Migration Agency takes into account:

That the view of sexual orientation and gender identity differs between different cultures and that the concepts used in Sweden and other western countries may not have an equivalent in the applicant's home country. For many, it can be difficult to talk about issues related to sexual orientation and gender identity.

That the experiences and feelings about one's sexual orientation or gender identity are deeply personal and that there is no right or wrong answer to the questions.

That the way in which an applicant describes oneself is affected, for example, by the applicant's social or cultural background, gender, ethnicity or age. Some people may also feel shame over their sexual orientation or gender identity, which can cause them not to identify as, for example, gay or transgender.

That religion, in some cases, causes that LGBT people have a complex and perhaps ambivalent attitude to their own identity.⁴

³ The Migration Agency usually uses the abbreviation LGBTQ

⁴ Migrationsverket, *SR 38/2015: Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar sexuell läggning, könsidentitet, könsöverskridande identitet eller uttryck.*

An asylum investigation on LGBTQ grounds relates to different areas of asylum seeker's case. In this review, the focus lies on the area where the person needs to prove the likelihood of belonging to the LGBTQ community. When it comes to this part of the assessment, the investigator often asks questions such as, how did the asylum seeker figure out their sexual orientation or gender identity, what experiences of same-sex relationships they have, and how does the person want to live their life in the future (for example, marry a partner of the same sex). The questions aim to give the asylum seeker the opportunity to make their belonging to the LGBTQ community probable. The questions are designed with the purpose to get the person to talk about their life, feelings, thoughts, and reflections that they have connected to being an LGBTQ person. These questions often become the main focus when it comes to trials against countries by the Migration Agency or the Migration Courts, where it is not questionable that there is a general risk of persecution.

After an asylum investigation, a decision is made. When an LGBTQ person is at risk of persecution due to their sexual orientation or gender identity, a decision is made to grant refugee status, and therefore, a residence permit. Refugee status is the only option that connects the risk of persecution with more specific grounds. Except for sexual orientation and gender identity, it involves political or religious beliefs or ethnic background. A rejection might mean that the person has proven likelihood of belonging to LGBTQ group, but that the situation for LGBTQ people or the personal threat is not enough, or that the person couldn't prove the probability of belonging to the LGBTQ community and that the given information is not considered reliable.

The method described above illustrates the way in which an LGBTQ case differs from other asylum cases. However, there are similarities with other case types that also depend on internal processes and identity issues, for example, conversion cases. In other types of asylum cases, the credibility criteria are used to verify an alleged course of events, for example, a received threat or previous vulnerability. In these cases, there is an internal course of events that can't be compared to the objective truth (that which actually happened).

Purpose

Evidence assessment of the oral statements is central to the asylum procedure, and not only because the oral statements are often the only evidence in the case. The Migration Agency and the Courts that are handling migration issues face the challenge of evaluating the individual statements and assessing the probability of that, which the applicant provides in support of their application. The consequences of an incorrect assessment can mean life or death. Support provided to case officers and decision-makers in the Migration Agency is the earlier mentioned scientifically based support for decision-making. In addition, the Migration Agency has made a number of education initiatives, and the most recent major investment was the core of the right to asylum.

⁵ Granhag, Pär Anders, Landström Sara, Nordin, Anders (2017) *Värdering av muntliga utsagor. Ett vetenskapligt baserat beslutsstöd för migrationsärenden*. Psykologiska institutionen, Göteborgs universitet.

Migration Agency has the task of safeguarding the right to asylum and making decisions of high legal quality.⁷

The purpose of this review is not to review whether the decisions or verdicts have been correct. Instead, the review should shed light on which are the most common existing grounds for an asylum seeker's failure in proving the probability of belonging to LGBTQ group – what are the credibility criteria that the rejections are based on. The purpose is also to examine how an oral statement based on LGBTQ grounds is being evaluated and to start a discussion on how legally certain these evaluations are and can be.

Research questions

- Which are the credibility criteria that are most frequently occurring in the evaluations of evidence when it comes to sexual orientation and gender identity?
- How are the oral statements based on LGBTQ grounds being evaluated according to the most common credibility criteria?

⁶ Within the framework of the project, 300 case officers and decision-makers are being trained in the evaluation of oral statements and assessment of future risk. Migrationsverket, Asylrättens kärna, <https://www.migrationsverket.se/Andraaktorer/EU-fonder/Beviljade-projekt/Flikar/Asyl/Asylrattens-karna.html>, (Accessed 2020-09-07)

⁷ Regulation (2019: 502) with instructions for the Migration Agency

The research frame of the review allows for the legal debate on credibility assessments in the asylum examinations and on the application of credibility criteria to continue – research that has already begun through reviews and studies conducted by the civil society and, not infrequently, by the media. The overall purpose is to consistently question how legal certainty can be ensured, especially for the most vulnerable groups among asylum seekers.

Selection and method

It is not possible to request access to LGBTQ cases, because the grounds for asylum such as sexual orientation and gender identity might not be registered by the Migration Agency. The most efficient method is requesting all the cases where a decision has been made during a certain period and manually sorting out LGBTQ cases.

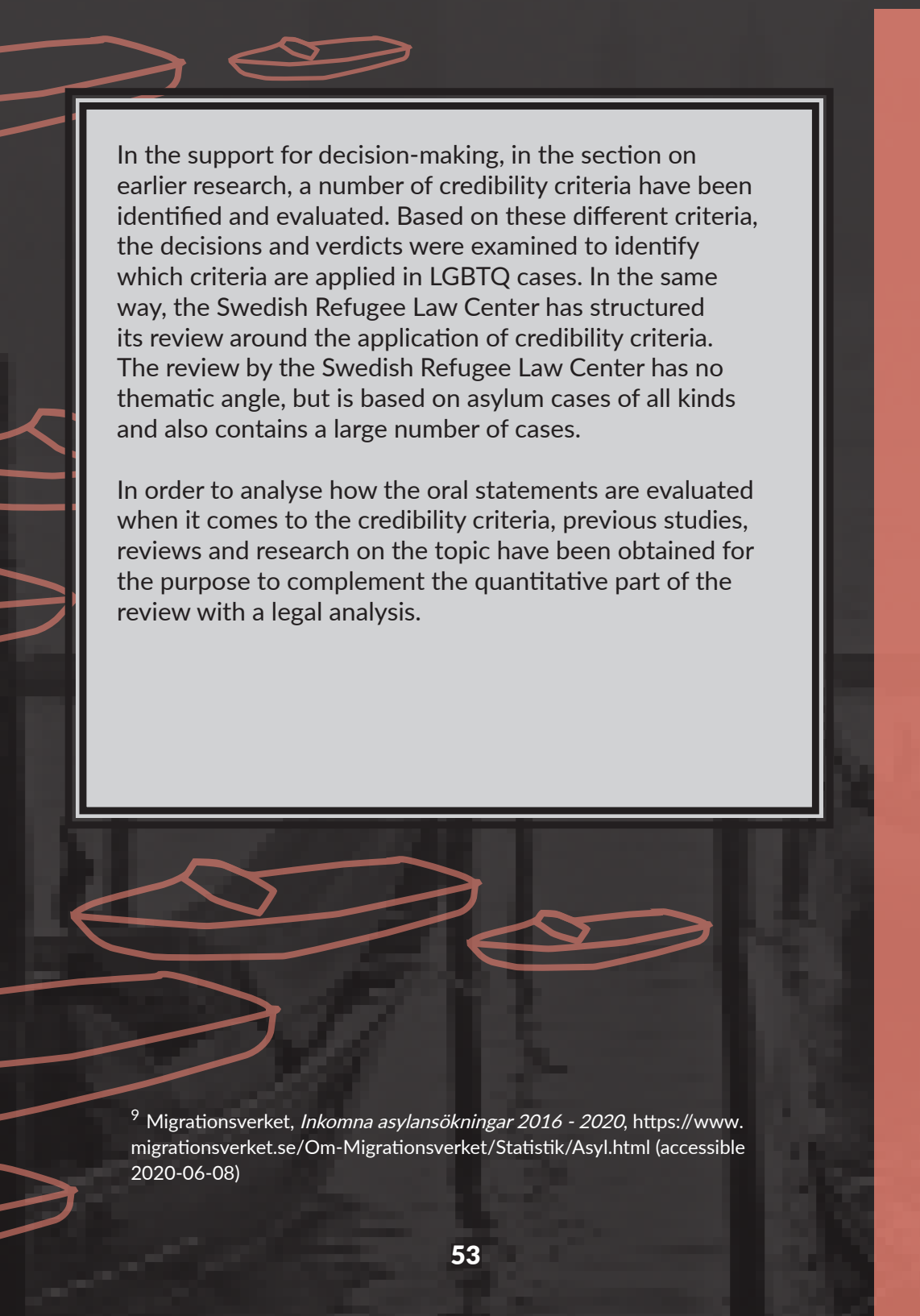
In order to obtain the relevant cases, we used the special service JP Migrationsnet from the JP Infonet database service and collected 453 cases by subscribing to decisions containing the keyword “LGBTQ”. The review consists of cases from 2017 to 2019, where the Migration Agency made decisions.

⁸ JP Migrationsnet, <https://www.jpinfo.net.se/webbtjanster/migration/jp-migrationsnet/> (accessible 2020-09-21)

In the majority of selected cases, the verdicts containing the previous decisions by the Migration Agency were attached. These are the verdicts that have been published on JP Migrationsnet between March of 2018 and June of 2019.

To get a clear youth perspective, the only cases included in the review were those of people born in 1998 and younger. Cases that had classified personal data in their decisions were not included in the review because it wasn't possible to determine the age in these cases. The individuals chosen didn't seek asylum with a partner or family, and they have received their decision by the Migration Agency, mainly during the years 2018 and 2019. A total of 29 cases have been examined. This is a relatively small selection compared to the base material. The main reasons for this are that a large proportion of cases had classified information and that the review has a narrow age range. However, this selection criterion has led to a collection of cases that are similar and therefore interesting to compare. Also, this makes it easier to discover recurring tendencies in the assessments by the Migration Agency and the Migration Courts. The cases in the review consider only people who have arrived as unaccompanied children to Sweden. However, at the time of the decision by the Migration Agency, all but one were assessed as adults.

No one who has stated that they identify as women are represented among the selected cases. This may be because the proportion of women seeking asylum is generally lower. It may also be because women have requested classified personal data, and their cases have therefore not been included in the review.



In the support for decision-making, in the section on earlier research, a number of credibility criteria have been identified and evaluated. Based on these different criteria, the decisions and verdicts were examined to identify which criteria are applied in LGBTQ cases. In the same way, the Swedish Refugee Law Center has structured its review around the application of credibility criteria. The review by the Swedish Refugee Law Center has no thematic angle, but is based on asylum cases of all kinds and also contains a large number of cases.

In order to analyse how the oral statements are evaluated when it comes to the credibility criteria, previous studies, reviews and research on the topic have been obtained for the purpose to complement the quantitative part of the review with a legal analysis.

⁹ Migrationsverket, *Inkomna asylansökningar 2016 - 2020*, <https://www.migrationsverket.se/Om-Migrationsverket/Statistik/Asyl.html> (accessible 2020-06-08)



Previous reviews of LGBTQ cases and previous research



Analysis report and annual reports by the Migration Agency

The Migration Agency regularly conducts internal reviews of decisions made with the purpose to examine the legal quality. In the year 2017, a thematic analysis report with a focus on LGBTQ cases was published. Just like in this review, the data is not statistically ensured, given that the case group isn't searchable in the Migration Agency's information system. A total of 190 cases were examined, 155 of which were cis men, 35 were cis women, and five were transgender people.

Since this review focuses on identifying tendencies in evidence assessment and credibility assessments, it is relevant to point out what the Migration Agency highlighted as problematic in this area in the analysis report from 2017. In the analysis report, among other things, it is highlighted that there were problems with multiple approval decisions that have ill-founded justification regarding credibility. Even when it came to rejection decisions, the credibility of certain cases had been tried with the imprecise justification that had no basis in investigation material and did not take into account the individual perspective or reflect on the applicant's individual circumstances.¹¹

¹⁰ Migrationsverket (2017) *Analysrapport Tematisk kvalitetsuppföljning av asylärenden där hbtq-skäl prövats*

¹¹ *Ibid.* s. 9

From the Migration Agency's analysis report:

The monitoring group can state that approximately 61 % of approval cases have a correct outcome, 20 % have an incorrect outcome, and 19 % have a questionable outcome.

The monitoring group can further state that 79 % of rejection cases have a correct outcome, 15 % have an incorrect outcome and 6 % have a questionable outcome. The Migration Courts have changed the outcome in 12 % of the rejection decisions that were appealed. [...]

A partial explanation of the results is that the assessment of the grounds for asylum based on sexual orientation includes a difficult balance between different credibility criteria. Since it concerns individual assessments, where the circumstances in other countries should be taken into account, there is a certain margin of discretion in the assessment of the evidence – both for the decision-maker, for the court and for the expert who did the monitoring. But even with regard to these explanations, the result is clear: there is a potential for improvement[.]¹²

¹² Ibid. s. 12

These statistics presented by the Migration Agency differ from the general statistics available in the Migration Agency's annual reports. In the annual report from 2017¹³, the same year of the thematic analysis report of LGBTQ cases¹⁴, the outcome in 4 % of the examined cases is incorrect, and in 10 %, the outcome is debatable. However, the approval and rejection decisions were combined here. The frequency of change for LGBTQ cases was 12 % (change to approval), and in the general follow-up, it was 8 % (change to approval). In general, the frequency of change has increased in 2018 and 2019, but this can be attributed to the application of the new Swedish Upper Secondary School Act¹⁵.

Reviews by the civil society

Review of credibility criteria

In 2019, the Swedish Refugee Law Center (formerly Clinic for asylum seekers and refugees) published a review about the application of credibility criteria by the Migration Agency¹⁶. The purpose was to find out which are the most common criteria within the framework of the Migration Agency's credibility assessments. The results indicated that the most common criteria are level of detail as well as conflicting information, which also appears

¹³ Migrationsverket (2017) Årsredovisning, s. 50ff

¹⁴ There are no more statistics updated regarding outcomes in LGBTQ cases.

¹⁵ Migrationsverket (2018) Årsredovisning s. 71 , Migrationsverket (2019) Årsredovisning, s.86

in behavioural science research that the support for decision making for the evaluation of oral statements by the Migration Agency is built on¹⁷. It also indicates general trustworthiness¹⁸ as something that affects credibility in some cases.

In the review by the Swedish Refugee Law Center, different identities were highlighted as examples. Within the framework of this review, the lack of general trustworthiness concerns exclusively those with, in the process, late adduced grounds. The Swedish Refugee Law Center examined the existence of different credibility criteria in the assessments of the asylum seekers' stories about their grounds for protection. From the perspective of behavioural science, they discussed which criteria the decision-makers use are reasonable and which have no scientific support. The purpose was, as in this review, not to examine asylum investigations to assess the correctness of decisions. It differs from the analysis report from the Migration Agency - since the Migration Agency also had access to the protocol from asylum investigation in their research. The Swedish Refugee Law Center wanted to lay the groundwork for continual research on the topic of evaluation of oral statements where these types of questions could be addressed. In this review, the application of these criteria will be problematized from LGBTQ perspective.

¹⁶ Rådgivningsbyrån för asylsökande och flyktingar (2019) *Tillförlitliga kriterier? En granskning av Migrationsverkets tillförlitlighetsbedömningar av asylberättelser*.

¹⁷ Granhag, Pär Anders, Landström Sara, Nordin, Anders (2017) *Värdering av muntliga utsagor. Ett vetenskapligt baserat beslutsstöd för migrationsärenden*. Psykologiska institutionen, Göteborgs universitet.

Research

Scientific support for decision-making for migration cases

The research that the Swedish Refugee Law Center uses as analysis reference is scientific support for decision-making that has been developed by the Department of Psychology at University of Gothenburg. The support for decision-making has been developed to support the case officers and decision-makers in the evaluation of evidence in oral statements. The support for decision-making addresses the issue of how different credibility criteria should be applied and how to form a basis for an assessment of an oral statement. It will provide an analysis reference for the results of this review, as will the review by the Swedish Refugee Law Center.

Review of cases concerning children with LGBTQ grounds for asylum

In a research article published in 2018, in *Journal of Refugee Studies*, researchers Daniel Hedlund and Thomas Wimark write about the evidence evaluation by the Migration Agency in LGBTQ cases involving unaccompanied children.¹⁹ Hedlund and Wimark chose the method of requesting all the asylum decisions that involved children from a specific year (2011), which was a total of 2321 decisions. The cases that involved LGBTQ grounds were then screened and resulted in input of a total of 16 cases. 13 of them were boys and 3 were girls. All had applied for asylum on the grounds of their sexual

¹⁸ In Swedish "allmän trovärdighet"

¹⁹ Wimark, Thomas & Daniel Hedlund (2018) *Unaccompanied Children Claiming Asylum on the Basis of Sexual Orientation and Gender Identity*, *Journal of Refugee Studies*, Vol. 32 Nr.2, s.257-277

orientation. A total of 11 were granted refugee status and thus probably received asylum because of the risk of persecution due to sexual orientation.

The purpose of Hedlund's and Wimark's study was to map unaccompanied children's asylum grounds linked to sexual orientation and gender identity, as well as to review how the Migration Agency assesses the credibility in these grounds for asylum. The main result was that the staff of the Migration Agency was led by homonormative and homonationalist²⁰ ideals while making their assessment and in their decision making. This underlined the results from previous studies that Hedlund and Wimark presented in the article. The authors addressed also, as previous research highlighted, that the asylum seekers with LGBTQ grounds are expected to prove that they are in line with homonormative LGBTQ „out and proud“ identities. An example presented in the article shows that the allegations of homophobic structures, the exercise of power or oppression in the home countries of asylum seekers aren't being questioned. When it comes to opposite experiences, for example, having received help to escape, the questioning of the credibility of information is strong and is considered and assessed as improbable.

²⁰ Ibid, s. 261f: Homonormativity is a process in which certain aspects of same-sex practices, desires and identities become acceptable to the general public. This process can be dualistic. On one hand, the public has embraced the non-threatening and depoliticized commercial identities. However, the other ways of being and acting that fail to uphold the heteronormative institutions are moved to the private and personal.

Homonationalism is a concept that describes a process where the West considers itself superior in matters relating to LGBTQ rights compared to non-western countries. The individuals who fit into the liberal and “Western” story of acceptable ways of acting, being, thinking and appearance are a part of the national identity. These individuals must then be saved from nations seen as intolerant, homophobic and transphobic.

International reports and research

This review will only cover how the Swedish Migration Agency and the Swedish Migration Courts apply credibility criteria in asylum cases of young LGBTQ adults. The discussion regarding credibility assessments in LGBTQ cases is also ongoing internationally and is promoted by international organisations, civil society and researchers. Here is a small selection of international reports and research.

The recommendations from international research projects

SOGICA - Sexual Orientation and Gender Identity Claims of Asylum: A European Human rights challenge was a four-year international project funded by European Research Council (ERC). The project was based on the Faculty of Law at the University of Sussex and had a goal to produce the necessary evidence base for a fairer and more humane asylum process for people seeking asylum in Europe on the grounds of their sexual orientation or gender identity. The purpose of the project was to explore the social and legal experiences of LGBTQI asylum seekers throughout Europe and to come up with recommendations on how European asylum systems can treat SOGI asylum applications more fairly. It resulted in 30 recommendations. No 23: Legal authorities shouldn't use „stereotypical beliefs“ during the interviews or in their decisions. No 24: The decisions are all too often made in an attempt to objectively „prove“ applicant's sexual orientation or gender identity and have a sceptical attitude towards the authenticity claim; therefore the

law enforcement authorities should take the evidence, especially the personal testimony, submitted by the applicants as a starting point for credibility assessment.²¹

EU report on the situation for asylum seekers with LGBTI grounds

In 2017, FRA (European Union Agency for Fundamental Rights) published a report which represented a study on the conditions for asylum seekers with LGBTI grounds in 14 of the EU Member States (including Sweden). The report examines how LGBTQ grounds are investigated and assessed by the Member States and indicates available courses and further courses of education for staff of asylum authorities within the EU. Among the main conclusions of the report is that the representatives of the civil society in different Member States have highlighted the issues of relying on stereotypes in the asylum process.

Comparative review of EU countries' handling of asylum seekers with LGBTQ grounds

The research is a collaboration between the Dutch LGBTI organisation COC and Vrije University Amsterdam and is a comparative review of EU Member States' and European states' handling of asylum seekers with LGBTQ grounds and was published in 2011.

²¹ SOGICA -Sexual Orientation and Gender Identity Claims of Asylum: A European human rights challenge (2020) Final Recommendations, <https://www.sogica.org/en/final-recommendations/>, (tillgänglig 2020-09-09)

Some of the conclusions from the review are that there are big differences between European states in terms of handling these cases, that there are shortcomings in handling in several examples that are below the standard of what may be required by international and European law regarding human rights and refugee rights. The review also highlights credibility assessment as problematic and that the national asylum authorities rely on stereotypes in the assessment of LGBTI cases²².

Research study on credibility assessment in Belgium

The study presents problems regarding the assessments of asylum grounds connected to sexual orientation and gender identity in Belgium, even though Belgium is considered one of the better countries in the EU when it comes to these assessments. The problem is that the assessments of these grounds rely on western perceptions and expectations, which are deemed problematic. However, while interviewing people who had undergone the assessment, it emerged that they all portray their home countries as homophobic and Belgium as „gay-friendly“. This is something that has been criticised in academic literature, as aforementioned, as homonationalistic. On the contrary, the interviewees had embraced and identified themselves with western identity concepts. However, this may have to do with who has been interviewed and whether this was a type of narrative and conceptualization of identity that they used already

²² Jansen, Sabine, Spijkerboer, Thomas (2011) *Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, Vrije Universiteit Amsterdam

before leaving their home countries, or that it is a reflection on which asylum seekers get their application granted – because they managed to adapt their stories to fit into the narrative that the designated authorities expect. In comparative interviews with the undocumented people, the later proved as probable. These narratives and concepts of identity can also no longer be considered to be only a Western narrative because they have been around for a long time and have spread globally. The conclusion of the article is that the people who have fled to Belgium on the grounds of their sexual orientation or gender identity should not be silenced because they are accused of reproducing homonationalism and power structures. Those who in fact contribute to the reproduction of these structures can be criticised without silencing people with lived experiences.²³

Norwegian dissertation on credibility assessment in LGBTQ cases

As a comparison, it may even be interesting to look at the research that is closer to the Swedish legal system. In the article *Assessing sexual orientation-based persecution: a closer look at the Norwegian practices of asylum evaluation of gay and lesbian claimants*,²⁴ Deniz Akin has analysed the case officers' premises prior to investigation

²³ Dhoest, Alexander, (2017) Learning to be gay: LGBTQ forced migrant identities and narratives in Belgium, *Journal of Ethnic and Migration Studies*, vol. 45, nr. 7, s.1075-1089

²⁴ Akin, Deniz. (2015) *Assessing sexual orientation-based persecution : a closer look at the Norwegian practices of asylum evaluation of gay and lesbian claimants*. *Lambda Nordica: Tidskrift om homosexualitet*. Vol. 20, nr 1, s. 21-42

questions and external assessments of interviews and not the final decisions. The conclusions are compiled together with other research made in the field, with the focus on the authorities of other countries. Akin makes observations regarding the reluctance of case officers to ask about sexual experiences and sexual behaviour. It is in line with international practices and UNHCR guidelines and a trend that has been outlined over the years and found in many other countries' asylum procedures of LGBTQ cases. Akin refers to most studies where this has been shown. Focus on identity and romance instead of on sexual behaviour or experiences may, however, have consequences for those who are at risk of falling outside the stereotypical image of the „credible LGBTQ person“ in the eyes of the authorities. This, too, is a clear sign of how homonormativity and homonationalism affects the handlers' assessments in the asylum examination of LGBTQ cases..²⁵

²⁵ Akin, Deniz (2016). *Queer asylum seekers: Translating Sexuality in Norway*. Journal of Ethnic and Migration Studies. Vol. 43, nr. 3, s 458-474





The stories of the youth

Some of the interviewees who applied for asylum in Sweden have fled their home countries because of their sexual orientation. During their stay in Sweden, they have been placed in different accommodations where many of them have been subjected to discrimination and threats.

Sofia

There were plenty of reasons why Sofia needed asylum and protection in another country. Some of the most important ones were that Sofia's life was in danger and that she had received many death threats because she was publicly out as a trans woman.

I was discriminated against publicly in Parliament by the government of the time, I was haunted by a cult and could not get a job because of who I was.

During her stay in Sweden, Sofia shared a small apartment with an elderly man in a small village in Dalarna.

I could tell that he was transphobic by his gaze and the way that he avoided talking to me. Eventually, I chose to move out of there.

Paul

Paul was forced to flee Rwanda because of his sexual orientation. He remembers these years as the darkest years of his life.

In Rwanda, some people found out about my sexual orientation, which created many problems with my family. They had other expectations of me, to create a family with a wife and to have children. All of a sudden in their eyes, I became a disappointment. I couldn't cope with it anymore, and I was forced to flee.

The time spent in an accommodation in northern Sweden was unpleasant for Paul.

I shared a room with five men. I could not sleep at night, it was like I was in Rwanda. It was very dirty and unhygienic. I couldn't go anywhere. I had no information or anyone to ask about the simplest of things. It felt like a prison for people from other cultures.

Hammodi

The accommodation in Sundsvall (a city in northern Sweden) was a very safe and secure place for Hammodi. He met new friends who took care of him and went to school. One day he got the news that he would be moved to another residence, of which he still has bad memories.

At the other accommodation, I was offended by the staff who said plenty of racist things to us Afghans. They called us disgusting Afghans and parasites. I felt bad about it and like nothing could be done. We mostly thanked the staff and felt no desire to quarrel with such people.



Results



Level of detail

The decisions by the Migration Agency


All denials of credibility by the Migration Agency are based on the level of detail, in part or in full. Just as revealed in the review by the Swedish Refugee Law Center, this is the most prevalent credibility criterion.²⁶ In the support for decision-making, it is explained that there is stronger empirical support for the statements that are based on the self-experienced, and have higher degree of detail (regarding events, locations, objects and persons), than statements that have no basis in something self-experienced. It is also stated that there are a number of factors that affect how much detail the applicant remembers about a particular event.²⁷

When reviewing the selected cases and inspecting how the level of detail of the oral statement is assessed, it appears that the shortcomings above all occur in the parts of the story regarding the asylum seeker's feelings and descriptions around their sexual orientation.²⁸ There often comes an assessment, reasoning that the asylum seeker hasn't been able to, in sufficient detail, account for thoughts and feelings regarding their sexual orientation or that reflections on being a norm-breaker in a society

²⁶ Rådgivningsbyrån för asylsökande och flyktingar (2019) *Tillförlitliga kriterier? En granskning av Migrationsverkets tillförlitlighetsbedömningar av asylberättelser*. s. 9

²⁷ Granhag, Pär Anders, Landström Sara, Nordin, Anders (2017) *Värdering av muntliga utsagor. Ett vetenskapligt baserat beslutsstöd för migrationsärenden*. Psykologiska institutionen, Göteborgs universitet. s. 49

²⁸ There was only one case concerning gender identity.



where homosexuality is taboo have been too vague.²⁹ In order to get a closer look at what the Migration Agency is stating when assessing the level of detail in an oral statement, two representative quotes from the reviewed cases have been selected for illustration. Instead of the descriptions of concrete events, the detailed description rather applies to describe internal processes and reflections on emotional reactions around these processes.

1) The Migration Agency assesses, despite difficult circumstances, to place higher demands on your ability to talk about your thoughts and feelings related to your sexual orientation. The thoughts you describe are mainly about your need for closeness and love, but your other reflections are generally withdrawn. You have mentioned that you have experienced a certain ambivalence, as well as that you sometimes denied your sexual orientation, but you do not connect these feelings to either your upbringing, family relationships or societal context. These emotional descriptions thus appear detached.³⁰

2) The Migration Agency finds overall that your statement is consistently brief and scanty with respect to both circumstances and inner thoughts and reasoning. Your story is also assessed as lacking a personal touch. A person's sexual orientation is a fundamental characteristic of an individual, and that you could not account for this, thus, affects the credibility of information.³¹

²⁹ Cases nr 1,3,4,6,7,8,10,11,13,14,15,16,17,18,20,21,22,23,24,25

³⁰ Cases nr 18

³¹ Cases nr. 11

The support for decision-making states that the level of detail in stories is influenced by cultural communication style and the type of events being described³² In the credibility assessments of LGBTQ cases, the key issues do not concern one concrete event but rather an emotional process.

The support for decision-making also touches upon the fact that the asylum seeker's language development and cognitive maturity must be taken into account in the assessment of the level of the details. Questions about the course of events have a clear answer, where the answer can contain concrete details and later be assessed whether the said details are sufficient for the oral statement to be deemed a "self-experienced touch".³³ Emotional processes have no clear "conclusion" and, therefore, it becomes difficult to assess their credibility. Still, this is a part of the guidelines for handling LGBTQ cases.³⁴

Emotional processes and personal insights about sexuality and identity are questions that don't have any right or wrong answers. Each individual has their own truth and should also have the right to it, regardless of whether

³² Granhag, Pär Anders, Landström Sara, Nordin, Anders (2017) Värdering av muntliga utsagor. Ett vetenskapligt baserat beslutsstöd för migrationsärenden. Psykologiska institutionen, Göteborgs universitet. s. 49

³³ Ibid.

³⁴ Migrationsverket, SR 38/2015: Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar sexuell läggning, könsidentitet, könsöverskridande identitet eller uttryck

it violates the standards in the host country. This is an attitude that is reflected in the UNHCR guidelines and in the Migration Agency's legal stance.³⁵ The problem arises when the statement is to be evaluated on the basis of parameters that are adapted after there is a conclusion. Therefore the assessments arise as in quote 2. The Migration Agency has set up a core value that should be universal, that one person's sexual orientation is a fundamental characteristic, as reflected in the UNHCR guidelines from 2002 and that also appears in the preparatory work for the Aliens Act.³⁶ The asylum seeker's statement is judged to be far too brief and scanty about circumstances, inner thoughts and reasoning. Such a type of assessment shows that there is an expectation of the level of detail - but also what kind of information needs to be reported in the oral statement for it to be deemed to have a personal touch. This application is far from the view on the assessments and the investigations expressed in the Migration Agency's legal position for examination of LGBTQ cases:

"The experiences and feelings about one's sexual orientation or identity are deeply personal, and there are no right or wrong answers to the questions." ³⁷

³⁵ UNHCR (2012) Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity; Migrationsverket, SR 38/2015: Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar sexuell läggning, könsidentitet, könsöverskridande identitet eller uttryck

³⁶ Prop. 2005/06:6: Flyktingskap och förföljelse på grund av kön eller sexuell läggning

³⁷ Ibid, s. 25

In the section on credibility criteria, it is mentioned that using the criterion of level of detail is difficult since the statements will be interpreted differently by different people. These problems can, according to the support for decision-making, be minimised if the descriptions of the decisions are transparent and if it is clearly justified which criteria are applied and how they relate to the facts of the case.³⁸

The verdicts by the Migration Courts

Out of the cases that were rejected³⁹ and were remanded to the Migration Court, all had completely or partially been based on the credibility criterion regarding the level of detail. Here, too, formulations about the information provided by the asylum seeker regarding their sexual orientation, thoughts and feelings about having a sexual orientation that is not accepted in their country of origin come up. The reasoning is that sexual orientation is considered as one of the basic human characteristics and, thus, the asylum seeker should be able to reflect more on how they came to terms with their sexual orientation and account for their internal process.⁴⁰

The consistency criterion

The decisions by the Migration Agency

54% of decisions⁴¹ rejected by the Migration Agency are based on, both partial or full, contradictions in the story.

³⁸ Ibid. s. 47

³⁹ 21 out of 21 cases

⁴⁰ Årende nr. 1,2,4,5,6,7,8,10,12,13,15, 16, 17,18,21,23

⁴¹ 13 of a total of 24 decisions - insufficiency rejection and non-attached decisions are excluded.

Just as revealed in the review by the Swedish Refugee Law Center, this is the second most commonly appearing credibility criterion.⁴² The research around this credibility criterion is clear - obvious contradictions are uncommon, and when they occur, they negatively impact credibility. When it comes to the information lost in repeated interviews, the research isn't as clear, and on such observation, it can be deceitful to draw major conclusions about credibility.⁴³

An examination of recent cases makes it possible to discern similar formulations and problems in the majority of cases. In some cases, there are descriptions of concrete events that have contained conflicting information, such as being outed, contact with family, information about previous relationships, where the threats are coming from, and to what extent the person has taken advantage of information about LGBTQ rights in Sweden.⁴⁴ In many of the cases, the Swedish Migration Agency pointed to the contradictions, rather than the information about how the person came to an understanding of their sexual orientation, their thoughts and feelings around the sexual orientation, their relationship to religion and definition of sexual orientation, and the information was assessed as incoherent.⁴⁵

⁴² Rådgivningsbyrån för asylsökande och flyktingar (2019) *Tillförlitliga kriterier? En granskning av Migrationsverkets tillförlitlighetsbedömningar av asylberättelser*. s. 9

⁴³ Granhag, Pär Anders, Landström Sara, Nordin, Anders (2017) *Värdering av muntliga utsagor. Ett vetenskapligt baserat beslutsstöd för migrationsärenden*. Psykologiska institutionen, Göteborgs universitet. s. 57

⁴⁴ Cases nr. 3, 7, 8, 17, 23

⁴⁵ Cases nr. 1,4,8,10

3) You have said that you do not have a good relationship with Islam, that homosexuals are not allowed to live according to Islam and that homosexuality is considered a disease. At the same time, you stated [...] when asked if you are a believer, that you were a Shia. You also told me [...] that you fasted the very first time after you came to Sweden.⁴⁶

4) The Migration Agency has [...] asked you how it felt when you came to the realization that you were gay. You answered that it didn't matter much when you were a child and that you did not have any special feelings, but that after a while, you realised that you were not like other friends. [...] The Migration Agency finds that you have left incoherent answers regarding your feelings and thoughts about your sexual orientation. On the one hand, you had said that your orientation didn't play such a big role for you and that you had no special feelings when you came to the realization that you were attracted to men and that you were partially ashamed and afraid."⁴⁷

In these cases, we see examples of how the Migration Agency applies the criterion of consistency in the assessment of personal experiences and personal processes. A person's relationship to their religion is subjective and not always logical. It is therefore striking that the Migration Agency assesses it as a contradiction when a person states that they have a problematic attitude towards their own religion but still see themselves as a believer. In addition, the Migration Agency hasn't asked whether the personal attitude to religion is linked to faith or is more tied to a cultural identity, which may have been relevant to sort out.

⁴⁶ Case nr. 1

⁴⁷ Case nr. 4

In the second quote, the criterion of consistency is used to note that the person has told details of their process that are seemingly contradictory. Here it seems that the Swedish Migration Agency does not recognise that emotional processes such as these may very well be contradictory and confusing. This is also recognised in the legal stance and UNHCR guidelines.⁴⁸ It is in the nature of emotional processes not to be logical. The example illustrates how the criteria are used in the absence of better methods and points to the difficulty of developing a method that could work and at the same time take into account human nature and varying life stories. Furthermore, it is clear that the person first had a feeling, which later developed into something else. But it is not clear how this has emerged during the asylum investigation because the procedure isn't available for study in the context of this review.

The verdicts by the Migration Courts

Out of the cases that were rejected and were not remanded to the Migration Court, about 71 %⁴⁹ had been partially based on the criterion of consistency. Among these cases, the same justifications as those of the Migration Agency are also reappearing. It is partially in concrete information such as the awareness of one's sexual orientation, details regarding events such as being caught having sex with a person of the same sex, or the knowledge a person had about the situation of LGBTQ people in their home country or in Sweden. But the courts also reason differently about contradictions in the statements.

⁴⁸ SR 38/2015, UNHCR Guidelines no.9

⁴⁹ 15 out of 21 cases

⁵⁰ Cases nr. 1, 5, 7, 8, 16, 17, 18, 23

5) "During the oral hearing, he stated that he did not dare to speak about his sexual orientation because Iran and Afghanistan are strict religious countries, where same-sex relations are considered crimes. At the same time, he said that it was easy for him to reach the conclusion that he was gay. The court considers that this appears contradictory, namely, that he, despite knowing it was forbidden, had no deeper reflections about the fact that he was attracted to men."⁵¹

The court's reasoning is comparable to the requirements around realism in the section below. It's hard to do a closer examination of the assessment since the information in the decision is scarce. It can, however, be questioned why the court finds the statements from the asylum seekers as contradictory. The assessment assumes that a person should have deeper reflections about being attracted to men in one or more countries where such relationships are forbidden. The absence of reflection should not be generally considered to be contradictory in relation to the rest of the statement.

General trustworthiness (late disclosure)

The decisions by the Migration Agency

25 % of decisions⁵² are rejections based in part on the lack of general trustworthiness related to late disclosure of the LGBTQI claims. The application of the concept of general

⁵¹ Case nr. 6

⁵² 6 av totalt 24 beslut - tillräcklighetsavslag samt ej bifogade beslut är borträknade.

trustworthiness as a criterion in the credibility assessment is criticised in the support for decision-making. General trustworthiness refers to a person's behaviour, and the evaluation of this criterion is in contrast to an assessment of the credibility of an oral statement. It is considered an imprecise concept that does not have a clear scientific basis and definition. To let an assessment of general trustworthiness guide a decision is something the authors of the support for decision-making warn about. However, this is still used as a criterion in 25 % of the reviewed decisions, and it concerns only the issue of late disclosure. This can be compared with the study of the Swedish Refugee Law Center, where 11 of 90 reviewed cases (approximately 12 %) contained reasoning about general trustworthiness. This is not statistically reliable data, and therefore the figures should be interpreted with caution. However, an explanation for why LGBTQ cases should more often include reasoning about late disclosure is that these are the grounds that are often put forward in the form of a notification of impediments to enforcement or after a rejection. This is the experience of Newcomers Youth since we often come in contact with people who have already received a rejection in one or more instances.

According to the rulings A, B, C of the European Court of Justice, v. the Netherlands⁵³ the fact that the grounds for asylum regarding an LGBTQ person have been submitted late shouldn't limit the person's right to be granted protection. This also reappears in some of the decisions⁵⁴ om än för att konstatera att det ändå, sammanvägt even if the finding consists of a credibility assessment, it does not mean that the person has made it probable that they belong to the group of LGBTQ people.

⁵³ Domstolens dom den 2 december 2014, A, B, C mot Staatssecretaris van Veiligheid en Justitie, C-148/13 to C-150/13, ECLI:EU:C:2014:2406

⁵⁴ Ärende nr. 4,6,7,8,16

The verdicts by the Migration Courts

Out of the cases that were rejected and were not remanded in the Migration Courts, about 52 % were partially based on the criteria of how general trustworthiness affected the credibility in the statements given. This is to compare to the 25 % when reviewing the Migration Agency's decisions. Again, these are not statistically significant numbers, but they offer an indication of the fact that the Migration Court refers, to a greater extent, to general trustworthiness and late disclosure. As in the Migration Agency's decision, this applies exclusively in reasoning about late disclosure. Motivations look similar in the cases examined. The court notes that a late disclosure doesn't automatically mean that the person is not trustworthy, but that it still is strange or noteworthy that the asylum seeker didn't state the claims before.⁵⁶ All these cases have been tried on the LGBTQ grounds after impediments to enforcement or after they have stated the new grounds in the Migration Court and the case has been resubmitted. This may explain why the proportion of cases that have reasoning linked to the criteria of general trustworthiness is so high in comparison with the Swedish Refugee Law Center's review. It may be that the Migration Agency or the Migration Courts grant retrial or resubmitting to a greater extent when it comes to LGBTQ grounds because there is some awareness that for some asylum seekers, it may take time to dare to talk about these reasons. Out of four cases that were approved in the court, there was one who had not relied on LGBTQ grounds at first instance and had their case remanded, and one that was granted a new trial after a notification of impediments to enforcement.

⁵⁵ 11 out of 21 cases

⁵⁶ Cases nr. 1,2,4,5,6,7,8,12,17, 23

⁵⁷ 17 out of a total of 24 cases- insufficiency rejection and non-attached decisions are excluded.

Realism

The decisions by the Migration Agency

71 % of decisions⁵⁷ are rejections partly based on reasoning about how realistic the statement is. What is meant with realism, in the support for decision-making⁵⁸, is either how the statement relates to external data which can be based on, for example, information about a country. It can also contain an assessment of how reasonable a statement truly is. This is described in support for decision making as something that can be problematic in migration cases because an asylum seeker's story may contain elements that are difficult to understand and identify by a case officer or a decision maker, who compares what feels reasonable or realistic in a Swedish context. This can contribute to assessments being based on limited experiences (general knowledge, life experience and perceptions of relevant relationships), that can easily slip into pure prejudices. Among the cases examined are those where it is, to a large extent, the reasonableness of the statement that forms the basis for the assessment of this criterion of credibility. This argumentation is furthered in several cases, about what an LGBTQ person should reasonably be able to reflect on, for example, be able to reflect on their position as a norm-breaker⁵⁹ in a society strongly influenced by conservative norms, about the relationship to Islam, if the person has grown up in a strictly religious context, that the person should be able to reflect more on risks that they have taken and that the person

⁵⁸ Granhag, Pär Anders, Landström Sara, Nordin, Anders (2017) *Värdering av muntliga utsagor. Ett vetenskapligt baserat beslutsstöd för migrationsärenden*. Psykologiska institutionen, Göteborgs universitet. s. 53

⁵⁹ In case no. 10 ruling by the Migration Agency, that the person has a deviant sexual orientation.

should be able to reflect more, even though they are in the middle of their development process.⁶⁰

In the review of the Swedish Refugee Law Center, realistic aspects in the statements are the third most common credibility criterion used and found in 46 of 90 reviewed decisions (approx. 51%). The Swedish Refugee Law Center is, like the support for decision-making, sceptical about the widespread application of this criterion and claims that it justifies further studies on its application, given that such an assessment took place in over half of the decisions reviewed.⁶¹

"You have not been able to explain how you, despite your cultural background and upbringing, accepted your sexual orientation."⁶²

In three of the reviewed cases, the assessments are based on argumentation that the asylum seeker, partially or fully, explained the sexual details and interactions, instead of focusing on thoughts and emotions.⁶³ A reluctance of the law enforcement agencies in valuing sexual details and sexual relationships, independently from the idea that sexuality is connected to romantic and monogamous love, is noteworthy. This is a topic that is not covered in the support for decision-making and barely covered in the judicial position, except for the fact that the experiences

⁶⁰ Cases nr 3,4,6,10,11,13, 14, 18, 21, 25

⁶¹ Rådgivningsbyrån för asylsökande och flyktingar (2019) *Tillförlitliga kriterier? En granskning av Migrationsverkets tillförlitlighetsbedömningar av asylberättelser.* s. 13

⁶² Case nr 6

⁶³ Cases nr 13,22,25

and feelings about one's sexual orientation or identity are deeply personal and that there are no right or wrong answers to the questions.⁶⁴ Deniz Akin in the article, *Assessing sexual orientation-based persecution: a closer look at the Norwegian practices of asylum evaluation of gay and lesbian claimants*, states that the normative expectations of the stories from an asylum seeker can result in that a person with an LGB sexual identity who is denied the freedom to express their love, can more easily be assessed as credible because it is valued as a more extensive loss, to lose the freedom to express one's sexual identity, in contrast to the freedom to engage in non-normative sexual relations. Previous studies showed that the earlier assessments were centred around sexual behaviour and sexual relations. But Akin finds opposite results.⁶⁵

The judicial position is that the case officer and decision-makers should keep in mind that the view of sexual orientation and gender identity differs between different cultures.⁶⁶ However, the awareness of the strong romantic standards, as well as of the norm of duality in Swedish society, is lacking - as Deniz Akin notices at the UDI in Norway.

⁶⁴ Migrationsverket, - *SR 38/2015: Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar sexuell läggning, könsidentitet, könsöverskridande identitet eller uttryck*

⁶⁵ Akin, Deniz (2015) *Assessing sexual orientation-based persecution: a closer look at the Norwegian practises of asylum evaluation of gay and lesbian claimants*. Lambda Nordica: Tidskrift om homosexualitet. Vol. 20, Nr. 1, s. 19-42

⁶⁶ Migrationsverket, - *SR 38/2015: Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar sexuell läggning, könsidentitet, könsöverskridande identitet eller uttryck*

In what way can the Migration Agency understand that the view on sexual orientation and gender identity may be different? The results from the cases examined are that it is clear that case officers and decision-makers at the Migration Agency have an expectation from an LGBTQ person, for example, to value the freedom of sexual identity more than the freedom of sexual practice, because the statements about sexual practice are almost ignored.

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In two of the examined cases, the Migration Agency reasons around the asylum seeker's perception of homosexuality or LGBTQ people and evaluates the oral statements by characterising them with generalisations and stereotypical perceptions of LGBTQ people.⁶⁷ The legal frame gives a clear guideline for the case officers and decision-makers – the way an applicant describes themselves is affected, e. g., by the applicant's social or cultural background, gender, ethnicity or age. It is further stated that some people may even feel ashamed of their orientation or gender, which may lead to the person not identifying oneself as, e. g., a homosexual or trans person.⁶⁸ It would be strange to think that a person who grew up in an LGBTQ-phobic context is not affected by its environment.

⁶⁷ Ärende nr 15, 16

⁶⁸ Migrationsverket, - SR 38/2015: Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar sexuell läggning, könsidentitet, könsöverskridande identitet eller uttryck

In two other cases, the argumentation of asylum seekers about their sexual orientation can be explained by the fact that they have previously been sexually abused. This is something that the Migration Agency dismisses based on the criterion of reasonableness. However, here it is important to distinguish between what is true and what is the truth for the asylum seeker. When the asylum seekers, e. g., give an answer about how they came to realise their sexual orientation - the Migration Agency then only accepts answers that fit into a Swedish, European or Western narrative about how a person experiences the realisation of their sexual orientation or even how they "become" LGBTQ.

In the Belgian article *Learning to be gay*, a similar problem is presented - the asylum seekers who were granted asylum more easily had a clear identity as gay persons and fit in the narrative expected by the law enforcer. The article also emphasises that the Western LGBT identity model is not necessarily completely Western but that it is now spread globally and is mixed with local cultures. Identifying, fully or partially, with this model should therefore not necessarily be seen as a reproduction of hegemonic, homonationalist discourses, but rather be valued for the experienced realities. It should be respected that the LGBTQ identities have been adopted globally, though this narrative sometimes reproduces homonationalist discourses..⁶⁹

⁶⁹ Dhoest, Alexander, (2017) *Learning to be gay: LGBTQ forced migrant identities and narratives in Belgium*, *Journal of Ethnic and Migration Studies*, Vol. 45, Nr. 7, s. 1075-1089, s.23f

Verdicts by the Migration Courts

Out of the cases that were rejected and were not remanded in the Migration Court, the credibility assessments in about 71 %⁷⁰ have been partially based on the realism criterion. The same arguments reoccur in the courts, the expectations of the ability of an asylum seeker to reflect on their thoughts and feelings, and the amount of detail in which they should do it. We see the justification of expectations in many assessments, e.g., growing up in a country where the person lived as a norm-breaker, where the upbringing was strictly religious, and in one case of the person coming from a country where homosexuals are at risk of being punished or killed. Furthermore, it is stated that the asylum seekers should also have been able to reflect more on risks and were expected to account better on the situation of homosexuals and bisexuals in their home country. These expectations are justified by the argument that sexual orientation is a basic characteristic of an individual and that it is, therefore, noteworthy not being able to reflect in more detail about it.⁷¹ That sexual orientation is a basic characteristic of an individual is a statement originally from the UNHCR guidelines according to the current examination of gender-based persecution. This was the first specific UNHCR guideline on LGBTQI cases published before 2008 and updated in 2012 to the applicable guidelines.⁷² The guidelines state several times that sexual orientation is a basic characteristic of an

⁷⁰ 15 av 21 ärenden

⁷¹ Cases nr. 1,2,5,6,9,10,11,12,13,17,21

⁷² UNHCR (2002) *Guidelines on International Protection Gender-Related Persecution*; UNHCR (2008) *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, UNHCR (2012) *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity*

individual and that no one should be forced to renounce it or be forced to hide it (in relation to the assessment of future risk) and that gays, bisexuals and also transgender people should be considered to constitute special social groups.⁷² This reasoning is underlined even in the government's bill in the Aliens Act of 2015.⁷⁴ The Migration Court of Appeal refers to these sources in the verdict MIG 2013: 25.

Frequency of change (upon appeal)

Out of the 29 cases that have been examined within the framework of this review, 14 % of verdicts were changed upon appeal from rejection to approval in the Migration Court (cf. 12 % in general).⁷⁵ The review contains a relatively low sample of cases, it is not statistically ensured; therefore, the conclusions must be drawn with great care. In the Migration Agency's analysis report from 2017, it was indicated that the rate of change should be higher in LGBTQ cases.⁷⁶

⁷³ This is because sexual orientation is not a refugee ground in The Refugee Convention, transgender people are protected as another social group, in comparison with Sweden, where it is on the grounds of gender.

⁷⁴ prop. 2005/06: 6 p. 26: "Other characteristics that can establish belonging to a particular social group are those that are fundamental to individual identity, conscience or the exercise of human rights, and which are rooted in the individual's belief or sense of human dignity."

⁷⁵ Migrationsverket (2018) Årsredovisning, s.69ff

⁷⁶ Migrationsverket (2017) *Analysrapport Tematisk kvalitetsuppföljning av asylärenden där hbtq-skäl prövats*, s.12



The stories of youth

There are many thoughts and feelings that come up when members think about their asylum process. A lot of them have difficulties talking about their sexual orientation and feel shame and other feelings difficult to understand during the interviews with the Migration Agency.

Mohammed

I sat in for 8 hours on my first interview with the Swedish Migration Agency. It was unpleasant that they didn't believe my story, and because of that and not being used to it, I had a hard time talking about my sexual orientation. For how long have you known that you are gay? Have you had sex with a guy? Have you had a boyfriend? How can I answer this, when I have lived in a country where this was the last thing on your mind? The consequences are that I have difficulties with sleeping at night and that I am constantly worried. Everyone worries about the future, and me, especially as a gay person. I don't even want to think about leaving my whole life behind me when I have just built it.

Hammodi

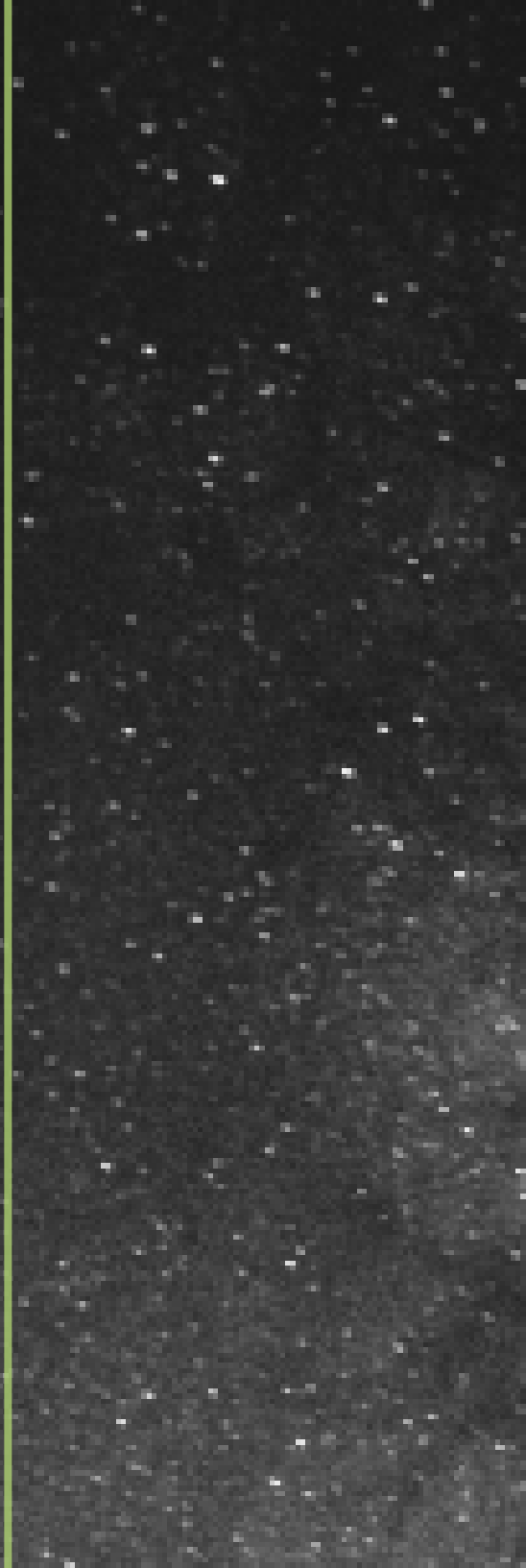
I was not quite sure who I was. There were emotions within me that I could not explain to either myself or to the Migration Agency. When you come to a new country, you expect to stay. With many rejections, you lose hope of a future here. It happened to me. I stopped going to school, and I was constantly scared that the police would pick me up.

Ali

During my process, I had to send pictures of my partner and me. Among other things, they wanted pictures of us kissing in order to prove we're both gay. They still didn't believe me, and they still constantly asked questions about my religion and family, which felt irrelevant. I tried to talk with all my heart about my love for my partner, and about my friends in Sweden who are all LGBTQ people.

Maria

During this period, I was very uncomfortable and homophobic against myself because I lived with my family, who was uncomfortable with LGBTQ people. I tried to avoid the question about my sexual orientation during interviews. I did not feel comfortable having to label myself. Why should I have to say lesbian, bisexual or pansexual? I am who I am. Is that not enough? I was asked not to say that to the Migration Agency because you only get asylum if you are LGBTQI. It did not feel right and it felt like a betrayal of myself to have to categorise myself....A prolonged process that took a long time, I had to sit and wait a whole summer to know whether I would get to stay or not.



Conclusions



The purpose of this study has been both to examine the credibility criteria applied in assessments of LGBTQ cases and to examine how they are applied by the Migration Agency and the Migration Courts. It is hard to do the research of the latter mentioned purpose without full insight in all relevant evidence on which specific decisions were made. In particular, such research is hard to conduct without the asylum investigation protocol. The purpose is, as mentioned before, not to investigate whether the outcomes of the cases have been correct or not, but rather to deduce whether there are some widespread types of assessments. Based on research material of similar cases, this study notes recurring tendencies and thus, serves as a motivation for a more in-depth study review or research in the field.

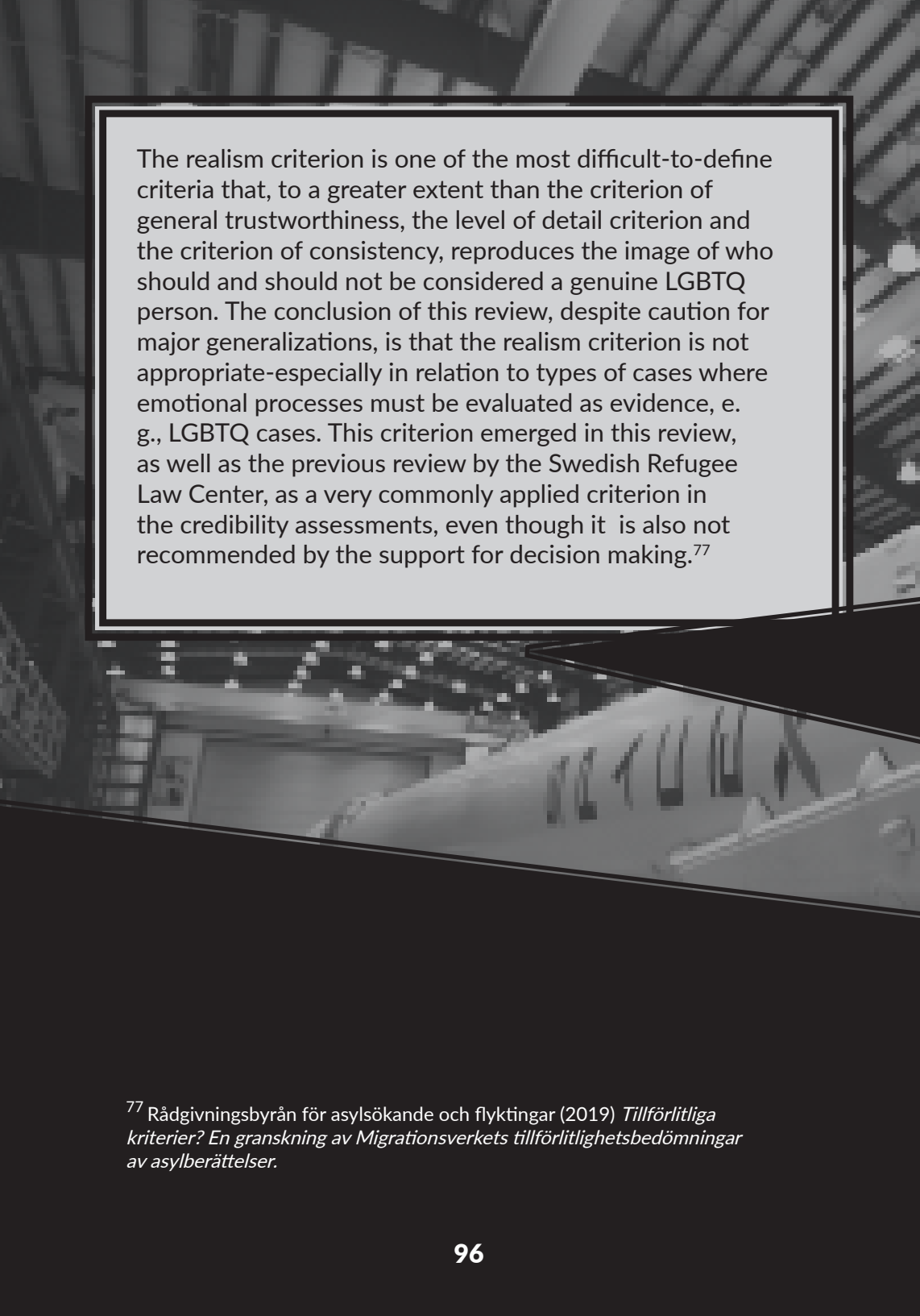
The results show that the most common credibility criteria are the level of detail criterion, the criterion of consistency, the criterion of general trustworthiness and the realism criterion.

With regard to the level of detail criterion, it is noteworthy that the support for decision making, developed with the purpose of increasing the quality of the decisions by the Migration Agency, is primarily concerned with the level of detail in relation to a sequence of events or a specific situation. There is a lack of guidance and recommendations for the application of the level of detail criterion when it comes to its application related to internal processes such as thoughts, feelings and reflections on identity and sexuality. However, this criterion is applied in all of the examined cases that were not rejected on insufficiency. There is no support for the level of detail criterion application in the emotional

processes such as those in LGBT cases. The application of the level of detail criterion where emotional processes must be evaluated as evidence (can even concern the conversion cases), should be evaluated carefully and should not be applied while waiting for the review.

A similar conclusion can be drawn about the application of the criterion of consistency. In the application of this criterion, more cases were evaluated as contradictory where concrete events or processes were described. Also, some cases with the internal processes and reflections on identity and sexuality were evaluated as contradictory. There is no support that the criterion of consistency should be applied in the way that it is being applied now. The application of the criterion of consistency where emotional processes must be evaluated as evidence should be evaluated carefully and should not be applied while pending review.

When it comes to the criterion of general trustworthiness, it is a criterion that does not have strong support in the scientific basis of the support for decision making, and therefore, is not recommended. Despite this, the results of this review and of the review of the Swedish Refugee Law Center show that it is a widespread criterion in credibility assessments. General trustworthiness as a credibility criterion is not legally secure and should, therefore, not be applied in the evaluation of evidence of LGBTQ asylum grounds, especially not in the evaluation of evidence of a person's belonging to the LGBTQ group.



The realism criterion is one of the most difficult-to-define criteria that, to a greater extent than the criterion of general trustworthiness, the level of detail criterion and the criterion of consistency, reproduces the image of who should and should not be considered a genuine LGBTQ person. The conclusion of this review, despite caution for major generalizations, is that the realism criterion is not appropriate-especially in relation to types of cases where emotional processes must be evaluated as evidence, e. g., LGBTQ cases. This criterion emerged in this review, as well as the previous review by the Swedish Refugee Law Center, as a very commonly applied criterion in the credibility assessments, even though it is also not recommended by the support for decision making.⁷⁷

⁷⁷ Rådgivningsbyrån för asylsökande och flyktingar (2019) *Tillförlitliga kriterier? En granskning av Migrationsverkets tillförlitlighetsbedömningar av asylberättelser.*



Recommendations for the Migration Agency and the Migration Courts

Include intersex people and intersex perspectives in the work with LGBTQ issues.

Re-evaluate the application of the level of detail criterion and the criterion of consistency in LGBTQ cases, as well as other cases where internal processes and identity journeys must be accounted for and reflected on.

The evaluation should include norm-critical analysis of the application, as well as the analysis of processes around the application, from a perspective that can identify hegemonic discourses. The application of these criteria should be paused while waiting for the evaluation.

Refrain from the application of the criteria of general trustworthiness and realism within the credibility assessment in LGBTQ cases.

Future research

This is a study in detail of a major problem. The basic questions are concerning whether emotional processes should be evaluated as evidence at all, or if the focus should be only on the assessment of future risk, and how this method has affected the decision making in LGBTQ cases. Aino Gröndahl examines this in more detail in a comprehensive legal investigation of LGBTQ cases. As reproduced in the above-mentioned reports and studies, the states that handle asylum applications should review how the assessments of the asylum grounds of LGBTQI people are implemented. It is clear in the research that the stereotypes and homonationalist discourses reappear as key components in assessments. However, there is not enough research on the ways forward and how this could be overcome.

⁷⁸ Gröndahl (2020) *Avslagsmotiveringar i hbtq-asylärenden. En rättsutredning av Migrationsverkets, migrationsdomstolarnas och Migrationsöverdomstolens prövning av sexuell läggning, könsidentitet och könsuttryck*, RFSL

The stories of the youth

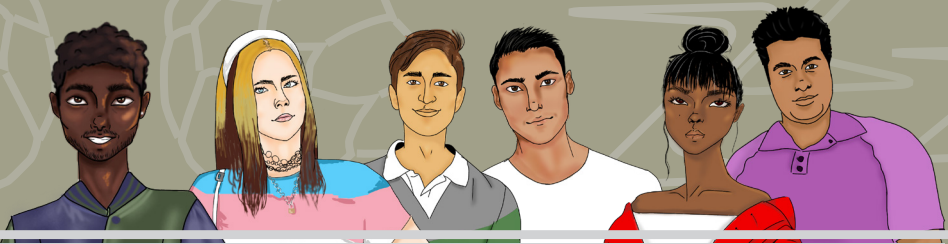
Mohammed

When Mohammed came out as gay to his mother tongue teacher, he received a lot of support and got advised to contact RFSL Ungdom. Through Newcomers Youth, he got to meet a counsellor and friends who have, like him, been through a lot.

I feel an incredible fellowship with other young people and incredible happiness that the Newcomers Youth's meeting place is available to us. Thanks to RFSL Ungdom, I am finally comfortable with who I am and more proud than ever.

Hammodi

It was during a lecture on society that everything changed for Hammodi. The topic of the lecture was LGBTQI, where many things were presented. Hammodi got the chance to get answers to many of his questions about himself. The lecture ended with Hammodi opening up about his sexual orientation in front of his teachers that referred him to RFSL Ungdom and Newcomers Youth. Today, he gets help from a lawyer from RFSL Ungdom, which, according to Hammodi, has helped him a lot, and he is happy about it. He is also attending the meeting place with other young people.



Maria

Maria got in touch with RFSL in Linköping (a city in southern Sweden), where she got a lot of support and legal advice. She also got the opportunity to go to Newcomers Youth's meeting place and meet other young people, which made her feel like she was not alone.

Ali

I have a fantastic lawyer who helped me get in touch with RFSL Ungdom and who has supported me lately. I have also gotten the opportunity to go to Newcomers Youth's meeting place on Fridays, where I found some peace from my problems.

Paul

Paul contacted RFSL Ungdom when he was in Warsaw. From there, Paul got in touch with RFSL Ungdom's asylum lawyer, who helped him become a member and get information about the meeting place. He had also gotten help with transferring to safe housing when Newcomers Youth sent a certificate to the Swedish Migration Agency.

Sofia

I got in touch with RFSL Ungdom through a friend of mine. They have helped me in many different ways during my time in Sweden, and I am eternally grateful for that.

Final words

When the asylum process is over and the asylum seeker has received a decision that has been enforced, the legal journey is over. The idea is that the authority and the courts should make legally secure decisions about who is entitled to asylum, but the reality our members experience is different. The story that the legal documentation tells us about a human being - through protocols, decisions, appeals and verdicts does not correspond to the lived experiences and is often not even the truth. Many of our members receive a rejection decision where it says that the Migration Agency has not assessed that they made it probable that they belong to the group of LGBTQI persons. If a person has told the truth and can't go back to the country they fled from, there are very few options left. Young adults in this situation often ask us for advice, but there is often not much good advice to give.

Hammodi

Hammodi has been granted a new trial after he has submitted a notification of impediment to enforcement and is waiting for another asylum investigation.

I really want to stay in this country. I'm gay and I really hope that my sexuality will be accepted by the Migration Agency. He has been homeless for two years and has lived on people's sofas. Furthermore, he also met some bad people who have treated him horribly. Nobody knows what it's like to walk in my shoes. Having to go through more than one process is eating on me.

Today, Maria has received a three-year residence permit, which makes her feel relieved. She regularly goes to the meeting place, and she made many friends through Newcomers Youth.

Maria

All has filed a notification of impediment to enforcement and is waiting for an answer if he gets to have a new trial. When I first came to Sweden, I imagined everything would be better. Now I just feel a lot of darkness. I have finally opened up completely, and the Migration Agency still doesn't believe me. My family knows about my partner and is far from accepting. My family will kill me if I get deported home because everyone in my hometown knows about my orientation. I'm not accepted here or in Iraq. Truth to be told, I don't know what to do anymore. It feels like my future has been stolen from me, and all the will for life is gone.

Ali!

I really want the Migration Agency to help people from the Middle East because it is difficult to live as LGBTQI in these countries, and it is difficult to openly talk about it.

Today, Mohammed lives with his partner and feels much better. He doesn't know what the future will bring, because he already received two rejections. There is a risk that he will be deported to Iran

Mohammed

I really wish the Migration Agency would think about the way they ask questions about the sexual orientation of others because not everyone comes from a western culture. They want to put us in boxes and want us to have answers to questions that are not in line with our cultures. Listen to us instead.

Paul

Paul has not yet received a decision and is waiting to be called to a complementary asylum investigation.

It is difficult to be an LGBTQI asylum seeker; we are not heard or taken seriously. One loses all hope when one sees no happiness left. I really want to stay here and build my future. Also, I hope that the Swedish Migration Agency will employ more LGBTQI-specialized case officers.

Sofia

Sofia was deported to northern Macedonia.

When I was deported, I was lucky that it was back to a context where the government has changed and that has made me feel a little safer than before. I'm still struggling to have a normal life and find a job. It is very difficult for a trans person to transition here, and it is very expensive to have a surgery. All I want is a bright and happy future. My goal is to be able to find peace, and I hope that one day I will be free.

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