



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

6B - Fairness and Access to Justice

Chair: Livia Johannesson (SCORE, Stockholm University, Sweden) livia.johannesson@score.su.se

Access to justice for asylum seekers staying in Poland

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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

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Mrs. Maja Łysienia (she/her/hers) is a Polish attorney-at-law who worked for many years as an immigration lawyer in the Helsinki Foundation for Human Rights in Warsaw. Currently, at the University of Zurich, Switzerland, she is finalizing her PhD thesis on asylum cases decided by the European Court of Human Rights and the Court of Justice of the EU. She is also a co-author of the AIDA report on the Polish asylum system, published yearly since 2013 (<https://asylumineurope.org/reports/country/poland/>).

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

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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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Mr. Sasha Brown (he/him/his) is a finishing PhD student in Geography at Maynooth University, in Maynooth, Ireland. Sasha’s PhD, “Evidence and absence in the archives: A study of the Irish Refugee Appeals Tribunal Archive to assess the state practice of determining asylum in Ireland”,

explores the evidence and absence of evidence in the Refugee Appeals Tribunal Archive. Sasha recently finished his dissertation, and is also working on projects including community mapping, creative use of digital research methods and the application of web-scraping methods in political geography.