

“Pushed out in limbo – The every-day decision-making about ‘practical impediments to enforcement’ in the Swedish management of return migration”

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Abstract

This article presents a study of the contradiction between the rhetoric of return, stressing that rejected asylum seekers should leave the country, and the reality of how migrants end up as legally stranded, in Sweden. Through a qualitative analysis of; 25 decisions by the Swedish Migration Agency, an internal quality report about the legal application, and the documentation in two complete individual casefiles, the study reveals assessments of facts which, combined with legal interpretations, push people out in social and economic destitution, i.e. they become superfluous with no right to residency and no way to leave Sweden. This position, the article argues, is produced in routine decision-making at the Migration Agency through (1) a negligence with regard to the key issue of practical enforcement barriers, (2) a complex and far-reaching organization of non-responsibility, and (3) an incommensurable circle of suspicion throughout the asylum process towards people seeking refuge. These technologies, the article argues, are in stark contrast to the idea of general basic welfare for all residing in the welfare state, and they tell a broader story of the continuous production and reproduction of unequal access to fundamental welfare services.

Key words

“limbo”, “legally stranded migrants”, superfluity, Sweden, Migration, “practical impediments to enforcement”, “return migration”, asylum, “Swedish Migration Agency”

1. Introduction

A stateless Palestinian from Saudi Arabia sought refuge in Sweden. After having his application rejected and having been notified of an expulsion decision, including circumscribed welfare rights, the man still claimed a right to residency. This was because the expulsion decision could not be enforced; In terms of the law, there were Practical Enforcement Barriers in the man's case. The reason for the barriers was that the man had not been able to attain permission for entry into Saudi Arabia since he had no sponsor in the country.¹ The man's application for residency due to impediments to enforcement was rejected because he was not deemed to have tried hard enough to obtain a sponsor and nor had he made any “actual attempts” to leave Sweden. Thus, it had not been shown that there was a concrete enforcement barrier that could be considered, and nor were there any other circumstances on the basis of which residency could be granted. The man was now caught between the removal from the Swedish territory, where he resided, and the inability to return to his former residence, and the refusal by any other state to grant entry.

The description above is based on a judgement adopted in 2008 (MIG 2008:38) by the Swedish Migration Court of Appeal (SMCA) which is the highest instance in the Swedish asylum process. Compared to previous judgements on the issue of “Practical Impediments to Enforcement” (hereinafter PEB), the words “actual attempts” to enforce the expulsion order are made important by the Court, for a person to qualify for a residence permit.

¹ The sponsor system (also called the Kafala system) requires laborers to have an in-country sponsor who is responsible for their visa and legal status; usually this is their employer.

In most situations it is officers at the Migration Agency (MA) that make recurrent assessments of such "attempts" or other aspects of PEB after a final asylum rejection (Aliens Act ch. 12, sec. 18, first paragraph, point 2).² As will be discussed below, for PEB to be valid in the eyes of the migration authorities, and then in the next step for a residence permit to be granted, it is currently required that the MA makes the assessment that the applicants have made sincere practical efforts to leave Sweden (see State public investigation SOU 2017:84: 119, hereinafter SOU 2017).

A starting point in the present article is that it has become increasingly difficult for previous asylum seekers to provide acceptable evidence that PEB are present in their cases. One in all respects undesirable effect is that previous asylum seekers are caught in a position usually referred to as limbo or "being legally stranded" (see Grant 2007, 31). An indicator of the high threshold for residence is the fact that very few people, approximately 20 persons every year (SOU 2017: 92), are granted residency on the basis of PEB. This may be compared to the number of documented assessments of PEB in MA:s management of return, which has varied between 9,000 and 11,000 every year over the last years (see Migration Agency 2016, 2017).³ There are several explanations to these numbers, one reason being the Court verdict above and another a stronger focus on return-migration from the government's side.

This article aims *to identify and analyse decisions and documented assessments of PEB, and in doing so to reveal complex technologies hidden from public scrutiny* which are constitutive of what legal scholar Susan Marks has termed "processes of superfluization" (Marks 2011). Such processes are defined as production of superfluous people, i.e. rightless marginalised people. The technologies that will be disclosed relate to (but is not completely explained by) the broader context of more aggressive priorities in recent years in pushing rejected asylum seekers to leave Sweden, a more limited room for granting residence permit at all, and clear signals to potential future forced immigrants in need of a refuge, to stay away. The technologies, this article suggests, need to be understood in light of a broader development where more and more people are being neglected access to the general welfare systems, a tendency described by Saskia Sassen as a move;

"(F)rom Keynesianism to the global era of privatizations, deregulations, and open borders for *some* [which] entails a switch from dynamics that brought people into dynamics that *push people out* (Sassen 2015, 211, author's italics)".

Marks calls for attentiveness to how superfluisation and law intersect, and she suggests that law in the current world should be understood in a context of how industrialization from the 19th century tended to produce superfluous workers, so called by-products. With such approach, Marks argues, we see that superfluisation is not a singular phenomenon but rather embedded in law. It "thrives in the heartlands of liberal capitalist welfare state, the most

² The particular officers work in the so-called "administrative process unit" (*förvaltningsprocessenheten*) and are legally trained to handle appeals from people who have been denied their residence permit application. Officers at this unit also represent the MA in court hearings and have the task to examine whether there are PEB in individual cases and (Migration Agency 2020). The PEB-assessments cannot be appealed (except in the ordinary process), see Aliens Act ch. 14 sec. 3.

³ These numbers may be related to the more than 300,000 return decisions adopted by Swedish migration authorities over the last two decades, an average of almost 20,000 per year, the vast majority of which took place in the later part of this period (Malm Lindberg 2020: viii).

modern places on earth" (Marks 2011, 15) and it produces superfluity which means that (some) human being are (necessarily) seen as consumable, disposable, worthless, undesirable, worthless, meaningless. No-people people come about when people are deprived of their political existence and severed from the meaningful nexus of relations that constitute the common world (see Gaffney 2016).

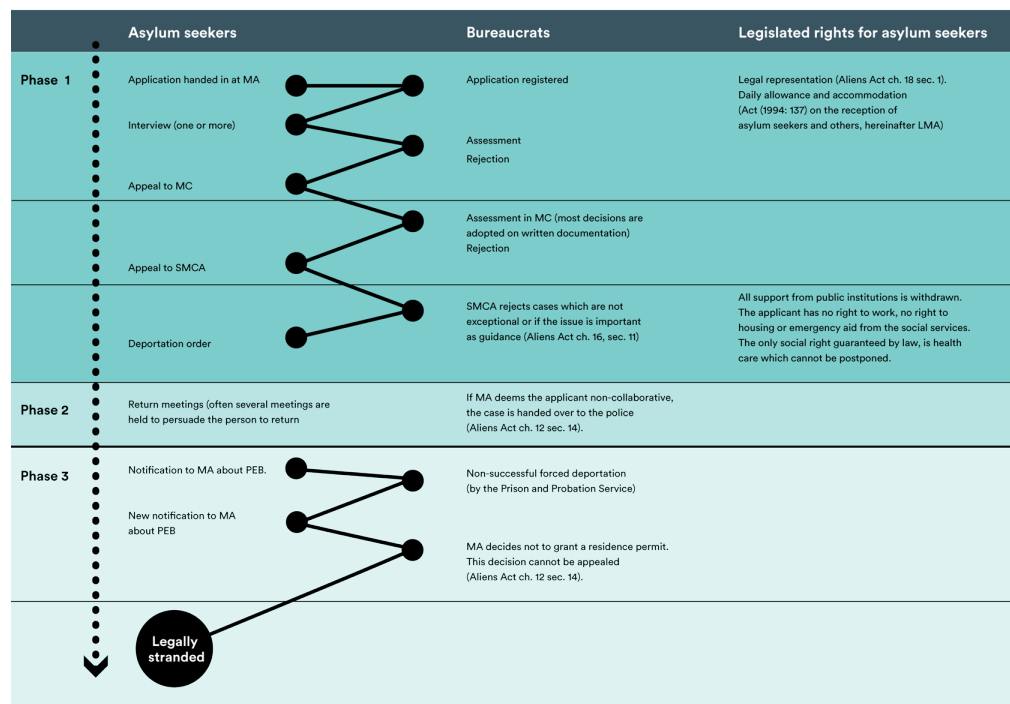
While much legal scholarship, Marks argues, has focused on the role of law in exceptional sites such as Guantanamo, few scholars have asked the "equally important question of how law and legal institutions may be helping to justify, normalise, naturalise and hence enable the forms of misery against which protection is needed" (Marks 2011: 21). The processes investigated in the present article, of *how* the position of legally stranded migrants comes about when return migration is managed through routine assessments which are not given any specific deliberation – just documented in casefiles – address these issues.

With the ambition to provide relevant reflections on superfluity from the ground-up, and some empirical knowledge of how law and superfluity intersect in the context of states' management of return migration, this article continues in five steps. In the next section, scholarly discussions on states' return politics are presented including the intended contribution of the present study, followed by methodological standpoints and study design. Then, a presentation is provided of the legal concept "practical impediments to enforcement" in law and legal application. This is followed by an in-depth qualitative analysis of two cases.⁴ In the concluding remarks, broader implications of the study's findings are elaborated.

2. Contribution to previous research

The present study adds on to previous research conducted by the author (X 2011, X and Y 2013) and the recent findings in an ethnographic multi-sited research project by Tobias Eule, Lisa Marie Borrelli, Annika Lindberg, and Anna Wyss (2019), conducted in Sweden and other European countries in which it was found that the application of informal adjustments to formal settings (such as when a legal decision is adopted) "to make things work practically" was common in the management of return (Eule et.al. 2019, 101). Adjustments could for example happen through the use of criminal justice procedures to achieve migration related means to make people leave. Another finding was the use, and abuse, of time to control migrants and as a means of subverting this control (see Eule et.al. 2019, ch. 5). Focus of the present study is a critical study-up analysis (Nader 1972) of legal decision-making at the time of the final expulsion decision in the Swedish asylum process, where there are no remedies available (see figure):

⁴ While some decisions in the files are immediately important for a PEB-assessment, there are several decisions made by a number of officers in a wide variety of issues related to an applicant which are not. The analysis presented below focus on assessments of relevance to the enforcement barriers.



Of particular interest to gain an understanding of how legally stranded migrants are produced from the inside of the migration bureaucracy, is the leeway for granting residency because of PEB. Furthermore, documented assessments (if taken out of context they seem unimportant and isolated) in casefiles, and evaluations of the management of return provides a comprehensive account of what enabled superfluousness. Apart from a content analysis of 25 decisions adopted at the MA, an internal quality report, and an in-depth qualitative analysis of migration law “in action” in two full casefiles, this article contributes with some reflections on the broader implications of superfluousness.

Technologies as means of exerting control over movement (Pickering and Weber 2006) which are constitutive of superfluity are important to understand, of course, for the individuals concerned, who end up in social and economic destitution, but also from a broader social perspective as it relates to the increasingly debated Swedish “shadow” or parallel society and the role of law and legal application (Ghasri 2017; Malm Lindberg 2020: 112; also see the state enquiry SOU 2017:93: 155 f.). In such society people live outside of all formal protection systems with very limited rights (see figure 1). Whereas several studies have demonstrated that rejected asylum seekers remain in the country where they got an expulsion decision (see for example Bausager et.al. 2013; Cantor et.al. 2018; Nimführ and Sesay 2019; Paoletti 2010; European Union Agency for Fundamental Rights, 2011, 36f.), and have analysed the experiences of “deportability” (Lind forthcoming; XX and ZZ 2015; Sager et al 2016; Schweitzer 2017; Söderman 2019) as well as the nexus between social legislation and migration control to promote self-return (Atac and Rosenberger 2019; XX and YY forthcoming, Scarpa and Shierup 2018), little is known about the role of grassroots bureaucrats’ decisions and their institutional contexts (for two contributions on the Danish context, see Bendixen 2014, Suarez-Krabbe et.al. 2018, also see Eile et.a. 2019).

This gap in previous research is noteworthy because, as Barak Kalir et al (2019) argues, the European migration control field currently is intensely fraught with discretionary power:

“For a start, some prevailing right-wing political ideas regarding non-citizens and asylum seekers may be difficult to get translated into formal rules and regulations, but they can effectively be transmitted in more *informal ways* that provide those in the field room for *expansive interpretation*. Equally, the dispersed and fragmented structure of the field calls for *interminable collaborations* between different state agencies. While there are attempts to regulate neatly these collaborations, they are also often *implemented in practice* according to the particular ideas of the individual officials in charge.” (Kalir et al 2019, 11, author’s italics).

To make knowledge-claims about these interpretations and individual ideas, as well as their implications, in-depth studies of separate cases are necessary.

3. Method, empirical material and analytical process

The present study deals with migration law in a Swedish context, i.e. a country with relatively well functioning institutions which enjoys a high trust among the public, as well as a confident self-image and reputation of respecting international law. Sweden has been one of few sought-after models of a state bureaucracy in the context of migration, and is well known for its comprehensive protections against insecurity (Barker 2017; Scarpa and Shierup 2018).

The analysis below draws on Catherine Dauvergne’s contemporary diagnosis of the legal branch of migration law as a convergence of globalisation and sovereignty, in that failing physical borders combine with simultaneous exclusion of undesirable people from *within* the welfare state (Dauvergne 2008). This happens, Dauvergne suggests, through technical distinctions that appear as politically neutral, but which are, in fact, influenced by broader political priorities. These are smoothly channelled through migration law and its application because of a prevalent ideology that law invents and reinvents legitimate procedures. Pickering and Weber makes a similar argument in their discussion around how globalization imprints and reshapes borders in ways that reveal their dynamic and sometimes contradictory functions (Pickering and Weber, 2006). In the present context, unlike those affected by the decision-making, the “border system” – including the legislator, the SMCA, MA’s legal experts and the case-officers – have great influence over the process, yet almost no burden of proof with regard to the key issue, as will be demonstrated below.

Inspired by a grounded theory approach (see Bryant and Charmaz 2018), two datasets were collected for the study which are supported by secondary data from previous studies in the field; 120 randomly selected non-appealable MA-decisions regarding PEB out of which 25 included a substantial assessment, and two full asylum cases containing a number of legal decisions which illustrate the sequence of events in the whole asylum process. Besides this primary empirical data, the results from an internal quality analysis by the MA served to provide a broader context and support the text based analysis.⁵

⁵ From the beginning, the data for the current study was collected for an independent state inquiry [lead by the author], conducted in 2017, and it has been archived for future review and research (at the *Swedish National Archives*). The backdrop of the enquiry was a contemporaneous quandary for the government,

The first data-set gives an overview of the content in decisions adopted when the MA are notified about PEB in individual cases. This material answers to the question of what circumstances that, weighed in with the legal interpretation, may lead to a residence permit in Sweden or not, and on what grounds. For this study of decisions, all MA's *positive* decisions during one full year – July 1st, 2015 to July 1st, 2016 – were first selected, i.e. decisions by the MA to grant residency because of PEB after a final rejection. In this material 19 decisions were identified where there had been a substantial assessment in the case, of PEB. Then, the total number of *negative* decisions announced during two weeks in the spring of 2016 were selected. In this material, 101 rejections were identified out of which a substantial assessment of PEB had been made in 6 cases.

The remaining 25 decisions were analysed through Rennstam's and Wästerfors' three-step model of sorting, reducing and argumentation. In practice, the decisions were read repeatedly and sorted in categories which could tell us about what was demanded from the applicants when they made a claim to the MA about the impediments to enforcement, to attain a residence permit.⁶ All 25 decisions were short, concise and fairly straightforward, although it was not possible to identify the actual reasons for making a certain interpretation. The analysis included daily conversations between the author and the secretary in the state enquiry who conducted the selection (see footnote 4). Much attention in our discussions was given to the question of why people end up in limbo and what could be done about this problem. In the next step, reducing took place through an identification of specific reasons for denying or granting a residency permit, i.e. questions were asked to the data of *what was critical* for the final decision. The final step in Rennstam's and Wästerfors' model, argumentation, consisted of an explanation to why the sorting and reducing was a contribution to theory – in my case the theory that law and superfluity are interlinked (Marks) and that people are pushed out from the inside of the system (Dauvergne).

The second data-set, 2 complete casefiles, provides a ground-up qualitative understanding of technologies which emerge in the management of return migration that produce superfluous people. One casefile concerned a man from Qatar who was a stateless Palestinian and one an Eritrean woman who was deemed to be Ethiopian. Each file contained over sixty pages, including various evidence such as certificates from embassies verifying that some specific groups were not allowed to travel there at the time, letters from the Swedish Police requesting instructions from the MA on how to proceed so that the expulsion could come about, decisions to not grant residency and court judgements. The files furthermore enclosed documentation of conversations from the registration of the asylum application and information exchange between case officers, minutes on whether the returnee was collaborating or not, and incidents in the applicant's whereabouts or in the previous country of residence. Hence, the material includes a breadth of information on aspects which related to the asylum process as a whole.

namely, that some previous asylum seekers who are not considered refugees (according to the Alien's Act) and therefore receive a decision ordering them to leave the country, cannot return to the designated recipient state and end up in a limbo state. Importantly, the qualitative case study was based on documentation which was partly produced before the volte-face in the Swedish management of asylum since 2015-16, and hence the empirical data for the current study is a reflection of the time before the current crisis-oriented rhetoric (see X 2017).

⁶ The result from the analysis is presented in Swedish in SOU 2017:84, ch. 5.

The casefiles are valid and reliable as material because they expose, step-by-step, documented assessments which leads to people ending up as deportable and then in the next step as legally stranded. Whereas the investigation of the 25 decisions was descriptive, an abductive approach was made use of when analysing the two casefiles. After several readings of each casefile as a whole (in total over 120 pages), a thematisation technique was adopted to make the material more manageable and to illicit clear explanations in regard to the notion of superfluity combined with Dauvergne's theory that migration law excludes undesirable people through technical distinctions that appear as neutral, but which are influenced by broader political priorities. Questions were then asked to the material about *what circumstances* were selected and assessed, *on what basis* were decisions taken, and what were the *implications* for the next step in the process. This way, an active selection of relevant facts and active interpretation of applicable regulations could be identified which mutually formed certain technologies. Of importance was also the issues that were ignored or forgotten as relevant facts, how issues of responsibility were handled, and documented replies with regard to claims put forward by the applicant. All in all, focus of the analysis was the migration control system (not the applicants whom had notified the MA about PEB) i.e. the documented assessments by MA case-workers, and negotiations between the Police and the MA or the MA and the assigned recipient state. In the next section, the legal framework for PEB is presented, followed by a content analysis.

4. The legal context and its application

Swedish law allows for granting residence permits because of PEB, as does that of other European countries (see Nimführ and Sesay 2019).

According to the Aliens Act, PEB should *always* be considered in administrative and court decisions concerning refusal of entry or expulsion (Aliens Act ch. 8, sec. 7). The *travaux préparatoires* to this provision explain that the public trust in the legislation may be assumed to suffer if legal decisions are taken that cannot be enforced "although asylum seekers whom were notified of a rejection are expected to contribute to the execution of the decision" (Aliens Act ch. 12, sec. 15, also see prop. 1997/98:173, 18 and prop. 2004/05:170, 193, 226 and 299).⁷ Therefore, the MA (cf. Aliens Act ch. 5 sec. 17) may grant residence permit, in terms of the law, if:

"new circumstances [has] come to light that ... mean that *there is reason to assume* that the intended country of return will not be willing to accept the alien ..." (Aliens Act ch. 12, sec. 18, first paragraph, point 2, author's italics).⁸

According to the *travaux préparatoires* of this paragraph it is not possible to list all those situations where an enforcement cannot take place, and hence leeway is left on what may

⁷ Propositions, sometimes referred to as travaux préparatoires or legislative history, are often useful in clarifying the intentions of a certain piece of legislation, and in Sweden they are an important part of the legislative history.

⁸ The other parts of this paragraph refers to new circumstances that may imply renewed individual protection needs and medical "or other special grounds", such as bad health condition. These various grounds are handled in the same decision-making process as practical obstacles to return. For the present study focus is limited to hinders that are linked to the position of being stranded, beyond one's own control.

constitute PEB. It should, states the *travaux préparatoires*, however be a question of exceptional situations where several various circumstances need to be considered:

“It is *of course impossible* to make a complete list of situations where an enforcement should not or cannot be done under this provision. However, it should be a matter of pure exceptional situations” (prop. 2004/05:170, 299).

How are these regulations and *travaux préparatoires* implemented in the everyday decision-making? This question was investigated in an internal report of the MA's handling of PEB (Migration Agency 2015). Investigating 76 cases, the authority found that PEB is a general so called “enforcement problem” in the management of return. It was further stated in the report that since the applicant usually does not have public assistance in this phase of the process, the MA has an increased investigation responsibility. It is particularly important, stated the report, with clear communication to individuals about what is expected from them. Instructions to the individual must be “practical”, and the administrative process must obtain “relevant information” for this purpose.

In their mapping of the 76 enforcement cases MA concluded on the positive note, that the authority had not split families in these decision processes, and that Uzbekistan had been dealt with in accordance with the precautionary principle.⁹ Furthermore, it was found that stateless Palestinians with expulsion decisions to Gaza at the time were granted temporary residence permit Migration Agency 2015, 2).

A number of quality problems were also identified in the report. One problematic was that individual circumstances were ignored by not being responded to by the MA and that no answers on how to proceed with the implementation of the expulsion decisions were found in the authority's answers to the Police authority's request for such advice. In cases where new information which had been provided to case-workers was used as a basis for the assessment of PEB, this information had not been communicated to the concerned individuals. In some cases the country of return had been changed but it was unclear if this had been communicated to the applicant. An example was stateless Palestinians from Iraq in whose cases the Migration Agency's administrative process unit had provided country information on possible measures for self-return. This had not been communicated to the persons concerned and as a result they had not been given the opportunity to respond to information that was central to the MA's decision in their case. Another deficiency was that internal legal positions (*rättsliga ställningstaganden*) were used as a source of justice although they do not have status as such (Migration Agency 2015, 4f).

From the analysis of the 25 decisions in the present study, additional knowledge about the “law in action” may be revealed. To start with, as a collective material, the 25 decisions disclose how tremendously difficult it is to attain residency in Sweden due to practical hinders to enforcement. Out of the six positive decisions where a substantial assessment appeared of

⁹ This refers to the difficulties in securing forward-looking risk assessments vis-à-vis Uzbekistan, which may also be relevant in enforcement work. For a long time, there has been knowledge about the Uzbek regime's repressive approach. An incident occurred in December 2014 when six former asylum seekers in Norway who were deported to Uzbekistan were sentenced to many years in prison after being prosecuted and sentenced for subversive activity and religious extremism (see legal comments SR 27/2015 and previous position SR 04/2015).

PEB, four concerned stateless Palestinians who had an expulsion decision to Libya. At the time, the Libyan government had decided on an entry ban for stateless Palestinians which constituted a general enforcement barrier for stateless Palestinians (see Migration Agency's legal expert 05/2015). The applicants in the four cases were assessed to have made likely that they were stateless Palestinians and the Migration Agency therefore granted them a temporary residence permit.

It furthermore appeared in the decisions that PEB in the Swedish context typically is related to the fact that the assigned recipient country explicitly do not grant entry permits or that it is not possible to travel to the state territory due to closed borders. Lack of identity documents proving citizenship and a right to entry may also constitute PEB. Hinders further can arise if embassies issuing visa or a passport do not respond to calls and written applications for an entry permit. Sometimes, issuance of travel documents is conditional on the individual having original identification documents, and sometimes the problem is that the validity of travel documents issued is so short or geographically limited that entry is not possible.

For a positive decision, applicants first need to have made their identity and previous domicile probable. Furthermore, actual attempts, as well as "new circumstances" and evidence of such are required. The interpretations of regulations varied. For instance, a stateless person with an enforcement decision to Iran who had put forward new e-mail correspondence between Swedish authorities and documents from the Police's enforcement group showing that he was not accepted as a resident in Iran was granted residency. A stateless family with an expulsion order to Kuwait was however denied residency because they had failed to "prove any new circumstance". The confirmation provided in the family's notification was information from the Kuwaiti embassy (unclear in what form) that they were not registered in the country. This "non-registration" was not, according to the MA a "new circumstance". An adult stateless person with an expulsion decision to the West bank who claimed that he lacked passport and that the recipient country was not willing to accept him, had not "verified" an obstacle to return in the eyes of MA. In particular, the applicant had not helped "enough" in making "attempts to obtain travel documents and otherwise get the documents required to be able to return ...".

Another case concerned an Ethiopian woman who had been informed by the embassy that she was not welcome (unclear in what form). MA here referred to the principle of free evidence in Sweden¹⁰, and the associated responsibility [for the woman] "to decide if [she] wants to invoke any actions from the Ethiopian embassy". The implied message from the MA here was that the woman herself must produce credible evidence from the embassy in her notification of PEB for this to be trustworthy. Otherwise, the assessment would remain, that the woman had not "made it probable that there is a practical impediment to enforcement".

In one positive decision regarding a stateless family who had an enforcement decision to Saudi Arabia, written evidence was attached in the form of additional reply letters to job applications proving that no sponsor had accepted them. A stateless Palestinian family from the United Arab Emirates was however deemed to have "made no attempts" to obtain a sponsor, because the documentation (visa application, round trip ticket to the United Arab

¹⁰ In Sweden, the parties to a trial may invoke any evidence they can obtain (so-called free evidence) and that the value of the evidence be freely examined by the court (free evidentiary evaluation).

Emirates and e-mail correspondence) was considered to have a low probative value and did not come from the authorities.

To conclude, the hitherto empirical data (decisions and quality report) indicates a clear presumption of rejection and a lack of obligation to substantially investigate the claims. Some form of evidence is required that clear attempts have been made for an actual return, and these efforts should have been going on for some time. For example, the positive decisions concerning Gaza included copies of one or more visa applications (to return) at the Egyptian Embassy. Actual attempts to eliminate the hinders, signalling a sort of genuine willingness for return, as well as clear evidence of this, appear to be necessary. Without explanation and argument in their decision, the MA can deny a residence permit because hinders were not "verified", or due to lack of "new circumstance".

While the investigation above provides an insight into substantial decision-making including the selection of facts and legal interpretations on which the outcome is based, to understand assessments which may reveal how the intersection of superfluity and law play out on a micro-scale, a review of entire casefiles was sufficient (ceasing in June 2017). Such review is presented below through a close presentation of two cases, followed by a qualitative analysis. As noted in the method section, the descriptions below are based on documentation by the MA-officers and the Police. Individual case-officers underlying assumptions of why certain facts are relevant while others may be ignored is not possible to capture from a study of written documentation documents and nor is that the aim of the present study. Rather, the intention is to point to how individual persons through – supposedly impartial – legal judgments in the light of a larger political context, enable well-hidden technologies to be developed to emerge that lead to people being pushed out in limbo.

5. Case descriptions

5.1 Stateless Palestinian with expulsion decision to Qatar

A 41-year-old stateless Palestinian man seeks asylum in Sweden in November 2011. He is born and raised in Qatar and seeks protection in Sweden because his economic guarantee (sponsor) has withdrawn from his responsibility due to a financial dispute between the two. Following this conflict, which indicates that the man have politically challenged the Kafala system¹¹, the sponsor would seek to destroy the man's life. The applicant on the basis of an Egyptian travel document has a residence permit in Qatar until September 2012. This is confirmed by a stamp in the passport and a residence permit number. The Egyptian travel document indicates that he is not entitled to enter Egypt, and the man states in his asylum interview that he is not allowed to enter Qatar because he has been outside of the country for more than six months.

During the interview the man is asked whether he could get another sponsor which he answers would be possible provided that the former sponsor approves. In March 2012, the MA rejects the man's asylum application. With regard to PEB it is stated:

"You have stated that you have lost your residence permit because it has now been six months since you left Qatar. However, the Migration Agency has not

¹¹ The Kafala system requires laborers to have an in-country sponsor who is responsible for their visa and legal status; usually this is their employer.

found any information supporting your claim. Therefore, our conclusion is that you have the opportunity to return to Qatar because you are the holder of a valid residence permit."

The decision is appealed to the MC, and the MA now claims that "stateless Palestinians can apply for residence and work permits while abroad", and that "the appellant has not made it likely that he could not obtain a permit for entry into Qatar". The court on the basis of these claims concludes that a new residence permit in Qatar is possible to attain. Following the court process, and after being denied trial in SMCA, a return meeting takes place at the MA in January 2013. The applicant now reiterates what he said earlier, that the sponsor who laid him aside must agree for another guarantor to step in. The man is also wondering how he may return when he is not given an entry permit. The protocol from the meeting states "that it is primarily his own responsibility to see that his trip home will occur, [it is] not the job that anyone else will solve for him". The applicant then asks if they can send him to another country, whereby the officer states that this could happen, if it is shown that this country allows him to settle. During the meeting the man is informed that his daily allowance will be reduced if he does not participate in the expulsion work.

After 12 days a new meeting is held and again the man is informed that he is solely responsible for re-obtaining the necessary permits to go to Qatar. With no acquired new travel documents, the applicant "may not be deemed to be sufficiently involved in the operation", the minutes state. The man claims that he has submitted written evidence that he cannot get a new sponsor and that the Egyptian travel documents do not allow entry into Egypt without a visa. "I am a human being without a country", he explains. The officer then responds that "the MA is likely to make the assessment" that the man has not part-taken and accordingly is deemed "non-collaborative" in the process.

On month later (February 2013), the case is handed over to the Police with reference to the return meetings and previous documentation that "full responsibility for the expulsion has been placed on the applicant". Following a logic that coercive measures are necessary for a hand-over to the Police, no questions are asked about the effect of a Police intervention in terms of prospect of actually being able to return.

After a new notification from the applicant about PEB in March 2013, the MA concludes that the alleged impediments to enforcement are merely modifications or additions to previous circumstances and thus not relevant at this time. One year later the MA anew rejects a notification about PEB on the same basis; nothing new has been revealed in the case. The applicant is deemed to have "been able to ensure that he receives such sponsorship which allows him to obtain a permit for entry into Qatar". Reference is also made to the applicant's obligation to get a new sponsor. The MA finds no reason to interrupt the expulsion operation. Instead, the determination is to, as stated in the case-file "make him work harder still".

In February 2014 another year has passed, and the Police now notifies the MA of their obstacles in this "return-case". They request further guidance from the MA on how to proceed, after having received a letter from Qatar's embassy which states that the applicant has no valid passport for entry into Qatar. Egyptian travel documents, issued by the Egyptian Embassy in Doha, Qatar, do not entitle to entry into either Qatar or Egypt. Furthermore, the Police states, the applicant has been in contact with the Egyptian embassy and the Palestinian

consulate in Stockholm to get a valid travel document, but without success. Egypt does not allow entry, and entry permits in occupied Palestine are granted only if one has a Palestinian ID. The reasons for this (according to the documents from Egypt) "have been in place since 1993". Extensive documentation portrays various activities by the Police to make possible an expulsion to Qatar and now "continued enforcement work seems impossible to implement", argues the Police. Six months later the MA answers to the request, denoting the judgment previously referred to that "[Unless] the foreigner himself proves that there is no possibility of receiving a sponsor, there is no enforcement hinder according to the Aliens Act". Furthermore, the documents submitted to make possible that the man "is unable to ever receive a sponsor, are deemed to be of low probative value". The fact that the man has a family in Qatar who "in some way have received sponsors to reside in the country", is stated as an indication that not all opportunities for a new sponsorship have been exhausted. The Police should therefore according to the MA focus on the fact that the remaining relatives can assist the applicant.

A year and a half passes, and in September 2016, the Police sends a third request to the MA for instructions on how to implement the expulsion decision. Four months later, the MA answers that there is no longer a legally enforceable decision. The man has now again applied for asylum because the previous expulsion decision has expired. According to the protocol from the registration of the new application, the man has declared that he is mentally tired, worried, and stressed after having lived far away from his children for six years. When asked about identification documents the man answers that more than 50 different documents have been submitted to the MA. At this point in time the man has not been entitled to work and has not been entitled to housing in Sweden for nearly four years.

5.2 Eritrean woman who is deemed to come from Ethiopia

It is August 2013 and a 32-year-old Eritrean woman seeks asylum at the MA. She states that the reason for her escape from Eritrea is that she has been called for military service. Such a call implies not only military duty but also torture and rape. No ID documents are submitted, but in the asylum interview the woman reports that she has an Ethiopian ID card at her parents' place in Eritrea. She also tells there is a paper at her uncle's place in Eritrea that would prove her identity, provided by the Eritrean authorities after her expulsion to Eritrea from Ethiopia in 2000 (when Eritrea had been an independent state for seven years). However, due to family conflicts it is unclear whether she may retrieve these papers.

In November 2013, a rejection of the woman's claim for asylum is announced because the MA deems that the applicant is "most likely" Ethiopian. In the subsequent negative rejection from the MC it is declared that the applicant has been prepared to "do everything she could to determine her identity" and that she "did not contact the Ethiopian embassy in order to confirm that she would not be allowed to return". Nor had the woman at the time contacted her uncle to obtain documentation. In a section on humanitarian grounds for residency the Court states that PEB may be considered in the overall assessment of whether there are particularly distressing circumstances in individual cases, but if so, it requires that "at the time of the examination" there is "a concrete enforcement hinder" (reference to MIG 2008:38). According to the Court, the applicant has made no "serious attempts to contact the Ethiopian embassy, to show that she cannot return to the country" and nor has she made it probable that there is "a concrete hinder for her return". According to the Court, the woman here is implicitly requested to contact the embassy to investigate the possibility of return *before* the

last examination of her protection claim. In light of the basic idea that asylum is granted if there is a fear of persecution, this request is striking.

Several return meetings are held with the woman in the summer of 2014. She maintains that it will be difficult for her to attain a travel document, and no instructions appear in the documentation of what she should do for such documents to be retrieved. In the protocol from the second return meeting, under the heading "Other important information" MA states that there is no use "to initiate the case for embassy, without any ID document". After another return meeting, where the woman explains that she cannot, as a non-citizen in Ethiopia, take measures to receive a travel document there. During the meeting the MA instructs her to submit ID documents within one week. She is also informed that her daily allowance will be reduced to SEK 19¹², and:

"NN receives information that the Migration Agency will not be able to continue with her return case if she does not submit ID documents, and that her case will then be handed over to the Police."¹³

In a forth return-meeting another week later, the woman again states that she tried but did not succeed to attain the requested documents. She repeats that she cannot travel to Ethiopia because this is not her country. She tells that there is a new document, prepared by the Red Cross, proving that Ethiopia does not welcome her. The document is with her uncle in Ethiopia, and the woman's brother in America tries to get a hold of this and other relevant documents, to prove PEB. In the memorandum from the meeting, the migration officer concludes that they cannot continue working on return "because she has not submitted any ID, and therefore this case is handed over to the Police". A few months later, the MA again is notified of PEB, which again are rejected. The decision states that there have been no new circumstances, and states that the MA has "limited scope for considering factors such as false hopes and worries about return" or "social or financial problems."

Six months later the Police requests information from the MA about what to do next in their enforcement work. A response comes five months later, noting that the applicant has now submitted a form of a "refugee document" issued in Eritrea. This has a low probative value, states the MA, because its "authenticity cannot be verified, and it can be easily falsified". As long as the applicant cannot show that "any other country will permit entry", the MA concludes, the enforcement work to Ethiopia will continue.

The woman submits a new notification about PEB in December 2015, including an attached copy of a card from her home village near the border to Ethiopia. A new rejection with the same formulations as the previous decisions about false hopes and social and economic problems is communicated. The MA states that the applicant's previous residency has been assessed within the framework of the legal process (the asylum process) and that this "card" can be easily falsified. At the time of this final rejection, in the spring of 2017, the woman has

¹² 19 SEK = 1,603 GBP. At the time, some economic support was provided until departure. This changed (except for families) in the summer of 2016.

¹³ Cf. Aliens Act ch. 12 sec. 14, fourth para., where it is stated that "The Swedish Migration Board may turn over a refusal-of-entry or expulsion case to the Police authority for enforcement if the person to be refused entry or expelled has gone into hiding and cannot be found without the assistance of the Police authority or if it can be assumed that force will be needed to enforce the decision".

been in Sweden for two years and four months. For more than a year she has had less than SEK 20 per day to live on. During this period, she has consequently declared herself willing to contribute for an actual return to come about.

6 Analysis

In this section, a cohesive analysis is presented of the empirical data; two full casefiles, as well as the 25 substantive decisions and the internal quality report previously described. These three sets of empirical material combined with the previous research about the Swedish asylum process, constitute a comprehensive account of how the assessments regarding PEB manifest themselves and tend to produce surplus people in the welfare state. In particular, three overlapping technologies from this "inner-side of the migration bureaucracy" (cf. Dauvergne 2008) may be identified which are constitutive of the superfluousness processes which Marks addresses: Neglectment of key issue, organisation of non-responsibility, and incommensurable circles of suspicion.

6.1 Negligence of key issue

By negligence is meant that factual circumstances of importance are ignored in favour of circumstances that are less relevant in relation to the set task namely to "always consider" PEB in administrative and court decisions concerning refusal of entry or expulsion (Aliens Act ch. 8, sec. 7). In particular, circumstances such as statelessness, difficulties in establishing citizenship or attaining travel documents come in the backseat of documenting various undertakings by the single "returnee" at a certain point in time.

One expression of the negligence of key circumstances are the examples, in the files and decisions, of a disinterest in whether the actions taken by the individual actually would have any effect. For example in the Eritrean case, the applicant was instructed to provide a document within one week, which eventually, as must have been expected, turned out to be "easily falsified" and whose "authenticity cannot be verified". In the 25 decisions, it was found that whether something constituted a so-called *new* circumstance rather than a modification of previously assessed circumstances (regardless of the point in time) was considered more important than the enforcement hinder itself. Whether the previously assessed circumstances has become substantially relevant because of broader contextual changes, appeared unimportant. This is paradoxical in light of the fact that MA (in the Eritrean case with reference to SMCA) simultaneously points to the importance of an enforcement hinder "at the time of the examination", i.e. when conducting their assessment.

Instead of an actual assessment of PEB in the individual case, applicants were deemed non-collaborative without further investigation and on this basis their expulsion case could be handed over to the Police. Alternatively, rejections were formulated that "false hopes, concerns, or social and financial problems cannot be the basis for a residence permit in Sweden". At the same time, the heart of the issue – PEB – was ingeniously avoided. A particularly clear example of the "technology of negligence" was the documentation from the return meetings in the Qatar-case. In this file, under "Assignments for the next call", the applicant was informed that if residency is not granted due to his notification of PEB, the case would be handed over to the Police because of non-participation. However, as long as the man's previous sponsor was not willing to provide the documents needed for a new guarantor to be recruited, little could be done. This minor but crucial detail which did constitute a

practical enforcement hinder, was ignored while the task to implement the expulsion decision could be offloaded to the Police. At the same time, the man was imposed the insurmountable task of proving that something non-existent – approval from the previous sponsor – did in fact exist.

6.2 Organisation and reorganisation of non-responsibility

Eule et.al. in their analysis of migration control in bureaucracies, point to the problematic "many hands of the migration regimes" making it extremely difficult to hold anyone accountable for the outcomes of law enforcement (Eule et.al. 2019: ch. 6). In the current study, these many hands are also observable in the cases through the organisation and re-organisation of non-responsibility.

This technology appeared most clearly through negotiations between the border police and the MA. While the police articulated to the MA – and this was also identified in the internal quality report, that "continued enforcement work seems impossible to implement", the system enables for the MA to blithely relinquish their responsibility for their own decisions without any reflection on whether individual assessments on the PEB-issue would actually improve the possibilities of expulsion. In these situations, a confusion arose between the measures taken and the likelihood that these would be effective. The Eritrean woman was for example informed that if she did not provide ID within one week, her case would be handed over to the police. The Palestinian man's case illustrate the same "technology of non-responsibility" when the man was informed that he was solely responsible for re-obtaining the necessary permission to be able to travel to Qatar (without further instructions).

The issue of responsibility was also clearly related to the position of statelessness. The fact that as stateless, one lacks a legitimate claim for residency other than with reference to the right to asylum (which is sought after having left the territory of the persecutor) was absent in the documentation of assessments of PEB. The logic of the Westphalian world order – that which paves the way for *non-citizens* to be legitimately expelled – was both reproduced and neglected in "the technology of non-responsibility". A logic of enigmatic confidence appear in the documentation of assessments, that individual asylum seekers on their own initiative and with full responsibility are equipped to challenge the current world order. This, by visiting the embassy of a nation where they lack evidence of citizenship, and make a claim for entry, because Swedish law has decided that this is where they belong. Countries that are not formally answerable to non-citizens and stateless people, are with this logic simultaneously imposed exactly such responsibility by the MA-officers. The stateless Palestinian with an expulsion decision to Qatar made this contradiction clear, stating that "I am a human being without a country".

Also in the 25 decisions investigated, the designated reception countries unwillingness to accept a person did have effect in four cases. This happened when Libya officially declared that a certain group of people was not welcome (stateless Palestinians). This situation lead to a temporary residence permit. But in most cases the lacking will to take on a responsibility for persons with return decisions, is not so explicit, and then a transfer of responsibility onto the individual take place. One example of this was found in the 25 decisions, where the applicant was told that it was up to her to decide if she wanted "to invoke any actions" from the embassy.

6.3 Incommensurable circles of suspicion

"When starting at the Migration Agency, I had a stomachache when declining asylum applications, but in the end my stomachache came when granting residence permits" (Norström 2004b). This quote comes from Eva Norström's dissertation from 2004 *In wait for asylum* (Norström 2004b) which is based on several years of ethnographic fieldwork at the MA. According to Norström, a kind of suspicion that was sitting in the walls came to embody the everyday work at the MA, described by the officers as a stomachache. A similar structural "culture of disbelief" in the Swedish migration control bureaucracy have been identified by Shahram Khosravi (2009) and Maja Sager (2011, 179). Migration scholar Olga Jubany makes a similar reflection explaining how the relationship between migration and a "social threat discourse" in Europe has securitised asylum seekers in a way that they are now seen as a menace that bureaucrats must keep out to protect society (Jubany 2017, ch. 1).

There are also empirical studies of "law in action" confirming these tendencies of distrust and suspicion towards people seeking refuge in Sweden as well, departing from Gregor Noll's reflection that the asylum processes are permeated by considerable degrees of uncertainty and complexity (Noll 2005). Legal scholar Daniel Hedlund in an investigation of 916 decisions concerning unaccompanied children containing case-officers' credibility reasoning, came to the conclusion that the children were recurrently questioned (Hedlund 2017, 168). In particular, inconsistencies in the applicants' narrative chains were used to question both their credibility and competence. Overall, Hedlund concludes, the case-officers' reasoning about credibility appeared as if they were bolstered by efforts not only to identify, but also to underscore alleged "inaccuracies" (Hedlund 2017, 168). In my own research, based on observation studies, interviews and an investigation of decisions in children's cases at the MA, I was also able to identify a strong idea among case officers at the MA, that children applying for asylum in Sweden seldom have any "real asylum grounds" (X 2011, 66). Children and their families were thus initially expected not to have protection needs founding a residence permit. This starting point affected the legal interpretation and final outcomes in individual cases, as well as the conversation among the case officers about relevant facts in individual assessments (X 2009, 2011).

A culture of disbelief emerged also in the present study which is disclosed through an aggregated analysis of the numerous documented decisions in the two casefiles. From the registration of an application through the asylum interview and then during the forward-looking assessment regarding risk of persecution, a structural subordinated position of the applicant appeared. One example from the casefiles was the Eritrean woman who was required to contact the embassy before being notified of the final decision in her asylum case, i.e. the embassy of a state in relation to which she had not claimed to seek refuge and hence had no fear against. The assumption about the woman's Ethiopian citizenship, which was done early on in the process, undermined the basis of her claim to seek refuge because of persecution in Eritrea. The circle of suspicion then accompanied the documentation of obstacles to return, PEB, namely with regard to the credibility of activities, evidence and anticipated non-collaboration.

The effect on a structural level of this "technology of disbelief" is that information taken from – unclear where – and provided in documentation of selection and assessments of factual circumstances, turn out to be of great importance for negative decisions, while no examples could be found where information brought up by the asylum seeker led to the conclusion that

there was reason to assume that the intended receiving state was unwilling to let the person entry its territory. The statutory definition of PEB, "reason to believe that the designated recipient country will not receive the foreigner" was thus transformed into a question of the individual showing that there is "no possibility to attain an entry permit" (see the Palestinian case above). All at all the distrust shone through most of the decisions and documentation in the casefiles, with the implication that the concerned individuals were left with a great responsibility and lacking instructions from the MA about how they could be released from limbo. It also appeared in the casefiles how applicants at times demonstrated an awareness of their position, such as when the Palestinian man from Qatar explained that he was "mentally tired, worried, and stressed", after having lived far away from his children for six years, and that he had submitted "more than 50 different documents" to the authorities.

7 Concluding remarks

The present study illustrates that "law in action" at the MA is much more than simply distinguishing between protection needs and lack thereof. The analysis also demonstrated some explanations to the gap between the rhetoric of effective returns and the reality of asylum seekers ending up as legally stranded, beyond factors of public protests, reluctance among recipient countries to permit certain individuals, or asylum seekers absconding because they see no other way to avoid expulsion. In particular, the decisions and casefiles reveal how people end up in limbo when interpretations of regulations are weighed in relation to the selected facts.

On a structural level, assessments of PEB appear to manifest a silent agreement with the prevailing migration management priorities in Sweden where return is given increasingly weight (Malm Lindberg 2020). In this agreement certain constructions of social worlds are needed in order to renounce the existence of a social reality, un-returnability beyond the individual's control. The hunch of "non-existent hinders" emerges as an underlying objective in the legal application and it is invented and re-invented through recurring similar assessments, viz. someone who does not genuinely want to return and thus do not comply with formal decisions and thereby disqualify from residency in Sweden because of PEB. What is forgotten is that people who sought refuge by definition lack a will to return. The implication is that measures taken to eventually make people leave, reach levels of absurdity, albeit tacitly.

The technologies identified in the present study – negligence of key aspects, non-responsibility and mis-belief – play out in a multifaceted process on the inside of the MA. This is concealed from public scrutiny; in part because the decisions confirm an appealing thought, in part because legal application is meant to be a neutral activity and in part because the decisions cannot be appealed. The technologies also enable destitution (superfluity) for which no-one may be held accountable.

From the perspective of the migration authorities, the technologies are perhaps all for the signal of order and to uphold the legitimacy of migration law; but the handling wears a warning. It is a warning that reaches beyond the issue of how people who did not have their protection needs recognised should be treated. It is about powers given to the bureaucratic system in relation to human beings, and about "neutral legal practices" that are everything but about neutrality.

Rather than solving the problem with PEB in individual cases, the technologies perhaps incorporate a broader transformation of the welfare state which over the last three decades has been characterised by austerity policies (Scarpa and Shierup 2018, Therborn 2017), and a parallel re-distribution of welfare which also involves a sharp increase in economic gaps (see Kamali and Jönsson 2018). In this perspective, legally stranded migrants are part of a much rising numbers of people who cease to have a value as worker and consumer (Sassen 2015).

To be pushed out is not about leaving the territory but to be pushed out from the common world and turned into superfluity. It remains to be seen what the broader implications are, both for inequality in society and for the Swedish model so cherished.

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