

STRATEGIC LITIGATION

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OVERVIEW OF THE PRESENTATION



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PART 1. What is strategic litigation?

- Historical overview
 - Roots in the civil rights movement / NAACP
 - Has spilled over globally, also to Europe

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PART 1. What is strategic litigation?

- part of the *cause lawyering* toolbox
- strategic litigation = litigation that
 - aims to effect change that transcends the victory in a particular case, and
 - prioritises a specific (legal/social/political) agenda over the particular interests of a client
- different types of strategic litigation

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PART 1. What is strategic litigation?

- impact: potential benefits of strategic litigation
 - law reform / doctrinal change
 - extra-legal effects
 - strategic litigation as a driver of EU law integration
 - strategic litigation as a society-builder

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PART 1. What is strategic litigation?

- impact: potential risks of strategic litigation
 - losing a case
 - costs of litigation
 - conflict of interests
 - others

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PART 1. What is strategic litigation?

	Factors	What they indicate:	
What?	Legal Standards of Non-Discrimination Law	What is the legal basis for strategic litigation (SL) efforts? (EU acquis & case law, national provisions)	Material scope of SL
Where?	Adequate Fora for Strategic Litigation	Where can SL take place?	Judicial structure
Who?	Carriers / Supporters of Strategic litigation	Who can potentially carry out SL?	Actors of SL and their legal standing
	Resources	What kind of resources are available to them?	
How / Why?	Access to Justice	Is SL attractive?	Incentives / Disincentives for SL
	Socio-Legal Culture	Is SL attractive?	

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PART 2. Promoting Equality in Europe

- legal standards of non-discrimination law
 - entrenchment with EU law
 - strategic litigation can enhance & develop non-discrimination law

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PART 2. Promoting Equality in Europe

- Actors / carriers of strategic litigation
 - Civil society organisations (CSOs)
 - Trade unions / chambers of labour / equality bodies
 - Law firms (pro bono dept.s) / individual lawyers
 - Law clinics

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PART 2. Promoting Equality in Europe

- CJEU – creator of non-discrimination standards
- CJEU – access to justice
 - preliminary reference procedure
 - Particularities of carriers / supporters of SL

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PART 3. Best Practice Example: Coman (C-673/16)

- Facts of the Case:
 - Adrian Coman, Romanian national, married US citizen in Belgium (where both lived)
 - Romanian authorities denied residence permit to Coman's spouse *as a spouse*
 - Proceedings went ultimately up to Const Court – referral to CJEU

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PART 3. Best Practice Example: Coman (C-673/16)

- Citizens' Rights DIR 2004/38/EC
 - Immigration rights for spouses / family members of EU citizens
 - Impacts free movement of EU citizens
 - Interpretation of Art 2(2)(a) (spouse); Art 3(2)(a) or (b) (family member or partner)

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PART 3. Best Practice Example: Coman (C-673/16)

- Opinion of AG Wathelet:
 - Principle of uniform application of EU law in the realm of principle of non-discrimination
 - Fundamental rights attached to family life / marriage, citing ECtHR jurisprudence & CFR
 - interpretation (in light of legal materials) of “spouse”
 - European consensus
- CJEU decision: largely followed AG opinion

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PART 3. Best Practice Example: Coman (C-673/16)

- Interesting facts:
 - Legal framing of issues = very relevant
 - Proceedings coincided with parliamentary electoral campaigns in Bulgaria
 - Conservative “Campaign for Family” – lobbied for const. amendment by popular vote (marriage)
 - Adrian Coman = activist, associated with ACCEPT
 - High media and political attention

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PART 4. Conclusions

Importance of Networks / exchange

Litigation embedded in
a larger strategy



Incremental Approach

Backlash



Legal Story Telling

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THANK YOU FOR YOUR ATTENTION!

Any questions?

You can contact me at:

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Report on strategic litigation in Gender Equality Law available at:

<https://www.equalitylaw.eu/publications>

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