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Possibilities for epistemic violence in asylum process

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ABSTRACT

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In 2015, Europe noticed that the Common European Asylum System malfunctions in “crises”-like-situations. With the New Pact on Migration and Asylum, the European Union (EU) tries to ensure an efficient and humane migration management. Migration being a highly polarising issue, fuelled by populist rhetoric, migration policies must be founded on scientifically discovered implications of the policies. Here, we evaluate the Finnish asylum process through analysing the legislation, legal practice and 70 former asylum seekers’ experiences. We merge these viewpoints through the concept of epistemic violence understood as failures in linguistic exchanges harming the speaker. We examine whether the legal amendments in Finland, increased the possibilities for epistemic violence in the asylum process. At worst, epistemic violence results wrongly motivated decisions in asylum cases. Based on the case of Finland, this paper argues that more research is needed in times of efficiency pressure regarding asylum processes and overall contestation related to the legitimacy of the EU migration policies.

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Introduction

Nothing outside Europe suggests a decrease in migration. There is turmoil in the Middle East and some African and South Asian countries. Climate change and the existing structured migration routes foster future migration. Moreover, the growing global middle class will increase migration further. Larger population empowered economically coupled with remaining local inequalities, discontent and unrest are prone to materialise as forced migration. Meanwhile, the European Union (EU) aims to move towards a more harmonised, centralised and responsibly and fairly managed policy (European Commission, 2019) with the new pact on migration and asylum (European Commission, 2020). However, migration is a highly polarising issue where different interests pull into opposing directions, fuelled by populist rhetoric. There is a great contestation towards the EU migration policies, both for failing to reduce the number of migrants coming but also for disregarding human rights and the rule of law (Gadd, Engström & Grabowska-Moroz, 2020). Political sensitivity and disagreement over the nature and scope of solidarity in the EU’s common policy on asylum, immigration and external border control undermines the EU’s ability to implement an effective policy in this area. The EU was in “crisis” as irregular migrants outnumbered the reception capacity of some member states in 2015 and 2016. Moreover, an overall willingness to help refugees in need swiftly turned into an increasing pressure to “regain control” of the situation (Brekke and Staver, 2018), which is also happening in Finland.

In 2015, nearly 33,000 people applied for asylum status in Finland (Migri, 2018). Finnish authorities were not legally well prepared for this eightfold increase in the number of individuals coming¹, and thus, Finnish immigration law and legal practice were amended in 2016. In 2015, if the conditions for asylum or subsidiary protection were not fulfilled, but the applicant was unable to return to his/her home country due to a poor security situation or an environmental disaster, residence permits could be obtained based on humanitarian protection (Aer, 2016). In 2016, the conditions for obtaining asylum and other residence permits in Finland were tightened and this possibility was removed from the Finnish law. Furthermore, in 2016 some restrictions on legal assistance in the asylum process were introduced. The legal assistance by private lawyers in the asylum process in Finnish Immigration Service (Migri) was, *in practice* no longer possible unless the presence of the assistant was necessary for highly severe reasons. Such reasons could be particularly weak mental or health situation or if the asylum seeker is under 18 years old and in the country without a guardian (Changes on Aliens Act 9§ and the Legal Aid Act). Yet, depression, anxiety or trauma are not enough to fulfil this condition.

Despite the stressful situation, an asylum seeker must be able to tell a personal, coherent, well-founded, credible and detailed story including all relevant details. S/he needs to remember, e.g. the time and the place of different life events, places of residence and be able to tell why specifically him/her is perpetrated by the specific actor. Often to be able to prove who is behind the threatening is highly challenging. Hence, not only does the asylum seeker need to be able to tell the story in detail, s/he needs to understand what is relevant, so actually understand the Finnish asylum process. This is challenging also from the cultural viewpoint of storytelling. The things, which are considered vital in the Finnish context and in relation to the requirements of international protection, might be different from what the asylum seeker considers as vital. Moreover, s/he needs to acknowledge how the interpreter puts the words, detects the possible shortcomings in the translation and insist on correcting them. However, as the translation is to a language asylum seeker does not often know, assuring the correct translation is extremely difficult. Furthermore, knowing how the interviewer understood, and interpreted the translated story, is highly challenging. For some asylum seekers trusting fully in authorities is counterintuitive and even impossible. Besides, some asylum seekers might suffer from post-traumatic stress disorder jeopardising the possibilities for coherent storytelling (Gadd & Lehtikunnas, 2019). Nevertheless, according to a Directive on victims' rights (2012/29/EU, Article 3) established by the European Council, the member states need to ensure that communications between the authorities and, in this case, asylum seekers acknowledge personal characteristics of the victim including any disability, which may affect the ability to understand the communication or to be understood. Additionally, the United Nations High Commissioner for Refugees (UNHCR) has given instructions on examining asylum seekers' claims concerning epistemic difficulties. The procedural instructions of UNHCR have addressed the need for the assistance of independent experts with particularised knowledge of the country, region and context of the claim, capable of objective interpretation and evaluation (HCR/GIP/04/06) particularly.

In this article, we assess the Finnish legislation and legal practice regarding the asylum process, yet emphasising the asylum interview, as it is essential for the result of the process. On the one hand, we do the assessment by analysing legal documents. On the other hand, we discover 70 asylum seekers' own experiences of their asylum interviews in Finland. These both viewpoints are jostled through the concept of epistemic violence, understood here as described by Hornsby (1995) and Dotson (2011); meaning a failure in linguistic exchanges. The word 'epistemic' suggests that interpretations in linguistic exchanges are framed as knowledge and 'violence' denotes that this 'knowledge' has potentially a negative impact on the *other* (Teo, 2010). Thus, the violence might be indirect and non-physical (Teo, 2010), yet it can potentially have very material consequences such as a negative decision on an asylum request. We do not claim that epistemic violence would only occur in linguistic exchanges. For instance, Foucauldian and post-colonial literatures suggest epistemic violence as suppression, dismissal and destruction of knowledge systems often replaced with powerful knowledge of the elite. Yet touching upon the issue of knowledge, we focus specifically on linguistic exchanges as asylum interview is largely about linguistic exchange and communication.

Through this research, we answer three separate yet interconnected research questions. First, what are the aspects in the Finnish asylum process causing risk for epistemic violence (if any) and are the amendments in the Finnish law creating more possibilities for epistemic violence in Finnish asylum processes? Second, what

¹ The normal annual amount of new asylum seekers in Finland varies from 3000 to 4000 (Migri, 2018)

kinds of experiences do the participants of this research have from their asylum interviews? Thirdly, what can be learned from the asylum seekers' experiences when considering migration policies even at the European level?

Data and methods

The data consists of official documents of international law and the Finnish Constitution. Moreover, we have interview notes with 70 former asylum seekers living in Finland (24 females and 46 males). We conducted the interviews individually or in small groups depending on the preference of the research participants. The migrants were not pre-selected. Some gatekeepers facilitated initial communication with irregular migrants, for instance, by informing them about our research. Interpreters from the same background were present in the conversations if necessary; otherwise, we used either Finnish or English. We avoided any predeterminations regarding anything in the lives of the participants, in this way appreciating the knowledge systems of the participants. All participants had experiences from at least one asylum interview. Furthermore, all participants had received negative decisions on their asylum requests but felt that they could not return to their respective home countries. All the interviews were conducted during the years 2018 and 2019. This particular study is part of a larger research, and thus, many different topics were discussed in the interviews. The legal documents were analysed using theory-oriented content analysis in order to detect possibilities for epistemic violence in the asylum process and especially in the asylum interviews. We distinguished elements, which, according to our conceptualisations are prone to increase possibilities for epistemic violence. Such elements were for instance, but not limited to, mistakes in understanding or in being understood, the power imbalance in the interview, negating and nullifying the statements of asylum seekers. The interviews were analysed in this same way using theory-oriented content analysis focusing on epistemic violence.

Research ethics were negotiated constantly during the fieldwork and the writing process according to the guideline of the Finnish National Board on Research Integrity (TENK). The topic of migration is highly inflammable in Finland and consequently, we carried out the writing so that the results of the research would not cause any negative impact on anyone. Thus, we have decided to withdraw from indicating the nationality of the participants' quotations. By this decision, we want to avoid the situation where all people with a certain nationality would be labelled by something only one individual has stated. This is also in line with the norms introduced by the new reform of EU data protection (European Commission 2018). Moreover, we only use selective examples from the interviews. In case we would offer comprehensive descriptions of the situations and views of participants, we might hamper the unrecognizability of the participants.

Epistemic violence

Epistemic violence arises in situations where *other* is created and/or the hearer is incapable of comprehending the speaker in linguistic exchanges causing harm to the speaker (see also Spivak, 1988; Dotson, 2011). According to our conceptualisation, the word 'epistemic' suggests that interpretations in linguistic exchanges are framed as knowledge and 'violence' denotes that this 'knowledge' has potentially a negative impact on the *other* (Teo, 2010).

Epistemic violence may occur intentionally or unintentionally (Dotson, 2011). Hampering other persons (or group's) possibility to speak, express him/herself and be heard may be even unconscious, indirect and non-physical and consequently challenging to detect and address. Nevertheless, this hampering might potentially have very severe material consequences (Teo, 2010).

In empirical sciences, epistemic violence has been discussed in relation to analysing and interpreting data. Often scientists analyse the data and refer to it as a fact. An analysis of the rhetoric of facts in academic discourses reveals that often what is presented as a 'fact' actually is data and interpretative speculation of it (Teo, 2008). This relates epistemic violence to the hermeneutic processes of interpretation of data (Teo, 2010). Speaker's vulnerabilities always exist in these linguistic exchanges and what happens to the speaker is depending on how his/her words are heard and interpreted (Dotson, 2011). These communications might be interpreted in a certain way even though an equally valid alternative interpretation would be possible (Teo, 2008). Thus, it is relevant to declare from which theoretical viewpoint the data has been interpreted, making

it open for alternative interpretations. Nevertheless, according to research ethics, scientific writing should never harm anyone, i.e. refrain from epistemic violence.

Increased possibility for epistemic violence is created in linguistic exchanges when there is a dependence relationship between the speakers and the hearer. One excellent example is an asylum interview. In a dependence relationship, the situation of the speaker depends, in one way or another, on whether the hearer understands the speaker's words and understands what the speaker means with those words. Therefore, the communication is about the speaker being able not only to express meaningful thoughts but also to be heard leaving the communication ultimately depending on the hearer (Hornsby, 1995).

Refusal or inability of the hearer to communicatively reciprocate a linguistic exchange and thus, understand the message of the speaker can stem from the lack of knowledge, creating possibilities for epistemic violence (Bergin, 2002; Townley, 2006). In such a case, the lack of knowledge is not necessarily related to intelligence but can be caused by inadequate hermeneutical resources and epistemic differences referring to a gap between different worldviews (Berenstain, 2016). That gap, in turn, might be prompted by different social, cultural or economic situations or sexual orientation, gender or religion creating different understandings of the world (Bergin, 2002). Epistemic violence is widely explored in feminist studies also highlighting the often-vulnerable position of women in relation to men (Ayoette and Husain, 2005).

One form of epistemic violence is micro-validation, e.g. exclusion, negation and nullifying the psychological thoughts, feelings, or experiential reality of a person (Sue et al., 2007). In such communication, the speaker is not recognised as the knower of certain information, but his/her views and opinions are actively negated. This might happen when the testimony or a statement of a person is in contradiction with commonly accepted "truths".

Legal rights of asylum seekers and asylum process in Finland

According to article 14 of the Universal Declaration of Human Rights (UDHR) everyone has the right to seek and enjoy asylum from persecution in another country. Moreover, according to UDHR and the European Convention on Human rights (ECHR) everyone has the right to a fair and public hearing within a reasonable time in an independent and impartial lawfully established tribunal when deciding on his/her rights and obligations. The European Council has affirmed that access to justice, legal security and efficient asylum procedures need to be guaranteed to everybody, regardless of the member state the asylum seeker applies for asylum in (EC 2010/C 115/01). According to the directive on common asylum procedures (2013/32/EU), the requirements for the processes (e.g. effective access to these processes, legal assistance, and understandable communication) need to be ensured already at the first instances of the process. Additionally, asylum seekers have the right to have competent personnel dealing with their asylum cases having appropriate knowledge and obtaining necessary training in the field of international protection (L 180/61). The EU directive on victim's rights (2012/29/EU, Article 3) gives an obligation to the member states to ensure simple and accessible linguistic or written exchange in proceedings where information about the process and asylum seekers' rights and obligations is provided by an authority. Furthermore, the member states need to ensure that such communication takes into account the victim's personal characteristics including any disability affecting the ability to understand or to be understood. According to the directive, the victim also has the right to be accompanied by an assistant *if needed* to be able to understand or to be understood. International law also includes the non-refoulement clause, according to which no one can be returned to an area where s/he may become subject to the death penalty, torture, persecution or any other detriment of human dignity (UDHR art. 14(1)). However, for the asylum seeker, the member state examining the application is still significant. The outcome of the individual asylum application may differ greatly depending on the member state processing the application.

According to the Finnish Alien Act 94§, asylum applications, including the grounds for international protection, are processed at the border or within the territory of Finland. Finnish Constitution (731/1999) secures the publicity of the hearing, the right to be heard, and the right to get a reasoned decision and to appeal, as well as the other guarantees of fair trial and good administration. According to the Alien Act 97§, Migri is obliged to determine the identity of a person seeking international protection and his/her route to Finland and determine whether an asylum seeker's application can be processed in Finland. This is done in the asylum interview, for which the EU directive on common procedures for international protection sets the

minimum standards. After registering into the system as an asylum seeker, begins the asylum investigation including two sessions of interviews: one investigating person's identity, itinerary and entry to the country, another clarifying the motives for being granted asylum. The grounds for persecution, violations and threats in the home country are interrogated at this point. Before the interview, the applicant receives instructions on the interview procedure, obligations and rights related to the interview. The instructions given by the Migri highlight also that applicant him/herself needs to disclose *orally* the grounds for his/her persecution and other violations s/he has confronted or the threat of them in the home country giving the interview a central significance in the asylum processes.

According to the Aliens Act 9§, an alien whose case is dealt with within the Finnish courts is granted legal aid (or when legal aid is of particular cause). Legal aid is provided by state funds to a person in need of professional assistance and who, due to his financial position, is unable to cover the expenditures himself (257/2002). Legal aid includes legal advice, the necessary measures, assistance in the court and in communication with other authorities, and exemption from some of the administrative costs involved. Legal aid of asylum seekers under 18 years of age entering Finland alone is always compensated.

In the asylum interview

In the interview, an asylum seeker is given an opportunity to talk about his/her own country or the country of residence and about the experienced threat there. The aim is to discover the violations of rights in the person's past. On the other hand, the possible violations and threats in the future are also of particular interest (Aer, 2016). The purpose is that all elements related to the acquisition of the applicants' residence permit would be clarified already at this stage (2013/32/EU). The individual conditions for international protection as well as the country-specific information on asylum seeker's home country are acknowledged in the decision-making process (Finnish Aliens Act 97§).

Migri is responsible for arranging an interpreter for the interview. At the beginning of the asylum interview, the interviewer is supposed to ask whether the asylum seeker understands the interpreter or not. However, professional interpreters have not always been available due to the pressure in the legal system after 2015. Nevertheless, according to Article 15(3) of the EU procedures directive (EU Procedures Directive Article 15(3)), the member states must ensure that the interviews are conducted under conditions allowing asylum seekers to present the grounds for their applications in a comprehensive manner. Article 15 also addresses the procedural requirements for interviews by giving special importance to the interviewer's competence to acknowledge personal and general circumstances related to the asylum application, such as the asylum seeker's cultural origin, gender, sexual orientation, gender identity or vulnerability. Migri instructs the interviewer to assess also what parts of the asylum seeker's story and documents are important for the case. If necessary, the interviewer asks further questions to guide asylum seekers to reveal the most important things. Consequently, successful communication between the different parties in the interview (i.e. asylum seeker, interpreter and the interviewer) is crucial for the result of the asylum request.

According to the Finnish Administrative Proceedings Act (new Act replaced the old Administrative Act 1.1.2020) and Alien Act, the authorities are obliged to investigate and reveal all the important aspects for individual asylum cases. Moreover, the authority must take its own initiative and determine all the relevant aspects of the process. Furthermore, the asylum seeker must be given the opportunity to present his/her views on the documents relevant to the case. The applicant has the burden of proof of the grounds for the application to be believable. Supposedly, the asylum seeker is obliged to disclose *all* the elements s/he considers relevant for the process, and which give grounds for the application and endorse the story with official documents and other elements confirming the information (Aer, 2016).

Deciding whether to grant asylum

If the application is unbelievable, it will be dismissed (Aer, 2016). This situation is challenging as, at worst, there is a word of the asylum seeker against one of the decision-makers. According to the benefit of the doubt rule, however, in this case, the advantage should be on the asylum seeker's side. Nonetheless, in Finland, two opposing statements often decrease the evidential value of the asylum seeker. This power-laden moment is crucial in determining whether the asylum seeker will get his rights fulfilled or not.

The asylum decision is made based on the information received, especially from the interview and on the other material, the asylum seeker submits. When Migri makes the decision on an asylum application, they assess whether the story told in the interview and the documents presented are credible. Assessing the need for international protection, in addition to the persecution experienced in the past, the decision-maker assesses whether the asylum seeker would be in danger of being persecuted if s/he returned to the country of origin. Such assessment is extremely difficult. In Finnish legal practice, it is not sufficient for the grounds for international protection that an asylum seeker has previously experienced persecution or serious threat (Aer, 2016). However, in international refugee law, the experienced persecution or danger has consistently been considered as a strong indication of continuing threat (Qualification directive, 2011/95/EU, Art. 4). According to the Qualification directive, the evaluator of the asylum application needs to demonstrate a fundamental change in the situation and circumstances that will eliminate the risk of serious harm in the future if the presupposition of the danger is not found valid. However, according to the directive, the asylum seeker must be able to demonstrate a real risk, while the decision-maker must be able to demonstrate the essential and fundamental change of the circumstances (UNHCR, 2011).

In Finland, if an asylum seeker does not fulfil the requirements of the Aliens Act to obtain asylum and s/he is not considered persecuted for the reasons presented favouring the asylum, s/he may be granted a residence permit based on subsidiary protection (Finnish Aliens Act, 88§). In this case, it is required that significant grounds have been presented to believe that if s/he is returned to his/her country of origin, s/he would be in real danger of suffering serious harm and because of such a risk, the person is either incapable or reluctant to resort to the protection of the country. Serious harm, in this case, is for example, death penalty, execution, torture or otherwise inhuman or degrading treatment or punishment, or serious and personal danger caused by arbitrary violence in situations of international or internal armed conflicts (Finnish Aliens Act, 88§). The subsidiary protection requires that the country of origin or an international organisation do not offer the person effective and permanent protection.

Amendments to the immigration policies and legislation in Finland 2016

In Finland, the broadest amendment on immigration legislation was made urgently in 2016, yet some of the amendments occurred already before autumn 2015. The purpose of the amendment was primarily to enhance the efficiency of courts and to provide access to legal aid when dealing with issues of international protection while simultaneously reducing the cost of government finances (HE 32/2016). According to the amended law, the legal aid in the asylum interview is *in practice* impossible as the legal aid no longer includes the presence of a private lawyer in an asylum interview (previously in Finland private lawyers have taken care of the asylum cases to a great extent.). Nonetheless, asylum seekers still have the right to legal aid if the presence of an assistant is necessary for particularly weighty reasons or if the asylum seeker is under 18 years old and in the country without a guardian (Changes on Aliens Act 9§ and the Legal Aid Act). The legal councillor is allowed to be present during the interview, but after tightening regulations, the councillor will only be paid if there are special, weighty reasons for his/her presence. The legal aid office decides whether it will compensate the legal councillor's costs.

Additionally, in 2016, the times to appeal were amended. The appeal time is one of the most concrete and important formal regulations regarding asylum seekers' processes. The appeal period for Administrative Court was shortened from 30 days to 21 days and to the Supreme Administrative Court from 30 days to 14 days from the date of notification of the decision (12.8.2016/646). In relation to the appealing deadlines, the experts raised their concerns in the preparatory phase of the amendment by addressing those deadlines should not be set at any specific time, or at least they should be longer (HE 218/2014). These deadlines are rather short, especially for asylum seekers who might have a limited understanding of the Finnish legal system. Nevertheless, together with these two amendments, i.e. cut in legal aid provision and shortened appealing times, meant significant changes to asylum processes.

Possibilities for epistemic violence in the asylum process in Finland

Epistemic violence occurs for instance, when misunderstandings (intentional or unintentional) arise in linguistic communication causing a negative impact on the other. There are multiple possibilities for epistemic violence throughout the asylum process in Finland. Furthermore, the possibilities for epistemic violence increased after the amendments in the legislation in 2016. The possibilities for epistemic violence

ultimately come to the questions of the (in)ability to speak and be understood, lack of knowledge and nullifying the knowledge of *the other*.

Policymakers, also in Finland, have created a narrative of being hard on migration (Tyler, 2013; Sager, 2018), which, in its own right, has been prone to increase the depiction of the *other*. This creation of *other*, according to Spivak (1988), is one form of epistemic violence. This issue of othering is important. As the topic of migration is so polarised, there is a section of the public claiming that the majority of asylum seekers are “fortune seekers” and “bogus refugees” (Verkuyten, Mepham and Kros, 2018). Pirjatanniemi et al. (2021) also assessed recently the joint implications of the amendments in the Alien act and its application procedures in Finland. They demonstrated that the impacts of the discourses regarding migration, produced during the drafting of the laws, do not necessarily remain merely in that process. Government proposals are also sources of law informing about the aims of legislators for instance (Pirjatanniemi et al. 2021). Argumentation in the government proposals can, in the hands of the authorities, become judicial arguments (Pirjatanniemi et al., 2021, p.47). Their study gave grounds to believe that the language in the government proposals might have had an impact on the authorities applying the law when they use their discretion in determining whether to believe the story of an asylum seeker and whether or not to consider her fear to be justified (Pirjatanniemi et al., 2021). Partly due to this narrative of harder immigration policy, the policies and practices in Migri were amended. The proportioned number of negative decisions increased remarkably in 2017 compared with the year 2015. In 2015, Migri considered the asylum seekers’ fear objectively justified in the simple majority of the cases whereas in 2017, every fifth case was successful based on these same elements (Saarikkomäki et al., 2018). The argument in which the asylum seeker’s story was considered *clearly unconvincing* occurred in approximately every third decision. The increase cannot be explained by the change in asylum seekers’ profile, but the objectivity of the story evaluated by Migri was more difficult to reach in 2017 than in 2015 (Saarikkomäki et al., 2018). By evaluating asylum decisions and what the asylum seekers feared Saarikkomäki et al., (2018) revealed significant changes in how Migri considered whether the fear was objectively justified or not. The same team concluded, moreover, that in 2015 the threshold to give negative decision because of the lack of credibility was quite high whereas in 2017 the threshold was considerably lower. Consequently, in 2017 and onwards, the asylum seekers have been required to provide more detailed evidence of their fears. They are required to be more accurate and detailed in linguistic exchanges during their processes. Moreover, this change in the legal practice increased the nullifying the individual as the knower of his/her situation indicating that the (possibilities for) epistemic violence increased with the amendments.

The asylum process narrows the possibility of asylum seekers to speak and be heard by the rule of having only two interviews where important and relevant aspects for the case need to be revealed. This makes the process prone to epistemic violence. Especially the importance of the asylum interview creates agony and stress through vulnerability and threat of failure resulting deportation. Under 57§ of the Administrative Proceeding’s Act, when an individual requests an extra oral hearing, s/he must state the reasons why the extra interview is necessary and what explanation s/he would give in the interview. Arranging an extra interview is highly exceptional in Finland and thus, success in the interview has an essential role in the asylum process putting extra pressure on the applicant.

In the asylum interview, the asylum seeker is totally depending on the understanding of the interviewer. The dependence is one characteristic of epistemic violence (e.g., Dotson, 2011). Therefore, an unsuccessful communication might have very severe negative consequences (Teo, 2010) for the asylum seeker in the form of a negative decision on the application. The future of the asylum seeker is in the hands of the listeners: interpreter and interviewer. This dependence relation of the asylum seeker on the interviewer’s (and the interpreter’s) ability to hear and understand is evident in asylum processes and increases the possibility of epistemic violence.

Reciprocity is essential in successful communication. It is not only related to understanding the *speaker’s words* but also to *hearing the words as they are meant to be heard* (Hornsby, 1995). There are possibilities for lack of understanding in the asylum process and especially in the asylum interview due to knowledge deficit, which could cause the realisation of epistemic violence in this power-laden communication (Bergin, 2002). The lack of knowledge might be due to the different worldviews of the asylum seeker and the interviewer for instance. It is inevitable that the backgrounds of the asylum seekers and the interviewers might be drastically different. It is highly difficult to avoid the effect of different worldviews in any way, but

often these personal traits are contrasted with courts' efficiency requirements and productivity targets of the judgments (Korhonen, 2017). The interpreters have, moreover, a crucial role in communication during the asylum interview. As the asylum seekers' cases are often related to cultural, traditional, and religious aspects, the interviewer and interpreter might have their own opinions about the statements of the asylum seeker. Nevertheless, they ought to consider the case objectively without judging or interpreting the statements based on their own experiences or general assumptions (Gadd & Lehtikunnas, 2019). Certainly, professional interpreters are trained to avoid their own opinions in translation work, but in the Finnish case, there have not been enough professional interpreters available in these interviews. If the interpreter has the same cultural or religious background as the asylum seeker, the asylum seeker may be afraid of being interfered with or judged by the interpreter and this might hamper the free communication in the interview. Then again, without having this understanding of the background, it is challenging to be able to hear the full story and to understand it clearly (Gadd & Lehtikunnas, 2019). These aspects create a real danger of intentional as well as unintentional epistemic violence, and the possibility to hinder open communication. Even little misunderstandings and differences in the terminology used can create an irrevocable impact on the coherency and credibility of the asylum seekers' stories (Gadd & Lehtikunnas, 2019).

The burden of the proof on the asylum seeker imposes high obligations and expectations on the applicant's ability to communicate and reveal all the relevant elements for the application. It could be argued that individual asylum seekers could not possibly know what the relevant facts for the case are and thus, question whether s/he has a real possibility to direct and govern his/her own case. This lack of knowledge is a prerequisite for epistemic violence as the rights of the asylum seekers are depending on knowing those relevant factors.

Particularly, it is important to take into account how previous experiences and trauma affect the ability to communicate, remember things and above all to express these things in a consistent and open manner. If a person is suffering (but is not diagnosed) from post-traumatic stress disorder, the person might be unable to make a coherent narrative (Brewin, Dalgleish and Joshep, 1996), which is required for a positive asylum decision. Under extreme stress, which might be the case with asylum seekers, the hippocampus works less efficiently, and attention is narrowed, hampering the coherency of telling (Brewin, Dalgleish and Joshep, 1996). Elements, such as challenging and traumatic experiences, are likely to have significant impacts on the safety situation in the country of origin regardless of whether the individual is able to tell them in the right way during the process or not which creates a true risk for epistemic violence.

The information given in the asylum interview is mirrored against the other evidence provided by the asylum seeker but also against so-called *country information*. This country information is an evaluation of a country stating, for instance, whether the country is dangerous or not and whether it is possible for people to escape dangerous events inside the country. This country information affects the possibility to get asylum in Finland. However, sometimes the story of an asylum seeker is in contradiction with the country information. According to the case law, the Courts have not been considered to be obliged to hear asylum seekers about the country information used in his/her particular case despite the specific information being evaluated together with the asylum seeker's own story (Aer, 2016). Then there is a possibility for an asylum seeker being disqualified as a knower and his/her personal experiences, fears and knowledge of the home country are nullified (see, e.g. Sue et al., 2007). The interpretation concerning a specific country becomes epistemic truth overriding individual experiences and embodied knowledge. This is a concrete example of possible epistemic violence in the asylum process especially in the case where the asylum seeker is simply incapable of telling the story in an adequately coherent and detailed way or in the case, the country information is partly insufficient.

The purpose of the amendments in the law in 2016 was to make the processes shorter. However, shortening of the appeal period inevitably increased the possibility of epistemic violence encountered by asylum seekers as the appealing needs to be done in a shorter time hampering the thorough work and possibilities to provide asylum seekers with a full understanding of the asylum process. To respond to the asylum decisions, often requires longer so that the situation can be properly scrutinised with a lawyer. These time constraints also cause unnecessary pressure on lawyers assisting asylum processes, as it is often more time-consuming to contact these clients, arrange an interpreter, notify the decision and clarify the contents of it, but also to understand the possible errors that occurred in the previous stage(s) of the process. This compromises the quality of the Finnish legal system.

Consequently, there are occasionally smaller and bigger errors left in the documents from the interviews, which are difficult to retrieve afterwards. Sometimes, there is a lack of both capability and desire to hear and understand the stories presented and the documents from the interviews do not include everything the asylum seeker said or the documents are written using slightly different expressions making the story incoherent. These are often noticed only after receiving the negative decision on the asylum request. Dotson (2011) underlined the necessity of understanding the meaning of the words in linguistic exchanges to avoid epistemic violence. However, this precise understanding is sometimes lacking in the translation and writing process of the documents from the asylum interview particularly when there is not enough time for the lawyer and the asylum seekers to go through the process thoroughly.

One case concerning directly Finnish practices and the credibility was a case of a Zairean man (KHO, 2003:8). The Finnish Supreme Administrative Court rejected his application for international protection. The European Court of Human Rights declared the story of the applicant as credible and considered the applicant to be in great danger if he was returned to his home country (ECtHR, N. v. Finland). In this case, one can ask, whether the man was not fully able to provide all the needed elements for his case and the Finnish authorities did not investigate properly or did the man suffer epistemic violence causing a misunderstanding between the interviewer and him.

Experiences of asylum interviews in Finland

Asylum seekers' dependence on the interviewer is evident in the asylum interview and according to the participants of this research, that dependence caused them to torment before and during the interview. Will the interviewer help me to make my story as strong as possible? Does the interviewer intend to ask the right questions benefiting me? Furthermore, does the interviewer understand me? (i.e. have hermeneutical resources to understand or does the story remain unintelligible. See e.g. Berenstain, 2016). Forty-two of our seventy participants had experiences, which fulfil the characteristics of epistemic violence.

Twelve participants of this study explicitly said that they were not satisfied with the interpreter's translation. They told to have corrected various expressions in the documents from the interview, trying to find suitable expressions. This is an important point as translation is always about shrinking a language (the asylum seeker's story in this case) into a form suitable for the prevailing system and mindset (Vásquez, 2011). Stories become easily less nuanced than reality. However, in some worst cases actual flaws remained in the documents. The interviewer was unable to understand the details of the story and the asylum seeker was unable to detect the failures in understanding. Failures were detected only when the asylum seeker got a rejection of his/her asylum request based on the mistakes in the documents causing the misunderstanding. One of the participants described this: "*Only when I got the first negative decision and read through the papers with my Finnish friend did I realise that no, this wasn't what I meant*". This highlights the difficulty of perceiving epistemic violence before it is actually materialised as a negative decision (Fricker, 2007).

The failures in the linguistic exchange in the interview are extremely difficult to correct afterwards. Changing the wording or expression often leads to a situation where the credibility of the story is decreased (Koistinen and Jauhainen, 2017) as one of the participants explained:

"I made the corrections and appealed. I got a second negative decision fast as they said that my story wasn't coherent anymore". Another participant continued: "In my papers there is a line saying that I cannot be granted asylum as I have not been threatened in my home country in 2014 or 2015. I tried to correct this by saying that of course not, because I had already escaped and I was already in a refugee camp. I showed a document from UNHCR. Still negative."

In these cases, it is evident that the testimonies of these individuals have not been heard and there have been severe difficulties in understanding. Nevertheless, Article 16 of the EU procedure directive guarantees the right to the opportunity to give an explanation regarding elements, which may be missing and/or any inconsistencies or contradictions in the asylum seeker's story. Sometimes misunderstandings are merely minor differences in the words used, sometimes the word has a totally different meaning in different tribes and families changing the content of the story creating a dearth in the coherency and credibility of the story. One participant explained a confusion, which happened in his asylum interview:

"I used the word 'bro' of my friend but the interpreter had translated it as 'brother'. My story wasn't coherent as they have my other documents stating that I don't have any brothers. But I never said I had, I talked about my friend".

This episode highlights the importance of the quality of the interpreter and his/her suitability to each particular case. This is also highly relevant in terms of legal protection. However, five participants told to have been afraid of being interfered with or judged by the interpreter as the interpreter might have a different perception of the situation back home. One participant described this: *"I noticed that the interpreter was from a different sect than me. I did not feel free to talk as I know that he doesn't believe in what I say"*. Besides these challenges, ten participants mentioned that they used Google Translator in their asylum interview. Time pressure to give a decision on asylum applications only made it more challenging to find professional interpreters for the hearings. These aspects create a real danger of intentional as well as unintentional epistemic violence and the possibility to hinder open communication.

Most of the participants felt disqualified as knowers about their own situation. They had heard rumours about the country information before their interview and felt nullified already in advance as one of the participants explained: *"I thought already before the interview that they [Migri] wouldn't believe me anyway and would say that I can go to...[other part of the home country]"*.

In the negative decisions, it is often claimed that the applicant has been asked to tell everything relevant and there are no legal grounds to give asylum. Nearly all the participants (65/70) questioned how they would know what is relevant. This problem grew after the amendments in the immigration law in Finland (yet it existed already before) as legal advice might nowadays be scarce. The lack of advice and knowledge increases the possibility for epistemic violence in the asylum process as it jeopardises the ability of asylum seekers to speak. One participant said: *"The person who assisted me in the interview [a voluntary person, not a lawyer] told me to tell them how difficult I had it and what I was afraid of and I did. However, I didn't know what I should have told until I got help from a lawyer. Then I had already gotten a negative"*. Participants of this research said that they had not understood the extent and level of the details that should be said and explained during the process. This highlights the problem of not knowing the relevant aspects for the case, causing the epistemic violence due to the lack of knowledge (Bergin, 2002; Townley, 2006).

In Finland, it is possible to make an asylum application for the whole family together. In such a case, the interview is for both the husband and the wife. This might limit the possibilities of both partners to talk freely. In our research, two women talked about their experiences to anybody in Finland only after their families had received a negative decision on their asylum applications. Later they asked whether the social worker could organise a possibility for them to talk about their own stories and not the story of the family. One participant put it like this:

"I would like to tell about my situation. My husband is threatened in our home country, but it wasn't enough to get asylum here. Above all that, my parents do not accept my husband and they have said they will kill me if they get me. I cannot go back".

This example illustrates the possibility of epistemic violence encountered by women as their possibilities to talk might be even more limited (at least in these cases of family applications) than the one of men. This limited ability ends up having a negative impact on women (Dotson, 2011; Teo, 2010). However, the issue of overlapping inequalities is not an issue merely regarding women. This is highly relevant also for LGBTQ communities and requires further exploration.

Along with the aforementioned factors jeopardising the ability to talk and the dependence relationship asylum seekers have on the interviewers, attention needs to be paid to the impact of personal traumas, habits and experiences of asylum seekers. As mentioned, when a person is traumatised, telling a coherent story might be impossible (See Brewin, Dagleish and Joshep, 1996). Asylum seekers do not always get a thorough medical check-up, and even less often, for example post-traumatic stress disorder is diagnosed. Nevertheless, in order to get asylum, the story needs to be coherent and detailed. This is however, challenging as one participant said: *"I did not have my mind with me. I just could not concentrate and kept forgetting what I was supposed to say. I guess I didn't do too well as I got negative"*. Moreover, the issue of trust is evident in the asylum interview. The person might have lived the whole life learning not to trust authorities and for

them, trusting the interviewer and the interpreter might be counterintuitive. One of the participants explained this:

"In my home country I needed to fear militia. So, I learned very young to talk without telling much. I learned that I couldn't trust. When I arrived, I should have told everything directly but I was too afraid to do so. I got negative [decision]. I noticed I need to trust and tell everything and I appealed. They said my story is not coherent anymore and that I should have told everything directly".

These quotes are clear examples of the challenges giving room for epistemic violence in power laden linguistic exchanges. However, it is important to acknowledge that not all epistemic violence is intentional or in the case of this research, practised actively by the authorities, interpreters or even the asylum system. Nevertheless, possibilities for experienced epistemic violence might be, as shown, present despite any goodwill of the listener especially when the abilities to speak, understand and be understood are drastically jeopardised.

Concluding remarks

In this article, we analysed the asylum process in Finland to distinguish the aspects in the process causing risk for epistemic violence (if any) and if the amendments to the Finnish law and legal practice created more possibilities for epistemic violence in the Finnish asylum processes. Here we want, moreover, to conclude some lessons to be learned from the Finnish case.

There are multiple possibilities for epistemic violence throughout the Finnish asylum process. There are two occasions where asylum seekers need to disclose all relevant aspects for the case limiting the possibilities to talk and be heard outside those two occasions. Epistemic violence could occur when there is a failure in a linguistic exchange in a dependence relationship. The possibility for epistemic violence exists, as the asylum seeker is dependent on the interviewer's (and the interpreter's) ability to hear and understand the words of the asylum seeker.

The lack of knowledge of both, the asylum seeker, but possibly also the interpreter and interviewer upsurge the possibility for epistemic violence in the process as it risks the ability of asylum seekers to speak about the right aspects. As we showed, revealing grounds for protection and threat could be jeopardised by other elements too, e.g. fear of the asylum seeker to explain the things, lack of professional interpreters available in the interviews or disqualifying the knowledge of the asylum seeker about his/her home country. Moreover, we highlighted the difficulty of speaking after traumatic circumstances and embodying the idea of authorities being enemies. These aspects create a real danger of intentional as well as unintentional epistemic violence, and the possibility to hinder open communication.

Furthermore, the amendments in the legislation in 2016 increased the possibilities for epistemic violence or intensified the existing ones. From the viewpoint of this article, making the legal aid in the asylum interview *in practice* no longer possible (as the legal aid no longer includes the presence of a private lawyer in an asylum interview) is the biggest factor increasing possibilities for epistemic violence. The legal councillor is allowed to be present during the interview, but after tightening regulations, the councillor will only be paid if there are special, weighty reasons for his/her presence. Additionally, the amendment shortened the period for appealing to the Administrative Court and the Supreme Administrative Court to obtain international protection. This inevitably increased the possibility for epistemic violence as one needs to appeal in a shorter time, hampering the thorough work and possibilities to provide asylum seekers with a full understanding of the asylum process. Additionally, the time pressure to give the decision on asylum applications only made it more challenging to find professional interpreters for the hearings.

We found all these schoolbook aspects of epistemic violence in the experiences of the former asylum seekers. Forty-two of our seventy participants had experiences that fulfil the characteristics of epistemic violence. In some worst cases, there were actual flaws, which were not detected before the person received the negative decision. The interviewer was unable to understand the details of the story and the asylum seeker was unable to detect the failures in understanding. Through empirical examples, we showed the importance of the quality of the interpreter and his/her suitability to each particular case as even a slight changing of the

wording or expression might lead to a situation where the credibility of the story is decreased. Participants of this research said that they had not understood the extent and level of the details that should be said and explained during the process. Cutting the possibilities of legal advisor just made things more challenging. Nearly all the participants (65/70) questioned their possibilities to even know what is relevant to tell and sometimes felt nullified with their personal fears and knowledge about the country they came from.

These remarks are important in times of efficiency pressure regarding asylum processes and an overall contestation related to the rule of law and democracy in European migration policies. The new pact on migration and asylum aims at more efficient processes and gives legal guarantees of individual assessment of asylum claims and essential guarantees protecting access to asylum (European Commission, 2020). The possibilities for epistemic violence are difficult (if not impossible) to remove totally. Moreover, the possibilities for epistemic violence are tightly related to legal practice and political guidance, as we showed with the Finnish case. This makes the asylum system vulnerable to increased epistemic violence and in the worst case, violations of non-refoulement clause of the international law.

There are several points, which should be highlighted for possible migration management regulations in the EU. First of all, according to the directive on common asylum procedures, the requirements for asylum processes (e.g. effective access to these processes, legal assistance, and understandable communication) need to be ensured already at the first instances of the asylum processes. We stress that the emphasis ought to be in the beginning phase of the process. Epistemic violence, especially in the asylum interview, might prolong the processes as it increases pressure on the later legal stages through appeals and thus, make the process less effective from a process economic viewpoint. The possible mistakes and discrepancies in the first phase are likely to bring more work in the appealing phases, and these corrective measures are weaker in terms of legal security and certainty.

Secondly, the member states really have to fulfil their obligation to ensure simple and accessible linguistic or written exchange in proceedings in the asylum process. Here the competence of the interviewer (and interpreter) to acknowledge the personal and general circumstances related to the asylum application, such as the asylum seeker's cultural origin, gender, sexual orientation, gender identity or vulnerability, are of vital importance. This does not happen, however, through Google Translator or without proper legal advice.

Lastly, we emphasise that even though everyone has the right to a fair and public hearing within a *reasonable time*, the decisions cannot be made within the too strict time frame if not enough qualified personnel are available to conduct the work. In order to (re)gain legitimacy in the eyes of the citizens in Europe and elsewhere, the EU needs to show the capacity to take responsibility and display trust and perception of fairness. Consequently, we need to be cautious with over-tightened time- and efficiency pressure for not to compensate the efficiency with poorer quality and increased epistemic violence.

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