



Annual General Conference 2018
Belgrade, 7-9 November 2018

Workshop - Strategic Litigation in Practice - What, When, Where?
Background paper

Facilitator

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Objectives

The overarching objective of this workshop will be to coordinate between participants on what can be done to be more active in taking strategic litigation cases and what can be done to be more effective when taking strategic cases before domestic, European and international mechanisms. More specifically, the following objectives have been identified for this workshop:

1. To provide participants with a step-by-step approach on how to litigate cases strategically, namely through the identification of cases ripe for bringing about important changes in law and/or practice at the domestic and European level and appreciating which redress mechanism is the most suitable for the case according to the topic, procedural considerations and timing;
2. To discuss practical examples of cases, first at the national level and second at the European and international level, which have been pursued with a specific strategy and which have been brought before courts and quasi-judicial mechanisms with the aim of triggering broader legal and/or policy change;
3. To discuss amongst participants cases which are ripe for being brought with a strategy behind them and to collaborate with one another on how the case can be pursued and argued in a strategic and effective manner.

Structure

The workshop will start with practical guidance on litigating with a strategy. It will provide information to participants on identifying cases which can be litigated strategically, deciding when and when not to undertake strategic litigation and understanding the advantages and disadvantages of a range of redress mechanisms. The workshop will then be split into two different litigation jurisdictions, the first - strategic litigation at the domestic level, the second - strategic litigation at the European level. For both jurisdictions specific case examples, which have been or are being currently litigated, will be presented by participants with a particular focus on the strategy and process behind the litigation, how the cases have been identified, arguments advanced, challenges faced and the impact of the litigation taken. After each jurisdiction, an

information exchange on current or future strategic litigation will follow with a particular emphasis on how cases which are prime for being taken in a strategic manner can be actively identified, pursued and effectively argued.

Guiding Questions

1. What can be done in your jurisdiction to be more active on pursuing cases in a strategic manner?
2. Are there any particular topics in your jurisdiction which would be ripe for strategic litigation and, if so, before which mechanism would you like to pursue this to?
3. What can be done to make your strategic litigation more effective?
4. When you take strategic litigation cases, do you have a specific method or strategy when pursuing and arguing these types of cases? Is there anything that you particularly look for (before, during and after litigation) in these types of cases? What other factors play a role in the way that you litigate these cases?
5. What are the challenges that you have faced/face when taking strategic litigation cases?
6. What has been the impact of your strategic litigation and, if applicable, what can be done to maximise the impact?