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Rethinking commonality in refugee status determination in Europe: Legal geographies of asylum appeals

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A B S T R A C T

The Common European Asylum System aims to establish common standards for refugee status determination among EU Member States. Combining insights from legal and political geography we bring the depth and scale of this challenge into sharp relief. Drawing on interviews and a detailed ethnography of asylum adjudication involving over 850 in-person asylum appeal observations, we point towards practical differences in the spatio-temporality, materiality and logistics of asylum appeal processes as they are operationalised in seven European countries. Our analysis achieves three things. Firstly, we identify a key zone of differences at the level of concrete, everyday implementation that has largely escaped academic attention, which allows us to critically assess the notion of harmonisation of asylum policies in new ways. Secondly, drawing on legal- and political-geographical concepts, we offer a way to conceptualise this zone by paying attention to the spatio-temporality, materiality and logistics it involves. Thirdly, we offer critical legal logistics as a new direction for scholarship in legal geography and beyond that promises to prise open the previously obscured mechanics of contemporary legal systems.

1. Introduction

The Common European Asylum System (CEAS) is an ambitious project that aims to generate a 'truly common' (Chetail, 2016, p. 3), 'fully harmonised' (Trauner, 2016, p. 316) approach to the reception of asylum seekers in Europe, the determination of their claims for international protection and the contents of protection offered across the European Union (EU). Critical commentators have pointed out, however, that the driving rationale for the CEAS from the 1990s onwards was not the protection of refugees, but rather the social and economic security of EU Member States (Chetail, 2016; Lavenex, 2018). With the abolition of barriers to migration within the EU under the Schengen rules, Member States saw a need to regulate 'secondary movements' by people claiming asylum. In other words, there was concern that, once they had arrived in the EU, asylum seekers would be able to travel to other countries within it that they thought were more desirable. Alongside tougher external border controls, the EU therefore introduced rules, solidified in the CEAS (in particular the Dublin Regulation[9]), that

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[9] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31–180/59; (EU) No 604/2013. Retrieved from https://www.refworld.org/docid/51d298f04.html.

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made it mandatory for the first safe country reached to determine an asylum seeker's claim. The CEAS also entails an extensive effort to document and track migrants with the objective of enforcing these rules (in particular the EURODAC Regulation[10]). The fact that the parts of the CEAS which relate to border controls are more binding and more well-developed than the other parts that deal with reception, qualification for protection and the procedures that Member States use to make decisions, has been taken to signal the true priorities of the CEAS (Lavenex, 2018), despite all the talk of high standards of protection for refugees.[11]

In 2016, at the height of the so called European 'refugee crisis', the CEAS experienced an 'effective collapse' (Byrne, Noll & Vedsted-Hansen, 2020, p. 871) as Member States reasserted their national authority over refugees' movements. In what they felt to be the absence of adequate support from the EU, Greece and Italy adopted an informal policy of waving through migrants, while other countries hastily and unilaterally erected fences and implemented other policies to prevent entry (Lavenex, 2018; Trauner, 2016). The resulting panoply of routes and controls revealed struggles over sovereignty, solidarity and state power worthy of any political geography textbook.

Yet, scholarly and policy discussion of the technical aspects of the CEAS continues to be dominated by legal voices. While 'the CEAS has been chiefly reviewed from a legal standpoint' as Beirens (2018, pp.20–1) has noted, '[o]ther nonlegal perspectives that might shed light on whether the spirit of the law has been carried out and why (or why not) are generally drowned out'. To an extent this is understandable: the components of the CEAS are, first and foremost, legal instruments and technical wrangling about the law tends naturally towards doctrinalism. This dominance of legal perspectives, however, comes at a cost. The notion of a truly common system is broader than simply common rules and laws. A collection of rules does not fully describe the organisational and practical decisions and actions necessary to bring a common system into being.

Geographers who study borders are interested in the grounded conditions and manifestations of border laws, such as at checkpoints, offices, courts, detention centres and airports (see Ehrkamp, 2017; Mitchell, Jones & Fluri, 2019 for overviews). Following geographers' broader fascination with the everyday, they are interested in the discretion of, and embodied encounters between, a range of actors, from migrants themselves, to judges and security guards, who enact and animate border laws (Häkli & Kallio, 2021; Jones & Johnson, 2016). Concrete practices have a different reality to abstract laws and can be highly revealing of the power and politics that rules often do not make explicit.

In this light, this paper offers a new perspective on the CEAS and its problematics, taking asylum appeals as its case study, and drawing on perspectives from legal and political geography to foreground differences in the practical operationalisation of refugee law. We understand operationalisation to be a process of translation from abstract legal rules, to concrete, implemented arrangements within which legal decision making can take place. Our focus is therefore not decision making itself or the rules decision makers should follow, but the environments within which decision making occurs.

We draw on an ethnography of over 850 asylum appeal hearings in five different EU countries as well as interviews with people involved in the appeal process in three countries. We mobilise legal geography's insights into the spatio-temporalities and materialities of law, as well as political geography's engagement with logistics, to expose the extent of operational differences in asylum appeals in different EU countries, and reveal innovative ways to examine them in the future.

Our findings have implications for the notion of a "common" European asylum system. The CEAS seeks harmonisation in law and legal processes at a highly abstract level. Although legal scholars have already voiced concern about the achievability of even general commonality in terms of the basic rules governing qualification for asylum status (Beirens, 2018; Chetail, 2016), our findings reveal another order of challenges to true commonality, located at the level of concrete implementation and practice. To secure a "truly common" asylum appeal process, we show that judges and various other actors involved in refugee status determination would have to, for example, understand what asylum appeals are more similarly, be supported in more comparable ways (e.g. by similarly qualified and remunerated interpreters and clerks), work with more comparable technology, be expected to complete a comparable number of tasks per day or week, undertake more comparable training, be located in more comparable venues, and be presented with asylum cases in a more similar format. Such a degree of standardisation would represent an unprecedented EU influence over core aspects of Member States' legal architecture.

Conceptually, our findings indicate how important it is to conceive of the distinction between written procedure and practice not as a 'gap' but as a grey zone of implementation that exceeds the proscriptions of law and policy, as highlighted by the special issue theme. The problem with the 'gap' metaphor is that although it recognises that law is not effective in every context, it nevertheless risks reproducing the dominance of written law. This is because it steers attention towards codified procedures, even when not followed, and assumes that the most salient aspects of legal practice are described by the procedures in question. A geographically-informed view of legal practice, however, reveals a world full of contextual, ground-level variety and idiosyncrasy that is often not anticipated by law on the books, but which can exert strong influences over how law is implemented on the ground (Bartel et al., 2013; Bennett & Layard, 2015; Braverman, Blomley, Delaney & Kedar, 2014; Delaney, 2015; Jeffrey, 2019). The 'gap' metaphor threatens to obscure this complexity by confining discussion about legal implementation to the more specific topic of compliance.

We first set out some of the ambiguities of the CEAS. We then introduce perspectives on spatio-temporality, materiality and logistics from legal and political geography to enable us to explore the ambiguities we have outlined. We then describe our methodological approach before explicating the main differences in the operationalisation of refugee law we detected through these lenses.

Our analysis makes the following contributions. Firstly, we identify a key zone of differences that has largely escaped academic attention, which allows us to critically assess the notion of harmonisation of asylum policies in new ways. Secondly, drawing on legal- and political-geographical concepts, we offer a first attempt to conceptualise this zone by paying attention to the spatio-temporality, materiality and logistics it involves. Thirdly, we offer critical legal logistics as a new direction for scholarship in legal geography and beyond that has the potential to prise open the previously obscured mechanics of contemporary legal systems.

2. Legal geographies of refugee law in practice

There is a dearth of literature on asylum in the EU that addresses differences in processes and practices at ground level. A body of quantitative literature draws attention to differences in recognition rates of

[10] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), 29 June 2013, OJ L. 180/1–180/30; (EU) 2003/86. Retrieved from https://www.refworld.org/docid/51d296724.html.

[11] European Commission (2021) *Migration and home affairs*. Retrieved from https://ec.europ a.eu/home-affairs/policies/migration-and-asylum/common-european-asylum-system_en.

refugees in the EU and their correlation with numbers of applications for asylum, terrorist incidents, the economic vitality of destination countries and the gender of applicants, among other factors (Avdan, 2014; Neumayer, 2005; Plümper & Neumayer, 2021; Toshkov, 2014). There are numerous methodological difficulties inherent in measuring and comparing asylum recognition rates and policies across countries, making it hard to synthesise studies and identify unifying themes and findings (Gest et al., 2014). Perhaps owing to these difficulties, there is mixed evidence concerning the influence of the economic health of destination countries over the recognition rate of refugees in those countries (compare Neumayer, 2005 with Toshkov, 2014)[12]. There is also a lack of clarity concerning the influence that governments' policy positions have over the number of asylum applications they receive, with some commentators pointing to the relatively small effect of policy on asylum seeker numbers (Toshkov, 2014; Thielemann, 2003) and others maintaining that government policies can have an important effect on asylum applications (Hatton, 2004)[13]. These differences aside, a focus on application and recognition rates, while informative, leaves the processual aspects of refugee status determination black-boxed (Tomkinson, 2018).

Doctrinal scholarship also does not always address differences in processes and practices in concrete terms. This is not surprising because, in fact, neither the qualification nor procedures directives of the CEAS[14] are intended to exhaustively specify every qualificatory or procedural consideration across the EU:[15] both have been written to give plenty of latitude to Member States and/or subnational courts and actors (Chetail, 2016). The directives are sometimes intentionally ambiguous to allow Member States leeway to interpret the provisions as they see fit: specifying, for example, that an appeal should be possible against an initially negative decision but giving little detail about the practical composition or orchestration of appeals. In the Recast Procedures Directive of the CEAS for instance, reference is made to an 'effective' remedy, but little detail is provided about what this means in practice.[16] Further ambiguities include what a 'court or tribunal' actually consist of, what a 'full' examination of cases entails, and what 'reasonable' timelimits for making appeals are.

Teitgen-Colly (2006, pp.1512–3) catalogues a raft of 'loophole techniques' that the CEAS legislation embodies that enables it to project an 'illusion of protection' for refugees whilst remaining light on substantive content, including 'harmonisation à la carte', 'reference to national law', 'ambiguity', 'minimal binding force', the 'possibility of exceptions and of options' and a large amount of 'discretionary competence … left to states'. In short, the legislation of the CEAS only specifies a proportion of what countries, courts and judges should actually do when considering asylum appeals. Geddes, Hadj-Abdou, and Brumat (2020) surmise that the ambiguity of the CEAS is a product of the diverging viewpoints of Member States, meaning only the vaguest language is sufficiently uncontroversial to be universally adopted. The result is tentative legislation, despite its high aspirations. A study commissioned by the European Parliament (Directorate-General for Internal Policies, 2016, pp.8-12) noted that '[t]he CEAS is not "common", in the sense of one EU wide asylum system … On the contrary, the [CEAS] still consists of 28 different asylum systems, with different actors responsible, different procedures and different results' (ibid, p.12). It is therefore to be expected that doctrinal analysis of the CEAS does not offer a holistic perspective on asylum adjudication in Europe.

Our analysis offers a comparative empirical approach across various European countries that is focussed on appeal mechanisms (see Eule, Borrelli, Lindberg, & Wyss, 2019 on initial decisions). Various analyses focus on individual countries' appeals rather than taking a comparative perspective (e.g. Fassin & Kobelinsky, 2012 on France; Good, 2007, Campbell, 2016, on the UK). Comparative work on appeal processes tends to focus on a specific aspect of the process (e.g. witnesses and expertise in Lawrance & Ruffers, 2015) or compare countries outside of Europe (e.g. Hamlin, 2014, on the USA, Canada and Australia). Our work therefore fills a significant gap by being internationally comparative within Europe.

A geographical approach is well suited to investigate differences in legal practice not specified in written law. Legal geography examines the relationships between the realm of social practice that is labelled 'legal' and other socio-spatial, material and environmental conditions, influences and phenomena (Bartel & Carter, 2021; Delaney, 2015). Legal geography combines approaches from the disciplines of law and geography, which have traditionally been disconnected. This offers chances to understand the 'mutual constitutivity of the legal and the spatial' (Delaney, 2015, p. 98).

The field of legal geography is rich in concepts and we adopt three themes here, two of which are well-developed and the third of which combines insights from legal and political geography.

2.1. *Spatio-temporality*

Although laws can vary formally and explicitly across space, such as between different countries, the same formal laws are also frequently locally inflected via 'informal rules and lore as well as social custom and norms' (Bartel et al., 2013, p. 340) which themselves are influenced by place-specific socio-economic and cultural histories and geographies (Blomley, 1994). Focusing on these can productively destabilize the law's 'self-authorizing claims of unity and coherence' (Delaney, 2015, p. 97). Too often, abstract understandings of law 'overlook spatial heterogeneity and the geographically grounded nature of its own processes' (Bartel et al., 2013, p. 340). The self-referentiality of law as a way of thinking and reasoning can imply a degree of 'separateness and supremacy' (ibid, p.340) that excludes the importance of grounded place-based processes to the development of legal systems and practices, to the extent that there is 'an apparent dismissal [of] spatiality' (Bennett & Layard, 2015, p. 406). Legal geography offers 'a way for the heterogeneity, messiness, complexity, dynamism and emergent properties of people and place' to inform our understanding of law and its functioning (Bartel et al., 2013, p. 340).

Practically speaking, the desire to fuse the spatial and the legal has

[12] Neumayer (2005, p.64) writes: 'the recognition rate for full refugee status is … vulnerable to … a higher unemployment rate [in the destination country]' whereas Tochkov (2014, p.192) finds 'Unemployment is only weakly related to recognition rates and not at all to application shares'.

[13] Toshkov (2014, p.192) writes: 'government positions favouring immigration and multiculturalism have no effect on asylum application shares and recognition rates', and Thielemann (2003, p.1) writes that 'some of the most high profile public policy measures—safe third country provisions, dispersal and voucher schemes— … have often been ineffective'. Hatton, however, finds 'progressive toughening of asylum policy since the 1980s did help to stem the number of asylum claims' (Hatton, 2004, p.8).

[14] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, OJ L 337. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180. Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032.

[15] Proposals to strengthen the CEAS in 2016 progressed slowly, illustrating the limitations of EU-level legislation.

[16] Directive 2013/32/EU, Article 46 (1) prescribes that 'Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal' against a government decision; and (3) 'Member States shall ensure that an effective remedy provides for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs'; and further elaborates on 'reasonable time limits' and the suspensive effect of appeals. The Directive, however, does not provide practical guidelines for conducting hearings.

produced various concepts that allow geographers to read the two together, including their 'co-constitutivity' as well as thinking about them as 'spliced' and as forming 'nomospheres' and 'lawscapes' (see Delaney, 2015 for a review). These neologisms 'urge us to adopt [an] inherently wide angled lens for any ensuing investigation' focusing on explicating historical, social and spatial specificity (Bennett & Layard, 2015, p. 410).

Legal geographers have also pointed out the inseparability of space and time in the study of legal phenomena (Valverde, 2015; Braverman et al., 2014). Just as abstract law only comes alive when it is enacted at a particular site, it also instantizes at a particular time. Valverde, giving the example of the courtroom, notes that '[t]he spacetime in question is only a court of law at certain times' (Valverde, 2015, p. 16) and that 'paying attention to the way in which time and space interact to constitute the courtroom helps to shed light on the dynamics of what is called "justice"' (Valverde, 2015, p.18). Although legal geography may have privileged space over time in the past, there is now a consensus that 'greater inquisitiveness … about multiple aspects of temporality … is necessary for the further development of legal geography' (Braverman et al., 2014, p. 14).

This interest in the spatio-temporalities of legal systems raises questions like: 'how do spatial settings affect legal implementation and drafting, and vice versa?' (Bennett & Layard, 2015, p. 410). Where and when do the stages of the legal process take place? How are legal events like appeals distributed across space? When do they start and how long are they? How de/centralised are they?

2.2. Materialism

Legal geographers have also paid attention to materialism, as the entanglement between matter and meaning (Davies, 2017), because bodies and things are often at the intersection of i) the cerebral life of the law and ii) it's taking place in everyday concrete contexts. Matter 'is an under-acknowledged presence throughout the life of the law', Bennett and Layard write, 'from law-making right through to application of the law' (2015, p.416). In the case of courts, trials and legal hearings, the materials that constitute evidence and exhibits are particularly crucial to the functioning of the law and are subject to a range of geographical processes, from the difficulty of collecting and assembling them to their decay over time (Gill et al., 2020; Jeffrey, 2021).

In analyses of courts, hearings and trials, legal geographers have recognised that the sites at which legal hearings take place have a material effect upon the law via the 'nature of trial spaces, court architecture and the arrangement of courtrooms' (Jeffrey, 2019, p.565). Material perspectives on trials and hearings also extend to the influence of new technologies that are used in court rooms, which is often highly spatial (Hynes, Gill, & Tomlinson, 2020), as well as 'the performance and comportment of trial participants' (Jeffrey, 2019, p.566).

Performance and visuality are inextricably bound-up with legal materiality. 'Performativity', Delaney (2010, p.15) writes, 'denotes an irreducible and practical fusion of discursivity and materiality'. Legal hearings are, at least partially, theatrical events and while the need for performance should not detract from the substantive content of the law, theatricality is often important in legal processes (Hughes, 2015). Courtrooms are sites at which things must be 'shown to compel belief', eyewitnesses are often decisive, and the law divides itself starkly between public and private (Braverman, 2011, p.174). Attending to the visibility of law is a way to understand the 'interconnectedness between the material and the discursive' (ibid, p.177).

The focus on the material staging and visuality of law in legal geography prompts more useful questions, including: What roles do professionals and appellants play in the performance of asylum appeals? To what extent and in what ways are legal events like asylum appeals public and visible? What effects does the audience have over them? And what function do technologies play in their staging?

2.3. Logistics

Political geographers have developed a keen concern for logistics in recent years (for an early intervention see Zhukov, 2012). Neilson (2012) posits that logistics structure the unexamined background to contemporary capitalist development in the current epoch. Logistics is the 'art and science' (ibid, p.322) of 'managing things in time and space' (Lecavalier, 2016, p. 32) to maximise efficiency and flow, whilst minimising disruption and other costs.

While innovations in logistical ways of organising manufacturing and service industries have fundamentally altered the economic landscapes of contemporary capitalism over the past half century, geographers have been slow to appreciate their importance (Coe, 2020). This is partly because logistical operations are not intended to take centre stage. With their roots in military applications, the organisation of food supply lines to feed troops, flows of ammunition and medical supplies were always conceived as ancillary to, and subservient to, the 'main event' of combat (Neilson, 2012). Managerial logistics associated with industry such as warehouses, shipping routes and transport hubs, that lubricate the wheels of global capitalist production and consumption, are often similarly part of the unexamined background, located in grey non-places that are 'easy to disregard' (Lecavalier, 2016, p. 7), and often intentionally located out of the limelight (see also Khalili, 2021).

Yet, according to political geographers and other critical scholars, logistical logics and infrastructures are increasingly influential. Exceeding supply chain, military and corporate applications, Chua, Danyluk, Cowen and Khalili suggest that logistics have become a pervasive calculative logic and rationality bound up with spatial practices of circulation of 'innumerable kinds' (2018, p.617). The need to keep products and people moving has begun to take precedence over the quality of attention to these very goods and people (Cowen, 2014).

Geographers studying migration management in the EU are alive to these developments (Papada, Papoutsi, Painter, & Vradis, 2020; Tazzioli, 2018). Scholars have noted the widespread use of logistical terminology such as 'hubs', 'platforms' and 'corridors' which simultaneously dehumanise and depoliticise migration management (Grappi, 2020). Innovations, such as hotspots under EU legislation, have been conceived as logistical devices which locate, sort and detain those who arrive at the EU border in accordance with these logics (Pollozek & Passoth, 2019).

Thus far, however, legal geographical scholarship has not critically examined the logistical arrangements of legal processes and the influences these have over (the main event of) legal reasoning and deliberation, despite a tectonic increase in the volume of matters dealt with legally in society (Sumption, 2019). Academic law's fascination with the written law and abstract reasoning obscures the arrangements needed to ensure the flow of information, cases, estates, expertise and evidence that make legal reasoning, as well as hearings and trials, possible. Recent developments in data-intensive logistical innovations in legal processes (Netten, van den Braak, Bargh, Choenni, & Leeuw, 2018) have consequently gone under-scrutinised. There is a need for a critical legal logistics that might take a sceptical view of the speed of progress and opacity of these very developments.

A third set of questions that animates our analysis of asylum appeals therefore relates to the facilitative and ancillary - 'the hidden stuff that lies behind the physical or spatial site' (Braverman, 2011, p.175). What infrastructural and safety measures are considered necessary? What information, technology and other inputs are required and how will they be assembled? What personnel aside from the judge, appellants and lawyers are involved in legal systems and how do they influence the legal process?

3. Approaching asylum claim adjudication in practice

A large number of would-be asylum claimants are never able to make a claim for refugee protection because they are denied entry to states

where they would be able to do so. For those that overcome these barriers, initial asylum claims in the EU are assessed by government decision makers. Whether a claim warrants international protection depends on the claimants' narratives, means of arrival, national and international laws, evidence, documentation, and country of origin information. Claimants' narratives are scrutinised according to their internal coherence, the level and accuracy of details, and whether their account corresponds to known external information.

Asylum seekers in the EU whose claims are rejected, or who want to pursue additional protection, are usually permitted to file an appeal reviewable by a court, judge, tribunal or review board.[17] These are often within administrative law not criminal, civil or other areas. Administrative law normally deals with claims against government institutions, and is often designed to be a cheap, efficient, high-volume dispute resolution mechanism. Asylum cases, however, are frequently complex, involve vulnerable appellants, and are not as "clear-cut" as typical administrative claims (e.g. building and planning claims).

Braverman has advocated for 'the special relevance of ethnography' for legal geographers (2014, p.120). We used ethnography to explore differences in the daily operation of refugee law, drawing guidance from the socio-legal tradition of legal ethnography (Darian-Smith, 2017) and court ethnography (Dahlberg, 2009; Bergman Blix & Wettergren, 2018).

From 2013 to 2019 a multi-disciplinary team of researchers conducted over 850[18] observations of asylum appeal hearings across five EU Member States: over 350 in the UK (which was a member of the EU at the time of our observations), over 280 in Germany and over 150 in France, as well as 45 in Belgium and 4[19] in Austria. We selected these countries because of the substantive number of asylum cases heard, the publicness of hearings which allowed us access, and also because these countries represented a mixture of adversarial and inquisitorial legal systems. We observed public asylum appeal hearings, as well as everyday life in the public areas of hearing centres, and had informal conversations with the various actors involved. Researchers conducted their observations from courtrooms' audience areas and produced field diaries.[20] This approach allowed a critical comparison of multiple sites,[21] as well as insights into the often uncodified differences in atmosphere of asylum appeal adjudication (Gill et al., 2021).

We also conducted interviews with asylum seekers and lawyers, in Greece, Italy and the UK.[22] Interviewees were recruited via existing contacts with charities and refugee community groups (snowball-sampling) through a process separate from the hearing observations. Interviews were conducted in English or the native language of the researcher (e.g. Italian).

We focused exclusively on cases involving adult asylum appellants, although their children were sometimes present at the hearings. Court authorities were informed of the study. During court observations, we remained as inconspicuous as possible, and followed court etiquette. We explained our research to participants when possible and appropriate, and handed out information about our research. We have anonymised data.

Although it is not possible to include all the data we collected, and findings we arrived at, in this paper, we focus on the different practical approaches used to stage asylum appeals that were discernible in our interview and ethnographic material.

4. Operationalising asylum appeals

We now explore the diversity of approaches to legal operationalisation, focusing on the spatio-temporality, materiality and logistics of legal processes. These foci help clarify the 'grey zone' of legal implementation beyond formal legal rules.

4.1. Spatio-temporality

Hearings must happen somewhere, sometime, raising questions about their scheduling and venue. Here we examine two aspects of the spatio-temporality of appeal hearings: the degree to which national systems were decentralised, and the settings of the hearings themselves.

A key distinction between the countries we examined concerned the degree of centralisation of their refugee adjudication practices. Belgium and France had a single central venue while Germany, Italy and the UK all heard asylum appeals in multiple regional courts. Appellants living in remote parts of the country can have significantly longer journeys, especially to centralised courts, and may thus be tired in their hearings.

Court location is important for appellants because getting there can be stressful. 'I was a little bit worried about how I could get there, I went on the internet to try … find a way to get there, but there was not any clear way', one appellant in the UK recalled (interview, UK). 'Even the people living around the place don't know the court' another appellant in the Italian system explained, 'they don't know the place … because [it] looks like every other building. The buildings are very similar, you cannot find the place if you go alone' (interview, Italy).

Concern about getting lost and rumours about how hard it was to find venues often caused appellants to arrive several hours before hearings. Some also struggled to pay for travel tickets. One former appellant told us that they had enough money to get to the court but not enough for the return trip to their accommodation (interview, UK).

In decentralised systems though, the more remote courts outside major conurbations can suffer higher rates of unrepresented appellants because lawyers, especially more experienced and established ones, are sometimes reluctant to travel to remote locations. For example, in hearings observed in Berlin 91% of appellants had a legal representative, whereas in Augsburg, a less densely populated region with difficult public transport access, only 34% were represented. In the UK, a barrister reflected:

> Barristers from my chambers, generally have lots of work, but once they're about three or four years in they just start refusing to go to [remote hearing centre] because it just doesn't make financial sense and it's a complete nightmare in terms of your work/ life balance …. There's a higher quality of lawyer concentrated in London, and it's difficult to persuade good lawyers to go to [remote hearing centres].
>
> Interview, UK

Smaller regional courts also sometimes did not have the critical mass and financial means to support a wide enough network of specialists to deal with difficult or unusual cases. The availability of interpreters for less commonly spoken languages or dialects, for example, was sometimes constricted in courts located far from major conurbations, which provide the requisite diversity to support specific language needs. This could result in mismatching interpreters and appellants, or appointing less skilled interpreters. One lawyer in the UK reported that expert witnesses were in short supply at smaller courts. A British judge described the smaller courts he visited as 'little out stations' with poorer facilities than large courts (fieldnotes, UK).

Decentralised court systems may be seen as necessary because of the number of cases in some countries which would overwhelm a single court. There may not, however, be enough asylum cases to justify judicial specialisation at small, regional courts. Many judges had

[17] Henceforth, we refer to all these as "courts" owing to inconsistent nomenclature across our sample countries.

[18] Precise count depends upon how partial cases are treated.

[19] Although this sample was small we were able to identify differences with our other case countries.

[20] Including questions and answers, evidence presented, behaviour and characteristics of participants.

[21] Qualitative data were analysed with NVivo.

[22] This includes 41 appellants in the UK, 24 in Italy and 1 in Greece; 18 legal professionals in the UK, 30 in Italy and 10 in Greece, as well as a small number of interviews with other professionals involved. We were unable to observe asylum appeals in Italy or Greece because they were closed to the public.

specialisms in other legal areas but had been co-opted into asylum when demand increased in 2016. Our respondents felt some judges were consequently uncomfortable: 'he was put there' one lawyer in Italy explained about one judge she worked with, 'but he prefers to do company law' (interview, Italy). A German judge explained that 'other areas of [administrative] law … concern questions of an impersonal nature', whilst asylum has 'real-life effects on humans' (fieldnotes, Germany). He felt unprepared for this: 'the psychological dimension of such cases is only taught when training for criminal law'.

Another German judge was normally only responsible for labour law, but was drafted into asylum to cope with the increasing amount of work. He found asylum law 'more exhilarating', but more complex and time-dependant:

> In labour law – or classic law – the law doesn't change that often, and it's more rigid …. But in asylum law you really need to be on top of the constant changes, and read up on country of origin information all the time … I have to re-learn geography, which I haven't looked at since school …
>
> Fieldnotes, Germany

A system of decentralised, regional courts can also result in different judicial cultures arising at different hearing centres. In the UK there were marked differences in the propensity to grant in-hearing adjournment requests between centres (Gill, Rotter, Burridge, & Allsopp, 2018). Adjournments are important when appellants have been unable to disclose important facts, perhaps because of trauma or shame that can accompany sexual violence, or not having time to gather evidence.

In Germany we observed markedly quicker hearings in certain federal states (Fig. 1). In Dusseldorf, some hearings are scheduled for only 15 minutes, with one judge being able to hear up to eight hearings daily. In Berlin, by contrast, hearings are normally scheduled for around two hours, with judges normally hearing two or three cases a day. In part, this is explainable because some types of cases, and cases from certain countries, are more common at certain courts, and some cases are more complex than others. There are, nevertheless, regional cultural differences. During our observations, most judges in Berlin assessed each case 'de novo' (i.e. from scratch), whereas in Dusseldorf and Munich, judges only asked 'follow-up' questions, taking their cue from the initial government decision, rather than fully revising the facts in the hearing (we return to this issue below). While research has scrutinised the discretionary influence of individual judges over legal processes, our analysis points to the durable influence of court culture in asylum appeal determination which operates across multiple judges and cases in systematic and measurable ways (Fassin & Kobelinsky, 2012; Ramji-Nogales, Schoenholtz, & Schrag, 2007; Liodden, 2019).

In Italy, our interviewees also drew attention to regional differences between tribunals, pointing towards the markedly different backlogs across regions, which meant some appellants waited much longer for hearings. One lawyer associated these differences with varying judicial engagement between courts:

> Bologna and Florence are on another level. Meaning they have judges totally different, … because they are passionate, they study, they do 15 page decisions … While here and in other branches you see some 30 page decisions because they are copy and paste [decisions].
>
> Interview, Italy

In terms of the spatial setting of hearings, some of our interviewees felt underwhelmed by the court space, especially in decentralised systems. 'The Courts of Appeal usually are very beautiful' one lawyer mentioned.

> 'they are in these very big buildings … but here, nothing, we went in the judge's office, which wasn't even a very pompous office, it was a small-ish office. And we did the hearing there.'
>
> Interview, Italy

In Germany, some regions have comparatively few hearings, so it is not cost effective to build a dedicated court. In Chemnitz for instance the 'court' is simply housed on the ground floor of an ordinary office block, which looks and feels very different to a dedicated court space.

Most asylum appeal hearing rooms in France, Germany, and the UK have a raised dais for the judge and an internal layout that distances the judge from the other participants. In smaller German courts however, the rooms were sometimes like university seminar rooms, with tables arranged in a rectangle without a judges' platform or any particular architectural feature to distinguish them, and in Italy hearings were held in judges' rather unremarkable individual offices.

In contrast, other appellants felt overwhelmed by a large, overly formal building:

> I would feel more comfortable in a different place, more informal than the court. Because I'm not a criminal, so why in the court? I'm just a person who is looking for a better life for my child. Those things should be discussed in a small place, no need for something big like the court … I would have more trust in the system then.
>
> Interview, UK

In summary, the spatiality of asylum appeal hearings affects how they are executed and experienced. Our data revealed a significant cleavage among EU Member States between either a central court dealing with all asylum appeals, or a more decentralised system. This distinction was itself related to the degree of specialisation of the judges and other actors involved, and also determined the journeys of the appellants and, to an extent, the venues of the hearings. Attending to these differences is a way of nuancing 'law's generic approach to the solving of all tasks and questions referred to it' (Bennett & Layard, 2015, p. 407) by understanding how law is embedded in 'social and political life that is in turn emplaced' (Bartel et al., 2013, p. 340).

If the location of hearings differed, the timing did equally: 'different legal processes are shaped and given meaning by particular spacetimes' (Valverde, 2015, p. 11). Some countries considered a 15–20-minute hearing sufficient to have reviewed an asylum claim (see also Hambly & Gill, 2020 on France); other countries and courts encouraged much longer engagements, constituting very different interpretations of what legal deliberation and fair hearings mean in practice. In these ways 'different legal times … shape legal spaces' (Valverde, 2015, pp.17–8).

4.2. *The materiality of the appeal*

Two aspects of the materiality of asylum appeals differed significantly within our sample – the procedure of appeals and the degree to which they were public events. In terms of procedure, what an appeal consists of concretely varies significantly across EU states (International Association of Refugee Law Judges European Chapter, 2016). Some countries (e.g. Greece) conduct appeals mostly 'on paper', meaning judges never meet appellants in person. Judges may or may not meet each other to discuss the appeal, or meet the legal representatives, but appellants are not present.

A minority of legal representatives and judges recommended a paper-based process like this because hearings can re-traumatise appellants. The majority, however, saw the opportunity for appellants to appear in person at their hearings as important. As Jeffrey (2020, p.1004) notes, '[b]odies and law are intricately intertwined' and the presence of 'bodies' is related to both the moral authority of law as well as the types of narration and evidence that law considers. Some lawyers felt appellants needed to use all means of communication available to convey their experiences, including body language. 'It makes sense to explain with your language, with your face, with your cry, with everything' (interview with lawyer, Greece). Some appellants preferred meeting a judge too, seeing this as an important part of the official process.

The Italian system presented an interesting case regarding appellant

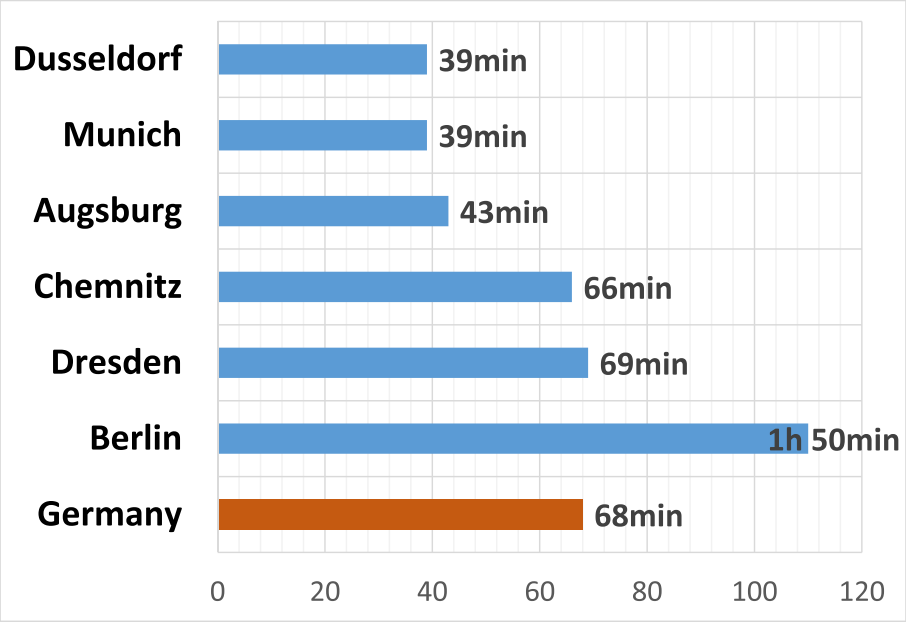

Fig. 1. Average hearing times at different courts in Germany according to our observations.

attendance, because legislation had recently been approved during our research that meant judges could base their decisions, at least partly, on a video recording of the initial interview.[23] Most interviewees argued that a video recording of the initial interview was a poor substitute for an in-person appeal. Appellants were normally not legally represented at the initial interview, they may have been unable to disclose important facts, and the questioning style of the Territorial Commission (the initial decision-making body in Italy), which has a direct stake in the outcome, may not be as objective as an independent judge.

Yet, the video recording of the initial interview as a tool to support judges in their decision-making was not seen as negative per se, provided it was not intended to replace in-person hearings. Some argued that having a video recording of the initial interview was better than relying on written transcripts for instance, which were often poorly produced. One lawyer reported that key words like debt, fraud, blackmail and usury were often mistranslated in transcripts. 'The use of the keyboard is, per se, a tool of institutional violence' he commented:

> I have seen records made without punctuation … I mean, it is a complete humiliation of the story … Because the commissioner, at the fourth interview, at 6.30 pm, if he doesn't have typing competences … And nobody is selected for their typing competences, there were people who were typing with two fingers, two!
>
> Interview, Italy

Countries varied in terms of the publicness of hearings too, which affected 'the dual project of seeing and concealing' the law (Braverman, 2011, p.173). Some countries like France, Germany and the UK have public hearings that anyone (including researchers) can attend, while other countries like Italy have in-person hearings which are not publicly accessible. Our interviewees held varying views about this. Some worried that appellants might have difficulties disclosing their case publicly, especially if they feared being traced by malevolent forces in their origin countries. '[I]n public, [with] many audience listening [sic], I would not feel more comfortable' one appellant in Italy said (interview, Italy). Others mentioned their fear of journalists:

> It can happen that some journalists come to listen to you, and that the next morning when you wake up, you find that your history is on everybody's lip, hence on the newspaper …
>
> Interview, Italy

While careful steps were taken in France and the UK to exclude the public if risks were identified, in Germany we sometimes became concerned that hearings were 'too public', characterised by an inflexible presumption towards publicness where appellants rarely had the chance to request a closed session. We were never excluded in advance for example (whereas in France and the UK this happened routinely) or asked to leave by the judge. Once, around 10 college students piled into a small German hearing room. When the appellant questioned their presence and looked uncomfortable about it:

> The judge frowns and looks slightly annoyed, and says in a very loud voice: 'This is the public, and they want to watch your case. In Germany, our system is open for public scrutiny'.
>
> Fieldnotes, Germany

In another instance:

> The young female appellant describes in harrowing detail how she tried to commit suicide by self-immolation due to forced marriage. She sobs uncontrollably. I feel that I shouldn't be there. This is too personal, too harrowing for a public hearing.
>
> Fieldnotes, Germany

There were also practical difficulties with public hearings. 'The disadvantage from a physical point of view', one Italian lawyer explained, is that open hearings suffer from 'the shouting, the noise, the judge interrupting the hearing to say to be quiet … ' (interview, Italy). There were certainly instances of these difficulties in Belgium and France, where on different occasions the sounds of shouting, weeping, mobile phones, school trips in the corridors, lectures being delivered in adjoining rooms, angry reactions to the previous case and, especially, children in the waiting areas of the court, all made it more difficult to hear what was being said.

Conversely, there was also awareness that public scrutiny of hearings can have a moderating effect on judicial behaviour (Gill & Hynes, 2021). 'Maybe it would be better if there was public' one Italian Civil Court judge mused, 'because it has social control over the hearing and the judge' (interview, Italy). Furthermore, if appellants can observe other

[23] This legislation had not been implemented during our fieldwork and contained numerous ambiguities.

hearings in advance of their own, this can help put them at ease. In Paris this happened frequently, and appellants could also bring supporters.

The decision to hold 'de novo' appeals also affected their visibility. Consider the difference between some Austrian and Belgian cases we observed. In Austria judges revisited the whole narrative of the appellant in hearings and we observed all of the discussion. A Belgian judge explained that their hearings, in contrast, are only meant to allow judges to be told about new developments since the paperwork was submitted: 'everything else has to be given in their statements through the lawyers' (fieldnotes, Belgium). This resulted in frequently truncated exchanges during hearings, during which the basic facts of the case were neither disclosed nor discussed. Some judges would cut appellants short when they were supplying information that judges felt they already knew from files. 'For you and everyone at the back listen up' one Belgian judge angrily announced, 'I will listen to nothing I already know from the files. Written procedure!' (fieldnotes, Belgium). Processes that differed between countries therefore affected the visibility of the legal system when a lot of information was confined to unpublished paperwork in some systems.

In summary, our findings illustrate that EU countries take very different approaches to the material organisation of hearings. Some hold them on paper, others in-person, others employ a changing balance between the two, such as when video technology is employed. This is significant given the 'capacities of the body to disrupt or reconfigure the operation of law' (Jeffrey, 2020, p.1013). Furthermore, some countries also see appeals as essentially a last chance to add anything to the paperwork, while others see them as an opportunity to go over the whole case again. Some countries allow video technology to play an important part in the process whereas others do not. These differences demonstrate that 'foregrounding performativities' (Delaney, 2010, p. 14) can be productive to understanding the practical implementation of law.

4.3. Logistics

Our findings also highlighted who and what was necessary to allow the appeals to take place. Appeals rely on various non-human forms of facilitation including the technology, information and infrastructure needed, although here we focus on human facilitators. The most prominent figures in asylum appeals are usually judges, appellants, and legal representatives. In the UK's adversarial system the legal prepresentatives, when present, have a formally different role to in the other countries we studied, constituting an important difference between legal systems. Here, however, we focus on the range of supporting roles that must be fulfilled too.

Most of the countries in our sample provided interpreters, who can impact the hearings profoundly (Pöllabauer, 2004). We observed one interpreter seeming to advocate for the appellant in their responses in France, for instance, using everything at their disposal to add narrative force to responses:

> The interpreter seems to be giving added dramatic effect to the answers given by Mr A. Whereas his answers are relatively monotonous, she is very forceful in the interpretation, inserting drama, passion, raised voices, gestures, that the appellant has not used.
>
> Fieldnotes, France

Our investigations also highlight more structural differences between countries. In Belgium some hearings were conducted in French and some in Dutch according to the constitution of the court. Interpreters, however, were not necessarily fluent in both French and Dutch, as well as the appellant's language. Two interpreters therefore sometimes operated together, one interpreting the appellants' native language into French or Dutch, and the other interpreting either from French to Dutch or Dutch to French. Consequently 'a sort of game of broken telephone sometimes ensues where one translator will explain what is happening to the other who must then translate it for the appellant … and vice-versa' (fieldnotes, Belgium). Not only does this process take longer and cost more than single-interpreter processes, but the risks of misinterpretation and interpreters imputing meaning, are arguably exacerbated.

In Italy, conversely, we were told that courts had ceased to provide interpreters for appellants: interpreters must be sourced by the appellants themselves. 'Before it was paid by the Tribunal' one lawyer recalled:

> [T]here was a list of people who could do this job … [But] some interpreters didn't want to do it anymore because the Tribunal was not paying them on time … And now it is on the asylum seeker, so he pays … or the reception centre takes on the expense of paying the interpreter.
>
> Interview, Italy

The difficulties of this arrangement were clear to our respondents. 'They are not professionals', a lawyer explained, 'there isn't a professional register of interpreters, I mean, there is a list at the Tribunal, but it isn't constituted by people with a qualification' (interview, Italy). Judges too were dissatisfied. 'This is a massive problem in the hearing's management' one Civil Court judge said 'we have no trust in the person joining the appellant. I mean, we have not nominated him, and we do not know who they are' (interview, Italy). Many appellants brought compatriots with them as interpreters, who were frequently paid cash in hand. Although appellants may have appreciated knowing their interpreters, this meant interpreters were often inexperienced, needed guidance from judges, and sometimes made mistakes. They 'empathise too much with the story' one judge complained, giving the example of:

> Ukrainian women [who] come to translate for their sons … It happened to me three times, always from Ukraine … it's obvious that when the mother comes to speak on behalf of her own son, she would tend to say mostly her own opinions [like] 'Yes, yes poor thing he escaped … '
>
> Interview, Italy

Other facilitative roles include court writers which were common in Austria and Belgium but much rarer elsewhere. They made notes in real time, subject to the judge's direction. Their success was of course variable, but as a system of recording the proceedings, it has advantages over the other systems we observed. In France, Italy and the UK for example hearings are not formally recorded which can make onward appeals difficult. In Germany almost all the hearings we observed were recorded on a Dictaphone by the judge. Many would stop frequently to speak into it, often with information everyone had already heard, to make an official record. This made the conversation disjointed and difficult to follow, especially in a foreign language.

Security arrangements differed too, depending on court size, security risks at the time, and the culture at each court. Austria was the only country in our sample where attendees' IDs were checked in the hearing room at the start of every hearing. Elsewhere, although it was common for bags to be searched and water bottles emptied some courts were particularly zealous. In Düsseldorf we came across 'a special door arrangement – almost like an airlock or something akin to an airport - that won't let you through before they have seen your ID and checked your bags (i.e. the door to the actual court space won't open)' (fieldnotes, Germany). One court in the UK:

> … was unusual in actually removing various types of items from visitors, including spray deodorant, nail varnish and flasks of liquid. They objected to a little mirror I had (they specifically asked if I had a mirror) and I had to let them keep it whilst I was there, which involved me having to complete a form and get a raffle ticket in order to claim it back.
>
> Fieldnotes, UK

Other courts were more relaxed.

> I am surprised that the court seems to be in a normal office building, and there is no security … One courtroom is right next to the entrance … and the only way that the courtroom is separated from the rest of the entrance is through a few large foliage plants.
>
> Fieldnotes, Germany

Security matters, because it affects the atmosphere of the hearing centre (Gill et al., 2021) which can influence how appellants approach their hearings. They can find the experience intimidating, which may make them less forthcoming with evidence. 'You're just cattle' a British clerk told us in describing the attitudes of security staff at his centre. 'You feel like you're a criminal' an appellant explained, 'you see the guard and then you talk to the judge, and they don't believe what you are saying' (Interview, UK). Security guards can also lift appellants up though. 'I met only one security guard who was very helpful' one appellant recalled, 'he even gave me confidence. I felt, "I can do this"' (interview, UK).

Other supporting figures in France and the UK include clerks and secretaries. Their role includes helping orientate the parties on the hearing day, checking they are all present and ready to proceed, supporting the judge in deciding the order of cases, and keeping parties informed when there are breaks and adjournments. Good clerks and secretaries can significantly affect cases. We noticed that when a case is adjourned 'sometimes the clerk goes and gets a date while the hearing is in sitting. Usually this happens afterwards or the date is served in writing at a later date' (fieldnotes, UK). A helpful clerk, then, can save appellants weeks of unnecessary waiting. They can also be crucial in ensuring the judge has all the documentation. 'Even just with last minute documents arriving' one British lawyer explained, 'like a doctor's letter from the surgery arriving in court on the day of the hearing - they'll bring it in' (interview, UK).

In summary, our investigations have highlighted the cast of logistical workers, often operating out of sight, or at least not as visibly as the judge, appellant and legal representatives, but working to strict schedules to keep legal processes moving and functioning. The logistical arrangements across EU countries vary significantly. Interpreters face different labour markets and regulatory requirements. Other supporting staff were present in some countries and not others. Security arrangements also differed widely. The working conditions, remuneration and training of these actors impact on the way law is experienced by the 'main event' participants, especially appellants.

5. Conclusion

We concur with critical scholars of EU refugee law who see the CEAS as 'a work in progress rather [than] a legal reality' (Chetail, 2016, p. 35), who raise concerns about the illusory nature of protection (Teitgen--Colly, 2006) and who highlight the hypocrisy of high normative aspirations on paper but noticeably lower levels of action in practice (Lavenex, 2018). Our paper contributes to debates about refugee law by suggesting ways to appreciate the variability of legal practice, informed by concepts from legal and political geography, that connect legal processes to concrete sites of implementation. The complementary lenses of spatio-temporality, materiality and logistics provide ways to classify and systematically investigate variations in legal practice that are usually labelled simply ambiguous or extra-legal. This classification helps to clarify a persistently grey zone with respect to the implementation of refugee law. Our analysis thus responds to recent calls from within legal studies to examine the CEAS 'from below' (Byrne , Noll & Vedsted-Hansen, 2020, p.871), using perspectives from a wider range of disciplines than has usually been the case to expand the 'methodological repertoires' (ibid, p.892) used to understand asylum law and its evolution. With the framework offered by legal geography, we have begun to categorize a previously opaque set of phenomena and bring specificity to debates about the uneven implementation of refugee law. If the goal of the CEAS is truly to harmonize the opportunities for people seeking asylum in the European Union to receive (or be denied) protection no matter which Member State assesses their application, then these phenomena matter because they shape the way law is interpreted, enacted and experienced.

Our ethnography has highlighted how the practical operationalisation of asylum appeals differs widely across the EU countries we studied. Key spatio-temporal aspects of appeals such as the scheduling and degree of centralisation of the systems of asylum claim adjudication as well as the duration of hearings, varied significantly. Materially, the balance between paper, in-person and televisual elements, the degree to which hearings were embodied, and the degree to which hearings were public also all varied in tangible ways.

In terms of the logistical challenges of facilitating hearings at the required pace, the involvement of supporting actors also varied significantly. This aspect of our investigation has borrowed from recent conceptualisations of logistics amongst political geographers and others, but we see great potential in the fusion of insights from political and legal geography in relation to the hidden underbelly of concrete legal systems. In particular, the development of what we are calling "critical legal logistics" is required, that takes seriously and makes visible the labour,[24] infrastructure and technology that is needed and utilised to facilitate legal processes. Such an endeavour would critically engage with the managerial and technical discourses and rationalities that organise law as a flow (Netten et al., 2018), with a speed and rhythm that must be maintained, and would reckon with how these supposedly background considerations mould law and access to justice themselves.

It might be argued that asylum adjudication in the wake of the 2015–16 refugee 'crisis' in Europe, which coincided with much of our data collection, can be seen as an area of law in which the quantitative pressure on the legal system was unusually intense. In response, we would point out that much socio-legal scholarship is focussed on elite courts, such as international courts, which are both better resourced than lower-level courts and yet not representative of most people's experience of law (see Anleu & Mack, 2017; Hughes & Elander, 2022). Our focus on lower courts provides something of a corrective to this focus. Furthermore, given the increasing demand for legal services in modern society, our findings might well be a harbinger of what is to come in other legal fields.

This is not to suggest that all the differences we identified justify intervening to 'equalize' the settings and practices of refugee law. Differences may simply reflect alternative ways of doing things, often linked to individual states' histories of administrative law and other decision-making structures, none of which are intrinsically fairer. It is not clear, for example, whether an auspicious or modest courtroom is preferable. 'Many diverse procedural forms are intrinsically fair', Costello and Hancox write, 'so there would seem to be little justification for general harmonisation in the name of fairness' (2016, p. 383). Nevertheless, to talk of commonality or harmonisation without acknowledging the ground-level differences we have identified seems unsatisfactory because it can give a false impression of uniformity and coherence that does not correspond to the reality.

Conceptually, our work has illustrated the limits of the notion of the 'policy/practice gap' in the context of asylum adjudication by illustrating the complexity of legal implementation and the degree to which this complexity exceeds the parameters described and anticipated by written law or policy. While notions of a 'gap' convey concern about the shortfall of practice from policy and legislation, our analysis implies that implementation must be seen as broader than compliance, especially when policy and legislation is weak, ambiguous and partial. Reducing the conversation to a linear debate about closeness to, or distance from, rules that were never intended to specify the minutiae of legal practice in

[24] See Dahlvik (2017) on the everyday work undertaken within Austrian first instance asylum decision making administrations (see also Pörtner, 2021).

the first place, not only excludes too much, but also subtly reproduces the hegemony of written doctrine. In response, our analysis has explored a zone of concrete practice that has often escaped academic scrutiny, attention to which casts discussion of harmonisation of European asylum policies in a new light. Drawing on legal- and political-geographical concepts, we have sketched out the spatio-temporal, material and logistical dynamics of this zone. Critical legal logistics, we have argued, holds particular conceptual and empirical promise for future scrutinising of legal systems in grounded, geographically-informed ways.

At the level of policy and the CEAS, if harmonisation was to be achieved in the field of asylum adjudication, the environments within which judges make their decisions would arguably need to be far more comparable. Substantial progress towards harmonisation is likely to depend on whether the working conditions of judges, interpreters, clerks and ushers can be made more equitable, if legal representation can be organised in more comparable ways, if approaches to the use of televisual technology can be harmonised, if the scheduling and venues of asylum hearings can be made more similar and if training can be standardised. Although the European Union Agency for Asylum (formerly European Asylum Support Office) has a mandate to target the practical and operational aspects of refugee claim determination to support harmonisation, work to address all these factors would represent a hitherto uncharted degree of standardisation of Member States' justice systems (see Tsourdi, 2020). Since many are related to national traditions of justice, the political contentiousness of attempting this magnitude of reforms may very well make them impossible.

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Declaration of competing interest

None.

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