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Waiting as probation: selecting self-disciplining asylum seekers

Lorenzo Vianelli *, Nick Gill and Nicole Hoellerer

Department of Geography, College of Life and Environmental Sciences, University of Exeter, Exeter, UK

ABSTRACT

This article diagnoses and critiques a type of governmentality associated with waiting during protracted asylum appeal procedures by drawing upon data from a multi-methodological study of asylum adjudication in Europe. Focusing on Austria, Germany and Italy, we explore the use of integration-related considerations in asylum appeal processes by looking at the ways in which these considerations permeate judges' decision-making, particularly, but not exclusively, on the granting of national, non-EU harmonised protection statuses. Building on insights from the literature on conditional integration we question the implicit socio-political biases and moral assumptions that underpin this permeation. We show that the use of integration-related considerations in asylum appeals transforms migrant waiting into a period of probation during which rejected asylum seekers' conducts are governed and tested in relation to the use of time. More than simply waiting patiently, rejected asylum seekers are expected to wait productively, whereby productivity is assessed through the neoliberal imperatives of entrepreneurship, autonomy and self-improvement. We thus contribute to scholarship on migrant waiting by showing how time is capitalised by state authorities even when – and actually because – it offers opportunities for migrants.

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1. Introduction

In this article we identify and critique a type of governmentality associated with waiting during the refugee status determination process according to which rejected asylum seekers' conducts are governed and tested in relation to their use of time. Its key condition is the creeping inclusion of levels of 'integration'[1] of rejected asylum seekers into the criteria that are considered during asylum appeals when deciding whether to offer them humanitarian protection, or otherwise support them. We discern an increasing permeation of integration-based criteria into this decision in various countries in the European Union (EU), via both formal legal mechanisms (the recent growth of national, non-EU harmonised protection statuses) and informal mechanisms (the everyday moral

CONTACT Nick Gill N.M.Gill@exeter.ac.uk
current affiliation: Department of Geography and Spatial Planning, Faculty of Humanities, Education and Social Sciences, University of Luxembourg, Luxembourg

judgements of decision-makers). Building on insights from the literature on conditional integration we question the implicit socio-political biases and moral assumptions that underpin this permeation.

Liberal societies require and value self-disciplining migrant subjects who display qualities of punctuality, motivation, self-improvement and social engagement (Conlon and Gill 2013). Through the apparent opportunity to turn periods of waiting into 'productive' episodes when asylum appeal processes are protracted, migrant waiting is transformed into a period of probation during which the extent of the presence of these desirable characteristics in the migrant subject can be diagnosed.

The complexity and ambiguity of migrant waiting is highlighted in scholarly literature. Waiting is portrayed simultaneously as an imposition that slows down movements, usurps time and produces uncertainty *and* as a period for resistance which can sometimes be meaningful, active and full of potential. While these two dimensions might appear contradictory, our argument shows them to be commensurate within a governmentality framework. Waiting *is* productive for some asylum seekers but this very productivity becomes part of the way they are governed, as socially constructive activity becomes increasingly expected and demanded of the migrant who *waits well*.

We draw upon data from a multi-methodological study of asylum adjudication procedures in Europe to build our argument. ASYFAIR involved observing asylum appeal hearings in Austria, Belgium, France, Germany and the UK, as well as conducting interviews with asylum seekers and legal professionals in Greece, Italy and the UK. We explore the use of integration-related considerations in asylum appeal processes by looking at the ways in which these considerations permeate judges' decision-making, particularly, but not exclusively, on the granting of national, non-EU harmonised protection statuses, such as humanitarian protection. Although our analysis focuses on Austria, Germany and Italy because they offer different, complementary insights into the phenomenon we describe, our concern is that the governmentality we diagnose is becoming more widespread in the EU generally.

First, we review the literatures on migrant waiting and conditional inclusion and elucidate how our contribution in this paper brings the two areas of literature into dialogue in an innovative way. In Section Three we describe our methodology. We then set out both the informal and formal ways integration-related considerations are permeating asylum appeal adjudication in the EU in Section Four, and the various consequences of this in Section Five. Section Six brings these strands together to outline the characteristics of the governmentality of waiting we have discerned.

2. The temporal governance of migration

2.1. Governing over and through time

A growing, interdisciplinary body of literature has explored 'the relevance of time, temporality, and temporalizing processes in the workings of border regimes [and] migration schemes' (Mezzadra and Neilson 2013, 131; see Cwerner 2001, 2004; Andersson 2014; Griffiths 2014; Tazzioli 2018). The articulation of temporal borders with practices of spatial control, for example, is evident in the functioning of the hotspots introduced by the EU in the European Agenda on Migration of 2015 (Tazzioli 2018). Temporal

bordering techniques are utilised when forms of spatial containment are less effective in governing 'unruly mobility' (Tazzioli 2018, 16). Through the deceleration of unauthorised movements and the simultaneous acceleration of identification procedures, hotspots have allowed the EU border regime to govern 'over and through time' (Tazzioli 2018, 15).

The 'technologies of temporal management' (Mezzadra and Neilson 2013, 133) in the field of border control take multiple forms and serve various objectives. The most evident revolves around a politics of deceleration, through which migrants' movements are slowed and their journeys to legal regularisation hindered. Camps play a key role in such a 'decelerated circulation of mobility' by regulating the speed of migration (Papadopoulos, Stephenson, and Tsianos 2008, 198; Missbach 2013), as do increasingly fundamental features of the EU border regime, such as protracted waiting, imposed suspension and early interception (Andersson 2014).

Not all movements are slowed however. Not only are there efforts to speed up privileged forms of mobility through biometrics and chipped passports (Mezzadra and Neilson 2013) but speed can also act as a form of obfuscation in the context of less privileged forms of migration. Asylum seekers, claims are commonly rushed, streamlined and fast-track, which obscures poor quality legal processes (Hambly and Gill 2020). Contemporary border regimes should thus be seen as premised upon a combination of speeds through which border crossings are governed (Mezzadra and Neilson 2013; McNevin and Missbach 2018). Indeed, the 'time politics' (Cwerner 2004, 72) at stake is more complex than being a mere issue of acceleration and deceleration. Time is a flexible technique of government that works through 'complex temporal requirements, bars and windows' (Griffiths 2017, 48), temporal punishments involving delays, detention and return bans, and temporal rewards, such as the granting of periods of legal stay in the country through successful visa applications (Griffiths 2017).

Due to such complexity, it is virtually impossible to take an unambiguous stance on the time politics of border regimes that can decisively inform progressive critique and advocacy work, because migration control systems are simultaneously 'too fast and too slow' (Griffiths 2014, 1994). This contradiction is experienced first-hand by asylum seekers as they are expected to comply with the 'hurry up and wait pattern' described by Mortland (1987, 397) who observes how the residents of a Philippine refugee resettlement camp must follow rigid schedules and wait endlessly for appointments with the staff, whilst being required 'to spring immediately and ceaselessly into action' (1987, 397) when their turn comes.

2.2. Waiting

Waiting is a hallmark of asylum seekers' experiences within Europe and at its edges (Elliot 2016). In 2016, the Asylum Information Database presented waiting times during the so-called refugee crisis, citing various examples of nationalities that had to wait over a year on average for their initial decision, and pointing out that many European countries imposed no time limit on decision-makers to respond to appeals (AIDA 2016). In Austria, for example, asylum seekers had to wait several months for their first appointment, and sometimes over a year for their initial government interview (ibid., 3-4). In Italy, asylum appellants waited on average 18 months for a decision on their appeal

(ibid., 9-10). In Germany – with the highest caseload in 2016 – asylum seekers had to wait several months to be registered in some cases (ibid., 3), and more than 7 months for the first instance decision (ibid., 5). The ability to make people wait is a fundamental feature of the exercise of power (Bourdieu 2000, 228), exposing the uneven value that is accorded to different people's time in society (Bayart 2007; Schweizer 2008; Conlon 2011; Auyero 2012).

The literature on migrant waiting also captures the paradoxical, ambiguous character of waiting. On the one hand it is clear that waiting can be experienced negatively as an instrument of control that contains, delays and suspends. Waiting involves 'a sort of holding action – a lingering' (Crapanzano 1986, 45), thus revealing its 'paralytic' nature (ibid., 43). Other studies, however, problematise an understanding of waiting as an 'empty interlude' (Rotter 2016), when nothing happens (Gasparini 1995; Bissell 2007; Schweizer 2008). Waiting can be a 'meaningful experience' for those waiting (Gasparini 1995, 31), imbued with potential and experience (Bissell 2007). Rotter highlights how waiting times can be a resource when asylum seekers spend time on activities, affects and routines (2016). Waiting can be a form of resistance too (Andersson 2014; Khosravi 2014). Hage for example warns us against accounts that present waiting as devoid of agency (2009) and Khosravi observes that 'waiting can be an act too, a strategy of defiance by the migrants' (2014, 74).

This article builds on these insights, which establish the paradoxical nature of waiting, by stressing how waiting represents a temporal governing mechanism *even when spent productively*. Our study of asylum appeals confirms the contradictory character of waiting, revealing how waiting times are simultaneously a mechanism through which rejected asylum seekers are blocked or slowed *and* an opportunity for them to take advantage of the delay. We go beyond this insight, however, by showing how time is capitalised by state authorities even when – and actually because – it offers opportunities for migrants.

2.3. Conditional inclusion

'Integration', which 'can be interpreted to mean the process whereby a group becomes part of the prevalent or majority society' (Chatty 2010, 50), is a notoriously problematic concept, often correlated with socio-cultural assimilation (Titley et al. 2009). Several authors have drawn attention to the lack of precision characterising both the definition of integration and the ways of achieving it (Cheung and Phillimore 2013; Griffiths, Sigona, and Zetter 2006). Integration can take many forms, such as economic, political, religious, or social, and migrants can be active and passive during the process (Chatty 2010).

We approach integration by looking at its moral, pedagogical and contingent character, as it is emphasised by literature on conditional inclusion (de Waal 2020; Hackl 2020; Klarenbeek and Weide 2020). These studies show how access to rights and inclusion in political and social spaces are contingent upon behaviour and the ability to display specific moral qualities. According to this perspective, integration becomes an everyday challenge through which migrants have to earn the trust of the local population by exhibiting the qualities that the latter associates with 'goodness', thereby proving they can behave as 'good immigrants' (Shukla 2016), or 'good citizens' (Schinkel 2010). Integration is thus tied to notions of deservingness. Deservingness is context-specific, but

is often related to socio-economic independence, language ability and socio-cultural adaptation (Willen and Cook 2016, 96; Hackl 2020; also see Holmes and Castaneda 2016; Yarris and Castaneda 2015).

The emphasis on the conditional character of integration makes clear how this is often an issue of supposed compatibility with the host society (Lentin and Titley 2011, 200). This is evident in the study by Klarenbeek and Weide on the civic integration discourse in Denmark (2020). The authors identify what they call a 'participation paradox', according to which 'participation [of people with a migrant background] is both demanded and feared' (ibid., 214). On the one hand, migrants are required to perform as 'active citizens' by showing political engagement. On the other hand, the host society fears that migrants may abuse the tolerance of the host society. Thus, participation is accepted only as long as it confirms the status quo of an imagined liberal and open society, but is limited by the fear of cultural incompatibility.

The conditionality of inclusion described by these studies resonates with our idea of waiting as probation. Framing integration as a permanent test, they point to its precarious, and thus always revocable, character. Integration is not a stable achievement, but the ever-changing outcome of an ongoing assessment through which migrants need to constantly demonstrate their deservingness, compatibility, utility and trustworthiness (Cheung and Phillimore 2013). This has crucial repercussions even after migrants acquire formal citizenship or permanent residence (Schinkel 2010), as their legitimacy as members of the polity is permanently under review.

3. Methodology

The ASYFAIR research project explores differences in the daily adjudication of refugee law. From 2018 to 2019 a multi-disciplinary team of researchers conducted over 450 observations of asylum appeal hearings across five EU member states: Austria, Belgium, France, Germany and the UK. We watched public hearings from the public/audience area in courtrooms, made notes on what happened, and produced field diaries in the 'thick description' style (Geertz 1973). We selected cases randomly and focused predominantly on judicial behaviour and procedure, rather than appellants' testimonies.[2]

We also conducted interviews with asylum seekers and lawyers, including with 29 lawyers and 24 asylum seekers in Italy. Interviews were conducted in English or the native language of the researcher (e.g. Italian). Written or oral informed consent to quote anonymously in publications was collected. We did not systematically record certain personal details, such as ethnicity and socio-economic and educational backgrounds of interviewees to protect anonymity even though these details emerged in some interviews. Interviewees were recruited via existing contacts with charities and refugee community groups through a research process separate from the hearing observations. Although we made our position as academic researchers clear to interviewees, some may have harboured suspicion towards the interview and the interviewer (e.g. as a male Italian researcher, who could potentially cooperate with those running the reception centre that the interviewee was accomodated in, or with the legal authorities), whilst others saw the interviews as an opportunity to voice their concerns about reception facilities and

authorities. The power imbalances in interviews and sampling are influenced by important intersectional factors such as gender, ethnicity and post-colonialism.[3]

4. The permeation of integration-related considerations into asylum adjudication in the EU

We now set out two ways in which integration-related concerns permeated the asylum claim adjudication we observed. The first is formal, referring to the evolution of laws that include aspects of integration in the criteria for granting non-EU harmonised protection statuses. The second is informal: asylum seekers who are more integrated are often in a strong position to make a positive impression on the judge (or relevant decision-maker) during hearings.

4.1. Formal inclusion

In 1999, EU member states started a process of harmonisation of asylum policies with a view to establishing a Common European Asylum System (CEAS), in which applicants could enjoy similar standards in terms of procedures, contents of protection, and reception conditions.[4] Yet, the legal framework of the CEAS allows EU member states to grant national forms of protection for cases in which an asylum seeker fails to qualify for refugee or subsidiary status, but cannot be returned to the country of origin. The result is a patchwork of different national protection statuses – sixty different types among 25 countries according to the European Migration Network in 2020 (EMN 2020) – the most common of which is humanitarian protection.

Protection statuses on humanitarian grounds are usually more precarious than refugee status or subsidiary protection,[5] generally entitling recipients to short-term

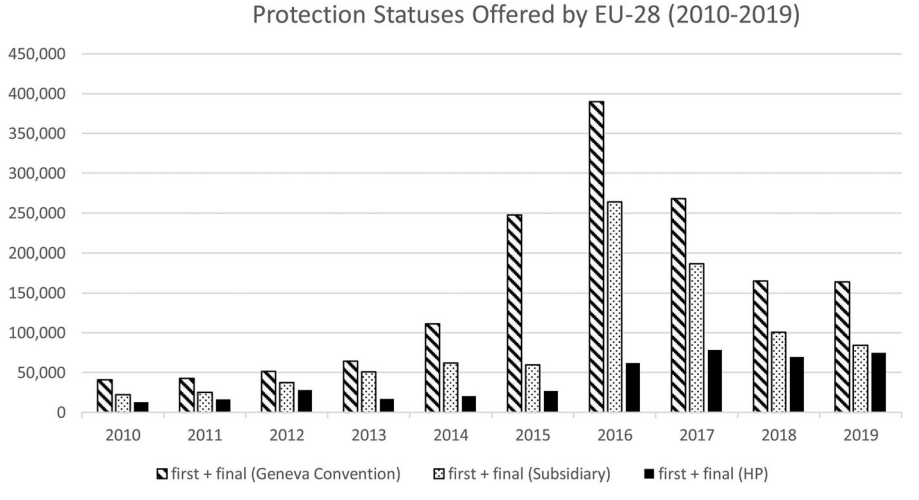

Figure 1. Protection Statuses Offered by EU-28 (2010-2019). Sources: EUROSTAT, migr_asydcfsta and migr_asydcfina. https://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database, accessed 20/07/2020.

Notes: Bars refer to sum of first instance and final instance positive decisions.

residence permits (e.g. 1 or 2 years) that are more difficult to renew, disallowing family reunification, and not granting similar access to social, education and health systems.

Figure 1 shows the growth in humanitarian protection (referred to as 'HP' in the chart) in the EU28 over the past decade. It grew in line with refugee and subsidiary protection as numbers of asylum seekers entering Europe expanded, most obviously between 2015 and 2016 when the number of decisions granting humanitarian protection more than doubled. While the other forms of protection had both more than halved by 2019 though, humanitarian protection remained at over twice its 2015 level and over five times its 2010 level.[6]

Humanitarian protection embraces a wide range of statuses granted on the grounds of compassion, exceptional circumstances, the principle of *non-refoulement*, and the provisions of the European Convention on Human Rights (ECHR), the main commonality being that they are meant to protect those who are not returnable and yet excluded from the EU definition of international protection. What is most interesting here is that factors related to integration feature prominently in the list of considerations covered by 'humanitarian protection'.[7] For instance, in countries like Cyprus, Czech Republic, Ireland, Poland and Norway, integration-related reasons are explicitly included in the decisions about humanitarian residence permits (EMN 2020, 18). Various other countries do not define what is to be included (which opens the door to integration-related considerations) such as Italy which, as we discuss below, included integration-related reasons centrally in its approach to humanitarian protection.

Turning to our case countries, Austria has a formal form of national protection, 'humanitarian right to remain',[8] that asylum seekers can turn to if they do not qualify for refugee status or subsidiary protection under EU laws (Bassermann 2019). It details the levels and forms of integration that can be considered sufficient to grant asylum seekers a residence permit on humanitarian grounds. In particular, asylum seekers can be entitled to a humanitarian right of residence, or a residence title for particularly exceptional circumstances, if: they have lived in the country for five years; they have been lawful residents for three years; and they have successfully completed a compulsory language and orientation programme, or have employment with a salary that is at or above the minimum earning threshold. Article 56 of the Asylum Act 2005 states that: 'The authority shall take into account the degree of integration of the third-country national, in particular self-sustainability, educational and vocational training, employment and knowledge of the German language.' The Austrian authorities therefore pursue questions like: How long have you been living in Austria? Do you work? Do you have Austrian friends? How good is your German? Are you part of a club or society? And do you participate in social activities? (Vienna Law Clinics 2020).

Italy too has awarded national protection under the label of 'humanitarian protection' for most of the last decade, but in Italy's case the content of humanitarian protection is less clearly defined. According to the Consolidated Act on Migration (Article 5 para 6), state authorities have the power to refuse or revoke a residence permit 'unless there are serious reasons, in particular of humanitarian character or resulting from constitutional or international obligations of the Italian state'. There is no clarification of the serious reasons of humanitarian character that would deserve protection, however. For most analysts, the lack of a clear definition has deliberately given authorities considerable leeway (Morandi 2017). Humanitarian protection should thus be understood as an

'open catalogue', as described by the Italian Supreme Court (*Corte di Cassazione*),[9] which is destined 'to evolve in time' (Morandi 2017, 8) and allow the legal framework to adjust to changing conditions and protection needs.

Thanks to this flexibility, the scope of humanitarian protection has expanded to include integration issues. This was clarified by the Supreme Court,[10] which required judges to assess cases by comparing appellants' living conditions in Italy to the situation in their country of origin. Until 2018, Italy granted the most humanitarian protection in the EU awarding four to eight times more than the EU28 average between 2012 and 2018. Although humanitarian protection was discontinued in 2018, it kept on playing an important role in appeal adjudication, allowing those who lodged their asylum claim before 5th October 2018 (when the reforms were introduced by law 132/2018) to file for it. In 2018 and 2019, 70% and 63% of positive decisions taken at higher instances awarded humanitarian residence permits. In December 2020, humanitarian protection was essentially reintroduced by law 173/2020 under the name of 'special protection'.

4.2. Informal inclusion

Although asylum appeals in Germany do not formally take integration into account,[11] the level of integration an appellant can convincingly present in asylum hearings may still informally influence the consideration of the claim and judge's disposition.

Judges sometimes congratulated appellants for their language ability for example.[12] When one appellant told the judge that since arriving in Germany she learned to ride a bike and swim, the judge was extremely pleased, saying 'very nice, very nice', and when another appellant told the judge that he had joined a choir the judge exclaimed: 'How wonderful!'

The positive feelings that appellants who 'make an effort' to integrate can induce in judges can have various consequences. One judge told the appellant outright that she will take account of their efforts to integrate in their decision, even though technically she should not:

> The appellant gets emotional, almost crying. He emphasises that they 'want to stand on their own feet', and that they don't want to be a burden to Germany. He argues that they learned German already (level B1 course), that his wife is having interviews in refugee clinics (to work as a nurse), and that they will do whatever they can to 'give back to Germany'.
>
> The judge smiles, and advises them that the right to work will have to be discussed with the immigration department, but she is happy to hear this and has taken note of their 'commitment' to integrate. She said that the 'drive to integrate' she noticed (and which is evidenced by their documents) will form part of her decision-making.
>
> Field notes, Germany, 2018

Judges who are positively predisposed towards appellants can also choose to help appellants out in various ways, through the questions they pose, the impressions they form about the appellants' character and honesty (related to the crucial notion of credibility), and the patience and body language they display in hearings. They can also elect to offer appellants advice. We saw numerous German judges advise appellants on what to discuss with their legal representatives, how to obtain a visa and address shortcomings in their

cases. This advice giving was not universal, but typically followed when judges seemed impressed by appellants' integration efforts.

Summarising across all three case countries, the inclusion of integration-related considerations in the adjudication of asylum claims is generally justified according to some combination of three logics: instrumental, compassionate and moral.[13] According to the first, the rejected asylum seeker is sometimes seen as more productive and less burdensome to the host society if they are more integrated, including if they have acquired language skills, if they play an active 'community' role, if they are employed, or have undertaken training since arrival. According to the second, the wrench of deportation is sometimes considered greater if they are more integrated, the difference in relative living standards between their destination and 'home' country starker, and the challenges of adjustment to a new environment in the country they are deported to sterner. According to the third, decision-makers sometimes associate efforts to integrate with moral value, which they feel moved to 'reward' within the discretionary leeway of their positions. These considerations can broadly be considered 'humanitarian' because they are unrelated to the actual substance of the asylum seeker's rights-based claim for refugee protection. As such, they are not governed by EU law on shared standards of refugee, subsidiary or temporary forms of international protection, rendering them inherently more fractured and vague.

5. The consequences of including integration-related considerations in asylum adjudication

We now turn to the consequences of the permeation of integration-related considerations into asylum adjudication. We explore how subjective judicial discretion increases; how pressures on asylum seekers who are waiting increase; how a proportion will be capable of meeting those pressures while others will not for reasons unrelated to their rights-based claim for refugee protection (such as age, gender, socio-economic background), introducing inequality between them; and how asylum seekers are liable to obsess about their integration under such conditions.

5.1. Subjectivity and discretion

One Austrian judge observed how 'aspects of integration cannot be deduced directly just from the bundle',[14] and stressed that 'especially when it comes to integration, the *personal impression* is even more important' (Interview, judge, Austria, 2019, our italics). This affective dimension collides with the formality and consistency that supposedly underpin legal decision-making. The Austrian judge is acknowledging the weight an appellant's appearance and performance during the hearing has on the evaluation of integration.

'Proving' integration is deeply problematic. The ability to communicate in the language of the host country is a common yardstick, for example, but the 'language tests' carried out during asylum hearings risk being shallow and ineffective.

Judge:	[to appellant] I want to talk with you in German, without the help of the interpreter, so I can gain a picture of your German skills.

The judge tells the court writer to write:	'the single judge now asks the appellant to speak German, to verify his German skills.' – The appellant speaks German during this part of the testimony.
Judge:	In which federal state do you live?
Appellant:	[The appellant outlines in which federal state he lives].
Judge:	Since when?
Appellant:	Two years.
Judge:	How did you get to Vienna? By train? Did you arrive here today, or earlier?
Appellant:	[The appellant explains how he travelled to the court]
The judge turns to court writer and tells him to write:	'He [the judge] could convince himself that the German skills of the appellant are intermediate to advanced.'
The judge turns to the appellant and says:	'Now we continue the hearing with the help of the interpreter.'

Field notes, Austria, 2019

Our fieldworker (a German native speaker) felt this 'small talk' in German was insufficient to reliably test the appellant's language skills. Institutions, like the Goethe Institute – which runs German courses for refugees for the Austrian and the German governments – have stringent requirements for language certificates, based on listening, reading, writing and speaking comprehension and ability,[15] assessed by professionals. Although they have many abilities, it is questionable whether judges who attempt to determine language ability as outlined above have the expertise to assess the language skills of appellants through such brief and superficial conversations.

An appellant is also likely to be expected to behave in a way that conforms to the manners and cultural norms of the host society. Failure might be seen as a lack of respect and irritate the judge, thus compromising the latter's impression of the appellant:

> I think it is right that they [appellants] know that they are in front of a judge. I don't think we are friends who are having a chat in a café, because the respect of the rules starts from here. I believe that the appellant must take responsibility […] to make it clear that it is an important moment that has a certain sacredness, in quotation marks, not only for the importance it has in their life but because they are before a state authority, acting in the name of the whole Italian people, who is invested with this power. And it is not just a chat between friends […] I tell you this because it might happen that someone comes with chewing gum, with a cap and does not take it off […] they answer the phone while they are in the hearing with me … Perhaps I am old-fashioned but why don't you try to do it yourself during a criminal trial? I don't think that you would answer the phone while being heard by the judge as a witness. I don't think so, no? But there is no need even to tell you this.

Interview, judge, Italy, 2019

The appellant's behaviour is contrasted with the expected conduct of the (Italian) researcher in a similar situation to expose a fundamental difference between the appellant and the host society. While judges may perceive researchers as members of the community and their appropriate conduct is taken for granted simply because of their national belonging and educational background, the appellant's behaviour is presented as an indication of their unsuitability for the host society. In other words, by not conforming to the behaviour that is expected in a formal setting like a hearing, the judge concluded that the appellant showed s/he had not yet integrated enough in Italian society.

Most hearings take place in the judges' offices in Italy in any case (not in a dedicated courtroom), whose 'sacredness' and formality are questionable. But the possibility that a decision that could determine whether someone faces deportation could be influenced by such facile factors as whether they wear a cap illustrates the arbitrariness of the decision-making. Judges in Germany often commented on appellants' punctuality in a similar vein.[16] Judging 'integration' thus represents a process of assessing 'desired behaviours' (Lentin and Titley 2011, 199).

A judge's personal impression is also crucially influenced by economic concerns related to appellants' self-sufficiency. It is important that they demonstrate they work and can support themselves economically, without constituting a 'burden' on the host country. Submitting an employment contract is thus important in this regard in Italy, as it is also the exit from the reception system and the resulting autonomy with respect to accommodation.

> It's really important that you don't stay in an association, in a project [meaning a government funded reception centre]. You speak Italian, you have a job and you are out of a project. Judges take this into consideration a lot. You are independent; you don't depend on the Italian government.
>
> Interview with an interpreter who had worked in many asylum appeals, Italy, 2019

Asylum appeals that take integration into account aim to assess the active and 'good' migrant, who complies with the host society's values, which include 'appropriate' behaviour when engaging with official bodies. Here, productivity during waiting is defined as the acquisition and presentation of appropriate social capital, behaviour and skills (such as language), which would assure the judge that the asylum seeker is in the process of transforming, or may later transform, into an engaged and 'valuable' citizen. Assessing integration is discretionary, vague and unpredictable though, and yet it is the appellant's task to convincingly demonstrate that their time-in-waiting has been spent productively.

5.2. The pressure of waiting

As a legal advisor in Italy argued, 'every individual has a different reaction as far as time is concerned':

> Some say, 'Okay, I have a lot of time, I'll take advantage of it, so I can show the judge that I'm doing a lot of things'. Some become depressed instead, so they start on a psychological path, so obviously a lot of certificates are produced and handed to the assigned lawyer eventually. Or there are some who say 'No, I can't take it anymore' and they come to me with questions like, 'Okay, what if I go to another European country? If I leave now, I go seek asylum in Germany, in France, can I do that? What do you think? Would it work?'.
>
> Interview, legal advisor, Italy, 2019

Some appellants have a positive experience of waiting, confirming those analyses that argue that waiting can be a time during which people are working, studying, cultivating relations, formulating hopes and making plans (Gasparini 1995; Bissell 2007; Schweizer 2008; Rotter 2016). For example, an appellant in Italy explained 'the long time is not the problem' precisely because he could go to school and work (Interview, appellant, Italy,

2019). These possibilities make waiting meaningful, which was described by the appellant through the metaphor of moving: 'I'm not sitting, *I'm walking*, you understand?'

The passing of time might also allow appellants to process and consequently recall traumatic events, especially if psychological support is received. 'Certain events emerge later, sometimes also thanks to some paths taken with the help of psychologists, or also thanks to some […] specialist examinations made by some medical examiners' (Interview, legal advisor, Italy, 2019).

Lengthy appeal procedures could also sometimes benefit appellants:

> The lengthening of time between the first reception of an asylum applicant and the end of the appeal procedure could be an advantage for asylum seekers, especially for those who were accommodated in reception facilities which provided inclusion measures, e.g. language classes, vocational training, internships, options for voluntary work in the local community. … In such a longer timespan they could manage to integrate in the reception context – *clearly according to their skills and ability*. They could build relationships, perhaps they could find a job, or attend courses. All these aspects could be taken into account for the granting of humanitarian protection.
>
> Interview, lawyer, Italy, 2019, our italics

The length of procedures is framed as an opportunity here, as better integration might facilitate the granting of a humanitarian residence permit. However, one appellant in Italy was concerned that 'there are many people that don't have the opportunity' (Interview, appellant, Italy, 2019), drawing attention to the impact of the variable quality of reception and support measures. The opportunity to spend one's own waiting time productively is not completely in the hands of appellants, given that the quality of support provided by reception centres significantly affects the opportunities available to them. In other words, waiting can be divisive: a resource for those able to exploit it but a cause of increased marginality for those unable to take advantage of it.

Other appellants described their experiences of waiting as 'passive, empty, "devalued time"' (Rotter 2016, 88). 'When my lawyer told me […] that the judge said my next hearing is in December, that is really when I felt sad […] because in October it will be three years in the process […] It's like I've wasted enough time' (Interview, appellant, Italy, 2019). When we asked this interviewee whether the waiting was problematic, he replied:

> It's the worst. Yes, that is a problem […] What do you expect me to be doing? […] you can't keep somebody like that for so long, and then at the end of the day you tell the person that they have not been accepted. […] The time they put is too long.
>
> Interview, appellant, Italy, 2019

Another interviewee said he felt like being in 'stagnant water', as he could not plan and move forward in his life:

> As a human being, you plan, you make plans. If I have a positive from this answer, there are certain things I want to do. If they don't give me, these are the things I want to do. In this process I am confused because I don't know the decision. […] I'm in the middle, I don't know. […] It's just like stagnant water, you just remain in one place, you don't move forward.
>
> Interview, appellant, Italy, 2019

The lack of control is extremely difficult to bear. The open-ended character of waiting means appellants cannot 'locate themselves in relation to an end point' (Rotter 2016, 90) and can have a negative effect on one's capacity to focus on the present as demonstrated by an appellant who explained how he felt unready to resume university although he had just started a degree before he had to leave his country. When asked whether he wanted to start studying again, he replied:

> Yes, but now my head is somewhere else, my head is a little worried, it is hard now to focus on my studies. If I was more settled, I could dedicate myself to studying, because studying isn't something simple because when you have all these worries, it is hard to study, at least for me. […] When we are here, we don't feel secure, because we are on a journey that we don't know how it ends and our heads are not at peace and can't think about school. Maybe in the future I can think, maybe I'll be able to think about studying once I'm all settled.
>
> Interview, appellant, Italy, 2019

Another crucial dimension of the effects of waiting is that appellants may forget their story or what is perceived by decision-makers as 'significant' details (Kagan 2003). Appellants' memory 'gets out of practice' because 'the time between the interview with the Commission and the hearing in court is often very long … it is also hard to reconstruct, because […] they are dealing with a long timeframe and they have to go and try to remember something that happened a long time ago' (Interview, legal advisor, Italy, 2019). This was confirmed by an appellant who noted that 'everything is long, so I forget a lot. The dates, you know […] Yesterday we were talking, I would remember, but this is taking a lot of time, you know?' (Interview, appellant, Italy, 2019).

Even the practice of remembering becomes a signifier of successful integration, as the ability to remember key dates and details by a European yardstick is tested during appeals. One German judge reprimanded an appellant who struggled to recall details: 'In order to believe you, you need to provide exact details and dates of something so serious and severe that would lead to you leaving your country of origin … According to German asylum law, if you cannot provide details, then it is as if it has never happened to you' (Field notes, Germany, 2018). This sort of approach rewards record keeping and mental strength.

Some appellants 'are illiterate, and not used to recounting a story', and it is advisable to 'talk about it […] take notes, write down dates, events' (Interview, legal advisor, Italy, 2019). However, even those appellants who have notes in hearings are sometimes dismissed.

> The judge asks the appellant: 'When did you depart?' – The appellant has hand-written notes in front of him, and reads from these notes. The judge raises his eyebrows and makes a dismissive hand-gesture, interrupting the appellant reading from his notes: 'Doesn't he remember [*im Kopf haben* – literally to have it in one's head]? Can't he do it without his notes?' – The appellant replies that he doesn't remember, because 'it's a long time ago.' – The judge adds in a slightly mocking tone: 'I see … how long ago was it that he can't remember?'
>
> Field notes, Germany, 2018

Some decision-makers have the impression that details and dates should be 'in the head' (as the judge stated), recallable at any point. However, there is an ever-present risk that appellants get tired about the whole procedure: 'there is a moment of resignation, they no longer feel like repeating their story again or digging deeper to uncover certain events' (Interview, legal advisor, Italy, 2019). Indeed the necessity to recall traumatic events in detail, not just once during the appeal hearing but frequently during the whole waiting period in order to keep details fresh and ready for legal inspection, constitutes a barrier to mental healing after trauma, a form of re-traumatisation.

Our concern is that it is the most capable ones who have the skills needed to make the most of their time. A political economy of waiting is at stake (McNevin and Missbach 2018, 26). The stronger, more capable, fitter (mentally and physically), wealthier, freer, and cleverer asylum seekers with more initiative, confidence and social connections have chances to flourish. Parents encumbered by childcare are likely to be disadvantaged, whilst asylum seekers who have held jobs before and know how to interact with employers will be advantaged. It will be easier for them to 'endure' than for those who are weakened by their experiences or simply less socially and economically experienced. The effect is also gendered as it is often men who are more able to make connections with employers, free of childcare, and are socially unperturbed by joining mixed-gender language classes or employers.

5.3. Integration and obsession

A third consequence of the permeation of integration-related considerations into EU asylum adjudication concerns asylum seekers obsessing about integration. Just a few successful cases that are perceived to have been aided by integration efforts are enough to spread and amplify the perception that 'integration' is taken seriously in asylum hearings and to foster appellants' self-government.

Documentary evidence is often taken as objective support for claims made about integration. Even 'individuals who didn't have very 'strong' stories' have been able to obtain a humanitarian residence permit in Italy thanks to documentary evidence of integration such as Italian language certificates, school diplomas and work contracts (Interview, legal advisor, Italy, 2019).

This can encourage legal representatives and appellants to assume that there is an automatic link between the evidence of integration that appellants collect and humanitarian protection. In Italy however, even at the height of the issuance of humanitarian protection, this link was not assured because of the discretionary element involved in assessing integration. This could frustrate appellants who had gone to great lengths collecting evidence of their integration. Workers in the Italian reception centres were sometimes held accountable for the advice they had given to appellants to collect such evidence, when their hearings were unsuccessful.

> We sometimes even get bad criticism from the guys [meaning the residents in the reception centre] because they say: 'Okay, you guys still say that we need to learn Italian, you guys still say that you need to go to school, you need to get a job. We get a job, we are doing our best, but we still got negative from you, so what do you expect me to do?'
>
> Interview, interpreter, Italy, 2019

Furthermore, such was the influence of the belief that integration could lead to the award of humanitarian protection in Italy, that lawyers would advise their asylum seeking clients to focus predominantly, even exclusively, on this form of protection to the detriment of their cases for more secure refugee status or subsidiary protection. One Italian judge disapproved of some appellants' strategy of immediately showing the employment contract at the hearing outset: 'In my opinion, they must understand that an employment contract or a medical certificate are not what matters to us. I mean, they also matter, but afterwards; unless the appeal is only targeted at humanitarian protection' (Interview, judge, Italy, 2019).

As noted above, the eligibility for a national form of protection should only be evaluated as a last resort. It is not unusual to come across Italian courts in which hearings are either extremely rushed or focused predominantly on the appellant's life in Italy, however. Several appellants recounted how their asylum hearings were extremely short (e.g. 5–10 min). An interpreter in a court described asylum hearings as follows: 'they [judges] only ask you, 'Do you confirm your story?' 'Yes', that's all' (Interview, interpreter, Italy, 2019). In these cases, appellants need to be prepared to tell the judge that they would like to add something, requiring groundwork not undertaken by every lawyer or every reception facility. Alternatively, it is up to the lawyer to prompt the judge to ask more questions about specific aspects of the appellant's story or his or her activities in Italy: 'in that case it's the work of the lawyer who sometimes tells [the judge], "Okay, this guy has been doing this, this, this, that and I have all the certificates here."' (Interview, interpreter, Italy, 2019).

Hearings lose much efficacy when they are carried out like this, as appellants hardly have time to clarify discrepancies and gaps in the story they told to the government representative during their first interview at the Territorial Commission. The very *raison d'être* of hearings is significantly transformed, as they are turned into swift integration tests in which rejected asylum seekers have to prove their 'integration' in the host society. Notably, this aspect is somewhat endorsed by some lawyers themselves, who place their emphasis on proving integration:

Interviewer:	Did the lawyer give you some tips about the hearing?
Respondent:	The only tip she gave me was to get a job, that it's better in this period to have a contract.
Interviewer:	Like this, no tips about your story?
Respondent:	No.
Interviewer:	What to tell, what not to tell?
Respondent:	No.

Interview, appellant, Italy, 2019

In this way, the appeal fails to constitute an effective legal redress: the first instance decision on the asylum application is essentially unquestioned by the court.

6. Waiting as governmentality

Our contribution in this paper has been to diagnose a specific type of governmentality associated with integration that tests asylum seekers in relation to their use of time as they wait for their asylum appeal hearing to come around. The notion of governmentality

is based on a broad understanding of government, as the 'mechanisms and procedures intended to conduct men, to direct their conduct, to conduct their conduct' (Foucault 2014, 12). More than simply 'waiting patiently' (McNevin and Missbach 2018, 27–28) we have shown how asylum seekers are expected to wait *productively*, whereby the productivity of their waiting is assessed through the neoliberal imperatives of entrepreneurship, autonomy and self-improvement. Through such a governmentality of waiting, protracted appeal procedures become probation periods in which appellants can be at the same time tested and governed, ruled through opportunity and made docile through activity and agency.

The effect of this period is to screen appellants in order to select the most suitable for the neoliberal order of the host society (Mortland 1987). Access to humanitarian protection is made conditional on the appellants' ability to show willingness and the aptitude to improve their language skills, to live autonomously, and to find a job in order to be independent and integrate socially. The status of asylum appellants as distinct from economic migrants is eroded by these requirements. The consideration and reward of such integration efforts constitutes a pathologizing of the primary purpose of asylum appeals, which are supposed to protect those vulnerable to the threat of persecution. Although this purpose is not altogether lost – as humanitarian residence permits can still be granted to vulnerable cases that do not fit into the categories of international protection, such as victims of human trafficking – it is polluted by the permeation of integration-related criteria. The 'strongest' appellants – those able to learn languages or hold full time employment – are better placed than 'weaker' ones: not vulnerable enough to get protection but not equipped to 'integrate' effectively. In turn, the degree to which they are equipped can be highly conditioned by the intersecting influences of race, class, age, gender and sexuality.

Appellants are favoured when they increase their marketable capabilities, display resilience, take initiative, solve problems efficiently, overcome personal challenges and exhibit punctuality (e.g. by submitting to authorities' time-regimes). Key to this neoliberal ideal is that the migrant takes full responsibility for their own life and actions. They must be patient, and work hard.

This is clearly stated by the Austrian Federal Ministry for European and International Affairs:

> Integration is a comprehensive, long-term process that takes place in all areas of life. The goal is to provide framework conditions for 'integration through achievement', i.e. a system where people are not judged on their origin, language, religion or culture, but solely by what they are willing to contribute to Austria. To achieve this, it is essential to promote, demand and acknowledge merit so that all citizens are able to participate fully in Austrian society.[17]

In this way, appellants are disciplined, whereby discipline, in Foucauldian terms, represents a technique of 'individualisation of power' (Foucault 1991, 159). Furthermore, this disciplining does not end with the granting of status like humanitarian protection, as this does not lead to permanent safety because it is time-limited. Probation continues well beyond the asylum hearing as even those who obtain humanitarian protection, particularly for integration reasons, are kept in a condition of precarity and uncertainty – the renewal of their residence permits being conditional upon their ability to prove once again their deservingness.

The necessity to wait requires rejected asylum seekers to exhibit endurance, and the privations of uncertain status extend to almost every area of their lives. In Italy, for example, employers are often sceptical that appellants will stay in the country, making it even more difficult to find employment. 'They ask you for documents. If you don't have documents of long stay, they don't give you a contract because they don't know - maybe tomorrow you will leave the country' (Interview, appellant, Italy, 2019). It is these very difficulties, however, that make the waiting period into an effective test. Although never explicitly acknowledged, through the expectations related to integration in asylum appeals, the asylum system actually utilises the unfairness and hardships facing a rejected asylum seeker as an opportunity to discern who amongst them can independently overcome the difficulties that they face.

Notes

1. 'Integration' is enclosed in inverted commas because it is a problematic concept that is often correlated with socio-cultural assimilation (see Section 2.3). However, we decided not to use inverted commas throughout the article for the sake of readability.
2. We usually did not notice an impact of our presence on court proceedings or appellant behaviour, as visitors in public areas at court were common. Where possible and appropriate, we offered information on our research (including the right to withdraw) in multiple languages to participants.
3. The scope of this work is too limited to discuss intersectionality in research in detail but see e.g. Rice, Harrison, and Friedman (2019) and Windsong (2018).
4. For a comprehensive review of CEAS's legislative instruments, see Chetail, De Bruycker, and Maiani (2016).
5. Subsidiary protection codified and aimed to harmonise various existing practices in Member States but Member States may grant other forms of protection stemming from international obligations not covered by the Qualification Directive or based on discretionary grounds adopted by national legislation.
6. 75,035 decisions in 2019, up from 13,005 in 2010. We acknowledge that Eurostat's data has limitations and drawbacks, but we do not have space for a full discussion of these here.
7. EMN (2020) lists protection against *non-refoulement*, medical reasons, protections of the rights of the child, conflict and unrest in the origin country and integration-related reasons among such considerations.
8. https://help.unhcr.org/austria/asylum-in-austria/
9. Ruling 26566/2013
10. Ruling 4488/2018
11. The Federal Office for Migration and Refugees (BAMF) is responsible for asylum determinations (and is the defendant in asylum appeals). The Central Foreigners Authority (ZAB) assesses residence permits based on integration. German immigration law offers skilled and qualified asylum seekers other routes to residence.
12. E.g. 'You should be proud of yourself' (Feld notes, Germany, 2018); 'You have left an exceptionally positive impression on me today' (Feld notes, Germany, 2018)
13. There are further differences between our case countries, but the scope of this article does not allow for an in-depth discussion. For a practical overview of the differences between various EU countries' asylum procedures, see the Asylum Information Database (AIDA) by the European Council on Refugees and Exiles (ECRE) http://www.asylumineurope.org/.
14. i.e. the paperwork.
15. From http://www.goethe.de/lhr/pro/daz/dfz/dtz_Pruefungshandbuch.pdf [Accessed: 24/04/2020]

16. E.g. 'For [appellants], we are only one appointment of many … They don't even realise the importance of this appointment' (Field notes, Germany, 2018).
17. From https://www.bmeia.gv.at/en/integration/ [Accessed: 23/04/2020]

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ORCID

Lorenzo Vianelli http://orcid.org/0000-0001-9269-2822
Nick Gill http://orcid.org/0000-0001-6064-8157
Nicole Hoellerer http://orcid.org/0000-0002-6672-1156

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