

How strategic litigation for asylum seekers can be effective

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The rights of asylum seekers are under pressure. Nevertheless, politically

this group has very little to gain. We can, therefore, expect a further rise in strategic litigation, a tactic that interest groups are increasingly using to protect the rights of asylum seekers and refugees.

Legal scholar Kris van der Pas examined why and how different European organizations litigate strategically. She will defend her Ph.D. thesis at Radboud University on 10 September.

Strategic litigation refers to an organization that uses the law to achieve its goal when, in the opinion of that organization, the government (or a company) is not doing enough to comply with the law.

This is a tactic that has long been used in the United States, but it is now increasingly applied at the national and European level too.

Examples are climate change litigation and lawsuits relating to discrimination or migration. A recent example is the successful case conducted by the Dutch Council for Refugees involving the reception center in Ter Apel, aimed at forcing the government to improve the situation.

Lobby route

Van der Pas is not surprised by the rise in strategic litigation in recent years. "In the past, refugee organizations often tried to achieve success through the lobby route. This is still the case in countries like Germany, where the political climate is more accommodating.

"However, that route hasn't been very successful in the Netherlands in recent years, which is partly why organizations here are shifting their attention to the law." Van der Pas' study offers the first comprehensive analysis of how these organizations litigate.

Political and legal climate

The legal scholar spoke to members of interest groups in the Netherlands, Germany and Italy. These conversations revealed significant differences in how organizations operate, depending on the political and legal environment.

In the Netherlands, it is relatively easy to go to court. You will, therefore, see some organizations presenting themselves more prominently in cases attracting a lot of media attention, such as the Public Interest Litigation Project. Other parties mainly offer information and expertise in the background.

Van der Pas says, "In Germany, on the contrary, it's much harder for an organization to start litigation. There, these organizations also tend to be made up of [social workers](#) and communications experts, making them less likely to opt for a legal route.

"In all cases, interest groups look at the strategy most likely to achieve the goal they want to achieve. Strategic litigation seems to work in this context: in asylum law, several important national and international court cases have emerged in recent years thanks to these interest groups."

Blocking access to the courts

Although some [political parties](#) want to take steps to stop strategic litigation, Van der Pas does not expect that to have much effect. "There's still a lot of scope for organizations to achieve success through this route because there are many instances where national policies aren't in line with European Union law or human rights.

"The only way for governments to avoid [legal challenges](#) is simply

through better compliance with laws and regulations. If you don't like a [court ruling](#), you mustn't immediately block interest groups from accessing the court. In fact, my research shows that organizations always find a way to strategically litigate and take important cases to court."

Provided by Radboud University

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