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**Respect for Fundamental Rights in Credibility Assessment of  
LGBTIQ+ Asylum Seekers in Sweden**

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## Abstract

This thesis investigates an increasingly important topic in the European Union (EU). I analyze challenges to respecting fundamental rights when assessing the credibility of LGBTIQ+ asylum seekers in Sweden.

A qualitative adaptive approach has been selected in order to describe, explore, and analyze the challenges concerning fundamental rights in the process of credibility assessment. I focus specifically on LGBTIQ+ asylum procedures to be able to frame, describe, and subsequently analyze this complex legal process affecting LGBTIQ+ community members. Seven qualitative interviews have been conducted to provide insight into how asylum procedures are applied to LGBTIQ+ asylum seekers in Sweden. In addition, two official documents are taken into consideration to provide contextual support for the interviews. The documents represent international and national legal guidelines and boundaries concerning these procedures. With this thesis, my aim is to establish a broader and more comprehensive “picture” of how LGBTIQ+ asylum guidelines are applied and the effects on the LGBTIQ+ asylum seekers’ fundamental rights.

I identify challenges to fundamental rights by analyzing visible and hidden procedural elements through pre-settled codes taken from queer theory and fundamental rights. Strong ethical elements are also considered throughout the text due to the sensitivity of the topics and the objectionable implementation of LGBTIQ+ asylum procedures.

Key words: *LGBTIQ+ community, asylum, asylum seeker, fundamental rights, queer asylum.*

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# 1. Introduction.

**"As a gay man, I have been amazed and shocked by the perverse variety of ways that so-called 'civilized' societies have found to discriminate against us."**

**Waaldijk (1994, page 50)**

A great degree of migration has been observed across EU borders recently and a substantial part of this is made up of asylum seekers. Unlike those who elect to migrate, asylum seekers make up a group of forced migrants, whose migration is often caused due to armed conflict. Among asylum seekers, LGBTIQ+ individuals are a group particularly vulnerable to human rights violations throughout the asylum seeking procedure. However, research on how asylum guidelines are applied to this group from the perspective of theory on LGBTIQ+ human rights and how the implementation of asylum guidelines potentially violate those rights is lacking. Thus, there is a need for new conceptual frameworks and interdisciplinary approaches to help understand the effects that the asylum procedure has on the individual well-being of those that make up the LGBTIQ+ community from the perspective of fundamental rights.

Reports from UNHCR (2010) and Fundamental Rights Agency (FRA) (2017) define the LGBTIQ+ community as a **vulnerable social group** that particularly suffers to a high degree during migration and asylum procedure implementation. UNHCR (2010) conveys the struggles of LGBTIQ+ asylum seekers regarding persecution in their country of origin. LGBTIQ+ migrants (subsequently asylum seekers) leave their countries due to persecution regarding their sexuality or gender identity.

As a result, LGBTIQ+ migrants experience a special set of difficulties relative to other asylum groups.

These difficulties can be identified in a stage called "credibility assessment" where this community is often asked about intimate matters in order to receive refugee status. This asylum step represents the stage where asylum authorities question the asylum seeker about their claims in order to reach the legally-necessary "veracity" and proof about their sexual orientation or gender identity.

Asylum claims related to sexuality are, in fact, a complex matter to be questioned. This is so, due to associations with intimate individual aspects (Manalansan IV, M.F. 2006). Hence, when it comes to sexuality-related asylum claims, credibility assessment puts the EU in a twofold scenario where a supranational stakeholder that defends LGBTIQ+ rights implements the procedure in a manner that can lead to negative effects regarding individual well-being and their fundamental rights. In this way, “credibility assessment” creates a rather conflictive situation for the EU, between the EU’s defense of LGBTIQ+ fundamental rights and the current implementation of the credibility assessment procedure on LGBTIQ+ asylum seekers.

This thesis thus analyzes challenges to respecting fundamental rights when assessing the credibility of LGBTIQ+ asylum seekers in Sweden. Among the EU member states (MSs), Sweden is, in fact, a good example for investigating this phenomena considering the relatively large amount of forced migrants applying for asylum that the country receives. According to Migrationsverket, 710.000 asylum applications were received between 2000 and 2017. 60% of asylum applications during this period were made between 2011 and 2016, illustrating a clear connection between the highly conflicted period in Syria, Afghanistan, and Iraq and the number of migrants coming to Sweden with asylum claims.

Accordingly, this thesis takes the legal framework and the current legal boundaries of the asylum procedure into consideration. To do so, it is imperative to consider the EU’s common asylum framework, which has been developed in accordance with previous treaties and declarations of global scope. The Asylum legal framework has always been developed in accordance with *Article 14 of the 1948 Universal Declaration of Human Rights* which ensures the right to protection in the case of persecution. Therefore, one can argue that these documents have good intentions and can be used in instabile situations concerning international migration (UNHCR, 2010). The following two binding documents provide information about the asylum process specifically concerning LGBTIQ+ migrants:

- GUIDELINES ON INTERNATIONAL PROTECTION NO. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.

- (SR 38/2015) Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar skyddsskäl på grund av sexuell läggning, könsöverskridande identitet eller könsuttryck. (*Migrationsverket*)

Often, a regular implementation of asylum processes on the persecuted (most of the times under risk of death) LGBTIQ+ community in the way it is applied in Sweden creates a division between “*insiders VS outsiders*”. LGBTIQ+ asylum seekers become considered as “outsiders” which can create a legal, moral, and institutional dilemma for the EU (Spijkerboer, 2018, pp221). While the EU claims to be a fundamental rights guarantor, it uses this legal tool to create a differentiation between *IN* and *OUT*. Therefore, this thesis illustrates *how* this separation leads to social injustice, LGBTIQ+ discrimination and possible violation of LGBTIQ+ fundamental rights (FRA, 2017; Jakulevičienė *et al*, 2012).

This thesis will utilize a theoretically/driven categorization in order to frame, describe, and analyze *cross-issues* regarding LGBTIQ+ asylum seekers’ fundamental rights by using procedural ethical considerations in the method. The search for *Why* these procedures are applied in *What* manner and *How* that can lead to the disrespect of fundamental rights will drive this study.

### 1.1. Aim & Research Questions.

This thesis aims to: Analyze how international and national asylum guidelines and regulations are applied in Sweden and how the implementation affects the rights to integrity and intimacy among LGBTIQ+ asylum seekers.

To do so, an adaptive qualitative approach is applied. The use of such an approach provides flexibility within the method since it also embraces the contextual complexity of seeking asylum. Once “*credibility assessment*” is analyzed, this study’s objective is to reach conclusions related to the effects of its implementation by considering the fundamental rights of intimacy and integrity of LGBTIQ+ asylum seekers. It aims to identify strengths and weaknesses in need of improvement in this procedure with the well-being of the asylum seeker in mind. In order to do so, this thesis provides a broad theoretical background where

the theories chosen can direct the analysis into topics that have not been fully researched. Therefore, an exploratory analysis will be implemented in order to create a more complete picture of the implementation of asylum policy regarding the LGBTIQ+ community by inquiring about the experiences of those working in associations that aid LGBTIQ+ asylum seekers. This research deliberately intends to raise greater awareness of the need for change in asylum processes in relation to LGBTIQ+ people in Sweden.

This thesis takes Sweden as the EU MS that embraces one of the most proven and advanced asylum systems. With this EU MS selection, this thesis can spark discussion and paths to follow in other EU MSs which have less progressive asylum systems. It can encourage reflection regarding other EU MSs to be able to develop a more suitable and common *EU-acquis communautaire* regarding asylum. To do so, the following research questions will be used in order to investigate the previously mentioned aim:

- *How are the asylum processes related to the LGBTIQ+ community (and therefore considering sexual orientation and gender identity prosecution claims) applied in Sweden in terms of EU fundamental rights?*
- *How does the application of credibility assessment affect the rights of integrity and intimacy of LGBTIQ+ asylum seekers in Sweden according to the asylum framework set forth by the EU?*

## 1.2. Structure.

The following section develops a broad-scope synthesis of previous research that leads to the research gap on which this thesis is built. Theoretical framework will then be provided in order to guide the research and contribute to the analysis.

This will be followed by research design with methodological discussion, which will take into account the categories and *theory-driven* intersectional considerations that will lead to analysis of the material. This thesis provides data by mixing qualitative content analysis and interviews with the objective of producing a more comprehensive view of LGBTIQ+ asylum regarding fundamental rights. Policy documents and professional experiences from a key civic society organization will be taken into account. Finally, analysis and conclusions are presented together with theoretical reflections, ending with final observations.

## 2. Previous Research.

In this section, previous research regarding LGBTIQ+ asylum is discussed. Considerations from previous research are provided in two sections – the first section refers to the implementation of asylum on LGBTIQ+ asylum seekers, and the second section analyses the current information about “credibility assessment” in relation to right of intimacy and integrity.

Based on the limited amount of related research, Van Veldhuizen *et al* promote the creation of new ways to approach this topic, including new theoretical frames which will be explained and used (2016, pp17). Few fully comprehensive studies have been done yet; therefore this thesis contributes to *asylum analysis development by addressing issues that occur from the way it's implemented regarding LGBTIQ+ asylum seekers' fundamental rights*. Furthermore, this study does not pretend to set LGBTIQ+ asylum as a problem itself, but rather as a procedure that might result in negative consequences for the LGBTIQ+ people involved because of the way it's applied (Shidlo, A. *et al* 2013). Procedural application has been set in previous research as questionable from the perspective of individual well-being (Pallotta-Chiarolli & Rajkhowa, 2017), yet legal and necessary (Commission, 2018). It is, in fact, possible to affirm that previous research conclusions regarding the implementation of asylum regulations as well as its relation to LGBTIQ+ fundamental rights are very divided and lack in agreement. What seems to be similar throughout is the necessity for sensitivity when studying LGBTIQ+ asylum cases since this procedure can lead to harmful situations if the case is rejected (Shidlo, A. *et al* 2013; Pallotta-Chiarolli & Rajkhowa, 2017; Veldhuizen *et al* 2016).

The procedural application of the asylum system on LGBTIQ+ people will be addressed as well as the effects of the “credibility assessment” stage in which previous research has shown noticeable threats to the fundamental rights of the LGBTIQ+ community. Official reports such as *Current Migration situation in the EU: LGBTIQ+ asylum seekers* (FRA, 2017) are regularly conducted analyzing the context and implementation of asylum policy. However, these reports lack theoretical framework as well as concise analysis on LGBTIQ+ asylum effects and their fundamental rights.

In order to provide a more complete study, this thesis aims to identify possible procedural failures that might need improvement to fully respect LGBTIQ+ fundamental rights. In this



process, possible reinforcement and validation of actual strong points regarding the LGBTIQ+ asylum procedure are addressed, showing a neutral and unbiased analysis.

## 2.1. Application of Asylum Procedure with LGBTIQ+ Claims and Relation to Fundamental Rights.

In 2017, FRA conducted a general report where the situation and conditions of LGBTIQ+ asylum seekers in the EU were described. This report covered various points related to asylum such as migration experience, the relationship between asylum seekers and national authorities, and the conditions in origin and receiver countries. FRA also established the importance of the asylum seeker's fundamental rights due to the diversification of asylum policy application among EU MS. This agency always takes the fundamental rights perspective into consideration since its primary purpose is to control and analyze such matters (FRA, Regulation EC n.168/2007).

The reading of this report prompted the purpose of this thesis due to its clearly problematic categorization and findings regarding asylum procedural matters. Previous studies similar to this report show the initial stages of problem awareness as well as the perception and classification of possible institutional failures. Examples of this are the *Qualification Directive 2011/95/EU* and *Migrationsverket Asylum Guidelines for LGBTIQ+ claims*. The Qualification Directive defines the criteria for EU international protection regarding asylum; it gives sexual orientation as a valid reason for EU protection. On the other hand, Migrationsverket guidelines regarding LGBTIQ+ asylum (SR 38/2015) claims define the way in which the procedure has to be correctly carried out.

According to "*Procedural Problems in LGBT asylum cases*" provided by Jakulevičienė *et al* (2012), the current regulations regarding the early stages of the asylum procedure concerning sexual orientation claims is presented as relaxed and ambiguous, giving a MSs such as Sweden room for interpretation. On the other hand, FRA acknowledges Sweden as a well-prepared EU MSs regarding this issue but points out the need for changes in areas such as country of origin study, credibility assessment style, and authority training updates (2017, pp 6, 9).

Previous research about *how* the asylum procedure is applied to the LGBTIQ+ community has been presented in texts such as “*Drawing the limits*” by Hedlund (2016). In this study, Hedlund focuses on the role of Swedish law and the way it is applied. This thesis, on the other hand, tries to consider more than legal frameworks and their application but also the resulting effects by taking professionals related to the LGBTIQ+ asylum community into account.

Although previous studies have addressed this question, according to the FRA report “*Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers*”, details on improving such aspects are yet to be framed and developed (2017).

Other studies have been conducted but from a **sociological** and **identity** point of view. This is the example from Spijkerboer (2018), who analyzes sexuality and asylum within the EU. He says:

*“Asylum law functions through a dichotomy between an idealized notion of Europe as a site characterized by human rights, and non-European Countries as sites of oppression”*  
(pp 221).

Spijkerboer develops the symbolic idea of the “*tool of differentiation*”. He frames the LGBTIQ+ asylum procedure as a legal, political tool that creates a “differentiation” between EU insiders and EU outsiders. This description, as he argues, creates a social division within the EU in which Sweden is also included (ibid, pp 221). Spijkerboer (2018) explains that Europeans are usually characterized by openness, freedom and respect for fundamental rights, and at the same time, this same society currently applies asylum procedures in a way which produces a certain “differentiation”. According to Spijkerboer, if EU societies are defined in this way, the manner in which asylum procedures are applied should be changed. Considering Spijkerboer’s point of view, this thesis frames “how” asylum procedures are applied and its connection to fundamental rights. Nevertheless, such studies lack contextual analysis regarding EU MSs; therefore, this thesis can add a broader perspective of Sweden as a leading MS in terms of asylum policies.

Following the idea set by Spijkerboer regarding European *dichotomy*, it is possible to affirm that when it comes to asylum matters, the EU sometimes has a difficult relationship with

fundamental rights. This particularly concerns individuals that do not belong to the *EU Acquis communautaire* yet, such as LGBTIQ+ asylum seekers. Therefore, it might be valuable to analyze how the asylum process is implemented using Spijkerboer's point regarding dichotomy as an argument to carry out this study.

Akin (2017) also contributes by making conclusions about LGBTIQ+ asylum in Scandinavia. According to Art 11 (UDHR), he comments on the meaning of "*Innocent until proven guilty*". He argues that inverse logic is applied in LGBTIQ+ asylum cases, namely "*guilty until proven innocent*". Moreover, he argues about the accusative style of the procedure itself. To support his idea, Akin provides a two-sided perspective (asylum seeker – authority) by saying:

*"In the end, 'asylum seekers and the asylum officials operate with different vernaculars', as Amy Shuman and Carol Bohmer (2012, 205) claim in their discussion of how different conceptions of what counts as normal and plausible for adjudicators plays a determining role in the evaluation of asylum cases."* (pp 459)

This strange relation, he says, reveals the hidden truth of the asylum procedure application – it is used as a legal, institutional tool where not all fundamental rights are "*equally considered*" by authorities (ibid). Lewis *et al* (2014), in line with Akin's (2017) argumentation, explains the "discrimination" caused by the "little discussion" this matter receives. They account for academic discrimination when it comes to discussing the relationship between LGBTIQ+ fundamental rights and migration.

Spijkerboer's text concludes that it is extremely difficult to reach conclusions given the lack of discussion about how these procedures are applied in LGBTIQ+ cases where there is a constant "pressure" to consider fundamental rights and the regulations within the legal framework of the asylum process itself. This thesis argues that "little discussion" is also the result of the sensitivity of the matter as well as the dominance of normative attitudes in society.

The intention of this thesis is to take Spijkerboer's previous argument regarding lack of discussion by analyzing the following question deeply in order to contribute to furthering research and discussion: "*How are the asylum processes related to the LGBTIQ+ community*

(and therefore considering sexual orientation and gender identity prosecution claims) applied in Sweden in terms of EU fundamental rights?“.

## 2.2. Credibility Assessment, the Sensitive and Crucial Step.

What does the previous literature tell us about how LGBTIQ+ people are treated and how specific rights are respected? This question relates to the “credibility assessment” stage and the effects on LGBTIQ+ people taking specific fundamental rights such as *privacy* and *personal integrity* into account.

The “credibility assessment” stage in the asylum process has been analyzed by previous research but mainly from a purely legal perspective. LGBTIQ+ studies have defined the credibility assessment stage as the procedure in which the LGTBIQ+ asylum seeker is asked uncomfortable questions about their private life regarding intimacy and their past to check for accuracy in their claim (Perego, A. 2017; FRA 2017). “*Prove innocent*” is, in fact, a concept developed by Akin (2017) where he reveals the reality that LGBTIQ+ asylum seekers face. Credibility assessment in Sweden is applied according to the following guideline:

*Rättsligt ställningstagande angående utredning och prövning av den framåtsyftande risken för personer som åberopar skyddsskäl på grund av sexuell läggning, könsöverskridande identitet eller könsuttryck. (SR 38/2015. Migrationsverket)*

This official document from *Migrationsverket* provides the steps that the Migration agency officers should take when preparing and carrying out an interview with the LGBTIQ+ asylum seeker who claims they will be persecuted because of their sexual orientation or gender identity. Although previous research such as the work of Velhuizen *et al* (2016) positions Sweden, once again, as a leader in LGBTIQ+ asylum procedure implementation, it is important to note that complaints and concerns about the overall effects and the type of questions asked are still widely debated (FRA 2017). Unfortunately, Velhuizen *et al* (2016) do not make any specific conclusions or frames regarding specific fundamental rights such as intimacy and integrity.

Velhuizen *et al* (2016) argue that the migration authorities (*Migrationsverket*) are trained and well-equipped to make an assessment of *queer people* using “sensitivity”. On the other hand,

FRA (2017) reports that there are differing opinions regarding LGBTIQ+ matters found among major organizations. They describe the need for improvement regarding the way this asylum stage is carried out, indicating the excessive and sometimes invasive style of the techniques (questionnaires) used in this process.

Although credibility is crucial in every type of asylum claim, veracity related to LGBTIQ+ claims (sexual orientation and gender identity related claims) causes added difficulty and complexity both for the authorities and for the asylum seekers. Self-identity, intimate topics, and language barriers are a few elements that complicate matters for LGBTIQ+ asylum seekers. Jakulevičienė *et al* (2012) take the line of Dauvergne and Millbank (2003) in their study “*Procedural problems in LGBT asylum cases*” to argue that such a procedure requires careful consideration due to the vulnerable position of the LGBTIQ+ asylum seeker. They use definitory concepts such as “*burden of proof*” where the context of hardship is framed. In this article, Jakulevičienė *et al* (2012) raise awareness of specific elements within the credibility assessment such as the conflict between the type of questions asked and the LGBTIQ+ asylum seeker’s fundamental rights. For instance, they explain that the “*credibility “depends not only on applicants’ efforts to tell their story” (ibid, pp 199)*. The interviewer approach to questioning is main key in this asylum stage regarding the LGBTIQ+ asylum seekers fundamental rights of privacy that “*were more recently acquired than the status of refugee” (ibid, pp 200)*.

However, their claims are quickly mentioned, which shows that further research on this topic is needed. This thesis takes on the challenge to further investigate the relation and the effects of the way credibility assessment is carried out in connection with the LGBTIQ+ asylum seeker’s fundamental rights.

This thesis considers credibility assessment to be a difficult and sensitive stage where asylum authorities must be properly trained and informed about LGBTIQ+ (UNHCR Guidance. Art 36-37). According to FRA (2017), Swedish authorities are well-trained and highly prepared when it comes to LGBTIQ+ asylum; however, major civic associations in line with Akin’s concept of “*proven innocent*” argue that there is still room for procedural improvement concerning the relation between LGBTIQ+ asylum seekers and asylum case officers (2017).

Limited research regarding credibility assessment has been done but only from a purely legal perspective that just accounts for general fundamental and human rights without a specific study on intimacy and integrity. Berlit *et al* (2015) approach this asylum stage from legal and applicability points of view. Related practical conclusions prove to be an important matter in this study since it shows the analysis of the relation between the authorities and LGBTIQ+ asylum seekers, as previously mentioned. Although the Berlit *et al* (2015) study helps to legally frame and develop the practical context (the implementation of credibility assessment), it does not reach any resolution. Berlit *et al* (2015) provide legal background supporting the idea for the need of fundamental rights in LGBTIQ+ asylum procedures, asserting the role of European Court of Justice (CJEU). Their study relates to the pure legal framework that is used to settle LGBTIQ+ asylum cases at the EU level. However, intimacy and integrity as fundamental rights are neither deeply framed nor developed in their work that focuses on LGTBIQ+ EU asylum regulations.

Berlit *et al* (2015) define their assumptions through a content analysis of Article 4 EU Directive 2011/95/EU (aforementioned Qualification Directive). In this study, the authors discuss the assessment procedure related to sexual orientation persecution in two different stages – firstly, establishing the circumstances and evidence that directly concerns the asylum application, and secondly, where authorities must create conclusions derived from the first stage. Previous research on credibility assessment resulted in interesting ideas that this thesis uses to describe important dynamics and elements within this stage. “*Benefit of the doubt*” is, in fact, one of them. Berlit *et al* (2015) accurately use it to explain the need for “open-mindedness” to be able to understand each unique LGBTIQ+ asylum case. This concept embraces a certain level of empathy which the analysis will further develop. Akin (2017) also uses the concept of “*innocent until proven guilty*” which uses a similar theoretical frame with that of Berlit (2015). He argues that in the cases of asylum, inverse legal logic is implemented, taking the logic of “*guilty until proven innocent*” to comment on the “overall procedural style of this legal procedure”.

Berlit *et al* (2015) & Van Veldhuizen, T. *et al* (2016, pp 13), on the other hand, define Sweden as an EU MS, highly skilled both legally and procedurally. However, their studies do not consider the subsequent effects of this procedure on LGBTIQ+ asylum seekers as a

“recycling mechanism” for future improvement<sup>1</sup>, nor the effects on LGBTIQ+ asylum seekers’ specific fundamental rights.

The focus of previous research has also been on the style of questions asked in the credibility assessment. Veldhuizen, T. *et al* (2016) conducted a research study where a mock asylum procedure case was held to analyze the context where LGBTIQ+ applicants and authorities interact. However, it is important to remark that effects on LGBTIQ+ asylum applicants’ fundamental rights were not addressed. Nevertheless, Veldhuizen *et al* describe the information gathering style (questions from Migration agency to LGBTIQ+ asylum seekers) as a remarkable aspect to take into consideration due to its effects on the asylum seekers’ fundamental rights (2016). They defend the “soft-open questions” style as an accurate method to gather broader information from asylum seekers, rather than “accusatory-close questions” (Vrij *et al*, 2014; 2006). Presumably, the “soft-open question” style as an approach agrees more with LGBTIQ+ asylum seekers’ fundamental rights even if Veldhuizen *et al* do not analyze this in this context. According to Memon *et al* (1994), authorities have a tendency to transition from a soft-open questioning style to a close-accusatory style which, to a higher extent, creates a risk for getting inaccurate responses leading to non-credible evaluations. They argue that the main reasons for applying the close-accusatory question style are the lack of time needed and not having substantial knowledge or experience regarding the LGBTIQ+ perspective. Therefore, this aspect will also be taken into consideration in the sampling and analysis section.

According to Migrationsverket (2018), claims related to sexual orientation must be shown as soon as possible in the asylum procedure. A late disclosure of such claims might affect the result of the “credibility assessment”. If procedural logic is followed, the requirements such as early disclosure of the asylum claim assume that LGBTIQ+ people are already at this stage fully aware of and comfortable with their own sexuality or gender identity. Unfortunately, according to major civic LGBTIQ+ organizations, this is not the case for most LGBTIQ+ asylum seekers. This point will be discussed further in the analysis. Information gathered through interviews will reveal the difficulties that LGBTIQ+ asylum seekers experience,

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<sup>1</sup> By this concept, I mean the skill of authorities to analyze the effects of the asylum procedure on LGBTIQ+ asylum seekers to be able to identify possible process failures and subsequent improvements.

including acknowledging themselves as LGBTIQ+ despite their discriminatory past, and often, an internal LGBTIQ+ phobia. Since “credibility assessment” aims for accuracy (Migrationsverket 2018), it might be correct to say that the practice of such a procedure on a person who has not gone through their personal self-identity process could be problematic; a negative conclusion could result from difficulties for the asylum seeker to show one’s LGBTIQ+ identity, which could lead to deportation, extreme oppression, or death. Therefore, this thesis considers opinions and experiences from people helping affected asylum seekers to be able to understand to what extent this factor influences the individual’s well-being as well as the perception of integrity and intimacy.

After analyzing previous research within this subject and taking the theoretical perceptions of plausible procedural issues into consideration, this thesis aims to address the following question by analyzing professional experiences and personal perceptions: How does the practice of “credibility assessment” affect the rights of integrity and intimacy for LGBTIQ+ asylum seekers in Sweden according to the asylum framework set forth by the EU?

### 2.3. Gaps and Moving Forward.

To summarize, thus far there have only been a handful of studies made regarding the implementation of LGBTIQ+ asylum guidelines and their relation to fundamental rights of integrity and intimacy. Some awareness has been raised about the flaws in the asylum procedure regarding fundamental rights (Jakulevičienė et al, 2012). Following the considerations from Lewis et al (2014) & Akin (2017), LGBTIQ+ asylum issues are discriminated as witnessed by the “little discussion” on the subject, which is partly explained by the dominance of normative attitudes in society. Overall, supranational considerations have also been carried out by supranational agencies such as FRA (2017). However, the lack of framing of concise problematic elements in this procedure produces a research gap that this thesis aims to fill.

Previous research on “credibility assessment” relates to the current difficulties existing within the process. Overall considerations such as the close-accusatory questioning style with normative perceptions or the effects of interrogation have been cautiously studied (Velhuizen et al, 2016). However, the conflicting relation of this asylum stage and the fundamental rights of intimacy and integrity are yet to be developed. This thesis addresses this challenge through



the second research question. In order to guide the research, a theoretical framework provided by queer theory is explained in the next section.

### 3. Theoretical Framework.

#### 3.1. Overall Considerations of Queer Theory.

Queer theory as a theoretical frame was formed as a result of criticism from social exclusion collected in queer studies. Scholars such as Knopp (2007) and Bell & Valentine (1995) conclude that queer theory has developed “rich and complex” theoretical frames by gradually deconstructing categories such as gender and sexuality in society. Spike (2017) argues that queer theory (often exclusively attached to sexuality or sexual intimacy), provides an extended range of knowledge related to behavior, norms, and practices. The author describes queer theory through a poststructuralist concept of “deconstructing” or “*queering*”, providing for this theoretical frame of critical leverage. The author also embraces the *Foucauldian* notion of sexuality, which refers to sexuality as a discursive result rather than a purely essential human attribute. Queer theory has increasingly been recognized for its importance in describing practices and norms; however, it still receives criticism within social studies (*ibid*).

Descriptive and critical views have been used in order to analyze elements in different contexts that imply the role of LGBTIQ+ identities within society. LGBTIQ+ identities have been described as highly discriminated by this theory. Berlant & Warner (1998) develop the theoretical concept of “*heteronormativity*” as a poststructuralist tool to describe “institutions, structures of understanding and practical orientations that make heterosexuality to seem to be the norm”. They also describe this concept as a “form of *power* and *control*” that applies in society through institutional practices and accepted norms. These considerations describe how LGBTIQ+ identities are discriminated against due to normative attitudes and norms as well as how discriminatory context often leads to a powerless position for LGBTIQ+ people.

By using the “**queering or deconstructing**” concept, the theory also provides a critical perspective on how norms are constructed and how these can affect LGBTIQ+ identities.

According to Spike (2017), different dimensions of social inquiry can be provided by this theory, among which the intersectionality dimension is the most influential. In fact, flexibility and adaptability to specific contexts are natural qualities of queer theory. The author explains intersectionality as a dimension influenced by feminist theory in order to address elements

of “*social differentiation*” (Eng, Halberstam, & Muñoz 2005). The social differentiation dimension leads to the importance of *identity*. Alternative theoretical paths take the “social differentiation” of LGBTIQ+ identities as a self-discriminatory theoretical element within queer theory. However, this thesis takes the path provided by Eng, Halberstam, & Muñoz because it identifies and helps to easily frame the social context (2005).

In this case, **LGBTIQ+ identity** conceptualization plays an important role when describing, exploring, and analyzing the LGBTIQ+ asylum procedure in Sweden. LGBTIQ+ identities can be categorized as non-normative categories<sup>2</sup>, arguing that the LGBTIQ+ community as a whole suffers from norms produced by *stereotyped* normative decision-makers (Manalansan, 2006). From this perspective, Manalansan (2006) adds *stereotyped perceptions* as a concept to add to the context in order to describe and categorize inequalities towards LGBTIQ+ identities (*ibid*).

To summarize, queer theory embraces identities, institutions, behavior and social practices, and therefore, a great variety of elements within the social spectrum. It also describes the LGBTIQ+ community as *Queer*, taking into account identities that are excluded from normative categories.<sup>3</sup>

### 3.2. Queer Theory and Migration/Asylum.

The relation between queer theory and migration/asylum is explored by Carrillo (2004). He suggests that sexuality can be a crucial factor for causing forced migration. “Sexual migration” is the concept used by Carrillo to explain the context in which LGBTIQ+ individuals have to migrate in order to feel safe.

Further efforts to integrate queer perspectives into migration studies have been done. For instance, Manalansan (2006) establishes this integration by explaining the idea of

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<sup>2</sup> Normative identities are described as identities constructed by practices, ideas and institutions dominated by hetero-discourses. Non-normative identities are those that have not been developed in the line of the previous line; in fact, they are developed according to queer and gender equalitarian discourses (Manalansan, 2006).

<sup>3</sup> Manalansan (2006) uses “queer” terminology to refer to the LGTBIQ+ community as the same social category without creating a distinction. However, it is important to note that Lesbian, Gay, Intersexual, Bisexual and especially Transsexual, are categories that could be addressed as individual studies, which is made evident by queer theory. To be able to conduct a larger, general study on the topic this thesis will refer to the LGBTIQ+ community as a whole.

reconceptualization (*queering*) which is very visible in social and legal norms. He pushes for the importance of reexamining normative ideas that might unintentionally describe LGBTIQ+ sexuality in migration. He also argues that a broad spectrum of standpoints related to sexuality have been hidden and often repressed in migration and asylum processes (ibid, pp 224). Taking into account an identity perspective provided by queer theory, Luibhéid (2004) reveals that legal frames created by “normative–attitudes” or “heteronormativity” might lead to added discrimination for LGBTIQ+ asylum procedure. Skipe (2017) adds that by queering this procedure (asylum), questions arise regarding how inequalities between normative and non-normative identities are normalized as well as how the practices of these procedures breach LGBTIQ+ asylum seekers’ fundamental rights.

Therefore, queering drives the research’s focus towards “how” LGBTIQ+ asylum is applied and by “whom”. This implies the use of a broad method which will be explained in the next section.

Manalansan (2006) justifies the use of queer theory in migration studies to frame conflictive elements that might not be clear when using normative theoretical frameworks. The author argues for the use of queering to be able to reexamine normative notions by producing “provocative insights” (ibid, pp 243). He argues that the application of this theory can also lead to the identification and understanding of discriminatory aspects that might be hidden by current legal attitudes and frameworks. (ibid, 2006, pp 225). Manalansan (2006), in line with Luibhéid (2004), exposes the effects on LGBTIQ+ identities due to normative attitudes but also how that shapes the process of sexual-identification of the person. In fact, looking at *sexual-identity* as a fluid and constructive process (different for each person), a theoretical and analytical perspective can be used to find discriminatory elements within social or legal contexts. The authors also explain how sexual-identity process depends greatly on various external factors and social context: persecution, conservative and religious societies, and threatening contexts ruled by extreme normative discourses. Therefore, when *queering* the asylum procedure, **contextual vulnerability** and **LGBTIQ+ self-identity** are the necessary analytical dimensions to describe the frameworks and scenarios in which LGBTIQ+ asylum seekers are put through. Firstly, LGBTIQ+ seekers have to explain and justify intimate matters such as sexual orientation in a vulnerable context, and secondly, the accusatory nature of the assessment procedure can lead to discrimination or violation of fundamental rights.

Queer theory's ability to be adapted to different contexts leads to theoretical concepts that use the previously mentioned fundamental rights. *Queer asylum* is a theoretical concept that embraces legal asylum framework as a normative binding fact, LGBTIQ+ individuals' fundamental rights and a clear self-identity dimension (García Rodríguez, 2017). Firstly, the concept criticizes how the legal text has been shaped by normative identities, in line with Luibhéid (2004). Post-structuralist "queering" is used to explain how norms affect LGBTIQ+ identities in asylum procedures. Secondly, it embraces the perspective of LGBTIQ+ individuals' fundamental rights within the process (further discussed in the next section). And lastly, taking LGBTIQ+ self-identity dimension as a main element within the queer community, the queer asylum concept is used as a tool to analyze if the procedure respects the asylum seeker.

What does the queer theory contribute to this thesis?

Queer theory creates a flexible and adaptable theoretical framework used to describe and criticize (by queering) *heteronormativity* which is the strongest factor in any social context. The theory describes the LGBTIQ+ community as discriminated identities by *stereotyped perceptions* from normative identities. Therefore, it adds contextualization to the asylum implementation on LGBTIQ+ asylum seekers in Sweden. When applying this theory to migration (asylum) studies, hidden procedural elements by normative rules and processes might arise as well as perspectives impossible to identify by standard theories. By *queering*, this theory pursues explanatory and descriptive approaches to be able to identify conflicting elements between asylum authorities and seekers. Queer asylum, as a theoretical concept within this theory, apart from self-identification, also embraces the legal context and the LGBTIQ+ fundamental rights. Considerations about asylum seekers' rights have to always be taken into consideration. Although queer theory touches upon "queer rights", legal considerations as well as ethical implications are considered. In order to investigate the integrity and intimacy of asylum seekers, this thesis focus on both the legal and ethical perspectives.

## 4. Research Design and Methodology.

This empirical study ultimately follows an adaptive approach. According to Derek Layder (2013), an adaptive approach is a suitable method for connecting the different research stages. Due to “little academic discussion” about this topic, an adaptive approach is chosen to be able to explore the research gaps. An adaptive approach facilitates this through consideration of “orienting codes”, which according to Layder (2013), “have proven value from previous research, or grounded theory”. In this case, queer theory and fundamental rights provide these code-concepts in order to guide the analysis.

Following this adaptive approach, I use qualitative methodology to understand, explain, and analyze LGBTIQ+ asylum in Sweden.

In particular, applicability of asylum policy on the LGBTIQ+ community and their fundamental rights is assessed through open-ended semi structured informant interviews. Moreover, two official documents from Migrationsverket and UNHCR are also assessed to provide the necessary contextual support on how the asylum procedure should operate.

Because it was difficult to get in contact with a large sample of LGBTIQ+ asylum seekers, the interview sample for this study consists of social workers, LGBTIQ+ asylum volunteers, and lawyers. With a sample of these participants,-- language barriers and possible uncomfortable situations for LGBTIQ+ asylum seekers were avoided.

In addition, asylum applicability is addressed by taking reports and official guidelines into account that have been provided by migration officers from Migrationsverket via email. Once the “how” is addressed by comparing information from official documents and interviews, the effects of the implications on fundamental rights (integrity and intimacy) are explored.

Theory-driven dimensions (codes) from queer theory and fundamental rights are used in order to guide the analysis in the interviews.

#### 4.1. Background through Documents, “contextual support”.

In Sweden, two official documents are taken into consideration to be able to apply the asylum procedure to LGBTIQ+ applicants. Both texts provide legal frame guidelines and recommendations to the migration authorities to be able to assess accurately LGBTIQ+ asylum cases. In this case, both documents provide the *contextual support* in which the methodology is based. *Contextual support* is necessary since there are binding texts which have to be strictly followed by migration authorities.

UNHCR provides the Guidelines on International Protection N.9. This binding legal document from United Nations has global character, ergo globally applied by states. This document intends to give legal guidance *for states, migration authorities as well as decision makers and judiciary*, and therefore provides an exhaustive frame were the LGBTIQ+ asylum must be carried out.

It introduces necessary definitions of who an asylum seeker is and LGBT social group, as well as a description of the highly discriminatory and marginalized context where LGBTIQ+ asylum seekers mostly come from. It also introduces the fact that LGBT people are “*strongly influenced by their cultural, economic, family, political, religious, and social environment*”.

Background, fear of being persecuted, actual persecution and criminalization of LGBT community are topics described in this document.

Credibility assessment is found in the procedural issues section, explaining general considerations such as conditions for this asylum stage and accurate authorities’ attitudes (open-mindedness). It establishes topics such as self-identification, childhood, gender-identity, family-relations and romantic and sexual relationships (this point limited by judgement of CJEU). Open-mindedness, non-judgmental questioning style and non-confrontational way are the aspects that this text demands to the migration authorities for a correct LGBTIQ+ asylum procedure application.

In addition, Sweden provides its own binding legal text of Guidelines. The SR 38/2015 document is developed by Migrationsverket to be able to execute LGBTIQ+ asylum cases in the most respectful and *forward-looking* manner. As N.9 Protocol (UNHCR), the SR 38/2015 Guidelines provides the context and the steps to which the LGBTIQ+ asylum procedure must be held. Background of applicants and variety in their stories are aspects considered

throughout. This document establishes the “suitable application manner” of the credibility assessment as: consideration whether the applicant belongs to a group in risk of persecution (sexual orientation or gender identity), study the situation of that group in their country of origin (COI), assess if the applicant was a victim of persecution in their COI, produce a personal assessment to delimitate the applicant’s personal risk, and finally assessment is made to explore “*internal refugee alternatives within their COI*”.

SR 38/2015 as legal extension of the N.9 Protocol establishes a great scope of definitions and legal considerations such as LGBT group, persecution or human rights. It defines the LGBT social group as vulnerable and an object of abuse and persecution, and considers this group as likely eligible for Swedish state protection. General information of the investigation is developed such as existence of different perceptions about sexuality, gender identity and related social-issues. It also provides the relevant themes for the investigation which in turn is deeply developed in the N.9 UNHCR protocol. Late disclosure of claims is also framed as possible within the procedure; this is set in both binding texts as a perfectly legal possibility. It compels to the authorities to embrace this procedural aspect as normal and possible due to the self-identification procedure of each LGBT asylum seeker. Finally, it mandates the application of open-ended, non-intimate and respectful questions with the applicants and their fundamental rights.

All in all, both texts provide a broad contextual support for this thesis analysis. They explain how this procedure is supposed to work in the Swedish migration context.

## 4.2. Interviews.

In this study, the semi-structured interviews provide valuable information about the current way the asylum procedure is carried out.

Kvale & Brinkman describe this qualitative tool as a “*guided question-answer conversation that produce an exchange of information about a topic of mutual interest*” (2009. pp 2). In this thesis, interviews gather information regarding LGBTIQ+ asylum, and more specifically, about “credibility assessment” and its effects on the rights of privacy and intimacy. Interviews require planning and strategizing in advance (Tracy, 2012. pp 132). Planning and strategizing are based on the objectives and aims settled and guided by research questions..



This tool gives the informants the opportunity to provide “accounts” by describing their experiences and giving their opinions, which are guided by semi-structured questionnaires. The interview question guide was sent in advance to the interview informants with information about the themes and the context that the interview will be used in. A letter of consent was attached to the interview guide (APPENDIX 1 & 2).<sup>4</sup>

Following Layder’s (2013) adaptive approach, sampling of the problem is addressed by open questions and a focus on *key problems* such as “LGBTIQ+ self-identity” or “right of intimacy”.

Since the sensitive nature of this thesis topic is high, contact with LGBTIQ+ asylum seekers was avoided, but instead a selection of “*curators*”, *volunteers* and *lawyers* from major civic organizations involved in LGBTIQ+ matters, asylum activists and knowledgeable individuals about the LGBTIQ+ asylum process were selected. The decision to interview these informants and not actual respondents, i.e. the LGBTIQ+ asylum seekers themselves, is highly influenced by recommendations from Migrationsverket regarding LGBTIQ+ asylum seekers. Another reason was the collaboration between these informants as members of major civic organizations regarding LGBTIQ+ community and Migrationsverket itself (Migrationsverket, 2018). I also decided not to categorize informants by their roles since the sample range is relatively small. By doing this, I keep a more general view in terms of sampling and create a base for further research.

Although the time frame has been short, two months were needed to gain the trust of the organization and for the *snow-ball* effect to take place, which allowed me to get in contact with more potential interview candidates. Regarding Migrationsverket, additional contacts were also provided thanks to the *snow-ball* effect but unfortunately, the case officers never responded.

This selection aims to keep information quality and ensure that interview informants are in a non-stressful context that could affect how the interview is carried out. Therefore, the informants were selected with the following criteria in mind:

- Older than 18 years old

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<sup>4</sup> An extensive letter of consent was provided upon request to most of the Informants. Master students are not covered by the Law of ethical vetting (Lag 2003:460 om etikprövning), hence special measures have been taken to respect confidentiality for such a sensitive topic by the request of some informants.

- Working at or involved in asylum organizations in Sweden (legal, voluntary, or procedural level)
- Knowledgeable about LGBTIQ+ rights

In order to avoid selection limitation, the requirements were established to be as broad as possible and yet not too broad so as not to lose focus on the goal of the thesis (Layder, D. 2013). This sampling responds to “theoretical-construct samples” that, according to Tracy, embrace the theoretical framework in order to draw limitations. In this case, queer theory guides the requirements in a way that informants should be sensitivity towards LGBTIQ+ identities (Ibid.).

Although adaptive and flexible approaches are proposed, Layder (2013) suggest that data collection needs to be solidified by theoretical known-concepts in order to start collecting data through interviews. Therefore, concepts such as fundamental rights, credibility assessment, and the rights of intimacy and integrity are applied in order to establish data collection themes and resulting analysis considerations.

A total of seven interviews were conducted. Six of them were recorded and transcribed, and the remaining interview was done through email by sending questions and receiving an email back with answers. The interview conducted through email was not possible to do in person due to lack of time for the interviewee.

This information was transcribed in a selective style, taking into consideration interview parts regarding previously mentioned themes.

### 4.3. Analysis Scheme.

According to Wiesner *et al*, the discovery of “important elements and dimensions” is the main objective of reports analysis. They express the importance of clear understanding by framing elements and dimensions submerged (2017).

They argue that apart from the basic steps, such as the first reading of the document, content analysis requires an extra effort in order to identify key concepts or “flags” which are important for the discussion (2017, pp 60). They use the theoretical terminology of “*topoi*” to identify concepts that are important for the methodology.<sup>5</sup>

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<sup>5</sup> Wiesner *et al* (2017) describe “*topoi*” as a key concept or important argument to take into consideration within the text.

In this thesis, queer theory is the framework that will set the “topoi” needed in order to carry out a reliable study. In this line, Layder (2013) argues that in an adaptive approach, you do not need to find codes or labels (topoi) within the text, but to take them from chosen theoretical framework. In this case, “pre-decided” codes established from queer theory are used. Theoretical analytical perspectives or codes are taken as well as one additional “code”, which is introduced by the normative standard of fundamental rights (right of intimacy and integrity).

Layder also comments on the researcher’s openness to identify “emerged codes” that can lead to a more complete perspective; identifying unknown variables in this process can lead to knowledge expansion and future research.

The main codes or “*topoi*” are defined as follows:

<ul style="list-style-type: none"> <li>● General considerations</li> </ul>	General information, process complexity, range of protection
<ul style="list-style-type: none"> <li>● LGBTIQ+ self-identity</li> </ul>	Variety of backgrounds, variety of LGBTIQ+ self-identity stages, late disclosure
<ul style="list-style-type: none"> <li>● Vulnerability</li> </ul>	Historical, physical, mental. Accommodation conditions, isolation, mental health.
<ul style="list-style-type: none"> <li>● Rights of intimacy and privacy (fundamental rights)</li> </ul>	Type of questions, accommodations, mental and physical integrity
<ul style="list-style-type: none"> <li>● <i>Room for “emergent codes”</i></li> </ul>	Theoretical – procedural issues. New elements to research. Room for knowledge expansion.

By applying these codes, key information is gathered to be able to reach conclusions about the asylum procedure in Sweden regarding the rights of intimacy and integrity. These codes highlight elements from the procedure that are selected as points for validation or points for improvement.

Because of the chosen group of informants, this study is highly dependent on opinions, experiences, and perceptions about LGBTIQ+ asylum. Therefore, Bricolage and *theoretical*

*reading* are chosen as the form of interview analysis. The objective of this analytical approach is to take into consideration as much information as possible (Kvale, 2007). Bricolage, being an “*eclectic combination of multiple forms of analysis*”, produces a “*theoretical informed reading*” which provides flexibility and a variety of techniques to create reflections on the theory in the text (Kvale, 2007. pp 116). In this case, this analytical approach implies a free “*interplay*” of techniques to create meaning in the interview transcripts.

According to Kvale, Bricolage provides a process of discoveries and interpretation throughout the text (2017). Although this “*interplay of techniques*” is flexible within the method, a clear structure and starting point is recommended. Consequently, Layder’s adaptive approach is used. The author recommends defining predefined codes/labels or “*topoi*”. In this case, theory and normative standard-based codes are established to be able to start the analysis. Theory-based concepts such as LGBTIQ+ self-identity and vulnerability are considered as well as the normative standard of the rights of intimacy and integrity.

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#### 4.4. Validity, Reliability, and Generalizability.

In line with Layder (2013), this thesis gains validity and reliability by using several interviews and contextual support given by the two official documents. Reliability and validity are described as elements in research that provide accuracy regarding the quality of research.

According to Tracy (2012), reliability refers to the stability, transparency, and consistency of the study, taking into account the idea of reliable studies as “*those that can be replicated in exactly the same way, no matter who is conducting the study*”. Although this study requires a great degree of interpretation, which can raise questions regarding reliability, accurate comprehensive interview transcriptions as well as clear methodology are used in order to provide academic procedural reliability.

As the methodology of this study is flexible, it is explained in a very concise and detailed manner.

In this case, validity also acts as a key measurement of the quality of the research. This element relates to the accuracy of the findings that the researcher aims to gather and how precise the chosen methods (interviews) are in regards to the objectives. The sources used are also elements to take into consideration when it comes to the validity and reliability of this study. A contact with the major civic organization regarding LGBTIQ+ asylum seekers has been established based on information by different NGOs. In order to gather varied perspectives, interviews were conducted with informants working both at the Gothenburg and Stockholm offices.

This study also aims for research generalizability since it uses an international legal framework and interviews conducted with people who have frequent contact with LGBTIQ+ asylum seekers in Sweden. It also attempts to overcome the disadvantage of a small number of informants through specific respondent selection, such as “kurator” (social worker) and LGBTIQ+ asylum agents who are in contact with a large number of LGBTIQ+ asylum seekers. This study also takes Tracy’s concept of “*formal generalizability*” by arguing for the possibility of general study applicability (2012, pp 248). In fact, according to its flexible methodology, this thesis could be implemented in different EU MS by taking the state’s legal background regarding asylum and conducting interviews with similar organizations.

Different informant locations have been used; Gothenburg and Stockholm have been selected as the cities where the samples can be better represented in terms of Swedish geography. Both cities provide a varied representation of Sweden as an EU MS as well as the major civic LGBTIQ+ organizations chosen, which are the main stakeholders related to LGBTIQ+ asylum.

#### 4.5. Ethical Considerations.

Special attention has been given to ethical considerations in this study. LGBTIQ+ asylum is a topic that can imply important ethical perspectives such as cultural sensitivity, the notion of fundamental rights, and non-discriminatory consistency. The concept of ethical behavior has been applied in order to avoid making premature assumptions or considerations and, instead, different theoretical points as well as a varied selection of previous research have been considered.

According to Tracy, procedural ethics are needed in every qualitative study (2012, pp 243). This thesis follows procedural ethics such as “*do no harm*”, “*avoid deception*”, “*informants’ consent*” and “*privacy and confidentiality*”. As the current topic is considered highly sensitive and sometimes difficult to research, transparency, honesty and accuracy have been used throughout as well as extra attention put on building trust. As mentioned before, approximately two months were needed in order to establish contact and carry out an interview with the first informant.

Hewson (2016) also comments on the idea of confidentiality as a major ethical guide shown through qualitative research. This thesis has ensured the confidentiality of interview informants by providing a “*letter of consent*” where main points, type of questions and general considerations of the research were explained in advance (Appendix 1). The interview material (including transcripts) have also been kept in a secure place during the process, as Hewson recommends. Even if the majority of informants were open to show their identity, Lag 2003:460 om etikprövning stipulates that I, as a student, am not protected by ethical vetting, and, hence, I was guided to make the interviews anonymous. However, Aino (informant 7) asked for her identity to not be kept anonymous, as expressed through email.

Relational ethics have also been considered by which *values recognition, mutual respect, dignity and connectedness between researcher and informants* have been examined (Tracy, 2012, pp 244). As a researcher, I always try to respect previously researched opinions and I have tried to impact as little as possible in the informants answers. Therefore, as a researcher, I can assume that relational ethics have also been considered throughout.

# 5. Analysis and Final Results.

This section begins with a summary of the two documents, N.9 Protocol (UNHCR) and SR 38/2015 (Migrationsverket), that describe how the asylum procedure and credibility assessment processes are meant to work. I then turn to the analysis of the these documents and the interviews to assess asylum implementation according to the main codes or topoi:

<ul style="list-style-type: none"> <li>● General considerations</li> </ul>	General information, process complexity, range of protection
<ul style="list-style-type: none"> <li>● LGBTIQ+ self-identity</li> </ul>	Variety of backgrounds, variety of LGBTIQ+ self-identity stages, late disclosure
<ul style="list-style-type: none"> <li>● Vulnerability</li> </ul>	Historical, physical, mental. Accommodation conditions, isolation, mental health.
<ul style="list-style-type: none"> <li>● Rights of intimacy and privacy (fundamental rights)</li> </ul>	Type of questions, accommodations, mental and physical integrity
<ul style="list-style-type: none"> <li>● <i>Room for “emergent codes”</i></li> </ul>	Theoretical – procedural issues. New elements to research. Room for knowledge expansion.

According to N.9 Protocol (UNHCR) and SR 38/2015) the asylum procedure works in the following way.

According to N.9 UNHCR Protocol and SR 38/2015 the asylum procedure works in the following way.

General asylum stages:

1. Migration: asylum seeker leaves home country and migrates to Sweden.
2. Arrival to Sweden: first contact is with Migrationsverket through a “social” interview. This is when the migrant has the chance to make their claim. Many hide their LGBTIQ+ identity when speaking with the authorities.
3. Sent to live in camps. Here, the migrant is allowed contact with associations and lawyers to prepare for the next interview for “credibility assessment”.
4. Credibility assessment: Interview takes place in person between the migration board, lawyer, and asylum seeker.
5. Case resolution: approved or rejected (it can be appealed to Court in the case of rejection).

According to the N.9 UNHCR Protocol and SR 38/2015 Guidelines, this is how the asylum procedure regarding sexual orientation and gender equality should work. They are the binding guidelines and the Migration Agency in Sweden must base their procedures on this. First, UNHCR N.9 Protocol explains the grounds where this document is supported. It defines the LGBTIQ+ community as historically discriminated and currently still persecuted in many countries (Art 2). It tackles this context providing arguments such as marginalization from families and work. Art. 20 frames this socially vulnerable context by recognizing that threats, violence, and abuse towards the LGBTIQ+ community is a common occurrence. This document also explains how there are a great variety of backgrounds of LGBTIQ+ asylum seekers resulting from the supranational and intersectional character of migration and queer studies. Open-mindedness from authorities, UNHCR says, is key in these procedures to be able to frame the case from a comprehensive point of view. This protocol also makes it mandatory to consider the hiding of sexual orientation (and therefore LGBTIQ+ asylum claim) by asylum seekers since LGBTIQ+ individuals might have kept their sexuality a secret for “large parts of their lives” (Art 30). It embraces the possibility of different stages of LGBTIQ+ identities in each person, which the authorities should also take into consideration during the process. Overall, this protocol asks the authorities to be open-minded, avoid early



conclusions, and understand LGBTIQ+ context in terms of vulnerability and varying levels of self-identity.

Sweden applies this procedure by mandate of the N.9 UNHCR protocol and the SR 38/2015 Guidelines where Migrationsverket sets the legal grounds for LGBTIQ+ asylum. The SR 38/2015 report includes an extremely broad idea of persecution grounded on sexual orientation and gender identity. Swedish Guidelines provide a long list of principles that the authorities should respect throughout the process which are in line with the N.9 Protocol. A great level of conceptualization regarding LGBTIQ+ identities and contextual vulnerability is provided throughout.

Credibility assessment is clearly stated in N.9 Protocol. Art 62 makes it mandatory to consider the individual character of each case. It points out the importance of each LGBTIQ+ applicant's background as well as their perceptions of their own sexuality, excluding information related to sexual practices. N.9 protocol addresses the topics that the authorities are allowed to bring up with the objective to give each case "veracity". Search for the required evidence is the principle in which this document sets the authority duty. The applicant's notion of *LGBTIQ+ identity, their social relations, their networks, and their romantic relationships* are the mandatory topics set by the guidelines. This step consists of an in-person interview where the asylum seeker is given the opportunity to tell their story as well as the explanation required for why they need state protection (in this case, related to sexual orientation and gender identity persecution). To start with, both N.9 Protocol and SR 38/2015 Guidelines stress the importance of letting the asylum seeker explain their situation and ask for understanding from the authorities regarding the individual's story while taking into account the cultural-social background. Subsequently, questions tailored to the individual are asked regarding their life and experiences.

SR 38/2015, in line with N.9 Protocol, follows the previously mentioned topics carefully. It adds the obligation for authorities to have non-stereotypical preconceptions in their assessment as well as strong consideration of human dignity and the rights of privacy and personal integrity (Art 19. SR 38/2015). Finally, following N.9 Protocol, the Sr 38/2015 Guidelines protect the asylum applicant's rights of intimacy and integrity according to ECJ

Judgement C-148/13-C-150/13. Authorities are prohibited from asking detailed questions about sexual habits and intimate scenarios.

According to these official documents, this is how the LGBTIQ+ asylum process is supposed to work. I now turn to the analysis of the documents and the interviews. This analysis focuses on credibility assessment as well as the rights of intimacy and integrity. This is done through the pre-settled codes derived from queer theory and general considerations taken from the EU fundamental rights, which are indicated above.

## 5.1. General Considerations.

This section provides an overview of LGBTIQ+ asylum in Sweden taking into account contextual support from official documents. It addresses overall perceptions about how the procedure should work and how the procedure is actually implemented.

Official Documents and Guidelines are clear in terms of issue framing and the procedure itself. Nevertheless, in practice, different scenarios can be encountered by interview informants. In the contextual background provided by N.9 Protocol and SR 38/2015 Guidelines, the current definition of a “refugee” regarding sexual orientation and gender identity is discussed. Article 1A (2) of the 1951 Convention provides the legal grounds by which LGBTIQ+ asylum seekers can seek state protection for LGBTIQ+ related reasons. However, there is disagreement among different EU MS and this procedure takes different measures regarding the way it’s implemented. As mentioned, the authorities must carry out procedures with open-minded attitudes to be able to be understanding towards various backgrounds of asylum seekers as well as their level of **LGBTIQ+ self-identity**. When doing this, authorities must avoid *stereotypical perceptions* (UNHCR, 2012, pp2). N.9 Protocol (Art 62) establishes factual explanations related to the previously mentioned idea which are in line with Manalansan’s (2006) queer theory perception of LGBTIQ+ identity as highly dependent on external factors.

The relation between human rights, sexual orientation and gender identity is explained as follows:

*“Although the main international human rights treaties do not explicitly recognize a right to equality on the basis of sexual orientation and/or gender identity, discrimination on these grounds has been held to be prohibited by international human rights law”. (UNHCR 2012)*

This is another example of the lack of international agreement regarding sexual orientation and gender identity being considered as fundamental rights. Their connection is based on the principle of non-discrimination instead of as fundamental right. This weak relationship between LGBTIQ+ identity and equal fundamental rights is, in fact, in accordance with Akin (2017), hidden evidence of asylum procedure as a *tool* where fundamental rights are not “*equally considered*”. However, the EU has gone slightly further by introducing a broader spectrum of legal grounds against sexual orientation discrimination in the EU Charter of Fundamental Rights, Lisbon Treaty (Art 2 and 3), along with a number of additional rules and regulations. Considerations concerning integrity and intimacy as examples of fundamental rights are developed in the next sections. Credibility assessment is also specifically explained in relation to procedural elements in the next sections.

What do the informants say about procedure implementation?

According to informant 1 (manager of newcomers department) the procedure begins as follows:

*“When you first seek asylum here, you have a social interview in the beginning where you get to explain why you are seeking asylum, for example that you are LGBTIQ+ person... and you briefly explain what you are fled from and so on... So when this is read by the case officer they get a little picture of what this is about. And then, they can be more respectful about the integrity and the respect for them.. like what kind of questions they have to ask, questions in a simple way... not like questions that your mind get confused, and makes you think about the kind of question the authorities want.”*

Informant 1 expresses the intentions of the asylum authorities. The uniqueness of each case is, at first, respected by providing the possibility to describe their experiences, so the case officers can execute questionnaires adapted to their story at the credibility assessment. Therefore, the information given by informant 1 shows that the authorities try to take the uniqueness of each LGBTIQ+ asylum case into consideration. However, different opinions are expressed regarding the authorities’ perceptions.

*“We have confrontation with migration board because they assimilate the Swedish ‘way’ with the asylum seekers, so they assume that people have the ability to reply and respond and react like any other Swedish sometimes. It is not that simple...” (informant 4 – Lawyer, Migration counsellor)*

By law, the authorities must show understanding when carrying out asylum procedures. However, according to informant 4, there are still issues regarding stereotypes and assumptions about how the asylum seeker should act. According to Heller (2009), part of the *stereotyped perception* identification shows a low degree of open-mindedness in the early stages of the procedure. This is, indeed, a breach of article 19 SR 38/2015 where these practices are forbidden in judgement 2 as of December 2014 by CJEU.

Most of the informants argue that due to the different backgrounds and personal circumstances of each asylum seeker, complications can occur in how the asylum procedure is generally applied. The initial situation for most LGBTIQ+ asylum seekers is explained by informant 1 (manager of newcomers department):

*“So, when they get in contact with us many of them are afraid in the beginning. Some of them maybe they have sought asylum, but they did not know that LGBTIQ+ rights exist in Sweden. And it is not so obvious because many of persons that come to us, are coming from persecution, from countries where is not legal to be an LGBTIQ+ person. And there are different reasons, some of them don’t want to out themselves while are seeking asylum, and inside of some different asylum organizations or in refugee camp...”*

And informant 6 (asylum lawyer):

*“When the asylum seeker arrives to Sweden, and they are an LGBTIQ+, it really depends on what kind of background that person has. We have people from extremely broad backgrounds. If they are educated, (...), they have an easier way to, first of all, say that they are an LGBTIQ+ person...”*

And also, the difficulties to explain about such a variety of backgrounds, which implies a procedural disadvantage for many LGBTIQ+ asylum seekers:

*“For many people is the first time in their life that maybe they are expressing their emotions, is the first time they are discussing their love affairs... It is maybe the first time they discuss their lives! In general, it is very difficult for them”.*  
(Respondent 5 – volunteer at newcomers department).

Overall, the interview informants explain the complexity of the process by pointing out the variety of backgrounds, the level of LGBTIQ+ self-identity, the level of information given by the authorities, and the multiple factors needed for consideration when it comes to the assessment.

The following sections explain using more detailed codes or important elements that have been selected in order to simplify and understand the complexity of the LGBTIQ+ asylum process. LGBTIQ+ self-identity, vulnerability, and right of intimacy as well as integrity are carefully analyzed. In addition, room for emergent codes will be addressed in order to add new perspectives to the analysis.

## 5.2. LGBTIQ+ Self-identity.

*“LGBTI individuals frequently keep aspects and sometimes large parts of their lives secret. Many might not have lived openly as LGBTI in their country of origin and some may not have had any intimate relationships. Many suppress their sexual orientation and/or gender identity to avoid the severe consequences of discovery, including the risk of incurring harsh criminal penalties, arbitrary house raids, discrimination, societal disapproval, or family exclusion”.*  
(UNHCR 2012, pp 9, Art 30)

LGBTIQ+ self-identity is an analytical perspective (topoi) defined by N.9 Protocol as developing “*across a person’s lifetime*”. This element, as mentioned in previous sections, is very much dependent on the social environment. Thus, multiple LGBTIQ+ identities prevails within this process. This context is supported by Manalansan (2006). He explains the importance of “*queering the social context*” in order to explain how normative attitudes affect LGBTIQ+ identities. Individual development of LGBTIQ+ self-identity is broadly addressed in the Guidelines. In fact, official documents state that internalized homophobia can occur during this process (Art 3 & 63i).

SR 38/2015 explains LGBTIQ+ identity as part of a problematic spiral that is a result of the asylum seeker’s past experiences. Authorities must take this into consideration and not use it as a reason to reject a person’s case for asylum. This fact is grounded on the Judgement from 2<sup>nd</sup> December 2014 in A, B and C (joined Cases C-148/13 – C-150/13). There, sexuality is established as a sensitive matter that evolves over time and therefore it gives legal ground for “late disclosure” as a legitimate option within the LGBTIQ+ asylum procedure.

*“**Sur place claims** may also arise due to changes in the personal identity or gender expression of the applicant after his or her arrival in the country of asylum. It should be noted that some LGBTI applicants may not have identified themselves as LGBTI before the arrival to the country of asylum or may have consciously decided not to act on their sexual orientation or gender identity in their country of origin” (UNHCR, 2012; Art 57).*

Through interviews, the informants provide information regarding LGBTIQ+ self-identity and “**late disclosure**” in the following way: first, they explain how the identity process works and can affect the procedure; secondly, they explain how this aspect of the procedure can lead to conflictive situations (credibility assessment).

“*It takes time...*” was the most frequent comment that was found while gathering information in the interview transcription phase. It represents the nature of this procedure regarding time and something that most LGBTIQ+ asylum seekers deal with when applying for asylum.

*“Many of them who come to us live in denial, and they don’t know what the rights in Sweden are, but it is an individual situation. Some of them live in a family where they cannot out themselves, some of them maybe have the same address and when they get a letter from the agency or a lawyer it can be read by different people who lives there, It can be friends sharing the apartment.... So, it depends. **But Identity itself, depending the country you come from, many of them live in the denial. To know who you are... It takes time!** And to get to a free country and be yourself it also takes time. So, this time must also be countable for the benefit, otherwise would be like: “ok, I come here, I can be free”, but it is not like that. We have to count the background of each individual, where they come from. Many of them are traumatized, they cannot just come and say: I am free now. **No, it takes time, to work on this trauma, to get to know to what identity you belong, and so on... and It is different each individual**”.* (Informant 1 – manager of newcomers department)

*“It also takes years for you to realize: Am I really homosexual? **It takes time**, before you go over to those next steps. And you might have this experience too. Do I feel as I wanted? Do I feel comfortable with that? It is like climbing the walls of find out of how it is to be on the other side”.* (Informant 3 – volunteer at newcomers department)

*“I mean, normally identity, when the person claim sexual orientation, they have a special situation, unique in every case, the thing in common is that they couldn’t live in their own country, so I mean we can talk about that problem, what happened, why? Even self-identification, or LGBTIQ+ self-identity **takes time...**”.* (Informant 4 – Lawyer, migration counsellor)

According to the information provided by the informants, time and external factors are elements that affect LGBTIQ+ self-identity. But is **late disclosure** an actual problem for authorities?

Regarding “**late disclosure of claims**”, Swedish guidelines say: “*this fact might lead the asylum seeker to be questioned about it and the asylum seeker must provide a coherent explanation*”.

As mentioned before, **late disclosure** of claims is not a legal reason for authorities to reject cases due to the individual self-identification level of each asylum seeker. But some informants have experienced reality differently:

*“Sweden has had legal guidelines about **late disclosure** since 2009, stating that it cannot be the sole reason for deciding on incredibility. However, we see that late disclosure always, always is used against the person's credibility, and this has increased the last 1-2 years. (...) in interviews the case officers spend half of the time questioning why, why, why the person didn't "speak up" immediately when they arrived on Swedish ground.”* (Informant 7 - Aino Gröndahl, Asylum lawyer)

*“When you come with the claims later on the process, that should not be a problem in legal terms. We have late disclosures in the EU court that says that this cannot be a reason for negative response from migration agencies. Because it should be an understanding in migration agency that these kinds of claims can appear later in the process, but nonetheless, I think there are affecting negatively to the cases. So that is just 1 part of it”.* (Informant 6 – Asylum lawyer)

Based on the comments of informant 7, the authorities’ *stereotyped perceptions*, argued by Manalansan (2006) and García-Rodríguez (2017) through queer asylum, are identified by the informants. This supports the idea that LGBTIQ+ identities are discriminated by stereotyped normative decision-makers (Heller, 2009).

However, the notion of “late disclosure” as a major procedural element regarding LGBTIQ+ identity is framed by queer theory as problematic (*ibid*). Manalansan (2006) says, *If queer people struggle to often identify themselves as LGBTIQ+ leading them to confusion and mental issues. To give an explanation about it is therefore an impossible demand...* In fact, Shidlo *et al* (2013) comments on this part of the procedure as a cause of emotional distress and mental harm for LGBTIQ+ asylum seekers. Theoretical considerations are also provided by Pallota-Chiarolli & Rajkhowa (2017). Their theoretical perspective of LGBTIQ+ identity

supports the claim that there is a problem regarding how the authorities carry out the “late-disclosure” procedure. They define the overall execution of late-disclosure cases as “questionable” regarding LGBTIQ+ fundamental rights (integrity and intimacy) and well-being. Furthermore, Berlant et al’s (1998) concept of *heteronormativity* suggests that the authorities misuse “late-disclosure” as a tool for controlling cases, this allows them to justify negative outcomes for LGBTIQ+ cases. It is not the “late disclosure” legal ground that is the problem but rather the specific “use” of it.

Thus, it can be said that the practice of late disclosure of claims needs to be revised. Revisions are needed to be able to reduce the mismatch between the CJEU jurisprudence and its implementation. *Stereotyped assumptions* can be taken into consideration in this case. Luibhéid (2004) relates this context to the study of “how” and by “whom” these processes are applied to in order to discover possible discriminatory situations driven by heteronormative attitudes (heteronormativity). As well as Manalansan’s (2006) critical perspective in which queer theory explains how the rules produced by normative identities affect non-normative. The authorities should be well-prepared for understanding LGBTIQ+ identity processes; however, they usually have stereotypical perceptions or make incorrect assumptions. This conclusion is based on the similar statements given by informants as well as queer theoretical framework. *Late disclosure* of claims, explained by the informants, directly affects the process of individual “LGBTIQ+ self-identification”, which adds to the negative impacts experienced by the often initially unstable mental health of LGBTIQ+ asylum seekers; this also creates distrust between asylum seekers and authorities (Berlit *et al* 2015).

Thus, late disclosure implementation in Sweden, even if justifiable from a legal perspective, expresses a clear normative constructed asylum framework that leads to negative implications and an added “*burden of proof*” in the credibility assessment (Dauvergne and Millbank, 2003).

### 5.3. Vulnerability.

According to previous research and queer theoretical framework, vulnerability is the most appropriate theoretical analytical perspective in order to understand the circumstances of LGBTIQ+ asylum seekers. Manalansan (2006), supported by FRA and Binnie & Klesse,



describe the LGBTIQ+ community as *highly discriminated and marginalized in any social context* by normative attitudes or *heteronormativity*. The asylum procedure is, in fact, no exception. This analytical code is categorized into three different types of vulnerability: historical, physical, and mental vulnerability.

Historical vulnerability refers to the overall context where certain normative attitudes towards the LGBTIQ+ community occur over time. This perspective is mainly supported by queer theory and previous research. Legal texts support the claim that the LGBTIQ+ community is subject to “serious human rights abuses and other forms of persecution that historically has always been there” and are a “target of killing, sexual abuse, physical attacks, torture and arbitrary detention by authorities (Art 2, 2012, pp1).

Physical vulnerability is framed as a result of attitudes towards this community through elements such as “rape” which “*leads to deep psychological scars on the victim*”.

*“People with homosexual or bisexual orientation are usually very vulnerable group. Many times, these people come from countries where homosexuality is a taboo phenomenon and they can because of their sexual orientation has been affected by harassment from both his own the family circle as from the authorities”.* (SR 28/2015)

Mental vulnerability refers to the fact that in most of the countries of origin, same-sex relations are illegal (UNHCR 2012, Art 26, pp 8). Such hostility against LGBTIQ+ identities leads to “*discriminatory and disapproving social and political attitudes that have serious consequences in the mental health of the LGBTIQ+ individuals*”. Violation of personal integrity and intimacy is the norm in the countries of origin.

Vulnerability regarding credibility assessment is described as a result of lack in contextual information regarding the background and country of origin. It interferes with the required consistency in personal stories from LGBTIQ+ asylum seekers. In order to explain this requirement, Manalansan (2006) provides “normative stereotyped perceptions” as descriptive theoretical concept to explain the attitude from decision makers. Lack or understanding from authorities regarding LGBTIQ+ issues, is also a perspective that leads into context definition from queer theory.

What do the informants say?

Interviewed informants expressed themselves broadly in regard to the legal text. Informants explained the historical context of LGBTIQ+ asylum seekers regarding their background. They described it in accordance to legal text and queer theory perspective. However, these informants also discussed the LGBTIQ+ asylum seekers current situation when going through the procedure. This last point includes procedural elements that lack from provisions in the legal texts.

For instance, informants pointed out asylum *accommodations* and *health treatments* as major procedural elements that contribute to their vulnerability. Questions regarding credibility assessment were also discussed.

All informants agree that there is a great variation in LGBTIQ+ asylum seekers' backgrounds. This agreement is describes the hard physical and mental conditions in which LGBTIQ+ asylum seekers come to Sweden.

*“From the part when you seek asylum there is scariness in every asylum seeker life, even though they are in a free country where they can be themselves. There is still kind of stress, traumas (...) and so on, so all of that is still there. And even when you seek asylum is still with you... ”.* (Informant 1 – manager at newcomers department)

*“You keep asking them: how come that you came to Sweden? And they always explain to me (of course): there was no choice, I just fled, I had to! Quickly! In any way I could!”.* (Informant 2 – volunteer at newcomers department)

*“I don't know what to do.... And many of these asylum seekers have depression, they experience that they do not know what to do... In that moment they need some affection, to feel embraced, and perhaps we can do something about it”.* (Informant 3 – volunteer at newcomers department)

*“I can surely say that LGBTIQ+ group is very much subjected to these types of mental health issues. They are in trauma, as a group in society is overexposed to these experiences. If we apply this intersectional dimension to asylum processes, you can imagine how its results”.* (Informant 6 – asylum lawyer)

The type of *accommodation* is another procedural aspect of the asylum process that can affect the person, and thus, affects the vulnerability context. According to informant 1 (manager of newcomers department), current asylum *accommodation* leads to vulnerable situations for LGBTIQ+ persons:

*“I had cases where they did not get respected for who they are, they didn’t look at for they needs, for example when it comes to trans person, who cannot live with others, for example straight men at the refugee camp... where they didn’t even bother to help. And the opposite, where the officers understood their needs and they put in a bedroom alone. So, it depends.”*

Informant 5 (volunteer at newcomers department) expresses:

*“The Swedish migration agency places individuals in asylum camps or asylum accommodations, and these asylums accommodations are generally in the countryside. And the problem with the organizations is that generally are in the cities. So, they are disconnected immediately from the LGBTIQ+ organizations. And the organizations work on a volunteer basis, so they don’t have the resources or the time to go around the camps and try to empower people. So, they are literally left on their own. (...) Especially after the 2016 migration crisis, sometimes they had to be 8 in the same room. And when you put someone there, they are left there. So, either have to hide their gender identity, or sexual expression, or they are the subject of abuse. That’s what we see. (...) Then the migration agency has openly recognized that this is a big problem, so they have had different ways to deal with this amount of issues. They have tried to put people in safe houses...”*

Informant 5 expresses that *accommodation* desperately needs improvement due to its essential role in providing a stable safe space where the mental state of LGBTIQ+ asylum seekers can be assured. Thus, by safe accommodations provision, authorities can provide space where LGBTIQ+ asylum seekers can prepare the credibility assessment interview, as well as the insurance of their fundamental rights. Although the Migration Agency has tried to improve the asylum accommodations, the issue still remains. Pallotta-Chiarolli & Rajkhowa (2017) describe the issue as a *questionable implementation* of the asylum procedure in terms of well-being. Manalansan’s notion of queer theory as a critical perspective explains that such situations are the result of normative attitudes that can unintentionally and negatively affect the development of LGBTIQ+ identity. While living in such accommodations, LGBTIQ+ asylum seekers are not only victims of historical vulnerability through hostile context (surrounded by heteronormativity) but they also remain victims of mental vulnerability presently.

*“But when it comes to the accommodations, LGBTIQ+ refugees live with others from the same countries, so it is not a feeling of not leaving the country. They are surrounded by people like the same crowd as you had in your country of origin, so is a psychological feeling of not being safe. This can be resolved with safe houses, but not all get them.”* (Informant 6 – asylum lawyer)

Continuing on the same topic, Informant 5 (volunteer at newcomers department) mentioned:

*“There is a lot of people that feel that well-being is not ok, a lot of people feel bad. There is a lot of people that need mental care, but they don’t get it. So, they are left with the normal healthcare. When they enter the normal healthcare, they are supposed to give them only help that cannot wait. (that is how is pronounced). And this is a bit tricky because what cannot wait here? Regarding mental stability most of the cases the doctors cannot do long term treatments when they meet, and they talk and they pass through a psychological therapy. They just put them in pills, so most of them just get pills, and of course this is not great.”*

It opens up discussion about the consequences for each LGBTIQ+ asylum seeker and their personal integrity. In accordance to Shidlo *et al*, such elements establish clear interferences with mental stability (2013). In fact, taking Shidlo *et al*’s research into consideration, informant 5 also explained that these pill treatments often have a negative impact on “credibility assessment” since authorities demand *coherent, structured and detailed* accounts from LGBTIQ+ asylum seekers. These poor treatments can harmfully affect the way these asylum seekers express themselves when speaking with authorities.

*“I have had meetings where people were discussing about which pill is the best... so you can imagine...”*. (Informant 5 - volunteer at newcomers department)

LGBTIQ+ asylum seekers are also victims of physical abuse according to informants. Because of inadequate accommodations, LGBTIQ+ asylum seekers are exposed to context driven and ruled by *heteronormativity* where physical abuse can occur (Manalansan, 2006). Therefore, it can be concluded that personal integrity is threatened by inadequate procedural elements within the asylum process.

Credibility assessment is another procedural step where vulnerability occurs as a noticeable analytical perspective. This stage is often problematic when it comes to the vulnerability of LGBTIQ+ individuals involved. Elements such as the *type of questions* are very much discussed in previous literature and within organizations involved in asylum. Opinions vary, but the context in which the assessment is implemented is described unanimously by informants as follows:

*“Because sitting there, terrified, stressed, getting such questions where they are not simple, where you have to go back to your background, it is NOT EASY! It is*

*very hard to know how to reply, and often it requires training, and that's what we exactly do. We pre train them for the kind of questions they are going to get, because IT is HARD to answer such questions... because you are not only gaining your credibility, but your life! Your integrity!*". (Respondent 1 – manager of newcomers department)

Using Spijkerboer's "*tool of differentiation*" concept, one can argue that the type of questions themselves can be a way to create differentiation within the asylum process. The conflicting relation between the *type of questions* and *the level of intimacy and integrity* of the LGBTIQ+ asylum seeker involved can also be seen. Therefore, their fundamental rights can be threatened by the type of questions asked. Sweden, as well as the EU, have created an asylum system where feelings of *distrust* and *differentiation* can be easily felt between authorities and LGBTIQ+ asylum seekers. This is due to the credibility process where LGBTIQ+ asylum seekers have to prove their personal story and gain *veracity*. It is a process very much influenced by subjective assessment, which is dependent on the different interpretations by the authorities.

According to Berlitz *et al* (2015), asylum assessment needs to change from the current "*guilty until proven innocent*" attitude towards "*benefit of the doubt*" to be able to address LGBTIQ+ cases properly. Taking into account the information from interviewed informants, the "*benefit of the doubt*" attitude seems to be lacking from case officers. Currently a rather accusatory and harsh questioning style exists in which LGBTIQ+ asylum seekers have to fight in order to have their story heard as credible. Manalansan (2006) explains through *queering* the accusatory questioning style as a result of existing heteronormativity within the authorities and decision makers. Lack of knowledge regarding LGBTIQ+ identities, for instance, can be defined as a specific cause when describing this context.

Informant 5 explains the struggle that authorities have when it comes to avoiding bias and emotional attitudes towards LGBTIQ+ cases, since this can lead to a lack of objectivity and a violation of *Migrationsverket's* principles:

*"The case officer should not be biased. If he builds too much trust, he or she would be bias towards this asylum seeker. The person should be objective..."*.  
(Informant 5 - volunteer at newcomers department)

But the informant also comments on the importance of trust-building to be able to address the case in a more open minded manner:

*“It is a big issue, indeed. I think where they could build trust is through asylum accommodations and the first experiences they have there. For example, in Västerås there is a co-worker that is in charge of the placement of them and she is lesbian, and she is active in this exactly, in building trust, she is lesbian herself, so she can connect to them. And that has been very important of course for the people to understand that the authority wants to help them, not only to judge them.”* (Informant 5 - volunteer at newcomers department)

Informant 1 comments on how this situation could be improved:

*“First of all, to be more human, humanity in between... when it comes to make a question to a person that you do not know anything about.... BE CURIOUS about their background... where this person comes from... and in a way that is respectful to their identity of the person that is in front of you... not pre expecting certain answers...”* (Informant 1 – manager of newcomers department)

Following the previous statement, it is also important to address the problem of existing pre-assumptions among authorities. Informant 1, in line with Heller (2009), agrees that the concept of *“stereotyped perceptions”* can be problematic and sometimes key in the assessment and final decision.

Although authorities have been trained and educated to be able to understand the LGBTIQ+ perspective, it seems that procedural issues occur during the assessment process. A few informants expressed their thoughts on this:

*“They feel intimidated, and feel ashamed again, sitting there, having to talk about something that is not fully understood”* (Informant 2 – volunteer at newcomers department)

*“There is not much that you can ask and try to prepare my clients to what that kind of questions. The problem is the assessment, how do you take the questions or the answers and make them an assessment that is credible or not. That is very not based on a formal standard, it is base in case officer assumptions.”* (Informant 6 - asylum lawyer)

*“For this group of a never-ending story, so they are in the system much longer than other types of claims that are less stigmatized. Of course, every asylum seeker has stigmatized claims in a way but this group has very special vulnerabilities. Often they do 2 processes!”* (Informant 6 - asylum lawyer)

#### 5.4. Right of Intimacy and Integrity.

According to Spijkerboer (2017), there is a very little serious discussion and research about the relation between the asylum procedure and the fundamental rights in the EU. He argues

that although lack of research is present, it is possible to notice and reduce some “tense linkages” between fundamental rights and the asylum procedure regarding sexual orientation and gender identity. Since informants’ opinions about intimacy and integrity vary greatly in this process, this thesis interprets this variety as a result of the “little discussion” explained by Lewis *et al* (2014) & Akin (2017). As normative standards, the rights of intimacy and integrity are framed by the corresponding legal documents in order to preserve LGBTIQ+ asylum seekers’ fundamental rights, particularly, at the stage of credibility assessment. Intimidation, degradation, humiliation, discrimination, and control of the person are elements defined as factual violation of fundamental rights (pp7). These factors are established as reasons to seek state protection and are absolutely prohibited within the asylum process.

UNHCR points out training of authorities as one efficient measure for avoiding conflicts between asylum seekers and authorities to be able to, for instance, gain an “understanding of particular aspects of LGBTIQ+ claims” (2012). Vagueness is an aspect that explains this point in the associated documents. As previous research explains, vagueness can be explained by a lack of global consensus regarding LGBTIQ+ fundamental rights. This report uses constructs such as “*should be considered*”, or “*needs to be conducted*” rather than “*must*”; therefore, it can be said that UNHCR N.9 Protocol (2012) is written in a soft-style that leads to procedural and implementation-related discussions. Supported by Manalansan’s “heteronormativity” (2006), the idea of vagueness can be explained as a result of normative attitude behaviour. In this case, decision makers and authorities, whether they do it consciously or unconsciously apply procedures in a way that conflict with LGBTIQ+ rights of intimacy and personal integrity.

Another measure described by the protocol is the *type of questions* asked during credibility assessment. Open-mindedness as well as the LGBTIQ+ perspective should be adopted by authorities through soft-style open questions. Questions can directly impact the privacy and mental integrity of vulnerable asylum seekers. With this in mind, Spijkerboer’s (2017) European *dichotomy* appears from such a scenario. Another forbidden type of behaviour for authorities is making “detailed inquiries about sexual habits” or the “acceptance of visual material”, as set forth by CJEU Jurisprudence (C-148/13-C-150/13).

However, the experiences of certain informants show a different type of reality.

They commented on authorities' lack of respect for intimacy and integrity in the assessment process and therefore, the questionable procedure execution regarding this rights. The rights of intimacy and integrity have a very questionable relationship when it comes to the applicability of the asylum procedure in LGBTIQ+ cases. Despite this, some informants noted that improvements had made by Migrationsverket in the last years. According to informant 1 (manager of newcomers department):

*“In the beginning there was much more focus on the sexuality and the sexual part of the identity, not about where you are from or how you feel... it was maybe on the wrong side of the matter when it comes to the asylum process and getting protection according to it, which got improved...”*

As previous codes have shown (see Vulnerability), the integrity and intimacy of the LGBTIQ+ community is also threatened in several stages of the asylum procedure. By providing suitable accommodations and health treatments (mental health related) questions about mental well-being as well as physical integrity might disappear. Those elements are described as highly problematic and in drastic need of improvement to be able to protect the already defined LGBTIQ+ asylum seekers' group as vulnerable social target (Pallota-Chiarolli & Rajhowa, 2017)

As commented by informant 5, consequences from unsatisfactory accommodations and health care are shown in the quality of the asylum seeker performance during the credibility assessment. The level of protection and stability that safe spaces that accommodations can provide them, has direct implications in the integrity and intimacy of the person. Therefore, the better accommodations and health care, the better the integrity and intimacy protection of the asylum seekers as well as their performance in the crucial stage of credibility assessment.

Accommodations and health services that surround the assessment stage still have a very unsatisfactory level for protecting LGBTIQ+ asylum seekers.

When it comes to the assessment of how the rights of intimacy and integrity are protected, informants answer as follows:

*“It depends on who works in the migration agency, some of them are VERY committed and very good on knowing LGBTIQ+ rights, some of them are like:*



*your rights are the same as everyone else when it comes to the asylum. But they have to look at the individual needs of every asylum seeker. And especially when it comes to LGBTIQ+ community. Some of the officers are **good at showing the respect for asylum seekers fundamental rights, some of them not that good.***” (Informant 5 – volunteer in newcomers department)

*“When it comes to the important part which are the interviews it got **improved** now, **but there are still officers who are very harsh or very strict** when it comes to asking the questions and pushing on of knowing more than is needed.”* (Informant 1 – manager of newcomers department)

*“But now it is about the story itself, which **is much better**. But still to be improved. It is only the story what matter, but **unfortunately the questions are still problematic**. And they **are too deep and interfere in the integrity of the person...**”* (Informant 1 – manager of newcomers department)

Informant 1 mentions that the procedure has been successfully improved and that they generally take into account more superficial aspect in the life of the LGBTIQ+ asylum seeker. However, inconsistency from authorities still happens regarding the implementation of the procedure. Although some improvements have been made by *Migrationsverket*, it seems that case officers’ statements and types of questions vary between different LGBTIQ+ cases. Despite the fact that all case officers must follow the same obligatory protocol, many different ways of carrying it out can be seen. Such variation can be explained by referring to the *stereotyped perceptions* of each case officer (Heller, 2009). *Heteronormativity* can also vary among case officers, creating an unfair and unequal procedure with regards to LGBTIQ+ asylum seekers’ fundamental rights.

*“For example, my recent client from Bangladesh was told during our verbal interview, by the case officer “Hmm, you say you realized your homosexuality at 17 years of age. That is a very late age to realize you're a homosexual now, isn't it?” (of course I objected and we are still waiting for the decision)”* (Informant 7 - Aino Gröndahl, Asylum lawyer)

Informant 7’s statement shows that Berlitz et al’s (2015) recommendation of the “benefit of the doubt” does not apply. Again, the “*prove innocent*” path seems to be common in these cases where the authorities’ stereotyped perceptions create a major issue for achieving understanding and “*veracity*” (Akin, 2017). It is possible to conclude that in such cases, none of the fundamental rights of LGBTIQ+ asylum seekers are respected. Informant 2, who has their own direct experience with handling assessment interviews, supports this conclusion by saying:

*“I have been around a few times, and my experience is that **I feel embarrassed afterwards by the questions that authorities are asking these poor young LGBTIQ+ asylum seekers that are coming here (...)** It is **CLEAR** that those asking questions they are not homosexuals themselves, so they often do not know what they are talking about. As I said, I am embarrassed. This is the overall feeling. Embarrassment! **How can you ask such questions!**”* (Informant 2 – volunteer at newcomers department)

*“The experiences I have been told expresses that this is **very humiliating process**, (...) to be **more specific**, and **to repeat... aaaah!** It is exactly how I would feel! That this is humiliation, and embarrassment.”* (Informant 2 – volunteer at newcomers department)

Informant 2 highlights the issue regarding the *type of questions* asked – how intimate as well as how repetitive they are, causing traumatic experiences for LGBTIQ+ asylum seekers. Words used to describe the intimacy and integrity of LGBTIQ+ asylum seekers, such as “humiliation” and “embarrassment” are, in fact, very alarming. Once again, the evidence of Manalansan’s concept of *heteronormativity* or normative attitudes is obvious in the statement “It is **CLEAR** that those asking questions they are not homosexuals themselves, so they often do not know what they are talking about”. It clearly shows the lack of understanding and knowledge about LGBTIQ+ circumstances.

Both lawyers, informants 4 and 6 gave somewhat different opinions regarding the issue of the types of questions asked in the assessment process:

*“Sometimes the authorities (...) ask intimate questions. As a lawyer you could think: these questions are needed, or normal in this legal procedure... But the truth is that is too intimate... I am saying that because when you work with this for a very long time, you think: it is normal, you normalize this asylum procedure, but the reality is that is not normal at all for the LGBTIQ+ asylum seekers to talk about such intimate things in front of 3 different persons.”* (Informant 4 – asylum lawyer, migration counsellor)

*“They cannot ask about sexual practices, but for example the LGBTIQ + asylum seeker tells a story about being caught while having sex with another person of the same sex. This is a common story. So, the method that the case officer would use is to get as many details as possible just to confirm that the scenario has actually taken place. Fact check. What did it happen? Ok, what did your mother say? What they did? What happened next?...”* (Informant 6 – asylum lawyer)

*“I would not say that the credibility is a breach of that right as I see the levels of case law when it comes to that right. Because it will always tend against the*

*state right to control the immigration, so that would always be discussed or compromised to get those kinds of questions in the assessment. This is in contradiction of the right of the state of control who is allowed to come into the country or not. And that is a very strong right for the state. (...) I think that the questions are not the problem, it is the assessment.*” (Informant 6 – asylum lawyer)

As a lawyer specialized in migration cases, informant 4 expresses a strong opinion about the types of questions used in credibility assessment and how they affect the rights of intimacy and integrity of the person. This informant expresses that the questions are often inadequate and too excessive, which can be interpreted as fundamental rights violation. On the other hand, informant 6 describes the type of questions as rather disturbing but not a factual breach of fundamental rights. The latter informant also points out the use of “fact check” as a technique to reach “veracity”, which means authorities engage in an in-depth questioning about specific situations often related to “sexual acts” and its social consequences. Informant 6 also describes the state as an “entity with the right to migratory control” which creates a conflicting scenario for asylum seekers’ intimacy and integrity. The latter informant has also expressed the legal differences between asylum-specialized lawyers. The lack of research and vagueness in the legal guidelines were mentioned as key reasons for such discrepancies. The informant also highlighted the need for more “solid comprehensive research”.

*“This is not something that is going to solve with in-house education, we need solid research from different kinds of fields. Social, psychological, legal... we really need the legal research. That is the reason why those cases turn out to be so unfair and also invasive, because we don’t have another solutions in how to do them”* (Informant 6 – asylum lawyer)

In spite of differences in opinions, conflicting points regarding intimacy and integrity can be framed in general. Supporting Berlant *et al’s* (1998) notion of prevailing “heteronormativity” as a “*tool of control*” and a “*structure of social understanding*”, it is easy to assume the current vulnerable situation for LGBTIQ+ asylum seekers and their right of intimacy and integrity still exist. Heteronormative attitudes as well as *stereotyped perceptions* (Heller, 2009) can be identified within this procedure. In fact, despite different opinions, the negative effects on LGBTIQ+ asylum seekers’ rights can be seen. Specifically, “discriminatory assessments” or “breaches of fundamental rights” often occur during the process.

The ambiguity in legal text makes it difficult to carry out queer asylum correctly, as García Rodríguez explains. Stereotyped perceptions from case officers lead to conflicts regarding the intimacy and integrity of asylum seekers in the credibility assessment stage based on the types of questions. Last but not least, accommodations and health care are asylum stages where the rights of personal integrity and intimacy are often violated. Therefore, the conflict does not only occur during credibility assessment but also at asylum accommodations and as result of inadequate health-care service.

## 5.5. Emergent Codes.

Following Layder's (2013) adaptive approach methodology, room for "emergent codes" has been provided. These codes were not predefined but they consistently appeared during content analysis and interviews.

The first code is related to Heller's concept of *stereotyped perceptions*, which in this case, is specific to sexuality and LGBTIQ+ self-identification development. The concept suggests that "*western society perceptions*" exist, which indicate a biased manner that explains how a society should behave. SR 38/2015 points out this issue through CJEU case-law where it establishes the need for more comprehensive research about each LGBTIQ+ asylum seeker's background in order to understand the capacity of the asylum seeker involved and make an individual assessment. Although it is clearly required by the Swedish Guidelines, the informants indicates that this is often not the case:

*"They are criteria at the migration agency that they have to follow when it comes to asking questions for LGBTIQ+ asylum seekers. Unfortunately, this criteria is not applied on every case. It is still **stereotypical (NORMATIVE) western minded** type of questions that get asked to asylum seekers (...) I had different cases where many asylum seekers got affected from that, because of the case officer had this old and inboxed idea about how the decision should look like. And it gets to the Court and the Court changes that decision."* (Informant 1 – manager of newcomers department)

*"when we say "gay" in Sweden we mean one thing. But when they say "gay" in Guinea Bissau is perhaps another thing. So, it is difficult for the legal authorities to find a way to understand. If I would be official case officer, I would have difficulties, I imagine..."* (Informant 2 – volunteer at newcomers department)

*“the problem is that we all the time have confrontation with migration board because they assimilate **the Swedish “way”** with the asylum seekers, so they assume that people have the ability to reply and respond and react like any other Swedish sometimes... (...) circumstances, feelings, perceptions and skills vary among people.”* (Informant 4 – Asylum lawyer)

*“...sexual orientation usually is western social construct. It is about cohabitation many times, these ways of living that are mostly, I would say, **the western way of life**. Like you expect to have a boyfriend and life together for a long time... to be able to prove that you are an LGBTIQ+ person. They have an absolutely difficult job.”* (Informant 5 – volunteer at newcomers department)

*“I argued that the very credibility assessment itself is based on **stereotypes, western-normative notions** and expectations of how LGBTIQ around the world “should” have the same experiences, self-identification and ways of expressing themselves. My main argument is that this (Migration Board’s interpretation of step 1 in SR 38/2015) contradicts ABC and the absolute right to individual assessments within asylum law.”* (Informant 7 – Aino Gröndahl, asylum lawyer)

In order to create further research that takes “*western society perceptions*” as a preset code into account, post-colonialism grounded theory could be used (Wilets, 2011).

The “*role of translators*” is another emergent code that has repeatedly appeared in most of the interviews. The role of the translator is not addressed in the previously mentioned policy documents since it is at each state’s procedural discretion.

According to most of the informants, translators, as key elements of the asylum procedure, are problematic due to the level of intimate details exposure and dependency that LGBTIQ+ asylum seekers have on them. Usually, translators come from the same community or country of origin creating barriers for LGBTIQ+ asylum seekers, which is explained by informant 1 (manager of newcomers department):

*“some of them are even afraid of the interpreter, maybe they are from the same country, and they might know each other. So, there are many different parts of this where they are not 100% sure that they can be fully themselves while seeking asylum...”*

The role of the translator becomes crucial if the LGBTIQ+ asylum seeker does not speak Swedish or English. Any issues in such a crucial procedural element might have negative effects for both authorities and asylum seekers. According to the informants 2 and 4, situations of unintentional or intentional inaccurate translation, refusing to provide

translation because of their own beliefs, and distrust or fear between asylum seekers and translators can cause severe negative effects on this procedure.

*“they say: because there is not language where I come from to talk about this things, and If I try to put words to what I feel, I feel ashamed because of my culture or religion... Quite a few times I have heard that after the interview they told me that the translator didn’t put the correct words. It didn’t translate it correctly. Therefore, the asylum seeker didn’t trust the translator.”* (Informant 2 – volunteer at newcomers department)

*“...for example, when we talk about Ethiopian ... it is not easy to find Ethiopian translator.... But at the same time, they are not 100% sure if they are translating correctly, because of language accuracy, or limitations or lack of vocabulary. Or because of their religion, so they cannot translate many things. They can refuse.”* (Informant 4 – asylum lawyer)

Based on the information gathered through interviews, it is necessary to mention the importance of considering the role of the translator as an element that has direct negative implications for the authorities and also for LGBTIQ+ asylum seekers. Authorities are affected when information is not accurately translated for them. It can lead to inaccurate statements. The situation for an LGBTIQ+ asylum seeker can be influenced by shame, lack of privacy if they belong to the same community, and not getting help from a translator, or in the worst case, translating information for the authorities that is intentionally changed or inaccurate.

## 6. Discussion.

Problem-driven analysis supported by selected codes has been carried out to draw conclusions about LGBTIQ+ asylum, credibility assessment, and fundamental rights. According to Layder (2013), using an adaptive approach in the context of LGBTIQ+ asylum in Sweden can provide for descriptive and exploratory research to find hidden procedural aspects that negatively affect LGBTIQ+ asylum seekers as well as the Migration Authorities. Assumptions taken from queer theory have been repeatedly used to show a discriminatory context produced by a lack of LGBTIQ+ identity knowledge. Conflictive scenarios produced by *historical LGBTIQ+ vulnerability* and how *heteronormativity* shapes LGBTIQ+ asylum are, in fact, conflictive scenarios described through queer theory (Berlant et al, 1998; Manalansan, 2006; García Rodríguez, 2017; Binnie & Klesse, 2013). LGBTIQ+ asylum in Sweden is, as it has been described, a very complex and controversial procedure with lack of comprehensive research. This creates difficulties for both the authorities and LGBTIQ+ asylum seekers. Although a number of improvements have been made, according to FRA (2017) reports and interview informants, several aspects of the asylum procedure remain problematic. Conflict arises in terms of situational perception from LGBTIQ+ asylum seekers and authorities. As a matter of fact, a disconnection is found using a combination of comments from informants and queer theory assumptions. Sweden, as an EU MS, has an advanced asylum process in terms of LGBTIQ+ claims within the context of the EU; however, it does have its issues with contradictions regarding fundamental rights and procedural problems, which are addressed in the following answers to the research questions. This thesis seeks to break down the problematic aspects of asylum implementation in Sweden. It is important to note that its aim is not to criticize the system itself, but rather, to establish the problems that still remain in this unexplored field in order to encourage future research. To do so, this thesis focus on the procedure implementation by taking into account opinions and experiences from informants.

In order to develop the previously mentioned ideas, research questions are stated and answered below:

How are the asylum processes related to the LGBTIQ+ community (and therefore considering sexual orientation and gender identity prosecution claims) applied in Sweden in terms of EU fundamental rights?

International UNHCR guidelines are strictly followed by Sweden regarding LGBTIQ+ asylum. On top of that, Sweden has an additional and broader legal document where more detailed procedures are developed. SR 38/2015 establishes the right of equality based on sexual orientation according to CJEU jurisprudence. Therefore, Sweden is characterized by its advanced and broad legal framework. Legal grounds for persecution as well as recognition of sexual orientation and gender identity are factual reasons for state protection. *LGBTIQ+ self-identity* is considered from a flexible point of view in line with Manalansan's (2006) queer theory. It legally covers the variety of *self-identity* stages in which each LGBTIQ+ person might be according to their background (UNHCR, 2012). Legal framework, in line with Berlitz *et al's* "*benefit of the doubt*" (2015), advises the authorities to handle each asylum case with open-mindedness in order to carry out cases with an understanding for each individual.

In their opinion, how do informants think the asylum procedure is carried out by authorities? According to interview informants, Swedish authorities hold training programs for asylum case officers on a regular basis to increase knowledge about LGBTIQ+ identity as well as the boundaries of fundamental rights in this procedure. However, by *queering* stages of this procedure, conflictive elements occur regarding the way it's carried out. *Stereotyped perceptions* regarding the LGBTIQ+ community have been confirmed when queering and analyzing the information gathered from informants. Variety and inconsistency in the asylum process have been noticed due to stereotyped perceptions of individuals and, more specifically, due to "western society perceptions". Thus, throughout the procedure, a number of conflictive elements are defined. The main cause is a discrepancy between the guidelines and the actual implementation by case officers. Manalansan and Spike argue that *personal sided perceptions* as well as *prevailing normative attitudes* from institutions and decision makers are the biggest issue when it comes to *queer asylum* implementation.

When LGBTIQ+ asylum seekers arrive to Sweden, the first social interview with Migrationsverket shows that the authorities have the intention to take on the case in an



unbiased and open-minded manner. Asylum seekers are given the opportunity to briefly explain their story, which will allow case officers to apply this information at later stages of the procedure (and more specifically the credibility assessment stage). The first step does not reveal any obvious biased perceptions nor prevailing normative attitudes that could threaten the vulnerability of LGBTIQ+ asylum seekers. However, conflicts arise when asylum seekers move on to the next stage: *Accommodations*.

Current asylum accommodations, apart from being geographically isolated, create a vulnerable context for LGBTIQ+ identities. Supported by statements from informant 5, health care is also another hidden procedural element framed in this thesis that leads to “*social differentiation*” and disadvantages regarding their assessment performance. Current discussion on such elements is non-existent; therefore this is part of the contribution of this thesis – the framing of asylum procedural elements that lead to LGBTIQ+ asylum seekers’ discrimination or violations of their fundamental rights.

Physical and mental integrity are threatened in the accommodations provided. The physical integrity of LGBTIQ+ asylum seekers is often threatened by discriminatory normative identities in asylum camps. This can also lead to distortions of LGBTIQ+ self-identity as well as negative effects on their credibility assessment performance.. The type of medical assistance, regarding their often vulnerable mental health state, is also a point that directly affects their physical and mental integrity in terms of non-equal treatment provided by EU law. Effects of inappropriate types of mental treatments also negatively affect the quality of the LGBTIQ+ asylum seeker’s interview; therefore, a massive threat against the rights of the asylum seeker to a fair trial, as set forth in SR 38/2015, is present.

Using Manalansan’s (2006) queer theory, I test the assumption that one can find hidden discriminatory elements and hidden legal attitudes, as well as the impact of normative attitudes in the application of the queer asylum process, in Sweden (Luibhéid, 2004; García Rodríguez, 2017).

In fact, fundamental rights are legally protected, but within the asylum procedure, the elements mentioned above result from an inadequately designed process which leads to conflict with fundamental rights such as physical integrity.

The following research question deals with the next asylum stage by taking the rights of integrity and intimacy of LGBTIQ+ asylum seekers into consideration.

- *How does the application of credibility assessment affect the rights of integrity and intimacy of LGBTIQ+ asylum seekers in Sweden according to the asylum framework set forth by the EU?*

The answer to this question is the main contribution made by this thesis to the field. Credibility assessment has been addressed from legal perspectives, but this thesis focused on the social perspective through analysis of procedural implementation with informant interviews instead.

Credibility assessment creates complications for both Migrationsverket and LGBTIQ+ asylum seekers. Migrationsverket is guided by official Guidelines and International Protocols that incorporate a high degree of queer theory assumptions about LGBTIQ+ identities and vulnerability. However, by analyzing its implementation, informants expressed a great degree of conflict, supporting Akin's concept of "*prove innocent*" (2017).

"*Burden of proof*" arises in asylum cases regarding sexual orientation and gender identity since intimate stories have to be told to be able to get state protection (Dauvergne & Millbank, 2003). "*Burden of proof*", in these cases, creates additional difficulties for the already vulnerable LGBTIQ+ asylum seekers, created by prevailing *heteronormativity* as well as *stereotyped perceptions* instilled within authorities and decision makers (Heller, 2009; Manalansan, 2006).

Taking into account the overall undertone of the analysis, it is possible to affirm Velhuizen *et al's* (2016) assumption of Swedish authorities as competent, well-equipped and committed to improving this sensitive procedure. According to the interview informants, Swedish migration authorities show a very high level of awareness in terms of LGBTIQ+ identities and broad knowledge of the complexity of the process. However, some procedural elements become problematic when the process takes place, in terms of LGBTIQ+ self-identity as well as the rights of intimacy and integrity.

Informants explain the hard style questioning method used in this procedure, in line with Akin's (2017) concept of "guilty until proven innocent". Akin's terminology provides a defining concept which implicitly entails "*social differentiation*" for LGBTIQ+ asylum

seekers as well as excessive pressure on LGBTIQ+ individuals when *queering* the procedure path.

Informants saw credibility assessment as highly accusatory based on the questions asked. This was a consequence of case officers acting inconsistently. This largely depends on the specific case officer as well as their connection (attitude) with the LGBTIQ+ asylum seeker. Although training has been provided, *stereotyped western conceptions* still remain in the assessment; this leads to the discussion about LGBTIQ+ intimacy and integrity rights provided by the EU legal framework. Legal Guidelines establish the necessity of being open-minded as well as neutral when it comes to the evaluation; therefore, problems arise in this part of the process.

Credibility assessment negatively affects LGBTIQ+ asylum seekers as well as their rights of intimacy and integrity. According to the informants, stress, trauma, and issues related to LGBTIQ+ self-identity appear during credibility assessment. These negative effects drive the discussion towards fundamental rights-related considerations. How are the rights of intimacy and integrity affected?

Informants described the effects on asylum seekers caused by the “types of questions” as serious in terms of their mental stability. They argued that their stories are often very painful and traumatic to describe, especially regarding sexual orientation and gender identity within their vulnerable social context. These negative effects lead to threats imposed upon their rights of integrity and intimacy. Informants describe the types of questions as “too intimate” and “sometimes unnecessarily deep”; thus, this element can be framed as a threat to the rights of intimacy and private life for asylum seekers. According to Berlant *et al*, *heteronormative attitudes* arise in this context as a control mechanism used by institutions to discriminate LGBTIQ+ asylum seekers by asking unnecessarily personal questions that violate the intimacy rights of the person (1998). The rights of integrity and intimacy-related issues are also identified when *queering* “late disclosure” of claims.

*Late disclosure*, as a self-identity related issue, can also lead to problems regarding mental integrity. This is due to case officers using a “fact-check” approach where they ask an excessive amount of questions about the “reason” for the asylum seeker’s late disclosure. This is an example of an accusatory questioning style that adds unnecessary pressure to the

already weak position of the asylum seeker; essentially, this leads to a violation of their right to intimacy as well as their mental integrity.

Even though asking questions about sexual acts is forbidden by CJEU ruling, it is still sometimes done in the credibility assessment stage. The reason for using such a method by some case officers can be explained by a one-sided and limited understanding of “sexuality” by some LGBTIQ+ asylum seekers who only connect and relate to their own sexual identity through sexual acts. Such one-sided understandings are directly conflicting with the *Western-perception* of LGBTIQ+ identity, causing misunderstandings and confusion among migration officers and LGBTIQ+ asylum seekers. Thus, some migration officers choose to specifically ask questions about sexual acts. Even if the use of such illegitimate methods provides an easy shortcut, personal integrity and intimacy are clearly violated in such cases. Implicit *stereotyped perceptions* can be explained as reasons for rights violations as well as *social differentiation* perceptions from authorities (Manalansan, 2006; Heller, 2009). Existence of these cases and explanations for them are supported by the majority of the interview informants.

Informant 6 highlights the issue of a lack of serious research on this subject, which is supported by the academic discriminatory claims of “little discussion”. Thus, a new contribution to the research field of LGBTIQ+ asylum regarding how credibility assessment is carried out and how the rights of intimacy and integrity are affected is of great value. The current protocol for credibility assessment threatens and sometimes (due to clear inconsistencies regarding how case officers carry out this process) violates the rights of intimacy and integrity of those involved. However, following the recommendation of informant 6, more legal research should be conducted in order to provide a complete understanding about such a sensitive and insufficiently researched subject.

As a final point, the current role of a translator is defined as problematic and sometimes conflictive. The social and cultural proximity of translators to the LGBTIQ+ asylum seekers creates procedural issues that can negatively affect the asylum seekers as well as influence the assessments made by the authorities. Although all translators are supposed to be objective, there are cases of translation rejections because of their personal negative attitudes towards LGBTIQ+ community. Furthermore, the personal beliefs and lack of sensitivity towards the subject of LGBTIQ+ by translators can also create conflicts that negatively affect

the integrity of the asylum seekers and their right to intimacy. Subjective translations done by some translators, caused by *stereotyped prevailing perceptions* towards the LGBTIQ+ community, can lead to insufficient information gathered from the individual's personal stories. This leads to biased assessments of the asylum seeker.

## 7. Conclusion.

This thesis has addressed the issue of LGBTIQ+ asylum in Sweden as a matter of necessary discussion due to the severe implications regarding well-being and fundamental rights of LGBTIQ+ asylum seekers involved in the context of the EU. As previously mentioned, analysis on how the asylum regulations are applied in Sweden and how this application affects the rights of integrity and intimacy among LGBTIQ+ asylum seekers has been pursued. Many implications and effects have been identified and framed based on queer theory. By doing this, this thesis has ultimately aimed for a broader understanding of how this procedure is executed when it comes to claims regarding sexual orientation and gender identity (LGBTIQ+).

The thesis shows that LGBTIQ+ asylum in Sweden is an extremely complex social and legal procedure where both the Migrationsverket and LGBTIQ+ asylum seekers find difficulties to reach mutual understanding and total law compliance. Distrust among them is framed as a prevailing norm, having severe implications in crucial stages of the asylum such as in the credibility assessment stage in accordance with findings of Berlit et al & Spijkerboer in previous research (2015, 2018). Although legal guidelines provided by UNHCR and Sweden are broad in terms of issue-conceptualization, some hidden issues emerge as result of the execution of the procedure by authorities. *Heteronormative perceptions, stereotyped perceptions* and *social differentiation* are the chronic elements that arise by *queering* the LGBTIQ+ asylum procedure. According to the informants, biased perceptions from authorities are aspects that impact negatively in the understanding of applicants' stories, possible late disclosure of their claims, questioning style during assessment and often their fundamental rights of intimacy and integrity.

Manalansan (2006) emphasizes the individual complexity of each LGBTIQ+ identity based on queer theory due to the unique social context and level of LGBTIQ+ self-identification. Therefore, this thesis has addressed the implementation of this crucial asylum stage (credibility assessment), by taking into account these elements.

The legal documents refer to these problematic elements given the individual complexity of these asylum seekers in great scope and informants express their positive opinion about

Sweden, an EU leader in these matters. Asylum procedural elements such as the provision of a lawyer from the beginning or case officers' training are elements that, according to informants, make a great difference when compared with others EU MSs. Thus, the analysis reveals strategies to commend in the implementation of this asylum procedure.

Nevertheless, the analysis has also uncovered problems and challenges given instances of negative effects on LGBTIQ+ asylum seekers' fundamental rights throughout the procedure. In particular, this thesis frames the following stages as problematic and questionable.

*Accommodations* and *healthcare* are set as asylum elements that bring conflict regarding asylum seekers' rights of integrity and intimacy. These elements lead to physical abuse and mental health issues, which directly affect asylum seekers' capability to perform at the subsequent credibility assessment as well as in their inner process of *self-identification*. Effects such as trauma, distress, physical abuse and psychological issues are witnessed by informants as a result of inadequate accommodations and healthcare. According to queer theory, this context is produced as a result of prevailing heteronormative attitudes, lack of knowledge regarding LGBTIQ+ subjects, and stereotyped pre-conceptions (Manalansan, 2006)

In addition to accommodations and healthcare, credibility assessment as such is found to be a very complex problematic asylum stage in which elements such as *type of questions* to LGBTIQ+ asylum seekers and the particular interpretation of the assessment are major points on which improvement is urgently required. According to Akin's (2017) "prove innocent" concept, this thesis has proved that the *accusatory style* created by a context of distrust and often *western-sided perceptions* produces breaches on asylum seekers' mental integrity as well as their intimacy and therefore, violation of their fundamental rights.

Late disclosure of claims, as an existing legal possibility within the process, is another element that is described by informants as conflictive regarding credibility assessment. It is described as an example of the existing distrust between procedure actors as well as the highly accusatory questioning style applied by authorities to LGBTIQ+ asylum seekers. In fact, late disclosure is a procedural element used against the LGBTIQ+ asylum seekers according to the informants. Implications are also described regarding their right of intimacy and integrity which are often threatened by the current application of late disclosure by authorities.

Another element that fills the contribution of this thesis is the role of translators as a hidden element within this complex procedure. It is described as crucial within the credibility assessment stage as well as highly problematic both for authorities and LGBTIQ+ asylum seekers. As previously mentioned, translators have an important role when it comes to telling the LGBTIQ+ asylum seekers experiences. Therefore, translators are crucial for communicating accurate information to the authorities. According to the informants many factors seems to appear regarding this procedural element: personal beliefs, language limitations or social proximity are mentioned. Nevertheless, further research needs to be done to fully elucidate the impact of translators at the assessment.

Following informant 6's considerations, this thesis also proposes further comprehensive research to be able to explore in depth elements already framed such as accommodations, health treatments, type of questions, late disclosure of claims, and translators.

Since this thesis addresses the implementation of LGBTIQ+ asylum by *Migrationsverket*, improvement can also be proposed to this state agency. Based on informant experiences and considerations framed in this thesis, *Migrationsverket* could do better when it comes to the "safe" asylum accommodations for LGBTIQ+ people (as an extremely vulnerable social group). Improvements can be done in the frequency and duration of the courses provided to migration case officers as well as incentives to decrease the high mobility of personnel within the agency. This last aspect is important when it comes to the effectiveness of the training courses over time. Training is also connected to the questioning style; this is, no doubt, a major current issue within this procedure.

Another proposal of this thesis is to separate the research by sexual orientation and gender identity, so each letter of LGBTIQ+ can be studied separately since different circumstances are seen depending on the type of claim regarding LGBTIQ+ matters.

This thesis also acknowledges the intentionality from *Migrationsverket* to improve the procedure based on informant 6 (Asylum lawyer):

*"Migration agency is trying, trying hard to get better. The guidelines, the policy documents, they are fine... in theory. But it doesn't work in reality, because it is a complex issue. This is what I see as a major problem. This is not something that is going to solve with in-house education, we need solid research from different kinds of fields. Social, psychological, legal... we really need the legal research."*



*That is the reason why those cases turn out to be so unfair and also invasive, because we don't have other solutions in how to do them."*

The thesis also identifies discrimination and problem with lack of research and discussion related by Lewis (2014) & Akin (2017). Lack of discussion leads to procedural issues that greatly affect the LGBTIQ+ asylum seekers' fundamental rights. This behooves the need for further research and discussion.

Finally, taking in the overall development of LGBTIQ+ asylum, positive perceptions need to be taken into consideration. Great development has been achieved and perhaps the greater insight from future research might lead to the improvement of this matter.

*"We have to be patient, because things have happened so fast really in society. What it was illegal a couple of decades ago, it is now legal completely. So, keep on the work that we are doing and hope that your thesis will be read and will be part of making the world a better place."* (Informant 2 – volunteer at newcomers department).

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# Appendix 1.

## PARTICIPANT LETTER OF CONSENT.

### *“Respect for fundamental rights in Credibility assessment of LGBTIQ+ asylum seekers in Sweden”*

Please read the following explanation of this study. Signing this form will indicate that you have been informed about the study and that you consent to participate.

You are being asked to take part in a student project conducted by Rubén Pomar Mir, a Master student under the direction of Amy Alexander, Associate Professor at the Department of political Science and researcher in the Quality of Government Institute at the University of Gothenburg, Sprängkullsgatan 19, 405 30 Göteborg.

***Project description.*** This study is about understanding LGBTIQ+ asylum in Sweden through a comprehensive point of view. It embraces different perspectives, from institutional, legal and practices.

This study tries to draw a broader picture about “how” the asylum procedure is implemented and the possible effects of its implementation taking into account queer theory and fundamental rights framework to guide the research. The methodology implies content analysis of reports and interviews. The objective of this study is to categorize effects of this procedure regarding LGBTIQ+ asylum claims by triangulation and mix of qualitative methods. Your participation in this study is entirely voluntary. However Informants perspective would help to draw a bigger picture about LGBTIQ+ asylum as object of study. You may decline to participate, you may choose to skip questions, or you may ask to be withdrawn from the study at any time.

***Procedures*** If you agree to take part in the study, I am going to interview you as knowledgeable person related to LGBTIQ+ asylum. The name of your organization will not appear in the research as such but It will be named as “major civic society organization”. (This clause can be modify by the respondent as they wish)

Being aware of the sensitive topic, interviews can be previously settled and agreed in structure by the Informants.

You can read some examples of questions I may ask you during an interview below:

- How is your work related to LGBTIQ+ asylum?
- Describe your experience as person working with LGBTIQ+ asylum.
- How asylum procedure can influence LGBTIQ+ asylum seekers?
- Describe your formed experience about LGBTIQ+ asylum seekers throughout asylum procedure.
- How are the experiences of LGBTIQ+ asylum seekers through different stages of the procedure?

The interviews will occur at a time and place that is most convenient for you. Interviews will be audio recorded and recordings will only be used for study purposes, being deleted at the end of the period of study.

### ***CONFIDENTIALITY***

**Every effort will be made to maintain the privacy of your data. To protect confidentiality, I can remove all personally identifying information. The results may be used in student reports, student presentations, or student publications. Depending on your preference, your identity can be anonymize or coded as you wish. You can be assigned a pseudonym or number and NONE of your personal information will be recorded or saved under real names.**

**All electronic files of interview transcripts and audio files will be kept in physically secured locations and security passwords, not accessible by any third part.**

***Invitation for questions.*** If you have questions about this study, you should contact the researcher before you sign this consent form. If you have any questions following this study, please feel free to contact Rubén Pomar Mir at [guspomru@student.gu.se](mailto:guspomru@student.gu.se)

If you have any questions regarding your rights as a participant, any concerns regarding this project, or any dissatisfaction with any aspect of this study, you may report them –

confidentially, if you wish – to my thesis advisor Associate Professor Amy Alexander at amy.alexander@gu.se.

**Authorization.** I have read this paper about the study, or it was read to me. I know that being in this study is voluntary. I choose to be in this study. I know that I can withdraw at any time. I have received, on the date of the signature, a copy of this document. I realize I will be audio recorded.

Name of Participant \_\_\_\_\_ Signature of  
Participant \_\_\_\_\_ Date \_\_\_\_\_



## Appendix 2.

### INTERVIEW GUIDE: (“can be modified depending on the answers”)

#### General:

- Describe your work at this organization, and some of your general insights about LGBTIQ+ asylum in Sweden.

#### *LGBTIQ+ asylum seekers experiences:*

- Could you explain your experience related to the context in which LGBTIQ+ asylum seekers arrive to Sweden?
- Do you know if they find special struggles?
- In your experience, how do you think these struggles could be resolved or improved from the Swedish perspective?

#### *Asylum processes:*

- Could you explain the overall experiences that LGBTIQ+ community have once they are involved in the asylum processes?
- How they experience this procedure? Do they feel vulnerable? In which sense?
- Have you heard complains related to the respect of fundamental rights from LGBTIQ+ asylum seekers?
- Do they think that the procedure respects their Fundamental rights as LGBTIQ+ people?
- In which sense?
- What do you think about LGBTIQ+ asylum seekers well being in this process? How can asylum affects them?

#### *Credibility assessment:*

- As It is known, credibility assessment regarding LGBTIQ+ claims is a sensitive step, how do they react to this asylum stage? What is your experience about this?

- Could you explain some of your insights about this from your professional point of view?
- Do you think that LGBTIQ+ claims are treated differently by the competent authorities?
- In your opinion, how and Why this should be done differently?

***Right of Privacy and Personal integrity:***

- What can you tell me about the relation between the credibility assessment and the right of intimacy and integrity?
- Do you think the asylum procedure could be implemented differently? How? To be more adapted to the LGBTIQ+ community.
- How do you think the asylum procedure and more specifically the credibility assessment could be less invasive with LGBTIQ+ people?

***Final remarks:***

- In your opinion, how this procedure could be improved to be able to embrace better LGBTIQ+ community?
- Do you have any final comments you would like to add?

## Appendix 3.

Informant 1	Project manager of Newcomers in civic organization regarding LGBTIQ+.	20/03/19	Gothenburg	Recorded-transcribed
Informant 2	Volunteer in civic organization regarding LGBTIQ+	27/03/19	Gothenburg	Recorded-transcribed
Informant 3	Volunteer in civic organization regarding LGBTIQ+	01/04/19	Gothenburg	Recorded-transcribed
Informant 4	Lawyer, migration counsellor at civic organization regarding LGBTIQ+	03/04/19	Stockholm	Recorded-transcribed
Informant 5	Volunteer in civic organization regarding LGBTIQ+.	04/04/19	Stockholm	Recorded-transcribed
Informant 6	In the past: case migration officer. Currently Asylum lawyer at civic LGBTIQ+ organization.	04/04/19	Stockholm	Recorded-transcribed
Informant 7- Aino Gröndahl <sup>6</sup>	Asylum lawyer in civic LGBTIQ+ organization.	03/04/19	Stockholm	Via email.

<sup>6</sup> Aino Gröndahl accepted to reveal her identity via email. She also explained that she was the first lawyer to write a thesis about credibility assessment in Sweden in 2012. The interview was conducted through email due to scheduling problems. She read my topic and questions and she replied with a detailed and structured email on 03/04/19.

