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Sexual nationalism and asylum in Switzerland: How deservingness and credibility are created in the discourse about asylum claims pertaining to sexual orientation and gender identity

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Presented by:

Mathis Schnell

Supervised by:

Philip Balsiger, Professor, University of Neuchâtel, Switzerland

Janine Dahinden, Professor, University of Neuchâtel, Switzerland

Presented to the following committee:

Phillip M. Ayoub, Professor, University College London, United Kingdom

Jan Willem Duyvendak, Distinguished Research Professor of Sociology, University of
Amsterdam, the Netherlands

Mengia Tschalaer, Adjunct Full Professor of Anthropology and Law and Society, John Jay
College of Criminal Justice, City University of New York, USA

Publicly and successfully defended on 16 April 2025

IMPRIMATUR

La Faculté des lettres et sciences humaines de l'Université de Neuchâtel, sur les rapports de Mme Janine Dahinden, co-directrice de thèse, professeure, Université de Neuchâtel ; M. Philip Balsiger, co-directeur de thèse, professeur, Université de Neuchâtel ; M. Phillip M. Ayoub, professeur, University College London, UK ; M. Jan Willem Duyvendak, Distinguished Research Professor of Sociology, University of Amsterdam, the Netherlands ; Mme Mengia Tschalaer, Adjunct Full Professor of Anthropology and Law and Society, John Jay College of Criminal Justice, City University of New York, USA autorise l'impression de la thèse présentée par M. Mathis Schnell en laissant à l'auteur la responsabilité des opinions énoncées.

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Le doyen

Loris Petris

p. o.


Abstract

In recent decades, the nature of asylum claims in Switzerland has changed. A significant novelty is the increase in claims based on persecution related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) – both in terms of quantity and as a subject of political debate. As in other countries, this category of claims – and the overall phenomenon of queer asylum – turns out to be an issue related to pre-existing discourses of sexual nationalism and the precise configuration and design of the asylum system: Relatedly, the nationalist project of Switzerland – as in many other Western European countries – is informed by supposedly liberal, progressive, and humanitarian ideas – while the asylum systems are becoming more and more restrictive. In this dissertation, which consists of three scientific articles, I therefore pursue the following research question:

How does the discourse on queer asylum in Switzerland interact with the country's predominant sexual nationalism and exclusivist asylum system?

I investigate this discourse at two distinct levels. First, for the public-political level, I argue that the relevant actors produce narratives of deservingness that function as a means of filtering and triaging access. Some claims are deemed ‘deserving’. Their acceptance feeds the ideal of being a queer liberal and humanitarian nation. Others are deemed undeserving and are thus excluded. Second, at the level of legal discourse, I argue that the expectations regarding SOGI-related cases have led to an amplified importance of credibility assessments and legal representation for SOGI-related cases in court.

Empirically, the thesis combines qualitative and quantitative data sources and analyses and applies a sequential mixed-method research design. My data corpus consists of newspaper articles, parliamentary minutes, expert interviews, and over 44,000 asylum appeal claims. Using this data, I apply grounded theory–inspired critical discourse analysis and quantitative text-as-data methods to identify and analyse the discourse. The first article focuses on the public-political level of the discourse about sexual/queer asylum. Here, I investigate what narratives of deservingness can be found in Switzerland. I find that

notably geopolitical imaginaries, Western notions of queerness, vulnerability, and credibility are central narratives in the debates about deservingness.

The second article addresses the amplified role of credibility in SOGIESC-related asylum claims. I analyse the case law of the Swiss appeal court and show that SOGIESC-related claims are subject to high levels of credibility assessments, highlighting how credibility serves as a central element of the legal level of the discourse. Importantly, the relevance of credibility is, when compared to non-SOGIESC cases, amplified in such cases.

In the third article, I highlight the role of legal representation in SOGIESC-related asylum claims. For all asylum cases, (quality) legal representation significantly increases the likelihood of a favourable decision. Probably due to the complexity of SOGIESC cases, this effect is, however, amplified in SOGIESC-related cases, compared to the others. Here, I further show that represented, SOGIESC-related cases are positively correlated with credibility-related formulations, indicating that experienced legal representatives can counter-argue the credibility-related arguments of the institutions, but also argue in favour of the claimant's credibility.

I offer several contributions to the literature. By examining different levels of discourse, I provide a nuanced understanding of the Swiss case. Specifically, I show which narratives can be found in the public-political sphere and how they are used by different actors. At the same time, I show how influential credibility assessments are in this area of asylum law and how central the role of legal representation is in this context. Finally, thanks to the quantitative approach, I further advance the marginal but emerging field of queered quantitative research.

Keywords: Switzerland, SOGIESC, queer, asylum, sexual nationalism.

Résumé

Dans les dernières décennies, les caractéristiques des demandes d'asile en Suisse ont significativement changé. Une nouveauté est l'augmentation des demandes basées sur la persécution liée à l'orientation sexuelle, à l'identité et à l'expression de genre, ainsi qu'aux caractéristiques sexuelles (OSIEGCS) - tant en termes de nombre de demandes que de sujets de débats politiques. Comme dans d'autres pays, cette catégorie de demandes s'avère être une question liée à des discours préexistants de nationalisme sexuel et à la configuration et à l'architecture précis du système d'asile. Le projet nationaliste de la Suisse - comme dans de nombreux autres pays d'Europe occidentale - est façonné par des idées supposément libérales, progressistes et humanitaires - tandis que les systèmes d'asile deviennent de plus en plus restrictifs. Dans ce contexte, cette dissertation, composée de trois articles scientifiques, répond à la question de recherche suivante :

Comment le discours sur l'asile queer en Suisse interagit-il avec le nationalisme sexuel dominant et le système d'asile restrictif du pays ?

J'examine ce discours à deux niveaux distincts. D'abord, pour le niveau public-politique, je démontre que les acteurs concernés produisent des récits basés sur le 'mérite' qui fonctionnent comme un moyen de filtrer et de trier l'accès : certaines demandes sont jugées 'méritantes' alors que d'autres ne le sont pas. L'acceptation d'une partie des demandes alimente l'idéal d'être une nation (queer-) libérale et humanitaire. Les autres demandes, jugées 'non méritantes', sont donc exclues. Ensuite, au niveau du discours juridique, je montre que les attentes liées aux affaires OSIEGCS ont conduit à une importance amplifiée des évaluations de vraisemblance et de la représentation légale pour les affaires liées à l'OSIEGCS devant les tribunaux.

Sur le plan empirique, la thèse s'inscrit dans une méthodologie mixte qui combine des sources de données et des analyses quantitatives ainsi que qualitatives. Mon corpus de données se compose d'articles de journaux, de procès-verbaux parlementaires, d'entretiens avec des experts et de plus de 44 000 décisions de cas de recours. Grâce à ces données, je produis non seulement une analyse qualitative et critique du discours, mais

aussi une analyse quantitative de ce discours basée sur les données textuelles. Le premier article se concentre sur le niveau public-politique du discours sur l'asile queer. J'examine quels récits de mérite peuvent être trouvés en Suisse. Je constate que, notamment, les imaginaires géopolitiques, les notions occidentales de queerness, de vulnérabilité et de vraisemblance sont des récits centraux dans les débats sur le mérite.

Le deuxième article aborde le rôle amplifié de la vraisemblance dans les demandes d'asile liées à l'OSIEGCS. J'analyse la jurisprudence de la Cour d'appel suisse du Tribunal administratif fédéral (TAF) et montre que les demandes liées aux OSIEGCS sont soumises à des exigences élevées d'évaluation de vraisemblance, soulignant comment la vraisemblance sert d'élément central au niveau juridique. Dans le troisième article, j'examine le rôle de la représentation légale dans les demandes d'asile liées aux OSIEGCS. Pour tous les cas d'asile, je démontre qu'une représentation légale (de qualité) augmente considérablement la probabilité d'une décision favorable. En raison de leur complexité, cet effet est amplifié dans les cas liés aux OSIEGCS par rapport aux autres. Je montre également que les cas liés aux OSIEGCS ayant une représentation juridique sont positivement corrélés avec des formulations liées à la vraisemblance.

Dans cette dissertation, je propose plusieurs contributions à la littérature queer asylum. En examinant deux niveaux de discours, je fournis une compréhension nuancée du cas suisse. Plus précisément, je montre quels récits peuvent être trouvés dans la sphère public-politique et comment ils sont utilisés par différents acteurs. Je démontre également comment les évaluations de vraisemblance ont des effets dans le domaine du droit d'asile et comment le rôle de la représentation légale est central dans ce contexte. Enfin, grâce à l'approche quantitative, je participe au développement du domaine encore marginalisé, mais néanmoins émergent, de la recherche quantitative queer.

Mots-clés : Suisse, OSIEGCS, queer, asile, nationalisme sexuel.

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Acronyms

ARK	Schweizerische Asylrekurskommission (Former Swiss Asylum Appeal Commission, replaced by the FAC in 2007)
BFM (FOM)	Bundesamt für Migration (Federal Office for Migration)
CJEU	Court of Justice of the European Union (Luxembourg). Technically, the rulings are not binding for Switzerland. However, if there are no pertinent reasons against, the Swiss authorities respects the verdicts (Oesch, 2023).
COI	Country of Origin Information
CSS	Computational Social Science
ECtHR	European Court of Human Rights (Strasbourg). Binding for Switzerland.
EU	European Union
FAC	Federal Administrative Court (Swiss appeal court)
FLINTA	Female, lesbian, inter, non-binary, trans and agender people
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
LGBTQI+	Lesbian, gay, bisexual, transgender, queer/questioning, intersex, +
PSG	Particular social group
RSD	Refugee Status Determination
SEM	State Secretariat for Migration (First instance Switzerland)

SOGI(ESC)	Sexual Orientation, Gender Identity (Expression, and Sex Characteristics)
UNHCR	United Nations High Commissioner for Refugees

Consolidated glossary

Credibility

A central issue in the asylum process. Indicates whether a decision-maker/actor in the discourse considers a claim to be legitimate and coherent (Millbank, 2021). For example, if the claimant actually belongs to a SOGIESC group, has actually been persecuted, and/or faces future persecution (Held & Dustin, 2018; Selim et al., 2022). Socially constructed in context. Potential marker of deservingness.

Deservingness

A discursive element that indicates whether or not an actor considers an individual/a group to be deserving and worthy of protection status. Can be based on various reasons (e.g., whether an individual is perceived as vulnerable enough to be protected) (Clerc, 2022; Strasser, 2022) and can be applied to individuals and groups. It depends on the dynamics in which it is embedded, such as temporality or geographic location (Holmes & Castañeda, 2016; Ravn et al., 2020). Often influenced by culturalized, gendered, and class-based reasonings (Bonjour & Duyvendak, 2018; Streinzer & Tošić, 2022). In the context of this thesis, to be understood as “*a moral assessment of distribution processes*” (Streinzer & Tošić, 2022: 2).

Geopolitical imaginaries

Imaginary that the decision-maker/actor in the discourse has about a country of origin (van der Kist & Rosset, 2020). For example, do they understand the applicant’s country of origin to be particularly, inherently, and collectively queerphobic and dangerous? May relate to the factual situation (e.g., legislation), but can also develop independently of it (e.g., due to postcolonial ideas and representations). Potential marker of deservingness.

Humanitarianism

A mode of governance that focuses on the innocent, morally legitimate “*suffering body*” and uses moral and compassion-based reasoning to alleviate the immediate suffering of particular populations (D. Fassin, 2012; Ticktin, 2011). Dominant force in contemporary

politics, often gendered and/or focused on children (Streinzer & Tošić, 2022; Ticktin, 2011). Reasoning that tends to react to events (e.g., natural disasters) rather than anticipate them. At the same time it depoliticizes processes, because the actions taken are based on an allegedly global and ahistorical set of morals and values, they focus on moral sentiments rather than rights, but do not challenge structures. (Ticktin, 2014, 2016; D. Fassin, 2012). Central historical myth of the Swiss nationalist project (Büchler, 2022; Uebersax, 2019).

Intersectionality

Theoretical paradigm/perspective originally developed to illustrate the interacting effects of gender and race for women of colour in the US (Crenshaw, 1989; Spierings, 2023). Used to examine the intersecting effects of discrimination and exclusion of different social identities, experiences, and identity markers in different contexts (Manalansan, 2006). In the case of this thesis it allows us to answer such questions as whether the exclusive forces of asylum systems – in terms of deservingness and decision-making – affect, for example, homosexual women differently than homosexual men or non-binary persons, and what the role and effects of race, religion, ethnicity, social class, ... are (Fischer et al., 2020; Millman, 2023; Tschalaer, 2020).

Nationalism

An ideology and political project that aims to unify and consolidate an (imagined) community within defined boundaries, sharing a history and a future (Wimmer, 2002). Defines inclusion and exclusion. The exact modelling varies across contexts (B. R. O. Anderson, 2006; Wimmer, 2002). However, different forces and rationales can constitute different nations (e.g., religion, print media, institutions). In practice, it can be understood as the processes of nation-building and nation-maintenance (Wimmer, 2002; Sharma, 2020; Gellner, 1983).

Queer liberalism

On the one hand, a critique/framework developed in queer theory to grasp processes of assimilation and *“the consolidation of the confluence between a more conservative and contained version of queerness and liberal rights discourses”* (Saleh & Tschalaer, 2023:

1774). In this thesis, on the other hand, also a set of values and potentially an element of a country's sexual nationalism: A mode of governance in which certain forms of queerness have been domesticated, mainstreamed, and incorporated into the nationalist project (Saleh, 2023; Tschalaer, 2019a); hence the idea of being a liberal, progressive, and advanced community. Also an assimilation and depoliticization of queerness, such as by reducing queerness to consumerism and "*rainbow capitalism*" (Puar, 2007; Saleh & Tschalaer, 2023). However, it is also an exclusivist force because it only mainstreams certain forms of queerness and erases other dimensions such as class, ethnicity, race, etc., and thus lacks an intersectional perspective (Saleh, 2023; Saleh & Tschalaer, 2023). May also lead to culturalized hierarchies and processes of othering.

Sexual nationalism

The sexualized/gendered dimension of a nationalist project. Describes which forms of gender/sexuality/SOGIESC are included and excluded from the national community/imaginary. Sexual nationalisms change between contexts and can be, for example, queer-friendly ('we are a tolerant nation') and queer-exclusive ('we defend traditional family values') (Jaunait et al., 2013; Mepschen, 2024; E. Fassin, 2012). Can be a means of in/exclusion, for instance by "*casting (post)migrants out as moral and sexual others, 'not integrated' because of their alleged (universal) homophobia*" (Duyvendak & Mepschen, 2012: 75) since non-correspondence to the image may imply non-belonging.

Vulnerability

Increasingly important category in the international refugee system, ambiguous term with many contextual meanings, impacting discourses and decisions (Strasser, 2022). For this thesis, in the context of a regime driven by compassion and humanitarian reasoning (Ticktin, 2011), a central force and a state of someone ('being vulnerable'). Vulnerability is an externally constructed attribute of an individual/group that determines whether or not they are considered worthy of protection. Relatedly, gender and age are central drivers of attributed vulnerability (vulnerable children and the elderly) (Strasser, 2022). Potential marker of deservingness.

Western notions of queerness

Socially constructed ideals to which a deserving (queer/LGBTIQ+) asylum seeker corresponds in the eyes of a Western decision-maker/actor in the discourse. Linked to stereotypes (Topel, 2017) and a potential marker of deservingness.

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Part 1

1 Introduction

In recent decades, the characteristics of asylum claims have changed significantly. Internationally, this has given rise to new questions about the politics of access, asylum governance, and ultimately about belonging (Duyvendak & Mepschen, 2012; Efionayi-Mäder et al., 2001). One notable example is the substantial increase in asylum claims based on persecution related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) – a phenomenon often referred to as queer asylum – which has sparked various legal and political debates (Millbank, 2021; Raboin, 2017). An example that highlights these debates can be found in an article from the Swiss tabloid *20 Minuten*.¹ The article addresses a 2013 ruling from the Court of Justice of the European Union (CJEU),² in which the judges constituted that homosexuality can be grounds for asylum in certain situations. When asked about his opinion, a right-wing member of the Swiss national parliament expressed scepticism and concern about the potential abuse of the asylum system:

It would be extremely difficult to prevent abuse – especially as it would be difficult to check whether someone is actually homosexual or simply claims this in the asylum procedure.³

Meanwhile, an employee of a human rights NGO argued that

it would be an indictment of Western countries that pride themselves on their fundamental

¹ Büchi, J. (2013): 20 Minuten: Asyl für Schwule: “Schon wer Baileys trinkt, wird verhaftet” (<https://www.20min.ch/story/schon-wer-baileys-trinkt-wird-verhaftet-649863807748>) [16.6.2024].

² European Database of Asylum Law (2013): The Court of Justice of the European Union Delivers Judgment in the Joined Cases of C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie en Asiel. (<https://www.asylumlawdatabase.eu/en/content/court-justice-european-union-delivers-judgment-joined-cases-c-19912-c-20012-and-c-20112-x-y>) [21.10.2023].

³ “Es wäre äusserst schwierig, Missbräuche zu verhindern – zumal schlecht überprüft werden könne, ob jemand tatsächlich homosexuell ist oder dies einfach im Asylverfahren behauptete” (own translation).

³ “Für westliche Länder, die sich ihrer Grundrechte rühmen, wie die persönliche Freiheit, einschliesslich der geschlechtlichen Orientierung, wäre es ein Armutszeugnis, wenn sie in Panik verfielen und eine Invasion von Homosexuellen beschwören würden

rights, such as personal freedom, including sexual orientation, if they were to panic and conjure up an invasion of homosexuals.⁴

While the quotes indicate contrasting viewpoints – one dismissive, the other inclusive – they highlight two central elements of the discourse concerning this category of asylum claims. First, decision-making in such cases is a sensitive and controversial issue. After all, street-level bureaucrats⁵ attempt to assess intimate and personal aspects such as sexual orientation/gender identity (Kobelinsky, 2015; Millbank, 2021). Second, the discourse encompasses political elements, notably about the nationalist project and the self-image of the countries of arrival (Duyvendak & Mepschen, 2012; E. Fassin, 2009; Raboin, 2017). Relatedly, in the second quote, the NGO employee directly linked the topic to Western countries' self-image. As I demonstrate in this thesis, these two aspects – the delicate decision-making and the political relevance of the issue to the nationalist project Switzerland – are crucial to the understanding the discourse about the phenomenon of SOGIESC-related asylum claims. This holds especially true in times of allegedly (queer-) liberal sexual nationalisms and humanitarian reasoning⁶ in Western Europe and Switzerland – hence in times when the political projects of national identities are increasingly linked to certain (liberal) values concerning sexuality, gender, potentially some forms of queerness, and the idea of being a humanitarian nation protecting those genuinely in need (see also Chapter 3, Duyvendak & Mepschen, 2012; Fassin, 2012; Saleh & Tschalaer, 2023).

Coming back to the newspaper article, even though the landmark judgment⁷ of the CJEU mentioned only dates from 2013, the international emergence of the phenomenon of

⁴ “Für westliche Länder, die sich ihrer Grundrechte rühmen, wie die persönliche Freiheit, einschliesslich der geschlechtlichen Orientierung, wäre es ein Armutszeugnis, wenn sie in Panik verfielen und eine Invasion von Homosexuellen beschwören würden” (own translation).

⁵ “Here understood as state-employed agents” (Borrelli, 2022: 1).

⁶ See below.

⁷ Technically, Switzerland is in many domains not bound to the decisions of the CJEU. However, for the sake of a uniform legal practice with the EU, Swiss courts mostly follow the decisions of the CJEU, unless there are pertinent reasons to do otherwise (see e.g., Oesch (2023), and BVGER (2018)): BVGE 2017 VI/9. (<https://bvger.weblaw.ch/cache?guiLanguage=de&q=eugh&id=98a2c0b6-78ee-4bac-9fe8-8878ae138cef&filters=%5B%5B%22panel%22%2C%5B%22Abt.%20V%20%28Asylrecht%29%3B%3BCour%20V%2>

asylum claims pertaining to SOGIESC can be traced back to the late 1970s/early 1980s, with the Dutch authorities among the first to assess related claims. Also, a parliamentary resolution regarding access practices for such claims was filed in the Netherlands in 1979 (European Council on Refugees and Exiles, 1997). In the following decades, an increasing number of SOGIESC-related claims were submitted in various countries, including South Africa, Canada, and France. Eventually, the receiving countries began to evaluate the cases, while a national and international jurisprudence was developed. Similarly, in the 2000s, persecution pertaining to SOGIESC was also institutionalized within the UNHCR (Hamila, 2021). On the level of the European Union, sexual orientation, gender identity, and gender are also mentioned in the 2004 and 2011 Council Directives (Article 10), which aim to establish higher standards of protection.⁸ At present, most national asylum systems have established guidelines in this area (Büchler, 2022; Ferreira & Danisi, 2021).

While the phenomenon of queer asylum emerges and travels, scholars argue that international refugee law has undergone a process of 'queering', whereby courts, lawyers, and other actors have gradually influenced and adapted the treatment of SOGIESC-related claims, by incorporating certain 'queer elements' into the international refugee system (Ferreira & Danisi, 2021). This evolution can be illustrated by many examples: For instance, there has been a significant shift in the legal doctrine and debate – such as from the question of whether homosexuality can be relevant to asylum at all to that of which interrogation techniques are appropriate and which must not be used.⁹ There have also

0%28droit%20d%27asile%29%3B%3BCorte%20V%20%28diritto%20di%20asilo%29%3B%3BAbt.%20V%20%2) [27.12.2024].).

⁸ Official Journal of the European Union (2004): Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0083>) [25.11.2024] and Official Journal of the European Union (2011): Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (<https://eur-lex.europa.eu/eli/dir/2011/95/oj>) [25.11.2024].

⁹ European Database of Asylum Law (2013): The Court of Justice of the European Union delivers judgment in the joined cases of C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie en Asiel. (<https://www.asylumlawdatabase.eu/en/content/court-justice-european-union-delivers-judgment-joined-cases-c-19912-c-20012-and-c-20112-x-y>) [21.10.2023] and European Database of Asylum Law (2014): CJEU –

been multiple national and international court rulings on whether an asylum seeker can be expected to avoid potential persecution by behaving discreetly (Wessels, 2021). In any case, SOGIESC-related claims have become a prominent element of international and national asylum governance. However, as is invariably the case with asylum, institutional practices in this regard remain incoherent – for instance the still widespread use of arguments banned by courts (Wessels, 2021; Zisakou, 2021) – and are riddled with contradictions (Eule et al., 2019; Millbank, 2021).

Probably since the late 1980s,¹⁰ the phenomenon has also been present in Switzerland (Bertschi, 2007; Hruschka & Portmann, 2012; Werenfels, 1987). Here, the increase in asylum cases related to SOGIESC has been accompanied by public debates and has prompted institutions to develop guidelines. Correspondingly, Swiss institutions such as the State Secretariat for Migration (SEM), the former Asylum Appeal Commission (ARK), and the current appeal instance – the Federal Administrative Court (FAC) – have assessed related claims, giving rise to questions such as how can (and should) institutions assess the credibility of a sexual orientation (Millbank, 2009; Selim et al., 2022). In terms of public debates, parliaments at several levels discussed the issue, newspapers covered the developments, and the phenomenon gained momentum (Büchler, 2022; Hruschka & Portmann, 2012).

Motivated by questions about the public-political and legal levels of the discourse on the phenomenon, I examine the issue of queer asylum in the Swiss context. I examine the emergence of the issue and the characteristics of the public-political and legal levels of the related discourse. Several aspects make the phenomenon special. As mentioned above, the first is the identification of ‘a SOGIESC’: How to prove one’s belonging to this category? And how to avoid basing this assessment on Eurocentric perceptions of SOGIESC? Furthermore, the question of future persecution is central to these cases: After all, SOGIESC

Joined Cases C-148/13 to C-150/13, A, B and C v Staatssecretaris van Veiligheid en Justitie, 2 December 2014. (<https://www.asylumlawdatabase.eu/en/content/cjeu-joined-cases-c%E2%80%9114813-c%E2%80%9115013-b-and-c-v-staatssecretaris-van-veiligheid-en-justitie-2>) [24.10.2023].

¹⁰ The oldest source I found on the subject (respectively gender- and homosexuality-related asylum) in Switzerland is the dissertation of Werenfels (1987).

are characteristics and identity markers that may lead to persecution in the future as well. This raises the question of how the authorities should assess the likelihood of such events occurring in the future. Ultimately, such difficulties increase the chances of a claim being challenged as implausible and subsequently rejected, suggesting the heightened relevance of disbelief and credibility in such cases, as noted by scholars and legal practitioners (Millbank, 2021; Vogler, 2016). These are just a few points, but they show that SOGIESC-related cases have certainly earned their reputation as a complicated category of claims. These aspects are particularly relevant for Switzerland, where the handling of such claims is described as relatively restrictive compared to neighbouring countries such as Germany (Mutz, 2021).¹¹ In addition to these practical and legal challenges, it is also important to consider what I call the political dimension of the phenomenon.

Scholars have demonstrated how such issues as gender, gender roles and identity, and sexuality inform the nationalist projects (e.g., Yuval-Davis, 2003), and thus how sexual nationalisms are central to understanding the creation and formation of national entities – also in relation to the fields of immigration and asylum (Duyvendak & Mepschen, 2012; Fassin & Salcedo, 2015; Puar, 2007). For example, in several (North-)Western European countries, queer-liberal narratives characterize the public discourse and sexual nationalisms (e.g., Norway: Akin, 2019, the UK: Raboin 2017, and Germany: Tschalaer, 2019a). Various actors – be it politicians or the authorities - thus tend to present their countries as queer liberal safe havens. In the countries in question, the nationalist projects – and thus their politics of access - are pervaded by queer-liberal stances, the idea of pioneering and championing liberal and progressive values towards (some) SOGIESC and forms of queerness.

In said countries, queer-liberal stances inform the predominant nationalist projects. Based on Puar (2007, 2013), Saleh and Tschalaer (2023), and Tschalaer (2019a), I understand queer liberalism as “*a mode of governance*” (Saleh & Tschalaer, 2023: 1769), that

¹¹ For a comparison between the European states: ILGA Europe Rainbow Map, LGBTI asylum human rights standards 2024. (<https://rainbowmap.ilga-europe.org/categories/asylum/>) [11.12.2024].

incorporates and mainstreams certain forms of queerness into nationalist thinking: Some forms of queerness are ‘normalized’ – sometimes rather conservative forms, and paired with a liberal rights discourse (Saleh & Tschalaer, 2023: 1774). In doing so, relevant actors underpin their own, (newly found) liberalism towards (some forms of) queerness, while creating cultural hierarchies, as (externally attributed) non-compliance can be used as an argument for exclusion and distinction. Understanding queer liberalism as part of the nationalist thinking and contemporary political ideals of Western European states reveals that some forms of queerness are mainstreamed, and how this is used as a means of nation-building and distinction. Likewise, queer liberalism also has a selective side: a queer liberalism that mainstreams, for example, some same-sex (often white, middle-class) couples does not necessarily imply that all forms of queerness are equally tolerated. Similarly, and as pointed out by scholars such as Puar (2007) and Saleh and Tschalaer (2023), the politics of queer liberalism tends to forget and conceal other factors such as race, religion, and ethnicity and can thus even be exclusivist for some bodies. Relatedly, in those countries, we may contend that these queer-liberal stances impact the discourse about queer asylum.

In this dissertation, similar considerations are made for Swiss sexual nationalism and the related political relevance of the phenomenon (Büchler, 2022). In the context of queer immigrant women, for example, Büchler (2022) shows how ideas of Switzerland being a queer-liberal and progressive safe haven persist. However, while I strongly agree with this analysis, one caveat should be made: Current queer asylum research in (North-)Western Europe often builds on theoretical reflections on queer liberalism in (North-)Western European countries, I posit that such an argument nevertheless needs to be nuanced when researching the Swiss case. Potentially, queer-liberal discourses are less prevalent and dominant in Switzerland than in other (North-)Western European countries such as the Netherlands. As I will argue later, the predominant Swiss sexual nationalism is partly informed by queer liberalism but debates about gender equality and women’s rights dominate. The discourse on sexuality and gender appears to be somewhat different in

Switzerland than in otherwise similar countries. But, as with queer liberalism, this discourse also has exclusionary elements.

In practice, gender equality, women's rights, and SOGIESC-related legislation in Switzerland have historically always been deferred (Büchler, 2022; Fischer & Dahinden, 2017; Studer, 2001). And to this day, the legislation relating to gender, sexual orientation, and gender identity is hardly pioneering, liberal, progressive, or emancipatory. However, gender equality, and how it is achieved, seem to be the central theme of the political discourse (e.g., Dahinden & Manser-Egli, 2023; Kristol et al., 2024). The current Swiss sexual nationalism – including in its relation to asylum – is thus influenced by queer-liberal ideas, but also heavily characterized by debates around gender equality and women's rights – and contrasted with a conservative and deferred sexual regime. To understand the Swiss case, it therefore makes sense to understand the (sexual) nationalist project in a slightly adapted way.

Furthermore, when researching asylum in Switzerland, the aspect of the humanitarian self-image must be considered as well (Büchler, 2022; Uebersax, 2019). In Switzerland, I propose that the topic of asylum is closely intertwined with the idea upheld by political actors that Switzerland is a humanitarian nation which takes care of a selection of victimized 'suffering bodies' (D. Fassin, 2012). This humanitarianism is a central element of the national self-understanding (of some actors) and (the ideal of) helping the vulnerable becomes a central political tool (Ticktin, 2014). However, the definition of said 'suffering body', which is to be saved by humanitarian actors, is always constructed within a specific historical and social context and must be "*morally legitimate in order to be recognized*" (Ticktin, 2011: 11). This quote already indicates that applied humanitarianism is always subject to societal debates. And, a humanitarian rationale renders protection status into an act of compassion, rather than a right of an individual (Clerc, 2022; D. Fassin, 2005). Consequently, those who qualify for humanitarian protection are considered as innocent victims, while the underlining the processes behind are seemingly apolitical (Ticktin, 2016; Ticktin, 2011).

Humanitarianism can further be understood as a mode of governance that assumes the universality of moral and individual rights. Relatedly, governance is driven by compassion and perceived levels of suffering (D. Fassin, 2012). Furthermore, Fassin uses “*the expression ‘humanitarian government’ to designate the deployment of moral sentiments in contemporary politics*” (2012: 1). In the context of this thesis, I understand humanitarianism as a crucial element of the nationalist self-image that various actors – such as institutions, politicians, or journalists – have of Switzerland, or at least promote in public discourses (e.g., Büchler, 2022; Pörtner, 2021; Uebersax, 2019). After all, as described by Büchler, “*the upheld ‘humanitarian tradition’ and especially the accommodation of refugees have been an integral part of the construction of Swiss national identity since the 19th century*” (2022: 35). I thus theorize humanitarianism to be a central factor of the self-image that said actors have in Switzerland – which, of course, does not necessarily correspond to reality (e.g., Uebersax, 2019), but is still important for reflections about asylum-related discourses in Switzerland. These attitudes are crucial to the nationalist project. Consequently, when analysing a discourse that pertains to asylum in Switzerland, we must keep the humanitarian aspect in mind.

In short, while scholars like Akin (2017, 2019) have highlighted how, for example, Norway constructs its self-image around the idea of being a queer-liberal safe haven (E. Fassin, 2012; Raboin, 2017; Tschalaer, 2019a), we must nuance this argument for Switzerland: The country’s sexual nationalism is characterized by delayed advances in terms of rights for women and LGBTIQ+/queer-identifying people, and the public discourse is informed by gender equality rather than queer liberalism. Or, formulated differently, the idea of being a queer-liberal nation is present as well, but potentially less dominant than in otherwise similar countries. In addition, the Swiss asylum system is known for its relative restrictiveness, including in terms of legislation for SOGIESC-related asylum,¹² and, finally, discourses about asylum in Switzerland are suffused with humanitarian reasoning.

¹² See: ILGA Europe Rainbow Map, LGBTI Asylum Human Rights Standards 2024. (<https://rainbowmap.ilga-europe.org/categories/asylum/>) [11.12.2024].

In such a constellation, queer asylum and the handling of SOGIESC-related cases are politically and legally highly sensitive issues. Understanding the related discourse provides valuable insights into a country's politics of access and nationalist project. I expect that this constellation shapes the discourse – for example the narratives found in the public-political debates and the legal considerations in the decision-making process. I argue that the constellation itself can be seen as a productive element shaping the Swiss discourse about the phenomenon of queer asylum.

1.1 Definition of key concepts: Terminology and discourse

To ensure an accurate and precise treatment of the subject, it is necessary to first provide a brief clarification of the terminology used. Ultimately, this field is characterized by a variety of terminology and no unanimous practice can be found in the literature. Fundamentally, I will employ the category SOGIESC asylum/SOGIESC-related¹³ asylum when referring to the category of cases I examine in this thesis. This acronym, used in (socio-)legal studies and by the (inter)national organizations,¹⁴ has several advantages (Dustin & Ferreira, 2021): First, it is comparatively inclusive because it covers a wide range of potential attributes. Second, it does not refer to categories of self-identification (which are often rooted in Western terminology), but rather to characteristics. This allows us to anticipate that an individual need not necessarily identify with a specific identity marker, but that the characteristics relevant to the persecution can also be attributed externally (Danisi et al., 2021): After all, the UNHCR Guidelines on International Protection No. 9 indicate that “*those perceived to be LGBTI*” may face persecution as well (UNHCR, 2012: 2). Third, the acronym SOGIESC may also be divided, allowing for nuanced statements, for example when comparing cases pertaining to sexual orientation or gender identity, notably against the background of more in-depth analysis of the different sub-categories. The term ‘SOGIESC’

¹³ When it makes sense, I apply the term ‘related’: After all, in many of the cases, SOGIESC is one topic among others (e.g., when analysing the case of a non-binary person from a religious minority). Hence, the term ‘related’ allows me to visibilize that there are other elements crucial to the cases as well.

¹⁴ For example: UNHCR (2025): Emergency handbook: Protecting lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons. (<https://emergency.unhcr.org/protection/persons-risk/protecting-lesbian-gay-bisexual-transgender-intersex-and-queer-lgbtqi-persons>) [25.01.2025].

makes it further possible to anticipate that, for example, the legal frameworks for addressing sexual orientation and gender identity-related cases are similar (Danisi et al., 2021), but also that there are partly differences in the implication of certain identity markers – for example for sexual orientation and gender identity (Güler et al., 2019).

At the same time, due to the queered angle of the thesis, notably when it comes to the topic in a theoretical sense and to refer to it as a political phenomenon, I will also use ‘queer asylum’ (see e.g., Giametta, 2018; Luibheid, 2008). This term has the advantage that it is widely used and accepted in the (queer migration) literature. Like SOGIESC, it is inclusive. Further, due to its embeddedness in queer theory, it also covers questions of power dynamics (and thus the political dimension) and the social embedding of the phenomenon (Sedgwick, 2008), which is not necessarily the case for SOGIESC. Relatedly, I also use ‘queer asylum’ when referring to the subject matter as a broad, political phenomenon. This approach – the concurrent use of SOGIESC and queer – therefore allows me to show when it is more about procedural-legal issues and when it is more about the phenomenon in a political and theoretical context.

While those are my principal categories, other related terminology will appear throughout the thesis: I am following the idea of staying close to the literature and data and when it comes to the terminology employed (see also Danisi et al., 2021). While it makes sense conceptually to strive for a uniform use of terminology, this may lead to misunderstandings: For example, when discussing literature or data that focuses explicitly on sexual orientation, the acronym LGB may be more adequate than SOGIESC, queer or LGBTIQ+. While the latter terms are clearly more inclusive than LGB, using them nevertheless leads to misguided conclusions, such as assuming that the results of a study about sexual orientation claims can be applied to gender identity claims. I will thus (critically) reuse the terms found in the data/documents, while indicating that the exact wording is due to the underlying document. This, however, has certain disadvantages, such as the risk of reproducing categories and being non-inclusive. Nevertheless, to avoid said misunderstandings, terms like ‘LGB’, ‘LGBT’ or ‘SOGI’ are used when they are most appropriate to describe a particular situation (Danisi et al., 2021). If known, I will further try

to respect the auto-identification of the individuals in question. Relatedly, it also seems important to me to underline that older data, and research mainly refers to (male) homo-/bisexuality (e.g., LGB), while more recent documents often use more inclusive language such as queer, LGBTIQ+ or SOGIESC. Using different terms allows a more precise picture to be drawn.

Before addressing further issues, two final remarks must be made. First, the terminology I used changed during the process of writing the PhD: Due to formalities (such as already having published/submitted articles), I was no longer able to adapt the terms employed in the articles and analyses, which is why, the articles mainly refer to SOGI and sexual asylum. I would like to briefly explain the latter. To address the phenomenon of queer asylum in the first and second article I primarily use the term 'sexual asylum', which is based on Foucault's concept of the regime of sexuality (Foucault, 1978). I use this term to refer to the intersection of sexuality, sexual orientation and gender identity with asylum, underlining further the relevance of the inherent power relations between the actors involved – such as politicians, the media, NGOs or street-level bureaucrats - involved. Hereby, I not only refer to the individual cases but also to the other layers of the discourse such as the political debates about sexual asylum. However, the notion of 'sexual asylum' has the conceptual disadvantage of combining sexual orientation and gender identity. Nevertheless, it can, and here I follow Danisi et al. (2021), to a certain extent be justified based on the comparable legal framework. Furthermore, while the majority of the cases are about sexual orientation (mostly males), gender identity, expression, and sexual characteristics are also understood as part of the phenomenon of sexual asylum. However, the term invisibilizes gender identity and is not very common in related research – notably also when using a queered angle – and I thus use it (and the same holds true for SOGI) in this final manuscript only when referring to the articles.

Second, the current research uses a variety of wording, and no uniform 'best practice' was found. Depending on the scholars, context, discipline, or data, terms like 'SOGI', 'sexual identity', 'queer', and the different varieties of the abbreviation LGBTIQ+ can be found. While many scholars have provided nuanced and well-elaborated justifications for their

terminology,¹⁵ I found no uniform practice, and the choice of adequate terminology thus remains subject to further debate and must be adapted to the specific context.

In addition, I focus on analysing discourse as a social practice within the context of queer asylum. This discourse operates on multiple interconnected levels, including the public-political and legal. The actors involved give meaning to this phenomenon – for example access and refusal of a claim. Moreover, the various elements constituting the discourse, such as case files, have tangible effects on the lives of those affected. Although they are 'only' written documents, they have implications and represent the materialization of the discourse. Finally, it is important to acknowledge the role that power dynamics play in the discourse: The actors – such as judges, members of parliaments, or NGOs – are in hierarchical relationships. And certain actors, such as street-level bureaucrats, have the power and legitimacy to decide, for example what becomes materialized and what is considered as 'truth'. In essence, I view the actions and statements of the actors involved as part of a discourse that, in summary, assigns a provisional meaning to the topic, which then manifests. The discourses examined in this thesis are thus networks of statements that constitute the phenomenon of queer asylum and at the same time materialize the dominant discourse (Foucault, 1972; S. Miller, 1990).

In the thesis, I thus focus on the discourse about SOGIESC-related and queer asylum. I will investigate two different levels of it, namely the public-political (as found in publicly available documents) and the legal (as found in appeal decision/case files). Although they are interrelated, this conceptual separation allows for a clearer analysis. The public-political level, inspired by van Dijk's concept of the political discourse (1997), refers to forms of texts and statements, etc. that are produced by public actors, such as officials and politicians, regarding the subject matter. These documents then represent the public-political level of discourse, also because they shape public perception. It is further

¹⁵ E.g., for SOGIESC vs. SOGI (Danisi et al., 2021; Dustin & Ferreira, 2021; Güler et al., 2019), or why the terms 'queer' and 'trans' should be used separately (Canning & Marnell, 2022).

important to keep in mind that this level of the discourse is explicitly addressed to the public – for example to the individuals reading the newspapers.

Relatedly, the legal level is understood as the negotiation processes and regulative speech acts that claim truth, materialized in the case files of the Swiss appeal instance FAC (Tuori, 2021: 122). In my case, the legal discourse is recorded in the case files. They are produced by the court but also include contributions from other actors such as legal representatives, the former instances, and the issued country reports. Together, the relevant stakeholders produce a document that represents the ‘official version’ of the case, which I understand as the ‘legal level’ of the discourse: The actors influence what is recorded in the case files. Depending on their social positions, stakeholders can shape the content, which in turn leads to the relevant decision. Contrary to the documents of the public-political discourse, these case files are, even though publicly available, not necessarily aimed at a broad audience, but rather at ‘experts’ such as asylum lawyers, NGOs, or public servants.

1.2 Swiss sexual nationalism and a restrictive asylum system: A productive constellation?

To investigate the discourse, I draw from a broad selection of literature and theories. Much of the theoretical framework is rooted in migration and nationalism studies, but the field of (socio-)legal studies play an important role, too. Central to the thesis' epistemological perspectives are further reflections based on queer theory, notably the link between sexuality, sexual orientation, gender and gender identity, power, and governance. I follow this perspective by understanding SOGIESC as institutional and political categories that emerge from, and are defined by, the discourse in the sexual asylum regime¹⁶ (Foucault, 1978). In relation to the considerations above, the discourse is thus not understood as 'objective' and indifferent to temporality, but as processes entangled with societal meanings, power relations, and expectations (Sedgwick, 1993, 2008) and, for example, the categories are expected to change their meanings and implications over time. This perspective allows me to understand the phenomena against the background of the

¹⁶ See Chapter 3.

sexual asylum regime, its power relations, and broader societal processes rather than understanding it in an 'empty' or 'neutral' space.

In short, the central argument of this dissertation is as follows: The configuration of the dominant sexual nationalism in Switzerland, on the one hand, and the exclusivist asylum system, on the other hand, resonates in the discourse of the actors in the Swiss context in a productive way – notably when further considering the significant role of the humanitarian self-image in the Swiss nationalist project. I examine the public-political and legal levels of discourse that have emerged in the Swiss context. Importantly, the aforementioned sexual nationalism has the effect of promoting the acceptance of selected claimants while simultaneously excluding others, in line with the logic of the nationalist and exclusivist asylum regime (Akin, 2019; Luibheid, 2008). In the context of these considerations, I pose the following overarching research question:

General research question: *How does the discourse on queer asylum in Switzerland interact with the country's predominant sexual nationalism and exclusivist asylum system?*

Given the two central aspects of the asylum discourse – the intersection of sexuality and asylum as a salient political field and the delicate legal handling – I focus on two levels. On the one hand, on the public-political level, since the predominant sexual nationalism incentivizes the acceptance of a few selected claims, I ask how 'worthiness for protection' is produced in the public-political sphere. Relatedly, I ask about the resulting narratives of deservingness (as defined by Strasser (2022) and elaborated further in Chapter 2). On the other hand, I examine the legal level of the discourse, in particular the role of credibility and of legal representation.

The first article is concerned with elucidating the way these processes operate at the public-political level. In short, because of the configuration – queer asylum as an institutional phenomenon located in the intersection of the predominant Swiss sexual nationalism and its exclusivist asylum system – I argue that the actors involved in the public-political level of the discourse produce narratives of deservingness that triage between those who are considered as meriting protection, while the others are excluded (Akin, 2019;

Koçak, 2020). Importantly, this level of the discourse also refers to the self-image of Switzerland: Some claimants are framed as deserving in order to feed the narrative of being a queer-liberal and humanitarian safe haven (Raboin, 2017; Tschalaer, 2019a). Meanwhile, the logic of the nationalist asylum system leads to the refusal of this status to those considered undeserving. To gain an overview of the public-political discourse and the related narratives of deservingness, I formulate the first research question of this thesis as follows:

Research question article 1: What are the narratives of deservingness that shape the politics of belonging in the Swiss sexual asylum regime?

In the second article, I leave the realm of the public-political debates and turn towards the Swiss appeal instance – the FAC. Whereas in the first article, I deliberately focus on a wide range of narratives, in this second article I examine only one aspect, namely credibility. There are several reasons for this: First, according to Swiss asylum law, credibility is one of the central conditions for granting asylum.¹⁷ Second, the findings of international research indicate that credibility is a pivotal factor in the context of SOGIESC-related asylum assessments (Millbank, 2021). Individual claimants are subjected to a “*culture of disbelief*” (Ferreira, 2022), whereby their identity (including their SOGIESC) and their story, conduct, and even body language are evaluated in terms of their credibility (Koçak, 2020; Zisakou, 2021). Research on queer/SOGIESC-related asylum has also shown that credibility is almost orthogonal to all other aspects of the decision-making process and the narratives of deservingness in the public-political discourse. After all, every single aspect of a refugee's story is scrutinized (Millbank, 2009; Zisakou, 2021), so the combination with the significant “*culture of disbelief*” (Ferreira, 2022; Millbank, 2021) means that credibility has a special role. Hence, credibility is a central topic for SOGIESC-related cases, probably even more so than in other domains of asylum. Credibility can be understood as a sword of Damocles above every other aspect of the discourse: One can correspond to every other aspect of

¹⁷ Fedlex (2023): Asylum Act 1998. (<https://www.fedlex.admin.ch/eli/cc/1999/358/de>) [21.10.2023].

deservingness (e.g., being especially vulnerable, see article 1): If the bureaucrats doubt a claimant's story, the person will not receive a protection status anyway. The amplified and unique role in SOGIESC-related cases justifies the subsequent focus on credibility.

More precisely, I focus on the question of credibility in the discourse as found in the appeal case files of the FAC. In these files, central elements of the refugee stories are negotiated, and the actors present their arguments as to why the person should (or should not) be believed. These discussions are often about such questions as whether the history of persecution or the SOGIESC itself is credible.

In light of the above literature, I argue that the role of credibility is amplified in what I conceptualized as SOGI-related asylum cases compared to other types of claims. These expectations must also be understood as a result of the prevailing sexual nationalism and the restrictive asylum system, which is nevertheless perceived by various actors as an element of Swiss humanitarianism: Denying someone's sexual orientation based on credibility arguments is a strategy of certain actors in the discourse to be able to reject a person without contradicting the idea of the dominant sexual nationalism and humanitarianism. After all, those who are credible are still granted a protective status. On the basis of this argument, I evaluate the following second research question:

Research question article 2: Is the role of credibility is amplified in case law relating to SOGI asylum, compared to unrelated asylum case law?

Finally, in the third article, I stay in the realm of the legal level and examine the discourse found in the case files of the FAC from yet another perspective. I build on the literature about the centrality of courts and legal representatives in the domain of asylum, with a particular focus on (what I called) SOGI asylum (Conant et al., 2019; Ferreira & Danisi, 2021; Miller et al., 2015). After all, it is evident that courts play a pivotal role in the evolution of asylum practices, influencing how such claims are adjudicated and future political agendas surrounding access to asylum (Conant et al., 2019). In line with the findings of socio-legal studies, I also emphasize the pivotal role of legal representation (B. Miller et al., 2015). In an asylum system where power and resources are asymmetrically distributed,

legal representatives have a central role in ensuring access to rights. Hence, they are powerful actors who may impact the discourse found in the case files, especially the aspects of it that are related to credibility. After all, they know what aspects are relevant to make the claimant's narrative credible. To investigate the impact of legal representation, I draw upon a theoretical framework from socio-legal studies (e.g., Miller et al., 2015) and queer theory and pose the following research question:

Research question article 3: To what extent does legal representation influence the outcome of SOGI-related asylum appeal cases in the appeal procedure in Switzerland? And how does this impact the presence of credibility-related reasoning?

1.3 Answering the research questions: Data, methods, and contributions

To answer these research questions, I collected and analysed a wide selection of qualitative and quantitative data. The quantitative dataset of Swiss asylum case law represents the methodological centrepiece of the thesis, as it allows for a comprehensive overview of the Swiss asylum appeal instance and the legal level of the discourse as found in the case files. I collected about 45,000 asylum appeal case files – of which around 800 refer to SOGIESC – published between 2007 and 2023 and created a large-n dataset, allowing for the quantitative analysis of the case files of the FAC, the sole and only appeal instance of the Swiss asylum system (Spirig, 2018). Based on this data, I employed quantitative text-as-data and regression-based methods to draw inferences from the textual data (Egami et al., 2022; Livermore & Rockmore, 2019). In this sense, combining quantitative methods with reflections found in (reflexive) queer migration literature, I further advanced the marginal field of queered quantitative research (Kilgo, 2022; Strunk, 2023). Also, I contribute from a quantitative point of view to a field that is primarily researched from qualitative perspectives.

In addition, I collected and analysed qualitative data as well. I created a corpus consisting of expert interviews (Meuser & Nagel, 2009), media reports, case law, and parliamentary minutes. I analysed this data qualitatively, drawing upon the tenets of grounded theory and critical discourse analysis (Charmaz & Mitchell, 2001; Wodak & Krzyżanowski, 2008).

Accordingly, the overarching research design is informed by qualitative and quantitative methods. While the individual articles are either purely qualitative or quantitative, the thesis as a whole thus follows a sequential transformative strategy mixed-methods approach (Ayoub et al., 2014; Creswell, 2009; Gillespie et al., 2024; Shannon-Baker, 2022). By combining qualitative and quantitative data and analyses, I can overcome the limitations of each approach and present insights from several perspectives (Creswell, 2009; Gillespie et al., 2024).

1.4 Structure of the thesis

The thesis is divided into three main parts. As well as this introductory Chapter 1, Part 1 contains Chapter 2, where I review the relevant literature on the topic. Specifically, I focus on the existing literature on the nexus of SOGIESC and asylum, notably decision-making and the related political implications. In Chapter 3, I outline the theoretical framework, drawing primarily on queer theory. Chapter 4 then provides an overview of the main argument of the thesis. In Chapter 5, I present, discuss, and justify the rationale for examining the case of Switzerland. This section explores the historical developments that are closely linked to the international asylum system, as well as an examination of the operational aspects of the Swiss asylum system. Chapters 6 and 7 contain my reflections on the data and methods used, as well as a discussion of the use of quantitative approaches within a theoretical framework characterized by queer theory. Part 2 then contains the core elements of the thesis, which are the articles. Thus, chapters 8, 9 and 10 are the three research articles, each accompanied by a brief introduction and abstract. Finally, in Part 3, which consists only of Chapter 11, I conclude the thesis.

2 The discourse about queer asylum: Deservingness, credibility, and the construction of a safe haven¹⁸

In what follows, I situate my thesis by presenting and discussing the relevant literature on queer/SOGIESC-related asylum that inspired my own argument. First, I address the literature that discusses, explicitly or implicitly, deservingness – that is, arguments that determine whether an applicant is considered ‘worthy’ and ‘deserving’ of protection. Examples include assessments based on stereotypical queerness as well as the claimant's vulnerability. I then turn to the legal arguments of discretion (can a claimant be expected to hide their SOGIESC to avoid persecution), credibility (is the claimant lying about their SOGIESC/history of persecution), and the role of legal representation. I then focus on further research and explore the literature on the political implications of queer asylum, namely how the discourse resonates with the self-image of the countries of arrival. This branch of literature is especially important to this thesis and I follow Luibheid, who argued that *“sexuality constitutes a ‘dense transfer point for relations of power’ that structure all aspects of international migration”* (2008: 169). The literature selected best reflects the focus of my work and shows what aspects are important to my thesis.

2.1 The queering of the international refugee law

Selecting the relevant literature was not an easy task due to the increasing amount of academic writing on queer/SOGIESC asylum. For example, using the search query 'queer AND asylum' on Google Scholar, there are 1130 hits for 2005, 3020 for 2015, and 7890 for 2023. A similar positive trend can be observed for the query 'homosex* AND asylum'.¹⁹ The phenomenon has attracted considerable scholarly attention – and while I was writing my thesis, the number of related publications continued to increase.

¹⁸ In this chapter, I employ a wide range of different terms to describe the phenomenon. I will stick closely to the terminology used by the respective scholars, as some of the publications only focus on certain subgroups (e.g. research focusing only on sexual orientation).

¹⁹ Google Scholar (2024): (<https://scholar.google.com/>) [30.04.2024].

While not necessarily driven by it, this scholarly interest also reflects the growth of SOGIESC-related asylum claims. SOGIESC-related asylum is one of the newest categories of claims, having been introduced only in the last few decades. And while the number of cases has increased since the 1980s (Jansen & Spijkerboer, 2011), it has caught the interest of international organizations and practitioners alike (Ferreira & Danisi, 2021; Giametta, 2017). The emergence of SOGIESC-related asylum and the institutional adaptations are conceptualized by Ferreira and Danisi (2021) as the 'queering' of international refugee law. Describing this process of queering – which I understand as the incorporation of the 'factor SOGIESC'/'queer elements' into the asylum system – these authors underline how the Refugee Convention was created after World War 2, with a particular focus on political activists and members of ethnic/religious minorities who were persecuted by fascist regimes. While SOGIESC groups were also persecuted, this category did not explicitly find its way into the convention. Later, in Europe and North America, the earliest SOGIESC-related cases emerged in the late 1970s/1980s (as far as I know, see e.g., European Council on Refugees and Exiles 1997; Ferreira & Danisi 2021). In the years that followed, national and international actors worked together to advance the relevant *“legal and policy tools”* (Ferreira & Danisi 2021: 87). And as of the 2000s, the UNHCR started to treat these claims under the legal category of *“membership of a particular social group”* (Hamila, 2021). Over time, SOGIESC-related asylum became institutionalized and through this process, international refugee law was to a certain extent 'queered'.

As rightly pointed out by Millbank (2021), the practical relevance of what she calls SOGI claims in the domain of refugee status determination (RSD) must not be underestimated:

Although SOGI claims are often considered marginal or exceptional cases, I argue that they should be seen as a key axis from which to understand major developments and failings of refugee law across the board. Relatedly, I suggest that SOGI (Sexual orientation and gender identity) claims are a paradigm example of the ontological challenges at the heart of RSD, including the enduring challenges posed by fact-finding and evidentiary practices such as future-focused risk analysis, credibility assessment, and the interpretation of claims across culture. (2021: 761)

It is hence indisputable that SOGI(ESC)-related claims raise fundamental questions in the context of asylum decision-making, regardless of the volume of cases. Understanding these questions allows us to gain valuable insights into other areas of asylum as well.

2.2 Narratives of deservingness in the discourse on queer asylum

At the most general level, deservingness acts as a moral assessment of processes of distribution. (Streinzer and Tošić 2022: 2)

A crucial element of the queer asylum literature is deservingness, which has become a central concept in research on asylum (Ravn et al. 2020, Streinzer and Tošić, 2022). At the most general level, narratives of deservingness address the question of who is worthy of protection. Moreover, as the quote above suggests, questions of deservingness are primarily driven by moral considerations and must be understood "*as a crucial category of contemporary politics*" (Streinzer & Tošić, 2022: 1), in which different actors evaluate claimants and their legitimacy.

The concept of deservingness is multifaceted: Scholars such as Ravn et al. (2020) examine how different arguments can be used to ascribe or deny deservingness. According to them, juridical (e.g., is the claimant legally entitled to seek asylum?), moral (e.g., is the claimant perceived as vulnerable?), and economic (e.g., is the claimant participating in the local economy?) arguments in particular are central to the construction of deservingness of refugees. Thus, various factors, including social class, economic, or cultural reasoning (Bonjour & Duyvendak, 2018; Casati, 2018; Zisakou, 2021) can be decisive and indicate whether someone is considered deserving of protection. Moreover, the narratives of deservingness are highly contextualized and can vary over time and place: They are not fixed but can change, emerging from the discourse of the moment. Importantly, gendered and age-based reasoning play an important role today (Strasser, 2022; Streinzer & Tošić, 2022). Finally, deservingness can be ascribed/denied to an individual, but also to a collective (Abbey, 2024; Koçak, 2020) and can be found at various levels of the discourse such as in the "*media and in political and public narratives*" (Holmes & Castañeda, 2016: 2),

and the decision-making arena. Consequently, when analysing the Swiss discourse, I also focus on different levels of the discourse, notably the legal and the public-political one.

2.2.1 Deservingness and queer asylum

The concept can also be found in SOGIESC- and queerness-related migration studies. Here, among other things, being considered "*queer enough*"/stereotypically queer (Koçak, 2020; Murray, 2014b, 2014a), but also being seen as a vulnerable victim in the country of departure (Giametta, 2017; Tschalaer, 2020), have been isolated as central arguments by various actors in the assessment of deservingness when it comes to queer asylum.

Deservingness is a key argument in asylum debates and research on asylum. This is also true when comparing SOGIESC-related cases with other cases. For example, Strasser (2022) highlights how different groups of refugees are attributed varying levels of deservingness. According to her, in the current EU border regime, women and LGBTIQ+ individuals are considered deserving refugees by the authorities, also due to the politics of compassion (D. Fassin, 2005, 2012) and the emergence of homonationalist reasoning (Puar, 2007; Strasser, 2022). Strasser's research emphasizes that "*LGBTIQ+ people are now considered [...] as vulnerable and deserving of international protection*" (2022: 259), illustrating that narratives of deservingness can change over time. However, many LGBTIQ+ asylum seekers have their claims rejected, and hierarchies of deservingness are also present within the "*LGBTIQ+*" group (Strasser, 2022: 259).

Similarly, focusing on the hierarchies of deservingness within the group of what Koçak calls LGBT claims, Koçak (2020) analyses UNHCR resettlement practices in Turkish refugee camps and dives into the question of so-called 'fake cases'. The article is about "*non-queers abusing LGBT identities for refugee status*" (2020: 44) and Koçak discusses two interlinked points. First, the "*discourse of codified homophobia*" (Koçak, 2020: 36): According to the author, bureaucrats do not ask applicants directly about gender/sexuality. Rather, they note and assess how an applicant describes their life in the country of departure. Moreover, the claimants are expected to reproduce a gendered performance of nationality and persecution, and they are – e.g., by the bureaucrats – incentivised to narrate problems,

danger and public persecution in the country of departure due to "*being visibly queer*" (Koçak, 2020: 39) to be considered as deserving of protection status. Second, asylum seekers are further described as being encouraged to raise the issue of allegedly fake LGBT cases, thus contrasting themselves with others who are seen as 'not queer enough' and thus undeserving: Thus, deservingness and being an authentic (the eyes of decision-makers) queer asylum seeker becomes a question of hierarchies, and asylum seekers benefit from differentiating themselves from 'fake cases'. Koçak raises an important point about how the distribution of places on resettlement programmes leads to individualization, as deservingness results from contrasting oneself with the supposedly less deserving (Koçak, 2020).

Relatedly, Topel (2017) published a research note about the assessment of LGB cases in the United States of America and the role of stereotypes. Topel underlines how most judges appear to sometimes ask questions that are "*inappropriate, intrusive, and reliant on Western stereotypes*" (2359) to assess a claimant's deservingness. In practice, this leads to a situation in which fitting into sexual orientation stereotypes increases an individual's deservingness.

Why is this so? In the US asylum system, claimants must prove that they have been persecuted due to their sexual orientation, that they belong to a particular social group in the country of departure, and that they face a well-founded fear of further persecution. This can result in a central role of stereotypical and performance-oriented assessments according to Western standards (Cortés, 2023; Topel, 2017). Either the claimants directly reproduce the expected stereotypes of an LGB person themselves, or the judges search for such aspects in the personality and narrative of the individuals, such as expecting lesbian women to wear little make-up and to have short hair. Corresponding to a Western stereotype thus renders people more deserving and credible (Topel, 2017: 2372).

Another aspect of deservingness is underlined in the broad study on the sexual politics of asylum in the UK by Giametta (2017). Giametta (2017) highlights the general role of humanitarian arguments (also D. Fassin, 2012) in the protection-granting systems of the North Atlantic area and notably the UK. According to the ideals of humanitarian reasoning,

people considered as suffering enough are considered deserving and should thus be granted a protection status (Mai, 2014). According to Giametta, this also holds for what he calls sexual minority asylum seekers: their claims are considered deserving and authentic when they narrate themselves as (psychologically) vulnerable – after all, a humanitarian country of arrival helps the vulnerable.

Claimants are expected to present themselves as especially vulnerable, such as suffering from trauma, to appear high in the resulting hierarchies of vulnerability. Importantly, these structures and logics are reproduced throughout the asylum system: Not only bureaucrats expect certain narratives, but claimants and related NGOs also (strategically) play this card (Giametta, 2017). Vulnerability is, therefore, another crucial aspect that shapes deservingness in queer (and other) asylum claims.

Moreover, such institutional expectations draw hierarchies of deservingness between individuals. In an article about LGBTQI+ Muslim asylum claimants in Germany, Tschalaer (2019a) discusses two cases, indicating how corresponding to the ideal of queer liberalism (Saleh & Tschalaer, 2023) fosters deservingness, and how non-correspondence decreases the attributed level of deservingness. The first case involves a queer activist who is open about their own SOGI and states that they have never had issues speaking about it. This attribute, combined knowledge about the German ‘ideal’ of an openly queer person – which is often related to high levels of education – who needs to be saved from their country of departure, leads to an assessment that they describe as unproblematic

This scenario is contrasted with another claim. In this case a male Somali claimant was not only confronted with a conservative translator but also with his own fear and shame when talking about his sexual orientation. Consequently, he did not meet the institutional expectations of an open, gendered, and sexualized performativity, of being a queer who needed to be saved by German liberal benevolence, and thus as conforming to the ideal of queer liberalism (Saleh & Tschalaer, 2023; Tschalaer, 2019a). An openly queer person expressing their narrative of liberation by the German state fuels the idea of Germany as a safe haven, while the man from Somalia was attributed less deservingness due to not being queer in the expected way.

Another article by Tschalaer (2020) focuses on female experiences. Tschalaer investigates the cases of two women from Uganda who identify as lesbians and had their asylum claims rejected in Germany. Tschalaer argues that women who portray themselves as helpless victims are considered more deserving of protection than others. They correspond to the gendered idea of being “‘helpless,’ ‘mute,’ and ‘naïve’ victims” (10) and align with the Western concept of who needs protection. The two cases, however, did not conform to the role of (female) victims. Their asylum stories, even though characterized by violence and abuse, contain elements of their own agency and contradict the expected helplessness. Furthermore, the two stories demonstrate how the assessment process is influenced by expectations that do not align with the complex situations faced by lesbian women. Although they were victims of structural discrimination, they were also in heterosexual relationships, had children, and only secretly lived a 'queer lifestyle'. Hence, to some extent, they deviate from the expectations of an open queer lifestyle and female victimhood. These aspects were deemed to make their asylum stories less credible and deserving by the authorities.

In short, Tschalaer (2020) emphasizes that lesbian women are perceived as deserving if they fit the idealized notion of queerness and victimhood. Otherwise, if they have children, were engaged in heterosexual relationships, and draw an image of their own agency, they are more likely to be deemed undeserving. The important take-home message of both articles (Tschalaer, 2019a, 2020) is that the assessments of the claims do not operate in isolation from politics. While both articles are about assessing the deservingness of individuals, the criteria are politically shaped, and in order to be deserving, one must correspond to these criteria: The moral assessment of deservingness is thus connected to the political dynamics in the country of arrival – an aspect that I also keep in mind, notably for the first article of the thesis.

Overall, different narratives of deservingness can be found in the discourse about queer/SOGIESC asylum: depending on the context, claimants – as individuals or as groups – can be considered as more or less deserving. Scholars identify further factors such as social class (Zisakou 2021), race, geopolitics, religion (particularly Islam) (Tschalaer, 2019a,

2020), and gender (Millman, 2023; Tschalaer, 2020) as influencing the ascribed levels of deservingness in the decision-making and the public-political discourse. In other words, aspects such as stereotypes, vulnerability, and conformity to Western expectations can both fuel or reduce deservingness. Based on the conceptualization of deservingness at the beginning of this section and the extensive literature that implicitly or explicitly evaluates such narratives of deservingness, I devote a significant part of the thesis to this issue, following the question of which narratives of deservingness can be found in the Swiss discourse. Inspired by Strasser (2022) and Tschalaer (2019a), I also investigate them in the context of the political dynamics in Switzerland and will mainly look at them in the public-political discourse, keeping in mind how intersections – between SOGIESC, social class, race, religion, etc., – also plays a crucial role.

2.3 From discretion to disbelief

A second, more socio-legal body of literature is also highly significant for my thesis. It revolves around questions of discretion/concealment on the one hand and disbelief/credibility on the other. I will therefore first delve into the former, while the subsequent section deals with the aspect of belief/disbelief as it is currently debated in scholarly literature. Yet, one must keep in mind that they are interrelated with the aforementioned discourse about deservingness.

Essentially, discretion is the idea that asylum seekers can simply hide or discreetly express their SOGIESC to avoid persecution – they are hence expected to live in the 'closet' in the country of origin (Kendall, 2003; Sedgwick, 2008) and conceal central aspects of their own identity. In the 2000s, authorities routinely argued that claimants could simply hide their SOGIESC or be discreet about it, and that their asylum claims could therefore be rejected. In her work on discretion, Millbank (2009) shows how authorities demanded that claimants refrain from certain behaviours and cooperate for their own protection, for example by pretending that their partner is a flatmate. Millbank underlines the fundamental issue with discretion in the following way:

This approach subverted the aim of the Refugees Convention – that the receiving state

provides a surrogate for protection from the home state – by placing the responsibility of protection upon the applicant: it is he or she who must avoid harm. (Millbank 2009: 394)

Additionally, she underlines that if the claimant fails to prove any relevant past persecution, the argument of discretion makes any fear of future persecution invalid: If someone managed to hide in the past, they will also be able to do so in the future, and only a potential future incident can legitimize a protection status. In other words, if assessed under the discretion regime not only must claimants hide but also await a (forced) coming-out and relevant incident before successfully claiming asylum. In the late 2000s and early 2010s, national and international courts began to reject such arguments (Millbank, 2009; Spijkerboer, 2015). However, despite these explicit court decisions, discretionary arguments continue to be used in SOGIESC-related asylum cases in many Western European countries (Jansen & Spijkerboer, 2011; Spijkerboer, 2015; Wessels, 2021). Or, as formulated by Wessels:

The persistence of ‘discretion’ reasoning, despite continuously being refuted – constitutes the centre of one of most heated discussions in refugee law doctrine in recent years. (2021: 234)

A key work on this topic is the book by Janna Wessels (2021). Mostly focusing on homosexuality-related cases, she underlines how although the argument of discretion was officially abandoned in most countries by the courts, it is still widely applied by decision-makers. Consequently, one of the main goals of her book is to show first that discretion/concealment is an issue that remains relevant in SOGIESC asylum, and second that variations of discretion exist. This becomes especially clear thanks to the book’s comparison of countries like France, Spain, and Germany. The analysis indicates that in France and Spain the focus is on the claimant’s past acts: If claimants managed to hide their SOGIESC in the past, decision-makers assume that this can also be done in the future. German bureaucrats, on the other hand, relies more on a future-oriented assessment and the SOGIESC, arguing that if the likelihood of the SOGIESC being discovered is low enough, *"the claimant would be able and willing to continue to hide their 'inclination' from the persecutor"* (Wessels 2022: 164). In other words, Germany focuses on assessments of stable and visible identities - which, of course, is hardly possible if one understands SOGIESC as

fluid and unstable. Wessels' analysis shows that the requirement of discretion persists in various forms, and that decision-makers may, for example, focus on the actions and/or identity of the claimant. It also shows that official doctrine does not necessarily have to coincide with the way cases are actually handled by decision-makers.

Relatedly, Millbank's (2009) analysis of case files indicates a high correlation between the requirement of discretion and rejection. In those cases, while applicants' claims to belong to a sexual orientation minority were (often) believed, according to the doctrine of discretion, they would only potentially be exposed to future persecution in case of non-discreet behaviour or a forced coming-out. As they were held responsible for their own safety, their application was rejected and it was argued that they could remain in their country of origin.

Millbank's analysis was motivated by a 2002 court decision in Australia stating that discretion must not be demanded. Her analysis shows how after said ruling, the use of discretion declined, but this did not lead to more claims being granted. Rather, it led to an increase of credibility-based refusals. This, in practice, credibility partly replaced discretion, while the outcomes did not change. Importantly, both arguments – discretion and denying credibility – can be used as 'rhetorical sledgehammers' to deny a case as they render any further argument invalid: Those who can hide need not fear, and those who are not credible have – and will not be – harmed.

In conclusion, discretion did not disappear but "*turns out to be a virus that easily deals with vaccines, by mutating*" (Spijkerboer, 2015: 5). It has, however, to a certain extent been replaced by the assessment of credibility – which is another central issue in the refugee statute's determination for SOGIESC asylum and the related literature. Thus, the decline of discretion and the rise of credibility as the central criterion in SOGIESC-related asylum claims lead to a new dynamic, but not necessarily to a higher acceptance rate. As current practices are characterized by a denial of the claimant's credibility, credibility is also a central concept for this thesis.

2.3.1 The central issue of credibility: Denying an identity and doubting the history of persecution

For several reasons, credibility assessment is often described as one of the most complex and psychologically challenging aspects of asylum adjudication for decision-makers.

(Selim et al., 2022: 3)

Assessing credibility is a central element of any asylum application and can in very short terms be understood as the collection of ‘evidence’ and the determination what ‘evidence’ is accepted as legitim in the asylum proceeding (Selim et al., 2022). After all, bureaucrats must base their reasoning on their assessment of an individual's credibility. However, as the quote above suggests, credibility assessments are a delicate subject. Legal literature usually distinguishes between three different elements of credibility: First, internal credibility, which is about the coherence and consistency of the claimant's narrative. The absence of contradictions is crucial here. Second, external credibility, which deals with the coherence of the applicant's narrative with other, external evidence, such as reports on the situation in the country of origin. Third, we have the assessment of plausibility – which follows the former two and is also the least clear of them. It is an assessment of the probability that a narrative is true, such as the likelihood of actually being discovered and persecuted by a militia (Geertsema & Helmink, 2013; Sweeney, 2009).

In the context of SOGIESC-related claims, establishing and denying credibility is a far from simple task, which leaves substantial leeway to the decision-makers (Ferreira & Danisi, 2021). After all, credibility assessments are about establishing truth – a process that is, according to Fassin and Salcedo (2015), embedded in the predominant power structures and thus far from being ‘neutral’ or ‘objective’. Credibility assessment is therefore on the one hand a legal practice, but on the other, from a sociological perspective, it is also a process that must be understood in its respective context of power relations.²⁰

²⁰ For instance, a study conducted in Switzerland demonstrated that the intensity of the discourse on asylum in the media exerts a significant influence on the decision-making of the Federal Administrative Court (FAC). Specifically, it was observed that when the topic of asylum is extensively deliberated upon, the judges of the FAC tend to judge more severely (Spirig, 2023).

Also, different aspects of a refugee's story are examined and, accordingly, a variety of arguments can be found in the literature as to how cases are rejected (Ferreira, 2022; Held & Dustin, 2018; Selim et al., 2022). Scholars like Ferreira (2022) and Held and Dustin (2018) argue that the role of credibility is, in comparison to other domains of asylum, of amplified relevance: After all, many elements of a sexual asylum story can be doubted, and claimants may also not be aware that their SOGIESC may present a reason for asylum – which often leads to a deferred coming-out vis-à-vis the institutions, which in turn further undermines perceived credibility (Ferreira & Danisi, 2021; Selim et al., 2022).

Two fundamental elements that can be put into question are the credibility of the SOGIESC identity (1) and the credibility of the history of persecution (2). On the one hand, we have SOGIESC-related claims that are assessed regarding whether the claimant is perceived to genuinely belong to a SOGIESC-group. Here, legal scholars investigate how bureaucrats try to prove a concept – a SOGIESC – that the scholars deem untestable (Ferreira & Venturi, 2018). Relatedly, queer theory scholars question this practice due to its essentialist assumptions about gender and sexuality, arguing that individuals cannot be expected to conform to a Eurocentric image of queerness (Giametta, 2017). On the other hand, also the claimant's history of persecution can also be assessed regarding questions of credibility (Selim et al., 2022). Here, for example, the scholars ask how a claimant's narrative can be considered credible and in what circumstances future persecution is plausible or not (Zisakou, 2021).

The literature shows that different credibility-related arguments are used to decide upon asylum claims – some of which are unique to SOGIESC-related claims. In a meta-study, Selim et al. (2022) outline various arguments used to deny credibility in such cases. For example, male claimants were considered 'too masculine' to be genuinely and credibly homosexual, while some women were considered 'too feminine' to be genuinely and credibly lesbian. In other cases, the testimony that they were queer and religious was interpreted as incoherent and hence not credible. Others did not show enough emotion, did not fit the Western perceptions of queerness, or did not provide enough details in their story of persecution to be considered genuine and credible (Selim et al., 2022). Besides the

usual credibility assessments (e.g., credibility regarding the claimant's age), said aspects showcase how credibility is especially complicated and relevant in SOGIESC-related cases. Relatedly, scholars like Ferreira (2022) and Zisakou (2021) underline how the domain of SOGIESC asylum is characterized by a "*culture of disbelief*": Cases and claimants alike are considered 'fake' or 'bogus', and claimants are suspected of lying about their SOGIESC, their background, and the intensity of the stated persecution. The claimants face constant distrust and must prove that they are honest and trustworthy. Such discourses are not only a practice within state institutions: NGOs, legal representatives, and even other queer asylum seekers themselves may reproduce the narrative of 'fake' claims (Ferreira, 2022) and deny the credibility of some asylum seekers as they are considered not to be genuine (Giametta, 2017; Koçak, 2020).

Zisakou (2021) presents a detailed analysis of this regime of disbelief and the various aspects of denied credibility. She analyses interviews and 60 Greek asylum cases that were rejected due to a lack of internal credibility (thus disbelief regarding sexual orientation and/or history of persecution). In the first step, the cases and their reasoning were investigated against the background of the current institutional guidelines. Here, she asks what exactly was put into question. She found that in 16 cases, details about sexual practices were asked. Additionally, in 28 cases, reasoning based on stereotypes was among the decisive factors, such as the claimant's lack of knowledge about LGBTI organizations. What these cases have in common is that the refusals were based on arguments that have theoretically been abandoned by the EU, the UNHCR, or even the Court of Justice of the European Union (CJEU): These institutions deemed arguments based on stereotyped reasoning and assessments of certain forms of visual evidence to be inappropriate. In other words, the refusals by the street-level bureaucrats were based on arguments that were condemned by higher institutions.

Moreover, the sample also incorporates 39 cases in which no such violations of the official doctrine were found. However, Zisakou argues that those rejections were based on so-called 'second-generation stereotypes': Claimants were expected to conform to (Western) notions of sexual orientations and were expected to have discovered and lived their sexual

orientation in a specific way to be considered credible. A credible narrative includes an essentialist, "*fixed and immutable sexual identity*" (Zisakou, 2021: 8) according to Western standards. Relatedly, the process of self-realization was expected to have happened in an entirely homophobic environment and to have been painful and shameful. An asylum story of suffering corresponding to those expectations made the claimants more credible. Hence, Zisakou argues that in all 60 cases, a lack of credibility was central to the rejections. While in some cases legally refuted arguments were used, the other cases failed because the claimants would not provide an allegedly credible narrative, including a "*linear and hard process of self-realization*" (2021: 7) according to Western ideas. Thus, the claimants did not demonstrate the kind of (pain- and shameful) "*inner emotional journey*" (Zisakou, 2021: 9) that decision-makers would expect from credible claimants and were thus denied credibility.

Credibility is always a central topic in asylum claims. However, the literature makes it clear that it is of amplified relevance in SOGIESC-related claims. It is also important to remember that there is no single, uniform practice of denying credibility. Rather, different aspects are subject to scrutiny. Furthermore, I will now demonstrate that different sub-groups can be assessed by the bureaucrats against different expectations.

The literature about credibility and the varying expectations between the SOGIESC subgroups provides a key example of this. For instance, Hedlund and Wimark (2019) focus on unaccompanied minors in Sweden who had based their claims on SOGI-related persecution. In the case files, the authors found that the case workers focused primarily on the 'quality' of the minor claimants' relationships to assess credibility. Asylum stories including stable and long-lasting relationships were more likely to be considered credible, while short relationships and encounters often triggered disbelief. Here, in the sense of homonormativity (Duggan, 2002),²¹ the authors argue that morally acceptable (long-lasting) relationships are considered credible, while others are doubted.

²¹ Based on Duggan (2002) and defined by Hedlund and Wimark as a "*process in which some aspects of same-sex practice, desires and identities become acceptable to the mainstream public*" (2019: 262).

The authors underline that, contrary to other studies, they did not find direct patterns of denied SOGI. For the minors, other aspects (e.g., the quality of the relationships and support in the country of departure) were decisive. They argue that this is due to the idea that minors are still in development – they are going through a phase – and that they do not (yet) have a stable SOGI and thus their identity cannot (yet) be assessed (Hedlund & Wimark, 2019). This insight is of great relevance as it indicates that not all SOGIESC cases are assessed in the same way and that differences among subgroups of SOGIESC claimants exist, for example between younger and older claimants (Hedlund & Wimark, 2019).

Then, in one of the few quantitative studies about queer asylum and which also has an intersectional perspective (Crenshaw, 1989), Millman (2023) focuses on New Zealand and Australia and compares acceptance rates for what he calls “*queer males*” and “*queer females*”, using both quantitative and qualitative methods. The quantitative analysis of cases reveals no significant differences in acceptance rates between the two groups in Australia, while queer males have higher chances of acceptance in New Zealand compared to queer females. Millman's qualitative follow-up analysis of juridical decisions suggests that these differences can be explained by varying thresholds of credibility. The study indicates that male refugees face lower expectations in terms of credibility than females, highlighting how decision-makers do not adequately consider the experiences of queer women and how various axes of social categories, in this case gender and sexual orientation, intersect in the decision-making processes (and how the thresholds of credibility vary between the sub-groups). Doing so, Millman (2023) also underlines the relevance of intersectionality when it comes to understanding asylum claims that are based on any form of queerness.

Finally, it should be noted that the decision-making process – and the related process of establishing credibility – is certainly not always a binary relationship between the authority and the asylum seeker. Rather, scholars have shown how important quality legal advice and representation can be in the area of asylum (Miller et al., 2015). Although this is also true for SOGIESC cases, there is surprisingly little research on the subject, and, when it is

analysed, it often seems to be a 'side issue'. This means that, although it has been discussed by scholars such as Giametta (2018) and Vogler (2016), I found no studies dealing exclusively with this issue. Nevertheless, the following points can be made.

It can be noted that legal representation is also crucial in SOGIESC-related asylum cases, notably when it comes to establishing credibility. This goes so far that NGOs in the UK recommend that asylum seekers contact a lawyer before their first contact with the authorities (Giametta, 2018). It is also striking that, for strategic reasons, representatives sometimes try to persuade asylum-seekers to conform to Western categorizations of SOGIESC in order to meet the expectations of decision-makers (Vogler, 2016), such as telling the claimant to remember the date of Pride and the location of gay bars (Greenberg, 2006). This also outlines the interplay of legal representation and deservingness: Corresponding to Western expectations of queerness is, in the eyes of the legal representatives, thus a meaningful strategy to defend their clients.

Legal representatives sometimes resort to extreme measures to prove a sexual identity and to avoid deportation (Lewis, 2014). For example, Lewis describes cases in which representatives submit clients' pornographic material as evidence to prove their sexual orientation. In addition, medical evaluations (specifically phallometric tests, which measure a physical response to pornography) have also been requested by a representative in the Czech Republic as a means of making the claimant credible (Jansen & Spijkerboer, 2011). Then, Danisi et al. (2021) also found that SOGIESC-related claims are time-consuming for lawyers because the claimant must 'open up' and reveal a fundamental aspect of their personality, requiring an experienced, SOGIESC-sensitive legal representative; and, as they show, there are indeed few lawyers with SOGIESC-specific experience. Finally, it is important to note that legal representation is not only crucial during the asylum process, but also, for example, in ensuring access to adequate (i.e. non-discriminatory) housing, including for gender-queer persons (Danisi et al., 2021). Nevertheless, despite the particularities, some issues, such as access to representation and financial concerns, are common to many asylum cases (Danisi et al., 2021: 20).

The literature on the role of credibility in asylum shows that it is at the heart of the discourse and is amplified in SOGIESC-related asylum cases compared to unrelated cases. In asylum, credibility is always a central issue, but even more so in SOGIESC-related cases. Consequently, credibility and the different ways of assessing it play a central role in this thesis. After all, different aspects – the SOGIESC, the history of persecution, the plausibility of future persecution, ... – are questioned. It is precisely due to this “*culture of disbelief*” (Ferreira, 2022) – and I will also include this aspect in the thesis – that it becomes evident that legal representation is essential in establishing credibility in such cases. After all, legal representatives have their ways of influencing the processes and experience in establishing credibility (and deservingness).

It is clear, however, that in addition to the more legal notion of credibility, other arguments, especially narratives of deservingness, also determine access. Relatedly, narratives of deservingness are always linked to questions of credibility, and one cannot understand deservingness without credibility, and vice versa. However, credibility, as I understand it, works orthogonally to narratives of deservingness: A person may be deemed deserving – for example, because they are particularly vulnerable – but if the asylum story is challenged, the person may still be denied protection status.

Therefore, in all three research articles, I devote considerable attention to the issue of credibility and its assessment. Focusing on the Swiss case, I ask whether the issue of credibility is indeed more important in SOGIESC-related cases than in other areas of the asylum system. I also address the question of the role of legal representation in this issue.

2.4 Queer asylum and the construction of a safe haven

Moving away from deservingness, discretion, and credibility, the literature also indicates how the discourse about queer asylum is not only about case assessment but also became a central marker of the self-images of the countries of arrival and their respective nationalist projects (Lopes Heimer, 2020; Raboin, 2017): it is not only about ‘them’ and their access but also about ‘us’ and our values. Or, in the words of Luibheid: “*The granting of asylum to selected individuals — who must be few enough in number not to threaten*

dominant systems, but sufficient to lend credence to claims of first-world humanitarianism and democratic freedom — legitimizes exclusionary, repressive immigration control systems” (2008: 179f).

As I will outline more depth in the theoretical section (Chapter 3), the topic of queer asylum is paradoxical (Akin, 2019). On the one hand, different (North-)Western European countries present themselves as queer-liberal, humanitarian actors, while on the other hand, they follow a nationalist, exclusivist logic. Because of this paradoxical situation, many (North-)Western European countries tend to grant few, selected asylum applications, as this does not challenge the dominant, nationalist system, but allows a certain moral self-image of the country of arrival to be maintained (Akin, 2019; Luibheid, 2008).

Much of the related research therefore focuses on how queer asylum resonates in the self-images of Western societies and the cultural hierarchies they produce in their discourses (Cortés, 2023). Clearly, the situation for individuals belonging to specific SOGIESC-groups varies around the world – and many individuals flee countries with homo-/queerphobic legislation. This must not be forgotten in what follows. However, the following literature is about the creation of cultural hierarchies between the different regions of the world. In short, the idea of queer asylum seekers as vulnerable and stereotyped victims is produced, and their protection is then used as a means of distinguishing between the liberal and modern ‘us’ and the queer-/homophobic ‘them’ (Giametta, 2017, 2019; Raboin, 2017).

This argument is clearly outlined by Raboin (2017), showcasing how the handling of what he calls LGBT asylum – understood as a collective phenomenon rather than individual cases – is considered a tool for creating the idea of a queer haven in the United Kingdom. Raboin writes that *"asylum is [therefore] an object of choice to investigate the role of the state in relation to LGBT people, the production of nationhood and the rights and citizenship of LGBT subjects"* (2017: 2) and he asks *"what [...] this tell[s] us about the way the nation represents itself in relation to sexuality and queerness? How does the state fashion itself in this act of hospitality?"* (2017: 2). In other words, the book is about how the handling of LGBT-related claims constitutes the nation and its self-image and how it relates to the political project of boundaries.

Raboin's results underline how, on a discursive level, the phenomenon *LGBT asylum* is used to narrate the idea of the UK as a safe haven, in contrast to the illiberal countries of departure. According to Raboin, however, this also leads to a situation in which the identities of claimants are denied, as the asylum regimes still have an inherently exclusivist tendency: By denying the sexual/gender identities, refusing claims does not contradict the ideal of being a safe haven. Clearly, and as also indicated by the research of Tschalaer (2019, 2020) above, the conditions of access and feeding a positive self-image are heavily interrelated.

Using a similar argument, Jenicek et al. (2009) illustrate further how discourses around sexual orientation-related asylum claims resonate in the construction of the idea of Canada's "*cultural superiority*" (2009: 637). They argue that the discourse about what they call "*sexual minority*" asylum seekers is at once about 'who they are' and about constituting a self-image of 'who we are'. The authors underline that in newspapers, "*sexual minority refugee claimants*" (643) are mainly framed as deserving and legitimate, as 'flamboyant' and wearing pink. The deserving claimants are stereotyped as vulnerable and in need of Canadian protection. Other newspaper articles, however, focus on the violent and homophobic setting in their countries of origin, drawing an image of a passive and, when corresponding to said images, "*legitimate*" (643) refugee in need of "*Canadian benevolence*" (643). Claimants fitting stereotypes are thus mainly framed as deserving in the media, benefitting from the liberal Canadian state. This holds especially true when they come from a place imagined as particularly backwards.

Describing the countries of origin as illiberal is often done via religion, specifically Islam and Christianity. Jenicek et. al. (2009) illustrate how in Canadian news outlets Islam is portrayed as a monolithic and intolerant religion and contrasted with liberal, Canadian society. In contrast, the patterns vary for Christian countries of departure: Contrary to Islam, Christianity is portrayed as heterogeneous. In some countries, Christians are displayed as modern and liberal, while in other countries, notably in the so-called 'Global South', they are seen as illiberal. The authors demonstrate how the media often presents Canada as a "*safe haven*" for sexual minority refugees, contrasting it with the Muslim and parts of the

Christian world. Here, the authors argue that the refugees' stories are used as "*mediating agents*" (637) between Canada and non-Western countries. This approach tends to create a narrative that praises Canada's merits and superiority, highlighting its inclusive and tolerant cultural practices in contrast to "*their cultural practice of homophobia*" (Jenicek et al., 2009: 647), justifying again the exclusion of other, non-queer nationals from those countries.

The politics of queer asylum has become a central element in the sexual nationalism and the related nation-building of Western European countries. These nations prioritize their own (queer) liberal stances, concurrently leveraging this attribute as a marker of distinction. As will be argued in the subsequent chapter, such processes – that is, the correlation between queer asylum and the nationalist project – can also be expected in the case of Switzerland. Consequently, sections of the dissertation will address the manner in which the discourse on queer asylum interacts with the nation's self-image.

2.5 Linking the literature and the thesis

In this review, I assessed the literature on queer/SOGIESC asylum that has inspired my own articles. After justifying my interest in the topic, I presented literature on the legal and public-political levels of the discourse about queer asylum. I gave examples of the role of narratives of deservingness and credibility, two aspects that are central to this thesis. On the one hand, narratives of deservingness are central to understanding the discourse, notably at the public-political level. The narratives are arguments used by actors to determine whether or not a claimant is considered worthy of protection, and they can be found throughout the discourse. Relatedly, the literature also shows the centrality and specificity of credibility assessments for SOGIESC-related asylum cases: Every aspect, including the narratives of deservingness and the claimant's asylum story, is constantly exposed to the question of whether someone is credible or not. Moreover, due to the overall complexity of the cases, credibility's role in decision-making seems to be amplified compared to in other areas of asylum. Both – the narratives of deservingness and credibility – are therefore central to understanding the Swiss discourse on queer asylum.

Importantly, deservingness and credibility are interrelated; therefore, it seems to me a useful approach to analyse both aspects in this dissertation. In addition, the literature shows that both the decision-making processes and the more political/public processes are of great interest.

Furthermore, immigration and queer asylum became crucial tools for creating the self-images of countries of arrival as safe havens, that is, queer-liberal and humanitarian countries. Queer asylum is not 'only' about decision-making, but a significant part of the discourse is about the self-images of the nation and a means of contrasting oneself with the 'other'. In particular, such narratives are central to these mirroring processes. This aspect is also crucial for this thesis, and so I devote attention to how the discourse resonates in the creation of the (queer-) liberal and humanitarian self-image in Switzerland – and will also ask the extent to which we can generalize said reflections for the case Switzerland.

The literature review outlines various aspects of the phenomenon of queer asylum and also indicates where my thesis can contribute. First, apart from a few older legal studies (Bertschi, 2015; Hruschka & Portmann, 2012), there is little on the Swiss case (e.g., Büchler, 2022). Second, it is also clear that the field is dominated by qualitative analyses. Although these small-n studies provide in-depth insights, additional large-n studies can complement these. Third, little is known about the role of legal representation. After presenting a selection of relevant studies to illustrate the diversity of relevant research, I now discuss the theoretical framework that shapes the analytical process of the three research articles.

3 A queered perspective on asylum

In this chapter, I discuss the central theoretical considerations and the argument of the thesis. I start with an overview of queer theory, the concept of the sexual regime, and the process of queering. I then turn towards central reflections for the thesis, notably research related to (sexual) nationalism and homonationalism.

3.1 A queer theoretical approach to asylum

A central perspective for the thesis is queer theory. To explain what queer theory is about, it is useful to start with a very brief genealogy. For the longest time, “*classical sociology*” (Seidman, 1994: 167) was largely silent when it came to gender and sexuality. Relatedly, Seidman underlines the striking “*silence in classical sociological texts regarding [these] sexual conflicts and knowledge*” (1994: 167). Later, a “*sociology of sexuality*” (Seidman, 1994: 169) emerged in the USA in the 1950s and 1960s, notably feminist and LGBT-studies. These ‘predecessors’ of queer theory put questions of the body, feminism, (homo-)sexuality, and gender at the centre of their interest, but those scholars often followed a minority- and oppression-oriented epistemology (Seidman, 1994). In doing so, they usually also essentialized identity categories. Later, scholars of queer theory started challenging assumptions such as stable identities and, even more importantly,

shift[ed] their focus from an exclusive preoccupation with the oppression and liberation of the homosexual subject to an analysis of the institutional practices and discourses producing sexual knowledges and how they organize social life, with particular attention to the way in which these knowledges and social practices repress differences. (Seidman, 1994: 174)

Said focus was also central to the 1990 conference at the University of California in which the term ‘queer theory’ was coined (Halperin, 2003). However, even before that, scholars had developed approaches that critically addressed questions of gender and sexuality in relation to questions of power and governance. For example, works such as *Gender Trouble* by Butler (2006) and Sedgwick’s (2008) *Epistemology of the Closet*, both originally published in 1990, are understood as works that anticipated queer theory, indicating the pre-existing

demand for a holistic and critical approach to sexuality, gender, society, and power (Woltersdorff, 2003).

An important thinker for queer theory who also anticipated said perspective is Michel Foucault (e.g., 1978). His historical work shows how homosexuality as an identity was reconceptualized in the 19th century (Kruger, 2018: 339) and is identified as a fundamental part of the theoretical foundation of queer theory (Foucault, 1978; Seidman, 1994). Foucault illustrates, for example, how essentialism and affirmative political struggles may support the current, predominant structures and how the term 'homosexuality' was invented only in the Victorian Era (Foucault, 1978; Seidman, 1994) – showcasing how relevant categories are socially constructed. Importantly, early queer theorists underlined the relevance of understanding the societal frameworks, settings, and power relations in which subjects are embedded. They advanced the pre-existing research on sexuality and gender and developed a new approach based on post-structuralist theoretical reflections, but also on queer political struggles against discrimination towards any form of queerness (Woltersdorff, 2003).

For this thesis, the following three points are at the core of my understanding and use of queer theory. First of all, gender and sexuality are understood as social constructs. Or, following Ferreira and Danisi:

The key message in this theoretical field [is] that sex, gender, and sexuality – and the relationship between these – are not natural or biologically determined, but rather socially, legally and historically produced, thus being the product of social processes that are constantly changing. (2021: 78)

Queer theory conceptualizes gender and sexuality as social constructs, acts, and performances to be analysed in their respective contexts (Perreau, 2016; Sedgwick, 1993; Thiel, 2013). Markers of identity are not seen as stable, but rather as fluid and changeable, since they are the result of currently dominant structures. Consequently, queer theory rejects essentialist understandings of sexuality and gender, categorizations, and groupings

and follows an anti-essentialist perspective (Chandler & Munday, 2011; Kruger, 2018).²² This aspect is central to my own work, as I research the topic within an institutional framework, and also show how socially constructed, bureaucratic categories are highly relevant to this issue.

Second, queer theory offers a disruptive perspective and critique. Due to the refusal of existing categories and its premise of challenging power and norms, queer theory incorporates a disruptive element. Contrary to other fields of research, queer theory understands sexuality and gender against the background of “*institutional practices and discourses*” and the organisation of “*social life*” (Seidman, 1994: 174). This is exemplified by its proximity to political struggles and activism (Kruger, 2018). Queer theory deconstructs existing structures and their developments, scrutinizing and challenging them. Consequently, queer theory is also a critique of dominant forces and the prevalence of heteronormativity in society (Perreau, 2016: 80).

To be a disruptive perspective, however, the premises must be adapted to the respective context and time. Thus, other scholars criticize this idea of a strictly heteronormative society. It is against this background that Puar (2007) formulated the criticism of homonationalism.²³ Puar argues that although the dominant space today is no longer purely heteronormative, the selective inclusion of certain forms of queerness has led to new marginalizations and forms of exclusion. This is why, contrary to other theories of sexuality and gender, queer theory does not seek integration into any predominant structure. Rather, it constitutes an anti-assimilation stance, refusing the idea of queer inclusion into dominant structures and rejecting the idea of mainstreaming queerness and queer liberalism as defined in the introduction of the thesis (Saleh & Tschalaer, 2023). After all, the assimilation of some queer/homosexual bodies might still imply the exclusion of others (Ferry, 2012; Puar,

²² Eide (2016) describes essentialism as the assumption that one can create groups and categories for determinable members based on uniform, distinctive, and exclusive attributes. Essentialist approaches to creating distinctions are, according to Eide, problematic as they reproduce and legitimize existing structures, boundaries, and hierarchies. Further, essentialism fosters the assumption that people with a common identity marker share the same experiences, which is an oversimplification (Eide, 2016).

²³ For more details, see below.

2007). Rather, disidentification is considered an act of resistance (Muñoz, 2009). Queer theory is also about challenging the structures that possess the authority of in- and exclusion (Ferry, 2012; Puar, 2007). This disruptive aspect is crucial to this thesis, as queer asylum represents a phenomenon in which some forms of queerness became institutionalized and mainstreamed, while others remained excluded.

Third, queer theory is an intersectional perspective. As exemplified by the early queer of colour critique (Ferguson, 2004, 2018), queer theory also draws from the idea of intersectionality (Crenshaw, 1989). The intersectional critique challenges the idea of assessing the dominant forces of the regime solely through the prism of sexuality/gender, producing a "*single-oppression framework*" (Cohen, 1997: 441) that does not take into account other dimensions such as race, ethnicity, social class, Or, as formulated by Cohen:

It is my contention that queer activists who evoke a single-oppression framework misrepresent the distribution of power within and outside of gay, lesbian, bisexual, and transgendered communities, and therefore limit the comprehensive and transformational character of queer politics. (1997: 441)

To understand, question, and challenge the predominant distribution of power, queer theory scrutinizes the interacting effects of various axes of discrimination. Again, this consideration is central to this thesis, as factors such as socio-economic resources (e.g. for legal representation) are also crucial to the asylum process.

3.2 The sexual regime concept

Having those three 'pillars of reflection' in mind – sexuality/gender as categories resulting from the dynamics of a society, the goal of disruption, and the intersectional perspective – and using a queer theory-inspired approach to study a phenomenon like queer asylum expands the analytical scope. The focus is not only on sexuality and gender: Rather, queer theory links sexuality and gender to the existing organization of society, its discourses, institutions, knowledge, hierarchies, movements, and power relations. The object of interest is the sexual regime/regime of sexuality (Foucault, 1978; Seidman, 1994). When using a

regime perspective (Amelina & Horvath, 2020) inspired by queer theory, questions about sexuality and gender are understood against the background of power relations in the respective society. Using this perspective, sex, sexuality and gender are no longer seen as characteristics of an individual, but as something interrelated with society and its respective forms of knowledge (Seidman, 1994).

According to Seidman a sexual regime can be understood as “*a field of sexual meanings, discourses, and practices that are interlaced with social institutions and movements*” (1994: 169). Sexual regimes comprise vast networks of actors, while the actors organize, hierarchize, and classify the roles of sexualities and genders in society. As argued by Foucault (1978), the dominant regimes of sexuality change over time, and even at one point in time not every subject is exposed to the same regime: For example, Foucault argued that bourgeois families faced different restrictions on how they could live out their sexuality than families from lower socio-economic classes (Foucault, 1978: 129).

The sexual regime shapes thus the way sexualities and gender roles are organized in a society. The actors – in this dissertation, for example, the asylum decision-makers, the media, or the NGOs – in the sexual regime negotiate the question of which sexualities/genders are integrated/mainstreamed into society and which mechanisms of in- and exclusion come into play. Sexual regimes are equated to knowledges constructing “*the self as sexual*” and mechanisms fostering existing categories as markers of identities, and also “*as categories of knowledge*” creating “*moral boundaries and political hierarchies*” (Seidman, 1994: 174). Importantly, sexual regimes may further coexist and interact with other regimes, such as the asylum regime (Dahlvik, 2017; Lett, 2012). In this thesis, I thus also investigate how the sexual regime and the asylum regime are interrelated.

In conclusion, I do not understand sexuality/gender issues as individualized identity markers. Rather, the issues and related events – for example individual asylum cases, a related debate in a parliament, ... – are understood on a collective, political level. The conditions of access, for instance, are negotiated by a multitude of actors, making sexuality and gender political elements that must also be understood as such.

3.3 Queering as a process

While queer theory investigates sexual regimes, it is also closely related to ‘queering’ as a verb (Ghaziani & Brim, 2020). This process of queering is crucial to the thesis. In short, two types of queering are present in this thesis: On the one hand, queering can be considered as an act of research. Here, scholars analyse any subject of research through the prism of a queer theory epistemology – or at least use a queer angle – and/or put sexuality/gender at the centre of their analysis. An example might be research on how binary gender thinking affects the experiences of non-binary or trans* asylum seekers in shelters (Wimark, 2021). On the other hand, queering also means the emergence of sexuality/gender-identity-related issues in a formerly heteronormative realm and is a process that can be observed and researched. An example of this is the expansion of refugee qualifications to include homosexuality: homosexuality was gradually introduced into a heteronormative structure that was initially blind to sexual orientations, for example through the queering of asylum law and the inclusion of the category of SOGIESC-related asylum in the UNHCR since the 2000s (Ferreira & Danisi, 2021; Hamila, 2021). I subsequently address both aspects, queering as a kind of research and queering as a (social) process.

3.3.1 Queering a research design: From epistemology to interpretation through a queered lens

Giametta (2017) describes several components of queering as an element/act of research, including the following three: First, queering refers to the topic of research. Part of the process of queering research is to focus on “*issues that directly concern gender and sexual minorities under neoliberal governmentality*” (Giametta, 2017: 147). Thus, queering, as an element/act of research is hence the focus and subject of the research (Shannon-Baker, 2022). Second, queering does not condition to research a queer topic (Giametta, 2017: 31). Queered research also assesses domains formerly not considered queer, such as refugee law (Ferreira & Danisi, 2021), uncovering their queer aspects: The queer elements of an object may be implicit, and scholars may wish to uncover them. Here, the goal of queering is “*unsettling hetero- and cisnormative notions of gender, sexuality, identities, and practices*” (Shannon-Baker, 2022: 589). Third, queering is finally a means of thinking, an

epistemology allowing scholars to “ask social research questions about the very orientation of social research itself” (Giametta, 2017: 31) and to challenge the processes of research itself, for example by “unfixing and troubling” (Giametta, 2017: 30) identities or the status quo – a critical lens, that must be maintained throughout the research. Queering is hence an element/act of research, focusing on ‘queer subjects’ and epistemologies or focusing on the ‘queer’ aspects of an object previously and commonly not considered as ‘queer’, such as the asylum system. Importantly, the queer lens must be applied throughout the research process – a high threshold that I tried to meet at any point when working on this thesis.

3.3.2 Queering as a phenomenon of societal transformation

Furthermore, queering can also be understood as a societal process. Such processes can be observed and studied and are understood primarily as transformations of the dominant sexual regime. Here, queering refers to processes in which issues of (non-conforming) sexuality and gender enter spaces that were previously characterized only by heteronormative structures. An example of this is provided by Ferreira and Danisi in their research on the queering of international refugee law. In this context, Ferreira and Danisi exemplify queering the process of the “*progressive interpretations of the Refugee Conventions key concept*” by courts (2021: 88). In their case, a court granting a homosexuality-based asylum claim is considered an act of queering. Incrementally, sexuality and gender became relevant to asylum systems, and, following court decisions,²⁴ SOGIESC-related persecution became a category qualifying for asylum. Other actors, such as the UNHCR,²⁵ also qualify as actors that queered the current refugee status determination system by introducing ‘queer’ topics into a formerly heteronormative legal space (Hamila, 2021). This has happened for example through the publication of new

²⁴ E.g., European Database of Asylum Law (2013): The Court of Justice of the European Union delivers judgment in the joined cases of C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie en Asiel. (<https://www.asylumlawdatabase.eu/en/content/court-justice-european-union-delivers-judgment-joined-cases-c-19912-c-20012-and-c-20112-x-y>) [21.10.2023]

²⁵ E.g., UNHCR (2008): UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity. (<https://www.unhcr.org/us/media/unhcr-guidelines-lgbt>) [05.11.2023]

guidelines about how bureaucrats must assess claims. Here, the process of queering is not a research process but rather a process (that can be observed and researched) in the social world. An example is the queering of the asylum system – the process that is investigated in this thesis.

Changes in sexual regimes have thus led to a queering of the asylum system: While asylum systems were designed from a (male) hetero- and cis-normative perspective, recent years and decades have witnessed a gradual queering, and, for example, in Western-European countries, homosexuality has moved from being an illegalized category to a reason to justify access via asylum (Fassin & Salcedo, 2015). One consequence of such processes in the field of asylum is that access criteria have changed. For example, several court decisions have emphasized that SOGIESC-related cases can be treated under the notion of "*membership of a particular social group*" – a crucial development, as this membership is a criterion for obtaining asylum, including in Switzerland (Affolter, 2021; Ferreira & Danisi, 2021): New terms of access may evolve over time.

Shifts in the sexual regime affect who has access to the nation and under what conditions; therefore, perceptions of sexuality and gender in a society are linked to nationalism. Consequently, I will address this interrelationship below by first looking at nationalism, and then moving on to sexual nationalism and homonationalism as two concepts crucial to this thesis.

3.4 (Sexual) Nationalism

The literature on nationalism, which will serve as the basis for further reflection here, is rich, and I will limit myself to just a few scholars to indicate my understanding. As a first premise, I concur with Gellner (1969: 168), who argues that "*nationalism [...] invents nations where they do not exist*" and can thus be understood as a political project that aims at building a community. Gellner further posits that nationalism is a "*political principle which holds that the political and the national unit should be congruent*" (1983: 1). Or, in the words of Yuval-Davis: "*The concept of the 'nation-state' assumes a complete overlap between the boundaries of the nation and the boundaries of those who live in a specific state*" (2003:

10). Following Gellner's (1983) work, nationalism can be understood in a related way as a political project – often based on a set of values – aimed at creating a unified entity. As we will see, many means (and sets of values) can be proposed to achieve these goals. Relatedly, Sharma (2020) also emphasizes how nationalism relies on bounded communities that demand authority over borders and boundaries, which are central technologies of nation-making, nation-building, and nation-maintenance (Sharma, 2020). Here, a population is regarded as naturally belonging, while the others (non-nationals or non-natives) are regarded as (potentially illegitimate and thus deportable) immigrants.

Relatedly, in his seminal work, Anderson (2006) argues that all communities, beyond the possibility of relying solely on frequent face-to-face contact, depend on imagination to create a sense of community. The same holds true of nations: Nations are imagined communities, conceived as limited and sovereign, delimited by boundaries, borders, and national border regimes. In this context, nationalism is the creation, imagination, and becoming of said entities. Nationalism must be understood as an ideology like religion or kinship, but also as a process by which a delimited community and its boundaries are imagined and thus created through various means and discourses (Anderson, 2006).

In addition, as indicated by Wimmer (2019), various forms of nationalism exist. At their core, however, they have always had the idea of a group of citizens with a “*shared history and future political destiny*” (2019: 27) and the idea of self-governing. It is not “*an irrational sentiment that can be banished through enlightening education*” (Wimmer, 2019: 28), but rather a form of organization invented in the 18th century that allows unifying a selection of people under a common idea – for example the idea of a multi-ethnic nation Switzerland (Wimmer, 2011) – and, as we will see, potentially also under the idea of being a liberal, progressive, humanitarian society. While nationalism can, in a positive way, be understood as an ideology that unifies and allows to and facilitates the cohabitation of millions of individuals, it also has an exclusivist character. Nationalism is a “*discourse of alterity*” (Duyvendak & Mepschen, 2012: 75), hence a discourse deciding upon belonging and othering, an aspect of particular importance for this thesis.

Then, according to Yuval-Davis (1993), the gendered (and, as we will see, also sexualized) aspects of nationalism have long been a marginal perspective in the study of nationalism. However, many scholars now argue that nationalism is also linked to sexuality and gender (Duyvendak & Mepschen, 2012; Mepschen, 2024; Puar, 2007; Yuval-Davis, 1993, and many more). Once understood, however, this perspective is a logical step: For example, gender relations play a crucial role in the reproduction of the nation – biologically, culturally, and politically (Yuval-Davis, 1993). Feminist scholars, for example, have pointed to the gendered dimensions of nationalism (Farris, 2017). Farris's concept of femonationalism is the idea is that discourses on women's rights and gender equality are taken up by nationalist forces to discursively consolidate the nation ('we stand for gender equality' and define our community as individuals sharing such values) and used as an argument for marginalizing and excluding the allegedly intolerant others ('they do not') – mostly the Muslim and immigrant populations. Relatedly, other approaches have focused on how nationalism and national belonging relate to categories of sexuality and gender identities, coining the term 'sexual nationalism' (Duyvendak & Mepschen, 2012; Jaunait et al., 2013; Mosse & Roberts, 2020): In such an understanding, gender roles, women's rights, and SOGIESC have meanings and implications and should be understood as relevant elements of nationalism and national belonging, but also of the processes of exclusion. Sexual nationalisms describe the relationship between gender and sexuality and the formation of a national (imagined) identity, with implications for the politics of access, belonging, and (cultural) citizenship (Duyvendak & Mepschen, 2012; Jaunait et al., 2013). Sexual nationalism thus refers to how certain ideas about the different forms of sexuality/gender are means of defining the nation and shaping the policies, conditions, and markers of belonging. This can happen in the legal and public-political space, and is exemplified by the inclusion of certain SOGIESCs in the group of people potentially eligible for asylum, and thus shapes access.

Importantly, the predominant sexual nationalisms are neither stable nor uniform, and can be both pro- and anti-queer, as well as pro- and anti-feminist. In Russia, for example, the authorities refer to 'traditional' (highly conservative) values, gender roles, and norms as a

means of distinguishing between 'us' and the (Western) 'them' (Stella, 2016). In 2013, the Russian parliament outlawed "*propaganda for homosexuality*". Then, in 2023, the "*Supreme Court of the Russian Federation granted the Ministry of Justice's request to declare what it called 'the international LGBT public movement' an extremist 'organization'*" (Ingvarsson, 2023: 1). These developments can be understood in the context of a nationalist project (i.e., an exclusivist/anti-queer sexual nationalism): Based on the exclusion of queerness and feminism, Russian politics presents the country as a morally sovereign nation, defending traditional values against the influence of the allegedly decadent Western world. Any form of queerness is portrayed as a Western import that attacks the nation and therefore needs to be repelled (Rahman, 2014). Similar arguments can be found, for example, in the context of the Anti-Homosexuality Bills in Uganda (e.g., 2013 and 2023): Long-time president Yoweri Museveni argued that a law against homosexuality (initially based on British colonial rulings) would allow Uganda to defend 'traditional' (read: heterosexual) families and values. It has also been argued that homosexuality is a colonialist and imperialist import from the West against which Uganda must defend itself (Strand, 2024; Wahab, 2018). Thus, as in the case of Russia, anti-queer attitudes are central to the proclaimed sexual nationalism of Uganda, which is defined in part through the exclusion of queerness from the nation and allegedly 'traditional families' and 'values'.

Meanwhile, in other countries, such as the Netherlands and Germany, liberalism and the freedom of (certain) sexualities, sexual orientations, and gender roles/identities are used as central identity markers and as arguments for access practices.²⁶ One example is when liberal stances related to gender equality and homosexuality become a condition for citizenship, as it was observed in Germany: The state grants access – in terms of naturalization – only to those who are considered 'tolerant [vis-à-vis homosexuality] enough' and who transport a certain set of values. Attitudes and acts towards sexuality/gender become a criterion for access and belonging, and the current sexual nationalism becomes the benchmark for belonging (Büchler, 2022; Duyvendak &

²⁶ It should be noted, however, that this image is distorted and that those countries are by no means places free of homo-, queer-, and xenophobia.

Mepschen, 2012; E. Fassin, 2011; Jaunait et al., 2013). In this way, liberal stances in the debates around gender and sexuality are defined as markers of a nationalist project and belonging – also in Switzerland (e.g., Kristol et al., 2024). Sexual nationalism thus refers to the idea that national identities and belonging are built on ideas about sexuality and gender. As Jaunait, Renard, et al. theorize based on the work of Anderson (2006), *“national communities are also ‘imagined sexual communities’ that define what is normal and acceptable in terms of sexuality, vis-à-vis a national identity that is itself constantly reinvented”* (2013: 3). Or, put simply by McClintock (1991: 104): *“All nationalisms are gendered, all are invented”* – a quote we may expand and argue that all nationalist projects contain a sexual nationalism.

Finally, it should be noted that sexual nationalisms – that is, whether they are exclusive or inclusive, but also irrespective of which groups exactly are in question (e.g., sexual orientation or gender identity groups, racialized or not, ...) – are neither fixed nor constant, but rather fluid and variable over time. Relatedly, the idea of sexual nationalism must not be understood as a direct pattern towards liberalism: Mepschen (2024) illustrates this with regard to the idea of progress that has long dominated the literature, for example on the Netherlands. But now, as he shows, we can also observe a backlash in various European, and anti-liberal stances are becoming central narratives in the nationalist discourses again. What I want to emphasize here is that the current backlashes can and should also be understood as part of sexual nationalisms. And that we, as researchers, must be careful not to fall into a paradigm of a supposed given liberalism – even if only discursively created. Rather, we must take up current developments and adapt our analyses to the fact that supposedly liberal sexual nationalism was often only a superficial façade, which is increasingly crumbling within Western countries. For example, in Western Europe, Mepschen (2024) argues that we are facing a situation where certain sexual orientations (and gender identities) are mainstreamed and used as an argument to exclude, for example, Muslim populations. Meanwhile, other actors, often also right-wing politicians, may have a discourse that excludes, for instance, non-binary or trans* identities. Thinking

about dominant sexual nationalisms must therefore also consider their evolution, both in terms of progress and regression.

Very briefly: At any point in time, there is always a sexual nationalism that is predominant. In this context, the conditions of access to the nation are negotiated and (and this is where the concept becomes important for the thesis) often also the question of who is granted protection status by the asylum system.

3.5 Homonationalism and transnational community-building?

Another central concept used in research about queer asylum is homonationalism, which was developed by Puar (2007, 2013) and focuses on queerness-related arguments of belonging, particularly in the context of the post-9/11 War on Terror. Homonationalism is a response to the theoretical paradigm that the nation is strictly hetero/cis-normative. Rather, some forms of queerness have been incorporated into national ideas, such as white, bourgeois, and same-sex couples, while reproducing the previously dominant structures of gender, race, and class. However, the integration of certain forms of queerness now serves as a means of distinction and a marker of superiority. Or as Puar puts it:

I develop the conceptual frame of 'homonationalism' for understanding the complexities of how 'acceptance' and 'tolerance' for gay and lesbian subjects have become a barometer by which the right to and capacity for national sovereignty is evaluated. (2013: 336)

Homonationalism is further a critique that argues that the incorporation of some homosexual bodies into the nation and the subsequent access to citizenship based on the newly discovered liberal values also lead to new forms of exclusion, "*delimitation and expulsion*" (2013: 337) for other populations: Those who either do not fit the new categories or who oppose such new values.

Sexual nationalism is the phenomenon of attitudes towards sexuality and gender roles being important in defining a nation and determining who has access to it, in the case of (North-)Western Europe mostly through supposedly liberal attitudes. Homonationalism, on

the other hand, refers specifically to the use of supposedly progressive US/Israeli/Western (Puar, 2007) sexual nationalisms to distinguish themselves from others, especially the Muslim(-looking) world. Both concepts highlight how certain groups/bodies are included as 'insiders' while others are marginalized as 'outsiders', with only a few selected bodies granted access. Other bodies are excluded because they do not fit the given criteria. Gender and sexuality are relevant issues in understanding a nation's politics of belonging.

What unites both approaches – sexual nationalism, and homonationalism as a form of it – is the idea that sexual regimes are changing and new sexualities/gender identities and gender roles are being integrated into the imaginaries of communities, such as women's emancipation in France or liberalism towards certain forms of queerness in the Netherlands (Duyvendak & Mepschen, 2012; E. Fassin, 2012; Puar, 2007). I argue that after such changes in sexual regimes, the developments manifest themselves, among other things, in the asylum system.

Finally, after all this literature about nationalism, the question of transnational processes remains (e.g., Dahinden, 2009; Wimmer & Glick Schiller, 2002). According to Anderson (2006), communities are imagined and socially constructed (Ayoub & Paternotte, 2014). While this does not mean that these processes necessarily and always take place at a nation-state level, such processes of value-based community-building can also take place at the transnational level (Dahinden, 2009; Wimmer & Glick Schiller, 2002) and this holds equally true for sexuality- and gender-based processes. It is also no coincidence that literature dealing with sexual nationalism in the broadest sense often speaks of Western, rather than country-specific, values (e.g., Kristol et al., 2024; Rahman, 2014).

An example of this is Ayoub and Paternotte (2014)'s analysis. Drawing on Anderson's idea of socially constructed communities, they use a social movement perspective to analyse how LGBT activists understand, and shape, Europe as a liberal, progressive, and democratic entity and project. Further, those activists actively use this understanding as a strategic tool to trigger local change, but also to shift existing (nation-state/transnational) borders and boundaries (Ayoub & Paternotte, 2014).

The authors argue that transnational pro-LGBT organizations have been forming in Europe since the 1950s. They have traditionally been organized on a transnational level, and early on pursued the idea that the European project must also be liberal. In their argumentation, they promoted what we could call a progressive sexual transnationalism as a central element of the European DNA. For these activists, there are advantages to such an strategy: If Europe is characterized by a liberal sexual (trans-)nationalist project, so must its member states. Said reflections materialized in hands-on cases: For example, the activist would use Europe-level institutions - such as courts - to enforce national changes. Changes, that would, within a national setting, often not be possible. An example of this is the 1981 European Court of Human Rights ruling against the criminalization of same-sex relationships in Northern Ireland: An international court enforced changes on the (sub-)national level (Ayoub & Paternotte, 2014).

Furthermore, after the Cold War, pro-LGBT activists have actively sought to apply this image of a Europe of liberal values to the EU's eastward enlargement. Shortly after the fall of the Iron Curtain, Eastern and Central European LGBT organizations were directly supported by Western states (mainly by the Netherlands, Sweden, Norway and England, countries known for a queer-liberal sexual nationalist discourse) and organizations to fight for the image of a liberal European project and for legislation to prevail in the new EU states. It can therefore be said that transnational ideas and values can also be relevant for community-building - such as the idea of a liberal European community. This approach also shifts borders and boundaries - for example, from a purely Western Europe to a community that includes the new EU member states. And, as the authors point out, later also Eastern European countries that are not in the EU - such as by supporting the 2011 Pride in Belgrade (Ayoub & Paternotte, 2014).

What is important for my argument is that this form of transnational community-building is not entirely different from classical nationalist projects in that nationalism is always also a process of othering and alterity (Duyvendak & Mepschen, 2012): Ayoub & Paternotte (2014) describe further how the inclusion of additional states within said political community led to the redefinition of Europe's borders and boundaries, and a shifting of the dichotomy

between the modern West/Europe and the “*homophobic East*”, creating “*LGBT Europe’s ‘sexual other’*” (Ayoub & Paternotte, 2014: 231, 251) – whereby the borders and boundaries shifted and the question of where exactly they run through can be the subject of further discussion (Ayoub & Paternotte, 2014). However, it is important to note that processes similar to nationalist community building can also take place at the transnational level: A community is defined by its values (e.g. in relation to queer liberalism); these values can also be used strategically, but often lead to new borders and boundaries being drawn.

4 Asylum and sexual nationalism in Switzerland: The overarching argument and research questions

Based on the aforementioned considerations, the question arises as to how the discourse about queer asylum is constituted in Switzerland. First, however, a short disclaimer seems appropriate. Overall, research about this topic in (North-)Western Europe mostly uses the following reasoning: In light of the predominant queer-liberal sexual nationalism and homonationalist narratives, the inclusion of certain queer bodies seems a logical step (Akin, 2019; Luibheid, 2008; Puar, 2007). In this literature, predominant sexual nationalisms in (North-)Western Europe are characterized, *inter alia*, by queer liberalism. Therefore, these authors describe how different actors understand their own country as queer safe havens. Examples hereof are e.g., the Netherlands, the UK, or Norway (see e.g., Akin, 2019; Büchler, 2022; Fassin, 2012; Raboin, 2017; Tschalaer, 2019a).

These characteristics would lead us to expect a receptive practice towards people who have been persecuted because of their SOGIESC: After all, vulnerable SOGIESC (or here: queer) asylum seekers resonate with the image of the ideal (queer) asylum seeker and the idea of being a queer safe haven (Akin, 2019; Raboin, 2017). However, research paints a picture of exclusive decision-making processes and practices towards such claimants are described as relatively hostile. In the European countries of arrival, people's stories of flight are fundamentally doubted, and recognition rates in SOGIESC-related asylum cases – to the extent that they are known at all – are certainly not high (Giametta, 2017; Jansen & Spijkerboer, 2011; Millbank, 2009). These low rates of acceptance also suggest that factors such as race, ethnicity, and religion also play a central role: One might fit the ideal of a country's queer liberalism, but other factors may still lead to exclusion (Akin, 2019).

If we follow this literature, a paradox emerges from the contrast between the predominant queer-liberal sexual nationalism in some (North-Western) countries and the exclusivist asylum system. The following quote by Akin about Norway might be a good starting point to understand this paradox between those allegedly queer liberal stances and the nationalist and exclusivist asylum systems:

LGBT refugees stand out as a paradoxical figure. On the one hand, LGBT refugees appear as being void of agency, and waiting for protectorship of Western democracies, following their self-claimed inherent tolerance of sexual diversity. On the other hand, the non-whiteness of LGBT refugees provokes political anxiety and prompts questions about the credibility of their protection claim: Are they really LGBT or are they misusing the asylum system? (2019: 35)

In my opinion, some of these considerations can also be applied to Switzerland. Importantly, this paradoxical configuration has also been described by Büchler (2022: 385f) for queer women in Switzerland. As already indicated in the Introduction (and later in the first article of the thesis), different actors advance related arguments for Switzerland; thus, a queer-liberal narrative can – to a certain degree – also be observed there. Like in the other countries characterized by a queer liberalism, Switzerland's practice is also restrictive – a report for the UNHCR describes Swiss practice as particularly strict, compared also to other European countries (Motz, 2021). The handling of SOGIESC cases is characterized by contradictions and tensions, such as the persistent usage of formally abandoned arguments by courts and other decision-makers (UN High Commissioner for Refugees (UNHCR), 2021; Wessels, 2021).

However, we must nuance reflections about the 'queer safe haven' Switzerland and the related paradox, since the Swiss case does not necessarily 100% align with those considerations. A theoretical argument based on the ideal of being a queer-liberal safe haven – and notably also a significant discourse about such issues – cannot be made in exactly the same way as for otherwise similar countries. For this thesis, I posit that the public debate in Switzerland is less about queer liberalism than it is in other Western European countries. While queer-liberal rationales clearly play a role and are driving forces, other issues – as I will argue, gender equality and women's rights – dominate the debate and Swiss sexual nationalism. We need to adapt our arguments accordingly.

To make such a claim – and to describe Swiss sexual nationalism in a broad way – it makes sense to zoom out and look first at the development of women's rights and gender equality in Switzerland. After all, much of what has happened in the context of SOGIESC asylum is rooted in the notion of gender-specific persecution. This perspective allows us to grasp that

the gendered and sexualized aspects of the Swiss nationalist project are – both on the discursive and the practical levels – conservative and deferred: Until 1952, women would lose their Swiss citizenship if they married a non-Swiss citizen, and until 1992, they had to actively declare that they wanted to keep their Swiss citizenship if they married a non-Swiss citizen (Studer, 2001). Also, the late introduction of women’s suffrage (1971 at the national level, and even 1991 at the cantonal level in Appenzell Innerrhoden) (Studer, 2001),²⁷ indicates a conservative regime regarding demands for gender equality.

Even if these examples focus on women’s rights and gender equality rather than queerness, they show that an argument based on liberal positions on women’s rights, gender identity, and, as I will subsequently show, also on some forms of queerness may need to be nuanced in Switzerland, as its regime may not be comparable to otherwise similar (North-)Western European countries.²⁸ The same can be said for the legislation of queerness-/LGBTIQ+-related rights. In terms of legislation, the following examples may provide some clues about the regime and the prevailing sexual nationalism in Switzerland, also in comparison to other countries.

4.1.1 The legalization of homosexuality and the legal recognition of same-sex relationships

One indication to characterize the sexual regime and nationalism of Switzerland could be the (patchy) legalization of homosexuality. Due to the Napoleonic Code, many (French-speaking) cantons in Switzerland have not punished homosexuality since 1798 (Büchler, 2022). However, at the national level, homosexuality became legal only in 1942. By comparison, the Netherlands legalized it in 1811, Norway in 1972, the United Kingdom between 1967 and 1982 (in Northern Ireland), and New Zealand in 1986. On the international level Switzerland was thus neither an early adaptor nor a latecomer in terms of abolishing

²⁷ Ch.ch (2023): Frauenstimmrecht in der Schweiz (<https://www.ch.ch/de/wahlen2023/geschichte-der-wahlen/frauenstimmrecht/>) [11.12.2024].

²⁸ Also, there is less research on this topic for Switzerland than, for example, for Germany, Norway, or the United Kingdom (Akin, 2019; Raboin, 2017; Tschalaer, 2019a).

laws prohibiting consensual same-sex relations at the national level.²⁹ However, legalization did not prevent the police, for example in the canton of Bern, from creating a register of (allegedly) homosexual persons – until the 1990s.³⁰

Then, Switzerland was relatively late in legally recognizing same-sex relationships: It introduced civil partnerships in 2007 (Denmark: 1989, the Netherlands: 1998, Germany: 2001, Hungary: 2009). Similar patterns can be observed for same-sex marriage, which was introduced in 2022 following a referendum by 64.1% of the votes. In terms of marriage, the Netherlands took the lead in 2001, followed by Sweden and Norway in 2009. According to data from the ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association), Switzerland is clearly a latecomer.³¹

4.1.2 And today?

In order to understand the current situation in Switzerland, its legislation, and its prevailing sexual nationalism, I would also like to mention other sources. First, the F&M Global Barometer of Gay Rights and the F&M Global Barometer of Transgender Rights (Dicklitch-Nelson et al., 2023). This project is a collection of information on the state of what they call gay and transgender rights in 204 countries – measured, among other things, by legislation, and de jure and de facto protections. According to this data, Switzerland's regime has evolved in recent years: While the score for both gay and transgender rights was below the average of other Western European countries until 2020/2021, Switzerland has actually caught up in terms of progressive legislation and can now be considered an average case in Western Europe – a development that is illustrated by Figure 1 (the bold line being Switzerland's score, the dashed line the average score of Western Europe). The figure

²⁹ ILGA (2020): State-Sponsored Homophobia: Global Legislation Overview Update. (https://ilga.org/wp-content/uploads/2023/11/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf) [11.12.2024].

³⁰ Bern LGBT (2022): Schwulenkartei. Die Berner Polizei und die Schwulen. (<https://bern.lgbt/2021/06/schwulenkartei/>) [11.12.2024].

³¹ ILGA database (2024): Legal Frameworks | Same-Sex Marriage and Civil Unions. (<https://database.ilga.org/same-sex-marriage-civil-unions>) [11.12.2024].

shows the evolution of the Swiss score compared to the Western European average (Dicklitch-Nelson et al., 2023).

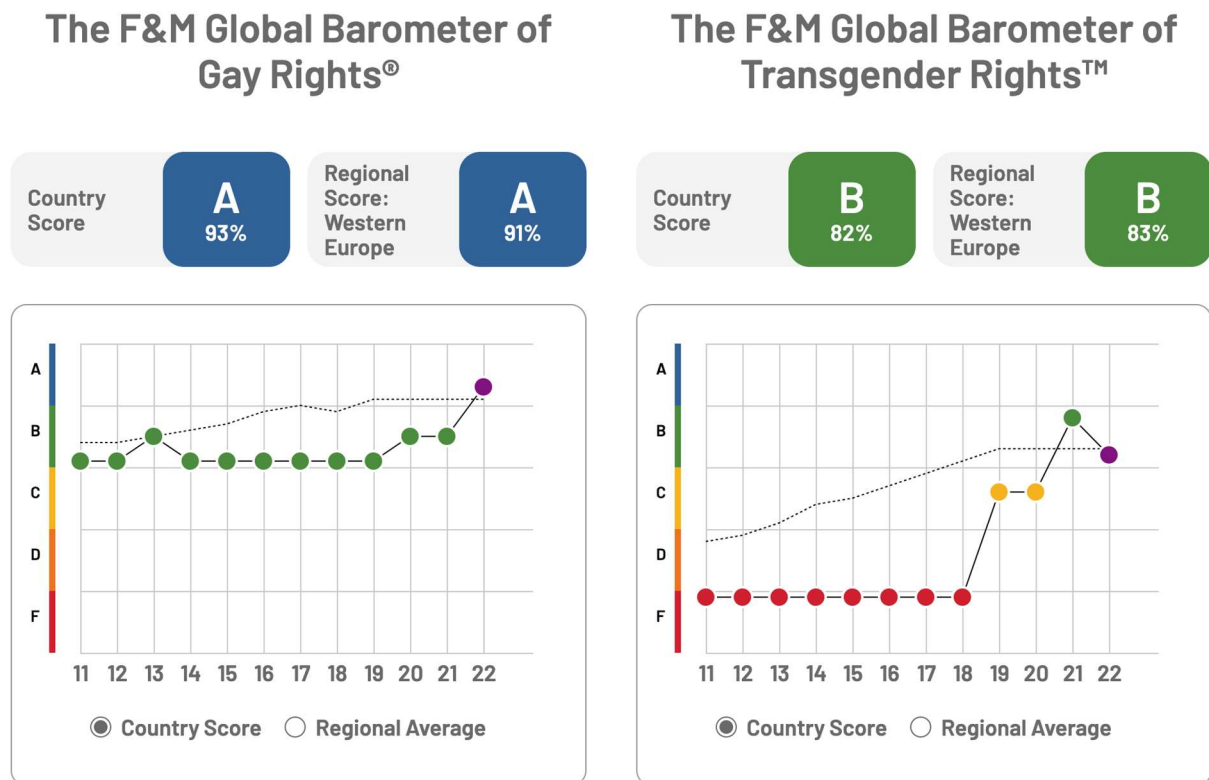


Figure 1: The F&M Global Barometer, Switzerland.
[\(https://www.fandmglobalbarometers.org/countries/switzerland/\)](https://www.fandmglobalbarometers.org/countries/switzerland/) [11.12.2024].

Similarly, ILGA Europe’s Rainbow Map³² shows how well a state protects the human rights of LGBTI people. On a scale of 0–100%, this indicator indicates the level of protection of LGBTI people’s human rights for 49 European country – based on 75 criteria. As with the previous indicator, ILGA’s data shows that Switzerland is an average case in terms of laws and policies affecting the human rights of LGBTI people: Overall, as shown in Figure 2, Switzerland scores 50%, which is, for example, significantly lower than Belgium (78%) but also significantly higher than Italy (25%).

³² ILGA Europe (2024): Rainbow Map. (<https://rainbowmap.ilga-europe.org/about/>) [11.12.2024].

2024 Rainbow Map Scores

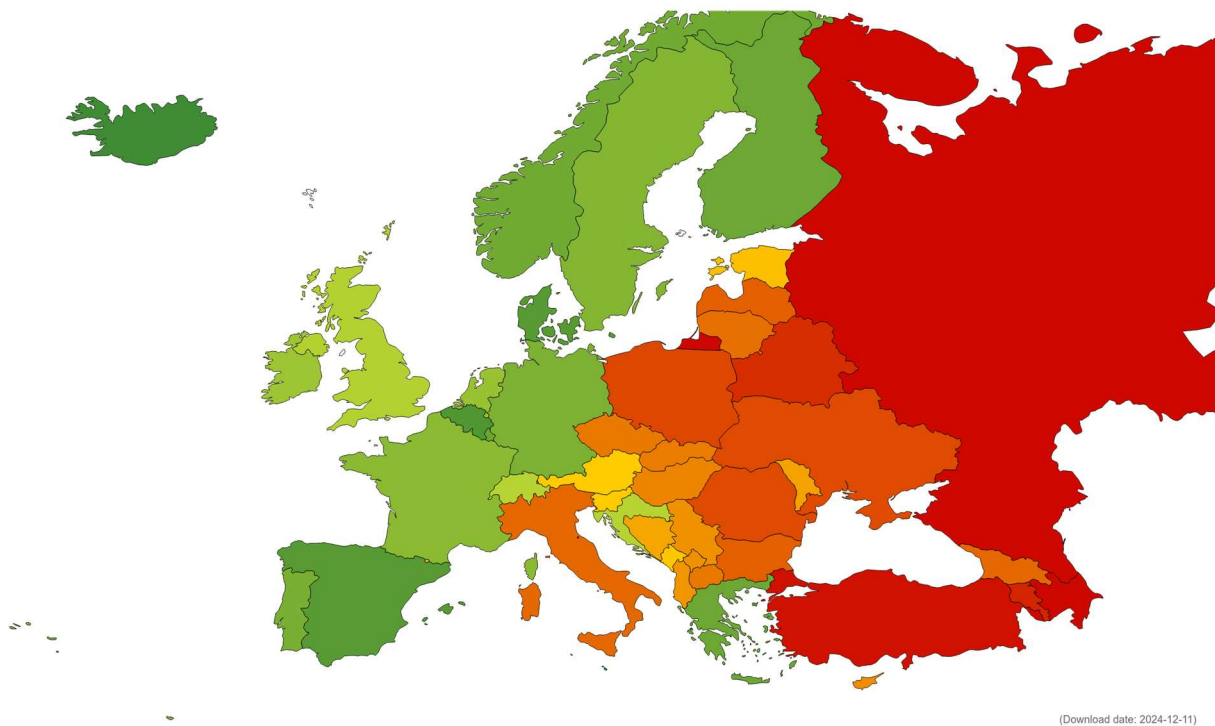


Figure 2: ILGA Europe Rainbow Map, overall LGBTI human rights standards 2024. (<https://rainbowmap.ilga-europe.org/>) [11.12.2024].

Further, the Rainbow Map also allows us to differentiate between seven policy fields. Here we see, for instance, that Switzerland scores very poorly on protection against hate crimes and hate speech – and on asylum for LGBTI people: In terms of protection for LGBTI asylum seekers, as shown in Figure 3, Switzerland scores 33%, while the Netherlands and Belgium score 66% and 83% respectively. Thus, while Switzerland's overall score is in the middle of the European Union countries, its score for asylum-related legislations is significantly lower (33%, compared to 44% in the European Union) and thus closer to, for example, Hungary (16%) and Italy (33%) than to the Netherlands (66%) or Belgium (83%). While the overall score of Switzerland is average, its asylum-related legislation scores very low.

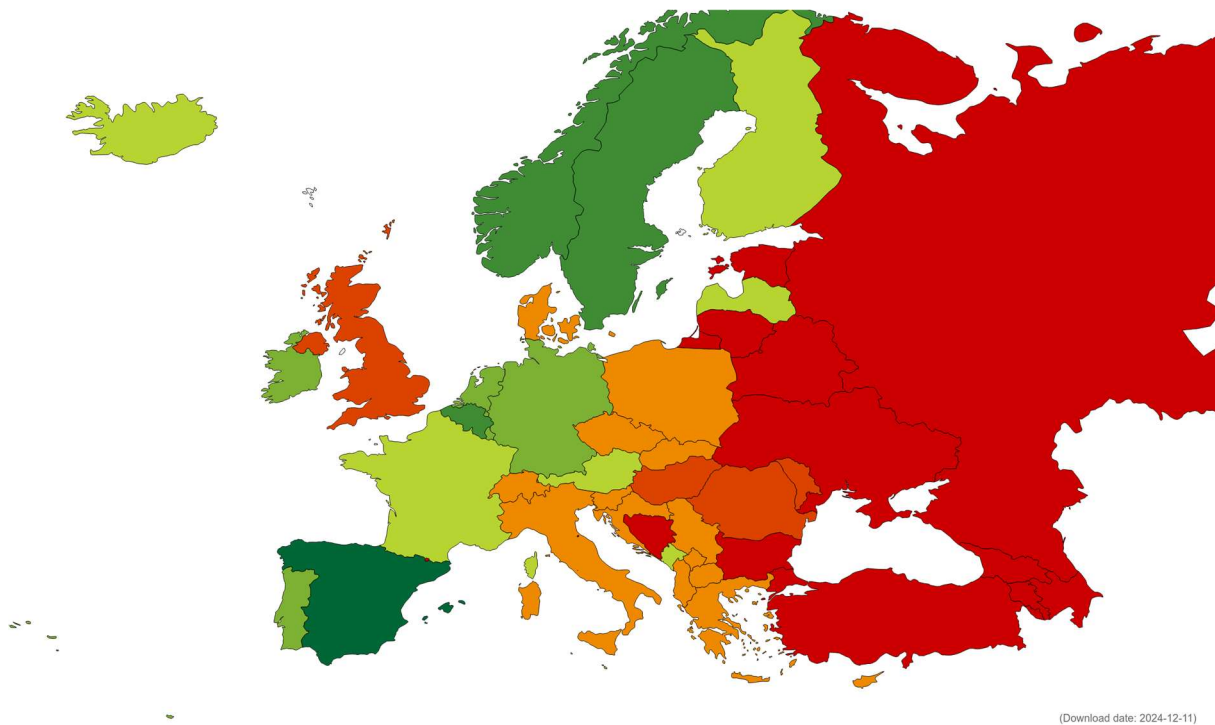


Figure 3: ILGA Europe Rainbow Map, LGBTI asylum human rights standards 2024. (<https://rainbowmap.ilga-europe.org/categories/asylum/>) [11.12.2024].

While there are compelling arguments to be critical of such nationalized and essentialist accounts,³³ the data indicates a trend: In 2024, compared to the European countries, Switzerland is a rather average case in terms of legislation – and compared to Belgium, for example, it has a conservative regime. This holds equally true in the area of asylum for LGBTQI+ people, where Switzerland is well below the average level of the countries of the European Union.

4.1.3 (Queer-) liberal public discourses in Switzerland?

Compared to other Western European countries, the Swiss legislation is currently neither very conservative nor very progressive – in the area of asylum, however, international data paints a picture of a clearly conservative and exclusivist regime. Nevertheless, and this point cannot be stressed enough, the specifications of the public-political discourse on

³³ However, these scores also indicate how the scientifically found discourses about queer liberalism must not align with legislation, e.g., when considering the surprisingly low score of the Netherlands.

³³ For more details, see Giametta & Havkin (2021).

liberalism, queerness, and nationalism – as well as its intensity – can to some extent be separated from the legislation: A country insisting on queer liberalism may have very conservative legislation and vice versa. So, despite those insights, the exact discursive configuration of Switzerland remains a central question. Has Switzerland a dominant discourse about queer liberalism or is the topic less prevalent in this country? And what is the public discourse about? Sadly, there is comparatively little research on the discourse of queerness and its discursive prevalence in Switzerland, especially from a country-comparative perspective.

Nevertheless, we observe how some actors imagine and present Switzerland as a queer-liberal country. For example, Büchler (2022) shows how a pro-lesbian NGO frames Switzerland as belonging among open and liberal countries. While I am sympathetic to her analysis – that several actors present Switzerland as a queer-liberal safe haven – I nevertheless contend that said discourse about queer liberalism is less pronounced and predominant than, for example, in the Netherlands, where homonationalist discourses have characterized the public debate for more than two decades – exemplified for example by Pim Fortuyn, a pioneer of homonationalist right-wing populism who was assassinated in 2002 (Spierings, 2021).

Rather, as various scholars have shown, the Swiss discourse, and thus its sexual nationalism, is to a large degree oriented towards women's rights, gender equality and how it is achieved in modern Switzerland (Dahinden & Manser-Egli, 2023; Khazaei, 2019; Kristol et al., 2024). This point is illustrated by Dahinden and Manser-Egli (2023), who developed the concept of gendernativism.³⁴ They emphasize the role of gender equality and women's rights in the Swiss public discourse of belonging, triaging between the 'free native' Swiss citizens, and the unfree migrants (and their descendants) and Muslim women. The authors demonstrate how the public and political discourse is characterized by a deep-seated

³⁴ For an overview about nativism, see, e.g., Kešić and Duyvendak (2019) or Mudde (2009). In very brief terms, it is not only about the creation of in- and out-groups (hence those who have been here before, and those who just arrived), but also about a resulting hierarchy and the idea that the former should be prioritized over the latter.

perception of liberal values in the Swiss nationalist project, to the extent that it becomes a marker of belonging. They further demonstrate how the perceived levels of freedom of individuals also inform their sense of belonging, as well as their externally attributed belonging: Only those who are (considered to be) free and liberal belong. It is evident that the concept of championing gender equality and women's rights is a fundamental aspect of the Swiss (sexual) nationalist project and national cohesion (Dahinden & Manser-Egli, 2023).

The authors illustrated said dynamics through two case studies that emerge from political debates which have dominated public and political discourse in Switzerland: the debate about forced marriage, as well as the burqa ban. The debate on forced marriage prevailed in the 2000s and early 2010s and was characterized by the linkage of said practices with certain countries of origin. For example, Muslim immigrants and their descendants were automatically viewed with suspicion. Discursively, they were either suspected of promoting, or falling victim to, forced marriages. Also Muslim women who are legally citizens of Switzerland are discursively excluded from the category of 'native Swiss' because either they are considered to be promoting anti-equality values (by supporting forced marriage) or they are victims of it, and are thus 'unfree migrants' rather than 'free Swiss' citizens. In any case, they are denied liberal subjecthood and thus cannot be and become Swiss natives (Dahinden & Manser-Egli, 2023).

The second case study of the article is the burqa ban, which was approved in a popular initiative in 2021 with 51.2% of the vote. Despite very few people wearing a face veil, the ban was loaded with various political meanings and implications: The burqa has been interpreted as a symbol of oppression and a lack of freedom, and public discourse has portrayed veiled women as lacking autonomy, a fundamental criterion for recognition as a free Swiss political subject and nativist belonging. Again, given that women wearing a burqa were either considered victims of oppression or supporters of the practice, they were discursively denied belonging. Of particular interest is the official reaction to the popular initiative: The Federal Council presented the burqa as a potential sign of subjugation for immigrant (and descendent) women. Meanwhile, they also presented (native) Swiss

converts as fully capable of making independent decisions regarding the wearing of a face veil (Dahinden & Manser-Egli, 2023).

Through these examples, Dahinden and Manser-Egli demonstrate that gender equality and women's rights are mobilized as fundamental aspects of Swiss identity and belonging (and thus sexual nationalism), and how they are used as an argument for nativist (non-)belonging and national cohesion. By framing the championing of liberal values as universal and inherent to Swissness, public and political discourses create a boundary that excludes those who are understood as deviating from this ideal. This dynamic functions to victimize and marginalize Muslim and immigrant (and descendent) populations, denying their belonging, and thereby consolidating the national identity of a free, gender-equal Swiss native population (Dahinden & Manser-Egli, 2023). Clearly, gender equality and women's rights are central factors in the Swiss nationalist project and public discourses.

In another article, Kristol et al. (2024) examine how the principle of gender equality – and the idea that it has been achieved in Switzerland – functions as a key determinant of belonging. The authors understand belonging as a technology of power, hence as a tool that, due to the dominant power relations, governs individuals by categorizing them. To showcase how gender equality-based arguments are means of belonging, they use two case studies. They show that gender equality, framed as achieved and as a core Swiss value, functions both formally (affecting individuals in naturalization processes) and informally (affecting individuals in their everyday lives) as an instrument of inclusion and exclusion (Kristol et al., 2024).

Case study one focuses on the role of gender equality in naturalization processes. According to Swiss law, individuals must be 'integrated' in order to be granted Swiss citizenship. This vague wording implies, *inter alia*, that decision-makers use gender equality as a yardstick to measure an individual's attitude to 'Swiss/European core values' (Kristol et al., 2024). During their naturalization hearings, individuals are asked many questions, some of which – aimed only at people from certain parts of the world – are designed to understand whether an individual's ideas and lifestyle are in line with the supposedly achieved Swiss equality and liberalism: a woman from Kosovo might be asked whether she

is free to marry whomever she wants, a woman from Thailand whether she would stay with her husband if he beat her. Individuals from certain backgrounds are thus required to prove their adherence to these ideals in order to qualify as members of the Swiss community. These examples show how ideas of gender equality have shaped formal technologies of belonging and access. In a second case study, however, the authors also show how this happens informally in people's everyday lives, targeting equally migrantized citizens. Here, people of immigrant descent, even if they hold a Swiss passport, are stereotyped and 'othered' through gender-equality arguments, for example by pointing out that the descendants of immigrants marry at a very young age. Gendered arguments are thus used formally and informally as a means of excluding migrants. Kristol et al. (2024) argue that gender equality is treated as an already accomplished and inherent characteristic of Swiss identity, serving as a marker to distinguish those who belong from those who do not. This creates a double standard: While migrants are scrutinized through the lens of gender equality, inequalities within Swiss society are overlooked. In this way, gender equality becomes a tool for 'doing belonging', shaping both formal citizenship choices and informal social perceptions. In short, the authors show how "*gender equality in Switzerland is largely treated as an accomplished social fact and thus as a genuine characteristic of those who count as 'Swiss'*" (Kristol et al., 2024: 14). Gender equality becomes an instrument of formal and informal belonging.

What these two research projects – and several more (e.g., Bader & Mottier, 2020; Fischer & Dahinden, 2017; Khazaei, 2019; Studer, 2001) – have in common is the following argument: Women's rights and gender equality are discursively presented as an achieved ideal in Switzerland, and the related liberalism is a central marker of the Swiss (sexual) nationalist project. Said liberalism is, however, often understood as being jeopardized by immigrants. While several indicators – such as the mobilization of 500,000 people for the women's strike in 2019 (Kristol et al., 2024) or the high level of violence against the LGBTIQ+ population³⁵ – indicate how the gender- and queer-liberal nation Switzerland is far from being the reality,

³⁵ See the Swiss LGBTIQ+ Panel reports (e.g., Eisner & Hässler, 2022, 2024).

equality and liberalism are discursively presented as a given fact. Relatedly, conformity is a condition of access and belonging in Switzerland. Those processes are very similar to discourses about queer liberalism in other Western European countries, as they create similar borders and boundaries.

For this thesis, I posit that Swiss sexual nationalism is informed by both ideas of gender equality/women's rights and queer liberalism. However, while the former is prevalent in Switzerland, the discourse about queer liberalism, although present, is less prominent than it is in other Western European countries. When researching queer asylum, we must keep that in mind. However, while research about the Swiss discourse indicates how gender equality rather than queer liberalism characterizes the debate, we must also address a limitation to my argument that the Swiss discourse is more about gender equality than queerness, homonationalism, and queer human rights: Potentially, my argument may also reflect a research gap in the Swiss landscape. After all, little research about the Swiss case has been conducted. However, the sluggish development of Swiss legislation – especially given the semi-direct democracy and federalism³⁶ that would have allowed for pioneering bottom-up and de-centralized movement towards a fast implementation of liberal legislation – suggests that the issue is less prevalent than in other countries.

Returning to the central point, we can thus understand Swiss (sexual) nationalism in the following way: Scholars have outlined various dimensions of the Swiss nationalist project. Much has been written of the role of its institutional particularities – federalism and semi-direct democracy, or the four national languages (Mottier, 2000). Further, like in other cases, questions of sexuality and gender play a central role in Swiss nationalist discourses (Bader & Mottier, 2020; Mottier, 2000). Here, gender equality and women's rights as achieved goals are central markers of the nation-building project, and patterns of queer liberalism can also be found (Bader & Mottier, 2020; Büchler, 2022; Dahinden & Manser-Egli, 2023; Kristol et al., 2024).

³⁶ The Swiss pioneer is the canton of Vaud, which introduced women's suffrage 'as early as' 1959 (Dlabac & Gilardi, 2019).

What is further important for this thesis is the following: In terms of legislation, Switzerland has – in recent years – become an average case. However, it has clearly remained restrictive in terms of its legislation concerning LGBTI asylum. Meanwhile, on the discursive level, we find actors that underline Switzerland's position as a queer-liberal country; however, said discourse seems to be less pronounced than in other Western European countries. I thus argue that the discourse around Swiss sexual nationalism is less about queer liberalism and homonationalism, and more about gender equality. Swiss sexual nationalism is also shaped by notions of being a liberal country, but the focus is on women's rights and equality rather than queerness.

Obviously, this configuration tells us that Switzerland is an interesting case in which to study the issue of queer asylum, since its sexual nationalism differs from other – otherwise similar – countries that have often been the subject of related research (e.g., Germany, the UK, or Norway, see e.g. Akin, 2017; Raboin, 2017; Tschalaer, 2019a). But before formulating the research questions, one last remark must be made. In order to understand the dominant Swiss nationalism in the context of asylum, I argue that any analysis of Switzerland must also take into account the discourse of the humanitarian tradition (Büchler, 2022; Uebersax, 2019): The image of Swiss identity, although far from coherent and uncontroversial in practice, has been closely linked to the (myth of the) humanitarian tradition of welcoming those in need of protection, as it is for example propagated by the authorities (Pörtner, 2021). While I will discuss this aspect of the Swiss nationalist project in more detail in the following chapter, it is important to keep it in mind when making the case.

Specifically, for Switzerland, I argue that in the country's dominant discourse, gender equality, to some extent queerness, and the associated ideal of liberalism have been 'mainstreamed' and incorporated into the predominant Swiss nationalist project. I posit that the relevant actors in Switzerland – the media, politicians, official institutions, ... – use this domestication of (some forms of) queerness as a means of constructing their positive self-image and creating cultural hierarchies. However, we must keep in mind that this discourse is less pronounced than in other Western European countries, and that the focus of the dominant sexual nationalism is mainly on gender equality rather than on queerness

and SOGIESC. However, these configurations do not make an analysis of the related discourse any less interesting.

To understand the case of Switzerland, I focus on two levels of the discourse that are of particular interest – namely the public-political and the legal. This assumption is based on the findings of various scholars who indicate that, on the one hand, SOGIESC/queer asylum can be of paramount importance for the imaginaries of the countries of arrival and their policies (Giametta, 2018; Raboin, 2017; Tschalaer, 2020). On the other hand, scholars have also outlined how the legal level is marked by various difficulties, such as assessing a SOGIESC and evaluating the risk of future persecution (Ferreira & Danisi, 2021; Millbank, 2009). To understand the discourse, I dedicate this thesis to the following research question:

General research question: *How does the discourse on queer asylum in Switzerland interact with the country's predominant sexual nationalism and exclusivist asylum system?*

Based on the theoretical interest and research question, this thesis consists of three research articles that examine the discourse of queer asylum from three perspectives.

4.2 The public-political level of the discourse or the production of narratives of deservingness

In the first step, I focus on the public-political level of discourse. Here, I am mostly interested in the question of how, given the sexual nationalism of Switzerland outlined above, regime actors use different narratives of deservingness to filter access: Some applicants are accepted in the name of the dominant sexual nationalism, while 'only' the allegedly undeserving are rejected. Narratives of deservingness become a means of filtering access (Akin, 2017, 2019; Giametta, 2018; Luibheid, 2008).

I hence focus on the narratives of deservingness that can be found in the discourse, answering the questions of who merits access, “*who deserves to enter into European territory?*”, and “*who deserves to receive state-funded assistance?*” (Ravn et al., 2020: 135).

By creating hierarchies of deservingness within the category of (what in the article are called) sexual asylum claims, such narratives allow the contradictory elements of the

tension between sexual nationalism and a restrictive practice aiming to reduce access to remain unchallenged (Luibheid, 2008). Based on these considerations, I formulate the following research question:

Research question 1: What are the narratives of deservingness that shape the politics of belonging in the Swiss sexual asylum regime?

4.3 The legal level of the discourse or the paramount relevance of credibility and legal representation for SOGI(ESC) asylum claims

Then I turn to the legal level of the discourse. Not only is the political relevance of what I conceptualized as SOGI asylum amplified, but the institutional practices are also characterized by various difficulties and contradictions. Understanding the legal level of the discourse could, as argued by Millbank (2021), allow us to gain further insight into general questions about the refugee status determination system. Moreover, I argue that credibility is orthogonal to the other elements of the discourse, such as the narratives of deservingness: While several narratives are put forward in the discourse of access – the vulnerability of the individual, conformity to Eurocentric stereotypes, ... – the question of credibility always seems to hover over all of them, and even conformity with the other narratives of deservingness seems to be of little use if the story of flight and persecution is ultimately distrusted. A vulnerable person – even if perceived as such – is unlikely to be granted protection status if the credibility of their flight story is denied. Thus, credibility seems to be a central element of the discourse, with a certain special status that justifies the following focus on this element.

Therefore, I follow the rich literature on the central role of credibility assessments in SOGI-related asylum (Ferreira, 2022; Zisakou, 2021). Building on this literature and given the suggested heightened relevance of credibility in this domain, I explore the role of credibility assessments in the Swiss asylum system. After all, SOGI cases are subject to an amplified “*culture of disbelief*” (Ferreira, 2022), and the claims are often considered ‘fake’ and ‘bogus’ (Danisi, 2019). Based on the literature highlighting the challenges of providing evidence for

such asylum claims, I argue that credibility must be of heightened importance for SOGI-related asylum claims. Therefore, I propose the following research question:

Research question 2: Is the role of credibility is amplified in case law relating to SOGI asylum, compared to unrelated asylum case law?

The third article continues to focus on the legal level of discourse. Furthermore, I aim to understand how the discourse found in the appeal cases is influenced by legal representation. I draw on the rich socio-legal literature on legal representation, which has shown that, under certain conditions, legal representatives help to level the odds for claimants and are thus central actors in assisting claimants to access protection status (B. Miller et al., 2015). I argue that legal representatives act as intermediaries, helping claimants overcome inherent power imbalances at the asylum courts (Conant et al., 2019; Miaz, 2021; B. Miller et al., 2015). Examples of such imbalances include language barriers, economic disadvantages, and unfamiliarity with the legal system (Ryo, 2018). Given the complexity of SOGI-related cases and the difficulties in proving the credibility of asylum stories, I further argue that this effect must be amplified in SOGI asylum cases. Based on the reflections on credibility, I also examine how representation (in SOGI-related cases) correlates with the presence of credibility assessments. The third research question is thus:

Research question 3: To what extent does legal representation influence the outcome of SOGI-related asylum appeal cases in the appeal procedure in Switzerland? And how does this impact the presence of credibility-related reasonings?

Having presented the theoretical framework, the argument, and the resulting research questions of this thesis, I now turn to a description of the case that I investigate: Switzerland.

5 Setting the scene: SOGIESC and queer asylum in Switzerland

Having presented the theoretical framework and the resulting research questions, I now present and discuss the case of interest: the Swiss asylum system, with a particular focus on its handling of SOGIESC-related cases. First, I provide a brief historical overview of the development of the Swiss asylum system in general. Second, I examine the history of the phenomenon – both as a category of asylum cases and as a political discourse – in Switzerland. Third, I turn towards the current functioning of the Swiss asylum system, with a particular focus on its appeal instance, the Federal Administrative Court (FAC), since the second and third articles focus mainly on this institution.

5.1 Asylum in Switzerland: A selective safe haven?

As pointed out by Skenderovic (2009) and Uebersax (2019), immigration has played a significant role throughout Swiss history and politics. While Switzerland is now a country of immigration in quantitative terms, it wasn't until the end of the 19th century that net migration became positive (Arlettaz & Arlettaz, 1996; Büchler, 2022). And now, Switzerland has one of the highest immigration rates in Europe (Mahnig & Piguët, 2004; nccr – on the move, 2024). While those statistics mostly concern labour immigrants and their families, people fleeing persecution have been a topic in Swiss politics for decades as well. Moreover, according to the website of the SEM,³⁷ the (constructed image and myth) of the Swiss humanitarian tradition dates back centuries. Various events, such as the accommodation of the Bourbaki Army in 1871, the establishment of the Red Cross in Geneva, and its role as the depository state of the Geneva Convention (Uebersax, 2019), are used by state institutions and political actors alike as arguments for the country as a humanitarian safe haven (Büchler, 2022). Even though this self-image remains crucial and present in the discourse today, it is important to note that practices of granting asylum and

³⁷ SEM (2019): Humanitäre Tradition. (<https://www.sem.admin.ch/sem/de/home/asyl/asyl/humanitaere-tradition.html>) [22.03.2024].

protection have neither been consistent nor stable over time. Rather, practices changed as a function of time (Efionayi-Mäder, 2003), but also were never really coherent at any one point (Eule et al., 2019). For example, political refugees were largely granted protection during the first years of World War 1, whereas Jewish refugees were rejected during World War 2 (Efionayi-Mäder et al., 2005; Uebersax, 2019). Admission or denial of access has largely depended on geopolitical and national political circumstances.

Between the 1950s and the early 1980s, the majority of asylum claims were granted (Affolter, 2021). During this period, assessments were made using group-based rather than individual reasoning and were handled flexibly and politically, rather than following a legal approach with vested rights and clear legal criteria (Uebersax, 2019). The intensity of persecution was not the only determining factor, but rather who the asylum seekers were, their country of origin, and whom they were fleeing. For example, (presumably left-wing) refugees from non-communist countries like Chile (1973) received less favourable treatment and triggered debates about their "*asylum worthiness*" (Efionayi-Mäder et al., 2005), compared to those from Hungary in 1956 and Czechoslovakia in 1968/1969, reflecting the paradigmatic logic of the Cold War (also Efionayi-Mäder, 2003; Uebersax, 2019). Importantly, many members of these two groups would not be granted asylum under current legal regulations (Uebersax, 2019).

However, overall, despite Switzerland spearheading the rise of radical right-wing parties in Europe in the second half of the 20th century, a receptive practice dominated the Swiss asylum system between 1950 and 1980. While the absolute numbers of asylum claims were low, the xenophobic discourse around "Überfremdung" (over-foreignization, see also Fischer & Dahinden, 2017) mainly targeted economic immigrants, such as guest workers from Southern Europe (Efionayi-Mäder et al., 2005), and the issue of asylum was relatively low in political salience (Skenderovic, 2009). Even the radical right-wing did not fundamentally question the asylum policies (Efionayi-Mäder, 2003). And although the electorate voted on several popular referendums related to immigration, they were primarily directed against the issue of (economic) immigration in general rather than asylum (Efionayi-Mäder et al., 2005; Skenderovic, 2009).

According to Efionayi-Mäder (2003), the period of the late 1970s and the 1980s represents a turning point. Asylum increasingly became the subject of political discourse towards the end of the 1970s and the early 1980s (Piguet, 2013; Skenderovic, 2009). Importantly, the first Asylum Act of 1979³⁸ implemented individual decision-making and shifted decision-making power from the cantonal to the national level, although leaving parts of the implementation process to the former (Holzer & Schneider, 2004). This change was accompanied by a procedural shift, where legal rather than political factors became decisive points for decision-making (Uebersax, 2019). Of course, political aspects still play a role, but the legal criteria are formulated more clearly, and group membership became less important. Relatedly, while the initial focus of the asylum process was on group affiliation, the new regulations placed more emphasis on individual components such as credibility and 'evidence'. In this logic, each individual claim is thoroughly examined against various criteria, reflecting the shift towards individualization in asylum practices and the rise of "evidentiary requirements" (Affolter, 2021: 52; Büchler, 2022).

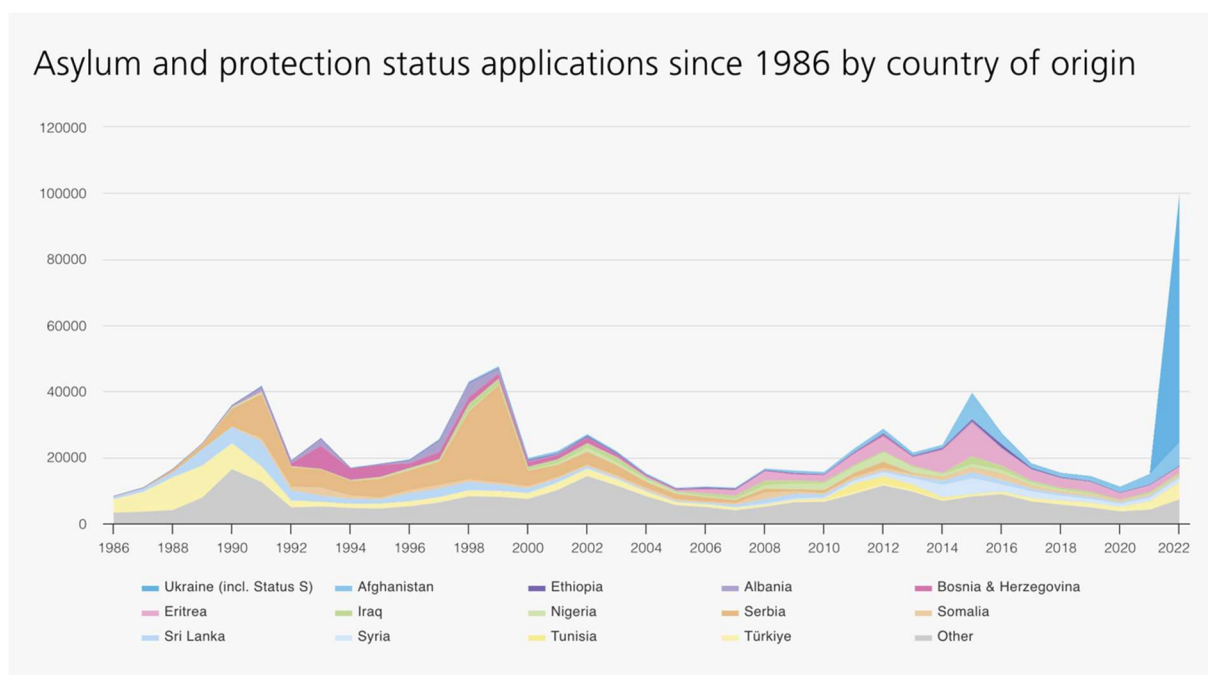


Figure 4: Asylum and protection status application numbers since 1986. The peak of 2022 must be understood against the background of the war in Ukraine. SEM (2024): Highest number of refugees in decades. <https://archiv.migration.swiss/en/migration-report-2022/asylum-and-protection-status-s/a-few-figures?lang=true> [11.04.2024].

³⁸ Schweizerisches Bundesarchiv (1979): Asylum Act 5 October 1979. (<https://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10047803>) [23.10.2923].

Simultaneously, the asylum statistics changed rapidly: The number of asylum claims increased from fewer than 5000 in 1980 to more than 35,000 in 1990.³⁹ This is also indicated in Figure 4, published by the SEM, showing further how the numbers are variable, with peaks in, for example, 1998 (due to the wars in former Yugoslavia, of which most returned, see Dahinden, 2014), 2015 (the so-called long summer of migration, see Hess et al., 2017), and the application for temporary protection from citizens of Ukraine as of 2022 (of which only a few are actual asylum claims, as they are treated under the temporary protection status S system⁴⁰).

Meanwhile, the asylum acceptance rate dropped from more than 90% (1981) to less than 10% (1990) and then rose again to 25.7% in 2023 (Piguet, 2013; Pörtner, 2021).⁴¹ Against the background of the historical statistics between the early 1980s and 1990s, Affolter describes the Swiss regime as having become increasingly restrictive, for two main reasons:

Firstly, the refugees that started to arrive in the 1980s, no longer neatly fitted into the East/West divide. Secondly, the economic crisis following the 1973 oil crises led to increased unemployment and a ban on labour immigration which restricted possibilities (other than asylum) for gaining residency in Switzerland. (Affolter, 2021: 50)

As the acceptance rates dropped between 1980 and 1990, the relative openness of the Swiss asylum system faded away, and the exclusivist debates about asylum and labour immigration started to merge. A generic debate on immigration thus became a prominent

³⁹ Later, the numbers changed again: 39523 during the events of 2015, and 2022, following the outbreak of the war in Ukraine, nearly 100000. SEM (2024): Asylstatistik. (<https://www.sem.admin.ch/sem/de/home/publiservice/statistik/asylstatistik/uebersichten.html>) [22.04.2024].

⁴⁰ The Swiss authorities can activate this country-specific status in the event of large movements of refugees. In the case of Ukraine, it has now been activated for the first time, granting refugees from Ukraine comparatively unbureaucratic temporary protection and, for example, the right to work. SEM (2024): Fragen und Antworten für Geflüchtete aus der Ukraine. (<https://www.sem.admin.ch/sem/de/home/sem/aktuell/ukraine-krieg.html>) [03.12.2024].

⁴¹ Overall, there was an increase in the recognition rates, with 25% in 2015 (53% if temporary admissions are taken into account) and 30.6% (59% with temporary recognition) in 2022. Prior to the war in Yugoslavia, there was no temporary protection status and the numbers are not really comparable (Efionayi-Mäder et al., 2005). SEM (2016): Asylstatistik 2015. (<https://www.sem.admin.ch/sem/de/home/aktuell/news/2016/2016-01-28.html#:~:text=Im%20Jahr%202015%20wurden%20in,viele%20wie%20im%20Jahr%202014.>) [22.04.2024] and SEM (2024): Archiv Asylstatistiken ab 1994. (<https://www.sem.admin.ch/sem/de/home/publiservice/statistik/asylstatistik/archiv.html>) [24.05.2024].

topic, albeit one with little nuance in terms of content (Skenderovic, 2009). Moreover, Swiss radical right-wing parties started to politicize asylum policies in the 1980s (Skenderovic, 2009), and the topic also became prominent in other Western European countries (Holzer & Schneider, 2004). International conflicts and the resulting forced human movements became a central issue in political debate, and, in 1999, following the Yugoslavian wars, refugees were granted collective provisional status for the first time (Efionayi-Mäder et al., 2005). Then, in 2008, Switzerland implemented the Dublin regulations⁴² and became even more integrated into the European asylum system (Büchler, 2022; Eule et al., 2019). Ever since, immigration and asylum have remained political issues of high importance and relevance in parliamentary politics, popular referendums, and media discourse.

In Switzerland and other European countries, asylum seekers are nowadays often portrayed as a problem, mainly by right-wing political parties. They argue that some claims are 'fake' and 'bogus' and that many claimants abuse the asylum system instead of being genuine. Asylum seekers are presented as a burden on the welfare state, linked to terrorism, and overall portrayed as a threat to national security (De Genova, 2017; Leyvraz et al., 2020; Mudde, 2009; Pörtner, 2021). This trend can also be seen in the reforms to the Swiss Asylum Act and related policies, which have been amended and revised several times since their implementation – towards more restrictive practices (Affolter, 2021; Efionayi-Mäder, 2003). This is further reflected in the various anti-immigration and anti-asylum popular initiatives and referendums that Switzerland has voted on in the last few decades (Fischer & Dahinden, 2017; Skenderovic, 2009).⁴³

⁴² The Dublin area currently comprises 31 countries that have implemented these rules to prevent multiple applications by the same asylum seeker. In practice, this means that a person can only apply for asylum in one of the countries. If the authorities discover that the person has already made an application in another Dublin member state, they can be returned to the first country. However, for the actual asylum procedure, national law applies again. SEM (2024): Dublin Regulation. (<https://www.sem.admin.ch/sem/en/home/asyl/dublin.html>) [03.12.2024].

⁴³ Also, there are upcoming votes, such as the so-called sustainability-initiative, aimed at limiting the Swiss population to 10 million inhabitants. SVP (2023): Keine 10-Millionen-Schweiz! (Nachhaltigkeits-Initiative). (<https://www.svp.ch/aktuell/kampagnen/keine-10-millionen-schweiz-nachhaltigkeits-initiative/>) [21.10.2023].

However, although the anti-immigration discourse was developed early on in Switzerland, the intensification are not a phenomenon specific to Switzerland: The associated exacerbation of the asylum regime is in line with general developments in the European asylum system, which are ongoing and more and more oriented towards externalization (Affolter, 2021; Avanza et al., 2023) and be externalized (De Genova, 2017; Zaiotti, 2016). For example, the European Commission proposed the European Pact on Migration and Asylum in 2020, which was agreed upon by EU member states in 2023 and includes new restrictions.⁴⁴ Procedures are to be carried out in camps at the EU's external border and to be massively shortened.⁴⁵ Given that Switzerland is not a member state of the EU, said pact is only partly binding (e.g., the rulings corresponding to the Dublin regulations). However, the Swiss government also announced that it would monitor developments and potentially apply some of the new practices.⁴⁶

While the discourse around asylum has become increasingly exclusivist, tensions have been accentuated. An example of this is the tensions between the perception of Switzerland as a seemingly humanitarian country (Uebersax, 2019) and its comparatively restrictive practices (Motz, 2021). To some extent, this tension can be rationalized by arguing that only the genuinely deserving are being protected, while the undeserving, who do not require protection, are excluded. However, this distinction is influenced by factors other than the actual need for protection. This becomes evident, for instance, when

⁴⁴ European Parliament (2023): EU Pact on Migration and Asylum State of Play. ([https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/739247/EPRS_BRI\(2022\)739247_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/739247/EPRS_BRI(2022)739247_EN.pdf)) [20.10.2023].

⁴⁵ Schweizerische Flüchtlingshilfe (2024): Genehmigung und Umsetzung der Notenaustausche zwischen der Schweiz und der EU betreffend die Übernahme der Verordnungen (EU) 2024/1351, (EU) 2024/1359, (EU) 2024/1349, (EU) 2024/1358 und (EU) 2024/1356 (EU-Migrations- und Asylpakt) (Weiterentwicklungen des Schengen- und des Dublin-/Eurodac-Besitzstands) Vernehmlassungsantwort der Schweizerischen Flüchtlingshilfe (SFH). (https://www.fluechtlingshilfe.ch/fileadmin/user_upload/Publikationen/Vernehmlassungsantworten/241114_SF_H_VNL_EU_Pakt_de_final.pdf?utm_medium=email&utm_campaign=Vernehmlassung%20EU%20Pakt%20copy&utm_content=Vernehmlassung%20EU%20Pakt%20copy+CID_af53fc788445cc8f84fc854e2ebe9277&utm_source=Campaign%20Monitoring&utm_term=Vernehmlassungsantwort) [03.12.2024].

⁴⁶ SEM (2024): EU Pact on Migration and Asylum. (<https://www.sem.admin.ch/sem/en/home/international-rueckkehr/kollab-eu-efta/eu-migrations-asylpakt.html>) [03.01.2025].

comparing the relatively uncomplicated assistance provided to refugees from Ukraine,⁴⁷ with the restrictive practices towards refugees from Eritrea, Afghanistan,⁴⁸ or Syria, who are in undeniable need of protection as well. Despite these 'double standards', the self-image of Switzerland as a humanitarian and liberal safe haven, where the deserving in need are protected and only the undeserving are rejected, is maintained.

I posit that in the current political debate, few would deny the right of access for 'credible', 'vulnerable', 'deserving', and 'genuine' refugees. The discourse is about where the authority to interpret who fulfils these criteria lies, paired with a growing effort to filter out 'undeserving' claims: Contemporary political discourses depict Switzerland as a country that protects those truly in need while portraying allegedly undeserving refugees as a threat to the system and the country. Moreover, this also means that the discourse is constantly negotiating the notion and definition of 'deservingness' and who should be allowed to enter.

In conclusion, in the last few decades, several changes have impacted the Swiss asylum system: first and foremost, the number of claims increased, while the acceptance rates dropped. The issue was further highly politicized, and the processes shifted towards an individualized, credibility- and evidence-based assessment of each individual claim, in which correspondence to dominant notions of deservingness is negotiated. Importantly, Swiss asylum practices have become increasingly intertwined with international

⁴⁷ By the time of writing this thesis, political actors such as the SVP however started critiquing said practices, see e.g. SVP (2023): Verlängerung des Status S: Einmal mehr wird die Schweizer Bevölkerung von Mitte-Links über den Tisch gezogen. (<https://www.svp.ch/aktuell/publikationen/medienmitteilungen/verlaengerung-des-status-s-einmal-mehr-wird-die-schweizer-bevoelkerung-von-mitte-links-ueber-den-tisch-gezogen/>) [23.11.2023] and Schweizerische Flüchtlingshilfe (2024): Schutzstatus S wird untergraben. (<https://www.fluechtlingshilfe.ch/publikationen/news-und-stories/status-s>) [20.01.2025].

⁴⁸ As of 17 July 2023, the SEM changed practices towards a more receptive regime. This, however, triggered political outcry, and the FAC later revoked said decision. See SEM (2023): Faktenblatt 'Praxisänderung weibliche afghanische Asylsuchende'. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/afghanistan/230926-fakten-afg-praxisaenderung.pdf.download.pdf/230926-fakten-afg-praxisaenderung-d.pdf>) [21.10.2023] and e.g. Curia Vista (2024): Motion 24.3008: Schutz von Afghaninnen. Einzelfallprüfung und Sicherheitsüberprüfung. (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20243008>) [03.03.2024].

developments (Affolter, 2021). Besides participating in the common European asylum system Dublin, Switzerland is also involved in international organizations and impacted by policy diffusion, for example, when adopting European legislation and regulations to which it is technically not bound to which it is technically not bound. Consequently, global developments such as the emergence of gender-specific persecution and later SOGIESC-related claims have also had an impact on the Swiss asylum system.

5.1.1 SOGIESC-related asylum – the emergence of a new category of asylum claims

Since the 1980s, the Swiss asylum system has become increasingly restrictive, and the individualization of case assessments has been accompanied by an increasing entanglement with the European and international asylum system. It is in this context that we can situate the international, and later also national, emergence of sexual asylum. However, to understand the developments in Switzerland, two preliminary remarks must be made.

First, discussing SOGIESC-related asylum in Switzerland without incorporating international developments would be an example of methodological nationalism (Efionayi-Mäder, 2003; Wimmer & Glick Schiller, 2002) and a hardly justifiable simplification as the developments diffused across countries. Consequently, the following overview of the developments of SOGIESC-related asylum in Switzerland will also incorporate international developments. Second, as also discussed in the first article of the thesis, SOGIESC-related/queer asylum – internationally as well as in Switzerland – evolved to a large degree as a subgroup of women-/gender-specific asylum, and many developments and institutional foundations in this domain also affect sexual asylum. Sexual asylum must not be understood in isolation. Historically, the legal frameworks – for example the Swiss Asylum Act – were mostly implemented relating to women-specific asylum grounds, which later in practice was often interpreted as also applicable for gender-specific (including men), and then also SOGIESC-related, asylum. An example of this is the 2003 case of a man from Sri Lanka who was tortured on his genitals: The former Asylum Recourse Commission

interpreted this to mean that male asylum seekers could also be considered victims of gender-based persecution, as his sexual/physical integrity had been affected. As a result, in Swiss practice, men can also be persecuted on the basis of gender-specific persecution. This has of course had an impact on men's claims, including SOGIESC-related claims, and shows how gender-based persecution has gradually been applied to a larger group than female claimants.⁴⁹ Therefore, when analysing the topic, a merging of the topics of women-, gender-, and sexuality-related persecution can be observed. The relevant framework of gender-specific persecution was developed for women before it was also applied for male – for example homosexual – claimants.

It is difficult to find a meaningful starting point for this overview of the developments of SOGIESC-related asylum (in Switzerland). After all, there have probably always been LGBTIQ+/queer asylum seekers, but these characteristics were not a relevant part of the administrative considerations. To the best of my knowledge, an early appearance was in 1979, when sexual orientation–based asylum was discussed for the first time in parliament in the Netherlands,⁵⁰ following three asylum claims from homosexuals. In the following years, the Dutch authorities assessed several claims (European Council on Refugees and Exiles, 1997; Jansen & Spijkerboer, 2011).⁵¹ The late 1970s might hence be a good starting point to understand SOGIESC-related asylum, as there were similar developments in other countries, such as the first claims in South Africa (1982), Germany (1983), and the USA (1988, see European Council on Refugees and Exiles, 1997).

To understand the international developments, however, it is necessary to look at the issue of women-/gender-specific persecution (LaViolette, 2007). Although the first claims of

⁴⁹ Schweizerische Asylrekurskommission (2003): 2003/2. (<https://ark-cra.rekurskommissionen.ch/assets/resources/ark/emark/2003/02.htm>) [26.11.2024].

⁵⁰ In 1979, the Dutch Secretary of State agreed to a “*parliamentary resolution recognising persecution on the basis of sexual orientation as grounds for asylum*” (European Council on Refugees and Exiles, 1997: 10).

⁵¹ Afdeling rechtspraak van de Raad van State (Judicial Division of the Council of State) 13 August 1981, Rechtspraak Vreemdelingenrecht 1981, 5, Gids Vreemdelingenrecht (oud) D12-51 (Jansen and Spijkerboer 2011: 19). The claimant from Poland was rejected because, according to the court, he suffered discrimination only and not persecution. However, the court further decided that homosexuality may qualify for belonging to a particular social group, which was an important step towards a more receptive practice.

SOGIESC-related asylum appeared in the 1980s, the international debate at that time mostly focused on women-/gender-specific reasons, with sexual asylum only partly implied (Ferreira & Danisi, 2021). During the 1980s/1990s, there was an institutional and political realization that the experiences of male and female refugees differ, for example due to arranged marriages or forced abortions (LaViolette, 2007). Furthermore, this also resulted from an increasing number of reports related to systematic sexual violence in war zones (Barzé, 2012; Büchler, 2022; Hruschka & Portmann, 2012). The growing international attention towards women-/gender-specific persecution was evidenced by various international events, such as the World Conference on Women in Beijing in 1995 and the statement of the Executive Committee of the UNHCR in the same year (Achermann & Hruschka, 2012a), both addressing women-/gender-specific persecution.⁵²

Another key document – also for SOGIESC-related cases – is the *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* - or more commonly known as the 2011 Istanbul Convention (which came into force in Switzerland in 2018 (Miaz et al., 2024)).⁵³ The convention is a binding human rights framework for the prevention of gender-based and domestic violence. Within this focus, two out of the convention's 81 articles deal with asylum: Article 60 states that "*gender-based violence against women*" must be recognized as grounds for flight and that the entire asylum procedure must be interpreted in a gender-sensitive manner. Article 61 ensures that victims of gender-based violence cannot be returned to a country where their lives are in danger. Although SOGIESC is not directly mentioned in the convention, Article 2 encourages the countries to apply the framework to all victims of domestic violence (e.g., including children).⁵⁴ NGOs and scholars indicate that the convention should thus be

⁵² Importantly, in practice, women-specific persecution was often interpreted as gender-specific persecution, and frequently also interpreted as incorporating sexual asylum (Achermann and Hruschka, 2012a).

⁵³ Fedlex (2022): Übereinkommen des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt (Istanbul-Konvention). (<https://www.fedlex.admin.ch/eli/cc/2018/168/de>) [04.12.2024].

⁵⁴ Humanrights.ch (2020): Europaratskonvention zur Verhütung von Gewalt gegen Frauen (Istanbul-Konvention). (https://www.humanrights.ch/de/ipf/grundlagen/rechtsquellen-instrumente/europarat/istanbul-konvention/?gad_source=1&gclid=EAlalQobChMI2MHFtdyNigMVIqSDBx2zzwuCEAAYAiAAEgJt3vD_BwE) [04.12.2024].

interpreted to include also SOGIESC-related asylum cases, including (homosexual) cis-male.⁵⁵ However, they also argue that the convention lacks an intersectional perspective, by, for example, thinking about women as a homogeneous group (Tschalaer, 2021).⁵⁶

Finally, the recognition of a broad definition of gender-based persecution – that is, including SOGIESC-specific aspects – is a key issue, especially for lesbian, bisexual, intersex, and trans* people in particular, as they are more likely to be affected by, for example, rape and corporal punishment within the family, as well as additional difficulties during flight and asylum proceedings (Tschalaer, 2021). The Istanbul Convention is therefore another key that helps to shape national practices on sexual asylum in the context of gender-based persecution. Ultimately, the convention should be reflected in national practice, as the framework is binding. However, prior to the implementation, actors like the Federal Office of Justice would argue that Switzerland already fulfils the requirements of the convention (Miaz et al., 2024) – also according to the SEM and their guidelines on gender-specific persecution.⁵⁷

Meanwhile, SOGIESC-related asylum was also mentioned explicitly in international documents. The Yogyakarta Principles of 2006,⁵⁸ a UN document about human rights concerning SOGIESC, also addressed the issue of freedom of movement and asylum. Furthermore, in 2008, the UNHCR presented a guidance note on how to treat what they called LGBT asylum cases.⁵⁹ While the issue of women-/gender-specific asylum gained

⁵⁵ Netzwerk Istanbul Konvention (2021): Umsetzung der Istanbul-Konvention in der Schweiz Alternativbericht der Zivilgesellschaft. (https://istanbulkonvention.ch/assets/images/elements/Alternativbericht_Netzwerk_Istanbul_Konvention_Schweiz.pdf) [04.12.2024].

⁵⁶ See for example also the discussions of the following conference: Queer European Asylum Network (2022): Die Istanbul-Konvention intersektional denken. (<https://queereuropeanasylum.org/upcoming-events-2/>) [03.12.2024].

⁵⁷ SEM (n.d.): Handbuch Asyl und Rückkehr Artikel D2.1 Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf.download.pdf/hb-d2-d.pdf>) [21.10.2023].

⁵⁸ The Yogyakarta Principles (2006): The Yogyakarta Principles. (<https://yogyakartaprinciples.org/>) [21.10.2023].

⁵⁹ UNHCR (2008): UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity. (<https://www.refworld.org/docid/48abd5660.html>) [21.10.2023].

salience in the 1980s and 1990s, SOGIESC-related asylum often resonated implicitly in the subtext. However, from the 1990s/2000s onwards, the discourse somewhat evolved into a more independent one. Incrementally, SOGIESC asylum became institutionalized as a separate topic on the international level.

The situation was similar in Switzerland. Here, four findings underline the early presence of SOGIESC-related claims: In 1987, a doctoral thesis concerning the definition of a refugee in Switzerland was published, stating that the issue of homosexuality-based claims, and gender-specific persecution in general, would gain relevance in the future (Werenfels, 1987). Second, a study about homosexuality-based asylum covered the period from 1993 to 2007, indicating the presence of related cases in the early 1990s. The study found an increase in the number of cases over the years (Bertschi, 2007). Third, in 1996, the former asylum appeal commission, ARK,⁶⁰ re-evaluated two cases – a man from Uzbekistan and a woman from Russia – related to sexual orientation.⁶¹

Albeit both were rejected, this indicates that the issue was definitively present in the institution in the mid-1990s.⁶² Fourth, also at the end of the 1990s, an internal working group, addressing gender-specific persecution, was implemented within the Swiss migration authorities. This working group also considered homosexuality-based claims (Achermann & Hruschka, 2012; Barzé, 2012; Parak, 2020). Clearly, the topic of homosexuality-related asylum claims had arrived in the Swiss institutions before the 2000s.

Nevertheless, in Switzerland as well, the overarching topic of women/gender-specific reasons dominated the discourse back then, and SOGIESC-related asylum was a subtopic, at best. This is illustrated by the following example: Prior to the 1998 revision of the Swiss

⁶⁰ Asylrekurskommission ARK

⁶¹ Schweizerische Asylrekurskommission (1996: 29). (<https://ark-cra.rekurskommissionen.ch/assets/resources/ark/emark/1996/9629274PUB.htm>) [21.10.2023]; Schweizerische Asylrekurskommission (1996: 30). (<https://ark-cra.rekurskommissionen.ch/assets/resources/ark/emark/1996/9630284PUB.htm>) [21.10.2023].

⁶² As one can read in Werenfels' dissertation (1987), however, the topic had already arrived in the academic discourse earlier.

Asylum Act, the Social Democratic Party, the Refugee Council, and women's NGOs advocated expanding the (legal) definition of a refugee to include gender-specific reasons.

In its statement,⁶³ however, the government deemed the demand as inappropriate for two reasons: First, a material change in the notion of a refugee would not conform with the definition in Article 1a of the Convention Relating to the Status of Refugees⁶⁴ and would disrupt the aim of harmonizing European asylum practices (despite not being bound to many European treaties and institutions, the Swiss authorities often implement practices so that they align with the European level). Second, it was argued that it would be unclear who exactly would fall under the umbrella term and the number of claims would increase, *“especially from states with strong fundamentalist tendencies”*.⁶⁵

The material definition of a refugee was hence not adapted. However, after the revision, the Asylum Act included the phrase *“motives for seeking asylum specific to women must be taken into account”*⁶⁶ (Achermann & Hruschka, 2012; Büchler, 2022). Thus, women-specific asylum was introduced into the Asylum Act, which was later, in practice, interpreted as gender-specific persecution, also covering SOGIESC-related asylum.

As of the 1990s, and following the revised Asylum Act of 1998, the practice for SOGIESC asylum was incrementally developed and adapted: it has been institutionalised that persecution on the grounds of sexual orientation can qualify for asylum if one is considered as belonging to a particular social group (PSG). As discussed above, men became eligible

⁶³ Bundesrat (1995): Botschaft zur Totalrevision des Asylgesetzes sowie zur Änderung des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer vom 4. Dezember 1995. (https://www.fedlex.admin.ch/eli/fga/1996/2_1_1_1/de) [18.10.2023].

⁶⁴ UN (1951): Convention Relating to the Status of Refugees. (<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>) [21.10.2023] (Geneva Convention).

⁶⁵ “Insbesondere aus Staaten mit starken fundamentalistischen Strömungen” (own translation). Bundesrat (1995): Botschaft zur Totalrevision des Asylgesetzes sowie zur Änderung des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer vom 4. Dezember 1995. (https://www.fedlex.admin.ch/eli/fga/1996/2_1_1_1/de) [18.10.2023] (page 40).

⁶⁶ “Den frauenspezifischen Fluchtgründen ist Rechnung zu tragen” (own translation). Fedlex (2023): Asylum Act 1998. (<https://www.fedlex.admin.ch/eli/cc/1999/358/de>) [21.10.2023].

for gender-based protection in 2003⁶⁷ and the implementation of the theory of protection underlined that non-state persecution can also qualify for asylum (Büchler, 2022).⁶⁸ The discretion requirement was further, depending on the source, abandoned in 2007 (Barzé, 2012) or 2009.⁶⁹ Nowadays, the migration authorities also have related guidelines⁷⁰ and training about the topic was organized at the immigration office. Although the qualification criteria have not been reformulated in the Asylum Act 1998, and neither SOGIESC nor anything related to it is mentioned in the current Asylum Act, one might talk about what I call a '*silent institutionalization*' (a change of institutional practices without a broad, public debate) of SOGIESC-related asylum and an evolution of the related practices.

As is the case in many other countries (Jansen & Spijkerboer, 2011), SOGIESC asylum in Switzerland has long been an empirical black box. The first chapter on homosexuality and asylum in Switzerland was, to the best of my knowledge, published in 2006 (Bertschi, 2006). An expanded version of this study showcased how the number of cases remained low: Between 1993 and 2007, Bertschi found 90 cases related to homosexuality. Four were granted, however, only two directly due to the sexual orientation (Bertschi, 2015; Ziegler, 2007). In the other two cases, other aspects of the history of persecution than the sexual orientation were decisive. Additionally, two more were admitted temporarily (Bertschi, 2007). Those new statistics, even though contested by the Federal Council,⁷¹ allowed advocates of LGBTIQ+/queer asylum seekers to back up their position. This is exemplified by the events of 2009, when the study was quoted in a motion at the Swiss National

⁶⁷ Schweizerische Asylrekurskommission (2003): 2003:2. (<https://ark-cra.rekurskommissionen.ch/de/emark.html>) [21.10.2023].

⁶⁸ Schweizerische Asylrekurskommission (2006): 2006:18. (<https://ark-cra.rekurskommissionen.ch/de/emark.html>) [21.10.2023]. Also of relevance was the FAC-decision from December 2011, D-4925/2007 (Hruschka & Portmann, 2012).

⁶⁹ Curia Vista (2013): Frage 13.5496 Homosexualität als Asylgrund. Wie weiter nach dem Entscheid des EuGH? (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20135496>) [22.11.2023].

⁷⁰ SEM (n.d.): Handbuch Asyl und Rückkehr Artikel D2.1 Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf.download.pdf/hb-d2-d.pdf>) [21.10.2023].

⁷¹ Curia Vista (2009): Motion 09.3561 Erweiterung des Flüchtlingsbegriffes. Anerkennung der geschlechtsspezifischen Verfolgung. (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20093561>) [21.10.2023].

Council.⁷² A Green Party politician sought to add persecution for “*Sexual orientation and/or identity*”⁷³ as an explicit motive for asylum into the Asylum Act.⁷⁴ In the motion, the following was demanded:

In about 85 states, consensual sexual acts between adults of the same sex are punishable by law, and in some states, there is even the threat of the death penalty. Against this background, it is necessary that gender-specific persecution is not simply subsumed in the catch-all offence of ‘belonging to a particular social group’, but that a separate motive for persecution is created.⁷⁵

The parliamentarian aimed to expand the definition of the qualifications, now specifically for “*reasons for fleeing in connection with sexual orientation and/or identity*”.⁷⁶ The claim was rejected with a clear left–right division, as the practice of summarizing claimants under the notion of a *particular social group* was deemed sufficient: The government put forward the argument that there is no need for an adaptation as there was already an institutionalized way of dealing with these cases, while the right-wing feared an increase in cases.⁷⁷

Further relevant developments also occurred at the international level. Importantly, the different national practices of treating SOGIESC-related cases was, to some extent, developed also by international courts (Conant et al., 2019; Ferreira & Danisi, 2021). Central to this is the 2013 XYZ vs. Minister voor Immigratie decision by the Court of Justice of the

⁷² Idem.

⁷³ “Sexuellen Orientierung und/oder Identität” (own translation).

⁷⁴ Fedlex (2023): Asylum Act 1998. (<https://www.fedlex.admin.ch/eli/cc/1999/358/de>) [21.10.2023].

⁷⁵ “In rund 85 Staaten sind einvernehmliche sexuelle Handlungen unter Erwachsenen desselben Geschlechts strafbar, und in einigen Staaten droht sogar die Todesstrafe. Vor diesem Hintergrund ist es absolut notwendig, dass die geschlechtsspezifische Verfolgung nicht einfach im Auffangtatbestand der ‘Zugehörigkeit zu einer bestimmten sozialen Gruppe’ subsumiert, sondern ein eigenes Verfolgungsmotiv geschaffen wird.” (own translation).

⁷⁶ “Fluchtgründen im Zusammenhang mit der sexuellen Orientierung und/oder Identität” (own translation).

⁷⁷ Curia Vista (2009): Motion 09.3561 Erweiterung des Flüchtlingsbegriffes. Anerkennung der geschlechtsspezifischen Verfolgung. (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20093561>) [21.10.2023]

European Union in Luxembourg (CJEU, Büchler, 2022b; Jansen, 2018).⁷⁸ Here, the Netherlands filed a demand concerning three asylum claims from male homosexuals from Senegal, Sierra Leone, and Uganda, respectively. Though same-sex conduct is punishable in the three countries, none of the three claimants had already faced prosecution, and the Dutch decision-makers asked for clearer guidelines. The CJEU contented, among other things, the following (Hruschka, 2018): First, the presence of laws against homosexuality renders homosexuals into a particular social group, a legal criterion for asylum. Second, if the danger of punishment is evident, it constitutes a form of persecution. Third, as sexual orientation is considered a fundamental characteristic of an individual's identity, one cannot expect them to conceal their sexual orientation – hence to hide it to avoid persecution in the country of arrival (see also Wessels, 2021).

The CJEU in Luxembourg thus partly confirmed existing practices as well as how the cases should be assessed, and underlined that homosexuality can be a reason for asylum (Büchler, 2022). Despite said decisions not being binding for Switzerland, the Swiss courts usually adopt them (Oesch, 2023): Subsequently, in 2014, the CJEU decision triggered a interpellation in the Swiss National Council, where a Social Democratic member of parliament asked about the implications of the decision for Swiss practice.⁷⁹ The then Minister of Justice, Simonetta Sommaruga (Social Democratic Party), argued that no further action was needed because Swiss practices anticipated this ruling and thus already met international standards, including when it comes to the abandonment of the discretion requirement. According to her statement, the BFM had already dispensed with the discretion requirement since 2009 and there was no need for any other adjustments. In addition, following a current Swiss guideline on gender-specific persecution published by the SEM: *“sexual orientation/gender identity is one of the fundamental characteristics of*

⁷⁸ European Database of Asylum Law (2013): The Court of Justice of the European Union delivers judgment in the joined cases of C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie en Asiel. (<https://www.asylumlawdatabase.eu/en/content/court-justice-european-union-delivers-judgment-joined-cases-c-19912-c-20012-and-c-20112-x-y>) [21.10.2023]

⁷⁹ Curia Vista (2014): Interpellation 13.4211 Rechtspraxis bei der Beurteilung von Asylanträgen Homosexueller. (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20134211>) [22.10.2023]

human identity.”⁸⁰ Hence, discretion must not be required. However, as I will showcase later, in the practices of the SEM and the FAC, discretion seems not to have disappeared completely and discretion-related arguments can still be found in related verdicts (Büchler, 2022; Perino-Bowman, 2019; UN High Commissioner for Refugees (UNHCR), 2021).

While the period up to 2010 was characterized by what I above referred to as ‘silent institutionalization’, a noticeable increase in politicization and media coverage of the issue occurred in the 2010s. A notable case is that of O. and his partner.⁸¹ After fleeing within Nigeria to Lagos, where they were also threatened, the couple fled Nigeria in 2010 and applied for asylum on the grounds that they were being persecuted for their relationship. However, their case was rejected as not credible and O.’s partner returned to Nigeria in 2011. The authorities also argued that even if O. was indeed homosexual, he could live his sexual orientation discreetly. O. went into hiding and was to be deported after his arrest in 2014. His situation attracted public attention and several NGOs, and a solidarity committee became involved. Following a request for reconsideration, the SEM conducted a new hearing in 2015, and the Swiss Embassy in Nigeria began investigating his claims. In 2016, the Embassy issued a report confirming the authenticity of his testimony. He was then granted a temporary permit in 2017.⁸² What is interesting in this specific case is its public presence. Various newspaper articles were published,⁸³ a solidarity committee was

⁸⁰ “Sexuelle Orientierung/Geschlechtsidentität zu den grundlegenden Merkmalen der menschlichen Identität” (own translation). SEM (n.d.): Handbuch Asyl und Rückkehr Artikel D2.1 Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf.download.pdf/hb-d2-d.pdf>) [21.10.2023].

⁸¹ E.g. humanrights.ch (2017): Kehrtwende des SEM im Fall eines verfolgten Homosexuellen. (<https://www.humanrights.ch/de/ipf/menschenrechte/lgbtiq/sem-homosexualitaet-asyl>) [22.10.2023]; DeVore, Veronica (2014): Homosexuell, Nigerianer, Asylsuchend – die Geschichte des O. (https://www.swissinfo.ch/ger/gesellschaft/homophobie-in-afrika_homosexuell--nigerianer--asylsuchend---die-geschichte-des-o-/38692080) [22.10.2023].

⁸² Idem.

⁸³ Idem.

founded and launched a petition,⁸⁴ a demonstration was organized,⁸⁵ a documentary movie was made.⁸⁶ Later, several parliamentary interpellations referring to the case were submitted to the National Council, asking about Swiss practices in such cases. Again, the Federal Council answered by stating that Swiss practice was in line with international practice.⁸⁷

O.'s case illustrates how in the 2010s, the phenomenon of queer/SOGIESC asylum in Switzerland became salient at the public-political level: Articles in newspapers were published, and NGOs⁸⁸ increasingly focused on the topic. Furthermore, in local parliaments, such as Geneva (already in 2013),⁸⁹ Zurich (2017),⁹⁰ Bern (2018),⁹¹ and Basel (2019),⁹² SOGIESC

⁸⁴ AvAAZ Bürgerpetitionen (2017): Keine halben Sachen – Asyl für O. (https://secure.avaaz.org/community_petitions/de/An_die_zustaendige_Behoerde_Die_Unterzeichnenden_sind_ueberzeugt_dass_O_aus_Nigeria_der_aufgrund_sein/?cALEJlb) [23.10.2023].

⁸⁵ Liberty for O. (2015): Liberty for I.! Lesbischschwultransqueerer Tanzspaziergang. (<https://libertyforoblog.tumblr.com/image/118808830348>) [10.10.2023].

⁸⁶ Lanfranchi, Nadia; Oppliger, Nina and Pfister, Corinne (n.d.): Being okey. (<http://beingokey.ch/>) [29.10.2023].

⁸⁷ Curia Vista (2014): Interpellation 14.3378 Asyl und Unterdrückung Homosexueller. (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20143378>) [22.10.2023] and Curia Vista (2017): Interpellation 17.3588 Situation von LGBTI-Asylsuchenden (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173588>) [23.10.2023].

⁸⁸ E.g. Queer Amnesty (n.d.): Wer wir sind. (<https://queeramnesty.ch/gruppe/wer-wir-sind/>) [23.10.2023] and Asile LGBT (n.d.): Qui sommes-nous ? (<https://asile-lgbt.ch/qui-sommes-nous/>) [23.10.2023].

⁸⁹ Secrétariat du Grand Conseil (2013): Rapport du Conseil D'Etat au Grand Conseil sur la pétition en faveur de la défense des droits des homosexuel-le-s. (<https://ge.ch/grandconseil/data/texte/P01474B.pdf>) [23.10.2023].

⁹⁰ Gemeinderat Zürich (2017): Interpellation 2017/189 Situation der LGBT-Geflüchteten (Lesbian, Gay, Bi, Transgender) in Zürich, Einschätzung der Problemlage und Bereitschaft für ein Engagement beim Bund betreffend Anerkennung der Fluchtgründe im Asylgesetz und für die Erarbeitung von Lösungen mit anderen Gemeinden. (<https://www.gemeinderat-zuerich.ch/geschaefte/detail.php?gid=ec46cf4c73ef4ad2819af936d7fc4224>) [23.10.2023].

⁹¹ Stadt Bern (2018): Interpellation 2018.SR.000218 Interpellation Tabea Rai (AL): Betreffend Situation der LGBT-Geflüchteten (Lesbian, Gay, Bi, Transgender) in Bern – Einschätzung der Problemlage und Bereitschaft für ein Engagement beim Bund betreffend Anerkennung der Fluchtgründe im Asylgesetz und für die Erarbeitung von Lösungen mit anderen Gemeinden. (https://ris.bern.ch/Geschaeft.aspx?obj_guid=df9fff7f235c4f819234d1c92199240a) [23.10.2023].

⁹² Regierungsrat des Kantons Basel-Stadt: Schriftliche Anfrage Tonja Zürcher betreffend Situation von LGBTIQ-Geflüchteten in Basel-Stadt und Bereitschaft der Regierung für ein Engagement betreffend Anerkennung der Fluchtgründe im Asylgesetz und einen Dialog zur Verbesserung der Situation in den Städten und Kantonen. (<https://grosserrat.bs.ch/dokumente/100389/000000389724.pdf?t=155684651720190503032157>) [23.10.2023].

asylum was addressed, and the issue of adequate asylum accommodations was debated. Although the original interpellations were often of a more technical nature, the debates also showed that the topic reveals clear political divisions between left and right. Therefore, one might state that in the 2010s the issue not only arrived among Swiss asylum authorities but also at a public-political level.

In addition, another Swiss case has attracted considerable attention, also on an international level.⁹³ The case concerns a homosexual man from The Gambia. He arrived in Switzerland in 2008 and applied for asylum based on his homosexuality and the fact that it is a criminal offence in The Gambia. Over the years, he has had several asylum claims rejected. As of 2014, he has been living in a registered partnership with a Swiss citizen. However, their application for family reunification was rejected, and the Swiss Federal Supreme Court in Lausanne – the court of last instance in this matter – approved his expulsion in 2018.⁹⁴

He appealed to the European Court of Human Rights (ECtHR), arguing that he would be at risk of torture and inhumane treatment if returned to The Gambia, and that his expulsion would deny his right to family life, in violation of Article 3 (prohibition of torture) and Article 8 (right to respect for private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁹⁵ However, due to the death of his partner, the second point was not assessed.

The Strasbourg court ruled in his favour. According to Humanrights.ch,⁹⁶ the claimant argued that the new government in The Gambia does not actively incite hatred against

⁹³ European Court of Human Rights (2020): CASE OF B AND C v. SWITZERLAND / Applications nos. 889/19 and 43987/16. ([https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-206153%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-206153%22]})) [05.12.2024].

⁹⁴ Bundesgericht (2018): 2C_30/2018 / Urteil vom 5. Juli 2018. (https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza://05-07-2018-2C_30-2018&lang=de&zoom=&type=show_document) [05.12.2024].

⁹⁵ European Court of Human Rights (n.d.): Convention for the Protection of Human Rights and Fundamental Freedoms. (https://www.echr.coe.int/documents/d/echr/convention_ENG) [05.12.2025].

⁹⁶ Humanrights.ch (2020): Keine Ausschaffungen ohne Abklärung der Risiken im Heimatland. (<https://www.humanrights.ch/de/ipf/rechtsprechung-empfehlungen/europ-gerichtshof-fuer-menschenrechte-egmr/erlaeuterte-schweizer-faelle/ausschaffung-homosexualitaet-gambia>) [05.12.2024].

LGBTIQ* people, but that laws prohibiting same-sex relations remain in place and there is still a risk of persecution of individuals. Coupled with the state's inability and/or unwillingness to protect individuals, the court argued that the expulsion of the person in question would constitute a violation of the European Convention on Human Rights. The judges also argued that the Swiss authorities did not sufficiently investigate the risk of ill-treatment and the existence of official protection from non-state actors.⁹⁷

To sum up, SOGIESC-related asylum and the related discussion emerged as a subtext to the rise of women-/gender-specific persecution in the 1980s/1990s. For a long time, the topic was in the shadow of the latter, but in recent years it has emancipated itself and more and more sources can be found that refer specifically to SOGIESC asylum. Over the years, the related practice has evolved. While there is still no mention in the Swiss Asylum Act, contrary, for example, to the South African Refugee Act (Andrade, 2020),⁹⁸ the 'silent institutionalization' can nevertheless be observed. Various national and international guidelines and court decisions shape today's practice, and related guidelines have also been developed by the Swiss authorities.⁹⁹ Importantly, that practice was developed on the international as well as the national level.

However, it must also be noted that, similar to in the domain of asylum in general, current practice is far from always being coherent (Eule et al., 2019). Even though the national and international legal doctrine has evolved and become clearer, the issue formulated by Millbank remains valid:

There is a persistent, indeed widening, gap between the formal acceptance of SOGI claims in refugee law (broadly taken to include authoritative international guidance, interpretative norms, and binding domestic precedent) and the implementation of such

⁹⁷ Humanrights.ch (2020): Keine Ausschaffungen ohne Abklärung der Risiken im Heimatland. (<https://www.humanrights.ch/de/ipf/rechtsprechung-empfehlungen/europ-gerichtshof-fuer-menschenrechte-egmr/erlaeuterte-schweizer-faelle/ausschaffung-homosexualitaet-gambia>) [05.12.2024].

⁹⁸ SAFLI (2023): South African Refugee Act. (https://www.saflii.org/za/legis/consol_act/ra199899.pdf) [24.10.2023].

⁹⁹ E.g.: SEM (n.d.): Handbuch Asyl und Rückkehr Artikel D2.1 Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf.download.pdf/hb-d2-d.pdf>) [21.10.2023].

law through the low-level administrative practice that comprises the vast bulk of refugee status determination (RSD). (2021: 761)

The gap between formal guidelines and their implementation can also be observed in Switzerland, for example when discussing the requirement of discretion/concealment. As stated above, according to the government, the argument of discretion/concealment was already abolished in 2007 or 2009 (depending on the source).¹⁰⁰ However, in 2022, the UNHCR published a submission related to a Swiss case¹⁰¹ to the ECtHR in Strasbourg.¹⁰² The case involved a homosexual man from Iran who was denied asylum. The Swiss authorities argued that his (undisputed) homosexuality was known only within the queer community in Iran. Based on information suggesting that the law criminalizing homosexuality (punishable by death) was not enforced, they argued that he could live discreetly in Iran without suffering intolerable psychological pressure. As outlined in the submission, Swiss authorities still sometimes use discretion/concealment as an argument to reject a case (see also Perino-Bowman, 2019), and the FAC argued that if the psychological pressure when staying in the country of origin is not sufficiently high discretion can nevertheless be expected. Adding the factor of psychological pressure into the argument, it was thus slightly reinterpreted. The alleged lack of unsupportable psychological pressure was added as a further component to legitimize the practice of requiring concealing the own SOGIESC. However, on 12 November 2024, the ECtHR in Strasbourg ruled that Switzerland could not expel him, because he would be at risk of ill-treatment in Iran – in particular honour killings and lack of state protection – and that his expulsion would violate Article 3 (prohibition of torture) of the European Convention for the Protection of Human Rights and

¹⁰⁰ Curia Vista (2013): Frage 13.5496 Homosexualität als Asylgrund. Wie weiter nach dem Entscheid des EuGH? (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20135496>) [22.11.2023], and Barzé (2012). For the case: European Court of Humanrights (2022): Case of B. and C. v. Switzerland, 880/19 and 43987/16. (<https://www.refworld.org/jurisprudence/caselaw/echr/2020/en/123381>) [04.03.2024].

¹⁰¹ UNHCR (2022) Application No. 56390/21. (<https://www.refworld.org/country,,UNHCR,AMICUS,CHE,,635956f84,0.html>) [23.10.2023], see also Perino-Bowman (2019).

¹⁰² European Court of Human Rights (2024): M.I. v. Switzerland (Application no. 56390/21). (<https://www.refworld.org/jurisprudence/caselaw/echr/2024/en/149048>) [25.11.2024].

Fundamental Freedoms.¹⁰³ The fact that Switzerland is being reprimanded at the international level shows once again that its jurisprudence is relatively restrictive. Clearly, despite being officially abandoned, the issue of discretion/concealment is still a relevant topic in Swiss practice.

Despite the gaps between formal policies and their implementation, the UNHCR submission states that Switzerland fundamentally recognizes SOGIESC-related persecution as a potential reason for a protection status. Legally speaking and like in other countries, the Swiss authorities understand this as a subgroup of gender-specific persecution, which is then again subsumed under the concept of a particular social group.¹⁰⁴ It must, however, also be emphasized again that the Swiss approach to SOGIESC asylum is characterized as restrictive, by experts and the UNHCR (Della Torre et al., 2021; Motz, 2021).¹⁰⁵

5.2 The current Swiss doctrine on SOGIESC-related claims

The example of discretion shows that the practice, also in Switzerland, is far from coherent, and a conclusive summary is therefore hardly possible. After all, according to Eule et al. who looked at the daily practice of decision-makers, *“the [...] idea of the rule of law crumbles. At times, it even appears as an illusion when we observe the divergence between ideas of law and law-in-practice”* (2019: 82). Nevertheless, a few key points on the precise handling of such cases should be discussed here. In a first step, I highlight the practices as described in the official documents of the SEM. In a second step, I outline the related literature.

¹⁰³ European Court of Human Rights (2024): M.I. v. Switzerland (Application no. 56390/21). (<https://www.refworld.org/jurisprudence/caselaw/echr/2024/en/149048>) [25.11.2024].

¹⁰⁴ UNHCR (2022) Application No. 56390/21. (<https://www.refworld.org/country,,UNHCR,AMICUS,CHE,,635956f84,0.html>) [23.10.2023], see also Perino-Bowman (2019) and SEM (n.d.): Handbuch Asyl und Rückkehr Artikel D2.1 Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf.download.pdf/hb-d2-d.pdf>) [21.10.2023].

¹⁰⁵ UNHCR (2022) Application No. 56390/21. (<https://www.refworld.org/country,,UNHCR,AMICUS,CHE,,635956f84,0.html>) [23.10.2023].

5.2.1 The official guidelines of the Swiss authorities

Hence, although each case is different, and practices must not necessarily align with guidelines, the following key points can be isolated from the relevant documents published by the authorities (SEM). The cases, referred to by the SEM as SOGI claims, are legally a subcategory of the broader notion of gender-specific claims – along with six other categories, including victims of domestic violence, female genital mutilation, or forced marriage. According to the SEM, the following aspects need to be considered in such cases:¹⁰⁶ From a legal perspective, most gender-specific asylum claims are treated under the category of *membership of a particular social group*.¹⁰⁷ This means that gender-specific grounds can justify asylum, even though, for example, sexual orientation is not explicitly mentioned in Swiss asylum law. However, it requires that a person can credibly demonstrate that they belong to a particular group (e.g., non-heterosexuals) in their country of origin on the basis of an innate characteristic/background and that they have been perceived as such by the surrounding society.¹⁰⁸

Regarding the legal situation in the country of origin, it should be noted that, for example, legislation criminalizing homosexual acts is not in itself considered serious enough to justify an asylum status – this is only the case if such legislation (e.g., imprisonment) is actually enforced. In addition, when it comes to persecution from non-state actors, the applicant must suffer a “*serious disadvantage*”¹⁰⁹ in the country of origin – a further condition for asylum. Concerning the criterion of a serious disadvantage, the SEM writes that so-called ‘simple discrimination’ in the country of origin is not sufficient. Rather, the discrimination experienced – or the threat of it – must be so severe that a so-called objectively humane

¹⁰⁶ SEM (n.d.): Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf>) [5.8.2023].

¹⁰⁷ SEM (n.d.): Die Flüchtlingseigenschaft. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d1-d.pdf.download.pdf/hb-d1-d.pdf>) [11.01.2025].

¹⁰⁸ European Union Agency for Asylum (n.d.): Membership of a particular social group. (<https://euaa.europa.eu/easo-practical-guide-qualification-international-protection/membership-particular-social-group>) [21.01.2025].

¹⁰⁹ For more details: SEM (n.d.): Die Flüchtlingseigenschaft. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d1-d.pdf.download.pdf/hb-d1-d.pdf>) [11.01.2025].

life is no longer possible without going abroad. Therefore, the SEM also examines whether domestic flight alternatives are possible and reasonable.¹¹⁰

In addition to these requirements, the SEM also stipulates those hearings for people claiming their gender/SOGI as a reason for flight must take place in an appropriate setting, as claimants often have difficulty formulating their reasons for flight (e.g., out of shame). The SEM also stresses that certain elements of an asylum story may only be presented in a deferred manner. Given that this can be explained by trauma, the SEM's document notes that such a delayed presentation should not be a reason for denying credibility. Finally, the SEM also states that trained personnel and interview techniques specifically developed for the SOGI context should be used.¹¹¹

5.2.2 The literature about the Swiss practice

While the above subchapter shows how the authorities describe the official treatment of these cases, the following aspects of the Swiss practices are discussed in the literature: One of the fundamental questions in this field is 'how to test the untestable' (Ferreira & Venturi, 2018): How to prove, for example, a SOGIESC? There have been two more landmark judgments by the Court of Justice of the European Union. In the first,¹¹² it was determined that stereotypical reasoning must not be used to prove homosexuality and that certain types of evidence, notably intimate videos, must not be used as evidence. A further judgment¹¹³ focused on psychological assessments of sexual orientations. It was confirmed that determining a SOGIESC is, in some cases, not even relevant. Under certain

¹¹⁰ SEM (n.d.): Der Nachweis der Flüchtlingseigenschaft. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/c/hb-c61-d.pdf>) [11.01.2025].

¹¹¹ SEM (n.d.): Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf>) [5.8.2023].

¹¹² European Database of Asylum Law (2014): CJEU - Joined Cases C-148/13 to C-150/13, A, B and C v Staatssecretaris van Veiligheid en Justitie, 2 December 2014. (<https://www.asylumlawdatabase.eu/en/content/cjeu-joined-cases-c%E2%80%9114813-c%E2%80%9115013-b-and-c-v-staatssecretaris-van-veiligheid-en-justitie-2>) [24.10.2023].

¹¹³ European Database of Asylum Law (2018): Case C-473/16, 6. (<https://www.asylumlawdatabase.eu/en/content/cjeu-case-c-47316-f>) [26.10.2023] and UNHCR (2022): UNHCR's Views on Asylum Claims based on Sexual Orientation and Gender Identity. (<https://www.unhcr.org/us/sites/en-us/files/legacy-pdf/631f45ad9.pdf>) [03.03.2024].

circumstances, it is not the identity of a person that is pertinent, but rather the perception of their peers and resulting persecution. A heterosexual person can also be convicted and persecuted due to a same-sex act, and a heterosexual identity does not prevent persecution, for example due to an externally attributed SOGIESC (Hruschka, 2018). This is also reflected in Swiss practice, where e.g., the sexual orientation is sometimes questioned (Della Torre et al., 2021). At other times, however, it is also argued that this is not actually relevant to the case, that the question therefore does not need to be answered, and it is the overarching narrative/history of persecution that is decisive.¹¹⁴ In Switzerland, therefore, both the credibility of a person's SOGIESC and/or the general credibility of their history of persecution and flight can be relevant. As showcased in the second article, this indicates the general relevance of credibility in SOGIESC-related claims.

Furthermore, according to Motz (2021), the Swiss authorities have not recognized the collective persecution of LGBTIQ+/queer individuals in any country, in contrast to how Germany and Italy have for some countries. Consequently, and as intended in the Asylum Act of 1979, each case is examined individually, and claimants must prove significant disadvantages and intensity of the persecution. The requirements for demonstrating significant disadvantage in Switzerland are relatively high, as described in the aforementioned UNHCR submission.¹¹⁵ For example, a person must regularly experience serious disadvantages and discrimination. Penalties, including the death penalty, must be regularly enforced in the country of origin to constitute a reason for asylum. The mere existence of a relevant article in a country's penal code is not sufficient. As indicated above, 'simple discrimination', whether from state or non-state actors, does not qualify for asylum (Della Torre et al., 2021). Finally, unlike, for example, Germany, Belgium, or Sweden,

¹¹⁴ BVGER (2023): BVGer D-2534/2023. (<https://bvger.weblaw.ch/cache?id=67fed467-b898-4432-94d6-0b320aeaf10a&guiLanguage=de&q=D-2534-2023&sort-field=relevance&sort-direction=relevance>) [07.03.2024].

¹¹⁵ Idem.

Switzerland does not currently mention sexual orientation, gender identity, or intersex status/sex characteristics in the asylum law as a qualification criterion.¹¹⁶

In practice, in SOGIESC-related claims, the claimants must often present multiple incidents, which together form cumulative grounds for asylum. However, this leads to high thresholds of credibility, as the claimant must show that, due to their SOGIESC, they are systematically and regularly exposed to violations of fundamental rights and that this leads to unbearable psychological pressure. In this context, the demand for objective proof is particularly challenging (Della Torre et al., 2021).

In conclusion, this overview underlines the fact that SOGIESC asylum is a dynamic field where multiple disruptions, contradictions, developments, and instances shape national and international practices. It is important to note that SOGIESC/queer asylum is not a marginal issue, but rather a vibrant field influenced by various actors (Millbank 2021).

5.3 The functioning of the Swiss asylum system with a focus on the Federal Administrative Court

However, although asylum cases pertaining to SOGIESC have their peculiarities, they are fundamentally subject to the same institutional structures as any other asylum case. In this section, I will shed light on how the Swiss asylum system operates today more generally. My focus will be on the appeals instance, the Federal Administrative Court, as this court is a central subject of research in this thesis, especially in articles two and three.

¹¹⁶ ILGA Europe Rainbow Map, LGBTI asylum human rights standards 2024. (<https://rainbowmap.ilga-europe.org/categories/asylum/>) [11.12.2024].

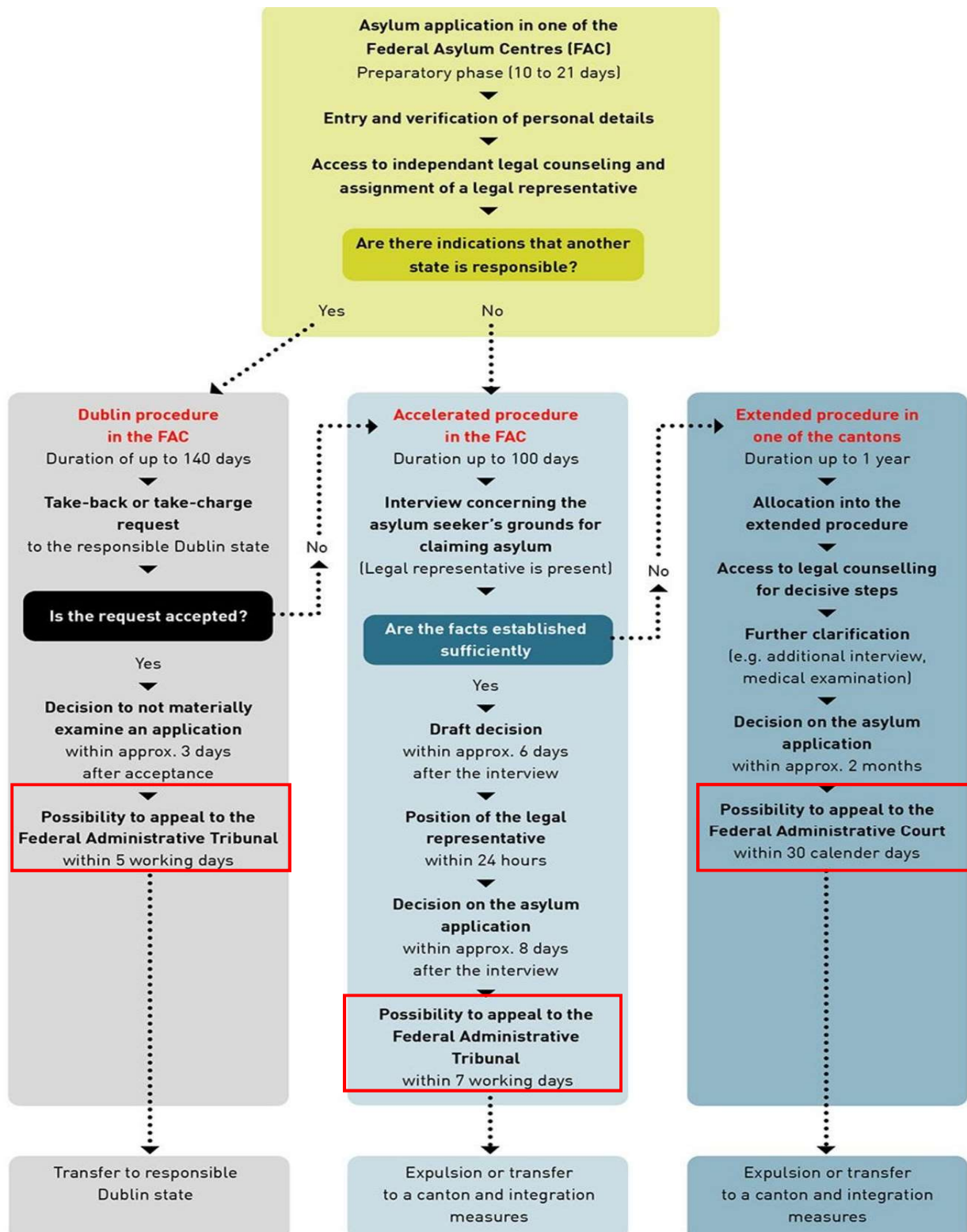


Figure 5: Illustration Swiss process as of March 2019, Swiss Refugee Council. Indexed in red: Possibility to appeal a SEM decision at the Federal Administrative Court. (https://www.refugeecouncil.ch/topics/asylum-in-switzerland/the-asylum-procedure?_gl=1*12alw4t*_gcl_au*MTU1MTkzMDExOS4xNjk4MjIzNzQ5&_ga=2.251114254.96529012.1698223750-279312297.1698223747) [21.10.2023].

Figure 5, created by the Swiss Refugee Council, illustrates the current process in Switzerland. Importantly, there are two central players. First, the State Secretariat for Migration (SEM, predecessor: BFM), which decides in the first instance, and second, the Federal Administrative Court (FAC, predecessor: ARK), reassessing appealed decisions. Fundamentally, the process is as follows: After submitting a claim (green fields in Figure 5), the claimants are assigned to a federal centre.

Here, a first assessment is conducted, mainly to decide whether it is a Dublin case, and therefore whether Switzerland or another country is responsible (grey fields). If the latter is the case, the appellant is expelled to the respective country; otherwise, the actual, material (hence content- and not formality-oriented) asylum process starts.

If the case is materially assessed (blue fields), a decision is made as to whether an accelerated or an extended procedure should be carried out (up to 100 days, in a federal centre, or up to one year, in a cantonal facility respectively).¹¹⁷ Here, the SEM may approve or deny a request for asylum. If the latter is the case, the administrators may, if removal “*is deemed inadmissible, unreasonable or impossible*”, also grant a provisional protection status (Spirig, 2018: 6). In any case, if a decision is negative, the claimants have the right to appeal (see my indications in red in Figure 5). Contrary to other countries, Switzerland has only one appeal instance, the Federal Administrative Court in St. Gallen (Spirig, 2018). Here, claimants have the right to ask for a reassessment of their SEM decision, but also of former decisions by the court itself. The court is divided into several divisions, two of which deal exclusively with asylum (Court IV and V). Their decisions are also analysed in this thesis.¹¹⁸ When an individual appeals a decision, first, an algorithm called 'Bandlimat' assigns the cases randomly to judges (Büchel et al., 2021).¹¹⁹ It also determines the roles of the respective judges, such as the chair judge. The chair judge then assesses whether the claim is

¹¹⁷ SEM (2020): Das neue Asylverfahren. (<https://www.sem.admin.ch/sem/de/home/asyl/asylverfahren.html>) [23.10.2023].

¹¹⁸ Some Dublin cases are further treated at Court VI, which mainly focuses on foreigners and citizenship.

¹¹⁹ However, the attribution is questioned and some actors doubt that allocation is always random (Büchel et al., 2021).

manifestly well- or unfounded. If the latter is the case and a second judge agrees to this course of action, the chair judge can decide by themselves. Examples of such decisions include formal issues such as missed deadlines (Bolz, 2021). If, however, the chair judge decides that a thorough and material assessment of the claim is needed, additional information is gathered and a first draft, written with the assistance of a clerk, is sent to the second and third judges. They can suggest changes, and then, ultimately, the three judges may attempt to reach a consensus decision or vote based on a simple majority principle. Furthermore, in a precedent-setting case, two more judges may be appointed (Büchel et al., 2021).

The processes are usually conducted in the language of the contested first decision and in written format, without a physical meeting between the judges, the claimant, and the legal representative. Furthermore, the claimants have the right, but not the obligation, to request legal assistance. The resulting case files consist of a re-evaluation of facts and previous processes, including illustrations of the case, legal arguments, and other information. Figure 6 illustrates an example of a title page. The subsequent pages of the documents contain a summary of previous discussions and conclusions by various institutions, primarily the SEM. Consequently, the case files consist of a compilation of different texts from multiple sources, including the former instance and the judges. The court has the option to uphold the previous decision, issue a new decision, or send the case back to the previous instance for a second evaluation (Bolz, 2021). Following this procedure, the individual is either granted status, the case is re-evaluated by the former institution, or closed (see also Affolter, 2021). This overview, of course, is simplified. It should be noted, however, that unlike other countries, Switzerland has only one court of appeal. Also, unlike other countries (such as France and the United Kingdom), judges are officially affiliated with a political party (Spirig, 2018). In short: If a claimant disagrees with an asylum-related decision made by the SEM, they have the right to request a reassessment at the court. Ultimately, the court operates in a relatively transparent manner, with most cases subsequently published anonymously (see also Gertsch, 2021; Spirig, 2018).

In this context, it should be noted that two out of three articles in this thesis deal with this court. However, as this is the court of appeal, the data cannot be considered representative of the entire Swiss asylum system: Due to the lack of statistics, we do not know how many SOGIESC-related claims are filed, rejected and accepted in the first instance, the SEM. Therefore, the figures found should not be seen as representative, but rather as reflecting the reality of the appeal instance. Having provided an overview of the case investigated in this thesis, I subsequently address the research design.

Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Divison
case number

Urteil vom

Date

Besetzung

Richterin
Richterin
Richterin
Gerichtsschreiberin

Judge(s)

Parteien

A. _____, geboren am (...),
_____,
vertreten durch _____ Rechtsanwalt,
Beschwerdeführer,
gegen

Staatssekretariat für Migration (SEM),

Vorinstanz.

Country of
origin

Legal
representative

Gegenstand

Asyl und Wegweisung;
Verfügung des SEM

Subject

Figure 6: Example cover page of an appeal case file. BVGER (2024): Entscheiddatenbank.
<https://www.bvger.ch/de/rechtsprechung/entscheiddatenbank> [22.04.2024].

6 Research design

In this subsequent chapter, I elucidate the research design, data, and methods of this thesis. I start with a discussion of the overall epistemological considerations, which are based on the theoretical foundations of queer theory. I then present and discuss the quantitative data and the corresponding quantitative analysis. As the novel quantitative dataset, comprising the case files of the Federal Administrative Court (FAC), represents a central point of this dissertation, I give particular emphasis to this section. Subsequently, I describe the qualitative data and the associated qualitative analysis. I then address additional methodological considerations, particularly the use of quantitative methods in a queered social science project and finally conclude with reflections on my positionality.

In general, it should be noted that my entire methodological work, which encompasses the collection, analysis, interpretation, and evaluation of data has been informed by a queer theory-oriented epistemology and lens. As mentioned in the theoretical section, this involves various theoretical assumptions that have shaped the entire process. The thesis explores a queer research subject (Giametta, 2017) and examines how SOGIESC-related asylum was introduced in the Swiss asylum system and, hence, how the system was queered (Ferreira & Danisi, 2021), and how the discourse is shaped. Queering as a process and queer aspects of the asylum system are, therefore, the focus of this research.

However, the influence of queered epistemology/angle extends beyond the selection of the topic to the planning and conducting of the entire research process. In addition to the choice of topic, three key points are central to shaping my approach: the question of categories, the question of power, and the question of intersectionality.

1. Queer theory, as an epistemology, is critical of the use of categories and identities, especially binaries (Sedgwick, 2008): All forms of categories and identities are initially considered non-biological or natural (Ferreira & Danisi, 2021). Such an understanding instead requires adjusting perception to view categories and identities as socially constructed, shaped by power, as fluid. In my research, in which I examine the discourse of public actors and the state, this plays a central role: I

analyse how these actors use categories and binaries, and I am cautious and constantly questioning the utilized categories critically to avoid reproducing them in my own methodological choices and analysis. The case files discussed later offer an example of this: The court itself labelled certain cases with the tag 'homosexuality'. It would have been easy to produce a simple binary between homosexuality-related cases and others based on this official categorization. However, with such an approach, I would not only have reproduced the state's categorization but also its binary classification. The approach I adopted instead – that is, measuring the relevance of SOGIESC per document based on the text – instead allowed me (1) to find the 'queer aspects' in other cases as well; (2) to examine non-homosexuality-related, but still SOGIESC-related cases – thus enabling me to expand the focus onto other groups as well, such as cases related to gender identity and/or other sexual orientations found in the case files; (3) to explore not only if, but also how intensively queerness/the topic SOGIESC was discussed in an individual case file; and (4) to accept non-stable uses of terms (Ghaziani & Brim, 2020). This example of categorizations and tags, which will be discussed in more detail later, demonstrates that throughout the research process, questions of categorization, reproduction, and fluidity were addressed.

2. Another relevant aspect of queer theory epistemology is the question of power. A queer epistemology always necessitates questioning and challenging the fundamental (hetero/homonormative) structures of a regime (Seidman, 1994). As with the categorizations mentioned above, throughout the entire research process, I was eager to question the underlying power structures. With this premise, that is, the relationship of research to power, other questions were also addressed, including considering the potential impact of such research. Especially when employing quantitative methods, it was crucial to interpret the obtained statistics precisely and cautiously so that they retained their critical nature and did not contribute to the reproduction of certain structures (Seidman, 1994).

3. The question of intersectionality played a role (Cohen, 1997; Crenshaw, 1989; Ferguson, 2004). A queer theory-driven perspective cannot function solely based on individual axes of discrimination, as the (queer) asylum seekers also have no uniform experiences (Eide, 2016). Research shows, for example that the experiences of queer men and women are not the same, but also that factors such as origin and social class play a role (Millman, 2023; Tschalaer, 2019a). Hence, for example when qualitatively investigating the narratives of deservingness, I always also work out how the practices differ between the socially constructed categories. Despite limitations due to the nature of the data, I tried to follow these considerations in the quantitative analysis as well.

Throughout the entire research process, I attempted to align myself with these three fundamental aspects. Sometimes, this was not easy as quantitative methods, for example, are strongly influenced by a post-positivist tradition that contradicts constructivist queer theory assumptions. This did not simplify the process, but in my opinion, it led to a productive pressure to queer the entire approach, including analysis and interpretation (see also chapter 7). As always with this type of research, such considerations are only partially directly evident, but they have accompanied the entire thesis.

6.1 The data collection

To investigate the subject matter in the Swiss asylum system, I used a wide range of qualitative and quantitative data. Table 1 provides an overview. As I will discuss in detail later, I created and analysed a quantitative dataset of over 44,000 asylum cases. Furthermore, I conducted expert interviews (as explained below) and examined a wide range of institutional documents from various sources (state authorities, NGOs, etc.). Having provided a discussion of the epistemological considerations, as well as a very short overview of the data used, I will now address the data and methods in more depth.¹²⁰

Table 1: Overview of data collected

¹²⁰ Even though I will as of now showcase the research from my perspective, some of the data collection and analyses were conducted by my co-authors.

Quantitative	Article
Dataset caselaw of the FAC	2 and 3
Qualitative	
7 expert interviews	1
13 related Swiss newspaper articles	1
9 national parliamentary protocols	1
9 subnational parliamentary protocols	1
5 political documents	1
6 country reports published by the SEM	1
6 documents on the decision-making (SEM/UNHCR)	1

6.1.1 The data for the quantitative analyses: Finding the needle in the haystack

For the quantitative parts (article 2 and 3) of this thesis, I employed a ‘text-as-data’ approach, whereby I used information derived from textual data as variables in regression models for inferential purposes (Egami et al., 2022; Grimmer et al., 2022). I based my research on a novel dataset built from scratch: Similar to Gertsch (2021) and using the library Relenium (Harrison, 2014), I scraped (automated downloading) the publicly available decisions/case files¹²¹ of the two asylum divisions IV and V, published between 01.01.2007 (the implementation of the court) and 31.01.2023 using a self-authored program.¹²² Having saved each case as a separate .txt file, I then opened them in R-Studio and generated a text-corpus as well as a dataset, mostly using the package quanteda (Benoit et al., 2015).¹²³

Subsequently, I employed three different language detection algorithms¹²⁴ to verify the language of each document. Given my lack of proficiency in Italian, I excluded the 2299

¹²¹ According to the court website, only cases that are of interest to the public are being published (even though I am unaware of the exact criteria, I was told that the vast majority of cases can be found online). For an example of a title page of such a file see Figure 6.

¹²² Entscheiddatenbank BVG. (<https://www.bvger.ch/de/rechtsprechung/entscheiddatenbank>) [29.01.2024]. The website was updated and no longer corresponds to the one I scraped.

¹²³ Unfortunately, new AI-tools like ChatGPT were released too late for me to use them for the creation of the dataset (see e.g., Gilardi et al., 2023 and Törnberg, 2023).

¹²⁴ Google's Compact Language Detector 2 via the package cld2 (Ooms, 2017), the N-Gram Based Text Categorization of the library textcat (Hornik et al., 2009), and once comparing the text to the stopwords of

Italian cases.¹²⁵ However, the corpus remained bilingual, necessitating thorough data cleaning to guarantee comparability between the German and the French cases (Ruedin, 2013). I further dropped the duplicated cases. The final dataset contains 44,406 documents, of which 13,401 are in French and 31,005 in German (30.2% and 69.8%, respectively). Following the data cleaning procedure (e.g., removing upper case or replacing umlauts), I started extracting the treatments, responses, and covariates from each of the documents (Egami et al., 2022). The latter was necessary because, after all, one aim of quantitative models is to isolate the effect(s) of interest while eliminating other explanations (Agresti & Finlay, 1997:301ff). Next, I present and discuss the central variables of the thesis, starting with the salience of SOGIESC and credibility, the legal representation and their prior success rate, the decision, and, finally, the control variables used.

6.1.1.1 The salience of SOGIESC and credibility

Fundamentally, I followed the logic of Egami et al. (2022) and extracted information about concepts of interest from the text. I was interested in the question of whether, and if so, to what extent, a case refers to one of the concepts ‘credibility’ and ‘SOGIESC’, understood as categories of practice emerging from the data (Brubaker & Cooper, 2000). Following a qualitative pre-reading of documents, together with two student assistants proficient in French (German being my first language), I created a dictionary per concept (see Appendix 14.1). This means that we read several randomly selected cases (some of which were SOGIESC-related; some not) and noted which terms were used to refer to the two concepts of interest. While reading, we thus asked ourselves the following questions: How are the topics discussed in the case files and what wording is used? How do the authors write about SOGIESC and credibility? In other words, I created lists with relevant terms that indicated whether a case is about one of the said issues, that is, vectors of words related to one of

the package `tm` (Feinerer & Hornik, 2007), see also <https://stackoverflow.com/questions/8078604/detect-text-language-in-r> [03.09.2024].

¹²⁵ This decision was made due to resource constraints and presents a potential bias in the data. In any further use of the dataset, this deficiency should be addressed.

the concepts. In addition, I also added some terms that were theoretically relevant, notably also translations of certain terms. However, the number of terms used was deliberately small, as overly extensive dictionaries tend to overfit, leading to unreliable measurement (Grimmer et al., 2022). Subsequently, the computer counted the term frequency of those terms for each document, providing their respective frequency. For example, how many terms related to credibility are found in each case? The resulting count variables encompass the concepts of 'salience SOGIESC'¹²⁶ and 'salience credibility'.

The following excerpt from a Swiss appeal case indicates this proceeding. In the quote – an excerpt from a case about a lesbian woman from Afghanistan – the terms 'homosexual' and 'lesbian' appear.¹²⁷ This wording, along with other related terms (see the dictionary in the appendix (Table 12)) found in the rest of the case file, add up to the measurement of the 'salience of SOGIESC' for this case:

Furthermore, the legal representation noted that, with regard to the presence of psychological pressure for a homosexual woman in Afghanistan, that no sufficient deliberation about said issue had taken place. With regard to the situation of lesbian women in Afghanistan, the SEM stated that such a constellation, according to current practice, does not lead to a general recognition of refugee status.¹²⁸

The proceeding was the same for the variable 'salience credibility'. This can be illustrated by the following excerpt from the case of a claimant that was born in Ethiopia and who was to be expelled:¹²⁹

¹²⁶ It is noteworthy that the term was initially designated 'salience SOGI,' which is why the term can still be found in the articles.

¹²⁷ BVGER (2023): BVGer E-2976/2023. (<https://bvger.weblaw.ch/cache?guiLanguage=de&q=E-2976%2F2023&id=44caeed4-d29e-4ca5-92a7-5cfefa4322e9&sort-field=relevance&sort-direction=relevance>) [26.11.2024].

¹²⁸ Im Weiteren habe die Rechtsvertretung angemerkt, dass in Bezug auf das Vorhandensein des psychischen Drucks für eine homosexuelle Frau in Afghanistan keine genügende Auseinandersetzung mit der Thematik stattgefunden habe. Hierzu hielt das SEM hinsichtlich der Situation von lesbischen Frauen in Afghanistan fest, dass eine solche Konstellation nach derzeitiger Praxis nicht zu einer generellen Anerkennung der Flüchtlingseigenschaft führe. (own translation)

¹²⁹ BVGER (2020): BVGer E-2109/2019. (<https://bvger.weblaw.ch/cache?guiLanguage=de&q=BVGer%20E-2109%2F2019&id=f67d5886-e4a7-4e20-abc7-aa75b543a428&sort-field=relevance&sort-direction=relevance>) [05.12.2024].

The lower court concludes in its decision that the homosexuality of the appellant, the discovery of the photos on his mobile phone, and the incident in the dormitory are implausible. Therefore, it is necessary to examine whether the lower court rightly classified the appellant's submissions as implausible. In doing so, the credibility of the homosexuality and of the events based upon it must be assessed individually.¹³⁰

This excerpt would add two points to the case's salience of credibility. It is crucial to note that salience is a term that has various definitions, with its predominant usage found in the realm of political behaviour studies (Moniz & Wlezien, 2020). In this thesis, salience is defined as the intensity of the manifestation of one of the two concepts within a case file. It represents the significance of a concept within said text. In other words, it refers to the level of attention that the authors attribute to a particular concept. Consequently, the measurements presented herein aim to address the extent to which a topic is mentioned in a case (Collins & Cooper, 2012; Moniz & Wlezien, 2020).

The two variables 'salience SOGIESC' and 'salience credibility' thus indicate the frequency of terms associated with specific concepts in a document/case file. For each of the two variables, the following reflections are central: For instance, a document that includes the term 'credible' twice has a higher salience (count) of credibility compared to a document that mentions 'credible' only once. However, it is important to note that this measurement does not imply a normative judgment: For example, a judge may reflect multiple statements of suspicion from a previous institution, thereby increasing the salience of credibility in the document, but subsequently negating the former institution's discourse. Therefore, a high salience of credibility does not necessarily indicate that the judges were highly suspicious. Instead, the variable measures whether questions regarding attributed and denied credibility were raised during the assessment of the asylum story, and not necessarily the level of suspicion held by the judges towards a claimant. This approach

¹³⁰ Die Vorinstanz gelangt in ihrem Entscheid zum Schluss, die Homosexualität des Beschwerdeführers, die Entdeckung der Fotos auf seinem Mobiltelefon und der Vorfall im Schlafsaal seien unglaublich. Nachfolgend ist deshalb zu prüfen, ob die Vorinstanz das Vorbringen des Beschwerdeführers zu Recht als unglaublich eingestuft hat. Dabei ist die Glaubhaftigkeit der Homosexualität und jener der darauf basierenden Ereignisse einzeln zu beurteilen (own translation).

may be subject to criticism in that a neutral measurement does not allow for the distinction between attributed and denied credibility and showcases the overall risks of such text-as-data approaches – a loss of in-depth knowledge about each single case. However, within the analytical process, this neutral measurement allows for determining whether the concept of credibility, overall, serves as a means of accepting or rejecting an appeal: It is not about the question of whether the judges believe the claimants or not, but rather if any form of credibility plays a role.

In a similar vein, the variable ‘salience SOGIESC’ describes whether a document relates to SOGIESC and, if so, to what extent. It represents a count variable indicating how many words relating to SOGIESC were found and differentiates between cases related to SOGIESC and all other cases. Using this conceptualization, three limitations remain:

1. There are mixed cases, for example a queer activist who is persecuted due to a same-sex relationship and their political engagement. Such a case would be classified as a SOGIESC case.
2. If a case refers to SOGIESC with only one word but has 20 pages of discussion, is it appropriate to define it as such? After all, the bulk of the text in the case files seems to be focused on other issues.
3. The approach conceals differences within the group of SOGIESC -related cases since all the socially constructed categories (LGBTIQ+, ...) are measured using the category ‘SOGIESC’.

Nevertheless, I consciously applied this conceptualization: I argue that every case file contains an asylum story and the related legal discourse – the way it is told by the institutions. Now, if the topic SOGIESC appears, it becomes a “*sexual asylum story*” (Tschalaer, 2019b), the retelling of a situation in which SOGIESC plays a role. It therefore seems obvious that, even if other topics than SOGIESC are dominant, these are influenced by the SOGIESC question and are to a certain extent queered. Then, in the analysis, sexual asylum stories are compared with other asylum stories. So, these are documents that tell an asylum story. And in some cases, SOGIESC has been part of this story, influencing also the other aspects of the story.

Every case file contains an asylum story with various topics, SOGIESC cases are simply distinct because SOGIESC is one of the topics. Importantly, it is not that every claim coded as SOGIESC-related is only about a claimant's sexual orientation/gender identity and the related refugee status determination. Instead, SOGIESC is a part of the story that is being assessed, for example also in a case determining which country is responsible for assessing the case (Dublin case), or cases pertaining to religion AND SOGIESC. The dictionary approach has two conceptual advantages:

1. On the court's updated website, there is a tag for homosexuality-related cases, indicating whether homosexuality is a central topic of a case. Methodologically, it would have been easier to use a classification of homosexuality-related vs. non-homosexuality-related cases, based on this indicator. However, the dictionary approach allowed me to code a broader selection of cases as SOGIESC-related, and avoid the traps of uncritically reproducing state categories (Dahinden et al., 2020) and the assumption of historically stable terminology (Ghaziani & Brim, 2020). It further allowed me also to grasp cases that related to subcategories such as trans*/non-binary, rather than only those relating to homosexuality.
2. Much queered research has identity as a starting point (Strunk, 2023). My process, however, focuses instead on the queer aspects of a case file, asking to what degree it was queered and not about the claimant's identity. A high score does not mean that the claimant is 'queerer', but rather that the case was queered more thoroughly than others or that queerness played a bigger role.

Using this measurement, the dataset contains 849 cases related to SOGIESC, thus approximately 2% of the total cases. Besides the continuous measurement of the salience of SOGIESC, I created the dummy variable 'SOGIESC, indicating whether the topic is present or not ('SOGIESC case', 'non- SOGIESC case').

6.1.1.2 Legal representation

For the third article, I added information about legal representation, asking whether a claimant was represented or not ('yes', 'no'). In the preamble of some cases, there is a note

referring to the representation: Eventually, an indication stating ‘represented by’ is included. I extracted these parts from each document. If there was no indication at all, I coded the case as ‘not represented’. For this variable, the inconsistency in data quality was a problem. Among the represented cases, some documents only provided an indication of the NGO and not the person, while others only contained an anonymized note (represented by ...). It was therefore not possible to gather additional information such as on the different lawyers involved, which is why only the dichotomous measurement was finally used, and no nuanced representation variable was included, contrary to similar research, such as that by B. Miller et al. (2015). Of course, this variable is not without its limitations. It raises the question of whether an unrepresented case truly received no external support at all, and the question of causality is also central (Bennour, 2022; Howe, 2021): The decision as to whether a case is represented or not is hardly random, but one can assume that legal representatives and NGOs refrain from representing ‘hopeless’ cases, as, especially for NGOs, resources are often scarce. The analysis is therefore able to show a relation, but further effects cannot be ruled out.

Based on this variable, I further extracted the prior success rate of a legal representative. Inspired by similar literature about legal representation (B. Miller et al., 2015), I argued in parts of the thesis that the former success rate – an indication of experience – also has an impact on the outcome. I did this as follows: I ordered the cases by legal representative (e.g., lawyer X), and then by date. Then, starting from case 2, for each case I calculated a former success rate (as indicated in Table 2 below). I did the same for the SOGIESC cases only, indicating the SOGIESC-specific prior success rate. Importantly, this variable faces the same limitations as the variable about representation, notably the question of causality.

Table 2: Example data on former success rate

Case number	Date	Legal representative	Success	Prior success rate
1	01.01.2010	John Doe	Yes	NA
2	01.02.2010	John Doe	No	100%
3	01.03.2010	John Doe	No	50%
4	01.04.2010	John Doe	Yes	33.33%
5	01.01.2012	Jeanne Doe	No	NA
6	01.02.2012	Jeanne Doe	Yes	0%
7	01.03.2012	Jeanne Doe	No	50%
8	01.04.2012	Jeanne Doe	Yes	33.33%

6.1.1.3 *The decision*

The fourth central variable was the decision. Following related research (Miller et al., 2015; Gertsch, 2021; Spirig, 2023), I decided to apply a dichotomous measurement ('refuse', 'accept'), asking whether the verdict represents an improvement of the appellant's situation or not. Thus, a partly positive verdict counts as accepted. This procedure is standard in similar literature, although it is a simplification that potentially overlooks the nuances of the verdicts. Examples are cases in which refugee status is denied but a temporary protection status is granted. Importantly, a positive decision is, in addition to improving the appellant's situation, also a correction of a previous verdict. The related implications are discussed in more depth in the second article.

6.1.1.4 *The control variables*

In addition to the four variables of interest, I also extracted control variables that were used in the models (see also Table 14):

1. I incorporated the year as a control variable because the context – including national/international legislation and international events – may vary, making it relevant to include a related control. This information was obtained from the first page of each case file.
2. I included language as a control variable for the case: Although carefully prepared, the German and French dictionaries may vary in terms of accuracy. Additionally, the country of origin partly explains the language used in a document. In general, cases at the FAC are conducted in the language in which

the SEM conducted the initial asylum procedure, while persons from some countries tend to speak French rather than German. Consequently, these countries are overrepresented in the French-speaking cohort, leading to potential influences on the results due to country effects. This information was obtained by utilizing three language detection algorithms.

3. The FAC comprises two asylum divisions. Given that research has demonstrated the impact of staff on outcomes, it is meaningful to also control for these factors (Gertsch, 2021; Spirig, 2023). This information was found on the first page of each case file.
4. The origin of the claimant plays a role. To account for this, I extracted information on the country of birth. For methodological purposes (i.e., having enough observations per group), I subsequently grouped the countries according to the Wikimedia scheme.¹³¹ This information was found on the first page of each case file.
5. The subject of a case provides an indication of its type, such as whether it pertains to a Dublin case or family reunification. These indications were translated into German and subsequently summarized into nine categories of claims (see Table 15). This information was found on the first page of each document and was indicated in the list on the old website of the court.
6. The decision-making process is influenced not only by the individuals on a board but also by its size. More judges are assigned to unclear cases, and vice versa. Therefore, in the regression models, I controlled whether the decision was made by one judge or several judges. This information was found on the first page of each document.
7. The question of whether the case was also about entering into appeal (does the court even assess the claim) or not is included as well since it refers to the

¹³¹ Wikimedia. (https://meta.wikimedia.org/wiki/List_of_countries_by_regional_classification) [26.01.2024].

material component of the verdict (e.g., Dublin cases). This information was found on the first page of each document.

The selection of control variables largely depended on the availability of information in the documents. Hence, important socio-demographic factors such as gender, race, ethnicity, or social class of the claimants were unfortunately not incorporated into the models, which is especially problematic when trying to anticipate questions of intersectionality (Millman, 2023; Spierings, 2023).

Importantly, the process of extracting the variables was iterative: To ensure data quality, I collaborated with two student assistants and conducted regular checks. I randomly extracted 100 cases, which were then manually reviewed. Subsequently, based on the errors identified by the three of us, I modified the syntax of the automated extraction of information until I successfully extracted 100 randomly selected cases without any for such errors (Grimmer et al., 2022). However, some errors may remain, and I do not claim to have a flawless dataset. For instance, during the initial tests, I discovered that the word 'flugrouting' was mistakenly counted as SOGIESC-related due to its inclusion of the term 'outing'. Another example is that cases from Niger were initially categorized as cases from Nigeria due to the word stems. Consequently, similar errors may still exist.

In addition to addressing technical concerns, there are conceptual issues about the data that need to be addressed. Most research on SOGIESC-related/queer asylum relies on qualitative methods, which allow scholars, using a close-reading practice, to engage deeply with the precise meanings of each term and phrase, analysing what is specifically of interest. However, a quantitative 'test-as-data' research design, understood as a distant-reading practice, necessitates an adapted approach (Lemke & Wiedemann, 2016). Inspired by the idea of the 'sexual asylum story' (Tschalaer, 2019a, 2019b), I tried to conceptualize my approach using a 'story-based conceptualization' of the data.

Each case file includes several topics (latent dimensions), represented by the words (tokens). Furthermore, each document contains text from several sources, such as previous reports and decisions, leading to a decision. Some of the files contain references to

SOGIESC – therefore, in these cases, the document contains a sexual asylum story. The difference between SOGIESC-related and unrelated cases is defined in this dissertation by whether or not SOGIESC played a role in any way. Hence, a treatise on Dublin cases, determining which country is responsible, might also constitute a SOGIESC-related case if corresponding references, such as in the recapitulation of the initial reason for asylum, are found.

Furthermore, one of the key decisions when conducting such ‘text-as-data’ research is the definition of units of observation. For my purposes, I defined a document as one unit. This approach neglects the presence of combined verdicts, as well as non-individual cases (for example families), but it aligns with the way the data is presented online. Simply put: Each document represents a (sexual) asylum story that is discussed and evaluated by the judge(s).

The data used comes with limitations. First, the methodological assumption of independence between the cases is violated, since a hypothetical decision B (e.g., from 2015) likely depends, due to the evolution of the doctrine, on a former, hypothetical decision A from 2010. Furthermore, the boards/judges may be the same. So, the uncertainty of the estimates will likely be underestimated, and the outputs will show too-high confidence in the data. This reduces their informative value. However, the dataset is more or less a full population sample, which mitigates this problem somewhat (only some cases are not published, e.g., for privacy reasons). Second, the terms of the count variables are not embedded in their context. This is due to the bag-of-words approach, hence the quantification of term frequencies: A term for credibility must not necessarily explicitly refer to a question of SOGIESC, while the mere presence of a term like ‘homosexuality’ must not mean that the case is only about the refugee status determination of a person based on sexual orientation. A case may be of a procedural nature (e.g., a Dublin case), quickly referring to homosexuality as the initial reason for the asylum claim only. However, following the ‘story-based conceptualization’, the mere presence of the topic already renders a story into a sexual asylum story exposed to the effects discussed in the theoretical chapter 3. It is thus relevant to keep in mind that the following analysis is based on a conceptualisation

that differs from existing research: I shifted from close- to distant-reading practice (Kitchin, 2014). This approach and conceptualization allow for new perspectives on the topic. Further, such publicly available textual data has several advantages: Among other things, it is an effective way to analyse a public actor (Laver et al., 2003). Also, the way the data was produced by the court is highly standardized, which guarantees comparability of the units of observation.

Fundamentally, each case file is a text and comprises high-dimensional data that includes different latent concepts, hence topics, constituting the asylum stories. However, to isolate the topics of interest, one must reduce the dimensions. I did this by extracting the concepts of interest, hence the variables. This may lead to potential pitfalls: For example, one must assume a stable meaning of the terms of interest, in a domain where the terminology is in a constant state of change (Grimmer & Stewart, 2013). This issue is exemplified by the evolving use of different specifications of the abbreviation LGBTQI+. In addition, identification problems, overfitting, or independence of documents are common obstacles (Egami et al., 2022). Importantly, one must critically assess the logic of such data (Drouhot et al., 2022; Törnberg & Uitermark, 2021). Despite all the pitfalls, the quantitative analysis of case law is a field of increasing popularity, allowing scholars to gain new perspectives in various fields such as political or legal science (Dunn et al., 2017; Engel et al., 2021a, 2021b; Lettieri et al., 2016; Livermore & Rockmore, 2019a).

It should also be noted here that quantitative data collection must confront ethical questions. In the field of queer theory, for example, some authors question whether quantification can already constitute a form of violence (Patterson, 2019). Here, I would take the position that it is not the person affected, but the court case and the court itself that are the objects of investigation, although this raises questions about anonymity, both of the court employees and the claimant concerned. However, the data was only presented in cumulative form, and no information was included that would identify an individual. It must also be said that the scraping of data is sometimes ethically questioned. I would like to emphasize that although I did not initially receive the data from the FAC, they informed me that an analysis of the publicly available cases would be in order. When

scraping the data, I made sure that there was enough time between each query so that there was no disruption to their IT-system.

6.1.2 Quantitative analysis of the textual data – testing existing theories

For the quantitative analyses, I followed the logic of dictionary-based (Guo et al., 2016), supervised, and deductive text analyses. Roughly speaking, I used information extracted from the case files to draw inference (Egami et al., 2022). To do so, I used four different types of models: zero-inflated negative binomial regressions (ZINB), mediation analysis, and, in the third article, logistic and ZINB-regressions with interaction terms. In the second article, I ran zero-inflated negative binomial (ZINB) regressions (Erdman et al., 2008; Garay et al., 2010; Lambert, 1992; Ridout et al., 2001).

This method is applied in cases where the dependent variable follows a binomial distribution with excess zeros. In other words, when the possible responses are (low) natural values only, but with many observations being zero and a right-skewed distribution, as presented in the histogram of the dependent variable credibility below (

Figure 7).

Distribution variable salience credibility

Excess zero/right-skewed

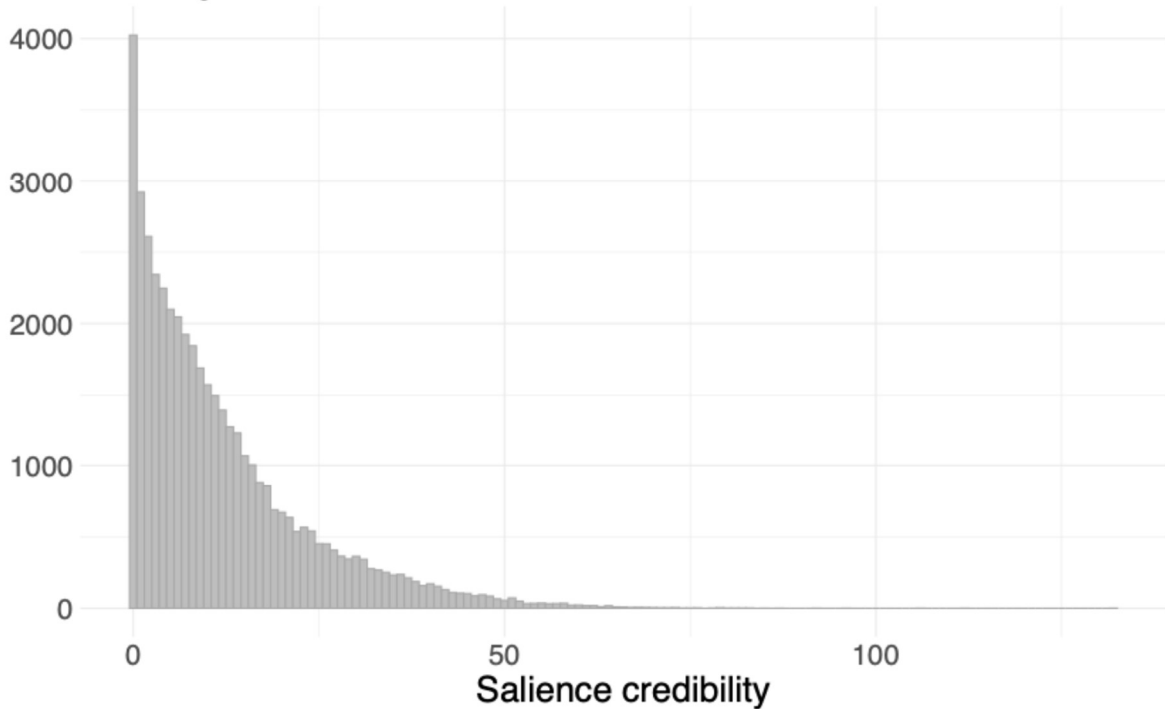
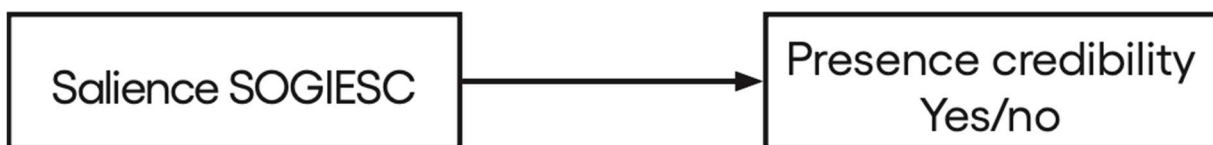


Figure 7: Distribution of the variable credibility

The underlying assumption of a ZINB model is a two-step procedure. First, a logit model calculates the impact of the independent variables on whether the count of credibility is zero or not (zero model). Subsequently, the negative binomial model accounts for the effects of the said independent variables on the ‘salience credibility’ variable (count model).

This is illustrated in Figure 8.

Zero model



Count model

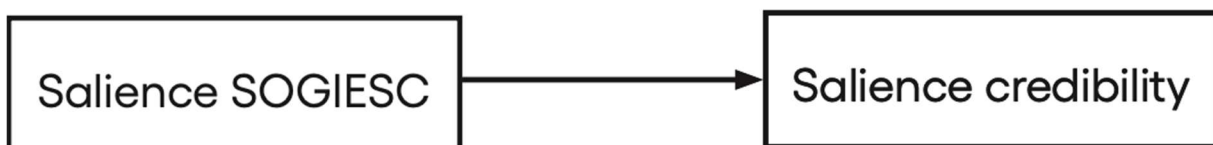


Figure 8: ZINB model article 2

The top regression (zero model) refers to the question: Was a case about credibility, yes, or no? The bottom illustration (count model) explains, under the condition that the case was about credibility (hence salience credibility ≥ 1), to which degree it was about credibility. To facilitate the interpretation, I then calculated the predicted probabilities (hence the expected outcome for a specific scenario, while keeping every control variable at their respective mode/median).

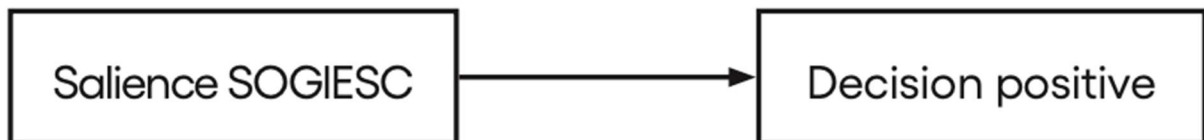
The choice of a zero-inflated model is also theoretically motivated: It is likely that in the writing process of the documents, the absence of credibility-related terms may be explained in two ways: Is the case about something that can be put into question? If everyone agrees on the facts of a case and only, for example, an adaptation in a formulation is in question, probably no terms related to credibility appear (structural/excessive zeros). However, if the case is about something to be discussed and put in doubt, for example, the SOGIESC of the claimant, it is likely that terms related to credibility appear. However, even if this is the case, the theoretical distribution still expects cases where the count of credibility equals zero (sampling zeros).

In other words, potentially, there are two other types of zeros for 'salience credibility': Some may be structural, and others may be due to sampling (Feng, 2021). The two-step procedure of the ZINB regression anticipates this situation. Having conducted said regressions and the robustness checks, I subsequently used the estimates to calculate predicted values and quantities of interest, so that a more intuitive interpretation is possible.

For the second part of the second article, I conducted a mediation analysis (Imai, Keele, & Yamamoto, 2010; Tingley et al., 2014). Following Imai, Keele, and Yamamoto *"the goal of such a [mediation] analysis [is] to investigate alternative causal mechanisms by examining the roles of intermediate variables that lie in the causal paths between the treatment and outcome variables"* (2010: 51). In my case, the method is adapted to figure out whether credibility functions as an intermediary factor between SOGIESC and the decision, amplifying the effect of SOGIESC on the decision-making. In practice, I follow the approach proposed by Imai, Keele, Tingley, and Yamamoto (2010, see also Imai, Keele, & Tingley,

2010; Tingley et al., 2014), who developed and described a generalized version of the original Baron–Kenny procedure for mediations (Baron & Kenny, 1986), adapted for generalized linear models (GLM) – in this case a combination of OLS (linear) and probit models.

Direct model



Mediated model

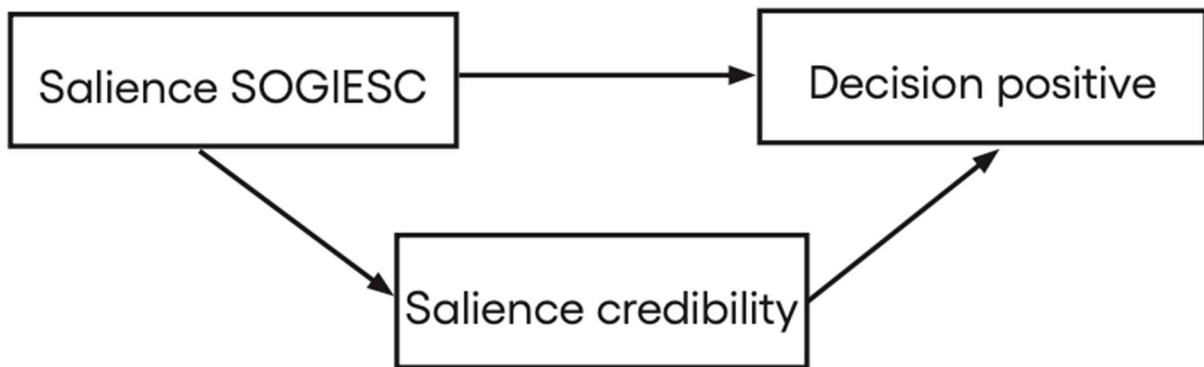


Figure 9: Mediation model article 2

In practice, the analysis can be understood in the following way: The base model is a probit regression, in which the impact of SOGIESC on the decision is estimated (

F

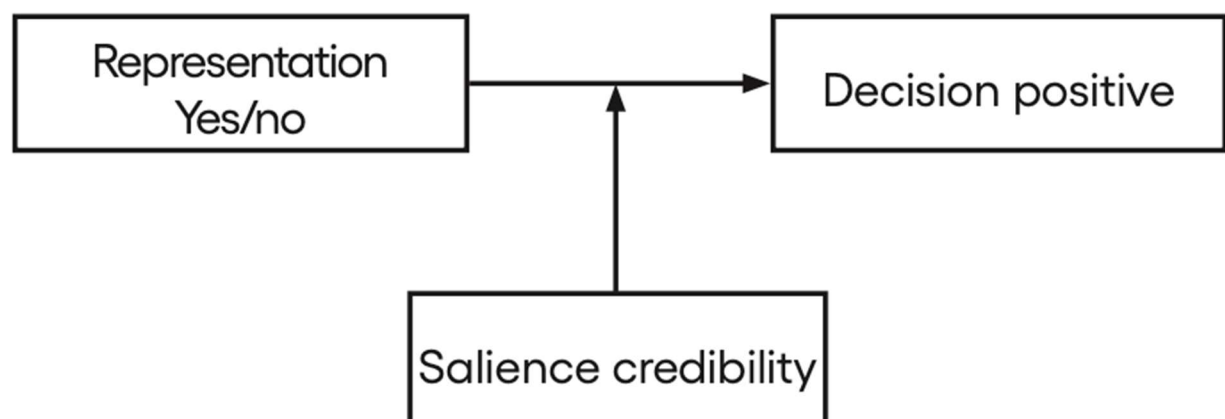
Figure 9). As indicated in the bottom graph, the program calculates not only this impact but ‘cleans’ the direct relation by also incorporating the impact of SOGIESC on credibility and the impact of credibility on the decision, leaving the direct effect of SOGIESC on the decision only.

Further, following Imai, Keele, and Tingley (2010), a mediation analysis should incorporate an a posteriori check of the omitted variable bias, hence whether the postulated relation actually holds or whether an unknown, additional variable might alter the results: Therefore, I ran an additional sensitivity analysis of the mediation models (Lindemann & Stoetzer, 2021). How much of the variance must be explained by the unknown variable to render my postulated effect redundant (might there be another variable altering the effect)? Or, in other words, a test anticipating whether the sequential ignorability holds.

Both the results of the mediation and the corresponding sensitivity analysis were estimated using bootstrapping with 2000 iterations. Importantly, they converged and hence provided stable results.

As a third method, I relied on logarithmic regression models to analyse the impact of SOGIESC and representation on decision-making (James et al., 2022). Using different specifications and samples of the data, I ran models to examine whether SOGIESC and representation affect the decision outcome and included interaction terms to explore whether the influence of legal representation is stronger or weaker in SOGIESC cases (Figure 10). To present robust findings, I calculated the predicted probabilities and marginal

Interaction model



effects (the differences of the predicted probabilities for different scenarios) of the scenarios of interest.

Figure 10: Interaction model article 3

I also ran logarithmic models in which the former success rate of a legal representative explained the success of a case, as illustrated in Figure 11. Again, I calculated the predicted probabilities to facilitate the interpretation of the results.

Direct model

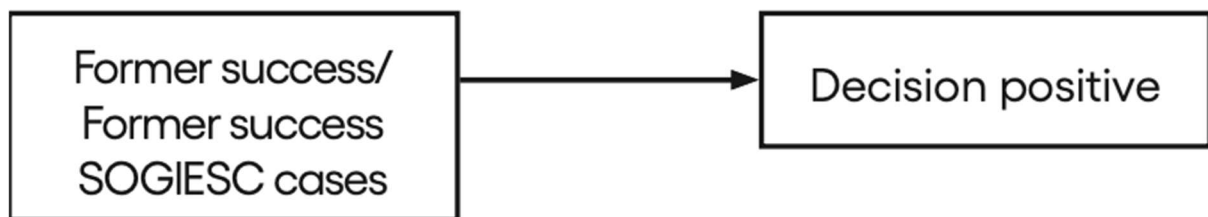
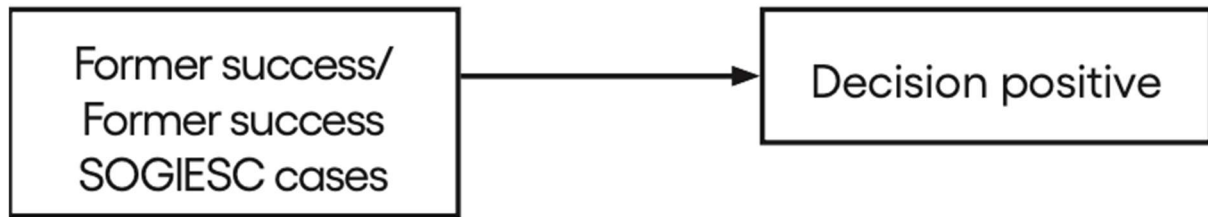


Figure 11: Direct model article 3

Finally, like in article 2, I ran ZINB regression to test the impact of SOGIESC and representation on the salience of credibility (Erdman et al., 2008; Garay et al., 2010; Lambert, 1992; Ridout et al., 2001). Here, the model is indicated in Figure 12.¹³² The goal was to quantify the presence of the concept credibility as a function of the interaction between SOGIESC and the fact of being represented. Based on this model, I then calculated the predicted probabilities, using ordinary bootstrapping, to better visualize the results and indicate the uncertainty of the results.

¹³² For the sake of simplicity, I also ran OLS regression (James et al., 2022), indicating similar results.

Direct model



Interaction model

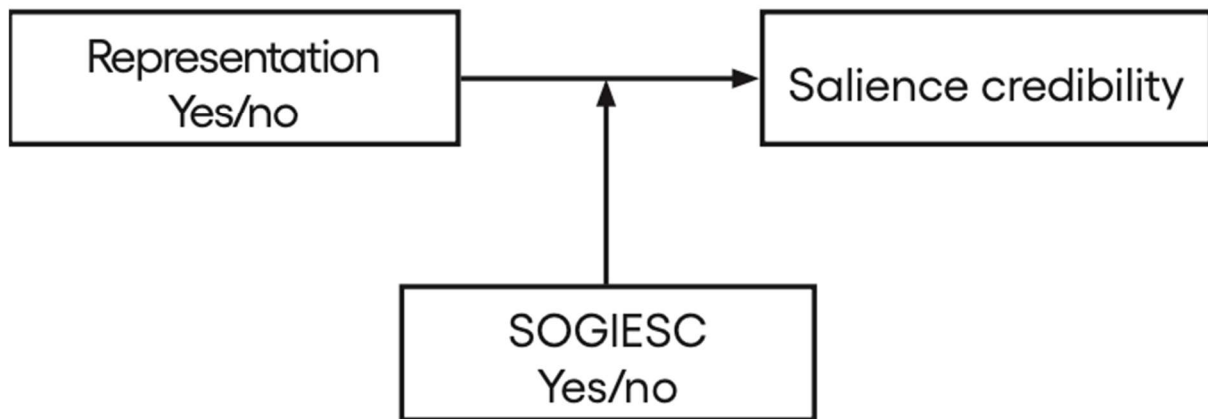


Figure 12: Interaction model article 3

Furthermore, not every model and analysis found its place in the articles. It is important to note that I employed different specifications for each of the three types of regression. These specifications included the use of SOGIESC as both a dummy and a continuous variable, the utilization of subsamples of the data, and the inclusion of different control variables. The presented analyses incorporate those specifications that were deemed most relevant for the research.

In addition to the regressions, I also present descriptive statistics for two reasons. First, they often reveal relevant conditions for analysis, such as the distribution of a quantitative variable. Second, the analysis in this thesis is based on real-life data, and a descriptive overview of the data helps to provide a more comprehensive understanding, for example by examining the trends in the number of cases per year. It is important to note that, due to the text-as-data approach employed in this thesis, various other types of (more sophisticated) analysis would have been possible, including (seeded) Latent Dirichlet Allocation, Word Embeddings, and Structural Topic Models. While I employ several of them

for the data exploration, they however did not make it into the dissertation, as they do not respond to the final research questions.

6.1.3 Gathering the data for the qualitative analyses

For the first article, written together with my supervisors Philip Balsiger and Janine Dahinden, I started the exploratory phase with expert interviews (Meuser & Nagel, 2009), conducted between October 2020 and May 2021. In total, I conducted seven interviews with the following interviewees: two legal experts (selected based on a recommendation from my supervisors and an author of a related study), two left-wing politicians (selected from related political interpellations in a local parliament), two activists from NGOs (selected using a Google search and based on the language of the NGO), and one representative from a state institution (selected based on the offer of the SEM). The purpose of the interviews was to provide a broad overview of SOGIESC asylum in Switzerland, which is why individuals from diverse backgrounds (institutions, experts, politicians, activists) were included. The interviews followed a semi-structured approach (Creswell, 2009). I formulated open questions and conducted the interviews in a flexible manner, allowing me to react spontaneously. I created different sets of questions for the legal experts, the representatives of the institution, the NGOs, and the politicians. After each interview, I adapted the interview guidelines to reflect my current state of knowledge (see Appendix 14.3). Throughout the thesis, I take measures to ensure the anonymity and confidentiality of the interviewees.

Due to the Covid-19 pandemic, six out of seven interviews were conducted online. While this did not hinder the gathering of relevant information, I nevertheless felt that the spatial distance in such uncertain times reduced the amount of information obtained, as the less formal interactions before and after the actual interview fell away. However, I was surprised by the interviewees' openness in responding: They appeared eager to express their perspectives on the issue, and sometimes I even obtained 'off the record' information that I did not include in the analyses.

Besides the seven interviews, I gathered additional textual data from various sources, notably media reports and official documents about what I conceptualized as sexual (and later SOGIESC-related/queer) asylum. Again, the purpose was to obtain an overview of the public-political discourse and the relevant actors in the field. I conducted searches using queries¹³³ on Google, LexisNexis, and the Swiss Federal Archives in Bern to find newspaper articles, allowing me to select 13 articles from a broad range of Swiss media outlets, including both left- and right-wing publications like the *Wochenzeitung* (a left-wing weekly newspaper) and the *Weltwoche* (a right-wing weekly journal). Additionally, I performed keyword searches in the online archives of the national parliament (9 documents) and several subnational parliaments, where I found related documents for the cities of Zurich, Geneva, Bern, and Basel (9). I also looked at country reports (6) published by the State Secretariat for Migration (van der Kist & Rosset, 2020). Furthermore, I included guidelines and four documents by the Swiss Refugee Council, the umbrella organization of 11 NGOs, researched online archives of political parties and related NGOs (5) and collected documents from (inter)national organizations (6). This collection represents a broad range of textual data, encompassing not only media coverage but also administrative and political texts. This enabled an analysis of a discourse targeted at various audiences, such as the public and decision-makers.

One significant limitation was the absence of an interview with a right-wing politician, as the two interviews with members of local parliaments were conducted with left-wing politicians. Nevertheless, I tried to address this gap in the data through related newspaper articles, excerpts from parliamentary debates, and party statements. The same holds for the lack of interviews with decision-makers of the SEM or the FAC, the appeal instance, which was, however, deliberate as the goal was to present the public-political discourse rather than the decision-making itself.

One last comment regarding my qualitative data. I encountered the critical question of why I did not include interviews with individuals directly involved, such as decision-makers or

¹³³ Query: homosex* | LGBT* | queer | sexuelle orientierung | orientation sexuel* & asyl | flüchtling | réfugié*

asylum seekers. While I understand the criticism, it was a deliberate decision that I fully stand by. The research question of this dissertation is centred around institutional behaviour, dynamics, and discourses and how the Swiss asylum system was queered, rather than individual experiences (Ferreira & Danisi, 2021; Strunk, 2023). While this may not be a completely compelling justification, my interest lies in understanding the discourses of institutions rather than focusing on how they are experienced by the individuals involved. This may invite criticism that I have focused on writing about asylum seekers rather than writing with them. I believe, however, that this perspective is also valuable as much of the existing research on this topic focuses on the individuals affected, and scholars, especially those influenced by queer theory, have produced extensive and valuable work based on the experiences of queer/LGBTIQ+ asylum seekers (Giametta, 2017; Tschalaer, 2020).

6.1.4 Conducting qualitative analyses of the textual data: Drawing a landscape of queer asylum in Switzerland

I conducted the qualitative data analysis in the first article using Atlas.ti, and employed a methodology influenced by grounded theory: I applied close reading of the gathered textual data and allowed themes, subjects, categories, and in this case narratives, to emerge inductively (Charmaz & Mitchell, 2001; Nelson, 2020). The reading followed an epistemology of critically analysing the public-political discourse, with a focus on power dynamics, and their reproduction (van Dijk, 1993; Wodak & Meyer, 2015). The aim was “*to know what structures, strategies or other properties of text, talk, verbal interaction or communicative events play a role in these modes of reproduction*” (van Dijk, 1993: 250)

In practice, to bring out the narratives of deservingness present in the data, I assigned codes to different elements of narratives of deservingness that were found. I then compared the codes across various text sources and grouped them into four code families, which I subsequently analysed and theorized (Charmaz & Mitchell, 2001). By organizing the sources into different code families, the narratives identified across these code families could be compared, thus facilitating the triangulation, juxtaposition, and comparison of insights for this case study on Switzerland (Yin, 2018).

In conclusion, the first article of the dissertation encompasses qualitative data and methodologies. Fundamentally, I apply a grounded theory–inspired close reading, allowing concepts and narratives to emerge in an inductive manner. For their understanding, a critical lens, focusing on power dynamics and their reproduction, was applied. Nonetheless, it is worth noting that my colleagues and co-authors, who were also part of the above-described proceedings, offered substantial support and encouragement throughout the process of data collection, analysis, and interpretation, facilitating the adoption of qualitative and quantitative methods in this thesis.

6.2 Reflections on the mixed-methods approach

In the dissertation, I use both qualitative and quantitative methods, and the thesis qualifies thus as a mixed-methods research project (Creswell, 2009; Janasik et al., 2009): I investigated the Swiss case from multiple perspectives, using a broad selection of methods (qualitative and quantitative), theories (queer theory, socio-legal studies) and data (case law, interviews, media reports, etc.). This approach allowed me to respond to the many calls for mixed methods that can be found in various branches of the social sciences (Gillespie et al., 2024). For example, Dyevre (2010) has argued, in the context of empirical legal studies, that purely quantitative, rational-choice research on judicial decision-making could be complemented by qualitative research in order to gain more comprehensive knowledge. Other pleas to combine quantitative and qualitative methods can be found for gender, feminist and intersectional studies (Spierings, 2012, 2023), queer studies (Shannon-Baker, 2022), and big data–driven social science (COWLS & Schroeder, 2015). Indeed, there is a demand for (theory-driven) mixed methods in the social sciences.

Advancing qualitative and quantitative methods at the same time allows scholars from various disciplines to examine a topic from different perspectives and angles. However, mixed methods are also controversial. Among others, Ayoub et al. (2014) illustrate the following points:

1. Mixed-methods research can be costly and require more resources compared to single-methods research. In the context of this dissertation, this was indeed the

case, as I was not well versed in qualitative methods (and some quantitative methods) when starting the PhD. However, my experience has shown that it is quite possible to acquire such methods during a PhD and to broaden and deepen one's own skillset.

2. Researchers have limited resources and need additional training to conduct mixed methods research. Consequently, the promotion of mixed-methods may result in a greater number of academics who are average in both approaches, while reducing the number of academics with expertise in a particular area. This criticism may partially apply to my own situation, as I have spent time training in qualitative methods that could have been used to improve my quantitative skills.

However, I would argue that migration studies are a complex and dynamic field that requires critical analysis from multiple perspectives. Scholars trained in both methods can gain a better understanding than those who specialize in only one approach. In addition, I have had the opportunity to work with co-authors who have extensive experience in qualitative approaches.

In addition, mixed methods have practical disadvantages, including in terms of publication: Mixed-methods research tends to be overly long and is also vulnerable to criticism from scholars from different research traditions (Ayoub et al., 2014). However, the advantages outweigh these disadvantages. Advantages are, for example:

1. Following Ayoub and Bauman (2019), triangulation (and I think we can apply this to mixed methods in general) is particularly appropriate when conducting research with marginalized groups. Also, according to Ayoub and Bauman (2019) such approaches are valuable for their *“ability to engage with a complex social world and as a validation strategy that enhances theory-building capacity”* (2019: 2768). As queer asylum seekers are such a group, the mixed-methods approach allowed me to present a more comprehensive understanding while ensuring that crucial aspects were not overlooked.
2. It is important to note that when I started my dissertation, there was a lack of (quantitative) social science research on SOGIESC-related asylum (in Switzerland).

Therefore, one of my main goals from the beginning was to provide a broad, rather than an in-depth, perspective on the issue of SOGIESC asylum in the Swiss context. This approach allowed me to extend the current state of knowledge using quantitative methods, while at the same time comparing the results with my own qualitative research as well as with the qualitative research of other scholars.

But how can I outline and describe the approach in my case? It seems useful to outline my process: At the beginning of the dissertation, I first collected and then analysed the data for the first qualitative article. This sparked my interest in the issue of credibility assessment, which is reflected in articles 2 and 3. Both were developed after the first article. Specifically, after completing the analysis of the first article, I collected the data and then coded the variables I needed for the second article. After analysing the data of the second article, I extracted the additional variables I needed for the third article only and finally conducted that analysis as well. So, the process was one article at a time, moving from qualitative to quantitative methods.

What exactly did this look like? Based on the aforementioned theoretical frameworks including sexual nationalism, queer studies, as well as reflections found in migration studies (e.g., Jaunait et al., 2013; Sedgwick, 2008). I started the research with the first article by exploring the field in a qualitative way: I collected a wide range of qualitative, textual data such as guidelines, country reports, media reports, but also expert interviews. Using a qualitative, inductive approach, I examined the central narratives of deservingness found in the Swiss public-political discourse. After isolating four different narratives of deservingness, it quickly became clear that among the four narratives, the question of credibility and disbelief might be the most central – both when looking at the results and at the existing literature.

However, knowing that credibility plays a central role in the literature on SOGIESC-related asylum (e.g., Zisakou, 2021), I was puzzled by the lack of empirical research on this topic. Therefore, for the second article, I decided to review the literature on the enhanced role of credibility (Ferreira, 2022). Keeping in mind the theoretical considerations, I used different data (the case files) and methods (quantitative, regression-based methods). In the third

article, I again built on the same literature, but also incorporated the literature on legal representation in asylum decision-making (Conant et al., 2019; B. Miller et al., 2015). The focus of research thus shifted to this interplay between legal representation and credibility, again using quantitative data and methods (Creswell, 2009; Gillespie et al., 2024).

At first glance, it could be argued that the overall research design of the dissertation represents a sequential exploratory strategy, in which qualitative analysis is followed by quantitative analysis/verification of the previous findings (Ayoub et al., 2014; Creswell, 2009). However, although the focus on credibility assessments also emerged from the first article, it was the overarching theoretical framework that led me to focus on credibility and legal representation in the quantitative section. I would argue, therefore, that the approach should ultimately be understood as a sequential transformative strategy (Creswell, 2009): Theoretical considerations found in the literature have informed the whole endeavour, the reflections and processes of data generation and analysis. In addition, a qualitative phase was followed by a quantitative phase. According to Creswell (2009), such a sequential transformative strategy has several advantages: The theoretical considerations often lead to a certain sensitivity in data collection, especially when studying marginalized groups. This also often leads to different perspectives being heard and to a more comprehensive understanding of the issue. In conclusion, I would argue that indeed, as suggested by (Gillespie et al., 2024): "*Qualitative and quantitative methods are synergistic*" (2024: 117).

To anticipate the next chapter, I would like to emphasize the following point: Mixed-methods designs allow for the integration of theories and methods that may initially seem difficult to reconcile and are based on a pragmatic approach (Gillespie et al., 2024). For example, Shannon-Baker (2022) showed that queered (as a verb) perspectives/methods are partly incompatible with positivist methods and mixed-methods research designs. Similar considerations have been described and discussed by Patterson (2019) in the case of queered quantitative methods. In the following chapter, therefore, I will describe how the theoretical framework has influenced my work, especially the reflections I have made on the quantitative part – after all, the melange of queer perspectives and quantitative methods is not the most common.

8 Further reflections on the research design: Queered quantitative research and my own positionality

Due to digitization and the exponential growth of available textual data, legal documents have gained the status of ‘big data’, enabling new perspectives on different research topics. Case law, in large volumes, became data for computational approaches (Livermore & Rockmore, 2019a). Not surprisingly, researchers, for example in empirical legal studies, use large-scale approaches to study case law (Dyevre, 2010a; Lettieri et al., 2016). Consequently, the documents of the Federal Administrative Court (FAC) have already been the subject of research projects similar to mine (Gertsch, 2021; Spirig, 2018, 2023). In this context, two of the articles of this dissertation contain elements that are nowadays characterized by terms such as big data (Guo et al., 2016) and computational social science (CSS, Törnberg & Uitermark, 2021).

However, this thesis employs a queered angle and is thus also rooted in a queer theory epistemology, a type of research that is dominated by qualitative approaches. It thus unites two fields that only seldom meet – CSS/big data with queer theory – and could be described as queered quantitative research (Kilgo, 2022): After all, I scraped from an online database, used computational methods to extract the relevant information, and drew inferences from a large corpus of textual data. Furthermore, a queer theory-oriented framework was used to plan the research and investigate the issue. In the following, I will discuss how the two fit together – big data/quantitative research on the one hand, and queer theory/queered research on the other.

This chapter requires a brief definition of terminology: I refer to queer research/methods. By this I mean research that is rooted in queer theory and methods, focuses on a queer subject, and/or builds on a queer theory epistemology. This can also be methods and perspectives that are characterized but not entirely defined, by a queer theory epistemology: An example might be the use of queer anti-essentialist considerations in a research design that is mainly rooted in, for instance, socio-legal studies, or a queered re-reading of existing textual data (Plummer, 2005). Or another example might be a research

project that takes up a queer issue such as queer asylum, while again not exclusively using queer theory and conventional (qualitative) queer methods.

While some domains of social science were heavily disrupted by the rise of computational methods (Bail, 2014), the impact on queer theory and queered research has been limited: Quite the contrary, queer theory-oriented research seems rather reluctant towards quantitative approaches. Queer theory scholars, for example, criticize the post-positivist epistemologies, lack of theory, and essentialist tendencies of quantitative research (Browne, 2008; Patterson, 2019; Shannon-Baker, 2022). For example, how to handle the tension between using categories and the concurrent goal of deconstructing them (Strunk, 2023)? The question has emerged as to whether quantitative research can do justice to the foundations of queered research.

While conducting research on a queered topic using quantitative data and methods, I have often encountered this tension. Consequently, I devote the following section to discussing the confluence of a partially quantitative, computational, and large-n research design and a queered research project. To address this debate comprehensively, I first discuss the relationship between big data and theory in general, and then turn to computational social science (CSS). This is because the two concepts serve as the basis for a discussion of the above tension. The insights that emerge from this discussion will subsequently prove relevant in facilitating a nuanced understanding of queered quantitative research. I will then discuss the tensions facing queered quantitative research, turn to a possible solution for conducting properly queered quantitative research, and share my personal experiences: I argue, first, that scholars can queer quantitative methods when queering the entire research process and, second, that thanks to the advent of big data and CSS, new possibilities have opened up for scholars using queer theory-oriented epistemologies. Queering the entire research process, and potentially also [adopting] a mixed-methods design, allows for queered quantitative research. Following these methodological considerations, I conclude with some final reflections on my own positionality.

8.1 Big data and theory

Big data is becoming increasingly important in the social sciences, as exemplified by the rapid growth in the amount of textual data being produced every day. Conducting research with big data and the computational methods associated with it is crucial for keeping track of developments in the social world, such as the increasing number of asylum claims pertaining to SOGIESC-related persecution. Moreover, the exponential growth in computational power has enabled scholars to apply such methods (Livermore & Rockmore, 2019a). Importantly, both the academic literature and colloquial language have spawned different definitions of big data (Cows & Schroeder, 2015; Schroeder, 2014). For Cows and Schroeder (2015), as well as for me, big data is a relative term that refers to changes in the scale and scope of knowledge about a given phenomenon. Or, in their words: *“Big data can be defined as a knowledge advance that represents a step change in the scale and scope of knowledge about a given phenomenon”* (2015: 465). Given the prevalence of low-n studies in sexual/queer asylum research, I consider my research design to be big data-oriented (Schroeder, 2014; Schroeder & Taylor, 2015). I faced several conceptual and epistemological questions, including: How to deal with big data in a field dominated by queer theory? More generally, the debate on how to combine big data and (critical) theory is in full swing in the social sciences.

Two extreme positions can be identified. Some, like the often-quoted journalist Chris Anderson (2008), expect the end of theory and argue that big data will make theory obsolete: The new methods, coupled with increased computational power, will find new connections, correlations, and knowledge. Theoretical derivations and interpretations will no longer be necessary (Anderson, 2008; Gillespie et al., 2024; Grimmer et al., 2022). While Anderson argues that theory becomes obsolete due to big data, others, including scholars of queer theory, proclaim the exact opposite: They are reluctant to embrace empirical and quantitative methods, questioning whether such large-scale approaches can do justice to the theoretical requirements of certain research traditions (Patterson, 2019) and provide more than superficial correlations (Kitchin, 2014).

Between these extreme poles, scholars provide more nuanced thoughts and reflections about a potentially fruitful interplay between big data research and queer theory/social science in general (Browne, 2010; Gillespie et al., 2024; Masso et al., 2020; Pigliucci, 2009). To parry the above extreme positions, two crucial arguments can be found in the literature. First, big data/quantitative research needs theory more than ever. For example, in their book on text-as-data, Grimmer et al. reacted to Anderson as follows:

The argument was that large data sets would eliminate the need for theoretical thinking because we could replace any work that theorising does in a project with more data. These pronouncements are wrong because they overstate what any algorithm can provide. [...] Quite contrary to proclamations that theory will end, and humans will be obsolete, many of the models [...] are] useful only with deep and close interpretation from analysts. (2022: 24)

In short, the authors emphasize that even with the most sophisticated big data analysis, theoretical reflection and interpretation remain crucial and may even be more important than ever (see also Cows & Schroeder, 2015).

This brings us to the second argument. While big data research needs theory, on the other hand theory can benefit from big data. Big data and quantitative research can be conducted in a critical way (Tabron & Thomas, 2023), allowing for more large-scale insights into a topic, and enabling existing theories and epistemologies to be tested and improved, including in relation to queered research topics (Patterson, 2019) and qualitative research. Quantitative approaches in fields dominated by qualitative research designs allow researchers to find new, perhaps unexpected, patterns in the phenomena of interest.

Finally, thanks to new methods and computational power, big data-driven approaches now allow for increasingly fine-grained analysis (Kitchin, 2014). Concepts and ideas that were previously considered unmeasurable become (at least approximately) measurable and testable, such as the extent to which a case file deals with a concept such as 'queerness'. In the best case, existing (queer) theory can be challenged, nuanced, and adapted (Bail, 2014; Browne, 2010). Conducted in a reflexive (Dahinden & Pott 2024) and critical (Kincheloe & McLaren, 1994; Tabron & Thomas, 2023) manner, the new insights

gained thanks to big data can be used to challenge and develop existing theories (Shah et al., 2015), for example by using computational grounded theory (Nelson, 2020) and algorithmic methods for inductive research with textual data. In the context of this dissertation, this seems to be the case, as I have been able to present quantitative findings on SOGIESC-related asylum in Switzerland, such as the number of cases and the exact ways in which credibility assessments work.

Big data does not end theory. Rather, it relies on theory to produce substantive and critical social science. Big data, on the other hand, can be a means of advancing and challenging existing theory and epistemology, while expanding knowledge: As new concepts become measurable, dominant knowledge and thus theories can be challenged. The epistemology of research can also be increasingly based on inductive insights from the mountains of data if desired and deemed appropriate, and, therefore, ignoring big data in a field of research leads to a loss of potential empirical and theoretical knowledge, and possibly also to the omission of new theoretical insights. Thus, given the anti-normative and deconstructive epistemology of queer theory, while the tension between quantitative big data research and theory might be amplified, so is the potential gain in knowledge (Browne, 2008; Patterson, 2019).

8.2 Computational social science

In addition to the relationship between theory and data, big data research designs also raise other fundamental questions – particularly around epistemology – that can also be discussed in the context of CSS, where many of the conceptual issues of large-scale, quantitative methods in the social sciences are amplified. In short, CSS is an approach in which complex datasets are analysed using computational methods and social science theory (Shah et al., 2015) and *“involves the analysis of web-scale observational data, virtual lab-style experiments, and computational modelling”* (Watts, 2013: 7; see also Törnberg & Uitermark, 2021). While the field is promising, critical scholars such as Törnberg and Uitermark (2021) have highlighted that (uncritical) CSS suffers from several fundamental problems. Again, these points apply to all areas of the social sciences but seem to be even

stronger for a queered research design. I will address two of the related conceptual challenges – which I also faced during the PhD – below:

1. Törnberg and Uitermark (2021) note a lack of critical engagement with data. While some CSS scholars understand the data found online as ‘naturally occurring’ by-products or traces of societal processes, the authors argue that we need to understand data as a valuable commodity shaped by power inequalities. Critical (or ‘heterodox’, Törnberg & Uitermark, 2021) CSS must therefore engage with the structures that produced the data, rather than simply reproduce them, and be aware of the political nature of research (Kitchin, 2014).
2. Some scholars of CSS reproduce the problematic view of the social world as a system that can be modelled based on ontologies rooted in natural science, hence reducing the complexity of the social world to rationalism (Schumpeter, 1984). Big data and CSS are often used as a strategy to create a ‘hard science’ approach to the social sciences, where correlations are considered sufficient to understand the subjects of research, lacking critical reflections and assuming the existence of stable, objective ‘truth’. Critical and heterodox CSS, however, should not only be about modelling the world but rather about questioning it (Törnberg & Uitermark, 2021).

Both aspects – a lack of critical engagement with the data and a lack of critical epistemology – incentivized critical scholars to abandon CSS. Törnberg and Uitermark (2021), however, make a plea: We must find a middle way, as computational social science has the power to produce meaningful insights. Instead of refusing or applying it in an uncritical way, one should “*put simply, be careful, modest and be critical*” and potentially act “*strategically positivist*” (Wyly, 2009: 316, 317). The critical engagement with the data, the epistemological questions, and the imperative to be modest are crucial to this thesis and how I attempt to deal with the confluence of queer perspectives and quantitative methods.

Both big data and CSS encourage researchers to focus excessively on data rather than theory, while abandoning a critical and theory-driven perspective. The temptation to

understand the world only in terms of correlations and to neglect the questioning of fundamental premises is great. At the same time, some branches of research remain reluctant to embrace such approaches. This conflict is pervasive across the social sciences, but using proper conceptual work, the issues can be addressed. When it comes to big data and CSS, scholars have shown how critical theory can be combined with computational and big data approaches: Törnberg and Uitermark (2021) with their concept of a heterodox computational social science, Bail (2014) with his plea for the use of big data for cultural sociology, and also Nelson (2020) with the concept of computational grounded theory. It seems possible to fuse critical and theory-driven perspectives with large-scale computational methods without falling into traps such as an uncritical view of the research process and a rationalist, hard science–inspired understanding of the world. The question of whether and how critically oriented social sciences can engage with large-scale and computational approaches seems to have been answered. However, a new question arises as to whether this also applies to queer perspectives. After all, in queer theory, the reluctance and epistemological differences seem to be even more nuanced (Patterson, 2019). In the following, keeping in mind the discussion outlined above, I will address queered quantitative research, that is, the attempt to combine quantitative methods with a queer theory epistemology to investigate a queered subject like SOGIESC asylum.

8.3 The confluence of quantitative methods and queer(ed) research

The aforementioned points are crucial for social sciences in general and need to be considered for queered research as well. In addition to issues such as critical perspectives and the importance of theory, queered quantitative research faces additional struggles. I will address these below and discuss possible solutions, particularly using big data-driven/CSS approaches.

Specifically, when conducting queered research, it seems difficult to combine queer theory with quantitative methods. Kilgo highlights the paradoxical nature of queer quantitative research, which may explain this reluctance: *“queer quantitative research exists in a paradoxical space straddling the use of queer theory and quantitative methods.*

Quantitative research emerges from positivist and post-positivist perspectives” (2022: 556).

So, one might ask, is queered quantitative research possible? After all, much quantitative research is grounded in (post-)positivist epistemologies, contradicting queer theory in its foundations, and several tensions between the approaches can be found.

One tension between queered research and quantitative data is the authority of the latter, as illustrated by the example of census data (Browne, 2008). After all, census data is a form of governmental power, where the state predetermines the possible answers and contours before the data is collected. The state thus decides which answers will even be considered. The state also decides who and what is to be counted, and how the count will be conducted, and thus legitimizes, creates, and neglects certain categories (Browne, 2010): Census data is an extremely powerful example of how statistics and numbers, far from being neutral, can lead to real policies and must be understood as both a tool and an outcome of existing power hierarchies. This is the first point explaining why conducting quantitative queer research is challenging: While queer theory aims to question power dynamics, much quantitative data results from those very dynamics. Much of the data used has been created by state institutions, and the state is the gatekeeper when it comes to data availability. Researchers must therefore be extremely cautious about using such data, especially as they often had little authority over how it was generated.

Like with qualitative approaches, quantitative data and statistics can also represent a form of violence, from data collection to data interpretation and implications (Strunk, 2023). Examples include discriminatory framing of research questions, but also psychological research that pathologizes certain forms of queerness. Violence can also occur if, for example, research subsequently legitimizes discriminatory acts, or if privacy is not guaranteed and individuals can be tracked. Further, to return to the census data, in any queerphobic environment the idea of the state holding data on queerness is highly problematic.

Importantly, the question of categories arises. After all, one of the fundamental premises of queer theory is the refusal of categories – and how can categories that do not actually exist be measured? And how can this premise be maintained in a quantitative research

design? How can categories be used in a field that aims to deconstruct them (Patterson, 2019; Strunk, 2023)? Overall, it is thus evident that pure post-positivist, quantitative research is hardly compatible with a queer framework. Such tensions between queer theory's inclination towards deconstruction and quantitative procedures raise questions about the feasibility of quantitative research paying tribute to epistemology (Browne, 2008, 2010; Strunk, 2023).

Hence, should we reject the idea of merging queered and quantitative research altogether? Personally, I say no and follow scholars like Kilgo (2022: 556) who states that if one queers quantitative methods, relevant new insights can be gained: *"Queer quantitative research engages in queering the inquiry process by relying on critical ontological and epistemological perspectives within a queer theoretical lens. The combination of these perspectives creates a productive tension"* (2022: 556). The confluence is possible, yet no easy task.

8.4 Conducting quantitative research about a queered topic

I argue that queered quantitative research projects have advantages, and a simple rejection would not be expedient. The suspicion is partly justified but cannot be a conclusive position. Browne (2008, 2010) would underline, in parallel to the discussion of the race question, that a lack of quantitative data about SOGIESC also fuels the invisibility of a group: Without any information about the situation of e.g., racialized people/SOGIESC groups, questions of discrimination and inequalities may remain in the dark (Browne, 2010) as policymakers need 'evidence' to address issues like discrimination, and access to health and welfare services (Purdam et al., 2008). Sexual orientation/gender identity questions in a survey may not be very queer, but nevertheless illuminate queer life and struggles in official data and numbers (Browne, 2010).

According to Patterson (2019: 54), queered quantitative research allows to provide 'bird's-eye perspectives' on the subjects of research, exposing aspects that would have been concealed without large-scale approaches. In a similar vein, Vanlee, who discussed LGBT+ representation in television, argued that *"quantitative scholarship should not be regarded*

as the naive sibling to qualitative methods and close reading practices. Rather, we may regard quantitative data instead as an explorative topography" (2019: 8). Hence, using quantitative approaches in queered (migration) research might challenge epistemologies, theories, and insights, allowing for the advancement of this branch of research, always under the premise of 'strategic essentialism' (Eide, 2016; Spivak, 2008).

Embracing the paradoxical nature of such research – quantitative methods and a queer theory-inspired framework – the question of how to conduct it arises. For example, if we follow the premise of Sedgwick who asserted that "*knowledge does rather than simply is*" (2003: 124), we must anticipate the potential side effects of research. Relatedly, we need to be aware of the potential implications of such research (who uses my findings for what purposes) and the embeddedness of the categories and data themselves in a society characterized by asymmetrical distributions of power.

8.4.1 Queering the quantitative research process and gaining new knowledge

To avoid such potential pitfalls, it is therefore useful to get an idea of what constitutes successful queered quantitative research. A review of the literature reveals that at least two authors have identified such conditions. As formulated by Kilgo (2022: 556), four conditions are crucial for successful queered quantitative research: (1) a reflexive researcher, (2) the acceptance of identity as fluid, emergent, political, and anti-normative, (3) the disruption of categorizations, and (4) transformation as an outcome (e.g., by rendering a population more visible).

More exhaustively, Strunk (2023) reflected upon the question of critical queer quantitative research as well, and outlined the following points (which, in my eyes, also hold true for other domains of the social sciences):

1. Queered quantitative approaches require a researcher who accepts that numbers are not neutral: Numbers, statistics, and values are materially produced in an environment driven by power relations, as are their implications. This also applies to published research and its potential policy implications.

2. Then, categories are not neutral. They are also the product of dominant forces and should be seen as such. After all, not only are they produced in a network of power, but they might have material consequences – historically, often negative ones for queer people. If a scholar chooses to use certain categories, it must be done in a reflexive way, and any form of violence must be avoided at all costs.
3. Data and statistics are testimonies to their environment: They are produced in a specific setting and must be understood and interpreted as such – importantly, they do not speak for themselves.
4. The research design influences the outcome: Queered quantitative research needs to be aware that the sample, the wording of the questions, and similar considerations influence the responses, but potentially also the participants.
5. Queer (quantitative) scholars might also wish to shift their scope away from queer bodies and individuals towards the analysis of systems and regimes: This would allow for a move away from the problematic focus on identity markers and shed new light on structures of ideology and power.
6. Doing queer quantitative research also necessitates restraint from some fundamental assumptions of positivist approaches: Results are never ‘objective’, ‘true’, ‘universal’, or ‘generalizable’. Rather, they emerge from their specific settings. Queer interpretation of statistics also requires consideration of issues of space and time – and humility.

Therefore, a successful queered quantitative research design should, in addition to the usual thresholds of quality research, consider the above conditions, which I have tried to do as far as possible.

8.4.2 Applying the queered quantitative research in practice

The previous sections have demonstrated that the combination of queer theory and quantitative methods can be challenging for several reasons. However, when used critically and with the conditions of successful queer quantitative research in mind,

quantitative methods can yield significant insights. But how can this be done in practice? In what follows, I share some of my own reflections on the process.

Importantly, in my experience, the overall queering of a quantitative research design must take place throughout the process (Patterson, 2019) and be incorporated at all stages, not just at the research design stage. Thus, not only does the researcher need to adapt/queer the method, but the theoretical framework, its assumptions, data collection and analysis, and interpretation need to be done in a queer way. Focusing on the research design starts with the data: Will I use existing data, or will I try to collect my own?

Much quantitative research relies on datasets produced by institutions, such as census data. If, for example, a gender variable is collected in a binary manner, fully queered quantitative research already faces limitations: Queer theory considerations should thus already play a role in the data collection process. Therefore, I argue that if one is aiming for queered quantitative research, collecting one's own data makes the project more feasible, as the researcher has more control over the exact specification of the data used. This approach would allow for less reliance on pre-selected categories, as the data can to some extent be created and conceptualized at one's own discretion. This is especially true as the new AI-driven¹³⁴ tools allow for some degree of overcoming the pre-existing limitations of social categories in large-n datasets (John-Mathews & Cardon, 2023); in particular when dealing with textual, audio, film, or image data, these methods have the ability to search for and find queer aspects within the data. Beyond the careful creation of the dataset, the new computational/big data methods, such as AI-driven methods, allow us to go a step further. Algorithm-based methods such as Structural Topic Models (STM) or (seeded) Latent Dirichlet Allocation (LDA) allow us to find fine-grained insights, go beyond categories, and go further than classical quantitative methods such as binary t-tests (Engel et al., 2021a).

If the creation of one's own dataset and the new AI-driven methods facilitate approaching the goal of a queered quantitative research design, then it could be argued that the new

¹³⁴ However, AI in particular calls for new reflections about research ethics.

computational approaches have opened the gates to more quantitative queered research: Scholars can now, more than ever, create their own datasets – for example by scraping existing online data – and apply methods that allow them to overcome the restrictions of pre-existing categories. If, as mentioned above, a critical and theory-driven research design is created – from the beginning to the end of the research process – it seems to me that it is possible to do queered and quantitative research at once.

And there is much to gain: Quantitative methods in queer research can offer new perspectives and help advance existing theories. One should see quantitative methods as a new perspective on the field. Moving away from the practice of close reading to ‘distant reading’, hence analysing a text after “*deliberate reduction and abstraction*” (Moretti, 2007) remains a challenge in queered research (Kitchin, 2014). Researching a queered subject is no easy task, especially when using quantitative methods. Such research designs not only face conventional obstacles associated with integrating large datasets, computational techniques, and a critical, theory-driven lens. Rather, the confluence faces fundamental methodological (e.g., binaries, Browne, 2010), theoretical (e.g., epistemology, Patterson, 2019), as well as ethical challenges (e.g., avoiding violence, Kitchin, 2014).¹³⁵ However, given the prevalence of qualitative, low-n studies in the field of SOGIESC asylum, there is a justifiable rationale for my approach: My research design allows for a broad and comprehensive overview of queer asylum in Switzerland, revealing previously unknown proportions, numbers, and institutional practices. Moreover, the attempt to integrate two contrasting approaches is not only a challenge but also an opportunity to develop the theoretical framework.

¹³⁵ One might also argue that this holds especially true when combining queer and migration studies with (quantitative) methods, e.g., with the example of predictions of migration flows (see a related open letter: Access now (2022): Open letter to the ITFlows Consortium: stop tech tools for predicting migration that can be repurposed to violate fundamental rights. (<https://www.accessnow.org/press-release/open-letter-itflows-consortium/>) [23.12.2024]. In this context, it should also be mentioned that the technological means used to control migration and to predict migration movements - as they are increasingly used at the European level - also raise questions, especially from an intersectional perspective (e.g. for gender-specific persecution, see also Tschalaer et al., 2025).

Having experienced that it is not easy to meet all these requirements when conducting quantitative research, I nevertheless follow scholars with expertise in queer studies and quantitative research who have argued that a combination of approaches is possible, useful, and feasible (Browne, 2008, 2010; Patterson, 2019). Furthermore, Browne would argue that we are experiencing a lack of critical engagement with quantitative methods and methodologies, even though *“quantitative research poses interesting challenges to queer anti-normative and deconstructive tendencies, where the absence/questioning of sexual subject positions are key enquiries”* (2010: 231). Quantitative approaches are a means of generating additional knowledge and insights (Patterson, 2019). Meanwhile, queering quantitative approaches could also lead to better, more nuanced, reflexive, and humane quantitative research (Strunk, 2023): Quantitative research could benefit from the practice of queering to improve the quality/reflexivity of research. By incorporating the epistemology of queer theory into their methodologies, quantitative scholars have the opportunity to foster a more critical examination of their own approaches (Sumerau et al., 2017): As with big data and social science in general, queer theory might benefit from quantitative approaches and vice versa.

To take advantage of the above, two key provisos/conditions have emerged from my personal experience:

1. Quantitative research is based on assumptions and simplifications. It is crucial to accept that large-scale research designs and models will never be flawless and fully validated and should be seen as adaptive tools rather than definitive and rigid. Or, as the statistician Box put it: *“all models are wrong, but some are useful”* (1979: 202). Finally, the critical creation of categories and analyses and the strategic use of quantitative research could be a crucial element of doing queered quantitative research (Boellstorff, 2010): The assumptions used need to be seen as provisional rather than stable and static, allowing for potential deconstruction in subsequent research projects. Clearly, a degree of pragmatism is required (Gillespie et al., 2024), and a fully queered (quantitative) research design is unlikely to be possible.

2. If we allow the provisional and strategic use of (post-)positivist stances and essentialist categories to conduct queered quantitative research, scholars must also understand that not even counting is a neutral act, but a process of qualitative decision-making that affects the supposedly neutral outcome and can even constitute an act of violence (Patterson, 2019; Strunk, 2023). An appropriate quantitative research process on a queered question must be complete, carefully conducted, and humble, and queering must be a process that happens throughout conducting research (Das, 2020).

There is more and more research showing how queer theory-based theoretical frameworks might be combined with quantitative methods. For example, Ayoub and Bauman (2019) advance the literature about transnational queer activism in a mixed-method framework (including regressions) and show the links between immigration and the proliferation of organizations within the queer social movement. This research counters the right-wing narrative of the 'bad' impact of immigration on what they call LGBTQ individuals and their organizations – but rather shows the opposite, demonstrating how mobility drives the growth and presence of pro-LGBT organizations. Similarly, Turnbull-Dugarte and López Ortega (2023) discuss and analyse the role of homonationalist (Puar, 2007) reasoning in political argumentation. They provide causal evidence from experiments in Spain and the United Kingdom. In a nutshell, they show an instrumental use of liberal values towards what they call LGBT+ rights by far-right actors, especially as a tool to justify anti-immigration and anti-Muslim stances. In a homonationalist (Puar, 2007) sense, the findings show how the supposedly liberal values are used by far-right actors to justify nativist, anti-immigration narratives: They 'nationalize' liberal values towards LGBT+ as a means of differentiation and identification with the 'West'. In short, the article provides queer theory-inspired theoretical frameworks and interpretations, but also classical quantitative methods. Besides such individual examples (see also Spierings, 2021), Browne (2008, 2010) and Patterson (2019) highlight more generally that it is possible to combine queer(ed) perspectives and topics with quantitative methods, advancing both fields of

research:¹³⁶ Queered quantitative research may be more reflexive, and queer theories are tested empirically if they indeed hold true.

I tried to approach the topic with due caution, learning a lot about qualitative and quantitative methods, as well as different theoretical perspectives, especially queer theory. This made the research process a very stimulating endeavour. Throughout, I tried to maintain a theory-guided and critical perspective. Thus, I always kept in mind the relevant theoretical assumptions of a (quantitative) queer perspective when preparing the dataset, specifying the models, and interpreting the results. I also kept in mind the embedding of the data and results in discourse and tried to anticipate the conditions for successful queered quantitative research (Kilgo, 2022; Strunk, 2023). However, in conducting such an analysis, my queered quantitative approach faced several challenges.

For example, I relied on the published data of a governmental institution: Consequently, my results are biased to the extent that they only include what the institution has published. In addition, my approach reproduced government categories such as national containers or terminology (Borrelli & Ruedin, 2024; Dahinden et al., 2020; Wimmer & Glick Schiller, 2002). Although I created my own dataset, I was partly constrained by the available categories and information (Borrelli & Ruedin, 2024). While I had some leeway with certain concepts, such as the measurement of SOGIESC/queerness in a case file, other aspects, such as legal representation, were binary and difficult to conceptualize in a more nuanced way. As a researcher, I tried to be as reflexive as possible about such factors, including by testing different specifications of my data and models. I also faced other limitations, particularly in terms of intersectional reflection, as I was not able to extract relevant information such as social class, ethnicity or race from the case files, which of course left a blind spot and hindered a totally intersectional perspective – an epistemic foundation of the epistemology used – on the phenomenon. This indicates how much my approach depends on what I found online, and how I had less control over what I was doing than, say, doing purely

¹³⁶ Similar debates related to feminist, gender, and intersectional studies can be found in the work of Spierings (2012, 2023). However, those branches focus less on the abolition of categories.

interview-based research where you get to ask explicit questions. However, to put it more positively, the process can also be seen as an experiment that attempts to generate a 'big picture'.

However, I have learned that the most difficult part of a queered quantitative research design is the interpretation, as one must find the right balance between queered reflections and statistics. I have also learned from my experiences that a queered quantitative research design can be particularly successful when it is incorporated into a mixed methods research design, as such an approach allows for the combination of close and distant reading practices, thus meeting the conditions of queered research and quantitative analysis. Combining qualitative and quantitative methods in queered research is therefore a difficult undertaking, but it would be a loss to conduct only qualitative queered research. Of course, as always with (computational) methods, one must remain *“careful, modest and be critical”* (Wyly, 2009: 317). Or, in the words of Box, accept that *“all models are wrong but some are useful”* (1979: 202).

8.5 Reflections on positionality

In this section, I offer some additional, personal reflections on the research process. To illustrate my research trajectory, a brief genesis of the chosen topic and theory is useful. I took this topic by chance: To apply for my position as an assistant in quantitative methods, a research proposal was required. Given my personal interest, it was obvious that I wanted to work on a topic related to asylum. The specific focus on SOGIESC asylum was initially suggested by my former flatmate. The more I learned about the topic, the more my interest grew, and I finally decided to apply for the position with a research proposal focusing on this topic.

The use of queer theory also requires some explanation. During my undergraduate and Master's studies in political science, I had only limited exposure to migration studies or queer theory. I attended a few seminars on migration sociology and gender studies, but my training was predominantly focused on quantitative, post-positivist political behaviour research. Clearly, writing this thesis in a discipline and at an institute where qualitative and

critical approaches dominate, and knowing that I would thus need to adapt my epistemological and theoretical perspective, I had to begin a new intellectual journey, starting with the academic literature. The theoretical concepts that were subsequently used in the thesis came from the recommendations of my two supervisors, from the syllabus of the course on queer theory that I taught in a seminar with them, and, of course, from intensive reading. This was, of course, a significant obstacle at first, as I had to familiarize myself with new literature, methods, and, above all, ways of thinking that had emerged in recent years. While I admit that this has not always been easy, I am also grateful for it, as I have learned much in the process and am now confident that I have a broad knowledge of different forms of social science.

In addition to my theoretical trajectory, it is essential to acknowledge that my personal positionality has also influenced the data collection, analysis, and interpretation. Furthermore, it must be emphasized that the importance of positional identity cannot be overstated when using a queered perspective, even when using seemingly objective quantitative methods (Browne, 2008; Das, 2020; Kilgo, 2022). My positionality, a combination of visible (race, ...) and external (social class, ...) characteristics (Dahinden & Pott, 2024; Reyes, 2020) – has clearly driven all of the findings generated in this thesis and must be understood in this way. First, conducting research on a queer and asylum-related topic as a white, non-queer male requires some self-reflection: Do I really have the authority to make certain statements, to apply certain analytical categories? Second, how have my own attributes shaped my research? And third, what are the potential political consequences of my research (Jamieson et al., 2023)? Questions of this kind have preoccupied me throughout the process and have influenced decisions such as analytical strategy.

I certainly do not have the lived experience of an individual who has undergone a refugee journey and asylum procedure because of their SOGIESC. Due to this positionality, I obviously have missed some insights, as unconscious biases exist in both qualitative and quantitative research, unconscious biases exist (Jamieson et al., 2023). Beside a genuine interest, this positionality was also one of the reasons why I focused primarily on institutional

practices, dynamics, and discourses rather than individual experiences: I relied on expert interviews, but also on administrative and institutional sources. This contrasts with most of the queer asylum literature, but to a certain extent allowed me to avoid ‘distant interpretations’. In this respect, my positionality has certainly characterized the entire project. At some points, notably in terms of choosing the approach, this was a productive tension: While much queered asylum research is of a strictly qualitative nature and focuses on individual experiences, my approach seems to have the advantage of moving away from subject-oriented research to shed more light on the institutional aspects and the bigger picture of SOGIESC-related/queer asylum (Strunk, 2023).

Nonetheless, positionality, non-belonging, and related considerations also had a significant impact on other aspects of the research process, particularly concerning my sense of legitimacy: As I became more involved with the subject, questions of legitimacy arose at various points. Is it really legitimate for me to conduct this kind of research? I agree with Dahinden and Pott (2024) who argue that the “*insider-outsider*” dichotomy – that is, belonging to the group being researched or not as an indicator of legitimacy – should no longer be the central question. Yet, these reflections nevertheless remained in my mind, to the point that I sometimes did not feel totally legitimate in conducting my own research. For example, the aspect of non-migrantization (or, rather, not having experienced an asylum proceeding), combined with not being trained as a legal scholar, made me constantly ask if I had properly understood the asylum proceedings, their implications for the individuals involved and, for example, what a legal representation actually means for the claimants. At some points, this represented a substantial (psychological) hurdle. However, I was able to overcome this partly thanks to interpersonal exchanges and support – which underlines the relevance of a supportive scientific (and personal) network for conducting research.

It should also be noted that the question of the effects of positionality – particularly if understood in an intersectional sense (Dahinden & Pott, 2024; Reyes, 2020) – can hardly be answered conclusively. One element that arises is whether the related questions in quantitative research must be asked and answered differently than for qualitative

approaches: The raw data in the case files, for example, did not change as a function of my positionality, in contrast to what is often described for interviews in the context of qualitative research (e.g. Khazaei, 2019; Manser-Egli, 2023). However, the subsequent data cleaning was influenced by my internal attributes, such as my political ideas and personal experiences. It could be argued that in quantitative research the effects of internal rather than external attributes are more apparent (Jamieson et al., 2023) – especially because a certain ‘objectivity’ is often assumed and the data (if scraped, as in my case) already exists to some extent.

Another element is the question of whether certain of my personal identity marker had a stronger influence than others in my specific research context. For example, I felt that both my SOGIESC and my external attribute of holding a Swiss passport and not being migrantized had a stronger impact on the project – particularly in terms of interpretation – than, for example, my social class. After all, these two attributes are central factors in my thesis, while other aspects play a more marginal role: One could therefore hypothesize that the more relevant/closer an individual identity marker is to the field of research, the more central is its relevance in terms of positionality – although such questions need to be reassessed in each specific context and, as noted above, a conclusive and satisfactory answer can hardly be given.

Also, my political orientation – understood as an invisible tool (Reyes, 2020) – has certainly influenced my research (see also Charmillot, 2023): It is worth noting that I have a left-leaning political stance, and that I have been actively involved with and still hold a small function within the Social Democratic Party. This ideological stance probably played a role in the choice of topic and influenced my perception of the overall course of the research project. While my thinking has certainly influenced the research, I have often had certain scruples: What if I find something that contradicts my expectations and political values? Although my assumptions turned out to be correct, I asked myself such questions throughout the research process – which, in retrospect, also taught me to critically question my own work, findings, and interpretations.

This aspect also becomes relevant when considering the potential political implications of my research: After all, all findings related to sexuality, gender, asylum, and their intersection are central elements of today's political and public debates. My research revealed how the issue is treated in the Swiss political and legal spheres, and the quantitative aspects allowed me to quantify the phenomena. Accompanied by the fear of having produced inaccurate results about the practices in the Swiss asylum system, I wondered throughout the process whether these findings might actually have an impact on the public discourse in Switzerland, which clearly also drove my research and might have led me to a more 'conservative' interpretation of the data and results. However, as with the point above, I think it has influenced my thinking in a productive way.

In summary, I would like to emphasize that this work has involved a great deal of epistemological, theoretical, and methodological exploration – for which I am grateful in retrospect, as it has opened new academic territories for me. In turn, the subject matter and my positionality have led me to spend a lot of time in self-critical reflection on legitimacy and impact. Having said that, I present the following the articles of my thesis, accompanied by a short introduction and the abstract:

Article 1:

Schnell, Mathis, Philip Balsiger, and Janine Dahinden. 2024. 'Sexual Asylum Regimes and the Politics of Belonging: Narratives of Deservingness in the Political-Public Discourse in Switzerland'. *Migration Studies* 12(4). 1–18.

Article 2:

Schnell, Mathis. 2024. 'Credibility Assessments in Sexual Orientation and Gender Identity Asylum Cases: Evidence from a Quantitative Study of Case Law in Switzerland'. *Swiss Journal of Sociology* 50(3). 333–360.

Article 3:

Schnell, Mathis, and Jonathan Miaz. 'Leveling the Odds of LGBTIQ+ Asylum Seekers? The Interaction of Legal Representation and Credibility in Asylum Appeals in Switzerland'. Submitted to the *European Journal of Politics and Gender*.

Part 2

9 **Article 1: Sexual asylum regimes and politics of belonging: Narratives of deservingness in the political-public discourse in Switzerland**

This article is the first contribution to my dissertation, a collaboration with my supervisors, Philip Balsiger and Janine Dahinden. I was primarily involved in data collection, interviewing, and analysis. In addition, I took the lead in the empirical section and contributed to the other sections. On the other hand, my two co-authors focused primarily on the theoretical and analytical aspects and contributed to the writing of the other parts. The goal was to produce an article that would provide an overview of the phenomenon, and the political developments related to the issue of what we have conceptualized as sexual asylum in Switzerland.

The starting point of this study was the hypothesis that due to the configuration of the prevailing sexual nationalism and the exclusivist asylum system at the public-political level of the discourse, different actors can present divergent narratives of deservingness. These narratives, in turn, play a central role in Switzerland's boundary work. The data collection for this article began in 2020 and resulted in a diverse corpus of publicly available data, including parliamentary minutes and expert interviews. The application of grounded theory-inspired critical textual analysis revealed the existence of (at least) four interrelated narratives (the situation in the country of origin, Western understandings of queerness, vulnerability, and credibility) that are used by different actors within the sexual asylum regime to determine the deservingness of sexual asylum seekers in the public-political level of the discourse.

This article contributes to the existing literature on deservingness and sexual asylum by covering a significant part of the public-political discourse. This allows us to understand boundary-making and narratives of deservingness as vital components of the Swiss politics of belonging. In addition, the historical section provides a compelling overview of the history

of sexual asylum in Switzerland. It was presented online at the IMISCOE 2021, the Neuchâtel Graduate Conference 2021, the Swiss Political Science Association Annual Congress in 2021, and the Fachtagung of the SGGF (Schweizerische Gesellschaft für Geschlechterforschung) 2021. In 2024, it was published in *Migration Studies*.

9.1 Abstract

This article explores the ways in which narratives of deservingness in the field of sexual asylum become crucial elements of national border drawing and boundary work and important instruments of the politics of belonging. Switzerland is a particularly interesting case study in which to explore these issues due to the supposed humanitarian tradition on the one hand and conservative policies on gender and sexuality issues on the other hand. Drawing on literature on belonging and sexual nationalism, we conduct a qualitative analysis of textual data representing the political-public discourse. Four interconnected narratives of deservingness regarding the sexual asylum regime were isolated: Postcolonial geopolitics of national imaginaries (1); Eurocentric/Western representations of queerness and a corresponding politics of the queer body (2); hierarchising categories of vulnerability (3); and a general narrative of (dis)belief (4). We argue that the political-public discourse on sexual asylum should be understood as part of a broader moral economy concerned with the creation and definition of the Swiss community and its politics of belonging.

9.2 Introduction

The political debate about gays and lesbians who have left their homeland for fear of persecution and punishment is in full swing [in Switzerland]. Not without reason, as the State Secretariat for Migration (SEM) confirms. The number of applications has clearly increased, says the SEM's spokeswoman. She does not have concrete figures to hand. She explains that homosexuality alone is not a reason for asylum. The decisive factor is whether the applicants are threatened with serious consequences because of their sexual preferences. Whether they go to prison or fear for life and limb, they must be able to credibly demonstrate the seriousness of their situation.¹³⁷

This quote from a Swiss newspaper in 2019 indicates that in Switzerland, as in many other European countries, asylum claims based on sexual orientations or gender identities (SOGI) (as they are currently labelled in the official handbook of the Swiss administration¹³⁸) have come to be officially recognised while provoking political debates. Through discourses around queer asylum, new boundaries are drawn in reference to regimes of sexuality (Foucault, 1978). Focusing on one aspect of this discourse, we ask what are the narratives of deservingness that shape the politics of belonging in the Swiss sexual asylum regime? By sexual asylum regime we mean the asylum regime and all its actors, discourses, practices that contribute to its formation and governance and that are related to sexual orientation and gender identity/queerness.

In this paper, we argue that political-public discourses around sexual asylum - the thematic intersection of sexual orientation and gender identity/queerness and asylum - must be considered against the background of a double bordering by asylum regimes (Horvath et al., 2017; Rass & Wolff, 2018; Tsianos & Karakayali, 2010). On the one hand, asylum regimes can be considered as political projects of governance, and on the other hand as political projects of belonging. The first concerns their capacity in a *physical and legal sense* to sort deserving from undeserving people, resulting in them being granted or denied access,

¹³⁷ Künzi (2019): Berner Zeitung: Nicht schwul genug. (<https://www.bernerzeitung.ch/nicht-schwul-genug-837477425911>) [5.8.2022].

¹³⁸ SEM: Die geschlechtsspezifische Verfolgung. (<https://www.sem.admin.ch/dam/sem/de/data/asyl/verfahren/hb/d/hb-d2-d.pdf>) [5.8.2023].

rights, and entitlements to national territories. The second, *politics of belonging*, stands for “the maintenance and reproduction of the boundaries of the community of belonging by the hegemonic political powers” (Yuval-Davis 2006: 205). Symbolic boundaries between ‘us’ and ‘them’ (re)produce important distinctions (Fischer et al., 2020) and create not only images about the others, but, relationally, also particular self-images of ‘us’. Such boundary work is crucial in political-public discourses in the sexual asylum regime, particularly regarding questions of deservingness. European asylum regimes incorporate and reproduce ideas about the national imagined communities of value (B. Anderson, 2013; B. R. O. Anderson, 1983) about ‘who we are and who they are’.

We will demonstrate that such narratives of deservingness, which function as filtering devices in terms of bordering and boundary making, can be understood as fundamental to a politics of belonging and its associated moral economy: Deservingness impacts politics of belonging, and vice versa. While scholars have demonstrated that deservingness is a powerful means of bordering in the realm of migration and asylum regimes (Holmes & Castañeda, 2016; Holzberg et al., 2018) our article adds to this literature in two main regards:

First, existing work engaging with deservingness discusses the concept as applied in asylum centres (Casati, 2018), or for the analysis of UNHCR and EU resettlement programmes (Koçak, 2020; Strasser, 2022): Hence, most of the literature focuses on deservingness for asylum claims in general (e.g. also Borrelli 2022 and Marchetti 2020). Further, scholars who focus on narratives of deservingness related to the sexual asylum regime show for example how performances of vulnerability and perceived credibility impact deservingness (Akin 2019; Held and Dustin 2018). Most of these studies are qualitative and ethnographic in view of their methodological approaches and they focus primarily on the *experiences* of queer asylum seekers and how (un)deservingness is produced in individual cases (e.g., Koçak 2020; Tschalaer 2019). In contrast, we conduct a qualitative analysis of the sexual asylum and its narratives of deservingness by focussing on the political-public discourse: We do not ask how and why an individual is considered as (un)deserving, but what are the narratives that can be identified in public-political

discourses. This allows us to learn how queer deservingness is discursively produced by and contingent upon bordering and symbolic boundary making in view of political-public actors and contexts.

Second, we contribute with a case study – Switzerland – which is often neglected in international debate while being a particularly interesting case for the topic at hand. One of Switzerland's best-known myths is its liberal humanism (Ludi, 2014). Welcoming those who are considered as genuinely deserving people in need is an often declared (historical) self-representation of the Swiss federal state and at the core of Swiss nationalism (Efionayi-Mäder, 2003). In contrast, Switzerland is also known for its restrictive asylum regime (Mötz, 2021), resulting among other things from various anti-asylum initiatives and referendums launched over the last three decades, mainly by the country's dominant right-wing party – the Swiss People's Party (SVP) (Miaz & Stünzi, 2020). This paradox – an imaginary of a humanitarian, liberal nation versus restrictive regimes in the realm of migration and asylum – is, however, no exception in Western Europe. What makes the Swiss case interesting is the fact that Switzerland is a comparative latecomer in Europe to the domain of politics around gender and sexuality: At the federal level, women's suffrage was not introduced until 1971 (Studer, 2001). Further, same-sex marriage was accepted – after a referendum – only in 2022 (Admin, 2022a). This raises the important question of how a country that lags in terms of progressive sexual regimes produces narratives of deservingness in its sexual asylum regime. However, Switzerland is of course not a unique case in all respects. Like in other European countries, the amount of sexual asylum claims has increased in Switzerland since the 1990s (Bertschi, 2007; Jansen, 2013). And as in other countries, the issue gained some political and public attention over the last two decades, and the Swiss authorities started to develop specific guidelines for such cases (for instance for questioning). Finally, the Swiss asylum system is embedded in a shared European migration and asylum regime, especially because of the Dublin Agreements (Admin, 2022b; Affolter, 2021; Kriesi & Trechsel, 2008). Our case is therefore an interesting, but not in every aspect 'extreme', case. While some factors are unique, the country is similar to other Western European countries in many other aspects.

To analyse the related narratives of deservingness, we go back to queer theory – which, of course, has many meanings (Seidman, 1994). For this article it means that we are interested in understanding the ‘regime of sexuality’ (Foucault 1978) as it is embodied in the field of asylum, in terms of its public and political discourses and practices that are interlaced with social institutions. This seems to be a theoretically justified decision, since, after all, *“sexuality constitutes a ‘dense transfer point for relations of power’ that structure all aspects of international migration”* (Luibheid 2008: 169; Foucault 1978: 103).

A sexual regime is organised around specific perceptions of gender and sexuality, which unfold their power at the intersection with race, migration, and class. We thus investigate *“a field of sexual meanings, discourses, and practices that are interlaced with social institutions and movements”* (Seidman 1994: 169). More concretely, we are interested in the sexual regime in terms of categories of knowledge and of a normative language that erects moral boundaries, political hierarchies, and is part of a politics of belonging. We follow a Foucauldian understanding of discourses as a way of constituting knowledge (Foucault 1972). We are studying those knowledges and discourses which organise narratives of deservingness in the asylum regime. Such discourses are more than ways of thinking and producing meaning: They are imbued with power and practices.

Subsequently, we use the term sexual asylum regime in relation to our topic. We understand the sexual asylum regime as a vast network of different actors, coined by power relations, that are in constant exchange shaping the discourses and practices around SOGI-based asylum claims, organising, hierarchising and classifying the different forms of queerness-related asylum claims (Foucault, 1978). In light of the numerous changes in recent decades in the factual handling of such cases, it is also important for us to emphasise that this regime of sexual asylum is constantly evolving (Ferreira & Danisi, 2021).

Our analysis is based on a corpus of textual data, including media reports, expert interviews, as well as institutional documents, covering the period 2013 to 2020. Furthermore, the emic vocabulary – including specific notions and categories such as homosexual, trans* person, LGBTIQ+, SOGI, queer, etc., which are used by our interview partners and which we find in the analysed documents – is considered as part of our

empirical material. Given our anchorage in queer theory, we will, however, use the analytical category of queerness, which comprises and overarches all the emic categories and is attached to an anti-categorical epistemology.¹³⁹

9.3 Asylum regimes, sexual liberalism, and deservingness

Sexuality and gender identities have come to play a crucial role in national and European politics of belonging and othering. Scholars have demonstrated how sexuality relates to nation-building and nationalism, the role it has played for imperialist governance during colonialism, and the ways in which it is based on culturalised, racialised but also orientalist underpinnings (Jaunait et al., 2013). Today, notions of freedom of (some) sexual orientations and gender identities are mobilised in nationalist politics in Europe as a means of boundary marking against migrants and asylum seekers (Dietze, 2010; Mepschen et al., 2010).

In political-public discourses and among political actors, there is a prevailing idea that (Western) European societies champion sexual freedom, with a liberal sexual regime being presented as a specifically (Western) European value and a positive sign of so-called 'modernity'. Meanwhile, the 'others' are characterised by backwardness and illiberalism in terms of freedom of sexual orientations and gender identities (for France: E. Fassin 2012; for France and the UK: Giametta 2018; for the Netherlands: Mepschen et al. 2010; for Germany: Tschalaer 2019; also: E. Fassin and Salcedo 2015). Studying the UK, Raboin (2017) explicitly discusses these processes with regard to queer asylum. Raboin illuminates how the practices towards LGBT-asylum in the UK are means of constructing a liberal 'us' (a *queer haven*) and argues that the geopolitics of sexual rights are performative tools for the "*representation of a racialised queer-liberal state*" (13). Since protecting (some) forms of queerness allows to foster the imaginaries of the liberal 'us', one might expect (some) sexual orientations and gender identities to prove advantageous in increasing the chances of

¹³⁹ We are aware that all these notions and categories are potentially grounded in a European-Western epistemology and, hence, risk reproducing particular power systems and epistemic violence (Spivak, 1993). But given that we focus on the regime of sexuality of Switzerland, we need to analyse these categories, exactly in order to be able to bring to light the particular 'regime of sexuality' embodied by these narratives of deservingness.

asylum in a country presented as a safe haven (Raboin 2017; Yuval-Davis et al. 2005). At the same time, despite the implementation of SOGI-related persecution as potential reasons for asylum, the asylum regimes in most European countries became noticeably restrictive during the last decades, mirroring nationalist practices (De Genova, 2017; Giametta, 2018), whereby also sexual asylum cases face restrictive regimes.

Sexuality is and was historically of importance for nation-building, the nation, and its boundaries. Nowadays, it is values of liberty and equality in particular that are introduced to what has been called “*new sexual nationalisms*” (E. Fassin, 2009, 2012). This means the newly discovered alleged liberal values concerning sexuality, gender, and some forms of queerness were turned into a political project and put at the core of the imaginaries of nations; those values become markers of the ‘us’ and at the same time means of othering and exclusions, as they frame reasons to exclude certain populations (E. Fassin & Salcedo, 2015). These new sexual nationalisms are a crucial facet of national politics of belonging (Jaunait et al., 2013). This becomes even more evident when we follow Wimmer (2011: 718), who argued that “*if we define nationalism as a political project [...], then nations are best conceived as (imagined) communities of individuals within which this political project is widely shared*”.

The new sexual nationalisms are mirrored in particular forms of boundary making and intersect with racial, neo-oriental, and postcolonial logics. We draw on and expand this existing literature on sexual nationalism and sexual asylum by looking at the Swiss case and focusing on the importance of deservingness. Deservingness, here, is a moral and legal filtering mechanism deciding upon entrance, but also a means of making distinctions between the ‘us’ and the ‘them’. Deservingness hence relates to the projects of governance and belonging at the same time. Taking into account legal, moral, and economic dimensions (Holmes and Castañeda 2016, Ravn et al. 2020), deservingness “*participates [...] as a conditional attribution enabling a moral demarcation [...] between people who are understood as worthy of [...] aid and those who are not*” (Holmes and Castañeda 2016: 5f) and incorporates hierarchies of who is deserving and who is not.

Research on queer asylum has studied how deservingness is created. Tschalaer (2019, 2020) for example illustrates how in the German case, adapting “*German/Western standards of moral on gay/queer sexualities*” (Tschalaer 2019: 1) increases the chances of receiving a protection status. Tschalaer also demonstrates how decision makers’ practices relate to imaginaries of Islam, and how, in cases of lesbian asylum seekers, imaginaries of sexuality and blackness shape bureaucrats’ perceptions of victimhood. Similar patterns are described by Held (2015), who emphasises how credibility for lesbian asylum seekers in the UK is constructed around racialised and Western imaginaries of sexuality and being ‘out’. Akin (2017; 2019) illuminates further how genuine refugeeness is constructed in Norway, where, due to racialisation, queer refugees face an ambiguous status, as their queerness feeds imaginaries of tolerance, while their widespread racialisation leads to nationalist reactions. Koçak (2020), finally, investigates the creation of queer deservingness in UNHCR resettlement programs. Koçak describes how some queer asylum seekers would reinforce their own deservingness for a place in the resettlement programs by pointing at others as “*fake cases*” (45), reproducing the discourses of the international refugee governance system by “*peer policing and disciplining of sexualities and gender identities*” (45) (see also Giametta 2018).

In our study, we consider deservingness as a discursive practice that takes place in political-public arenas and is produced by the various actors involved. We seek to identify narratives of deservingness, taking into account that they are dynamic and vary according to place and period (Ludi, 2014), and may even be contradicting each other (Ravn et al., 2020).

9.4 Data and methodology

Our case study follows a qualitative-interpretative approach and is based on a diverse corpus of textual data and expert interviews (Meuser & Nagel, 2009). We first conducted seven expert interviews with people involved in the sexual asylum regime. They are members of local parliaments (two) and of pro-asylum NGOs (two), legal experts (two), or work for a state institution (one). Due to the Covid-19 pandemic, six out of seven interviews

were conducted online, five in German and two in French, between October 2020 and May 2021.

In a second step, we selected a corpus of different text types: newspaper articles, minutes of parliamentary debates, administrative documents, and publications by NGOs and political parties. To maintain the focus on political-public discourse we chose to prioritise the inclusion of publicly available documents in the corpus. Besides the historical overview, the main analysis covers the period from 2013 to 2020. We chose this starting date because in an influential decision the Court of Justice of the European Union (CJEU) clarified again that homosexuality can be grounds for asylum and membership of a particular social group, which further institutionalised the topic.¹⁴⁰ Using bilingual (French/German) keyword search, we conducted open online research (Google/LexisNexis) and identified 13 Swiss media articles from our period that cover the topic of sexual asylum and contain narratives of deservingness. Furthermore, we looked at minutes of parliamentary sessions about the topic of sexual asylum in the cities of Bern, Zurich, Basel-Stadt, and Geneva, as well as in the National Council. Based on a bilingual key word search in the respective data bases, all related 18 sets of minutes found were included in the analysis. With this selection, we take into consideration Switzerland's federalist structure. Additionally, we included documents from different institutions and organisations: four documents representing the guidelines for related cases as well as six country reports issued by the Swiss migration authorities; two documents relating to the topic published by NGOs; and two documents published by political parties that explicitly mentioned queer asylum (we searched the media releases and websites of the five major Swiss parties, their youth organizations, as well as the gay SVP for theoretical considerations. However, we found relevant data only in two cases). In line with research ethics we anonymized all actors, be they NGOs or members of political parties. In contrast, politicians that publicly took a voice with their name, we did not anonymize.

¹⁴⁰ CJEU (2013): Judgment of the Court, 7 November 2013. (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0199>) [05.08.2022].

The data was analysed with Atlas.ti following an inductive approach inspired by grounded theory (Charmaz & Mitchell, 2001) and a discourse analytical approach (Wodak and Meyer 2015: 20). With the aim of identifying narratives of deservingness in the Swiss discourse over time, we initially conducted an open coding of each document and interview transcript. Then we triangulated, juxtaposed, and compared the codes between the different text sources (Charmaz & Mitchell, 2001). In the process, four code-families emerged from the data that represent the four narratives of deservingness that we will discuss in detail below.

9.5 The Swiss Asylum Regime and politics of belonging

The Swiss authorities faced the first sexuality-related asylum claims in the 1990s (Bertschi, 2007). Since then, three turning points in the Swiss sexual asylum practice are of particular importance (Büchler 2022: 48–53).

The first turning point was preceded by the international debates of the 1980/90s which revolved around the transnational emergence of gender-specific asylum (Achermann & Hruschka, 2012; Barzé, 2012). The predecessor institution of the SEM responded by establishing a working group on gender-specific persecution, which also addressed homosexuality (Deputy of a state institution). For the 1998 revision of the Swiss Asylum Act, the Social Democratic Party, the Refugee Council and Women's NGO's advocated for the incorporation of gender as a reason for asylum. In the official statement, the Federal Council rejected the said proposal. The Federal Council referred to the efforts to harmonise the European asylum system and to an expected increase in asylum applications, especially from *“women from countries with strong fundamentalist forces”*.¹⁴¹ With the aim of avoiding such an increase, the government advocated against the explicit mention of 'gender-specific persecution' as a reason for asylum. Instead, a sub-paragraph was added stating that *“motives for seeking asylum specific to women must be considered”* (Art. 17

¹⁴¹ Fedlex (1996: 34): Botschaft zur Totalrevision des Asylgesetzes sowie zur Änderung des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer vom 4. Dezember 1995. (https://www.fedlex.admin.ch/eli/fga/1996/2_1_1_1/de) [5.8.2022].

Abs. 2 AsylA).¹⁴² However, in 1999, the term *gender* was included in the Swiss Asylum Ordinance on procedural questions. In 2003, this was interpreted to also be relevant to asylum for male applicants by the former Schweizerische Asylrekurskommission (Asylum Appeal Commission, ARK).¹⁴³ Sexual asylum was initially embedded in a discussion on the inclusion of women-specific grounds for asylum, and it only implicitly also included male homosexuals. Furthermore, sexual asylum cases became a sub-group of the broader term *gender-specific*, all of which were treated under the term *particular social group* (Bertschi, 2007; Hruschka & Portmann, 2012).

A second turn happened in 2006 when the so-called ‘Schutztheorie’ (protection theory) was implemented. This new provision in principle allows for the protection of claimants persecuted by private actors, in situations where the state is not able or willing to provide protection (Büchler 2022: 50). At the same time, an initial comprehensive study on asylum based on homosexuality was published and brought the topic onto the political agenda. The study revealed that only four out of the 90 claims identified had been granted asylum between 1993 and 2007 (Bertschi, 2007).¹⁴⁴ These numbers had significant effects: First, the authorities became more aware of the number of asylum applications based on homosexuality. Second, sympathetic stakeholders could now use figures to support their arguments for better protection of sexual asylum claims. Following a motion in 2009, the issue was brought into parliamentary debate, and a motion by a green politician sought to add persecution for “*sexual identity or orientation*” as an explicit motive for asylum:

In about 85 states, consensual sexual acts between adults of the same sex are punishable by law, and, in some states, there is even the threat of the death penalty. Against this background, it is necessary that gender-specific persecution is not simply subsumed in the catch-all element of ‘belonging to a particular social group’, but that a separate motive

¹⁴² Fedlex (2022): Swiss Asylum Act. (<https://www.fedlex.admin.ch/eli/cc/1999/358/de>) [5.8.2022].

¹⁴³ Fedlex (2022): Swiss Asylum Ordinance. (<https://www.fedlex.admin.ch/eli/cc/1999/359/de>) [5.8.2022].
EMARK (2006): EMARK Urteil 2003/2. (<https://ark-cra.rekurskommissionen.ch/assets/resources/ark/emark/2003/02.html>) [5.8.2022].

¹⁴⁴ Unfortunately, no statistics are available on more recent trends.

for persecution is created.¹⁴⁵

The goal was thus the transition from a de-facto practice (as a particular social group) to a de-jure practice with an explicitly named category. However, due to said de-facto practice the motion was deemed unnecessary by the government,¹⁴⁶ and, with a clear left-right divide, the motion was rejected by the National Council. A politician from the SVP further argued that introducing this change would lead to less control, more unjustified asylum claims, and the potential arrival of “*hundreds of thousands*” of new asylum seekers.¹⁴⁷ From this point onwards, claims based on homosexuality were discursively linked to the idea of unjustified and abusive asylum claims, an important element in the Swiss (and European) asylum debates (Miaz & Stünzi, 2020).

The third turning point impacting the Swiss sexual asylum regime resulted from the CJEU’s decision that homosexuality could qualify as a reason for asylum, published in 2013 (Jansen, 2013).¹⁴⁸ The ruling led to a renewed institutional and political awareness of the issue in Switzerland. Furthermore, it provided stakeholders in favour of sexual asylum with a basis for new arguments, and the topic gained enhanced attention in the Swiss media and entered public discourse to a greater extent.

It is important to emphasise the shared characteristics of these turning points. First, the topic not only was politicised by NGOs or politicians, but also bureaucratised by state institutions: Many of the national and international developments were implemented in an incremental way – a silent bureaucratisation and diffusion of policies. Second, Switzerland’s (sexual) asylum regime was, and still is, exposed to transnational trends. The emergence of the topic and the development and implementation of guidelines and practices were a function of what was happening in other countries, or transnational

¹⁴⁵ Curia Vista (2009): Motion Erweiterung des Flüchtlingsbegriffes. Anerkennung der Geschlechtsspezifischen Verfolgung. (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20093561>) [5.8.2022].

¹⁴⁶ Ibid.

¹⁴⁷ Pomper (2010): 20 Minuten: Schweiz: Asyl für Homosexuelle?

¹⁴⁸ CJEU (2013): Judgment of the Court, 7 November 2013. (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0199>) [05.08.2022].

institutions such as the UNHCR (2012). Additionally, we must emphasise the inherent male bias of the Swiss sexual asylum regime, to which “*women-specific reasons*” for asylum were introduced in 1998. Over time, this practice increasingly applied to new categories such as trans* people. Nevertheless, the documents and the interviews show that in many people’s minds a sexual asylum seeker is mostly equated with a cis-male homosexual.

9.6 The four narratives of deservingness

Against the backdrop of the institutional development of the Swiss *sexual asylum regime*, our analysis brought up four different narratives of deservingness. First, we will discuss them separately before elaborating on their entanglements in the conclusion. Importantly, we demonstrate that these narratives contribute to boundary work and bordering in terms of a project of politics of belonging and sexual nationalism.

9.6.1 Postcolonial geopolitical imaginaries of sexual (il)liberalism and deservingness

And then, of course, it [the decision] also firmly depends on what kind of imaginaries we have of these countries of origin. E.g. via media reports. Or how great is our trust in these countries of origin, in their governments. [...] We’ve assisted various people, from Sierra Leone, or from states like the Comoros, or Jamaica, destinations that I know at best from travel brochures, but certainly don’t know how the governments work there. ... Uganda is one of the countries that has been very much in the press lately, when a gay activist was beaten to death with a hammer, and then we have had about seven or eight positive applications from Ugandan people. (Representative of asylum NGO 1)

The assessment of deservingness in the sexual asylum regime is related to the imaginary that stakeholders have of a certain country of origin in view of its sexual regime, with particular countries having a reputation for being especially homo-/queerphobic. Overall, asylum claims from these countries will be judged as more deserving than those from places that are perceived to have a more liberal sexual regime and safe structures. Of course, we do not deny that there are countries where people suffer from severe persecution due to their queerness. However, such imaginaries do not necessarily align with the factual situation. Nevertheless, they produce distinctions between ‘us’ (the liberal,

modern Swiss) and ‘them’ (the sexually illiberal countries) which generate narratives of deservingness.

The SEM mandates country reports in which experts collect information, including on sexual regimes. Nonetheless, studies show that many stakeholders in the public and political realm have no detailed knowledge about these issues (van der Kist & Rosset, 2020). Rather, the stakeholders also resort to media coverage or use social media to inform themselves. In addition, as indicated in the quote above, if a country receives no media attention or is not, or only partially covered, less deservingness is generated in the public and political imagination about sexual asylum claims from those countries. In this way, deservingness must also be seen as a dynamic, contextual process, which is subjected to trends, current events, and an economy of attention – as can be inferred from the above interview excerpt.

Our analysis reveals what we call here a ‘geopolitics of deservingness’. This is based on postcolonial or other representations of modernity/progress versus tradition/backwardness in which sexual freedom is linked to the former, and it can therefore be understood as a project of politics of belonging within sexual nationalism. The country report on sexual minorities in Kosovo¹⁴⁹ illustrates further how this discursive construction of ‘them’ and ‘us’ relationally creates the imaginary of the modern and progressive West and the unmodern, backward ‘other’:

The constitution of, and legislative power in Kosovo are based on progressive and modern European role models. [...] The events and measures carried out with international support should not hide the fact that the attitude of large sections of the population continues to be negative. [...] The analyst [...] therefore expressed the opinion that the time is not yet ripe for members of sexual minorities in politics. [...] The modern legislation in Kosovo, oriented towards Western European patterns, does not coincide with the attitude of the majority towards sexual minorities.

¹⁴⁹ SEM (2015): Focus Kosovo: Lage sexueller Minderheiten. (<https://www.sem.admin.ch/dam/sem/de/data/internationales/herkunftslander/europa-gus/kos/KOS-lage-se-minderheiten-d.pdf.download.pdf/KOS-lage-se-minderheiten-d.pdf>) [5.8.2022].

This particular framing of the question of tolerance towards sexual minorities makes evident the legacies of historical Western European representations, in this case of the Balkans as the ‘European’s uncivilized self’, as Todorova (2009) has argued (Tošić 2009). More generally, what we see is that Western European countries of arrival are represented as superior while other regions are framed as if they had to catch up with ‘modernisation’ (While scholars have largely demonstrated how the European asylum system incorporates postcolonial structures and inequalities (Krause, 2021; Mayblin & Turner, 2021), we argue that, beyond this, the alleged liberalism or illiberalism of a sexual regime turns directly into a marker to sustain this coloniality of power (Quijano, 2000) and Western superiority (Said, 1979) – geopolitics of deservingness. Similarly, scholars have pointed to the fact that such narratives (re)produce a catch-all imaginary of a queerphobic and monolithic African continent and of a liberal West – “*a simplistic oppression-to-liberation narrative*” (Marnell 2022: 39). These narratives also reproduce the idea of queer migration as something that goes unidirectionally from South to North, neglecting queer migration within the ‘Global South’ and the African continent (Camminga & Marnell, 2022).

Against this backdrop it comes as no surprise that media articles represent Switzerland as particularly liberal and tolerant towards queerness. An example can be found in a tabloid portraying a Syrian refugee’s night of partying. The headline “*with refugee Hadi (23) in gay heaven*” is revealing. He and his friends are cited as “*lov[ing] the peaceful and tolerant atmosphere that prevails here*” and thus the article focuses on how they are enjoying their newfound freedoms in Switzerland.¹⁵⁰ This self-portrait of being a safe haven for queer people is mobilised in terms of politics of belonging.

Deservingness is a double-edged narrative which serves sexual nationalism: First, claims by asylum seekers from countries associated with an imaginary of illiberal sexual regimes are often judged as deserving. Simultaneously, in contemporary public representations, migrants and asylum seekers from those countries are depicted as threats to the alleged

¹⁵⁰ Pomper (2019): 20 Minuten: Mit Flüchtling Hadi (23) im Schwulen-Himmel. (<https://www.20min.ch/story/mit-fluechtling-hadi-23-im-schwulen-himmel-792061728076>) [5.8.2022].

sexual freedom, liberal order, and ‘advanced’ values of an open Europe (E. Fassin & Salcedo, 2015; Holzberg et al., 2021; Mepschen, 2020). The imaginaries about repressive sexual regimes in countries of origin turn in this case into undeservingness and are instrumentalised to assert anti-asylum and anti-immigration politics. Sexual nationalism produces the idea of the Swiss ‘we’ whose core value is a liberal sexual regime while simultaneously including and excluding others. A parliamentary debate in Zurich about accommodation for LGBT asylum seekers illustrates the latter point. After cases of homophobic mobbing in an accommodation centre for asylum seekers, the issue became politicised. As a reaction to the cases, individualised housing solutions for LGBT asylum seekers were demanded by members of the Social Democratic Party of Switzerland. In the debate, the topic was used to call for stricter measures against an undefined group of ‘intolerant’ asylum seekers by opponents of the demand:

Allegedly, there are LGBT asylum seekers in Zurich who are bullied by other asylum seekers.

It is undisputed that the asylum system brings people to our city who are extremely intolerant of the Western way of life. [...] The whole of society is threatened by it.¹⁵¹

The following statement by the gay section of the radical right SVP points in the same direction:

It is also our opinion that much stricter action should be taken against foreigners or asylum seekers who [...] openly oppose our liberal basic attitude. Homophobia is particularly widespread among young people with a migration background.¹⁵²

Using such homonationalist narratives (Puar, 2007), Switzerland’s supposedly liberal policies and values regarding its sexual regime are mobilised both as a reason for accepting *some* persecuted people (here homosexuals) *and* as an argument for excluding asylum seekers who supposedly do not conform to these liberal attitudes – hence, they become a filtering device in terms of a national politics of belonging.

¹⁵¹ Gemeinderat Zürich (2018): Detailansicht Geschäft | Gemeinderat Zürich. (<https://www.gemeinderat-zuerich.ch/geschaefte/detailansicht-geschaefte?gld=052e1f3d-b239-464a-806e-7a9f4007a498>) [5.8.2022].

¹⁵² Gay SVP (?): Wer sind wir? (<https://www.gaysvp.ch/index.php/ueber-uns/wer-sind-wir>) [5.8.2022].

9.6.2 Deservingness produced through performative acts and a politics of the queer body

Men who are more feminine have better chances than those who do not correspond at all to the image of a homosexual person. ... Men [...] with a very masculine appearance, muscular, with beards and macho-like body language, they are believed much less than men who correspond to our image of a homosexual man. The same happens with women. So, I've seen more women [being believed] with shaved haircuts and, according to our understanding, male body language, than those with long hair, adorned, red fingernails, and children in their home country. (Representative of asylum NGO 1)

Studies such as those from Topel (2016) and Tschalaer (2019) have shown that sexual asylum claims are often denied because decision makers do not believe the claimant is genuinely queer. In the quote above, a member of an NGO indicates that this also happens in Switzerland with homosexual-identifying people. With the implementation of sexual asylum, a new filtering device emerged: the institutional zeal and eagerness to supposedly 'define' one's sexual orientation/gender identity and to prove the related persecution associated. Assessments are based on an (oral) sexual asylum stories and applicants need to reconstruct themselves as archetypical sexual asylum claimants.

This of course requires a formulation according to a European/Western imaginaries of sexuality and gender identity that represents a stereotypical white middle-class gay identity (Tschalaer, 2019). In other words, the process of establishing *prima facie* 'evidence' of one's queerness is heavily based on representations of European/Western queerness, which produce perceived deservingness and can be understood as another facet of a project of politics of belonging. It should be noted that the expectations are not uniform across the groups: for example, trans* people face different expectations (e.g. the body as evidence) and obstacles (e.g. medical care) than other categories of queer asylum seekers.

A 2019 case published in a Swiss newspaper reveals these processes.¹⁵³ A gay Iranian man's asylum claim, which he based on persecution related to his homosexuality, was denied. The

¹⁵³ Künzi (2019): Berner Zeitung: Nicht schwul genug. (<https://www.bernerzeitung.ch/nicht-schwul-genug-837477425911>) [5.8.2022].

institutions involved did not consider him a genuine refugee and, furthermore, according to the newspaper, cast doubt on his homosexuality. He happened to live in the same village as a politician from the Christian Democratic Party of Switzerland (BDP, today 'The Centre') who got to know him and started to advocate his case. The politician – unlike the institutions – believed in his homosexuality and considered him deserving. When the journalist asked how he could know that the Iranian man was *actually* gay, he replied “*I noticed it quickly. By the way he moves, the way he acts – in short, by his whole behaviour.*”¹⁵⁴ Although the article does not specify what kinds of behaviour led to this assessment, it indicates that in the politician’s view, the deservingness of this specific asylum seeker stems from conformity to his own representation of a gay man. Based on this reasoning, the politician considered the man’s story credible: The threat of persecution, his turning away from Islam. This example, as well as the opening quote, point to what D. Fassin has theorised, for other asylum contexts, as ‘politics of the body’: “*The body is not only the site where power is exerted or resisted, it is also the site where truth is sought or denied*” (2011: 284).

In asylum processes, medical and psychological certificates often confirm the existence of physical scars or psychological trauma compatible with the story recounted and they have become a key element in improving one’s chances of securing refugee status (D. Fassin & D’Halluin, 2005). In the case of persecution due to sexuality and gender identity *body performances* of gender and queerness corresponding to the European/Western gay story fulfil a similar function. In other words, Eurocentric and Western imaginaries of queerness become part of the politics of belonging: They draw clear boundaries through a politics of the queer body which defines who is included or excluded from the national community in both a symbolic and legal sense.

9.6.3 Deservingness produced through hierarchised vulnerability

The number and proportion of asylum seekers who are considered particularly vulnerable and whose specific needs must be considered in the asylum procedure and in

¹⁵⁴ Ibid.

accommodation have increased, [...]. These are unaccompanied minors, asylum seekers who have suffered torture, rape or other forms of psychological or physical violence, people with disabilities, victims of human trafficking, or people who are persecuted because of their sexual orientation or gender identity.¹⁵⁵

This quote from a report about the Swiss practice illustrates that (genuine) sexual asylum cases are defined as particularly vulnerable, together with a list of other categories of asylum seekers. Strasser (2022) argues that the vaguely defined concept of vulnerability is ambivalent given that it represents a moralised assessment tool of un/deservingness. Importantly, there is little consensus about what vulnerability is, as like deservingness it is also a category of practice, entangled with power, used to justify one's exclusivist argumentation. Strasser further demonstrates that, based on a gendered, sexualised, and neo-orientalising epistemology, vulnerability became an additional yardstick for moral ideas about 'good' or suitable refugees. In the context of vulnerability and sexual asylum, we can identify an epistemology of vulnerability based for example on gendered and postcolonial geopolitical imaginaries about illiberal sexual regimes in certain countries of origin analysed above and the alleged superiority of the gay-friendly, egalitarian, and sexually democratic West. Therefore, the idea of vulnerability as embedded in a narrative of deservingness which is part of Swiss politics of belonging and reinforces Swiss/European supremacy.

Vulnerability attributed to sexual asylum seekers is explicitly acknowledged in administrative guidelines developed to inform street-level bureaucrats.¹⁵⁶ Exemplary, in a report about the evolution of Swiss asylum practices from 1979 to 2019, the following quote about the hearing in gender-specific (including LGBT) cases is found:

Asylum seekers who claim gender-specific persecution often find it difficult to talk about intimate and personal matters. For this reason, the interviewer must [...] be familiar with the prevailing moral concepts in the country of origin. The appropriate questioning technique,

¹⁵⁵ Parak (2019): Asylpraxis der Schweiz von 1979 bis 2019. (<https://www.sem.admin.ch/dam/sem/de/data/publiservice/publikationen/asylpraxis-schweiz-1979-2019.pdf.download.pdf/asylpraxis-schweiz-1979-2019-d.pdf>) [5.8.2022].

¹⁵⁶ SEM (2021): Die geschlechtsspezifische Verfolgung. (<http://www.sem.admin.ch/dam/sem/de/data/asylverfahren/hb/d/hb-d2-d.pdf>) [5.8.2022].

an appropriate tone, and psychological skills are prerequisites for creating an atmosphere of trust, which is particularly important for a hearing in such a situation.¹⁵⁷

For the administration, those institutionally defined as particularly vulnerable should be able to count on a sensitive questioning technique and the psychological skills of the interviewers. Yet, this simultaneously introduces a distinction between those considered vulnerable and those who are not perceived as such – a problematic differentiation given that the latter might also have experienced fundamental traumas. Similarly, the idea of vulnerability introduces hierarchies between and among asylum seekers who claim protection due to their sexuality or gender identity, and potentially also between and among other categories of claimants. A telling example for distinctions among sexual asylum seekers is the observation by a member of an NGO regarding trans-related claims:

Trans* people might have a slight advantage compared to the sexual orientation cases, because it is pathologised. [...] it's not so long ago that it was, according to the ICD, a psychiatric diagnosis. (Representative of asylum NGO 1)

This hierarchy of vulnerability becomes even clearer when this interview partner narrates in the following how a young, wealthy, and well-educated homosexual man is, according to her, more likely to be considered as being able to cope with his situation, and thus might be rejected due to his lack of individually attributed vulnerability. This also indicates how deservingness is constructed intersectionally and how characteristics of an individual may shape ideas about vulnerability and deservingness in a counterrotating manner: An individual may be considered deserving based on some attributes – being homosexual, trans*, or living in a certain country that has a certain reputation – while being considered as undeserving based on other attributes, such as being male, young, and educated.

Importantly, in absolute terms, cis-men currently represent most accepted queer asylum cases (albeit also of the rejected ones), thus their perceived lack of vulnerability for being young men does not mean that their asylum claims necessarily will get rejected. And

¹⁵⁷ Parak (2019: 161): Asylpraxis der Schweiz von 1979 bis 2019. (<https://www.sem.admin.ch/dam/sem/de/data/publiservice/publikationen/asylpraxis-schweiz-1979-2019.pdf.download.pdf/asylpraxis-schweiz-1979-2019-d.pdf>) [5.8.2022].

similarly, it may well be that trans* people are not always perceived as vulnerable, and they have difficulty obtaining asylum. But what the quote demonstrates is that there is a boundary-making discourse that revolves around a contextually constructed vulnerability. It is a practice of hierarchisation by the institutions, in which individual situations are measured against a pre-imagined yardstick of deservingness through perceived vulnerability affected by intersectional considerations, including gender, race, and class (Seidman, 1994; Zisakou, 2021).

These distinctions and concomitant hierarchisations can be seen as a facet of the Swiss politics of belonging that results in a deviation from *rights to political asylum* in terms of a system of protection towards a *vulnerability/humanitarian*-driven system, similar to what D. Fassin (2012) identified as “*politics of compassion*”. The Swiss asylum regime, by defining vulnerable asylum seekers along the lines of gender and sexuality (and in intersection with race), creates a tool of un/deservingness, reducing individual rights and transforming them into an ambiguous compassion for the most vulnerable/deserving. Vulnerability as a tool for measuring un/deservingness contributes to the production of national boundaries by narrowly defining the group of belonging according to often stereotypical Western representations as well as fundamental European/Western humanitarian superiority and postcolonial imaginaries.

9.6.4 ‘Abusing’ the asylum system and (dis)belief regarding sexual orientation and gender identity

It must not be that every asylum seeker suddenly pretends to be homosexual to obtain asylum. [...] we need a straightforward approach without false political correctness.¹⁵⁸

In this fourth narrative, (dis)belief regarding the queerness of claimants is at stake: Asylum seekers are accused of *making up stories/identities* to be granted refugee status. While the above cited manifesto of the Gay SVP refers to homosexuality, sexual asylum cases are by far no exception as other asylum seekers are also constantly exposed to the suspicion of abusing the system. The argument of abuse is omnipresent in the political-public discourse

¹⁵⁸ Gay SVP (?): Wer sind wir? (<https://www.gaysvp.ch/index.php/ueber-uns/wer-sind-wir>) [5.8.2022].

about asylum, in Switzerland and beyond (Leyvraz et al., 2020). According to Miaz and Stünzi (2020), the consequences of the rhetoric of the ‘fight against abuse’ are considerable: It is the framework within which the question of asylum is framed, understood, debated, and acted upon. This means that queer asylum seekers who can provide a narrative of being ‘genuine’ are, in a following step, exposed to disbelief about their story of persecution.¹⁵⁹ But it is often difficult to prove the “*sexual asylum story*” (Tschalaer, 2019) because the persecution may be informal or cumulative in nature, and because such “*stories*” are easily deniable given the asylum procedure’s reversed burden of proof.

The right-wing journal *Weltwoche* provides an example of this abuse debate: “*Is homosexuality, particularly among asylum seekers from Islamic and African countries, developing into a successful model to secure recognition?*”¹⁶⁰ The effect of this generalised narrative of disbelief is that these cases are particularly carefully investigated, as observed by a legal expert:

I always find interesting the meticulousness with which – it’s only comparable with religious cases – [...] they look at how a person is. Often very negatively in the sense that it could be that the person is lying. (Legal expert 2)

Disbelief plays a central role in the (re)production of a boundary and in the alleged need to defend a national community of belonging from ‘trespassers’. The ‘safe haven’ is considered to only protect those who are really deserving but must simultaneously be defended against those lacking the required attributes, and often also racialised persons. Accessing the community, or also the mere intention of doing so, is suspected of abusing, and menacing, the national community. Disbelief is also related to the idea of a Swiss community of solidarity in terms of its welfare state: Access to this community of solidarity is limited to those considered as belonging and deserving (Wimmer, 2002), while the community must be shielded from the undeserving.

¹⁵⁹ Asylum seekers must first qualify as refugees (Art. 3 AsylA), and the qualification must also be considered as at least credible (Art. 7 AsylA).

¹⁶⁰ Mörgeli (2019): *Weltwoche: Asylgrund Schwul* (<https://weltwoche.ch/story/asylgrund-schwul/>) [5.8.2022].

An SVP politician's statement in a debate on separate housing for LGBT asylum seekers illustrates this point:

They'll become something LGBT or something in a flash because there's better housing, there's more money to send home. They're not that stupid; they're very intelligent. They know how to do it. Unfortunately, the only ones who are stupid are us. Therefore, stop with such things. Please think of the dignity of our fellow human beings in Africa, who should not be seduced with such things.¹⁶¹

This positioning is particularly characteristic of actors of the Swiss political right. Pro-asylum NGOs and left-wing politicians often defend the opposite view, of generalised *belief*, while simultaneously promoting the ideal of protection. Firstly, pro-asylum NGOs reject the idea that queerness would be an easy way to be recognised as a refugee and argue that there are no incentives to falsely claim asylum on these grounds. For example, in a newspaper article from 2010, an activist says: "*In the asylum process, there is an individual assessment. So, 'false' homosexuals would be detected*".¹⁶² They turn the disbelief argument upside down, arguing that pretending to be queer is not a worthwhile strategy when claiming asylum as in fact very few sexual asylum cases are being granted. Secondly, these actors give priority to protecting the individual and reject the idea of shielding Switzerland. As a left-wing politician expresses it: "*I have this ideal of protection. For me, this is central. That people who are at risk in a structure, they need to be protected*" (Left-wing politician 2).

The left's narrative of belief draws the boundaries in a different way. It sets the threshold of disbelief differently, starting from a generalised belief. With this, the focus in the left-wing discourse is on the deserving and not the undeserving. The 'us' is here mostly addressed in terms of having a responsibility, to protect, which is not fulfilled. In contrast to the right-wing discourse, which paints the 'other' as a potential abuser trying to penetrate the community that needs to be protected, the left-wing paints 'them' as victims in need of protection and the 'us' as those who have the responsibility to protect.

¹⁶¹ Gemeinderat Zürich (2017): Auszug aus dem substanziellen Protokoll 175. Ratssitzung vom 22. November 2017. (https://www.gemeinderat-zuerich.ch/Geschaefte/detailansicht-geschaefte/Dokument/0bdcf6b7-3f3a-4e31-a0c4-948367e60bd9/2017_0169%20Protokollauszug%20substanziell.pdf) [5.8.2022].

¹⁶² Pomper (2010): 20 Minuten: Schweiz: Asyl für Homosexuelle?

Given the imaginary of the Swiss community, the filtering mechanism of (dis)belief has a crucial role: Denying asylum for a vulnerable person would conflict with the ideal of being a humanitarian host. However, by denying credibility, this idea seems not to be under pressure because those who are not credible would be abusing the system. Exclusion thus even sustains the narrative of protecting those who are deserving.

9.7 Conclusion

At the core of this article is the qualitative analysis of the political-public discourse which produces deservingness in sexual asylum in Switzerland. The production of deservingness in the Swiss sexual asylum regime has many facets – yet the overall picture which emerges shows that the narratives of deservingness are anchored in imaginaries of humanitarianism and liberalism, as well as (sexual) nationalist practices (1). They are interconnected with postcolonial representations, namely a hierarchisation based on attributed so-called 'progressive' values in terms of a juxtaposition of modernity/tradition. They are further based on Eurocentric/Western representations of queerness and a politics of the queer body (2). Deservingness is also produced through hierarchisations of vulnerability (3) and the question of (dis)belief (4). Politics of deservingness leads to a distinction between 'good' and 'bad' refugees, between those who are potentially allowed to enter the national community and those who are denied entry. Importantly, narratives of deservingness participate in the co-production of an imaginary of a liberal, modern, humanitarian Switzerland that reinforces nationalism.

Importantly, the narratives of deservingness reveal their effects in close interaction with each other. For example, the role of country of origin and its reputation may become even more relevant if the person is perceived as conforming to a Western perception of queerness. It is also important to emphasise that an attribute of the claimant(s) can have different implications depending on who is using the narrative. As we have shown in the tabloid article discussing the example of the young refugee from Syria, coming from an Islamic country and conforming to Western notions of queerness increased deservingness.

At the same time, in the right-wing newspaper, coming from an Islamic country is seen as an indication of less credibility and therefore less deservingness.

Our results contribute to the field of research on sexuality and asylum, but also to the debate on the othering and boundary making of (postcolonial) nation-states: How is accessibility produced, and who is attributed correspondence to those conditions, notably in the case of Switzerland? We do so by combining a broad selection of theoretical lenses, notably using queer theory and literature about politics of belonging. Our analysis reveals that political-public discourse about sexual asylum and the question of deservingness are *both similar and different* compared to other groups in the asylum system. On the one hand, some aspects are specific to sexual asylum: For example, deservingness is a question of representations of queerness and of politics of the queer body. Correspondingly, much work in this field has focused on how stereotypical and Western perceptions of queerness work as core filtering devices in asylum procedures for queer people. Importantly, even though terms such as *LGBTQI+* or *queer* are often found in the data, the discourse in Switzerland mostly focuses on (male) homosexuality. On the other hand, however, the terms under which deservingness is produced reflect issues that characterise the asylum bordering regime at large, beyond queer asylum: for instance, the issue of vulnerability, abuse, and disbelief of the ‘asylum story’. Yet, in sexual asylum cases these narratives are tainted in a specific way: Vulnerability is closely related to gender expressions, and abuse is connected to the alleged ‘ease’ of pretending to belong to this “*particular social group*”. Furthermore, another specificity is that deservingness in queer asylum procedures simultaneously produces narratives of belonging and boundary making in line with representations sexual nationalism.

It is further striking that, despite Switzerland’s ambiguous relation to sexuality- and gender-related issues and its undoubtedly conservative politics, the way deservingness is constructed in sexual asylum claims is in line with many other European countries. Although we set this study off by presenting Switzerland as a partially special case, the discourses regarding this issue do not appear to differ significantly from those found in the literature about other Western European countries. The result indicates that lagging in terms of

gender and sexuality rights does not prevent discourses of sexual democracy, sexual nationalism, and homonationalism from taking hold in the realm of asylum. It speaks to the force of the transnational diffusion of such discourses and their possible disconnect from actual practices. Future research could further explore this. Further research could focus on how different narratives interact and have varying effects depending on the circumstances.

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10 **Article 2: Credibility Assessments in Sexual Orientation and Gender Identity Asylum Cases: Evidence from a Quantitative Study of Case Law in Switzerland**

This article is the second of my dissertation and is single-authored. Given the findings of the previous article and the relevant literature, it became clear to me that the second article would explore the complex role of credibility in sexual asylum (e.g., Millbank, 2009). Given my initial training, I was also eager to write a quantitative article and thus sought a way to combine my research interest with such an approach. Considering existing research by scholars like Gertsch (2021) and Spirig (2018), I decided to study the practice of the Swiss Federal Appeals Court through an analysis of its case law and the legal discourse revealed in these documents. To this end, I began creating a dataset in 2021 that included information on the case files published by the FAC. I then updated the dataset in early 2023, resulting in a corpus of approximately 45,000 cases for analysis.

By employing a theoretical framework comprising queer theory and socio-legal studies, I focus on the role of credibility. Moreover, I show that in cases involving SOGI, its salience does not reduce the likelihood of success in the Swiss appellate process. Rather, I argue that when judges intend to reject a claim, they are more likely to base that decision on credibility than in other cases. While the article addresses a topic that has been the subject of extensive research (Ferreira, 2022; Zisakou, 2021), it is a unique contribution in that it provides quantitative data on a phenomenon for which such data is scarce.

I wrote the article mainly during my stay at the University of Amsterdam from 2022 to 2023, where I also received much valuable feedback. The article was presented at the inaugural conference ‘Voices of Law’ of the Swiss Network of Law and Society (2022), as well as at the Neuchâtel Graduate Conference and the IMISCOE annual conference in Oslo in 2022. It was published in the *Swiss Journal of Sociology* in 2024.

10.1 Abstract:

In asylum cases pertaining to sexual orientation/gender identity (SOGI), credibility is of amplified relevance. I analyse the decisions of the Federal Administrative Court and can confirm that credibility is addressed extensively in SOGI cases, which in turn has a negative impact on the likelihood of a positive verdict. In a field dominated by qualitative approaches, the analysis contributes to the understanding of how credibility acts as a central filtering device in asylum proceedings and how this is increasingly evident in SOGI cases.

10.2 Introduction: The Swiss (Sexual) Asylum Regime

Historically, asylum decision-making in Switzerland was a political act, and decisions were often made on a group level. The open attitude towards refugees from the Soviet Union in the 1950s/60s is exemplary, as is the comparatively hostile attitude towards left-wing refugees from South America in the 1970s (Efionayi-Mäder, 2003; Affolter, 2021). Since the 1980s, however, asylum has become increasingly politicised, and the 1979 Asylum Act has led to individualised case assessments based on vested rights and legal criteria rather than political ones. Asylum seekers and their claims are now meticulously and individually evaluated by the authorities (Uebersax, 2019; Miaz, 2020). Asylum procedures are increasingly based on “*evidentiary requirements*”, a need for proof (Affolter, 2021: 52): The significance of the credibility assessment of the history of persecution, and oftentimes also of the applicant's identity, has increased due to this development. New policies and practices were implemented, inter alia intensified and individualized credibility assessments: The whole asylum story must be considered credible enough to convince the bureaucrats (UN High Commissioner for Refugees (UNHCR) 2013). Swiss institutions, especially the State Secretariat for Migration (SEM, first instance) and the Federal Administrative Court (FAC, appeal instance), are no exceptions.

This development also applies to asylum claims related to Sexual Orientation and Gender Identity (SOGI).¹⁶³ Millbank (2009) highlighted the increased importance of credibility assessments in sexual orientation asylum cases when investigating the case law of Australia and the UK. While asylum processes and credibility determination are complex undertakings in themselves, SOGI adds an additional layer of complexity. For instance, how can a SOGI be proven, particularly when the concept is fluid, contextual, and invisible? (Vogler, 2016; Ferreira and Venturi, 2018) Such considerations suggest that there is a practice of increased credibility assessments in SOGI cases: This is because the cases are actually more complex and/or because denying credibility is used as an argument to

¹⁶³ To remain as close as possible to the legal literature, I predominantly use the term ‘SOGI’. However, other terms are used selectively when indicated by literature or data.

legitimise refusal. In what follows, I will address the question of whether the role of credibility is amplified in case law relating to SOGI asylum, compared to unrelated asylum case law.

Consequently, credibility is at the core of this article. I focus on the Swiss case, which is an exciting one in which to study the phenomenon. The Swiss imaginary of a liberal and humanitarian community persists (Uebersax, 2019). While in this respect it is no exception within the European context, Switzerland is a latecomer when it comes to policies on issues of sexuality and gender: Same-sex marriage was implemented after a 2022 popular referendum, and women's suffrage was introduced in 1971. In addition, the Swiss asylum regime is comparatively restrictive. In Italy, for example, a law prohibiting homosexual acts in the country of origin is sufficient to justify a claim for protection. This is not the case in Switzerland (Motz, 2021: 37). The Swiss imaginary of liberalism and humanitarianism collides with a conservative sexual regime and an exclusivist asylum regime. This tension renders Switzerland an exciting and understudied case in which to research SOGI asylum. The subject of the research in this article is the FAC, the sole appeal body. Here, claimants whose requests have been denied in the first instance SEM may present their cases for reevaluation. The court, in its capacity as the final arbiter of the matter, then reviews the facts and their interpretations.

I test two hypotheses. First, I argue that the attention that the authorities attribute to SOGI in a case, hence its salience, in turn, raises the salience of credibility. The more SOGI-related terms a case file contains, the more references to credibility are expected to be found. Second, I shed light on decision-making. I argue that the relationship between SOGI and decision-making is predominantly manifested indirectly via questions of credibility: In other words, I argue that the salience of SOGI increases the salience of credibility, which in turn decreases the chances of a positive verdict. I analyse the entirety of the FAC case files using a novel dataset containing the entirety of the cases published between 01 January 2007 and 31 January 2023. First, I ran zero-inflated negative binomial regressions (ZINB), showing how the salience of SOGI in a case has two effects: While the salience of SOGI is a significant predictor of the mere presence of credibility as a concept, the salience of SOGI also increases the salience of credibility. Second, I ran mediation models which provided

the following results: No significant direct effect of “Salience SOGI” on the decision was found. However, the relationship between SOGI and the decision is negatively mediated by credibility as the salience of SOGI increases the salience of credibility, which, in turn, reduces the chances of a positive verdict. Grosso modo, the results follow the expectations and confirm international research e.g. by Dustin and Held (2018) in Germany and the UK, or Murray (2014a) for Canada: Credibility is also of fundamental importance in SOGI-cases at the FAC. Not only is credibility a prominent element in the case files, but also a means of rejecting appeals.

10.2.1 The Role of Credibility in Sexual Asylum

In Europe, the topic of SOGI asylum surfaced during the emergence of gender-related asylum in the 1980s (Ferreira and Danisi 2021). Subsequently, guidelines and policies were developed and evolved. According to the ground-breaking report by Jansen and Spijkerboer, this process led to “*positive and concrete steps*” (2011: 7) and SOGI and the related persecution became institutionalised reasons for asylum (E. Fassin & Salcedo, 2015).

In the context of such cases, the prevailing treatment has historically been the requirement of discretion/concealment. Claimants were told to hide their SOGI in the country of origin instead of being granted asylum in the country of arrival (Wessels, 2021), hence to live in the closet to avoid future persecution (Markard & Adamietz, 2011; Sussner, 2022). Various institutional and judicial decisions have by now clearly established that such an approach is unlawful. Examples include the 2008 UNHCR guidance note (UN High Commissioner for Refugees (UNHCR) 2008) or the court ruling of the Court of Justice of the European Union XYZ (CJEU, 2013). Moreover, the former Swiss Bundesamt für Migration has officially refrained from applying this practice since 2009 (Curia Vista, 2013). Nevertheless, according to Spijkerboer (2015), discretion is akin to a virus: It mutates, and it resurfaces intermittently in slightly altered forms, also in Switzerland (Della Torre et al., 2021). However, the discretion requirement appears to be on the decline, and the rejection of applications is increasingly grounded in the argumentation of lacking credibility. This is demonstrated by Millbank (2009) who shows how in Australia, following the abandonment of the

discretion requirement, sexual orientation cases were increasingly refused by arguing that the sexual orientation was not genuine. Overall, discretion was partially replaced by disbelief and credibility assessments, and hence by suspicion towards the claimant's SOGI and history of persecution.

Related to credibility, the handling of SOGI asylum raises several questions for the authorities. The following quote by Millbank (2021: 761) is exemplary: "*SOGI claims are a paradigm example of the ontological challenges at the heart of RSD [Refugee Status Determination], including the enduring challenges posed by practices of fact-finding such as [...] credibility assessment*". Crucially, the amplified relationship between SOGI and credibility appears throughout the literature. For instance, according to Ferreira and Danisi (2021: 79), SOGI cases raise "*particular issues in the context of any legal system, including [...], the assessment of credibility*". In practice, the difficulties are illustrated by several questions: For example, how to prove a sexual orientation? and how to deal with a Eurocentric perception of gender and sexuality? Overall, two fundamental aspects of denied credibility in SOGI asylum can be isolated: The alleged lack of a credible identity, and the alleged lack of credibility of the overall (sexual) asylum story.

The first aspect refers to the practice of doubting the SOGI itself, such as denying the claimant's homosexuality. If the authenticity of the SOGI is doubted, the claimants are less likely to be granted a protection status/asylum. The literature found various patterns of such contested and denied SOGIs. Being considered genuine, for example, is evaluated based on the assessment of the quality of (sexual) relationships (Hedlund & Wimark, 2019), sexual practices, or Western stereotypes (Giametta, 2017; Lewis, 2014). Other research indicates how the assessments of credibility shifted towards questions around a "*sexual self-realization*" (Akin 2019: 38), ideally underlined by a narrative of having been "*liberated in the host country*" (Akin 2019: 31; Murray, 2014b). The "*inner emotional journey*" gained relevance in the establishment of credibility of the SOGI (Zisakou 2021: 7). In any case, assessing one's SOGI remains a delicate task and various forms of so-called evidence for the SOGI, such as using stereotypes, phallometric or psychological tests, are neither

appropriate nor productive (Jansen and Spijkerboer, 2011).¹⁶⁴ Following the 2014 ABC and the 2018 F CJEU decision on how to assess credibility for related claims (CJEU, 2014, 2018), it has also become clearer that some means of establishing credibility – such as stereotypes or visual material – are also unlawful because they contradict human rights standards. Legal scholars and experts argued that the assessments should shift towards the assessment of the persecution and need for protection rather than proving the SOGI (Hruschka, 2018; Dustin and Ferreira, 2021). Furthermore, the question of the SOGI might sometimes even be left unanswered (Hruschka, 2018).

The authors underline that the decision-makers should focus on the credibility of the general asylum story and persecution rather than solely on the SOGI: Besides the credibility assessment of a claimant's SOGI, there is also an assessment of the general story, of the setting. Parts of the assessments of the credibility of a SOGI asylum claim might hence refer also to the claimant's story: E.g. how was the person persecuted, and by whom? (Della Torre et al., 2021) Further, external information such as country of origin information might underline or undermine the credibility of a claimant's story (van der Kist and Rosset 2020; Ferreira 2022). Credibility assessments of both the identity and the asylum story hence coin the practices of SOGI asylum, and credibility is established and denied in various ways.

SOGI asylum cases are characterised by great precariousness and amplified demands on credibility (Giametta, 2017). A telling example to understand the processes is the lens of the "*sexual asylum story*" (Held and Dustin 2018; Tschalaer 2019). It refers to the idea of how a case must be presented and made credible to be granted. For Germany, Tschalaer (2019) describes the following process: Overall, the authorities assess whether the sexual asylum story is accurate, credible, and corresponds to their expectations. More precisely, first, claimants must convince decision-makers about their SOGI, and that this identity is "*fateful and irreversible*" (5) as is demanded in the German asylum law. Second, they must "*illustrate that their 'membership of such special group' renders them subject to*

¹⁶⁴ One must also keep in mind that theory and practice may differ fundamentally (Millbank 2021, 761).

persecution" (5). Hence proving that they were persecuted due to their SOGI. Tschalaer underlines two filtering mechanisms: The SOGI identity itself and the belonging to this "special social" triggering the persecution. And both aspects may be exposed to questions of credibility.

While the subject matter was primarily examined using qualitative approaches, a more quantitative study with a focus on SOGI and credibility was presented by Millman (2023), highlighting the intersectional issues of credibility assessments. Using asylum decisions from Australia and New Zealand and regression analysis, Millman finds how in New Zealand, but not in Australia, "*queer cisgender women*" face higher thresholds of credibility than "*queer cisgender men*" (500). Analysing the results against a background of intersectionality, this approach allowed the scholar to quantitatively test for the qualitatively identified amplified role of credibility within the diverse group of SOGI asylum seekers. Taken together, legal and sociological strains of literature make the point that various forms of credibility play a disproportionate, ambiguous, and central role in SOGI cases, also compared to other groups of asylum seekers. This is reflected in both qualitative and quantitative research. In conclusion, credibility plays an amplified role in cases referring to SOGI-related persecution. The identity and the story are constantly exposed to discourses around being "*fake*" or "*bogus*" and the claimants face a "*culture of disbelief*" (Zisakou, 2021; Ferreira, 2022).

I build on the confluence of legal and sociological schools of literature. They are united by their focus on the nexus of credibility, SOGI, and decision-making processes in the context of asylum. This leads me to the following two hypotheses. First, I expect an enhanced relationship between SOGI and credibility. The complex nature of the cases and the demand of the decision-makers enhance the focus on the credibility of the applicant's story. Therefore, the higher the salience (hence attributed attention by the authorities) of SOGI in a case, the higher the salience of credibility (H1). Second, decision-making is the *raison d'être* of a court, and one could assume that the presence of SOGI directly impacts the outcomes. However, I argue that it is not necessarily SOGI that drives the outcome, but rather the practices of credibility in a case. I contend that the relationship between SOGI

and decision-making is negatively mediated by credibility, rather than solely being a relationship between SOGI and the decision (H2).

10.3 Sexual Orientation and Gender Identity Asylum in Switzerland

To test the hypotheses, I focus on the case of Switzerland. Although the imaginary of a liberal and humanitarian society prevails (Uebersax, 2019), Swiss practices regarding sexuality and gender can be described as deferred. Exemplary is the late introduction of female suffrage in 1971. Also, the Swiss Asylum Regime is exclusivist: Motz (2021) describes Switzerland's practice as restrictive due to the high requirements for targeted mistreatment and the causality between motive and persecution to qualify as a refugee. This also applies to LGBTIQ persons (Motz, 2021). Historically speaking, SOGI asylum was a relatively late phenomenon in Switzerland. The Dutch and South African authorities treated their first cases the late 1970s and 1982, respectively (European Council on Refugees and Exiles, 1997). In Switzerland, for the period from 1993 to 2007, Bertschi (2007) found 90 cases related to homosexuality. Out of those 90, two were granted due to persecution related to homosexuality, two for other reasons, and another two were accepted provisionally, while the remaining cases were rejected. Nevertheless, overall, Swiss institutions followed international trends, and asylum based on sexual orientation and gender identity (SOGI) became institutionalized.

A more recent statistic was presented by the Della Torre et al. (2021: 673). The authors analysed 67 SOGI cases treated by the FAC. Five were granted asylum, four were reissued to the former instance, and one was accepted by the first instance during the trial. According to the authors, this relative strictness is mirrored in various aspects: Laws prohibiting homosexuality, for example, must be applied regularly to constitute a reason for asylum. Also, high demands regarding the intensity of the persecution are demanded. Importantly, the entire sexual asylum story is evaluated, and inflated levels of credibility are required in such cases (Della Torre et al., 2021).

The Swiss asylum system consists of two central decision-makers: The SEM and the FAC. The SEM is the first instance to evaluate asylum applications. In the event of an

unfavourable decision, a claimant can appeal to the FAC. Consequently, the appeal court deals only with contested cases (Bolz, 2021). Following an appeal, an algorithm called “Bandlimat” randomly assigns the cases to the judges. Cases that are manifestly well- or unfounded may be dealt with by a single judge, provided that a second judge agrees to this course of action (Bolz, 2021). Also, in a precedent, five judges may be appointed (Büchel et al., 2021). The processes are usually conducted in an iterative process, in which the documents are circulated between the judge(s) and the clerk, and eventually compiled and decided upon. The resulting files are a revaluation of facts and previous processes, including illustrations of the case and legal arguments. Also, the documents include recapitulations of what has been considered by previous institutions. After this exchange, a simple majority vote among the judges involved is decisive. The court may adopt the former verdict, refuse the appeal, or hand the case over to the previous instance for a revaluation (Bolz, 2021). Considering its status as the appeal instance and the expected disproportionate significance of credibility in SOGI asylum, the practice of the FAC is a promising field for further investigation.

10.4 Research Strategy, Data, and Methods

To examine the relationship between SOGI, credibility, and the decision-making process, I rely on the published case law of the FAC. Such publicly available textual data has several advantages: Among other things, it is an effective means to analyse a public actor (Laver et al., 2003). According to Laver et al. (2003) such research designs require abandoning the assumption of text as a discourse and conceptualising it as a bag of words (Laver et al., 2003; Grimmer and Stewart, 2013). Importantly, one must critically assess the logic of such textual big data (Törnberg and Uitermark, 2021; Drouhot et al., 2022). For example, the bias between published and unpublished documents (Keele et al., 2009; Carlson et al., 2020). However, quantitative analysis of case law is a field of increasing popularity, anticipating the growth in the amount of available data, and allowing scholars to gain new perspectives in fields like political science or “empirical legal studies” (Dunn et al. 2017; Livermore and Rockmore, 2019: x). Given the advantages of case law as data and the

interest in asylum authorities, it is hardly surprising that the case law of the FAC has already been subject to comparable research, e.g. by Spirig (2018) and Gertsch (2021).

However, working with case law on the intersection of SOGI and asylum, most related research is qualitative, exemplified by the analysis of lesbian claims in Belgium by Verhaeghe, Jacobs, and Maryns (2023). Compared to related qualitative and legal research, a quantitative research design calls, however, for an adapted approach. Inspired by the "sexual asylum story" (Tschalaer, 2019b), I use a "story-based conceptualisation" of the case law: In each document, different aspects of the case are outlined, such as quotes from previous reports, decisions, or the judge's reasoning. Consequently, those units form the bureaucratic view on the asylum story, consisting of various latent topics such as SOGI or credibility: Each document contains one story, represented by the bag of words, and this story may be a sexual asylum story. To understand the relation between the topics, each asylum story must hence be analysed as such. This becomes additionally important as one of the key decisions when conducting such text-as-data (Grimmer et al. 2022) research is the definition of units of observation. For my purpose, I define a document as one case and one asylum story. This approach ignores the presence of combined verdicts, as well as non-individual cases but fits the way the data is presented online.

I use a novel dataset using the published cases of the FAC.¹⁶⁵ First, I used web scraping to download the totality of the publicly available decisions of the two asylum divisions, published between 1 January 2007, hence the implementation of the court, and 31 January 2023. The court publishes, however, only the material decisions considered as of interest to the public, according to regulations of the court.¹⁶⁶ The dataset does, by consequence, not consist of every decision by the court, and an uncontrollable bias exists.

Then, I ran three different language detection algorithms to verify the language of each document. Third, to ensure constant quality in the concepts described later, I then

¹⁶⁵ For the database: <https://bvger.weblaw.ch/dashboard?guiLanguage=de&sort-field=relevance&sort-direction=relevance> (29.11.2023). However, there was an update to the page, and I scraped the old version.

¹⁶⁶ See the publication practices: <https://www.bvger.ch/en/jurisprudence/publication-practices> (29.11.2023).

excluded the 2299 Italian cases, leaving a total of 44406 documents, of which 13401 are French (30.2%) and 31005 German (69.8%). As conceptualised in Egami et al. (2022), I subsequently extracted the variables from each of the documents (Grimmer et al. 2022). This process happened in an automated way. One potential pitfall is the bilingual nature of the data, which can be overcome by applying proper data cleaning (Ruedin, 2013). This became especially important for the subsequent step, the creation of the two dictionaries. Together with a student assistant of French first language, myself having German as a first language, I created two dictionaries based on theoretical considerations and qualitative pre-reading of selected cases. The dictionaries are vectors of words relating to the concepts "Credibility" and "SOGI" (see Table 5 in the Appendix). Both dictionaries include theoretically relevant terms, but also terms relating to the topics found in the data and are hence partly categories of practice (Brubaker and Cooper, 2000). Subsequently, for each document, the algorithm counted the term frequencies, providing the respective importance of the concepts, hence their respective salience. For this article, I define salience as a practice emerging from the text, as the attention that the authors give to the respective concept. The measurements thus answer the question of how much attention a topic has received in a case.

Both resulting variables – "Salience SOGI" and "Salience Credibility" – represent counts of terms associated with one of the concepts in a document. For example, a document containing the term "credible" twice has a higher salience (count) of credibility than a document containing "credible" only once. Importantly, the variable measures a neutral concept. A high salience of credibility may represent a high level of attributed, but also a high level of denied credibility.

The variable "Salience SOGI" on the other hand determines whether a document relates to SOGI and, if yes, to what extent. It differentiates between cases relating to SOGI and all other cases. There can be overlaps where, for example, political activism and sexual orientation both play a role. Such a case would be assigned to the category of SOGI-related cases. This operationalisation for the presence of SOGI is also a conceptual difference from most existing research, which mostly considers cases in which SOGI are the core topics in

the claim. The salience of SOGI is measured again by counting predefined keywords. Using this measurement, the dataset contains 849 cases related to SOGI, 1.9% of the cases. In addition, I created a dummy variable of SOGI that indicates the presence/absence of the topic.

The third core variable is the decision. Following existing literature (e.g. Spirig, 2018; 2023), I apply a dichotomous measurement ("refuse," "accept"), informing whether the verdict represents an improvement of the appellant's situation. Thus, a partly positive verdict counts as accepted. This procedure is the standard in similar literature, although it is a simplification that potentially overlooks the nuances of the verdicts. Exemplary are cases where the qualifications as refugees are denied but the protection status is granted. Importantly, a positive decision is, in addition to improving the situation of the appellant, also a correction of a previous verdict. Furthermore, I extracted a battery of control variables that were also included in the models. To ensure the quality of the data, regular checks were performed with two student assistants and the automated data generation was continuously adjusted iteratively.

The approach and the data have several limitations. First, the assumption of independence between the cases hardly holds. Due to the ongoing development of case law, decisions depend on formerly implemented practice (time dependence). Also, judges and clerks work on several cases: For instance, one may posit that cases adjudicated by the same judge exhibit a degree of interdependence. So, the uncertainty of the estimates will likely be underestimated, and hence the p-values and confidence intervals may be biased. Second, due to the bag-of-words approach, the terms of the count variables are not embedded in their context. A term for credibility may not necessarily explicitly refer to a question of SOGI, while the mere presence of a term like "homosexuality" does not mean that the case is only about the Refugee Status Determination of a person based on the sexual orientation: A case may, for example, be a Dublin case, where the claimants SOGI is mentioned. However, following the "story-based conceptualisation," the mere presence of the topic already renders a story into a sexual asylum story exposed to the dynamics discussed above. So, it

is important to keep in mind that the following analysis is based on a conceptualisation that differs from related research.

The analysis follows a dictionary-based, supervised, and deductive approach to text analysis. Information extracted from the documents is used as variables in regression models (Egami et al., 2022). I applied two methodological methods, both supported by descriptive statistics. For the first hypothesis, I ran zero-inflated negative binomial regressions (ZINB, Erdman et al., 2008). These models assume a two-step procedure. The initial model assesses the effect of the independent variables on whether 'Salience Credibility' equals zero or not (zero model). The model is hence aimed at determining whether the independent variables predict the presence of credibility-related terms in a case file, answering the question of whether a case is about credibility or not. Subsequently, the negative binomial model analyses the impact of the independent variables on the 'Salience Credibility' variable (count model), predicting how high the word count of salience credibility will be. In summary, the ZINB model first determines whether the variables explain the presence of the concept credibility in a case file, and, if so, the expected level of the salience of credibility. To account for the possibility of two types of zeros for 'Salience Credibility' – structural and due to sampling (Feng, 2021) – a zero-inflated model is also considered theoretically eligible.

Second, I conducted a mediation analysis (Imai, Keele, and Tingley, 2010; Tingley et al., 2014). Following Imai, Keele, and Yamamoto is "the goal of such a [mediation] analysis [is] to investigate alternative causal mechanisms by examining the roles of intermediate variables that lie in the causal paths between the treatment and outcome variables" (2010: 51). Therefore, the method is used to analyse whether the effect of 'Salience SOGI' on the decision runs (partly) indirectly through 'Salience Credibility'. In other words, does SOGI affect credibility, which in turn affects the decision? To execute this, I follow the approach proposed by Imai, Keele, Tingley, and Yamamoto (2010) and Imai, Keele, and Tingley (2010) and specify the mediation with OLS and probit models.

However, according to Imai, Keele, and Tingley (2010), a mediation analysis is incomplete without a sensitivity analysis. Eventually, it allows one to draw conclusions about the

stability of the postulated effects and to anticipate the omitted variable bias. Hence, following Imai, Keele, Tingley, and Yamamoto (2010), I subsequently conduct such an analysis, an a posteriori check of whether the assumption of sequential ignorability holds: Are the estimates stable or might there be omitted variables foiling the estimated effects? (Tingley et al., 2014; Lindemann and Stoetzer, 2021) Additionally, I ran all the models using different specifications.

Finally, I would like to emphasise the ethical considerations of research design. This seems particularly relevant in such an intersectionally sensitive research subject. I need to emphasise the following two points. First, I made a conscious decision not to conduct research with asylum seekers directly. This is because relevant literature already exists and, due to a lack of training and as a non-queer person, I would potentially lack the necessary sensitivity. Second, I do not study individuals like judges or clerks and only present the data in an aggregated way. So, the anonymity of all potentially affected people remains guaranteed.

10.5 Analysis and Results

Is the role of credibility amplified in SOGI asylum? Figure 13, which shows the distribution of "Salience Credibility," provides an affirming first impression. Discriminating between SOGI cases and the rest, the distributions indicate how SOGI cases contain more terms referring to credibility than unrelated cases do: As the black lines further indicate, the average salience of credibility for SOGI cases is 15 term counts per case file. Unrelated cases have an average of 12: Documents of SOGI-related claims tend to contain more credibility-related terms than the others. Credibility plays a pivotal role and cases referring to SOGI contain more credibility-related terms than non-related terms.

Distribution salience credibility

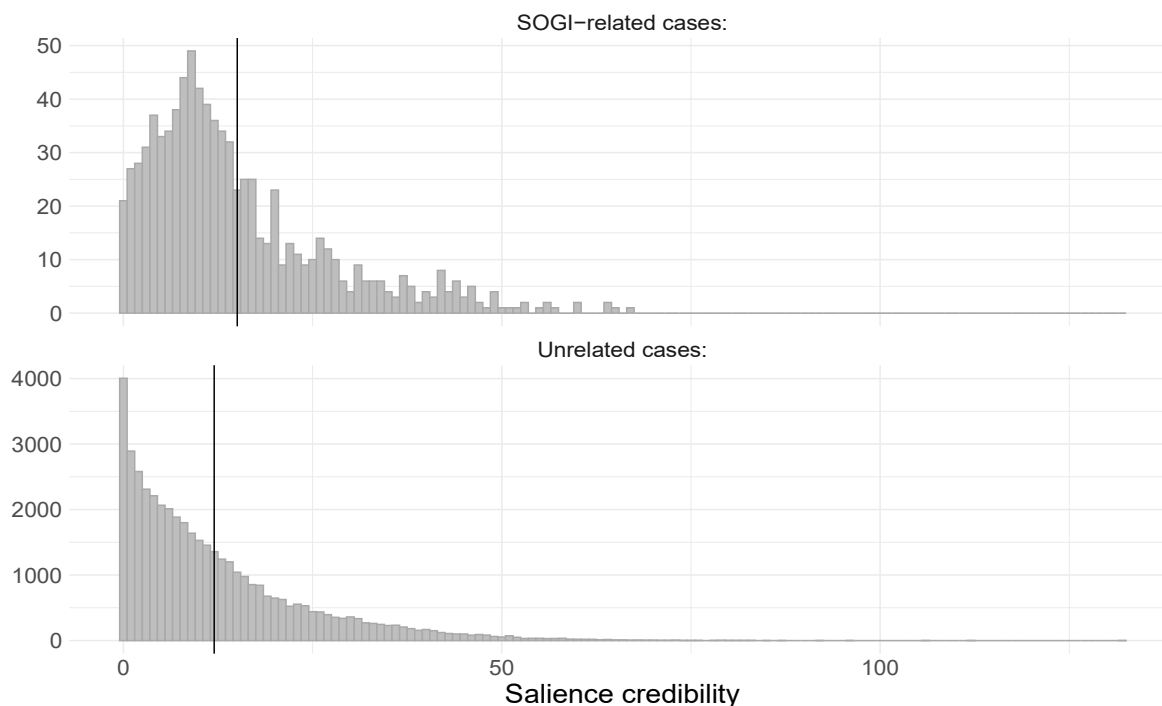


Figure 13: Distribution of 'Salience Credibility' among related and non-related cases. Indications equals mean.

Table 3 represents the coefficients of the ZINB models. Model 1a indicates the regression using "Salience SOGI" as a count variable, and model 2a includes SOGI as a binary variable. The coefficients of the zero models indicate negative and significant values: *Ceteris paribus*, the presence of SOGI decreases the likelihood of having zero credibility-related terms in a document (zero model): Unrelated cases are more likely to be discussed against other backgrounds than credibility, while SOGI claims are more likely to be about credibility. Further increases the salience of SOGI the salience of credibility (count-model): SOGI does not only drive the mere presence of credibility, but it also increases the salience of credibility. In other words, the more a case is about SOGI, the more it will also be about credibility. Again, those results imply an amplified role of credibility in SOGI asylum.

Table 3: Models 1a and 2a. Selected variables presented only (year, subject and region not displayed)

	Model 1a DV: Credibility	Model 2a DV: Credibility
Zero Model		
Intercept	-19.16 (208.54)	-19.59 (258.76)
Salience SOGI	-0.47* (0.19)	
SOGI YES		-1.53** (0.49)
Judge Single	0.36*** (0.06)	0.36*** (0.06)
German	17.26 (208.54)	17.69 (258.76)
Court V	0.00 (0.05)	0.00 (0.05)
Count Model		
Intercept	1.79*** (0.02)	1.79*** (0.02)
Salience SOGI	0.01*** (0.00)	
SOGI YES		0.12*** (0.03)
Judge Single	-0.51*** (0.01)	-0.52*** (0.01)
German	0.12*** (0.01)	0.12*** (0.01)
Court V	-0.03*** (0.01)	-0.03*** (0.01)
AIC	287251.42	287265.81
Log Likelihood	-143550.71	-143557.90
Num. obs.	44406	44406

Note: *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$

Facilitating the perception of the intensity of the effects of the zero-model, I calculated the predicted probabilities for model 1a. Figure 14 indicates the predicted probabilities of terms related to credibility in a document, again discriminating between SOGI and unrelated cases. The probability of including zero references to credibility is higher for the unrelated cases than for the SOGI cases. SOGI cases have an average 0.3% probability of not referring to credibility at all, while unrelated cases have an average probability of 3.9%: Unrelated

cases have approximately thirteen times the probability of not referring to credibility at all, which, despite the low absolute values, presents a fundamental difference.

Probability zero credibility

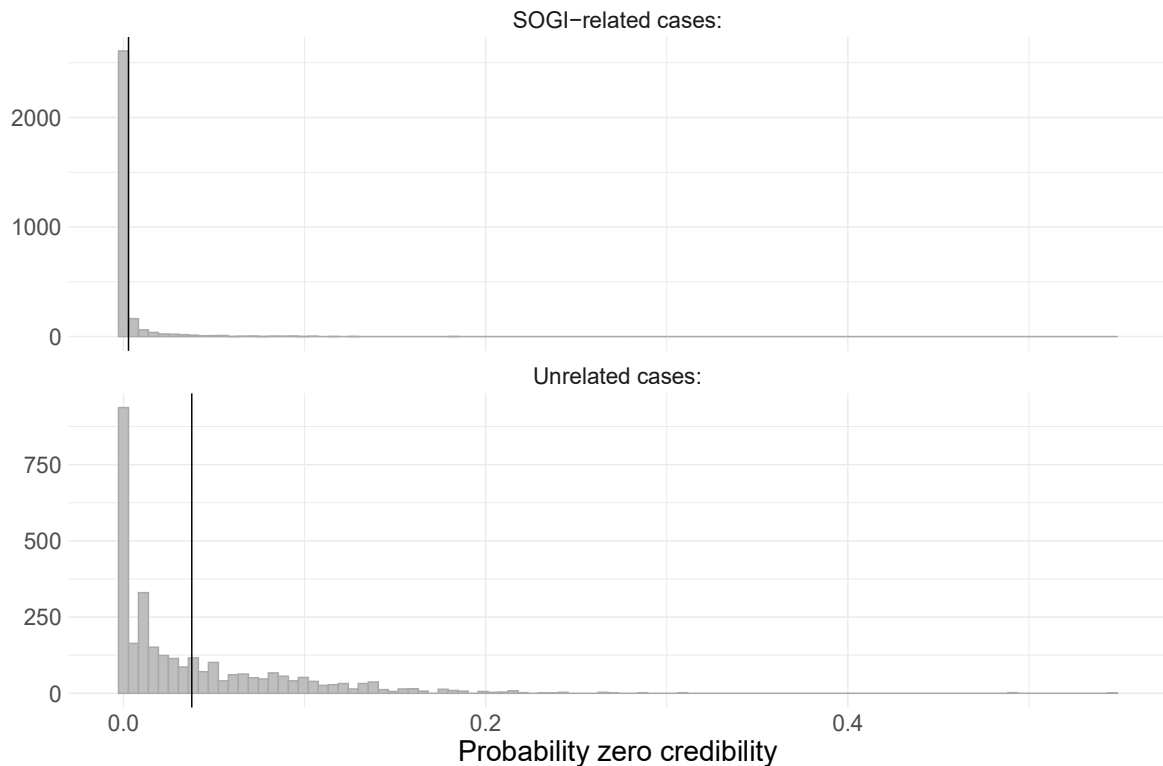


Figure 14: Model 1a, distribution of the probability of 'Salience Credibility' equal zero among related and non-related cases. Indications equal mean.

Finally, Figure 15, which represents the count model, illustrates the predicted level of "Salience Credibility", represented as a LOESS function. The predicted values of "Salience Credibility" are on the vertical axis, being a function of the values of "Salience SOGI" on the horizontal axis. A positive relation is indicated: The higher the salience of SOGI in a case, the higher the predicted salience of credibility. Therefore, I accept hypothesis 1. SOGI is a predictor of the mere presence, as well as of the salience, of credibility. If it is about SOGI, it is likely about credibility, too. And if it is about SOGI, the more prominent the topic of SOGI, the more prominent the concept credibility. Therefore, I state that the role of credibility is amplified in SOGI cases. As I will outline in the discussion of the results below, credibility plays indeed an amplified role in SOGI cases and we can assume that when SOGI play a crucial role in the case, the files contain more credibility-related terms to discuss the

claimant's identity and story: Because the cases tend to be less clear, and/or to justify the decision.

Predicted salience credibility

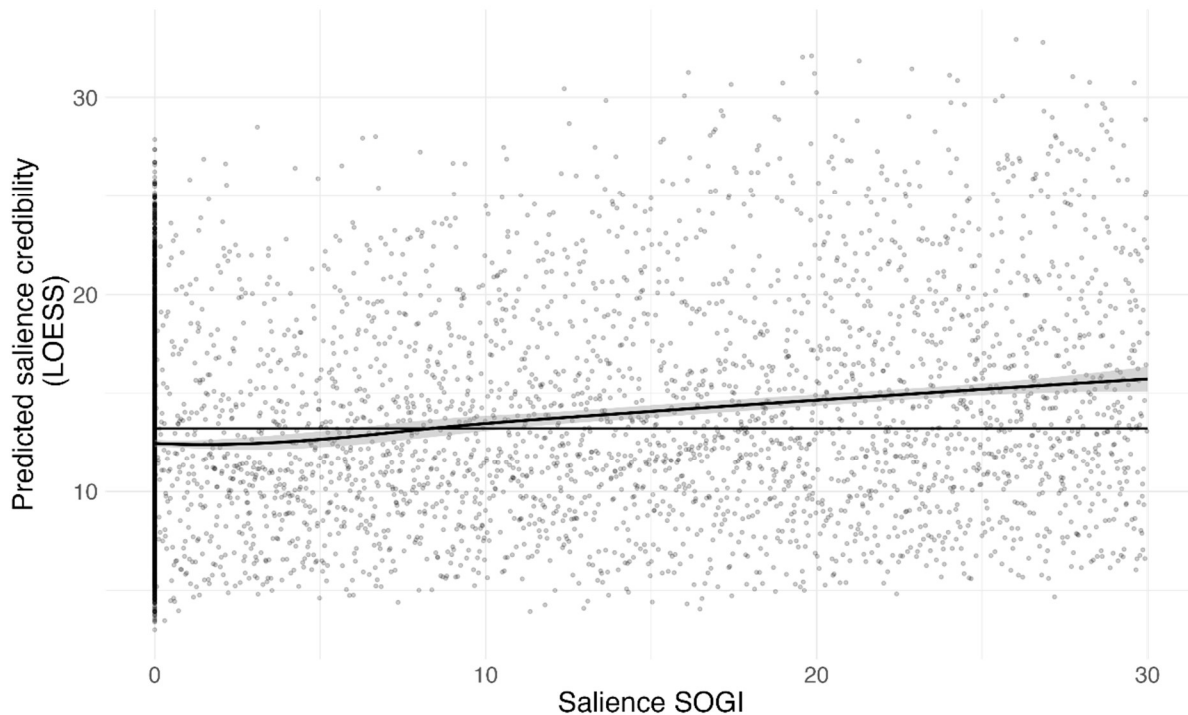


Figure 15: Model 1a, predicted values of 'Salience Credibility'. Indication equals mean.

Prior to testing the second hypothesis, I focused on descriptive statistics: SOGI cases are accepted by 17.4%, while unrelated cases have a success rate of 18%. The difference is thus rather small, yet cases referring to SOGI have a slightly smaller chance of a positive verdict. This result calls for a more in-depth investigation as this pattern does not hold systematically. Some cases only marginally touch on SOGI but mention the concept once or twice. Hence, I reran the same analysis, this time excluding cases that only referred to SOGI once or twice. Now, having excluded such low-salience SOGI cases, the remaining 553 SOGI cases have an acceptance rate of 12.7%: The difference increases when only considering case files with a count of SOGI higher than two and unrelated cases. Second, as presented in Figure 16, the acceptance rate (top graph) and the number of cases (bottom graph) are a function of time: Assuming that the values do not only fluctuate due to the low number of cases (each year has more than 30 cases, except for 2007), the percentage of positive verdicts is unstable.

In general, the relationship between SOGI and decision-making is negative by trend, however unstable over time. Anticipating additional interpretative challenges, we must briefly consider what the acceptance rate entails. The FAC is the second instance and reassesses appealed decisions. In this institutional setting, this makes the acceptance rate a vague measurement. A high acceptance rate may indicate that the first instance, the SEM, takes contestable decisions or that the court applies a more inclusive practice. On the other hand, low values may imply that the first instance is working precisely to the guidelines and no corrections are needed, or that the FAC follows a more exclusivist practice.

Development SOGI cases
2007 – 2022, vertical lines: Critical junctures

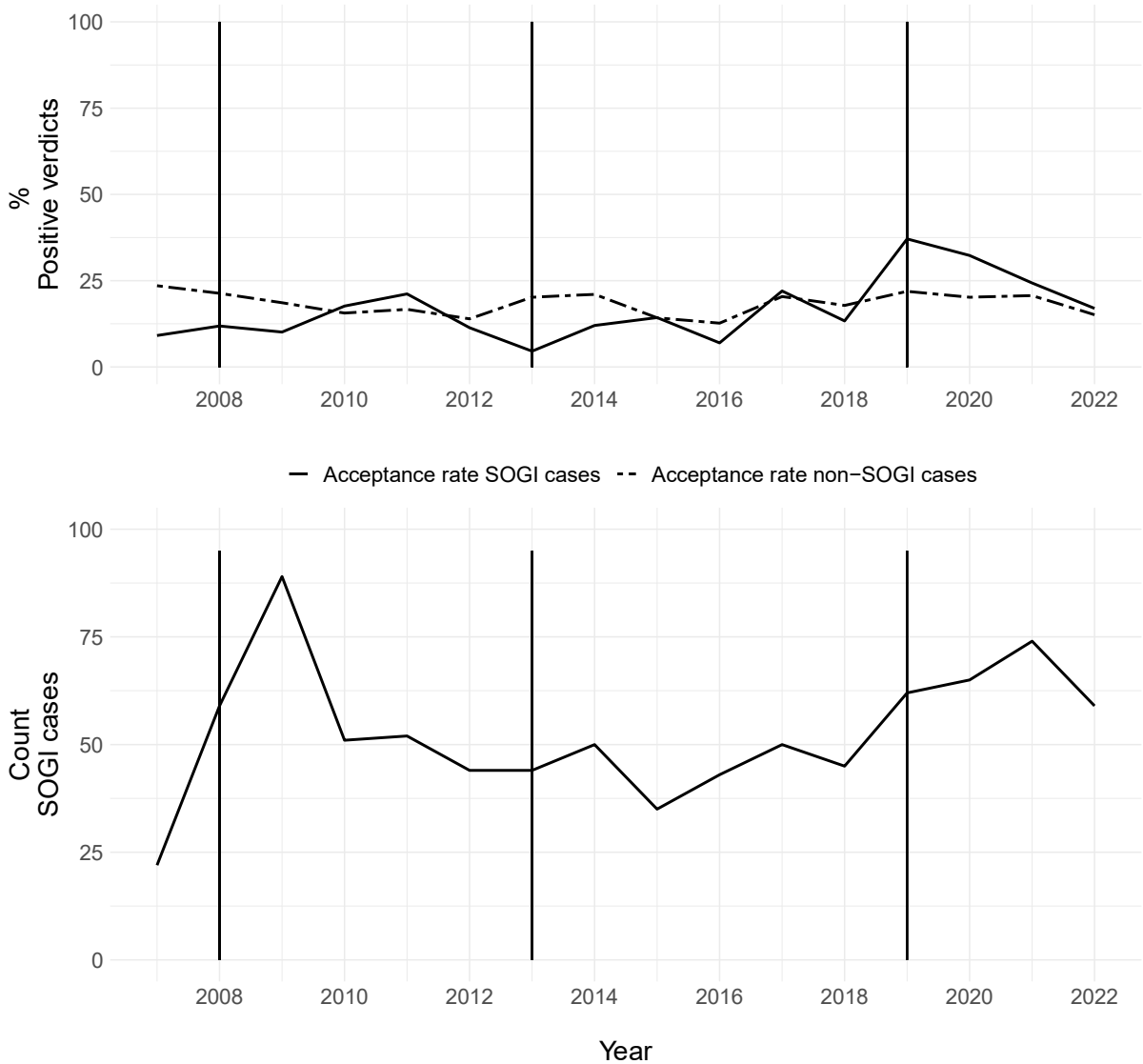


Figure 16: Historical developments: Acceptance rates and numbers of cases.

Assuming that the variations in the acceptance rates and the absolute numbers of cases are not due to random variance, it can be inferred that they have been impacted by the marked critical junctures. The first juncture occurred when the number of SOGI cases increased to 89 in 2009, which may be related to the UNHCR guidance note published on 21 November 2008 (UN High Commissioner for Refugees (UNHCR), 2008). The new guidance note may have provided new opportunities for claimants and lawyers alike to appeal SOGI cases. The increased visibility of the issue may have led claimants and legal intermediaries to build their appeals upon this now more auspicious and legally reinforced argument. The slight increase in 2014 could be linked to the CJEU court ruling in late 2013, which reaffirmed that persecution related to homosexuality may warrant asylum (CJEU, 2013). The following decrease in both absolute values and recognition rate may suggest that the practices of the first instance were adjusted after the decision, resulting in a lower probability of success for appeals. Nevertheless, the effect is only minor for the number of cases. Finally, in 2019, the number of cases increased. 62 SOGI-related cases were assessed in 2019, compared to 45 in 2018. Similarly, did the acceptance rate. This may in turn be related to the revision of the Swiss Asylum Act in 2019. According to a member of a related NGO, the new “accelerated asylum procedures” (SEM 2020) are not suitable for SOGI cases, due to factors such as late coming-outs. This has led to an increase in appeals, as well as a higher rate of positive verdicts. It should be noted that the impact of SOGI on the decision-making process varies depending on when the claim was assessed. However, it is important to emphasize that this interpretation is speculative in nature and other factors may have contributed to the variance. The lack of knowledge of the developments in the first instance SEM presents a black box that impedes definitive interpretations.

For the second hypothesis, I argued that the effect of the salience of SOGI on the decision is mediated by the salience of credibility. There might be a connection between the salience of SOGI and decision-making. However, considering the significance of credibility and its potential as a tool for exclusion, some of the influence of SOGI on the decision is expected to function via the salience of credibility. Prior to carrying out the mediation analysis, I computed the required regressions as illustrated in Table 4. Line two indicates that the

salience of credibility decreases the chance of a positive verdict. The more credibility is a topic in a case file, the lower the chance of a positive decision. Second, as shown in the third and fourth lines, the salience of SOGI increases the salience of credibility. Furthermore, the effects of SOGI on the decision are not significant, implying that the judges reject SOGI cases hardly without using credibility as an argument: If a case gets rejected, this happens via credibility assessments rather than solely because of the topic of SOGI.

Table 4: Models 3a - 6a. Selected variables presented only (year, subject and region not displayed)

	Model 3a DV: Decision refcat = 'refuse'	Model 4a DV: Credibility	Model 5a DV: Decision refcat = 'refuse'	Model 6a DV: Credibility
Intercept	-0.86*** (0.05)	3.79*** (0.30)	-0.86*** (0.05)	3.76*** (0.30)
Credibility	-0.02*** (0.00)		-0.02*** (0.00)	
Salience SOGI	0.00 (0.00)	0.15*** (0.02)		
SOGI YES			0.08 (0.05)	1.70*** (0.34)
Judge Single	-0.77*** (0.02)	-6.39*** (0.10)	-0.77*** (0.02)	-6.41*** (0.10)
German	0.02 (0.02)	1.65*** (0.11)	0.02 (0.02)	1.66*** (0.11)
Court V	0.04** (0.01)	-0.56*** (0.09)	0.04** (0.01)	-0.57*** (0.09)
AIC	38385.02		38383.18	
BIC	38733.02		38731.18	
Log Likelihood	-19152.51		-19151.59	
Deviance	38305.02		38303.18	
Num. obs.	44350	44350	44350	44350
R2		0.34		0.34
Adj. R2		0.34		0.34

Note: *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$

Overall, this interpretation of the results is also reflected in the mediation analysis (see Table 6 and Table 7 in the appendix). The analysis provides the following estimates, presented in Figure 17: The total effects are not significant at the 0.05 level (horizontal lines), which is, given the contradictory effects of the two variables, no surprise. The Average Direct Effect (ADE) is not significant and no direct relation between SOGI and decision-making can be accepted. However, the Average Causal Mediation Effects (ACME) in both models are negative and significant. SOGI is not a significant predictor of a negative decision. Rather, if a SOGI case gets rejected, it will happen based on a credibility-related chain of argumentation.

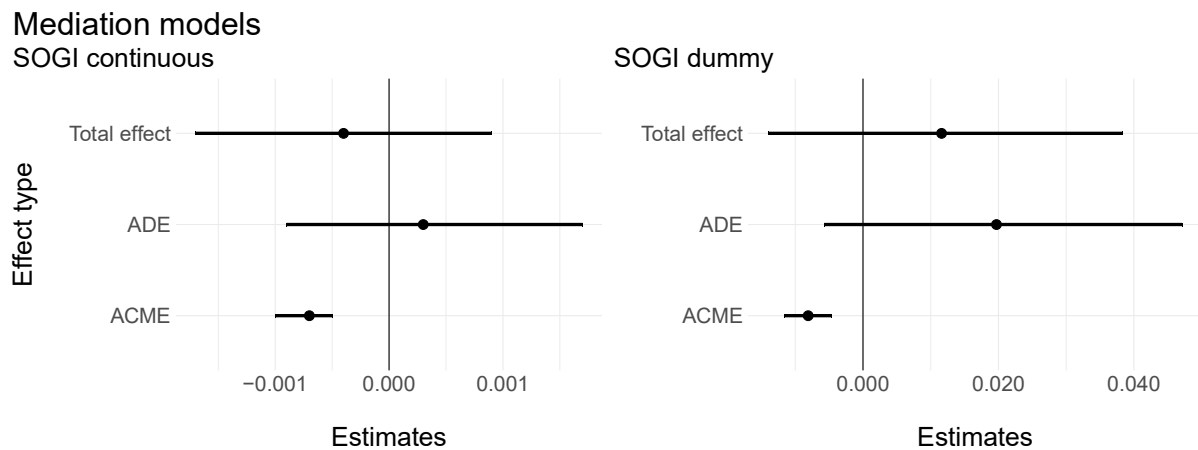


Figure 17: Results mediation 3a/4a and 5a/6a.

To ensure the stability of this result, I conducted an additional sensitivity analysis for the ACME of the two mediation analyses displayed above, using the R^2 -method. The findings, represented in Figure 18 in appendix, indicate a threshold of 0.022 for both mediations: The estimate of the ACME would become positive only if the potentially omitted confounder(s) explained at least 15% of the unexplained variance of the salience of credibility and the decision. Considering the explanatory power of the models and controls, this scenario is unlikely. As such, I accept the hypothesis of a stable mediation and will proceed to discuss the implications of the results.

10.6 Discussion

The initial research question can thus be answered: Credibility does indeed play an enhanced role in SOGI cases. Nevertheless, the interpretation and implications are not clear-cut at all. The results of the hypothesis may indicate that SOGI cases are effectively less clear, and thus more effort is put into fact-finding: Complex cases require more investigation. Or, alternatively, more resources of credibility are mobilised to legitimise the subsequent negative decision, as the decisions are hard to justify. The second hypothesis and existing research support the latter interpretation: Putting forward an alleged lack of credibility is used in practice to justify negative decisions, and unclear cases are mostly rejected due to the denied credibility (Miaz, 2019; Parak, 2020).

Furthermore, as delineated in the theoretical framework, cases relating to SOGI are subject to various modes of credibility assessment: Is the claimant's identity perceived as genuine? Do the narratives of sexual self-realization, discovery, and escape align with the expectations of the decision-makers and the migration to liberation narrative? (e.g., Murray, 2014b; Akin, 2019; Hedlund and Wimark, 2019) It can be assumed that the diversity and various forms of credibility assessments account for the disproportional accumulation of credibility-related terms, and, ultimately, the results foster the image of a "*culture of disbelief*" that is amplified in SOGI cases (Zisakou, 2021).

Hypothesis two exposes how credibility is a means of exclusion rather than inclusion, reducing the chances of positive verdicts. The results can thus be interpreted in such a way as to reveal that credibility is used as a justification for denying SOGI cases, which explains the lack of a direct effect. Instead, there is an indirect relation, which exposes how decisions, while not based on SOGI itself, are likely to be made and refused through the lens of credibility and (dis)belief (Millbank, 2009). The cases are not decided based on the reason of the claim to SOGI itself but based on the application of inflated levels of credibility assessments as a means of filtering. SOGI is thus not decisive but rather the related questions of credibility, which are fuelled by questions around SOGI. Further, the importance of credibility might also reflect the decline of the discretion requirement, as, if cases were rejected based on the latter, little credibility assessment would be necessary to

justify a negative decision (Millbank, 2009) – after all, when demanding discretion, there is no need of establishing a truth of a SOGI and related persecution.

Not only is credibility an omnipresent concept in asylum-related discourse, but a lack of credibility is the most frequent reason asylum claims are rejected in Switzerland. Allegedly unclear cases are often denied on this basis (Miaz, 2019; Parak, 2020). Insofar is SOGI asylum no exception. The amplified relevance of credibility may however indicate that SOGI cases tend to be considered unclear. As the results show, the assessment of credibility is crucial to back negative decisions, a practice amplified in SOGI cases: They are not decided based on the reason SOGI itself – and maybe judges even try to avoid the question – but rather based on the denied credibility of the sexual asylum story. Said effect is also of great interest as the various forms of credibility assessments outlined in the theoretical section vary over time, and credibility as a practice itself is in a constant process of evolution. However, while evolving, it constantly shapes the decision-making. Nevertheless, the results clearly answer the research question: In SOGI asylum, credibility is comparatively of amplified relevance and serves as a tool of exclusion.

10.7 Conclusion

Individualised credibility assessments are at the core of current asylum practices. Moreover, this is particularly pronounced when SOGI is concerned. This tendency can be explained by legal restrictions and the sensitive nature of sexual asylum stories. It is against this background that I pursued my interest in finding out more about the case of Switzerland and the link between SOGI, credibility, and decision-making. My focus was on Switzerland's only appeal court, and I compared cases where there was a reference to SOGI with cases where there was no reference to SOGI.

Comparing SOGI to non-SOGI cases, I uncovered variations in the practices of credibility. Using a novel dataset of Swiss case files, I tested two hypotheses. First, the ZINB regressions indicated that SOGI cases were more likely to contain credibility-related terms than non-SOGI cases. Furthermore, the salience of SOGI increased the predicted salience of credibility. Second, the descriptive statistics first indicate time-changing effects, and in the

total dataset, the cases have slightly lower chances of being granted. The following mediation analysis indicated that the effects of SOGI on decision-making are not significant. Yet, an increased salience of SOGI, resulting in an increased salience of credibility, negatively impacts the chances of a positive verdict. These results suggest that SOGI itself is not a predictor of decisions in the cases, but rather the related amplified salience of credibility. Overall, the implications of these findings are hardly straightforward. They could indicate that these cases are more difficult to assess, requiring more investment in credibility assessments. An alternative interpretation is that credibility is used to justify negative decisions in such delicate cases. Existing research supports the latter interpretation (Miaz, 2019; Parak, 2020).

However, no analysis comes without limitations. First, despite the focus of the article, I want to underline that the assessments of credibility are also a means of exclusion for other groups appealing their first verdicts and SOGI is not the only root of discrimination. Zisakou (2021) has for example shown that intersectional discrimination also impacts SOGI-related decision-making in Greece, disadvantaging, for example, women and people of less privileged economic and social classes. Future research should hence follow e.g. Millman (2023) and include more intersectional perspectives. Also, although I controlled for the subjects, I did not discriminate between content-related difference. The models anticipate the differences in cases that have, for example, removal or Dublin as subjects. Nevertheless, they do not discriminate between the original reason for asylum, for example between cases referring to religion or race. Due to this approach, the article followed a dichotomous logic in which a case was either SOGI or non-SOGI. A follow-up study using a more fine-grained distinction of topics would allow for a more in-depth understanding of patterns, similarities, and differences, also considering the specific experiences of e.g., trans*persons. This holds also true when considering the different forms of credibility: The method failed to consider e.g., differences between the denied credibility of a SOGI or the denied credibility of the history of persecution or the exact reason why a claim was granted/rejected. Existing qualitative studies (e.g. Murray, 2014b; Zisakou, 2021) precisely describe the various forms of credibility assessments. Meanwhile, this article uses credibility

as an umbrella term to underline its overall impact. Future studies could aim for more fine-grained measurements of different forms of credibility, using contextual word embeddings. From a theoretical point of view, further quantitative research could also aim to confluence themselves with more critical literature that investigates the mechanisms of power and politics attributed to queer asylum, such as homonationalism (Puar 2007), queer liberalism (Saleh and Tschalaer, 2023), or the work of Giametta (2017) and Akin (2017).

Consequently, I want to make a plea for a mixed-method approach to analyse this very data, similar to Millman (2023). Incorporating qualitative and legal approaches in an iterative research strategy would allow a more in-depth understanding of the empirical results. Especially for this marginalised group, this approach seems valuable (Ayoub and Bauman, 2019). Nevertheless, the applied research strategy already allowed for new and previously lacking empirical insights.

Despite these limitations, the contributions of this article are threefold: First, while the amount of related literature is growing, qualitative perspectives prevail. My innovative quantitative approach, however, provides a novel perspective on the issue: On the one hand, it allows us to quantitatively underline the prominent nature of credibility. Compared to other quantitative research designs on decision-making, on the other hand, my approach also takes the content, hence the text, of a case file (SOGI, credibility) and not only context-variables like the country of origin or legal representation into account. By doing so, I expanded the scope, added empirical results, and nuanced the insights (Marnell et al., 2022). Second, I show that the decision-makers tend not to reject claims due to the topic of SOGI. Rather, credibility, and not SOGI, is used as a means of justifying the rejection of SOGI cases. This also allows us to triangulate existing insights on the amplified relevance of credibility for SOGI asylum. Third, I shed light on the under-researched Swiss case.

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10.9 Appendix

Table 5: Dictionaries

Concept	terms bilingual	terms German	terms French
SOGI	homosex*	schwul	identite sexuel*
	bisex*	lesbe*	orientation sexuel*
	lesbi*	transperson	partenaire sexuel*
	transsex*	sexuelle identitat	homoerotiq*
	transiden*	sexuelle neigung*	
	homophob*	sexuelle veranlagung*	
	intersex*	sexuelle orientier*	
	transgen*	sexuellen orientierung	
	coming out	sexualpartner*	
	coming-out	homoerotisch*	
	gay		
	lgbt*		
	homophob*		
	heterosex*		
	iglhrc		
	ilga		
	queer		
	' outing '		
Concept	terms bilingual	terms German	terms French
Credibility	plausib*	angeblich	corrobor*
		glaubhaft	credib*
		erfindung	dout*
		glaubwurdig	*croyable*
		pauschali*	invention
		zweifel*	generalis*
		widerspruch*	preci*
		substanziier*	preuve
		gefalscht*	justification
		nachweis*	presum*
		verfalsch*	justificative
		stubstanti*	evidenc*
		prazis*	contrefai*
			falsifi*

10.9.1 Hypothesis 2

Table 6: Mediation analysis, Salience SOGI continuous

	Estimate	Lower CI 95%	Upper CI 95%	p-value
ACME (control)	-0.00071	-0.00096	-0.00048	<0.001* * *
ACME (treated)	-0.00071	-0.00096	-0.00049	<0.001* * *
ADE (control)	0.000335	-0.00095	0.00166	0.626
ADE (treated)	0.000334	-0.00095	0.001655	0.626
Total Effect	-0.00038	-0.00167	0.000947	0.589
Prop. Mediated (control)	0.773224	-18.5338	14.11798	0.589
Prop. Mediated (treated)	0.772772	-18.5793	14.15125	0.589
ACME (average)	-0.00071	-0.00096	-0.00048	<0.001* * *
ADE (average)	0.000335	-0.00095	0.001658	0.626
Prop. Mediated (average)	0.772998	-18.5566	14.13461	0.589

*** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$

Table 7: Mediation analysis, SOGI dummy

	Estimate	Lower CI 95%	Upper CI 95%	p-value
ACME (control)	-0.0078	-0.0112	-0.0046	<0.001* * *
ACME (treated)	-0.0083	-0.012	-0.0048	<0.001* * *
ADE (control)	0.0199	-0.0058	0.0477	0.153
ADE (treated)	0.0194	-0.0056	0.0465	0.153
Total Effect	0.0116	-0.0139	0.0383	0.361
Prop. Mediated (control)	-0.4354	-8.3213	5.7241	0.361
Prop. Mediated (treated)	-0.472	-8.6139	5.8844	0.361
ACME (average)	-0.0081	-0.0116	-0.0047	<0.001* * *
ADE (average)	0.0197	-0.0057	0.0471	0.153
Prop. Mediated (average)	-0.4537	-8.4797	5.8027	0.361

*** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$

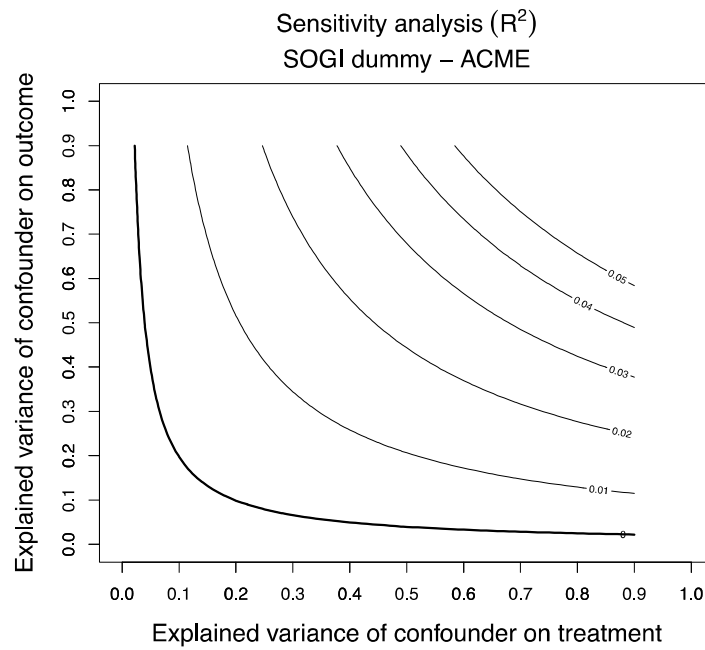
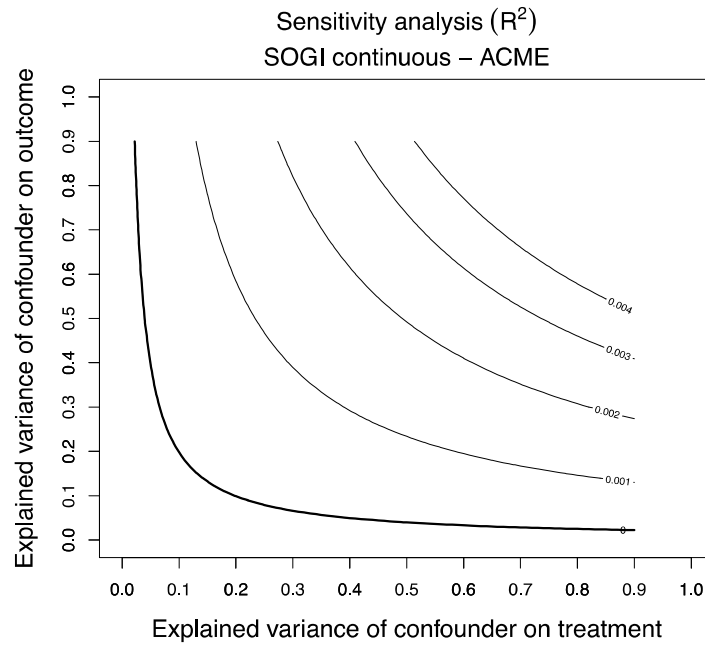


Figure 18: Sensitivity Analyses Average Causal Mediation Effects: Models SOGI continuous (models 3a/4a, top graph) and SOGI dummy (models 5a/6a, bottom graph)

11 Article 3: Levelling the odds of LGBTIQ+ asylum seekers: The interaction of legal representation and credibility in asylum appeals in Switzerland

In the third article, co-authored with Jonathan Miaz, I assess how legal representation helps claimants access their rights and how this effect is amplified in SOGI-related cases. It is largely based on the data I used for the analysis in the second article. Using that data, we ran logarithmic and ZINB regressions to estimate, among other things, the effect of legal representation and the representative's prior success on the outcome of a case. We show how represented SOGI-related cases tend to be more correlated with credibility arguments than other cases. The goal was to combine the socio-legal literature (D. Miller et al., 2015) on legal representation with a theoretical framework inspired by queer theory, hence analysing the subject matter from a socio-legal perspective using a queered angle. Given our respective backgrounds, I focused mainly on the quantitative part, while Jonathan Miaz focused mainly on the conceptual and interpretive part. Even though we focused on different parts of the research process, the collaboration was iterative in nature, and from the first meetings to the last details, we double-checked the analysis and drew inspiration from each other's perspectives. The same was true for the construction of the theoretical framework and the writing process. I presented an early draft of this article at the Neuchâtel Graduate Conference in 2023. In January 2025, we submitted the article to the *European Journal of Politics and Gender*.

11.1 Abstract:

This article concerns the interplay of legal representation and credibility and how it affects LGBTIQ+ asylum seekers' appeal cases in court. We argue that (quality) legal representation increases the likelihood of a positive decision and that these effects are even more pronounced for SOGI-related (Sexual Orientation/Gender Identity) claims. Using a dataset of appeal case files, we run regressions and confirm these hypotheses. We then assess the expected heightened role of credibility in SOGI-related cases. We show how legal representation and SOGI correlate with the presence of credibility-related terms in

the case files. This study shows that legal representation with specific expertise in SOGI-related cases increases the probability of a positive decision at the appeal level. Specialized legal representatives are key intermediaries in shaping access to protection. These results raise political questions about justice in the asylum system.

11.2 Introduction

Since the 2000s, in the international asylum system, persecutions based on Sexual Orientation and Gender Identity (SOGI)¹⁶⁷ have gradually been recognised as asylum motives under the ‘particular social group’ ground (Hamila, 2021). Scholars observe a ‘positive’ and ‘opening’ evolution of asylum law, hence a ‘queering’ of international refugee law (Danisi et al., 2021; Ferreira & Danisi, 2021). Thus, even though the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 New York Protocol Relating to the Status of Refugees didn’t explicitly mention SOGI-related persecution as possible asylum grounds, SOGI can be invoked to justify seeking protection status. These developments occur at multiple levels, through norms and recommendations of international organisations (in particular the UNHCR), through domestic jurisprudence, as well as within asylum bureaucracies (Hamila, 2022). In Switzerland, similar developments are observed (Miaz, 2014) and SOGI-related asylum has become a category implemented in the Swiss asylum system (Büchler, 2022) and the Swiss public-political discourse (Schnell et al., 2024).

Scholarship on refugee status determination (RSD) regimes (Hamlin, 2014) has demonstrated the important role of courts, notably related to judicialisation, in the implementation of asylum policies, ultimately affecting the future lives of refugees (Soennecken, 2008). While the relevance of courts and other decision-making institutions for SOGI-related asylum claims is researched by various queer-theory, legal and migration scholars (Millbank, 2009; Tschalaer, 2019; Wessels, 2021), the relevance of legal representation for asylum procedures in such cases has not been researched thoroughly.

¹⁶⁷ Because we are examining a category of cases rather than individuals, we will use the term SOGI asylum claims below. Because a case may include additional issues – for example, a person persecuted on the basis of SOGI AND political activism – we feel it is more appropriate to speak of SOGI-related cases. By this we mean any case file that relates to the concept of SOGI in any way. We also use LGBTQIA++ (or the appropriate acronym) to refer to individuals. The literature and data also use different terms, which we present as they were used. It should be noted that older literature, focuses primarily on (male) homosexuality, while more recent literature considers the broader categories of LGBTQIA+. Although the realities of these cases are obviously different, and the experiences of homosexual men or transgender people, for example, cannot be directly compared, legal practice remains comparable across the spectrum (Danisi et al., 2021). Therefore, an analytical combination of cases, whose different complexities and difficulties we underline, makes sense for the forthcoming research.

There is relatively little literature on the subject, and often legal representation is not the central theme of the research articles, but only appears in the form of additional insights found by the researchers (e.g. Morgan, 2006; Vogler, 2016).

This is puzzling since socio-legal scholars have repeatedly emphasised the central importance of legal representation – and its quality, measured as the former experience and expertise in the field – for the outcome of an asylum claim (Keith, Holmes & Miller, 2013; Miller, Keith & Holmes, 2015). After all, legal representatives are crucial actors that can help (LGBTQIA+) asylum seekers circumnavigate the restrictive asylum system. They facilitate claimants' access to protection status by providing legal advice and writing asylum appeals that are legally argued and are admissible by the court (D'Halluin, 2010; Miaz, 2022). Among other things, this can be achieved by proving the applicant's credibility, for example, by framing the sexual asylum story in a way that meets the thresholds expected by the judges and by ensuring adequate translation. Research has shown that credibility plays a central role in the Swiss asylum system (Affolter, 2021; Schnell, 2024). And, on the international level, scholarship demonstrated this is particularly the case in SOGI-related asylum. Furthermore, scholars emphasised how the demands on credibility are amplified in such cases (Ferreira, 2022a).

We therefore ask the following questions: To what extent does legal representation influence the outcome of SOGI-related asylum appeal cases in the appeal procedure in Switzerland? And how does this impact the presence of credibility-related reasonings?

As Millbank suggests, “*SOGI claims are a paradigm example of the ontological challenges at the heart of RSD, including the enduring challenges posed by fact-finding and evidentiary practices such as future-focused risk analysis, credibility assessment, and the interpretation of claims across culture*” (Millbank, 2021, p. 761). Every asylum claim has its particularities, however, according to the literature, SOGI-related cases combine several difficulties. They face an amplified “*culture of disbelief*” (Ferreira, 2022) about motives that are related to the intimacies and private lives of asylum seekers (Kobelinsky, 2015). They are expected to correspond to Western stereotypes (Topel, 2017). An example hereof was provided by Topel indicating how decision-makers expect lesbian claimants to be

“stereotypical lesbian women with short hair and no make-up” (2017, p. 2372). Further, they might be expected to prove how remaining in the country of origin might mount to intolerable psychological pressure (Della Torre et al., 2021). Overall, they have amplified difficulties in establishing the necessary credibility in terms of their SOGI and the related persecution (Zisakou, 2021). This holds equally true for the threat of future persecution – not only nor mostly by state agents, but often by third parties (family members, neighbours, etc.) – due to their SOGI that they have hidden (or tried to) so far. Because of these difficulties, and the need to establish their credibility, we argue that the role of legal representation and the argument of credibility are of heightened relevance in SOGI cases.

To pursue our research interest, we test several hypotheses: We follow the existing empirical research of (Miller et al., 2015a, 2015b) and test whether legal representation increases the likelihood of a positive decision in Switzerland. Similarly, we argue that this is also true for the prior success of the legal representative. Combining the socio-legal literature (e.g. Miller et al., 2015b) with reflections found in queer asylum studies (e.g. Giametta, 2017), we go a step further and argue that said effects are even more pronounced in SOGI-related cases, compared to other cases. Finally, we argue that legal representation and the topic of SOGI increase the presence of terms related to credibility assessments.

Using Switzerland as a case study, we adopt a quantitative research strategy. We use a dataset containing 44,406 Swiss judgments on appeal cases. These judgments usually present a summary of the arguments of the lower instance SEM (State Secretariat for Migration), of the arguments of the appellant (and the representative), and additionally contain the reasonings of the judges to argue their decision. We then run regression analysis with information extracted from each case file.

We show that legal representation and the prior success of the person providing the legal representation increase the chances of a positive decision. Importantly, these effects are amplified in SOGI-related cases, which we explain by the difficulties and specificities that characterise such cases (Kobelinsky, 2015; Millbank, 2021). We argue that legal representatives are actors who are able to strategically act in the asylum proceeding and

can help for example, by formulating a “legally adequate” appeal. The same holds for the amplified presence of credibility-related terms.

Because SOGI-related claims are complex and, as we have shown above, hard to prove, they are more likely to be dismissed by the first instance based on an alleged lack of credibility (hence, SOGI-related claims face more credibility-related assessments than other cases in the first place). Then, in the second step, appealing the first decision, the legal representative must rebut the arguments of the lower instance and argue why the claimant is nevertheless credible (hence, representation increases the presence of credibility-related terms). Since legal representatives in SOGI cases have to respond even more to credibility arguments, they have to work more regularly with credibility and the effects are thus mutually reinforcing each other. Finally, judges also need to discuss credibility and base their decision on it.

11.3 Asylum appeals and legal representation in Switzerland

Since the Swiss Asylum Act entered into force in 1981, one has observed interrelated processes of politicisation and judicialisation of the asylum issue (Miaz, 2021). Asylum rapidly became one of the main issues in the political agenda (Parini & Gianni, 2005; Piguet, 2013), mainly framed in terms of “abuses” and security, with numerous and frequent legislative reforms, mainly restricting the asylum law (Stünzi, 2018). Also, associative and activist organisations and lawyers massively contested individual asylum decisions to the appeal instances – the Asylum Recourse Commission (ARC, until 2006) and the FAC (since 2007) –, which involved a significant role of the court in the production and implementation of asylum law through its jurisprudence (Miaz, 2021). This has been observed more generally and in other countries where courts play important roles in regulating the access to citizenship, rights and statuses (Conant et al., 2019).

Besides the numerous reforms restricting the asylum law, Switzerland is also influenced by the emergence of SOGI asylum and the international queering of asylum law (Bertschi, 2015; Büchler, 2022; Ferreira & Danisi, 2021). In the 2000s and 2010s, this development opened up Swiss asylum law at the margins: “In practice”, this has led to asylum being

granted to people with motives that were previously not considered relevant. While one can date cases back to the 1990s in the jurisprudence of the Asylum Recourse Commission,¹⁶⁸ SOGI was progressively included in the asylum practice on gender-related persecutions within the UNHCR, the SEM (first instance) and in the jurisprudence during the 2000s and 2010s. Individuals considered as belonging to an SOGI minority became potentially considered members of a “particular social group.” Following international developments, the elaboration in the 1990s of an “asylum practice” on female-specific persecutions by a working group within the asylum bureaucracy and jurisprudential changes, this asylum practice evolved in the 2000s towards an asylum practice on gender-related persecutions progressively taking into account SOGI as a possible argument of belonging to a “particular social group” (Barzé, 2012; Miaz, 2014). Hence, in the asylum bureaucracy and the instance judging asylum appeals (ARC and FAC), SOGI-related asylum has become an implemented category (Büchler, 2022).

Institutionally, Switzerland has only one appeal instance, the FAC. Claimants who receive a negative decision in the lower instance – the SEM –, have the right to appeal their case at this court. Here, the individuals have the right to be legally represented, although this is voluntary. Appeals are only written, and there is no hearing at the FAC; this means that judges never meet or hear the asylum seekers and base their decisions on individual asylum files collected by SEM asylum officers and their statements related to the appeal. They further consider written appeals and other means of proof submitted by appellants and their legal representatives, as well as other means of proof and country of origin information (COI) (Bolz, 2021). This exclusively written appeal procedure differs from several other European countries (e.g. France, the UK, Italy or Germany) studied by other scholars, where judges hear the appellants and their legal representatives (e.g. Danisi et al., 2021; Giametta, 2017; Kobelinsky, 2015), also underlining the relevance of researching the case files.

¹⁶⁸ E.g. JICRA 1996/29 and JICRA 1996/30

After an individual submits (potentially with the help of a legal representative) an appeal against an asylum-related decision made by a lower instance, a process is initiated: The case is assigned to a primary judge who conducts a preliminary investigation. At this stage, it is decided whether the case will be examined by one (clear/simple cases), three or five judges (reference cases). With the assistance of a clerk, a written document (henceforth case file) is created, which circulates among the judges, who can rework it (Bolz, 2021). During this process, the facts of the case are presented and discussed, including the positions of the parties, the reasons for the appeal and the situation in the country of origin. Finally, a decision is made, usually by a simple majority, as to whether the appeal was justified. This may result in the judges dismissing the case, sending it back to the lower level for reconsideration or issuing a decision (Bolz, 2021). This configuration – that is, only some cases are represented cases and the relative transparency of the court, with its cases available online¹⁶⁹ – makes the FAC an ideal case study, also because it deals with controversial, appealed cases (Spirig, 2018, 2023).

The field of legal aid support for asylum seekers in Switzerland is characterised by a strong involvement of NGOs – mostly related to catholic and protestant churches' social action – and activist groups that have created legal aid services to provide legal advice and help for asylum seekers in Swiss cantons (Miaz, 2022). Since 2019 and a fundamental reform of the asylum procedure, some of these organisations are mandated/commissioned by the SEM to provide free legal aid to asylum seekers within federal asylum centres (Eule, 2022): this is the case of Caritas, the Swiss Church Aid HEKS/EPER, *RBS Bern* (legal aid service Bern), and SOS Ticino. However, NGOs and activist groups are also active by holding legal aid services in Swiss cantons – e.g. *Freiplatzaktion*, the *Centre social protestant*, *Elisa-asile*, the *Centre Suisses-Immigrés*, the *Service d'aide juridique aux exilés*, but also HEKS/EPER and Caritas Switzerland. These legal aid services mostly employ lawyers (with a law degree, but often without a barrister's licence), but also other professionals (social workers or people with a university degree in social or political sciences) and volunteers who

¹⁶⁹ For the database: <https://bvger.weblaw.ch/dashboard> [27.07.2024].

develop, in practice, specialised skills in advising and legally defending asylum seekers. Relatedly, there are also NGOs specialising in SOGI-related cases, notably Asile LGBTIQ+ and Queeramnesty. Besides those organisations, some private lawyers specialise in asylum law and are known for their experience and specialisation in the practice of asylum law. It is therefore important to mention here that we can assume that legal representation already has a significant influence in the first instance SEM.

11.4 Theoretical framework and hypotheses: Legal representation and SOGI-related asylum

We argue based on two strands of literature: On the one hand, we use empirical socio-legal studies to highlight the role and importance of legal representation. On the other hand, we also advance queer migration literature to argue why we think the role of legal representation is amplified in SOGI-related asylum appeals. While we expect that those cases are largely complicated and thus have potentially more to gain from external help, we also explain the amplified relevance with a focus on the credibility argument. Of course, credibility is central for all kinds of asylum cases, also because of the Swiss Asylum Act (art. 7, abs 1.), which states that: *“Anyone applying for asylum must prove or at least credibly demonstrate their refugee status.”* However, while credibility is crucial for all cases, various scholars have highlighted that it is especially difficult in SOGI-related cases to be considered credible (e.g. Millbank, 2021; Ferreira, 2022a; Giametta, 2017; Tschalaer, 2019). We thus expect SOGI-related cases to benefit additionally from representation, also because of the amplified relevance of credibility.

But how can the triangle of claimant, legal representatives and judges be understood conceptually? In a famous article, Marc Galanter has built a typology of actors between *“those claimants who have only occasional recourse to the courts (one-shotters or OS) and repeat players (RP) who are engaged in many similar litigations over time. The spouse in a divorce case, the auto-injury claimant, the criminal accused are OSs; the insurance company, the prosecutor, the finance company are RPs”* (Galanter, 1974, p. 97). This distinction between repeat players and one-shotters *“focuses on the abilities of the types*

sof parties before the court to shape the law in their favor over the long term and to gain both substantive and procedural knowledge of the courts in which they appear. Generally speaking repeat players [...] enjoy a multitude of advantages, which contribute to empirically demonstrated greater probability of winning they enjoy over [...] ‘one-shotters’ (Miller, Keith & Holmes, 2015, p. 214).

The Swiss appeal system is characterised by an asymmetrical distribution of power: The judges are in a structurally powerful position, as a dominant group within the juridical field (Bourdieu, 1987). Like the SEM – whose decisions are mainly re-assessed by the FAC – they are repeat players because they are routinely involved in asylum litigation before the FAC (Galanter, 1974, see 3.2). Then, asylum seekers are “laypeople,” outside of the juridical field (Bourdieu, 1987). They usually appeal for the first time in their lives, they can be considered “one-shotters” (Galanter, 1974), often lacking resources and experience. Legal representatives are legal intermediaries (Billows et al., 2019; Lejeune & Spire, 2021)¹⁷⁰ – who provide access to the law and are thus central actors in partly overcoming the asymmetrical distribution of power between the court and the claimant. As legal representatives are, for the most part, lawyers and other professionals working in legal aid services for asylum seekers, or private attorneys specialising in migration or asylum law, we consider them as “repeat players” with specific experience and expertise in asylum law practice. Indeed, following Spire and Weidenfeld, we can say that these legal representatives have an asylum-specific juridical and procedural capital (Spire & Weidenfeld, 2011). Adapting Spire and Weidenfeld’s definition of “procedural capital” to this idea of an asylum-specific juridical and procedural capital of legal representatives involved in the Swiss asylum appeal procedure, this notion refers to the varying ability to legally qualify facts and to use legal arguments according to asylum law, as well as to the varying experience and knowledge of the asylum appeal procedure and of this specific court’s operating logic. Legal representatives are thus key intermediaries who help asylum seekers

¹⁷⁰ As underlined by Billows et al. (2019), legal intermediaries can include legal professionals (i.e. with legal education and working in a legal aid service or as a private attorney) or non-legal professionals (e.g. professionals or volunteers of legal aid service who have not studied law). These non-legal professionals have usually studied political, social sciences or social work.

write and file their appeals. They provide access to law, justice and eventually protection (asylum or temporary admission).

11.4.1 Legal representation and levelling the odds

Miller, Keith and Holmes (2015b) show that legal representation in the USA, under certain conditions, increases the odds of a positive decision. More generally, Ramji-Nogales, Schoenholtz and Schrag show that “*legal assistance plays an enormous role in determining whether an asylum seeker wins her case*” (Ramji-Nogales et al., 2007, p. 340). Importantly, they also underline how other factors may also be relevant – e.g. the quality of the legal assistance (Danisi et al., 2021; Liew et al., 2021; Miller et al., 2015b; Smith et al., 2021), or a selection bias because legal representatives often take up cases with a high chance of success for the sake of their reputation (Miaz, 2022) – they find that legal representation overall increases the chances of a positive verdict. Similar results were found by Ryo (2018) in the case of immigration bond hearings. Ethnographic studies on asylum procedures have highlighted that legal representatives – mostly NGOs and specialised lawyers – play an important role because they are key intermediaries translating stories and motives of asylum seekers in legally argued words that are admissible and “audible” by judges and asylum officers (D’Halluin, 2010). In doing so, they shape access to justice and rights and are key intermediaries enabling individuals to challenge the bureaucratic interpretation and implementation of the asylum law and asylum seekers’ stories.

In a complex and difficult legal field such as asylum law, “*legal representation seems to be a key component of fairness and consistency in asylum cases*” (Miller et al., 2015b, p. 211). Legal representation influences outcomes, for example, by submitting relevant documents, providing affirmative and legal arguments and altering the behaviour of the actors in the courtroom (Ryo, 2018). Hence, socio-legal scholars have demonstrated that legal representation is a key factor in asylum proceedings where: “*the asylum seeker is always the underdog relative to the federal government. Nevertheless, [...] capable counsel can offset this asymmetrical power relationship*” (Miller et al., 2015b, p. 210).

While these aspects hold for any type of asylum case, we argue that those effects are especially amplified in SOGI-related cases. Here, the rich queer immigration literature has found various aspects that might explain why those cases are different and thus need different forms of representation: *“LGBTI claimants have to prove that their fear of harm is real, but also that their sexualities and gender identities are truly what they say they are”* (Giametta, 2020, p. 149). Suspicion and disbelief – that broadly characterise RSD regimes (Bohmer & Shuman, 2017; Borrelli et al., 2022; Jubany, 2017) – affect LGBTQIA+ asylum seekers in such a way that they must appear ‘credible’ at the same time as the persecution they endured (or the fear of future persecution), their SOGI, the conditions in which the latter were discovered by state agents or third parties and the situation of LGBTQIA+ people in their country of origin. In addition to the general issues of an asylum hearing, asylum adjudicators are thus in a position of “judging intimacies” (Kobelinsky, 2015) and “testing the untestable”, hence the SOGI (Ferreira & Venturi, 2018). Moreover, not only are there *“psycho-social issues of particular significance to lesbian, gay and bisexual claimants which may act as barriers to eliciting their narrative of self-identity”* (Berg & Millbank, 2009, p. 195), but also stereotypes on which asylum authorities rely (Jansen & Spijkerboer, 2011), usually based on Eurocentric representations (i.e. of what would be authentic experiences, behaviours, feelings of an LGBTQIA+ identifying person (Fassin & Salcedo, 2015; Giametta, 2017, 2020). Similarly, Millbank (2021, see below) demonstrates that these cases are representative of various problems and challenges faced by modern RSD – such as future prosecution and the handling of attribute evaluation that are fundamental to an individual's identity. Due to said complexity and the necessary experience to deal with it, we argue that the impact of (specialised) legal representation is amplified in SOGI-related cases.

In the Swiss case, those specificities are, according to the expert and activist Kaiser (2020), for example, the difficulties encountered during asylum hearings at the SEM, the suspicious climate during the hearings prevents asylum seekers from being confident enough to reveal their SOGI, the evaluation of stereotypes on the lives, the experience and rationales/action logics of LGBTQIA+ persons, and the amplified relevance of credibility.

Moreover, LGBTQIA+ asylum seekers often remain silent about their SOGI asylum motives, and only reveal them at a later stage. SEM and TAF also use the arguments related to discretion, according to which LGBTQIA+ asylum seekers could avoid persecution if they remain “discreet” about their SOGI (Wessels, 2021), and to the intolerable psychological pressure of future persecution in the country of origin (Kaiser 2020). Although such factors also occur in other categories of asylum cases, SOGI-related cases differ in that they often demonstrate an accumulation of said aspects. Consequently, because (SOGI-related) cases are complicated, we advance the following two hypotheses:

H1a: Overall, represented cases have a higher chance of being accepted.

H1b: The effect of H1a is amplified in SOGI-related cases.

11.4.2 The role of legal representatives as “repeat players” and the “quality” of legal representation

We further expand our argument to the “quality” of the legal representation, by which we mean former experience and expertise in the field. Miller et al. have shown how legal representation can also have oppositional effects: High-quality representation – hence with experience and expertise – increases, while low-quality representation reduces the odds of a positive outcome. Or, in the words of Miller et al. (2015b, p. 210): “*In particular, we find that past success in asylum cases is the strongest predictor of future success.*” The (lack of) quality of legal representation matters in accessing justice and in the chances of success of an appeal or judicial review of an asylum decision. In short, the quality, expertise and experience of a legal representative play a crucial role (Liew et al., 2021; Rehaag, 2011; Schoenholtz & Jacobs, 2002; Smith et al., 2021).

Hence, the prior successes of the representatives can be expected to additionally increase the odds of a positive decision, very much in the sense of the distinction between one-shotters and repeat players and the placement of the legal representative in this continuum. We expand this argument again by debating that, due to the high complexity and specificities of the cases discussed above, this argument holds especially true for

SOGI-related cases. This accumulation of aspects suggests that the role of experience and thus prior success is also central to such cases.

Thus, because (SOGI-related) claims need experience, we argue the following two hypotheses:

H2a: Represented cases have a higher chance of being accepted when represented by a priorly successful representative.

H2b: The effect of H2a is amplified in SOGI-related cases.

11.4.3 The question of credibility as an argument of the appeal in SOGI-related cases

So far, we have argued that there are effects of legal representation and that they are amplified in cases relating to SOGI. Questions such as, "What are the arguments that FAC judges adjudicate in their judgments?", have not been addressed as yet. In the following, we formulate our hypothesis regarding how the effects of hypotheses 1a–2b can be explained. More precisely, we focus, based on Millbank (2021 p. 716), on "*credibility assessment*". After all, similar to the Swiss system, credibility is a central aspect of refugee status determination (Affolter, 2021).

As in other domains of asylum, research – socio-legal and queer migration literature both alike – has shown how credibility is a central topic in SOGI cases (Akin, 2015; Ferreira, 2022; Millbank, 2009), including in Switzerland. Additionally, articles and reports about SOGI asylum in Switzerland indicate that the role of credibility is of amplified relevance in SOGI cases (Kaiser, 2020; Lederrey & Martenot, 2022), which is confirmed in the academic literature by Schnell (2024) who has shown that issues of credibility are more extensively debated in SOGI-related appeal cases in comparison with non-SOGI-related ones¹⁷¹ (Schnell, 2024). Not only is credibility the main ground used by SEM asylum officers for rejecting SOGI asylum claims, but LGBTQIA+ asylum seekers often remain silent about – or have difficulties expressing – their real motives for seeking asylum or only reveal them

¹⁷¹ Even if credibility is the most frequent reason asylum claims are rejected overall according to Schnel and Affolter (Affolter, 2021; Schnell, 2024).

belatedly. This impacts credibility assessment, as these issues can create inconsistencies and contradictions in the narrative, which can be used to argue a lack of credibility by the decision-makers. The amplified presence of credibility in SOGI-related cases at the FAC was further described by Schnell (2024)

Hence, we can expect that the legal representative must argue against the alleged lack of credibility pleaded by the SEM, explain inconsistencies and contradictions and prove the credibility of the asylum claim and the SOGI. Furthermore, they potentially argue to explain the reasons why the asylum seekers couldn't provide their SOGI-related motives and only reveal them belatedly. Then, the presence of legal representation may mean that judges must justify their decisions more effectively and therefore place more emphasis on credibility. Both effects may be true, and consequently, we have the following two hypotheses:

H3a: Compared to unrepresented cases, represented cases tend to include more credibility-related terms.

H3b: The effect of H3a is amplified in SOGI-related cases.

11.5 Research design

We build on the published judgments of the FAC. We rely on a dataset created by Schnell (2024), consisting of case files from appeal cases from the FAC. It consists of 44,406 cases that were published on the website of the FAC between 01.01.2007 and 31.01.2023. Each document represents a case that was rejected in the first instance and against which an appeal was filed. The dataset is therefore not representative of the entire Swiss asylum system but only deals with a selection of cases, notably the contested.

Following the scraping and cleaning of the data, a dataset was created by extracting the information in an automated way and rendering it into variables. Overall, the proceeding followed a "text-as-data" logic, as described by Grimmer, Roberts and Stewart (2022), using

text data to create variables for further analysis (Egami et al., 2022): From each document, the information of interest was extracted and transformed into a variable in a dataset.¹⁷²

Besides the control variables (type of request, court division, language of the case, region of origin and the lag of the prior success rate), we use the following variables:

1. Following existing empirical legal literature (Gertsch, 2021; Spirig, 2018), we use a binary measurement for the decision, indicating whether the decision presents an improvement in the appellant's situation or not. A partially granted claim is coded as accepted.
2. We use a binary measurement indicating whether a case is an SOGI-related case or not. This variable is based on a measurement of whether terms referring to SOGI are present in the case file or not.
3. A count variable indicates the presence of discussions about credibility in a case file. The variable 'credibility' indicates how often terms related to the concept appear per case file: For example, a case containing two times the term 'plausible' will score higher on the credibility scale than a case file containing the word 'credible' once (for the list of terms, see Table 12 in the appendices).
4. We expanded the original dataset and added additional information about the legal representation: In some cases, the case file has an indication starting with "represented by...". This information indicates whether a case was represented or not (see the example of a case file in the appendices). We cannot rule out the possibility of some support in cases where no indication was found. As Miaz (2022) has shown, in certain cases, when the legal representatives assess that there are no chances of success, particular lawyers accept to write an appeal anyway but don't sign it and don't mention the name of their organisation in order to protect their reputation. Therefore, our data may include certain appeals that are written by lawyers or volunteers without being registered as such. While some representatives are anonymous, others are indicated by

¹⁷² For more details, see Schnell (2024).

name. For each named legal representative, we have calculated the past success rates for all cases, as well as for SOGI cases only. These two variables illustrate the percentage of cases that have been successfully defended in the past and are grounded in the scholarly literature that assesses the quality and experience of legal representation (Miller et al., 2015b; Miller & Curry, 2022). However, it is important to note that these variables can only be applied to cases that explicitly mention the legal representative by name (23,453 cases). We subsequently showcase the logic of this proceeding as it can be found in the dataset (Table 8):

Table 8: Example variable prior success

Case number	Date	Legal representative	Success	Prior success rate
1	01.01.2010	John Doe	Yes	0%
2	01.02.2010	John Doe	No	100%
3	01.03.2010	John Doe	No	50%
4	01.04.2010	John Doe	Yes	33.33%
5	01.01.2012	Jeanne Doe	No	0%
6	01.02.2012	Jeanne Doe	Yes	0%
7	01.03.2012	Jeanne Doe	No	50%
8	01.04.2012	Jeanne Doe	Yes	33.33%

To test hypotheses 1a–2b, we present the results of logarithmic regressions, which are adapted to deal with binary outcomes (James et al., 2022). For hypotheses 1a and 1b, we are interested in the question of whether the effects of representations are amplified if SOGI is a topic in the case. We hence also add interaction terms (representation X SOGI) into the models. This way, we can first isolate the effects of representation on the outcome and determine whether these effects are amplified in SOGI cases. We do so for all cases (Model 1), and for the SOGI-related cases only (Model 2). For hypotheses 2a and 2b, we use the variables indicating the past success rates of named legal representatives. Again, we run the model for all cases (Model 3) and the SOGI-related cases only (Model 4). Then, we run the same model with the SOGI-related cases only, however, using the prior success rate in SOGI cases as a predictor (Model 5).

Finally, for the hypotheses 3a and 3b (Model 6), we use zero-inflated negative binomial regressions (ZINB), since prior tests indicate that the dependent count variable 'credibility' is right-skewed, and tests indicate excessive zeros (Erdman et al., 2008; Garay et al., 2010). A ZINB model is comprised of two distinct steps. The initial zero model evaluates the impact of the independent variables on the dependent variable, 'salience credibility', which is either present or absent. The objective of the model is to ascertain whether the independent variables are predictive of the presence of credibility-related terms in a case file, thereby providing an answer to the question of whether a case is concerned with credibility or not. Subsequently, the negative binomial model assesses the impact of the independent variables on the 'salience credibility' variable (count model). In summary, the ZINB model initially determines whether the variables explain the presence of the concept of credibility in a case file (zero model) and, if so, the anticipated salience of credibility (count model) (Feng, 2021). Further, the same approach was previously selected by (Schnell, 2024) when researching the same variable. For the predicted probabilities, we run ordinary bootstrapping with 1000 bootstrap replications.

11.6 Results

To begin examining the results, we start with a descriptive statistic: What is the difference in the representation rate between SOGI-related and unrelated cases in terms of legal representation? Globally, we find that about 62% of unrelated cases and 60% of SOGI-related cases are represented: So, the difference is marginal – which is surprising given the overriding differences we will now demonstrate.

11.6.1 The impact of legal representation

As a first step in approaching our hypotheses, we divided the dataset into four groups: Represented SOGI cases (1), unrepresented SOGI cases (2), represented non-SOGI cases (3), and unrepresented non-SOGI cases (4). As shown in Figure 19 among the non-SOGI cases, only 8% of cases without indication of representation are accepted. The acceptance rate of represented non-SOGI cases is higher at 23%, a difference of 15 percentage points. This effect increases when only examining the SOGI cases. Here, 4% of the unrepresented cases are accepted, compared to 25% of the represented cases, a difference of 21 percentage points. Descriptively speaking, represented appeals are more often accepted and the effect of legal representation might be even more pronounced in SOGI asylum cases. Among the represented cases, SOGI cases have a higher chance of a positive decision. Among the unrepresented cases, SOGI cases have a lower chance than their respective counterparts. Said results already indicate that hypotheses 1a and 1b will probably hold.

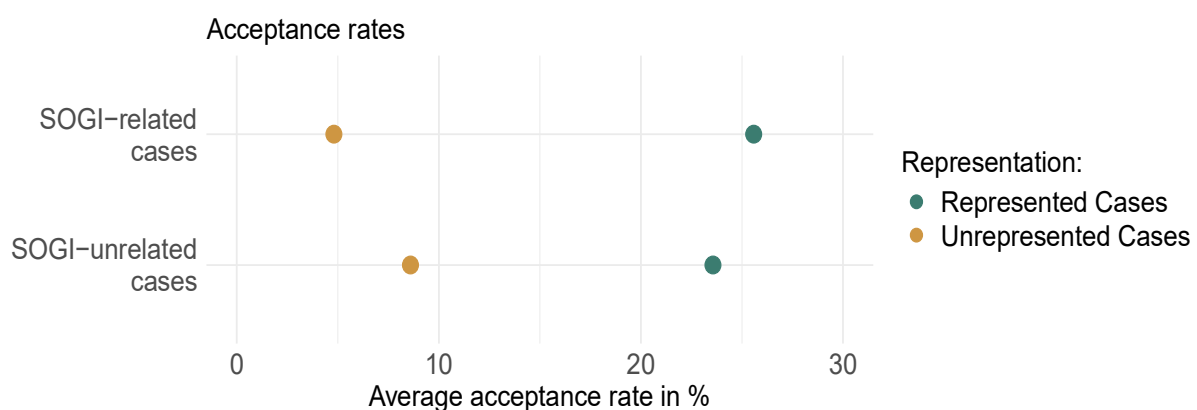


Figure 19: Descriptive statistics acceptance rates by groups (data: casefiles FAC)

To isolate the effects that we are interested in, for hypotheses 1a and 1b, we ran logistic regressions Table 9. The analysis shows that the effect of representation is positive and significant. Legal representation levels the odds overall. This is true for all cases (Model 1), but also for SOGI cases only (Model 2). We also observe an interaction (Model 1): If it is an SOGI-related case, the effect of legal representation is even stronger and thus has even more impact than for the rest of the cases.

Table 9: Results H1a and H1b (data: casefiles FAC, excl. CVs)

Results H1a–H1b

	Model 1: DV Decision	Model 2: DV Decision (SOGI-related cases only)
Representation	1.172*** (0.032)	1.718*** (0.290)
SOGI Yes	-0.508** (0.258)	
Representation: SOGI Yes	0.687** (0.278)	
Constant	-2.629*** (0.048)	-3.745*** (0.528)
Observations	44,395	849
Log Likelihood	-19,849.730	-345.527
Akaike Inf. Crit.	39,741.470	729.053
Note: *p<0.1; **p<0.05; ***p<0.01		

To visualise the results and for the sake of empirical precision, we calculate the predicted probabilities of a positive verdict, as shown in Figure 20 (fixing the control variables to their respective modal categories, hence providing clearer results than the descriptive analysis above). The results are similar to the ones above: It is noticeable that the probability of success of all represented cases differs significantly from the probability of success of non-represented cases, which reinforces the results above. While the probabilities for represented cases are between 16% (non-SOGI) and 19% (SOGI), the probabilities for unrepresented cases are between 3% (SOGI) and 5% (non-SOGI).

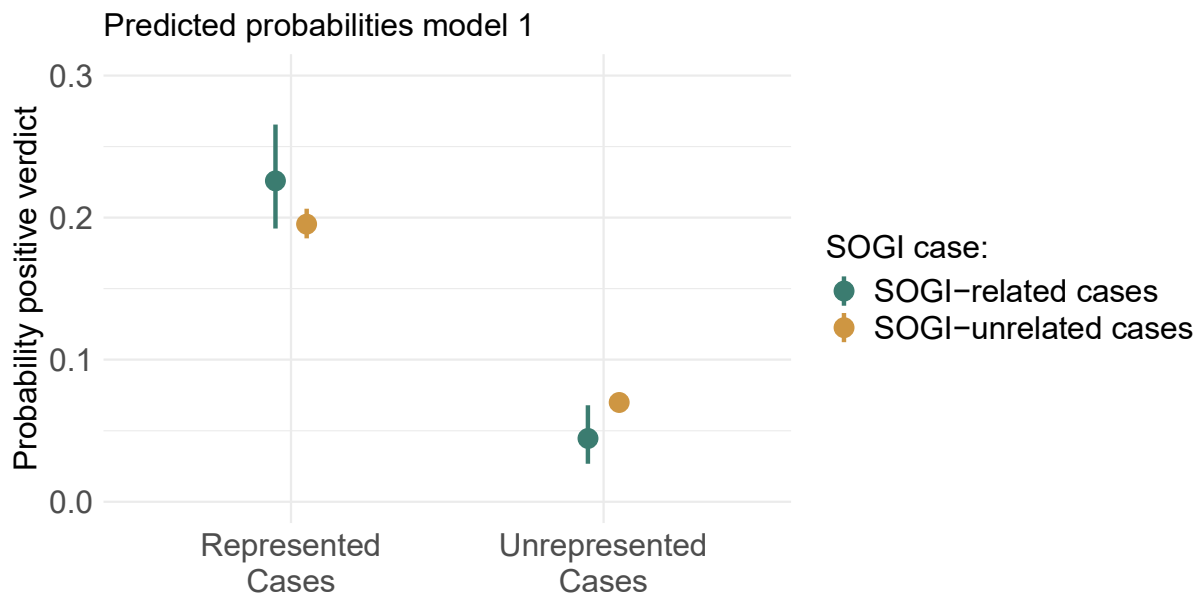


Figure 20: Predicted probabilities H1a and H1b (data: casefiles FAC)

While the direction of the effects supports our hypothesis, the partial lack of significance partly clouds the previous findings. To obtain a clearer picture, we thus calculated the discrete changes – i.e. the differences between two calculated predicted probabilities – that indicate the strength of the effects of representation for the groups of SOGI-related and unrelated cases: Does one group benefit more than the other? The values on the vertical axis of Figure 21 show the percentage points by which the probability of success increases when a case is represented: In Model 1, the probability of success for a non-SOGI case increases by about 12% when it is represented, and by about 18% for an SOGI-related case. Since this difference is significant at the 5% level, the interpretation of the above results can be taken even further: Not only does legal representation increase the likelihood of success for all cases, but this effect is significantly stronger when a case involves SOGI: SOGI-related cases benefit even more from legal representation than other cases.

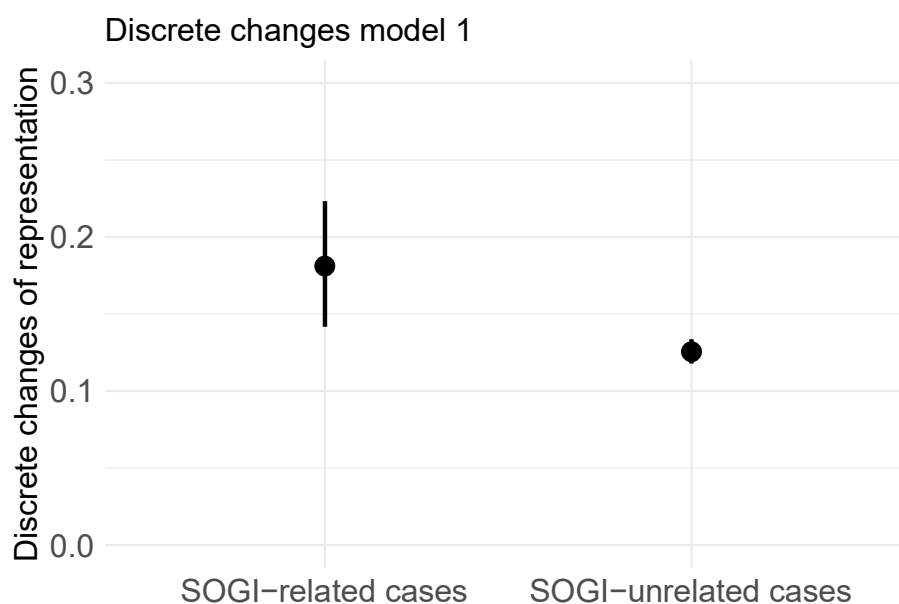


Figure 21: Discrete changes H1a and H1b (data: casefiles FAC)

Based on these insights, we attribute a significant effect to legal representation: We found positive effects of representation. Indeed, legal representation is a crucial means of levelling the odds, and the positive effect of legal representation seems to even be amplified in SOGI cases.

11.6.2 The role of legal counsellors as repeat players

Using the past success ratio as a determinant, we slightly alter the dataset: We now only use the cases in which the representatives are explicitly named. The following Table 10 presents three models to measure the effect of previous successes of a legal representative over the chances of success in an appeal. Model 3 does so for all represented cases: This means that we estimate the effect of prior successes on any asylum appeal (not specifically an SOGI case) over the chances of success of any asylum appeal (not specifically an SOGI case). Model 4 does the same, but only for represented SOGI-related cases. Model 4 thus indicates if an overall successful legal representative helps in SOGI-related cases. Model 5 finally also incorporates represented SOGI-related cases only but includes the prior success in SOGI-related cases as a predictor (and not the overall prior success).

Table 10: Results H1a and H1b (data: casefiles FAC, excl. CVs)

Results H2a–H2b

	Model 3: DV: Decision	Model 4: DV: Decision (SOGI-related cases only)	Model 5: DV: Decision (SOGI-related cases only)
Prior success	1.499*** (0.126)	1.900*** (0.676)	
Lagged prior success	0.188 (0.127)	0.461 (0.670)	
Prior success SOGI cases			2.161** (0.885)
Lagged prior success SOGI cases			-1.176 (0.899)
Constant	-1.610*** (0.078)	-2.303*** (0.883)	-18.229 (2,717.424)
Observations	21,703	411	217
Log Likelihood	-11,669.470	-229.296	-119.426
Akaike Inf. Crit.	23,378.940	496.593	276.852
Note: *p<0.1; **p<0.05; ***p<0.01			

The interpretation for Model 3 is straightforward: The higher the prior success rate, the more likely a case is accepted. Hence, a previously successful representative does indeed level the odds. Model 4 indicates further that this effect also holds for SOGI-related cases: The prior overall success of the legal representation does level the odds. Then Model 5 indicates how for SOGI-related cases only, the prior experience of SOGI-related claims also

increases the chances of a positive verdict. Said results speak for our hypotheses 2a–2b: Prior success does indeed impact the chances of an appeal being accepted. Since this holds across cases and models, we observe not only a 'repeat player effect', but also an SOGI-specific 'repeat player effect'.

In Figure 22, we calculated the predicted probabilities of a positive decision in the function of several levels of the past success rate of the legal representative for Models 3–5, supporting this interpretation: Prior success does increase the chance of a positive verdict in all scenarios, overall and specifically for SOGI-related cases. However, perhaps also due to the lower numbers of observations, the predicted probabilities do not always differ significantly in Models 4 and 5, indicating that the results must be taken with prudence: Notably, in the data, we found few legal representatives that represented many SOGI-related claims: For the SOGI-related cases, the highest count of cases defended is 16 (while one legal representative worked more than 1000 cases in total), indicating that there are potentially too few SOGI-related cases to isolate an incontestable, SOGI-specific, effect. Also, we cannot make a direct comparison of the effects between the three models, and we must thus accept hypothesis 2b with prudence. Nevertheless, the results, overall, speak in favour of our hypotheses 2a and 2b and we thus state a global and an SOGI-specific repeat player effect (however, we are unaware if this effect is indeed stronger than the global one). We accept hypothesis 2a and we also tend to accept hypothesis 2b: The previous success rate of the legal representative does indeed increase the probability of success.

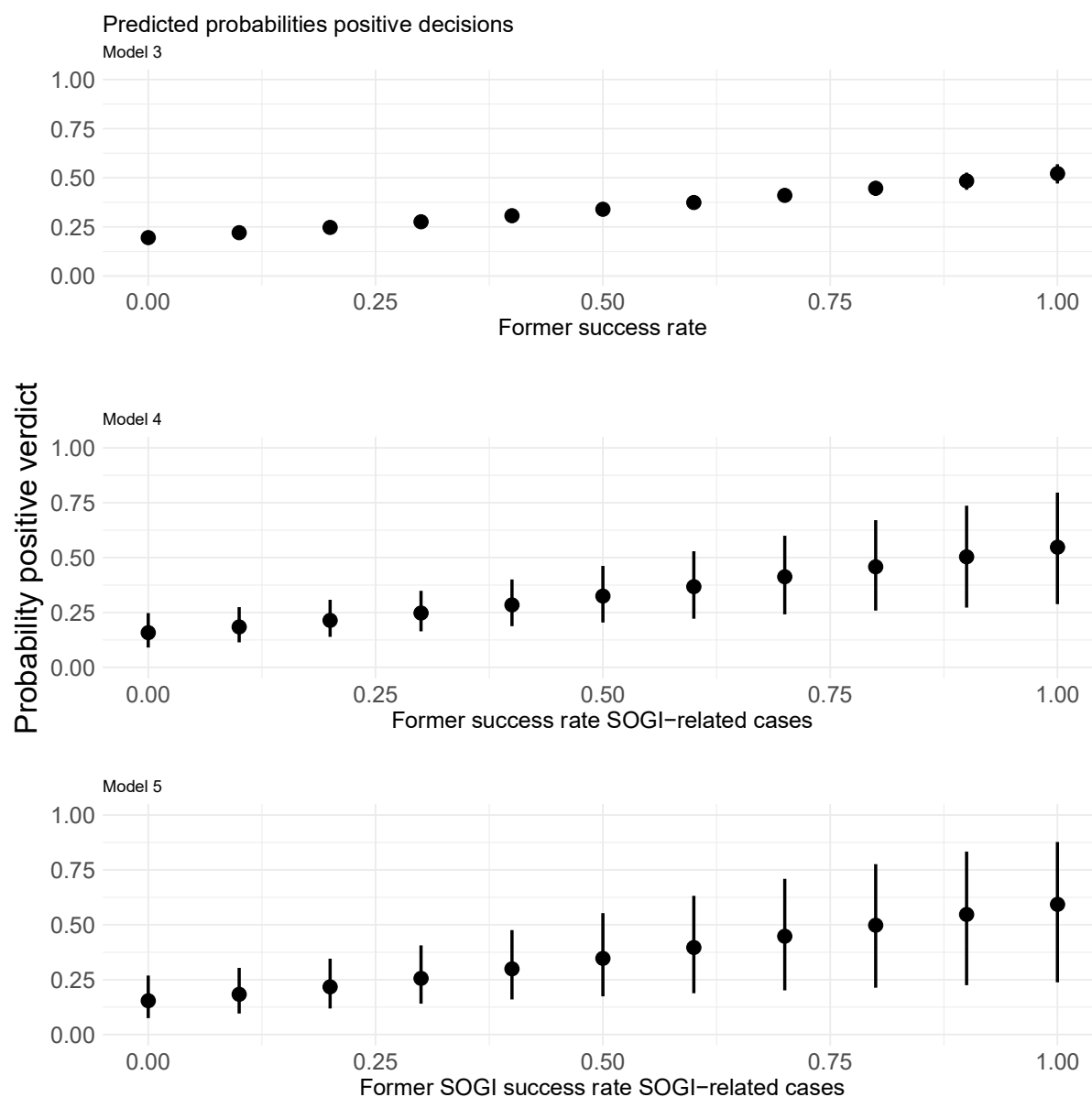


Figure 22: Predicted probabilities Models 3–5 (data: casefiles FAC)

11.6.3 The amplified role of credibility

Finally, we argue for the centrality of discussions about credibility in SOGI-related cases. This statement is supported by existing research, such as Schnell (2024) in the Swiss case who showed that credibility is addressed extensively in SOGI-related cases in comparison with non SOGI-related cases, but also Zisakou (2021) for Greece, and Ferreira (2022) for several other European countries. Therefore, we conduct an additional ZINB regression

(Model 6) to predict the score of credibility-related terms present in a document as presented in the following Table 11.¹⁷³

Table 11: Model H3a and H3b (ZINB): Effect of representation on credibility (data: casefiles FAC, excl. CVs)

	Results H3a and H3b
	Model 6: DV: Credibility
Count model: Representation	0.24 *** (0.01)
Count model: SOGI Yes	0.18 *** (0.04)
Count model: Representation: SOGI Yes	-0.10 (0.05)
Count model: Intercept	1.54 *** (0.02)
Zero model: Representation	-0.00 (0.06)
Zero model: SOGI Yes	-2.60 (1.92)
Zero model: Representation: SOGI Yes	1.44 (1.99)
Zero model: Intercept	-16.29 (50.25)
Observations	44406
Log Likelihood	-145193.86
Akaike Inf. Crit.	290541.72
	Note: *p<0.1; **p<0.05; ***p<0.01

¹⁷³ ZINB models showed similar results (Erdman et al., 2008).

We observe that representation increases both the likelihood of credibility-related terms being present and the count of it. Thus, the presence of a legal representative is correlated with a greater presence of credibility, as shown in the predicted probabilities below in Figure 23. Further SOGI is not a significant predictor of credibility-related terms being present. If they are present, however, SOGI increases the count of such terms. Thus, SOGI is correlated with a greater presence of credibility (however, the interaction is not significant). But how does this fit together? Our predicted probabilities show significant differences, speaking for our hypotheses 3a and 3b: Although the interaction coefficient is not significant, it can be seen that represented SOGI-related cases tend to have even more references to credibility than represented non-SOGI-related cases. In represented cases, more credibility-related terms are used than in unrepresented cases, and this happens on a higher level in SOGI-related cases.

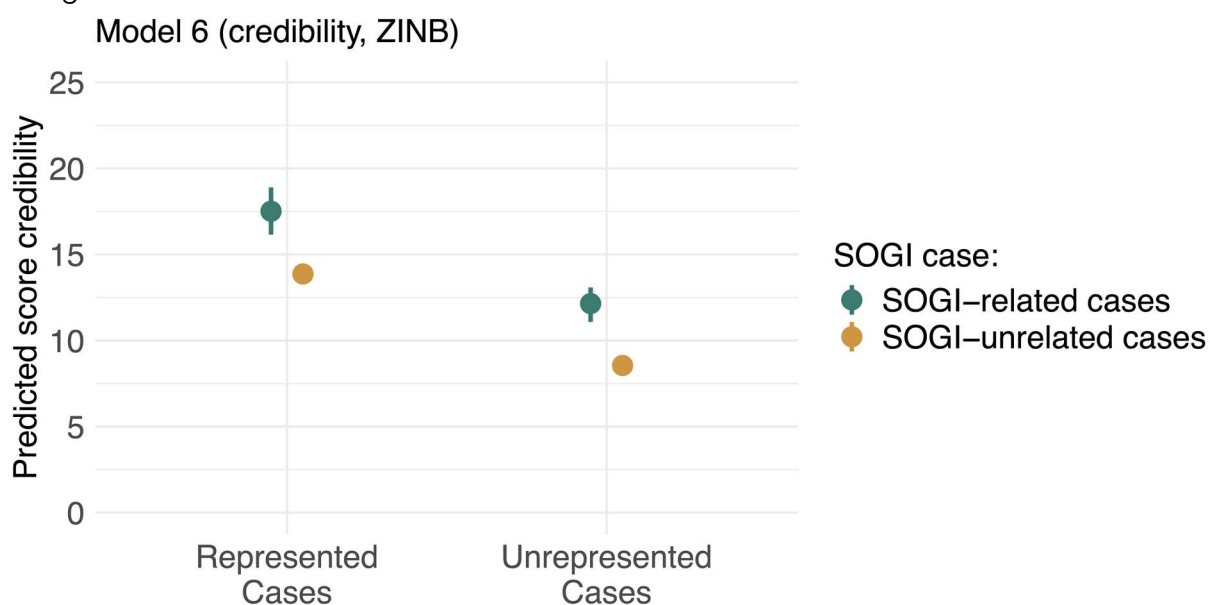


Figure 23: Predictions word-count credibility (data: casefiles FAC)

11.7 Discussion

We demonstrate that legal representation of asylum seekers levels the odds, even more for SOGI-related cases. In the dataset, 25.6% of the appeals on SOGI-related cases that were represented were accepted by the FAC, while only 4% of the unrepresented SOGI-related appeals were accepted. This difference is larger than for the same comparison for

unrelated cases, where 23% of the represented claims were accepted, and 8% of the unrepresented. These differences indicate the pivotal role of legal representation, especially in SOGI-related cases, and we hence accept hypotheses 1a and 1b. This significant intermediary role helps to partly overcome the asymmetrical relationship between asylum seekers and the judges. Legal representatives who are often professionals in the juridical field (Bourdieu, 1987), with specific juridical and procedural capital (Spire & Weidenfeld, 2011) specialising in asylum law, help asylum seekers – who are “laypeople” outside the juridical field – to legally contest bureaucratic asylum decisions, and provide access to law, justice and eventually protection.

Nevertheless, having a legal representative doesn’t suffice, nor does it have a uniform effect on the appeals’ outcomes. We demonstrate that prior success enhances the effect of legal representation. We use the notion of “repeat players” (Galanter, 1974; McGuire, 1995) to conceptualise the triangle of appellants, legal representatives and judges. Furthermore, we combined this notion with the one of asylum-specific juridical and procedural capital – inspired by the notion of “procedural capital” (Spire & Weidenfeld, 2011) – to grasp the specific and specialised experience and expertise in the field of asylum law and appeal procedure. Hypotheses 2a and, tendentially also 2b, were accepted: The previous rate of success does increase the probability of success in general and for SOGI cases (considering the previous overall success rate). This confirms what previous research has shown (Miller et al., 2015b), but we also find that there is an SOGI-specific repeat player effect, with repeat players, who were formerly successful in SOGI-related cases, levelling the odds even more. Indeed, our results show that the prior rate of success with SOGI-related cases also increases the probability of success for SOGI-related cases. This indicates that prior specialised experience and success, which indicate a certain expertise, matter.

Thus, our findings – the confirmation of hypotheses 1a to 2b – support the existing scholarship on the role of legal representation that has shown that legal representation increases the chances of a positive verdict (Miller et al., 2015b; Ramji-Nogales et al., 2007). They also underline the amplified importance of representation and experience, all the

more so of SOGI-specific experience and expertise: Indeed, there is an effect on legal representation, especially of legal representatives who are repeat players (Galanter, 1974; McGuire, 1995) with an asylum-specific juridical and procedural capital. Hence, as previous ethnographic research argues (Miaz, 2022), these findings show that legal representatives are key legal intermediaries who help asylum seekers appeal negative decisions from the SEM at the FAC, and that, in doing so, they shape access to law, justice, rights and protection.

At the same time, we also argue that legal representatives are key to better facing the “*ontological challenges*” that are specific to SOGI cases, according to Millbank, and that are related to fact-finding and evidentiary practices (Millbank, 2021). This relates to future-focused risk analysis – e.g. the mobilisation of the country-of-origin information and case law concerning the specific facts of the case –, “*interpretation of claims across culture*” (2021, p. 761), and credibility assessment – e.g. the use of different kinds of clues to argue that the story is credible. They also help to face the specific difficulties related to the intimate dimension of SOGI-related motives (Kobelinsky, 2015). Relatedly, legal representatives – especially those trained with SOGI-specific knowledge – can help to counter-argue decisions based on the alleged lack of credibility and stereotypical and Western-centric reasonings (Topel, 2017) and other aspects that were outlined by the queer immigration literature (Giametta, 2017; Tschalaer, 2020).

While the literature has already shown that credibility is a central aspect of any asylum procedure, we analysed how the interaction between SOGI and representation affects the presence of credibility-related arguments. We were able to show that it is indeed the case that both the presence of representation and of the topic SOGI, increase the presence of credibility-related terms. Then, while the difference in the count of credibility-related terms between the SOGI-related and the unrelated cases was not significant among the unrepresented cases, it was significantly different between the represented cases: SOGI-related cases contain thus more credibility-related terms than unrelated cases, but the effect is stronger among represented cases. Or discussed conversely: Credibility is more present in represented cases, but even more so in represented SOGI-related cases.

We argue that already in the first instance – since it is an SOGI-related case – credibility plays a central role: The asylum officers of the SEM (Affolter, 2021; Miaz, 2024; Pörtner, 2021) will, in SOGI-related claims, already argue particularly based on the lack of credibility (step 1). If the case then is appealed, the legal representative must argue against the denial of credibility of the SEM but also argue in favour of the credibility vis-à-vis the judges (step 2). Then, the judges must rediscuss credibility (step 3). In unrepresented SOGI-related claims, steps 2 and 3 cease to apply, and thus the count of credibility-related terms is lower. Represented, non-SOGI-related cases are subjected to the same process as represented SOGI-related cases but tend to begin with less credibility-related terms in the first step, which ultimately leads to a lower presence of credibility-related terms overall.

The effect of SOGI increasing the presence of credibility debates (Schnell, 2024) therefore becomes more and more self-reinforcing the further the process goes. Thus, the issue of credibility is more discussed in cases that are represented, probably because legal representatives have extensively argued against SEM asylum decisions, which was – due to being an SOGI case in the first instance – more likely to be based on a lack of credibility.

It must be noted that qualitative research regarding reasonings indicates that assessment of credibility covers various dimensions: Not only SOGI itself but also how the individual came out and how their SOGI came to be discovered, the persecutions they endured, as well as how they fled the country (also Kobelinsky, 2015; Morgan, 2006; Murray, 2016). Each one of these various dimensions of credibility can lead to a rejection of the asylum demand and the appeal. Hence, the SOGI may not be considered incredible – the person is recognised as being, for example, homosexual –, but the story related to how their SOGI was discovered by their family, by state agents or by other third parties can be considered incredible. This illustrates how the “*culture of disbelief*” is amplified (Ferreira, 2022) also because it covers various dimensions of the story. This can further explain why credibility is more correlated with represented SOGI-related cases. But this statement must be nuanced, as this motive is still suspected to be “fake” – because incredible –, or to be insufficient: After all, even if the person is recognised as belonging to an SOGI minority,

parts of the narrative related to how the SOGI was discovered or the details of the persecutions can still be considered as incredible.

It should be noted, however, that our methodology does not allow us to assess who exactly uses these credibility arguments and who does not: It is therefore not possible to say whether it is the legal representatives, the judges or both, who are responsible for the credibility arguments being more important when a case is represented.

11.8 Conclusion

We emphasise the crucial role of legal representation in asylum appeal court cases. We argue that legal representation assists claimants in accessing their rights by serving as intermediaries between the courts and the claimants. With their knowledge and expertise, we believe that they can increase the probability of a positive ruling. While this argument is not novel in socio-legal studies, we elaborate on it by incorporating reflections of the queer migration literature, notably regarding the specifics and enhanced demands on credibility for SOGI-related claims. Also due to the heightened role of credibility (Ferreira, 2022), we assert that in cases involving SOGI, the impact of legal representation may be even more substantial.

To test these assumptions, we tested hypotheses concerning the quantitative impact and were able to show how legal representation and the prior success rate impact the outcome, and that this occurs even more prevalently in SOGI cases. We demonstrate that represented cases tend to include more credibility-related formulations than unrepresented cases – for both SOGI cases and unrelated cases. However, the overall counts of credibility-related terms are highest in represented and SOGI-related cases.

This study contributes to the existing literature as we emphasise the convergence of the queer asylum literature with the socio-legal literature on representation. Little is known about the impact of legal representation on SOGI-related claims, as most of the literature either focuses on all asylum claims or only analyses the decision-making process as a binary relationship between bureaucrats and claimants. Secondly, we advance the quantitative literature on legal representation by considering the role of SOGI-specific

repeat players' effect and of the asylum-specific (and we could add SOGI-specific) juridical and procedural capital.

In conclusion, this article shows that legal representation levels the odds of asylum appeals, even more so for SOGI-related cases. More specifically, legal representation with specific experience and expertise in SOGI-related cases increases the likelihood of a positive decision for SOGI-related cases. Represented SOGI-related cases tend to be more correlated with credibility issues, meaning that credibility is discussed more by all the relevant actors of a case, notably the case worker at the SEM, the representative and the judges. Therefore – especially legal representation with experience and expertise in SOGI cases –, asylum seekers with SOGI-specific claims should be given access to lawyers who specialise (with experience and expertise) in defending SOGI-related cases.¹⁷⁴ Such experienced and expert representation should be better able to address the specific difficulties faced by LGBTQIA+ asylum seekers (Kaiser, 2020; Lederrey & Martenot, 2022), as well as the ontological challenges they face during the RSD process (Millbank, 2021). Specialised legal representatives should be better equipped to counter the specific credibility-related arguments used by the authorities to dismiss these SOGI cases, as well as to mobilise legal arguments, COI and other evidence to argue for the credibility and relevance of SOGI-specific asylum motives. Our findings call for ensuring that asylum seekers access legal representation with the adequate specific expertise and experience to ensure a quality and adapted legal representation even in the context of a mandatory legal representation involved in the asylum procedure. Relatedly, the findings pose questions about the financial resources of the mandated legal aid support organisations.

¹⁷⁴ This holds especially true given that access to legal representation is unequal across the country and varies between the cantons.

11.9 References

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11.10 Appendix

11.10.1 Dictionaries

Table 12: Terms Dictionary

Concept	terms bilingual	terms German	terms French
SOGI	homosex*	schwul	identite sexuel*
	bisex*	lesbe*	orientation sexuel*
	lesbi*	transperson	partenaire sexuel*
	transsex*	sexuelle identitat	homoerotiq*
	transiden*	sexuelle neigung*	
	homophob*	sexuelle veranlagung*	
	intersex*	sexuelle orientier*	
	transgen*	sexuellen orientierung	
	coming out	sexualpartner*	
	coming-out	homoerotisch*	
	gay		
	lgbt*		
	homophob*		
	heterosex*		
	iglhrc		
	ilga		
	queer		
	'outing '		
Concept	terms bilingual	terms German	terms French
Credibility	plausib*	angeblich	corrobor*
		glaubhaft	credib*
		erfindung	dout*
		glaubwurdig	*croyable*
		pauschali*	invention
		zweifel*	generalis*
		widerspruch*	preci*
		substanziier*	preuve
		gefalscht*	justification
		nachweis*	presum*
		verfalsch*	justificative
		stubstanti*	evidenc*
		prazis*	contrefai*
			falsifi*

11.10.2 Case file

Bundesverwaltungsgericht Tribunal administratif fédéral Tribunale amministrativo federale Tribunal administrativ federal		
		
		Divison case number
Urteil vom 		
		Date
Besetzung	Richterin  Richterin  Richterin  Gerichtsschreiberin 	Judge(s)
Parteien	A.  , geboren am (...),  , vertreten durch  Rechtsanwalt, Beschwerdeführer, gegen Staatssekretariat für Migration (SEM),  Vorinstanz.	Country of origin Legal representative
Gegenstand	Asyl und Wegweisung; Verfügung des SEM 	Subject

Figure 24: Example cover page of an appeal case file

Part 3

12 Conclusion

In this thesis, I investigated the discourse about queer/SOGIESC-related asylum in Switzerland. This phenomenon is of great interest, as it resonates with the predominant sexual nationalism, the humanitarian self-image, and the restrictive asylum system in Switzerland – notably also in terms of its severity when treating SOGIESC-related claims. More precisely, I investigated how the different levels of the discourse are resonate with this configuration, particularly the legal and public-political levels. In this final chapter, I follow three main objectives: showcasing the core insights and contributions; outlining limitations and proposals for future research directions; and offering some concluding words. First, however, I would like to indicate the most recent debates in Switzerland.

As mentioned in Chapter 5, Switzerland has recently been condemned by the European Court of Human Rights in Strasbourg.¹⁷⁵ Against all international rulings and national assertions, the Swiss authorities argued that a homosexual asylum seeker from Iran could act discreetly and conceal his identity to avoid persecution after his expulsion to Iran. The decision of the court in Strasbourg – that Switzerland must adapt its practices – was subsequently reported in various newspapers. In the comments section of one related article,¹⁷⁶ the following can be found:

I am grateful for this happy ending; such people should find protection in Switzerland. But I find it questionable that we take in a lot of people from this cultural area who regard homosexuality as a mortal sin, have no interest in women's rights and live out this attitude here without restraint. Ask men holding hands where the harassment comes from.¹⁷⁷

¹⁷⁵ European Court of Human Rights (2024): M.I. v. Switzerland (Application no. 56390/21). (<https://www.refworld.org/jurisprudence/caselaw/echr/2024/en/149048>) [25.11.2024].

¹⁷⁶ Fargahi, Nina (2024): Der Bund: Als hätte ich die besten Jahre meines Lebens verloren. (<https://www.derbund.ch/egmr-ruegt-schweiz-homosexueller-iraner-spricht-ueber-urteil-324960445231>) [23.12.2024].

¹⁷⁷ “Ich bin dankbar für dieses Happy End, solche Menschen sollten in der Schweiz Schutz finden. Fragwürdig finde ich, dass wir eine Menge Leute aus diesem Kulturraum aufnehmen, die Homosexualität als Todsünde

And

For those who don't know: Switzerland was once the country of Henri Dunant and Johann Heinrich Pestalozzi.¹⁷⁸

The narratives in the comments are symptomatic of the characteristics of the Swiss discourse: The asylum system is restrictive – to the point where international courts condemn the Swiss authorities for using a reasoning (discretion) outlawed more than a decade ago (Wessels, 2021). Furthermore, in the comments, the humanitarian tradition is emphasized and culturalized hierarchies between essentialist notions of ‘us’ and ‘them’ are created. Also, the first comment reflects the nationalist project and contains elements of humanitarianism and queer liberalism, but also focuses on women’s rights and gender equality. The quotes indicate how relevant the debate remains, how closely the discourse is linked to the nationalist project, and how the narratives of deservingness found in the first article are still present in today’s discourse.

Due to the ideal of being a humanitarian, progressive, and liberal nation – exemplified in Switzerland inter alia by stances towards gender equality as a marker of belonging (Kristol et al., 2024) – the idea of granting asylum for certain population groups such as SOGIESC-based cases (if they are considered credible) feeds the national self-images of being liberal and humanitarian safe havens (E. Fassin, 2012; Raboin, 2017; Ticktin, 2011), while simultaneously creating cultural hierarchies. However, like gender equality in Switzerland (Dahinden & Manser-Egli, 2023; Kristol et al., 2024), the subject triggers nationalist reactions and SOGIESC asylum seekers are either not believed and/or instrumentalized in nationalist politics (Akin, 2019). I thus argued that the discourse about queer asylum and the related claims interacts with the predominant sexual nationalism. Given the complex decision-making processes in this field, I contended that this holds especially true for the legal level of the discourse (Millbank, 2021). Due to the paramount significance of sexuality and

betrachten, für Frauenrechte nichts übrig haben und diese Gesinnung auch hier hemmungslos ausleben. Fragen Sie mal Händchenhaltende Männer, aus welcher Ecke die Belästigungen kommen.” (own translation).

¹⁷⁸ “Für die, die es nicht wissen: Die Schweiz war einmal das Land von Henri Dunant und Johann Heinrich Pestalozzi.” (own translation).

gender for nationalist projects, I argued the same at the public-political level (E. Fassin & Salcedo, 2015; Kristol et al., 2024; Raboin, 2017).

Following those reflections, I was interested in how the discourse in the Swiss case interacts with this constellation. The overarching research question was thus as follows:

How does the discourse on queer asylum in Switzerland interact with the country's predominant sexual nationalism and exclusivist asylum system?

I explored the question from multiple perspectives. My data included contributions of politicians, media outlets, state institutions, and courts. Importantly, I followed an epistemology driven by queer theory and migration studies, understanding the practices and discourses against the background of the power relations found between the various actors, while understanding sexuality and gender as social constructs located at the centre of political reasoning (Luibheid, 2008; Sedgwick, 2008; Seidman, 1994). I further based my understanding on the idea that the relevant actors constitute the sexual asylum regime (Foucault, 1978), which allowed me to conceptually combine various actors and discursive arenas, helping me understand their respective relations and practices. Finally, I understood the discourse against the background of a (sexual) nationalist project.

12.1 Findings: How narratives of deservingness, credibility, and legal representation for SOGIESC asylum claims function in Switzerland

In the first article, I was interested in understanding the Swiss public-political discourse as well as the history of queer asylum in Switzerland. To address the research interest, I collaborated with my supervisors, Philip Balsiger and Janine Dahinden, and constructed a theoretical framework that draws on queer theory and migration studies. Based on those fields of literature, we underlined the paramount significance of sexuality/gender for the understanding of underlying mechanisms of inclusion and exclusion – bordering and boundary-making – of Switzerland. We asked how SOGIESC asylum seekers are discursively granted access into Switzerland, arguing that this happens through what we called 'narratives of deservingness'. We developed an inductive, qualitative research design, using grounded theory-inspired critical discourse analysis (Charmaz & Mitchell,

2001; Wodak & Krzyżanowski, 2008) to analyse a wide range of data, including newspaper articles, parliamentary minutes, documents published by political parties, and expert interviews (Creswell, 2009; Meuser & Nagel, 2009). Upon critically examining these documents, we identified four interconnected narratives of deservingness.

First, there is the establishment of deservingness through what we refer to as the postcolonial geopolitics of national self-images. In this narrative, deservingness for SOGIESC asylum seekers, both as individuals and as a group, is determined based on their countries of origin. The actors involved in the process argue that certain regions are particularly intolerant towards certain SOGIESC, whereas Western Europe/Switzerland is seen as a safe haven and a liberal ‘unicum’. As a result, individuals from certain regions, allegedly contrasting with the safe haven, are considered more deserving than others – and the regions are categorized by the self-images of the respective actors. Second, deservingness also relates to alignment with Eurocentric and Western representations of queerness. In this narrative, the evaluation centres on the claimant's behaviour and gendered performance. If the claimant's behaviour corresponds to those representations, they are more likely to be considered deserving. Third, the narrative of deservingness through vulnerability also plays a significant role. As Switzerland perceives itself as a country with a humanitarian tradition (Büchler, 2022; Pörtner, 2021), individuals who are considered more vulnerable are seen/presented as more deserving of asylum than others. In an intersectional way, SOGIESC interacts with other factors such as gender, race, ethnicity, social class, and age, and, depending on the respective identity markers of an individual, more or less deservingness is attributed (Crenshaw, 1989; Millman, 2023).

One can correspond to all three of the above-mentioned narratives and still be denied deservingness and a protection status. As scholars like Ferreira (2022) and Millbank (2009) have pointed out, high thresholds of credibility – our fourth narrative of deservingness – and a “*culture of disbelief*” influence SOGIESC-related asylum and the discourse about queer asylum in general. The data indicates that the related discourse is characterized by an inflated level of disbelief and mistrust that, in turn, may suddenly render as undeserving a claimant who, if believed, might otherwise be perceived as deserving.

Moreover, one must be aware that credibility can also be understood as a concept that hovers over the entire discourse and is in my understanding orthogonal to the other narratives and arguments in the discourse: Every narrative, every argument can ultimately be doubted. It therefore seemed sensible to place this aspect more firmly at the centre of further analyses. Following other studies (Geertsema & Helmink, 2013; Zisakou, 2021), I thus underlined the centrality of credibility, both as a narrative of deservingness and as a meta-argument in the discourse.

I took up this finding in the second article, where I investigated the Federal Administrative Court (FAC) and the legal level of the Swiss discourse. Since its implementation in 2007, the FAC has published over 52,000 asylum-related verdicts, which I scraped and used to create a large-n dataset containing information such as the country of origin and the count of credibility- and SOGIESC-related terms. Using a theoretical framework impacted by queer theory and socio-legal studies, I utilized this dataset and conducted several quantitative analyses to assess the above-mentioned research question.

The results indicated two central points: First, what I called SOGI-related case law incorporated more credibility-related terms than unrelated claims, suggesting that the concept of credibility is particularly relevant in such cases. Thanks to the mediation analysis, I was able to showcase that it is not necessarily the topic of SOGI itself that affects decision. Rather, the presence of the topic SOGI increases the presence of credibility-related terms, which in turn reduces the likelihood of a positive asylum decision. The response to the research question was thus ‘yes’, the “*culture of disbelief*” (Ferreira, 2022) is also present in the practices of the FAC and has an amplified role in SOGI asylum claims. Such claims face an inflated level of credibility-related arguments, which in turn lowers the odds of a positive verdict.

For the third article, I collaborated with Jonathan Miaz and focused on the role of legal intermediaries (Miaz, 2021). Here, we advanced the aforementioned dataset of the FAC's case law. Using various regression analyses, we demonstrated that legal representation increases the likelihood of receiving a favourable decision. This effect was even stronger in SOGI-related asylum cases. Furthermore, we also showcased that the quality of legal

representation, measured by the previous success rate of representatives, significantly impacts the outcomes. The experience of formerly successful repeat players had an amplified role in SOGI cases. Legal representation and former success level the odds, especially in SOGI asylum claims. In the data, we thus observed a generic and a SOGI-specific 'repeat-player effect'.

To better understand these patterns, we then focused on how the repeat-player effect might be explained. Thus, we ran an additional model which shows that having a legal representative working on a SOGI-related case increases the presence of credibility-related arguments. Represented cases, and even more so represented SOGI-related cases, tend to correlate with high levels of credibility-related terms. We explained this by the assumption that the presence of SOGI already leads to an above-average relevance of credibility in the first instance. In a second step, when the decision is contested and legally challenged, the representative must argue all the more on the basis of credibility – to counter the first instance SEM, but also to support the asylum seeker. This must then be evaluated by the judges: SOGI and the representative therefore reinforce each other with regard to the presence of credibility.

The three resulting articles investigate the public-political and legal levels of the discourse in Switzerland. On the public-political level, deservingness is assessed against postcolonial geopolitical imaginaries, correspondence to Western perceptions of queerness, perceived vulnerability, and credibility. In decision-making, credibility plays a central and amplified role in the politics of access. Finally, the odds of a positive verdict in court can be levelled with the help of legal representation, an effect that is even more pronounced for SOGI-related cases and can be explained with the amplified presence of credibility-related reasonings.

Now, how do the results of the three articles speak to each other? The results indicate that the public-political and legal discourses are not static; rather, they are dynamic. As for all discourses, their presence and implications differ depending on various factors, such as the settings (e.g., parliament vs. court) and the intended audience (e.g., the public vs. the judges, Foucault, 1972; S. Miller, 1990). This multi-level impact highlights the complex

interplay of narratives in shaping discourse and practices and was also the justification for investigating both queer asylum as a political phenomenon and the related decision-making. While the narratives traverse various contexts, similar considerations can be observed in the different discursive arenas. The different narratives are interconnected and may even contradict each other. The findings illustrate, for example, how one may be considered as deserving, for instance, by being perceived as particularly vulnerable, but at the same time be denied deservingness due to being seen as undeserving because of simultaneously lacking credibility. These findings are especially interesting as they reflect findings from other countries - particularly countries in which the discourse about queer liberalism and homonationalism is more prevalent, such as the UK or Germany (Raboin, 2017; Tschalaer, 2019a). Thus, despite different settings, varieties of sexual nationalisms, and the prevalence of debates, similar discourses and arguments can be found, indicating how the narratives travel between different national entities, underlining also the transnational elements of the subject matter (see also Ayoub & Paternotte, 2014). Despite the similarities, I contend that future research should remain conscious about differences between the countries that are researched, and that the theoretical arguments should be adapted to each case. Also, more (comparative) research about cases that are not necessarily associated with a progressive legislation or a prevalent and dominant queer-liberal sexual nationalism is much needed – as well as research that focuses on the current backlashes and the rise of new – or formerly disappeared – forms of (sexual) nationalisms (Mepschen, 2024).

However, not only the question of what narratives can be found in the public-political discourse is central to asylum, but also decision-making and thus also the legal level of the discourse. Consequently, I put the question of the role of the assessment of credibility and legal representation centre stage. Here it is important to acknowledge that the means of filtering (Giametta, 2018) did not vary greatly between SOGIESC-related and unrelated cases: For every asylum claim, credibility, legal representation, and its quality are relevant factors. However, the role of legal representation and its quality was amplified, and credibility assessments were of enhanced prevalence for SOGIESC-related cases. Finally,

however, all of them are legal tools that allow the filtering of access – in SOGIESC-related and unrelated cases, too. Furthermore, credibility-assessments are double-edged swords, as they can be used to deny deservingness ('they are lying about their SOGIESC', D'Epifanio, 2011), but also to enhance it (legal representatives handing in evidence, B. Miller et al., 2015). In a similar vein, narratives can also have positive and negative effects on the deservingness of the claimants, depending on the originator of the narrative and their goal (e.g., left- vs. right-wing politicians, judge vs. legal representative).

12.1.1 Queer asylum: A unique phenomenon?

Ultimately, these findings raise the question of which aspects of queer asylum are unique and which are common to other categories of asylum. Given the significance of gender and sexuality as political factors – as evidenced by the importance of sexual nationalism (Duyvendak & Mepschen, 2012) or the presence of homonationalist arguments (Puar, 2007) – the special status of queer asylum is certainly justified: After all, the data clearly shows how the issue contributes to nation-building and the self-image of communities (B. Anderson, 2013; B. R. O. Anderson, 2006; Raboin, 2017) – including in Switzerland. But this is not surprising: Current political debates – such as anti-queer debates (arguably mostly about trans*/gender identity) in the US¹⁷⁹ or the far-right discourse on remigration in Germany and Switzerland¹⁸⁰ – show that both sexuality/gender/queerness and immigration, and asylum in particular, remain salient issues in political arenas. Relatedly, it is hardly a surprise that among the executive orders US-president Trump issued on his first days in office, several pertained to immigration and gender identity.¹⁸¹ Likewise, we may expect that the interactions between the topics are of relevance as well.

¹⁷⁹ ACLU (2024): Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024. (<https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024>) [11.06.2024].

¹⁸⁰ SRF (2024): Wie der rechte Rand den Begriff "Remigration" kaperte. (<https://tinyurl.com/SRFremigration>) [11.06.2024].

¹⁸¹ Ollstein, Alice Miranda and Ward, Myah (2025): Trump closes first day with an Avalanche of Executive Orders. (<https://www.politico.com/news/2025/01/20/trump-executive-orders-targets-00199302>) [21.01.2025].

Moreover, and here I follow Millbank (2021), practical considerations of decision-making are specific to SOGIESC-related asylum claims, such as the assessment of the sexual asylum story. Although certain questions – for example the assessment of credibility or very intimate aspects of a personality – also arise in other areas, SOGIESC-related asylum seems to accumulate many of these problematic aspects (Millbank, 2021).

This does not mean, however, that the phenomenon of queer asylum is entirely unique. For example, other subfields of asylum may also reveal fundamental insights about a country's self-images and nationalist projects. The politics of access for refugees during the Cold War was heavily influenced by reflections about the (democratic) 'us' as well (Efionayi-Mäder, 2003): Political questions of belonging, access, and nationalist projects can be negotiated via various topics, so if we want to learn more about the various aspects of a country's nationalist project, many different policy fields may be revealing.

The same applies to the legal dimension: SOGIESC-related asylum is a field that is characterized by its own peculiarities. However, factors presented as relevant for such claims – for example credibility and legal representation – are also be central in other subareas of asylum (Geertsema & Helmink, 2013; B. Miller et al., 2015; Strasser, 2022). Especially in cases based on religion or politics, similar arguments could probably be made, but further analysis would be necessary to accept/reject such a hypothesis. However, as we have seen, immigration and sexuality/gender have always been crucial elements of nationalism and nation-building, and debates about the confluence of these issues will likely always be a revealing subject of research for understanding nationalist projects. In short, the delicate decision-making and the proximity of nationalist projects and sexuality/gender render queer asylum – to a certain extent – into a unique phenomenon.

12.1.2 Intersectionality in the thesis

Then, when discussing the results, further reflections on intersectionality are needed – notably also due to the claim using a queered angle: As described in Chapter 3, a queered venture point requires an intersectional lens, and the concluding reflections must therefore anticipate how different identity markers operate at their intersections – be it within the

group of SOGIESC-related cases (e.g., the different experiences of homosexual cis-men, homosexual cis-women, and trans* people in asylum facilities), or when considering the intersections with other axes such as social class, race, ethnicity, etc. (e.g., financial resources for legal representation or prejudice based on religion; Cohen, 1997; Crenshaw, 1989; Ferguson, 2004). Throughout the research process, I have tried, albeit with some limitations (see below), to respect this perspective and to think about subcategories of SOGIESC other than the (quantitatively predominantly male)¹⁸² sexual orientation claims, and how these categories interact with other social categories. For example, in the first article and the *chapeau de thèse*, I actively chose examples and quotes that included the realities of lesbian cis-women or trans* people whenever possible. In the second and third articles, however, these reflections did not leave many traces: After all, the case files, and thus the resulting analyses and interpretations, contained hardly any relevant data that would allow me to draw substantial conclusions (in the case files, for example, there were no systematic references to religion, social class, or age). Questions remained: What does this tell us? How might the various identity markers – whether self- or externally ascribed – relate to each other? Given the lack of relevant data mentioned above, I am hardly able to provide an empirical analysis of the effects of specific intersections. However, based on my findings and the literature, I will offer some reflections on the different ways in which certain identity markers can interact with each other, especially against the background of deservingness. In doing so, I would like to emphasize three points: First, an externally attributed identity can change the implications of other identity categories. Second, experiences also vary within the group of SOGIESC-related claimants. And third, the effects of the interactions vary by setting.

¹⁸² However, this over-representation also raises future research questions, particularly from an intersectional perspective: For example, are (queer) women's experiences systematically hidden in the male-dominated asylum system, or do they perhaps need to be sought elsewhere? One can imagine that (queer) women nevertheless apply for asylum via other legal channels (e.g. forced marriage) and are therefore not found in the SOGIESC category. We may also argue that female refugees tend to travel shorter distances (de Haas, 2023). It could therefore also be investigated whether female SOGIESC cases, and the related experiences, are, for example, more likely to be found in refugee camps in the regions of origin.

First, I follow Strasser (2022), who discussed the nexus of what she called LGBTIQ+ identities with deservingness. As she shows, such an identity – if externally ascribed and considered credible – can be a central factor for a person to be considered as deserving (Strasser, 2022). My data confirmed what Strasser (2022) described in her book chapter on deservingness in the area of resettlement politics after the EU–Turkey deal 2016: An identity that is otherwise considered undeserving can suddenly become deserving through an externally attributed LGBTIQ+ identity. She describes this by comparing the experiences of two young, male, Muslim Syrians. In principle, this is not a set of identity markers that, in their intersection, are considered deserving in the current international asylum regime (Strasser, 2022). However, one of the two identifies as homosexual – and was granted a place in a humanitarian resettlement programme. In this example, if the attribute ‘homosexual’ is ascribed to such a person (e.g., by street-level bureaucrats), a (formerly undeserving) identity may become deserving. This shows that an externally attributed LGBTIQ+ identity can be an important condition for a particular intersection (e.g., young, male, and Muslim) to be understood as deserving, reversing the implications of otherwise ‘negative’ identity markers of being young, Muslim, and male.¹⁸³ But, as I discuss next, these effects need not be constant within the group of SOGIESC claims.

Second, I note that there are differences within the group of SOGIESC claimants and their experiences within the asylum system. For example, the role of medical support is a different issue for trans* people than it is for cis-gender claimants. Similarly, as suggested in the first article, issues of adequate asylum accommodation – while important for any claimant – raise different questions, especially when comparing SO cases with GIESC cases. While these are two obvious examples of differences within the group of SOGIESC claims, we can make similar considerations in the context of deservingness: As indicated by the data in the first article, different elements may constitute a deserving asylum claim. For instance, I found in the data that cis-gender sexual orientation claimants with an expected gender performance were more likely to be considered deserving – an example

¹⁸³ However, we must be aware that despite such processes, many claims from homosexual men are rejected, indicating that, while important, the attribute it is neither a necessary nor a sufficient condition.

for cis-women to be considered ‘queer enough’ would be short hair (Koçak, 2020; Wolff, 2017). For trans* people, however, one NGO worker pointed out that the driving elements of deservingness are rather compassion and attributed vulnerability. I am not saying that these elements are not relevant to sexual orientation claims, and vice versa, but we need to understand that in terms of the factors driving deservingness, different narratives may have different implications for different groups. This is where different identities – or sets of identity markers – become deserving through different attributes.

Third, for a specific intersection/identity marker to have specific effects, the respective setting is crucial: After all, research focusing on specific identity markers found partly differing results. Depending on the data – for example are we analysing newspaper articles or case files – the same set of identity markers may have different implications. Relatedly, when thinking about intersecting effects of identity markers, we can hardly generalize such an analysis, since the effects of a single identity marker may be fluid: Depending on the situation, the effect of a particular identity marker can have different meanings. Let’s take the example of the attribute ‘female’ in the context of sexual orientation-related claims. In Strasser’s (2022) work on resettlement programmes, the attribute ‘female’ is understood as an identity marker that triggers deservingness. According to her, in the international refugee system, women are understood as vulnerable victims. According to the ideal of being liberal, progressive, and humanitarian, identities with the attribute ‘female’ are therefore expected to be more deserving, for instance leading to places for women in the resettlement quotas. However, this attribute can also have negative effects. Other scholars (e.g., Millman, 2023; Tschalaer, 2020; Verhaeghe, et al., 2023) have shown how (queer-)women’s experiences in the asylum system challenges the idea of females being deserving: Rather, these scholars show how claimants – perceived by the decision-makers as female and also because of intersections with, for example, race or religion – face additional difficulties in the process, such as heightened demands on their credibility and different expectations of their gender performance. With regard to the question of deservingness and the role of different identity markers and their intersections, this suggests that, in one setting (e.g., UNHCR resettlement projects), an

identity marker (e.g. being female) can enhance the deservingness of an identity in the discourse of resettlement, while in another setting (e.g., a national asylum system) being categorized as 'female' does not necessarily imply more deservingness and a positive decision in the asylum proceedings. I would thus argue that in the context of SOGIESC and asylum, the effect of a particular identity marker changes depending on the other markers, but also depending on the setting.

In short, I posit that, depending on the situation, some identity markers may be more additive and cumulative in their effects (e.g., young, male, Muslim equals less deservingness), while in other circumstances they may rely on each other or change the meaning of the other categories (e.g., young, male, Muslim, AND queer equals more deservingness). While different effects apply between queer and non-queer identities, we can observe similar differences within SOGIESC-related claims – for example different challenges and issues of accommodation for cis-gender sexual orientation claimants versus gender identity claimants. These considerations already suggest that in order to understand the mechanism in depth, we need to understand the identity markers of the individual and thus clearly need an intersectional perspective. However, we also need to understand that capturing the impact of individual identity markers and their interrelationships with others is highly contextualized – for example, decision-maker A may have a different assessment of an element than journalist B. Later, when discussing the limitations of the methodological approach, I also address the limitation of the research design in terms of intersectionality.

Following this résumé, I subsequently show that the contribution of this thesis to the literature is twofold: I advance the literature by focusing on Switzerland, and the exact functioning of credibility and legal representation. Second, the methodological approach stands as a 'unique selling point' as it is a rare case of combining queer theory/asylum studies with a quantitative approach, allowing for new insights about the topic.

12.2 Contributions to the literature: Adding nuances to the knowledge about deservingness and decision-making in SOGIESC related claims

In the thesis, I have provided insights into the discourse on the phenomenon of queer asylum. In particular, I focused on the role of deservingness in the public-political sphere, showing how it emerges, operates, and functions in different spaces: Clearly, the politics of queer asylum has implications for the nationalist project of Switzerland. I have also shown how credibility and legal representation have amplifying effects in the realm of decision-making. By conceptualizing the sexual asylum regime, I was able to shed light on multiple aspects of the discourse, including the public-political and the legal level, considering a wide range of different actors. This, in turn, allowed me to make the following contributions to the literature.

12.2.1 Focus on the public-political level of the discourse in Switzerland

Much of the existing literature about the narratives of deservingness analyses individual-level data like decision-making processes (e.g., the practices of street-level bureaucrats). In parts of the thesis, notably in the first article, I followed scholars like Tschalaer (2019a) and Jenicek et al. (2009), who also consider the public-political discourse. Relatedly, I advanced data that relates to the public-political debate (e.g., parliamentary minutes) and that is not explicitly intended to impact decision-making (e.g., newspaper articles). Part of the data I used – contrary, for example, to case files – was not created as a means of decision-making or assessing (individual) cases but represents a discourse that is aimed at a public audience, is mainly about the group of asylum seekers as a collective, and thus follows a political, not bureaucratic and legal, logic. Given those characteristics, my corpus of data allowed for a wide perspective on the topic in Switzerland, understanding queer asylum as a political phenomenon rather than a mere accumulation of bureaucratic verdicts. It therefore adds a valuable layer to current knowledge about the Swiss case, in which what scarce research there is focuses on the decision-making process rather than the political dimension and the nationalist project. In this way, I offer additional and complementary perspectives. Importantly, the public-political narratives must not be understood as distinct from the legal discourses found in decision-making. Rather, all the

dimensions I investigated are interconnected. This is especially demonstrated by my research on the role of credibility assessments in queer asylum, which indicates the significance of credibility assessment as a legal argument but also as a narrative found on the public-political level.

12.2.2 Quantifying SOGIESC asylum and assessing the functioning of credibility

I also investigated the role of credibility in the decision-making process, which has been extensively researched, with various scholars contributing insightful results (e.g., D'Epifanio, 2011; Ferreira, 2022; Zisakou, 2021). Nevertheless, due to my queered quantitative approach, my work represents a novel addition to the research on decision-making in SOGIESC-related asylum: I contribute to the understanding of credibility by quantifying its impact and demonstrating how decision-making is impacted by it. The quantitative research design allowed me to nuance the understanding of how credibility works and complements existing research. It allows me to uncover how credibility operates, and to showcase how credibility becomes particularly prevalent in cases that are represented. Thus, I was able to complement existing qualitative insights about the role of credibility and legal representation in SOGIESC-related asylum, notably by quantifying the effects and providing valuable, formerly unknown statistics for the case of Switzerland.

12.2.3 Combining the literature about SOGIESC/queer asylum and legal representation

Finally, the article about legal representation contributes to the existing literature in two ways: I build on the rich literature about legal representation in asylum procedures such as Miller et al. (2015). Here, I contribute by adding the content (SOGIESC, credibility, ...) of the respective asylum claims as an additional explanatory factor, expanding current research which focuses on context-related variables like country of origin or legal representation. In a similar vein, I contribute to the existing literature about SOGIESC-related asylum by showcasing the importance of legal representation for such cases (Conant et al., 2019; B. Miller et al., 2015). This is especially evident as I was able to demonstrate how the effect of

legal representation varies across different subfields of asylum. The confluence of the queer migration and (socio-)legal literature about legal representation is a meaningful way to complement both branches of research.

Therefore, in terms of content, the contributions of this thesis to the literature are threefold: First, I complement the literature on queer asylum and deservingness by focusing on Switzerland. Second, I was able to study a previously neglected case, which is defined by a specific sexual nationalism, especially in comparison to existing research, and therefore allows for new insights. Third, by bridging a qualitative branch of literature with quantitative methods, I was further able to examine the precise workings of credibility and introduce the literature on legal representation into queer migration studies – thus contributing to the literature by providing additional perspectives.

12.3 Methodological contributions: Bringing quantitative approaches into queered migration studies

The second main contribution is the research design, notably the confluence of queer theory epistemology and quantitative approaches. With some exceptions (e.g., Ayoub & Bauman, 2019; Millman, 2023), I am aware of little research that combines queer theory, the topic of asylum/immigration, and quantitative/mixed methods. The research design is innovative in two senses. First, my large-n dataset of case files allowed me to produce statistics about the topic for the Swiss case. This approach could be employed in similar ways for other countries, which would potentially also allow comparative research, notably between countries with differently characterized sexual nationalisms. Second, the confluence of queer migration literature and quantitative studies allows for additional layers to be added to the current literature and answers calls for at least partly filling the gap in available statistics (Jansen & Spijkerboer, 2011). While the approach clearly has its limitations in terms of a completely queered research design – for example in terms of accounting for intersectionality – it nevertheless seems a promising route for further research endeavours. After all, the knowledge gain is substantial. Bridging queer(ed)/critical studies with quantitative methods is thus a meaningful strategy,

especially when combined with mixed methods. However, one must also accept its limitations and to a certain extent be pragmatic (Gillespie et al., 2024). I argue as follows: Queer theory provides a precise lens through which to examine a given phenomenon. In my work, I have used this lens yet prioritized methodological pragmatism. Due to my research design, I had to abandon some fundamental theoretical considerations. This appropriation of the theory as a tool opens up legitimate points of criticism from a queer theory perspective but allowed me to draw a broad picture.

12.3.1 A novel data set

The dataset of case law is innovative. While I was inspired by empirical legal studies (e.g., B. Miller et al., 2015), and also scholars like Gertsch (2021) and Spirig (2018) who have already investigated the FAC and its decisions, I was also influenced by the groundbreaking article by Egami et al. (2022) about drawing inference from textual data. In the process described by the authors, the goal is to extract concepts as variables from the text for further analysis. Consequently, my dataset is not the first large-n collection of the decisions of the FAC (see Spirig, 2018; Gertsch, 2021). However, many scholars of empirical legal studies focus on case-level variables (meta-information), such as attributes of the legal representatives or the country of origin of the claimants (e.g., B. Miller et al., 2015), without incorporating the content of the case, such as the reasoning and the latent concepts found in the documents, hence without incorporating the text itself. While I also used such case-level information, I additionally applied dictionary-based methods and included elements from the text of each document as variables. I not only use the 'meta-information' of each document but also expand the data with the dimension of the case content, which allows me to contribute to the approach of empirical legal studies (Dyevre, 2010b) and opens new perspectives, also for other domains of research (e.g., about asylum pertaining to medical conditions, specific countries, or religious persecution).

12.3.2 Towards queering quantitative research – or quantifying queer migration research

I applied a research design that is novel in this field, notably a combination of quantitative methods and a queer theory epistemology: Much research about SOGIESC-related asylum, especially when queer theory-related, does not apply quantitative methods (even though there are some exceptions such as Millman, 2023). Here, my approach allowed me to quantify the number of cases, the developments, as well as the intensity of the effects in question, allowing me to test the theory further against distinctions between SOGIESC-related asylum and other types of claims and thus to provide additional perspectives on the phenomena. Using a quantitative approach in a queer theory-driven setting allows me to work with the concept of queered quantitative research (Kilgo, 2022; Patterson, 2019), to put it into practice and expand on so far mostly conceptual and programmatic literature. Here, I argue, especially when using big-data approaches with textual data, a queer theory epistemology (hence queering the approach) is possible. Dedicating the data generation and analysis to this perspective, new and relevant insights can be found. However, I also underline that in such an endeavour a pragmatic approach is necessary, as it is hardly possible to meet all the conditions of ‘entirely queered’ research (Gillespie et al., 2024; Kilgo, 2022). This quantitative work is, in my eyes, the central contribution of this thesis and provides a blueprint for other scholars to research other countries.

While this approach allowed me to build bridges between fields of research, we must also see where further reflection is needed. An example of this is artificial intelligence: On the one hand, the advent of AI-related technologies allows more and more scholars to access the methods (e.g., R or Python scripts written by an AI or web scraping to access new data) and it has become much easier to carry out such data collections and analyses. On the other hand, new reflections, for example on gender bias in algorithms, the authority of data, or censorship – become necessary (Castelluccia et al., 2019; Strunk, 2023). Especially when using a queered perspective, such reflections are more important than ever, and the time saved on technical implementation should probably be invested in conceptual and critical work.

In conclusion, I have advanced existing research on deservingness and queer/SOGIESC asylum by shedding light on different discursive arenas in Switzerland, unpacking the exact role of credibility, and combining the literature about legal representation with a queered angle. The research design further allowed for a more global, comprehensive perspective, contributing not only to the literature on queer/SOGIESC asylum but also to the concept of queered quantitative research. In this sense, this dissertation may also contribute to the creation of much needed bridges between queer/critical migration studies and quantitative methods.

12.4 Societal and political implications of the thesis

A thesis that focuses on such a delicate issue may potentially have impacts outside the academic space. For this thesis, I argue the following two aspects as potentially relevant for political action and policymaking. First, I hope the quantitative data has some impact: In 2009,¹⁸⁴ when the National Council debated the introduction of sexual identity as a category of asylum, Bertschi's empirical study (2007) was quoted, and the figures he found were used as a basis for the argument for political action in the field. In a similar vein, my dataset allows for new empirical insights, which might impact political actors' future argumentation.

Second, while the dissertation raises many questions – such as why the authorities maintain the “*culture of disbelief*” (Ferreira, 2022) – the findings seem to me to raise one question in particular: How can access to legal representation be better managed in Switzerland? While there is a right to free legal advice in the first instance (SEM), this is not the case in the second instance (FAC). However, the results of the third article showed that this would be crucial and that the differences in terms of outcome between represented and unrepresented cases are significant. The same applies to the quality – or rather the experience – of the legal representatives: It is necessary to ensure that counsellors have

¹⁸⁴ Curia Vista (2009): Motion 09.3561 Erweiterung des Flüchtlingsbegriffes. Anerkennung der geschlechtsspezifischen Verfolgung. (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20093561>) [21.10.2023].

expertise in precisely this type of asylum case, and the authorities must not consider asylum as a homogeneous category but must be aware that each group has its own characteristics and that legal advice must be adapted accordingly. In my opinion, this argument applies to SOGIESC-related claims in general, but also to the various subgroups in this category.

12.5 Limitations and future research

Every research project has its limitations, which ideally also indicate potential future research. One possible limitation is my focus on the case of Switzerland alone. While this was a deliberate decision and knowledge of this case has value in its own right, scholars like Wessels (2021) or Spierings et al. (2017) have shown the value of comparative case studies in understanding the phenomena and other, related, debates. Given the findings of this thesis, the undoubtedly interesting configurations in Switzerland, and the potential of comparison, I argue that the case of Switzerland should be the subject of future comparative case studies. Such a venture would bring additional insights into the narratives of deservingness and the impact of credibility and legal representation for SOGIESC-related asylum claims.

Next, although I argued for the use of a queered quantitative research design, I believe there are some limitations to the amount of ‘queering’ this study does. One is, for example, my dichotomous approach of comparing the essentialist categories of SOGIESC asylum versus ‘everything else’, indicating also the ambiguity of categories. While this approach makes sense given the data, it somehow overlooks some of the basic assumptions of the epistemological foundation of the thesis. As I argued above, the queered quantitative approach allowed me to gain new insights into the topic. But this queering of the approaches faces some limitations – for example the use of state categories – and must be carried out in a pragmatic and flexible way.

One limitation of the text-as-data approach, in my case, is the lack of intersectional perspectives: I was able to download and analyse the documents – but I had no control over what they contained in the first place, so I had little information about the social

categories to which the claimants corresponded. This in turn is reflected in the quantitative analyses in that I have little empirical evidence of intersectional effects, and thus missed to uncover e.g., FLINTA-specific experiences to a sufficient extent. Further research which explicitly refers to this would be needed here. I would argue that qualitative research can contribute more here: In interviews you can ask directly about these aspects, and in ethnographic field studies you can pay attention to them. And even with a quantitative questionnaire, you can ask directly about the relevant categories (Kilgo, 2022; Spierings, 2023). But with text-as-data you have to work with what you find: And since many key identity markers are not systematically mentioned in the case files, the intersectional lens is limited to the interpretive part of the research.

Nonetheless, the approach promises new perspectives and can be advanced in future research, including beyond the realm of asylum. Both quantitative as well as qualitative scholars working in the field might benefit from the advantages of one another's approaches. The former can conduct research in a more reflexive way, while the latter can support their arguments with empirical perspectives. I hence invite scholars of both traditions to aim to combine their approaches and attempt to quantitatively analyse large datasets, while keeping a queered lens.

In addition, future research could compare different types of cases within the group of SOGIESC asylums claims. For example, a future project could (critically) compare different institutional categories of SOGIESC asylum claims or differentiate between cases based on sexual orientation or gender identity. To further advance queered quantitative research, the dataset of decisions could also be subject to more sophisticated computational methods, such as large language models (LLM), structural topic models (STM), or (seeded) Latent Dirichlet Allocation (LDA, Grimmer et al., 2022). Thanks to the rise of widely available generative AI, such approaches have become more accessible to a broad range of researchers, not just a select few specialized in these methods. Generative AI could also have been useful in creating the dataset in a more efficient and potentially higher-quality manner, notably also addressing questions of intersectionality more

profoundly, and also quantitatively disentangling the different effects for various subgroups. Overcoming these limitations can also be the focus of future research.

Finally, I would like to mention one last potential research perspective, which is related to theoretical considerations. As Mepschen (2024) has pointed out, both political discussions and research on sexuality and gender in (North-)Western countries have often been characterized by a narrative of liberalism: Politically, it has been argued that equality has been achieved (and is only threatened by immigration). At the same time, research has often argued that this idea of liberalism towards some forms of queerness has become a central argument in respective (sexual) nationalist projects. In my view, this research argument is still valid. However, for some time now we have seen the rise of new political forces. Although some of them use, for example, homonationalist arguments (Puar, 2007), it seems to me that the discourse is shifting, and especially when it comes to gender identity, the façades of certain actors who have proclaimed the supposedly progressive and liberal societies are falling (Mepschen, 2024) – attacks on lectures of drag artists and sex education in Switzerland (Brockschmidt, 2023), Trump's executive orders, and the ubiquitous insistence on two unchanging, biological genders are evidence of this.¹⁸⁵ Future research that refers to discourses of recent and coming years must also anticipate this backlash in its theoretical concepts, assess the (paradoxical?) coexistence of homonationalism and open hostility towards different forms of queerness, and possibly also the increasingly varying implications of gender identity and sexual orientation. I thus highly agree with Mepschen, who claims that *“what we are witnessing is a backlash against the politics of normalization: we therefore need a radical rethinking of sexual nationalism”* (2024: 18).

12.5.1 De-centring research about SOGIESC-related forced migration

What has been missing so far in the thesis is a focus on the fact that a large proportion of SOGIESC refugees move within the Global South and seek refuge in countries like South

¹⁸⁵ Ollstein, Alice Miranda and Ward, Myah (2025): Trump closes first day with an Avalanche of Executive Orders. (<https://www.politico.com/news/2025/01/20/trump-executive-orders-targets-00199302>) [21.01.2025].

Africa or Brazil. Additionally, non-European/North American countries like South Korea also accommodate SOGIESC asylum seekers (Ferreira & Danisi, 2021). Importantly, *"critics from the Global South have warned against the false dichotomy of a West characterized by its acceptance of sexual diversity and modernity, and an obscurantist East defined by the negation of rights"* (Cortés, 2023: 18).

Moreover, research has also disentangled this limited perception, and scholars started to use more south-centred research about (forced) SOGIESC-related (im)migration. In a book about queer and trans African mobilities, Camminga and Marnell (2022) indicate how, for example, more research on African countries would allow us to understand other perspectives on SOGIESC asylum beyond the mere 'from south to north' narrative (Camminga, 2018; Marnell, 2022). This focus not only limits the understanding of the global phenomenon of queer asylum but also neglects the existence of a large proportion of those affected, namely those who migrate within or to a non-Western state. Furthermore, in the argument of Camminga and Marnell (2022), this focus also fosters self-images and reproduces narratives of a monolithic African continent from which vulnerable (genuine) SOGIESC asylum seekers must be saved in the West (Marnell, 2022). Because of the focus of this thesis – a case study of Switzerland – I concentrated mainly on research that investigates the south-to-north trajectory and the resulting discourse in a country of the Global North, but I also want to emphasize how research from and about other regions of the world also provides important insights and thus contrasts with the dominant perceptions.

In conclusion, this dissertation offers a new perspective on the discourse about queer asylum in Switzerland. Understanding queer asylum as an institutional and political phenomenon resonating with the predominant sexual nationalism and the exclusivist asylum system, I demonstrated how the different levels of the related discourse – the legal and public-political – work in different ways. In doing so, I have shown that the narratives and processes of decision-making are far more than mere institutional acts; rather, they reveal valuable insights into the actual politics of belonging and governance in

Switzerland. I also underlined how credibility and legal representation are of amplified relevance in SOGIESC-related cases. I accomplished this by investigating an under-researched case and by employing what for this domain is a novel research design, notably using a queered quantitative framework. Hopefully, my work offers valuable insights and will leave some traces in the academic discourse and practical policymaking.

13 Bibliography

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14 Appendix

14.1 Dictionaries

Table 13: Dictionaries SOGIESC and credibility

Concept	terms bilingual	terms German	terms French
SOGIESC	homosex*	schwul	identite sexuel*
	bisex*	lesbe*	orientation sexuel*
	lesbi*	transperson	partenaire sexuel*
	transsex*	sexuelle identitat	homoerotiq*
	transiden*	sexuelle neigung*	
	homophob*	sexuelle veranlagung*	
	intersex*	sexuelle orientier*	
	transgen*	sexuellen orientierung	
	coming out	sexualpartner*	
	coming-out	homoerotisch*	
	gay		
	lgbt*		
	homophob*		
	heterosex*		
	iglhrc		
	ilga		
	queer		
	'outing'		
Concept	terms bilingual	terms German	terms French
Credibility	plausib*	angeblich	corrobor*
		glaubhaft	credib*
		erfindung	dout*
		glaubwurdig	*croyable*
		pauschali*	invention
		zweifel*	generalis*
		widerspruch*	preci*
		substanziier*	preuve
		gefalscht*	justification
		nachweis*	presum*
		verfalsch*	justificative
		substanti*	evidenc*
		prazis*	contrefai*
			falsifi*

14.2 List variables

Table 14: Description variables

Variable	Description
Saliency Credibility	Count-variable terms related to credibility
Saliency SOGIESC	Count-variable terms related to SOGIESC
Decision	Claim (partly) granted, reference category = refusal
SOGIESC dummy	Dummy variable SOGIESC
Representation	Dummy case represented or not
Region	Region of Birth appellant – first mentioned in document (Classification: ITU/Wikimedia, https://tinyurl.com/wikidiss [12.03.2022]).
Judge	Single- or group-decision
Subject	Subject of the claim
Year	Year according to name of document
Court	Court division (4 or 5)
Former success rate (SOGI)	Former success rate of legal representant. (overall and SOGIESC only)

Table 15: Categories variable Subject

Subject	Frequency
Asylum	6818
Asylum and Removal	23398
Asylum without Removal	4206
Delay	548
Dublin	3981
Execution of Removal	635
Family	795
Removal	2130
Varia (subjects appearing less than 300 times)	1895

14.3 Questions qualitative interviews

14.3.1 Interviews legal experts

Zur Person:

1.1 Was ist Ihr Bezug zur Thematik?

1.2 Wie sind Sie dazu gekommen?

Hauptteil:

2.1 Wie hat sie sich verändert? Können Sie mir einen historischen Abriss geben?

2.2 Wie ist die Situation in der Schweiz aktuell?

2.3 Welche Artikel werden in der Schweiz angewandt?

- Geschlechtsspezifisch, Particular social group,

2.4 Welche Kriterien von "Asylwürdigkeit" werden angewandt?

- Wie stark hängen die Entscheide von der verantwortlichen Person ab?

- Wissen Sie genaueres bezüglich Diskretion und Misstrauen?

2.5 Gibt es gewisse Vorstellungen/erwartete Narrative bei SOGI-Fällen, die in den Köpfen der Menschen die Entscheidungen prägen?

2.6 Wie glauben sie, dass die

- EntscheidungsträgerInnen

- AktivistInnen

- PolitikerInnen

definieren, wer "asylwürdig" ist?

2.7 Gibt es systematische Unterschiede zu Asylanträgen aufgrund anderer Verfolgungstypen?

2.8 Wie stark wurde die Schweizer Praxis vom Ausland geprägt? Und von internationalen Gremien wie dem UNHCR oder dem Europäischen Gerichtshof?

2.9 Wie nehmen politische Akteure Einfluss auf das Gesetz und die Praktiken von Behörden und Gerichten?

Allgemein:

3.1 Welche Reformen wären sinnvoll?

3.2 Könnten Sie mir Zahlen nennen?

3.3 Könnten Sie mir weitere Datenquellen nennen?

3.3 Könnte Sie mir weitere ExpertInnen oder involvierte Personen nennen?

14.3.2 Interviews representant NGO

Zur Person:

1.1 Wie sieht Ihre Organisation dazu & wie sind Sie involviert?

1.2 Inwiefern sind sie aktiv?

1.3 Wofür setzen Sie sich ein?

1.4 Seit wann ist das Thema aktuell?

Hauptteil:

2.1 Wie hat es sich entwickelt?

- National

- International

2.2 Welche Positionen können sie im Diskurs ausmachen?

2.3 Welche Erfahrungen können sie bei Betroffenen ausmachen?

2.4 Welche Erfahrungen haben sie mit den Behörden gemacht? Wie legen diese ihren Fokus?

2.5 Welche Punkte erachten sie für einen angenommenen Antrag als entscheidend?

2.6 Wie sieht die Argumentation im Vergleich zu anderen Asylbereichen aus?

2.7 Wie schätzen sie den politischen Diskurs ein?

- Welche Positionen werden von wem vertreten?

2.8 Welche Reformen wären sinnvoll?

2.9 Könnten Sie mir Zahlen nennen

2.10 Könnten Sie mir weitere Datenquellen nennen

2.11 Könnte Sie mir weitere ExpertInnen oder involvierte Personen nennen?

14.3.3 Interviews politicians

- 1.1 Wie oder durch wen wurde die Thematik an Sie herangetragen?
- 1.2 Seit wann ist die Thematik politisch präsent & wie hat sich der Diskurs gewandelt?
- 1.3 Was fällt Ihnen am Diskurs auf?
- 1.4 Wie sieht es an anderen Orten aus?
 - Städte, Kantone, Bund, ...
 - Und wie im Ausland?
- 1.5 Waren auch NGO's beteiligt?
- 1.6 Welches sind die Kernfragen?
- 1.7 Wie haben sie die Debatten zur Thematik erlebt?
- 1.8 Wofür stehen die Lager? Was sind die verschiedenen Positionen im Diskurs?
- 1.9 Als wie gross würden Sie die Symbolkraft der Thematik beschreiben?
- 1.10 Und das Konfliktpotential?
- 1.11 Welche Reformen wären sinnvoll?
- 1.12 Könnte Sie mir weitere ExpertInnen oder involvierte Personen nennen?

14.3.4 Interviews bureaucrat

- 1.1 Wann wurde das SEM/BFM zum ersten Mal mit einem solchen Fall konfrontiert?
- 1.2 Was sind die genauen rechtlichen Grundlagen?
- 1.3 Wie sind die Praktiken des SEM's bezüglich solcher Fälle? Und wie haben sich diese entwickelt?
- 1.4 Wann und wie wurden die Leitlinien entwickelt?
- 1.5 In den 1990er wurde ja die GespeVer-Gruppe gegründet: Waren da SOG-Fälle immer mitgemeint?
- 1.6 Warum wurden im Asylrecht explizit "frauenspezifische" nicht "geschlechtsspezifische" Fluchtgründe erwähnt?
- 1.7 Wie sehen die entsprechenden Schulungen aus?
Welche Schwerpunkte werden gesetzt?
Wer führt diese durch
Wie oft werden diese durchgeführt?
- 1.8 Warum muss oft die Sexualität bewiesen werden? Es ist ja eine Frage der Verfolgung.
Wurden in der Schweiz je Tests wie psychologische Untersuchungen durchgeführt?
- 1.9 Gibt es systematische Unterschiede zu Asylanträgen aufgrund anderer Verfolgungstypen?
- 1.10 Welche Narrative oder Beweise werden, explizit oder implizit, verlangt?
- 1.11 Wie hat sich das der Anspruch nach Diskretion entwickelt?
- 1.12 Wie stark wurde die Schweizer Praxis vom Ausland geprägt?
- 1.13 Welche Reformen wären sinnvoll?
- 1.14 Wie sieht es mit den sicheren Drittstaaten aus?
- 1.15 Könnten Sie mir Zahlen nennen?
- 1.16 Könnten Sie mir weitere Datenquellen nennen?
- 1.17 Könnte Sie mir weitere ExpertInnen oder involvierte Personen nennen?