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Mapping Bisexuality in the Czech Asylum System

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Abstract

Many asylum jurisdictions throughout the world now recognize persecution on the basis of sexual orientation as a ground for granting asylum. While seen as a positive development for LGBT people fleeing violence, the inclusion of ‘LGBT’ people in asylum discourse does not automatically imply the full consideration of all people ostensibly covered by this term, as the structure of asylum systems relies on the categorization of ‘recognizable’ sexuality. Research from a number of countries indicates that bisexual asylum seekers may be less likely to be granted international protection than gay or lesbian applicants, in part because bisexuality itself destabilizes and resists such neat categorization. In this thesis, I seek to ‘map’ the construction of bisexuality in the asylum system of the Czech Republic through the analysis of relevant governmental, legislative and court documents in conjunction with expert interviews. Drawing on critical migration theory and bisexual legal theory, I argue that in the Czech asylum system, bisexuality is constructed as a concept which is superficially acknowledged, but positioned as suspect because it evades easy categorization and destabilizes administrative procedures of ‘proving’ ‘credibility’ while also being absent from consideration in some parts of the procedure due to wider patterns of erasure and invisibility. The purpose of this research is not only to discover where and how bisexuality is present, but also to name what is missing.

Keywords: bisexuality, asylum, Czech Republic

Key acronyms and abbreviations

COI	Country of Origin Information
CEAS	Common European Asylum System
EASO	European Asylum Support Office
EU	European Union
LGB(T)	Lesbian, Gay, Bisexual (Transgender)
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer
MOI	Ministry of the Interior (Czech Republic)
SAC	Supreme Administrative Court (Czech Republic)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

The right to seek asylum is enshrined in the United Nations 1948 Universal Declaration of Human Rights and is intended to serve as a mechanism for providing international protection to persecuted persons (*International Justice Resource Center* 2021). However, as critical migration scholars demonstrate, the modern institution of asylum is also inextricably bound to the interests of the state, and thus also to hegemonic discourses of deservingness and ‘security’ (Picozza 2017, 233-235). In order to grant the protection of asylum, states must determine what kind of suffering constitutes persecution and which kinds of narratives qualify for international protection, relying frequently on expectations of ‘evidence,’ and on a set of recognizable, readable categories into which they can separate asylum seekers (Picozza 2017, 240-241).

The concept of ‘sexual orientation’ also relies on a system of categorization; as scholars of sexuality show, concepts like ‘heterosexuality’ and ‘homosexuality’ are historical constructions which serve to define cultural norms (Katz 1995, 351). While hetero- and homosexuality are constructed as oppositional, mutually exclusive categories, a third label -- bisexuality -- challenges the premise of both. Legal scholar Kenji Yoshino (2000) argues that “bisexuality destabilizes sexual orientation by making it logically impossible to prove that one has a monosexual identity” (400). Bisexuality does not easily fit into the logic of hetero- versus homosexuality, and cannot be ‘proven’; as Yoshino (2000) argues, this then leads to the erasure, invisibility, and dismissal of bisexuality within institutions, and in societies at large.

These systems of categorization collide when bisexual people seek asylum. While some research conducted in Western European countries, the United States and Canada indicates that bisexual asylum claims are less likely to be accepted than those of gay men and lesbians, there is almost no data on bisexual asylum seekers in the Czech Republic. In this thesis, I seek to map out the status of bisexuality within the specific context of the Czech asylum system.

1.2 Research question and purpose

This thesis takes an exploratory approach to mapping the construction of bisexuality in the Czech asylum system in the realm of European Union and Czech national policy and jurisprudence, as well as in the world of NGOs and other social actors involved in asylum. The overarching research question is: *How is bisexuality constructed (or not constructed) in the Czech asylum and migration system?* If/where it appears, how is bisexuality characterized and categorized? How do various social actors approach the concept of bisexuality (whether explicitly or implicitly), and how does this play out in practice? This research is also concerned with pinpointing where absences occur, and what is missing.

As will be illustrated in the literature review section of this thesis, there is some existing research on bisexuality and asylum -- however, all of this work (at least that which is available in English) focuses on countries with high volumes of asylum applications, countries which are popular destination countries for both refugees and labor migrants, and countries whose historical relationships and experiences with migration can be characterized as different than that of the Czech Republic -- that is, countries like the United States, Canada, Australia, and various Western European countries. Thus, this research seeks to provide a map of this issue not only in a country for which there is little data on the topic, but also exists in a different context from the countries already examined.

As a feminist project, this research also hopes to produce knowledge -- and questions -- that could be useful for those advocating for the dignified treatment of not only bisexual asylum seekers, but also migrants and refugees in general by exposing some of the problematic patterns and assumptions of the asylum system.

2. Background

In this section, I provide background information on five foundational subtopics on which this research rests: asylum and migration in general, LGB asylum in general, LGB rights and asylum/migration in the Czech Republic, bisexuality in general, and bisexuality and asylum.

2.1 Asylum

‘Asylum’ is a central concept in the sphere of international human rights, and is enshrined in the 1951 United Nations Refugee Convention. Established following the mass conflict and displacement of people during World War II (United Nations 2011) the Refugee Convention recognizes the right to seek international protection for people who

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (United Nations 1951, Art. 1(A)(2)).

The Convention sets out principles for who can be considered a refugee, core guidelines for signatory states in dealing with asylum seekers and refugees (those who have been granted asylum), and the rights and obligations of both asylum seekers/refugees and states (United Nations High Commissioner for Refugees (UNHCR) 2011). As of 2020, there were 26.3 million recognized refugees and 4.2 million asylum seekers worldwide according to the United Nations High Commissioner for Refugees (UNHCR 2021). While popular and political discourse in the European Union (EU) in the past several years has focused on fair sharing of the “burden” of refugees in light of the recent “refugee crisis,” it

should also be noted that the vast majority of the world's displaced people are hosted in low-income countries in the so-called 'Global South,' such as Turkey, Pakistan and Uganda (Karasapan 2020). Additionally, these numbers of officially recognized refugees or asylum seekers represent a relatively small proportion of the approximately 80 million displaced people around the globe (UNHCR 2021); as will be discussed in this thesis, the process of officially seeking international protection is a complex one to which not all displaced or persecuted people have access.

This complexity arises, in part, from a web of normative frameworks upon which institutions of asylum and migration rely. For example, feminist, postcolonial and other critical theorists demonstrate how the politics of asylum and migration are deeply enmeshed with concepts of 'deservingness' and adequate suffering and victimhood (Picozza 2017, 235). Institutions of asylum and migration also rely on constructing categories -- refugee, deserving victim, vulnerable person, member of a 'particular social group,' and as Fiorenza Picozza (2017) points out, these categorical labels within asylum politics and institutions "reflect the interests and perspective of the state" (235) and not necessarily of the lived realities of those to whom they are applied. Additionally, in many European states, these interests have become increasingly characterized by suspicion, particularly through the idea that 'fraudulent' asylum seekers frequently 'abuse' the system, which in turn justifies increased scrutiny (Fassin, Kobelinsky and Matthews 2012, 465).

This institutional anxiety and "specific politics of truth and authenticity" (Picozza 2017, 240) means that asylum seekers and some other migrants can be asked to 'verify' for authorities not only their suffering, but sometimes also aspects of their intimate lives -- things like love and desire, which are "immeasurable" and "indefinable" but are nonetheless subjected to 'objective' assessment within the administrative setting of migration institutions (Maskens 2018, 83). While granting asylum is often conceptualized by the receiving countries as a "benevolent act of the state," (Picozza 2017, 253) feminist and critical migration scholars show that the power structure of asylum is asymmetrically imbalanced in favor of the state, meaning that asylum seekers must meet a range of conditions -- often unspoken and implicit -- in order to be granted this 'benevolence' (Berg and Millbank 2009, 197).

2.2 LGB asylum

Though persecution based on ‘sexual orientation’ is not named in the Refugee Convention, it has been increasingly accepted as a ground for granting asylum in many countries in the past several decades (Jansen and Spijkerboer 2011, 13-14). Some persons persecuted for their sexual orientation have sought asylum based on ‘religion’ or political opinion,’ but they most commonly invoke the grounds of belonging to a ‘particular social group’ which is persecuted (Rehaag 2009, 417-418). This then gives rise to the question of how the concept of a ‘particular social group’ is defined in asylum jurisdictions. As Sean Rehaag (2009) notes, there are two primary conceptualizations of this term which have been applied in such cases: groups defined by ‘innate’ or ‘immutable’ characteristics, or by something that is “so fundamental to their human dignity that they should not be forced to forsake the association” (418-419). While these understandings have been generally accepted in many countries as including persons persecuted for their sexual orientation, some contention over the vague and inconsistently applied term ‘particular social group’ remains (Jansen and Spijkerboer 2011, 19).

A number of international asylum directives explicitly mention sexual orientation as a potential grounds for asylum and as a characteristic that can define a ‘particular social group,’ including the 2011 European Union Asylum Qualification Directive and the United Nations High Commissioner for Refugees’ 2012 guidelines on assessing asylum claims based on sexual orientation (both discussed later in this thesis). While the language used in such documents varies, in this thesis I will generally use the acronym ‘LGB’ (‘Lesbian, Gay, and Bisexual’) to refer to asylum based specifically on sexual orientation, occasionally omitting the ‘T’ from the typically used ‘LGBT’ acronym (‘Lesbian, Gay, Bisexual and Transgender’) because while the issues faced by transgender asylum seekers certainly merit attention, the ‘T’ differs from the other three letters in that it refers to *gender* rather than *sexuality* and thus involves a different, though related, set of discourses and issues. As I will argue throughout this thesis, specificity of language is important, and uncritically using ‘LGBT’ to refer to issues that are only relevant for non-heterosexuals could constitute a subtle erasure of the specificity of transgender experiences.

Some feminist and queer studies scholars point out that despite the concrete benefits of this development for many persecuted LGB people, it has also “been driven partly by the increasing politicization and instrumentalization of LGBTQI human rights for

the purpose of cultural hegemony as parts of neo-imperial agendas,” pointing to the discursive positioning of countries from which these asylum seekers originate as ‘backwards’ in comparison to the ‘benevolent’ West (Klesse 2021, 116). Furthermore, the acceptance of anti-LGB persecution as a grounds for asylum also relies upon the construction of normative ideas and categories of sexuality that are ‘recognizable’ to the state, obscuring differences in how sexuality and identity are conceptualized between different cultural contexts (Walker-Said 2014, 205).

Because of the attitudes of suspicion and emphasis on ‘verification’ of suffering that underpin asylum systems, LGB asylum seekers are then faced with the challenge of ‘proving’ their persecution. As Deniz Akin (2017) observes, asylum seekers are frequently treated as “guilty until proven innocent” and are expected to bear the burden of proof; in the case of LGB asylum seekers, this is often implicitly extended to the expectation that they should also ‘prove’ their ‘authentic’ sexual orientation (458). Sabine Jansen and Thomas Spijkerboer (2011) note that in the European Union, the process of ‘proving’ one’s LGB sexual orientation -- i.e. making it ‘visible’ and ‘credible’ to authorities -- is plagued by a number of concerns, including the use of stereotypes and even invasive medical or psychological examinations, insufficiently researched background information on countries of origin, and a lack of training on LGB issues for asylum authorities (7-10).

2.3 LGB rights and asylum in the Czech Republic

While the Czech Republic is an EU Member State, its relationship with asylum and migration in general differs in some ways from its ‘Western’ neighbors. Migration to Czechoslovakia was somewhat limited during the socialist era, and began to increase after the 1989 revolution, the 1993 separation of the Czech and Slovak republics, and the 2004 accession of the Czech Republic to the EU (Blahoutová, n.d.). While the number of asylum applications has increased overall in the past decades, they still represent a relatively small proportion of migrants in the territory of the Czech Republic (Blahoutová, n.d.). The most recent UNHCR data shows that in 2020, the Czech Republic granted asylum to only 39 persons out of 1,432 total decisions (UNHCR 2021). By contrast, Belgium, with a similar population, recognized 4,990 persons as refugees out of a total 23,015 decisions (UNHCR 2020). While comparisons of acceptance or rejection rates are difficult to fully establish

(especially amidst a pandemic), these numbers are at the very least an illustration of the difference in volume of decisions made and applications received. In 2019, *Radio Prague* reported that the Czech Republic rejects asylum applications at a rate of approximately 89%, the highest percentage in the EU (Kenety 2019).

The Czech Ministry of Interior does not release statistics on LGB asylum applications received or decided upon, making it difficult to ascertain the scope of LGB asylum in the country. The Czech Republic's practices regarding LGB asylum cases did, however, rise to international attention in 2011 when it was revealed that the state had used 'phallometry' in several asylum cases as a method of 'verifying' asylum seekers' sexual orientation. As described by the UNHCR (2011) report on this practice by the Czech state, phallometry is a "mechanical technique" which "measures changes in genital blood flow in response to sexually explicit visual and audio stimuli using electrodes attached to the genitalia" (1). This practice was highly criticized as constituting degrading treatment and an invasion of privacy, and has since been discontinued (UNHCR 2011, 4-5).

A 2019 Ombudsman report notes that LGB people in the Czech Republic face a number of challenges, including workplace discrimination and a lack of rights regarding children (Ombudsman of the Czech Republic 2019). The prohibition of same-sex marriage in the Czech Republic is also notable; though civil unions are legal, as of this writing the Czech government still has not come to a conclusion on whether they will approve the same-sex marriage law introduced to parliament in April 2021 (Muller 2021).

2.4 Bisexuality

The word 'bisexual' has been variously defined since the 19th century when it first came into use. Initially used to refer to organisms that are undifferentiated by sex or a "combination of masculinity and femininity in an individual," bisexuality is commonly understood today as the sexual attraction to 'both' genders (MacDowall 2009, 4). Though an important topic, in this thesis I do not explicitly interrogate the gender binary or engage with debates about whether 'bisexuality' inherently reinforces this binary (Klesse 2021,

114). For the purpose of this research I understand ‘bisexuality’ through the definition offered by activist Robyn Ochs as “the potential to be attracted – romantically and/or sexually – to people of more than one gender, not necessarily at the same time, not necessarily in the same way, and not necessarily to the same degree” (Ochs, n.d.).

Theorists of bisexuality have noted patterns of erasure, dismissal, and even hostility towards bisexuality from both the ‘heterosexual’ and ‘gay’/’LGBT’ communities, in part because it challenges the oppositional hetero/homo divide upon which dominant understandings of human sexuality are predicated (Rehaag 2009, 425). Jonathan Katz (1995) notes that both of these categories are historical constructions which serve to reify the other -- the concept of ‘homosexuality’ cannot exist without the concept of ‘heterosexuality,’ and vice versa (351). Because these two categories are framed as mutually exclusive, bisexuality disrupts this paradigm; as Sean Rehaag (2009) notes, “because many in both heterosexual and sexual minority communities have an interest in preserving essentialist understandings of human sexuality, and because bisexuality challenges these understandings, bisexuality is often downplayed, ignored, or even erased” (425).

Legal scholars observe how this erasure extends into the realm of law, noting, for example, that laws granting certain rights or protections to ‘LGBT’ people frequently fail to address bisexuality specifically, often resorting to what Nancy Marcus (2018) calls “limiting ‘gay and lesbian’ nomenclature” (81) in their use of language -- that is, basing the text on the premise that it applies to all non-heterosexual or all ‘LGBT’ people, but nonetheless placing ‘gay and lesbian’ terminology and experiences at the center. Kenji Yoshino (2000) also examines what he calls the “epistemic contract of bisexual erasure,” arguing that bisexuality is invisible in the US legal system precisely because it “destabilizes” the aforementioned essentialized construction of hetero/homosexual orientation, and because both of those groups have an interest in “retaining sex as a dominant metric of definition,” and in “defending norms of monogamy” (362).

These trends are not limited to the English-speaking world; for example, the Czech government’s Working Group for the Issues of Sexual Minorities (predecessor to the Committee on Sexual Minorities) includes the following comment in a report on the situation of LGBT people in the Czech Republic:

Amongst sexologists there exists a dispute about whether life-long bisexually oriented people form their own independent group, or if this is a matter of an

insignificant exception. In Czech sexual science, this opinion is especially lively thanks to the influence of Kurt Freund. His opinions on the existence of bisexuality as its own orientation were extremely critical. For example, based on their clinical experience, Czech sexologists Brzek and Pondělíčková-Mašlová expressed the conviction that there are very few such cases, because even people feeling like bisexuals are not normally attracted to both sexes at one time. Like certain foreign authors, they point out that normally, bisexuality is only a temporary development phase, which is replaced in time by a tendency to one of the two sexual orientations (Working Group for the Issues of Sexual Minorities 2007, 9).

Here, we see that bisexuality may be discredited in the Czech context in particular because of the medical discourse of sexology; interestingly, the above-mentioned Czech-Canadian psychologist and sexologist Kurt Freund invented the very same phallometric measurement methods that the Czech asylum authorities have been criticized for using (Lišková and Bělahradová 2019, 336). Also evident in this passage is the attitude of discrediting, disbelieving, and diminishing bisexuality as an identity, reducing it to a medical neurosis that is merely a phase. In the framework of this passage, bisexuals are given no agency or authority over their own identities and experiences (“people *feeling like bisexuals*” [emphasis added] rather than ‘people who *are* bisexuals’ [9]). The report goes on to note that this attitude has shifted slightly in recent years, but this is still the dominant approach to bisexuality, noting also that bisexuals are excluded from gay and lesbian communities, and that “in the Czech Republic, it is factually impossible to speak of the existence of a bisexually oriented community per se” (Working Group for the Issues of Sexual Minorities 2007, 9). An interview with a current member of the Committee is included in a later chapter of this thesis.

Some discourse within the ‘LGBT’ community has also popularized the concept of ‘straight-passing privilege’ in recent years. This term refers to the idea that bisexuals do not experience the same level of discrimination or violence as gay men and lesbians because they are less ‘visible’ and have the ability to ‘hide’ their non-heterosexuality (Lingel 2009). While the purpose of this thesis is not to engage with this claim, this attitude provides important context because it associates oppression or subjection to violence with a specific kind of ‘visibility’ -- despite studies showing, for example, that in some places like the United States, bisexual women are more likely to face interpersonal violence and sexual assault than gay or straight women (National LGBTQ Task Force 2021), and that

bisexuals overall have worse mental health outcomes than their gay and straight peers (Chan, Operario and Mak 2020).

Christian Klesse (2021) notes that within the sphere of transnational queer studies, there are legitimate critiques of Western ‘LGBT,’ terminology. However, he suggests that “bisexuality is framed as having an almost *unique* capacity for reinforcing dominant sexual discourse” and points to a culture of “hostility” and erasure of bisexuality in various academic fields (114). Furthermore, he notes that the supposedly more favorable term “queer” appears to be applied in practice only to gay and lesbian subjects, erasing bisexuality from this supposedly more inclusive term (Klesse 2021, 115). Rehaag (2009) notes that such terminology cannot truly claim to match with people’s self-identifications, especially across cultures (416). In this thesis I follow Rehaag in choosing to avoid debates surrounding these arguments -- like Rehaag, “my interest is to explore how sexual minority refugee claimants whose cases involve allegations of non-gender-exclusive sexuality are treated in the refugee determination systems” (Rehaag 2009, 416).

2.5 Bisexuality and asylum

With these trends of suspicion and categorization within asylum systems, and erasure and dismissal of bisexuality on a societal level in mind, we turn now to the point where these phenomena intersect. Scholars working on LGB asylum issues have noted the specific challenges faced by bisexual asylum seekers in countries such as Australia, Canada, the United States (Rehaag 2008 & 2009) and various European Union member states (Jansen and Spijkerboer 2011). Much of this research suggests that bisexual applicants for asylum are less likely to be granted refugee status than gay and lesbian claimants (Rehaag 2009).

Stories of bisexual asylum seekers being rejected have also surfaced in various media stories, such as that of Orashia Edwards, a bisexual man from Jamaica whose asylum claim in the United Kingdom was initially rejected because a judge believed he had been “dishonest” about his sexuality (Duffy 2016). In 2020, a Zimbabwean woman was deported from Ireland after authorities decided that she did not “seem bisexual” and

therefore did not meet the criteria for being granted refugee status (Kelleher 2020). The previous year, a Guinean bisexual man, who was married to a woman and had children, saw his asylum claim rejected and received a deportation order from Canada (*Presse Canadienne* 2019). In 2016, a court in the United States rejected a Jamaican man's application for asylum on the grounds that he was married to a woman and therefore could not be bisexual (McCormick 2016). While gay and lesbian asylum seekers are, in general, also rejected at high rates (Berg and Millbank 2009, 196), research suggests that bisexual claimants face specific obstacles in securing international protection that are predicated upon bisexuality itself. The main themes found in this research will be explored in the literature review which follows.

3. Literature review: theoretical and conceptual context on bisexuality and asylum

Literature available in English on bisexuality and asylum is largely focused on countries such as Canada, the United States, and Australia, as well as Western European countries, or the European Union as a whole. While this body of work cannot automatically be assumed to be representative of countries like the Czech Republic, it points to important themes and patterns present both in individual countries and in the international realm of asylum law and practices. One of the primary scholars whose work has explicitly centered bisexual asylum is Sean Rehaag. Rehaag's 2009 comparative study on bisexual asylum claims in Canada, Australia and the United States reveals a number of patterns suggesting that in these countries, bisexual asylum seekers are much less likely than gay or lesbian applicants to be granted refugee status (415-436). Following from his 2008 work focusing solely on Canada (59-102), Rehaag (2009) analyzes published court decisions to argue that this can be at least partially attributed to "negative views" of bisexuality held by decision-makers and adjudicators, and to pervasive essentialist conceptualizations of sexuality that encourage the neat division of people into categories of either heterosexual or homosexual, a framework into which bisexuality does not

comfortably fit (416). While Rehaag (2009) points out that these cases cannot necessarily be taken to be representative, as many court decisions and information about these cases are not publicly accessible, the patterns he discusses are important indications of what may exist behind the scenes in many asylum jurisdictions (429).

Some of the negative views Rehaag (2009) discusses include, for example, the stereotype that bisexual people are necessarily “pathologically promiscuous” (426) and therefore a claimant displaying monogamous or celibate behavior must not really be bisexual (427); the refusal to view bisexuality as a self-contained identity that is not defined by the gender of a person’s current partner(s) (427); and the characterization of bisexuality as a ‘phase’ (428). Neva Wagner’s 2016 work explores patterns of disbelief towards bisexual asylum seekers in the United Kingdom which resemble those observed by Rehaag, and further contextualizes these patterns by arguing that “myths” such as the idea that bisexuality is a phase and the belief that identity and behavior must necessarily match are linked to larger societal discourses surrounding bisexuality which exist outside the realm of migration institutions (216). In the cases examined in Rehaag’s (2009) study, these ideas were employed to discredit claimants’ identities or argue that their situations did not merit international protection, revealing not only striking misunderstandings of bisexual experiences, but also suggesting that adjudicators in these cases “were actually concerned with establishing, not whether the claimant was bisexual, but rather whether the claimant fit into an essentialist hetero/homosexual binary” (428).

These prevailing essentialist conceptualizations of sexuality and the challenges they pose specifically to bisexual asylum seekers are also discussed by Laurie Berg and Jenni Millbank (2009) in the context of the ‘membership of a particular social group’ construction established in the Refugee Convention as one of the categories of persecuted people who may claim asylum (205). As Rehaag (2009) notes, most LGB asylum claims are based on this ground (rather than, for example, religion or political opinion) (418). In constructing LGB people as a ‘social group,’ the asylum jurisdictions examined by Rehaag (2009) employ either the concept of this ‘social group’ as being “defined by an innate or unchangeable characteristic” or being a group “whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association” (418). While Rehaag (2009) advocates for the latter “human dignity” approach, he notes that the former essentialist framing appears to still be relatively common in the realm of asylum adjudication (420). Berg and Millbank (2009) note, then, that in their examination of LGB asylum cases in Canada, Australia, and United Kingdom

and New Zealand, this approach can have particularly problematic consequences for bisexual asylum claimants because, as mentioned above, bisexuality does not fit into the cleanly divided and oppositional framework of human sexuality as either essentially heterosexual or homosexual; as a result, decision makers may express more doubt towards bisexual asylum seekers' claims of membership of a 'particular social group' than those of gay and lesbian claimants (213).

The requirement of proving 'group membership' can be problematic for bisexuals because of stereotypes about what LGB lives and intimacies look like. For example, Christian Klesse (2021) notes that bisexual asylum cases are frequently viewed as "non-plausible or non-consequential" because of the idea that one's behavior and identity must neatly correspond, and the idea that the gender of one's partner defines their sexual orientation (109); if these ideas are accepted within a framework of essentialized categories of sexuality, it is difficult to easily determine to which group bisexuals belong. Furthermore, persisting stereotypes about the life narratives of LGB people -- for example, that marriage or relationships with someone of a different gender, or that having children, are incompatible with being LGB -- can pose substantial problems for the 'credibility' of bisexual claimants' cases (Klesse 2021, 119). Berg and Millbank (2009) also point to the problems posed by dominant theories of sexual identity which frame the development of sexual identity as linear -- a conceptualization which is not only Western- and ando-centric, but also is particularly inaccurate for explaining the lives and experiences of bisexuals both materially and conceptually (207). Berg and Millbank's (2009) discussion of how LGB asylum applicants are constrained by stereotypes in constructing their personal narratives in the asylum process further indicates how bisexuals seeking asylum may face obstacles in being granted recognition: Because "the power dynamics of refugee determination procedures dictate that the construction of the applicant's life story cannot challenge foundational tenets of the decision-maker's understandings of the world," the aforementioned dominant stereotypes about LGB lives, and especially bisexuality, have the ability to play a significant role in asylum decisions (197).

Klesse (2021) also discusses the disproportionate emphasis in the discourse of asylum jurisdictions on the concept of *visibility*, noting that this can be particularly problematic for bisexuals because "there is a lack of a recognizable 'bisexual culture' in most countries" (119). The importance placed on visibility -- being 'out' and 'recognizably' non-heterosexual -- is an important theme explored by Deniz Akin (2017), though she does not mention bisexuals specifically. Akin (2017) discusses the ways in

which queer asylum seekers in Norway strategically “translate” their identities to construct narratives that make them more ‘recognizable’ or ‘readable’ to the host culture, though these narratives may not match with their own internal self-identifications, or their own wishes about being publicly ‘out’ and visible (459). Rehaag (2009) also discusses the issue of visibility with regard to bisexual asylum seekers (420) pointing to Kenji Yoshino’s (2000) theory of the “epistemic contract of bisexual erasure,” which argues that bisexuality is invisibilized in legal systems precisely because it destabilizes essentialist ideas of sexuality, sex, and difference (351).

A significant purveyor of this erasure is language. Klesse (2021) makes note of how many LGB asylum seekers feel pressured to become involved with LGBT organizations in their host country in order to strengthen the credibility of their claims through the visibility of association with such groups; however, many of these organizations tend to implicitly exclude bisexuals (for example with names like “UK *Gay and Lesbian* Immigration Support Group” [emphasis added]) 120). According to Klesse (2021), this linguistic omission of ‘bisexual’ and the lack of substantive awareness of bisexual issues in LGBT organizations has the consequence of not only linguistic erasure, but also may result in bisexual asylum seekers feeling less comfortable seeking support from these groups (120). He also notes that many official asylum policy and guidance texts “generically [refer] to ‘gay and lesbian’ or ‘queer’ claims and claimants” in places where bisexuality should also ostensibly be included (Klesse 2021, 115). A Vrije Universiteit Amsterdam study authored by Sabine Jansen and Thomas Spijkerboer in 2011 also touches on the issue of language used by asylum authorities in the European Union, noting that in the Czech Republic specifically, there appears to be a tendency for the courts who take up asylum cases (particularly the Supreme Administrative Court, or SAC) to fail to make distinctions between LGBT sub-groups. Giving a particularly relevant example, they make note of instances of bisexual asylum cases in which the terms “homosexual” and “bisexual” were used interchangeably by the court (72).

As Jansen and Spijkerboer (2011) comment, this failure to properly distinguish between LGBT sub-groups arises in part from the greater visibility (and existence of stereotypes) surrounding gay men; this can be particularly relevant in the context of information used by asylum authorities in European Union member states to assess asylum cases. Jansen and Spijkerboer (2011) note that Country of Origin Information (COI) used to determine whether the situation in the applicant’s home country could lead to persecution tends to focus almost exclusively on gay men, either obscuring the specific

experiences of other LGBT sub-groups, or lumping them in together and assuming that there are no distinctions (71-72). This is significant for bisexuals and other sub-groups because it means that the lack of specific information on their situation can be interpreted as an indication that they “have no problems” (Jansen and Spijkerboer 2011, 71). As suggested by the previous example, the report finds that in the Czech Republic, this pattern often takes the form of lumping all gender and sexual minorities together (Jansen and Spijkerboer 2011, 71). Rehaag’s 2008 work also examines this pattern in his work focusing solely on bisexual asylum in Canada, noting that in the published bisexual cases he examined for his study, not a single one included the consideration of “documentary evidence specific to bisexuals” (77).

Another important theme explored by Jansen and Spijkerboer (2011) is the so-called “discretion requirement,” a kind of reasoning that posits that if an LGBT person has the ability to live a closeted life in their country of origin, they should do so, and that this ability would disqualify them from meeting the definition of a ‘persecuted’ person required to attain refugee status (33). While the “discretion requirement” has been applied to applicants across the LGBT spectrum, Jansen and Spijkerboer (2011) note, importantly, that bisexuals can be uniquely targeted by this idea because of the perception that they can simply ‘choose’ to live a heterosexual life (34). While such reasoning has been discouraged by the UNHCR, Jansen and Spijkerboer (2011) demonstrate that it persists in some cases (33-35). Wagner (2016) also discusses this belief, arguing that it relates to the societal “myth” of ‘bisexual privilege’ or ‘straight-passing privilege,’ or the idea that bisexuals do not experience oppression to the same extent as gay men and lesbians (216).

An ongoing theme throughout much of this literature is the emphasis in asylum systems on the credibility of an applicant’s *identity* rather than on the credibility of the *persecution*. Senthoran Raj’s 2017 work on queer asylum adjudication and emotion in Australia notes how this focus on ‘verifying’ identity negatively impacts bisexuals’ chances of being granted asylum because the non-fixity of bisexuality means that they are “either disbelieved, or.... their capacity for heterosexual relationships is seen to mitigate their need for protection” (458). In order to challenge this, Raj (2017) suggests turning towards a “Difference, Stigma, Shame and Harm” model which focuses on the persecution itself (460). Rehaag’s 2008 work also argues that decision makers seem particularly determined to disbelieve bisexual applicants’ identities, frequently invoking the stereotype of bisexuals being simply “confused” (78), or using past different-gender relationships to argue that applicants are not truly bisexual (79).

Rehaag (2008) is among the only of these scholars to examine the role of gender in bisexual asylum claims, suggesting that bisexual women may be less likely to have their identities believed than bisexual men (79). Klesse (2021) builds on this observation with a discussion of the disadvantages bisexual women may face in proving the credibility of their identities to asylum authorities, in particular because the idea of ‘visibility’ employed by these institutions hinges on “representations of a linear and coherent identity that stretches across the private/public divide” (119). Thus, gender roles that restrict women’s public expressions and freedoms, and their life narratives can make their identities less visible, less documented, and therefore potentially more open to contestation if asylum decision makers request ‘evidence’ of their identities (Klesse 2021, 119).

While these texts all provide rich context for the challenges bisexual asylum seekers, there is also a great deal missing from this data. For example, Klesse (2021) admits that there is not enough data to assess the role gender may play on the adjudication of bisexual claims (119) -- indeed, it is missing from this thesis as well. Also absent from this bank of knowledge is data on how this might play out in countries outside the Western European and Anglophone countries that typically receive large numbers of asylum applications. The Czech Republic, for example, does not appear in these texts, save for occasional mentions in Jansen and Spijkerboer’s (2011) report (43, 47, 49), and a note on the use of phallometry in Kleese’s work (2021, 119). The purpose of this thesis is to find some of these missing pieces using these scholars’ work, but keeping in mind that these trends may not necessarily translate to the Czech context.

4. Methodology and theoretical framework

The methods available for this research were notably more limited than those of the theorists mentioned in the Literature Review. In this section, I outline the theoretical framework of this thesis, the methods used, the limitations that I faced, and my positionality as the author and researcher.

4.1 Theoretical framework: critical and feminist theories of migration and asylum

The theoretical framework employed in this thesis stems from the constructivist paradigm and the assumption that gender and sexual orientation are related (Stein 2004, 255), socially constructed systems of categorization which structure ‘norms’ and social power dynamics (Katz 1995, 349). In this thesis, I follow critical and feminist theories of migration and asylum in my investigation of bisexuality in the Czech asylum and migration system, focusing on the ways in which the state (and in the case of the United Nations and the European Union, the supra-state) and other relevant social actors construct narratives and ‘truths’ of migration and critically examining these as constructions that are influenced by a web of socio-political factors. For example, I draw on the work of Didier Fassin, Carolina Kobelinsky and Toby Matthews (2012) and their theories of “suspicion” in the realm of asylum, which suggest that geopolitical changes and the institutionalization of migration have caused “changes in the moral economy of asylum and a shift from trust to suspicion” in European countries (444).

Additionally, I engage with Fiorenza Picozza’s (2017) work on the construction of categories by European asylum systems, and how language works to create labels and “establish an order in the life of the other, producing the illusion that their essence is immediately accessible, visible, and recognizable” (233). I also draw from Maïté Maskens’ (2018) theories on state perceptions and constructions of, and interventions into, ‘acceptable’ intimacies of migrants. Maskens (2018) shows how migrants’ (in the case of her work, those seeking marriage to Belgian citizens) narratives of their intimate relationships are variously interpreted by authorities in subjective ways that are shaped by stereotypes, “administrative suspicion” (75) and a lack of guidance from above (79).

Kenji Yoshino’s (2000) “epistemic contract of bisexual erasure” is an important frame for this thesis, as Yoshino theorizes how and why bisexuality is invisible in legal structures. In particular, I engage with Yoshino’s (2000) theorization of bisexuality as a destabilizing concept for the essentialist construction of mutually exclusive homo- and heterosexuality, which Yoshino argues creates attitudes of suspicion and anxiety towards bisexuality, and then leads to the erasure of bisexuality (362). Additionally, I draw on other

theorists of asylum -- both of whom have built on Yoshino's text -- who place bisexuality and its destabilizing potential at the center of their work -- namely Sean Rehaag (2008, 2009) and Christian Klesse (2021). In particular, I follow Klesse's (2021) observations on the linguistic erasure of bisexuality (120) by paying special attention to the language used in my data. I also draw on both scholars' theoretical problematizations of the normative concept of 'visibility' and recognizability of sexuality, and how it relates to 'credibility' in the realm of LGB asylum adjudication (Rehaag 2009, 424; Klesse 2021, 119).

4.2 Methods

The methods used for the research contained in this thesis consisted of qualitative content analysis of selected policy, governmental and court documents and open-ended interviews with experts in relevant fields. Data from the selected documents and the interview transcripts was coded using an 'open coding' method (Corbin and Strauss, 1990, 12) to identify main patterns. These codes were then reduced to a set of main interpretive coding categories in order to analyze the collective set of data. Following Corbin and Strauss's work on Grounded Theory (1990, 6-7), this approach to coding was chosen because of the varying kinds of data ('guidelines,' legally binding policies, court decisions, interviews) and because the purpose of this research, as an exploratory project, is to draw theory from data in order to provide a 'map' of bisexuality in the Czech asylum system. The coding categories are as follows:

1) language and categorization

- This category refers to the language and terminology used to describe 'LGB(T)' and/or bisexual asylum seekers, as well as other categories (i.e. those not explicitly specified as related to 'sexual orientation') into which bisexual asylum seekers are, or ostensibly could be, placed

2) credibility and visibility, further subcategorized into

a) immutability and sexological discourse,

- This includes given definitions/concepts of sexual orientation and groups present in the data, specifically the way in which

they reference essentialist concepts of sexuality, and the ways in which this can be related to sexology

b) visibility,

- This category refers to references to ‘visible,’ recognizable and public sexuality as it relates to asylum seekers’ perceived credibility

c) suspicion,

- This category includes references to ‘suspicion’ within the asylum system

d) ‘passing’ and ‘discretion reasoning’

- This category refers to references to ‘passing’ as heterosexual and the concept of ‘discretion reasoning’ explored by Jansen and Spijkerboer (2011, 34)

3) Policy and practice, further subcategorized into

a) Country of Origin Information (COI)

- This category refers to issues related to the production and use of COI

b) Interviews and training

- Likewise, this category refers to issues related to interviews and training for asylum authorities

c) Institutional inconsistencies

- This category makes note of the varying practices between different institutional levels involved in the asylum procedure

d) Absence

- This final category refers to places where something is missing: data, transparency, or bisexuality itself

The combination of content analysis and interviews was chosen in order to provide a more saturated map of bisexuality in the Czech asylum system, and in order to make more holistic ‘comparisons’ between the different kinds of data in order to map patterns and (in)consistencies (Corbin and Strauss, 1990, 9).

4.2.1 Empirical part: content analysis

Because asylum not only involves national, but also regional and international governance, I selected documents from three different levels: one document from the United Nations High Commissioner for Refugees (UNHCR), four from the European Union, and five from the Czech national level. The complexity of asylum, as both an international and national legal process, means that there is indeed a larger volume of texts that would be relevant for the exploration of the research question. The texts examined for this research were selected to exemplify approaches to bisexual asylum on these three levels, and also because of their importance to the procedure – several of them are foundational law, for example, which provide legal basis for asylum procedures. Others are ‘guidelines’ on researching and assessing LGB asylum cases, and can therefore illustrate how the procedure plays out in practice (in theory). Three of the documents from the Czech national level are court decisions, which serve as concrete examples of how bisexual asylum seekers may be assessed in the system. All texts were accessed through online platforms.

The UN and EU documents were all analyzed in their original English form; the Czech *Act on Asylum* is also available from the Ministry of Interior in an official English translation. The last four documents from the Czech national level are available only in Czech, and were analyzed in Czech (with some assistance from translation tools). For these documents, I include the original iteration of all quoted text in addition to my own translation, and I avoid detailed linguistic analysis as my level of Czech does not allow me to accurately to engage in this level of analysis.

4.2.2 Expert interviews

In addition to analysis of these documents, I also conducted four interviews with experts in relevant fields: three with lawyers, and one with a member of the government's Committee on Sexual Minorities. As these are expert interviews and are not meant to be representative, a typical 'sampling' technique was not used; rather, I reached out to experts whom I thought would have some knowledge on the topic of bisexual asylum in the Czech Republic. In seeking informants, I reached out to twenty-one contacts, including lawyers, social workers and directors of NGOs which work with asylum seekers, refugees and migrants in the Czech Republic. I also contacted migration law professors and scholars working in migration-oriented academic institutions, including universities and consortia, and posted inquiries in relevant Facebook groups. In total, eleven inquiries were answered. It is worth noting that of those who responded and declined to participate in the interview, six indicated that they had no knowledge of the issue of bisexual asylum seekers and/or that they had no knowledge of LGBT asylum issues at all. This can be taken, at the very least, as an indication of the gaps in knowledge and action surrounding LGBT asylum in the Czech Republic in general. Interviews with asylum seekers or recognized refugees are not included for practical reasons (as it was not possible for me to connect with asylum seekers or refugees in the Czech Republic), and because the focus of this research is the asylum *system* itself. These interviews provide personal perspectives and experiences which complement, complicate, and sometimes contradict what is said in the documents analyzed for the content analysis part of the research.

The interviews themselves were unstructured and between 30 and 90 minutes in length. Before each interview, I prepared a set of questions based on the expertise and background of the interviewee, but also allowed the conversation to flow naturally based on the interviewees' comments. As such, each interviewee was not asked exactly the same questions, though the same general topics were covered. Again, this is because the purpose of these interviews was not to provide a representative 'sampling' of perspectives from experts working with asylum, but to saturate the data with their personal expert experiences. All interviews were conducted via online video call platforms, and the audio of each interview was recorded with the interviewees' consent. The interviews were then

transcribed in preparation for analysis, which employed the coding methods described above.

4.3 Ethical and COVID-19 considerations & limitations

The entirety of the preparation work, research, analysis and writing of this thesis took place in the midst of the global Covid-19 pandemic. Beyond the psychological impact of this on the author and all others involved, this also resulted in a number of practical limitations for the research. All interviews were conducted remotely via video call platforms due to pandemic restrictions and safety considerations, and all were impacted by technical difficulties in some way. Interviewees were all sent Informed Consent forms prepared by the advisor of this thesis and myself; none were returned or signed, but all interviewees gave verbal consent to having the conversations recorded, and used solely by me, and solely for the purpose of this thesis. All four Experts were also fully informed about the reason for the interviews and the research. I have anonymized all names and identifying information of the interviewees and per the Informed Consent form and the verbal consent agreed upon with the interviewees, the interviewees' identities will remain anonymous, and the recordings and transcripts of the conversations have not been shared with anyone besides the advisor of this thesis.

Beyond limitations resulting from the Covid-19 pandemic, this research was also restricted in part by language barriers, in particular in the context of policy and governmental documents from the Czech Republic. While my Czech is adequate for basic comprehension (for example of the aforementioned Czech documents included in the Content Analysis part of the research), I am limited when it comes to reading long, complicated legal language in Czech, or searching for sources in Czech. This means that there may be more data on this topic in Czech than I was able to access. This research was also limited by a lack of transparency by the relevant governmental bodies (particularly the Czech Ministry of Interior) regarding their practices and publicly accessible statistical data. The resources available to me for this research were also limited by the fact that this is a Masters thesis for which I did not have funding, and by the practical reality of having had to work at my paying job full-time throughout the duration of the research and writing process. Lastly, the data produced in this research is limited in that it does not include first-hand perspectives or lived experiences of asylum seekers or refugees themselves. This is in

part due to a lack of access to contacts for bisexual or other asylum seekers/refugees in the Czech Republic, and in part because the ethical and practical considerations necessary for interviewing people who have been through the asylum system is beyond the boundaries of my resources. The experience of going through the asylum system may be a sensitive topic for some, especially if intimate topics of sexuality are linked to that process, and many may be traumatized in some way. I do not, therefore, seek to speak for bisexual asylum seekers or refugees, and the focus of my research is not them, but the *system* which they must navigate.

4.4 Positionality of the author/researcher

My positionality as the author of this text has had an inevitable influence on the decisions, methods, theories, assumptions, and even biases contained in this thesis and the process of its creation. Though I have never experienced violence amounting to persecution, and though I have no personal means through which to image the experience of being an asylum seeker, the topic of this thesis is personal to me as someone who is both bisexual and a migrant in the Czech Republic. I have experienced firsthand what it is like to be erased and dismissed as a bisexual woman, and I have experienced the hostility and bureaucratic incomprehensibility of the Czech immigration system.

Nonetheless, I belong to a privileged group of migrants in the Czech Republic as a white, sometimes ‘Czech-passing’ citizen of the United States. This position does not allow me to understand the experience of seeking asylum; however, as previously mentioned, I do not seek to represent the perspectives of asylum seekers and refugees themselves in this research, but focus rather on the asylum system. In this sense, I believe my positionality has been an advantage, because as a migrant in the Czech Republic I have some understanding of the administrative complexity of migration processes, and the suspicion and hostility with which migrants -- including myself -- are sometimes treated by the authorities. As a bisexual person, it is also easy for me to pinpoint when, where and how my ‘identity’ or existence are being constructed, dismissed or invisibilized within discursive, policy and interpersonal realms. This may, of course, raise the question of whether I am biased in favor of bisexual perspectives or narratives. While I have attempted

to take a holistic and balanced approach to this research, I do not claim to be ‘neutral’ and am aware that biases I have as a bisexual person have seeped into the my methods, analysis, and conclusions I have drawn from them.

5. Data

In this section, I present the data upon which this research is based, beginning with descriptions of the documents utilized for the Content Analysis section, followed by summaries of the four Expert Interviews I conducted.

5.1 Documents

As demonstrated by the myriad of issues laid out in the Literature Review, bisexuality can be constructed in the realm of asylum through many avenues: through cultural stereotypes and language; through NGOs, lawyers, asylum seekers themselves, and asylum authorities. While policy and other governmental documents are not necessarily indicative of the reality of the Czech asylum system, they are a foundational element of understanding how certain concepts are structured. They can also be used to map connections or contradictions between policy and the experiences expressed in the four Expert Interviews that follow. As feminist methodological theory notes, documents like these both shape and reflect cultural trends, beliefs and norms (Reinharz, 1992, 151).

5.1.1 United Nations High Commissioner for Refugees (UNHCR)

UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

In 2012, the United Nations High Commissioner for Refugees (UNHCR) released a set of guidelines for assessing asylum claims based on sexual orientation or gender identity which are “intended to provide legal interpretive guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR staff carrying out refugee status determination under its mandate” (UNHCR, 2012, 1). This document is not

legally binding, but rather serves as a foundational guide upon which asylum authorities in Member States should conduct asylum proceedings. This document, hereafter referred to as the ‘UNHCR Guidelines,’ provides an overview of some of the problems LGBT people may face around the world that would lead them to seek asylum (UNHCR, 2012, paras. 1-3), and outlines some of the key issues and considerations asylum authorities should keep in mind when assessing LGBT cases (paras. 3, 4). Importantly, the UNHCR Guidelines also establish that though persecution based on sexual orientation is not mentioned in the Refugee Convention, it should be considered a rightful ground to seek asylum (UNHCR, 2012, paras. 6, 7). Because the Czech Republic is a UN Member State, this context is important for understanding how Czech policies and practices relate to the supranational framework of asylum.

5.1.2 European Union (EU)

As a member of the European Union, the Czech Republic is bound by certain EU policies, and should ostensibly also follow additional non-binding guidelines. The relevant documents analyzed for this research include the Asylum Qualification Directive, the European Asylum Support Office’s (EASO) guide to “Researching the situation of lesbian, gay and bisexual persons (LGB) in countries of origin,” the *New Pact on Migration and Asylum* and the *LGBTIQ Equality Strategy 2020-2025*.

Asylum Qualification Directive - 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)

The European Union Asylum Qualification Directive adopted in 2011 is a binding document which instructs Member States on determining asylum seekers’ qualification for refugee status. The document, hereafter referred to as the ‘EU Qualification Directive’ or ‘Qualification Directive’ lays out conditions asylum seekers should meet in order to be eligible for asylum (European Union 2011, para. 12), parameters for defining and

interpreting certain concepts contained in the Refugee Convention and other relevant international law documents (such as ‘persecution’) (Art. 4), and outlines some of the obligations of Member States towards asylum seekers and refugees (Arts. 23-27). The EU Qualification Directive does not utilize the same ‘LGBT’ terminology found in the UNHCR Guidelines, but it does stipulate that ‘sexual orientation’ should be considered when interpreting the Refugee Convention concept of ‘particular social groups’ (Art. 10). The Czech Republic, as an EU Member State, is legally bound by this document in its handling of asylum cases.

European Asylum Support Office (EASO) - “Researching the situation of lesbian, gay and bisexual persons (LGB) in countries of origin”

In 2015, the European Asylum Support Office (EASO) published a guide for asylum caseworkers and researchers in EU Member States on how to approach Country of Origin Information (COI) research for LGB (lesbian, gay and bisexual) cases. This is not a binding document for European Union member states, but is intended as a methodological guide for conducting research on the situation of LGB people in countries of origin, which is an important element of the asylum procedure and helps shape decision makers’ assessment of whether applicants are credible and qualified for international protection. This document, hereafter referred to as the ‘EASO research guide’ provides guidance on sources of information that can be used in conducting research (EASO, 2015, 24), how research reports should be framed (20), an overview of issues that may make it difficult for researchers to access adequate information, and suggestions for dealing with these issues (37).

New Pact on Migration and Asylum 2020 - *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM/2020/609 final*

The 2020 *New Pact on Migration and Asylum* lays out a set of proposed reforms to the Common European Asylum System (CEAS), focusing primarily on procedural issues (European Union, 2020, para 2.1), coordination and “solidarity” between member states (para. 2.2), and border management and strengthening (para. 4). The concepts of ‘LGBT’ or ‘sexual orientation’ are not present in this document, but it is included as an example of some of the most recent EU discourse and policy on asylum.

LGBTIQ Equality Strategy 2020-2025 - *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM/2020/698 final*

The final EU document analyzed for this research is the *LGBTIQ Equality Strategy 2020-2025*, hereafter referred to as the ‘Equality Strategy.’ This document establishes commitments to LGBTIQ rights in the EU “in order to move towards a Union of Equality” (European Union, 2020, 5). The *Equality Strategy* covers a range of topics, from economic (9) and housing (4) inequality to discrimination (6) and healthcare issues (10). LGBTIQ asylum issues are also mentioned in this document as important points of consideration for the EU (11-12).

5.1.3 Czech Republic

While the Czech Republic is bound by UN directives like the Refugee Convention and EU legislation like the Qualification Directive, it also sets its own national asylum

policy and has its own set of practices. The final set of documents analyzed for this research include the Czech *Act on Asylum*, a document from the Czech government's Committee on Sexual Minorities, and three Supreme Administrative Court case decisions.

Act on Asylum (Zákon o azylu) 325/1999 Coll. - Ministry of Interior of the Czech Republic

The *Act on Asylum (Zákon o azylu)*, signed into law on 11 November 1999 and most recently amended in 2015, is the Czech Republic's foundational national law on asylum. The *Act on Asylum* mirrors the language of the Refugee Convention in some ways, for example in stating that people may be granted asylum based on "legitimate fear of being persecuted on the grounds of race, gender, religion, nationality, belonging to a particular social group" (Czech Republic, 1999/2015, sec. 12(b)), but also reflects the Czech Republic's own national agenda and legislative framework, laying out requirements for being granted asylum, procedural and administrative steps, and rights and obligations of both the Czech state and of asylum seekers and recognized refugees.

"Topics for the activities of the Committee on Sexual Minorities" (*Témata pro činnost Výboru pro sexuální menšiny*) - Government Committee on Sexual Minorities (*Výboru pro sexuální menšiny*)

The Czech government's Committee on Sexual Minorities is part of the Government Council on Council for Human Rights (*Rady vlády ČR pro lidská práva*) and acts as an advisory body to the government, making both legislative and non-legislative recommendations. According to the government website, the members of this committee include, for example, academics, sexologists, representatives of local LGBT NGOs, and members of other governmental bodies, including the Ministry of the Interior (*Vláda české republiky*, 2021). This document outlining the Committee's activities contains a number of topics, including LGBT asylum issues. Because this appears to be the only advisory body to the government that focuses on LGBT issues, the ways in which it employs concepts of sexuality in its activities has, in theory, some ability to impact relevant legislation. This

document is available from the Committee's page on the government website but no date of publication is available.

8 Azs 323 / 2019-76 - Supreme Administrative Court of the Czech Republic

The final three documents included in the Content Analysis part of this research are published decisions from the Supreme Administrative Court (SAC). The first decision was published on 16 July, 2020 and was filed by a bisexual man from Iran who had previously been granted asylum in the Czech Republic on the grounds of persecution due to sexual orientation, but was then set to be deported due to "serious criminal activity" (*závažné trestné činnosti*), which he then challenged at a regional court in Ústí nad Labem (Supreme Administrative Court of the Czech Republic, 2020, para. 7). The regional court ruled that the deportation order was justified, and that the claimant, as a bisexual man, was not threatened by the criminalization of homosexuality in Iran and therefore could be safely returned to his country origin). Supreme Administrative Court of the Czech Republic, 2020, para. 4). The claimant appealed this decision at the SAC, which ultimately ruled in his favor, repealing the regional court's approval of the deportation order and returning the case to the Ministry of Interior for further processing (para. 17). The current status of this applicant's case is unknown.

5 Azs 419/2019 - 49 - Supreme Administrative Court of the Czech Republic

The second decision, published on 8 February 2021, involves a bisexual Uzbek man who resided in the Czech Republic 'illegally' for several months before being detained and receiving deportation orders, and then applying for asylum. He fought against the deportation orders from the Ministry of Interior in a regional court in Plzeň, arguing additionally that he should be considered a 'vulnerable person' and should not have been detained. The regional court dismissed his claim and ruled that the deportation order was justified; the claimant then then appealed against this decision at the Supreme Administrative Court (Supreme Administrative Court of the Czech Republic 2021, paras.

1-7). This case involved a number of complex administrative issues, but once again the SAC ruled in the applicant's favor, stating that he should not be deported and had grounds to apply for asylum; the case was not returned to the Ministry of Interior for further proceedings in this instance (paras. 20, 30, 43). The current status of this applicant's case is unknown.

4 Azs 35/2019 - 69 - Supreme Administrative Court of the Czech Republic

The final decision, published on 28 May 2019, is a case brought to the Supreme Administrative Court by a man from Botswana who originally came to the Czech Republic to study and had two children with his Czech girlfriend. When the relationship ended, so did the validity of his residence permit, and he then applied for asylum claiming that he feared persecution and violence due to his bisexuality if he were required to return to Botswana (Supreme Administrative Court of the Czech Republic 2019, para. 34). The Ministry of Interior decided that his claim for asylum was unfounded in part because the applicant could not 'prove' his bisexuality, a decision which the regional court in Prague upheld. The asylum seeker then appealed this decision in the SAC (paras. 1-3). The SAC annulled the regional court's decision, and did not return the case to the Ministry; the current status of the case is unclear (para. 45).

5.2 Interviews

In addition to analyzing the documents discussed above, I also conducted four open-ended interviews with experts working in relevant fields: three with lawyers, and one with a member of the government Committee on Sexual Minorities. Due to pandemic restrictions, all interviews were conducted via online video call platforms. The interviewees were all sent informed consent forms prepared by the author and academic advisor of this thesis; none of the consent forms were signed, but all four interviewees gave a verbal agreement of the terms, which state that they consented to the audio of the interview being recorded and that these recordings and the full transcriptions will be only

used by the author. All names and personal details of those interviewed have been removed and anonymized, and the author and advisor of this thesis are the only people who have had access to the names and personal details of the interviewees. The interviews are presented here in the order in which they were conducted.

5.2.1 Expert 1: Lawyer, head of legal department at NGO

The first interview was with an asylum lawyer who is currently the head of the legal department at a Prague-based NGO that offers assistance to asylum seekers and refugees. This NGO is well-established, and the interviewee demonstrated throughout our conversation that she has had relatively extensive experience representing and advising asylum seekers, including many LGBT and bisexual persons. She cited specific experiences with bisexual cases, describing in detail some of the primary issues she sees in her daily work in regard to MOI practices. She also identified relevant patterns regarding COI, interviews, and her own organization's practices and position within the system.

5.2.2 Expert 2: Academic, activist, member of Committee on Sexual Minorities

As briefly demonstrated in the Documents section of this chapter, the Czech government's Committee on Sexual Minorities includes asylum issues in the topics they claim to address in their activities. I spoke with a member of the Committee about its involvement with this issue, and also about the way that the Committee works with the concept of bisexuality generally, and how this might impact the recommendations it makes to the government. The member I spoke with has been with the Committee for five years, and has extensive experience with LGBT activism and NGOs, and as an academic studying sexuality and media in the Czech context. While this interviewee does not have direct experience or involvement in the asylum procedure itself, as a scholar of sexuality, an activist and a member of an important advisory board to the Czech government, he was

able to provide a great deal of context, as well as reveal absences and gaps in knowledge and consideration of bisexuality in the realms in which he is involved.

5.2.3 Expert 3: Lawyer, former Assistant Judge for the Supreme Administrative Court

Expert 3 is a lawyer with a background in both Czech constitutional law and asylum law. He has been the Czech Republic's national expert or rapporteur for a number of migration and asylum reports and studies concerning European countries, including on LGBT topics, and is thus well-versed in the foundational issues surrounding LGBT asylum. He is an expert on non-state agents of persecution, and has also worked for the Supreme Administrative Court of the Czech Republic, including with some of the judges involved in the SAC cases discussed previously. He has not worked directly with asylum law in the past couple years, but nonetheless provided detailed context of not only specific issues bisexual asylum seekers might face, but also systemic issues within the web of EU and Czech asylum jurisprudence.

5.2.4 Expert 4: Lawyer, Project Coordinator for NGO

The fourth and final expert interviewed for this thesis is a lawyer by training, though she has not been practicing as a lawyer for several years. She is currently the Project Coordinator for one of the main Prague-based migration NGOs and has worked on projects involving gender and migration, and has also worked closely with a small number of LGBT asylum seekers. While her experiences did not allow her to provide concrete and up-to-date information on the situation of bisexuality in the Czech asylum system, her insights provide further context and help map what is missing from the authorities' approach and from the knowledge accessible to (at least some) NGOs working in the field.

6. Data analysis

6.1 Language and categorization of bisexuality in asylum

I begin my analysis of the data at the level of language, noting the terminology used in the documents and how it constructs or erases bisexuality, as well as other linguistic issues like interpretation and the non-universality of ‘LGBT’ terminology. I also explore some of the processes of categorization involved in the asylum procedure, examining how bisexuality may (or may not) fit into these frameworks.

6.1.1 Language: terminology, distinctions, interpretations

As Klesse (2021) demonstrates, language plays an important role in constructing the presence or absence of bisexuality in the realm of asylum. For example, many advocacy organizations that cater to ‘LGBT’ asylum seekers seem to exclude bisexuality in their language (i.e. “UK *Gay and Lesbian* Immigration Support Group” [emphasis added]) (Klesse 2021, 120). Additionally, many of the official texts which guide asylum policy and practice use the phrase ‘gay and lesbian’ as a synonym for all non-heterosexual (or all ‘LGBT’) people, implicitly erasing bisexuality as a specific and consequential term (Klesse 2021, 115). While my research did not include ‘LGBT’ asylum advocacy organizations -- in part because it appears that no such organization exists in the Czech Republic -- I did find instances of linguistic erasure of bisexuality in my data.

In the UNHCR *Guidelines on International Protection No. 9*, the 2012 publication on assessing claims based on sexual orientation, there is one instance of an apparent omission of the word “bisexual” in a statement that ostensibly could apply to bisexuals in addition to gay men and lesbians -- “Anti-LGBTI statements could be part of a State’s official rhetoric, for example.... Claiming that *gay men and lesbians* are not considered part of the national identity” (emphasis added) (UNHCR 2012, para. 50) -- but the term is

otherwise generally included. Likewise, the European Asylum Support Office's (2015) guide on conducting Country of Origin (COI) research for LGB applicants contains a similar pattern with phrases such as: "information often concerns gay men to the exclusion of lesbians *and other LGBT persons*" (emphasis added) (31) and "laws specifically concerning gay men and lesbians" (18). However, a later section the European Asylum Support Office (EASO) guide also encourages researchers to pay close attention to the use of terminology, noting that if the COI contained in a given report concerns only gay men, for example, researchers should be explicit about this specificity and refrain from using umbrella terms like 'LGBT' (EASO 2015, 20). Thus, we see in this particular document both an awareness of how different 'LGBT' sub-groups may have different experiences, and a subtle marginalization of bisexuality. Expert 1 (lawyer, head of legal department at NGO) noted that while her organization generally takes care to use specific terms in individual cases, they also use 'LGBT' broadly; during our conversation, she reflected on how in her daily work, it is not always easy to consciously pay close attention to this kind of terminology (interview with the author, 25 March 2021). In this statement, we see that specific terms like 'bisexual' may be obscured not only asylum authorities' practice, but also in the realm of NGOs and advocates.

Likewise, the degree to which the specificity of different subgroups under the 'LGBTIQ' umbrella will be addressed in the realm of asylum under the *Equality Strategy* is unclear. The *Equality Strategy* (European Union 2020) does encourage the use of EU funds "to improve the socio-economic position of the most marginalised LGBTIQ people and develop initiatives focusing on specific groups, such as the gay, lesbian, bisexual, trans and intersex subgroups" (para. 1.2). While this indicates awareness that attention to the potentially differing experiences of various subgroups is important, this approach is not mentioned in the section of the document on asylum. The use of the acronym "LGBTIQ" should ostensibly indicate that all of the letters will be taken into consideration, but as Yoshino (2000) demonstrates, the "B" can easily disappear within such discourse (358). Without more specific illustrations of how the *Equality Strategy* will play out in practice and without explicit guidance on combating the erasure of bisexuality, it seems plausible that bisexuality may not be fully addressed in its own right in some cases.

In a similar vein, bisexuality may also be erased when bisexual asylum seekers are 'misabeled' by the authorities. The UNHCR guidelines (UNHCR 2012) comment that "bisexuals are often categorized in the adjudication of refugee claims as gay, lesbian or heterosexual" (para. 11). Expert 4 (lawyer, Project Coordinator for NGO) noted that she

believes bisexuality is not sufficiently ‘recognized’ by the Czech asylum authorities, and that they may sometimes use the word ‘homosexual’ when referring to bisexual applicants (interview with the author, 12 May 2021). Expert 3 (lawyer, former Assistant Judge for the Supreme Administrative Court) noted a similar pattern from his previous experience (interview with the author, 29 April 2021). This would be in line with Jansen and Spijkerboer’s observation in their 2011 report that, for example, Supreme Administrative Court (SAC) decisions sometimes use ‘homosexual’ and ‘bisexual’ interchangeably (72). Interestingly, this does not seem to be the case in the three SAC decisions I analyzed for this research; all three case decisions use the term ‘bisexual’ when referring to the applicants (Supreme Administrative Court of the Czech Republic, 2019, 2020, 2021). Additionally, Expert 1 noted that based on her experiences representing asylum seekers (which are more recent than those of Experts 3 and 4) she finds that the authorities generally do distinguish between ‘gay’ and ‘bisexual,’ and “the issue [is] not the language as much as the conclusion that the Ministry drew based upon the story” (interview with the author, 25 March 2021).

Despite these examples of subtle erasures, bisexuality is not entirely invisible in many of the other documents analyzed. The UNHCR guidelines, EASO COI research guidelines, and EU *LGBTIQ Equality Strategy 2020-2025* all use the word ‘bisexual’ with some frequency; the former two also provide definitions of bisexuality and discuss bisexual-specific issues, which will be discussed subsequently. However, it is also important to keep in mind Rehaag’s (2009) observation that terminology like ‘LGBT’ and ‘bisexual’ are not universally shared or understood across languages and cultures, and it cannot be assumed that all people seeking asylum on the grounds of persecution based on ‘sexual orientation’ will self-identify with these terms (416). As Expert 2 (academic, member of Committee on Sexual Minorities) points out, language, translation and interpretation can play a significant role in how the interview portion of the procedure plays out. He notes that there is always

The question of how the [interpreter] can really translate the identity and what the people are feeling, and if the translator actually has these kind of language competencies to talk about sexuality and the various aspects of it.... If for example in the country of origin or the language of origin there actually is the terminology for expressing anything of this nature (interview with the author, 26 April 2021).

Keeping this in mind, we can ask whether ‘bisexuality’ could either get lost in translation if the asylum seeker does not have a term that is understandable to authorities in the Czech context as ‘bisexual,’ or could get lost in interpretation if the asylum authorities lack the knowledge or will to conclude from an asylum seeker’s story of multi-gender attraction that they could be subjected to persecution based on their sexuality, even if they do not use the word ‘bisexual.’ The word ‘bisexual’ does exist in the Czech language, and the asylum seekers involved in the three SAC cases I examined seem to have used the word ‘bisexual’ to describe themselves, but it cannot be assumed that this would always be the case.

6.1.2 Categorization: particular social groups and vulnerable persons

As Fiorenza Picozza (2017) notes, contemporary European asylum systems are reliant on the categorization of migrants, and of asylum seekers specifically. These categories can serve to help determine who is ‘deserving’ of international protection or of certain rights afforded to some groups (or conversely, who is ‘undeserving’) (Picozza 2017, 233-235). She notes that these categories reflect not the lived realities of asylum seekers, but the “interests and perspective of the state” (Picozza 2017, 235). As Picozza (2017) states, “labels do not merely classify; they establish an order in the life of the other, producing the illusion that their essence is immediately accessible, visible, and recognizable” (233).

Many conceptualizations of sexuality also use categories to define and differentiate between different sexual groups. Jonathan Katz (1995), for example, shows how the categories of homo- and heterosexuality have been constructed as oppositional concepts which cannot exist without the other (351). Bisexuality, as Kenji Yoshino (2000) argues, destabilizes this system of mutually exclusive categorization (362); and as Christian Klesse (2021) notes, the inability of bisexuality to fit into the neatly defined groups of either hetero- or homosexual can be problematic in contexts -- like asylum -- which rely upon such categorization (120).

While some of the texts I analyzed do use the word ‘bisexual,’ others do not, meaning that bisexual must be ‘categorized’ under other concepts if they are to be considered at all. The 2011 EU Qualification Directive does not use ‘LGBT’ terminology but rather uses the language of “sexual orientation” to describe one possible “common characteristic” that can constitute a “particular social group” (European Union 2011, Art.

10(d)). As previously mentioned, the concept of a “particular social group” that has been subjected to persecution and has grounds for seeking asylum is lifted from the Refugee Convention, and is the grounds upon which most ‘LGBT’ people seek asylum (Rehaag 2009, 417-418). The vagueness of this term, however, leaves a great deal open to interpretation. Rehaag (2009) demonstrates how the concept of ‘immutable’ sexuality -- often accompanied by the assumptions of the aforementioned hetero/homo system of sexuality -- is employed in many asylum jurisdictions to justify the asylum claims of gay and lesbian applicants (418-419). Berg and Millbank (2009) argue that bisexuals may have an especially difficult time ‘proving’ this kind of group membership (207). The Qualification Directive states that a particular social group can be identified when

— members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

— that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society (European Union 2011, Art. 10 (d)).

This reflects the UNHCR Guidelines (UNHCR 2012) in presenting two possibilities of what binds a “particular social group” together: either an immutable characteristic or some other quality that is fundamental to a person’s identity, while also adding the ‘perception of difference’ as a potential reason for persecution. Because the Qualification Directive (European Union 2011) explicitly states that a “common characteristic of sexual orientation” can constitute a group (Art. 10(d)), bisexuals should ostensibly be included under this definition; however, this phrase is relatively vague, and can be left open for interpretation.

Likewise, the Czech Republic’s *Act on Asylum* does not mention ‘LGBT’ people or even ‘sexual orientation’; it does acknowledge same-gender relationships, defining a “partner” as “a person who proves that he/she has entered into officially approved permanent union of two persons of the same sex” (Czech Republic 1999/2015, sec. 1(j)). This appears to be relevant only in terms of family reunification (i.e. reunification of a partner with someone who has been granted refugee status), and only if the partnership is “officially approved,” language which seems to exclude the possibility of reunification of

same-gender partners from countries which do not allow some kind of partnership registration. The *Act on Asylum* mirrors the Refugee Convention's inclusion of 'particular social groups' in its definition of who may be granted asylum (Czech Republic 1999/2015, sec. 12(b)). Assuming that the legally binding EU Qualification Directive is followed by the Czech authorities, sexual orientation should be included under this category. However, Expert 3 noted that he has frequently seen the Ministry of Interior questioning whether 'LGBT' sub-groups other than gay men are truly 'particular social groups' because they lack the same kind of visibility as gay men, and the Ministry can therefore argue that they "do not fall into any sort of cohesive group that would be facing persecution" (interview with the author, 29 April 2021). Klesse (2021, 120) and Berg and Millbank (2009, 213) observe precisely this pattern as well.

Indeed, SAC case 4 *Azs 35/2019 - 69* demonstrates that the concept of 'particular social groups' may be especially problematic for bisexual asylum seekers in the Czech Republic. In this case, the regional court and the Ministry of Interior denied the applicant's claim to membership in a particular social group because he did not provide adequate 'proof' of his bisexuality (that is, he did not provide proof that he had sexual experiences with *both* men and women) (Supreme Administrative Court of the Czech Republic 2019, para. 4). In this case, it seems that the rejection of his claim to group membership was not necessarily based on the idea that bisexuality itself does not qualify as a 'group' -- or at least was not presented this way -- but rather that the Ministry and regional court did not believe that the claimant was really bisexual.

Bisexuality may also be 'included' in these documents which do not use 'LGBT' terminology under the concept of 'vulnerable persons' who should be entitled to certain services and rights by the authorities. In the context of the Czech Republic's *Act on Asylum* (1999/2015), a 'vulnerable person' may be

an unaccompanied minor, a parent or family with a minor child or a parent or family with a minor child with a medical disability, a person over 65 years of age, a person with a medical disability or a serious illness, a pregnant woman, a victim of human trafficking or a person that has suffered torture or rape or been subjected to serious forms of mental, physical or sexual violence (para. 1(i))

While there is no part of this definition that directly implies that 'LGBT' people may be considered 'vulnerable' (beyond the potential overlap with one of the groups specifically

mentioned), Expert 4 notes that they are sometimes included in this definition in practice (interview with the author, 12 May 2021). For example, the EU *Equality Strategy* notes that ‘LGBT’ people should be considered ‘vulnerable’ in the context of the *New Pact on Migration and Asylum*, which itself makes no mention of sexual orientation or ‘LGBT’ groups (European Union 2020, para. 1.4).

Because ‘vulnerability’ is a subjective concept, the application of this term in the asylum system could leave open the question of how ‘vulnerability’ is defined, and who counts as vulnerable. Picozza (2017) demonstrates, for example, that the label ‘vulnerable’ is not always applied based on asylum seekers’ lived experiences and narratives, but rather imposed through “a specific politics of truth and authenticity” (240-241). Through this politics, an asylum seeker must then meet certain conditions -- set by the state -- in order to be considered ‘vulnerable.’ While the label of ‘vulnerability’ can be an objectifying term that may not always be welcomed by those to whom it is applied (Picozza 2017, 241), it also can afford certain rights and protections. Expert 4 notes that she finds it is inconsistently applied in the Czech context, and because it is sufficiently elaborated in the asylum policy, it is difficult to pinpoint exactly how the authorities interpret and work with this term (interview with the author, 12 May 2021). SAC case 5 *Azs 419/2019 - 49*, for example, shows that simply stating that one is an ‘LGBT’ person does not automatically grant one the status of ‘vulnerability’ in the Czech system; in this case, the applicant explicitly argued that he should be treated as a ‘vulnerable person’ due to his past traumatic experiences with police and community violence (Supreme Administrative Court of the Czech Republic 2021, para. 30). The Ministry of Interior claimed that he could not be considered vulnerable because he

did not state anything that could be considered a vulnerable person. The complainant is a healthy adult man and has not stated that he has been subjected to violence that would make him vulnerable (Supreme Administrative Court of the Czech Republic 2021, para. 17)

(*Stěžovatel neuvedl podle žalovaného nic, z čeho by bylo možné usuzovat, že je zranitelnou osobou. Stěžovatel je dospělým zdravým mužem a neuvedl, že by byl podroben násilí, které by z něho zranitelnou osobu činilo.*)

The claimant responded by referencing a UK report that classifies LGBT asylum seekers as ‘vulnerable’ (Supreme Administrative Court of the Czech Republic 2021, para. 18), and the SAC refuted the Ministry’s claim that the claimant had not stated any experience of violence, including in the decision the claimant’s detailed account of violent encounters with neighbors and police in Uzbekistan (para. 30). Though it is not clear whether the Ministry’s decision to claim that this man was not ‘vulnerable’ was based specifically on his bisexuality (or perhaps in conjunction with his gender, and his ‘health’), it is worth questioning whether his ‘vulnerability’ would be assessed differently if he were not a ‘healthy adult [bisexual] man.’ As Picozza (2017) notes, ‘vulnerability’ can be conceptualized by the state in varying ways which reflect cultural notions of ‘authentic’ suffering (240-241); apparently, in this case the regional court did not find a bisexual man with experiences of police violence to be sufficiently ‘vulnerable.’ The claimant in SAC case *8 Azs 323 / 2019-76* does not appear to have requested the label of ‘vulnerable person,’ but the SAC invokes this concept in its rebuttal of the regional court’s argument that the claimant, as a bisexual man, was not threatened by the criminalization of homosexuality in Iran (Supreme Administrative Court of the Czech Republic 2020, para. 10). Also implicitly invoking the concept of ‘particular social groups,’ the SAC stated that people with “non-heterosexual orientations” are persecuted in Iran, and “as such fall within certain vulnerable social situations” (Supreme Administrative Court of the Czech Republic 2020, para. 10).

([Rozhodnutím Ministerstva vnitra ze dne 30. 6. 2008, čj. OAM-704/LE-05-07-R3-2004, byl stěžovateli udělen azyl s odůvodněním, že v žádosti o mezinárodní ochranu uvedl, že je homosexuál, a v řízení bylo zjištěno, že] je bisexuální a jako takový spadá do určité ohrožené sociální skupiny, neboť v Íránu dochází k tvrdé perzekuci lidí s jinou sexuální orientací než heterosexuální, u nichž se tato jiná sexuální orientace zjistí.)

This position by the SAC also allows for “people with a non-heterosexual sexual orientation” to be categorized as a social group following the Qualification Directive (European Union 2011, Art. 10(d)), and also acknowledges the potential vulnerability of such groups.

6.2 Credibility, visible sexuality, authentic persecution in asylum

As demonstrated by Jansen and Spijkerboer (2011), *credibility* is a key issue in asylum adjudication, and can take on additional weight for ‘LGBT’ asylum seekers (71-72). Due in part to the culture of suspicion in asylum systems observed by Fassin, Kobelinsy and Matthews (2012), asylum seekers must provide ‘credible’ and ‘coherent’ narratives of their suffering to asylum authorities (444). For those applying on the grounds of persecution based on sexual orientation, the credibility assessment element of the asylum procedure can involve providing evidence not only of their persecution, but also of their sexuality. In this chapter I discuss patterns related to credibility which appear in my data, including the perception of the ‘credibility’ of bisexuality itself, the ways in which the perceived ‘credibility’ of bisexual asylum seekers may be linked to overarching constructions of sexuality and ideas about ‘visibility,’ and how the concept of ‘persecution’ is conceived in relation to bisexuality.

6.2.1 Immutability and sexology in asylum

As Rehaag (2009, 118) shows, the ‘particular social group’ concept used in ‘LGBT’ asylum adjudication is frequently invoked in conjunction with the idea that sexual orientations are, as the UNHCR Guidelines state, “innate and immutable characteristics” (UNHCR 2012, para. 47). This conceptualization can be problematic for bisexuals, who cannot so easily show that they fit into this essentialist framework -- how does one ‘prove’ that one is ‘innately’ bisexual? Bisexuality is, as Klesse (2021) notes, incompatible with hegemonic concepts of fixed and rigid sexual identities, and can therefore easily be called into question or misunderstood (118).

Immutability

Traces of this essentialist conceptualization of sexuality are present in some of the data used for this thesis. The UNHCR Guidelines (UNHCR 2012) acknowledge multi-gender attraction and bisexuality, yet also implicitly reflect certain normative and essentialist discourse that could limit understandings of bisexuality. The given definition of “sexual orientation” includes attraction to “more than one gender” (para. 8) but is also elaborated upon with the following:

Whether one’s sexual orientation is determined by, *inter alia*, genetic, hormonal developmental, social, and/or cultural influences (or a combination thereof), most people experience little or no sense of choice about their sexual orientation. While for most people sexual orientation or gender identity are determined at an early age, for others they may continue to evolve across a person’s lifetime (para. 9)

This statement reflects a preoccupation with ‘how’ sexual orientation is formed; as Rehaag (2009) argues, excessive focus on this question within the realm of LGBT asylum can allow for essentialist conceptualizations of sexuality which do not fully encompass bisexuality (418-419). However, this passage also acknowledges that sexuality is not necessarily fixed or linear, which, as Klesse (2021) notes, can leave some room for consideration of sexual narratives -- like those of bisexuality -- which do not fit into the rigid framework of immutability (115).

The definitions of LGBT sub-groups employed by the UNHCR Guidelines also acknowledge, to some extent, that sexuality can be fluid and cannot always be evaluated based on what is visible. The “lesbian” definition acknowledges that lesbians “may have had heterosexual relationships, often, but not necessarily, because of social pressures to marry and bear children” (UNHCR 2012, para. 10). Likewise, the definition for “gay men” also acknowledges potential for past different-gender relationships (UNHCR 2012, para. 10). “Bisexual” is defined as follows:

Bisexual describes an individual who is physically, romantically and/or emotionally attracted to both men and women. The term bisexuality tends to be interpreted and applied inconsistently, often with a too narrow understanding. Bisexuality does not have to involve attraction to both sexes at the same time, nor

does it have to involve equal attraction to or number of relationships with both sexes. Bisexuality is a unique identity, which requires an examination in its own right. In some countries persecution may be directed expressly at gay or lesbian conduct, but nevertheless encompass acts of individuals who identify as bisexual. Bisexuals often describe their sexual orientation as ‘fluid’ or ‘flexible’ (UNHCR 2012, para. 10).

This definition acknowledges common misunderstandings of bisexuality, and also notes that it should be taken into account as its own category, and not only in relation to gay and lesbian identities. The EASO research guide (EASO 2015) uses a similar definition, adding that “a bisexual identity does not necessarily equate to equal sexual attraction to both genders” (17). Following the last sentence of the UNHCR definition, however, readers are referred to paragraph 47 of the document, which states:

Sexual orientation and/or gender identity are considered as innate and immutable characteristics or as characteristics so fundamental to human dignity that the person should not be compelled to forsake them. Where the identity of the applicant is still evolving, they may describe their sexual orientation and/or gender identity as fluid or they may express confusion or uncertainty about their sexuality and/or identity. In both situations, these characteristics are in any event to be considered as fundamental to their evolving identity and rightly within the social group ground (UNHCR 2012, para. 47)

While this passage does indicate that applicants whose sexualities are “fluid” or “uncertain” should still be taken into consideration in the “particular social group” reasoning for granting asylum, it nonetheless allows room for the ‘immutability’ argument detailed by Rehaag (2009) as especially problematic for bisexuals (418-419). Furthermore, in this passage, “fluidity” is associated with sexual identities which are still “evolving,” and with “confusion.” This implies that legitimate sexual identity is a final and fixed location at which one must arrive, which, as Klesse (2021) points out, is “at odds” with bisexuality (118). In addition to this implication of a linear theory of sexual identity development, the word “confusion” also stands out as problematic, particularly keeping in mind the stereotypical assumption that bisexuals are ‘confused,’ an idea which Rehaag (2009) observes is very much present in the language surrounding bisexual asylum cases,

and is used to discredit bisexual asylum claims (77). Though this section does not explicitly mention bisexuals or any other LGBT sub-group, readers of this guide are directly referred from the definition of “bisexual” to this paragraph, and it is the only such reference in the document. Thus, bisexuality is here positioned as a phase of confusion, albeit one that the guidelines indicate is still worthy of consideration for asylum.

Sexology

As Rehaag (2009) demonstrates, ideas about ‘innate’ sexuality can be linked to scientific and medical paradigms which pathologize non-heterosexual identity (though he also notes that some ‘medical’ perspectives also view non-heterosexuality as ‘curable’ and therefore ‘mutable’) (418-419). This can have particular significance in asylum procedures because, as Jansen and Spijkerboer (2011) note, many asylum jurisdictions in Europe use, or have used, medical or psychiatric experts and examinations in order to ‘verify’ asylum seekers’ sexual identities (49). The Czech Republic’s use of phallometry is an especially striking example of this. Phallometry is, as previously described, a medical ‘examination’ in which the person being examined is shown pornographic material while an instrument attached to their genitals ‘measures’ their arousal (Jansen and Spijkerboer 2011, 52). This practice was criticized as an invasion of privacy and dehumanizing treatment by the UNHCR (2011) and the European Commission, and was suspended -- supposedly -- in 2009 (Jansen and Spijkerboer 2011, 49).

The use of this practice in the Czech Republic can be seen as a reflection of the country’s deep -- and somewhat unique -- history with sexology. Sexology, or the study of human sexuality, can be considered part of a medical paradigm of sexuality which has been long criticized for its focus on classifying, pathologizing and ‘diagnosing’ sexualities which differ from the ‘norm’ (McGann 2006). As Kateřina Lišková and Andrea Bělehradová (2019) demonstrate, sexology has been solidly established and institutionalized as far back as the 1920s, during the era of the first Czechoslovak republic; it remained an important field during the socialist years, and as they show, remains prominent in Czech institutional frameworks until today (336-337). Referring to the Czech Republic (or Czech lands) as the “cradle of sexology,” Expert 2 spoke at length about this (interview with the author, 26 April 2021), noting that sexology maintained a particularly strong position during the Czechoslovak socialist era, referring to Věra Sokolová’s (2014) observation that during this period, sexologists simultaneously helped to decriminalize

homosexuality and yet were nonetheless “purveyors of a heteronormative discourse” through their esteemed position as ‘experts’ trusted by the state (83). Expert 2 stated that he feels that Czech sexology is in some way “stuck” in this period, and he believes there to be a “very strong sexological discourse” that is held in high regard at both institutional and cultural levels in the Czech Republic (interview with the author, 26 April 2021). Importantly, he noted that bisexuality is not acknowledged or considered valid in the logic of Czech sexology; it is seen not as an identity but as a “stage during coming out” (interview with the author, 26 April 2021). Because of the high value with which sexology is regarded, he believes that bisexuality -- as a concept and as an identity -- is “problematic” in the Czech context (interview with the author, 26 April 2021).

Expert 3 also reflected on the Ministry of Interior’s use of phallometric testing on asylum seekers, noting that the first instance of this practice was, in fact, initiated by an asylum seeker’s lawyer, because she believed it would help her client’s credibility; according to Expert 3, the Ministry then decided to start applying this practice in a broader scale (interview with the author, 29 April 2021). Beyond the question of how a bisexual person might fare in a phallometric examination and how such a test could possibly be ‘accurate,’ this context is important because it suggests that though phallometric testing has been suspended, the underlying paradigm of sexuality with which the Czech authorities engage seems to have been influenced by a sexological discourse which values medical framings of sexuality which do not acknowledge bisexuality as ‘legitimate.’ Expert 2 explained that sexology became so important in Czech society in part because of a lack of a colonial history; while other European nations were preoccupied with the “disciplinization of colonial bodies,” in the Czech (and German-speaking) lands, the focus was on “the bodies of their own citizens” (interview with the author, 26 April 2021). While sexological ‘disciplinization’ is still applied to the bodies of Czech citizens, as Lišková and Bělehradová show (2019, 349), we see here that it has now also been applied, albeit briefly, to the bodies of ‘others’ as well.

6.2.2 Visibility and suspicion

Visibility

As Klesse (2021) notes, the concept of ‘visibility’ plays a significant role in ‘LGBT’ asylum decisions because ‘visibility,’ or recognizability, is often a prerequisite for the perceived ‘credibility’ of one’s sexuality and persecution (118-119). Jansen and Spijkerboer (2011) observe that decision makers may rely on stereotypes surrounding ‘coming out’ (57) or being publicly involved in ‘gay’ scenes, and authorities may expect LGBT applicants to display certain mannerisms, such as a “‘flamboyant’ or feminine demeanor in gay men, or ‘butch’ or masculine appearance in lesbian women” (48).

As we have already seen, Expert 3 noted that the Czech authorities sometimes question the legitimacy of a ‘social group’ that is not ‘visible,’ something also noted by Klesse (2021, 118-119). Expert 3 also recalled that interviewers sometimes expect applicants to be familiar with ‘LGBT’ organizations or a ‘gay scene’ in either their country of origin or asylum. For example, he pointed to a specific instance in which the authorities questioned an applicant about the exact address of a gay club in his city of origin, and asked him to find it on a map; when he was unable to do so, they concluded that his story and claimed homosexual identity were not credible (interview with the author, 29 April 2021). While the assumption that all LGBT people will necessarily associate with some kind of public organization or scene is problematic for all under that umbrella, it may also be worth questioning whether this assumption might impact bisexual people in a more pronounced way; studies from countries such as the United States show that bisexual people often feel unwelcome in ‘LGBT’ spaces (San Francisco Human Rights Commission: LGBT Advisory Committee 2011, 5) and while the same cannot automatically be assumed for other contexts, the question should be kept in mind.

Additionally, as Klesse (2021) points out, this kind of assumption can also have consequences for lesbian or bisexual women’s credibility assessments, because the gendered public/private divide often prevents women from being ‘visible’ and public with their identity expressions, and can restrict their lives in more pronounced ways, meaning

they may have less ‘evidence’ to provide in support of their claims (119). Klesse (2021) argues that though there is no conclusive data on the role gender may play, “we should assume that this problem is aggravated for bisexual women (compared to bisexual men)” (119). In the Czech context, it is indeed difficult to pinpoint how gender may impact the credibility assessments of bisexual men and women differently; all three SAC cases I analyzed involved men, and I did not find any instances of bisexual cases involving woman applicants. While Expert 4 mentioned that her organization had conducted training with MOI employees on gender issues, it is not clear if this training incorporated intersections between gender and sexuality (interview with the author, 12 May 2021).

Jansen and Spijkerboer (2011) also demonstrate that conclusions are often drawn based on the visible aspects of applicants’ relationships and personal lives; for example, children or past marriages are frequently taken as indication that the applicant is not truly non-heterosexual (57). While gay men and lesbians may have marriages and/or children for a myriad of reasons, this could be especially consequential for bisexuals. The UNHCR guidelines state that an LGBT applicant may

be married, or divorced and/or have children. These factors by themselves do not mean that the applicant is not LGBTI. Should concerns of the credibility of an applicant who is married arise, it may be appropriate to ask the applicant a few questions surrounding the reasons for marriage. If the applicant is able to provide a consistent and reasonable explanation of why he or she is married and/or has children, the portion of the testimony should be found credible (UNHCR 2012, para. 63)

While this is an important point that addresses the patterns observed by Jansen and Spijkerboer (2011) of applicants being discredited because of past marriages or children (48) this statement seems to imply that there is a certain set of circumstantial ‘reasons’ for an LGB applicant having been married or having children, but does not explicitly acknowledge that the ‘reason’ for marriage could be simply that the person is bisexual and has married someone of a different gender.

As Klesse (2021) notes, these kinds of assumptions are often tied to the idea that sexual identity and sexual behavior will necessarily ‘match’ (118). This concept is especially problematic for bisexuals -- what is ‘bisexual behavior’? Does a bisexual person have to engage in sexual activity with an equal number of men and women in order to

‘behave bisexually’? The regional court initially involved in SAC case 4 Azs 35/2019 - 69 seems to have employed precisely this kind of argument to justify their conclusion that the applicant was not really bisexual because he could not provide proof of sexual relationships with both men and women, stating that he was not credible because he did not

substantiate his allegations that he had several rather short-term relationships with men in the Czech Republic (e.g. photographs, witness statements). However, it was only established in the proceedings that the applicant had sexual intercourse with several women (Supreme Administrative Court of the Czech Republic 2019, paras. 3-4)

(*[Naproti tomu jistě lze po žalobci požadovat,] aby doložil svá tvrzení o tom, že v České republice měl několik spíše krátkodobých vztahů s muži (např. fotografiemi, výpověďmi svědků). V řízení však bylo prokázáno pouze to, že žalobce měl sexuální styk s několika ženami.)*

This statement seems to imply that the claimant’s sexual experience with women necessarily indicates something about his claims of attraction to men. He could not prove that he has had sex with men, “however,” he *could* provide evidence that he had sex with women -- and thus, he must not really be bisexual. The regional court and Ministry’s argumentation is not entirely clear based on the published SAC decision, but this position could also potentially imply -- perhaps contradictorily -- that the claimant’s ‘proven’ sexual experience with women cancelled out his alleged same-gender attraction. The asylum seeker responded to the regional court and Ministry of Interior’s reasoning by stating that he could not be rightfully required to provide such ‘evidence’ of his sexual orientation, an argument that was supported by the SAC (Supreme Administrative Court of the Czech Republic 2019, paras. 9-10). The asylum seeker’s response also highlights some of the ways in which the Ministry and regional court misconceptualized bisexuality, stating that it should not have been

necessary for the complainant to prove the absence of a heterosexual relationship, as the defining feature of bisexuality is precisely the sexual affection of an individual towards men and women. However, the defining feature of sexual

orientation is not whether and how a person actively expresses his or her sexual orientation. Many people do not have a relationship, but that does not mean that they lose their sexual orientation and identity (Supreme Administrative Court of the Czech Republic 2019, para. 9).

(*[Za nelogický stěžovatel označil závěr krajského soudu, že] není třeba, aby stěžovatel prokazoval absenci heterosexuálního vztahu, neboť definičním znakem bisexuality je právě sexuální náklonnost jedince k mužům i ženám. Definičním znakem sexuální orientace však není to, zda a jak osoba svou sexuální orientaci aktivně projevuje. Řada osob žádný vztah neudrží, neznamená to však, že by tím ztráceli svou sexuální orientaci a identitu.)*

This response is a succinct challenge to the essentialist frameworks of sexuality which equate sexual behavior with sexual identity and misunderstand bisexuality as necessarily involving equal attraction to ‘both’ genders, and sheds light on the high standards of ‘credibility’ to which bisexuality is held. The asylum seeker asserts here that his bisexuality is not based on ‘proven’ experience, and is not conditional on a certain set of behaviors. At the same time, the claimant addresses the apparent misunderstanding of bisexuality by the regional court and Ministry by stating that the “absence of a heterosexual relationship” (Supreme Administrative Court of the Czech Republic 2019, para. 9) is irrelevant to the question of whether or not he is really bisexual. Though not mentioned by the claimant or by the SAC in this published decision, the regional court’s reasoning seems to also be in contradiction with both UNHCR (2012, para. 10) and EASO (2015, 17) definitions which state that bisexuality does not necessarily involve ‘equal attraction to both genders,’ and with the UNHCR guidelines passage which notes that that self-identification should suffice as ‘proof’ of an asylum seeker’s identity (UNHCR 2012, para. 63.1). Interestingly, the argumentation used by the regional court in SAC case *8 Azs 323 / 2019-76* frames the question of behavior versus identity differently; the applicant’s bisexuality was accepted, but the regional court argued that he was not threatened by homophobic laws in Iran because such laws punish only behavior, not sexual orientation itself, and therefore this man could simply “look for sexual partners among women in Iran” (*[stěžovatel byl označen rovněž za bisexuála,] dle krajského soudu tak v Íránu mohl vyhledávat sexuální partnery mezi ženami*) and be safe from persecution (Supreme Administrative Court of the Czech Republic 2020, para. 4).

The applicant in SAC case 4 Azs 35/2019 - 69 also had a long-term relationship and two children with a Czech woman, which seems to have been utilized by the regional court and MOI as further arguments against his credibility. Even as the SAC rejected the regional court's ruling that his case was inadmissible and found the applicant to be 'credibly' bisexual, it nonetheless noted in its decision that "the applicant acts externally as a heterosexual as a father of two children" (*stěžovatel navenek působí jako heterosexuál – otec dvou dětí*) (Supreme Administrative Court of the Czech Republic 2019, para. 34). This raises the question of what it means to 'act externally' as a heterosexual -- Can a bisexual person ever 'act externally as a bisexual,' or are they always either acting as a heterosexual or homosexual? Expert 1 noted that she has observed similar argumentation from the Ministry of Interior, sometimes because the authorities simply cannot "comprehend that a person might have a relationship that looks like a straight relationship" and be a non-heterosexual person persecuted for their sexuality (interview with the author, 25 March 2021).

Comprehending bisexuality is, as Yoshino (2000) demonstrates, a difficult task in a paradigm that relies on essentialist mutually exclusive categories of sexuality. Speaking about the "shared investment" gay and straight communities have in stabilizing their sexual identities, he notes that

In a world that recognizes bisexuals, a would-be heterosexual must show (1) that he is not gay and (2) that he is not bisexual.... The first he can do by showing cross-sex desire. The second he can only do by proving the absence of same-sex desire. But this is impossible to do, as it is impossible to prove a negative. Thus, after the bisexual possibility is acknowledged, it is not only harder, but logically impossible, to prove one's heterosexuality (Yoshino 2000, 401).

According to Yoshino (2000), this is one of the underlying reasons bisexuality is actively erased and discredited; the system of hetero- and homosexuality -- mutually reinforcing constructions, as Katz (1995) argues (351) -- cannot incorporate bisexuality because then no one would be able to 'prove' their hetero- or homosexuality (401-402). The consequence for bisexuals is then that *they* are unable to 'prove' their bisexuality. Expert 2 notes that this is particularly consequential in the Czech context because of the heavy influence of sexological discourse on understandings of sexuality (interview with the author, 26 April 2021). Because it cannot be proven, the authorities are then tasked with

measuring the “immeasurable,” which Maskens (2018) suggests could lead to decision makers falling back on stereotypes -- in this case about the visibility of sexuality and the match between behavior and identity, for example -- in order to make their decisions (83). Interestingly, the regional court involved in SAC case 4 *Azs 35/2019 - 69* seems to have asked the bisexual applicant to verify that he was bisexual by ‘proving a negative’ (or by proving that he had sexual experiences with ‘both’ genders – the intent behind this argumentation is not entirely clear). If this is the case, this could be a reflection of Rehaag’s (2009) observation on similar arguments used in Canadian cases in which, he argues, adjudicators “were actually concerned with establishing, not whether the claimant was bisexual, but rather where the claimant fit into an essentialist hetero/homosexual binary” (428). In either case, it appears that bisexuality created confusion on the part of the authorities in this instance.

Suspicion

Why, then, are authorities so concerned about ‘proof’ and ‘credibility’? Fassin, Kobelinsky and Matthews (2012) note a marked increase in attitudes of ‘suspicion’ in European asylum systems in recent decades (445). This suspicion often manifests itself through the perception that undeserving asylum seekers frequently ‘abuse’ the system, thereby justifying an approach to asylum decision making that resembles criminal investigations and adjudications (Fassin, Kobelinsky and Matthews 2012, 445). In a twist of the typical dynamic of democratic justice, however, asylum seekers tend to be treated as “guilty until proven innocent,” as Akin (2017) argues, and therefore are expected to bear the burden of proof (458).

This suspicion and fear of ‘abusive’ claims is evident in the Czech context. The *Act on Asylum*, for example, outlines a robust set of information that is required to make a decision. This can include the application itself and supporting information, the interview, COI, and “the result of investigations” (Czech Republic 1999/2015, sec. 23(d)) on the applicant’s identity, “marital status and children,” and reason for applying for asylum (sec. 10). The *Act on Asylum* even notes that the Czech police and intelligence forces may become involved in the verification of information (Czech Republic 1999/2015, sec. 87). The use of the word ‘investigations’ is notable here, as it could possibly imply a framework of subtle criminalization of asylum seekers. As we have already seen, the MOI’s ‘investigation’ on a bisexual applicant’s children and past or current marital status

may be cause for challenging the claimant's credibility, such as the SAC case *4 Azs 35/2019 - 69* applicant whose fatherhood and relationship with a Czech woman was interpreted as 'heterosexual behavior' (Supreme Administrative Court of the Czech Republic 2019, para. 34).

Additionally, the way in which the acknowledgement of same-gender partners is framed in the *Act on Asylum* reflects a concern with ensuring that applicants do not use this category to 'abuse' the system by stipulating that reunification with a same-gender partner is only admissible if the partnership existed (and was "officially approved") prior to refugee status being granted, language which, as previously mentioned, also seems to exclude those from countries where no such 'official' registration is available (Czech Republic 1999/2015, sec. 13.3). Experts 2 and 3 both noted the perception from the MOI that the 'LGBT' category is used 'abusively.' Expert 2's comments even seem to suggest that he may also share this opinion, stating that "there is a high rate of misuse of this asylum mechanism, and misuses of LGBT," citing examples of people from Ukraine or Moldova who are in "straight relationships" and fabricate "gay" relationships in order to apply for asylum and then for residency (interview with the author, 26 April 2021). Expert 2's positioning of these Ukrainian and Moldovan asylum seekers' 'straight relationships' as incompatible with being LGBT, whether intentional or not, provides a subtle example of how bisexuality can be excluded from consideration or discredited as a 'real' LGBT category, as also seen in SAC case *4 Azs 35/2019 - 6* through the argument that the applicant's previous relationship disqualified him from being considered bisexual (Supreme Administrative Court of the Czech Republic 2019, para 3). Expert 2 stated that this information came from an associate working in MOI, and as he is not directly involved in asylum matters himself, we can see how he might fall into this opinion (interview with the author, 26 April 2021). This is notable because Expert 2, while not an active participant in asylum proceedings, is a member of an advisory body to the government which is supposed to represent the interests of 'sexual minorities,' including asylum seekers.

Expert 3, on the other hand, noted from his extensive experience as a lawyer and assistant SAC judge that while he has seen intense scrutiny and fear in the MOI of such 'abusive' claims, he does not believe that this is an accurate perception of reality (interview with the author, 29 April 2021). Concern with maintaining the 'integrity' of the larger European asylum system is also seen in the 2020 *New Pact on Migration and Asylum*, which communicates to Member States a need to 'strengthen' the system and prioritize more 'desirable' migrants (European Union 2020, paras. 2.2, 2.5, 7). As critics of

the *New Pact on Migration and Asylum* argue, the framework upon which it is built reflects a turn towards more restrictive and surveilled migration and asylum processes that seems to be a direct concession to countries like the Czech Republic (in addition to the other Visegrad states of Slovakia, Hungary and Poland) which have taken anti-migrant and especially anti-refugee stances in the past decade, especially in light of the 2015-16 so-called ‘refugee crisis’ (Kirişci, Erdoğan and Eminoğlu 2020). The EU *LGBTIQ Equality Strategy* also reflects this underlying attitude, noting that while LGBT asylum seekers’ particular needs should be addressed, they may have various “motives” for seeking asylum (European Union 2020, para. 4).

While these attitudes impact all asylum seekers’ credibility assessments, bisexuals may be impacted by this in unique ways. As we have already seen, asylum authorities may question bisexual applicants’ credibility by arguing that they do not fit into a ‘particular social group,’ or because bisexuality itself is not ‘recognizable’ to them. Within an environment of suspicion in which asylum seekers might be assumed to be ‘abusing’ the system (until proven otherwise), they must provide sufficient ‘evidence’ to support their claims (Picozza 2017, 233). Because, as Expert 3 notes, authorities focus on both the credibility of an LGBT asylum seekers’ persecution and the credibility of their *identity*, this means that LGB asylum seekers may also be required -- directly or indirectly -- to ‘prove’ their sexuality, as we see for example with the use of phallometry (interview with the author, 29 April 2021). Thus, if bisexual asylum seekers are asked to ‘prove’ their sexuality in order to demonstrate that their claims are not ‘abusive,’ but bisexuality cannot be proven (as Yoshino shows [2000, 401]), how can authorities know, within the given framework, who is ‘abusing’ the ‘LGBT’ category and who is not? Expert 2’s comments that the Ukrainian and Moldovan applicants who “create gay relationships” (interview with the author, 26 April 2021) in order to seek asylum and regularize their residence in the Czech Republic are ‘abusing’ the system, in the opinion of his MOI contact, is a succinct example. While it is, of course, possible that this happens, how do we know that those people are not bisexual? The applicant in SAC case 4 *Azs 35/2019 - 69* was also accused of ‘abusing’ the system and fabricating his bisexuality as a means to stay in the Czech Republic after his relationship with a Czech woman, upon which his residence permit was based, ended (Supreme Administrative Court of the Czech Republic 2019, para. 12). From these examples, it seems that the ‘incomprehensibility’ of bisexuality, and its inability to be ‘proven’ or measured, throws a wrench in a system which seeks to rigidly categorize asylum seekers in order to determine abusive claims. And if, as Expert 1 argues, “it is

better for [the authorities] to reject the claim,” decision makers may not give bisexual asylum seekers the benefit of the doubt when faced with the confusion it elicits (interview with the author, 25 March 2021).

6.2.3 Passing, discretion reasoning, and “a lighter situation”

One of the notable trends observed by Jansen and Spijkerboer (2011) in their report is the so-called “discretion requirement” or “discretion reasoning.” This is the idea that if an LGBT asylum seeker is able to be ‘discreet’ in their country of origin and thus avoid persecution, they may not necessarily qualify for asylum because they supposedly have the ability to be ‘safe’ in their countries (Jansen and Spijkerboer 2011, 8). While they note that this reasoning can be applied to any LGBT applicant, “bisexuals can be expected to practice discretion in a particular way” (Jansen and Spijkerboer 2011, 34) -- that is, bisexuals are, as Klesse (2021) states, “alleged to be able to ‘pass’ without hassle, if they only enter heterosexual relations” (109). Jansen and Spijkerboer (2011) suggest that because of this assumption, ‘discretion reasoning’ may be especially targeted at bisexuals; they found, for example, that in Austria, this reasoning is used almost exclusively in bisexual cases (34).

Perhaps a part of the larger societal idea of ‘straight-passing privilege’ (Lingel 2009), this assumption is also linked to the concept of visibility: if one is expected to display their sexuality in a certain way, or to have a certain kind of relationship that is ‘recognizably’ non-heterosexual in order to qualify as a ‘real’ LGB person, it may follow that those who fail to meet those conditions are not perceived to be truly persecuted for their sexuality. As we have seen, bisexuals (and other LG/non-heterosexual persons) may ‘fail’ to fit into these requirements in a myriad of ways: having been married, having children, mixed relationship histories, or not associating with public ‘gay scenes.’

The UNHCR Guidelines state that such reasoning should not be utilized, as “applicants are entitled to live in society as who they are and need not hide that” (UNHCR 2012, para. 12). However, Jansen and Spijkerboer (2011) show that many European states do not necessarily adhere to this guidance and sometimes find ways to work around this

instruction (33). For example, the EU Qualification Directive states that an application can be rejected if authorities believe that the asylum seeker could “reasonably be expected to settle” in a ‘safer’ part of their country (European Union 2011, Art. 8(b)). As Jansen and Spijkerboer (2011) note, this kind of statement can often be interpreted through the lens of ‘discretion reasoning,’ and is certainly open for interpretation on the part of the authorities (33). For example, could this mean that some decision-makers might argue that a bisexual asylum seeker could simply move to a different part of their country (perhaps with a different-gender partner, so as to ‘pass’ more effectively)?

It seems that in the Czech Republic, however, authorities may not always resort to these more subtle forms of ‘discretion reasoning.’ Expert 1 stated that she has seen a notable pattern of the MOI using precisely this argumentation in bisexual cases. For example, in cases where the decision makers find the applicant’s bisexuality itself credible, they may then turn to the argument that

‘ok, you are bisexual, but you can live in hiding in your home country. And maybe you can even live in hiding in an easier way than if you were a gay person’ -- they don’t say it like this, but that’s what comes through (interview with the author, 25 March 2021).

She noted that she has also seen MOI authorities argue that bisexual asylum seekers should simply “find a partner who would be acceptable in [their] country” (interview with the author, 25 March 2021). This is precisely one of the arguments used in SAC case *8 Azs 323 / 2019-76* wherein the regional court stated that in addition to the supposed safety the applicant would have from the criminalization of homosexuality in Iran as a bisexual, he could simply “look for sexual partners among women” (*v Íránu mohl vyhledávat sexuální partnery mezi ženami*), and thus further avoid persecution (Supreme Administrative Court of the Czech Republic 2020, para. 4). This demonstrates an attitude that bisexual people are “able to keep up a pretence and ‘pass’ as heterosexual without hassle” (Klesse 2021, 122), and that being a bisexual person in a ‘heterosexual’ relationship precludes the possibility of homophobic persecution or violence. Importantly, this kind of argumentation also implies not only that this applicant *could* ‘hide’ his bisexuality, but also that he *should* do so rather than seek international protection. This is in clear contradiction to the previously discussed UNHCR Guidelines, which state that this should not be expected (UNHCR 2012, para. 12). The regional court’s argument constructs bisexuality as a

fragmented rather than a holistic state of being, implying that because a bisexual man ‘could’ choose to have a genuine relationship with a woman, it would be reasonable to require him to do so, and that putting his attraction to men in the closet would both protect him from external (and internal) harm. It is also worth asking the question of whether this argumentation could be used more frequently (and ‘successfully’) against bisexual applicants because if bisexuality is accepted as ‘valid,’ then entering into a different-gender relationship is not contradictory to that person’s identity per se; this kind of argument thus does not have the same appearance of ‘forcing someone into the closet’ as if they were to suggest that a gay or lesbian person simply choose a heterosexual relationship.

‘Discretion reasoning’ like that illustrated in this case not only relies on the premise that bisexual people can/should ‘choose’ a different-gender partner in their country of origin, but also that bisexual people are perhaps less persecuted than gay men and lesbians. Though the SAC rejected the regional court’s claim in case *8 Azs 323 / 2019-76* by noting that all non-heterosexual people in Iran seem to be persecuted by such laws and the applicant thus qualified for asylum under this ground (Supreme Administrative Court of the Czech Republic 2020, para 10), Expert 1 stated that she has experienced instances of the Ministry of Interior claiming that bisexual applicants did not qualify for asylum because they perceive that bisexuals have “a lighter situation [than] gays and lesbians” (interview with the author, 25 March 2021).

Expert 2 also had an interesting perspective on why bisexuality could be important for consideration in asylum:

bisexuality is probably very important actually, now that I’m thinking about it, regarding immigration/asylum, mainly from countries that are very restrictive sexually the bisexuality is kind of a mode that the people can identify with and still manage to survive in the environment, and that makes a logic for them too, like ‘well I have this thing, but ok, let’s call it bisexuality,’ because being homosexual is very deviant and something that no one really wants, and is ‘disgusting’ so bisexuality is kind of a way how to cope with it also mentally and also probably socially (interview with the author, 26 April 2021)

While the situation he describes certainly could happen and should be further explored, this statement appears to preclude the possibility that some people identify as bisexual simply

because they identify as, or *are*, bisexual, and also seems to position bisexuality as less persecuted and stigmatized than homosexuality. The interviewee seems to suggest here that many people from restrictive countries who apply for asylum based on their bisexuality are not actually bisexual, but are using bisexual identity to ease the burden of homophobia. While the situation described in this comment could, of course, occur, and though it is not directly relevant to the question of ‘discretion reasoning,’ I include it here primarily to provide an example of a belief about bisexuality that is expressed by an influential scholar and activist and someone with the ability to advise the Czech government on its approach to LGBT people, including asylum seekers.

6.3 Policy and/vs. Practice

In the final chapter of this section, I explore the patterns related to policy and/versus practice which I have identified in my data. As Jansen and Spijkerboer (2011) show, the various steps of asylum procedures can involve different, specific issues for LGBT applicants. Beyond the overarching questions of language and credibility, specific practices in the collection of Country of Origin Information and interviews can have significant impacts on the outcome of LGBT asylum cases; the question of whether persons conducting interviews and other asylum authorities have received any kind of LGBT-specific training is therefore important to consider (Jansen and Spijkerboer 2011, 33). The question of whether medical/sexological knowledge is used by authorities in some way is also of significance, especially in the Czech context. Examining these aspects of the procedure in the Czech Republic also allows us to explore the degree to which UNHCR and EU guidance is, or is not, implemented on the national level, and what kind of inconsistencies might exist between the adherence to such guidelines of different actors within the Czech Republic. Finally, I also examine some of the specific characteristics of the Czech asylum system which create absences of data and adequate structures for the incorporation of bisexuality into the asylum system.

6.3.1 Country of Origin Information (COI)

Country of Origin Information, or COI, is an important element of the decision-making process in asylum procedures. COI is intended to serve as background information on the situation in the asylum seeker's country of origin in order to help determine the level of safety in that country. As Jansen and Spijkerboer (2011) demonstrate, COI is not always accurate or used "appropriately" by authorities (10). From a critical perspective, we must also keep in mind that knowledge production is not 'objective' (Ramazanoglu and Holland 2002, 3-4); the content of COI reports depends on what kind of information is available to researchers, who produced that information, and how researchers interpret and communicate it.

In LGBT asylum cases, COI should ostensibly include specific information on the position of LGBT people in that country, including relevant legislation; however, as Jansen and Spijkerboer (2011) observe, researchers often restrict their findings to facts surrounding criminal law in the country, leaving out other social policies and grassroots information (10). Additionally, available information is often focused on gay men, and in some instances this can be taken by researchers and decision makers to mean that "there is no risk" for other LGBT sub-groups" (Jansen and Spijkerboer 2011, 10). The European Asylum Support Office (EASO) guide for researching the situation of LGB people acknowledges this pattern, noting that

many sources provide information about gay men exclusively as less information may be available on the situation of lesbians and bisexual individuals for various reasons (they may not be as 'visible', for instance). While sources may present information as relevant to LGB, the information may be limited to the situation of gay men (EASO 2015, 10).

This is an important acknowledgement of the potential absence of bisexuals from information available to COI researchers, and also implicitly introduces the concept of 'visibility' as something that should not be taken for granted. The guide instructs researchers to include this issue as a disclaimer in their reports, suggesting that they indicate whether "the available COI mostly concerns a specific group of persons, such as homosexual young men who live in an urban environment" (EASO 2015, 19). Researchers

are also cautioned to pay close attention to the sources they use for their reports, noting that “specialized sources may not represent all LGB. LGB sources may focus on specific sub-groups (e.g. gay men)” (EASO 2015, 26). This guide also provides a checklist for researchers, encouraging them to ask themselves, “if I used specialised LGB sources, did I check that they represent all LGB persons?” (EASO 2015, 38).

Though the Czech *Act on Asylum* states that COI must be “precise and up-to-date” (Czech Republic 1999/2015, para 23(c)), Expert 3 observed that COI generally focuses on gay man, and “sometimes lesbians” (interview with the author, 29 April 2021). Additionally, Expert 1 noted that in her experience, the COI used by the Ministry of Interior is often insufficiently specific, and groups all ‘LGBT’ people together (interview with the author, 25 March 2021). If gay men are the most visible group in a country of origin, it follows that the information available likely reflects primarily their position, but might present it as representative of the situation for all ‘LGBT’ people, effectively erasing the potentially differentiated and specific issues faced by different groups. As we have seen, bisexuals in particular may be less visible in this sense, as Klesse (2021) point out, there is a lack of a visible “bisexual culture” in most countries (118), so it may be questionable whether there exists adequate information on the specific issues faced by bisexuals.

While the EASO guide does suggest that researchers have the discretion to determine whether “limited or lack of information should not be conclusive as to the merits of the claim” (EASO 2015, 37), it does not delve into the specific issues surrounding a potential lack of information about particular groups. Additionally, leaving it open to researchers to decide whether insufficient COI on a specific group can be taken as an indication of a lack of any problems -- without further elaboration on potential reasons for that lack of information -- could allow COI researchers and asylum decision makers to assume that a lack of information about bisexuals (perhaps in conjunction with other ideas about bisexuality -- such as the ability to ‘pass’) means they do not face persecution and therefore do not qualify for international protection.

Furthermore, when providing guidance for researchers on keywords to use in their searches, the EASO research guide states the following: “It is recommended to start with the wider terms when initiating research on the situation of LGB in a particular country of origin. The wider terms include: homosexual; gay (man/men); lesbian; LGB, LGBT, LGBTI; sexual orientation” (EASO 2015, 34). While the “B” appears here, the word “bisexual” is missing from this list, and it is unclear whether this omission is an acknowledgement of the lack of specific information on bisexuals, or results from the

authors' (perhaps unconscious) belief that bisexuality is not significant enough to be explicitly included in the list of "wider terms." No further elaboration on this omission, nor any mention of bisexuals is given in the section of the guide on search terms. Thus, in either case this guide could be seen as potentially contributing to the problem of a lack of information about bisexuals; if researchers are not encouraged to search for specific terms where necessary, it follows that they may be less likely to find sufficient information about the given group.

In the three SAC cases analyzed for this thesis, it is unclear what exactly the COI used by the Ministry contained. However, in case *8 Azs 323 / 2019-76*, we do see COI being referenced as a justification for rejecting the applicant's claim. As stated in the decision,

According to the May 2019 report on the security and political situation in Iran, the death penalty could only be imposed for adultery or certain forms of consensual same-sex sexual conduct. Sexual orientation itself was not so punished, but only behavior (Supreme Administrative Court of the Czech Republic 2020, para. 4).

(Dle zprávy o bezpečnostní a politické situaci v Íránu z května 2019, platí, že trest smrti bylo možno uložit pouze za cizoložství či některé druhy konsenzuálního sexuálního jednání osob stejného pohlaví. Samotná sexuální orientace tak postihovaná nebyla, ale pouze jednání.)

Here, we see a use of COI that does distinguish between different sub-groups in determining their situation. It is not clear what exactly the referenced report contains, who produced it, or if explicitly mentions bisexuals, but here the Ministry of Interior attempted to make the distinction between homosexuality and bisexuality in order to justify the deportation order issued for the applicant. This appears to be an example of a pattern observed by Expert 1, which she states is characterized by the MOI using

information very selectively, so if they gather three pieces of information and one of them is what their colleagues at the Ministry wrote, and it says that everything is fine, and two others [say that the situation] is not good, they choose the one [that says everything is fine] -- so that is also repeatedly criticized by the courts, that's also sort of prevailing (interview with the author, 25 March 2021).

Indeed, in this particular case the SAC did criticize the MOI and regional court's position, stating that all non-heterosexual people in Iran are subject to criminalization, and thus that the applicant's fear of persecution was credible (Supreme Administrative Court of the Czech Republic 2020, para. 10). This selective (and perhaps *strategic*) use of COI paints an interesting picture of bisexuality in the MOI and regional court's eyes: legitimacy of bisexuality as such is not questioned, and the divide between behavior and identity is acknowledged, but bisexuality is also taken to elicit a lesser form of persecution, and, as previously discussed, the applicant is asked to go back into the closet when he returns to Iran and to seek only women partners.

6.3.2 Interviews and training

According to Jansen and Spijkerboer (2011), training (or lack thereof) is also an important point of consideration when examining the issues faced by LGBT asylum seekers. Training on LGBT-specific issues can be relevant for authorities working in reception centers and the judiciary, but may be especially important for interviewers and interpreters, as interviews are a significant element of the procedure and can play an important role in determining the outcome of a case (10). As Berg and Millbank (2009) note, "the power dynamics of refugee determination procedures dictate that the construction of the applicant's life story cannot challenge foundational tenets of the decision-maker's understanding of the world" (197). In cases involving LGB applicants, this means that the interviewer's own ideas about sexuality will influence the interview, and the conclusions drawn from it, in some way. As Jansen and Spijkerboer (2011) recommend,

it is of great importance that asylum authorities are made aware of the fact that they are inherently predisposed to rely on stereotypes in practice; that they should be aware of the particular stereotype(s) they rely on in examining cases; and that they should be open to questioning the particular stereotype(s) they use. To this aim, there should be a training module specifically about LGBTI asylum issues at the beginning of the training of asylum adjudicators and LGBTI issues should be a standard part of their general permanent education (9).

Maskens (2018) also notes that in the absence of sufficient training for decision makers can lead them to -- perhaps unwittingly -- “rely on stereotypes as a professional resource” (79). As we have seen, bisexuality is not always recognizable or comprehensible within certain paradigms of sexuality, so it follows that, as Rehaag (2008) notes, bisexual claimants may be more “easily misunderstood” (61).

The Czech *Act on Asylum* (1999/2015) stipulates that “the Ministry shall ensure that the interview is conducted and background materials supporting the issuance of the decision are prepared by a qualified person who has been duly trained in areas specified in a directly applicable regulation of the EU” (sec. 19.3). The EU document referenced here is *Regulation No. 439/2010 on establishing a European Asylum Support Office*, which mentions training on

- (a) international human rights and the asylum acquis of the Union, including specific legal and case-law issues;
- (b) issues related to the handling of asylum applications from minors and vulnerable persons with specific needs;
- (c) interview techniques;
- (d) the use of expert medical and legal reports in asylum procedures;
- (e) issues relating to the production and use of information on countries of origin;
- (f) reception conditions, including special attention given to vulnerable groups and victims of torture (European Union 2010, Art. 6.4).

The *Act on Asylum* (Czech Republic 1999/2015) also states that “the Ministry shall ensure that suitably trained persons work with applicants for international protection, especially in the case of vulnerable persons” (sec. 79). LGBT applicants are, of course, not mentioned explicitly here, or in the 2010 *Regulation*, but could fit under the definition of ‘vulnerable groups,’ as previously discussed.

LGBT-specific training is mentioned by the EU *Equality Strategy* (European Union, 2020), which states that moving forward, Member States should seek to prevent stereotypes or negative views from impacting asylum applications in part through “training for protection officers and interpreters to ensure that the examination of LGBTIQ people’s

applications for international protection is not influenced by stereotypes and is in line with international/EU law and other relevant instruments” (para. 1.4). Similarly, the UNHCR Guidelines (UNHCR 2012) note that interviewers and interpreters should receive “specialized training” in order to help them remove stereotypical thinking from their interview practices and decision making (para. 60.iii). While these EU and UNHCR provisions regarding LGBT-specific training are in place, however, the lack of specificity in the *Act on Asylum* makes it unclear whether this particular kind of training has been implemented, and how such guidance on training plays out in practice. Experts 1, 3 and 4 all noted that they are unaware of such training; Expert 4 stated that she believes it is unlikely that MOI employees receive LGBT training, because “in most of the cases, they have to deal with people arriving on political grounds or from armed conflicts, etc. gender identity or sexual orientation is still a marginal issue for them. And not only for this type of authorities, but in general” (interview with the author, 12 May 2021). Expert 4 also noted that in her experience, the sensitivity of authorities towards LGBT applicants is sometimes questionable, and in some cases reflects homophobic attitudes present in the wider Czech society (interview with the author, 12 May 2021). As previously mentioned, Expert 4 did note that her organization has conducted gender sensitivity training with MOI employees, but it is not clear the extent to which this might have addressed sexuality (interview with the author, 12 May 2021).

The government Committee on Sexual Minorities mentions in its document on “Topics for the activities of the Committee on Sexual Minorities” that the Committee will include for consideration in its activities the “Education of members of the police and employees of the Administration of Refugee Facilities in a sensitive approach to LGBT + persons” (*Vzdělávání příslušníků a příslušnic policie a zaměstnanců a zaměstnankyň Správy uprchlických zařízení v citlivém přístupu k LGBT+ osobám*) (Committee on Sexual Minorities, n.d.). This demonstrates that there is some awareness in this Committee of the importance of training; however, it is unclear if the Committee has ever engaged with this kind of training, and Expert 2, a member of the Committee, was not aware of this (interview with the author, 26 April 2021).

Of course, the question of *whether* LGBT-specific training takes place within the Czech asylum system does not automatically help us to understand what such training might encompass. While the EU *Equality Strategy* (European Union 2020) does mention training (para 1.4) and while the UNHCR Guidelines (UNHCR 2012) explore some of the stereotypes that may be applied to bisexuals (para 10), the extent to which the referenced

training might address bisexuality in its specificity is unclear. The question of whether Czech asylum authorities receive LGBT-specific training, and what that may or may not include, remains open to question. As Expert 3 notes, EU guidance is not always easily implemented on a broad scale in the Czech Republic (interview with the author, 29 April 2021). If the number of LGBT applicants in the Czech Republic is relatively low (or is perceived to be low), this kind of specific training may not be a priority for the authorities. Furthermore, without sufficient transparency from the MOI on their practices, it is difficult to know if EU and UNHCR guidance on LGBT-specific training tells us anything substantive about the reality within the Czech asylum system.

6.3.3 Institutional characterizations and inconsistencies: SAC, regional courts and Ministry of Interior (MOI)

Three of the primary institutions involved in the asylum system at the Czech national level are the regional courts, the Supreme Administrative Court, and the Ministry of Interior. Despite the lack of transparency on the specific practices of these institutions, some notable patterns can be observed in my data. First, all four Experts characterized the Ministry of Interior as an institution that is restrictive towards asylum seekers and resistant to change. Expert one believes, for example, that “It is simply a strategy of the Ministry of Interior to make any applicant not credible....whenever they see someone who does present a strong and coherent story, they just try to make them sound not credible” (interview with the author, 25 March 2021). Expert 2 explained that the Committee on Sexual Minorities’ activities are often limited by the perception that including migration-related measures in its recommendations is politically inconvenient -- as he observed, “we [the Czech society] don’t mind the sexual minorities; we do mind the non-white, non-Catholic minorities” (interview with the author, 26 April 2021). Expert 3 stated that the Ministry’s focus on the credibility of LGBT applicants is strategic, because challenging ‘credibility’ (which, as we have seen, can be difficult to ‘prove’ for LGB claimants in general and bisexual claimants in particular) is an “easy way.... to justify refusing these refugee claims” (interview with the author, 29 April 2021). He also stated that he believes the MOI uses past jurisprudence very selectively, “cherry-picking” decisions that work in

favor of a given case rather than referring to national and EU jurisprudence and policy holistically (interview with the author, 29 April 2021). Expert 4 noted that the MOI has restricted her organization's access to asylum facilities because they criticized the living conditions in particular reception centers (interview with the author, 12 May 2021).

Though a full analysis of the way in which the Czech courts approach bisexual asylum cases is beyond the scope of my research, it is nonetheless interesting to note the apparent inconsistencies with which the regional courts and the SAC dealt with the three cases analyzed for this thesis. In all three cases, we see regional courts agreeing with MOI positions: in *8 Azs 323 / 2019-76*, that the applicant was not threatened by the criminalization of homosexuality in Iran (Supreme Administrative Court of the Czech Republic 2020, para. 4); in *5 Azs 419/2019 - 49* that the applicant did not qualify for 'vulnerable person' status (Supreme Administrative Court of the Czech Republic, 2021, para. 17); and in *4 Azs 35/2019 - 69* that the applicant should be expected to provide 'proof' of his bisexuality (Supreme Administrative Court of the Czech Republic 2019, para. 4). In all three cases, the SAC rejected the MOI and regional court's primary claims: in *8 Azs 323 / 2019-76* citing an arguably more accurate COI source to show that bisexuals *are* threatened by homophobic legislation in Iran (Supreme Administrative Court of the Czech Republic, 2020, para. 10); in *5 Azs 419/2019 - 49* that the applicant should not have been detained and should have been treated as a vulnerable person (Supreme Administrative Court of the Czech Republic, 2021, para. 31); and in *4 Azs 35/2019 - 69* that the claimant should be accepted as bisexual, citing the UNHCR Guidelines and EU Qualification Directive guidance that stipulates that applicants cannot be asked to 'prove' their sexualities (Supreme Administrative Court of the Czech Republic, 2019, paras. 30-31).

Though these are clearly three examples of cases in which the regional courts ruled in a manner that justified taking the case to the SAC and cannot be taken to be representative, at the very least it is interesting to note the inconsistencies between the apparent adherence (or lack thereof) to EU and UNHCR guidelines between the two levels of courts. Some of the regional court positions -- in particular the idea that an applicant can be asked to 'prove' their sexuality as seen in *4 Azs 35/2019 - 69* (Supreme Administrative Court of the Czech Republic 2019, para. 4) -- are relatively blatant contradictions to UNHCR and EU guidelines; this case is especially interesting considering the past international controversy caused by the Czech authorities' use of phallometry as an extreme method of 'proving' applicants' sexuality (UNHCR, 2011). Though this is only one such

example, and though it was rejected by the SAC, that this kind of argumentation is still used at all is indeed concerning for the plight of bisexual asylum seekers in the Czech system.

6.3.4 Medical practices

Indeed, my research indicates that there are other reasons to question the degree to which practices have truly changed in light of the controversy of the phallometric testing methods used in the late 2000s in the Czech Republic (UNHCR, 2011). While the use of this method has officially been abolished (Expert 1, interview with the author, 25 March 2021), this does not necessarily mean that the influence of medical and especially sexological ‘expertise’ has been fully extracted from the environment of the Czech asylum system. In fact, Expert 2 claimed that he believes sexologists and psychologists (including one of his colleagues on the Committee on Sexual Minorities) are still frequently consulted in LGBT asylum cases (interview with the author, 26 April 2021). He stated that to his knowledge, the Ministry sometimes asks a sexologist or psychologist to conduct an evaluation of an asylum seeker in order to determine the credibility of their claimed sexual identity; and as previously discussed, he noted that bisexuality does not have a legitimate position within the framework of Czech sexology (interview with the author, 26 April 2021). Indeed, he stated that the two individuals he named as probable consultants for the MOI are not likely to accept bisexuality as a valid category, and one in particular, Expert 2 feels, would likely dismiss bisexuality altogether as a ‘phase’ or ‘confusion’ (interview with the author, 26 April 2021).

It should be noted, of course, that Expert 2 is not directly involved in the asylum procedure, and may not have the most accurate or up-to-date information regarding MOI practices. I was unable to verify his statements about the continued involvement of sexologists in the asylum process. Expert 1 stated that she is unaware of any recent cases using such methods, pointing out that there is now a large body of EU and national jurisprudence that prohibits such methods for ‘verifying’ applicants’ sexuality (in part triggered by the controversy of phallometry) (email correspondence with the author, 7 June

2021). Similarly, Expert 4 stated that she has not heard of such practices being used; however, “this doesn’t mean it doesn’t happen,” but could simply be a consequence of a lack of transparency on the part of the MOI (interview with the author, 12 May 2021). It is therefore unclear what exactly the role of sexology looks like in the Czech asylum system in 2021. *If* Expert 2’s comments are correct, and sexologists who do not ‘believe in’ bisexuality are being consulted by the MOI in making credibility assessments, this could have obviously detrimental consequences for bisexual asylum seekers’ chances of being granted refugee status. If his information is incorrect and outdated, however, we still must ask how much of the sexological approach to credibility assessments has truly faded out of the institution, and the mindsets of individuals working in the MOI. We do know that phallometry was used in the Czech Republic, ending in 2009 (UNHCR 2011); is twelve years long enough to remove the assumptions of sexology from the MOI?

6.3.5 “There are very, very few”

The specificity of the Czech Republic’s past and present relationship with migration may also play a role in the authorities and other social actors involved in the asylum process account and are prepared for taking bisexuality into account. The Czech Republic is certainly not a top ‘destination’ for asylum seekers in Europe; in a statistical bar graph from Eurostat showing the number of applications filed in EU countries in 2019 and 2020, the Czech Republic’s bar is barely visible in comparison to Germany, France and Spain (Eurostat 2021). Because the MOI does not release statistics on LGBT asylum seekers, it is therefore impossible to know quantitatively what proportion of that small number are LGBT applicants, and even more difficult to know how many are bisexual. Expert 3 noted that in his experience, the majority of LGBT claimants are gay men, and that when it comes to assessing “the cases of transgender, bisexual or queer cases, there are very very few It was quite clear that this in a sense does not affect the broader group of claimants, so the authorities [do not] spend much attention on this” (interview with the author, 29 April 2021). Here, we see the possibility that bisexual asylum seekers are -- or are perceived to be -- minorities within a minority, and are thus not afforded the same consideration as gay men by the authorities. This could mean that the development of more

specific COI research methods may not be a priority; LGBT training, if it happens at all, may not focus on bisexual-specific issues; in other elements of the procedure, such as reception center policies, the possibility of bisexuality may not be considered. Additionally, in the wider context of governance in the Czech Republic, bisexuality may not be truly ‘visible.’ For example, Expert 2 stated that before our interview, he had never thought of bisexuality as being an important topic for LGBT asylum, and also mentioned that the latest ‘National Equality Strategy’ the Committee on Sexual Minorities has crafted does not contain a single measure specifically addressing bisexual issues (interview with the author, 26 April 2021).

Of course, the idea that bisexuals do not constitute a notable group of asylum seekers in the Czech Republic may simply be a perception and not necessarily reality. As Expert 4 notes, there is no way to know how many applicants are bisexual, as there are no publicly available statistics pertaining to this (interview with the author, 12 May 2021). Even if the MOI did release such statistics, we must also consider the possibility that bisexual people may be mislabeled as either gay or straight if the authorities do not understand bisexuality in general (UNHCR 2012, para. 11), or if the authorities lack the language to ‘read’ bisexual narratives from another cultural context (Akin 2017, 469). As Yoshino (2000) argues, the issue of bisexual invisibility “is better explained by bisexual erasure than by bisexual nonexistence” (361). Bisexual asylum seekers in the Czech Republic will not be seen if the authorities, courts, and possibly even sexologists assign different, more conveniently categorizable labels to them. They will not be seen if the MOI does not release statistics, practice transparency, or allow NGOs access to information (Expert 4, interview with the author, 12 May 2021). They will not be seen if they are dismissed as “non-consequential” (Klesse 2021, 109), or if COI researchers are not trained to look for them (EASO 2015, 34).

7. Findings and conclusion

In the final chapter of this thesis, I synthesize my findings by identifying the primary patterns present in the data in order to answer my research question, to demonstrate what is still missing, and to present recommendations. Overall, bisexuality is linguistically ‘visible’ and is nominally included in the documents which use ‘LGBT’ terminology, and the SAC decisions all use the word ‘bisexual’ to refer to the claimants in question. However, some texts, as also observed by Klesse (2021), “generically [refer] to ‘gay and lesbian’ or ‘queer’ claims and claimants” in places where it seems appropriate to also include explicit mention of bisexuality (115). Additionally, I argue that full consideration of bisexuality is not given in many of the documents analyzed. For example, the EASO COI research guide (EASO 2015) omits ‘bisexual’ from its list of suggested search terms while including ‘lesbian’ and ‘gay’ (34) and utilizes phrases like “lesbians *and other LGBT persons*” (emphasis added) (31). Thus, while bisexuality is not entirely erased within these texts, I argue that Klesse’s (2021) observation that “while bisexuality is occasionally nominally evoked, it keeps lingering in the margins” (115) applies to the texts analyzed for this thesis as well.

Furthermore, some documents -- namely the *Czech Act on Asylum* -- do not explicitly name bisexual or LGBT people as categories for consideration. While these groups can be implicitly included under terms like ‘vulnerable persons’ and ‘particular social groups,’ the lack of specific mention of these groups can leave authorities to employ their own interpretations of these concepts. While it appears that EU and UNHCR guidance are sometimes invoked to include LGBT and bisexual asylum seekers under such terms, SAC cases like *5 Azs 419/2019 - 49* demonstrate that this does not always happen in practice. Furthermore, SAC case *4 Azs 35/2019 - 69* suggests that in some instances, bisexual claimants may be particularly susceptible to having their claims of ‘group membership’ denied, if the authorities question the applicant’s bisexuality itself because they misunderstand bisexual narratives of mixed relationship histories, or if they perceive that bisexuals face a “lighter situation” than gay men and lesbians (Expert 1, interview with the author, 25 March 2021).

Jansen and Spijkerboer (2011) argue that one of the problems facing bisexual asylum seekers in terms of visibility is the lack of distinctions made between different LGBT sub-groups, mentioning that in the Czech Republic specifically, the courts seem to

frequently use ‘homosexual’ and ‘bisexual’ interchangeably in bisexual cases (72). This was not the case in the three SAC cases I analyzed -- though I am unable to conduct a thorough linguistic analysis of the original language of the decisions, it is clear in all three texts that the SAC at least distinguishes between the categories of ‘homosexual’ and ‘bisexual’ in its language. Additionally, Expert 1 claimed that in her experience the Czech authorities do make distinctions between LGBT sub-groups, perhaps especially when that distinction allows for a credibility challenge (interview with the author, 25 March 2021). While Expert 4’s past experience leads her to believe that it is likely that the authorities sometimes would not ‘recognize’ bisexuality and might then fall back on the word ‘homosexual’ (interview with the author, 12 May 2021) the more concrete and up-to-date data -- Expert 1’s experiences and the SAC decisions -- indicate that perhaps contemporarily, the distinction is (at least sometimes) being acknowledged. Furthermore, while the three SAC cases analyzed for this thesis do not appear to have been significantly impacted by issues with translating or interpreting the word ‘bisexual,’ Expert 2’s observation that such terminology does not necessarily exist in every language and therefore cannot always be sufficiently translated should also be taken into consideration (interview with the author, 26 April 2021). Expert 2 also demonstrates that organizations like the government’s Committee on Sexual Minorities do not necessarily address bisexual-specific issues (or are not even aware of such issues) (interview with the author, 26 April 2021). That the ‘LGBT’ entity with ostensibly the most direct link to the Czech government does not generally consider bisexuality in its specificity can be taken as an indication that bisexuality is unlikely to be fully ‘visible’ within governmental discourse on migration and asylum, or indeed any other topic.

On the other hand, Expert 1 also notes that the COI used by the Ministry of Interior usually does not distinguish between sub-groups, and lumps all ‘LGBT’ people together (interview with the author, 25 March 2021). The EASO (2015, 10) and UNHCR (2012, para. 66) guidelines also acknowledge the tendency of COI to focus primarily on gay men, i.e. the more ‘visible’ group, a pattern mirrored by Expert 3’s observations that the Ministry generally focuses on groups which are perceived to have a larger presence in the asylum system, i.e. gay men (interview with the author, 29 April 2021). While the Czech Act on Asylum states that the COI used by the Ministry should be “precise,” (Czech Republic 1999/2015, para. 23(c)), it is unclear what exactly this means in practice in regard to LGBT cases. The SAC case *8 Azs 323 / 2019-76* does demonstrate one instance of COI being used to distinguish between gay and bisexual experiences, in this case for the

purpose of arguing that the asylum seeker, as a bisexual person, was not subjected to the criminalization of homosexuality in his country of origin (Supreme Administrative Court of the Czech Republic 2020). Though there is not sufficient data to establish whether this is a pattern, the fact that the Ministry and regional court did make the distinction between gay men and bisexuals in the country of origin seems to mirror Expert 1's observation on the Ministry using the distinction to come to the conclusion that the persecution faced by bisexuals is "lighter" than for gay and lesbian asylum seekers (interview with the author, 25 March 2021). Though we cannot speculate about the intentions of the individuals who brought this argument forward in this case, this seems as if it could be a strategic use of the distinction -- in this case, it allowed for the argument that the claimant was not truly persecuted or in danger, which the SAC struck down as an illegitimate conclusion. However, overall, Expert 1 and 3's experiences -- as well as the lack of COI on bisexuals specifically documented by the EASO (2015, 10) and UNHCR (2012, para. 66) guides in addition to Jansen & Spijkerboer (2011) -- suggest that the Ministry of Interior may not be using COI that is specific to bisexual cases consistently or on a large scale.

Expert 3 notes that in his experience, the 'visibility' of asylum seekers' sexuality is held to be important by the authorities in their credibility assessments, in that a lack of 'visibility' in gay/LGBT organizations or 'communities' can be seen as evidence that the person is not really LGBT (interview with the author, 29 April 2021). As Klesse (2021) observes, a focus on this concept of 'visibility' can be particularly problematic for bisexuals because their sexuality may not be 'visible' in the stereotypical way expected by authorities. He points out, for example, that "there is a lack of a recognizable 'bisexual culture' in most countries" (Klesse 2021, 119). Furthermore, I argue that we should also consider the question of whether bisexuals might feel less welcome in 'LGBT' spaces in either their countries of origin or asylum, as this could also contribute to lessened 'visibility.' Interestingly, the regional court initially involved in the *8 Azs 323 / 2019-76* case also used the concept of 'visibility' to argue that the claimant could choose to make himself less visible as non-heterosexual by simply seeking female partners in his country of origin (Supreme Administrative Court of the Czech Republic 2020, para. 4). This "discretion reasoning" (Jansen and Spijkerboer 2011, 34), while rejected by the SAC in this instance, implies that a certain concept of 'visibility' is sometimes considered a prerequisite for persecution. Indeed, Expert 1 observes that the people assessing asylum cases sometimes do not understand the concept of someone being in a relationship that "looks like a straight relationship" and still being LGBT (interview with the author, 25

March 2021), making their sexualities, as Akin (2017) observes in the Norwegian context, “unreadable” to the authorities (469).

Being ‘readable’ to the Czech asylum authorities certainly seems to have some impact on the perceived ‘credibility’ of asylum seekers’ claims. Beyond the potential to not be found credible because of a lack of participation in LGBT communities or because one’s sexuality or relationships are not comprehensible to authorities, Expert 3 also notes that less visible sub-groups (i.e. those besides gay men) can have the credibility of their membership in a ‘particular social group’ challenged. In SAC case 4 *Azs 35/2019 - 69*, for example, we see a regional court employing the argument that the bisexual asylum seeker did not fit into a ‘social group’ that was subject to persecution because of his past relationships with women (Supreme Administrative court of the Czech Republic 2019). As Berg and Millbank (2009) argue, this kind of reasoning can have a particularly detrimental impact on bisexual asylum seekers’ cases because the “fluidity” implied by bisexuality can be difficult to “contextualize.... in terms of the claimant’s experience of well-founded fear of persecution” (213). Klesse (2021, 119) and Yoshino (2000, 358-359) also note how this fluidity presents a challenge to the essentialist conceptualizations of sexuality often employed in administrative/institutional settings and to the idea of ‘immutable’ sexuality, especially when it comes to the requirement to provide empirical ‘proof’ of one’s sexuality. In this vein, both Experts 2 and 4 indicated that they believe bisexual cases could be vulnerable to poor credibility findings in the Czech context because it cannot be ‘objectively’ proven.

The emphasis on ‘proof’ can be seen, for example, in the extensive list of materials the Ministry of Interior may request as laid out in the *Act on Asylum* (Czech Republic 1999/2015, sec. 10). Experts 1 and 3 both expressed the belief that the Ministry of Interior has an interest in rejecting asylum claims, and Expert 3 noted that an elevated focus on credibility of both LGBT claimants’ identities and experiences of persecution can be an avenue through which to issue rejections (interview with the author, 29 April 2021). Increased scrutiny of asylum claims can also be seen on the EU level through the *New Pact on Migration and Asylum* (European Union 2020). Experts 2 and 3 also mentioned the perception within the Ministry of Interior that there is a high level of ‘abuse’ of the LGBT category, leading to heightened suspicion of such asylum claims. Expert 1 stated that while LGBT claims are, in general, all subjected to intense scrutiny, but she believes that bisexuals may be more susceptible to negative credibility decisions than gay and lesbian applicants due to misunderstandings of bisexuality (interview with the author, 25 March

2021). This echoes Berg and Millbank (2009, 213) and Rehaag's (2009, 416) observations, though further data would be needed to determine the degree to which this might be a pattern in the Czech context.

The SAC cases *5 Azs 419/2019 - 49* and *4 Azs 35/2019 - 69* involved challenges to the applicants' credibility. In *5 Azs 419/2019 - 49*, the Ministry of Interior did not believe that the applicant had been subjected to violence, and the regional court ruled that he did not fit the definition of being a 'vulnerable person' (Supreme Administrative Court of the Czech Republic 2021, para. 17). Most notably, however, in *4 Azs 35/2019 - 69*, the Ministry rejected the applicant's claim for lacking credibility, a position with which the regional court agreed because the applicant had not provided adequate 'proof' of his sexuality, also citing his relationships with women as a justification for disbelieving his self-identification as bisexual. As the SAC noted in its rebuttal against the regional court's position, previous EU jurisprudence has determined that such proof cannot be required (Supreme Administrative Court of the Czech Republic 2019, para. 13).

Expert 1 confirmed that the authorities are no longer allowed to request 'evidence' of an intimate nature or allow for invasive medical examinations like phallometry; she also stated that she is unaware of recent cases in which the Ministry requested the involvement of sexologists or psychologists to help 'confirm' an asylum seeker's sexual orientation (email correspondence with the author, 7 June 2021). Expert 4 also stated that she has not heard of such practices being used recently. It is therefore unclear if Expert 2's statements on the role of sexology in the procedure are accurate and up-to-date. While Expert 1 and 4's concrete experiences suggest that sexologists likely no longer play an active role in the asylum process, Expert 2's observations on the historical development of this field nonetheless provides important context and raises the question of how sexology has shaped societal and institutional conceptions of sexuality in the Czech Republic. The sexological position on bisexuality mentioned by Expert 2 -- that bisexuality is a phase and is not a legitimate identity -- may very well still be present in the minds of decision makers both in the Ministry of Interior and in the government in general. Indeed, it makes sense that institutions of sexology and asylum would be compatible with one another: both seem to value evidence, the categorization of people, and imposing labels from above rather than favoring self-identification. As Picozza (2017) notes, "labels do not merely classify; they establish an order in the life of the other, producing the illusion that their essence is immediately accessible, visible, and recognizable" (233). If, as Expert 2 suggests, the sexological discourse present in the realm of Czech governance (including in

asylum until relatively recently) does not ‘recognize’ bisexuality, it may indeed be the case that the asylum system is unable to adequately encompass the narratives and experiences of bisexual asylum seekers in the categories it employs.

While these observations on visibility and credibility can help map out potential patterns, there is a great deal that remains absent. As Experts 1, 2 and 4 all noted, there is no publicly available statistical data on LGBT asylum seekers in general, and certainly not on bisexuals specifically. While the *Act on Asylum* states that the Ministry will collect statistics on asylum (Czech Republic 1999/2015, sec. 86) it does not specify exactly what is to be examined by these numbers; as Expert 1 indicates, it is also possible that the Ministry has internal data on LGBT asylum seekers, but simply chooses not to release it publicly (interview with the author, 25 March 2021). Without this data, it is difficult to ascertain the true scope of LGBT asylum in the Czech Republic and the extent to which bisexuals are (or are not) counted or present; as Expert 4 comments, there may be many more LGBT asylum seekers and refugees in the Czech Republic than we know (interview with the author, 12 May 2021). This also means that we lack concrete data on other intersectional factors that could impact bisexual asylum seekers’ cases. The influence of gender, for example, is difficult to assess with the current data. All three SAC cases analyzed above involve men, and I was not able to find any mention of cases of bisexual women in the Czech Republic. As Klesse (2021) notes, there is a broader lack of data on bisexual women as asylum seekers, but because of the way asylum processes value the public visibility of sexuality as ‘proof,’ it may be reasonable to assume that bisexual women could be even more susceptible to negative credibility findings (119).

While the EASO COI guide provides detailed instructions for COI researchers, and while the *Equality Strategy* implies that training on LGBT issues should be administered to authorities in Member States, there is no evidence from my findings that such training actually happens in practice in the Czech Republic. Experts 1, 3 and 4 all expressed doubt that such training occurs, and Expert 4 also spoke at length about the difficulties in implementing EU guidance in the Czech context (interview with the author, 12 May 2021). Certainly, the content of the EASO COI research guide is not necessarily favorable to bisexuals, and it is unclear how the training mentioned by the *Equality Strategy* might construct bisexuality. However, a lack of training or implementation of these guidelines on COI research leaves open the possibility for researchers, interviewers and others involved in the process to potentially make decisions based on misunderstandings or even negative attitudes. As Maskens (2018) notes, a lack of training can leave decision-makers to rely on

stereotypes, especially in a setting in which intimate subjectivities are evaluated through an administrative lens (79). I argue that bisexuality is susceptible to erasure in either instance: the EASO guide, for example, does not encourage researchers to sufficiently consider bisexuality in some areas; as seen in the SAC cases, Czech asylum authorities -- who have presumably not received training on LGBT issues -- also fail to fully consider bisexuality in some instances.

Bisexuality may also be absent from the decision-making process in part because of a lack of adequately specific COI. The EASO guide acknowledges this, even while contributing to this invisibility itself (for example by omitting ‘bisexual’ from the list of suggested search terms for researchers) (EASO 2015, 34). As previously mentioned, Experts 1 and 3 also noted a general lack in COI on specific sub-groups. While this could be in part because researchers, as laid out in the EASO guide, do not explicitly search for information specific to bisexuals, it seems that the larger problem is an overall lack of information on bisexuals on a general global level. This could be due to the lack of stable and visible ‘bisexual culture’ as mentioned by Klesse (2021, 118), to an under-reporting of bisexual issues by LGBT advocacy groups, or to a broader invisibility of bisexuality -- an “epistemic contact of bisexual erasure,” as Yoshino (2000, 362) names it. The SAC cases analyzed above do not seem to have used bisexual-specific lenses on their COI, except to some extent in *4 Azs 35/2019 - 69* in which the authorities attempted to argue that the bisexual claimant was not threatened by legislation which criminalizes homosexuality (Supreme Administrative Court of the Czech Republic 2019). This seems to be an example of what Expert 1 referred to as the ‘selective use’ of COI (interview with the author, 25 March 2021), which points us to consider that the mere *availability* of COI on bisexuals does not necessarily indicate that bisexual-specific considerations will be made; this depends also on *how* the COI is used.

Bisexuality is not only absent in COI, but seemingly also in broader discourse in the governmental sector. This is displayed particularly well by Expert 2, who stated that he had never considered bisexuality as something that could be uniquely problematic within the realm of asylum (interview with the author, 26 April 2021). Additionally, Expert 2 stated that in the context of the government Committee on Sexual Minorities’ activities, bisexuality is frequently not fully addressed or acknowledged (interview with the author, 26 April 2021). This suggests that the absence of bisexuality comes not only from within the arena of actual asylum authorities, but also from other governmental entities and social actors. Expert 2 also noted the extensive obstacles the Committee faces in persuading the

government to consider any suggestions surrounding migration in general (interview with the author, 26 April 2021); this raises the question of how it might be possible to address an issue like bisexual erasure if even the mention of LGBT asylum is enough to make government officials balk. As Expert 4 stated, “this topic is really not discussed, and we even don’t have numbers about how many people it could concern.... And that’s quite a shame that nobody is putting any stress on this group in their specificity” (interview with the author, 12 May 2021).

The findings of this research are accompanied by a number of inconsistencies as the result of a lack of transparency on the part of the Ministry of Interior, a lack of a larger data set, and indeed to the ‘absences’ uncovered. The goal of this thesis has not been to provide a conclusive ‘answer’ to the question of the status of bisexuality within the Czech asylum system, but this research has produced some pieces of the ‘map.’ I argue that bisexuality is constructed in the Czech asylum system as a category that is nominally present, but not consistently considered in its own right; it is sometimes seen as a label that is not ‘credible’ because it cannot be visibly recognized, and because rigid ideas about what it means to be ‘LGBT’ -- and persecuted as such -- do not fully encompass bisexual experiences of invisibility and ‘fluidity.’ While the presence of bisexuality in specific, concrete cases cannot be denied, it is largely absent from the background information and the cultural and administrative knowledge that structure the asylum system.

Based on the findings of this research, it seems that this happens through language that does not sufficiently address the specificity of bisexual experiences; through essentialist ideas about immutable, categorizable sexuality; and through a lack of transparency and data. Though the full scope of the underlying legal, political, historical and sociological forces behind this are not examined here, within the frame of this research I pinpoint two contributing factors to this partial, sometimes selective ‘visibility,’ discrediting, and occasional absence of bisexuality from the Czech asylum system. First, on a more practical level, it appears that EU and UNHCR measures concerning bisexual asylum seekers, including training for asylum authorities and COI research are not necessarily implemented consistently by all relevant authorities. Because Czech national legislation does not explicitly include bisexuality, and because bisexuality is, as Expert 2 states, “problematic” in the Czech context (interview with the author, 26 April 2021), these measures from above may be the ‘best’ chance for the recognition of bisexuality. Without consistent adherence to this guidance, it is difficult to know what the true status of bisexual

asylum in the Czech Republic is, though the SAC cases and experts' testimonies hint that the disbelief and partial omission may be larger systemic patterns.

As I have argued, these measures may be, however, also problematic in some ways, and reflect my primary argument: Bisexuality is, as Yoshino (2000) states, inherently destabilizing to the concept of essentialized sexual orientation, and to the institutions which rely upon those neatly defined categories (400, 410). Because the asylum system is structured based on rigid, recognizable categories and because of the underlying suspicion present, bisexuality -- with its instability, incomprehensibility, and resistance of neat categorization -- is not (and perhaps cannot be) fully encompassed in the Czech asylum system as it currently stands. While the word 'bisexual' is not entirely erased, and while various pieces of the structure of asylum acknowledge bisexuality in its own right (for example, lawyers like Experts 1, 3 and 4 and to some extent the SAC judges involved in the cases examined in this thesis), bisexuality challenges this structure. Because bisexuality cannot be fully recognized by the system, it is then cast as doubly 'suspicious' or "non-consequential" (Klesse, 2021, 109).

Two systems of categorization collide when bisexual people seek asylum: the system of mutually exclusive 'sexual orientations' -- reified in the Czech context by a history of sexology -- and the system of assessing suffering and deservingness for international protection. Bisexuality is doubly suspicious, as we see in the questioning of applicants' qualification for protection and of their bisexuality. It transgresses these systems by resisting the easy and mutually exclusive identification of who is gay and who is straight, creating anxiety in a system which has an "investment in stabilizing [identity], as members of all groups take comfort in knowing their place in the social order" (Yoshino, 2000, 402). It transgresses the asylum system by resisting easy categorization of who is 'credibly' non-heterosexual enough to be persecuted, and the easy identification of 'abusive' asylum claims of people 'pretending to be LGBT' in order to be granted protection. Even when bisexuality itself is not disbelieved, it is nonetheless cast as "non-consequential" (Klesse 2021, 109) because its inability to fit the category of a visibly 'gay' and visibly persecuted category, or because of a perception -- upheld by the lack of statistical transparency on the part of the MOI -- that there are not enough bisexual asylum seekers to warrant specific consideration. On a practical level, this could be exacerbated by the apparent lack of training, and wider lack of bisexual-specific COI; as Maskens (2018) suggests, lack of guidance can lead to the use of stereotypes (79). This may especially be the case in the Czech Republic since there does not appear to be any training; without this

training, it may also be the case that some MOI authorities also rely specifically on sexological or medical ideas about (bi)sexuality because of the historical role of sexological discourse in Czech society and asylum.

More careful inclusion of bisexuality in the Czech asylum system -- through training, expanded COI research methods, and increased representation in legislative texts -- could certainly have a positive material impact on the lives of individual asylum seekers. Practical steps could include a requirement for the MOI to collect and publicly release statistics on LGBT asylum cases (including a breakdown of each sub-group), which could then be used as justification for specific measures on LGBT asylum, and would also signal to NGOs and other social actors that this issue is present and worthy of consideration. Increased transparency from the MOI on their practices would also be an important step; in particular, it should be absolutely clear to the public and to asylum advocates like the experts interviewed for this research whether sexological knowledge is still actively employed by the authorities. If the MOI were to claim that sexology no longer plays a role in their practices, this should be clarified in the *Act on Asylum*. Furthermore, the MOI should be more transparent about the degree to which EU and UNHCR guidance are implemented; the positions taken by the regional courts exemplified in this thesis also indicate that training is needed not only for MOI authorities, but also for the judiciary. Of course, ensuring adherence to training and COI research guidelines from the EU does not automatically mean that bisexuality will be appropriately considered; with this in mind, EU materials should also be assessed and adjusted in order to make sure bisexuality is more fully understood and taken into consideration.

However, none of these recommendations truly challenge the underlying premises of suspicion, categorization and deservingness that structure the asylum system, and do not challenge the asymmetrical power dynamics of asylum. Acknowledging the importance of Klesse's (2021) question of whether the 'inclusion' of bisexuality in asylum systems, discourses, and policies would "do anything to challenge the obsessive search and digging for the 'truth' of asylum seekers' gendered and sexual subjectivities," I argue that the most notable importance of examining the construction of bisexuality in the system is precisely because it problematizes the "obsessive search and digging" exemplified by the Czech asylum system (123). That bisexuality cannot be 'proven' through medical or other documentary 'evidence' does not mean that bisexuality, and bisexual asylum seekers, do not exist. If they cannot be encompassed, how many others are absent as well, and how

many such people are denied dignified treatment and the granting of asylum due to the system's failure to recognize them?

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