

On Borders and Bodies

A Critical Discourse Analysis of the Construction of Transness in the
Credibility Assessment of Trans People's Claims in Belgium

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Abstract

In applying for international protection in Belgium, trans people are subjected to a credibility assessment of their gender identity and their fear of persecution. During this judgement, the asylum officer assessing the claim is considered neutral and their statements objective, as they are embedded in a wider juridical framework. However, by conducting a Critical Discourse Analysis of the reports, we start our research from the perspective that these manifestations of discourse are embedded in a wider social, political and historical context. In doing so, we put forward the idea that a person producing text can never break free from the wider structures in which they move. Based on an analysis of 15 reports, we begin by critiquing the notion that asylum officers are neutral, arguing that their tone and narratives of Western superiority undermine this idea. Next, we analyse how officers construct transness through colonialist and Western ideas of gender identity. Finally, we criticise the application of well-founded fear to the cases of trans people, stating that there is a failure to consider or understand the specific struggles trans people face.

Abbreviations

CDA: Critical Discourse Analysis

SOGI: Sexual Orientation and Gender Identity

LGBT: Lesbian, Gay, Bisexual, Transgender

COI: Country Of Origin Information

CAD: Council for Alien Disputes

CGRS: Office of the Commissioner General for Refugees and Stateless People

ICJ: International Commission of Jurists

UNHCR: United Nations High Commissioner for Refugees

Definitions

Cisgender: We use the prefix of *cis* to refer to the privilege of being nontrans. *Cis* means “on the same side”, while the opposite of this is *trans*, which means “across” (Stryker, 2017).

Gender expression: The way we perform our sense of self, it is about the framing of our bodies in the way we want to express our gender (Stryker, 2017).

Gender identity: The subjective sense of belonging to a particular gender category. Often people experience congruence with the category they were assigned at birth and socialised into, but for trans people their sense of self is not the same as that of other members of the gender they were assigned at birth (Stryker, 2017).

1. Introduction

“The migrant has lost the nation state. The refugee has lost their house. The trans person loses their body. They all cross that border. The border is part of them and cuts through them. Usurps and overthrows them” (Preciado 2020, 36).

In this quote, writer and philosopher Paul B. Preciado (2020: 20) brings together the two main themes of this dissertation, by pointing out how transness and borders are inherently intertwined. The segment is taken from a speech Preciado gave in 2019, when he was asked to speak about his personal process of “transitioning” to an audience of 3,500 psychoanalysts at a conference in Paris on “Women in Psychoanalysis”. The fragment touches on how border regimes protecting the nation state produce strict, binary frameworks when approaching certain people (Berg & Millbank, 2013; Avgeri, 2021; Luibhéid, 2008; Manganini, 2020; Dhoest, 2018; Tremblay, 2016). More specifically, borders distinguish desirable subjects who are entitled to international protection from those who are deemed undesirable and undeserving of such protection (Luibhéid, 2008; Avgeri, 2021; Anderson, et al, 2009).

This dissertation examines how asylum officers working at the Belgian border interpret and actively construct transness through trans people's asylum claims. In addition, we explore the underlying and historically defined ideas that underpin these officers' notions of transness and explore how power is manifested in the reports. Finally, we examine how the assessors' interpretation of transness is applied in assessing applicants' fear of persecution and serious harm. To get to the heart of the matter, we situate the asylum officers' narratives in a broader context, linking the seemingly neutral decisions to historical and deeply rooted power structures (Ahmed, 2006; Sedgwick, 1990; Foucault, 1979). More specifically, we will conduct a Critical Discourse Analysis (CDA) of the published reports of the officers' decisions. This method allows us to critically approach these documents that are often considered to be a manifestation of an ‘objective’ discourse because they are embedded in a wider legal framework (Foucault, 1979).

Based on an analysis of 15 reports, we begin by critiquing the notion that asylum officers are neutral, arguing that their tone and narratives of Western superiority undermine this idea. Next, we analyse how officers construct transness through colonialist and Western ideas of gender identity. Finally, we criticise the application of well-founded fear to the cases of trans people, stating that there is a failure to consider or understand the specific struggles trans people face.

To date, no research has focused exclusively on the position of trans people in the refugee status determination process in Belgium. In general, previous research has combined the claims of trans people with those of LGB people, but in these cases little or no conclusions have been drawn about the specific challenges trans people face when going through the asylum process (Rosati et al., 2021; Dearham, 2017). This research aims to centre the position of trans people, people who's identities are otherwise compromised and revoked at the border.

In what follows, we first outline the origins and development of the international legal framework regarding the recognition of gender identity as a ground for international protection. We also provide an overview of the Belgian asylum procedure for trans people. We then elaborate on the existing literature in this field, highlighting various areas of tension in the Belgian procedure regarding the meaning of transness. Following this, we substantiate these findings by referring to important international literature on the subject, while further elaborating on certain inconsistencies in the assessment of trans claims. On the basis of this information, we move on to outline our theoretical framework. In particular, we elaborate on the importance of queering migration studies and acknowledging the interconnections between power, colonial legacies and the role of the nation state. We then present our conceptual framework, exploring three specific concepts that allow us to further explore the different layers in the protection officers' narratives, linking them to a broader political, historical and social context. Based on all this, we finally outline our problem statement, highlighting the relevance of the study. From there, we present our research questions.

We continue by explaining the methodology. In this segment, we describe how we selected our sample and we reflect on the challenges we need to take into account when designing and interpreting our analysis. We also discuss some key elements of Critical Discourse Analysis. In the main part of this research, we present the results of our analysis and outline the various themes that emerged. Throughout the different sections, we reflect on how transness is constructed, drawing on our conceptual and theoretical framework. Specifically, we first discuss the position and arguments of the asylum officers before turning to their interpretation of gender as a binary. We then go on to discuss how asylum officers assess trans people's fear of persecution. Finally, we synthesise these different findings in our conclusion.

2. Asylum procedure for trans people

2.1 International juridical framework

On 28 July 1951, the United Nations Convention relating to the Status of Refugees established for the first time a uniform definition of persons entitled to a refugee status. This convention described what specific rights these people have. In 1967, the United Nations supplemented those original decisions with the United Nations Protocol Relating to the Status of Refugees. These treaties define a refugee as "a person who, owing to a 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 their nationality and is unable to avail themselves of the protection of that country". In order to qualify for international protection, it must be established in all cases "that the individual has a well-founded fear of being persecuted and that such persecution is on account of race, religion, political opinion, nationality or membership of a particular social group" (UNHCR, 1951; Goodwin-Gill & McAdam, 2007). Thus, the 1951 Convention did not explicitly mention LGBT people as a group in need of international protection, and for the first three decades after the 1951 Convention, the claims of this group were therefore often rejected. This changed when the Netherlands became the first country to recognise sexual orientation as a ground for international protection, followed by the United States in 1990 and Canada in 1991 (Fernandez, 2017).

With the increase in visibility of queer communities, legal instruments had to adapt and therefore the 1951 Convention too. In 2002, UNHCR included Sexual Orientation and Gender Identity (SOGI) for the first time in relation to asylum claims in the *Guidelines on International Protection No.1*. Notably, there was a strong conflation of gender identity and sexual orientation, with gender identity being seen as a subset of the latter. Consequently, a 2008 UNHCR guidance note mentioned how often only gay men and lesbians were considered to belong to a Particular Social Group (PSG). Despite bisexual and trans people making fewer claims, the note explicitly re-emphasized that they too belonged to a PSG (UNHCR, 2008; Berg & Millbank, 2013). Next, in 2010 the UNHCR *Discussion Paper on LGBTI Asylum-Seekers and Refugees* shed light on the notion of gender identity by explaining that the term 'gender-based violence' should also be understood in a broader sense to include not only violence against women and girls, but also violence against women and men because of how they experience and express their gender and sexuality. Finally, in 2012, UNHCR published *SOGI Guidelines No.9*, which further attempts to reduce the conflation between Gender Identity (GI) and Sexual Orientation (SO) by providing a separate discussion on trans persons seeking international protection (UNHCR, 2012; Manganini, 2020).

In addition, despite their non-binding nature, the Yogyakarta Principles, first formulated by the International Commission of Jurists (ICJ) in 2006, are widely regarded as the most important interpretative framework for the protection of LGBT asylum seekers (Manganini, 2020). The principles are not binding as they have not been adopted by states in a treaty. In 2017, the ICJ was able to further substantiate the principles as it gained a deeper understanding of the violations suffered by people on the basis of their SOGI. One of the most prominent principles is one that articulates how states must ensure that “a well-founded fear of persecution based on someone’s sexual orientation, gender identity and gender expression is recognised as a ground for refugee status in a situation where these elements directly create or contribute to an oppressive environment of intolerance and a climate of discrimination and violence”. The main emphasis in the Principles is on the fact that everyone has an internal and individual experience of their gender, which may or may not correspond to the sex assigned at birth, including the personal sense of the body and other expressions of gender (ICJ, 2017; Manganini, 2020; Berg & Millbank, 2013).

However, despite these adjustments in legal instruments over the past two decades, Berg and Millbank (2013) suggest that understanding gender as fluid and shifting challenges the requirements of innateness and fixity embedded in categories such as PSG to analyse the notion of 'well-founded fear'. To make this more concrete, Mariza Avgeri (2021) points at how within the definition of a social group, all members are expected to share a similar characteristic and this feature is then considered to be fixed and congenital. This causes problems for people who are applying since they are expected to prove a part of their identity that they might not consider to be fixed and that might have already changed over the course of their lives (Avgeri, 2021). Consequently, GI claims are framed as SO claims, as this category is more readily accepted or seen as a less risky advocacy strategy (Berg and Millbank, 2013). For example, there is very little information available on the country of origin regarding the position of trans people to substantiate cases on violence against trans people. Berg and Millbank (2013) emphasise that this structural misclassification of transphobic violence as homophobia confirms how there is a misunderstanding regarding the nature of trans identities and the dangers faced by this group, contributing to the erasure of trans-based violence.

2.2 Belgian context

Focusing on the position of trans people within the Belgian asylum procedure, it is clear that the literature available on this topic mostly include descriptions of the entire LGBT community. In general, there is little transparency about how the CGRS deals with applications on the basis of gender identity. We do know that it was not until an adjustment of the Alien Act in 2013 that it was explicitly stated that gender aspects, including gender identity, can constitute a specific social

group and that this should be implemented in the practice of the CGRS (Desmet, 2020). Furthermore, in her detailed analysis of gender and migration law in Belgium, Ellen Desmet (2020) mentions that from June 2019, applications based on gender identity are being registered separately. Previously, this was considered a sub-category of the overarching category of 'sexual orientation and gender identity'. In addition, a 'Gender PO Team' was created in July 2019, which includes protection officers who have received additional training to deal with complex gender-related cases. (Desmet, 2020).

Despite these developments, Desmet (2020) notes that during the asylum process, trans people who do not identify as a trans woman or man, and therefore do not want to fit into this binary, cannot have their gender registration reconciled with their internal lived gender identity. More specifically, Desmet (2020) describes how migration statistics are limited to a binary division of gender as woman or man. She argues that people seeking protection who do not fit into this binary should at least have the option of identifying in a non-binary way.

2.2.1 The Belgian procedure

As our focus is on the Belgian asylum procedure for trans people, it is important to briefly touch on the process that these applicants go through before they ultimately receive a decision on whether or not they will be granted international protection. In Belgium, the asylum procedure starts by submitting an asylum application to the Immigration Office. The file is then passed on to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS). There, the applicant is interviewed by a Protection Officer (PO) about the reasons for leaving the country of origin. Based on this interview, a decision is made on whether or not to grant international protection. Finally, in case of a negative result, the person who made the asylum application can appeal to the Council for Alien Disputes (CAD) (CGRS, 2019; Addea, 2013).

In the case of SOGI applicants, their claims are assessed by a specialised gender cell (Desmet, 2020). During the interview, the applicant applying on the grounds of their SOGI are subject to a double credibility test. On the one hand, the PO will assess the credibility of the applicant's gender identity. On the other hand, there is a focus on their reasons for fleeing. If these two parts are found to be credible, a test of whether the fear is well-founded follows (CGRS, 2005; Okladnicoff, 2019). If the credibility test of the person's trans identity is not accepted, the well-founded fear test is automatically rejected. Conversely, if the credibility assessment of the person's identity and story is positive but the well-founded fear test is not accepted, CGRS will look at the anti-LGBTQIA+ legislation in the country of origin. In this way, the legislation in that country may be a reason for the need for international protection (Okladnicoff, 2019; Addea, 2013).

In discussing the process of refugee status determination, it is crucial to look more closely at the work of Laurie Berg and Jenni Millbank (2009; 2013) on the jurisprudence of trans claimants, to which we referred earlier. Their work is widely considered to be one of the earliest influential researches that looked at the Refugee Status Determination process through a queer lens. In their work of 2013, they look at how the trans identity is understood, claimed and received in the interview with an official. They describe the refugee status determination process as a “multistage process in which identities are experienced, articulated, framed and translated – literally and figuratively – for the purposes of making the self intelligible within both the terms of the Convention and the decision-maker's own understanding of human sexuality and behaviour” (Berg & Millbank, 2009 & 2013: 1).

In addition, Irene Manganini's (2020) work is the second research focusing on this issue with a similar approach. She emphasises how, within the decision-making process, the interview is a delicate and life-defining step for applicants. Therefore, she explains, the interview should always be conducted with integrity, consideration and expertise. Manganini criticises the fact that there is a serious lack of transparency in how the cases of trans applicants are handled, in terms of the psycho-social aspect of their self-identification and the way the law is applied to them in general.

Over the years, the number of asylum applications based on SOGI in Belgium has risen sharply. For example, the figure climbed from 188 applications in the year 2007 to 1059 applications in 2012. Of these, 21% were granted the right to international protection (Dhoest, 2018). In 2019, 569 people applied for international protection with SOGI as the reason. Of these, 46% were granted a refugee status (Okladnicoff, 2019). In their work, Manganini (2020) and Berg and Millbank (2013) express how problematic it is to find substantial jurisprudence on the issue of trans people seeking asylum. According to them, one reason for the low number of reported GI cases is the conflation of SO and GI during the process. On the one hand, it is possible that asylum seekers themselves are not aware that they can apply on the basis of their GI. Furthermore, in many cases people do not use the word 'transgender'. On the other hand, lawyers tend to advise people to apply on the basis of SO because there is more country of origin information available to support their case, or because in some contexts the category is more accepted and therefore a less risky strategy. (Berg and Millbank, 2013; Manganini, 2020).

2.3 Areas of tension in the assessment of SOGI claims in Belgium

Researchers agree that the step in the asylum process where the assessor makes claims about the credibility of someone's SOGI is inherently problematic (Okladnicoff, 2019; Berg & Millbank,

2013; Spijkerbroer, 2013; Dhoest, 2018). In *Fleeing Homophobia*, Thomas Spijkerboer (2013) argues that assessing whether the applicant is a 'real' LGBT person heavily relies on the PO's individual prejudices. In other words, the decision depends on how the adjudicator thinks this community should look and behave (Manganini, 2020).

Overall, there is little transparency on the explicit criteria used by protection officers to assess the credibility of someone's trans identity. Furthermore, no research has focused exclusively on the position of trans people during the CGRS hearing. Nevertheless, Lisa Ockladnicoff (2019) has described various areas of tension in cases of SOGI claims that have come to light through an analysis of approximately one hundred negative CGRS decisions that were appealed to the Council. In her analysis, however, Ockladnicoff (2019) focused mainly on the POs' assessment of the LGB claims. She critiques how the PO only considers a SOGI request to be legitimate when the applicant is able to narrate a coherent and linear story. In doing so, applicants are expected to start their story at the moment of the "realisation" of their SOGI and then describe its further development. Moreover, Ockladnicoff (2019) writes that an application is considered implausible when the applicant testifies that the SOGI has always been evident to them. The "discovery" of the sexual orientation and/or gender identity, in other words, should have a major impact on the person's well-being in order to be considered credible. People have to give detailed accounts of often traumatic and violent moments in order to be considered credible (Ockladnicoff, 2019).

Apart from Ockladnicoff's research, a second important study was conducted by Alexander Dhoest (2018). He focused on the experiences of gay men in the Belgian asylum process. An important finding of his work is that it seems to be advantageous for applicants to be familiar with the Western SOGI terminology used by the CGRS. Therefore, he considers the possibility that the applicant's narrative is permeated by jargon that they have internalised prior to the interview. Ockladnicoff (2019) confirms how knowledge of Western terminology and LGBT symbols influences the decisions of the POs. She adds to this finding that the CGRS has indicated that it plans to focus less on this criterion, by paying more attention to the socio-cultural context of an applicant. Dhoest (2018) wants to bring nuance by highlighting that it can be problematic to simply assume that applicants did not know Western terminology and concepts of sexual orientation and gender identity prior to their arrival in the country where they apply. The author argues that we need to recognise that Western models have been in dialogue with local contexts outside the West for years.

Finally, Ellen Desmet (2020) argues in relation to the interviews that there have generally been some positive developments over the last decade in the way migration institutions deal with trans

applications in Belgium. For example, she acknowledges that there has been an increase in the attention paid to women and LGBT people as a result of the trainings mentioned above.

2.4 Areas of tension in the assessment of SOGI cases internationally

In order to substantiate the analyses from the Belgian literature discussed above, we will briefly look at the work of researchers who have analysed the assessments of non-Belgian asylum officers. First, we will look at Berg and Millbank's (2013) groundbreaking analysis of 42 cases of trans applicants over a seventeen-year period. Their main aim was to unpack how trans identity is understood, claimed and received during the Refugee Status Determination in Australia, New Zealand, Canada, the UK and the US. In their view, the interview could ideally be a context in which people are able to give a nuanced account of their evolving GI over time. It can also serve as an opportunity to learn more not only about these people's sense of self, but also how this interacts with external perceptions of their gender identity (Berg & Millbank, 2013). However, Berg and Millbank (2013) describe how the questions currently asked in these interviews do not take into account this duality of self-identification and gender attributions.

In addition, one of their key findings about trans asylum seekers is that they are more likely to be accepted if their bodies fit what they call a “visual typology”, meaning that it is advantageous for the applicant if their physical expression at the interview matches the description of their gender development (Berg & Millbank, 2013: 10). Berg and Millbank (2013) thus argue that the interview becomes an assessment of the applicant's gender performance rather than an assessment of the credibility of their GI. Similar to Dhoest's (2018) findings, Berg and Millbank (2013) emphasise that people are considered more credible when their narratives fit to Western tropes of gender identity and dysphoria. In particular, they found that there was a strong emphasis on the 'born in the wrong body' narrative, in which people describe how they knew from a very young age that they were in fact of the opposite sex, and how this led to them being alienated from others (Berg & Millbank, 2013).

Mariza Avgeri (2021) touches upon the emphasis that is put on ‘coming out’ of the closet in the assessment of trans claimants. She describes how in Western representations this moment is an important milestone (Avgeri, 2021). Hiram Perez (2007) also points out that the act of coming out is closely intertwined with Western concepts such as visibility and individualism. These views often not applicable to the social and cultural contexts of people outside the West (Berg & Millbank, 2009). In addition, certain expectations are attached to the act of coming out. For example, there should be significant differences between the identity a person had before coming out and the identity after coming out. Subsequently, a dominant idea is that the quality of life of

LGBTQIA+ people will increase as long as they continue to follow the linear path of coming out (Perez, 2007). Contesting this idea, Alessandro Boussalem (2020) writes that we can only truly understand people's sexual orientation and gender identity if we go beyond binary ideas of before and after coming out.

Stefan Vogler (2019) also writes about Western expectations embodied in the idea of coming out, focusing his research on trans people in US immigration law. He emphasises that trans people are primarily considered legitimate if they wish to undergo or have already undergone a medical procedure. Furthermore, like Berg and Millbank (2013), Vogler notices how every trans person is assumed to feel that they were born in 'the wrong body'. Austin Johnson (2017) calls these normative expectations of being trans 'transnormativity'. In legal contexts such as the CGRS, these biases are detrimental to people whose gender identity is fluid. As a result, the identities of non-binary people are seen as less legitimate in the assessment of their claims (Vogler, 2019). Additionally, asylum officers tend to declare the applicant's stories implausible when they describe how their SOGI has changed over time. Additionally, Vogler's research reveals how trans asylum seekers in the US have been granted asylum since the 1990s mainly because they adapt their narratives to the legislation, which is based on sexual orientation. This confirms Berg and Millbank's (2013) analysis of how GI is used internationally as a subcategory of SO in migration policy. In Belgium too, the criteria used to assess the credibility of SOGI claims focus mainly on SO (Ockladnicoff, 2019).

To conclude, those who have studied the position of trans people in the refugee status determination process found overlapping points of tension leading to an overall agreement that this stage in the process is inherently problematic and is rooted in fixed, Western ideas of gender identity as well as sexual orientation. However, it is crucial to emphasise how the claims by trans people are rarely rejected because the PO questions the credibility of the claimant's gender identity (Manganini, 2020; Avgeri, 2021; Berg & Millbank, 2013). One possible explanation for this is that trans people often provide medical evidence of previous procedures or psychological assessments they have undergone. This in turn is seen by the asylum officers as 'proof' of the credibility of the applicant's trans identity (Manganini, 2020). In reality, trans people's claims are mainly rejected because their fear of persecution is not considered 'well-founded'. We will discuss the notion of a well-founded fear of persecution at length in our analysis, as well as the application of the Refugee Convention's criteria by the POs to the cases of trans people.

3. Theoretical framework

3.1 Queering

3.1.1 Queering as a method

Eve Kosofsky Sedgwick (1990) defines *queering* as the process of ‘becoming’ and Sara Ahmed (2006) builds on this by highlighting how *queering* is the possibility of bodies to find a home in the world around us. For Ahmed, it is about facing the fact that certain spaces and objects have been given the status of neutrality and normality. However, when we engage in the process of *queering* the world around us, we are actively working against these fixed ‘normalities’, which can mean, for example, challenging the idea that gender is binary. In turn, for philosopher Simon(e) van Saarloos (2019) *queering* is the possibility to escape being understandable or legible. Like Sedgwick (1990) and Ahmed (2006), to van Saarloos (2019) it is about finding a way of imagining the world beyond dominant norms and values. Importantly, in deconstructing dominant categories such as ‘man’ or ‘woman’, *queering* also means radically questioning the power structures that underpin processes of normalisation, standardisation and exclusion (Luibhéid, et al, 2021). It is about radically challenging what Irene Manganini refers to as “regimes of the normal” (Manganini, 2020; Fernandez, 2017, Sedgwick, 1990; Browne & Nash, 2010).

We want to emphasise that when talking about *queering* in this research, the notions of ‘trans’ and ‘queer’ serve as analytical rubrics. This is important because in some cases the lived experiences of trans people do not match the understanding of trans as the ultimate manifestation of fluidity. Some people thus feel comfortable identifying in the category of man or woman and do not consider their GI as changeable or political (Browne & Nash, 2010). Sara Ahmed (2006) also points to the importance of not idealising queer worlds as alternative spaces and to be aware that fixed ‘normalities’ are still dominant over the queer world. Therefore, the point of entry in this dissertation is to use *queering* to shed light on the production of ‘normalities’ at the border.

3.1.2 Queering migration studies

Lionel Cantú, Eithne Luibhéid and Alexandra Minna Stern (2020) write how queer migration studies emerged in the early 1990s to utilise the tools of queer studies to investigate the power relations that lie at the roots of international migration and to learn how these regimes produce strict, binary frameworks when looking at certain bodies. More specifically, some people are seen as ‘deviant’ and others as ‘normal’ within migration institutions. It is a way of learning about specific assumptions and concepts that reify normative notions of gender and sexuality (Luibhéid, et al, 2021; Sowards, 2021; Schrover & Moloney, 2013; Murray, 2016).

3.2 Borders and power

“The mass production and social organization of difference is at the heart of border-craft.”
(Walia, 2020)

This creation of strict lines is a production of a few people's perceptions and is implemented by those with authority. This in turn determines other people's view of the world, of who belongs in it and who does not (Ahmed, 2006; Van Saarloos, 2019; Sedgwick, 1990). Simon(e) van Saarloos (2019) writes how it is the powerful who decide how the Other should appear. Consequently, these notions of the desirable subject are always anchored in the exclusion of the undesirable Other (van Saarloos, 2019).

Borders can be seen as a means of fixing the binary opposition of the desired subject versus the Other, as they function as a productive and generative entity (Anderson, et al, 2009). It acts as a filter, sorting people into divisions of desirable and undesirable, deserving and undeserving (Luibhéid, 2008; Avgeri, 2021; Anderson, et al, 2009). This analysis of the border is relevant to our dissertation, as we have learned that the Protection Officers who conduct the interviews with trans applicants ask questions that are shaped by their own, often subjective and Western perceptions of transness when considering gender identity. Fittingly, Bridget Anderson et. al (2009) explain in their work on bordering regimes how we should think of borders as a mould that actively creates desirable subjects. As we have learnt from the existing literature, POs encourage people to tell their very personal story in a linear and coherent way about the 'discovery' of their transness, combined with a detailed description of the cruelties they had to endure because they were 'different' from the norm.

To conclude, a central question in the work of Sara Ahmed (2006) is how we choose what we see in our world and what is then forgotten in our experience of it. She argues that the choice of what we see is influenced by histories of colonialism, patriarchy and racism, among others. In order to then integrate different perspectives, Ahmed believes that the first step is to consider the possibility that our world as it is hinders certain people while at the same time protecting the interests of those in power.

3.2.1 Strict gender categories and the history of colonialism

So, *queering* migration forces us to historicise the gendered, racialised and classed categories that are produced and reinforced at the border. To do this, we refer to the work of Ann Laura Stoler (2002), as it helps us to see certain continuities in the categories that were produced during the

Dutch colonial regime. Today, many of the same ideas, norms and values are still in place and serve our current restrictive migration policies at the border.

Stoler (2002) did her research by delving in archives on a colony in the Dutch-East Indies. Central to her analysis is the observation that categories of gender, citizenship, masculinity and sexuality were constantly redefined in order for them to serve and maintain the colonies' power position. Stoler (2002) explains how these categories were important because culture, norms and values that reinforce the colonial power are best reproduced within the personal sphere (Stoler, 2002). This notion of intimacy is therefore crucial because, at the root, it determines who belongs and who does not (Stoler, 2002).

Stoler (2002) points thus at the constant oscillation and movement of categories. In her analysis, she explains how this categorisation is driven by fear and anxiety that the colonies might lose their power – meaning they constantly have to legitimise their position by redetermining what is legitimate and what is not. We thus see that the gendered categories of man and woman and the meaning that is attributed to them is not static, but changes over time in order to serve those in power who are able to attach moral judgements to them. As trans legal studies scholar Dean Spade (2011) also writes that power is not just about a selection of individuals that are targeted by one ruler. Rather it is about the creation of norms that distribute vulnerability to some and security to others (Spade, 2011).

To conclude, the use of binary gender categories in our bordering regimes can be seen as a means to reinforce the regimes' power position. The constant threat of people *queering* the world around them exposes the vulnerable position of the institutions working at the border. Luibhéid (2008) also points to how heteronormative norms are unstable because they “require anxious labour to sustain”. According to her, discourses such as migration policies regarding queer people are a manifestation of this instability (Luibhéid, 2008).

3.2.2 Colonialism and the nation state

When discussing borders and bordering regimes, it is crucial to point out the capacity of the nation-state to produce meaning and knowledge (Luibhéid, 2008). Harsha Walia (2022) highlights how the border today serves as a site where the Western nation state is able to protect its dominant position by safeguarding its wealth and cultural superiority through strict border regimes. For many of us today, the existence of the border feels 'natural', as if it has always been there (Walia, 2022). However, the nation state and its borders were only invented after the end of the slave trade as a way for the West to protect its borders from people coming from colonised countries (Luibhéid, 2008). Therefore, according to Wright et. al (2012), the border should be

understood as a colonial artefact that is still, as it was then, about distinguishing those who belong from those who don't. The notion of citizenship is an important tool here, as it enables the possibility of shaping a world in which capital, goods and people in possession of a favourable passport can travel the world, while racialised people, especially from the global south, face the militarisation and securitisation of borders. (Walia, 2022; Cowan, 2020).

Tuck and Yang (2012) also recognise how the border regimes of the nation state are a continuation of colonialism. They argue that global power relations are as they are because of the inequalities created by colonialism. In this context, bordering regimes are about the biopolitical and geopolitical management of people within the borders of an imperial nation, such as Belgium. In this way, the position of powerful metropolises is confirmed.

4. Conceptual framework

4.1 Homonationalism

Starting from the framework constructed above, we have defined three different theoretical concepts that will further shape the lens through which we will analyse our data. The first concept we have chosen, based on the argument above about the Western nation-state and its cultural and political superiority, is homonationalism. This concept was put forward by Jasbir Puar (2007). With her influential book *Terrorist Assemblages: Homonationalism in Queer Time*, Puar sparked a stream of literature. The theory refers to the idea that nations that protect forms of gender identity and sexual orientation are superior to those that do not (Avgeri, 2021; Luibhéid, 2008). In doing so, other nation states, primarily in the Global South, are constructed as intolerant whilst the colonial history is being completely ignored (Murray, 2016). Consequently, the acceptance of queer people is used to decide which countries deserve sovereignty and international support (van Saarloos, 2019). This reasoning however reinforces the colonial idea that the West is a place of progress, while the rest of the world is stuck in the past, without a future of its own (Ferreira da Silva, 2015; van Saarloos, 2019).

Mariza Avgeri (2021) brings migration into the picture, illustrating in her work how migration can be used by states as a homonationalist project to reinforce Western domination. In the case of SOGI claims, this can be done by subjecting people to normative Western understandings of gender identity (Avgeri, 2021). Literature shows that individuals applying for international protection are expected to condemn their country of origin and erase their emotional connection to that place (Dearham, 2017; Dhoest, 2018). Fadi Saleh (2020) explains in his research how Syrian queer and gender non-conforming people seeking protection are approached as products of suffering and pain, while other, crucial parts of their story are ignored during the interview. In

this research dissertation, I will trace homonationalist views within our asylum process, where Belgium is seen as a safe haven where homophobia and transphobia are long gone. In conclusion, this concept is useful for our research question because it allows us to dissect narratives of Western cultural superiority.

4.2 Transnormativity

Next, we will use Austin Johnson's (2017) concept of transnormativity. Stefan Vogler (2019) highlights in his research that within asylum procedures, it is always assumed that people know exactly what their gender identity means and that they can then express it in words. He argues that trans people who would not place themselves within the binary male/female during the asylum procedure are still being absorbed within this Western pattern of thinking. In other words, we limit their views regarding gender.

As we mentioned before, Vogler (2019) writes that trans persons are considered legitimate primarily when they desire or have already undergone a medical procedure. Toby Beauchamp (2013) writes in his text on transgender politics and U.S. state regulations of testosterone that the fixation on medical transitioning can be considered as a method to regulate movement of bodies and identities. The regulations reflect the state's prejudice that the ultimate goal of trans people is to transition directly from one gender to another (Beauchamp, 2013). In addition to this, Vogler (2019) mentions how there is a focus on the concept of 'coming-out' in the interviews, where a person's identity development is always seen as a linear process, with a clear beginning and end point. Transnormativity can therefore help us recognise normative and Western binary male/female reasoning in the judgments.

4.3 Intersectionality

Finally, we will also draw on Kimberlé Crenshaw's (1989) theory of intersectionality. In writing her work *Demarginalizing the Intersection of Race and Sex* in 1989, drawing on the work of Black and Chicana feminists. She first used it to denounce discrimination against women of colour (Stryker, 2017).

Intersectionality is represented visually through axes representing different aspects of identity. In turn, the intersection of these axes influences the daily reality of individuals within society (Crenshaw, 1989). According to Gloria Wekker (2018), when there is an intersection between two aspects, it can cause other axes to be brought into existence more quickly. Writing on intersectionality and migration processes, Tremblay (2014) argues that persecution based on gender identity is influenced by race, class, culture, gender and sexual orientation.

The importance of an intersectional lens is also highlighted by Dean Spade (2011), who discusses the specific intersections faced by the most marginalised trans people. He writes how they are more vulnerable because different parts of their lives are often controlled by legal and administrative systems such as welfare systems, foster care or prisons. These systems, Spade writes, tend to be based on rigid gender binaries, making it difficult for people to access trans-specific resources and zones of safety. This group of the most marginalised trans people are the least protected from violence and experience more beatings, rape and are more likely to be disappeared and killed (Spade, 2011). In turn, Rosati et. al (2021) express how an intersectional lens sheds light on how trans refugees tend to experience a combination of more risk factors than cisgender refugees, such as poorer health outcomes, lower socio-economic status, and the risk of being rejected by their communities.

The multiple dimensions of a trans person's identity in the asylum system require asylum officers to consider different vectors of oppression and to move beyond an essentialising view of the applicant's gender identity (Scissa & Cucco, 2020; Rosati et al, 2021). As described above, the literature on trans asylum seekers has highlighted some significant shortcomings in the process, showing how little data and knowledge institutions have about the specific struggles faced by trans people (Manganini, 2020). As a result, cultural aspects, class and education levels are often not taken into account (. This concept will therefore help us to identify essentialising assumptions about trans people in the POs' arguments during the interviews, particularly when analysing their interpretation of well-founded fear and serious harm.

Even though I present the concepts separately in this section, they are strongly interconnected. For example, in both homonationalism and transnormativity, we recognise a moralising Western view of what belongs and what does not (Puar, 2007; van Saarloos, 2019). Additionally, transnormativity defines what trans people should look like, what they should think and how they should behave. Intersectionality and the critique of transnormativity are also linked in that they both seek to address the essentialisation of aspects of identity.

5. Problem statement

“I appear before you today not to accuse, but rather to warn of the epistemological violence of the binary regime and to seek a new paradigm.” (Preciado 2020: 77)

Berg and Millbank (2013) highlight how trans identities are confrontational for refugee law, as it clings so tightly to static and legible identities. This confrontation, however, can serve as an opening for the possibility of beginning to unravel the various issues and power structures at the

root of the migration process. Angela Davis spoke in June 2020 in a talk with anti-racist activist organisation *Dream Defenders* about the importance of the trans and non-binary solidarity movement. She emphasises how these communities have taught us how to challenge what is accepted as 'normal'. Thus, like Berg and Millbank, Davis points to the possibilities that the confrontation between the 'norm' and what is considered 'different' can bring. Along the same lines, Ahmed (2006) describes how queerness means living out a politics of 'disorientation', making it possible for us to sustain wonder about the very 'queer' forms of social gathering. In turn, Gloria Anzaldúa (1987), who was a scholar in border studies and queer theory, discusses the notion of 'borderlands', which she describes as a nebulous place created by the remnants of an unnatural boundary (Fernandez, 2017). Her description of such a place fits the position into which trans asylum seekers are forced by border regimes.

In this dissertation, we want to analyse the asylum interview and extract its different layers, revealing fields of tension and entrenched power structures. So far, there has not been any research focusing only on the position of trans people in the refugee status determination process in Belgium. This could be due to a lack of transparency and accessibility on the part of CGRS, which we also experienced in the process of preparing and writing this thesis. Therefore, a central position for research on trans people within the Belgium asylum procedure is needed. In addition, it is important to add that when discussing a 'gap' in the existing literature on trans people in migration processes, we have only read and referred to works written in English, Dutch and sometimes French. Even though it is not possible to cover all the literature produced on a given topic, it is important to address the fact that we have only looked at works published in these academic languages (Manganini, 2020).

Generally, previous research has combined the claims of trans people with those of LGB people. Subsequently, there were no conclusions written about the specific challenges faced by trans people throughout the process (Rosati et. al, 2021). Kaitlin Dearham (2017), too, points to the same gap, with trans people being almost completely absent from existing research. The author argues that while the international literature appears to include LGB and trans refugees, there is in reality a lack of research focusing on gender identity in particular. These prompts for subsequent research thus show how the trans identity is not only considered as a subset identity of LGB in the migration process, but also in the academic field.

In addressing the tendency to think of "trans" as a subcategory, we would like to make it clear that in this research we follow Dean Spade's (2011) idea from his book *Critical Trans Politics and the Limits of Law*. He argues that we should rethink the idea that trans politics should only aim for the kind of inclusion that has been sought by LGB rights advocates. For him, when

discussing trans politics, we need to go beyond this LGB focused inclusion and conceptualise the specific conditions that trans people face. For this research, this means looking at the ways in which transness in particular is constructed in the CGRS interviews. Finally, in discussing the relevance of this research, we align ourselves with Eithne Luibhéid (2008), who argues that all queer migration studies aim to explore the lives that have been compromised, neglected and revoked at the border.

6. Research Questions

In demarcating our research questions, we specifically want to know how the meaning of transness is understood and reproduced in the argumentation of asylum officers in the reports published on the CAD website. In this way, we will be able to unravel on what grounds trans people's claims are rejected.

In addition, we aim to place the officers' narratives in a broader context, linking the seemingly neutral decisions to deeply rooted power structures. By critically approaching their arguments, we can learn what underlying ideas contribute to their decisions. Therefore, our main research question is: “How is transness understood and constructed in the narratives of Belgian asylum officers when assessing asylum applications from trans people?”. Furthermore, the following sub questions will be explored:

- “What are the underlying and historically defined ideas lie at the root of the evaluators' notions of transness?”
- “How does power manifest itself in the reports that deal with the claims of trans people?”
- “How do the assessors apply the notion of well-founded fear to the specific cases of trans people?”

7. Methodology

7.1 Selection of the reports

A first crucial step in the operationalisation of this study was the creation of a corpus of CGRS motivations. We found these in the database of judgments on the website of the Council for Alien Disputes (CAD). In order to select the reports, we first worked with some fixed search terms: 'transgender', 'trans', 'gender identity' and the French word 'transgenre'. In this study we always use 'trans' as an adjective because we see trans as an aspect of identity. However, we also use 'transgender' as a noun in this context because this is the terminology used in asylum authority reports. Between 2011 and 2022, 132 reports included 'gender identity', 193 included 'transgender', 121 included 'trans' and 107 included 'transgender'. Furthermore, we will focus on

reports published between 1 January 2019 and 1 May 2022. This distinction makes sense because, as mentioned above, applications for international protection based on gender identity are being registered separately since June 2019 (Desmet, 2020). Following this delineation, we find 85 judgments under the keyword 'transgender', 40 under 'trans', 98 under 'gender identity' and 36 under 'transgender'. Once we had collected the reports using the keywords, we went through them a first time and noticed that the words were often quoted in the PO's narrative without being of significant relevance to the applicant's claim or the report in general. Furthermore, in these cases the asylum officers did not elaborate on the meaning of transness, so these reports are not significant for answering our research question. After removing these reports from the sample, we ended up with 15 reports.

7.1.1 The sample

After going through the initial sample, we initially collected the reports of people who had applied on the basis of their trans identity and their subsequent fear of persecution; these were 12 reports. In addition, we also selected those reports where gender identity was not the reason for the applicant's claim, but transness was discussed, for example in relation to the applicant's relationships or sexual orientation; we selected 3 such reports. Although these reports gave us less data, they were still valid for this research, especially as we are interested in how the PO understands and constructs the meaning of transness.

We are aware that this sample is small. Apart from the fact that only the rejected applications of those who appealed are published on the CAD website, we must also take into account the constraints mentioned above. Some trans people are advised by their lawyer not to apply on the basis of their GI because there is more country of origin information on sexual orientation or because this category is more accepted in certain contexts (Berg & Millbank, 2013; Manganini, 2020). In addition, some people are unaware that they can claim on the basis of their GI, or do not identify with the gender categories that are pushed forward throughout the asylum process.

An overview of the different reports is given in Annex 1. The table shows that most people come from Colombia (5) and Northern Macedonia (2). Others come from Venezuela (1), Bosnia (1), Mexico (1), Morocco (1), Surinam (1), Gambia (1), Ecuador (1) and Iraq (1). In all but one of the reports, people's appeals were rejected and they were not granted refugee status. In the case of the person whose appeal was accepted, the CGRS decision was overturned and sent back to the institution. Of the 12 reports in which claims were made on the basis of gender identity, only in three cases were people's GI questioned. In other cases, the GI as such was not challenged, but the fear of persecution was considered unfounded.

7.2 Elements to take into account

Above all, when discussing the elements to be taken into account when reading our results, we must emphasise once again that we are working with a relatively small sample. Therefore, it cannot be our aim to generalise our observations. Furthermore, the fact that only the negative decisions are justified and published, and we therefore do not know how the positive cases of trans people are interpreted and judged, contributes to this blind spot.

In addition, as we will describe in detail later in this research, the process of transferring the applicant's story to paper during the interview means that elements such as emotion and facial expressions are lost. As a result, we do not know for sure how closely the PO adhered to the applicant's way of telling their story in the compilation of the report. Furthermore, we acknowledge that sometimes we do not know whether the expressions and terminology were used by the claimant themselves, or whether their story has been 'filtered' and shaped to fit the terms used by the PO. Berg and Millbank (2013) describe similar challenges in their research and express that, despite a small sample, it is still useful to analyse the reports available to us. In particular, to critically approach broad themes in PO evaluations.

Finally, we did not have the opportunity to speak with CGRS officials. After several attempts, it became clear that they did not want to participate due to their already heavy workload and pressure. As a result, we were unable to delve deeper into their personal experiences of doing this work, or how they approach and assess trans people's claims.

7.3 Positionality: some ethical considerations

In starting this research, we were inspired by Laura Nader's text on 'Studying Up' (1969). She calls for a change of perspective when doing research, where we no longer focus our research on colonised tribes, remote indigenous communities or other marginalised groups. Instead, we must use research to better understand power structures and dynamics present in the Western world. More specifically, in Nader's view, we must study powerful institutions and bureaucratic organisations, which in our case is the CGRS. However, merely focusing on the discourse produced by organisations like these leaves silence to explore the lived experiences of applicants, according to Suyapa Portillo Villeda (2020). She explains that the testimonies by SOGI claimants contain stories of deep pain and violent experiences, which in turn trigger raw responses of human emotion (Portillo Villeda, 2020).

In any case, it is beyond the scope of this research to interview trans applicants about their experiences with CGRS. There are also some ethical challenges in doing this as part of a Master's thesis, as many people have already had to undergo four hours of CGRS questioning, most of them twice. However, in preparation for this Master's thesis, I did volunteer at an organisation that focuses on bringing intersectionality to the topic of queer migration. Despite being queer myself, I wanted to develop an additional awareness and sensitivity to the position of trans asylum seekers and the intersections of oppression they face. While working there, I was able to talk to queer people who had already undergone the interview process with CGRS. Talking to them in this context was different because they had approached the organisation themselves and were setting up a project together. They were also aware that I was writing my dissertation on queer migration and I asked whether or not I could mention some of the topics we discussed in my dissertation. Throughout our analysis, we will briefly refer to the testimonies of some of these people. While we are aware that this is not enough data to make generalised statements, the interactions are still valuable because they underpin certain analyses we have drawn from studying the reports.

7.4 Critical Discourse Analysis (CDA)

To answer the research questions, we will conduct a Critical Discourse Analysis of the published CGRS reports. This method is multifaceted and applied in many diverse ways. However, there are some common core principles, where language is always linked to a wider context (Jorgensen & Phillips, 2002). While we will always place the language of POs in a broader context, our analysis will not focus on the language of officers as such. More specifically, we will examine how the analysis of the reports sheds light on the specific social, political and historical context in which these manifestations of discourse are embedded. In doing so, we start from the idea that was put forward by Fairclough (1992) that someone producing text, can never break free from the wider structures in which they move.

According to Fairclough (1992), power is both an inequality between people who can or cannot produce discourse and an inequality in access to the ability to control how text is produced and consumed within a socio-cultural context. Discourse can both construct our reality and be used to understand existing social structures. Approaching discourse in this way shows how it is material, since it actively produces practices of shaping and categorising objects (Foucault, 1979).

The way we understand discourse in this dissertation is heavily influenced by Foucault's work on discourse and its links to power (Foucault, 1979). According to him, power is productive in that it constructs bodies, knowledge and discourse. Therefore, power and knowledge are always

intertwined (Foucault, 1979). For example, knowledge produces a version of reality as we acquire information about what we are trying to understand. As part of acquiring knowledge about the population, we have to develop arbitrary categories (Foucault, 1979). However, according to Foucault (1979), in order to produce meaning, one needs to be seen as a legitimate actor and therefore needs power. Consequently, those who are able to produce meaning are those who are, for example, associated with a prestigious institution. Feminist scholar Gayatri C. Spivak (1988) calls this process 'epistemic violence', referring to the way in which certain actions and decisions are legitimised on the basis of the knowledge of people in a particular position of power.

It is therefore crucial to emphasise Foucault's (1979) conviction that current dominant views do not reflect reality, since according to him there is no such thing as neutral data or knowledge in general. Arbitrary demarcations of what belongs and what does not, he argues, ensure that people are forced to assimilate. This is how people become manageable, docile and productive (Foucault, 1979). Finally, according to Foucault (1979), we need to place this process in a historical context, and he argues that the boundaries of the classifications created can change over time. These analyses of the creation of discourse and the meaning of it fit seamlessly into our theoretical and conceptual framework, as they critically approach structuralist views of reality, questioning notions of objectivity, reality and regimes of the normal.

7.4.1 CDA of our sample

What characterises the CGRS reports is how this manifestation of discourse gives the impression of being 'objective' and reflecting 'reality' because the arguments are embedded in a broader legal framework. However, as we have described, in this dissertation language is not seen as neutral, but as a means of creating and maintaining power relations (Foucault, 1979; Fairclough, 1992; Jorgensen & Phillips, 2002). Throughout the analysis of our data, we seek to identify the constant interplay between knowledge and power by exploring how what is presented as 'normal' in the reports is embedded in a wider social, political and historical context (Fairclough, 1992; Foucault, 1979). In other words, we will look at how the PO's power is manifested in the categories that it can create in their assessments.

In order to identify patterns of power in the CGRS reports, we begin with the unequal relation between the CGRS protection officer and the applicant for international protection, and then unravel the ways in which they construct transness as such and in relation to the notions of well-founded fear of persecution. Our *queering* lens allows us to transgress the normalisation processes in the officers' narratives and will help us to analyse how the officers are creating moral categories of 'credible' vs. 'implausible' or 'deserving' vs. 'undeserving' trans applicants (Berg & Millbank,

2013; Avgeri, 2021; Luibhéid, 2008; Manganini, 2020; Dhoest, 2018; Tremblay, 2016). Additionally, we will historicise these categories and unpack how dominant constructions of transness are rooted in a wider history of colonialism and white supremacy and are continued today to protect the strict borders of the Belgian nation-state (Ahmed, 2006; Sedgwick, 1990; Spade, 2011; Manganini, 2020; Luibhéid, 2008).

7.4.2 The process of CDA

In conducting our CDA, we began our analysis by approaching the reports in three different rounds. During the first reading of the selected reports, we approached the data with an open mind, focusing mainly on familiarising ourselves with the structure of the document and the legal jargon used by the POs. Reading the reports a second time, we focused mainly on the way in which the officers constructed transness and how the applicant's descriptions of fear of persecution were assessed. Thus, in this first part of our discourse analysis, we worked mainly inductively. When reading the data for the third time, however, we proceeded to work deductively, looking at the reports through a critical queer lens. Our CDA process was therefore iterative, as we went back and forth, re-reading the data, trying to take into account the different layers of these seemingly neutral accounts. Since we are working with a small sample, we will stick to a qualitative analysis.

8. Results

8.1 The position of the asylum officer

8.1.1 Officer as aloof

As Eva Meijer (2020: 53) puts it, “we can visualise the asylum process as a funnel into which the stories of asylum seekers are poured.” As the process unfolds, complex, fraught and messy stories are eventually filtered into a clear narrative. Luibhéid (2008) also describes how a legal format, such as a legal report, does not allow time and space for applicants to share the full context of their stories. These limitations undermine the ability to gain an intersectional understanding of a person's trans identity in relation to their context. Meijer writes that despite the officer's claim of aloofness, this too should be considered an attitude that affects the outcome of the interviews. As part of her PhD Maja Hertoghs (2019) gained access to the Dutch asylum procedure and looked at how the feelings of professionals working in the system have an influence on the outcome of an application. After four years of fieldwork, she analysed that an officer's decision is never based on neutrality, because the answers to their questions are gathered through movements of distrust (Hertoghs, 2019). She writes that the notion of neutrality is therefore purely performative, as it allows interviewers to position themselves as unbiased, while at the same time asking questions

that stem from a sense of scepticism (Hertoghs, 2019). We choose to illustrate the immunity of the CGRS officer as neutral by referring to a Council response to a lawyer's criticism of the officer's disruptive attitude during the hearing. It is important to note that we do not focus on the Council's statements in this dissertation, but this fragment sheds light on what is usually invisible in the reports:

"Where reference is made by the lawyer to a dismissive attitude of the protection officer during the interview, it must be noted that such an assessment is essentially entirely subjective. Since the protection officer is bound by the duty to confront the applicant with contradictions during the personal interview, it is not entirely inconceivable that such confrontations may have some impact on the atmosphere of the personal interview. Notwithstanding, the protection officer is an impartial official who has no personal interest in adopting such an attitude, as well as nowhere during the personal interview was any reference made to a possible atmosphere that would upset the applicant and counsel." (a262 843, 2021, p.10)

As we did not gain access to CGRS, we are not able to thoroughly explore in what ways this sense of distrust is present in the PO's attitude in our sample. We therefore have no idea what statements, emotions, tones of voice were lost in the process of transferring the applicant's story to paper. Hertoghs (2019), on the other hand, was able to observe how the complexity of the person's story is stripped away as the officers type their account, making their narrative readable. Hertoghs (2019) gave an example where the elements that were eventually left out were the officer's annoyed tone of voice and their aggressive typing sounds. Once the annoyed tone was removed the text could even be interpreted as showing the interviewer as empathetic (Hertoghs, 2019).

Fittingly, a common observation made by the people we spoke to during our work at the queer organisation was that they could clearly notice that the PO is not there to try to understand where they were coming from, but rather to test them and expose their alleged lies. One person testified that the PO kept going back and forth, asking similar questions, but with slightly different wordings. This caused the applicants to doubt themselves and their statements about very detailed information such as dates. Additionally, they explained how they felt very observed and intimidated, since the interviewer was constantly looking in their eyes, at their face, at their hands and their body language in general. This serves as a reminder to the reader of this dissertation to be aware throughout the reading process of how certain elements that were apparent during the interview have been omitted from the report.

8.1.1.1 Tone of voice

In analysing our sample, we learned how the officers' tone of voice reveals more about their attitude during the interview. More specifically, this tone is reflected in certain specific word choices. When reading the reports in our sample, we noticed that the officers repeatedly adopted a rather patronising tone. We recognise this in the following quotes:

“In that context, the CGRS also points to the numerous initiatives and associations working for the social acceptance and safeguarding of the rights of transgender and transsexual people in Colombia. It should be noted that you are not aware of the existence of such organisations, however, such organisations are also active in Valle del Cauca, the department where you stayed (see the information added to the blue map of the administrative file). One would expect somewhere that should you actually have severe problems in Colombia you would look for possible solutions or look for ways to help you. Information suggests that in recent years, thanks in part to this organisation, the situation has improved for transgender people.” (a250 059, 2021:15)

“You were then unable to provide an adequate explanation as to why there would be discrimination in your case. Although you indicated that it would be difficult to find work (CGRS, p. 18), it is clear from your statements that you never actually tried to find work in Bulgaria. Indeed, the mere fact that you looked for work in Ljubljana, Slovenia, but were told that you would not be allowed to return there (CGRS, p. 19), does not establish beyond doubt that you would not be able to find work in Bulgaria.” (a268 581, 2022: 5)

“Equally curious is the fact that you never sought information about men who feel like women (CGRS, p. 14). Although you stated that you have met men who feel like women and talked to them about it, when asked what you talked about, you gave the meaningless answer "about ordinary things"” (a217 917, 2019: 5)

These fragments reveal the POs' tendency to attach moral judgements to certain elements of the applicant's story in order to substantiate their arguments. In doing so, they present their individual judgements as established and generalisable facts. For example, when the PO argues in the first quote that "one would expect", they are making a vague argument, but framing it in such a way as to make it seem like a matter of common conscience. The way the PO uses “it is clear” and “equally curious” reveals a similar reasoning.

8.1.1.2 Narratives of Western superiority and homonationalist logic

Eithne Luibhéid's (2008) work on queer migration confirms how criteria, like the necessity to use the 'correct' terminology, are based on the idea that Western knowledge is superior. She highlights how granting asylum to a select few legitimises exclusionary, repressive systems of immigration control. When assessing the power relations entrenched in the interviews, it is crucial to discuss the racial and colonial dimension. As Luibhéid and Cantú (2005: 64) argue, asylum hearings are a space where the powerful meet the powerless and where the powerful are usually white, while the powerless are often racialised. They write how applicants are constructed as 'unworthy' or as begging for saviour from the tyranny of their cultures. We read this in the following quote:

“Asked if you were at odds with the fact that it is not accepted in your religion, you reiterated that you were born this way and stated that religion and other persons have no say in this, which is quite remarkable for someone who received a good Islamic upbringing. The superficial description and relative ease with which you seem to have experienced the discovery of your gender identity and sexual orientation, while living and being brought up in a traditional Islamic environment, raises doubts about the credibility of your statements.” (a217 917, 2019: 5)

This PO's argument and use of the word 'traditional' reveals their racist and colonialist ideas about the context in which this applicant grew up. The expectation that the applicant should support their narrative with negative images of their life as a trans person living in their specific context fits with our concept of homonationalism. Luibhéid (2008: 179) writes how the homonationalist idea that the West operates a normalising regime within a context of ultimate democratic freedom is able to be maintained by admitting only a few queer applicants in numbers to not threaten the dominant systems, but just enough to validate the safe haven discourses. In the following quote, we read how CGRS frames itself as a neutral institution that is to be trusted:

“It should be clear that obtaining international protection does not seem to be a priority for you. Your statements that you were afraid and did not know anyone when you first applied for asylum, and that you were only ready for an interview after all this time in Belgium because you now wanted to study and work (see CGRS questionnaire at DVZ, question 5), are not at all convincing and do not offer any excuse. An applicant for international protection can be expected to place his trust in the asylum authorities, since an application for protection is in itself a request and an expression of trust in the protection offered to the applicant by the Belgian authorities. The processing of an application for protection is confidential and 'fear' cannot be a reason for simply not

showing up for an interview and then disappearing for more than a year. After all, it was the applicant herself who decided to turn to the Belgian asylum services in order to obtain international protection.” (a262 842, 2021 p. 3)

By framing itself in this way, CGRS is able to further build on this and produce narratives of white saviourism (Hiller, 2020). In other words, this discourse makes it possible to frame queer migration as a journey from repression to liberation, while simultaneously creating heterogeneous and marginalised subjects within our restrictive systems of control (Luibhéid, 2008). In this context, Manganini (2020) argues for a shift from ‘ethnocentrism to entho-relativism’, where we go from thinking that Western culture is at the centre of the world to thinking that there is no centre at all. Bashki et al. (2021) go further, arguing that in order to decolonise gender identity in refugee law, we need to step back and learn from subjects who have been silenced and made 'subaltern'.

8.1.2 Asylum officer’s argumentation

Although we could not speak to the asylum officers about their approach, we can analyse their written arguments. This is particularly important as we do not consider their reports as isolated entities but need to be aware of how they are made available to the public, including lawyers and other POs. In this way, the documents can inform future decision-making processes. Maja Hertoghs (2019) notes that the meaning of this report is always subject to the interpretation of future readers. For example, if an applicant appeals after receiving a negative decision from CGRS, the initial report is reviewed by the Council. As a result, the document is inherently political and has the power to greatly influence a person's future (Berg & Millbank, 2013; Hertoghs, 2019).

8.1.2.1 Guilty until proven innocent

Reading the reports confirms Maja Hertoghs's (2019) analysis of how POs start from suspicion, as certain word choices clearly reflect that the PO will never simply accept what an applicant claims. The following fragments reveal how the interviewers start from suspicion, rather than wanting to hear the applicant's story:

“Your mother is aware of your alleged gender identity.” (a217 917, 2019: 1)

“If your so-called assailants were really targeting you to that extent, they could have essentially already easily followed and found you.” (a280 179, 2022: 3-4)

“Whatever the case may be, the CGRS concludes that you cannot presently demonstrate a well-founded fear of persecution in relation to actors in your country of nationality.” (a237 351, 2020: 4)

“The seriousness and comprehensiveness of these allegedly serious problems is also put into perspective by the fact that you have left Colombia several times in recent years and have always returned.” (a280 179, 2022: 6)

8.1.2.2 Misgendering

Besides the tone of voice and the typing sounds that Maja Hertoghs (2019) describes, another element that is left out of the CGRS report is the way the PO addresses the person after the applicant disclosed their trans identity. More specifically, the report does not reveal whether or not the PO respects the applicant’s possible request to use certain pronouns or specific gendered words (e.g., sir or madam).

However, in one report we can read the following in an argument of the applicant's lawyer in response to the CGRS decision:

“On the other hand, the applicant's gender identity is not taken seriously at all, nor the consequences thereof. The defendant continues to address her with "sir" (see supra) while the applicant has indicated since the beginning of her asylum procedure that she wishes to be addressed with [Ms] G. (...). Moreover, the defendant's protection officer was not trained in gender-sensitive matters. She did not always understand the applicant's personally sensitive situation. The applicant felt strongly intimidated during the personal interview. Consequently, this gender-sensitive approach was lacking in the present case.” (a268 581, 2022: 8)

Being misgendered can make the claimant feel unsafe and misunderstood and can indicate that the environment they are in is hostile. Kevin A. McLemore (2014) conducted a study with 115 people who had experienced being misgendered and the results show how that this can lead to less identity strength and coherence and an overall increase in negative affect. So, we can therefore say that experiencing this can throw someone off track and affect their ability to tell their story in the way that CGRS expects them to.

8.1.2.3 Requirement to tell a coherent and chronological story

Studying the PO's attitude, we learn how the applicant's story should be predominantly efficient. Maja Hertoghs (2019) notes how the PO mainly focuses their interview questions on what is important for the report. If an applicant's answers are too long or if the PO feels that the applicant is not answering their questions, they can become irritated. Once again, this is an example of how different layers are removed from the applicant's story. Eva Meijer (2022: 44), on the other hand, emphasises again how 'words can show pasts, outline futures and communicate to others what you feel inside'. Berg and Millbank (2013) also notice this desire for coherence when studying the reports in their sample. In the case of trans people this specifically means that there must be a coherent story about the genuineness of the applicant's GI on the one hand and their well-founded fear on the other hand. Additionally, there is also an emphasis on the need for a chronological narrative, for example in the following quote:

“The fact that you have already proved incapable of outlining a coherent time sequence raises eyebrows. (...) Furthermore, the fact that you and your partner make different statements about the alleged perpetrators further compromises your credibility. (...) you express that everything would have happened very quickly, and you would not excel in exact dates (CGRS, p. 24, p. 26), which can objectionably count as excusable and fails to restore your already significantly impaired credibility” (a280 179, 2022: 5)

In the next case, the officer does not seem to take into account that this event happened more or less ten years ago. In addition, the fact that the narrative contains traumatic events could also contribute to the fact that this person is not able to present an exact timeline (Fernandez, 2017):

“Except for an incident with the police in 2012. You cited that you were taken by police officers at the time, and they then beat you, after which they left you in the mountains. However, you stated shortly afterwards during the personal interview that this incident had occurred in 2010, before you had outed yourself as gay or transgender”. (a237 351, 2020: 5)

8.2 Constructions of transness

“Why is it that you are convinced that only subalterns possess an identity? Why are you convinced that only Muslims, Jews, queers, lesbians, trans people and migrants have an identity? Do you – the normal, the hegemonic, the bourgeois white psychoanalysts, the binary, the patriarchal-colonials – have no identity? To be branded with an identity means simply that one does not have the power to designate one's identity as universal.” (Preciado, 2020: 31)

Looking at the construction of transness throughout the asylum interview, we start from the understanding that this interaction between the CGRS officer and the trans applicant is inherently

characterised by a general asymmetry of power. As anthropologist Maja Hertoghs (2019) puts it, this power imbalance is closely linked to the notion of suspicion and the fragility of 'truth'. As our approach is to look at the interviews through a Foucauldian lens, we can see how CGRS officials have the power to define what it means to be trans and to experience a well-founded fear associated with that identity. Based on their understanding of transness asylum officers are able to develop arbitrary categories of those applicants who are credible as opposed to those who are not, and those who are deserving as opposed to those who are not. As this has real-life implications for the future of the trans applicant, people are forced to adapt their stories to the perceptions of the PO, who, as it will turn out, see trans people as 'born in the wrong body' with a desire to eventually 'medically transition to the other gender'. Ultimately, as Dhoest (2018) writes, people who adapt their stories to the expectations of POs are more likely to be accepted.

8.2.1 Gender identity as binary

From the reports, it is clear that POs have the expectation that trans people should position themselves within the binary categories of man or woman. In the first place, this is made tangible when the officer assesses the applicant's narrative. In doing so, they refer to the applicant in the third person, using the possessive pronoun 'his' or 'her', thus offering only two strict options. The following citation illustrates this:

"A person who claims to be in need of international protection because of serious problems at home can reasonably be expected that he/she invokes that need and apply for asylum as soon as she/he has the opportunity to do so." (a237 351, 2020: 3)

In her analysis of the legal framework for international protection, Irene Manganini (2020, p. 52) confirms how the idea that there are two biologically defined genders is reflected in our national legal systems. This has a tangible impact on the lives of trans people, who are expected to conform in order to navigate our cis-normative legal institutions. One of the dominant ideas in this context is that every trans person ultimately wants to 'change' gender, to go from being a 'man' or 'woman' to *becoming* the opposite gender. Although some trans people identify with this argument, it is important to understand that it can lead to more misunderstanding, discrimination and rejection in the case of non-conforming trans people (Manganini, 2020:52).

We can say, then, that the use of a strict binary understanding of transness 'filters out' many people who apply on the basis of their gender identity and who do not wish to place themselves within this restrictive logic. These binary gender categories, which today seem to function to protect the national border, were invented in the 19th century to serve white supremacist projects of

colonialism. Scientists proposed that the difference between the categories of 'man' and 'woman' was natural and biological, and introduced the idea that the more civilised a society is, the more visible the physical differences between men and women would become (Schuller, 2017).

In our analysis, this dichotomous thinking is reflected not only in the tendency of POs to mention only “he/she”, leaving only two options, but also in deeper assumptions and emphases mentioned throughout the reports.

8.2.1.1 “Born in the wrong body”

It is striking that the majority of the selected reports start by mentioning how the applicant was “born in the wrong body” and how they realised from a very early age that they eventually wanted to 'change bodies' in order to be their true selves. It is not possible to find out to what extent the narrative of being stuck in a body that feels like a cage is used by the applicants themselves. We therefore do not know whether these images are how they actually describe their feelings or whether they are a way for them to fit their story into our dominant notion of transness as a process of becoming 'man' or 'woman'. It could also be a way for the Protection Officer to summarise the applicant's story in one very image-laden sentence. In the reports, we read:

“You were born C.R.L.H., in fact you were born in a boy's body, but you identify as transgender and go through life as a woman.” (280 179, 2022: 3)

"Since you were very young, you felt different. You were born in the body of a boy but felt like a girl.” (a268 581,2022: 2)

In discussing this narrative, it is again important to mention that it is not our intention to suggest that it does not fit the lived experience of some trans people. However, because it is so often used by the institution in power, it is important to understand where this narrative comes from and what implications it can have. The narrative was first introduced by German American endocrinologist and sexologist Harry Benjamin. In 1967, he published the book *The Transsexual Phenomenon* in which he expresses that to recognise a ‘real transsexual’, they have to feel as though they are trapped in the wrong body. The expression thus stems from the context of medicine, in which it served as a precondition to be able to obtain hormone therapy and gender-affirming surgery. We can therefore assume that it was adopted by trans people to be able to be understood by cis people in power. Berg and Millbank (2013) also discuss this narrative and show that at its heart is the expectation that trans people will experience their gender identity as a 'problem' that needs to be solved. Subsequently, in the assessment of claimants' stories, there is an expectation that being trans is always traumatic and that the claimant will then be able to provide a very detailed and

lived description of what it was like to realise that they were trans and how difficult it was for them to navigate in their own context.

Fittingly, Philosopher Paul B. Preciado (2020: 20) describes how his body is branded by medical and juridical discourse as “transsexual” and offers us the following insight: “I speak to you today from this elective, refashioned cage of the ‘trans man’ of the ‘non-binary body’. Some will say this is a political cage too: whatever the case, this cage is better than that of ‘men and women’ in that it acknowledges its status of as a cage.” (Preciado, 2020: 20) This quote further reflects how the “born in the wrong body” discourse reinforces our rigid and dichotomous patterns of thinking about gender identity. Ultimately, it can make people feel stuck in our exclusionary discourses rather than in their bodies.

8.2.1.2 Discovery of trans identity

Following CGRS's construction of transness as a process of fitting into the gender binary, there is an assumption that trans people realised at one particular moment that they were 'different' and that from that moment on they would start their irreversible and chronological path of 'transitioning'. We clearly see this pattern in the way CGRS starts its report, providing it with the following timeline:

“From a very young age, you felt different. You were born with a boy's body, but you felt like a girl. At school, the other children treated you badly: they laughed at you, pulled down your trousers and tugged at your T-shirt. When you were little, you saw a psychologist who insisted that you needed to change. (...). You had a very difficult time in your teens and high school. You felt like a girl and started wearing make-up. No one accepted you as a friend. (...) Your mother finally accepted you for who you are. You agreed with her that you would go to a doctor to get a diagnosis so that you could change your gender. But there was no such doctor in northern Macedonia. The idea of going to another country for hormone therapy was born. (...) When you were 23 years old, you underwent hormone therapy in Skopje. You had to follow this treatment for two years and then undergo gender reassignment surgery.” (a268 581, 2022: 2)

As mentioned above, we are not able to find out whether or not this short summary is a literal transcription of how the applicant told their story. Therefore, we cannot criticise this narrative as such, but it is clear from reading the reports that the legitimacy of applicants is at risk if they cannot describe their inner process of self-discovery. For instance, in this report:

“First, for instance, it is striking that, despite being asked about this on three occasions, you struggled to describe specific situations in which you realised you were not in the right body (NPO 1, p. 16). You did not get further than being dissatisfied with what you saw in the mirror. You repeatedly falling back on descriptions of your appearance, without elaborating on the inner process involved. Despite being repeatedly reminded of the importance of lived explanations to support your request, you failed to articulate your feelings in this regard - Time and again, you reverted to physical characteristics, such as wanting breasts and longer hair, or wanting to change your penis for a female body. The finding that you are incapable of doing this seriously undermines the credibility of your claim that you identify as a trans person.” (a279 892, 2022: 6)

Here we clearly see the PO's expectation that the claimant should be able to give an accurate description of 'that one' occasion when they 'discovered' that they were trans. This is clearly linked to our concept of transnormativity by Austin Johnson (2017), who also criticises this emphasis on the idea that a person's identity development is a process with a clear beginning and end point.

8.2.1.3 Trans identity as fixed

Additionally, this focus on the ‘born in the wrong body’ narrative reveals how there is a general expectation that trans applicants should describe their gender identity as an innate and fixed characteristic that has remained the same since the moment of 'realisation'. In her research on the assessment of asylum claims by trans and gender non-conforming people, Mariza Avgeri (2021, p.5) also points to the need for applicants to demonstrate that they experience their gender identity as an immutable characteristic rather than a choice. She writes that this understanding serves as a substitute for medicalised notions of SOGI, which consider gender or sexuality to be real as long as it is prescribed.

When analysing the POs' assessments through a critical queer lens, we want to re-emphasise how many trans and gender non-conforming people do not see their identity as a fixed condition. Rather, they see it as mutable and influenced by the immediate context in which they navigate (Stryker, 2017; Sedgwick, 1990). Sara Ahmed (2006:9-10) describes how the specific context of migration helps us to explore how bodies ‘arrive’ in a particular place and how they are then reshaped as a condition of their arrival. She therefore refers to migration as a 're-inhabitation of the skin', where different landscapes 'imprint' on the body as unfamiliar impressions.

8.2.1.4 Importance of ‘passing’

Despite the emphasis on transness as a process towards a binary gender identity, Manganini (2020) and Berg and Millbank (2013) argue that trans people will not fully be recognised as fitting into the category of “male” or “female” as long as their gender expression does not match their gender identity. The authors write that to be taken seriously during asylum hearing, you need to “pass”, meaning that your appearance should be consistent with the features we usually associate with being male or female (Anderson et. al, 2020). Susan Stryker (2017) writes about how being perceived as 'passed' gives people a kind of access to the world that is otherwise blocked if you are trans or perceived as such. Despite the importance of passing because of the way our world is organised, many trans people are uncomfortable with the logic of medical 'transitioning' that is often associated with it (Stryker, 2017).

In the following quote we recognise the importance of “passing”, as the PO urges the applicant to prove their trans identity by referring to their physical appearance. The officer's statement that the applicant “claims” to have a female appearance shows how they do not consider the applicant's trans identity to be legitimate.

"The individual claims to be transgender and to have the appearance of a woman. However, he does not provide any evidence or details to support his claims. In fact, he does not provide us with any official or unofficial documents (medical certificates, family testimonies, etc.) to prove his "transformation" into a woman or his current physical appearance. However, it is up to the applicant to substantiate his argument. This element cannot therefore be upheld in his favour". (a262 594, 2021: 3)

8.2.1.5 Emphasis on gender-affirming surgeries

In analysing the reports, it is clear that gender-affirming surgery is understood as the ultimate goal of a trans person and is seen as a legitimate 'solution' that fits with the argument that transness is a problem. It is clearly advantageous for an applicant to be able to provide medical evidence of having undergone surgery, or to express a desire to undergo surgery in the future, as we read in the following judgement:

"However, you have heard of men who feel they are women and have surgery to become women. When asked if this was something you would want, you simply replied: "In the future, why not?". (...) When you were told by a friend that it would cost a lot of money, you said "never mind". The fact that you, who has never felt like a man and has always felt like a girl or a woman, react in such a laconic way simply because you do not have

the necessary money, casts further doubt on your claimed gender identity". (a217 917, 2019: 5)

Or, in the following case the applicant testified that she first wants to know if she will be able to stay before taking any further steps to ultimately undergo surgery. CGRS, however, does not take this into account when assessing the credibility of her trans identity, stating the following:

"It should also be pointed out in this context that, despite the fact that you have been living in Belgium for more than two years and have several friends here within the LGBT community, it was hardly possible for you to say anything about the practical steps you need to take before you could possibly transition to a female body. (...) You did not know the procedure for any sex change in Belgium or the steps required for surgery. Nor could you tell which hospitals you could go to for any procedure in Belgium. (...) You also took no steps to find out which doctor could help you in this process. More to the point, you did not know what kind of doctor specialised in preparing gender reassignment surgery for trans people. You had never heard of an endocrinologist. (...) The observation that you completely failed to inform yourself about the practicalities of your transition further casts doubt on the sincerity of your intentions. These doubts are reinforced by the observation that when questioned about what your transition meant to you, you always referred back to the physical aspects of it (cf. supra)." (a279 892, 2022: 7)

"Nor does your objection that you do not want to embark on your transition until you have certainty about your residence papers in Belgium affect the above findings. Apart from the fact that it does not seem very convincing that you would let something as essential as your transition to a female body depend on your residence status, the mere fact that you might not be eligible for (the reimbursement of) an operation without a residence permit does not prevent you from inquiring about this prior to that transition. (a279 892, 2022: 7)

8.2.2 Western conceptions of transness

8.2.2.1 The 'correct' terminology

We have previously discussed how the idea of gender as binary is rooted in Western colonial projects (Schuller, 2017) and how the dominant 'born in the wrong body' narrative stems from Western scientists who approached transness as a medical condition (Benjamin, 1966; Preciado, 2020). Despite their problematic origins, these ideas are systematically present in the accounts. Moreover, as Dhoest (2017) writes, these Western ideas of SO and GI are imposed on applicants

during the asylum process in order for them to be taken seriously. In the following quote, we read how this PO criticises the applicant for not using what is, in their eyes, the correct terminology:

“Asked what you meant by ‘homosexual orientation’, you stated during the interview with the CGRS that you mean that you feel nothing for the opposite sex and that all your feelings are directed towards men. At the same time, you repeatedly stated that you are "different", by which you mean that you have felt like a girl since childhood, that you have never felt like a man and that you now feel like a woman. If you have always felt like a girl or woman and have never felt like a man, it is somewhat curious that you still speak of a homosexual orientation, referring to women as the 'other sex'. You stated that a man who feels female is called "al zamel" by Moroccans and you use the term "female man". At no point in the personal interview did you use the term "transgender". (a217 917, 2019: 5)

This asylum officer questions the legitimacy of the applicant's trans identity because they do not use the term 'transgender', which is a requirement in the eyes of the interviewer. They clearly do not consider the non-Western description of 'female man' to be legitimate. This focus on using the 'right' terminology can be understood as a continuation of a colonial legacy in which non-Western terminologies and forms of fluid gender identity were erased in order to be validated by the West (Najmabadi, 2005). We can link the idea of the superiority of Western terminology to a concept put forward by Simon(e) van Saarloos (2019: 57) called “Wit Herinneren”, which literally translates as “White Remembering”. They write about how whiteness means hearing something and thinking that this information, which is new to you, has probably not been relevant for a long time or is not relevant at all. Whiteness also means thinking that if white people start using a certain word, it will gain value. As a result, van Saarloos writes, White Remembering 'acts like an eraser and a pen at the same time: it erases in order to plant a flag or write a name (van Saarloos, 2019: 57).

In turn, Berg and Millbank (2013), Dhoest (2017) and Manganini (2020) also analyse how applicants who mention versions of sexual orientation and transness from other cultures are often disbelieved because adjudicators are unaware of, or unwilling to consider, non-Western forms of transness. In this way, Manganini (2020) writes, powerful institutions are able to pigeonhole trans people's identities and subject them to fixed expectations and categories. In addition, the PO questions the honesty of this person because of the way they describe the relationship between their GI and SO. However, Berg and Millbank (2013) remind us that trans people are also represented across different sexualities and may identify as lesbian, queer, bisexual, gay or straight, while also moving beyond these categories.

From our interactions with trans refugees while working at the queer organisation, one person told us that they felt the PO was very knowledgeable about different LGBT terminology. However, when this applicant explained how they identified as queer, the POs clearly pushed them to go deeper into what this meant, asking "do you mean you are a lesbian?". Even though they may be aware of certain terminologies, the applicants are still expected to fit their descriptions into their fixed categories. The PO's struggle to fit the vague and flexible meaning of 'queer' within the category of 'lesbian' sheds light on the hetero-cis-normativity entrenched in the asylum procedure.

8.2.2.2 Western LGBT culture

Alongside the emphasis on the use of Western terminology, Manganini (2020) writes how the asylum officer's reasoning is often informed by stereotypical Western notions of LGBT culture, resulting in caricatured images of trans people. An example is the expectation that all trans people are also part of a community and are inevitably surrounded by people with the same gender identity. For instance, we read in a judgement from 2022:

“By the way, for someone who has been identifying himself as transgender for six years, it is also remarkable that you cannot name a single person in Venezuela or elsewhere who has publicly expressed themselves as transgender.” (a279 892, 2022: 5)

Or in this quote, where the applicant is expected to take action by contacting an organisation or have an idea about the name of one:

“It is striking that you have never contacted organisations in either Morocco or Europe that provide assistance or information to men who feel like women, more so, you do not even know any such organisation by name.” (a217 917, 2019: 5)

8.3 Conceptions of the trans applicant's well-founded fear

Despite the stigmatising and restrictive attitudes towards transness that were evident in the reports, people's gender identity is not questioned in the majority of the applications. In other words, most applications are rejected because the asylum officer does not consider the person's fear 'well-founded'. In our corpus, the asylum officer explicitly doubted the trans identity of three applicants, but the negative decision was always accompanied by an argument about the lack of serious harm. Berg and Millbank (2013: 5) also note that in their extensive sample, only one application was rejected because the applicant's gender identity was deemed illegitimate, as the adjudicator felt that the person's appearance did not match their described GI.

In the following fragment we learn how the rejection of the credibility of one's well-founded fear is described:

“The Commissioner General considers that the nationality you claim in support of your application for international protection is established. Nor does it question your gender identity. In examining your application for international protection, the Commissioner General has taken note of and considered the current situation of transgender persons in Colombia. This information shows that the situation of transgender persons from that country is currently complex and that they constitute a vulnerable group there. However, you have not demonstrated that return to Colombia would require you to have a well-founded fear of persecution within the meaning of the Refugee Convention or that you would face a real risk of suffering serious harm within the meaning of the definition of subsidiary protection.” (a246 402, 2020: 2).

The many layers of this argument call for a deeper understanding of how asylum officers understand and construct the notion of 'well-founded fear'.

8.3.1 Meaning of well-founded fear

It is beyond the scope of this dissertation to offer a description of the entire course of the legal assessment of the notions “well-founded fear”, “persecution” and “serious harm”. However, it is interesting to see what POs understand by well-founded fear for trans people. It will help us understand their awareness of the particular dangers, barriers and discrimination that trans people may face throughout their lives. In other words, we will be looking at whether POs are addressing different intersections of trans exclusion and oppression in their assessment of the case.

In *The Law of Refugee Status*, international refugee law experts James C. Hathaway and Michelle Foster (2014) describe the paradox that the need to demonstrate a well-founded fear of 'persecution' is central to the definition of the Refugee Convention, despite the fact that it does not provide a definition of the meaning that can be attached to this concept. Manganini (2020) expresses that on the one hand, the lack of this definition could ideally create a situation in which the many specific and individual experiences of people could fit. For their part, Hathaway and Foster (2014) argue that countries should seek to understand the essence of 'persecution' and then use it as a phenomenon that is “constant in motive but mutable in form” (Hathaway & Forster, 2014: 1). In this way, they believe, the inconsistencies between different cases will be reduced, while there is also room to take account of specific individual factors (Hathaway & Foster, 2014). However, Manganini (2020) argues that this lack of a clear definition is in fact intentional, as it

leaves room for restrictive interpretations, leading to a high level of inconsistency between judgments. Narrowing the scope of this definition can therefore be seen as a tactic to reduce so-called mass migration (Manganini, 2020). Overall, there are some notions of 'persecution' that are widely used by migration institutions. For example, persecution is a form of harm inflicted by a person. The harm is unfair, serious and systematic. In addition, this harm may be inflicted by the state or by private actors (Manganini, 2020).

Going back to our analysis of homonationalism, the need for people to give a detailed, gruesome description of their experiences in their country-of-origin feeds back into the narrative of the West as a safe haven and the ultimate reference point for judging whether someone's fear is justified (Fernandez, 2017; Luibhéid, 2008). Furthermore, the lack of core criteria, which leaves the definition very narrow, creates a situation where the rejection of people appears justified within the context of asylum law, which is widely seen as a beacon of truth. Officers are actively negotiating subjective emotions of fear while expecting people to give detailed descriptions of pain, trauma and shame (Fernandez, 2017). In this analysis we do not explicitly argue for the need for fixed or well-defined criteria, but we do criticise the use of the lack of such criteria as a means of reinforcing existing unequal power dynamics.

8.3.2 Absence of intersectionality

Scholars analysing the use of well-founded fear through a queer lens argue that the assessment of trans asylum claims should consider a wide range of different forms of serious violations of human rights, apart from just threats of life or death (Avgeri, 2021, p. 10; Berg and Millbank, 2013; Manganini, 2020). Examples could be taking into account whether the trans applicant has access to education, health care, psychological care, work and housing (Avgeri, 2021). In relation to these examples, Berg and Millbank (2013) primarily argue for the importance of looking not only at the personal experience of trans identity, but also at how people's context interacts with their identity.

According to this line of reasoning, the need to suppress one's desire to live freely as a trans or gender non-conforming person can be considered a systematic violation of human rights. The subsequent threat of harm for actually living openly should then be sufficient to establish a well-founded fear of persecution (Avgeri, 2021: 10). In her research, Manganini (2020) follows the approach of the International Court of Justice (ICJ) in the Yogyakarta Principles, which were added in 2017. These principles express that when a trans person is at risk of being violated on the basis of their gender identity, their dignity, personhood and equality before the law are under pressure.

In the following chapters we will learn more about the PO's interpretation of well-founded fear in the context of trans applicants' claims. More specifically, our analysis will shed light on how this definition is restrictive, focusing primarily on the importance of state protection while neglecting various oppressive intersections that affect trans people's quality of life.

8.3.3 Emphasis on state protection in countries of origin

Overall, in our sample we see that POs rely heavily on the existence of anti-discrimination laws and a well-functioning police force to decide whether a person's fear of persecution is well-founded or not. In general, we find that once they can point to specific legal articles that appear to protect the safety of trans people, the chances of a person being granted protection status are significantly reduced. However, Manganini (2020, p. 46) warns us how the state is not able to provide protection in all cases. Sometimes protection mechanisms may be in place but not implemented, for example because the authorities refuse to do so or because of corruption. For trans people in particular, it is not enough for the protective framework to be in place; the framework must also be sensitive to trans issues. Manganini (2020: 24) writes in this context that "protection cannot only be *de jure*, it must also be *de facto*".

In one case, we even read that a person's claim was rejected even though there was no protection from the authorities:

“It should be noted that although Moroccan law punishes same-sex sex with a person from six months to three years in prison and a fine from 200 to 1,000 dirhams, this law is only applied sporadically. The same information shows that same-sex sexual relations are generally tolerated in tourist areas.” (a217 917, 2019: 7)

This is a clear example of how the flexible definition of persecution has serious implications for the safety of trans claimants.

8.3.3.1 Emphasis on the importance of the police

In the following quotes, we read how the POs condemn applicants who did not file a complaint after being violated, even though the applicants testify about their bad experiences with the police. In a report from 2020 we read how this person was attacked and raped by a police officer. Later, in the PO judgement of the applicant's well-founded fear, we read how this PO does not take into account the violent transphobic experiences this applicant has had with the police.

"The two incidents that you and your friend M. experienced when you were young boys and dressed as women - namely the police officers forcing you and your friend to walk around barefoot and the officer forcing you to perform oral sex after you had run away from a stop - occurred more than a decade ago and have not been repeated since. Nor did you file a complaint or otherwise seek help or protection at the time. Consequently, the CGRS does not consider it likely that such cases would recur, nor does it conclude that the Colombian authorities would be unable or unwilling to provide you with assistance or protection. (a246 402 17, 2020: 4)

Next, we read the testimony of a claimant talking about their fear for their violent, transphobic brother, to which the PO responds:

"You claimed that your brother is protected by the police because the police are against people like you (CGRS p. 13). However, your statements and documents filed by you show that the police were indeed informed after the incident and came to the hospital (document 4 in your administrative file). (...) Moreover, you did not take any official steps against your brother afterwards. For instance, you did not file an official complaint against him because he threatened to kill you if you did. - "However, this cannot justify your omission in this regard. After all, the purpose of filing a complaint, is precisely to get protection and avoid further escalation of the conflict. If you do not ask the authorities to act, you obviously cannot blame them for not doing so." (a268 346, 2021: 3-4)

Here, the PO does not go deeper into the remark of the applicant on how they do not feel as though they can go to the police for protection, as they feel like they tend to be against trans people. Instead of exploring why this person feels this way, they condemn them for not taking action and condescendingly explain that they should have gone to the authorities. In addition, when discussing the position of the Bosnian police, the PO writes:

"The Bosnian authorities guarantee legal mechanisms for the detection, prosecution and punishment of acts of persecution for all ethnic groups. (...) Although some (important) reforms remain necessary within the Bosnian police, efforts are being made to improve cooperation between law enforcement agencies at different levels." (a268 346, 2021: 3-4)

In this case, it seems as if the PO assesses the police's attitude toward trans people by referring to their position toward ethnic minorities. It could be argued that if an institution shows tolerance towards one minority, it could show similar tolerance towards another. On the other hand, this

line of reasoning neglects the specificity of trans experiences and could be described as a leap too far.

8.3.3.2 Neglecting microaggressions

The example above shows that the CGRS also values an individual narrative of the applicant's fear of persecution in concrete terms. In this narrative, we then learn how the applicant's often hostile environment affects their quality of life. However, when assessing individual claims, the definition of 'persecution' is again very narrow, only counting as well-founded fears situations of life or death, while other incidents are not considered legitimate. Charisa Scissa and Elisabeth Cucco (2020) also criticise the fact that there is no room for the harm that trans people have to endure on a daily basis. They argue that this leads to an inadequate assessment of individual claims.

Analysing the reports, we learn how instances of microaggressions are not considered to constitute someone's well-founded fear. In *Microaggressions: An Introduction* Natasha N. Johnson and Thaddeus L. Johnson (2019: 1) describe microaggressions as “brief and commonplace daily verbal, behavioural, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative slights and insults toward people who are not classified within the “normative” standard.” Inevitably, these aggressions have a negative impact on the mental health of the victims. Derald Wing Sue (2010) confirms this by writing about how microaggressions create inequalities in education, employment and healthcare, while simultaneously planting hateful cues in the wider society that result in the alienation of some identities. The following citations show how these instances are not taken into account by the PO:

“You mainly refer to the lack of respect or hostile treatment of some people, e.g., in hospital you are still addressed as De. when in fact you are called Da. (CGRS, p. 19) and discrimination in the labour market (CGRS, p. 19), which does not amount to a violation of fundamental rights. It should also be noted that you have made few or no attempts to find work.” (a259 059, 2021: 3)

Next, in a report we read:

"To lead to the recognition of refugee status, the denial of rights and discrimination must be of such a nature that they give rise to a state of affairs that can be equated with a fear in the refugee law sense. This implies that the problems feared are so serious as to affect

fundamental human rights making life in the country of origin unbearable."(a280 585, 2022: 3)

As we are reading this, we might wonder who is in a position to decide what it means to live a life that is 'unbearable'. The following citation describes the experiences of an applicants and confirms that the impact of microaggressions cannot be neglected:

"For the last five years you have lived indoors as much as possible, not going out for fear of your own safety. Additionally, they do not give you an identity card with a woman's name, which puts you in all kinds of uncomfortable situations. For example, when you went to the bank, several people looked at you because the name on your identity card did not match your appearance." (a 268 581, 2022: 2)

"When you return to Northern Macedonia, you think it would be like going to prison. You would be depressed and stressed. You think that you would face the same problems as before: people would laugh at you and you would not dare to go out. You also fear that someone would kill or beat you. You fear that you would be discriminated against and not accepted." (a 268 581, 2022: 3)

We can conclude this section by criticising the lack of an intersectional lens when assessing trans people's fear of persecution. As Rosati et. al (2021) write, this lens can shed light on different risk factors trans asylum seekers face, such as a lower socio-economic status and a general risk of rejection by their communities. We could say that arguments like the one about the person not looking hard enough for a job reveal the PO's lack of knowledge about the barriers trans people face and the impact of everyday microaggressions.

8.3.4 Notion of 'discretion'

Another trend across the reports was the way POs expect people to be less 'visible' and to change the way they want to express themselves in order to protect themselves. Berg and Millbank (2013, p. 39) also notice this in their sample of reports and state how applicants are expected to tolerate the secrecy that is imposed on them by society and to generally be more private. Avgeri (2021: 9-10) urges adjudicators to always go deeper into the topic of discretion, even if the claimant decides for themselves to live more 'privately'. This is important, she writes, because the risk of serious harm should be considered likely to occur when we look at the span of a trans claimant's entire life. In the following quote we learn that the PO expects the applicant to live with discretion.

"Although you said that in Morocco you hid in public places that you feel like a woman and that you only did your way at home, your statements show that you wore girls' clothes on the balcony of your home, in sight of your neighbours. The CGRS considers it unlikely that on the one hand you tried to hide the fact that you feel female but on the other hand took the risk of wearing women's clothes on the balcony of your home, where you could be seen by your neighbours." (a217 917, 2019: 6)

In the following case, the PO condemns this person's choice of going to a Pride parade and staying in touch with their friends. They clearly expect the applicant to live more discretely after being violated.

"On 27 June 2021, during a period of street protests, you were surrounded by four or five unknown men in your neighbourhood. You were on your way to your parents' house down the street when you were chased by a van. The men tried to pull you into the van and told you to get in, but you managed to escape and ran." (a280 179, 2022: 3-5)

"On July 4, 2021, you attended the pride parade and activities in the city. On your way back home, you were again assaulted by the same group of men from the neighbourhood." (a280 179, 2022: 3-5)

"Moreover, if you had really experienced an attempted kidnapping, if you had really been assaulted by the same perpetrators in the aftermath of this alleged incident, and if you had really feared for your life as a result of it - including that you would have been very frightened and even traumatised - then it may essentially be quite surprising that you would still have gone to the LGBT Pride event in the city (CGRS, pp. 23-24). It seems hardly plausible that you would have gone to such an event in the immediate aftermath of the alleged assault, with little discretion and dressed erotically. You would also have continued to work with the organisations to which you belonged, albeit more covertly (CGRS, p. 27). Given that your role was essentially to encourage other trans women to come to meetings (CGRS, p. 26), it seems hardly plausible that you would have been able to do this completely hidden and unnoticed." (a280 179, 2022: 3-5)

"Moreover, it may be highly surprising that during the period in which these alleged incidents allegedly occurred, and also in the period thereafter, essentially until your departure from the country in September 2021, you continued to lead a vibrant social life, which you consistently posted on your public Facebook profile. Indeed, there are

numerous photos on your social media pages showing you in the company of your group of friends at social events.” (a280 179, 2022: 3-5)

To counter the expectation of applicants to be discrete, Mariza Avgeri (2021) argues that the use of the concept of well-founded fear for trans people needs to be restructured. More specifically, she argues to include forced concealment as a human rights violation and gender expression as a fundamental human right, drawing on UNHCR Guideline No. 9 Section IV and Principle 19 of the Yogyakarta Principles (2006). Thus, to open the current refugee status convention, we must remember that discretion ensures that danger may be distant in time, but not in terms of certainty when looking at a person's lifetime (Avgeri, 2021). Furthermore, the need for someone to hide their gender expression on this scale should be seen as systemic and harmful in itself (Avgeri, 2021).

8.3.5 Use of Country of Origin Information

Another element that takes up space in the reports is the PO's discussion of the COI. This information is particularly important where an applicant is unable to demonstrate their individual well-founded fear. In this case, there must be evidence that all members of the LGBT community are being systematically subjected to the notion of serious harm and that they are not being protected by the state (Manganini, 2020; Avgeri, 2021).

8.3.5.1 No trans-specific Country of Origin Information

In our analysis, it came to light how POs seem to systematically refer to information on the situation for the entire LGBT community when assessing the claims of trans people. Berg and Millbank (2013, p. 10 & 24) also mention that there were no trans-specific COI across their sample, and that gay-focused information was often misapplied to trans applicants. Subsequently, they warn us to be careful about conflating SO and GI claims, as people applying on these different grounds may experience very different forms of persecution, such as sexual violence, but also lack of health care, education, lack of access to gender recognition, which may in turn lead to persecution. In the following citations we read how COI on SO is used as a tool to assess the situation for trans people:

"From most sources consulted, a paradox emerges as protection mechanisms do not always work sufficiently well to prevent violence and discrimination, however, it appears that the risk of being exposed to violence and harassment often depends on the specific context. However, the same information also shows that Colombia is one of the most progressive countries in Latin America in terms of its legal framework. For example,

same-sex relationships are not criminalised, they have the possibility to marry and enjoy equal rights in terms of adoption. Moreover, nowhere in the sources consulted by Cedoca is there any mention of judicial and/or police persecution of LGBT people because of their sexual orientation and/or gender identity.” (a280 179, 2022: 4)

“The available information does show that homophobia, discrimination and violence against LGBT is prevalent in Venezuelan society, as well as that authorities may also be guilty of this. However, the same information also shows that homosexual acts are not punishable in the country. Moreover, nowhere in the sources consulted by Cedoca is there any mention of any judicial and/or police persecution of LGBT because of their sexual orientation and/or gender identity” (a279 892, 2022: 8)

“It should be noted that although Moroccan law punishes same-sex sex with a person from six months to three years in prison and a fine from 200 to 1,000 dirhams, this law is only applied sporadically. The same information shows that same-sex sexual relations are generally tolerated in tourist areas.” (a217 917, 2019: 7)

GI is mentioned here, but there is a lack of elaboration on the situation of trans people separately. In these quotes, it seems that transness is seen as a subset of SO, where the legalisation of same-sex relationships is seen as a sign of safety for trans people. In conclusion, in the absence of COI that specifically discusses the situation of trans people, no reasoned decisions should be made on the level of persecution of the applicant (Gartner, 2015).

Next, what is also seen as a sign of safety for trans people is the fact that there are Pride parades being organised in the country of origin (Manganini, 2021). We recognise this emphasis on the presence of a pride in the following citation:

“However, the information available at the General Commissariat, which has been added to your administrative file, shows that positive signals have been given by the political environment in recent years to improve the situation of the LGBTQ community. (...) Moreover, a development of acceptance in the political discourse on LGBTIQ in North Macedonia has been observed and a first Pride has been organised in Skopje in 2019. A second Pride, after an online alternative due to the Covid 19 crisis in 2020, was successfully organised in June 2021. Therefore, on the basis of the information available to the Commissioner General, it cannot be assumed a priori that every LGBTIQ person in northern Macedonia is at risk of persecution.” (a260 585, p. 3).

“In addition, a first Pride was organised in Sarajevo in September 2019, which went well and was well monitored by the police. A second Pride, following an online alternative due to the Covid 19 crisis in 2020, was successfully organised in August 2021. They submitted screenshots of videos and photos showing that counter marches were organised on the same day by organisations opposed to the LGBTQI community. The information available at the General Commissariat confirms that counter-protests were organised by the political party Vjera Narod Država (Faith, People, State). However, this information also shows that there was a large police presence in Sarajevo on the day of Pride, that both marches were managed and that the situation was well controlled. There were no violent incidents. It also appears that the Pride march had a larger turnout than the counter-march.” (a168 446, p. 3).

Again, in these fragments, there is a neglect of the specific experiences of trans people. The mere fact that a country allows a Pride parade to take place should not be taken as a sign that the safety of trans people is guaranteed. Nadijah Robinson and Amalia Duncan-Raphael (2018) argue that the presence of police and corporations is now more central to Pride parades than ever before. However, these are actors that generally do not contribute to the safety and well-being of trans communities. In reality, Pride celebrations tend to centre the wishes of cis, white people while neglecting the presence of trans people and people of colour (Robinson & Duncan-Raphal, 2018: 215). Furthermore, in these fragments, the fact that a first pride is being organised is seen as a sign of 'progress' towards a more accepting and developed environment. By merely mentioning a pride as the 'right' step forward, officials follow the logic of dominant homonationalist discourses (Da Costa, 2020). Following this logic, the act of building on a liberal and progressive agenda regarding gender identity is strongly intertwined with ideas of civilisation and nationhood (Mandelbaum, 2018)

8.3.5.2 Country of Origin Information as objective

Approaching the notion of COI through a Foucauldian lens, we note how the CGRS officers refer to the information as completely objective. We can read this in the following extract from the judgement:

"Objective information shows that transgender people often face problems in connection with military service and the accompanying military booklet, but you make no mention of this. When asked if you had to do your military service, you answered in the negative because you looked gay. You did not know of any other problems as a result" (a237 351, 2020: 6)

"The army and the police generally have a negative attitude towards transgender people, you said, which again is just a general statement. Where you go on to say that according to statistics, trans women only live to the age of 35 on average, it should be noted that this is just a general observation that says nothing about your personal situation". (a237 351, 2020: 6)

This quote illustrates how knowledge is always intertwined with power (Foucault, 1979), as the scientific information addressed by the applicant is considered a 'general observation', while the official only has to mention vaguely that their statement is based on 'objective information'. The inseparable relationship between knowledge and power is also felt by Paul B. Preciado (2020: 19), who writes "As a trans body, as a non-binary body, whose right to speak as an expert about my condition, or to produce a discourse or any form of knowledge about myself is not recognized by the medicinal profession, the law, psychoanalysis or psychiatry."

In conclusion, there is no distinction between different sub-groups and their specific situations. This conflation of COI on SO and GI may arise in the first place because trans people who are victims of violence are largely invisible in official crime statistics because they often do not report the incidents or do not relate them to their GI (Liddicoat, 2008: 43; Berg & Millbank, 2013). Despite the arbitrary and unnuanced use of COI, it seems that for now the COI still outweighs the lived experiences of people.

8.3.6 Late application for international protection

When assessing an applicant's well-founded fear, CGRS also seems to focus on whether a person travelled outside of their country of origin before applying for asylum in Belgium. If they have visited Belgium or a neighbouring country but have returned to their country of origin, their well-founded fear is usually considered illegitimate. For instance, in this following citation, we read a story about a person from the Netherlands:

"He introduced you to Europe and paid your ticket. From August 2019 to November 2019, you travelled to Belgium, France, Spain and Turkey for tourism purposes. You saw during this trip that in Europe, as a trans person, you would be able to be yourself. You did not apply for international protection during your stay in Europe because you had told your parents that you would return and because you did not have all your documents." (a279 892, 2022: 3)

“It is highly surprising that you did not apply for international protection during your stay in Europe. (...) Indeed, a person who is genuinely in danger of being persecuted and/or suffering serious harm in his or her country of origin can reasonably be expected, upon arrival in countries which are signatories to the Geneva Convention and which apply the protection modalities provided for therein, to seek information about these protection modalities and to make use of them as soon as possible. Their failure to do so is inconsistent with a well-founded fear of being persecuted within the meaning of the Refugee Convention or a real risk of suffering serious harm within the meaning of the definition of subsidiary protection.” (a279 892, 2022: 3)

In the same report we can read a reaction to this written by the lawyer of this applicant

“Once she begins her transition, she will never again have contact with her family, from whom she will be disowned. Although the applicant does not share the extremely conservative religious beliefs of her relatives, she nevertheless finds it - rightly - difficult to make such a decision.” (a279 892, 2022: 17)

This remark reminds us that it is not evident to leave behind the place where you have lived for a long time. Despite the fact that this person does not identify with the beliefs of their family members, it is often difficult to completely reject your country of origin and the people you have been close to all your life. In her work, Eithne Luibhéid (2008) writes how the expectation that the claimant will completely reject the nation-state from which they come, while constructing reified notions of his culture, is embedded in homonationalist and colonialist ideas.

9. Recommendations further research

In terms of future research, we argue that the different criteria used by asylum officers to assess trans people's claims should be further explored. In particular, it might be interesting to interview officers. This research only focused on reports of negative decisions, leaving a gap in the full picture of officers' construction of transness. Even though we were not able to access the positive decisions, it might be possible to gain more insight into this other outcome by talking to the officers. It should be noted, however, that it was not easy to reach the CGRS and that it was not possible to interview staff for dissertation due to their heavy workload.

10. Conclusion

In this research, we analysed how asylum officers interpret and construct the meaning of transness when assessing the claims of trans people. Based on a Critical Discourse Analysis of the selected

reports in our sample we sought to understand the underlying and historically defined ideas that lie at the root of their notions of transness. Additionally, we aimed at understanding how power manifests itself in the reports and how assessors applied the notion of well-founded fear to the specific cases of trans people.

While analysing the reports, we noticed some overlapping and recurring motifs in the argumentation of the asylum officers. First, the idea that the officers are neutral actors is reiterated throughout the reports, contributing to the idea that their statements are highly objective as they are embedded in a juridical framework. However, when peeling away the first layer of the report and looking at the attitude in the argumentation of the officers, we learned how their supposed neutral status serves as a performative means to formulate arguments that stem from a sense of scepticism (Hertoghs, 2019). In this regard, we rejected the idea that an assessor's position is 'aloof' or 'neutral'. This became especially tangible in the officers' patronising tone, revealing how they attach moral judgements to certain elements of the applicant's story. In doing so, they present their individual judgements as generalisable facts. Additionally, in exploring the power relations entrenched in the interview, we discussed how racial and colonial narratives were present in the officers' argumentation, such as the superiority of the West. In expecting applicants to use certain 'terminology' and to present certain narratives of rejection of their country of origin, officials follow a homonationalist logic.

Secondly, we focused on how asylum officers construct transness as a linear process. They assume that all trans people were "born in the wrong body" and wish to "change bodies" in order to become their true selves. Additionally, officers consider the only possible options to become either a man or a woman. We situated these dominant ideas within a wider historical context, tracing how the gender binary is rooted in notions of Western supremacy and colonialist projects. For example, the narrative on being "born in the wrong body" stems from medicine, where the narrative served as a precondition to obtain gender-affirming surgery.

Thirdly, we elaborated on how the asylum officers interpret well-founded fear and how they attach it to cases of trans people seeking international protection. This is important, as most applications are rejected because the applicants' fear is not considered "well-founded". In this section, we learned how officers lack knowledge of the specific struggles and dangers trans people face. For instance, the officers seem to heavily rely on state protection in the applicant's country of origin. Once they can point to specific legal articles that appear to protect the safety of trans people, the chances of a person being granted protection status are significantly reduced. However, we emphasise that it is not enough for the protective framework to be in place; it must also be sensitive to trans specific issues. Furthermore, officials believe that everyday microaggressions

against trans people do not contribute to well-founded fear. This demonstrates a lack of understanding of the specific position of trans people.

In conclusion, the meanings asylum officers attach to transness and their expectation of applicants to describe their trans identity as such is anchored in a wider context of Western superiority and colonialism. During the assessment process, which takes place at the border of the nation state, categories of desirable and undesirable subjects are actively formed.

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Appendix 1

| | Number arrest | Year of decision | Country of Origin | Role of GI | Reason of Arrest | End decision |
|----|---------------|------------------|-----------------------------|---|---|--|
| 1 | 217 917 | 2019 | Morocco | GI as ground Legitimacy questioned | Appeal the refusal refugee status <i>Legitimacy GI questioned</i> | Refusal refugee status and subsidiary protection |
| 2 | 250 059 | 2021 | Colombia | GI as ground | Appeal the refusal refugee status | Refusal refugee status and subsidiary protection |
| 3 | 268 127 | 2022 | Suriname | Conflation SO and GI | Appeal the refusal refugee status | Appeal dismissed |
| 4 | 280 585 | 2022 | Northern-Macedonia | GI and SO as ground | Appeal the refusal refugee status | Appeal dismissed |
| 5 | 280 179 | 2022 | Colombia | GI as ground | Appeal the refusal refugee status | Refusal refugee status and subsidiary protection |
| 6 | 227 308 | 2019 | Mexico | GI as ground | Ban on entering the territory of Belgium | Appeal dismissed |
| 7 | 237 351 | 2020 | Colombia | GI as ground | Appeal the refusal refugee status | Refusal refugee status and subsidiary protection |
| 8 | 246 402 | 2020 | Colombia | GI as ground | Appeal the refusal refugee status | Refusal refugee status and subsidiary protection |
| 9 | 261 018 | 2021 | Gambia | Statements on meaning of transness | Appeal the refusal refugee status | Refusal by CGRS overturned by CAD and sent back |
| 10 | 262 843 | 2021 | Colombia | GI as ground | Appeal the refusal refugee status | Refusal refugee status and subsidiary protection |
| 11 | 268 581 | 2022 | Northern-Macedonia/Bulgaria | GI as ground | Appeal the refusal refugee status | Appeal dismissed |

| | | | | | | |
|----|------------|------|-----------|--|---|---|
| 12 | 279 892 | 2022 | Venezuela | GI as ground | Appeal the refusal refugee status <i>Legitimacy GI questioned</i> | Refusal refugee status and subsidiary protection |
| 13 | 268 346 | 2022 | Bosnia | GI as ground | Appeal the refusal refugee status | Appeal dismissed |
| 14 | 262 594 | 2021 | Ecuador | GI as ground | Appeal the refusal refugee status <i>Legitimacy GI questioned</i> | Appeal dismissed |
| 15 | 246 368 | 2020 | Iraq | Sexual Orientation - with constructions of transness | Appeal the refusal refugee status | Appeal dismissed |