

International Journal of Law in Context

<http://journals.cambridge.org/IJC>

Additional services for *International Journal of Law in Context*:

Email alerts: [Click here](#)

Subscriptions: [Click here](#)

Commercial reprints: [Click here](#)

Terms of use : [Click here](#)



The question of Salah Sheekh: Derrida's hospitality and migration law

M. C. Stronks

International Journal of Law in Context / Volume 8 / Issue 01 / March 2012, pp 73 - 95
DOI: 10.1017/S1744552311000449, Published online: 14 February 2012

Link to this article: http://journals.cambridge.org/abstract_S1744552311000449

How to cite this article:

M. C. Stronks (2012). The question of Salah Sheekh: Derrida's hospitality and migration law. *International Journal of Law in Context*, 8, pp 73-95 doi:10.1017/S1744552311000449

Request Permissions : [Click here](#)

The question of Salah Sheekh: Derrida's hospitality and migration law

M. C. Stronks¹

Editor-in-Chief *Asiel&Migrantenrecht* (the Dutch journal for refugee and migration law)

Abstract

Hospitality is a self-contradictory concept. Both inclusionary and exclusionary forces are present at the very threshold of hospitality. This article shows how this contradiction works in the practice of migration law. The author takes a Dutch case, the case of Abdirizaq Salah Sheekh, to reveal the force of this contradiction from the moment the asylum seeker arrives on the territory, all the way through to the end of his story at the European Court of Human Rights. The case is, in fact, a symptomatic indictment of how aliens are treated in the Netherlands and, in a more general sense, in Europe as a whole. This article not only demonstrates how the question of hospitality commences with language – the moment we start communicating with the alien – the author also argues that in the violent collision produced by the two contradictory demands of hospitality, a new subject is created. Not only is the migration procedure questioned, but also the subject of migration law.

I. Introduction

'Then fair-haired Menelaus greeted the two and said: "Take of the food, and be glad, and then when you have supped, we will ask you who among men you are; for in you two the breed of your sires is not lost, but ye are of the breed of men that are sceptred kings, fostered of Zeus; for base churls could not beget such sons as you".' (Homer, 1919)

This excerpt from Homer's *Odyssey* describes the arrival of Ulysses' son Telemachus, accompanied by a friend, in the kingdom of Menelaus. King Menelaus, whose wife Helen had been the cause of the Trojan war, does not recognise Telemachus as a young man. When Ulysses and Menelaus had left for battle a generation earlier, the boy had been still a baby. Nevertheless, Menelaus welcomes the stranger into his home, offers refreshment and places him at his side at the head of the table. Indeed, questions as to Telemachus' identity appear secondary to his reception – at least until Helen enters the room. Menelaus thus welcomes before questioning. This story illustrates the core of what this article discusses, with the arrival of Telemachus being taken as an example of hospitality. Hospitality was one of the important themes in the final work of the French-Algerian philosopher Jacques Derrida. I briefly discuss the main aspects of Derrida texts on hospitality in the next section.

In Section II, I present a modern case of hospitality: the case of an alien, Abdirizaq Salah Sheekh, who sought asylum in the Netherlands. The case, which went to the European Court of Human Rights (ECtHR) in Strasbourg,² is a symptomatic indictment of how aliens are treated in the

¹ LLM and MA (Philosophy) at VU University Amsterdam and currently PhD Student VU University Amsterdam, the Netherlands. My thanks go to Hemme Battjes, Ashleigh Barnes, Jonathan Burton-MacLeod, Frances Gilligan, Hans Groenewegen, Thomas Spijkerboer and Wouter Veraart for their comments on earlier drafts of this article.

² ECtHR, 11 January 2007, *Salah Sheekh v. The Netherlands*, no. 1948/04.

Netherlands and possibly also, in a more general sense, in Europe as a whole. With the help of Derrida, I will endeavour to show a certain tension in our treatment of Salah Sheekh. This tension is in fact paradigmatic for hospitality and, as I will argue, for our migration practice. In this article I seek to show how this tension functions in an asylum procedure and what consequences it has for the subject of this procedure.

II. Hospitality

II.1 Welcoming Telemachus

I can hardly think of a more welcoming and hospitable reception than the welcome afforded to Telemachus on his arrival in Lacedaemon, the land of King Menelaus. Not only is he pampered, fed and treated as a king; more remarkably, this treatment is provided without question. The strangers did not even ask to be allowed to enter. They simply arrived at the gate and were taken by the servant Eteoneus to see Melenaus, who in turn was infuriated that his servant had questioned their welcome at all. In other words, they are welcomed beyond their identity, beyond their predicates and even beyond their language (note, however, that they are seen as being descendants of Zeus).

Derrida describes such a welcome in a series of lectures given at the *École Pratiques des Hautes Études* in Paris and later published as *De l'hospitalité. Anne Dufourmantelle invite Jacques Derrida à répondre*. This form of reception welcomes the *other* in an immediate, urgent way and without waiting, as if 'real' qualities, attributes or properties would slow down or compromise the purity of this welcome. It represents, and here we see the influence of Emmanuel Levinas, a form of welcoming in which 'it is necessary to welcome the other in his alterity, without waiting, and thus not to pause to recognize his real predicates' (Derrida, 1997, pp. 111–12). This type of welcome, according to Derrida, constitutes what he refers to as the 'Law of Hospitality'. In other words, welcoming without questioning and even without identifying a person who appears at our borders.

Hospitality, however, not only triggers an unlimited, unconditional form of welcome. The laws of hospitality, as relating to migration, are the conditional rights and obligations laid down in treaties and domestic laws (Derrida and Dufourmantelle, 2000, p. 77). These laws are explicit and regulate the entrance of 'aliens' into a territory. They are, therefore, in themselves conditional and restrictive. If they failed to limit the number of aliens entering the territory, it would be pointless to have such laws and borders in the first place. Despite the friendly welcome afforded to Telemachus on his arrival at the gates of the city, the story also elicits restrictive elements of hospitality. It is unlikely that every stranger would receive the welcome provided to Telemachus, whose visage and stature led Eteoneus to assume that he and his travelling companion were of deified descent. Indeed they are introduced as the seed of the great Zeus.

According to Derrida, these two forms of hospitality – the unconditional welcome, and the condition of custom and legal boundaries – are intrinsically interrelated. Whereas the Law is above the laws, at the same time it annexes the laws in order to become effective, concrete and determinable. The Law thus needs the laws to avoid becoming too abstract, utopian or dim. The laws are always, however, in contradiction with the Law; they threaten, undermine and deprave it. At the same time, the conditional laws would no longer be laws of hospitality if they were not guided, inspired and annexed by the Law of unconditional hospitality. These two schemes, therefore, are simultaneously antinomic and inseparable. They both imply as well as exclude each other: 'They incorporate one another at the moment of excluding one another, they are dissociated at the moment of enveloping one another [...]' (Derrida and Dufourmantelle, 2000, p. 81).

The stranger Telemachus is thus welcomed in an unconditional, unquestioned manner, but this does not last. Following the meal, Menelaus' wife, the beautiful Helen, joins them at the table and

perceives such a remarkable resemblance between the guest and Ulysses that she requires his identity to be revealed.

In the words of Derrida, the laws of hospitality require the alien, albeit in the case of Telemachus only after the overwhelming welcome, to make himself known and to become *subject* to our laws. If the guest were not to reveal himself, he would remain a ghost for the master of the home. This is impossible, as is later argued, if someone wants to welcome another person to his home.

In the above example, therefore, the tension between the Law and the laws becomes apparent. The Law requires me to open my home, without asking any questions, to both the alien and to the absolute, unknown and anonymous other. The laws demand questions and rules. This situation reflects the simultaneous desire to be master in one's own home, while also extending an unconditional welcome. For an individual to remain sovereign in his own home, the guest has to become subject to the rules of the master of this home. Otherwise the situation is prone to hostility: 'Anyone who encroaches on my "at home", on my ipseity, on my power of hospitality, on my sovereignty as host, I start to regard as an undesirable foreigner, and virtually as an enemy. The other becomes a hostile subject, and I risk becoming his hostage' (Derrida and Dufourmantelle, 2000, pp. 53–55).

What should prevail: the unconditional or the restricted form of hospitality? This is what Derrida dubs the question of the alien, or the being-in-question of the question: Does hospitality start with an unquestioned welcome? Or does hospitality imply that the alien should be interrogated? Is hospitality given to another person before he identifies himself and before it has been established that he is a subject, or a subject of law? (Derrida and Dufourmantelle, 2000, pp. 27–29).

In other words, hospitality is a self-contradictory concept. To put it in the most used and misused word in respect of Derrida's thinking, it 'deconstructs' itself precisely through being put into practice. It never exists as such, it is always to come (Pavlich, 2005, p. 106).

It does matter whether laws or the Law prevails. If the Law is given too much space, hospitality can easily turn into xenophobia, which relates to the collusion of power and hospitality. After all, the power of the host implies that he will select and filter the visitors and guests as he would otherwise lose the sovereignty of his home (because, for example, too many people would enter his home or someone would take over his power). This power consequently implies a certain inclusionary and exclusionary force at the very threshold of the right of hospitality (Derrida and Dufourmantelle, 2000, p. 55). It seems that the alien has to comply with our laws of hospitality. If a new arrival meets the terms of these laws, he will be seen as the host's guest. If, however, this new arrival does not meet the criteria, he can only force his way into the home of the host as a parasite or a guest who is unlawful, illegitimate, clandestine and liable to expulsion or arrest. Both manoeuvres, the legal and illegal entrance of aliens, are consequences of the very fact that a certain area is defined as home:

'That once again, is not absolutely new: in order to constitute the space of a habitable house and a home, you also need an opening, a door and windows, you have to give up a passage to the outside world [*l'étranger*]. There is no house or interior without a door or windows. The monad of home has to be hospitable in order to be *ipse*, itself at home, habitable at-home in the relation of the self to itself. But what has always been structured like this is nowadays multiplying both the home and the accessibility of home in proportions and modalities that are absolutely unprecedented.' (Derrida and Dufourmantelle, 2000, p. 61)

So, since we have houses and territories with doors and windows, it is inevitable that people will come to our home whether we want it or not, or whether we see them as guests or parasites. This is one obvious feature that would seem to accord with our migration practice.

The fact that we have a country with borders makes it inevitable that aliens will come to our country (and leave it).³

At the same time, however, giving laws too much scope can result in a violent interrogation of the guest, a questioning in which the singularity of the alien fades away in the violence of the general laws.

In the next section I examine the case of the Somali asylum seeker Abdirizaq Salah Sheekh and look for indications of the described tension between the Law and the laws.

III. Welcoming Abdirizaq Salah Sheekh

The following is a contemporary story about the arrival of an alien at the gates of a modern country, where Lacedaemon is replaced by the Netherlands and Telemachus by Abdirizaq Salah Sheekh.

Before introducing this alien, let me first make some contextual remarks about the circumstances of his arrival and some analytical points on the aforementioned tension of hospitality.

III.I His-story and our-story

In the migration sphere we⁴ decide whether someone can become part of our society.⁵ But not only do we decide on whether he may enter, we also force him to adjust to our language. Derrida sees this problem and emphasises that requiring an alien to speak our language is the first violence upon his otherness. This, according to Derrida, is where the question of hospitality begins.

If the question of hospitality begins with language, we need to establish a linguistic referent so as to analyse, in respect of the way in which Salah Sheekh was welcomed to the Netherlands, where the violence upon Salah Sheekh's otherness began. To make the distinction clear in this text, I will use two neologisms: 'his-story' and 'our-story'. Where I discuss the story of Abdirizaq Salah Sheekh, or other persons who come to our borders, I use the word 'his-story'. Where I discuss the story constructed in the process of the asylum procedure, I use the word 'our-story'. This analytical distinction is used throughout this article to show the dichotomy between the story of Salah Sheekh as he tells it and our conception of this story. It also demonstrates the violence and dissimilarity innate to this gap. First, however, this distinction has to be problematised in order for us to understand that we can never grasp any conception of the his-story of Abdirizaq Salah Sheekh that is not affected by our-story.

3 In this article I use Derrida's metaphor of the home to illustrate a certain welcoming in migration practice in the Netherlands. I believe that the contradictory, but intrinsically related aspects which Derrida puts to the fore can illuminate certain tensions in our migration practice. This presupposes, however, that the metaphor of welcoming to the home serves in a similar fashion for the nation as well (something Derrida seems to suggest, but does not analyse). It could be interesting to analyse the differences between hospitality in homes and in nations, but that is not the purpose of this article. For a thorough and very interesting analysis of the relationship between the family and the nation, see Van Walsum (2008).

4 When I use the plural 'we' or 'our' in this article I mean the plural of the general laws, or of the drafters of the laws. This does not necessarily denote the Dutch legislator; instead it is intended to designate a more abstract plural of the host in a migration procedure, such as the migration procedure in Western Europe as a whole. Douzinas and Warrington put this tension between the actors in immigration law rather succinctly: 'Immigration law is a prime and symbolic space for the construction of the asymmetrical relationship between "we" and the "others". The "we" of "we decree as a norm" and the "you" of the "you ought to obey" are radically external to each other' (Douzinas and Warrington, 1991, p. 133).

5 This dichotomy between us and the singular alien is not restricted to the migration sphere. The model of spheres is developed by Michael Walzer in his *Spheres of Justice*, where he distinguishes between different spheres and upholds a principle of 'complex equality' which, to put it simply, denotes that justice in one sphere may not influence justice in another. Linda Bosniak, however, convincingly argues that such a strict separation of spheres is simplistic in the context of migration law. The migration sphere seems to follow someone into other spheres; see Bosniak (2006, pp. 40–49).

First of all, there is no such thing as ‘the real story of Abdirizaq Salah Sheekh’. Even the his-story that Abdirizaq Salah Sheekh tells (or maybe even thinks) is an interpretation (namely his-interpretation) affected by the circumstances of the moment. This is illustrated by the ‘fact’ that his-story will change depending on the given circumstances of the audience, the moment, his feelings and so on. The his-story of Abdirizaq Salah Sheekh will not remain the same even if he tells it, without interrupting, to a different audience at a different moment.

Second, I cannot think, speak or write of a version of his-story that is not affected by our-story. As the discourse of our migration policy is in our language, Abdirizaq Salah Sheekh must make himself understandable, either by addressing us in our-language or by speaking through an interpreter. One has to understand, in more or less the same way, that this translation, however excellent it may be, necessarily remains a translation.⁶ This means, as Derrida pointed out when he addressed an audience in the United States in English, whereas his text was originally written in French and then translated into English, that a translation is ‘an always possible but imperfect compromise between two idioms’ (Derrida, 1992, p. 5). In this way Salah Sheekh’s his-story in our procedure has always already been influenced by our-language.⁷ According to Derrida it is ‘more just to speak the language of the majority, especially when, through hospitality, it grants an alien the right to speak’ (p. 5).

This is obviously not the only way, however, in which his-story is influenced by our-story. The fact that Abdirizaq Salah Sheekh requests asylum in the Netherlands suggests that he wants a residence permit and will adjust his-story in the manner that he deems most likely to result in his being granted this permit. Thus his-story is adjusted in order to enhance his chances in our procedure.⁸ Then, in our procedure, the his-story is structured by the actual questions we pose. These questions structure the aspects of his-story which Abdirizaq Salah Sheekh thinks relevant for his-story.⁹ Furthermore, the environment in which the initial interview is held can greatly influence the way in which he arranges his-story. The sometimes harsh and direct method of questioning in the procedure can have a vital influence.

Finally (this is obviously not an exhaustive list), our translation of the spoken words of Abdirizaq Salah Sheekh into the written procedural documents is another layer of (our) interpretation as there can be a great difference between the words expressed in the interviews and the words recorded in the procedural documents.

It is important, therefore, to note that his-story, as we find it in the procedural documents, is already highly influenced by our-story. However, this does not mean that there is a ‘real’ or pre-discursive version of his-story, which we should *actually* find. Below I outline how we first ask for such an influenced his-story, which we then reject because it is neither a real his-story nor a well-structured our-story.

III.II Contextual remark: the asylum procedure in the Netherlands

In order to be able to situate Salah Sheekh’s story in the bigger picture of the general migration laws currently in force in the Netherlands, let me quickly sketch the asylum procedure.

6 According to Dutch research by Nienke Doornbos, translators and interpreters are important and active participants in the interaction between asylum seekers and government officials. One of the reasons for this is that translators and interpreters often try to make the procedure more efficient (for the Immigration and Naturalisation Department); Doornbos (2003, pp. 196 – 227).

7 Or, if the interpreter interprets from the ‘original’ language into English, our interpretation of the English of the interpreter.

8 See, for example, Barsky (2000).

9 Spijkerboer has shown the important structuring (but mostly hidden) influence of questions in interviews with asylum seekers in the procedure; see Spijkerboer (2000).

The Dutch asylum procedure starts as soon as the alien requests asylum (Kuijjer, 2005, p. 259). After this request, the asylum seeker has to be available for investigation at a specially designated place.¹⁰ An initial interview [*eerste gehoor*] is held as soon as possible.¹¹ During this interview the alien is not asked why he is seeking asylum, but only about his identity, nationality and travel route.¹² After this initial hearing, a decision is made as to whether the case can be dealt with within the accelerated asylum procedure ('48-hour procedure').¹³

Subsequently, the asylum seeker is subjected to a detailed interview focusing predominantly on his reasons for leaving his country of origin and on the results of the investigations into his identity, nationality and travel route.¹⁴ The alien receives a copy of the report compiled from the detailed interview and is given a limited period of time to submit corrections and additional information. The alien must be given a letter of intent if the Minister intends to reject the application and should be allowed the opportunity to react to the substance of this letter.¹⁵ This reaction can be expressed in writing.¹⁶ Lastly, the Minister will announce a decision.¹⁷ If the Minister rejects the application, the asylum seeker can appeal to the District Court of The Hague (which also sits at other District Courts in the Netherlands) and subsequently, if this Court rules against the asylum seeker, to the Council of State (*Raad van State*) (Spijkerboer and Vermeulen, 2005, pp. 238–56; Slingenberg, 2006, p. 7).

III.III The truth

We first get to know Salah Sheekh in the initial interview after his arrival and request for asylum in the Netherlands. Just like everyone who applies for asylum in the Netherlands, Abdirizaq Salah Sheekh is first interviewed by a government official of the Immigration and Naturalisation Department (IND) seeking to obtain more information about his identity, date of birth, nationality and travel route. As mentioned earlier, this first part of the procedure is not intended to establish Abdirizaq Salah Sheekh's reasons for applying for asylum. A clear and strict distinction is made between this initial interview, which is purely intended to establish the individual's identity, nationality and travel route, and the subsequent detailed interview, which is intended to establish the motives or reasons behind the application. The Aliens Circular even states that 'In practice it often happens that the alien already during the first interview, without being asked, commences with his asylum story. In that case the alien is informed that his motives for asylum will not be addressed before the detailed interview.'¹⁸ The rationale behind this distinction, according to the *travaux préparatoires* of the Aliens Decree, is that the alien is

¹⁰ Article 31, para. 2.b Aliens Act 2000 [*Vreemdelingenwet 2000*] ('*Vw 2000*'). See Kuijjer *et al.* (2005, p. 261). This is a euphemistic way of saying that the alien will be detained for the duration of the investigation.

¹¹ Article 3.110, Aliens Decree 2000 [*Vreemdelingenbesluit 2000*] ('*Vb 2000*').

¹² Article 3.110, para. 2 *Vb 2000*. See also Kuijjer *et al.* (2005, p. 261).

¹³ A new asylum procedure has operated in the Netherlands since July 2010. This is disregarded for the purposes of this article. This paragraph merely serves to explain the procedure applying in the case of Salah Sheekh, not the procedure currently in force. For a detailed description of the Dutch accelerated asylum procedure, see Slingenberg (2006).

¹⁴ Article 3.111 *Vb 2000*. See also Spijkerboer and Vermeulen (2005, pp. 209–211).

¹⁵ Article 39.1 *Vw 2000*; Spijkerboer and Vermeulen (2005, pp. 213–15); Slingenberg (2006, p. 6).

¹⁶ Article 39.2 *Vw 2000*; Spijkerboer and Vermeulen (2005, pp. 215–16).

¹⁷ Article 42, *Vw 2000*.

¹⁸ Aliens Circular [*Vreemdelingen Circulaire*] 2000 C 12/1.1 ('*Vc 2000*').

granted a period of rest before he puts forward his-story.¹⁹ This appears to be so important that we grant the alien this period of rest even if he starts telling his asylum story himself. Contrary to Telemachus, Abdirizaq Salah Sheekh is thus immediately questioned about his identity and his name. After this, however, we grant him some time to refresh and to rest. A treatment probably not as luxurious as that received by Telemachus, but at first sight it is done with the same intention: to make the alien feel at ease.

There is, however, more to say about this rigorous distinction in the procedure. We also see an interesting separation between the asylum story of Abdirizaq Salah Sheekh and his name. We first ask for his name and identity before we are interested in what he has to say about his asylum request. So he first has to make himself known to us in our language, or at least after translation into our language. This means that he tells us in our language what his name, age, date of birth and nationality are, but it also means that we only understand what he says if he objectifies this with documents. So part of our language, part of our procedure, is that we want to 'objectify' his-story and thus his-name, his-age and his-nationality. For now, it is enough to note that this distinction in the procedure is not only for the benefit of Abdirizaq Salah Sheekh, but also ties in very well with the objectives of our procedure. This part of our language, the language of objectified documents, plays a prominent role in the asylum case of Salah Sheekh, as demonstrated below.

In this article I do not treat the distinction between the initial and detailed interviews as strictly as in the Dutch procedure. For my purposes it is not necessary to isolate the 'facts' about Abdirizaq Salah Sheekh's identity, his nationality and travel route from the rest of his-story (if this is at all possible). Let us, therefore, first listen to Abdirizaq Salah Sheekh's own summary of his-story, as recorded in the detailed interview:

'I was five years old when the war started in Somalia. I lived with my family in Mogadishu. We had to flee to the village Nuuh. We encountered several problems from the moment we arrived there. I belong to a minority tribe. We were too powerless to protect ourselves. We lost our valuable belongings, we were robbed. During our stay in the village we were threatened with death, we were assaulted. Q. 'We' is the whole family and myself. My sister was raped. My mother was almost raped. Q. She was harassed by men. A year ago my brother was killed while he was working in his grocery store. He was assaulted by armed militia. Q. That was almost a year ago. My mother always tried to sell goods on the market for our maintenance. Q. She was harassed by armed militia who were in power. She was robbed and assaulted at the market. And even at our home. The militia came to our home for money. Life was just harsh, we could not protect or defend ourselves. Sometimes we slept without eating and drinking because my mother's daily profit was stolen by the militia. When they visited us, times were really hard, it was a time of intimidation. They had weapons, we were held at gunpoint. At one of those occasions my younger brother Ali was tortured by the militia so seriously that his arm was broken. During this visit I was also tortured. Q. I received a tough blow. They hit me with the butt of a gun. Q. My forehead was injured. Q. It left me with a scar. Life has been rough since the fall of the government. There are no public authorities who protect the civilians and minorities. We were helpless against the aggression of the militia who attacked people every day and night. To our dismay I lost my father in 1995. He passed away. Times became even harder for us then. There was no hope if I stayed any longer. My life was

19 *Nota van toelichting bij het Vreemdelingenbesluit 2000*, Bulletin of Acts and Decrees 2000, 497, p. 175. It seems unlikely, however, that this is the only rationale behind the separation. The *proces-beslissing* (the decision on whether the application should be dealt with under the 48-hour procedure) is taken on the basis of information from the initial interview. Although this is a very important decision, with a massive effect on the alien's asylum procedure, it is not discussed in this article. For a detailed discussion, see Slingenberg (2006).

threatened. I ran a great risk of being killed by the militia who hunt for minorities. It became unsafe. There was no order. Because of these facts and circumstances and problems, my mother and I discussed the possibility of leaving the country.’²⁰

Salah Sheekh told his-story himself without interruption and without specific questioning by government officials (at least that is the suggestion of the official transcript).²¹ This is actually one of the few moments in both the initial and detailed interview that one has the impression that Abdirizaq Salah Sheekh was free to express his own view on his-story (as I previously noted, his view on his-story will always be influenced by our-story). In the remainder of this article I analyse how we further restructure and reconstruct our conception of Abdirizaq Salah Sheekh’s his-story in the initial and detailed interviews. As mentioned earlier, I do not see Abdirizaq Salah Sheekh’s version of his-story as the only ‘real’ story and the rest of the interviews as our ‘fictional’ version of it. I am not particularly interested in the question of ‘realism’. Instead, what interests me are the differences between these stories and the way these differences are emphasised and employed in our asylum procedure.

III.III.I Which truth?

“Also” sagte der Untersuchungsrichter, blätterte in dem Heft und wandte sich im Tone einer Ferstellung an K. “Sie sind Zimmermaler?” “Nein” sagte K., “sondern erster Prokurist einer großen Bank.” (Kafka, 1983b, p. 39)

The standard policy is for the government official to ask the asylum seeker in the initial interview for his name, date and place of birth, nationality, ethnic origin, the date of his departure from his country of origin and the date of his arrival in the Netherlands, information on any possible stays in other countries, his travel documents and documents to establish his identity.²² Rather than discussing all the questions put by the government official to Salah Sheekh, I will focus on some specific aspects of the interview.

At the beginning of the interview the official makes some interesting statements. He stresses that it is important to check whether Salah Sheekh’s name appears clearly in the document and states that the interpreter is impartial and that this initial interview is intended to establish his identity, nationality and travel route.²³ The official also emphasises that Salah Sheekh can speak freely,²⁴ that everything he says will be treated confidentially and that it is important that he speaks the ‘truth’. These latter instructions merit particular attention. What does it mean to speak freely, that his statements are safe with us and that he should speak ‘the truth’?

The first two statements should probably be seen as interrelated. It seems plausible that they are meant to put Salah Sheekh at ease in the situation and to convince him that, contrary to the situation from which he came, he has nothing to fear as long as he is with us. In other words, he can trust us and

²⁰ All the quotations from the Salah Sheekh file are my translation.

²¹ Spijkerboer (2000) has shown that these statements were interrupted by questions that cannot be found in the file. I have added a ‘Q’ in the transcript where it is likely that Salah Sheekh is responding to a question.

²² Article 3.44 *Voorschrift Vreemdelingen 2000* (‘VV 2000’).

²³ As we saw, even his-name is already being influenced by our-story. This is further illustrated by the fact that in one of the early documents he fills in his name in his own alphabet (which is totally distinct).

²⁴ In the original Dutch text it is literally stated ‘that he can speak in freedom’, I have translated this by ‘freely’ as in the Dutch ‘*vrijuit spreken*’ as I believe this is what the official (or the drafter of the questionnaire) might have had in mind. It would be odd to use the word ‘freedom’ here since Salah Sheekh is being detained at the border and is not particularly free at that moment. Furthermore, it is hard to think of a more vulnerable and dependent situation than that of a person asking for asylum.

tell us everything as long as it is 'the truth'. The question remains, however, as to which truth we are interested in. I already stated in the first paragraph of this section that it is difficult to establish 'the story' of Salah Sheekh or 'the truth' about Salah Sheekh. What are we saying, then, when we stress that he should speak 'the truth'? Do we mean that he should not willingly withhold information that is relevant to our-story or his-story? In other words, does 'the truth' denote our version of it, or his? And if he should only speak our-truth, what does this say about our earlier claim that his statements are safe with us and, more importantly, that he can speak freely? Is this our-free speech? And is Salah Sheekh then safe with us?

III.III.II How on earth did you get here?

Salah Sheekh has a (false) Kenyan passport, which he used, according to his-story, to travel from Kenya to Istanbul and from Istanbul to Amsterdam. He had to return the document to the travel agent every time he passed through customs. In the interview the government official seems a bit surprised that Salah Sheekh did not keep the documents himself in order to prove his travel route as soon as he arrived in the Netherlands. Salah Sheekh subsequently declares that the travel agent arranged everything and told him to use this false passport. The travel agents also provided a Somali passport to get Salah Sheekh from Somalia to Kenya. Salah Sheekh also declares that he has never had an authentic passport (nor any other identity document) since it is impossible to get such a document in Somalia.

This prompts the government official to ask: 'How do you think you can convince the Dutch authorities that you are who you say you are when you do not have any documents with you?' Salah Sheekh answers: 'I speak the truth. When the former regime was in power, I was really young. I did not have a chance to get hold of those documents.' We already see a divergence between our-truth and his-truth here. Salah Sheekh states that the government officials should be convinced by his-story *because* he is telling 'the truth'. At the same time we see that the government official equates convincing arguments or 'the truth' with documents that 'prove' certain statements. If those documents are present and we are convinced that they are 'official' (in other words, that the document has been produced by the authority that issued it and that this authority was authorised to issue it), we hold these statements, or 'these truths', to be self-evident. So at the beginning of the interview we instruct Salah Sheekh to speak the truth, but the truth of Salah Sheekh, his-truth, appears not to be convincing enough for us. We need a truth based on 'official documents'; in other words our-truth.

There is, however, another aspect of Salah Sheekh's his-story about which the government official is suspicious: his travel route. On this subject Salah Sheekh states the following in the initial interview:

'My uncle and mother arranged everything for me. I went to Mogadishu on 1 May 2003 by truck. My uncle accompanied me in this truck. I stayed one week with my uncle in the district of Abdulaziz. My uncle arranged the Somali travel agent. The agent asked for a passport photograph in order to arrange a passport for me. The agent, Abduqadir, and I took the plane from Mogadishu to Nairibi [*sic*]. We flew in a small plane which transported narcotics, Qat-Chat. We arrived in Nairobi airport, from where we took a taxi to the hotel, from where the travel agent arranged the documents for our journey to Europe. Where exactly we were heading to in Europe was unknown.'

In response to further questioning by the government official, Salah Sheekh states that he and the travel agent could not speak the same language and were therefore unable to communicate properly with each other. Although the government official does not ask many questions specifically relating to his travel route, Salah Sheekh's lack of travel documents seems to puzzle the official.

III.III.III How old is he?

Another interesting aspect from the initial interview relates to the age of Salah Sheekh. The initial interview starts with Salah Sheekh stating that he is seventeen years old and was born on 23 February 1986. The government official asks how he knows that this is how old he is. Salah Sheekh states that he believes that he must have been born in 1986 as he knows that there is a three-year age gap between his brother and himself. Salah Sheekh does not know the exact date of birth of one of his family members and nor does he know the date on which his brother or father died.

On the basis of this information the government official decides that there are serious doubts about the age of Salah Sheekh. He therefore tells Salah Sheekh that he can undergo an examination to determine his 'real' age.²⁵ In this way the official acts in accordance with the standard policy, which states: 'When the involved asylum seeker asserts to be minor, but does not succeed in proving his age with documents or make it plausible in another manner, the official of the IND has to determine whether there [...] are so many doubts about the alleged age that the involved should be given the opportunity to prove his age with the help of an examination to establish his age.'²⁶ The question remains, however, as to why the official doubts Salah Sheekh's age. Is it just because he does not have official documents to prove his age? That would mean that, once again, there is a divergence between his-truth and our-truth.

Salah Sheekh nevertheless agrees to undergo an examination to officially establish his age. This examination establishes, with 95 per cent or more certainty, that Salah Sheekh is at least twenty-one (and with 99.9 per cent certainty that he is twenty or older).²⁷ The official then starts the detailed interview with some questions about Salah Sheekh's age. Salah Sheekh states once again that he is seventeen years old and that he believes his date of birth to be 23 February 1986. He states that his mother told him when he was ten or thirteen that he was born on that date because he had to inform his Koran teacher of his age. She told him that he was five years old when the war in Somalia started. The following conversation unfolds:

Government Official: 'On 19 May 2003, *at your own request*, you underwent an examination of your age. Contrary to your testimony that you were born on 23 February 1986, it *appears* that you are twenty years or older. What do you think of this?'

Salah Sheekh: 'I do not trust these results. I rely on the age and the words my mother told me.'

Government Official: 'Do you stick to your statement that you were born on 23 February 1986?'

Salah Sheekh: 'Yes. Again, the doctor has examined me. He does not know my date of birth. I have an age of my own. That is the date of birth I have been given by my mother.'

Government Official: 'I, the reporter, explain to the person concerned, that he will be given 1 January 1983 as his date of birth since it appears that he is at least twenty years of age.'

Salah Sheekh: 'I do not agree with this. That I just get another age. I have an age of my own. That is the date of birth I was given by my mother.' (emphasis added)

25 In the words of the Aliens Circular: 'an examination to determine the real age is *offered* when there are doubts about his age' (VC 2000 12/1.3 [my emphasis]). As if we do him a favour by not believing him and instead give him the opportunity to prove our truth. If the alien refuses to co-operate with the examination, he will be assumed to be an adult.

26 VC 2000 C. 12/1.3. It is not explained, however, what 'make it plausible in another manner' could mean.

27 More 'scientific doubts' about these results appear to be possible than the IND leads us to believe. Several reports by the National Ombudsman have criticised the results of the IND (including *Nationale Ombudsman*, 30 September 2005, 2005/299 and *Nationale Ombudsman*, 6 June 2001, 2001/156). It has also been argued that the IND fails to take account of anthropological conditions, such as the ethnic origin of the person being examined and his or her gender, and nor does it take into account whether someone suffers or has suffered from a disease.

Let us examine exactly what is happening here. First of all, the government official stresses that the examination was held at Salah Sheekh's own request. Earlier on, however, we pointed out that it was the official who had doubts about Salah Sheekh's age (contrary to Salah Sheekh himself, who is convinced that he is seventeen years old). At the discretion of the official, policy states, 'an examination to determine the real age is *offered* when there are doubts about his age'.²⁸ So first we doubt his-story and then we *offer* him the opportunity to take away our-doubts. To whom are we doing a favour? Salah Sheekh or ourselves? How can we understand the official's statement to be in accordance with Salah Sheekh's statement that he does not have any doubts about his age? We see that he *agreed* to an examination, but that is obviously different from *requesting* such a test. Is the government official confused?

Furthermore, Salah Sheekh doubts the results of the examination. He questions the possibility that someone else, who does not know him, let alone his-story, can know his 'real' age. He states: 'I have a date of my own.' The official, however, is not convinced by Salah Sheekh's claim and 'provides' him with a new date of birth. Now, there are two conflicting stories about Salah Sheekh's age, his-story and our-story. We give priority to our-story since that is based on 'facts' and 'reliable' research and so replace Salah Sheekh's age by an age that happens to be in our favour.²⁹ This, however, is not the only consequence of Salah Sheekh's new date of birth.

III.IV The 'applicant'

As outlined in Section II.2, the next phase of the asylum procedure, after the initial and detailed interviews, is the Minister's decision. If the Minister intends to reject the application for asylum, he will issue the asylum seeker with a letter of intent. In this section I discuss both this letter of intent and the Minister's decision on Salah Sheekh's request for asylum.

III.IV.I Letter of intent

The letter of intent issued to Salah Sheekh is dated 3 June 2003, three weeks after his request for asylum. The letter of intent appears to be an automatically generated document in which the Minister can choose from several grounds on which to reject the request.³⁰ Referring to Article 31 *Vw 2000*, the Minister states that the alien has not made a plausible case that his application is based on circumstances constituting legal grounds for the issue of the permit. According to standard case-law of the Administrative Jurisdiction Division of the Council of State [*Afdeling Bestuursrechtspraak van de Raad van State*], this should be seen as a procedural rule, which requires the alien to convincingly argue that there are grounds to grant him a residence permit (Spijkerboer and Vermeulen, 2005, p. 147). In Article 31.2, to which the Minister subsequently refers, we can find 'facts' that take into account, amongst other things, the screening of the asylum seeker's application (note that all 'relevant facts' are negative for the asylum seeker). If 'facts' such as these are outlined, a heavier burden of proof is placed on the alien (Spijkerboer and Vermeulen, 2005, pp. 147–49).³¹ So, although the Minister will not base any rejection of the request merely on these 'facts', we do expect a greater degree of effort from the alien to make his case convincing.

28 VC 2000 C 12/1.3.

29 In view of the different legislation applying to unaccompanied minors, Salah Sheekh's request for asylum will become less complicated if he 'turns out to be' an adult.

30 This might just be our impression. Let us, however, assume that it is possible, from the perspective of the government, to deduce the individual his-story of Salah Sheekh from a standardised form (only, obviously, if the intention is to reject the request).

31 See also *Parliamentary Papers II 1999–2000*, 26732, no. 3, p. 41.

In his letter of intent to Salah Sheekh, the Minister refers to Article 31, paragraph 2.f *Vw 2000* as one of the ‘facts’ to be taken into account in assessing the request. This Article states: ‘in support of his application the alien is unable to produce a travel document, identity card or other papers necessary for assessment of his application, unless the alien can make a plausible case that he is not to blame for their absence.’³² The letter of intent states: ‘(x) Travel route a/o no verifiable coherent statement concerning travel route.’ A little further it is explained why the lack of documents is applicable to Salah Sheekh:

‘The statement of the applicant that he was accompanied during his journey by a travel agent, who kept all the travel documents in his possession, is insufficient to exonerate him from the absence of any travel documents. Neither has the applicant explained his travel route with detailed and verifiable statements. The fact that his travel route has finally been determined, and that it became clear which travel documents he used to travel to the Netherlands, does not change this case since this information was not determined with the assistance of the applicant.’

So, first we refuse to believe Salah Sheekh’s statement that he was not responsible for his travel documents and, even if we were to believe it, it would not be enough to exonerate him from not having any travel documents. Then we do not believe his-story of his travel route at all since it was not detailed enough and hard to verify. And finally we stress that the fact that *we* determined which travel documents he used, and that we found out which route he used, does not change the situation since he did not help us to reach this conclusion. So first *we* do not believe *his-story* since it does not conform to *our* standards of ‘truth’ and ‘objectivity’. But when *we* establish, in accordance with our standards, what *Salah Sheekh’s* travel route was and which travel documents *he* used, we blame *him* for not helping *us* to reach *our* conclusions.

The Minister’s next argument relates to the credibility of his-story. The letter of intent states: ‘Contradictory/no/false statements relating to: (x) age: found to be adult after age examination.’ This is another example of a mysterious sentence that seems to come from a form generated automatically and becomes interesting once we look at the explanation:

‘Applicant has given false statements as to his age and also persisted, after he was confronted with the results of the age examination, that he was born on 23 February 1986 and thus currently seventeen years old. The above is severely detrimental to the overall credibility of his asylum story.’

In Section II.3.1 we concluded that there was a discrepancy between his-story and our-story in respect of Salah Sheekh’s age. Salah Sheekh thought he was seventeen years old. We, however, ‘established’ that he was twenty years or older. In this phase of the asylum procedure we go further than stating that there seems to be a discrepancy between the different stories. We say that Salah Sheekh ‘has given false statements as to his age’. Not only do we prioritise our-story above his-story, but we also declare his-story to be false and lacking in credibility. Technically this is not strictly necessary, we could believe our-story to be true and thus give priority to it

³² Interestingly enough, an alien will also have the same problems if he has travel documents that are not his own. So we make a problem of the ‘fact’ that Salah Sheekh gave the travel documents to the travel agent, but if he had had these documents, we would conclude, on the basis of Article 31.2.e *Vw 2000*, that he purposely would have used travel documents which were not his own. This would lead to the same conclusion: a heavier burden of proof is placed on the alien.

within our asylum procedure, but nevertheless leave his-story for what it is. In the letter of intent, however, we go further; we accuse *him* of making statements which *we* deem false, and not only do we accuse *him* of this, but we also hold *him* accountable: his overall credibility has vanished. The Minister's decision is examined in Section II.4.3, where I also touch on some more aspects dealt with in the letter of intent. Before this, however, I will analyse what has happened to Salah Sheekh so far.

III.IV.II Metamorphosis into the 'applicant'

'Als Gregor Samsa eines Morgens aus unruhigen Träumen erwachte, fand er sich in seinem Bett zu einem ungeheureren Ungeziefer verwandelt.' (Kafka, 1983a, p. 1)

One of the first things that strikes me on reading the Minister's decision in the case of Salah Sheekh is under the 'subject of the decision'. First, this decision is stated to apply to an asylum request by an alien that was filed on 13 May 2003. Subsequently we read who this alien is:

'Abdirizaq SALAH SHEEKH
born on 1 January 1983 (assigned date of birth after age examination)
with Somali nationality.
Mr Salah Sheekh shall further be known as "applicant".'

Something remarkable has happened here. The text reads like the announcement of a birth: we are pleased to announce that we have given birth to an alien, his name is Abdirizaq SALAH SHEEKH, but from now on we will call him 'applicant'. This can be seen as a substitution of the initial his-story of Salah Sheekh by our-story of the 'applicant'.³³ From now onwards we no longer see Salah Sheekh, or at least his name, as the subject of our proceedings, but instead the abstract word 'applicant'. We appear to have to move away from the personal his-story and to replace this by a more general, maybe 'more factual', more 'objective' story. This means we are now in the surreal situation in which the government official informs Salah Sheekh who he *is*, what his age is and how he travelled to the Netherlands, and, more importantly, this does not correspond at all with his own version of these 'facts'. In the following we go even further; we add that this 'applicant' is not credible. We can thus rightly say that one morning Salah Sheekh found himself transformed into a hideous 'applicant'. From that moment onwards Salah Sheekh is totally removed from the proceedings. Whereas he feels that inside his body he is still related to the Salah Sheekh he used to be, he will no longer be recognised as such; people will see him as the 'applicant'.

III.IV.III Decision

The announcement of the birth of the 'applicant' is immediately followed by the outcome of the present decision; in line with the letter of intent the 'applicant' is informed that his request for asylum has been rejected. In the following section I focus on some specific aspects of the reasons given by the Minister. I examine our conception of the 'facts' of the case and show how we

33 We have already encountered the 'applicant' a couple of times in the letter of intent, but his appearance becomes most apparent at this moment. Furthermore, the ordering of events in written documents is in any event a construction or, to quote my favourite novelist, José Saramago: 'Writing is an extraordinary difficult endeavour, a whole responsibility, imagine the work it takes to order events chronologically, first this, then that, or, if this provides a better effect, the occurrence of today before the episode of yesterday and other, no less daring magic tricks, the past as if it were present, the present as a continuum without beginning or end, but whatever efforts writers undertake, one trick they will never control, namely the simultaneous inscription of two simultaneous events.' Translated from José Saramago, *Het Stenen Vlot* (The Stone Raft), p. 12.

conceptualise these ‘facts’ in the light of the definition of a refugee in the Refugee Convention³⁴ and the prohibition of *refoulement*, as well as the prohibition of torture, inhuman and degrading treatment or punishment as enshrined in Article 3 of the European Convention on Human Rights (ECHR). Although the analysis of the relationship between ‘the facts’ and Article 3 of the ECHR also plays an important role in the case before the Court, we will here examine the Refugee Convention to illuminate the way in which we understand Salah Sheekh’s his-story.

First, the Minister addresses the question of whether the ‘applicant’ could receive a residence permit because of his alleged refugee status.³⁵ According to the Refugee Convention, an alien who is outside his country of nationality owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and is unable or, owing to such fear, unwilling to avail himself to the protection of that country, is deemed a refugee within the meaning of the Refugee Convention.³⁶ According to the Minister, there is no suggestion at all, given everything that has been said and raised, that the ‘applicant’ has well-founded reasons to believe that he will fear persecution in his country of origin within the meaning of the Refugee Convention. This is a clear statement. The Minister does not say that it is impossible for the ‘applicant’ to have a well-founded fear; he stresses that, on the basis of the information available, there is no indication to believe it. The Minister has two arguments for reaching this conclusion. First, the asylum story, or rather the his-story of the ‘applicant’, lacks credibility and second, even if this story were reliable, it is deemed insufficient to allow the ‘applicant’ to qualify for refugee status. Let me discuss these two arguments, starting with the issue of credibility.

Many of the questions relating to the credibility of the his-story of the ‘applicant’ have already been discussed in the letter of intent, but are reiterated in the Minister’s decision. In respect of whether the request for asylum should be granted or rejected, it is important that the alien does not have any documents on which to base his-story, or more specifically his identity, nationality and travel route.³⁷ The Minister stresses that the ‘applicant’ has a responsibility of his own to prove his identity and nationality by providing relevant documents. The ‘fact’ that he does not possess these documents is his responsibility. The ‘applicant’ has to co-operate fully to establish his identity and nationality, and his statement that he had to hand over the documents to the travel agent does not take away this responsibility.

Interestingly enough, the Minister would have used the same argument if the ‘applicant’ had provided the identity documents with which he travelled. Since these documents were ‘false’, the Minister would then have objected to the his-story of the ‘applicant’ on the basis of the same Article.³⁸ In other words, we not only demand that the ‘applicant’ provides us with documents to establish his identity and nationality, but also with ‘verifiable’ or ‘official’ documents to establish this. We do not accept false documents, nor do we accept the absence of such paperwork. The statement by the ‘applicant’ that it is impossible to get hold of the documents that we demand from him does not alter the Minister’s opinion (and is not even taken into account).³⁹

34 *UN Convention relating to the Status of Refugees*, UN, 28 July 1951, entered into force 22 April 1954, Treaty Series, 1954, 88.

35 Article 29, para. 1, s.a *Vw 2000*.

36 Article 1(A) *Refugee Convention*.

37 According to Article 31.2.f *Vw 2000*.

38 Now Article 31.2.d or e *Vw 2000*.

39 Interestingly, the Dutch government acknowledges in its own official country report about the situation in Somalia that, since the fall of the central government in 1991, there has been no internationally accepted institute for issuing identity documents. Travel documents that are regarded as Somali passports can be

Furthermore, on a more abstract point, it could be argued that it is odd to demand that someone who claims that he cannot receive protection in the country of his origin and might even be persecuted by the government in that country⁴⁰ should nevertheless prove his identity by providing documents issued by that same government. From this perspective it could even be argued that the absence of documents makes the story of the 'applicant' more reliable. But that does not appear to be the way we look at it.

Obviously, this is not an argument that can be made in every case, but it does raise a legitimate question. It could be argued that the 'applicant' can still make his argument, providing he comes up with convincing evidence. But it is important to note that we already start doubting this part of the 'applicant's' his-story as soon as he is unable to provide us with the documents we deem necessary to establish whether something is reliable. Because of the lack of documents we deem his-story automatically not to be genuine, even though it could also be seen as evidence for the sincerity of his-story.⁴¹

As the letter of intent and earlier interviews, however, show, there is another aspect that we deem relevant in determining the credibility of the his-story of Salah Sheekh: his age. As we saw in the interviews, there is a divergence at this point between his-story and our-story. Salah Sheekh believes that he is seventeen years old and was born on 23 February 1986; we, however, have 'established' that the 'applicant' is at least twenty years old. When discussing the letter of intent we concluded that not only is there a discrepancy between the his-story of Salah Sheekh and the our-story of the 'applicant', but we also hold him responsible for this discrepancy. We accuse him of deliberately saying something that is a breach of 'our truth'. In the decision we even see that 'this performance of the applicant furthermore seriously harms the truthfulness of the applicant and his asylum motives'.⁴² So we not only doubt his-story, but also the credibility of the 'applicant' as a whole and his reasons for applying for asylum. The Minister consequently concludes that the statements, the behaviour and even the person of the 'applicant' must be seen as lacking any form of credibility. Note that it is possible for both statements to be genuine (according to their own criteria): Salah Sheekh sincerely believes he is seventeen years old, while we firmly trust in our age examination.

Although the Minister concludes that the 'applicant' and his-story should not be seen as credible, we still have to decide whether we have an obligation to protect this person under the Refugee Convention.

Our Minister of Foreign Affairs has prepared a country report, an official document, on the situation in Somalia. We know from this country report that the mere fact of coming from Somalia is not sufficient for recognition as a refugee. Since we have this 'objective' information, the story of the 'applicant' needs to be really convincing in order to convince us. Unfortunately

purchased at markets. The government thus acknowledges that it is simply impossible to have an internationally valid travel document from Somalia, but at the same time holds the applicant responsible for his lack of paperwork. See, for example, *Algemeen ambtsbericht Somalië* (General Official Report on Somalia), October 2009, pp. 49–50.

40 This is the case if the state is regarded as the persecuting agent. The problem gets slightly more complicated, however, if it is not state agents that are persecuting the 'applicant', but the state is either tolerating or condoning persecutory behaviour or is unable to offer protection from persecution; see Bem (2007, pp. 148–53).

41 According to Boeles, this is due to what he calls the 'administrative approach'. Such an approach is not directed at fact finding, it is meant to prevent fraudulent foreigners from gaining access to our public services: 'Therefore the minister has given the burden of proof to the foreigner and described in very precise manner which evidence can be used in which circumstances' (Boeles, 2003, pp. 213–14). In other words, we use our documents to find our-facts on which we decide the case of the 'applicant' for our purposes.

42 Minister of Alien Affairs and Integration, Decision on Salah Sheekh, 21 June 2003, p. 3.

for the 'applicant', we have already deemed his-story to lack credibility. Therefore we need him to have a particularly good story, a story in which we find 'personal facts' and circumstances that 'justify the fear of persecution'.⁴³ Unfortunately, however, the 'applicant' in this case did not have such a convincing story.

An important reason why the story of the 'applicant' cannot be seen as containing personal facts and circumstances that justify the fear of persecution is 'the fact' that he never made himself known, or at least not as far as we established, to be an opponent of the local rulers. Neither is there any 'objective' evidence to show that the 'applicant' was a member or sympathiser of a political party or that he had ever been detained. At a general level the Minister stresses that 'the applicant has never had any negative attention of a government or another movement or group'.⁴⁴ It is important to note that this statement is diametrically opposed to the claim by the 'applicant' that he had been harassed from childhood by members of the Abgal clan because he belonged to a minority.

Besides 'the fact' that this apparently does not constitute negative attention by a group of people, the Minister adds that this harassment cannot be regarded as systematic and gross discriminatory treatment that made the life of the 'applicant' unbearable. The alleged incidents are regrettable, but should be seen as a consequence of the overall unstable situation in Somalia, where intimidation and threats by criminal groups occur randomly. So we acknowledge that there is an overall unstable situation in Somalia and that regrettable incidents have occurred, but nevertheless there has not been any negative attention towards the 'applicant' and the regrettable incidents cannot be seen as systematic and gross. Furthermore, the statement by the 'applicant' that he had to perform hard labour and that he was threatened with death on several occasions was also deemed insufficient. We cannot believe this part of his-story to be true because, if it were true, the 'applicant' would have fled immediately. So the fact that he stayed in the area for a while automatically implies that the threat can never have been serious.

In addition to the obligation under the Refugee Convention to grant the 'applicant' a residence permit, there are several other situations in which a permit can be granted.⁴⁵ Although the Minister discusses all these opportunities in the decision, I will focus on only one of them since this is of great importance in the remainder of Salah Sheekh's procedure. In other words, Article 3 of the ECHR: the right to freedom from torture or inhuman and degrading treatment or punishment. As soon as the 'applicant' is to be expelled, the Minister can grant a residence permit if the 'applicant' runs a real risk of being subjected to treatment contrary to Article 3 ECHR in his country of origin.⁴⁶ The prohibition on expulsion is often referred to as the prohibition of *refoulement*. In the decision, however, this possibility is only discussed very superficially. Referring to the arguments raised in respect of whether the 'applicant' applied for refugee status, the Minister stresses that the 'applicant' did not make a plausible case that, because of personal facts and circumstances, he would run a real risk of being subjected to such treatment. According to

43 Obviously the justification, or well-foundedness, of fear seems in itself to be a contradiction since the word 'fear' seems to connote a personal state of mind. There is, however, considerable debate about this point in the doctrine of this aspect of the definition of a refugee. According to Bem, these discussions can be reduced to two basic views: '1) [*sic*] that the well-founded fear requirement has an objective and a subjective element. The subjective element is the fear of the applicant, which is always subjective, while the objective component is the fear's potential well-foundedness in real life. The second theory claims that the definition does not contain any subjective element, but is strictly objective' (Bem, 2007, p. 119). A purely 'subjective' fear appears not to be enough. On this subject, see also Douzinas and Warrington (1991, pp. 128 – 31).

44 Minister of Alien Affairs and Integration, Decision on Salah Sheekh, 21 June 2003, p. 4.

45 Article 29.1 *Vw 2000*.

46 Article 29.1.b *Vw 2000*.

the Minister, the ‘applicant’ could not expect any specific attention to be paid to his person upon arrival in Somalia. Instead, any risk to which he could be exposed related to the overall situation in Somalia. Therefore the ‘applicant’ was not eligible for a residence permit under this provision. In the next section I focus more on the specific reasoning of the Dutch authorities when discussing the ‘applicant’s’ case before the Court. At this stage it is sufficient to establish that the ‘applicant’ has not been granted a residence permit under any of the grounds specified in Article 29.1 *Vw 2000*, which means he can be expelled and deported to his country of origin.

III.V Case before the European Court of Human Rights

After the negative decision in the domestic procedure, Salah Sheekh decided to lodge an appeal with the European Court of Human Rights. The road to the Court, however, was not entirely unproblematic. Since Salah Sheekh’s initial attorney did not see any chances of success for the case, he did not appeal to the Council of State (Administrative Jurisdiction Division). This means that he did not exhaust all the domestic remedies, which is a prerequisite for filing a complaint with the Court (see Article 35.1 of the Refugee Convention). By the time attorney Flip Schüller took over the case, the deadline for an appeal to the Council of State had, therefore, passed. Nevertheless, Schüller filed an appeal and the Court declared the case to be admissible, stating that ‘although the Administrative Jurisdiction Division may in theory have been capable of reversing the decision of the District Court, in practice a further appeal would have had virtually no prospect of success’.

In the following sections I will examine the proceedings before the Court and whether the Court shares the perspective of the Dutch authorities.

III.V.I Case of Salah Sheekh: general principles

The Court commenced its judgment by reiterating its general principles on Article 3 of the ECHR that states have the right to control the entry, residence and expulsion of aliens, whereas the right to political asylum is not contained in the ECHR. However, in exercising the right to expel such aliens, states must have regard to Article 3. This prohibition, according to the Court, enshrines one of the most fundamental values of democratic societies and is furthermore absolute. If substantial grounds are demonstrated for believing that the alien, if expelled, would face a real risk of being subjected to treatment contrary to Article 3, this implies an obligation not to expel this alien. (Note that when this line of argument is discussed on such a general level, we further abstract from the singular ‘applicant’ to ‘aliens.’) In establishing any responsibility for the expelling state the Court considers that, given the absolute nature of the protection afforded by Article 3, ‘it must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources’. For such an assessment, it is not enough only to use the documents provided by the state. The ill-treatment must be of a minimum level of severity to fall within the scope of Article 3. The assessment of this is relative and depends on the circumstances of the case.

III.V.II Application of the general principles to the case

Subsequently the Court applied these general principles to the specific circumstances of the case of the ‘applicant’. Whereas the Court did not dispute that the areas of Somaliland and Puntland were generally more stable and peaceful than southern and central Somalia, it questioned whether this would make a difference for the ‘applicant’.⁴⁷ Since the ‘applicant’ does not come from these

⁴⁷ The Court also discusses the alternative of internal flight, which I do not examine in this article.

regions and has no opportunity for clan protection there, the ‘relative safeness’ will not apply to him. The Court came to this conclusion on the basis of the United Nations High Commissioner for Refugees (UNHCR) reports, which state that the lack of clan protection means that these areas that were determined ‘relatively safe’ by the Dutch government are in fact ‘relatively unsafe’ for people such as the ‘applicant’. Thus the Court does not find any evidence to guarantee that the ‘applicant’ would be able to settle in such ‘relatively safe’ areas.

Therefore, according to the Court, the question has to be asked as to whether the ‘applicant’ runs a real risk of being subjected to treatment contrary to Article 3. According to the information provided by the government, the problems that the ‘applicant’ would experience in Somalia should be seen as a consequence of the general unstable situation in which criminal gangs frequently, but arbitrarily, intimidate and threaten people. The Dutch government maintained that the problems experienced by the ‘applicant’ had not come about as the result of systematic, major acts of discrimination which rendered *his* life unbearable (para. 28).

The Court stressed first of all that the treatment to which the ‘applicant’ claimed to have been subjected can be classified as inhuman treatment within the meaning of Article 3; in other words it fulfils the minimum level of severity requirement. Contrary to the view of the government, the Court stressed that the ‘fact’ that the risk comes from the general unstable situation in which criminal gangs frequently, but arbitrarily, intimidate and threaten people does not remove the treatment from the scope of Article 3. Of more relevance is whether the ‘applicant’ would be able to obtain protection against the violent acts. In the case of the ‘applicant’ the Court concluded that the ‘applicant’ could not have sought recourse to such protection. The Court deemed it sufficient that it was foreseeable that the ‘applicant’, because of being a member of a certain minority group, would be exposed to treatment in breach of Article 3:

‘It appears from the applicant’s account that he and his family were targeted because they belonged to a minority and for that reason it was known that they had no means of protection; they were easy prey, as were the other three Ashraf families living in the same village. The Court would add that, in its opinion, the applicant cannot be required to establish the existence of further special distinguishing features concerning him personally in order to show that he was, and continues to be, personally at risk. [...] However, in the present case, the Court considers, *on the basis of the applicant’s account and the information about the situation in the “relatively unsafe” areas of Somalia in so far as members of the Ashraf minority are concerned*, that it is foreseeable that on his return the applicant would be exposed to treatment in breach of Article 3. It might render the protection offered by that provision illusory if, in addition to the fact of his belonging to the Ashraf – which the Government have not disputed –, the applicant were required to show the existence of further special distinguishing features.’⁴⁸

Therefore the Court held that the expulsion of the ‘applicant’ would breach the Netherlands’ obligations under Article 3. Noteworthy in the ruling of the Court is that it determines on the basis of both *the applicant’s account* as well as *other information* that the situation in Somalia is different from the picture provided by the government. The Court appears to have taken his-story more seriously than the Dutch government did, and moreover remains open for other ‘sources of truth’ about the situation in Somalia than those provided by the government.

⁴⁸ ECtHR, 11 January 2007, *Salah Sheekh v. The Netherlands*, no. 1948/04, para. 148 (my emphasis).

IV. The question of Salah Sheekh

In this article I have highlighted two aspects of the way in which Dutch officials dealt with Salah Sheekh in the asylum procedure. The first concerns the divergence between his-story and our-story, while the second is that Salah Sheekh bears the responsibility for this divergence.

The description of the case of Salah Sheekh shows that the Dutch officials do not believe Salah Sheekh's his-story because he does not provide the documents that we deem necessary in order to establish whether something is true. We do not believe the age, identity, nationality and travel route of Salah Sheekh. But that is not the odd aspect of the his-story of Salah Sheekh. How can we know for certain that he has been harassed and, more importantly, that this treatment was directed at him personally? Is it not possible that the treatment was just the result of the overall instability of the country?

Therefore we conclude that the his-story of Salah Sheekh is of no use to us. We do not believe him as he does not fit our standards. Irrespective of whether we believe the his-story of Salah Sheekh, we give birth to the 'applicant'. The 'applicant' has a new age (from now on he is 'at least twenty'), a new identity and an objectified travel route; in other words the his-story of Salah Sheekh is replaced by our-story of the 'applicant'. We base our-story on objective information about the country where the 'applicant' comes from, on scientific results of age examinations and on objective documents (or the lack of them). In other words we replace his-story with our-story as soon as we 'invite' Salah Sheekh into our-procedure. His-truth is replaced by our-truth, his-age by our-age, his-travel route by our-(preferred) travel route and his-identity by our-identity. We give birth to the 'applicant', who is a hologram of all these perceptions of our-story. This 'applicant' is in fact the product of our procedure.

This, however, is not the entire story. We not only replace Abdirizaq Salah Sheekh by the 'applicant', we also conclude that the 'applicant' cannot be deemed credible. He does not speak our-truth about his age, identity and travel route and his reasons for requesting asylum. Given the lack of documents to establish our-truth we deem him unreliable and demand that if he wants to make a convincing case, he needs to come up with very convincing evidence. Unfortunately for Salah Sheekh he cannot convince us that the circumstances in Somalia are directed at him personally. Therefore we cannot grant the 'applicant' a residence permit.

What can we see here? Who is the subject of our asylum procedure? It could be claimed that Salah Sheekh should be the subject of our asylum procedure. In the above, however, we see that this seems not to be the case. During our procedure his-story is replaced by our-story, Salah Sheekh by the 'applicant'. Obviously this process started long before I came up with the word 'his-story'; indeed, it is unavoidable. Any attempt to grasp the identity of the asylum seeker at our borders will necessarily lead to a collision between his-story and our-story. Furthermore, as I outlined in Section II.1, every his-story in asylum cases has always already been influenced by our-story. This article sets out to trace this slow, but steady, process of transformation in which his-story, or some version of it, is substituted by our-story. Abdirizaq Salah Sheekh is transformed into the 'applicant', and the 'applicant' is held responsible for the divergence between his-story and our-story. He is not credible because he does not speak our-truth, and the applicant's lack of credibility in this respect is used to deny Salah Sheekh a residence permit.

The Court's approach in the case of Salah Sheekh was different from that of the government. The Court held the intended expulsion of Salah Sheekh to Somalia to be in breach of one of the core provisions of the ECHR. Of particular note is the fact that the Court sets aside the judgment of the Council of State, the highest body in the Dutch asylum procedure. It does so by stating that, in practice, a further appeal by Salah Sheekh to the Council of State 'would have had virtually no prospect of success'. The Court appears not to have had much confidence in the highest Dutch asylum judges. The individual case of Salah Sheekh would seem, therefore,

not to stand alone, but instead to be emblematic of more endemic problems in the Dutch treatment of aliens.

What, then, is particularly striking about this judgment? First, and most obviously, it is that the Court held the intended expulsion of Salah Sheekh to be a breach of Article 3 of the ECHR. It thus declares that the way in which we dealt with this particular alien is in breach of one of the core principles of the Convention. In other words, an infringement of one of the most fundamental values of democratic societies in Europe.

Second, in the earlier sections on Salah Sheekh's domestic procedure, I stressed that we transformed the his-story of Salah Sheekh into our-story of the 'applicant'. In its judgment, however, we can see that the Court, too, does not take his-story as the starting point for its procedure. We saw in the domestic procedure that the government used its own 'official documents' to determine the safeness of Somalia. On the basis of its own country reports, it concluded that Somalia could be divided into a 'relatively safe' and a 'relatively unsafe' area. In this way Salah Sheekh's statement that he had been subjected to torture or inhuman and degrading treatment was replaced by the information from official, and therefore 'objective', documents about the situation in Somalia.

There seems, however, to be another striking difference between the approach of the Court and that of the Dutch government. Whereas the Court did not dispute the substitution of the his-story of Salah Sheekh by these documents as such, what it did dispute was the specific information provided by these 'objective documents'. Referring extensively to documents from the UNHCR, an organisation mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide, it stresses that the areas that are safe from the perspective of the government are unsafe for the 'applicant' (from the perspective of the UNHCR and the Court). The Court thus sought to apply the general observations about the country as specifically as possible to the circumstances of Salah Sheekh.

IV.1 Isn't the question of Salah Sheekh a foreigner's question?

This question encompasses both aspects of hospitality described in Section I. On the one hand, the question of Salah Sheekh is a question of the foreigner, coming from abroad. This is Salah Sheekh's call for hospitality; it is the ethical claim of hospitality, the claim to the unconditional welcome of the Law. This Law of hospitality requires me to open my home, without asking questions, to the absolute, unknown and anonymous other. This other is ungraspable, the non-identical, that which we cannot encompass. The moment I 'understand' him, I make this other identical, colonise his features and breach that which is most characteristic about him: his otherness. This ethical claim to welcome the other in his otherness occurs prior to a choice being made. It is unconditional and reflects the asymmetrical relationship I have with the other. It is this singular encounter in which I am responsible to and for the other. This account of subjectivity, which Derrida borrows from Levinas, always presupposes responsibility to and for the other. In this sense it can be claimed that this unconditional hospitality can properly be understood as the originary ethics, opposed to the conditional hospitality of politics (Leung and Stone, 2009, p. 199).

It is this conditional form of hospitality that can be seen as the second interpretation of the question of Salah Sheekh. This is the question addressed to Salah Sheekh, the questions we pose and our interrogations about his name, his identity and his-story. This is the realm of the laws, the perspective of politics. It is in this conditional hospitality that the dilemmas of choice, limits and finitude arise. For the conditional welcome we need to ask the other for his name and his identity in order to decide whether he conforms to our conditions for hospitality. It is here that we welcome the finite other, the other with graspable characteristics and a definite identity.

The question of Salah Sheekh is thus also, to put it in Derrida's words, the birth of the question. The moment Salah Sheekh arrives at our borders, the two initial questions collide. It is at the moment of this collision that a choice has to be made because there is more than one ethical demand. This is what, as Levinas puts it, can be called the appearance of the third. The third is a concept which Levinas uses to refer to society. Whereas Levinas grounds ethics in the binary situation with the face of the other, the third necessarily comes to the premise if one thinks of living in a community. Since living in a community presumes that one does not live solely with one other, the third is presented alongside the other. This plural third necessarily obfuscates the intimate relationship I have with the other. The multitude of people, the appearance of the third alongside the other, makes it necessary to draft laws and create an adjudicator. The (particular) situation of the other has to be balanced and compared with that of the third (in general). The inter-human relationship that I have with the other has to be tempered by that fact that I have to interrelate with other humans. This, according to Levinas, is the reason for adjudication. This question of the third immediately suspends the face to face of the binary situation. This collision between singularity and generality can also be seen in Derrida's description of the relationship between the Law of hospitality and the laws, and is in fact another way to describe the tension between his-story and our-story.

The appearance of the question of the third, of society, the question of Salah Sheekh, of the singular alien, thus demands a decision. In this decision, however, it is important to note that the ethical claim, the Law of hospitality or, in the case of my article, his-story, is not to be prioritised. This is where Derrida criticises Levinas' perspective on the relationship between the ethical and political demands. Contrary to Levinas, and I tend to agree with this perspective of Derrida, hospitality equally implies both the Law as well as the laws. It is a distinction between two essentially equally compelling ethical imperatives.⁴⁹ This is the *aporia* of hospitality, the abyss of welcoming. In this *aporia*, the question arises. Again and again. In each situation, and on the basis of an analysis that is each time unique and infinite, the unconditional ethical hospitality meets its boundaries. This tension between hospitality towards the 'guest with real predicates' and the 'ghost', between the law and the Laws, or between our-story and his-story, is inevitable (or maybe, more accurately, *inalienable*).

It is this tension that becomes apparent in the case of Salah Sheekh. My assessment in this article shows this struggle between these equally compelling imperatives. It traces the tension throughout the whole procedure of this alien. The identity of the alien was shown to be erased in the violence of the laws. Strangely enough this happened in the case of Salah Sheekh through the interrogation about his-story. The story of his case shows how exactly and stealthily this erasure occurs: not in the open, but through small questions, with every single answer serving to remove Salah Sheekh from the scene.

Derrida acknowledges that the Law of hospitality can have phantomatic consequences: if one does not dare ask the name of the guest, one risks inviting a ghost instead of a guest into one's home. A certain degree of interrogation is, therefore, inevitable, as the welcoming of Telemachus shows. The case of Salah Sheekh demonstrates, however, that the Law of hospitality, too, can have phantomatic consequences. In determining the identity of the guest, we ourselves created a ghost. Our sequel for the 'real' and 'objective' identity of Abdirizaq Salah Sheekh ended up creating the 'applicant', a hologram of our own perceptions rather than a pseudonym for Salah Sheekh.

49 Leung and Stone criticise Derrida's perspective on hospitality for those situations in which 'the other' does not demand hospitality (thus outside the migratory context). I doubt, however, whether this is genuine criticism since Derrida's text on hospitality appears to have been specifically written for this migratory context, for the situation in which someone appears at our borders and begs for asylum. In any case it is not a criticism of my use of Derrida in this rather typical asylum case (Leung and Stone, 2009, pp. 199ff).

The collision between hospitality and power can easily, as Derrida emphasises, turn into xenophobia. The alien is no longer seen as a guest, but instead as a hostile subject. This ambiguity can already be found in the French word *hôte*, which denotes both 'host' and 'guest', two seemingly distinct figures. Guest and host, who in a situation of hospitality seem opposed to each other, appear etymological to be closely related, while the Latin word *hostis*, from which *hôte* derives, also denotes 'stranger' or 'enemy'.

The case of Salah Sheekh shows how the stranger can become an enemy, a subject we do not trust and thus cannot welcome. Derrida exemplifies this by taking the double connotation of *hôte* to its extreme. In hospitality one does not simply find the guest subordinate to the host; rather it is a constant play between the two. While the host is being hospitable to a guest, he also runs the risk that the guest may encroach on his sovereignty, rights and property. From this perspective, the stranger can be an enemy of the host. However, as the story of Salah Sheekh illustrates, the guest is also a hostage of the host. As Leung and Stone rightly point out, the notion of the 'host' also contains this idea of 'hostage', since being hospitable is in fact being hospitable subject to the preconditions of the host. The host retains the sovereign power to stipulate these conditions and thus holds the guest hostage (Leung and Stone, 2009, p. 195).

To conclude, what about the difference between the treatment afforded by the Dutch government and the subsequent judgment of the Court? In the case of Salah Sheekh, the Court showed more interest in the singularity of Salah Sheekh. Indeed it actively sought to understand his-story by relying on sources other than those of the government. Here, the Court could be said to have confronted the law-based perspective of the government with a Law of Hospitality-based perspective. This does not mean, however, that the Court has a better view on hospitality.⁵⁰ Courts are in a very different position from governments. Without wishing to open a discussion on the role of adjudication in democratic societies, it is enough to note that the Dutch government's position is primarily that of the laws and of the third, whereas it is the role of the adjudicator to weigh up both aspects of hospitality, the his-story of the singular alien and the our-story of the government. One of the most alarming aspect of the Salah Sheekh case is not, therefore, his actual treatment as such, but the fact that, in the words of the Court, aliens have 'virtually no prospect of success' in an appeal at the Dutch Council of State. This means that, in difficult cases such as that of Salah Sheekh, it is the European Court that has to fulfil the balancing required for hospitality. This in turn leads to a whole range of different problems, including the democratic nature of the European Court and the fact that it is not in the situation of a host (is there a European home?). Such questions, however, will have to be dealt with in a different story.

References

- BARSKY, Robert (2000) *Arguing and Justifying: Assessing the Convention Refugees' Choice of Moment, Motive and Host Country*. Aldershot: Ashgate.
- BATTJES, Hemme (2009) 'In Search for a Fair Balance. The Absolute Character of the Prohibition of Refoulement Under Article 3 ECHR Reassessed', *Leiden Journal of International Law* 22: 583–621.
- BEM, Kazimierz (2007) *Defining the Refugee. American and Dutch Asylum Case-law 1975–2000*. Amsterdam: VU University.

⁵⁰ In an interesting article Battjes argues that case law of the Court on Article 3 can be seen as highly contradictory. On the one hand there is a line in which the Court stresses that Article 3 leaves absolutely no room for derogation, while on the other hand there seems to be a line in which the Court stresses that this apparent absoluteness should be in fair balance with other demanding appeals; see Battjes (2009). In this ambiguity one could see the *aporia* of hospitality, the necessarily contradictory but at the same time embracing demands of the Law and the laws.

- BOELES, Pieter (2003) *Mensen en papier. Legalisatie en verificatie van buitenlandse documenten in 'probleemlanden'*. Utrecht: Forum.
- BOSNIAK, Linda (2006) *The Citizen and the Alien*. Princeton: Princeton University Press.
- DERRIDA, Jacques (1992) 'Force of Law: The Mystical Foundation of Authority', in D. Cornell *et al.* (eds), *Deconstruction and the Possibility of Justice*. New York: Routledge.
- DERRIDA, Jacques (1999 [1997]) *Adieu to Emmanuel Levinas*, trans. P. A. Brault and M. Naas. Stanford: Stanford University Press.
- DERRIDA, Jacques and DUFOURMANTELLE, Anne (2000 [1997]) *Of Hospitality*, trans. R. Bowlby. Stanford: Stanford University Press.
- DOORBOS, Nienke (2003) *De papieren asielzoeker: Institutionele communicatie in de asielprocedure*. Nijmegen: GNI.
- DOUZINAS, Costas and WARRINGTON, Ronnie (1991) 'A Well Founded Fear of Justice: Law and Ethics in Postmodernity', *Law and Critique* 1: 115–47.
- HOMER (1919) *The Odyssey*, trans. A. T. Murray. Cambridge, MA: Harvard University Press.
- KAFKA, Franz (1983a) 'Die Verwandlung', in *Franz Kafka Gesammelte Werke*. Frankfurt am Main: Fischer Taschenbuch Verlag.
- KAFKA, Franz (1983b) 'Der Prozeß', in *Franz Kafka Gesammelte Werke*. Frankfurt am Main: Fischer Taschenbuch Verlag.
- KUIJER, Aldo *et al.* (2005) *Nederlands vreemdelingenrecht*. The Hague: Boom Juridische Uitgevers.
- LEUNG, Gilbert and STONE, Matthew (2009) 'Otherwise than Hospitality: A Disputation on the Relation of Ethics to Law and Politics', *Law and Critique* 20: 193–206.
- PAVLICH, George (2005) 'Experiencing Critique', *Law and Critique* 16: 95–112.
- SLINGENBERG, Lieneke (2006) *Dutch Accelerated Asylum Procedure in Light of the European Convention on Human Rights*. Amsterdam: VU University Press.
- SPIJKERBOER, Thomas (2000) *Gender and Refugee Status*. Aldershot: Ashgate.
- SPIJKERBOER, Thomas and VERMEULEN, Ben (2005) *Vluchtelingenrecht*. Nijmegen: Ars Aequi Libri.
- VAN WALSUM, Sarah (2008) *The Family and the Nation. Dutch Family Migration Policies in the Context of Changing Family Norms*. Cambridge: Cambridge Scholars Publishing.