

Bridging the gap? Using strategic litigation to increase access to justice of asylum seekers in Europe

Par Kris van der Pas
e-legal, Volume 9

Pour citer l'article :

Kris van der Pas, « Bridging the gap? Using strategic litigation to increase access to justice of asylum seekers in Europe », in *e-legal, Revue de droit et de criminologie de l'ULB*, Volume 9, avril 2025.

Adresse de l'article :

<https://e-legal.ulb.be/volume-9/droit-s-aux-frontieres/bridging-the-gap-using-strategic-litigation-to-increase-access-to-justice-of-asylum-seekers-in-europe-2>

La reproduction, la communication au public en ce compris la mise à la disposition du public, la distribution, la location et le prêt de cet article, de manière directe ou indirecte, provisoire ou permanente, par quelque moyen et sous quelque forme que ce soit, en tout ou en partie, ainsi que toute autre utilisation qui pourrait être réservée à l'auteur ou à ses ayants droits par une législation future, sont interdits, sauf accord préalable et écrit de l'Université libre de Bruxelles, en dehors des cas prévus par la législation sur le droit d'auteur et les droits voisins applicable en Belgique.

© Université libre de Bruxelles - avril 2025 - Tous droits réservés pour tous pays - ISSN 2593-8010



Introduction

Violations of the rights of asylum seekers and refugees in and around Europe are widespread and have been documented extensively.¹ Court proceedings appear to be one of the ways in which truth and justice on these violations can be obtained, nevertheless, the practical possibilities of those affected to access justice are rather limited. People fleeing to Europe (referred to here as asylum seekers)² often lack the resources to take their case to court effectively and successfully. In order to increase such access to justice, non-governmental organizations (hereafter NGOs), lawyers and other civil society actors try to use efficient legal procedures with the aim of increasing asylum seeker protection, referred to as strategic litigation. The rationale behind the use of strategic litigation in the field of refugee and asylum law includes increasing access to justice for asylum seekers.³ Thus, this strategy is selected in order to ensure effectiveness of laws in practice and access to the asylum procedure.⁴ Nevertheless, it is unclear whether strategic litigation can live up to this challenge. This raises the question: What is the potential and what are the pitfalls of strategic litigation on behalf of asylum seekers, as seen through the lens of access to justice?

Strategic litigation is defined here as the use of judicial procedures to create change (social, legal, political) that goes beyond the individual case or individual interest.⁵ Successful cases that strengthen the rights of asylum seekers – such as protection against *non-refoulement*, access to an asylum procedure, safeguards in the asylum procedure – brought before the European courts, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), can have radiating effects throughout the continent. Examples of such intentional use of litigation are cases such as CJEU *FMS*, CJEU *NS & ME*, and ECtHR *ND & NT vs. Spain*.⁶ Also at the national level, different actors are active in European Union (hereafter EU) member states using litigation strategies to improve the rights of asylum seekers. The extent to which asylum seekers are included in such litigation differs per case and per NGO.

Access to justice entails, according to the World Justice Project, « the ability of all people to seek and obtain effective remedies through accessible, affordable, impartial, efficient, effective and culturally competent institutions of justice ». ⁷ Access to justice is a procedural human right, which consists of access to a court of law, access to the law itself, and a fair solution.⁸ Several authors have highlighted the difficulties for asylum seekers to access a legal procedure and obtain a just outcome.⁹ This lack of access to justice can relate to different aspects: human rights violations in transit countries, violations when trying to enter Europe, and non-compliance of states with procedural asylum rules when people have entered Europe. Obstacles for asylum seekers to access justice can include lack of

resources, no knowledge of the language in the country of destination, and medical problems.¹⁰ Realizing access to justice for asylum seekers is even more pertinent due to the severe consequences for wrong decision-making and the (often) vulnerable situation in which people find themselves.¹¹

The present article uses the lens of access to justice to discuss the potential and the pitfalls of strategic litigation in asylum law. Two sub-research questions are answered in the article, aside from the research question posed in the first paragraph. The first sub-question is: what does strategic litigation in asylum law in Europe look like? The second sub-question is: What are the obstacles to access to justice for asylum seekers and can strategic litigation overcome these? To answer these questions, this article uses empirical evidence from the (European) literature on strategic litigation in asylum law, which has taken flight over the last 10 years.¹² Although much of this literature touches upon aspects of access to justice, by for example speaking on the role of individual asylum seekers in strategic litigation or their lack of resources,¹³ or even stating that strategic litigation can bring relief to a lack of access to justice,¹⁴ there is no study that systematically addresses the use of strategic litigation and its effects on access to justice for asylum seekers. This article conducts a qualitative meta-analysis of the existing empirical studies.¹⁵ This entails a secondary qualitative lens which has been adopted to gather novel insights on strategic litigation through the lens of access to justice.

Section 2 sketches an image of the specificities and practices of strategic litigation in the field of asylum law and the state-of-the-art of the literature. Empirical examples that are assessed in the literature reviewed are mentioned as illustrations. After that, in section 3, a bird's eye view of access to justice for asylum seekers and the challenges often faced are described. Five main challenges are identified there: access to European territory, access to an asylum procedure, length and complexity of the asylum procedure, legal aid, and access to a fair and durable solution. The article takes a Eurocentric approach to limit the scope of inquiry. Both access to justice on the national, EU Member State-level, and access to justice on a supranational, European level (Council of Europe and European Union), are taken into account.¹⁶ Section 3 then also assesses the possibilities of strategic litigation to combat some of the challenges identified, using the information from section 2. Lastly, section 4 provides some concluding remarks. It will be shown throughout that although strategic litigation has great potential to take away certain obstacles to access to justice, use of the tool comes with risks for both individuals and the larger community of asylum seekers as a whole.

Strategic litigation in (European) asylum law

This section describes strategic litigation in the field of asylum and refugee law based on a qualitative meta-analysis (and thus secondary analysis) of empirical data. It should be pointed out that the concept of strategic litigation is not entirely clear-cut: different definitions/descriptions exist, with different characteristics that can be featured.¹⁷ In an ideal depiction of the procedure, there is a three-stage process. In the first stage, litigation is chosen as a strategy, as opposed to or in parallel to other strategies. In the second stage, litigation is prepared and conducted, which involves the legal aspects of the procedure, but also - potentially - media outreach and campaigning. The last stage is the period after strategic litigation, entailing the follow-up.¹⁸ After some more general comments about the phenomenon, this section will return to these stages in the order presented. As strategic litigation is not used exclusively in the field of asylum and refugee law, but also for example famously used to protect the climate, some more general aspects of strategic litigation are discussed and specifications are made at times to strategic litigation on behalf of asylum seekers and refugees.

The origins of strategic litigation lie in the United States, where it is known under the name of public interest litigation.¹⁹ Another associated term among practitioners, socio-legal scholars and political scientists is legal mobilization, meaning: « any type of process by which individual or collective actors invoke legal norms, discourse, or symbols to influence policy, culture or behavior ».²⁰ Narrowly construed, legal mobilization refers to litigation strategies only, however, a broader conceptualization is also possible.²¹ The current article focuses on litigation only, and therefore deploys the term strategic litigation. This phenomenon appears to be on the rise globally, and especially in Europe.²² Coinciding with the Europeanization of refugee law,²³ the use of strategic litigation on behalf of asylum seekers also appears to have increased.²⁴ Even more so, NGOs make use of « integrated legal strategies », meaning that they use multiple litigation avenues at the same time and in collaboration with one another.²⁵ Examples of this are the third-party interventions that NGOs file in one another's cases. Strategic litigation is happening in asylum and refugee law at the national level, but also at the supranational, European level. This is especially interesting when it comes to potential impact: positive judgments can have radiating effects throughout the continent. The downside of this is that a negative judgment can jeopardize future litigation action and decrease the protection of asylum seekers and refugees.

2.1 Choosing litigation as strategy

When it comes to choosing litigation as a strategy, there are other tools at the disposal of NGOs or other civil society actors. These include lobbying, community

organizing, and gathering media attention for a topic.²⁶ These strategies are not mutually exclusive; NGOs can use multiple strategies at the same time. Several academics have explored the question why litigation is chosen as a strategy on a certain topic or in a certain field of law. Different rationales have been found in research as to why civil society actors would choose to litigate as opposed to or next to other strategies. For example, several authors have found a lack of political opportunities as relevant for the « turn to the courts », ²⁷ while others focused on the opening up of legal opportunities, such as liberalization of standing rules.²⁸ Additionally, organizational-level aspects, such as resources and expertise, have been found decisive in why litigation is pursued as a strategy.²⁹ Although it is not the focus of the current article, in the introduction it has been explained that a lack of access to justice has played a role in the field of asylum for NGOs who are pursuing strategic litigation.³⁰ This can be considered a lack of legal opportunities for the people on whose behalf strategic litigation is started. Moreover, a closing of political opportunities has played a big role in why NGOs turn to the courts in asylum matters.³¹

2.2 *Preparing and conducting litigation*

After litigation is selected as a strategy, the second stage commences: that of preparing and conducting the litigation procedure. Thus, there is a strategy within strategic litigation. At times, this entails that a case is made publicly known by launching a media campaign simultaneously to initiating the procedure. An example of this in the asylum and refugee field is the campaign « Not on our border watch », which accompanied a complaint to the Court of Justice of the EU about the EU agency Frontex and its alleged role in deportations of asylum seekers.³² Another aspect of this strategy within litigation is the selection of the ideal forum to litigate. This can be a court or a judicial body that issues non-binding decisions. Procedural law usually guides this decision, but there is also an element of choice, for example at the international level where strategic litigants can decide to take a case to the European Court of Human Rights or a United Nations Treaty Body. In the field of asylum, it has been argued that strategic litigants have taken cases to the ECtHR increasingly after a first wave of successful cases in which violations against asylum seekers were found.³³ One major strategic litigation case before the European Court of Human Rights was that of *M.S.S. v. Belgium and Greece*, in which the Court found a violation of the principle of *non-refoulement* in light of the situation in Greek asylum management.³⁴ This case led to a change in policy and was later followed up by a case before the Court of Justice of the EU, *N.S. and others*.³⁵ These cases altered the system of transfer of asylum seekers within the European Union to prevent violations of the prohibition of torture and inhuman/degrading treatment. The many NGOs involved in both of these cases, either supporting the litigants or as third-party interveners, show the strategic element behind them.³⁶ At the same

time, literature on strategic litigation in asylum matters has highlighted the lack of jurisdiction of human rights fora, making it difficult to bring cases before these bodies.³⁷ This is especially specific to the European context.³⁸

Tied to this is the type of involvement of the strategic litigant: NGOs can be involved directly by initiating a class action (*actio popularis*) or litigation in the public interest, but they can also decide to represent a client. The first option is not possible in all legal systems, which means that NGOs have to resort to client representation.³⁹ Another possibility that depends on procedural law is being involved as *amicus curiae*, also known as third party.⁴⁰ *Amicus curiae* means 'friend of the court' and has its origins in the United States. It refers to someone, i.e. individual, organization, governmental body, state, providing information to help the court make its decision.⁴¹ The term third-party intervention is more commonly used in the European courts, and refers to a similar phenomenon, namely a party not directly involved in the proceedings that provides information on the case. Not all national legal systems provide for this possibility, and there are also distinct differences at the supranational level whether third-party interventions are possible. For example, intervening as a third party in cases before the European Court of Human Rights is much easier than before the Court of Justice of the EU.⁴² Via third-party intervention, the outcome of a case may be influenced and thus have the desired impact.

A final aspect that is part of the strategy within strategic litigation is the selection of the so-called perfect case and client. Especially choosing a suitable client can come with specific problems of client accountability. The client's interests need to be protected, while there is also the overarching goal of the litigation procedure.⁴³ There is the possibility, or threat, of lawyers replacing their own view with that of the client and/or the community in strategic litigation, thereby even disempowering clients or decentering victims.⁴⁴ In strategic litigation on asylum and refugee law matters, this can entail that the personal interests of asylum seekers are not taken into account, but instead the broader interest is put forward in the case (see section 3 below).

In the selection of the perfect case, claim and argumentation, there is the danger of setting negative precedents: using arguments in a case that is lost can jeopardize these arguments in future litigation. An example of this is the *N.D. and N.T.* case before the European Court of Human Rights, a case on collective expulsion of migrants in the Spanish enclave Melilla and its border with Morocco.⁴⁵ The case was lost, endangering future litigation on collective expulsion in the European Convention on Human Rights system.⁴⁶ At the same time, would it have been better if the litigation never took place and the circumstances were never brought before a court?

2.3 Impact and follow-up of litigation

Strategic litigation is all about making a social/legal/political impact beyond the individual case or interest. Therefore, the third stage relates to the impact and follow-up of strategic litigation. Strategic litigants often aim to make a broad impact in a variety of ways. In one study from the United Kingdom, legal change was assessed in the form of a successful litigation outcome, impact was seen on the empowerment of the affected group, and public opinion was positively affected.⁴⁷ In assessing the impact of certain landmark cases in asylum law, Moritz Baumgärtel argues for looking at effectiveness on three levels: law development effectiveness, case-specific effectiveness, and strategic effectiveness.⁴⁸ He, therefore, considers that effects of strategic litigation can seep through in the law, policy, and practice. The role of strategic litigants often does not stop after a decision has been rendered: follow-up action might be needed in the form of pressure for policy change or even new litigation efforts. In the field of asylum, once someone attains refugee status, this does not mean that there is no longer a possibility of violations: in the Italian context there has been strategic litigation to challenge discriminatory measures against refugees.⁴⁹ Even more so, a win in the short term does not necessarily entail a win in the long term, as governments might change legislation to wind back strategic litigation wins.⁵⁰

In conclusion, strategic litigation is used to defend the rights of asylum seekers and refugees in court, by attempting to create change beyond the individual with one single case. This case can be combined with a broader political and social campaign, but litigation in a strategic manner is always purposefully selected as a strategy. Moreover, tactical choices are made within the litigation process, such as the court where litigation is started, how an NGO is involved and what legal claim and arguments are used. This strategy within strategic litigation is necessary in order to attain the envisioned goals of political, legal, and/or social change.

3 Access to Justice for Asylum Seekers and the Potential of Strategic Litigation

This section turns to the question of what the potential and pitfalls are of strategic litigation through the lens of access to justice. The latter is generally speaking subject to a very rich body of literature,⁵¹ but a good starting point is the seminal study of Richard Miller and Austin Sarat, who argue that only a small number of all « grievances » (potential legal disputes) reach the courts, for a variety of reasons.⁵² William Felstiner, Richard Abel and Austin Sarat have famously framed these reasons into problems of naming, blaming and claiming.⁵³ Naming refers to the process whereby one needs to 'name' an injurious experience. Blaming entails the transformation of the experience into a problem that can be addressed. Claiming, lastly, consist of holding the involved party responsible. Ashley Terlouw divides access to justice for asylum seekers specifically into three aspects: access to a court of law, access to the law (i.e. knowledge of the law), and a fair solution.⁵⁴

Notwithstanding that full access to justice is a rather utopian idea, significant additional hurdles are encountered for asylum seekers specifically when it comes to accessing a court of law, the law, and a fair solution. Problems with naming, blaming, and claiming, or accessing (a court of) law, are thus exacerbated for several reasons. These reasons, particularly applicable to asylum seekers in the EU context, are divided in this article into the following fivefold typology: access to the territory, access to the asylum procedure, the length and complexity of asylum procedures, legal aid, and access to a fair and durable solution.⁵⁵ These bottlenecks are first set out, after which the role of strategic litigation in possibly tackling them is addressed. Main features of strategic litigation with examples are used throughout the section, as opposed to a singular ideal depiction of a strategic procedure. It is acknowledged here that each strategic litigation process is different and can thus have different implications for access to justice of asylum seekers.

3.1 Access to territory

Access to the territory is often necessary for having access to a legal procedure (and thus a court). Simply put: if you cannot reach an EU member state, how can you file a legal claim in such a state?⁵⁶ Asylum seekers often have considerable lack of access to the territory of EU Member States. In the EU, Member States are increasingly attempting to « keep migrants out », by concluding deals with third countries (such as Turkey and Tunisia) and paying money to contain migrants outside of EU territory.⁵⁷ These deals cannot be reviewed by the Court of Justice of the EU, which means that asylum seekers have no option of challenging such deals in court.⁵⁸ Therefore, legally speaking, obstacles have been created for asylum

seekers to not access the territory and subsequently, they cannot access justice.

Additionally, on a more practical level, hurdles have been drawn up that create a lack of access to the territory. The practice of « pushbacks » by EU Member States particularly shows this problem. Asylum seekers are – often violently – removed from the territory of EU member states and brought back across the border to non-EU territory.⁵⁹ This practice is not allowed under the right to *non-refoulement* (Article 33 of the 1951 Refugee Convention) and is against Article 3 ECHR and Article 4 of the Charter of Fundamental Rights of the EU (hereafter: Charter). This has been confirmed in the case law of the Court of Justice of the EU and the European Court of Human Rights.⁶⁰ Nevertheless, states are still involved in pushbacks. Even more so, they are developing new ways to prevent asylum seekers from accessing the territory, most notably through paying/providing equipment to private actors or other states, to prevent judicial responsibility for this practice.⁶¹ If an asylum seeker is removed from the territory of an EU member state, it will be more difficult to initiate a legal procedure. This is also due to the related problem of a lack of resources and being unable to contact a practicing lawyer in an EU member state because the asylum seeker is not on EU territory. Moreover, it is difficult for an asylum seeker to prove the pushback because there is often little evidence, phones have been taken away, etcetera.

Strategic litigation can play a role in enhancing access to justice for asylum seekers who are stuck at the external European borders. On the one hand, regular lawyers will often not have the means to seek out clients who are not on European territory, nor will they receive legal aid fees for aiding such clients, as these persons do not fall within the scope of EU law.⁶² NGOs, on the other hand, are not bound strictly to persons on European territory and can, for this reason, seek out asylum seekers whose cases can be litigated before courts in Europe. An example of such a situation is the aforementioned *N.D and N.T.* case before the European Court of Human Rights, litigated by the NGO European Center for Constitutional and Human Rights. The case concerned two asylum seekers who were never able to reach European territory, and the NGO actively sought out this case and these clients.⁶³ Thus, the role of strategic litigation in relation to this obstacle to access to justice can be significant: asylum seekers can have access to a judicial procedure through NGOs where this would otherwise be almost impossible. At the same time, it is illusory to think that NGOs can help every person in such a situation: NGOs will have to be selective in what case to bring before a court. Moreover, the outcome of the case and subsequent implementation of a (positive) outcome is still not guaranteed by the initiation of a strategic litigation procedure.

3.2 Access to an asylum procedure

The second problem for asylum seekers is the lack of access to an asylum procedure. Related to the previous paragraph, if one cannot access the territory,

one cannot access the asylum procedure.⁶⁴ Additionally, a more general lack of access to an asylum procedure can be observed, even for asylum seekers who do reach the territory of EU member states. It is argued that the EU limits such access to a procedure by offshore border checks, outsourcing visa processing, and privatizing pre-boarding controls.⁶⁵ In Greece, for example, the overburdening of the Greek asylum system has led to asylum seekers not being able to secure an interview to enter into the asylum procedure.⁶⁶ This overburdening, which is also present in Italy, is partially related to the EU Dublin system. Under the Dublin Regulation,⁶⁷ asylum seekers in the EU are sent back to their first country of entry into the EU, as that country is responsible for dealing with their asylum claim. As there are very few legal pathways available to seek asylum in the EU, the states at the border of the EU receive a disproportionate amount of asylum seekers. Due to the Dublin Regulation, these states remain responsible for dealing with an asylum claim even if asylum seekers have travelled further into the EU. EU Member States at the border, such as Greece and Italy, face significant overburdening of their asylum systems. Not being able to access an asylum procedure is contrary to the right to seek asylum in Article 14 of the Universal Declaration of Human Rights, which is a procedural right that implies the right to an asylum procedure.⁶⁸ It is most likely that this problem will worsen with the new EU Pact on Migration and Asylum (hereafter: Pact).⁶⁹ It is proposed in the Pact that there will be a pre-entry screening before one can enter into the 'real' asylum procedure, which is likely to decrease the number of people who are actually able to seek asylum in the EU, further limiting access to justice of asylum seekers.

Overburdening of asylum systems and explicit limitation of accessing asylum procedures can be tackled in part by strategic litigation. NGOs can explicitly seek out cases and litigate them that target these problems of a lack of access, in an attempt to structurally improve the situation or the asylum procedure itself. While regular lawyers are mostly confined to individual situations, strategic litigation can take a broader outlook. If successful, such procedures could create broader policy changes, possibly enhancing access to asylum procedures for a larger group. Nevertheless, the success of such litigation is not guaranteed, nor is concrete follow-up at local, national, or European level. Problems of overburdened asylum systems are likely to continue and possibly even worsen with the new Pact.

3.3 Length and complexity of asylum procedures & legal aid

The third significant obstacle for asylum seekers is the length and complexity of asylum procedures. A 2016 report showed that the time-limit imposed by the EU Asylum Procedures Directive⁷⁰ is often not adhered to by states. Even more so, there is a significantly longer time taken for asylum procedures than the Directive requires.⁷¹ A known strategy by states to lengthen the procedure is by waiting to

register someone as an asylum seeker, which is the moment from which the time-limit applies.⁷² Thus, people are kept in a legal fiction of non-entry by not being registered. It has even been argued by researchers that immigration authorities explicitly accelerate and decelerate asylum procedures, in order to control and discipline asylum seekers.⁷³ For example, the Dutch immigration authorities prioritized cases for asylum seekers with a poor chance of success, while they deprioritized cases with a high chance of success.⁷⁴ This temporal aspect might be related to the increasing complexity of asylum procedures: due to the multiplicity of legal regimes and legal norms applicable to a domestic asylum procedure, it has become more complicated for immigration authorities to assess an asylum claim. In one asylum procedure, norms from the following legal regimes can be applicable: international refugee and human rights law, European Union law, the European Convention on Human Rights, and national (administrative and constitutional) law.

A fourth problem that ties to the previous is a lack of legal aid. Legal aid is an important component in making sure that individuals have access to the law and a court.⁷⁵ In asylum procedures, this is even more pertinent due to the inequality in resources between the asylum seeker and the other party in a legal procedure, the state.⁷⁶ Legal aid lawyers compensate for this inequality through their expertise. Under EU law, free legal assistance and representation is required in asylum procedures (see Articles 19-23 of the Asylum Procedures Directive). If asylum seekers are not able to access the asylum procedure, a lawyer can assist them and ensure this access. Moreover, lawyers can force the state to adhere to time-limits and collect fines for asylum seekers if those time-limits are not met. Lastly, with the increasing complexity of asylum procedures, the expertise of lawyers becomes even more important. In asylum law, changes during a procedure are possible and the time-limits are short, which complicates the provision of legal aid.⁷⁷ Nevertheless, despite the importance of legal aid, several EU Member States do not comply with their obligation to provide this.⁷⁸ For example, states do not provide legal aid to asylum seekers in detention centers, legal aid is not present for procedures in first instance, or only NGOs provide legal aid.⁷⁹

The way in which NGOs and strategic litigation can tackle the third and fourth obstacle identified is discussed here in unison, as there is a lot of overlap in the potential of strategic litigation for both. NGOs who engage in strategic litigation more often can be regarded as « repeat-players » as opposed to « one-shotters ». ⁸⁰ This means that these players have the expertise and ability to win more cases, as opposed to a single lawyer who has fewer resources and deals with a certain legal claim only once. The possibility to specialize and pick certain cases increases chances of successful strategic litigation, and, therefore, enhances access to justice of asylum seekers. At the same time, these NGOs are not helping every person on the move with their case, on the contrary, only a few cases are selected for strategic litigation. Thus, it can be wondered whether NGOs are fully fledged

repeat-players. The government, for example, has much more resources and ability to strategically litigate, as it is confronted with a lot more cases in the field of asylum and refugee law.⁸¹ This means that many people are left without access to justice, as resources that could be more broadly divided over several cases are instead devoted to only one.

3.4 Access to a fair and durable solution

The final major obstacle addressed here is the lack of access to a fair and durable solution. According to Article 47 of the Charter, everyone has the right to an effective remedy (and to a fair trial). As highlighted in the introduction, wrong decision-making in an asylum procedure has grave consequences, as an asylum seeker can be removed from the territory and returned to their country of origin. Thus, a fair solution is of utmost importance. Additionally, when a positive decision is given, it is pertinent that that decision is carried out in accordance with (inter)national and European law. This means not only complying with standards for reception centers for asylum seekers, in line with the EU Reception Conditions Directive,⁸² but also providing people with a dignified standard of living after the asylum procedure. Problems in that regard have arisen in several EU Member States, which has also led to successful litigation on behalf of asylum seekers.⁸³

This last challenge of a fair and durable solution can be solved in part with the potential of successful strategic litigation cases. If a case on a certain topic is won, policy change can be required that leads to more durable solutions for many asylum seekers. This does require a certain follow-up of the organizations who strategically litigate. Moreover, a fair and durable solution is not achieved when the injustice that is tackled with strategic litigation does not match the interest of the asylum seeker. This problem, as described in section 2, means that the strategic goal does not match the individual's goal. If this is the case, strategic litigation does not enhance, but rather diminish, access to justice and reaching a fair solution, as clients are disempowered. Several NGOs working on strategic litigation in the field of asylum and refugee law are aware of this problem and have distinct ways of dealing with it.⁸⁴

In sum, strategic litigation has some potential to overcome certain obstacles to access to justice. For example, one feature of strategic litigation is that it is conducted by NGOs with more resources than individual lawyers. This means that NGOs can seek out clients that are outside EU borders. Moreover, NGOs have more expertise to bring into a legal procedure, which – according to Marc Galanter's work – can lead to higher rates of success.⁸⁵ At the same time, structural problems in accessing the asylum procedure and legal aid are not solved by strategically litigating. On the contrary, devoting many available resources into one specific case (that is perhaps even lost in court) means that resources are not divided and allocated equally among a larger group. This section has, therefore,

shown the mixed bag of potential and pitfalls of strategic litigation as seen through the lens of access to justice.

4 Conclusion

In order to tackle problems of access to justice and increase migrant protection, NGOs are turning to the courts to maximize positive impact with strategically selected and conducted legal procedures. With these procedures, NGOs aim to create change beyond the individual case/interest, for example by litigating before one of the European courts. One of the rationales behind this strategy is increasing access to justice, however, it is unclear whether this objective is attained. Through a secondary analysis of empirical data on strategic litigation in asylum law, this article has assessed precisely that question. Works published over the last 10 years have been reviewed to establish an overview of what strategic litigation in asylum law looks like. In an ideal depiction of the phenomenon, litigation is first chosen as a strategy - as opposed to another strategy such as lobbying. A lack of political opportunities on asylum issues is one of the reasons for starting court cases in this field. Thereafter, a complaint is filed with a forum of the NGO's choice, a client is selected, and the NGO is involved in the proceedings in a certain way. Finally, after a decision is rendered, there is the phase of impact and follow-up. There is great potential in strategic litigation if a case is won, but this does not mean that the decision is implemented. Moreover, cases can be lost as well, jeopardizing future litigation efforts and possibly diminishing asylum seeker protection.

When it comes to access to justice, strategic litigation has the potential to partially overcome certain obstacles. Problems such as lack of access to territory and the length and complexity of procedures can be tackled by repeat-player NGOs, who devote resources and expertise to a specific strategic litigation procedure that, if successful, can change the lives of many. Nevertheless, this potential should not be overestimated. Strategic litigation comes with significant downsides to solving structural problems with access to justice for asylum seekers. For example, not everyone's case will become a strategic litigation case, rather, only a few specific cases will be selected. Moreover, the government has a considerable larger number of resources and experience in litigation and can possibly be referred to as the ultimate repeat-players. This means that realizing full access to justice requires more than NGOs stepping in with strategic procedures. For example, NGOs could critically review where they put their resources: as opposed to putting all effort into bigger strategic cases, they could aim for smaller wins with more cases. Moreover, the practice of « movement lawyering » could be focused on, which entails involving communities and those affected into building strategic litigation.⁸⁶ As an afterthought, it should also not be forgotten that a problem in practice is not solved immediately if a legal (strategic litigation) case is won. Problems of implementation and follow-up are widespread when it comes to asylum and migration cases, diminishing the potential of strategic litigation altogether. The strong human rights and EU legal framework, both procedurally and materially, do open up opportunities for strategic cases, but NGOs should keep in mind the downsides.

This article has made use of a qualitative meta-analysis – and thus existing empirical contributions – to assess strategic litigation through the lens of access to justice. This approach is not sufficient to exhaustively address this topic. As no systematic literature review has taken place, certain pieces may have been missing. Strategic litigation and access to justice combined have not yet been tackled in the literature extensively, so the aim is here also to set out avenues for further research. While this article did not make use of empirical data gathering, such an approach could further help develop this field. This data can consist of expert interviews with NGOs, but also asylum seekers can be subjects of study in future research. Given the resources and attention to strategic litigation, as this special issue also shows, different approaches (such as quantitative methods) are warranted as well.

1. EU Fundamental Rights Agency, *Guidance on Investigating Alleged Ill-Treatment at Borders*, report 2024. See also the work of the Border Violence Monitoring Network, <https://borderviolence.eu/>. ←
2. The remainder of this article will refer to « asylum seekers » for conceptual clarity, as often those fleeing are seeking international protection. This is not to say that this article ignores the complex reality of those coming to Europe, including mixed migration flows and the distinction between so-called voluntary and forced migrants. As the main purpose of this article is to describe a socio-legal reality, the legal term « asylum seeker » is used. For a more detailed conceptual work, see Rijken C. and Pijnenburg A., « Moving beyond refugees and migrants: Reconceptualising the rights of people on the move », *International Journal of Postcolonial Studies*, 23(2), 2021, pp. 273-293. ←
3. Pas K. van der, *The 'Strategy' in Strategic Litigation: The Why and How of Strategic Litigation by Civil Society Organizations in Europe*, Amsterdam, Europa Law Publishing, 2024. This is often also the purpose of strategic litigation in other areas (representing underrepresented groups), which has been discussed by Chen A.K. and Cummings S.L., *Public Interest Lawyering: A Contemporary Perspective*. New York, Wolters Kluwer Law & Business, 2013. ←
4. Manhart M., « "Backpack Refugee Rights Advocating" in Greece – Access to Justice through Legal Empowerment », *Windsor Yearbook of Access to Justice*, 37(1), 2020, pp. 68-87. ←
5. Pas K. van der, « Conceptualizing Strategic Litigation », *Oñati Socio-Legal Series*, 11(6), 2021, pp. 116-145. ←
6. CJEU, *N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner and Minister of Justice, Equality and Law Reform*, C-411/10 and C-493/10, 21 December 2011; CJEU, *FMS, FNZ, SA, SA junior v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, Országos Idegenrendészeti Főigazgatóság*, C-924/19 PPU and C-925/19 PPU, 14 May 2020; ECtHR, *N.D. & N.T. v. Spain*, appl. No. 8675/15 and 8697/15, Grand Chamber, 13 February 2020. There were several organizations behind these cases, such as Amnesty International, the AIRE (Advice on Individual Rights in Europe) Centre, the Hungarian Helsinki Committee, and the European Center for Constitutional and Human Rights. ←
7. World Justice Project, *Rule of Law Index 2012-2013*, 2012, p. 27. Available at https://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf. ←
8. Terlouw, A., « Access to Justice for Asylum Seekers: Is the Right to Seek and Enjoy Asylum Only Black Letter Law? », in Grütters C., Mantu S., and Minderhoud P. (eds.) *Migration on the Move*, Leiden, Brill Nijhoff, 2017, p. 248; Hubeau B. and Terlouw A. « Legal Aid and Access to Justice: How to Look at and Evaluate Legal Aid Systems? » in Hubeau B. and Terlouw A. (eds.), *Legal Aid in the Low Countries*, Antwerp, Intersentia, 2014, pp. 3. ←
9. Terlouw, A., « Access to Justice for Asylum Seekers: Is the Right to Seek and Enjoy Asylum Only Black Letter Law? », in Grütters C., Mantu S., and Minderhoud P. (eds.) *Migration on the Move*, Leiden, Brill Nijhoff, 2017, pp. 247-67; Butter T., « Providing Legal Aid in Asylum Procedures in the Netherlands: A Challenging Business? », in Hubeau B. and Terlouw A. (eds.), *Legal Aid in the Low Countries*, Antwerp, Intersentia, 2014, pp. 105-121; Jacobs C., and Milabyo Kyamusugulwa P., « Everyday Justice for Internally Displaced in the Context of Fragility: The Case of the Democratic Republic of Congo (DRC) », *Journal of Refugee Studies*, 31(2), 2018, pp. 179-196. ←

10. Butter T., *Asylum Legal Aid Lawyers' Professional Ethics in Practice: A study into the professional decision making of asylum legal aid lawyers in the Netherlands and England*, The Hague, Eleven International Publishing, 2018. ↵
11. Reneman M., *EU Asylum Procedures and the Right to an Effective Remedy*, Oxford and Portland Oregon, Hart Publishing, 2014. ↵
12. Notwithstanding that there are works with a broader lens. ↵
13. See for example Passalacqua V., « Who Mobilizes the Court? Migrant Rights Defenders Before the Court of Justice of the EU », *Law & Development Review*, 15(2), 2021, pp. 381-405; Tsourdi E., « Enforcing refugee rights under EU procedural law: the role of collective actors and UNHCR », in Muir E., Kilpatrick C., Miller J. and De Witte B., *How EU law shapes opportunities for preliminary references on fundamental rights : discrimination, data protection and asylum*, EUI Working Papers 2017/17, pp. 99-112. ↵
14. Altafin C., « Child rights strategic litigation on deprivation of liberty for migration-related reasons: Review of selected cases in Asia and Europe », *Global Campus Human Rights Journal*, 6, 2022, pp. 253-286 ↵
15. See on qualitative meta-analyses, Timulak L., « Meta-analysis of qualitative studies: A tool for reviewing qualitative research findings in psychotherapy », *Psychotherapy Research*, 19(4-5), 2009, pp. 591-600. They are not common in law, but have been used in social science studies. Quantitative meta-analysis can also be found in legal research, see for example Walters G. and Bolger P., « Procedural justice perceptions, legitimacy beliefs, and compliance with the law: a meta-analysis », *Journal of Experimental Criminology*, 15, 2019, pp. 341-372. The texts selected consist of the most important studies found by searching the databases Heinonline, Google Scholar and the Tilburg University Library with "strategic litigation" AND "asylum" OR "migration" AND "Europe" (for texts since 2015). Not all hits were reviewed - Google Scholar alone generated 2070 results - but the most relevant as well as the most referenced texts were taken into account. Snowballing was used from there to identify more related, important texts. Additional literature on strategic litigation was taken into account whenever there were certain gaps in the literature on strategic litigation in asylum law. ↵
16. Strategies by individuals to overcome problems with access to justice are not the focus of this article, but compare Nillson M. and Badran D., « Surviving Seemingly Endless Refugeeship—Social Representations and Strategies of Palestinian Refugees in Ein El Hilweh », *Journal of Refugee Studies*, 34(3), 2021, pp. 3423-3441 with Purkey A.L., « A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations », *Journal of Refugee Studies*, 27(2), 2014, pp. 260-281. ↵
17. Pas K. van der, « Conceptualizing Strategic Litigation », *Oñati Socio-Legal Series*, 11(6), 2021, pp. 116-45. ↵
18. More elaborately addressed in Pas K. van der, *The 'Strategy' in Strategic Litigation: The Why and How of Strategic Litigation by Civil Society Organizations in Europe*, Amsterdam, Europa Law Publishing, 2024. It should be noted that this three-stage process is not linear and changes per procedure. It is used here as illustrative example. ↵
19. Chen A.K. and Cummings S.L., *Public Interest Lawyering: A Contemporary Perspective*, New York, Wolters Kluwer Law & Business, 2013. Famous cases include US Supreme Court, *Brown v Board of Education of Topeka*, 347 U.S. 483, 17 May 1954; US Supreme Court, *Roe v. Wade*, 410 U.S. 113, 22 January 1973. ↵
20. Vanhala L., *Legal Mobilization*, Oxford Bibliographies, 2021. Available at <https://www.oxfordbibliographies.com/display/document/obo-9780199756223/obo-9780199756223-031.xml>. ↵
21. Compare Vanhala L., « Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK », *Law & Society Review*, 46(3), 2021, pp. 523-556; with Handmaker J. and Taekema S., « O Lungo Drom: Legal Mobilization as Counterpower », *Journal of Human Rights Practice*, 15(1), 2023, pp. 6-23. ↵
22. Cummings S.L. and Trubek L.G., « Globalizing Public Interest Law », *UCLA Journal of International Law and Foreign Affairs*, 13(1), 2008, pp. 1-53; Walsh J., « Strategic Litigation at a European Level » EDAL, 2017. Available at <https://www.asylumlawdatabase.eu/en/journal/strategic-litigation-european-level>. ↵

23. Guild E., « The Europeanisation of Europe's Asylum Policy », *International Journal of Refugee Law*, 18(3-4), 2006, pp. 630-651. ↵
24. Pijnenburg A. and Pas K. van der, « Strategic Litigation against European Migration Control Policies: The Legal Battleground of the Central Mediterranean Migration Route », *European Journal of Migration and Law*, 24(3), 2022, pp. 401-429. ↵
25. Pijnenburg A. and Pas K. van der, « Strategic Litigation against European Migration Control Policies: The Legal Battleground of the Central Mediterranean Migration Route », *European Journal of Migration and Law*, 24(3), 2022, pp. 401-429. This is based on the 'topographical approach', explained by Tan N.F. and Gammeltoft-Hansen T., « A Topographical Approach to Accountability for Human Rights Violations in Migration Control », *German Law Journal*, 21(3), 2020, pp. 335-354. ↵
26. Chen A.K. and Cummings S.L., *Public Interest Lawyering: A Contemporary Perspective*, New York, Wolters Kluwer Law & Business, 2013, pp. 201-202. ↵
27. Lejeune A. and Ringelheim J., « The Differential Use of Litigation by NGOs: A Case Study on Antidiscrimination Legal Mobilization in Belgium », *Law & Social Inquiry*, 48(4), 2022, pp. 1365-1398. ↵
28. Passalacqua V., « Legal Mobilization via Preliminary reference: Insights from the Case of Migrant Rights », *Common Market Law Review*, 58(3), 2021, pp. 751-776; ↵
29. Galanter M., « Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change », *Law & Society Review*, 9(1), 1974, pp. 95-160; Sotomayor L., Montero S. and Angel-Cabo N., « Mobilizing legal expertise in and against cities: urban planning amidst increased legal action in Bogotá », *Urban Geography*, 44(3), 2023, pp. 447-469. ↵
30. This can for example be due to high costs of litigating, see Palmiotto F. & Ozkul D., « Climbing a Wall: Strategic Litigation Against Automated Systems in Migration and Asylum », *German Law Journal*, 25(6), 2024, pp. 935-955. ↵
31. Van der Pas K., « Legal Mobilization in the Field of Asylum Law: a Revival of Political Opportunity Structures? », *Recht der Werkelijkheid* 44(3), 2023, pp. 14-32. See also Webber F., « Asylum Seekers and Strategic Litigation », Vecchio F. and Gerard A. (eds.), *Entrapping Asylum Seekers*, Springer 2017. ↵
32. Prakken d'Oliveira, *EU agency Frontex sued over illegal pushbacks*, 2023. Available at <https://www.prakkendoliveira.nl/en/news/2023/eu-agency-frontex-charged-over-illegal-pushbacks>. See also <https://www.notonourborderwatch.com/>. ↵
33. Psychogiopoulou E., « European Courts and the Rights of Migrants and Asylum Seekers in European Equality Law », in Anagnostou D. (ed.), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-Level European System*, Oxford, Hart Publishing, 2014. ↵
34. Ibid, pp. 159-161. ECtHR, M.S.S. v. Belgium and Greece, Appl. No. 30696/09, Grand Chamber, 21 January 2011. ↵
35. CJEU, *N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner and Minister of Justice, Equality and Law Reform*, C-411/10 and C-493/10, 21 December 2011. ↵
36. Psychogiopoulou E., « European Courts and the Rights of Migrants and Asylum Seekers in European Equality Law », in Anagnostou D. (ed.), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-Level European System*, Oxford, Hart Publishing, 2014, pp. 164-166. ↵
37. Costello C. and Mann I., « Border Justice: Migration and Accountability for Human Rights Violations », *German Law Journal*, 21(3), 2020, pp. 311-334. See also Ireland F., « Challenging the boundaries of accountability: strategic litigation and jurisdiction in European migration control policies », *Australian Journal of Human Rights*, 29(1), 2023, pp. 167-173. ↵
38. Costello C., « Strategic Litigation to Vindicate the Rights of Refugees and Migrants: Pyrrhic Perils and Painstaking Progress' », in Bacik I. & Rogan M. (eds), *Legal Cases that Changed Ireland*, Clarus Press, 2016. ↵
39. For example, it is possible in the Netherlands and Portugal, and on non-discrimination matters in Italy, but impossible in Germany. See Pas K. van der, *The 'Strategy' in Strategic Litigation: The Why and How of Strategic Litigation by Civil Society Organizations in Europe*, Amsterdam, Europa Law Publishing, 2024. ↵

40. Van den Eynde L., « An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights », *Netherlands Quarterly of Human Rights*, 31(3), 2013, pp. 271–313; Wiik A., *Amicus Curiae Before International Courts and Tribunals*, Baden-Baden, Nomos Verlagsgesellschaft, 2018. ↵
41. Canelo K.S., « The Supreme Court, Ideology, and the Decision to Cite or Borrow from Amicus Curiae Briefs », *American Politics Research*, 50(2), 2022, pp. 255–264; Collins P.M. Jr., Corley P.C. and Hamner J., « The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content », *Law & Society Review*, 49(4), 2015, pp. 917–944; Wiik A., *Amicus Curiae Before International Courts and Tribunals*, Baden-Baden, Nomos Verlagsgesellschaft, 2018. ↵
42. Krommendijk J. and Pas K. van der, « To intervene or not to intervene: intervention before the Court of Justice of the European Union in environmental and migration law », *The International Journal of Human Rights*, 26(8), 2022, pp. 1394–1417. ↵
43. Cummings S.L., « Empirical Studies of Law and Social Change: What is the Field? What are the Questions? », *Wisconsin Law Review*, 1, 2013, pp. 171–204, at 182. ↵
44. Sarat A. and Scheingold S., *Cause Lawyering: Political Commitments and Professional Responsibilities*, Oxford, Oxford University Press, 1998, pp. 4; Cummings S.L. « The Social Movement Turn in Law », *Law & Social Inquiry*, 43(2), 2018, pp. 362; Baumgärtel M. (2019) *Demanding Rights: Europe's Supranational Courts and the Dilemma of Migrant Vulnerability*. Cambridge: Cambridge University Press, pp. 122; Chen A.K. and Cummings S.L., *Public Interest Lawyering: A Contemporary Perspective*, New York, Wolters Kluwer Law & Business, 2013, pp. 222; Hodson L.C., « The Struggle for Gay Rights in the ECtHR », in Anagnostou D. (ed.), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-Level European System*, Oxford and Portland Oregon, Hart Publishing, 2014, pp. 181–204, at 196–197; ↵
45. ECtHR, *N.D. & N.T. v. Spain*, appl. No. 8675/15 and 8697/15, Grand Chamber, 13 February 2020. ↵
46. For an analysis of the present-day impact of *N.D. and N.T. v. Spain*, see Beuscher A. et al., « The Claim of Hybrid Attacks: Balancing State Sovereignty and Migrants' Rights at the European Court of Human Rights », *Verfassungsblog*, 2025. Available at <https://verfassungsblog.de/hybrid-attacks/>. ↵
47. Vanhala L., Lambe S. and Knowles R., « 'Let Us Learn': Legal Mobilization for the Rights of Young Migrants to Access Student Loans in the UK », *Journal of Human Rights Practice*, 10(3), 2018, pp. 439–460. ↵
48. Baumgärtel M., *Demanding Rights: Europe's Supranational Courts and the Dilemma of Migrant Vulnerability*, Cambridge, Cambridge University Press, 2019, pp. 7–8. ↵
49. Protopapa V., « From Legal Mobilization to Effective Migrants' Rights: The Italian Case », *European Public Law*, 26(2), 2020, pp. 477–507. ↵
50. Salomon S., « What Happens After the Court of Justice Has Given its Ruling? Promises and Pitfalls of Strategic Litigation Against Internal Border Controls in EU Law », *German Law Journal*, 25(6), 2024, pp. 1043–1067. ↵
51. See for an overview Johnson E. « Justice, Access to: Legal Representation of the Poor », in Wright J. (ed.), *International Encyclopedia of the Social & Behavioral Sciences*, Amsterdam, Elsevier, 2015, pp. 919–927. ↵
52. Miller R.E. and Sarat A., « Grievances, claims, and disputes: assessing the adversary culture », *Law & Society Review*, 15(3), 1980, pp. 525–566. ↵
53. Felstiner W.L., Abel R.L. and Sarat A., « The Emergence and Transformation of Disputes: Naming, Blaming, Claiming », *Law & Society Review*, 15(3–4), 1980–1981, pp. 631–54. See more recently Olesen A. and Hammerslev O., « The dynamic and iterative pre-dispute phase: the transformation from a justiciable problem into a legal dispute », *Journal of Law and Society*, 50(1), 2023, pp. 120–138. ↵
54. Terlouw A., « Access to Justice for Asylum Seekers: Is the Right to Seek and Enjoy Asylum Only Black Letter Law? », in Grütters C., Mantu S. and Minderhoud P. (eds.), *Migration on the Move*, Leiden, Brill Nijhoff, 2017, pp. 247–67. ↵
55. This typology is not derived from one specific study, but is rather an analytical lens that flows from the literature on access to justice for asylum seekers and strategic litigation in asylum law. ↵

56. To file a claim in a different state, you have to collect specific documents (for which you often need help of a lawyer), a translation might be required, and specific procedures might be required for a court in a specific country. ←
57. Ovacik G. and Spijkerboer T., « Introduction to the Special Issue Asylum for Containment: The Contradiction of European External Asylum Policy », *European Journal of Migration and Law*, 26(2), 2024, pp. 147-153. ←
58. Pas K. van der, « Litigating the EU-Turkey Deal », *Verfassungsblog*, 2024. Available at <https://verfassungsblog.de/litigating-the-eu-turkey-deal/>. ←
59. European Parliament, *Addressing pushbacks at the EU's external borders*, 2022. Available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI\(2022\)738191_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI(2022)738191_EN.pdf) ; Pijnenburg A., « From Italian Pushbacks to Libyan Pullbacks: Is *Hirsi 2.0* in the Making in Strasbourg? », *European Journal of Migration and Law*, 20(4), 2018, pp. 396-426. ←
60. See for example ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Grand Chamber, 23 February 2012; CJEU, *European Commission v. Hungary*, C-808/18, 17 December 2020. ←
61. Pijnenburg A., « From Italian Pushbacks to Libyan Pullbacks: Is *Hirsi 2.0* in the Making in Strasbourg? », *European Journal of Migration and Law*, 20(4), 2018, pp. 396-426. ←
62. EU legislation requires legal aid for asylum seekers, but only once they are on EU territory (and thus not outside). ←
63. Pas K. van der, *The 'Strategy' in Strategic Litigation: The Why and How of Strategic Litigation by Civil Society Organizations in Europe*, Amsterdam, Europa Law Publishing, 2024. ←
64. Gammeltoft-Hansen T. and Gammeltoft-Hansen H., « The Right to Seek - Revisited. On the UN Human Rights Declaration Article 14 and Access to Asylum Procedures in the EU », *European Journal of Migration and Law*, 10(4), 2008, pp. 440. There are some rare exceptions when one can obtain asylum extraterritorially, this is through resettlement - arranged for by UNHCR. This procedure is available to vulnerable asylum seekers, but only concerns a few dozen of people every year. See <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/resettlement/resettlement-data>. ←
65. Moreno-Lax V., *Accessing Asylum in Europe: Extraterritorial Border Controls*, Oxford, Oxford University Press, 2017. ←
66. Manhart lists other problems in relation to the Greek asylum procedure as well: inability to speak to immigration officers, lack of interpreters, no legal aid, etc., see Manhart M., « "Backpack Refugee Rights Advocating" in Greece - Access to Justice through Legal Empowerment », *Windsor Yearbook of Access to Justice*, 37(1), 2020, pp. 68-87. See also Greek Council for Refugees, *Country Report: Fast-Track Border Procedure (Eastern Aegean Islands)*, AIDA/ECRE, 2024. Available at <https://asylumineurope.org/reports/country/greece/asylum-procedure/procedures/fast-track-border-procedure-eastern-aegean/>. ←
67. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). ←
68. Gammeltoft-Hansen T. and Gammeltoft-Hansen H., « The Right to Seek - Revisited. On the UN Human Rights Declaration Article 14 and Access to Asylum Procedures in the EU », *European Journal of Migration and Law*, 10(4), 2008, pp. 441. ←
69. Vedsted-Hansen J., « Border Procedure on Asylum and Return: Closing the Control Gap by Restricting Access to Protection? », in Thym D. and Odysseus Academic Network (eds.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum*, Glashütte, Nomos, 2022, pp. 99-112. ←
70. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast). ←
71. ECRE/AIDA report, *The length of asylum procedures in Europe*, 2016, p. 5. Available at <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-DurationProcedures.pdf>. ←
72. ECRE/AIDA report, *The length of asylum procedures in Europe*, 2016, p. 3. Available at <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-DurationProcedures.pdf>. ←

73. Reneman M. and Stronks M., « What are they waiting for? The use of acceleration and deceleration in asylum procedures by the Dutch government », *Time and Society*, 30(3), 2021, pp. 302-331. ↵
74. Reneman M. and Stronks M., « What are they waiting for? The use of acceleration and deceleration in asylum procedures by the Dutch government », *Time and Society*, 30(3), 2021, pp. 302-331. ↵
75. See for example Denvir C., Kinghan J., Mant J. and Newman D., *Legal Aid and the Future of Access to Justice*, Oxford, Hart Publishing, 2023. ↵
76. Butter T., *Asylum Legal Aid Lawyers' Professional Ethics in Practice: A study into the professional decision making of asylum legal aid lawyers in the Netherlands and England*, The Hague, Eleven International Publishing, 2018, pp. 2. ↵
77. Butter T., *Asylum Legal Aid Lawyers' Professional Ethics in Practice: A study into the professional decision making of asylum legal aid lawyers in the Netherlands and England*, The Hague, Eleven International Publishing, 2018, pp. 3. ↵
78. ECRE/ELENA, *Legal Note on Access to Legal Aid in Europe*, 2017. Available at <https://ecre.org/wp-content/uploads/2017/11/Legal-Note-2.pdf>. ↵
79. Ibid. ↵
80. Galanter M., « Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change », *Law & Society Review*, 9(1), 1974, pp. 95-160. ↵
81. Baumgärtel M., *Demanding Rights: Europe's Supranational Courts and the Dilemma of Migrant Vulnerability*, Cambridge, Cambridge University Press, 2019. See also Wessels J., « Reverse Strategic Litigation by Governments? Negotiating Sovereignty and Migration Control before the European Court of Human Rights », *AJIL Unbound*, 118, 2024, pp. 214-218. ↵
82. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). ↵
83. See for example CJEU, *Abubacarr Jawo v. Bundesrepublik Deutschland*, C163/17, 19 March 2019; European Committee of Social Rights, *Conference of European Churches (CEC) v. The Netherlands*, No. 90/2013, 9 July 2014. ↵
84. Pas K. van der, *The 'Strategy' in Strategic Litigation: The Why and How of Strategic Litigation by Civil Society Organizations in Europe*, Amsterdam, Europa Law Publishing, 2024. ↵
85. Galanter M., « Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change », *Law & Society Review*, 9(1), 1974, pp. 95-160. ↵
86. See on this from a US perspective: Cummings S., « Movement Lawyering », *Indiana Journal of Global Legal Studies*, 27(1), 2020, pp. 87-130. ↵