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# Asylum Decisions as Performances: Intertextuality in Internal Credibility Assessment

Erna Bodström\*

## ABSTRACT

This article shows how the Finnish Immigration Service approaches internal credibility assessment in asylum decisions. The internal credibility assessment is one of the most important parts of the asylum process, since it aims to assess the truthfulness of the asylum applicant's account, customarily through evaluation of the level of detail, coherence, and sense of personal telling. If the account is not accepted as truthful, the applicant may not be granted asylum. In general, the internal credibility assessment is based on the asylum interview documented in the asylum record. The current study analyses 44 asylum decisions and the corresponding interview records to see how the internal credibility assessment is intertextually constructed in the decisions. The article shows that referring to detail seems to be used as a shorthand in the decisions to reject the applicant's account, since it is used both in cases where the questions of the interviewer have been general, and in cases where the issue seems rather to be one of consistency in either the interview or the decision. The article further shows how the decisions portray the assumptions of the decision maker as more neutral, objective, and credible than those of the asylum applicant. Overall, the article argues that the asylum decisions become performances in which the form and internal argumentation may become more important than the intertextual coherence of the asylum case.

## 1. INTRODUCTION

Fair and just asylum decisions are at the heart of a legitimate asylum system, and pivotal to asylum decisions is the internal credibility assessment of the applicant's claim.

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This is because they are legal<sup>1</sup> and administrative<sup>2</sup> decisions that, by and large, evaluate whether the applicant's narrative of persecution is to be deemed credible. To do this, the decisions draw on the applicant's asylum interview, information about the applicant's country of origin, and any available documentary evidence. Thus, the decisions are inherently intertextual.<sup>3</sup> On a larger scale, asylum decisions are intertwined with global processes of border control and gatekeeping. However, as Mezzadra and Neilson argue, borders are designed not simply to keep people out, but to select and filter who gets in and under what conditions.<sup>4</sup> Indeed, selecting and filtering is a crucial function of the asylum assessment process.

Asylum documents have been studied from various perspectives – such as interpretation,<sup>5</sup> psychology,<sup>6</sup> anthropology,<sup>7</sup> and social linguistics<sup>8</sup> – but rarely with a specific focus on intertextuality. Some studies have examined the production of the interview records,<sup>9</sup> others the asylum decisions themselves.<sup>10</sup> When it comes to credibility, some studies have considered credibility assessment in general,<sup>11</sup> while others have paid

<sup>1</sup> Jyrki Virolainen and Petri Martikainen, *Tuomion Perusteleminen [Justifying a Sentence]* (Talentum 2010).

<sup>2</sup> Ida Staffans, *Evidence in European Asylum Procedures* (Martinus Nijhoff Publishers 2012).

<sup>3</sup> Julia Kristeva, *Desire in Language: A Semiotic Approach to Literature and Art* (Columbia University Press 1980); Norman Fairclough, *Analysing Discourse: Textual Analysis for Social Research* (Routledge 2003).

<sup>4</sup> Sandro Mezzadra and Brett Neilson, *Border as Method, or, the Multiplication of Labour* (Duke University Press 2013).

<sup>5</sup> Isabel Gómez Díez, 'The Role of the Interpreter in Constructing Asylum Seeker's Credibility: A Hearing at the Spanish "Asylum and Refugee Office"' (2010) 4 Sociolinguistic Studies 333; Marco Jacquemet, 'Transidioma and Asylum: Gumperz's Legacy in Intercultural Institutional Talk' (2013) 23 Journal of Linguistic Anthropology 199.

<sup>6</sup> Jane Herlihy and Stuart W Turner, 'The Psychology of Seeking Protection' (2009) 21 International Journal of Refugee Law 171; Jane Herlihy, Laura Jobson, and Stuart W Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum' (2012) 26 Applied Cognitive Psychology 661.

<sup>7</sup> Jacquemet (n 5); Nick Gill and Anthony Good (eds), *Asylum Determination in Europe: Ethnographic Perspectives* (Palgrave Macmillan 2019).

<sup>8</sup> Díez 2010 (n 5).

<sup>9</sup> Isabel Gómez Díez, 'How the Officials' Styles of Recording the Asylum Seekers' Statements in Reports Affect the Assessment of Applications: The Case of Belgian Asylum Agencies' (2011) 31 Text and Talk 553; Forough Ramezankhah, 'The Tale of Two Men: Testimonial Styles in the Presentation of Asylum Claims' (2017) 29 International Journal of Refugee Law 110.

<sup>10</sup> Hanna Wikström and Thomas Johansson, 'Credibility Assessments as "Normative Leakage": Asylum Applications, Gender and Class' (2013) 1 Social Inclusion 92; Karin Johansson Blight, 'Questioning Fairness in Swedish Asylum Decisions' (2015) 4 State Crime 52.

<sup>11</sup> Gregor Noll, 'Asylum Claims and the Translation of Culture into Politics' (2006) 41 Texas International Law Journal 491; Jenni Millbank, '"The Ring of Truth": A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations' (2009) 21 International Journal of Refugee Law 1; James A Sweeney, 'Credibility, Proof and Refugee Law' (2009) 21 International Journal of Refugee Law 700; Jane Herlihy, Kate Gleeson, and Stuart W Turner, 'What Assumptions about Human Behaviour Underlie Asylum Judgments?' (2010) 22 International Journal of Refugee Law 351.

particular attention to assessing internal credibility – that is, evaluating whether the applicant is telling the truth, based on the cohesion and level of detail of his or her persecution narrative.<sup>12</sup> Although several international agreements guide the asylum process,<sup>13</sup> each State has its own processes for asylum decision making. Studies on these include, but are not limited to, the United States,<sup>14</sup> Canada,<sup>15</sup> the United Kingdom,<sup>16</sup> Switzerland,<sup>17</sup> the Netherlands,<sup>18</sup> Belgium,<sup>19</sup> Sweden,<sup>20</sup> and Norway.<sup>21</sup>

In the case of Finland, a small number of in-depth studies exist, including a 1996 dissertation by Saarelainen on the assessment by the Finnish Immigration Service (Service) of the fear of persecution,<sup>22</sup> and a book by Staffans comparing the asylum appellate systems of the United Kingdom, Germany, and Finland.<sup>23</sup>

This study complements the existing literature on asylum decisions by focusing on the intertextuality of decisions with regard to internal credibility assessments, from a

<sup>12</sup> Katherine E Melloy, 'Telling Truths: How the REAL ID Act's Credibility Provisions Affect Women Asylum Seekers' (2007) 92 Iowa Law Review 637; Sara L McKinnon, 'Citizenship and the Performance of Credibility: Audiencing Gender-Based Asylum Seekers in US Immigration Courts' (2009) 29 Text and Performance Quarterly 205.

<sup>13</sup> For example, the Universal Declaration of Human Rights (adopted 10 December 1948) UNGA res 217 A(III) (UDHR); Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention); Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (1967 Protocol). In the European Union, see eg European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR).

<sup>14</sup> Amy Shuman and Carol Bohmer, 'Representing Trauma: Political Asylum Narrative' (2004) 117 The Journal of American Folklore 394; Melloy (n 12); McKinnon (n 12); Sean Rehaag, 'I Simply Do Not Believe ...': A Case Study of Credibility Determinations in Canadian Refugee Adjudication' (2017) 38 Windsor Review of Legal and Social Issues 38.

<sup>15</sup> Robert F Barsky, *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing* (John Benjamins 1994); Rehaag (n 14); Hilary Evans Cameron, *Refugee Law's Fact-Finding Crisis: Truth, Risk, and the Wrong Mistake* (Cambridge University Press 2018).

<sup>16</sup> Millbank (n 11); Sweeney (n 11); Ramezankhah (n 9).

<sup>17</sup> Michel-Acatl Monnier, 'The Hidden Part of Asylum Seekers' Interviews in Geneva, Switzerland: Some Observations about the Socio-Political Construction of Interviews between Gatekeepers and the Powerless' (1995) 8 Journal of Refugee Studies 305.

<sup>18</sup> Thomas Spijkerboer, 'Stereotyping and Acceleration: Gender, Procedural Acceleration and Marginalised Judicial Review in the Dutch Asylum System' in Gregor Noll (ed), *Proof, Evidentiary Assessment and Credibility in Asylum Procedures* (Martinus Nijhoff Publishers 2005).

<sup>19</sup> Díez 2011 (n 9).

<sup>20</sup> Wikström and Johansson (n 10); Johansson Blight (n 10).

<sup>21</sup> Deniz Akin, 'Queer Asylum Seekers: Translating Sexuality in Norway' (2017) 43 Journal of Ethnic and Migration Studies 458.

<sup>22</sup> Matti Saarelainen, *Perusteltu Pelko: Tutkimus Turvapaikanhakijan ja Valtion Kohtaamisesta Suomalaisessa Turvapaikkaprosessissa* [Well-Grounded Fear: A Study on the Meeting of the Asylum Seeker and the State in the Finnish Asylum Procedure]. This thesis from the University of Helsinki was published by the Finnish Ministry of the Interior in 1996.

<sup>23</sup> Staffans (n 2).

socio-legal perspective. By ‘internal credibility assessment’, the study refers to the way that authorities assess whether an asylum applicant is telling the truth. This is a crucial aspect of the asylum process, because if the applicant fails to convince the authorities of the truthfulness of his or her narrative, the individual is likely to be denied asylum. Through an analysis of 44 negative asylum decisions and the corresponding interview records, the article aims to answer the question: how is internal credibility assessment intertextually constructed in negative asylum decisions? From an intertextual point of view, the presumption is that in a just asylum process, the decision should be based on matters raised and explored in the interview record; grounds for rejection should not simply emerge in the decision.

The decisions examined in this study represent legal and practical reactions in Finland following the so-called refugee crisis of 2015. Having traditionally received few asylum seekers, in 2015 Finland received about 30,000 asylum applications (10 times more than in previous years).<sup>24</sup> Accordingly, Finland made several changes to its asylum legislation and internal practices – including, but not limited to, removing one protection category from the law, reassessing the security situation in key countries of origin, increasing the use of the internal flight alternative, and restricting the applicant’s right to legal aid in an asylum interview.<sup>25</sup> Following this, the percentage of accepted asylum claims decreased significantly for citizens of Iraq and Afghanistan, as well as for some other countries of origin. Saarikkomäki and others argue that the decrease in accepted asylum claims is not fully explained by the known changes, and suggest that the Service also increased the threshold of the credibility assessment.<sup>26</sup> The decisions selected for this study were drawn from the decisions made for Iraqi and Afghan asylum seekers by the Service between March 2016 and March 2017, during the period of legislative and acceptance rate changes. This study thus sheds further light on the Service’s approach to internal credibility assessment.

## 2. INTERNAL CREDIBILITY ASSESSMENT

Credibility assessment is a central part of the asylum process. Credibility can be divided into three categories: internal, external, and social credibility.<sup>27</sup> Assessing internal

<sup>24</sup> Eurostat, ‘Asylum and First Time Asylum Applicants: Annual Aggregated Data (Rounded)’ <<https://ec.europa.eu/eurostat/data/database>> accessed 21 November 2020.

<sup>25</sup> Finnish Immigration Service, ‘Humanitarian Protection No Longer Granted; New Guidelines Issued for Afghanistan, Iraq and Somalia’ <<https://migri.fi/en/-/humanitaarista-suojelua-ei-myonnetta-ena-uudet-maalinjaukset-afganistanista-irakista-ja-somaliasta>> accessed 21 December 2020; Outi Lepola, ‘Turvapaikanhakijat Oikeusavun Asiakkaina: Kohti Yhdenvertaisia ja Laadukkaita Oikeusapupalveluita’ [Asylum Seekers as Legal Aid Clients: Towards Equal and Good Quality Legal Aid Services], Policy Brief 33/2018 (Ministry of Justice 2018).

<sup>26</sup> Elsa Saarikkomäki and others, *Kansainvälistä Suojelua Koskevat Päätökset Maahanmuuttovirastossa 2015–2017: Pilottitutkimus 18–34-Vuotiaita Irakin Kansalaisia Koskevista Myönteisistä ja Kielteisistä Päätöksistä* (Oikeustieteellisen Tiedekunnan Tutkimusraportteja ja Katsauksia 1/18) [Decisions on International Protection at the Finnish Immigration Service in 2015–2017: A Pilot Study on Positive and Negative Decisions regarding Iraqi Citizens between the Ages of 18 and 34 (Research Reports and Reviews of the Faculty of Law, University of Turku 2018)].

<sup>27</sup> Noll (n 11); Sweeney (n 11); Wikström and Johansson (n 10).

credibility means evaluating the asylum applicant's persecution narrative to see how internally cohesive it is, whereas assessing external credibility refers to comparing the applicant's account to the available information on the applicant's country of citizenship, as well as any available documentary evidence provided by the applicant.<sup>28</sup> Wikström and Johansson suggest a further category, social credibility, by which they mean assessing credibility in reference to the societal context of the applicant's origin.<sup>29</sup>

Internal credibility is assessed by comparing the applicant's narrative to certain criteria. It is usually evaluated through an asylum interview, where the applicant provides his or her reasons for seeking asylum. In general, an internally credible asylum narrative is expected to be coherent, consistent, and rich in detail.<sup>30</sup> Shuman and Bohmer specifically state that an asylum applicant's account must have 'a consistent chronology, a clear sense of agency (especially the identification of perpetrators and victims), and an account on causality in which political persecution is the motivation for seeking asylum.'<sup>31</sup> Guidelines produced by the United Nations High Commissioner for Refugees (UNHCR) provide an important transnational framework for assessing the credibility and robustness of asylum claims.<sup>32</sup> Although not binding, the guidelines are seen as authoritative, as UNHCR plays a leading role in the interpretation of the 1951 Refugee Convention and its 1967 Protocol.<sup>33</sup>

In the asylum interview, it is not sufficient for asylum applicants simply to narrate the reasons for their fear; they are expected to do so in a credible manner, the credibility of which is assessed by the decision maker. The interview is not an equal situation; the interviewer holds significant power over the asylum applicant.<sup>34</sup> This is in part because the interviewer knows what is required from the applicant for a successful asylum interview, whereas the applicant necessarily does not.<sup>35</sup> McKinnon describes the information produced in asylum interviews as 'performances'.<sup>36</sup> She argues that in order to be assessed as credible, the applicants need to narrate their experiences to the level of detail, coherence, and rationality expected by the decision maker for the narrative to have a 'ring of truth', as Millbank puts it.<sup>37</sup> The ways of performing may vary based on the socio-economic background and education of the applicant,<sup>38</sup> but, as Ramezankhah shows, differences may also occur between applicants from similar backgrounds.<sup>39</sup>

<sup>28</sup> Wikström and Johansson (n 10).

<sup>29</sup> *ibid.*

<sup>30</sup> Shuman and Bohmer (n 14); McKinnon (n 12); Herlihy, Gleeson, and Turner (n 11); Ramezankhah (n 9); Rehaag (n 14); Matilde Skov Danstrøm and Zachary Whyte, 'Narrating Asylum in Camp and Court' in Gill and Good (eds) (n 7).

<sup>31</sup> Shuman and Bohmer (n 14) 402.

<sup>32</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4 (1979, reissued 2019).

<sup>33</sup> Staffans (n 2) 20.

<sup>34</sup> Spijkerboer (n 18).

<sup>35</sup> cf Ramezankhah (n 9).

<sup>36</sup> McKinnon (n 12) 218.

<sup>37</sup> Millbank (n 11) 5.

<sup>38</sup> Shuman and Bohmer (n 14).

<sup>39</sup> Ramezankhah (n 9).



In Finland, the asylum process starts when the asylum applicant lodges an application with the police or at the border. At this time, the applicant is expected to briefly explain his or her reasons for seeking asylum. The asylum interview itself is usually organized by the Service. Interview participants generally include the interviewer employed by the Service, the applicant, and an interpreter. At the beginning of the interview, the interviewer asks if the applicant has understood his or her rights and obligations, as delivered in writing before the interview. The interview starts with the interviewer prompting the applicant with the words: 'Please tell me the reasons based on which you are seeking asylum.' The applicant is allowed and expected to freely narrate his or her reasons. After that, the interview continues with further questions posed by the interviewer. In addition, the interviewer writes down the questions asked and the answers provided.<sup>40</sup> At the end of the interview, the applicant, with the help of the interpreter, checks what the interviewer has written, and they all confirm it with their signatures. This becomes the interview record. The asylum decision is based on the interview record and other intertextual documents, such as the Finnish law and country information. Country information refers to factual evidence about the situation and safety of the applicant's country of citizenship, produced primarily by organizations such as UNHCR and the European Asylum Support Office, as well as the immigration services in various States.<sup>41</sup>

The asylum process in Finland is guided by several statutes. However, as Staffans points out, these provide guidance at a general level and do not entail detailed norms on the process or the assessment of credibility.<sup>42</sup> The principle of *non-refoulement* is reflected in the Constitution of Finland 1999 as follows: an alien shall not be deported, extradited, or returned if in consequence he or she is in danger of a death sentence, torture or other inhuman treatment. The reasons for granting asylum are set out in the Aliens Act 2004, while general rules on good administrative conduct and making administrative decisions, including asylum decisions, are reflected in the Administrative Procedure Act 2003. The Administrative Judicial Procedure Act 1996 details the right and process of appeal. The Service is the authority that makes the decision on granting asylum in the first instance. If the decision is negative – that is, it denies asylum – the applicant has a right to appeal the decision on the merits to the Administrative Court. If the Administrative Court confirms the decision of the Service, the applicant can further ask for leave to appeal from the Supreme Administrative Court. Unlike some other States, oral hearings at the appellate stage are rare in Finland.<sup>43</sup> This further emphasizes the importance of the internal credibility assessment undertaken by the Service.

Several researchers have pointed out problems with credibility assessment. McKinnon argues that, despite shared criteria, internal credibility assessment is quite subjective and prone to errors in translation and misinterpretation.<sup>44</sup> Thus, assessing

<sup>40</sup> See Monnier (n 17); Díez 2011 (n 9).

<sup>41</sup> cf Nicholas R Bednar, 'Social Group Semantics: The Evidentiary Requirements of "Particularity" and "Social Distinction" in Pro Se Asylum Adjudications' (2015) 586 Minnesota Law Review 355.

<sup>42</sup> Staffans (n 2) 144–45.

<sup>43</sup> *ibid* 160.

<sup>44</sup> McKinnon (n 12) 211–12.

credibility is as much about what the decision maker hears as it is about what the asylum applicant says or does.<sup>45</sup> Furthermore, the standards expected in a credible asylum narrative may be difficult to attain, not only for uneducated or underprivileged applicants,<sup>46</sup> but also for those who have experienced trauma<sup>47</sup> (which is not uncommon among people seeking asylum). Additionally, several studies report a ‘culture of disbelief’ among decision makers – that is, a view that many asylum applicants are not ‘real’ refugees but are prone to telling lies.<sup>48</sup> Such an expectation is likely to affect the credibility assessment of the applicant’s narrative.

### 3. ASYLUM DECISIONS AS INTERTEXTUAL DOCUMENTS

Asylum decisions are inherently intertextual. This is because the decision document is largely constructed by referring to other texts: the interview record, country information, the law, and so forth. Fairclough defines intertextuality as ‘relations between one text and other texts which are “external” to it, outside it, yet in some way brought into it’.<sup>49</sup> The notion was developed by Kristeva, and a similar idea also played an important role in Bakhtin’s work.<sup>50</sup> According to Fairclough, intertextuality is essentially a matter of recontextualization<sup>51</sup> (that is, taking certain parts of texts and fitting them into another context with another purpose and environment).<sup>52</sup> Recontextualization has two aspects: first, the relationship between the report and the original and, secondly, the relationship between the report and the rest of the text – what work does the report do in the text?<sup>53</sup> According to Linell, stories, ‘facts’, and knowledge are some elements of texts that can be recontextualized.<sup>54</sup>

Recontextualization is at the heart of internal credibility assessment. First, the oral narrative of the asylum applicant is reformulated as an interview record.<sup>55</sup> Then, the interview record is used to assess the applicant’s internal credibility and is recontextualized for the asylum decision. Interview records are usually a minimum of 10 pages in length; negative asylum decisions also tend to be around 10 pages, although this varies for both on a case-by-case basis. Thus, the recontextualization of the applicant’s account in the decision can be anything from less than a page to a few pages, but is never anywhere

<sup>45</sup> *ibid.*

<sup>46</sup> Sabine Weidlich, ‘First Instance Asylum Proceeding in Europe: Do Bona Fide Refugees Find Protection?’ (2000) 14 *Georgetown Immigration Law* 643; Shuman and Bohmer (n 14).

<sup>47</sup> See Herlihy, Gleeson, and Turner (n 11).

<sup>48</sup> Millbank (11); McKinnon (12); James Souter, ‘A Culture of Disbelief or Denial? Critiquing Refugee Status Determination in the United Kingdom’ (2011) 1 *Oxford Monitor of Forced Migration* 48.

<sup>49</sup> Fairclough 2003 (n 3) 39.

<sup>50</sup> Kristeva (n 3); Mikhail Mikhailovich Bakhtin, *Speech Genres and Other Late Essays* (University of Texas Press 1986).

<sup>51</sup> Fairclough 2003 (n 3) 51.

<sup>52</sup> Per Linell, ‘Discourse across Boundaries: On Recontextualizations and the Blending of Voices in Professional Discourse’ (1998) 18 *Text – Interdisciplinary Journal for the Study of Discourse* 143.

<sup>53</sup> Fairclough 2003 (n 3) 51.

<sup>54</sup> Linell (n 52).

<sup>55</sup> Díez 2011 (n 9).



near as long as the interview record. The oral telling in the asylum interview, the interview record, and the decision document form an intertextual chain,<sup>56</sup> which may continue further in the form of appeals and court decisions.

As Fairclough argues, there is always likely to be tension between the reporting and reported texts.<sup>57</sup> Linell points out that '[i]ntertextual chains involve opportunities for manipulation and discrimination';<sup>58</sup> those doing the recontextualization must, but also have the opportunity to, select the parts to be presented, give them a perspective and a context, rearrange them, and completely exclude other parts. Thus, the professionals doing the recontextualization – in the context of the current study, the employees of the Service – have an important gatekeeping role in the process.<sup>59</sup> Indeed, the plausibility of the internal credibility assessment is largely dependent on how the intertextual attribution is concluded,<sup>60</sup> even if the decision seems logical internally, the process is robust only if the attribution is done correctly.

#### 4. DATA AND METHODOLOGY

The study analysed 44 first-instance negative asylum decisions and the corresponding interview records. The decisions were made by the Service in relation to citizens of Iraq and Afghanistan between March 2016 and March 2017. The length of the interviews varied greatly, ranging from 70 minutes to over eight hours. This time included interpretation and checking of the interview record, which means that in an interview lasting 70 minutes, probably less than half an hour was given to the applicant's telling of the asylum narrative and answering questions.

The Iraqi and Afghan citizenship groups in the data were chosen for two reasons. First, they were the two largest citizenship groups receiving asylum decisions in Finland during the period examined, with almost 15,000 asylum decisions made regarding Iraqi citizens and approximately 5,000 decisions regarding Afghan citizens (of a total of 26,000 asylum decisions during the 12-month period).<sup>61</sup> Secondly, that time saw a clear decrease in the recognition rates of the asylum applications of the two groups. Whereas in the preceding 12 months, 71 per cent of Iraqi and 42 per cent of Afghan citizens were granted a protection status (that is, asylum, subsidiary protection, or humanitarian protection) in Finland, from March 2016 to March 2017, only 21 per cent of Iraqi and 28 per cent of Afghan citizens were granted a protection status.<sup>62</sup> This was a decrease of 50 percentage points in the case of the Iraqi citizens and 14 percentage points in the case of the Afghan citizens, indicating that the two groups were gravely impacted by

<sup>56</sup> Norman Fairclough, *Discourse and Social Change* (Polity Press 1992) 130–33.

<sup>57</sup> Fairclough 2003 (n 3) 48–49.

<sup>58</sup> Linell (n 52) 151.

<sup>59</sup> *ibid.*

<sup>60</sup> See Johansson Blight (n 10).

<sup>61</sup> Finnish Immigration Service, Statistics, 'International Protection, Decisions 4/2016–3/2017' <<https://tilastot.migri.fi/index.html#decisions/23330?l=en&start=555&end=566>> accessed 19 December 2019.

<sup>62</sup> *ibid.*

the changes in legislation and practices, including the restricted credibility assessment practices,<sup>63</sup> particularly those made in 2016.

The asylum decisions and interview records were gathered directly from the asylum applicants. This is because asylum documents are classified as confidential in Finland. The data collection was carried out as part of a project aiming to map the situation of asylum applicants and to support them. The decision outcomes were usually seen as incorrect by the applicants taking part in the study. When comparing the data with other similar datasets gathered by random sampling,<sup>64</sup> it is worth noting that the latter samples included several decisions in which the applicants clearly did not report any reasons for persecution covered by the 1951 Refugee Convention and its 1967 Protocol,<sup>65</sup> but cited instead, for example, poverty as the reason for migration. The dataset in this study contains only three decisions in which the applicants clearly do not report any grounds for asylum. This suggests that the current sample may provide more pertinent results on the particular issue of credibility assessment, but at the same time, these results are not generalizable as those from a random sample would be. Similarly, although the sample of 44 decisions and interview records certainly gives a wider and more varied set of results than a simple case study would, it nevertheless represents a small sample of the total asylum decisions made during the time period examined.

Furthermore, the dataset focuses on negative decisions because previous studies have shown that positive decisions from the period are vague when it comes to credibility assessment. They do not explain in any detail why they find the applicant's narrative credible – they simply state that they do.<sup>66</sup> For example, the following excerpt from a positive decision states:

Based on the information and evidence provided, as well as the general country of origin information about your home country, the Finnish Immigration Service regards that you have a well-founded reason to fear persecution in your home country based on your political opinion and nationality, as stated in Section 87 subsection 1 of the Aliens Act.<sup>67</sup>

This short excerpt represents the entire credibility assessment of the decision. It provides no reasons or grounds for the assessment, but merely states the end result. This is quite common in positive asylum decisions by the Service at this time, and is reflected in the length of the decisions also. Whereas negative decisions tend to be around 10 pages in length, positive decisions are often less than five. For this reason, it was decided that including positive decisions in the dataset was unlikely to provide additional insights as to how the credibility assessment is intertextually constructed in the decisions.

The research was undertaken with the informed consent of all participants. The University of Helsinki Ethical Review Board in the Humanities and Social and

<sup>63</sup> Saarikkomäki and others (n 26) 34–35.

<sup>64</sup> Saarelainen (n 22); Saarikkomäki and others (n 26).

<sup>65</sup> 1967 Protocol (n 14).

<sup>66</sup> Saarikkomäki and others (n 26).

<sup>67</sup> This excerpt is taken from a positive decision made during the time period March 2016–March 2017. However, for the reasons noted in this part, it is not included in this study's dataset.

Behavioural Sciences has confirmed that an ethical review statement was not required for the research. Nevertheless, certain ethical aspects needed to be considered. First, both the decisions and the interview records included confidential and sensitive information. When individuals handed over their documents, they were asked to sign a release form, usually written in Arabic or Dari. On the forms, people were able to choose if parts of their documents could be made public. The article uses direct quotations only from those participants who allowed this. For the rest of the documents, the cases are paraphrased to maintain the applicants' anonymity. The participants are referred to by pseudonyms only. The examples are discussed anonymously and any identifying information has been removed. Secondly, when people provided their documents, many wanted help with their particular cases. It was explained to the participants that the data would be used for a research project and thus would not provide immediate help, or perhaps any help at all. However, because of language and cultural barriers, it was difficult to ascertain whether all the participants fully understood this. As part of other grassroots research projects, the author did provide some support to asylum applicants. Data from five such applicants (whose consent was specifically obtained) are included in the dataset for this study.

The article examines intertextuality in internal credibility assessment by combining content analysis<sup>68</sup> with Fairclough's discourse analysis approach.<sup>69</sup> The analysis starts by looking at the points in the asylum decisions where internal credibility is assessed. These are grouped by the various arguments used by the Service, that are often marked by particular terms, such as 'general', 'assumptions', or 'profile'. These points in the decision are then compared to the applicant's narration in the interview record. The focus of the analysis is first on how internal credibility is constructed in the decision and, secondly, on how this construction relates to the corresponding interview record.

## 5. ANALYSIS

The current analysis shows that, in assessing the internal credibility of the applicant's narrative, the Service relies, in particular, on three arguments. The first relates to detail. The narrative is assessed as either detailed and therefore personal, or too general and hence lacking the feel of a personal experience. The latter assessment, according to the Service, indicates that the events narrated are unlikely to have been experienced by the applicant and thus the applicant is assessed as lying. The second argument assesses the applicant's interpretation of the events. For instance, the Service may agree that the events (for example, kidnapping or violence) occurred but disagree with the applicant's interpretation as to why the events occurred and who carried them out. Thus, the Service argues, the persecution is based only on the applicant's personal assumptions about the reasons and the perpetrators. The third argument assesses the applicant's profile – that is, the role and importance of the applicant in the eyes of the agents of

<sup>68</sup> See Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology* (SAGE Publishing 1980).

<sup>69</sup> Norman Fairclough, *Language and Power* (Longman 1989); Fairclough 1992 (n 56); Fairclough 2003 (n 3).

persecution. Usually, the argument points out that the applicant is not assessed as sufficiently high profile to be of interest in the future to the agents of persecution.

However, some of the decisions analysed (6 of 44) do not dispute the internal credibility of the applicant. In these cases, the negative decision is based on an interpretation: that the country information did not support the threat reported by the applicant; that an internal flight alternative was available;<sup>70</sup> or that the applicant's narrative did not include any reasons for asylum according to the law (for example, a general sense of insecurity rather than a personal threat). Several decisions examined in the study reflect this last finding. These were decisions made regarding young Afghan men of the Hazara minority who fled Afghanistan as adolescents with their families and had lived in Iran as undocumented migrants since then. Having left their home country as children, many of them were unable to give *personal* reasons for being in danger upon return.

Whereas previous literature refers to coherence as a notable criterion for assessing and denying internal credibility,<sup>71</sup> the current data clearly emphasize detailed telling instead. This perhaps indicates that the applicants in this study performed their persecution narratives in a largely coherent manner. Indeed, in comparing Finnish asylum decisions from 2015 and 2017, Saarikkomäki and others point out that the importance of detailed telling in assessing credibility by the Service has increased. In 2015, the applicant's narrative was usually rejected based on clear indications that weakened the applicant's overall credibility. However, in 2017, internal credibility was most often rejected because the narrative was seen as being too general and thus lacking a sense of personal telling.<sup>72</sup>

The applicant's personal assumptions and profile are not usually matters of internal credibility assessment in the literature, but in the current data they are nevertheless constructed as such. Saarikkomäki and others also note that whereas the applicant's profile was used to reject asylum claims much more often in 2017 than in 2015, applicants' personal assumptions are a completely new feature in the Service's argumentation and are present only in the 2017 dataset.<sup>73</sup> Hence, this study gives support to the findings of Saarikkomäki and others, as well as indicating that the changes they describe were already in place in 2016. In this article, it is argued that, on the data analysed here, personal assumptions and profiles are used by the Service to assess the internal credibility of the applicants' persecution narratives. This argument will be deepened in the following sections by addressing each of the three arguments in detail.

<sup>70</sup> The internal flight alternative acknowledges that the applicant's area of origin is assessed as not safe enough for the person to return to, but argues that he or she can safely live in another area within his or her country of citizenship.

<sup>71</sup> See Jan Blommaert, 'Investigating Narrative Inequality: African Asylum Seekers' Stories in Belgium' (2001) 12 *Discourse & Society* 413; Shuman and Bohmer (n 14); McKinnon (n 12); Herlihy, Gleeson, and Turner (n 11).

<sup>72</sup> In Finnish, the original language of the decisions, terms such as *pintapuolinen*, *yleisluontoinen*, and *vailla omakohtaisuutta* denote 'generality' and the 'lack of a sense of a personal experience'. Saarikkomäki and others (n 26).

<sup>73</sup> *ibid.*

### 5.1 On generality

The asylum decisions analysed in the study challenge the internal credibility of the applicants' narratives by using a variety of concepts, such as 'undetailed', 'superficial', 'inexact', 'imprecise', or simply 'general'.<sup>74</sup> This strategy of assessing and reflecting on the credibility of the applicant's narrative is used in approximately half the decisions (20 of 44). Some of these decisions include only one or two terms, while others (such as 'Faisal's' decision below) use the terms more than once.

Instead, what you have told about the threats from [a powerful militia group] is superficial and lacks a sense of a personal experience ... What you have told about your [forced] marriage is inexact and lacks the sense of a personal experience.<sup>75</sup>  
(Faisal's decision)

Consideration of Faisal's interview record and his telling of the threats from the militia group indicates that his narrative was brief. According to his account, Faisal received two threats – one by phone, the other by letter. The extract below represents most of the brief discussion between the interviewer and Faisal about the threatening letter.

*Interviewer:* Did I understand correctly that the next morning, when you opened the door of [your business], there was a paper there?

*Faisal:* Yes.

*Interviewer:* Then you said that you read the paper and wondered about it. What did the paper say?

*Faisal:* The letter said that you have not followed our orders or rules. In these times you will be punished for this. ...

*Interviewer:* Do you remember anything special about the letter? Was it a normal paper, was it written normally or was there something special ...

*Faisal:* The letter was written in normal handwriting. But it had a particular logo and a signature, and it had a stamp too.

(Faisal's interview record)

The interviewer starts the discussion with the words: 'Did I understand correctly.' This indicates that Faisal has already mentioned the threatening letter, albeit briefly, in his free telling. Now the interviewer asks for more detailed information about the letter that Faisal had 'wondered about.' He answers the interviewer's questions briefly, but at the same time answers everything he is asked. The interviewer's later questions do not indicate dissatisfaction with Faisal's answers – there is no sign that the interviewer finds his responses too 'superficial', as the decision later states. This can be seen by the fact

<sup>74</sup> Throughout the article, translations from the original language (Finnish) documents have been made by the author. In the original language, *yksityiskohdaton*, *pintapuolinen*, *täsmentymätön*, *epätarkka*, and *yleisluontoinen*.

<sup>75</sup> The phrase 'lacks the sense of a personal experience' is transcribed from *vailla omakohtaisuutta*.

that the interviewer does not probe for more specific answers. For example, the interviewer does not ask again about the quality of the paper, nor is Faisal asked to describe the logo, signature, or stamp that he mentions. Rather, after this, the interviewer moves on to the next theme for proof in Faisal's testimony.

It is essential here to consider the situational context: the balance of power between the interviewer and the applicant. The interviewer is the one in charge of the situation,<sup>76</sup> the one who knows how much information is necessary to make the decision; the applicant does not.<sup>77</sup> The interviewer's decision not to ask more specific questions is notable because, in the Finnish asylum system, the authorities have a duty to investigate<sup>78</sup> and thus attempt to find out all the relevant facts in accordance with the Administrative Procedure Act 2003. Therefore, although it may be possible to interpret Faisal's telling as 'superficial', the nature of his account seems – at least partly – to come from the questions and expectations presented to him by the interviewer. Indeed, Faisal's case is typical of the decisions in which the applicants' narratives are rejected as being too general; very often, the questions put to the applicants by the interviewers are also quite general and the interviewers do not push for more detailed answers.

'Abdul's' case is a less common example in the sense that it clearly explicates the points where Abdul has failed to give enough detail.

During the asylum interview, you have been asked questions about your girlfriend, your relationship and its beginning. You have also been asked to accurately describe your first meeting which, according to your narration, happened in a coffee shop and tell in more detail what you did together and how you organised your secret meetings. Your answers to these questions have been general and included only a few details typical of personal narration. Despite several questions, you have not given a more detailed account of your first meeting in the coffee shop. Furthermore, your narration about your girlfriend and her family has remained narrow, given that you have told that your relationship continued for many years and you knew each other well. The Finnish Immigration Service views that it is reasonable to expect that you could broadly and personally tell about your multi-year relationship for which your life is under threat. ... Given the previous matters, the Finnish Immigration Service does not accept as a fact that you had a courtship as you described.

(Abdul's decision)

In Abdul's decision, the Service uses the generality of his telling about his girlfriend and their first meeting – despite several questions about them – as a reason to dismiss his account of having a premarital affair and the resultant threat against him. Looking at his interview record, it is evident that Abdul has not talked very much about these matters. When it comes to their first meeting and a description of his girlfriend, Abdul replies fairly shortly, in a few lines. The interviewer keeps on asking, prompting him to tell more and thus clearly expressing dissatisfaction with his answers.

<sup>76</sup> Spijkerboer (n 18).

<sup>77</sup> Herlihy, Gleeson, and Turner (n 11).

<sup>78</sup> Staffans (n 2) 154.



*Interviewer:* Tell more about how your relationship began?

*Abdul:* I was in my second year at the university. She was in her first. We got to know each other at a coffee shop. Little by little, we got to know each other more. We loved each other. In our culture it is shameful to be girlfriend and boyfriend. That's why it's good to know right at the beginning that both love each other. ...

*Interviewer:* Can you please still describe again as detailed as possible the first time you met?

*Abdul:* The first time we met was at a coffee shop. After that, we agreed to go [to an area of the city] and buy books. There, we met at a petrol station. Then we went to a restaurant to eat. We were there for a couple of hours. We discussed things and learned to know each other. She asked me about my family and I asked her.

*Interviewer:* Please tell me about how everything started at the coffee shop.

*Abdul:* We met at the coffee shop and also ran into each other at the university. Later I asked for her phone number and that's how it started.

*Interviewer:* How long did your relationship last?

(Abdul's interview record)

In this excerpt, it is clear that the interviewer is not happy with Abdul's answers to the questions, although this is not necessarily an issue of detail. The dissatisfaction is expressed in the way the interviewer repeatedly asks the same question in slightly different words: 'tell more', 'still describe', 'please tell me about'. In the end, the interviewer seems to give up, and they move on to the next subject – the length of the relationship. Nevertheless, Abdul makes quite a few points about the meetings – that he and the girl went to buy books, that they then went to a restaurant, and that they ran into each other at the university. Indeed, it seems as if Abdul does not quite understand what is being asked because, instead of deepening his story by giving more details about the first meeting, he keeps on widening his story, giving more information about other meetings. The interviewer seems to have a preconceived notion that describing the first meeting, in particular, is essential to the internal credibility of Abdul's narrative, but Abdul does not recognize the importance of this. Thus, the problem seems to be not an absence of detail, but an inability to answer in detail the particular questions the interviewer asks.

The interview record furthermore shows that Abdul is able to speak about the relationship in detail. This is evident later in the interview, when he is asked to explain how the relationship with his girlfriend ended. He starts to talk about how they were supposed to get married. He tells about travelling to his home village to talk to his family about the marriage. He describes the matters that delayed his return to the city to propose marriage and how, when he returned, the girl had become engaged to somebody else, and that was the end of their relationship. At this point, his account is spontaneous and detailed, and it has a clear narrative. Yet this aspect of his telling is not taken into account in the asylum decision. Indeed, based on the intertextual perspective, the argument for denying Abdul's narrative should be the story's lack of internal cohesion

– answering certain questions in detail, others not so much – rather than a lack of detail in the story as a whole.

Further notable examples of generality are those decisions in which one part of the narrative is accepted – and thus presumably considered detailed enough – whereas another part is rejected on the basis of generality. This is the case for ‘Ahmed’. Ahmed’s narrative relates to two sets of events that took place about five years apart. According to Ahmed’s interview record, during the first period, his brother was kidnapped and he himself received death threats. During the second period, his brother was killed and, after a period of calm, death threats were again made against Ahmed. In its decision, the Service accepts the earlier events as fact, but rejects the later events. The Service argues that the rejection is based on Ahmed’s account of his brother’s death being ‘narrow’ and the connection between the death and Ahmed’s actions remaining ‘superficial’.<sup>79</sup>

When the ways in which Ahmed talks about the earlier and later events in his interview record are compared, it is clear that the levels of narration relating to the two time periods are very similar. The events are narrated at approximately the same length and with the same level of detail. He relates the chain of events that led initially to his brother’s kidnapping and later to his death, as well as the threats on both occasions. He also talks of the threats he received at a similar level: the contents of the threatening letter he received and the threats he later received by phone. Thus, considering the intertextual perspective, it appears illogical for the Service to accept Ahmed’s account of the earlier events but to dismiss the narrative of the later events based on a lack of detail. Indeed, this seems to represent a lack of internal cohesion, not in Ahmed’s narrative, but in the Service decision.

One possible explanation is the different situational contexts of the events that Ahmed narrates – that is, when they happened. Indeed, as the Service states about the earlier events: ‘Considering that the presented events took place already several years ago ... the Finnish Immigration Service does not accept as a fact that you would be in danger due to these events upon your return to your home country’. Thus, the Service accepts the earlier events as fact, but argues that, because of the temporal distance, those events no longer indicate the likelihood of future persecution. However, a similar argument is not possible in the case of the later events, which happened only a few weeks before Ahmed left his country. Thus, if the Service had accepted the later events as fact, this may have affected the outcome of the negative asylum decision.

With all the variety and lack of coherence in the data when it comes to generality, it almost seems as if the notion of generality is used as a shorthand in denying internal credibility. The examples here show that the Service can reject credibility based on generality even when the questions asked are also very general and details relating to the same theme have been provided in other parts of the interview. In Abdul’s case, for example, the interview record shows that in some instances Abdul gives a detailed account but in others does not, such that the narrative lacks cohesion rather than detail.

Similar to the findings of Saarikkomäki and others, there is some indication in the current data that, since 2015, the Service has begun to require more detailed narratives from the applicants in order to regard their accounts as credible.<sup>80</sup> This is indicated

<sup>79</sup> In the original language, *suppea* and *pintapuolinen*.

<sup>80</sup> Saarikkomäki and others (n 26).

by the interview records in the study where the applicant had a legal representative present – for example, in the case of Faisal. Although the legal representative asks Faisal some additional questions, the lawyer does not prompt him to provide a more detailed account. Yet, in Faisal's decision, the lack of detail is a central argument for denying him asylum. If the level of detail required had been the same as previously in the asylum process, it is likely that an experienced lawyer would have been able to foresee during the interview that Faisal's narrative was too general and would have asked him to provide more details.

## 5.2 On personal assumptions

Several decisions (7 of 44) assess and reject the asylum claims based on the applicants' personal assumptions. To be granted asylum, one must show a well-founded fear of future persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.<sup>81</sup> That is, there must be a causal link. Therefore, successful asylum narratives must show not only a well-founded fear of persecution but must also identify the purported agent of persecution and the reasons for that persecution, which may require the applicant to make personal assumptions. For example, the decision regarding Abdul's application states:

The link between these events [an assault against Abdul] is based on your own personal assumption ... Considering all the points above, the Finnish Immigration Service does not accept it as a fact that the family of your ex-girlfriend or people sent by them would have assaulted you.

(Abdul's decision)

It may be relevant to point out here that even if the Service had accepted that Abdul was assaulted because of his relationship with his ex-girlfriend, this would not necessarily have meant he would have been granted asylum. This is because a family is not necessarily regarded as an agent of persecution under the Refugee Convention.<sup>82</sup> Nor is honour violence necessarily a ground for the grant of asylum, although it may be. Studies examining persecution related to gender and sexuality, as well as domestic violence, especially where it relates to women and sexual minorities, show that being granted asylum on these grounds is not straightforward.<sup>83</sup>

<sup>81</sup> Refugee Convention (n 13) art 1A(2).

<sup>82</sup> According to UNHCR, non-State actors can be considered agents of persecution if their acts of persecution are 'knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.' UNHCR Handbook (n 32) 23.

<sup>83</sup> Catherine Dauvergne and Jenni Millbank, 'Burdened by Proof: How the Australian Refugee Review Tribunal Has Failed Lesbian and Gay Asylum Seekers' (2003) 31 *Federal Law Review* 299; Susan A Berger, 'Production and Reproduction of Gender and Sexuality in Legal Discourses of Asylum in the United States' (2009) 34 *Signs: Journal of Women in Culture and Society* 658; Heather Scavone, 'Queer Evidence: The Peculiar Evidentiary Burden Faced by Asylum Applicants with Cases Based on Sexual Orientation and Identity' (2013) 5 *Elon Law Review* 389; Akin (n 21).

To be granted asylum in Finland, acceptable reasons for persecution in section 87 of the Aliens Act 2004 mirror those of the Refugee Convention. In 'Mustafa's' asylum decision, for example, the Service accepts as fact all the events narrated by Mustafa in his interview, but not the reasons underlying them. According to the decision, he was kidnapped after returning to his home town and was released after his family paid a ransom. Mustafa claims that he was kidnapped because he was a member of a minority religious group in the area. The Service argues that Mustafa's claim that he was kidnapped for religious reasons is based only on his personal assumptions and that, in fact, he was kidnapped for economic rather than religious reasons. Thus, according to the Service, Mustafa's case does not fit the reasons for being granted asylum – religion is a reason for the grant of asylum, but economic grounds are not.

Based on the decision in this case, it is difficult to assess the basis of the Service claim. This is because the decision does not in any way expatiate on the reasoning behind the conclusion that the kidnapping happened for economic reasons. There may be some ground for this reasoning, as Mustafa recounts that he was released by the kidnappers after his family paid a ransom. However, this is not openly explained by the Service; it is simply announced. There is a presumption here that the personal assumptions of the decision maker are more valuable than the personal assumptions of the applicant. Hence the assumptions of the decision maker are treated as facts in the decision.

This may be explained by the findings of Smith-Khan, who argues that decision makers involved in making asylum decisions are framed as objective and neutral actors both when assessing and writing the decision.<sup>84</sup> This is, of course, false. Affolter, Miaz, and Poertner, for example, describe decision makers as 'communities of interpretation': decision makers view just decisions through the lens of their institutional community.<sup>85</sup> This way of making arguments can be seen as part of the institutional context, in which the decision makers are guided to be 'not just part of the institution, they are the institution', as Smith-Khan states.<sup>86</sup> However, especially in the case of Finland, it can additionally be seen as part of the societal context, as Finland displays a high level of trust in administrative authorities, a trust that extends to the appellate court.<sup>87</sup> Fairclough considers assumptions to be part of the ideological context.<sup>88</sup> Therefore, in this study, the ideological context of assessing the credibility of asylum applicants seems to suggest that the decision makers are neutral, objective, and know the 'truth', whereas the applicants are prone to telling lies.

However, in Mustafa's case, when the decision and the interview record are compared, it is evident that the earlier events narrated by Mustafa support the interpretation of his kidnapping as being based on religion. Mustafa says that he had already experienced problems because of his religion. According to the record, because of those

<sup>84</sup> Laura Smith-Khan, 'Telling Stories: Credibility and the Representation of Social Actors in Australian Asylum Appeals' (2017) 28 *Discourse and Society* 512.

<sup>85</sup> Laura Affolter, Jonathan Miaz, and Ephraim Poertner, 'Taking the "Just" Decision: Caseworkers and Their Communities of Interpretation in the Swiss Asylum Office' in Gill and Good (eds) (n 7).

<sup>86</sup> Smith-Khan (n 84) 518.

<sup>87</sup> Staffans (n 2) 213–14.

<sup>88</sup> Fairclough 1989 (n 69) 84; Fairclough 2003 (n 3) 58–59.

problems, Mustafa moved to a different town, where nobody knew him or where he lived. Then, one day, in the town, a person he did not know called him by his name and asked him if he was from his home town, and where his current house was. Mustafa did not answer, but later, when he returned home, his wife told him that some unknown people had come and asked for him by name. After this, Mustafa ran away to another city, but when his money ran out, he was compelled to return to his home town. There, he remained in hiding until the kidnappers found him. According to Mustafa, after they received the ransom money, the kidnappers told his family that, if they saw him again, they would kill him.

Thus, based on the intertextual analysis, it is clear that the Service and Mustafa interpret the events differently. In Mustafa's interview record, he recounts the events as a continuum – first, he decided to leave his home town because of religious problems, then his persecutors found him and he had to flee again, and, finally, when his resources ran out, he decided to go back to his home town but to stay in hiding there. Then, on a rare day when he left his hiding place, he was kidnapped. In the decision, however, the narrative is different: first, Mustafa left to go to another town, then he returned and was kidnapped. In the decision, these two events are assessed as separate, unrelated events. In this light, it is easier to understand why the Service argues that the kidnapping was not because of religious reasons, yet the argument is very different from the way Mustafa relates the events.

In the decision, the Service seems to leave out important events that would better explain Mustafa's persecution narrative and reason for persecution and thus support a grant of asylum. Similar practices are described by Johansson Blight who notes a case in which the Swedish Migration Board completely failed to assess important information related to persecution (the reported physical abuse and rape by a policeman in front of the applicant's children).<sup>89</sup> In Mustafa's case, the decision excludes his flight from the first town to the second before returning to his home town, including the reasons for his return. It further excludes the threat, as recorded by Mustafa, made by the kidnappers to his family. In Mustafa's narrative, his flight to one town and then a second are the events that tie together the earlier and later events in his home town. Excluding them from the Service's decision makes the events look separate and unrelated and, consequently, his claim about the religious basis of the kidnapping appears unfounded, based only on his personal assumption, as the Service concludes in the asylum decision.

Overall, the argument about personal assumptions is interesting in the sense that all communication is based – at least partly – on assumptions.<sup>90</sup> Without some assumptions, any communication would have to clarify everything that is said because there would be no shared assumptions or common sense on which to base the communication. Furthermore, assumptions are necessary to make sense of the world and the events around us. In asylum narratives, in particular, asylum applicants are required to present a logical narrative of events that may not be explicitly linked, but the links must be created through assumptions in the context of previous events.

It is not realistic to expect an asylum narrative in which assumptions are not necessary. Making no assumptions would require that the persecutors come to the applicant,

<sup>89</sup> Johansson Blight (n 10) 62–63.

<sup>90</sup> Fairclough 2003 (n 3) 55.

and clearly and explicitly set out their intention to violate the applicant's rights (for example, torture or killing), as well as the Convention reasons for doing so, and their identity (for example, the secret police or a conservative militia group). Indeed, it would be preferable, from the applicant's point of view, if the persecutor were to give him or her an official, verified testimony clarifying all the points above. However, persecutors rarely work in this manner. In real life asylum cases, more often than not the applicants have to rely on their personal assumptions about the reasons for the persecution and sometimes even to exactly identify the agents of persecution because the persecutors do not openly or explicitly communicate their intentions, reasons, and identities. In view of this, the Service argument that an applicant's narrative is not credible because it is based on his or her personal assumptions seems unfounded.

### 5.3 On profiles

Several decisions (11 of 44) assess and reject asylum claims by questioning the applicants' profiles. According to Saarikkomäki and others, the prevalence of denying credibility based on the profile has increased in the more recent decisions of the Service.<sup>91</sup> Based on this study's dataset, when the decisions refer to the applicants' profiles, the reference is usually quite general. For example, 'Masoud's' decision states: 'The Finnish Immigration Service considers that you personally cannot be regarded as a high profile person in your home country'. As this quotation shows, the Service does not usually justify or explain the basis on which it finds the applicant to have a low profile. Sometimes, the decision maker refers to country information, but does not justify how the applicant's profile is assessed in relation to that information. In Masoud's case, the country information about people with Masoud's profile is missing. Hence, the question of profile seems to be treated as a matter of internal rather than external credibility. Very often, it is difficult or even impossible to discern the basis of the Service's argument in the decision. In the decisions in this study, this generalization is not limited to the assessment of profile. Instead, it is a common trait of the decisions in the study, which in turn is problematic for the applicant's right to due process.<sup>92</sup>

'Haydar's' case provides a more explicit example. In his home country, Haydar was a political activist and, on that basis, was threatened by militias. This is accepted as fact in his asylum decision. However, the Service then starts to assess Haydar's profile as an activist.

Based on what you told, you have not been in a leading position in the party but you are a normal ordinary member. Thus, the Finnish Immigration Service does not accept as a fact that you would be such a high-profile political actor that [the militias] would hold you as their political or religious adversary or that you would be a particular object of interest to the militias.

(Haydar's decision)

<sup>91</sup> Saarikkomäki and others (n 26).

<sup>92</sup> Erna Bodström, "Because Migri Says So": Legitimation in Negative Asylum Decisions in Finland' (2020) 10 Nordic Journal of Migration Research 5 <<https://content.sciendo.com/configurable/contentpage/journals/S002fnjmr/S002fahead-of-print/S002farticle-10.2478-njmr-2019-0035.xml>> accessed 26 November 2020.



In this case, the Service mainly bases its negative asylum decision on the conclusion that Haydar is 'a normal ordinary member' of his party who would not 'be a particular object of interest to the militias'. The Service's assessment is that Haydar's political profile is low and that he is not particularly visible or important. It is not explained how this conclusion has been reached; the Service merely refers to what Haydar 'has told'.

However, this conclusion contradicts Haydar's account of his political activities in his interview record.

In the beginning we organised demonstrations. ... I write the slogans on the banners and sheets. I'm a poet. ... [A militia group] kidnapped one poet and a spokesman from [our group] in front of the police, and they did not react in any way. The person in charge of us was [a name]. He disappeared, and he was found on the street [of my city of origin]. There were signs of torture on his body and he had been shot in the head. ... [One month later] there was a big demonstration. A big mob invaded in the middle [of] the demonstration. They started to knife, shoot, assault the crowd during the demonstration. During the demonstration, we had slogans. ... One of them said: 'in the name of religion, thieves have stolen the wealth of the homeland'. This slogan made them angry.

(Haydar's interview record)

In this short excerpt from the record, Haydar mentions several things that do not support the assumption by the Service that he was 'a normal ordinary member'. He points out that he was one of the organizers of the demonstration ('we organised'); that he was 'a poet' (that is, a person who creates and writes the slogans); that a fellow poet had already been kidnapped; and that, in one demonstration, it was the slogan, in particular, that made the mob angry. This indicates that, as a poet, Haydar was not an ordinary member. Indeed, there is no point in the interview record where Haydar describes himself as 'a normal ordinary member'. Nor does the interviewer ask about this.

Instead, it seems that Haydar is not quite able to 'translate'<sup>93</sup> his political activities into a language that would make his profile as a political activist understandable to the interviewer. For example, his use of the word 'poet', which the interviewer does not ask him to properly clarify, is something that seems to evoke very different connotations in the context of Haydar's country of origin and that of the interviewer. Rather than writing sensitive verses about love or nature in the solitude of his room, as a poet Haydar devised convincing ways to promote the message of his party. Instead of trying to work out more clearly Haydar's (or 'a poet's') role in the political movement, the decision maker makes the interpretation that 'a poet' is 'a normal ordinary member'. This interpretation continues to guide the whole asylum decision regarding Haydar, including the end result.

The intertextual analysis indicates that Haydar's case does not fulfil the authorities' obligation to investigate. According to the Administrative Procedure Act 2003, the Service is obligated to examine and clarify all the aspects that are necessary for making a decision. According to the interview record, there are some notable questions that

<sup>93</sup> Akin (n 21).

the interviewer does not ask Haydar. For example, what kind of role did Haydar play in the demonstrations? And why would the militias be interested in him in particular? An explanation for this negligence may lie in the extraordinary societal and institutional context of the time at which Haydar's asylum interview took place – spring 2016. In autumn 2015, Finland received almost 10 times as many asylum applications as in previous years. Consequently, the processing of the applications overwhelmed the Service and it therefore hired new personnel. At the beginning of 2015, the number of personnel in the unit processing asylum applications was 73; this number rose to 570 in 2016.<sup>94</sup> In practice, this means that the majority of those carrying out asylum interviews and making asylum decisions in the Service in 2016 were new in their roles. However, although this may explain decisions like Haydar's, it does not excuse them, especially as asylum decisions are, in practice, decisions about matters of life, persecution, torture, and death.

## 6. CONCLUSION

This article set out to examine the intertextual construction of internal credibility assessment in negative asylum decisions in Finland. To do so, it analysed 44 asylum decisions and the corresponding interview records. The article shows that the decisions construe internal credibility assessment by referring to generality, personal assumptions, and the profiles of the applicants. Lack of coherence is rarely cited, which may indicate that the asylum narratives of the applicants in the study were usually fairly coherent.

How much detail an applicant provides is commonly used as a measure to assess internal credibility,<sup>95</sup> but the study suggests that it can, in addition, be used as a shorthand way to reject the applicant's claim. The intertextual analysis implies that, in the current study, the generality argument is often related to issues such as the very general nature of many interview questions, a lack of additional questions, and the coherence of the interview and the credibility assessment itself. This indicates that the assessment of credibility is not done consistently and thoroughly.

The decisions seem to construct personal assumptions and the applicants' profiles as matters of internal credibility as well. This would not necessarily have to be the case; if the decisions were to reject the applicant's personal assumptions and profile by referring clearly to external information about the country of origin, this would be treated as a matter of external credibility. Indeed, in some decisions analysed, this is the case. However, the decisions in which these are construed as a matter of internal credibility

<sup>94</sup> Finnish Immigration Service, Financial Statement of the Accounting Department (Finnish Immigration Service 2015) 13 <[https://migri.fi/documents/5202425/5915665/66194\\_Tilinpaatosasiakirja\\_2015.pdf/df073869-2d90-4b0e-8469-64ef029aa6de/66194\\_Tilinpaatosasiakirja\\_2015.pdf.pdf](https://migri.fi/documents/5202425/5915665/66194_Tilinpaatosasiakirja_2015.pdf/df073869-2d90-4b0e-8469-64ef029aa6de/66194_Tilinpaatosasiakirja_2015.pdf.pdf)> accessed 6 January 2020; Finnish Immigration Service, Financial Statement of the Accounting Department (Finnish Immigration Service 2016) 15 <[https://migri.fi/documents/5202425/5915665/72625\\_Maahanmuuttoviraston\\_toimintakertomus\\_2016.pdf/3f87f69d-0c11-4c90-a729-f9f50c5c59c3/72625\\_Maahanmuuttoviraston\\_toimintakertomus\\_2016.pdf.pdf](https://migri.fi/documents/5202425/5915665/72625_Maahanmuuttoviraston_toimintakertomus_2016.pdf/3f87f69d-0c11-4c90-a729-f9f50c5c59c3/72625_Maahanmuuttoviraston_toimintakertomus_2016.pdf.pdf)> accessed 6 January 2020.

<sup>95</sup> Shuman and Bohmer (n 14); McKinnon (n 12); Herlihy, Gleeson, and Turner (n 11); Ramezankhah (n 9); Danström and Whyte (n 30).

do not refer to external sources, but assess only what the applicant has recounted in his or her narrative. Thus, the rejection is often merely based on assumptions – those of the decision maker. The decisions clearly show a presupposition, according to which the decision maker is viewed as neutral and objective<sup>96</sup> and his or her assumptions are regarded as more valuable than those of the asylum applicant.

As the dataset examined in this study relates to an exceptional period in asylum processes and consists of negative asylum decisions originally viewed as problematic by the applicants, the results of the current analysis cannot be generalized to all asylum decisions. Nevertheless, the findings indicate that in some cases processed in 2016 and 2017, where the applicants have expressed concern about the outcome of their decisions, especially the way in which their accounts have been recontextualized and assessed, that concern has been confirmed.

Furthermore, the findings here support previous findings that it is not sufficient for the asylum applicants to tell the decision maker what happened to them and what they fear may happen if they are returned home. Rather, they need to tell their experiences with the level of detail and coherence expected by the decision maker.<sup>97</sup> Thus, the asylum process becomes a performance.<sup>98</sup> The study's findings indicate that the asylum process may be a performance not only by the applicant, but also by the decision maker. Whereas the applicant tries to deliver an appropriate asylum narrative, the decision maker tries to give an appropriate rejection by, for example, referring to the lack of detail in an applicant's narrative, even when no detailed questions have been asked by the interviewer. As Affolter, Miaz, and Poertner point out, based on their interviews and informal conversations with decision makers, a correct decision is often understood by decision makers as one that survives review by their superiors and the court.<sup>99</sup> This means that the form and internal argumentation of the decision may become more important than its content or intertextual coherence.

<sup>96</sup> Smith-Khan (n 84) 518.

<sup>97</sup> Noll (n 11); McKinnon (n 12); Millbank (n 11); Ramezankhah (n 9).

<sup>98</sup> McKinnon (n 12).

<sup>99</sup> Affolter, Miaz, and Poertner (n 85) 268.