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Buhari, J.L.J.; Shield, A.D.J.; Kuipers, L.; Schrover, M.L.J.C.

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Sexuality and Asylum: Progress and Ambivalence in the Netherlands, 1979–1986

Jamel Buhari

History Department, Leiden University, Leiden, Netherlands

j.l.j.buhari@hum.leidenuniv.nl

Andrew Shield

History Department, Leiden University, Leiden, Netherlands

a.d.j.shield@hum.leidenuniv.nl

Laurian Kuipers

GMD graduate, History Department, Leiden University, Leiden, Netherlands

lauriankuipers@gmail.com

Marlou Schrover

History Department, Leiden University, Leiden, Netherlands

m.l.j.c.schrover@hum.leidenuniv.nl

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Abstract

The Netherlands was the first country in the world to offer refugee status to people persecuted on the basis of their sexual orientation. In this article we show that Dutch conversations on asylum on the basis of sexual orientation, while ground-breaking on paper, had little practical effect. We analyse three key achievements in the Dutch history of LGBTQI+ asylum: a 1980 parliamentary motion, a 1981 Council of State ruling, and a 1986 policy memorandum. All of these laid the foundation for refugees to receive asylum based on the grounds of their sexual orientation or gender identity. We argue that vagueness, which was part of the discussions on these three achievements, explains why the policy change on paper had so little effect in practice. Our sources indicate that vagueness was at least in part a deliberate choice by policy makers.

Keywords

asylum – LGBTQI+ – vagueness – Netherlands – gay rights

Introduction

The Netherlands is a country of many firsts when it comes to LGBTQI+ rights legislation. For instance, in 1974, the Netherlands was the first country to no longer ban gays from the army. In 1993, it was the first country to legislate non-discrimination in the labour market,¹ and, in 2001, it was the first country to legalise marriage between same-sex partners. In 1987, Amsterdam had the world's first monument for homosexuals persecuted during the Second World War; in 1998 Amsterdam was the first European city to host the Gay Games; in 2016, it had Europe's first AIDS memorial.² Also, in 1981, the Netherlands was the first country to recognise persecution because of sexual orientation as grounds for refugee status: the focus of this article.³ Previous research has addressed how Dutch practices related to LGBTQI+ migrants changed in the decades after the Second World War.⁴ In this article, we zoom in on the asylum system in the 1980s, and highlight the gap between progressive legislation and practical outcomes.⁵

In 1990, *Het Vrije Volk* (a social-democratic newspaper affiliated with the Dutch Labour Party, the PvdA) asserted that homosexuality was barely

- 1 Joke Swiebel, 'De Algemene Wet Gelijke Behandeling als mijlpaal in de geschiedenis van de Nederlandse homo-emancipatie', *Beleid en Maatschappij* 47:3 (2020) 290–310, 290–291.
- 2 'COC-bezoek koning "van Uganda tot Appingedam gevolgd"', *NOS Nieuws*, 22 November 2016, <https://nos.nl/artikel/2144542-coc-bezoek-koning-van-uganda-tot-appingedam-gevolgd> (11 July 2022); 'COC-bezoek koning is belangrijk in tijden van toenemende agressie', *NOS Nieuws*, 22 November 2016, <https://nos.nl/artikel/2144467-coc-bezoek-koning-is-belangrijk-in-tijden-van-toenemende-agressie> (11 July 2022).
- 3 Sabine Jansen, 'Introduction: fleeing homophobia. Asylum claims related to sexual orientation and gender identity in Europe', in: Thomas Spijkerboer (ed.), *Fleeing homophobia: Sexual orientation, gender identity and asylum* (Abingdon 2013) 1–31, 1; Sabine Jansen and Thomas Spijkerboer, *Fleeing homophobia: Asylum claims related to sexual orientation and gender identity in Europe* (Amsterdam 2011) 19; see also the various articles on homosexuality and refugee status on the website. <https://www.vluchtelingenwerk.nl/nl> (25 August 2025).
- 4 Marlou Schrover and Frerik Kampman, "Charter flights full of homosexuals". The changing rights of homosexual immigrants in The Netherlands, 1945–1992', *Tijdschrift voor Sociale en Economische Geschiedenis* (from now *TSEG*) 16:3/4 (2020) 5–45.
- 5 Laurian Kuipers, '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 (Leiden 2019) MA Thesis Leiden University.

acknowledged as grounds for asylum in practice, although legislation had officially provided the possibility to claim homosexuality as grounds for asylum for almost ten years.⁶ The COC (the main Dutch LGBTQI+ rights organisation) approached 250 lawyers who dealt with refugee cases: they reported 38 cases in which homosexuality was central to the refugee's claim, yet there were *no* cases in which refugee status *had been granted* due to sexual orientation.⁷ Three men who noted persecution related to same-sex desire *did* receive refugee status, but based on other persecutions mentioned in their claim (e.g. as political dissidents).⁸ It is highly surprising that so few requests were granted.⁹ Also, in other countries where it became possible to apply, the number of LGBTQI+ asylum applications granted seems low.¹⁰ Official data is lacking, as EU member states do not isolate LGBTQI+ people in statistical data about asylum.¹¹ On paper, the Netherlands was a world leader in the equal treatment of sexual minorities, but in practice, progressive legislation was not translated into access to rights and protection.

Terminology to describe diversity in sexual orientation and gender identity has changed over time. Although currently dominant discourses

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- 6 'Homoseksualiteit nauwelijks erkend als grond voor asiel', *Het Vrije Volk* (8 May 1990) 6; 'Homofilie vaak niet erkend als reden asiel', *Het Parool* (8 May 1990) 13; 'Homoseksuele asielzoekers', *NRC* (7 May 1990) 3.
 - 7 'Homoseksualiteit nauwelijks erkend als grond voor asiel', *Het Vrije Volk* (8 May 1990) 6.
 - 8 "Altijd secuur onderzoek rond asiel homoseksuelen", *Nederlands Dagblad* (8 May 1990) 3; M. Bos, R. Pot and E. Willems, 'Grensverlegging of grensversperring? Vreemdelingenrecht en homoSEKsualiteit', in: M. Moerings and A. Mattijsen (eds), *HomoSEKsualiteit en recht* (Utrecht 1992) 163–184, 177. In protest to the apparent lack of serious consideration given to queer asylum seekers, the COC threatened to make the Netherlands' official policies widely known throughout the world; see 'Kosto wil zorgvuldige behandeling van asielaanvragen homo's', *Trouw* (8 May 1990) 9. The COC implied that by doing so, there would be a sharp increase in the number of applications for asylum, but this did not happen.
 - 9 Thomas Spijkerboer, 'Uit de kast, maar ook uit de brand? Lesbische, homoSEKsuele, biSEKsuele en transgender asielzoekers in Nederland', *Ars Aequi* (2016) 668–672.
 - 10 J. Millbank, 'A preoccupation with perversion: the British response to refugee claims on the basis of sexual orientation, 1989–2003', *Feminist Legal Studies* 16:2 (2008) 141–167; P. Heller, 'Challenges facing LGBT asylum-seekers: the role of social work in correcting oppressive immigration processes', *Journal of Gay and Lesbian Social Services* 21:2–3 (2009) 294–308; E. Fassin and M. Salcedo, 'Becoming gay? Immigration policies and the truth of sexual identity', *Archives of Sexual Behavior* 44:5 (2015) 1117–1125; Eithne Luibhéid and Lionel Cantú Jr. (eds), *Queer migrations: sexuality, US citizenship, and border crossings* (Minneapolis 2005); Deniz Akin, 'Queer asylum seekers: translating sexuality in Norway', *Journal of Ethnic and Migration Studies* 43:3 (2017) 458–474; D. McGhee, 'Persecution and social group status: homosexual refugees in the 1990s', *Journal of Refugee Studies* 14:1 (2001) 20–42.
 - 11 Jansen and Spijkerboer, *Fleeing homophobia*, 15; Søren Laursen and Mary Lisa Jayaseelan, *Disturbing knowledge: decisions from asylum cases as documentation of persecution of LGBT persons* (Copenhagen 2009) 5.

speak of sexuality as being fluid, sexual categorisation remains rigid within a legal context. Decision makers must judge the credibility of the claimants' narratives, yet they are biased by Western understandings of LGBTQI+ identities (e.g. about shame).¹² We employ both the terminology of our sources (e.g. 'homosexuals') and anachronistic terms more commonly used today (e.g. 'queer'), but we are aware that they do not reflect the diversity, fluidity and complexity of human sexual identity and gender expression.

Theory

In Dutch policies regarding homosexual immigrants, changes occurred over a long period of time. Changes – discussed below – were revolutionary in nature, but not in speed. The most striking element of the policy change was the casualness of the decision-making process, and the length of time that lapsed before the media, lawyers and LGBTQI+ rights organisations followed up on what were in essence ground-breaking decisions.¹³ When it comes to the right to refugee status – discussed in this article – developments were different. There was not so much a time-lag between when discussions occurred and when organisations and others responded, but rather a gap between policies on paper and policies in practice.

We use the policy implementation gap theory to explain the debates and practices related to refugee rights for homosexual immigrants.¹⁴ The policy implementation gap theory refers to the disparity between policy on paper and policies in practice. This gap theory explains the difference by pointing towards the influence of legal rights groups, which makes it difficult for authorities to implement policies.¹⁵ Pressure groups, political parties and

12 Pamela Heller, 'Challenges facing LGBT asylum seekers: the role of social work in correcting oppressive immigration processes', *Journal of Gay and Lesbian Social Services* 21:2–3 (2009) 294–308; Thomas Spijkerboer, 'Sexual identity, normativity and asylum', in: Thomas Spijkerboer (ed.), *Fleeing Homophobia: Sexual orientation, gender identity and asylum* (London 2013) 217–238, 223.

13 Schrover and Kampman, "Charter flights full of homosexuals", 5–45. See also S. Bonjour, *Grens en gezin: Beleidsvorming inzake gezinsemigratie in Nederland, 1955–2005* (Maastricht 2009); S. van Walsum, G. Jones and S. Legène, 'Belonging and membership. Postcolonial legacies of colonial family law in Dutch immigration policies', in: M. Schrover and D. Moloney (eds), *Gender, migration and categorisation: making distinctions between migrants in Western countries, 1945–2010* (Amsterdam 2013) 149–173.

14 Bob Hudson, David Hunter and Stephen Peckham, 'Policy failure and the policy-implementation gap: can policy support programs help?', *Policy Design and Practice* 2:1 (2019) 1–14.

15 W. Cornelius, T. Tsuda, P. Martin and J. Hollifield (eds), *Controlling immigration. A global perspective* (Stanford 2004); Philipp Lutz, 'Reassessing the gap-hypothesis: tough talk and

judges restrict the possibilities for government officials to manoeuvre, according to the literature. This explanation from the literature is not relevant for our topic; pressure groups, journalists and judges did not push against implementation, but rather for it. The gap theory also mentions that national authorities may not have the means and tools to implement policies, and local authorities may be reluctant to do so. Implementors may work against the implementation of policies because they may not have sufficient money, time, skills, people or willingness to implement policies. In our case, those implementing policies were less important than the policy makers themselves, who seemed reluctant to urge for the implementation of policies, as we will show below. Dutch historian Tycho Walaardt showed that the vagueness of policies on paper created possibilities to solve complicated or contested issues in practice.¹⁶ According to him, the gap between policies on paper and policies in practice should not be regarded as a policy failure, but rather as leeway that offered implementors room to manoeuvre and possibilities for creative solutions in practice. According to the paradox of law making, vague rules and open concepts leave discretionary room to those who have to implement rules.¹⁷ In this article we do look at vagueness, but – as we will show – in this case the vagueness did not create room for creative solutions or room to manoeuvre for those implementing policies, but rather led to a lack of urgency in implementing policies by the policy makers, despite the formal acceptance of policy changes.

Review of the Literature

In the 1980s, authors started to pay attention to homosexuality in the Netherlands in the seventeenth and eighteenth centuries, and the criminalisation at that time of men engaging in sexual relations with other men.¹⁸ In the 1980s, scholars broke with earlier academic research, dating back

weak action in migration policy?', *Party Politics* 27:1 (2021) 174–186; P.M. Christiansen and M.B. Klitgaard, 'Behind the veil of vagueness: success and failure in institutional reforms', *Journal of Public Policy* 30:2 (2010) 183–200.

16 Tycho Walaardt, *Geruisloos inwilligen: Argumentatie en speelruimte in de Nederlandse asielpprocedure, 1945–1994* (Hilversum 2012).

17 J. Prottas, *People processing. The street-level bureaucrat in public service bureaucracies* (Lexington 1979); D.J. Smith, D. and J. Gray, *Police and people in London*, vol. 4: *The police in action* (London 1983).

18 T. van der Meer, *Dewesenlijke sondevans sodomie en andere vuyligheden. Sodomietenvervolgingen in Amsterdam 1730–1811* (Amsterdam 1984); Mattias Duyves, Gert Hekma and Paula Koelemij, *Onder mannen, onder vrouwen: studies van homosociale emancipatie* (Amsterdam 1984); D.J. Noordam, 'Sodomy in the Dutch Republic, 1600–1725', *Journal of Homosexuality* 16 (1988)

to the late nineteenth century, which was dominated by medical perspectives on this topic.¹⁹ The legacy of the medicalisation of non-heterosexual or gender non-conforming identities are still visible in modern day asylum cases. Psychiatrists, psychologists and sexologists were asked to provide proof for the credibility of asylum claims related to sexual orientation or gender identity. This still leads to controversial and unethical practices such as phallometry (i.e. measuring a claimants' physical reactions to pornographic material).²⁰

Medical perspectives were part of the *fin-de-siècle* European perception of sexuality.²¹ These European ideas were transferred to the colonised world, which also provided a refuge for European men seeking same-sex relationships. Racialised ideas about sexuality, especially regarding the colonised other, spilled over from the colonial period into the current era, and have an impact on today's assessment of asylum claims of people coming from the former colonies and by extension to other 'exoticised' parts of the world.²²

Researchers pay attention to the challenges faced by asylum seekers, who try to base their claims on sexuality, and are expected to share intimate details about their sexuality or gender identity, and over-emphasise traits, activities or characteristics which decision makers associate with their sexual orientation or gender identity.²³ This leads to what is called 'reverse covering'. Asylum seekers

207–228; Gert Hekma, 'Sodomites, platonic lovers, contrary lovers: the background of the modern homosexual', in: Kent Gerard and Gert Hekma (eds) *The pursuit of sodomy. Male homosexuality in Renaissance and Enlightenment Europe* (New York 1989) 433–455. Jonas Roelens recently added to this literature showing that persecutions led to refugee migration from the Netherlands to current-day Belgium: Jonas Roelens, "Those rascals chased from Holland!" Sodomy, migration and identity building in eighteenth-century Antwerp', *Cultural and Social History* 18:2 (2021) 183–200; Jonas Roelens, 'Fornicating foreigners: sodomy, migration, and urban society in the southern Low Countries (1400–1700)', *Dutch Crossing* 41:3 (2017) 229–246; See also, Anna Tijsseling, *Schuldige seks: Homoseksuele zedendelicten rondom de Duitse bezettingstijd* (Utrecht 2009) 10–193.

19 Mattias Duyves, Gert Hekma and Paula Koelemij, 'Onder mannen onder vrouwen: Bij voorbaat', in: Mattias Duyves, Gert Hekma and Paula Koelemij (eds), *Onder mannen onder vrouwen: studies van homosociale emancipatie* (Amsterdam 1984) 7–19, 8.

20 Phallometry and other forms of medical examinations continue to be used in some European countries (e.g. Austria, Czech Republic, Germany, Bulgaria), despite violating the European Convention on Human Rights: Jansen, 'Introduction: fleeing homophobia', 1–31.

21 G.A. Mak, 'Conflicting heterosexualities. Hermaphroditism and the emergence of surgery around 1900', *Journal of the History of Sexuality* 24:3 (2015) 402–427; G.A. Mak, "So we must go behind even what the microscope can reveal": the hermaphrodite's "self" in medical discourse at the start of the twentieth century', *GLQ: A Journal of Lesbian and Gay Studies* 11:1 (2005) 65–94.

22 Robert Aldrich, *Colonialism and homosexuality* (London 2003) 202.

23 Heller, 'Challenges facing LGBT', 296, 297; Katherine Fobear, "I thought we had no rights": challenges in listening, storytelling and representation of LGBT refugees', *Studies in Social Justice* 9:1 (2015) 102–117.

may have spent a lifetime in their countries of origin hiding aspects of their identities, referred to as 'covering', and when claiming asylum, they have to do the opposite.²⁴ 'Covering' and 'reverse covering' are connected to so-called discretion reasoning. This line of reasoning entails that the asylum claimants could prevent persecution by keeping a low profile and not openly expressing their sexual orientation or gender identity. Discretion reasoning is connected to credibility reasoning in asylum cases: the claimants could have been discrete, but if they are this might lead to a lack of credibility ('how can you be silent if it was so important?'). This line of reasoning comes up in cases from the early 1980s until the present. Publications on LGBTQI+ asylum about later periods, however, also refer to a shift from discretion reasoning to a focus on credibility, stating how in current asylum cases emphasis is on assessing the credibility of a person's narrative and self-identification.²⁵

Most of the scholarship on same-sex desire and refugee migration is not historical. There is much emphasis on gay men's narratives, which are also overrepresented in news media about queer migration, as well as in legal cases. The scholarship on policy change focusses on how asylum seekers 'prove' their identities; much of this research takes place in the context of European or North American asylum systems.²⁶ Related, there is also a body of literature dealing with queer asylum seekers and sexual health.²⁷

24 Heller, 'Challenges facing LGBT', 296, 297.

25 Spijkerboer, 'Sexual identity', 219, 220.

26 Katherine Fobear, Eryn Lê Espiritu Gandhi and Vinh Nguyen, 'Queer refugee homemaking: Lesbian and gay refugees' oral histories and photovoice narratives of home', in: Eryn Lê Espiritu Gandhi and Vinh Nguyen (eds), *The Routledge handbook of refugee narratives* (New York 2023) 328–340; Fadi Saleh, 'Queer/humanitarian visibility: the emergence of the figure of the suffering Syrian gay refugee', *Middle East Critique* 29:1 (2020) 47–67; Aryan Karimi, 'Refugees' transnational practices: gay Iranian men navigating refugee status and cross-border ties in Canada', *Social Currents* 7:1 (2020) 71–86; Shanda L. Hunt et al., 'Somali American female refugees discuss their attitudes toward homosexuality and the gay and lesbian community', *Culture, Health and Sexuality* 20:5 (2018) 591–605; Laurie Berg and Jenni Millbank, 'Constructing the personal narratives of lesbian, gay and bisexual asylum claimants', *Journal of Refugee Studies* 22:2 (2009) 195–223; Jenni Millbank, 'From discretion to disbelief: recent trends in refugee determinations on the basis of sexual orientation in Australia and the United Kingdom', *The International Journal of Human Rights* 13:2–3 (2009) 391–414; Kimberly D. Topel, '"So, what should I ask him to prove that he's gay?": how sincerity, and not stereotype, should dictate the outcome of an LGB asylum claim in the United States', *Iowa Law Review* 102:5 (2017) 2357–2384; Susana Pena, '"Obvious gays" and the state gaze: Cuban gay visibility and U.S. immigration policy during the 1980 Mariel boatlift', *Journal of the History of Sexuality* 16:3 (2007) 482–51; Linda Piwowarczyk, Pedro Fernandez and Anita Sharma, 'Seeking asylum: challenges faced by the LGB community', *Journal of Immigrant and Minority Health* 19:3 (2017) 723–732.

27 I. Maatouk, M. Assi and R. Jaspal, 'Sexual health among HIV-negative gay and bisexual men in Lebanon: a comparison between native and immigrant/refugee communities', *Sexually Transmitted Infections* 97:1 (2021) A72–A73.

From previous research it is clear that old stereotypes dating back to the first half of the twentieth century, especially medical and colonial ones, influenced policies and practices in much later decades.²⁸ Sexuality was central to the colonial project, forming the basis of a European self-image.²⁹ Racialised ideas about sexuality and gender led to same-sex desire being associated with the colonised world, forming a stark contrast to the 'civilised' white European self, as several scholars have shown. There was a shift in this European self-image, where homosexuality and related rights politics have come to be associated with modernity and progress, presented as a core part of Western liberal values. Recent publications pay attention to this phenomenon, and in particular how it has fuelled a homonationalist rhetoric, in which LGBTQI+ rights politics are entangled with migration, racialisation and cultural othering.³⁰ In the Dutch context, this rhetoric often combines pro-gay stances with xenophobic or Islamophobic narratives, a rhetoric that has become increasingly normalised in Dutch political discourse since the late 1990s.³¹ The Netherlands is the preeminent example of a public sphere in which politicians openly and

28 Maja Hertoghs and Willem Schinkel, 'The state's sexual desires: the performance of sexuality in the Dutch asylum procedure', *Theory and Society* 47 (2018) 691–716.

29 Jeffrey Weeks, "'Sins and diseases": some notes on homosexuality in the nineteenth century', *History Workshop Journal* 1:1 (1976) 211–219; Alan Bray, 'Homosexuality and the signs of male friendship in Elizabethan England', *History Workshop Journal* 29:1 (1990) 1–19; Matt Cook, "'A new city of friends": London and homosexuality in the 1890s', *History Workshop Journal* 56:1 (2003) 33–58.

30 Jasbir K. Puar, *Terrorist assemblages. Homonationalism in queer times* (Durham 2008); Phillip Ayoub and Lauren Bauman, 'Migration and queer mobilisations: how migration facilitates cross-border LGBTQ activism', *Journal of Ethnic and Migration Studies*, 45:15 (2019) 2758–2778; Christine Klappeer, 'Queering development in homotransnationalist times: a postcolonial reading of LGBTQ inclusive development agendas', *Lambda Nordica* 22:2–3 (2017) 41–67; Andrew D.J. Shield, *Immigrants on Grindr: race, sexuality and belonging online* (Cham 2019) 1–26; Christopher Ewing, *The color of desire: the queer politics of race in the Federal Republic of Germany after 1970* (Ithaca 2023).

31 Gloria Wekker, 'Of homo nostalgia and (post)coloniality: or, where did all the critical white gay men go?', in: Gloria Wekker (ed.), *White innocence: paradoxes of colonialism and race* (Durham 2016) 108–138; Fatima El Tayeb, "'Gays who cannot properly be gay": queer Muslims in the neoliberal European city', *The European Journal of Women's Studies* 19:1 (2012) 79–95; Markus Balkenhol et al., 'The nativist triangle: sexuality, race and religion in the Netherlands', in: Jan Willem Duyvendak et al. (eds), *The culturalization of citizenship* (London 2016) 97–112; Stefan Dudink, 'A queer nodal point: homosexuality in Dutch debates on Islam and multiculturalism', *Sexualities* 20:1–2 (2017) 3–23; Nicholas Boston and Jan Willem Duyvendak, 'People of color mobilization in LGBT movements in the Netherlands and the United States', in: David Paternotte and Manon Tremblay [eds], *The Ashgate research companion to lesbian and gay activism* (London/New York 2015) 151–164; Andrew D.J. Shield, *Immigrants in the sexual revolution: perceptions and participation in northwest Europe* (Cham 2017) 1–18.

repeatedly have proclaimed a need for restricting migration from Muslim-majority countries so as to avoid the need to carry out gay emancipation again. Pim Fortuyn (leader of the right-wing party LPF) relied on this argument in his campaign for the 2002 Dutch national elections.³² Geert Wilders (leader of the right-wing party PVV) later copied the argument.³³ Homosexuality is, in this rhetoric, constructed as 'white', while the 'non-white' threatening 'other' – usually presented as a migrant from a Muslim majority country – is constructed as heterosexual. Queer Muslim asylum seekers face unique credibility issues,³⁴ due to the 'homosecularist' assumption that queer asylum seekers cannot be religious, and Muslims cannot be queer.³⁵ Ideas on homonationalism and homosecularism are relevant to the larger story about refugee migration, but they were not yet very articulated in the period under study in this article. It is interesting to focus on key moments in the 1980s, when scholarship changed, as well as policies and practices.

Policies and Practices

In the period 1945–1990 there was a series of policy changes.³⁶ In the immediate post-1945 years, suspicion that a foreign-born man might be a homosexual

32 *Gay Krant* 326 (14 February 1997).

33 Gert Hekma, 'Imams and homosexuality: a post-gay debate in the Netherlands', *Sexualities* 5:2 (2002) 237–248; Boston and Duyvendak, 'People of color mobilization', 151–164; Niels Spierings, 'Homonationalism and voting for the populist radical right: addressing unanswered questions by zooming in on the Dutch case', *International Journal of Public Opinion Research* 33:1 (2021) 171–182; Wouter van Gent, Gerald Brugman and Valerie De Craene, 'Navigating (homo)nationalism and heteronormativity: how Turkish-Dutch and Moroccan-Dutch gay/bi men negotiate belonging in Amsterdam', *Geoforum* 141 (2023) 1–10.

34 Sarah French Brennan, *Shifting selves: queer Muslim asylum seekers in the Netherlands* (New York 2020) Thesis Columbia University; Keith E. McNeal and Sarah French Brennan, 'Between homonationalism and Islamophobia: comparing queer Caribbean and Muslim asylum seeking in/to the Netherlands', in: Richard C.M. Mole (ed.), *Queer migration and asylum in Europe* (London 2021) 162–183; J. Patterson and K. Leurs, 'We live here, and we are queer!: young gay connected migrants' transnational ties and integration in the Netherlands', *Media and Communication* 7:1 (2019) 90–101; Maja Hertoghs, *Intensities of the state. An ethnography of intimacy and suspicion in Dutch asylum procedures* (Rotterdam 2019) Thesis Erasmus University Rotterdam.

35 Diego Garcia Rodriguez, 'Many people think it's impossible to be LGBTQ+ and religious – this 'homosecularism' is dangerous for asylum seekers', *The Conversation*, 27 June 2023, <https://theconversation.com/many-people-think-its-impossible-to-be-lgbtq-and-religious-this-homosecularism-is-dangerous-for-asylum-seekers-204570> (10 August 2025).

36 Marlou Schrover, 'Feminationalisme en hoe vrouwen belangrijk werden in het maatschappelijke debat over migratie en integratie', *TSEG* 17:1 (2020) 97–122.

was reason to deny him Dutch citizenship. This practice was abandoned in the 1960s. In the 1960s and 1970s, foreign gay men could receive visas as economic migrants as long as they avoided a scandal – meaning they were not too open about their sexuality. In the 1970s, policies changed in anticipation of migration to the Netherlands from its colony Suriname, on the eve of its independence. Dutch policy makers assumed that during slavery, some women formed households consisting of two women and children as a survival strategy, because male partners were sold separately and relocated to different plantations. It was assumed – without proof – that this practice continued after the end of slavery. In a treaty that regulated migration prior to Suriname's 1975 independence, households consisting of two women (with children) were explicitly mentioned as an entity that could migrate to the Netherlands as a family.³⁷ In practice, no applications were made on this basis. Civil servants however concluded that if a household consisting of two women could be regarded as a family, this should mean that Dutch men could bring foreign male partners to the Netherlands as well, within the framework of family-migration. In a 1973 meeting – attended by the COC – the State-Secretary of Justice, Jan Glastra van Loon (liberal party D66), noted that it might be difficult to apply for this form of partner migration if the partner was from a country in which homosexuals were persecuted; in that case, he added, applicants could be placed in the category of refugees.³⁸ This is the earliest (Dutch) indication that individuals might receive refugee-status related to sexual orientation. The ground-breaking character of that observation was not immediately recognised by most people. It took some time before debates emerged about a possible increase in the number of requests, about what constitutes persecution, and about the potential misuse of this refugee avenue by non-LGBTQI+ asylum seekers.³⁹

In the early 2000s, European countries regularly denied LGBTQI+ asylum seekers refugee-status on the grounds that they could live 'discreetly' in their

37 S. van Walsum, *The family and the nation. Dutch family migration policies in the context of changing family norms* (Newcastle 2008).

38 Dutch National Archive (NA), Archive Immigration and Naturalisation Department and Predecessors (IND) 931, Minutes meeting State Secretary with COC, 24 October 1973.

39 'Netherlands uncovers network helping Ugandan asylum seekers fake being gay', *Reuters*, 5 November 2020, <https://www.reuters.com/article/us-netherlands-lgbt-asylum-trfn-idUSKBN27L29M> (11 July 2022); Sarah French Brennan, 'Specter of the fraud: Muslim sexual minorities and asylum in the Netherlands', *Perspectives on Europe* 46:1 (2016) 75–79; Cees Waaldijk and Andrew Clapham, *Homosexuality: a European Community issue. Essays on lesbian and gay rights in European law and policy* (Dordrecht 1993); McGhee, 'Persecution and social group status', 20–42; Brian F. Henes, 'The origin and consequences of recognizing homosexuals as a particular social group for refugee purposes', *Temple International and Comparative Law Journal* 8 (1994) 377–402.

country-of-origin and thus avoid persecution.⁴⁰ In 2013, three applicants from Sierra Leone, Uganda and Senegal, who had applied for asylum in the Netherlands, brought the Dutch rejection of their claim before the Court of Justice of the European Union (CJEU).⁴¹ Seven months later, an applicant from Libya, whose claim was denied in Sweden, presented a similar case.⁴² In a ground-breaking decision, the CJEU ruled that 'LGBTI applicants [...] cannot be reasonably expected to "conceal their homosexuality in their country of origin", nor to "exercise reserve in the expression of their sexual orientation" in order to reduce the risk of persecution and make return a safe option.' The judge imagined an 'Anne-Frank hypothesis': utilising the 'reasonably tolerable' criteria, Anne Frank's asylum claim – if there had been one – could have been refused 'as she could be expected to tolerate living in an attic to avoid detection by the Nazis.' According to the judge, 'such a hypothesis exposes the "absurdity" of the "reasonably tolerable" test'; thus, the test had to be abandoned 'once and for all'.⁴³

Nevertheless, in the case of the applicants, the EU Court found 'not all violations of fundamental rights suffered by homosexual asylum seekers will necessarily reach that level of seriousness.' 'The mere existence of legislation criminalising homosexual acts cannot be regarded' as serious enough to constitute *persecution*.⁴⁴ According to legal scholar Thomas Spijkerboer the 'problem' for LGBTQI+ asylum seekers was not the *grounds for persecution*, but rather, that authorities never found applicants' claims 'sufficiently serious to amount to persecution.' Indeed, as one Dutch judge concluded (in 1994): 'The position of a homosexual man in Russia might not be simple', but this does not make him a refugee.⁴⁵ This might explain the difference between policies on paper and policies in practice.

40 Mole, *Queer migration and asylum in Europe*, 5–7, 10; Jenni Millbank, 'Sexual orientation and refugee status determination over the past 20 years: unsteady progress through standard sequences?', in: Thomas Spijkerboer (ed.), *Fleeing homophobia: sexual orientation, gender identity and asylum* (Oxford 2015) 32–54, 38.

41 www.asylumlawdatabase.eu/en/content/cjeu-c-19912-c-20012-and-c-20112-minister-voor-immigratie-en-asiel-v-x-y-and-z (8 August 2023).

42 www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93me-v-sweden-application-no-7139812#content (8 August 2023).

43 Matthew Fraser, 'LGBTI asylum seekers: discord between the European courts?', *European Database on Asylum Law*, 25 July 2014, www.asylumlawdatabase.eu/en/journal/lgbti-asylum-seekers-discord-between-european-courts (8 August 2023).

44 www.asylumlawdatabase.eu/en/content/cjeu-c-19912-c-20012-and-c-20112-minister-voor-immigratie-en-asiel-v-x-y-and-z (8 August 2023).

45 Thomas Spijkerboer, 'Querelle asks for asylum', in: Peter Fitzpatrick and James Henry Bergeron (eds), *Europe's other: European law between modernity and postmodernity* (Aldershot 1998) 189–217, 190, 202.

In order to explain why the policy on sexual orientation and refugee rights had so little effect in practice, also in much later periods and in other countries, we centre the remainder of the article on Dutch debates during three decisive moments for LGBTQI+ asylum-rights: (1) the 1980 parliamentary motion that declared that homosexuals had a right to apply for asylum in the Netherlands on the grounds of being persecuted for their sexual orientation (see figure 1); (2) the 1981 ruling of the Council of State, the highest court in the country, which recognised asylum based on sexual orientation on a judicial level; and (3) the first governmental policy brief on homosexuality in 1986, which addressed ambivalences in how asylum policy applied to homosexuals.

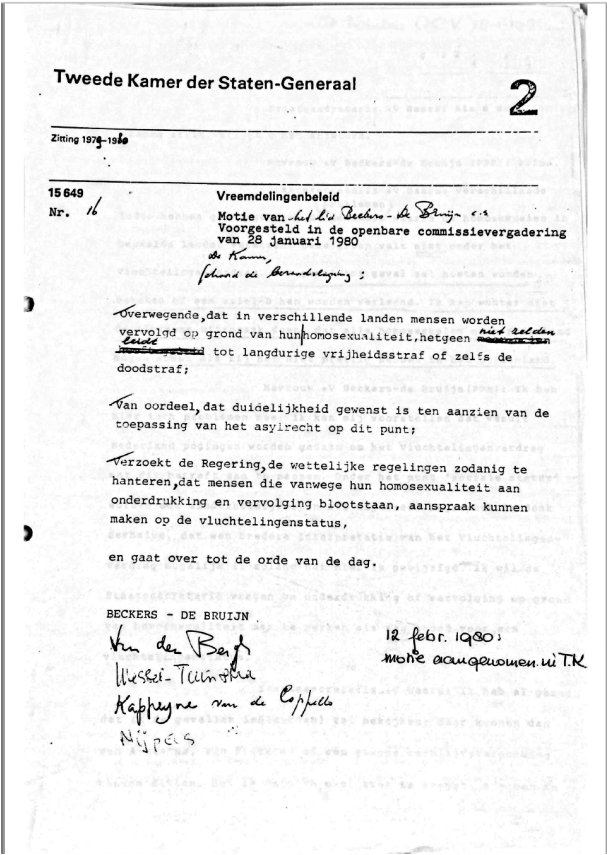


FIGURE 1 Dutch Parliament grants refugee status to gay asylum seekers, 1980. The third paragraph ends, 'people who are subject to oppression and persecution because of their homosexuality can claim refugee status.' SOURCE: [DUTCH] NATIONAL ARCHIVES, ALGEMEEN BELEIDSARCHIEF, 1956-1985, 2658.

Key Steps and Sources

With regard to sources, this article draws from the archives of the *Werkgroep Vreemdelingen coc: platform homo-vluchtelingen* (Working Group Aliens coc: Platform Gay-Refugees; henceforth 'COC Working Group'),⁴⁶ which includes letters to parliamentary representatives, minutes from meetings, and documentation on asylum cases. The COC played a major role in debates. Amnesty International, which as a rule did speak out on behalf of refugees, did not support the campaign by the COC for gay refugee rights because Amnesty declared it sought to protect people who were persecuted for their opinions and not for whom they were.⁴⁷ Additionally, we present material from the archive of the Ministry of Justice and the Immigration and Naturalisation Service (IND), including minutes and newspaper articles.⁴⁸ The combination of these sources allows us to trace rather precisely who used which arguments first, and how claims were adapted and adopted.

Persecution Based on Homosexuality: 1980 Parliamentary Motion

The 1980 motion was the result of debates on gay rights and asylum in relation to two asylum cases from 1975 and 1979. The two cases highlighted in this section became testing grounds for how Dutch authorities interpreted 'persecution' and 'membership of a particular social group' under the 1951 Refugee Convention. The second half of the 1970s shows the interaction between Dutch MPs, lawyers and LGBTQI+ rights organisations, such as the COC, and more specifically the partnership of gay and lesbian organisations under the *Roze Front* (Pink Front). Various actors navigated changing interpretations of persecution and social group categorisations.

Two political actors central to the debates on the 1980 parliamentary motion were MP Ria Beckers of the centrist Christian-progressive Political Party of Radicals (PPR),⁴⁹ who proposed the motion, and State-Secretary of Justice, Alberta/Bert Haars of the centrist Christian party Christian Historical

46 Held at the International Institute of Social History (IISH), Amsterdam.

47 'Homofiele vluchteling heeft weinig rechten', *Trouw* (21 September 1979) 11.

48 NA, Archive Ministry of Justice: Beleidsarchief Immigratie- en Naturalisatiedienst (IND) [1956–1985] (from now NA-IND), 2.09.5027, inv.no. 2658 Situatie Homosexuelen (from now Homosexuelen) 1979–1983.

49 *Politieke Partij Radikalen*.

Union/ Christian Democratic Appeal (CHU/CDA),⁵⁰ who resisted it. Bert Haars' rejection of the motion was severely criticised by members of her own party and by voters who regarded her immigration policies as too strict, inhumane and un-Christian. Some party members resigned from the party because of these policies, but there were also others who praised her for not conceding to lobby groups.⁵¹

The two asylum cases that sparked the 1980 motion were that of a Chilean man who migrated to the Netherlands in 1975, and a Polish man who migrated in 1979. Neither of them ultimately received asylum due to persecution based on their sexual orientation. These debates on gay rights and asylum took place in a period when guest-worker migration to the Netherlands had come to an end (after 1973) and family-reunification increased. The unemployment rate was high, and several political parties argued in favour of a restrictive immigration regime: 90 per cent of all asylum claims in the 1980s were rejected. In 1980, the extreme-right *Centrumpartij* made an appearance on the political stage.⁵² It had only one seat in the House of Representatives between 1982 and 1986, but it still influenced public discourse. Henry Brookman (founder of the party) and Alfred Vierling (party strategist) were both openly gay.⁵³ Gay-emancipation was, however, not a key issue in the party's propaganda, despite frequent references to the revolution in Iran and Iran's persecution of men having sex with men.⁵⁴ The *Centrumpartij* was not alone in talking about the situation in Iran; Dutch newspapers published over 400 articles about the persecutions there, drawing connections between the repression of sexual and gender minorities and potential migration.

The COC, founded in 1946, was the first post-1945 organisation in Europe advocating for freedom from persecution and discrimination based on sexual orientation. In the 1970s, it became more visible in debates. The Dutch government officially recognised the organisation in 1973, and in the 1980s

50 *Christelijk Historische Unie/Christen-Democratisch Appél*.

51 Walaardt, *Geruisloos inwilligen*, 200, 217.

52 M. Fennema and W. van der Brug, *Nederlandse anti-immigratie partijen in Europees perspectief* (Amsterdam 2006); J. de Vetten, *In de ban van goed en fout. De bestrijding van de Centrumpartij en de Centrumdemocraten (1980–1998)* (Leiden 2016).

53 Archive BVD via www.stichtingargus.nl, Inzage dossier Nationale Centrumpartij, Centrumpartij, Centrumdemocraten, Centrumpartij '86, Jonge Geuzen (1980–1997) map 4 deel 1.

54 Schrover, 'Feminationalisme'; For more on same-sex desire and gender non-conformity in Iran, see Afsaneh Najmabadi, *Professing selves: transsexuality and same-sex desire in contemporary Iran* (Durham 2014) 120–162.

it started to engage with it as a discussion partner.⁵⁵ The COC was not the only organisation advocating for gay rights; almost all Dutch political parties established their own party-aligned gay-rights organisations.

In the 1970s, the COC partnered with political groups within the *Roze Front* (Pink Front), a group founded in 1979 as a partnership between different lesbian and gay rights organisations. As described above, the situation for foreign queer individuals in the Netherlands had improved in the 1970s,⁵⁶ while the situation for sexual minorities in Iran worsened after the Iranian Revolution. This caused gay rights organisations to look more at refugees in particular. In 1979, 30 members of the gay sub-group of the Dutch labour party (PvdA) held a wake at the Iranian embassy in the Hague, protesting against the executions of gay men in Iran.⁵⁷ That same year, *Het Roze Front* reported that 30 executions of Iranian men that had engaged in sex with other men had taken place.⁵⁸ In the following years, the COC and related organisations made claims on behalf of a few dozen gay men (and two women) from across Europe, Latin America, South Africa, and the USA. It is unclear why no Iranian cases were presented, as persecutions based on same-sex desire in Iran were widely documented; indeed, Iran was the impetus for the creation of the COC Working Group for homosexual refugees.

The Chilean Man

The Chilean case in particular illustrates how legal categories, shifting understandings of homosexuality, and institutional resistance shaped asylum outcomes, despite pressure from political actors, civil society groups and an emerging transnational human rights discourse.

The COC Working Group got involved in the Chilean case in 1975. It said that after the military coup in Chile in 1973, the applicant suffered discrimination and persecution based on his political orientations and activities, as well as his homosexuality.⁵⁹ This claim was for refugee status. He later added a claim for a right to residence status based on his relationship with a Dutch man. In 1978, that claim for a residence permit based on his relationship was denied, and Bert

55 Robert Davidson, 'Advocacy beyond identity: a Dutch Gay/Lesbian organization's embrace of a public policy strategy', *Journal of Homosexuality* (2018) 1–23, 3.

56 Schrover and Kampman, 'Charter flights full of homosexuals', 19, 21–27.

57 'Drie duizend hom's bij betoging', *De Volkskrant* (2 July 1979) 3.

58 'Al-doende: Homo-vluchtelingen', *Homologie* 3 (March 1981) 4, <http://tinyurl.galegroup.com/tinyurl/A6eQi5> (11 July 2022).

59 IISH Internationaal Homo/Lesbisch Informatiecentrum en Archief, Amsterdam (from now IISH-IHLIA), Werkgroep Vreemdelingen COC – platform homo-vluchtelingen (from now Homovluchtelingen) inv.no. Box 1 Folder 5 Files, Letter to Head Immigration Department Ministry of Justice from P. v.d. Jagt 1979.

Haars added he would also be denied refugee status because the applicant did not need to fear persecution in Chile. The labour party PvdA protested against the denial based on his relationship. PvdA MPs said – implicitly referring to the change in family migration rules mentioned above – that the Chilean man should get a residence permit because the Ministry of Justice had decided that a foreigner in a relationship with a Dutch partner can be allowed to stay within the framework of family reunification or formation.⁶⁰

The Chilean's asylum application was indeed rejected in March 1979, as Haars said it would be, because he could not 'show or 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.' The lawyer of the Chilean man appealed against this, stating that 'expressions of homosexual orientation' were 'unacceptable' in Chile, therefore his client had 'well-founded reasons to fear persecution due to his belonging to a particular social group'.

According to the 1951 Refugee Convention, refugees are persons who have a well-founded fear of persecution because of their political opinion, nationality, race, religion, or because they belonged to a particular social group, who are outside their countries of origin and who cannot re-avail themselves to the protection of their home countries. The Dutch authorities, therefore, did not see homosexual men as belonging to a *particular social group*, emphasising 'race' in the rejection, which was seen as absent in this case. They also did not see how the *persecution* was related to 'religious or political convictions or his nationality'.⁶¹ 'Social group' and 'persecution' were therefore narrowly defined, as they had been when the 1951 Convention was drafted. In his appeal, the lawyer sought to challenge the way homosexuality pertained to these terms, but he failed. After thirteen months the appeal was denied.⁶²

In the meantime, in June 1979, *Het Roze Front* published a pamphlet wherein it called on the Dutch government to 'explicitly name homosexuality as a legitimate reason for fleeing' and 'to address and fight the anti-homosexual legislation of other countries as part of a general human-rights strategy'.⁶³ The pamphlet centred on executions in Iran, and criticised that the Ministry of

60 'Chileneen moet weg van Justitie. Protest PvdA, *Het Parool* (7 October 1978) 1.

61 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 5 Files 1980–1987, Ruling Directorate Alien Affairs, 15 March 1979.

62 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 5 Files, Secretary of State Justice, Head Immigration Department, J.W. de Gee, to Chief of Police, 13 May 1980.

63 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 6, Pamphlet *Het Roze Front*, June 1979.

Justice had not yet argued in favour of asylum for people persecuted based on their sexual orientation. The pamphlet was sent to Haars and to the Ministry, amongst others. The Ministry kept the pamphlet in its archive with a handwritten note: 'What to think of this *homosiel* [a neology formed by contracting the Dutch words for 'gay' and 'asylum']? We shall have to respond with something'.⁶⁴ In her response to *Het Roze Front*, Haars reasoned that 'prosecution based on a criminal offense' in the country-of-origin did not automatically equate to *persecution*,⁶⁵ which was in line with her previous arguments. In January 1980, the COC Working Group wrote to Haars requesting her to 'change the policies' to ensure that 'homosexuals can receive refugee status'.⁶⁶

The 1980 Motion

On 28 January 1980, MP Ria Beckers presented a parliamentary motion requesting the government to create the opportunity for 'people who are exposed to oppression and persecution based on their homosexuality' to 'claim refugee status'.⁶⁷ The motion was co-signed by Harry van den Bergh from the Labour party (PvdA), Elida Wessel-Tuinstra from the progressive centrist political party Democrats 66 (D66), and Annelien Kappeyne van de Coppello and Ed Nijpels from the centre-right People's Party for Freedom and Democracy (VVD). They all agreed homosexuals ran the risk of imprisonment or the death penalty.⁶⁸ The COC Working Group reached out to political parties across the political spectrum, but Beckers seems not to have consulted with them about the motion.

The motion was discussed in the House of Representatives (*Tweede Kamer*). Reiterating some of her arguments from earlier, Haars argued in the House that 'this group [homosexuals] does not fall under the Refugee Convention', and thus each asylum request had to be judged on a case-by-case basis. Beckers responded that she would like to see the government 'make adaptations to the Refugee Convention' by considering 'oppression or persecution on the grounds of

64 NA-IND, 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983, Letter Het Roze Front to Minister of Justice, 29 June 1979.

65 NA-IND, 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983, Letter to Het Roze Front t.a.v. P. de Groot from Secretary of State Justice, Head Immigration Department, 20 August 1979.

66 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 4 minutes and Correspondence Werkgr. HomoSEKsuele Vluchtelingen 1979–1981, Letter to Secretary of State Justice, E. Haars, 9 January 1980.

67 Minutes House of Representatives (minutes) 1979–1980, 28 January 1980, 761, www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%63A0000751 (11 July 2022).

68 NA IND 2.09.5027, inv.no. 931, 28 January 1980.

homosexuality as reason for refugee status'. She also said that 'if one has problems in their country-of-origin on the basis of homosexuality' this did not mean that a person should be automatically eligible for refugee status. Each homosexual's asylum case would be 'handled with care'; 'with regards to this motion', Haars could not 'simply say that one [i.e. a homosexual] can claim refugee status', and thus that 'this motion goes a bit far'. She therefore 'advise[d] against it'.⁶⁹

In minutes from a preparatory meeting before her debate with Beckers, dated 28 January 1980, Haars accedes that after individual assessment, applicants might be given a so-called 'B-status'. This B-status was created in the 1970s for people who fled, but were not persecuted 'enough' to be classified as a refugee and get an A-status. They could be given permission to stay temporarily on humanitarian grounds, based on the assumption that the situation in their country of origin might improve.⁷⁰ Grounds for a B-status were less clear than for the A-status. Haars added she wanted to prevent all homosexuals who were unhappy in their country of origin coming to the Netherlands.⁷¹

Despite Haars' objections, the motion passed on 12 February 1980. All political parties, including members of Haars' own CDA, voted in favour, and only two small Orthodox Protestant parties voted against it.⁷² This broad support for the motion is noteworthy. An MP of the CDA clarified his support for the motion 'because, of course, homophiles are in principle free to claim refugee status'. However, he stressed that this motion should not mean that 'different or less strict conditions for refugee status should apply to homophiles than to other asylum seekers'. Each asylum request still had to be 'individually assessed'.⁷³ These MPs did not support Haars' fears that passing the motion would imply every gay refugee must be granted asylum; rather, the motion only signalled one could apply for refugee status based on sexuality.⁷⁴ The COC Working Group was 'not unhappy' with the parliamentary motion, but it expressed concern about its practical application. During a meeting in March 1980, they advocated approaching Beckers 'about the matter of the Polish refugee' (described in the next section), suggesting they were eager to see the motion applied in practice.⁷⁵

69 Minutes OCV/UCV 1979–1980, 28 January 1980, 761, www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%3A0000751 (11 July 2022).

70 From 1987, permission to stay for 'humanitarian reasons' was labelled as C-status.

71 NA IND 2.09.5027, inv.no. 931, minutes of meeting preparing answer, is prepared by Haars to Becker 28 January 1980.

72 Minutes 1979–1980, 12 February 1980, 2872. <https://www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%3A0000672> (11 July 2022). The SGP and GPV were both extreme orthodox Protestant parties, with only a few seats in parliament. They also voted against the extension of women's rights.

73 Ibid.

74 'Motie', *Parlement*, www.parlement.com/id/vh8lnhrogvv2/motie (11 July 2022).

75 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 4 minutes and correspondence Werkg. HomoSEKsuele Vluchtelingen 1979–1981, 14 March 1980.

That same month, Haars communicated to the COC Working Group that she remained ambivalent. She promised 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’.⁷⁶ Yet, in a draft of her original letter, held in the IND archive, with handwritten commentary, the Ministry of Justice remains sceptical. Presumably written by Haars, the marginalia states that ‘the reply is intentionally left somewhat vague’ (figure 2). Haars sought ‘to bypass tricky questions’, such as whether ‘prosecution [being brought before a court] means persecution [as defined by the Refugee Convention]’.⁷⁷ The motion had passed, but Haars clearly remained hesitant to grant LGBTQI+ asylum in practice.

Haars’ support for restrictive immigration policies explains why she did not want to create precedent that would open up the asylum system for new categories. In a draft response to questions by Harry Van den Bergh (PvdA), Haars wondered if another way to restrict immigration might be reducing family-reunification, but she retracted that. People had a right to a family life.⁷⁸ Beckers was aware that the motion was vague, and requested the Chairwoman of the Standing Committee on Justice to schedule a meeting to set a clear line of conduct with regard to determining the status of gay asylum seekers.⁷⁹ This

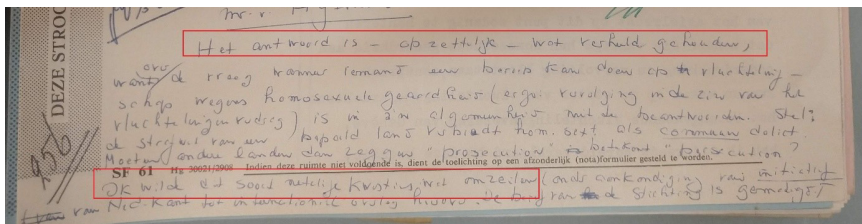


FIGURE 2 Part of a document from the archive of the Ministry of Justice (boxes added by authors). Below a typed draft of this letter from State Secretary Haars to the COC Working Group, the hand-written marginalia, presumably written by Haars, reads: ‘The answer is – intentionally – left somewhat vague, [...] I wanted to bypass this type of tricky questions [...]’

SOURCE: [DUTCH] NATIONAL ARCHIVES, ALGEMEEN BELEIDSARCHIEF, 1956–1985, 2658.

- 76 NA-IND, 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983, Letter to Jhr. Mr. J.A. Schorerstichting, Drs. R.P. van Diggelen, from Head Immigration Department 27 March 1980.
- 77 NA-IND, 2.09.5027, inv.no. 2658, Ministry of Justice, Immigration Department, Answer to letter 9 January 1980 Werkgroep homoseksuele vluchtelingen.
- 78 NA IND 2.09.5027, inv.no. 931, draft of an answer prepared by Haars to Van den Bergh 28 January 1980.
- 79 IISH-IHLIA, Homovluchtelingen Inv. No. Box 1 Folder 5 Files, Letter to Chair Committee Justice Mr. A. Kappeyne van de Copello, from Ria Beckers, 17 April 1980.

attempt to standardise the asylum process for homosexuals would take five years.

Haars promised to address the issue of homosexual refugees at the 1980 Council of Europe meeting (within the Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons). A Dutch representative raised the 'question of persecution of persons on the basis of their sexual orientation' to see whether there would be any European support for recognising them as refugees.⁸⁰ The Dutch representatives found it 'doubtful' any country would support the initiative (admitting only 'the Scandinavian side' might show 'any understanding'⁸¹). The Dutch representative claimed Austria 'already took some [homosexual refugees] in as belonging to a particular social group', and that Switzerland 'has the same problems as the Netherlands', yet had nevertheless taken 'some in for humanitarian reasons.'⁸² We, however, did not find evidence to back up these claims regarding Austria and Switzerland.⁸³ According to the minutes of their meeting the following year (1981), 'several' representatives disapproved of extending the criteria: the Council of Europe feared that asking countries to grant asylum for homosexuals 'could give rise to political problems and even put the Convention system at risk'.⁸⁴

Practical Effects?

Returning to the case of the Chilean man, whose request for review had now been submitted to the State Secretary in April 1979: despite advancements in debates for asylum for homosexuals, his request was again denied in May 1980 as 'neither his political activities, nor his homosexuality' had caused persecution in the sense of the Refugee Convention, nor was it deemed necessary to grant him residence on humanitarian grounds.⁸⁵ Persecution on the basis of sexual orientation could be grounds for asylum, yet, in Haars' judgment, the Chilean

80 As a rule, the minutes of Council of Europe meetings do not give the names of those present.

81 NA-IND, 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983, Betreft: Motie nr.16 (Beckers-de Bruijn), April 1980.

82 Ibid., Mr. Emde Boas in verb. Vergadering BuZa, 13 May 1980.

83 RFSL (today: The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights) Stockholm, 'Vill du veta mera?' August 1990; accessed via IHLIA LGBT Heritage, Oba Amsterdam location.

84 NA-IND, 2.09.5027, inv.no. 2658 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.

85 Ibid., Secretary of State Justice het Head Immigration Department, voor deze w.g. J.W. de Gee, aan de Chief of Police, 13 May 1980.

man had not faced 'persecution' despite the fact that homosexual acts were criminalised in Chile (as they would be until 1999). The Chilean man requested a review again; his story continues later.

Stepping back to 1979, before the motion passed, there was another case in which the COC Working Group was involved: a Polish man (born in 1953), who applied for asylum in the Netherlands in 1979. According to his testimony, he realised he was gay in 1971 and had been in a same-sex relationship since 1978. He believed a cab driver, who was also a secret agent, had betrayed this relationship to the Polish authorities. The cab driver had previously asked the Polish man for a bribe, and the authorities threatened to get him fired if he would not break off his relationship with the man and marry a woman. In 1979 he was fired from his job and could not find a new one. He paid bribes in order to get a passport to leave Poland, where his mother continued to be blackmailed by the authorities. In February 1980 – the same month that the parliamentary motion passed – his application for asylum was denied as homosexuality was not explicitly forbidden under Polish law; the Polish man may have been discriminated against but that did not equal persecution. His lawyer appealed, arguing the client had not been protected by the Polish authorities from blackmail or being fired from his job; his claim was rejected. Creating doubt regarding his credibility, the Dutch authorities claimed the Polish man probably heard about the new option to be recognised as an asylum seeker via the press, and therefore applied.⁸⁶

The COC Working Group discussed this rejection in their meeting on 14 March and decided to reach out to Beckers to ask how the rejection could be 'reconciled with the [1980] motion' that had just passed. Beckers brought this issue to the House of Representatives ten days later. Beckers asked Haars to explain the decision regarding the Polish man.⁸⁷ Haars did not disagree that the Polish man had suffered some kind of discrimination in his country of origin, yet there was no 'genuine persecution in the sense of the Refugee Convention on the basis of homosexual orientation', and thus there were no 'severe humanitarian reasons' to grant asylum. Even though he 'had suffered oppression and persecution on the basis of his homosexuality', he could return to the country as the act was not illegal there.⁸⁸ In sum, the parliamentary

86 NA IND 2.09.5027, inv.no. 931, Council of State (CoS) ruling and Secretary of State; IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 5 Files, Letter to Head Immigration Department from H. Kluiwstra, 1979.

87 Annex to the minutes of the House of Representatives 1979–1980, no. 982, 16 April 1980, www.statengeneraaldigitaal.nl/document?id=sgd%3A19791980%3A0001778 (11 July 2022).

88 Jur. D12 – 476 Vreemdelingenrecht – Suppl. 27 (januari 1982) Afdeling rechtspraak van de Raad van State. Uitspraak van 13 augustus 1981, no. A-2.1113 (1980) – Rubriek D, sub 12 D12-51 Jurisprudentie <https://www.raadvanstate.nl/uitspraken/> (10 Augustus 2025).

motion hardly had any immediate practical effects in the Netherlands, at least not in the two cases to which it most cogently applied at the time.

1981 Council of State Ruling

The second foundation for LGBTQI+ asylum in the Netherlands pertains to a statement from the Administrative Jurisdiction Division of the Council of State in relation to the Polish case. The Council of State is the highest administrative court in the Netherlands, and its Administrative Jurisdiction Division hears appeals concerning governmental decisions, including those on asylum. This 1981 ruling should have conclusively defined ‘particular social group’ and ‘persecution’ to benefit asylum seekers making a claim based on their sexual orientation. In fact, the CoC Working Group even cheered that their main goal was officially achieved. The 1981 ruling, although ground-breaking in terms of the theoretical foundations of LGBTQI+ asylum, once again revealed the gap between progressive legal language and practical implementation, as ensuing legal cases show the ruling had no immediate practical effects.

Returning to the case of the Polish man: his lawyer referenced the 1980 parliamentary motion in his appeal of May 1981, arguing that the refusal of his client’s application was not ‘in accordance with this statement’,⁸⁹ as there were ‘explicit policy intentions’ that could be distilled from the 1980 parliamentary motion.⁹⁰ In a final attempt to get his client’s asylum request approved, he took the case up to the highest court in the country, the Council of State. The Council was convinced by the lawyer’s claim that ‘discrimination of a particular social group – in this case, homosexuals – as encouraged or even approved by the government’ should be seen as ‘persecution in the sense of the Refugee Convention.’ In this monumental 1981 ruling, the Council declared that ‘persecution on the basis of sexual orientation’ could be understood as ‘persecution because of membership of a particular social group.’⁹¹ With this ruling, the Dutch Council of State became the first court in the world to recognise that ‘particular social group’ in the 1951 Refugee Convention could refer to sexual and gender minorities.⁹² This was the precedent for which the CoC Working Group had fought. The Dutch representative with the UNHCR,

89 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 5 Files, Answer 26 May 1981.

90 NA-IND, 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983, Statement Mr. L.D.H. Hamer CoS, 18 June 1981.

91 NA-IND, 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983 Ruling CoS 13 August 1981. Emphasis added.

92 Jansen, ‘Introduction: fleeing homophobia’, 1; Spijkerboer, ‘Querelle asks for asylum’, 189.

Jaap Hoeksma, in a national newspaper articulated its significance for gay emancipation.⁹³

The Council of State reported further good news: referring to the 1980 parliamentary motion, it stated that ‘the concept of “persecution” is in no way limited to official prosecution’.⁹⁴ It openly and clearly disagreed with Haars’ earlier ruling that the Polish man did not face genuine persecution, since the Polish law did not technically criminalise homosexuality; it argued ‘the [Polish] government was involved in the measures taken against the appellant’, thus ‘he could not seek protection from that government’. However, in the final sentences of their ruling, the Council of State concluded that ‘even though the appellant suffers discrimination by [Poland] [...] on the basis of his sexual orientation’, these ‘discriminatory measures do not create a severe limitation on his livelihood’, and thus could not be classified as *persecution*. Similar to the statements made by Haars in 1980, the Council of State wrote that a certain threshold had to be reached before prosecution was deemed persecutory: a foreign government’s discrimination must present a ‘severe limitation’ to a homosexual’s livelihood.⁹⁵

The COC Working Group, responding in October 1981, was disappointed that the Council of State ultimately refused to grant refugee status to the Polish man. They hoped that the new State Secretary of Justice – Michiel Scheltema (D66), who replaced Haars in September 1981 – would use his discretionary power to grant the Polish man B-status. Ultimately, it is unclear what happened to the Polish man: he had applied for partner migration, but it was denied (also after appeal); he tried to find a job, but failed (and could therefore not be admitted as a labour migrant), and there is no record of his naturalisation.⁹⁶ Nevertheless, by 1982, the COC Working Group appeared satisfied: the aim of ‘governmental acknowledgement of persecution because of homosexuality as legitimate reason for flight’ had been ‘officially achieved’, even if ‘the application in practice will have to be fought for, time after time.’⁹⁷

‘Hide your Entire Self’

The Chilean man’s lawyer presented a letter to the Council of State in June 1983 in which he expressed that his client’s livelihood had been limited very

93 ‘Vluchtelingenstatus homo’s mogelijk’, *De Volkskrant* (12 September 1981), 7.

94 NA-IND, 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983, Ruling Council of State 13 August 1981.

95 Ibid.

96 Kampman, ‘Charter flights full of homosexuals’, 74.

97 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 4 Minutes and Correspondence Werkgr. HomoSEKsuele Vluchtelingen 1979–1981, 9 June 1982.

seriously. He argued that homosexuality was viewed as 'a denial of morality' that the Chilean military 'enforced with guns'. In an impassioned plea, the lawyer extolled: '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.' Sexual orientation was a fundamental aspect of one's humanity: 'suppression, this not being able to be who you are' was a 'very serious limitation' on his client's livelihood.⁹⁸ But the lawyer's case was not built solely around the Chilean man's sexual orientation; it also mentioned that he and his father had been arrested because of their political activities.⁹⁹ According to the lawyer, the man should be granted asylum because of this specific combination. After acknowledging that the Netherlands was a 'global exception' in protections of gay rights, the lawyer proclaimed that a positive result for his client 'does not mean that the Netherlands will be a refuge for all homophiles in Chile'; each decision must depend on 'the individual case'.¹⁰⁰ The lawyer clearly sought to ease potential worries about a legal precedent for gay asylum. The Chilean man could have received asylum based on his political activities and/or his sexual orientation, but his residence permit was not related to sexuality at all.

Parliament also debated asylum for a Portuguese man, for which Secretary Scheltema was accused of not 'following the [1980 parliamentary] motion' as he denied the case in April 1982 even while acknowledging the man 'suffered discrimination in Portugal on the basis of his homosexual orientation'. The authorities, however, (again) ruled not all discrimination equated to persecution. A month later, the government collapsed and Scheltema lost his position. He was replaced by Virginie Korte-van Hemel, who, like Haars, came from the CDA and shared a preference for restrictive immigration policy. In December 1982, Korte-van Hemel refused to grant an Austrian man asylum even though 'prosecution because of his homosexuality' did indeed 'provide limitations to his private life.' Several MPs questioned whether this decision contradicted the 1980 motion and/or the 1981 Council of State ruling; yet it was found neither provided a solid basis for asylum.¹⁰¹

98 IISH-IHLIA, Homovluchtelingen Inv. No. Box 1 Folder 5 Files, Statement mr. R.B. Hartkamp to CoS, 2 June 1983.

99 Ibid., Letter to Head Immigration Department to Ministry of Justice P. v.d. Jagt 1979.

100 IISH-IHLIA, Homovluchtelingen Inv. No. Box 1 Folder 5 Files, Statement of Mr R.B. Hartkamp to CoS, 2 June 1983.

101 Annex minutes House of Representatives: 935 (22 April 1982), www.statengeneraaldigitaal.nl/document?id=sgd%3A19811982%3A0001934 and 394 (7 January 1983), www.statengeneraaldigitaal.nl/document?id=sgd%3A19821983%3A0001257 (10 August 2025).

In 1983, the COC journal *SEK* published a positive article about the attitude of the Dutch government to 'homosexuals' in general, in which the author cheered the Netherlands as 'one of the few Western countries, if not the only' that granted refugee status to individuals 'persecuted on the grounds of sexual orientation or sexual preference'. The writer admitted his ignorance of the legal history: 'If this [fact] is not the case [...], let it be the theory [...] which is very important in itself'.¹⁰² The author offered, without proof, that 'it had occurred a few times' that persons had been granted asylum due to 'homosexuality'. However, there was no record of any person receiving asylum for reasons related to sexual orientation. 'The theory' is the realistic representation of the consequences of the 1980 motion and the 1981 ruling; both provided a *theoretical* foundation for gay refugees to seek asylum. However, practice was very different.

1983 Policy Brief, and 1986 Memorandum on Homosexuality

While the COC Working Group was occupied with assisting in individual asylum cases, the COC as a whole was intensifying its collaboration with the government.¹⁰³ In 1983, the COC presented a policy brief – *Homoseksualiteit in het Overheidsbeleid* (Homosexuality in Government Policy) – in which it lobbied the government to prosecute anti-gay violence and discrimination, to fight 'heterosexism', and to protect gay rights in international relations. This policy brief exemplifies the COC's shift in the early 1980s of prioritising public policy over cultural change. With regard to asylum, the policy brief asked for embassies in foreign countries to collect 'information about the situation of homosexuality [...] outside of the official government positions'.¹⁰⁴ The COC argued it was not enough to look only at laws and regulations in order to grasp 'the situation of homosexuality' internationally, but rather advocated for broad interpretations of persecution: 'official government positions' might not delineate what 'liveable' meant for a LGBTQI+ individual.

In April 1984, the COC interviewed Korte-van Hemel, and when asked if the Netherlands legally recognised homosexual refugees, she replied: there needed to be taken into account more than '*het homo-zijn*' (the state of *being gay*); one also had to look at 'what the person had done in the country' and

102 'Kijk, Nederland staat hier voor zijn principes', *SEK* 12 (December 1983) 4, <http://tinyurl.galegroup.com/tinyurl/A7a6N7> (11 July 2022).

103 Davidson, 'Advocacy beyond identity', 10–15.

104 'Amersfoortberaad: Door nota nieuw overheidsbeleid mogelijk', *SEK* 4 (April 1983) 4, <http://tinyurl.galegroup.com/tinyurl/A6gLk7> (11 July 2022).

whether he was persecuted 'solely on the basis of this *homo-zijn*. Did they fight for gay rights?'.¹⁰⁵ As the archival documents already showed, Korte-van Hemel – following Haars – was sceptical of the urgency for LGBTQI+ asylum: an individual persecuted based on sexual orientation did not qualify automatically as a refugee.

In September 1984, *De Gay Krant* – an independent periodical founded in 1980 – reported that the government's response to the 1983 Policy Brief was 'ludicrous' and that they were 'severely disappointed' with the official response. The COC had to 'wait nearly sixteen months for a response' of 'only three pages' long. Nevertheless, the government did indeed agree to adopt some recommendations: for example, to 'obtain information on discrimination and persecution of homosexuals abroad, specifically regarding asylum requests from homosexual refugees'.¹⁰⁶

In August 1985, the COC introduced a new case: 'Two Englishmen, who are persecuted in their own country for committing so-called unnatural fornication, [who] have been deported from the Netherlands (to England) for trial'.¹⁰⁷ At that time, the age-of-consent in England was twenty-one for homosexuals, and 16 for heterosexuals. Since one of the Englishmen was over twenty-one and the other was between the age of 16 and twenty-one, the men were accused of 'unnatural fornication'. The appellants 'had heard [...] that the situation for homosexuals is better in the Netherlands', and hoped to 'have a chance for asylum here'.

Again, it proved difficult to employ any of the 1980–81 theoretical progress to their specific case. Korte-van Hemel reckoned the applicants should first 'exhaust the legal options in Great Britain and with the European Court.' The COC reported that MPs 'were not in the mood' to take the case further.¹⁰⁸ Later, *SEK* reported the two men were given 'a mild punishment' in the British courts, yet they wanted to 'return to the Netherlands as soon as possible.' After all, the COC claimed, the 'jurisprudence of the Council of State' (i.e. in the 1981 ruling) legitimised their claim of persecution.¹⁰⁹

105 'Korte-van Hemel: Overheid moet rechten homo's beschermen', *SEK* 4 (April 1984) 24, <http://tinyurl.galegroup.com/tinyurl/A7aD68> (11 July 2022).

106 'COC stelt voorwaarden voor verder overleg: Reactie regering op COC-nota uiterst mager en teleurstellend', *Gay Krant* 9 (September 1984) 25, <http://tinyurl.galegroup.com/tinyurl/A7aJj8> (11 July 2022).

107 'Twee Britse homo's uit ons land gezet', *SEK* 7 (August 1985) 19, <http://tinyurl.galegroup.com/tinyurl/A7aKT9> (11 July 2022).

108 Ibid.

109 'Twee Engelsen: Asiel', *SEK* 8 (September 1985) 8, <http://tinyurl.galegroup.com/tinyurl/A7aM3X> (11 July 2022). It is unknown what happened with the two Englishmen.

1986 Policy Memorandum

In April 1986, three and a half years after the COC policy brief, the government presented the *Nota Overheidsbeleid en Homoseksualiteit* (Memorandum Government Policy and Homosexuality) which outlined their desired government policy.¹¹⁰ Among other topics (e.g. HIV/AIDS, adoption), the *Nota* addressed homosexual refugees, saying that: 'The Netherlands is, as far as known, the only country that brings persecution because of sexual orientation under the Refugee Convention of Geneva.' The *Nota* defined persecution as 'acts by the government against the asylum seeker' that created a 'violation of human rights' that were 'very severe' and 'discriminatory based on sexual orientation'.¹¹¹ Yet, even though the *Nota* sought to solidify an official interpretation of 'persecution', much was still left open theoretically.

At the end of 1986, more than half a year after the presentation of the *Nota*, MPs still questioned its implementation. One PPR member noted that 'seven asylum seekers have tried to invoke persecution on the basis of their sexual preference', then asked how it could be 'rhymed with the *Nota* that no positive decision has been made?'.¹¹² As stated in the introduction, no applicant received asylum chiefly on the grounds of persecution for same-sex desire, even by the mid-1990s. Although the theoretical foundations for LGBTQI+ asylum were laid in 1980 and 1981, and expanded in 1983 and 1986, it was seemingly impossible for homosexual asylum-seekers to be recognised as refugees in the Dutch legal system.

Conclusion

The Netherlands can rightfully claim to be a forerunner in what we today call LGBTQI+ asylum, though, as this article shows, this advancement can be documented mainly on-paper rather than in-practice. The lawyer of the Chilean man praised the Netherlands as 'a global exception' with regard to its progressive treatment of 'homosexuals'.¹¹³ The 1986 memorandum boasted the

110 Davidson, 'Advocacy beyond identity', 18.

111 Papers House of Representatives, 1985–1986 19504:2, 27, www.statengeneraaldigitaal.nl/document?id=sgd%3A19851986%3A0007901; and 17 November 1986, 22. [10 August 2025]

112 NA-IND, 7 November 1986, 22–1, www.statengeneraaldigitaal.nl/document?id=sgd%3A19861987%3A0000960; see also 2.09.5027, inv.no. 2658 Homosexuelen 1979–1983, Hearing COC, 14 January 1981.

113 IISH-IHLIA, Homovluchtelingen inv.no. Box 1 Folder 5 Files 1979–1983, Statement mr. R.B. Hartkamp CoS 2 June 1983.

Netherlands as 'the only country' that incorporated sexual orientation into its Refugee Convention. Yet, achieving effective refugee status for people on grounds of sexual orientation proved nearly impossible for decades.

Both in the short and long term, refugee status was hardly ever granted based on sexual orientation, but ideas regarding the policy did not change: the possibility of granting refugee status on grounds of sexual orientation is still seen as a 'good' policy. Haars was clearly unwilling to follow the 1980 motion that had been accepted, as were her successors; under a restrictive migration regime, she and her successors favoured family reunification over asylum.

One main reason that LGBTQI+ people faced obstacles when attempting to seek asylum relates to the vague definitions of 'persecution' in various stages of Dutch policy-making. From the very beginning – in the late 1970s and the 1980s – key to the debates was if applicants could prove 'enough' persecution to qualify for refugee status. Based on our research into Haars' decision-making process, we show, the vagueness regarding 'enough' was intentional. Over time, the gap between policy on paper and policy in practice grew rather than reduced. Haars stuck to a restricted interpretation of 'social group' and 'persecution'. The right to refugee status was a right on paper only because in practice – and intentionally via the vagueness of the definition of 'enough' – the people who were meant to implement it were, from its very beginning, not keen on granting the right. The COC and the *Roze Front* (Pink Front) claimed victory based on the theory, not on the practice, and this claim, symbolising Dutch progressiveness or modernity, reappears uncritically. The vague definition was built into the policy. The later homonationalist claims based on the cherished idea of Dutch modernity in gay rights, could, in part, be debunked, but they were not.

This article adds to the policy implementation gap theory by showing that – apart from factors mentioned by earlier authors – vagueness can also explain the gap. Contrary to what other authors have shown, vagueness, in this case, does not generate room to manoeuvre for those who have to implement policies in practice. The gap between policy and practice was not the result of policies being defined too narrowly (as suggested by others), nor of bureaucrats' unwillingness to implement the law. Organisations were not pushing against implementation, but rather for it. Meticulously tracing the small steps in the debates on policies and in implementation have showed that, in this case, policies were left vague by the policy makers with the intention of reducing the options to implement them.

In at least 77 countries, people are at risk of legal persecution based on their non-hetero normative sexual orientation or gender identity; in some of these countries it is punishable by death. Though 37 countries now formally grant

asylum based on persecution due to sexual orientation or gender identity, there still are gaps in practice. Recent qualitative research on experiences of queer asylum seekers shows how this gap persists still, also in the Netherlands. Queer, and especially racialised, asylum seekers continue to face challenges in proving the credibility of their claims of persecution, while they find themselves in a context of general societal distrust and rising anti-migrant sentiment. The gap between policy and practice has persisted for decades, and continues to restrict the human rights for sexual and gender minorities seeking refuge today.

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