Querying into Data in Asylum Decision-making

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Our recent research has revealed for the first time and empirically the full extent of interconnections and entanglement of the European Court of Human Rights' migration jurisprudence, using cutting-edge legal research technology of citation network analysis.

International migration law (IML) is the quintessential example of a fragmented body of international law. Lacking a central treaty system, IML finds its substance from a diverse body of peripheral norms, including (but not limited to) refugee law, diplomatic protection, and labour law. During past decades, however, different international legal regimes and adjudicatory bodies have added substantive new layers for the rights of migrants under international law. This includes, first and foremost, international and regional human rights courts and bodies, where today migrant and refugee cases have come to form a significant part of their jurisprudence. However, this has made it difficult for legal practitioners and scholars to find what is relevant law in IML, throughout a scattered web of legal precedents that deal with similar issues but across incredibly diffuse sources of international law.

A comparative migration law (Ghezelbash, Hinterberger, Urscheler and Viennet, 2022) that integrates multi-focal jurisdictional perspectives into legal analysis shows significant potential for reigning in IML into a more systemic whole. In this blog post, we will show the potential for computationally driven case citation network analysis for bringing into full scope explicit and implicit connections in migration case law on greater empirical scale than seen before. Network analysis builds from legal doctrinal methods but enables researchers to navigate normative complexity on a scale that is normally not possible through human reading of legal texts. It does this by treating case citations as data points and representing their connections as nodes, such that they can be analysed empirically in a computationally drawn network. This can be used to further explore previously unknown or undervalued legal connections.

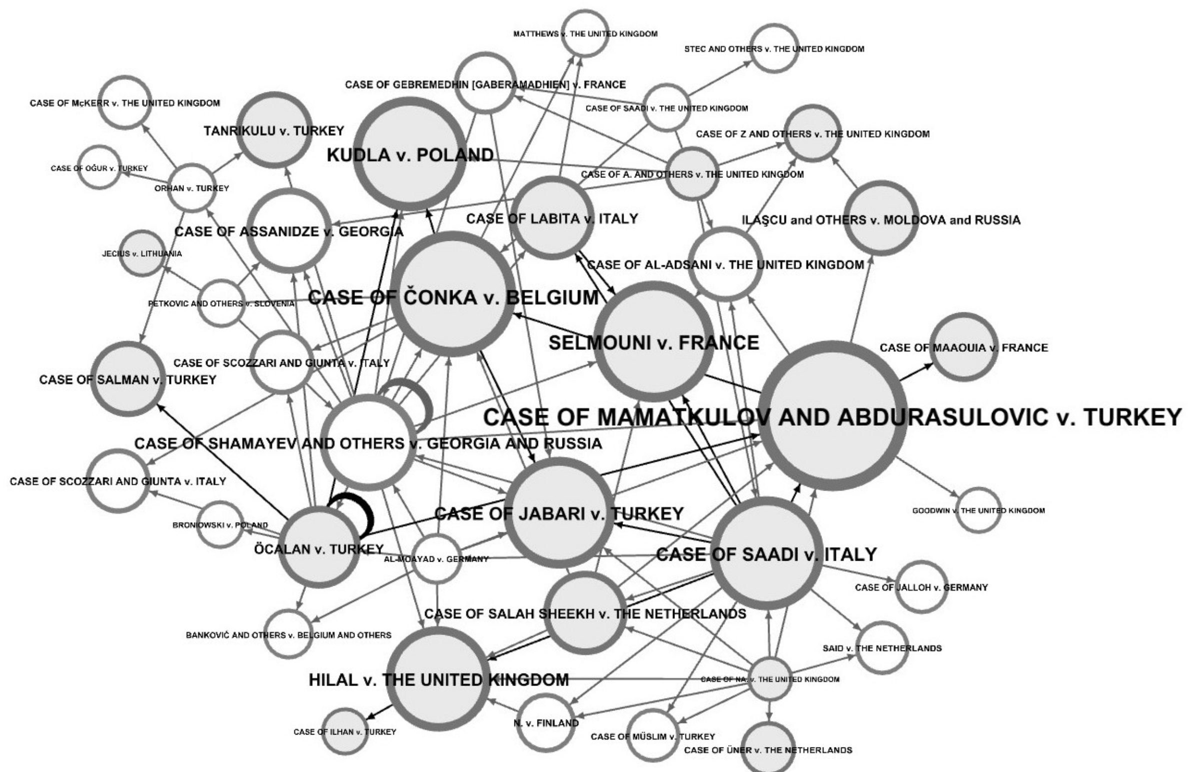
It has long been supposed that migration issues have played a central role in the development of the European Court of Human Rights' ('ECtHR') jurisprudence, and indeed integral to the entanglement of migration and human rights across law and politics (Gammeltoft-Hansen and Madsen, 2021). However, this was hardly a *fait acommpli*, as at the time of its founding 'migrants were hardly a consideration in the newly created human rights scheme (Dembour, 2015). The first migration cases began to enter the ECtHR case law in the 1980s, and the Court has since built a sophisticated jurisprudence that extends from a core focus on expulsion, extradition, and *non-refoulement* and to a range of migrant rights based on non-discrimination, privacy, family unity and protection against arbitrary arrest and detention.

Understanding the rights of migrants in the ECtHR legal space implicates a range of more general, and themselves often complicated, human rights case law areas. This puts migration lawyers at the crux of sitting on the fence and looking below – how can we leverage this deep case law whilst maintaining focus on the subject of migration law? On the one hand, we are beholden to law textbooks that mostly offer a one-sided picture of the law – for instance, a focus on 'European Human Rights Law' or 'International Refugee Law.' On the other, we are forced to rely on legal databases that are either selective in their approach (e.g. 'asylumlawdatabase') or insufficiently discriminate in their search results (e.g. HUDOC). An addition, how do we avoid the risk of overlooking cases, which do not neatly fit with accepted doctrinal legal categories or can otherwise be neglected in the legal research process?

In order to show a possible solution to this problem and get a broader view of how the ECtHR case law on migration issues has developed we conducted an exemplary network analysis. The

network we present is the internal relations in migration case law of the ECtHR using a set of defined keywords. Using keywords as a method to define the network risks leading to an over-inclusive dataset, where cases not related to migration are equally captured. In order to overcome the issue of irrelevance we have noted the number of times keywords appear in the text. This functions as a proxy for relevance and we can subsequently use this information when analysing and further delineating the network. Our search reveals 3273 cases or 'nodes' in our network, and by observing those nodes that have the highest scores in the network based get a sense of which cases are more important in the network built from our dataset.

The entire dataset of internal connections may thus be illustrated as follows:



Quantitative case networks may further provide the basis for qualitative or more in-depth analysis of the results. Many of the cases above are likely to be familiar to migration lawyers as leading cases of IML. *Saadi v. Italy* is a well-known case and intuition would suggest that is commonly cited by the ECtHR for its reaffirmation of *Chalal v. United Kingdom* on the absolute nature of non-refoulement. However, paragraph-to-paragraph analysis could add clarity on the purpose of citations (Sadl and Panagis, 2016) as the ECtHR enunciated dicta on diplomatic assurances in this case (but see also *Al-Moayad* and *Othman* in this data set). Contrariwise, *Chalal* does not feature in the top cited cases, despite being commonly recognized by scholars as an important precedent (See e.g. Costello, 2015, 192-193) which may suggest that *Saadi* has displaced *Chalal* for its unequivocal position on non-refoulement in this respect.

This effect, where newer case law displaces older precedent in terms of citations, is not automatic, however. For example, *M.S.S. v Belgium and Greece*, which examined the compatibility of transfers under the Dublin Regulation with the *Convention*, so far remains the Court's leading precedent on this issue. *Salah Sheekh v Netherlands* might be recalled as a

precedent on internal protection alternatives, whilst *Üner v Netherlands* affirmed principles on the expulsion of long-term immigrants convicted of criminal offences, and both cases have not been displaced by more recent cases in these subject areas. This could be explained by the continuing weight afforded to more general precedents vis-à-vis those that tailor legal principles to specific areas. Moreover, there is a bias in network analysis towards older cases despite not necessarily being the most relevant precedents (on this issue see, Olsen, Lehmann and Leitao, 2019). However, there are also exceptions. For example, *Ilias Ahmed v. Hungary* (2019), on immigration detention in a transit zone, is emerging as a highly cited precedent.

Our network also reveals cases central to ECtHR jurisprudence but that might be less well known to migration lawyers. For instance, *El-Masri v. The Former Yugoslav Republic of Macedonia* affirmed ground-breaking principles on non-refoulement but did not involve a situation of migration *stricto sensu* and thus ultimately rarely receives explicit mention in IML textbooks. *Cyprus v. Turkey* affirmed significant principles on Article 1 of the Convention but is less known for the dicta expressed on the rights to health and family unity. A third case rarely mentioned within the migration literature is *NADA v Switzerland*; an important case on the compatibility of UN Security Council Resolutions with the Convention, it also affirmed principles on freedom of movement. Network analysis can reveal a broader scope of IML scope with less influence of the pre-defined conceptual categories of doctrinal legal research.

In the end, and as is clear from the foregoing analysis, network analysis is 'no substitute for careful thought …and problem-specific validation' as computers cannot differentiate between legally significant and insignificant text (Grimmer and Stewart, 2016). This is just one example of what can become possible through a computationally driven approach to IML in bringing into full scope authoritative judicial practice across much larger and wider data sets. Further research shows promise for promoting coherence in through comparative migration law, whilst reducing the influence of epistemic bias that can privilege certain legal perspectives.

See further: William Hamilton Byrne, Thomas Gammeltoft-Hansen, and Henrik Palmer Olsen, 'Network Analysis and Comparative Migration Law: Examples from the European Court of Human Rights' (2022) International Journal of Migration and Border Studies 1

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