

Working across borders and strategic litigation: two ships that pass in the night

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Strategic litigation

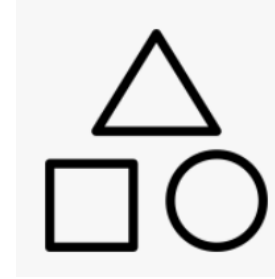
CONTENT



Substantive understanding:

- Aims to bring societal change beyond individual case (*ECCHR*)
- Case as part of strategy to promote certain rights (*TRIAL International*)
- Bringing cases to promote workers' rights (*Lörcher*)
- To overturn bad case law, to establish (new) legal precedent (*Equinet*)

FORM



Functional understanding:

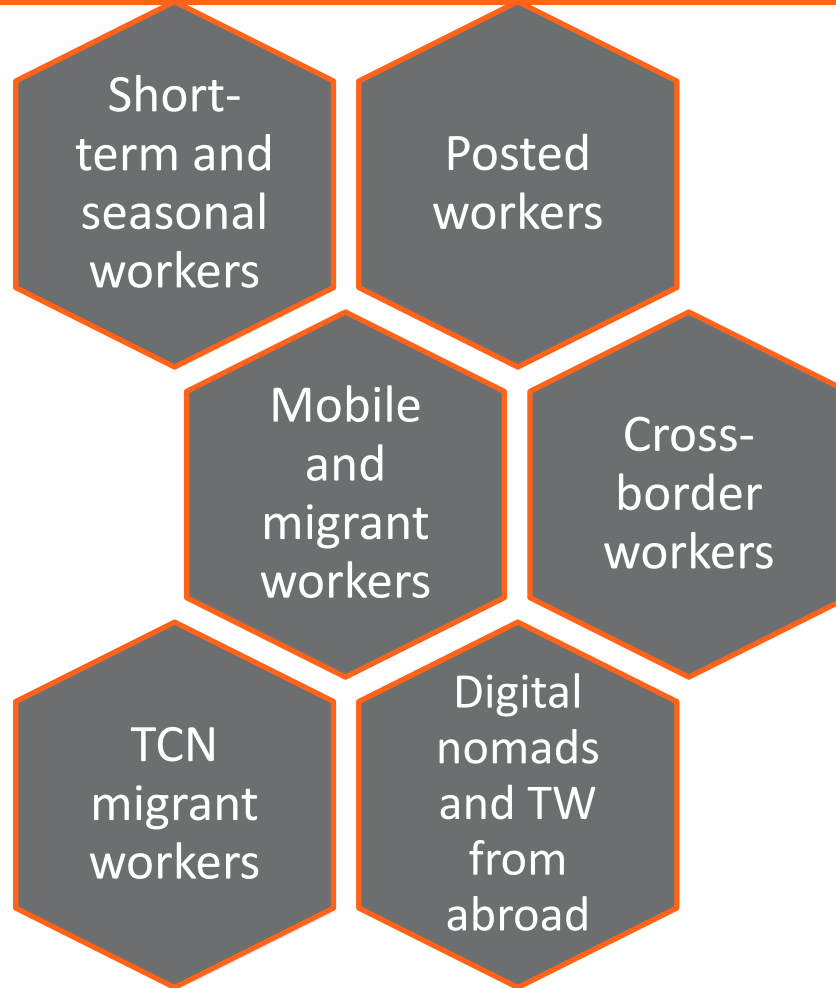
- Bringing of and engagement with on-going cases
- Third party interventions, support to lawyers, training, guidance (*ECRE*)
- Bringing collective/representative/class action on behalf of victims (identified or not identified)

Workers' rights and strategic litigation



- Mobile and migrant workers' rights as one type of rights to be protected via strategic litigation
- Strategic litigation as part of strategy to protect mobile and migrant workers

What do we know about litigation involving migrant workers?



Mobile and migrant workers and their 'justice gap'



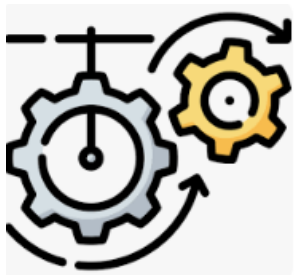
FORMAL EQUALITY

- Same procedural rights as local workers
- Same substantive rights including collective representation rights
- Same procedures
- Principle of equality
- No dedicated support

SUBSTANTIVE EQUALITY

- Lack of resources (language, knowledge, financial)
- Cross-border element in their working lives
- Default intersectionality

Building legal opportunity structures for migrant workers?



MECHANISMS



AWARENESS



POWER



COVERAGE

- Representative/collective/class action opportunities
- Support and opportunities to sue in the country of origin
- Dedicated support for bringing cases in the host country
- Representation across borders
- Untangling legal status issues
- Legal protection during (and after?) litigation
- Easy access to courts (language, legal aid, translation, real possibility to continue action after leaving territory, online procedures)

Thank you for attention

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- ‘Enforcing migrant and mobile workers’ rights’ in Rasnača et al, *Effective enforcement of EU Labour Law*, Hart publishing, 2022
- ‘Proposal for a Directive on Effective Enforcement’ in Rasnača et al, *Effective enforcement of EU Labour Law*, Hart publishing, 2022
- ‘Collective redress in labour and social law disputes’, ELLJ 12(4), 415-435, 2021
- ‘Enforcing the rights of remote workers: the case of digital nomads’ in Countouris et al, *The future of remote work*, ETUI, 2023