



SESSION 6 (Friday, 2 July, 09:30 - 11:15, BST)

6A - Case Law and Evidence

Chair: Nick Gill (University of Exeter, UK)

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Analysis of problematic legal issues in Turkish case law on asylum

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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

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Dr. Gamze Ovacik is a research assistant in the final year of her PhD at Bilkent University Faculty of Law in Turkey, working on an empirical and critical analysis of asylum case law in Turkey, and she was a visiting researcher of Radboud University Centre for Migration Law in 2019-2020. She

was part of the Policy Development Unit of UNHCR Turkey between 2017-2018, working with asylum lawyers and judges. She was previously part of the Project Development and Implementation Unit of IOM Turkey between 2012-2014, and she also worked with the International Centre for Migration Policy Development Turkey as a freelance expert on migration and asylum law between 2016-2017.

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

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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

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Ms. Sara Traylor carries out interdisciplinary research on migration-related topics, with a focus on large-scale political and legal tensions generated by the act of crossing the border into Europe. She is also an activist for freedom of movement involved in transnational networks conducting research, carrying out actions and supporting the struggle for a world with no borders. Sara graduated in 2020 from the multidisciplinary Masters “Advanced Migration Studies (AMIS)” at University of Copenhagen with a thesis on strategic litigation at international (quasi-)adjudicating bodies on violations occurring at the European borders, from which this paper is extrapolated.

Restricting access to refugee status through internal flight alternative, and the use of jurisprudential guides, and the dangers of shallow decision-making

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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

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Dr. Sule Tomkinson is an Associate Professor at the Political Science Department of Laval University. She studies justice outside of courts. More specifically, she examines how democratic states deliver administrative justice, how they measure its quality and how they innovate in this area with the contribution of non-state actors.