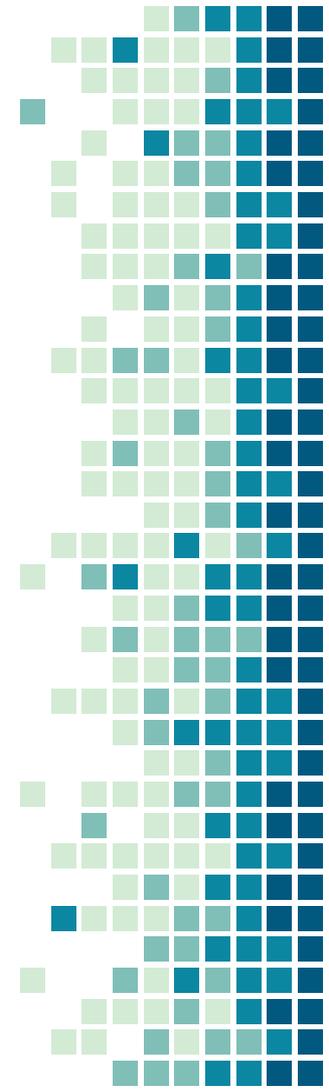


STRATEGIC LITIGATION IN EU GENDER EQUALITY LAW

Dr. Marion Guerrero

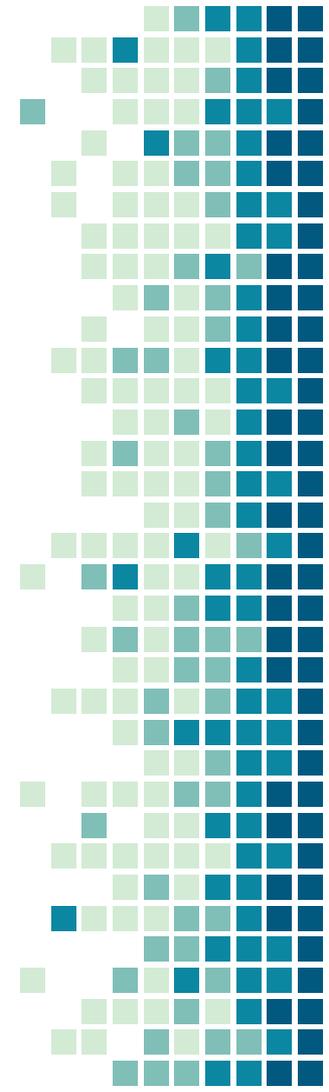


OVERVIEW OF THE REPORT



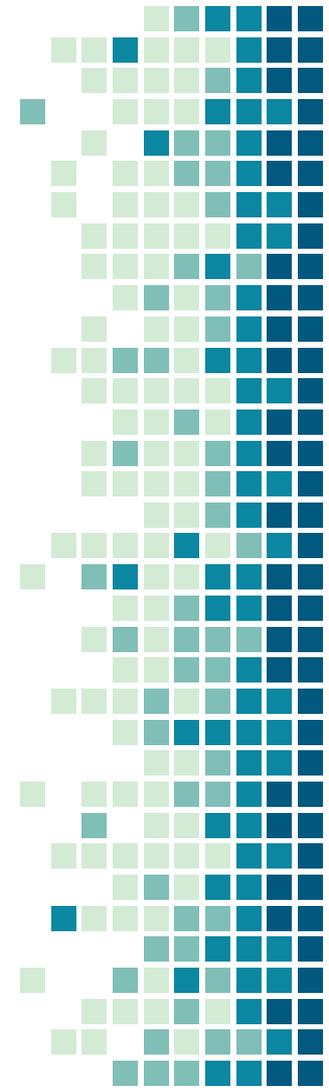
CHAPTER 1. What is strategic litigation?

- 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



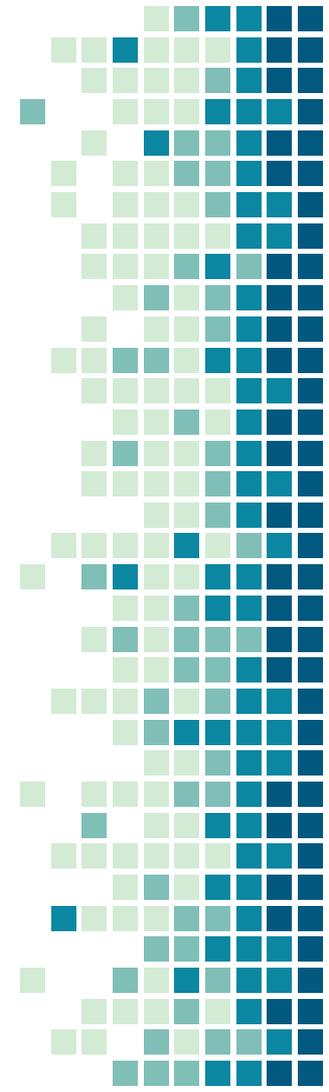
CHAPTER 1. What is strategic litigation?

- Who carries out strategic litigation?
 - (direct) carriers of strategic litigation
 - supporters of strategic litigation projects
- different types of strategic litigation



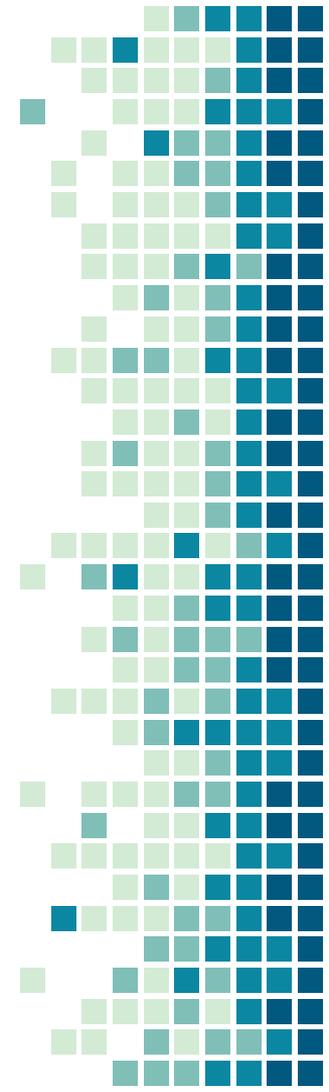
CHAPTER 1. What is strategic litigation?

- 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



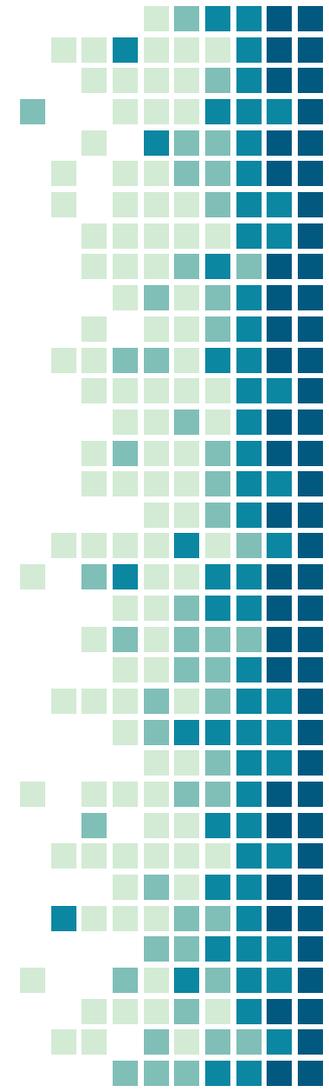
CHAPTER 1. What is strategic litigation?

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



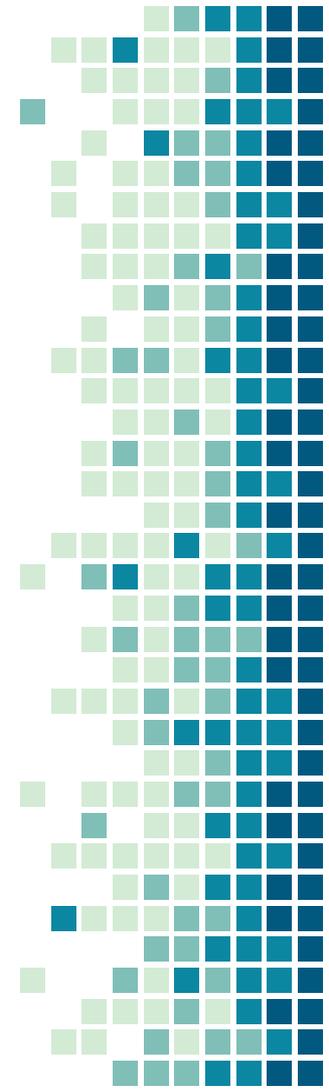
Chapter 2. National Level

	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?	



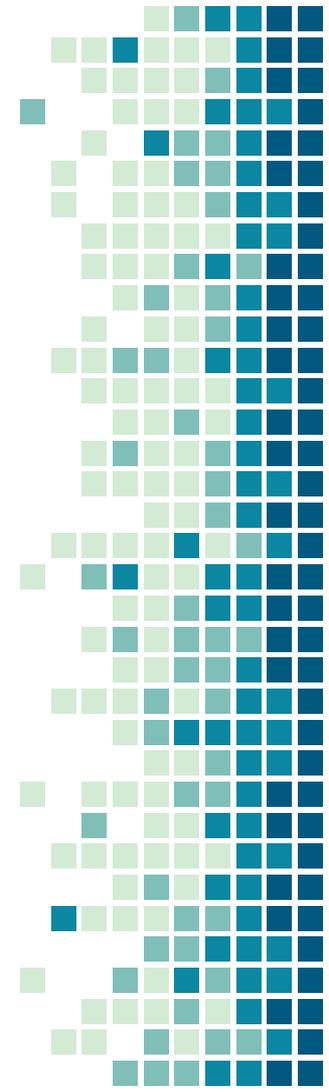
CHAPTER 2. National Level // What?

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



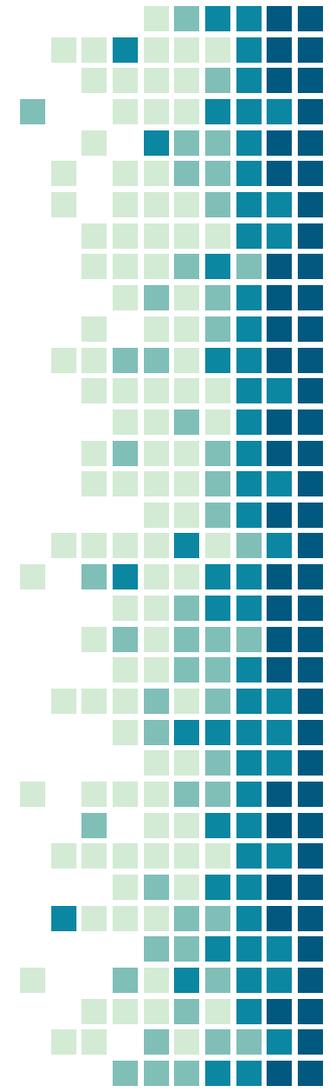
CHAPTER 2. National Level // Where?

- adequate fora for strategic litigation
 - authority of courts: - adherence to precedent / judicial review powers
 - equality bodies can act as tribunals
 - dissenting / concurring opinions: insights into judicial decision making process



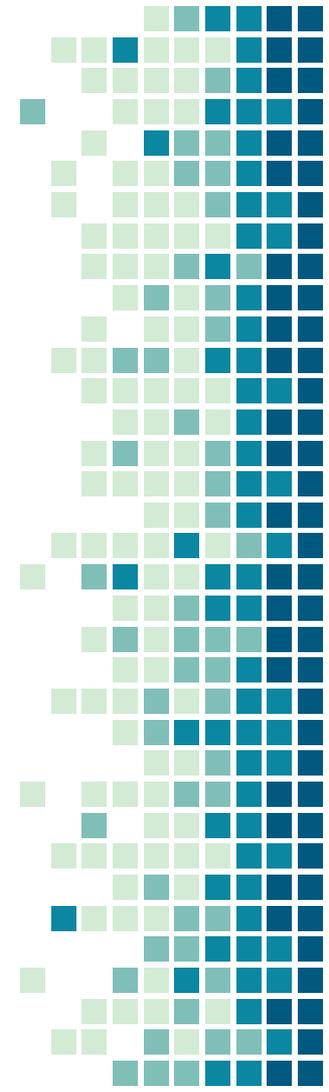
CHAPTER 2. National Level // Who?

- Who can be direct carriers / supporters of strategic litigation efforts?
 - direct carriers – dependent on standing rights:
 - legal representation of a victim at court
 - actio popularis / litigating in own name
 - class action / group action
 - amicus curiae / third party intervention



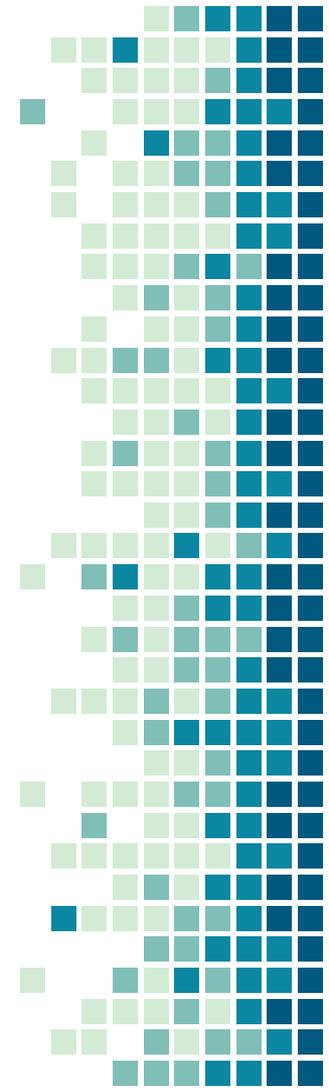
CHAPTER 2. National Level // Who?

- (potential) entities capable of carrying strategic litigation efforts:
 - equality bodies
 - civil society organisations (CSOs)
 - trade unions / chambers of labour
 - law clinics
 - law firms / pro bono programs



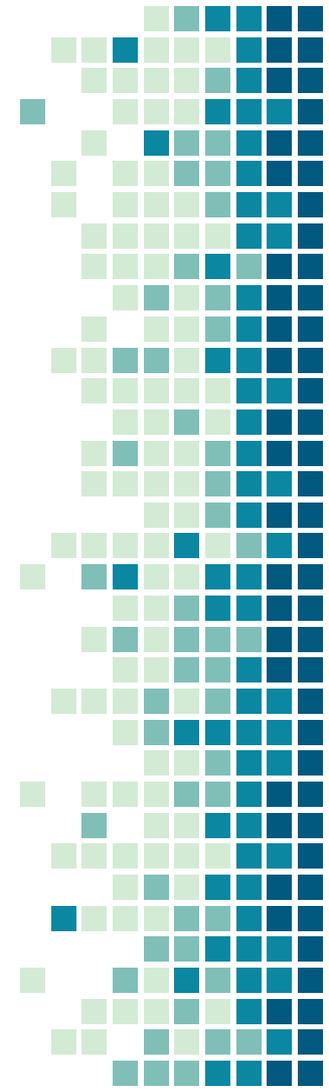
CHAPTER 2. National Level // Who?

- resources
 - financial resources / funding
 - knowledge-based resources
 - access to networks



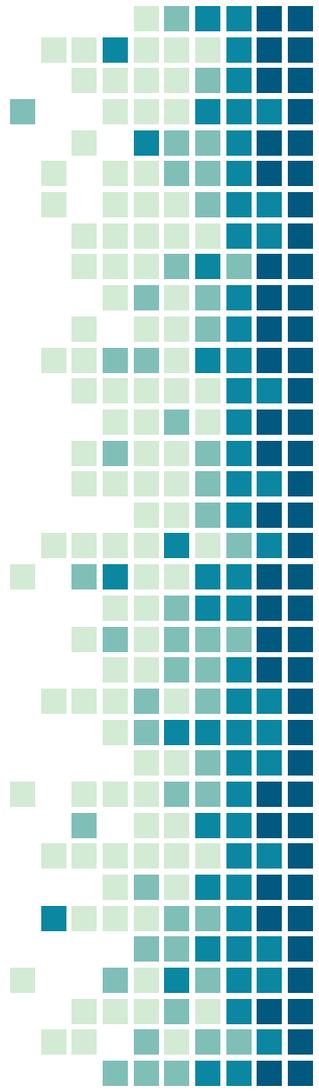
CHAPTER 2. National Level // How?

- access to justice
 - time limits for anti-discrimination claims
 - duration of proceedings
 - Judicial fees
- socio-legal culture



CHAPTER 3. EU level

- CJEU – creator of non-discrimination standards
- CJEU – access to justice
 - preliminary reference procedure
- specific functions of carriers / supporters of strategic litigation at the CJEU



CHAPTER 4. Conclusions

lack of research

socio-legal environment

lack of awareness

lack of trust

high risks

better alternatives

legal factors
impeding strat lit

rules on lawyer fees / pro bono
practices

lack of availability of suitable
claims

access to justice – other
factors

- equality bodies
- CSOs (including trade unions,...)
- law clinics
- Law firms / private lawyers

adequate carriers of
strategic litigation

expertise

structure

Resources / funding

CHAPTER 4. Recommendations

support of research
support of publications

support of awareness
raising measures

reducing risks of litigation,
e.g. by erecting funds to
take over costs

support of pro bono
programs in law firms

review of minimum fee
provisions

review of / research on
contingency fees

expansion of legal aid to
CSOs and strat lit projects
expansion of standing
rights for CSOs & equality
bodies

creating strat lit expertise
hubs

- expertise building
- knowledge dissemination
- network building
- communication

creating expertise
providing resources
(funding / specific
programmes / ...)

supporting creation of law
clinics

transnational exchange

THANK YOU FOR YOUR ATTENTION!

Any questions?

You can contact me at:
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