Performing Credibility:
Assesments of Asylum Claims in Swedish Migration Courts

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Abstract: This article explores how adjudicators justify the rejection of an asylum application, by the practice of assessing credibility. This is done by analyzing written decisions from the migration courts in Sweden. By applying an intersectional theoretical approach which emphasizes the performative aspects of identities, it is argued that the court decisions constitute important sites where identities get formed, subverted and rejected. The analysis reveals that the formal judicial principles for assessing credibility are not the only tools that are used by the adjudicators. In addition, informal presumptions about how gender, education, culture and religion determine individual asylum applicants’ behavior play significant roles for the outcomes of the credibility assessments. The article suggests that the way in which these presumptions are articulated in the decisions indicates that they actively limit the possibilities for unique and deviant asylum narratives to get recognized as credible in the court procedure.

Keywords: asylum applicant, asylum narrative, credibility assessment, Sweden, migration courts, Migration Board, intersectionality, gender, religion, honor-related cultures

1 Introduction

In the beginning of the 20th century people’s movements across the national borders of Europe were virtually unregulated. In Sweden, as in many other European countries, the only regulation attached to migration was the ability for states to deport foreigners that had committed illegal acts on the state’s territory. However, as new technologies developed, nation states’ abilities to monopolize the legitimate means of movement across borders increased. Today, the regulation primarily strives at controlling who is allowed to move across borders, more than restricting movement in general. The regulations have given rise to a broad terminology of

1 Hammer, 1964.
2 Torpey, 2000.
different legal categories of movers, of which some are considered legitimate and others are not. This article focuses on the Swedish legal-administrative procedure of determining who is eligible for protection from the Swedish state, i.e. whose asylum claims that are recognized as genuine. By applying an intersectional approach focused on situated identity constructions embedded in wider webs of power relations, the court procedure as a site for complex negotiations of subjectivities, realities and categorizations becomes visible.

In all judicial decisions there is space for discretion, but in the asylum procedures this space is unusually wide. The main reason for that is that facts and evidence to support the asylum claims are frequently difficult to evaluate or simply missing, a circumstance that gives the applicant’s oral account great importance. Often, the applicant’s account alone should fulfill the requirement of sufficiency in meeting the legal definition of a refugee, and a prerequisite for doing that is that the story is considered credible by the adjudicator. However, credibility is a fundamentally difficult aspect to adjudicate, as shown by research on the subject in as disparate disciplines as anthropology, law, sociology, psychology and ethnology.

Over 250,000 persons applied for asylum in the EU in 2010. Every one of these individuals was confronted with a concrete asylum procedure practice of some kind, depending on in which EU member state the application was lodged. The countries that received the majority of the applications in 2010 were France and Germany, with about 50,000 applicants each. Sweden was the third largest receiver in the EU in 2010 with 31,875 applicants, which was a significant increase compared to 2009. On average, one out of four applications was granted asylum in the EU in the year 2010. However, the granting rates differ substantially between EU member states. Among the six largest receiving EU countries in 2010, the Netherlands had the highest granting rate with 44 % approvals, and France the lowest with 13 %. Sweden approved 30 % of all asylum applications being decided upon that year.

The overall aim of this study is to investigate how non-credibility is justified in court decisions on asylum claims, as it is a particularly decisive component of the overall adjudication process in these cases. More precisely, the article wants to explore if and how informal categorizations of subjects and their asylum narratives are

5 Granhag et al., 2005; Noll, 2005; Sahlin, 2008; Bohmer and Shuman, 2008; Spijkerboer, 2000; Blommaert, 2001; Wettergren, 2010; Anker, 1991.
6 This is only approximately 32 % of the total number of persons that applied for asylum in the whole world in 2010. Developing countries host four-fifths of the world’s refugees with Pakistan, Iran and Syria as the top three of hosting countries (UNHCR Global Trends 2010). Belgium, United Kingdom and the Netherlands are other countries that received a large part of the EU asylum applicants in 2010 (Albertinelli, 2011).
7 Albertinelli, 2011.
triggered in the process of assessing credibility. Questions are posed about how particular frames of intelligibility are produced and sedimented in the court decisions.

In the next section of the article a discussion of what intersectionality as a theoretical framework means in this particular study is introduced, followed by a method section where I suggest that discursive psychology is a suitable methodological framework for empirical intersectional analysis. The forth section of the article presents the results of the empirical investigation and is divided into three subsections dealing with different themes that were representative for the material. Last, some concluding remarks from this study are presented.

2 »Doing« Credibility as Analytical Object: an Intersectional Approach

To announce that one uses an intersectional perspective has became very common in feminist-oriented research. It has even been labeled a vague buzzword that helps the researcher signal that she or he is aware of the latest theoretical debates in gender studies. But the vagueness of the concept can also be considered its strength, as it opens up for innovative uses and adaptable interpretations of what intersectionality means on a theoretical level and how it could be employed in empirical studies. Intersectionality also has the potential of combining anti-foundational theoretical understandings of identities with a sophisticated analysis of power structures. Nina Lykke has formulated an umbrella definition of intersectionality, stating that »intersectionality can, first of all, be considered a theoretical and methodological tool to analyze how historically specific kinds of power differentials and/or constraining normativities, based on discursively, institutionally and/or structurally constructed socio-cultural categorizations such as gender, ethnicity, race, class, sexuality, age/generation, dis/ability, nationality, mother tongue and so on, interact, and in so doing produce different kinds of social inequalities and unjust social relations.« However, as this broad definition aims at including as much as possible into the concept, a more specified definition is needed in order for it to be applicable for this study. Firstly, this article uses a definition of intersectionality that emphasizes the process of »doing« categorizations rather than seeing identities as something that individuals »have« or »are«. Therefore the focus is on the site where multiple identities are performed rather than on the categories themselves, as a way of avoiding predetermining which »concrete intersections, hierarchies and elabora-
tion« to analytically look for.11 This definition of intersectionality enabled me to pay attention to how identities were created, negotiated and rejected by the different actors in relation to the assessment of credibility. Additionally, this theoretical framework facilitates an analysis which also takes notice of discursively unmarked positions. These positions are often occupied by the majority, who thereby constitute their positions by excluding deviant subjects as inappropriate others.12

As a consequence of the abovementioned definition of what intersectionality means in this article, this study is underpinned by the ontological assumption that human experience is historically and subjectively dependent. That includes a rejection of the ability to find an absolute and objective truth, whether in research or in courts. But this assumption does not exclude the statement that credibility is a real and concrete phenomenon that occasionally emerges in human interactions. On the contrary, this study aims at exploring what consequences the recognition of credibility (or the lack of it) gives rise to when it is played out in the unique setting of an asylum procedure. A starting point for this study is that the capacity to be recognized as credible is inseparable from the institutional and relational context that it is embedded in. Credibility does not only demand a sender, but also an active receiver that is able to apprehend the sender’s attempt to act credibly. Thus, the receiver also occupies a capacity: the capacity to apprehend credibility. However, the epistemological capacity to apprehend credibility is dependent on what is considered intelligible, and that is determined by the »historical schema that establish the domain of the knowable«13 and accordingly constitutes the frames of intelligibility. These frames of intelligibility are politically saturated operations of power as they implicitly delimit the interpretation of what is being framed.14 One aim of this study is to explore the limitations of possible asylum narratives that the frames of intelligibility, as they are constructed at the migration courts, give rise to.

However, the act of apprehending credibility in the legal setting of asylum procedures follows some formalized principles. In law, credibility should be evaluated against principles such as coherence, frequency and quality of details, plausibility, and internal as well as external consistency in an account. Also, the general impression that the account given in court is self-experienced is considered relevant criteria for credibility. Credibility is closely linked to the notion of authenticity and the capacity to give an account in a self-experienced manner. The impression of self-experience is based on the court’s evaluation of body language as well as spontaneity and immediacy in the manner of which the account is being told.15


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Organizational sociologist Åsa Wettergren, who has done an ethnographic study on the emotional regimes at play among the employees at the Swedish Migration Board, describes the assessments of credibility as a «process of continuous conciliation between cognitive knowledge and its emotional evaluation that began with the lawyer’s plea and reached its peak at the face-to-face hearing.» These findings run contrary to the perception — embraced by most of the officers — of the process as unemotional and the belief that decisions were merely fact-based. These feelings can be both positive, and thereby increasing the capacity to apprehend credibility, or negative, and thereby decreasing the same capacity. The migration authorities’ power to actively construct the credibility of the asylum applicant is also found in an extensive study of interview reports with female asylum seekers at the Dutch Migration Board conducted by Thomas Spijkerboer, professor of migration law. He concludes: «the position of power of the interviewer is such that s/he sets the limit on what can be said, noticed, understood.» Nevertheless, despite the vast power asymmetries between migration authorities and asylum seeker, the latter has some space for constructing his/her story and appearance so as to be as credible as possible. With this in mind, it is not farfetched to think of the asylum procedure as a site where different actors are assigned different roles and perform according to those roles. How successfully the asylum applicant performs the role as a genuine refugee is determined by the adjudicator’s decision concerning credibility.

3 Method and Data Selection

Since the purpose of this article is to study the construction of the non-credible asylum seeker, there is no point of analyzing the court decisions on the basis of correct or incorrect assessments of credibility according to law. Instead I have focused on how subjects are defined and marked with categorizations in the court decisions. The method used to explore this is inspired by discursive psychology, which is a methodological framework that has proven to be suitable for doing intersectional analysis, as it is a discourse analysis that enables analysis of daily practices at a micro level. Discourse is here defined as everyday language that makes the lived reality become meaningful and comprehensible for individuals and groups. Discursive psychology rejects the idea that discourses are abstract phenomena but instead conceives of them as situated social practices. Of particular interest for discursive psy-

17 Wettergren, 2010.
18 Spijkerboer, 2000, p.102.
19 Barsky, 1994, p.4.
ological analysis is the formation of identities that takes place in everyday speech acts and texts. 21

In all discourse analysis it is important to distinguish the genre that the data belongs to. The data in this particular study belongs to the genre of official judicial documents. Judicial language as genre is characterized by certainty, authoritative monologue, and formality. It is a language that gains legitimacy by performing impartiality, formality and authority. 22 In the decisions from the migration courts, there is no room for dialogue or hesitations. Instead the document gains its legitimacy by performing certainty through the use of formulations that are legitimate and well-established in legal discourse. By the very nature of the genre that the decisions from the migration courts are situated within, the accounts of the world that are articulated therein have a major impact on how the social world is shaped and represented for the actors involved in the asylum procedure. It is not until the migration courts state the decision, that an asylum applicant becomes either a genuine refugee or a failed asylum seeker. 23 The decisions therefore constitute very powerful acts of constructing identities. Although authored by the adjudicator at the migration courts, each court decision has to be conceived as a condensed summary of the whole asylum process. It includes fragments of other voices such as the asylum seekers oral testimony – translated by an interpreter and transcribed by the officer at the Migration Board –, written pleas from the public counsel, and statements and reasoning from the Migration Board.

All asylum applications are first adjudicated at the Migration Board where on average one out of four applications for asylum was approved in 2010. 24 The Board’s decision can be appealed at the migration courts, located at the administrative courts in Malmö, Gothenburg and Stockholm. On average, the migration courts receive approximately 20 000 appeals a year, of which Stockholm receives about half

22 Van Leeuwen and Wodak, 1999, p.93.
23 I make this argument well aware of the formulations in the UNHCR Handbook, where § 28 reads: «A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee». Inherent in this statement is the assumption that there is a category of persons who are refugees, independent of any language that calls them by that name. The difference between being recognized as a refugee or declared a refugee, however, collapses in practice, as refugees without a court’s confirmation of them being recognized as refugees are denied access to any substantial rights connected with being a refugee.

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of all the appeals. The majority of the rejected applications are reviewed at the migration courts, but less than 10 percent of the decisions are changed. The courts’ decisions can be appealed at the Migration Court of Appeal, which is the final instance and cases reviewed there are few and serve as precedent for future decisions. In this paper I have focused on the appeal institution – the migration courts – as it is the last instance for most cases and therefore produces the final reasoning behind the legally binding decisions.

Asylum applications can be rejected on one or both of the two following grounds: (1) the claims presented to the court do not fulfill the sufficiency-criteria, i.e. the story and potential supporting evidence does not comply with any of the grounds for protections stated in the law, (2) the asylum narrative is not recognized as credible. I have selected cases where the sufficiency-criteria are fulfilled but the credibility-criteria are presented as the basis for rejection. In order to get hold of decisions where only credibility was at stake I had to read through a larger sample of asylum decisions from 2010 and 2011 that was sent to me by the administration section of the migration court in Stockholm. I searched the sample for decisions where oral hearings had been held at the court, as this indicates that credibility was decisive for the decision. I supplemented the selected sample with a few decisions from 2009 and 2007, which I found through the Migration Court of Appeal where these cases had been sent back for a new trial at the migration courts due to inaccuracies in the oral procedure. Altogether I got a sample of nine decisions on rejection which all had an oral hearing at the court because the credibility of the applicant had been questioned by the Migration Board, however not the sufficiency of the asylum claims. This small sample was not meant to be representative for all decisions from the migration courts; the purpose was instead to search for interesting discursive patterns and variations within a particular type of asylum decisions.

4 Analysis

4.1 The Use of Formal Principles for Assessing Credibility

All decision in this sample where rejected with reference to one or several of the formal principles for determining credibility that is stipulated in judicial handbooks. Five of the applications lacked any kind of documentation, including identity cards.
or passports. The frequent lack of identity documents among asylum seekers is by state authorities seen as a large problem, which has increased from 34 % of the total number of asylum applications in 1997 to 93 % in 2004. In the court decisions, it was frequently stressed that the applicants lacking documents may deliberately be withholding information, which resulted in undermining the applicants’ credibility in the eyes of the court. In two of the decisions that had documents submitted, the Migration Board and the court suspected the documents to be fabricated. This severely undermined these two applicants’ credibility in general. Additionally, inability to meet formal principles that had to do with the way the asylum narrative was presented was a common reason for assessing the applicants as non-credible. This included articulation about including facts in the narrative that did not comply with general facts, telling the narrative without details, or changing any details of the narrative from one hearing to the next throughout the process.

Taken together, it was apparent that the court relied on a legitimate legal discourse when justifying the decision on non-credibility. Nevertheless, by applying an intersectional analysis which emphasizes the doings of identities and the way categorizations intersect in these constructions, it became apparent that the legal principles of assessing credibility merged with informal presumptions about how gender, education, culture and religion structure human behavior in particular ways. I also discovered that some subject positions were heavily marked by different categorizations while other could remain unmarked, and thereby obtain a seemingly neutral position from where to make statements. The following sections of the analysis will exemplify these findings.

4.2 Confusing What is True with What is Known

One of the most important techniques when determining asylum claims used by the migration authorities is the digital information database (called Lifos) containing information about countries all around the world. The primary source of this information is the Swedish Ministry of Foreign Affairs, complemented with equivalent authorities in other countries. Other sources are national and international non-governmental organizations and resources available online. A few experts are also assigned by the Migration Board to evaluate and find reliable and updated information, which occasionally includes travelling to the countries of relevance. Most of the information in Lifos is accessible to the public, as a way of achieving transparency in the asylum procedure. This information was the main source of »general

29 SOU 2009:56, p 44ff.

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known facts» that the adjudicators referred to when opposing a statement of the applicant (and thereby undermining her or his credibility).30

It was obvious that the information from Lifos and the accounts from the applicants were not considered to have the same reliability in the eyes of the court. In fact, it appeared that the information from Lifos was taken as an unquestionable truth by the migration court. Nowhere in the decisions was any discussion about how reliable or up to date the information from Lifos could be considered to be, or to what extent an individual asylum narrative could be required to correspond to the general statements and snapshot images that an international expert report could muster. In two examples from two different court decisions it was particularly evident that cultural norms that were stated in a Lifos report were treated as evidence for asylum narratives being unreliable. The first example was from a court decision where the applicant claimed asylum on grounds that he had been exposed to serious threats from a powerful family because he married a woman from that family without the family’s permission. The Migration Board rejected this story by referring to a report from the Swedish embassy in the country, where it was concluded that honor-related violence was mainly tied to women’s sexuality. Additionally, referring to a second report31, the Migration Board stated that occasionally men were exposed to honor-related violence, but mainly because they converted to another religion or because they were considered to be homosexuals.32 With this information at hand, the migration court made the conclusion that the applicant’s asylum narrative was incoherent with his gender. The same report was referred to in another decision on asylum claims from a woman from a neighboring country. Her narrative about how she, belonging to the Greek Orthodox religion, married a Sunni Muslim man who after a short period divorced her was considered non-credible with reference to a section of the report that in a few sentences discussed time limited marriages within Shia Muslim groups. The Migration Board concluded that neither she nor her former husband were Shia Muslims, and therefore rejected that part of the narrative. In both of these examples general categories such as »women/men« and »Shia/Sunni/Greek Orthodox« were perceived as fixed and static, and any variation within or between them was not taken into account. This shows how abstract cate-

30 For a critical discussion about the appropriateness of letting judges assess the political situation in foreign countries, see Rex D. Khan (2000).
31 The full title of the report is: »Hedersrelaterat våld i Libanon, Syrien och de kurdstyrda provinserna i norra Irak: utredningsresa tillsammans med Röda Korset och Rådgivningsbyrån«, 2009-07-24 [English translation: Honor-related violence in Lebanon, Syria and the Kurdish-controlled provinces in northern Iraq: Investigation Trip with The Red Cross and The Swedish Refugee Advice Centre]
32 When reading the exact formulations in the report (page 22), it is evident that honor-related violence directed at men is not excluded, only described as rare and exceptional by the seven country experts on honor-related violence that were interviewed for the report.
organizations can be used in a very concrete way to exclude subjects that do not fall within the majority description of that category. It is worth emphasizing that in asylum cases this exclusion might result in endangering the lives and well-being of the subjects that get rejected.

These examples illuminate the often-irreversible consequences that single formulations from one or a few sources can have for large groups of asylum applicants’ chances to be understood as credible. It can be described as if the knowledge possessed by the adjudicators was taken as a neutral measurement of plausibility. Following from this confusion of what is locally known with what is necessary universally true, is that asylum narratives have two contradictory criteria to live up to in order to be conceived as credible. The first is to be recognized as authentic and self-experienced, and the other is to be coherent with the information that the Migration Board has access to from the Lifos database, no matter how up to date or well confirmed that information is. Another contradiction arises as the information in Lifos tries to capture the most significant norms and behavioral patterns in a specific region or country. That information is then used to evaluate the credibility of individual asylum narratives. The problem is that peoples’ motives for fleeing often have to do with their inability to live according to the norms and behaviors that govern their surroundings. The information that the migration authorities rely upon is therefore not a very relevant and precise tool for evaluating, self-experienced and therefore unique, asylum narratives.33

4.3 Informal Presumptions about Proper Conduct

The former section of this article discussed how decisions to reject asylum applications could be justified by referring to reports and information that the migration authorities relied upon. This section will illuminate that credibility assessments frequently were grounded in general presumptions about how individual asylum applicants should behave according to the general categories gender, education, and religion, without references to any particular source of knowledge. In these occasions, the frames of intelligibility were not constructed around existing information from Lifos, but consisted of much more informal presumptions of what type of proper conduct that was attached to different identity categories.

Level of education was one of the categories that appeared as something that the plausibility of the asylum narratives was measured against. In one decision the Migration Board argued: »The Migration Board finds it remarkable that [the applicant], who appears to be a well-educated person who studied at university, would

33 I am in debt to one of the anonymous referees of this article for making me aware of this contradictory circumstance.

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not be able to show any documents to prove who she is.«\textsuperscript{34} The connection between higher education and the ability to obtain identity documents was not clarified further. In another decision the low degree of basic education of the applicant underpinned statements about the implausibility that he had completed a 40-day long police-training program. In this case too, no further clarification about the connection between low basic education and the ability to go through police training was given.

There were three decisions in the sample that included statements about honor-related cultures. The analysis of these statements revealed that the migration authorities had presumptions about certain types of logics that govern these kinds of cultural expressions, without explicitly referring to any particular source of information. In two decisions parts of the asylum narratives were dismissed because it was considered implausible that young people living in countries where family honor is an important moral system could sustain romantic relationships with a person of the opposite sex without the parents’ knowledge. These conclusions only make sense if they are supported by a presumption that dismisses the possibility that young persons may act against the cultural and religious norms that apply in their surroundings.

The third applicant was the man that claimed asylum on the grounds that he had married a member of a very powerful family without their permission, and claimed he risked being killed by them if he returned. The court agreed with the Migration Board’s statement of implausibility concerning the chain of events in his asylum narrative. In the decision a very specific understanding of the logic behind honor-related behavior was expressed:

«[The Migration Board] finds it remarkable that the family, according to [the applicant], would spread out the incident in the neighborhood. If there is a question of preserving family honor it seems more reasonable that it would be in the family’s interest to make sure that as few people as possible found out about what had happened. You have yourself stated that the family is so powerful in your home country that they are not afraid of anything so it seems remarkable that they would need to spread what you have done to justify their actions. If the family controls the police and have such influence […] as you claim, it should not be necessary for them to have to defend their actions in that way. This especially since it means that the family’s offended honor gets even more attention.«\textsuperscript{35}

\textsuperscript{34} Original quote in Swedish: »Migrationsdomstolen finner det märkligt att [sökanden] som framstår som en välutbildad person som studerat vid universitet inte skulle kunna visa upp några handlingar som visar vem hon är.«

\textsuperscript{35} The original quote in Swedish: »Migrationsverket anser det anmärkningsvärt att familjen själv, enligt dina uppgifter, skulle sprida ut det inträffade i grannskapet. Om det är en fråga om att bevara familjens heder ter det sig mer rimligt att det låg i familjens intresse att...
With a slightly different understanding of what kind of logics that promote honor-related behavior one could just as well argue that because of the family’s status, it is even more important for them to publicly spread the incident and the punishment they imposed on the applicant and his family, than would have been the case if this family did not have such a high status to maintain and protect. However, in the reasoning for dismissing the asylum narrative in this case, the court did not feel the need to ground this argumentation in any particular and documented knowledge.

What was apparent from these statements was that profoundly unstable categorizations such as religious affiliation, gender, and culture were perceived as stable and essential. The intersectional analysis suggests that the legal discourse leaks of informal presumptions about how structural categories determine proper conduct for individual asylum applicants. These presumptions were occasionally formalized by references to expert reports, but more often it was just an unconfirmed, but seemingly taken for granted, general assumption about how people in other countries behave according to certain general categories such as gender or religion.

4.4 Attempts to Challenge the Neutral Position of the Migration Board

As became evident in the former section, the asylum applicants were frequently marked according to the general categories gender, religion, and level of education or culture. This section investigates the (rare) attempts made by the applicants to mark the counterpart – i.e. the Migration Board – by gender or culture. In all such attempts, the migration court avoided to let that have any implications for the final credibility assessment.

One applicant, who had three oral hearings at the Migration Board and one at the migration court, gave the following explanation to why she had changed her story:

«[The applicant] has during the investigation at the Migration Board with male investigators found it difficult to talk about the sexual abuses that she has been the victim of. The primary reason for this is that it is against her culture and religion to talk about such sensitive and intimate things in front of male strangers.»

Original quote in Swedish: «[Den sökande har] under Migrationsverkets utredningar inför sina manliga handläggare haft svårt att prata om de sexuella övergrepp som hon har utsatts för så få som möjligt i ditt hemland fick reda på det inträffade. Du har själv uppgett att familjen är så mäktig i ditt hemland att de inte är rädda för någonting varför det synes anmärkningsvärt att de skulle sprida ut vad du har gjort för att rättfärdiga sina handlingar. Om familjen styr polisen och har ett sådant inflytande […] som som gör gällande torde det inte vara nödvändigt för dem att behöva försvara sina handlingar på detta sätt. Detta särskilt då det innebär att familjens kränkta heder blir än mer uppmärksammad.»

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The Migration Board objected to this explanation by stating that:

»The Migration Board would also like to point to the fact that she, in connection to the asylum application, stated that the gender of the investigator and interpreter was irrelevant.«

In this case the applicant wished that the adjudicators not pay so much attention to what she said during the investigations at the Migration Board, particularly in the beginning. Her reasons for this were that she felt ashamed and that her culture and religion prohibit her from talking to males about sexual abuse. In the new directives from 2006, given to the Migration Board to improve the investigations of female applications, the question whether the gender of the officers and interpreters has any importance for the applicant is mandatory. The aim is to increase gender sensitivity in the investigations, but in this particular case the answer to that question was used to undermine the credibility of the applicant. This mandatory question is the only part of the asylum procedure where an identity marker of the Migration Board employees is allowed to have importance. However, as this case shows, the implications of this identity marker are not always very strong, as an asylum applicant that is not prepared for answering that question at the first meeting with the Migration Board has lost her chances to retrospectively refer to the identity of the officers as an obstacle for presenting all relevant evidence in the case. This way of reasoning by the court indicated an understanding of human behavior as stable and unchangeable due to external changes. The possibility that the asylum applicant had changed her perception of herself and her behavior as she became aware of the specificity of the Swedish cultural settings during her stay in Sweden was not taken into account by the migration court.

In addition to the example stated above, two other decisions indicated that the applicants had tried to refer to cultural differences between the migration authorities and the applicant. One explicitly articulated at the oral hearing at the court the difficulty for Swedish authorities to evaluate events that had taken place in other cultural settings. The other example was from an applicant that when questioned about why he had been unable to recall the exact date of certain events in his asylum narrative, answered that dates and times were not considered important in his country of residence. Implicitly, these two statements marked the Swedish authori-
ties as culturally specific, and thereby undermined the ability for the authorities to position themselves as neutral.

I argue that these attempts can be understood as acts of resistance against the single-sided efforts to force the asylum applicants into different subject positions characterized by some kind of otherness. At the same time as the migration court procedure puts a lot of effort into defining the applicants according to various kinds of identity categories with more or less explicit presumptions attached to them, the position possessed by the Migration Board remains to a large extent silent and unmarked. Consequently, it is much easier to aspire to neutrality and impartiality from the position of the Migration Board than it is from the position of the gendered and «culturalized» asylum applicant. The position of the asylum applicant has emerged because of the asylum applicant's interest in obtaining permission to stay in Sweden, and therefore that position is tied to a partial interest: i.e. the interest to stay. The position of the Migration Board is not supposed to have any particular interest tied to it, except for the interest of following the regulations that define the authority's legitimate actions. However, in the court procedure, the Migration Board takes on the role of being in opposition to the asylum applicant, and therefore is assigned the interest of not letting the applicant stay. In that way, the neutral position of the Migration Board is transformed to a partial position in the court procedure. If that circumstance were taken more seriously in the court procedure, a credibility assessment of the sources and explanations given by the Migration Board would probably be seen as relevant.39

5 Concluding Remarks

By applying an intersectional approach which focuses on the performative aspects of identity formations, the analysis could explore the use of informal presumptions about identity categorizations in legal discourse and practice. The analysis suggests that the way that informal presumptions about categorizations were articulated in the decisions indicated that they actively limited the possibilities for unique and deviant asylum narratives to get recognized as credible in the court procedure. This argument builds on three major conclusions drawn from this study. Firstly, the information contained in the Lifos database was treated as neutral and objective facts

39 It could be argued against this statement that the neutrality and impersonality of bureaucratic officers is not a problem, but on the contrary an ideal and a prerequisite for an efficient, democratic and uncorrupt state administration. I do not wish to oppose this argument, but I do want to illuminate the problems of power distribution that are accentuated when state authorities are supposed to form one out of two equal parties in a court procedure, as is the case in the migration courts.

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by the migration court, even when the sources consisted of briefly conducted reports about essentially contested issues such as the scope and character of honor-related violence in a country. Secondly, the migration court relied on informal presumptions about how categories determined proper conduct in various cultural settings when making judgments about asylum applicants’ credibility. These presumptions created and established specific frames of intelligibility through which all different and unique asylum narratives had to be adjusted to be able to be apprehended as credible in the migration court procedure. Thirdly, the courts rejected to take notice of the applicants’ occasional attempts to mark the Migration Board as culturally specific and thereby a non-neutral counterpart. The consequence of letting presumptions about categorizations such as gender, education, religion and culture intervene in the justifications for rejections was that the applicants’ abilities to perform credibility in the court procedure were constrained and directly affected by how the frames of intelligibility at the Swedish migration authorities were constructed.

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