Street-level bureaucrats and coping mechanisms. The unexpected role of Italian judges in Asylum policy implementation

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Keywords: *International protection of refugees; Common EU Asylum System; Italy; EU policy; national implementation; judicial discretion; asylum appeals procedure; asylum courts*.

The present article aims to open the black box of the asylum determination process, focusing on asylum adjudication in courts and on actors implementing this specific policy frame: asylum judges. To assess the peculiarities of the Italian adjudication model and how judges concretely behave shaping the policy, we rely on the Street Level Bureaucracy (SLB) framework (Lipsky 1980). The SLB perspective allows to study the implementation of asylum adjudication from a bottom-up perspective, focusing on judges and their margin of discretion in processing asylum claims. This explorative study aims to verify the proposed theoretical framework and to understand if courts and judges adopt a SLB behavior, the reasons why they adopt such a behaviour and the scope of their discretion.

In 2015, at the breakdown of the so-called European migration crisis (2015-2019), around 1.2 million people claimed asylum in EU Member States (Gill & Good 2019). Asylum claims declined consistently only after 2019, especially during the pandemic emergency, which reduced the number of asylum applications[1] (Eurostat 2020). To ensure a fair and uniform asylum policy, the EU has developed the Common European Asylum System (CEAS), a legal and policy framework covering all stages of the asylum process. Asylum adjudication is a crucial phase of this process and consists in the evaluation of the application by the competent authorities, at first instance and then on appeal. The present research specifically focuses on asylum adjudication in the appeal stage. In the EU context, when asylum seekers receive a total or partial negative decision to first instance claims, they have the right to appeal to either judicial or administrative institutions, depending on the country (Gill & Good 2019). To give an idea of the relevance of the appeal phase, it is sufficient to recall that in Europe 236,840 asylum claims were challenged on appeal in 2020 and 29.7 per cent of these appeals ended with a positive decision (Eurostat 2020). The appeal phases are carried out by judicial institutions having different organisational models depending on the country (e.g. specialised local courts or centralised courts; administrative or civil courts). This is due to the margin of manoeuvre left to Member States in the implementation of the CEAS.

As we will explain below, Italy can be considered a crucial case study to analyse asylum adjudication, especially on appeal. Between 2014 and 2016, the number of people applying for asylum in Italy

doubled from 63,000 to 123,000, reaching 130,000 applications in 2017 (Ministero degli Interni 2020). The 26 court-sections specialised on migration and asylum have gradually become crucial institutions for the Italian asylum policy, especially if we consider that since 2015 negative decisions at first instance have gradually increased (Fontana 2019): as an example, in 2019, 65 per cent of the 95,060 decisions at first instance were rejections (Ministero degli Interni 2020). From 2016 to March 2020 more than 94 per cent of the first instance rejections were redressed through judicial procedure and 37.5 per cent out of 209,155 claims examined by the civil courts received a positive decision (Giovannetti 2021). In particular, the article focuses on the role of Italian judges working within two specialised local courts (Milan and Florence) re-examining a great number of claims on appeal. The article is conceived as an explorative study aiming at verifying the proposed theoretical framework and refining more precise hypotheses to be tested on a larger sample of cases. In doing so, the article bridges three research streams in political science.

First, it relies on the scholarship on asylum policy which proposes the concept of battleground as a theoretical 'lens', allowing to uncover the dynamics of the governance of asylum and migration at various levels and to detect the role of the different actors involved (Caponio & Jones-Correa 2018; Ambrosini 2021). The article aims to add to this literature by opening the black box of asylum, specifically by focusing on adjudication appeals and on a precise group of actors, asylum judges. Secondly, the article relies on the growing literature on diversity in EU policy implementation (Thomann & Sager 2018). The case of asylum adjudication on appeal and the peculiar implementation choices in Italy clearly shows that Member States have a lot of discretion when applying EU directives and EU soft law. This leads to a considerable diversity of practical policy solutions, combining policies with different procedural rules or informal practices and inevitably causing heterogeneity in policy outcomes. Finally, the article relies on the Street-Level Bureaucracy (SLB) approach (Lipsky 1980), which focuses on implementation from a bottom-up perspective, mainly addressing the margin and use of discretion by street-level bureaucrats. Indeed, the article focuses on judges and their margin of discretion in deciding on the merit of many asylum claims. This SLB-driven approach to the functioning of the judiciary is in open contrast with the formalistic vision of the role of judges (judge as *la bouche de la loi*), still permeating legalistic approaches to the analysis of judicial systems. Academic research has never applied this perspective to Italian judges, also because this legalistic approach is still prevailing in Italy. Thus, the article also aims to fill this gap by offering a new perspective to grasp the concrete functioning of the Italian judicial system.

Accordingly, the first research question aims to determine if asylum courts act as street-level organisations by implementing 'organisational coping strategies', as practical expression of their discretion. Moreover, it addresses the complex relation between collective and individual dimensions

of discretion (Miaz 2017), by understanding if judges also adopt individual coping mechanisms. Coping strategies are behavioural efforts and patterns of practices street-level organisations and frontline workers adopt to face the main challenges of their daily work. Subsequently, the article questions the reasons why asylum courts and judges adopt coping mechanisms and SLB behaviour. Here the theoretical hypothesis considers elements such as the intrinsic complexity of the asylum issue, the structural weaknesses of the CEAS framework and some ambiguities of the Italian adjudication model. In order to test the hypotheses, the article firstly presents the theoretical framework. Then, after having presented the research design and the methodology, the article proceeds to outline the main findings of the analysis. Finally, the conclusion elaborates on the main results and suggests additional hypothesis to be addressed by future studies.

Theoretical framework

Our theoretical framework combines different bodies of literature: the SLB framework and its application to judges, the nature of asylum adjudication as a policy issue, the structural elements of the EU asylum framework and, finally, the Italian asylum adjudication model.

Judges as street-level bureaucrats

The concept of Street-Level Bureaucracy (SLB) was first developed by the political scientist Michael Lipsky in his seminal work *Street-Level Bureaucracy. Dilemmas of the Individual in Public Services* (1980), in which he innovatively analysed policy implementation in its delivery at the 'bottom of the State'. The notion of a 'street-level bureaucrat' is an open notion, primarily identifying 'public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work' (Lipsky 1980, p. 3). Discretion is a key concept in SLB and is defined as the freedom a frontline worker can exercise in a specific context and the factors leaving space for that freedom (Evans 2010). Discretion has a neutral meaning, since its consequences depend on specific circumstances, and is an unavoidable aspect of the work of street-level bureaucrats (Evans & Harris 2004). The focus of SLB is the so-called 'discretion-as-used', meaning that it aims to understand how discretion is employed at street-level (Van Parys 2019). Some works seem to conceive discretion as an alternative to rule-following and law (Evens & Harris 2004) However, both socio-legal studies (Davis 1969; Hawkins 1992; Dworkin 1978) and street-level bureaucracy research (Lipsky 1980) demonstrate that discretion is inherent to the implementation of law and to the translation of rules into actions (Hupe 2013).

Street-Level Bureaucracy has already been used to study asylum adjudications at first instance (Dahlvik 2018; Miaz 2017), showing that SLB is extremely suitable for this field of studies. These

studies have demonstrated that asylum caseworkers seem to act similarly to judges, since while their decisions are justified 'in law', they maintain a certain room for manoeuvre in applying unclear rules and standards to specific cases. Thus, applying SLB to those professionals allows to uncover the complex relation between discretion and rule-following (Miaz 2017). Some scholars have already stressed the potential of this approach in studying judges and judicial institutions (Tata 2007; Halliday et al. 2009). However, the judiciary was rarely considered a crucial actor in the analysis of specific policy implementation, although Lipsky (1980) originally placed judges in the list of street-level bureaucrats. As regards asylum claims, Italian judges meet all the characteristics Lipsky highlighted: 1. they take decisions on the life or fundamental rights of individual human beings; 2. they can exercise discretion due to their specific knowledge and professional status; 3. they implement routines and mechanisms to cope with a heavy workload and the ambiguity of policy goals.

As Biland and Steinmetz (2017) note, some general conditions differentiate the judiciary from other street-level bureaucrats such as social workers, teachers or police officers, namely: 1. judges usually work more distant from their clients, since they rely on other professionals (lawyers and court officials) who work on the tasks requiring contact with applicants; 2. judges belong to a professional group endowed with a higher status and decision-making power than most bureaucrats. However, Lipsky himself reflected on the peculiar role of high professionals in implementing policy goals and he suggested to further analyse if a higher professional status could, in some ways, prevent the adoption of a SLB behaviour. On this point, Ham and Hill (1984) reply that the higher professional status of specific categories of implementers, such as doctors or judges, should only be conceived as a sub-field of SLB behaviour, characterised by a different margin of manoeuvre but, especially after the advent of New Public Management (NPM) reforms, with similar constraints in terms of performance evaluation and accountability (Brodkin 2012). As a matter of fact, in the rare cases where SLB was applied to judges, there were many elements in support of using this framework. The pioneering study by Biland and Steinmetz (2017) on French and Quebec family judges shows that several factors can drive the judiciary closer to or further from the SLB model. Especially in France, trial judges, confronted with a vast number of litigations such as family disputes, act as frontline street-level bureaucrats, dealing with all litigants under strong NPM-driven time constraints. French judges tend to use discretion in a way that is familiar to most street-level bureaucrats: they frame the interaction by conducting the hearing and directly addressing clients with less self-restraint than other bureaucrats.

The Italian judiciary seems to match all the characteristics Biland and Steinmetz (2017) note, especially after the shift towards the implementation of a NPM model. Indeed, in the last 15 years, the Italian judicial system changed considerably, turning into a quasi-bureaucratic and managerially

driven organisation similarly to other public service domains in Western and Southern Europe. Since 2010, Italian courts were massively targeted by reforms concerning accountability and performance evaluation (Verzelloni 2020). This managerialisation trend led NPM concerns to trivialise European judiciaries, with an increased pressure towards individual and organisational performance (Contini & Lanzara 2009). The quantity and complexity of cases in some fields, such as family or asylum law, make performance concerns even more powerful. Finally, the influence of managerialisation led to other significant consequences, changing the nature of the judicial system itself. These changes include: 1. increasing the localism of the Italian courts, differentiating local courts in their routines and procedures 2. a fragmented judicial system in terms of performance and results (number of solved cases, time spans, number of appeals) and 3. the expanding role of court presidents (chief justices) as court managers, with an increasing power to influence the organisational identity of their courts (Verzelloni 2020). In such a context, the SLB perspective can bring added value in considering the lower courts as complex organisations (Contini & Lanzara 2009). The SLB approach can therefore be extremely helpful in bringing to light the concrete functioning of the judicial system in Italy and the gap between the formal-judicial vision of the role of judges and their behaviour in practice (Dallara 2015).

Coping mechanisms and spaces of discretion. The literature applying SLB in policy studies agrees that one of the most visible effects of 'discretion as used' is the creation of *coping mechanisms* (Brodkin 2012). Coping mechanisms are defined as 'behavioural efforts frontline workers employ when interacting with clients, in order to master, tolerate, or reduce external and internal demands and conflicts they face on an everyday basis' (Tummers et al. 2015, p. 1100). These coping mechanisms can be conceived as: 1. patterns of practices (routines and stereotypes) to limit demands on time and resources; 2. changes in the conception of their job to narrow the gap between objectives and resources. Coping mechanisms can also derive from an organisational 'strategy in place', conceived by Mintzberg (1979) as a specific pattern of work planning and coordination mechanisms. For this reason, as suggested by Brodkin (2011), studies on this matter should also try to disentangle the linkage between the individual behaviour of street-level bureaucrats and their street-level organisation. Adopting a relational approach to discretion (Miaz 2017), we focus on the implementation of formal and informal rules existing within the organisation (the court-section), as well as social and organisational constraints shaping the discretion of judges. Based on these theoretical assumptions, the first proposition the article will tackle is:

PROPOSITION 1: Courts dealing with asylum claims adopt collective coping mechanisms or strategies defined at the organisational level. While judges also adopt individual coping mechanisms

when deciding on asylum claims, these organizational strategies contribute to influence the behaviour of judges.

Previous research shows that a quasi-bureaucratic organisation of justice, direct and frequent contacts with clients, a routinised study of cases and a massive amount of workload are all factors which lead judges to use their discretion in a way that is familiar to street-level bureaucrats (Biland & Steinmetz 2017). SLB research demonstrates that street-level bureaucrats usually apply these coping mechanisms because of the main characteristics of their work (Lipsky 1980). First, they lack relevant resources and sufficient time to process the high number of cases (Lipsky 1980). Second, they face several challenges in carrying out their tasks due to unclear policy goals and ambiguous rules, the latter not always matching the specific circumstances of clients (Tummers et al. 2015). Lipsky (1980, p. 387) also argues that spaces to exercise discretion are wider under some particular circumstances, occurring for example when policy details are not finalised before implementation or when street-level workers have to respond to some complex circumstances in their clients' cases Similarly, the seminal contributions of Davis (1969) and Jowell (1973) added some points which deserve attention for the purpose of this research. They pointed out that the space for the implementer's discretion is wider and deeper when policy goals are complex, technical and when the policy field is relatively new, un-covered and uncertain. In this context, policymakers seem to leave space of manoeuvre to the implementer, waiting for feedback effects in order to improve the policy design itself. The European and Italian asylum policy, and in particular the appeal phase, seems to fit well with the above-mentioned elements. In order to understand why asylum courts and their judges adopt coping mechanisms, it is necessary to examine in detail the nature of the asylum adjudication, paying attention to the nature of the policy issue and then to the policy framework at both EU and national level.

The complexity of asylum adjudication

Asylum is a politically contested issue and for this reason lawmakers need to adopt compromises and ambiguity in responses. Indeed, asylum policy - particularly asylum adjudication - is characterised by continuous tensions between suspicion and securitisation, on one hand, and humanitarian goals, on the other (Miaz 2017; Johannesson 2018). This brings the various organisations processing asylum claims to aim at conflicting goals, also in response to the ambiguousness of policies, the norm more than the exception in asylum and migration policy (Schultz 2020). Moreover, asylum law is evolving towards a greater complexity and sophistication, due to the high number of legal texts and normative levels, technical drafting, as well as the specification of law through guidelines and jurisprudence (Miaz 2017). In addition, it is important to consider that this is a relatively new and uncovered policy

issue, especially for some EU Member States, where responsible organisations face several challenges to process the rapidly growing number of applications. Indeed, asylum adjudication needs great resources in terms of time (Hambly & Gill 2020) and specific competences and skills (Rousseau et al. 2002), as well as support from different experts (Good 2006; Gibb & Good 2014).

Asylum procedures are also challenging in nature, since they differ from other legal procedures due to the absence of criteria to establish clear evidence in support of the application (Gill & Good 2019). Indeed, in many cases, the declarations of asylum seekers are the main source of evidence, since they cannot support their personal story with documents and/or other sources. Even legal research has shown that the fate of asylum applications is often determined by the individual credibility assessment[2] and that sometimes there is little or no independent evidence to demonstrate the veracity of the personal history (Kagan 2015). In fact, ethnographic research has shown that credibility assessments leave adjudicators with great room for discretion (Sorgoni 2019).

The CEAS framework and its structural weakness

The policy domain of migration and asylum is deeply affected by the tension opposing the desire to preserve national sovereignty to the need to devise responses to transnational phenomena (Beirens 2018). This is the case of the Common European Asylum System (CEAS). Specifically, the CEAS relies on three directives: the Asylum Procedure Directive aiming at regulating the conditions for fast and fair asylum decisions, the Reception Condition Directive guaranteeing common standards for reception conditions, and the Qualification Directive setting the standards for granting international protection. Moreover, it is governed by two Regulations. Firstly, the Dublin Regulation governs the relations between EU countries, and it specifies the criteria to assess which Member State is responsible for processing the application. Secondly, the Eurodac Regulation establishes an EU asylum fingerprint database, which guarantees the appropriate implementation of the Dublin Regulation (Table 1).

[Table 1. HERE]

This legal and policy framework is weak in terms of legally binding tools. Relevant aspects of the asylum determination process are regulated by European Directives, which are soft-law instruments and leave wide discretion to Member States in designing implementation, especially for asylum adjudication on appeal. According to some monitoring reports[3], this framework has legal and operational deficiencies baked into its DNA. Even if some Member States have tried to apply the asylum procedures prescribed by the CEAS consistently, this effort often led to growing backlogs, long delays and inconsistencies in understanding which type of asylum procedure should be applied

to which cases, both between and within Member States. As for the adjudication systems, Member States diverge so drastically that often applicants of a same nationality have very different chances to obtain protection depending on the Member State of application (Beirens 2018).

One of the main shortcomings the experts underline is the dominance of a legalistic perspective in setting the framework (Beirens 2018). Even when the Commission carried out some implementation studies, it relied on the same legalistic approach. Other non-legal perspectives are usually not considered. The deep gap between law and practice was largely left unaddressed or treated with yet another legal rather than practical solution (e.g., sanctions for individuals who do not provide fingerprints). Another main concern is the narrow monitoring space left to asylum actors at national and subnational levels, the only ones that have developed the knowhow to expand and contract infrastructure, resources, and capacity. Although these actors are usually consulted in the monitoring studies carried out by the European Commission, their stories are often filtered through the legalistic perspective that permeates these studies. As such, these front-line players currently have a rather muted voice in the rethinking of asylum systems. In recognizing the need of reforming the CEAS, the European Commission proposed to replace soft legal instruments with harder ones to set uniform criteria for granting international protection and uniform rights for beneficiaries (European Commission 2016). However, these reforms have not been implemented and heterogeneities between national implementation models persist at various phases, jeopardising the whole coherence of the system in guaranteeing asylum seeker rights.

The peculiarities of the Italian model

Italy represents an interesting case study, because of its peculiar and somewhat ambiguous choices in implementing the CEAS for what concerns asylum adjudication at the appeal stage. Italy transposed EU Directives through different legislative measures[4], which were recently modified by substantial reforms in 2017 and 2018. As regards the asylum determination procedure, the asylum application can be submitted either at the border police office or at the provincial Immigration Office (*Questura*). After fingerprinting and photographing, the asylum application must be submitted in a standard form exclusively at the provincial Immigration Office. The Dublin Unit verifies whether Italy is the Member State responsible for the examination of the asylum application, according to the Dublin Regulation. Then, asylum seekers wait to be interviewed by one of the 21 Territorial Commissions. Territorial Commissions are administrative bodies, articulations of the Ministry of the Interior, and are composed by one officer of the Prefecture (territorial office of the central government), one representative of the UNHCR and two administrative officers of the Ministry of the Interior. If the Territorial Commission rejects the application or grants a minor form of protection[5], the asylum

seeker can appeal against the decision within 30 days from the official communication. In 2017, the Minniti-Orlando decree (Decree no. 13/2017) created migration-specialised court-sections within Italian civil courts. This reform aimed to speed up the process, also by curbing some legal guarantees, for instance limiting hearings to only few selected cases[6] and eliminating the second instance appeal (Contini 2018). After the reform, civil court decisions can only be challenged in law before the Court of Cassation within 30 days. Figure 1 summarises the main steps of the Italian procedure.

[Figure 1. HERE]

As mentioned, the EU legal framework requires to guarantee to asylum seekers the right to an effective remedy but leaves space for implementation at the national level (Asylum Procedure Directive: article 46). Italy adopted a peculiar choice by entrusting civil judges with the task, differently from most the EU countries, which have assigned asylum adjudications to administrative judges (RE-JUS PROJECT 2018). This implementation choice leads to two main consequences: first, the appeal stage is conceived as a completely different step of the procedure, disconnected from the administrative phase (background interview 1); second, unlike other EU countries, Italian judges re-examine the case and eventually assess the right to obtain either international protection or a national form of protection. Thus, Italian judges are crucial decision-makers who can completely overturn the decision of the Territorial Commission and who decide on the merit of asylum claims, effectively shaping Italian asylum policy. Their decision is usually the final one since it can be challenged only in law by the Court of Cassation.

Since 2016, Italy has decided to delegate asylum appeals to 26 Italian courts, setting up court-sections specialised in migration. Therefore, they adopted a decentralised system, in line with the localism characterising the Italian judicial system (Verzelloni 2020). The High Judicial Council (CSM) report on the implementation of the 2017 reform (CSM 2018) shows that there is vast heterogeneity between court-sections. As an example, it is customary for the judge to meet the lawyer during the hearing. However, in some cases s/he also requires interviewing the asylum seeker about the reasons why s/he applied for asylum. Thus, the hearing does not always include the interview of the asylum seeker, which is not mandatory, and in each single case it is judges who decide whether it is necessary. Courts adopt different criteria to establish whether to carry out the interview (CSM 2018). The CSM report (2018) also reveals differences concerning which judges are allowed to carry out the hearing. As a matter of fact, while in some tribunals ordinary judges conduct it on their own, in other cases they delegate this crucial task to honorary judges[7]. This heterogeneity is also found in quantitative data on asylum appeals and acceptance rates as described in Table 2 (Giovannetti 2021).

[Table 2 HERE]

The third characteristic of the Italian model concerns the lack of resources. Differently from other EU countries, the Italian model does not provide extra-legal expert support and only since 2020 a project financed by the European Asylum Support Office (EAS0) has provided for experts supporting judges in the Country-of-Origin Information (COI) research[8]. The Italian model does not even provide impartial and qualified interpreters for hearings and interviews. Thus, Italian judges seem to face many challenges in performing this complex and delicate task because of a lack of resources in terms of both necessary skills and time, due to their high workload. The logic of exceptionality and emergency that has traditionally characterised Italian migration policy has probably contributed to these problems (Fontana 2019). Not by chance, the Minniti-Orlando decree contained 'Urgent Provisions' to accelerate asylum application procedures, considering asylum and migration as extraordinary phenomena to be contained (Castelli Gattinara 2017).

Finally, Italian judges, as in other European countries, deal with an ambiguous and inconsistent policy. This is due to different reasons. First, immigration is a highly politicised issue (Urso 2018) and this causes it to be reformed continuously and in a non-organic way. Thus, rapid changes in Italian asylum policy and law also increased its ambiguity and complexity. This happened with the 2018 and 2020 reforms of humanitarian protection, a national form of protection granted in addition to international protection[9].The humanitarian protection was based on a vague norm, allowing judges and caseworkers an extensive margin of discretion in deciding on its concession. In 2018, the then-Ministry of the Interior introduced a reform replacing humanitarian protection with a more restrictive form in order to decrease the quantity of humanitarian protections granted. However, already in 2020 the succeeding government reformed it by re-expanding national protection.

Starting from the various elements discussed in this section, this article aims to tackle this second theoretical proposition:

PROPOSITION 2: the complexity of the issue at stake, the structural weakness of the EU framework and some specific features of the Italian asylum adjudication model account for the wide space of discretion in the hands of lower courts and their judges.

The empirical analysis on the behaviour of judges, that will be presented after the next methodological section, will trace if and how they recognized the three sources of complexity and how they explain their strategy in dealing with them.

Research design and methodology

Due to the above-mentioned characteristics, Italy can be considered a crucial case study (della Porta 2008; King, Keohane & Verba 1994) to be investigated through an explorative research. Moreover,

Italian judges are known for being the most engaged within European judicial networks and commissions set at the supranational level (Dallara & Piana 2015). Using ad hoc newsletters, chats or forums for discussion, they frequently share their reflections on national norms and standards at the supranational level (Moraru, Cornelisse & De Bruycker 2020). For these reasons, a focus on the practices of Italian asylum judges can add relevant insights for the entire asylum debate. Against this background, this article, conceived as an explorative pilot study, has a twofold purpose: a) verifying if our theoretical propositions are suited for a policy study on asylum adjudication in Italy; b) refining more precise hypotheses to be tested on a larger sample of cases, coherently with the aims of an explorative investigation. To this end, our analysis is focused on two lower civil courts specialised on asylum: the courts of Milan and Florence. The criteria behind this selection follow Mill's most different system design. Indeed, these two courts are among the six dealing with the biggest load of casework (Giovannetti 2021), but vary extensively in asylum recognition rates, registering respectively the lower and higher rates among the group of the six: 22 per cent in Milan and 76 per cent in Florence (Giovannetti 2021). Moreover, according to the High Judicial Council's data on their organisational structures and strategies, they adopt very different models in dealing with asylum adjudication. A deeper look into these two courts, focusing specifically on organisational shared practices, can also help understanding why their outcomes in terms of acceptance rates diverge so much.

As regards the methods, this study applies a triangulation of techniques and sources. The study is based on eighteen months of intense desk-based research and field site data collection, both at national and local level, and consisting in a long-term immersion in the asylum adjudication with frequent contacts and meetings with asylum judges.

The first stage of the analysis (2019-2020) benefited also from long informal discussions held with groups of asylum judges during round tables and training session at the National School of the Magistracy. This initial stage was then complemented with document analysis to investigate asylum adjudication at national level and with the participation in several academic seminars and workshop on the topic. Afterwards, we held two in-depth background interviews with one international leading expert and one EASO officer to collect further information on the Italian case and define the analysis at court level (2020). Then, in a final stage (2021), we conducted fourteen formal semi-structured interviews to judges working in the Florence and Milan courts (see Appendix). The interviews lasted between 1 and 2 hours. The research design also benefited from field site observation in four courts[10] (2020-2021).

The first theoretical proposition (PROPOSITION 1) is addressed through the following research question (RQ1): a) *Are there specific organisational coping strategies that each court implements to frame asylum claims?*; b) *Which practices do judges carry out in their individual daily activities dealing with asylum claims?*

Accordingly, we aimed to trace shared routines, coping strategies and structural choices adopted at the organisational level by each court in dealing with cases. Semi-structured interviews with judges and the court-section presidents were instrumental to collect information on: 1. Collectively shared choices and strategies officially implemented at the court level (specific schedule and timeline to analyse cases; delegation of case analysis to other professionals; decisions on asylum seekers' hearings and interviews; specific approach to credibility assessment); 2. who is primarily responsible for the adoption of these strategies (court-section president; other particularly skilled judges) and how judges motivate these organisational decisions. Then, we traced evidence for the individual behaviour of judges and their margin of discretion focusing on individual coping mechanisms and their alignment with organisational choices. Here, using both semi-structured interviews and narrative exercises proposed to judges, we collected information on: 1. the steps they take when starting to deal with an asylum claim, following stages up to the final decision, other professionals involved in the case analysis; 2. consistency of their individual strategies and alignment with the court-section practice (motivating their affirmations). We also proposed some vignettes as examples of 'typical' cases, asking for their opinion about them.

In tackling the second proposition (PROPOSITON 2), we focus on the reasons behind the adoption of coping mechanisms. Accordingly, the second research question is twofold (RQ2): a) *Why do asylum judges adopt organizational and individual coping mechanisms?* b) *What are the sources of complexity that judges identify in asylum adjudication?*

Through semi-structured interviews and narrative exercises, we collect information on: 1. whether judges perceive difficulties in dealing with asylum claims; 2. which type of problems they face; and 3. which are the reasons for these problems. We are aware of the inherent limitations of this study, such as the small number of courts analysed that might affect the effort to generalise and to correctly trace multicausality effects. Even so, this article relies on data and primary sources that are rarely available for academic purposes. Open and long interviews with judges working on asylum adjudication represent an original and invaluable source of data for research in law and political science alike.

Findings

Our research findings support the hypothesis that Italian judges processing asylum claims on appeal act as street-level workers and adopt coping strategies both at the organisational and individual level. They adopt these strategies because of limited resources in terms of time and non-legal competences and because of the inherent complexity and ambiguity of the EU and national asylum systems, in policy and legislation.

Coping mechanisms in asylum courts

Italian asylum courts and judges exercise their task with a high level of discretion, as defined by the SLB research. The most visible effect of such discretion lies in the various coping solutions they adopt to examine asylum claims. These strategies occur at both the court-section and the individual level. The most evident concern: 1. hearings and interviews of asylum seekers, 2. task delegation to other professionals, and 3. rule interpretation options.

Hearings and asylum seeker interview. The courts of Milan and Florence adopt different organisational choices on how to manage direct contacts with lawyers and asylum seekers. In particular, the two court-sections adopt different criteria in scheduling the hearings with lawyers. Judges from Florence usually fix them following a chronological order (interview 14), while the court-section of Milan prefers scheduling hearings based on certain specific priorities, such as the asylum seeker's vulnerability or the situation of the country of origin (interview 10). Moreover, courts and judges maintain a high margin of manoeuvre in deciding whether to fix the interview. The civil court of Florence always sets the interview, except in the rare cases when it's already clear that there are sufficient elements to grant a form of protection (interview 1). On the contrary, Milan has a more restrictive attitude. Unlike Florence, all judges argue that it's only necessary to conduct the interview in a limited number of situations, for example if new elements have emerged since the application or if some circumstances described in front of the administrative body are unclear (interview 2; interview 3; interview 10).

The court-section president has a decisive role in defining these organisational strategies. The former court-section-president of Florence explains that, after several meetings, discussions with other judges and some actions of moral suasion, she convinced the colleagues of the necessity to always interview the asylum seekers, although some of them did not entirely agree initially (interview 14). However, although judges usually follow the court-section strategy, they seem to adjust it to their preferences, because of their independence. A judge from Milan explains:

> In our court-section, we decided to conduct interviews only under limited circumstances. However, those circumstances have not been defined in detail at the court-section level, so

> everyone of us adopts very different solutions […]. Personally, I usually set the interview only when lawyers clearly highlight the presence of elements that need elaboration (interview 10).

Another judge from Milan argues that, although s/he in principle agrees with the court-section choice to limit the numbers of interviews, s/he always prefers to ask lawyers to have asylum seekers present at the hearing. In this way, s/he can ask them some questions if needed (interview 13). As in the case of other street-level workers, judges frequently justify their adoption of coping mechanisms with the need to overcome time constraints. For example, one judge from Florence argues:

> I believe the interview could be avoided in some cases. However, […] I have almost 1000 appeals to examine and I do not have time to closely read all of the written documents, so I prefer to always set the interview to get the information quickly (interview 7).

On the contrary, a judge from Milan states that 'in some cases, the interview is not needed, and it has the negative effect of prolongating the process and increasing the workload' (interview 2).

Task delegation. Court-sections examining asylum appeals organise their work by delegating some tasks to other professionals: the honorary judges, who support judges in hearings and interviews, and the EASO officers who conduct COI research.

In some court-sections, judges conduct the hearing and the interview on their own, while in others they delegate them to honorary judges. The courts of Florence and Milan decided to adopt a mixed approach. Indeed, in both courts only some hearings and interviews are delegated to honorary judges. Some interviewed judges argue that their support is necessary due to the high workload of the court-sections (interview 2; interview 14). Moreover, as mentioned, Italian courts are involved in an EASO project, which since 2020 has temporarily involved EASO officers in the adjudication process. EASO officers are experts who support judges in the preliminary phase of the adjudication. It seems that, since judges lack resources in terms of time and non-legal competences, they adopt organisational coping mechanisms, delegating some tasks to these professionals. Indeed, in both courts, the EASO officers conduct COI research and work concretely on the examination of single cases, conducting a preliminary analysis (interview 2; interview 4). However, some judges from Milan entrust them with extra tasks than those decided at the organisational level. For example, one judge from Milan says:

> Although some of my colleagues do not agree with my method, I also delegate to the EASO officer the screening of the case. Although the final decision is mine, s/he evaluates whether to conduct the interview by filing in a form proposed by EASO (interview 10).

Thus, beyond organisational choices, judges also adopt their individual strategies. One judge from Florence for example argues:

> Differently from my colleagues, I prefer to conduct the preliminary analysis of the case on my own, preparing a document with all relevant information, since it is useful to properly conduct the interview. On the contrary, I prefer that the EASO officer works on COI research, since s/he is better than me due to his/her specific competences (interview 6).

Rules interpretation. The courts of Milan and Florence also adopt coping mechanisms concerning rule interpretation at the court-section level. As an example, the court of Florence has granted subsidiary protection status to asylum seekers coming from Mali since 2018, because of the indiscriminate violence resulting from internal armed conflict in that country (interview 4). On the contrary, the court of Milan evaluated the security conditions in Mali differently, adopting a more restrictive interpretation of indiscriminate violence. Thus, judges in Milan started to grant subsidiary protection to all Malian citizens only in 2020 (interview 3).

Another difference in rule interpretation concerns humanitarian protection. One judge from Milan says that 'before the 2020 reform, Milan rarely granted humanitarian protection, since there was a restrictive interpretation of its scope, differently from other courts' (interview 10). On the contrary, a judge from Florence explains that his/her court-section has an extensive interpretation of humanitarian protection, since judges give relevance to the fact that many applicants have already integrated in Italy (interview 3). One judge argues:

> In most cases we grant humanitarian protection because of the integration of the asylum seeker in the country. These people have been in Italy for three or four years and they build their life here. What can we do? (Interview 7).

Judges believe it is important to develop the criteria for rule interpretation at the organisational level, in order to guarantee homogeneity within the court-section. According to judges, court-section presidents can play an important role in this regard (interview 13). Indeed, in both courts the court-section presidents organise frequent meetings to discuss divergences among colleagues, aiming to reach uniformity (interview 14; interview 10).

Although there are collective strategies for rule interpretation at court-level, judges preserve their independence. A judge from Milan explained that, although there are some harmonised criteria for rule interpretations at court-section, there are relevant divergences among colleagues on different issues, so the final decision often results from a highly conflictual debate (interview 11). One judge gives an example:

> Differently from the court-section's more restrictive interpretation, I believe that when there is indiscriminate violence in a certain country, but not enough to recognise the subsidiary protection status, we should grant the special protection (interview 10).

Table 3 summarizes the three main domains in which we traced evidence for coping mechanisms.

[Table 3 HERE]

Complexity of asylum policy and spaces for discretion

Our findings support that coping mechanisms are a consequence of the intrinsic complexity of the work of judges in dealing with asylum issues (Lipsky 1980). Our analysis points to a multi-dimensional nature of this complexity First, it is the consequence of limited time resources (excessive workload) and of the necessity of non-legal competences. In addition, asylum adjudication is a technical process, and its legal framework has become increasingly sophisticated at different levels: international, European and national (Miaz 2017). Finally, as asylum is a highly contested and politically debated issue, these changes happened rapidly and following a logic of emergency, which did not favour clarity in norms and policy goals.

Lack of resources. All interviewed judges stated that time constraints are one of the main challenges they face in examining asylum appeals (interview 2; interview 5; interview 6). One judge explains that interviewing asylum seekers thoroughly requires at least one hour, but this is openly in contrast with the performance pressure faced by courts due to their massive workload (interview 5). Moreover, most judges believe that their work is somewhat repetitive and therefore it is difficult to avoid the standardization of decisions and to detect the differences between personal histories. The high number of appeals makes this task even more complicated (interview 4).

Moreover, judges argue that their work is extremely complex because of their limited extra-legal competences. They find it very difficult to understand the context of origin of the asylum seekers, since, as some judges state, they usually come from very different countries from their own (interview 3; interview 4). As a matter of fact, judges are required to reconstruct the asylum seeker's socio-cultural background and evaluate the risk that applicants face in a country that is unknown to the judges, as well as to be able to listen accurately to the individual history and translating what is said using legal terms, so that asylum law can be applied. Because of the amount of extra-legal knowledge that is required, judges stress the need of other professional figures with non-legal competences, such as anthropologists, geo-politics experts or psychologists (interview 6).

Complexity of the task. Judges argue that there are different reasons for the inherent complexity of asylum adjudication. First, judges state that one of the most complex tasks consists of assessing the

credibility of the asylum seeker's declarations (interview 5; interview 10). The credibility assessment is a crucial step of asylum adjudication, especially because their narratives about the reasons why they fled their countries of origin are usually the only proof available to judges for the assessment. Thus, judges need to ask clarifications on traumatic events experienced by asylum seekers and intense emotions naturally come into play (interview 6; interview 7; interview 10). In this regard, one judge explains:

> 'Some interviews are more challenging than others. In my opinion the most difficult ones are those concerning women victims of trafficking, because you need to ask clarifications on sexual violence and abuses, even if you do not want to' (interview 8).

Another judge says that:

> 'It is extremely difficult to assess the credibility of asylum seekers' declarations, especially when they declare to be homosexual. Sexual orientation concerns an extremely private sphere of the individual, so it is very difficult to ask clarifications or to assess the credibility' (interview 6).

Ambiguities of the policy at the EU and national levels. Judges explain that they face many legal and technical challenges. First, this is due to the ambivalence of international, European, and national rules. Indeed, asylum law only provides for vague legal standards, given the impossibility to account for specific situations *ex ante*. Thus, matching rules to specific cases is extremely challenging for judges (interview 6; interview 11). Moreover, they argue that it is difficult to refer to different levels of legislation as well as judgments from national and international courts, such as the European Court of Justice and the European Court of Human Rights (interview 3). Not by chance, one judge from Milan argues that 'Italian judges sometimes do not consider international and European laws, and this can damage important parts of their work' (interview 4).

Moreover, judges argue that it is difficult to interpret the EU directives precisely because they allow for a wide margin of interpretation, especially on subsidiary protection status and on procedural issues, such as the above-mentioned case of asylum seeker interview (interview 3). One judge from Milan explains that the EU directives and jurisprudence are also very difficult for Italian judges to apply because they do not consider the peculiarity of the asylum appeal in Italy (Interview 2). S/he explains that:

> Differently from other EU countries, if some procedural guarantees have been violated by the Territorial Commission, the Italian judge cannot remit the case to the administrative body. On

> the contrary, s/he has to review the case completely, deciding on the merit of the asylum application, in order to remedy the breach of those guarantees (interview 2).

This is a clear consequence of the Italian choice to delegate asylum appeals to civil judges, instead of administrative judges as in other EU countries. Judges argue that they perceive their work as completely different and separated from the Territorial Commissions which analyse asylum applications at first instance (interview 11).

The complexity of asylum adjudication is even more evident at the national level and is due to different reasons. First, Italian courts have not dealt with asylum adjudications until recently, since asylum appeals were extremely rare before 2015 and therefore the Italian jurisprudence is quite new. As a consequence, the Court of Cassation has not yet elaborated clear provisions for uniform rule interpretation criteria, leading to a strong heterogeneity at the local level (interview 13; interview 14). As an example, the majority of judges interviewed argue that 'the contradictory judgements of the Court of Cassation do not help to harmonise divergent practices between Italian courts, for example on whether it is needed to interview asylum seekers (interview 1; interview 2; interview 14).

This also happens in the case of rule interpretation, especially concerning humanitarian protection. One judge explains:

> Divergences among courts are also caused by different interpretations of the Court of Cassation, as in the case of humanitarian protection. Sometimes the Court of Cassation says that having a work contract is enough to grant this protection, while in other decisions it argues that it is not sufficient (interview 11).

Moreover, according to judges, frequent reforms have added complexity by compulsively modifying rules, which have become increasingly unclear (interview 13; interview 7; interview 10). This is mainly due to a logic of emergency in dealing with migration (interview 3) and to the fact that the issue of asylum is extremely politicised. One judge says that 'the fact that this field is at the centre of the political debate has its consequences since rules have been frequently modified by governments. This forces us to interpret norms that are increasingly complex and heterogeneous (interview 7). Finally, judges state that politics delegates responsibility to the judiciary due to its inability to manage the phenomenon effectively. One judge explains that 'asylum adjudication should be better addressed at the political and administrative level. The political inability to manage migration has brought this pressure on civil courts' (interview 5).

Conclusion

This study offers a meaningful contribution to different scholarly debates. Firstly, the empirical analysis confirms that asylum courts adopt organisational coping mechanisms to handle the complexity of asylum adjudication. However, judges also adopt individual coping mechanisms which are not always conform to the organisational collective strategy. These findings are consistent with the main results of SLB research and also show the validity of applying the SLB framework to the analysis of judicial systems and their internal functioning. As originally proposed by Lipsky (1980), judges working in some specific fields, such as asylum, family or other individual rights, all appear to have the characteristic of SLB workers. Our interviews showed that asylum judges are conscious of the complexity of the asylum claims and clearly identify several problems impacting on their daily work practice, deriving from both the EU and Italian policy frameworks.

Second, the analysis confirms that asylum policy is a multi-layered battleground composed by several phases, frames, and actors. Thoroughly analysing the concrete implementation of each one of these frames and the role of the multitude of actors involved helps to better understand the full picture of the European asylum system and how to improve it. In accordance with other fields of EU policy, asylum is characterized by huge 'diversity' of implementation practices in each member states (Thomann & Sager 2018). Both the EU Commission and experts discussing the weakness of the CEAS highlighted the need to better understand how these models work in each phase, in order to grasp how the implementation variance affects the policy goals. Our article supports that further research in this direction should consider the possible correlation between different national adjudication models and acceptance rates. This latter reflection is valid also at the national level. In fact, the comparison between Florence and Milan, although limited in scope, shows that the two courts adopt different strategies especially on whether to interview asylum seekers and in interpreting rules. Although it is possible that these differences have an impact on their divergent acceptance rates, further research with a wider case selection is needed to confirm this hypothesis.

Finally, our research also helps to understand some peculiar features of the Italian case. Migration in Italy, as in other Southern Europe countries, is a highly conflictual and polarising issue in the political debate. Very often in Italian politics, political actors shift responsibility over polarizing and conflictual issues to the judiciary, leading to the phenomenon known as 'judicialisation of political issues' (Hirshl 2013). This article points to two clear signals of this tendency. First, the high number of claims rejected at first instance by the Territorial Commissions, which are articulations of the Interior Ministry, and then passed to courts. Second, the political attacks which targeted judicial discretion and the resultant divergent practices. In 2019-2020, judges in some local courts (for

example in Florence) were frequently contested by right-wing political actors, namely the former Ministry of the Interior, Mr. Matteo Salvini, for excessively favouring asylum seekers and using too much discretion in applying laws. Even if the struggle between right-wing political actors and the judiciary is a recurrent trait in Italian politics (Dallara 2015), the more specific conflict on migration and asylum needs further investigation. This also shows the incapacity of the parliamentary arena, especially the left-wing area, to actively intervene on the migration issue rather than delegating responsibility in decision-making to judges.

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Appendix. Lists of interviews.

Background interview 1. Academic leading scholar on EU asylum policy, European University Institute, 01 July 2020.

Background interview 2. EASO officer working at the Courts & Tribunal section, 08 July 2020.

Interview 1. Italian judge working at the court of Florence, 28 May 2020.

Interview 2. Italian judge working at the court of Milan, 25 June 2020.

Interview 3. Italian judge working at the court of Milan, 02 July 2020.

Interview 4. Italian judge working at the court of Florence, 06 July 2020.

Interview 5. Italian judge working at the court of Florence, 31 July 2020.

Interview 6. Italian judge working at the court of Florence, 10 November 2020.

Interview 7. Italian judge working at the court of Florence, 10 November 2020.

Interview 8. Italian judge working at the court of Florence, 12 November 2020.

Interview 9. Italian judge working at the court of Florence, 16 November 2020.

Interview 10. Italian judge working at the court of Milan, 8 April 2021.

Interview 11. Italian judge working at the court of Milan, 9 April 2021.

Interview 12. Italian judge working at the court of Milan, 12 April 2021.

Interview 13. Italian judge working at the court of Milan, 12 April 2021.

Interview 14. Italian judge working at the court of Florence, 28 June 2021.

[1] The term asylum includes international protection, encompassing refugee status and subsidiary protection status, which are regulated at the EU level, and national forms of protection complementary to international protection, which are granted in many Member States, such as Italy.

[2] Credibility assessment is a determination of whether an asylum seeker' declaration should be accepted as evidence they eventually determining whether the applicant meets the burden of proof to show that s/he has to be granted international protection (Kagan 2015).

[3] Among the others, here we make reference to the 2018 Migration Policy Institute Europe report authored by H. Beirens (2018).

[4] The Qualification Directive has been transposed by Law 251/2007, the Asylum Procedure Directive by Law 25/2008 (Procedure Decree) and The Reception Directive by Law 142/2015.

[5] Those minor forms of protection are subsidiary protection and special protection (previously humanitarian protection).

[6] Article 35 bis (10) of the Procedure Decree lists all specific circumstances in which the hearing of the asylum seeker is mandatory. Among those circumstances, the judge must set the hearing when there is not video-recording of the audition in front of the Territorial Commission.

[7] Honorary court judges are selected only by their academic titles, they are not Ministry of Justice's employees and have no regular salary, gaining only a little reward for the single days in which they go to the sittings.

[8] These are mainly socio-political information on the countries from which asylum seekers originate relevant for decision-makers in the field of asylum.

[9] The CEAS allows Member States to introduce their own national protection status, complementary to international protection.

[10] As regards to the two courts analysed in this article, the onsite participant observation was organized only in Florence for two months. Meanwhile in Milan, due to the 2021 Covid-19 restrictions, frequent online meetings and appointments with almost all the judges of the court were organized.