

#### PART 1. What is strategic litigation?

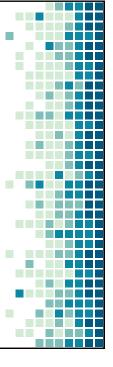
- Historical overview
  - > Roots in the civil rights movement / NAACP
  - ➤ Has spilled over globally, also to Europe

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



#### 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 13

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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.
  - Adrian Coman`= activist, associated with ACCEPT

amendment by popular vote (marriage) High media and political attention

