

The I.A.R.L.J. European Chapter IUSTITIA PROJECT

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**An examination of Post-traumatic Stress Disorders as experienced by
Asylum-seekers / Medical Reports / Credibility issues arising out of
medical investigations.**

**“ The Good, the Bad and the Ugly ”
“ The Judge¹, the Expert and the Asylum Seeker ”
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Psychologists have ‘behaviour and relations ’ as their field of scientific studies. As a psychologist I never found a better and more beautiful existential description on relations than in the work of the Jewish author Martin BUBER. The title of his book ‘Ich und Du/ ‘I and You’ refers to the core of his thinking. The whole essence and meaning of our existence seems to lie in the dynamic of these two words.

It is good to believe in an absolute ideal of the perfect relation where the other person’s emancipation is the true door to happiness. My belief in this ideal protects me probably from the reality of that ideal in daily life. Unfortunately, reality is quite different and much, much more complex.

What relation are we talking about here?

The Judge and the Asylum Seeker (AS)

First the Judge in the Asylum procedure:

Judges in Asylum Procedures, as part of an organised system, have to abide by and are at the same time protected by international and national laws, instructions and agreements. The long years of expertise in different courts and even the friendship with some of judges has taught me however that judges are also human beings. So far so good and the judge in office should be OK and ready to confront the AS.

But what’s ‘being OK’?

¹ ‘judge’ may easily be replaced by ‘caseworker’

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Apparently protected by all the means of the law and by their functional independence, judges are often confronted with the desperation and the threshold of pain of the AS appearing in court.

As an agnostic I take the Bible seriously and want to quote here the enigmatic words of the Book Judges: "Thou shalt not touch victims unpunished".

So, in your daily job there seems to be not only objective elements that you have to evaluate but there are also subjective elements that have to be taken into account in your final decision. Let me give you an example: one tiny problem, but which shouldn't be underestimated in your job: the evaluation of the degree of truth in the story of the AS. And as a psychologist I am highly interested in the way you cope with this problem. Do you ignore it? Does it make you angry? Does it clash with your personal opinion of handling the truth? Do you understand it, from the position of an AS? Has each judge his or her own idea and reaction or is there a common position among colleagues in the same court?

I am just talking about the tiny problem of the truth in the whole process of the treatment of a case. And I won't say anything about the dozens of other psychological problems and pressure points of your job such as : are you enough respected and paid by the authorities ? What's your motivation for doing this job? To what extent are you trained to understand and explain the different cultural patterns and reactions of the AS population? How do you cope with your own doubts? Does "vicarious traumatising" exist among Judges and eventually among your personnel? Etc, etc

No need to mention here that your decisions may have tremendous consequences for the AS 'as such' but also for our society and the whole political and economical system in which we work. And by touching now this point : I have no clear answer on the question of how strong the pressure or stress arising from public opinion could be on your work. For instance: the different point of views on asylum matters of Non Governmental Organisations in our countries versus the official policy in Europe.

So there could be reasons that the judge on the job is not "that ok".

Let's see it now from the other end of the relation: the refugee candidate.

Commonly we accept the idea that the AS is not OK. Just the status of "refugee" seems to give them the label of "being not OK". Is this so? Are they really not OK? Of course they have their anxious expectancies, their fragile hopes, their fears and my experience with these persons teaches me that not one of them has a restful night the day before his appearance in court or an interview. But this does not give us the right to generalise the whole population as "being not OK". In my point of view it's a fairly denigrating attitude toward this population. As I mentioned earlier and unfortunately often

misused by some NGO. I firmly believe that making this kind of statements has a word: I call it “patronising”.

And patronising is always linked to abuse of power. Don't forget that a lot of these candidates were a victim of abuse of power. Abuse of power by humans, by mechanical or by natural and economical disasters.

On the other hand, from a scientific point of view, it would not be honest to ignore that some of them have less or more severe psychological problems.

What are the objective figures on this particular matter?

Different scientific publications (and here my special appreciation to the Dutch and German colleagues) give us an incidence of mental and psychological problems among asylum seekers and refugees rating between 19 and 44 %. And again, those rather shocking figures must not in any way be a reason to “psychopathologize “ the whole population. Lots of asylum seekers and refugees have their own particular mental strength and get a lot of healing cares from informal care providers.

Among colleagues, in our daily work with AS, we commonly estimate that about one out of five presents ‘some’ kind of mental disturbance, more or less severe and spread out over the Gauss curve. The particular uncertainty about their situation, their present living conditions, their possible earlier traumatic experiences, possibly pre-existing mental disturbances in their personality, etc... all these factors may cause and explain the higher level of mental and psychological difficulties than in an average population.

So, what about the famous PTSD. There is a lot to tell about. First of all we should be aware that modern scientific research on the psychological impact of traumatic events is very recent. At the ISTSS³ we commonly agree that 1980 is the start of an international and objective scientific research in this domain. The more the scientific study advances, the more we know that PTSD, at least in its pure form, is a rather rare phenomenon. That every normal human being that undergoes a traumatic experience feels the impact on his or her personality is generally accepted. The Anglo-Sax approach postulates that those victims do have “normal reactions on abnormal situations”. Every normal person who lived through a terrible experience needs a period of working trough, to give this experience a place in his or her live. But it's scientifically not accurate to state that all persons who undergo a traumatic experience suffer from PTSD after the working trough period.

³ International Society for Traumatic Stress Studies

Psychopathology and psychiatry have their trends, or should I say fashions. When I was a student, 'anti-psychiatry' was the talk of the town in our colleges and favourite pubs, then it was the turn of 'schizophrenia', then 'anorexia' and so on. During the last 10 years PTSD has become the favourite subject in psychology and there are a lot of good reasons for it.

Do you realise what a relief it was for a victim to hear that she or he was still a normal person after the traumatic experience. That he or she was not becoming crazy, that the sleep disturbances, the lack of attention and concentration, the flashbacks, the nightmares, etc... were normal reactions to a highly abnormal situation. Another reason for the tremendous popularity enjoyed by the topic of traumatic events lies in the fact that it may happen to every one of us.

As for me, I believe that the opening up and free speech about this subject stimulated a "victim emancipation movement".

Due to the awful cases of paedophiles in Belgium's recent history, this victim emancipation movement is particularly strong in my country. I should say : "as such, it is a good thing". The other side of the coin is less shiny. In their defence of ASs, Belgian lawyers use, and even abuse, the fact that we live in an 'over'-victimised society. A small analysis of the last 85 cases that were presented to me this year for psychological advice mentioned in 76 % the word "PTSD". Undoubtedly "PTSD" is the most common used diagnosis in psychological and medical certificates concerning asylum seekers. We should perhaps take it as a warning that even clergymen, social workers, good meaning neighbours and volunteers are using as easy as that the rather complex concept and dynamics of PTSD. Another interesting observation that results from my little study is that quite often the notion 'PTSD' appears for the first time in the file at the very end of the whole asylum procedure and mostly there is no indication of, or proposal for, a treatment.

Another side effect of the popularisation of the concept PTSD is the fact that our "case officers" working in the asylum procedure are particular sensitive when the word 'PTSD' is mentioned in the file. Perhaps the topic of this panel may be another side effect of this phenomenon ...

So far so good as to our short and superficial analysis of the "relation between Judge and Asylum seeker".

The judge Ok, the judge not Ok – The AS not Ok, the AS Ok.

As this relation isn't complicated enough, the congress board introduced a third person in the already complex relation between judge and AS: The psychological / psychiatric expert.

Let me first turn to the relationship between the judge and the expert :

Ever since legal procedures make use of experts in order to advise the court, there is a tension between the two actors. This tension is particularly visible in the interaction between the psychiatrist or psychologist as expert and the court.

Let there be no doubt that the tension has not to do with the problem of who rules the game. In my long career as an expert I always felt that this tension is much more subtle.

My first reflection applies to the interface of the legal language and the psychological language. Both are two autonomous systems and are sometimes jealous about each other's autonomy. Legal discourse should be transparent and logic. Questions addressed to experts are mostly clear and well defined. Well, this clarity is never or rarely the case for psychologists. The psychological discourse centres on affective problems, listening, explaining, interpreting, advising, and so on ...

All this became 'as such' more important for psychological experts than the concrete answers on the questions from the court.

A second reflection: I have sometimes the feeling that the judicial world asks us a degree of certainty equal to that of a laboratory experiment. The positivistic claims pretending to explain everything about a given personality are plainly wrong. In a certain way, the psychological expertise should be seen as a sign of poverty of knowledge. Even if we experts have serious difficulties to formulate a direct answer to the questions asked us, I believe that they can be answered in the practical functioning of a juridical-psychological system. In practice that's the way it functions. The basic condition is that both partners, and as such both systems, are aware that answers are relative and that the discourse has the dynamic of an exchange showing deep respect for each other's role and discourse.

Now the "expert and the AS"

In my opinion there is little difference between the psychological expert and the judge in his or her direct contact with the AS. Together in our different tasks we are confronted to the same and extreme delicate and precious material: "fellow man". We are as much as you sensitive to the daily stress that working with this vulnerable group may cause. A small example: one of my first questions in any expertise is: "And how was your sleep last night". No asylum seeker has ever answered : 'good'. It's inevitable that we also undergo to some extent this form of stress. And it is an illusion to believe that our scientific degrees, our experience, our supposed mental strength are enough to protect us against the impact of stress or against the enigmatic words of the Bible: "thou shalt not touch victims unpunished".

As I explained before, because of the uniqueness of our scientific reference frames, “doubting” is an essential dimension of the expertise act. I am sure you can understand and even feel this constraining aspect of the job of the psychological expert.

A few words word about the ‘AS and the psychological expert’.

It should be clear that candidates are in the most cases highly stressed before our examination. Very often it takes more than half an hour to explain the situation and to reassure the AS before we can start our real work. There are a lot of reasons for the asylum seekers’ internal stresses:

- Cultural attitudes of aversion toward a psychologist or psychiatrist. For example: asylum seekers from the former Soviet Union seem to be particularly anxious in front of a psychiatrist, who they seem still to label with political abuse of power. AS from the Far East seem to express psychological problems by a psycho-somatic tableau. Etc...
- The intensive fear and reluctance to re-evoke painful experiences or the simple misunderstanding that a psychological examination includes a physical examination is often felt as a new violation of their integrity and, as such, denigrating.
- Very often AS experience the psychological impact on their personality as a key argument and proof in the range of motives of their asylum application. They often feel anything that could go wrong during this examination as a personal catastrophe.

Besides other reasons for internal stress of the AS faced with a psychological expertise interview, we are confronted to another very frequently observed attitude. AS connect the word ‘psychologist’ with ‘help’. And I am glad that in their mind this connection exists but high is their disappointment went they hear from me that I am not allowed to give them psychological help and relief. This point brings me to the conclusions of my intervention.

In spite of the fact that the AS does not get concrete psychological help from us during our expertise work, we observe a strange reaction at the end of our examination. The AS thanks us profusely for the opportunity he or she got to tell his or her story. Some of them express it in a most explicit way: “I was so afraid of this and now I am feeling warm and good”.

What can we learn from these simple words and more specifically what is important for AS with a psycho-traumatic history?

However deeply felt a trauma may be, victims of critical incidents do not suffer only from the facts that caused their pain. In my opinion they also suffer from the loss of capacity to structure and organise their world afterwards. They suffer from the incapacity to love again. And last but not least they suffer from a lack of recognition, a lack of information about what happened exactly and what happens to them now. But above all they suffer from an inappropriate approach from their direct environment. By inappropriate approach I mean an approach that is invested with authority. And all of us, judges and experts, in the eyes of the AS we represent “authority”. That is probably our main and common handicap in our contacts with the “real” traumatised AS.

Keeping the authority of our position as a protection may help us to survive mentally in this job. I agree. But we should be aware that in that case we would never have the possibility to understand fully the dynamics of a traumatised AS. On the other hand a judge needs this understanding in order to make a well-founded decision and the psychological expert needs it for his expertise.

Our relational triangle (AS, judge and expert) seems to be particularly complicated and this complexity seems to hold some serious risks for the quality of our life as well as for the quality of our work.

Is there a solution? If you want my sincere opinion ... there is none. This complexity is the essence, the peculiarity and, why not, the richness of our different jobs. Of course this doesn't mean that we can't take some preventive measurements for ourselves.

And, guess what the appropriate scientific literature suggests as preventive measures in such situations and for what is these days commonly named as “High-Risk Jobs” ?

Recognition;
Correct information;
and a correct approach. The correct approach has to be translated as ‘using the force of sharing our experiences and feeling with colleagues’

Where I heard these words earlier in this intervention and to whom were they addressed?

Could it be that ‘*vulnerability*’ is the magic and strange concept that we share with the AS.

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