Heterogeneous judicial models for the asylum claims at national level: Which consequences for the Common European Asylum System?

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One of the main objectives of the Common European Asylum System has been to ensure uniformity of decisions across the EU on who qualifies for international protection. Unlike any other policy field in EU law, asylum is characterised by a wide variety of judicial configurations of adjudication. Thus, the first aim of the paper is to investigate the similarities and differences between the 27 domestic systems of judicial adjudication in asylum. This paper argues that they vary on the basis of the following criteria: the appeal instance; the jurisdiction; the territorial organizational structure; the composition of courts; the appointment, specialization and training of judges; the extent of judicial review power and remedies; the legal effects of the decision; the extent of legal aid. On the basis of the selected criteria we will cluster the 27 judicial systems into different models. Then, considering some reflections on how models of judicial organization could impact on the functioning of the courts and judicial behaviour, the paper investigates how this wide heterogeneity impacts on the construction of a truly Common European Asylum System. In particular, it seeks to understand how a judicial model can influence final results in asylum adjudication. Thus, we will select some dimensions of the judicial heterogeneity based on relevance and availability of public data and investigate how these dimensions of judicial constellations impact on the results in asylum appeals for certain nationalities.

Keywords: Asylum adjudication, judicial systems, CEAS, EU
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The co-constitution of the normativity of protection in Nordic asylum appeal systems

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The organization of asylum appeals represents political and regulatory choices of how to enact decision-making under situations plagued by radical uncertainty. The quasi-judicial or judicial institutional set-up reveals regulatory compromises and constructs a particular conception of asylum expertise that merges the political, legal and factual. This paper seeks to enhance socio-legal attention to the institutional level of asylum appeals, by 1) conducting a comparative case study of the Nordic appellate systems in the historical and current iterations and 2) outlining the politics of legal knowledge that constitute the normativity of international protection.

The organizational aspects of asylum appeals are understudied. Legal scholars mostly focus on legal sources, whereas social sciences provide rich accounts of the practices of 'street level bureaucrats.' Following the turn to practice in IR theory and more specifically the turn to pragmatism, this paper will focus on the minutiae that makes up the big picture of refugee politics within axiological contexts. We take as our object the appellate structures in Denmark, Sweden and Norway, and draw on official documents, semi-structured interviews, and a new database of asylum cases in the Nordic countries.

We seek to show how the special and globalized nature of asylum law is given meaning through interactions between political and legal knowledge. In the contextualization of the different Nordic asylum appeal models, we highlight the role of politicization, the Scandinavian legal culture and the relationship to international law. We define this as the particular and co-constituted normativity in refugee asylum appeals context.

Keywords: Socio-legal studies, practice theory, Nordic asylum appeals, expert knowledge, legal culture, politicization, Denmark, Sweden, Norway

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**Exploring inconsistencies in refugee status determination in Europe: Operational perspectives on asylum appeal adjudication in practice**

**ASYFAIR**

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Most scholarship and policy discourse concerning inconsistencies in refugee status determination in the EU focuses either on differences in doctrinal legal rules, or differences at the level of the individual decisions and practices of judges and caseworkers. Drawing on a detailed ethnography of asylum adjudication in seven member states that involved observing over 850 asylum appeals in person, this presentation points towards the importance of systemic factors that occupy a meso-level between these two extremes. A close analysis of our data reveals that there are significant within and between-country differences in the format, facilitation and placement of asylum appeal processes across the EU, with two consequences. First it is clear that in order to achieve meaningful consistency in asylum adjudication in the EU a much deeper set of factors would need to be standardised than have currently featured in efforts towards harmonization. Doing so may very well be both undesirable and practically impossible due to the political contentiousness of the exercise. Second our work reveals how important it is to conceive of the distinction between procedure and practice not as a ‘gap’ but as a grey zone of implementation that exceeds the proscriptions of law and policy.

**Keywords:** Asylum appeals, discretion, ethnography, European Union, CEAS

**ASYFAIR** is a multi-disciplinary and multi-methodology study, conducting research in a variety of EU countries, such as the UK, France, Germany, Austria, Belgium, Italy and Greece. The study examines asylum courts in different European countries to see whether processes of asylum adjudication are the same across Europe. The project is hosted by University of Exeter and has received funding from the European Research Council (ERC).

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