

How Joining a Majorette Group Can Lead You to Being Denied International Protection

Lore Roels

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“... [Y]ou have been working since you were 17 ...; you are financially independent ...; [a member of a] religious community..., the choir ..., [and] the majorette group ...; [and] you financed part of your trip yourself All these elements attest to your level of independence and resourcefulness ..., making it difficult to believe in your status as a young woman ... at the mercy of a violent stepfather.”

With this argument (among others), the (administrative) [Belgian asylum authorities](#) (the Commissioner General for Refugees and Stateless Persons) judged a Congolese asylum seeker’s fear of sexual and gender-based violence (SGBV) as non-credible in December 2021. The reasoning seems to suggest that only ‘young, professionally inexperienced, financially dependent, and socially isolated persons’ are likely to become a survivor/victim of SGBV. This blogpost will not only reveal how such types of reasoning bear strong parallels to long-established ‘rape myths’ in the criminal justice context. It will also show how they ultimately reduce the group of those worthy of and eligible for (international) protection (from refoulement) to an illusion of ‘the ideal victim’ of SGBV.

Too Resourceful to Be Protected

The reasoning above constructs applicants with SGBV-related flight stories as being “*too knowing and too agentive to be innocent*” and to be protected. Stemming from [responsibilisation tendencies of SGBV survivors/victims](#), this thinking pattern resonates with the idea that victims lack personal characteristics of strength and independence. It renders their vulnerability self-made and thus “*ameliorable through individual self-improvement*”. Such constructions overshadow the broader [social and institutional structures](#) determining individual ability to deal with this violence. The example cited above is not unique to Belgian authorities. The European Court of Human Rights (ECtHR) also tends to overemphasise applicants’ (perceived) [resourcefulness](#) and coping mechanisms to deal with SGBV and weaponize these against them. Such decisions are in sharp contrast to international law provisions, such as the [Istanbul Convention](#)’s articles 60 *jo.* 61, obliging member states (e.g. Belgium) to ensure ‘gender-sensitive’ asylum and non-refoulement assessments. More so, they go against a recent ruling of the Court of Justice of the EU (2021), which confirmed that “[m]ere social and financial support ... is inherently incapable of ... preventing[,] detecting, prosecuting and punishing acts [of persecution] and ... cannot be regarded as providing ... protection ...”.

Rape Mythology in Asylum/Non-Refoulement Assessments

In line with this international (case) law, the UN Refugee Agency ([UNHCR](#)) already expressed the concern that asylum authorities might “[...] reach conclusions based on stereotypical, superficial, erroneous, or inappropriate perceptions of gender”. In the criminal justice context, such perceptions have been theoretically framed as ‘rape myths’. They were defined by [Burt](#) as “prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists”. Functioning as (un)conscious cognitive schemas, rape myths allow one to mentally [structure](#) information about SGBV, but can also [justify, rationalise or minimise](#) the behaviour of perpetrators. When hearing SGBV stories, the extent to which persons adhere to rape myths (called ‘rape myth acceptance’) affects their credibility assessments. This effect is all the stronger in cases with room for [interpretation](#) where little evidence is available. Although the criminal justice and the asylum/non-refoulement systems operate in very different substantial and procedural contexts, the reasoning cited above suggests strong parallels between the two. The differences exist in the substantial focus (guilt vs. credibility due to common lack of evidence), the temporal focus (past offense vs. future risk of persecution/ill-treatment), and the personal focus (convicting perpetrators vs. protecting survivors/victims). Taking these into account, ‘rape myths exonerating perpetrators for past rape’ in the criminal justice context could be translated as ‘SGBV myths undermining the credibility of applicants’ fear of future persecution/ill-treatment’ in the asylum/non-refoulement context.

As such, the resourcefulness argument outlined above can be linked to a specific rape myth category: ‘[victim precipitation myths](#)’ (e.g. SGBV only happens to certain types of persons). This category has been concretised as follows: “nice girls do not get sexually assaulted; only a certain type of [person] does” ([Lochhead and Tan](#)), “victims of human trafficking are usually young girls who are naïve, fragile, poor and lack education” ([Baert, De Schrijver, Fomenko, Keygnaert and Linthout](#)), “[SGBV] is ... the problem of certain neighbourhoods ... and certain types of people” ([Ticktin](#)), or “usually, it is only [persons] who do things like hang out in bars, sleep around or dress suggestively that are raped” ([Payne, Lonsway and Fitzgerald](#)). However, SGBV occurs across [all socioeconomic backgrounds](#) and as ECtHR judge [Power-Forde](#) once concluded in a separate opinion “the protection of a person’s fundamental human rights cannot be reduced to a question of currency”. Still, the Belgian asylum authorities reproduced the rape myth above holding that ‘usually, it is only persons who lack material resources’ (e.g. financial means/independence) ‘and personal resources’ (e.g. professional experience, age, membership of social/religious communities, doing hobbies and organising travels) ‘that are subjected to SGBV’. This jurisprudential trend substantially limits the contexts considered ‘survivor/victim-worthy’ and therefore deserving to be protected. Those who fall outside such contexts are often labelled [non-credible](#) and are denied (international) protection (from refoulement).

The Ideal Victim Theory in Asylum/Non-Refoulement Assessments

This limitation of ‘survivor/victim-worthy’ contexts can be linked to [Christie](#)’s concept of ‘the ideal victim’ in the criminal justice context, defined as: “a person or a category of individuals who ... most readily are given the complete and legitimate status of being a victim”. Christie characterises this (category of) individual(s) as 1) weak,

2) carrying out a noble task, 3) located in a respectable place and harmed by 4) malign and 5) unknown forces or actors. Similarly, (inter)national refugee case law portrays an image of the 'ideal SGBV refugee' as a passive, dependent and vulnerable female and/or child [victim](#) without agency or public/political role. To maximise the chance of a successful asylum/non-refoulement claim, [Barsky](#) explains that applicants must fit into a story that is sought by the authorities. This story is based on their own specific world view and the assumption that "[we can recognize suffering wherever we see it](#)". As such, an (ideally female) victim must demonstrate to behave 'properly' according to societal gender roles, as an apolitical, voiceless [victim](#) of an oppressive, dysfunctional and patriarchal culture. The Congolese asylum seeker described above does not fit the ideal of the suffering '[Third World Woman](#)'. She cannot be considered passive nor voiceless and therefore cannot, in the view of the Belgian asylum authorities, represent a '[morally legitimate suffering body](#)'.

Furthermore, the harmful effect of 'ideal victim' thinking may be even greater for male asylum/non-refoulement applicants, who are judged almost *a priori* to be [invulnerable](#). It is often assumed that [men are more resilient](#) to SGBV (the so-called [hierarchy of suffering](#)). In reality, the road towards protection might be as/even more burdensome for male applicants. They may face additional hurdles in obtaining [\(self-\)acknowledgement](#) as a SGBV survivor/victim, such as cultural and religious taboos, harmful gender norms, shame, stigma, scarce services... . As mentioned above, the resourcefulness argument also appears in the ECtHR's case law, with the most recent example from [2020](#) concerning a male applicant. He was a 22-year-old rape survivor/victim, who left his home country at age 5, lost (contact with) both his parents and foster parents, and was diagnosed with post-traumatic stress disorder and depression. In this case, the Court judged that "*[a]s an adult single male, healthy and capable of work, the applicant cannot be considered particularly vulnerable [to further sexual violence], even in the absence of any support network*". Falling outside the (female) SGBV victim ideal, he was excluded from eligibility for (international) protection (from refoulement).

This decision resonates with the wider phenomenon that knowledge (production) on SGBV still primarily [focuses on female survivors/victims](#) (considering 'gender' as a synonym for 'women'), excluding men and others not identifying as cisgender women. However, SGBV occurs across the [entire](#) gender spectrum, making an exclusively (cis) female orientation [difficult](#) to justify. Therefore, it is important to highlight that the thinking patterns underlying the ECtHR's case law originate from male rape myths in particular, such as: "*men would not be [as] traumatised by rape [as women]*" ([Davies, Gilston and Rogers](#)), "*men cannot be raped; they can resist*" ([Lochhead and Tan](#)), and "*most men who are raped ... are somewhat to blame for not escaping or fighting off [the perpetrator]*" ([Struckman-Johnson and Struckman-Johnson](#)). Here, the male gender can be seen as a personal resource (next to age, health and able-bodiedness in this case) preventing the recognition of a need of (international) protection (from refoulement).

Conclusion

The alarming jurisprudential trend to consider applicants with SGBV-related asylum/non-refoulement claims as too resourceful to be vulnerable and protected occurs not

only in Belgian asylum decisions, but also in the non-refoulement case law of the ECtHR. Such reasoning not only lacks evidence-based justification, it also shows a remarkable lack of understanding of the protection needs of SGBV survivors/victims. The exact meaning of ‘gender-sensitive asylum and non-refoulement assessments’ remains [undefined](#) to date. However, it cannot in any way imply that decision-makers are allowed to use rape myths to construct an illusory group of ‘ideal SGBV victims’ and deny protection to anyone deemed too resourceful to match its characteristics.

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