Capacity Building Workshop on Strategic Litigation: Exploring the Potential of a Law and Political Economy Approach

Tuesday 30th May 2023

Erasmus University Rotterdam

This one-day workshop is the first of several workshops funded by a grant from Partners for a New Economy to develop the Law and Political Economy (LPE) in Europe Research Network ("LPE-E Network"). In addition to integrating academics working in the field of LPE, the LPE-E Network also aims to integrate non-academic actors who, like LPE researchers, are seeking to use the law to effect social transformation. Civil society organisations who seek to use litigation to advance various social, economic and environmental causes, and the lawyers that represent them, are clear examples. This first workshop will therefore bring together legal practitioners, civil society actors, and academics who are advancing strategic litigation initiatives on diverse issues and in different legal fields to share experiences of making creative use of the law to achieve social, economic, and environmental change.

Strategic litigation is necessarily advanced in specific jurisdictions, focuses on either public or private actors, and is organised to confront particular issues. Despite this inevitable variation in cases, this workshop builds on the premise that there are important insights to be gained from sharing experiences and attempting to distil consistent obstacles to claims and successful cross-jurisdictional and cross-sectoral argumentative patterns. This is especially true given that in some of areas, such as climate change litigation, successful suits have been brought against both governments and private actors (e.g. the *Urgenda* or the *Milieudefensie v. Shell* cases in the Netherlands) whereas in other domains NGOs, legal teams, and academics are still at the early stages of identifying impactful targets of litigation and relevant legal theories to support their cases.

The primary goal of the workshop is to explore the potential for an integrative and collaborative approach between strategic litigants (civil society actors and the lawyers that represent them) and academics to enhance the potential for strategic litigation to achieve the social, economic, and environmental change that is sought by the litigants.

This first workshop has two key ambitions. First, to investigate the possible relevance of an LPE approach for advancing strategic litigation claims. Building on the success of its US counterpart,[1] the LPE-E Network is committed to developing initiatives in research, pedagogy, and praxis that harness the transformative potential of critical engagement with the 'constitutive' role of law in the economy for achieving social change. The focus on the constitutive role of law draws attention to how markets are constructed through legal rules and allocations of legal entitlements. Highlighting the deliberative and artificial nature of the economy also illuminates the complicity of law in the generation and acceleration of social crises. Indeed, the LPE-E Network focuses on the role of law within the crises currently impacting society, such as for example relating to climate, food systems, housing, or financial governance and monetary policy. These key areas of emphasis for LPE research map on to the list of invitees from the NGO sector and from legal practice at the workshop.

The workshop aspires to discuss the relevance of a focus on the constitutive (and thus on the distributive and power-conferring) role of law in academic research for advancing strategic litigation claims. What could LPE researchers contribute to strategic litigation initiatives? How can LPE researchers learn from practitioners and NGOs working in the field who are already pushing the boundaries of the law and developing creative legal strategies to advance claims? Are there ways in which the different but interrelated approaches that academics and litigation teams are taking to using the law 'creatively' can be combined to enhance current efforts to challenge laws and policies that are responsible for social, economic, and environmental harms?

In this workshop we will begin exploring these questions, and we will think together about how we might collectively promote the development of innovative and creative interpretations of

[1] https://lpeproject.org/

legal doctrines, procedures, and regulations by combining insights from academic research, NGO interventions, and legal practice going forwards.

The second key ambition of this workshop will be to lay the foundations for the development of tools that can nurture that collaboration, including the creation of a European network for knowledge exchange that can help to promote a more joined up approach to strategic litigation. To fulfil this ambition, there will be time at the workshop for participants to discuss what other aspects may be worthy of the network's attention in subsequent activities, such as the remaining two workshops.

The workshop will proceed by means of a series of semi-structured discussions on key topics and case studies. In the **first session of the day**, we will have a round of introductions and we will discuss findings from a very short questionnaire (circulated in advance of the workshop) that will address expectations and assumptions about working collaboratively across academia and legal practice. In the **second session of the day** we will have a discussion to explore how strategic litigants (civil society actors and the lawyers that represent them) and academics understand the constitutive role of law and its potential to inform litigation strategies. A briefing note on the constitutive role of law will be circulated in advance to serve as a focal point for discussion. After a lunch break, **the two afternoon sessions (sessions three and four)** will focus on two case studies of past or ongoing litigation claims and/or initiatives being developed by some of the invitees. In these sessions, participants may be asked to reflect on a) what the relevant case study might mean for their own litigation strategies (e.g. whether there are any lessons to be learned from the case studies for their own work); and b) how the case in question might inform the outcome of the discussion in the second morning session about the potential of the constitutive role of law for strategic litigation (e.g. how the constitutive role of law might inform particular directions in terms of case selection , legal strategy or the assessment of argumentative patterns. In the fifth (and last) session we will conclude with a discussion of what other activities the network should develop next. Attendees will be invited to a workshop dinner in the evening.

List of Participants

Anna Chadwick	(Organiser, University of Glasgow)
Ioannis Kampourakis	(Organiser, Erasmus University Rotterdam)
Javier Solana	(Organiser, University of Glasgow)
Valentina Arazov	(Global Legal Action Network – GLAN)
Alessandra Arcuri	(Erasmus University Rotterdam)
Ruth Dukes	(University of Glasgow)
Filippo Fantozzi	(Climate Litigation Network)
Tomaso Ferrando	(University of Antwerp)
Jeff Handmaker	(ISS Hague and Public Interest Litigation Project)
Eleanor Kirk	(University of Glasgow, Labour and Strategic Litigation Project)
Lydia de Leeuw	(The Centre for Research on Multinational Corporations – SOMO)
Alex Lombos	(ClientEarth, Accountable Finance)
Paul Mougeolle	(Notre Affair À Tous, Université Paris Nanterre)
Phillip Paiement	(Tilburg University, TransLitigate: The Agency of Transnational Strategic Litigators in Global Environmental Governance)
Pablo Felmer Roa	(Barcelona Bar Association)
Jamie Sawyer	(ClientEarth, Accountable Finance)
David Scott	(University of Glasgow)
Sanne Taekema	(Erasmus University Rotterdam)
Jasper Teulings	(Children's Investment Fund Foundation, Director Strategic Litigation)
Vera Weghmann	(Independent Workers of Great Britain Union and United Voices of the World)

Schedule

Room: Theil C2-6

- 09:00-09:15. Welcome remarks
- 09:15-10:00. Collaborative work between academia and legal practice: Finding common ground
- 10:00-10:30. Coffee break
- 10:30-12:00. Strategic litigation and the constitutive role of law
- 12:00-13:15. Lunch

Room: Langeveld 4.16

- 13:15-14:45. Case study A: Strategic Litigation in the Financial System
- 14:45-15:15: Coffee break
- 15:15-16:45: Case study B: SOMO – Tentative litigation project – structural enablers of corporate power
- 16:45-17:30: Stocktaking and next steps
- 19:00: Dinner at *Osteria Vicini*