

# Reflections on the grey zone between language legislation and implementation in EU asylum practice

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# COMMON EUROPEAN ASYLUM SYSTEM (CEAS)



- Asylum Procedures Directive (2005/85/EC ▸ 2013/32/EU)
  - Right to a personal interview
  - Unified standards for asylum determination
  - “fairer, quicker and better quality asylum decisions”
- Little reference to language in these standards
  - Poorly defined allocation criteria
  - Much latitude for national implementation
- Focus: linguistic challenges that remain unaddressed in the directive but that may cause applicants to miss out on linguistic support + inconsistent implementation across member states

# ASYLUM PROCEDURES DIRECTIVE (2013/32/EU)

## – *Article 12* **Guarantees for applicants**

Member States shall ensure that all applicants enjoy the following guarantees:

(a) they shall be informed in a language which they understand **or are reasonably supposed to understand** of the procedure to be followed and of their rights and obligations during the procedure (...)

## – *Article 15* **Requirements for a personal interview**

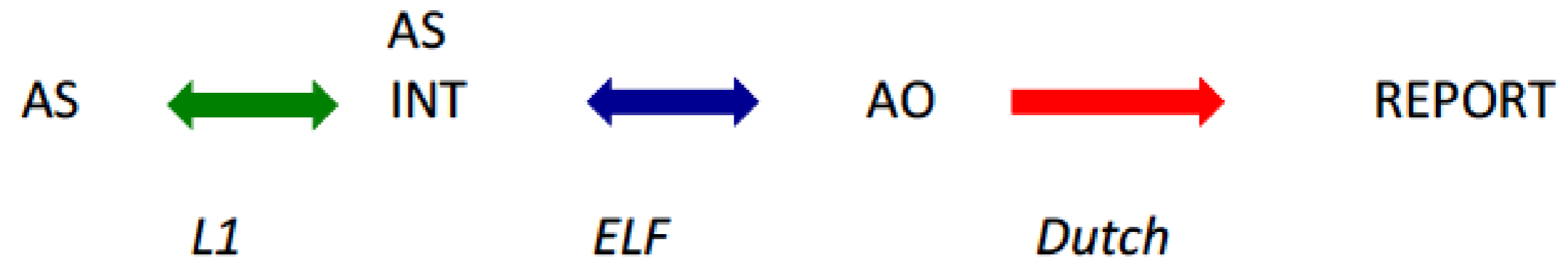
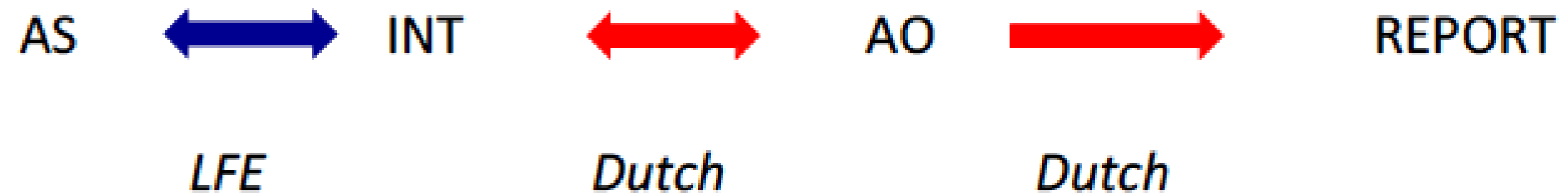
Member States shall:

c) select an **interpreter** who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant **unless there is another language which he or she understands and in which he or she is able to communicate clearly.**

# LANGUAGE MATCHING AND MULTILINGUAL STRATEGIES

- Asylum procedure: participants with increasingly hybrid linguistic profiles
- Who is qualified to decide what multilingual strategy will work best?
  - Same-language and interpreted modes of interaction
  - With varying possibilities of L1/ L2 or even L3 use
- Issue of language matching:
  - How about the metalinguistic awareness needed to assess language proficiencies (self-ratings and other-ratings)?

# ISSUE 1: INCONSISTENCIES BETWEEN BE & NL IN IMPLEMENTING THE RIGHT TO TRANSLATION



# NETHERLANDS APPEAL COURT

- **Claim:** The client was assisted by an English interpreter and not by an interpreter in his mother tongue

*“I consider the assistance of an interpreter in my client’s mother tongue necessary if the court intends to assess the credibility of my client’s declarations. He cannot express himself accurately enough in English”*

➤ **Appeal rejected:**

*“The law does not require interpreting services to be provided in the native language of the client, this can be done in any other language that s/he has sufficient command of.”* (Directive 2010/64/EU + Recital 22 of the preamble of this Directive)

# BELGIAN APPEAL COURT

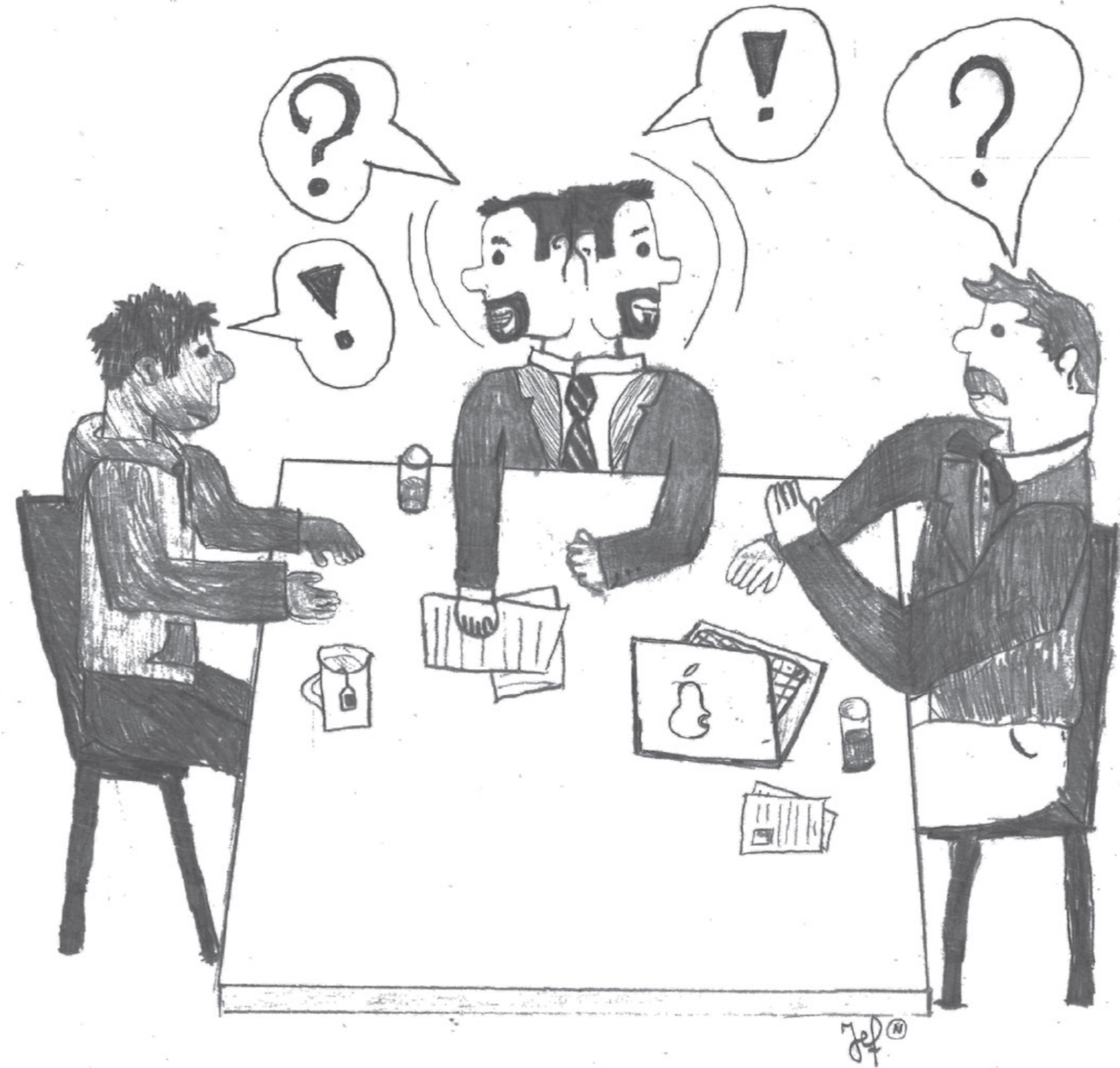
- **Claim:** The applicant's rights and interests have been violated because of infringement of the language legislation in administration (Art. 51/4, Belgian Alien's Law):

*“Though asylum officers may be assumed to have a perfect command of Dutch and/or French—which enables them to conduct the hearing with the necessary nuances and accurately write this down in their hearing report, it cannot be stated with certainty that, given that the interview was conducted in English, the examination of the asylum application has met the same criteria of thoroughness and precision.”*

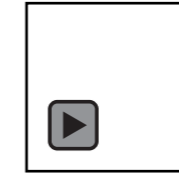
➤ **Appeal rejected:**

*“The article does not prohibit the asylum officer (who conducts the interview with the asylum seeker) from expressing him/herself in a foreign language and even from playing the role of the interpreter if s/he has a good command of the language.”*

# ISSUE 2: PROBLEM OF LANGUAGE MATCHING



– Specific concepts used:



➤ The ***Black Axe***:

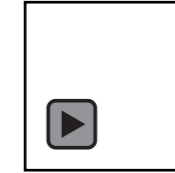
a campus gang/ the most dreaded Nigerian campus cult

➤ 2 political parties in Nigeria: ***Action Congress*** (liberal) and ***PDP***  
(People's Democratic Party, right wing)

# TRANSCRIPT

- ASYLUM SEEKER: After the incident we came out and we saw that there were lot of **thugs (/tɔks/)** outside ... political thugs (/tɔks/) ... like as I said **cultist (/gultiz/)** those are people who politicians send **to-to kill people (/ki pipul/)** or destroy ... they were shooting guns so everybody have to run ... I can be a political thugs (/tɔks/) like I would be **working (/wɔkin/)** with politicians ... it 's like a cultist (/gultiz/) yeah so the-the *Black Axe (/black haks/)* they send maybe they want to kill an opponent they send you to go and do the job .. they paid you for it or maybe if election is going on they send people to destroy the election steal ballot boxes ..... Yeah I'm-I'm-I'm-I'm-I'm an *Action Congress* so I know that these people are from the *PDP* because it was when the incident happened the speaker went out of the house and before we know these people came they started -shooted gun before we know they co -the p- the-the **precincts (/prezens/)** of the house of assembly not inside .. the precinct (/prezent/) they were outside the assembly's arena so they started shooting gun people were running away ... before the police came in to put things in order...

- 1) AO: so what happened then?
- 2) AS: I let down- after the incident we came out and we saw that there were lot of (**/tɔks/**) outside
- 3) AO: [talks= people were talking?
- 4) AS: political (**/tɔks/**)
- 5) AO: uhum
- 6) AS: you know what political thugs is? (1.5)
- 7) AO: ja (3.5)
- 8) AS: like as I said (**/gultiz/**) those are people who politicians send to-to kill people or destroy
- 9) AO: oh no I don't= [xx
- 10) AS: [ =yeah fighting=
- 11) AO: =there were many political=
- 12) AS: =thugs along the street .. they were shooting guns so everybody have to run
- 13) AO: [wha -okay then- what is it then?
- 14) AS: hen?- They were shooting guns so everybody have to run
- 15) AO: but political talks I don't understand them [like this
- 16) AS: [that is what I'm telling
- 17) AO: ja
- 18) AS: political- I can be a political (**/tɔks/**) like I would be (**/wɔkin/**) with politicians they send me maybe=
- 19) AO: =is like the 'Black Hawks'?
- 20) AS: yeah it 's like a (**/cultis/**) yeah so the-the *Black Axe* (**/black haks/**) they send maybe they want to kill an opponent they send you to go and do the job .. they paid you for it or maybe if election is going on they send people to destroy the election steal ballot boxes



20)AO: and they were outside?

21)AS: they were outside so=

22)AO: =how did you recognize them?

23)AS: Yeah I'm-I'm-I'm-I'm-I'm an *Action Congress* so I know that these people are from the *PDP* because it was when the incident happened the speaker went out of the house and before we know these people came they started -shooting gun before we know they co

24)AO: =the speaker went out of the house=

25)AS: =house=

26)AO: = and then? They came in?

AS: the p- the-the **(/prezens/)** of the house of assembly not inside .. the **(/prezent/)** they were outside the assembly's arena so they started shooting gun people were running away ... before the police came in to put things in order...

20)AO: they c- I don't- this happened outside of the=

21)AS: =the house of assembly (.)

22)AO: and who was- so the- the political talks how do you write it cause I don't really know how you write 'talks' then (.)

23)AS: I spell it=

24)AO: =tugs or- probably- eh (...)

25)AS: ((writes down the word))

26)AO: thugs ja

27)AS: yeah

# HIGH DEMANDS ON PRACTITIONERS

- Problem of negotiating context-rich meaning in an L2/ L3
- Interactional skills to handle the dynamics of world Englishes
- Socio-cultural background: specific connotations and local collocations of English
- Translation skills: the AO as “self-translator” from English (interview) to Dutch (report)
- Shared non-nativeness: equal resources?

# THE HEARING REPORT

- Na incident kwamen we naar buiten. er waren veel politieke ‘**thugs**’, die werken met de politiciers..
- *Hoe herkend?* Ik ben AC, ik weet dat ze van de PDP zijn. De speaker ging naar buiten en wij, AC leden, werden aangevallen door de **thugs**.
- Van wie kwamen die [de sms'en] dan? Van **cultus** groep, van **black hawks**. Hoe weet je dat? ze vermelden **black hawks** in de SMS-en.

# IMPLICATIONS AND FURTHER RESEARCH

- What is our responsibility as researchers to improve conditions of linguistic support?
- Would it be useful/ possible/ desirable to develop a model for multilingual communication that can be used as an instrument in asylum training programmes?
  - Reflection on linguistic variability and the language matching process
  - Considering ≠ parameters/ variables in the process:
    - Language repertoires and resources of all the participants in the process (↔client-centredness)
    - The purpose and task-orientedness of the interaction
    - Logistics: availability of (trained) interpreters, time constraints, etc.
    - ...
  - Recordings?

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