Chapter 6
Domination, Asylum, and Sexual Orientation

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ABSTRACT

In this chapter, the authors determine that in the society of control, denizens who exercise their right to seek asylum on ground pertaining to sexual orientation are forced to prove their homosexuality through various humiliating ways during the asylum-granting process. Do public authorities aim to reject the criminalization of sexual orientation, eventually? Do they have the possibility to abolish the detention centres in the name of human dignity, human life and liberty, rights established by national, international, and European laws?

INTRODUCTION

In May 2014, two boats crammed with immigrants were captured near the island of Samos leaving at least 22 dead people (Athens Associated Press, 2014). In January 2014, just off the island of Farmakonisi in the eastern Aegean Sea, the sinking of the ship was only one of the countless tragic events that triggered the outburst of rage around the controversial policy used to stop immigrants from entering the European Union (Smith, 2014). According to the survivors, having identified the boat carrying the immigrants, the Greek coastguards tried to haul the boat back towards Turkey, but it accelerated rapidly causing the immigrants in the boat to sway (Price, 2014). This rescue-method was essentially a “push-back operation”, which resulted in the death of several immigrants.

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A few months earlier, in October 2013, another tragedy had happened near the coast of the Italian island of Lampedusa resulting in the death of over 360 people (Price, 2014). Greece, Lampedusa, Malta and Spain constitute the most prevalent crossing point for immigrants entering the European Union, while simultaneously being a major transit point for immigrants who want to reach northern Europe. This means that traffickers have already established well the pathways of transition to Europe, gaining large amount of money. Hundreds of immigrants who managed to survive have been taken to reception centers and most of them have the right to be asylum-seekers.

According to the United Nations Convention signed in Geneva on July 28, 1951 and considering Art. 1A(2) as completed by the 1967 Protocol “a refugee is any person who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it” (Lambert, 1995, p. 2). The term “refugee” was broadened in 1969 by the Organization of African Unity Convention, and in 1984 by the Cartagena Declaration, therein also referring to victims of conflict and violence who have been forced to cross the border (Fitzpatrick, 2002, p. 5). However, so long as they do not cross internationally recognized state borders, IDPs (internally displaced persons) remain under the protection of their country of origin and thus are not protected by refugee law (UNHCR, 2014).

ASYLUM AND SEXUAL ORIENTATION

According to the introduction of the Yogyakarta principles “sexual orientation is defined as each person’s capacity for profound emotional, affectionate and sexual attraction to, and intimate and sexual relations with individuals of a different gender or the same gender or more than one gender. Gender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech, and mannerisms” (The Yogyakarta Principles, 2007). These principles aim to draw our attention to the protection of rights and to extinguish transphobia,
Refugee Claims Based on Persecution Due to Sexual Orientation before the Court of Justice of the European Union

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