REFLECTIONS ON THE GREY ZONE BETWEEN LANGUAGE LEGISLATION AND IMPLEMENTATION IN EU ASYLUM PRACTICE

Tema

Volgens Artikel 12 van de EU *Richtlijn inzake Asielprocedures* moeten verzoekers worden ingelicht over de te volgen procedure "in een taal die zij begrijpen of waarvan redelijkerwijze kan worden aangenomen dat zij deze begrijpen" en "moeten zij, telkens wanneer dat nodig is, gebruik kunnen maken van de diensten van een tolk" (2013/32/EU). Deze criteria zijn nauwelijks toepasbaar en onduidelijk voor wat het metalinguïstische bewustzijn betreft dat vereist is voor een correcte inschatting van de nodige taalondersteuning. Dit artikel focust op enkele linguïstische aspecten die in de huidige asielwetgeving onderbelicht zijn. Onduidelijke richtlijnen leiden tot tegenstrijdigheden tussen lidstaten bij de interpretatie en toepassing van taalgerelateerde richtlijnen in de dagelijkse asielpraktijk.

Katrijn Maryns | Ghent

Katrijn Maryns (Ghent University) examines multilingualism and interpreting in institutional settings of globalisation, with a specific focus on asylum and migration. She is the author of *The asylum speaker: language in the Belgian asylum procedure* (Routledge 2006).

1. Introduction

Over the last few decades, the EU has made significant efforts to improve its asylum system with a view to building a shared space of protection, responsibility and solidarity among its individual Member States. Between 1999 and 2005, some major directives and regulations were adopted to streamline asylum legislation and to work towards a Common European Asylum System (CEAS). The main objective of this harmonisation policy was to bring an end to the 'asylum lottery' by increasing the chances that applications were treated in the same way across the European Union, regardless of the Member State where they were submitted. One of the key texts in the implementation of the CEAS was the Asylum Procedures Directive of 2005 (2005/85/EC), which set out minimum standards for assessing asylum applications. These basic requirements include the right to a personal interview with an asylum officer trained in EU law to determine, according to unified standards, whether the applicant is a refugee or qualifies for subsidiary protection. Increasing needs for further specification and refinement of these standards resulted in a revision of the Directive in 2013 which aimed at "fairer, quicker and better quality asylum decisions" (EU, 2014).

Though the recast Asylum Procedures Directive implies an improvement of important procedural standards, it remains vague in several respects, leaving much latitude for national implementation. Consequently, and particularly in the context of the current refugee 'crisis', changes in EU legislation follow one another in rapid succession. Nevertheless, from a linguistic point of view, it is remarkable how little attention is paid in these amendments to the role of language in what is essentially a discourse-based procedure, where spoken and written discourse form the main input for the production and the assessment of asylum cases (Barsky, 1994; Pöllabauer, 2004; Inghilleri, 2005; Maryns, 2006, Tipton, 2008; Blommaert, 2010). While the Directive addresses some elementary language assistance requirements, such as the provision of interpreters, the allocation criteria are poorly defined and

PIÙ ARTICOLI SU QUESTO TEMA:
WWW.BABYLONIA.CH >
ARCHIVIO TEMATICO > SCHEDE 6 E 20C

Imprecise estimates of the client's and the other participants' language proficiencies or insufficient appreciation of the inherent variability of the languages selected, may cause applicants to miss out on the linguistic support they are entitled to.

do not adequately take into account the sociolinguistic and language-ideological complexities characterising our increasingly mobile and globalised society.

This article aims at highlighting some linguistic challenges that remain largely unaddressed in the current *Asylum Procedures Directive*. On the basis of a selection of passages from the 2013 Directive where explicit reference is made to language, it will explore the grey zone between legislation and implementation of language-related requirements at the level of the Member States. First, I will highlight some of the main 'forgotten contexts' (Blommaert, 2001), i.e. contexts that are easily overlooked when considering the role of language in asylum practice, both at the level of spoken interaction and at the level of textual reproduction. On the basis of a comparison of multilingual institutional practices in Belgium and the Netherlands, I then illustrate how a lack of clear standards can lead to inconsistencies between Member States in the practical implementation of these standards in everyday asylum practice.

2. Linguistic variability and representation: forgotten contexts in asylum practice

The 2013 recast Asylum Procedures Directive contains several direct and indirect references to language. In particular, Articles 12, 15 and 17 provide a number of minimal guarantees when it comes to access to information and language assistance. Article 12 states that applicants have the right to language assistance in order to be able to communicate with the asylum agencies and to be informed about the procedure and the result of the decision taken. Concretely, it is stated that applicants "shall be informed in a language which they understand or are *reasonably supposed to understand*" and that "they shall receive the services of an interpreter for submitting their case to the competent authorities *wherever necessary*" (my italics). In a similar vein, Article 15, stipulating the requirements for the personal interview, states that Member States must provide an interpreter who can help to assure effective communication between the applicant and the interviewer in the language chosen by the applicant "unless there is another language which he or she *understands* and in which he or she is *able to communicate clearly* (my italics). The question remains how these ill-defined instructions should be implemented in practice: where to draw the line between necessity and sufficiency? While such vague categorisations steer the interview procedure, very little attention is paid by the asylum authorities to the language selection process and the metalinguistic awareness needed to assess language proficiencies (self-ratings and other-ratings) and to anticipate what will work best in the given communicative situation. The directives may presume a certain 'client-centeredness' (Moorhead *et al*., 2003), reflected in this clear focus on the linguistic rights and needs of the applicant. Still, imprecise estimates of the client's and the other participants' language proficiencies or insufficient appreciation of the inherent variability of the languages selected, may cause applicants to miss out on the linguistic support they are entitled to.

Recent research has shown that when it comes to the discursive input into the asylum procedure, some of the main 'forgotten contexts' involve (a) the variability of individual linguistic repertoires and the flexible multilingualism encountered in the asylum interview (at the level of spoken interaction) and (b) the implied transformative effects of multimodality in the procedure (at the level of textual reproduction). First, the rather static linguistic categories postulated in the regulations fail to address the communicative needs of immigrant 'new speakers' (O'Rourke & Pujolar, 2015) whose individual histories of displacement reflect their flexible multilingual repertoires of (socio)linguistic resources that have been accumulated by moving around (Maryns, 2006; Blommaert, 2010). The embeddedness of these resources in the often very divergent linguistic repertoires of individual speakers may account for the fact that one and the same word or concept can take a whole range of varietal linguistic forms. In other words, what is considered to be the 'same' language in the procedure is often conditioned and shaped by very different speaker repertoires. Analysis of authentic asylum interviews in Belgium (Maryns, 2006, 2013, 2015) has demonstrated how significant variation in the pronuncia-

tion, semantic meaning and pragmatic relevance of English terms may lead to multiple interpretations and possibilities for misunderstanding. For example, in one of these interviews, where English is selected as a lingua franca for communication between a Flemish asylum officer and a Nigerian applicant, these varieties are phonologically and socio-linguistically so divergent—both lingua-culturally 'placed' in local speech communities and moulded by individual speaker's linguistic repertoires—that the interlocutors fail to recognize particular words ('thug', 'axe') from their spoken forms, which eventually leads to a mismatch of supposedly homophonous words ('thugs'/'talks', 'axe'/ 'hawk'). The consequences of such misunderstandings and inaccuracies can be significant in view of the institutionally expected degrees of accuracy and factual detail in the motivation of asylum claims.

A second discursive context that tends to be forgotten in the assessment of asylum claims is the tension between orality and textuality in the procedure. According to Article 17 of the 2013 recast Asylum Procedures Directive, every Member State "shall *ensure* that either a *thorough and factual report* containing all substantive elements or a *transcript* is made of every personal interview" (my italics). This provision raises a number of concerns. First, the question is how this requirement of a thorough and factual report, or even a transcript, can be squared with the specific conditions and parameters at stake in the asylum interview: not only are asylum officers supposed to have the necessary interactional abilities to handle contextually dense and usually very sensitive information, they often have to do so in a second or even a third language and are at the same time assumed to possess the aptitude to reproduce spoken and often very messy experiential accounts into neat bureaucratic textual reports. Besides the fact that these officers are usually not trained and qualified to perform such complex linguistic tasks (inter-and intradiscursive renditions[1]) they also assume the responsibility for the evaluation of asylum identities, often under severe work pressure, all of which raises concerns about the presumed accuracy of these reports. After all, while asylum accounts are by definition co-constructed by applicants and officials in the interview, these oral accounts are abstracted from the interactional dynamics of the interview as soon as they go on record in written reports. Given that generally no recordings are made of these interviews, caseworkers and decision-makers at a later stage in the procedure no longer have access to the actual conditions under which these accounts took shape. And although the asylum seekers' initial account inevitably undergoes all sorts of filtering in order to fulfil institutionally expected textual standards of consistency and detail, it is still taken for granted that the written account is a neutral and equivalent representation of the original. Discursive inequality arises indirectly from the privileged status granted to the institutionalized version of the account, which is, despite multiple levels of translation between languages (source and target languages in interpreted interaction), modalities (speech and writing) and genres (interview and report), still attributed to the individual asylum applicant, despite the fact that he or she has very little control over these representations.

3. Inconsistencies in the implementation of linguistic standards: the case of Belgium and the Netherlands

Ongoing research on language (Pöllabauer, 2004; Maryns, 2006) in the asylum procedure has not only demonstrated how difficult it is for asylum applicants, officers and interpreters alike to meet the vague but at the same time also very high linguistic expectations set by the Asylum Procedures Directive, moreover, it has brought to light that the above described client-centeredness of the Directive is interpreted differently between Member States. Belgium and the Netherlands, for instance, two neighbouring countries that share Dutch as an official language, adopt a different language policy when it comes to the use of English as a lingua franca in asylum hearings. The fact that Dutch is a relatively small language (compared, for example, to Arabic, French or English), often causes problems finding an interpreter who can immediately interpret between the client's L1 and the officer's L1. Instead of using an additional interpreter to bridge the language gap,

1 The interdiscurisve dimension implies the transfer of meanings 'between' languages (like translation) while the intradiscursive dimension refers to the representation of discourse 'within' a given language (like report writing).

2 By 'off the record' I mean that this form of translation is not visible in the files: the report just mentions that the interview was interpreter-mediated, but not that the interview language (and also the target language of the interpreter) was English. So the fact that it is the asylum officer who is in charge of the translation from English into Dutch is not traceable. This could be considered as an unofficial translation, as it was carried out by an officer, not by a translator.

lingua franca use is often preferred in such cases. And here is where the inconsistency between the two countries comes in: in the Netherlands, it is the client who has to switch to an L2 or L3 – any language he or she is *reasonably supposed to understand* – for lingua franca communication with the interpreter, who then interprets between this lingua franca and Dutch, the native language of the officer. In Belgium, it is the other way around: the client is given the opportunity to express him/herself in an L1, assisted by an interpreter who interprets into a lingua franca, usually English, for communication with the officer. In such cases, it is the officer who conducts the interview in an L2 or L3, and who, in order to comply with the language legislation, has to provide a off-the-record translation[2] of this lingua franca into the official language of the written report (Dutch or French).

Still, whatever the multilingual strategy adopted, asylum attorneys in both countries have appealed against asylum decisions on grounds of linguistic issues. While asylum attorneys in the Netherlands have stated that their clients cannot sufficiently express themselves and motivate the details of their claim in a lingua franca, Belgian lawyers have argued that the use of English as an interview language in the asylum procedure circumvents the Belgian language law. UNHCR has reported such unauthorized practices and has alerted Belgium and other EU Member states to the risk that 'important elements in the applicants' statements may be missed or lost' (UNHCR, 2010: 119). Still, further research is required, if possible on the basis of authentic data from within the asylum procedure, to continue improving the linguistic conditions for submission, representation and assessment of asylum applications across the EU.

4. Concluding remarks

Over the last twenty years, the EU has continued to commit itself intensively to the increased harmonization of asylum legislation and the correspondence of legal-administrative practices between the Member States. The issue that arises is to what extent these processes of harmonisation and homogenisation of the judicial system can be extended to the discursive input in the system and the way language is institutionally managed in the asylum procedure. Though harmonization of laws and regulations is indispensable in the European context, issues of linguistic variability in the production and the representation of asylum accounts should not be overlooked. Several parameters are at stake when applying multilingual strategies , such as the language repertoires and resources of the participants in the process, the purpose and task-orientedness of the interaction and the availability of (trained) interpreters or other forms of linguistic support. These parameters deserve special consideration in the further development and legislative fine-tuning of the CEAS.

References

Barksy, R. (1994). *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing*. Amsterdam: John Benjamins.

Blommaert, J. (2001). Context is/as critique. *Critique of Anthropology* 21(1), 13-32.

Blommaert, J. (2010). *The Sociolinguistics of Globalization*. Cambridge: Cambridge University Press.

CEAS (2015). http://ec.europa.eu/dgs/home-affairs

European Union (2014). *A Common European Asylum System*. Luxembourg: Publications Office of the European Union.

Inghilleri, M. (2005). Mediating Zones of Uncertainty: interpreter agency, the interpreting habitus and political asylum adjudication. *The Translator* 11 (1), 69-85.

Maryns, K. (2006). *The asylum speaker: language in the Belgian asylum procedure*. London: Routledge.

Maryns, K. (2006). Procedures without borders: the language-ideological anchorage of legal-administrative procedures in translocal institutional settings. *Language in Society* 42, 71-92.

Maryns, K. (2015). The use of English as ad hoc institutional standard in the Belgian asylum interview. *Applied Linguistics,* VOL, xx-xx.

Moorhead, R., Sherr, A. & Paterson, A. (2003). What clients know: Client perspectives and legal competence. I*nternational Journal of the Legal Profession* 10(1), 5-35.

O'Rourke, B. & Pujolar, J. (2015). Special Issue: New Speakers and processes of new speakerness across time and space. *Applied Linguistics Review* 6(2), xx-xx.

Pöllabauer, S. (2004). Interpreting in asylum hearings: Issues of role, responsibility and power. *Interpreting 6* (2), 143-180.

Tipton, R. (2008). Reflexivity and the social construction of identity in interpreter-mediated asylum interviews. *The Translator* 14 (1), 1-19.