Julia Dahlvik

Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria

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Foreword

Given that the so-called "refugee crisis" has loomed so large in European politics in recent years, it is indeed surprising, as Julia Dahlvik notes in her introductory comments to this significant new study, that so little research attention has been directed toward the government bureaucracies charged with deciding the growing numbers of asylum claims, and with implementing the conversion of asylum from a human rights issue to a key element of border control. It is easy enough to find official documents presenting idealized accounts of these bureaucracies and the formal decision-making procedures they are expected to follow, but it is far harder to glean information on how things work out in practice. This book represents a major step toward remedying that lacuna for the important case of Austria.

Such studies are made all the more necessary because the processes they investigate are normally invisible and because, as Dahlvik persuasively argues, organizations such as the Austrian asylum bureaucracy are characterized above all by their organizational practices rather than their formal structures. These practices, and the actions that constitute them, are anchored in material artifacts as well as human actors. In the Austrian Federal Asylum Office (FAO), as in any bureaucracy, these material artifacts are primarily textual – annotated documents, compiled into case files. These documents, too, must therefore also be regarded as actors that play their own part in structuring the social practices of the institution.

Right across Europe, the formal structures have been subject to almost constant change, and Austria is certainly no exception. Even so, a study such as this will retain its value not only because routinized practices change more slowly and incrementally – partly because they are heavily dependent upon newly appointed officials observing the behavior of their colleagues and orienting their own practices accordingly – but also because the issues and dilemmas that refugee status determination entails, such as those attached to the assessment of credibility (Chap. 6), have remained surprisingly stable over the years.

Although a new piece of legislation may disrupt some existing practices to the extent that they may even be rendered invalid, the fact that these practices are located within a broader conglomerate of well-established social practices, not all of which are affected to the same degree – if at all – by the new law, serves to

dampen the overall effect. As when a stone is dropped into a pond, the ripples created by a new law radiate outward, but decrease in amplitude and eventually disappear altogether. What is more, the further one moves down the organizational hierarchy, the greater the importance of localized organizational practices relative to the legislation and formal procedures imposed from above and from the outside.

Thus, there are any number of reasons why Dahlvik's study of the different actors in the asylum process – primarily the officials in one branch of the FAO, but also, and mainly through the eyes of those officials, the asylum applicants, interpreters, and medical and linguistic experts with whom they interact – provides us with insights that could only be obtained through an institutional ethnographic study.

To mention only a few of the many examples throughout Parts II and III of the book, we learn a great deal about how, in practice, FAO caseworkers prepare for and conduct interviews; how they go about balancing adherence to regulations with the exercising of personal discretion when reaching and writing up their decisions; and the extent of individual variation – such that the practices of certain officials may even, as one interlocutor told Dahlvik, make colleagues' hackles rise. We discover how these caseworkers, faced with the uncertainties inherent in almost every asylum claim, subjectively assess the performances of asylum applicants at their interviews in order to decide whether they are telling the truth. We find out about the failings of (sometimes) untrained interpreters and the possible detrimental effects of their actions in the fraught context of asylum interviews; and that caseworkers often compound these failings by addressing their questions to the interpreter rather than the asylum claimant, who is referred to in the third person. We learn too about experts who delay decisions by failing to submit reports within agreed deadlines. None of this material would be even indirectly accessible to a researcher restricting herself to formal structures and official instruction manuals. In addition to these empirical insights, we also learn, through the concluding analysis, about the extent to which the FAO's procedures are socially constructed and what might be done to make asylum decision making better.

From another perspective, which seems very compatible with Dahlvik's own approach, the Austrian asylum system as described here appears to be a classic example of "strong" legal pluralism in which the applicable law and legal institutions cannot all be subsumed within a single "system" but arise from the articulation of a number of what Sally Falk Moore (1978) has labeled "semiautonomous social fields." The key characteristics of such fields are that, while they are capable of generating rules and inducing conformity, they are not fully autonomous or socially isolated but are affected by the broader social matrix within which they are set. As a result,

> the "law" which is actually effective on the "ground floor" of society is the result of enormously complex and … unpredictable patterns of competition, interaction, negotiation, isolationism, and the like (Griffiths 1986: 39).

The notion of "pluralism" is employed in several senses within the contemporary anthropology of law (Moore 2001), and at least four of these are evident here. First, the state itself is internally complex and diverse, and its official administrative

subparts not only cooperate but also sometimes compete for legal authority; here, for example, the processing of asylum claims requires the involvement of the police and municipal authorities as well as the various branches of the FAO. Second, state law may depend upon the collaboration of nonstate social fields for its implementation. For example, NGOs are intimately involved in the processing of Austrian asylum claims. Third, the state itself vies with other state legal systems in supranational arenas, such as the EU, or with global institutions such as the UN High Commission for Refugees. Thus, Austrian state institutions are constrained to work within the framework of the 1951 Refugee Convention and the associated prohibition on refoulement, as well as no fewer than six EU regulations and directives. Finally, the state is enmeshed with nongovernmental semiautonomous social fields that generate their own norms and values and have the capacity to induce a degree of compliance to them. For example, the various professional groups implicated in the Austrian asylum process (FAO officials, judges, lawyers, experts, interpreters, and so on) interact in complex ways regulated not only by the rules OF procedure developed by the various state bureaucracies and different types of court, but also by the ethical codes of the specific professional bodies to which they belong, and by the unwritten conventions that have arisen through their day-to-day interactions.

This last point brings us back, once again, to the centrality of social practice, as amply demonstrated in Julia Dahlvik's interesting and important book.

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April 2017

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This book grew out of a dissertation at the University of Vienna, and I wish to acknowledge and thank the persons who have guided me along the way. I am particularly indebted to Christoph Reinprecht and Manfred Nowak, who, as supervisors, read drafts of the thesis and provided me with thoughtful feedback. Their guidance and critical comments have contributed substantially to the realization of this research. I also want to thank Heinz Faßmann for his support through the research platform at the University of Vienna. My sincere thanks go to Rosaline S. Barbour for inspiring my passion for qualitative research methods and to Ulrike Froschauer for introducing me to the world of the sociology of organizations. This study benefited from the constructive feedback and support of many scholars to whom I remain indebted.

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Part I
Claiming Asylum in the Twenty-first Century: An Institutional Perspective

Chapter 1
Introduction

In Austria, as in most European states, claiming asylum is one of the few possibilities to enter the state legally for most non-European migrants who are not highly skilled (except for family reunification). In 2015, during the so-called refugee crisis, 88,340 persons submitted asylum applications in Austria, adding to applications that were already pending (Bundesministerium für Inneres 2017). An asylum procedure can last from a few days to several years. This empirical reality confronts a large number of actors in their everyday and working lives, including asylum claimants, legal representatives, NGOs, and decision-making officials. Public officials' work, their decisions – which impact these individuals' lives – and their institutional embeddedness are at the center of this study. This book is the result of my research on social practices and processes in a governmental agency. It concerns the work of public officials employed at the former Federal Asylum Office (FAO), an administrative unit of the Austrian Ministry of the Interior in charge of processing asylum applications in the first instance. These officials decide whether an asylum claimant is granted or denied asylum or subsidiary protection or receives a residence permit on humanitarian grounds in Austria. In this book, I investigate the "what, how, and why" of a bureaucratic agency as an organization within a governmental system (Krause and Meier 2003).

The administration of asylum represents a field of public administration that has seen important development and change throughout recent decades as a consequence and a part of societal, political and legal events and developments in the world, which are also related to the movement of people, among whom are refugees. Nevertheless, the study of immigration bureaucracies has long been "conspicuously absent from the literature on public administration" (Wagenaar 2004:643). Investigating the process of refugee status determination is a pressing need for several reasons. Despite the intrinsic importance of asylum adjudication in

the field of human rights and persistent concerns about the quality of the process, organizational practices have thus far been a comparatively neglected area of concern for scholarship. Moreover, the decision-making process occurs in a highly controversial political context. More than 15 years ago, Steiner (2000:1) found that "few issues in Europe today are as controversial as the granting of political asylum." Asylum is still a key issue of state politics (Joly 2016), and the controversies over asylum seem to have increased in the wake of the so-called refugee crisis.

This book does not provide a legal or policy analysis or a media analysis of current events and developments. Instead, the study focuses on the organizational context of decision making in the asylum procedure and offers an analysis of the social practices of public officials in administering and deciding asylum claims. The title of this book refers to Downs's (1967) "Inside Bureaucracy," and some findings of this study are surprisingly similar to those in his investigation of the bureaucratic organization half a century ago. This study takes a close look at the governmental body, understanding the bureaucratic apparatus as the "belly" (Mountz 2010: xxxii) or the "heart" (Fassin 2015) of the state. In the recent past, other researchers studying bureaucracies in the field of migration and asylum have adopted similar inside perspectives (e.g., Hall 2010; Calavita 2010; Bosworth 2014; Eule 2014; Jubany 2017).

This investigation aims to gain a complex understanding of how the everyday work of decision makers is structured and which social practices and processes are involved in administering asylum applications at the FAO. The study started from the assumption that the legal and administrative parameters, which are the main sources defining the work of decision-making officials, have differing or competing objectives and logics, producing structural contradictions. Research on the work of public administrators has shown that in enacting policies, they are confronted with inconsistencies and "inherently contradictory sets of ideas" (Mountz 2010:88). "Bureaucratic work is internally conflictive" (Heyman 1995:264), even if this is not outwardly apparent because coherent narratives are constructed for the public. As Thomas (2011:48) notes, "asylum decision making is notoriously difficult, perhaps the most problematic adjudicatory function in the modern state." I argue that public agents have to balance these structural tensions in their interactions with the other involved actors and develop individual strategies for dealing with the prevailing circumstances. Thus, it seems essential to critically analyze these "dilemmas of the individual in street-level bureaucracy" (Lipsky 2010[1980]) and to investigate how officials address these conflicting logics in everyday work.

Consequently, the main interest of this study is first to investigate the circumstances under which decision makers work at the Asylum Office and how those circumstances can be explained. I then aim to explore how decision makers deal with these circumstances, that is, the identified structural dilemmas, and how decision makers' practices can be explained (through social theory). I briefly discuss the consequences of the observed social practices and possible ways forward. To that end, a set of more detailed questions needs to be investigated. What does the organizational context look like, and how does it inform officials' work? How are officials socialized in the organization? With which actors do officials interact in the course of processing an asylum application, and what are their roles in the proce-

dure? How can officials' relations to and the interactions among these actors be characterized and explained? What role do artifacts play in decision makers' everyday work?

This approach offers an unprecedented view from the perspective of organizational sociology combined with a link to broader social theory, which surpasses traditional street-level bureaucracy approaches. I believe that this approach to theorizing, which includes theories of social practice (Reckwitz 2002), structuration (Giddens 2011[1984]), and social construction (Berger and Luckmann (1975[1966]), and which has been neglected thus far, makes a necessary contribution to the existing literature. In this study, I am interested in structural aspects regarding institutional, organizational and legal elements, which structure and contextualize the asylum procedure; however, I also examine aspects of agency, that is, the social practices and processes occurring at the front side and the back side of this administrative justice system. By studying action in its course, I aim to shed light on what is happening in this state agency and what is involved in deciding upon asylum applications. I investigate government action with qualitative and ethnographic methods and through sociological perspectives on organizational practice in the administration of asylum. Thus, the study responds to a call for more information on "what lower-level officials actually do in the name of the state" (Gupta 1995:376). While "it is puzzling that although human rights pervade nearly all actions that affect the public, so little attention is devoted to their administration" (Montgomery 1999:323), in dealing with refugee status determination, this book offers insights into the administration of (human) rights. Studying decision makers' everyday work is relevant because it not only affects a large number of lives but also provides insight into our contemporary society and how certain topics are organized through bureaucracy. It is important to understand how the state governs migration, that is, how the forces of structure and agency that affect each other to allow for a holistic diagnosis of the administrative situation; this understanding also facilitates the ability to act on and possibly improve that situation.

The average citizen cannot be expected to know much about the asylum procedure since reports on institutional practices and processes are rare and often do not provide a comprehensive picture. This lack of knowledge can be attributed to the fact that these administrative procedures are not public and occur behind closed doors. If anything is communicated to the outside at all, responsible officials will "craft a unified, coherent narrative for public consumption" (Mountz 2010:58). A focus on the "street-level bureaucrats" (Lipsky 2010[1980]), the front-line workers who interact with their "clients" on a daily basis, and their everyday activities and taken-for-granted routines is not only able to help demystify and explain institutional practices and processes at the FAO; it can also contribute to making the asylum procedure more transparent.

Change is a constant in the field of asylum, which might be related to the controversiality of the topic. This field is characterized by permanent modifications at both the legal level and the organizational-structural level. In recent decades, numerous political and legal changes have been undertaken at national as well as European

Union levels. In Austria, the most recent institutional change was implemented in 2014 when the former FAO, established in 1992, was incorporated into the newly established Federal Office for Immigration and Asylum (FOIA) and the Asylum Court, established in 2008 and representing the second instance in the asylum procedure, was incorporated into the new Federal Administrative Court.

While reorganization is partly related to new (distribution of) responsibilities, the practices and processes involved in the administrative asylum procedure seem more resistant to change. Considering research findings on the bureaucratic everyday from this and other current studies as well as those from half a century ago (e.g., Downs 1967; Lipsky 2010[1980]), key patterns of practice and structure – and the dilemmas involved – are remarkably similar independent of the local context and the issue of administration. Hence, structural dilemmas and officials' practices will likely remain much the same even if certain organizational processes are modified. Some of the theoretical implications made and drawn upon in this study are characteristic of any street-level bureaucracy; others seem particularly relevant to the asylum procedure. The findings suggest that if the procedure itself is not dramatically changed, its specific problems and dilemmas will very likely continue to exist. Therefore, it is interesting and important to better understand decision making in the context of asylum. This book examines how caseworkers address the dilemmas that confront them and how the stability of their practices can be explained against the backdrop of constant (structural) change.

Structure of the Book
The book is divided into four parts: (I) Claiming asylum in the twenty-first century, (II) Setting the scene, (III) Performing the maneuver, and (IV) Conclusion and prospects. In the remainder of the first part, I sketch the social, political and legal context in which the asylum procedure is situated. I then discuss the contemporary amalgamation of migration and asylum and provide background information on the developments of the last few decades in the field of asylum and immigration control in Europe. Following this, the research approach is outlined, including the theoretical and methodological approaches in this case study. The second chapter provides additional contextual information regarding the legal and institutional framework of refugee status determination. After presenting the relevant international and supranational law, I briefly outline the legal and institutional developments in the Austrian asylum system. For a better understanding of the legal procedure, I then explain how a person can be granted asylum (or subsidiary protection) in Austria.

The second part of the book, Setting the scene: the context and circumstances of work at the FAO, presents empirical findings. Chapter three explores the organizational context of refugee status determination with a focus on structure, environment and socialization at the FAO. The chapter addresses topics such as management and control, formal and informal requirements for the job, socialization and the development of routines, the ideal-typical workflow, and the logics of New Public Management (NPM). The next chapter examines the asylum interview as a magni-

fying glass for key issues such as conflicting norms, power struggles, and actors' strategies. The analysis of interviews revolves around the implementation of administrative norms and human rights standards and the related clash of logics, power relations in the interaction and differences in actors' intentions and expectations. Additional focus is placed on the role of interpreters and the importance of the written word in the legal procedure, as exemplified by the interview transcript.

Performing the maneuver: handling four dilemmas in everyday asylum bureaucracy, the third part of the book, continues with the discussion of empirical findings and examines the structural contradictions that characterize public officials' day-to-day work. A chapter is dedicated to each of the four identified dilemmas: regulation versus room for maneuver (Chap. 5), definitiveness versus uncertainty (Chap. 6), the human individual versus the faceless case (Chap. 7), and responsibility versus dissociation (Chap. 8). The chapter progression follows the logic of my arguments. First, I argue that caseworkers develop individual strategies and approaches, highlighting the role of the subjective dimension of decision making in the asylum procedure. Thus, chapter five explores the tension between a highly regulated field of action and decision makers' room for maneuver in implementing the different norms, with a focus on officials' individual approaches, attitudes and strategies. Second, I hold that decision makers' practices include the construction of facts, artifacts (in particular, documents) and incredibility; from an organizational perspective, these can be understood as practices that transform informality into formality. The following chapter is therefore dedicated to the fact that a definite decision needs to be made despite the asylum procedure (almost) always being characterized by uncertainty. Third, caseworkers make extensive use of categorization; this not only reduces the complexity of everyday work but also allows them to address both the requirements and consequences of NPM such as efficiency and various pressures. Hence, chapter seven illustrates the dilemma between a focus on the individual or on the "masses" – the human individual versus the faceless case. Fourth, officials show different practices in dissociating and delegating responsibility; officials' practices of assuming or delegating responsibility are thus explored in chapter eight in combination with the issues of emotions and ethics.

In the last part, Conclusion and prospects: theorizing public officials' practices and practical ways ahead, I first explore how street-level bureaucracy and organizational theories and the theoretical perspectives of structuration and praxeology help explain social practices at the FAO. Finally, I argue that more attention needs to be paid to ethics in public administration and in the context of international protection. Thus, the final chapter discusses practical implications for handling the structural dilemmas and possible ways to improve the asylum procedure. Bringing the book to a conclusion, I call for a stronger focus on procedural justice and decision makers' ethical competence. The book closes with a short outlook on future research avenues.

1.1 The Decision-Making Context: The Confusion Over Asylum and Immigration Control

Since the late 1980s, asylum has increasingly been "treated as an immigration rather than a humanitarian issue" (Morris 2002:23); it "is now deemed a vector of immigration" (Kobelinsky 2015:87). Whereas certain scholars agree that asylum should be considered a form of migration and that refugees[1] can therefore be conflated with other immigrants, other scholars contend that voluntary and forced migration should not be confounded. There is a trend to discuss "asylum migration" (Böcker and Havinga 1998; Borjas and Crisp 2005; Castles and Loughna 2005; Koser and Van Hear 2005; Keogh 2013; Barthel and Neumayer 2015); similarly, the notion of "the migration-asylum nexus" has been established in academia (Borjas and Crisp 2005; Castles 2007; Mingot and de Arimateia da Cruz 2013). Although these approaches address the blurring of voluntary and forced or economic and political migration, they also seem to partly contribute to it.

Several authors suggest that traditional distinctions are no longer valid in the contemporary world. Castles (2007:39) argues that "complex and ongoing emergencies may cause people to move between migration categories." Although "the distinction between migrant and refugee [is] in some sense the whole point of the Convention" (Gibney and Hansen 2005:92), Westra et al. (2015:2), along with other scholars, argue that the Geneva Convention and its Protocol are "totally inadequate to deal with both the quantity and the quality of asylum seekers" for a number of different reasons. Today, asylum claimants' suffering is often not the result of direct, deliberate persecution; instead, the causes of flight include internal conflicts, the impact of the Western industries on the global climate and "macroeconomic operations" (ibid:3) in the global South.

> While the distinctions between migrants and refugees in principle relies on the presence of a coercive element in the movement of the latter, the reality is often far more ambiguous. Increasingly, there are overlaps and complex dynamics at play in identifying the "voluntary" or "forced" nature of human mobility (Türk 2013: xii).

According to Brochmann (1999a:2), "the traditional distinctions between 'economic' and 'political' migrants became increasingly problematic in the 1980s and the 1990s." The two concepts, which had previously been separate, merged with the fusion of the concepts in the public and political spheres (Gibney and Hansen 2005). This intermingling went hand in hand with the politicization of asylum and a proliferation of policy reforms in this regard as asylum applications were sharply increasing and states started to aim to prevent, deter and limit the number of asylum seekers.

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[1] The law differentiates among asylum claimants (those seeking protection), recognized refugees (those granted protection) and other categories (such as subsidiary protection and humanitarian grounds). From a more philosophical point of view, those seeking protection may of course also be regarded as refugees, defined as individuals fleeing their countries of origin for reasons such as wars or persecution.

The events of the late 1980s and early 1990s – the fall of the Iron Curtain and the war in the former Yugoslavia – led to increased numbers of immigrants and refugees and thus constituted a significant marker for a more restrictive asylum policy. Immigration regulations started to become closely linked to asylum, and the latter was often used synonymously for irregular migration (Kraler 2011). Today, asylum is still often constructed as a "threat" or a "problem" that can be solved with increased restriction or control (Squire 2009; Jubany 2017). Although the framing of asylum as a security or criminal "threat" is used to legitimize the extension of restrictions (Huysmans 2006; van Munster 2009), it can be argued that many of the "problems" associated with asylum are actually "produced or aggravated by restrictive controls" (Squire 2009:9–10).

> To formulate and implement immigration control policies that correspond to normative obligations, while at the same time taking care of the "interest of the state" – all within a context of uncertain prognoses and insufficient information – may be said to constitute the current major dilemma of European governments (Brochmann 1999a:4).

Current developments in Europe demonstrate that almost 20 years later, the above observation still holds true. Refugee protection belongs to the field of human rights, but it has increasingly become an issue of border control, discarding the right to seek protection (Brochmann 1999b:312). The mechanisms of immigration control, that is, "the rules and procedures governing the selection, admission and deportation of foreign citizens," (Brochmann 1999a:9) can be understood as "mundane practices of exclusion" by which "states enact violence" (Walia 2013:5). Today, seeking asylum has become one of the few ways through which so-called third country nationals can legally enter an EU country. Hence, a critical gap can be observed between the importance of asylum as a means of protection for refugees when it was established more than six decades ago and the role of the concept today as an instrument allowing entry to a territory for a selected few, thereby functioning as a tool for collective exclusion. Additionally, the exclusionary politics of asylum have "become both discursively sedimented and institutionally embedded at the political, popular, public, and technical levels" (Squire 2009:185).

Immigration control even represents "one of the defining features of the modern sovereign state" (ibid:5). In the context of globalization, transnationalism and neo-liberalism, immigration control contributes to the constitution of a territorial order with regard to state governance and national belonging (Bartelson 1995). "The long-term targets of immigration control are generally determined by perceptions of national interests and national identities" (Bauböck 1999:98). Immigration bureaucracies are thus involved in the process of nation building, which is "embedded in its institutions, manifested in its policies and practices, and organized through state bureaucracies" (Basch et al. 1994:37). Civil servants contribute to this nation building through their daily practices of exercising discretion and deciding who belongs and who does not (Heyman 1995).

Despite the existence of the framework of the Common European Asylum System, these decisions on international protection differ widely among the EU

member states (Eurostat 2016; AIDA 2017).[2] The political choice of specific policy instruments is influenced not only by legal traditions and a country's political regime but also by its international position and orientation (Zincone et al. 2011). The varying recognition rates suggest that asylum decision making is not only a human rights issue but that it is also linked in practice to immigration control policies. The EU's harmonization goal can therefore be labeled more appropriately as "conditional convergence" due to "variation in national traditions in immigration policies and practice and, partly as a consequence of this, opposing interests on the side of the governments" (Brochmann 1999b:333). Policy transfer in the EU is thus a challenging process; this is also true in the context of refugee policy (Lavenex 2002). Nevertheless, Kraler (2011:53) notes that a proliferation of transnational policy communities can be observed in the field of migration and integration, and "it is likely that their influence on policymaking will increase in the future, especially in the EU context" (ibid).

1.1.1 Recent Developments in the Field of Asylum

Almost two decades ago, Brochmann (1999a:27) stated that "the EU and its member states are on the brink of a crisis with respect to their driving principles, insofar as key social institutions are being shaped by conflicting and contradictory forces." Eventually, the crisis manifested itself, and a tension of contradictory forces still shapes the work of decision-making officials in the asylum administration. Morris (2002:158) shows that the area of migration rights and controls "is one of compromise, made inevitable by the management of contradiction." This is equally valid for the street-level bureaucracy at the FAO. To some extent, this study thus replies to Morris's (ibid) call for more attention on "the nature of such compromise and its costs."

In 2015, European countries were confronted with a relatively sudden increase in refugees arriving mainly from the Middle East; indeed, Europe faced the largest refugee movement since World War II. These events were eventually labeled a "refugee crisis."[3] Close to 1.3 million individuals applied for asylum in the EU-28 in 2015, amounting to twice as many applications as 2014 (627 thousand) (Eurostat 2016). In 2015, 51% of all EU-28 first instance asylum decisions resulted in positive outcomes, that is, grants of refugee or subsidiary protection status, or an authorization to stay for humanitarian reasons (ibid). According to the UN High Commission for Human Rights (UNHCR) (2016), more than one million people arrived in Europe by crossing the Mediterranean Sea in 2015. Austria has been a major receiving country for asylum applications throughout the recent past. A UNHCR (2015) report identified Austria as one of the top 15 receiving countries in the last 15 years among 44 industrialized countries worldwide and as one of the top ten since 2012.

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[2] For example, recognition rates across Europe for Iraqis differ in the following ways: Germany, 70.2%; Belgium, 54.4%; Sweden, 45%; Finland, 24.1%; Norway, 18.4% (AIDA 2017).

[3] For a critical discussion of this notion, see, for example, Bade (2016).

Applying the per capita measure, Austria also ranks in the top ten for the period of 2010–2014 in contrast to the major receiving countries in absolute terms, Germany and the US. (UNHCR 2015). Within the EU, Austria ranked third on a per capita basis and among the top ten countries receiving asylum applications in absolute numbers in 2014 (European Commission 2015).

Looking at concrete numbers, Austria has seen an increase in asylum applications from 11,012 in 2010 to 28,064 in 2014 and to 89,098 in 2015; in 2016, the number was more than halved to 42,285 applications (Bundesministerium für Inneres 2011, 2015, 2017). In recent years, most claimants have been from the conflict regions of Afghanistan, Syria and Iraq. In Austria, 22,307 individuals were granted asylum in 2016, whereas 13,124 persons received a negative asylum decision. Subsidiary protection was granted to 3699 persons, whereas 4180 negative decisions were issued. In the scope of the asylum procedure, 1546 residence permits were granted on humanitarian grounds, and 9396 claims were denied (Bundesministerium für Inneres 2017).

From the perspective of administrations, the 2015 crisis was a challenge in terms of capacity and routine practices. For the Austrian case, Gratz (2016) provided an analysis of the management of the refugee crisis between August 2015 and February 2016, which he calls a "transit crisis" and an "asylum crisis." He notes weaknesses in the organization of the state administration. Similar to the situation in Germany (Bogumil et al. 2016; Hahlen and Kühn 2016), the federal and provincial states had conflicting aims, and the different provincial states reacted heterogeneously to the crisis. In sum, disputes about responsibilities as well as ill-defined double responsibilities largely impeded quick and efficient crisis management. In addition to the enormous pressure to increase the number of decisions, the recruitment of only poorly trained staff is mentioned as a major reason for a massive decline in the quality of asylum decisions (Lobenstein 2017). Beyond that, Mountz (2010:168) notes that states take advantage of crises "to advance enforcement agendas that exclude those in search of refuge." The legal steps that were taken in reaction to the crisis are briefly discussed in Chap. 2.

1.2 Investigating State Practices of Governing Asylum

"The state is a concrete and situated reality" rather than an abstract and neutral entity (Fassin 2015:3). The FAO thus represents one of the institutional sites, such as the police or the justice system, where the state is (re)produced. This (re)production is based on the individual and collective actions of civil servants embedded in a specific legal framework, organizational culture and ideological orientation that inform the objectives of the institution. Due to their "specific space where action is produced at the intersection of the national and the local, institutions allow for the theoretically delicate and methodologically uncertain operation of interconnecting the macro-sociological and micro-sociological levels" (ibid:7). As Cicourel (1981) notes, micro- and macrostructures are not separate; instead, they always interact

with each other. Whereas the macro level often seems too distanced from empirical practices, the focus on the micro level is perceived as ignoring structural conditions. Thus, a promising way to include both perspectives and investigate social practices at the intersection of the micro and the macro is to take the institution as a point of departure. Ethnographic approaches, such as "stategraphy" (Thelen et al. 2014) or "anthropology of the state" (Sharma and Gupta 2006), counter the abstraction of states suggested by Durkheimian and Weberian analyses of "the state as an impartial and dispassionate institution" (Fassin 2015:8) by investigating the practices and attitudes of public officials and thereby demystifying the power of the state. The state is often conceived as a unified decision maker; instead, it should be understood as a set of institutionally arranged social practices and conceived in terms of the individuals who act in the name of that state in everyday work. "Mapped ethnographically, the state is an idea that is imagined, shared and performed by a set of institutional actors with powerful material consequences" (Mountz 2010:xxiii).

The agency of migrants and their decision-making processes have been studied in the context of research on transnationalism, especially in the last two decades (Silvey and Lawson 1999; Bauböck and Faist 2010). In contrast, only a few scholars have analyzed the agency of the state in controlling migration; however, that agency can be considered "an essential aspect of the 'state-ness' of states" (Torpey 2000:3). To ensure that the state and its units are no longer perceived as "disembodied institutions" (Mountz 2010:xxx) and to make policies and decision making less obscure, conceptual models of migration must also include the state and its bureaucracy, its institutions and its actors. One recent stream of research that considers this perspective, and in which the present study can be situated, works with the concept of "migration regimes" (Horvath 2014; Pott et al. 2014) or "asylum regimes" (Morris 2002). This concept allows us to explore the interplay of political decision making, legal frameworks, and institutional configurations in the regulation of migration by providing a helpful framework for exploring the contested and complex dynamics of current migration politics from a sociological perspective (Horvath 2014). This approach allows us to examine "the internal mechanisms that shape the regime," including the individual and institutional actors who "manage migration to their favor" (Wolff 2013). While not explicitly referring to the concept of migration regimes, scholars are increasingly investigating (administrative) state practices in the field of migration in Europe and North America, often with a focus on decision-making processes. However, most of these studies do not focus on the administration of asylum but on immigration more generally, on specific programs (Calavita 2010; Eule 2014), including visa application (Infantino and Rea 2012), or on issues such as deportation (Ellermann 2009; Welz and Winkler 2014) and detention (Bosworth 2014).

As asylum becomes a more complex topic and legal instruments are refined, scholars have also developed a critical understanding of how European states act in the field of asylum. A growing number of studies on asylum law and policy in Europe and North America have emerged in the last three decades. Whereas legal (Guild 2012; Peers et al. 2012; Cornelisse 2016) and political science (Lavenex

2001; Geddes 2003; Toshkov and De Haan 2013) analyses are widespread, socio-logical investigations in the field of asylum, especially from an institutional per-spective, are still rare (Morris 2010; Liodden 2015; Tomkinson 2015; Lahusen 2016). Specifically, work on asylum adjudication, which is particularly represented in the UK (Thomas 2011; Gill et al. 2015; Campbell 2016) and US (Ramji-Nogales et al. 2011; Schoenholtz et al. 2014), often focuses on courts and judges rather than the administrative level. This focus may be the result of easier field access – both to the institutions and to court decisions and other legal documents that are publicly or easily available. Other studies tend to take a quantitative approach (for the US, e.g., Schoenholtz et al. 2014; Miller et al. 2015). The issues on which studies regarding refugee status determination often focus are credibility and discretion (Johannesson 2012; Wikström and Johansson 2013; Gray and Mcdowall 2013).

Due to the rather recent increase in interest in the topic, ethnographic research on the asylum procedure has not yet developed a long tradition. Partly driven by and parallel to important developments and changes in the European asylum system, the administration and adjudication of asylum have been investigated from various angles only since the turn of the century in different European countries, especially in Germany (Scheffer 2001; Probst 2013; Schneider and Wottrich 2017), France (Spire 2007; Kobelinsky 2014), and the UK (Gibb and Good 2014; Jubany 2017) as well as Norway (Fuglerud 2004; Liodden 2015), the Netherlands (Wagenaar 2004), and Switzerland (Affolter 2017). In 2014, a group of young scholars from various disciplines founded the International Research Network on Asylum Procedures. Following an ethnographic approach, the network members investigate everyday decision-making practices in state institutions, including administrative agencies and courts.

1.3   Old and New Theoretical Approaches: Street-Level Bureaucracy and the Theories of Social Practice and Structuration

While existing studies provide valuable insights into the dilemmas of officials' everyday work, sociological examinations of state actors in the field of migration and asylum and the practices in the organizational context of those actors are still rare; thus far, research has often lacked a link to broader social theory beyond the specific context. Thus, a key contribution of this book lies in the theoretical perspective used to explain the observed practices of decision-making officials, their rea-soning and the consequences of their decisions, including the circumstances under which those decisions are realized. This approach surpasses classical street-level bureaucracy (Lipsky 2010[1980]), primarily by drawing on practice theory (Reckwitz 2003), social construction and structuration theory (Giddens 2011[1984]) as well as through a focus on artifacts (Latour 2010) and texts, which accompanies

the institutional ethnography approach (Smith 2006). The book will show that these theoretical perspectives are not mutually exclusive but rather complement each other. The study thus relates to a small strand of research that applies social theory to the context of front line work.

Street-level bureaucracy research traditionally focuses on contradictions as a characteristic of bureaucratic working conditions (Maynard-Moody and Musheno 2003; Taylor and Kelly 2006; Collins 2016); administrators' key dilemmas were identified in the standard works of Prottas (1979) and Lipsky (2010[1980]). In particular, scholars have investigated issues of discretion in the process of decision making (Brodkin 1997; Hupe 2013; Buffat 2015); agents' behaviors, identities, narratives, and strategies (Maynard-Moody and Musheno 2000; Dubois 2010; Durose 2011; Piore 2011); the role of agents role in law enforcement (Loyens 2015) and implementing – or making – policy (Brodkin 2011; Meyers and Lehmann Nielsen 2012); and the responsiveness of street-level bureaucracies (Jewell 2007; du Gay 2008). Another relevant topic is management issues, especially the consequences of New Public Management and alternatives to it, such as public value approaches (Alford and O'Flynn 2009; Benington 2011; Brodkin 2011; Rathgeb Smith 2012). According to Maynard-Moody and Portillo (2010), "future research needs to focus more directly on how discretion is nested within rule-based systems" as well as on officials' agency and issues such as judgment, justice, and accountability. This study follows Maynard-Moody and Musheno's (2012:S16) approach, questioning "the dominant implementation-control-discretion narrative" and focusing on "the concepts of agency and pragmatic improvisation."

Simultaneously, the perspective of organizational sociology is used to understand officials' practices. Based on Brodkin's (1997) "structural logic of street-level work," Jewell and Glaser (2006) developed a framework for studying how the organizational setting mediates between policy goals and the behavior of front-line officials, which includes the following factors: authority (impact on others), role expectations, workload, client contact, knowledge and expertise, and incentives (rewards and sanctions). These elements are also considered in the analysis of the FAO's organizational setting. Most of the abovementioned issues are also explored to some extent in this study, but additional explanations can be found in broader social-theoretical frameworks.

In this study, I draw on the theories of social practice and structuration in particular. Praxeological approaches to street-level bureaucracy (Thorén 2008; Penz et al. 2017) are as rare as structurational approaches.[4] Sandfort (2000), for example,

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[4] Some scholars aim to incorporate the complex relationship between structure and agency into migration theory (Lamba 2003; Bakewell 2010; Jones 2012). However, the present study cannot be situated in that debate for several reasons. First, I do not investigate processes of migration as such (the movement of individuals) but rather the state action related to these processes. Second, as argued above, the general issue of migration is distinct from the specific focus on international protection. While being embedded in the migration and asylum regime, the application of structuration theory in this study relates to organizational processes in a government agency.

draws upon ethnographic data and a body of social theory to demonstrate that individuals both create and are constrained by social structures in a street-level bureaucracy. He uses this approach to explain a disjuncture between management frameworks and everyday front-line work. Following a similar approach with a focus on social practices, I examine how the system of asylum administration is organized, executed and maintained and how it is lived by government agents who directly interact with the asylum claimants. Thus, the study explores the institutional processes that structure the lives of persons who have been forced to seek protection in a different country.

Practice theory is not a single coherent theory; instead, according to Reckwitz (2003), the central elements of this perspective are based on distinct but overlapping theoretical approaches, such as Bourdieu's praxeology (1972, 1997) and Giddens's structuration theory (1979, 2011[1984]), the social philosophy of authors such as late Wittgenstein (1984[1969]) and Schatzki (2002), and ethnomethodology, poststructuralism, and cultural studies as explored by authors such as Butler (1990) and Latour (1994). In the debate over the social scientific "practice turn," Schmidt (2012) includes Goffman's (1966) and Mead's (1947) sociology of interactions as well as Elias' (1970) figuration theory.

Practice theories are neither individualistic nor holistic; they do not depend on presumptions about the primacy of individual choice or action or on a holistic notion of culture or societal totality. Despite their differences, practice theoretical approaches converge in the analytical decision to examine sociological questions by focusing on social practices in their situatedness, their material anchoring in bodies and artifacts, and their dependence on practical know-how and implicit knowledge. The social is located in practices, and according to Goffman (1971), the focus is less on individuals and their situations than on situations and their individuals. Practice analyses concentrate on the processual, repetitive creation of social phenomena—that is, on the processes of creating social order. A practice can thus be understood as "a routinized way in which bodies are moved, objects are handled, subjects are treated, things are described, and the world is understood" (Reckwitz 2002:250). According to Shove et al. (2012:14ff), "practices emerge, persist, shift and disappear when connections between" materials, competences, and meanings "are made, sustained or broken."

Reckwitz (2003) identifies three main features of the theory of social practices: the materiality of practices as dependent on bodies and artifacts; the "informal," tacit logic of practices and the location of the social in practical understanding and know-how techniques; and the tension between routinization and the incalculability of social practices. These topics will be explored in Chap. 3, which addresses the circumstances of work in the organization. Understanding and exploring administrative work as practice allows us to explore the knowledge and know-how public officials possess, embody, or enact in administering and deciding upon asylum applications. Similar to Wagenaar's (2004:643) approach in analyzing the Dutch Immigration Office, this research also focuses on "the almost unthinking actions,

tacit knowledge, fleeting interactions, practical judgments, self-evident understand-
ings and background knowledge, shared meanings, and personal feelings that con-
stitute the core of administrative work." In sum, contextuality, acting, knowing, and
interacting – the four core elements of administrative practice identified by the
author – constitute a unified account of practical judgment in an administrative
environment characterized by complexity, indeterminacy, and the necessity to act
on the situation at hand (ibid). Although uninformed outsiders might think that
administrators operate in a well-ordered bureaucratic world, organized according to
fixed rules, stable routines, and dependable procedures, the everyday work situa-
tions of administrators are full of complexity, indeterminacy, and unpredictability.

The praxeological approach to the set of social practices described as "working
as a decision maker at the Federal Asylum Office" can explore the implicit under-
standing of what it means to deal with a case in a way that is distinct from other
fields of public administration (e.g., communication in a shared language is not
possible). This approach also considers the knowledge of schemes of procedure
concerning the written decision (e.g., which kinds of arguments are accepted) and
the routinization of certain motives and emotions (e.g., moral indifference or psy-
chological burden). The practices reveal which symbolic orders structure work at
the FAO, such as codes of administrative efficiency and of responsibility or the
symbolic distinction from inappropriate behavior (based on Reckwitz 2003).

Practice theory and structuration theory are complimentary; in combination, they
are helpful for understanding and explaining organizational processes and public
officials' actions. The "duality of structure" (Giddens 2011) describes the recursive
relationship of agency and structure, implying the repetitive and routine character of
most human activity. In contrast to the concept of structure in which the subject is
absent, social systems include the situated activities of agents. Systems, in which
structure is recursively implicated, consist of reproduced relations between actors or
collectivities organized as regular social practices. The concept of structuration
describes the conditions governing the continuity or transmutation of structures and
thus the reproduction and alteration of social relations and practices across time and
space. "In summary, structuration theory accounts for the primacy of subjectivity
without relapsing into a subjectivist view and grasps the structural components of
social institutions that outlive single agents without seeing in them the 'forces'
determining their conduct and, eventually, human history" (Broger 2011:12).
Human conduct is conceived as recursive since agents reproduce, in and through
their activities, the conditions that make certain activities possible. Instead of being
a subject-independent, external, or internalized "force," structure is understood as a
set of rules of conduct and resources to which actors purposively resort in their day-
to-day activities.

The theoretical approach to structuration conceptualizes rules in a complex
together with resources. Formulated rules such as laws or bureaucratic regulations
are codified interpretations of rules rather than rules as such. Rules simultaneously
enable and constrain action, and they are transformational since they are responsible
for the constitution of meaning as well as for the sanctioning of human conduct.
Rules of conduct can be shallow or intensive, tacit or discursive, informal or formal-

ized.[5] Resources, in contrast, are used for the generation of power and categorized into allocative resources and authoritative resources. According to structuration theory, power is inherently tied to the exercise of agency as the human capacity to intervene in the world, that is, to "act otherwise" and "make a difference" (Giddens 2011:14). Allocative resources are conceived as material, including the natural environment and physical artifacts, and derived from human dominion over nature. In contrast, authoritative resources are non-material and derive from the capability of harnessing the activities of humans; they result from the dominion of actors over other actors. The meshing of rules and resources allows actors to develop strategies to change or reproduce the existing system of domination and advance their own strategic autonomy. Rules and resources are not only the medium but also the outcome of the practices they recursively organize (ibid:25).

To analyze the processes involved in the reproduction and change of practices and social systems as bundles of social relations, Giddens (ibid:29) divides the structural realm into three interrelated analytical dimensions: signification, domination, and legitimation. These structural dimensions are related to the knowledgeable capacities of agents by "modalities" that can be invoked by actors in interactions. Interpretive schemes, for example, link communication as an interactional dimension to the structural dimension of signification. In contrast, facilities, or resources, link the structural dimension of domination with power on the interactional level. Legitimation, the third analytical dimension of structure, is linked to sanctions on the level of interaction by means of norms. The dimensions of interaction – communication, power, and sanction – thus connect to the main dimensions of the duality of structure through interpretative schemes, facilities/resources, and norms.

Structuration theory can also be applied to social action in organizations, thus providing a theoretical framework for the analysis of decision-making officials' actions within the organizational context of the FAO. From this perspective, organizations are understood as systems of organized action that reproduce themselves beyond the action of individual actors. Organizations are characterized through organizational practices, recurringly practiced forms of action in organizations, rather than through formal structure or communications and decisions. According to Ortmann et al. (2000), organizations are the social systems within which action is controlled and coordinated by means of reflection on its structure. Through their actions, actors (re)produce the organizational structures – the structures of signification, legitimation and domination – and thus the existing rules and resources (ibid).

1.4   Data Generation and Analysis in This Case Study

To find answers to my research questions, I conducted a case study at a branch of the former FAO. The study builds on the "crystallization" (Richardson 2000) of three qualitative methods: (i) participant observation of office life and asylum

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[5] See, for example, Piore (2011) on tacit rules among street-level agents.

interviews, (ii) semi-structured in-depth interviews as well as quasi-normal conversations (Honer 1994) with decision-making officials and other institutional actors, and (iii) artifact analysis, particularly of asylum claimants' records. The observation data were generated during a research internship in 2010; the interviews were subsequently conducted from 2010 to 2012. The files of asylum claimants analyzed in the scope of this research were obtained in 2013.

Although there is a lack of consensus concerning the definition of case study research, Yin's definition (2009:14) is widely accepted and understands the case study as "an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident." Case studies are also useful for dealing with "broad, familiarizing questions about a social process" (Swanborn 2010:25). Such questions are likely to prompt more specific questions during the research, which can be explored in the case study. The case study is thus a useful approach for exploring the relatively broad questions that guide this research. First, under what circumstances do decision makers work, and how can these circumstances be explained? Second, how do decision makers deal with these circumstances, and how can their practices be explained? In this exploratory case study, I aim to provide a nuanced and holistic account of the practice of refugee status determination through the example of the Austrian FAO.

The case study is inspired by the institutional ethnography approach (Smith 2006), designed for the investigation of institutional processes through informants' experiences. The aim is to investigate social relations, which realize and coordinate organization and control in the sense of "relations of ruling" (Smith 2006). The approach focuses on the experiences of individuals whose everyday activities constitute and are shaped by the institutional relations that are being studied. Intermediary actors who are in direct contact with clients, such as decision-making officials at the FAO, are crucial to the research "because they make the linkages between clients and ruling discourses, 'working up' the messiness of an everyday circumstance so that it fits the categories and protocols of a professional regime" (DeVault and McCoy 2002:760). Against this backdrop, the study aims to explore the (rule-based) "procedures of people who make decisions and who thereby manufacture things and facts and statuses," which Prior (2004:350) characterizes as an important research topic for most organizational settings.

To gain access to the FAO, I asked about the possibility of doing an internship, explaining my aim of writing a doctoral thesis about the work of decision-making officials in the FAO. After explaining my approach and assuring anonymity, I was accepted as an intern for one day per week for a three-month duration. By participating in the agency's everyday working life, I was able to investigate the administrative asylum procedure, which otherwise occurs behind closed doors. In addition to the investigated FAO branch, another unit concerned with asylum applications was included in the research: one of the initial reception centers (IRCs) where asylum applications are examined for admission (before the procedure at the FAO).

There, I conducted interviews with officials, the deputy head of the department, a police officer, an official and an assistant as well as a head of a division and two officials of the "Dublin division"; however, I was not given access to participate in on-site interrogations. Data generated at the IRCs were not included in the detailed analysis since the focus of the book remains on work at the FAO. Access to and inspection of files for scientific purposes are not allowed in the asylum procedure. Thus, instead of granting access to files, the Asylum Court offered an interview with a judge, which I accepted. With the help of a colleague working with an NGO, I later received the written authority of three asylum claimants to inspect their files, archived at the respective FAO branches at which the applications had been processed.

The three applied methods provide insight into different areas of interest: "Different methods used in qualitative research furnish parallel datasets, each affording only a partial view of the whole picture" (Barbour 2001:1117). Participant observation permits the researcher to gain access to discursive as well as non-discursive practices. The primary aim of my observations was to study officials' practices in dealing with asylum claimants and their claims in the asylum interview, but I was also interested in communication among colleagues and superiors, discussions of cases, and chats during breaks in the kitchen. By contrast, through in-depth interviewing, I aimed to explore officials' working environment as well as their attitudes and perceptions toward their work. The interview guidelines included key questions regarding (i) the organizational structure and its environment, (ii) the work process in general and the decision-making process in particular, (iii) attitudes toward the job and the required job competences, (iv) the asylum interview situation, and (v) perceptions of and attitudes toward asylum claimants. The interview sample includes a gender balance of three women and three men, aged from their late twenties to mid-fifties. Two officials had a law degree, four officials had already been employees to the Ministry of the Interior before they came to the FAO, and three of them had been police officers. Before conducting the interviews, I had participated in an asylum interview with all officials at least once. In addition to the scheduled interviews, I talked with the FAO head and vice head of the department, a head of a division, assistants, interpreters and other actors during my presence in the field. Most interviews were conducted at the Asylum Office, which had the advantage of allowing interviewees to illustrate what they were describing with concrete examples. For instance, one official provided me with a short introduction to the online data documentation system of the Interior Ministry, whereas another decision maker showed me an Excel table to demonstrate how he proceeds with his work on a daily basis. Additionally, during one of the interviews, an official scrolled through her emails and showed me an email conversation with her assistant to illustrate their communication with each other. These "interruptions" of the interview gave me further insight into the working procedures at the FAO.

The findings from interviews and observations were analyzed following the approaches of grounded theory (Strauss and Corbin 1991) and interpretive social

research (Froschauer and Lueger 2003). Whereas the grounded theory approach provides an overall impression of the key topics and their interrelations, the interpretive system and microstructure analyses go deeper into the issue by suggesting four levels of interpretation that correspond to four different levels of meaning: (1) the manifest content (everyday meaning), (2) the conversation context (subjective meaning), (3) the structural conditions (objective meaning), and (4) the system dynamics (practical meaning). Group interpretations and discussions represent a precondition for this method and were therefore vital for the identification of key issues within the data.

For the analysis of asylum records, I developed a method that I call the *reconstructive process-oriented analysis of records*. Internal documents were subject to a more general content analysis. Although documentation forms a cornerstone of modern – and organizational – life, writing and written traces are often undervalued in social science when compared to the spoken word (Prior 2004:345). However, what eventually counts is what is "spatialized and rendered visual: recorded, filed, and placed on a docket" and what is "embodied 'by the paper'" (Ewick and Silbey 1998:8), especially in legal-administrative procedures such as the asylum procedure. It is thus vital to consider the power of texts (Turner 2001). Whereas document analysis usually adopts methods such as content or discourse analysis (Wolff 2008; Glenn 2009), my approach to records goes in the direction of artifact analysis as developed by Froschauer (2009), investigating the circumstances of production, the use and the purpose of the artifact. In addition, the investigation of artifacts as actants[6] (Latour 2010) enables us to understand more about an organization and to learn something about the functioning of the asylum administration in the context of the FAO.

The analysis of a record reveals communication patterns as well as power relations and the channels and borders of social influence. The circulation of documents that eventually constitute a record also defines the limits of the organizational network that, as we will see, includes governmental and non-governmental actors as well as national and international actors. While also considering the materiality of the record, the strategy that I applied focused on the actors contributing to the emergence of the artifact as well as those involved in the procedure more generally and their roles and actions within the asylum procedure. Instead of focusing on the details of the content, on language use or the choice of pens and markers – which can also produce interesting results – I investigated the "career" of the record by analyzing who contributed to it and to what effect. Due to this perspective, this approach can to some extent be regarded as a form of network analysis, which may be reinforced by its graphic illustration (see Chap. 3).

Overall, the analysis of the different sets of data followed a "crystallization" approach based on the idea of the crystal that "combines symmetry and substance with an infinite variety of shapes, substances, transmutations, multidimensionalities

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[6] Latour's (2005:71) concept of non-human actants refers to objects becoming active mediators: "any thing that does modify a state of affairs by making a difference is an actor – or, if it has no figuration yet, an actant."

and angles of approach … Crystallization provides us with a deepened, complex, thoroughly partial understanding of the topic" (Richardson 2000:934). Unlike triangulation, crystallization presupposes "that no truth exists 'out there' to discover or get close to, but only multiple and partial truths that researchers co-construct" (Ellingson 2009:22). Whereas triangulation aims at discovering a more definitive truth, "crystallization problematizes the multiple truths it presents" (ibid). This approach to analysis considers the complementarity of different research methods and aims for comprehensiveness rather than internal validity (Mays and Pope 2000).

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Chapter 2
Determining Refugee Status in the European Context: The Legal and Institutional Framework

To illustrate the tensions between legal theory and administrative practice, it seems necessary to briefly sketch how highly regulated the asylum procedure is. Against this backdrop, the empirical findings will show that deciding upon asylum applications is more than "simply" applying the law to a case. The discussions in Parts II and III will highlight the variety of practices involved in putting this intricate legal framework into practice.

As a procedure of administrative law, the asylum procedure shares characteristics with other fields of public administration. Nevertheless, there are certain characteristics unique to the asylum procedure, among which is its legal framework. First, there is a strong link to international law and human rights as well as to the jurisprudence of higher courts (Bossuyt 2010). Whereas decisions regarding the entitlement to enter and remain in an EU member state are based on domestic privileges, decision making in the asylum procedure is based on international rights (Barnes and Mackey 2013:104). Additionally, the principles of surrogate protection when a state fails to provide national protection arise from international treaty obligations. Core treaties, such as the European Convention on Human Rights (ECHR) and the Geneva Convention Relating to the Status of Refugees, are living instruments "guided by dynamic or evolving interpretation in the light of social and political developments together with a liberal interpretation of rights and a narrow interpretation of restrictions" (ibid:103). In contrast to other fields of public administration, refugee and subsidiary protection status are declaratory rather than constitutive, implying that a claimant must be treated as a putative refugee who possesses certain rights (Barnes and Mackey 2013).

To understand the complexity and the transnational entanglement of the asylum procedure compared to most other street-level bureaucracies such as welfare services, it seems relevant to provide a brief overview of the legal framework accord-

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ing to which decisions on international protection are made. As Thomas (2011:48) notes, the asylum procedure's "superficial simplicity conceals a mass of detailed, difficult, and very problematic factual and legal issues." In the following, some key elements of international refugee law and EU legislation on asylum are explained, followed by a short summary of legal and institutional developments in Austria. Finally, the structure and phases of the asylum procedure in Austria are outlined.

2.1 International Refugee Law

The right to seek and enjoy asylum is enshrined in different international legal instruments. First, article 14(1) of the Universal Declaration of Human Rights (UDHR) of 1948 prescribes that "everyone has the right to seek and to enjoy in other countries asylum from persecution." Since the UDHR was adopted as a non-binding declaration, article 14 neither created an individual right to asylum nor a state-based obligation to provide it. However, due to the singularity of the provision on the universal level, it can be regarded as binding international law (Noll 2000:358). Moreover, the analysis of the drafting history and the later interpretation and implementation of constitutional asylum in different European states show that the right to asylum has been transformed into a right directly enforceable by individuals (Lambert et al. 2008). Going one step further, it can even be argued that in addition to the right to life, the right to asylum represents an existential right without which no other human right may be enjoyed (Chetail 2008). The preamble of the 1951 Refugee Convention states that the Convention was adopted "to assure refugees the widest possible exercise of these fundamental rights and freedoms," thereby referring to and reaffirming the principle of the UDHR.

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees constitute the benchmark for every domestic or regional regulation regarding asylum and refugee law (Zimmermann 2011:v). The states that ratified or acceded to the Convention agreed that the term "refugee" should apply to any person who is considered a refugee under earlier international agreements or who qualifies as a refugee under the UNHCR Statute. Originally, the application was limited to refugees who acquired such status "as a result of events occurring before 1 January 1951." States were also able to limit their obligations to refugees who had fled "events occurring in Europe" prior to that date. These limitations were expressly removed with the 1967 Protocol. The Convention identifies five relevant grounds of persecution and defines four key characteristics of Convention refugees that are still applied in today's refugee status determination processes. In article 1A(2), the 1951 Refugee Convention spells out that a refugee is someone who,

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

– or who, not having a nationality and being outside the country of his former
   habitual residence as a result of such events, is unable or, owing to such fear, is
   unwilling to return to it."

Due to the specific focus of this book, I will not address the debate over social
groups (Kirvan 1999; Rivas-Tiemann 2011) or explore the problems associated with
the limited scope of the Convention (Williams 2008; McAdam 2012). However, one
essential element of the Convention needs to be mentioned to understand the asy-
lum procedure: the principle of *non-refoulement*, which represents a cornerstone of
international protection. Article 33(1) of the 1951 Convention Relating to the Status
of Refugees states that "no Contracting State shall expel or return ('refouler') a
refugee in any manner whatsoever to the frontiers of territories where his life or
freedom would be threatened on account of his race, religion, nationality, member-
ship of a particular social group or political opinion." Protection against return to a
country in which a person has reason to fear persecution and danger – the most
essential component of refugee status and of asylum – has found expression in the
principle of non-refoulement. However, the practices of national asylum adminis-
trations show the phenomenon of "indirect or chain refoulement" (Subramanya
2004; Taylor 2005). When states apply the "safe third country" concept, they must
determine whether another country in which an asylum claimant can be expected to
request asylum will accept responsibility for examining the asylum applications.
Nevertheless, in practice, observations reveal that asylum claimants are refused
admission and returned to a country through which they have passed, and then,
without an examination of their claim, they are sent onwards either to their country
of origin or to another clearly unsafe country. Thus, states adopt legal and adminis-
trative measures – such as expediting asylum procedures and shifting responsibility
to other countries – that may result in placing refugees in situations that can ulti-
mately lead to refoulement to their country of origin or to other countries in which
their lives or freedom would be threatened. Therefore, national procedures require
measures to ensure that respect for the principle of non-refoulement remains the
guiding principle and ultimate objective of any refugee protection regime.

2.2   EU Legislation on Asylum

In addition to international law, supranational legal instruments define the character
of refugee status determination. At the level of the European Union, the EU Charter
of Fundamental Rights recognizes the right to asylum in article 18 (and the principle
of non-refoulement in article 19), which can be traced back to article 14(1) of the
1948 UDHR. Proclaimed in 2000, the EU Charter has been legally binding since the
Treaty of Lisbon entered into force in December 2009. Although there is debate
among legal scholars over the material scope of the provision's application, on the
basis of extensive analysis of this right's evolution in the EU Charter – including
aspects of international and comparative regional law, the Charter's object and

context, and its *travaux préparatoires* – it can be argued that the right to asylum in the Charter "is to be construed as a subjective and enforceable right of individuals to be granted asylum under the Union's law" rather than only as a procedural right to seek asylum (Gil-Bazo 2008:52). The right to asylum is thus enforceable as primary Union law, directly applicable within national legal orders without the need for further transposition; the Charter can also be directly invoked before national courts in the member states. Turning from law in the books to law in action (Pound 1910), however, state practice shows that the individual still has no right to be granted asylum since the right itself takes the form of a discretionary power (Goodwin-Gill and McAdam 2007: 414). The state has discretion as to whether to exercise its right and as to whom it will grant asylum or other protections and under which conditions such protections are to be enjoyed. The ideal of asylum as an obligation of states to accord lasting solutions, with or without a correlative right of the individual, thus continues to be resisted (ibid:415).

While an agenda for developing a Common European Asylum System (CEAS) was already established by the Tampere European Council in the key principles and aims of the Treaty of Amsterdam in October 1999, the entry into force of the Lisbon Treaty in 2009 eventually provided for the establishment of a "uniform status of asylum," "a uniform status of subsidiary protection," and a "common procedure" throughout the European Union. The treaty also made the EU Charter of Fundamental Rights legally binding. In June 2013, the European Parliament adopted several measures for a reformed CEAS, including common procedures, a basic set of rights created for asylum seekers arriving in the EU and a proposal to stop transfers to member states struggling to cope with the number of asylum seekers and related responsibilities. The European Asylum Support Office (EASO), established in 2010 and regarded as the most significant action taken by the Union to assist administrative cooperation (Peers 2011:375), is an EU agency that plays a key role in the development of the CEAS. The main purposes of the Office are to facilitate, coordinate and strengthen practical cooperation among member states; to provide operational support to member states subject to particular pressure on their asylum and reception systems; and to provide assistance regarding the policy and legislation of the Union in all areas having a direct or indirect impact on asylum (Regulation 439/2010). The EASO does not have any powers related to the decisions made by member states' asylum authorities on individual applications for international protection. The Office cooperates with the associated countries, other EU agencies such as Frontex, the Fundamental Rights Agency, and Europol as well as with UNHCR and members of courts and tribunals. The EASO contributes to the CEAS mainly by aiming at creating a common culture regarding asylum in member states, which is partially achieved through common training. The EASO Training Curriculum covers core aspects of the asylum procedure primarily for case officers but also for managers of asylum units, country of origin information (COI) researchers and other officers.

Among the many legal instruments in the field of asylum, six EU regulations and directives are particularly relevant to the asylum procedure (the first five of which were revised in 2013). The Asylum Procedures Directive (2005/85/EC, Directive 2013/32/EU) established common standards for safeguards and guarantees of access

to a fair and efficient asylum procedure. According to the Directive, EU countries must ensure that applications are examined individually, objectively and impartially and that asylum claimants shall be entitled to remain in the country while their application is pending. The Reception Conditions Directive (2003/9/EC, 2013/33/EU) requires member states to provide basic support needs – that is, a "dignified standard of living and comparable living conditions in all member states" – to asylum seekers while they are waiting on the assessment of their applications. The Qualification Directive (2004/83/EC, 2011/95/EU) addressed the lack of consistency in approaching the determination of refugee status by the different member states. Despite the adoption of this directive, there are still significant divergences in recognition rates between member states. The directive incorporates and interprets the refugee definition from the 1951 Convention and 1967 Protocol and provides for subsidiary protection. The Dublin Regulation (343/2003, 604/2013), which replaced the earlier Dublin Convention, established criteria and mechanisms for determining which member state is responsible for examining an asylum application lodged in one of the member states. This regulation established certain additions and amendments to the hierarchy of criteria for responsibility in the Convention along with an acceleration of the procedure for transferring asylum claimants between member states (Peers 2011:360). The Eurodac Regulation (2725/2000, 603/2013) was created to establish a system for comparing the fingerprints of asylum seekers. Aiming to facilitate the application of the Dublin II Regulation, it requires that fingerprints are taken from all asylum seekers over 14 years of age. The Return Directive (2008/115/EC) created common standards and procedures for returning third-country nationals staying "illegally" in the territory of a member state (Art 2(1)).

One other European legal document needs to be addressed in this context. While there is no express provision relating to asylum within the 1950 ECHR, a substantial body of jurisprudence has emerged from the Convention organs, which set the standards for the rights of asylum seekers throughout Europe (Mole and Meredith 2010). Three of the most important articles in this document are article 3, prohibiting torture and inhuman or degrading treatment; article 8, encompassing the right to respect for family and private life; and article 13, requiring a remedy for every victim of a violation of protected rights. Other articles particularly relevant to refugee status determination include article 2 (right to life), article 6 (right to a fair trial), article 10 (freedom of expression) and article 1 of Protocol No. 7 (concerning procedural safeguards relating to expulsion of aliens). The jurisprudence of the European Court of Human Rights (and its predecessor, the European Commission on Human Rights) has considerable precedential value, with a series of rulings in immigration and removal cases that impose important limitations on sovereign powers. Case law has had a particular impact on the development of the scope of *non-refoulement* beyond article 33 of the 1951 Convention by consistently reinforcing the absolute and non-negotiable nature of article 3 of the ECHR, which can be found in article 15 of the EU Qualification Directive, establishing subsidiary protection. Given this legal setting, officials must examine whether *refoulement* is admissible when the preconditions for granting asylum are not given. In the scope of this examination, among other things, they must investigate whether an expulsion would

represent a "real risk" of violation of article 2 or article 3 of the ECHR. Decision makers thus need to be convinced that (i) the treatment feared either amounts to torture or can be considered inhuman or degrading and (ii) there are substantial grounds for believing that the individual will be exposed to such treatment when removed (Goodwin-Gill and McAdam 2007:310–11).

2.3   The Austrian Context: Legal and Institutional Developments

Having presented the international and supranational legal foundations of the refugee status determination procedure, I will now briefly outline the legal developments in Austria since the late twentieth century before providing a practice-oriented summary of the asylum procedure. Although I argue that the observed practices and identified dilemmas are similar in any Western bureaucracy because they are inherent to the asylum procedure as it is, particularly within the EU due to the same inter- and supranational standards, it still seems relevant to comment on the specific Austrian context since national socio-political and historical dimensions also play a role with regard to the practices of the contemporary asylum administration.

Before the introduction of the first Asylum Act[1] in 1968, the Foreign Police Authority had to examine refugee status only as a preliminary question in a foreign police procedure. With the 1968 Asylum Act, the requirements and the lack of grounds for exclusion were determined by notification. Refugee status and permanent residency status were attached to the notification (Putzer 2011).

From the early 1960s to the mid-1980s, a politicization of immigration occurred in most Western European countries (Brochmann 1999). In Austria, this development implied a drastic change in decision-making patterns on immigration due to the emergence of new political parties and politicians fueling anti-immigrant sentiments and fear against immigrants from Eastern Europe. In this period, immigration control became not only more explicit but also more detailed. In 1985, a major impetus for reform of the legal framework was introduced by the Constitutional Supreme Court, annulling a provision of the Aliens Police Act (Fremdenpolizeigesetz) due to violation of article 8 of the ECHR protecting private and family life. While this impulse came from the judiciary and not from the political arena, it would become a lasting pattern, and judicial review has come to play an important role in immigration control legislation. Due to the rising number of asylum applications, a "three-track-model" was introduced in 1988. This model separated the procedures according to the purpose of entry (Bundesministerium für Inneres 2012:23). In the 1990s, a new immigration system emerged, and the Austrian government implemented new legislation on asylum, including the core principles of the 1990 Dublin Convention.

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[1] Bundesgesetz vom 7. März 1968 über die Aufenthaltsberechtigung von Flüchtlingen im Sinne der Konvention über die Rechtsstellung der Flüchtlinge, BGBl. Nr. 55/1955.

Since the parliamentarization of migration policy in the mid-1980s and the reconfiguration of migration policymaking in the late 1980s and early 1990s, "it was increasingly the political system – and its bureaucracy – that dominated the policymaking process and determined the contents of migration policies" (Kraler 2011). The number of asylum claimants had risen continuously since 1986, and nearly 90,000 people, mainly from Romania and Poland, applied for asylum in Austria between 1989 and 1992 (Böse et al. 2001). This new situation was addressed by new laws in 1991 regarding the asylum procedure (Asylgesetz 1991) and federal assistance for refugees (Bundesbetreuungsgesetz). On June 1, 1992, the FAO was established within the Ministry of the Interior. A special government commissioner for refugee and migration affairs, Willibald Pahr, stated in 1993 that Austria is "the first country in Europe that has embedded a comprehensive migration policy in its legal order" (Bauböck 1999:114 after Davy and Gächter 1993:155).

However, the reformed asylum policy was criticized not only as immoral but also as partly inefficient in its implementation. Among other reasons, the law was seen as unsatisfactory since the Administrative Supreme Court was receiving a flood of complaints questioning administrative decisions and practices in the field of asylum (ibid:121). In addition, under the new law, illegally entering the country became an alternative for refugees hoping not to be rejected at the border and to be tolerated once in the country. After numerous subsequent amendments, these and other concerns led to the adoption of a new asylum law only 6 years later in 1997 with the aim of keeping both the number of asylum claimants and the number of those granted asylum at the same low level as before while resolving problems in administrative implementation and conflicts with general legal principles. Austria joined the Schengen Accord in 1995, became a full member in 1997 and had until 1998 to abolish land borders with its Schengen neighbors.

With the Asylum Act (Asylgesetz 1997), which entered into force in 1998 and included several improvements to the procedure, the Austrian Independent Federal Asylum Review Board (UBAS) was introduced as an appeals authority not bound by instructions. Additionally, the new Act included a modification of the third country provision, which henceforth required a prognosis regarding the security in the other state (Putzer 2011). The right of residency for asylum claimants during the procedure was also introduced, with exceptions. This Act was amended (and tightened) several times; the amendment of 2003 led to structural changes in the procedure through the creation of the IRCs. In particular, these centers were responsible for both the first procedural steps and the consultation procedures following the Dublin II Regulation.

In 2005, the current Asylum Act (Asylgesetz 2005), which implemented the provisions of the EU Qualification Directive, entered into force as a part of the 2005 Aliens Law Package and entailed a further tightening of asylum law. The main objectives of the new Asylum Act included the creation of uniform professional country documentation unit (the COI Unit), the implementation of model case proceedings at the second instance of the asylum procedure, the timely establishment of the Dublin proceedings, new regulations regarding applicants' claims of traumatization, the creation of a legal basis concerning applicants' duties to cooperate, and the treatment of delinquent asylum claimants.

The Asylum Act of 2005 has been fundamentally amended several times. In 2008, the UBAS was replaced by the Asylum Court. This modification implied that the Administrative Court was no longer responsible for appeals as a third instance; the only remaining appellate instance after the Asylum Court was the Constitutional Court. The Aliens Law Amendment Act of 2009 introduced, among other things, specific regulations concerning subsequent applications, provisions regarding asylum claimants and persons with international protection status who become delinquent, and the registration duties of asylum claimants during the procedure. Further modifications were introduced by the Foreigner Law Amendment Act in 2011, particularly concerning the provisions on legal advice in the asylum procedure (ibid). In 2014, a major change was implemented on the institutional level, incorporating the Federal Asylum Office into the newly established Federal Office for Immigration and Asylum and the Asylum Court into the new Federal Administrative Court.

As discussed above, the most recent tightening of the Asylum Law was implemented in 2016. The difficulties in handling the new situation of the so-called refugee crisis in 2015 were partly answered with legal solutions. In June 2016, an amendment to the Austrian asylum law entered into force; this amendment allowed the government to deny entry to refugees through an emergency regulation. In Europe, the ability to deny refugees the application for international protection at the border had thus far only existed in Hungary. With this new legislation, Austrian asylum law became among the strictest in Europe. The law defines an "emergency" as a threat to public policy or internal security. In such a situation, the only people usually allowed to apply for asylum are those who have close relatives in Austria (relating to article 8 ECHR), unaccompanied minors and women with small children, and those who would otherwise fear inhuman or degrading treatment or punishment (article 3 ECHR); all others are to be rejected and sent back to neighboring countries. A "state of emergency" is limited to 6 months but can be extended to up to 2 years. In connection with this regulation and implying an erosion of human rights, a highly controversial ceiling of 37,500 asylum applications was introduced but not reached in 2016; for 2017, a ceiling of 35,000 applications was established (derstandard 27.12.2016). If this number is reached, the government can make use of the emergency regulation. In addition, the Border Control Act was amended in 2016, reintroducing border controls (attacking the Schengen agreement) and fast procedures. In the planned registration centers, asylum claimants can be detained for up to 120 h to determine whether the claim must be accepted. The construction of a 370-meter fence at the border with Italy (Brenner Pass) was also heavily discussed.

Although legal reforms and amendments are constantly undertaken both at the EU and the national levels, they often tend to focus on the protection of the nation-state, its borders and security. By enacting migration management, states express their constant concern with ordering "the disorder that is human migration" (Mountz 2010:175). The introduction of emergency regulations, such as that of 2016 in Austria, illustrates the state's endeavor to manage the spontaneous movement of refugees.

The reduction of bureaucratic obstacles and administrative costs in the sense of creating an effective and efficient administration as well as the expansion of regular immigration channels could represent a legal contribution toward improving the situation; however, Austria chose to move in the opposite direction (Hinterberger 2016). The current legal developments in Austria are criticized not only by churches, NGOs and the opposition but also by voices abroad. The German Huffington Post claimed that "a new Europe is being created in Austria. It's a Europe that is no longer cosmopolitan and progressive but closed and revisionist" (Klöckner 2016, own translation).

As this brief overview illustrates, the field of asylum is characterized by constant change. Modifications are made not only in the legal sphere (on the national and supranational level) but also with regard to the organizational-structural level (e.g., introduction of the IRC and the Asylum Court). These changes occur on the national level as well as on the level of the European Union. On both levels, numerous political and legal actions have been undertaken regarding the issue of asylum in recent decades, highlighting the volatility of the field of asylum.

However, with regard to the general migration policy in Austria, continuity prevailed. "Although the institutional set-up significantly changed in the 1990s, there are at the same time important institutional continuities and a remarkable stability in terms of the policy networks and policy communities involved" (Kraler 2011:53). Although continuity might be partly due to the fundamental role of the bureaucracy in framing and making migration policy, "it also can be interpreted as a reflection of a wider consensus on key principles – a consensus that to no small degree was influenced by the FPÖ's [Austrian Freedom Party] anti-immigrant populism" (ibid:52).

2.3.1 How Can a Person be Granted International Protection in Austria?

The meaning of relevant laws in practice for persons entering the asylum procedure and encountering the bureaucratic apparatus will be explained in the following short introduction to the Austrian asylum procedure. Although the asylum systems throughout Europe are generally similar to each other, there are differences between the specific national systems. This section introduces the main characteristics of the Austrian system in a general manner to provide an understanding of the asylum procedure as provided by national law.

Figure 2.1 illustrates the phases of the asylum procedure as currently executed in Austria. The relevant state institutions with which an asylum claimant will come into contact are the police and the FOIA (the former FAO), including the federal reception centers (the former IRCs). These institutions are subordinate to the Ministry of the Interior. The FOIA is an administrative body and the first instance for the determination of refugee status. Until the end of 2013, the Asylum Court was the court of appeal, representing the second and last instance, in which two judges

The **asylum application** can be lodged with the police.i

After lodging an application, the asylum claimant is registered, interviewed and brought to one of the **Federal Care Facilities** ('Distribution centres') throughout Austria where s/he lives (at least) for the duration of the admission procedure.

In the **admission procedure** the Federal Office for Immigration and Asylum (FOIA)ii assesses whether Austria or another EU member state is responsible for the procedure.

If Austria is **not responsible**, the country through which the claimant entered the EU first is responsible for the procedure (according to the Dublin Regulation). A claimant can lodge a complaint against the decision with the Federal Administrative Courtiii, which will either confirm the decision of the FOIA or judge that Austria is responsible.

If Austria is **responsible**, the asylum claimant is assigned an accommodation in a regional facility in Austria. The Länder are then responsible for the basic care.

If no complaint is lodged or the Court does not decide differently within 7 days, the claimant is **transferred** to the responsible EU country and can be taken into **pre-deportation detention** before that.

In the **substantive procedure**, the FOIA assesses whether the asylum claimant is persecuted or has to fear persecution in her/his country of origin.

The asylum claim is **rejected** if no flight reasons according to the GRC are found and the claimant does not have to fear a severe violation of human rights in the country of origin. The claimant can lodge a complaint with the Federal Administrative Court, and a complaint against the Court's decision with the Constitutional or Higher Administrative Courtiv.

If it is assessed that the claimant needs protection, s/he is **granted asylum** and is thereby a recognized refugee. S/he can stay in Austria and has almost the same rights and duties as an Austrian.
OR
If there are no flight reasons according to the GRC, but the claimant will be in danger in her country of origin s/he receives **subsidiary protection**.

If no complaint is lodged with the Federal Administrative Court or the negative decision is confirmed, the claimant has to leave Austria. If s/he does not do that voluntarily, s/he can be **deported** to her/his country of origin. A complaint or revision with the with the Constitutional or Higher Administrative Court is possible; the deportation however cannot be prevented thereby.

If neither flight reasons nor danger in the country of origin exist, the person may still be able to remain in Austria. Reasons can be that the person has been in Austria for many years already, is well integrated or has family members in Austria.

Fig. 2.1 The asylum procedure in Austria. (Source: Own production based on UNHCR 2015)
(i) Until the amendment of 2015, asylum claimants were brought to the initial reception centers (IRCs)
(ii) Until 2014, the Federal Asylum Office was responsible for this assessment
(iii) Until 2014, the Asylum Court was responsible for this decision
(iv) The possibility of addressing the Higher Administrative Court in the asylum procedure was reintroduced in 2014

decided in a council on a case. This was a special court that was subject to public law and had independent judges. As of January 1, 2014, an important institutional change was realized in the field of asylum in Austria: the Federal Asylum Office was incorporated into the new Federal Office for Immigration and Asylum and the Asylum Court was incorporated into the new Federal Administrative Court. In addition to these state institutions, various NGOs are engaged in supporting asylum claimants with legal and social aid.

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Part II
Setting the Scene: The Context and Circumstances of Work at the Federal Asylum Office

To discuss the empirical findings, this part of the book explores the organizational environment in which public officials work at the Federal Asylum Office, which is where they meet asylum claimants and decide upon asylum claims. It presents the structure and characteristics of the department and its relations and priorities, all of which influence how claimants and cases are treated in the procedure. Therefore, chapter three addresses issues such as formal and informal requirements for the job, socialization and the development of routines as well as management, control, and the logics of New Public Management. In addition, the five phases of the ideal-typical workflow are explained.

The asylum interview, which is detailed in chapter four, represents a cornerstone of the procedure and is the only situation in which the caseworker and claimant meet face to face. The analysis of the interviews, which are fundamental to the final decision, allows us to explore the challenges of this asymmetric interaction. Thus, the analysis examines the asylum interview as a magnifying glass for key issues, including conflicting norms, power struggles, and actors' strategies. The main issues are how administrative norms and human rights standards are implemented (including the related clash of logics), the power relations in the interaction and the actors' different intentions and expectations. Finally, the discussion focuses on the crucial role of interpreters as well as the importance of the written word in the legal procedure through the example of the interview transcript.

Chapter 3
The Organization: Structure, Environment and Socialization

This chapter explores the structural framework of the organization and caseworkers' working conditions at the Federal Asylum Office. Familiarization with the organization and its key processes provides the background for an in-depth examination of decision makers' practices in administering asylum claims and how they are influenced by organizational structures. The findings are categorized into three main topics. First, the formal structure and organization of the FAO is explained, including the institutional environment and embedding. The chapter also includes a reconstructive process-oriented analysis of an asylum record, providing a network perspective on actors, processes and practices. This analysis is followed by an excursus on the importance of materiality in the asylum procedure. After describing the formal and informal requirements for the job, the second section addresses organizational socialization, explaining how decision-making officials begin the new job and eventually develop routines. The third section explores what it means to work as a member of the organization in the context of New Public Management. Issues such as hierarchy and management as well as productivity and time pressure are discussed, followed by a focus on control and the measurement of quantity instead of quality. Finally, organizational development and change are briefly covered. The last section illustrates the identified ideal-typical workflow from the distribution of files and the organization of summons to making and writing the decision.

3.1 The Formal Structure and Environment of the Organization

The creation of the FAO by the Asylum Act in 1991 led to the separation of asylum and security matters, although both would remain within the Ministry of the Interior. On January 1, 2014, the FAO was integrated into the new FOIA, which still reports to

the same Ministry. In the following, the structure of the FAO will be explained as it was when field research at the office was conducted for this study (from 2010 to 2012).

To understand the functioning and the internal logic of an organization, it is necessary know how it is embedded in a broader institutional structure, especially in a field where most actions by individuals are based on orders "from above," such as in the state administration. Until 2014, the FAO was a subdivision of Directorate-General III of the Interior Ministry, which was divided into two directorates dealing with legislative and legal affairs and with asylum, migration and integration issues. The FAO was included in one of the four departments of Directorate III B, labeled "Department III/5 Asylum and Care," while the other three departments dealt with "residence and citizenship affairs," "integration," and "electoral affairs." The department addressing asylum and care was again divided into two units: one for "asylum affairs and care and basic care" and one for "controlling asylum and aliens issues." The FAO, headed by a director, was divided into a central department, seven regional offices and three IRCs. The central department included a registry, a secretariat, a human resources department, an economic department and the Policy and Dublin Department, which included the COI Unit (Bundesministerium für Inneres n.d.).

Similar to the former FAO, the current FOIA has two main units: (i) "Resources," which is divided into "Human Resources and Quality Development" and "Economic Matters and Control," and (ii) "Legal and International Affairs" divided into three subunits: "Policy and Legal Matters," "Dublin and International Relations," and "Country of Origin Information." The FOIA includes the headquarters in Vienna as well as nine regional directorates, one in every province, and seven branch offices. There are also three IRCs (East, West, and Vienna Airport) where asylum claimants can be accommodated when Austria is not deemed responsible for the asylum procedure (Dublin III) (Bundesamt für Fremdenwesen und Asyl n.d.a, b).

In 2009, 341 persons were employed at the FAO (Bundesministerium für Inneres 2009). By the end of 2016, 3 years after the organizational reform, the number of employees had tripled to 1,284 staff members working at the FOIA, including administrative interns, apprentices and men rendering their civilian service. In the scope of this organizational development, which mirrors the growing importance of the asylum issue, a training course for decision makers uniform throughout Austria was established.[1] The course with 23 modules lasts 4 months and covers technical as well as social and personality competences.[2] Since this course did not exist when this study was conducted, certain processes within the organization may have changed since then.

The FAO, like every other organization, is embedded in a broader organizational environment. First, for officials working at an FAO branch, the other FAO branches can be regarded as points of reference. However, most caseworkers in this study admitted that they did not know much about the other branches or their colleagues there. Nevertheless, officials' assessments of other branches were generally not very positive. These lackluster assessments might be related to institutional myths and

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[1] http://www.bfa.gv.at/presse/news/detail.aspx?nwid=567156585A6B42756274383D.

[2] http://bmi.gv.at/news.aspx?id=694F766C74572F39522F593D.

stories spread within the organization over time (Gabriel 2000; Hallett 2010). Second, there are institutions that precede or follow the asylum procedure at the FAO, such as the IRCs and the former Asylum Court described in the introduction. Established in 2006, the COI Unit, a department of the FAO that claims to cover a comprehensive collection of all relevant and recent documents on countries of origin, is another important actor in the asylum procedure.[3] In trying to assess an asylum application, caseworkers can send inquiries to the COI Unit, which is tasked with collecting facts that are considered relevant to the asylum procedure. According to Austrian law, the purpose of the Unit is "in particular, the collection of facts that are relevant (1) for assessing whether facts support the conclusion that the danger of persecution exists in the sense of the federal law in a certain state, (2) for assessing the credibility of the assertions of asylum seekers and (3) for determining whether a certain state is a safe country of origin or a safe third country in the sense of the asylum law" (Article 60 Abs. 2 AsylG 2005, own translation). The COI Unit operates a database in cooperation with ecoi.net, the European Country of Origin Information Network, which is a public source for country of origin information. This network is operated by ACCORD (Austrian Centre for Country of Origin and Asylum Research and Documentation), a department of the Austrian Red Cross, in cooperation with the German Informationsverbund Asyl & Migration e.V. Ecoi.net claims to make an important contribution to fair and efficient asylum procedures.[4]

3.1.1   A Network Perspective: Reconstructing Social Practices Through an Asylum Record

The FAO environment includes far more organizations than those mentioned (FAO branches, ICRs, the COI Unit, the Asylum Court). Figure 3.1, which illustrates the result of a reconstructive process-oriented file analysis, demonstrates that interactions within the administrative asylum procedure are manifold and multidirected. The analysis also shows that processes of organizing usually transcend the boundaries of individual organizations, while interorganizational networks gain importance. In administering asylum claims, decision makers at the FAO interact with and depend on many other actors – whether governmental, non-governmental, national, international or supranational (at the EU level). The analysis of a file reveals important information concerning the institutional environment and the actors involved in the processing of an application. The identified social practices, which include the circulation of texts and documents, not only delimit social networks and their borders but also illustrate power relations and mutual dependencies in officials' everyday work.

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[3] http://www.staatendokumentation.at.

[4] http://www.ecoi.net.

Fig. 3.1 Reconstructive process-oriented file analysis. (Source: Own production)

The figure shows at which point in the procedure information is transferred as well as from whom and to whom it is transferred; however, it includes only interactions with external actors (individuals and institutions). Internal communications – such as conversations with a superior or other consultations concerning a case – occur simultaneously but are masked in the file, thus becoming invisible. The partly oral, partly written internal communications, which could make institutional procedures and decision-making processes more transparent, are hardly legible from the file. On the one hand, only documents that are assessed as relevant for documentation by the file managers are added to the file (Nüsken 2008:117); on the other hand, certain documents, such as excerpts from the register of residents, are excluded from the inspection of files and can thus be seen only by actors of the FAO. The exchange between actors internal to the system, such as the Dublin Unit or the COI Unit, can thus only be partly reconstructed on the basis of the existing documents and context knowledge.

In the figure, the FAO is located at the center since all documents concerning the specific "case" are compiled in a file at the FAO, as are documents such as transcripts from earlier interviews in other organizational units.[5] In this particular

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[5] It would be interesting to analyze the procedure and its reliance on textual documents from a different point of view, such as from a perspective that places the asylum claimant at the center of such a network analysis.

file, the institutional and non-institutional actors include the asylum claimants, the IRC, the Dublin Unit, the police, the Asylum Court, an NGO and interpreters. Other important actors not visible in this file are experts (producing reports) and the COI Unit. The analysis reveals interaction patterns regarding the exchange of information among the different actors. What becomes visible is a sort of "game of Ping-Pong" (Latour 2010:79) between the involved parties. The analysis allows the involved actors as well as the quality of the interaction, that is, its direction and topic, to be identified. This analysis reveals how central the circulation of documents and the contained information is in the asylum procedure.

The analyzed file begins with a summons for an interview sent to the asylum claimant by the IRC. The claimant has two interviews. One document is the transcript of the claimant's short first interview at the FAO, concerning nine standard topics.[6] The second transcript documents the claimant's interview with the police at the IRC; it contains a battery of fifteen standard questions, including several sub-questions. Since these two interviews were conducted with the support of an interpreter (the same in both interviews), it is evident – albeit not visible in the file – that the FAO and the police were in contact with the interpreter, who had to be appointed beforehand. The asylum claimant then receives a procedure card and signs a form confirming the reception of the card (according to article 50 Asylum Law).

The next step is undertaken by the Austrian Dublin Unit, which sends a standard form for requests for "taking back or taking charge of" the asylum claimant, including a photo and the Eurodac information, to the Dublin Unit of Country X, another EU country. In the interview, the asylum claimant states that he has been in this country before but that he was sent back to his home country and entered Europe again; however, he did not know through which country had entered. In the comments section of the form, the representative of the Austrian institution notes, "We don't believe his statements." The Dublin Unit of Country X sends back an automatic reply serving as proof of delivery.

The IRC then issues an order of procedure to the claimant, a notification initiating the deportation procedure. The claimant is notified that the FAO intends to reject the application since Dublin consultations have been conducted with Country X. As a resident in a reception center, he is also reminded that he has the duty to report every 48 h and that he will receive legal advice before his hearing. The notification is supplemented by an instruction sheet and an information sheet regarding Dublin II. Subsequently, a form signed by the claimant confirms the reception of the notification.

The Dublin Unit from Country X then informs the FAO of its refusal to take back the asylum claimant; it states that the person "was removed from Country X" and that the request to take back the person is denied. The Austrian Dublin Unit forwards the refusal notification to the IRC, which is responsible for further processing the asylum application. The charge filed by the police regarding the claimant's violation of his reporting obligation is also forwarded to the IRC by the FAO receiv-

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[6] These are identity, documents, entry, parents/accompanying persons, education, languages, occupation, last address in home country, and military service.

ing center. In addition, the police send a notification to the FAO concerning the violation of the reporting obligation, which is also forwarded to the IRC.

The police then send a notification to an NGO requesting that the NGO forward that notification to the asylum claimant, saying, "Please send the person to the police station X to sign a document." This request is also forwarded to the FAO. The police subsequently inform the FAO that the person has fulfilled the obligation to report for the first time. The notification is forwarded to the IRC.

As a result, the FAO requests that the IRC executive forces produce a residence card and deliver it to the FAO. Via the police, the FAO sends a summons to the asylum claimant, including a confirmation of receipt. The police are asked to convey the summons and return the confirmation. There is a note explaining that delivery is not necessary and that the document only needs to be kept for collection provided that the person fulfills the obligation to report. The document has to be returned to the FAO within 3 weeks. Next, the police send a report to the FAO stating that the summons was conveyed in exchange for the confirmation of receipt. The signed confirmation is attached to the report.

A new summons is later handed to the claimant personally at the FAO. What follows is an interview of the asylum claimant at the FAO, for which an interpreter needs to be appointed (again not visible from the file). During the interview, the claimant introduces photographs, which are included in the file, as evidence. Attached to the interview transcript are also the names of persons known to the claimant in the claimant's handwriting. After the interview, the official responsible sends a request for information relating to the person's legal status, travel document, visa, asylum application and decision to the abovementioned EU Country (based on Council Regulation 343/2003 article 21). The claimant's fingerprints are attached to the request. A note is also included explaining that the asylum claimant expressly agrees that the FAO will send a request to Country X regarding the claimant's application to that country. The caseworker forwards the request for information, including fingerprints and a photo, to the Austrian Dublin Unit. Consequently, the Dublin Unit informs the FAO of the results of the request: data are available. The Dublin Unit of Country X answers the request for information by providing the following documents: the transcripts of the screening interview and of the asylum interview, two state of evidence forms from different dates, and the reasons for refusal.

The FAO then sends a summons via the police to the asylum claimant, including a confirmation of receipt. As before, the police are asked to convey the summons and return the confirmation to the FAO or to return the document if it is not collected within 3 weeks. The police send a report to the FAO stating that the summons was conveyed in exchange for the confirmation of receipt, including the signed confirmation. Again, an interpreter needs to be appointed for the interview. The subsequent interview takes place at the FAO and is documented in a transcript. The FAO then issues the decision regarding the asylum application to the claimant, again via the police; the application for asylum and subsidiary protection is refused, and the claimant will be expelled from Austrian territory and returned to his home country. The same instructions are given to the police as with the earlier summons: the person must collect the decision from the police within 3 weeks.

The police file a charge against the asylum claimant because he did not fulfill the obligation to report and excused himself due to a stomachache without a medical certificate. The charge is forwarded to the IRC. Following this charge, the police send a notification to the FAO with the same information; this is also forwarded to the IRC. Consequently, the FAO makes a public announcement (according to article 25 of the Delivery of Official Documents Act). It states that a decision has been presented for this person and that this decision has until a certain date to be collected; after 2 weeks, the announcement is considered to be delivered. The police then send a short report to the FAO stating that the asylum decision was conveyed in exchange for the confirmation of receipt, with the signed confirmation attached. The police later send a notification to the FAO with the information that the person (again) did not fulfill the obligation to report and excused himself due to stomachache without a medical certificate. The notification is forwarded to the IRC.

In response to the decision, the asylum claimant files a complaint against the FAO, which is forwarded to the Asylum Court, the (former) second instance in the asylum procedure. The police then notify the FAO that the claimant is now registered, indicating the new address and that the obligation to report is no longer necessary. This notification is forwarded from the general receiving center of the FAO to the caseworker at the relevant FAO branch through the receiving center of that branch. It is also forwarded to the Asylum Court, which is now handling the case.

Next, the Asylum Court sends its judgment regarding the application to the asylum claimant: the complaint is dismissed as unfounded. The Court informs the FAO about the settlement of the procedure and that the decision was delivered; the attachment includes the administrative act and the copy of the delivery receipt as well as the signed confirmation of receipt. In the last document of this file, the municipality informs the FAO of the person's marriage. A handwritten note on the document informs the reader that there has been a legally binding negative decision regarding the person's asylum application.

3.1.1.1   What the Asylum Record Tells Us About the Organization

As an artifact, the file represents the materialization of communication and manifests decision-making processes in the organization. The file also represents an objectivation of the organization's social relations (Froschauer 2009). The reconstructive file analysis illustrates how texts coordinate activities within the organization, emphasizing the fact that administrative work is organized around a set of documents. According to Smith (2002:161), it is

> in particular the formality, the designed, planned and organized character of formal organization [that] depends heavily on documentary practices which coordinate, order, provide continuity, monitor and organize relations between different segments and phases of organizational courses of action.

The analysis reveals the multitude of actors involved in processing a single asylum application and shows how central the circulation of documents and their contained information is in the asylum procedure. In addition to governmental

institutions – the FAO, the IRC, the police, the Dublin Unit, and the Asylum Court – the municipality and an NGO interact in this "case." Both the claimant and the interpreter are non-institutional actors, and many more actors are imaginable, such as language experts, friends of the claimant and organizations providing reference letters, or hospitals issuing a diagnosis. In this case, the involvement of the Dublin Unit in the other European countries hints at the international scope of cooperation in the asylum procedure.

At the macro-level, the relations between network organizations are typically complex and reciprocal, cooperative rather than competitive and relatively stable (Ortmann et al. 2000:350). Interorganizational relations are well institutionalized and allow for a quick and open exchange of information while also requiring trust and loyalty. This process is also valid for the asylum procedure, where diverse institutions depend on cooperation and exchange. From the perspective of structuration theory, networks or network relations are the consequence of intended or non-intended interorganizational practices, that is, of reorganization and/or evolution (Ortmann et al. 2000:351). Allocative and authoritative resources that exist within the network and the society as well as the prevailing rules of signification and legitimation are vital to the reproduction of these relations. However, these structures and network relations extend (and simultaneously restrict) the action possibilities of organizational and individual actors, such as making possible the use of interorganizational resources by offering an appropriate way to arrange relations. Being embedded in a network of national and international organizations can also result in the FAO facing contradictory requirements produced by practices directed toward the organization by different institutions. However, these practices often need to transcend the organization and instead relate to interorganizational networks as reference points. This relationship can be illustrated by the influence of the European Union and its institutions on the national asylum systems of its member states.

On a more micro- or meso-level, the findings demonstrate the prevailing patterns of contact and communication, providing insight into the organizational network and power relations such as hierarchies and dependencies (Prior 2004). The processes of generating and organizing knowledge in the institution as well as the prevalence of intertextuality become evident, particularly when evidence or sources, such as expert reports or newspaper clippings, are included in the file (which was not the case in the present analysis). In the asylum procedure, authors borrow from and transform prior texts, and texts are translated, quoted and used in other ways. As Barthes (1998:385) notes, "we know that a text does not consist of a line of words … but [is] a multi-dimensional space, in which a variety of writings, none of them original, blend and clash. The text is a tissue of quotations drawn from the innumerable centres of culture." This interrelatedness of texts not only holds true for literary texts but also is visible in the bureaucratic context and the asylum procedure. "A text is made of multiple writings, drawn from many cultures and entering into mutual relations of dialogue, parody, contestation" (ibid). Thus, the knowledgeable reader has the task of understanding the text, interpreting it and taking action on its basis.

The high density of written communication (mostly email), including the forwarding of the same information to different units, is a characteristic of bureaucracy. The need for every step to be confirmed and the importance of deadlines

highlight the legal character of the procedure, as do the many references to specific articles throughout the written communication. Although informal interaction can reveal social practices as well as values systems within the institution (Drew and Heritage 1992) and oral interaction also plays a vital role in the asylum procedure (especially in the asylum interview), what is eventually important is what is "spatialized and rendered visual: recorded, filed, and placed on a docket" and what is "embodied 'by the paper'" (Ewick and Silbey 1998:8). Administration is an example of a whole complex of practices, which would not exist without such artifacts (Reckwitz 2003:291). As Hartland puts it with regard to his ethnomethodology of state documents,

> social organization that extends beyond face-to-face interaction usually relies on practices of writing and reading. Documents, lists, files, contracts, instruction manuals, timetables, reports, statutes, forms, catalogues, fixtures and tables are vitally involved in the coordination of activities in time-space (Hartland 1989:398).

In the institutional ethnography approach, work processes are investigated "by following a chain of action, typically organized around a set of documents because it is texts that coordinate people's activities across time and place with institutional relations" (DeVault and McCoy 2002:756). In Smith's (2006) understanding of institutional relations, the form of coordination and power generation is increasingly textual. Institutions can be understood as "clusters of text-mediated relations organized around specific ruling relations" (ibid:753). Texts play a particularly crucial role in administrative and legal procedures such as the asylum procedure. The record, one of many documents, is the pivotal element around which officials' work is organized and structured; however, it is also constantly modified through officials' work. The analysis of asylum files can provide insight into translocal relations and the chains of action involved in processing an asylum application. This approach allows the textual coordination of work processes to be analyzed across different sites and levels of administration.

The personal file, which includes all information available on a specific asylum claimant and her application, represents the key artifact structuring practices at the FAO. By marking the beginning and end of a procedure and by including all main action between those points, the file can be understood as the embodiment of the asylum procedure. All documents regarded as relevant to the procedure are collected and chronologically and combined in this bundle of papers. The file – available as a hard copy as well as in an electronic database[7] – thus documents all work steps and the course of action routinely involved in the processing of an application. As seen above, the reconstructive analysis is not primarily interested in the content of the "case" but focuses instead on the materiality of the file and how it comes into existence. In the context of a legal procedure, research on this materiality and the related practices can be regarded as a way "[to] begin law at the beginning" (Latour

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[7]It is interesting to note that the hardcopy file contains more detailed information than the one in the electronic database. When the original file is sent to the appellate instance because a complaint has been filed, the FAO can only refer to the reduced information in the electronic file.

2010:71). However, in analyzing the record as an artifact, even its outer appearance reveals something about its content. The thickness and weight of a file can indicate the duration of a procedure; the cover of a file contains essential information concerning the applicant and the case. According to a judge, at the Asylum Court, "the data are as a rule clearly summarized on the cover side of the jacket." These data include the claimant's gender and age as well as information on whether she has a legal representative in the procedure and whether the appeal was filed on time. The date of the contested decision and the reference number are also indicated on the cover. Since not every decision is appealed, the reference number at the Asylum Court differs from the number at the FAO; the latter corresponds with the claimant's entry into the Interior Ministry's asylum applicant information system.

The color of a cover also conveys certain information regarding the case. The color "strikes the eye and points to the legal layer to which the contested decision notification belongs; that's a way to facilitate the handling here; attention shall be directed to urgent procedures," the judge explains. Thus, it matters whether the cover is red, blue or yellow (or differently colored); a specific color can even "with a certain probability imply an expulsion decision" (Stephan). A color can also "catch the eye" because the examination of a case is urgent due to a legal deadline (Stephan). The ability to convey detailed the information through the cover color can be best illustrated with a certain color that is used for "procedures regarding the suspension of the de facto deportation protection in subsequent applications" (Stephan). In addition to a file's thickness and its cover, its physical location and position play a role in officials' work. In a telephone inquiry, an official explains that the decision notification will be issued in the following 14 days, putting forward the argument that the file is already at the top of the order – "it's now the uppermost" – and that she will shortly address that file (Sabine).

Following practice theory, artifacts such as records are neither solely things to be observed nor forces of physical constraint; instead, they are objects that are used meaningfully and thus represent a part of the social practice or the practice itself. The meaningful use of an object implies that actors use them by means of an appropriate understanding and know-how, which is not determined by the artifact itself. According to Latour (2005), objects become active mediators – as opposed to neutral intermediaries – when they acquire agency and are able to change actions; they can authorize, encourage, suggest, influence, forbid and so on. Although these non-human actants cannot determine or cause human action, they can, for example, "'express' power relations, 'symbolize' social hierarchies, 'reinforce' social inequalities" (ibid:72). Hence, artifacts need to be treated as social facts, and the notion of interaction has to be extended to exchanges between humans and non-humans.

3.2   The Formal and Informal Requirements for the Job

The positions at the FAO are divided into officials with a law degree and those without one, termed legal and non-legal caseworkers in this study. According to a job advertisement for the FAO, the official requirements for decision-making officials without a law degree include (1) in this case (but not always), a valid contract of employment with the federal government; (2) a higher school certificate or civil service exam; (3) a high level of organizational skills and readiness for duty; (4) good knowledge of the legislation that is applied in the area of work; (5) readiness for indispensable on- and off-duty self-improvement of information procurement (media, technical journals, literature, TV, etc.) regarding current asylum-specific topics; and (6) knowledge of the General Administrative Procedures Act. The tasks of a decision-making official are succinctly described in the advertisement (for officials at IRC and FAO branches)[8]: executing of asylum procedures and admission procedures at the IRCs and conducting asylum procedures after admission at the branches of the FAO. Decisions are to be made regarding the responsibility of Austria as well as regarding the applicability of a grant of protection. According to the advertisement, the interrogation work requires high respect for legal deadlines and the humanitarian consideration of problematic cases. In addition to flexibility and correct prioritization, a high level of self-organization and integration into the operational structure of the unit is expected.[9] As Meyers and Nielsen (2012) note, it is part of street-level bureaucrats' job characteristics that job responsibilities cannot be fully specified in advance and that work is part of processes that involve other actors, including policy targets. Therefore, they have to exercise discretion in performing their jobs, and their behaviors and performances emerge in interaction with these other actors, thereby introducing variability and unpredictability.

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[8] In 2013, a substantial number of post offices were closed in Austria, and former postal staff were recruited to work at the FAO. This measure underlines not only the low level of preconditions for working as an asylum decision maker but also the fact that this job is regarded as any other job that can be done by anyone regardless of interests, attitudes or previous knowledge. A brief account of a concerned staff member can be found in a newspaper article at http://kurier.at/chronik/wien/bundesasylamt-manche-muss-ich-zurueckschicken/113.866.521.

[9] The current job description for a "caseowner" at the FOIA has similar but also some differing requirements as the former job. The new requirements include more so-called soft skills, which were informally mentioned as necessary by the interviewed officials. The current requirements include Austrian citizenship; a higher school certificate or civil service exam; independent work, organizational skills and personal initiative; friendly, confident appearance, sociability and negotiation skills; communicative, cooperative and team skills; conflict skills and assertiveness; a high sense of responsibility; willingness to engage in necessary further training; high physical and mental resilience; readiness to engage in on-call and permanent duties; and knowledge of at least one living foreign language (preferably English). Nevertheless, the job is still described as relatively simple: conducting interviews, assessing evidence, gathering expert evidence and/or country of origin information, and making the decision notification (Bundesasylamt für Fremdenwesen und Asyl n.d.).

By contrast, the job requirements for the position as a legal official at the FAO contain somewhat more detail. In an interview, one of the caseworkers reads to me the required competences from an advertisement he finds on his computer: in addition to a university degree, the candidate must have extensive specialized knowledge concerning the relevant area of law. The required knowledge of legal documents is extensive and includes the following: the Aliens' Law Amendment Act; the Service of Documents Act; the Geneva Refugee Convention; the General *Administrative* Procedure Act; the ECHR; significant EU law; the Schengen Agreement; the Dublin II Regulation; recent judicial decisions of the Administrative Court, the Constitutional Court, and the ECHR; and the main features of the Law on Entitlement to Fees. The candidate also needs to have up-to-date knowledge of the political, social, economic and contemporary historical situation of crisis regions with asylum relevance. In addition, social and organizational skills are required for a position as legal official; job applicants need to prove oral and written articulateness and have initiative, a sense of responsibility, and be conscientious. Potential employees must demonstrate that they are extremely responsible regarding the examination of the existence/non-existence of possible legally relevant entitlements of foreigners in the broadest sense. The person must be able to cope with peak workloads in periods of high application numbers and possess the necessary communication skills and willingness to work. These requirements are also valid for non-legal positions, as a caseworker explains (Stephan). In addition, the legal position requires the clarification of particular legal questions regarding the individual procedure and the preparation of essential questions of law with complex case facts. Although the complete job description includes more details, those presented above represent the main requirements for working at the FAO.

By comparison, when asked about their personal assessments regarding the necessary skills for doing their job, the interviewed caseworkers mention a number of different types of know-how and skills. The main competences identified related to language, self-organization, categorization, empathy, self-confidence and mental resilience. The capability to work with language was referenced extensively in the interviews and included the ability to articulate both orally and in writing and to be secure in writing in general. As one official notes, creativity is needed not only for a good argumentation in the decision but also for knowing which questions to ask during the interview. Self-organization is also regarded as an important skill. An official is supposed to work independently, to organize herself and to manage the work processes by herself. Concerning the knowledge necessary for the job, officials seem to agree that knowing the details of the law is not essential. Instead, one needs "tactics … you have to know where to look something up" (Stephan). In addition, the ability to categorize is mentioned as vital since real, individual "cases" need to be made to fit the general laws. "To identify the crucial points, to see what can I categorize, what has to be categorized in which way" (Thomas) are seen as key required abilities. As Martinez (2009:117) states, "[A] street-level administrator may be so far down inside the hierarchy of an organization that few occasions arise when detailed knowledge of laws and regulations apply." In addition, administrators

"are unlikely to be as conscious of the importance of purely legal rules as they are of the rules and practices of the public authority itself" (Feldman 2012:349). This lack of consciousness is related to the fact that there are fewer incentives for caseworkers to internalize legal rules than administrative ones. According to Feldman, "law can never offer a complete, or even sufficient, set of standards to guide public administration" (ibid:350).

The data suggest that there are two main types of knowledge that can be identified with respect to work at the FAO. First, a caseworker needs to know what she is required to do and how. That is, she needs knowledge regarding everyday work processes such as the individual steps that are necessary when processing an asylum claim, their chronological order, and where to get information as well as alternative solutions. An official needs procedural, legal, and administrative-bureaucratic knowledge to deal properly with an asylum application. Second, she needs social, cultural, political and economic knowledge, particularly regarding asylum claimants' countries of origin. In addition to general knowledge regarding how to process an application, an official needs to have knowledge concerning the specific case at hand.

The formal sources of such knowledge, provided by the FAO or the Ministry of the Interior, include, for example, handbooks and guidelines on how to lead an interview, how to deal with interpreters, and how to interpret and apply certain important laws. However, instructions can also be given on a day-to-day basis by email to address issues such as certain temporary measures. Another method of acquiring knowledge about everyday work processes is participating in training seminars, which caseworkers are officially required to attend twice a year. In these seminars dedicated to specific subjects such as interviewing traumatized persons, knowledge (and values, etc.) is passed on to officials. Although the law itself also represents a source of information, most officials do not consult the law in their everyday work; due to the administrative handbooks and guidelines, they see no need to delve into legal texts.

At an informal level, caseworkers' personal networks play a role in everyday work. Exchanges with colleagues inside and outside the agency allow caseworkers to be updated on new developments in the organization and are useful for gaining other "insider" information. Daily routines are also discussed among colleagues; learning from colleagues' best practices or failures is essential for developing a personal work style and approach. As we will see in the following, a key method of knowledge transmission is learning by doing, such as managing concrete interactions or determining where to obtain relevant information. "Knowing," which refers to the embodiment and enactment of knowledge, is a condition for and consequence of acting (Wagenaar 2004:651) and is thus a vital element of everyday work and administrative practice; however, it is not explicitly taught. Essentially, knowledge is organized at the individual level (concepts and skills) as well as at the collective level (stories and genres), and it can be organized tacitly, that is, at the cognitive level (skills and genres), or explicitly (concepts and stories) (Cook and Brown 1999).

Another skill that caseworkers note as being important is the ability to deal with people in general – not only asylum claimants but also interpreters and other actors.

Some interviewees find that officials should possess a certain humaneness or sensitivity. Thomas, referring to the interview situation, emphasizes the capability "to step into the situation, into what is going on and to create a basis for conversation," whereas another colleague believes that one should be able to show interest in the person on the other side of the table. Being a neutral decision maker is also identified as important; officials also highlight that one needs to prove rigor to be able to make a decision. Although the asylum interview represents a routine activity for caseworkers, it is still a special situation in which the performance of each actor is under supervision. Officials thus attach importance to self-confidence and a reasonable appearance when entering into direct contact with an asylum claimant. As mentioned above, another vital feature for caseworkers to possess is mental resilience and the ability to distance oneself consciously from the emotional part of the work. Being a decision-making official can create psychological burdens, a fact that is highlighted by Gabi, who finds that "we're all the psychiatrists of the other."

Comparing the formal and informal job requirements reveals that in the formal advertisement, the interpersonal and emotional aspects of the work are completely omitted, hinting at the lack of significance given by the state employer to these so-called soft skills. Concerning the other skills, the formal and informal job requirements largely overlap, although caseworkers attach less importance to the detailed knowledge of the law than the employer, which is also reflected in the everyday practices analyzed in this study.

3.2.1   Socialization: How to Begin the New Job…

As mentioned above, non-legal officials, who make up the majority of caseworkers, do not require any specific education beyond A-levels, which means that they are introduced to the working procedure through "primarily learning by doing" (Roland).[10] Although exchange and comparison with their colleagues remains relevant throughout officials' careers, their orientation toward others' behavior is especially crucial in the first months or even years of the new job. By working alongside other caseworkers before doing the job alone, agents benefit from senior colleagues' experiences. (Dubois 2010) "In the beginning, you read decision notifications and watch – how does he write, how does the other one write," an official explains (Gabi). When they start the job, caseworkers also sit in and observe colleagues' interviews with asylum claimants, which allows newcomers to "pick something out everywhere, to learn by watching and then also to develop one's own strategy" (Gabi). Thus, every caseworker develops her own approach oriented toward observed best and worst practices. Non-legal officials mention that when they started their job, they faced difficulties in working with the law and first had to familiarize themselves with legal language. Although training is available on

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[10] As mentioned above, a uniform training course was introduced in 2016.

specific topics, practice and experience represent the main key to learning how to tackle everyday work tasks at the FAO. Additional knowledge that is regarded as relevant, such as that concerning claimants' countries of origin, is also accumulated with experience. As an official notes, beginners can rely only on the official information provided by the COI Unit. However, after several interviews with claimants from the same country of origin, caseworkers gain additional information. "Through the interviews, you gain background knowledge, which you can't find in the COI; thus, you simply gain a sense for it; in the beginning you really lack that" (Veronika). On the one hand, the caseworker refers to informal information; on the other hand she also asserts that one gains a certain feeling or sense about the interview and the claim over time, which a newcomer cannot have because she lacks the experience.

Although the official training phase for institutional approval takes approximately three to 6 months, Veronika, a non-legal official, thinks that it takes "surely half a year to over a year" before someone is fully acquainted with the tasks and can work freely. After an initial introduction phase, newcomers must conduct interviews and write decisions under supervision. Before a newcomer is allowed to sign her own decision notifications, she is trained by the head of the unit, who checks her initial decisions. If the head of the unit decides that the person is ready, the official's decisions are subsequently checked by the head of the department before being issued. Only when the head of the department can state, "Okay, you're now able to sign by yourself," is the decision on the approbation authorization made in consultation with the director, allowing a caseworker to work independently. After 5 years of experience, Roland thinks that he can now "work freely" and notes that "only now I'm really ready." When he started at the FAO, he could not believe that it would take several years to learn how to do the job. After some years of experience, he realized that apart from the basic skills an official needs, "everything else comes with time."

The learning by doing procedure provides officials with practical, implicit knowledge. From the praxeological perspective, every practice is first and foremost a knowledge-based activity in which a practical sense of know-how is employed. Thus, knowing refers to the embodiment and enactment of this knowledge (Wagenaar 2004:651). For an administrator, this means that she can understand a particular situation without necessarily having full knowledge of the details of the entire situation. Thus, the understanding is in the doing; the administrator "understands what is right or fitting to do in this particular situation by acting on it" (ibid:650). What she knows is not held in memory but embodied in action. However, this sense of rightness is not given in a priori but is collectively (re)produced in a dialectical interaction with the particular situation and its embedding in the wider organizational, social, and cultural context (ibid:644). These norms of what is right in a certain situation refer not only to formulated rules but also to unformulated, informal norms.

Both the informal job requirements and the socialization process hint at the implicit and informal logic of social practice, a key element of the theory of practice. Every practice is first and foremost a knowledge-based activity in which a

practical sense of know-how is employed. When a practice is carried out, implicit social criteria are applied, creating a symbolic world in which objects and persons have an implicitly known meaning in order to act appropriately in a routinized manner (Reckwitz 2003). This practical knowledge, which is mobilized in a social practice, includes several forms of knowledge that are not presupposed as universal but as historically specific and as contingent "local knowledge" (Geertz 1983). On the one hand, it involves knowledge in the sense of interpretive understanding, that is, a routinized ascription of meanings to objects, persons, etc. On the other hand, it involves methodical knowledge, which refers to script-shaped procedures of how a chain of action is competently produced. Another key component is the motivational-emotional knowledge of "what one actually wants," what is appropriate and what is not. These socially conventionalized implicit complexes of motives and emotions are inherent to practices and can be redefined into individual interests by the actors. However, the implicit normative criteria of what is appropriate within a complex of practices must be distinguished from possibly existing explicit and sometimes formalized norms that might also conflict with each other (Reckwitz 2003:293).

A key assumption of structuration theory is that social actors "have, as an inherent aspect of what they do, the capacity to understand what they do while they do it" (Giddens 2011:xxii). Agents are thus understood as reflexive, knowledgeable and purposive rather than as manipulable actors directed by supra-individual forces over which they have no control. Following Giddens, actors' knowledgeability and the routinized character of their day-to-day activities are established through continuous and interdependent processes of reflexive monitoring, rationalization, and motivation. The knowledgeability of actors is primarily based on the ongoing (tacit or express) reflexive monitoring of one's own actions, the actions of others, and the context of these actions; that is, the material and temporal aspects of (inter)action settings (ibid:4). The knowledgeable actor is not only fundamental to the constitution of human agency but is also central to the concept of structure. Actors' knowledgeability is thus the place in which structure and agency become mutually constitutive and from which regularized social conduct emerges.

Practical knowledge is acquired in the context of a socialization process within the organization, which is where new caseworkers learn how to reproduce the structure. As Giddens (2011) argues, knowledgeable agents always refer to structures – rules and resources – in interactions. The structural characteristics of the field of action, such as rigid confines between different departments or strict division of labor (e.g., between legal and non-legal officials or along different countries of origin), are produced by agents' structuring action. By repeatedly engaging with these structures, agents simultaneously reproduce entire social systems. The fact that actors always act reflexively implies that they relate to their own past, present and future expected behavior as well as to the behavior of others and structural features of the field of action in a (more or less) reflexive way. Nonetheless, knowledgeable agents can never fully control the processes of social reproduction. They often act on the basis of unknown preconditions and generate unintended consequences (Ortmann et al. 2000:318).

Within this socialization process, officials also internalize the organizational culture and ideology. Often, "the behaviors and actions of street-level bureaucrats can be explained more by the professional norms, work customs, and occupational culture of the workers than by management factors" (Riccucci 2005). Giddens's (2011) model of human action includes the interplay of three levels that are relevant in this context. First, individual and organizational forms of reflexive control provoke questions such as, "What will the others do?" These forms of control can be seen when decision makers orient their action toward colleagues' social practices in asylum administration. The values within an organization can be so powerful and influential that they "sometimes partially supplant individual values and norms" (Martinez 2009:118). When "everyone is expected to perform certain chores or behave in certain ways, an individual is pressured, subtly and not so subtly, to conform" (ibid).

Second, the rationalization of action requires the development of an understanding of the reasons for action. These reasons are mostly provided by the organization and its ideology. As Downs (1967:245) notes, bureaucratic organizations "engaged in highly controversial activities" particularly depend on ideologies "to justify their existence to their members and the outside world, since they are under constant attack." Considering the current developments and hot political debates in the field of asylum, this reasoning also seems to be valid for the asylum administration. Van der Leun (2003) stresses that public officials' work is generally surrounded by political conflict. Regarding the ideological orientation underlying the decision-making process in the asylum procedure, Morris (2010) identifies two leading paradigms, the national and the cosmopolitan, which are linked to the concepts of national or universal solidarity, respectively. Deliberation on asylum applications can thus be construed as a contest between the national, rather restrictive paradigm of interpretation and the more expansive, cosmopolitan paradigm that promotes thinking beyond codified rules (Morris 2010:105). These two paradigms address how the social norms of a certain national community and those of "a more distant world community of world citizens" relate to each other (ibid:98). Although both approaches can be debated and are partly based on established jurisprudence, they can certainly be regarded as ideological predispositions. With regard to the rationalization of action, especially in the bureaucratic context, responsibility is often handed "upwards" in the hierarchy; caseworkers tend to see themselves as executors of instructions, making it easy to not further question the rationale for one's action.

Third, action is motivated consciously or unconsciously through the need to satisfy a desire or avoid fear. Caseworkers might be motivated to meet the legal requirements to pass the check of the second instance and to meet the internally required workload quotas to avoid sanction by the head of the department. However, most human action is not motivated directly but occurs on the basis of routine (Ortmann et al. 2000:316).

3.2.2 …and Develop a Routine

In becoming acquainted with the organizational culture, caseworkers also learn with which categories the institution works, which differentiations are made and which schemes are used to classify and structure claimants and cases. In cases of uncertainty, they consult more experienced colleagues or, for example, their superior, a veteran with 17 years of experience at the FAO. The aim of the organization is to enable staff to discern that "in this and that situation, you just approach a case in this way" (Thomas). This socialization process, which allows new employees to learn how things are interpreted in the organization, how officials are to interpret laws and other regulations and how specific cases are to be treated, is essential for organizational reproduction. When confronted with difficulties in writing the decision notification and leading interviews, an official concludes that it is now "a matter of habit, it's a routine" (Thomas). Noting that despite the established routines, "you still have to take your time for every person, for each cause," he claims that this routine is not detrimental to the asylum claimant. Instead, according to the caseworkers, the main benefit of routinized practices such as knowing how to efficiently prepare for an interview or taking minutes during the interviews (which is not done by the typist) is facilitating the workflow.

The advantage of experience is particularly evident with regard to the interview situation; the official's experience and routine further increase the power asymmetry vis-à-vis the asylum claimant. The unequal relationship is reinforced by the contradiction between a claimant's perception of the asylum claim as an emergency and the official's perception of the claim as routine (Hughes 1984 [1971]; Dubois 2010). As Gabi notes, her self-confidence grew in interviews with men who "almost don't look at you for three hours," a behavior that she associates with the men's cultural background. In terms of content, caseworkers also seem to profit from experience over time. Country specialization in the sense of division of work is regarded as important because such knowledge is "so specific" and much of the "additional background knowledge [is gained] through the interviews" (Veronika). The official adds that due to her routine, she also knows to ask the right questions at particular points during the interview. A problematic aspect of such a routine when handling asylum applications by claimants from the same country of origin is that officials tend to believe that only a limited number of recurring assertions and arguments exist regarding the reasons for persecution and flight. By reaffirming the daily grind of the bureaucratic apparatus, officials risk losing sight of the procedure's original purpose, namely, to grant protection to individuals on the basis of their experiences.

Since time is valuable, especially in an organization that follows the logic of NPM, caseworkers are keen to develop time- and effort-saving practices. One of the tools used to reduce invested time and effort that is usually employed in bureaucratic organizations is the template. As Gabi explains, "When you make yourself a great template, it's again going faster; it's the templates that are lacking in the beginning." While providing stability, templates also cause reproduction and non-

reflective routines. However, reproduction within the organization is intended since both the form and the content of decision notifications need to follow a specific structure. "For each decision, there is a template with the boilerplates that should be in there between the individual passages" (Gabi). In addition to such formal templates, informal templates circulate among caseworkers that enhance reproduction. Potentially leading to the reproduction of routines, informal templates are used for such purposes as determining how a colleague has dealt with a similar case in the past.

Although routines provide advantages to officials such as saving time and effort, repetition and reproduction can also have a negative impact on decision making. Practices of categorization, for example, have many practical functions such as pragmatic utility, but the mental economy of categorization can cause mindlessness in its application (Amsterdam and Bruner 2002). Some officials think that routines need to be modified from time to time because those officials are aware of how routines can develop: "you do the same thing over and over" (Thomas), "you slide into a rut" (Veronika), and "you establish a jog trot" (Stephan). After a certain period of being in the job and repetitively executing the same tasks, officials tend to start working by default and become imprecise in their work. Training is described as potentially eye-opening and mentioned as an opportunity to try different possibilities for action. Another solution to the problem of developing a one-track mindset in the asylum procedure is the option of limiting the duration of work at the FAO. Some caseworkers find that a certain fluctuation of staff is good; "I think it's not good if you do that [job] forever" (Stephan) since one "gets dulled" after many years of working in the same environment (Thomas).

The observed habituation effect also has an emotional impact. Sabine thinks that "one gets 'vaccinated,'" that is, that experience makes caseworkers immune or resistant to potentially new situations, meaning that they have already experienced so much in this job that they are not easily troubled anymore. Nevertheless, some situations seem to go beyond the bearable limit to the point that she thinks "the skin can never become that thick." She is callous concerning claimants' behaviors in the interview, but she is more sensitive when she is personally addressed and affected. Gabi concludes that over time, one becomes accustomed to the fact that unpleasant things occur in people's lives; "someday then you accept it, then you say, that just also exists."

Despite or in parallel to these routines, caseworkers experience uncertainty. Ambiguity is inherent in many of the officials' accounts. On the one hand, they often mention that cases are repetitive and "you always have the same things" (Gabi); on the other hand, they tend to stress that "each assertion is different" and that in this job, "you can't lean back, no, that's impossible; you can't just do something by default" (Thomas). Officials report the difficulties of not knowing how to approach a case or of dealing with non-routine cases. The issue of uncertainty will be explored in more detail in Part III.

In addition to materiality and implicit, informal logic, the interplay of routinization and the unpredictability of social practices is the third key element of practice theory. The relative closedness of repetition and the relative openness for failure,

reinterpretation and potential conflictuality of everyday practices are conceived as two sides of the logic of practice (Bourdieu 1980). As soon as the social world is viewed as a network of social practices, it obtains the basic feature of routinization; this is true both for practice complexes such as formal institutions and for the individual. Routinization – a basic feature of day-to-day social activity and a vital concept to structuration theory – is understood as grounded in practical consciousness, which generally cannot be expressed discursively. The routinized action enabled by implicit practical knowledge and understanding is what makes the social world relatively structured, understandable and ordered. The routinized character of social life is essential for maintaining "ontological security" (confidence or trust), that is, a sense of order and continuity (Giddens 2011:50). Maintaining this security is a continuous accomplishment of the actor through habitual participation in routine activities, making routine conduct a vital element for the constitution of institutionalized forms of social life. Reproduction is therefore a key element; once practical knowledge is transferred and incorporated, it tends to be used by actors repeatedly and tends to produce repetitive patterns of practice (Reckwitz 2003:294f). In the asylum administration, everyday work is also concentrated on continuous action patterns and schemes. The sequence of steps to be taken is predefined by legal and administrative regulations, and standardization is prevalent in the asylum interview as well as in the different forms and documents.

However, the other side of the social world consists of an interpretive indefiniteness and uncertainty, requiring a context-specific reinterpretation of practices and enforcing and enabling an innovative application surpassing reproduction. Hence, from the praxeological perspective, deciding upon asylum applications means routine, uncertainty and mimesis. The unpredictability of practice and thus its openness for change is demonstrated by four main features of the logic of practice: context, temporality, loosely linked complexes of practices, and the overlapping of different forms of knowledge in actors and subjects (ibid). Although the contextuality and situativity of the realization of practices can often be managed through routine, actors are sometimes confronted with events, persons, acts or objects for which no or no clear routinized pattern of understanding, methodical knowledge and conventionalized complexes of motive and emotion are available as "tools." Under such circumstances, a practice may fail or be in danger of failing and hence must be modified or changed. An example of such a new context is the emergence of new artifacts, such as new laws or administrative regulations, provoking the development of partially new practices (ibid).

However, within everyday crises of routines, structures are "broken" and "shifted" "in constellations of interpretative interdeterminacy and of the inadequacy of knowledge with which the agent, carrying out a practice, is confronted in the face of a 'situation'" (Reckwitz 2005:255). Such a crisis can be encountered, for example, when an asylum application is difficult (or impossible) to manage on the basis of an established practice. In their everyday work, officials are regularly confronted with such situations of indeterminacy and inadequate knowledge; in these situations, actors' mimetic capability becomes important. Instead of strict "rule follow-

ing," caseworkers' practices can thus be understood as mimesis, a form of imitation and a situation- and context-related orientation guide (Ortmann 2003:153). Mimesis is a social competence; it allows an agent to make use of and simultaneously provide immediate action patterns. It is "a sort of helplessly-helpful orientation in mimetic attitude toward the acting of others" (ibid:146) with the special feature of reducing moral or technical complexity. To act mimetically in the context of processing asylum claims, for example, means to orient one's action toward colleagues' precedents in similar cases. Mimesis thus plays an essential role in the process of deciding upon asylum claims and justifying these decisions; at the same time, mimesis disburdens actors by providing action orientation. Although all action is pervaded by mimetic orientation, perfect imitation is a contradictio in adiecto since rules are constantly shifted and modified in and through their application. Repetition is thus constitutively dependent on difference; there can never be identical reproduction since there is always a differential moment of repetition (ibid:48).

3.3   New Public Management Logics at the FAO: Working as a Member of the Organization

To understand the dilemmas with which decision makers are confronted, it is important to know the context and circumstances under which they work and that play a role in causing the dilemmas. Some characteristics of the FAO as a workplace, such as its institutional framework and network, the common practice of learning by doing and the importance of routinization, have already been explored. In the following, I will focus on specific organizational aspects of the administration of asylum claims. The study findings reveal important issues concerning the management of the FAO branch, the relevance of productivity and time pressure, the prioritization of quantity over quality, and the effects of organizational development and change.

   Much of what can be observed in this regard is related to the introduction of New Public Management to public services around the turn of the century. In the 1990s, NPM was designed as a strategy to modernize and render the public sector more effective (Hood 1991). This approach is based on the concept that market-oriented management of the public sector will lead to greater cost efficiency for governments without negative effects on other institutional objectives. It can thus be argued that with NPM, the "three Ms" were introduced into public services: markets, managers and measurement (Ferlie et al. 1996). Several authors have claimed that NPM had already peaked in the early 2000s and is in decline or even "dead" (Dunleavy et al. 2006), but the findings show that NPM logics still have an effect on daily routines and create particular contradictions and tensions. Eliminating the negative aspects of NPM from many areas of public administration, including the asylum procedure, will likely take some time.

3.3.1   Hierarchy and Management

A hierarchical structure is one of the main characteristics of a bureaucratic organization such as the FAO. The roles of the different actors as well as their positions in the hierarchical order are clearly defined from the director to the heads of each branch via the chambers to the unit heads. The legal and non-legal officials, who have differing job gradings and somewhat varying tasks, are under the supervision of the unit heads. The caseworkers are then superordinate to their assigned assistants, who mainly serve as typists. A few men who serve their civilian service[11] at the FAO and are thus only employed temporarily execute the work with the least responsibility. The power relations vis-à-vis the caseworkers are not as clear when interpreters or experts are involved (as we will see later in more detail). The organizational hierarchy becomes particularly visible when a person starts working at the FAO. Newcomers are first trained by the unit head, and later, the official's first independent decisions are checked by the head. Only then does the head of the branch decide together with the FAO director whether approbation authorization can eventually be conferred upon the official. While the head of the branch is not involved in direct interactions with asylum claimants, the deputy does conduct interviews in the present case study. Nevertheless, the head is regularly involved in decision making since officials have the ability to discuss "difficult" or complex cases with the head[12]; in many cases, it is even compulsory for officials to consult the head before making a definite decision.

There appears to be a good general working atmosphere in this specific branch, which caseworkers often attribute to the head's personality and managerial style. This head's attitude "is probably also reflected in the whole branch, with the whole atmosphere," Gabi explains. Expressing a similar view in a conversation, the head emphasizes that the current officials make a "good team" and that it would therefore be deplorable if jobs had to be cut (ob. 6).[13] This specific managerial style is also visible in the fact that the head is not necessarily present in official's everyday work; as Roland notes, probably in exaggeration, "if I aim for it, I don't see the head the whole year." It is also noted that the hierarchy is only explicitly manifest in the list of telephone numbers. Stephan has recently become a legal official, which has not produced much difference in everyday work thus far except for an update in the telephone list, as the official explains. If nothing else, this example emphasizes the importance of artifacts as actants in public administration. However, the different sub- and superordinations are clearly perceivable in the empirical data. The fact that even the head of branch is still subordinate to the director (and the vice directors) and ultimately to the Minister of the Interior is highlighted by the following quotation concerning pressure from "above:" "Of course, what matters for the head in the

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[11] Civilian service can be chosen by men as an alternative to compulsory military service and is often work in the NGO or public sector.

[12] Thomas (2011:159) identifies three categories of "hard cases" in the asylum procedure: age disputes, religious conversion, and disputed ethnicity or clan membership.

[13] Ob. is short for observation.

first place are the numbers. Probably not even because the head personally doesn't care what's written in there [in the decisions], but there is yet another boss above the head and this person exerts pressure" (Gabi). The vital issue of numbers and pressure will be discussed in the following section.

3.3.2   Productivity and Time Pressure

Public officials work in an environment ruled by instructions from "above," that is, by the management, which then controls whether these instructions are realized as intended. Similar to the business administration of private companies, and thus following the approach of NPM, the FAO places a particular focus on output, that is, on the number of completed cases. Caseworkers are confronted with requirements regarding the quantity of completed decision notifications and their quality, with more weight is put on the former than on the latter. Officials also feel pressure regarding the completion of these instructions; time and productivity pressure therefore characterize caseworkers' everyday work (see Fig. 3.2).

   Although, or because, the administration is often confronted with complaints regarding the duration of the procedure – in certain cases, it can take several years until a final decision is made – efficiency is a major priority at the FAO. Here, efficiency refers to processing asylum applications without wasting time and productive energy. Quick case settlements mean that more completed cases can be registered in less time. The importance of efficiency is also emphasized – in the context of the recent introduction of a global budget – by the head of the branch in a conversation. "We want to improve," the head explains in relation to efficacy and efficiency (ob. 2). This positioning implies that the management is oriented toward a business model comparable to other companies, making productivity a central aim of the administrative agency, which makes decisions regarding human rights issues and international protection.
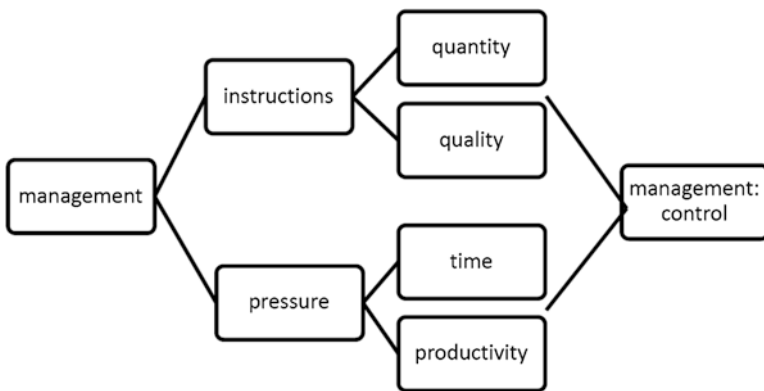

Fig. 3.2 Output/completed cases. (Source: Own production)

The distribution of tasks through the division of work can traditionally be seen as a step toward efficient organization. The FAO presents itself as being strongly oriented toward guaranteeing "an efficient and target-oriented division of work" (Pretterebner 2009). Division of work occurs between caseworkers and typists/assistants as well as among caseworkers, for example, along claimants' countries of origin. Certain officials are primarily concerned with processing applications where it is assumed that the claimant does not have "asylum-relevant" reasons for flight. Roland, who is mainly concerned with these special cases, explains that there was a month during which one-third of all completed cases were part of the so-called fast procedure. At his peak, he wrote 74 decision notifications in 1 month, more than the output of an entire small FAO branch. This extreme example illustrates not only the strong focus on time-efficient operating structures but also that time pressure is related to the expected productivity. Time pressure thus also impacts the search for information regarding a single case. Only a small number of alternatives will be considered, and the more complex the decision is, the smaller the number. In addition, "the decision makers involved will try to restrict the number of persons participating in the decision and the diversity of views among them" (Downs 1967).

It is important for the officials to save time in every aspect of their work and to relinquish additional work if it is dispensable. Gabi, for example, notes that writing a decision notification goes faster "if one makes a great template." Another official reports that he has a particularly efficient method for writing the decision notifications. He saves time and effort by overwriting old decisions in his word processing program. Although he admits that errors sometimes occur and that he happens to overlook things, he highlights that this method is "hard to beat for efficiency" (ob. 3). Although the caseworker notes that the length of time it takes to write a decision notification differs according to the respective official, he estimates that he finishes a notification for a "run-of-the-mill case" in 1 h (ibid). If the content of the case is new to him, it takes him "a bit longer"; for a "family" – asylum applications that concern a whole family – he explains that he needs 3 h (ibid). This official's representation reveals a competitive culture, focusing on quantity rather than quality. Caseworkers are also aware that there are differences in colleagues' output numbers.

> In the end, quantity counts. Nobody's really interested in it; it's more important that you yield your numbers than that you have really, really good decision notifications … It's just with regard to time, if you take into account everything, every little thing, is more time consuming than if I give it a once over with a few set phrases (Veronika).

Veronika's statement is clear: although quality is required concerning the content of the decision notifications, the administration has another priority, namely, quantity. Due to time pressure and the pressure of productivity, caseworkers resort to established routines, potentially neglecting quality. Sabine notes the same situation; it is the paper that counts. "If I have a family, father, mother and six children, it's of course easier" to produce numbers. She explains that in the best case, she can simply exchange the children's names and birth dates and "it's also paper." Moreover, the issue of time is relevant not only regarding decision writing but also concerning

the asylum interview. As Thomas explains, time constraints pressure him to reduce the interaction to the necessary minimum. The caseworker notes that being responsive and building trust in the interview situation requires more time than "simply" focusing on the mere facts of the case. Hence, the requirement to process claims as quickly as possible, in line with the NPM orientation toward efficiency, can obviously have negative effects on how the asylum claimant is treated in the procedure. This topic, the dilemma between the individual and the crowd, is further explored in Chap. 7 and touches upon the issue of procedural justice, which is discussed in the concluding chapter.

Due to the characteristics of their job, street-level bureaucrats need "to ration their time, attention, and other resources, often without clear or consistent guidance about priorities" (Meyers and Nielsen 2012). A reserve of time and resources is necessary to retain a degree of flexibility to be able to cope with an unpredictable environment. Thus, officials prefer "normal" clients to unusual ones because "normal" clients require fewer resources and thereby facilitate the protection of their autonomy (Prottas 1979).

3.3.3   Control: Measuring Quantity Instead of Quality

In a hierarchically organized institution, control is an important tool for the regulation of everyday work. The management thus checks whether the given instructions are adequately implemented: whether time limits are observed, whether the output is high enough, and so on.

Keeping statistics on the completed cases, the management quantifies productivity. "The director … thinks that 1.7 decision notifications a day must be possible," Sabine notes. For the head to be informed about the current status of completed cases, at the end of every week, the officials have to report to their superior "how many interviews have I done, how long did they take, how many decision notifications did I write." Thomas reports that 1 month he had completed so few cases – "I don't even want to say it, just little" –that he received an order "that this has to increase, clearly" to fulfill the "basic turnover required of everyone."

Management accounting practices are used to analyze past events, assign meaning to those events and dissect the flow of organizational action into distinct acts, eventually defining the causes and effects of these acts and their results. In the framework of the reproduction of structure, accounting also aims to convey certain values and ideals about what is regarded as good and bad or right and wrong in the organization, such as by sanctioning action in a positive or negative way (Giddens 2011:349). The structuration-theoretical perspective with a view toward organizational practices understands accounting as a social construction of reality. Accounting contributes to the interpretive construction of organizational reality as well as to the reproduction of the organization as a meaningful, powerful and respected societal institution (ibid). Initially, accounting aims for an objective and rational depiction of organizational reality. However, the conventional and mostly

positivist research on accounting usually blocks out the subjectivity of actors, accountants and users of the provided accounting information; it also ignores the organizational context (ibid:348). Nevertheless, accounting and the selective picture of organizational events that is thereby produced are not only susceptible to subjective interpretation and construction but also the object of political influence. The top management in particular strives to gain and maintain control over how data are to be collected, aggregated and understood in the general political context of utilization; however, it is not a given that these attempts at control through accounting will necessarily succeed. After all, the actors who are supposed to be controlled have various opportunities to influence the realization of the accounting work in their favor (ibid).

Other control mechanisms are prevalent when an official begins working at the FAO, which is understood to require a particularly high degree of control. To be conferred approbation authorization, the caseworker must conduct interviews with asylum claimants and write decision notifications "under supervision" for several months (Stephan). Another area in which caseworkers' practices are monitored is the online police database. "That's monitored quite strictly, that is, every time entering and looking [something up] is exactly documented," making it possible to retrace "who exactly has had a look at this [particular] name or case" (Veronika).

Although the internal focus of the organization – and thus the focus of control – seems to be primarily on quantity, the quality of asylum decisions and interviews with claimants can at least be regarded as a key requirement from outside the institution. As a public administration institution in a democratic society, the FAO is also accountable to the public (see the concept of public value) and societal values. However, independent quality checks are made only by the UNHCR through methods such as the evaluation of selected decision notifications. As the caseworker explains, especially in the beginning, "one orients oneself toward colleagues, and to be completely honest, I also just adopted nonsense and mistakes, and I learned a lot in this project now" (Gabi). However, the impact of such external monitoring eventually becomes hampered by internal requirements. A few weeks after one such evaluation aiming to highlight avenues for improvement, officials received an instruction that decision notifications now had to be issued within 20 days. This contradiction led to a feeling that "the whole project was only a sham," as Gabi explains.

> It's difficult because it's a predicament, because as I said, on the one hand, they want numbers … higher outputs, and on the other hand, the decision has to be made within 20 days; if you need longer, you already have to justify it, and of course, the quality should improve too … How is that supposed to work? In the end, it can only be at the expense of quality because you can't economize anywhere else (Gabi).

The caseworker expresses the essence of the dilemma. Decision makers are confronted with contradictory requirements. Management demands output in the form of the numbers of completed cases, which also have to be processed as quickly as possible; at the same time, the quality of the issued decision notifications must improve. However, increasing quantity *and* quality seems to be unrealistic in the

established time frames. The management's clear focus seems to find expression in the fact that quality is less controlled than quantity. Even if there are common standards to which officials are expected to adhere, other structural constraints dominate their everyday practice.

One of the problems of the control strategy applied at the FAO is that a standard processing time is allotted to each case, pretending that each case can be processed within the same amount of time or that "easier" cases balance out the time spent on "more difficult" cases. When such standardized formal norms collide with caseworkers' everyday practice, pressure is created since the completion of the expected workload is monitored on a regular basis. This mechanism, which may be called "quantity management," is usually rigorously enforced. However, quality management, which is also a means of control, seems to be more symbolic. The findings demonstrate that there is some managerial will to place value on quality, but other constraints seem to impede the realization of these aspirations. The demand to produce more numbers in less time while also improving the quality of their decisions places the caseworkers in a dilemma of contradictory requirements. The differing missions and logics of legal and administrative norms create structural contradictions for decision makers. The findings illustrate that officials find themselves trapped in numerous competing regulations and instructions. In that situation, neglecting quality is obviously seen as the easiest solution. As a consequence of their job characteristics, street-level bureaucrats "often experience competing or even contradictory performance demands and may be subject to scrutiny and evaluation by multiple stakeholders with divergent values and expectations" (Meyers and Nielsen 2012).

3.3.4   Organizational Development and Change

The abovementioned quality evaluation project and its questionable impact illustrate the management's strategy of dealing with attempts at (cultural) change within the organization. The official involved in the project expressed her frustration with the fact that newly acquired knowledge and the good intentions of the project are not sufficiently transmitted to all colleagues for implementation in their work practice. In addition to the dilemma of competing instructions regarding the quality and quantity of asylum decisions, the head's efforts to keep the staff together play a role in impeding quality improvement. Instead of forwarding the evaluator's feedback to the staff, the head protected the officials who had "screwed something up" in their decisions (Gabi). The caseworker is upset that despite the project, "nothing has changed"; when she looks at others' decision notifications, certain ones "get [her] hackles up." This situation illustrates the difficulty of actually effecting change in the everyday of a bureaucratic apparatus with established routines and a particular organizational culture.

The resistance to change observed at the FAO may also be related to the fact that the asylum system in Austria is characterized by constant change in its legal (and

institutional) framework (as sketched in Chap. 2). Certain legal modifications have a strong impact on officials' everyday work at the FAO (such as an obligatory expert opinion on an asylum claimant's age if it is unknown), whereas other changes can leave established routines almost unchanged. In particular, political instructions such as halting deportations to a specific country are designed to have an immediate effect. In theory, caseworkers have to be flexible and adapt to new (legislative) situations; in practice, the modification of entrenched thought patterns may take some time. For example, Thomas states that although there was a recent amendment, it did not touch upon his "main topics … So, I wouldn't know now what exactly has changed there; I continue as before," he explains. Different caseworkers thus also process and potentially decide cases differently, not only but also because they have been in the organization for different lengths of time.

> Colleagues who have been here for a long time... still know the old laws; they also know what a decision notification looked like 15 years ago, which, mely, was three pages long. ... In the meantime, it has become more comprehensive, and a decision notification has at least 25 pages. ... Mine are usually around 40 pages (Thomas).

The caseworker mentions that his longest decision notification comprised more than 100 pages. Although an extreme example, it illustrates that certain standards have changed in recent decades. When he started to work at the FAO, there were "completely different framework conditions" than there were for his long-established colleagues (Thomas). He notes that "if there is a big amendment … someone who is new [at the FAO] starts at a completely different level … and would know it completely differently." According to Gabi, "those who have been there for a long time already, they're so arrogant that they're not even interested [in improving] because they say, 'No, I've done it like this until now, now I don't readjust, I don't care.'"

Even institutional changes in the asylum system do not necessarily substantially affect officials' everyday work. When an institutional change from an independent committee to the court was made (in 2008) in the appeals procedure, "for my work, nothing changed," Roland stated. It would be worthwhile to study the consequences of the current institutional change – the incorporation of the FAO into the new FOIA and incorporation of the Asylum Court into the new Federal Administrative Court – for officials' everyday work and the established routines. However, since the asylum procedure itself has not changed, it seems likely that the work of administering asylum claims also has not changed, and decision makers face similar challenges in everyday work as they did before the reform.

In addition to top-down change through modified provisions and additional instructions, the training of staff represents a possibility to promote institutional development and change. At the FAO, skill improvement and awareness-raising trainings are provided by the institution itself with educators trained through the EASO. The FAO is thus informed by its supranational organizational environment not only on the legal level (EU Directives, etc.) but also on the level of work practices. The European Asylum Curriculum (EAC) is a common vocational training system for asylum officials throughout the EU. Based on the EAC, the EASO offers courses addressing topics such as interview techniques, evidence assessment, inter-

viewing vulnerable persons and children, drafting and decision making, and COI; courses are also offered on EU regulations, international refugee law and human rights. As Veronika explains, the branch head expects caseworkers to attend two seminars every year, although this specification is not strictly observed: "approximately, give or take." Although one caseworker notes that "you have to acquire much [knowledge] yourself; the seminars don't get you very far," they still represent "a good brush-up," and they can be eye-openers "if you've slid into a rail" (Veronika). By "sliding into a rail" the official refers to the established routines of processing asylum applications, that is, the problem of adhering to well-known patterns. One of the seminars, which was on the refugee definition in the Geneva Convention, showed the caseworker "a different perspective" and gave her an impetus to "rethink" and "reconsider" things. Similarly, Stephan explains that he is training a new colleague, which helps him to refocus since over time, "you get pig-headed a little bit." Refocusing causes him to realize how he could improve because he is "focused on what one does inaccurately but perhaps should be done a little more precisely." At least for some caseworkers, participation in training thus seems to be an effective way to inspire change with regard to established patterns.

The empirical examples suggest that there are always limits to planned, strategic change. These examples also highlight the interplay of formality and informality in everyday work at the FAO. Starting from the assumption of a recursive connection between structure and strategy, structuration theory suggests that structures are simultaneously original and the result of particular strategies. Thus, one is not possible without the other and establishes conditions for the other (Giddens 2011:347). The enforcement of strategies can only function if the management reproduces the social structure on the level of signification and normativity through sense-making, thereby ensuring domination vis-à-vis other actors (ibid). A complementary strategy seems to be accepting resistance to change to a certain degree, as the abovementioned examples demonstrate, resulting in a visible co-existence of formality and informality. In this context, creating a common "enemy," such as control by an external actor, can be understood as a way of making sense within the organization.

Organizational change can be more or less intended (reorganization) or unintended (evolution) (Ortmann et al. 2000:333). Reorganization, such as the establishment of the new Federal Office of Immigration and Asylum, is the deliberate, reflexive restructuring of an organization with the intention of changing the rules and resources in all dimensions of the social; it is the attempt to change the structures of signification, legitimation and domination. Reorganization and resistance to change thus must employ the instruments of power available within the current organizational structure (ibid:334). Following Giddens (2011[1984]) and Crozier and Friedberg (2014[1977]), resistance to reorganization, such as leaving practices unchanged despite new regulations, should not be understood as irrationality but as a phenomenon induced by the organization. Actors act according to established routines, which suddenly must be changed or even rejected, and this structural change is met with hesitation or resistance. Thus, reorganization processes lose much of their well-ordered rationality. In structuration theory, both change and

obstruction or encrustation are understood to be results of continuous reproduction (Ortmann et al. 2000:335). Structuration means being structured as well as structuring; stability and change are equally represented within it.

3.4 The Ideal-Typical Workflow

Having explored some key features of the organizational context in which decision making takes place in the asylum procedure, I will briefly discuss the sequence of steps officials typically follow in determining refugee status. Whereas the above analysis of an asylum record illustrated the concrete interaction patterns in dealing with a specific "case," including exchanges with different institutional and non-institutional actors, this chapter explains the basic workflow in administering asylum at the FAO more generally. Although everyday work in the bureaucratic organization follows a predefined operating procedure, the order of events is not unalterable. The study allowed the identification of an ideal-typical model with five main phases for processing an asylum application, as illustrated in Fig. 3.3: (i) the
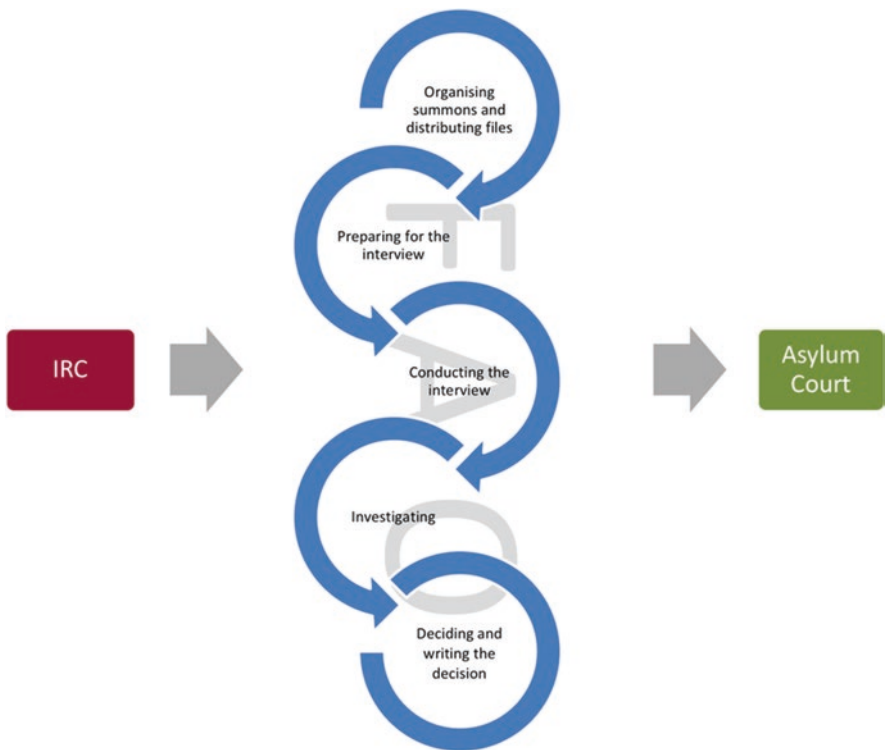

Fig. 3.3 The ideal-typical workflow. (Source: Own production)

distribution of files and organization of summons, (ii) preparation for the interview, (iii) conducting the interview, (iv) investigating, (v) deciding and writing the decision. Veronika's description of her working schedule provides a (simplified) overview of the standard working procedure explained in the following.

3.4.1   The First Phase: The Distribution of Files and Organization of Summons

> When the procedure is admitted, the file comes to the reception area, usually to Herta, and she divides the files according to Nicole's [the head of the division] instructions. So she has a list of which countries [i.e., claimants] are summoned for me; then, there is a date for the summons, and from the calendar I then learn which file [i.e., case] I have (Veronika).

The caseworker describes how she receives the asylum applications she then has to process, illustrating the hierarchical structure at the FAO. She is assigned a file with an application by another colleague charged with distributing the files according to certain provisions given by the head of the division along specific criteria such as an asylum claimant's country of origin. At the same time, the asylum claimant receives a summons for a specific date and time for the asylum interview, which is centrally organized. The interpreter is also appointed for the specific interview at this stage. From a central (online) calendar, the officials learn on which day which interview has been scheduled for them. For the legal official who is also charged with other tasks in addition to processing asylum claims, the schedule is different. She has the privilege of deciding when she has time for a new case. In addition, in her case, the files are not assigned by the head of the division; instead, she receives them directly from the FAO law office where her country specialization is known. She is also responsible for independently organizing the interview appointment.

From the administrative point of view, the distribution of files on the basis of particular countries has the advantage of allowing work to be divided along a rather clear line and ensuring that caseworkers are already acquainted with certain characteristics of these countries, leading to "efficiency enhancement" (Pretterebner 2009:61). When caseworkers receive several applications from claimants from the same country, they have the possibility to accumulate knowledge about the social and economic situation of the specific country. Officials also use countries of origin as a means to measure the "difficulty" of deciding a claim. Gabi explains that the legal officials are charged with "the countries that are a little bit more difficult." Her statement implies that the management also applies this distinction between easier and trickier cases according to countries of origin and that for the more difficult cases, it is advantageous for caseworkers to have more profound legal knowledge. Kosovo, for example, is regarded as an easy country since most cases are decided negatively. If the claimant's country of origin is Chechnya, Iran or Iraq, "it's maybe not all so easy... it's more complicated for sure," Roland concludes. Hence, the alleged complexity of a case seems to be related to the situation in the particular country and possibly the plausibility of persecution.

3.4.2   The Second Phase: Preparation for the Interview

> A few days before [the interview], I go to get the file and briefly skim it and see if I need any further information or if it's such a general assertion for a start (Veronika).

Most caseworkers explain that they prepare themselves for the interview by reading through the relevant assigned file. They skim the file to find out "what it is about" (Stephan), that is, to get an impression of the case from the available information, for example, from previous interviews with the police or the IRC. Gabi explains that after having read the earlier transcripts, she writes down specific questions she intends to ask the claimant in the interview. However, "it has occurred very often that I had to throw away my questions," she admits, because the interview takes a different direction than she had expected. Thomas explains that after reading through the file, "mostly already a certain picture emerges of what's important in this case." Officials thus develop a routine in identifying keywords and issues that could be relevant for decision making.

> If it's a relatively easy case or a run-of-the-mill case in quotation marks, you can also directly do the interview. ... If it's something to do with a [political] party, then it makes sense to also inform oneself about the parties [in the particular country] so that you can also challenge it... because it's no use if you do the interview and then don't know what you should ask. Especially now if they're countries that you don't handle so often, you have to inform yourself about the country (Stephan).

While some interviews do not require any additional preparation because officials categorize the claim as standard "cases," in other cases, the available documents reveal specific details that the caseworker wants to explore in more depth in the interview. Then the official will prepare herself, for example, by collecting COI beforehand. Caseworkers prepare themselves for the interview to be able to evaluate the claimant's assertions and to know which questions could be relevant to ask.

3.4.3   The Third Phase: Conducting the Interview

> Then, in the interview, I often start with personal data, whether he's healthy, how he lived at home, what his profession is, how he made ends meet financially, or whether he has relatives in Austria or in his home country. Then the whole thing becomes a little more relaxed, I have a little insight into the context, and then I go on with the flight-triggering reason (Veronika).

This phase – conducting the interview – is vital for the entire asylum procedure and the decision-making process. The interview is the situation in which decision-making officials and asylum claimants meet in person. It is a face-to-face interaction among several participants with fixed roles: the official as a state representative, the asylum claimant as an applying individual, the interpreter as a mediator, and potentially more actors such as legal representatives. Caseworkers aim to control the

interaction, asking the claimant questions while simultaneously having to type the transcript. However, the strongly regulated character of this "bureaucratic encounter" (Lipsky 2010), for example, regarding turn-taking, facilitates multitasking management. Different kinds of interviews are conducted at the FAO; in addition to the "main interview," interviews can also be conducted after specific investigations (fulfilling a party's right to be heard) or with witnesses.

To have time for other tasks, such as conducting investigations and writing decisions, officials are usually assigned one interview every second day (except for the legal official, who has the freedom to organize herself as mentioned above). "Sometimes, it can also be five," Roland explains. According to the official, the duration of an interview "really depends on the asylum applicant and less on me; and of course, it also depends on the case; that's absolutely specific. The interview can be 20 minutes, or it can be four, five, up to eight hours." However, due to the aim for efficiency, there is organizational pressure not to lengthen interviews and to keep the system running; the planned number of interviews must be completed. "Of course, if one has to conduct five interviews [on one day], one should see to managing that within the eight [regular working] hours" (Roland). Interviews with asylum claimants then have to be kept short for reasons of expected productivity. "To also give the asylum applicant a chance" (Roland), however, claimants can be summoned for a different day if there is not enough time for all scheduled interviews. The phrasing "to give the applicant a chance" to present their account implies that a fair procedure is not necessarily guaranteed when the interview is kept short in exchange for higher output.

As summarized by an official, the purpose of the main, substantive interview is to find out whether the claimant has reasons for flight related to the Geneva Convention and, if so, to test whether these are credible. Through the interview, decision makers have to determine whether the claimant is to be granted subsidiary protection and whether human rights concerns[14] exist in case of an envisaged deportation. Overall, the interview serves different purposes, among which are fact finding and credibility testing. Crawley (1999:47) argues that there is "no common or mutually agreed understanding of the purpose of the interview and that this gives rise to a perceived conflict between information gathering and credibility testing."

> Then there's the interview, where in principle, I go into the topics that I've had a look at before, and I ask further questions if it's something important. And in the most favorable cases, my decision already crystallizes in the interview (Thomas).

As the caseworker notes, ideally, he receives all the necessary information from the claimant within the interview, allowing him to decide on the asylum application immediately following the interview without any additional work. However, this is often not possible, and caseworkers have to perform investigations to find out more about the claimant and her application in order to reach or substantiate their decision. The asylum interview is explored in more detail in Chap. 6.

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[14] In particular, articles 2, 3 and 8 of the European Convention of Human Rights.

3.4.4 The Fourth Phase: Conducting Investigations After the Interview

> Depending on the assertion, for example, if he reports things [such as] that he was with a party or some specific circumstances that I don't have in the general information on the country, then I write to the COI Unit indicating that I want to have information, or if there are countries that one can research at home [in the country of origin], for example, there are a few countries, Armenia, Georgia, where you can conduct research on the spot, then one also does that via the COI Unit (Veronika).

After the interview, caseworkers often make investigations if they need further information to be able to decide upon an asylum claim. This information could concern the past, such as the specific situation in the claimant's country of origin at the time she fled. However, the information could also be related to the present, such as the claimant's state of health and the possibility of treating an illness in the country of origin. Officials have many opportunities and channels through which they can gain knowledge involving different kinds of actors, for instance, by verifying documents with the police, sending requests to the COI Unit, or commissioning expert reports. Since the asylum procedure is usually a procedure without much evidence, caseworkers search for "objective" facts that can be used to justify a decision on a claim. This fact-finding process is also related to the credibility of claimants' assertions, as an official's quotation illustrates.

> If it's credible, of course, it can happen that you have to make investigations, be it on the spot, via the embassy or by summoning witnesses. But [there are specific countries] where simply many [claimants] are not believable, and then mostly after my interview, I also already have made the decision (Veronika).

She explains that further investigation is usually necessary only when the assertion is credible. If the assertion is not credible, it seems that the claim can be denied without further action. If further investigations are made concerning the person, such as expert reports, the asylum claimant must be confronted with the findings in another interview in which she has the opportunity to react to these findings. If the research regards the general situation in a country, another interview is not obligatory (Schumacher et al. 2012:418). The problems inherent in the search for objective facts and the construction of in/credibility are discussed in more detail in Chap. 8.

3.4.5 The Fifth Phase: Making and Writing the Decision

> I deliberately don't write the notification directly after the interview because I'd find it unfair because after the interview you're often so full of emotions and think "this jackass (chuckle), why did he lie to me?" and so on. I find it quite good if one then waits one, two days, lets it sit and then from a neutral position, once again looks at what he said (Gabi).

This quotation illustrates that the asylum interview is also always a social interaction between two (or more) humans and that emotions thus play a role in this

bureaucratic encounter. Although the caseworker mentioned earlier that in most cases she already knows after the interview how she will decide on an application, she notes here that it is important to gain some distance from the person and the interview situation to be able to make an "unbiased" decision. The decision-making process forges a bridge from the preparation before the interview during which caseworkers skim the existing file, to the interview in which they "get an idea" of the case (Roland), to the investigations after the interview where the "picture" is completed.

In its written form, the decision represents the basis for all future steps in the asylum procedure, such as a complaint. For certain officials, the process of writing the decision is a creative process; Thomas likes it "when it's nice to read," and Roland notes, "writing is actually my thing; I like that." Even if there is a place for personal approaches and styles in writing the decision, caseworkers must adhere to a specific form with a predefined structure. Regarding content, the decision notification must contain (i) the decision, (ii) the reasoning and (iii) the explanation of the rights to appeal (Schumacher et al. 2012:438). According to an official, the most work-intensive part is the consideration of evidence (which is part of the reasoning) in which the caseworker explains and supports the way she reached her decision. However, in general, caseworkers mostly rely on specimens from former decisions, either their own or their colleagues' decisions (ob. 6). While officials tend to share the work of writing the decision with their assistants, Stephan notes that he writes the notification himself and that unlike other colleagues, he also prepares the form himself. Explaining that this approach "save[s] the trouble of double-checking," he stresses the organizational aim of efficiency. As with the interviews, the time it will take an official to complete a decision notification depends on the particularities of the claim.

> One can write it in one hour; sometimes, one needs longer, maybe also two days, it depends what one has to take into consideration, what the asylum applicant said; or sometimes, one only realizes during the writing that things are missing, that one would need expert reports, that one would need documents in order to be able to complete it [the decision notification] (Roland).

This statement illustrates that the processes identified in the ideal-typical work-flow are not necessarily linear. As the caseworker explains, in some cases, he thought that the decision was clear and could be made on proper grounds but realized only later that evidence was actually missing. The observation that finishing a decision can take anywhere from a few hours to several days shows that although asylum claims are usually said to resemble each other and even though institutional action is limited by legal regulations, there is always room for uncertainties, ambiguities, and maneuvering.

Once the decision notification is finalized, it is sent to the asylum claimant with a registered letter; it is simultaneously published in an electronic folder, which is accessible to all FAO staff. The hard copy of the file is then put on hold until the deadline for a complaint has expired. If there is no complaint during this time, the file is shelved at the FAO and the foreign police are contacted if the decision has

resulted in a deportation. However, if the asylum claimant files a complaint, the files are physically transmitted to the Asylum Court, and the FAO can only access the electronic file via an internal database. Additionally, all documents that are sent to the FAO and relate to the case are then forwarded to the Court.

The remainder of this book will focus on phases three, four and five of the ideal-typical workflow. I will start with an in-depth analysis of the asylum interview, which can be regarded as a magnifying glass of the key issues of the asylum procedure considered in this book.

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Chapter 4
The Asylum Interview as a Magnifying Glass for Key Issues: Conflicting Norms, Power Struggles, and Actors' Strategies

To better understand what exactly is going on in the asylum interview, it is essential to have a feel for the complexity of the legal framework (briefly outlined in Chap. 2) and knowledge of the organizational aims (presented in Chap. 3). The juxtaposition of these different normative frames of reference highlights some structural tensions due to contrasting objectives and logics, which will be explained in greater detail in Part III.

This chapter discusses the asylum interview as the third phase of the ideal-typical workflow. Understanding the interview as a magnifying glass for key issues, the chapter continues with the exploration of the circumstances under which decision makers work, how they deal with these circumstances, and what the consequences of their practices are. The interview, in which the caseworker and claimant meet face to face, represents a cornerstone of the asylum procedure. In contrast to relations between individual actors or between organizations, the relation between an institution and an individual is always asymmetric (Coleman 1982), especially in the context of street-level bureaucracies (Demazière 1996). The individual experiences the state only through officials as intermediaries, particularly through the practical experience and the physical contact in the interview (Dubois 2010). For caseworkers, this is "front line work" (Lipsky 2010). An official describes direct contact with the claimants as being "at the front" (Sabine) – a metaphor that alludes to a battle situation with two sides fighting against each other. In fact, it is a situation in which different logics and worldviews clash and aims and strategies are staged against each other. The analysis of asylum interviews as a bureaucratic encounter (Lipsky 2010) is thus instructive since conflicting norms, power struggles, and actors' strategies characterize the entire procedure, but they become particularly visible in the interview. The analysis of this interaction is particularly relevant in the context of procedural justice, which is

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concerned with interpersonal interaction and the treatment of claimants in legal procedures; this topic is explored in more detail in the concluding chapter.

The interview is a structured interaction with several participants in fixed roles: the official as a state representative, the asylum claimant as an applying individual, and the interpreter as a mediator. In addition to these three actors, who are always part of the interaction, other possible participants are, for example, a legal representative, a trusted person of the claimant, or a police officer. The interviews usually take place in separate interviewing rooms or sometimes in an official's office, for reasons such as a lack of space, and the participants are typically seated around a rectangular table.

As a social interaction, the asylum interview is not only structured but also structuring; it is a formal setting in which the interaction follows a strict question-and-answer scheme. To some extent, it is a situation of forced communication with predefined roles and power relations (Scheffer 2001; Pöllabauer 2005). Similar to a police interrogation, it is inherent in the interaction that the caseworker mainly asks the questions while the claimant is mainly expected to answer them. Although there are standard questions concerning, for example, personal details and reasons for flight, caseworkers also possess some leeway in asking questions. Stephan explains that he is "used to ticking off question after question," but further lines of inquiry can still be followed on the basis of the provided responses. Following structuration theory in the organizational context, every interaction – including the asylum interview – implies (re)production and institutionalization on the side of social structures and socialization and internalization on the side of the individual (Ortmann et al. 2000).

The interview follows a ritualistic order. First, the asylum claimant is brought from the waiting room to the interview room, which is usually a small office. After the greeting, the interview usually starts immediately with a confirmation of personal details. Normally, the caseworker then provides the claimant with some legal information regarding the procedure before beginning the questioning concerning the claimant's reasons for flight as well as her current life in Austria. During the interview, the caseworker types the transcript on a PC while simultaneously formulating questions and often searching for information in the existing paper file or even online. The assistant is not present at the interview. After the interview, the transcript is printed and translated back to the claimant, who then has the opportunity to intervene and correct or clarify misunderstandings – an opportunity that was not often used in the observed interviews. Eventually, the asylum claimant confirms the transcript's correctness by signing every page of the German transcript. Although the asylum interview should ideally be free from interruptions and distractions, some of the observed interviews were interrupted, for example, by phone calls to the interviewer or the interpreter as well as by colleagues of the official opening the door and asking questions.

In the following, two observed asylum interviews (or passages thereof) are examined in detail, taking us closer to answering the main puzzle. The analysis first focuses on the normative character of the interview, structured by legal and administrative norms (as sketched in the preceding chapters). The interviews are deconstructed and reconstructed to explore the structuring role of the law in the interaction. Since situations and roles are negotiated in interactions despite the formalized setting, the social

practices and strategies of the involved actors are analyzed on the basis of observation protocols. Following symbolic interactionism, actors enter situations with certain expectations and define the situation for themselves and the others accordingly. However, the type of meaning these expectations have for the joint action is negotiated in the situation. The way in which actors – asylum claimants, officials and interpreters – through their reciprocal interpretations define themselves, their actions and the objective conditions of these actions is thus analyzed. A section is also dedicated to the role of the interpreters and their active interventions in the interaction. Finally, the importance of the written word in the asylum procedure is explored through the interview transcript and an investigation of its constructed character.

   The two examples were chosen from the total of twelve observed asylum interviews to represent one typical and one atypical interview scene. The aspects that are atypical about the first interview and those that make the second example more typical will be explained. Nonetheless, the observed and analyzed interviews share certain characteristics regarding the content of the communication as well as the particularities of this institutional interaction, the participants' roles and aims.

4.1   An Atypical Interview

This interview with a young asylum claimant from Tunisia took place in the office of the interviewing caseworker. The analysis of the interview is instructive because it allows us to clearly follow and understand the course and structure of an asylum interview, the standard key questions and the official's strategy. It illustrates how the interviewing official determines whether the claimant puts forward reasons, which make him eligible for asylum or subsidiary protection.

   The interview is atypical in that the asylum claimant mentions only financial reasons as reasons for fleeing. This assertion leads to a very clear and structured interview compared to a more "typical" interview, which is often characterized by uncertainty and greater complexity. Another consequence of the assertion is that in contrast to a typical interview, this interview does not focus on credibility. Any reasons for flight a claimant could invoke other than "economic reasons" would lead to an intense test of credibility and plausibility, which would again involve a search for (and construction of) "objective" facts. A bad financial situation seems to be the only reason for flight and is instantly regarded as credible and not further questioned. Facilitating the bureaucrat's work, this development of the interview represents a direct "invitation" to not grant asylum. The interview is also atypical because the caseworker not only informs the claimant of his decision but also explains to him the reasons for that decision in the scope of the interview. In addition, he gives the claimant the opportunity to respond to each of the arguments. This opportunity did not occur in the other observed interviews. The official would sometimes let the claimant know her intended decision, but the reasons for the decision were usually not explained in detail. Here, the caseworker seems to double-check his decision with the claimant to ensure that the case can be written off and an appeal would not hold. At the end of the interview, the caseworker tells me that this case "should actually

have stayed at the IRC" because claimants whose reasons for flight are classified as "economic" are normally not admitted to the procedure and the content-related examination. "Sometimes, something else [other reasons] is added after one to two months, but he stayed with his initial assertion," the official explains. The fact that interviews such as this one are usually not conducted at the FAO but are in the IRC's area of responsibility also confirms the atypicality of the interview at the FAO.

Fragmentary Example of an Atypical Asylum Interview

Official (O): Good morning.
The official asks the interpreter (I) to check the data [name, date of birth, etc.]
…
The official makes an internal call: I'd need a card for my Tunisian.
…
The official introduces everyone (including me) and begins with the legal instruc-
    tions (*Belehrung*), which he says he will go through "point by point."
O: If you leave basic care, you have to register within three days; if you register as
    a homeless person, you have to report to the police station every four days …
    How is that called?...
O: When your application is admitted, you gain the right of residence … There will
    presumably be a content-related examination … there is no rejecting decision, no
    Dublin examination, except if it turns out today …
O: We will examine whether you need protection or not … Presumably, there will
    be no further interview, so please mention everything today …
…
The official brings water for everybody
O: Otherwise I don't have this service.
He makes a joke about serving wine.
O: But today, it [the heat] is inhuman.
[That is why he offers water today.]
…
The claimant says that he wants to obtain some documents and asks whether that
    will be a problem.
O: No, that's the first thing that will help you with the authorities in Austria.
…
O: In case you've had enough of Austria for any reason, there is always the possibil-
    ity of return counseling.
…
O: Please state your assertion as concretely, in as much detail and as true-to-life as
    possible … so that we as non-participants can see the situation through your
    eyes.
[Subsequently, he mentions "credibility"]
…
O: You had an interview at the IRC on 13.7.* Did you tell the truth there?
A/I: Everything is correct; it was back translated.

O: skims the claimant's file.

There was an inquiry asking whether he had already applied for asylum in Italy, but no data appeared

…

O: How did you leave? Illegally, legally? With or without a plan?

A: Illegally.

O: Did you possess a passport?

A: Yes.

O: When was it issued? Or how old were you? That may be easier.

…

The interpreter already knows how the official will continue to question the claimant. He interprets thoroughly.

…

The phone rings: the call is internal and concerns the return ticket (public transport) for the claimant.

…

O: Have you ever been abroad with your passport?

A: Yes.

O: For what reason?

A: For work.

O: What kind of work?

A: In the restaurant.

O: Always in the same restaurant? In which city?

…

O: Do you have relatives here?

A: No.

O: Do you know someone from your home country?

A: No.

O: Do you have a life partnership?

A: No.

O: [not to A]: Is it called that? Life partnership! In my day, that didn't exist; it was marriage or not. [jesting]

I: And in *my* day!

…

O: Do you work in Austria?

A: No.

O: Do you participate in associations?

A: No.

The official asks the claimant about his reasons for flight.

A: I left the country because of poverty.

O: Go on...

A: What more should I say?

O: For example, "I didn't find a job"; something like that is what I'm expecting with this question.

I: Family …

A: When I was eleven years old, my parents divorced.

A: Life is steadily getting more expensive … I thought I'd come to Austria.

O: In order to?

A: Seek asylum, then work and build my family.

O: So, with the anticipated income.

…

O: Anything else?

A: That's all.

O: What was your job in Tunisia?

A: I worked at construction sites, restaurants …

O: So, odd jobs.

The asylum claimant notes that he was supported by his father after the divorce.

…

O: is contemplating

O: On what does your family live currently?

…

O: To go to school and earn the family's income – how was that possible?

A: It didn't go well.

O: So you couldn't manage. Was that the reason why you stopped going to school?

A: Yes.

…

O: What would your life situation be in the case of a return?

A: It will be difficult for me.

O: Aside from the financial situation, would anything else threaten you?

A: There are no other problems.

O: Have you ever had problems with the authorities?

A: No.

O: Were you politically active?

A: No.

O: What is your religion? Part of the Islamic group?

…

O: The decision is made on the basis of your assertions and the situation in the country. I will let you know how we decide. You can respond to every argument.

  – You asserted economic reasons, but no persecution, no Convention reason. Humanely, it is understandable to us all but ….

  – In this argumentation, no fear is identifiable.

  – The economic situation in the home country is not bright, but in comparison to other North African countries, it is the second best; at least, it is not unreasonable.

  – What is also to be noted: the siblings are of an age [17–21] where they can contribute to the family, i.e., you don't have to care for the family by yourself.

…

A: That's right, but they are still studying [school, university].

O: That's understandable, makes sense. But as the head of the family, he has to say that not everyone can study if there is not enough money. In any case, it is not a reason under the asylum procedure. Also, it is not possible to grant subsidiary protection on the basis of this argumentation. The lack of connection to Austria, the existing connection to the home country ….

…

The official therefore decides on expulsion and non-approval of the claim. He tells the claimant that he will either be deported or he can return home on his own.

…

O: Do you want to add anything?

A: I told you the truth.

O: I thank you for that.

…

The interpreter makes the back translation.

At the end, there is a short general instruction.

The official tells the claimant that inquiries by telephone are not possible but that the inspection of files is possible, also in written form.

O: If you don't register anywhere, you have to inform yourself whether there is anything [any document] there [here] for you.

…

The official's cell phone rings twice; once he tells the person that he will call her back, and once he takes the call.

Then, the telephone [landline] rings.

O: What's going on today?

…

The interpreter explains the procedure to the claimant, including that the decision notification will be delivered by mail.

4.1.1 Interview Structure and Content: Implementing Administrative Norms and Human Rights Standards

The interview structure is clearly visible; it is framed by a beginning and an end, and it follows the question-answer scheme quite strictly. The interview begins with an introduction and an instruction. Before starting with the actual interview, the caseworker expresses a general greeting and makes various arrangements. In fact, however, the interview starts with a role transfer since the official asks the interpreter to check the claimant's personal data. Instead of asking the relevant questions himself, the caseworker charges the interpreter, who already seems to be acquainted with this routine, with this task. The caseworker then makes an internal call, asking a colleague to issue a card for the asylum claimant whom he calls "my Tunisian," leaving out the indication "asylum claimant." After having introduced all the participants to

the asylum claimant – including me as the researcher – he begins with the legal instruction, and he provides water for everyone. When providing water, the official makes an interesting remark. Whereas other officials regard it as natural to provide water during the interview, this caseworker explains that he usually does not "provide this service" and that he is only offering water on that day because of the "inhuman" hot weather. This is an irritating remark since there are definitely factors other than the weather that make the asylum procedure inhuman, such as an official's interviewing style or incredibly long waiting times in the procedure.

The omnipresent – but often still invisible – role of the law comes to the fore when the official begins to explain the legal instructions (*Belehrung*), that is, the claimant's rights and duties during the asylum procedure. He does this once at the beginning of the interview and again at the end. The instructions provided during the interview concern not only the interview itself but also the framework conditions of the asylum procedure, particularly the duty of cooperation and the duty of registration. This instruction also has the function of committing the claimant to the "rules of the game" and making him legally responsible for incomplete or incorrect assertions (Scheffer 1998). At the beginning of the interview, the official briefly explains how the procedure and the interview are organized and informs the claimant about the possibility of return counseling in case he wishes to return voluntarily, adding an ironic remark, "in case you've had enough of Austria for any reason." At the end of the interview, the official again addresses the issue of registration and informs the claimant about his right to inspect his file. Both of these instruction blocks, which usually frame the interview, and the questions that the caseworker asks illustrate how the whole interview is structured by administrative provisions and relevant laws.

Concerning content, the overall aim of an asylum interview is the determination of a legal status. The official's task consists of identifying whether the claimant can be granted asylum, subsidiary protection, or neither of the two. If an expulsion is envisaged, the caseworker also has to determine whether it is admissible. The specific questions the official asks indicate which international, legal and human rights standards he is referencing.

As a complement to the formal work instructions guided by administrative as well as human rights laws and other norms, caseworkers have some leeway both in the decision-making process and in conducting the interview. In this interview, the official begins by determining whether an expulsion would be admissible. The caseworker asks the claimant questions regarding his private life and his personal connection to Austria. The caseworker asks about the claimant's family situation, whether he has relatives or a partner in Austria, and whether he is working or participating in any associations. The normative framework of the asylum procedure prescribes that the caseworker asks questions such as these to determine whether the right to respect for private and family life – as defined in article 8 ECHR – might be violated in case of an expulsion. Since the claimant does not mention any private

involvement in Austria, the official infers that an expulsion is admissible, which he proclaims at the end of the interview.

Having addressed this point rather quickly, the caseworker turns next to the question of the claimant's reasons for flight. The official tries to identify whether the claimant can be granted asylum by investigating whether – according to the Geneva Convention – the asserted reasons for flight are due to "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." Since the asylum claimant in this particular interview does not mention any reasons for flight other than his family's financial situation, the official asks additional questions to ensure that there are no other reasons for flight that might be relevant for granting asylum. To exclude possible persecution, the official asks the claimant whether he has had problems with authorities or was politically active and to which religion he belongs. The official thereby receives the claimant's confirmation that he has not been persecuted for political or religious reasons.

By asking the claimant about his life situation if he were to return and by asking whether anything other than the financial situation would threaten him if he returned, the caseworker examines whether *refoulement* (expulsion or deportation) is admissible since the preconditions for granting asylum are not given. The official thus determines whether an expulsion would represent a violation of the right to life (article 2 ECHR) or the right not to be tortured, including inhuman or degrading treatment or punishment (article 3 ECHR). In such cases, the claimant would have to be granted subsidiary protection.

After having asked a series of questions about the claimant's past (reasons for flight), present (situation in Austria) and future (in case of return), the caseworker reaches a decision, which he presents at the end of the interview. He argues that the claimant did not assert any reasons for flight relating to the Geneva Convention, that is, no fear of persecution (referring to asylum). The official further argues that the situation in the claimant's home country is stable enough that a return is acceptable (referring to subsidiary protection) and that the claimant has no private connection to Austria and can thus be expelled. The official informs the claimant that his application has not been approved and that he will be deported if he does not leave the country on his own.

Although the interview itself is atypical, the basic structure of an asylum interview can be clearly traced. This structure allows us to observe the types of questions officials ask, the reasons they are asked and what their underlying intentions are. Key human rights standards are implemented in the asylum interview without explicit mention. Knowledge of the legal normative framework enables us to see the structure behind the content of the asylum interview; human rights are only referenced indirectly. However, the official acknowledges that irrespective of the legal situation, from a human perspective, leaving one's country for "economic reasons" is understandable, but the legal asylum framework does not address this problem.

4.1.2   Playing Roles in a Clash of Logics: Actors' Intentions and Expectations

This clash of logics between organizational NPM-oriented goals and the individual life world and human rights-oriented aim of the claimant characterizes the entire asylum procedure and becomes visible in both the atypical and the more typical interviews.

In this interview, the claimant formulates his aims very clearly: "seek asylum, then work and build my family." During the interview, he also seems to have another intention, which he makes explicit toward the end: to be honest. At the end of the interview, the claimant – who had been answering the official's questions mostly monosyllabically – emphasizes vis-à-vis the caseworker that he told the truth. In return, the official expresses his gratitude, which may be serious in the sense that the claimant's honesty spares him additional work and effort he might otherwise have to invest. In this case, it is another quickly concluded case, an additional "number" for the official and the institution. Thinking in managerial terms, the official explains that although the case should have stayed with the IRC, it is not bad for the FAO to "have some [additional] visible output." This remark makes the different intentions of the participating actors very clear. Whereas the asylum claimant aims to secure his personal future, the official focuses, at least to some degree, on benefits to the organization.

In the second, more typical interview (see following excerpt), this clash of logics is also evident. The fact that the claimant, who was given a choice in the interview, decided to restart the procedure from scratch is not appreciated by the official. She had hoped that the claimant would decide for the less cumbersome option, subsidiary protection instead of asylum. Several times during the interview, she indicates that the claimant's decision means more work for her. For example, she says to herself that it would have been better to have left the claimant or the case to a colleague, and as quoted in the excerpt, she refers to the caseworker who made the first, overruled decision: "What do you think, how much work I have because of this official!" While the official complains about the additional work she now has because one of her colleagues did not act correctly, the claimant regretfully notes that he "lost six years" because of this caseworker and because he did not get into "this wave," referring to a period when almost all refugees from Chechnya were granted asylum in Austria. Here, the actors' differing aims and expectations as well as the competing logics of administrative norms and human rights again become visible. The pressure, as well as perhaps the desire to settle cases quickly, is omnipresent. Therefore, the official suggests granting the claimant and his family subsidiary protection and leaving the final decision to the court, assuming that the claimant would file a complaint. However, her intentions collide with the claimant's interest in starting a new asylum procedure and never returning to Chechnya.

The way in which actors deal with this clash of logics when interacting in an asylum interview can partly be understood from the perspective of role theory. This theory suggests that being able to manage interactions in which mutual interpretations

of the situation and of the other's actions are performed requires the involved actors to have certain capabilities: role distance, identity representation, empathy, and ambiguity tolerance. Role distance refers to the ability to act flexibly regarding expectations of others, whereas identity representation implies being able to symbolically demonstrate one's own expectations and needs. Empathy allows actors to understand and consider others' thoughts and emotions. Finally, ambiguity tolerance is necessary to identify and cope with role conflicts as well as with unclear or contradictory situations. We have seen how these abilities can play a role for actors involved in an asylum interview. Focusing on certain expectations and ignoring others, for example, is another important ability in conducting an interview. Due to the framework conditions of the bureaucratic organization, officials are likely to place more emphasis on the expectations of a superior than on those of the client. Although the official says that he needs to be able to see the situation through the claimant's eyes, this should not be mistaken for empathy since the caseworker only aims for as much detail as possible to (re)construct the "case." However, empathy and ambiguity tolerance are called for in the following example interview in which the claimant would like to ask the official something "from human to human" rather than from individual to government agent. Since asylum claimants' emotional expressions are often considered stagings or borrowed stories, this type of action by a claimant, provoking a role conflict for the official, can be regarded as an attempt to redefine the situation (Rousseau and Foxen 2006). Using this phrase, the claimant speaks directly to the clash of logics and thereby dismantles it.

In examining actors' intentions and expectations concerning the course of the interview, the atypical example includes several instructive situations. First, before the asylum claimant has a chance to speak, the official instructs him not only on legal issues but also on the course of the interview. He tries to prepare the claimant and to inform him about his expectations regarding the interview. The caseworker tells the claimant how he wants him to act in the interview by prescribing *how* the claimant is supposed to tell his "story:" as concrete, detailed and true-to-life as possible. As an explanation for why this approach is necessary, he positions himself as an unknowing non-participant who needs to learn every detail in order to understand and be able to relate to what the claimant asserts. Although the caseworker tells the claimant that he needs to see the situation through the claimant's eyes to understand, whether the caseworker really can and wants to empathize with the claimant to this extent might be questioned. In this particular interview, however, it turns out not to be necessary since the claimant does not mention any "asylum relevant" reasons for flight. Additionally, the official does not plan another interview with the claimant, as he mentions at the beginning of the interview; he uses this as an argument for the claimant to mention everything that could be of importance right away.

Although the official already has certain fixed ideas regarding the interview, there are still some instances that illustrate his leeway; these are instances in which the caseworker still has to decide during the interview. When the official contemplates or skims the file, it implies that he is thinking about the "case" and which information he needs to be able to solve it. Presumably, the caseworker considers different possibilities and reflects on the "direction" in which he wants the interview

to go and which questions to ask. When the asylum claimant does not understand the aim of the official's request to "go on" about his reasons for flight, the interviewer explains his expectation: "For example, 'I didn't find a job,' something like this I'm expecting with this question."

In another instance, the official reformulates his question because he knows from experience that (also) claimants sometimes have difficulties remembering exact dates or years. Therefore, he asks the claimant how old he was when his passport was issued instead of the issuing date, assuming that this would be easier to remember for the claimant. Since dates of certain events in the life of the claimant are often given importance in the procedure, caseworkers have expectations regarding claimants' knowledge of such dates. As one of the superiors explains, "Some colleagues know the exact date of their school leaving examination, driver's license and so on, and they also expect that from the asylum applicants," the concludes. Measurement using personal standards represents a common practice; the caseworker explains that he does not require this specific knowledge from claimants because he himself is "not good at it either." This statement highlights the common practice of officials to measure using their own standards, usually based on Western socialization. Later in the interview, the caseworker utters another expectation, this time relating to a general attitude. When the claimant argues that his siblings are not able to financially contribute to the family because they are studying, the official imposes his opinion that he would expect the claimant, as the head of family, to exercise authority, determining that not every child can study if the family does not have enough money.

Asking caseworkers about their expectations regarding asylum claimants reveals some more general attitudes. Officials tend to emphasize asylum claimants' duty to cooperate and their obligation "to make an effort" (Veronika), as one official says, asserting that she also confronts claimants with these expectations in the interview. She expects asylum claimants to provide "sensible answers" and adds that she encounters claimants who are not willing to provide the details she is requesting. The caseworker says she can even "freak out" if claimants do not cooperate during the interview. Gabi also finds it "the most terrible thing when you ask a question, and he starts with Adam and Eve and talks about something completely different; but these questions are banal." Like her colleague, this official says that after a few questions, "you throw away your nerves" if the person starts talking about her reasons for flight when she was only asked a yes-or-no question.

Whereas Roland insists that an asylum claimant has to make an effort, another official claims that he does not care about the claimant's behavior. He states that a claimant "can lie to me, can do a headstand, that all doesn't bother me … he can do what he wants." While first claiming that he cannot be bothered by a person who lies or acts conspicuously, the caseworker then describes his behavior as being similar to his colleagues. If the claimant does not properly answer his question, "that makes me [the official] crazy." Making an absurd comparison, he says, "The only thing that I don't like is if I ask him what color this coffee mug is and he tells me what he had for dinner last night." Veronika explains that she will act if the asylum claimant does not show the expected effort, "then I do often ask more rigorously whether he is

aware of where he is, what this place is actually about and that he has a duty to cooperate and that he does have to make an effort." If the claimant's performance does not meet the official's expectations, she explicitly demonstrates her authority and instructs the claimant how to behave. This bureaucratic practice of "teaching the client role" (Lipsky 2010) affirms the power relations in this situation.

In the interview situation, caseworkers have clear expectations regarding claimants' behavior and answers. Claimants are expected to demonstrate that they take the procedure seriously and "make an effort" in advancing the procedure. Their answers must correspond to the question, should be as brief as possible but as detailed as necessary, and should follow the chronology predefined by the official. Again, these requirements clearly mirror the agency's efficiency and efficacy-driven approach and highlight that the interview is not to be understood as a "quasi-normal" conversation; instead, the interview follows a strict question-answer structure with a clear power imbalance.

4.2   Situations in a More "Typical" Interview

This interview is more typical than the previous example in the sense that it is much more characterized by ambiguity and uncertainties. There is more negotiation and a livelier exchange between the participants than in the previous interview, which was very clear and structured. The selected passages of the chosen interview continue to illustrate the main issues of the book: power relations, intentions, aims and expectations, processes of communication and understanding, the importance of legal and administrative norms (and a clash of logics), the "human aspect" and intersubjective comprehensibility, and the issue of fact-finding. Since these are recurring themes, similar examples can be found in other observed interviews.

Some context might help to understand the following interview situation. The asylum claimant is a man from Chechnya who has been in Austria for several years and who has a family there with his Chechen wife (who is then also interviewed). This is not his first interview; rather, the first decision of the FAO, which was made several years ago, has been overruled by the Asylum Court and the case thus must be reopened by the FAO. An additional note concerns the claimant's action in this example. Not all claimants play such an active role in the interaction as the one in this interview; their activity in this situation is likely to depend on different factors. These factors can include, for example, the interviewing style of the official, the atmosphere during the interview, and the claimant's personality and previous experiences.

Fragmentary Example of a More Typical Asylum Interview

…

O: Subsidiary protection would always have to be prolonged. After five years, one can apply for a residence permit and then one can strive for citizenship … The appeal, of course, remains as legal remedy.

…

I: I think now he's got it.

…

O: Is the child still in medical treatment?

A: Yes.

O: Then the reasons for subsidiary protection are still valid … He shall not get excited. You don't have to go back. I think he doesn't get it!

…

O: The procedures of the brothers are irrelevant to your procedure!

…

O: I'm nowhere near finished. I think he doesn't want to get it. What's the problem with the protection from deportation? Another would be glad! He puffs himself up. I'll tell you something: I will give the whole family subsidiary protection and you can file a complaint. The Asylum Court will then decide whether subsidiary protection is legally correct or if you're entitled to asylum.

…

O: I'm telling you once again: You will not be deported!

A: You don't have to tell me that I won't be deported. I guarantee it to myself that I don't have to return anymore. At the most as a corpse.

O: But as one could see some time ago, you're not safe in Austria either. [A man from Chechnya was murdered.]

A: One still can't compare that. I want to ask you something from human to human: Have you ever lived through a war?

O: I'd be terribly afraid of a war. But I've also been asked by a refugee counselor whether I've ever been raped.

…

A: If there wasn't the child with health problems, I wouldn't get any protection?

O: Well, after all these years … *I* do ask how the integration is and so on, but ….

A: A friend from Switzerland gave this letter and these pictures to me [as a proof of the friendship].

O: So, you do socialize and learn German. … I will copy the letter and the pictures.

…

A: If I appeal, will I keep the subsidiary protection?

O: You're not supposed to appeal against subsidiary protection but against decision point 3! We will have a look at that. I wanted to please you.

A: I don't understand that because I am politically persecuted! And I get subsidiary protection just because of my child?

O: The last word has not yet been spoken.

A: That's as if I have to let myself be killed before my wife can apply for asylum.

…

A: Because of this official [who decided in the first place] I have now lost six years! Because I didn't get into this "wave."

O: What do you think—how much work I have because of this official!

…

A: Chechens are often not treated like humans. Actually, they would all have to see
    a psychologist. [The claimant reports from the war.] One doesn't see the real war
    on TV. You can't even know that!
O: I hear this misery every day. I also have a family at home. We who are not on the
    spot also have to cope with this psychologically. We don't have psychological
    care; we have to pay the psychologist ourselves.
…
O: If something is wrong, you have to announce it immediately, not just 6 years
    later. I will see what I can do for you. The worst thing that can happen to you –
    one shouldn't say that – is subsidiary protection. Maybe I will have to discuss
    this with the boss.

4.2.1   Power Relations in the Interaction

While both interviews reveal details about the asymmetric power relations between
the official, the asylum claimant and the interpreter, the second interview more
clearly reveals the contested character of these relations and the negotiation process
involved in defining them. The power relations are primarily defined by the partici-
pants' roles, which are accompanied by their level of knowledge relevant to the
asylum procedure, thereby reinforcing the a priori asymmetry. The caseworker is a
veteran who knows the legal and administrative details of the procedure from every-
day work, whereas the claimant lacks most of this knowledge; this difference main-
tains the inequality in their already asymmetric relationship (Dubois 2010).
Nonetheless, the claimant also has an understanding of the asylum procedure
because he has been in the procedure for several years and knows other people who
have gone through the procedure. In the interview, he refers to other peoples' pro-
cedures (first his brother's and later those of Chechens in general), and he is aware
of the fact that written evidence might substantiate his claim. To prove his integra-
tion, the claimant produces a letter by a friend as well as pictures, and he shows the
official a document that proves his child's illness.

   In the interview, the official demonstrates her room for maneuver and legal dis-
cretionary power several times. First, she makes statements implying that the deci-
sion is not yet final and that there is always room for maneuver: "We will have a
look at that" and "The last word is not yet spoken." She also mentions a few times
that she is trying to accommodate the claimant ("I wanted to please you"), implying
that another caseworker might not act in the same way. At one point, she says explic-
itly that another caseworker might decide differently and not in the claimant's favor.
She tells the interpreter, "For example, if he comes to another official, he takes away
article 15 for the girl [the claimant's daughter]. I just want to show him that I want
to help him!" Additionally, when she notes, "*I* do ask how the integration is and so
on," she implies that it is within her discretion to ask certain questions during the
interview and that other caseworkers do not necessarily do so.

At the beginning of the interview (not part of the excerpt), the official tells the claimant that there are two ways to deal with the new situation, that is, the reopened case. She offers him different suggestions – either subsidiary protection for the whole family or beginning the procedure anew – and the claimant has to choose one of these options for the procedure. At the same time, addressing the claimant through the interpreter (instead of the claimant directly), she notes, "He doesn't have to decide" and "I don't put him under pressure." However, she clearly does push the claimant to a decision, placing him under pressure and delegating responsibility to the claimant. He decides to claim asylum instead of acquiescing to subsidiary protection. Although the official maintains several times that she wants to help the claimant and accommodate him, the claimant seems not to want this kind of help and is not convinced that her help is good for him and his family. The caseworker acts surprised and almost annoyed that the claimant does not accept her good intentions. She compares him with other asylum claimants who, according to her, would appreciate her approach, "another [claimant] would be glad!" Instead, "he puffs himself up," as she says, indirectly positioning the claimant as a strong participant in the interaction who does not acquiesce.

At the end of the interview, the official leaves the outcome of the procedure open, explaining to claimant what could happen in the worst case. However, the fact that the official's discretionary power is limited also comes to the fore when she mentions that she might have to discuss her decision with her superior. Hence, the final decision is not hers alone because the superior might have a different opinion on the case. Later in the interview, the claimant places himself in a strong position, saying that regardless of the official's decision, he will not go back to Chechnya – "at the most, as a corpse." By participating in the negotiation of power, he shows the caseworker that her power will not reach as far as she might think. Despite the asymmetric relationship, "strategies are also at work on the weaker end" (Dubois 2010:138).

In the interview situation, power can be related to roles as well as to the provision of information, such as when the official explains the legal framework to the claimant. Prottas (1979) distinguishes the "downward flow" of information from the "upward flow," which the actors can both control. Street-level bureaucrats control the "downward flow" in positive and negative ways: through suppressing information and by distributing either supportive or inadequate information. By controlling the downward flow of information, officials affect the content of the "upward flow" from the client and thereby gain "de facto control over the categorization of clients while appearing to adhere to the agency's formal rules" (Prottas 1979:137). An official's power is thus based on her simultaneous possession of information about the relevant rules and the client. However, "clients who share this simultaneity share that power ... because they can alter information about themselves in light of what they know about the agency's categories" (ibid:141).

Claimants can thus control the "upward flow" of information. The claimants' actions differ widely in the two analyzed interviews; whereas one is more reticent, the other is rather keen to debate. No interview can be said to be more typical than the other; rather, different contexts, situations and personalities produce different

interactions. Thus, the way the interview unfolds also depends on the interviewing officials' practices and the extent to which they enable or restrict exchange and debate. Conversely, Prottas (1979) notes, the personality and knowledge of clients affects the work of street-level bureaucrats. Knowledgeable clients can be perceived as threats: "A client who is familiar with the rules and categories of an agency is in a position to insist on 'correct,' hence time-consuming, treatment" (Prottas 1979:115). In this interview, we see that the claimant insists on proper treatment; he is knowledgeable, partly because he has previously experienced improper treatment through the authority. Such active clients may represent a threat to officials' autonomy by potentially influencing the official's ordering of priorities. However, the official in this case deliberately passed responsibility to the claimant. Nevertheless, she remained the powerful actor in the situation by pushing him into a specific direction (that of subsidiary protection).

4.2.2 Communicating and Understanding: Handling Conflicting Logics

The above analysis highlighted the structuring force of the legal framework and its administrative implementation in the interaction between asylum claimant and official through methods such as a standardizing "catalog of questions" (a set of basic questions). The second interview shows that a translation process is necessary to translate problems experienced in the life world into the legal and administrative world and, conversely, to translate legal and administrative concepts into terms and concepts relevant to the claimant's life world. The example reveals how the complexity and technical nature of the procedure reinforce the opposition "between the ordinary man and the expert" (Dubois 2010:54). There is a lack of mutual understanding since the two parties have different knowledge and different frames of reference. In addition, communication is difficult because they do not speak the same language in two ways; they need an interpreter in order to communicate, and the caseworker speaks a bureaucratic jargon employing administrative and legal terms, which the claimant is not able to classify. At one point, for example, the official describes subsidiary protection as "small asylum" – a commonly used description at the FAO – aiming to relate to the claimant's reference system. Habermas (1996:150) understands law as the medium for transforming communicative power into administrative power. Administrative power must thus be linked to communicative power if law is to be a normative source of legitimation and not just a means of organizing domination.

In the observed interview, the asylum claimant expresses a desire to understand the (legal) system and the logic governing the asylum procedure. He explicitly mentions this learning process, referring to the fact that he did not know his rights and was not able to assess the consequences of his action at the start of the asylum procedure. Referring to his first asylum interview, he says, "At that time I didn't know

that one can decline the official. Otherwise, I'd have done that. And that you can change the interpreter. I felt humiliated. I didn't know what the consequences would be when I said something" (o.i. 6, not part of the excerpt).[1] His legal knowledge has developed throughout the procedure, and now, several years later, he knows his rights in the asylum procedure. Nonetheless, there is still much he does not understand about how the asylum procedure is executed. In particular, the official's (legal-administrative) way of thinking and acting does not correspond to the claimant's understanding of protection. He makes it clear that the logic of the law as applied by the authority is not compatible with his own understanding of his situation. He claims asylum because he is politically persecuted but would receive subsidiary protection because of his daughter's health problems. "That's like if I have to let myself be killed before my wife can apply for asylum," he comments on the logic of this asylum system.

Despite his experience, the claimant does not seem very familiar with the legal framework; however, he asks questions that imply that he is eager to understand the system. Throughout the interview, the caseworker (as well as the interpreter) makes an effort to explain different things to the asylum claimant, mostly various details of Austrian asylum law. The official explains, for example, what is implied if he is granted subsidiary protection and that a reason for protection can lose its "validity." When the claimant confirms that his child is still in medical treatment, the caseworker concludes that "the reasons for subsidiary protection are still valid." While she first only mentions that there is the possibility of appealing, she later takes it for granted that the claimant will file a complaint with the Asylum Court. The official then tells him what exactly he is supposed to appeal against, namely, a certain provision of the decision. She also mentions that there are difference legal consequences depending on the point in the procedure when a child is born.

However, the official's attempts to explain often fail in this interview. At several points, both the official and the interpreter state that the claimant does not understand what the caseworker is trying to explain to him. "I think he doesn't get it!" the official says; later, the interpreter states, "I think now he's got it." According to the official, the claimant does not understand that she wants to help him; however, she does not understand why the claimant does not appreciate her good will. While the caseworker first only states that the claimant does not understand what she is trying to explain, she later implies a lack of willingness. "I think he doesn't want to get it," she concludes. At the beginning of the interview, when the claimant expresses that he wants the procedure to start over, the official also makes a casual remark about the claimant being stubborn. "I'm telling you once again: you will not be deported!" With this sentence, the caseworker again tries to make the claimant, who is afraid of more malice from the system, understand the logics of the legal procedure. The examples demonstrate that explaining and understanding the legal and administrative norms play an important role in this interview. Since the claimant wants to

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[1] O.i. stands for observed (asylum) interview.

understand the system he is a part of as an asylum claimant, the official and the interpreter try to explain these norms. These attempts at clarification pave the claimant's way toward becoming an informed participant in the procedure, but even his knowledge of the rules and regulations will not make the claimant and the official communication partners who are on equal footing. Dubois's (2010) findings in the French welfare bureaucracy also illustrate that explanations are usually necessary but are often not accessible to clients. Few claimants understand the logic of the procedure, which includes not only knowing their rights but also knowing what exactly the official implicitly wants to know.

Another aspect emphasizes the inequality of the interaction partners and the challenges of mutual understanding. In many of the observed interviews, there were situations in which an asylum claimant appealed to the official's ability and willingness to understand and take her situation and her experiences seriously. The example of the above interview excerpt directly addresses this issue. The claimant wants to ask the caseworker something "from human to human." Instead of addressing the official in her role as an organ of the authority, the claimant relates to a human, universal component of the interaction, asking the official a personal question. The claimant asks the caseworker whether she has ever personally experienced a war, thereby inverting, for a moment, the strict, formal question-answer scheme. The official accepts the claimant's unusual attempt to start a "normal" conversation by indirectly answering the claimant's question, "I'd be terribly afraid of a war."

The claimant's question highlights the importance of intersubjectivity in the asylum interview. He reaches the conclusion that the official cannot understand his situation because she only knows war from TV: "You can't even know that!" However, the official counters that they do share something: they both have a family, and they have both experienced psychologically difficult situations (without explaining what exactly her experience refers to). Thus, she tries to clarify that there is a certain foundation that enables her to understand his situation. The caseworker also notes that it is not necessary to have lived the same experience to be able to show understanding for someone else's situation. She recalls an interview situation in which she was asked by a refugee counselor whether she had ever been raped. This (rhetorical) question implies that, according to the counselor, the official did not show the necessary understanding for the asylum claimant who had been raped. However, the official found the counselor's comparison inappropriate. Intersubjectivity, which enables access to shared knowledge and practices and makes comparisons of different individuals' experiences possible, is key for successful communication (Habermas 1992; Scheff 2006) However, ensuring intersubjectivity can be problematic when members of different social groups (or cultures) have different background experiences, leading them to ascribe different meanings to certain phenomena. These differing perspectives are thus another factor explaining why communication and understanding can be difficult in the asylum interview.

4.3   Working with Interpreters: Observations and Officials' Perceptions

One issue that has not yet been considered in detail in the analysis is the crucial role of interpreters in the asylum interview, which has been receiving increasing attention from scholars of diverse disciplines in recent decades (Rycroft 2005; Gibb and Good 2014). Without an interpreter, most asylum interviews could not take place; it is particularly the interpreter's task to ensure that both parties clearly understand each other. In the following, I will first explore caseworkers' perceptions of and relations to the interpreters. I will then analyze interpreters' behavior with regard to issues of un/professionalism in the asylum interview. This chapter continues to explore the conditions under which officials work, how they handle these conditions and what the consequences of their action are. One key finding that recurs throughout the book is that to some degree, caseworkers develop individual strategies of dealing with the circumstances they find in everyday work. These strategies include how they deal or cooperate with interpreters in the asylum interview. In addition, the analysis shows how interpreters, due to their key role in managing the interaction situation, are involved in the abovementioned power struggles.

How do public officials perceive and relate to interpreters in the context of the asylum procedure? Interpreters are not members of the government institution; they are usually commissioned freelance workers. The fact that the caseworkers themselves are the ones who commission the interpreters illustrates that decision makers have not only discretionary power in a legal sense but also room for maneuver with regard to social practices more generally. Although they are supposed to vary the interpreters they commission (possibly to prevent a strong collaboration effect), Sabine, one of the officials, explains that meeting this requirement is unrealistic or unworkable. Classifying the instruction as "ridiculous," she says, "That's just difficult, right, because if you now work well together with one [interpreter], are satisfied with him, he knows how you work, I have the feeling he's neutral, why should I then appoint another one?" Based on her experience – good and bad – with various interpreters, she reaches the conclusion that it is more useful to reappoint an interpreter with whom she has good experience instead of appointing a new interpreter whom she does not know. The example shows that work instructions, just as any other norms, are subject to interpretation, are not unalterable and may thus produce diverging social practices. The commissioning of interpreters is only one area in which caseworkers' individual approaches, attitudes and strategies – including the circumvention or expansion of norms – in dealing with asylum claims become visible. The above quotation identifies some key issues in the relation between the official and the interpreter, such as working well together, being satisfied, and being neutral, which will be discussed in the following.

One main issue concerning the cooperation between officials and interpreters that emerged from the interviews with officials is the quality of interpreters' work and hence their degree of professionalism and their capability of doing a good job. Because court-approved interpreters are only available for certain languages,

uncertified interpreters must be commissioned for other languages. Although they are not court approved, the latter may still possess a university degree or other training in interpreting. Another aspect to be considered is the fact that for some languages, there is a large pool of (trained and untrained) interpreters from which to choose, whereas for less common languages, it can often be difficult to find an "appropriate" interpreter, as caseworkers explain. Hence, there is not only an official, publicly available list of certified interpreters but also an internal list produced by the institution including the other uncertified available interpreters, which illustrates how formal and informal norms coexist and mutually complement each other in the FAO's institutional life.

As some caseworkers note, uncertified or untrained interpreters can have particular difficulties with the interpreting situation and can create problems for other participants in the communication situation due to their lack of specific competences. Some interpreters are simply "stopgap solutions who you don't take [commission] anymore," Gabi, an official, explains. However, highlighting that often there is no viable alternative when commissioning an interpreter, she adds that "for some countries [that is, languages], there are no good interpreters, but you still have to turn to them time and again."[2] Uncertified interpreters can turn out to be stopgap solutions, for example, if they do not speak German well. This solution is regarded as problematic "because you don't know, does he now translate it correctly? Or also when writing it down, you have to turn the sentence around three times, and then for sure, it's not as the asylum claimant said it," the caseworker explains. It is evident that the consequences of officials having to "translate her [the interpreter's] German into my German," as another official puts it, can be profound. The caseworker Gabi remembers a "catastrophic" interview "with a desperate asylum claimant, all in tears, and an interpreter, in quotation marks, who doesn't speak German, who can't express herself." In these crucial communication situations in which decisions are made about the futures of persons who are potentially in danger, it is clear that commissioning unqualified interpreters can have dreadful consequences. If the interpreter does not possess even the most basic interpreting skills, let alone any training, the communication between two parties who do not understand each other is bound to fail.

Another issue relevant to the cooperation between an official and an interpreter is the relation between the interpreter and the asylum claimant. Bias on the side of the interpreter is perceived as a problem by caseworkers since it deviates from the idea of the neutral interpreter. Officials tend to believe that a good interpreter is neutral and that a bad interpreter is prejudiced either for or against the asylum claimant. This standpoint can also be found in the literature on community interpreting (Gile 2009). Especially when recognized refugees, or, as officials tend to refer to them, "former asylum claimants," are commissioned for interpreting – which is often the case for languages with no certified interpreters available – "you don't know on which side they are," Veronika, an official, notes. Although case-

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[2] The quotation also highlights the problem that countries tend to be equated with one specific language, indicating a certain (deliberate) ignorance of complex realities such as language varieties (Angermeyer 2013; Maryns 2015).

workers are aware that this can be a problem, there is often no alternative. Interpreters taking sides is often said to be related to ethnic conflicts; some officials mention that it can be particularly problematic when the claimant and the interpreter belong to conflicting ethnic groups. By contrast, when the claimant and interpreter share experiences from the same country of origin, officials find that asylum claimants hope to get support from the interpreters, especially if the latter have also been asylum claimants before.

Cooperation between a caseworker and an interpreter can be understood as a game of power in which the interpreter possesses useful resources. The idea and image of the neutral interpreter is compromised by the fact that some interpreters seem to act as the officials' colleague instead of an independent third party. The claimant is generally not involved in the decision regarding which interpreter is commissioned (except concerning the interpreter's gender) and the official will usually choose an interpreter with whom she knows that she can "work well together" (Gabi). Ideally, Gabi understands her relation to the interpreter as a good team, which implies that they each know what they can expect from the other person. Caseworkers typically recommission interpreters with whose services they are satisfied instead of risking a debacle with an unknown interpreter (this commissioning process can also be observed with regard to experts). However, if an official and an interpreter work closely together, this image is also conveyed to the asylum claimant, who may consequently have less trust in the interpreter than if she acted as an independent third party. This impression is reinforced by the fact that in the interview, the interpreter often sits on the side of the caseworker although, ideally, for exactly that reason, the claimant and the official should sit opposite each other with the interpreter between them in a triangle (UNHCR Österreich 2015). This practice facilitates cooperation between the official and the interpreter, particularly with regard to the production of the interview transcript; sitting next to the caseworker makes it easier for the interpreter to intervene when the official makes a mistake or misunderstands something. However, this seating pattern is bound to imply partiality on the part of the interpreter rather than neutrality. The claimant may easily gain the impression that the interpreter is not independent but belongs to the institution. The question of the interpreter's neutrality or bias arises since the interpreter might not only be seen as a member of the institution but might also act as one, especially if she is not professionally trained.

Earlier studies have shown that cooperation between officials and interpreters often includes more than just a translation service (Angelelli 2004; Llewellyn-Jones and Lee 2014; Gill et al. 2016). Roland, for example, first argues that interpreters "are there to translate and nothing else;" however, he later adds that in reality, he will also consult the interpreter for expertise, especially when countries of origin are concerned "where [he is] not really sure." According to the official, he sometimes refers to the interpreter's knowledge to check whether the information given by the claimant is "true" or credible. Although interpreters' knowledge is not systematically consulted, the information they provide can influence the assessment of an asylum claim. Even if the influence might be minor, it illustrates that an interpreter's power surpasses language mediation. Due to their specific knowledge, interpreters

can represent a valuable resource for caseworkers and thus act as important partners. Since decision makers in the asylum procedure largely depend on information from "outside" the institution (such as expert opinions), interpreters represent one such resource and support for the assessment. Interpreters often have personal experience in the region in question and are consequently perceived as knowledgeable concerning the local circumstances. As Sabine notes, "Some things you don't think of as an official because you're not from that cultural area … sometimes there have been really good ideas or hints that I'd never have thought of. I just think in a Western way and how it is here." Because of their knowledge, interpreters can, for example, offer caseworkers new perspectives, often explaining differences from Europe, as the following passage from an observed interview illustrates.

Official: Street names? House numbers? Do they exist there?
Interpreter: They don't exist.

Sabine is aware of her own measures and standards and therefore sometimes takes the opportunity to ask the interpreter for her judgment, expressing a certain degree of trust in the interpreter's expertise. However, the caseworker explains that she does not trust every interpreter: "Someday, you have a feeling for which interpreter you can take seriously and you can trust and which you cannot. Of course, there are some [interpreters] I wouldn't ask because I know what they would say," she adds. Her conscious decision to ask or not to ask an interpreter for background information thus relies on a "feeling" that she developed through experience. This finding also illustrates the significance of implicit, practical knowledge in the asylum administration.

To communicate with the claimant, the caseworker depends on the interpreter; the interpreter is also powerful because of her expert knowledge. Officials often have to make an effort not to lose control of the situation. Veronika, for example, notes that even if she asks the interpreter for information, she still has the power to decide how to use this information: "the decision is ultimately mine." At the same time, the interpreter has the power to decide which information she wants to provide. Roland mentions an interview in which the asylum claimants' children started to cry. After the interview, the interpreter explained that the mother had instructed the children to cry. To some extent, the interpreter is thus always one step ahead; this is part of her powerful position in relation to the other participants. The interview situations analyzed in the following will illustrate these processes in more detail.

4.3.1   Active Interventions in the Interaction

Just as the structure and the content of the interview represent constant elements of every asylum interview, the interaction among the involved actors also reveals recurring patterns of action strategies. The two sample interviews along with the findings discussed below show that interpreters do not "only" translate what other interaction participants say but often act in a proactive way. How interpreters act is

related both to their experience in interpreting asylum interviews and to their professionalism.

In the first (atypical) interview situation, the interpreter seems to be acquainted with the interview procedure. He seems to anticipate how the caseworker will proceed and which questions he will ask, and the interpreter takes the official's task of checking the claimant's personal details. This familiarity implies that the interpreter is experienced at interpreting in asylum interviews. The interpreter and the official may have already worked together and know each other since the interpreter seems to be familiar with the official's approach. The relation between the two seems relaxed when they joke about their age and the changing conventions of marriage. Situations such as this, in which the claimant is excluded from conversations between the official and the interpreter, can regularly be observed in other interviews. Interpreters often perform additional tasks besides interpreting the involved actors' utterances. In this interview, the interpreter supports the communication by providing a stimulus when the claimant does not know what to say. When the claimant asks, "What more should I say?," the interpreter gives him a hint with the key word "family," implying that he might talk about his family situation. At the end of the interview, the interpreter also provides the claimant with additional information regarding the procedure, such as that he will receive the decision notification by mail.

The following scenes from observed asylum interviews illustrate how interpreters actively intervene and structure the interaction, thereby taking control of the situation, at least for an instant. Three main aspects will be discussed: (i) situations in which the interpreter aims at managing and clarifying the communication, (ii), situations in which the interpreter acts as an assistant to the official, and (iii), situations in which the interpreter does not seem to take her job seriously. The first part focuses on situations in which the interpreter exhibits professional behavior, whereas the remaining two sections consider problematic situations in which the interpreter acts unprofessionally. Such types of unprofessional behavior usually affect the power relation to the detriment of the claimant.

(i) *Professional attitudes: Managing the communication situation*

There are situations in which the interpreter feels the urge to clarify the communication situation because something is misunderstood or unclear. In one situation, for instance, during the back-translation of the interview transcript at the end of the interview, the interpreter calls the official's attention to a mistake. "I think we didn't ask this either," the interpreter says to the official, referring to a text passage in the transcript that was not part of the actual interview (ob.0401). The fact the interpreter uses the pronoun "we" instead of "you" could be interpreted as her working together with the caseworker as a team. However, technically speaking, they both ask a question if the official asks it since the interpreter asks the same question in a different language. The interpreter's statement illustrates that she verifies that the interview transcript accurately reproduces the content of the interview and that nothing has been added or omitted. Most importantly, the statement implies that the official reused a template from a previous interview and forgot to delete this passage (and another one) from the text document when transcribing the interview. On the one

hand, it is understandable that a caseworker may be overburdened by simultane-
ously strategizing, asking questions, receiving answers and recording both during
the interview (since there is no extra typist) and thus overlook something. On the
other hand, the inattentive use of templates can be problematic and have serious
consequences for the asylum claimant and her application if mistakes remain
unidentified. The interpreter's service to the official when calling attention to typing
errors in the transcript is usually less decisive but still important (ob.0422).

   In another situation, the interpreter feels the urge to untangle the communication
and prevent any misunderstanding. In the following example from an observed
interview, the interpreter is unable to follow the asylum claimant and keeps asking
the claimant for clarification. This is what happens:

Interpreter to claimant: I don't know the story, so tell me in a way that I understand
   it.
Interpreter to official: I can only translate something when I understand him; other-
   wise, you'll be confused too.
Official: Please just translate anyway.
Interpreter: Okay, I'll tell you what he says, but it won't make any sense. (o.i.3)

   In this situation, the interpreter does not understand the meaning of claimant's
statement; the interpreter therefore draws the claimant's attention to the fact that he
does not know the background of the claimant's story. The interpreter obviously
thinks that he needs additional details to be able to make a sound translation. He
also immediately informs the official about the reasons for his intervention and
thereby demonstrates awareness that he is acting beyond his official mandate.
Anticipating a misunderstanding, the interpreter takes the initiative to ask the claim-
ant for clarification. However, the caseworker does not appreciate the interpreter's
active steering of the communication and asks him to translate the claimant's
account without further clarification. This scene illustrates how the interpreter and
the official negotiate power through their interaction. Whereas the interpreter tries
to ensure clear communication by intervening, the caseworker fears losing control
of the situation. Eventually, the interpreter accepts the official's demand but makes
a comment to save face and preserve his authority as a professional interpreter by
adding that the translation will not be of much use since, according to him, impor-
tant information is missing but necessary for the claimant's account to make sense.
However, the caseworker seems to want to make his own judgment regarding this
claim.

   In the following situation, the interpreter manages the communication situation
by reacting to an odd, unexpected situation. The interpreter is back-translating the
interview transcript so that the claimant can note mistakes in the transcript, which
can also include translation mistakes. Here, however, it appears as though the claim-
ant has fallen asleep during the back-translation.

Interpreter to official: She [the claimant] is sleeping. Do you want me to continue to
   read?
The official does not react to his question.

Interpreter to claimant: Do you hear me?
Claimant: Yes. (o.i.2)

In this situation, the interpreter stops the back-translation because the claimant sits with closed eyes and does not seem to participate in the communication by listening and making sure that the transcript is correct. He asks the official how to proceed; however, she does not react either, perhaps because she does not expect to be addressed in the scope of the back-translation. Since the interpreter does not receive any reaction through the official procedure, he takes the initiative himself and asks the claimant whether she is listening. The interpreter continues back-translating after the claimant's confirmation that she is actively listening.

(ii) *Unprofessional attitudes: the interpreter as an assistant*

Interpreters not only establish clarity and prevent misunderstandings; in some observed interview situations, they seem to act as assistant officials. This is a well-known phenomenon among interpreter-mediated interviews in bureaucratic settings (Donk 2016[1994]; Scheffer 2001; Pöllabauer 2005). In the following, a number of scenes will illustrate how the interpreter seizes the power of definition with regard to the course of the interview.

The claimant says something.
Interpreter to official: That's completely off-topic. (o.i.6)
***
The claimant explains something.
Interpreter to official: She now continues to talk about her sisters. Do you want to…?
Official: How does it relate to the departure? (o.i.7, same interpreter)

These two situations with the same interpreter illustrate that interpreters sometimes make a comment to the official instead of translating what the claimant says. In the first situation, the interpreter seizes power by judging what is relevant to the procedure and what is not; presumably, his action is based on previous experience with asylum interviews and officials' opinions on relevance. The interpreter presents his own conclusion – that the claimant's statement is off-topic – instead of leaving that judgment to the official. Only after making that decision does he ask the caseworker whether she wants to hear the translation. In the second situation, the interpreter again takes control by providing a summary instead of a translation. Instead of simply translating the claimant's statement, he first asks the caseworker whether he should continue with the translation, once more anticipating the irrelevance of what the claimant is saying. The official's reaction is a question: he only wants to know what the claimant has to say if it is related to the flight and thus deemed relevant to the procedure. These scenes show how the claimant's account is cut and tailored to the requirements of the bureaucratic procedure.

In another observed scene, the interpreter comments on the claimant's account and its in/credibility. In the interview, the claimant explains that a man bit her and shows a large scar on her arm as proof.

Official: Why do you think he [the perpetrator] bit you?
Claimant (Interpreter): Because I cried and maybe people heard it.
Interpreter to official: If someone bites me, I'll cry even more. (o.i. 1)

Here, the interpreter adds his own opinion regarding the claimant's account after translating it. Taking the role of the official, the interpreter questions the account's credibility by comparing the claimant's actual behavior with his own potential behavior in the mentioned situation. Contrary to his mandate, the interpreter utters a personal opinion by measuring the claimant's assertion using his personal standards. Although officials tend to act similarly when judging credibility, as mentioned above, the official in this situation decided to ignore the interpreter's comment. The interpreter's interference in this situation not only demonstrates unprofessional behavior but also calls into question the interpreter's alleged neutrality.

(iii) *Unprofessional attitudes: Not taking the job and the asylum claimant seriously*

The third aspect to be discussed in the context of interpreters' practices concerns their general attitude toward the job, which can also be regarded from the perspective of professionalism. In one observed interview, for example, the interpreter asks the official to interview the claimant without the children present to create an atmosphere that supports the interpreter's ability to concentrate (o.i.7). She demonstrates professionality by arranging for a working environment that allows her to provide high-quality work. By contrast, other interpreters display a certain careless attitude toward their job through inappropriate behavior. The following scene, for example, shows an interpreter who behaves disrespectfully vis-à-vis the claimant.

The interpreter is leaning backwards with stretched legs. The claimant keeps leaning forward when the interpreter translates what the official says.
During the interview, the interpreter's mobile phone rings; he picks it up.
The official excuses the interpreter in front of the claimants.
Interpreter: It was only concerning my car.
Official: Can we continue?
The interpreter agrees by humming ("mhm").
…
Official: How far is it to the Indian border?
Interpreter: Not so far.
Official: Ask the asylum claimant, please!
…
Official: Where are you living? Basic care, right, a guesthouse.
Interpreter: He says he's living completely privately now.
Official: I'll check what's registered in the computer.
The interpreter does not interpret the official's comment.
Official to interpreter: Would you be so kind as to tell it to him? (o.i.5)

First, the interpreter's posture, leaning backward with stretched legs, indicates some extent of disinterest and superiority. It also requires the claimant to lean forward to understand the interpreter; he does so every time the interpreter translates the caseworker's questions. Furthermore, the interpreter answering and talking on his mobile phone during the interview appears rude and disrespectful toward the other participants, especially the asylum claimant, who is already in an unpleasant situation.[3] The interpreter simply interrupts the interview without a comment to the claimant or the official. Although the caseworker condemns this behavior, he does not sanction the interpreter, for example, by rebuking him. Instead, the caseworker excuses the interpreter in front of the claimant. After finishing his call, the interpreter explains that it was only about his car; the official then asks him whether they can continue with the interview. As the interview proceeds, the interpreter continues to disregard the asylum claimant by not translating some of his statements. At one point, the interpreter even answers a question from the caseworker instead of translating it for the claimant. The official then needs to explicitly ask him to translate the question to the claimant. Later in the interview, the same situation occurs once more when the interpreter does not find it necessary to translate the official's comment to the claimant. Furthermore, a professional interpreter would not talk about the claimant in the third person but would address him in the first person. This is one of the first lessons of interpreter training.

Similar situations in which the interpreter and the caseworker exclude the claimant from the conversation can be observed in many interviews, such as the second (more typical) interview analyzed above. These cases demonstrate the interpreter's powerful role as a "filter" with the power to decide what content to pass on to the claimant and what to withhold. If the caseworker were not so persistent in the present scene (possibly due to my presence), the claimant, who is in the focus of this whole procedure, would be even less included in the interaction. Overall, the observed situation is far from representing a fair asylum interview. The same is true for the following example.

The claimant says something, but the interpreter does not translate it.
Official: What was that now?
Interpreter: I didn't pay attention because it wasn't a question from you.
The interpreter asks the claimant what he just said.
…

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[3] Similar observations were made in other asylum interviews, such as the first (atypical) interview discussed above. The interaction is interrupted several times by telephone calls (landline and mobile phone); once, the claimant also makes a call. It is obvious that two of the landline calls are internal and that they concern the case of the asylum claimant. Instead of arranging these issues – a certain card for the claimant and his public transport return ticket – before or after the interview, the caseworker organizes them during the interview. Since the various phone calls interrupt the ongoing interaction, they can be perceived as disturbing, especially by the claimant, who is not familiar with the procedure. However, accepting such interruptions or disturbances does not convey the impression that the caseworker pays full attention to the interview and the asylum claimant.

Interpreter to official: I didn't pay attention because he's just talking to himself, off-topic. (o.i.5)

The interpreter decides not to translate what the claimant says in this situation as well. Whereas in the previous example the interpreter did not inform the asylum claimant of the official's statements, here, the claimant's assertion remains untranslated. More seriously, the interpreter did not even listen to what the claimant said in this situation. While claiming to be working according to the rules, he turned out to be working toward the wrong rule. The interpreter justifies his action – or rather non-action – by referring to the rules of the situation: he is supposed to translate the official's questions and the claimant's answers. He argues that it is not his job to translate what the claimant says if the official has not asked about it. However, this improper work attitude does not seem to be in the interest of the caseworker, who would be interested in what the claimant says. In the first situation, the interpreter then asks the claimant to repeat what she just said. In the second situation in this scene, the interpreter makes an a priori judgment, concluding that what the claimant said is not relevant to the procedure. Instead of translating what the claimant said, the interpreter makes a comment to the official, justifying his reason for not translating it. By deciding in advance not to translate or not to listen, the interpreter impedes rather than facilitates the communication.

The data illustrate that interpreters do more than "just translate." While they provide the official with "expert" knowledge in some cases, in other situations, they influence or manipulate the communication between asylum claimants and officials. The analysis reveals that instead of being neutral mediators, some interpreters even work to the detriment of a fair asylum procedure. In the first section, the interpreters acted professionally by drawing the caseworkers' attention to important issues, such as real and potential misunderstandings or mistakes in the transcript, or by explaining their own behavior to the caseworker to prevent misunderstandings. The second section highlighted cases of problematic and unprofessional behavior by the interpreters, such as summarizing instead of translating, making judgments in lieu of the official or commenting on the credibility of a claimant's account. The consequences of disrespectful, disinterested or lazy behavior, which seems to be related to some interpreters' work attitude, are discussed in third section.

These examples highlight that asylum claimants are typically at the very low end of the power distribution with respect to the power relations in the asylum procedure. At the same time, the power of officials is partly relativized since they depend on the interpreter's service. The fact that the power of unprofessional interpreters can have problematic consequences underscores the relevance of the interpreters' ability to handle their power responsibly. The findings suggest that the professionalism of the interpreter has a strong potential to influence the quality of the asylum procedure or, at least, the interview as a cornerstone of the procedure. Instead of being neutral mediators, some interpreters seem to work to the detriment of a fair asylum procedure. This kind of non-professional behavior is very likely to be connected to a lack of professional training and might be otherwise preventable. Hence, the importance of at least basic training becomes evident for interpreters in

the asylum procedure, where far-reaching decisions are made on the basis of such interviews.[4] As the agency employing the interpreters, the FAO will also need to deal with these problems in the future.

4.4   The Interview Transcript: The Importance of the Written Word

The importance of the interview transcript has already been mentioned in different contexts. The production of the interview transcript as the outcome of the interview is closely related to the processes of communicating and understanding. As the above analysis has shown, under such difficult conditions that include power struggles and a lack of mutual understanding, it is easy to comprehend the complexity and the associated challenges of co-producing a legally crucial document. An asylum claimant's account represents the core of the asylum application and is supposed to be the most important source for deciding the claim. Although written sources of evidence often weigh more in the decision-making process in practice, the interview still represents a key element. Consequently, interview transcripts are a fundamental source for decision making not only for the FAO but also for the appellate instances. The focus on the transcript also illustrates the key role of texts and artifacts (materiality) in officials' everyday work. In the context of the bureaucratic organization, the production of and reliance on the written word is also related to the production and reproduction of formality (as opposed to seemingly powerless informality). This recurring topic will also be discussed in the context of expert reports, which are key sources in the decision-making process.

The relevance of the transcript is illustrated by the fact that interpreters are sometimes used as excuses or scapegoats. When confronted with contradictions of previous interviews, claimants sometimes argue that they "didn't understand or didn't say that at all," Roland, an official, explains. According to another official, a claimant once "alleged [in retrospect] that the interpreter had translated it incorrectly and that he had said already in the beginning that he didn't understand him, but the interpreter forced him to continue to talk." In the context of this incident, the case-

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[4] In Austria, a voluntary qualification measure for interpreting in the asylum procedure (QUADA) provided by adult education centers in cooperation with the UNHCR was introduced in 2015 and is a first important step in the right direction (http://www.vhs.or.at/594). The curriculum includes, among others, classes on the basics of interpreting as well as its techniques and ethical principles. Because the importance of professionalism in interpreting, which includes knowledge of the techniques and ethics of interpreting, cannot be underestimated, especially in the delicate context of asylum applications, I would argue that such training should be compulsory and subsidized by the state, which is legally responsible for providing a fair hearing. Asylum claimants have a right to professional interpretation.

worker expressed her disbelief regarding the truthfulness of the claimant's account regarding the interpreter's behavior in the previous interview. This example also illustrates that in case of doubt, caseworkers tend to believe the written word, the transcript of a former interview in this case, rather than the claimant's word (Zimmerman 1976; Dery 1998). In doing so, they are assuming that the interpreter did her job as expected and that the claimant wants to benefit from the situation that it cannot be proven in retrospect.

In line with existing research, the analysis demonstrates that the process of transforming a spoken discourse into a written one is complex, especially if translation is involved. The "process of rendering a given instance of discourse as text, detachable from its local context" (Silverstein and Urban 1996:21) can be referred to as entextualization, involving "a refocalization of the narrative towards new deictic centers" (Blommaert 2001:442). In the process of "(re)structuring talk into institutionally sanctioned text" (ibid:415), a routine task in the legal procedure, caseworkers deconstruct asylum claimants' assertions in order to eventually reconstruct them. A claimant's account is always decontextualized when she explains her reasons for flight in front of a public official and consequently recontextualized authoritatively and far beyond the claimant's control in the course of the procedure (Blommaert 2001). This process of entextualization involves rephrasing at two levels, a phenomenon that I have described as "one-way filters" (Dahlvik 2010). The claimant's statement goes through the interpreter to the official who finally writes it down – a process that typically includes (partly extensive) reformulation. In other words, "the flight motives of an applicant are always the product of choices made by people involved in getting them down on paper – the applicant, the translator, the interview official" (Spijkerboer 2000:46).

Although officials have assistants, the latter are not involved in producing the transcripts. In contrast to a court situation, every caseworker has to type the transcript herself during the interview while asking questions and listening. Due to the given circumstances, it is not surprising that inconsistencies and contradictions in a claimant's account that were not present in the oral communication can be found in the interview transcripts (Kolb 2010). The above analysis of several interactions suggests that discrepancies between the spoken word and the written transcript are not rare. Such discrepancies are not only based on misunderstandings and reformulations; an official's statement that "what's not conducive" (Wolfgang) to the substance of the procedure is not included in the transcript illustrates the selectivity of the process. Audio-recording the interview could be useful for comparing the original communication with the final product, especially in cases of doubt or when interpreters are blamed for contradictions in claimants' accounts, including investigations at the appellate instance. Although this would require almost no additional resources, only a few countries use audio- or video-recordings (European Commission 2014). In the Austrian asylum procedure, this is also not a common practice.

The transcript provides an excellent example of the fact that "text is created when instances of discourse, by being rendered detachable from their immediate context of emission, are made available for repetition or recreation in other contexts" (Barber 2008:22). The achieved detachment allows for reproduction and transmission over time and space. In the asylum procedure, as in any legal procedure, it must be possible for any person to reconstruct the actions that have been taken, the reasons for those actions, and the information on which they were based. Documentation is thus a means for ensuring the transparency of institutional action (Krems 2013). Moreover, texts are not only social facts but also forms of action; they are "commentaries upon, and interpretations of, social facts" (Barber 2008:4). While being part of social reality, "they also take up an attitude to social reality" (ibid). This perspective is important to bear in mind when looking at interview transcripts and expert reports as well as the entire file.

The principle of the written form was defined as a key element of bureaucracy by Weber (1978[1925]), and it still represents a major principle of modern administration; in other words, the asylum bureaucracy is "a paper heavy system" (Thomas 2011:105) or based on "papereality" (Dery 1998). Officials' work is mainly text-based; for example, protocols are produced, prints of diverse registers are requested, and written evidence is brought forward. Practice theory makes sense of this by understanding materiality as a key element of social practice. The perspective of institutional ethnography pays tribute to this fact by understanding documents as key actors in structuring the "ruling relations" within institutions (Smith 2002).

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Part III
Performing the Maneuver: Handling Four Dilemmas in Everyday Asylum Bureaucracy

Having examined the third phase of the ideal-typical workflow, the asylum interview, this part focuses on the fourth and fifth phases of the workflow – conducting investigations after the interview and making and writing the decision – and thereby addresses the key problem investigated in this book. The following chapters explore officials' practices when dealing with the structural tensions that were implied in the previous chapters on the context and conditions of work, which are primarily characterized by the collision of a legal framework and administrative aims. Four key dilemmas were identified and will be discussed in the following four chapters. These dilemmas illustrate the contradictions of the asylum system broken down to the level of everyday work. The discussion of these structural contradictions and officials' practices will illustrate how structure and agency are mutually dependent, influencing and reproducing each other.

Such "dilemmas of the individual in public service" (Lipsky 2010[1980]) can be understood as "the tensions and conflicts between different principles, aims and demands that are inevitably present and being dealt with in the mundane street-level work in order to find pragmatic ways of making the conflicting practices meaningful and accountable" (Hjörne et al. 2010 after Billig et al. 1988). In their discussion of the two classics on street-level bureaucracy by Prottas (1979) and Lipsky (2010[1980]), Hjörne et al. (2010:303) identify three main dilemmas that characterize the work of "welfare workers … as mediators between institutions and citizens." These dilemmas are (1) autonomy versus control, (2) responsiveness versus standardization and (3) demand versus supply. While these findings relate to general street-level bureaucracies that cater to citizens' different situations, it can be argued that refugee status determination has some particularities. Nevertheless, the dilemmas officials face at the FAO are largely comparable to those of their "colleagues" in other agencies.

The four dilemmas identified in this study are (1) regulation versus room for maneuver, (2) definitiveness versus uncertainty, (3) the human versus the faceless case, and (4) responsibility versus dissociation. These dilemmas illustrate the sys-

tem's contradictoriness; they are structural dilemmas (re)produced by public officials in everyday work. Whereas the first dilemma – regulation versus room for maneuver – matches the first dilemma identified by Hjörne et al. (2010), the second dilemma – uncertainty versus definitiveness – corresponds to the dilemma "responsiveness versus standardization." The common topic of the latter is the bureaucratic use of categories and the classification of things, events and people. Although the third dilemma identified by Hjörne et al. (2010) – demand versus supply – seems relevant, especially with regard to developments of increasing asylum applications, it did not figure as a key issue at the time of this study (apart from the orientation toward the logics of New Public Management). Instead, two other key dilemmas could be identified as key issues: the human versus the faceless case and responsibility versus dissociation. The latter can be understood as a translation of the former into more ethical terms.

There are different ways of understanding and explaining the dilemmas and how caseworkers address them. One of these ways of understanding is the concept of "pattern variables" (Parsons 1951), which assumes that individual orientations are characterized by the interplay of cultural (thus also organizational) values, social norms and personal motivation. Parsons (1951) argues that actors have to decide between "pattern-alternatives of value orientation," which are regarded as appropriate in a given situation. To define the action situation, the actors must be aware of what is expected as well as of their own interests and action possibilities (Abels 2009). The orientation alternatives that confront individuals – and, in this context, decision-making officials – with dilemmas of choice can be distinguished into the following: (i) universalism or particularism, (ii) ascription or achievement, (iii) collective or self-orientation, (iv) diffuseness or specificity, and (v) neutrality or affectivity (Parsons 1951).

Since this approach is only partly appropriate in the current context, adopting an organizational perspective in combination with structurational and praxeological approaches is more promising. In addition to street-level bureaucracy theory, this approach helps to understand and explain officials' practices in administering asylum claims. Summarizing conclusions, including an understanding of the dilemmas as an interplay of formality and informality in organizations, will be provided in the last part of the book.

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Chapter 5
Regulation vs. Room for Maneuver

One tension that caseworkers encounter in everyday work is that between normative regulation and the room for maneuver (which goes beyond discretion). This chapter shows how decision-making officials deal with this tension in processing asylum claims. On a superficial level, officials' task consists of applying the law; however, this is anything but a clear task. Deciding upon asylum claims requires the application of general laws to particular individual situations, and this implies more than strictly following rules. Applying a rule also means shifting, changing, supplementing, replacing, or violating a rule; to a certain extent, rule application always implies interpretation, manipulation, circumvention (Ortmann 2003). Moreover, norms, rules and preferences can only be fully constituted in situ; that is, decision criteria are interpreted and modified in view of the situational and contextual circumstances. As with the application of any norm, there are also "peripheral" zones in the application of law. These gray zones with unclear borders play a vital role in officials' work. Dealing with questions of the law can be especially difficult for those decision makers who do not have a legal education.

> Because legal rules contained in statues and regulations may be incomplete, vague, ambiguous, contradictory, or inexplicable, grasping the appropriate course of action from a positivist legal source may be problematic. For an administrator who is not trained in the law and has neither the experience nor the time to navigate through rough seas toward understanding, legal requirements can raise more questions than they solve (Martinez 2009:115ff).

Concerning non-legal officials, the law is thus rather "felt and tamed … than grasped and comprehended" (Eule 2014:62). Whereas bureaucratic work is structured and defined by administrative and legal norms, caseworkers have various ways of understanding and applying these norms in everyday work. The differing missions and logics of legal and administrative norms, such as human rights versus

processing targets, create structural contradictions for decision makers. Within this structure, caseworkers develop social practices that facilitate everyday work and make use of (legal) discretionary power and, more broadly, room for maneuver within the asylum procedure. Where officials have room for maneuver, they develop a variety of individual approaches, attitudes and strategies in dealing with everyday tasks. Caseworkers' different approaches are reflected in their ways of dealing with asylum applications and claimants and in their decisions. Considering decision makers' discretionary power, the alleged objectivity of legal procedures can be relativized; it can make a difference who decides upon a specific claim since it is not an abstract authority that makes the decision but a particular individual.

5.1   Norms and Instructions, Discretionary Power and Room for Maneuver

In the bureaucratic setting, everyday work is governed by comprehensive provisions and by the law and its translation into administrative norms. Although decision makers are always individuals and not robots, they often perceive themselves simply as executing organs carrying out orders; active agency is often factored out. "I'm only the executor … of course, I can stimulate something, but in my everyday work, I work according to the provisions that are given to me," Thomas explains. Veronika also describes her task as a clear application of the rules: "the legal basis in Austria just is like that … and if politics, let's say, decide that we are to apply … Article 3 ECHR for dialysis patients too, then I will apply it." Taking and carrying out orders implies that responsibility can be delegated, for example, to the management, to politics, and to the provisions as such. As Gabi notes, "There is a binding work instruction for everything." However, she adds that after an official knows the basics, she will rarely look at the instructions. When the work instructions are internalized by and through everyday practice, they no longer need to be considered explicitly. Routine implies that when "cases" are perceived as repeating themselves, officials also reproduce their practices in processing these cases. Within and in addition to the formal framework, officials not only possess discretionary power but also room for maneuver within their practices of dealing with asylum claims. Using a metaphor, a caseworker highlights his action possibilities as well as the restrictions.

> There is a certain basic schedule that's predefined for everyone, sure. And then there is a little room for maneuver on top of this mountain of instructions where one can choose one's way, I'd say … So there's the big motorway, you can choose the lane, but, let's say, there are no side streets, the breakdown lane that's then the head of the unit … one can also change lanes (Thomas).

Using a traffic-related metaphor, the official explains that although there are an enormous number of rules and regulations, there are also areas where caseworkers can work autonomously. He mentions the possibility of changing one's approach as well as seeking help from a superior. In addition, the notion of a "motorway" alludes to speed, possibly hinting at the time pressure that dominates work at the FAO.

The perceived or actual leeway manifests itself in different forms and in various situations of the bureaucratic everyday. "I am my own master. Nobody interferes

here; I can do what I want, now again in quotation marks," Roland explains, relativizing his statement and thus his power by introducing quotation marks. Aware of the restrictions, he narrows his field of action, emphasizing that his room for maneuver is limited by the normative framework: "Sure, always within the scope of the laws, no question." The two legal officials particularly emphasize their autonomy. Despite the strong hierarchy at the FAO, Stephan thinks that he is "not under the thumb of a boss." Gabi feels as though she is her "own boss," feeling "much freer" than in her former job in a similar context where she had the impression that she had to "function like a machine." Stephan highlights the fact "that you can decide relatively freely." While emphasizing his discretionary power in the decision-making process, he simultaneously notes the limitations imposed by the normative framework by using the word "relatively." This ambivalence between regulation and discretion is present in most interviews with caseworkers. A common practice of public officials seems to be affirming their own discretion while constantly being aware of the normative constraints structuring their actions (Herbert 1997; Mountz 2010).

The law, which is itself subject to interpretation, is at the same time regarded as the limit of their leeway. Roland summarizes his relation to the law: "Well, I can only decide according to the law, right? If there is nothing, then I can't give asylum, right? … 'I feel sorry for you, I'll give you asylum,' that I can't do, right?" A similar point of view is expressed by a colleague who views herself as an executing organ and decision making as a simple process. "Now I think, okay, this is how the law is, these are the regulations, and if it is like this, then he gets that," Veronika explains. While identifying the limitations of their scope of action, the caseworkers are aware of the opportunities for interpretation that the legal provisions introduce. Thomas explains that "if one enters substantially into the topic, then suddenly very many possible interpretations open up." At the same time, he finds that "our law is already formulated in great detail, so there are not many possibilities." As an example of the fact that the room for interpretation is minimal, he mentions the notion of private life in the context of the ECHR: "A typical notion, which one can interpret very broadly, and now, there are already very clear determinations from the Asylum Court and the European Court of Human Rights, what that actually is, which points are listed under that notion." Although decision makers' leeway is subject to important limitations, judges, and as I would argue also decision-making officials, are "confronted by a choice whose outcome is not dictated by the law" (Morris 2010:93). As Eule (2014:61) notes in the German immigration context, due to the ambiguous and changing character of the law, "it is inherently impossible to ever fully implement it 'according to the law.'" However, "the 'legislator's will' is often a practical excuse" (Dubois 2010:57).

Roland mentions a concrete example for his exercise of discretionary power: the possibility of making an expulsion "permanently inadmissible." The asylum claimant "must be integrated, he must speak German, he must have work, he must have an apartment, and, and, and, right? And if that's rudimentarily fulfilled, and he was really well behaved, and he worked, well then, I let him remain here, right?" The caseworker emphasizes that especially if children born in Austria are involved, and especially if they already go to school, he does not see a reason to "send them home." This account demonstrates not only the asylum interview's checklist charac-

ter (including the applied definition of integration), highlighting the importance of expectations toward asylum claimants, but also the fact that the exercise of discretionary power is linked to officials' individual approaches, as we will see in the upcoming sections. In addition, the quotation points to the moral aspect of judging when the caseworker aims to examine whether a claimant was a "well-behaved" person during her stay in Austria. This classification mainly refers to whether she is actively contributing to her integration and did not commit a crime. It is related to the evaluation of whether a person will be allowed to stay in Austria because of her "connection" to the country in her private or family life (article 8 ECHR). This example thus highlights the importance of ideology – such as notions of what is good or bad – in administrative work.

The ambiguity between strictly following the rules and discretionary power is evident in caseworkers' accounts. While certain decision-making officials emphasize their discretion, they also call attention to existing limitations. Although they claim to be merely following the prescribed rules, decisions still have to be legitimized and justified; although the limits of their scope of action are formally defined by law, they are only formed through actual practices and routines. What caseworkers have to do is predefined, but the realization of those instructions through social practices implies some autonomy. As Alpes and Spire (2014:261) note, street-level bureaucrats "are able to draw on legal frameworks in a flexible and instrumental manner."

Since work at the FAO is not only structured by law, caseworkers also orient their actions toward other normative frameworks that allow for room for maneuver with regard to social practices beyond legal discretionary power. Whereas Lipsky (2010:xvii) defines street-level bureaucrats as actors who "have discretion in exercising their authority," Prottas (1979:112) argues that autonomy, that is, the preservation of an independent sphere of action, represents an end in itself for street-level bureaucrats. This room for maneuver is expressed, for example, by statements such as "normally, I don't do that" (Sabine) or "actually, there would now be no reason anymore" (Sabine). The words "normally" and "actually" imply that while certain standards exist, these norms can be circumvented or expanded. Additionally, with regard to fact-finding, Sabine mentions that "one becomes imaginative with time," indicating that there are multiple options to gain information, often counterevidence, on a specific application. She explains, for example, that a liaison officer was assigned to inspect a particular village and question people on the spot so that she could contrast the officer's findings with the drawings and explanations she had asked the asylum claimant to make during the interview. This example illustrates that there is a certain "inventive" aspect in officials' work. Relating to the circumvention or expansion of norms, Gabi mentions that instructions can be unrealistic or unworkable. She classifies a particular instruction as "ridiculous" because she regards it as unrealistic. "One is to always commission different interpreters … that's just difficult, right, because if you now work well together with one, are satisfied with him, he knows how you work, I have the feeling he's neutral, why should I then appoint another one?" Based on her experience in the past – good and bad – with various interpreters, she has reached the conclusion that it is more useful to reappoint an interpreter with whom she has good experience instead of appointing

a new interpreter she does not know. The example shows that work instructions, just as any other norm, are subject to interpretation, alterable and may thus produce diverging social practices.

Officials' autonomy is also relevant to their relations to other actors such as assistants, interpreters and experts. As the superiors, decision makers can determine the role and activities of their assistants, deciding which tasks they want to carry out themselves and which they want to delegate. As Gabi notes, "not every assistant is good for everything," referring to the varying skills and competences of the different assistants. In addition, caseworkers have the freedom to decide which interpreter and which expert they want to commission for a particular asylum claim, and they have the power to decide what to do with the information provided by these external actors. These examples demonstrate that caseworkers have both discretionary power in a legal sense and room for maneuver with regard to social practices more generally. This observation is also highlighted by the individual approaches, attitudes and strategies that officials develop in dealing with asylum claimants and their claims.

5.2 Individual Approaches, Attitudes and Strategies

Different caseworkers develop distinctive social practices in dealing with the various norms. These differing practices can be observed in all areas of everyday work, whether officials take something to heart or choose a superficial approach, in their behavior and methods in interviewing asylum claimants, in their preferences for certain experts and the avoidance of others, and whether work is taken home – mentally or physically. Dubois (2010:94) argues that agents not only have personalities but also that "individual paths, relationships to the job and personal competences are combined in the definition of the … agent's role." In other words, officials each have their own way of dealing with their job, and their individual attitudes influence how they deal with asylum claimants and their claims. These observations highlight the informal aspects of the asylum procedure.

Whereas Roland regards himself as "the most liberal" in comparison to his colleagues, Veronika claims to be "someone who racks her brain" and who "makes an effort," in contrast to others who work differently. Different caseworkers have different "attitudes toward the whole thing," Veronika notes. Stephan believes that, unlike himself, "there are surely soft-hearted [officials] who let themselves be lulled [by claimants]." He thus suggests that an official's attitude and personality impact that official's interaction with claimants in the interview situation. This view is confirmed by an official who was sitting in on an interview with a claimant whose application she had handled before; this follow-up interview was conducted by one of her colleagues. She notes her discontent with the substituting official's behavior: "I still feel sorry for him [the claimant]. He's [the official] bad! ... That hurts me; I'd never do an interview like that" (o.i. 1). As two officials summarize, "everyone has a different approach to the matter... an individual approach" (Veronika), and officials can "work completely differently" (Stephan).

Illustrating that caseworkers' attitudes seem to be reflected in their ways of dealing with asylum claimants and their claims, Thomas explains that "it is possible [to work] with more or with less effort." This is valid for the asylum interview as well as for writing the decision notification; "one can treat it really very quickly … or one arranges it more nicely." Similarly, Gabi finds that some colleagues "maybe don't place so much value on quality from the start and therefore sling out [notifications] quick, quick." Veronika says that she would "wish for a certain superficiality" and thinks that it would be better for her "to ruminate less." She finds that due to her attitude, she also needs longer for the interviews with claimants than other colleagues of hers. The fact that caseworkers develop individual strategies for dealing with the different situations of everyday work is also illustrated by the "mimesis approach" when officials start working at the FAO. They observe different colleagues when interviewing asylum claimants "in order to pick out something everywhere, to adopt [things] and then to develop their own strategy" (Gabi).[1] Additionally, before asking colleagues for their opinion on a specific "case" Gabi first "get[s] a theory or a strategy ready." Veronika explains that she "simply [has her] rail" in processing asylum applications. That is, once established, routines can be difficult to break.

An official's general approach can thus also be relevant to the concrete decision on an asylum claim. Which decision is made "also depends on the official," Sabine explains, since a colleague "might not have granted subsidiary protection" to a person to whom she did grant this status. A colleague mentions that he always "tries a little bit more," meaning that in his decisions, he tries to be tougher than necessary or than other colleagues would be since "one never knows what the Asylum Court does" (ob. 40,401). The caseworker thus makes extensive use of his discretionary power to the detriment of the claimant because he assumes that the claimants will appeal anyway. Gabi is also convinced that different officials would – hypothetically – decide the same case differently due to their "personal attitudes." She thinks that it depends on "how much you grapple with it [and] how seriously you take it [the work]." The official recalls a situation in which she was not completely sure how to handle a specific application. Already having a tendency regarding the decision, she asked some colleagues for their opinions regarding the case. Although she eventually made a positive decision, the other caseworkers' opinions differed widely, including positive and negative assessments as well as subsidiary protection. As O'Dwyer (2008) notes, it is inevitable that two decision makers who look at the same set of facts can reach different conclusions. "Adjudicators can and consistently do reach opposite conclusions based on near-identical and conclusive evidence" (O'Dwyer 2008:206).

These examples illustrate that "objectivity" – generally claimed in legal procedures – can become relative, especially since discretionary power and room for maneuver are involved. The findings demonstrate that it can make a difference who decides upon a specific claim and that it is not an abstract authority making the deci-

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[1] Strategies suggest that actors have a certain autonomy to define the rules of the game, as opposed to tactics that would only allow them to subvert the rules (de Certeau 2011[1980]; Fassin 2015).

sion but a particular individual. Government action and decisions upon asylum claims thus "depend as much on personality as on policy" (Mountz 2010:89). In addition, institutional context plays a key role. Houle's (2002) description of discretion as a sponge that absorbs the values, assumptions, and preferences to which it is exposed illustrate the importance of the context in which civil servants make decisions. Since caseworkers' attitudes and approaches can affect decisions, the fact that those attitudes are not necessarily stable but may change over time (for example, through increasing socialization in the organization and internalization of its values) should also be considered. Some officials note that they viewed things differently when they started working at the FAO as opposed to now, with several years of experience. As mentioned above, for example, training can be eye-opening, leading to a reconsideration of established approaches and routines.

The sociology of legal judgment provides some insight into the issue of decision makers' individual approaches. Following Habermas (1996), legal legitimacy is found in the process of law rather than in its content; judicial decisions can thus be understood as "part of a co-operative search for truth which establishes legitimacy through deliberation rather than legal certainty." (Morris 2010:93) Whereas Dworkin (1986) argues that the principles must be applied in view of the coherence in the law, the critical perspective conceives of law as inherently contradictory and conflictual. Habermas chooses a path between these two positions. Acknowledging Dworkin's argument that principles are often engaged in the application of law, Habermas "emphasizes the plurality of judicial opinion and the role of deliberation in forming a judgment" (Morris 2010:93). According to Habermas (1996:223–24), "a proceduralist understanding of law … reckons from a start with discursively regulated competition among different paradigms." The "procedural paradigm" views the court as providing a deliberative forum for determining the prevailing interpretation of a rule, which can involve a dialog between judges both within and across cases (Morris 2010:98). Similar to the majority of authors of the relevant sociological literature on judgment, Ortmann and Morris also concentrate on judges' power of decision as a special case. Deliberations on the (binding) decisions of administrative authorities are rather rare. Nevertheless, the findings of this research suggest that many of the observations concerning the practices of judges can be regarded as equally valid for decision making at the administrative level, even if somewhat attenuated.

As discussed above in the context of socialization within the organization, Morris (2010) differentiates between the "cosmopolitan" and the "national" paradigms, which represent ideological predispositions in judicial asylum decision-making. While there are certain prevailing paradigms within the organization, officials also have their own viewpoints. Considering caseworkers' attitudes and approaches, organizations have the opportunity to fill posts strategically; "ethically qualified" persons can be positioned at sensitive places, and more hardened persons or those more loyal to the regime are deployed where they are needed (Ortmann 2010).

The findings also suggest that individuals' approaches and strategies are closely related to power relations. According to Crozier and Friedberg (2014[1977]), the analysis of actors' strategies reveals the characteristics of the underlying "game" by

which all (organized) social action is framed. Since this "game" is based on the existence of zones of uncertainty, controlling sources of uncertainty means having the power to affect others' room for maneuver. From this perspective, the asylum procedure can be regarded as a strategy game in which the involved actors have different "stakes" and take certain risks. However, a risk usually refers to a predictable event for which the chances of occurrence and costs of damage can be estimated. This does not hold true for the asylum procedure since the outcome is (almost) always open and chances are difficult to calculate. The sources of uncertainty, and with them others' room for maneuver, are thus largely controlled by the decision makers.

5.2.1   The Claimant's Performance and the Subjective Dimension in Processing an Asylum Application

Formally, decision making can be understood as an interplay of facts and norms. However, when considering caseworkers' informal practices, it seems important to take into account the subjective dimension of deciding upon asylum claims. Both officials' discretion in interpreting the law and applying it to a particular case and the face-to-face interaction with the claimant may influence the decision. What role do impressions (for example, regarding a claimant's behavior in the interview) play in this context? How can the relation between facts, norms and this subjective dimension be characterized and how are these three factors weighted in the decision-making process?

As Wagenaar notes (2004), dialog constitutes the act of judging. "Practical judgment" can be regarded as an integral part of administrative practice, involving observations, beliefs, convictions, and feelings in the context of the organizational environment. At the same time, any act of judging is constitutive of the environment or community from which it arises. "By entering into a dialogue with other members of that community, be they colleagues or clients, the administrator discovers what unites her and separates her from the other members" (Wagenaar 2004:652). The excerpt of an interview with a relatively new caseworker illustrates the impact of this verbal and non-verbal dialog between official and claimant in the scope of an asylum interview and highlights the subjective dimension of decision-making.

O: Mostly, before I actually write the decision, I already know how I will decide. And then, I actually try to rather incorporate the impressions from the interview. And which facts and circumstances emerge … That's actually rather unspectacular. [chuckling]

I: Not for me. [chuckling] … So, you mean the atmosphere in the interview or the interhuman dimension?

O: I also perceive that very strongly, yes. I also already realized that in the beginning that that influences one very strongly. So how a person acts and their appearance also does have an effect, yes. Of course, in the first place, what has to be judged is what the person says, so the content, but at the same time, yes, at times it can

also be derived from the behavior if someone now takes it seriously or not, for example.

I: What are these indicators, for example, where you think that's strange somehow?

O: Well, that's not so easily stated. So, that's really a purely subjective impression, yes. It's difficult, there are very many different things; I couldn't specify it at all now.

I: Depending on the situation?

O: Right, exactly, also one couldn't say, one can't generalize and say, if now someone just keeps saying that he doesn't know anything or can't provide any information that immediately or that the behavior would allow any conclusions, let's say it like that.

…

O: I have to add that in both cases [discussed before], I started out from what they had said and let that just slip in in addition, let's say. I also think when one is aware oneself that something like that can influence one, then one is much better prepared ….

I: Yes, sure, when that's somehow reflected.

O: Yes, in a way. Especially, one realizes quite quickly if one has sympathy or not. Or antipathy.

(Interview with Thomas; O … official, I … interviewer)

The analysis of this interview passage provides insight into the complexity of the decision-making process, particularly regarding the officials' impressions and conclusions. Whereas Thomas distinguishes between the actual decision on the claim and the process of writing the decision down for the caseworker notification, the excerpt focuses on what influences the caseworker in this writing process (and potentially in the decision-making process). In developing the decision notification, he distinguishes two elements: the facts and circumstances of the case and his impressions from the asylum interview, particularly regarding the claimant's appearance and behavior. Although he insists that, above all, the facts and circumstances of the case – that is, the content – must be judged, he also thinks that his impressions have a certain weight. Using the phrase "at the same time," he first implies that the two dimensions are equally important. Later, however, the official emphasizes that the facts are his starting point and that his impressions are used as a complement. While alluding to the idea that it would be illegitimate to base a decision equally on impressions and on "facts," he does not claim that his impressions of a claimant's behavior and appearance are irrelevant in dealing with an application, as might be expected in the allegedly impersonal bureaucracy context.

Thomas finds that a person's appearance and behavior in the interview influence him "very strongly." Emphasizing that the impression he gains in an interview is purely subjective, the caseworker thinks it is advantageous that he is conscious of the fact that he can be influenced by a claimant's performance. This consciousness may make him feel that he is in control of these processes and able to handle them. Nonetheless, the official draws conclusions from his impressions, noting, for

instance, whether the person "takes it seriously or not." While he does not explain what is meant by "taking it seriously" in this context, he is presumably referring to whether the claimant makes an effort in the interview to be taken seriously by the official, thereby giving importance to the procedure.

Although Thomas is certain that it is sometimes possible to derive conclusions from a person's behavior, he notes that conclusions cannot be generalized. He is not able to specify a particular behavior that would lead him to a certain conclusion. He knows that there are different elements of a person's behavior that can have an impact on him, but he notes that there is not a fixed scheme regarding the direction of that impact. According to the official, it is not possible to automatically reach a particular conclusion, for example, when a claimant does not provide any information or keeps saying that she does not know what he wants to know.

Highlighting the performative aspects of the asylum interview, Veronika stresses the problem associated with determining credibility or incredibility on the basis of a claimant's linguistic capabilities.

> It's always difficult. Let's say you want to assess all that neutrally. Now someone is here who can't really express himself well because he never learned it, because he didn't need it; he talks haltingly and because of that, the whole assertion maybe doesn't come across so well. Now you have another case, he is articulate, is well prepared … and trots out a false story really skillfully … then you almost don't have a chance. And that's also difficult, so, someone, let's say, does he now lack credibility simply because he stutters, because he doesn't formulate an answer, or is he just so simpleminded that he really can't express what the situation actually is? (Veronika)

This quotation illustrates that an asylum claimant's performance in the interview can be seen as a key factor in the procedure: decision making may be impacted not only by her appearance and behavior but also by her linguistic capabilities. The important aspect in this regard is how caseworkers evaluate the performance; the quotation shows that both *what* the claimant discloses and *how* she does so are relevant. Referring to the naturalization procedure, McKinnon (2010: 218) finds "that key audiences focus on dimensions of credibility that are performed through the conventions of speaking well, rationally, and evenly." Access to a legal status thus increasingly depends on individuals' "ability to appear coherently credible, grounded on the performance conventions of good speech, narrative rationality, and embodied affect" (ibid:205). Claimants' performance and how they "orchestrate" their claims (Noura 2006) in the asylum interview was also highlighted in the above findings.

The officials do not discuss the consequences of their impressions and conclusions. If the official determines that a claimant does or does not take the procedure seriously based on her behavior or if he realizes that he has or lacks sympathy for a person, what does that imply? The caseworkers do not mention the consequences of the fact that claimants' behavior has an impact on them. The questions thus remain open: do these behaviors have an impact on the decision or on the argumentation of the decision, or are the impressions and conclusions just a byproduct that does not require any further attention? The relation among impressions, conclusions and what the caseworker eventually incorporates into the decision notification remains

unclear. Nonetheless, the findings highlight "the prevalence of subjectivity involved in state practices" (Mountz 2010:89). As Kagan (2003:375) notes, refugee status determination is a "human process." Therefore, credibility assessment is, to a certain extent, inevitably prone to subjectivity in a system where "emotional impressions of a person and 'gut feelings'" (ibid), intuition (Jubany 2017) or instinct (Dubois 2010) can have a considerable impact.

According to Habermas (1996:178), judicial decision making involves a combination of two types of procedures: the institutionalized legal procedure and an argumentation process that evades the internal structure of legal institutionalization and follows its own logic. Codes of procedure enable and institutionalize legal discourses without being able to standardize the argumentation as such. "Legal procedures define, protect and structure only the spaces in which argumentations are supposed to take place" (ibid). While the embedding of discourses in legal procedures does not affect their internal logic, the procedural institutionalization subjects discourses to certain temporal, social and technical restrictions. Procedural norms regulate, for example, participation and role allocation as well as the range of topics and the course of argumentatively controlled processes of the formation of opinion and will (ibid). In the asylum procedure, caseworkers must justify their decisions in the written notification. They are required to adhere to a formal structure, but they are free to develop and substantiate their individual argumentation. This freedom makes it possible to draw on impressions and other subjective elements, although these elements will have to be expressed in an institutionally authorized way, which involves a process of transforming informality into formality.

5.3   Theorizing Officials' Practices: Rule Application and Decision Making

The findings discussed in this section illustrate the structural contradiction of the omnipresent legal framework, on the one hand, and the importance of caseworkers' individual approaches and strategies, on the other hand. This is the dilemma of autonomy versus control, identified by Hjörne et al. (2010:303) on the basis of the works of Prottas (1979) and Lipsky (2010[1980]). Speaking in Parsons' (1951) terms, this dilemma can be expressed as a necessary decision between ascription and achievement. This orientation alternative concerns the evaluation of whether the situation requires action according to the relevant rules or whether an individual achievement is possible or even necessary. An orientation toward ascription could imply work to rule – a practice often attributed to the administrative field. By contrast, an orientation toward achievement focuses on the possibilities off the beaten path, highlighting the individual and "creative" aspect of officials' work.

Structuration theory provides further insight by taking a broader perspective on applying rules and making decisions. Applying general rules to concrete cases is one of public administrators' main tasks. Rules can be understood as "generalizable

procedures applied in the enactment/reproduction of social practices" (Giddens 2011:21). Verbally formulated rules such as law books, organizational instructions or job announcements – the "blueprints" of formal organization (Ortmann et al. 2000:329) – are not understood as rules but as "codified interpretations of rules" (Giddens 2011:21). Rules, including the formal, explicitly formulated (codifications of) rules, are only completed in their situational enactment. The seemingly secondary application derived from the formal rule is actually constitutive to the meaning of this rule. Giddens conceptualizes this enactment of rules and resources in a specific situation with the particular background and competency of the actor realizing the action as a "modality" mediating between action and structure (Ortmann et al. 2000:331).

Following Ortmann (2003), deciding and applying a rule are closely connected concepts. Deciding upon a specific asylum claim involves more than simple deduction from a general rule. For the rule to maintain its generality, it has to be void to a certain extent, and this void can only be filled in and through the application of the rule. However, the way to fill this void cannot be deduced from the rule. The necessary void of a rule can only be complemented and filled in situ – a complementation that takes on the character of replacement (Ortmann 2003:135). Decision criteria are thus interpreted and modified in view of the situational and contextual circumstances. As the author notes, "[A]ims and orders of preference do not exist *before* and *independently from* the decision but are only established *through* the decision" (ibid:40, emphasis in orig.).

The interviewed caseworkers defined the laws as the limits of their leeway; at the same time, they are subject to interpretation. It becomes clear that although the limits of their discretion and room for maneuver – the "zones of tolerated difference" (Ortmann 2003) – are formally defined ("by law"), they are only formed through the actual action, by routines. Referring to the administrative field, Prior (2004) argues that independently of the degree to which a categorization system is rule based, administrators always have to interpret the rules anew. Nevertheless, if those who categorize are asked to explain their reasoning, they most often invoke rule-based systems.

Decision criteria are generalizable procedures of practice and thus are subject to continuous self-deconstruction. In view of the situational and contextual circumstances, decision criteria are interpreted, reinterpreted, modified, complemented or even replaced. New conditions, obstacles, opportunities, and technologies evoke ever-new changes of aims, shifts of aspiration levels, and modifications of decision criteria. Since every decision is based on a particular case, the decision maker has to realize a constructive interpretation of her decision rule anew each time. She applies the rule and replaces it in order to create a "new" one – but the deviation from the old rule is usually regarded as insignificant. The maintenance of this insignificance of deviation from the old is one of the main aims of organization (Ortmann 2003). Similarly, Friedberg (1995) argues that actors in organizations necessarily act counter to official norms and precisely thereby guarantee the continuation of organizational procedures when these norms are characterized by conflicting goals, rigidity or generality that is too great or little.

The praxeological perspective also highlights how socialization in the organization rather than official rules inform officials' practices. Practical judgment refers to the relationship between the general rule and the particular case as well as the given circumstances of having to act on the situation. Here, knowledge, as a condition for and consequence of acting, helps the official to orient herself in the particular situation. "Knowing" then refers to the embodiment and enactment of this knowledge (Wagenaar 2004:651). Being able to "understand" a situation does not imply that the official follows static organizational goals but rather that she draws on background knowledge and experience based on a sense of what the situation requires. It is not necessarily an analytic understanding that settles the case once and for all but a more holistic and unarticulated understanding that is developed in the course of working in a particular organization on a specific topic such as immigration or asylum. This understanding, which suggests meaningful action, is flexible and open-ended, allowing for situation-specific adaptation. In addition, finding a feasible (practicable), acceptable (in case of a complaint) and rational (in accordance with the law) solution to a problem or a case is a highly interactive process (ibid:646). As Wagenaar (ibid:652) notes, it is an organization's "specific social–cultural– moral community that provides the categories, situations, norms, standards, and exemplars that guide her [an administrator's] assessment of situations."

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Chapter 6
Definitiveness vs. Uncertainty

Another dilemma with which caseworkers are confronted in everyday work is undecidability. This issue can be understood as the key dilemma of the procedure and one that is specific to the asylum procedure in contrast to other contexts of street-level bureaucracy. This chapter explores officials' practices in dealing with this tension. Despite – or perhaps due to – extensive standardization, officials are regularly confronted with uncertainty. A fundamental problem of the asylum procedure is that there is rarely unambiguous evidence; claimants and officials often produce counterevidence against each other's view. However, decisions are indispensable regardless of how much uncertainty is involved; "take the file [and] you should know what will come out in the end, yes, approximately know," the superior told Sabine when she started to work at the FAO. To reach a decision that can be justified and legitimized, caseworkers depend on authoritative "facts." After exploring officials' practices of accessing and using information in processing asylum claims, I analyze how facts are socially constructed in everyday work and discuss the prominent and problematic role of credibility.[1]

6.1 Information, Its Sources and Its Uses: Eliminating Uncertainty and the Social Construction of Facts

In the ideal-typical process of handling an asylum claim, as described in Chap. 3, the interview is followed by a phase in which caseworkers conduct investigations to find out more about the asylum claimant and her situation. This is the main phase of

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[1] This section is partly based on two earlier publications (Dahlvik 2017a, b).

searching and finding "facts," and it illustrates the uncertainty with which caseworkers are confronted in their everyday work. Although they have various opportunities to gather information on countries of origin and other case-specific aspects, the usual lack of unambiguous evidence makes uncertainty a constant companion. As Sabine explains, even an expert report can be ambiguous: "This carpal thing [bone] has grown together but not entirely, well, 18, minus, plus one [year]; then you can figure, what now, is he now a minor or not?" This caseworker complains about the uselessness of findings such as these for her work. To be able to reach a particular decision, she needs exact facts instead of vague findings. For the asylum procedure, for example, whether the claimant is still a minor is relevant; in this case, an X-ray of the carpal bone was used to determine the claimant's age. According to Habermas (1996:187), "administration is the process of realising stated values in a world of contingent facts." Because values are specified, administration is oriented toward facts, some concrete or historical and some probabilistic. Answering these sorts of questions implies an investigative turn of mind, and doing so efficiently generally requires a division of labor and hierarchical control — in short, bureaucracy (ibid).

The prevalent lack of evidence in the asylum procedure makes the argumentation difficult for both sides, claimants and officials. Although most asylum claimants do not carry documents or other objects, they can sometimes provide certain evidence in the form of photographs, letters or newspaper clippings. As we will see, by contrast, public officials utilize a variety of opportunities to obtain additional "facts" and therefore (counter-)evidence. Caseworkers' dependence on information that can be used to "objectively" decide a claim leads to practices of establishing past facts or proving a future risk that are "processes of actively constructing, rather than passively discovering, knowledge" (Sweeney 2009:705). In his seminal work on bureaucracy, Downs stressed how the biases of individual officials affect the search process. An official's "perception apparatus will partially screen out data adverse to his interests and magnify those favoring his interests" (Downs 1967:180). In other words, "the risk is their own presupposition that will influence their fact-finding" (Thomas 2011:165).

How do caseworkers gain information about a specific case? First-hand information is necessarily provided by the asylum claimant in the interview. Additional information regarding the social, economic, political and medical conditions in a specific country is provided by the COI Unit. Additionally, so-called fact-finding missions are conducted to collect "facts" about the actual situation in a specific country (Tiwald 2010). Furthermore, the FAO can commission reports by independent experts on the physical and psychological condition of asylum claimants. Data provided by these two sources – the COI Unit and experts – are generally considered to be objective facts and, as we will see, often have more weight attached to them than the claimant's own "subjective" account.

In processing an asylum claim, caseworkers need not only content-related information but also legal-procedural information. Since each case has or seems to have certain characteristics that make it similar to a previous case, officials often rely on precedents for orientation regarding how to handle a case. Earlier decisions issued by the Agency, the Asylum Court or the European Court of Human Rights represent

guidelines when deciding on a case at hand with similar features. Moreover, relevant information, including all asylum decisions, is stored on an internal server with personal folders as well as "public" folders, which are accessible to all officials via the intranet. During my observations, for example, an official tells a colleague that she can look at a former decision of his on a similar case in a specific folder because she never had a case such as this before and thus does not know how to handle it. This practice illustrates how the organization facilitates and ensures reproduction.

In addition to these sources, which are controlled and authorized by the organization (except for the independent expert reports), caseworkers draw on more informal and uncontrollable sources of information. One such unauthorized source of information takes the form of officials' personal networks of informants. As Sabine explains, she sometimes conducts "private research" or receives certain pieces of information from a friend who works at the police. These informal channels of acquiring information are only available to the official because of her personal contacts. Although the obtained information might influence her decision regarding an asylum claim, the written notification must be based on official, authorized sources.

Furthermore, the Internet represents an important source for decision-making officials that cannot be controlled by the organization but that allows for quoting – more or less – legitimate sources. Referring to the "googling judge," Byrne (2015) notes the need to consider the effect of decision makers' cyberactivity. Similar to other structural dimensions, information technology also restricts and enables action and organization. The use of technology can be seen as the result of structuration processes in which technology and organization interact in a specific context. With reference to Giddens's duality of structure, Orlikowsi (1992) formulates the thesis of the "duality of technology," implying that technology is not only socially constituted but also plays a constitutive role in the reproduction of structures. Organizations can be understood as the medium and the result of the development of technologies; they simultaneously promote the development of technologies, which in turn encourages the development, expansion and power of organizations in society. For example, the introduction and development of the electronic file in the asylum procedure can be understood both as a product of organizing and as organizing social practices. Byrne (2015) argues that using new media and electronic evidence as a source for decision-making has led to "decreased protection for some," especially because "decision makers are disinclined, or insufficiently trained, to assess" this kind of evidence.

As already mentioned, caseworkers particularly rely on information from the COI Unit. But who ultimately defines what information counts as a fact? When officials search for information on the current situation in a country, they can direct their questions to the COI Unit, such as "Are the following medications available to asylum claimants in Greece?" or "Does party XY have a seat in Tiflis?" However, as one official notes, regarding certain issues, the way a certain question is phrased will influence the answer one will receive from the COI Unit. With this knowledge, caseworkers can, at least sometimes, influence the outcome of the investigation and thereby indirectly gain definatory power over what counts a fact. By employing this strategy, the caseworker gains definatory power because the COI Unit's responses are usually taken as plain facts and can thus be used to justify a decision. As Downs

(1967:180) notes, "[I]n formulating alternative actions, each caseworker will tend to give undue precedent to alternatives most favorable to his interests, and to those about which adequate consensus can most easily be established."

In addition, the COI Unit works with informants on site (*Verbindungsbeamte*) to obtain case-specific information. For example, to determine whether there really was a tailor's shop beside the church in a certain village or whether the asylum claimant's grandfather really was a member of the military, the informant is ordered to go check places and houses and to interrogate alleged relatives or acquaintances of the asylum claimant concerned.

> So then we played it over the informant, that he went there and questioned the people and asked, "Hey, was there once a tailor's shop at this place?" It's supposed to be the, I don't know, Heratstreet 27, let's say. Well then, of course, when the research from the COI Unit gives the answer and says, listen, there is a field or there is a church and there has never been a tailor's shop in the last 20 years, well, then I'm terribly sorry, no? (Sabine).

The official's quotation highlights the importance of these informants in defining the facts; the decision maker explains that she has no reason to believe the asylum claimant when the informant says otherwise. However, caseworkers can hardly monitor the informants' work methods. In this respect, Roland expresses his discontent with his current informants in a certain country, mentioning a case in which he was happy that he still had an old colleague in place on whom he could count: "The one we have now, well, he also makes an effort, but... I don't know. But, he can't reach Berger* [the former informant]."

Although Sabine admits that "the COI Unit can also be wrong," in everyday practice, there do not seem to be real alternatives to believing the information provided by this department. The caseworker also believes that the department has more opportunities to obtain the necessary information. "I think they have liaison officers ... infiltrated ones who are actually more likely to get at information than if I call the Afghan embassy, right?"

The analysis reveals that numerous actors are involved in constructing what eventually counts as a fact in the asylum procedure. The information that is provided can be influenced not only by the experts of the COI Unit and their informants on site but also by the official, who can ask certain questions and omit others. However, there are even more actors involved, including interpreters and independent experts. The different types of external expertise also allow for a delegation of responsibility on the part of the caseworkers regarding the definition of what is a fact.

6.1.1   Working with Experts

To decide upon an application in the asylum procedure, caseworkers largely depend on knowledge from "outside" the institution, and interpreters represent one such source. In Sect. 4.3, interpreters were discussed as representing a valuable resource

for officials in gaining additional information. They often do more than "just" translate. Due to their personal background and experience, many interpreters are regarded as knowledgeable concerning local circumstances, such as geography or customs. While it is not the rule, interpreters are sometimes also commissioned as experts to produce reports on specific topics. This section and the one that follows explore the role of experts and their reports in the asylum procedure.

Commissioned experts represent a key group of informants for decision makers. Similar to officials' relation to interpreters, the power relations between officials and experts are not always obvious. Vis-à-vis the authority, interpreters and experts have several things in common: both are supposed to work independently and neutrally, and officials have some leeway regarding which interpreter and which expert to commission for a specific "case." The issue of power and control in the relation between caseworker and expert is complicated by the dilemma in which the agents have "to defer to, yet exert a degree of control over, the experts" (Redmayne 2001:1). The same is true for caseworkers' relation to interpreters. While officials have the power to choose which expert or interpreter to commission, at the same time, caseworkers depend on them to a certain degree; without an interpreter, the interview cannot take place, and without an expert report, caseworkers often cannot substantiate their decisions.

In addition to the information provided by the COI Unit, expert reports represent another source of legitimate information for the establishment of facts. Examples of these can include medical reports that give insight into asylum claimants' scars, psychological reports on claimants' health attesting to depression or post-traumatic stress syndrome, or linguistic reports to determine a claimant's country of origin. Similar to the situation with interpreters, according to Austrian procedural law (article 52 AVG), the agency has to appoint court-approved official experts registered on an official list; non-official experts should only be commissioned in exceptional cases. The requirements for becoming a sworn, court-certified expert include not only an examination but also technical knowledge, work experience, third-party insurance, trustworthiness, and other elements (article 2 SDG). The fact that experts are legally obliged to have insurance hints at the conflict potential involved in experts' work. In the following, we will observe that decision-making caseworkers also mention trustworthiness and professionalism as important factors in their relation with experts. While the Austrian association of court-certified experts stresses that its members have an excellent reputation and act correctly, thoroughly, objectively and independently, practice has shown that this is not always the case. Scholars, especially in the medical and psychological disciplines (Korzilius and Rabbata 2004, Hofmann et al. 2014 for the German context), have drawn attention to serious shortcomings concerning expert reports in the asylum procedure. Such deficiencies can concern an insufficient consideration of the findings, ignorance of the state of the art as well as incomplete, incomprehensible or incorrect conclusions (Schumacher et al. 2012).

The analysis of an interview with one of the FAO officials reveals three main aspects of the relation between official and expert, which are comparable to those

between the official and the interpreter: the role that personal contact with the expert can play and the importance of informal requirements; trust-building and ensuring professionalism as vital parts of relationship work; and the contribution of these different elements to officials' distinction between good and bad experts.

Sabine's account emphasizes the role of the personal contact with the expert she will appoint for a report. Although there is an official list of certified experts, she is "always looking for new doctors," pointing out that she will go to see them in their offices. The official explains that she went to see a doctor to ask him whether he would write reports for the FAO "because he has the qualifications," mentioning on the side that her neighbor works as the doctor's receptionist. The latter fact, a link to the official's private life, might also influence the relation between the caseworker and the expert. Why is it important for her to see the doctor and to talk to him face-to-face, thereby establishing a personal relation to the expert? The personal contact that emerges from this special recruiting measure modifies the relation between the orderer and the supplier of the report; at the least, it is likely to facilitate communication and collaboration between the two. By knowing the expert personally, she can learn about his (professional, political and other) orientation or worldview. The analysis suggests that she is not the only one who finds it important to be on a similar wavelength with the expert; she explains that certain caseworkers have good contact with specific doctors. She seems to be satisfied with her choice of the new medical expert and his work, noting that "we're doing quite well with him."

This statement implies that there are other experts with whom cooperation does not fulfill the agency's or the officials' expectations. The agency has its stock of doctors that it appoints regularly because the agency has had good experiences with them. By contrast, every caseworker seems to have certain experts with whom they are "not able to work" for different reasons (Sabine). Although she does not further explain why caseworkers have a dislike for certain experts – except that "they simply have objections" – the reasons may be the experts' working style or their personality. Alternatively, the dislike may be because the official's expectations regarding the report were not fulfilled. The official explains that in addition to the necessary qualification, only experience in working together will demonstrate the quality of an expert. She stresses that the expert should take her work seriously, producing reports that are useful for the decision-making process and not preparing biased reports. In addition, by providing a negative example, the official demonstrates that she finds it important that the expert be respectful and empathetic toward asylum claimants and their situations. Interestingly, she thinks it is better if the expert is physically located near the FAO. While she argues that it is better to keep travel distances for asylum claimants short, this placement might also be practical for caseworkers in that the expert is more or less "seizeable," as in the example above. In addition to these informal requirements, the law is the primary force that prescribes the tasks and duties of experts along with the Austrian general association of experts, which defines professional standards, such as general rules of conduct, behavior when making a report (especially when based on a court mandate), and behavior toward other experts.

As with interpreters, quality and professionalism represent another main aspect in the relation between the caseworker and the expert. Sabine recounts a phone call in which the expert told her something similar to the following: "Look, Ms. Nefka, I don't benefit if I write something that is not true because I have to justify myself before the court." With this statement, the caseworker seems to want to convince the FAO official that the person is a sincere expert who takes his job seriously and is aware of the possible legal consequences of a flawed report. In addition to the mentioned formal framework of professionalism, there are other informal components at play in the relation between official and expert, such as trust and reliability. As the caseworker highlights, a good expert, in the medical field in this case, "has to be a doctor of trust too," explaining that she would not choose an unknown expert for a medical report. Trust building can thus also be seen as an aim of the expert's statement in the above phone call. In addition, the social status of the expert seems to contribute to his trustworthiness. In the course of Sabine's account, an expert receives a variety of different titles, such as doctor, university lecturer, professor, and court-certified expert. He is regarded as being in a prestigious position and possessing a profound education approved by the court. As such, he is perceived to be competent and trustworthy.

In this context, it is interesting that the German Institute for Expert Assessment, advertising for quality assurance measures and special training, promotes the idea that "trust is good, qualified is better" (Institut für Sachverständigenwesen 2011). Although this statement implies that trust is not sufficient, it still indicates that trust is an important component in the relationship between orderer and supplier. The fact that power is a relevant issue in this relationship is highlighted by Möllering (2005): trust is necessarily connected to control in the sense that there is a duality, which "entails that trust and control each assume the existence of the other, refer to each other and create each other" (Möllering 2005:283). This observation underlines the complexity of the relation between the official and the expert, which is similar to that between the official and the interpreter.

Reliability seems to be another characteristic of a good expert, especially with regard to the deadlines given by the FAO. Stephan mentions that he has been waiting for an expert report for more than a year. "But not for much longer," he adds, since he has set a final deadline for the expert, and if that expires, he will process the application without this report. Making use of his discretionary power, he tries to escape this situation of dependency; as long as one expert has already been commissioned, another one cannot be commissioned for the same task. Although he explains that he has not received an answer yet "because nobody dares to go there [to a particular region],"[2] he does not seem to believe that this dangerous situation could be a reason to grant the claimant asylum. Instead, the caseworker seems to be bothered by his loss of control; the official aims at regaining power in order to be able to close the pending case and thereby produce another "number." The summary of an interview excerpt also illustrates that experiences of cooperation with an expert will lead

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[2] However, if an expert refuses or delays the submission of a report without reason, there can be legal consequences, such as a fine and reimbursement of costs in the administrative procedure.

an official to judge that expert's reliability and consequently decide whether to recommission her:

> The official wants an asylum claimant to go to a certain doctor for an expert report. The caseworker goes on holiday; when she comes back, her assistant tells her that their superior talked to the head of the department about this case, and the head found that the traveling distance for the asylum claimant was too great and that they would send her to another doctor. The official says, "Nobody knows him; our colleagues in XY [other branch] took him once or twice." Now, five months later, the report still has not arrived. She continues, "And yesterday I said to the head, 'When I say, send her to Dr. Diestel* – we'd have had the report within four weeks – then I want this to be done'" (Sabine).

This excerpt reveals how the caseworker positions herself within the power structures by arguing that her decision was justified. Additionally, she notes that to further the aims of the organization, it makes sense to commission an expert with whom she has already had good experiences despite the greater travel distance for the claimant. Both examples demonstrate that the question of control and its loss is at play in the officials' relations with the experts; both officials insist on a powerful position, aiming to regain their room for maneuver. The fact that caseworkers largely have the ability to choose which expert they will ask for a report suggests that it makes a difference which expert is appointed.

6.1.2   The Power of the Expert Report

In addition to the interview transcript, expert reports can represent a vital source of information in the decision-making process. These reports are documents, understood as text-based discourses and forms of knowledge, that emphasize the importance of the written word in the administration of asylum applications. The law, and with it legal procedures, depends on external knowledge. Although an expert report cannot solve legal questions, it can facilitate and consolidate decisions by "helping to fill interpretive gaps" (Wolff 1995:7).

To illustrate the power of the written word in the asylum procedure, I will use an example based on a scene reported by Sabine. An asylum claimant who needs medical treatment because of a tumor is to be deported to Poland since, according to the Dublin Regulation, Austria is not responsible for the case. The expert report suggests that the required treatment is also available in Poland. In this context, the caseworker recounts a situation at the medical expert's office that the expert reported to her, in which the claimant's companion threatened the expert verbally. According to the expert, Sabine tells me, the companion said to the doctor, "But he hopefully knows that he's supposed to write something appropriate into this report." What something "appropriate," that is, prudent or useful in the context of the procedure, means is self-explanatory: a report that makes an expulsion to Poland difficult to justify, such as a conclusion by the expert implying that the claimant's illness cannot be treated in Poland and he therefore needs to be treated in Austria, allowing him to

stay. This scene illustrates that the asylum claimant and/or his companion are aware of the power of the written word in the procedure, particularly if it is expressed by a powerful person such as the expert.

The official's account makes explicit the importance of an expert report in the asylum procedure. Her decision to reject the application, implying a deportation, is manifestly determined by the expert's conclusion that the claimant's illness can also be treated in Poland. In her description of her face-to-face interaction with the asylum claimant, the official repeatedly challenges the claimant's assertion with that of the expert. This confrontation is most evident when she says to the claimant during the asylum interview, "Well, it's your word against that of the doctor." Her statement implies that she has to balance the two opposing assertions against each other. She also uses the phrase "very well" (*sehr wohl*) several times in the sense of "of course." For example, in contrast to what the claimant said (that he cannot go back to Poland), according to the expert, this is "very well" possible. This statement suggests that the caseworker has a certain tendency regarding whom she believes. The importance of the written word in the asylum administration is also evident in another remark in which the caseworker refers to a specific event she deems relevant to the procedure: "Of course, I made a file memorandum." Every additional piece of information that is regarded as relevant is written down to ensure that all actors potentially involved in the procedure, such as a judge at the appellate court, are informed as soon as they read the file.

Another example of the higher value and credibility attributed to the written word in comparison to the claimant's assertions is illustrated by an interview transcript. According to the transcript, the claimant says, "I also have some problems with my liver, but I don't know if it is stated in the report. I already mentioned it to the doctor" (memo 0624). The official answers, "It does not appear from the report that you have liver problems. It can be assumed that you do not suffer from any liver problems" (ibid). The official thus openly demonstrates that for her, the medical report – the expert's written word – is more trustworthy and more relevant than the claimant's assertions. These examples illustrate that documents can be understood as active agents in episodes of social interaction; they can be recruited, manipulated, defied or hidden according to the situation (Prior 2004:358).

The findings demonstrate that the spoken word is deprived of power in this administrative procedure; it only gains relevance in an entextualized form. In other words, "the essentially problematic character of the applicant's claim is addressed and resolved by reliance on the essentially unproblematic character of official documents" (Zimmerman 1976:339). However, the system from which a particular document originates or who issued it is relevant. Expert interviews are treated differently than documents belonging to the asylum claimant, which are often treated with skepticism, checked for genuineness or evaluated as irrelevant and set aside. At the FAO, claimants' documents, such as certificates of birth or marriage or driving licenses, are often checked for forgery.

By contrast, the problem attached to expert reports and official documents is that they tend to be treated as objective and "true" representations of reality, often gain-

ing authority beyond the account of the affected person. However, what is considered reality in a concrete situation is not determined by facts, which exist beyond their representation. Instead, facticity is precisely the result of a particular form of representation and is embodied in this representation (Wolff 1995:68). For the officials, expert reports function as support for decision making in concrete cases. For the reports to be acceptable, the statements made by the expert must be regarded as undistorted depictions of reality (ibid:65). In the asylum procedure, as in other legal procedures, alternative versions of reality are usually called into play, and parties argue for or against them; eventually, they must be set against each other by the decision maker. Hence, it is vital to consider that the production of information is not a process "of filtering out a 'truth' that exists out there but that has been contaminated by selectivity or bias; it is fundamentally and inevitably interpretive by its very nature" (Gibb and Good 2013:322). In addition, with regard to the key issue of credibility, Good (2004a, 2004b) emphasizes that social science and legal thought differ in their forms of reasoning as well as in their understandings concerning the nature of "fact" and "truth."

6.2   From Assessing Credibility to Constructing Incredibility

While according to the UNHCR Handbook, the burden of proof is generally upon the claimant according to the UNHCR Handbook, there may be circumstances in which the decision maker is required to "use all the means at his disposal to produce the necessary evidence in support of the application" (UNHCR 2011:para.196). However, if there are statements that are not easy to prove, the applicant should be given the benefit of the doubt if her account appears to be credible. Hence, the UNHCR regards credibility as an alternative to proof, not as a synonym for it, since "'being credible' is different both from 'being proven' and from 'being true'" (Sweeney 2009:711). The search for facts is thus connected to the assessment of the credibility of a claimant's account. Although credibility is not mentioned as a criterion in the UN Refugee Convention, many asylum applications are rejected because of doubts regarding credibility (Sweeney 2009:701). Additionally, Kagan (2003:367) notes that "credibility assessment is often the single most important step in determining whether people seeking protection as refugees can be returned to countries where they say they are in danger of serious human rights violations."

    The Austrian Asylum Act states that asylum is to be granted to "a foreigner … if it is credible that he is threatened by persecution in the country of origin in the sense of … the Geneva Convention on Refugees." Additionally, "the assessment of the credibility of asylum seekers' assertions" is stated as one of the purposes of the COI Unit. Credibility assessments usually involve testing an account's plausibility as well as its internal and external consistency, that is, its congruence with known facts (Weston 1998 in Sweeney 2009). Plausibility – the assessment of the likelihood of an event to occur in reality – "is commonly considered as a reliable verbal cue for

truthfulness (Vrij 2008) and as such, has a significant influence on credibility judgements" (Nahari et al. 2010). However, what remains unclear is "*how* internally consistent, *how* externally consistent, or *how* plausible the applicant's story would need to be in order to be 'credible'" (Sweeney 2009:701). Why and how is an individual supposed to "prove" credibility, and how do credibility findings and the outcome of the case relate?

Whether a claimant's assertion is judged to be credible is often a decision based on uncertainty. An official expresses this uncertainty by asking a colleague whether she thinks that a certain assertion is credible. The caseworker explains the details of the "case" to her colleague, who then replies, "That's nonsense; you can make him incredible" (ob. 2). "To make someone incredible" means to reach the conclusion that a claimant's assertion is not credible – usually with the consequence that she will not be granted asylum. Credibility can be uncertain, and it can be intangible. Veronika explains that sometimes "you really feel that it's not true, but you can't catch him on the factual level because he just doesn't have any contradictions; where you just have a sense of it and think to yourself, 'How do I get him now?'" This account illustrates both the subjective dimension of dealing with asylum claims and the relation between credibility and facts. The official mentions that she has a "sense" and that she "feels" that what the claimant says is not true. At the same time, she does not have any evidence to prove otherwise.

Gabi reports that she "didn't believe a word of her [the claimant], but then, you're powerless!" (o. 0804) The caseworker regards herself as powerless because she perceives herself as not having a "choice" regarding the decision on this particular asylum application – not because of a lack of evidence this time but "because her [the claimant's] brother got a positive decision with the same assertion in the first instance." The caseworker was thus bound to stick to this decision despite not judging the claimant's assertions to be credible. The official explains that there are cases "where you're convinced that it's not true, but you can't prove it." Mountz (2010) also observed that although bureaucrats make powerful decisions with important consequences to individuals' lives, they sometimes feel powerless in the process of decision making.

When dealing with this context of uncertainty, caseworkers constantly search for inconsistencies or contradictions, a problem that is reinforced by the fact that these caseworkers tend to measure plausibility using their own standards. One official regards her work as "a little bit like detective work," explaining that she usually makes notes during the interview that she then compares to the protocols of the claimant's previous interviews (ob. 2). Such "detective work" can be seen as "an element that spices up a rather routine activity" (Dubois 2010).

Asylum claimants are expected to have knowledge regarding specific issues. They should have knowledge of general issues such as geography, political parties or religion, but they also require particular knowledge relating to certain events in their lives. The expectations concerning specific knowledge are most often related to credibility. Caseworkers tend to have certain expectations regarding what a person should know – partly in reference to their own standards – for an assertion to be

credible. Stephan, for example, finds it suspicious if a claimant does not know specific places, distances between places, the language, the customs or the religion of the country from which she claims to come. Another colleague finds that "there are these typical points, for example, years, dates; if something really happened, then I know when that was" (ob. 2). Whereas an occurrence sometimes "comes out of the assertions and the behavior [of the claimant] consistently," as Thomas mentions, other times, the non-occurrence of a claimed event seems to be obvious to officials. There are certain indications and signs of incredibility, which officials claim to identify. Veronika finds that "such [vague] answers are more than an indication that he didn't experience it; because otherwise, he has to say *something* … even if I'm not so good verbally, I can say something."

The knowledge that a claimant is expected to have is also tested in the asylum procedure to verify the correctness of the claimant's assertions. An official explains a possible approach to verifying the provided information: "I ask the same question three times in the same interview, just differently phrased; you can also test like this" (ob. 2). For a certain period, Stephan mentions that there was a test for claimants from a specific country of origin in which oral and written language, as well as knowledge about the capital of that country, were tested. Such tests in the asylum procedure can be regarded as tools for "transforming undecidables into decidables" (Scheffer 2003, own translation).

The failure of a claimant to provide the expected information or to act in the past as the caseworker would have expected – since caseworkers tend to measure by their own standards – may lead to conclusions of incredibility. Acts or statements that make an assertion seem conspicuous or suspicious thus serve as indicators of incredibility. In addition, the alleged "mistakes" a claimant may make are weighted; they do not have the same value. "That he doesn't know a date, that doesn't count as much as when he makes a mistake by years … Also, it's always conspicuous if the asylum claimants know the days by heart" (Stephan). The caseworker first explains that it makes an assertion more incredible if a person confuses years, whereas confounding days is regarded as less problematic; however, he then implies that it can even be conspicuous if a claimant does know an exact date. In addition, he finds that "time-related contradictions, of course, don't count as much as logical contradictions."

This inherent ambiguity – on the one hand, claimants are expected to know dates; on the other hand, it can be suspicious if they know those dates – is further illustrated by the following statement. "It also always depends whether it's a single person or they are families or several persons connected; are there contradictions then or congruities in the respective accounts, statements?" (Stephan). According to the official, "It's also conspicuous if they're a hundred percent similar because one immediately figures out that it's arranged because everyone has their own view a little bit different, like with the 3-D effect; two cameras can't see the same thing." For an assertion to be credible, officials expect that different persons' accounts will resemble each other. At the same time, if they resemble each other too much, this is interpreted as an indicator of incredibility. Thus, convincing an official of the

account's credibility seems to require a sophisticated balancing act by the claimant.

In addition to contradictions, officials claim to identify lies in claimants' accounts. However, often, "you really can't assess it; does he lie to me or does he not lie to me?" Veronika states. This uncertainty often leads to "half-hearted decisions." Whereas she stresses the prevalent uncertainty, Stephan claims that there are interviews "where you know the story is definitely a lie simply because you already know the country better than the asylum seeker who claims that he's from there." The caseworker directly relates a lack of knowledge to untruthfulness, which can have a major impact on the decision-making process. Borrowed stories, contradictions and omissions are used by decision makers to identify lies. According to Rousseau and Foxen (2006), the asylum interview is often constructed as a trap or a search for authenticity. In addition, the labeling of claimants as liars or bogus is a common practice both in the public sphere and in the asylum administration (Jubany 2017). In this study, asylum claimants are said to "produce fake tears" (Stephan) or to tell their children that they have to cry at a certain point in the interview (Roland). Stephan, for example, is convinced that Chechen asylum claimants only pretend that they cannot speak Russian in order to be given a Chechen interpreter. Thomas mentions that a claimant persistently maintained his assertion "although it was nonsense, that was obvious." However, some caseworkers demonstrate understanding, such as Gabi, who accepts that claimants try different things to reach their aim, which she regards as "a cry for help."

6.2.1   Credible Well-Founded Fear

A particular aspect of the assessment of credibility consists of determining whether a "well-founded fear" of persecution exists. Following article 1 of the Geneva Convention on Refugees as amended by the 1967 Protocol, the term "refugee" shall apply to any person

> who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The UNHCR states that in determining whether "well-founded fear" exists, both a subjective *and* an objective element must be taken into consideration. On the one hand, fear is understood as "a state of mind and a subjective condition" of the asylum claimant; on the other hand, this frame of mind must be supported by an objective situation (UNHCR 1992:para.38). Decision-making officials thus strive to examine whether the subjectively expressed fear is objectively "well-founded." However, Douzinas and Warrington (1991) argue that the claim that "well-founded"

fear of persecution, a requirement for asylum, can be rationalized through the shared understanding of their cause puts the victim in a "violent double bind." Independently of how a claimant acts, it always seems to be wrong; the person is labeled either as a liar or as a performer who is too bad or too good.

> Either he [the applicant] is in fear or he is not. If he is, he should be able to give facts and reasons for it which, as they belong to the genre of truth, should match up to the assessment of the judge. If they do not, the refugee is lying. If, on the other hand, he cannot give "objective" justifications for his fear the refugee is again lying. Similarly, when the refugee is inarticulate and cannot explain the "objective basis" of his fear, he is not in fear. But when he can do so, the immigration officer "formed the view that the Applicant, who appeared in good health, was alert and confident at the interview, was moving away from Uganda because a better life awaited him somewhere else and that this was not a genuine application for asylum" (2:949) (Douzinas and Warrington 1991:129-30).

The performance aspect has already been discussed in the previous chapter. By highlighting the importance of subjectivity in evaluating the performance, particularly in terms of what the claimant says (or does not say), the way in which case-workers measure their own standards can be observed. One example is the abovementioned situation in which a claimant knows the exact date of certain events but not of other events, knowledge that would be crucial according to the official. The caseworker explains that such knowledge gaps raise his awareness concerning the person's (or rather the assertion's) credibility. Veronika regards this situation as an "indication that he hasn't experienced it" if a claimant does not say anything to substantiate his assertion. By referring to herself, Veronika thinks that it must be possible to describe in detail an unpleasant situation one has actually experienced "because if I'm [imprisoned] somewhere for forty days, then I can recount my thoughts, how I felt." Although it can be assumed that this comparison is only hypothetical, she also does not seem to consider possible traumas at this point. Later in the interview, Veronika demonstrates understanding for claimants who are traumatized or suffer from fear or inhibitions. Imagining how she would react in the situation mentioned by the claimant, she applies her personal standard. If the claimant does not reveal details about her experience in this situation, as Veronika would expect her to do if she had actually been in this situation, the caseworker interprets this as an indicator that she has not experienced it, Veronika explains.

As Blommaert (2001:442) notes, "general common-sense plausibility" implies that "certain arguments are qualified as unlikely on the basis of a general perception of what is possible and what is not." In these situations, "there is no evidence offered of the impossibility of these facts, they just seem unlikely" (ibid). The above findings illustrate that plausibility represents the potentially most subjective of all grounds for credibility assessment (Sweeney 2009). Thus, it is vital that in assessing credibility, decision makers "also engage in much self-examination in order to interrogate the degree to which their own value judgments and life experiences influence their decisions" (Thomas 2011:165ff). In the context of other immigration agencies, it can also be observed that rather than being derived from laws or regulations, case-workers' criteria for screening individuals are based on their own categorizations, rules and values, which originate in stereotypes based on experiences and social

prejudices (Jubany 2017). In the UK, asylum decision makers are therefore instructed "not to construct their own theories of how the applicant or others in the account ought to have behaved or to assess their behavior against what would be plausible in the UK" (Sweeney 2009:705).

Credibility assessments can thus constitute a tension between norms of subjective and objective decision making (Kagan 2003). Whereas subjective credibility assessments are highly personal and depend on the decision maker's judgment, perceptions and dispositions, objective assessments involve standardized criteria and a more structured inquiry. As this study demonstrates, subjective assessments often lack an articulated logic and tend to be inconsistent from one decision maker to another; by contrast, objective assessments generally involve more specific and concrete explanations for decisions – such as the implementation of administrative and human rights norms in the asylum interview – and are easier for appellate bodies to review (ibid).

The problem of subjectivity and objectivity becomes particularly relevant when officials assess the existence of "well-founded fear." Hathaway (1991:65) argues that "the concept of well-founded fear is rather inherently objective" and that "the subjective perception of risk must be consistent with available information on conditions in the state of origin." By contrast, Noll (2005) notes that the Geneva Convention contains neither an "objective" nor a "subjective" element. While the Convention contains implicit procedural obligations, there are no explicit norms governing the asylum procedure. According to Noll, the linkages between fear and subjectivity, on the one hand, and between well-foundedness and objectivity, on the other hand lead to misperceptions and ungrounded conclusions. An objective element would imply a perception of facts or conditions "without distortion by personal feelings, prejudices, or interpretations" (ibid:144). However, the assessment of the well-foundedness of fear is necessarily based on personal interpretations of reality. Noll argues that the UNHCR Handbook (1992) blurs the dichotomy of objective and subjective; it provides no clear indications for decision makers, only a rule of thumb to "when in doubt, do more of the same, and call it credibility assessment" (Noll 2005:149). The author concludes that when a decision maker has decided that no additional evidence is necessary and attempts to decide the asylum claim, she has two possibilities: either endorse the claimant's risk evaluation on the basis of a source credibility assessment (positive decision) or reject the claimant's evaluation and replace it with her own evaluation – motivated not by a lack of general credibility but by its own terms (ibid:160).

As Kagan (2003:384) notes, "credibility assessment is extremely difficult because each credibility factor is subject to substantial caveats and requires significant caution." The author identifies four pairs of positive and related negative credibility factors. A detailed and specific account from the asylum claimant is generally regarded as a positive factor for credibility as opposed to vagueness. The account must also be consistent, whereas contradictions represent a negative factor for credibility. In the assessment of credibility, time also plays an important role. A claimant is supposed to provide all "facts" at the earliest possible opportunity and not to delay the revelation of essential "facts." In addition to plausibility, the claimant's

ability to reproduce her account at any time during the asylum procedure is regarded as another factor for credibility. However, inconsistencies are not only normal but also more likely to arise when the interviewee is, for example, traumatized. In addition, contradictions can be caused by rapid questioning or a quick change of subjects. It is therefore important that claimants are given sufficient time and opportunities to provide information (Dornboos 2005:121). In addition, decision makers should beware of too quickly equating minor inconsistencies with implausibility and a lack of credibility.

6.3   Concluding Thoughts on Deciding in Uncertainty

According to Ortmann (2003:138, own translation), one difficulty in deciding is that "we do not know enough; our capacity to process information is limited, and our preferences are unstable and inconsistent." The situation of never knowing enough is of particular importance in processing asylum claims. Caseworkers are constantly searching for information; they arrange research and expert assessments in order to make conclusions regarding the credibility of the asylum claimant's assertions. However, a decision-making official can ultimately never know enough and can hardly know every detail of the "true" concatenation of circumstances and contexts that led to the flight or fully evaluate and anticipate a possible future risk of persecution. The investigation of officials' practices is of particular interest in such "crises," that is, in situations that cannot be mastered by means of routinized patterns. Following Reckwitz (2005:255), "the 'breaking' and 'shifting' of social structures takes place in everyday crises of routines, in constellations of interpretive indeterminacy and of the inadequacy of knowledge with which the agent, carrying out a practice, is confronted in the face of a 'situation.'" Although officials are constantly confronted by the undecidability of asylum claims, each situation requires a new strategy of dealing with that uncertainty.

Following Ortmann, deciding means the transformation of contingency into unambiguity. "What to do when the necessary transformation of contingency – the decision – is not doubtlessly substantiated in itself – and it is almost never? Then, doubts have to be suppressed, weak justifications have to become strong ones, missing ones have to become feigned ones" (Ortmann 1990:375). In the legitimation and justification of a decision regarding an asylum claim, these suppression and consolidation mechanisms play a crucial role, highlighting the constructed character of facts. Such a decision is rarely "doubtlessly substantiated in itself," and missing or weak argumentation is strengthened through information from authorized sources such as the COI Unit or expert reports. These legitimate sources play a vital part in the construction and definition of a "fact." These mechanisms of suppression and consolidation are related to the decision makers' practices of ascertaining facts while being oriented toward norms. Caseworkers investigate only those facts that are norm-relevant and allow a decision that fits the "program" (Lautmann 2011:168).

The construction of facts departs from the assumption that objectification is possible. As Rousseau and Foxen (2006:515) note,

> The interpretation of the refugee's story in terms of conformity and deviance relies on expert (institutional) knowledge and on an expert experience that must appear to be founded on an objectification of truth and falsehood and that therefore assumes, from the outset, that such objectification is possible.

Data provided by tools such as databases are often perceived as "'hard' data, duly filtered and authoritatively approved, and somehow representing 'objective' information," an impression that might be reinforced by the technological presentation of data (Noll 2005:145). However, any such information depends on the author's judgment and might thus be as subjective as a claimant's account. In this "game" of interpretation, definition and legitimation, organizations and their members are powerful players. As members of the organization, certain groups of actors – often, the decision makers – have the power to define "right" and "wrong" (Ortmann 2010:191). These issues emphasize the power asymmetry between the individual claimant and the caseworker as a member of the organization. Being such a member also means being socialized in the organization and adopting certain views, values and practices, such as practices of dealing with uncertainty. Categorization, one way of dealing with ambiguous situations, will be discussed in more detail in the following chapter. This chapter illustrated how information is made valid and legitimate in a context through the construction of facts, artifacts and (in)credibility. It also became evident that the different practices of officials' "construction work" are closely intertwined.

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Chapter 7
The Human Individual vs.
the Faceless Case

Another structural contradiction inherent in the asylum procedure is the conflict between a focus on the asylum claimant as a human being and a faceless case. This chapter examines how officials try – or do not try – to reconcile these. I explore what shapes their practices and how these practices shape the interaction with claimants.

In his treatise on bureaucracy, Weber (1978:959) argues that the ideal public servant is to be "devoted to impersonal and functional purposes." While the administrative processing of large numbers of applications provokes impersonality, at the same time, the asylum procedure and the asylum interview in particular need to focus on the individual claimant. The interview situation seems to be the only time and place where claimants are perceived and recognized as individuals. Throughout the procedure, asylum claimants are otherwise constructed as abstract cases and productivity-related numbers in the sense of New Public Management. Examining the situation from the perspective of Parsons' (1951) orientation alternatives, case-workers find themselves in a dilemma between universalism and particularism. On the one hand, deciding upon an asylum claim requires that officials follow general principles; on the other hand, they have to consider the particular case. While the law requires that every asylum claimant be treated on an equal basis, officials also have to attend to the claimant's specific situation. In addition, the dilemma is related to a choice between an orientation at neutrality or affectivity (Parsons 1951); whereas some roles and situations require emotional commitment and action motivated by feelings, others demand functional, sober behavior. In this context, Maynard-Moody and Musheno (2000:329) identify two coexisting narratives of discretion among officials: on the one hand, they are "state agents who act in response to rules, procedures, and law"; on the other hand, they are "citizen agents who act in response to individuals and circumstances." The latter, caseworkers' practices of "dealing with faces," has often been muted in street-level bureaucracy

research thus far (Maynard-Moody and Musheno 2003). In a similar Dubois (2010) argues that most dilemmas "alternate between involvement and detachment, assistance and domination." Officials' practices with regard to these structural tensions will be explored in this and the following related chapter on responsibility versus dissociation.

7.1   The Face in Face-to-Face Interaction: A "Human Aspect" vs. Organizational Aims

As a face-to-face interaction, the asylum interview is characterized by the visibility and presence of the claimant as an individual. It seems to be the only situation in which caseworkers see their "clients" as "faces" instead of abstract cases or numbers. In this bureaucratic encounter, where the official (usually) leaves her desk and performs "front line" work (Lipsky 2010), the appearance and performance of the claimant (and all other involved actors) gains importance. As explored above, officials tend to pay attention to claimants' behavior and ways of talking, and their impressions influence the decision-making process.

The individual and her experiences are the focus, particularly when claimants call intersubjectivity into question. Referring to the idea that an official is not only an organ of the authority but also a human being, claimants may appeal to the official's empathy for and understanding of their situation. Examples include the questions mentioned in Sect. 4.2 toward one caseworker, asking whether she had ever been raped or had ever experienced a war. In one of the observed interviews, the claimant directs the latter question to the caseworker "from human to human" (o.i. 6). Instead of addressing the interviewer in her official role, embodying state authority, the claimant alludes to the human level, asking her, as an individual, a personal question. However, the official notes that one can also have understanding without having the experience. While the caseworker reflects critically upon her position, regarding herself as an "inhabitant of the island of bliss" (Sabine) and being aware that she does not have certain experiences, she finds that her investigation possibilities compensate this lack of intersubjectivity.

> I mean, of course one also has to think in the people's shoes … For us, it's also difficult, I'd say. We live here, yes, we have no idea, let's be honest, what's happening in another country. Now, we as inhabitants of the island of bliss, if I may say so, decide upon someone who comes from a country where there's really no security, no legal system, no security police, functioning police, right? But how can we know that if we've never been there, right? And one [claimant] criticized me for that; I don't have a clue what I'm actually talking about, right? It's true, but for that, we do have our research (Sabine).

The official also believes that "if you have a family at home yourself, you maybe also think differently than if you are a single, and a male single." She explains that when she started working at the FAO in what is now the IRC, she "always had toys for the children in the interview rooms" and provided snacks for the children, thereby creating a more relaxed interview situation not only for the children but also for the parents. Her statement also implies that there is a gender difference in

officials' attitudes and approaches when addressing asylum claimants and their claims. Referring to intersubjective comprehensibility, she believes that female caseworkers or those who have their own family might be more understanding toward claimants, especially if they have children. Another official's account also underlines that the official's approach in the interview can make a difference and that it can be related to gender. Gabi reports a situation in which the claimant appreciated her interview style. At one point, the official had to inform the male claimant that he had the right to be interviewed by a male official. However, the claimant wanted to continue the interview with the female official (and the female interpreter) "because we were so friendly and so empathetic," Gabi remembers.

However, physical closeness in the interview also includes the possibility of conflict. Two caseworkers mention specific memories of conflictual interactions with asylum claimants. A claimant became verbally aggressive during the interview and threatened the caseworker that she would "see what [she] get[s] from it," implying that the official's decision would have consequences for her. Sabine explains that she felt intimidated: "They marched him [the claimant] off with the security … and I said to the boss, 'I don't dare to sign the decision notification.'" Another official mentions that she was informed that a claimant was supposed to be aggressive and "a danger to the public" and that "they took a knife off him outside" (o.i. 1). Therefore, she did not want to conduct the interview on her own and thought it would be "better if a man does it" (ibid), again highlighting the relevance of gender in the interview context. As Dubois (2010) notes, violence, whether real or feared, affects officials and their work.

> Violence has the effect of making the agents' individuality resurface against their own will. When they are threatened, sometimes physically exposed … agents lose their relative control of the alternative use of their physical body and of their bureaucratic role, which usually allows them to control the situation (Dubois 2010:171).

These examples of experiences of physical nearness and individuals' aim for intersubjective comprehensibility illustrate the difficulty of this human interaction in the form of a bureaucratic encounter. These and similar situations, which highlight the potential for conflict that this interaction bears, have already been analyzed in Chap. 4 on asylum interviews. For officials, one way of dealing with this challenging face-to-face situation is to reduce complexity by being less responsive to the claimant and focusing on the "factual" level of the asylum claim.

Thomas explains that before he started working at the FAO, the "human aspect" in interpersonal relations had always been "very important" to him. However, after only 2 years of experience as a decision maker, he reflects that "the work shapes you," implying that he has incorporated new values through socialization in the organization. The official remembers that in the beginning, he made sure that there was "a very, let's say, human, maybe not cordial, basis" and a "very good atmosphere." He emphasized "that the person feels comfortable and simply can speak freely." However, after some time, that "faded away a little bit" (Thomas).

According to the caseworker, there are two reasons why this occurred. First, he finds that there is not enough time to invest this additional effort because there is a certain workload that has to be fulfilled. He finds that it would take more time to

"build a human [basis] or a basis of trust" in the interview. Second, he realizes that there was a point when he thought, "Okay, it doesn't make any difference if I spend the energy and create a human basis of trust or if I really treat it factually." After conducting interviews on a purely factual basis – implying a concentration on the content and the questions of the interview and not on the individual and the atmosphere – he feels that "it's faster; so, it definitely saves time if you don't add this … human supplement." The fact that the caseworker prefers saving time and energy to creating a trusting atmosphere highlights how the logic of NPM permeates the organization. The organizational aims focus on efficiency and efficacy, not on the individual and the "human aspect." Thus, the organization provides decision makers with a clear orientation in the dilemma between the human individual and the faceless case or number.

Even if the official claims that it makes no difference for him, it is likely to make a difference for many asylum claimants if he creates a more or less comfortable atmosphere, taking and giving enough time for the interview. Although it is doubtful that an asylum claimant will really "trust" a government official, the findings highlight that claimants appreciate a "human" approach in the interview. Thomas mentions that he recently "tried it again on that level, to build up trust." He explains that he liked it: "It was also good for me because I thought, okay, I can still open up, it's still possible; I can still build up a certain basis of trust with people." This example shows that as the "head of the official act" (*Leiter der Amtshandlung*), he has the power to define the interview situation. The official's behavior toward the claimant, including which aspects of the interaction he focuses on and which he does not, largely determines how the interview situation develops. He adds that the claimant was grateful and appreciated that he took the time for the interview. The caseworker recalls that he answered, "Well, of course I take the time for everyone … it's also my task." This ambivalence between taking time and saving time emphasizes that although officials are required to take every individual asylum claim seriously, there are organizational norms that push them toward processing cases more quickly. The study shows that understanding in all its dimensions is a key factor in the interaction between caseworkers and claimants, but time pressure does not seem to be a good breeding ground for understanding.

These practices of focusing on the content and the "facts" of the case rather than on the individual can be understood as a process of making the human invisible. To some extent, this process of "invisibilization" is reinforced through a sort of proxy communication in the asylum interview. The fact that communication is mediated through an interpreter adds to this tension. As we have seen above, interpreters are often addressed directly by the speakers instead of the actual conversation partner. However, this practice implies that the actual communication partner is not addressed directly but in the third person. For example, officials say to the interpreter, "Tell him that that doesn't make any sense" (o.i. 2) or "Ask her why she didn't say that before" (o.i. 5) instead of addressing the claimant directly. This form of interviewing may not only influence the claimant's answer, but is certainly also

detrimental to the recognition of the present claimant. It was observed in several asylum interviews that the official and the interpreter talked about the claimant or her assertions without the interpreter informing the claimant about the content of the conversation. This practice is problematic since the claimant usually cannot understand what the two are talking about and is thus not taken seriously as a communication partner.

In addition, the fact that the claimant's account is reproduced – and potentially modified – by the interpreter contributes to this process of "invisibilization." The translation can be understood as a way of empowering the speaker in the sense of giving someone a voice, but it is simultaneously disempowering when a statement is rephrased twice before it is put to paper. This process was analyzed as the "filtering" of messages through different actors in the production of the interview transcript. More generally, the interview situation can be understood as a proxy communication, a situation in which nobody speaks for "themselves"; the interpreter speaks on behalf of the claimant or the caseworker and is thus acting "in the name of" both parties, whereas the official acts "in the name of" the authority, and a potential legal representative acts "in the name of" the claimant.

Although both the claimant and the caseworker depend on the interpreter, implying a disempowerment of both parties because they cannot speak entirely for themselves, the power relations are still maintained since the official is empowered by being an institutional actor. The fact that caseworkers act in the name of the authority seems to culminate in an official's statement, "I am the authority" (Veronika). Although asylum interviews are held in an official setting, inside a government building, an official's authority is not visible at first sight. Since caseworkers do not wear a uniform or any other recognizable symbols, even when entering the interview room, the caseworker could be mistaken for a secretary or any other person. The linguistic level thus represents one key to authority in this interaction. To position herself and to make her role clear, the official explains to an asylum claimant that she is not to be regarded as a person but as the authority in the sense that she is acting as the decision-making institution. Thus, she contributes further to the elimination of the human aspect from the interaction. While she is personalizing the authority as an institution, the interviewer depersonalizes herself with her statement. The question of an official to a claimant in an observed interview regarding why the claimant "lied to the authority" (o.i. 0401) also represents this impersonalization. The caseworker is obviously referring to a prior interview – an interaction between the claimant and an official, who is then regarded in an impersonalized manner as the authority. Officials symbolically impersonalize themselves through objects and language while simultaneously personifying the institution that employs them (Dubois 2010:79). In addition, these examples illustrate the expandability of power in formal organization through its detachment from concrete persons (Coleman 1982).

7.2   Making the Human Invisible: Claimants As Categories and Cases

In dealing with asylum claimants, decision makers are confronted with a structural tension that requires a focus on the individual on the one hand and a "processing of the masses" on the other. While attempts to maintain a "human element" can be observed in some officials' practices, according to Weber (1978:225), the bureaucrat's work is dominated by "a spirit of formalistic impersonality."

> "Sine ira et studio," without hatred or passion, and hence without affection or enthusiasm. The dominant norms are concepts of straightforward duty without regard to personal considerations. Everyone is subject to formal equality of treatment; that is, everyone in the same empirical situation. This is the spirit in which the ideal official conducts his office (ibid).

Impersonality as a characteristic of bureaucracy can have positive effects on an asylum claim when it implies a neutral, unbiased stance of the official toward the claimant and her assertions. Since decisions are generally regarded as fairer when they are made on a neutral and unbiased basis, proof of objectivity and impartiality in decision making increases perceived fairness (Tyler 2003). However, such treatment also includes the risk of reducing persons to cases and turning them into objects by reducing them to their files (Felstiner et al. 1980:631). Whereas impersonal treatment can thus have negative consequences for the client, for organizational work, impersonality has both necessary and desirable effects (Prottas 1979). Alluding to the interview situation and illustrating this impersonality, caseworkers often refer to claimants in a rather neutral but still telling way as "the person on the other side." However, the findings also show that empathy, sympathy and antipathy can play a role in the relation between caseworker and claimant even if the law prescribes impersonality and objectivity. As in any other direct face-to-face interaction, participants gain a picture of the other, and decision makers are, at least to some extent, influenced by their impressions, as discussed above. For example, asylum claimants are sometimes perceived by caseworkers as orderly and decent people or as poor, particularly when they are seriously ill. However, "poor" is also used in an ironic manner to criticize people with a critical opinion on a topic who do not know much about the "reality" of the cases according to the caseworker. The media is also blamed for publishing distorted accounts and portraying asylum claimants as poor victims. However, media analyses demonstrate that the opposite is true, and asylum claimants are often criminalized and stigmatized (Statham 2002, Alia and Bull 2005).

The approach of impersonality, a feature of bureaucratic "people-processing" (Prottas 1979), is closely related to processes of categorization and generalization, especially when officials try to determine who is "in the same empirical situation" (Weber 1978:225). The ambivalence between the individual and the group or the masses is a major issue. Although Gabi notes that one has to adjust to every claimant afresh, there is a clear ambivalence in her comment, "of course, every human is different, everyone is individual … but the stories are also always the same." She differentiates between the individual and individuals' assertions, highlighting that

the former is unique but the latter often resemble each other. Caseworkers tend to emphasize that claimants' "stories" repeat themselves, usually without reflecting that this might be related to the fact that the reasons for granting protection are equally limited to persecution on certain grounds. Another interesting differentiation is made by Veronika, who thinks that for political and societal discussions, "one has to see the mass," whereas in her everyday work, she finds the opposite is true, explaining that ideally, she wants to act as though every claimant was her first case. On the one hand, officials emphasize the necessary attention to every individual claimant and her particular assertion; on the other hand, asylum claimants are categorized and regarded as homogenous groups (despite their heterogeneous lived realities).

Impersonalization can also be understood as making the human invisible through practices of constructing asylum claimants as administrative units, such as cases, records, or numbers, and "output." As soon as a person files an asylum application and a record is opened, she receives an individual number that makes her case identifiable within and beyond the institution, regardless of her name and characteristics of her claim. When talking about a claimant and her claim, caseworkers talk about "the case," which is ascribed its own characteristics, such as "protracted," "complicated," "intractable," or "relatively easy" and "run-of-the-mill." Typical in the bureaucratic context, categorization, as a means to reduce complexity, fulfills the organizational aim of promoting reproduction and processing claims in a standardized and efficient manner. As Amsterdam and Bruner (2002:33) note, "[T]he bureaucrat prefers categories that are clear, definite, and free of ambiguity." However, the treatment of people as cases and categories also leads to a "banalization of suffering" (Weiler 1992). As Zetter (2007:172) argues, "[T]he 'convenient images' of refugees, labelled within a co-opting humanitarian discourse in the past, have been displaced by a fractioning of the label, which is driven by the need to manage globalized processes and patterns of migration and forced migration in particular." Public policy and practice increasingly prescribe and invent new labels, thereby institutionalizing specific categories. Zetter emphasizes the role of government agency, arguing that "state action mobilizes bureaucratic labelling to legitimize the exclusion and marginalization of refugees" (ibid:189).

In addition to the reduction of individual claims to cases and political and legal labeling, FAO caseworkers employ different kinds of categorizing: claimants are understood as clients, recipients, duty bearers or – more rarely – rights holders, and they are often subject to cultural essentialism. Officials tend to conceive of asylum claimants as homogenous groups, especially with regard to national origin or cultural background. Claimants are often equated with their countries – or even continents (e.g., Africa) of origin or with their "population of origin" (e.g., "the Russians"). These generalizations are partly based on officials' experience or perception that claimants' assertions resemble each other. Both cultural essentialism and gender stereotypes are prevalent in caseworkers' practices of characterizing and evaluating asylum claimants, highlighting the intersectionality of prejudice and potential discrimination. One official, for example, talks about a Chechen woman who claims to have been raped but was married shortly after the incident and then

also became pregnant. The caseworker mentions her doubts about the woman's credibility, saying that "normally it's not like that with Chechen women; for them, [being raped] is a disgrace" (o. 0429). Since the woman was married and pregnant shortly after the rape, the official, invoking a cultural reason, thinks it is unlikely that the rape occurred. Such complexity-reducing mechanisms are thus especially problematic in the asylum procedure because they tend to influence caseworkers' assessments of the claimants' credibility. Categorizations influenced by stereotypes and officials' own value systems lead to a classification of asylum claimants that questions their legitimacy and thus not only depersonalizes them but also dehumanizes them.

The findings illustrate how categories are entrenched in practice and institutionally anchored. In legal decisions, "entrenched categories are privileged not only against precipitous amendment but against presumptuous inquiry" (Amsterdam and Bruner 2002:36). Nevertheless, the praxeological approach, including the theories of social construction and structuration, suggests that categories are always made, never found and never final. The definition of categorical boundaries as well as the content of conceptual categories with which officials work can thus change over time and develop with experience. As social constructs, they are subject to modification; old categories are altered or discarded, and new ones are continuously constructed. However, category systems do not change easily since categorizing is always an act of meaning-making. Categories automatically imply a world that contains them (theories, stories, legal systems); hence, the choice of a particular category "implies (often unintentionally) some conception about where and how that something fits into a broader vision of the world" (ibid:29). Categorical mechanisms are embedded within the infrastructure of the social institutions, cultural practices, and conceptual understandings upon which markets rest (Massey 2007:xvi).

7.3   Sources, Functions and Risks of Categorization

According to Amsterdam and Bruner (2002), categories are usually abstracted from various kinds of theories, from stories, or from the regulative and normative sphere. Theories in this context are intended to be verifiable or falsifiable; they and the categories derived from them carry authority. By contrast, stories derive their convincing power from plausibility rather than from verifiability; they include different genres of narrative, such as myths. Storytelling and myths play a key role in sense-making in organizations (Gabriel 2000; Brown et al. 2005). For example, in the context of the asylum procedure, "the lying asylum claimant" can be argued to be an established category that is socially useful and a necessary myth, also for the political system (Rousseau and Foxen 2006). Both theories and stories can be understood as part of an organizational ideology or culture since particular category systems impose ideological structures on everyday work. Socialization within the organization will thus influence the way caseworkers perceive the world and construct social reality, often with the consequence of a *déformation professionelle*: officials' work leads to their thinking in and using specific categories. However,

theories and stories from outside the organization, such as media reports or an official's personal environment, can also affect categories that are regarded as useful and employed in daily work at the FAO.

The third key source of categories is found in regulative or overtly normative frameworks such as the law or administrative and other organizational norms. Normative knowledge is "a system not only of rules or commands but of justifications for them informed by some conception about what is right and wrong in the conduct of human affairs" (Amsterdam and Bruner 2002:32). Normative accounts can also be expressed by narratives or theories, but they are generally ethically axiomatic (ibid). Law represents an established means of categorizing individuals and defining identities, especially in the administrative field. To some extent, the law defines and fixes categories into which reality has to be made to fit – also, and especially, in the administrative processing of applications. Douzinas and Warrington (1991) argue that refugees, when they "come to the law," are treated as faceless entities.

> In this process of abstraction and generalization, the individual is sacrificed to the concept in a display of another common type of violence that the law and judgements deal in. The law is about rules and universals. Its categories and concepts, self-enclosed and auto-referential, form a normative grammar that multiplies endlessly according to its internal logic … In its performative aspect, the judgement abstracts the particular, generalises the event, calculates and assesses individuals and distributes them along normative and normal(ised) paths under a rule that subjects the different to the same and the Other to the self (Douzinas and Warrington 1991:136).

To ensure a consensus regarding category systems, both societies and organizations "obey the rules laid down by precedent in the law, by the institutionalization of customs, by tradition or entrenched protocol or immemorial convention" (Amsterdam and Bruner 2002:24).

What are the functions of and reasons for categorization? According to Berger and Luckmann (1975:45), "the reality of everyday life contains typificatory schemes in terms of which others are apprehended and 'dealt with' in face-to-face encounters." Such typification is reciprocal and has an ongoing effect on the interaction (ibid:44). In an asylum interview, for example, when a caseworker and an asylum claimant enter into direct face-to-face contact, the asylum claimant might think of the official as "a white person," "an Austrian," "a staff member of the authority," or "a representative of the state." By contrast, an official might regard a claimant, for example, as "a Georgian," "a Muslim," or "a sick person." However, it is more difficult to impose rigid patterns of typification in face-to-face interactions than in other, more remote forms of interaction. As Lipsky (2010:59) notes, in bureaucratic encounters, unique individuals with different life experiences and circumstances "are transformed into clients, identifiably located in a very small number of categories, treated as if … they fit standardized definitions of units consigned to specific bureaucratic slots." Bureaucrats thus see their clients' problems as calls for categories of action and perceive individual demands as components of aggregates (ibid:60).

Individuals use these schemes to interpret and evaluate themselves as well as others, social roles, groups and events; categorizations are thus used to make social judgments in encounters (Massey 2007:9). While individuals always build their

interpretations on categories, categorical judgment is even more crucial under conditions of threat or uncertainty. Since an asylum interview represents a situation characterized by both threat (mostly for the asylum claimant) and uncertainty (for both parties, albeit in different ways) and is a place where social judgments – as well as legal judgments – are made, categorization is a key tool for structuring. Following Berger and Luckmann (1975:48), "social structure is the sum total of these typifications and of the recurrent patterns of interaction established by means of them. As such, social structure is an essential element of the reality of everyday life."

In general, categorization is a means of structuring and meaning-making for our experience and analysis of the world. Hence, categorizing has several functions, such as mental economy, pragmatic utility, reference group relevance, communal power, personal gratification, and risk regulation (Amsterdam and Bruner 2002). Mental economy describes the process of "using the past to manage the present" (ibid:21) since categorizing minimizes surprise and allows actors to treat things as if they were the same as things previously encountered. Only when there is a special need do actors violate the principle of economy and resort to a non-ordinary category. This practice leads to another function, pragmatic utility, which refers to the deployment of useful categories for doing a certain job or pursuing a particular interest. Implicit in this function of categorization is the possibility of redrawing categories from time to time, such as in situations that disturb the mindlessness caused by the mental-economy function. In addition, categories used by individuals are grounded in conceptions of what matters to those individuals as well as to reference groups. Category systems are instruments for relating to different reference groups such as profession or social class; thus, they vary according to whom and what a person has in mind (ibid:32). "In figuring out who a person is," caseworkers ascribe to the person "a social identity or group belonging that carries with it significant meaning and consequence and becomes unchanging" (Maynard-Moody and Musheno 2003:78).

Concerning category systems, which serve a culture, community or society, two main functions can be distinguished that sometimes occur simultaneously: cohesiveness and domination (ibid: 34). Categories promote cohesiveness within cultural groups, such as organizations, by maintaining cognitive solidarity. Group members tend to see the world in a similar manner, creating a solidarity that gives the group a unique identity. By contrast, establishing hegemony over others is another consequence of categorizing since the domination of other groups is linked to imposing one's own category system on others. According to Massey (2007), categorization is the basis of social inequality, which is usually expressed by discrimination and exclusion. However, discrimination, such as gender- or race-related categorizations, is often part of implicit category systems rather than explicit categories.

Amsterdam and Bruner (2002:49f) identify three additional risks of legal categorization in particular that are relevant to the work of decision makers at the FAO: the appeal to similarity, the appeal to natural kinds, and the rhetoric of categorization. The observation that things are similar – for example, a precedent having something in common with a case at hand – provides an available ground on which to treat those things in a similar way, but only if an actor deems this commonality relevant.

Which commonalities are deemed relevant mostly depends on other factors, such as values or principles. For asylum claimants from a particular country, one official finds, for example, that "they have, let's say, five main assertions" (Roland). However, the danger inherent in such generalizations is that they may represent a barrier to examining claimants' individual assertions in detail. The appearance or claim of naturalness for certain categories represents another hazard of categorization; by defining a category as natural, such as by using faulty logics regarding reasons for flight, "society is absolved" (ibid:50). However, "'naturalness' itself is a creature of our conceptions and our circumstances, of our theories and our praxic understandings about how things work" (ibid). The third identified risk lies in the rhetoric of categorization, such as the distinctions implicit in daily vocabularies and lives. Language can work as "institutional cement" in this process of entrenchment (ibid:31). This risk can only be approached by raising awareness of habitual categories through conscious scrutiny. The aim should then be to become aware of "the broader, value-loaded narrative and conceptual frameworks from which particular categories are being derived for the purpose at hand" (ibid:51).

In conclusion, through caseworkers' practices of social construction and categorization, asylum claimants are made invisible as individuals in the procedure. In managing the dilemma between "attention and avoidance," officials reduce individual lives to cases and files; "incidents translated into computer codes are then not only functional necessities, they are elements that allow the agents to limit their involvement as a person" (Dubois 2010:133). In addition, asylum claimants are frequently subjected to stereotypes and thus reduced to, for example, their countries of origin or religious groups. According to Lipsky (2010), clients are socially constructed within a bureaucratic "client-processing mentality." Whereas bureaucrats are required and trained to respond to people's individual needs, in practice, claimants tend to be dealt with collectively since the conditions of work impede individualized responses. In the ideal case, bureaucrats create "modes of mass processing" that allow them to treat the public in a more or less fair, appropriate and thoughtful way. In the worst case, they give in to stereotypes, convenience, and favoritism, serving only their own purposes or those of the agency rather than those of the "client" (Lipsky 2010:xiv).

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Chapter 8
Responsibility vs. Dissociation

A fourth dilemma with which public officials are confronted in the process of decid-
ing upon asylum claims is responsibility versus dissociation. This dilemma is related
to the structural tension of the human versus the faceless case, which was discussed
in the previous chapter, and can be regarded as a translation of that dilemma with a
focus on the moral (individual) and ethical (societal) aspects of decision makers'
work. This chapter explores caseworkers' practices of balancing these two poles
when processing asylum claims. Similar to the previous chapters, it will become
clear how these practices are strongly related to the organizational working condi-
tions at the FAO. Thus, the mutual influence and reproduction of structure and
agency will be highlighted.

Essentially, the tension exists between decision makers, who bear great respon-
sibility since they decide upon the future lives of others, and the Asylum Office,
which is a bureaucratic institution where work instructions must be executed.
However, decision makers do not act as machines but constitute themselves as
responsible beings in practices of engaging with the other. Thomas, for example,
explains that he feels "challenged to show commitment and to do it [the work] con-
scientiously … it's not that you just work like a computer or in a gherkin factory or
so." This chapter explores the different strategies caseworkers develop in dealing
with responsibility and coping with the burdens of their everyday work. Officials
have to find a balance between the two extremes of too much distance and too much
proximity (Weller 2002). In the French welfare offices, Dubois (2010) also observed
agents' practices of balancing between self-withdrawal and personal involvement in
dealing with the misery they face. Considering Parsons' (1951) orientation alterna-
tives, officials need to decide between a collective orientation, which follows gen-
eral interests and is oriented toward the common good, and self-orientation, which
follows officials' own interests. However, in addition to the interests of the society

and the individual official, the interests of the organization must be considered. It is vital to consider the context of social action. If individual responsibility is to be evaluated, human agents and their actions need to be examined in the context of the organization within which they function, that is, as individuals acting as agents of organized power relationships (Sjoberg et al. 2001). The investigation of the dilemma of responsibility versus dissociation will lead to a discussion of the topic of ethics in public administration and in the specific context of administering asylum.

8.1   The Responsibility of the Individual in Everyday Work

The structuration of work at the FAO places an emphasis on individualism. Caseworkers do not work in teams; instead, they perceive themselves as "lone fighters" (Veronika).[1] This is also expressed in the lack of a common goal, as discussed above. Officials are individually responsible for each "case" and for the decision they make regarding an asylum claim. "You have your file and for that, you're responsible" (Veronika). This fact can be expressed in a "possessive" manner, as illustrated in one of the asylum interviews analyzed above in which the caseworker refers to the claimant as "my Tunisian" (o.i. 3). Sabine mentions that "a Chechen of [my colleague] Roland stabbed my Afghan to death." The identification with a processed asylum claim also implies that annulments of decisions through the second instance can have a personal dimension. Referring to the annulment of a decision she had made, Veronika complains, "They [the judges] annulled me." In addition, the importance of caseworkers' individual attitudes, approaches and strategies was highlighted above. These observations emphasize the ambiguity of the process of individualization and decollectivization as a characteristic of the modern organization of work (Castel 2003). In the German immigration offices, Eule (2014) also found that caseworkers are largely left on their own in managing difficult tasks due to a lack of structural responses; officials compensate this deficit through mutual exchange.

Time and productivity pressures as well as other challenges of everyday work, such as psychological challenges due to the difficult topic and tasks, could theoretically be ameliorated by teamwork. "Team spirit is important in order to be able to cope with the difficult task fields. Even if caseworkers make decisions on their own, the cooperation of staff is at the center" (Pretterebner 2009, own translation). Although the preceding is a description of work at the FAO in the magazine of the Interior Ministry, in fact, teamwork does not take place in officials' everyday work. "I'm a team player … and here [at the FAO], you're a lone fighter; you're not a team," Veronika notes. The only teamwork she can imagine is between her and her assistant; but she eventually concludes that that relationship is not a team because she is a superior as opposed to a team where "all [members] are equal." At the FAO,

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[1] Since team leaders were introduced with the organizational reform in 2014, after this study was conducted, it would be interesting to explore how practices have changed since then.

the idea of teamwork fails already at the very beginning, namely, in the definition of a common goal among officials. "A common goal," Gabi says, "I couldn't imagine anything really; now, what that could be" other than "settl[ing] the files quickly?" Veronika asks a counter question, "What did you think of as a common goal?" The fact that neither teamwork nor a common goal is a reality at the FAO is also highlighted by Sabine, "Well, common goal, I mean we do have the instructions from the headquarters." As Downs (1967) noted in his seminal work on bureaucracy, individuals in large organizations build coalitions instead of teams since members do not have identical goals. Nevertheless, they have certain goals in common that lead to "biased behavior" (Downs 1967:76), such as how certain asylum "cases" will be decided.

While most interviewed caseworkers seem to perceive themselves as "lone fighters" (Veronika), there is still exchange and support among colleagues. "One talks with colleagues about cases … who has decided how; but it's not team work because one doesn't work on a case together … For different topics … one asks different persons," Thomas explains. Colleagues are consulted for their opinions, especially in the context of decision making, but beyond that, the possibility to discuss problems of everyday work among colleagues seems to be crucial since there is no institutionalized form of support in this regard, such as supervision. Instead, "we're all the psychiatrist of the other," Gabi notes. Sabine, who explains that before she started working here there was supervision or something similar that no longer exists, thinks that supervision provided by the organization "surely wouldn't be bad." In an observed interview with an asylum claimant, she explicitly mentions the psychological burden to which she finds herself exposed. "We who are not on the spot also have to cope with this psychologically. We don't have psychological care; we have to pay the psychologist ourselves," she says to the asylum claimant in a confrontation (o.i. 6). She says very clearly that everyday work is also accompanied by challenges for which she is not necessarily prepared. Veronika also senses a certain danger in her job. "I'm one who racks her brain about many more things … because I just don't want to lose sight of the human aspect … and I don't want to become someone who says, 'Damn asylum seekers;' I just don't want to." The official's deliberations on the dangers of stopping to see the human in an asylum claimant illustrate that the job does confront the caseworkers with psychological challenges. Stephan is not certain but believes that nothing similar to supervision exists and feels that he does not need it. The caseworker mentions that there was a plan to introduce a burnout commissary from within the ranks of the FAO. While the plan was not realized, he finds that if this were to be realized, "we'd need a [professional] psychologist." As the official notes, this would have meant an additional burden for the person concerned: "To bear the psycho terror of the others in addition to one's own – no." However, his statement about the "psycho terror" one must bear as an official makes it clear that there would be a potential need for competent and professional support. Since there is a lack of institutional offers, officials are largely on their own when coping with problems of everyday work. Although there is a general unit for psychological support at the Interior Ministry, specialized support opportunities for decision-making officials in the asylum procedure could allow them to be better prepared to deal with delicate situations in everyday work.

Caseworkers are not only responsible for processing an application from an administrative perspective; with their decision, they also influence the future life of the person concerned. Aware of her position, Veronika finds that her responsibility as decision maker is "enormous." "I, by myself, decide now whether he receives asylum or not; that's actually madness, right? So, I don't decide if he has to pay 300€ or 130€ because he jumped a red light, but I decide upon his future life." Veronika, who says that she would not be able to do her work if it were not for the appellate Asylum Court, is overwhelmed by the weightiness of her decisions concerning the future lives of others. This example illustrates the difficulty of dealing with the responsibility of decision making in morally and ethically complex situations.

In addition to the administrative task of processing asylum claims and the eventual decision, another aspect relevant to the responsibilities of caseworkers' everyday work is the way asylum claimants are treated through the procedure and especially in the bureaucratic encounter. According to Tyler (2003), procedural justice, that is, fair and respectful treatment following the rules, plays a greater role for individuals than obtaining outcomes that can be regarded as fair or favorable to themselves. Therefore, for a legal procedure to be perceived as fair, the quality of treatment in face-to-face encounters is at least as important as the actual outcome. "Above and beyond the quality of the procedures used in the resolution of their problem, people value being treated with dignity and having their rights acknowledged" (Tyler 2003:299). Meeting asylum claimants with respect and recognition, particularly in the interview, can thus contribute to procedural justice in the asylum procedure. The way in which claimants are treated and whether they feel that their concerns are taken seriously can be relevant to their experienced fairness. Hence, these questions also concern officials' responsibility and room for maneuver and the use they make of that leeway.

As we have seen, the way in which a caseworker meets the claimant – whether she attaches importance to the interview atmosphere and to the creation of a certain degree trust – depends on the specific caseworker. "A human addition" (Thomas) to the bureaucratic encounter can be understood as a voluntary additional effort. In this bureaucratic logic, "dry," run-of-the-mill interviews are perceived to be more conducive to the organization's output orientation. An official mentions a colleague who "is luckily gone" because he "used to scream; he thought he had to play Rambo in here" (o. 0428). Attempts at intimidation such as the reported one – and its condemnation – illustrate that officials pursue different practices in everyday work. As a tool for demonstrating superiority, intimidation is fatal to interactions in the bureaucratic encounter, where the power relation is already inherently asymmetric, since it destroys any basis for sensible conversation. Although it is questionable whether an interaction "from human to human" is possible, recognizing and respecting "the other" is a fundamental basis not only for interaction but also for procedural justice. Respectful treatment is also related to creating an acceptable atmosphere in the asylum interview.

8.2   Emotions in the Job

Bureaucracy has long focused on rationality and efficacy, but the emotional aspect of administrative activities is often neglected despite the fact that "emotions in management and the management of emotions play a significant role in the outcomes of public administration personnel" (Vigoda-Gador and Meisler 2010:72). Nevertheless, in contrast to Weber's (1978:225) ideal bureaucrat, who works "without hatred or passion, and hence without affection or enthusiasm," some researchers have explored the emotional work of officials (Guy et al. 2010; Penz et al. 2017), including in the field of immigration and asylum (Graham 2002; Hall 2010; Eggebø 2012). Decision makers in the asylum procedure face ethically difficult situations and moral conflicts in everyday work that can be reinforced by a lack of time and resources. As discussed above, there is structural tension between a focus on the individual human being, on the one hand, and the faceless case, the number, on the other hand. This study illustrates that emotions are closely connected to morality, including in the bureaucratic context. According to Nussbaum (1998), philosophers agree that emotions such as anger, fear or compassion can pose problems for morality in different ways: "by impeding judgment, by making attention uneven and partial, by making the person unstable and excessively needy, by suggesting immoral projects and goals."

Thomas explains that he "had great difficulties in the beginning to single out just the facts and leave out the emotions." Thus, "certain situations … cost [him] a lot of energy in the beginning when [he] was not yet able to distance [himself]" The caseworker remembers well "the first case that made [him] feel low emotionally; the only one until now." He thinks that he was "close to being biased because on a human level, [he] didn't show the asylum claimant the respect anymore that [he] normally show[s]." The official explains that he was so unsympathetic toward the claimant because of what the claimant had reported about his past behavior that the official was no longer able to look at the claim unemotionally. "He nettled me so much," the official remembers. Another negative experience is Sabine's report of a situation in which she felt threatened by a claimant who went wild in the interview because she had told him that the decision would be negative. She remembers that the claimant suddenly started rummaging around in his backpack, which caused her to panic because she was afraid of what he was going to pull out. In the end, the claimant was taken away, but the caseworker was so scared that she did not dare sign the decision notification. By contrast, some other caseworkers talk about certain asylum claimants with positive emotions. Gabi, for instance, remembers a father with three children, two of whom had cancer. With her decision, she "really had the feeling somehow [to have] given them a new life or the possibility to even grow older." The official explains that every time she passes the hospital where the children were treated, she automatically thinks of the family. "Somehow, I have also taken them into my heart," the caseworker concludes.

These accounts of dislike, anger, fear, pride and satisfaction make the ideal of impersonality appear to be a bureaucratic myth. In the asylum procedure, which

usually concerns people in miserable situations, pity is another emotion that tends
to be evoked – sometimes by decision makers. Some officials feel pity for certain
asylum claimants, especially if they are very sick or if children are involved. For
Roland, for example, "the only thing that's emotional is when children are involved."
He remembers a claimant who "really didn't have a reason for flight" but "whose
dad was obviously an alcoholic and kicked him out," and the claimant started crying
in the interview. "I felt sorry for him," the official states while at the same time
explaining that nevertheless, he had to "decide according to the law." He explains
that he cannot grant asylum to a person only because he feels sorry for her or him.
Thomas reports that he developed a certain protective instinct for a young woman,
"the first woman [claimant he] had." It was at the beginning of his career, and he felt
sorry for her, but he emphasizes that his sympathy "definitely doesn't play a role in
the decision." The mismatch between emotions such as pity and the reality of the
legal framework is also highlighted by Veronika. "Where I vicariously suffer very
much, it's really nothing related to the Geneva Convention, but it's interpersonal
fates." The caseworker remembers "a mother with such a profoundly disabled boy"
who received the diagnosis that he would die within 1 year.

> Some [colleagues] sneer at you when you sympathize with such people. But it's not in the
> sense that it puts a strain on me. Just in the moment, it burdens you, yes, I maybe talk about
> it at home. But actually, you get more satisfied [with your own life] through these experi-
> ences (Veronika).

The caseworker explains that she felt bad for the claimant, adding that certain
colleagues have different attitudes and take a more distanced stance. She thinks that
"it's not bad, you know. I'd also wish for a certain superficiality; you're just better
off." Veronika refers to the fact that superficiality in the job is a form of dissociation,
which makes the dilemmas of everyday work less complicated and more bearable.
However, she also finds a benefit for herself by comparing her life to that of the
claimant, which allows her to relativize her own problems. However, the problem
with pity is that the purpose of asylum is to protect individuals from serious harm
and not to select morally desirable individuals for membership in our society (Souter
2011). The finding that an official's individual approach to the job can make a dif-
ference in several aspects was discussed above; the following quotation shows that
this is also true regarding the emotional and moral aspects of their work. As Dubois
(2010:101) notes, "[F]irst-hand experience brings suffering to the agents who –
unlike social workers – have not looked for it and to which they have not been well
prepared." Gabi explains that decision makers' attitudes are also related to how they
cope with their work emotionally.

> It depends how you go about it. It [the job] can be very demanding if you embark on the
> whole thing. But if it all doesn't matter to you, then not. Because then you turn a deaf ear to
> it, do your interviews, I don't know, make all [claims] negative and think, "the Asylum
> Court can solve it." Then you can distance yourself very much. If you do your work consci-
> entiously, then it can also affect you deeply (Gabi).

Vigoda-Gador and Meisler (2010) argue that emotionally intelligent public offi-
cials understand and problem-solve situations that are important for their clients as

well as for governments' policy issues. Such public officials' abilities include understanding emotions and the emotional meanings of others (clients, employees, etc.) as well as using emotion in reason-based decisions and policymaking (ibid:75). "Whereas the mind and the heart may frequently conflict in aspirations, ambitions, analysis, and interpretations, both exist in the daily actions of government and governmental agencies at any level – federal, state, or local" (ibid:74). Referring to judgment in the context of the asylum procedure, Morris (2010:139) stresses that a final judgment can be "based less on the application of formal rules than on reflection over the lived experience of a vulnerable group." She also argues that evidence cannot resolve a paradigm disagreement (generating differing evidential requirements), but "it can offer an aid to reflexive judgement through access to the human experience at issues" (ibid:105–106). The reflection on claimants' experiences – or its lack – seems to be exactly what produces many of the abovementioned emotions.

Focusing on organizations in general, Ortmann (2010:231) emphasizes that in interactions, both personal and societal structures are (re)produced, including specific dispositions and action concepts. Since these dispositions are also emotional dispositions and since action and related concepts are also guided by emotions, it becomes evident that recursions of interaction and emotional disposition can lead to the organized generation of specific emotions. In the negative case, emotional indifference could be the result of "organizational anaesthetization" (ibid:232). Although the findings suggest that the primacy of rationality and impersonality in public administration is more ideal-typical than lived social practice, it still seems important to explicitly acknowledge the affective aspects of decision makers' work and to work toward preventing emotional indifference in the bureaucratic asylum procedure.

8.3   Coping with Responsibility: Practices of Dissociation

The fact that caseworkers are alone in dealing with this and the other dilemmas is also mirrored in their practices of coping with these dilemmas. As a way of dealing with responsibility in deciding whether to grant international protection, dissociation in its different forms has a protective function for officials. The ability to "consciously distance oneself" emotionally from the work is regarded as a useful skill (Thomas). When Thomas was new to the job, he could not understand his colleagues' behavior; he explains, "How colleagues can simply switch off … just do the interview and type the decision notification and have a ball with colleagues on the side, I didn't understand that." However, after 2 years of socialization on the job, he became accustomed to it and adopted a similar attitude: "in the meantime, I also see that I can distance myself; it becomes a routine." Dissociation has several functions and can, for example, allow for the creation of distance and room for reflection, which can help decision makers gain a more "neutral" standpoint, as Gabi explains. As mentioned above, she gains this perspective by deliberately not writing

the decision notification directly after the interview; instead, she lets the case sit for 1 or 2 days before looking at it again. Dissociation can also be applied when an official feels personally attacked by something the claimant said or when it is obvious to the caseworker that the claimant is lying to her. In this respect, Roland explains that it does not bother him if asylum claimants lie to him, but it bothers him if the person does not respond to his questions. By making a ridiculous comparison, he also trivializes the issues at stake.

> I don't care, he can lie to me, he can stand on his head, that all doesn't bother me. Because others, they take that personally, right? I don't care. He can tell me something, he can do what he wants, right? The only thing I don't like is when I ask what color this cup is and he tells me what he had for dinner last night (Roland).

The findings suggest that dissociation not only involves developing a superficial approach but also can occur through the delegation of responsibility, practices of trivialization, and the separation of work and private life. Officials tend to delegate responsibility to a "higher" level, such as to politics, the law, the management, or the Asylum Court. Thomas, for example, thinks that he can hand over "moral responsibility," which he cannot take on himself, to the given provisions. Veronika also sees herself as someone who does nothing more than apply provisions to cases: "the legal basis in Austria is just like that … and if politics, let's say, decides that we are to apply … article 3 ECHR for dialysis patients too, then I will apply it." While difficult cases sometimes bothered her in the beginning, this is no longer the case since she hands off responsibility for the present situation to "politics … laws … regulations," thereby distancing herself from an emotional burden. She emphasizes that "you always have to think the last instance is the Asylum Court. So, with that, you can live well." By delegating the responsibility for the final decision to the court, she feels that she no longer has to worry about her decisions and their impacts on asylum claimants. With regard to the Asylum Court, Veronika perceives herself and her colleagues to be "the small Indians [who] do the ground work," whereas "the people up there [at the court] really orient themselves toward the world view" and make "farsighted decisions." The Asylum Court represents a "control instance" that, according to the official, has "a completely different responsibility" compared to the first instance. Impersonalization, discussed above, represents another practice for gaining distance, such as when she says to a claimant, "I am the authority." With this statement, she distances herself from being an individual who decides the claim; instead, she delegates responsibility to the institution.

Public administrators, like other people, are often more comfortable when someone else decides what is right and wrong, thereby allowing them to surrender personal responsibility. It is much easier to blame others when anything goes wrong "than to assume personal responsibility for one's own actions, policies, decisions" (Sheeran 1993:149). According to Ortmann (2010), organizations implement a moral division of labor by dissecting and distributing responsibility. This capacity for dispersion increases with a number of factors, such as the need for self-appeasement in case of cognitive-moral dissonance ("scruples"), the creation of everyday theories and chains of legitimation, or the mutual mimetic reassurance of

the correctness and acceptability of one's own actions. Additionally, by means of a moral division of labor and systemic constraints, one's own contribution appears insignificant and negligible in relation to the organization's overall "product" (Ortmann 2010:108ff). Organizations disperse and absorb responsibility; those responsible are not locatable, and the trace of responsibility tends to disappear, often by referring to higher instances. At the same time, organizations produce moral indifference and numb feelings of responsibility (ibid:111f). Responsibility is typically shifted in organizations; that is, it is denied and transferred to someone else. One person may not know what another one does, but responsibility is disclaimed because someone claims not to have the necessary competence or resources – it is "the other" person who has them (ibid:131). The impersonal completion of tasks, the execution of bureaucratic decisions aiming at efficiency, financial questions and the uniform interpretation of rules, hierarchical command structures, authorization from above and upward loyalty, and routinization are all elements of bureaucracy in the sense of Weber, and they are simultaneously elements of the production of moral indifference (ibid:114). Against this backdrop, caseworkers arguably need to be willing to accept responsibility for their decisions (Sheeran 1993). Laws, rules and regulations can provide guidance in determining what is right and wrong when making discretionary administrative decisions, but they cannot guarantee infallible judgment (ibid:86).

In addition to the delegation of responsibility, caseworkers express dissociation through practices of trivialization. Veronika remembers a situation in which she was confronted with a public authority in the role of an applicant. The comparison with the situation of asylum claimants, however, results in trivialization and a "banalization of suffering" (Weiler 1992). She reports how it felt for her when she was applying for a building subsidy.

> Three times I had to go to a lady who got rid of me like if I had committed an offense. But actually, it was only my right … and she was so impolite, and really, at that time, I swore to myself that I would never become like this. Because you feel like a thing, right? And yes, in principle, they [the claimants] have the right to come here, they can first exercise that right, yes. And because of this I don't have to be angry with this person who makes an application because if that [right] wasn't there, I wouldn't have work either, strictly speaking … I'm only deciding whether they justifiably receive what they apply for or not. Very simple. Like with a, I don't know, subsidy (Veronika).

On the one hand, the caseworker explains how she felt badly treated by the person in authority who was responsible for her application, specifying that she had the impression of being treated as a criminal or a thing. This treatment is exactly what the asylum system is often criticized for – that asylum claimants are not only treated in an unfriendly manner but that they are also dehumanized and criminalized (for example, through detention pending deportation). This experience led the caseworker to the decision not to deal with asylum claimants in this "angry" way. On the other hand, at the end of the quotation, the official trivializes her own power as a decision maker. In an essentialized way, she portrays her job as a "very simple" task: to check whether a claim is justified. Being one of the officials who emphasize the great responsibility of FAO decision makers, she notes that she can only tolerate

her job because she knows that there is an appellate instance. Thus, her strategies to address this dilemma are the delegation of responsibility as well as the banalization of her work.

Another comparison by the same official, often put forward in the political discussion concerning asylum, is trivializing. Creating a link to the dilemma of the human individual versus the faceless case, the official notes that "surely the individuals' fates are terrible," but "one has to see the masses." In this context, she compares asylum claimants with health problems who reach Austria with Austrians who would (theoretically) go abroad to receive treatment. "Neither can we go somewhere and say, I don't know, in America they offer the treatment – now we're coming, we don't get it here, so pay it [for us]; it doesn't work like this" (Veronika). However, this simplification does not consider the needs of individuals who flee a place due to the prevailing circumstances, particularly if they are or become sick.

Another means of dissociation related to how caseworkers cope with their work emotionally is the separation of work and private life. Thomas mentions that he sometimes discussed topics related to his work with his friends, but now, when he leaves work, he "leave[s] the building and leave[s] everything behind; that's actually also a very conscious process." Another official explains that he does nothing related to work in his private life. He does not think about particular cases outside of work because, as he notes, he is not paid for it. "I have to not care how many files lie around here," Stephan states. By contrast, Roland remarks that "it does happen every now and then, where I think, 'What do I do with this one?'... When I'm jogging, I often have the best ideas, 'Exactly, I could also do that [with a specific case]!' … But not that it would burden me." Sabine mentions explicitly that "one continues to reflect about it at home." She explains that she also writes decision notifications on the weekend or in the evening when she is at home. However, she is also the one who says that as officials, they "have to pay the psychologist [themselves]," implying a need for support (o.i. 6). These accounts again illustrate the significance of caseworkers' individual approaches to their work. They show that decision makers handle their responsibility in different ways and often try to deflect the responsibilities associated with their role. While there is criticism of a "responsive" conception of the bureaucrat, highlighting the problems of involvement and attachment (du Gay 2008), I argue that the asylum procedure is not only about conferring legal status; it is also an interaction between two humans and therefore requires responsibility and recognition.

8.4   Ethics in the Administration of Asylum

How much dissociation and delegation of responsibility is acceptable in the context of asylum decision making? Scholars, especially in the French context (Weller 2002; Kobelinsky 2015; Fassin 2015), have investigated the moral aspects of public agents' work and US-based authors (Martinez 2009; Geuras and Garofalo 2011) have discussed the issue of ethics in public administration, but the topic has been

Fig. 8.1 Decision-making dilemmas in public administration. (Source: Own production after Thedieck and Banke 2011)
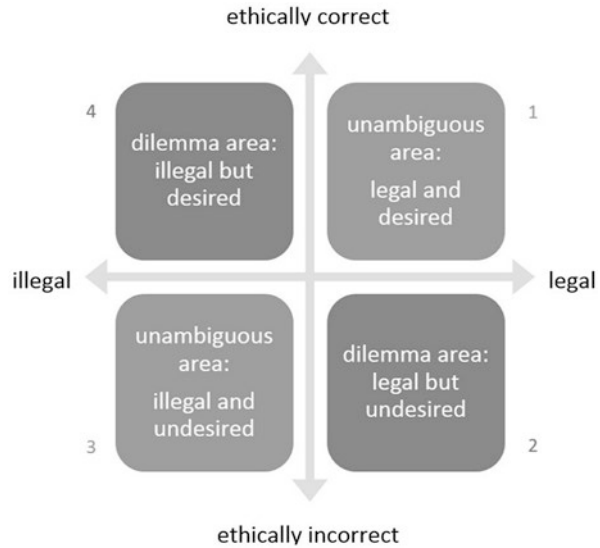
widely ignored by the German-speaking scientific community. Ethics in street-level bureaucracies has thus not yet been a notable discussion topic in Austria. Hence, the moral and ethical aspects of decision making in the asylum procedure still need to be explored. This is not to say, however, that a decision on international protection and human rights issues should be regarded as an ethical or moral question per se.

Due to the various – partly conflicting – objectives of the administration, decision makers are confronted with different dilemmas. Dissociation and delegation of responsibility can be interpreted as ways of dealing with the tensions between legal provisions and an individual sense of justice. Such ambiguous situations occur, for example, when the ethical evaluation of a situation differs from the evaluation that is prescribed by the required application of law (Thedieck and Banke 2011). The situation of a decision maker can then be illustrated with a table of four quadrants, which consider the legal and the ethical aspects of action (see Fig. 8.1). Whereas there are two unambiguous areas – (1) legal and desired and (3) illegal and undesired – the other two quadrants symbolize the dilemma situations: (2) legal but undesired and (4) illegal but desired. Touching on a similar topic, Sossin (2005) examined the interaction between civil service values and legal norms in the exercise of discretion in the context of the Canadian Immigration and Refugee Protection Act, exploring norms of independence, fairness and trust. In addition, Eggebø (2012) argues that emotions play a key role in dealing with the encountered dilemmas. Her findings reveal that bureaucrats in the Norwegian immigration administration "negotiate two somewhat different ethical principles where the foundation for ethical conduct is either emotion or reason" (ibid:301).

One method of addressing these dilemmatic situations is dissociating, retreating from the problem, and delegating responsibility to others. However, "a willingness to explore and assume personal responsibility for doing the right thing" represents

the key to ethical responsibility in public administration (Sheeran 1993:151). According to Derrida (1992:23), a decision maker does not act as a "calculating machine" executing a program by strictly following rules; instead, in a decision, the subject constitutes or "invents" herself as a responsible self in practices of engaging with the other. As Weiskopf and Willmott (2013:13) note, "[E]thics come into play as the generality of the rule is addressed in relation to (an appreciation of) the singularity of the situation where one is called to respond to the ethical demand of the other." In this sense, ethics can be conceived as "a critical practice of questioning and problematizing moral orders and moral rules-in-use in which subjects (re)define their relations to self and others" (ibid:1). These deliberations highlight the interactional and interpersonal aspects of deciding asylum claims. They show that the dilemma of dissociating versus assuming responsibility is closely linked to the dilemma of recognizing the claimant as a human or regarding her as a faceless case. Processes of negotiating organizational moralities are thus also situated within power relations. Exploring the conception of ethics in the context of practice theory, Weiskopf and Willmott (2013) investigate how people "manage to define their ethical position in relation to their everyday practice" (McMurray et al. 2011:543).

Since decision makers are potentially confronted with ethically complex situations in their everyday work, they need to be well equipped to cope with such situations beyond dissociation and the delegation of responsibility. Thus, ethics should be regarded as a defining feature of the public administrator's profession and should therefore not be distinguished from other aspects of public work (Geuras and Garofalo 2011). One possibility for working on this issue is to develop a capacity-building approach that includes the development of public officials' ethical competence (ibid). Since this is an issue of broader relevance, it will be discussed in more detail in the concluding section of the book.

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Part IV
Conclusion and Prospects: Theorizing Public Officials' Practices and Practical Ways Ahead

The following chapters provide concluding thoughts – both theoretical and practical – regarding the study's key issues. The preceding analysis of everyday work at the Federal Asylum Office using qualitative and ethnographic methods allowed the exploration of what constitutes everyday public administration: "the moving about in the legal–moral environment of large administrative bureaucracies, the mastering of difficult human–emotional situations, the negotiating of discretionary space, and the interactive give and take with colleagues" (Wagenaar 2004:644). In this book, I investigated decision-making officials' practices involved in administering asylum claims, including their practices of dealing with their own roles; with diverse actors such as claimants, interpreters, experts as well as actants; and with the identified structural tensions. Understanding and examining administrative work as practice, which requires the investigation of day-to-day activities and taken-for-granted routines, helps make the implicit explicit. The visible aspects of administrative work – decisions, reports, standard operating procedures, legal rules, lines of authority and accountability – are then conceived as effectuations and enactments of the actors' invisible routines (Wagenaar 2004). Moreover, the combined analysis of legal context, organizational working conditions and caseworkers' practices revealed how structure and agency are mutually influence and reproduced.

The aim of this book was not only to provide empirical in-depth insights into practices and processes that take place behind closed doors but also to make a theoretical contribution through a perspective on the observed practices, their reasons and consequences that goes beyond traditional street-level bureaucracy theory. In the following chapter, I discuss the key findings with insights from practice and structuration theories. Additional foci that developed from the analysis were the different layers of social construction in the asylum procedure and the interplay of formality and informality in organizational sociology. The final chapter draws conclusions on a more practical level, discussing perspectives for future developments in the field of asylum administration. Based on these conclusions and the key points discussed above, I close the book with a call for increased attention to ethics in public administration and some avenues for future research.

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Chapter 9
Practices in Focus: The Dilemmas That Evoke them and the Effects They Have

This study investigated a problem that can be expressed in two broad questions. Under what circumstances do decision makers work, and how can those circumstances be explained? How do officials deal with these circumstances, that is, the structural tensions, and how can their practices be explained? My approach to exploring these questions was a case study that was inspired by institutional ethnography and adopted the combined analytical lens of social practice, structuration and (post-)constructivist theories. Throughout the book, I aimed to show how these theoretical perspectives complement each other on the basis of empirical findings. In closing, this chapter focuses on officials' practices and offers concluding theoretical remarks in this regard.

To understand the contextual factors of the case study, it was important to consider the external and internal circumstances of refugee status determination and how these circumstances interact. The international, supranational and national legal framework, asylum policies and jurisdiction of higher courts can be understood as an external environment that is, at least partly, already contradictory. Different orientations, such as human rights and restrictive policies, create conflicting logics in the field of asylum. However, the dilemmas are reinforced when we consider the internal circumstances of the FAO. The administration has its own organizational aims and is largely oriented toward the values of New Public Management – which was increasingly introduced in the Austrian context around the turn of the century – such as efficiency and outcome orientation. The mass processing of applications under limited resources creates the typical dilemmas of street-level bureaucracies. The findings illustrate that these circumstances produce the dilemmatic situation in which caseworkers find themselves when deciding asylum claims.

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The concrete dilemmas that could be identified were regulation versus room for maneuver, definitiveness versus uncertainty, the human individual versus the faceless case, and responsibility versus dissociation. To some extent, these dilemmas can all be understood as typical dilemmas of a street-level bureaucracy. The fact that these dilemmas faced by officials in everyday work are comparable to those in other fields is highlighted by their similarity to the dilemmas described by Prottas (1979) and Lipsky (2010[1980]). Their works highlight three important dilemmas of the mediators between state institutions and their clients (Hjörne et al. 2010): (1) autonomy versus control, (2) responsiveness versus standardization and (3) demand versus supply. These "dilemma[s] of the individual in public service" (Lipsky 2010), which were also found in more recent works (Maynard-Moody and Musheno 2003; Dubois 2010; Hupe et al. 2015), can be understood as the tensions between conflicting norms and demands to which street-level workers' practices relate in everyday work (Hjörne et al. 2010 after Billig 1988). Thus, they represent the general dilemmas of bureaucratic action aimed at establishing the eligibility of individuals to access certain rights or benefits.

Two dilemmas in particular – that decision makers are confronted with heavy regulation but also possess undeniable room for maneuver and that caseworkers need to find a balance between processing the masses and recognizing the individual – are not specific to the asylum procedure, as the existing literature on street-level bureaucracies suggests. However, the asylum procedure creates additional dilemmas that seem more relevant here than in other settings. The two dilemmas, that officials need to make a definite decision in situations characterized by uncertainty and that they find themselves oscillating between responsibility and dissociation, can also be found in other street-level contexts but seem to be particularly critical in the asylum procedure. The first dilemma refers to the problem that the procedure is primarily about establishing past facts or proving a future risk, often with lacking evidence. The absence of evidence, which leads to the "construction" of facts in the asylum administration, is not a major problem in most other street-level bureaucracies. In addition, the issue of international protection, in which the right to life (article 2 ECHR) and the right not to be tortured (article 3 ECHR) are at stake, creates particularly far-reaching consequences of officials' decisions, which are made under conditions of uncertainty. Thus, the legal framework also makes the asylum procedure at least partly different from other street-level contexts. The other dilemma concerns the interpersonal interaction between the decision maker and the asylum claimant. In contrast to other street-level bureaucracies, cross-cultural challenges and working through interpreters are the norm in the asylum procedure (Barnes and Mackey 2013). In addition, many claimants have vulnerabilities inherent to their situation, making it necessary to consider psychological and traumatic dimensions. Taking these aspects into account, finding a balance between responsibility and dissociation – which is related to the dilemma between recognizing the individual and processing the masses – seems particularly tricky.

The observation that these two dilemmas seem to be of special importance in the asylum procedure provokes a need to discuss two issues beyond traditional street-level bureaucracy theory. The first issue, the social construction of facts and (in)credibility as a particularity of the asylum procedure, was explored in detail in Chap. 6. The other issue that emerges is ethics (and ethical decision-making) in the bureaucratic context, which will be discussed in the concluding chapter.

The next question that I aimed to answer in this study was how caseworkers address these dilemmas and how their practices can be explained. I will briefly summarize which practices emerge from the four dilemmas following the sequence of chapters. In dealing with the first dilemma (regulation versus room for maneuver), caseworkers develop individual strategies and approaches, highlighting the importance of the subjective dimension of processing asylum claims. They have and make use of room for maneuver beyond discretionary power not only because legal and administrative norms allow it but also because it facilitates everyday work. This leeway gives decision makers a feeling of power and autonomy, a key issue in street-level bureaucracy theory. Confronted by the second dilemma (definitiveness versus uncertainty), officials engage in practices of constructing facts, artifacts (documents) and (in)credibility. Social construction appears to be a necessity in everyday work, and an explanation from the organizational perspective identifies these practices as transforming informality into formality. The third dilemma (the human individual versus the faceless case) is met by an extensive use of categorization made necessary by a focus on efficiency and "people processing." This practice again simplifies the otherwise intricate everyday work of deciding asylum claims; in addition, it represents a possibility of meeting the aims of NPM. The fourth dilemma (responsibility versus dissociation) causes officials to oscillate between practices of accepting and delegating responsibility. For some decision makers, their work (not only with traumatized persons) represents a heavy psychological burden. However, the organization does not seem to provide appropriate ways of dealing with responsibility. Additionally, the ethical aspects of decision-making and delegating responsibility are not addressed.

The question that emerges as a result concerns the effects of these practices. The fact that officials' practices differ – partly challenging or running counter to not only certain norms but also the organizational culture – produces a relatively unpredictable asylum procedure. This is also mirrored by the variance in recognition rates (as mentioned in the introduction). However, discretion and variance in the treatment of asylum claimants and their claims cannot be fully eliminated; they will always exist since the procedure consists not only of applying a general law to a specific case but also of interaction among humans. Together with the question of how the current situation can be approached or improved (giving rise to suggestions at different levels), these two issues will be discussed in the concluding chapter of the book. First, to summarize, the following two sections will explore the specific insights into the identified dilemmas and practices that can be provided by an analytical focus on social construction and an organizational sociology perspective.

9.1   From the Perspective of Structuration, Practice and Social Construction Theories

Existing street-level bureaucracy theory helps to understand and explain the observed structural contradictions and officials' practices of handling them. Nevertheless, in each chapter – starting with the organizational context, continuing with the analysis of the asylum interview, and going into detail on the dilemmas – I aimed to account for the added value of practice and structuration theories, including a focus on organizational sociology and social construction, to analyze the circumstances of work at the FAO and officials' practices. The key concepts of practice theory – the materiality of practices as dependent on bodies and artifacts; the "informal," tacit logic of practices and the location of the social in practical understanding and know-how techniques; and the tension between routinization and the incalculability of social practices (Reckwitz 2003) – guided the analysis of officials' practices. In addition, the structurational approach (Ortmann et al. 2000; Giddens 2011) provided an exploration of the recursive relationship of agency and structure in organizational everyday work.[1]

The perspectives of structuration and praxeology also agree with a constructivist view, prompting an analysis of public officials' practices of construction – not only of facts but also of cases, categories, incredibility, or artifacts. In their seminal work on social construction, Berger and Luckmann [1975(1966)] observed the relationship between structure and agency as dialectical. Consequently, structuration can be understood as a theory regarding the way that social construction – as practice and modality – takes place and is effectuated by agents.

Little research has been conducted on social construction in public administration in general (Jun 2006) and in the asylum procedure in particular. In the context of asylum, the issue of social construction has been analyzed on the discourse and narrative level, mainly with regard to processes of categorization and labeling of asylum seekers (Zetter 2007; Innes 2010; Long 2013). Other studies focus on the social construction of asylum claimants (Lynn and Lea 2003; Lacroix 2004; Goodman and Speer 2007), and some work has been done on the construction of credibility in refugee status determination (Sweeney 2009; Noura 2006; Jubany 2017). However, there is still very little scientific understanding of the constructed character of the entire procedure, particularly with regard to the facts and artifacts within it.

Adopting a (post-)constructivist approach to how knowledge is established and enacted (Hacking 1999; Latour 2003), social construction is not only a cognitive but also a performative act. With the aim of exploring social practices beyond language use as such in the specific institutional context of an asylum authority, the social constructivist approach also allows the understanding of facts and artifacts (such as records) as social constructs (Latour and Wooglar 1986; Lowe 2004; Bijker and Pinch 2012). The constructed character of the asylum procedure is ubiquitous. The

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[1] This section is partly based on an earlier publication (Dahlvik 2017b).

procedure itself is not only a legal construct but also a social construct, as are its defining "elements" such as asylum claimants. In addition to constructions based on legal instruments, other forms of construction, deconstruction and reconstruction occur in administrative day-to-day work. Asylum claimants are constructed as essentialized group members (Goodman and Speer 2007), and their accounts, which they provide in the interviews, are subject to deconstruction and reconstruction in processing a claim.

The important role of social construction in the asylum procedure becomes visible through an analysis of practices along the three dimensions of structure (Giddens 2011): signification, domination and legitimation. This analysis provides insights into how the social structure constrains and enables the action of decision-making officials and how the latter reproduce and use rules and resources as "modeling clay." Social construction in the sense of this analysis is not only an interpretive scheme in the asylum procedure; it is also a facility or a resource that can be employed, and it can take the form of norms as well as shape norms in refugee status determination.

To define what constitutes a fact, what should be documented in a record, and what is credible or incredible, the involved actors make use of interpretive schemes. They ascribe meanings, but they also negotiate these meanings and put different weights on them. These practices are illustrated by the fact that different versions of reality, which have to be balanced against each other, are called into play in the asylum procedure. Through communication, those with the power of definition decide which of the meanings is valid in each specific "case." Social construction, cognitive and enacted, is thus also a facility or resource that can be employed by knowledgeable agents in different situations. Whereas one document is constructed – through negotiation – as a piece of evidence, another one is construed as "fake" or irrelevant. Domination and signification are thus closely interrelated in deciding what constitutes a fact, an artifact, (in-)credibility, and, in the long run, an asylum claim. These constructions are also informed by or oriented toward certain social, organizational, legal and other norms. As mentioned above, the search for facts is often norm-oriented, and a decision based on existing (legal) norms facilitates the legitimation of the official's decision. However, the construction of (in-)credibility is often based on other norms, such as the individual benchmarks and expectations of the decision maker. These findings show that in the asylum procedure, power is unequally distributed among all three dimensions of structure: signification, domination and legitimation.

The process of refugee status determination also illustrates the relations among communication, power and sanction – the three dimensions of interaction. The construction of facts, artifacts and (in-)credibility is based on oral (in particular, the asylum interview) and written (e.g., notifications, pieces of evidence) communication not only between the asylum claimant and government official but also among other actors. Within these communications, power plays a key role since the aim of each actor is to gain the power of definition. Asylum claimants, caseworkers, and experts struggle over who defines what constitutes a fact, what is worth being documented, and what is credible – and what is not. If an actor loses or never reaches the

power of definition, s/he can be said to be sanctioned. Eventually, it is the asylum claimant who receives the final sanction – the decision upon her/his asylum claim – based not only on the preceding communication and power interplay but also on the normative framework (the law as well as other social and organizational norms).

This theoretical approach highlights that power is unequally distributed, but it also suggests that interaction creates room for maneuver and interpretation, potentially also for those with less power of definition. Structuration theory implies that through their agency, officials – just as any other agent – have the opportunity to act differently, to create something new and to shape new "figurations" (Elias 1976). Caseworkers can, for example, develop new strategies for obtaining facts or define different documents as a legitimate source or regard other evidence as relevant to the record. The asylum procedure is thus characterized by transforming rules and resources and changing compositions and configurations of signification, domination and legitimation. Officials are not "caught" in or determined by the structural circumstances; instead, they contribute to the (re)production of those circumstances through their day-to-day actions. Structuration theory holds that knowledgeable individuals can use the available resources to change the norms or policies that the structure imposes on them. As Dubois (2010:137) notes, "[T]he agents employed by an institution and the people who have to deal with it always have a degree of leeway, and, in using it, develop practices that limit the institution's influence, or even transform it."

This approach also emphasizes that street-level bureaucracy is not only about discretion in the sense of "the right or ability to decide something" (Cambridge English Dictionary 2017) but also, essentially, about the room for maneuver in a broader sense and about agents' practices and strategies. Emphasizing their power, this "active" view of bureaucrats is also in line with the position that understands bureaucrats as policy makers since they are the ones who turn law into action (Brodkin 2011; Paquet 2015). In his seminal work, Lipsky (2010[1980]) argued that street-level bureaucrats, such as decision-making officials in the asylum procedure, "function as policy decision makers, as they wield their considerable discretion in the day-to-day implementation of public programs." Public officials not only implement policies but also contribute to them by understanding their roles and using resources in different ways, by making use of their room for maneuver in interpreting the given rules, and by attributing political meaning to their actions (Fassin 2015).

Squire's (2009:186) statement that we are all social actors capable of acting and organizing with significant consequences concerns civil society, asylum claimants and decision-making officials alike. As Mountz (2010:xxv) notes, decision-making officials potentially have the power to act subversively in everyday work, especially when policies are questioned and challenged by larger parts of society. According to Martinez (2009:116), an ethically acting caseworker should call attention to flaws in the system in order to allow reflection on and the implementation of change instead of abiding by the letter of the law because it was stipulated by the caseworker's superiors. "The embodied nation-state is articulated through, and in an important sense limited by, the imaginations of those who enact it" (Mountz 2010:xxv).

9.2   From the Organizational Perspective: Practices of Dealing with Formality and Informality

Drawing on street-level bureaucracy theory in combination with practice and structuration theories is useful for understanding and explaining the findings of this case study. Furthermore, the perspective of organizational sociology provides additional insights regarding governmental action in the administration of asylum. The structural contradictions observed through decision makers' practices vis-à-vis dilemmas can be conceived as a tension between legal and administrative overregulation and the relative "triviality" of everyday work. This tension is expressed in the co-existence of the formality of legal and administrative norms and the informality of everyday work practices – an analytical distinction relating to the gap between law in the books and law in action (Pound 1910). The dilemmas thus represent the interplay between formality and informality, which relates to key issues of practice and structuration theories that emphasize the role of informality in social (and organizational) practices. Legal and administrative norms require

– adherence to rules, but everyday work – characterized by the interpretation and implementation of these norms – requires room for maneuver;
– a definite decision, but in everyday work, much is undecidable since the asylum procedure is characterized by uncertainty;
– orientation at the individual (human being), but everyday work is largely oriented toward the faceless case;
– responsibility, but everyday work is characterized by dissociation.

The identified dilemmas can thus be regarded from the perspective of formality and informality and caseworkers' related practices. While formality and informality coexist and are closely interwoven, they each regulate different areas. The findings illustrate how in processing asylum claims, officials practices are oriented toward both formal and informal frameworks in trying to find a balance.[2]

In organizational research, praxeological approaches represent a counterpole to classical economic theories such as rational choice or post-Weberian formal rationality in bureaucratic-hierarchical institutions. Since the 1980s, structurational organization studies have focused on recursive routines of action instead of rationalistic decision-making theories. Key topics are, for example, decisions under uncertainty and the related role of rules of thumbs and relations of trust. Actors are not normatively idealized as individuals following explicit institutional norms; by contrast, informal practices are assumed to govern the organizational everyday, which can also contravene official regulations (Reckwitz 2002; Martinez 2009). Caseworkers have the possibility to resist formal norms to some extent, for example, by ignoring those norms because they are impracticable in everyday work. In such situations, informality takes "the form of deviant action aimed at achieving the ends that the abstraction failed to achieve" (Stinchcombe 2001:7).

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[2] This section is partly based on an earlier publication (Dahlvik 2017a).

In the context of organizational work, experience-based knowledge and situational action are thus not conceived as deviations but must be analyzed within their own systems. The focus on situational action, as developed by ethnographic workplace studies (Knoblauch and Heath 1999), implies that the "how" of action is emphasized. In the sociological field, the concept of "experience-led subjectivizing action" (Böhle 2010:160, own translation) was developed in this context. This concept points to the fact that experience represents the basis of knowledge acquisition and considers the cognitive and practical interpretation of subjective elements such as feelings. Concerning informal forms of cooperation, the concept of "experience-led subjectivizing cooperation" was developed and opposes "planning-related objectivizing cooperation" (Böhle and Bolte 2002; Bolte and Porschen 2006). Experience-led subjectivizing cooperation is characterized by the following elements: the occasion, point in time and involved partners result from the situational problem; communication is based on common experiences; and the relation between the cooperative partners rests on mutual (work-related) familiarity (Böhle 2010:164). The fact that such forms of communication and cooperation cannot or can only partly be formalized results in the structurally informal character of social practices and processes. Regarding the example of cooperation, the difference between formal and informal forms of self-regulated cooperation lies specifically in the type of cooperative action and the resulting possibilities and limitations of formalization (Böhle 2010).

The differentiation between formality and informality is a classic distinction of organizational research. In the 1950s, Blau (1955) suggested that the functioning of an organization is based not only on formal structures but also on informal ones. Along with a few other scholars, Friedberg (1995) determined that deviation from the rules plays an important role for the functioning of an organization. According to Froschauer and Lueger (2015), formality and informality represent two forms of order that are closely interrelated but regulate different organizational areas. The authors argue that eventually, informality dominates formality. In the asylum bureaucracy, the informal poles of the dilemmas are also at least equally as important as the formal ones. The formal requirements – regulation, decision, focus on the individual and responsibility – represent the framework of action. Hence, formality creates a stable frame of social processes that are regulated through informality, "an expectation-robust framework that simultaneously serves as a ritual facade" (Froschauer and Lueger 2015:204, own translation). This abstract frame serves to externally legitimize decisions through binding procedures. To make the decision formally useful, it must be adjusted to this frame of formality. In addition, formalization offers an enforceable referral structure and simultaneously allows responsibility to be externalized. As explored above, this is a common practice of decision-making officials at the FAO.

By contrast, informal orders of interaction are based on relationships of trust and expectation-robust action. These informal orders enable flexibility and heterogeneity, as illustrated by caseworkers' individual approaches and strategies, and contribute to obscuring decision-making processes. It has also been noted that informal information networks represent one of the reasons why "decisions cannot be made

transparent, even if officials were willing to do so" (Eule 2014:62). Unequal treatment and the lack of transparency are particularly criticized characteristics of the asylum procedure (Montgomery and Foldspang 2005; Linton 2014). Furthermore, informality requires experience and implicit, often inexplicable, knowledge (Froschauer and Lueger 2015). Officials' initial training, for example, is primarily based on the principle of learning by doing, which highlights the relevance of experience and implicit knowledge in the administration of asylum claims. The importance of socialization within the organizational culture becomes apparent in this context. As Martinez (2009:117) argues, "[A] formal organization also contains informal organizations composed of groups that form naturally, regardless of the formal, hierarchical structure. Informal organizations influence the perceptions and attitudes of group members and shape behavioral values and norms." In developing strategies, for example, regarding the treatment of asylum claimants in the interview, decision makers orient themselves not only toward administrative provisions but also toward their colleagues' practices. Froschauer and Lueger (2015:206, own translation) argue that often, "the explicit applicable rules are either not definitely known to the agents or the knowledge about them is unequally distributed." In the case of the FAO, decision makers who lack a legal education only know the legal basis of their actions to some extent. "In practice, it is the belief in specific formal rules and the legitimacy of this imagined order as well as the collective orientation toward this imagined order that connects the formal rules with everyday action" (ibid, own translation).

The sociological concept that addresses the functionality of the interplay of organizational formality and informality contributes to explaining the observed social practices with regard to the identified dilemmas. Formality is based on defined membership, clear rules and competences, enforceable rights and duties, impersonal and abstract relations, explicit knowledge, and a legal framework; here, domination allows for enforcement on an institutionalized basis. By contrast, informality is based on social inclusion, personal relations, common orientations, trust and solidarity, voluntary commitment, and implicit knowledge; here, power functions as the basis of enforcement. To some extent, formality establishes the confines for the room for maneuver by determining which rules have to be followed. However, it is only a frame that has to be animated; at that point, informality is the decisive factor (Froschauer and Lueger 2015).

This perspective shows how the two areas coexist and regulate different domains in asylum administration. Regulation, definitiveness, a focus on the individual human, and responsibility constitute the formal frame, whereas room for maneuver, uncertainty, a focus on the faceless case, and dissociation define practices on the informal level. Nevertheless, social practices cannot always be definitely located, and much takes place within an indeterminable gray zone, that is, in "tolerated zones of difference" with regard to rule application (Ortmann 2003), somewhere between formality and informality. Deviation from formality cannot always be clearly identified; instead, it is subject to interpretation, just as formal rules require interpretation, which is not always formally regulated down to the last detail (Froschauer and Lueger 2015).
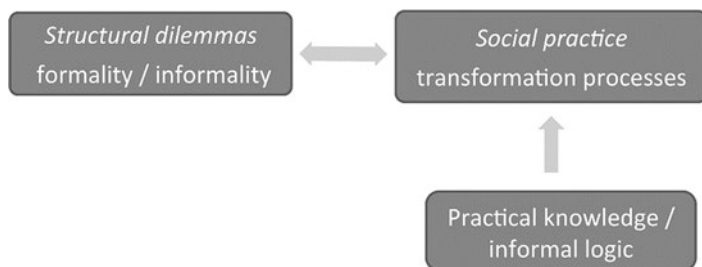
Fig. 9.1 Structuration in the context of formality and informality at the FAO. (Source: Own production)

Regarding the identified everyday dilemmas, officials' practices can be interpreted to the effect that the primarily informal practices – room for maneuver, uncertainty, orientation toward the faceless case, dissociation – experience a process of formalization to ensure that the case processing will include orientation toward the given norms, individual treatment of the claim, and a responsible, definite decision. By expressing the relation of practical knowledge, social action and structural dilemmas, Fig. 9.1 illustrates how social practices and structures in the asylum procedure mutually influence each other.

The way in which decision makers' social practices are based on practical knowledge and an informal logic has become clear. These practices reach their professional maturity through learning by doing; for example, they create informal categories of asylum claimants and their "cases," and they often maintain individual, informal relationships with experts or interpreters. At the same time, the legal and institutional structure in which the administration of asylum takes place requires formality – that is, not only a stable framework for social processes but also legitimation through binding procedures. To make a decision officially and formally useful, that decision has to fit the frame of formality. The different processes of transformation onto the formal level, such as the social construction of facts, must occur through social practices and are thus observable on the level of "doing" asylum decisions. Whereas structure represents a frame of reference for social action and thereby influences decision makers' opportunities, officials' room for maneuver enables them to stretch structure in one direction or another.

Both formality and informality as well as the explored transformation processes contribute to the reduction of complexity in the bureaucratic everyday. Decision makers' tasks include "tailoring" asylum claimants' experiences to legal and administrative requirements. Hence, complexity reduction must take place since we generally do not know enough, and system constraints, action chains and path dependencies make reasonable decisions unlikely (Ortmann 2003:138, own translation). Reducing complexity is also necessary since the endeavor to reach greater accuracy – such as the ongoing search for "true" facts in the asylum procedure – could otherwise never end, resulting in agents' inability to act (Reichertz 1997). Ultimately, the asylum procedure is a bureaucratic process in which unambiguity must be produced and thus, alternatives must be excluded and made impossible. The abovementioned suppression and consolidation mechanisms are the consequence (Ortmann 1990).

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Chapter 10
Practical Implications: How to Deal with Structural Dilemmas?

Whereas the socio-theoretical perspective on the study's key issues contributes to the academic debate, this chapter discusses some practical implications of the main findings that might be relevant not only to scholars but also to practitioners and activists in the field. First, ideas for dealing with the current challenges – present throughout Western democracies – and improving the asylum procedure are explored. I then argue for a stronger focus on procedural justice and ethical competence in public administration as a means of creating an improved asylum procedure. To that end, I discuss the issue of ethics and organizational culture and ethical decision making in the asylum procedure. The book concludes with a brief outlook on possible future research avenues.

10.1 Envisaging Change for the Better

At the legal and policy level, many scholars have argued that change is necessary to overcome current problems in the asylum system. Along with other scholars, Westra et al. (2015:2) argue that, for a number of different reasons, the Geneva Convention and its Protocol are "totally inadequate to deal with both the quantity and the quality of asylum seekers." Feller (2015) agrees that there are substantial arguments for rethinking the principles and concepts of the international laws regarding refugees. Numerous suggestions have been made for changes in the current legal framework at the national, supranational and international levels (Staffans 2012; Westra et al. 2015), for example, with regard to the problems of the Dublin system (Amnesty International 2010; Fratzke 2015). Gibney and Hansen (2005) propose four ideas for future directions in asylum policy in the West: (i) expanding immigration

categories, which they regard as unlikely; (ii) focusing more on the resettlement of refugees (especially in North America); (iii) introducing asylum without welfare, that is, a market-based approach that allows for welfare incorporation only after labor market incorporation, although this would contravene most states' social protection regimes; and (iv) expanding opportunities for return, which is perceived as "morally dubious" (ibid). The status quo represents a final alternative: "perhaps the Geneva Convention is preferable to any conceivable alternative" (ibid:92). According to the authors, only a fundamental change and a substantial revision of the current asylum system would allow the deadlock to be overcome (ibid).

Nevertheless, different indicators reinforce the need to improve the current system of asylum administration in and beyond Austria. These indicators include disparities in decision making (leading to a high variance in recognition rates) and quality deficits in the procedure and decisions (including problems with fairness and equality). The works cited throughout the book, which report similar findings, illustrate that decision makers face similar challenges irrespective of different national and cultural contexts. Initially, this might be attributed to legal harmonization within the EU (CEAS); however, as we will see, even policy recommendations with regard to the adjudication of asylum in the US prove relevant to the European context. The fact that these problems exist – to a greater or lesser extent – in most Western democracies demonstrates that solutions cannot be found only at the national level. Instead, working on joint strategies for improving the procedure and learning from best practices around the world would make sense.

Ramji-Nogales et al. (2011) explain why certain approaches to reform have not been helpful thus far. The introduction of quotas, for example, would allow political influence to increase; determining and justifying the percentage for any quota would also be difficult. Additional codification is not regarded as a suitable approach either since dissent among decision makers regarding the meaning of the law is not the primary explanation for differing rates of granting asylum (Ramji-Nogales et al. 2011). Instead, as also suggested by the present study, disagreement often focuses on judgments regarding credibility. Additional regulations cannot mitigate decision makers' different approaches in trying to mold individual cases to existing legal categories or in evaluating the credibility of a claimant's assertions since these differences are seldom a consequence of the vagueness of the legal norms themselves (ibid).

However, existing problems need to be addressed. Recognition rates not only vary across regional asylum offices but also experience disparities within asylum offices; this is true at the national level (Maisch 2015) as well as at the EU level (Eurostat 2016) and in the US (Ramji-Nogales et al. 2011). Although investing in greater consistency is essential, it is likely that disparities cannot be fully eliminated due to the specific challenges of the asylum procedure (Thomas 2011a:164), as this study has shown. One approach suggested at the EU level by Amnesty International (2016) as well as by scholars and practitioners is the establishment of a supranational asylum court to create more equality. This suggestion was raised by the European Parliament in 2010, but it is currently not close to realization. At the organizational level, increasing opportunities for interaction among officers represents another approach. Ramji-Nogales et al. (2011) suggest that decision makers should receive peer-to-peer training to make disparities apparent or should sit in

three-member panels to understand the sources of the disparities. However, the principle of multiple-assessor verification (the four eyes principle) will only be effective when taken seriously and not used as a method to share the workload, where one official only expresses her obligatory consent to her colleague's decision.[1] Such enhanced interaction among colleagues might provide a remedy that would also solve difficult situations or "cases" from an ethical perspective. "The more novel and difficult the ethical choice we face, the more we need to rely on discussion and dialogue with others about the dilemma. Only by careful exploration of the problem, aided by the insights and different perspectives of others, can we make good ethical choices in such situations" (Markkula Center for Applied Ethics 2015).

In addition, in the Austrian context, deficiencies in the quality of the procedure and the decisions made on the administrative level can be seen, for example, in decisions overturned by the second instance and complaints filed with the Austrian Ombudsman Board (2017) responsible for monitoring the action of the public administration. Additionally, independent research through the UNHCR (n.d.) or the Ludwig Boltzmann Institute of Human Rights (n.d.) on the legal developments and on the authority's work reach similar conclusions. Since the long duration of the asylum procedure represents a major problem, the state's emphasis on speedy and efficient procedures works to the detriment of fairness and equality. Hence, Thomas (2011a) regards the pursuit of a quality agenda as the most promising approach. He argues that administrative justice needs to be defined not only top-down but also bottom-up; the concept refers not only to external accountability mechanisms by which individuals can challenge administrative decisions and the role of courts but also to "the mass of front-line initial decision-making and the processes necessary to ensure quality" within the procedure (Thomas 2011b:3). One possibility for providing higher standards of decision making might be to introduce adjudication at the initial decision stage through "a closer assimilation of adjudication and administration" (Thomas 2011b:292). Although certain recommendations are designed primarily for the judiciary, most of them are thus also relevant for the first instance.

Additional options for improvement include, for example, depoliticizing the institutions and placing the responsible bodies in an independent agency. Migration is increasingly constructed as a security issue (Huysmans 2006; van Munster 2009). The political process of connecting migration to criminality is related to a wider politicization in which immigrants and asylum claimants are regarded as a challenge to both the protection of national identity and welfare provisions (Huysmans 2000). Moving migration and asylum issues away from security issues and into the field of social questions – also at the institutional level – would be an important step, not only at the symbolic level.[2] Regarding recruitment, it is important that the government does not use political standards when employing decision makers and that they are carefully selected according to high standards (Ramji-Nogales et al.

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[1] At the FAO, this is usually implemented in the case of positive decisions, which have to be double-checked by the head of the unit. However, it seems essential to include negative decisions in this review process as well.

[2] In Austria, matters of immigration were moved from the Ministry of Social Affairs to the Ministry of the Interior at the beginning of the 1990s.

2011:102). Some scholars also argue that asylum officers should have a legal education to be able to better address the complex issue (Schoenholtz et al. 2014).

In addition, developing a more professional culture and creating an authority that meets the highest standards of fairness and due process (Ramji-Nogales et al. 2011:106) could represent a viable approach to change. Increasing the number of decision makers[3] and giving them enough time per case might represent another improvement for the system since "social psychology supports the idea that judges with heavy dockets are more likely to make inaccurate decisions" (ibid:108). Providing the necessary resources and periodic in-person training (as currently done by EASO) should be the norm. As the findings suggest, caseworkers constantly face situations of structural conflict that partly produce psychological stress. Since there can be fatal consequences when dissatisfaction or frustration affect the interaction with asylum claimants and the decision-making process, it is vital that the organization provides sufficient support and resources for caseworkers, such as regular supervision.

Regarding caseworkers' sources of information for decision making, regular exposure of officers and supervisors to research findings would make sense. In Germany, for example, a special newsletter (*Entscheiderbrief*) informs decision-making officials on a monthly basis by providing information on specific regions, recent case law, legal developments in Europe and other current topics, including new publications in this field.[4] Such specialized, regular information would help decision makers remain up to date and gain more in-depth knowledge on current developments, ideally contributing to more carefully considered decisions. In addition, a high standard of information needs to be guaranteed, although "realistically, available country information is unlikely ever to be fully comprehensive and exhaustive" (Thomas 2011b:195).

However, to improve the situation of asylum claimants within the procedure, it is not only necessary to promote change within the institution; asylum claimants also need to be empowered by enhancing their "client autonomy" (Lipsky 2010). Respecting and encouraging asylum claimants' struggle to organize and to obtain some control over their asylum procedure requires ensuring that the procedure and its various implications are made very clear to asylum claimants. Rudimentary legal counseling through the state leaves most of the explanatory and other supportive work to NGOs. To prevent inhuman treatment and neglect of claimants' rights, it is vital to make the bureaucracy more accountable to individuals since accountability represents the link between bureaucracy and democracy (ibid:160). To empower claimants, the government could also provide appointed counsel for unrepresented applicants since "a system that claims to provide procedural due process requires

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[3]The number of decision-making officials has increased (Bundesministerium für Inneres 2016), which can be attributed to the institutional reform in 2014 and the increase in asylum claims in 2015.

[4]See, for example, Entscheiderbrief 7–8/2015 (Bundesamt für Migration und Flüchtlinge 2015), http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2015/entscheiderbrief-07_08-2015.pdf?__blob=publicationFile

some degree of fair representation" (Ramji-Nogales et al. 2011:113). Thomas (2011b:117) found that the presence of representation more than doubles the success rates of appeals. However, to effectively challenge the exclusionary politics of asylum, the concept needs to be re-evaluated in a more radical way, which also requires political engagement and mobilization. For a more inclusionary approach to asylum, the conception of the political subjectivity of asylum claimants must be strengthened (Squire 2009). Mountz (2010:169) emphasizes the need to think "beyond the pervasive, mythical power of the magical state" in order to imagine and strive for alternative models that "protect and include, rather than endanger and exclude."

10.2   Procedural Justice and Ethical Competence

The concept of procedural justice, with a focus on the treatment of asylum claimants, represents another approach for improving the quality and fairness of the procedure. Along with other scholars (Verburg and Schueler 2014; Silverman and Molnar 2015), I argue that procedural justice needs to be more vigorously pursued in the asylum procedure. As Tyler (2003) notes, the legitimacy of a justice system is more significantly shaped by public perceptions of the system's fairness than by perceptions of its effectiveness. In this sense, he makes an important distinction between an idea of justice based on process and justice based on outcome. According to Tyler, fair and respectful treatment that follows the rules – procedural justice – plays a greater role for individuals than obtaining outcomes that are regarded as fair or favorable to themselves (Hough et al. 2010:205). Although this might be questioned in the context of international protection, it is still essential to consider that for a legal procedure to be viewed as fair, the quality of treatment in face-to-face encounters can be more important than the actual outcome – or at least equal to it. "Above and beyond the quality of the procedures used in the resolution of their problem, people value being treated with dignity and having their rights acknowledged" (Tyler 2003:299).

Another key element of procedural justice is the quality of decision making, as discussed above. Since decisions are generally regarded as more fair when they are made on a neutral and unbiased basis (rather than on the basis of personal views), proof of objectivity and impartiality in decision making increases perceived fairness. Administrative bodies profit from transparency since it allows them to demonstrate that decisions are made on a neutral basis (ibid:298). Tyler's findings suggest that both procedural justice and motive-based trust – the assessment of whether individuals trust the motives of the authority – influence decision acceptance and satisfaction with the decision maker. The results also highlight that the quality of interpersonal treatment and the understandability of actions are the antecedents of procedural justice and motive-based trust (ibid:300). In the context of the asylum procedure, claimants' trust in the motives of the authority is questionable, especially since those motives are not particularly transparent. Hence, this issue could be a starting point for rethinking current institutional practices and possible motivational biases.

Beetham (1991) adds another factor to the perceived legitimacy of institutions based on the idea that institutions represent specific normative and ethical frameworks. From this perspective, legitimacy also depends on the perception that the authorities and the public share broadly similar moral positions. According to the author, such "moral alignment" – a shared sense of right and wrong – is a necessary component of legitimate authority. As Hough et al. (2010:205) note, the sense of a shared moral position is communicated to individuals by the authorities through the quality of interpersonal treatment in interactions and particularly through their procedural fairness or lack of it. The fact that the procedure is not only about acknowledging rights but also about interpersonal interaction was illustrated by the analysis of asylum interviews in Chap. 4, which highlighted the importance of the treatment of asylum claimants.

Following these observations and considering the present findings – particularly concerning the dilemma of responsibility and dissociation – I argue that the role of ethics in the administration of asylum should be strengthened. The so-called bureaucratic ethos (du Gay 2000) does not seem to sufficiently secure justice through rational, rule-based assessment and the principle of equal treatment. The structural dilemmas that officials face in deciding upon asylum claims are reinforced since administrators act in an (ethically) difficult environment. "Given the ambiguities of ethical principles and the role of competing values in giving them meaning within particular contexts, ethical practice comes down to a personal responsibility for weighing and balancing conflicting imperatives" (Pratchett 2000:122). The strategy of focusing on ethics in decision makers' everyday work is relatively independent of the diverse developments of the political and legal framework since the process of deciding on an asylum claim is inherently difficult. According to Martinez (2009:74), understanding administrators as "moral agents" can be regarded as "a starting point for improving ethics."

A capacity-building approach that includes the development of caseworkers' ethical competence (Geuras and Garofalo 2011; Sedlačko and Dahlvik 2017) could support decision makers in dealing with the uncertainties and ambiguities inherent in deciding asylum claims. While bearing in mind that refugee status determination is a legal (human rights) issue, a focus on ethical decision making may not only help advance the understanding of asylum claimants' situations and promote their recognition as individuals but also give the ruling principles of equality and non-discrimination more importance in officials' discretionary power. An invitation to decision makers to imaginatively identify with the claimants, as proposed by Morris (2010:143), can, for example, contribute to mitigating simplifications and thoughtless categorization in this "people-processing bureaucracy" (Lipsky 2010). Competence-building – including ethical competence – and awareness-raising can contribute to improving the quality of the asylum administration by modifying entrenched routines. However, the issue is also relevant at a broader level. As Juss (2006:ix) argues in the context of migration and global justice, "never in recent times has there been a situation in the democratic world that has more urgently needed brave moral leadership."

In addition, it would make sense to include human rights more prominently in the relevant curriculums. Whereas philosophy alone cannot provide the relevant tools, it is also insufficient to examine social equity only within the confines of policymaking. Therefore, Alvez and Timney (2008:51) suggest using human rights theory as a means to incorporate social equity into the public administration curriculum since "advancing social equity is, or should be, a primary focus of public administrators."

10.2.1   Ethics and Organizational Culture in Public Administration

Similar to immigration policies and laws embedded in national traditions (Bauböck 1999; Morris 2002; Zincone et al. 2011), the practices of administrators are shaped by organizational culture. Previous research has shown that immigration departments and caseworkers' practices are influenced by wider politics as well as by organizational cultures (Psimmenos and Kassimati 2003; Triandafyllidou 2003). Supranational training on the EU level, such as the training provided by the EASO, may represent a step toward harmonization, but it will always be confronted by socio-political and cultural heritage as well as organizational cultures that are difficult to change since they have grown over time and practices are deeply rooted within them.

To do their job, officials need to know not only the legal framework but also the organizational culture and their own role within it since this culture has an impact on every action of the organization (Martinez 2009). Organizational culture can be defined "as the visible organizational elements, values and hidden assumptions that provide rules of behavior for [the organization's] members," whereas the consensus on these elements connects the organizational members (Erakovich and Wyman 2009:80). Ideology and values are thus represented through organizational culture. According to Erakovich and Wyman (2009:82), the ethics of an organization amount to the shared behavior, which guides the ethical actions and decisions of its members. Since these shared practices influence officials in the decision-making process, the authors argue that organizational culture is predictive of ethical behavior.

Turning to the specific context of public administration, ethical issues can be understood as a mosaic of individual motives, the organization's mandates, and societal values (Lawton and Macaulay 2009). To take ethical practices seriously, an organization must enable and promote ethical behavior, and its members, at all levels of the hierarchy, must comprehend the need for ethical behavior (Martinez 2009). The aim should thus be "to ensure that ethical behaviour is an integral part of the whole" (ibid:73). Therefore, the question of ethics in public administration is also related to the strength of prevailing organizational and individual ideologies vis-à-vis the legal framework.

The findings demonstrate that the "ethical dilemmas of immigration policy" (Zolberg 2012) are also observable at the level of everyday practices in organizations. Civil servants make value-based judgments on what is true or false, right or wrong, good or bad, and they express feelings such as empathy or suspicion, pity or outrage. The asymmetrical relationship between the administrator and the claimant, between those who possess power and resources and those who depend on these resources, reinforces the strength of these values and feelings (Fassin 2015). What these agents think and do is also related to and reflects public and political discourses and actions, such as the stigmatization or criminalization of asylum claimants. As Morris (2010:131) notes, "answers given by courts are functions of a larger social and political debate"; to some extent, this also seems to be valid for decisions made by the administration. These "various forms of moral mobilization" (ibid: 256) give rise to the tensions, conflicts and dilemmas that require caseworkers' action in everyday work.

> To take into account the tensions at the heart of the state between the coherences and contradictions, between over-determination of the action and the indetermination of the agents, between the macro-power of the law and policy makers and the micro-powers of the agents in the institutions is to implement what Michel Foucault called a "critical morality" (ibid:259).

To capture the moral dimension of state institutions, Fassin (2015) engages two concepts, moral economies and moral subjectivities, combining "the two major approaches to moral questions in the social sciences inspired by Kant and Aristotle, namely, the ethic of duty and the ethic of virtue, respectively" (Fassin 2015:10). Both ethics are combined in the everyday work of public administrations that have to address social issues and respond to concrete situations. The relevance of officials' responses given in these situations emphasizes the role of evaluations and emotions in the bureaucratic encounter, as discussed above. Additionally, both moral economies and subjectivities have underlying political stakes. The moral work of institutions thus consists of dealing with the tensions within the general public sphere regarding the issue at hand (moral economies) as well as dealing with the dilemmas administrators face in trying to resolve these problems (moral subjectivities) (ibid). Moral economies refer to the judgments and feelings that characterize the collective understanding of a problem at a specific time and place in history. "Thus, one can speak of the moral economy of asylum to characterize the transformations of values and affects around the question of refugees" (ibid:9). Originally positively valued and emotionally charged, refugees were perceived as victims or heroes; over time, their image transformed into that of the "fake refugee," stirring mistrust largely regardless of where and what the person was escaping (ibid).

Whereas moral economies concern social facts, moral subjectivities "refer to the processes by which individuals develop ethical practices in their relationships with themselves or others" (ibid).

> [Moral subjectivities] attest to the autonomy and freedom of agents, notably within contexts in which opposing values can come into conflict, contradictory sentiments can create tensions, or political injunctions can run counter to professional ethos. They may be conscious exercises stemming from reflections on a dilemma, or they may be ordinary gestures stemming from a sense of care (ibid).

Considering the findings of this study, I argue that it is important to increasingly focus on ethics in public administration – in research as well as in practice – especially in the field of asylum and in decisions makers' everyday work, which is characterized by several dilemmas.

10.2.2 Ethical Decision Making in the Asylum Procedure

Ethical questions are ubiquitous. They become relevant in different contexts: in "acting ethically as individuals, creating ethical organizations and governments, and making our society as a whole ethical in the way it treats everyone" (Markkula Center for Applied Ethics 2015). Since public administration is never an end in itself but always serves the aims of the context in which it is embedded, administrators are confronted with a variety of objectives that cannot always be reconciled (Banke and Thedieck 2011). Dilemmatic situations such as those explored in this study are predetermined; this also includes tensions between legal provisions and the individual sense of justice. Dilemmas can arise when the ethical evaluation of a situation differs from the evaluation that is prescribed by the required application of law. Banke and Thedieck (2011) illustrate the situation of a decision maker with a table of four quadrants considering the legal and ethical aspects of social action. Officials deciding upon asylum claims might thus be confronted with situations in which legal or administrative norms and the individual's sense of justice or ethic responsibility do not coincide but collide. We also need to be aware that the purpose of asylum is to protect individuals from serious harm and not to select morally desirable individuals for membership in our polity (Souter 2011).

How should decisions be made in this imbroglio? "Making good ethical decisions requires a trained sensitivity to ethical issues and a practiced method for exploring the ethical aspects of a decision and weighing the considerations that should impact our choice of a course of action" (Markkula Center for Applied Ethics 2015). Hence, focusing on a capacity-building approach that includes the development of public officials' ethical competence seems to be a desirable advancement (Geuras and Garofalo 2011). However, in addition to the philosophical problems, it is a difficult task to develop "a workable model for administrative ethics [since] the field of public administration is extremely diverse and exists at all levels of government" (Martinez 2009:102). It may thus be "unethical" (Pratchett 2000) to apply one standard code of ethics irrespective of the specific context. Nonetheless, public officials might be supported in ethical decision making in all fields of public administration, including in the asylum bureaucracy.

The Markkula Center for Applied Ethics at Santa Clara University (2015) has developed a framework for ethical decision making that can also be applied in the context of public administration.[5] It includes five phases: (a) recognizing an ethical

[5] The Center has also developed an app for making ethical decisions, "a practical tool for thinking through tough decisions," available at https://itunes.apple.com/us/app/ethical-decision-making/id799710217?mt=8, accessed 27 February 2017.

issue, (b) getting the facts, (c) evaluating alternative actions, (d) making a decision and testing it, and (e) acting and reflecting on the outcome. This method can help to explore ethical dilemmas and identify ethical courses of action. However, the findings show that the processes of obtaining the facts and evaluating alternative actions (b and c) are already highly problematic in the context of administering asylum claims. In the search for facts, caseworkers engage in construction practices characterized by the fact that an official's "perception apparatus will partially screen out data adverse to his interests and magnify those favoring his interests" (Downs 1967:180). In addition to these challenges in dealing with asylum claims, the findings suggest that the tasks of recognizing an ethical issue and reflecting on the outcome (a and e) especially need to be encouraged and stimulated in the asylum administration. As we have seen, officials often try to "escape personal responsibility because they [are] part of a larger organization" (Martinez 2009:85). While it is easier to blame others when something goes wrong, it is crucial that decision makers assume personal responsibility and do not dismiss ethical questions.

Geuras and Garofalo (2011:391) note that ethical change, similar to other substantive reforms, is generally perceived as disruptive and as offering only uncertain long-time benefits at (potentially high) immediate costs. By contrast, compliance is comforting and comfortable for administrators. However, to eliminate compliance and moral neutrality, the understanding of the nature of public service and of the public servant's responsibilities needs to change. Decision-making officials ought to be conceived and conceive themselves as competent moral agents instead of obedient bureaucrats. Disincentives with regard to ethical development are powerful and pervasive in the public sector, and recommendations on this level can only be realized in the scope of reframing public service ethics (ibid). This scope would include "a reinvigorated conception of ethical public administrators, their obligation to resolve ethical dilemmas, and their covenant with the public, not as experts but as citizens in league with their fellow citizens" (Garofalo 2008:351 in Geuras and Garofalo 2011:391) or future fellow citizens.

Analyzing the drivers of administrative reform in the US and Scandinavia, Wise (2002) finds that past reforms of the public service sector have been driven not only by economic and rational forces but also by demands for greater social equity, democratization, empowerment and the humanization of public administration. This perspective offers hope that change in this direction may also be realized in the future in Austria and other European public administrations, including asylum administrations. According to Morris (2010:131), judgment "can be a source of social change, opening up new areas of interpretation and application for human rights, as in the extension of the ECHR to address social as well as civil and political rights" – also in the field of asylum. While this might be particularly true for courts, it is also valid for the administration to some degree. Every agent can contribute to change; every member of the organization is therefore responsible for improving the ethical organizational culture on a day-by-day, decision-by-decision basis. Structuration theory suggests that the system is part of the problem, but it is not the

entire problem: "A system is what its members make it" (Sheeran 1993:150). It is crucial to build on human agency and the power of individuals to induce change through social action.

> Clearly, in the public sector, organizational structure, culture, and formal rules play an important part in determining the choices that are made, but ultimately, the individual must make the choice. An ethical system can never work if it fails to assign final responsibility to the individual (Martinez 2009:97).

At the same time, we need to bear in mind that "the nature and extent of the administrator's role will determine the nature and extent of that personal responsibility" (ibid:119). Eventually, the greatest burden rests on the highest-ranking members of the organization since they set the tone for the entire agency, thereby making it easier or harder for the others to achieve improvement (Geuras and Garofalo 2011). Therefore, future studies might also explore new avenues by studying (the potentials of) change and resistance from inside state action in migration and asylum regimes.

10.3   Future Avenues

The findings from this research suggest that studying certain aspects of this specific public administration in more detail would be interesting. In particular, the issue of emotions in public administration represents an intriguing subject. Emotions seem to play a vital role in situations in which individuals have the power to decide on the future lives of others. The topic is also interesting with regard to the treatment of claimants and interpersonal interaction as elements of procedural justice. In this context, the role of ethics in public administration also needs to be investigated further, not only theoretically but also with a focus on practical implementation. Research on public administration in general is more developed in other countries, such as France or the US; this is particularly true for research in the field of ethics in public administration, which is only now emerging in the German-speaking world. "We must also consider the consequences of what the state and its agents do" (Fassin 2015:260), especially in the domains of injustice and inequality.

Referring to the local context of this study, the German-speaking scientific community has generally paid too little attention in the past to socio-legal issues or studies on law and society, including the role of state institutions. With regard to the more recent developments in the field of asylum in Austria, including organizational change and the introduction of a uniform training course, it would be worthwhile to develop a follow-up study on the new Federal Office for Immigration and Asylum as well as in-depth comparative research. In general, viewing public authorities as observation posts for the relation between the citizen and the state represents a particularly attractive approach.

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