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Assessing Sexual Orientation-Based Persecution

A Closer Look at the Norwegian Practices of Asylum Evaluation of Gay and Lesbian Claimants

NORWAY HAS BEEN progressive with respect to the civil rights of gays and lesbians. The country was pioneering with its 1981 enactment of a law to prevent discrimination against gay and lesbian people in the domains of employment and services. The Act on Registered Partnership of 1993 and the Marriage Act of 2009, which gave same-sex couples the right to get married on the same basis as heterosexual couples, are the highlights of the Norwegian gay and lesbian civil rights movement. The Norwegian state's liberal approach to gays and lesbians manifests itself in its asylum policies as well. The Norwegian Directorate of Immigration (UDI), the official body that processes the country's asylum cases, has been granting asylum on the basis of sexual orientation since 1997 (Lindstad 1997). However, the assessment of such cases has been and remains contested, mainly because there is a lack of consensus over how intelligible sexual orientation is manifested. Furthermore, the usual lack of evidence for the risk of persecution for gays and lesbians constitutes additional difficulties for adjudicators during the credibility assessment.[1] This article poses the following question: How do UDI caseworkers understand intelligible sexual orientation and a credible narrative of risk of persecution? Drawing upon semi-structured interviews conducted with

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UDI caseworkers, this article addresses the normative understandings of sexual orientation in the Norwegian asylum context.

Legal Background and Previous Studies

UDI processes all asylum cases and maintains overall responsibility for coordinating the immigration administration. The UDI Asylum department in Oslo consists of subunits that specialize in specific countries. Caseworkers in those units do not necessarily have an educational background in the country their unit specializes in. Landinfo (Norwegian Country of Origin Information Centre) is responsible for collecting and presenting updated country of origin information to immigration authorities.[2] Caseworkers usually hold different degrees within the social sciences and humanities.

At the heart of the asylum evaluation process lays credibility assessment. United Nations High Commissioner for Refugees (UNHCR) defines the credibility assessment as a process of examining all of the relevant information available to decision-makers to determine whether a claimant's testimony and the material facts presented as evidence are valid for asylum (UNHCR 2013). In her comparative study of credibility assessment practices, legal scholar Jenni Millbank (2009b) pointed to the prevalent use of the notion "ring of truth" in asylum determinations, arguing that it is problematic to refer to decision-makers as fact finders and it is misguiding to approach asylum stories as self-evident.[3] Currently, diverse guidelines are in place to assist decision-makers in Norway during this challenging procedure.

With regards to the assessment of sexual orientation-based asylum claims, following the UNHCR Guidance Note on refugee claims relating to sexual orientation and gender identity, UDI follows the *Guidelines on Gender-Related Persecution*. Three guidelines were published in 2008, 2009 and 2012 (Arbeids og inkluderingsdepartementet 2008; Justis og Beredskapsdepartementet 2009; 2012a). The guidelines published in 2012 are significant due to their omission of the following paragraph, which was included in the previous two guidelines:

> [I]n cases where homosexuality is argued, the question of how an individual gay applicant may be expected to accommodate himself on his return to his country of origin would then have significance for the risk assessment viewed in relation to the sociocultural limitations of the community concerned. In many communities there are general social, cultural, and statutory restrictions on expression for both heterosexual and homosexual people, which are not necessarily characterized as persecution. (Arbeids og inkluderingsdepartementet 2008; Justis og Beredskapsdepartementet 2009)

This statement used to ground the "discretion requirement," which states that gay and lesbian claimants, with an established sexual minority status and a risk of persecution, can be returned to their country of origin with instructions to act discreetly to avoid persecution. Practice of discretion requirement had been prevailing until recently not only in Norway (Mühleisen, Røthing and Svendsen 2012), but also in asylum receiver countries like the United Kingdom (O'Leary 2008), Australia (Walker 2000; Dauvergne and Millbank 2003), Canada (LaViolette 2009) and examples are found in the majority of European Union member countries (Spijkerboer and Jansen 2011). In Norway the application of discretion requirement began to be questioned both legally and practically following the famous UK Supreme Court verdict known as *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* (2010). In short, the Supreme Court of the United Kingdom ruled that if an applicant with an alleged sexual orientation would choose to live discreetly to avoid persecution, it means that the person in question has a well-founded fear of persecution. Following this ruling, UDI sent a request to the Ministry of Justice and Public Security (JP), which instructs UDI concerning the interpretation of the Immigration Act through the guidelines mentioned above, to make the necessary amendments to disable the applied discretion requirement. JP not only removed the paragraph that was used to justify the practice of discretion in the new guidelines, but also published new instructions specifically designated for the assessment of sexual identity (instructions refer to

sexual identity as an umbrella concept to cover both sexual orientation and gender identity-related applications) (Justis og Beredskapsdepartementet 2012b). These instructions provide UDI with five steps to be followed during the assessment procedures. These are credibility of the asylum foundation, assessing whether the applicant will be subjected to persecution if he or she lives openly, evaluation of how the applicant will act after returning to the country of origin (here, it is noted that the assessment should not be limited to sexual acts but include all behaviors and beliefs that are associated with, and are fundamental to, an individual's sexual identity), assessment of whether the applicant is likely to live his or her identity openly after returning to country of origin, and assessment of whether the applicant is likely to hide his or her sexual identity upon return (it is noted that if the applicant chooses to hide his or her sexual identity arguing that it is the right thing to do because of fears for breach of family and friendship ties and to avoid shame and social pressure,[4] then the conditions for refugee status are not met). Put simply, this guiding note closes the door of asylum for those willing to remain tacitly, or voluntarily, closeted.

Nonetheless, the coherence and efficiency of the 2012 guidelines and instructions are still debated, mainly for two reasons. First, there is no consensus over what constitutes intelligible sexual orientation. Second, there are debates around the scope of activities considered necessary for expressing an inherent sexual orientation. For instance, legal scholars James Hathaway and Jason Pobjoy (2011, 335) argue that the scope of activities considered necessary for expressing intelligible sexual orientation or gender identity, whose denial or limitation would amount to persecution, needs to be clarified in asylum evaluations. Yet, Hathaway and Pobjoy's positioning is associated with being in favor of a distinction between status and conduct, an is/does dichotomy, and is also criticized for implying that sexual minorities can reasonably be expected to limit at least some activities to maintain a low key in the society they live in (Millbank 2012; Spijkerboer 2013; Wessels 2013).

Additionally, sexual orientation-based asylum claims are challenging for both adjudicators and asylum seekers. One reason for this is that al-

legations related to non-heterosexual identities are "easy to make, and hard to disprove" (Berg and Millbank 2009, 196). This is because the term "sexual orientation" is absent in the jurisprudence of many countries,[5] and the plight of sexual minorities are hardly documented, generating evidentiary challenges for both the gay and lesbian asylum seekers and the caseworkers (Randazzo 2005; LaViolette 2009). With regards to this issue, the relevant UNHCR guidance (2008, 16) warns against the likely absence of evidence for persecution and country information, and suggests that the decision-maker should rely on the claimant's testimony alone.

Theoretical Inspirations: Queer Perspective on Law and Juridical Structures

Given that queer theoretical lenses question the notion of identity as naturally given, the queer perspective on law mainly interrogates the ways in which identity categories are inscribed, normalized, and regulated by legislations and juridical institutions (Morgan 2000, 217). Francisco Valdes makes the following insightful observation of the developments within the legal trajectory, mainly in the United States, that addresses the issues of sexual orientation:

> The former, reflective of dominant norms in conventional legal scholarship, focused on "discrimination" against sexual minorities; that is, the practice of treating sexual minorities differently on the basis of sexual orientation – as in the case of marriage, for example. The latter, incorporating the insights and methods of critical outsider jurisprudence from the 1990s and since, shifts focus to the "subordination" of multiply diverse sexual minority persons or groups. (Valdes 2009, 92)

Valdes' observation is crucial in pointing out that the incorporation of sexual orientation and gender identity within legal scholarship initially focused on legal inscriptions of discrimination toward sexual minorities. There was, however, a singular lens viewing sexual minorities as a homogenous group, which was inadequate to address the differences

among sexual minorities who encounter legal and social oppression in various ways (Valdes 2009). Accordingly, the configuration of gay and lesbian identities into international law and complementary agreements has been of great interest to legal scholars who employ queer analytical perspective in their analyses. For instance, in her remarkable work "Exporting Identity," legal scholar Sonia Katyal (2002) presents the "substitutive model," which is predominant in the US law, but can also be applicable to jurisdictions across the Western world and its presumption of the interchangeability of sexual identity and sexual conduct. Her framing of substitutive model critically questions the relationship between sexual identity and sexual conduct and expression. She argues that traditionally the law presumes that "individuals who engage in same-sex sexual conduct can be legally classified by a fixed and clearly demarcable gay, lesbian, or bisexual sexual identity" (Katyal 2002, 101), and underlines the various divergence between identity and conduct in a cross-cultural context. In the end, as Willy Pedersen and Hans W. Kristiansen (2008, 84) demonstrate in their study on homosexual experiences, desire, and identity in Norway, the framing of people according to the categories of gay, lesbian or bisexual is highly dependent "on the 'strictness' of the criteria applied and whether the point of departure is sexual experience, interest desire or identity." Does an authentic sexual minority have all these characteristics simultaneously? In cases where these departure points, or similar ones, are employed to render people gay and lesbian, one might miss those who fall into what Pedersen and Kristiansen (2008, 72) call a "the sexual grey zone."

Queer perspective on the law deals with more than just the inclusion of sexual orientation and gender identity in legal terminology, it also stands for a critical position that questions the norms attached to these terms. A central concern of such perspectives is the Western hegemony in delimiting, describing, and naming identity categories. For instance, legal scholar Aeyal Gross (2007, 130–2) analyzed the Yogyakarta Principles, a legal tool concerning the application of international human rights law to sexual orientation and gender identity, and argued that the terminology offered by these principles signifies a modern Western

concept of sexuality that might have no relevance in different social and cultural settings. Enhancing his argument with what Joseph Massad (2002) termed "gay international," Gross (2007) warned against the uncritical integration of sexual orientation and gender identity into the juridical structures that might ahistoricize sexual cultures in different cultural settings.

The queer perspective on the law and legal institutions has much to offer our understanding of asylum caseworkers' accounts of intelligible sexual orientation and a credible narrative of risk for persecution. Here I use the word "intelligible" drawing upon Judith Butler's (1990, 16–7) discussion on culturally intelligible notions of identity, where she aptly underlines that intelligibility is related to conformity to recognizable standards that are governed by regulatory practices. In her latter account of the intelligibility of lives and their labeling as grievable in times of loss, Butler (2009, 3) defines an intelligible life: "The epistemological capacity to apprehend a life is partially dependent on that life being produced according to norms that qualify it as a life or, indeed, as part of life." Similarly, the intelligibility of a lived sexual orientation depends on certain understandings of sexual orientation and the values attached to it with respect to the way it should be expressed and felt. Likewise, Alice M. Miller (2005, 146) uses the term "distinguishability" to refer to the law's separation of worthy queer claimants from the unworthy ones. Put simply, worthy claimants are those whose suffering is grounded on their identity, not just their act of sodomy (Miller 2005, 146).

Method and Reflections

I recruited my informants via the Research and Development Coordinator of the Analysis and Development (A&D) section of UDI. A&D put me in contact with units[6] that work with applicants from African countries, on the basis that these units received relatively more asylum claims based on sexual orientation than the others did. As a result, I did not get the chance to collect information about asylum seekers coming from countries other than the mentioned units' field of work, i.e., Iran.[7]

I conducted six semi-structured interviews. Four of the interviews

were conducted face-to-face and two of the officers were interviewed over the phone. These six informants were all volunteers to be interviewed following my research request submitted to A&D. In short, as a researcher, I did not choose either the unit or the caseworkers for the inquiry. Rather, they were recommended to me as potential informants who had the time and willingness to be a part of the research. All of the six informants were very open and enthusiastic about the research I am doing, and seem/sounded to be comfortable and confident to talk about both the strength and weaknesses in the way they make asylum evaluations. One of the informants said that being a part of this research is a valuable opportunity for UDI to be able to clarify their point of view, arguing that there exists misinformation and misunderstandings in public debates concerning their work. Additionally, she acknowledged that caseworkers in UDI are in a constant state of learning, and eager to interact more with human rights organizations and scholars to improve their work.[8] As Tom Clark (2010, 400) elaborately demonstrates in his work on people's research engagement and participation, being a part of the research is not a passive activity as it involves, for some, a certain degree of risk to be misrepresented or situated in an unwanted position. Yet, Clark (2010, 399) also mentions the possibilities of "representation, political empowerment, and informing change" through being involved in a research as an informant. I was lucky and privileged in that the informants considered my project an opportunity to rebuild their public image and/or brainstorm around the aspects that require further improvement.

As Tim Rapley (2004, 26) asserts in his elaborately written account on qualitative interviews and analyses of interview material, "first and foremost, analysis is always an ongoing process that routinely starts prior to the first interview." It is hard to deny that I had a set of analytical themes, derived from all the literature reviews and public debates around the topic, in my head that I was eager to explore further during the interviews. These themes were mainly about the stereotypical understandings of homosexuality and cultural essentialism, that diverse scholarly works on queer migration have put emphasis on (Lidstone 2006; Berg

and Millbank 2009; Mühleisen, Røthing and Svendsen 2012; Jansen 2013). Yet, I tried to formulate questions in a way that would not fish for a certain explanation or utterance. From the beginning, I invited informants into a dialogue over the dynamics and challenges – if any – of the evaluation of gay and lesbian asylum seekers. First, I asked the informants whether they find applicants who ask for protection in relation to sexual orientation challenging to evaluate. This question induced elaborations that emphasized the informants' strengths and weaknesses in the assessment process. I asked them how they could run a credibility assessment when the topic is sexual orientation and the claimant lacks evidence of a risk for persecution. I also asked them how they separate those needing protection from those misusing the asylum regulations.

Accordingly, the interview material was analyzed in such a way as to identify patterns in the caseworkers' use of a set of words and terminologies concerning sexual orientation, which gave me an idea of their understanding of intelligible sexual orientation.

Let's NOT Talk About Sex

As mentioned in the legal background section of this study, evidentiary challenges of the sexual orientation-related asylum claims constrain caseworkers to rely on applicants' testimonies as a primary focus of asylum evaluation. The credibility assessment of these testimonies are most of the time determinative in deciding if the person in question has a valid ground for protection, which, for this study, is a well-founded fear of persecution based on sexual orientation. I asked my informants whether they have a special method for the verification of an alleged sexual orientation. One of them replied:

> We focus a lot on what is inside of the person. We do not focus on sexual acts or stuff like that. We focus on the life they lived, how they dealt with having a different orientation other than the norm. It is about their emotions, thoughts, reflections. […] I think sexuality is fluid. Someone can be one hundred percent gay or straight, but then someone might be twenty percent gay. This is what I believe. I try not to involve my very liberal

> perception on sexual orientation in the interviews. I do not find it helpful. I do not ask people: "If you name yourself, what would it be? Do you perceive yourself as gay?" There is no need to put the words into the claimants' mouth. I try to make them create the narrative, describe how they feel.

Another one said:

> You would conclude the same if you talked to a person who is not gay. I do not ask people if they have sex back home, I do not ask them such questions. […] Some try to fake by putting on stereotypes, telling stories often filled with sex. We do not use only one or two arguments to demonstrate that the person is not credible. In the decision, we write all the reasons why we think that particular person is not gay.

I did not ask informants whether they questioned their claimants about sexual practices. However, they did mark the practice of sexuality as a theme they avoided. Admittedly, this standing is in line with the interview techniques that the guidelines present in relation to the sensitivity of sexuality related topics (Justis og Beredskapsdepartementet 2012a, 2.1). The instructions also tell caseworkers to evaluate not only sexual acts, but also include all behaviors and beliefs that are associated with, and are fundamental to, an individual's sexual identity. Yet, the narratives above imply that they become very distrustful when asylum seekers voluntarily talk about their sexual experiences. Statements such as: "I do not ask people if they have sex back home," and "We do not focus on sexual acts or stuff like that," illustrate a determinant position that intentionally strips sexual orientation from sexual conduct, rendering sexual conduct, practices, and activities irrelevant – or perhaps even misguiding – for verifying a claimant's orientation. It is also noteworthy that the informants explained their technique of verifying an applicant's sexual orientation by telling what they do not do, implying that they are presumably aware of what Katyal (2002, 108) describes as "substitutive model," the interchangeable use of sexual conduct and sexual identity where sexual conduct is considered to be grounding someone's sexual

identity. A great deal of literature on asylum receiver countries points to the hegemony of Western understandings of homosexuality and the requirements of unequivocal evidence of sexual identity that come into play during the evaluation of gay and lesbian asylum claimants (Katyal 2002; Luibhéid and Cantú 2005; Randazzo 2005; Raj 2011). In this sense, the divorce of sexual conduct from sexual orientation appears liberating, and even echoes a queer line of thinking when the caseworker said that she approaches sexual orientation as a wide spectrum and argued, "someone can be one hundred percent gay or straight, but then someone might be twenty percent gay." This approach also keeps the gate of asylum open for those who have not had any sexual experiences or who practices sexuality differently than what is prominent in Norway.

Despite the rejected equivalence of sexual conduct and sexual orientation, the accounts illustrate an important parameter that is used by the informants to verify a credible sexual orientation. The extracts of the interviews illuminates that caseworkers place their focus on how their claimants lived their lives in their countries of origin, in order to trace the repetitive acts and performances that showed divergence from the predominant norms of society. The extract below demonstrates a straightforward technique:

> LGBT cases are different. I choose different approaches. It is on instinct really; you have to improvise here and there. I know that we have guidelines, but when you are sitting here, listening to their story you need to improvise according to what you hear. I try to get all the facts first. I sort of look for the reflections around, you know, being gay, and how do you live as a gay man. A credible person would easily be differentiated, not just in appearance, but also in what they do. […] I hear that gay men have sex frequently, and they like speaking about it but I am not interested in hearing about it. I do not think it is true for everyone. […] As I mentioned, each applicant is treated individually.

In this account, one might follow up a step-by-step technique that is parallel to the instructions given to the caseworkers, although she ac-

knowledges following her gut feelings sometimes. With a magnifier, we can notice that a great deal of the informant's assessment deals with the asylum seeker's own reflections about being gay and the applicant's way of life as a gay person. A credible applicant, according to the informant, could simply be read through appearance and action. Accordingly, there is an implication that there are some measures, let us say stereotypes, being in use to identify an authentic gay appearance and action, that would convince the gut feeling about the credibility of an applicant. Conversely, the informant sounds cautious when it comes to the stereotypes regarding the sexual practices of gay men. It is something that the informant argues is irrelevant, because it might differ from person to person.

Concerning the distrust for, and distance to, accounts on sexual acts in verifying an alleged sexual orientation, quoted caseworkers seem to have a similar perspective. Their inquiry of the applicants' feelings, thoughts, and reflections can be interpreted as an implicit search for a sexual identity even though the claimants are not required to name themselves as gay or lesbian. As Miller (2005, 146) argues, adjudicators distinguish a social identity from the mere action of sex between two people of same sex, because that is the distinguishing mark of a "worthy queer." Nonetheless, there exist differences among caseworkers as well. One of them utters ideas that can easily be read as queer and non-essentialist, where as another one appears to be utilizing certain stereotypes in her assessment. Here I would also like to mention a news published on the website of NRK (the Norwegian government-owned broadcasting corporation) on February 26, 2014 ("Norge tror ikke på at jeg er homofil" 2014) that surfaced a discrepancy. Accordingly, Tone Loge Tveter, Deputy Head of the Asylum Department at UDI, described their procedure of asylum assessments: "We do not go into the sex life, but we go into the preference and practice of homosexuality and the environment they have wandered in." This is reminiscent of the caseworkers' remarks; however, her final comment about those whose asylum applications were rejected, blurs the purview. Tveter said:

> Those who did not receive asylum were rejected partly because they failed to demonstrate that they were gays and partly because they were not persecuted because of homosexuality in their country. In the rejections we have stated that if they could live with their homosexuality hidden and not be persecuted, this is why they are rejected. ("Norge tror ikke på at jeg er homofil" 2014)

It is quite puzzling that this statement was made in 2014, and this triggers curiosity about whether the discretion requirement is still applied.

When reminded of Tveter's statement during a follow-up email exchange with one of the informants, I was told that Tveter's statement had been misinterpreted, as UDI follows the Supreme Court verdict from 2012 and claimants no longer are asked to conceal their homosexuality since then.

Identities to Be Protected: Normative Adjudication

Regarding the question of how caseworkers separate a credible risk of persecution from a non-credible risk, I received the following responses:

> Country information and the personal stories matter a lot. In Uganda, the risk is obvious. We do not need to talk about return to Uganda at all, or Nigeria where Landinfo reports risk of persecution accurately. […] Our method is talking to the person. A very good interview is what we need. We make them talk about their life situation, their experiences, living as gay, living the trauma, stigma, and all the experiences they had in their home country. Risk for persecution speaks for itself if the applicant is homosexual.

> I do not think that it is easy for an asylum seeker to lie about their situation. You cannot sit through all of the asylum interviews and be believable... I assume that a person who is LGBT, who have grown up in a community where these subjects are taboo, unspoken... You are taught that these sexualities are wrong, satan-work... I expect asylum seekers to talk about these inner feelings of denial, the struggle. […] They do not

need to speak the gay jargon to be believable; a credible account is usually obvious although the person does not talk about typical things.

What these two responses have in common is the attention predominantly paid to the authenticity of a sexual orientation as the determinant for the risk for persecution. In fact, the caseworkers' approach is not unique to Norway. In her study on jurisprudences in the United Kingdom and Australia, Millbank (2009a, 391) notes the growing emphasis on the credibility of the claimants' sexuality, following the demise of discretion reasoning. She describes this fashion as "from discretion to disbelief." In the Norwegian case, this fashion appears to be dependent on the applicants' country of origin. In countries like Uganda and Nigeria, homosexuals are so extensively oppressed by the state that evidence of the plight is not required by UDI, leaving the proof of an authentic sexual orientation the only prerequisite.

Yet, there are examples where the "authenticity" of the non-heterosexuality plays little role, for example for claimants from Russia where sexual minorities are persecuted under the infamous propaganda law. According to the Russian law, propaganda of non-traditional sexual relations among minors are punishable with fines (Landinfo 2014), which has led to even more severe stigmatization and discrimination of LGBT people in the country whose persecution usually goes undocumented because of the propaganda law (Human Rights Watch 2014). Despite that concrete examples of persecution in Russia are reported by Landinfo, in 2014 the Immigration Supreme Court of Norway denied protection to a lesbian couple from Russia and directed them to other parts of their country, such as Moscow or St. Petersburg, stating that these cities are safer.[9]

Another interesting aspect of the accounts above is related to the cultural gulf between the caseworkers and the applicants that seem to stage an Orientalist performance. Informants' hunt for signs of wounds, stigma, and vulnerability as the assumed indicators of an authentic non-heterosexuality, deserves further elaboration. Similarly, in her inspiring work on sexual minorities among African asylum claimants in

the United States, Charlotte Walker-Said (forthcoming) argued that asylum hearings host a so-called staging of the American refuge state. Throughout her work, she described how applicants are required to conform to Orientalist framings of sexual selfhood and to recognize the American government's role as a powerful savior. A similar argument is presented in David A. B. Murray's (2014) analysis of homonationalism in the Canadian refugee system. His data shows that refugee narratives often emphasize their gratitude toward the shelter country for rescuing them from persecution, even though they may encounter different forms of discrimination in the host country (Murray 2014, 28). He associates asylum seekers' homonationalist sentiments, presented during both the asylum hearings and at the LGBT support organizations, partly to a strategy that presents them as persons fitting the Canadian model (Murray 2014, 27–8).

Accordingly, the so-called rescue narrative appears to have shaped another UDI caseworker's approach to asylum testimonies:

> Actually I have interviewed two men, so far, whose claims were based on sexual orientation. One was very credible and the other one was not. The story that was not credible was from a man who told that he had met a random person when he was out one night, unexpectedly. After talking with this man shortly, they walked home together to have sex. They had sex at the claimant's own apartment and was caught red handed by some radical Islamists. The rest is classic, story of persecution. […] The level of stigma is incredible in his country, I mean, people can react wildly toward homosexuality. Living in such a society, you would not just bring someone you barely know to your place. In addition, they were caught red handed. It means that there was someone in the apartment already. I contemplate over this narrative and it is not credible at all.
>
> The credible testimony was from another man from the same country as the man I just told about. He had never had sex with another man, had never engaged in a sexual relation with another man. His story was in short that everyone else considered himself very feminine in appearance and everybody found that he was different. I could see that he was

> feminine. […] I applied the same technique, as I would do with any other informant. I listened to his story and asked him questions. He was very hesitant to reply, he was embarrassed, did not know where to look. He said it was difficult. He looked very ashamed. I asked him more questions, and in the end I asked if he was attracted to men or women. […] He finally told that he was attracted to men. I asked him how he would picture himself in the future, and his reply was: "If I can trust a man who loves me, I would like that."

The account above illustrates a comparative example of an informant's determination of credible and non-credible testimony. Arguments underpinning this judgment resemble the other caseworkers' approaches to intelligible sexual orientation.

Sexual activities were evaluated as irrelevant, or even misguiding, in determining the sexual orientation of the person in question. Assessment of the risk of persecution, which was foundational to the claimant's rescue, was traced within the vulnerability script, which drew on reflections of shame, hesitation about talking about sexual identity, confusion, and so forth. The justification for the credibility assessment of the first narrative was highly personal. The caseworker contemplated the narrative from her perspective and drew a conclusion similar to: "I would not do that," or "Who would risk that?" The claimant demonstrated no hesitation over the sexual conduct he had engaged in, and told the story straightforwardly – perhaps "too directly," in that it sounded unfeasible to the caseworker or sounded merely as sex between two males, which has nothing to do with a homosexual identity to be saved. As Miller (2005) notes, the "distinguishability" approach seems to operate in this account when the caseworker discerns sexual identity from the mere act of sex, rendering the latter not a credible narrative of persecution. Although there is a strong emphasis on the disbelief of the overall testimony, the act of, and outspoken utterance about, sexual experience seems to be demonized.

The second narrative, which the caseworker found credible, clearly spoke to the so-called rescue narrative that favors identity. While the narratives of persecution that are depicted in "loud and proud" sexual

practices might seem unintelligible to asylum adjudicators, obscure narrations of a wounded sexual identity appear to be found credible.

What is at stake is multifaceted, having normative implications. The authentic homosexual asylum seekers, who are worthy of protection, are romanticized with the inclusion of a love aspect and rendered vulnerable and innocent because they are being denied to love. What seems to be granted is the freedom to live out their sexual identity, rather than providing a safe haven for merely same-sex sexual conduct. Perhaps, people whose testimonies are found credible and who are rewarded with refugee status are those ones whose lives would have been grievable in case they are not saved. To be denied the freedom to engage in non-normative sexual conduct is not necessarily considered as a recognizable loss. Worthy claimants are constituted when their desire to be able to have a non-normative sexual life is accompanied by an intelligible sexual identity. The intelligibility of this sexual identity is predominantly characterized by Norwegian norms. Foreign homosexuals are depicted as victims and sufferers, which is also quite noticeable in Norwegian foreign policies that represent the country as a savior of oppressed homosexuals abroad (Stoum 2012, 32). Similarly, Norwegian asylum policy acts like a savior – which is plausible, given that it is an asylum receiver country. The weight placed upon the themes related to love and romance, however, requires further thinking. "Love" has also been an aspect that is frequently accentuated since the modern gay and lesbian liberation movement begun in Norway around 1950, with the use of the term *homofil* [homophile] instead of homosexual (Hellesund 2010, 306). The adoption and maintenance of the term homophile is considered to be a strategy because the term emphasizes love and friendship, in comparison to sexual connotations of the term homosexual (Bolsø 2008; Hellesund 2010).

The love aspect and the focus on homophile as an unchangeable identity, has also been used by the Norwegian national association for gays, lesbians, bisexuals, and transgender people (LLH) as a strategic maneuver to press the Norwegian authorities to welcome more people who seeks asylum based on sexual orientation. In her short essay "Identitet på flukt" [Fleeing Identities] in the Norwegian newspaper *Dagsavisen*

on June 30, 2009, Karen Pinholt, the leader of LLH at that time, reminds the Norwegian authorities about the horrific circumstances in which gays and lesbians live outside Norway: "In some places, people even risk death penalty because they love a person of the wrong gender." (Pinholt 2009) In 2009, when discretion requirement was still applicable, Norway used to send people back to their country, advising them to adapt the sociocultural norms of their country of origin. In her essay, Pinholt criticizes this policy with a strong emphasis on the immutable traits of sexual orientation and gender identity by writing:

> Homophile and transgender are about identity, not just sexuality, and cannot be given up. Until all the officers of immigration administration realize this, these groups are not ensured protection in Norway. (Pinholt 2009)

This style of advocating, with frequent vocalization of the assumed love aspects and immutability of homosexuality, for non-heterosexual asylum seekers are quite analogous to the understanding of an intelligible sexual orientation expressed by the caseworkers mentioned in this study.

An emphasis on love and romance is also known to be a sexual norm of the Norwegian gender equality policy, based on heteronormative families and long-lasting marriages, including same-sex unions (Røthing and Svendsen 2011, 1956–7). Romantic love is also an issue frequently mentioned in studies on Norwegian immigration policies, mainly family reunification polices, as a determinative aspect of the marital legitimacy (Muller Myrdahl 2010; Eggebø 2013). Furthermore, love is an aspect that is frequently brought up in the international arena for the rights of LGBT people and asylum seekers. For instance, Amnesty International's (2015) famous slogan, "Love is a human right," was used to urge for the legalization same-sex marriages around the world and, soon after, was adopted for diverse campaigns to decriminalize homosexuality in various countries. In 2009, UNHCR published a report on asylum seeking on the grounds of sexual orientation, named "Fleeing for Love" (Hojem 2009).

Concluding Thoughts

This paper illuminates that it is not easy to talk about a pattern or a standard practice that caseworkers follow to evaluate their asylum applicants. Previous studies noted that reduction of sexual identity to sexual practice during asylum assessments is fallible due to its essentialist premises. In this sense, informants of this study demonstrated a different position as they considered sexual orientation independent of sexual practice. However, their practice of evaluation remains problematic as they have a tendency to render accounts on sexual experiences irrelevant or misleading for the overall assessment. Because of this forceful detachment of sexual practice from sexual identity, informants trap into a reverse essentialism where sexual identity is favored at the expense of sexual act and practices.

To sum up, this paper examined a selection of interviews conducted with UDI asylum caseworkers in Oslo regarding the subject of gay and lesbian asylum seekers in Norway. It is crucial to underline that these examples neither represent nor constitute the overall complex texture of asylum evaluation in Norway for sexual minorities. Asylum assessment is a complex and dynamic procedure that situates caseworkers amid legislations, guidelines, and asylum testimonies. The interview material analyzed here only provides the insights of the UDI asylum units I interviewed. A more profound investigation would entail further research that would encompass other asylum units of the UDI. In this sense, I prefer to present this work as an entry point for discussing the dynamics of assessment of sexual orientation-based asylum claims in Norway.

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NOTES

1. See also, UNHCR (2008, 5).
2. Read more on Landinfo at http://www.landinfo.no/id/162.0.
3. This study encompasses jurisdictions in Australia, the United Kingdom, Canada, and New Zealand.
4. The instructions add that the accumulation of these conditions can sometimes be characterized as persecution.
5. See also, Paoli and Zhu (2013).
6. Unit C1 "Djibouti, Kenya og Somalia," and Unit C4 "Africa Other – Øvrige afrikanske land."
7. Non-heterosexual asylum seekers coming from Iran are frequently mentioned in public debates, holding a certain degree of popularity in Norway. See Hojem (2009) for an insightful overview of some popular cases in Norway, regarding Iranian asylum seekers.
8. For instance, UDI sent a representative as a speaker during the panel debate Beviselig LHBT – Provable LGBT, organized during the Pride House Oslo arrangement. There were also speakers from Queer World and Norwegian Organization for Asylum Seekers on the same panel.
9. The Norwegian Immigration Appeals Board, practice base, Referanse: N1464151030.

SAMMANFATTNING

Norge har beviljat asyl på grund av sexuell läggning sedan 1997. Utvärderingen av dessa fall fortsätter emellertid att vara omstridd och frågor om vad som utgör en förståelig sexuell läggning och risk för förföljelse debatteras alltjämt. Artikeln granskar det norska Utlendingsdirektoratets (UDI) nuvarande utvärderingspraktiker. Med hjälp av semistrukturerade intervjuer med handläggare på UDI söker artikeln svara på frågan: Hur förstår handläggare på UDI begriplig sexuell läggning och trolig risk för förföljelse?

Före år 2012 hände det ofta att immigrationsmyndigheterna uppmanade lesbiska och homosexuella asylsökanden att uppföra sig diskret för att undgå förföljelse i hemlandet. Men sedan ett tillägg, till följd av ett utslag av Storbritanniens högsta domstol, gjorts i aktuella direktiv förekommer det inte längre att någon nekas asyl med hänvisning till ”diskretionskravet”. Om en person tvingas dölja sin sexuella läggning för att undgå förföljelse, anses det följaktligen att denna person har en välgrundad rädsla för förföljelse på grund av ett väsentligt personlighetsdrag.

Intervjumaterialet visar att handläggarna har olika uppfattningar om en förståelig sexuell läggning. Några har en mer queerinriktad, icke-essentialistisk syn på sexuell läggning, medan andra verkar följa gaystereotyper. Samtliga understryker att den sökandes sexuella erfarenheter inte spelar någon avgörande roll i deras utvärdering. Under asylintervjuerna undviker de i själva verket att tala med sökande om sexuella handlingar. Det beror delvis på den intervjuträning som handläggarna får. De är alltså medvetna om hur känsliga sexualitetsrelaterade ämnen kan vara och föredrar att inte berör sådana saker i mötet med asylsökandena. Artikelns intervjumaterial visar dock att handläggarna tycker att det är suspekt om asylsökandena själva tar upp sina sexuella erfarenheter. Historier om sexualitet, menar informanterna, skapar snarast tvivel om redogörelsernas trovärdighet. Det som tycks spela en avgörande roll i beslutsfattandet är framställningar av skam, stigmatisering och sårbarhet. Dessutom verkar berättelser om romantiserade icke-heterosexuella på jakt efter kärlek, anses som mer trovärdiga. Studiens resultat ligger i linje med norsk sexualpolitik som, som hithörande litteratur visar, betonar betydelsen av romantisk kärlek som norm och sexuella identiteter som oföränderliga.

Keywords: sexuality, queer, asylum, Norway