CREDIBILITY ASSESSMENT

IN ASYLUM PROCEDURES

A MULTIDISCIPLINARY TRAINING MANUAL

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INTRODUCTION

"To believe or not to believe… this is the question?"

Credibility assessment is undoubtedly one of the most challenging aspects of asylum decision-making. An important part of claims for international protection are rejected based on the justification that the determining authority or court does not believe what the applicant says. While in recent decades there has been spectacular advancement regarding the legal standards and relevant concepts of international refugee law, credibility has to some extent remained out of focus. This training manual aims to fill an important gap, by offering **a creative, multidisciplinary learning method on credibility assessment, tailored to the needs of asylum decision-makers and other asylum professionals**.

This manual **does not offer magic tricks, techniques or solutions** to overcome the serious challenges of credibility assessment – simply because no such tricks exist. What we offer is a framework for developing knowledge, skills and attitude through multidisciplinary learning, which can help asylum professionals to **reduce the possibility of errors, reach more objective and fair credibility findings, as well as to apply a more structured approach** to credibility assessment.

This is **not an academic publication**. Many of the issues covered in the two modules are of a complex and challenging nature and this publication does not aim to provide a detailed, scientific analysis. It rather strives to offer an **easily digestible, concise – yet valuable – summary** of what decision-makers and other asylum professionals need to know about the key issues related to credibility assessment. The style of the publication, including that of footnote references, is therefore **informal** and tailored to a learning objective.

This manual has been drafted in **English**, the most widely spoken language in Europe, in order to ensure the greatest outreach to people who may find this publication interesting or relevant for their work. We are aware of the fact that English will not be the mother tongue of most readers; therefore we have tried to **avoid complicated vocabulary and structures**. Within the strong limits set by the complexity of the content, we have aimed for a clear and simple style.

This is a **multidisciplinary** manual, meaning that it covers knowledge from different areas of science, including law, medicine, psychology and anthropology. **You do not need to be a legal expert, psychologist, psychiatrist or anthropologist to understand and use the content of this manual**. On the contrary, our aim is to present the core knowledge from various disciplines to asylum professionals, who may not have a specific educational background in these areas of science. The composition of authors also reflects the diversity of the content (see the short introduction of contributors at the end of the publication).

This training manual can be used in various frameworks, including **self-study and face-to-face training**. As a book, the interactivity it offers may be limited, yet the authors strived to include a number of **exercises and questions for reflection**. If you use this publication alone (for self-study) it is very important that you complete the exercises before you continue reading. The authors wish to **build upon already existing materials** (including UNHCR guidance and publications, in particular "Beyond Proof", as well as the European Asylum Curriculum), ensuring synergy with their content and terminology. The content of this manual can therefore be **easily integrated into other training programmes**.

Notwithstanding the EU focus of this manual, its intended use is **not necessarily limited to Europe**. Most of Module A can be adapted to other legal contexts by adducing references to

national or regional norms established by legislation, guidance and/or jurisprudence. Module B is directly applicable to all non-European contexts, as its multidisciplinary content is not Europe-focused.

This manual, more precisely its Module B, will be completed by a **second volume** (expected publication in 2014). Volume 2 will include specific chapters on **language and interpretation; shame, stigma and denial; gender; sexual orientation and gender identity; and children**.

Finally, we must emphasise that this manual is **work in progress**. Being the first initiative of its kind, there may well be useful information or nuances that can further improve its content. Several research initiatives are expected to take place in the forthcoming years, as well as specific UNHCR guidance on credibility assessment. Therefore the authors would be pleased to receive any suggestion for the further development of this manual and the "CREDO training methodology".

This short introduction can only conclude with the expression of the editor's and the authors' sincere hope that this manual will significantly contribute to fair, objective and effective asylum procedures in the EU and beyond.

ABBREVIATIONS AND ACRONYMS USED THROUGHOUT THIS MANUAL:

✓ **UNHCR** = United Nations High Commissioner for Refugees

✓ **IARLJ** = International Association of Refugee Law Judges

✓ **EAC** = European Asylum Curriculum

✓ **Qualification Directive** = Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9

✓ **Procedures Directive** = Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2005] OJ L326/13

✓ **UNHCR Handbook** = UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1968 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV.3

✓ **UNHCR Note** = UNHCR, Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998

✓ **UNHCR, Beyond Proof** = UNHCR, Beyond Proof – Credibility Assessment in EU Asylum Systems, May 2013

✓ **IARLJ Credibility Guidance** = IARLJ, Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive – Judicial criteria and standards, 2013

I. THE EVIDENTIARY FRAMEWORK OF CREDIBILITY ASSESSMENT

SETTING THE SCENE

Before discovering the scope, limits and methodology of credibility assessment, it is crucial to understand the **general evidentiary framework** of asylum procedures and its **specific characteristics**. In particular, this chapter will help to understand:

✓ Why, and to what extent **asylum procedures differ** from other procedures with regard to evidence assessment and the establishment of facts and circumstances?

✓ Who has the **duty to substantiate** facts and circumstances in asylum procedures and what does this mean in practical terms?

✓ What is the **level of conviction** an asylum decision-maker needs to have regarding the existence of relevant facts and circumstances in order to make a favourable decision, and what does this mean in practical terms?

This chapter provides a **short and practice-oriented introduction** to these complex legal issues, indispensable for the understanding of the following chapters. It does not intend to present an in-depth academic analysis.

I.1 Why Asylum Procedures Are Different

EXERCISE I.a

First part: What concrete forms/types of evidence (e.g. documentary, testimonial, etc.) can a judge use when making a decision in a criminal or civil procedure? And what forms/types of evidence may a public administration officer consider when deciding upon a claim for a student's visa or a construction permit? Write down as many ideas as possible.

Second part: Now mark the types of evidence in your list which are also frequently available and used in asylum procedures. How many did you find?

In most types of procedures, administrative and judicial decision-makers have access to a wide range of factual, verifiable evidence.[1] In the process of deciding whether an accused person is indeed guilty of a certain crime, the judge will most probably hear witnesses and the victim, who will give an account of their personal, direct experience with the case. The viewing of the crime scene will also provide crucial information to her/him, including fingerprints and other factual information of high evidentiary value. She/he may also request expert evidence, such as a DNA test or a ballistic analysis, or a forensic report. An immigration officer when deciding upon a visa application is usually in a position to assess a wide range of documentary evidence (such as bank statements, salary slips, labour and apartment rental contracts, school and language certificates, etc.) which prove whether the applicant fulfils the necessary conditions of livelihood, accommodation, etc. The judge and the immigration officer of our example are therefore in a position to take a decision with relatively high certainty.

In the field of asylum, **the range of verifiable evidence available is much more limited** than in most other types of administrative and judicial procedures.

✓ Testimonial evidence is in practice not usually available and therefore seldom able to be used (for example in many cases there are no witnesses in the host country);

✓ The viewing of the "scene of persecution" (i.e. an on-site visit to establish the facts and circumstances of an individual case) is not feasible for practical, financial and security reasons (decision-makers cannot travel to countries of origin on a case by case basis);

✓ Personal documentary evidence proving a risk of persecution or serious harm is usually not available (e.g. the agent of persecution will not issue any such document, the refugee is not in a position to bring the relevant papers from the country of origin, etc.), or when available, its authenticity may be questioned or cannot be verified;

✓ The scope of relevant expert evidence is usually limited to useful medical and psychological reports, language tests and expert opinions about the authenticity of documentary evidence, and in many cases such evidence is not available at all.

It is therefore not surprising that both EU law and UNHCR guidance emphasise the importance of a **personal interview**, where the applicant can present all the information relevant to her/his case, as well as submit supporting evidence.[2] We will come back to the crucial importance of the interview in credibility assessment in the next chapter.

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[1] Note that the word "evidence" is differently used and understood in different national jurisdictions and legal traditions. Throughout this manual, it will be used in a general, comprehensive sense, which does not mean that all types of evidence labelled as such in this publication will constitute "evidence" in a strict legal sense in all European countries.

[2] Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9 (hereinafter Qualification Directive), Art. 4(3); Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2005] OJ L326/13 (hereinafter Procedures Directive), Art. 12-13

It should also be noted that **country information or country of origin information (COI)** is sometimes the only other evidence (in addition to the applicant's statements) available in asylum cases, at least to a certain extent. EU law also requires the use of country information.[3] However, even though useful country information is now widely available due to the development of information technology and the growing attention to this issue, it also has strong **limitations**. It should be kept in mind that:

✓ COI cannot reflect the entire reality in countries of origin, the vast majority of events and facts remain unreported even today;

✓ All sources of COI have an inherent bias, therefore while there are a number of sources considered as objective, 100% objectivity does not exist in reality;

✓ Even the most precise and detailed country information report is somewhat general, as compared to the usually highly individual character of an asylum claim;

✓ COI is not a lie detector: it provides the wider context for the assessment of an asylum claim, yet it cannot tell whether the applicant is truthful, neither can it decide whether the claim is well-founded.

The role of COI is to corroborate, question or put into context the applicant's statements and other evidence. To sum up, the increasing availability of up-to-date COI may help reduce the margin of error in decision-making, yet it **cannot substitute the wider range of factual evidence usually available in other type of cases** (criminal, administrative, etc.).

EXERCISE I.b

Consult the literature on country information and related quality standards (see bibliography at the end of this module) and answer the following questions:

✓ Why do we say that "all COI sources have an inherent bias"? What are the factors that have an impact on the content or presentation of a COI source?

✓ What are the relevant quality standards for researching, processing and using country information in asylum procedures? How are these norms reflected in jurisprudence and EU law?

Asylum decision-makers can therefore make use of **a much more narrow range of evidence and verifiable information** than decision-makers in most other fields of law. This seriously **limits the level of certainty** attainable in this context.

Another important difference is due to the fact that asylum decision-makers have to assess cases that involve **distant places and contexts**. Let's see some concrete examples for this:

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3   Qualification Directive, Art. 4(3)(a); Procedures Directive, Art. 8(2)(b)

	CRIMINAL OR CIVIL JUDGE, OR ADMINISTRATIVE DECISION-MAKER FROM OTHER FIELDS OF LAW	ASYLUM DECISION-MAKER
Physical distance	Is familiar with the location of interest (e.g. where the crime took place), has been there or to similar places	Has no personal experience about the location of interest (has never been to the country of origin)[4]
	May have access to places, objects and persons that can provide first-hand information relevant to the case (viewing of the premises, finger-prints, witnesses, etc.)	Usually does not have access to places, objects and persons that can provide first-hand information relevant to the case (viewing of the premises, finger-prints, witnesses, etc.)
Linguistic distance	Usually speaks and conducts the procedure in the mother tongue of the procedures' main actors (applicant, accused, appellant, defendant, etc.), can directly communicate with them	The decision-maker and the applicant usually do not have the same mother tongue or do not even speak the same language, only indirect communication is possible
Cultural distance	The socialisation of the decision-maker and that of the main actors of the case have taken place in a similar cultural context, they use more or less similar cultural codes, non-verbal signs, stereotypes, etc.	The socialisation of the decision-maker and that of the applicant have taken place in very different cultural contexts, they use different cultural codes, non-verbal signs, stereotypes, etc.

Therefore asylum decision-makers often walk on *terra incognita* in a certain sense. Even the best prepared and most experienced asylum professionals will have **limited familiarity with the context the subject of their decision involves**.[5] This fact further limits the certainty attainable in asylum cases and calls for a certain caution in the decision-making process.

A third crucial specificity of asylum procedures is its **forward-looking character**. A criminal procedure always aims to establish the circumstances under which a criminal act was committed in the past. A civil judge or a public administration officer from other fields usually has to assess past events, and her/his decision will focus on whether certain circumstances prevail at the time of deciding. This is even true for immigration and naturalisation officers. Meanwhile, the objective of asylum decision-making is to establish whether there is a risk (well-founded fear) of persecution or serious harm, should the applicant have to return to the country of origin. Thus, quite uniquely, based on the established past and present facts of the application, asylum decision-makers have to **assess a future risk**, which process inevitably involves a **high level of uncertainty** and is "**inherently somewhat speculative**".[6]

Finally, a fourth factor that makes asylum decision-making different from many other types of procedures is the **gravity of its consequences**. An erroneous decision on a naturalisation claim, an application for a student's visa, a work or construction permit, or in a civil litigious

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[4] An interesting exception can be when the decision-maker personally knows the country in question, for example based on her/his experiences as a tourist. However, this sort of experience is usually limited to certain geographical locations and spheres of life, and thus can be seriously misleading. To put it simply: spending a week at a holiday resort serving mainly European tourists, or even travelling around a country and getting in touch with its people and culture can be a very positive experience about a beautiful and welcoming place. However, such an experience will not provide an insight into all relevant spheres of life (such as prison cells for example) and its scope will most likely remain somewhat limited.

[5] Obviously, the above-described forms of distance may vary significantly from case to case. Asylum professionals may be of a migrant background themselves, asylum-seekers may at times come from neighbouring countries, etc.

[6] UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, Para. 18 (hereinafter UNHCR Note)

procedure may have seriously negative and unfair impact on those concerned. However, this effect will never be as grave as the consequence of a wrong decision on asylum. The latter will result in exposing a person to a risk of death, torture, inhuman or degrading treatment, slavery or other forms of persecution or serious harm. This particular circumstance calls for **increased caution** in the decision-making process. The UNHCR Handbook also emphasises this principle:

Since the examiner's conclusion on the facts of the case and his personal impression of the applicant will lead to a decision that affects human lives, he must apply the criteria in a spirit of justice and understanding [...][7]

Deciding on asylum claims represents a specific challenge as compared to most other types of administrative and judicial procedures. With a limited range of verifiable evidence, decision-makers have to assess whether a future risk prevails at a distant, relatively unknown place, with this decision having vital consequences on the life, physical integrity and human rights of a person. As a result, a high level of uncertainty is inherent to the system, increased caution is necessary and specific rules apply for evidence and credibility assessment.

SUMMARY

| 1. Limited range of verifiable evidence | | SPECIFIC RULES ON THE DUTY TO SUBSTANTIATE THE RELEVANT FACTS AND CIRCUMSTANCES |

| 2. "Distance" between the applicant and the decision-maker | Uncertainty inherent to the system | |

High level of caution is necessary

| 3. Assessment of future risk | | |

| 4. Grave consequences of the decision | | SPECIFIC RULES ON THE LEVEL OF CONVICTION REQUIRED |

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[7]   UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1968 Protocol Relating to the Status of Refugees*, December 2011, Para. 202 (hereinafter UNHCR Handbook)

I.2 The Duty to Substantiate

The first issue to clarify with regard to the specific evidentiary framework of asylum procedures is **who has the duty to substantiate the relevant facts and circumstances** or otherwise said on whom lies the **burden of proof** (usually interpreted as who has the primary obligation to produce or submit evidence), or as stated in Article 4 of the Qualification Directive, who has the duty to substantiate the application. With regard to this issue, the UNHCR pointed out in its recent study on credibility assessment in EU asylum practices that

> […] there is no requirement that relevant facts asserted by the applicant have affirmatively to be "proven". Indeed, Article 4 [of the EU Qualification Directive], relating to the assessment of facts and circumstances of applications for international protection, does not use the words "prove", "proof" or "burden of proof". It refers to the duty to "substantiate" the application.[8]

This manual will therefore refer to the **duty to substantiate** rather than to the burden of proof, whenever relevant.

It is a general principle of law that **the burden of proof lies on the person submitting an application, making a statement or claiming a right** (in simple terms: if I claim something, I have to prove that I am entitled to it). This – as a general fundament – is widely accepted in the field of asylum, too. Nevertheless, the specificities of asylum decision-making presented in the previous sub-section modify the application of this principle in practice. As the UNHCR explains:

> It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application.[9]

This means that in reality, **the duty to substantiate the relevant facts and circumstances is shared** between the applicant and the determining authority. The Qualification Directive further confirms this rule in implicit terms:

> Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.[10]

The same principle can be derived from the general rules (e.g. authorities' obligation to establish all relevant facts and circumstances of a case) applicable in administrative procedures in several countries.

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[8] UNHCR, *Beyond Proof – Credibility Assessment in EU Asylum Systems*, May 2013, p. 85 (hereinafter UNHCR, Beyond Proof)
[9] UNHCR Handbook, Para. 196
[10] Qualification Directive, Art. 4

EXERCISE I.c

What does the shared duty to substantiate mean in practice? Before you continue reading, prepare a list containing the duties of both the applicant and the determining authority in establishing the facts and circumstances of an asylum case. Be as concrete as possible.

EU law and UNHCR documents[11] provide guidance on how the duty to substantiate should be shared in practice:

THE APPLICANT HAS TO…	THE DECISION-MAKING AUTHORITY HAS TO…
…submit as soon as possible all elements needed to substantiate the application for international protection and cooperate in the assessment of these elements	…assess all the relevant facts and elements of the application in an individualised manner, in cooperation with the applicant
…make an effort to support her/his statements by any available evidence as soon as possible and, if relevant, to give a satisfactory explanation for any lack of element	…evaluate the evidence objectively and impartially
…make a genuine effort to substantiate her/his claim by supplying all relevant information concerning herself/himself and her/his past experiences and by giving a coherent explanation of all the facts and circumstances of the application for refugee status	…guide and assist the applicant in providing the relevant information, evaluate the applicant's statements objectively and impartially taking into account the individual and contextual circumstances of the applicant
	…be familiar with the situation in the country of origin, be aware of relevant matters of common knowledge, obtain and use legally relevant, individualised, balanced, precise and up-to-date country information in a transparent manner
	…relate all these elements to the relevant criteria of refugee law objectively and impartially, in order to arrive at a correct conclusion as to the applicant's claim for international protection

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[11] Qualification Directive, Art. 4; Procedures Directive, Art. 8; UNHCR Handbook, Para. 205; UNHCR Note, Para. 6

In practice, the duty to substantiate the relevant facts and circumstances is shared in asylum procedures. The applicant has the duty to disclose/submit as soon as possible all elements needed to substantiate her/his claim and cooperate with the authority in establishing the facts and circumstances of the case. The authority has the obligation to guide the applicant by providing relevant information on the process, support her/him to substantiate the application by asking questions and cooperating, assess these elements, to adduce country information thus establishing all relevant facts and circumstances of the case objectively and impartially.

SUMMARY

I.3 The Decision-Maker's Level of Conviction

The second issue to clarify with regard to the specific evidentiary framework of asylum procedures is **the level of conviction necessary for the decision-maker to establish the past and present facts of the application and later determine the well-founded fear of persecution or a real risk of suffering a serious harm**. This concept is often linked to what is called the **standard of proof** mainly in Common Law jurisdictions.[12] In this manual preference will be given to the term **"level of conviction"** to move away from this traditional evidentiary terminology, emphasising that in refugee law (including the EU asylum regulation) there is no requirement of proof and such use of terms may therefore be inappropriate.[13] Moreover, while in the Common Law system there are codified rules and legal debates about standards of proof applicable in different procedures and contexts, Civil Law jurisdictions,[14] based on the principle of the *liberté de la preuve*,[15] are significantly much less formalistic about this issue and seldom set concrete rules about applicable standards. Therefore, referring to a specific standard of proof in asylum cases may not be so relevant in many European countries. Finally, the standard of proof concept may also be problematic as it is often unclear whether it refers to the standard applicable to accept or reject the facts as presented by the applicant and later establish the well-founded fear itself. This sub-section will therefore be limited to the introduction of how and why asylum cases are different from other types of procedures with regard to the level of conviction necessary for the decision-maker to decide in one or another way.

But where is this threshold in asylum cases? In order to find the answer, one may look for comparison with other types of procedures, as in sub-section I.1. For instance, most jurisdictions define a very high level of conviction/standard of proof ("beyond doubt" or "beyond a reasonable doubt") in criminal cases. To put it simply: if a judge condemns a person for years of imprisonment, she/he has to be sure, based on very convincing evidence, that the person actually committed the crime in question. In most civil cases, the standard of proof will be significantly lower. It will suffice to

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[12] This will mainly be in English-speaking countries all over the world
[13] Refer to quotation in sub-section I.2 from UNHCR, Beyond Proof, p. 85
[14] Continental European states and Latin-America belong to this tradition, for example
[15] Freedom of proof

demonstrate that the applicant's proposition is more likely than its opposite. Or in other terms: if one party manages to show that she/he is more right, truthful or convincing than the other, she/he will win the case. In Common Law jurisdictions therefore, the usually applicable standard is the "balance of probabilities" (meaning "more likely than not").
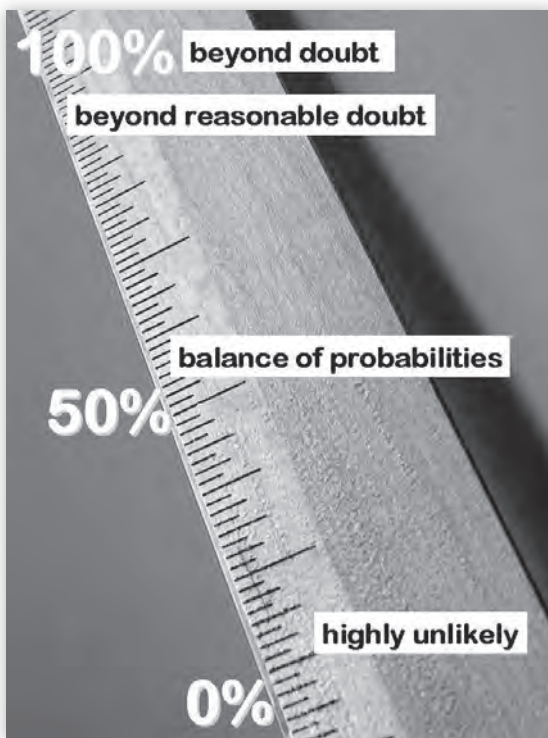
EXERCISE I.d

In light of the specificities of asylum procedures (as previously described in this chapter), where would you set the decision-maker's necessary level of conviction in asylum cases? To what extent does she/he have to be convinced about the past and present facts presented by the applicants and the well-founded fear of the claim in order to decide favourably? Mark a point or an area on the scale! Is there a difference between refugee status and subsidiary protection in this respect?

In order to find the answer, three international sources can be consulted: EU law, UNHCR guidance, and the jurisprudence of the European Court of Human Rights.

1. EU law

EU law does not set a clear standard of proof or level of conviction for establishing a well-founded fear of persecution. It is quite telling, however, that the relevant provisions in Article 4 of the Qualification Directive repeatedly use the term **"substantiate"** instead of "prove". This implicitly indicates the need for a **lower required level of conviction** in asylum procedures (threshold to establish the well-founded fear of persecution and real risk of serious harm), as compared to, for example, criminal matters.

EU law is more concrete on the standard related to subsidiary protection. Article 2(e) of the Qualification Directive defines the beneficiary of subsidiary protection as someone

> [...] in respect of whom **substantial grounds** have been shown for believing that the person concerned, if returned to his or her country of origin [...] would face a **real risk** of suffering serious harm.

This formulation originates from and should be read in conjunction with the relevant established case law of the European Court of Human Rights (see below).

2. UNHCR guidance

It is also noteworthy that the UNHCR Handbook repeatedly uses the term **"substantiate"**, and even explicitly underlines that

> [...] **it is hardly possible for a refugee to "prove" every part of his case** and, indeed, if this were a requirement the majority of refugees would not be recognized.[16]

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[16] UNHCR Handbook, Para. 203 (emphasis added)

As for the standard applicable for credibility assessment, UNHCR guidance reads as follows:

> Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, **on balance, capable of being believed**.[17]

Concerning the well-founded fear of persecution, the UNHCR suggests that

> In general, the applicant's fear should be considered well-founded if he can **establish, to reasonable degree**, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.[18]

The UNHCR further concluded that

> As regards "well-foundedness" of the fear of persecution, while an assessment of this element is inherently speculative in nature, it is **not pure conjecture, nor does it amount to drawing strict legal inferences**. Deciding on the "likelihood" or "possibility" of an event happening lies somewhat in-between and must be justifiable based on valid grounds.[19]

3. European Court of Human Rights

The European Court of Human Rights is a supranational court, which rules on individual or state complaints alleging violations of the civil and political rights enshrined in the European Convention on Human Rights.[20] The latter instrument does not explicitly include a right to asylum and does not deal with asylum as such. At the same time, it contains **the absolute prohibition of torture, inhuman or degrading treatment and punishment** (Article 3 of the Convention). The well-established jurisprudence of the Court requires states parties to respect this obligation in an **extraterritorial aspect** as well, meaning that no state can expel, return or extradite a person to a territory where she/he would be subject to such prohibited treatment. An important part of the Court's emerging jurisprudence on Article 3 since 1989 concerned the expulsion or return of foreigners in danger, many of whom were asylum-seekers in the state party concerned. Consequently, the Court's jurisprudence on this matter is widely seen as standard-setting for European asylum practices, even fertilising EU legislation. The Court's standard of proof for the extraterritorial application of Article 3 is therefore highly relevant for European asylum practices, especially as both the concept of persecution and that of serious harm include the prohibited treatment defined in Article 3 of the Convention.[21]

The Court's well-established standard of proof is equal to and served as model for the above-mentioned standard in the Qualification Directive, regarding the risk of serious harm. The Court ruled in a high number of different cases that there is a violation of Article 3 if

> [...] **substantial grounds** have been shown for believing that the person concerned, if deported, faces a **real risk** of being subjected to treatment contrary to Article 3.

In light of the Court's consequent jurisprudence, this standard means that:

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[17] UNHCR Note, Para. 11 (emphasis added)
[18] UNHCR Handbook, Para. 42 (emphasis added)
[19] UNHCR Note, Para. 21 (emphasis added)
[20] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950
[21] Cf. Qualification Directive, Art. 9(1)(a) and 15(b)

✓ There is **no need for the risk to be very high or to represent an option more likely than its opposite** (no certainty or significant probability requirement);[22]

✓ At the same time the risk **cannot be a mere possibility** (a distant, vague or theoretical alternative).[23]

QUESTIONS FOR REFLECTION…

The US Supreme Court provided a telling and frequently quoted example of interpretation concerning the applicable standard of proof for the well-founded fear analysis. In the *Cardoza-Fonseca* judgment,[24] the Court held that "10% chance of being shot, tortured, or otherwise persecuted" already constitutes a well-founded fear. Do you know about any relevant judicial interpretations in your country?

Considering the consonant guidance provided by these sources it can be concluded that the level of conviction is **lower** in asylum cases than in criminal and most civil matters. **It should not be above the balance of probabilities and it should certainly not reach the high threshold of certainty beyond a reasonable doubt. Nor should it represent only a highly unlikely possibility.**

Despite that EU law applies a different formulation for refugee status (well-founded fear) and subsidiary protection (real risk), in light of the above-presented guidance, as well as consequent state practice there is **no difference between the two applicable standards of proof.**

EXERCISE I.e

What does the above principle mean in practice? Before you continue reading, prepare a list of rules for the practical application of a suitable level of conviction in asylum cases.
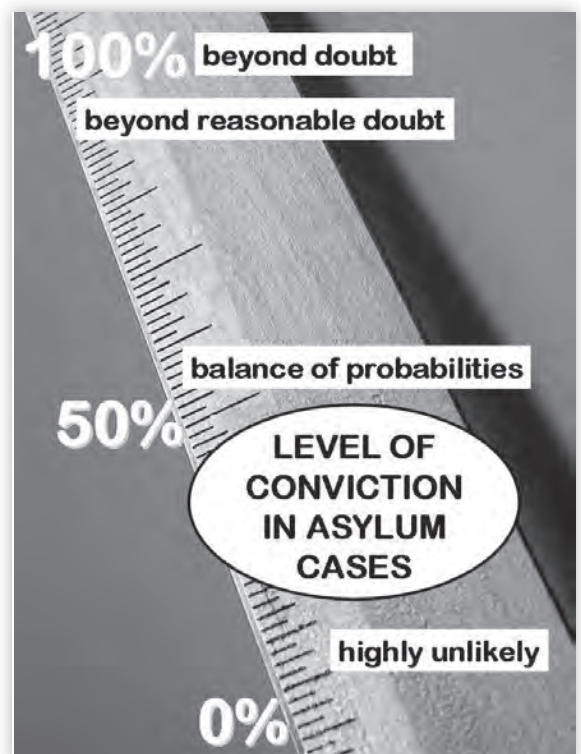
A lower level of conviction can be applied to various elements/questions of the asylum decision-making process. For example:

✓ There is no need to clarify all little details of a claim; the examination should focus on the **material facts and circumstances** that can determine the need for international protection;

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[22] *Saadi v Italy*, App no. 37201/06 (ECtHR, 28 February 2008), Paras. 124-149

[23] *Vilvarajah and others v United Kingdom*, App no. 13163/87;13164/87; 13447/87; 13448/87 (ECtHR, 30 October 1991), Para. 111

[24] *Immigration and Naturalization Service v Cardoza-Fonseca*, 480 US 421 (1987)

✓ The applicant is **not obliged to provide documentary or other evidence**; the past and present facts of a claim can be substantiated in other ways, too;[25]

✓ As for the well-founded fear analysis,[26] the decision-maker **does not need to be fully or very much convinced** about the well-foundedness of the claim; it is enough to reach the conclusion that the possibility of suffering persecution or serious harm is a reasonable (and not necessary a very probable) one, accepting the inevitable uncertainty inherent to the system;[27]

✓ The **benefit of the doubt** principle should be applied in adequate situations;

✓ Etc.

These issues will be further elaborated in the forthcoming two chapters, with a closer look at credibility assessment.

> Given the specificities of asylum decision-making, the decision-maker's required level of conviction is lower in these cases than in criminal and most civil matters. As for the well-founded fear of persecution or a real risk of suffering serious harm, it should not be above the balance of probabilities and it should certainly not reach the high threshold of certainty beyond a reasonable doubt. Nor should it represent only a highly unlikely possibility. In light of international guidance, state practice and jurisprudence, it is enough to substantiate that the risk is a reasonable one, and not only a mere, distant or theoretical possibility.

SUMMARY

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[25] Cf. Qualification Directive, Art. 4(5)
[26] The second phase of the decision-making process, see Chapter III for more details
[27] Cf. sub-section I.1

II. UNDERSTANDING CREDIBILITY ASSESSMENT IN THE REFUGEE CONTEXT

<div>

SETTING THE SCENE

Credibility assessment plays a central, and somewhat different role in asylum determination than it does in other contexts. This chapter will help establish what credibility and credibility assessment means in the context of **international refugee protection**, and the factors that go into a refugee credibility assessment. In particular:

✓ What is the **definition of credibility** assessment in asylum procedures?

✓ What **procedural norms** should guide credibility assessment?

✓ How is the **benefit of the doubt** principle applied to credibility assessment?

✓ What are the basic **pre-conditions** for proper credibility assessment?

✓ What are the main **indicators** of credibility in asylum cases?

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II.1 The Link Between Credibility and International Protection

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EXERCISE II.a

Imagine that in April 1994 a Rwandan man sought asylum in another country under the 1951 Refugee Convention. His valid identity card indicates that he is Tutsi, and his identity card has been found to be genuine. In his asylum application, he says that he was a deputy leader of an opposition political party, but this party's leadership is well-known and this man is not listed anywhere as one of its leaders or members. He also says that he had been imprisoned the previous year because of his political activities, but he is vague and highly inconsistent about this experience. The adjudicator has determined that the man's statements about his political background and detention are not believable. At the same time, there are urgent reports emerging from Rwanda that Tutsis are being rounded up and massacred on the basis of their ethnicity.

Can this man be recognised as a refugee?

</div>

Asylum decision-makers know that the applicant's credibility is often decisive, and that is why it is critical to conduct credibility assessment properly. Yet **the 1951 Refugee Convention says nothing about credibility**, honesty, trustworthiness, or any related characteristic, and credibility does not form part of the refugee definition. This makes asylum determination somewhat different than other situations where a person might actually have to prove that she/he possesses an honest or trustworthy character, such as in applying for a professional licence as an accountant or a lawyer. By contrast, in asylum cases credibility serves a more narrow purpose. **Credibility determination is a step towards deciding how to weigh an applicant's statements and other evidence when making an asylum decision.**

There are, in fact, occasionally cases where a person might be able to establish refugee status even with an invented story, or perhaps without even testifying at all. This would be the case where there is clear evidence for instance, that the person is a member of a social group or race that is targeted for persecution (see the above exercise). There may even be somewhat valid reasons for such a person to submit a false claim, for instance if she/he is genuinely afraid of being sent back to her country, but does not know that she/he can be granted asylum on the basis of her/his ethnic identity alone.

While credibility is not one of the criteria for refugee status, it is a requirement that a refugee must have a well-founded fear of being persecuted, as we have seen in Chapter I. A well-founded fear may be established by many different types of evidence, such as country of origin reports, expert testimony, personal documents and third party witnesses. But in practical terms, **it will be difficult for most asylum-seekers to establish a well-founded fear without providing their own statements, and that makes it critical to determine whether the statements and other evidence submitted are credible**.

While we can conclude that credibility is not a general condition for refugee status, it is correct to say that most asylum-seekers will have difficulty establishing refugee status if they are not first found to be credible concerning the past and present facts of their application.

As we will see, understanding the specific role that credibility assessment plays in asylum determination procedures is essential to defining what this should mean in this specific context. But first it is important to establish some of the specialised rules that have been developed to cope with the unusual nature of asylum determination.

> Being "credible" is not an absolute condition for being recognised as a refugee. Presenting credible statements and other evidence is, however, usually a crucial element of establishing a well-founded fear of being persecuted.

SUMMARY

II.2 The Benefit of the Doubt

As we have seen in Chapter I, one of the key challenges of refugee cases is that the decision-maker must assess the evidence from a considerable distance, geographically, linguistically and culturally. **The applicant faces unusual challenges in obtaining documents** about her/his life, since a refugee in danger of persecution cannot easily go back to institutions and individuals back home to verify key facts. **Country of origin information is critical for establishing a general context**, for showing that a certain type of person is in danger of persecution, or for confirming that a certain pattern of persecution occurs. But except for relatively well-known or high profile cases, country of origin information will not usually confirm that a particular individual was

targeted for persecution, or is a member of a group at risk.

Even if an applicant were able to access a full range of personal documents and other evidence, there will often be no direct independent proof about past persecution or future risk. There are exceptions, such as where a person may have a paper record of an arrest, medical documentation of the impact of torture, or a personal document proving an ethnic or political affiliation. But more often, persecutors that practice arbitrary arrest, torture, discrimination and violence will not give their victims any certificates to prove the persecution, and people who are targeted try to survive by avoiding documenting their identities, beliefs and activities. The result is that **the applicant's statement is usually the central – and may even be the only – evidence** showing that this person has a well-founded fear of being persecuted.

This practical reality causes difficulties to all parties involved. It puts refugees under immense pressure to persuade people in a new country to believe them. And it creates fear for decision-makers that migrants who are not really in danger will invent stories to obtain refugee status. It would indeed be easier for all sides if one could expect an applicant to present documentary evidence of the danger of persecution. But to demand this would exclude nearly all genuine refugees from asylum, and defeat the purposes of international protection. The UNHCR has provided a useful note of caution:

> *On the other hand, given the special situation of asylum seekers, they should not be required to produce all necessary evidence. In particular, it should be recognised that, often, asylum-seekers would have fled without their personal documents. Failure to produce documentary evidence to substantiate oral statements should, therefore, not prevent the claim from being accepted if such statements are consistent with known facts and the general credibility of the applicant is good.[28]*

These challenges have been addressed through the development of the **benefit of the doubt** rule. The basic idea is that the applicant's statement can be accepted as credible and **an asylum-seeker may establish a valid claim to refugee status through her/his statements alone**, under certain circumstances. The UNHCR defined this principle as follows:

> *Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the adjudicator as regards the facts asserted by the applicant. Where the adjudicator considers that the applicant's story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant's claim; that is, the applicant should be given the "benefit of the doubt".[29]*

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[28] UNHCR Note, Para. 10
[29] UNHCR Note, Para. 12

✓ This rule is reflected in Article 4(5) of the Qualification Directive, which states that "where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation", under certain conditions. Among these, an applicant must have made a genuine effort to substantiate the application.

✓ Similarly, the Evidence Assessment module of the European Asylum Curriculum (EAC) advises that when an applicant's statements are internally credible, it should be accepted even in the absence of independent country of origin information.

This rule embodies several key principles drawn from both law and practical realities.

1. First, it is important to remember that refugee status **does not require a certainty or even a clear probability of future persecution**.[30] It is sufficient to show a reasonable possibility of persecution. This fairly low threshold of risk is meant to make sure that protection is available to all of those in danger, even though some of them might be able to escape serious harm. In turn, this low threshold impacts the degree of confidence that a decision-maker needs to have in the key evidence supporting the claim. As we have seen in Chapter I, a decision-maker need not be as sure about the risk of persecution to grant refugee status as one would need to be about the evidence in a prosecution for a serious crime.

2. Second, when establishing the material facts of the application, the benefit of the doubt rule accepts the reality that **there will not be certainty about most past and present facts in refugee cases**. This is inherent in the fact that refugee status is based on assessing future risk, since no one can predict the future with complete confidence. Combined with the fact that there is usually a limited amount of evidence available in refugee cases, the benefit of the doubt rule reminds decision-makers that they need not have complete certainty in order to accept an applicant's statement as credible.

3. Third, the benefit of the doubt rule embodies the **humanitarian purposes of asylum**. It reminds decision-makers of the dangers of making negative assumptions about the behaviour of asylum-seekers. Indeed, it is important to assume a sympathetic approach that acknowledges the difficulty of judging people across linguistic and cultural gaps. Doubt and uncertainty are inherent in asylum determination, and a decision-maker often should accept a fact as credible even if she/he is not completely sure that it is true.

> **Refugee Claim**
>
> Applicant's <u>credible statement</u>
> can be enough
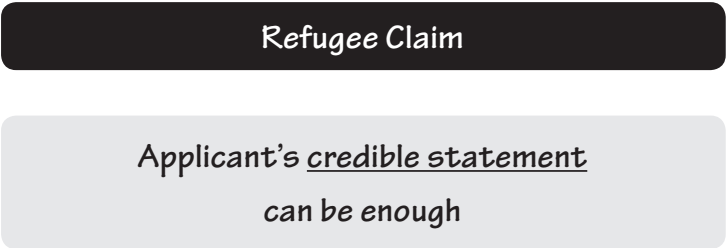
However, the benefit of the doubt is not unlimited. **The benefit of the doubt applies to an applicant's credible statements.** The underlying principle that a refugee needs not show certainty of persecution and that a certain amount of doubt may remain about the relevant past and present facts and circumstances of refugee cases is critical for understanding what

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[30] See in detail in Chapter I, sub-section I.3

credibility assessment should mean in the refugee context. But the benefit of the doubt **does not automatically apply in every case where there is a doubt regarding important elements in the applicant's statement**. According to the guidance provided by the International Association of Refugee Law Judges (IARLJ),

> [...] the claimant should be given the "benefit of the doubt" provided that otherwise the claimant's account appears credible or there are persuasive contrary reasons.[31]

UNHCR has advised that the benefit of the doubt should be given when "the applicant's story is on the whole coherent and plausible".[32]

EXERCISE II.b

✓ An applicant for asylum has no documents to prove her claim. But she has been able to explain her situation consistently, and in great detail. She has been found to be credible. But it is impossible to know for sure if her claim is correct because there is no independent evidence. Should she receive the benefit of the doubt?

✓ An applicant for asylum has no documents to prove his claim. When questioned, he was vague and repeatedly changed his story substantially. He has been found to be not credible. Should he receive the benefit of the doubt?

Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the decision-maker regarding the facts asserted by the applicant. Where the decision-maker considers that the applicant's story is on the whole coherent and plausible, an element of doubt should not prejudice the applicant's claim; that is, the applicant should be given the "benefit of the doubt".[33]

SUMMARY

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[31] IARLJ, Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive – Judicial criteria and standards, 2013, p. 49, (hereinafter IARLJ Credibility Guidance)

[32] UNHCR Note, Para. 12 – See more on the practical application of this principle in the context of credibility assessment in Chapter III

[33] UNHCR Note, Para. 12

II.3 Defining Credibility in the Asylum Context

1. Does credibility mean complete trust or certainty?

EXERCISE II.c

Consider the following examples. How much would you need to trust the person in each of the different situations? How much information would you need from them in order to give them your trust? Try to put these situations in order of the trust needed.

✓ To lend someone your car.

✓ To let someone take care of your children for 1 hour.

✓ To give someone a job as an office cleaner.

✓ To give someone a job as a book-keeper.

✓ To invest 100,000 Euros in a business venture.

✓ To lend someone 1000 Euros in a microcredit programme.

✓ To give someone power of attorney over your finances.

✓ To feed someone at a soup kitchen.

Do you think that credibility assessment is a question of trust?

We rely on credibility and trustworthiness throughout our lives, but they do not mean the same thing in all contexts. There are some situations where we might reasonably want to be satisfied that a person lives up to a high level of honesty in very general terms, such as in selection of a spouse or business partner. But in most aspects of life, we use trust in more narrow ways that are specific to particular functions. If we buy a cup of coffee that costs 2 Euros, and we hand the cashier a 10 Euro banknote, we are implicitly trusting that the cashier will give us back change, despite the fact that we have never met the person before. We routinely rely on car mechanics, plumbers and electricians to diagnose problems and tell us how to solve them, even though we know that they may be able to charge us more money by misleading us. We may ask for a second opinion, but often we don't, especially if we are only asked to pay a relatively small amount of money or if we do not want to spend extra time and effort. In all of these areas, we live with varying levels of doubt because to demand complete verification in every personal interaction would make it impossible to function.

In all of these areas, we learn to calibrate the level of trust we need to

have based on the context. It is important to underline though that **credibility assessment is not a matter of personally trusting or not the asylum-seeker**. But what is it about then? A number of **factors determine our expectations about other persons' credibility** in specific contexts:

1. One factor is whether the verification of the alleged facts would be reasonably possible.

2. Another is the risk that another person will be injured if we trust the wrong person.

It is important to understand what damage will come from being too willing to believe. But there is also an equally important inverse question: How much would someone be injured if we *disbelieve* someone who is actually telling the truth?

These factors help to explain **the definition of credibility in the refugee context**. As we have already seen, there is typically little chance for a genuine refugee to completely "prove" her/his statements, which makes refugee cases different from financial cases where there is more likely to be extensive documentation. Unlike a criminal case where there is a danger of sending an innocent person to prison, in asylum cases there is no individual who will be directly hurt by granting refugee status to an undeserving person. By contrast, genuine refugees will be directly and very seriously harmed if we disbelieve someone who is actually telling the truth.

Asylum determination is **not a search for truth**, and doubt will likely persist. Most statements will relate to experiences as lived and recalled by the person who is talking about them. As we will see in Module B, a high number of factors (such as the inherent characteristics and limitations of memory, culture, language, etc.) influence and distort how we recall and interpret past experiences. With regard to most material facts in an asylum case there is no such thing as "the Truth", and credibility assessment should not be focusing on such an expectation.

Decision-makers are human beings, and as such, are subject to a number of different circumstances that determine their attitude and trust in other persons.[34] In this way, every decision-maker is unique. Recognising this, it is important to point out that **it is not required that the decision-maker actually believe the applicant**. This would be an inherently subjective standard that would make asylum decision-making inconsistent, since some people are more likely to believe certain types of applicants than others.

For these reasons, in light of the specific evidentiary framework of credibility assessment (see Chapter I), we can conclude that **credibility in the asylum context does not mean complete trust, nor certainty or the search for truth**.

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[34] This issue will be addressed in detail in Chapter VIII.

2. Credibility of what or whom?

As demonstrated by the above examples, we often have to decide whether or not we trust or believe a person. Also there are specific situations where we seek to understand whether or not a person meets a high standard of "general trustworthiness" (selection of spouse or business partner) – well beyond the mere credibility of a person's certain statements. It is important to point out that in light of the fact that credibility, as such, is not an absolute condition of being a refugee (see earlier in this chapter), credibility assessment in asylum cases is **not about establishing the general truthfulness of the applicant, but the credibility of her/his statements and other evidence**. A genuine refugee may be an unreliable and unfaithful person in her/his love relationship or friendships, or may even present false information about her/his abilities or health, but she/he may still present a genuine asylum claim and be entitled to protection. In practical terms, the fact that an asylum-seeker has already lied to certain authorities about certain details (e.g. she/he previously presented false information to the police regarding the route towards the host country or the lawfulness of the entry) does not mean that the asylum-seeker's credibility should be automatically questioned in the asylum procedure. Instead, credibility in the refugee context should be understood as **the credibility of the applicant's statement, with regard to the facts and circumstances legally relevant to the evaluation of an asylum claim**.

> ### QUESTIONS FOR REFLECTION…
>
> The editor of this manual conducted an interesting experiment with asylum professionals from different European countries, on the occasion of training seminars on credibility assessment. At the beginning of the seminars, participants were requested to answer whether or not they consider credible a person acting in a certain way. Examples were taken from every-day life situations, rather than asylum. For instance: "Is a woman lying about her age a credible person?", "Is an adolescent who hides the fact that he has been adopted even to his best friend a credible person?", "Can a person regularly lying about his salary and financial situation to his family members still be a credible person?", etc. When discussing the answers given by participants, opinions proved to be extremely diverging. Participants all had very different views on what lies or omissions are still socially acceptable and what others question a person's credibility significantly. These experiments well indicated (even if not on a statistically significant level) that what we understand by "credibility" is determined by a number of personal factors and it radically changes from one person to another.

3. But what is credibility then in the asylum context?

CREDIBILITY IS…	CREDIBILITY IS NOT…	CREDIBILITY IS NOT…	CREDIBILITY IS NOT…
A statement, which is capable of being believed.	Definitely true.	The general trustworthiness of the asylum-seeker.	A statement actually believed by this decision-maker.

UNHCR defined credibility in refugee cases in the following way:

Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.[35]

This standard:
✓ Does not require certainty that the applicant's statements and other evidence are definitely true.

✓ Emphasises that credibility concerns the relevant statements of the applicant, not her/his general behaviour or personality.

✓ Finally, it does not require that the decision-maker actually believe the applicant.

The "capable of being believed" standard seeks an **objective approach** because it asks a decision-maker to assess **whether there is a reasonable basis for believing the applicant**. It requires for a careful analysis of factors, rather than a basic inclination or gut feeling. But it also means that a statement that is too seriously in conflict with known facts or significantly vague or contradictory may be deemed not credible because it is incapable of being reasonably believed. We will get back to all these issues in Chapter III.

CREDIBILITY IS…	CREDIBILITY IS NOT…	CREDIBILITY IS NOT…	CREDIBILITY IS NOT…
A statement, which is capable of being believed.	Definitely true.	The general trust-worthiness of the asylum-seeker.	A statement actually believed by this decision-maker.

SUMMARY

II.4 Establishing a Basis for Credibility Assessment

Logically, a decision-maker cannot assess an applicant's credibility until they have been fully interviewed and all of the relevant evidence in her/his case has been collected and considered. The Procedures Directive requires that decisions are taken only after "appropriate examination" which includes an individual, impartial examination and investigation into available evidence.[36] A personal interview is particularly essential:

Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview.[37]

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[35] UNHCR Note, Para. 11
[36] Procedures Directive, Art. 8
[37] Procedures Directive, Art. 12

An important aspect of asylum determinations is that both the applicant and the decision-maker have an active role to play in collecting this information. As we have already seen in Chapter I, the two actors share the **duty to substantiate** an asylum claim and have an obligation to cooperate.

Much of credibility assessment depends on how clearly and coherently an applicant is able to express her/himself. But it is important to keep in mind that how people express themselves differs by context. A person who is articulate when relaxed might appear very different when under stress. Thus, part of the decision-maker's duty to cooperate is to ensure that the applicant has **a fair and real opportunity to provide a credible statement**.[38] If a person is not given this opportunity, it would be unfair to later reach a negative conclusion about her/his believability. One pre-condition of this is to ensure that critical **procedural safeguards** are in place, such as:

- ✓ access to legal information and advice;
- ✓ confidentiality;
- ✓ competent and gender-sensitive interpretation;
- ✓ accommodations for people with disabilities and special needs;
- ✓ and a generally dignified environment that is conducive to interviewing victims of human rights violations.

The asylum-seeker should be **fit for the interview**, both physically and psychologically. This is especially important in cases of traumatised or sick persons. The UNHCR's policy for its own offices that conduct refugee status determination calls for asking the applicant if she/he is well enough to proceed and to inquire if there is any indication that she/he is not physically and psychologically ready.[39] Rescheduling or referral to more specialised services may be necessary.

The way the interview is conducted plays a critical part in providing a fair opportunity to the applicant. It is artificial to look only at the answers that a person gives. **Credibility assessment also requires looking at the questions that were asked and how they were asked**, so that their full context can be considered.

A key pre-condition of any proper asylum interview is **sufficient time**. Since credibility assessment is a sensitive process, subject to several distortion factors (see Module B), it is basically impossible to reach reliable findings in a short time. As an additional safeguard, it is important that applicants be given a copy of the **transcript or record, including voice or video recordings if relevant and available**, of their interviews so that they can **correct** and clarify simple misunderstandings or errors. It is also critical that if the decision-maker identifies weaknesses (contradictions, incoherence, etc.) in the applicant's statement that might raise doubts about credibility, they must bring these issues to the attention of the applicant and **provide an opportunity for response**.[40] This means that credibility assessment through an asylum interview can only be valid, if there is **true communication** between the questioner and the respondent. The use of standard set questionnaires may hinder such communication. Especially in the context of interviewing people from foreign countries and cultures, very simple misunderstandings may appear to be far bigger contradictions or gaps than they really are. A number of important distortion factors will be presented in Module B of this manual.

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[38] See more about the shared duty to substantiate in Chapter III.
[39] UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, Para. 4.3.5
[40] The principle of confronting the applicant with negative credibility findings has been repeatedly confirmed in jurisprudence, and will be touched upon more in detail in the next chapter.

Finally, it is also an important pre-condition that the credibility assessment **consider other available evidence**. Credibility assessment based on the interview and the assessment of other evidence should not be conducted separately.

The basis and pre-conditions of any proper credibility assessment can be summarised as follows (note that concrete guiding principles and standards for the assessment process will be presented in Chapter III):

> In order to establish a proper basis for credibility assessment, asylum-seekers must have a fair and real opportunity to provide a credible statement. This includes respect to procedural safeguards, such as sufficient time and an interview transcript or record. In addition, instead of for example standard set questionnaires, there must be true communication between the applicant and the interviewer.

SUMMARY

II.5 Factors in Credibility Assessment

1. Internal and external credibility

Because credibility assessment should be objective, it is important for decision-makers to have **a common understanding of the factors that should be considered**. Credibility factors are commonly put into two broad categories: external credibility and internal credibility. Identifying these factors is the foundation for providing a transparent and consistent analytical structure to credibility assessment that will be as consistent and predictable from one case to the next.

External credibility refers to a comparison between the applicant's statements and other evidence and other sources of information, especially country of origin information. It might be that a public report described a pattern persecution similar to what the applicant says. For example, if a person says that he was released from prison on condition that he report back to the police several times a week and a public report describes a similar practice, it will tend to support the person's credibility. But if a person claims to have been arrested for being a member of a former opposition party and reliable reports indicate that this party was not being targeted at that time, it may undermine credibility.

Some caution is required about the use of external credibility.

✓ First, decision-makers should distinguish between public information that contradicts an applicant's statement from the absence of information. Human rights reporting is highly incomplete. If an applicant has fled an early wave of persecution, there may be few reports available that describe the problem.

✓ Also, human rights organisations are often able to report more information about countries that have a relatively developed civil society. Human rights reporting may be less detailed about countries that are more closed and where persecution may be even more rampant. As a result, the absence of information should not necessarily be held again an applicant.[41]

Internal credibility is the assessment of a person's testimony based solely on her or his own statements and other evidence submitted. Two key factors often referred to in this context are the level of **detail** (or vagueness), and the degree to which the applicant has been generally **consistent** (or contradictory). As we have seen, it is important to look at whether a person has been effectively questioned in a way likely to bring out more detail, and to provide an opportunity to clarify apparent gaps or inconsistencies. As we will learn in Chapters V and VI, decision-makers must also have an appreciation for the limits of human memory, especially for people who have been traumatised or who have a reason to fear talking about their experiences. But decision-makers may find applicants who are highly contradictory or vague on central issues, without any convincing explanation, to be not credible. Similarly, when an applicant has been able to provide significant details about her/his account and is generally consistent, it should strengthen credibility.

2. Four credibility indicators

Asylum decisions must be made "individually, objectively and impartially".[42] This standard will not be met if decisions are made based on false assumptions about memory, behaviour or communication. However, there are well-established indicators of credibility that can be the basis of a consistent and structured approach. It is useful to think of four main credibility indicators, which can be categorised as aspects of internal and external credibility.[43]

INTERNAL INDICATORS	1. Sufficiency of detail and specificity
	2. Internal consistency
EXTERNAL INDICATORS	3. Consistency with information provided by other witnesses
	4. Consistency with available external information

One factor not listed is the applicant's **demeanour**, or non-verbal body language. The validity of this potential indicator is, however, rejected by current scientific knowledge. The UNHCR has also cautioned:

The use of demeanour as an indicator of credibility appears to be based on an assumption that certain demeanours are indicative of credibility or non-credibility, including how the individual sits or stands, his or her nervousness, the colouration of his or her skin during difficult questions,

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[41] The EAC Module on COI and the ACCORD Training Manual on researching country of origin information mention that if no information was found on the researched issue, it should not be interpreted that the event did not take place or the subject of the research question does not exist. Both documents strongly advise that in these cases the answer should be that no information was found, without any other speculation being made. The EU Common Guidelines for Processing COI also mention that in the cases where no information is found, this should be clearly mentioned together with a disclaimer stating that if no information was found does not necessarily mean that an event did not take place. See:
  - Austrian Red Cross, Researching Country of Origin Information – A Training Manual, 2004, p. 94
  - European Asylum Curriculum, Section 5.2.12
  - Common EU Guidelines for Processing Country of Origin Information (COI), April 2008, p. 13
[42] Procedures Directive, Art. 8
[43] UNHCR, Beyond Proof, p. 245

the pace of his or her speech, which may be interpreted as indicative or truthfulness or deception. However, this is an assumption that is highly flawed.[44]

One crucial problem with demeanour is that it differs between cultures (this issue will be covered in detail in Chapter VII).[45] However, even within the same culture, extensive research and testing has found that most people are little better than chance at identifying a truthful witness based on non-verbal signs alone. It has also been demonstrated that people are more likely to believe speakers who are similar to themselves in terms of apparent cultural, educational or ethnic backgrounds. Research has also shown that people are more likely to find someone believable if they are more physically attractive. In short, basing credibility decisions on demeanour increases the chance that genuine refugees will be denied asylum while articulate or charismatic migrants without any danger of persecution will be granted protection. For all these reasons, it is essential that in asylum determination decision-makers use objective factors and analysis so that these high stakes decisions do not depend so much on the subjective impressions of particular individuals.

Another potential credibility indicator referred to by EU law, UNHCR and the EAC Evidence Assessment Module is **plausibility**. This concept, however, should be used with special cautiousness, as it may easily mislead decision-makers. Plausibility is **a culturally and personally determined concept**. As we will see in Chapters VII and VIII, what seems plausible in one culture or for one person with her/his specific life experiences, may seem implausible in another culture or for a person with different life experiences. The International Association of Refugee Law Judges also cautions that

> *Decisions based solely on implausibility are likely to be less persuasive than those based on a wider range of basic criteria.[46]*

The plausibility factor may then invite baseless speculation about what might happen in a foreign country, or how a person would behave. For instance, decision-makers from developed countries with efficient and accountable governments may find it hard to believe that officials of other governments are easily bribed or that bribes are routinely required to obtain even the most basic services. We also may sometimes speculate about how a person in danger might (or should) behave, assuming for instance that the applicant should have tried to escape earlier. But this often ignores the complicated psychological processes that determine how people behave in such circumstances, as well as the vast differences between how people behave in a situation of danger, for example in individualistic and collectivist cultures. For all of these reasons, UNHCR's "Beyond Proof" report warns that

> *[...] an assessment of whether facts presented by an applicant seem reasonable, likely or probable, or make "common sense" risks becoming intuitive, based on subjective assumptions, preconceptions, conjecture, speculation, and stereotyping, rather than accurate, objective, and current evidence.[47]*

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[44] UNHCR, Beyond Proof, p. 185
[45] UNHCR, Beyond Proof, p. 186
[46] IARLJ Credibility Guidance, p. 35
[47] UNHCR, Beyond Proof, p. 177

QUESTIONS FOR REFLECTION…

On 7 April 1944, Rudolf Vrba and Alfréd Wetzler, two Slovakian Jews, escaped from the Auschwitz concentration camp. Wetzler compiled a report, detailing information about the camp's geography, the gas chambers, and the numbers being killed. This report came to be called the "Vrba-Wetzler Report". In June 1944, the United States received this detailed information. Prior to this information, with few exceptions, the reports and information received by the allied forces were not taken seriously and were even dismissed as atrocity propaganda. And even after the report, the Roosevelt administration waited four months before authorising its release, as there was an issue of believability. Although this report had much more detail than previous information, and there were similarities to previous reports, the world did not seem to be ready to accept the existence of massive extermination camps.

In the case of the Rwandan massacre of Tutsis in 1994, reports were sent by local UNAMIR staff, but in the beginning they were not taken seriously and were rather considered exaggerations, unreliable information or attempts of the local staff to justify an increase of their mandate. Even if the information about the genocide in this case was circulated within the same organisation (within the UN) or from a reliable source (from the UN to governments), it was not deemed plausible mainly because such a scenario was considered highly improbable.

These are just two brief examples that show that human rights violations (among them the most horrendous genocides) can often be completely implausible, if we try to understand them only based on our general knowledge about the world. The Nazi Holocaust and the Rwandan genocide both seemed implausible, unbelievable and incomprehensible in their time. Unfortunately, human history has proved on many occasions that just because something is implausible or "too horrible to be true" it can still happen.

Therefore plausibility should not be considered an independent concept *per se*, but rather the assessment should be conducted with reference to the entirety of the evidence and other indicators of credibility. As part of this, credibility assessment should separately assess whether the applicant's statements should be given the **benefit of the doubt**, recalling that while a credible statement should be coherent, it need not resolve all doubt.

In the following chapters, we will see more about how these factors should be analysed in context. Finally, it is important to keep in mind the limits of what credibility means in the refugee context. As we have seen, **the ultimate test is whether there is a reasonable, objective basis on which to believe the applicant's statement**.

In order to reach consistent and structured credibility findings, certain credibility indicators need to be defined. Based on EU law, UNHCR guidance and the European Asylum Curriculum, the following four indicators have been specified:

INTERNAL INDICATORS	1. Sufficiency of detail and specificity
	2. Internal consistency
EXTERNAL INDICATORS	3. Consistency with information provided by other witnesses
	4. Consistency with available external information

Plausibility (which is often suggested as a fifth indicator) should be used only with great care, as it is especially sensitive to cultural and subjective distortion factors. Demeanour should not be used as a credibility indicator, as it very often leads to false conclusions and unfounded speculations about human behaviour.

III. GUIDING PRINCIPLES AND STANDARDS OF CREDIBILITY ASSESSMENT

SETTING THE SCENE

In the previous two chapters we covered the general procedural framework of asylum procedures as well as the main conceptual issues related to credibility assessment. As the last component of Module A, this chapter aims to outline standards and guiding principles for credibility assessment, based on requirements in EU law, UNHCR and other guidance, practical experience and the multidisciplinary knowledge that will be further discussed in Module B.

It is important to emphasise right in the beginning that **there are no magic rules or tricks for credibility assessment**. Credibility assessment, as it has already been stated, draws on a field of knowledge and practice in **continuous evolution**. Therefore this chapter strives to give important advice rather than a prescriptive recipe. Observing the standards and principles elaborated in the following sections will help decision-makers apply credibility indicators in a more objective, fair and effective manner, thus fulfilling the relevant legal requirements.

EU law, soft law guidance and jurisprudence have established a number of standards relevant for credibility assessment in asylum cases. Recognising the quickly evolving nature of the fields of knowledge relevant to the assessment of credibility, this chapter offers a structured model of standards,

✓ which is firmly **anchored in EU law** and relevant guidance;

✓ which has a **practical focus** (in addition to its legal basis);

✓ and which is **structurally transparent and logical** (in order to facilitate understanding and learning).

Further development of these standards in soft law guidance, as well as enhanced discussions in academic literature, policy debates, etc. is expected for the years following the publication of this manual. The goal of these standards is therefore to provide valuable input to this process and to help asylum professionals obtain structured and practically applicable knowledge on high-quality credibility assessment. The standards should be considered **with due respect to the content of Module B**, which will provide the **multidisciplinary knowledge framework** for the proper application of these norms. The following table shows an overview of **4 guiding principles** and **10 concrete standards** related to them:

CREDIBILITY ASSESSMENT MUST BE . . .	I. STRUCTURED	1. Part of a two-stage approach to the examination of asylum applications
		2. Balanced assessment using clear indicators
	II. FAIR	3. Shared duty
		4. Focus on material facts
		5. Benefit of the doubt
	III. OBJECTIVE	6. Evidence-based assessment
		7. Individual assessment
		8. Impartial approach
	IV. TRANSPARENT	9. Clear findings
		10. Opportunity to comment on negative credibility findings

These guiding principles and standards are of course **strongly related to each other** (for example, transparency and objectivity are also conditions of fairness, structure is also necessary for objectivity, etc.). In the following sections, we will briefly summarise all these standards, which should be read and understood in conjunction with the content of Module B.

I. CREDIBILITY ASSESSMENT HAS TO BE <u>STRUCTURED</u>

1. Part of a two-stage approach to the examination of asylum applications

STAGE

1

<u>past</u> and <u>present</u> facts; credibility assessment

STAGE

2

<u>future</u> risk analysis
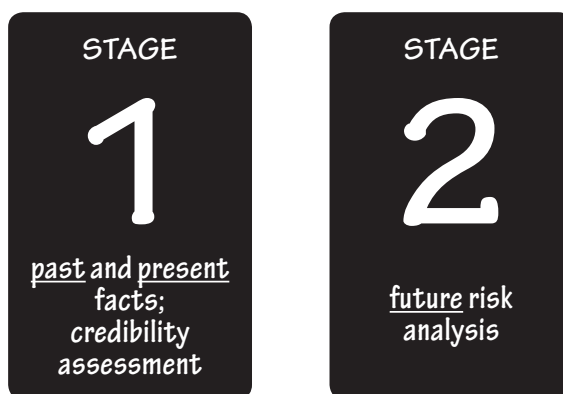
<u>**The standard in brief**</u>**: Decisions on international protection should be conducted with a two-stage approach, in which stage one involves the gathering of relevant information, the identification of material facts, and the assessment of the credibility of these material facts.**[48] **Stage two (which is only conducted once stage one is completed) is the assessment of the well-founded fear of persecution and the real risk of serious harm.**

<u>Why it is necessary</u>: The necessity of international protection (well-founded fear of persecution or real risk of serious harm) can only be assessed once all of the relevant information (the

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[48] See explanation on the material fact concept later in this chapter.

material facts) is known to the decision-maker. Without this knowledge – and a decision on which facts are accepted as credible – the decision on the necessity of international protection cannot be properly assessed and there is a risk that an erroneous conclusion may be reached. Clearly separating the assessment of past and present facts (stage one) and the future risk (stage two) helps decision-makers make correct decisions in fact and law.

QUESTIONS FOR REFLECTION…

As demonstrated by the previous two chapters, decision-making in asylum cases involves a high level of uncertainty. Doubts may even arise in connection with the most basic elements of the claim, such as the country of origin, the ethnicity or religion of the applicant, or past experiences of torture or inhuman treatment. Deciding on whether to accept these facts as credible may be particularly challenging with little evidence available and numerous factors that can distort the assessment of the asylum-seeker's statements.[49] Nevertheless, a conclusion must be reached on these issues before we actually move on to the assessment of international protection needs. Imagine a case where the fact that an applicant is a stateless Palestinian or a lesbian woman constitutes a decisive element of the claim, but there are serious doubts regarding the veracity of this statement. It would be impossible to properly assess the need for international protection without first deciding whether the applicant is indeed a stateless Palestinian or a lesbian woman. How could we objectively assess whether the person runs a risk of persecution if we have not yet even decided, for instance, whether she/he belongs to a risk group? Maintaining the doubt throughout the entire process (including when assessing the international protection needs), without clearly reaching a conclusion on whether the statement is accepted as credible or not would not be in line with the procedural standard of objectivity as set forth by EU law.[50]

The Court of Justice of the European Union in its 2012 *M.M.* judgment fully endorsed this approach, transforming it into a **mandatory requirement in EU member states**:

> *In actual fact, [the assessment of facts and circumstances as set forth by Article 4 of the Qualification Directive] takes place in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are met.[51]*

<u>More details</u>: The UNHCR publication "Beyond Proof" provided a concise practical summary of the two-stage approach in its recent publication on credibility assessment in EU asylum procedures, which will be presented later in this chapter.

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[49] See in detail in Module B
[50] Procedures Directive, Art. 8(2)(a)
[51] *M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General, C-277/11,* Court of Justice of the European Union, 22 November 2012, Para. 64, (hereinafter *M.M.* Judgement)

I. CREDIBILITY ASSESSMENT HAS TO BE STRUCTURED

2. Balanced assessment using clear indicators

The standard in brief: Credibility assessment (part of stage one of the above-mentioned two-stage process) has to be conducted in a structured manner, using a set of clear indicators. The applicant's statements and other evidence should be assessed "in the round" using clear credibility indicators; credibility findings should not be based on a single indicator.

Why it is necessary: A number of factors may seriously distort the application of credibility indicators to the statements and other evidence provided by the applicant; these therefore should be applied with great care and due attention to the potential impact of the multidisciplinary factors.[52] In light of these distortion factors and the specific characteristics of asylum procedures presented in Chapter I, the mere fact that there are some internal inconsistencies in an applicant's statements should not in itself lead to the rejection of credibility, if otherwise the statements are rich in details and the external credibility has also been established based on country information and other documentary evidence. The UNHCR in its recent publication also emphasised that

> *Applications must be examined and decisions taken individually, objectively and impartially, but there is no infallible and fully objective means to assess the credibility of the material facts presented by the Applicant. To minimize subjectivity, credibility indicators should be used. No one indicator is a certain determinant of credibility and non-credibility. [Decision-makers] must be aware of the assumptions that underlie each indicator, and understand the factors and circumstances that can render them inapplicable and/or unreliable in an individual case [...].[53]*

More details: The establishment of the material facts of the application using credibility indicators will of course differ in each individual case, and – again – there is no magic recipe for this exercise either. Nor is there just one way. The following model has been elaborated to support the practical use of credibility indicators in a structured manner.[54] The model emphasises that:

- ✓ Credibility indicators should be applied in relation to **materials facts**;[55]

- ✓ All the material facts should be assessed using the **various credibility indicators**, and a final conclusion should be drawn on whether to accept the material facts or not following a careful analysis;

- ✓ A negative finding in relation to a material fact should only be reached,

  – once the impact of the **distortion factors**[56] on the various credibility indicators has been duly taken into account given the background of the applicant, and

  – she/he has **failed to produce a satisfactory explanation** for the lack of detail or inconsistency.[57]

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[52] This issue will be addressed in detail in Module B
[53] UNHCR, Beyond Proof, p. 260
[54] The model has been partly inspired by: UNHCR, Beyond Proof, "The Credibility Indicators" checklist, p. 260
[55] See later in this chapter
[56] See Module B
[57] See more on this standard later in this chapter

		APPLYING THE CREDIBILITY INDICATORS TO THE MATERIAL FACTS IN PRACTICE	
INTERNAL INDICATORS	1. SUFFICIENCY OF DETAIL AND SPECIFICITY	Is the level and nature of detail provided by the applicant indicative of a genuine personal experience by someone with her/his individual and contextual circumstances?	
		If it is not, does the lack of detail or specific information concern material facts of the claim?	
		If it does, is there any distortion factor that can explain the lack of detail or specific information?	CONCLUSION?
	2. INTERNAL CONSISTENCY	Are there serious contradictions or discrepancies - within the information provided by the applicant during the asylum interview(s); and/or - between the applicant's statements and documentary or other evidence submitted by her/him?	
		If there are, do the contradictions or discrepancies concern material facts of the claim?	
		If they do, is there any specific distortion factor that can explain these contradictions or discrepancies?	CONCLUSION?
EXTERNAL INDICATORS	3. CONSISTENCY WITH INFORMATION PROVIDED BY OTHER WITNESSES	Are there serious contradictions or discrepancies between the facts presented by the applicant and statements and other evidence provided by dependants, other family members or witnesses?	
		If there are, do the contradictions or discrepancies concern material facts of the claim?	
		If they do, is there any specific distortion factor that can explain these contradictions or discrepancies?	CONCLUSION?
	4. CONSISTENCY WITH AVAILABLE EXTERNAL INFORMATION	Are there serious contradictions or discrepancies between the facts presented by the applicant and what is known about the situation in the country of origin or place of habitual residence; relevant, objective, accurate, up-to-date country information; other expert evidence (medical, anthropological, language analysis, document verification reports), or other evidence?	
		If there are, do the contradictions or discrepancies concern material facts of the claim?	
		If they do, is there any specific distortion factor that can explain these contradictions or discrepancies?	CONCLUSION?

Note: Factors potentially influencing/distorting the application of credibility indicators in the present case:[57]

(for example age; gender; sexual orientation or gender identity; educational background; trauma/PTSD; physical/mental health issues; shame, stigma or denial; communication difficulties; intercultural barriers; etc.)

OVERALL CONCLUSION ON MATERIAL FACTS

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[58] See Module B for details

In Chapter I, we have already seen that **the duty to substantiate relevant facts and circumstances in asylum procedures is shared in practice**.

The standard in brief: Credibility assessment has to be carried out as a joint and co-operative effort of the asylum-seeker and the decision-maker. Both have clear tasks in this process, as defined by EU law and guidance.

<u>Why it is necessary</u>: Both Article 4 of the Qualification Directive and UNHCR guidance emphasise the shared duty to ascertain facts and circumstances in asylum decision-making.[59] This principle reflects all the specific (and challenging) characteristics of asylum decision-making as explained in Chapter I, sub-section I.1. If establishing credibility was left exclusively to asylum-seekers, many applicants genuinely in need of international protection would fail to do so, especially the most vulnerable ones. Recognising this, the EU Court of Justice further confirmed that credibility assessment requires the cooperation of the applicant and the authority in its 2012 *M.M.* judgment:

> *[…] although it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.*

> *[…] This requirement that the Member State cooperate therefore means, in practical terms, that if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled. A Member State may also be better placed than an applicant to gain access to certain types of documents.[60]*

<u>More details</u>: In its recent publication on credibility assessment in EU asylum systems, the UNHCR provided two useful checklists of what the applicant's and the decision-maker's exact duties are in this context:

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[59] See Chapter I, sub-section I.2
[60] *M. M.* Judgement, Para. 64

DUTY	☑	EXPLANATION	THE ELEMENTS	☑
1. MAKE A GENUINE EFFORT	☐	Evidence may be oral or documentary. It includes the statements of the Applicant and oral evidence provided by experts, family members and other witnesses. Evidence may be documentary, incl. written, graphic, digital, visual materials, COI, exhibits (physical objects, bodily scarring) and audio/visual recordings. Evidence includes anything that asserts, confirms, supports, or bears on the relevant facts at issue.	Age	☐
			Gender	☐
2. PROVIDE THE STATEMENTS AND ALL DOCUMENTATION AT THE APPLICANT'S DISPOSAL	☐	The Applicant's duty to substantiate the application does not entail a duty to provide documentary or other evidence in support of every relevant fact presented. The Applicant's statements constitute evidence and are capable by themselves of substantiating the application. Some asserted facts are not susceptible to supporting documentary or other evidence.	Identity, nationality(ies), ethnic origin	☐
			Country or origin or place of habitual residence	☐
			Family members	☐
		The DM should not have onerous expectations regarding what documentary or other evidence the Applicant should possess and/or be reasonably able to obtain. The assessment of the "genuine effort" should take into account the individual and contextual circumstances of the Applicant, including the means at his or her disposal to obtain documentary or other evidence.	Education	☐
			Social status	☐
3. SUBSTANTIATE THE APPLICATION AS SOON AS POSSIBLE	☐	The Applicant may be requested, or wish to provide, additional relevant statements or other evidence after the assessment of the evidence begins. The interpretation of "as soon as possible" needs to be informed by an understanding of the individual and contextual circumstances that may inhibit disclosure of information and affect the possibility to obtain supporting documentary and other evidence. This includes taking into account the circumstances in the country of origin.	Rural/urban background	☐
			Religion	☐
			Documentation	☐
4. PROVIDE A SATISFACTORY EXPLANATION REGARDING ANY LACK OF OTHER RELEVANT ELEMENTS	☐	The DM should exercise flexibility with regards to time frames, and should interpret time frames with reference to the point when the Applicant is informed in a language his or her understands of the duty to substantiate the application. The DM should be aware that the process of presenting and gathering information and other evidence, as well as the assessment of that information, is not linear and may require the need to obtain additional information relating to relevant facts.	Physical/mental health	☐
			Previous asylum applications	☐
			Reasons for applying for international protection	☐

Source: UNHCR, Beyond Proof, p. 256 (DM refers to decision-maker)

DUTY	☑	EXPLANATION
1. DM'S PROVISION OF INFORMATION AND GUIDANCE TO THE APPLICANT	☐	The Applicant cannot be expected to know that his or her has a duty to substantiate the application, how to discharge this duty, and what facts and type of documentary or other evidence may be relevant. The DM informs the Applicant in a language and manner his or her can understand of what is required to substantiate the application. The DM invites the Applicant to submit evidence that can reasonably be obtained to support the material facts, and informs him/her of the time-frame and the means at an Applicant's disposal in order to submit all the elements required. This information must be given in time for Applicants to comply with these obligations.
2. DM'S PROVISION OF GUIDANCE THROUGH THE USE OF APPROPRIATE QUESTIONING DURING THE INTERVIEW	☐	The DM guides the Applicant to gather all the relevant information relating to the material facts of the application. The DM uses open, probing and closed questioning in combination to allow the Applicant to substantiate his or her claim. The interviewer is impartial and objective throughout the interview both in verbal and non-verbal communication. Questioning should be sensitive to the individual and contextual circumstances of the Applicant. Respect for the standards of the credibility assessment and the human dignity of the Applicant should be a guiding principle at all times.
3. DM'S PROVISION OF AN OPPORTUNITY FOR THE APPLICANT TO EXPLAIN POTENTIAL ADVERSE CREDIBILITY FINDINGS	☐	The Applicant should be afforded an opportunity to address potentially adverse findings up until the decision is made. The DM identifies any apparent inconsistencies, contradictions, discrepancies, omissions, and implausibilities at the interview and puts them all to the Applicant. It may require the DM to offer a further interview or other means for the Applicant to provide an explanation. Where explanations are offered, these need to be considered before a final decision is taken on the application.
4. DM'S GATHERING OF EVIDENCE BEARING ON THE APPLICATION BY HIS OR HER OWN MEANS	☐	Because of the inherent difficulties faced by Applicants to provide documentary and other evidence in support of their statements, the DM gathers evidence and other specific information bearing on the Applicant's asserted material facts by his or her own means, including where necessary, any evidence that supports these facts.
4.1 COUNTRY OF ORIGIN INFORMATION (COI) & OTHER EVIDENCE	☐	The DM obtains, by his or her own means, general and specific COI & other evidence, COI should be relevant, accurate, objective, impartial, reliable, and time-appropriate. The DM evaluates the Applicant's statements and other evidence in the light of what is generally known about the situation in the country of origin, or place of habitual residence, as well as any specific evidence available to the case. The DM adheres to the principle of objectivity and impartiality, which may require gathering evidence that confirms or supports, and not just refutes, the asserted facts.
4.2 PRINCIPLE OF RIGOROUS SCRUTINY	☐	The DM assesses all the material gathered in substantiation of the application, taking into account the individual and contextual circumstances of the Applicant. The DM also considers material obtained by his or her own means. It is the DM's duty to dispel any doubts about this information.

Source: UNHCR, Beyond Proof, p. 257 (DM refers to decision-maker)

The standard in brief: Credibility assessment should focus on the material facts of the claim (core elements which are of direct relevance for the determination of international protection needs). Credibility conclusions should not be based on findings related to only minor or peripheral issues of the claim.

Why it is necessary: On one hand, asylum decision-making is a particularly difficult task, often involving inevitable uncertainty.[61] The decision-maker's level of conviction (necessary for granting protection) is lower than in most criminal and civil matters.[62] On the other hand, asylum-seekers usually have very limited possibilities to prove their well-founded fear with documentary or other "hard" evidence. In addition, the assessment of the credibility of their statements is inevitably affected by a number of distortion factors.[63] To put it simply: no asylum-seeker will remember and be able to present all the minor details of her/his claim properly, nor are these relevant to her/his claim for international protection. In light of all these factors, it would be unfair and unrealistic to expect an asylum-seeker to be found credible on each little element of her/his claim in order to accept her/his statements as overall credible. Should this be the requirement, many genuine refugees would fall short of it.

Therefore, as the UNHCR succinctly summarises in its recent publication,

> *The credibility assessment should focus on those facts asserted by the applicant that are identified as material or relevant for qualification for international protection, and that are most significant in the determination of the claim.*[64]

The European Asylum Curriculum (EAC) also emphasises that

> *[it] is generally unnecessary to focus on minor/peripheral facts that do not affect the central elements of the claim.*[65]

In addition, the EAC provides a useful definition of what material facts are:

> *Material facts go to the core of the claim and are of direct relevance for the determination of one or several of the requisites of the relevant definition.*[66]

Finally, the relevant guidance paper of the International Association of Refugee Law Judges (IARLJ) also underlines that

> *Overall credibility conclusions should not be made only on "non-material", partially relevant or perhaps tangential findings only.*[67]

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[61] See Chapter I, sub-section I.1
[62] See Chapter I, sub-section I.3
[63] See Module B
[64] UNHCR, Beyond Proof, p. 42
[65] EAC, Module 7, Section 3.1
[66] EAC, Module 7, Section 2.1.14
[67] IARLJ Credibility Guidance, p. 33

More details: It is important to keep in mind that not all pieces of information which are relevant for certain purposes are material facts. For instance, authorities may consider important any information concerning the asylum-seeker's route and travel modalities towards Europe; as such details may help the struggle against illegal migration and human trafficking. Such information may also be relevant if the person has been victim of ill-treatment or traumatising experiences on the way, which influences her/his capacity to present her/his claim. However, mere information about the route and travel modalities (and whether or not they are presented in a consistent, plausible way, with sufficient detail, etc.) will not help the decision-maker to reach a conclusion regarding the credibility of the applicant's claim for international protection, based on an alleged risk of persecution in the country of origin. This information is not material, as it is not directly related to the substance of the claim. The material facts – depending on the case – will be for example the applicant's nationality, ethnic or religious affiliation, gender, sexual orientation, membership in a political movement, past experiences of torture or discrimination, efforts to seek protection in the country of origin, etc.

II. CREDIBILITY ASSESSMENT HAS TO BE FAIR

5. Benefit of the doubt

The standard in brief: The applicant should be given the benefit of the doubt if her/his claim is coherent and generally credible, but there is still a lack of evidence or clarity regarding some of her/his statements.

Why it is necessary: We have already seen in Chapter II that the benefit of the doubt principle has a crucial role in asylum procedures, and especially in credibility assessment. Given all the special challenges of asylum decision-making and the applicant's usually limited possibilities to provide corroborative evidence,[68] there will often be relevant points in the applicant's story which remain unclear, uncorroborated or doubtful even after a thorough assessment. As the UNHCR reminds

> *It is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized.[69]*

Applying the benefit of the doubt in relevant cases will reflect not only practical necessities (a conclusion has to be reached even with limited evidence available and numerous distortion factors), but also the humanitarian purpose of refugee protection. Beyond UNHCR and IARLJ guidance[70] this crucial principle is implicit in Article 4(5) of the Qualification Directive and is echoed by the European Court of Human Rights, which acknowledged in several cases that

> *[…] owing to the special situation in which asylum-seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof.[71]*

More details: In the two-stage decision-making model presented earlier in this chapter, **any significant doubt regarding material facts must be resolved by the end of the first phase**. If – following genuine efforts by the applicant and a thorough assessment by the decision-maker – the majority of the applicant's relevant statements have been accepted as credible, but doubt still persists regarding one or more important material fact(s), the decision-maker will have to consider the grant of the benefit of the doubt, and accept this fact or these facts as

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[68] See Chapter I
[69] UNHCR Handbook, Para. 203
[70] See Chapter II, sub-section II.2
[71] *R.C. v. Sweden*, App no. 41827/07, (9 March 2010), Para. 50; *N. v. Sweden*, App no. 23505/09, (20 July 2010), Para. 53; *F.H. v. Sweden*, App no. 32621/06, (20 January 2009), Para. 95

credible as well. This enables the decision-maker to move on to the second phase and assess the need for international protection.

The following simplified example demonstrates the application of this principle in practice. In the given case it has already been accepted as credible that the applicant belongs to a political movement in his country of origin and that this movement is often victim of government reprisals, sometimes amounting to persecution. It has also been established that he is traumatised due to inhuman treatment suffered in the past. The applicant's statements regarding his previous political activities and detention conditions (including humiliation and ill-treatment in detention) have also been retained as credible. However, no corroborative evidence could be found about the small detention centre in which the applicant was allegedly detained prior to his flight and where he was ill-treated. The existence of the detention facility is a material fact (as this is where alleged persecutory acts took place). It will be necessary to accept this fact as credible as well, granting the benefit of the doubt if

✓ there is still no evidence about the existence of this detention centre even after genuine efforts by both the applicant and the determining authority (in case of the latter in form of country information research);

✓ and the applicant's other statements concerning material facts have already been accepted as credible.

III. CREDIBILITY ASSESSMENT HAS TO BE <u>OBJECTIVE</u>

6. Evidence-based assessment

The standard in brief: Credibility findings have to be based on and supported by evidence, and all available and relevant evidence should be considered in the assessment process. Credibility findings should not be based on unfounded assumptions, speculation, stereotyping, intuition or "gut feelings".

<u>Why it is necessary</u>: The credibility assessment process can be distorted by numerous different factors, many of which emanate from the decision-maker's individual and contextual circumstances.[72] Relying on intuition, gut feelings, stereotypical expectations or speculation may easily result in misleading

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[72] See in detail in Chapters IV and VIII of Module B

conclusions regarding the credibility of a material fact. For example, rejecting the credibility of a statement just because it contradicts what "could have reasonably been expected" in the given situation is a decision which is seriously influenced by the decision-maker's cultural background, personality, life experience, age, gender, etc. Such speculative decisions – if not supported by evidence – can easily lead to unfounded conclusions on protection claims. Intuition and gut feelings may be considered useful in everyday life situations. At the same time, in asylum procedures, decisions on credibility which are based on such intuitive and emotional factors will most likely fail to fulfil the requirement of objective decision-making as set forth by Article 8(2)(a) of the Procedures Directive. Or as the International Association of Refugee Law Judges emphasises in its guidance,

> *Judges must provide substantive, objective and logical reasons, founded in the evidence, for rejecting past or present facts presented by claimants in support of their claim. [...]*

> *Judges must not engage in subjective speculation in their reasons for rejecting the credibility of claimants' evidence as to do so would be to rely on unfounded assumptions.*[73]

III. CREDIBILITY ASSESSMENT HAS TO BE <u>OBJECTIVE</u>

7. Individual assessment

<u>**The standard in brief**</u>: **Credibility assessment should be conducted in an individualised manner, with due consideration of the applicant's individual and contextual circumstances.**

<u>Why it is necessary</u>: Both Article 4(3) of the Qualification Directive and Article 8(2)(a) of the Procedures Directive stipulate that asylum procedures shall be conducted individually. This means that the applicant's relevant individual and contextual circumstances should be documented by the proceeding authority, and the latter should duly consider them throughout the asylum procedure. The UNHCR also emphasised in its recent publication that

> *Interviewers and decision-makers need to keep in mind and take into account the individual and contextual circumstances of the applicant in all aspects of the examination of the application, including throughout the credibility assessment. Indeed, this constitutes a legal requirement.*[74]

<u>More details</u>: The factors in question may include age, gender, cultural, educational and linguistic background, disabilities, health issues, trauma, sexual orientation, shame or stigma, etc. Such circumstances significantly affect the limits and results of credibility assessment. Moreover, they often distort the application of credibility indicators. Therefore, disregard to the relevant individual circumstances of the applicant will not only fall short of fulfilling the individualisation requirement, but will also question the objectivity of the conclusion reached in this way.

Due consideration of the individual factors in question requires a **multidisciplinary approach**, which will be explained in detail in Module B.[75]

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[73] IARLJ Credibility Guidance, p. 36
[74] UNHCR, Beyond Proof, p. 56
[75] About this concept see also UNHCR, Beyond Proof, Chapter 3

III. CREDIBILITY ASSESSMENT HAS TO BE <u>OBJECTIVE</u>

8. Impartial approach

<u>The standard in brief</u>: Credibility assessment should be conducted in an impartial manner. The impact of the decision-maker's individual and contextual circumstances on credibility findings should be minimised.

<u>Why it is necessary</u>: Impartial decision-making is a requirement under Article 8(2)(a) of the Procedures Directive and is a basic professional standard for public administration decision-makers and the judicial profession world-wide. In fact, it is basically impossible to imagine objective decisions on international protection claims (and objective credibility findings) without ensuring an impartial approach. It is important to keep in mind, though, that **impartiality means much more than simply avoiding that the decision-maker approach the case with a conscious bias**. A significant body of research has shown that human decisions are seriously influenced by subjective and irrational factors. In addition, the decision-maker's individual and contextual circumstances have a crucial impact on the decision-making process. In the context of asylum procedures, where the cultural, linguistic, etc. distance between the decision-maker and the applicant tend to be significant, the distortion impact of these – often unconscious – circumstances is even larger. Impartiality therefore requires the decision-maker to be aware of the relevant individual and contextual factors and learn how to minimise their potential distortion impact. Improved self-knowledge and burnout prevention are both crucial in this respect. Chapter VIII of Module B will deal with these issues in more detail.

IV. CREDIBILITY ASSESSMENT HAS TO BE <u>TRANSPARENT</u>

9. Clear findings

<u>The standard in brief</u>: Credibility assessment should result in clear findings, stating which material facts are accepted as credible, which are rejected and whether the benefit of the doubt principle has been applied.

<u>Why it is necessary</u>: Article 9(2) of the Procedures Directive requires that, where an application is rejected, the reasons in fact and in law are stated in the decision. Negative credibility findings very often constitute the core reasons for rejecting a claim for international protection, which means that such findings must be clearly explained in the decision. The EU Court of Justice further elaborated on this obligation in its *M.M.* judgment, linking it with Articles 41(2), 47 and 48 of the EU Charter of Fundamental Rights,[76] which set forth the right to good administration, the right to fair trial and the right of defence (respectively). The Court of Justice held that

> *[...] the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence.*[77]

<u>More details</u>: Beyond respect to the above fundamental legal requirements, reaching clear credibility findings is crucial for further reasons as well:

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[76]   Charter of Fundamental Rights of the European Union [2010] OJ C83/389
[77]   *M. M.* Judgement, Para. 88

✓ In the two-stage model, also required now by CJEU jurisprudence (see earlier), it is impossible to move on to the assessment of international protection needs while serious doubts persist regarding the credibility of material facts. The first phase should therefore be concluded by reaching clear credibility findings on material facts, if necessary through the application of the benefit of the doubt principle.

✓ Decisions based on and presenting clear credibility findings are more likely to be upheld upon appeal or judicial review. Besides providing a more firm justification, they also provide more "credibility" to the decision, as to the respect to all the other requirements presented in this chapter.

IV. CREDIBILITY ASSESSMENT HAS TO BE <u>TRANSPARENT</u>

10. Opportunity to comment on negative credibility findings

<u>The standard in brief</u>: Decision-makers should give applicants a reasonable opportunity to comment on issues that may result in negative credibility findings, before a decision is made.

<u>Why it is necessary</u>: Article 4(1) of the Qualification Directive imposes a duty on proceeding authorities to cooperate with the asylum-seeker in establishing the relevant facts and circumstances.[78] In the interpretation of the EU Court of Justice, the notion of cooperation includes "that the two parties will work together towards a common goal".[79] The Court of Justice further specified that

The right to be heard [as set forth by the EU Charter of Fundamental Rights] guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely […].[80]

Explaining the purpose of this principle the Court of Justice noted that

The purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before that decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person or undertaking concerned is in fact protected, the purpose of that rule is, inter alia, to enable them to correct an error or submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content.[81]

The Court of Justice also elaborated on why this principle has particular relevance in the asylum framework:

Indeed, in this type of procedure [for examining an application for international protection], which inherently entails difficult personal and practical circumstances and in which the essential rights of the person concerned must clearly be protected, the observance of this procedural safeguard is of cardinal importance. Not only does the person concerned play an absolutely central role because he initiates the procedure and is the only person able to explain, in concrete terms, what has happened to him and the background against which it has taken place, but also the decision will be of crucial importance to him.[82]

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[78] See more in Chapter I, sub-section I.2 and the "shared duty" standard earlier in this chapter

[79] *M. M.* Judgement, Para. 59

[80] *M. M.* Judgement, Para. 87

[81] *Sopropé – Organizações de Calçado Lda v Fazenda Pública*, C-349/07, Court of Justice of the European Union, 18 December 2008, Para. 49

[82] *M. M.* Judgement, Para. 43

The European Court of Human Rights also emphasised in its jurisprudence that

> [...] the onus rests with the State to dispel any doubt about the risk of being subjected again to treatment contrary to Article 3 in the event that this expulsion proceeds.[83]

The UNHCR has also underlined that

> [...] while an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts.[84]

The International Association of Refugee Law Judges further endorses this standard in its guidance:

> The effect on credibility assessment of inconsistencies and discrepancies in the evidence, taking into account the personal circumstances of the claimant, should be clearly explained to them and they must be given the chance to respond. The responses and explanations given by claimants when challenged on the apparent contradictions must be taken into account. [...]

> All claimants must be provided a reasonable opportunity to refute, explain or provide mitigating circumstances in respect of contradictory or confusing evidence that is material and could potentially undermine core elements of their claim.[85]

Since negative credibility findings usually play a crucial role in decisions on international protection, in light of the above concordant rules and standards, decision-making authorities shall offer a reasonable opportunity to the applicant to clarify material inconsistencies, vagueness, contradictions or implausible statements in her/his claim. This could normally happen through a **follow-up interview** and/or through offering the **possibility to provide further evidence**. There is a risk that the decision-making process may not be in line with above-presented legal requirements if the applicant is only informed about negative credibility findings in the final decision, with no possibility to provide explanatory information or corroborative evidence. These principles are firmly anchored in the national jurisprudence and guidance of several states, too.

More details: An important strategic consideration may further support respect to the above fundamental legal requirements. Experience shows[86] that negative credibility findings (especially those related to internal credibility indicators) are sometimes caused by simple misunderstanding, language or cultural barriers, or natural dysfunctions of human memory.[87] On the other hand, it is a frequent complaint in a number of European states that asylum procedures tend to be extensively prolonged, especially if various levels of appeal are involved. Not enabling asylum-seekers to comment on negative credibility findings before a decision is made – and therefore quickly clarify issues resulting from the previously mentioned distortion factors – may contribute to the extensive prolongation of the procedure. The translation errors, misunderstandings, etc. will then have to be clarified in a potentially lengthy appeal procedure, which may even result in quashing the lower-instance decision and referring back the case to that instance.[88]

The following table summarises once again the four guiding principles and ten concrete standards, highlighting both their brief content and legal basis:

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[83] *R.C. v. Sweden*, App no. 41827/07, (9 March 2010), Para. 55
[84] UNHCR Handbook, Para. 199
[85] IARLJ Credibility Guidance, pp. 34 and 35 (respectively)
[86] Including the author's long-standing experience on individual cases
[87] See in detail in Module B
[88] In cases where the appeal body or court does not have the right to decide the case itself. See examples in: Gábor Gyulai and Tudor Roşu, *Structural Differences and Access to Country Information (COI) at European Courts Dealing with Asylum*, Hungarian Helsinki Committee, July 2011, Chapter II.5

	PRINCIPLES/STANDARDS	BRIEF DESCRIPTION OF STANDARD	MAIN LEGAL BASIS[89]
STRUCTURE	1. Part of a two-stage approach to the examination of asylum applications	Decisions on international protection should be conducted with a two-stage approach, in which stage one involves the gathering of relevant information, the identification of material facts, and the assessment of the credibility of these material facts. Stage two (which is only conducted once stage one is completed) is the assessment of the well-founded fear of persecution and the real risk of serious harm.	CJEU jurisprudence (M.M.) UNHCR guidance
FAIRNESS	2. Balanced assessment using clear indicators	Credibility assessment (part of stage one of the above-mentioned two-stage process) has to be conducted in a structured manner, using a set of clear indicators. The applicant's statements and other evidence should be assessed "in the round" using clear credibility indicators; credibility findings should not be based on a single indicator.	UNHCR guidance
	3. Shared duty	Credibility assessment has to be carried out as a joint and cooperative effort of the asylum-seeker and the decision-maker. Both have clear tasks in this process, as defined by EU law and guidance.	Qualification Directive, Art. 4; CJEU jurisprudence (M.M.)
	4. Focus on material facts	Credibility assessment should focus on the material facts of the claim (core elements which are of direct relevance for the determination of international protection needs). Credibility conclusions should not be based on findings related to only minor or peripheral issues of the claim.	UNHCR guidance
	5. Benefit of the doubt	The applicant should be given the benefit of the doubt if her/his claim is coherent and generally credible, but there is still a lack of evidence or clarity regarding some of her/his statements.	Qualification Directive, Art. 4(5); ECtHR jurisprudence UNHCR guidance
OBJECTIVITY	6. Evidence-based assessment	Credibility findings have to be based on and supported by evidence, and all available and relevant evidence should be considered in the assessment process. Credibility findings should not be based on unfounded assumptions, speculation, stereotyping, intuition or "gut feelings".	Procedures Directive, Art. 8(2); UNHCR guidance
	7. Individual assessment	Credibility assessment should be conducted in an individualised manner, with due consideration of the applicant's individual and contextual circumstances.	Qualification Directive, Art. 4(3); Procedures Directive, Art. 8(2)(a); UNHCR guidance
	8. Impartial approach	Credibility assessment should be conducted in an impartial manner. The impact of the decision-maker's individual and contextual circumstances on credibility findings should be minimised.	Procedures Directive, Art. 8(2)(a); UNHCR guidance
TRANSPARENCY	9. Clear findings	Credibility assessment should result in clear findings, stating which material facts are accepted as credible, which are rejected and whether the benefit of the doubt principle has been applied.	Procedures Directive, Art. 9(2); EU Charter of Fundamental Rights, Art. 41(2), 47 and 48 CJEU Jurisprudence (M.M.) UNHCR guidance
	10. Opportunity to comment on negative credibility findings	Decision-makers should give applicants a reasonable opportunity to comment on issues that may result in negative credibility findings, before a decision is made.	Qualification Directive, Art. 4(1); CJEU jurisprudence (incl. M.M.); ECtHR jurisprudence; UNHCR guidance

In its recent publication on credibility assessment in EU asylum systems the UNHCR presented a checklist which briefly summarises many of the standards presented in this chapter, and which shows a useful model of how and when to apply them in the decision-making process.[90] This checklist concludes Module A of this manual:

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[89] In addition to IARLJ and national guidance, as well as national jurisprudence and the content of the European Asylum Curriculum

[90] UNHCR, Beyond Proof, p. 261

A Structured Approach to Credibility Assessment

International protection determinations are conducted with a two-stage approach. Stage one is the gathering of relevant information, the identification of the material facts of the application and the determination of whether and which of the Applicant's statements and other evidence can be accepted. Stage two is the analysis of the well-founded fear of persecution and real risk of serious harm.

STEPS	EXPLANATION	☑
STAGE ONE: Assessing the Credibility of the Applicant's Statements & Other Evidence		

Note: The opportunity to comment on potential adverse credibility findings must be provided up until a decision is made.

STEP 1: GATHER ALL THE INFORMATION TO SUBSTANTIATE THE APPLICATION	All statements and other evidence substantiating the claim must be gathered by both the applicant and the DM. Evidence related to the claim may be submitted by the Applicant or gathered by the DM up until the decision is made. Because the Applicant may not know the grounds for international protection, the examination of the facts of the claim should be broad.	☐

↓

STEP 2: DETERMINE THE MATERIAL FACTS	Once the DM has gathered all the facts in the case, his or her determines which may relate to protection grounds. Decisions on whether to grant status will be made on the basis of an assessment of the material facts of the application. Material facts go to the heart of the application and must be clearly determined.	☐

↓

STEP 3: ASSESS THE CREDIBILITY OF EACH MATERIAL FACT	In assessing the credibility of each material fact the DM gives due consideration to the credibility indicators in the light of the individual and contextual circumstances of the Applicant and the factors that could affect the DM's interpretation of the information.	☐

↓

STEP 4: DETERMINE WHICH MATERIAL FACTS ARE	☐

↓   ↓   ↓

❶ Accepted Material Facts Accepted facts are consistent, detailed enough, and plausible, whether or not they are supported by documentary or other evidence.	❷ Rejected Material Facts Rejected facts lack sufficient details and are inconsistent and implausible.	❸ Uncertain Material Facts: Uncertain facts which are unsupported by documentary or other evidence, or are facts about which an element of doubt remains.	☐

↓

STEP 5: CONSIDER WHETHER TO APPLY THE BENEFIT OF THE DOUBT TO FACTS ABOUT WHICH DOUBT REMAINS	Consider applying the benefit of the doubt for each remaining material fact about which an element of doubt remains when the statements are on the whole coherent, plausible and consistent with COI, and any explanations provided by the Applicant for apparent contradictions, inconsistencies, omissions and implausbilities are reasonable.	☐

↓

WRITTEN DECISION: STATE CLEARLY WHICH FACTS ARE ACCEPTED AND WHICH ARE REJECTED, STATE REASONS WHY	Outline all accepted material facts that will be taken into account in Stage Two – the well-founded fear and serious harm analysis. These will be the material facts accepted at Step 4 as well as those that are accepted at Step 5 after having been given the benefit of the doubt. State the reasons for accepting and rejecting each material fact.	☐

STAGE TWO: The Well-Founded Fear and Serious Harm Analysis	

FURTHER READING (suggested by the authors)

Austrian Red Cross/ACCORD, *Researching Country of Origin Information – A Training Manual*, 2nd edition, 2013

Byrne R, "Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunal" (2007) 19 (4) International Journal of Refugee Law 609

Canadian Council for Refugees, *The Experience of Refugee Claimants at Refugee Hearings at the Immigration and Refugee Board*, January 2012

European Asylum Support Office, *Country of Origin Information report methodology*, July 2012

European Union, *Common EU Guidelines for Processing Country of Origin Information (COI)*, April 2008

Gyulai G and Roşu T, *Structural Differences and Access to Country Information (COI) at European Courts Dealing with Asylum*, Hungarian Helsinki Committee, July 2011

Gyulai G, *Country Information in Asylum Procedures – Quality as a Legal Requirement in the EU*, 2nd edition, Hungarian Helsinki Committee 2011

IARLJ, *Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive – Judicial Criteria and Standards*, 2013

Kagan M, "Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination" (2003) Scholarly Works Paper 633

Noll G (ed.), *Proof, Evidentiary Assessment and Credibility in Asylum Procedures* (Volume 16, Martinus Nijhoff Publishers, 2005)

Sweeney J, "Credibility, Proof and Refugee Law" (2009) 21 (4) International Journal of Refugee Law 700

UK Border Agency, *Considering the protection (asylum) claim and assessing credibility*, August 2012

UNHCR, *Beyond Proof – Credibility Assessment in EU Asylum Systems,* May 2013

UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1968 Protocol Relating to the Status of Refugees*, December 2011

UNHCR, *Note on Burden and Standard of Proof in Refugee Claims,* 16 December 1998

UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 2003

Module B

MULTIDISCIPLINARY LEARNING

IV. DISTORTIONS AND SOLUTIONS IN A MULTIDISCIPLINARY FRAMEWORK

> ### SETTING THE SCENE
>
> The first part of this Manual dealt with the legal and procedural framework of credibility assessment. Module B will help to **enhance certain skills and areas of knowledge** that are indispensable for the proper application of the methodology and principles introduced in Module A.
>
> This chapter serves as an **introduction** to Module B. Its principal objective is to give an overview of the numerous **factors that may distort or otherwise impact on the use of credibility indicators** in practice. The chapter will also outline how improving **knowledge, skills and attitudes** can help address these particular challenges and **reduce the potential for errors** in credibility assessment.

Module A has shown the conceptual and procedural framework of credibility assessment, credibility indicators and guiding principles for their use. However, practice shows that this knowledge only becomes valid and applicable in practice if put in a wider, multidisciplinary context. When applied in practice, credibility indicators are subject to a number of **distortion factors**, which cannot be disregarded. Therefore, **multidisciplinary learning** is indispensable in order to facilitate the reduction of distorting effects as well as the effective application of credibility indicators and the related guiding principles.

For a proper credibility assessment, **the information presented by the applicant (which serves as basis for the use of credibility indicators) has to be duly**

1. **recalled and presented**;
2. **transmitted**; as well as
3. **received and understood**.

Any distortion or misleading interference at any point of this process may result in a subjective, biased or legally wrong credibility finding. This process is **strongly influenced by the individual and contextual circumstances of both the applicant and the decision-maker**. Besides the general limitations of human memory, a number of individual and contextual factors will determine the way the asylum-seeker is able to recall and present information relevant for credibility assessment. Trauma, shame, stigma or denial seriously limits this ability, but a number of other individual elements (age, gender, education, profession, religion, etc.) have a significant impact on this process as well. The decision-maker's circumstances, experiences and mindset influence the manner in which she/he receives and evaluates the information provided by the applicant. The cultural and linguistic barriers between the asylum-seeker and the decision-maker may significantly distort key information in the process of transmission. The following diagram outlines – in a non-exhaustive manner – the main distortion factors and at which point they may cause difficulties. Note that **the individual and contextual circumstances of both the asylum-seeker and the decision-maker have an important impact in this process**. Such circumstances involve age, gender, education, religion, social status, etc.

transmitting

For example:

• **Language barriers** (e.g. communication through interpretation involves inherent distortions)

• **Intercultural barriers** (e.g. non-verbal sign have different meanings in different cultural contexts)

recalling / presenting

ASYLUM-SEEKER

For example:

• **General limits of human memory** (e.g. memory is strongly selective, its content continuously changes and is naturally distorted by several factors)

• **Effects of trauma** (e.g. torture survivors cannot give a coherent account about traumatic experiences)

• **Shame, stigma and denial** (e.g. gay or lesbian asylum-seekers may not be ready to promptly reveal their sexual orientation)

receiving / understanding

DECISION-MAKER

For example:

• **Circumstantial factors** (e.g. emotions and mood in a given moment influences decision-making and attitude)

• **Professional experience and environment** (e.g. burn-out, compassionate or professional fatigue can lead to mistrust)

• **Personal background** (e.g. some people are more sympathetic or more naive than others)

THE ASYLUM-SEEKER'S INDIVIDUAL AND CONTEXTUAL CIRCUMSTANCES...

...THE DECISION-MAKER'S INDIVIDUAL AND CONTEXTUAL CIRCUMSTANCES

This means that credibility assessment (and asylum decision-making) is **far more than a legal question**. Without proper consideration and use of scientific achievements from other fields, there is a risk that the process and its results will become flawed. The UNHCR also emphasises the need for a **multidisciplinary approach** in its recent publication on credibility assessment:

> *To take into account the applicant's individual and contextual circumstances, the decision-maker needs to cross geographical, cultural, socio-economic, gender, educational, and religious barriers, as well as take account of different individual experiences, temperaments and attitudes. These factors and circumstances span many disciplinary fields, including neurobiology, psychology, gender and cultural studies, anthropology, and sociology. Consequently, it is necessary that the whole credibility assessment is duly informed by the substantial body of relevant empirical evidence that exists in these fields.*[91]

This requirement is **explicit in EU law** as well. According to Article 4(3) of the Qualification Directive,

> *The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account: [...]*

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[91] UNHCR, Beyond Proof, p. 56

*(c) the **individual position and personal circumstances** of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;*

This provision creates a clear obligation on asylum authorities to conduct credibility assessment with due regard to the applicant's individual and contextual circumstances. Article 8(2) of the Procedures Directive further stipulates that

[...] Member States shall ensure that:

*(a) applications are examined and decisions are taken **individually, objectively and impartially**.*

An objective and impartial decision-making requires knowledge on how human memory works and what expectations can be realistic with regard to an asylum-seeker's capacity to properly recall past events (with or without the presence of trauma). Intercultural and linguistic distortion factors, as well as the decision-maker's own circumstances have to be known and properly addressed in order to avoid subjectivity and partiality.

The inherent difficulties and distortion factors of credibility assessment may seem discouraging. However, experience shows that through **multidisciplinary learning** the potential for errors can be significantly reduced and credibility indicators, as well as related guiding principles can be applied more effectively in practice.
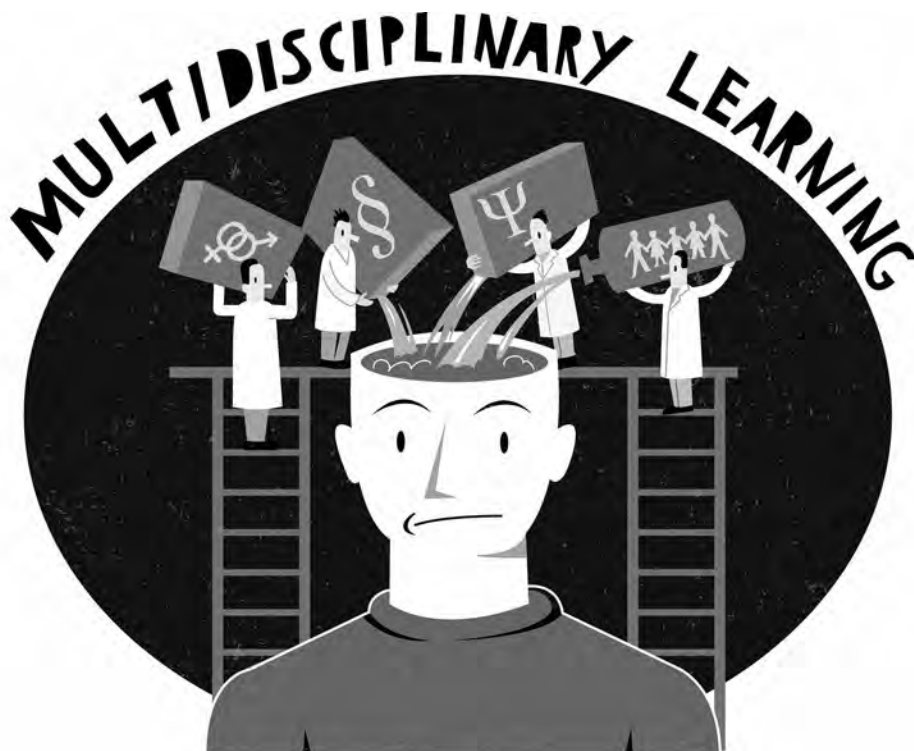
But what does multidisciplinary learning mean with regard to credibility assessment? It means that the effective application of the legal principles presented in Module A **requires some preparation and background learning in other fields of science**, especially psychology, neurobiology, cultural anthropology and linguistics. It seems though that in recent years the information exchange and cross-fertilisation between these fields and asylum has remained rather limited, which may lead to erroneous assumptions in decision-making. Most asylum professionals are not psychologists, psychiatrists, linguists, anthropologists or gender experts. However, it is not necessary to become a specialised expert in any of these areas of science to be able to conduct

credibility assessment properly. It is also evident that most asylum professionals have no capacity to read and learn from in-depth academic literature, usually written for a different target group (medical professionals, psychologists, etc.). Therefore, this module offers a **compact and user-friendly collection of the basics** that are necessary to know and apply in credibility assessment practice from fields of science other than law. The present edition will introduce the issues of human memory, the effect of trauma and PTSD, intercultural barriers and the impact of the decision-maker's individual and contextual circumstances. The second volume of this manual (expected publication in 2014) will contain the second part of this manual, touching upon specific issues related to language and interpretation, gender, sexual orientation, gender identity and children. Reference will be made to further, more in-depth materials at the end of the module.

Multidisciplinary learning in the field of credibility assessment – as any other type of learning – has different components. A traditional and commonly used classification distinguishes **three learning domains** in general, namely **knowledge**, **skills** and **attitude**.[92] The following table summarises the main characteristics of these three types of learning, using as examples some of the key knowledge, skills and attitudes a high-school teacher needs to have in order to effectively carry out her/his job:

LEARNING	**KNOWLEDGE**	Cognitive abilities	Remembering, structuring, understanding, evaluating information and data; awareness	- Knows and is able to structure the material she/he needs to transmit to the students; - Has a certain knowledge of child and educational psychology; - Knows what students are expected to know in order to pass a successful exam, etc.
	SKILLS	Psycho-motor abilities	Expertise or practiced ability in the manual manipulation of things or verbal actions	- Knows how to use a computer, a projector, a black-board and a flip-chart with ease; - Has a well-readable hand-writing; - Is able to speak clearly and loudly in front of many people, in a way that is understandable and attractive for teenagers, etc.
	ATTITUDE	Affective abilities	Learned capacity to act consistently in a given situation; psychological, emotional mindset; sensitivity	- Believes in her/his role as model for a new generation, knows how to show self-confidence; - Able to strike a proper balance between showing affection and discipline towards students; - Interested in and sympathetic towards the typical challenges of teenage years, etc.

These three learning domains are equally important, even though variations exist. Taking the high-school teacher's example: an expert in mathematics or modern history will fail as a teacher if she/he is not able to explain clearly and in a structured manner or if she/he is not able to keep time limits. And even a well-trained English teacher with excellent teaching and presentation skills will fail if she/he cannot cope with the stress inherent in this type of work. This module will therefore equally emphasise all three domains at the end of each chapter, presenting ideas of concrete learning requirements regarding knowledge, skills and attitude.

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[92] This model is based on the work of Benjamin Bloom (an American educational psychologist) in the 1950s and is often referred to as "KSA". Even if a number of different models have been elaborated in recent decades (many of them on the basis of KSA), KSA has been selected for the purposes of this manual for its simplicity and wide acceptance.

For a proper application of the credibility legal concepts, indicators and related guiding principles, the information presented by the applicant (which serves as basis for credibility assessment) has to be recalled and presented; transmitted; as well as received and understood by the decision-maker. Recalling and presenting may be seriously distorted by the inherent limits and characteristics of human memory, the impact of trauma, shame or other difficulties. Transmission is often distorted by linguistic and cultural barriers. Receiving and understanding may be distorted by the circumstantial, professional and personal characteristics of the decision-maker. Any of these distorting interferences can result in a subjective, biased or legally wrong credibility finding.

The potential for errors can be successfully reduced through multidisciplinary learning, i.e. by obtaining at least basic background learning about relevant issues in psychology, neurobiology, cultural anthropology and linguistics. Learning is composed of three domains: knowledge (cognitive abilities), skills (psycho-motor abilities) and attitude (affective abilities).

V. MEMORY AND ITS LIMITATIONS

SETTING THE SCENE

In order to remember something we need to

1. **encode**, or learn it – this includes paying attention;

2. organise & **store aspects** of it;

3. retrieve and **reconstruct** the details.

There are different ways in which each of these happen. This chapter will help to understand:

- ✓ The different **types** of memory;
- ✓ How people **attend to, store, and recall memories** of things that have happened to them;
- ✓ Why memories are so often **inconsistent**;
- ✓ How can you deal with an asylum-seeker's potential **lack of accurate and consistent memory** of past material events.

There is much that is still not understood about memory. This chapter briefly outlines some of the more established research that is helping to illuminate how memory works. As with the rest of the manual, this chapter does not intend to present a comprehensive academic review.

EXPERIENCE AN EVENT

HOLD IT IN MEMORY

RECALL AND TELL IT
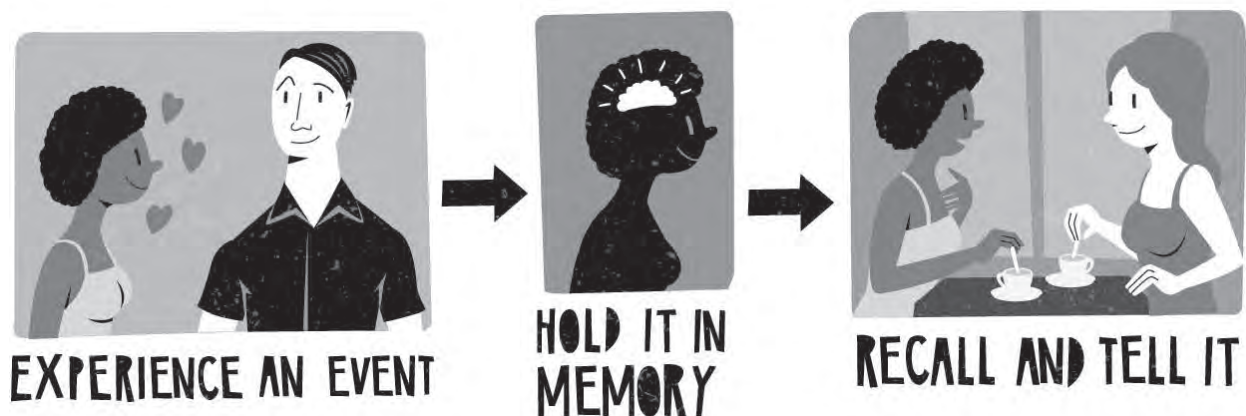
V.1 Types of Memory

The capacity to remember past events and to learn from experience is essential to survival. As a result, memory is one of the fundamental processes of the brain. This amounts to much more than the **explicit (or declarative) memory function**, which covers those memories that we

can access in our conscious minds, such as memories for events from the past and memories for facts. It also includes **implicit learning**, covering a range of unconscious functions, for example **procedural memory** and **emotional memory**.

Explicit or declarative memory is a long-term consciously retrievable store, covering memories of past experiences (**episodic memory**) and memories for facts and meanings (**semantic memory**). The brain area thought to be most important in explicit memory is the hippocampus, a structure deep within the brain. However, other parts of the brain are also involved – for example part of the frontal lobe (the prefrontal cortex), which is thought to be involved in remembering the context of an autobiographical memory.

QUESTIONS FOR REFLECTION…

It is probably worth pausing even at this early point. The weakness of memory is immediately obvious. If it were a perfect system, then we would all achieve 100% scores in examinations based on recall of facts. You would for example be able to recite this entire chapter, without looking again at the text, after a single read. Sadly, this is unlikely to be the case!

Learning to ride a bicycle is an example of **procedural memory**. This requires the repetition of a complex activity over and over again. It is the means by which any motor skill or cognitive activity is learned. The brain area important in procedural learning is the striatum, another structure deep inside the brain. Procedural memory is not easily accessible to the conscious mind – usually the individual can ride a bicycle or play an instrument without being aware of how the motor actions are organised.
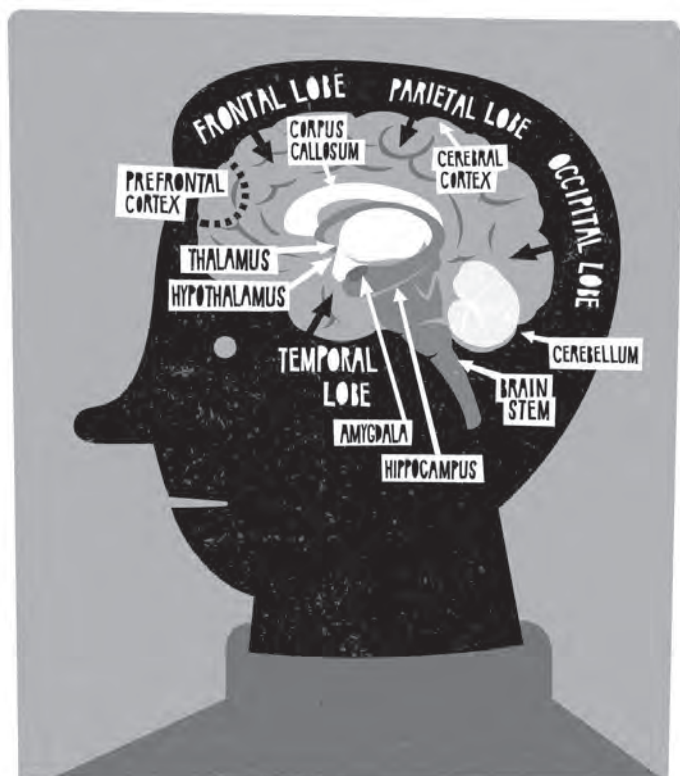
Another example of long-term memory concerns **emotional learning**. Fear conditioning is a specific example of Pavlovian conditioning[93] – involving putting together a neutral stimulus and a fear-provoking stimulus. Pavlov famously paired a bell with the presentation of food and in time, dogs learned to salivate when they heard the bell alone – it had become a conditioned stimulus. In fear conditioning, a previously neutral stimulus (e.g. a bell) is remembered as a source of fear. One neurologist famously hid a pin in his hand when he met his patient each morning. His patient had lost all conscious memory due to a neurological accident. After a few mornings, the patient refused to shake the doctor's hand – although he could not say why. He could not even remember having met the neurologist before and yet he had learned not to shake his hand.

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[93] Named after the Russian psychologist, Ivan Petrovich Pavlov (1849-1936)

Emotional learning may be especially important in refugees because they are likely to have experienced more frightening events than most people. The brain region primarily involved in acquisition of these traumatic memories is yet another deep brain structure called the amygdala. Once again these memories are not always available to conscious memory, but may appear spontaneously, for example as **flashbacks** (vivid distressing, often sensory, traumatic reliving experiences, typically occurring as if it was happening here and now).

In the asylum context, episodic and semantic memory (which together make autobiographical memories), as well as emotional and especially traumatic memory, are likely to be most important. The issues related to trauma and traumatic memory will be picked up in the next chapter.
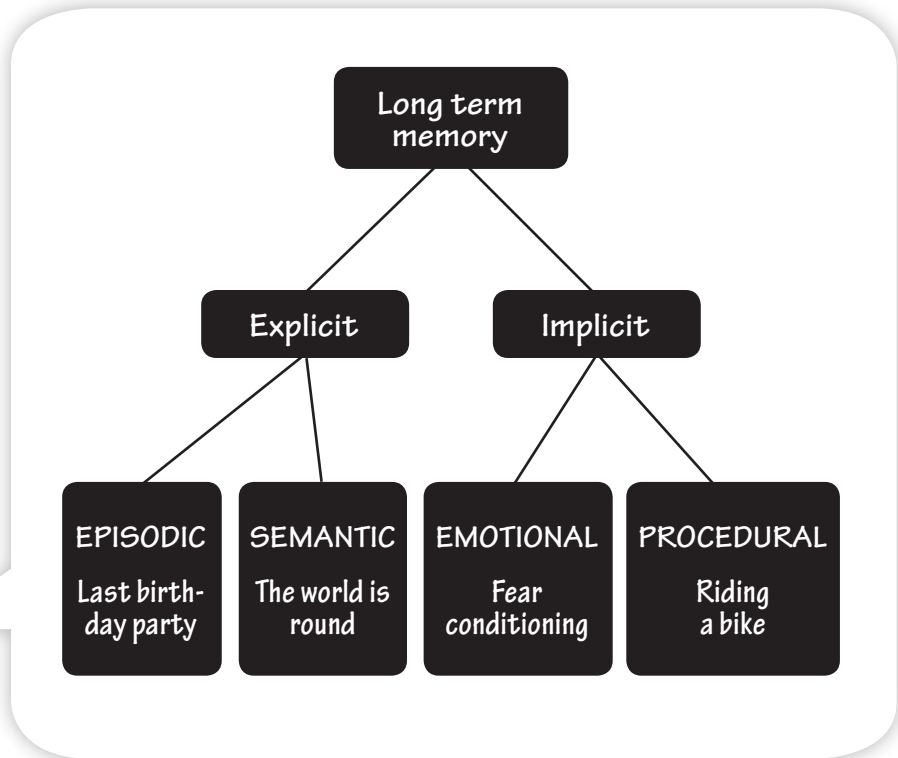
V.2 Episodic Memory

Episodic memory refers to the memory of **personally experienced events**. Episodic memory has been called "mental time travel" because it involves a sense of having been there. Episodic memory is of crucial importance in credibility assessment, as in order to "perform well" with credibility indicators (see Module A) the asylum-seeker is expected to recall personally experienced events coherently and in detail.

1. Encoding events (episodic memories)
Events that we experience first **pass through the stages of raw sensations to partially processed perceptions**. For example, we have a tendency to look for patterns in an image.
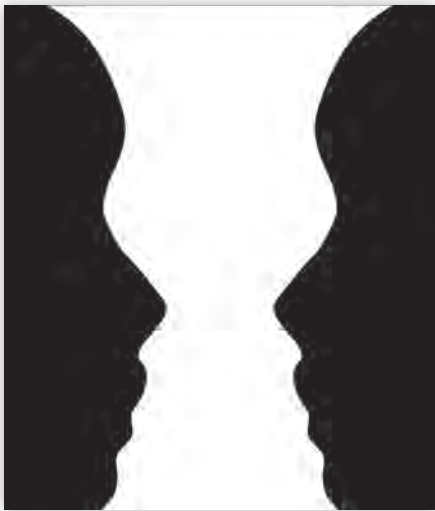
The picture below, a common visual illusion, is simply a two dimensional black and white pattern but it appears like a vase or like two faces.[94]

Information about events passes to the hippocampus where some is **encoded into a short-term, working memory store**. Some of these memories **enter a long-term store**; others are probably lost. The precise mechanism of encoding is not fully understood but it is associated with changes in the function of nerve cells (e.g. synaptic plasticity) and at a molecular level.

For the purposes of this chapter, the key message is that **there is no simple video recorder in the brain**. Instead, **information is stored and encoded in a way that is unique to the individual** – dependent on her/his experiences and the way that they perceived events. This process of encoding is what lies at the heart of the nature of recall – that it is a **reconstructive process** not a literal replaying of a tape.
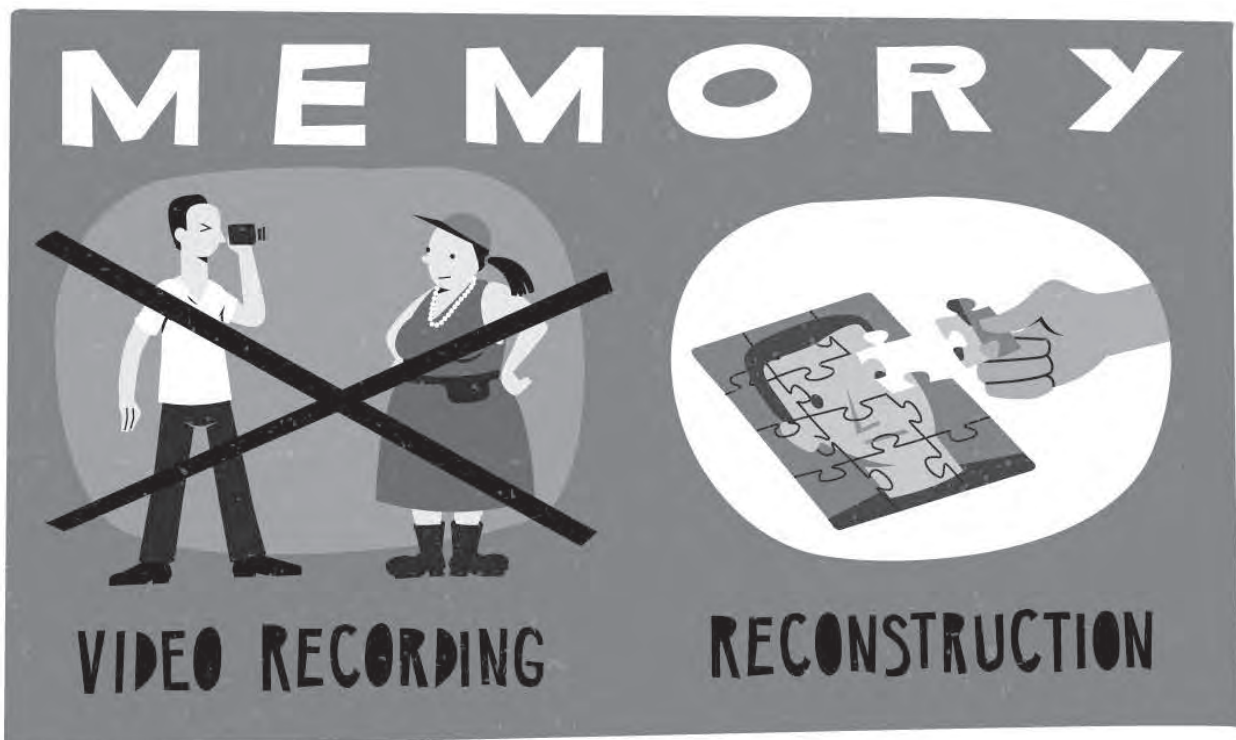
A group of experimenters used some eye-catching examples to show how people can be so concentrated on a task that they miss the most obvious things going on around them.[95] In one example they show a person giving directions to a stranger (the researcher). Half way through the conversation another researcher swaps places with the first one – and the individual is so focused on looking at the map and working out directions that they do not notice at all. **Attention** is very important to what we will later remember of an event.

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[94] Source of picture: A white cup or two black faces? (author and copyright: Bryan Derksen), 2 March 2007, from Wikimedia Commons

[95] You can watch these videos at: http://www.theinvisiblegorilla.com/videos.html

Significant research has examined eye-witnesses to crimes and distressing scenes, and it is now clear that **people remember the central details of a scene far better than they remember the less important peripheral details**. Central details are defined variously, but refer generally to the essential core of the story – who did what to whom – as well as what was emotionally important. The "centrality" of a detail can only be assessed by the person involved in the experience. There is also evidence of a specific **weapon effect**, whereby witnesses' attention is so drawn by the threatening weapon, that they are, it seems, less able to encode, or recall, other details of the situation. Peripheral details are defined as details which are not critical to the action of the event – usually things like the date, the time and other people at the scene. The reason for this "selectivity" is obvious: **the capacity of memory is limited**; it simply cannot encode all information.

2. Retrieving events (episodic memories)

EXERCISE V.a

Try to remember a time you sat alone on a beach (or a mountain) on holiday and write down how you felt at that moment.

One model describes your search through your memories as follows:

Search through personal knowledge…

⬇ **THEMES**
Holidays

⬇ **LIFETIME PERIODS**
Adulthood

⬇ **GENERAL EVENTS**
Going on holidays

Search may stop here

⬇ **SPECIFIC EVENTS**
The beach in Greece

Event-specific details: the feeling of the sun, the taste of ice cream, the image of surfers on the waves
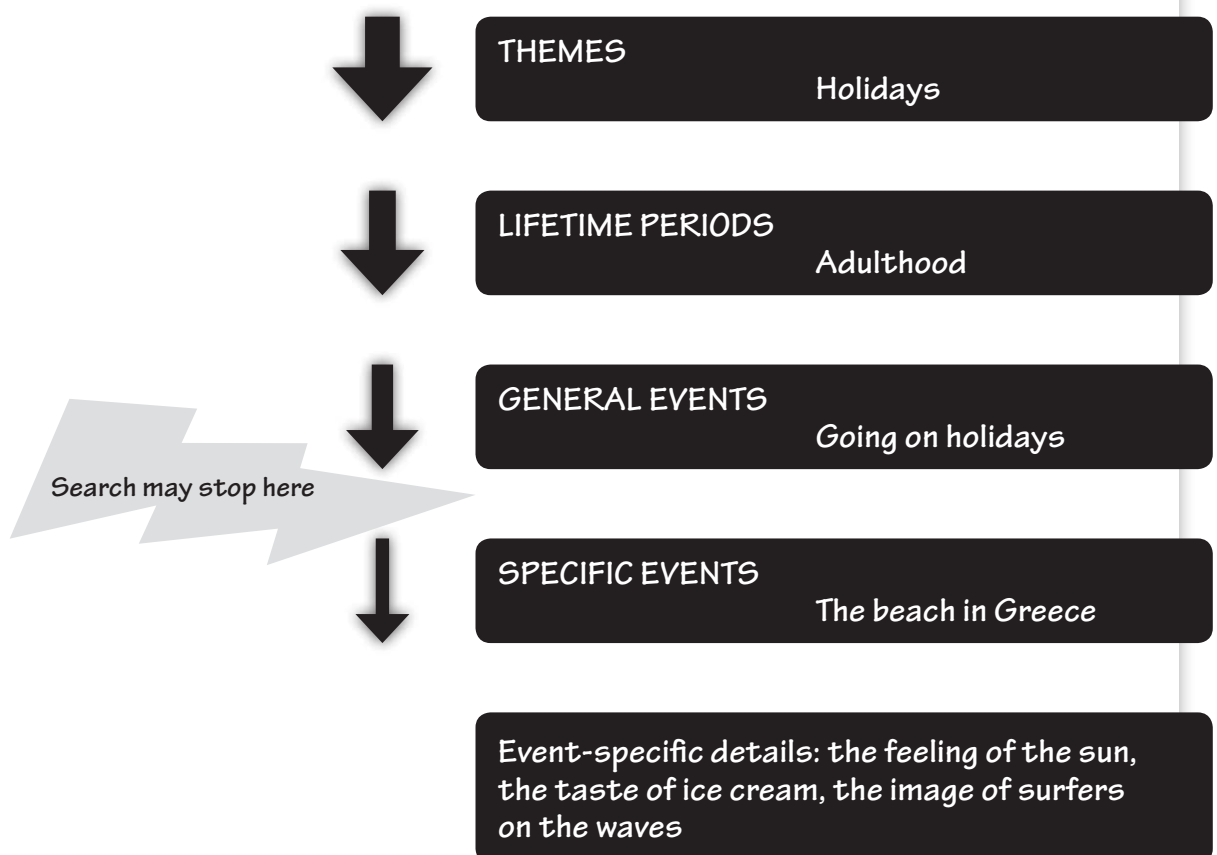
If one or more of the times you have sat on a beach something terrible happened to you, then you might have learnt to stop searching at the level of "general events" – before you get to the painful memories. This is known as **overgeneral memory** and has been studied extensively in people who have depression and posttraumatic stress disorder (PTSD), amongst other psychiatric diagnoses.

If you have been brought up to value general events that taught you an important lesson in life, rather than individual events, then you might stop your search at "going on holidays".[96]

3. Episodic memory details
As we have seen above, **recalling details of an event will depend firstly on what was attended to and <u>encoded</u> at the time**. Certain features of an event, such as a weapon, will draw the person's attention to the weapon, at the expense of other, less important (at the time) details.

We are more likely to believe someone's memory (including our own) if it contains vivid details. However, the **imagination inflation effect** describes how imagining something can make it very easy for us to elaborate a "memory", integrate it with our other memories, and become confident that it really is a memory, even if it was made up (for example by a researcher, or interviewer "suggesting" memories).

EXERCISE V.b

"A middle-aged man recalled his father distracting him when he was a young boy (about four years old) by asking him who was the first man on the moon. He had been intensely interested in the moon landings when he was a young boy and this incident occurred while his father was on the telephone to his mother, who had just given birth to his younger brother. [He] had a vivid and fond memory of his father placating him in this way; he was highly agitated by the birth, and in his memory he could 'see' his father on the telephone and almost 'hear' his voice. It was only decades later that he realised that his brother had been born in 1968, one year before the first moon landing."[97]

What are some possible explanations for this strange phenomenon? Write a list of your ideas.

There are a number of possible explanations:

✓ His father was on the phone to someone, and the boy was upset, but it was not about the birth of his brother (he knows now that he was also upset about his brother's birth and he has mixed together the two events of upset);

✓ The event happened in the way described, but his father actually said "who do you think will be the first person on the moon?";

✓ His father was asking him about something else – he knows now that he was interested in the moon landings as a boy, so he has put that bit of knowledge about himself into the memory of his father talking about something else (which he has now forgotten, as it is not so much a part of what he knows about himself now).

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[96] See more on this in sub-section V.5. Chapter VII will also deal with culture and intercultural issues.
[97] Taken from Martin Conway and Emily Holmes, *Memory and the Law : Recommendations from the Scientific Study of Human Memory* (British Psychological Society 2008), pp. 11-12

4. Schematic memories

EXERCISE V.c

Try to remember what you were doing yesterday. Maybe you were at work and you can remember some specific tasks that you did – what time you went for lunch, who you spoke to.

Now try to remember what you were doing on the same day last week, also at work.

Now try to remember what you were doing on the equivalent day last year.

Did you start using the word "probably" for your memories of a year ago? As the period gets further away, you are more likely to be drawing on your knowledge of the sorts of things that you do at work rather than actually remembering specific events. This **schematic memory** is one way that we access specific memories.

Can you remember paying the bill the last time you went to a restaurant? You probably start to think of restaurants/cafés, evenings/lunchtimes, people you might eat out with. Only if something stood out about one particular time (when you did not pay and were chased down the street) will you easily remember actual episodes of paying. We are also more likely to remember the first, and the most recent examples of the event.

Other than this we would expect people to remember what *usually* happens. Another typical example is the impact of regular visual impressions (e.g. films) on schematic memory. For instance, judges in Hollywood movies and American TV series always use a little hammer. This is uncommon in many European countries. A person from one of these countries, when requested to recall memories about a court hearing held many years ago may "remember" the judge using a little hammer, because this is how they think judges *usually* are (at least on TV). We very often fill in gaps in our memory by using such schematic details.

This also applies to distressing memories. Studies of people who have been sexually abused or physically assaulted show how memories of individual episodes can fuse into one another, or get mixed up.

The length of time since an event is known as the **retention period**. The longer the retention period, the more likely people are to rely on their schematic memories.

In light of all these factors it is evident that recalling personal experiences is a much more complex and difficult process than it is commonly believed. As the British Psychological Society's Memory report succinctly concludes:

> **Memories typically contain only a few highly specific details**. *Detailed recollection of the specific time and date of experiences is normally poor, as is highly specific information such as the precise recall of spoken conversations. As a general rule, a high degree of very specific detail in a long-term memory is unusual.*[98]

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[98] Martin Conway and Emily Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory* (British Psychological Society 2008), (emphasis added)

Episodic memories are memories of personally experienced events. The encoding of details of an event depends on what we are paying attention to at the time. If we experience a similar event repeatedly we will form a schematic memory which becomes a kind of general memory, which we rely on when we can no longer remember the details.

V.3 Semantic Memory

Semantic memory is **memory for facts, about ourselves or the world**. In brief, semantic memory is **knowledge**.

Usually when we learn something for the first time, **it starts with an episodic experience**. The first time you learnt that Cairo was the capital of Egypt, for example, you may have come home and told your parents about your class at school that day. Over time, the facts were reinforced by reading, films, and eventually visits to Cairo. The memory has now moved from being a remembered episode of learning to a piece of knowledge. You probably can now no longer remember learning the fact – even though there must have been a moment when you did.

1. Objects
Researchers have studied people who, following brain damage, have difficulties naming certain types of objects – it is one way that psychologists can work out what is happening in the brain. Most people who have difficulties naming objects find it easier to name or describe non-living things, compared to pictures of animals and people. For example one patient with an acute brain disease described a submarine as a "ship that goes underneath sea" but described a spider as a "person looking for things".[99] This intriguing finding (repeated in other brain-damaged patients) raises questions for how people store knowledge.

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[99] Elizabeth K Warrington and Tim Shallice, "Category specific semantic impairments" (1984) 107 (3) Brain 829

EXERCISE V.d

Describe (in writing) what a chair is.

Describe (in writing) a leopard to someone who does not know what it is.

Is there any difference between the way you describe the two things?

Your semantic memories of things (and people/animals) contain knowledge about both the **visual (and other sensory) features** as well as **functional knowledge** about what things are used for. Notice in the exercise above: where did you use more functional descriptions and where did you use more visual descriptions? Carefully designed research has led to the conclusion that the way we distinguish between living things relies more on visual (and other sensory) differences, whereas the way we distinguish between inanimate objects is more to do with their functions.

EXERCISE V.e

Describe, without looking at them, the coins and banknotes your country uses in as much detail as possible, specifying at least the colour and the people, buildings, etc. that they feature.

Once you have done this, check how many coins and banknotes you managed to describe correctly.

Most people perform badly when doing this exercise. How is it possible, if we see and use these coins and banknotes several times, day by day? The explanation is that coins and banknotes are inanimate objects, therefore we are interested in their function ("I can pay with it") and the key features related to them ("how much is it worth"). The colour and other similar (sensory) features are much less important. Remember also what has already been said about the selectivity of memory.

In other words, while we need to know what someone looks like to find them in a line-up of other people, we do not need to know what common everyday objects look like (e.g. coins) in order to use them. Our memories prioritise what is most useful to us – the *sensory* information about people and animals and the *functional* information about inanimate objects.

2. Features in a landscape

Many studies have looked at what happens when people remember features (such as buildings, bridges) in a landscape. People **do not remember accurately**, but usually remember things relative to each other, and there are distortions in their memories of distances and sizes.

People organise their memory of an environment around landmarks – such as a church, mosque, monument or supermarket. The distances around that landmark can then get distorted. For example the distance from an

ordinary building to a landmark will be judged further than the distance from a landmark to an ordinary building.

When people are asked about the length of a journey, they will be biased by the number of landmarks or junctions or bends in the road – the more landmarks, the longer the

journey, people will assume. Up and downhill sections are judged to take longer.

These are all experimental findings – so not all people will follow these biases all of the time. Other people may have a particularly good sense of distance – or they may have been trained as quantity surveyors!

3. Times and dates

Testing times and dates is another frequent element in asylum interviews and credibility assessment. This has been studied by psychologists using people's diaries. For example researchers might ask a group of people to keep diaries for a number of months – or occasionally

DATES ARE DIFFICULT TO REMEMBER

have found people who have kept diaries for years. The researchers can then use those diaries to test the participants on their memory for the events they have recorded. It seems that we can date things reasonably well up to about 2 weeks ago, and then we get worse and worse at it as the time since the event lengthens. In one study of a diary kept for 4 months the dates given later were out by up to 3 months.[100]

We can retain dates for events only if we practice (rehearsal), which we might do if

a. we are from a culture that values precise dating of events; and
b. it is important to us to remember the date (e.g. birthdays and anniversaries).

Unusual and memorable events are usually better remembered, if they are talked about. But this does not apply to the dates of those events – unless the date was talked about particularly. For example in London there were bombs on the transport system on 7 July 2005. The event is known colloquially as 7/7, so many people could tell you the day and month. However, fewer people will remember the correct year. What was the year of 9/11?

✓ Public events: An American study asked people to date the O. J. Simpson trial verdict – an event which was very heavily covered in the media. Even those who reported having been interested in the trial wrongly identified the date by up to 3 years (for something which had happened 8 months before).[101]

✓ Personal events: People have been asked about medical procedures or violent crimes (for which there are recorded dates). What researchers found (and what usually happens in such cases) is known as the **"forward telescoping effect"**, where these highly personally important events are commonly remembered as happening more recently than they actually did.

Inaccurate dating by asylum applicants can cause difficulties in two ways:

✓ Firstly, if the decision-maker checks the date and finds it is inaccurate (and then takes this to mean a lack of credibility);

✓ Secondly, if the applicant checks the actual date and corrects her/himself when asked again – introducing an apparent discrepancy in her/his statements.

EXERCISE V.f

Write down the dates of ten events from more than a month ago. Do not include birthdays or other events which are connected to dates. Do include both events that were private to you and public events. Which dates can you remember? Which ones not? Which ones are you most confident about?

Later try to check some of these dates with friends/partners, or by checking news websites for public events. How many did you get right? Did anything make it more likely that you got it right (e.g. connecting this event to something else that did have an obvious date, such as being the day after your birthday). Were you more right about the ones you were more confident about, or not?

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[100] Charles P Thompson, "Memory for unique personal events: The roommate study" (1982) 10 (4) Memory & Cognition 324

[101] Susan Bluck, Linda J Levine and Tracy M Laulhere, "Autobiographical remembering and hypermnesia: A comparison of older and younger adults" (1999) 14 (4) Psychology and Aging 671

4. Frequency, duration, sequencing

How many times have you been ill in the last 3 months? Researchers asked a group of people to keep diaries of their health for 3 months (and so you might argue they would have *better* memories of their health in this period, because of rehearsal – at least once, when writing their diary). When their memory was tested later, they were only 65% accurate about periods of illness.[102]

How long have you been ill for, in the last 3 months? The same study – in line with many others – showed that we are not very good at estimating either duration or frequency, even of important personal events.

If you walked around your town and took photos throughout one day – do you think you could then put them in **the right order** at the end of the day? One study[103] showed people were only 50% right. Two months later, they could only put 36% of the photos in the right order. Both of these studies show that **we are surprisingly bad at remembering our experiences in the right order**.

> **SUMMARY**
>
> Semantic memory is knowledge. People's semantic memory for the physical features of everyday objects, relative position and distances in environments, dates, duration, frequency and order of events are usually very inaccurate. Careful interviewing can help people remember some details more accurately. However, pressure to "get it right" will encourage people to guess – introducing further inaccuracy, and, over repeated interviews, inconsistencies.

V.4 Autobiographical Memory

This is the term used for **memories we hold for our personal experiences and it is essential to our sense of identity**. Autobiographical memory can only include material to which we have attended at the time, in other words to **our experience of an event, not the event itself**. It is therefore not complete; it can never be a literal recording of what has happened.

One study showed that asking "what" happened generated the highest number of accurate recollections from a person's diary. "When?" was the least effective question.[104]

Time may be marked for asylum applicants not by the calendar, but by **personally or socially significant events**. "Since the eruption of Mt. St. Helens, has anyone beaten you up?"[105] was the

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[102] Gillian Cohen and Rosalind Java, "Memory for medical history: Accuracy of recall" (1995) 9 (4) Applied Cognitive Psychology 273

[103] Christopher D B Burt, Simon Kemp and Martin Conway, "Ordering the components of autobiographical events" (2008) 127 (1) Acta Psychologica 36

[104] Linda Lhost Catal and Joseph M Fitzgerald, "Autobiographical memory in two older adults over a twenty-year retention interval" (2004) 32 (2) Memory & Cognition 311

[105] Elizabeth F Loftus and Wesley Marburger, "Since the eruption of Mt. St. Helens, has anyone beaten you up? Improving the accuracy of retrospective reports with landmark events" (1983) 11 (2) Memory & Cognition 114

title of a study exploring how to improve people's accuracy in reporting dates – to **reduce the "forward telescoping" effect**. Asking this question to students in North West United States in the early 1980s improved their estimates of when events happened to them, compared to just asking them for dates. It would not work, of course, for anyone from anywhere else, who had not been affected by that volcano eruption. Landmark events have to be personally significant.

When we recall an experience, this is based on our memories of those aspects of the event to which we have paid attention, which will depend on factors such as our feelings at the time, but also taking into account other attributes such as self-knowledge and knowledge of the world – which is bound by our culture. For example, we might reconstruct a memory in which we bring together knowledge (for example I am someone who was living in Kampala, I like the colour blue, I have a sister) with memories of details of a particular episode (for example the feel of my blue cotton shirt when I went to the city to visit my sister). So **what appears to be an autobiographical memory also brings in knowledge of our lives and of our sense of self**. In general, it seems that **memory is likely to be more accurate when it concerns general features of a person's life rather than a specific event**.

But **why** do humans have autobiographical memory?

✓ Autobiographical memory is important to help us **maintain a coherent sense of who we are** (I'm a loving daughter who looks after her parents);

✓ Memories of our personal history help to **guide us to make decisions** (I'm the kind of person who…);

✓ Autobiographical memories help us to maintain our **relationships** and other social bonds, by enabling us to share our history with other people.

In order to help us maintain our personal and social history in this way, autobiographical memories **have to be able to be modified to protect the self**. For example, if someone was forced or coerced to hurt another person, it might be important for them to emphasise the part of the memory that involves being forced, in order to still have a sense of being a person who does not normally hurt others. If this does not work and we focus on our responsibility for an experience like this, we tend to have strong feelings of guilt.

It is also important that we can **update** our autobiographical memories. In the example above, a therapist might help this person who has strong guilt to remember the ways in which they resisted. This would change the story – the reconstruction – that they told of the event, emphasising resistance and downplaying responsibility for causing hurt.

However, most of this is based on studies of memory in people from Western, independent cultures. In some cultures, identity is based more strongly on one's relationships, with others and in society.

SUMMARY

Autobiographical memory is the memory of our lived experience. It is a reconstruction of knowledge of the world and ourselves, together with sensory details of particular events. It is essential to the way in which we understand ourselves and our place in the world.

V.5 Autobiographical Memory in Different Cultures

It is important to understand that there are subtle but important differences in the ways that people in different cultures recount events that have happened to them. Some cultures (more common in the US and Western Europe) put more emphasis and value on **individuality, self-expression, autonomy and personal uniqueness (independent cultures)**. Other cultures (more common in South-East Asia and African countries) put higher value on **group harmony, conformity, interpersonal connectedness and social obligation (interdependent cultures)**.[106]

One of the ways in which culture is formed and maintained is the way in which we teach our children to talk about themselves and the events in their lives. This has been studied by comparing Euro-Americans (North Americans of European heritage) with Chinese and Korean people, where the culture is predominantly interdependent. Researchers have studied how mothers talk to their children at the point at which the children are developing the ability to remember (around the 3rd birthday). One study[107] compared Chinese mothers and children with American mothers (of European heritage) and children talking about a recent fun trip. The mothers spoke to their children quite differently.

INDEPENDENT CULTURE MOTHERS	INTERDEPENDENT CULTURE MOTHERS
Talk about past events 3 times as much	
Child is encouraged to see themselves as the main actor in the event	Factual questions (what do people do…), rather than a focus on the child's role
Repeat and elaborate on details	Repeat child's answers without elaborating
Collaborative, helping to construct the story	Draw lessons regarding morals and behavioural standards
Ask about child's thoughts, feelings	Hierarchical, teaching style

As a result, adults end up with very **different ways of recalling personal memories**. Adults from an interdependent culture are much more likely to report more socially shared or historical events and to think of those events as illustrating moral points, not personal histories. Finally, Euro-Americans and people from independent cultures are more likely to rate their own memories as more personally important, more detailed and more emotionally intense than people from an interdependent culture. They also tend to talk about personal memories more frequently (i.e. **rehearsal** or repetition of a memory). As we have seen above, rehearsal improves memory for the events.

In summary, we need to be aware that **the ability to give detailed accounts of personal experiences is something that is assumed in Western cultures, but may not be at all normal to everyone**. The following two examples demonstrate this:

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[106] You can read more about culture and the importance of cultural differences in credibility assessment in Chapter VII.
[107] Qi Wang, Michelle D Leichtman and Katharine I Davies, "Sharing memories and telling stories: American and Chinese mothers and their 3-year-olds" (2000) 8 (3) Memory 159

Examples – Developing children's memories[108]

AMERICAN MOTHER/CHILD	CHINESE MOTHER/CHILD
M: . . . And what about um was it a beautiful sunny day we had our picnic?	M: Do you remember that Mom took you to the Fandole park last time?
C: Yeah, um and it started to rain.	C: I remember.
M: And then what happened?	M: Tell Mom what were there in the Fandole?
C: The sun came up again.	C: There were toys.
M: But we had to go back through the woods, right?	M: What else?
C: Yeah.	C: There was food.
M: Where did we sleep when we went camping?	M: Right. When we went to the Fandole park, did you ask Mom to carry you on the way?
C: In the tent!	C: I didn't. If I got tired, I would still keep on going ahead bravely.
M: In a tent. And what did we climb inside?	M: Oh, right. When we rode on the bus, what did you see? We saw big wide roads. What else?
C: Sleeping bags.	C: We also saw a big round circle.
M: And you have your very own, don't you? Yeah. Is there anything else about camping that you really liked?	M: Right. What else did we see on the way there?
C: Swimming.	C: Um.
M: Swimming. And how about the campfire? Did you like the fire? What did we cook over the fire? Marshmallows, right?	M: Tell Mom, when a Mom takes her child to cross the street, where should they look?
C: Marshmallows! Yummy!	C: Look to their left and right. Look at the zebra lines.
	M: Right. We must walk on the zebra lines. Did you behave well that day?
	C: Yes.

Examples – Adult memories

SUBJECT# 9 MALE (dated at age 38)	SUBJECT# 6 MALE (dated at age 32)
The only three essays I have published are to be included in "Best of …" anthologies for each of the journals they have been published in. News of all 3 comes to me within a day or two so that I am filled with great joy and satisfaction.	The director of the design department liked people who were good at techniques. He knew that I loved working as a designer, so he tried his best to transfer me to the design department. At the welcome party, I swore that I would work hard and achieve something so that I would not disappoint my boss.

Note that Western researchers have identified **overgeneral memory** in depressed individuals and people with posttraumatic stress disorder (PTSD), but this may look the same as normal memory from some cultures.

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[108] Taken from Qi Wang, Michelle D Leichtman and Katharine I Davies, "Sharing memories and telling stories: American and Chinese mothers and their 3-year-olds" (2000) 8 (3) Memory 159

The way that we learn to talk about our personal history is different, depending on the culture in which we have been brought up. Some cultures teach people to make links between their experiences and others', and to use them to learn how to live together. Other cultures teach people to have more independent, individualistic stories of the events in their lives.

SUMMARY

V.6 Ways in Which Memories Change

One of the challenges in memory research is testing memories against an objective record, in order to test the **accuracy** of people's memory. This has led to studies of people's memories for reported crimes, medical procedures and diary entries, all of which can be checked. In the asylum system, there is very rarely any reliable corroboration of the historical accuracy of people's memories. This has led to the **consistency of memories** being used as a substitute method for deciding on credibility[109] – but it is not the same thing.

One of the most common misconceptions about memory is that it is stable. In reality, there are many reasons that **people's accounts of things that have happened to them will change over time**.

1. Forgetting
The more time that has passed since the event in question, the less we should expect people to remember precise details.
One of the first and most famous memory experiments was a memory test for short nonsense words. This produced the following graph, showing how results on a memory test decline steadily – and quite quickly. German psychologist Hermann Ebbinghaus ran many tests: this one shows that he has learned a list of words (100% at 0 minutes), but after 20 minutes he can remember just over 50% of them, and after a month, only 10%.

The Ebbinghaus forgetting curve

% of data remembered (y-axis): 0.00%, 10.00%, 20.00%, 30.00%, 40.00%, 50.00%, 60.00%, 70.00%

Time (x-axis): 20 minutes, 1 hour, 9 hour, 1 day, 2 days, 6 days, 31 days

_____
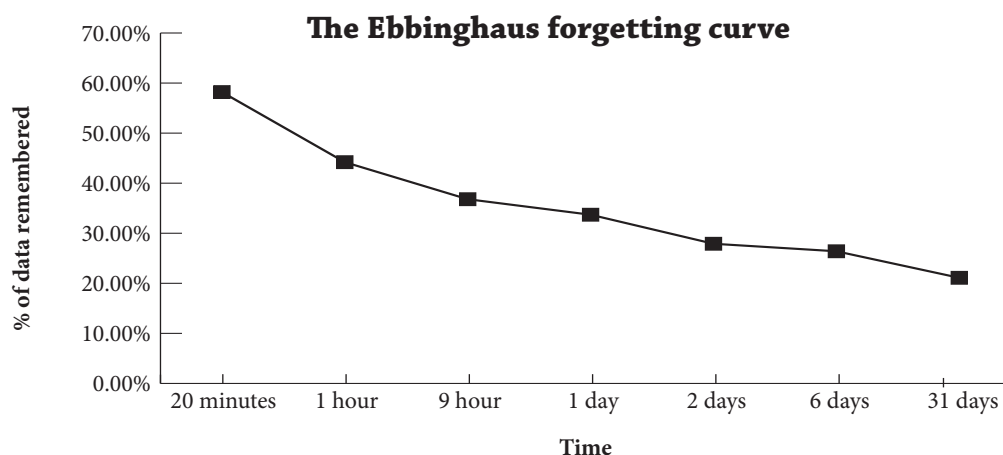
[109] See Chapter II, sub-section II.5 on credibility indicators

Obviously things are more complicated than learning lists of words, but this is a good place to start. The graph shows **passive, or what we might call normal, forgetting**.

There is also **motivated forgetting**, where the person makes efforts to put the event out of mind.[110] Motivated forgetting is not just for painful memories. One memory textbook gives the example of a restaurant cook making breakfasts, who must be able to forget one set of instructions for eggs, bacon and bread (fried, crisp and toasted) in order to correctly carry out the next (scrambled, crisp and fried). It may be that people who have to manage demanding events might push things that are not immediately relevant out of their minds in order to concentrate on the task at hand – especially if that task is survival.

2. Rehearsal
Maintaining a memory of an event can be improved by rehearsal – thinking and talking about it – but of course each time it is recalled (reconstructed), it will provide another opportunity for the inclusion of erroneous details and distortion.

More importantly, **it matters which aspects of the event are rehearsed, or talked about**. This was tested in a study[111] in which people were asked to watch a violent film clip containing graphic violence (including the near-stabbing of a small child and the repeated shooting of a dead body). After watching the film, one third of the group were asked to talk about what happened in the film, as if describing what had happened to someone who had not seen it. Another third of the group were asked to speak about their emotional reactions to the film, so that someone who had not been there could imagine exactly how they felt. The final third of the group did not talk about it at all (no rehearsal). Later, everyone's memory for the film was tested. The way in which they had talked about it had a strong effect on what they remembered. Talking about what had happened did help that group to remember what happened. However, the people who had talked about their emotions after the film, although they remembered their emotions well, made the most mistakes in remembering what actually happened – even more mistakes than people who had not rehearsed the memory at all.

So if you talk to a friend straight after an event about how you felt, then you will probably have better memories for your feelings. However, you are likely to make more errors in recalling what *actually* happened.

3. Confusing different events
Unless the interviewer is very careful in their questioning, they could be asking an applicant about an event which happened a number of times. The applicant will offer up details about the episode (for example of detention) which is in the front of their mind at the time of the interview. However, at a different interview, one of the other events may be recalled. The same questions about "your detention" will then bring out very different details.

As we have seen above, people develop **schematic or general memories** for things that happen more than once. So if someone has been detained a number of times, their memories will be less distinct for each individual episode of detention, unless any particular episode stood out particularly *to them*. One study[112] examined the evidence in a case involving a "sex ring" where police had confiscated hundreds of photographs and audio-recordings of sexual acts perpetrated on four young girls. The researchers compared the girls' testimony to the recordings and photographs, which showed 218 "acts" (sex, coercion, preparatory and other acts). The children cooperated fully and willingly with the police (one of them had called the police when

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[110] See more details about this issue in Chapter VI

[111] Elizabeth J Marsh, Barbara Tversky and Michael Hutson, "How Eyewitnesses Talk about Events: Implications for Memory" (2005) 19 (5) Applied Cognitive Psychology 531

[112] Sue Bidrose and Gail S Goodman, "Testimony and evidence: A scientific case study of memory for child sexual abuse" (2000) 14 (3) Applied Cognitive Psychology 197, p. 209

she realised a much younger child was involved) and 246 allegations were made. However, of the 318 acts for which there was evidence, 124 were never alleged by the victims. Even after they were shown the photographs, they had no memories of these specific events.

4. Reminiscence

> ### EXERCISE V.g
>
> Consider the exercise you did earlier, remembering a time you were on holiday. Have you remembered any more about that holiday? Have a think about it on the way home tonight. If you went with someone, you might ask them what they remember about it. Any more details coming to mind?

Similarly, an asylum applicant might discuss events with others between interviews, or the way in which a question is asked at interview might make them think about it afterwards. Both of these very likely events will **further increase the possibility of more – or different – details coming to mind**.

5. False memories

Because memory is a construction process, bringing together the past and the present, we can easily get it wrong. A huge number of studies have demonstrated how **it is possible to get people to report completely fictitious memories** – usually introduced by the researchers. In one study,[113] people were shown marketing posters for Disney World, inviting them to "Remember the Magic". The posters included a picture of Bugs Bunny. When they were later asked about their own memories of going to Disney World as a child, 16% of them claimed to have not just seen, but shaken hands with Bugs Bunny there. Bugs Bunny is not a Disney character and was never at Disney World.

If the people in this study went home and checked their "memory" they would no doubt change it (in embarrassment) if they were asked again.

Other studies have shown **the way in which questions are asked can affect the answers given**. Asking "how tall" instead of "how short" or "how far away was it" compared to "how close was it" can get significantly different responses. A classic study showed participants a film clip of a collision of two cars, afterwards, people who were asked "About how fast were the cars going when they smashed into each other?" gave higher estimates of the speed of the two cars than people who were asked the same question using the word *collided, bumped, contacted* or *hit*. A week later, they were asked about the film, including the question "Did you see any broken glass?". Despite there being no broken glass on the film, the people who had been asked about the car "*smash*" were more likely to say "yes".[114]

There has been a great deal of controversy about "false memories" in the reporting of childhood abuse. It is also the case that traumatic memories may be "forgotten" from memory and then

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[113] Kathryn A Braun, Rhiannon Ellis and Elizabeth F Loftus "Make my memory: How advertising can change our memories of the past" (2002) 19 (1) Psychological & Marketing 1

[114] Elizabeth F Loftus and John C Palmer, "Reconstruction of auto-mobile destruction: An example of the interaction between language and memory" 13 Journal of Verbal Learning and Verbal Behaviour 585

reappear later.[115] These are **recovered** memories and may reflect entirely valid accounts of past experience.[116]

6. Suggestibility

Further to these studies of suggesting "false" details in memories, it seems that **some people are more prone than others to changing their answers according to how they are questioned** – and some situations make us more prone to changing our answers. This is very true of children all of the time, but for adults, certain things will make it more likely:

✓ Being asked the same question repeatedly (they assume they made a mistake);

✓ Being told they made a mistake;

✓ Feeling anxious or uncertain;

✓ Feeling low;

✓ Having low self-esteem;

✓ Feeling suicidal;

✓ When the questioner/interviewer is unfriendly or even just "firm";

✓ When the questioner/interviewer displays any disapproval or criticism;

✓ When there is a power difference between the interviewer and interviewee, with the interviewer being, or appearing to be in a position of authority.

EXERCISE V.h

Note how many of these are to do with the interviewer. What could you do to reduce the effect you are having on the suggestibility of your interviewee? Write a list before you continue reading.

7. Confabulation

Confabulation is the term used to describe what we do when we really want to answer a question, but honestly cannot remember the answer – so we make something up, perhaps to cover up our embarrassment. It is seen at its most extreme in brain-damaged patients, where they can no longer distinguish between something they are remembering (reconstructing) from something they are imagining. In a highly important interview such as an asylum interview, if the applicant cannot remember an answer, she/he may be motivated to make what seems to her/him a **plausible guess**. For example, one asylum claimant known to the authors had been asked many times what had happened to his Iranian passport – and it was made clear to him that this was important for his claim and he must give an answer. His claim spanned many years of interviewing and delay: on one occasion he said he had dropped it in a bin, a second time he said he had lost it in Germany, and the third time he said he had burned it. When asked by his therapist, gently, away from the legal context, what he had done with his passport (8 years earlier) he simply said "I have no idea".

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[115] See Chris Brewin, "Autobiographical memory for trauma: Update on four controversies" (2007) 15 (3) Memory 227, p. 237 and Chris Brewin, *Posttraumatic Stress Disorder: Malady or Myth?* Yale University Press, London 2003
[116] See more details about this issue in Chapter VI

8. What tends not to change

Central details of events tend to be remembered better, and so should be less likely to change over time, compared to peripheral details. Peripheral details are more prone to being forgotten – thus also possibly leading to people **confabulating** in order to provide detail (since they too believe that vivid detail means accuracy).

Remember that it is only the person who experienced the event who can say what details are central to their emotional experience of it.

> There are many reasons why memories change over time. Memory is not stable; the information encoded in memory changes over time. Newer memories often overwrite or modify older ones. Recalling a memory is an act of reconstruction. Every time someone is asked to recall an event they will reconstruct it again. Forgetting, rehearsal, suggestibility, the correction of false memories and confabulation can all lead to inconsistency in ordinary memories.

SUMMARY

V.7 The Act of Remembering/Recall

1. Expectations

QUESTIONS FOR REFLECTION…

Today, Marcel was asked three times about what he had for dinner last evening. His answers were:

✓ "Fried chicken breast with mashed potatoes and the tasty, hot tomato sauce (the one that you do so well), and also a simple green salad with some dressing"

✓ "A low-fat chicken steak with dairy-free potato garnish and a light tomato sauce, accompanied by a big bowl of fresh green salad (bio of course)"

✓ "A chicken supreme sauté (well-done), creamy potato purée, salsa arrabbiata and a spring salad with vinaigrette spéciale made of Dijon mustard, fresh basil, green pepper and aceto balsamico"

One of the answers was given to his doctor, one to a famous chef he met at a cocktail party and one to his mother. Which is which? Did Marcel lie to any of these people?

Someone asking you what you had for dinner last night might get different answers depending on whether they are your doctor, your mother or an award winning chef who you are trying to

impress. Your memory of your dinner – the images and tastes that come to mind – will probably be the same in each case, but you will **tailor your response to what you think the person asking the question wants to know**. All of the answers will be true, but each will be slightly different.

2. Facts and feelings

People never give a totally true account of every last detail of events in their lives. We always give a **story** of what happened.

EXERCISE V.i

Think about something really momentous that happened to you – such as the birth of a child, a life-changing trip, or an important loss. Think carefully, moment by moment, through what actually happened. For example: in case of the birth of a child, what happened when the waters broke? What did you do next? What about the drive to the hospital? Which route did you take? What happened on the way? Were the first lights red or green? What happened when you arrived at the hospital? Who did you meet first at the hospital? What did they say? What happened next? And so on. Note down your emotions at each stage: excited, scared, hopeful, disappointed, worried, relieved, happy…

On your first day back at work, a colleague asks you "so, how was it?" Write down what you would say to them.

Did you describe every moment and every emotion to your colleague? If not, which were the details and/or emotions that you did not share with your colleague? Why?

Note the difference between the importance of the event to you (the fact of it), the images and feelings that come to mind, and the process of deciding what to tell your colleague. These are summarised in the table below.[117]

	MEANING	EXAMPLE
Life as lived	The flow of events that touch on a person's life	The event in the context of your other relationships; the stage of life that you are at
Life as experienced	How the person perceives and ascribes meaning to what happens, drawing on previous experience and cultural ways of behaving and responding	What you noticed at the time; smells, sounds, feelings, thoughts; what went through your mind as you experienced the moment
Life as told	How the experience is framed and articulated in a particular context and to a particular audience	"Yeah, it went fine. Thanks for asking."

Some of the factors that affect how we tell the story of our experiences have been covered above (suggestibility). More, including the disclosure of very distressing experiences are covered in the next chapter.

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[117] After Edward M Bruner, "Experience and its Expressions", in Victor W Turner and Edward Bruner (eds.), *The Anthropology of Experience* (University of Illinois Press, Chicago 1986), pp. 3–30, cited by Marita Eastmond, "Stories as Lived Experience: Narratives in Forced Migration Research" (2007) 20 (2) Journal of Refugee Studies 248

3. Mood

Have you ever failed a test or exam? Can you remember a time when you felt really embarrassed, or felt like a failure? If you are in a negative mood you will probably be able to remember more instances of failure, and more quickly, than when you are in a good mood.

This is particularly strong in people who are depressed, but researchers have shown that just by inducing a bad mood in a laboratory, in otherwise perfectly happy people, they can measure this **bias for negative memories**. A review of studies[118] showed that, normally, we tend to remember slightly more positive information; in people showing some signs of depression this shifts to 50-50%. Experiments where people are deliberately put in a bad mood remembered 6% more negative information than positive, and those who were actually diagnosed with depression, remembered 10% more negative than positive information. This is called **mood-congruent recall.**

In an interview someone might describe an experience in a very negative way. The next time they are asked about the same experience, they may be in a different mood – their depression may have lifted. If they give a different version of events, it may also be due to their mood, not necessarily to inconsistencies because of making up a claim.

> Recalling a memory is about what is happening in the present. The environment, the power relations between the interviewer and interviewee, the mood of the interviewee, all will determine what is recalled and how it is described.

SUMMARY

V.8 Is It Possible to "Help" People Remember More Accurately?

As we have seen in this chapter, recalling past memories is a difficult exercise in *any* situation and it is even more so in asylum procedures. You may have been surprised or frustrated to see how likely it is that inconsistencies, omissions or other problems may come up when presenting information about past events during an asylum interview. There is **no magic recipe or trick** to help you overcome these challenges. However, **learning based on what science knows today about the functioning of human memory** can significantly improve the quality of credibility assessment and reduce subjective or unfounded credibility findings. The following table offers a short list of key areas of learning, following the KSA model introduced in the previous chapter.

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[118] Georg E Matt, Carmelo Vázquez and Keith Campbell, "Mood-Congruent Recall of Affectively Toned Stimuli: A Meta-Analytic Review" (1992) 12 (2) Clinical Psychology Review 227

		HOW CAN YOU DEAL WITH THE APPLICANT'S POTENTIAL LACK OF ACCURATE AND CONSISTENT MEMORY OF PAST MATERIAL EVENTS?
LEARNING	**KNOWLEDGE**	- <u>Learn</u> and <u>understand</u> the way how human memory works, including its limits. Re-read and test yourself on this chapter, and <u>remember</u> the Ebbinghaus forgetting curve: you will need to re-read the chapter to remember it well… - <u>Learn</u> and <u>understand</u> the meaning of the concepts and terms you read about in this chapter, such as explicit, implicit, episodic, semantic, emotional and procedural memory, forward telescoping effect, schematic memories, mood congruent recall, etc. <u>Understand</u> how these concepts relate to your work; - Be <u>aware</u> of the continuously growing and developing body of research on this issue; - Other examples?…

	SKILLS	- <u>Improve</u> your questioning skills, based on the above knowledge, for example:
		
		   • Ask what, not when;
		
		   • Link times and dates not to the calendar, but to events personally or socially significant to the asylum-seeker;
		
		   • Ask about the functions of everyday objects, not sensory (visual) information about these;
		
		   • Expect asylum-seekers to consistently remember the details of only those events which are the most important to them, not unimportant (to them) peripheral details; etc.
		
		 - Be <u>aware</u> of suggestibility in questioning and <u>learn</u> how to reduce this impact when formulating your questions;
		
		 - Be <u>aware</u> that having similar experiences more than once can lead to schematic memories and <u>learn</u> how to reduce this impact when formulating your questions;
		
		 - Other examples?…

	ATTITUDE	- <u>Accept</u> and <u>understand</u> the limits of human memory and its impact on the assessment of credibility in the asylum procedure; <u>accept</u> that memory is not like video recording and that inconsistencies and changes are *natural* characteristic of recalling past events; - <u>Learn</u> not to be discouraged by these limitations and <u>develop</u> an open mind that accepts that credibility assessment should (and can effectively) be conducted within the boundaries set by the limitations of human memory; - <u>Test</u> and become <u>aware</u> of the limitations of your own memory, it will help you internalise what you learned from this chapter; - <u>Consider</u> how you and your colleagues can keep aware of the latest science about memory; - Other examples?…

VI. POSTTRAUMATIC STRESS DISORDER AND CREDIBILITY – THE PROBLEMS OF THE TRAUMATIC MEMORY

> **SETTING THE SCENE**
>
> In the previous chapter we have introduced the main characteristics and limitations of human memory, and we have also seen how these elements can affect credibility assessment. In the field of asylum, however, recalling difficulties go far beyond the general challenges of remembering past events. Many asylum-seekers go through seriously **traumatising experiences** (torture, ill-treatment, sexual violence, uprootedness, etc.) before reaching the host country. These experiences often create **further obstacles and difficulties for memory and recalling**, which are particularly relevant in the process of credibility assessment.
>
> This chapter will help to understand:
>
> ✓ What **stress**, **trauma** and **posttraumatic stress disorder (PTSD)** are;
> ✓ How they **affect the process of recalling** past events and thus credibility assessment; and
> ✓ How these **specific challenges can be addressed** in asylum procedures.

VI.1 Understanding Trauma and Its Consequences

Before exploring the specific challenges of the traumatic memory, we need to clarify some general concepts and ideas in order to understand an asylum-seeker who is suffering from the consequences of trauma.

1. Stress and distress

> **QUESTIONS FOR REFLECTION…**
>
> Which of these situations would you find stressful? Why?
> ✓ Examination at high school
> ✓ The birth of your child
> ✓ Loss of a relative
> ✓ Leaving your native country
> ✓ Wedding
> ✓ Writing a report on your work
> ✓ Cooking a dinner for eight persons
> ✓ Humiliation in front of your colleagues

You can see that stress may arise from very different situations, and even pleasant events may cause serious stress.

According to its medical definition stress is defined as an organism's **total response to a certain condition or stimulus**, also known as a **stressor**. Stress regularly describes a negative condition that can have an impact on an organism's mental and physical well-being.

Anything that might mean a challenge or a threat to our well-being causes stress. According to János Selye, it might evoke two answers: **"fight or flight"**, meaning that one either has to defeat the stressor, or escape from it.

Not really the stress itself is important for us, but its impact on our psychological system: thoughts and emotions, the interpretation of the stressful event. In this sense, there is a difference between **"good stress" (eustress)** and **"bad stress" (stress)**. Eustress means a stimulating factor (if I am stressed, I perform better at the university exam), while bad stress might paralise us (if I am stressed, I fail the university exam, as I cannot recall what I have learnt).

The impact of stress is called **distress** (physical or mental pain).

QUESTIONS FOR REFLECTION…

Is it a psychological trauma if a person has been abandoned by her/his partner whom she/he believed to love her/him?

What sort of problems might arise in the person's somatic and/or mental state?

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2. Trauma and posttraumatic stress disorder

STRESSOR	STRESS	DISTRESS
A certain condition or stimulus from inside or outside	"Fight or flight" Good or bad	Somatic or mental pain
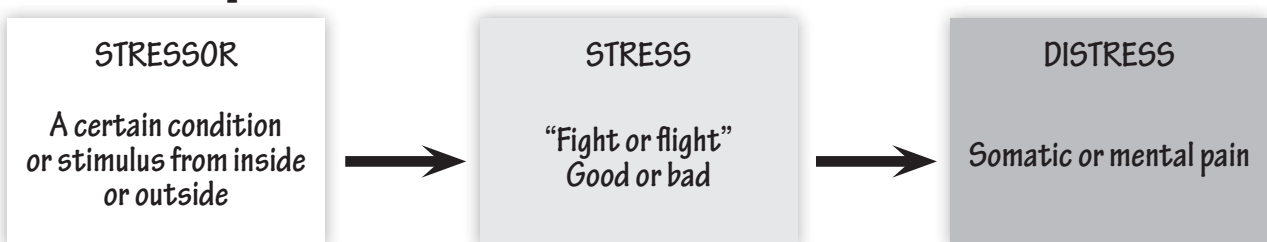
The expression **trauma** comes from the Greek word τραῦμα, meaning wound or injury. **According to the American Psychological Association (APA):**

> *Trauma is an emotional response to a terrible event like an accident, rape or natural disaster. Immediately after the event, shock and denial are typical. Longer term reactions include unpredictable emotions, flashbacks, strained relationships and even physical symptoms like headaches or nausea. While these feelings are normal, some people have difficulty moving on with their lives. Psychologists can help these individuals find constructive ways of managing their emotions.[119]*

One of the main characteristics of trauma is its **incompatibility with our ordinary picture about reality**; we cannot match it to our general experiences about the world. Traumatised persons percieve daily experiences in a special way, the experience of trauma and its consequences might distort their picture about the ordinary elements of life.

EXERCISE VI.a

Asylum-seekers may go through a number of traumatic experiences by the time they get to an asylum interview or a final decision. Before you continue reading, imagine the different steps of a "flight story" from the persecutory acts in the country of origin to a decision on the asylum claim, and write down potential traumatising experiences that may occur at each phase of the story.

A large part of asylum-seekers go through some sort of traumatic experiences by the time they get to an asylum interview. It is important to note that:

✓ Traumatic experiences may **not only arise in the country of origin**;

✓ **Not only experiences directly linked with the legal substance of the asylum claim** (well-founded fear of persecution) may be traumatic; and that

✓ **Not only torture** or other particularly serious forms of deliberate abuse can cause trauma.

The following table shows the main potential sources of trauma:

---

[119] APA, Trauma, available at http://www.apa.org/topics/trauma/

PRE-FLIGHT TRAUMATIC EXPERIENCES	TRAUMATIC EXPERIENCES EN ROUTE	POST-FLIGHT TRAUMATIC EXPERIENCES
• Persecutory acts (torture, inhuman or degrading treatment, slavery, servitude, genocide, rape, humiliation, killing of relatives or friends, deprivation, severe discrimination, etc.); • Consequences of war or generalised violence (loss of relatives and friends, loss of properties and habitat, exposure to fear, famine, etc.); • Serious health problems, unattended medical needs; • Consequences of natural or man-made disasters, etc.	• Consequences of human trafficking or smuggling (food, water, air or hygiene deprivation, sexual or gender-based violence, loss of relatives and friends, suffering and anxiety, etc.); • Serious health problems, unattended medical needs; • Uprootedness (loss of well-known environment and points of orientation, cultural shock, etc.).	• Consequences of human trafficking (sexual or gender-based violence, exploitation, slavery, servitude, loss of relatives and friends, etc.); • Ill-treatment, sexual or gender-based violence at reception facilities; • Serious health problems, unattended medical needs; • Arrest, detention, etc.; • Racist and xenophobic attacks or insults; • Uprootedness (loss of well-know environment and points of orientation, cultural shock, etc.); • Life in limbo and feeling of powerlessness.

Trauma, and its consequence, posttraumatic stress disorder have a crucial distorting impact on credibility assessment. But first of all:

What is posttraumatic stress disorder (PTSD)?
This syndrome was first described as "Survival Syndrome" by Paul Chodoff in 1969. Other previous names used for describing PTSD were the following:

The diagnostic criteria for PTSD can be summarised as follows:

✓ **Fear** – Exposure to a traumatic event and subjective emotional response of fear, helplessness or horror;

✓ **Reexperience** – Persistent reexperiencing of the traumatic event (for example in the form of nightmares[120] or flashbacks);

---

[120] Note that nightmares are not the exact copies or "photos" of the traumatic experiences. They are rather the results of a so-called "dream-work" or the distortion of the traumatic experience by certain unconscious mechanisms.

- ✓ **Avoidance** – Persistent avoidance of stimuli that remind to the traumatic experience and emotional numbing;
- ✓ **Arousal** – Persistent symptoms of increased arousal (or hyperarousal);
- ✓ **Distress** – Significant distress or impairment, suffering;
- ✓ **Duration** of at least 1 month.

You may have noticed some unknown terms in the above list of criteria, here is some explanation to help understand them:

PTSD GLOSSARY	
FLASHBACK	A sudden, involuntary, usually powerful, re-experiencing of a past experience or elements of a past experience. In case of PTSD, this means the sudden "re-living" of some of the traumatic experience (e.g. torture), often without any specific stimulus, and the person often not being able to fully realise what is reality and what is only the popping up of a past memory.
NUMBING	Difficulty in experiencing positive emotions (such as happiness, attraction, love or trust). Usually includes a loss of interest in previously interesting activities, a feeling of distance from other people and non-responsiveness.
AROUSAL	A physiological and psychological state of being awake and readiness to respond stimuli. It involves increased heart rate and blood pressure, mobility, sensory alertness, etc. Just imagine a cat when it sees a mouse…
HYPERAROUSAL	A constant state of increased psychological and physiological tension, which usually leads to reduced pain tolerance, anxiety, exaggerated responses to stimuli, insomnia and fatigue.
IMPAIRMENT	Incapacity, inability. In case of PTSD, this means a personality change resulting in a poorly functioning person in the psychological and social meaning.

The symptoms of PTSD can be divided into **intrusion** and **protection.**

1. Intrusion includes re-experiencing (flashbacks, nightmares) and hyperarousal (fear due to things that trigger memories of the trauma);
2. Protection includes avoidance of anything trauma-related and numbing.

These seemingly opposite symptoms can actually appear together: it may happen that a traumatised person feels extremely frightened and agitated, and at the same time emotionally numb.

3. Complex PTSD or DESNOS
Research has shown that 15-40% of patients suffering of PTSD are **survivors of torture**, extreme forms of inhuman or degrading treatment, or some extreme trauma. In such cases, especially if the traumatic experience is **prolonged and/or repeated**, a particularly severe form of PTSD may develop. Judith Herman suggested that long-term trauma might result a special form of PTSD: **Complex PTSD or DESNOS** (Disorder to Extreme Stress Not Otherwise Specified). Situations that may often lead to this syndrome are for example concentration camps; long-term torture or sexual abuse; long-term child abuse or slavery-like situations.

Its characteristics are:

SYMPTOMS	EXAMPLES
ALTERATIONS IN THE REGULATION OF EFFECTIVE IMPULSES, including anger and self-destructiveness	The victim "misbehaves" (e.g. shouts, behaves aggressively, etc.) without any specific reason
	The victim tries to destroy her/himself, by drug abuse, or cutting her/his own skin
ALTERATIONS IN ATTENTION AND CONSCIOUSNESS, leading to amnesia, dissociative episodes, and depersonalisation	The victim cannot recall the torture at all
	The victim is watching her/himself from another part of the torture chamber, she/he is not present in that body being tortured, she/he is not in her/his body (dissociation)[121]
ALTERATIONS IN SELF-PERCEPTION, such as chronic sense of guilt, responsibility, and/or shame	Torture survivors do not have a proper perception of their own body. For example, if they make a drawing about themselves they draw oversized hands or legs.
	Survivors of rape feel permanent guilt (instead of "blaming" the perpetrator)
ALTERATION IN SOCIAL CONTACTS, such as not being able to trust other people or to feel intimate with them	The victim may either abuse the helper (the psychologist, social worker, etc.) or refuse any positive attitude into their direction
SOMATISATION without any organic background	The victim complains all the time about different pains (one day she/he has headache, the next day stomach ache, then muscle pain, etc.), and none of these "pains" have any actual, physiological reason
COGNITIVE PROBLEMS, including difficulties with processing information, thinking and memory	The victim does not understand, or misunderstands basic issues of communication or simple questions, and she/he cannot present her/his thoughts in a coherent manner

EXERCISE VI.b

True or false? Write down your responses before you continue reading.

a. PTSD usually becomes evident right in the beginning of the asylum interview. If the applicant does not show any symptoms in the first few minutes; can easily communicate and seems to be in an excellent psychosomatic state, it is very unlikely that she/he would be seriously traumatised.

b. If the asylum-seeker starts sweating heavily during the interview, it is a clear sign of PTSD.

c. An asylum-seeker talks during the interview about how her children were killed in front of her eyes. However, she does not show any sign of emotion while talking about these traumatic experiences. I think she is lying.

---

[121] Dissociation may take particularly special forms. A torture victim treated by the Cordelia Foundation in Hungary, suffering from posttraumatic stress disorder was robbed in the street and her identity documents, cards, papers etc. were taken away. Later she explained to her therapist that she "dissociated" at the moment when she realised that "she had lost her identity". For several days she had sleep disorders with recurring nightmares where she experienced that she had "no body" and nobody could recognise her, not even her family members.

The above exercise highlights some key conclusions relating to the role and impact of PTSD in credibility assessment:

✓ **Trauma and PTSD have a crucial impact on the victim's ability to recall and present past events**, especially those related to traumatic experiences. Not showing any emotion while talking about extremely traumatic experiences – which may often be perceived as a sign of lack of credibility – can be a completely normal form of behaviour of a traumatised person. The next sub-chapter will explain in more detail the impact of PTSD on credibility assessment and will provide information to help overcome these distortion factors.

✓ **Not every trauma survivor develops and shows the symptoms of posttraumatic stress disorder**. Some victims might cope with the trauma by being resilient; they might even get over the trauma with increased psychological capacities ("what doesn't kill us makes us stronger").

✓ PTSD has very **diverging symptoms**, its characteristics and forms of appearance are highly personal. It is impossible to tell whether a person is traumatised at first sight or after a superficial examination. It can happen that a seriously traumatised applicant appears completely healthy and in good shape in the beginning of the asylum interview and the symptoms only become apparent once the traumatic experience is evoked. PTSD can also appear **months, or even several years after the traumatic experience**. Therefore establishing whether or not a person has PTSD or DESNOS – a fact with important impact on credibility assessment and the outcome of the asylum procedure – **requires specific professional knowledge, experience and qualification**. Sub-section VI.3 will briefly explain the main requirements and methods in this respect.

4. Is it contagious?

Before moving on to the impact of PTSD on credibility assessment, it is important to take a quick detour, in order to understand the impact of working with traumatised persons (for asylum decision-makers and others).

EXERCISE VI.c

Do you think a person can be affected by the trauma suffered by her/his grandparents 50 years before? If yes, in what ways?

Can an asylum officer be affected by the trauma suffered by the asylum-seekers she/he works with? If yes, in what ways?

If your response is yes to any of these questions, write down your concrete ideas on a paper.

According to Judith Herman, trauma affects not only the survivor and her/his family members – what we can call a **horizontal danger** – but it leads to a transgenerational trauma (a **vertical danger**). The latter means that the victim's children or even grandchildren will be affected by the trauma and may even show some symptoms of PTSD. The "transmission" of the trauma can happen through various ways:

✓ Taboos ("My grandparents never talked about what happened to them in Auschwitz, even when we asked… but the pain and suffering was always present in their life, even decades later. A horrible silence was suffocating the family whenever this topic came up. I still cannot watch any movie about the Second World War without crying.");

- ✓ Verbal transmission ("The Gulag was present during my entire childhood. Whenever I did something wrong, my father started talking about his suffering in the Gulag and how disrespectful I was for not appreciating my happy and peaceful life… Not a single day passed without this topic coming up in some context, I even started having nightmares about the Gulag when I was 10.");
- ✓ Alterations in behaviour (e.g. the victim's aggressive, abusive, or otherwise altered behaviour affect her/his interpersonal relations, which then has a serious impact on her/his children); etc.

The danger of the transmission of the traumas is possible without proper interventions and prevention mechanisms.

But how does trauma affect those who work with asylum-seekers? Working with asylum-seekers involves continuous exposure to **traumatic stories**. The contagious factor in this case is the human relationship itself, which means **empathy**. Through the thread of empathy the trauma intrudes the caregiver's, officer's, etc. personality. This is called **vicarious traumatisation**. To put it simply, this means that the person affected lives and survives the trauma to some extent "instead of the victim". This results in **PTSD symptoms appearing in her/him in a milder way**. The more empathic a person is, the more she/he is exposed to the risk of vicarious traumatisation. Facing cruel, inhuman and degrading human relationships might break the image of humanity and increase the woundedness of the person working with asylum-seekers. Furthermore, it might even evoke her/his own traumatic experiences, as well.

Vicarious traumatisation is a key factor in **professional burnout**, which may have serious impacts on credibility assessment. Methods aiming at preventing vicarious traumatisation are similar to those tackling burnout in general.[122]

Stress is a response to a certain condition or stimulus ("stressor"), from outside or inside. It can evoke two answers: "flight or fight". Stress affects behaviour, performance and well-being.

Psychological trauma is a damage stemming from a severely distressing event (such as torture, inhuman or degrading treatment, natural disaster, uprootedness, sexual assault, etc.). Many asylum-seekers suffer traumatic experiences in the country of origin, during flight and/or in the host country.

Traumatic experiences may cause posttraumatic stress disorder (PTSD). PTSD changes the person's response to future stress. The most important characteristics of PTSD are: re-experiencing, avoidance, negative cognitions and mood, and arousal.

Extreme trauma results in Complex PTSD or DESNOS, which causes serious alterations in the behaviour, mental and physicological state of the victim.

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[122] Read more about burnout in Chapter VIII

VI.2 How Do Trauma and PTSD Affect Memory and Credibility Assessment?

EXERCISE VI.d

Do you remember the symptoms of PTSD? Here is a list of some typical symptoms, write down on a piece of paper how you think they affect a traumatised asylum-seeker's ability to recall memories and present information that are crucial for credibility assessment:

✓ Nightmares, sleeplessness: …

✓ Emotional numbing: …

✓ Constantly increased arousal: …

✓ Avoidance of retraumatising stimuli: …

✓ Dissociation: …

✓ Decreased capacity to control emotions and anger: …

Keep the paper until you reach the end of this chapter.

1. Trauma and memory – general concepts

EXERCISE VI.e

Before we continue, we have to recall some notions and concepts learned in the previous chapter, as they will be referred to in the following part. Write down the definition of the following terms, before you continue reading:

✓ Explicit and implicit memory;

✓ Episodic and semantic memory;

✓ Emotional and procedural memory.

As we saw in the previous chapter, the memory system can be devided into two important parts: the declarative or explicit and the non-declarative or implicit memory. We have already explored these concepts in the previous chapter.

In general, there are two important types of **memory disturbances**: anterograd and retrograd amnesia.

1) **Anterograde amnesia** refers to loss of memory for events after an incident, which makes the person unable to store new information in her/his short-term memory. Patients with **anterograde amnesia** quite often show normal memory for events *before* the incident responsible for the memory deficit, but have severely reduced ability to recall information about events occurring *after* the incident. Anterograde amnesia is the inability to transfer new information from short-term into long-term memory.

2) Retrograde amnesia is the memory disturbance effecting facts, experiences *before* the traumatic incident (the person "forgets" what happened before the traumatic event, but may be able to properly recall later experiences).

These two types are not mutually exclusive and **can occur together**. **Trauma *may* lead to partial or full amnesia**.

2. Some victims remember, others don't?

> ### EXERCISE VI.f
>
> Hamid and Mahmud are asylum-seekers. Both of them claim to have gone through traumatic experiences (torture) in their country of origin. Hamid cannot stop thinking and talking about what he has gone through, he even repeats several times during his asylum interviews how everything happened. Mahmud has outward signs of torture on his body, but he seems to be unable to recall what happened to him while he was detained in the country of origin. He presents a story that is very poor in details and seems to be fake, or at least illogical in many aspects. Is Hamid or Mahmud more likely to actually have gone through traumatic experiences?

Notwithstanding what has just been explained in the previous section, **trauma does not necessarily cause amnesia** (actually it does not do so in the majority of cases). Trauma can have very diverging impact on victims' capacity to remember the traumatic experiences. Some persons suffering from PTSD show extremes of recalling traumatic circumstances: either continuous, intrusive memories of the event – called **hypermnesia** – or avoidance of thoughts and feelings about the event (amnesia). Some victims are constantly "haunted" by memories of traumatic experiences and this fragmentises their daily life (remember what was previously written about nightmares and flashbacks). In other cases, avoiding behaviour might result – in extreme situations – in **dissociative amnesia** or "white spots" in the process of evoking their painful memories, the consequence of which is that they can only present some fragments of them. Dissociation belongs to the **defence mechanisms** of the Ego protecting it from the original anxiety and pain of the traumatic experience and the evocation (remembering) of its memory. It **fragments the victim's memories**, by perpetuating the pain and protecting the victim from it at the same time. We can therefore conclude that both Hamid's and Mahmud's reactions *can* indicate past trauma: some victims can hardly recall the traumatic experiences, while others cannot stop recalling them all the time.

But what determines that a certain victim reacts in one or another way? There are certain factors determining if a traumatic experience is remembered or dissociated:[123]

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[123] Based on and for more details consult: Public service brochure developed by the Sidran Institute in conjunction with The Sheppard and Enoch Pratt Health System (Sidran Institute, 1994)

NATURE AND FREQUENCY OF THE TRAUMATIC EVENT	Single-event traumas are more likely to be remembered
	Repetitive, prolonged traumas often result in memory disturbances
CAUSE OF TRAUMATIC EVENT	Natural or accidental disasters (earthquakes, plane crashes, etc.) are more likely to be remembered
	Man-made traumatic events (torture, rape, etc.) are more likely to cause memory disturbances
AGE OF THE VICTIM	The more mature the victim is, the more able to recall the traumatic experiences
	The younger the age the person suffered the traumatic experiences at, the less likely she/he will be able to remember
SOCIAL REACTION AND EXPECTATIONS	Victims who are able to tell several times about the traumatic experiences, who receive sympathy, social and family support are more likely to be able to remember
	Victims who cannot share their experiences with family and friends, who cannot count on the support of society due to social taboos are more likely to dissociate and suppress memories[124]

3. Implicit memory and "body memory"

Traumatic memories are encoded in the brain in a very specific manner. **Trauma is stored in the so-called limbic system**, which processes emotions and sensations (but not language or speech). This means that traumatised persons **may well keep implicit memories** of the traumatic experiences (e.g. the fear or terror they felt while being tortured or detained), but they **may not be able to explicitly explain those feelings**.

> "I was there, in the torture chamber and I didn't feel anything. My only idea was: to say nothing and to survive. I thought I was lucky that I had no family and I had no responsibility. I felt the horrible pain of electric shocks in my ears and the intimate parts of my body, but nothing else. The only thought on my mind was that I have to survive."

Furthermore, the representations of the traumatic event persist in symptoms such as **"body memories"**. This means that the victim's body remembers the trauma and reacts later the same way (e.g. with pain) in the traumatised organ to the memory of the trauma, as it reacted to the actual trauma itself.[125] We do not know the detailed process of how trauma is encoded in the body but we know for example if a person was tortured with loud music, she/he will have ear problems whenever she/he hears *any* music in the future. A simple example from everyday life to describe this phenomenon is when persons who broke an arm or leg complain about recurrent pain every winter, as the body "remembers" the trauma and reacts to the challenges of the cold weather.

The body can be affected by trauma in other ways, too. Some traumatised persons have constant pain in varying parts of their body (first pain in the stomach, then headache, then cough, etc.), without any organic reason. Bessel van der Kolk asserted that **unconscious memories of**

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[124] Incest, child abuse and sexual abuse are typical examples for this phenomenon. These emotionally traumatic events are usually considered social taboos therefore the victim is strongly motivated to supress them. The dissociative amnesia helps the victim cope by allowing her/him to temporarily forget the traumatic event, until she/he is ready to handle them (which may never occur).

[125] Bob Uttl, Nobuo Ohta and Amy Siegenthaler (eds), *Memory and Emotions: Interdisciplinary Perspectives,* 1st edition, Wiley-Blackwell, 2006, pp. 259-291

trauma are expressed as somatic symptoms.[126] With his words: "the body keeps the score". This phenomenon is called **somatisation**.

4. How do the symptoms of PTSD limit the capacity to remember?

We have seen that trauma may lead to partial or full amnesia. At the same time, the impact of PTSD on the ability to recall past events is much more complex than this. PTSD does not necessarily lead to the complete loss of memories or the ability to remember. In many cases, it "just" **limits the victim's capacity to remember and properly present past memories** (especially the traumatic ones) and/or it **distorts the information recalled**. Recalling traumatic events usually plays a key role in credibility assessment (and the asylum procedure in general), as these memories tend to refer to acts of persecution. In this respect, it is indispensable to know and to be constantly aware of the distortion factors caused by PTSD; otherwise erroneous credibility findings (and decisions on international protection) cannot be excluded.

Before becoming familiar with the concrete distortion factors of PTSD, it is important to emphasise that **asylum interviews** – and evoking traumatic memories there – may have a **retraumatising effect** on most victims. Trauma survivors often try to avoid evoking their trauma: "if we do not speak about something it doesn't hurt". This psychological defence mechanism – aiming at protecting the soul from being traumatised again – is seriously challenged by the asylum procedure, which involves an obligation to repeatedly recall the traumatic experiences. However, some victims react in another way. For them, the traumatic experiences are less and less retraumatising if they narrate and permanently evoke these episodes of their life. Some of them are able to do so as they do not feel shame and humiliation tied to the experience or they have already overcome them. After all, it is always important to keep in mind the potential retraumatising impact of asylum interviews.

Now let's go through the most important symptoms of PTSD and see how they may impact the memory again. Compare the following table with the list you prepared in Exercise VI.d.

TYPICAL PTSD SYMPTOMS	IMPACT ON THE ABILITY TO RECALL PAST (TRAUMATIC) EXPERIENCES AND DISTORTION FACTORS
Damaged self-integrity	Trauma victims whose self-integrity has been fragmented cannot give adequate anwers to the question: what happened to you? One part of her/his fragmented self experienced a certain part of the trauma, the other part the other one. Due to this process, they might give contradictory information at the same interview, not being able to present the traumatic experience in its continuity.
Helplessness	Traumatic experiences usually involve helplessness ("I couldn't resist, I couldn't do anything, just searching the way how to get out of the situation, how to escape, etc."). People feel very uncomfortable with this feeling (and especially with revealing it to others); therefore they may unconsciously try to hide it even from themselves. Traumatised asylum-seekers may easily become unable to talk (let alone talk coherently) about experiences involving helplessness.

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[126] Bessel van der Kolk, "The Body Keeps the Score: Memory and the Evolving Psychobiology of Post Traumatic Stress" (1994) 1 (5) Harvard Review of Psychiatry 253

REEXPERIENCING	Victims often reexperience traumatic events in the form of nightmares or intrusive memories. These intrusive memories have an overwhelming nature: they invade the consious of the person; they "overwrite" the present and the past in a specific manner. This may have two sorts of distorting impact on credibility assessment. First, the victim may not be able to concentrate and talk coherently during the asylum interview, as intrusive memories (e.g. in the form of flash-backs) interrupt and deconcentrate her/him. Second, intrusive memories often "overwrite" the real experience as it happened.
AVOIDANCE	Avoidance often proves to be the only tool to mobilise against being retratumatised and the only possibility to survive. Victims may even "keep a distance" from their own body and mind, they may leave behind memories and the past in order to forget, and to carry on their life without the trauma that has changed their life so dramatically. This vital, unconscious survival strategy, on the other hand, will prevent the victim from remembering and being able to present the traumatic events properly.
INCREASED AROUSAL	In order to survive, victims mobilise their energies and do their best to carry on. They can only do so if they are permanently alerted, alarmed in order to identify any source of danger. Traumatised persons often perceive the whole world as dangerous, where they cannot trust anyone. This is one of the main roots of the agressive behaviour of several trauma victims. Such "alerted" persons are not able to recall their memories correctly as they cannot focus their attention on the memory itself, let alone presenting it coherently during an asylum interview. Even if pictures can be evoked, the person tries to run away from it or remember only some details of it in order to get rid of the painful memory as soon as possible.
SLEEPING DISORDERS, SLEEPLESSNESS	PTSD often involves grave sleeping disorders, due to constant nightmares and lack of sleep. Thus many victims are unable to concentrate during asylum interviews, they are unable to collect and present in a coherent manner their thoughts. Long-term sleeplessness may also lead to aggressive, non-cooperative behaviour (just think about how you would feel if you had not slept in several weeks…).
EMOTIONAL NUMBING	Trauma victims often feel alienated from the entire world, where they are not able to trust or love anyone. A traumatised asylum-seeker may not be able to present her/his story with sufficient detail and "colour", as – due to numbing – her/his entire style of communication with the outside world is altered. A trauma victim talking about the traumatising experience with short, colourless sentences, with little detail and in a silent, monotoneous manner can just be perfectly credible.

The list of distorting impacts could be continued for long.

PTSD causes serious memory disturbances. It can lead to partial or full amnesia, but at the same time it can also cause hypermnesia. A number of factors play a role in influencing whether a certain victim reacts to trauma with one or the other.

Even when there is no dissociative amnesia, the symptoms of PTSD seriously limit the victim's capacity to recall and present traumatic memories. These impacts can be summarised as follows:

Asylum-seekers suffering from PTSD often cannot…		
	RECALL	details of traumatic memories, or not even the entire traumatic memory itself
	FOCUS	their attention on the traumatic memories or the asylum interview
	TALK	about traumatic memories freely and in a coherent manner
	TRUST	the outside world (including the actors of the asylum procedure) and the future
	CONTROL	their emotions, aggressiveness and behaviour

Consequently, asylum-seekers suffering from PTSD often cannot be expected to present a coherent, detailed account of their traumatising experiences. Such cases require special treatment and methods with regard to credibility assessment.

VI.3 What Does PTSD Mean for Credibility Assessment?

In case of asylum-seekers, traumatic experiences are often **due to persecutory acts**. Therefore, recalling and describing these events usually play a crucial role in credibility assessment and the evaluation of international protection needs. It is evident that if the victim is unable to remember due to amnesia, this fact will constitute a major obstacle to the application of any credibility indicator. Such cases will **have to be put on a specific "track"**, where the involvement of proper medical and psychological expertise in an early phase of the process will be of key importance. This also means that **it is indispensable to properly identify at an early stage of the asylum procedure whether a certain asylum-seeker is suffering from PTSD**, and what the concrete symptoms are. It is also important to explore whether PTSD is accompanied by other psychological disorders, such as depression or suicidal thoughts. Practices related to the identification and treatment of traumatised asylum-seekers may vary to some extent from country to country; however four important rules should be generally observed:

1	APPROPRIATE TIMING	PTSD should be identified and reported <u>as soon as possible</u>. However, as it may also arise during the asylum procedure (e.g. due to evoking traumatic memories), the different actors of the process should be <u>constantly aware</u> of this possibility, and whenever there are signs indicating the potential presence of PTSD, the processing of the claim may need to be suspended until proper evidence can be obtained regarding this fact.
2	SPECIFIC EXPERTISE	Establishing PTSD, describing its symptoms and exploring its origin are complex tasks that require a set of skills and significant practical experience. Only <u>independent, specifically trained experts (psychologists, psychiatrists)</u> are entitled to provide expert evidence on PTSD, and not general medical practitioners without specific training, for example.
3	HORIZONTAL VIEW	Due to the complexity of PTSD and the effect an asylum procedure may have on dissociated traumatic memories (see earlier), it is important that the expert can have a "horizontal view" of the victim's physiological and psychological state. This may require <u>more sessions with and/or examinations of the victim</u>. While a "vertical view" (a one-off examination) may be sufficient to explore outward signs, it will be more difficult to enable a proper assessment of psychological symptoms and their <u>evolution</u> over time. This has an impact on credibility assessment as well: a medical or psychological expert's opinion often constitutes important evidence in such cases. An expert's opinion based on a horizontal view (repeated encounters/continuous treatment) will in most cases provide more valuable information for credibility assessment, and thus such opinions may – as a general rule – be preferred.
4	PROPER FORMAT	Psychological and/or medical expert opinions should be <u>detailed</u> (not only stating the presence of PTSD, but also elaborating on its gravity, symptoms and potential reasons). These documents should clearly state the <u>specific expertise and affiliation</u> of the author, as well as the <u>examination methods</u> applied. Such expert opinions should refrain from formulating legal positions (e.g. on the victims international protection needs). These requirements need to be fulfilled in order that the decision-maker can consider the expert opinion as one based on sound professional knowledge and methodology, representing important evidence in the credibility assessment process.

In case of **torture victims**, there are further considerations:

✓ In these cases, the expert has to have specific **medical** (and not only psychological) training and expertise;

✓ The so-called **Istanbul Protocol** should be applied as the methodological framework for the documentation of torture and its consequences.

But what is the Istanbul Protocol? It is a **unique methodological guidance** that was elaborated and published in 1999 in Istanbul, Turkey, by several legal, medical and psychological experts. Its aim is to provide a universally applicable framework for the preparation of **forensic evidence** that describes and testifies the consequences of torture. It is well-known by the medical-psychological staff of the torture rehabilitation centres world-wide and it is acknowledged by several courts in various jurisdictions. It is crucial that when assessing the credibility of asylum claims submitted by torture victims, the relevant medical expert's opinion be based on the Istanbul Protocol. Requiring the application of this methodological guidance ensures a higher level of professionality based on international standards, as well as it may offer a wealth of detail that can well "feed into" the credibility assessment process (e.g. outward signs and other consequences of torture are properly documented). Medical opinions not applying the Istanbul Protocol when documenting the consequences of torture may be increasingly considered as less professional and of less probative value or relevance for the credibility assessment process.

QUESTIONS FOR REFLECTION…

It is commonly believed that torture always leaves scars. But as science develops, as well as the documentation of the consequences of torture becomes more effective, torture methods are also "updated". Nowadays' torture methods leave physical scars on the body less frequently then before, which increases the importance of properly documenting "psychological scars". Can you think of any torture method that does not leave bodily scars?

VI.4 How Can These Scpecific Challenges Be Addressed in the Asylum Procedure?

As we have seen in this chapter, the presence of traumatising experiences and PTSD makes credibility assessment a particularly complex challenge, which requires the due consideration of highly specific symptoms and recalling difficulties. Dealing with such cases can also constitute an extraordinary challenge for all the asylum professionals involved. Identifying and documenting PTSD is indispensable but is not sufficient in itself in order to tackle the specific challenges of credibility assessment in these specific cases. Again, there is **no magic recipe or trick** to address these challenges. The following non-exhaustive list will provide, however, some advice that can help you address the challenges caused by the distortion factor of PTSD in credibility assessment:

✓ **Sufficiency of details should be applied as a credibility indicator extremely carefully** in such cases, and there may often be reasonable explanations for the lack of details. As we have extensively seen in this chapter, PTSD very often prevents a person

from being able to recall and coherently present details of traumatic memories. Instead of requiring specific (e.g. sensory) details, concentrate on the specific impact of traumatic experiences on the victim's life and psyche (remember that trauma usually indicates a rupture in a person's course of life).

✓ **Involve specific expertise**: An expert psychiatrist/psychologist (e.g. the one conducting the treatment of the victim) can continuously support the credibility assessment process (even beyond identifying and proving the presence of PTSD). The expert's opinion may serve as an important source of additional information concerning the material facts of the applicant's case. Consistency between the applicant's statements (e.g. "I was tortured with a burning cigarette") and the content of the expert's opinion (e.g. "there are several scars on the victim's skin which can be caused by burning") will contribute to the credibility of material facts presented by the applicant.[127]

✓ **Consider the person-specific symptoms of PTSD in credibility assessment**: As we have seen, symptoms of PTSD may differ from one case to another. At the same time, numbing, dissociation, amnesia, hypermnesia, etc. all influence credibility assessment in a different way. Do not conclude to credibility findings without knowing exactly which symptoms are characteristic in the given case.

✓ **Apply different interviewing techniques**: Try to avoid intrusive, direct questions referring to the trauma, be aware of the risk of re-traumatisation.

✓ **Give enough time**: Many traumatised persons may not be fit for asylum interviews upon arrival in the host country. In such cases, some time of rest (until which proper medical and psychological treatment can start) can significantly enhance the victim's ability to actively participate in the asylum process, which is a key condition of the establishment of facts and for the credibility assessment.

In addition, the following tips for learning can contribute to a more effective, objective and fair credibility assessment procedure.

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[127] See Chapter II, sub-section II.5.

		HOW TO HELP TRAUMATISED ASYLUM-SEEKERS REMEMBER AND PRESENT INFORMATION ABOUT PAST EXPERIENCES MORE ACCURATELY?
LEARNING	**KNOWLEDGE**	- <u>Learn</u> and <u>understand</u> what trauma, PTSD and DESNOS are, including their symptoms, diagnostic criteria, reasons and consequences; - <u>Learn</u> and <u>understand</u> the way how traumatic memory works, including its limits and specific characteristics as compared to the functioning of memory in general; - <u>Learn</u> and <u>understand</u> the meaning of (most probably) new concepts and terms you read about in this chapter, such as flashback, numbing, hyperarousal, vicarious trauma, anterograde, retrograde and dissociative amnesia, etc. <u>Understand</u> how these concepts related to your work; - Become <u>familiar</u> with the content of the Istanbul Protocol and <u>understand</u> how it can be related to your work; - <u>Explore</u> the legal framework and practical modalities of involving medical or psychological professionals in asylum procedures dealing with traumatised applicants (as therapist and/or expert) in your own national context; - <u>Understand</u> the legal significance of PTSD in the framework of the asylum procedure; - Other examples? . . .
	SKILLS	- <u>Learn</u> how to recognise *potential* signs of PTSD (early identification) and learn when to refer such persons to a medical/psychological expert for a proper examination (remember that only specialised experts can properly establish PTSD); - <u>Improve</u> your questioning skills with traumatised asylum-seekers, based on the above knowledge, for example by learning how to avoid intrusive, direct questions on traumatic experiences; - <u>Develop</u> and <u>learn</u> how to apply in practice your own mechanism for the prevention of burnout and vicarious traumatisation; - <u>Learn</u> how to deal with asylum-seekers whose past traumatic experiences cause behaviour disorders (e.g. aggression, communication impairment, etc.); - Other examples? . . .
	ATTITUDE	- <u>Accept</u> the limits of credibility assessment in cases of PTSD; - <u>Learn</u> not to be discouraged by these limitations and develop a professional attitude that <u>accepts</u> that credibility assessment should (and can effectively) be conducted within the boundaries set by the limitations of human memory, including the specific challenges of PTSD; - <u>Accept</u> that trauma often makes it necessary to involve specific, external expertise in the asylum decision-making process (including credibility assessment); - <u>Strive</u> to retain empathy; - Other examples? . . .

VII.INTERCULTURAL BARRIERS IN CREDIBILITY ASSESSMENT

SETTING THE SCENE

Cultural, social and ethnic differences have a great influence on how we communicate with each other and may lead to misunderstandings and conflicts. The stakes are even higher in the context of asylum procedures, where misunderstandings may contribute to erroneous decisions. **Intercultural competence is the ability to effectively communicate and interact with others who have a different cultural, ethnic or social background than our own.** It is a competence that we are all capable of acquiring as human beings, but it is something that we have to learn and practice throughout our lives. For professionals who work face-to-face with people from other cultural contexts, including asylum-seekers, this competence is essential for the high-quality performance of their job. This chapter will help readers understand:

✓ **what culture and identity are and why they matter** for the asylum procedure in general and credibility assessment in particular;

✓ **the sources of intercultural conflict** in different aspects of the asylum procedure; and

✓ how professionals working in the field of asylum can **acquire, develop and improve their intercultural competence.**

Note that **gender** plays a particularly important role in connection with several issues addressed in this chapter. References to gender aspects will be kept at the minimum though, as a separate chapter will deal with this topic in detail.[128]

VII.1 Culture and Identity – Why Do They Matter?

1. Multiculturalism vs. interculturality

Interaction between members of various cultures is a central aspect of asylum procedures. Becoming familiar with the concepts of culture, multiculturalism, interculturality and ethnocentrism among others can be very useful not only to understand what is happening when professionals interact with asylum-seekers, but also to improve communication as well as the efficiency and fairness of the procedures.

Multiculturalism is "in" these days. Companies boast of their multicultural work environment and their diverse clientele. To attract tourists, cities advertise themselves as having a great multicultural atmosphere. What does multiculturalism mean and how is it different from interculturality? Although there are various definitions of these concepts, for the purposes of this chapter, **the main difference is that "multicultural" is a descriptive term and "intercultural" is a normative one.**

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128 In Volume 2 of this manual (expected publication in 2014)

If we call a group or a place multicultural, we simply state that many different cultures are represented. In the broadest sense of the term, a multicultural group is one where people belong to different age groups or have different gender identities, nationalities, ethnic backgrounds and social statuses. In fact, a group can be described as multicultural even if all members have the same nationality or a similar origin, and even our extended families can be highly multicultural.

As opposed to multiculturalism, which describes a certain state of things, **interculturality is a normative term that goes beyond the mere co-existence of differences.** In contrast to a multicultural group or environment where people from various backgrounds are present, for a place or a group to be called intercultural, **there has to be meaningful and effective interaction among participants that involves a certain level of critical consciousness and adjustment by all parties.** The appreciation of multiculturalism – the recognition of the presence of cultural differences – is a pre-requisite for an intercultural process to develop. However, while multiculturalism is something that usually happens to us (different people and views are present regardless of our actions), interculturality is something that we have a role in creating.

Interculturality refers to a situation where representatives of different cultures not only exist side by side but **actively engage with each other**. In a multicultural environment, diversity and differences are acknowledged, but everyone is allowed to stay in their own respective **comfort zones**. In order to turn a multicultural environment into an intercultural one, participants have to be open to engage with the others, accept their own cultural prejudices and be ready to understand what the other person really means. This requires more effort, but tends to bear much better results in terms of both the process and the product of communication.

MULTICULTURALISM	INTERCULTURALITY
Descriptive term	Normative term
Co-existence of different cultures	Meaningful interaction of different cultures
Participants may remain in their comfort zones	Participants actively engage
It usually "happens to us"	We create it

In the same vein: while there is no doubt that asylum procedures take place in a highly multicultural environment with many different social, cultural and ethnic groups involved on all sides, it may not necessarily be an intercultural process where cultural and social differences are effectively recognised and addressed through self-reflection, engagement with difference and mutual learning.

It is important to note that creating an intercultural situation out of a multicultural one is not a question of "being nice" or "doing the right thing". Instead, in an environment where people from different cultural backgrounds have to communicate beyond mere formalities, **it is in the best interest of all participants to strive towards interculturality, so that interaction is more effective and meaningful for everyone involved**. In the asylum system and to carry out credibility assessments more specifically, this rule is probably more valid than in any other area of the asylum procedure. In addition, the duty of cooperation between the asylum-seeker and the authority as stipulated by Article 4(1) of the Qualification Directive will in practice also require the two parties to overcome cultural barriers and work towards interculturality in the credibility assessment process.[129]

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[129] See the "Shared duty" standard in Chapter III

EXERCISE VII.a

In writing, list all the smaller and larger groups that you are a part of such as family, workplace, friends, subcultures, school, neighbourhood, etc. Look at the members of these groups and determine how diverse they are based on age, ethnicity, gender, sexual orientation, religion, world view and social status. Then think about the interactions within the groups. Can you describe these groups as multicultural, intercultural or neither?

2. Definitions of culture

It is important to define culture before exploring why it matters and how to deal with cultural differences in an effective way.

EXERCISE VII.b

Which of the following do you think are part of "culture"? Mark them before you continue reading.

- ✓ food
- ✓ driving styles
- ✓ education
- ✓ high art
- ✓ relationship to money
- ✓ religion
- ✓ punk music
- ✓ rules of conduct on public transportation
- ✓ classical music
- ✓ graffiti
- ✓ daily greetings
- ✓ immigration policy
- ✓ architecture
- ✓ humour
- ✓ political parties

Why did you select certain elements and why didn't you select others?

Culture is rooted in the Latin word *colere*, which originally meant cultivating the land. From working the land to bear its vital fruits, the meaning of the word slowly shifted to cultivating the human realm of values and minds. For a long time, culture only referred to those products of the human mind that could be achieved through hard work, diligence and education such as painting, music and literature. **Up until the 19th century, culture was mostly synonymous with "high culture"**. This meaning was challenged by the newly emerging science of anthropology that defined culture as something that belongs to everyone and not just a small elite. British

anthropologist Edward Tylor provided the first all-encompassing definition of culture as **"that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society"**.

Some of the characteristics of culture identified by anthropologists are the following.

CULTURE IS… CULTURE IS… CULTURE IS… CULTURE IS… CULTURE IS… CULTURE IS…	BOTH UNIVERSAL AND PARTICULAR	*The ability for culture is universal among all human beings. This means that deep down we are all very similar – just like our genes. However, because culture develops in response to very specific social and material circumstances, it can also be very particular to a group of people, locality or way of life. As a result, while culture connects us all, it is also what divides us most sharply. In other words, it is exactly because we as human beings are all capable of living in culture that we produce such a variety of cultural forms and expressions.*
	ORDINARY	*Culture is not confined to those things that we associate with the "finer things of life" such as museums and concert halls. Culture is a totality than includes all of human life from driving a car through praying to cooking a meal. In addition, culture carries no inherent judgment: no cultural expression is better or worse than the other. In this sense, as anthropologist Ralph Linton emphasised: "there are no uncultured societies or even individuals. Every society has a culture, no matter how simple this culture may be, and every human being is cultured, in the sense of participating in some culture or other".*
	LEARNED	*While all human beings are born with the capacity to acquire, produce and perform culture, we are not automatically born with culture. We learn culture as we grow up through socialisation in our family and various communities. The process of enculturation refers to the process of learning the rules, norms and values of a particular culture. As we grow up, we learn through trial and error, experience and through direct instructions from our parents, peers, teachers and friends how to behave, what is acceptable and what is not and what social roles are available to us. It is through this collective learning that we know how to eat a meal "properly", how to speak or act as a man or a woman, what it means to be a friend, and what the difference is between good and bad or between being healthy and sick.*
	SHARED	*Even if as humans, we are equipped to create and live in culture, we can only create culture in a group. Culture cannot be produced alone, as it is born out of an interaction with other human beings. As the cases of "savage children" who lived in isolation from human contact have proven: one human being alone will not know how to speak a language or act according to the rules of a society. Culture is the product of constant communication about ourselves and the world around us. At the same time, this does not mean that everyone who belongs to a particular culture is the same. Quite the opposite: as individuals, our own attitudes, behaviours and world views are always a unique combination of social, cultural, personal and material circumstances.*
	INTEGRATED	*Cultures are not a mixture of ideas, norms, behaviours and traditions, but have internal integrity: their different parts are mutually dependent on and often complement each other. Certain patterns of behaviour and thinking are more typical of one culture than another. For example, "race" is a cultural construct that permeates North American culture and society and has an impact on how people categorise themselves and others, how they behave, what they think to be just and fair, where they live, who they make friends with etc. Even if we question race as a legitimate way to categorise people, the moment we enter US culture, we will be incorporated into this system of social organisation and often forced to act or think following its logic (as, for example, we will have to indicate on some official forms what race we belong to).*
	CHANGING	*Even if cultures are integrated, they are not monolithic: there are many internal variations and struggles over values and meanings. Cultural change is often the result of internal contradictions that cannot be solved without the reorganisation of the whole system. For example, if economic circumstances change for the worse, this will have an impact on the way people behave, what roles they play, what they eat as well as on their values regarding sharing and reciprocity and the way they think about "the good life". Cultures also change as they come into other ways of thinking and living. Given that no culture is totally isolated, cultures are in a constant interaction with each other.*

CULTURE IS... CULTURE IS... CULTURE IS... CULTURE IS...	**SYMBOLIC**	One of the unique abilities of human beings is to attribute meaning to inanimate objects. In essence, human beings are meaning-making machines. We cannot think outside the meanings that we have collectively created. In this way, all human behaviour has a symbolic aspect. As anthropologist Clifford Geertz put it: "Man is an animal suspended in webs of significance he himself has spun" and these webs are what make up culture. For example, even if a piece of cloth and a national flag are almost the same in a material sense, we attribute very different meanings to them. A flag carries strong symbolic messages for us, while a cloth is an object that we use for practical purposes. Even if we tend to take the meanings of these objects for granted, they are not inherent to either the flag or the cloth – they are something that we have created together to express our feelings and ideas.
	PLURAL	First, there is never a perfect correspondence between a place and a culture: a country always includes several ethnic, social, religious and professional groups that all have their own set of rules, values and attitudes. These different cultures have an impact on each other and may be in conflict with or support each other. In this sense, countries, regions and cities always have multiple cultures. Second, an individual always belongs to a variety of cultures. For example, a female junior judge in Belgium may belong to a professional culture, an ethnic and language group, a religious group, a sports club, a social class and a gender among other. All these groups have their own expectations about how she is supposed to behave and think. Her membership in certain groups also has an impact on how she behaves in the others (e.g. her gender may be an important factor in her sports team or her social class in the kinds of friends she makes). In all, describing the junior judge as "Belgian" would be a gross oversimplification and would not do justice to the complexity and plurality of her cultural belongings.

EXERCISE VII.c

✓ **If you have a small child or a grandchild**, take a sheet of paper and draw two columns. In the first column, list everything you have told them over the course of that day. Try to be as precise as possible. For example, you can jot down: "Don't put that in your mouth" or "Be nice to your friends." In the second column, interpret your own words and actions as a process of enculturation: What social/cultural rules did you teach them? Where and how did you learn about this rule?

✓ **If you don't have small (grand)children**, think about your childhood and list the kind of things that you were taught either explicitly or implicitly. What kind of clothes were you wearing? What games were you playing? With whom were you allowed to make friends? When you got scolded by a teacher or a parent, what rules or norms were they teaching you?

3. The onion of culture

EXERCISE VII.d

Think about a summer holiday or another (preferably longer) journey you made in the past to a foreign country. Write down the list of cultural differences you experienced as compared to the culture you are used to in your everyday life. Once the list is ready, put the differences in order, starting from the most obvious cultural difference (the ones you perceived first), to the most hidden or complex cultural ones (that you only understood after a longer time and through interactions with locals). What do you think distinguishes the differences at the beginning and at the end of the list?

Culture can be modelled in many different ways. While models are overly simplistic and do not reflect the depth and diversity of real life, they are useful as a tool of learning. In the following, the so-called onion model of culture will be presented in more detail. According to this model, **culture is like an onion that has several layers to be peeled off until we get to the core**. As we peel off the layers, we move from the external, more manifest aspects of culture to its less visible and more structural dimensions.

1. The first, most external layer represents the **manifest aspects of culture** – those elements that we can mostly see or experience first-hand. If we find ourselves in another culture, these are the things that first stand out to us such as architecture, clothing or language. It is important to keep in mind that even if this layer is often visible, it is not superficial, simple or insignificant. All it means is that it is **more accessible at first glance**.

2. The second layer is made up of **social values, norms and rules**. We cannot necessarily see this part of culture, but **we are aware of its existence**. This is the layer of norms and rules regarding eating, social behaviour and gender roles for example. The more nuanced parts of language also belong here such as how to talk to elders or when to use formal or informal language. An important aspect of this layer is that **it can be verbalised**. In other words, if a stranger asks us about these rules and norms, we are able to explain them.

3. The third layer in this model is the core of the onion and often called **the "black hole" of culture.** It is different from the second layer as these rules and norms are **no longer conscious**. As a result, it is very **difficult for us to verbalise** the elements of this layer. We **instinctively** understand or follow them, but it is almost impossible to explain the nature or even existence of these rules. This part of culture seems so natural to us that we are hardly aware of the ways in which it determines our behaviour and thinking. Taboos and jokes typically belong here: it is very hard to explain why something is funny in one culture and not in the other one or why people in one culture find insects disgusting, while they are considered a delicacy in another.

THE ONION OF CULTURE

Products, symbols (manifest)

Values, norms, rules (conscious)

Cultural axioms, worldviews, hidden values, taboos (unconscious)
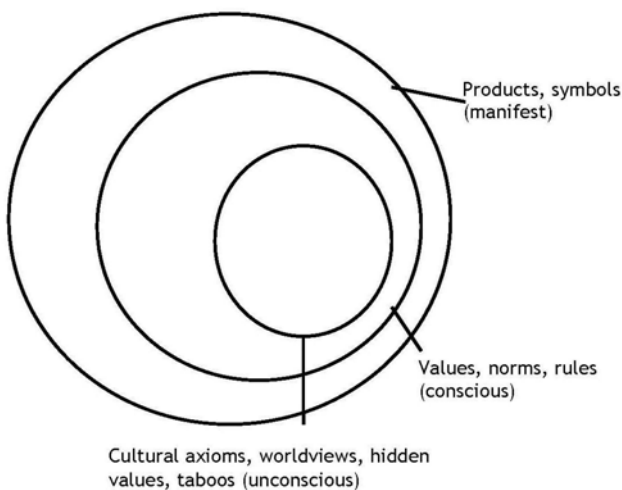
Source: Artemisszió Foundation

Importantly, **these layers are not isolated from each other. Each layer has implications for the others and they only exist as an integrated whole**. Manifest culture is very closely related to both social rules (second layer) and more unconscious aspects of a culture (the black hole). For example, the way we dress is an external element of culture but is related to a variety of social norms regarding gender, religion and implicit and explicit rules about the public exposure of our body. Our clothes may also reflect the rules of a particular social class, profession or subculture and they can be an expression of some of our most personal convictions and allegiances. In this light, while the public debate in some countries about whether Muslim women should be allowed to wear headscarves in public places seems to be about something rather superficial (a piece of cloth), it is actually a conflict that takes place in the greatest depths of the cultural black hole. What is at stake for all involved are basic values of religion, propriety, gender roles, education and public life.

When asylum-seekers enter a country, they also have to deal with a new culture (or rather a set of new cultures) in addition to the difficulties of their own flight experiences, and at times trauma. They are immediately faced with the external layers

of culture, while getting entangled quickly with its deeper layers. They do not speak the local language and often cannot even read the letters (if they have a different alphabet). They have assumptions about how to behave with the authorities but those are usually based on their own practices at home. They may have to eat food that they are not familiar with. They may have to accept and comply with gender roles and expectations which radically differ from what they are used to. The written laws of a country, including refugee law, are part of the second layer of social norms. As a result, they can be explained (especially if there is a common language), even if this is usually not easy. However, the informal rules about interaction and behaviour are hardly ever explained and are usually learnt through the hard way: a series of often painful **mistakes**.

EXERCISE VII.e

Take your workplace as a culture on its own and construct its onion model. Write down the most visible, manifest elements of the external layer and then peel off the layers one by one: What are the more explicit rules at work? What are the unspoken but conscious rules of behaviour? What are the rules that you never speak of but still know to keep? How is space organised? What does that say about the relationship between people? How are the different layers related? Do the external elements express something deeper? What are the values and norms at the heart of your workplace?

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4. The onion of identity

We often hear people say: "When two cultures meet…" However, *cultures* **never meet – it is always people who meet and interact with each other** and it is these *people* who are embedded in different culture(s). We are all unique as human beings and our identities are extremely complicated – made up of personal, cultural, and social aspects. The model of the onion is useful to understand the complexity of identity as well. In this perspective, similarly to culture, identity is made up of a set of concentric circles going from its more visible, manifest aspects to the less visible and more central aspects. In order to understand a person, we need to peel off the layer of habits, clothing and appearance first, then the layer of the person's internalised

"CULTURe…"

norms and values second, and finally the layer of their fundamental, unquestionable values and assumptions.

The two onion models together help us picture the world in a more complex way. We each represent an onion that is made up of multiple layers. In turn, our individual onions are all part of the bigger and even more complex onions of the various cultures we belong to. In fact, **when we interact with each other, it is our "onions" that interact**. As we try to make sense of each other, our identity-onions meet at all the different layers from visible to more hidden aspects.

The more different our onions, the more probable it is that conflicts and misunderstandings will arise. This is especially true if we try to make sense of the other without knowing anything about the layers that lie beneath what is directly accessible to us – which is very often the case. While every layer is prone to creating conflict, it is usually harder to face differences as we get closer to the core. **The black hole is where the most serious conflicts take place – these dimensions of culture are so natural and at the same time so essential to us that it is very difficult to accept that they may not be universally shared by everyone.** The more unconscious aspects of our cultural identity reveal themselves in statements like "this is the most logical way of doing it", "everybody knows…", "it is impossible for someone to think…" or "the asylum-seeker could have been reasonably expected to…". When we hear or say these statements, we can be sure that we are in the realm of the cultural black hole.

5. Culture shock is identity shock
We are all **ethnocentric**. In other words, **we are all determined by our own cultural and social context.** Culture is like a pair of glasses that we cannot take off. Being ethnocentric means that we can only see the world through our own pair glasses. As a general rule, we do not realise the existence of our own cultural values and norms until they are questioned or challenged. **It is usually when we face rules and norms different from our own that the more unconscious aspects of our own culture become apparent.** It is through meeting the "other" that our values become manifest. To use a very simple example: someone from Europe will only realise how fundamental it is for her/him to use a fork and a knife to eat or to have a chair to sit on, when she/he travels to a country where people eat with chopsticks or sit on the floor.

Culture shock is the term used to describe the kind of **disorientation and anxiety** that one feels as she/he faces differences in an unfamiliar environment. However, this term is a bit misleading: it is not the cultures that come under shock but our own identity. This is why – in the words of anthropologist Martine Abdallah-Pretceille – intercultural encounters can become "identity dynamites". **Culture shock becomes an identity shock** when the differences we encounter, question or challenge the most fundamental aspects of our identity. In other words, **culture shock does not happen between cultures, but inside our own selves – at the deepest levels of our identity-onion.**

But how do we know that we are experiencing culture shock? One sure sign is when we feel that the other person or culture does not make sense. Also, we tend to feel angry, disrespected and humiliated when some fundamental aspects of our cultural identity have been violated. The stronger we feel about our own position, the more certain it is that the conflict takes place at the level of our most unconscious and deeply held cultural, social and personal values.

When our identity is threatened, we tend to close up and see the other as a source of danger and not as a partner to work things out with (we tend to think that "they are stupid" or "they don't understand anything"). In these instances, it is very difficult to remember that the other is most probably going through the same process. As explained by social psychologist Marghalit Cohen- Emerique, anger and frustration can limit our ability to act or reflect. As a result, such conflicts have the tendency to escalate as both parties feel that they need to defend themselves.

INTERCULTURAL CONFLICTS
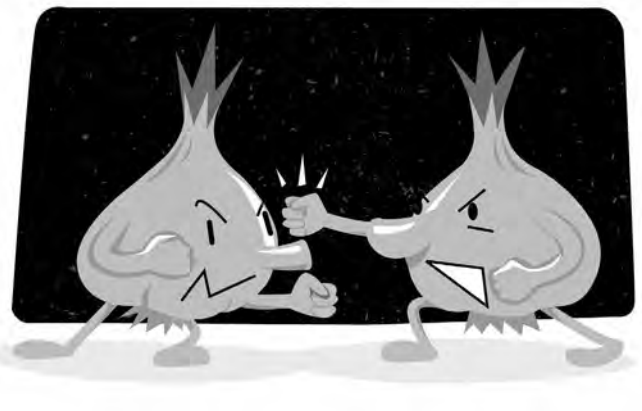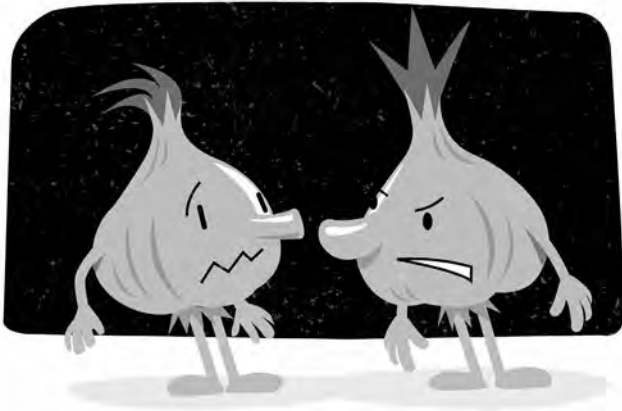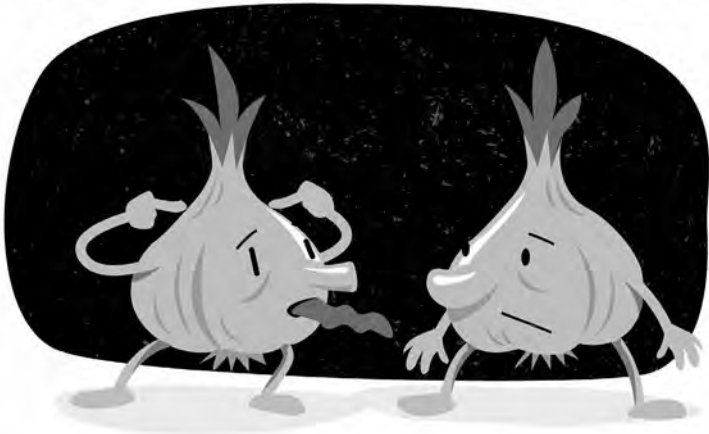
6. Culture and identity in the asylum procedure

The asylum procedure is a particularly sensitive zone in terms of identity. In addition to the obvious stakes of whether someone is granted protection from persecution or serious harm (for the asylum-seeker) and whether national and international laws are properly respected (for the official), a lot is at stake in terms of the identities of those involved, too. As a result, it is very important to consider the significance of culture shock when it comes to the interaction between asylum-seekers and officials.

At a human level, both the asylum-seeker and the official may view themselves as honest people with integrity and the representatives of larger groups. However, both may experience a culture/identity shock that makes them question the other person's honesty and integrity. On the one hand, **asylum-seekers often experience culture shock as they enter a foreign environment, at times even perceived as hostile.** This may result in anxiety, nervousness, memory failure, behavioural and psychological symptoms, which all have an influence on how they present their claims and how they interact with officials. On the other hand, **officials are also prone to experiencing identity shock as they interact with asylum-seekers**. Officials are not culture-neutral beings, but individuals whose complex identity-onions are deeply embedded in a broad and largely implicit web of social, cultural and political forces.[130]

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[130] See more on the impact of the decision-maker's contextual and individual circumstances in Chapter VIII.

EXERCISE VII.f

Take the example of an asylum-seeker that you have recently had contact with in your work. Draw all three layers of both their and your own onions of identity.

✓ What are the most visible, straightforward aspects or your identities and what are the more hidden aspects?

✓ Which onion is more detailed?

✓ How much do you know about the cultural background of the other person?

✓ How much do you know about their deeper layers of identity and about the culture they come from?

✓ What are those aspects that bring you closer together (that are similar) and which ones create distance (are significantly different)?

No participant in the asylum procedure is free from cultural determination. Both officials and asylum-seekers have been socialised in particular families, ethnic groups, religions, neighbourhoods, nations and schools. They all hold certain values and beliefs as universally true and act according to the rules, norms and values of their respective cultures. They also have their own complex onions of identity that determine how they view the world, the asylum procedure and each other. Even if they have the best intentions, **misunderstandings are inevitable as they all act within their own frames of reference**.

Any interaction between an asylum-seeker and an official, a judge, an NGO worker or a decision-maker has to be viewed as the interaction of two very complex identity-onions that are each embedded in a series of culture-onions. Because of the structure of the onion, the participants of these interactions can only perceive the external, most manifest layers of the other person's onion. Judging someone only from the most external layer of their identity (such as hairstyle, clothing, language, skin colour, demeanour, etc.) will give us a very distorted and extremely partial image. In the next sub-section we will see a series of concrete examples of how culture can distort information that would be used in credibility assessment.

SUMMARY

Culture is a complex system of values, symbols, rules and categories that we learn as a member of multiple groups. Even if we are not aware of it, culture permeates our lives and has a strong influence over how we think and behave. The onion model of culture represents the three layers of culture from the most external and accessible aspects through more conscious social rules and norms to the black hole including the most fundamental but least conscious aspects of culture. Identity is deeply embedded in culture and is similarly structured. When people interact with each other, it is their identity-onions that interact at all three levels. In this sense, a cultural shock is also always an identity shock. Cultural differences at all three levels of the onion can lead to misunderstandings and conflicts. Some of these conflicts are all the more difficult to settle because they may challenge the very heart of our identity.

VII.2 Credibility as a Cultural Construct

As it was explained in Chapter II, sub-section II.3, credibility assessment is not a quest for "the Truth". At the same time, what a decision-maker believes to be true or false plays an important role in this process. It is therefore crucial to understand that **truth is fundamentally a cultural construct** that is very hard to define. **What is considered true or credible changes from culture to culture, and it is at the heart of beliefs about honesty, reliability and trust**. In certain contexts, losing someone's credibility belongs to the realm of social death. Even if it is a universal value, the rules regarding the telling of truth vary across cultures. In some cultures, telling the truth equals saying what is socially expected. In others, it means a raw reciting of events, whilst in some others, it is more a performance of confession where details do not really matter. Even if the asylum procedure does not aim to establish "the Truth" as such, but rather the credibility of asylum-seekers' statements and other evidence, it tends to attribute high stakes to a rather nebulous concept.

EXERCISE VII.g

Which declarations would you believe more as an expression of love and which ones less? Try to put them in order. Why do you think one is more credible to you than another?

- ✓ I love you more than my life, you are the sunshine in my sky and I would die without you!

- ✓ I love you.

- ✓ I am happy with you, you give me something special.

- ✓ We make a very good couple and I am sure we will have lots of beautiful children.

- ✓ Wow, you're just adorable, sweetie!

- ✓ I kind of… care for you, you know?

All the above declarations of love can be truthful and sincere. Their style and though, is largely influenced by cultural factors. These factors determine whether detailed or short statements sound more true, whether a poetic and passionate or a reserved, objective style is more appropriate, whether *I* as an individual am in the centre, or *we* as an element of the larger community, whether direct statements or indirect signals seem more credible. Most probably, the first love declaration sounds theatrical and exaggerated – and therefore insincere – to many Europeans, while in certain societies in other parts of the world it may sound perfectly credible and appropriate. In those cultural contexts a simple "I love you" would probably be considered a dry, insincere statement, which is not more than what is expressed between close friends or family members.

This is just a simple example showing how the assessment of other people's statements can be determined by our own cultural identity and what we think to be "normal". Credibility assessment in asylum is equally affected by this phenomenon. **Asylum procedures take place in particular countries where specific social, cultural and gender rules govern behaviours and attitudes**, including those of asylum officers and judges**.** Within this socially constructed process, **credibility assessment is a particularly sensitive zone from a cultural perspective.** As a result, it requires awareness, including self-awareness, and should be handled with great care and consideration.

In the following, we will see a non-exhaustive list of cultural factors that can have an impact on the asylum procedure itself and distort apparently objective judgements regarding the credibility of an asylum-seeker's statements.

1. Communication styles

How we express our ideas is both very personal and very collective at the same time. There are talkative people and there are those of us who use a few words to say a lot. However, there are also cultural patterns regarding how we express our ideas, opinions or emotions. **Usual credibility indicators (coherence, level of detail, consistency, etc.) are fundamentally influenced by communication style, which is very much a cultural construct**.

The Intercultural Conflict Style Inventory developed by Mitch Hammer demonstrates how the various combinations of verbal directness and emotional expressiveness are attributed very different meanings in different cultural contexts. The model is based on two main factors: **verbal expression (which can be direct and indirect) and emotional expressiveness (which can be restrained and expressive)**. The different combinations of these styles create the four basic styles of approaching conflict and communication:

	EMOTIONALLY EXPRESSIVE	EMOTIONALLY RESTRAINED
VERBALLY DIRECT	Engagement	Discussion
VERBALLY INDIRECT	Dynamic	Accommodation

DISCUSSION STYLE	For someone socialised in the "discussion" style, the most appropriate and effective approach to solving problems is to articulate them verbally as much as possible and not to display too many emotions. This communication style, which may be typical of much of the United States and some of Northern and Western Europe, emphasises rationality and appreciates if someone keeps their cool during an argument.	"When I came home last night, I found the kitchen full of dirty dishes. Can we ake a moment and talk about the schedule of tasks we previously agreed on?"
ENGAGEMENT STYLE	For someone socialised in the "engagement" style, the most appropriate and effective approach to solving problems is <u>to be precise about the nature of the problem, but also display emotions</u> to emphasise the severity of the issue or the commitment to solving it. Broad regions where this style is widespread are the South of Europe, certain parts of the Middle East and Central America.	"I thought I would get a heart-attack when I came home last night and found the kitchen full of dirty dishes. A few weeks ago, you promised to be a better roommate. Can you explain what has happened?"
DYNAMIC STYLE	For someone socialised in the "dynamic" style, the most appropriate and effective approach to solving problems is to articulate them <u>indirectly</u>, at times using a third person as a mediator, and to <u>express emotions abundantly</u> to emphasise the severity of the issue and the person's personal engagement. This approach is more widespread in Arabic countries in the Middle East.	"Good morning! A miracle happened to us! When I came home last night, the kitchen was full of dirty dishes, but now it's all clean and shiny. It seems that we have been visited by the cleaning fairy. Isn't it amazing?"
ACCOMMODATION STYLE	For someone socialised in the "accommodation" style, the most appropriate and effective approach to solving problems is to use a lot of <u>indirect references such as stories and metaphors</u>. Directly accusing someone of wrong-doing is considered rude and unfruitful. In this style, the open display of emotions such as a louder voice or crying is considered counterproductive. This approach is more typical in East Asia.	"I was talking to James the other day and we agreed that this is a wonderful apartment and we are so happy to have such great roommates. I think it's also great that we take care of cleaning together. Do you agree?"

In each respective context, these approaches are seen as the most productive ways to address problems and solve conflicts. However, when people socialised in different cultures try to sort out problems, these very same strategies can lead to misunderstandings and further escalate the conflict itself. For example, if someone from an emotionally expressive culture (an Arabic country for example) is trying to let someone from an emotionally restrained culture (someone from Germany for example) know about their problems, they may raise their voice, cry and use a lot of intensive body language. While they engage in these cultural practices to express their deep concerns with an issue, their partner may take these as unnecessary and theatrical and even dismiss the issue itself. The same is true for verbal expression: in cultures where indirect verbal expression is preferred (such as Egypt), a person who is blunt about a problem (such as a Dutch) may be considered rude or even dishonest. In all of these situations, **each participant follows the culturally appropriate style of conflict and communication, but still ends up conveying the exact opposite of what they mean.**

Serious misunderstanding may be frequent between cultures that are closely related to each other (e.g. when they use the same language and share a number of common values and traditions). Critical feedback given by a supervisor may sound very different in the UK and the US:

<div style="display:flex; justify-content:space-between;">

United Kingdom

Thank you for your work and efforts. It is great that you effectively implemented my last suggestions and I am pleased to see that we are getting close to the final version of the text, good job. However, it may still be useful to consider some revision, namely the modification of the style where I indicated in yellow, and some additional references as I marked in the footnotes. You may also consider explaining in further detail your arguments in the summary, which I suppose would be helpful for the reader.

Many thanks and I look forward to seeing the final draft.

United States

Hi and thanks for sending the draft. I t has definitely improved since the last version, but I would suggest you soften your wording at some points (marked in yellow), and please also add the missing references in the footnotes. Your arguments in the summary are still quite unclear, please provide more explanation.
Thanks, bye

</div>

In the first style, critical remarks are expressed in a softer tone and are hidden between encouraging messages. The second supervisor uses a more direct tone and is not afraid to seem critical. This type of feedback would probably be considered too harsh and even impolite in the first context. On the other hand, the first text may not manage to transmit the critical message in the second context, as its politeness and encouraging style would be perceived as overwhelmingly positive.

In many cases, **the amount and style of words also matters**. Members of certain cultures communicate with an abundance of words and a lot of verbal ornamentation, while others are more restrictive and formal. Below is an example of two versions of saying the same thing in writing:

Dear Elizabeth,
Your words are more treasurable than gold and we have so far been enriched. We shall comply and obey all your kind advice as if they were scriptures. You and Robert have really helped us to remain confident in the middle of the deep blue sea. Thanks a zil-lion and posterity will live to remember you both and other staff who are working behind the scene.

Dear Elizabeth,
Thank you for your work and kind advice!

Culture A

Culture B

In a technical sense, both e-mails have the same meaning, but conveyed in a very different style – both in accordance with the rules of politeness in their respective cultures. Despite the uniformity of the actual content, each text carries an extra level of meaning. For someone from culture B, the first quote may seem overly emotional, too wordy and may strike as not totally sincere. For someone from culture A, however, the second quote would sound rude, empty and not really honest. Of course, in each case, our definition of "appropriate" seems superior to all other definitions.

Finally, **silence is another sensitive area of intercultural communication**. In certain cultural contexts, silence is considered respectful and wordiness is seen as intrusion. In others, staying silent is interpreted as unwillingness to engage with the other or to tell the truth. While representatives of both cultures act according to the best of their intentions in establishing a credible and respectful dialogue, they use almost opposite means to achieve this.

In the context of credibility assessment, the richness of language and the amount of words and details used by the asylum-seeker during the interview is often a determining factor. However, as illustrated above, this cannot *per se* be an objective measure and should only be used with caution and attention to intercultural differences.

2. High and low context communication
The distinction between high and low context communication within and across cultures was identified by anthropologist Edward T. Hall.

Low context refers to communication where
- the gist of the message is in the actual verbal message;
- direct verbal explanation, explicit messages, argumentation and reasoning are prioritised;
- written contracts and explicit rules are preferred.

High context, by contrast, refers to communication where
- many things are not conveyed verbally;
- much of the information is inferred from nonverbal communication and the socio-cultural context;
- the messages are more implicit;
- metaphors and symbols are often used;
- oral agreements are preferred.

Traffic signs are a good example to illustrate this distinction. Many cities in East Asia do not have any traffic signs: pedestrians and people driving vehicles (including buses, trucks, and motorbikes) navigate the streets based on implicit rules of priority and "critical mass". This is a typical example of very high context communication as participants are expected to be aware of unposted rules. In Eastern Europe, on the other hand, some traffic rules are posted, while drivers are expected to keep all the traffic rules in mind (a typical example of a rule that is not posted is the right-hand rule of giving priority). In this region, traffic signs also tend to be abstract and simple and do not use any words. In contrast to both of these, in the United States, there are traffic signs on every corner and no one is supposed to know who has priority in a particular situation. In addition, traffic signs include many written instructions (such as "Stop all way") instead of the abstract drawings typical of many European cities.

The difference between high and low context communication **can also appear within particular cultures**. For example, no matter which culture we take, a family dinner will always be much higher in context than a judicial hearing. At the same time, for a newcomer, any low context situation will seem full of implicit rules and expectations that are not intelligible or obvious at first.

It is often difficult for people to switch from low to high context communication or engage in effective communication with people who tend to use the other style. For example, it can be very confusing for a European driver to navigate on roads in the United States, and probably even more so for an American driver to try and figure out the rules of the road in Asia. Or, just think about your first day of work and the confusion you felt as you realised that knowing asylum law does not help you understand how the place "works" or navigate the intricate rules of communication with your colleagues and bosses.

All this has important implications for asylum procedures. On the one hand, no matter how clear the procedure seems to professionals and officials, it will inevitably and always seem confusing and vague to the asylum-seeker. **Most asylum-seekers come from predominantly high context cultural backgrounds**, while public administration and judicial decision-making in Europe are typically low context frameworks.[131] Many applicants face insurmountable difficulties in understanding and coping with extremely detailed and complicated regulatory frameworks such as the European asylum system, while formal, written rules play a rather limited role in their usual cultural context. This is often particularly the case of female asylum-seekers, who in several societies have less access to or direct experience of the codified rules of administration, its language and procedures.

On the other hand, cultural misunderstandings abound when people from high context cultures try to communicate with people from low context cultures, as is often the case with asylum-seekers in Europe. Asylum-seekers from high context cultures may say something "simple" and assume that the

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[131] Differences, however, prevail also within Europe. In some Northern European states detailed, transparent and written rules have a crucial impact in regulating several aspects of public life. At the same time, in Southern or Eastern Europe high context elements (such as the importance of implicit norms or personal contacts) tend to play a relatively more important role.

officials understand all its implications, while officials may only perceive a tiny fraction of the original message as they may not know all the implicit meanings it carries. In this way, **a great deal of the information that asylum-seekers want to convey (and are convinced to have conveyed) may be lost in the process of a hearing.**

3. Non-verbal communication

EXERCISE VII.h

Which of these signs indicate that a person is not telling the truth or has to hide something?

- ✓ They put their hand in front of their mouth while speaking.
- ✓ They do not look into my eyes and constantly avoid eye contact.
- ✓ They constantly look down to the ground.
- ✓ They cannot stop wringing their hands.
- ✓ They are moving farther and farther from me while we are talking.
- ✓ They make too many vivid gestures with their hands.
- ✓ They smile all the time, even when talking about difficult issues.
- ✓ They are constantly moving their head left and right.

No matter how many words we use, a large part of human communication does not take place at the verbal level. **Non-verbal communication is just as – or at times even more – important than what we actually say**. On the other, how we hold our head and hands or where our eyes are directed may convey messages that are the opposite of what we say. This can be especially dangerous – as is often the case in asylum procedures – when we do not speak the same language and rely heavily on body language as a cue to figure out what the other person thinks or how she/he feels. **Gender** may – again – play a crucial role here, as men and women may use and interpret body language differently, and often different social norms apply to them in this respect.

When we interpret body language and demeanour, we – usually unconsciously – **project our own understanding of what certain signs mean to our partners, as if they were universally valid interpretations**. We learn the basics of body language in an early phase of socialisation and they remain strongly encoded in the core of our identity-onion. This creates a hotbed for conflicts and misunderstandings, since non-verbal signs often go misinterpreted in a multi- or intercultural context. The fact that much of this process is not conscious makes the challenge even stronger. The following table lists a few examples of how body language and demeanour can carry different meanings:

EYE CONTACT	Where the eyes are directed in a conversation is a gesture that often causes conflict in encounters between Western and non-Western cultures. In certain cultures, most notably some Asian ones, looking in the eyes of certain people (e.g. superiors or someone of the opposite gender) means disrespect. In this context, if someone wants to show respect for another person, they will avoid direct eye contact. In many Western cultures, however averting the eyes is often interpreted as dishonesty and looking directly into the other's eyes is taken as a sign of sincerity.
NODDING	In most Western cultures nodding is a sign of a positive/affirmative response ("yes") or agreement. The opposite ("no") is usually expressed by shaking one's head. Nevertheless, in Bulgaria these signs are interpreted just the opposite way: nodding indicates "no" and shaking one's head means "yes". If such a fundamental difference exists even between European countries in interpreting one of the most common non-verbal signs, it is not difficult to imagine the high risk of misunderstanding between persons coming from profoundly different cultural contexts.[132]
HAND GESTURES	Hand gestures are an inevitable part of body language. Italian culture, for example, is famous for its intricate set of hand gestures from indicating hunger to expressing anger or boredom. While some hand gestures seem to carry a universal meaning (e.g. open palms indicate trust), there are many culturally specific gestures and even the same gesture can mean very different things in different settings. Some gestures that carry different meanings include the sign for "thumbs-up", "OK" and "victory" in Anglo-Saxon culture, which may be considered very offensive in some cultures. For example, the thumbs-up sign is seen as an insult in such different countries as Greece and Iran and the OK sign (when we form a circle with two fingers) may be interpreted as a sexual reference in Turkey and Russia.

Given that it is impossible to know all the different variations of body language in the world, it is better to avoid basing any part of credibility assessment on such shaky grounds. As already explained in Chapter II, **it is scientifically unfounded to use demeanour or body language as a credibility indicator, as it is completely determined by one's own culture and non-verbal signs do not hold any universally valid meanings**.[133]

4. Physical setting and use of space
Space is one of the most sensitive areas of an intercultural encounter. We learn rules regarding the appropriate use of space early on as children. We add our own personal preferences to them and then employ them without ever giving it another thought.

According to Edward T. Hall's studies into proxemics,[134] **the appropriate distance between people is regulated by cultural rules that show a great deal of variation.** How far or close we should be from someone depends on our relationship to them. The general rule is that the closer we are to them emotionally, the closer we may be physically. However, the actual physical distances that correspond to these relationships may be very different from culture to culture. The standard for the official distance in one culture may be more or less the same as that for friends in another. In this situation, both participants of a conversation will feel rather uncomfortable: one will perceive the distance too large, while the other too small.

Breaking spatial rules of privacy is considered a grave mistake in most cultures and can lead to feelings of anxiety, shame and discomfort. In asylum procedures, this is especially important in face-to-face interviews or hearings. How the interpreter, the interviewer and the asylum-seeker

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[132] This example becomes even more telling, if we add verbal communication to it. The word pronounced as "ne" means no in Bulgarian *(не)*, but yes in neighbouring Greece *(ναι)*. Therefore, nodding and saying "ne" means no in Bulgaria and yes in Greece. The same non-verbal sign accompanied by exactly the same word means just the opposite in two neighbouring European countries.

[133] At the same time, body language can help and orient questioning during an asylum interview, indicate the presence of trauma and PTSD, or help interpret the actual meaning of silence in a given situation, etc.

[134] Proxemics is the study of how people use space.

are situated in space may matter for the creation of a feeling of comfort and honesty for all of them. In addition, being alone in the same room with an unknown person behind a closed door may cause anxiety for certain asylum-seekers, especially for those from cultures where men and women are not allowed to stay in private.

5. Relationship to power

According to social psychologist Geert Hofstede, **different cultures develop various forms of social hierarchy and have strict standards about ways to exercise authority and express respect for it**. It is customary to distinguish between cultures with smaller and larger power distances.

- ✓ In societies with **smaller power distances**, relationships tend to be more horizontal and egalitarian. In these contexts, people are more used to questioning authority, asking questions and being critical.
- ✓ In cultures with **large power distances**, people are more used to obeying orders, take less personal initiatives and tend to follow their elders and seniors.

The asylum procedure is a complex process that is **embedded in a complicated political, economic, social and political reality**. Asylum-seekers and decision-makers are influenced by many social forces that they cannot control and may not even be aware of. In addition, the procedures create an unequal situation as certain people (officials) have the power to verify another person's (the asylum-seeker) story about their life and conditions. While all participants behave in a way that seems most logical to them, their definitions of the situation and what is appropriate may be very different. In this way, we cannot assume a situation of total neutrality. **The answers given by asylum-seekers may sometimes reflect their relationship to authority rather than their "real story"**. In other words, they may say what is expected rather than what has actually happened or they may withhold information for fear of not being precise or knowledgeable enough.

In many cultures, such as those in the Arab world and East Asia, it is not usually acceptable to question or challenge those in authority. While there are high power difference countries in Europe, too, especially Eastern Europe, many asylum-seekers are from cultures that do not encourage open critique. This means that they may be hesitant to voice objections even if they do not agree with a written declaration or wish to change something. Differences in competence and education may also cause power dynamics that deter a more transparent discussion of the situation. **Asylum-seekers with lower education may be intimidated if they do not understand a question, are not sure if they are giving the right answers or are not able to follow the procedure**. Just remember how you felt and behaved at an oral exam in high school or university…

Gender roles and the power relation between genders may also have an important impact here. Gender roles may become social mores which can be difficult or dangerous to breach. In some societies, the power imbalance between men and women is greater than in others.

In order to create an environment where a transparent discussion can take place, decision-makers and other officials also have to be mindful of the effects of these power dynamics.

6. Stereotypes and prejudices

EXERCISE VII.i

You have no more than strictly <u>2 minutes</u> to complete this exercise. Complete the following sentences with one or a few words (what comes to your mind at first). Try to complete as many of them as possible. Ready?

- ✓ Italians are usually…
- ✓ Chinese people very often…
- ✓ Europeans are usually more … than Americans
- ✓ Germans are usually…
- ✓ Professors are usually…
- ✓ Africans usually…
- ✓ Arabs are very often…
- ✓ Artists are often…
- ✓ Asylum officers tend to be…
- ✓ Women who wear a headscarf are usually…
- ✓ Brazilians are usually…
- ✓ Gay men usually…
- ✓ It is common for Scandinavian people to…
- ✓ Teenagers usually like…
- ✓ Men are usually more … than women

How many of the 15 statements did you manage to complete?

You may be surprised how easily you managed to identify stereotypical characteristics for various groups of people in a very short time. As human beings, we need to find patterns and create generalisations in order to navigate the complex social and physical world we live in. In a way, stereotypes are inevitable for our survival. **Stereotypes are images that we socially create about other people and groups**. **Prejudice is when we attribute a value judgment to these stereotypes**.

Stereotypes become especially dangerous when they become totally identified with the group they represent and thus turn into a prejudice. For example, a person may have never met a member of an ethnic group, but already has a firm idea about their behaviour, morals, values and customs. We learn these images as we grow up and we internalise them. Stereotypes may also be influenced by empirical experiences ("I lived in Spain for years and know that Spanish people talk louder than Swedes") or statistically relevant information ("Dutch people are on an average much taller than Ecuadorians"). Nevertheless, stereotypes usually tend to go far beyond such objective knowledge and the image they make of the "Other" **is usually our own creation to make sense of the world and less a realistic description of the Other**. For example, if we imagine the Other as dishonest, we will always have a second guess about why alleged members of the group say something this way or that.

Many asylum-seekers represent countries, religions, ethnic and social groups that officials and others involved in the procedure do not have direct contact with.[135] However, our cultures are still imbued with strong images about them (just think about the introductory exercise of this topic). When an official interacts with an asylum-seeker, the interaction takes places both at a personal level and at the level of the pre-constructed images society has created. Of course, the same is true for the images of asylum-seekers about Europeans or specifically asylum officials, judges or lawyers.

During these interactions, it is very important to be mindful about how these images determine our assessment of what the other person says. We may assume things that are not there in reality or ask questions that have little to do with the person's story and more with our own assumptions. **Stereotypes also complement stories that we hear and help us make sense of things that are not clear to us – again, based on a pre-constructed image and not necessarily reality.** Self-fulfilling prophesies can be very dangerous: when we expect someone to behave or react in a certain way, they often meet that expectation under the pressure of the image and the social context.

QUESTIONS FOR REFLECTION…

Try to discover how your own culture looks like from the outside. Ask friends who are not from your culture and look for accounts on the web and in books written by "outsiders." What do they find strange? What are their areas of culture shock? What are the differences and similarities? How is their account different from the way you see your own culture?

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[135] See Chapter I, sub-section I.1.

Despite the appearance of neutrality and objectivity, encounters between officials and asylum-seekers are deeply influenced by culture. In this context, culture shock often becomes an identity shock as some of our most basic values and assumptions are being threatened. There are a number of sensitive cultural areas that can influence the determination of an asylum-seeker's case and the assessment of their credibility:

✓ Communication style: While our communication style may be influenced by our individual features, how we behave in a conflict is also influenced by culture. Different cultures prioritize verbal directness, while others place more emphasis on emotional expressiveness when it comes to solving situations of conflict or tension.

✓ High and low context communication: Some cultures and situations are easier to "read" than others. Low context communication puts an emphasis on spelling our rules and expectations, while high context communication counts more in implicit awareness.

✓ Non-verbal communication: A large part of what is communicated is expressed by our body language and other forms of nonverbal communication. While the use of body language is universal, the meanings of signs can vary greatly and this can lead to a lot of misunderstanding.

✓ Relationship to power: Societies are different in how their members relate to those in positions of power. Small power distance indicates a more horizontal relationship, while high power difference indicates a respect for hierarchy.

✓ Stereotypes and prejudices: We tend to generalise our experiences, which is both natural and very useful. However, when generalisations about particular groups of people become petrified, they can be very harmful and make meaningful interaction very difficult.

VII.3 Developing Intercultural Competence in Asylum Procedures

For many people, being tolerant and empathetic[136] – or interculturally sensitive – is part of being "nice" or a "good" person. At the same time, there are important reasons why it is indispensable for people who work in asylum procedures to be interculturally competent. In order to conduct an effective credibility assessment resulting in valid findings, decision-makers have to:

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[136] See more on empathy in Chapter VIII.

1. **understand how culture influences groups and individuals**, including asylum-seekers and officials;
2. **be able to effectively communicate** with people from different cultural backgrounds.

Without this competence, officials in the asylum procedure cannot complete their job properly. Developing our intercultural competence means making an effort to understand how cultural interaction works as well as to live and cope with our own ethnocentrism without losing our sense of self and belonging. In the following, we provide some tips about how to improve intercultural competence through gaining knowledge, developing particular attitudes and honing certain skills. Intercultural competence is like a foreign language – we never become native speakers, but we become better and better as we practice it.

HOW TO DEVELOP INTERCULTURAL COMPETENCE IN THE ASYLUM PROCEDURE?	

LEARNING / **KNOWLEDGE**	• <u>Keep in mind</u> that cultural signs are always part of a larger system. Not being aware of the cultural background (the "bigger picture") will make our jobs more difficult and less effective.
	
	• <u>Keep in mind</u> that we are the product of our own culture(s) and that our judgments are greatly influenced by them. There are no neutral participants in the asylum procedure – our identities are always at stake.
	
	• <u>Remember</u> that there are many things that we can learn about other cultures. Anthropologists, sociologists and ethnographers have done a great job describing and interpreting diverse cultures of the world. Seek out books, articles and other cultural resources about the cultures that you encounter the most.
	
	• Some basic information that is important to <u>acquire</u> about the cultures whose representatives you interact with are the following:
	  – languages
	  – ethnic groups
	  – the relationship between different social, cultural and ethnic groups
	  – main religions and their basic rules of behaviour and rituals
	  – basic forms of body language
	  – gender norms
	  – social rules regarding the display of respect
	
	• <u>Read</u> more about your own culture too, including accounts by people who are outsiders. It can give you a great insight into how your culture is experienced from the outside, and what unspoken rules may govern your behaviour.
	
	• <u>Keep in mind</u> that cultures are not homogenous and they change all the time. As a result, books should not be taken as straightforward manuals as to how we should behave in a certain context. Check your intercultural knowledge through observation and personal experience too.
	
	• Don't be afraid if you don't know: ask people about their cultural practices and norms.
	
	• Other examples? . . .

LEARNING	**SKILLS**	• There are many different ways of "reading" a statement, gestures and behaviours – <u>improve</u> your ability to produce multiple interpretations of the same thing. • <u>Learn and practice</u> how to switch your own perspective to that of other people. How does it feel to be in someone else's shoes? • Always <u>interpret</u> the asylum-seekers' statements and behaviour in a larger social, culture and political context. • <u>Never stop</u> checking for your own biases, pre-conceptions and assumptions. • <u>Be open</u> to take risks to improve your intercultural competence. Making a mistake is part of the game. • <u>Improve</u> your intercultural communication skills; learn for example which words may have different meaning in different cultural contexts; • Other examples? . . .
	ATTITUDE	• Not everything can be learnt about a culture from books or even interactions. Always <u>stay open</u> to alternative interpretations of behaviours, events, ideas and facts. • <u>Practice</u> cultural relativism: cultures, ideas and cultural practices are only different, but not better or worse. • <u>Recognise</u> you own ethnocentrism. Build or strengthen your self-awareness and try to deconstruct your own assumptions. • When something does not make sense to you, <u>do not dismiss</u> as meaningless, try to understand it. • <u>Don't forget</u> that not all mistakes and inconsistencies are cultural. Intercultural competence includes professionalism and the use of common sense. • Other examples? . . .

SUMMARY

Becoming interculturally competent is a professional requirement for people who work with foreigners. To develop intercultural competence, officials working in the asylum procedure have to acquire some knowledge, develop certain attitudes and master certain interpersonal skills. Intercultural competence is not acquired at once but over a relatively long period of learning and practice.

VIII. THE DECISION-MAKER IS A HUMAN BEING

SETTING THE SCENE

The previous chapters examined the impact of the asylum-seeker's individual and contextual circumstances on credibility assessment and the potential distortion caused by memory and communication barriers. This chapter **observes directly the decision-maker**, and summarises the main factors that may influence or distort the manner in which she/he receives and interprets the information provided by the asylum-seekers and used as a basis for credibility assessment. These distortion factors are probably the less known and analysed in the context of asylum and may even be the most challenging ones to be confronted with. Nevertheless, the legal obligation of **objective and impartial processing of asylum claims** cannot be properly discharged without due respect to and awareness of these factors.

Objectivity and impartiality are crucial requirements in credibility assessment. While it is quite easy to adhere to these principles, their application can be more challenging in practice than one would think at first glance. The principle reason for this challenge is the fact that **decision-makers (and other asylum professionals) are also human beings**. Psychological and legal research has shown that **individual and contextual circumstances have an unexpectedly important impact on decision-makers' attitude** in situations similar to credibility assessment in asylum procedures. A variety of circumstantial, professional and personal factors may influence an asylum practitioner's ability to listen to an asylum-seeker **with empathy**[137] **and an open mind**, in order to assess her/his claim **objectively and impartially**. This chapter will first provide a non-exhaustive list of examples of these individual characteristics, followed by an introductory explanation of where and how the assessment of credibility can be influenced by distorting factors.

EXERCISE VIII.a

Which of the following personal or situational factors do you think might influence a person's readiness to behave in a sympathetic or altruistic manner in a decision-making process (such as an asylum procedure)?

✓ The decision-maker's childhood and life experiences
✓ The decision-maker's mood in the given moment
✓ The decision-maker's previous professional experience
✓ The decision-maker's professional satisfaction
✓ The decision-maker's gender
✓ Whether the decision-maker is hungry in the given moment

In what ways do you think the selected factors may affect credibility assessment in asylum cases? Write down your ideas, before you continue to read.

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[137] Empathy is crucial in asylum decision-making. Empathy is not the same as being sympathetic (e.g. feeling pity for another person who has problems) or behaving in a compassionate manner (e.g. offering help for someone in need). It means that we are actually able to understand what is happening within another person, her/his emotions, motivations, etc. from her/his perspective without losing track of where we stand.

The individual and contextual circumstances of the decision-maker that may have an impact on the credibility assessment process will be explored in the following sub-sections.

VIII.1 Circumstantial Factors

Circumstantial factors constitute the first layer of elements that may influence the credibility assessment process. These are typically **external and/or non-permanent characteristics of the actual situation** (interview or decision-making etc.). In other words these are to do with the state of the decision-maker at the time of receiving the information which will be the basis for credibility assessment.

Emotions and moods[138] play a fundamental role in information processing, and thus in daily decision-making. A vast amount of psychological research has shown in recent decades that the mood of a person has a decisive impact on, for example, moral decisions, risk-taking, financial decisions, etc. A happy person is more likely to expect good weather for the following day's excursion, as this condition would be the one compatible with her/his positive mood.

> ### QUESTIONS FOR REFLECTION…
>
> A few weeks ago you had a conflict with a close friend and you have not talked since then. Yesterday your partner broke up with you, which makes you feel bad and disappointed. You cannot stop thinking about what you did wrong. Moreover, you have been suffering with flu for a week now. It is raining outside, you are at home, and do not want to see anyone. All of a sudden, your close friend knocks on the door and wants to discuss the conflict you had a few weeks ago. He basically wants to say sorry, but also expects you to recognise that you did not behave properly either. What would be your most likely reaction in the mood you are in?
>
> Now let's imagine the same conflict with the same friend, but when he knocks on your door a few weeks later you are in a completely different mood. It is a beautiful sunny day, and you are just packing for your summer holidays that you have been so much waiting for with your partner. Plus you learned two days ago that you will be promoted at your workplace and will have a significantly higher salary. You feel healthy and optimistic. Would your reaction to your friend's initiative be the same as in the first case? If not, why and to what extent your decision about how to treat this situation would be different?

The above illustrative example can be transposed to the asylum context as well. Decision-makers in a positive mood may well be more open to accept an asylum-seeker's statements as valid, as the fact of lying or misleading would not be compatible with her/his positive state of mind. A negative mood may strengthen mistrust, disbelief or a non-cooperative or even hostile attitude.

Among the vast body of research done on the impact of mood, emotions or current state on individual decision-making, probably the most illustrative one for the purposes of this manual is the following. In 2010, Israeli and American researchers proved that **judges are**

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[138] Moods are more generalised, non-specific emotional states. Emotions are for example jealousy, anger, attraction, etc., while moods are for example happiness or sadness.

significantly more likely to decide positively on the provisional release ("parole") of a prisoner after eating. Summarising results from 1 112 parole hearings, they found that the proportion of favourable rulings drops gradually from around 65% to nearly zero within each decision session, and returns to around 65% after each break.[139] The study was not able to conclude whether the differences after eating were due to higher glucose levels, better mood, or just having had a rest. Any of these might have an effect, and decision-makers need to pay attention to these changes in themselves.

VIII.2 Professional Experience and Environment

Beyond numerous contextual circumstances, the decision-maker's **professional background, experience and environment** also have crucial impact on the decision-making process in the asylum framework. An asylum officer on her/his first working day may easily approach an individual case differently than after fifteen years of experience and several hundreds of decisions made.

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[139] For more information see: Shai Danziger, Jonathan Levav and Liora Avnaim-Pesso, "Extraneous factors in judicial decisions" (11 April 2011) 108 (17) Proceedings of the National Academy of Sciences of the United States of America 6889

EXERCISE VIII.b

Marianne and Marion are both asylum officers and work in the same office.

✓ Marianne is a lawyer by training. After graduation, she worked for an international law firm for a couple of years, where she was mainly in charge of corporate and financial law issues. When she decided to change and applied for a job at the asylum authority, she was first employed as the authority's legal representative in court procedures. Later on, she decided to apply for a vacant post of a first-instance decision-maker. Since then, due to the geographical specialisation policy of the asylum authority, she has been dealing exclusively with cases of asylum-seekers originating from an area with relatively acceptable human rights records and no armed conflict or systematic violence. Most of her clients have been young men. These factors resulted in a relatively low "recognition rate" in Marianne's decision-making practice.

✓ Marion has a degree in arts and pedagogy. After graduation, she first worked as a primary school teacher in a special school for children with mental disabilities. During those years, she had the opportunity to spend a year in the Congo, working in a schooling programme for orphans and former child soldiers. That is how she became interested in the issue of asylum. After a successful job application, she became an asylum officer and a focal point for unaccompanied minors. Since then, she has mainly been deciding on cases of Somali and Sudanese asylum-seekers, including many single women, children and torture survivors. Many of them have qualified for either refugee status or subsidiary protection.

Compare the professional background of Marianne and Marion by preparing a list of parallels and differences. Which of these factors do you think *may* influence their attitude to asylum decision-making and how?

A large empirical study in the United States (examining 140 000 cases between 2000 and 2004) demonstrated that **previous work experience has a clear impact on refugee law judges' decision-making practices**.[140] The above exercise shows a snapshot of the variety of professional factors that may have an impact on a decision-maker's attitude. Monotony, the level of specialisation, feedback from supervisors (and clients), the institutional context, the presence or lack of fair burden-sharing mechanisms, etc. may all have an important impact in this respect. Moreover, the professional environment may also be influenced by **wider political, social or cultural factors** (for example wider immigration control policies). None of these factors determines a certain decision or attitude; they are, however, important to be aware of.[141]

A particularly important professional factor that may seriously affect asylum decision-making (and credibility assessment) is **burnout**. The two most common definitions of burnout are as follows:

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[140] "The grant rate of judges who once worked for the Department of Homeland Security (or its predecessor, the Immigration and Naturalization Service) drops largely in proportion to the length of such prior service. By contrast, an asylum applicant is considerably advantaged, on a statistical basis, if his or her judge once practiced immigration law in a private firm, served on the staff of a nonprofit organization, or had experience as a full-time law teacher." – Jaya Ramji-Nogales, Andrew I Schoenholtz and Philip G Schrag, "Refugee Roulette: Disparities in Asylum Adjudication" (2007) 60 Stanford Law Review 295, p. 377 and pp. 345-347

[141] See more on the importance of self-knowledge later in this chapter.

- ✓ "A state of fatigue or frustration brought about by devotion to a cause, way of life, or relationship that failed to produce the expected reward" (by Herbert J Freudenberger, who actually coined the term);
- ✓ "A state of physical, emotional and mental exhaustion caused by long-term involvement in emotionally demanding situations" (by Ayala Pines and Elliott Aronson).

The burnout syndrome has been described and researched for decades; however, the attention to this phenomenon in the field of asylum is more recent and so far less researched. Burnout is **not connected to psychological pathology**; it can be frequently found in otherwise healthy persons. The International Statistical Classification of Diseases and Related Health Problems (ICD-10) of the World Health Organisation (WHO) specifies burnout as the **"state of vital exhaustion"**, as one of the "problems related to life-management difficulty".[142] Burnout is usually the result of a **long-term exposure to stress** (which may include numerous factors as frustration, conflicts, dissatisfaction, etc.). The three reasons often identified as being in the background of burnout are the following:

ROLE AMBIGUITY	The individual does not really know what is expected of her/him, she/he does not have positive role models. The result is that she/he never feels that she/he has accomplished anything valuable.
ROLE OVERLOAD	The individual cannot say no and keeps on taking on more responsibility than she/he can handle.
ROLE CONFLICT	The individual has conflicting responsibilities (e.g. as a manager and a head of household and a parent, etc.) and without being able to set and respect priorities, she/he will constantly feel "torn apart" by these conflicting tasks, not being able to fulfil any of them completely

The following factors often indicate **a higher risk** of work-related burnout:

- ✓ Continuous work overload, difficulty separating work from private life;
- ✓ Great responsibility in decision-making;
- ✓ Monotony of work or repetition of similar tasks;
- ✓ Continuous or frequent exposure to human suffering;
- ✓ Inability to tackle (all the) challenges (e.g. to help everyone in need), frustration;
- ✓ Lack or scarcity of positive feedback, unclear or conflicting performance indicators; etc.

EXERCISE VIII.c

Are the above characteristics common for asylum decision-makers? And for those who provide assistance to asylum-seekers? Before you continue to read, prepare a list and write down how these factors relate to the work experience of these two groups.

Asylum professionals – similarly to medical doctors, nurses, psychologists, care-givers, social and humanitarian workers – are among the groups most exposed to the risk of burnout. Considering the

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[142] World Health Organisation, "International Statistical Classification of Diseases and Related Health Problems" (2010) 10th revision ICD-10, Z73.0

specificities of asylum procedures (and credibility assessment within them) as described in Chapter I, it is not difficult to identify all the above-mentioned risk factors in asylum professionals' daily work.

An asylum officer or judge has to take decisions that may have grave consequences day after day. Their work necessarily involves reaching negative decisions in some cases, which may result in a negative feedback from asylum-seekers and other stakeholders, or perhaps a feeling of bad conscience. They may experience a conflict between their own performance indicators (e.g. "I have to take a careful and well-researched, well-established decision in each case") and management expectations to carry out speedy procedures and to take quick decisions, etc. It is not surprising then that there is growing awareness of the importance of burnout prevention among asylum professionals.

There is also a further risk for asylum professionals (in common with emergency workers, psychotherapists, humanitarian workers, etc.), due to the **daily exposure to highly distressing material**. Asylum decision-makers listen to descriptions of some of the worst human rights abuses from around the world. This can sometimes start to distort the way in which these professionals see the world – as a more dangerous, more cruel place, compared to employees in a bank, or compared to themselves, before starting their job in the asylum sector. They continuously listen to stories about torture, inhuman treatment, death, persecution, uprootedness and human suffering ("empathetic listening"). **Vicarious or secondary traumatisation** are the terms used to describe the effect that hearing these stories *can* have on people, indicating that they need to take care to develop balance in what they do in their professional and personal lives. It has also been called "compassion fatigue".

So how does burnout impact on an asylum decision-maker's capacity to conduct credibility assessment? The literature describes a number of typical phenomena related to burnout; different approaches emphasise different features.

EXERCISE VIII.d

Asylum decision-makers, alien policing officers and NGO staff supporting asylum-seekers said the following sentences to the author of this chapter in recent years (in different circumstances, e.g. training, informal discussion, etc.). Which of these statements do you think may indicate burnout?

✓ "I'm fed up with these applicants lying to me all the time. How can they imagine that I will believe such absurd stories? There may be less than one in a hundred who tells the truth."

✓ "I have more difficult cases than any of my colleagues, yet I cannot ask anyone to help me. No one else has the same experience as I do and I feel somewhat abandoned with a huge responsibility and without support."

✓ "After so many years, I can easily tell whether the asylum-seeker is lying."

✓ "I had so much work since some time ago that I had to bring home case files. Recently I have started having nightmares and dreaming about my cases."

✓ "All these poor people – I know I don't work hard enough to make sure that I'm not responsible for their torture or death if they're returned."

✓ "Last time I gave my home number to a client as I did not have time to receive him in the office and his case was very urgent. Since then I've been receiving more and more calls from clients at home and I just don't have the guts to reject them."

✓ "Asylum-seekers from [country X] represent a very bad migration. I understand that there may be serious cases from other countries, but not [country X]."

Typical **signs of burnout** include:

- ✓ Physical exhaustion, continuous tiredness;
- ✓ Emotional exhaustion;
- ✓ Irritability;
- ✓ Depression;
- ✓ Loss of interest and motivation;
- ✓ Lack of efficiency at daily work, slow and disorganised working methods;
- ✓ Distrustfulness (e.g. towards colleagues);
- ✓ Negative and cynical attitude (e.g. towards clients, in the present case: asylum-seekers);
- ✓ False self-confidence ("I already know everything about this").

Vicarious or secondary traumatisation (due to exposure to distressing material) can also give rise to

- ✓ Thoughts or images about the stories heard, intruding on personal or everyday life;
- ✓ Wanting to avoid hearing more stories, or details – stopping the applicant from giving more details, even though it might be necessary to explore them;
- ✓ Other more subtle forms of avoiding more distress – dismissing stories "that cannot be true" or laughing them off as ridiculous.
- ✓ You can now see that all statements quoted in exercise VIII.d are typical signs of burnout.

Burnout is usually a process, which starts and develops slowly, through different stages. The above symptoms may therefore develop in different stages, for example:

1st phase: Depression, nightmares, the heavy workload and the depressing personal stories infiltrate the sphere of private life;

2nd phase: Gradual loss of interest, motivation and empathy;

3rd phase: Development of a cynical attitude coupled with misplaced self-confidence.

In light of all the above information, there is an apparent link between burnout and the capacity to properly apply credibility indicators and related guiding principles. The following table shows the most important examples (non-exhaustive list):

SIGNS OF A LACK OF BALANCE (BURNOUT)	CONSEQUENCE RELEVANT TO CREDIBILITY ASSESSMENT	EVENTUAL DISTORTION EFFECT ON CREDIBILITY INDICATORS
Feeling exhausted and/or depressed	Too much emotional engagement in the decision-making process; loss of objectivity	Credibility indicators are applied subjectively; non-structured credibility assessment
Feeling of exhaustion, feeling depressed, loss of motivation and interest	Reduced capacity to "empathetically listen" to the asylum-seeker's statements	Important details may remain unexplored; then lack of details or contradictions may lead to negative credibility finding
Cynical attitude, mistrust, loss of an open mind	Reduced willingness to "empathetically listen" to the asylum-seeker's statements	If negative credibility indicators (e.g. contradictions) are identified, no effort is made to clarify them
False self-confidence (objectively unrealistic attitudes, such as "After so many years of experience I can easily tell who is lying and who is telling the truth")	Reduced willingness to "empathetically listen" to the asylum-seeker's statements; subjective impressions prevail over objective assessment methodology	Credibility indicators are applied subjectively or with prejudice; non-structured credibility assessment (based on "gut feelings"); no exploration or opportunities for applicants to explain fully

VIII.3 Personal Background

The third layer of human factors influencing the credibility assessment process includes **inherent individual circumstances or characteristics**. These elements are probably the most difficult to recognise and to change (if deemed necessary), since:

✓ Unlike contextual circumstances, they are more **permanent** and intimately linked to **personal identity and life experience**;

✓ Unlike professional background, they are not directly linked to work experience, but rather to **private life and psychological features**.

EXERCISE VIII.e

Pedro and Petra are both judges working at a court specialised in asylum and immigration matters. They are both 40 years old.

✓ Pedro's parents were diplomats and he spent most of his childhood travelling around the world. He was an only child and often felt lonely, as moving regularly prevented him from establishing stable friendships. At the age of 14, Pedro learned that he had been adopted by his parents, which – as a child – he experienced as shocking. It took him several years to accept this fact, even though now – as an adult – he does not see this as something that important. When he was 17, Pedro's parents got divorced and his father left the family and married another woman. Pedro's mother was suffering with depression for two years after this. Since then, Pedro's relationship with his father has been cordial, but rather distant. He still finds it difficult to forget what his father did to the family. When he was 23, Pedro discovered that his girlfriend (the first serious love relationship in his life), had been cheating on him with his best friend from

university for several months. This hurt him so much that it took him four years to become able to fall in love again. After a few rather disappointing attempts, Pedro is still single. He does not have very close friends and often spends his evenings and weekends working. He likes his work, but he is not very pleased with his financial situation and promotion prospects. A few years ago he took a large loan in order to be able to buy his apartment. Due to the unexpected financial crisis, his monthly mortgage payment increased by more than 60%, which causes him some financial difficulties.

✓ Petra has two sisters and a brother. She mainly has happy memories from her childhood. She was the best student of the class, and her parents have always been very proud of her. She always had an especially close relationship with her younger brother, as well as with her two best friends from school. They helped her a lot, when due to an illness she had to miss one year from school at the age of 15. Even after many years they still regularly meet and often go out or go on holidays together, and they often take care of each others' children. When Petra's beloved father became seriously sick, the four siblings equally shared the tasks of nursing him, and when he passed away they got even closer to each other when supporting their mother. Petra has two children and has been married for 12 years. Even though with her husband they went through some problems and conflicts last year, they managed to get over it together. Since her childhood illness, Petra has been paying a lot of attention to health; she practices various sports and tries to balance her heavy workload with intensive holidays and relaxing weekends.

Which are the factors in Pedro's and Petra's life story that *may* influence their attitude especially with regard to having **trust** in other persons? Before you continue to read, prepare a list.

The above exercise describes many of those personal factors that may affect the extent to which we become trusting or mistrusting people. Pedro's life has been full of experiences teaching him that he cannot trust other people, as they omit important facts, they lie to him, they cheat on him, etc. He also learned that circumstances may unexpectedly change in life in a negative way and he should not trust too much if something goes well. It is likely that Pedro does not have a lot of positive feedback from other people and that, as a consequence, he may have a relatively low self-esteem.

On the other hand, Petra has learned through her life that she can count on the people she loves, that when things get difficult there are always people to help, that most people usually tell her the truth and that problems can be solved. She has received a lot of positive feedback in her life from the most important people to her. Even though **none of these factors are determinant**, nor do they necessarily cause any specific attitude (as we have seen with the previous types of factors, too), it is quite likely that Petra has a more trustful attitude towards people (including asylum-seekers) than Pedro.

It would fall beyond the scope of this manual to analyse the vast body of research on these issues. However, one interesting example – **gender** – should be mentioned. Historically, in Western cultures, trustfulness, credulity and naiveté were often associated with women, and while they were tolerated (or even admired) in women, they were often disapproved of in men. Such gender differences may no longer play an important role. Nevertheless, the previously mentioned large empirical study in the United States showed that female judges grant asylum in significantly

higher proportions than their male colleagues (asylum-seekers assigned to female immigration judges were over 44% more likely to receive protection than those assigned to male immigration judges).[143] This research finding indicates that gender may impact on the way asylum decisions are made. However, we would caution against drawing far-reaching conclusions from this result, especially as experiences from other places may show different trends.

It may be discouraging to realise how many different individual and contextual circumstances may influence a decision-maker's attitude and thus the application of credibility indicators and related guiding principles in individual cases (even if only the tip of the iceberg has been shown in this chapter). Many of these factors are **difficult or simply impossible to change fundamentally** (one cannot re-write her/his life story or change inherent biological characteristics, changing social attitudes also takes a significant effort and time, etc.). **Decision-makers are human beings and not machines**; therefore it would be unrealistic to expect the complete elimination of these potential sources of distortion. However, the mere **awareness** of these factors, combined with improved **self-knowledge and burnout prevention** can help decision-makers reduce distortion and apply credibility indicators and related guiding principles in a more objective and consistent manner.

The UNHCR also emphasised in its recent study on credibility assessment in EU asylum systems that

> *The antidote to subjectivity in both individuality and thinking processes is awareness. Assessing credibility requires interviewers and decision-makers to engage in self-assessment so that they recognize the extent to which their own emotional and physical state, values, views, assumptions, prejudices, and life experiences influence their decision-making. It is critical that determining authorities and individual decision-makers have a basic understanding and awareness of these influences so that they can take steps to minimize subjectivity and partiality as far as possible.[144]*

EXERCISE VIII.f

What knowledge, skills and attitude do you need to develop in order to tackle the specific challenges presented in the first section of this chapter ("the decision-maker is a human being")? Before you continue to read, prepare a list of ideas and be as concrete as possible.

As has been previously said, learning may have a more limited impact on these specific (and often inherent) distortion factors than on those others that will be presented in the forthcoming chapters. The table below provides a suggested structure for knowledge, skills and attitude improvement, applied to the issues raised in this chapter.

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[143] This study of unprecedented volume reached its conclusions based on the examination of 140 000 decisions. Note that this gender-based difference in decision-making has been subject to interesting scientific debates for a long time and it is undoubtedly of a complex nature. Even the researchers of the study in question established a link between different work experiences of male and female judges (see what is written about the impact of previous professional experiences in this chapter). But gender, in itself, was still found to make a difference (even though to a slightly lesser extent), when the impact of previous work experience was excluded. – Jaya Ramji-Nogales, Andrew I Schoenholtz and Philip G Schrag, "Refugee Roulette: Disparities in Asylum Adjudication", (2007) 60 Stanford Law Review 295, pp. 342-346

[144] UNHCR, Beyond Proof, p. 77 (footnotes omitted)

		HOW TO DECREASE THE DISTORTING EFFECT OF THE DECISION-MAKER'S CONTEXTUAL AND INDIVIDUAL CIRCUMSTANCES ON CREDIBILITY ASSESSMENT?
LEARNING	**KNOWLEDGE**	- <u>Know</u> what are the main circumstantial, professional and personal factors that may have a distorting effect on credibility assessment; - <u>Learn</u> some essential background information from relevant areas of study – especially psychology, medicine, cultural anthropology and linguistics - <u>Know</u> what burnout is (including symptoms and prevention techniques); - Other examples? . . .
	SKILLS	- <u>Learn</u> how not to project your own personal characteristics and expectations when asking questions (aiming at credibility assessment); - <u>Develop your own</u> burnout prevention and stress reduction techniques; - <u>Learn</u> how to evaluate your performance and identify areas for improvement; - Other examples? . . .
	ATTITUDE	- Improve your <u>self-knowledge</u>, identify and be aware of those circumstantial, professional and personal distorting factors that are personally relevant to you (note that these may change, even day by day); - <u>Accept</u> that human characteristics may distort the objectivity of credibility assessment (<u>accept</u> your own limits), but strive to reduce the distortion; - <u>Improve</u> you ability to put yourself in the other's shoes, see and hear from their perspective; - Other examples? . . .

A number of contextual, professional and individual circumstances influence a decision-maker's attitude with regard to credibility assessment. While it would be unrealistic to aim for the full elimination of such potential sources of distortion, enhanced self-knowledge and awareness can help reduce their impact and can facilitate a more objective application of credibility indicators and related guiding principles in concrete cases.

SUMMARY

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[145] James P Eyster, "Searching for the Key in the Wrong Place: Why "Common Sense" Credibility Rules Consistently Harm Refugees" (2012) 30 (1) Boston University International Law Journal 1, p. 14 (FN 61)

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CREDIBILITY ASSESSMENT IS UNDOUBTEDLY ONE OF THE MOST CHAL-LENGING ASPECTS OF ASYLUM DECISION-MAKING. AN IMPORTANT PART OF CLAIMS FOR INTERNATIONAL PROTECTION ARE REJECTED BASED ON THE JUSTIFICATION THAT THE DETERMINING AUTHORITY OR COURT DOES NOT BELIEVE WHAT THE APPLICANT SAYS. WHILE IN RECENT DECADES THERE HAS BEEN SPECTACULAR ADVANCEMENT REGARDING THE LEGAL STANDARDS AND RELEVANT CONCEPTS OF INTERNATIONAL REFUGEE LAW, CREDIBILITY HAS TO SOME EXTENT REMAINED OUT OF FOCUS. THIS TRAINING MANUAL AIMS TO FILL AN IMPORTANT GAP, BY OFFERING A CREATIVE, MULTIDISCIPLINARY LEARNING METHOD ON CREDIBILITY ASSESSMENT, TAILORED TO THE NEEDS OF ASYLUM DECISION-MAKERS AND OTHER ASYLUM PROFESSIONALS.