

To Believe or Not to Believe – Is That the Question?

A critical study of how the Swedish migration
courts handle their responsibility to judge in
asylum cases



GÖTEBORGS UNIVERSITET
HANDELSHÖGSKOLAN

Akademisk avhandling

som för avläggande av juris doktorsexamen vid
Göteborgs universitet offentligt framläggs och försvaras
fredagen den 16:e juni 2023, kl. 10.00 i SEB-salen,
Handelshögskolan vid Göteborgs universitet,
Vasagatan 1, Göteborg.

av

Annkatrin Meyerson, jur. kand.

Doctoral dissertation to be publicly defended for the degree of Doctor of Laws, on 16 June 2023, at 10.00 AM, in SEB-salen, at the School of Business, Economics and Law, University of Gothenburg, Vasagatan 1, Göteborg. The defense of the dissertation will be conducted in English.

Abstract

Annkatrin Meyerson (2023) *To Believe or Not to Believe – Is That the Question? A critical study of how the Swedish migration courts handle their responsibility to judge in asylum cases*

Printed by: Stema specialtryck AB, Borås 2023.

ISBN: 978-91-87869-26-6 (PRINT)

ISBN: 978-91-87869-27-3 (PDF)

In this dissertation, the Swedish migration courts' handling of the risk responsibility of judging in asylum cases is studied. An empirical study of cases from the migration courts is followed by a critical analysis of the findings considered against the background of the asylum legal framework. The judges' choices of what to present in their judgements is then analysed through the lens of Hannah Arendt's theory of 'the faculty of judging'; the responsibility to judge in high-stakes situations. The results show that, the emphasis in the judges' argumentation lies on the criteria used as indicators to assess the credibility of the asylum seeker's narrative, while arguments on law, facts, circumstances, and the foundations of these arguments are less frequently emphasized. The analysis of these results in the light of the legal framework makes visible a shift of emphasis at different levels; from an assessment of the risk of return based on law and facts, to an assessment of the quality of the asylum seeker's narrative. Through these shifts, credibility is given the status of a legal requisite detached from the principle of non-refoulement. By making uncertainties, ambiguities, doubts and choices about facts and law invisible, the judgments lack essential parts of that which, according to Arendt, constitutes the faculty of judging. The outcome is presented as the only possible one, thereby leaving little room for the application of the principle of evidentiary alleviation; 'benefit of the doubt', established in asylum law, which serves to ensure the maintenance of non-refoulement. By choosing to narrow down the legal question to a decontextualised assessment of the credibility of the asylum seeker's narrative, the core issue – the potential risk of sending the asylum seeker back to an area where she or he is at risk of being subjected to ill-treatment prohibited by law – recedes into the background. What emerges is a reluctance to judge on that which is at stake in asylum cases.

Keywords: migration law, non-refoulement, credibility assessment, asylum adjudication, Swedish migration courts, the faculty of judging, Hannah Arendt
Annkatrin Meyerson, Department of Law, School of Business, Economics and Law at University of Gothenburg, Box 650, SE-405 30 Göteborg.
www.gu.se/handelshogskolan/juridik