Humanitarian Values on Trial: Legal Cases relating to Humanitarian Protection at the Migration Court in Stockholm

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"Nu måste vi agera för hans skull. För allas skull. 

[...] 

Humanismen måste övervinna den här typen av utmaningar. 

[...] 

Vi kan klara det här. Vi har tidigare tagit emot många flyktingar. Svenska folket måste visa att vi har ett hjärta. Att vi är människor allihopa.” 

Abstract

Purpose:
The paper’s purpose is to critically discuss how a government institution, the Migration Court in Stockholm, interprets the law and how this interpretation reflects value choices and value priorities.

Methodology/Design:
The present paper employs qualitative research methods focusing on discursive social psychology and the interpretative repertoire of “effortfulness”.

Results/Findings:
This paper suggests that the definition of values as behaviour predictors helps us understand how state institutions and, in the present study, the Migration Court in Stockholm can express “other-oriented” values.

Value/Originality:
The paper’s socio-legal analysis of the humanitarian sector highlights the emergence of the judiciary system as a new humanitarian actor.

Keywords:
Sweden; humanitarian superpower; new humanitarian actors; Migration Court in Stockholm; humanitarian values; Discursive Social Psychology; effortfulness; legalisation of politics; judicialisation of humanitarian protection.

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A. Introduction

“case n. 1. A court *action. 2. A legal dispute. 3. The arguments, collectively, put forward by either side in a court action. [...]”


A legal case, defined as a dispute, can be understood as a type of mild, low-intensity social conflict. Legal cases relating to humanitarian protection, as the subsidiary protection provisions in Articles 15 to 19 of the EU Qualification Directive (2004/83/EC) are commonly known, filed at the Migration Court in Stockholm are defined in this paper as judicial dispute resolution processes between two actors: the Migration Court in Stockholm, i.e. a state institution, and a private actor, in this case a person claiming to be in need of subsidiary protection based on the regulations in the EU Qualification Directive. This definition, then, does not include litigation processes relating to asylum seekers, refugees or persons otherwise in need of protection, seeking to receive a residence permit on the grounds that they need protection according to the provisions in the Swedish Aliens Act. However different the legal status of these categories might be, the common thread that unites all these different categories of persons claiming to be in need of protection is the potential for low-intensity social conflict at the domestic level as a consequence of the process of legalisation of politics and the judicialisation of humanitarian protection.

A.a. Courts as a new humanitarian actor?

The number of legal cases relating to refugee and asylum issues or humanitarian protection has increased significantly in Sweden since the mid 2010s. According to the official statistics of the Swedish National Courts Administration (2019), the number of cases filed at the Swedish administrative courts (where the four Migration Courts are located at) and classified under the category “Removal cases asylum” increased from 5,869 in 2014 to 16,897 in 2018, while the number of cases classified under the
category “Residence permit, Removal cases not asylum, Status declarations” increased from 8,472 in 2014 to 16,939 in 2018, when the total number of migration cases increased from 27,053 in 2014 to 50,771 in 2018. How could that clear increase in the number of litigations at the Swedish Migration Courts in a relatively short period of time be explained? Only speculations are possible in the absence of an explanatory study relevant to the topic. However, a combined analysis of the official statistical data of the Swedish government agency Statistics Sweden (2019) – showing an increase in the number of asylum seekers from 54,259 in 2013 to 81,301 in 2014 and 162,877 in 2015, and then a decrease to 28,939 in 2016, 25,666 in 2017 and 21,502 in 2018 – and the Swedish Migration Agency (2019) – reporting an increase in the number of granted applications for asylum from 28,948 in 2013 to 35,546 in 2014, 36,462 in 2015, 71,571 in 2016, and then a decrease from 36,531 in 2017 to 11,217 in 2018 – suggest that the two trends are somehow connected and most probably related to the 2015/2016 migration and refugee crisis in Europe.

From a humanitarianism research perspective, these numbers might help us discuss the unintended consequences of the different humanitarian crises’ spillover effects. Martin Binder (2015), for instance, has convincingly demonstrated that “[a] large extent of human suffering and substantial previous involvement in a crisis by international institutions” (p. 713) will activate a UN humanitarian intervention “only when combined with either negative spillover effects to neighboring regions (path 1) or with low capabilities of the target state (path 2)” (ibid.). While Binder has analysed the causal paths leading to humanitarian policy-making, Michael Barnett’s (2005) seminal work on the mechanisms that have promoted the institutionalisation of the organisation of humanitarianism and the politicisation of its purpose allows us to become aware of the emergence of new humanitarian actors since the 1990s, such as the state and its institutions.

But from an International Relations perspective, these same numbers tell a clear story about the judicialisation of humanitarianism and reveal legalisation trends in international and domestic politics; in other terms, the emergence of inter alia courts as
a new type of humanitarian actor. Trying to explore why and when “states choose legalized institutional forms when their autonomy would be less constrained by avoiding legalization” (Goldstein et al., 2000: 391), institutionalist International Relation researchers explain those legalisation actions that are representative of a longer term trend – that “some international institutions are becoming increasingly legalized” (ibid.: 386) in a world that is witnessing a move to law – as a “decision in different issue-areas to impose international legal constraints on governments” (ibid.). This process is also reflected at the regional and domestic levels, where the judicialisation of politics – defined as “the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies” (Hirschl, 2011: 253) or, in stronger terms, as “the growing reliance on courts for contemplating the very definition, or raison d’être, of the polity as such” (ibid.: 262) – is exemplified by “the efforts by courts at the national level to harmonize domestic law with international human rights law [that] compelled them to play an increasingly prominent role in the area of immigration and asylum policy” (Tolley, 2012: 80). Such efforts have ultimately contributed to the expansion of judicial power into areas of domestic policymaking. Sandvik’s (2018) recent study on the evolving juridification of humanitarian organisations’ duty of care norm, that has transformed perceptions of the humanitarian moral duty of care into forms of legalised accountability, points to the need of a more in depth socio-legal analysis of the humanitarian sector.

**A.b. Sweden as a humanitarian superpower?**

The emergence of the court as a new humanitarian actor can become clearer with the help of a historical example. In his study on Swedish Jewish aid organisations’ reactions to the Holocaust, Pontus Rudberg (2015) concludes that during the pre-World War II period, “the Swedish state had an even more restrictive policy towards Jewish refugees than previous research has shown, and that the state actively, as well as on a structural level, limited possible responses from the Swedish Jews” (p. 335). Their main organisation, the Jewish Community of Stockholm (MFST), paradoxically helped the
Swedish government to carry out its restrictive policy after 1939, when the Swedish state’s apparent concessions to the MFST’s refugee aid programme “were in reality ways to coopt Swedish Jewish aid and restrict it” (p. 344). Rudberg’s focus on private actors’ aid programmes and the Swedish state administration’s policies towards Jewish immigration to Sweden combined with his research’s silence on the role played by the Swedish judicial system could be seen as a sign of the relatively recent emergence of the court as a new humanitarian actor.

What is more intriguing with regard to the Swedish reactions to the Holocaust, however, is the emergence of a narrative about Sweden as a helper, a humanitarian force for good in the post-World War II period. Rudberg (2015) notes, for example, that the Swedish refugee policy shifted in the autumn of 1942, when “the authorities responsible for the [refugee] policy became less reluctant towards admitting Jews into the country and did, after this point, make great efforts to save Jews across Europe” (p. 336). This public memory of the last phase of WWII together with the findings in the final report of the Sandler Commission appointed by the Swedish government in 1946 to investigate the country’s handling of the refugee issue – suggesting that “in the 1930s, Sweden had been overly restrictive and that more lives could have been saved if a more generous refugee policy had prevailed” (Rudberg, 2016: 73), thus serving as an appeal for a more generous reorientation of the Swedish refugee policy – have contributed to the emergence of a positive stereotype of Sweden as a humanitarian power.

It did not take long for this positive stereotype to become part of the Swedish foreign policy toolkit. When and how exactly this image of Sweden as a humanitarian power became dominant in policy makers’ and lay people’s minds is rather unclear. Bjereld, Johansson, and Carl Molin (2008) argue that the Swedish foreign and security policy in the post-World War II period should be analysed in light of the new conceptions about an “active” Swedish foreign policy that was developing in the early 1960s as a result of security and domestic political considerations that partially realigned Swedish foreign policy toward non-Western countries. Its new focus shifted from a neutrality-based approach in international relations to a more complex foreign
policy approach that was reflected in three “conflict lines”: national sovereignty and international dependency, ideological friendliness to the West (“västvänlighet”) and security-political independence from participation in alliances, as well as democratic openness and military readiness (ibid.: 225). As a consequence of its efforts to tackle these dichotomies, the Swedish foreign policy priorities between 1963 and 1978 were characterised by a stronger and more assertive voice in international fora and the UN, as well as a closer co-operation with the Third World in matters of foreign policy concern (ibid.: 260).

More recently, in an interview with Radio Sweden (2015) about Sweden’s high ranking on the 2015 European Foreign Policy Scorecard, current Swedish Minister for Foreign Affairs, Margot Wallström, declared her readiness to push for “global commitment and an independent voice” (ibid.): “That means we will show that we are interested in looking at the global, UN agenda and we’re already doing that because we are regarded as a humanitarian superpower” (ibid.), Wallström insisted. A few months later and after the publication of photographs of the dead body of Alan Kurdi, a three-year-old Syrian refugee, in early September 2015, Margot Wallström, visibly moved in an interview with the Swedish public broadcaster, emphasised how important it was for humanism to overcome this type of challenges, since “[w]e have taken in many refugees in the past. The Swedish people must show that we have a heart. That we are all human” (SVT, 2015). The use of the plural form of the first person, and of the collective “the Swedish people” should be noted as expressions of a construction of an actor who is conscious of his/her agency, past and moral responsibilities.

However, as the statistical data analysis of the number of asylum seekers in Sweden between 2013 and 2018 indicates, Sweden has adopted restrictive policies and practices toward refugees and people in need of humanitarian (subsidiary) protection despite the Swedish Foreign Minister’s declarations. According to Thorburn Stern (2016), the recent stricter measures introduced by the Swedish government in October 2016 in order to reduce the number of asylum seekers in the country following the 2015 refugee and migration crisis “could be understood as attempts both to preserve the
Swedish self-image of being a humanitarian superpower – and the image Sweden presents to the world – and to explain the new policy as somebody else’s (the EU and other member states) fault or a result of unfortunate circumstances” (p. 12). This policy shift, then, begs the more general question of “how liberal democratic States in general react when their established high moral standards are called into question?” (Stern, 2014: 41).

A.c. Research question and Research aim and objectives

Part of the historical characteristics of humanitarianism are the different ways that actors define persons in need of protection (skyddsbehövande, in Swedish). Assessment of the need for protection is central in the refugee and asylum law. This is also one of the most complicated questions. When is a person in need of international protection? The usual providers of humanitarian protection are the various international, regional and national Non-Governmental Organisations, although state agencies are increasingly becoming providers of humanitarian protection. This change is reflected in Gibney’s (2004) analysis of the principle of humanitarianism as inter alia a state obligation: “We can begin the task of moving towards superior policies to refugees by identifying an appropriate principle to govern the actions of liberal democratic states. In my view, that principle should be the principle of humanitarianism. Humanitarianism can be simply stated: the principle holds that states have an obligation to assist refugees when the costs of doing so are low. This responsibility recognises, like impartial theories, the existence of duties that stem from membership in a single human community” (p. 231).

As it becomes evident, the research focus of this paper is a state institution, the Migration Court in Stockholm in particular. The research purpose of this paper is not to discuss critically national, state or popular stereotypes about Sweden as a “humanitarian superpower”. Rather, its purpose is to critically discuss how a government institution, the Migration Court in Stockholm, interprets the law that reflects value choices and value priorities. David P. Forsythe (2001) discusses a paradox in humanitarian
protection. He argues that: “[t]o engage in humanitarian protection is to be “other-oriented” for the benefit of persons of concern. National authorities (and those that seek to replace them) tend to be primarily “self-oriented” in the sense of pursuing egoistic interests that supposedly benefit the nation, or maybe only the ruling group. States (and non-State parties) strongly tend to prioritize strategic and partisan goals, doing only those things that fit in with perceived egoistic interest and preferred power structures. By contrast, humanitarian protectors have social liberal goals, as explained above” (p. 680).

However, the main argument of this paper is that it is possible for a government institution to engage in humanitarian protection, while being “other-oriented” rather “self-oriented”, contrary to what Forsythe (2001) suggests. Since legal cases are not spontaneous acts, but well-thought acts, it would be interesting to explore whether the acts of the Migration Court in Stockholm could be described as “other-oriented”.

The research question that will guide this exploration reads as follows: How is discourse about humanitarian protection and humanitarian values put together at the Migration Court in Stockholm, and what is gained by this construction?
B. Social Psychological Theories of Intergroup Relations

B.a. Literature review

Social psychology has been defined as the study of individual behaviour in social contexts, where the unit of analysis is the individual placed in its intergroup context; in this context, groups are conceptualised not as closed entities, but as “societally based groups that are open and have changing membership” (Taylor, & Moghaddam, 1994: 3). Adopting a rather broad definition of intergroup relations that does not require that there be cohesion with a social category, Taylor and Moghaddam (1994) understand intergroup relations as “any aspect of human interaction that involves individuals perceiving themselves as members of a social category, or being perceived by others as belonging to a social category” (p. 6). It becomes clear that the distinctive characteristic of this research tradition is its interest in “human behavior when it is affected by the perception that category membership is involved” (ibid.: 8).

Rational and materialist theories of intergroup relations

The unique perspective of social psychology focusing on the ways individuals influence and are affected by intergroup relations traces its origins to the work of William Graham Sumner and his structural-functional theory of groups’ origins in the context of conflict over scarce natural resources, which is characterised by ethnocentrism. Sumner (1906) described ethnocentrism as: “a view of things in which one's own group is the center of everything, and all others are scaled and rated with reference to it… Ethnocentrism leads a people to exaggerate and intensify every thing in their own folkways which is peculiar and which differentiates them from others” (Sumner, 1906: 13, cited in: Hogg, 2003: 480). While Sumner’s theory “viewed intergroup hostility and conflict to be natural and inevitable outcomes of contact” (Pettigrew, & Tropp, 2005: 262), Gordon W. Allport’s (1954) argument about the contrasting effects of intergroup contact – that can often reduce prejudice, but “as a situational variable, cannot always overcome the personal variable in prejudice” (p. 280) – introduced the idea that different people react differently to the same situation.
Behaviour in intergroup relations tends to be not only ethnocentric, but also competitive, when “people generally behave so as to gain or maintain an advantage for their own group over other groups in terms of resources, status, prestige, and so forth” (Hogg, 2003: 480). This notable insight is discussed in Muzaf fer Sherif’s functional theory of intergroup behaviour that posits the existence of material factors that shape conflict. Sherif’s Realistic Conflict Theory (RCT) “views identification with a group as arising from functional relations” (Moghaddam, 2008: 83) between in-group and out-group members, who configure their behaviour to achieve different goals – in many cases mutually exclusive goals –, and who are in competition over physical resources or political power. This functional, promotively interdependent nature of people became evident in Sherif’s “Robber’s Cave” study, where group formation gave rise to a competitive spirit between groups of individuals that developed into an intergroup competition for scarce resources leading to positive attitudes toward fellow in-group members, and antagonistic and negative attitudes toward the out-group (Sherif et al., 1961).

Other materialist theories of intergroup relations focus on the possibility that psychological experiences are determined by material or rational psychological resources. Resource Mobilisation Theory (RMT), for example, contends that those groups that control material resources can shape psychological experiences and “influence the situation so that a particular group feels less or more deprived, less or more unjustly treated” (Moghaddam, 2008: 72). Moreover, System Justification Theory (SJT) proposes that people are motivated to rationalise their actions, prejudice and social stereotypes, as they serve ego-justifying, group-justifying and system-justifying “functions of defending and legitimizing the status quo” (Jost & Sidanius, 2004: 11). Not unlike SJT, Social Dominance Theory (SDM) highlights the universal nature of intergroup hierarchies and inequalities by discussing “personality differences with regard to attitudes toward group-based inequality (or “social dominance orientation”)” (ibid.), and is situated within the framework of evolutionary psychology that views group-based and gender inequalities as having an evolutionary basis. Finally, from the gene-centred evolutionary psychology perspective, the need to examine the
biology of selfishness and altruism (Dawkins, 2006) led to the formulation of the theory of gene selfishness and of a competition between genes that develop into inter alia kin altruism and reciprocation in group living as the fundamental survival strategy for human species.

**Non-rational theories of intergroup relations**

Contrary to these materialist and rationalist theories of intergroup relations that view material conditions as the impetus for conflict, irrationalist models assume that unconscious and ongoing defence mechanisms shape intergroup relations. The most influential irrationalist theory of the modern era is Terror Management Theory (TMT) (Moghaddam, 2008: 58). Unlike proximal motivation theories (e.g. SDM) that are directly related to the behaviour in question, this distal motivational theory of intergroup bias is less directly related to the behaviour in question and more broad-ranging, as it posits that “self-esteem and cultural worldviews function to protect the individual from the potential for existential terror that is engendered by awareness of the inevitability of death in an animal instinctively programmed for self-preservation and continued life” (Greenberg, Solomon & Pyszczynski, 1997: 66). As a result, this potential for abject, paralysing, existential terror created by the human mortality anxiety lies at the root of human motivation and behaviour. Self-esteem functions as an anxiety buffer against this terror, only when people’s faith in their cultural worldview is sustained. This is an important aspect of the theory because of TMT’s claim about the ubiquitous nature of prejudice and intolerance (ibid.: 69): “peoples’ inability to peacefully coexist with those in other cultures, or with those within a culture who do not share one’s own views” (ibid.) is the result of people’s positive evaluation of in-group members who are assumed to validate their own cultural worldview – which is functioning as a basis of security –, and people’s negative evaluation of out-group members who are assumed to threaten their cultural worldview. Research in the TMT tradition suggests that mortality salience increases prosocial attitudes and behaviour (the “Scrooge Effect”): for example, Jonas et al. (2002) find that “mortality salience increased the amount of money people contributed to charitable organizations” (p. 1348), while Vail et al. (2012) argue that “conscious death awareness can motivate people to deliberately reprioritize
their goal strivings” (p. 308) and create conditions that promote positive outcomes. However, Solomon, Greenberg & Pyszczynski (2000) also find evidence for the existence of a link between people with threatening different beliefs and derogation, assimilation efforts, or annihilation of out-group members.

**Social identity approach of intergroup relations**

During the so-called “crisis of confidence” in social psychology in the late 1960s and early 1970s, social psychologists were worried that “social psychology was, among other things, reductionist and immature in its theories, positivist and unsophisticated in its methods, and blind to the role of language, history and culture” (Hogg, & Grieve, 1999: 79). The social identity approach – social identity theory and self-categorisation theory –, that was born in this era of crisis as a research response to this crisis, is considered, together with social cognition, the most impactful approach in theories of intergroup relations (ibid.: 80) that has reintroduced “the concept of ‘group’ as a distinct explanatory tool in social psychology” (Hogg & Abrams, 2006: 12) developing “as a spearhead of this attack on individualism in social psychology” (ibid.). Social identity theory (SIT) was initially developed at Bristol University in the UK in the early 1970s by Henri Tajfel, when Tajfel and his colleagues published a series of studies analysing the so-called “minimal group paradigm”. What was held constant in this new theoretical approach was the focus on the concept of ethnocentrism; according to Tajfel & Turner (1986), “[t]he laboratory analogue of real-world ethnocentrism is in-group bias – that is, the tendency to favor the in-group over the out-group in evaluations and behavior” (p. 282). In this “minimal group paradigm”, the mere fact of categorising individuals into two arbitrary but distinct social groups produced in-group favouritism, competitive intergroup behaviour and intergroup discrimination. According to Tajfel & Turner (1986), “the mere awareness of the presence of an out-group is sufficient to provoke intergroup competitive or discriminatory responses on the part on the in-group” (p. 282), because “discrimination serves to achieve a positive social identity” (p. 286) and “[i]ndividuals strive to achieve or to maintain positive social identity” (p. 284), which reflects one of the most basic of human motives for self-enhancement and self-esteem.
While the greatest advantage of SIT is the theoretical possibility to explain social change based on an understanding of intergroup behaviour as “driven by people’s ability to be critical of, and to see alternatives to, the status quo” (Hornsey, 2008: 207), Self-Categorisation theory (SCT) moves beyond the intergroup focus and underscores the importance of intragroup processes and the cognitive element of the theory. SCT’s main motivational dynamic is subjective uncertainty reduction: since feeling uncertain about how to behave can be unsettling, people strive to reduce uncertainty which “‘drives’ people to join groups” (Hogg, 2000: 224). In other words, uncertainty reduction motivates both social categorisation, which depersonalises self-perception, and social categorisation of self (i.e., self-categorisation), which “goes further in transforming self-conception and assimilating all aspects of one’s attitudes, feelings and behaviors to the ingroup prototype” (ibid.: 226). Prototypes are defined as mental representations of human groups, “fuzzy sets of interrelated attributes (attitudes, behaviours, customs, dress, and so forth) that capture overall similarities within groups and overall differences between groups. Prototypes represent attributes that maximise the group’s entitativity—the extent to which a group appears to be a distinct and clearly defined entity” (Hogg, 2016: 8). Because groups vary widely in the extent to which they are perceived as having entitativity (Hamilton, Chen, & Way, 2011: 30), self-categorisation, then, is a dynamic cognitive strategy through which the self categorises itself in prototypes in its search for certainty and meaning, contrary to Tajfel’s and SIT’s belief that people engage in a “search for coherence” (Hogg, 2000: 232). Most importantly, categorisation occurs as a function of fit and accessibility: “Fit refers to the extent to which the social categories are perceived to reflect social reality” (Hornsey, 2008: 208) and thus the process varies according to the context, while “categories are more or less likely to be a basis for self-definition if they are more or less accessible in the moment” (ibid.).

Unlike SIT’s explanation of in-group bias in terms of a search for positive distinctiveness and SCT’s focus on uncertainty reduction as a motivational dynamic behind in-group bias, a third motivational dynamic in social identity processes and
phenomena is discussed in Optimal Distinctiveness Theory (ODT). Contrary to the presumption of most materialist, rationalist and irrationalist theories of intergroup relations about the inevitability of a negative reciprocity between in-group favouritism and out-group derogation and prejudice, ODT claims that in-group bias does not imply out-group derogation, as laboratory experiments’ and field studies’ findings indicate that “variations in in-group positivity and social identification do not systematically correlate with degree of bias or negativity toward out-groups” (Brewer, 2007: 730). The theory highlights the importance of security motives as explanatory factors for in-group favouritism, as “the basis for universal in-group preference is derived from the security and trust associated with in-group exchanges” (ibid.: 733). Influenced by the lack of evidence of intergroup conflict in early human evolutionary history, when “flight rather than fight would seem to be the strategy of choice for our distant ancestors” (ibid.: 731), ODT views human nature as dominated by two opposing needs: “The first is a need for assimilation and inclusion, a desire for belonging that motivates immersion in social groups. The second is a need for differentiation from others that operates in opposition to the need for immersion” (ibid.). Since human beings in ODT are characterised by obligatory interdependence (Brewer, 2010: 29), these two opposing needs produce “the capacity for social identification with distinctive groups that satisfy both needs simultaneously” (Brewer, 2007: 731) defined as optimal distinctiveness, with differential positivity toward in-groups being a consequence rather than the cause of social identity.

**B.b. Applied theoretical framework**

One of the basic research findings of the social identity approach is that “[s]ocial identity is expressed through normative behaviour” (Hogg, 2016: 11). Although many scholars have pointed out that “values are distinct from attitudes, norms, beliefs, goals, and needs” (Malle, & Dickert, 2007: 1011), empirical research in social psychology suggests that values – such as humanitarian values – defined as “an abstract, desirable end state that people strive for or aim to uphold” (ibid.), are not only “directed at specific objects (as attitudes are), behaviors (as norms are), or states of reality (as beliefs
are)” (ibid.: 1011-1012), but they also “appear to relate to preferences and attitudes, which themselves predict behavior” (ibid.: 1012).

A question of central importance arises out of this understanding of values as behaviour predictors: Do values play out uniformly in the world or are they context specific? The sovereignty of the group is a defining characteristic of social identity theory in its ways of approaching the question. In this paper, Meg J. Rohan’s research findings will guide the understanding and analysis of humanitarian values in court. Drawing on Allport’s suggestion that “values were the ‘dominating force in life’ because they directed all of a person’s activity towards the realization of his or her values” (Rohan, & Zanna, 2001: 458), values in Rohan & Zanna’s (2001) theoretical framework can be understood as “underlying causes for attitudinal and behavioral decisions” (ibid.). The authors pay particular attention to the definitional delimitation of values that “may be viewed as implicit structures” (ibid.: 467), whereas “ideologies may be viewed as explicit, verbalizable constructions” (ibid.). Also important to their theoretical framework is the distinction between personal and social value systems, since people living and interacting in their social context “not only have a set of personal value priorities, they also have perceptions of others’ value priorities” (ibid.: 459). Adopting a “motivation” approach to values, which seems to be the dominant approach in this field (ibid.: 467), the authors consider basic motivations as “integral to the way a person views the world and responds to it” (ibid.: 463), because “people’s attitudinal and behavioral decisions are understood as value-driven responses to their environments” (ibid.).

Building on the work of important theorists in this field, Shalom Schwartz’s (2010) research findings focus on the universality of the organisation of human motives, and the universality of the structure of human values, which refers to “relations of conflict (opposition) and compatibility (congruence)” (p. 222) between, what he identifies as, ten motivationally distinct values: Conformity, Tradition, Benevolence, Universalism, Self-Direction, Stimulation, Hedonism, Achievement, Power and Security (ibid.: 223-224). Values can be distinguished from one another in terms of the
underlying context where the values are situated, and the motivational concern each value expresses. To be precise, in Schwartz’s (2010) analysis of the *structure of values*, “universalism, benevolence, conformity, security, and power” (p. 224) are the values that affect prosocial behaviour and promote co-operative social relations most frequently across contexts, with benevolence and universalism, seemingly, given analytical priority. A comparison between these two values suggests that while “[b]enevolence values concern the welfare of the ingroup” and “are socialized in the family and other primary groups” (ibid.), “universalism values concern the welfare of all” and “probably arise and can be socialized effectively only after people encounter others outside the extended primary group with whom they must get along” (ibid.). As already stated above, context matters for the expression of a value. The author assesses the inclusiveness of people's moral universe (the opposite of “moral exclusion”) through an examination of basic values across 66 societies with the help of three societal characteristics: cultural egalitarianism, cultural embeddedness, and level of democratisation (Schwartz, 2007). The author concludes that “[i]nclusiveness is greater in societies whose culture emphasizes egalitarianism (socializing people to recognize one another as moral equals) and whose culture does not emphasize embeddedness (socializing restraint of actions that might disrupt in-group solidarity). Moral inclusiveness is also greater in societies whose political system is more democratic” (ibid.: 725). In those societies where moral inclusiveness is high – Sweden is categorised as a country being high in moral inclusiveness –, the distinction between universalism and benevolence values remains valid. As a result, high inclusiveness of the moral universe at the national level, which “is likely to affect asylum policy, foreign aid policy, support for humanitarian and civil rights organizations” (ibid.), means that people understand universalism values as applying to all members of society (including strangers), while “a large number of societies do not understand benevolence values as applying to those beyond their in-groups” (ibid.: 726).

Schwartz’s theory can provide the structure for better understanding values as the fundamental coordinators of behaviour. Meg J. Rohan’s theory about value priorities and value systems could, in its turn, provide the structure for better understanding the
intrapsychic structures that might lead to the attitudinal and behavioural decisions. By personal value systems that “cause people to view the world in a particular way” (Rohan, 2000: 270), Rohan understands “people’s own judgments about the capacity of entities to enable best possible living for themselves” (ibid.), while social value systems “concern people’s perceptions about others’ judgments concerning the capacity of entities to enable best possible living, that is, others’ value priorities” (ibid.). Because of the sovereignty of the social, the importance of the role of constant interaction with people who have different personal value priorities cannot be underestimated, as changes in people’s beliefs can lead to changes to value priorities, “if they behave in particular ways often enough” (ibid.: 272). The general conclusion of this line of research could be that priming of either social value priorities or personal value priorities produces different behaviour, as “attitudes may be consistent with either personal or social value systems” (ibid.: 271). As a result, both personal and social value systems can influence people’s attitudinal and behavioural decisions depending on the process of value priorities priming, while depending on whether personal or social value systems are salient, “people may use different ideologies in their decision making” (ibid.) – ideologies being already defined as explicit, verballisable constructions.

It is worth noting that a shift in focus from the intrapsychic structures and processes discussed above to interpersonal or group processes might help us get better grasp on the importance of the sovereignty of the social in influencing people’s attitudinal and behavioural decisions. Cooper, Kelly and Weaver (2001), for instance, emphasise the major role in attitude formation, attitude–behaviour consistency and attitude change of belonging to a social group and developing a group identity (p. 266), that helps “prevent dissonance from being aroused” (ibid.: 277), since “[i]mportant group identities may serve a protective function, insulating people from the negative impact of dissonant acts” (ibid.). From an interpersonal perspective, and in addition to Schwartz’s five values that affect prosocial behaviour, helping and altruism could be regarded as “two fundamental types of prosocial behavior” (Dovidio, & Penner, 2001: 162), that is theorised as a model that rests on “evolutionary processes associated with
natural selection and inclusive fitness” (ibid.: 185). In general and unlike intrapsychic approaches, interpersonal perspectives offer the advantage of shedding light on the different types of internal motivations involved in altruism and helping. In Daniel Batson’s (2011) empathy-altruism hypothesis, for example, altruism, defined as a “motivational state with the ultimate goal of increasing another’s welfare” (p. 22), refers to the underlying goal of the act, rather than the prosocial act per se. What is more, Batson’s analysis of empathic concern as a condition producing altruistic motivation takes into consideration emotions, serving “an information function and an amplification function” (ibid.: 30). Compared to intrapsychic perspectives, this research tradition has wider goals; for Batson and Thompson (2001), two motivational explanations for the failure of moral people to act morally are “moral hypocrisy” and “overpowered integrity” (p. 56), while for Batson et al. (2002), a possible motivational explanation for helping a member of a stigmatised group refers to “the more positive attitudes toward a stigmatized group evoked by empathy felt for a member of the group [that] do carry over into action to benefit the group” (p. 1666). Finally, this focus on the internal motivational explanations for altruistic intergroup processes might also pay particular attention to empathy born of violence as a genuinely other-regarding motivation for altruistic behaviour, and as a mechanism linking violence to prosocial behaviour across group boundaries by “[motivating] altruistic behavior toward rival outgroups” (Hartman, & Morse, 2018: 21) and promoting inter-group co-operation.
C. Methodology

C.a. Discursive Social Psychology

The methodological approach adopted in this paper draws on the insights of social psychological discourse analysis. Stephen Gibson (2009) remarks that Discursive Social Psychology (DSP) argues for “a focus on the ways in which social psychological topics and concerns are managed in discourse by social actors themselves […]. Rather than seeing psychological concepts such as memory, attitudes, motivations, attribution and emotions as unobservable mental processes which can be inferred from linguistic behaviour, DSP sees such concepts as constructed in discourse in order to attend to some context-specific discursive business” (p. 396). Viewing language as a social practice that constructs identities for speakers, discursive social psychology “argues that identities or ‘subject positions’ are brought into being through discourse” (Augoustinos: 216), because “language does not merely reflect but also affects cognition, and that in its interplay with cognition language creates, as well as replicates, social information” (Sutton, 2010: 118). What is more, by adopting a critical approach in discursive social psychology, researchers might “uncover the ideological foundations of ‘common-sensical’ assumptions” (Andreouli, & Figgou, 2019: 162).

Discursive analysis of the court setting usually focuses on conversation styles in trial testimony, where “it is the general network of power relations, norms, and stereotypes, and not the court setting per se, that produces these interpretations of conversation styles” (Lind et al., 1978: 1567). For its part, discursive psychological analysis on refugees pays particular attention to the notion of place as central to the construction of the refugees’ identity, who “may make reference to what may happen to them if they return to their countries of origin as well as including displays of emotion” (Kirkwood, Goodman, 2018: 172), and “construct themselves as refugees by working up descriptions of conflict, and that they seek refuge in other countries because they claim this move offers peace” (ibid.: 173). Stephen Gibson’s (2009) interpretative repertoire of “effortfulness” will be used a) to uncover processes that attribute individual responsibility for applicants of humanitarian protection by locating the cause
of humanitarian protection at the level of the individual (p. 398), and b) to discuss the context-specific uses of “effortfulness” as a repertoire that performs a variety of functions in discursive practice (p. 405). What is important to keep in mind is that the mobilisation of the discursive repertoire of “effortfulness” “suggests the availability not only of a generally individualistic conception of social citizenship rights and responsibilities, but also of a conception of rights as specifically contingent upon displaying certain psychological characteristics. The ideological function of such accounts is to predicate social citizenship rights on individual psychology” (Gibson, 2011: 465).

**C.b. Data and Analytic Procedure**

The aim of the present paper is not to provide a comprehensive analysis of humanitarian protection legal discourse, but to discuss the discursive features of invocations of the “effortfulness” repertoire in the specific discursive context of refugee and subsidiary protection trials at the Migration Court in Stockholm. The data for such an analysis have been collected thanks to the generous help of the Department of Archives located at Tegeluddsvägen 1, 115 41 Stockholm. The collection of the data took place in four different research visits (two preparatory visits in April and May 2019 and two visits for the study of the archive material in May 2019) to the Migration Court in Stockholm. The selection of the folders containing the pdf files of the legal cases relating to humanitarian protection was carried out by the responsible archivist at the Migration Court in Stockholm, who provided me with 30 folders of archive material at each one of my two study visits.

The way to proceed with the study of the material was common to the two visits to the Court, and focused on the reading of the first or first two pages of all pdf files, in order for me to find those legal cases where the counterpart of the Migration Court in Stockholm was an Afghani citizen, and the Court had held an oral hearing. The aim of choosing Afghani citizens as the counterpart of the Court at the trial was to guarantee the existence of an (low or high-intensity) armed conflict in the country of origin of the
humanitarian protection applicant, so that the Court could always be aware of the possibility of deporting a person to a conflict zone, in other words to face the possibility of death. The selection process, that allowed me to pick only one legal case from each folder that was made available for me, also had as its aim to guarantee the representativeness of the sample, and to eliminate various selection bias. After the final selection of the legal cases that were to become my research material, I ordered the pdf files to the Department of Archives of the Migration Court in Stockholm, that sent me the requested files through encrypted email to my academic email address.
D. Empirical Evidence

D.a. Cases at the Migration Court in Stockholm determined in 2014

Of the fifteen legal cases that were determined in the first three months of 2014, ten cases were rejected, while five requests for residence permit were granted. As far as the second category is concerned\(^1\), all applicants originated from provinces that were considered to be safe, as no armed conflict was listed as ongoing. In this respect, it is worth noting that three out of five applicants were considered as original residents of Kabul (i.e. the Afghani seat of government), where the security situation is described by the Migration Court in Stockholm as not serious, together with that of Helmand where an absence of an ongoing armed conflict was reported, while only one, Baghlan province, was described as “not safe”. Furthermore, three underage applicants\(^2\) seem to form an important group of persons in need of protection compared to a case of two adult applicants\(^3\) and a family with children\(^4\). When examining the underage applicants requests, the Court pays particular attention to principles about the “child’s best interests” (“barnets bästa” in Swedish) with references to international legal instruments that allow the Court to take a more complex set of principles and values into account in their effort to establish the facts. Other demographic characteristics of interest in this group of cases are the applicants’ religious faith/affiliation, their physical condition (being able-bodied or not), and the number of months or years of their residence in Sweden. The two last observations are important for the Court’s examination of the degree of adjustment to different aspects of the Swedish society that requires an individual assessment. In all cases and irrespective of the length of the period of time of an applicant’s settlement in the country, the Court has consistently assessed the period of time the applicant has spent in the country as short.

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\(^3\) Legal case: UM 7874-13 (2014-02-25).

\(^4\) Legal case: UM 8650-13 (2014-03-17).
A number of examples of noteworthy comments made by the Court about the vulnerability status of each applicant need to examined. The applicant in case UM 9313-13 (2013-01-23) has claimed that she might be kidnapped by the Talibans because of her father’s profession (who was a military officer in the Afghani state army) in her effort to receive subsidiary protection status, but her claim was denied, as, according to the Court, her return to Afghanistan would not result in any concrete individual threat against her bodily integrity. Moreover, the female underage applicant’s narrative about her mental health condition in case UM 8257-13 (2014-01-28) was found credible and convincing, not only because she was visibly stressed during the oral hearing, but also because of the written evidence (i.e. psychologist’s certificate) she gave in Court and provided strong support to her claim that she was suffering traumatic disorders. What is also interesting to note is the Court’s relation to visual evidence: the applicant in case UM 7874-13 (2014-02-25), a wheelchair user with serious heart problems, had his application examined for individual reasons for protection based on a number of features, but it seems that his serious heart problems were less convincing reasons for a status declaration than his physical disability.

The ten cases that were turned down by the Migration Court in Stockholm were filed by eight men, an underage girl and a family. In at least four cases, the applicants invoked their ethnic identity in a specific context: their legal reasoning focused on their ethnic minority status (Hazaras) as an argument in favour of their claim to be granted residence permit in Sweden as persons in need of humanitarian protection. In all cases, their ethnicity was not found to be an adequate reason to be granted residence permit. The only female applicant in this group of cases also happened to be a minor; her case is important in that the reader becomes aware of a hierarchy of values in the Court that determines the outcome of litigation. To be precise, the Court remarked that a psychotherapist’s certificate about her mental health condition is legally less important than a doctor’s certificate. Moreover, for applicants in the unified cases UM

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6394-13/6517-13 (2014-02-19) and in case UM 8542-13 (2013-01-24) the Court suggested that they be deported to Afghanistan and then be relocated within the country ("internflykt" in Swedish) to a region that would be different from their place of origin (internal displacement cases), where threats against their integrity that are viewed as local could justify their relocation as a legitimate and real alternative, despite the fact that the applicants would not have access to a social network.

It has to be noted that the majority of cases (six out of ten cases) were filed by applicants who develop threat narratives, that are the result not of public interest motivation (e.g. their ethnicity, their age, their relation to the state etc.), but of private interest motivation. In the unified cases UM 6394-13/6517-13 (2014-02-19), for example, inexact descriptions about the applicant’s marriage certificate during the oral hearing, an extramarital affair and a child born outside marriage were considered valid reasons to be made before the Court in addition to public interest motivation (e.g. the applicant’s Hazari ethnicity). Another applicant’s narration about his father’s illegal selling of erotic films in Ghazni province as a cause for his possible persecution and threat to his integrity in Afghanistan is found to be vague and not credible by the Court; however, from a local Afghani perspective, what was analysed as a matter of more or less private morality in the Swedish context, could have been understood as a matter of public morality. Similarly to this last case, case UM 9407-13 (2014-02-28) points to the need for contextualisation of morality claims: the Court has described the applicant’s narrative about his relationship with a married woman in Afghanistan (whose family members murdered the applicant’s father and brother in Afghanistan) as not credible because of the existence of a so-called Afghani “honour culture” that would not have allowed the applicant to meet this woman in public. Finally, case UM 8909-13 (2014-01-30) raises questions about the Court’s efforts to develop legally sound reasoning: the applicant’s social origin (coming from a well-to-do family) has weakened his humanitarian protection argument to such an extent that the Court found that his basic needs can be satisfied in his home-country.

D.b. Cases at the Migration Court in Stockholm determined in 2018

All legal cases that will be analysed in this section were turned down by the Migration Court in Stockholm in 2018. When comparing the two groups of cases, one becomes aware not only of the quantitative density of cases in January 2018, but also of the lengthier and more detailed legal argumentation in this second group of cases from the Migration Court in Stockholm. As in the first group of cases, the question of ethnicity and belonging to ethnic minorities is discussed in most (nine of fifteen) legal cases of this group. Hazaras as persons belonging to a group in need of protection might be overrepresented, but in all cases the Court concludes that the security situation for Hazaras in Afghanistan does not necessarily appear to pose a threat to their integrity. The same applies for an applicant of Tajik origin, whose ethnicity is not considered to be part of the category of high risk minority identities.

Moreover, the large number of cases referring to the applicants’ religious faith/conviction and/or sexuality cannot be easily explained. Applicants in six cases\(^8\) describe themselves as Christian converts, atheists or persons that have distanced themselves from religion, while applicants in four cases\(^9\) describe themselves as homosexuals. The construction of an exclusive dichotomy between sexual identities (either heterosexual or homosexual) and the exclusion of any other possible expression of sexuality in the Court’s development of its legal reasoning hides more than it reveals. Such is the case for the applicant in case UM 10652-17 (2018-01-03) who refers to himself as a homosexual in a relationship with another man, Amir, whose brother, as well as his own mother and brother have physically aggressed him and forced him to flee Iran, where he was living as a refugee, for Sweden. According to the Court, his narrative about homosexuality is vague and not rich in details, while his narrative about his relationship with Amir contains contradictory information. The Court also remarks that his own

\(^8\) Legal cases: UM 9102-17 (2018-01-02), UM 11234-17 (2018-01-10), UM 11666-17 (2018-01-08), UM 12134-17 (2018-01-11), UM 12535-17 (2018-01-23), and UM 13375-17 (2010-01-31).

\(^9\) Legal cases: UM 10652-17 (2018-01-03), UM 11666-17 (2018-01-08), UM 10085-17 (2018-01-18), and UM 12535-17 (2018-01-23).
narrative is the main and often the only source of proof for his sexuality, thus transforming gender expression and sexuality into a disposition contingent upon the existence of an objective criterion for the evaluation of one’s identity behaviour. The applicant in case UM 11666-17 (2018-01-08), for his part, is asked to provide credible evidence for his homosexuality and for his claim that he was sexually abused, by describing how this has influenced his daily life. Not less distressful is the Court’s demand to the applicant in case UM 10085-17 (2018-01-18) to provide a credible narrative rich in details about his “bacha bazi” (i.e. sex slavery from the age of 11-13) past together with a doctor’s certificate about his mental health condition instead of his psychologist’s certificate. Finally, in case UM 12535-17 (2018-01-23) the Court constructs sexuality as a form of cognitive, emotional and rational behaviour; it finds that the applicant’s narrative about his homosexuality was vague, as the applicant not only offered contradictory information about his thoughts, emotions and rational reasoning relating to his sexuality, but also failed to distinguish between a friendly relation and a love relation between two men.

Equally problematic is the Court’s discussion of another type of identity, that of religiosity. Not unlike the examination of the applicant’s claims about his sexuality, the Court offers a number of contradictory remarks about the expression and the content of religiosity. An applicant’s narrative about his conversion to Christianity is found not credible, as, according to the Court, 99% of Afghanis are Muslim, who happen to get into contact with Christianity only when traveling abroad. Another applicant in case UM 11666-17 (2018-01-08), for his turn, is described as a person capable of narrating a lot of details about his Christian religious life, but since his thoughts about his faith are vague and lacking personal reflections, his conversion to Christianity seems not to be the result of a “genuine religious conviction” according to the Court, even if the applicant has been baptised and is an active member of his local Church. This criterion of the “genuine religious conviction” is repeated in case UM 11234-17 (2018-01-10), where the applicant is found lacking deeper reflections about his conversion to Christianity, as well as in case UM 12535-17 (2018-01-23), where the applicant who

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10 Legal case: UM 9102-17 (2018-01-02).
refuses to practice Islam failed to show that he had a “genuine atheist conviction”.

Finally, the applicant in case UM 13375-17 (2010-01-31) is described as not capable of
offering a convincing and credible narrative about his religious faith or what his religion
means to him, despite his claim that he was a regular churchgoer on Sundays.

As with many cases determined in 2014, a number of cases at the Migration
Court in Stockholm determined in 2018 tackle issues of land disputes, marital disputes,
extamarital affairs, health and forced recruitment by the Talibans. As far as the
applicants’ health issues are concerned, the Court establishes a hierarchy of threat with
regard to infectious diseases, since diseases not regarded as necessarily fatal, such as
Hepatitis B, do not constitute reasonable grounds for believing that the life of the
applicant is in danger. What is more, the requirement for a signed medical certificate as
the only recognised certificate attesting to a disability, a chronic illness or any other
infectious disease seems to be more pressing in the case of mental health conditions,
where a professional hierarchy between psychiatrists and psychotherapists is established
and maintained. Finally, the normalisation of low-intensity armed conflict in
Afghanistan, where one of the warring parties happen to be the Talibans, is evident in
the Court’s reasoning about the level of threat to integrity that the Talibans pose in areas
that are directly or indirectly controlled by their fighters. As a consequence, when
Talibans are not described as agents taking an active part in hostilities in an ongoing
armed conflict, as in case UM 8291-17 (2018-01-30), where the Talibans are found to
be threatening an applicant’s life, because the latter has not kept his promise to marry a
daughter to a Taliban, then the Court does not need to examine the case in detail, as it
usually considers the threat as not life-threatening. However, when there is the potential
for an escalation of a dispute into a conflict, as in case UM 8745-17 (2018-01-25),
where the applicant claims to be a target of Taliban persecution because of his
implication in the murder of a Taliban, then the Court needs to assess the credibility of
the narration in relation to the security situation of the applicant’s place of origin.
E. Discussion of Results

The basic theoretical concept of this paper, legalisation of politics, has helped to develop the main argument of this paper in such a way that the textual analysis of legal cases does not focus exclusively or even mainly on the legal reasoning in these cases, but rather on the links between legal thinking and politics. What has become clear after this short analysis of some of the main arguments in the legal cases discussed in the previous section is the increasing significance of the judiciary system, and the Migration Court in Stockholm in the present paper, as an autonomous humanitarian actor responsible for determining cases relating to issues of health, human dignity, protection from threats to life and human integrity, as well as migration issues. The analysis has tried to show how an independent state institution, the Migration Court in Stockholm, has managed to play an increasingly prominent role in the area of immigration, refugee and protection policy because of the state’s administration willingness to rely on the judicial system as a means for addressing core moral predicaments and political controversies in a way that these issues are partially depoliticised and vocal minorities partially silenced.

By interfering in all aspects of life of persons applying for refugee status or humanitarian protection, the Court has confirmed the social identity approach’s main research finding, namely that “[s]ocial identity is expressed through normative behaviour” (Hogg, 2016: 11). The existence of a set of detailed and elaborate norms that influence and are influenced not only by the government apparatus, but also by the case law of international and regional judicial systems for the protection and interpretation of humanitarian and human rights law, as well as by the legal protection provisions in international and regional treaties, becomes evident in the Migration Court’s examination of the applicants’ expression of various parts of their personal and social identities, as well as the display of individual psychological characteristics. The social actors in the texts analysed in the previous section consent to play the role of the recipient of humanitarian aid before a Court, which is empowered to take decisions that will most probably define the private actors’ future. Compared with the historical example of Swedish aid programmes during World War II, when the division of
(humanitarian) labour between the state apparatus and private aid agencies defined the sector and was defined by the complete absence of the judicial system in the development of aid policies, together with its focus on matters of domestic jurisdiction, the emergence of the Migration Court in Stockholm as a weak but active humanitarian actor in this policy area could be viewed as a change of paradigms.

It has also become clear that the expression of humanitarian values at the Migration Court in Stockholm “[appears] to relate to preferences and attitudes, which themselves predict behavior” (Malle, & Dickert, 2007: 1012) in very concrete ways. The insistence of the Court, for example, to treat the Talibans either as a lethal threat, and, as a result, a legal reason for the provision of humanitarian protection to persons claiming to be in need of such protection, or as a private threat of secondary importance not for the lives of applicants of humanitarian protection, but for the stability and security of the legal system, points to the preferential use of the same legal norm as either a matter of humanitarian urgency or as a matter of interpretation and elaboration of legal rules of general importance.

Schwartz’s (2010) analysis of two important prosocial values, understood in this paper as the core humanitarian values, that of universalism and benevolence, may help us understand how the conscious or unconscious choice of value priorities and value systems matters for the interpretation of humanitarian norms. If, according to Schwartz (2020), “[b]enevolence values concern the welfare of the ingroup” and “are socialized in the family and other primary groups” (p. 224), while “universalism values concern the welfare of all” and “probably arise and can be socialized effectively only after people encounter others outside the extended primary group with whom they must get along” (ibid.), then the interpretation and application of the appropriate legal norms in the face of the threat of the Talibans largely depends on the activation of the process of value priorities priming. Sweden being categorised as a country being high in moral inclusiveness, where the distinction between universalism and benevolence values remains valid, high inclusiveness of the moral universe at the national level, which “is likely to affect asylum policy, foreign aid policy, support for humanitarian and civil
rights organizations” (ibid.), means that people understand universalism values as applying to all members of society (including strangers), while “a large number of societies do not understand benevolence values as applying to those beyond their in-groups” (ibid.: 726). In other words, the understanding of the Taliban as a private actor committing everyday criminal acts (e.g. taking revenge for the extramarital relationship of his wife with a humanitarian protection applicant in Sweden) would only activate the universalist values of the members of the Swedish court, while the understanding of the Taliban as a public actor committing war crimes or crimes against humanity, that might affect the life prospects of the humanitarian protection applicant in Sweden, could in its turn activate the benevolence values of the Swedish judge, who in this case will interpret the legal norms accordingly. As a result, and by including the humanitarian protection applicant into the in-group, the Swedish judge might extend humanitarian protection to the relevant protection applicant.

However convincing this theoretical model might be, it remains silent about the processes that activate the one or the other values system. This was also a criticism raised by Meg J. Rohan (2000), that remains unanswered. The important insight to keep in mind in this respect is that the same actor making the one or the other decision depending on the choice of the values system, the Swedish Court in this case, is not acting morally in the first instance and immorally in the other instance. Rather, the basic insight of this tradition of social psychological research is that both personal and social value systems can influence people’s attitudinal and behavioural decisions depending on the process of value priorities priming, while “people may use different ideologies in their decision making” (Rohan, 2000: 271) depending on whether personal or social value systems are salient, as already discussed in the theoretical framework of this paper. In a few words, the theorisation of the figure of the Taliban as either a private actor or a public actor will force people to use different ideologies in their decision making, depending on whether personal or social value systems are salient.

The two other theoretical points that are of importance for this discussion are those referring to the individual and the repertoire of effortfulness. As far as the
individual is concerned, it has become clear that the applicant appears to be an individual actor before the Court. In my opinion, it is too early to tell whether this trend is promising or disastrous. What is certain, however, is that it seems to have the power to transform the power dynamics in a traditional humanitarian context, where the recipient of humanitarian aid is rarely isolated or extracted from its social context in order for the humanitarian actor to provide aid. What is more, the unequal power dynamics in this judicial context seems to further disempower the protection applicant. On the positive side, while the chances for the provision of humanitarian protection through this system might be low, as the textual analysis of the legal cases in the previous section has shown – since twenty-five out of thirty cases were turned down by the Migration Court in Stockholm in 2014 and 2018 –, it is important to remember that this emerging humanitarian actor might seem to be capable of offering some/limited remedy against administrative injustices.

As far as the discursive repertoire of effortfulness is concerned, Stephen Gibson’s (2011) argument (and criticism) about the development of “a conception of rights specifically contingent upon displaying certain psychological characteristics” (p. 465) when terms such as “effort” are used to formulate judgments concerning the merits of welfare claimants, could help us to shed light on the role that the protection applicant might play in this context of provision of humanitarian protection in court. The paper’s theoretical framework was designed to focus on the intrapsychic processes of the development of the actors’ motivational values in a social psychological analysis of legal reasoning. This was a deliberate choice in an effort to study the display of certain psychological characteristics at the individual level, i.e. at the level of the decision-maker, the Court’s members in the present study. The initial intention to study the content of the oral hearings before the Migration Court in Stockholm has never materialised into reality because of the syntactical structure of the legal cases and the conscious presentation choices of the writer(s) of these texts. The lack of a complete transcription of the oral hearings has modified the initial research design, but it has also allowed the reorientation of the research aims towards the discussion of the discursive interaction between the Court (judge, lay persons etc.) and the humanitarian protection
applicant in such a way that the efforts of the protection applicant to display certain psychological characteristics are highlighted. To be precise, the textual analysis in the previous section has revealed how the protection applicants adjust their discursive and defence strategy in such a way that they display certain psychological characteristics, such as their willingness and readiness to adjust to the Swedish culture, or their conscious choice to adopt some dominant cultural characteristics of the host society, or even their effort to portray themselves as worthy of humanitarian protection through their discussion of their past experiences as life changing events that have had a significant effect on the course of their life. In other words, the applicants focus on some discursive practices rather than others, such as the construction of a new religious or sexual identity that could be understood as more relevant to the national(ist), political and social context of their host society, or their willingness to revisit the circumstances that led to their psychic traumatisation in an effort to display certain psychological characteristics, such as that of resilience or incapacity to relive past experiences, might (might…) indicate the applicants’ willing display of their psychological readiness to play the role of the recipient of humanitarian protection.

This tentative conclusion, however, is dependent on the corroboration or the refutation of the implicit hypothesis in the previous paragraph, at the same time that it is also a comment about the weakness of the whole argument of discursive social psychology. Or, in the words of Augoustinos and Goodman (2011), “[d]iscursive psychological approaches are […] typically criticized as lacking scientific objectivity and relying heavily on the interpretation of analysts” (p. 16).
F. Conclusion

The research focus of this paper was the Migration Court in Stockholm, a state institution that was supposed to express “self-oriented” values. As the research purpose of this paper was not to discuss critically national, state or popular stereotypes about Sweden as a “humanitarian superpower”, but to critically discuss how a government institution, the Migration Court in Stockholm, interprets the law that reflects value choices and value priorities, this research has shown that a state institution is not necessarily an egoistic institution serving exclusively the state’s national interests. Rather, this research explored how the deployment of the interpretative repertoire of “effortfulness” and how discourse about humanitarian protection and humanitarian values has been put together at the Migration Court in Stockholm, and what is gained by this construction. The main research finding of this study is that states can serve humanitarian purposes and express humanitarian values, such as those of universalism and benevolence, depending on their value priorities and their value system.

Finally, the emergence of the judicial system, the Migration Court in Stockholm in the present paper, as a new type of humanitarian actor should be understood as a shift in paradigms. This change, however, offers both possibilities and poses new challenges. On the one hand, the Migration Court in Stockholm constructs itself as a humanitarian actor that refers to an individualistic understanding of “human nature”. On the other hand, the role that the protection applicant might play in this context of provision of humanitarian protection in court could be summarised in the analysis of the variety of functions that the repertoire of “effortfulness” performs in discursive practice; in this respect, the humanitarian protection applicant who displays “effort” to mobilise the discursive repertoire of “effortfulness”, that locates the humanitarian values at the level of the individual, becomes an actor displaying certain desirable psychological characteristics. While this analysis can help us understand what is gained by the construction of such a discourse about humanitarian protection and humanitarian values at the intrapsychic level, it is silent on the question of the different types of internal motivations involved in altruism and helping.
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UM 9313-13 (2013-01-23)
UM 8078-13 (2013-01-28)
UM 8257-13 (2014-01-28)
UM 8276-13 (2014-01-29)
UM 8909-13 (2014-01-30)
UM 6394-13/6517-13 (2014-02-19)
UM 9248-13 (2014-02-20)
UM 7874-13 (2014-02-25)
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