

COUNTERING THE USE OF SLAPPS – MODULE 1

MODULE 1

Introduction to Strategic Lawsuits Against Public Participation

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

- ▶ SLAPPs and human rights
- ▶ Timeline of events leading to European initiatives to counter SLAPPs
- ▶ SLAPPs as a problem across Europe
- ▶ SLAPPs at national level

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HOW FAMILIAR ARE YOU WITH STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION?

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QUESTIONS TO GUIDE THE DISCUSSIONS

- ▶ Are you familiar with SLAPPs?
- ▶ Have you heard of any national or international SLAPP cases? If yes, which case(s)?
- ▶ How would you define SLAPPs, and what elements are relevant to recognizing them?
- ▶ Have you experienced or been involved in any SLAPP case?
- ▶ Do you know of any available support for SLAPP victims or targets?

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SLAPPS AND HUMAN RIGHTS

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DEFINITION OF SLAPPS

Strategic Lawsuits Against Public Participation (“SLAPPs”) are understood as legal actions that are threatened, initiated, or pursued as means of harassing or intimidating their targets, and that seek to prevent, inhibit, restrict, or penalise free expression on matters of public interest and the exercise of rights associated with public participation. This definition is provided in Europe through the Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs).

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ACCOMPANIED BY AGGRESSIVE REPUTATION MANAGEMENT PRACTICES

Apart from legal actions, SLAPPS can often be accompanied by aggressive reputation management practices which seek to discredit the defendant or reshape the claimant's reputation to undermine the defendant's argument. Unlike legal practitioners, reputation management firms are hardly regulated, making it much harder to challenge or counter their activities via official channels. Those affected by SLAPPS may find that the accompanying attacks on their character or professional integrity undermine their ability to pursue further investigations in future.

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SLAPPS FAR-REACHING CONSEQUENCES

SLAPPS impede individual rights to expression whilst undermining the free exchange of ideas and information essential in a pluralistic society. SLAPPS can lead to self-censorship and a ‘chilling effect’ on free speech, as journalists or other affected parties withdraw investigations and publications fearing legal and financial consequences they cannot afford to bear. Media outlets and other actors may move away from lines of investigation expected to attract legal risk through intimidatory actions that are core to SLAPPS, such that the public loses access to information.

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CHILLING EFFECT

Apart from direct harm caused to affected parties, SLAPPs can have important consequences in terms of shutting down debate on matters of public interest. Where SLAPPs are not challenged and jurisdictions are perceived to be lenient towards this type of threat, this leads to a ‘**chilling effect**’ where media and public interest actors refrain from critiques or investigations, thus impoverishing public discourse. Scrutiny, transparency and accountability necessary for robust debate are jeopardised by the silencing of voices that challenge powerful actors that employ SLAPP tactics.

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DIFFERENCE BETWEEN SLAPPS AND OTHER FORMS OF HUMAN RIGHTS INFRINGEMENTS

“SLAPPs differ from genuine defamation, privacy, copyright, or other legal claims, which arise out of the need to genuinely protect rights. SLAPPs aim at obstructing public participation rather than protecting rights. By targeting journalists, human rights defenders, and other civil society actors who contribute to public interest matters, SLAPPs undermine a wide range of their rights, including their rights to freedom of expression, assembly, association, and public participation.”

UN Office of the High Commissioner, the impact of SLAPPs on human rights & how to respond

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SLAPPS IMPACT THE ENJOYMENT OF OTHER RIGHTS

SLAPPS do not solely challenge the right to freedom of expression but can also affect the enjoyment of a number of other essential rights protected by the Convention, including the right of access to a court (Article 6, right to a fair trial); the right to reputation (Article 8, right to respect for private and family life); and the right to an effective remedy (Article 13). Assessing whether a violation of these rights has occurred requires a careful balancing exercise between the competing interests at stake.

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USE OF TERM SLAPPS IN EUROPE

The term 'SLAPP' was first popularised in the United States in the 1980s, but its origins can be traced back to earlier legal discussions and cases. The concept behind SLAPP lawsuits had been recognised by legal scholars and activists for some time before the term was coined.

The term SLAPPS in Europe emerged between 2017 and 2018 and is closely linked with the assassination of Maltese investigative journalist Daphne Caruana Galizia, who was brutally killed by a car bomb. At the time of her assassination, she had 47 active defamation lawsuits against her.

SLAPP: the background of Strategic Lawsuits Against Public Participation, <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>

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TIMELINE OF EVENTS LEADING TO EUROPEAN INITIATIVES TO COUNTER SLAPPS

- ▶ **16 October 2017** – Maltese investigative journalist Daphne Caruana Galizia is assassinated.
- ▶ **10 April 2018** – Member of Parliament David Casa calls on the European Commission to come forward with Anti-SLAPP legislation.
- ▶ **13 June 2018** – 12 November 2019 – At least three events are organised by civil society and academia in Brussels and Aberdeen to discuss SLAPPS, including the preparation of a European Model Bill.

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- ▶ **24 February 2020** – Coalition Against SLAPPs in Europe (CASE) – at that time a small group of people – gathered in Amsterdam to write its strategy on how to combat SLAPPs in Europe. CASE became the leading civil society coalition in Europe against SLAPPs.
- ▶ **27 October 2020** – Council of Europe Human Rights Commissioner Dunja Mijatović called for action against SLAPPs.
- ▶ **1 December 2020** – CASE submitted to the European Commission an EU Anti-SLAPP model law.
- ▶ **3 December 2020** – The European Commission established an expert group against SLAPPs consisting of 35 experts.
- ▶ **26 March 2021** – CASE called on the Council of Europe to adopt a stand-alone recommendation on SLAPPs.

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- ▶ **11 November 2021** – European Parliament adopted an Own Initiative Report (INI) on strengthening democracy, media freedom, and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs, and civil society.
- ▶ **1 January 2022** – Council of Europe established the Committee of Experts on Strategic Lawsuits Against Public Participation (MSI-SLP).
- ▶ **15 March 2022** – The European Court of Human Rights published a judgment where it mentioned SLAPPs for the first time, referring to Dunja Mijatović's call for action blog. Case OOO Memo v. Russia, Application no. 2840/10, 15 March 2022.
- ▶ **27 April 2022** – European Commission presented the Recommendation (EU) 2022/758 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

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- ▶ **5 April 2024** – The Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2024)2 on countering the use of Strategic Lawsuits Against Public Participation (SLAPPs).
- ▶ **11 April 2024** – The European Parliament adopted Directive (EU) 2024/1069 of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

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SLAPPS AS A PROBLEM ACROSS EUROPE

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SLAPPS AS A PROBLEM ACROSS EUROPE

London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19

London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19, <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-publication-April-2022.pdf>

Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington

Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington

[https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOI_STU\(2023\)756468_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOI_STU(2023)756468_EN.pdf)



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SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation

SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation, <https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>

Following CASE first report in 2022, SLAPP lawsuits continued to be filed throughout the year, while more lawsuits from previous years were made known to CASE and inputted into the CASE database. From the 570 cases that were analysed in 2022, CASE's database increased to over 820 cases in 2023 – 161 of which were lawsuits filed in 2022, a significant jump compared to the 135 filed in 2021.

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