Strategically litigating equality – reflections on a changing jurisprudence

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In the past ten years, 'strategic litigation' has gained greater prominence as a tool for promoting equality in Europe, with numerous NGOs establishing litigation programmes to seek impact through litigation. This article focuses on strategic litigation of equality cases before the European Court of Human Rights ('the European Court' or 'Court') where INTERIGHTS has focused its practice. It considers the basic elements of strategic litigation, then details three strategic cases in which we have been involved describing the approaches to litigation and lessons learned in each case. The article finally considers the opportunities presented by the European Social Charter as a mechanism for progressive equality jurisprudence.

What is 'strategic litigation' and where does it come from?

Strategic litigation (or 'impact' or 'test' litigation) is a form of public interest litigation where a case is pursued on behalf of an applicant or group of applicants, with a view to achieving a law reform goal beyond the individual case. While legal ethics dictate that the clients' interests are paramount in litigation, strategic litigation seeks an additional social or political impact beyond the remedy sought by the individual. This could be, for instance, to challenge a law or practice that is inconsistent with international human rights standards, or to seek interpretation of an existing law to redefine rights in favour of stronger protection. It is important to note that by definition strategic litigation is risky litigation. Before regional fora it can be resource intensive, take a long time, and, as these are cases at the fringes of established law, the outcomes are uncertain.3 At the same time, good lawyers will frame cases in such a way as to maximise the possibilities of success, mitigating the implications of any loss.

Strategic litigation presents particular opportunities for vulnerable people for whom other channels of influence are unavailable.4 It frames equality issues as problems of law rather than of minority politics, and courts often provide a more sympathetic hearing for minority rights than parliaments concerned with populist politics. It is important to note the role that litigation can play in documenting injustices – creating a record of official practices, evidencing abuse and telling victims' stories.5 The many cases taken to the European Court by Kurdish people have yet to have much Impact in terms of human rights protection in Turkey, but they have been critical in documenting abuses by the government and drawing attention to the experience of victims. This 'story telling' element is symbolically significant, and deeply meaningful for victims themselves, who have a sense that they have been listened to and believed, that the violations that they have suffered have not gone unnoticed.6 Relatively, strategic litigation can play an

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important role in contributing to a greater public understanding of the lives of vulnerable people and to the empowerment of that group.\textsuperscript{7}

However, strategic litigation alone is a limited tool. Where judgments are successful, their implementation presents an additional set of challenges in terms of affecting change. The most successful cases are those that are brought in the context of a broader social and/or political movement, where there are parallel advocacy and lobbying efforts, engagements with the media etc. Litigation of an issue in isolation can have an impact on the case law, but is unlikely to resonate on the ground or beyond those most directly affected.

There are a number of approaches to strategic litigation. The litigation can be aimed at addressing a systematic, widespread problem on the ground (for example, trans-phobic violence) or can be aimed at addressing gaps in legal protection (for example, the absence of sexual harassment laws). The best cases are often those that manage to do both concurrently.

Strategic cases emerge in different ways. They can be conceived and constructed by human rights activists in an effort to address a specific problem – as occurred in the DH case,\textsuperscript{8} discussed below – or they can begin as ‘normal cases’ and be argued and pursued in a strategic manner. The former approach is predicated on lengthy and expensive ground research, recruiting of appropriate potential clients and construction of arguments to achieve the agreed litigation goal. The latter arise where aggrieved individuals seek redress and their lawyers recognise that the case has the potential to make a greater impact. These cases are made strategic through careful argument, supporting evidence and often third party interventions that highlight systematic violations and inform the Court of human rights developments in other jurisdictions. This category of cases is less expensive in that they are ‘naturally occurring’, but there may be challenges with respect to the facts or domestic proceedings which have predated the engagement of the strategic lawyers. The vast majority of strategic cases before the European Court fall into the latter category.\textsuperscript{9}

What makes a good strategic case?

Careful case selection is critical. Organisations like the author’s organisation have criteria which we apply rigorously to ensure that we are selecting cases that stand the best chances of success and of impacting on law reform more broadly. Our case selection criteria include: whether the case reflects a systematic and widespread problem, the strength of the facts, the relevant international human rights standards, whether INTERIGHTS has appropriate expertise on the subject matter, the likelihood of success and the likelihood of implementation. In our work before the European Court, we generally engage with local lawyers who know the domestic law and procedure and who can directly support the applicant. In such cases we will act as Advisers to Counsel (an officially recognised role) and on rare occasions we act directly for applicants. Where we think we can make a meaningful contribution to the Court’s understanding of the issues in a case, we will act as a third party intervener, providing comments on relevant international and comparative human rights law.

While we always apply our case selection criteria with a degree of flexibility, for certain types of cases – for example, cases of domestic or sexual violence – it is so rare for applicants to be prepared to take their case to courts, let alone international adjudication, that we apply the criteria with a presumption in favour of taking a case and finding ways to make it strategic. This reflects one of the key challenges for strategic

\textsuperscript{7} Ibid.

\textsuperscript{8} D.H. and Others v. the Czech Republic (GC), no. 57325/00, ECHR 2007; D.H. and Others v. the Czech Republic, no. 57325/00, 7 February 2006.

\textsuperscript{9} See for example Opuz v Turkey and M.C. v Bulgaria discussed below.
litigation – finding a good client. Much has been written about the profile of the ideal client: for example, they are sympathetic; they understand the goals of the litigation and they have strong family and community support. But the key quality of the ideal client is really their willingness to pursue the case through all the time and sometimes unpleasantness that litigation involves. By way of example, in the landmark case of M.C. v. Bulgaria the applicant was raped by two men shortly before her 15th birthday.\footnote{M.C. v. Bulgaria, no. 39272/98, ECHR 2003-XII.} By the time she received a judgment from the European Court she was 23 years old. Such applicants prepared to persevere through years of international adjudication – during which nothing happens for years on end – are rare, and it is their rarity that presents the single biggest obstacle for the author’s organisation in its litigation.

In equality cases, evidence is also often problematic. Rarely do those who are discriminated against have sufficient evidence to prove that their treatment was motivated by discrimination. For a long time this has represented a serious obstacle to equality litigation at the Court. When I began litigating equality cases at Interights a decade ago, the European Court had not found a single instance of indirect discrimination – where a law or provision was neutral on its face, but had a disproportionate effect on a particular group – nor had it recognised that statistical evidence alone might be used to prove discrimination. The opportunity to change the Court’s approach presented itself in D.H v. Others v the Czech Republic, discussed below.

Even where there is a positive judgment, there is often lack of implementation. For this reason NGOs like ours work with partners to try to play a stronger advocacy role post-judgment to ensure full implementation.

The European Court advances: three case studies

Ten years ago, the equality jurisprudence of the European Court was rather underwhelming. Historically the construction of Article 14 (non-discrimination) – which needs to be argued in conjunction with another, substantive article of the Convention – has meant that the Court would consider the matter under the substantive article, often not finding it necessary to consider the discrimination aspect. The Court also seemed to require ‘intent’ to prove discrimination, had not considered that discrimination could be indirect and had not recognised certain grounds – for example sexual orientation or disability – as prohibited grounds under the Convention. A decade of strategic litigation cases has resulted in significant advances in respect of the Court’s approach to equality. Below I consider a number of cases which have contributed to that change, which represent different approaches to strategic litigation and which hold lessons for future practice.

The Bulgarian racial violence cases

Those undertaking strategic litigation know that it often involves calculated losses to expose a court to arguments and fact situations which will eventually persuade it to change position. The series of Roma racial violence cases taken to the European Court in the early 2000s is illustrative of how the Court’s understanding of a particular issue can evolve.

In the 1990s, racist police violence became visible to those working in Roma rights in Central and Eastern Europe. While the European Court would consider the violence as a breach of the right to life or freedom from torture and ill treatment; it would not interrogate any racist motivations for the violence, noting that the failure of the State to adequately investigate this had prevented such evidence from being available. While the Court had developed so called ‘procedural obligations’ with respect to right to life and ill treat-
ment violations, it did not adopt a similar approach to discrimination cases. The following three cases changed that.

In 2000, the Court delivered a unanimous judgment in Velikova v. Bulgaria.\textsuperscript{11} The case concerned the death of the applicant's partner, Mr Tsonchev, while in police custody. He was Roma. In addition to Article 2 (the right to life) the applicant argued that the killing had been racially motivated, in violation of Article 14 of the Convention (non-discrimination). Evidence was presented of widespread discrimination against the Roma in Bulgaria and that Mr Tsonchev's ethnic origin was known to the police, who referred to him as a 'Gypsy'. While the Court found that the applicant's complaint under Article 14 was 'grounded on a number of serious arguments' it held that it was unable to find 'beyond a reasonable doubt' that the killing and the subsequent failure to investigate it, had been racially motivated.\textsuperscript{12} It found only a violation of the right to life, and the right to an effective remedy.

Two years later, the Court delivered its judgment in Anguelova v Bulgaria.\textsuperscript{13} Again, the case involved the death of a Roma youth, in this case the applicant's 17-year-old son in police custody. Again the applicant argued that the death and prior ill-treatment of her son was motivated by racial discrimination, in violation of Article 14. She noted that even in their official statements, the police officers had referred to her son as 'the Gypsy' and that his treatment needed to be considered in light of the systematic racism and anti-Roma hostility of law enforcement bodies in Bulgaria. Again the Court found that while the case was based on serious arguments, the 'beyond reasonable doubt' standard of proof meant that no Article 14 violation could be found.

However the Court was not, this time, unanimous. The Maltese judge, Judge Bonello, delivered a very strong and eloquent dissent. He found it disturbing that 'the Court, in over fifteen years of pertinacious judicial scrutiny, has not, to date, found one single instance of violation of the right to life... or the right not to be subjected to torture or to other degrading or inhuman treatment or punishment... induced by race, colour or the place of origin of the victim... The Europe projected by the Court's case law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion.'\textsuperscript{14} Judge Bonello went on to outline a variety of methods by which, by reference international and comparative law, evidence and particularly the burden of proof could be handled in such cases to allow a fair finding of an Article 14 violation.

In 2004, the First Section of the Court delivered its judgment in Nachova and Others v. Bulgaria.\textsuperscript{15} The case concerned the death of two Roma men of 21 years of age who, having absconded from military service, were shot dead when a military officer seeking to arrest them, a man named Major G, had opened fire in their Roma neighbourhood. One witness reported that immediately after the shooting Major G had shouted at him 'You damn Gypsies'. Again, the applicants presented considerable evidence of discrimination against and hostility towards the Roma in Bulgaria, arguing that the killings amounted to an Article 14 violation. On this occasion, the Court amended its approach.

The Court considered that it did not have sufficient evidence of racist motivation because the Bulgarian authorities had failed to investigate racist motivations for the violence, despite having good reason to believe that such motivations might exist. On this basis the Court established, and found, a violation of a procedural limb of Article 14. However the Court went further, and decided to examine the merits of

\textsuperscript{11} Velikova v. Bulgaria, no. 41488/98, ECHR 2000-VI.
\textsuperscript{12} Ibid., at §94.
\textsuperscript{13} Anguelova v. Bulgaria, no. 38361/97, ECHR 2002-IV.
\textsuperscript{14} Ibid., Dissent of Judge Bonello, §2.
\textsuperscript{15} Nachova and Others v. Bulgaria, nos. 43577/98 and 43579/98, 26 February 2004.
a substantive violation – that the men were killed because they were Roma – on the basis of Article 14. To do this, it shifted the burden of proof to the government to prove that the deaths were not the result of racism, and given its failure to do so, found a substantive violation of Article 14. Referencing Velikova and Anguelova, the Court noted that it considered it “highly relevant that this is not the first case against Bulgaria in which it has found that law enforcement officers had subjected Roma to violence resulting in death.”

The Bulgarian government requested referral of the decision to the Grand Chamber of the Court. Identifying what we considered the key challenges for the Court in approaching the case, three organisations with interests in the case coordinated our amicus requests so that there were three complementary third party interventions: one from the European Roma Rights Centre (on Roma discrimination in the region); one from INTERIGHTS (on the burden of proof issue) and one from the Open Society Justice Initiative (on the procedural obligations). While the Grand Chamber maintained and found a violation on the basis of the ‘procedural obligation’ under Article 14, the majority returned a finding of no substantive violation in light of insufficiency of evidence of discrimination. Six judges provided a robust dissent and held there was sufficient evidence of a substantive violation of Article 14.

The Nachova judgment has resonated through the Article 14 case law of the Court. It established a procedural obligation whereby states are required to investigate discriminatory motivations of killings where there is a reasonable suspicion of such motivation. It also opened the way, where there is sufficient evidence, for substantive violations of Article 14 in conjunction with Article 2. The principles elaborated in Nachova have now been applied to other grounds of discrimination, in respect of private violence and in respect of violence that has not resulted in death. In terms of strategy, the Bulgarian racist violence cases demonstrate that moving courts from established positions in law requires patience and persistence. They demonstrate the importance of providing context for violations and for coordinating efforts with interveners to maximise the potential of international and comparative material.

D.H. and Others v the Czech Republic

The litigation strategy in the landmark US Supreme Court case of Brown v. the Board of Education was explicitly the inspiration for D.H. and Others v. the Czech Republic. To this day, D.H. represents the most systemic challenge to an equality problem in Europe, with the biggest case budget and highest profile.

In 1948, the European Roma Rights Center (ERRC) decided to invest substantial resources on a test case addressing segregated education in Central and Eastern Europe. Across the region, Roma children were (and still are) schooled in separate classes or sometimes separate schools, often ‘special schools’ for children with intellectual disabilities. Following years of research and consultation with Roma communities, the ERRC identified special schools in the Czech city of Ostrava as the target for the litigation, interviewing hundreds of families and ultimately selecting 18 Roma children to be applicants in a case to the European Court challenging segregation in education. All were children whose initial test results and subsequent academic performance suggested that they did not belong in a special school, and who seemed to genuinely want to end segregation more broadly.

Ibid., §176.  
Nachova and Others v. Bulgaria (GC), nos. 43577/98 and 43579/98, ECHR 2005-VII.  
See for example, Milanović v. Serbia, no 44614/07, 14 December 2010 which concerned ill-treatment based on religious discrimination.  
The ERRC research demonstrated multiple layers of discrimination against Roma children but primarily focused on indirect discrimination, hitherto unrecognised by the Court. The children were allocated to special schools on the basis of tests that were on their face neutral, but in reality were strongly biased towards children well versed in Czech language and culture, and against Roma children. Roma children were 27 times more likely as non-Roma children to be sent to a special school.

The case was decided first by a Chamber and then by the Grand Chamber, with Interights and Human Rights Watch intervening jointly in both proceedings. By reference to international and comparative equality law, our interventions guided the Court towards recognising that indirect discrimination as a violation of Article 14 of the Convention, elaborating how indirect discrimination could be proved generally and recognising that statistical evidence specifically – where reliable and significant – could be used to prove discrimination.

In February 2006, the Chamber of the Court issued a disappointing judgment. While the majority noted that the application raised a number of serious arguments and recognised that indirect discrimination might possibly give rise to a violation of the Convention (though it did not use the term), they did not find sufficient evidence to disclose discrimination. In respect of statistics, while stating that it found the statistics on the education of Roma in special schools ‘worrying’, the Court reiterated its position that statistics are not by themselves sufficient to disclose a practice which could be classified as discriminatory.

The matter was referred to the Grand Chamber of the Court, which in November 2007 delivered a very different judgment. Recognising and for the first time using the term ‘indirect discrimination’, the Court’s judgment turned on its new approach to the question of proof. The Court found that where the applicant raises a prima facie case of discrimination, the burden shifts to the government to provide a discrimination-neutral explanation for the treatment or effect. Significantly, the Court held that where a critical assessment reveals statistics to be reliable and significant, they alone can establish the prima facie case resulting in a shift of the burden of proof. In many respects the D.H. Grand Chamber judgment brought the European Court jurisprudence in line with European Union standards such as those in the EU Race Equality Directive.

The D.H. litigation was an impressive example of strategic litigation. Without careful case strategising, applicant selection, amicus strategy and use of international and comparative law, the European Court is unlikely to have had the opportunity to so clearly articulate its position on segregated education. While the individual measures – in this case compensation of €4,000 each – were swiftly granted by the Czech Government to the applicants, the process of desegregating schools was more problematic. The fact of the litigation itself forced changes in Czech educational law, with the Czech parliament adopting legislation abolishing special schools in name and modifying the system of special education before either judgment was delivered. However on the ground, the situation of Roma children remains unchanged.

It is interesting to note that the educational needs of children with disabilities in the special schools were not considered in the D.H. case strategy – the ERRC is an organisation mandated to promote Roma rights, and at the time of the application in 2000 the rights of people with disabilities were far from the international human rights agenda. Many disability activists and lawyers, the author included, were of the view that the case seemed to implicitly accept the acceptability of segregated (and poor quality) education for children with disabilities and was therefore a missed opportunity to shine a light on the unacceptability of special schools for children of disabilities also. While disability organisations were not included in the

21 D.H. and Others v. the Czech Republic, no. 57325/00, 7 February 2006.
22 Ibid., at §45.
23 Ibid., at §46.
24 Ibid.
Initial strategy, a decade on understanding of disability among civil society has strengthened and disability organisations have become partners in the implementation stage of the decision, with a recognition that if the special schools are closed for children with disabilities, Roma children will not be schooled in them either. This is very much in line with the UNCRPD’s commitment to inclusive education being the default position for children with disabilities. Such collaborations across grounds of discrimination are deeply significant symbolically and make sense in terms of coordinating promotion of minorities in line with principles of the indivisibility of human rights.

Perhaps the most important aspect of D.H. is that the experience of Roma children in Central Europe was ‘heard’, just as the victims of education racial segregation in the USA were ‘heard’ by the Supreme Court in Brown v. The Board of Education of Topeka. While implementation remains a key goal for litigation, the significance of the factual unearthing of violations through litigation and the case law that emerges from these cases is crucial regardless. D.H. is one of the Court’s most important equality cases, and the principles it elaborated have been picked up in subsequent cases on women’s human rights and religious minorities, for example.

Opuz v Turkey

While D.H. was the product of strategy and planning, Opuz v Turkey25 arose organically – it was born of an applicant’s call for justice in response to a personal tragedy. It is an example of the more common, in many ways easier type of strategic litigation, where a ‘naturally occurring’ case is argued and supported in such a way as to become strategically significant. Unlike Nachova, there was no particular trend in the Court’s case law which led to the positive judgment; to the contrary the Court had never demonstrated that its approach to non-discrimination could extend to cover gender-based violence.

Nahide Opuz submitted an application to the European Court following the murder of her mother by the applicant’s own husband. This killing followed many years of domestic violence, sometimes life threatening, which was often reported to the police. Sometimes the applicant withdrew the complaints of violence due to fear of greater reprisals from her husband, on other occasions the complaints were maintained but little was done by the police to protect the applicant and her family. On one occasion the applicant’s mother was hit by a car, receiving life threatening injuries and hospitalised. The perpetrator was convicted of attempted murder and paid a fine. The violence was repeatedly minimised by the police and prosecutors as being a family affair, of no public consequence.

Over time, the violence escalated and the applicant and her mother complained to the police of greater violence and death threats. The police took no action. Ultimately, the applicant’s mother was in a removal van moving her belongings to a safer place when the vehicle was stopped by a taxi from which the applicant’s husband emerged and shot her mother dead. He claimed that she had been interfering in his marriage and that he killed her for the sake of his honour and children.26 He was convicted of murder. By the time the case was heard at the European Court – six years later – he had been released and was again threatening the applicant.

The applicant submitted her case to the European Court of Human Rights within months of her mother’s death. She claimed violations of her mother’s right to life and her own right to freedom from torture and discrimination, emphasising the subjugated position of women in Turkish society.

26 Ibid., at §54.
While other interesting issues are raised, for the purpose of this article I will focus on the discrimination aspect. The applicant argued that the failure of the Turkish authorities to protect her and her mother from the violence amounted to a violation of Article 14 (in conjunction with Articles 2 and 3).

INTERIGHTSHAS long worked on gender-based violence before the Court – for example, having intervened in M.C. v. Bulgaria and advising counsel in the domestic violence case of Bevacqua and S. v. Bulgaria – so when we observed Opuz on the list of communicated cases from the Court, we were looking for ways in which the case could strengthen the case law. The applicants had argued the Article 14 violation with reference to substantial evidence of high rates of domestic violence in Diyarbakir where the applicant lived and noting that police responses were generally geared towards mediation – trying to get the victims to return home and drop their complaint – and non-interference by the authorities. We were given permission by the Court to intervene on states’ obligations with respect to domestic violence and on the characterisation of domestic violence as discrimination. Our intervention highlighted the growing body of international law – from the Committee on the Elimination of All Forms of Discrimination against Women, from the Inter-American Court and from domestic jurisdictions – which has recognised gender-based violence as a form of discrimination.

As noted above, where it has found violations of substantive articles of the Convention the Court’s long standing – though slowly changing – approach has been to find it unnecessary to consider Article 14. Commonly, at the time of our submission, in violence against women cases the Court had not engaged at all with non-discrimination arguments. Accordingly, at the time of our intervention, and at the hearing a year later, there was no basis in the Court’s own case law for our discrimination arguments and we were relying exclusively on international and comparative material. As a result, our expectations of the Court were low and at the hearing we effectively addressed our presentation to one particular judge whom we imagined would be sympathetic. Mindful of the Velikova-Anguelova-Nachova experience, our strategy was to secure a majority - at least one dissenting opinion to begin moving the Court toward gender-based violence as an Article 14 breach of a violation. On this occasion, our lack of confidence was misplaced.

Unanimously, the Court found not only violations of Article 2 and 3, but for the first time they extended the protection of Article 14 to victims of domestic violence. Relying on its finding in D.H. the Court held that a prima facie case of discrimination had been established by reference to the extent of violence against women in the region of Turkey. It relied heavily on international and comparative law before finding a violation of Article 14 in light of the ‘general and discriminatory judicial passivity… [which] created a climate that was conducive to domestic violence”27 Nahide Opuz was awarded compensation for pain and suffering in the order of €30,000 and thanks to the Court’s specific instructions she now has a remote location and a constant security detail protecting her from her husband.

Opuz is significant for the Court’s discrimination case law and for international jurisprudence on gender equality. The Court has acknowledged the extent to which gender-based violence is an issue of inequality and how it impedes the enjoyment of numerous other rights. The judgment has been widely referred to by other courts – most notably the Inter-American Court of Human Rights in the Jessica Lenahan (Gonzales) case28 – and was referenced in the drafting of the new Council of Europe Convention on preventing and combating violence against women and domestic violence.29 Referring to the new Convention, Turkey has now adopted a new domestic violence law which, while inadequate in part, increases protection for women like Nahide Opuz.

27 Ibid. at §192.
29 See the Explanatory Report to the Convention, §§49, 58 and 163.
In *Opuz*, what was a very tragic, but regrettably common domestic killing was made into a vehicle for significant change in the law domestically and internationally. I believe *Opuz* was successful on Article 14 because the applicant put discrimination at the heart of the application from the very beginning – the context of violence against women in Turkey was emphasised and evidenced repeatedly – and because our intervention put pressure on the Court to advance its case law on gender-based violence, lest it lagged behind other international and regional bodies.

**Another option – the collective complaints procedure of the European Social Charter**

As noted above, litigating human rights cases is made difficult by finding appropriate applicants but also by strict admissibility criteria before the Court, for example the need to establish victim status, the need to exhaust domestic remedies and to submit within six months. While not individual litigation in the purest sense, the Council of Europe’s Social Charter provides a collective complaints’ mechanism which presents attractive opportunities to promote economic and social rights without presenting these admissibility challenges. Though not all Member States recognise the collective complaints mechanism, those that do allow certain NGOs and trade unions to make complaints to the Committee on the basis of the 1961 Social Charter or the Revised Social Charter. Taking a collective complaint involves no applicants, no exhaustion of domestic remedies, no deadlines, and yet could yield findings of violations, implementation of which is overseen by the Committee of Ministers in much the same way as judgments of the European Court.

A collective complaint either requires demonstration that a law on its face is inconsistent with the Charter or the provision of evidence that a law is inadequately implemented leading to violations of Charter rights. In the latter case, substantial ground research and evidence may be required, as was the case in the two cases we have taken to the mechanism to date.\(^{30}\) Unlike the European Court, which can take many years to come to judgment, at present the Social Charter Committee issues a final merits decision within around 18 months, providing a more speedy way to secure a ruling capable of being used in lobbying or referenced in individual litigation.

To date the Social Charter Committee has proved itself very strong on non-discrimination and equality, incorporating an equality analysis into a majority of its decisions. The decision in the case of *Autism Europe v. France*,\(^{31}\) for example, provides an elegant elaboration not only of the right to education, but of the meaning of equality for persons with disabilities in respect of education. The decision in *Interights v. Croatia* – a case primarily concerning the inadequacies of abstinence-based sex education in Croatia – provided strong language prohibiting homophobic content in school text books and has resulted in amendment to the offending texts.

The collective complaints mechanism provides exciting litigation opportunities for those groups for whom access to justice is vexed or where litigants are reluctant to come forward but face systemic discrimination. In the author’s mind, it has been underutilised by those adopting a strategic litigation approach.

**Conclusion**

While strategic litigation has resulted in many meaningful advances in the Court’s case law over the past decade – the recognition of indirect discrimination, the establishment of procedural obligations under Article 14 and the extension of protection to new groups – the advances have not been uniform. In


respect of disability, for example, the Court has found itself stuck in a largely medical model of disability, not adapting to the innovations in the UNCRPD with respect to equality nor demonstrating much of an appreciation for the way in which people with disabilities experience violations of their rights. When cases fail, we review our strategies and discuss new approaches with partners, and are committed to continuing to make the equality arguments that we believe will one day form part of the Court’s case law.

As stated at the outset, strategic litigation is an imperfect tool, but it has a valuable contribution to make. The experience of European Court equality litigation over the past decade has shown that the Court does move in response to strategic argument, it is sensitive to being out of touch with emerging international trends and it can provide a lever to help shift political and public opinion. The last ten years have taught me the need for patience and commitment to strategy, tenacity in the face of adverse judgments and confidence that the Court seeks to lead human rights law internationally, and will therefore, ultimately, increase protection for vulnerable people.