

Research Project

Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum (ACCESS)

Led by Assoc. Prof. Madalina Moraru

Wider research context: Pushbacks, walls, fences, detention measures and externalisation of asylum proceedings are the most widespread barriers that States around the globe increasingly implement to keep refugees out, and consequently prevent their access to international protection. In a global refugee context lacking an international court to interpret the 1951 Refugee Convention (RC), the burden of assessing the compatibility of these barriers with the RC lies on domestic and supranational courts. These separate jurisdictions are interpreting the same treaty (RC), are often presented with similar factual circumstances, and have a duty to uphold the rule of law. Yet, we do not know if courts around the globe have yielded similar or different interpretations on the compatibility of these barriers with the RC; and if common patterns have developed, whether or not they uphold those barriers in light of the RC. Despite these overarching problems, the literature has, so far, had a piecemeal approach; we thus lack an empirically driven socio-legal comparative analysis of the role of courts in interpreting the right to access asylum.

Objectives: More specifically, we will investigate: 1) how do judges apply the same legal treaty (RC) and related international norms in different political and socio-legal contexts?; 2) to what extent are there any discernible patterns in the courts' decisions related to barriers to asylum (either restricting or expanding access to asylum)?; 3) what are the socio-legal factors influencing adjudication?; and 4) how have courts developed international refugee law in response to these barriers?

Methods: ACCESS will employ case studies of 15 jurisdictions (Australia, Greece, India, Italy, Libya, Malaysia, Mexico, Poland, Serbia, Spain and the US, African Court of Human and Peoples' Rights, Court of Justice of the European Union, European Court of Human Rights, Inter-American Court of Human Rights), based on a legal comparative and qualitative content analysis of at least 40 leading cases per jurisdiction. In addition, we will conduct 20 semi-structured interviews with the four groups of actors involved in adjudication on access to asylum (judges, lawyers, asylum seekers, governmental representatives).

Innovation: ACCESS will advance international refugee law and migration governance as disciplines by introducing the first empirically grounded theoretical model of how courts develop international refugee law, in particular in relation to the right to asylum. Given that we are faced with the highest displacement figures on record and increasing barriers to accessing asylum, ACCESS is of topical importance.

Tasks of the research fellowship to be recruited

In the framework of the project – ACCESS, the main tasks of the research fellow to be recruited shall consist of :

- Carry out research on the role of the Inter-American Court of Human Rights in shaping access to asylum; and the role of domestic courts from at least one of the jurisdictions from the Latin-American region in shaping access to asylum. Jurisdictions such as: Mexico,

Brazil, but also other Latin American countries are accepted upon motivated proposals from the applicants;

- Producing, at least, 4 journal articles and one book chapter on the above mentioned topics;
- Provide scientific contribution to the WPs 1-4, in particular, drafting the conceptual template for the analysis of the 15 jurisdictions, feedback the interview guidelines and research outputs developed by the other team members;
- Organising project meetings (residential and online);
- Contributing to the management of the project database;
- Disseminating the results of the project in conferences and workshops;
- Writing up reports and meeting minutes.