

Language analysis and contra-expertise in the Dutch asylum procedure

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Language analysis is used by the Dutch Immigration Service (IND), in case asylum seekers cannot produce valid identification documents, and, in addition, the IND sees reason to doubt the alleged origin of the asylum seeker. Language analysis is then carried out to determine the areal or ethnic origin of the asylum seeker, through an evaluation of the language profile and accent of the asylum seeker. To this end, an interview with the asylum seeker is recorded and analysed. The results of this evaluation are laid down in a document entitled Language Analysis Report (LAR). The IND has a specialised unit, (BLT) that carries out these analyses. BLT is short for Bureau Land en Taal (in English: Office for Country Information and Language Analysis).

In the Dutch asylum procedure, asylum seekers are given the opportunity to hand in a contra-expertise by an independent expert on the language. To this end, the asylum seeker can buy a copy of the recorded language analysis interview and arrange for an assessment by an independent expert.

De Taalstudio is a small independent organisation that provides language analysis reports and contra-expertise, often upon request from the legal representatives of asylum seekers and sometimes also from the Dutch courts. De Taalstudio works with independent, external experts. The experts analyse the language analysis interview, and produce a report stating the results of the analysis, as well as the experts' comments on the analysis produced by BLT.

The present paper is largely dedicated to a presentation of language analysis (or contra-expertise) as it is carried out by De Taalstudio. After that, I will describe the Dutch situation with respect to the use of language analysis, and raise some general issues about language analysis, its methods and its results.

¹ De Taalstudio is a Dutch small-sized business, founded in 2003 by Maaïke Verrips, a Dutch linguist with a PhD in linguistics from the University of Amsterdam. De Taalstudio's mission is to develop and produce products and services with a strong linguistic component (www.taalstudio.nl). Since 2003, language analysis is a major activity of the company. The present paper is based on earlier oral and written presentations of the working method of De Taalstudio, mostly Verrips (2008), and De Taalstudio (2008).

1. The language experts

De Taalstudio recruits experts from all over the world. They work for De Taalstudio as freelance consultants, on the basis of assignments. De Taalstudio works with a clear expert's profile. It is based on the "Guidelines for the Use of Language Analysis" (LNOG, 2004), as well as on common elements in standards for experts, as laid out in various professional codes of conduct.

Guideline #3 of the aforementioned Guidelines, which describes the requirements for experts, reads as follows

3) LANGUAGE ANALYSIS MUST BE DONE BY QUALIFIED LINGUISTS

Judgements about the relationship between language and regional identity should be made only by qualified linguists with recognized and up-to-date expertise, both in linguistics and in the language in question, including how this language differs from neighbouring language varieties. This expertise can be evidenced by holding of higher degrees in linguistics, peer reviewed publications, and membership of professional associations. Expertise is also evident from reports, which should use professional linguistic analysis, such as IPA (International Phonetic Association) transcription and other standard technical tools and terms, and which should provide broad coverage of background issues, citation of relevant academic publications, and appropriate caution with respect to conclusions reached.

In addition to these criteria, experts working for De Taalstudio are required to form a neutral, objective judgement, and to be trustworthy and discrete.

To date, De Taalstudio has contracted around 70 experts for about 40 regions. Some experts cover a variety of regions or languages, some have a highly specialised area of expertise. New experts are constantly sought, both to expand the number of languages and regions, and to enhance the possibilities for comparison and cross-checking between experts.

In general, the name of the experts is mentioned on the first page of the report, and a short description of the expert's professional background is included in the report. If the expert requests that he or she remains anonymous to the client, the name and affiliation of the expert are omitted, but a description of the expertise remains. This procedure is in accordance with the Guidelines, which state that 'linguists should provide specific evidence of professional training and expertise with the right to require that this information remain confidential.'

2. Method

The analysis of the applicant's language is, according to De Taalstudio's current procedures, based on an interview with the asylum seeker. Dutch case law limits the applicant's right to contra-expertise to a second analysis of the official language analysis recording. In other words, evidence from a different interview, for example by the contra-expert, is not accepted by the IND. The official recording consists of a special language analysis interview with the asylum seeker, carried out by an Immigration Officer, with the help of an interpreter. The total duration of the interview, on average, is 45 minutes. Since time is shared between the asylum seeker, the interpreter and the officer, the interviews mostly contain about 15 minutes speech by the asylum seeker. The interviews follow a protocol, and address various topics related to the asylum seeker's claimed area of origin, such as geography, religion, clothing habits,

food, etc.

The (contra-)expert receives the recorded interview as well as the Language Analysis Report produced by the IND. The (contra-)expert writes a report about the subject's language on the basis of the recording, while he/ she can listen to the recording as often as necessary. The (contra-)expert also comments on the conclusions and arguments in the original Language Analysis Report.

In some cases, the recording contains too little material for analysis. This may have a number of reasons, for example the applicant was not cooperative during the interview, or there was a serious communication problem with the interpreter. In some cases, the data elicitation is hampered by the fact that the asylum seeker is told to speak in a language that the interpreter does not speak and reverts to the language the interpreter does understand (De Graaf and van den Hazelkamp, 2006; Verrips, 2006). In such cases a supplementary recording of around 15 minutes may be produced by the applicant. This recording will then be analysed in addition to the official recording.

3. Reports

The reports written by the experts conform to a standard developed and maintained by De Taalstudio. This standard is based on independent standards for expert reports in the legal system², including the aforementioned Guidelines for the Use of Language Analysis (LNOG, 2004). The standard defines criteria concerning the linguistic content of the analysis, the consideration of relevant background issues, the use of linguistic terminology and notation, the depth of argumentation, and the objective presentation of the findings. The standard format and the criteria help readers of these reports to evaluate the evidence provided. They also help the expert and the Taalstudio staff to compare the results in different reports and to maintain a high level of quality for each report.

Contra-expertise reports produced by De Taalstudio contain the following sections:

- 1. Qualification and expertise of the expert;**
- 2. Language profile according to the applicant;**
- 3. Description of the language use of the applicant**
 - 3.1 Sociolinguistic situation in the region*
 - 3.2 Phonology*
 - 3.3 Lexical properties*
 - 3.4 Morphology*
 - 3.5 Syntax*
 - 3.6 Proficiency in language(s)/ dialect(s) used*
- 4. Cultural and geographical knowledge of the applicant**
- 5. Data**
 - 5.1 Languages*
 - 5.2 Data elicitation*
- 6. Conclusion**
- 7. The previous Language Analysis Report(s)**
 - 7.1 Specifics of the Language Analysis Report(s)*
 - 7.2 Evaluation of the Language Analysis Report(s)*

² For an example of such a standard, see the Code of Conduct of ENFSI, on <http://www.enfsi.eu/page.php?uid=43>.

Notably, the contra-expert's analysis of the recording is reported separately from his/her assessment of the Language Analysis Report produced by the IND. This helps the contra-experts to formulate their own evaluation of the applicant's language, rather than focus on a reaction to the previous Language Analysis Report. Also, it makes the contra-expertise clearer for the reader.

The first page of the report contains the case number, the name and professional affiliation of the expert, the origin as stated by the applicant, the origin according to the expert, and the degree of certainty that the expert attaches to his opinion. Since the relation between the way a person speaks and his origin is complex, it is often not possible to reach unambiguous conclusions by means of language analysis.

Experts working for De Taalstudio are not required to choose between a predetermined set of possible conclusions. They can phrase their conclusions in any way they like, as long as the conclusion is clear, and supported by the arguments presented in the report. The experts are thus free to express their degree of certainty in words. In accordance with the Guidelines (specifically #4), De Taalstudio does not allow experts to express their certainty in quantitative terms, such as "I am 70 % percent certain that X originates from Y."

4. De Taalstudio staff

De Taalstudio staff consists of a small team of linguists (educated to the level of MA), one parttime legal advisor, administrative personnel and one managing director. Each linguist is responsible for certain linguistic and/ or geographical regions. It is the task of the linguists to select and train experts, to make them aware of the task at hand, and to provide the necessary information to them for the analysis of the cases they work on. In addition, the staff member proofreads the reports, and supports the linguists in reporting their findings in a way that fits the purpose of an expert opinion in the asylum procedure. The staff member thus ensures that the quality standards of De Taalstudio are met in each report. In addition, staff members are responsible for the decision whether an individual case can be accepted for language analysis (see below) and for assigning each case to the expert with the right profile. The legal advisor monitors developments in case law that relate to language analysis.

5. Advisory Board

A board of independent advisors assists De Taalstudio. It consists of three linguists, and two immigration lawyers. The Board meets on a regular basis. Individual Board members also advise De Taalstudio in between board meetings on specific issues.

6. Procedure for contra-expertise

As is evident from the Guidelines, for a careful and to the point assessment, it is crucial that relevant background information about the applicant is provided to the expert. For example, if an asylum seeker claims that he is from Sudan, and a language analysis is requested to assess the veracity of his claimed origin, this can only be done on the basis of more detailed information about his origin and history. In what part of Sudan was this person raised? Does he have a university education or did he live as a farmer in a rural area? Did he live in a refugee camp for an extended period? What ethnic group(s) did his parents belong to? Such background information is important for matching the right experts to the

right cases, and also for the expert's evaluation of whether the language profile matches the claimed origin of the applicant. It is one of the tasks of the staff members at De Taalstudio to provide the experts with the relevant background information. De Taalstudio follows certain procedures to guarantee that all the necessary information is available to the expert and that the case is presented to the expert with the right profile to assess the case. The procedure is as follows.

A typical case for contra-expertise goes through two phases. In the first phase the client (usually the applicant's legal representative) sends a Language Analysis Report produced by the IND to De Taalstudio, as well as background information about the asylum seeker and an outline of the question about origin that needs to be answered. At the end of the first phase, the client receives a *General Assessment* of the case, consisting of two parts: a *Proposal* for the contra-expertise and a *Case Analysis*, which is an assessment of the previous Language Analysis Report in terms of the *Guidelines*.

The *Proposal* describes whether language analysis may or may not contribute to answering the question that was asked by the client. It states whether De Taalstudio can accept the case for language analysis, and also which language or languages will be involved in the analysis. If there is a possibility for analysis by a Taalstudio expert, the *Proposal* also states the profile of the expert.

In order to obtain the relevant background information about the speaker De Taalstudio has developed a questionnaire that can be downloaded from the company's website. The questionnaire contains questions about the course of life of the applicant: What is his background? What languages does he speak? Does he still speak these languages on a daily basis? The questionnaire also has questions about the applicant's education and profession, and about other factors known to influence people's language profile.

On the basis of the background information, as well as consultation of experts and public sources, De Taalstudio also provides the client with a *Case Analysis* at the end of the first phase. The *Case Analysis* presents the preliminary findings, such as: What is the overall quality of the Language Analysis Report produced by the IND? Has the first analyst given due consideration to the relevant factors and background information? Does the person speak a language that is spoken widely in the claimed region of origin?

The *Proposal* and the *Case Analysis* are sent to the client. The client then decides whether he/she wants to accept the proposal, in which case the second phase of the contra-expertise is ordered. In the second phase, the case is assigned to a linguistic expert, who receives the relevant information about the applicant that was collected through the questionnaire. The expert produces a report as described above. It may happen that there is more than one possibility for the second phase, for example a choice between two different languages. In those cases, the client decides which option is preferred for the second phase. The *Proposal* may also state that a language analysis is not possible, or that, according to the standards of De Taalstudio, it is not a valid way to investigate the issue at hand³. In those cases, the contra-expertise usually ends after phase one.

³ An example of such a case would be when the asylum seeker's representative asks for a language analysis to show whether the applicant has a certain ethnic origin, whereas there are no linguistic features particular to the language or dialect spoken by that ethnic group.

7. Legal aspects

Language analysis is regarded by the Dutch Immigration Service (IND) as a reliable and scientifically valid tool to assess the credibility of an asylum seeker's claimed origin (Pinxter, 2008). Dutch case law supports this point of view, and also it has been established by the Council of State (the highest administrative court) that the IND may rely on the results laid down in Language Analysis Reports produced by the IND. Nevertheless, the immigration litigation is such that asylum seekers are given an opportunity to react to the Language Analysis Report by means of a contra-expertise from an independent expert. In principle, the IND is free to ignore evidence in a contra-expert's report. If the IND wishes to do this, it should provide arguments for ignoring the evidence. For example, if it can be shown that a contra-expert does not possess the expertise to assess the case, or if the contra-expertise does not provide 'concrete evidence to doubt the results of the Language Analysis Report', the conclusions of the contra-expertise may be put aside.

There are no official figures available on the number of cases in which language analysis plays a role in the decision, nor on how many contra-expertise reports are submitted to the IND, nor on what percentage of decisions is reversed on the basis of the results of a contra-expertise.

The Council of State confirmed that BLT is an expert organization in 2003, thus upholding the use of these analyses in the Dutch asylum procedures. Legal representatives of the IND have complained in appeal courts that the expertise, integrity and objectivity of contra-experts who work through De Taalstudio should be questioned, but these complaints have never been upheld by the court. Instead, in 2007, the Council of State confirmed that De Taalstudio is an expert organisation and that there is no reason to doubt the independence of the judgement by experts of de Taalstudio.

8. International perspective

Language analysis is an integrated part of the Dutch asylum procedure. It also has a place in other legal procedures in the Netherlands, and in asylum procedures elsewhere in Europe. As stated, the procedure for language analysis and contra-expertise employed by De Taalstudio is based on the Guidelines for Language Analysis. The procedure of De Taalstudio is very similar to the procedure employed by Lingua, the specialised unit for analyses of origin in the Swiss Migration Board (Lingua, 2008; Meyer, 2006), including the fact that reports are produced by qualified linguists, who are academically trained to analyse the language at hand, and who may remain anonymous as long as they can provide evidence of their qualifications.

The same holds in the German asylum procedure. The German Bundesamt für Migration und Flüchtlinge (BAMF) orders reports from professional linguists. In that respect the procedure at BAMF is also consistent with the Guidelines. Beyond that, very little information is publicly available about the standards that BAMF sets for the selection of experts or for the language analysis reports (Bundesamt für Migration und Flüchtlinge, 2008).

Ever since the beginnings of the development of Language Analysis, there has been an alternative working method around. This method is still in use by other practitioners (a.o., the Dutch BLT). Since this is not the procedure employed by de Taalstudio, I will not dwell on this for too long here. In this other procedure the analysis is carried out by a (native) speaker, called a language analyst, rather than by a professional linguist.

Two companies in Sweden and one government unit (the Dutch BLT) work in this way. The language analyst is usually - but not necessarily - a *native* speaker of the language analysed. This should not be taken to mean that he is a speaker of the local dialects of the applicant. One analyst may cover dialects from all over southern Somalia, another may deal with Swahili from Congo, Burundi, Somalia and Tanzania. The analysts are supervised and their reports are signed by a linguist, who is a staff member of the agency. The academic backgrounds of the supervising linguists vary, ranging from a BA in phonetics to a PhD in Language and Literature. The majority of the supervising linguists don't have an academic degree in the language concerned (BLT, 2007; IND, 2008; Sprakab, 2008; Verified, 2008). The results produced by the agencies working in this approach have been criticised heavily in the forensic linguistic literature (Eades et al, 2003, Eades and Arends, 2004). The critique also led to the development and publication of the Guidelines in 2004.

More recently, some academic debate has started between the two approaches, in particular about the role of native speakers and linguists in the analysis (Cambier-Langeveld and Samson, 2007; Fraser, to appear; Patrick, 2008).

9. The Dutch situation: comparing results

The situation in the Netherlands is rather unique in a number of ways, and certainly worth studying. Firstly, the fact that De Taalstudio is located in the Netherlands has had a major effect on the extent to which asylum seekers in the Netherlands actually make use of their right to obtain a contra-expertise. There is thus a large number of cases available for which two independent analyses are available about the same data. This is in itself an interesting database for research. A comparison of the results in Dutch cases is also interesting for those who are interested in comparing the results from the two working methods described above.

On the basis of five years of contra-expertise, two things have become quite clear: In some cases the conclusions of both reports are similar, but there are also frequent, systematic and noticeable differences. The percentage of agreement between experts varies from one region to another. A systematic study of the agreements and disagreements has not been carried out to date.

There are generally striking differences in the way findings and arguments are presented, and in the amount of detail provided. Systematic differences relate also to the formulation of conclusions. In many cases where the language analyst concludes that 'the applicant *definitely* cannot be traced to X', the linguistic expert (for readability, I will refer to the latter simply as linguists) appear more likely to come to a less definitive conclusion⁴.

I end this presentation with two examples of how language analysts and linguists can come to a considerably different conclusion on the same case. It is worth noting that in many of such cases, both the linguist and the language analyst are native speakers of the language concerned. Both examples illustrate that the lack of independently agreed criteria for interpreting the linguistic data is a major concern.

⁴ Note that, due to the fact that De Taalstudio is usually in the role of contra-expert, this is a typical case in our caseload. M. Verrips, 2009, Language analysis and contra-expertise in the Dutch asylum procedure. Page 7
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What language profile is expected?

There can be significant disagreement about the standard of comparison, i.e. about the linguistic profile that the applicant is supposed to conform to (De Rooij, 2007; Ngom, 2008). Claimants from Burundi with Swahili as their dominant language are a case in point. Language analysts and linguists appear to have different ideas about the linguistic characteristics of Burundi Swahili and the variation within Burundi Swahili. Systematic, scientific descriptions of varieties of Swahili in Burundi are not available. There is some agreement between language analysts and linguists that some non-standard phenomena in the phonological, morphological and syntactic domain are typical of Burundian Swahili. Still, in many cases the language analyst and the linguist come to opposite conclusions on the basis of the same recording. The language analyst may place the applicant's Swahili in Tanzania, whereas the linguist finds that the Burundian features prevail.

The use of language analysis for these Burundian applicants is not helped by the fact that language analysts and linguists also turn out to have different opinions about the likelihood that a person from Burundi speaks a little Kirundi or no Kirundi at all. For example, the language analyst finds the applicant's knowledge of Kirundi insufficient, whereas the linguist finds it sufficient.

Dialect mixing

Another issue that gives rise to differences between language analysts and linguists, is the evaluation of dialect mixing phenomena. A hypothetical Somali speaker – who claims to be from unsafe southern Somalia - uses both northern and southern Somali features in his Somali speech⁵. The language analyst of BLT judges this as 'non-authentic' south Somali speech: an evaluation encountered commonly in Language Analysis Reports is 'the applicant mixes some southern Somali elements in his speech, which is underlyingly clearly North Somali'.

The linguist describes the same linguistic data as containing mixed dialect features, but he does not consider this unnatural. Rather, according to the linguist this is a normal pattern for a person from the region the applicant claims to be from, where large groups of Somalis from various parts of the country live together. The linguist sees no reason to conclude that the applicant is using a variety other than his own, indeed the variety he speaks appears to belong in the claimed region of origin.

10. Conclusion

Language analysis is a fascinating field. It is considered a valuable tool for governments to assess the veracity of asylum seekers' claims, and for asylum seekers to present evidence about their origin that is otherwise hard to provide. The idea that the way people speak reveals information about their background is appealing and in general there is no reason to doubt that. However, the task of establishing the origin of a specific person on the basis of the language he uses is very complex. As a result, the reliability of language analyses can be undermined by many factors, including the lack of comprehensive descriptions, multilingualism, language attitudes, language acquisition and language loss.

It is fair to say that language analysis is a new field and its possibilities and limitations are as yet largely unknown. Until now very little attention has been paid to critical reflection on the field, be it from inside or outside. Independent standards and criteria for an objective linguistic assessment of claims to

⁵ For the sake of clarity, I grossly simplify the dialect situation in Somalia.

origin are as yet not available. A lot of work remains to be done to validate methods and to define the standards.

Linguists producing language analysis reports and the people using them in deciding about asylum seeker's applications should remain an acute awareness of the current limitations of the scientific basis for this work. It is the duty of experts working in this domain to contribute to the development of standards. It is also their duty to remind users of language analysis of the pitfalls and limitations. I hope that this paper contributes to that awareness as well as to the development of quality standards for language analysis.

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