Strategic litigation and OSH

1. Purposes

A. **Legal purposes** (*Stricto sensu* Strategic litigation)
   
i. **Change *Within the law*** (e.g. achieve a more favourable interpretation, application of the law; clarify a point in law; etc.)
   
ii. **Changes *Against the law*** (Actions for annulment; judicial review to quash a provision; overturn established ‘negative’ precedents; etc.)
   
iii. **Changes *Beyond the law*** (challenge the law both to quash it and obtain legal changes)
2. Broader and meta-legal purposes

i. **Mobilisation** (internal mobilisation of members, workers, recruitment, renewal by targeting certain groups particularly exposed to certain risks, solidarity between different groups)

ii. **Campaigning** (external campaigning, to highlight how certain practices harm the H&S of workers; to raise the profile of a cause or encourage public or media debate; to lobby and influence law makers)

iii. **European integration** (ensure upward integration and level playing field; ensure integration between different European legal regimes, e.g. EU, ESC, ECHR, and ILO instruments; building a European ‘Civil Society’)

---

**Strategic litigation and OSH**

*etui.*
Strategic litigation and OSH

2. Challenges (and possible responses)

i. **Access** (costs; procedural and jurisdictional hurdles; multiplicity of fora but some mutually exclusive)
   - ‘activist’ lawyers and experts; crowdfunding; staggering/scattering claims strategically – a ‘global strategy’ across jurisdictions; use of Article 6 ECHR and EU principles

ii. **The negative precedent**
   - Calculate risks; political choices; avoid too many negative precedents; ‘dual parent’ theory; sympathy vote and the long game

iii. **Losing sight of the ‘individual’** (individual v strategic interests; victimisation)
   - Rely on activists and union/H&S representatives; involve and connect

iv. **Backlash?** (e.g. campaigning and mobilisation adversely affect legal process? The ‘nanny state/snowflake’ criticism from hostile media)
   - Union involvement; political backing; seizing the narrative; attention to communication
Strategic litigation and OSH

3. Opportunities

i. An area shaped by ‘fundamental’ and ‘supreme’ principles (dignity; bodily integrity; prevention; precaution; care; Constitutional/EU/CoE/ILO standards) and prone to purposive/expansive interpretation – ideal for campaigning

ii. Transferability (victories in this area can positively affect other contiguous areas of the law; other legal systems)

iii. Links with other social actors and the creation of social movements (environmental NGOs; civil society; ...)

etui.