PART I – Agentic Formations

Practices of case-making occur in a complex assembly of discourses, practices, things and people which compose a networked arrangement of government – a *dipositif* (Foucault 1980). This *dispositif* is enacted in practices of case-making (Part II) while both enabling and limiting these practices. Before turning to the *dispositif's* enactment, I thus explore the embodiment and equipment of the *dispositif's* arrangements of power and knowledge – what I consider to enable and limit case-making. In other words, I start Part I by introducing the material-discursive agentic formations of knowing and doing asylum as stabilisations of the *dispositif*. Chapter 4 introduces some of the key associations of knowing the framings and meanings of asylum that enable caseworkers to navigate asylum cases. Chapter 5 suggests that to become a caseworker able to "act in the name of the state" (Gupta 1995) requires equipment, meaning that humans become equipped to become part of the office's collectives and with a range of 'tools' for case-making.

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4. Knowing Asylum

In this chapter, I introduce some of the key associations new caseworkers are endowed with to navigate cases. In subchapter 4.1, I provide an account of framings of the asylum *dispositif*, mainly from a basic training for new caseworkers I attended at the beginning of my fieldwork. This is blended with my comments. An account of such key framings helps new caseworkers – as well as the reader – to situate asylum case-making very roughly within migration policy, asylum law, and the asylum office. Subchapter 4.2 provides insights into a sort of 'common sense' of case-making. This consists of knowledge assembled – again in the basic training – about the aim of case-making and key legal notions that allow new caseworkers to make sense in their work. I suggest that knowledge practices – of training sessions, but mainly in case-making itself – can be fruitfully grasped by thinking of classifications of asylum as, on the one hand, exchanged, gradually incorporated and refined in "heuristics" (Gigerenzer 2013); and that such heuristics, on the other hand, are closely related to what Kuhn (1967) termed "exemplars": cases that translate abstract notions of policy and law.

4.1 Framings of the Asylum *Dispositif*

Here I will trace how the asylum *dispositif* is roughly situated in terms of Swiss migration policy, asylum law and the asylum office. For those enacting the *dispositif*, these elements provide the sort of metaphorical and material associations that make practices coagulate as an entity appearing and referred to as 'the asylum system'. Consequently, I will focus for the purpose of this chapter primarily on representations of policy, law, organisation, and procedure *from within* the asylum office. Empirically, these representations are how new caseworkers become informed in their initial office training

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about their job. Necessarily, these representations only offer a sort of minimal picture that consists of exemplary rather than exhaustive framings of the asylum *dispositif*. The first, policy framing, broadly locates practices of case-making within the broader arena of governing migration; the second, legal framing, situates these practices within the wider, and historically evolved, networks of global and national refugee law; the third, organisational framing, establishes key locales – a public administration with its offices and units – of the asylum *dispositif's* enactment. Moreover, all of these framings allow for a reading of continuity and change of the *dispositif* which is important for both those working inside it and for those encountering it from outside, as I did as a researcher.

4.1.1 Migration Policy

Asylum as an issue to be governed is closely associated with questions and approaches of migration management. Migration management refers to a range of practices aimed at directing the migratory movements of people (Geiger and Pécoud 2010). In my reading, migration policy can be considered a formalised account of, but at the same time a formula for, such practices. Migration policy materialises in laws and reports, in statistics and negotiations, in the figure of the border guard and office buildings. Policy cannot be equated with the practice itself, but is strongly influenced by, and influences, practice (ibid.). To be sure, there is not a single migration policy, but a range of interconnected and partially overlapping migration policies at various institutional levels (Feldman 2012). I will limit myself to how migration policy was (re)presented to new caseworkers in a basic training. To work in a domain of excruciating complexity – and to write about it – thus means to simplify in other domains, to accept a certain myopia that is characteristic for both specialised state and scientific practice (see also Whyte 2011). Yet, I will provide my own reading of a few features of what was portrayed as Swiss migration policy and its associations with governing asylum.

In the basic training I attended, a senior official introduced "Swiss migration policy" to the new caseworkers in what was a new training module. He showed them the definition of migration policy he had copied from the official representation on the website of the State Secretariat for Migration:

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> Swiss migration policy is expected to come to terms with a wide range of diverse issues: it deals with a Portuguese construction worker as well as with a family of Kurdish refugees, with a top manageress from Germany as well as with second-generation foreign nationals born in this country – and, unfortunately, also with foreign drug dealers and illegal residents.[1] (SEM 2017b)

He told us, "it shows that it is a huge field with which we are concerned here [in the migration office]: roughly said, how migration is directed, controlled and statistically evaluated" (Fieldnotes, basic training for new caseworkers, autumn 2012). This definition presents some of the basic distinctions of Swiss migration policy and can be considered a sort of least common denominator of migration management knowledge for asylum work. Initially, I think it already becomes clear from this framing that 'migration' policy is concerned with steering *im*migration and not *e*migration.[2] According to this representation, a first problem that migration management has to address is diversity regarding the origin, activities, and legal status of different groups of people who still have something in common: no Swiss citizenship. This representation only subtly hints at the issues for which the exemplary figures of noncitizens evoked stand for – it tells me as a reader that there must be a difference between the Portuguese construction worker and the manageress from Germany, for instance. It makes a normative differentiation between those considered fortunate and unfortunate. It suggests, importantly, that more or less implicit categories of migrants precede the attempt to manage migration: that diversity is already there, and migration policy is expected to come to terms with this diversity; that 'illegal residents' or 'second-generation foreign nationals born in this country' exist *before* migration policy, and are not its product. This paragraph thus contains two important keys to grasp Swiss migration policy: firstly, the classification of migrants according to issues, some of which appear to have to do with occupation, with origin, motives, and legality; and secondly, a classical European-American metaphysical stance of anteriority – a sense that a reality is "out there" and precedes us (see Law 2004a, 24). Migration policy is commonly understood

1 All quotes from fieldnotes, interviews, case records, websites, and documents are the author's translations.

2 As becomes visible in the third paragraph on asylum, emigration still is a part of migration policy, but only in the form of forced removal in the case of non-admittance.

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to "come to terms" with a world already inhabited by a seemingly natural diversity independent from attempts to manage migration.

The senior official moreover pointed out that, according to the same SEM website, Swiss migration policy pursues three aims that are briefly introduced and discussed in the next three paragraphs. The first aim states the need for controlled migration:

> A good migration policy safeguards and advances this country's prosperity. For this purpose, we need employees from other countries. Without these, many industries such as construction, tourism and health care, as well as Switzerland overall as a financial centre and a workplace, would be unable to preserve their current level of prosperity. It is for this reason that we depend on controlled immigration. (SEM 2017b)[3]

The bottom line of this paragraph, on the one hand, claims that immigration is a necessity: it explicitly states that "we depend" on it. On the other hand, it renders immigration a functional element of the political economy: i.e., it serves the provision of labourers "from other countries" for certain sectors of the national economy. As Kearney (1998, 125) pointed out, immigration policies of "receiving states" can be read as attempts to resolve a fundamental tension when it comes to foreign labour: that it "is desired, but the persons in whom it is embodied are not desired". The emphasis of "controlled immigration" implies a selection of potential immigrants according to their 'added value' in this equation.[4] If we follow Kearney's (2004) argument on the "value-filtering mission of borders", value (and class) of those crossing borders, however, do not precede filtering practices at borders, but are their effect. Omitted in the policy text is the consequence of this valuation: it prevents, in turn, those from immigrating who are considered "aliens", or "subaltern Others" (Kearney 1998, 130). Partly a consequence of European integration and concerted border regimes, Switzerland's migration policy since 1998 has built upon a "two-circles" or "dual admission" model common in the Schengen area: little regulation of migration between EU and EFTA countries,

3 I present the aims in a different order than the original.

4 It moreover contends that immigration is controllable: a persistent myth closely related to that of state's sovereignty, which, however, requires continual performance (see Hansen and Stepputat 2006)

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and highly restricted terms of immigration for people from the outside. For so-called "third-country nationals" who do not fall into particular categories of highly-skilled,[5] it is increasingly difficult to travel to Europe and Switzerland legally. On first sight, immigration policy thus simply aims at ensuring the supply of a labour force needed for the national economy to 'prosper'. At a closer look, 'controlling' immigrants produces what it names – 'employees' recruited abroad as well as an illegalised, precarious workforce (see Anderson, 2010). The latter's "illegalisation" (Walters 2002) can moreover only be ensured by reiterating their "alienation" (see Kearney 1998).

The second paragraph of aims explicitly addresses the category of asylum:

> A good migration policy grants protection to people who are really persecuted, as befits Switzerland's humanitarian tradition. People who must escape from war, persecution and torture should be able to find refuge here. However, by no means all those who apply for asylum are recognised as refugees or are provisionally admitted. Rejected asylum-seekers must leave this country again, and their return should be supported. (SEM 2017b)

This paragraph introduces the Swiss migration policy regarding the 'special case' of asylum. According to this representation, the aim of asylum policy is to "grant protection" to those "who must escape persecution, war and torture". I consider a few sections in this portrayal particularly indicative of Swiss asylum policy: it suggests that only those "who are *really* persecuted" (my emphasis) are to be granted protection, and "*by no means* all those who apply" (my emphasis) deserve such protection. In other words, one has to figure out who amongst those applying for refuge shall be recognised and granted asylum. As the senior official commented, "this requires a proper evaluation" (Fieldnotes , basic training for new caseworkers, autumn 2012). The first statement thus hints at the key distinction to be accomplished in the implementation of this policy: between people who are 'really' persecuted and those who are not. The second statement reads more like a warning directed at people potentially applying for asylum in Switzerland: chances to be granted protection are not high; and those not granted protection will

5 For detailed regulations see Federal Act on Foreign Nationals (1998) or the summary of the criteria for non-EU/EFTA nationals according to the dual access system of the SEM (2015d).

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be forced to leave the country again.[6] It can be read as an expression of "gatekeeping" (Nevins, 2002) to reduce the number of people filing an application in Switzerland (see also section 8.2.3).

Interestingly, and more addressed towards the Swiss population, I contend, is the reference to the "Switzerland's humanitarian tradition", which reads in the German version of the same paragraph on the SEM website even with the addition "of which we are proud" (SEM 2017b). A further addition in the German version[7] consists of the citation of the approximate number of people granted refugee status in Switzerland every year: "Every year, Switzerland receives about 2000 refugees". This reference to the humanitarian tradition and the rather low number of refugees presented (compared to the statistics, see for instance SEM 2017a) appears to me like an appeasement of the Swiss population. The whole representation of asylum policy in this paragraph implicitly testifies to an important feature of asylum policy: its high politicization in political and public discourse. Key issues in this discourse are the alleged abuse of the asylum system by 'economic migrants' (addressed both in this paragraph and the one that follows), the sheer numbers of asylum seekers (explicitly addressed only in the German version of this paragraph), and – more in the tabloid newspaper and right-wing propaganda – links drawn to purported criminal activities (as well addressed in the paragraph below). Notably, these tensions of asylum policy are far from new: already Werenfels (1987, 173) stated in his legal study of Swiss asylum law that "Doing asylum policy means for the federal government, on the one hand, to do justice to humanitarian expectations and responsibilities. On the other hand, it means to rigorously counter potential abuse and at the same time strive for wide appeal for one's position."[8]

6 According to Holzer and Schneider (2002, 38), countries generally have two possibilities to reduce their attractiveness as destinations for asylum seekers: on the one hand, strategies that aim at reducing the incentives for asylum seekers to file an application in the respective country. Examples for such strategies are the reduction of social welfare or the restriction of labour market access for asylum claimants, their accommodation in camps, but also the conscious reduction of the recognition rate. On the other hand, states can adopt measures to restrict who is eligible for asylum. These include 'safe country' categories, third-country agreements, and restrictive visa regulations for potential countries of origin.

7 Both additions are not only missing in the English, but also in the French and Italian version.

8 Own translation from German to English.

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The third paragraph alludes to the issue of integration, but evokes something more:

> A good migration policy aims at a situation whereby both natives and immigrants feel safe in Switzerland. This is why everyone must accept our fundamental rules of living together. Often – but unfortunately not always – immigrants succeed in becoming integrated. We pay particular attention to the fight against crime, abuse and racism. (SEM 2017b)

A further important purpose of migration policy is established here: that of security for the population. According to this representation, this feeling of safety is primarily depending on the successful integration of immigrants. Three points are important here: first, the paragraph introduces the fundamental (and ahistorical) distinction between "natives" and "immigrants" – which performs the boundary between 'us' and 'them' and can thus be read as informed by a politics of belonging (see Yuval-Davis 2010, 266). Second, security is primarily "to feel safe", and this feeling is to be achieved through migration policy. Behind this statement looms the political instrumentalisation of immigration as a threat and the parallel 'securitisation of migration', i.e., the (re-)orientation of migration policies on questions of security (Bigo 2002, 64). Third, in the emphasis on the need "to accept our fundamental rules of living together" and to see whether "immigrants succeed" lies an implicit understanding of integration as assimilation: it is *their*, the immigrants', task to become integrated, for which a key is to accept *our* rules. Of the three issues raised at the end of the paragraph ("the fight against crime, abuse and racism", SEM 2017b), crime and abuse are located on the side of those immigrating and only racism concerns 'natives'. It appears as if these 'phenomena' were completely unrelated – and outside – the realm of migration policy itself: however, in the age of what Richmond (1994) called a "global apartheid" of the global North vis-à-vis the global South, I would not be too assured about this purported dissociation. A remark could be made about the involvement of migration policy itself in forms of racism: according to the Federal Commission Against Racism, the dual admission policy entails an unequal treatment of persons pertaining to the two categories and unequal residence rights which cannot be explained with 'objective reasons'; it partly

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violates the non-discrimination rule of various human rights conventions to which Switzerland is signatory.[9]

After introducing migration policy through this official definition, the senior official provided us with a synopsis of the asylum policy in Switzerland.[10] The slide on the last era of asylum policy the senior official referred to was entitled "Europe? Africa! Challenges of the 21st century". He highlighted that, more recently,

> the European countries of origin have become less important. We increasingly have people seeking asylum who are not affected by persecution at home. The measure of a welfare moratorium was adopted for people with a DAWES[11] (2004), after which asylum applications dropped. In 2006, a new foreigners law and asylum law was passed. Between 2004 and 2007 we had a more or less constant, low number of asylum applications. Notably, there are no other possibilities outside asylum to get a legal status in Europe for many people. New developments since 2008: significantly more asylum applications related to arrivals in Southern Italy. The Swiss accession to the Dublin agreement was pending at the time: as an island outside Dublin it attracted many asylum seekers. After the accession, numbers again stabilised. From 2011 onwards, the Arab spring and the European economic crisis have become key. In 2012 [the year of the training], we expect about 30,000 applications. The reasons for this are: (A) the economic situation in Italy is bad which leads to increased onward migration as people do not find work; (B) the economic situation in the Western Balkans is bad for Roma: for them the journey to and asylum application in Switzerland has become a lucrative business. To counter these 'abusive' applications, a SEM taskforce introduced the 48-hour procedure (inspired by Austria's recently introduced three-week procedure), which reduced them drastically; (C) precarious human rights and security situation in many countries, amongst them Afghanistan, Eritrea, Iran, and Syria: we must not forget that this exists as well; (D) currently still

9 See the report of the Federal Commission Against Racism on the dual admission system from 2003 (EKR 2003).

10 For an extensive socio-historical reading of the emergence of Swiss asylum policy and law, I refer the reader to Miaz (2017).

11 Dismissal of Admission Without Entering into the Substance of the case [*Nichteintretensentscheid*].

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> relatively long procedures – although they never took four years, that's a press myth.[12] (Fieldnotes, basic training for new caseworkers, autumn 2012)

At the end of this introduction to Swiss migration policy, the senior official emphasised that "unilateralism is hardly possible in the asylum domain", thus there is a need for international cooperation. A whole part of the SEM is concerned with such cooperation, and "we do a lot in this domain", he said: "we worked out about 20 readmission agreements [with countries of origin] and migration partnerships (...) that they do not arrive in Chiasso [the most important point of entry to Switzerland at that time], and we are active in EU bodies such as the European Asylum Support Office (EASO)".

This portrayal of the evolution of Swiss asylum policy in the basic training for new caseworkers is remarkable in at least three respects. First, it presents asylum policy as having 'naturally' evolved in response to necessities and challenges: as the numbers and types of applications change, as the needs and views of the people shifted (indicated with the impersonal pronoun 'one' in the presentation), so did policy in response. In turn, in this reading, policies cause an immediate effect on applications: for example, as the Austrians introduced a three-week procedure, the number of applications from the Balkans dropped. While shifts in policies usually have some effect, I suspect the effect to be less clear-cut than this view implies. For instance, if numbers of applications dropped after the welfare moratorium, it is not sure whether this was actually caused by the moratorium. In this particular example, dropping applications across Europe at that time rather indicate a relationship of correlation, not causation, between policy change and application numbers. Second, the presentation of asylum policy is interesting for the small annotations the senior official makes to the main narrative. They offer a qualification of events: for instance, that the 'low point' of asylum policy was in World War II; that he anticipated a shift of significance from Europe towards Africa considering applications; or that the procedures taking four years was a 'press myth'. A surprising qualification was in my

12 According to a report by the Federal Council from 2011 widely cited in the media, the average duration for the whole national procedure (without Dublin cases) – until all remedies have been exhausted (including applications for re-examination) – amounted to 1400 days, i.e., approximately four years (e.g. Brönnimann 2012; Glaus, Schwegler, and Tischhauser 2011). The duration of the procedure until a first instance decision was, however, only 231.5 days according to the same report (FDJP 2011).

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view the remark "we must not forget" that the "precarious human rights and security situation in many countries" is a reason for the recent increase in application numbers. I think it implies that other factors tend to dominate the view on rising numbers in the office, namely (abusive) applications for economic reasons. Third, the presentation highlights that asylum policy is far from evolving in a vacuum, but on the contrary "policy-making worlds are becoming more intimately and deeply interconnected than ever before" (Peck and Theodore 2015, xvi), also in the domain of asylum. It does so by explicitly emphasising the significance of various forms of international cooperation. But it also implicitly points to the interconnection between policy developments: namely the adverse effect Switzerland faced when it was not yet signatory to the Dublin Regulation or follow the Austrian example of fast procedures for Balkan applications.

With this peculiar reading of migration policy, I tried to give the reader a minimal idea of key framings the policy discourse of the asylum *dispositif* introduces. These framings – of immigration being instrumental to prosperity, of gatekeeping to avoid immigration of the wrong kind, and of political sensitivity of the domain of asylum and its association with abuse and insecurity – are crucial to understand practices of asylum case-making.

4.1.2 Asylum Law

In 1981, the first law on asylum was enacted in order to formalise the practice of refugee protection in Switzerland (Piguet 2006, 96). Since then, the Swiss Asylum Act has recurrently undergone complete or partial revision on average every three years (eleven times until today; see Cassidy, 2016). Piguet (2006, 106) spoke of a "legislative intoxication" to emphasise the detrimental effect this tremendous legislative turnover has had on the asylum procedure. There is still no end in sight: the Swiss parliament passed the next total revision of the Asylum Act in 2015, and the referendum against it was rejected in a popular vote in 2016 (Miaz 2017, 96).[13] But the dynamics in numbers and types of asylum applications to be managed is not the only reason for the recurrent legislative shifts. Equally important seems to be the fact that asy-

13 The total revision of the Asylum Act was in negotiation already during the time of my field research. I refer to some of its consequences in the outlook section of the conclusion (Chapter 9).

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lum has become one of the most controversial issues in Swiss national politics in the last thirty years. Mobilising asylum matters has been instrumental to the ascent of a Swiss populist party (the Swiss People's Party, SVP), which has used asylum issues to constantly exert pressure on the public authorities – both by launching popular initiatives to tighten the legislation and by resorting to referenda against revisions of the law (Piguet 2006, 106–7).

Despite constant change in asylum legislation, there are nevertheless important continuities as well. The legislative revisions and amendments mostly revolved around the preservation of the existing protection system; the adaptation to the changing landscapes of flight by multiplying status categories; the acceleration of the asylum procedure (and the effective enforcement of rulings); the cutback of benefits as a measure of deterrence; and the demand to economise and reduce public spending on asylum (Piguet 2006, 107). Hence, on closer examination, many revisions can be considered 'variations of the same theme'. Conspicuously, a discourse of crisis has been at the heart of many legislative debates, which is reflected by the recurring revisions of the Asylum Act as 'urgent measures' to become effective proximately after their negotiation in parliament. The asylum *dispositif* can thus be said to have emerged and its legal scope expanded in response to a recurrent "urgent need" (Foucault 1980, 195) of managing asylum seeking.

In what follows here, I briefly situate the Swiss legal frame for the governing of asylum in some broader developments. It may run the risk of overgeneralisation, but still appears to me as a useful starting point to understand some key questions at stake. A review of Swiss legislation and reforms as described in the Swiss Federal Gazette[14] reveals some interesting broader tendencies. To start with, there have been some fundamental continuities: the determination of asylum eligibility has always been in *federal* (i.e., national) competence according to Swiss foreigner and asylum law; it has always been about *political* persecution; and it has always required applicants to show this persecution *credibly* (in a hearing). Already in the first legal article mentioning asylum I found, the Federal Act on the Stay and Residence

14 The Swiss Federal Gazette is containing the messages of the Federal Council to the Parliament for revisions of national law or the constitution as well as the laws passed by the Federal Assembly. The Swiss Federal Assembly consists of the two chambers of the Swiss parliament: the National Council (*Nationalrat*) and the Council of States (*Ständerat*) (Swiss Confederation 2014).

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of Foreigners (ANAG) from 1929 encompassed these elements: "The Federal Council can grant asylum to a foreigner who makes credible to seek refuge from political persecution … by committing a canton, after consultation, to his acceptance" (Article 21, ANAG 1929, Draft).[15] Thus, the very foundations of Swiss asylum law are not derivatives of the Geneva Refugee Convention from 1951, but preceded the latter (see also Gast 1997, 311–30). Yet, there have also been important shifts in the legal frame for the governing of asylum. Asylum law has been increasingly formalised both concerning the criteria for evaluating asylum eligibility and procedural intricacies. This is reflected, on the one hand, in the introduction of a separate Asylum Act[16] in 1981 and, on the other hand, in the fact that the legal provisions in the Asylum Act have more than doubled from 54 Articles in the first law of 1981 to 123 Articles[17] in 2014 (and also increased much more in length, from 12 to 58 pages).

An instructor in the basic training pointed out that asylum law has become increasingly complex, which would make it a difficult area to work in. He added that the Asylum Act has basically been in constant revision, what he referred to as a "tale of woe" [*Leidensgeschichte*]. Very broadly, three policy goals seem to have been key drivers for the proliferation of and experimentation with new legal provisions: first, the goal to avoid asylum applications 'of the wrong kind', for example through the introduction of additional matters of fact leading to the inadmissibility of applications and new regulations on the social assistance related to asylum seeking (Holzer and Schneider 2002). Second, the alignment with European developments regarding asylum procedures: as one the last countries in Europe, Switzerland, for instance, abolished the possibility to file asylum applications in Swiss embassies abroad

15 Own translation. The original reads: "Der Bundesrat kann einem Ausländer, welcher glaubhaft macht, er suche Zuflucht vor politischer Verfolgung, und welchem eine Bewilligung verweigert wurde, Asyl gewähren, indem er einen Kanton, nach Einholung von dessen Vernehmlassung, zur Duldung verpflichtet" (Swiss Confederation 1929, 930). This was the only article on asylum in the comprehensive Federal Act on the Stay and Residence of Foreigners (ANAG) that entered into force in 1931.

16 According to an instructor, the Swiss Asylum Act has the status of a *lex specialis*, which means it precedes the Administrative Procedure Act, but the latter applies if the Asylum Action does not specify anything differently (Fieldnotes, basic training for new caseworkers, autumn 2012).

17 This includes the five final provisions. In the latest revision, however, some grounds for the non-admissibility of applications introduced some years earlier were discarded.

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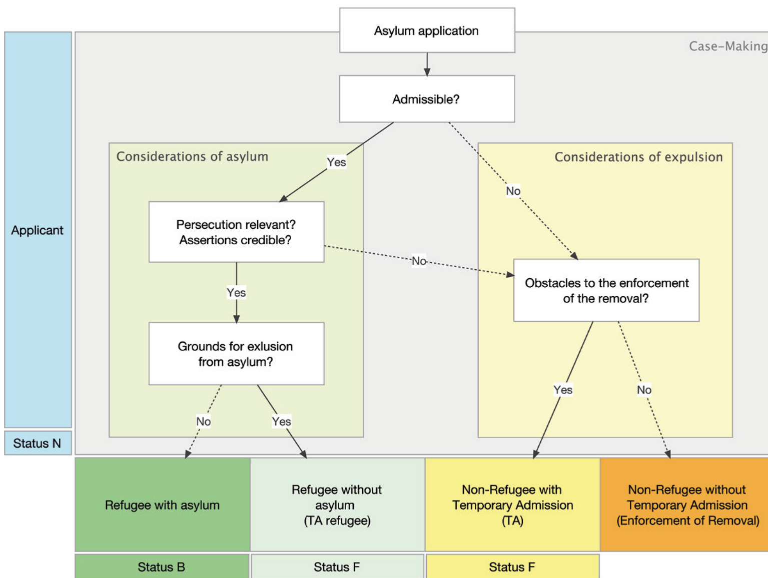
in 2012. Third, the goal to accelerate the procedure, for example through a concentration of processes in federal centres and synchronised procedural steps in envisaged in the latest revisions; this goal has been at the heart of debates about revisions of asylum law since the 1980s (see for instance Swiss Confederation 1986). Further important drivers of this proliferation lie in the increasing Europeanisation of asylum, namely through the introduction of the Schengen area and the Dublin procedure, and the increasing digitisation of procedural means that for instance involved the introduction of various databases requiring extra provisions on data protection.

Figure 3: Evaluations of asylum procedure, outcomes and respective legal status



(Source: own data)[18]

18 Synthesis of different flowcharts received in basic training (adapted from Affolter 2017, 54). The different appeal periods of "non-refugees without temporary admission" for those who received a (substantial) negative decision and those whose application was not admissible (DAWES) is not indicated but quite relevant in practice (thirty days versus five days).

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There are more or less constant key considerations in the asylum procedure according to asylum law. According to the handbook on the asylum procedure (SEM 2015b, sec. hb-c4, Ch2), "asylum means to provide state protection and residence to foreign persons who are persecuted for particular reasons. In the asylum procedure in the narrow sense it is necessary to examine whether the person seeking asylum fulfils the requirements for being granted asylum". An asylum procedure in the wide and the narrow sense have thus to be distinguished. The former notion is more intuitive in that it comprises all the procedural steps through which an asylum case is assembled and concluded. The second notion 'in the narrow sense' is rather for specialists (as is the handbook) and acknowledges that the resolution of an asylum application requires two different sets of considerations (and thus two 'procedures' in the narrow sense): those of asylum and those of expulsion. Considering the latter, the handbook states "in the course of the expulsion procedure, it is examined whether the asylum-seeking persons who do not fulfil the requirements for being granted asylum have to leave to their native country or a third-state or can remain in Switzerland" (ibid.).

What is usually subsumed under the heading 'asylum procedure' is thus a rather complicated set of legal examinations (that becomes of course again more complex when moving closer). Similarly to what Zetter (2007) observed more generally, in Switzerland "refugee labels" have also multiplied while the numbers of asylum seekers qualifying as refugees dropped since the introduction of the first asylum law (see Piguet 2006, 109). The first Asylum Act of 1981 only distinguished between asylum seekers and their recognised counterparts: refugees. The revision of 1990 added the (non-)status[19] of 'temporary admission', a subsidiary and provisional protection status with limited rights. In 2006, a further status was introduced, "temporary protection", which can be granted to a *group* of persons "exposed to a serious general danger" (Asylum Act, Art. 4). In contrast to the other forms, this status is not based on an individual examination of an application but can be granted to a collective of persons fleeing from civil war. However, as one of the instruc-

19 As was pointed out in the basic training for asylum caseworkers, temporary protection is not a residence status in itself. Legally, it only means that the enforcement of the expulsion order, which follows every rejection of an asylum application, is temporarily suspended. Such a suspension is envisaged if the enforcement of expulsion is considered inadmissible, unreasonable or (technically) impossible (see FNA, Art. 83).

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tors in the basic training clarified, this provision has remained "dead letter", as it has never been applied until today. Importantly, as examinations proliferate, so do the legal consequences for persons seeking asylum (see Figure 3): they may get the 'full package' and be granted asylum (B: residence status); recognised as refugees but excluded from asylum for some reasons[20] (F: temporary admission as a refugee); rejected for not fulfilling the conditions for refugee status and still stay in Switzerland because 'compensating measures are ruled' (F: temporary admission according to the Foreign Nationals Act); or receive a negative decision with a removal order. Furthermore, applicants may receive a Dismissal of Admission Without Entering into the Substance of the case (DAWES, or *Nichteintretensentscheid NEE*). Such a DAWES could, at the time of my fieldwork, be written on various grounds (for instance, identity fraud or serious violation of the duty to cooperate; see also the excursus on Article 32.2a below). An appeal can be filed against every decision except the positive one at the court of appeal, the Federal Administrative Court. While a temporary admission is supposed to be regularly evaluated and potentially revoked, reasons that lead to the temporary admission have proven to persist over prolonged periods of time. Many people live in this insecure status for many years before cantons (may) propose to the SEM to convert it – for humanitarian reasons – into a residence status (as so-called "hardship case" SRC 2018, see also FNA, Art. 30, para. 1).[21] Therefore, as an instructor told the new caseworkers, the "temporary admission … works like a fish trap – there are many more ways in than out of it" (Fieldnotes, basic training for new caseworkers, autumn 2012).

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20 Two provisions of the Swiss Asylum Act may apply: "Unworthiness of refugee status" (Article 53) if an applicant has committed offences in Switzerland or poses a threat to the national security; and "Subjective post-flight grounds" (Article 54), which means that applicants were not persecuted in their native country prior to their flight. Article 1F of the Geneva Refugee Convention excludes persons from its scope for certain "serious reasons", namely if they committed a crime against peace, a war crime, or a crime against humanity.

21 Both rejected asylum seekers as well as those only temporarily admitted can apply in the canton to which they are allocated for a case of hardship to receive a (proper) residence status (SRC 2018).

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Excursus: Article 32.2a Asylum Act

Legal provisions in the asylum sector may come and go unnoticed, but some of them profoundly impact the associations drawn in and beyond encounters. A good example of a legal provision that had a quite marked effect was Article 32.2a of the Asylum Act (in force between January 1, 2007 and January 31, 2014) unofficially referred to as a "paperless(ness) article" [*Papierlosenartikel*] or "Blocher's legal facts" [*Blochertatbestand*].[22] It had been invented to accelerate the procedure and increase the quota of asylum seekers submitting identity documents when applying for asylum (see Mutter 2005). In practice, however, the duration of procedures did not significantly decrease (for various reasons, e.g. SDA 2009). Nevertheless, the article still was most commonly used for decisions written in the reception centre when I did my field research there. The reason for this is arguably that it was considered a 'light' version of a negative asylum decision since it offered a rather effective way of associating the lack of papers with a simpler argumentation part to write in the decision*, and a short appeal period of five days (instead of thirty).

But how where these associations actually established? At closer investigation, the legal fabric was already rather complex: Article 32.2a stated that applications are considered non-admissible "if asylum seekers do not submit travel or identity papers to the authorities within 48 hours after filing the application" (AsylA, 2012). Article 32.2a, however, was balanced by a further article to safeguard the legal protection of applicants, Article 32.3. Article 32.2a would not apply if (a) applicants could credibly argue that they had "justifiable reasons" for not providing papers within 48 hours; if (b) applicants were considered to have a well-founded fear of persecution; or (c) if after applicants' hearings, further clarifications were considered necessary for concluding the case. To become legally effective, applicants thus had to be notified about their duty to submit identity papers (see subchapter 6.1) and their reasons for not doing so would be scrutinised in the hearings (see subchapter 6.2). Moreover, their reasons for asylum had still to be sufficiently evaluated. Interestingly, apart from the obvious identity paper-admissibil-

22 The later designation points to the then-Federal Councillor and Head of the Federal Department of Justice and Police (including the asylum office) Christoph Blocher, leader of the populist and right-wing Swiss People's party, who had a crucial part in the introduction of this legal article.

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ity nexus, Article 32.2a offered two other powerful associations to be drawn: because the defensible absence of papers had to be made credible, it could be linked to the credibility assessment of the reasons for persecution. If the reasons for asylum were considered untenable, this suggested that the justifications for not providing papers were not credible either. And if applicants could not make credible the absence of papers, this already cast doubt on the credibility of their persecution narrative.

In the basic training, a senior official explained the background of numerous types of dismissals of admission without entering into the substance of the case (DAWES) including article 32.2a: "The legislator has tried to fight abuse with tightening the law. The problem of this is that it reacts to things that have already occurred. Weaknesses of the law are exploited, that's understandable. The reaction is that one tightens the screw, tightens the law, and closes gaps. The DAWES are a result of this practice. But the only result of this is: we tripped ourselves up [*haben uns ein Bein gestellt*] – we cannot clearly decide anymore when we have to consider an application [i.e., entering into the substance of a case]. The most recent law reform therefore will mean: abolishing [most of] the DAWES, back to the roots" (Fieldnotes, basic training, autumn 2012).

When I conducted my research in the reception centre, where these DAWES were mainly written, the head of the section had not heard about the planned abolishment of most DAWES yet. When I told him, he could not believe it and said, "this would be a pity". When I chipped in with my impression that they were contested, he insisted that "they are not contested at all, if anything about them then the five days' appeal period". He suspected that they were only abolished to appease the political opponents of the revision in the parliament. He explained to me all the DAWES decisions and why those that effectively existed in practice made perfect sense in his eyes. About the Article 32.2a decisions, he emphasised that "they are very successful and … well-rehearsed". Nevertheless, the Article 32.2a decision was discarded together with most DAWES in the revision that became effective in February 2014. A frequently used legal association to close asylum cases was thus lost and alternative associations had to be found.

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4.1.3 The Asylum Office

In Switzerland, asylum applications are processed in the State Secretariat for Migration (SEM) (until the end of 2014, it was called the Federal Office for Migration, or FOM). The SEM is the Swiss national administration dealing with key questions concerning the status of foreigners.[23] The SEM is one of the three offices of the Federal Department of Justice and Police (FDJP), together with the Federal Office for Justice (FOJ) and the Federal Office of Police (fedpol). The SEM is composed of different "directorates": the asylum directorate that I call the "asylum office", plus directorates with different foci, namely immigration and integration, international cooperation, and planning and resources. Its headquarters are located in a large, symmetrically arranged building with two wings and a central glass areaway, which had originally been designed to host a shopping centre (Fieldnotes, headquarters, autumn 2013). Additionally, several annexe buildings pertain to the headquarters.

The SEM headquarters is located at the fringes of the Swiss capital of Bern in suburban Wabern, at the end of a tramway that connects it to the central train station. During my fieldwork, it employed about 800 officials internally and about 700 additionally through the affiliated service providers. The SEM has had in the last few years a budget of more than a billion Swiss Francs per year, of which the largest share – about 80 per cent – amounts to transfer services for asylum seekers and refugees (SEM 2017a, 56). About 400 officials worked in the subdivision of the asylum directorate: what I will refer to for reasons of simplicity as the asylum office.

23 Swiss federalism makes questions of competence in the field of asylum a bit more complicated: It is in the competence of the SEM to evaluate the eligibility of asylum applicants. Then, the SEM shares some of competences with cantonal migration offices and municipalities; others are completely devolved to these lower levels of federal government. For (up to) the first three months of the procedure, it is also responsible for the accommodation of asylum applicants. Thereafter, applicants are allocated to the 26 cantons according to a distribution key relying on the population. The cantons are responsible for the housing and social welfare of asylum applicants but receive subsidies from the SEM. Some cantons further distribute asylum applicants after a certain period (in the canton Zurich for instance after a maximum of six months) to the municipalities (again in numbers proportional to their population), which then take over the tasks of accommodation and social welfare. According to the Foreign Nationals Act (FNA), questions of return fall into cantonal competence, but they can request assistance from the SEM.

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The asylum office consisted of two central or "productive"[24] divisions with together about 200 employees who are responsible for the processing of asylum applications. One of these divisions with its eight sections was located at the headquarters; the other consisted of the five Reception and Processing Centres which are distributed across Switzerland and located close to the Swiss border (in Chiasso, Vallorbe, Basel, Kreuzlingen and Altstätten) and the two Dublin offices – again in the headquarters. A small number of officials from SEM also work at the two international airports in Geneva and Zurich, where cases of people arriving by plane are opened. Besides the two 'productive' divisions, there is a services division that administers interpreters and hearings (SAM), expert reports (LINGUA) and country of origin information (COI) (inter alia), and a finance division that deals with subsidisation (of cantons) and reporting. Furthermore, in 2014, an office pilot centre called "Test Operations" [*Testbetrieb*] evaluated the latest reforms for restructuring the asylum procedure opened in Zurich.[25]

The recurrent shifts in asylum law outlined in the last subchapter have been accompanied by repeated changes in the organisational structure of the asylum office. While legal changes sometimes induced reorganisations, as in the example of the most recent restructuring of the procedure, other reorganisations were initiated for reasons of efficiency. Already before the first Asylum Act became final in 1981, the Federal Office for Police[26] was the competent body for the processing of asylum applications on the national level.[27] It was not until a major revision of the procedure in 1990 that a separate administrative body – the Federal Office for Refugees – was established.

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24 This designation is related to the calculative government and the discourse of production and productivity discussed in sections 8.2.1–2.

25 As of March 1, 2019, Switzerland introduced a restructured asylum procedure. It primarily aims at an acceleration of the procedure, which is achieved through the coordination of processes, and centralised accommodation of applicants in federal centres, synchronisation of procedural phases, shortened appeal periods, and legal representatives free of charge for all applicants. It was evaluated in the *Testbetrieb* between 2014 and 2015 and considered successful (SEM 2015a).

26 *Bundesamt für Polizeiwesen* (Swiss Confederation 1977, 145)

27 Regarding asylum eligibility, cantons have been involved in the asylum procedure, particularly in the establishment of the facts – but to various extents over time. The details of this involvement and its historical evolution are quite complicated: for the purpose of my endeavour, it suffices to know that the cantonal share has decreased considerably in the last two or three decades. The main argument for what can be considered an increasing

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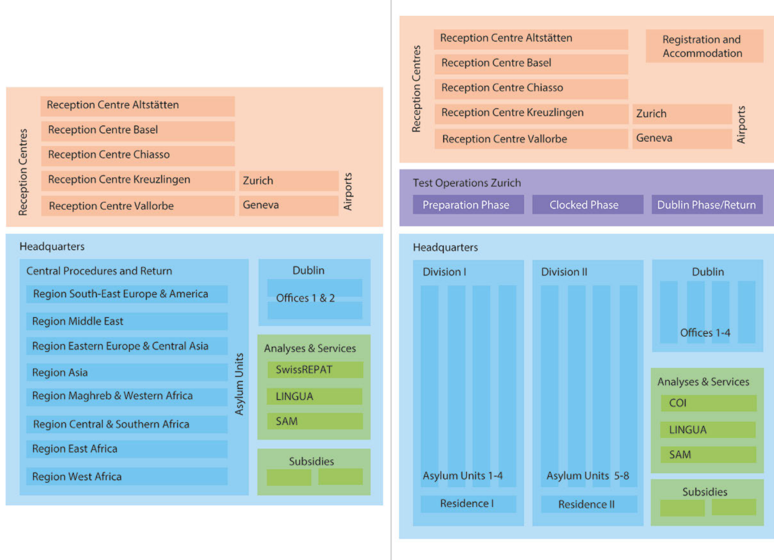
Although in the late 1990s, political advances for merging the Federal Office for Refugees with the IMES (*Schweizerisches Bundesamt für Zuwanderung, Integration und Auswanderung*) failed, in 2005 their consolidation succeeded and led to the establishment of the Federal Office for Migration (FOM). The internal structure of this relatively large public administration; however, it was soon after reformed in order to increase efficiency and improving processes in 2010. As this reform turned out to have rather converse effects to what had been envisaged, the structure of the organisation was again changed in 2013.

Figure 4: Schematic overview of asylum office before and after reorganisation



(Author's illustration, 2018)

Particularly in the headquarters, the structure of the "productive sections" significantly changed during the time of my research. When I started in 2012, there were 'integrative' sections with a regional focus (such as Eastern Africa or the Middle East) that processed not only asylum applications, but also supported cantons in the organisation and enforcement of return (see Figure

centralisation of the procedure has been the demand to accelerate the procedure (see for instance Swiss Confederation 1983, 785–90).

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4, left). In the restructuration of the office during my research, the sections of the asylum directorate became (again) limited to asylum procedures (see Figure 4, right). Return procedures were addressed in sections of another directorate of the SEM: International Cooperation. Parallel to organisational reforms, the size of the administrative body has varied over time, as it had to be recurrently adapted according to the volume of asylum applications and backlog. Therefore, every sketch of the organisational structure of the migration office and the asylum directorate amounts to a snapshot: reorganisations and the restructuring of procedural pathways have been a constant feature of the asylum office.

These rough framings of governing asylum – in terms of policy, law, and the office – I have provided here serve two purposes: they are supposed to reveal how the 'context' in which asylum case-making takes place is introduced to those starting to work as caseworkers in the administration. And they are a first step in situating my own encounter with the asylum *dispositif*, which took place at a particular spatiotemporal conjuncture (Massey 2005): When I started this study in 2012, the Swiss asylum administration faced serious challenges – politically, legally, and organisationally. At the time of my fieldwork, a few conjunctures complicated the processing of asylum applications in the Swiss asylum office considerably.

First, regarding what a senior official in the introduction referred to as an "office on the move" (Fieldnotes, basic training for new caseworkers, autumn 2012), the migration office went through two reorganisations within a few years that were accompanied by increased staff turnover that resulted in a related loss of expertise and a reshuffling of hierarchies. At the same time, more personnel were required and hired, but new caseworkers needed to be trained first.

Second, the backlog of cases became an issue: Related to the problem of limited 'productive' personnel and rising numbers of applications in the aftermath of the Arab Spring in 2012 and 2013, the number of pending cases was growing rapidly instead of decreasing. After a momentary stagnation in the second half of 2013, the application numbers again rose when human smuggling from Libya to Italy increased and migrants fled the country after the fall of the Qaddafi regime (Garelli and Tazzioli 2013; Zaiotti 2016, 6). The Syrian war was also escalating (e.g. Bischoff 2013). The management board

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of the office therefore always aimed at both reducing the backlog and keeping up with the numbers of new applications.

The third conjuncture concerns the restructuring of the asylum procedure in Switzerland. At the time I entered the asylum office, the restructuring of the asylum procedure and the testing of the new configuration in a pilot was discussed and decided in parliament in December 2012. The legislative and executive branches had reached a consensus about the main aim of the reform, namely the acceleration of the asylum procedure. Nevertheless, the rapid evolution of legal provisions continued: revisions of asylum law in various respects (for instance a reduction of the grounds for non-admission of cases) – some declared urgent and effective soon after – made time- and resource-consuming adaptations of organisational procedures and approaches indispensable.

While these conjunctures complicated the processing of applications in the asylum office, another conjuncture arguably facilitated the access of researchers seeking to research practices inside it, namely the access of Jonathan Miaz, Laura Affolter, and me. This conjuncture, on the one hand, involved the social democrat Federal Councillor Simonetta Sommaruga becoming the head of the Federal Department of Justice and Police (to which the SEM is subordinated) in 2010, who appointed a former relief organisation senior and long-term senior of the migration office, Mario Gattiker, as head of the SEM. On the other hand, this conjuncture involved key persons in the management board of the SEM who were supportive and facilitated research access despite some internal resistance.

My account of the asylum *dispositif* thus relies on insights related to these conjunctures. It is a story of the *dispositif* at a particular time and place: a partial and apparently fragmentary view on policy, legal, and administrative assemblies to which the asylum *dispositif* relates. It reflects my situated perspective from somewhere and sometime within the office. Yet, I want to emphasise that the perspective of everyone in the office is situated in this sense. I suggest that highlighting this situatedness of governing of asylum might render this account insightful beyond the particular conjuncture of its production.

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4.2 Common Sense? Assembling Meaning

In this subchapter, I provide a general overview of essential ways of knowing for enacting the asylum *dispositif*. For this purpose, I will outline a sort of 'common sense' explanation of key objects and categories of case-making. I thus 'assemble meaning' quite in the way caseworkers starting their work become acquainted with knowledge practices relevant for their work. This approach has little in common with legal accounts of the asylum procedure which systematically introduce the relevant legal categories of the Asylum Act (AsylA), the Foreign Nationals Act (FNA), the Administrative Procedure Act (APA) and case law to outline their application in administrative practice. To provide such legal accounts remains a task reserved to – and a crucial value of – handbooks (see for instance Kälin 1990; SEM 2015b; 2008; SFH 2015). Instead, I will outline selective material-discursive associations required for asylum case-making. I then introduce an analytical reading of how such a 'common sense' understanding of asylum might come about through the notions of heuristics and exemplars.

When I approached the public administration to negotiate my fieldwork, I first had to learn the language and style of asylum officials to convey the purpose of my work to them. The governing of asylum is facilitated by a professional jargon – a sort of officialese[28] – which "formats" (Latour 2005, 226) everyday tasks. As with any other specialist language, the ability to speak officialese is an expression of membership to a certain community of meaning (Yanow 2003a), in this case: that authorised to enact the asylum *dispositif*. But, importantly, most of this bureaucratic language is operational – and fulfils certain tasks. For instance, because of the peculiarities of legal reasoning, some notions of officialese operate as small references, building up small "referential chains" (Latour 2010, 226), which produce – either spoken or written – what we conceive of as 'legal'.[29] In short, I suggest it is utterly impossible to make sense of the governing of asylum without introducing

28 Officialese is synonymous with *Verwaltungssprache* in German. According to Wagner (1984, 7–8), officialese refers to the distinctive language of administrations and bureaucratic files, which has its own terminology as well as a particular linguistic structure (syntax). At the same time, some notions of everyday language have a very specific meaning when used in the administration.

29 See Latour (2010, 255–56) on the inescapable tautology of defining what is legal through reference to law or legal practices.

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some of the more pervasive terminological building blocks. Notions that have a very specific meaning in the asylum office and are marked with an asterisk (*), not to be confused with the everyday use (e.g. decision) or analytical use (e.g. practice) of the terms. They are amongst the core discursive elements that allow for a convergence of everyday practices of case-making (see also Latour 2005, 52). I will limit myself to the administrative device and record towards which most practices converge: the asylum decision* [*Asylentscheid*], the facts of the case* [*rechtserheblicher Sachverhalt*] and the considerations* [*Erwägungen*].

4.2.1 The Asylum Decision* and the Facts of the Case*

The asylum decision* is the most important association of an asylum case: all other associations mobilised and produced in the course of case-making point towards it. New caseworkers learn in the basic training that the asylum decision* is a written administrative order [*behördliche Verfügung*]. It is sent to the applicant in a registered letter and enters the case file as a record (see subchapter 6.5).[30] Once such a decision* becomes legally binding [*rechtskräftig*], it marks the closure of an asylum case – the file is closed.[31]

Asylum decisions* occur in two major forms: positive decisions and negative decisions. The simpler positive decision* has two parts: an administrative order – a letter sent to the applicant informing her or him about the positive decision* and the granting of asylum; and an internal decision* proposal – a record stating the relevant facts and the considerations for the positive decision, which remain undisclosed.[32] In contrast, the negative decision* is subject to appeal and therefore has to disclose these considerations. An appeal against a first-instance [*erstinstanzlich*] decision* issued by the SEM can be filed at the appeal body, the Federal Administrative Court (FAC), which is the

30 Exceptionally, the decision can also be orally disclosed at the end of hearing or, in the reception centre, on other occasions.

31 This does not, however, mean that the case is closed forever and will thus remain in the archive: The applicant may open a new file of the case by submitting another application or an application for re-examination of the case.

32 A lot of secrecy is devoted to preventing asylum seekers from learning about the administrative considerations for granting asylum. It is fuelled by a discourse of "learning effect", which says that news would spread amongst applicants about how to sell their story to be granted asylum.

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second and at the same time last national instance.[33] Hence, the main difference between the positive and the negative decision* is that in the latter the outcome is not only to be disclosed [*eröffnet*], but also justified [*begründet*]. Internally, positive decisions* also have to be justified, but generally less detailed (see section 8.2.2 for a glimpse into the 'economy' involved in case-making). Therefore, more work is usually devoted to negative decisions. In our basic training, the session on the actual writing of asylum decisions* focused solely on these. During the training for new caseworkers I attended, negative decisions were referred to as "business cards" of the office because they are the main outward directed records of the asylum procedure.

The evidentiary basis of an asylum decision* are the so-called "facts of the case"*. Asylum case-making is fundamentally about the establishment of these facts of the case. The legal basis for this can be found in the Administrative Procedure Act and is introduced in the Handbook Asylum of the SEM as follows:

> According to Art. 12 APA [Administrative Procedure Act] the authority has to determine the facts of the case. This inquisitorial principle means that the authority – except for the parties' duty to collaborate – takes the initiative to establish the facts necessary and relevant for the case, clarify the legally relevant circumstances, and duly reason and appreciate the results of the evidentiary procedure. (SEM, 2008, Chapter e, §2, p.1)

Crucially, this means that it is in the responsibility of the authority, the asylum office, to assemble the facts relevant for resolving the case. Such facts of the case mainly consist of evidence submitted by the applicant, evidence gathered by the asylum office and her or his testimony given in hearings. Concerning the establishment of the relevant facts, the handbook adds:

> For the asylum procedure this inquisitorial principle means that the assertions of a person seeking asylum have to be assessed as far as they are relevant for the granting or rejecting of asylum. They must not solely be countered by a counterclaim or presumption of the authority. What the authority counters the assertions of the person seeking asylum with has to be either clearly proven or at least be objectively closer to the truth than what the per-

33 Its rulings can be appealed at the European Court of Human Rights.

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> son seeking asylum claims according to the evidentiary degree of predominant probability. (SEM, 2008, Chapter e, §2, p.2)

If the conviction necessary for resolving a case does not arise from the assertions and evidence the applicant provides, so-called "further clarifications on the facts of the case" are required. According to an experienced caseworker in an internal one-to-one training session with a new caseworker that I attended, such further clarifications are only necessary in more complex cases, such as if origin remains unclear, if there are special assertions or illness. "Such cases stand out through their thicker case files and longer decisions*", she added. The facts of the case are what crucially provide – in material-discursive records of case files – the associations to the lives of applicants: the personal history that led to their flight. Producing these associations requires, at minimum, the hearings, but in some cases also further clarifications on the facts of the case (see subchapter 6.4). Only if the facts of the case are 'established' is the case ready for its legal resolution in a decision*. Caseworkers then draw upon key legal associations to argue about the 'persecution relevance' and 'credibility' of applicants' assertions in the considerations* of decisions* (see subchapter 6.5).

4.2.2 Legal Associations to Resolve Asylum Cases

> Rules, as Wittgenstein (1953) long ago showed, do not suggest their own proper application. (Law 2004a, 53)

The brief overview above already indicated that the production of the asylum decision* requires two different evaluations: determining asylum eligibility and considering obstacles to expulsion. The affirmation of such obstacles leads to a suspension of expulsion and the granting of a subsidiary, so-called "temporary" protection in Switzerland. I focus in this section only on the key legal provision for writing the argumentation in the asylum part of the decision*. This argumentation focuses on the existence of a well-founded fear of persecution according to the refugee definition and/or applicants' credibility. The crucial questions to be answered regarding the granting or rejecting of

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asylum are thus: firstly, does the applicant meet the demands of the refugee definition? And, secondly, is the person's testimony credible?[34]

I introduce Article 3 of the Swiss Asylum Act on the refugee definition and Article 7 on credibility here in some detail because they provide core associations for cases' legal resolution. The first article states who is to be considered a 'refugee' and the second lays out the standard of proof for asylum eligibility. Thus, these two articles provide the primary associations to *argue with* in the considerations* of an asylum decision*. Accordingly, negative decisions are often internally referred to as "(Article) 3 decisions" [*Dreier-Entscheid*], "(Article) 7 decisions" [*Siebner-Entscheid*] depending on the article (mainly) argued with (see also section 6.5.2).

The first paragraph of Article 3 states:

> Refugees are persons who in their *native country* or in their country of last residence are subject to *serious disadvantages* or have a *well-founded fear* of being exposed to such disadvantages *for reasons of* race, religion, nationality, membership of a particular social group or due to their political opinions. (Asylum Act, art. 3, para. 1, own emphasis)[35]

I take from this definition three important diagnostic flags that particularly matter: origin, temporality, and the reasons for leaving the country of origin. First, an important presupposition resonates in this so-called "refugee definition" (which largely overlaps with that of the Geneva Refugee Convention): the notion of the refugee rests on the premise that the international community only has a responsibility to protect persons who cannot expect protection from their own states in cases of threat (Caroni, Meyer, and Ott 2011, 231).[36] The notion of refugee status thus associates persecution to a circum-

34 In German, a distinction is made between the credibility of a person (*Glaubwürdigkeit*) and the credibility of the case (the testimony) (*Glaubhaftigkeit*). In the basic training for caseworkers, it was emphasised that not the credibility of the person ought to be assessed, but only the credibility of her or his testimony. The (old) asylum handbook of the office succinctly stated "not the human is measured by the asylum law but his/her assertions" (*Nicht der Mensch wird am Asylgesetz gemessen, sondern seine Vorbringen*) (SEM, 2008, Chapter c, §3d, p.6).

35 Source: The Federal Assembly of the Swiss Confederation (2014)

36 Country of last residence only applies for stateless persons, as they are not covered by the term "native country". It is assumed that the native country could always provide protection for its citizens in case of persecution elsewhere (see for instance Kälin 1990, 34). See

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scribed space – i.e., the sovereign territory of a "native country". For this reason – and for reasons of expulsion – the question of applicants' origin looms large in the procedure. Second, according to the definition, someone needs to have fled his or her native country because of "serious disadvantages". This notion occurs twice in this short legal paragraph, which points to an important temporality of the refugee definition: either persons "are subject" to such disadvantages, which indicates at present but actually means *at the time of leaving* the native country (condition: temporal relevance of disadvantages [*Aktualität*]); or they "have a well-founded fear of being exposed to such disadvantages", which means *in the future*.[37] Hence, temporality matters. Third, such disadvantages refer specifically to reasons – causes for which a person was persecuted – which are exhaustively listed: "race, religion, nationality, membership of a particular social group or due to … political opinions". Membership of a particular social group, however, was called in the basic training an "absorption matter of fact" [*Auffangtatbestand*] because it allows to stretch the scope of the refugee definition and to incorporate new grounds (such as was the case with homosexuality in certain countries). Obviously, in practice, the considerations required to evaluate the so-called "persecution relevance" of a case are more complex (see Table 1).

Table 1: Considerations for evaluation of "persecution relevance".

Question	Consideration
What did the person suffer?	Events that led to the flight
Who persecuted the person?	State or third party; persecution infrastructure?
Is the person effectively the target of persecution?	Targetedness [Gezieltheit] of persecution
Why is the person persecuted?	Persecution motivation
What are the consequences? How severe are they?	Seriousness of disadvantages
Was flight abroad the only solution?	Internal flight alternative (IFA)
Is persecution imminent?	Actuality of persecution

(Source: Fieldnotes and presentation notes, basic training, autumn 2012)

also the refugee definition of the Geneva Refugee Convention, which states this difference more intelligibly (UNHCR 2010).

37 If claimants can make credible that they experienced persecution in the past, this is considered a good indicator for a well-founded fear of future persecution; in any case, however, there must be a reasonable likelihood of (still) being threatened by persecution in case of return.

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The Swiss refugee definition deviates in a small but remarkable aspect from the notion of the Geneva Refugee Convention:[38] it refers to "serious disadvantages" instead of "persecution".[39] But what are considered "serious disadvantages"? The second paragraph of Article 3 of the Asylum Act specifies that this notion includes "a threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure" (Asylum Act, art. 3, para. 2). This specification could be a definition of persecution as well. And in practice, inside the asylum office serious disadvantages are (as I understood it) used synonymously with persecution – officials often speak of the "well-founded fear of persecution" as it is phrased in the Geneva Refugee Convention, not of serious disadvantages. By adopting the term serious disadvantages, the Swiss legislative authority has – probably unwillingly – expressed one of the predicaments in the work of asylum adjudication: the notion of persecution implies that a person who is a refugee is distinguishable from a person who is not by an attribute, a 'state of persecution'. In this reading, the "well-founded fear" of that person appears as a sort of diagnosis of that state of persecution (and asylum the remedy). In contrast, the notion of serious disadvantages immediately raises the question 'how serious?' and therefore points to the problem that, on closer investigation, what is considered persecution is a *matter of intensity*, as a range of disadvantages are not considered serious enough to count as persecution (Handout, basic training for new caseworkers, autumn 2012). The non-exhaustive enumeration of what should be considered 'serious enough' disadvantages highlights this even stronger: on the one hand, the provision gives some indication of who should clearly be considered a refugee – for instance, someone whose life is threatened. On the other hand, it concedes that the threshold to refugee

38 A second slight difference is the double temporality mentioned before, which seems also to be a speciality of the Swiss refugee definition.

39 To reiterate the refugee definition of the Geneva Refugee Convention of 1951 and the Protocol of 1967, a refugee is a person who "owing to well-founded fear of being *persecuted* for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence … is unable or, owing to such fear, is unwilling to return to it". Omissions follow the 1967 Protocol, which extended the scope of the 1951 Convention on events before January 1, 1951 and beyond Europe (UNHCR 2010).

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status is utterly indeterminate with notions demanding to rate, for example, "measures that exert intolerable psychological pressure".[40] To be clear: I do not want to suggest that the Swiss refugee definition has major flaws or that the Geneva Refugee Convention definition would be preferable. The two definitions seem more or less exchangeable when it comes to practice. Yet, I suggest that the Swiss definition offers a candid appreciation of the difficulty to draw the boundary between who is, and who is not, a refugee. It is therefore less a prescription but rather a representation of what the administrative work requires in practice.

The "persecution relevance" (Article 3) of a case is evaluated on the basis of the facts of the case* [*rechtserheblicher Sachverhalt*]. As it is often difficult, if not impossible, to prove persecution, the standard of proof in asylum procedures is rather low: it suffices to "credibly demonstrate" refugee status. The first paragraph of Article 7 on the "proof of refugee status" of the Asylum Act states that "any person who applies for asylum must prove or at least credibly demonstrate their refugee status" (Asylum Act, art. 7, para. 1–3). In practice, people are rarely able to *prove* their refugee status. Applicants sometimes have documentary evidence for certain events, for instance an arrest warrant – but this does not usually suffice to proof that they suffered "serious disadvantages" as a consequence. The latter is a matter of what applicants experienced, for instance if they were tortured or maltreated in prison or had realistic fear of such treatment.[41] Generally, evidence submitted by the asylum applicant only operates as one element (though often an important one) in the evaluation of the whole case, and its evidentiary value largely depends on the testimony associated with it in the hearings (see subchapter 6.4). In turn, the credibility of the testimony can be impacted, positively or negatively, by an evidentiary puzzle piece, depending on whether it corroborates or raises doubt about the story told. Hence, in most cases, refugee status arises not from proving it but from 'credibly demonstrating it' in applicants' verbal testimony.

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40 See also section 7.2.3 on evolving practice doctrines to see the effects of this indeterminacy of the notion of refugee.

41 Only in rare cases can a court decision be considered a relatively unambiguous proof for a so-called "*polit malus*": a disproportionate degree of penalty related to discrimination for reasons of religious, ethnic, political (or some other) affiliation of the person accused (Handout, basic training for new caseworkers, autumn 2012).

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But what is the measure for evaluating the credibility of a case? The authority examining the case has to *regard* it as predominantly credible, as the second paragraph of Article 7 clarifies, "refugee status is credibly demonstrated if the authority regards it as proven on the balance of probabilities."[42] Regarding a statement as predominantly truthful or "proven on the balance of probabilities" in practice means that the caseworker writing the decision* needs to be convinced of an asylum seeker's persecution account. As one of the senior instructors inculcated the quintessence of this examination to the newly employed caseworkers, "it is not about finding the truth, that's impossible; it's about *convincing* us. If you [the applicant] did not convince me, that's decisive" (Fieldnotes, basic training for new caseworkers, autumn 2012, emphasis added). The notion of "balance of probabilities" also means (in theory) that what speaks for the credibility of an account only needs to outweigh that which speaks against it. As another instructor pointed out, the standard of proof in the asylum examination "leaves room for doubt": one does not need to be completely sure. But the notion's allusion to probabilities amounts, in my view, to a performative objectification of a qualitative evaluation. The legal principle of the notion 'balance of probabilities' seems much better captured in a dictum of the office: "*in dubio pro refugio*" – in doubt for the refugee. It involves considering what speaks in favour and against the person's claim and thus the difficult and qualitative weighting of the different facets of a claim to arrive at a conviction: about the story being predominantly true (see also section 7.1.2).

The third paragraph of Article 7 adds some negative criteria or indicators, what kind of statements are considered to be *not* credible: "Cases are not credible in particular if they are unfounded in essential points or are inherently contradictory, do not correspond to the facts or are substantially based on forged or falsified evidence" (Asylum Act, art. 7, para. 1–3). In the basic training, an instructor highlighted that these criteria carry different weight in the examination of credibility – clear contradictions being a stron-

42 Remarkably, while the German version of this Article 7, paragraph 2 corresponds to the English one (*"Glaubhaft gemacht ist die Flüchtlingseigenschaft, wenn die Behörde ihr Vorhandensein mit überwiegender Wahrscheinlichkeit für gegeben halt", AsylG*), the French version defines the extent of the probability necessary to demonstrate credibility slightly, but noticeably different: *"La qualité de réfugié est vraisemblable lorsque l'autorité estime que celle-ci est hautement probable" (LAsi)*. The notion "*hautement probable*" means that the probability needs only to be high rather than only outweighed.

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ger indicator for incredibility than mere unfounded statements (Handout, basic training for new caseworkers, autumn 2012). In practice, caseworkers writing an "Article 7-decision" will need to associate applicants' accounts with at least one of these criteria (or a few more derived from case law; see subchapter 6.5).

To be sure, case-making requires becoming acquainted with a wider set of legal notions – articles 3 and 7 of the asylum act are just the most important ones – and terms of administrative language in the asylum office. And this means grasping the 'texture' of abstract notions, their 'actual meaning' and 'capacities' to resolve, as enacted in their material-discursive associations with concrete cases. An instructor in an basic training session put this quite succinctly:

> I can't teach you this [the meaning of Article 3] here. The experience, your work will teach you, this [training session] won't. In this sense, it does not help you, but it can show you that it is difficult! (Fieldnotes, basic training for new caseworkers, autumn 2012)

This notion of having to learn what these abstract notions of law really meant by doing casework appeared to be widespread in the office, a classical expression of notions of "metis" (de Certeau 1988, 162), "local knowledge" (Yanow 2003a) or "tacit knowledge" (Polanyi 2009) – of forms of knowing difficult if not possible to codify because they are so closely associated with embodied practice. Below, I attempt to make sense of such practical forms of knowing and their relationship to case-making. I suggest that the notions of "heuristics" (Gigerenzer 2013, 44) and "exemplars" (Kuhn 1967, 199) are useful in this respect.

4.2.3 'Decision-Seeking': Classification and Heuristics

Complex legal and policy classification systems, which set the standard for eligibility evaluations, are constantly translated into principles for work by everyone involved in casework. According to Bowker and Star (1999, 149), a classification system can be understood as "a set of boxes, metaphorical or not, into which things can be put in order to then do some kind of work – bureaucratic or knowledge production". Bowker and Star (1999) have analysed classification systems as political and historical artefacts. They state

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that "assigning things, people, or their actions to categories is a ubiquitous part of work in the modern, bureaucratic state" (Bowker and Star 1999, 285). And categories "are learned as part of membership in communities of practice" (ibid., 287), but "the work of attaching things to categories, and the ways in which those categories are ordered into systems, is often overlooked" (ibid., 286). Heyman (1995) referred to this as "thought work". But what does such thought work implicate for caseworkers' practical approach to classifications of asylum law and policy?

I suggest that more or less institutionalised rules of thumb – what I consider a form of "heuristics" (see Gigerenzer 2013, 44) – are significant, as they help caseworkers to grasp the complex classifications of law and policy. As Gigerenzer (2013, 44) emphasised, in all kinds of situations of uncertainty we draw on such heuristics, i.e., internalised "rule[s] of thumb … [that] enable us to make a decision fast, without much searching for information, but nevertheless with high accuracy". They allow us to "focus on the one or few pieces of information that are important and ignore the rest" (ibid., 47). In the process of arriving at a decision* in an asylum case, caseworkers draw heavily on such heuristics – which means they set out to seek and discover (the original Greek meaning of *heurískein*, from which "heuristics" derives) the decisional cues in their incorporated conceptual landscapes. As heuristics evolve in practice, decision*-seeking [*Entscheidfindung*] has to be considered an "art", as my administrative supervisors insisted, which needs substantial experience.[43] This art involves more or less implicit heuristics that allow caseworkers develop a sense of law, and to see cases as instances of a legal constellation. And it involves cases that exemplify possibilities and resolutions as exemplars.

Although basic training sessions with groups of new caseworkers are conducted to introduce basic terms and principles, all the people I met in the asylum office emphasised the importance of learning by doing. This means caseworkers start early to test and refine their heuristics on real cases. Moreover, a novice is usually allocated to an individual mentor or coach – a more experienced caseworker – to receive a form of "direction" (Foucault 2014a) and guidance to navigate in unknown landscapes of casework for

43 It can be seen as an art in the sense of ability, finesse and (learnt) skills in a certain field (Duden online) – but also in the sense that it provides those introduced to it with a sense of what is correct and incorrect in the field of asylum case-making.

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avoiding mistakes and accelerating the learning process.[44] Key elements that mentors convey are typically guiding principles, rules of thumb, schematic approaches to the matters, and innovative pathways for resolving cases. Beyond this, superiors seem to control novices' decisions quite thoroughly in the first few months of work and will complement and help to refine the development of heuristics. Unlike mentors, who only have the competence for direction, superiors can also impose (more) authoritative heuristics, as they have the 'last word' concerning the associations drawn in asylum decisions. With their authorising signature on the ruling (and some other core documents), they also confirm the resolution – i.e., the heuristic adopted – in a case. Ultimately, some influential heuristics become a sort of institutional myth or legend of what 'works best' or what 'is possible'. They are to be considered an invaluable feature of the reasoning powers that enable caseworkers and seniors to distinguish elements in individual cases and to recognise the boundaries or scope of legal and policy categories.[45]

At the outset, heuristic principles appear relatively simple, but they become refined every time they are measured against 'real' cases. To be of practical use, caseworkers have to learn about the scope of the application of principles, including the exceptions in which they are not applicable. Hence, heuristics are constantly evolving with every successful interpretation, which amounts to an association of abstract law and policy with actual cases. As cases are resolved through certain heuristic 'ties' become established and heuristics become stabilised and potentially diffuse along caseworkers' networks. I frequently heard comments on my attempts to make sense of law and policy classification systems about the dos and don'ts of case-making, which shifted and improved my navigational heuristics. This entailed numerous revelations about how things are to be approached. Take, for instance, the composite evaluation of Article 3 (the definition of a refugee) as introduced in the basic training for new caseworkers. The instructor highlighted a subtle difference concerning the meaning and utilisation of the notion of "collective persecution", which needs to be targeted to count as relevant grounds for refugee status:

44 A mentor system exists in most, but not all sections of the asylum divisions.

45 On the importance of the ability to draw such boundaries see also Liessmann's (2012) book about the "praise of the border" [*Lob der Grenze*].

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> It is directed against a group that is distinct from the broader community in terms of social features. These could be, for example, participants of a demonstration. This has to be distinguished from undifferentiated, non-targeted persecution, like the general consequences of a civil war on the population of a country. (Fieldnotes, basic training for new caseworkers, autumn 2012)

The instructor introduced in this example a crucial heuristic for identifying "collective persecution" in actual case-making: some shared features have to unite the collective, which has to be "distinct from the broader community". The heuristic thus distinguishes collective from undifferentiated, non-targeted persecution. I already introduced some of the key heuristics about the proper understanding of the key legal provisions of asylum casework in the previous subchapter. Now, I will outline some additional important heuristics new caseworkers learn to grasp not only the applicability but also the relatedness of key legal provisions. The most fundamental provisions introduced in the previous section – Articles 3 and 7 of the Asylum Act – are intimately related. But how they are related only becomes clarified in the heuristics (partly) taught in the basic training.

This interrelatedness of assessments in asylum orders concerning Articles 3 and 7 cannot simply be recognised in the text of the Asylum Act. When it comes to the reference to these Articles in the argumentation of an asylum order, their relationship becomes even more complex, as the explanations of a senior official in the basic training reveal:

> The mixing of Article 3 and 7 argumentations is problematic: if the credibility of assertions is doubted 'between the lines', it gets diffuse. Therefore, the main principle is: either Article 3 or Article 7. Often the core of assertions is credible, and besides it a lot which does not seem credible: in such cases, do use elements of both Article 3 and 7, but separated, never in the same argument. And make clear where you refer to what. (Fieldnotes, basic training for new caseworkers, autumn 2012)

Thus, in the argumentation of decisions, the preferable option is usually to argue (primarily) with only one of the articles, either with Article 3 or 7. The two should not be mixed in arguments, but a combination of elements from

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Article 3 and 7 can be reasonable – and in many cases expedient – if clearly separated.

This first heuristic quickly became refined in the training: "Are always both [articles] examined? – No, if the relevance is clearly not given; in all other cases the examination of credibility is worthwhile" (Fieldnotes, basic training for new caseworkers, autumn 2012). But how do I understand the seemingly contradictory statements "it's a double examination" and "not always both have to be examined"? It comes to a differentiation between theory and practice: Both have to be examined in theory, but if it is obvious that the grounds are not fulfilled, considering credibility becomes unnecessary. In other words, if the relevance of statements is evidently not given, it makes sense to believe the applicant in order to reject the application. In all other cases, the credibility assessment is 'worthwhile'.

But another statement in the same basic training session suggests that a credibility assessment is not only worthwhile, but that "The examination of Article 7 takes priority over that of Article 3" (Fieldnotes, basic training for new caseworkers, autumn 2012). But what does that mean? And what is the rationality behind it? This was not explained in the training. I dug deeper to find the reasons for this particular way in which Article 3 and 7 are associated. A caseworker offered a possible explanation in an interview:

> Caseworker: There are really co-workers who say "make rather an Article 7 decision" for tactical reasons.
> Researcher: Ah, instead of an Article 3?
> Caseworker: Yes. Because it is always more delicate with a 3, because with Article 3 you actually say: "I believe you, but it is not relevant for asylum". If he then comes with something else in the appeal, he can always say: "but you did believe me, generally you did not doubt my credibility".
> Researcher: Does this then mean, in principle you have to believe me about everything I tell now as well?
> Caseworker: And by tendency this is right, isn't it? And therefore, they [the co-workers] always say, if you do an Article 3 decision, always – and this is all just tactics – always state reservations regarding credibility.
> Researcher: Thus, a reservation that you can use, if further points are raised?
> Caseworker: Exactly. You have to, that's really like that, use an anchor, which you add at the end of the decision: at the end of the considerations[*] you say: "the facts stated by the applicant are not asylum relevant, therefore the credi-

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> bility does not have to be examined, although here explicit reservations have to be raised". Just like that, very generally, you implicate "I don't comment on this, but by the way, I have noticed that there are some inconsistencies" [laughs].
> (Interview with caseworker, autumn 2013)

This conversation about the reasons behind the heuristic introduced before reveals that the heuristic is not inferred from the legal provisions; the legal text does not say anything about prioritising some articles over others. Thus, their relation has to be figured out in practical terms – and the rationalities for certain ways of associating. And the relation suggested, prioritising Article 7 over 3 follows a certain logic: basically, it anticipates what is easier (or less delicate) to defend in an appeal against the decision. Ultimately, applying such a heuristic does not require knowing the logic for its establishment. Caseworkers adopt heuristics because they yield a preferable outcome (in whatever terms) or because they practically indicate how things 'have to be done' in certain constellations.

In this section, I suggested that heuristics about how to practically make sense about key legal articles such as Article 3 or 7 of the Asylum Act evolve and sometimes proliferate. They often become refined in their enactment in concrete cases – if they contribute to the successful resolution of a case, they gain currency; otherwise, they may be revised in form or applicability or completely abandoned. Heuristics diffuse through various more or less stable associations of the *dispositif* and thus become variably widespread. Heuristics can develop a paradigmatic character (see Kuhn 1967) if they are shared across large parts of the personnel, i.e., they become practical approaches that are based on a shared grasp or intuition about the matter (see also Gigerenzer 2013). They can also collapse and be abandoned: if the associations they establish are rejected by the appeal body, they become debunked as 'wrong' with a more authoritative heuristic, or they get replaced by another, timelier and more acknowledged heuristic.

4.2.4 Making Sense through Exemplars

> Sounds complicated, doesn't it? But when we arrive at the examples, the scales will fall from your eyes. (Head of section, fieldnotes, basic training for new caseworkers, autumn 2012)

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Exemplars complement heuristics in the evolution of a pragmatics of governing asylum. Institutional conversations often revolve around asylum cases and take a particular form: they are usually boiled down to what is considered their core narrative, their essence. These can be conveyed in a few sentences and draw on a range of shared meanings. Such core narratives of cases can become mediators in casework by altering ways of associating and assembling cases. I suggest it is useful to think of them as what Kuhn (1967) termed "exemplars".[46] Similarly to Kuhn's illustration that learning physics principles operates not through abstract formulae, but through concrete examples exposing the principles' forces and effects, asylum case-making is learnt through seeing abstract law and policy principles in light of concrete cases. However, I also consider exemplars to render conceptual landscapes of caseworkers more complex, as every case adds texture to the considerations of encountering another one. Exemplars associate cases and abstract legal and policy norms in particular ways. They are key to understand both processes of categorisation and interpretation in asylum case-making. I thus tend to think that a lot of caseworkers' 'knowledge' in case-making relates to the various roles exemplars play in practices of governing. I will outline some of these roles and provide examples.

In my analysis, I have encountered exemplars of different sorts. I propose a tentative distinction according to their mediating role (Latour 2005) and their scope across locales of case-making. With regard to their mediating role, exemplars can be differentiated according to the work 'they do', i.e., the effect they have on categorisation in asylum case-making. I distinguish three types of exemplars: illustrative, formative, and transformative.

The first type, illustrative exemplars are, in a way, 'classical' model-cases in a Kuhnian sense. They operationalise legal provisions and process principles and provide caseworkers with a neat 'model' for understanding their substance; they are therefore often raised in the training of new caseworkers. Consequently, many of them tend to stabilise the *dispositif*. For instance, in the basic training for caseworkers, the instructor pointed out "the most common construction for inadmissibility [of a removal order due to the principle of non-refoulement]" based on a concrete exemplar: that of "Eritreans … exiting [their country], and people from the Middle East demonstrating [against

46 I thank Robbie Duschinsky for pointing Kuhn's notion of exemplars out to me.

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the government of their countries of origin]" (Fieldnotes, basic training for new caseworkers, autumn 2012). Besides exemplars illustrative for certain provisions, some exemplars are illustrative for certain regions or countries of origin (sometimes intersecting with other categories such as gender or ethnicity). However, such 'classic' narratives usually imply a certain way of legal categorisation as well. During my fieldwork, caseworkers habitually referred to 'classic' narratives: for example, women from the Democratic Republic of the Congo, who tell that they had been the wives or servants of a politician and after some incident fell out of favour, which lead to their persecution (Fieldnotes, reception centre, spring 2013). Such narratives were commonly dismissed as not credible. Both versions of illustrative exemplars helped caseworkers simplify the navigation of the complex legal landscape, as they either provided a typical example for abstract legal notions or pre-classified certain types of stories in legal terms. They thus serve the reduction of abstractness (exemplifying law) and the reduction of complexity (typifying stories).

The second type of exemplars are formative – broadly said, all cases encountered by caseworkers (and their superiors) which shape their senses for categorisation and add a sort of texture to notions of policy and law. Formative exemplars can take two distinctive forms: one the one hand, extreme cases that point out the limits of what is possible – or advisable – to subsume under, i.e., the scope of, a certain category; on the other hand, borderline cases which challenge seemingly neat categorical distinctions and reveal indeterminacies in categorisation or categorical overlap.

Extreme cases are raised to make explicit the scope of a legal or policy category. An example mobilised in the basic training to exemplify the potential coverage of removal orders being "impermissible"* [*unzulässig*] was a hypothetical case: what if a murderer from the USA fled to Switzerland and claimed asylum? S/he would certainly not be granted asylum, but would the enforcement of a removal order be permitted*? The answer was: rather not; s/he would be temporarily admitted in Switzerland. Unquestionably, the legitimacy of prosecution of murderers by the US government is given, but in line with Article 3 of the European Convention on Human Rights (ECHR), the legal consequence would be considered disproportionate. However, to the surprise of most participants of the training, we were told that it is not the death penalty itself that conflicts with the ECHR, but the so-called "death cell syndrome", i.e., the long waiting times in the death row. Such rather

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unlikely extreme cases take the important role of exemplifying the potential to dilate the categories of law and practice* in casework (Fieldnotes, basic training for new caseworkers, autumn 2012).

Borderline cases occur much more often and reveal the blurriness of the boundaries between legal categories. Such a blurry boundary exists, for instance, between legitimate *prosecution* and *persecution* by state authorities. I discussed with an experienced caseworker a case of Kurdish man who was considered a former Kurdistan Workers' Party (PKK) combatant: The caseworker pointed out that prosecuting the combatant for hostilities he committed against the Turkish government was not considered illegitimate and thus did not amount to persecution according to Swiss asylum practice*. In the past, however, the regulating presumption* [*Regelvermutung*] had been different: the Turkish government had systematically tortured prisoners of Kurdish origin, thus amounting to persecution; but this was not the case anymore. At the same time, rule of law in Turkey remained questionable, despite recent improvements. Ultimately, the effective consequences the claimant had to face in case of return depended a lot on the officials he encountered. Crucial was, moreover, the question of whether the Turkish authorities (on some governmental level) had recorded his PKK activities (Fieldnotes, headquarters, winter 2013/14). As this borderline case exemplifies, the boundary between legitimate prosecution and persecution is neither clear nor static. To draw this boundary in an individual case requires various aspects to be taken into consideration. As this example furthermore reveals, borderline cases do not fix boundaries, but on the contrary highlight their fuzziness and indeterminacy.[47]

Borderline cases are often considered difficult to resolve and can become a burden for the caseworkers who have to deal with them. But if cases are in some respect borderline, for instance in terms of the refugee definition (Article 3), they do not have to be indeterminate in other respects. Some of the heuristics developed by caseworkers then explicitly serve to avoid inde-

47 Ultimately, borderline cases also compel caseworkers to draw a line. In turn, as similar cases of this type may end up on both sides of the line – meaning that asylum or temporary admission is granted or applications are rejected – their resolution may appear arbitrary from the outside at times. Hence, decisions in such cases tend to foster resistance on the side of the applicant as well. Borderline cases, I hypothesise, are more likely to be challenged at the appeal body.

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terminacy, for instance by choosing another categorical 'pathway' to resolve the case:

> In cases of doubt, I prefer to argue with the [article] 7, because it's just simpler. You just say 'not credible', then it does not matter whether it is asylum-relevant or not. There you have many stories, which are on the borderline. (Interview with caseworker, autumn 2013)

In sum, borderline cases form what one could call "frontiers" of legal categories, whose terrain remains fraught with "epistemic anxiety" (Stoler 2009) and prompts coping (see also subchapter 7.2). Extreme cases foster caseworkers' sense of the scope of legal categories. Borderline cases may become formative exemplars if the indeterminacy of categorical boundaries they carry lead to a form of negotiation about how this indeterminacy is to be resolved. Such a negotiation can take place between peers, with a head of section or in a more formal group setting.

The third and last type of exemplars I introduce are transformative exemplars: cases which lead to a transformation of how a category of cases is approached, a shift in the paradigm of practice*. Again, I suggest distinguishing between two sorts of transformative exemplars according to the revelatory mode they operate in: navigational and disastrous cases. First, navigational cases can, on the one hand, take the form of the classical precedent, e.g. leading decisions of the appeal body. Importantly, such 'external' decisions are not just something 'happening' to the office, but are at times actively sought, for instance in cases with unclear legal constellations or likely changes in the evaluation of the situation in a country of origin. In decisions*, navigational cases are sometimes called a "test balloon" [*Testballon*] (see section 8.3.2). On the other hand, navigational cases can occur as more internal cases of reorientation, such as cases for developing a new doctrine on gender-related persecution (see section 7.2.3). Second, transformative exemplars also take a second form of disastrous cases. These exceed and potentially suspend the standard mode of evolution. They can entail personal failure or even systemic breakdown and are forms of "overflowing" (Çalışkan and Callon 2009; 2010; Callon 2007b; see subchapter 7.3). Both types of transformative exemplars, however, are catalytic of new categorical interpretations, of rethinking and adaptation. Both types can involve pub-

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lic attention, but do not necessarily. They can affect law, case law, internal guidelines, or personal approaches concerning a category of cases.

A typical example of a navigational case is the one culminating in a leading decision by the appeal body. The leading decision can lead to a change in 'theory', i.e., what a legal category is about.[48] A good example of such a change in theory is the leading decision in an appeal case of a Somali man of 2006. In his application, he had claimed to be persecuted in Somalia, not by the state, but a third party – a militia of the Hawiye clan. The (then) Federal Office for Refugees had considered his persecution credible but not relevant in the sense of Article 3, the refugee definition, due to a small but crucial aspect: the Somali was not persecuted by the state, but by a clan militia. According to the 'accountability theory' that prevailed at that time, persecution had to be state-led to count as persecution in the sense of Article 3. Therefore, the office rejected his application. The appeal body (the Asylum Appeal Commission at that time) took this case as an opportunity to address foregoing legal scholarly and parliamentarian debates about a shift from the accountability to the 'protection theory'. The latter had already been adopted by a majority of signatory states to the Geneva Refugee Convention, and the EU qualification directive had incorporated it. The protection theory stated that not the source of persecution ("authorship") should matter, but the sort of protection the person concerned could rely on (no matter whether from a state or quasi-state body). Drawing on this theory, the appeal body repudiated that the applicant could have received adequate protection in Somalia at that time.[49] And it stated more generally that "in practice, it has to be established, who in the native country can grant sufficient protection (…). Furthermore, this poses the question of what kind and what degree of protection respectively in the native country suffices to acquit the asylum state from its responsibilities of protection under international law".[50] Thus, the grounds for rejecting the Somali application exemplified that Switzerland's asylum practice lagged

48 For other rulings of the appeal court, the effect is less clear: some may have an impact and become navigational cases; but others can also be dismissed as "outliers" [*Ausreisser*] and henceforth ignored.

49 "It is not possible for the appellant to apply for effective protection in his native country" (EMARK 2006/18: 205).

50 The German original reads: "Konkret ist zu prüfen, wer im Heimatland ausreichenden Schutz gewähren kann (vgl. nachfolgend unter Erw. 10.2.). Zudem stellt sich die Frage, welche Art respektive welcher Grad von Schutz im Heimatland ausreicht, um den Asyl-

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behind in this respect. At the same time, the case offered an opportunity to introduce the protection theory, which altered the frames of evaluation and provided (a first crucial) navigational exemplar for how one had to argue in future cases with the constellation of persecution by a third party.

Disastrous cases are of a more disruptive and unexpected nature: they suddenly occur and may shatter well-established institutional appraisals, for instance about the situation in a country of origin, or may shatter the belief of an individual caseworker in her or his ability to assess the truthfulness of asylum applicants' accounts. A good example of the former constellation occurred during my fieldwork in the headquarters: after the end of the civil war in Sri Lanka, the suspension of enforced returns for rejected asylum seekers had been lifted in 2011. But then, unexpectedly, in summer 2013, two returnees were imprisoned upon arrival at the airport in Colombo. Soon thereafter, the Federal Office for Migration decided to suspend further enforced removals to Sri Lanka until the whereabouts and the reasons that led to the arrest of the two men could be clarified (see also coverage on press communiqué, e.g. NZZ, 2013). The two disastrous cases thus produced an "overflowing" (Callon 1998) of the asylum and removal practice* for Sri Lanka that ultimately led to its complete revision (see section 7.3.1).

It is, moreover, possible to distinguish between the scope of exemplars: some operate on the more personal level of the caseworker and are shared with only a few colleagues or in one or several sections; others become so prevalent that even I as an intruder inevitably came across them. On the personal level, every case is at the beginning an instance of a particular aspect of abstract legal principles: it gives caseworkers a feeling what, for instance, Article 3 is about and how they can successfully argue with it in an asylum decision. On the institutional level (with sufficient circulation), exemplars may take the form of archetypes, i.e., 'classic' constellations that are associated with a certain *modus operandi*. If cases become approached only as instances of such archetypes, this amounts to stereotyping (with all its potentially detrimental effects; see also Spijkerboer, 2005). Exemplars and heuristics are closely interlinked in associations of the *dispositif* and are key modes of the latter's enactment. Practical ways of knowing evolve through the interplay of heuristics and exemplars in what could be termed "herme-

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staat von seiner völkerrechtlichen Schutzverpflichtung zu entbinden" (EMARK 2006/18: 202).

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neutic spirals": heuristics evolve through their invocation and translation in concrete cases. As some of these cases become exemplars, they may give rise to new heuristics and may induce the demise of others. Unlike standards (Bowker and Star 1999), heuristics and exemplars are not formalised, but rather circulate in institutional networks of various reach. They thus do not lend themselves to exhaustive classification or mapping; they are modes of knowing that allow both for simplifying complexity (seeing cases through law), and complexifying simplicity (seeing law through cases) (Mol and Law 2002). Their fine-grained and contingent translations of the *dispositif* lead to a fragmented landscape of practical knowing or 'common senses' – and multiple and overlapping "communities of meaning" (Yanow 2003a) and "communities of practice" (Wenger 2003) of a certain spatiotemporal scope and durability (see subchapter 8.1).

Heuristics and exemplars thus offer a particular reading of knowledge practices in the governing of asylum. For asylum caseworkers, a web of meaning expands with every case they assemble: cases both anchor and provide meaning to abstract provisions. At the same time, principles are turned into more fine-tuned heuristics which serve to take 'well-founded distinctions' when assembling another case. As heuristics and exemplars are embodied forms of knowing, they may account for what is often referred to as an ominous "gut feeling'" in caseworkers accounts of how they 'knew' (see also Affolter 2017, 45).

In this chapter, I have suggested that in order to engage in case-making, caseworkers have to acquire a minimal sense of what migration policy, asylum law, and the office mean for case-making. I have offered a reading of knowledge practices as being strategically oriented towards resolving asylum cases in decision*, which means to know both what relevant persecution is and how legally relevant 'facts' of a case arise from caseworkers' convictions about what is credible. Case-making, I have argued, can be considered a knowledge practice that is about managing both the complexity encountered in cases and the simplicity of law and policy.

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