

CONTENTS

<i>List of Figures</i>	<i>page</i> ix
<i>List of Tables</i>	x
<i>Series Editor's Preface</i>	xi
<i>Foreword</i>	xii
<i>Acknowledgements</i>	xv
<i>List of Abbreviations</i>	xvii
PART I	1
1 Introduction	3
1.1 The Demanding Character of Migrant Rights	4
1.2 Theoretical Underpinnings	6
1.3 Methodology and Case Selection	7
1.4 Outline of the Book	10
2 Expanding the Rights to Stay?	13
2.1 The Legal Framework of International Protection: A Short Introduction	14
2.2 <i>Elgafaji</i> : Fleeing from Indiscriminate Violence	17
2.2.1 Decision and Law Development Effectiveness	17
2.2.2 Case-Specific Effectiveness	19
2.2.3 Strategic Effectiveness	21
2.3 <i>X, Y and Z</i> and <i>A, B, and C</i> : Persecution Due to Sexual Orientation	24
2.3.1 Decision and Law Development Effectiveness: <i>X, Y and Z</i>	24
2.3.2 Decision and Law Development Effectiveness: <i>A, B and C</i>	27
2.3.3 Case-Specific Effectiveness	29

2.3.4 Strategic Effectiveness	31
2.4 Residency Based on Family Reunification	34
2.5 <i>Zambrano</i> : Family Life and EU Citizenship	36
2.5.1 Decision and Law Development Effectiveness	37
2.5.2 Case-Specific Effectiveness	39
2.5.3 Strategic Effectiveness	41
2.6 Concluding Remarks	44
3 Establishing Responsibility?	46
3.1 The Dublin System: An Introduction	47
3.2 <i>M.S.S. v. Belgium and Greece</i>	52
3.2.1 Decision and Law Development Effectiveness	52
3.2.2 Case-Specific Effectiveness	55
3.3 <i>N.S. and M.E.</i>	58
3.3.1 Decision and Law Development Effectiveness	58
3.3.2 Case-Specific Effectiveness	61
3.4 <i>Tarakhel v. Switzerland</i>	63
3.4.1 Decision and Law Development Effectiveness	64
3.4.2 Case-Specific Effectiveness	65
3.5 The Strategic Effectiveness of the ‘Dublin Cases’	68
3.5.1 Relative Strategic Effectiveness: Comparing the Courts’ Approaches	69
3.5.2 Absolute Strategic Effectiveness I: EU and Member State Policy	72
3.5.3 Absolute Strategic Effectiveness II: Mobilizing against Dublin	75
3.6 Concluding Remarks	79
4 Reaffirming Jurisdiction?	81
4.1 The Context of the Externalisation of Border Control	82
4.1.1 Maritime Border Control including ‘Pushbacks’	84
4.1.2 Jurisdiction and Extraterritorial Human Rights Obligations	85
4.2 <i>Hirsi Jamaa and Others v. Italy</i>	87

CONTENTS

vii

4.2.1 Decision and Law Development Effectiveness	87
4.2.2 Case-Specific Effectiveness	90
4.2.3 Strategic Effectiveness	94
4.3 Preliminary Conclusion	97
PART II	99
5 From Dilemmatic to Strategic Adjudication	101
5.1 The Perils of Dilemmatic Adjudication	101
5.1.1 Internal and External Dimensions of Dilemmatic Adjudication	101
5.1.2 Consequences for the Protection of the Rights of Migrants	105
5.1.3 Institutional Repercussions and the Question of Legitimacy	106
5.2 Elements for a Strategic Approach to Adjudication	109
5.2.1 Promoting Internal Consistency: Proposals for a Judicial Agenda	109
5.2.2 The Concept of ‘Vulnerability’ as a (Potential) Pillar of Strategic Adjudication	113
5.2.3 Ensuring External Harmony: The Case for Deepening Judicial Dialogues	115
5.3 The Reputational Capital of the Courts	117
5.4 Preliminary Conclusion	120
6 From Strategic to Consolidating Litigation	121
6.1 Inherent Constraints of Strategic Litigation: A View from Scholarship	122
6.2 The ‘Necessary Condition’ of Case Selection	125
6.3 The Importance of Consolidating Past Cases	127
6.3.1 Consolidating Actions at the European Level	127
6.3.2 Consolidating Actions at the National Level	131
6.4 ‘Setting the Stage’ and Raising the Reputational Capital of the Courts	134
6.5 Concluding Remarks	136

7	Migrant Rights as Existential Commitments	137
7.1	The Uncertain Character of Migrant Rights in Society	138
7.2	Responses from Human Rights Scholarship	140
7.2.1	Solidifying Human Rights as Law	140
7.2.2	Equating Human Rights to Social Norms	141
7.2.3	Imagining Human Rights as Existential Commitments	143
7.3	Existential Commitments and the European Courts	145
7.3.1	Existential and Legal Human Rights Commitments	146
7.3.2	The Limitations of Equality and Human Dignity	147
7.3.3	Vulnerability and the Legal Recognition of Social Processes	150
7.4	Concluding Remarks	152
8	Demanding Rights: Some Conclusions	154
8.1	The Limited Effectiveness of the European Courts	154
8.2	Reacting to the Demands of Migrant Rights	156
	<i>Appendix</i>	159
	<i>Bibliography</i>	163
	<i>Index</i>	179