

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

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*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 the asylum proceedings and how this is increasingly evident in SOGI cases.

*Keywords:* Credibility, migration, sexual asylum, Switzerland, text-as-data

### L'évaluation de la vraisemblance dans les cas d'asile liés à l'orientation sexuelle et à l'identité de genre : résultats d'une étude quantitative de la jurisprudence en Suisse

*Résumé:* Dans les cas d'asile concernant l'orientation sexuelle /l'identité de genre (SOGI), la question de la vraisemblance est un aspect crucial. J'analyse les décisions du Tribunal administratif fédéral et je confirme que la vraisemblance est davantage thématisée dans ces cas, ce qui a de surcroît un effet négatif sur les décisions. Cette analyse contribue à comprendre comment la vraisemblance agit comme un filtre central dans la procédure d'asile et comment cela se manifeste de manière renforcée dans les cas SOGI.

*Mots-clés:* Vraisemblance, migration, asile sexuel, Suisse, Text-as-data

### Die Prüfung der Glaubhaftigkeit bei Asylfällen bezüglich sexueller Orientierung und Geschlechtsidentität: Resultate einer quantitativen Fallstudie der Schweiz

*Zusammenfassung:* Bei Asylfällen, die sexuelle Orientierung / Geschlechtsidentität (SOGI) zum Thema haben, wird die Glaubhaftigkeit oftmals verstärkt geprüft. Ich analysiere die Entscheide des Bundesverwaltungsgerichts und kann bestätigen, dass die Glaubwürdigkeit bei SOGI-Fällen verstärkt thematisiert wird, was sich wiederum negativ auf deren Erfolgsaussichten auswirkt. Die Analyse trägt zum weiteren Verständnis dazu bei, wie Glaubhaftigkeit als zentraler Filter im Asylverfahren wirkt und wie dies bei SOGI-Fällen verstärkt zum Tragen kommt.

*Schlüsselwörter:* Glaubhaftigkeit, Migration, Sexual Asylum, Schweiz, Text-als-Daten

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## 1 Introduction: The Swiss (Sexual) Asylum Regime<sup>1</sup>

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 (Efonayi-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 individualised credibility assessments: The whole asylum story must be considered credible enough to convince the bureaucrats (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).<sup>2</sup> 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 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,

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1 This article was mainly written during a stay at the University of Amsterdam funded by the Swiss National Science Foundation/NCCR on the move.

2 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.

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 all 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.

## 2 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 (Fassin and 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 and Adamietz 2011; Sussner 2022). Various institutional and judicial decisions have by now clearly established that such an approach is unlawful. Examples include the 2008 UN High Commissioner for Refugees guidance note (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. 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 and Wimarck 2019), sexual practices, or Western stereotypes (Lewis 2014; Giametta 2017). 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).<sup>3</sup> Following the 2014 and the 2018 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 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.

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

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 branches 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 (Hypothesis 1, 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 (Hypothesis 2, H2).

### 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 in the late 1970s and early 1980s, 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 institutionalised.

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). Otherwise, three or, for 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 reevaluation 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 reevaluation (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.

#### 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 et al. (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 2019), 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.<sup>4</sup> 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

<sup>4</sup> 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.

decisions considered as of interest to the public, according to regulations of the court.<sup>5</sup> 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 excluded the 2 299 Italian cases, leaving a total of 44 406 documents, of which 13 401 are French (30.2%) and 31 005 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” (Table 3 in 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

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5 See the publication practices: <https://www.bvger.ch/en/jurisprudence/publication-practices> (29. 11. 2023).

dataset contains 849 cases related to SOGI, 1.9% of the cases. In addition, I created a dummy variable of SOGI that indicates the the presence or 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 types of regressions 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 et al. 2010a; Tingley et al. 2014). Following Imai et al. 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” (2010b, 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 et al. (2010b) and Imai et al. (2010a) and specify the mediation with OLS and probit models.

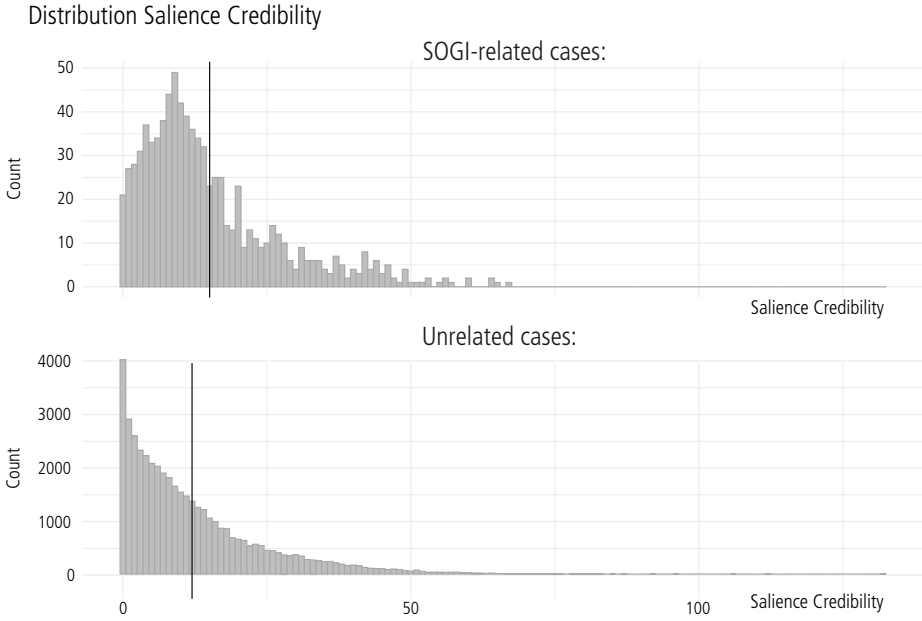
However, according to Imai et al. (2010a), a mediation analysis is incomplete without a sensitivity analysis. Eventually, it allows one to draw conclusions about the stability of the postulated effects and to anticipate the omitted variable bias. Hence, following Imai et al. (2010b), I subsequently conduct 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.

## 5 Analysis and Results

Is the role of credibility amplified in SOGI asylum? Figure 1, 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

Figure 1 Distribution of ‘Salience Credibility’ Among Related and Non-related Cases (Indications Equals Mean)



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.

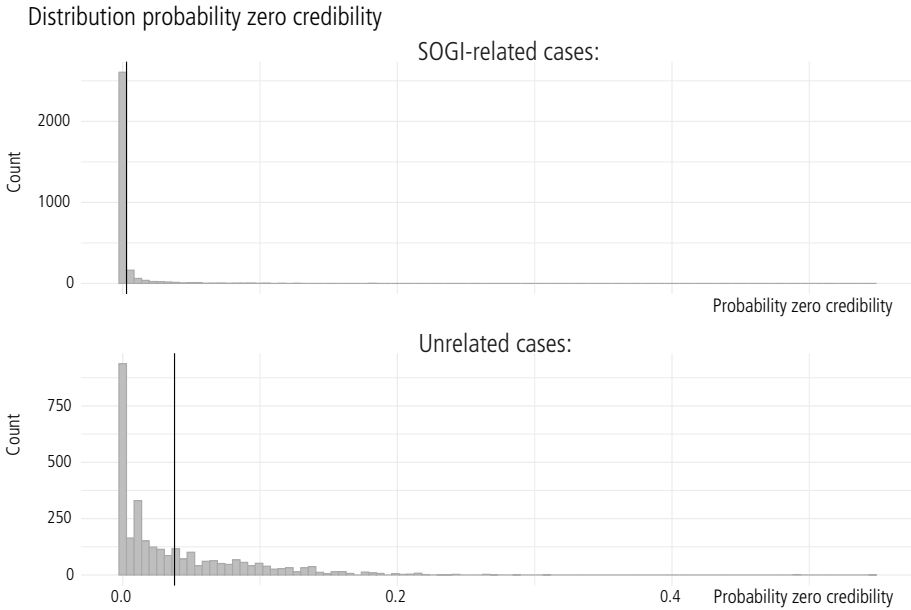
Table 1 represents the coefficients of the ZINB models. Model 1a indicates the regression using “Salience SOGI” as a count variable, and model 2a includes SOGI as a binary variable. The coefficients of the zero models indicate negative and significant values: *Ceteris paribus*, the presence of SOGI decreases 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 1 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)
Saliency 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)
Saliency 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: \*\*\* $p < 0.001$ ; \*\* $p < 0.01$ ; \* $p < 0.05$ .

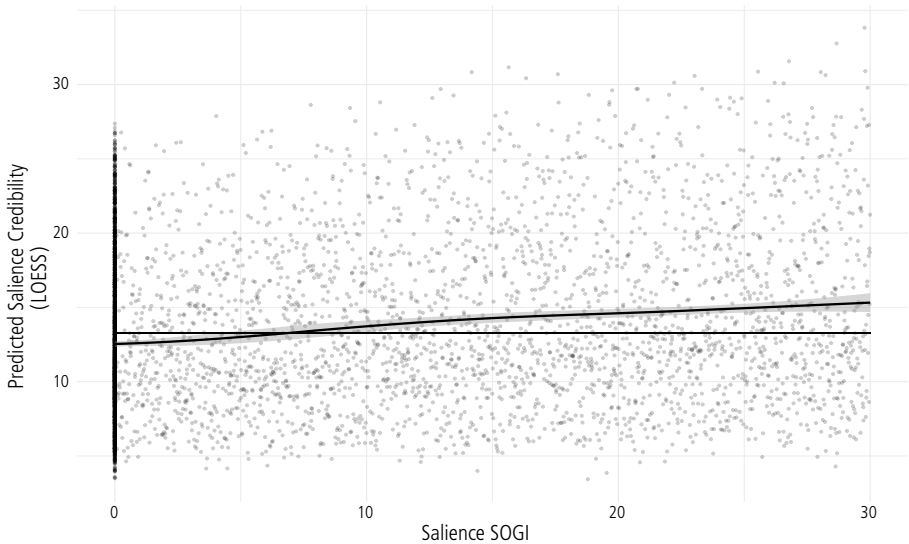
Figure 2 Model 1a, Distribution of the Probability of ‘Salience Credibility’ Equal Zero Among Related and Non-related Cases (Indications Equal Mean)



Facilitating the perception of the intensity of the effects of the zero-model, I calculated the predicted probabilities for model 1a. Figure 2 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 probability of 0.3% 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.

Finally, Figure 3, which represents the count model, illustrates the predicted level of “Salience Credibility”, represented as a LOESS function (locally estimated scatterplot smoothing). 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,

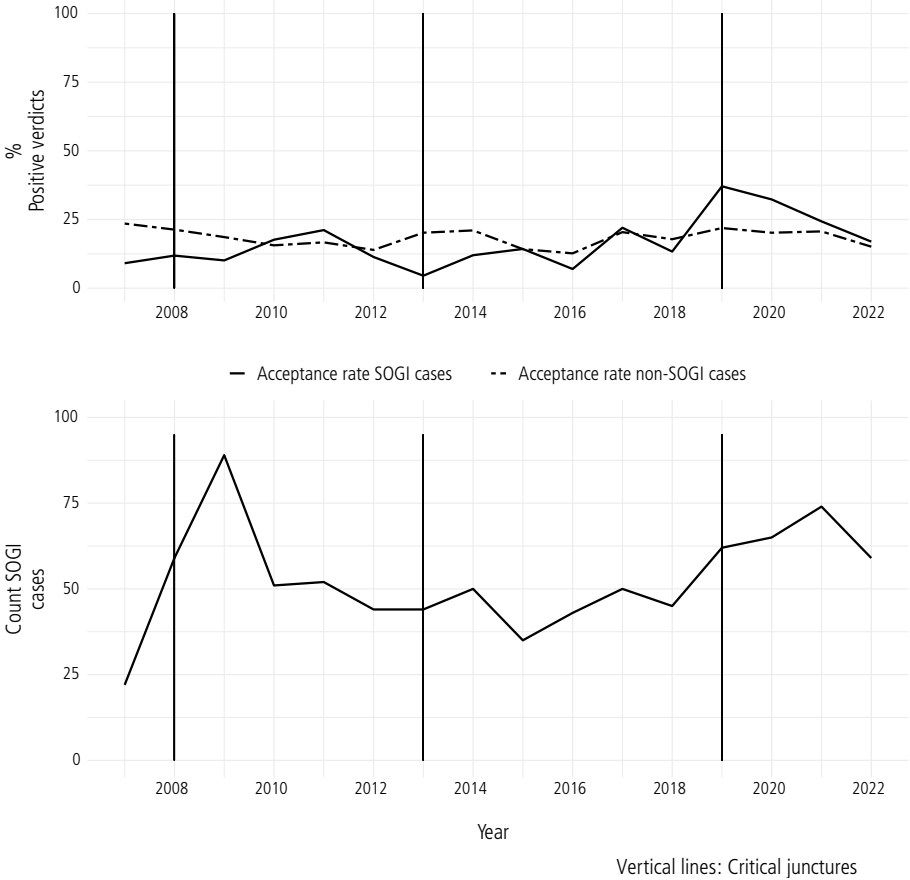
Figure 3 Model 1a, Predicted Values of 'Salience Credibility' (Indication Equals Mean)



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.

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 4, 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.

Figure 4 Historical Developments: Acceptance Rates and Numbers of SOGI Cases 2007–2022



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.

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 (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 I interviewed, 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 emphasise 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 2. 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.

Overall, this interpretation of the results is also reflected in the mediation analysis (see Table 4a and 4b in appendix). The analysis provides the following es-

Table 2 Models 3a–6a. Selected Variables Presented Only (Year, Subject and Region Not Displayed)

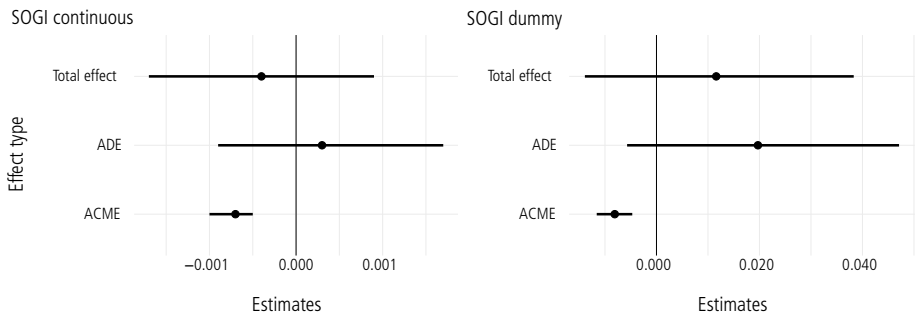
	Model 3a DV: Decision refcat = 'refuse'	Model 4a DV: Credibility	Model 5a DV: Decision refcat = 'refuse'	Model 6a DV: Credibility
Intercept	−0.86*** (0.05)	3.79*** (0.30)	−0.86*** (0.05)	3.76*** (0.30)
Credibility	−0.02*** (0.00)		−0.02*** (0.00)	
Salience SOGI	0.00 (0.00)	0.15*** (0.02)		
SOGI YES			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	38 385.02		38 383.18	
BIC	38 733.02		38 731.18	
Log Likelihood	−19 152.51		−19 151.59	
Deviance	38 305.02		38 303.18	
Num. obs.	44 350	44 350	44 350	44 350
R <sup>2</sup>		0.34		0.34
Adj. R <sup>2</sup>		0.34		0.34

Note: \*\*\* $p < 0.001$ ; \*\* $p < 0.01$ ; \* $p < 0.05$ .

timates, presented in Figure 5: 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.

To ensure the stability of this result, I conducted an additional sensitivity analysis for the ACME of the two mediation analyses displayed, using the  $R^2$ -method.

Figure 5 Results Mediation 3a/4a and 5a/6a (Exact Results See Appendix).  
Mediation models



The findings, represented in Figure 6 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.

## 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-realisation, 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.

## 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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## Appendix

Table 3 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*
		substanzier*	preuve
		gefalscht*	justification
		nachweis*	presum*
		verfalsch*	justificative
		stubstanti*	evidenc*
prazis*	contrefai*		
	falsifi*		

## Hypothesis 2

Table 4a Mediation Analysis, Salience SOGI Continuous

	Estimate	Lower CI 95 %	Upper CI 95 %	p-value
ACME (control)	-0.000710	-0.00096	-0.000480	<0.001***
ACME (treated)	-0.000710	-0.00096	-0.000490	<0.001***
ADE (control)	0.000335	-0.00095	0.001660	0.626
ADE (treated)	0.000334	-0.00095	0.001655	0.626
Total Effect	-0.000380	-0.00167	0.000947	0.589
Prop. Mediated (control)	0.773224	-18.53380	14.117980	0.589
Prop. Mediated (treated)	0.772772	-18.57930	14.151250	0.589
ACME (average)	-0.000710	-0.00096	-0.000480	<0.001***
ADE (average)	0.000335	-0.00095	0.001658	0.626
Prop. Mediated (average)	0.772998	-18.55660	14.134610	0.589

Note: \*\*\*p < 0.001; \*\*p < 0.01; \*p < 0.05

Table 4b 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	-0.0120	-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)	-0.4720	-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

Note: \*\*\*p < 0.001; \*\*p < 0.01; \*p < 0.05

Figure 6 Sensitivity Analyses Average Causal Mediation Effects: Models SOGI Continuous (Models 3a/4a, Top Graph) and SOGI Dummy (Models 5a/6a, Bottom Graph)

