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## Suing for European Democracy?

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## ERC Starting Grant 2022 - Part B2

### SUing for European DEMocracy – SUEDEM

#### STRATEGIC LITIGATION VERSUS DEMOCRACY?

In summer 2022, judicial news worldwide was marked by success stories of conservative groups using strategic litigation before the United States Supreme Court to reduce abortion rights (*Dobbs v. Jackson Women’s Health Organization*), environmental protection (*West Virginia v. EPA*) and protections offered to victims of gun violence (*New York State Rifle & Pistol Association, Inc. v. Bruen*). The large popular demonstrations that followed these decisions reinforced an impression of the US Supreme Court as an anti-democratic judicial institution, insensitive to the legitimate concerns of the American people.

If one were to limit oneself only to these lawsuits, which can be described as “strategic litigation” (SL) due to the strategy of social change of its initiators, one would soon discredit SL. They seem to corroborate the upholders of “adversarial legalism” (Kelemen 2006), raising the horror of instrumentalisation of justice (Schoettl 2022) or of “government by judges”, according to the expression conceived by the comparative jurist Édouard Lambert (1921). The recurring critiques of Judicial Review, perceived as an attack on the separation of powers, illustrate these concerns (Epp 1998). *The SUEDEM project, however, explores the contrary thesis*. When one focuses not on these high profile common law cases but on the experience of SL conducted in Europe by minority groups and those seeking to protect the environment, **SL can instead be seen as a new lifeblood for European democracy**. The challenge that SUEDEM takes on is to examine *how SL in Europe can be structured and promoted to this end*.

#### ANOTHER RESPONSE TO DEMOCRATIC BACKSLIDING

Whether on the national or European level, *significant efforts have been made in the last few years to strengthen the democratic character of institutions*. On the one hand, institutional and political dynamics have been favoured and have aimed to bring citizens closer to the centre of the exercise of power through federalisation, devolution, decentralisation and deconcentration (Ruano & Profiroiu 2017). On the other hand, the creation or enriching of mechanisms of participation has sought to include citizens more in the decision-making process; this is particularly visible in the development of general legislation on non-litigious administrative procedure in Europe (Auby & al. 2014), influenced by models of participation in the United States (Custos 2007), such as participatory budgeting (Bartocci & al. 2022), and environmental and social impact assessment (Stolp & al. 2012). The proliferation of norms, intended to protect marginalised individuals or minorities before domestic, European and international courts, also illustrates this tendency (Anagnostou 2014). However, *these efforts have not fully achieved the objective of democratic strengthening*. One can also see a counter-current in “illiberal democracies”, the return of populism, reduced electoral participation and, in a general sense, the loss of confidence in democratic institutions (Foa & Mounk 2016, 2017; Levitsky & Ziblatt 2019).

In order to resolve these fractures, *different proposals have been made*, following emergence of the theory of deliberative democracy several decades ago (Habermas 1992; Blondiaux & Manin 2021): reconceptualising democratic representation through “continuous democracy” (Rousseau 2022), de-professionalising political representation (Garapon 1996), creation of mechanisms for legitimising decisions (Marti 2018) or undertaking participative processes of reconstructing the law (Sintez 2022). *However, these approaches are still part of a majority framework, as if it alone were allowed to express the general interest*. Notwithstanding the responsibility that this majority framework carries in the democratic backsliding of regimes, it does not facilitate expression of demands by minority groups. Other proposals have emerged through focusing on the judicial function, taking seriously the idea that it would constitute a strong counter-power (Hourquebie 2004) or considering that it is the judge’s role to reveal the existence of fundamental debates in society (Ackerman 1991).

**SUEDEM is grounded theoretically in this doctrinal context and proposes a new democratic dynamic** based on the evolution of jurisdictional competence: the judge is not only an organ of application or interpretation of law, but a power per se. *In other words, the issue is no longer really that of the place of the judge in a representative democracy, but rather of incarnation of the sovereign people by the judge*.

In this framework, SUEDEM wishes to show that the judge, through strategic litigation, can play a role in preventing democratic backsliding. Indeed, in such lawsuits, citizens are not seen as a passive audience, waiting for their (mostly elected) representatives to speak on their behalf and identify the best (most often parliamentary) strategy to advance their rights. Instead, citizens seize hold of the courtroom directly and themselves draw up the strategy that will enable them to defend their cause and evolve the social “rules of the game”.

#### PRINCIPAL RESEARCH QUESTION

*The main question this research project will attempt to answer is the following: Should strategic litigation be promoted in Europe as part of a response to the democratic crisis?* Behind this question lies the assumption that SL can have a positive impact on democracy by returning power to individuals sidelined from democracy by others. This assumption is sufficiently substantiated by the many examples of SL that have enabled minorities to have their voices heard (for example, sexual or gendered minorities) and to restore the balance of power in democracy, even in cases of non-minority interest, such as in European SL concerning climate change or digital rights. However, what is unclear now is what lawyers can do about this: is it possible to identify precisely which SL can have a democratic impact, without politically demobilising activists (Tushnet 1984), and then to create tools to promote this “democratic strategic litigation” (DSL)? Or, if identification of DSL were to prove impossible, should one abandon the idea that a specific legal framework for SL could reduce the crisis in European democracies?

## SECTION A. STATE OF THE ART AND RESEARCH OBJECTIVES

### I. STATE OF THE ART

**TOPIC HISTORY.** In the international scientific literature, the phenomenon of SL has received little academic attention from European scholars until recently. Yet, it has been visible since women’s rights litigation in the 1920s, as in the Canadian “Persons Case” (Sharpe & MacMahon 2016), or the 1950s, when civil rights movements in the United States used it tactically to advocate for racial equality. One can nevertheless see a catch-up of this delay over the last ten years, as has been noted (Van der Pas 2021). The use of SL and its visibility has continued to grow in this period, as has the attention of researchers to marginalised groups (Fuchs 2019b).

The first scholarly works relating to this type of judicial practice were initiated in the United States from the middle of the twentieth century, in the context of lawsuits linked to civil rights (Collins & McCarthy 2017), and were produced by sociologists and political scientists concerned with understanding their origins and impact. Later, jurists also became interested in them and, from 1969 onwards, they began an effort of individuating these lawsuits by speaking of public interest litigation (Cappellitti 1975; Chen & Cummings 2014) and later of public law litigation (Chayes 1976).

Sociological studies saw a resurgence in the 1990s (Israel 2003), with the development of *cause lawyering* (Halliday & Karpik 1998; Sarat & Scheingold 1998, 2001; Israël 2001). Research conducted at that moment often sought to better understand the relationship between the actors at the origin of these lawsuits, to understand their motivation, to show the complexity of the cases, or to underline that winning or losing a lawsuit was not necessarily advancing or impeding the “cause” that one was bringing (Lobel 2003). Some literature in this period also re-drew the historical conditions of the emergence of bringing “causes” to court (Claverie 1994). Certain rare works were interested in more technical aspects such as retracing the legal reasoning of the litigants, analysing the decisions delivered in certain litigation proceedings (Frydman 2007; Hennebel & Frydman 2009, for transnational litigation) or seeking the causes of the development of this type of litigation in a particular legal system (de Schutter 1999 or Lasser 2009, regarding the judicial mobilisation of fundamental rights).

**DIVERSE TERMINOLOGY.** This subject of study is treated by disciplinary fields as diverse as political sociology, socio-legal studies, and political science (McCammon & McGrath 2015). **This diversity has bequeathed a fragmented state of research and terminological opacity.** Indeed, the phenomenon of lawsuits brought to produce political and social change is named by a large variety of terms, not all fully identical: “cause lawyering”, “public interest litigation”, “human rights litigation”, “test case litigation”, “impact litigation”, “social action litigation”, “social change litigation” (Goldston 2006), which could be gathered under the

banner of “lawyering for change” (Ramsden & Gledhill 2019), or more soberly of “legal mobilisation” (Lehoucq & Taylor 2020; Van der Pas 2021).

**DIVERSITY OF STUDIES OF STRATEGIC LITIGATION.** To date, a large diversity of SL has been studied, but the resulting work has been sector-based, and restricted to specific domains or legal systems. On the one hand, **studies are often limited materially to a specific social question.** Many of those have been brought by progressive interest groups such as those fighting racial segregation (Vose 1959; Kluger 1975), poor conditions of detention (Feeley & Rubin 1998), and inequitable school financing (Reed 2001), or pushing for the responsibility of tobacco companies (Mather 1998), for disability rights (Vanhala 2010), sex/gender equality (Fuchs 2013), gay marriage (Pizmony-Levy & Ponce 2013; Jjuuko 2020), or environmental litigation (Peel & Osofsky 2015; Setzer & Vanhala 2019). However, as noted above, conservative interest groups have also often used SL, contesting – for example – the right to abortion (Horan et al. 1987), measures of positive discrimination, or laws restricting the right to bear arms (Hatcher 2005). On the other hand, **research has been completed on various geographical spaces** including non-western countries, where SL also plays an important role. Thus, one finds work on SL in countries in Africa (Jjuuko 2020; Gathii 2020; Gonese-Manjonjo & Durojaye 2021), Asia (Baxi 1985; Deva 2009; Yap & Lau 2011; Bhuwania 2017; Bakshi 2020), and Latin America (Coral-Diaz & al. 2010; Rodríguez-Garavito & Rodríguez-Franco 2015). **Too few studies have been conducted at the European level.** This means that the procedural specificities of litigation that takes place before the Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECHR) are rarely taken into account (see, however, Monzala 2021).

**STATE OF RESEARCH RESULTS.** Cumulatively, this rich literature identifies the specificity of SL in comparison with other procedures: it seeks to provoke *systemic change*, beyond a single legal case (Freeman & Farris 1992; Cummings & Rhode 2009; Ramsden & Gledhill 2019); it is characterised by the importance of a movement identity (Vanhala 2009), and of “support structures” that provide expertise or subsidies (Epp 1998), in particular Ombudsmen who may come to the bar in support of NGOs (Duffy 2018). Scholarly work has highlighted motives for pursuing SL in certain contexts (Çağlıdil 2018) and drawn attention to stakeholders’ differing levels of awareness about the decisiveness of the litigation undertaken: certain persons anticipated it long before the application, and others during the process (Israel 2021). Another section of the literature has insisted on the limits, indeed the counterproductive character, of SL (Tushnet 1994; Pistor 2019; Fuchs 2019b; Fischer-Lescano 2021), or that it may only lead to formal changes (Guinier 2004) as opposed to cultural transformation.

**RESEARCH OPPORTUNITIES.** Nonetheless, there remain significant gaps that SUEDEM proposes to fill. **Firstly**, as mentioned, there exist considerable fluctuations in terminology related to SL. This terminological abundance raises confusion for those wishing to understand the emerging concept of SL, even if recent studies have attempted to put things in order somewhat, both from a systemic point of view (Graser 2019; Gledhill & Ramsden 2019; Van der Pas 2021) and more specifically, as in the field of international criminal justice (Jeßberger & Steidl 2022). **Secondly**, SL studies to date tend to depend strongly on the particular legal system or area considered, and on the social context of proceedings, as opposed to investigating the notion as a whole. The sector-specific character of this work explains the low level of abstraction in SL scholarship and, as noted above (Graser 2019; Ramsden & Gledhill 2019), prevents SL from being understood in a homogenous and systemic fashion. This is regrettable from the point of view of scientific knowledge. **Thirdly**, it is also unfortunate from a practical perspective because it reduces the possible contribution of SL to tackling injustice (Fuchs 2019a). One notes a paucity of works examining legal techniques neutralising or facilitating SL, a further obstacle to the *effectiveness* that SL could achieve in a better adapted legal framework. When all is said and done, one can see that there is hardly any regulation of SL worldwide. These lawsuits are instead governed by a series of disparate, not necessarily adequate, measures (rules relating to representation, *locus standi*, funding, and so on.). **Fourthly**, studies that are currently being undertaken do not envisage SL through the lens of the democratic deficit in representative democracies: these two fields are the subject of distinct research. This scholarly separation between issues relating to backsliding in democratic regimes and those relating to extent of judicial competence is not anecdotal. On the basis of a certain conception of the theory of the separation of powers, judicial authority is not considered as a lever for fighting the growing power of illiberal democracies.

## II. RESEARCH OBJECTIVES AND INNOVATIONS

### A. Research objectives

#### **RO1. Proposing an interpretative framework for strategic litigation**

**RO1-1. DEFINING STRATEGIC LITIGATION.** Although the expression “strategic litigation” is widely used throughout the world, by lawyers just as by human rights organisations and social movements, the question of its analytical definition has not been settled. For a while it seemed as though academics had abandoned such theoretical reflection in favour of more concrete analyses. However, the issue has drawn greater interest recently, and new definitions have started to emerge (Graser 2019; Gledhill & Ramsden 2019; Van der Pas 2021). SUEDEM will test these definitions in the legal field. It will also examine the appropriateness of new definitions of SL relative to other forms of lawsuit, such as lawsuit politicisation (Kirchheimer 1961), corporate judicial strategies (Champaud & Danet 2006) or SLAPPs (Strategic Lawsuits Against Public Participation) (Canan & Pring 1988; Sheldrick 2014; Hess 2022), a form of litigation that has recently attracted the attention of the European Commission (COM(2022)177 final, 27 April 2022). It will also be productive to place new definitions of SL into theoretical dialogue with closely neighbouring concepts such as orchestrated litigation, cause lawyering, public interest litigation, class action, and so forth.

**RO1-2. HIGHLIGHTING THE DIFFERENT USES OF STRATEGIC LITIGATION.** SUEDEM will examine the different uses of SL both to refine an interpretative framework for it, but also to prepare the ground for a legal framework favourable for such litigation. First of all, a better understanding is needed of the reasons for, and the forms of application to, SL. At what moment, and in what conditions, will a group decide to use this type of action? What will be the form of their participation: as party to a case (plaintiff, intervening third party, even legal counsel) or simply as support for the petitioner by providing them with financial, communication, legal, or other aid? Next, one will examine the jurisdictional preferences of individual(s) initiating SL in an attempt to understand the reasons for their choice to act before one jurisdiction rather than the other. The strategy of placing judges into competition or dialogue will also be scrutinised, to shed light on the strengths and weaknesses - for efficient SL - of the different judicial institutions applied to.

**RO1-3. MEASURING THE CONSEQUENCES OF STRATEGIC LITIGATION.** Finally, as a step to establishing an interpretative framework for SL, SUEDEM will measure its consequences, bearing in mind that a successful strategic lawsuit is not necessarily one whose demands have been accepted by the court. Indeed, an unfavourable judicial decision can be perceived as a political victory in light of the scandal it may cause (Israël 2020) and the placing on the public agenda (Baumgartner & Jones 2009) of a previously anonymous issue. For this reason, one must relativise the notion of success; it cannot be understood through the sole lens of a judicial decision in favour of the applicants (Däubler 2019). Instead, SUEDEM will adopt a more holistic approach, measuring the consequences of SL by systematising its different outcomes (Open Society Justice Initiative 2017: as an example). The internal consequences of SL will also be measured, that is, how such lawsuits affect the actors taking part in these proceedings (Edelman & Suchman 1999) and their cause. For example, SUEDEM will attempt to understand the impact of a ‘jurisdictionalisation’ of political activism on the resources of activists, and to consider the risk of activist “expropriation” by legal experts and consequent risks of demobilisation of a cause (Tushnet 1984).

#### **RO2. Elaborating a democratic theory of strategic litigation**

**RO2-1. HIGHLIGHTING THE EXISTENCE OF A PHENOMENON OF DEMOCRATIC DEFICIT.** One of SUEDEM’s hypotheses is that the increased recourse to SL in recent decades is linked in part to a shortcoming of the State and its incapacity to guarantee certain interests of its citizens, perceived by them as fundamental. A loss of confidence in institutions (crises of both representative regimes (Ham & al. 2017), and of representatives (Thomassen 2014) – coupled with a crisis in participation (Chevallier 2002) – and a perceived elite disrespect for democratic norms (Grimmel 2019; Levitsky & Ziblatt 2019) seem to divert many citizens away from decision-making processes. One of the more productive responses to this crisis of representation is the possibility for citizens to bring their cause before a judge through SL. Therefore, SUEDEM **will seek to highlight a link between democratic deficit and subsequent undertaking of strategic lawsuits.**

**RO2-2. UNDERLINING THE DEMOCRATIC FUNCTION OF STRATEGIC LITIGATION.** SUEDEM wishes to explore the extent to which SL can be a method of action at the disposal of actors fighting for the protection of a

collective interest or the common good. In the context of SL, the rights defended before the judge are not individualist in nature. **Although the case often emanates from a minority, it does not only concern the latter**: from the inception of a particular case to the actual strategic lawsuit defending it, a shift from the particular to the universal can occur (Claverie 1994), in particular, through the mobilisation of human rights. The study of this move will be one of the objectives of this project.

In addition, the democratic function of SL will be highlighted by **studying the consequences of the strategic lawsuit on subsequent Parliamentary or Government decision-making**. The hypothesis, to be tested (see WP2-2), is that SL can re-introduce balance to the forces involved in the case, offering new legitimacy to the group suffering heretofore from a democratic deficit; these factors will allow the group thereafter to see its interests taken into account through traditional democratic routes. Thus conceived, **SL fits more broadly into a polycentric conception of power**, where the lawsuit appears “as a roundabout method of effective political action” (Karpik 2002), and the judge, a “political decider” (Grandjean & Wildemeersch 2016).

Independent of other forms of litigation undertaken for private ends (see RO1-1), the risk that conservative or reactionary groups – in the objective of restricting the exercise of certain rights or freedoms on the basis of public order preservation – could reroute the direction of SL will not be overlooked. SUEDEM’s proposal of a legal framework for SL (see RO3-1) will reduce potential for actualisation of this risk, through inclusion of different criteria such as the lawsuit aim, accessibility requirements, or even legal grounds of the claim.

**RO2-3. HIGHLIGHTING THE REPRESENTATIVE FUNCTION OF THE JUDGE.** Political scientist Ran Hirschl coined the term “juristocracy” to describe the trend of increasing constitutional adjudication in democratic systems at the expense of the other powers (legislative and executive branches) (2007). This development of **judicial competence is feared because it is envisaged in opposition to the other powers**. This is one of the reasons why autocratic regimes seek above all to take control of the judiciary (Pech & Platon 2022). It is also feared for not being in line with a constitutional trend, that of refusing to recognize the judiciary as a real power (Foyer 1981).

**SUEDEM aims to renew what is perceived as the function of the judge through SL.** In this sense, it will define a theoretical framework centred on the figure of the *judge as mediator of a cause*. In this conception, the judge is not (only) tasked with reaching a decision on a particular dispute, but is asked to intervene in the normative environment. He can be invited to make use of quasi-legislative powers in accordance with his jurisdictional competence. Although the exercise of these powers is evidently not confined to SL, they are important because – through **the notion of cause, which extends more broadly than defence of a subjective right** – they invoke the responsibility of the judge, who cannot be impervious to the reasons underlying the application to him. Indeed, in this context, the judge is considered by the petitioner – consciously or not – as a *representative* called upon to position oneself in relation to the relevant societal issues at stake. In this context, the **strategic lawsuit could constitute an original mechanism of expression of the will of the Sovereign**, in sharp contrast to seventeenth and eighteenth century theories, which saw a danger in the judicial branch possessing a legislative function.

### **RO3. Democratising strategic litigation**

**RO3-1. PROMOTING STRATEGIC LITIGATION THROUGH THE LAW.** In order to facilitate the use of SL by groups suffering from a democratic deficit - in other words to democratise SL, - **SUEDEM will propose a legal framework, or model-law, that will assist in promoting their use**, akin to reforms proposed by Marc Galanter (1974). As in Canada, the United States or India, for instance, the existence of this framework will allow certain obstacles (procedural, media-related, and so on) to the success of SL to be lifted, one may see it as permitting a decisive gain over certain procedural rules, which are sometimes considered as capable of absorbing and neutralising social protest (Luhmann 1993). In this regard, particular attention will be paid to ethical ways of financing DSL through institutional grants or the establishment of a Multi-Donor Fund by NGOs (Guerrero 2020). This **model-law will then be offered to various European political authorities** in the hope that they will take inspiration from it.

**RO3-2. DOCUMENTING THE EFFECTIVENESS OF STRATEGIC LITIGATION.** To achieve the aim of democratising SL by convincing a broad range of actors of its relevance, SUEDEM seeks to better understand and underline its effectiveness. This task is not easy because the direction of the judicial decision is not sufficient to denote

success – or failure – of a strategic lawsuit, which must also include more subjective aspects linked to media attention to the cause and resultant visibility. To surpass this subjective dimension, SUEDEM will draw on litigation undertaken during the fieldwork phase of the project (*see below*) and, if necessary, on other field studies, so as to systematise the consequences SL can have on the petitioner, on society, on the function of the judge and, of course, on the law. As a result, **SUEDEM will be in a position to propose tools for holistically measuring the impact that SL can have.**

**RO3-3. SUPPORTING STRATEGIC LITIGATION ACTORS.** SUEDEM will pursue its objective of democratisation by supporting groups initiating SL. One key project output will be a **guide that such actors can use to pursue SL.**

## B. Research innovations

**INNOVATIVE CHARACTER OF THE RESEARCH SUBJECT.** The innovative character of DSL as a research subject is threefold. **First of all**, although certain authors have underlined the democratic contribution of SL (Cichowski 2007; O’Neill 2015; Fuchs 2019a; Ehs 2020), no research has ever envisaged SL as a democratic instrument. Therefore, this research subject is particularly innovative in legal science, and more generally, in the field of interdisciplinary studies. **Secondly**, contrary to sector-based approaches traditionally utilised in SL studies, SUEDEM displays originality by adopting a holistic and systemic approach to understanding DSL. Therefore, this approach can facilitate construction of the first general theoretical framework for DSL, a new circumstance bringing evolution to the state of the art. **Thirdly**, following Graser (2019), and in light of the existing literature, numerous questions relating to form, conditions of emergence, and effectiveness and legitimacy of DSL require deeper examination. SUEDEM’s ambition is precisely to respond to this, in particular, by conducting field studies and carrying out SL.

**INNOVATIVE CHARACTER OF THE RESEARCH METHODOLOGY.** This **research also stands out due to its methodology, which relies on an approach of Action Research in Law (ARL) (*see below*)**. Certainly, legal work in this vein is not completely unprecedented (for example Skogan 2009; Innes & al 2009), as this approach has been utilised for studying institutional and civil society instruments or actors in the field of human rights. Nevertheless, with the exception of a study in India (Bhat 2019), **the ARL approach is rarely used outside of North America and seems not to have been used in Europe.** Within a scientific and ethical framework, this methodology will enable SUEDEM to undertake SL cases with NGO partners (*see below* WP1-3).

In implementing this innovative methodology, SUEDEM also intends to push the envelope of legal methodology, too often focussed on a formal approach of norms and legal processes, to show the relevance of empirical and experimental approaches, and to mix the worlds of research and civil society in participatory action research (PAR). **ARL appears to be particularly useful for studying DSL**, as it can mobilise the different disciplinary fields that produce knowledge on the phenomenon, and facilitate collaboration between researchers and other participants to understand social issues and take action towards social change.

**INNOVATIVE CHARACTER OF INSTRUMENTS PRODUCED BY THE RESEARCH.** When considering the innovative nature of SUEDEM’s instruments it is helpful to distinguish those that will be created to assist SUEDEM in pursuing its research objectives, and those that will result as research products. In the context of instruments *allowing the research*, **the very first international SL think tank will be established** and will hopefully survive the research project, in order to continue advancing scholarship on SL. This framework will lead to a better understanding of DSL by involving researchers and stakeholders (NGOs, and actors from the legal, political and economic worlds) in all aspects of the research: defining the research problems, developing questions, gathering and analysing data, developing DSL strategies, preparing recommendations and guides, and so on.

With regard to instruments *resulting from the research*, **SUEDEM’s originality is to produce tools** that will be openly and readily accessible by the public (*see* WP3-3), so as to establish a favourable climate for SL. In this respect, SUEDEM will propose **normative frameworks** to guide regulators and SL actors. Likewise, in order to evaluate the effectiveness of SL and render its contribution to democracy more visible, SUEDEM will develop a set of general **performance indicators** for SL (to date, there are general indicators on the legal side [OSJI 2019], or multi-factor indicators, such as the Varieties of Democracy (V-Dem) indexes, which cover the democratic but not the legal aspect). Further, SUEDEM will propose **modification**

**to democratic indicators** (Genicot & Restrepo Amariles 2019) that do not, at this moment, incorporate the democratic role of SL. Generally speaking, the production of such tools is rare in legal research projects, which attests well to the innovative character of the envisaged research.

## SECTION B. METHODOLOGY

This section presents methods that are commonly used in several WPs, namely the methodological framework and investigation methods of action research. It then explains the methods specific to each of the three main working packages (WPs). Finally, the section discusses risk management, the research team, and dissemination of results.

### I. COMMON METHODOLOGIES OF THE STUDY

#### A. A common methodological approach: Action Research in Law (ARL)

##### ARL in short

For Greenwood and Levin, “Action research is social research carried out by a team that encompasses a professional action researcher and the members of an organisation, community, or network (“stakeholders”) who are seeking to improve the participants’ situation” (2006). It is a method of democratic and participative knowledge production, which links action and reflection, as well as theory and practice (Bradbury 2015). ARL permits researchers to pursue different objectives simultaneously, such as understanding practices, evaluation, resolving problems, producing knowledge or improving a given situation simultaneously. To this end, it should be motivated by real social needs, be conducted on the ground, harness all interested parties and remain flexible (adjust and evolve according to events). In this sense, ARL makes an actor of the researcher and a researcher of the actor (Lavoie & al. 1996).

**SUEDEM proposes to study SL using Action Research in Law (ARL) as its principal methodological approach** (Cane & Kritzer 2010; Hutchinson 2018; Bhat 2019). To date, ARL has not been widely used in the European legal field. Legal academics have seemed sensitive to the idea that action research is liable to proceed more from an ideological position than from a methodological approach (Wilkinson 1996). However, this approach, which has proven its worth since then, appears to be **particularly well adapted to researchers in law**, who may desire through their work to fill potential gaps between social reality and democratic ideals. Indeed, it has been shown that – in this perspective – **ARL has allowed better results to be achieved than other methods** (Bhat 2019). Instead of understanding social research questions through the sole lens of the norms in force, as is the case in traditional research, ARL offers the possibility of conceiving them more broadly, through an approach that is simultaneously *interdisciplinary*, *participatory*, and *empirical* (Greenwood & Levin 2006).

*Firstly*, applying ARL to the study of SL, as one author encourages scholars to do further (Bhat 2019), will lead us to proceed in an *interdisciplinary* manner, mobilising in particular the analytical frameworks of sociology of organisations, the political sociology of judicial power, organisational communication, and the economic analysis of legal disputes. *Secondly*, through ARL, one will proceed in a *participatory* manner by drawing on different types of knowledge (Bradbury 2015) produced by academics, civil society representatives, and those from the institutional, legal and economic worlds. In order to succeed in combining the knowledge and practices of these various actors, the project will establish a think tank as a central undertaking. The think tank will embody the “Knowledge Code” recommendations of ATD Quart Monde (NGO). Indeed, only a stable organisation, underpinned by a Code of Ethics, will be capable of offering spaces to reflect, express themselves and dialogue to actors in situations of inequality and, where they belong to minority groups, of vulnerability. For example, the think tank will ensure that no links of dependency exist between the actors, who will participate in the working groups. Moreover, educational and facilitator support teams will be established with the aim of re-creating situations of equal exchange. In other words, one will endeavour in this undertaking to provide a forum for expression to groups who have habitually been deprived of it. This will enable a mutual process of learning between the minorities and other actors in order to arrive at co-construction of knowledge. Moreover, in light of the aim of this project to strengthen European democracy, the proposed participatory dimension will enable the project to apply a



democratic approach to itself in the research methodology, contributing to the empowerment of minorities (Lamoureux & al. 1984; Houh & Kalsen 2014). *Thirdly*, applying ARL will allow SUEDEM to use social-scientific *empirical* methods deriving from observation and experience (*see below* WP1-3), and not simply from existing documentary sources.

## B. Common qualitative methods of investigation

In connection with the multi-method character of action research (Greenwood & Levin 2006), SUEDEM will combine various qualitative methods, employing *doctrinal*, *documentary* and *field-based* techniques.

**Doctrinal and documentary techniques** (employed in WP1-1, WP2 and WP3) will include the classical analysis of documentary content, and analysis of the discourse of institutional actors and of parties to the SL. More precisely, documentary analysis will consist in gathering data about SL through consulting existing scientific literature (journals, periodicals, scholarly works, conference proceedings, serial publications, primary sources, and so on.) In the same way, the analysis of discourse will imply extracting data from institutional documentary sources (information centre reports, public body reports, reports of commissions of enquiry, legal documents, internet sites, blogs, social networks, and so forth), and non-institutional documentary sources (including statements of intent, position papers, strategic guidance notes, lines of argument, press releases, interview transcripts, presentations, and white papers), these being “relatively under-utilized in empirical research even though they provide a rich source of data” (Webley 2010).

**Field-based data collection techniques** (featuring in WP1-2 & -3, WP2-1 and WP2-2) will be carried out through **individual and collective interactions**. The individual interactions will occur through semi-structured interviews with open-ended questions involving the relevant principal actors that will be described in the WP below, lasting between thirty to one hundred minutes, and conducted with the assistance of an interview guide. Moreover, in order to investigate the effect of SL on social representations in the general population, written questionnaires will be sent before and after the litigation undertaken by SUEDEM (*see below*). These questionnaires, composed of approximately fifteen open and closed questions, will be prepared with the help of social psychologists from SUEDEM’s scientific board. The questionnaire will be distributed in a standardised way, with the help of subcontractors.

With regard to collective interactions, they will be based on focussed group discussions (FGD), in particular for WP1-2, WP3-2 and WP3-3. They will be used to complement the semi-structured interviews with the aim of facilitating new elements of data to be generated by the exchange of views. However, it is hoped that the semi-structured interviews will create a forum to allow any socially unacceptable views unsaid in FGD to be preserved. For the composition of these FGD, one will pay attention to the social position of each participant so as to decrease potential relationships involving a sense of intimidation. Secondly, the method of Participatory Action Research (PAR) will be used to access information that has not yet been formalised as knowledge, in particular information linked to the carrying out of SL concerning the rights of intersex persons (WP1-3), or to co-construct instruments for the democratisation of SL (WP3) with the actors concerned. For instance, PAR will mean becoming involved directly in the lawsuits undertaken by actors. Such integration will permit SUEDEM to observe each detail of the process from the closest possible vantage point.

## II. SPECIFIC TECHNIQUES: WORKING PACKAGES

### WP1. Understanding strategic litigation

**WP1-1. ANALYSING THE LITERATURE ON STRATEGIC LITIGATION.** SUEDEM will carry out a complete review of existing literature related to SL in positive law, legal science, political science, sociology and anthropology, as well as in economic science and management science. The purpose will be to understand the complexities affecting SL with regard to its definition, conditions of emergence, and consequences. **Multiple databases in humanities will be used** (LexisNexis, Westlaw, Heinonline, JStor, Stradalex, Tandfonline, etc.) and keyword research will be conducted on the network of concepts linked to SL (*see state of the art above*). One will pay attention here to the legal systems in which the SL studied in the literature was pursued, in order to mitigate against an American tendency, in light of the over-representation of this litigation in the current literature. Finally, SUEDEM will organise an international conference on the conceptualisation of SL and to this end will launch a call for papers in addition to personal invitation of keynote speakers.

**WP1-2. PRODUCING CASE STUDIES.** Moreover, to better understand the phenomenon of SL, beyond literature, SUEDEM will interact individually and collectively (*see above for methods*) with key actors of past, ongoing or future potential SL (NGOs, attorneys, judges, MPs, members of key institutions such as Ombudsmen or ministers, journalists, lobbyists and so on), in order to understand the uses and consequences of SL (RO-1 and RO-2). **Five fields will be studied: the rights of deaf persons (F1), the rights of intersex persons (F2), the rights of indigenous peoples (F3), attempts to “pierce the corporate veil” (F4) and digital freedoms (F5).** Transgender rights will be a backup study area (F6), if necessary. These fields have been chosen following precise methodological criteria: they have been little or not at all studied to date; the PI’s interest, and academic and activist contacts in these fields; the different variables they display, which will enable SUEDEM to study a large spectrum of SL and to draw comparisons:

- *Comparison between F1 and F3, and then between F4 and F5* – this allows SUEDEM to study groups of different sizes (minority [F1-F3] / majority [F4-F5]) and therefore to investigate the origin of democratic deficit (few people could mean few means); within these two groups, there will also be variations in their distance from the law (large/small) and their ability to conduct SL (weak/strong).
- *Comparing F1, F2 and F3* – this will allow SUEDEM to study groups which struggle to access the law for differing, though perhaps overlapping, reasons: a unique language (F1), medical “invalidation” (F2), a separate legal culture (F3).

Each field study will be conducted in three countries with the assistance of experienced colleagues, who are part of the scientific board (see below); in this way, SUEDEM aims to facilitate identifying the influence of various parameters like the inclusiveness of the legal system (F1), the various forms or effects of SL (F2&F5), the structural or sectorial difference in the legal system (F3&F4). One will proceed somewhat differently with F3; in this case, comparison will be conducted on the basis of community as opposed to state, as the three communities concerned (the Sami people in Northern Europe, the Boto people in the West Himalayas, and the Salish peoples on the west coast of Canada) have territories that are not limited by state borders.

| Case study                      | Deaf persons                      | Intersex persons                      | Indigenous peoples   | Piercing the corporate veil               | Digital freedoms                          |
|---------------------------------|-----------------------------------|---------------------------------------|--|---|---|
| <b>Countries or communities</b> | 1. Finland<br>2. France<br>3. USA | 1. Austria<br>2. France<br>3. Germany | 1. Sami (Finland, Norway, and Sweden)<br>2. Salish (Canada & USA)<br>3. Boto (India) | 1. Germany<br>2. France<br>3. Netherlands | 1. Austria<br>2. France<br>3. Netherlands |

**WP1-3. CARRYING OUT AN ACTUAL STRATEGIC LAWSUIT.** A **major innovation** of SUEDEM is that, as well as a case study and literature analysis, **SUEDEM will conduct a series of SL in order to further its objectives.** For this, similar legal procedures will be initiated in four to six European countries, and SUEDEM will compare the procedural processing of these claims. The first aim of these lawsuits, from the PI’s side, will be to improve scientific knowledge on SL. Indeed, this string of lawsuits will enable SUEDEM to identify more surely than other *ex post facto* methodologies the legal and socio-cultural factors that can facilitate or, on the contrary, block the processing and success of the lawsuit. Relevant legal factors to examine include existing legal routes, conditions of justiciability, and the right of the public to access the law case, to record images from it, and so on. Relevant socio-cultural factors include the sensibility of the judges and public prosecutors to the causes brought, the degree of the society’s judicialisation, the existence of intermediaries in civil society and the capacity for the cases to galvanise public opinion. Moreover, carrying out strategic litigation directly will allow SUEDEM to be in an ideal situation of observation, opening the possibility for SUEDEM to document the external (society) and internal (within the NGO) effects of a strategic lawsuit in a **more precise and less biased manner** than field studies carried out *ex post*. Thus, SUEDEM will have direct access to exchanges between the groups and their lawyers or the opposite side, to the facts produced before the judge, and to the strategic choices made by the NGO in articulating their argumentation as well as in their communication around the lawsuit. All these datas will be recorded by the PI through observation diaries and audio records with the research partners’ informed consent.

In order to make the results comparable across different legal systems, **these SL will be brought in the same field**, the rights of intersex persons (F2), **and as much as possible on the same topic**, likely the

prohibition of torture and other inhuman and degrading treatment (European Conv. of Human Rights, art. 3) in line with the resolution on intersex human rights from the Council of Europe (PACE, res. 1952 [2013] & 2191 [2017]) and of the European Union (European Parliament, P8\_TA(2019)0128). The carrying out of these strategic lawsuits will occur in collaboration with the NGO OII Europe, which incorporates national intersex NGOs; in 2020, it established the European Intersex Strategic Litigation Network whose membership includes activists and lawyers, and also academics as external experts, like the PI. In order to start litigating early, the PI and OII Europe have already started reflecting on the potential national NGOs which could launch lawsuits. Four countries have been identified so far (Austria, France, Greece and Germany). The lawsuits will be filed by attorneys chosen according to guidelines co-developed with the NGOs and the PI, considering the attorneys' expertise and their ability to work with intersex persons.

## **WP2. Assessing the democratic potential of strategic litigation**

**WP2-1. CHARACTERISING THE WEAKNESS OF EXISTING DEMOCRATIC MECHANISMS.** From a position in advance of the proposed SL, SUEDEM will seek to identify, through the five field studies aforementioned, and from other available sources, if and how strategic lawsuits were preceded by an unfruitful democratic experience. By this one means the absence of response from political representatives who were hitherto appealed to, the absence of institutional consideration of their demands, the absence of consultation prior to elaboration of public policy, and the absence of academic and journalist intermediaries. This will be achieved through multiple documentary sources (parliamentary output, press releases, public statements, and so on) and semi-structured interviews and/or focus groups (see common methodology above) with the SL actors previously mentioned (WP1-2). Using these sources, SUEDEM will evaluate the conditions of access to institutions and decision-making processes for actors of future strategic lawsuits, noting in particular the extent to which their claims were considered by political parties. In doing this, SUEDEM will examine the extent to which the subjective experience of democratic misrepresentation features in actors' decisions to conduct strategic lawsuits.

**WP2-2. IDENTIFY EMPIRICALLY THE CONTRIBUTION OF STRATEGIC LITIGATION TO DEMOCRACY.** This time, situating itself after the SL under consideration, SUEDEM will highlight the democratic dimension of SL, that is, how these law cases allow the group having initiated them to see their interests and their rights recognised. *In order to examine the capacity of SL to fill (or not) the democratic deficit, the following tasks will be performed:*

- SUEDEM will systematically research, based on the existing literature for documented lawsuits, if there was a democratic rebalancing after this litigation.
- In the framework of the five fields examined (WP1-2), SUEDEM will carry out interviews and/or focus groups with: *1)* initiators of previous strategic lawsuits, to determine if the lawsuit constituted a new route of democratic participation for them; *2)* judges who had to decide on them, so as to determine if they intended to correct an institutional imbalance with their decision; *3)* journalists, who covered these suits, in order to examine whether they actively sought to fill the deficit of expression that these groups suffer from in the public space by offering them a media platform and *4)* officials who decided (or not) to change policy related to the question at stake in the SL. Besides these sources, SUEDEM will study both positive law texts and other official stances of public authorities that occurred during and in the aftermath of the strategic lawsuit, and that may reveal a wish to reduce a democratic deficit that existed prior to the lawsuit. If necessary, interviews and/or focus groups will also be conducted with the representatives of these public authorities, in order to determine whether the SL has filled the pre-existing democratic deficit.
- In the framework of the SL carried out relative to intersex persons, SUEDEM will measure the media impact of these proceedings by looking at the way in which the general population - in the countries where the proceedings will occur - represents being intersex. Social representations convey knowledge about a common meaning that is collectively created through communication between individuals and through the media (Moscovici 1976). As a system that functions to explain and interpret reality, social representations signal to people what it is to be intersex, for example: if it is a type of pathology emanating from a medical register, or a variation understood in a register of law and protection of persons. These social representations allow us to act, to communicate with others, and to make decisions in daily life: how to approach a person, what to call that person, how to consider this person (as ill or normal), and so on. The question arises therefore - by letting people

know about social issues at stake, do SL proceedings and their media coverage have an impact on the content of knowledge, its meaning, and forms of use in people's daily interactions? To attempt to answer, following exploratory interviews, a questionnaire will be created and sent to a sample of the population (1,000 to 2,000 persons in each relevant country). These will be distributed in two phases: prior to the SL, and then sufficiently after the proceedings to allow media coverage of the SL. This will provide an opportunity to discover possible transformations in representations of being intersex. Questionnaires will be developed with the aid of partner social psychologists (C. Fraïssé - Université de Bretagne Occidentale; M. Doumergue and S. Caillaud - Université Lyon 2) and distributed via the internet with the assistance of research laboratory partners, NGO partners and subcontractors.

Concerning use of the existing literature, SUEDEM will carry out, in particular, a review of the different criticisms advanced against SL (particularly Pistor 2019), evaluating their pertinence and impact on the democratic dimension that these lawsuits might have.

**WP2-3. INCLUDING STRATEGIC LITIGATION IN THE FIELD OF STUDIES ON DEMOCRACY.** In this last - mainly conceptual - task, based predominantly on the existing literature in law and political science, SUEDEM will endeavour to produce knowledge that shows how SL can be integrated into theoretical frameworks of democracy.

SUEDEM will start by **re-theorising the democratic role of the judge**; in this context, it will develop the figure of the *judge as mediator of social causes* brought before him. SUEDEM will attempt to demonstrate that the figure of the judge mediating social causes allows one to move beyond figures of the judge that are almost caricatural, when he was described on the one hand, as an “automaton” or a “mouth” merely pronouncing the words of the law (Montesquieu), or on the other hand, as a Government by itself (Lambert 1921). As has been shown, the **judge can assume the role of a defender of democracy** and become a “partner” in the work of law creation, undertaken in particular by litigant parties (Barak 2002, 2006). In this conception, SL can be seen as a framework permitting the judge to deliver legally coherent decisions founded on morally just principles – a system called “integrity” by Dworkin (1986). Indeed, SL could be said to embody one of the “post-modern figures of the judge”, a notion formulated by certain authors (Raynaud 2020). SUEDEM will attempt to show that the jurisdiction before which the strategic lawsuit is brought possesses the characteristics of a *deliberative forum*. Moreover, through studying the notion of representation (Pitkin 1967; Ewing 2000; Mance 2021), the research will explore **the legitimacy of the judge** to consider and reach decisions in strategic lawsuits. The research will elaborate on the idea that, like the legislator, the judge's democratic legitimacy is subject to constitutional and international norms. Finally, SUEDEM will explore if and how the judge has the capacity in SL to move beyond a situation of merely interpreting the law or guaranteeing the principle of its unity.

Once it will have been established that it is possible to conceive the strategic lawsuit and its judge as an instrument of democracy, it will be necessary to see how this instrument can be expressed in a **coherent fashion with other existing mechanisms** (for example, elections, referenda, consultation processes, and petitions) with regard to the complementarity of their functions. This comparison will allow a clearer perception of the differences and common points that exist between the different mechanisms. For example, the movement closer together of judicial procedure and legislative procedure will enable onlookers to better understand how each of these processes manages - in its own way - to formulate and express the will of a social group. To this end, one can ask in each case, for example: who is expressing themselves? According to which rules? With what legitimacy and degree of representativity? What weight is given to lines of argument in comparison with the balance of power?

This work will be conducted by a doctoral candidate co-supervised by the PI and a political science specialist (T. Theuns, Leyden University). Colleagues will also participate on the occasion of an international conference on the figure of the *judge as mediator of social causes* and on conceptualising SL as a democratic instrument, among others. For this international conference, SUEDEM will launch a call for papers in addition to the personal invitation of keynote speakers whose works will have been identified.

### **WP3. Creating tools for democratising strategic litigation**

**WP3-1. DEVELOPING PERFORMANCE INDICATORS TO MEASURE THE SCOPE OF STRATEGIC LITIGATION.** In the framework of a “Jurimetrics” approach, *i.e.* a scientific investigation of legal problems, on the basis of quantitative analysis (Loevinger 1949), SUEDEM will elaborate and publicise a table of performance

**indicators that will measure the effectiveness and scope of SL**, it being conceived as a channel for expressing democratic demands. The idea of developing indicators to measure the performance of law in the context of a technocratic aim or of deregulation has been questioned (Supiot 2015; Kurunmaki & al. 2019). Other work, however, with the objective of strengthening the efficiency of justice and the state of law, has shown both the relevance and possibility of such indicators (Genicot & Restrepo Amariles 2019 ; ECEJ 2022), used since the 1980s in an attempt to improve public governance (Cappellina 2020).

**These indicators will be developed from the data collected in the previous WP.** To create them, one will draw from indicators previously developed in the framework of a global study (OSJI 2019) and several sectorial studies on SL (OSJI 2017: equal access to education; Gathii 2020: African international courts). In addition, SUEDEM will aim to utilise “legal cueing”, which is an indicator derived from that of “elite cueing”; it will make it possible to measure the influence of landmark decisions having a strong normative impact on public opinion (Kovács & al. 2022).

The indicators will use three criteria to evaluate the impact of SL:

- Concrete results obtained during or at the end of the proceeding and which may take different forms (compensation, suspension of a legal decision, or resumption of political discussions, for example), and concern parties to the lawsuit and/or, more broadly, members of the minorities represented;
- Changes to legal norms;
- Social consequences that result from the lawsuit, particularly emphasising changes in media attitude and representation, or changes in interactions between members of the social movements and the different parties to the lawsuit.

**WP3-2. DEVELOPING EUROPEAN REGULATION ON STRATEGIC LITIGATION.** SUEDEM has the ambition of **drafting a model-law on SL** dealing, for instance, with rules on class action, financing of litigation, dissenting opinion, motion to dismiss, *locus standi* and all types of rules that have an impact on access of disadvantaged groups to the courtroom. For this, SUEDEM intends particularly to draw on the litigation practice and procedure of Public Interest Litigation (PIL), as it exists in the United States, South Africa, Malawi, Nigeria and especially in India where the Indian Supreme Court has developed a body of relevant case law that allows citizens to have their needs heard, as well as participating in the choice of social order and political decisions that affect them directly (Bakshi 2020). The comparative study of foreign laws will be conducted according to a so-called functionalist approach (Zweigert & Kötz 1998; Samuel 2014; Rambaud 2017). That is, the legal mechanisms studied will be analysed according to the function that they fulfil within their judicial system. This approach is founded on the hypothesis that national judicial systems use common legal solutions when they are confronted with the same problems. Although this approach is not free from criticism (Legrand 2003), it is likely to prove invaluable in comparing the responses of national systems of law when confronted with the issue of SL.

Through the think tank and the PI’s network in European institutions (see scientific board below), **SUEDEM will share its model-law with European institutions**, in the hope that it leads to a resolution by the Parliamentary Assembly of the Council of Europe, as occurred previously concerning the PI’s work on intersex human rights, or an EU directive based on EU shared competence in the area of justice (TFEU, art. 4). For the latter, SUEDEM will benefit from the growing interest of EU institutions in legal mechanisms related to SL, such as the establishment of a harmonised European class action mechanism for consumers (directive (EU) 2020/1828) or European Commission normative projects aiming to combat SLAPPs (COM(2022)177 final, 27 April 2022).

**WP3-3. DEVELOPING TOOLS FOR THE USE OF THOSE BRINGING STRATEGIC LITIGATION.** Within the framework of the think tank and drawing on ARL methodology, SUEDEM will provide legal support to those bringing SL by co-developing with them **a guide to SL that is adapted for litigation in a European context**, using both domestic and regional courts. For this, SUEDEM will research the guides that certain NGOs have already started to produce (see, for example, CRIN 2008; Equinet 2017; ALT Advisory 2022), without necessarily taking into account European specificities. At the same time as emphasising aspects of legal technique that have sometimes been neglected, SUEDEM will use accessible language and produce versions in different languages. The guides will then be disseminated widely through the SUEDEM-established internet site and, with the aid of the think tank, within different NGO and institutions.

## III. OTHER ASPECTS

## A. Risk management

| Description of main risks   | Probability                    | Impact                         | Mitigating measures  |
|---|--------------------------------|--------------------------------|--|
| <p><b>Conceptual risk:</b></p> <p>1. Absence of real benefits from SL for democracy and therefore futility of WP3.</p> <p>2. Impossibility of delineating the SL that promotes democracy and that which cannot.</p> | <p>1. Low</p> <p>2. Medium</p> | <p>1. High</p> <p>2. High</p>  | <p>1. If it appears that the impact of SL on democracy is very limited, it will at least be identified where it did work and what can be done to improve SL</p> <p>2. Use of comparative law to identify the criteria already implemented in other legal orders.</p>   |
| <p><b>Human risks:</b></p> <p>3. Difficulties of forming a relationship with relevant actors.</p> <p>4. The risks posed by SL to the living conditions of the affected minorities.</p>                              | <p>3. High</p> <p>4. Low</p>   | <p>3. Low</p> <p>4. Low</p>    | <p>3. One will approach contact with judges through first addressing the judicial hierarchy; for French judges, one will communicate with the <i>Judge &amp; University</i> network, of which the PI is a member. NGOs will be contacted through a member of their community or a person who has worked with them regularly. One will mention the assistance provided by the participatory research service of the PI's university (Lyon 2).</p> <p>4. SL will be favoured that does not place individuals in the front line, that is started by strong NGOs, and where there seems to be no risk of backlash.</p> |
| <p><b>Methodological risk:</b></p> <p>5. Drift towards activism - and no longer science.</p> <p>6. Difficulty for the PI to apply methodology beyond the legal discipline</p>                                       | <p>5. Low</p> <p>6. Medium</p> | <p>5. Low</p> <p>6. Medium</p> | <p>5. This risk will be minimised by the use of ARL methodology and by the fact that the project uses many other sources to suggest an analytical and normative framework for SL.</p> <p>6. A scientific board will help the PI regarding methodology.</p>   |
| <p><b>Time-related risk:</b></p> <p>7. The execution time of the project compared with the time taken for judicial proceedings to conclude.</p>   | <p>7. Low</p>                  | <p>7. Low</p>                  | <p>7. The PI has already started to work with NGOs to prepare lawsuits and to initiate them as soon as possible. When the type of lawsuit is chosen, attention will also be paid to its duration. Lastly, even if the lawsuit is not over by the project's end, many relevant materials will have been collected.</p>  |

**B. Management of work conditions**

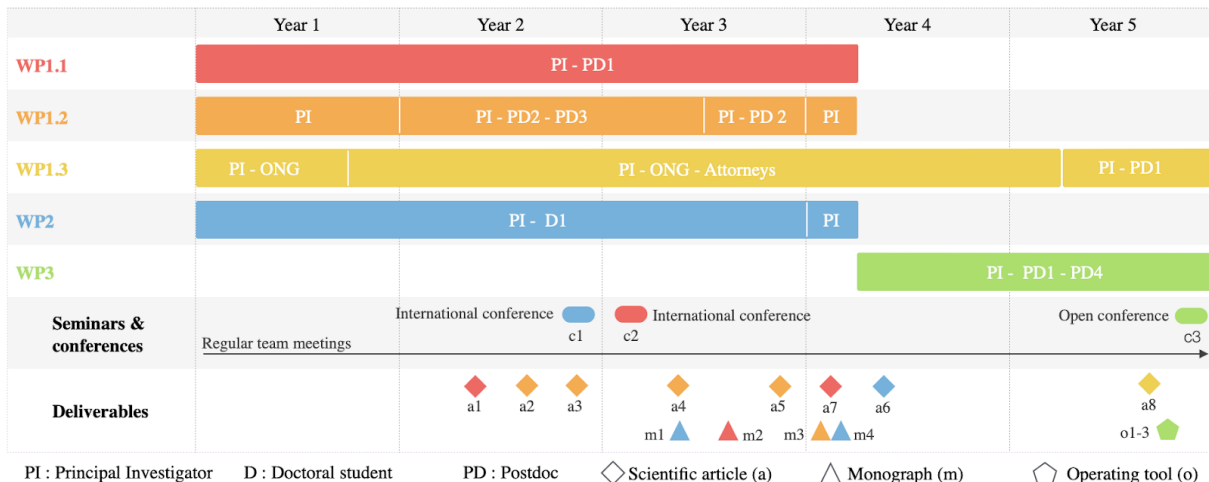
**ERC-FUNDED TEAM.** Besides the PI (at 70%), the **gender-diverse team** will comprise: **a)** post-doc (PD1) in legal sociology (at 50%) – potentially J. Kolbe-Andre who has worked on lobbying and assisted the PI in drafting the present ERC proposal – who will be the PI’s assistant and work on the theoretical framework for SL (WP1-1) and on drafting the model-law for European institutions and practical guide for NGOs (WP3); **b)** a doctoral student (D1) in law and political science, co-supervised with Tom Theuns (Leiden University, Institute of Political Science), to work on WP2; **c)** 2 post-doctoral researchers (PD2&PD3) to work on field studies with the PI (WP1-2), one with a sociological background and one with a legal background – potentially S. Vennetier & K.K. Pham who have worked with deaf people; **d)** a post-doc (PD4) in economic analysis of law, co-supervised with Prof. B. Deffains (Université Paris-Panthéon-Assas) to draft the DSL effectiveness indicators; **e)** legal service providers (attorneys) and OII Europe for their work on WP1-3.

**UNIVERSITY-FUNDED TEAM.** 1 research associate; 1 admin. assistant; participatory research service (Lyon 2).

**SCIENTIFIC BOARD.** Due to their knowledge of the various fields, the scientific board will include: A. Benvenuto (EHESS - F1), F. Vern (Univ. Glasgow - F3), Prof. S. Deboos (Univ Lyon 2 - F3), J. Chacornac (Univ. Paris-Panthéon-Assas - F4), G. Baars (City, Univ. of London - F4), S. Vergnolle (CNAM - F5) and P. Dunne (Bristol Univ. - F6). Due to their methodological expertise, in addition to Prof. B. Deffains and T. Theuns (mentioned above), the scientific board will include S. Blanchard (Univ. Lyon 2), and C. Dourlens (Univ. Saint Étienne) both in sociology, and M. Doumergue, S. Caillaud (Univ. Lyon 2) and C. Fraisse (Univ. Bretagne Occidentale) each specialist in social psychology. It will also include E. Tsetsekou and E. Giakoumopoulou, heads of division on Sexual Orientation and Gender Identity (SOGI), and Roma rights at the Council of Europe, and Prof. G. Marti (Univ. Lyon 3) specialising in legal issues related to democracy in Europe. All have agreed.

**C. Deliverables**

Besides operational tools (model-law [o<sub>1</sub>], effectiveness indicators [o<sub>2</sub>] and practical guide [o<sub>3</sub>]), to be presented in a final open conference (c<sub>3</sub>), at least 8 articles will be produced; on a theoretical framework for SL (a<sub>1</sub>, a<sub>7</sub>), on each field study apart from F2 (a<sub>2-5</sub>), on the democratic potential of SL in light of field studies and literature (a<sub>6</sub>), on the SL conducted in F2 and the methodological and epistemological issues at stake (a<sub>8</sub>). Four monographs will be produced, namely, the proceedings of international conferences on the link between SL and democracy (c<sub>1</sub> and m<sub>1</sub>) and on the concept of SL (c<sub>2</sub> and m<sub>2</sub>), a book about SL actors in the field studies examined (m<sub>3</sub>) and a thesis on the democratic aim of SL (m<sub>4</sub>). The following journals will be targeted: *Droit et société / RIEJ / Politix* (a<sub>1</sub>), *Oñati Socio-Legal Series / Law & Society Rev.* (a<sub>7</sub>), *Political Leg. Anthropol. Rev. / Anthropologie et Sociétés* (a<sub>2</sub>), *Disability & Society / Disabil Stud Q.* (a<sub>3</sub>), *Int. J. of Law and Management / RTDcom* (a<sub>4</sub>), *TechReg / ACM SICGAS Computers and Society* (a<sub>5</sub>), *J. Eur. Public Policy / Rev. Trim. Dr. Eur.* (a<sub>6</sub>), *J. Empir. Leg. Stud. / Int. J. Law Context* (a<sub>8</sub>). For the monographs, the following publishers will be targeted: Bruylant, Dalloz, Hart. All work will be openly and readily accessible on the think tank's website and the PI’s webpage on HAL.



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