

Promo-LEX Interview: The Art of Strategic Litigation



The concept of strategic litigation is relatively new for the Republic of Moldova, and its implementation, especially when it comes to promoting equality, is a field that is not fully explored. We discussed the importance of strategic litigation in preventing and combating discrimination with Joanna Whiteman, Head of Litigation at the [Equal Rights Trust](#).

For how long has strategic litigation existed and for how long has it been used to promote equality?

Dimitrina Petrova, Executive Director of the Equal Rights Trust, who was responsible for numerous strategic cases on Roma rights before the European Court of Human Rights, describes strategic litigation as an art, not a science. So the question ‘what precisely is strategic litigation?’ is a big one. What we generally mean by strategic litigation, is litigation that seeks to achieve a broader aim than justice for the victim in an individual case. Some have argued that it has its roots in the US system of class actions and involves taking cases which benefit large numbers of individuals. However, it is only in the last few decades that the notion of strategic litigation has started to exist. In terms of how long it has been used to promote equality, well, for the same time. Equality has been a key focus for organisations taking strategic litigation and the Trust sees such litigation as a key tool in the advancement of equality.

Why is it important to use strategic litigation as an advocacy instrument to promote equality?

There are a number of different, complementary ways to advance

equality and the Trust approaches the advancement of equality through four key programmes. In addition to litigation, we recognise that advocacy, developing knowledge and resources on equality and non-discrimination and building a movement at the national, regional, and international levels are important ingredients in the promotion of equality.

At times strategic litigation is not the best approach but it's clear from past experiences that sometimes governments don't respond to lobbying or other advocacy engagement and the courts can have a strong voice in advancing equality when law is not being enforced or appropriately interpreted. We have clear evidence from the national level that having a strong judgment on a matter of equality or non-discrimination can have a big impact.

Can you give us an example of the most interesting and recent case of strategic litigation that had a big impact on promoting equality?

For several years, we have supported a case relating to a mental health institution based in Delhi called Asha Kiran, where a large number of residents died due to the appalling treatment they received in the institution. The case was argued on a number of grounds including deprivation of the right to life and discriminatory torture and inhuman treatment.

The case is ongoing but in March there was a very big success when the Supreme Court of India demanded that the central government and all regional state governments submit evidence to the Court so that it can assess how mental health institutions across India are operating.

To me, this case is a very good example of what can be done with strategic litigation. It was a case related to one institution, and now through the Supreme Court, attention has been brought to all mental health institutions throughout the

whole of India. There is potential for all people with mental health disabilities housed in these institutions to be directly impacted. We will have to wait for the final outcome before we can fully assess this, but the case has already had positive results.

Do you have a few recommendations regarding strategic litigation here in Moldova?

There are a number of possible elements of strategic litigation. It may well impact on the broader public rather than just the individual. It could also be a case in which innovative legal arguments are brought before the court where there isn't clarity in the law or where the law hasn't been implemented in an adequate way.

In Moldova there are some very strong legal provisions for non-discrimination in the law but there hasn't been a lot done on the side of implementation yet. There are some very good lawyers who have a good understanding of discrimination principles. There is also the Council on the Prevention and Elimination of Discrimination and Ensuring Equality which is willing to make decisions on discrimination. However, the problem seems to be getting the courts to accept the Council's decision without overturning it. And the Council cannot provide remedies, only recommendations so it is particularly important for the courts to follow its lead. Until then, there may be an excellent decision but no effective enforcement of the Council's recommendations. This is a big issue for litigation in Moldova. In terms of the key issues for litigation here, the Equal Rights Trust and Promo-LEX have been and are continuing to work together to monitor discrimination across the country.

It's still too early to give final conclusions but there are some key issues arising. There are problems of ill-treatment, discriminatory and inhuman treatment against people with disabilities and disadvantaged social groups in institutions.

People's rights to freedom of movement, to be free from inhuman treatment, to have a free private life are being infringed. Then we have a huge number of cases where Roma are being denied access to services and this seems to be systematic across the country. A final example is related to problems of discrimination on grounds of public opinion; a controversial issue and one, which has not yet received attention before the Council, but an area for future focus.

This interview represent the views of Joanna Whiteman and not necessarily those of the Equal Rights Trust.

The interview is part of the project entitled "Strengthening civil society organizations from Moldova, including the Transnistrian region, to combat discrimination through advocacy actions". The Project is implemented by Equal Rights Trust and Promo-LEX Association with the financial support provided by the European Union.

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