

RESEARCH

'Because Migri Says So': Legitimation in Negative Asylum Decisions in Finland

Erna Bodström

University of Helsinki, Helsinki, FI

erna.bodstrom@helsinki.fi

This article argues that authorisation and moral evaluation are the dominant legitimation strategies used in asylum decisions by the Finnish Immigration Service (Migri). After the migration events of 2015, the percentage of accepted asylum claims dropped dramatically in Finland, causing concern about the legal rights of asylum seekers. Drawing on theoretical literature concerning asylum decisions, borders and language, this article is based on a systematic analysis of 77 asylum decisions. It aims to answer the following questions: What strategies of legitimation does Migri use to support their negative asylum decisions? How are these strategies used? The study reports that the reasons behind negative asylum decisions are often not openly provided. Instead, the decisions largely rely on authorisation and implicit moral evaluation; the decision is so 'because Migri says so'. This lack of transparency has adverse consequences for the due process of asylum seekers, and these consequences can be life changing.

Keywords: asylum seekers; asylum decisions; credibility; legitimation; Finland

Introduction

After Europe's border crisis in 2015, and as the physical borders of Fortress Europe failed, European governments harnessed asylum politics for the gatekeeping (Pellander 2015; Satzewich 2013) of migrants. As Enrica Rigo (2009: 137) aptly points out, a border never exists in a space, but it gets 'activated' as it is crossed or as people gather around it. Since the majority of asylum seekers sought asylum in Europe, an ample tool for this 'policing' at a distance (Guild & Bigo 2003) was asylum decisions. Asylum decisions are performative documents (Tiililä 2000) that either grant or deny a residence permit on grounds of international protection or other personal or humanitarian reasons. Thus, they are not merely texts; they determine whether or not an applicant can legally stay in a country.

Finland is a case in point in terms of harnessing asylum politics for gatekeeping. Before 2016, Finland was above the European Union average in terms of its level of granted asylums. However, in 2016, it sunk well below said average (Eurostat 2017). Since 2015, the country enforced various legal changes that negatively affected the rights of asylum seekers. These changes included removing one category of international protection from the law as well as restricting the presence of legal aids in asylum interviews. The asylum interview is

perhaps the single most important event in the asylum process, as it is where the asylum applicant presents their asylum grounds. Thus the restriction essentially meant that after 2015, the asylum applicants have increasingly been expected to present their case without legal aid. These measures have raised questions and criticism about how the human rights and due process of asylum seekers are met. Indeed, in their research, Saarikkomäki et al. (2018) show that the decrease in granted asylums could not be only due to the said legal changes, but that they were likely also due to changes in the internal practises of the Finnish Immigration Service (Migri), who are in charge of assessing asylum claims in Finland. The changes in practises were, for example, limiting the time reserved for an asylum interview and raising the bar of the credibility assessment (i.e. requiring more details and evidence from the asylum applicants in order to deem their persecution narrative as credible and, hence, 'true') (Saarikkomäki et al. 2018).

Asylum decisions and processes have previously been the subject of academic research, especially from the perspectives of interpretation and psychology (Herlihy, Jobson & Turner 2012; Herlihy & Turner 2009). Recently, there has been increased interest in studying the production of interview protocols (Díez 2011) and asylum decisions (Johansson Blight 2015; Vogler 2016; Wikström & Johansson 2013). In many cases, research has focused on particular groups of asylum seekers, such as women (Berger 2009; Melloy 2007), vulnerable families (Johansson Blight 2015) and sexual minorities (Berger 2009; Millbank 2009). Most often, the research is based on a small number of asylum cases. Studies based on fairly extensive data, thus providing a more general view of the process, are more scarce (see Ramji-Nogales, Shoenholtz & Schrag 2007; Vogler 2016).

This article aims to answer the following interrelated research questions: What strategies of legitimation does Migri use to support their negative asylum decisions? How are these strategies used? Legitimation refers to the strategies of justifying and making sense of controversial acts (Van Leeuwen & Wodak 1999). Legitimation is an essential aspect of decision making, because according to the Administrative Procedure Act (2003) of Finland, legal decisions need to state the reasons for the decision as well as the information and circumstances that have affected the end result. In order to answer these questions, the study uses a systematic analysis of 77 first-instance asylum decisions related to those who sought asylum in Finland for various reasons, such as political, ethnic and religious persecution. With 77 decisions, the data are quite extensive. Thus, the current study contributes to the growing literature on asylum decisions and processes by using qualitative methods to systematically examine extensive data that comprise a variety of asylum applicants.

The current article specifically focuses on legitimation, as legitimation is not merely a verbal strategy but also an aspect of social practises (Fairclough 2003; Van Leeuwen & Wodak 1999). Thus, although the current study concentrates on legitimation in asylum decisions, legitimation serves a greater purpose in the border regime. Essentially, the belief that asylum decisions are made and legitimised correctly is a prerequisite for the legitimation of varying recognition rates, changing asylum politics and the entire border system. That is, if we believe that borders are necessary but that granting protection to those in need is a part of a fair border system, this belief presumes that those in need are indeed correctly granted protection. Thus, the border system, especially in the context of international protection, rests on the principle of accurate and just decisions.

The Asylum Process as a Form of Gatekeeping

The asylum process is regulated by various conventions, laws and guidelines. According to the 1951 Refugee Convention of the United Nations High Commissioner for Refugees (UNHCR), asylum is granted to a person who

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. (UNHCR 1951: 14)

Finland has ratified the convention through the Aliens Act of Finland (2004). In addition, the UNHCR has provided guidelines on the procedure and criteria for determining refugee status. Although not binding, the guidelines are intended to guide governments in applying the asylum process (UNHCR 2011: 2).

Seeking asylum is not only an administrative but also a highly physical process permeated by a power imbalance. Indeed, it characterises the institutional and not always physical nature of borders (Mezzadra & Neilson 2013). In Finland, Migri is responsible for examining and deciding on asylum applications. According to the Administrative Procedure Act (2003) of Finland, authorities have an obligation to obtain all necessary information to decide on the matter. Indeed, the UNHCR (2011) guidelines state that the responsibility to ascertain and evaluate all necessary information in the asylum process is shared between the asylum seeker and the relevant authority. Still, it is necessary to point out that the asylum seeker and the relevant authority do not share equal positions of power. Rather, for example, asylum interviews are what Fairclough (1989: 47–49) has referred to as 'gatekeeping encounters'. Similar to a job interview – an example used by Fairclough – the interviewer is familiar with the requirements of the law as well as how to conduct asylum interviews and make decisions, whereas the asylum seeker cannot be expected to be familiar with these elements. Thus, the entire asylum process is a physical act of gatekeeping, often marked by non-linearity and waiting lasting from some months to several years (Karakayali & Rigo 2010; Könönen 2015; Rigo 2009: 150), as it determines who is legally allowed to stay within state borders and who is asked to leave.

One of the most crucial elements of asylum decisions, and thus of gatekeeping, is the credibility assessment. Asylum should be granted if a person has a well-founded fear of being persecuted in their country of origin (UNHCR 1951: 11). Traditionally, the assessment has been divided into two parts – namely, internal and external credibility (e.g. Sweeney 2009). Furthermore, Wikström and Johansson (2013) suggest a third category of credibility – social credibility. Internal credibility refers to how internally cohesive the account of the asylum seeker about their persecution is. Among other things, it is measured by examining how logical, detailed and coherent their account is (e.g. Wikström & Johansson 2013: 94). It is also based on how the applicant presents their fear (Noll 2006: 500). External credibility compares the applicant's narrative with available external information regarding, for example, the applicant's country of origin and provided documentary evidence. Social credibility refers to the sociocultural perspective used to read the applicant's narrative. This implies that the authorities use their own normative angles in asylum assessment, even though they may not consciously acknowledge this (Wikström & Johansson 2013: 93–94). Indeed, previous research shows that the backgrounds of the authorities (Ramji-Nogales, Schoenholtz & Schrag 2007) as well as the internal culture of the institution and wider societal culture (Johansson Blight 2015) affect asylum decisions.

Thus, this article views asylum decisions as a form of border control, where the act of gatekeeping is conducted not by border officials but by immigration officials in charge of applying the requirements and regulations of admission (see Pellander 2015; Satzewich 2013) through, among other things, the credibility assessment. Thus, it is what Guild and Bigo (2003) have called 'policing' at a distance, where the actual decision about asylum is made not at the state border but in an office removed from said border. In the current practise of seeking protection from a state, one must do so within the physical borders of that state.

The Four Strategies of Legitimation

The current article concentrates on legitimation in asylum decisions. It follows the model suggested by Van Leeuwen and Wodak (1999; see also Van Leeuwen 2007), who used it to study family reunification documents in Austria. With legitimation, Van Leeuwen and Wodak refer to acts – particularly discursive acts – that attempt to construct and justify controversial practises or events and make them look acceptable, necessary and even desirable. Asylum decisions certainly fall within such controversial acts. Although there are many aspects to the asylum process, these aspects are solidified in the decision, which, according to the Administrative Procedure Act (2003), is meant to list all the information and circumstances that have affected the decision.

Van Leeuwen and Wodak (1999) define four types of legitimation – namely, authorisation, rationalisation, moral evaluation and mythopoesis. The first type, authorisation, comprises the form of legitimation that refers to authority:

The answer to the implicit or explicit question 'Why is it so?' or 'Why must it be so?' is essentially 'Because I say so,' or 'Because so-and-so says so,' where the 'I' or the 'so-and-so' is someone in whom institutionalized authority is vested. (Van Leeuwen & Wodak 1999: 104)

According to Van Leeuwen (2007), no reasons or explanations are required for a decision – only that 'so-and-so says so'. In turn, the second type of legitimation, rationalisation, makes the reasoning more explicit. Instead of drawing on authority, rationality explains and calls for certain logic, purposes and means. Here, the answer to the question 'Why is it so?' is because the decision is logical and achieves a certain purpose or goal. The third type, moral evaluation, can according to Van Leeuwen & Wodak (1999), be defined as the legitimation of decisions by either explicitly or implicitly drawing on one's moral values. Moral evaluation can be conducted explicitly by deeming something to be desirable. When moral evaluation is conducted in an implicit way, certain values are implied to be 'good' by treating them as 'good' without explicitly stating so. The fourth type of legitimation, mythopoesis, refers to legitimation through storytelling. The story is used as either a moral or cautionary tale. With the moral tale, the protagonist follows a recommendable path of events and is rewarded in the end; with the cautionary tale, the protagonist makes wrong choices and ends up unhappy. How this translates to asylum will be discussed in the analysis.

Data and Methods

The data of the current article consist of 77 negative first-instance asylum decisions made by Migri. The article concentrates on negative decisions because most positive decisions from the era – after 2015 (Saarikkomäki et al. 2018: 11) – include scant legitimation, as the decisions do not explicate why they agree with the applicant's asylum claim, they simply state that they do. In addition to the decisions, the study uses 42 related interview protocols (i.e. protocols written during the asylum interview and repeating the questions asked and answers given) as complementary data. Thus, although the detailed analysis focuses on the decisions, the interview protocols are analysed and referred to in order to obtain a more comprehensive understanding of the decisions. The decisions in the data were made between March 2016 and March 2017. Hence, the decisions represent a period during which the percentage of accepted asylum claims dropped considerably in Finland.

As for the asylum applicants in the data, the majority are adult men, but the data also include adult women and families. For ethical reasons, no decisions of unaccompanied minors were included. As for the asylum seekers' reported fear of persecution, they are related to ethnicity,

religion, political views, honour-related violence or work. The data do not include any sexual-minority asylum seekers. Whereas, persecution based on political, ethnic or religious reasons clearly forms the basis for international protection, work-related reasons do not. Honour-related reasons remain a grey area (Berger 2009). Of the 77 applicants, 50 are Iraqi citizens and 27 are Afghan citizens. These were the two largest groups of asylum seekers arriving to Finland in autumn 2015. However, in 2015, the majority of both groups – more than 80% of Iraqis and almost 70% of Afghans – were given international protection in Finland, according to Eurostat (2017). However, following changes in asylum legislation and practises, in the third quarter of 2016, only 16% of Iraqis and 38% of Afghans were granted international protection in Finland.

Asylum decisions are classified as confidential in Finland; hence, the asylum decisions and other related documents were gathered directly from the asylum seekers. The data gathering was realised as part of a project that aims to map the situations of asylum seekers in Finland and support them. Thus, the applicants who received these decisions do not agree with them. As such, although the data are not representative of all the decisions made by Migri, it does provide excellent examples of the kind of decisions that have questioned and criticised the human rights and due process of asylum seekers in the aftermath of increasingly strict asylum policies.

In relation to the data, certain ethical considerations have been taken into account. Firstly, the decisions themselves include confidential and sensitive information. When the people handed over their decisions, they were asked to sign a release form, usually in Arabic or Dari. In the form, they were able to choose whether they wanted their decisions to be processed as part of a larger data set or if part of their decisions could also be published. The current article only uses direct quotations from the decisions that were permitted to be made public. For the other decisions, the article paraphrases the cases so that the identity of the applicant cannot be recognised. Additionally, all the examples are discussed anonymously, and any information that might reveal the identity of the applicant has been concealed. The asylum applicants are referred to by pseudonymous only. Secondly, when the applicants gave us their decisions, many of them wanted help with their cases. I made it clear that the data would be used for research purposes and, thus, would not provide immediate help, if any. However, because of certain language and cultural barriers, it was difficult to ascertain whether all the applicants truly understood this. Thirdly, in addition to this research project, I have been part of other projects that work to support asylum seekers. Within this work, I have personally got to know some of those whose decisions are included in this article. However, in the clear majority (72 in total) of cases, I do not personally know the applicants.

By the end of the analysis, the data were saturated (i.e. the last cases analysed did not provide any new insights and were similar to earlier cases). Thus, it is likely that the current data are quite representative of similar negative decisions made in Finland. In my role as a volunteer aide to asylum seekers, I have additionally read through roughly 250 negative asylum decisions. They also show similar features to the data analysed here. This further indicates that the data are exceedingly representative of similar cases.

The analysis was carried out systematically by using Fairclough's discourse analytic approach (1989, 2003). Firstly, the data were thoroughly examined and areas where internal, external and social credibility were discussed were highlighted. Secondly, special attention was paid to the areas where Migri examined and argued for credibility and where strategies of legitimation were used. Since legal decisions do not usually need to argue indisputable points (i.e. where the views of the authority and applicant concur; Virolainen & Martikainen 2010: 55), the current analysis concentrates on the areas where Migri disputed the credibility of the applicant.

The Domination of Authorisation and Moral Evaluation

The analysis shows that while the decisions involved all four strategies of legitimation, authorisation and moral evaluation were the dominant strategies, whereas rationalisation and mythopoesis were rarely used.

Let us look at Kasim's decision as an example. The document begins by listing Kasim's personal information, summarising his application and the end result of the decision. The documentary evidence provided by Kasim is also listed. This is followed by a credibility assessment and legal assessment, which generally comprise the longest sections of decisions in relation to asylum. These assessments are followed by shorter sections that concern residence permits on personal compassionate grounds (Aliens Act of Finland 2004: section 52) as well as sections related to deportation, voluntary return, appeal, execution of the decision and references.

The current analysis mainly concentrates on the credibility assessment, because this forms the basis of the end result. However, the analysis also utilises other aspects of the document as necessary. The structure of the credibility assessment in relation to Kasim's decision is presented in **Table 1**.

Kasim's decision has been used as an example here because it is quite typical: It mixes different strategies of legitimation by using authorisation, rationalisation and moral evaluation. In the analysed decisions in general, authorisation and moral evaluation are also typically combined and are both more common than rationalisation or mythopoesis. Thus, authorisation and moral evaluation represent the most typical strategies of legitimation. In the data, the strategies of legitimation also vary by their placement in the decisions: Authorisation and rationalisation are typically used in all parts of the assessment, whereas moral evaluation is mainly used in the external credibility assessment and mythopoesis in the internal credibility assessment.

The following sections present a more detailed analysis of the four strategies of legitimation. We begin with rationalisation, as by its nature this is one of the more explicit – and therefore more visible – strategies. This will be followed by authorisation, moral evaluation and mythopoesis.

Table 1: The topics of credibility assessment in Kasim's decision, arranged by paragraph.

| Paragraph | Topic |
|-----------|---|
| 1 | Confirming personal information |
| 2 | Rephrasing the narrative of Kasim |
| 3 | Credibility assessment by Migri |
| 4 | Rephrasing the narrative of Kasim |
| 5 | Credibility assessment by Migri |
| 6 | Credibility assessment by Migri |
| 7 | Information about the general security situation in country of origin |
| 8 | Information about the general security situation in country of origin |
| 9 | Information about the general security situation in country of origin |
| 10 | Information about the general security situation in country of origin |
| 11 | Assessment of the general security situation by Migri |

Recommended Rationalisation?

When the decisions use rationalisation, the text is detailed and quite transparent: It highlights the exact events of persecution and aspects of the applicant's story that lack detail, logic or coherence and how these manifest (see Wikström & Johansson 2013: 94). This can be seen in Hossein's decision:

Two days later you got assaulted at your work place, but you were able to escape through the window. What you have told about when your assaulters came to your work place has been very undetailed. You have not been able to describe more specifically how you have been assaulted, what you had been told during the events or what the assaulters looked like. You have not known how long the events lasted and you have not been able to tell how you were able to escape through the window while being assaulted. [...] Considering the circumstances above, the Finnish Immigration Service does not accept as a fact that [...] you would have got assaulted at your work place. (Hossein's decision)¹

The passage is legitimised by rationalisation, as events considered to be lacking detail in Hossein's account are listed. The list includes how the assaulters arrived, how they assaulted Hossein, how they looked or what they said, how long the assault lasted for and how Hossein escaped. Thus, by listing information about the lack of detail given in relation to certain events, the decision shows why the entire narrative of the applicant is seen as insufficiently detailed, and thus, not sufficiently credible.

It can be said that although rationalisation is a fairly rare strategy in the current data, I find it could be a recommendable one. In fact, when it comes to administrative decisions, such as asylum decisions, the ideal of explicitly explaining the reasons for the end result seems to be inherent within them. According to the Administrative Procedure Act (2003), those making decisions need to be transparent about their reasons for said decision – hence the rationalisation behind it. This has several functions. Virolainen and Martikainen (2010: 41–48) point out that when an authority presents the reasoning behind a decision, they also control whether their decision is correct based on law. A well-supported decision also provides a good base for an appeal and court assessment of the decision because the court is then able to see and thus evaluate the proper reasons behind the decision. Furthermore, the obligation to explicate the reasoning behind a decision enables democratic control in terms of the wider legal community.

Uncontrolled Authorisation

Authorisation presents itself in the decisions in two ways – namely, by making general arguments about the credibility of the applicant's account and by not making any arguments at all and instead stating or even implying that the applicant's narrative is not credible.

An authoritative argument commonly used in the decisions to dispute credibility is that the narrative is too vague and lacks detail, as also noted by Saarikkomäki et al. (2018: 27–29). This is apparent in Kasim's decision:

What you told [us] about the threats you received [in your home town] has remained general and unspecified. The Finnish Immigration Service does not accept as a fact what you told [us] about the threats [in your home town]. (Kasim's decision)

The legitimisation strategy here is indicated by the fact that, unlike in Hossein's decision, Migri does not provide in the decision any reasons for Kasim's narrative being 'general and

unspecified'. Before the excerpt presented here, what Kasim has said about events in his home town is rephrased. Following the excerpt, the events that happened after Kasim left his home town are mentioned. Thus, neither before nor after are any comments made that would posit why the narrative is considered to be lacking in detail – it is merely stated. Thus, in the decision, Migri does not provide information about their reasons to the applicant, their lawyer or the court (Virolainen & Martikainen 2010: 40–41). Instead, the only reason they give to the question of 'Why is it so?' is 'Because Migri says so' (cf. Van Leeuwen 2007: 95; Van Leeuwen & Wodak 1999: 104–105). Thus, relying on the authorisation strategy can be quite problematic, as is the case with the decision of Reza. In the decision, Migri simply states:

What you have told [us] about getting kidnapped and being released was general.
(Reza's decision)

Similar to Kasim's decision, prior to Reza's excerpt, Migri simply includes in the decision, in quite a factual manner, the account of his kidnapping without indicating that said account is too vague. After the excerpt, the evidence provided by Reza is discussed, and the lack of detail in his account is not further legitimised. Thus, Migri uses the 'generality' of Reza's narrative as a reason to dismiss said narrative and deny him asylum. However, when Reza's decision is compared to his interview, it seems that the statement concerning his lack of detail is quite contradictory. In his interview, Reza states:

When we had left [the place] came a car with darkened windows, and people came out of the car with guns and hit me and [another person] to the back of the head and after that I was put into the car. They put a bag over my head so I wouldn't see anything. When they hit me in the head, I lost consciousness and I woke up when I was sitting backwards in a chair with my hands and legs tied and a bag over my head. [...] Two people came into the room, I deducted it from the sounds. They took away all my clothes, they only left my underpants on. They said that I'm a traitor, why do I work with the foreigners. Two people bad-mouthed me and called me names all the time, I was a traitor and an agent, and there was a smell of cigarettes. They had smoked cigarettes and they butted out the cigarette on my back. I heard crying and yelling of people in there. This happened a lot, there was yelling and then it became quiet. (Reza's interview protocol)

Based on this excerpt, it seems that the claim in the decision about Reza's narrative being too 'general' is not in line with the interview. In fact, the excerpt reproduced here forms less than half of Reza's entire account of his kidnapping. He describes the sensory details of sounds and smells, which is in line with his story of having a bag over his head. Thus, the account is quite detailed.

This contradiction may be because of a lack of the controlling function, as pointed out by Virolainen and Martikainen (2010: 48). According to Virolainen and Martikainen, when an authority presents the reasoning behind their decision, they are also forced to control whether or not their decision is correct and based on the law. This is especially important in asylum decisions, because studies (e.g. Johansson Blight 2015; Ramji-Nogales, Schoenholtz & Schrag 2007) evidence that decisions are affected not only by facts and laws but also by the personal opinions of the authorities. When decisions rely on the authorisation strategy, and the authorities are not obligated to properly explain their decisions, the control function is lost.

Implicit Moral Evaluation

While there is little explicit moral evaluation in the decisions, there are many ways in which Migri makes abstract moral evaluations in the decisions. The current article distinguishes four domains from which Migri draws values to base their decisions on – namely, the value of the law, the value of country information, the value of parental care and the value of income.

The value of the law refers to the emphasis on and value of the perfection of the law. This perfection is used in the legitimation of decisions. The right to seek asylum is based on several international agreements and has been ratified in the Aliens Act of Finland. Thus, each asylum decision ends with a legal assessment. While the assessment is based on the preceding credibility assessment, the legal assessment presents itself as a purely logical chain. For example:

The Finnish Immigration Service sees that you have not faced acts as mentioned in Aliens Act section 87a to be considered persecution, that would be caused by the reasons of persecution as mentioned in section 87b [...].

The example seems to present a perfectly logical chain: The applicant has not fulfilled the requirements of the law; therefore, based on the law, they shall not be granted asylum. However, what is left quite implicit in this legitimation is the claim that the applicant has not faced acts of persecution, which is based on the credibility assessment, which is far less logical.

Unlike the other examples presented in this article, the example presented above is not given a specific source, as it is highly prevalent and is repeated verbatim in countless decisions. This is likely due to the use of model documents, which, according to Tiilikäinen (2007: 119, 142–146), are a way of making asylum decisions more efficient, equal and personal. The example also overlaps with other legitimation strategies (Fairclough 2003: 99), as the law is treated as an example of moral evaluation. Additionally, the example also represents law as the highest form of authority: Asylum should be granted on particular parameters by particular officials because 'the law says so'.

The value of country information refers to the assumption that the country information provided is objectively and absolutely truthful. In this sense, it is treated similarly to the law. In this article, country information refers to the information provided about the general status of society in the applicant's country of origin. In the decisions, this information serves two purposes. On one hand, it is used to assess whether the applicant is telling the truth; on the other hand, it is used to evaluate how safe it is for the applicant in particular and for people in general to return to said country.

In practise, country information provides only a situated and limited perspective of the situation of a country. This is partly because country information is typically based on several sources; these sources, in turn, are also based on several sources. For example, the first sources could be interviews or news stories, which are then turned into a report by the UNCHR, the European Asylum Support Office (EASO), or by the individual immigration offices in various European countries. These reports may be turned into yet another report and then into a passage for the asylum decision. Thus, the country information comprises an intertextual document, in which each phase entails the reframing of information as well as the inclusion and exclusion of information. This is apparent in the decision made in relation to Abdul.

Abdul's case is related to moral crimes, specifically premarital affairs between men and women. Drawing on country information provided by the UNHCR, the decision states:

A relationship between a young woman and a young man outside of or before marriage is a severe offence against the honour of the families, especially to that of the young woman's family. The family of the woman can for this reason threaten to murder both their own daughter and in some cases also the son (Abdul's decision).

Based on the passage in relation to country information, Migri makes the following statement in the decision:

According to the country information presented above, the threat of honour violence is additionally directed primarily to women. (Abdul's decision)

This is all that is said about the possible threat of honour-related violence (i.e. violence related to ensuring the honour of the family) against Abdul; thus, Migri seems to take the account of country information as the absolute truth. This is shown in the way that the decision does not even assess whether Abdul, with his particular case, might be one of those 'sons' who may be in danger. Nor does it argue or explain why he, according to the decision, is not in danger. Indeed, the fact that Migri does not believe Abdul to be in danger because of honour-related violence is not explained. Rather, it is only Migri's refusal to grant him asylum that highlights this lack of belief. For a discussion on gender-based and honour-related violence in relation to asylum claims, see Berger (2009) and Wikström and Johansson (2013).

The value of parental care refers to how Migri makes a moral evaluation in relation to said care. According to this value, a child's right to be with their parent is more important than the other rights of children, such as security or education. According to the Finnish law, when making decisions for a child under the age of 18, special attention should be paid to the best interest of the child. However, what exactly paying special attention to the best interest of the child means seems to be left to the authorities to decide. Here is an example from Migri's decision in relation to Adela and her mother, Saida:

Taking into account the young age of [Adela] and that [Adela], because of her young age, has not yet been able to form strong ties to Finland, no significant obstacles for the child to adapt in her home country [...] together with her guardian are seen. [...] The Finnish Immigration Service sees, taking into account the best interest of the child as a whole, that it is in her best interest to grow and develop in a way suitable for her, surrounded and supported by her loved ones in your home country [...]. (Saida and Adela's decision)

This example is repeated almost verbatim in numerous asylum decisions made concerning families. Migri claims that the decision aims to assess 'the best interest of the child'. However, Migri seems to reduce 'the best interest of the child' to simply being with her mother, Saida. A child's right to be with their parents is certainly an important right, but it is not the only one. According to the United Nations Convention of the Rights of the Child (UNHCR 1990), a child also has the right to, among other things, security and education. However, this is not in any way commented on or assessed in the decision. This is especially poignant in the decisions made in relation to Afghan children, as few girls in Afghanistan have access to education, and many are married off before the age of 18.

The value of income refers to the assumption that work is merely a way of making money, thus signifying nothing about the values or lifestyle of the applicant. In the data, there are numerous cases where applicants report persecution based on their work, usually because they have worked with foreigners or in a profession that is viewed as non-Islamic. In these

cases, Migri usually states in the decision that since the applicant has already stopped working – because they have left their country – they can safely return and take on another occupation.

What the decisions do not consider is how a choice of occupation can reflect a person's values. For example, if a person chooses to work with foreigners, this can be indicative of the fact that they are open to, or at least not against, foreigners. If a person chooses to work in a non-Islamic profession (e.g. selling alcohol), this indicates that they are not overly concerned with following the teachings of Islam. This, however, is not taken into account in the decisions or interview protocols. An analysis of the protocols shows that the questions posed by Migri almost exclusively aimed to verify *whether* the applicant has worked in the profession they say they have. Migri does not aim to clarify the reasons that they have chosen this profession. Thus, it seems that Migri does not try to ascertain whether the applicant's work is a way for them to earn a living, whether it represents their values or religious or political convictions, or whether their work could be interpreted as representing said values and convictions by persecutors. This is essential, as even though values or lifestyle are not covered by legislation as an official reason for persecution, religious and political convictions are.

The value of income appears to be predominantly associated with assessing an applicant's social credibility. In Finland, people are not usually persecuted because of their profession or beliefs related to said profession; Migri seems to assume that this is also the case in other countries. This is what Wikström and Johansson (2013) refer to as 'normative leakage' – when an immigration authority uses certain normative standards without realising or acknowledging this use. An example of this is an assessment of persecution in Iraq that is based on the social norms of Finland. Thus, as McKinnon (2009) writes, asylum applicants must be able to translate the persecution they have experienced into a language that the authorities prefer.

Mythopoesis and Counter-Narratives

Mythopoesis (i.e. the act of legitimization through narratives) is certainly an important form of legitimization in asylum decisions, partly because of the nature of asylum seeking. As the UNHCR (2011: 38) guidelines state: 'Often [...] an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule,' because, in most cases, 'a person fleeing from persecution will have arrived with the barest necessities'. Consequently, although mythopoesis is heavily present in the current data, it is mainly present as a legitimization strategy used by the asylum seekers, not by Migri.

However, also Migri uses mythopoesis as a legitimization strategy when they create alternative storylines or counter-narratives. In asylum decisions, mythopoesis relates not only to the events narrated by the asylum applicant but also to the cause-effect relationship between the applicant and the events (i.e. the events happened because of how the applicant is). An example of this is the case of Ali. In his interview protocol, Ali explained that he ran a shop in his home country. The shop had previously been run by his brother, but after his brother was killed, Ali took over. Ali recalled how he went to open the shop one day and was injured by a bomb that had been placed at the door of the shop. Following his recovery, he received a phone call in which he was told that he would be killed, just like his brother, because he had worked with foreigners.

In their decision, Migri challenges Ali's narrative by creating an alternative narrative. First, Migri accepts the events of Ali's narrative (i.e. that Ali's brother was killed and that Ali was injured in an explosion and was threatened over the phone). After this, however, Migri builds a counter-narrative about the meaning of these events. According to Migri, the bomb was not directed at Ali personally but was 'due to the generally poor security situation in the area'. This statement indicates that although Ali's brother was killed and that Ali himself was injured in an explosion and received a death threat, these events were not directly related

to one another or to Ali. In Migri's counter-narrative, they become individual incidents that coincidentally involved the same person. Thus, according to Migri, there was no cause-effect relationship between the events and Ali: The events were not because of *Ali*, but because of the *overall security situation*. Thus, they do not pose a threat to him, and Migri used this counter-narrative to deny asylum.

Hence, in the current data, mythopoesis is used as a strategy to legitimise plausibility and either prove or disprove the applicant's need for asylum. The role of mythopoesis is quite different from the moral or cautionary tales described by Van Leeuwen and Wodak (1999). It is also different from the example of mythopoesis provided by Fairclough (2003: 99) of 'building up of a picture of the "new age"'. The overlap of legitimation strategies (Fairclough 2003) is also noteworthy, as within mythopoesis, Migri also used the authorisation strategy. This is highlighted in the way that Migri does not explain why their narrative is more plausible than that of Ali, the asylum applicant – this seems to be assumed, because it is the narrative of the authority. This also implies a further overlap with moral evaluation, where it is assumed that the authority is automatically more trustworthy than the asylum applicant. This echoes previous research, which points to a 'culture of disbelief', indicating the deep distrust that asylum authorities feel towards asylum applicants. It is expected that the applicants will lie, so the applicants must specifically prove to the authorities that they are telling the truth (e.g. Herlihy & Turner 2009; Johansson Blight 2015; Millbank 2009; Sweeney 2009).

Conclusion and Discussion

This article has examined the strategies of legitimation used by Migri in supporting their negative asylum decisions as well as how these strategies have been used. The article has shown that in legitimating asylum decisions, Migri relies heavily on authorisation and moral evaluation, both of which are quite vague and opaque legitimation strategies. This has numerous consequences for the due process of asylum cases.

First, since these strategies render the arguments and logic behind the decision almost invisible, the method of legitimation does not support the appeal process (Virolainen & Martikainen 2010: 41–42). In fact, it does quite the opposite. This is because it is difficult to argue against and make clearer important aspects of the process when it remains unclear what kind of logic Migri used to make the decision in the first place.

Second, Virolainen and Martikainen (2010: 48) point out that public officials use rationalisation in their decisions so that they themselves can double-check their reasoning behind the decision (i.e. whether their logic really holds and if they have really made the correct decision). Since the negative asylum decisions made by Migri lack this element, it raises the question, in the case of Reza, for example, of whether the authorities making the decisions have actually double-checked their own logic and reasoning. If this kind of double-checking is seen as necessary when it comes to administrative decisions about transportation of the disabled – an example used by Tiililä (2007) – it would certainly be well-founded to do so in asylum decisions, as from the perspective of the applicant, those decisions are life changing.

As the entire system of asylum rests on the assumed fairness, accuracy and transparency of asylum decisions, this study shows that the decisions of Migri question the workings of the system. As Migri mainly relies on the strategies of authorisation and implicit moral evaluation, this makes their decisions difficult to assess or verify and, thus, to really see whether the decisions are fair and to correct them if they are not. Although the data used in the study are not representative of all asylum decisions made by Migri, it does provide insight into how the service presents its decisions and why the due process of asylum seekers has caused concern and criticism in Finland. Indeed, the study proves that those expressing concern about asylum decisions have concrete grounds on which to do so. In order to retain the legitimacy of

the asylum system and thus enable the protection of those in need, the legitimacy of asylum decisions has to be taken seriously.

Note

¹ The translations from the original Finnish language have been made by the researcher.

Acknowledgements

I would like to thank Hossein, Kasim, Reza, Abdul, Saida and Adela, and Ali as well as all the other applicants who shared their asylum decisions and helped me to collect them. My thanks also to the blind reviewers for their constructive and insightful comments as well as the CEREN seminar for comments and encouragement.

Competing Interests

In addition to being a researcher, the author is a human rights activist working with asylum seekers.

References

- Administrative Procedures Act of Finland.** 2003. Available at www.finlex.fi. [Last accessed 1 December 2017].
- Aliens Act of Finland.** 2004. Available at www.finlex.fi [Last accessed 1 December 2017].
- Berger, SA.** 2009. Production and reproduction of gender and sexuality in legal discourses of asylum in the United States. *Signs: Journal of Women in Culture and Society*, 34(3): 659–685. DOI: <https://doi.org/10.1086/593380>
- Díez, IG.** 2011. How the officials' styles of recording the asylum seekers' statements in reports affect the assessment of applications: The case of Belgian asylum agencies. *Text and Talk*, 31(5): 553–577. DOI: <https://doi.org/10.1515/text.2011.027>
- Eurostat.** 2017. Asylum and first-time asylum applicants. *Eurostat*. Available at ec.europa.eu/eurostat/ [Last accessed 6 November 2017].
- Fairclough, N.** 1989. *Language and power*. London: Longman Publishing.
- Fairclough, N.** 2003. *Analysing discourse: textual analysis for social research*. London: Routledge. DOI: <https://doi.org/10.4324/9780203697078>
- Guild, E and Bigo, D.** 2003. La visa Schengen: Expression d'une stratégie de police à distance. *Cultures et Conflits*, 49: 22–37. DOI: <https://doi.org/10.4000/conflits.924>
- Herlihy, J, Jobson, L and Turner, S.** 2012. Just tell us what happened to you: Autobiographical memory and seeking asylum. *Applied Cognitive Psychology*, 26(5): 661–676. DOI: <https://doi.org/10.1002/acp.2852>
- Herlihy, J and Turner, SW.** 2009. The psychology of seeking protection. *International Journal of Refugee Law*, 21(2): 171–192. DOI: <https://doi.org/10.1093/ijrl/eep004>
- Johansson Blight, K.** 2015. Questioning fairness in Swedish asylum decisions. *State Crime*, 4(1): 52–76. DOI: <https://doi.org/10.13169/statecrime.4.1.0052>
- Karakayali, S and Rigo, E.** 2010. Mapping the European Space of Circulation. In: De Genova, N and Peutz, N (eds.), *The Deportation Regime: Sovereignty, Space and the Freedom of Movement*, 123–144. Durham, London: Duke University Press. DOI: <https://doi.org/10.1215/9780822391340-005>
- Könönen, J.** 2015. *Tilapäinen elämä, joustava työ. Rajat maahanmuuton ja työvoiman mekanismina*, Itä-Suomen yliopisto, Joensuu.
- McKinnon, SL.** 2009. Citizenship and the performance of credibility: Audiencing gender-based asylum seekers in U.S. immigration courts. *Text and Performance Quarterly*, 29(3): 205–221. DOI: <https://doi.org/10.1080/10462930903017182>

- Melloy, KE.** 2007. Telling truths: How the REAL ID Act's credibility provisions affect women asylum seekers. *Iowa Law Review*, 92(2): 637–677.
- Mezzadra, S and Neilson, D.** 2013. *Border as method, or, the multiplication of labour*. Durham, London: Duke University Press. DOI: <https://doi.org/10.1215/9780822377542>
- Millbank, J.** 2009. The ring of truth: A case study of credibility assessment in particular social group refugee determinations. *International Journal of Refugee Law*, 21(1): 1–33. DOI: <https://doi.org/10.1093/ijrl/een040>
- Noll, G.** 2006. Asylum claims and the translation of culture into politics. *Texas International Law Journal*, 49(491): 491–502.
- Pellander, S.** 2015. "An acceptable marriage": Marriage migration and moral gatekeeping in Finland. *Journal of Family Issues*, 36(11): 1472–1489. DOI: <https://doi.org/10.1177/0192513X14557492>
- Ramji-Nogales, J, Schoenholtz, AI and Schrag, PG.** 2007. Refugee roulette: Disparities of asylum adjudication. *Stanford Law Review*, 60(2): 295–412.
- Rigo, E.** 2009. *Rajojen Eurooppa*. Helsinki: Like.
- Saarikkomäki, E, Oljakka, N, Vanto, J, Pirjatanniemi, E, Lavapuro, J and Alvesalo-Kuusi, A.** 2018. Kansainvälistä suojelua koskevat päätökset Maahanmuuttovirastossa 2015–2017. *Pilottitutkimus 18–34-vuotiaita Irakin kansalaisia koskevista myönteisistä ja kielteisistä päätöksistä, Oikeustieteellisen tiedekunnan tutkimusraportteja ja katsauksia 1/2018*, Turun yliopisto, Turku.
- Satzewich, V.** 2013. Visa officers and gatekeepers of a state's borders: The social determinants of discretion in spousal sponsorship case in Canada. *Journal of Ethnic and Migration Studies*, 40(9): 1450–1569. DOI: <https://doi.org/10.1080/1369183X.2013.854162>
- Sweeney, JA.** 2009. Credibility, proof and refugee law. *International Journal of Refugee Law*, 21(4): 700–726. DOI: <https://doi.org/10.1093/ijrl/eep027>
- Tiililä, U.** 2000. Tapaus päivähoidon päätös. In Heikkinen, V, Hiidenmaa, P and Tiililä, U (eds.), *Teksti työnä, virka kielenä*, 215–266. Helsinki: Gaudeamus.
- Tiililä, U.** 2007. *Tekstit viraston työssä: tutkimus etuuspäätösten kielestä ja konteksteista*. Helsinki: Suomalaisen Kirjallisuuden Seura.
- United Nations High Commissioner for Refugees (UNHCR).** 1990. Convention on the rights of the child. Geneva: UNHCR. Available at www.unhcr.org [Last accessed 18 April 2019].
- UNHCR.** 2010 [1951]. Convention and protocol relating to the status of refugees. Geneva: UNHCR. Available at www.unhcr.org [Last accessed 4 December 2017].
- UNHCR.** 2011. Handbook and guidelines on procedures and criteria for determining refugee status. Geneva: UNHCR. Available at www.unhcr.org [Last accessed 4 December 2017].
- Van Leeuwen, T.** 2007. Legitimation in discourse and communication. *Discourse & Communication*, 1(1): 91–112. DOI: <https://doi.org/10.1177/1750481307071986>
- Van Leeuwen, T and Wodak, R.** 1999. Legitimizing immigration control: A discourse-historical analysis. *Discourse Studies*, 1(1): 83–118. DOI: <https://doi.org/10.1177/1461445699001001005>
- Virolainen, J and Martikainen, P.** 2010. *Tuomion perusteleminen*. Helsinki: Talentum.
- Vogler, S.** 2016. Legally queer: The construction of sexuality in LGBQ asylum claims. *Law and Society Review*, 50(4): 856–889. DOI: <https://doi.org/10.1111/lasr.12239>
- Wikström, H and Johansson, T.** 2013. Credibility assessments as 'normative leakage': Asylum applications, gender and class. *Social Inclusion*, 1(2): 92–101. DOI: <https://doi.org/10.17645/si.v1i2.115>

How to cite this article: Bodström, E. 2020. 'Because Migri Says So': Legitimation in Negative Asylum Decisions in Finland. *Nordic Journal of Migration Research*, 10(2): pp. 5–19. DOI: <https://doi.org/10.33134/njmr.134>

Submitted: 01 April 2020 **Accepted:** 01 April 2020 **Published:** 28 May 2020

Copyright: © 2020 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.