

DENISE VENTURI, Reflections on empirical research with LGBTI refugees - a legal scholar's perspective

This paper seeks to reflect on the challenges related to conducting research with vulnerable persons. Specifically, it focuses on the case of lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers and refugees, drawing on preliminary findings of ongoing fieldwork in the United Kingdom (UK) and Italy. After an outline of the research aims and methodology, this paper explores the challenges related to the researcher's positioning vis-à-vis the fieldwork participants. The fieldwork underpinning this piece began in 2016 and is ongoing, and as such, this paper veers away from definite conclusions, rather advocating for the development of qualitative methodology in legal research.

Introduction

The current scholarship on LGBTI refugees is fragmented but growing, having received contributions from several disciplines, ranging from legal studies (Jansen and Spijkerboer 2011; Ferreira 2015), political science, sociology (Manocchi 2011), anthropology (Murray 2014) and social work studies (Alessi and Khan forthcoming). However, the great bulk of the literature on this topic deals with the issues related to refugee status determination (RSD) (Kapron and LaViolette 2014), in particular, how to assess these types of claims. RSD is a judicial or quasi-judicial process; therefore, the analysis of pertinent legislation and case law constitutes the starting point of the examination. However, law and legal methodology by themselves do not suffice. Arguably, the complexity and the multifaceted nature of such queries cannot be answered only by referring to legal instruments; there must be more.

On the basis of this premise, the present paper aims to shed light on the challenges related to conducting research with LGBTI asylum seekers and refugees. More specifically, it draws on questions which have arisen from the author's ongoing fieldwork in the UK and Italy. The paper is divided in two parts: first, it presents the aims and the methodology of the research and second it focuses on the problems related to the positioning of the researcher, providing also some observations on conducting empirical legal research.

Aims and methodology of the research

As mentioned, RSD has proven to be, so far, the area of most interest for the scientific community regarding the study of LGBTI refugees. Issues of evidence, credibility and the use of stereotypes in RSD have long been debated among scholars and practitioners (Jansen and Spijkerboer 2011).

On this account, the present research is a doctoral project aimed at understanding how human rights law could provide arguments to improve the assessment of asylum claims based on sexual orientation and/or gender identity (SOGI) in Europe and particularly, in the context of the common European asylum system. Notably, the research looks at how the concept of vulnerability could be used in the RSD process and in legal reasoning, in the context of appellate procedures against the rejection of an asylum application. The research combines legislation and case law analysis with qualitative methodology, specifically interviews and participant observations.¹

¹ Participant observations are not discussed in this paper.

The interviews informing this research have been conducted with both asylum seekers (individuals who have applied for international protection and are still in the process of obtaining same) and refugees (those who have been formally recognised as refugees).² Participants were reached through an adjusted version of the snowball sampling technique. This author contacted Non-Governmental Organisation (NGOs) and associations devoted to LGBTI refugees, which, in turn, referred to individuals who were willing to be interviewed. The actual participants were randomly selected among those available. Despite its shortcomings, the snowball sampling technique proves to be effective with regard to hidden and vulnerable population, where issues of trust and access may emerge (Atkinson and Flint 2001). So far, it has been possible to gather only participants self-identifying as lesbian, gay, bisexual and transgender but not intersex. Currently, 19 interviews have been conducted in the UK and 2 in Italy.³

Locating the researcher

'One question, if I may. Please feel free to ignore it if you feel uncomfortable. Are you a lesbian or a straight woman?' (Participant I, 'personal communication', May 2016).⁴

This is a text message that one of the UK interviewees sent me after I interviewed her. Before embarking upon this fieldwork, my decision had been not to reveal my sexual orientation, as I did not want to exercise any undue influence on the participants. In other words, I (perhaps naively) wanted the individuals to take part in the interviews not merely because I was being considered close to them for my sexual orientation or gender identity. Rather, I wanted to trigger their genuine interest in narrating their stories of forced migration. While the question of my sexual orientation was expected, it was not raised until I received the aforementioned text message, which was sent after ten interviews had been conducted. I replied stating I was a straight woman, which then led the participant to ask why I decided to engage with LGBTI people if I was not a part of the community myself. On this account, two aspects will be discussed: my role as an outsider researcher and, at the same time, as a 'human rights lawyer'.

Scholars have long debated about the inside versus the outside researcher, especially regarding LGBTI individuals (Bettinger 2010). At first, the advantages of being an inside researcher – namely being non-heterosexual and non-cisgender – may seem immediate, for instance in terms of access to population. Being an inside researcher can create trust and therefore facilitate initial contacts. This can stimulate 'chain referrals' (Atkinson and Flint 2001) and thus help reach hidden and vulnerable subjects.

Nevertheless, the reality of LGBTI refugees is not limited to their SOGI, but it is multi-layered: it involves elements such as ethnicity, cultural and educational background, as well as experiences and expectations in relation to forced migration. During fieldwork, I found that the participants were not much interested in my sexual orientation. Conversely, they were driven by

² Participants were required to have already undergone at least the first stage of the asylum process (i.e. the interview with the asylum authority).

³ More interviews are going to take place in Italy. Another set of interview will instead take place in Poland. These numbers only consider interviews with asylum seekers and refugees, but other interviews were conducted with members of NGOs, legal advisors and a judge.

⁴ The names of the interviewees have been omitted due to privacy concerns. Each participant has been assigned a code: a letter of the alphabet for the UK participants, a number for those in Italy.

the willingness to understand how I would have portrayed them and their stories. The overwhelming majority of the interviewees referred that they took part in the interview because they wanted to raise awareness of the situation of LGBTI refugees, while one participant expressly stated that, since I was studying human rights, he was confident I could make a difference with my research.

This argument leads to the second aspect mentioned above: my position as a ‘human rights lawyer’. I include this expression within quotation marks because that is how I believe I was understood and perceived by the participants. Before the interview, I inform participants that one of the purposes of the research is to analyse RSD from a human rights point of view, in order to understand how asylum seekers’ rights could be fostered. Considering the attitudes and the responses I received, this is what provided the link and enabled a fruitful participation, despite not being an insider researcher in the sense explained before. More specifically, given my position, I was considered as someone who could bring to the ‘outside’ their claims and needs for human rights’ advancement.

Thus, even though issues remain regarding accessing an in-depth understanding regarding the thoughts and experiences of research subjects, it has been possible to find ways to build trust and meaningful engagement.

The qualitative side of legal research

For the purposes of the present project, empirical legal research – defined by Burton (2013: 55) as including ‘the study of law, legal processes and legal phenomena using social research methods, such as interviews, observations or questionnaires’ – has been deemed necessary in the light of the aforementioned research questions. In fact, limiting the research to case law and legislation analysis would have prevented the author from having a comprehensive understanding of the issues related to status determination. On this account, the use of interviews has been motivated by the need to explore aspects that may not explicitly emerge from the case law; this is the case, in particular, of issues related to the burden of proof, credibility and the correct implementation of the low threshold of standard of proof (UNHCR 1998). Notably, regarding credibility, it has been considered necessary to analyse the position and the arguments of the applicants *vis-à-vis* the asylum process. Most importantly, qualitative fieldwork has served to witness how the law in action differs from the law on the books (Clune 2013) and therefore to better identify gaps and inconsistencies that can be detrimental to the asylum seeker’s human rights.

Conclusion

Within the legal discipline, interviewing techniques are generally unfamiliar (Burton 2013); their use in legal scholarship, although increasing, is still not full-fledged. Nevertheless, the use of empirical methodology proves to be relevant in order to provide a full picture of the topic, especially when certain issues risk being overshadowed within the confines of desk research. The findings of the interviews are useful in the legal context as they can actually be transposed into legal arguments and enrich legal analysis.

With specific regard to LGBTI persons, it should not be thought that only non-heterosexual researchers are necessarily better positioned; this would in fact further accentuate differences and

divisions (see Bettinger 2010). On the contrary, it is necessary for researchers to reflect on their perspective and positioning, by analysing their hidden biases and being open-minded. Such attitude allows to build bridges between the participants and the researcher and to mutually recognise their common humanity.

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