

‘You cannot hide your sexual orientation; you then hide your entire self’

An analysis of the discussions underlying the process of opening up the Dutch asylum system to gay refugees, 1979-1986

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International Institute for Social History - Internationaal Homo/Lesbisch Informatiecentrum en Archief, Amsterdam, Werkgroep Vreemdelingen COC – platform homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Pleitnotities mr. R.B. Hartkamp, aan Raad van State afdeling Rechtspraak, 2 June 1983.

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Introduction

In 2018, the Dutch Immigration and Naturalisation Service (IND) responded to demands of LGBTI¹-organisations and the government with regard to their treatment and questioning of LGBTI-refugees. The predominant criticism was that the IND used Western conceptions of LGBTI-life, wherein ‘awareness’ and ‘self-acceptance’ were prerequisites for being seen as ‘truly’ LGBTI. According to the COC Nederland (COC), the largest Dutch organisation for the LGBTI-community, this Western way of judging someone’s credibility caused the IND to turn down many valid claims and to send people back to places where they were not safe.² This discussion about the criteria surrounding asylum for LGBTI-persons is not new. In contrast to most countries where LGBTI-asylum is a recent addition to asylum law, its history in the Netherlands can be traced back to the early 1980s. The *Tweede Kamer* (House of Representatives) passed a motion in 1980 that argued in favour of creating the option for homosexual persons³ that were persecuted in their country of origin to claim asylum in the Netherlands. Additionally, the Council of State made a statement in 1981 that created a legal precedent for homosexual persons to apply for asylum in the Netherlands if they were being persecuted on the basis of their sexuality in their home country. Following the 1951 United Nations Refugee Convention (Refugee Convention) that states that a refugee is someone who is ‘unable or unwilling to return’ based on, amongst others, ‘a well-founded fear of being persecuted for reasons of [...] membership of a particular social group’,⁴ the Council of State declared that homosexuals should be seen as ‘members of a particular social group’.⁵ This thesis shows however, that the impact of this motion and court statement should not be overemphasised, since throughout the first half of the 1980s it proved to be (nearly) impossible

¹ The acronym ‘LGBTI’ in this thesis is used to refer to people who are non-heterosexual and/or non-cisgender, or to topics related to this sexuality- and gender identity-based diversity. Currently, writing in 2019, asylum in the Netherlands can be claimed on the basis of one’s sexual orientation and/or gender identity and expression.

² “‘IND begrijpt homo-vluchteling niet’”, *Trouw*, 24-10-2018, <https://www.trouw.nl/samenleving/-ind-begrijpt-homo-vluchteling-niet-~a974e1d6/> (22 May 2019); ‘IND past ondervragingsmethoden homoseksuele asielzoekers aan’, *De Volkskrant*, 05-07-2018, <https://www.volkskrant.nl/nieuws-achtergrond/ind-past-ondervragingsmethoden-homoseksuele-asielzoekers-aan~b64c41ae/> (22 May 2019).

³ The term ‘homosexual’ referred to people who were attracted to someone of the same gender and thus included both men and women. In practice however, all cases of gay asylum-seekers in the time period studied, concerned men.

⁴ United Nations High Commissioner for Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees* (2010), <https://www.unhcr.org/3b66c2aa10> (22 May 2019).

⁵ Handelingen Tweede Kamer OCV/UCV 1979-1980, 28 January 1980, 761. Accessed via [statengeneraaldigitaal.nl](https://www.statengeneraaldigitaal.nl), <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%3A0000751> (24 May 2019); National Archive, The Hague, Ministerie van Justitie: Beleidsarchief Immigratie- en Naturalisatiedienst (IND) [periode 1956-1985] (further NA-IND), 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Raad van State Uitspraak 13-8-81.

for homosexual persons to actually be successful in their claims for asylum. As can be seen above, it was still challenging in 2018.

This thesis analyses the discussions underlying the process of opening up the Dutch asylum system to homosexual persons facing persecution.⁶ The main question guiding this research is: How did different actors involved in the issue of asylum for gay persons in the Netherlands acknowledge those fleeing persecution based on their sexual orientation as refugees between 1979 and 1986? In providing an answer to this question, this thesis looks at possible differences between the different actors involved and at whether a development over time can be found. The research is based on four types of primary sources, representing four different actors involved: a working group on refugees from the COC,⁷ the Ministry of Justice and the IND, the Dutch parliament, and three magazines aimed at a gay audience.

Historiography and theory

Not much historical scholarship has been written about gay refugees nor the asylum procedures following their flight. Most scholarship on LGBTI-refugees and corresponding asylum processes is very recent. This can be easily explained by the fact that the international recognition of the rights of LGBTI-persons and the legitimacy of LGBTI-refugees is a rather recent phenomenon. The Yogyakarta Principles, that applied international human rights norms and standards to the issues of sexual orientation and gender identity, were only drafted in 2007. The United Nations Commission on Human Rights (UNHCR) Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity was published a year later.⁸ In 2011, the EU passed the Qualification Directive that explicitly mentions sexual orientation and gender identity as possible reasons for persecution.⁹ In contemporary non-historical research on LGBTI-refugees, a number of trends can be distinguished. First, there is a clear focus on the legal aspects of these asylum cases, as exemplified by ‘Sexualities and the ECHR’ by Michele

⁶ The use of the term ‘homosexual’ is contested in the current age, because of its clinical history and the fact that it was commonly used to refer to homosexuality as a disease or mental disorder. Recognising the problematics of this term, but also recognising the importance of staying true to one’s primary sources, both ‘homosexual man/woman/person’ and ‘gay man’/‘lesbian’/‘gay person’ respectively are used in this thesis.

⁷ The COC was then officially called the Nederlandse Vereniging tot Integratie van Homoseksualiteit COC (Dutch Association for Integration of Homosexuality COC). It was the main advocacy organisation for Dutch gays and lesbians and increasingly became incorporated into mainstream Dutch society throughout the 1970s and ‘80s.

⁸ Sabine Jansen and Thomas Spijkerboer, *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe* (Amsterdam 2011) 13-14.

⁹ European Union Agency for Fundamental Rights, *Current Migration Situation in the EU: Lesbian, Gay, Bisexual, Transgender and Intersex Asylum Seekers* (2017) 2.

Grigolo.¹⁰ Secondly, scholars use this group of refugees to analyse the real and imagined boundaries and borders created by national immigration systems. A prominent example of this trend is the book *Queer Migrations*, edited by Eithne Luibhéid and Lionel Cantú Jr.¹¹ Thirdly, scholars focus their research on qualitative data collected from LGBTI-refugees in a specific host country or region. Examples of this are ‘Uit de kast, maar ook uit de brand?’ by Thomas Spijkerboer and ‘Fleeing Homophobia’ by Sabine Jansen and Thomas Spijkerboer.¹² A common denominator found in all these trends of scholarship on LGBTI-refugees is the focus on the specific vulnerabilities and difficulties faced by them and on how national governments (should) respond to these. The academics involved are often highly critical of the requirements and restrictions set up by these governments and of the way asylum officials question LGBTI-refugees.

As mentioned, when looking at the discipline of history, not much can be found about asylum claim-making related to sexuality and/or gender identity. Notable exceptions for the Dutch case are: ‘Intertwining of Family Rights and Refugee Rights’ by Marlou Schrover and the master’s thesis of Frerik Kampman ‘Charter Flights full of Homosexuals’.¹³ Both Schrover and Kampman have looked at changes in Dutch policies with regard to gay foreigners and refugees. They have used primary sources from the government and from the COC to recreate and analyse the processes underlying various policy changes from 1945 onwards, amongst others referring to the 1980 parliamentary motion and 1981 court statement. This thesis adds a new perspective to this historical scholarship on gay refugee cases in the Netherlands. Schrover and Kampman focus on policy changes and how these came into being. No scholar has yet analysed how different actors involved talked about recognising gay refugees in the earliest stages of the opening of the Dutch asylum system for this refugee group specifically. Derek McGhee however, has in fact done something similar for the United Kingdom. In his article ‘Persecution and Social Group Status’, he describes how the social group definition of the Refugee Convention was interpreted by different UK actors with regard to male homosexuals

¹⁰ Michele Grigolo, ‘Sexualities and the ECHR: Introducing the Universal Sexual Legal Subject’, *European Journal of International Law* 14:5 (2003) 1023-1044.

¹¹ Eithne Luibhéid and Lionel Cantú Jr. (eds), *Queer Migrations: Sexuality, US Citizenship, and Border Crossings* (Minnesota 2005).

¹² Jansen and Spijkerboer, *Fleeing Homophobia*; Thomas Spijkerboer, *Uit de kast, maar ook uit de brand? Lesbische, homoseksuele, biseksuele en transgender asielzoekers in Nederland* (Amsterdam 2016).

¹³ Frerik Kampman, ‘Charter Flights Full of Homosexuals: Policy Making on Homosexual Men in Dutch Immigration and Asylum Procedures 1945-2001’, *Master’s thesis Leiden University* (2014); Marlou Schrover, ‘Policy Changes in Homosexual Immigrant Rights (The Netherlands 1945-1992), unpublished.

trying to get asylum at the end of the twentieth century.¹⁴ Jenni Millbank has also analysed how British courts, from 1989 to 2003, reacted to refugee claims of lesbian women and gay men in her article ‘A Preoccupation with Perversion’.¹⁵ Since the two articles deal with similar subject matter as this thesis does, even though concerning a different country and a different decade, they provide a guiding method for this research, as is explained further along this introduction.

In addition to the historiography on LGBTI-refugees, this thesis uses secondary literature on the ways in which gay persons have been and still are discussed in Europe and in the Netherlands specifically. In recent years, much has been written about the ways in which sexual politics are continuously being used as part of and/or driving force behind anti-immigrant rhetoric. Judith Butler and Jasbir Puar, in ‘Sexual politics, Torture and Secular Time’ and *Terrorist Assemblages* respectively, have argued that Europe has created narratives that explicitly link the acceptance and tolerance of homosexuality and gay emancipation with Western modernity, contrasting this with other ‘backward’ cultures.¹⁶ Puar has coined the term homonationalism to describe these narratives.¹⁷ Scholars have additionally researched the Dutch case specifically. This scholarship is exemplified by ‘Sexual Politics, Orientalism and Multicultural Citizenship in the Netherlands’ by Paul Mepschen, Jan Willem Duyvendak, and Evelien Tonkens, *Immigrants in the Sexual Revolution* by Andrew Shield, and *White Innocence* by Gloria Wekker.¹⁸ The first article explains the specifics of the Dutch context that have created the conditions for the development of a pro-gay anti-immigrant discourse.¹⁹ Shield secondly, used the introduction of his book to explain the appropriation of a pro-gay discourse by the Dutch political right and how they linked this with anti-immigrant and specifically anti-Muslim rhetoric.²⁰ Wekker lastly, has argued that the Netherlands has a clear history of

¹⁴ Derek McGhee, ‘Persecution and Social Group Status: Homosexual Refugees in the 1990s’, *Journal of Refugee Studies* 14:1 (2001) 20-42.

¹⁵ Jenni Millbank, ‘A Preoccupation with Perversion: The British Response to Refugee Claims on the Basis of Sexual Orientation, 1989-2003’, *Social & Legal Studies* 14:1 (2005) 115-138.

¹⁶ Judith Butler, ‘Sexual Politics, Torture, and Secular Time’, *British Journal of Sociology* 59:1 (2008) 1-23; Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham and London 2017).

¹⁷ Puar, *Terrorist Assemblages*, 2-3; 19-21.

¹⁸ Paul Mepschen, Jan Willem Duyvendak, and Evelien Tonkens, ‘Sexual Politics, Orientalism, and Multicultural Citizenship in the Netherlands’, *Sociology* 44:5 (2010) 962-979; ‘Introduction: “The disaster of Islamization ... where gays are not safe to walk the streets, women are seen as inferior”: Pro-Gay, Anti-Immigrant Politics and the Right, 2000-2017’, Andrew Shield, in: Andrew Shield, *Immigrants in the Sexual Revolution: Perceptions and Participation in Northwest Europe* (Springer 2017) 1-18; ‘Of Homo Nostalgia and (Post)Coloniality: Or, Where Did All the Critical White Gay Men Go?’, Gloria Wekker, in: Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Durham and London 2016) 108-138.

¹⁹ Mepschen, Duyvendak, and Tonkens, ‘Sexual Politics’, 971-973.

²⁰ Shield, ‘Introduction’, 1-4.

positioning themselves at the forefront of gay emancipation, even though the actual emancipation has only taken place for white cis gay men.²¹

Additionally, in order to provide historical context to this research, Tycho Walaardt's dissertation 'Geruisloos inwilligen' is used.²² Walaardt, amongst others, had explained the national macro-level context wherein discussions about the Dutch asylum system took place. He has briefly mentioned gay refugees but does not go into any detail.²³ Lastly, since this thesis concerns the intersection of refugee studies and LGBTI-studies, it uses secondary literature on the development of gay advocacy in the Netherlands. Gert Hekma has provided an exhaustive overview of the history of homosexuality in the Netherlands in his book *Homoseksualiteit in Nederland* and Robert Davidson has sketched out the developments of the 1980s that made the COC treat the Dutch government as a partner in achieving public policy goals in 'Advocacy Beyond Identity'.²⁴ Each article or book in this historiography deals with one specific part of this research. The specific elements that this thesis analysis however, have not been analysed together before.

Method

As said, the article of McGhee is one of the few that has approached the subject of asylum for gay refugees from a similar angle as is done here. He has analysed 1) how 'membership of a persecuted social group' was defined throughout the 1990s in court cases in the United Kingdom; 2) a number of the most important gay refugee court applications of that decade; and 3) the influence of international human rights law on the changes found in refugee determinations in international refugee law.²⁵ He has found that the early refusal to see homosexual persons as member of a social group was predominantly dependent on the idea that being gay and/or expressing your non-hetero sexuality was a choice and not a necessity.²⁶ Millbank additionally has argued that British courts and other decision-makers involved throughout the period of 1989 to 2003 have concluded that gay and lesbian asylum seekers were

²¹ Wekker, 'Of Homo Nostalgia and (Post)Coloniality', 108.

²² Tycho Walaardt, 'Geruisloos Inwilligen: Argumentatie en Speelruimte in de Nederlandse Asielprocedure, 1945-1994', *Doctoral Thesis Leiden University* (2012).

²³ *Ibid.*, 254.

²⁴ Robert Davidson, 'Advocacy Beyond Identity: A Dutch Gay/Lesbian Organization's Embrace of a Public Policy Strategy', *Journal of Homosexuality* (2018) 1-23; Gert Hekma, *Homoseksualiteit in Nederland van 1730 tot de Moderne Tijd* (Amsterdam 2004).

²⁵ McGhee, 'Persecution and Social Group Status', 20.

²⁶ *Ibid.*, 24.

‘under a duty to protect themselves by hiding their sexuality’.²⁷ Furthermore, McGhee has argued that it proved very difficult for homosexual applicants to claim the ‘well-founded fear of persecution’ required to be classified as a legitimate refugee following the Refugee Convention. It was, for example, unclear whether it was sufficient if the country of origin criminalised (certain aspects of) homosexuality and the host country did not, or whether being unable to live openly as a gay person should be seen as persecutory in itself.²⁸ Again, Millbank has found very similar argumentation in her research and has stated that the courts have been very reluctant in acknowledging that criminalisation of homosexuality in itself is persecutory.²⁹ McGhee has also pointed out that the cases and underlying processes studied in his article can be seen as exemplary of the tension between ‘genuine’ and ‘bogus’ refugees.³⁰

The main question of this thesis, how different actors acknowledged those fleeing persecution based on their sexual orientation as refugees, is answered by focussing on themes similar to those found by McGhee and Millbank. The thesis pays most attention to how ‘membership of a particular social group’ was being defined since this was the part of the Refugee Convention that was brought up in connection to gay refugees most often. Different actors in- or excluded persons fleeing persecution based on their sexual orientation from this definition at different times. As argued in this thesis, this process of in- and exclusion was strongly interconnected with the discussion of whether these persons should be seen as ‘genuine’ refugees or not and why. Also connected to this conceptualisation of ‘genuine’ refugees, was the discussion about what types of discrimination and/or prosecution should be classified as persecution as meant in the Refugee Convention. Here, the possible influence of international human rights law can be found.

Material

The first primary source base is the archive of the Werkgroep Vreemdelingen COC – platform homo-vluchtelingen (Working Group Aliens COC – platform gay-refugees) is located in the International Institute of Social History in Amsterdam.³¹ The files concerning this working group and the cases of gay refugees that they discussed are from 1979 to 1983. I have

²⁷ Millbank, ‘A Preoccupation with Perversion’, 116.

²⁸ McGhee, ‘Persecution and Social Group Status’, 29; 34.

²⁹ Millbank, ‘A Preoccupation with Perversion’, 116.

³⁰ McGhee, ‘Persecution and Social Group Status’, 21.

³¹ International Institute for Social History - Internationaal Homo/Lesbisch Informatiecentrum en Archief, Amsterdam (further IISH-IHLIA), Werkgroep Vreemdelingen COC – platform homo-vluchtelingen (further Homo-vluchtelingen).

therefore chosen 1979 as the starting point of this analysis. The working group was part of the COC and was created in order to help gay refugees with their asylum cases. The group predominantly consisted of representatives of the COC, other gay organisations, and a prominent Dutch refugee organisation.³² The group furthermore had extensive contacts with various parliamentary representatives and political parties, and tried to use their influence to obtain positive results in the asylum requests of their clients. Additionally, they provided the gay refugees with legal support and information about the Dutch asylum system.³³ The archive contains minutes from meetings, letters to parliamentary representatives and the gay groups of certain political parties, and elaborate documentation concerning three cases of gay asylum seekers. The latter category consists of transcripts of the actual court cases, but also letters sent between the working group and the men in question, and additional documentation the men provided to help with their cases. The refugees are anonymised throughout this thesis.

Second, this research uses some archival material from the Ministry of Justice and the IND, located in the National Archive in The Hague. The material used comes from the folders ‘Situatie homoseksuelen, 1979-1983’ (‘Situation homosexuals, 1979-1983’) and ‘Toelatingsbeleid betreffende homoseksuele- en niet-huwelijkse relaties, 1964-1983’ (‘Admission policy regarding homosexual- and non-marital relationships, 1964-1983’). Both folders contain minutes from national and international meetings, letters between members of parliament, and letters exchanged between the Ministry of Justice and gay activist groups.³⁴ Thirdly, parliamentary documents that referenced opening up the asylum system for homosexual persons are included. These include debates from the *Eerste* and *Tweede Kamer* (the Senate and House of Representatives respectively), questions asked by members of parliament, and parliamentary motions. These documents were accessed through *statengeneraaldigitaal.nl*, where digitised versions of Dutch parliamentary sources from 1814 to 1995 can be found. A combination of keywords related to the subject³⁵ presented thirteen relevant documents.

The fourth and final primary source concerns media aimed at a gay audience. The periodicals *Gay Krant*, *Homologie*, and *SEK* are used. *Gay Krant* was a monthly periodical that

³² The organisations involved were: COC, Stichting Vrije Relatierechten (Foundation Free Relationship Rights), Schorerstichting (Schorer Foundation), Vereniging Vluchtelingenwerk Nederland (Association Refugee Work the Netherlands). IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 4 Notulen en Corr. Werkgr. Homoseksuele Vluchtelingen 1979-1981, Werkgroep homoseksuele vluchtelingen – adressenlijst.

³³ Kampman, ‘Charter Flights Full of Homosexuals’, 67-69.

³⁴ NA-IND, 2.09.5027, inv. no. 2658 Situatie homoseksuelen 1979-1983; NA-IND, 2.09.5027, inv. no. 931 Toelatingsbeleid betreffende homoseksuele- en niet-huwelijkse relaties 1964-1983.

³⁵ Homo* and seksue* (sexua*) in combination with vlucht* (refuge*) and/or asiel* (asylum*).

started in 1980. In the '80s, *Gay Krant* often published articles on the (inter)national political situation with regard to the acceptance and/or discrimination of lesbian women and gay men. They were however not (radically) activist in nature and claimed to represent the 'silent majority' of gay people.³⁶ *Homologie* existed from 1978 to 1997 and was a bimonthly scientific and cultural magazine, created by students and professors.³⁷ *Homologie* thus was more intellectual in nature than the other two studied here. *SEK* lastly, was one of the magazines published by the COC for their members and it existed from 1973 to 1992.³⁸ The three magazines thus were all explicitly aimed at the Dutch gay audience but had a slightly different target audience. (Parts of) the archives of these magazines can be found in the online Archives of Sexuality and Gender from Gale: *Gay Krant* 1982 to 1989, *Homologie* 1978 to 1997, and *SEK* 1982 to 1988. Twelve articles from *Gay Krant*, four from *Homologie*, and ten from *SEK* are relevant for this thesis.³⁹

Each individual type of primary sources has its own difficulties and disadvantages. It can be assumed that the contents of the COC archive and the archive of the Ministry of Justice and the IND have been through processes of selection. The documents thus in no way form complete exhaustive documentation of the activities of any of these actors. It is probable that the sources that represent those activities or events deemed 'most interesting' have actually ended up in the final archives. Additionally, the sources are in no way a neutral or objective representation of the events that occurred and the people that were involved. The periodical articles also are a very subjective source base. However, since I am explicitly analysing the wording and terminology used in these documents, this does not have negative consequences for this research. The parliamentary debates lastly, represent only a small part of Dutch society. The analysis of parliamentary debates is mainly an analysis of an elite view of society. Furthermore, each member of parliament is a member of a political party. Each party has its own agenda and aims that, for them, have to be met during these debates and each party has their specific subjective view of Dutch society and of the arrival of gay refugees. As with the other documents however, this subjectivity is made explicit throughout this thesis.

³⁶ Mattias Duyves, 'Bij de meerderjarigheid van homostudies: Nederlandse sociologen over homoseksualiteit 1965-1985', *Sociologische Gids* 32:5-6 (1985) 332-351, 342.

³⁷ *Ibid.*, 332.

³⁸ J.C. van der Borgt, 'Anders en gewoon hetzelfde: Identiteit, strategie en belangen van het COC 1946-1971', *Master's Thesis Radboud University Nijmegen* (2014) 19.

³⁹ Keywords used: vlucht* (refuge*) and/or asiel* (asylum*).

The four types of primary sources are combinedly analysed throughout this thesis. Each of the three following chapters deals with a number of years within the broader time period of 1979 to 1989. In the first chapter, the sources from 1979 and 1980 are analysed. This chapter deals with the earliest efforts of the COC working group and initial collaboration with the gay groups of national political parties. In these years, the subject of asylum for gay refugees was being discussed publicly for the first time. Additionally, the parliamentary motion of 1980 can be seen as the first theoretical foundation for the acknowledgement of this refugee group. This set the context for the more elaborate discussions of the years 1981 and 1982, as analysed in the second chapter. This chapter analyses whether the arguments used had developed from those used in the years before, considering the expansion of the theoretical foundation that took place in 1981. The third chapter, lastly, covers the largest time period: 1983 to 1986. This chapter deals with the end of the efforts of the COC working group and the developments that took place afterwards. The Dutch government presented a memorandum wherein policies with regard to different aspects of homosexuality were explained in 1986. This memorandum is the first instance where the government implemented public policies with the aim of promoting the (social) acceptance of homosexuality⁴⁰ and can be seen as the third addition to the theoretical foundation of the recognition of gay refugees. This third chapter again analyses the arguments used by the actors involved and whether they had developed from the years before. Throughout the entirety of the thesis additionally, attention is paid explicitly to how the theoretical foundation actually was being implemented in practice.

⁴⁰ Davidson, 'Advocacy Beyond Identity', 2.

1. ‘What to think of this gaysylum’: The initial discussions, 1979 – 1980

This chapter concerns the years 1979 and 1980. When looking at the broader Dutch asylum context, it is important to note the introduction of the B-status. The B-status was created in the late 1970s for asylum seekers who had fled to the Netherlands but who were found not to be persecuted ‘enough’ to be classified as a legitimate refugee following the Refugee Convention (A-status), but who were given permission to stay based on ‘humanitarian reasons’ (B-status). This did not create any legal precedent since each case had to be judged on an individual basis and there was no fixed definition of these humanitarian reasons.⁴¹ The B-status comes back repeatedly throughout this thesis. The lawyers in the asylum cases discussed all initially strived for the A-status for their clients, but the B-status proved to be an attractive alternative. Additionally, there was an intensification and diversification of gay activist groups in these years.⁴² The COC was increasingly normalised and mainstreamed in Dutch society. In the same period, national political parties started to form gay groups. The socialist party PSP was the first in 1978 and the progressive PPR, liberal VVD, socialist PvdA, and communist CPN soon followed.⁴³ Other gay and lesbian organisations, such as various student groups, Paarse September (Purple September), and Rooie Flikkers (Red Faggots) took over the more radical aspirations of the gay and lesbian community.⁴⁴ They criticised the COC for becoming too mainstream and being too focussed on achieving integration, but at the same time pulled the COC towards more radical gay liberation aims. These gay and lesbian groups worked together with a number of other gay and lesbian organisations in Het Roze Front (The Pink Front).⁴⁵ The COC furthermore began to strive for public policy aims with regard to gay emancipation.⁴⁶ Robert Davidson has argued that the COC began creating public policy strategies in the early 1980s and consequently started to treat the Dutch government as a partner in this.⁴⁷ This thesis shows however, that the COC working group for homosexual refugees saw the gay groups of political parties as useful partners already in 1979.

⁴¹ Walaardt, ‘Geruisloos Inwilligen’, 185-186; 190.

⁴² Hekma, *Homoseksualiteit in Nederland*, 82-85.

⁴³ Pacifistisch Socialistische Partij (Pacifist Socialist Party), Politieke Partij Radikalen (Political Party Radicals), Volkspartij voor Vrijheid en Democratie (People’s Party for Freedom and Democracy), Partij van de Arbeid (Labour Party), Communistische Partij van Nederland (Communist Party of the Netherlands). Stephan Sanders, ‘Een kritiek op de sociale emancipatie van homoseksualiteit: En ons geheim is een van woorden niet...’, *Groniek* 77 (1982) 43-50, 48.

⁴⁴ Hekma, *Homoseksualiteit in Nederland*, 83.

⁴⁵ Davidson, ‘Advocacy Beyond Identity’, 8.

⁴⁶ *Ibid.*, 12.

⁴⁷ *Ibid.*, 12-13.

Within this context of an increasing presence of gay advocacy groups in Dutch society, the issue of asylum for those fleeing persecution on the basis of their sexual orientation was first brought up. One of the key individuals involved was the State Secretary of Justice Bert Haars. She first served as part of the Christian party CHU.⁴⁸ After a fusion of several Christian parties in 1980, the CHU became part of the Christian-democrats, the CDA.⁴⁹ As State Secretary of Justice, Haars was amongst others responsible for the Dutch immigration policy and had the discretionary power to grant someone asylum. She was in favour of a rather restrictive immigration policy.⁵⁰ The second member of government that was involved in the issue was Ria Beckers-de Bruijn. She was the parliamentary leader of the progressive party PPR⁵¹ and was the main driving force behind the parliamentary motion of January 1980. The other two individuals that this chapter repeatedly mentions are the two refugees who had help from the COC working group in their asylum cases: a gay man from Chile and a gay man from Poland. All actors dealt with the same subject, but their different positions and backgrounds meant that they did not necessarily agree with one another. This first chapter deals with the initial stages of two main points of discussion that come back throughout this entire thesis. Firstly, there was disagreement about the appropriate interpretation of the ‘particular social group’ category of the Refugee Convention and about whether sexual orientation should be classified as such. Secondly, it was unclear whether the prosecution of (aspects of) homosexuality should be seen as automatically meaning persecution in the sense of the Refugee Convention. This chapter deals with the initial phase of these discussions, wherein the possibility of including gay persons in the Dutch asylum system was being brought up for the first time in a somewhat coordinated effort by the working group and the gay groups of political parties. This initial phase created the context for the more in-depth and elaborate discussions that the following chapters discuss.

Prosecution versus persecution

Beginning with a statement from the State Secretary of Justice Haars from 15 March 1979, tensions between her and the advocates of asylum for gay refugees are immediately clear.

⁴⁸ Christelijk-Historische Unie (Christian Historical Union).

⁴⁹ Christen-Democratisch Appèl (Christian Democratic Appeal).

⁵⁰ ‘Mr. E.A. (Bert) Haars’, *Parlement.com*, https://www.parlement.com/id/vg09111bfly3/e_a_bert_haars (22 May 2019).

⁵¹ ‘Drs. M.B.C. (Ria) Beckers-de Bruijn’, *Parlement.com*, https://www.parlement.com/id/vg09111hwfpyv/m_b_c_ria_beckers_de_bruijn#p.loopbaan (7 June 2019).

One of the first asylum cases that the working group was actively involved in was that of a Chilean man who had fled Chile in 1975. After the military coup in 1973, he had suffered discrimination and persecution based on his political orientations and activities, and based on his homosexuality.⁵² State Secretary Haars however, argued that the man had not been able ‘to show or to make probable’ that he had ‘well-founded reasons to fear persecution’, neither on the basis of his ‘religious or political convictions or his nationality’, nor on the basis of ‘belonging to a certain race or a certain social group’. Therefore, he could not be classified as a refugee.⁵³ His lawyer filed for an appeal of the decision on 24 April. In this appeal, he stated that ‘expressions of homosexual orientation’ were ‘unacceptable’ in Chile. He concluded therefore that his client had ‘well-founded reasons to fear persecution due to his belonging to a particular social group’. In this appeal, the lawyer believed that homosexual persons should be seen as a particular social group and that persecution based on homosexuality should, therefore, be a valid and legitimate reason to claim asylum. As a final alternative, he suggested the possibility of granting the appellant a residence permit based on humanitarian reasons.⁵⁴

As pointed out before, this B-status residence permit was an easier way to grant people residential status than the A-status was. Critics argued that the Ministry of Justice used the B-status to side-line the Refugee Convention since it fell outside of the Convention’s scope. From the perspective of the Ministry, it was a smart and safe alternative because it would not create any legal precedent. It was based on an individual combination of specific characteristics.⁵⁵ The lawyer of the Chilean man most likely was fully aware of these ideas surrounding the B-status. By suggesting this alternative to the recognition of his client as a legitimate refugee, he offered the State Secretary a way to grant a residence permit without creating any legal precedent for asylum based on sexual orientation. His argumentation that homosexual persons should be seen as a particular social group however, was a much more controversial statement. The Refugee Convention does not define what a particular social group should entail before it should be seen as legitimate. As has been shown by McGhee for the British case, getting sexual orientation acknowledged as a particular social group was no easy feat. The main challenge was that a social group was commonly seen as a group of people with shared historical and cultural

⁵² IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Brief aan Hoofd van de Directie Vreemdelingenzaken van het Ministerie van Justitie, van de contact-ambtenaar P. v.d. Jagt, Betreft: [name], 1979.

⁵³ Ibid., Directie Vreemdelingenzaken, Beschikking, 15 March 1979.

⁵⁴ Ibid., Hans Langenberg, 24 April 1979.

⁵⁵ Walaardt, ‘Geruisloos Inwilligen’, 190.

characteristics, and this is not the case for people who share a sexual orientation.⁵⁶ None of the primary sources used here discussed these specifics of the ‘particular social group’ definition in this much detail, but this did not mean that it was easy to get sexual orientation to actually be recognised as such.

A few months later, State Secretary Haars doubled down on her restrictive interpretations of the concept of persecution. Het Roze Front published a pamphlet in June 1979 wherein they called on the Dutch government to ‘explicitly name homosexuality as a legitimate reason for flight’ and ‘to address and fight the anti-homosexual legislation of other countries as part of a general human rights strategy’.⁵⁷ They sent a list of these demands to the Ministry of Justice as well. This letter as preserved in the IND archive is accompanied by handwritten commentary: ‘What to think of this gaysylum [*homosiel*]? We have to reply with something.’⁵⁸ The Ministry clearly was sceptical of the urgency of creating the possibility for gay refugees to claim asylum. In a response to a later letter of Het Roze Front, State Secretary Haars replied that ‘prosecution based on a punishable offense’ in the country of origin did not automatically mean that the individual in question had been persecuted.⁵⁹ Her reply to this pamphlet is the first explicit example of the discussion of whether prosecution should be seen as equalling persecution. Het Roze Front clearly believed that it should, but Haars did not agree. As argued by McGhee, the 1979 UNHCR guidelines for the determination of refugee status state that the national legislation of the host country should be used ‘as a yardstick’ to determine possible persecutory intent of the legal prosecution in the country of origin.⁶⁰ Following this line of argumentation, any legal prosecution of homosexuality could be seen as persecutory when compared to the Dutch legislation. Haars did not want to draw this conclusion, arguably because this would create the possibility for homosexual persons from all over the world to claim asylum in the Netherlands. Apparently, she believed something more was required before a case should be classified as persecution, but it was left unclear what this should be.

⁵⁶ McGhee, ‘Persecution and Social Group Status’, 23.

⁵⁷ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 6 Diversen, Pamflet Het Roze Front, June 1979.

⁵⁸ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Brief van Het Roze Front aan Ministerie van Justitie, 29 June 1979.

⁵⁹ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Brief aan Het Roze Front t.a.v. P. de Groot, van De staatssecretaris van Justitie, voor deze, het Hoofd van de Directie Vreemdelingenzaken, 20 August 1979.

⁶⁰ United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1992) 11; McGhee, ‘Persecution and Social Group Status’, 28.

Het Roze Front had already acknowledged the difficulties surrounding getting recognition for gay refugees in their initial pamphlet. It stated that ‘the results of the efforts to get the first homosexual refugees refugee status have not been hopeful’. They went on to state that with ‘22 executions on the basis of homosexuality in Iran’, ‘the rise of Islam ahead’, and ‘an increasing amount of homosexuals in countries with a totalitarian regime’, there would be an increase of gay refugee cases.⁶¹ Writing in 2019, this argumentation strikes remarkably familiar. As pointed out by, amongst many others, Butler in 2008, Western countries and the Netherlands specifically use homonationalist narratives that appropriate the acceptance of LGBTI-individuals and link this to broader notions of ‘Western’ freedom and modernity. This is presented as contrasting to the ‘pre-modern’ and ‘homophobic’ Islam.⁶² The 1979-pamphlet used very similar arguments by presenting ‘the rise of Islam’ as something that would lead to the oppression of homosexual persons. However, the pamphlet was strongly influenced by the conservative Islamic revolution in Iran of that year, where any ‘homosexual activity’ was criminalised with harsh penalties, such as lashes and the death penalty.⁶³ This development in Iran was heavily criticised by gay organisations from many countries and the International Gay Freedom and Solidarity Day of that year was devoted to its denouncement.⁶⁴ It would thus not be appropriate to equate the statements presented by Het Roze Front with the development sketched out by Butler.

An increase of actors

The initial disagreements between State Secretary Haars and those in favour of ‘gaysylum’ provided the context for more elaborate discussions in the following year. On 9 January 1980, the working group sent a letter to Haars to request her to ‘change the policies’ to ensure that ‘homosexuals can receive refugee status’.⁶⁵ It is not made clear if they were in favour of including sexual orientation as a particular social group or if they had something else in mind. In this early phase of lobbying, the working group thus was not yet consistent in how they wanted sexual orientation to be introduced in the asylum system. In this year additionally, more actors started to get involved in the subject. The working group had become active for a second

⁶¹ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 6 Diversen, Pamflet Het Roze Front, June 1979.

⁶² Butler, ‘Sexual politics, Torture, and Secular Time’, 3-4; Thomas Spijkerboer, ‘Gender, Sexuality, Asylum and European Human Rights’, *Law and Critique* 29:2 (2018) 221-239, 222.

⁶³ ‘The Sexual Rights of Women and Homosexuals in Iran’, Hamid Parnian, in: Steven Seidman, Nancy Fischer and Chet Meeks (eds.), *Handbook of the New Sexuality Studies* (Routledge 2006) 348-352, 351.

⁶⁴ Kampman, ‘Charter Flights Full of Homosexuals’, 66.

⁶⁵ *Ibid.*, Brief aan de staatssecretaris van Justitie, Mevrouw E. Haars, 9 January 1980.

asylum case in September of 1979. Here, the appellant was a Polish man. Homosexuality was not officially criminalised in Poland, but the man had been fired because of his sexual orientation and had been the victim of a number of blackmailing campaigns threatening to ‘out’ him to his friends, family, and employers.⁶⁶ The files concerning this case take up a large part of the archive of the working group since this asylum case was instrumentalised to ‘make sure that the (gay groups of) political parties urge [the Ministry of] Justice to acknowledge persecution based on homosexuality’.⁶⁷ In order to do this, the working group started to invite representatives of these gay groups of political parties to their meetings. The archive shows that representatives of the progressive PPR, liberal VVD, socialist PvdA, communist CPN, and socialist PSP were invited in January 1980.⁶⁸ When gay groups were later formed in the socio-liberal party D’66⁶⁹ and the Christian-democratic party CDA, they were invited as well. These invitations were sent on 9 June 1981⁷⁰ and these gay groups attended the following meeting that October.⁷¹

The theoretical foundation: the parliamentary motion

In the same month as the invitation to the gay group of the PPR had been sent, Beckers-de Bruijn presented the parliamentary motion that requested the government to create the opportunity for ‘people who are exposed to oppression and persecution based on their homosexuality’ to ‘claim the refugee status’.⁷² As with the asylum case of the Chilean man and the reply to Het Roze Front, State Secretary Haars was not in favour of the motion. She stated that ‘this group does not fall under the Refugee Convention’ and that it had to be seen on an individual basis if someone would be eligible for the B-status. Additionally, she said that it was not enough ‘if one has problems in their country of origin on the basis of homosexuality’.⁷³

⁶⁶ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Brief aan Hoofd van de Directie Vreemdelingenzaken, van de contactambtenaar H. Kluiwstra, 1979.

⁶⁷ Ibid., Inv. No. Box 1 Folder 4 Notulen en Corr. Werkgr. Homoseksuele Vluchtelingen 1979-1981, Notulen werkgroep homoseksuele vluchtelingen, 14 December 1979.

⁶⁸ Ibid., Brief aan de homogroepen van de PPR, VVD, PvdA, CPN en PSP, 8 January 1980.

⁶⁹ Democraten 1966 (Democrats 1966).

⁷⁰ Ibid., COC aan D’66 homogroep t.a.v. Willem-Jan Koch, 9 juni 1981; COC aan CDA-homogroep t.a.v. mevrouw V. Korte-van Hemel, 9 June 1981;

⁷¹ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 4 Notulen en Corr. Werkgr. Homoseksuele Vluchtelingen 1979-1981, Afspraken bijeenkomst werkgroep homoseksuele vluchtelingen, 23 October 1981.

⁷² Handelingen Tweede Kamer OCV/UCV 1979-1980, 28 January 1980, 761. Accessed via [statengeneraaldigitaal.nl](https://www.statengeneraaldigitaal.nl), <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%3A0000751> (24 May 2019).

⁷³ Ibid.

Haars thus again did not believe prosecution to equal persecution. She did not agree with the argumentation of Beckers-de Bruijn, who argued in favour of broadening the interpretation of the Refugee Convention and the conceptualisation of ‘social group’ specifically, in order to include homosexual persons.⁷⁴ Haars, however, did not provide any specific argumentation as to why sexual orientation should not be seen as a social group. In the end, only the conservative Christian SGP and GPV voted against and the motion was passed on 12 February.⁷⁵ It is unclear whether the working group had had any contact with Beckers-de Bruijn before she presented this motion.⁷⁶

Minutes from a meeting of the working group on 14 March show that they were ‘not unhappy’ with the parliamentary motion, but nothing is stated that would suggest any involvement from their side. The minutes go on to state that Beckers-de Bruijn should be approached ‘about the matter of the Polish refugee’.⁷⁷ This was apparently done very quickly because she asked questions in the *Tweede Kamer* about this asylum case ten days later. Her questions were supported by members of the VVD, PvdA, and D’66. The latter is an interesting addition since they did not have a gay group associated with the party at that time and consequently were not involved with the working group.⁷⁸ The questions referred to the fact that the asylum claim of the Polish man had been denied in February, even though sources showed that he ‘had suffered oppression and persecution on the basis of his homosexuality’. Furthermore, they asked how the rejection could be ‘reconciled with the motion Beckers-de Bruijn’. State Secretary Haars replied that there was ‘no persecution in the sense of the Refugee Convention on the basis of homosexual orientation’ in Poland and that there were no ‘severe humanitarian reasons’ that would allow a residence permit.⁷⁹ She did not contradict that the Polish man had suffered some kind of persecution in his country of origin, but this was not deemed to be ‘genuine’ persecution in the sense of the Refugee Convention. This answer shows that even though a parliamentary motion had been passed, it was by no means made easy to

⁷⁴ Ibid.

⁷⁵ Staatskundig Gereformeerde Partij (Reformed Political Party), Gereformeerd Politiek Verbond (Reformed Political League). Handelingen Tweede Kamer 1979-1980, 12 February 1980, 2872. Accessed via [statengeneraaldigitaal.nl](https://www.statengeneraaldigitaal.nl), <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%3A0000672> (24 May 2019).

⁷⁶ Nothing that would suggest this has been found in the archives. The invitation to the gay group of the PPR was sent earlier, but the minutes of the first meeting where a representative was present are of a later date.

⁷⁷ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 4 Notulen en Corr. Werkgr. Homoseksuele Vluchtelingen 1979-1981, Verslag vergadering, 14 March 1980.

⁷⁸ Ibid., COC aan D’66 homogroep t.a.v. Willem-Jan Koch, 9 June 1981.

⁷⁹ Aanhangsel Tweede Kamer 1979-1980, no. 982, 16 April 1980. Accessed via [statengeneraaldigitaal.nl](https://www.statengeneraaldigitaal.nl), <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%3A0001778> (24 May 2019).

claim asylum if one was persecuted based on one's sexual orientation. Haars continued to use the similar lines of argumentation to deny this asylum claim as she had done the year before.

This can additionally be seen in her reply to a letter sent by the working group. As aforementioned, the working group had sent her a letter in January requesting her to open up the asylum system for homosexual refugees. She replied to this letter in March, promising that 'someone who claims to face persecution abroad because of his homosexual orientation' can be sure that 'his asylum request will be treated with the same meticulousness as any other'.⁸⁰ This letter can be found in the IND archive with some handwritten commentary. In this commentary, presumably written by Haars, it is stated that 'the reply is intentionally left somewhat vague'. She wanted 'to bypass tricky questions' such as whether 'prosecution means persecution'.⁸¹ State Secretary Haars thus was aware of the fact that this 'prosecution means persecution' debate was central to the issue of opening up the asylum system to gay refugees. Once again, it can be assumed that she did not want to draw a conclusion that would make it easier for gay persons to claim asylum in the Netherlands. Beckers-de Bruijn, on the other hand, did not agree with leaving these definitions 'somewhat vague' and requested the president of the Commission of Justice to ensure that a clear line of conduct would be set with regard to determining the status of homosexual asylum seekers in April.⁸² As the third chapter of this thesis shows, this would not happen until 1986.

The international context

Documents in the IND archive show that even though the parliamentary motion hardly had any direct practical effect in the Netherlands itself, it had made State Secretary Haars promise to bring the issue of homosexual refugees up in the following meetings of the Council of Europe and the UNHCR. The impact of the debates taking place in the Netherlands started to move outside of the national borders. A document from April 1980 states that the Dutch representative in the Council of Europe was supposed to raise the 'question of persecution of persons on the basis of their sexual orientation' to see whether there would be any European

⁸⁰ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Brief aan de heer Jhr. Mr. J.A. Schorerstichting t.a.v. Drs. R.P. van Diggelen, van Dir. Vreemdelingenzaken, 27 March 1980.

⁸¹ Ibid., Ministerie van Justitie, Dir Vreemdelingenzaken, Algemene aanwijzingen, Betreft: Beantwoording brief dd. 9 januari 1980 van de Werkgroep homoseksuele vluchtelingen.

⁸² IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Brief aan de voorzitter van de Vaste Kamercommissie van Justitie, mevrouw Mr. A. Kappeyne van de Copello, van PPR-fractie Ria Beckers, 17 April 1980.

support for recognising them as refugees. The Dutch side did not expect much, as the document states that ‘it is doubtful’ that any country would support the initiative and that only ‘the Scandinavian side’ would maybe have ‘any understanding’. ‘The question of discrimination of homosexuals’ had apparently already been addressed by a Dutch representative at the UNHCR, but since this reportedly led to some turmoil, there were no high hopes for any positive results here either.⁸³ The Netherlands clearly saw themselves as standing (nearly) alone in denouncing discrimination of homosexual persons and defending the acknowledgement of homosexual refugees. As argued by Wekker, the Netherlands can be characterised by a ‘self-congratulatory national tone’ stating that the country is ‘a paradise of emancipation’, specifically for LGBTI-persons.⁸⁴ Puar has described this to be a form of a ‘national sexual exceptionalism’, where the nation is presented as being singularly superior and excellent compared to others, in this case with regard to notions of sexuality.⁸⁵ Even though the Dutch members of parliament in this case presumably did not particularly like the fact that they were at the forefront, the idea of a Dutch exceptionalism related to gay emancipation can already be seen. Following the meeting of the Council of Europe however, the Dutch representative made note of the fact that Sweden was in the process of setting up a motion for incorporating ‘homophilia as grounds for refugee status’, that Austria ‘already took some in as belonging to a particular social group’, and that Switzerland ‘has the same problems as the Netherlands’ and they ‘took some in on humanitarian reasons’.⁸⁶ The Netherlands thus was not alone in dealing with this ‘question’. The answers from the other three countries show that they also were not sure whether it was necessary to explicitly recognise sexual orientation as a reason for flight, to classify these refugees as belonging to a particular social group, or whether ‘humanitarian reasons’ would suffice. Further research into each of these countries would be necessary to provide insights into the underlying discussions and processes that took place there.

While this all was going on, the appeals in the asylum cases of the Chilean and the Polish man were still going. The first appeal of the Chilean man was denied on 13 May, because ‘nor his political activities, nor his homosexuality’ supposedly had caused persecution in the sense of the Refugee Convention, nor was it deemed necessary to grant him residence on

⁸³ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Betreft: Motie nr.16 (Beckers-de Bruyn), April 1980.

⁸⁴ Wekker, ‘Of Homo Nostalgia and (Post)Coloniality’, 113.

⁸⁵ Puar, *Terrorist Assemblages*, 4-5.

⁸⁶ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Mr. Emde Boas in verb. Vergadering BuiZa, 13 May 1980.

humanitarian grounds.⁸⁷ The same reasons were presented in the denial of the appeal of the Polish man on 3 June: there was ‘no well-founded reason to fear persecution as meant in the Refugee Convention’ and he ‘should not be given a residence permit on humanitarian reasons’. In this case however, the court did recognise that ‘homosexuals in Poland are discriminated’, but this discrimination was not deemed to be persecutory.⁸⁸ In these statements, the courts presented very similar argumentation as had earlier been done by State Secretary Haars. Prosecution was not seen as necessarily entailing persecution, nor as providing severe enough humanitarian reasons for a B-status. An employee of Vereniging Vluchtelingenwerk Nederland (Association Refugee Work the Netherlands) who was actively involved in the asylum case of the Polish man, stated in a letter following this rejection that ‘there most certainly is persecution of homosexuality’ in Poland but that this ‘takes place under the guise of other arguments’. He therefore stressed the importance of creating a clear line of conduct for how ‘humanitarian grounds’, ‘discrimination’, and ‘persecution’ should be defined.⁸⁹ It is a challenge to unite these court conclusions with the Dutch exceptionalism that was presented in the documents concerning the UNHCR and the Council of Europe. The conversations that were being held in an international context did not match with what was going on in the Netherlands in practice.

Initial media coverage

While the issue of asylum for gay refugees had thus been repeatedly discussed by the COC and Het Roze Front, the Dutch government, Dutch representatives in international institutions, and in numerous court cases, it was hardly mentioned in the magazines aimed at a gay audience. The first article found that talked about gay refugees is from June 1980 and was published in *Homologie*, the more intellectual of the three magazines. The article announced the ‘annual gay demonstration in Amsterdam’ that would be held on the 28th of that month. The demonstration would ‘again’ pay attention to, amongst others, ‘political asylum for gay refugees’.⁹⁰ This article refers back to the International Gay Liberation and Solidarity Day of 1979 mentioned before, where one of the main themes had been the persecution of homosexual men in Iran after the revolution. According to the *Homologie* article, the organisers of the 1980

⁸⁷ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), De Staatssecretaris van Justitie het hoofd van de Directie Vreemdelingenzaken, voor deze w.g. J.W. de Gee, aan de Hoofdcommissaris van Politie, 13 May 1980.

⁸⁸ Ibid., De Staatssecretaris van Justitie het hoofd van de Directie Vreemdelingenzaken, voor deze w.g. J.W. de Gee, aan de Hoofdcommissaris van Politie, 3 June 1980.

⁸⁹ Ibid., Brief van L.W.A Koppenrade, Betreft: Afwijzing herzieningsverzoek [name], 9 June 1980.

⁹⁰ ‘Agenda: Homodemonstratie’, *Homologie* 4 (June 1980) 3. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A6bv70> (22 May 2019).

demonstration wanted gay refugees to get political asylum. It is unclear whether ‘political asylum’ was the precise wording used by the organisers or whether this was what *Homologie* had made of it. Considering that Het Roze Front was the driving organising force behind the demonstration and that the COC was part of Het Roze Front, it can be assumed that they would have been aware of the discussions about including gay refugees in the ‘particular social group’ category specifically. More likely would therefore be that the editors of *Homologie* were unaware of this broader discussion, even though they presented to be an intellectual and socially aware magazine.

The last file from 1980 is a letter sent on the first of December by the working group to the gay groups of the political parties wherein it is announced that the lawyer of the Polish man would take up the asylum case to the highest legal authority in 1981.⁹¹ The statement that followed and its consequences are discussed in the next chapter. This chapter has shown that the initial debate on ‘gaysylum’ revolved around two main issues: whether sexual orientation could and should be seen as a particular social group, and how persecution should be defined and interpreted. Additionally, the primary sources show that even though each actor discussed was dealing with the same subject matter, this did not mean that they were all part of the same conversation. On the contrary, the sources show that actors operating in different spheres did not necessarily know what was being discussed by others, thereby creating a number of separate parallel conversations.

⁹¹ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Brief van de leden van de homogroepen van de politieke partijen, van de werkgroep homoseksuele vluchtelingen, Inzake: afwijzing herzieningsverzoek, 1 December 1980.

2. ‘A particular social group’: Seemingly promising developments, 1981 – 1982

The years 1981 and 1982 were very turbulent for the Dutch government. National elections were held in May 1981 and led to a very difficult coalition-forming process. The final parliament was not installed until September.⁹² New elections also meant a new State Secretary of Justice: Michiel Scheltema. Scheltema was part of the socio-liberal party D’66.⁹³ This new coalition fell in May 1982 already. D’66 lost their wins from the previous election and the Christian-democrat CDA and the liberal VVD became the new governing parties.⁹⁴ Virginie Korte-van Hemel, from the CDA, became the new State Secretary of Justice and remained in this position for the rest of the years this thesis covers.⁹⁵ Even though much changed in the national government, the discussions with regard to asylum for gay refugees that had started in 1979 and 1980 continued into the following years. This chapter deals with the conclusions of the final appeals of the asylum cases of the Chilean and Polish man. In dealing with the latter, the Council of State played an important role. The Administrative Jurisdiction Division of the Council of State the highest general administrative court of the country.⁹⁶ In their final conclusion in the case of the Polish man, they presented a definitive interpretation of the ‘particular social group’ concept in the context of gay refugees. The discussions on how persecution should be defined however, remained to be far from reaching a definitive conclusion. This second chapter deals with an expansion of the theoretical foundation for granting gay refugees asylum and at the same time with how much stayed the same in practice.

Prosecution versus persecution, continued

The first source from 1981 immediately shows that the discussion about what should be seen as ‘genuine’ persecution continued. On January 6, an appeal in the asylum case of the Polish man was denied. The reply stated that he could not be granted the B-status, because he

⁹² ‘Kabinetsformatie 1981’, *parlement.com*, https://www.parlement.com/id/vj4je8ca57mi/kabinetsformatie_1981 (22 May 2019).

⁹³ ‘Dr. M. (Michiel) Scheltema’, *parlement.com*, https://www.parlement.com/id/vg09lln9o3zq/m_michiel_scheltema (8 June 2019).

⁹⁴ ‘Kabinet-Lubbers I (1982-1986)’, *parlement.com*, https://www.parlement.com/id/vh8lnhronvw5/kabinet_lubbers_i_1982_1986 (22 May 2019).

⁹⁵ ‘Mr. V.N.M. (Virginie) Korte-van Hemel’, *parlement.com*, https://www.parlement.com/id/vg09lli83lzn/v_n_m_virginie_korte_van_hemel (8 June 2019).

⁹⁶ ‘The Council of State’, *Raad van State*, <https://www.raadvanstate.nl/talen/artikel/> (22 May 2019).

had not been in ‘such a special situation’ in Poland.⁹⁷ As mentioned earlier, the B-status was only granted on the basis of an individual combination of characteristics and factors.⁹⁸ Apparently, the situation of the Polish man in his country of origin was not deemed to be deviating from the norms – whatever they entailed – enough to provide a basis for a B-status. The court emphasised that ‘even if the alien belongs to a group that is disadvantaged by the government’, this would not automatically provide severe enough humanitarian reasons.⁹⁹ They thus saw it as a possibility that the Polish man did indeed belong to a particular group that was treated differently by the government, but this apparently did not necessarily constitute persecution. This line of argumentation is elaborated on with a comparison to South Africa and the apartheid system that was in place there. The court stated that ‘this system deserves our disapproval’, but that it did not mean that ‘anyone who is subject to it’ would deserve to be granted residence based on humanitarian reasons.¹⁰⁰ The court apparently did not see a general state of inequality and discrimination as circumstances qualifying for persecution.

Whereas the court sided with earlier court statements and conclusions from the State Secretary by going for a narrow interpretation of the concept of persecution, the COC continued their lobbying efforts to open it up. On the 14th of January, the COC stated in a parliamentary hearing that the government should realise that a person could also be in a life-threatening situation ‘if the social situation is unacceptable’.¹⁰¹ As explained by Eithne Luibhéid, the Refugee Convention in its initial conception was aimed at individuals seeking refuge from persecution as executed ‘by the government or by individuals whom the government is unable or unwilling to control’.¹⁰² In this parliamentary hearing, the COC argued in favour of moving away from this strict interpretation of what should be seen as ‘genuine’ persecution by acknowledging that an ‘unacceptable’ social situation could also create life-threatening circumstances and that governmental involvement should not be required. They furthermore criticised the fact that ‘even though the government has said that homosexuality will be

⁹⁷ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Conclusie van antwoord, De Staat der Nederlanden tegen [name], 6 January 1981.

⁹⁸ Walaardt, ‘Geruisloos Inwilligen’, 190.

⁹⁹ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Conclusie van antwoord, De Staat der Nederlanden tegen [name], 6 January 1981.

¹⁰⁰ Ibid.

¹⁰¹ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Deel verslag hoorzitting COC, 14 January 1981.

¹⁰² Luibhéid and Cantú, *Queer Migrations*, 31.

acknowledged as a reason for flight', this was yet to be applied in practice.¹⁰³ The first chapter of this thesis shows that the parliamentary motion from January 1980 hardly had any direct practical effects in the Netherlands. This comment from the COC shows that a year after its passing, they were still waiting for its practical implementation.

Some media attention

In these early months of 1981, *Homologie* remained the only magazine that published articles about gay refugees. In their March issue, a short article about the working group was published. It is stated that 'the Working Group Homosexual Refugees' was organising an evening for male refugees from Latin America where they could talk about what it was like being gay and living in the Netherlands.¹⁰⁴ So, apparently, there were a number of gay Latin-American refugees in the Netherlands that were the target audience of this article. Since the COC-archive does not hold any documentation with regard to these refugees, it can be concluded that the working group had not been involved in their asylum cases. It is most likely that these refugees had received asylum or residence status based on other reasons, such as their political activities or other humanitarian reasons, and not on their sexual orientation. A legal precedent for gay refugees thereby had not been created. In the same issue of *Homologie*, an article was published about the upcoming parliamentary elections. It is stated that 'all leftist gay groups' desired 'a more active policy towards discrimination based on sexual orientation'. This policy should amongst others contain 'a more active refugee policy for taking in and acknowledging gays that are persecuted abroad'.¹⁰⁵ So, the collaboration between the working group and the gay groups of the leftist political parties of the years before had placed this issue prominently on their agendas. Further research would need to be done into the intricacies of the gay groups and their communication with the larger parties to see if they actually had a significant level of influence.

¹⁰³ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Deel verslag hoorzitting COC, 14 January 1981.

¹⁰⁴ 'Al-doende: Homo-vluchtelingen', *Homologie* 3 (March 1981) 4. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A6eQi5> (22 May 2019).

¹⁰⁵ 'Welk hokje maken we roze?', *Homologie* 3 (March 1981) 12. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A6eUi3> (22 May 2019).

A European standard

As discussed in the previous chapter, the Dutch representative in the Council of Europe had brought up the issue of asylum for homosexual refugees in 1980. The subject was brought up again in their meeting in March 1981. Within the subject of ‘granting of asylum in the case of certain forms of persecution’, the Dutch representative ‘recalled the case of persons who claim that they risk persecution on the grounds of their homosexual tendencies’.¹⁰⁶ The fact that they spoke about ‘homosexual tendencies’ instead of homosexuality or sexual orientation is striking. McGhee has shown that the UK courts and decision-makers in the 1990s saw being gay and/or expressing one’s homosexuality not as a necessity or fundamental human right, but as a choice. These courts required gay men to return to their country of origin and ‘simply’ refrain from engaging in homosexual activities. In these court cases, sexual orientation was explicitly and only linked to its expression in certain activities associated with this specific orientation. There is no sense of sexual orientation being a part of someone’s identity.¹⁰⁷ The same can be seen in the minutes from the meeting of the Council of Europe. Here, someone’s ‘homosexual tendencies’ were presented as possibly creating the risk of persecution. By using ‘homosexual tendencies’, no reference is made to the fact that one’s sexual orientation might actually be a fundamental part of someone’s identity which is not limited to specific sexual acts. This choice of wording made it much easier to refuse asylum claims based on sexual orientation since people could simply be required to refrain from acting on their ‘tendencies’.

Representatives of several countries additionally expressed their doubts ‘as to the advisability of attempting to extend the criteria of the Convention’ for these cases. They emphasised the ‘global scope’ of the Refugee Convention and did not want ‘to introduce European standards’ since that ‘could give rise to political problems and even put at risk the Convention system’.¹⁰⁸ Apparently, a development had taken place since the meeting the year before. In 1980, the Netherlands had not expected much support for including gay refugees in the asylum systems and there had only been three other countries that had said to have been thinking about how to deal with the subject. Then, a year later, this same issue was presented as a ‘European standard’. The feelings of Dutch exceptionalism of 1980 had developed into an

¹⁰⁶ NA-IND, 2.09.5027, inv. no. 2658 *Situatie Homosexuelen 1979-1983*, Ad Hoc Committee on the Legal Aspects of Territorial Asylum and Refugees (CAHAR), Meeting Report and Final Activity Report on the Harmonisation of Procedures, 23-27 March 1981, 7.

¹⁰⁷ McGhee, ‘Persecution and Social Group Status’, 24.

¹⁰⁸ NA-IND, 2.09.5027, inv. no. 2658 *Situatie Homosexuelen 1979-1983*, Ad Hoc Committee on the Legal Aspects of Territorial Asylum and Refugees (CAHAR), Meeting Report and Final Activity Report on the Harmonisation of Procedures, 23-27 March 1981, 8.

explicit linkage of gay emancipation and Europe in its entirety. The Council even went as far as suggesting the possibility that the introduction of asylum for gay refugees could ‘put at risk’ the entire Convention system. They clearly did not believe that the world outside of Europe would agree with any explicit acceptance and protection of homosexuality. This line of argumentation can be easily linked to Butler’s observations that Europe continuously tries to define itself as ‘the privileged site’ where this acceptance can take place and to thereby assert itself as standing apart from the rest of the world.¹⁰⁹ In this case, this sentiment was expressed by stating that it would be inadvisable to introduce these ‘European standards’ in a global system. At the same however, no proof has been found that someone had actually been granted asylum based on their sexual orientation at that point. This thesis furthermore shows that in the national context, the Dutch government by no means had been enthusiastic about the possibility. Where the idea of a European standard of asylum for gay refugees had come from thus remains unclear.

The theoretical foundation: the Council of State statement

The final stages of the asylum case of the Polish man from a few months later show that even though the conversation taking place in the European context had sounded promising, no development had taken place in the Netherlands in reality. The reply of the lawyer of the Polish man to the refusal of his appeal from January shows that the interpretation of the concept of persecution remained to be an important point of discussion. The reply was published on May 26th. The lawyer referenced the parliamentary motion from the year before and a statement made by State Secretary Haars wherein she had said that ‘persons who are being persecuted because of homosexuality can be admitted into the Netherlands as refugees’. He stated that the decision to refuse the asylum claim of his client was not ‘in accordance with these statements’.¹¹⁰ On the 18th of June, he brought up the same arguments in a brief for the Council of State. In his brief, he stated that it was deemed persecutory if ‘existing discrimination is accompanied and/or worsened by the government or government officials’. According to his argumentation, this had clearly been the case in Poland.¹¹¹ He did not include who exactly deemed this to be the definition of persecution, but he clearly tried to place the claims of his

¹⁰⁹ Butler, ‘Sexual Politics, Torture, and Secular Time’, 2.

¹¹⁰ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Conclusie van repliek, [name] tegen de Staat der Nederlanden, 26 May 1981.

¹¹¹ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Pleitnotities Mr. L.D.H. Hamer, Inzake: [name]/Staat, Afdeling Rechtspraak van de Raad van State, 18 June 1981.

client within the strict interpretation of the Refugee Convention that required government involvement in ‘genuine’ persecution. For him, the fact that the discrimination had up to that point not been recognised as persecution, had been the consequence of an ‘underestimation of the facts and an incorrect use of the concept “persecution”’. Additionally, no reasons had been provided on why there had been ‘deviated from explicit policy intentions’.¹¹² This lawyer is the first to claim that there actually were ‘explicit policy intentions’ that could be distilled from the parliamentary motion. As seen in the first chapter of this thesis, others had complained that the motion and consequent line of conduct were too vague. This brief however, provided a clear interpretation of ‘persecution’ and presented it as unquestionable that the refugee status should be granted to the Polish man.

The Council of State made the final statement in this asylum case on 13 August. They refer to the parliamentary motion and state that ‘the concept of “persecution” is in no way limited to official prosecution’.¹¹³ They thereby rejected earlier court conclusions that presented the discrimination suffered by the Polish man as not qualifying as ‘genuine’ persecution since the Polish law did not explicitly criminalise homosexuality. Secondly, they found that there was clear involvement from the Polish government in the persecution suffered by the appellant: ‘he could not go to this government for protection’.¹¹⁴ They follow the argumentation presented by the lawyer and a narrow interpretation of the Refugee Convention; a governmental actor had to be involved in order for discrimination to be classified as persecution. The Council furthermore explained that the lawyer had claimed that ‘discrimination of a particular social group - in this case, the homosexuals – [...] as encouraged or even approved by the government’ should be seen as ‘persecution in the sense of the Refugee Convention’. First, it is made explicit that ‘persecution on the basis of sexual orientation’ could be understood as ‘persecution because of membership of a particular social group’.¹¹⁵ This is the first time that a Dutch court concluded that sexual orientation could be interpreted as a particular social group, thereby including homosexual refugees as a ‘genuine’ refugee group, part of the Refugee Convention.

These arguments looked very promising for the asylum procedures of the Polish man. In the final sentences of the statement however, the Council of State concluded that ‘even though the appellant suffers discrimination of the government on the basis of his sexual orientation in his country of origin’, these ‘discriminatory measures do not create a severe

¹¹² Ibid.

¹¹³ Ibid., Raad van State uitspraak, 13 August 1981.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

limitation on his livelihood' and thus could not be classified as persecution.¹¹⁶ So, apparently, the Council believed that the discrimination did not only have to be enacted by governmental actors, but it should also be a 'severe limitation' of someone's livelihood in order for it to count as persecution. As had been done by State Secretary Haars in the years before and by the courts involved in the earlier phases of this asylum case and the case of the Chilean man, the Council of State believed that a certain threshold had to be reached before discriminatory treatment and/or prosecution should be deemed persecutory. What this threshold specifically entailed however, was left unclear. Minutes from the following working group meeting of 23 October show that they were disappointed that the Council of State had not granted the Polish man the A-status. The working group hoped that the new State Secretary of Justice that had been installed that September would be willing to grant the Polish man the B-status. It is unclear what happened to him in the end. His name or his case were not mentioned further in the primary sources and there is no record of his naturalisation.¹¹⁷ At the same time, the working group was pleased that the Council of State had concluded 'that the Netherlands sees the Geneva Convention as being applicable to homosexuals'.¹¹⁸ This directly makes clear the ambivalence of this Council of State statement. The asylum claim of the Polish man had been denied. Additionally, it was still unclear what level of persecution one had to have suffered based on their sexual orientation before it was supposed to be seen as 'genuine'. At the same time, this statement did create the legal precedent that included gay refugees in the Refugee Convention system as members of a particular social group. After the parliamentary motion of January 1980, this Council of State statement can be seen as the second addition to the theoretical foundation for asylum for gay refugees.

The goal had been reached?

The fact that the Council of State statement still left a lot unclear and open to interpretation, can be seen by comparing a source from the *Eerste Kamer* to one from the COC. In a first draft of a reply to the proposed budget of the new governing coalition, the *Eerste Kamer* stated that, following the statement from the Council of State, the interpretation that persecution on the basis of sexual orientation could indeed be seen as persecution of members

¹¹⁶ Ibid.

¹¹⁷ Kampman, 'Charter Flights Full of Homosexuals', 74.

¹¹⁸ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 4 Notulen en Corr. Werkgr. Homoseksuele Vluchtelingen 1979-1981, Afspraken bijeenkomst werkgroep homoseksuele vluchtelingen, 23 October 1981.

of a particular social group had become ‘the starting point’ of the Dutch asylum policies.¹¹⁹ This was repeated in their final reply of February 1982.¹²⁰ The *Eerste Kamer* thus was of the opinion that the fact that the Council of State had said that sexual orientation could be seen as a particular social group meant that this had actually become ‘the starting point’ of the asylum system. There is no acknowledgement of the ambivalence of this statement as mentioned above. It is unclear what had been the basis for this conclusion since still no refugee had actually been granted asylum based on persecution suffered because of their sexual orientation. The minutes of the working group from a meeting the following June indeed show a completely different interpretation. They stated that the aim of ‘governmental acknowledgement of persecution because of homosexuality as legitimate reason for flight’ had been ‘officially achieved’, but that ‘the application in practice will have to be fought for time after time’.¹²¹ They evidently were less optimistic about the certainty of this new ‘starting point’ of the asylum system.

Since their goal had been reached officially, the intense collaboration with political parties could be brought to an end and ‘become incidental’, based on ‘concrete and relevant’ events.¹²² For this working group thus, 1982 meant the end of a time of intense cooperation with the political parties. This goes against the argumentation of several scholars, as synthesised by Davidson, that the prioritisation of public policy aims of the COC and the consequently strong cooperation with the government originated in response to the violent counterdemonstration that occurred at a gay protest in Amersfoort in 1982.¹²³ Davidson himself has argued that after ‘fighting the government’s discriminatory laws’ and gradually improving their relations with the government in the years before, ‘the COC saw the Dutch government as a potential policy partner’ from January 1982 onwards.¹²⁴ The primary sources used in this thesis however, show that the COC working group on homosexual refugees already closely cooperated with the gay groups of the national political parties and lobbied intensively to reach specific public policy goals from 1979 onwards.

¹¹⁹ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Concept-antwoord Begroting 1981 E.K.

¹²⁰ Kamerstuk Eerste Kamer 1981-1982 kamerstuknummer 17100 VI ondernummer 34c, 3 February 1982, 1. Accessed via [statengeneraaldigitaal.nl](https://www.statengeneraaldigitaal.nl), <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19811982%3A0000624> (24 May 2019).

¹²¹ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 4 Notulen en Corr. Werkgr. Homoseksuele Vluchtelingen 1979-1981, Agenda bespreking werkgroep homoseksuele vluchtelingen, 9 June 1982.

¹²² Ibid.

¹²³ Davidson, ‘Advocacy Beyond Identity’, 12-15.

¹²⁴ Ibid., 12.

Parallel conversations in the media

The COC had thus already been involved in the issue of gay refugees for three years. The subject had been repeatedly discussed by Dutch governmental actors in these three years as well. Still, it was not until 1982 that *Gay Krant* and *SEK* published their first articles about the subject. This shows that even though the magazines were part of the broader process of gay emancipation and gay advocacy, and even though *SEK* was published by the COC, this did not mean that the editors actually were aware of the discussions that had been taking place. In September, a member of parliament for the PvdA wrote an article for *Gay Krant*. He was a member of the gay group of the PvdA and had been in close contact with the members of the COC working group throughout the years before.¹²⁵ Interestingly, no reference is made to his involvement in this working group in the article. This again shows the parallel conversations that were taking place. The article is titled ‘awareness remains bitter necessity’.¹²⁶ This refers to the same issue the working group was dealing with: the theoretical acknowledgement of gay refugees was there, but this was no guarantee for ‘proper’ implementation. He wrote that during the parliamentary discussions about the 1980 parliamentary motion, he had believed it to be very important to include sexual orientation as a particular social group. Consequently, he was disappointed by the fact that State Secretary Haars had not been in favour of this. If this inclusion had been accepted by the *Tweede Kamer* in 1980, ‘men and women who suffer persecution based on their sexual preference in their own country could claim refugee status in the Netherlands’ and this would have created ‘an important precedent’ in the international context. He thought that other countries would have followed the Dutch example and that it would create ‘a basis for a critical conversation’ with the ‘dictatorial governed countries’ that ‘simply deny the existence of people with an other than heterosexual orientation’.¹²⁷ These last quotes show that he saw the international acceptance of homosexuality as something that the Netherlands should be at the forefront of, presenting the same idea of Dutch exceptionalism as has been argued before. Furthermore, he only referred to the fact that persons fleeing persecution based on their ‘other than heterosexual orientation’ were not seen as a particular

¹²⁵ Harry van den Bergh. For his involvement in the working group, see for example: IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Brief van Harry van den Bergh aan Bram Bol, 13 December 1979; Ibid., Van [name], aan van den Bergh (PvdA) en Beckers-de Bruijn (PPR) en Wessel-Tuinstra (D’66) en Kappeyne van de Coppelo (VVD), 25 January 1981; Ibid., Inv. No. Box 1 Folder 4 Notulen en Corr. Werkgr. Homoseksuele Vluchtelingen 1979-1981, Brief van COC aan Harry van den Bergh, t.a.v. Hans Wolters, 9 June 1981.

¹²⁶ ‘Binnenhof 1a: Oplettendheid blijft bittere noodzaak’, *Gay Krant* 9 (September 1982) 30. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A6fQ23> (22 May 2019).

¹²⁷ Ibid.

social group by the *Tweede Kamer* in January and February 1980 but did not mention the Council of State statement that did actually include them in this categorisation. This is an interesting omission since it can be assumed that he was aware of this statement due to his involvement in the COC working group and because he was a member of parliament. The fact that it is not mentioned in the article, again shows that even though each actor was involved in discussions about the same subject, this did not mean that every actor was aware of what others involved actually had achieved.

In November 1982, *SEK* published an article about the new coalition agreement that had recently been made public. The article referred to the coalition agreement as ‘half-hearted, with some starting points’. The article states that it was ‘a political victory of about four years ago’ that it was possible to get a residence permit for ‘persecution based on homosexuality’.¹²⁸ It is unclear what this specifically refers back to since gay refugees were not recognised in the Netherlands four or even three years before this article was published. Again, a magazine proved not to be fully aware of how the discussions about the subject had actually developed over the last few years. The article went on to state that much would depend on the policies of the new State Secretary of Justice, Korte-van Hemel. Apparently, ‘the newspapers’ had referred to her as ‘a stranger’. The article in *SEK*, however, mentions that she had been ‘the president of the working group homophilia of the CDA’, had ‘asked questions about the American military spies in gay bars in Limburg’, and had submitted a motion ‘to make one-parent adoption possible (and that from the CDA)’.¹²⁹ *SEK* apparently had a decent amount of faith in her, for their cause, good intentions ‘even though’ she was a member of a Christian party.

The State Secretaries of Justice

The fact that much indeed depended on the State Secretary is exemplified by two instances where members of parliament asked questions about the asylum cases of gay persons. In April 1982, there were questions asked about a Portuguese man who was trying to claim asylum based on the persecution he had suffered on the basis of his sexual orientation. They asked whether State Secretary Scheltema would be willing to ‘permit the refugee residence [...] following the [parliamentary] motion’ since the refugee had ‘suffered discrimination in

¹²⁸ ‘Regeerakkoord: Halfslachtig, met een enkel aanknopingspunt’, *SEK* 11-12 (November 1982) 21. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A6fX20> (22 May 2019).

¹²⁹ *Ibid.*

Portugal on the basis of his homosexual orientation'.¹³⁰ Scheltema replied that 'it needs to be determined whether the applicant has suffered oppression and persecution' and that not all discrimination could be seen as persecution.¹³¹ In the following December, members of the PPR asked State Secretary Korte-van Hemel how she had come to the conclusion to deny the asylum request of a gay Austrian man since he would 'suffer prosecution because of his homosexuality if he is returned'. Korte-van Hemel had apparently stated earlier that 'this prosecution would provide limitations to his private life' but that it could still not be concluded that 'these limitations would not be justified within the European Convention for the Protection of Human Rights and Fundamental Freedoms' (ECHR).¹³² The members of parliament did not see this argumentation and the final decision as following the parliamentary motion and the Council of State statement. So, even though two different State Secretaries from two different political parties at other ends of the political spectrum replied to these two questions, their replies came down to the same thing. Once again, the discussion centred on how persecution was supposed to be understood. State Secretary Scheltema made explicit that 'not all discrimination' was persecutory and State Secretary Korte-van Hemel did not see prosecution that limited someone's private life as equalling persecution. The members of parliament that asked the two questions clearly did not agree and argued that the replies of the State Secretaries did not follow the parliamentary motion nor the Council of State statement. This shows that these two documents, although providing an initial theoretical foundation, left too much open for interpretation to guarantee actual practical implementation.

State Secretary Korte-van Hemel replied furthermore in January 1983 to the questions concerning the case of the Austrian man that he had 'not been prosecuted because of his sexual orientation', but because of 'an expression of this' that was criminalised in Austria to protect minors. She stated that legal precedent showed that this prosecution was no violation of the ECHR and that it did not need to be deemed persecutory.¹³³ In this case, homosexuality as such thus was not criminalised. The statements from Het Roze Front in 1979 that the persecution of homosexual men was 'usually played via accusation of other crimes'¹³⁴ and from an employee of Vereniging Vluchtelingenwerk Nederland in 1980 that it 'takes place under the guise of other

¹³⁰ Aanhangsel Tweede Kamer 1981-1982 no. 935, 22 April 1982. Accessed via *statengeneraaldigitaal.nl*, <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19811982%3A0001934> (24 May 2019).

¹³¹ Ibid.

¹³² Aanhangsel Tweede Kamer 1982-1983 no. 394, 7 January 1983. Accessed via *statengeneraaldigitaal.nl*, <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19821983%3A0001257> (24 May 2019).

¹³³ Ibid.

¹³⁴ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 6 Diversen, Pamflet Het Roze Front, June 1979.

arguments',¹³⁵ clearly still rang true in 1983. It can be assumed that the extra high age of consent that Austria had in place 'only for gay sex' had been the law underlying the prosecution.¹³⁶ As explained by Millbank, the criminalisation of homosexuality has historically often been related to the 'protection of young men'. Gay men were seen as 'seductive', 'degenerate', and 'predatory' and this was used to justify a higher age of consent.¹³⁷ Millbank's research shows that the UK courts followed this justification and did not deem these laws to be persecutory throughout the 1990s.¹³⁸ This even though the Parliamentary Assembly of the Council of Europe had explicitly condemned discriminatory laws regarding the age of consent in 1981.¹³⁹ State Secretary Korte-van Hemel had made explicit that she did not see the discriminatory Austrian law as violating the ECHR and did not follow the Council in condemning it.

In 1981 and 1982 thus, the working group had officially reached their main aim with the official recognition of gay refugees as a 'genuine' refugee group following the Refugee Convention. In practice however, there was little to celebrate since it had not been possible to actually get a gay refugee to be recognised as such. In addition to this, the expanded theoretical foundation had little to no influence on the discussions that were being held. The debate of whether sexual orientation should be seen as a particular social group was answered, but the debates on how persecution should specifically be defined continued, with the same arguments being used as in the years before.

¹³⁵ Ibid., Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Brief van L.W.A Koppenrade, Betreft: Afwijzing herzieningsverzoek [name], 9 June 1980.

¹³⁶ Kees Waaldijk, 'Standard Sequences in the Legal Recognition of Homosexuality – Europe's Past, Present, and Future', *Lecture International Conference Lesbian, Gay and Bisexual Rights in New Europe, Helsinki, 4/5 April 1992 Organised by SETA*, 62.

¹³⁷ Millbank, 'A Preoccupation with Perversion', 124.

¹³⁸ Ibid., 125.

¹³⁹ Waaldijk, 'Standard Sequences in the Legal Recognition of Homosexuality', 61.

3. ‘No positive decision has been made’: A disappointing reality, 1983 – 1986

The Dutch asylum system is generally assumed to have been rather open and hospitable up to 1983. A clear shift can be seen from 1984 onwards. There was a notable increase in the number of people who tried to get asylum in Europe and in the Netherlands specifically. People involved in the Dutch asylum system believed that only a small number of these asylum seekers actually were ‘genuine’ refugees and that the majority were economic migrants.¹⁴⁰ Korte-van Hemel from the VVD remained the State Secretary responsible for the asylum system in the years this chapter covers. In these years, the asylum case of the Chilean man came to its final appeal. Since the last files in the archive of the working group are from 1983, it can be assumed that it was no longer active thereafter. The COC however, intensified its collaboration with the government in these years. They presented the policy brief *Homoseksualiteit in het Overheidsbeleid* (Homosexuality in Government Policy) in 1983. They called on the government to, amongst others, actively prosecute anti-gay violence and discrimination, fight heterosexism, and protect gay rights in international relations.¹⁴¹ As a result of the more intense lobbying efforts of the COC, the government presented the *Nota Overheidsbeleid en Homoseksualiteit* (Memorandum Government Policy and Homosexuality) in April 1986, wherein a line of conduct for granting asylum to gay refugees was set out. What this chapter most clearly shows however, is that practical implementation of the expanded theoretical foundation continued to be lacking.

The final stage of the asylum case of the Chilean man

In April 1983, *SEK* referenced the policy brief *Homoseksualiteit in het Overheidsbeleid* in an article. They wrote that the policy brief included called on the government to ensure that embassies in foreign countries would collect ‘information about the situation of homosexuality [...] outside of the official government positions’.¹⁴² In *Homoseksualiteit in het Overheidsbeleid* thus, the COC argued that it was not enough to look at laws and regulations in place in order to be able to fully grasp ‘the situation of homosexuality’ in certain countries. This ties into the broader debate about the ‘right’ interpretation of the concept of persecution. The COC had continuously been advocating for a broad interpretation of the concept and did so in

¹⁴⁰ Walaardt, ‘Geruisloos Inwilligen’, 247-249.

¹⁴¹ Davidson, ‘Advocacy Beyond Identity’, 2.

¹⁴² ‘Amersfoortberaad: Door nota nieuw overheidsbeleid mogelijk’, *SEK* 4 (April 1983) 4. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A6gLk7> (22 May 2019).

their policy brief as well by stating that one had to look beyond the ‘official government positions’ to see if a country was liveable for a gay person. The *SEK* article went on to state that this collection of information would be ‘of importance for homosexual refugees, especially those from Eastern Europe, Latin America, and Islamic countries’, thereby making explicit which countries they deemed to be the worst for gay persons.¹⁴³ This enumeration furthermore is another example of the aforementioned narrative that presents Western Europe as the vanguard of gay emancipation in contrast to the ‘backward’ rest.

This narrative can also be found in the final appeal in the asylum case of the Chilean man. His lawyer presented a brief for the Administrative Jurisdiction Division of the Council of State on 2 June 1983. In this brief, he stated that the Netherlands was ‘somewhat Enlightened’ and therefore was ‘a global exception’ in the level of gay emancipation that had taken place in the country.¹⁴⁴ He thereby presented gay emancipation as an end result of the process of ‘Enlightenment’ that had taken place in the Netherlands from the eighteenth century onwards. As Wekker has argued, this kind of homonationalist argumentation has been very common in the Netherlands, presenting the country as a ‘free, emancipated, tolerant, a beacon of civilization’ where a ‘march of progress toward sexual liberation’ has taken place.¹⁴⁵ What has to be noted however, is that contemporary homonationalism focusses on the fact that this ‘sexual liberation’ has to be protected against foreign ‘backward’ influences, thereby linking pro-gay and anti-immigrant sentiments.¹⁴⁶ The lawyer of the Chilean man did not follow this part of the narrative. On the contrary, he presented the ‘somewhat Enlightened’ status of the Netherlands as a reason why this Chilean immigrant had to be allowed to stay. It would thus be a misrepresentation to say that this argumentation is an early example of homonationalism. It can be seen however, as laying an initial foundation for the homonationalist narrative that presents acceptance of homosexuality ‘as the litmus test for modernity’.¹⁴⁷

Further in his brief, the lawyer referred to the Council of State statement of August 1981. He stated that, considering the fact that the Polish case had been dismissed because the discriminatory measures were not deemed to present ‘severe enough limitations’ on the man’s livelihood, ‘it would suffice for the Council if there is a government that installs discriminatory

¹⁴³ Ibid.

¹⁴⁴ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Pleitnotities mr. R.B. Hartkamp, aan Raad van State afdeling Rechtspraak, 2 June 1983.

¹⁴⁵ Wekker, ‘Of Homo Nostalgia and (Post)Coloniality’, 108.

¹⁴⁶ Shield, ‘Introduction’, 4.

¹⁴⁷ Ibid., 111.

measures that [...] are considered to be a very serious limitation of an individual's livelihood'.¹⁴⁸ So, even though the case of the Polish man had been denied, the statement did provide a legal precedent that could be used. The lawyer of the Chilean man went on to try to show that his client's livelihood actually had been limited very seriously. He stated that homosexuality in Chile was seen as 'a denial of the morality that is enforced with guns' and therefore was criminalised. This criminalisation was being actively enforced. He believed this 'suppression, this not being able to be who you are' to be a 'very serious limitation' of his client's livelihood.¹⁴⁹ The lawyer actively tried to make clear how in this case the supposed threshold for 'genuine' persecution had indeed been reached. He went on to say that this 'does not mean that the Netherlands will be a refuge for all homophiles in Chile' because that was still dependent on 'the individual case'.¹⁵⁰ The Chilean man had based his asylum claim not only on his homosexuality but also on the fact that he and his father had been arrested because of their leftist political activities.¹⁵¹ According to his lawyer, this specific combination of factors made it that the man should be granted asylum; not 'just' on the basis of his sexual orientation. Following this argumentation, it would not create a legal precedent for 'all homophiles in Chile'. It can be assumed that the lawyer included this to ease any potential worries from the side of the Council of State and/or the State Secretary, that up to that point had actively avoided granting asylum to a person solely based on their sexual orientation and did not seem to want to set that precedent.

While attempting to ease these potential worries, the lawyer additionally included some more ground-breaking argumentation in his brief: 'You can swallow a political opinion, you can denounce a faith, you can keep an opinion to yourself, but you cannot hide your sexual orientation; you then hide your entire self.' He therefore to a certain extent regretted the fact that sexual orientation had been included in the asylum system as part of the particular social group category, since 'it would have been much better' if there had been 'a criterium that opened up the refugee status to people who are persecuted on the basis of their humanity itself,

¹⁴⁸ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Pleitnotities mr. R.B. Hartkamp, aan Raad van State afdeling Rechtspraak, 2 June 1983.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ IISH-IHLIA, Homo-vluchtelingen, Inv. No. Box 1 Folder 5 Dossiers: [name] 1982-1983.) [name] 1980-1981.) [name] 1979-1983.) [name] 1987) [name] 1979.) [name] 1981.), Brief aan Hoofd van de Directie Vreemdelingenzaken van het Ministerie van Justitie, van de contact-ambtenaar P. v.d. Jagt, Betreft: [name], 1979.

namely their orientation'.¹⁵² He presented one's sexual orientation as being a fundamental aspect of one's humanity that you cannot be required to hide. In the 2011 EU Qualification Directive that includes sexual orientation and gender identity as possible reasons for persecution, it is stated that one's sexual orientation is a 'crucial element of [one's] personality' and that it is a 'denial of a fundamental right' to ask people to hide or suppress it.¹⁵³ The lawyer was an early advocate. In the end, the Chilean man did manage to get a residence permit. He was interviewed for the Communist newspaper *De Waarheid* (The Truth) in October 1987, where he talked about the racism that refugees encountered in the Netherlands.¹⁵⁴ It is most likely that he had received asylum based on his claims of having been persecuted because of his political opinion and activities. Legal scholars in 1992 stated that no asylum on the basis of homosexuality had been granted in the Netherlands yet.¹⁵⁵

An increase in magazine involvement

Up to this point, the magazines aimed at a gay audience had hardly devoted attention to the issue of asylum for gay refugees. The few articles that were published have been analysed in the previous chapters, but there was no elaborate coverage. The coverage slightly increased in the following years. The subject had now apparently been brought into the public eye enough that it was seen as deserving some more media attention. *SEK* published an article in their June 1983 issue about the 'new rise of extreme right groups' in Dutch politics, investigating whether this rise was 'dangerous for homosexuals'. In the article, it is stated that the extreme right groups of the 1930s and '40s had been 'explicitly hostile towards homosexuality' and that it was therefore necessary to see how the extreme right from the '80s compared.¹⁵⁶ They interviewed, amongst others, Hans Janmaat, the leader of the Centrumpartij (Centre Party). The Centrumpartij was a nationalist, xenophobic, populist, and authoritarian party.¹⁵⁷ Janmaat had 'declared in January 1983' that he was 'against the idea of granting political asylum to gays who are oppressed in other countries'. He furthermore said in the interview that 'if that truly

¹⁵² Ibid., Pleitnotities mr. R.B. Hartkamp, aan Raad van State afdeling Rechtspraak, 2 June 1983.

¹⁵³ Jansen and Spijkerboer, *Fleeing Homophobia*, 33.

¹⁵⁴ 'Vluchtelingen signaleren toename van racisme', *De Waarheid*, 16-10-1987, 3. Accessed via *Delpher*, <https://resolver.kb.nl/resolve?urn=ddd:010472507:mpeg21:a0037> (22 May 2019).

¹⁵⁵ Kampman, 'Charter Flights Full of Homosexuals', 77.

¹⁵⁶ 'De tolerantie van Glimmerveen, Janmaat en Ego', *SEK* 6 (June 1983) 6. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A7a596> (24 May 2019).

¹⁵⁷ J. de Vetten, 'In de ban van goed en fout: De bestrijding van de Centrumpartij en de Centrumdemocraten (1980-1998)', *Doctoral thesis Leiden University* (2016) 39.

happens, the percentage of those people here would increase significantly. And that would make the resistance increase.’ He compared this to an earlier statement of his, that ‘the large number of foreigners in the Netherlands encourages discrimination’.¹⁵⁸ Janmaat apparently believed that if there were ‘too many’ of a certain group, either gay persons or foreigners, living in the Netherlands, ‘resistance’ and discrimination would automatically increase. He did not link nationalist and anti-immigrant sentiments with the supposed ‘Dutch value’ that is the acceptance of homosexuality, what is striking considering that contemporary homonationalism is predominantly used by populist right-wing politicians to legitimise their anti-immigrant standpoints.¹⁵⁹ Janmaat however, presented the possibility of more gay persons, of ‘those people’, coming to the Netherlands as something negative that would not be appreciated by the broader public. It took another twenty years before Dutch right-wing anti-immigrant politicians saw the acceptance of homosexuality as a national value that should be protected.

A few months later, *SEK* published a rather positive article about the attitude of the Dutch government to homosexual persons in general. The writer addressed the readers by stating that ‘you will know that the Netherlands is one of the few western countries (if not the only)’ that granted refugee status if someone is ‘persecuted on the grounds of sexual orientation or sexual preference’.¹⁶⁰ So, once again, the Netherlands is presented as being the sole global frontrunner with regard to opening up the asylum system to gay refugees. The writer furthermore stated that he ‘thought that it had occurred a few times’ that someone had been granted asylum because they were persecuted because of their sexual orientation.¹⁶¹ It is not clear where he got this idea from. There is no record from before or in 1983 of any person actually getting asylum for this reason. The writer went on to state that ‘if this is not the case [...], let it be the theory so that we do not have to build that anymore, which is very important in itself’.¹⁶² This is a more realistic representation of the consequences of the 1981 statement from the Council of State. It had provided a theoretical foundation for gay refugees to get asylum, but this did not mean that anybody had actually been successful in making use of it.

In the next year, *Gay Krant* and *SEK* published a number of articles about how other countries were dealing with the issue of ‘gaysylum’. In the July-August 1984 issue of *SEK*, they

¹⁵⁸ ‘De tolerantie van Glimmerveen, Janmaat en Ego’, *SEK* 6 (June 1983) 7. Accessed via *Archives of Sexuality & Gender*, <http://tinyurl.galegroup.com/tinyurl/A7a596> (24 May 2019).

¹⁵⁹ Puar, *Terrorist Assemblages*, 19-21.

¹⁶⁰ ‘Kijk, Nederland staat hier voor zijn principes’, *SEK* 12 (December 1983) 4. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7a6N7> (24 May 2019).

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

wrote that ‘the Austrian authorities have granted refugee status on the basis of homosexuality for the first time to a man from Iran’, whereby they ‘have created a precedent’. Further along the article, it is stated that ‘even though homosexual men are being executed, refugee status on the basis of homosexuality has never been granted to Iranians’. The concluding sentence additionally states that a homosexual Iranian man has fled to the Netherlands and is waiting for the verdict in his asylum case.¹⁶³ *Gay Krant* also devoted an article to the conclusion of this Austrian asylum case. They wrote that ‘even though gays who are prosecuted for sexual contact with minors repeatedly flee Austria’, the Austrian court had ‘granted political asylum to a homosexual refugee for the first time in its history’.¹⁶⁴ Firstly, it is striking that they started the article with a not so subtle judgement of the situation for gay men in Austria. Even though they are clearly pleased with the fact that a gay Iranian man has been granted asylum, they do not approve of other Austrian measures in place. Secondly, *Gay Krant* wrote that the man in question was granted ‘political asylum’, whereas *SEK* explicitly stated that the man was given asylum ‘on the basis of homosexuality’. The fact that the writers of these articles were not very precise and exact in their choice of wording in writing about this asylum case again shows that these magazines were not aware of the specifics of the parallel conversations on the subject. It additionally makes it impossible to be sure whether this court judgement actually created a legal precedent for refugees being granted asylum solely based on their sexual orientation. Further research into the specifics of the development of opening up the Austrian asylum system to gay refugees is required.

One month later, in September, *Gay Krant* wrote that a ‘governmental commission’ had been set up in Sweden that had recommended the government to ‘give asylum to homosexuals who are persecuted in their own country’. The commission explicitly recommended to ‘change the law’ so that sexual orientation would be included as a legitimate ground for asylum.¹⁶⁵ As presented in the first chapter of this thesis, Sweden had been in the process of coming up with a motion that would incorporate ‘homophilia as grounds for refugee status’ already in May 1980.¹⁶⁶ It can be assumed that the commission referenced in the *Gay Krant* article had been a result of this process. In October, *Gay Krant* published another article on the subject. ‘The

¹⁶³ ‘Oostenrijk: Vluchteling’, *SEK* 7 (July-August 1984) 11. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7a7q7> (24 May 2019).

¹⁶⁴ ‘Oostenrijk verleent asyl’, *Gay Krant* 8 (August 1984) 11. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7a8g0> (24 May 2019).

¹⁶⁵ ‘Zweden wil asiël geven’, *Gay Krant* 9 (September 1984) 11. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7a9G7> (24 May 2019).

¹⁶⁶ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Mr. Emde Boas in verb. Vergadering BuiZa, 13 May 1980.

Swedish parliament is researching the possibility of drastically broadening the legislation for granting political asylum to homosexual refugees'. This research was supposed to result in a bill that was 'supported by the most important political parties'.¹⁶⁷ Neither *Gay Krant* nor any other magazine published anything further about this development in Sweden. It was discussed in a parliamentary plenary debate in 1986 however, as is discussed further along this chapter.

At the same time as these articles discussing the international context were published, articles were written that show that the editors were not pleased with the developments taking place in the Netherlands. In April 1984, State Secretary Korte-van Hemel was interviewed in *SEK*. When asked if the Netherlands acknowledged gay persons as refugees, she replied that more needed to be taken into account than 'one's gay-ness'. One had to look at 'what the person had done in the country' and whether they were persecuted 'solely on the basis of their gay-ness'. And, if the latter was the case, 'would that have made it that you factually were in a flight situation?'¹⁶⁸ The last sentence specifically shows that Haars was sceptical of the urgency behind granting asylum to gay refugees. She implied that even if someone was persecuted based on their sexual orientation, this would not have automatically created a 'flight situation', thereby delegitimising the necessity of granting these people asylum. A few months later additionally, in September, *Gay Krant* wrote that the COC found the response of the government to the *Homoseksualiteit in het Overheidsbeleid* policy brief 'laughable' and that they were 'severely disappointed'. They had to 'wait nearly sixteen months for a response' that was 'only three pages' long. *Gay Krant* however, included that the government had actually gone along with a couple of the recommendations made in the policy brief. They, for example, promised to 'obtain information on discrimination and persecution of homosexuals abroad, specifically regarding asylum requests from homosexual refugees'.¹⁶⁹ So, even though the response left much to be desired, a promise had at least been made to actually start systematically researching the situation for gay persons in different countries.

SEK continued to report their dissatisfaction with the way gay refugees were treated in 1985. In August, *SEK* published an article that said that 'two Englishmen, who are persecuted in their own country for committing so-called unnatural fornication, have been deported from

¹⁶⁷ 'Zweden verruimt asielbeleid', *Gay Krant* 10 (October 1984) 22. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7aCe7> (24 May 2019).

¹⁶⁸ 'Korte-van Hemel: Overheid moet rechten homo's beschermen', *SEK* 4 (April 1984) 24. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7aD68> (24 May 2019).

¹⁶⁹ 'COC stelt voorwaarden voor verder overleg: Reactie regering op COC-nota uiterst mager en teleurstellend', *Gay Krant* 9 (September 1984) 25. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7aJj8> (24 May 2019).

the country'.¹⁷⁰ In England at that time, the age of consent for gay men was set at 21, whilst being 16 for other couples.¹⁷¹ Since one of the British men was over 21 and the other was 'underage', they had been accused of 'unnatural fornication'. They 'had heard before that the situation for homosexuals is better in the Netherlands' and had hoped that they 'would have a chance for asylum here'.¹⁷² Apparently, the continuous talk from Dutch representatives about how they were the frontrunners of this development had caught on abroad. The practical implementation however, again proved to be difficult. State Secretary Korte-van Hemel had denied their case since she claimed they first had to 'exhaust the legal options in Great-Britain and with the European Court'. The COC had tried to get members of parliament to ask questions about this case and stop the deportations, but they 'were not in the mood'.¹⁷³ In their next issue, *SEK* wrote that the two men had been given 'a mild punishment' by the British court and that they wanted to 'return to the Netherlands as soon as possible'. Furthermore, the article refers to the 'jurisprudence of the Council of State' that was supposed to have made it possible to claim asylum based on persecution because of sexual orientation.¹⁷⁴ It is unknown what happened with the two British men after this. No further articles or references to them could be found. This case does show how time after time the interpretations of the Council of State statement differed between the actors involved and how difficult it still was to actually get asylum on the basis of one's sexual orientation.

The theoretical foundation: *Nota Overheidsbeleid en Homoseksualiteit*

In October 1985 finally, two and a half years after the initial policy brief from the COC, the *Tweede Kamer* debated a letter drafted by the minister-president regarding a new Wet Gelijke Behandeling (Equal Treatment Act). In this debate, they came to the conclusion that it was necessary to create government policies 'with regard to homosexuality'.¹⁷⁵ In April 1986, the *Nota Overheidsbeleid en Homoseksualiteit* (Memorandum Government Policy and

¹⁷⁰ 'Twee Britse homo's uit ons land gezet', *SEK* 7 (August 1985) 19. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7aKT9> (24 May 2019).

¹⁷¹ Waaldijk, 62.

¹⁷² 'Twee Britse homo's uit ons land gezet', *SEK* 7 (August 1985) 19. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7aKT9> (24 May 2019).

¹⁷³ Ibid.

¹⁷⁴ 'Twee Engelsen: Asiel', *SEK* 8 (September 1985) 8. Accessed via *Archives of Gender & Sexuality*, <http://tinyurl.galegroup.com/tinyurl/A7aM3X> (24 May 2019).

¹⁷⁵ Kamerstuk Tweede Kamer 1985-1986 kamerstuknummer 19504 ondernummer 1. Accessed via *statengeneraaldigitaal.nl*, <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19851986%3A0007900> (24 May 2019).

Homosexuality) was presented. The *nota* dealt with, amongst others, discrimination, HIV/AIDS, adoption, education, and refugees. With regard to the latter, it is stated that ‘the Netherlands is, as far as known, the only country that brings persecution because of sexual orientation under the Refugee Convention of Geneva’. Furthermore, there is reference made to the meetings of the Council of Europe in 1980 and 1981, where ‘other countries’ had proven to be ‘very hesitant to take the same step’.¹⁷⁶ Once again, the Netherlands is presented as ‘daring’ to take the step that no-one else had ‘dared’. The fact that it had been presented as a ‘European standard’ in the Council of Europe in 1981 had apparently not made it to the Dutch national context. These statements additionally contradicted the reporting from *SEK* that stated that Austria had granted a gay Iranian man asylum based on his homosexuality in 1983 already. Further in the *nota*, the first official line of conduct with regard to granting asylum to persons persecuted on grounds of their sexual orientation is set out. It is made explicit that sexual orientation is included in the interpretation of ‘membership of a particular social group’. It was supposed to be seen as persecution if ‘acts by the government against the asylum seeker’ created a ‘violation of human rights’ that was ‘very severe’ and ‘discriminatory based on his sexual orientation’.¹⁷⁷

This *nota* is the first time that the Dutch government actually presented a clear line of conduct and explicitly defined what should be seen as persecutory in relation to governments’ treatment of gay persons. The *nota* can therefore be seen as the third addition to the theoretical foundation for asylum for gay refugees. What was made clear is that it was only to be seen as persecution if a government had been responsible for the discriminatory treatment. The influence of non-governmental actors, such as families or religious communities, or an ‘unacceptable social situation’¹⁷⁸ was not recognised. They had gone for an interpretation of the Refugee Convention that followed its initial conception, requiring the persecution being executed ‘by the government or by individuals whom the government is unable or unwilling to control’.¹⁷⁹ Additionally, discriminatory treatment in itself would not necessarily be deemed persecutory. This was only supposed to be the case if the discriminatory treatment actually was a ‘very severe’ violation of human rights. The question of what should specifically be classified as a ‘very severe’ violation was once again left open to interpretation. The line of conduct thus

¹⁷⁶ Kamerstuk Tweede Kamer 1985-1986 kamerstuknummer 19504 ondernummer 2, 25. Accessed via [statengeneraaldigitaal.nl](https://www.statengeneraaldigitaal.nl), <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19851986%3A0007901> (24 May 2019).

¹⁷⁷ *Ibid.*, 27.

¹⁷⁸ NA-IND, 2.09.5027, inv. no. 2658 Situatie Homosexuelen 1979-1983, Deel verslag hoorzitting COC, 14 January 1981.

¹⁷⁹ Luibhéid and Cantú, *Queer Migrations*, 31.

was made a bit more clear than it had been up to that point, but still many questions remained unanswered.

At the end of 1986, more than half a year after the presentation of the *Nota Overheidsbeleid en Homoseksualiteit*, a number of members of parliament asked questions about its actual implementation. In the plenary debate of 17 November, a member of the PPR stated that ‘seven asylum seekers have tried to invoke persecution on the basis of their sexual preference’. He then asked how it could be ‘rhymed with the *nota* that no positive decision has been made’.¹⁸⁰ Apparently, it was still as good as impossible for gay refugees to actually be recognised as such in the Dutch asylum system, even though the initial theoretical foundation for this had been laid more than five years before and had recently been expanded and clarified with the *nota*. He continued by asking if Dutch representatives in ‘international fora’ had actually been trying to ‘move other countries towards recognising persecution because of sexual orientation’.¹⁸¹ He apparently believed that it should be the responsibility of the Netherlands to export their progressive interpretation of the Refugee Convention to other countries. The Minister of Justice replied that Sweden was the only country of which it was known that they had ‘discussed the subject in parliament’. Apparently, they had come to the conclusion that ‘the criteria for admitting asylum seekers should not be extended with this criterium’.¹⁸² It can be assumed that these comments refer to the parliamentary commission that has been mentioned above. Not much had come from this commission and the attempts to come up with a motion for recognition of gay refugees apparently. The early stages of LGBTI-asylum in Sweden still need to be properly researched in order to be able to fully grasp the intricacies of these processes. The Minister completely glossed over the fact that Austria and Switzerland had also been dealing with this subject in 1980 already.

These last four years can best be characterised as a general feeling of dissatisfaction. The practical implementation of the theoretical foundation that had existed for a few years now, continued to be lacking. The third addition to this foundation, the *Nota Overheidsbeleid en Homoseksualiteit*, did not change this. It did set out the first official line of conduct and an attempt was made to conclude the discussions on how persecution should be defined, but much was still left open to interpretation.

¹⁸⁰ Handelingen Tweede Kamer OCV/UCV 1986-1987, 17 November 1986, 22-11. Accessed via [statengeneraaldigitaal.nl](https://www.statengeneraaldigitaal.nl), <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19861987%3A0000960> (24 May 2019).

¹⁸¹ Ibid.

¹⁸² Ibid., 22-16.

Conclusion

This thesis has set out to provide an answer to the following question: How did different actors involved in the issue of asylum for gay persons in the Netherlands acknowledge those fleeing persecution based on their sexual orientation as refugees between 1979 and 1986? The different actors involved were gay organisations, predominantly the COC; the Ministry of Justice and the IND; the Dutch parliament; and three magazines aimed at a gay audience. Parts of their archives and/or publications have been analysed for this thesis, in chronological order. This conclusion provides an answer to the main question. Attention is explicitly paid to whether the arguments used by the different actors changed over time or if they stayed the same. After providing the conclusions of the separate chapters, the analyses are brought together.

The first chapter concerns the years 1979 and 1980. The initial discussions about the issue of asylum for gay refugees show that there was a clear tension between the different actors involved, predominantly between State Secretary of Justice Haars on the one hand and the those in favour of asylum for gay refugees on the other. This can be seen in the first asylum case discussed, that of the Chilean man, where his lawyer believed that gay persons should be seen as members of a particular social group and that persecution based on someone's sexual orientation should thus be a 'genuine' reason to claim asylum. Haars did not deny the possibility that persecution on the basis of one's sexual orientation could be a 'genuine' reason for claiming asylum but did not believe that the Chilean man actually had suffered persecution. In her response to a letter drafted by Het Roze Front additionally, Haars doubled down on her restrictive interpretations of the concept of persecution. For her, prosecution did not equal persecution. What would, in fact, be seen as persecution however, was continuously left undefined.

In 1979, those in favour of expanding the asylum system to include gay refugee were not yet consistent in how they wanted them to be included specifically. The working group called on the government to include sexual orientation as a valid reason for flight but did not further specify this inclusion. The pamphlet of Het Roze Front presented the urgency behind the recognition of gay refugees as 'genuine', but also did not specify how this recognition should be fitted into the Refugee Convention system. This changed as time went on and the gay advocacy organisations became consistent in striving for inclusion of gay refugees in the 'particular social group' category of the Convention in 1980. This did not mean that all those

involved adopted this language. The articles from the gay magazines of 1980 show that they seemed to be unaware of the broader debates taking place.

The subject was discussed more precise in the *Tweede Kamer*, specifically in the debate about the parliamentary motion. Ria Beckers-de Bruijn was in favour of including gay persons in the conceptualisation of a particular social group. State Secretary Haars however, did not want to include them in the Refugee Convention and was only willing to consider individual cases and their eligibility for the B-status. Haars additionally repeated that she believed that prosecution of homosexuality should not automatically be seen as persecutory. She again left unanswered what actually would count as persecution. The same can be seen in the responses to the appeals in the asylum cases of the Chilean and the Polish man. The courts did not see prosecution as equalling persecution and a certain – undefined – threshold of the severity of the humanitarian reasons was not reached. Even though the Netherlands thus still had much left to figure out and had not actually granted asylum to anyone based on their sexual orientation, Dutch representatives did raise the subject in the UNHCR and the Council of Europe in 1980 and believed the country to be a global frontrunner in the process of including gay refugees in their asylum system.

In 1981 and 1982, as discussed in the second chapter, the main debates from the two years before continued: how persecution should be defined and whether sexual orientation should be seen as a particular social group. A new appeal in the asylum case of the Polish man was denied because an unspecified threshold of the severity of humanitarian reasons that apparently needed to be reached before the B-status could be granted, had not been reached. What was new, was that the court acknowledged that the man had, in fact, belonged to a particular group that had been targeted by the Polish government. This discriminatory treatment however, was not deemed to have been persecutory. Briefly after this court conclusion, the COC called on the government to move away from the strict interpretation of the Refugee Convention that required governmental involvement in order for something to be classified as persecution, but this was without success.

With regard to the European context, a clear shift took place between 1980 and 1981. Whereas the Netherlands had not expected any support from other European countries to recognise gay refugees as a ‘genuine’ refugee group in 1980, the Council of Europe presented this very idea as a European standard in 1981. The Dutch exceptionalism of 1980 had developed into an explicit connection of gay emancipation and Europe in its entirety. It is not clear what this connection was based on in reality since no proof has been found that anyone had actually

been granted asylum based on their sexual orientation at that point. In the Dutch national context additionally, governmental actors involved continued to use a narrative of Dutch exceptionalism that presented the country as being unique in their supposed acceptance of gay refugees.

A development took place in the Dutch context as well. The Council of State, the highest general administrative court of the country, declared in August 1981 that sexual orientation could be classified as membership of a particular social group. The question of whether sexual orientation should be seen as a particular social group thus was answered. The other debate, about what should be seen as persecution, was still to be concluded. The Council of State declared that in the case of the Polish man, an assumed yet undefined threshold for 'genuine' persecution had not been reached. This immediately shows the tension between the theoretical foundation for recognition of gay refugees as 'genuine' on the one hand, and the lack of actual practical implementation on the other. Those in favour of asylum for gay refugees called on the government to create a clear line of conduct, but this would take another four years. This implementation thus remained to be highly dependent on the State Secretary of Justice. The two that served in 1981 and 1982 continued the restrictive argumentation of State Secretary Haars from the years before: in none of the asylum cases of gay refugees had the appropriate level of 'genuine' persecution been reached.

The third chapter lastly, analyses the years 1983 to 1986. With the Council of State statement from 1981, the working group had reached their main aim and the collaboration with the political parties decreased from 1982 onwards. They were last active in 1983. At the same time, the general COC intensified and professionalised their collaboration with the government. The policy brief *Homoseksualiteit in het Overheidsbeleid* from 1983 was the first official call on the government to promote the public acceptance of gay persons, including an emphasis of the importance of collecting information about the situation for gay persons abroad to properly assess the validity of asylum claims.

In the same year, the Chilean man was granted asylum. This did not create any legal precedent for asylum purely based on one's sexual orientation however, since his lawyer had emphasised that his client should be granted asylum based on the specific and individual combination of elements that had influenced his decision to flee. His lawyer furthermore presented the Netherlands as an Enlightened country standing at the forefront of global gay emancipation; the same idea of Dutch exceptionalism as mentioned above. What was more ground-breaking, was his argumentation that sexual orientation was a fundamental aspect of

one's humanity that you cannot be required to hide. It took until 2011 before this recognition made it into official EU law.

After the subject of asylum for gay refugees had been discussed by the other actors involved since 1979, the magazines aimed at a gay audience only started to devote a bit more attention to it in 1983 and the years after. They amongst others wrote about how other European countries were dealing with this issue, writing about a gay Iranian man that had been granted asylum in Austria and about a governmental commission set up in Sweden that was dealing with the subject. *Gay Krant* and *SEK* additionally published articles that showed that the editors were not pleased with the developments taking place in the Netherlands. The practical implementation of asylum for gay refugees continued to be lacking.

The government presented the *Nota Overheidsbeleid en Homoseksualiteit* in April 1986, thereby creating the first line of conduct of how to deal with the issue of asylum for gay refugees. They presented the Netherlands as being the first to have 'dared' to take the step of recognising this refugee group, thereby ignoring the fact that the Council of Europe had presented it as a European standard five years before. The *nota* stated that sexual orientation was understood as a particular social group and that persecution was supposed to entail governmental involvement in a very severe discriminatory violation of one's human rights. This line of conduct thus still left much open to interpretation as the supposed threshold of the severity of this violation was not defined. The parliamentary debate from November 1986 shows that even with this expansion of the theoretical foundation, it continued to be practically impossible for gay refugees to actually be granted asylum.

A number of overarching concluding statements can be made at the end of this thesis. Firstly, the themes found by McGhee and Millbank as set out in the introduction were: how 'membership of a particular social group' was being defined and whether this led to the in- or exclusion of gay refugees, how this was connected to a discussion about the 'genuineness' of certain refugees, and how this discussion was being related to the Refugee Convention and international human rights law. As had been the case in the UK courts in the 1990s, the actors studied here who were in favour of including gay refugees in the Refugee Convention system, saw the social group category as their 'way in'. Some references were made to political asylum, but these form a small minority. Those who did not want to include gay refugees in the system, but at the same time could not deny that there in fact were gay persons who feared for their lives in their countries of origin, favoured granting asylum on a case-by-case basis to specific individuals based on humanitarian reasons. This tension is strongly related to the discussions

about the ‘genuineness’ of each refugee. The working group for example, saw each of their clients as a ‘genuine’ refugee fearing persecution in their country of origin. They were in favour of including gay refugees in the Refugee Convention system to make it easier for them to be recognised. The courts, on the other hand, proved difficult to be convinced of the ‘genuineness’ of these refugees. The discrimination and/or prosecution and/or persecution suffered was continuously deemed not ‘severe’ enough, thereby making their asylum claims not ‘genuine’ and dismissing the urgency of including them in the asylum system. The Refugee Convention thus was often mentioned and provided the context wherein these discussions could take place. Any further influence of international human rights law has not been found.

Secondly, this research has shown that the parliamentary motion of 1980 and the Council of State statement of 1981 had little result in practice. They provided a theoretical foundation, but their actual impact can hardly be understated. Attempts were made by lawyers and by a number of members of parliament to use the motion and/or the statement of the Council to change the final verdict of certain asylum cases, but these proved to be futile. The courts and State Secretaries addressed kept dismissing the appeals and did not see the motion nor the Council’s statement as a legal precedent that would require them to actually grant asylum to gay refugees. The lack of influence of the motion and the Council statement can secondly be seen in the publications of *Gay Krant*, *Homologie*, and *SEK*. First of all, there were very few articles published in these magazines that mentioned gay refugees and even fewer that actually discussed the subject in more detail. Furthermore, in the articles where the subject was in fact dealt with, no specific clear terminology was used consistently. Apparently, the editors of these magazines were unaware of the motion, the Council of State statement, and the broader debates that had been taking place. They were having their own parallel conversation. This is further exemplified by the fact that they published a number of articles on asylum cases of gay refugees in other countries and that this was not referenced by any other actor involved.

Thirdly, it can be concluded that each asylum case discussed in this thesis was rejected on the basis of either very similar or identical arguments: prosecution was not seen as equalling persecution, and/or discriminatory legislation was not deemed to be persecutory, and/or the supposed violation of someone’s human rights was not ‘severe’ enough to require refugee status, or a combination of the three. These arguments were used throughout the time period studied and no development over time has been found. Each court statement and each addition to the theoretical foundation left the question of what should specifically be classified as persecution unanswered. The Dutch government and the courts proved to be very wary of creating a legal precedent for a refugee to be acknowledged on the basis of their sexual

orientation, arguably because this would create the opportunity for more individuals to try and achieve the same. It would therefore be interesting to see if the same arguments were used for other refugee groups in the same time period. Further research could investigate if the Dutch State was wary of creating any legal precedent when it came to specific refugee groups, or if gay refugees were treated differently than others. Even though those involved proved not to be very enthusiastic about granting asylum to gay refugees in practice, no explicit derogatory statements were made. A notable exception is the interview with the leader of the extreme-right Centrumpartij in *SEK* in 1983, who presented the possibility of an increase in the number of gay persons in the Netherlands as something negative that would lead to resistance of the broader public. This is a striking exception considering the fact that from the early 2000s onwards, extreme-right political parties have been enthusiastic advocates of the supposed Dutch value of gay emancipation that requires 'protection' from foreign 'backward' influences.

The fourth point that came back throughout this thesis is a clear tension between theory and practice. Between 1979 and 1986, there were many instances where reference was made to the idea that the Netherlands was ahead of the rest of Europe and/or the rest of the world when it came to gay emancipation. They did not expect any other country to be 'as far as they were' with regard to including gay persons in the refugee status. For this narrative, it did not matter that exactly this was presented as a shared European standard in a meeting of the Council of Europe in 1981. Further research is required to see whether other European countries followed similar trajectories and to see if the Netherlands actually was ahead of the rest. Neither did it matter that the Netherlands was far from being an actual 'safe haven' for gay refugees in practice. In the years studied, there is no evidence found that even one asylum seeker was granted refugee status based on their sexual orientation. No legal precedent had been created. The *Nota Overheidsbeleid en Homoseksualiteit* created a line of conduct, but still left much open to interpretation. This room for interpretation additionally is a theme that has come back multiple times in this research. The COC and the lawyers of the asylum seekers interpreted the Refugee Convention, the parliamentary motion, and the Council of State statement in the same way, but these interpretations were far removed from those of the State Secretaries and the courts. It, of course, makes sense that each actor made use of that interpretation of the documents that was the best for them and that represented their interests best, and this is certainly not limited to the subject matter of this thesis. What this thesis does show however, how these different interpretations made actual progress nearly impossible.

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