

Accessible Guide to Strategic Litigation

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VALIDITY



FORUM
Human Rights



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1. Glossary of basic concepts.

To understand strategic litigation, it's important to know some basic concepts:

What is a right?

A right is something everyone is allowed to have or do.

For example, everyone has the right to go to school, work, or live where they choose.

Rights are protected by laws to make sure they are respected.



What is a law?

A law is a set of rules made by the government.

These rules tell people what they can and cannot do.

For example, there are laws:

- to protect people from discrimination, and
- to ensure public places are accessible.



What is a court?

A court is a place where decisions about laws are made.

Judges in courts listen to people's problems, and decide if the law has been broken.



What is discrimination?

Discrimination is when someone is treated unfairly because of who they are, such as their disability, gender, age, or background.

For example, if a person with a disability is not allowed to go to school or work because of their disability, that is discrimination.

Laws exist to protect people from this kind of unfair treatment.



What is a barrier?

A barrier is anything that makes it harder for someone to do what they need or want to do.

Barriers can be physical, like stairs that stop a person using a wheelchair from entering a building.



They can also be invisible, like rules or attitudes that exclude people with disabilities.

2. Introduction

2.1. What is Strategic Litigation?

Strategic litigation is a way of using the law to make big changes that help many people.

It is different from regular court cases because it does not focus on just one person's problem. Instead, it looks at bigger issues, like unfair rules or practices that harm groups of people.



For example:

- If buses are not accessible to people who use wheelchairs, a court case could force the bus company to make changes for everyone.



- If schools do not provide support for children with disabilities, strategic litigation can push for new rules to make schools fairer.



Sometimes, the laws in a country do not protect people's rights as they should. This can happen when national laws go against international rules, such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD) or the Charter of Fundamental Rights of the European Union.

The Charter is a document that lists the basic rights everyone in the European Union has, such as the right to equality, freedom, and justice.



Strategic litigation can show how national laws discriminate and push for changes that follow these international standards. It is a way of ensuring that everyone's rights are respected.



2.2. Why is Strategic Litigation Important for People with Disabilities?

Many people with disabilities face barriers in everyday life, such as:

- Rules that limit their freedom, like not being allowed to make decisions for themselves.
- Public places, schools, or jobs that are not accessible.
- Unfair treatment or discrimination.



Strategic litigation can help by:

- Fighting against these barriers.
- Showing everyone why these issues matter.
- Making lasting changes to improve lives.



For example:

A court case about one person's difficulty getting into a public building can lead to all public buildings becoming accessible.

This approach is not just about winning a single case.

It's about creating awareness, and encouraging others, including governments, to adopt fairer rules and practices for everyone.



2.3. Why This Guide is Important

This guide explains how strategic litigation works in a simple way.

It will help you understand:

- How laws can be used to bring change.
- How people with disabilities can stand up for their rights.
- How to get involved or find help.



Strategic litigation is not just for lawyers.

Anyone can play a role, whether by:

- sharing their story,
- supporting a case, or
- raising awareness about the issues.

Together, we can build a fairer world for everyone.



3. Key Concepts

3.1. What is Disability?

Disability is when a person faces barriers because of the way society is designed.

These barriers make it harder for them to do everyday activities or fully participate in life.



For example, a person who uses a wheelchair is not disabled by their wheelchair, but by the lack of ramps or elevators in buildings.

Disability is not just about medical conditions; it is about how the environment and attitudes affect people's lives.

Making changes to remove barriers helps people with disabilities to live independently, and equally.



The Charter of Fundamental Rights of the European Union recognizes the rights of people with disabilities to live independently, be included in society, and access equal opportunities.

3.2. Legal Capacity: What does it mean?

Legal capacity means the right to make your own decisions, and have those decisions respected by others. This includes decisions about money, health, work, and where you want to live.

Some people think that people with disabilities cannot make their own decisions, but this is wrong.

Everyone has the right to legal capacity.

When someone needs support to make decisions, it should be given in a way that respects their wishes and preferences

Taking away someone's legal capacity, such as placing them under guardianship, can lead to unfair treatment and loss of freedom.



3.3. The Role of Human Rights in Strategic Litigation

Human rights are the basic rights and freedoms that belong to everyone, like the right to education, work, and live without discrimination.

These rights are protected by international laws, such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Strategic litigation uses human rights to show how laws or practices are unfair and need to change.

For example, if a school refuses to admit a child with a disability, this goes against their right to education.

By taking the case to court, strategic litigation can make sure human rights are respected and protected for everyone.



4. How Strategic Litigation Works

Step 1: Identifying the Problem

The first step is to find a problem that needs to be fixed. This problem should be something that affects many people, not just one person. For example:

- A rule that stops people with disabilities from voting.
- A public building that is not accessible.

It is important to listen to the people affected by the problem to understand their needs and experiences.



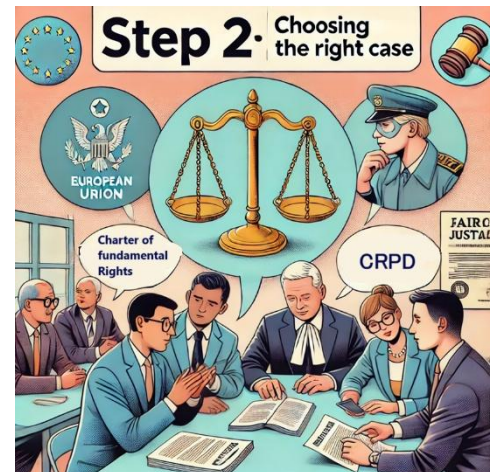
Step 2: Choosing the Right Case

Not every problem can become a strategic litigation case. It is important to choose a case that:

- Represents a bigger issue.
- Has a good chance of success in court.
- Can bring attention to the problem and encourage change.

Lawyers and advocates work together to find the right case and plan how to present it in court.

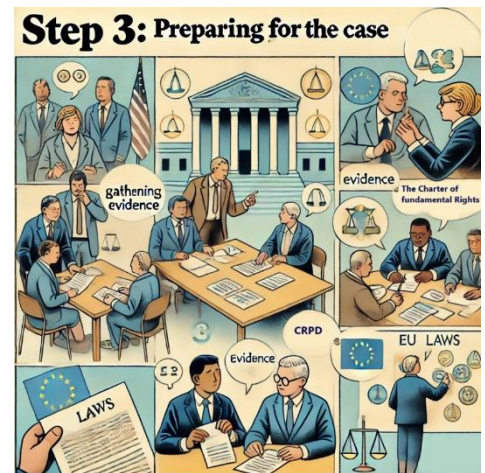
In the European Union, lawyers may use the Charter of Fundamental Rights to show how national laws conflict with EU standards, and the Convention on the Rights of Persons with Disabilities.



Step 3: Preparing for the Case

Preparation is key to winning a case. This includes:

- Gathering evidence, like documents or witness statements.
- Studying the law to show why the problem needs to be fixed.
- Planning how to explain the case clearly to the court.



This step can take time,

but it is important to make sure the case is strong.

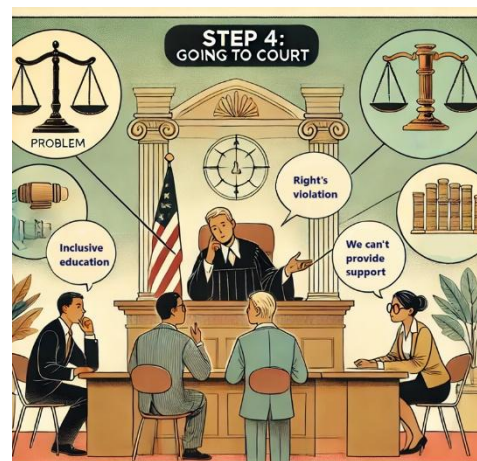
In cases involving the European Union, lawyers may ask the Court of Justice of the European Union (CJEU) to clarify how EU laws, including the Charter, should be applied.

Step 4: Going to Court

In court, lawyers present the case to a judge. They explain:

- What the problem is.
- How the law has been broken.
- What changes are needed to fix the problem.

The judge listens to both sides, and makes a decision based on the law.



Step 5: What Happens after the Judgment?

Winning a case is just the beginning.

After the judgment, it is important to make sure that the decision is put into action.

This process is called the implementation of the judgment. Here is how it works:



- **Making Changes to Laws and Practices:**

Governments or organizations that lose a case may need to change their rules, laws, or practices to follow the judgment.

For example, if a court decides that a building must be made accessible, the government or owner must take steps to add ramps or elevators.



- **Supervision by International Bodies:**

In some cases, international organizations, like the Committee of Ministers of the Council of Europe, make sure that countries follow the decisions of the European Court of Human Rights.

They check if the changes required by the judgment are being made.



- **The Role of Civil Society:**

Organizations and advocates can help make sure that the judgment is implemented. They can:

- Monitor progress to see if the changes are happening.
- Work with governments to create better laws or policies.
- Raise awareness about the judgment to keep public attention on the issue.

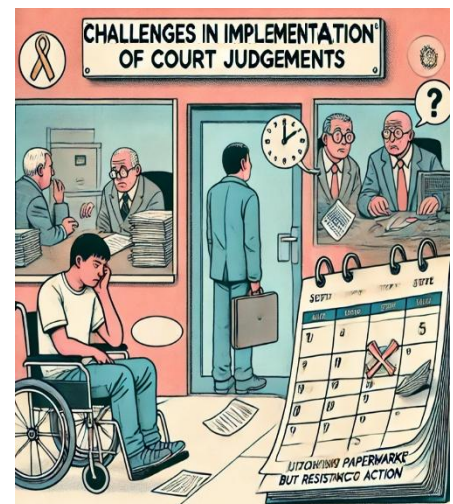


- **Challenges in Implementation:**

Sometimes, it can take a long time for judgments to be fully implemented. There may be delays, lack of political will, or resistance to change.

For example, in the case of *Stanev v. Bulgaria*, the European Court of Human Rights required reforms to legal capacity laws.

While some changes were made, challenges remain in ensuring that all people with disabilities have their rights fully respected.



Implementation ensures that the judgment helps not just the person who brought the case, but also many others who face similar problems. It turns a legal victory into real-world change.

5. Success Stories

Real-Life Examples of Strategic Litigation

Strategic litigation has already helped many people by addressing unfair laws and practices. Here are some examples:

The Right to Vote for Persons with Disabilities (*Alajos Kiss v. Hungary*, no. 38832/06, 20 May 2010):

In Hungary, people under guardianship were automatically denied the right to vote. Mr. Alajos Kiss challenged this rule, arguing that everyone should have the right to vote.

The European Court of Human Rights ruled that removing voting rights without assessing each person individually was unfair and discriminatory.

This decision led to changes in Hungary's laws, ensuring that people under guardianship were no longer automatically excluded from voting.



However, there is still work to be done to fully protect voting rights for people with disabilities in Hungary.

Death in a Psychiatric Hospital (V. v The Czech Republic, no. 26074/18, 7 December 2023):

In this tragic case, a 30-year-old man with a disability, P.Z., died in a psychiatric hospital in the Czech Republic after being forcibly medicated and restrained.

His family sought justice, arguing that the treatment he received violated his rights and highlighted systemic problems in psychiatric care, including the use of violence and lack of community-based crisis intervention.



The European Court of Human Rights ruled that his right to life had been violated. This judgment not only recognized the wrongdoing against P.Z. but also created an opportunity for civil society organizations to push for better crisis intervention services and non-violent support for people with disabilities in crisis.

How These Cases Changed Lives

These cases don't just help the people who bring them to court. They can:

- Change unfair rules and make life easier for many people.
- Show governments that they need to follow human rights laws.
- Encourage other people to stand up for their rights.



6. Barriers to Justice

Challenges Faced by People with Disabilities

People with disabilities often face extra difficulties when trying to access justice. For example:

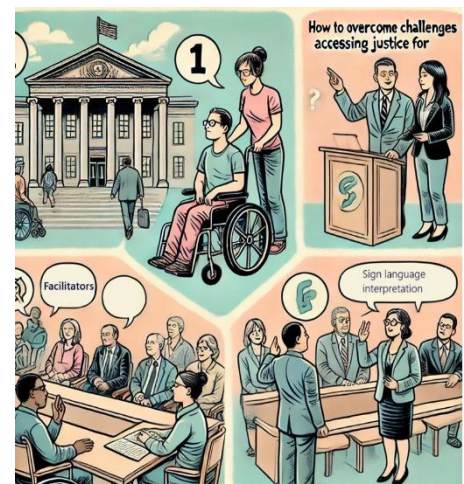
- Some courthouses are not accessible physically and sensorily. They have no ramps, and light and noises can make communication difficult.
- Information is not always available in easy-to-read formats or sign language.
- Lawyers and judges may not understand disability rights or how to communicate with people with disabilities.



How to Overcome These Challenges

Here are some ways to make justice easier to access:

- Ensure courthouses are accessible to everyone.
- Provide sign language interpreters and materials in easy-to-read formats.
- Train legal professionals about the rights of people with disabilities and how to communicate with them.
- Support people with disabilities in understanding and defending their rights.



7. Your Role in Strategic Litigation

How Can You Get Involved?

You don't have to be a lawyer to help with strategic litigation.

You can:

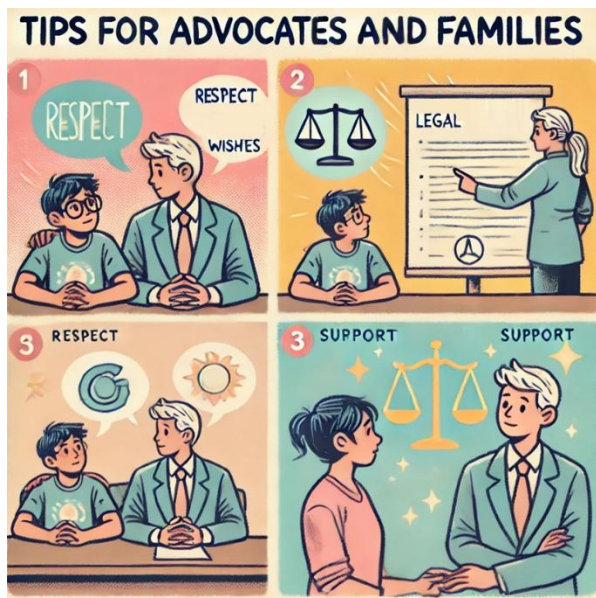
- Share your story to show why change is needed.
- Support someone who is bringing a case to court.
- Talk about unfair rules and help others understand how they can be changed.



Tips for Advocates and Families

If you are supporting someone with a disability, remember:

- Listen to what they want and need.
- Help them understand their rights.
- Stand by them if they decide to speak up or go to court.



8. Resources and Support

Where to Find Help

If you want to learn more about strategic litigation or need help, you can contact:

- Local disability organizations.
- Legal aid offices.
- Human rights groups in your country.



Organizations That Can Support You

Here are some organizations that work on disability rights and strategic litigation:

- European Network on Independent Living (ENIL).
- Validity Foundation
- Centre of Legal Resources
- KERA Foundation
- Victim Support Europe.

