



# ASY FAIR

*Conference 2021*

**Adjudicating Refugee Claims in Practice:**  
Advocacy and Experience at Asylum Court Appeals

**30 June - 2 July 2021, Online**

## Conference Programme

Abstracts, Speakers' Biographies and Bibliography

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## Conference Theme

Immigration and asylum judges are tasked with the highly challenging job of deciding an asylum claim in an imperfect informational environment where evidence, expertise, testimonies and even the ability to reason intuitively about country of origin conditions and particular cases can be highly constrained. If this was not challenging enough, asylum appeal caseloads increased markedly across Europe in 2017 and 2018, putting strain on the capacities of Europe's judiciary to deal with the challenges of adjudication effectively. The policy context is continuously evolving, the linguistic challenges are manifold, the political environment is often problematic, and the stakes are high in terms of the personal safety of refugees and the integrity of European countries' claims to uphold their international obligations to people forced to migrate to find safety.

The conference brings together scholars and practitioners to discuss the challenges of adjudicating asylum appeals, access to legal remedies, and other fundamental topics arising in refugee status determination.

The conference covers themes such as:

- Credibility in refugee status determination and asylum adjudication
- Legal representation and advice
- Refugee status determination and asylum adjudication in various settings, such as in the UK and Italy, as well as in Europe and elsewhere
- Vulnerability in refugee status determination and asylum adjudication
- Case law, evidence and country of origin information in refugee status determination and asylum adjudication
- Fairness and access to justice

This programme contains an [overview](#) of all events, as well as [abstracts](#) of presentations and keynotes, speakers' short [biographies](#), as well as a [bibliography](#) of key references by participants.

# Welcome by the ASYFAIR Team

## The ASYFAIR Research Project

ASYFAIR is an interdisciplinary research project that brings insights from human geography, anthropology and socio-legal studies to bear on asylum appeals. It aims:

- To understand the practical, grounded challenges facing asylum appeals as an effective form of protection.
- To examine the roles and experiences of various actors involved in appeals, including appellants.
- To understand the different ways law are interpreted, implemented and negotiated on the ground.
- To identify and share realistic ideas for improving access, engagement and fairness in appeals

We are a team of researchers conducting observations of asylum appeal hearings as well as interviews with asylum appellants, legal representatives and judges. ASYFAIR aims to generate insights and ideas about how to make sure asylum processes are as fair and effective as they can be during a crucial period of consolidation of the Common European Asylum System (CEAS) and border controls in Europe.

## The ASYFAIR Research Team and Conference Organisers



Prof. Nick Gill (PI ASYFAIR)



Dr. Nicole Hoellerer (ASYFAIR Lead Researcher)

**Prof. Nick Gill** is a political geographer, teaching Human Geography at the University of Exeter. He has conducted ground-breaking research on asylum adjudication in the UK. His previous research and methodology forms the foundation of ASYFAIR.

**Dr. Hoellerer** is an anthropologist, with extensive research experience in migration and refugee studies. She is the lead researcher for the ASYFAIR research project, and is responsible for research conducted in Germany and Austria, as well as data analysis.

Over the course of the project, the ASYFAIR team also comprised of:

**Dr. Daniel Fisher** is a human geographer. His main responsibility in the ASYFAIR project was to analyse UK data, and publish on asylum adjudication. He has also conducted research for ASYFAIR in Belgium and the UK. Since leaving ASYFAIR, Daniel was working as a social scientist at The James Hutton

Institute in Aberdeen, and is currently a Research Associate at the University of Glasgow (School of Education)

**Dr. Jessica Hambly** has a background in law. As a French speaker, she was responsible for ASYFAIR research conducted at the CNDA in France, and research interviews in Greece. Since leaving ASYFAIR, Jessica is working as a Postdoctoral Fellow at the College of Law at the Australian National University (ANU).

**Dr. Lorenzo Vianelli** holds a PhD in Politics and International Studies. In the ASYFAIR research project, he was responsible for research in Italy, conducting interviews with asylum seekers and key stakeholders in asylum adjudication. Since leaving ASYFAIR Lorenzo is working as a Postdoctoral Researcher at the Department of Geography and Spatial Planning of the University of Luxembourg. He is the principal investigator of the CONDISOBS project, funded by a H2020 Marie Skłodowska-Curie Individual Fellowship.

### Acknowledgements

We thank the research team of Prof. Gill's previous UK-based project, funded by the ESRC: Jennifer Allsopp, Andrew Burridge, Melanie Griffiths, Natalia Paszkiewicz and Rebecca Rotter for their continued support.

We also appreciate the support and advice of the University of Exeter Event's Team and the Pro Vice Chancellor, Janice Kay, as well as Dr. Gill's PhD students Jo Hynes and Laura Scheinert for providing technical assistance during the event. We also thanks Yamen Albadin for his assistance with graphic design and technical queries, as well as Warwick Event Services for technical support.

*The ASYFAIR project is hosted by University of Exeter and has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme under grant agreement No. StG-2015\_677917*



Technical assistance provided by [Warwick Event Services](#)



## Conference Programme Overview

ALL TIMES IN BRITISH SUMMER TIME (BST).

Click on the session title to go to the abstracts (or see table of contents)

\* [REC] – Presentation via a pre-recorded video

### Day 1 – Wednesday, 30 June 2021

9:30 – 10:15      **Opening & Welcome by the ASYFAIR team**

#### SESSION 1

10:30 - 12:15      [1A - International Experiences of Refugee Status Determination](#)

Chair: John R Campbell

- Legal literacy and the refugee asylum experience: Developed vis-a-vis developing countries - *Annie Margaret Ihoreere Wagana*
- South Africa has no camps: The attitude of judges in refugee claims adjudications concerning the policy of encampment in other Southern African states - *Cristiano d'Orsi*
- BANGLASTORIES: An introduction to the Bangladeshi community in Palermo through their legal experience of the asylum application - *Valentina Grillo*

[1B - Credibility I: Credibility Assessments and Discretion](#)

Chair: Sule Tomkinson

- Spaces of discretion in asylum adjudication: An insight into Italian tribunals specialised in asylum - *Alice Lacchei*
- Interviewing asylum-seekers in the courtroom: The experience of a French judge in light of scholarly insights - *Fabrice Langrognet*
- The fiction of credibility assessments: How poor interpretation and transcription undermine adjudication procedures in Italy - *Lorenzo Vianelli*

12:15 - 13:15      *Lunch break*

## SESSION 2

### 13:15 - 15:00 [2A - Legal Representation, Legal Aid and Information](#)

Chair: Jo Hynes

- Evidence over legal argument: The advantages of the pro bono refugee law clinic model - *Susan Reardon-Smith, Isabela Rodrigues Nahssen, Ram Sabaratnam and Adithi Shenava*
- Legal representation in 2nd instance asylum cases before the Greek Appeals Committees [REC] - *Maria Basdeki, and Martha Chatziantoniou*
- Are asylum outcomes really luck of the draw? Reconsidering the relationship between access to legal advice and structural injustice - *Emma Marshall*

### [2B - Credibility II: Religious Conversion Asylum Cases](#)

Chair: Nicole Hoellerer

- Finding the true convert: Tensions between church and state in asylum appeal hearings based on conversion to Christianity - *Lena Rose*
- Sur place religious conversion in the asylum process: What kind of view on religion guides the Finnish state official's credibility assessment of conversion? - *Ilona Silvola*
- Fragmented truths in narratives of converted Iranians in a diaspora [REC]- *Zahra Abedinezhad-Mehrabadi*

### [2C - The Challenges of Asylum Adjudication in Italy: Perspectives from the Field](#)

Chair: Lorenzo Vianelli (University of Luxembourg)

Discussant: Barbara Sorgoni (University of Turin, Italy)

- The international protection before the judge: A study on the decisions of the Tribunal of Bologna - *Alessandro Fiorini*
- Adjudicating refugee cases in Italy: Insights from a judge - *Matilde Betti*
- The asylum waltz: Private feelings and public statements - *Maurizio Veglio*

### 15:15 - 17:00 [Keynote 1: Prof. Nick Gill – ‘Inside Europe’s Asylum Appeals’](#)

### SESSION 3

#### 09:30 - 11:15 [3A - Vulnerability I: Vulnerability in Refugee Status Determination](#)

Chair: Ben Hudson

- The burden of vulnerability: Legal and social perspectives on asylum claims submitted in Italy - *Dany Carnassale*
- Asylum seekers in disused military barracks: How the UK's first refugee camps harm residents' health - *Jennifer Blair, Cornelius Katona and Yusuf Ciftci*
- Examining policies and priorities of the Indonesian government in fulfilling the rights of refugees amid the COVID-19 pandemic [REC] - *Desi Yunitasari and Devi Yusvitasari*

#### [3B - Asylum in Europe and the Common European Asylum System \(CEAS\)](#)

Chair: Ana Beduschi (University of Exeter, UK)

- Heterogeneous judicial models for the asylum claims at national level: Which consequences for the Common European Asylum System? - *Cristina Dallara, Alice Lacchei and Madalina Moraru*
- The co-constitution of the normativity of protection in Nordic asylum appeal systems - *William Hamilton Byrne and Sarah Scott Ford*
- Exploring inconsistencies in refugee status determination in Europe: Operational perspectives on asylum appeal adjudication in practice – *ASYFAIR*

### SESSION 4

#### 11:30 - 13:15 [4A - Vulnerability II: Children in Refugee Status Determination](#)

Chair: Fabrice Langrognet

- Effective participation of children in asylum procedures: Asylum interviews with school-aged children seeking asylum in the Netherlands - *Stephanie Rap*
- Separated children and the operationalisation of credibility assessment in appeal decision-making in the Republic of Ireland - *Diego Castillo Goncalves*
- Children and their rights in appellate asylum procedures in Belgium: Methodological challenges in legal-ethnographic research - *Sara Lembrechts*



#### **4B - Asylum Determination and Adjudication in the UK**

Chair: Susan Reardon-Smith

- Legal silo's and indifference: The wrongful prosecution of refugees and asylum seekers in the UK - *John R. Campbell*
- Conducting disembodied online ethnographies of disembodied legal processes: Loitering with (research) intent in digital spaces - *Jo Hynes*
- Imaginings of the other: Home Office assertions of culture and their implications for Kurdish asylum seekers - *Kaveh Ghobadi*
- Cooperation and kindness in the immigration and asylum chamber - *Susannah Paul*

#### **4C - Country of Origin Information (COI) in Refugee Status Determination**

Chair: Anthony Good

- Country of Origin Information: The essential foundation for fair decision-making - *Femke Vogelaar*
- "It's not what you know, it's how you use it": On the application of country of origin information in judicial refugee status determination decisions - *Valentin Feneberg and Laura Scheinert*
- Source assessment and the U.S. Department of State's annual human rights reports - *Stephanie Huber*

**13:15 - 14:15**    *Lunch break*

### **SESSION 5**

#### **14:15 - 16:00**    **5A - Vulnerability III: Gender Identity and Sexual Orientation in Refugee Status Determination**

Chair: Raawiyah Rifath

- Assessing asylum claims of trans and gender non-conforming claimants [REC] - *Mariza Avgeri*
- Invariably "discreet"? Refugee status determination in Germany and France and the intricacies of "discretion" reasoning - *Janna Wessels*
- Subjective judicial assessments of SOGI claims at German asylum courts – *Nicole Hoellerer*

#### **5B - Effects on Refugee Status Determination and Asylum Adjudication**

Chair: Rebecca Hamlin

- Asylum law, decision-making and adjudication to compare between Europe and Japan - *Yukari Ando*

- The Italian reform of the judicial system in the asylum procedure: Speeding up the application processes or weakening refugees' rights to defence? [REC] - *Francesca Di Blasi, Daniela Peruzzo and Cristiana Russo*
- An existing role, an emerging function? The complex process and consequences of interpreters' professionalization at the French National Court of Asylum' - *Maxime Maréchal*

**16:15 - 17:45** [Keynote 2: Prof. Ashley Terlouw – ‘The Dilemma of Discretion: Deciding by the Rules or by Heart in Asylum Cases?’](#)

## Day 3 – Friday, 2 July 2021

### SESSION 6

**09:30 - 11:15** [6A - Case Law and Evidence](#)

Chair: Nick Gill

- Analysis of problematic legal issues in Turkish case law on asylum- *Gamze Ovacik*
- The role of strategic litigation in international (quasi-) adjudicating bodies in addressing border violence in the Mediterranean [REC] - *Sara Traylor*
- Adjudicating asylum appeals: Internal flight alternative in Canada - *Sule Tomkinson*
- How do Belgian asylum judges take into account medico-legal documents supporting individual asylum requests: A case law analysis - *Marjan Claes*

[6B - Fairness and Access to Justice](#)

Chair: Livia Johannesson

- Access to justice: Should there be a limit? [REC] - *Alexandra Sideri*
- Access to justice for asylum seekers staying in Poland - *Maja Łysienia*
- Assessing cultures of practice in asylum decision-making: Towards an analysis of variations in refugee appeals decisions in Ireland - *Sasha Brown*

**11:30 - 13:30** [Roundtable](#)

Chair: Nick Gill

Participants: John Campbell, Cristiano D’Orsi, Tobias Eule, Livia Johannesson, Rebecca Hamlin, Anthony Good, Austin Kocher, Ashley Terlouw, Helena Wray

**13:35 - 14:00**    **Closing Remarks:** Prof. Nick Gill (PI ASYFAIR)

# Keynotes and Roundtable

## [Keynote 1: Nick Gill - 'Inside Europe's Asylum Appeals'](#)

**Wednesday, 30 June 2021, 15:15 – 17:00 (BST)**

**Prof Nick Gill (PI ASYFAIR, University of Exeter, UK)**

**Chair:** Nicole Hoellerer (University of Exeter, UK)

Thousands of people seeking refugee protection appeal their asylum decisions in Europe every year, but what does an asylum appeal actually involve, how are they experienced, and how do they vary across Europe? Drawing on extensive ethnographic work in seven European countries, this talk examines the social and institutional dynamics involved in asylum appeal processes on the ground. It raises concerns about the practical accessibility of refugee protection via asylum appeals, the superficiality of the process, and the degree of subjectivity involved. At the same time it also reflects on a range of practices that seemed to work, or that could work, to improve access, engagement and fairness throughout the process. In doing so the talk opens a series of questions about asylum appeals in Europe, including in relation to how different they are, how public they should be and what relationship they should share with the initial, governmental part of refugee status determination.

**Keywords:** Ethnography, Access, Engagement, Fairness

Nick Gill is a Professor of Human Geography at the University of Exeter, UK. He is a political geographer whose work focuses on issues of justice and injustice, especially in the context of migration, border control, mobility and its confiscation. His work is highly inter-disciplinary and he has published academic work in anthropology, economics, law, sociology and migration studies journals, as well as in his 'home' geographical ones. He uses multiple methodologies and employs interviews, ethnography, focus groups and quantitative analysis in his work. His current research project, ASYFAIR, examines access to justice in asylum determination systems in Europe.

### **Selected Publications:**

Gill N, Allsopp J, Burridge A, Fisher D, Griffiths M, Hambly J, Hynes J, Paszkiewicz N, Rotter R, Schmid-Scott A (2020) *Experiencing Asylum Appeals: 34 Ways to Improve Access to Justice at the First-tier Tribunal*. Exeter University and the Public Law Project [open access].

Gill N, Good A (eds) (2018) *Asylum Determination in Europe: Ethnographic Perspectives*. Palgrave Macmillan [open access].

Gill N, Conlon D, Moran D, Burrige A (2018) Carceral Circuitry: New Directions in Carceral Geography. *Progress in Human Geography*, 42, 183-204 [open access].

Gill N, Rotter R, Burrige A, Allsopp J (2017) The limits of procedural discretion: Unequal treatment and vulnerability in Britain's asylum appeals. *Social and Legal Studies*, 27(1), 49-78 [open access].

Burrige A and Gill N (2016) Conveyor-Belt Justice: Precarity, Access to Justice, and Uneven Geographies of Legal Aid in UK Asylum Appeals. *Antipode*, 49, 23-42 [open access].

## **[Keynote 2: Ashley Terlouw - 'The Dilemma of Discretion: Deciding by the rules or by heart in asylum cases?'](#)**

**Thursday, 1 July 2021, 16:15 – 17:45 (BST)**

**Prof. Ashley B. Terlouw** (Radboud University, Nijmegen, Netherlands)

**Chair:** Nick Gill (University of Exeter, UK)

In my speech I will deal with administrative discretion and the dilemma of dealing with this discretion in the asylum procedure. On the one hand the executive wants and needs to have administrative discretion. Discretion gives the executive freedom to make policy and to organize the work as they wish. On the other hand the same bureaucracies fear discretion. It makes them responsible, it causes work. They have to justify their choices.

To illustrate this dilemma I will use the Dutch situation in which the State Secretary of Justice and Safety struggles with her discretion. I will illustrate this by two examples:

In the first example discretion is welcomed by the State Secretary and used extensively. This concerns the way she deals with time limits in the asylum procedure. The second example concerns a situation in which discretion is seen as an unwelcome burden. This is the case when rejected asylum seekers who cannot be deported, root in the Netherlands and then claim that due to their specific situation they should be granted a residence permit.

In the end I hope to show that - although the dilemma of discretion seems to be a choice between equal and individual treatment - in fact both can be realized.

**Keywords:** Discretion, asylum adjudication, Netherlands

Ashley Terlouw is professor of Sociology of Law at Radboud University (Nijmegen, Netherlands). She is chair of one of the two research centres of the Law Faculty, the Research Centres for State and Law, and is responsible for the Institute of Sociology of Law and for the Centre of Migration Law. She is also the chair of the Meijers Committee (Standing Committee of Experts in International Migration, Refugee and Criminal Law), the chair of the journal Asiel en Migratierecht, and is responsible for the *Sectorplan on Conflict Resolution*, for which Radboud University collaborates with the universities of Leiden and Utrecht.

In the past, she has worked at the Office of the District Court of The Hague, and was the head of the Refugee Department at *Amnesty International Nederland*. She has also been a member of the *Dutch Committee on Equal Treatment*, and was a deputy judge at the District Court of Gelderland (Migration Chamber) from 2011 – 2016.

Ashley's main research topics are asylum, non-discrimination, and the working of judicial institutions, and she has published extensively on the administration of justice and migration law. She is supervising various PhD projects in e.g. strategic litigation in asylum cases, externalisation of EU asylum law, time pressure on migration law and criminal law judges, country of origin information in asylum procedures, and the treatment of Roma EU citizens.

**Relevant publications (in English):**

*(for a full list of Ashley's publications, see the Radboud Repository [here](#))*

A.B. Terlouw and A. Böcker (2019), 'Mayors' Discretion in Decisions about Rejected Asylum Seekers', in P.E. Minderhoud, S.A. Mantu and K.M. Zwaan (eds) (2019), *Caught In Between Borders: Citizens, Migrants and Humans. Liber Amicorum in honour of Prof. Dr. Elspeth Guild*. Tilburg: Wolf Legal Publishers, 291-302.

A.B. Terlouw (2016), 'Voluntary Departure of Irregular Migrants and the Exception of Public Order: The Case of Z. Zh. & IO v Staatssecretaris voor Veiligheid en Justitie, Case C-554/13, 11 June 2015', *European Journal of Migration and Law*, 18(1), 126-137.  
DOI: <https://doi.org/10.1163/15718166-12342093>

B. de Hart and A.B. Terlouw (2015), 'Born here: Revocation and the automatic loss of Dutch nationality in case of terrorist activities', in M. van den Brink, S. Burri and J. Goldschmidt (eds), *Equality and human rights: nothing but trouble? Liber amicorum Titia Loenen*. Utrecht: Netherlands Institute of Human Rights (SIM), 305-331.

B. Hubeau, A.B. Terlouw and M. Westerveld (2015), 'Access to Justice: Yesterday, Today, Tomorrow', *Recht der Werkelijkheid*, 36(3), 169-172.

J. Gerards and A.B. Terlouw (2013), 'Solutions for the European Court of Human Rights: The Amicus Curiae Project', in S. Flogaitis, T. Zwart and J. Fraser (eds) *The European Court of Human Rights and its Discontents*. Cheltenham: Edward Elgar Publishing, 158-182.  
DOI: <https://doi.org/10.4337/9781782546122.00022>

## Roundtable

**Friday, 2 July 2021, 11:30 – 13:30 (BST)**

**Chair:** Prof. Nick Gill (University of Exeter, UK)

The roundtable brings together scholars active in researching refugee status determination, including asylum appeals, to discuss challenges of global refugee status determination and asylum appeal adjudication, and reflect on the themes discussed during the conference.

Some themes at the roundtable may include:

- Reflections on themes discussed during the conference
- Theoretical or methodological insights to move conversations forward
- Looking ahead: The future(s) of global refugee status determination, asylum law and asylum adjudication (for both scholarship and practice)
- How can non-legal and socio-legal academics work most effectively with legal decision makers and system designers to have a real impact?
- In what ways can we stimulate Global North-South conversations to improve asylum adjudication?
- Global challenges of refugee status determination, asylum law and asylum adjudication

**John R Campbell**      *SOAS, UK*

Dr. John Campbell is a social anthropologist who undertook his doctoral research in West Africa before teaching urban sociology at the University of Dar es Salaam, Tanzania in the early 1980s. Subsequently he taught at Queen's University Belfast, Northern Ireland, at the University of Swansea, Wales and at the School of Oriental and African Studies (SOAS), London from where he retired in 2018. He has written two monographs about refugees and asylum, and third about the quality of justice in London's magistrate's courts. John has published widely and has also worked as a consultant in international development.

Campbell, John R. (2020) Examining Procedural Unfairness and Credibility Findings in the UK Asylum System. *Refugee Survey Quarterly*, 39 (1), 56-75. <https://doi.org/10.1093/rsq/hdz017>.

Campbell, John R. (2020) Why 'the best interests' of Unaccompanied Asylum-Seeking Children are Left at the Border: Structural Violence and British Asylum Policies. *Journal of Borderland Studies*. doi: 10.1080/08865655.2020.1824681.

Campbell, John R. (2017) *Bureaucracy, Law and Dystopia in the United Kingdom's Asylum System*. NY & Oxford: Routledge.

Campbell, John R. (2016) Asylum v sovereignty in the 21st century: How nation-state's breach international law to block access to asylum. *International Journal of Migration and Border Studies*, 2 (1), 24-39.

**Cristiano D'Orsi** *University of Johannesburg*

Dr Cristiano d'Orsi is a Senior Research Fellow and Lecturer at the South African Research Chair in International Law (SARCIL), Faculty of Law, University of Johannesburg. He holds a Laurea (BA (Hon) equivalent, International Relations, Università degli Studi di Perugia, Perugia); a Master's Degree (Diplomatic Studies, Italian Society for International Organization (SIOI), Rome); a two-year Diplôme d'Études Approfondies (Master of Advanced Studies equivalent, International Law, Graduate Institute for International and Development Studies, Geneva); and a Ph.D. in International Law from the same institution. His research and teaching interests mainly focus on the legal protection of asylum-seekers, refugees, migrants and IDPs in Africa, on African Human Rights Law, and, more broadly, on the development of Public International Law in Africa.

D'Orsi, Cristiano (2021) 'Migrant smuggling in Africa: challenges yet to be overcome', *African Journal of Legal Studies*, 13(4), 1-30.

D'Orsi, Cristiano (2018) 'To stay or to leave? The unsolved dilemma of the Eritrean asylum-seekers in Israel', *Harvard International Law Journal*, 59, 137-179.

D'Orsi, Cristiano (2015) *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa: The Peregrination of a Persecuted Human Being in Search of a Safe Haven* (Routledge) 344 pp.

D'Orsi, Cristiano (2008) 'Sub-Saharan Africa: is a new special regional refugee law regime emerging?', *Heidelberg Journal of International Law (ZaōRV)*, 68, 1057-1081.

**Tobias Eule** *University of Bern, Switzerland*

**Anthony Good** *University of Edinburgh, UK*

Anthony Good is Emeritus Professor of Social Anthropology at the University of Edinburgh. His initial research in South India focused on domestic life-cycle ceremonies, especially those of puberty, marriage, and death. Subsequent field research in a Hindu temple was concerned with the ceremonial economy linking gods, priests and worshippers, as well as with daily and festival worship. He has frequently acted as an expert witness in asylum appeals involving Sri Lankans, and has carried out research on uses of expert evidence in the British asylum courts, and (with Robert Gibb, University of Glasgow) on the conversion of asylum applicants' narratives into legal discourse in the UK and France.



Gibb, Robert and Good, Anthony (2013) Do the facts speak for themselves? Country of Origin Information in French and British refugee status determination procedures. *International Journal of Refugee Law*, 25(2), 291-322.

Gill, Nick and Good, Anthony (eds) (2018) *Asylum Determination in Europe: Ethnographic Perspectives*. Cham: Palgrave Macmillan [open access].

Good, Anthony (2015) 'Anthropological evidence and Country of Origin Information in British asylum courts.' In: Lawrance BN, Ruffer G (eds) *Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise and Testimony*. New York: Cambridge University Press, 122-144.

Good, Anthony (2007) *Anthropology and Expertise in the Asylum Courts*. London: Routledge-Cavendish.

**Rebecca Hamlin** *University of Massachusetts Amherst, USA*

Hamlin, Rebecca (2021) *Crossing: How We Label and React to People on the Move*. Stanford, CA: Stanford University Press.

Hamlin, Rebecca and Jamie Rowen (2020) From Redress to Prevention: How the International Politics of 'No Safe Haven' became the Politics of 'Not in My Backyard'. *Human Rights Quarterly*, 42(3), 623-645.

Hamlin, Rebecca (2004) *Let Me Be a Refugee*. New York, NY: Oxford University Press.

**Livia Johannesson** *SCORE, Stockholm University, Sweden*

Livia Johannesson is a political scientist at the Stockholm Centre for Organizational Research (Score), Stockholm University, specialized in asylum determination research, legal ethnographies and interpretive analysis. She has a background in feminist political theory and a general interest in judicialization of politics and public policy-making, most recently blame management as political phenomenon. In a current four-years research project, Johannesson studies the role of the administrative courts in the Swedish democratic system by conducting an ethnographic study of how equality before the law is practiced in asylum appeals compared to other administrative court procedures.

Johannesson, Livia and Weinryb, Noomi (2021) How to Blame and Make a Difference: Perceived Responsibility and Policy Consequences in Two Swedish Pro-Migrant Campaigns. *Policy Sciences*, 54 (1), 41–62. <https://doi.org/10.1007/s11077-020-09407-x>.

Johannesson, Livia (2018) Exploring the 'Liberal Paradox' from the Inside: Evidence from the Swedish Migration Courts. *International Migration Review*, 52 (4), 1162–85. <https://doi.org/10.1177/0197918318767928>.

Johannesson, Livia (2012) Performing Credibility: Assessments of Asylum Claims in Swedish Migration Courts. *Retfærd Nordisk Juridisk Tidsskrift*, 35 (3/138), 68–83.

**Austin Kocher** *Syracuse University, USA*

**Ashley B. Terlouw** *Radboud University, Netherlands*

(see Prof. Terlouw's details in [Keynote 2](#) above)

**Helena Wray** *University of Exeter, UK*

Dr Helena Wray is Associate Professor in Migration Law. Her research and publications focus on the impact of immigration law on families. She led teams that provided expert evidence in two test cases heard in the Supreme Court on pre-entry language testing for spouses, and the onerous financial conditions to be met by the sponsors of migrant spouses and partners and she led a team that wrote a report for the Children's Commissioner for England on the impact of the financial requirements in the family migration rules on children. She is currently writing a book on how the UK's Supreme Court has addressed the right to respect for family life. She is the editor of *Journal of Immigration Asylum and Nationality Law*.

Helena Wray (2015) "A Thing Apart": Controlling Male Family Migration to the UK', *Men and Masculinities*, 18 (4), 424-447.

Helena Wray, Agnes Agoston and Jocelyn Hutton (2014) 'A Family Resemblance? The Regulation of Marriage Migration in Europe', *European Journal of Migration and Law*, 16(2), 209-247.

Helena Wray (2011) *Regulation of Marriage Migration into the UK: A Stranger in the Home* (Ashgate).

# Abstracts

## SESSION 1 (Wednesday, 30 June, 10:30 – 12:15)

### 1A - International Experiences of Refugee Status Determination

**Chair:** John R Campbell (SOAS, UK)

#### Legal literacy and the refugee asylum experience: Developed vis-a-vis developing countries

**Annie Margaret  
Ihoreere Wagana**

*Magistrate Grade One*

Courts of Judicature Kampala,  
Uganda

The process of asylum seeking varies greatly between the developed and developing world. Due to their status internationally, and despite being recognized by both international and national law, refugees nonetheless still fall within vulnerable minority groups in host nations. Through the lens of a Ugandan Magistrate that has adjudicated over disputes involving refugees as at least one of the litigants, it is interesting to juxtapose the two contrasting experiences of asylum seekers in rural Uganda versus one in modern Europe. It is noteworthy to comprehend a refugees experience in deficient informational environments, where legal literacy is highly constrained. As caseloads in Uganda increase, refugee mobility is constrained by poor infrastructural systems for facilitating the deportation of refugees entangled with the law. In addition, the political environment heightens the tensions between the host nation and refugees in most countries as the geopolitics in different geographical regions changes. Further, while in Europe, asylum cases are handled by the courts, in Uganda they are handled by the Office of the Prime Minister (OPM) working together with the United Nations High Commissioner for Refugees (UNHCR), while deportation on the other hand in some instances is ordered by the courts. Legal literacy remains important in assisting refugees to not only understand their rights, but have the confidence to maneuver through the legal system. This paper further seeks to draw comparisons between European judiciaries strained by heavy caseload vis-a-vis the Ugandan OPM and UNHCR caseloads; the efficacy of the two systems; and what recommendations could be made for either methodology of handling refugees, where legal literacy is equally wanting in both circumstances. This study is anchored on desktop research and personal experience.

**Keywords:** Legal literacy, asylum seekers, refugee mobility, Uganda

## **South Africa has no camps: The attitude of judges in refugee claims adjudications concerning the policy of encampment in other Southern African states**

**Cristiano d’Orsi**

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University of Johannesburg,  
South Africa

When we focus on refugee claims adjudications in Southern Africa, the first, and perhaps only, country that comes up to mind of an extra-African expert, is South Africa, whose courts have historically been sensitive to refugee claims. However, as South Africa formally has no camps, South African judges have never adjudicated on this delicate subject. Conversely, this matter has been adjudicated in other Southern African countries that promote and implement encampment for asylum-seekers and/or refugees. Thus, my work focuses on assessing the adjudications by the courts of other Southern African countries concerning the encampment of refugees. Indeed, in the past courts tended to often endorse the encampment policy put in place by governments, such as in the 2008 *Ex Parte Nsabimana* case. In that context, the High Court of Lilongwe declared that the request of the applicant to quash the order of the respondent (the Department of Poverty and Disaster Management Affairs) giving notice to all refugees and asylum-seekers residing outside designated areas to return to the appropriate camps, had no merit. However, this view has been completely reversed in the 2017 *Kituo Cha Sheria Kenyan* case. In that situation, the Kenyan Government had issued a directive requiring relocation of refugees living in urban areas to refugee camps. The respondents sought that the court declare the Government’s decisions unlawful. In that circumstance, the High Court of Nairobi quashed the government directive. As such, through my work I show how the same issue, the policy of encampment, has been historically adjudicated in different ways according to the country of adjudication as well as according to several conditions.

**Keywords:** Courts, adjudication, encampment, Southern Africa

## **BANGLASTORIES: An introduction to the Bangladeshi community in Palermo through their legal experience of the asylum application**

**Valentina Grillo**

*PhD candidate (Anthropology)*

University of Vienna, Austria

In 2018 the Italian Government took the decision to close its ports to all boats of incoming migrants. In October 2018, it approved the immigration law reform that abolished one form of international protection. In 2018, several newspapers described these measures as fascist (<https://www.independent.co.uk/voices/italy-fascist-policies-march-rome-matteo-salvini-donaldtrump-a8586711.html> , last accessed on 23.02.2021). How do these practices of exclusion take place in the Refugee Status Determination Procedure in a specific context, like the one of the Bangladeshi community in Palermo?

Bangladeshi applicants constitute most of the migrant population in Palermo. Ricca and Sbriccioli (2017, *Processi culturali e spazi giuridici. Dal Bangladesh all’Italia: migrazioni, protezione umanitaria e reinterpretazione del divieto di patto commissorio*, p. 182, *Questione Giustizia* 1/2017) explain why Italian authorities may recognise humanitarian protection to Bangladeshi applicants who are exposed to trafficking, and labour exploitation. The administration of Palermo

challenges the indiscriminate fight of migration, pursued on a national level (<https://www.aljazeera.com/features/2019/5/13/sicilians-have-affinity-for-the-islamic-world-in-theirdna> , last accessed on 23.02.2021) Indeed, while the stay of the Bangladeshi community is socially and economically grounded, their legal status is not. The purpose of this contribution is to present legal procedures in the field of international protection. Before a call for cultural rights, in fact, it is worth looking into asylum law. This provides researchers and activists instruments to investigate people's perspectives and have their right for protection recognised.

**Keywords:** International protection, legal anthropology, Bangladeshi community, refugee status determination, Italy

## **1B - Credibility I: Credibility Assessments and Discretion**

**Chair:** Sule Tomkinson (Université Laval, Canada)

### **Spaces of discretion in asylum adjudication: An insight into Italian tribunals specialised in asylum**

**Alice Lacchei** *PhD candidate (Political and Social Sciences)* University of Bologna, Italy

The present contribution falls within a PhD research project on discretion in asylum adjudication in Italian and French lower courts. The research investigates how discretion takes shape within those courts and how it may influence asylum adjudication. In order to do this, it studies practices adopted by judges during their daily work through the lens of the Street-Level Bureaucracy. Although this approach is not usually applied to study the work of judges, it allows to address the issue of discretion in lower courts dealing with international protection from a different perspective. The present contribution aims at presenting some preliminary results based on a fieldwork in an Italian court-section specialised in asylum. These results represent an interesting starting point for further comparative reflections. In particular, they show how the scope of discretion and its constraints develop at the micro-level (judges) and the meso-level (court-section) as well as in the interrelation between these two dimensions. Moreover, they show how different factors contribute to shape discretion, such as vague norms, resource limitations, organisational arrangements, roles, as well as values, ideas and perceptions. Finally, they allow to make some hypotheses on the influences that discretionary practices may have on asylum adjudication within the Italian case. Data have been collected in a fieldwork of two months, which allowed to observe 100 hearings and conduct two background interviews and six semi-structured interviews. Furthermore, shadowing was used to follow five judges specialised in international protection during their daily work and the different stages of the procedure.

**Keywords:** Asylum adjudication, lower courts, discretion, Italy

## **Interviewing asylum-seekers in the courtroom: The experience of a French judge in light of scholarly insights**

**Fabrice Langrogné**

*Leverhulme Trust ECF Fellow (History)*

University of Oxford, UK

This paper addresses the question of asylum interviews in the courtroom from the viewpoint of judges. Building on the author's singular experience as both a French immigration judge (2010-2014) and a migration scholar, it resorts to the method of ego-history to discuss some of the scholarly insights from the social sciences about that particular moment of interaction against the author's own recollections and archives.

Whether inside countries or at their borders, the legal standards by which States evaluate people's alleged recollections are becoming less and less favourable to claimants, in a context of widespread efforts to both fast-track and toughen screening procedures (Kerwin, 2015; Thielemann and Hobolth, 2016; Fitzgerald, 2019). From one particular vantage point, that of the judicial review, in France, of the denials of entry issued against individuals filing for asylum at international airports, the paper looks at the ways in which negative representations about asylum-seekers have pervaded, beyond the applicable law itself, multiple elements of the hearing, and specifically its narrative core, the persecution claims. In most advanced nations, the safeguards meant to ensure the fairness of the states' assessment of protection requests have faced repeated challenges in recent years. Yet this erosion of procedural and substantive rights has been documented more extensively with regard to RSD-tasks institutions than the court systems. This paper argues in that respect that in addition to normative and structural considerations, both the social scientists and those interested in protecting asylum-seekers' rights should also take into account some contingent and context-specific biases.

**Keywords:** Asylum narratives, asylum hearings, France

## **The fiction of credibility assessment: How poor interpretation and transcription undermine adjudication procedures in Italy**

**Lorenzo Vianelli**

*Postdoctoral researcher, PI CONDISOBS*

University of Luxembourg

The paper radically calls into question the efficacy of RSD procedures by focusing on the limitations of credibility assessment in adjudication processes in Italy. Whilst oral testimony has gradually become the key criterion against which applicants' credibility is assessed, empirical evidence exposes the weaknesses and risks of a decision-making system that is based on applicants' statements. The weak spot of the system does not lie on the reliance on statements in itself, but it is rather due to the fact that the statements considered in the decision-making have never been expressed by applicants. "Statements" are in fact the result of multiple layers of translation and transcription, which tend to be incomplete, hasty and perfunctory. Drawing on 62 interviews with actors involved in asylum appeals in Italy, i.e. judges, lawyers, appellants and interpreters, the paper explores two of these layers. The first concerns poor interpretation services that in some cases lead to a radical alteration of applicants' actual words. The second stems from rushed asylum hearings and an excessive reliance on the transcripts of asylum interviews, which, not being verbatim, are

far from representing the voice of applicants. The paper therefore shows how decisions that can be crucial for the lives of applicants often rest on extremely flimsy foundations. The findings from the Italian context are used to emphasise the overall absurdity of RSD procedures at large and the need to move beyond an unfair system that is based on an artificial distinction between legitimate and illegitimate forms of mobility.

**Keywords:** Refugee status determination, interpretation, transcription, categories, Italy

## SESSION 2 (Wednesday, 30 June, 13:15 – 15:00)

### 2A - Legal Representation, Legal Aid and Information

**Chair:** Jo Hynes (University of Exeter, UK)

#### **Evidence over legal argument: The advantages of the pro bono refugee law clinic model**

Susan Reardon-Smith, Isabela Rodrigues Nahssen, Ram Sabaratnam and Adithi Shenava	<i>Clinic Coordinator, Students and Volunteers</i>	Refugee Law Clinic, University of London, UK
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It is increasingly clear to practitioners that many refugee law cases are won on the quality of the evidence presented rather than on legal argument. This is even truer in ‘fresh claims’ appeals, given how new evidence, like evidence of changed circumstances, are central at this stage of appeal. We pose the question of whether pro bono legal clinics are particularly well-placed to retrieve and present evidence for further submissions given the collaborative style of work they cultivate, which in turn can improve access to justice for refugee clients. To explore this question, we draw on our work at the University of London’s Refugee Law Clinic, which focuses on advising and preparing ‘fresh claims’ for asylum, an area identified as currently underserved. The Clinical Legal Education (CLE) model of the clinic allows student volunteers to learn the law through engaging and reflecting on real supervised casework. Since the clinic only advises, rather than represents clients who remain ‘litigants in person’, the client remains deeply involved throughout the process and builds a collaborative relationship with the volunteers and lawyer. The wide network of individuals involved in cases ensures there is more dedicated time and people working to find evidence, in a way often not available to solicitors working independently. This discussion will show how models of legal practice can evolve in ways to most benefit refugee clients, whilst also training future legal practitioners.

**Keywords:** Evidence, fresh claims, Clinical Legal Education, UK

## **Legal representation in 2nd instance asylum cases before the Greek Appeals**

### **Committees**

**Maria Basdeki**

**Martha**

*Lawyers, Legal team*

Solidarity Now Athens, Greece

**Chatziantoniou**

Legal aid providers and international protection applicants are presented with serious challenges in the stage of asylum appeals. Normally, in Greece, free legal assistance and representation is provided either by lawyers who are appointed from a list, drafted by the Ministry of Migration and Asylum in collaboration with the Athens Bar Association, or by a range of NGOs. However, the number of legal aid providers is insufficient to cover the huge demand. At the same time, the State is slow in taking positive actions to increase their capacity, while no while no action is taken in ensuring the quality of the free legal aid service. Asylum seekers are not always informed in a language they understand about the procedures in place to access legal aid and no assistance is available for illiterate asylum seekers. The time limits to file an appeal are short and service of decisions is currently conducted by post, thus in most cases in addresses invalid since long ago. In this reality, this paper examines, whether high-quality legal advice has become a luxury to asylum seekers in Greece, whereas it should be their right. By answering a series of critical questions, it draws a distinctive line between legal information provided by all kinds of actors involved in the asylum procedure and the expert legal consultation, which is the professional responsibility of an asylum lawyer. The issues that fall under examination are:

- What are the key elements of high-quality legal representation?
- Is high-quality legal representation met by the state actors or NGOs? To which extent and at which cost/to whose detriment?
- What are the obstacles that legal representatives encounter throughout the preparation of the case file and the support of the appeal?

By assessing all relevant topics, the paper wishes to inform about the current state of things and make useful propositions.

**Keywords:** Legal aid, appeals, high-quality representation, Greece

## **Are asylum outcomes really luck of the draw? Reconsidering the relationship between access to legal advice and structural injustice**

**Emma Marshall**

*Research Fellow*

University of Exeter and Public  
Law Project, UK

Luck is a recurring theme in asylum literature and a powerful metaphor, often used to explain the relationship between sites of decision-making and discrepant outcomes for individuals. Using the commonly referred to idea of 'refugee roulette' as a starting point, I examine the relationship



between control, luck and responsibility in terms of how the immigration system in the UK is configured and the role of legal representatives. I consider the implications for individuals who are unable to access to legal advice in the UK due to restrictions on legal aid and whether the consequences can accurately be depicted as a matter of chance.

**Keywords:** Luck, legal aid, austerity, UK

## **2B - Credibility II: Religious Conversion Asylum Cases**

**Chair:** Nicole Hoellerer (University of Exeter, UK)

### **Finding the true convert: Tensions between church and state in asylum appeal hearings based on conversion to Christianity**

**Lena Rose**

*Leverhulme Trust Early Career Fellow*

Centre for Socio-Legal  
Studies, University of Oxford,  
UK

Among recent migrations to Europe, asylum claims on the basis of fear of religious persecution following a religious conversion are frequent, especially among Iranian and Afghan asylum seekers. Decision-makers employed by the secular state have to assess the genuineness of the conversion, and risks of practising Christianity in the country of origin of the applicant. The overwhelmingly negative decisions for converted asylum seekers in Germany have led to a conflict between churches who support converts and administrative courts: church representatives lament the lack of consideration of pastors' letters as evidence for converts' credibility. While German courts maintain that judges have the right to assess the credibility of an appellant's conversion (Karras 2018; 2 BvR 1838/15) and possibly override a pastor's assessment of an appellant's Christian faith, churches seek to regain the authority over determining the faith status of their members.

This paper draws on case law, ethnographic observations of 30 asylum appeal hearings based on conversion at German courts and theological workshops, as well as interviews with all actors involved to outline the tensions between church and state in the adjudication of asylum claims based on conversion to Christianity. The paper contributes to the scholarship on evidentiary assessment (e.g. Noll 2005) and cultural expertise in asylum courts (Good 2007; Holden 2020) to explore the role of pastors as expert witnesses in asylum appeal hearings based on conversion. It critically explores the crisis of trust between church and state in assessing the credibility of asylum seeker converts to Christianity in Germany.

**Keywords:** Conversion, credibility, expert evidence, ethnography, Germany

## **Sur place religious conversion in the asylum process: What kind of view on religion guides the Finnish state official's credibility assessment of conversion?**

**Ilona Silvola**

*PhD candidate (Systematic Theology*

*Åbo Akademi University,  
Finland*

In Finland, a rising number of asylum seekers from Islamic countries are converting to Christianity. As persecution based on religion is a ground for refugee status, the Finnish Immigration Service (Migri) must take a stand on whether a change of religion poses a threat to the asylum seeker in their home country. However, how can it be verified that an asylum seeker has, in fact, converted?

In my presentation, I analyse the grounds on which Migri assesses the credibility of religious conversion in the asylum process. I argue that the credibility assessment of religious conversion seeks to examine the authenticity of the person's religious identity. The understanding of what is authentic is in turn based on asylum official's (implicit and normative) understanding of the concept of religion. However, their view on religion does not necessarily overlap with the asylum seeker's own understanding of religion. This discrepancy makes the credibility assessment potentially unreliable.

In my presentation, I will present the results of a theological analysis of Migri's view on religion as it appears in a sample of 48 negative asylum decisions of Christian converts. I will also discuss the possible differences between converted asylum seeker's self-understanding of their religious identity and Migri's expectations.

**Keywords:** Religious conversion, credibility assessments, religion, asylum, Finland

## **Fragmented truths in narratives of converted Iranians in a diaspora**

**Zahra Abedinezhad-Mehrabadi**

*Graduate Fellow (Comparative Studies  
and Folklore)*

*Ohio State University, USA*

In this paper, I gather data based on ethnographic interviews with Iranian refugees in a diaspora to hear their narratives and understand considerations around their religious conversions. By showing the complexity of conversion, I point out the importance of considering relational thinking and dismantling the binaries of genuine/insincere and authentic/inauthentic claims in the assessment of conversion cases. I don't place my argument specifically on the aspects of credibility and genuineness of converted Iranians' claims; instead, I will argue that there are broader structural factors and enmeshed considerations and that push some Iranians to seek asylum through religious conversion in European justice systems. In parallel, if we listen to different and various narratives of such Iranians and consider them as a collective text, we would perceive that the "fact" of the matter is evident in these fragments of truth.

The power relations of the two home and host countries interlace pressures on the lives of such refugees—both in the context of alienation and in the context of connection. The study examines

the importance of the non-binary approach in exploring multidimensional elements in religious asylum surroundings, touching on Iranian refugees' narratives.

**Keywords:** Intersected restrictions, collective text, fragmented truths, refugee narratives, conversion, Iranians in Europe

## **2C - The Challenges of Asylum Adjudication in Italy: Perspectives from the Field**

**Chair:** Lorenzo Vianelli (University of Luxembourg)

**Discussant:** Barbara Sorgoni (University of Turin)

### **The international protection before the judge: A study on the decisions of the Tribunal of Bologna**

**Alessandro Fiorini**

*Lawyer*

Asilo in Europa

The presentation focuses on the main findings of a study carried out between June and August 2019, thanks to a cooperation between the Emilia-Romagna Regional Authority (DG Social integration), the Tribunal of Bologna and Asilo in Europa. The study aimed to shed light on the judicial review of asylum decisions, a field which suffers from a chronic lack of research in Italy.

The Tribunal of Bologna – which is competent for reviewing the 1st instance, administrative, decisions taken within the regional territory of Emilia-Romagna – gave Asilo in Europa's researchers access to its database in order to collect data and information. The study was limited in scope. It covered only appeals lodged after August 2017 - when a thorough legislative reform on asylum appeals entered into force - by asylum seekers coming from Bangladesh and Nigeria, two of the main countries of origin of asylum seekers in Italy.

The presentation follows the structure of the study and is divided into two different sections. The first one shows the figures on recognition rates – broken down by nationality, sex and type of protection. The second section elaborates on the most important findings of the in-depth analysis of 87 decisions taken by the Tribunal, with a focus on the legal reasoning, the credibility assessment, the use of COI, the approach towards the most recurrent claims.

**Keywords:** Asylum adjudication, recognition rates, legal reasoning, credibility assessments

## **Adjudicating refugee cases in Italy: Insights from a judge**

**Matilde Betti**

*Judge, President of International  
Protection Chamber*

Tribunale di Bologna, Italy

The recent experience of the Italian courts has been of a dramatic increase in refugee law cases. This represents a huge challenge both for our justice system and for our legal culture. On the one hand, the very high increase in the number of these cases has not been matched with a higher number of judges and the backlog of refugee cases is now a national issue in the Italian judiciary. On the other hand, the training of lawyer and judges in this area is poor. The professionals working today in this field did not get any such teaching at University and their training comes either from personal interest or from occasional courses. A civil judge who deals with refugee cases must change their role from merely listening to also gathering evidence and must learn to understand cases related to very different cultural contexts.

In the experience of deciding refugee cases, the tension between law and justice becomes most apparent. Refugee law offers international protection when one's own state puts somebody's fundamental human rights at stake. Migration towards Europe starts from very different situations: wars, hope for a better life, persecutions, poverty. The right to migrate is enshrined in different international laws but the European Union has a restrictive legislation towards immigration. Applying as an asylum seeker may appear to be the only way one is allowed to be in Europe. Refugee law has a different scope but can become an arena where human lives ask to be recognized.

**Keywords:** Decision making, reasons for migration, European law, Italy

## **The asylum waltz: Private feelings and public statements**

**Maurizio Veglio**

*Lawyer, Lecturer*

International University  
College (IUC), Italy

Lawyering in the asylum field poses an endless list of challenges. Narratives from asylum seekers are conveyed by lawyers into written legal statements aimed at supporting claims for international protection. Throughout the process the former are (often unconscious) authors, while the latter become co-authors, shaping words into a script. Often a mandatory, though ambivalent, in-between-player, the interpreter, offers higher degree of understanding as well as the risk of hidden impasse.

Resulting legal papers encapsulate life diaries and chronicles of violence, obsession and death, a contemporary form of literature mingling history, drama and legal storytelling. Voices from survivors share epic, post-colonial accounts, narrated in rotten languages (pidgin, creole) that defy national standards and borders.

In the quest for success, asylum seekers attempt to satisfy expectations of the decision makers, paving the way for adjustments, exaggerations, coup de théâtre; on the other hand, case workers and judges usually pursue the ideal refugee figure, regardless of its actual existence. Under a cloud

of mutual suspicion, both parts second-guess each other and legal papers are the mirror through which the applicant's image gets deflected, and possibly denied, or disclosed, and eventually acknowledged.

The asylum waltz engages basic human feelings: fear, the crucial statement for any asylum seeker, versus trust, the sentimental core of the credibility evaluation; disguise versus moral judgement; and above all, the effort to revert law from a supremacy tool into a justice-generating factor.

**Keywords:** Storytelling, credibility, narrative, literature, Italy

## SESSION 3 (Thursday, 1 July, 09:30 - 11:15)

### 3A - Vulnerability I: Vulnerability in Refugee Status Determination

**Chair:** Ben Hudson (University of Exeter, UK)

#### The burden of vulnerability: Legal and social perspectives on asylum claims submitted in Italy

**Dany Carnassale**

*Postdoctoral Research Fellow*

Ca' Foscari University of  
Venice, Italy

My paper focuses on the experiences of various institutional, legal and social actors dealing with asylum claims submitted by protection seekers in situations of vulnerability. The research has been carried out in Italy between February 2020 and October 2020 and it is based on qualitative research methods (analysis of documents, in-depth interviews, ethnographic observations) to explore diverse experiences of support and assessment of such protection requests.

In this paper, I analyse what vulnerability means for these actors, taking into account the variety of their roles (decision making, humanitarian aid, legal support and advocacy). Many participants discussed pros and cons of the asylum procedures and the reception system. Findings highlight how situations of vulnerability are framed, what procedures and guarantees have been implemented, and which challenges and shortcomings remain to cope with. This paper shows also how vulnerability may emerge (or not) and may be identified and assessed in different spaces, but also with different instruments and timings. The research reveals that some vulnerabilities may be fostered, created or invisibilized by specific procedures, highlighting the impact of the recent legislative changes affecting the Italian asylum system between 2017 and 2020.

In conclusion, the research examines the inconsistencies and shortcomings existing between the legal framework, its implementation and social (and local) realities. While some procedures are conceived to facilitate the identification of situations of vulnerability, others can create further

obstacles to their identification, support and assessment, creating a dramatic impact on the vulnerabilities of protection seekers.

**Keywords:** Vulnerability, asylum, Italy

### **Asylum seekers in disused military barracks: How the UK's first refugee camps harm residents' health**

**Jennifer Blair** *Barrister* Helen Bamber Foundation, UK

**Cornelius Katona** *Medical Director (HBF), Emeritus  
Professor of Psychiatry* University of Kent, UK

**Yusuf Ciftci** *Policy and Advocacy Officer* Doctors of the World, UK

In September 2020, in the midst of a global pandemic, the British government opened up refugee camps in Ministry of Defence sites. People were transferred in, often with a few minutes notice in the middle of the night, and left in dormitories where social distancing is impossible. Survivors of torture, trafficking and abuse were left to share public showers, with no privacy to change and in run-down facilities in extremely isolated locations. The Home Office committed not to place vulnerable people on the sites, but medical assessments from independent doctors found that many vulnerable and unwell people were in fact present on the sites. During an outbreak of COVID unwell residents were left with limited access to medical care, at times effectively looking after each other, and with COVID-positive residents locked in with those who did not have a positive test.

The presenters of this paper will share some of the initial findings of independent medical assessments undertaken of barracks residents by our charities and will explain how this work is being used externally by Parliamentary committees and in strategic litigation. These camps are a new phenomenon in the UK and it is vitally important for non-clinical professionals working in this field to understand how this move to institutionalise asylum seekers harms health.

**Keywords:** Refugee health, mental health, refugee camps, refugee accommodation, UK

### **Examining policies and priorities of the Indonesian government in fulfilling the rights of refugees amid the COVID-19 pandemic**

**Desi Yunitasari** *Students (Law)* Ganesha University of Education, Indonesia

**Devi Yusvitasari**

COVID-19 is disproportionately impacting refugees. Refugees are extremely vulnerable to the COVID-19 outbreak. Most of refugees in the world live in low to middle-income countries, most of which have insufficient resources to deal with an outbreak of this magnitude. Moreover, refugees are often excluded from many countries' pandemic plans. Refugees do not have the rights to work

hence they have limited access to healthcare and sanitation facilities during covid-19 in the world. Few states in Southeast Asia have never ratified UN refugee convention, such as in Indonesia, Indonesia as a non-party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which are modern international refugee law instruments. This means that refugees in Indonesia are difficult in fulfilling their rights, despite in the facts, Indonesia mostly as transit country house a number of refugees running away from conflict areas. Moreover Indonesia's treatment of refugees is based on the general obligation to protect and honour human rights. The authority to handle refugees is given to international organizations. However, the handling of this international organization has not been implemented optimally due to obstacles. This research has a suggestion that the Indonesian Government must implementing productivity empowerment schemes as one of the steps to enable refugees to live independently.

**Keywords:** Covid-19, human rights, protection, Indonesia

### **3B - Asylum in Europe and the Common European Asylum System (CEAS)**

**Chair:** Ana Beduschi (University of Exeter, UK)

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

**Cristina Dallara** *Associate Professor*

**Alice Lacchei** *PhD candidate (Political and Social Sciences)*

University of Bologna, Italy

**Madalina Moraru** *Senior Research Fellow*

Masaryk University Brno,  
Czechia

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

### **The co-constitution of the normativity of protection in Nordic asylum appeal systems**

**William Hamilton  
Byrne**

*Post-Doctoral Researcher*

iCourts, University of  
Copenhagen, Denmark

**Sarah Scott Ford**

*PhD candidate*

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



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

ASYFAIR

University of Exeter, UK

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

### **SESSION 4 (Thursday, 1 July, 11:30 - 13:15)**

#### **4A - Vulnerability II: Children in Refugee Status Determination**

**Chair:** Fabrice Langrognet (University of Oxford)

#### **Effective participation of children in asylum procedures: Asylum interviews with school-aged children seeking asylum in the Netherlands**

**Stephanie Rap**

*Assistant Professor (Law)*

Leiden University, Netherlands

Child migrants are often not recognised and respected as rights holders and thus as active agents in asylum procedures. However, a one-sided view of these children as vulnerable objects is not in coherence with international children's rights law and standards, including among others the UN Convention on the Rights of the Child, that see all children as autonomous subjects and full bearers of rights. Recent studies suggest that the right to participation and information is insufficiently safeguarded for children involved in asylum procedures.

Asylum application procedures are highly complex administrative procedures that are often not adapted to the capacities and level of maturity of children. Unaccompanied children seeking asylum as young as six years of age have to go through the asylum procedure in the Netherlands. Efforts have been put in making this procedure more child-friendly, by designing a child-friendly interview room and training immigration officers. The question is, however, whether the goal of the asylum interview – determining if the child is in need of international protection and truth-finding – can be achieved for children below the age of twelve through an interview that is compliant with the child’s right to be heard (article 12 CRC). This will be addressed by presenting the findings of observations conducted of thirteen asylum interviews with school-aged children (aged 7 to 11). The results show that child-friendly conversation techniques and tools are used to some extent, however, immigration officers should be trained more extensively in order to enhance the effective participation of young children.

**Keywords:** Refugee and migrant children, asylum procedure, conversation techniques, child-friendly justice, Netherlands

### **Separated children and the operationalisation of credibility assessment in appeal decision-making in the Republic of Ireland**

**Diego Castillo  
Goncalves**

*PhD candidate (Law)*

Trinity College Dublin, Ireland

This paper explores how the credibility assessment of separated children seeking international protection is being operationalised in the Republic of Ireland through looking at how these children’s agency is manifested or suppressed at the appeal level. It does so through mapping credibility outcomes for children in light of data available in the International Protection Appeals Tribunal decision archive.

I start by conceptualising what I mean by operationalisation within the Irish asylum context. I then consider 57 decisions regarding the status determination of separated children from 2016 to 2019, including those where credibility was not decisive at first instance. I proceed by analysing, through these decisions, how procedural issues arise out of credibility decisions concerning children. This includes identifying emerging sub-themes, such as the over-use of inconsistencies as reasons for rejection, the use of stereotypes to question children’s ability to make their own decisions, and the heavy reliance on age to establish overall credibility. Additionally, I attempt to outline how children’s rights are currently placed within this assessment of credibility at the Appeals tribunal, noting that the United Nations Convention on the Rights of the Child is only occasionally paid attention to.

I conclude by arguing that, the image of the child which emerges is one where children’s agency is at times conflated with opportunism, where the disengagement with children’s rights leads to the demonstration of children’s agency being seen as a problematic feature.

**Keywords:** Decision-making, credibility assessment, separated children, vulnerability, Ireland

## **Children and their rights in appellate asylum procedures in Belgium: Methodological challenges in legal-ethnographic research**

**Sara Lembrechts**

*PhD candidate (Migration Law)*

Ghent University, Belgium

The question guiding my research is how children's rights are, could and should be perceived, mobilised and practiced by the key actors involved in the adjudication of Belgian asylum cases in appeal before the Council for Alien Law Litigation (CALL). Adopting a legal-ethnographic perspective, the project combines different actors (legal and non-legal professionals and children, young people and families in migration), disciplines (law, childhood studies and anthropology) and corresponding research methods (case law analysis, -participant- observations, interviews, focus group discussions and co-creative workshops). In the early stages of the PhD, this presentation aims to critically reflect about some of the methodological challenges I face in researching the role of children's rights in CALL-cases involving children, young people and families. In particular, I will address selected topics in relation to case selection, negotiating field access, using participatory methods and research ethics.

**Keywords:** Children's rights, appellate asylum proceedings, methodology, Belgium

## **4B - Asylum Determination and Adjudication in the UK**

**Chair:** Susan Reardon-Smith (RLC, University of London, UK)

### **Legal silo's and indifference: The wrongful prosecution of refugees and asylum seekers in the UK**

**John R. Campbell**

*Emeritus Reader (Anthropology)*

SOAS, UK

This paper explores the situation in the United Kingdom where the government has consistently prosecuted and convicted asylum-seekers who have entered the country in contravention of its obligations under Art. 31 (1) of the 1951 Refugee Convention. This paper looks at the history of these prosecutions by examining how the United Kingdom's Criminal Justice System (CJS) and the UK's Asylum and Immigration System has handled these cases. At the center of the CJS lies the Criminal Cases Review Commission (CCRC), which reviews wrongful convictions, and Criminal Court of Appeal, which has the power to quash wrongful convictions. The paper concludes that there are three major reasons why asylum seekers continue to be prosecuted and convicted: (a) only a 'patchwork' of protections exists to protect asylum-seekers from prosecution; (b) all state/legal institutions operate in policy silos and fail to communicate with one another, and (c) legal institutions are indifferent to and deeply hostile towards asylum-seekers.

**Keywords:** Art. 31(1) Refugee Convention, miscarriage of justice, UK Home Office, UK

## **Conducting disembodied online ethnographies of disembodied legal processes: Loitering with (research) intent in digital spaces**

**Jo Hynes**

*PhD candidate (Geography)*

University of Exeter, UK

Prior to COVID-19, my primary methodology was conducting in-person ethnographies of immigration bail hearings in the UK. Following Jeffrey (2020), this was a heavily embodied process, reliant on organic, in-person interactions, rapport building, waiting and atmosphere: in other words, loitering with intent to conduct research. As a result of the pandemic, both the hearings and my ethnographies of them have moved online, conducted via video conferencing software. This presents a number of challenges for a method that places such an emphasis on embodiment, ad-hoc interaction and open-endedness. Is conducting ethnographies in the form of loitering with (research) intent even possible in digital spaces? It is helpful to reflect on these challenges of disembodiment in order to acknowledge how my research has changed and what new avenues of research may open up as a result.

I suggest that the methodological challenges are twofold. Firstly, there is an enforced narrowing of sensory engagement with the hearing. Only audio and visual engagement are possible, and even these are prescribed for the observer. Secondly, there is a loss of informal, ad hoc conversation (the 'conversation in a corridor'). The ethnography generally takes only as long as the hearing itself, with a consequent loss of interaction with participants around the edges of the hearing. Following Gill et al (2020) I hope to explore what these 'absences' might mean for online ethnographic methodology in the context of immigration bail hearings.

**Keywords:** ethnography, digital justice, immigration bail, embodiment, UK

## **Cooperation and kindness in the immigration and asylum chamber**

**Susannah Paul**

*PhD candidate (Law)*

University of Glasgow, UK

My paper draws on the findings from my PhD research which involved an autoethnographic study of the First-Tier-Tribunal Immigration and Asylum Chamber (FTTIAC) in Glasgow. My research has yielded insights into the interactions of the workgroup in the meeting place of the FTTIAC. I explore the link between cooperation and connection within the working group and the changes that the digitalisation reforms are likely to bring to the workgroup of the FTTIAC. I come to reflect that the values of cooperation and connection will become increasingly relevant in the digital tribunal. Finally, I open a discussion about the opportunity to consider the incorporation of kindness into the ethos of the FTTIAC. In Scotland, 'kindness' has been included in the National Performance Framework; research and policy discussions have begun to consider how kindness might be incorporated into public policy in Scotland. I consider what an infrastructure of kindness could involve in the FTTIAC and how dimensions of kindness may be a prerequisite for cooperation.

**Keywords:** Behaviour and emotions, digitalisation reforms, tribunal workgroup, UK

## **Imaginings of the other: Home Office assertions of culture and their implications for Kurdish asylum seekers**

**Kaveh Ghobadi**

*Former PhD student, Expert Witness*

University of Exeter, UK

This paper explores the Home Office's selective and reductionist presentation of the Other and their culture to cast doubt on the credibility of Iraqi Kurdish asylum seekers' accounts. I have worked as an expert witness since 2017 and have prepared over 200 reports for courts in the UK ever since. The present paper examines the cases of 50 asylum seekers whose claims the Home Office refused, and for whom I was instructed to provide country expert reports. Drawing on post-colonial theory and Edward Said's orientalism, I will conduct a close textual analysis to lay bare some assumptions with which the Home Office imagines asylum seekers from Kurdish backgrounds, by closely examining their reasons for refusal. An essentialist discourse on culture figures in nearly all the refusal letters studied for this paper, examined here against the backdrop of a long history of colonialism and Orientalism. Ultimately, this paper argues that the Home Office treats Kurdish culture as a monolithic entity equally inherited and practised by all its members. Denying the cultural diversity of Kurdish people enables the Home Office to refuse an asylum seeker's application simply by arguing that their account contradicts what they imagine to be Kurdish culture, i.e., a backward, patriarchal, and uniform society.

**Keywords:** Orientalism, post-colonialism, UK Home Office, Kurdish asylum seeker, Kurdish culture, UK

## **4C - Country of Origin Information (COI) in Refugee Status Determination**

**Chair:** Anthony Good (University of Edinburgh, UK)

### **Country of Origin Information: The essential foundation for fair decision-making**

**Femke Vogelaar**

*Former PhD candidate*

VU University Amsterdam,  
Netherlands

Considering the importance of Country of Origin Information as the essential foundation for qualitative decisions on international protection needs, it is remarkable that for the harmonization of the application of Country of Origin Information the European Commission has opted for (non-binding) practical co-operation rather than harmonization through more detailed legislation. As a result, the evidentiary assessment of Country of Origin Information by decision makers and judges has been left mostly to the discretion of the European Member States. Therefore, the harmonization of the application of Country of Origin Information in European Union Member States, in first instance decision-making as well as at the appeals level, should be achieved through the adoption of common standards and principles in binding EU legislation. The future Asylum

Procedures Regulation should include references to all the most important common standards and principles, namely relevance, currency, accuracy, reliability, balance and transparency. Moreover, the EASO COI Report Methodology, or the common methodology to be developed by the future EU Agency for Asylum, should be given the status of a legally binding document through references in the asylum acquis. A more detailed framework for the evidentiary assessment of Country of Origin Information will improve convergence in asylum decision-making.

**Keywords:** Evidentiary assessment, country of origin information, quality standards, harmonisation, EU

**It's not what you know, it's how you use it: On the application of country of origin information in judicial refugee status determination decisions**

**Valentin Feneberg**      *PhD candidate (Socio-Legal studies)*      Humboldt-Universität zu Berlin, Germany

**Laura Scheinert**      *PhD candidate (Human Geography)*      University of Exeter, UK

Existing research has emphasised the different forms of knowledge available to refugee status determination (RSD) decision makers, as well as the differing conditions under which it is produced, but very little work has addressed how judicial decision makers interpret, represent and mobilise or side-line evidence within written verdicts, and how their approaches are localised.

This presentation (based on a paper) investigates how country of origin information (COI) is used in written judgements about RSD, taking Germany's Higher Administrative Courts decisions between 2016 and 2018 on Syrian draft evaders as a case study. Our quantitative and qualitative analysis of court verdicts shows that local courts draw different conclusions from the same evidentiary basis and freely utilise a menu of techniques including interpretation, framing and citation styles to amplify or dampen the argumentative force of COI within their reasoning. As such legal reasoning dominates evidence, meaning that evidence in refugee status determination is discursively highly malleable and based on local interpretations, frequently incidental to legal arguments, and unable to produce legal consensus. Our findings raise concerns that local courts use COI selectively to justify the positions they have adopted locally, rather than allowing their positions to be directed by COI or centralised interpretations. We conclude by reflecting on what, if anything, can be done about these seemingly opaque and unaccountable textual and discursive forms of discretionary and localised judicial power.

**Keywords:** Country of origin information, local interpretations, local legal practices, legal inconsistencies

## Source assessment and the U.S. Department of State's annual human rights reports

**Stephanie Huber**

*Director*

Asylum Research Centre  
(ARC) Foundation

The research compares the State Department's assessment of the situation in Eritrea, Iran, Iraq, Pakistan and Sudan in 2016, the last year of President Obama's administration, with the subsequent reports produced by President Trump's administration covering events in 2017, 2018, 2019 and 2020.

I will provide a short introduction on what source assessment is and its importance when submitting COI as evidence, as well as present key findings of ARC Foundation's research. Notable content changes identified were not consistent with the situation on the ground as documented by other sources and have the effect of downplaying the seriousness of the human rights situations in these countries. The principle changes related to women's rights, civil and political rights, and issues relating to LGBTI persons.

I believe this conference provides an ideal platform to inform a wide variety of stakeholders in the asylum field of the importance of undertaking a thorough source assessment and highlight limitations of even well-established sources which carry a lot of weight in refugee status determination processes throughout the world.

**Keywords:** Evidence, country of origin information, source assessment, U.S. Department of State's annual human rights reports

**5A - Vulnerability III: Gender Identity and Sexual Orientation in RSD**

**Chair:** Raawiyah Rifath (University of Exeter, UK)

**Assessing asylum claims of trans and gender non-conforming claimants**

**Mariza Avgeri**

*PhD candidate (Law)*

Maynooth University, Ireland

This paper aims to reflect on trans asylum and gender non-conforming applicants and the position they occupy in current refugee law and practice. In the first part, the paper will offer an overview of international refugee law with a special focus on the ‘particular social group’ grounds for discrimination, a taxonomy in which gender identity related reasons for application are usually included. The paper will proceed to examine the current literature on trans asylum seekers as belonging to a particular social group and to critique the criteria for such inclusion. I will problematize the way the assessment of persecution is attempted in gender diverse applicants’ claims and I will argue for the right to asylum on the grounds of both gender identity and expression. I will explore the need for a complementary narrative and practice based, rather than strictly identity-based approach to gender identity and expression related asylum claims based on the impact of gender non-conformity in the country of origin, as Berg and Millbank suggest (2013). In this light, I will propose a refined framework for refugee status determination for trans and gender non-conforming asylum seekers that does not reproduce strictly identitarian, rights-based, westernized frameworks in order to assess persecution of applicants on the basis of non-conforming gender identity and expression.

**Keywords:** Transgender, gender nonconformity, particular social group, refugee law

**Invariably ‘discreet’? Refugee status determination in Germany and France and the intricacies of ‘discretion’ reasoning**

**Janna Wessels**

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VU University Amsterdam,  
Netherlands

One of the most controversial issues concerning sexuality-based asylum claims in recent years has been ‘discretion’ reasoning—the notion that a claimant can avoid persecution by behaving ‘discreetly’. Though often challenged, such reasoning has remained resilient in the English-speaking common law jurisdictions, upon which research has mainly focused to date. This paper broadens the debate by undertaking a detailed exploration of ‘discretion’ reasoning in sexuality-based asylum claims in Germany and France, two of the major European civil law jurisdictions. In the first part, the paper demonstrates that in very different forms ‘discretion’ logics have traditionally also affected sexuality-based asylum claims in each of these jurisdictions. The second part of the paper explores the effects that the Europeanization of asylum and the rejections of the ‘discretion’



requirement by the UK Supreme Court in 2010 and the Court of Justice of the European Union in 2012 and 2013 have had on established French and German jurisprudence. The analysis reveals that rather than ending 'discretion' reasoning in Germany and France, these developments have transformed it, such that it persists in a different shape. Much like in the common law jurisdictions, with all of its problematic implications, 'discretion' reasoning remains deeply entrenched and resistant in German and French decision-making practice concerning sexuality-based asylum claims.

**Keywords:** Refugee status determination, sexuality-based claims, discretion reasoning, Germany, France

### **Subjective judicial assessments of SOGI claims at German asylum courts**

**Nicole Hoellerer**

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University of Exeter, UK

Drawing on ethnographic observations at German asylum court hearings, the paper discusses how credibility and a 'credible narrative' are assessed by German asylum judges in asylum determination, with a particular focus on SOGI cases.

For a long time, anthropologists criticised the Global Northern lens by which a credible narrative of one's biography is characterised by a linear progression of time, critical self-reflexion, and rationalisation. Similarly, European authorities involved in refugee determination – including asylum courts - are preoccupied with identifying incoherencies, discrepancies and 'untruths'. Little attention is given to socio-cultural idiosyncrasies, such as cyclical progression of time: for example, those who are unable to coherently present a linear chronology of their biography are dismissed as "non-credible", and thus not entitled to refugee protection in Europe. Similarly, asylum seekers who base their claim on sexual orientation may often be dismissed for not fitting into the Global Northern perception of what it means to be LGBTQI+, and our research has shown that SOGI claims are often reduced to sexual activity and public displays of one's sexual orientation, as well as the ability to 'critically reflect' on the persecution SOGI claimants may face in their country of origin. In my presentation I attempt to shed light on the problematic use of credibility in SOGI claims that are assessed by Global Northern standards and definitions.

**Keywords:** Asylum courts; asylum adjudication; credibility, SOGI claims, Germany

## **5B - Effects on Refugee Status Determination and Asylum Adjudication**

**Chair:** Rebecca Hamlin (University of Massachusetts Amherst, USA)

### **Asylum law, decision-making and adjudication to compare between Europe and Japan**

**Yukari Ando**

*Guest Associate Professor*

Osaka University, Japan

Japan acceded the Refugee Convention in 1982, but the refugee recognition rate is 0.4%. The challenge of the refugee protection is not only Non-signatory States but also the Signatory State. On 19th February 2021, the Japanese government proposed the Draft Immigration and Refugee Recognition Act. Some of the proposed provisions seem violation of the State obligation under Refugee Convention. For instance, crimmigration and robust forced deportation are main proposals which will allow to deport to the country of origin even during the refugee status recognition process. If the person concerned denies to be deported, s/he will put into the prison. According to the proposal, it would be effective procedure to reduce the prolonged immigration detention. However, the UN Working Group on Arbitrary Detention clearly stated that current immigration detention in Japan is contrary to Article 9 of the International Covenant on Civil and Political Rights (ICCPR) in 2020.

The refugee protection regime should not be politicised, but the government publicly states that Japan needs make sure "peace and safety" for the Olympic 2020 (now 2021). The decision-makers and adjudicators need to comply with Asylum law at any time. The author, therefore, compares Asylum law, decision-making and adjudication between Europe and Japan, and intends to raise the critical questions for the participants what is the "peace and safety" in international human rights standard?

**Keywords:** Decision-making, adjudicator, refugee convention, domestic law, Europe, Japan

### **The Italian reform of the judicial system in the asylum procedure: Speeding up the application processes or weakening refugees' rights to defence?**

**Francesca Di Blasi**

*Legal Officer*

Social Cooperative

**Daniela Peruzzo**

*PhD candidate (Refugee Care)*

University of Essex, UK

**Cristiana Russo**

*Intercultural trainer and mediator*

Fondazione intercammini, Italy

In our paper, we will be focusing on the role of the court of law in the refugee status determination (RSD) process, in Italy. We will be discussing, especially, the innovations introduced by the Minniti's Act (n.13/2017), only partially entered into force on 17 August 2017, and their effects on the judicial system in relation to asylum. While the Italian judicial system provides for three stages of proceedings, the Minniti's Act abrogated the second instance of judgment in relation to the RSD procedure creating, in so doing, a discrimination between Italian and Third country nationals.

Furthermore, the new decree replaces the claimant's hearing with the video-recording of the interview held at the TC that the judge is expected to watch to make his decision. We believe that through these changes, the act weakened the balancing role which, before it, the courts exerted in relation to the Territorial Commissions (TCs), the administrative bodies responsible for the RSD, affecting the fairness of appeals and refugees' right to the defence. Also, we argue that, whether analysed in the light of the subsequent Salvini's reform which abolished the Humanitarian Protection the Minniti's decree appears to be a piece of a wider political strategy designed to empty the rights provided by the 1951 Refugee Convention. After briefly touching the main problems which besotted the Italian RSD process before Minniti's Act, we will first mention some positive improvements of the act, then we will further discuss the problems outlined above. Finally, we will draw our conclusions and recommendation.

**Keywords:** Decision making, legal and court procedure, access to justice, technology in asylum appeal processes, Italy

### **An existing role, an emerging function? The complex process and consequences of interpreters' professionalization at the French National Court of Asylum**

**Maxime Maréchal**

*PhD candidate (Sociolinguistics)*

Université de Paris, France

Communication challenges in asylum settings, including interpreting issues, have been extensively studied in a variety of European contexts. If their crucial importance on refugee status determination processes is obvious to scholars and interpreting services providers, it is also recognized by the asylum institutions themselves. Indeed, European directives gathered in the Common European Asylum System (CEAS) strongly contribute to shaping national and administrative norms into a standardized approach of interpreting concerns in adjudicating refugee claims.

However, ethnographic works have depicted a great diversity of practices despite those seemingly unifying norms. In France, at the National Court of Asylum – the administrative court which examines appeals made against negative decisions by the first asylum adjudication instance (OFPRA) – interpreters are thus granted different degrees of agency, depending on the judges. It is consequently necessary to analyze the role of the interpreter, which is simultaneously the object of an increasing normative corpus and shaped by decision-making agents at the institutional level, and the way it influences decisions over asylum claims.

To this end, we would like to present insights from our current doctoral research. In a sociolinguistic perspective, we conduct both a socio-history and an ethnography of interpreting practices in the French asylum adjudication institutions. Taking into account the particularities of each of these instances, we aim to understand the complex process towards the professionalization of interpreting, and thus at shining an original light over asylum adjudicating in France.

**Keywords:** Public service interpreting, French Cour Nationale du Droit d'Asile (CNDA), asylum adjudication, sociolinguistics, administrative context, France

### 6A - Case Law and Evidence

**Chair:** Nick Gill (University of Exeter, UK)

#### Analysis of problematic legal issues in Turkish case law on asylum

**Gamze Ovacik**

*PhD candidate (Law)*

Bilkent University, Turkey

Execution of the EU-Turkey Joint Statement of March 2016 as well as the EU-Turkey Readmission Agreement effectively made Turkey a “safe third country” for EU states. Although not operational at the moment, they are legally in effect and have the potential of being implemented any time depending on change of political climate. Thus, the quality of the asylum system in Turkey which includes judiciary, have crucial implications for EU states in terms of their legal obligations in safe third country transfers. Thus, the aim of this submission is to analyse the prominent legal discrepancies in Turkish judicial practices regarding asylum procedures, based on an empirical study of decisions of Turkish courts. Accordingly, a review of the Turkish court decisions on asylum procedures revealed certain recurring problematic issues observed in the case law. As observed in a total of fifty court decisions, such prominent legal issues are chosen to be the subject of legal analysis, considering their frequency. They consist of, assessment of risk arising from non-state actors, scope of justified excuses that prevent implicit withdrawal of asylum applications and finally, the lawfulness of assessment of conditions of removal by courts during judicial appeal of administrative decisions concerning withdrawal or rejection of asylum applications. The problems identified here could contribute to the arguments of asylum seekers before national courts of EU states, against safe third country transfers to Turkey. They are also important in terms of regional refugee protection considering Turkey is the country hosting highest number of refugees in the world.

**Keywords:** Refugee recognition, judicial review of asylum applications, implicit withdrawal of asylum applications, non-state actors of persecution, Turkey

#### The role of strategic litigation in international (quasi-) adjudicating bodies in addressing border violence in the Mediterranean

**Sara Traylor**

*Independent researcher, Denmark*

AMIS, University of  
Copenhagen, Denmark

This study examines how the practice of International Strategic Litigation (ISL) through international (quasi-)adjudicating bodies (ICs) contributes to the challenge and formation of legality. This is done by tracing the evolution of ISL in the context of border control in the Mediterranean through the lens of Practice Theory (PT). I observe how ICs provide a forum for contestation between states and their challengers (IS Litigators), and how they have responded to their growing role in this context.

Indeed, judges in ICs often alternate between progressive and deferential decisions with respect to cases that have a strong political charge, such as the ones occurring at the borders. This is done to preserve their authority and relevance. In this context, I argue that legal contestation contributes to the formation and challenge of legality in two main ways: through the production of case law, and through the shift in understandings of what is (il)legal, which causes the recognition of one legal interpretation over another. This, in turn, has an impact on the legal and political landscape at the border.

**Keywords:** International courts, strategic litigation, borders, practice theory, legality, Mediterranean Countries

### **Adjudicating asylum appeals: Internal flight alternative in Canada**

**Sule Tomkinson**

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For destination countries, the existence of an Internal Flight Alternative (IFA) is one of the determinative aspects of refugee protection. Even though Refugee Convention does not expressly refer to it, since the late 1970s, asylum authorities are invoking IFA to restrict access to refugee status. In Canada, the general principles concerning IFA findings emerge from two cases decided by the Federal Court: *Rasaratnam* and *Thirunavukkarasu* in the 1990s. Determination of IFA requires careful consideration of the applicant's identity as well as the country conditions. Previous legal research examining first instance refugee decisions concluded that the resort to the IFA led to inconsistent results within Canada. As Canada has established a Refugee Appeal Board in 2012, administrative review has the potential to improve these decisions. Currently, there is a gap in our knowledge regarding how refugee appeal decisions regarding IFA fare. This proposition adopts a public policy perspective and examines the effects of IFA as a procedural instrument. Through a content analysis, it examines the patterns of reasoning offered in over 200 published appeal decisions involving IFA considerations and illustrate under what conditions adjudicators examining appeals consider IFA determinations as (un)reasonable.

**Keywords:** Internal flight alternative, refugee appeals, materiality and justice, evidence, Canada

### **How do Belgian asylum judges take into account medico-legal documents supporting individual asylum requests: A case law analysis**

**Marjan Claes**

*Legal officer*

NANSEN - Belgian Refugee Council

The first part of the paper discusses the consideration that medico-legal reports drafted according to the standards of the Istanbul Protocol, as proof of past torture or ill treatment receive in the Belgian asylum procedure. Based on an analysis of case law (2019-2020) of the appeal Courts in asylum cases, the Council for Aliens Law Litigation and the Council of State in Belgium, the paper examines the evidential value given to medico-legal reports on three different levels. Firstly, in the

credibility assessment of the protection need, secondly with regard to the standard of proof required in order to take medico-legal reports into account when assessing the well founded fear of persecution, and thirdly the asylum authorities' assessment of the competence of the doctor to establish a causal link between physical and/or psychological injuries sustained by the asylum seeker and his or her statements. The importance of medico-legal reports as evidence in the asylum procedure is discussed in light of an analysis of the standards of the Istanbul Protocol and against the background of the case law of the ECtHR and the UNCAT.

Finally, the paper clarifies the obligation for the asylum authorities to conduct a medical examination in accordance with the UN Convention on Torture combined with article 18 of the EU Procedure Directive, a provision allowing the asylum authorities to arrange for a medical examination of the asylum seeker when indications exist of past persecution or serious harm that could be relevant for the assessment of the international protection need.

**Keywords:** Medico-legal reports, evidential value, Belgium

## **6B - Fairness and Access to Justice**

**Chair:** Livia Johannesson (SCORE, Stockholm University, Sweden)

### **Access to justice: Should there be a limit?**

**Alexandra Sideri**

*Human Rights Lawyer*

Greece

The purpose of this paper is to examine whether the existing structure of the asylum process applied in Greece includes loopholes leading to insufficient refugee determination procedures. Can the same person apply for different levels of refugee granted protection? Has a person the right to appeal at decisions without any limits at all?

Have asylum seekers residing in Greece abused the State provided benefits and if so, how does this affect the European mechanism? The national judicial mechanism has been reformed many times over the past years but has not been supported to effectively manage the continuously increasing asylum applications. It is rather common for a person to reside at Greece for more than five years whilst waiting for the result of a simple, second-degree appeal.

Ensuring access to justice for everyone whilst respecting the nature of this right is of paramount importance and a constant challenge. Overall, Greece has been regularly convicted by the European Court of Human Rights for severe violations and negligence on asylum cases. This is to be explained by analysing the role of civil society, national policy and several issues presented while working on the field at Greece. Particular emphasis is to be given on underage minors, human trafficking victims and child soldiers.

**Keywords:** Justice, access, implementation, Greece

## **Access to justice for asylum seekers staying in Poland**

**Maja Łysienia**

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Association, Poland

Asylum seekers struggle with accessing justice in Poland. By law, judicial remedies have been made available in asylum (and related) proceedings, but their effectiveness raises significant doubts in practice.

First, asylum seekers who are denied access to a Polish territory (so to asylum proceedings as well) can appeal against decisions on a refusal of entry, but this remedy lacks a suspensive effect. Moreover, it does not guarantee that the concerned asylum seeker will be allowed to enter Poland when the court annuls the challenged decision. Second, in the court asylum proceedings, an automatic suspensive effect must be requested by the asylum seeker, it is not attached to a judicial remedy itself. Besides, such requests are often denied. Lastly, when public order and national security considerations are involved in asylum decision-making, the asylum seeker has no possibility to know why he is considered to be a threat. The reasoning of the decision rejecting his asylum application is made secret – both for the asylum seeker and his legal representative. Only courts have access to such classified information.

For those and other reasons, remedies that are made available to asylum seekers in Poland are not considered to be effective as required under Article 13 of the ECHR. In 2020, the European Court of Human Rights concurred with this opinion. It condemned Polish authorities for refusing entry to Russian asylum seekers and not guaranteeing them access to an effective remedy in this regard. Further complaints before the ECtHR are now expected as regards the lack of an automatic suspensive effect in the court asylum proceedings and the lack of access to classified information.

**Keywords:** Effective remedies, suspensive effects, pushbacks, national security, Poland

## **Assessing cultures of practice in asylum decision-making: Towards an analysis of variations in refugee appeals decisions in Ireland**

**Sasha Brown**

*PhD candidate (Geography)*

Maynooth University, Ireland

In migration and border enforcement, states exert extreme versions of power— limiting movement, detention and deportations, especially in cases of assessing claims and applications for asylum. State archives are central to how states project this power – in records of citizens and populations, in codes of conduct, in deliberations on policies, in records of passports or in monitoring people’s movements around the world.

This project uses digital qualitative methods to assess over 100 refugee appeals decisions issued in Ireland, and quantitative methods to assess the corpus of over 16,000 decisions in a digital archive of Refugee Appeals Tribunal decisions issued 2001-2020.

The work from this project reveals the range of cultures of practice in the Irish asylum appeals decision process, and shows how a variation of practices by decision-makers can lead to situations where asylum seekers rely on the 'luck of the draw', in which decision outcomes are highly determinant upon the individual decision-maker. This paper presents a discussion of how investigating archives and revealing state practice of bordering can 'make a difference', identifying cultures of practice in asylum appeals decisions and identifying variations and patterns in how individual decision-makers assess appeals for refugee protection. This paper also proposes that making this information accessible and public can make the asylum process more transparent and more fair.

**Keywords:** Decision-making, digital methods, political geography, Ireland



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Dr. Nicole Hoellerer is an anthropologist, with extensive research experience in migration and refugee studies. Her ethnography on refugee resettlement in the UK laid bare the practice-policy gap in the UK's migration service provision. She is the lead researcher for the ASYFAIR research project, and as a native German speaker, she is responsible for research conducted in Germany and Austria. Nicole has published on refugee resettlement policies and experience in the UK, as well as on asylum adjudication in Europe.

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ARC Foundation is a UK charity which specialises in the production and use of Country of Origin Information (COI) in refugee status determination. We review COI produced by the UK Home Office, as well as that published by the European Asylum Support Office (EASO). We also offer a case-specific COI research service and have been instructed in a number of UK Country Guidance cases. We are also regularly commissioned by UNHCR to produce country reports on information gaps identified by their decision-makers.

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The University of London's Refugee Law Clinic was established in 2020 and is an innovative project providing pro bono legal advice for refugee clients. It is based on a model of Clinical Legal Education for the University's diverse student body. Delivered in partnership with two law firms, the Refugee Law Clinic also provides the opportunity for lawyers to undertake pro bono work within the clinic. This paper is a collaborative project between the clinic's staff and student volunteers, reflecting on the work of the clinic thus far. Ms. Susan Reardon-Smith is the Refugee Law Clinic Coordinator.

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Since 2005 Dr. Femke Vogelaar has gained professional experience in the field of asylum and refugee law. She has been able to take up positions with the Dutch Council for Refugees (Amsterdam) and Flemish Refugee Action (Brussels). She has also been able to do research for UNHCR Europe/Benelux office as well as UNHCR Southern Africa office. In December 2020, Femke successfully defended her PhD dissertation entitled 'Country of Origin Information, the Essential Foundation for Fair and Credible Guidance for Decision-making on International Protection Needs' at the VU University in Amsterdam. Chapters 2 through 5 of her thesis have been published as articles in peer-reviewed journals. Her presentation for the ASYFAIR Conference 2021 is based on the final chapter of her thesis which includes her recommendations regarding the evidentiary assessment of COI: [https://www.globalacademicpress.com/ebooks/femke\\_vogelaar/](https://www.globalacademicpress.com/ebooks/femke_vogelaar/)

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