

# COUNTERING THE USE OF SLAPPS – MODULE 5

## MODULE 5 SLAPP Indicators

*(Training material to be shared with trainers only)*

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPs – MODULE 5

## PRESENTATION OUTLINE

Reminder: the two main international instruments

CoE Recommendation: Definitional criteria of SLAPPs and

indicators EU Directive: Definitions

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPS – MODULE 5

## REMINDER: THE TWO MAIN INTERNATIONAL INSTRUMENTS

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# MAIN INTERNATIONAL LEGAL INSTRUMENTS

As discussed in Module 4:

- ▶ Council of Europe Recommendation  
CM/Rec(2024)2 – applies to administrative,  
civil and criminal matters
- ▶ European Union Directive 2024/1069  
– applies only to civil matters with cross-border  
implications

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPS – MODULE 5

## COE RECOMMENDATION: DEFINITIONAL CRITERIA OF SLAPPS AND INDICATORS

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# RECOMMENDATION CM/REC(2024)2

Chapter I of the Recommendation discusses the definitional criteria of SLAPPs:

- ▶ Targeting public participation (paragraph 5)
- ▶ Any cause of legal action (paragraph 6)
- ▶ Any stage of legal action (paragraph 7)
- ▶ SLAPP indicators (paragraphs 8 and 9)
- ▶ Specific forms/types of SLAPPs (paragraph 10)

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

COUNTERING THE USE OF  
SLAPPs – MODULE 5

**RECOMMENDATION**  
**CM/REC(2024)2:**  
**PARAGRAPH 5**

**Targeting public participation:**

“The legal action seeks to misuse or abuse the legal process to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation.”

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPs – MODULE 5

# RECOMMENDATION CM/REC(2024)2: PARAGRAPH 6

### Any cause of legal action:

- ▶ all types of statutory or common law to prevent, inhibit, restrict or penalise contributions to public debate, including, but not limited to:
  - defamation, insult, invasion of privacy, conspiracy, breach of intellectual property rights, economic interference or infliction of emotional harm.
- ▶ includes misdemeanours, administrative measures or criminal charges
- ▶ definition also extends to “legal intimidation tactics”: interlocutory or interim measures, aggressive subpoenas or simple threats designed to intimidate the other party into backing down.

Co-funded  
by the European Union



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# RECOMMENDATION CM/REC(2024)2: PARAGRAPH 7

### **Any stage of the legal action:**

“All stages of legal action are relevant, including an initial threat of legal action, which is in itself capable of having a chilling effect on public participation, as well as enforcement proceedings.”

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# RECOMMENDATION CM/REC(2024)2: PARAGRAPH 8

SLAPP indicators include, but are not limited to, the following:

- a. the claimant tries to exploit an imbalance of power, such as their financial advantage or political or societal influence, to put pressure on the defendant;
- b. the arguments put forward by the claimant are partially or fully unfounded;
- c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;
- d. the claims amount to abuse of laws or procedures;

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

### RECOMMENDATION

### CM/REC(2024)2: PARAGRAPH 8

*(continued)*

- e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;
- f. the legal the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- g. action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake;

Co-funded  
by the European Union



Co-funded and implemented  
by the Council of Europe

COUNTERING THE USE OF  
SLAPPS – MODULE 5

**RECOMMENDATION**

**CM/REC(2024)2:  
PARAGRAPH 8**

*(continued)*

- h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;
- i. the claimant or associated parties engage in multiple and co-ordinated or cross- border legal actions on the basis of the same set of facts or in relation to similar matters;
- j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPS – MODULE 5

## RECOMMENDATION CM/REC(2024)2: PARAGRAPH 10

Specific forms/types of SLAPPs:

### **i. cross-border SLAPPs**

These involve additional layers of complexity, costs and stress. Member States should:

- ▶ take of the damages appropriate and effective measures to limit forum shopping that is unfavourable to public participation or vexatious to the defendant, including as set out in the Declaration of the Committee of Ministers on “Libel Tourism”.
- ▶ provide effective protection against third-country judgments
- ▶ ensure that a person targeted with a cross-border SLAPP case in a non-CoE member state can seek compensation and the costs incurred in defending the case



## COUNTERING THE USE OF SLAPPS – MODULE 5

# RECOMMENDATION CM/REC(2024)2: PARAGRAPH 10

*Specific forms/types of SLAPPs (continued):*

### ii. multiple or co-ordinated SLAPPs

- ▶ Courts and other authorities should take due account of and take appropriate and effective measures to eliminate or at least reduce the aggravating impact of multiple or co-ordinated SLAPPs against defendants.
- ▶ Member States should introduce rules to prevent the claimant from initiating additional proceedings related to the same matter, as well as rules to enable judicial or other authorities to effectively manage co-ordinated proceedings that are closely related, in order to avoid the exposure of the defendant to multiple proceedings.

Co-funded by the European Union



Co-funded by the Council of Europe

## COUNTERING THE USE OF SLAPPs – MODULE 5

# RECOMMENDATION CM/REC(2024)2: PARAGRAPH 10

*Specific forms/types of SLAPPs (continued):*

### **iii. SLAPPs targeting anonymous public participation**

Some SLAPPs seek to force the disclosure of the identity of the defendant who spoke out anonymously or under a pseudonym, often due to fears for their safety if they were to speak out under their real names.

Member States should put in place appropriate and effective safeguards to protect the identity of anonymous public participants and of confidential sources, in line with the Convention, the Modernised Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223), and Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers.

Co-funded  
by the European Union



Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPS – MODULE 5

## EU DIRECTIVE: DEFINITIONS

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPs – MODULE 5

# EU DIRECTIVE 2024/1069

Applies in matters of a civil or commercial nature with cross-border implications brought in civil proceedings.

Article 3: Protects “persons engaged in public participation” against

- ▶ manifestly unfounded claims
- ▶ abusive court proceedings

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# EU DIRECTIVE 2024/1069 (CONTINUED)

### Key definitions (Article 4)

‘public participation’: the making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# EU DIRECTIVE 2024/1069 (CONTINUED)

### Key definitions (Article 4) (continued)

‘matter of public interest’ means any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as:

- ▶ fundamental rights, public health, safety, the environment or the climate;
- ▶ activities of a natural or legal person that is a public figure in the public or private sector;
- ▶ matters under consideration by a legislative, executive, or judicial body, or any other official proceedings;
- ▶ allegations of corruption, fraud, or of any other criminal offence, or of administrative offences in relation to such matters;
- ▶ activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including the protection of democratic processes against undue interference, in particular by fighting disinformation

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPs – MODULE 5

# EU DIRECTIVE 2024/1069 (CONTINUED)

### Key definitions (Article 4) (continued)

‘abusive court proceedings against public participation’ mean court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims.

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# EU DIRECTIVE 2024/1069 (CONTINUED)

### Key definitions (Article 4) (continued)

Indicators of ‘abusive court proceedings against public participation’:

- a. exploiting an imbalance of power
- b. pursuing unfounded claims
- c. the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;
- d. the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- e. intimidation, harassment or threats on the part of the claimant or the claimant’s representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;
- f. the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

EUROPEAN UNION

CONSEIL DE L'EUROPE

## COUNTERING THE USE OF SLAPPs – MODULE 5

# EU DIRECTIVE 2024/1069 (CONTINUED)

### **Unfounded claims** (Preamble, paragraph 29)

Claims made in abusive court proceedings against public participation can be either fully or partially unfounded.

This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed.

On the other hand, if the claimant in court proceedings pursues claims that are founded, such proceedings should not be regarded as abusive.

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# EU DIRECTIVE 2024/1069 (CONTINUED)

### **Exclusions** (Preamble, paragraph 7)

The court should not apply the relevant safeguards for example where the public participation is not in good faith such as in cases where, through the public participation, the defendant disseminated disinformation or fabricated allegations for the purpose of damaging the claimant's reputation.

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPs – MODULE 5

## EU DIRECTIVE AND COE RECOMMENDATION: OVERLAP

Council of Europe Recommendation	EU Directive
▶ claimant tries to exploit an imbalance of power	▶ exploiting an imbalance of power
▶ claimant arguments are partially or fully unfounded	▶ pursuing unfounded claim
▶ remedies requested by the claimant are disproportionate, excessive or unreasonable	▶ disproportionate, excessive, unreasonable nature of claim, including the excessive dispute value
▶ multiple and co-ordinated or cross-border legal actions on the basis of same facts/in relation to similar matters	▶ multiple proceedings by the claimant/associated parties concerning similar matters
▶ claimant engages in legal intimidation, harassment or threats, or has a history of doing so	▶ intimidation, harassment or threats, during or before proceedings as well as in similar cases
▶ tactics designed to drive up costs, such as delaying proceedings, selecting a forum that is unfavourable or vexatious, provoking an onerous workload, pursuing appeals with little or no prospect of success	▶ bad faith in procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping, discontinuation of cases at a late stage of the proceedings
▶ claim amounts to abuse of laws or procedures	▶ applies to “abusive court proceedings”

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPs – MODULE 5

# EU DIRECTIVE AND COE RECOMMENDATION: DIFFERENCES

Council of Europe Recommendation	EU Directive
<ul style="list-style-type: none"><li>▶ deliberately targets individuals rather than the organisations responsible for the challenged action</li></ul>	
<ul style="list-style-type: none"><li>▶ legal action is accompanied by a public relations offensive</li></ul>	
<ul style="list-style-type: none"><li>▶ claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim</li></ul>	

The list of indicators in the EU Directive is non-exhaustive ( it states “[i]ndications of such a purpose include for example...”).

Therefore indicators listed in the CoE Recommendation but not in the Directive may still be used to help interpret the Directive.

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPS – MODULE 5

## MODULE 5

### The European Court and SLAPPS: the case of OOO Memo v. Russia

*(Training material to be shared with trainers only)*

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPs – MODULE 5

## OOO MEMO PUBLISHES AWARD-WINNING ONLINE MEDIA “CAUCASIAN KNOT” WHICH REPORTS ON HUMAN RIGHTS AND POLITICS



### Awards [\[ edit \]](#)

In 2007, Caucasian Knot was awarded the [Free Press of Eastern Europe award](#), which is given out jointly by the German charity [ZEIT-Stiftung](#) and the Norwegian free speech organisation [Fritt Ord](#).<sup>[22]</sup>

In 2009, Caucasian Knot was awarded with the Prize of the Union of Journalists of Russia for defending the interests of the professional community.<sup>[23]</sup>

The editor received the Dutch [Geuzenpenning](#) award in 2012 for his work with Memorial and Caucasian Knot.<sup>[1]</sup>



новости

версия для распечатки 

[На главную Kavkaz.MEMO.RU >>](#)

1/7/2008

ЮФО, Волгоградская область / Экономика и финансы, Органы власти

### Серенко: мэрия Волгограда и администрация области поссорились из-за автобусного завода

Причиной финансовой конфронтации, возникшей между мэрией Волгограда и администрацией Волгоградской области, могли стать интересы чиновников администрации области и руководства автобусного завода "Волжанин".

К такому выводу пришел в беседе с корреспондентом "Кавказского узла" Андрей Серенко, эксперт Фонда развития информационной политики (ФРИП).

"На мой взгляд, существует две основные причины финансового конфликта, возникшего вокруг приказа о приостановлении выделения Волгограду субсидий из областного бюджета. Речь, как вы помните, идет о сумме в 5 294 000 рублей, - пояснил Андрей Серенко. — Первая причина, несомненно, политическая — [выборы в областную думу](#). А вот вторая причина мало кому известна. Она носит сугубо экономический характер".

Андрей Серенко заявил, что многие чиновники администрации Волгоградской области являются "профессиональными" автобусными...

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# OOO MEMO V. RUSSIA: FACTS

Online media Caucasian Knot, published an article discussing the suspension of a subsidy from Volgograd Region to Volgograd City. The article claimed the conflict was partly political, following the regional elections, and also linked to a lost bus factory tender.

Volgograd's Regional Authority sued, alleging that the following statements are defamatory:

- “[T]here are two main reasons for the financial conflict that stemmed from the order of the Administration of the Volgograd Region to suspend the allocation of subsidies from the regional budget to the City of Volgograd. ... Undoubtedly, the first reason is a political one. It is linked to the [results] of the regional elections.”

- “Recently the Mayor’s Office held an open call for tenders to buy buses. The Administration of the Volgograd Region lobbied on behalf of the Volzhanin factory to win the call for tenders, but it was won by another company.”

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

### OOO MEMO V. RUSSIA: FACTS (CONTINUED)

- ▶ “The officials of the Administration came down on the Mayor’s Office, saying, ‘How come you did not support the local producer?’ It appears to me that the refusal of the Mayor’s Office to do business with the Volzhanin factory was one of the main reasons for the regional officials’ anger.”
- ▶ “[T]he suspension of the allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tenders.”
- ▶ “The officials of the Administration came down on the Mayor’s Office, saying, ‘How come you did not support the local producer?’ It appears to me that the refusal of the Mayor’s Office to do business with the Volzhanin factory was one of the main reasons for the regional officials’ anger.”

Co-funded  
by the European Union



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# OOO MEMO V. RUSSIA: FACTS (CONTINUED)

- ▶ “[T]he suspension of the allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tenders.”

The Caucasian Knot argued that the excerpts had been value judgments and that the claimant – a public body – should, in any case, expect a higher degree of criticism than a private individual. The first-instance court disagreed, holding that the statements were false and tarnished the Volgograd Region Authority’s reputation, and ordering that a retraction to that effect be published, with the operative part of the judgment being published on the company’s website. That judgment and the reasoning were upheld by the Moscow City Court on appeal.

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPs – MODULE 5

# OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT

Relevant legal framework: includes Human Rights Comment by the Council of Europe Human Rights Commissioner

“SLAPPs: lawsuits with an intimidating effect

The Annual Report of the Council of Europe Platform to promote the protection of journalism and safety of journalists highlights groundless legal actions by powerful individuals or companies that seek to intimidate journalists into abandoning their investigations. In some cases, the threat of bringing such a suit, including through letters sent by powerful law firms, was enough to bring about the desired effect of halting journalistic investigation and reporting.

This problem goes beyond the press. Public watchdogs in general are affected. Activists, NGOs, academics, human rights defenders, indeed all those who speak out in the public interest and hold the powerful to account might be targeted. SLAPPs are typically disguised as civil or criminal claims such as defamation or libel and have several common features.”

Co-funded  
by the European Union



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

Council of Europe Human Rights Commissioner Human Rights Comment  
(continued)

“First, they are purely vexatious in nature. The aim is not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism. Litigants are usually more interested in the litigation process itself than the outcome of the case. The aim of distracting or intimidating is often achieved by rendering the legal proceedings expensive and time-consuming. Demands for damages are often exaggerated.

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

Another common quality of a SLAPP is the power imbalance between the plaintiff and the defendant. Private companies or powerful people usually target individuals, alongside the organisations they belong to or work for, as an attempt to intimidate and silence critical voices, based purely on the financial strength of the complainant.

Member states therefore have a positive obligation to secure the enjoyment of the rights enshrined in Article 10 of the Convention: not only must they refrain from any interference with the individual's freedom of expression, but they are also under a positive obligation to protect his or her right to freedom of expression from any infringement, including by private individuals.”

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

### The Court's Assessment

*Whether the interference pursued a “legitimate aim”*

- ▶ The claimant in the defamation proceedings under consideration is the executive authority of a constituent entity of the Russian Federation
- ▶ As regards public bodies seeking legal protection of their reputation, in *Lombardo and Others v. Malta* (no. 7333/06, 24 April 2007) the Court, noting that it was only in exceptional circumstances that a measure proscribing statements criticising the acts or omissions of an elected body could be justified with reference to “the protection of the rights or reputations of others”, was prepared to assume that this aim could be relied on as legitimate in the context of defamation proceedings brought by the local council of a town with a population of under 12,000

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPs – MODULE 5

# OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

### The Court's Assessment

*Whether the interference pursued a “legitimate aim” (continued)*

“considering the growing awareness of the risks that court proceedings instituted with a view to limiting public participation bring for democracy, as highlighted by the Council of Europe Commissioner for Human Rights (see paragraph 23 above), and in view of the power imbalance between the claimant and the defendant in the present case, the Court considers it appropriate to establish in the present case whether the interference complained of – that is, the civil defamation proceedings brought by the Administration of the Volgograd Region against the applicant company, a media outlet – was in pursuance of the legitimate aim of “protection of the reputation of others”

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPs – MODULE 5

# OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

### The Court's Assessment

*Whether the interference pursued a “legitimate aim” (continued)*

“shielding bodies of the executive, which have the ability to respond to any adverse allegations in the “court of public opinion” through their public relations capabilities, from media criticism by way of according them protection of their “business reputation” may seriously hamper freedom of the media. Allowing executive bodies to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and could have an inevitable chilling effect on the media in the performance of their task as a purveyor of information and public watchdog”

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

COUNTERING THE USE OF  
SLAPPS – MODULE 5

OOO MEMO V. RUSSIA:  
EUROPEAN COURT JUDGMENT (CONTINUED)

**The Court's Assessment**

*Whether the interference pursued a “legitimate aim” (continued)*

“the interests of a body of the executive vested with State powers in maintaining a good reputation essentially differ from both the right of natural persons to a reputation and the reputational interests of legal entities, private or public, that compete in the marketplace.

It follows that civil defamation proceedings brought, in its own name, by a legal entity that exercises public power may not, as a general rule, be regarded as being in pursuance of the legitimate aim of “the protection of the reputation ... of others””

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

### The Court's Assessment

*Whether the interference pursued a “legitimate aim” (continued)*

“the claimant in the domestic defamation proceedings is the highest body of the executive of the Volgograd Region. It is hardly conceivable that it had an “interest in protecting [its] commercial success and viability”, be it for “the benefit of shareholders and employees” or “for the wider economic good” (see *Steel and Morris*, cited above, § 94), that would warrant legal protection. Nor could it be said, given the scale of its operations, that its members were as “easily identifiable” as members of the Water and Forestry Commission in Luxembourg (see *Thoma*, cited above, § 56) or members of the Fgura Local Council in Malta, representing 12,000 inhabitants (see *Lombardo and Others*, cited above). In any event, the defamation case was brought on behalf of the legal entity as such, not any of its individual members.

Co-funded  
by the European Union



Co-funded and implemented  
by the Council of Europe

COUNTERING THE USE OF  
SLAPPS – MODULE 5

**OOO MEMO V. RUSSIA:  
EUROPEAN COURT JUDGMENT  
(CONTINUED)**

**The Court's Assessment**

*Whether the interference pursued a “legitimate aim” (continued)*

Accordingly, the Court finds that the civil defamation proceedings instituted by the Administration of the Volgograd Region against the applicant company did not pursue any legitimate aims enumerated in paragraph 2 of Article 10 of the Convention.”

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## COUNTERING THE USE OF SLAPPS – MODULE 5

# OOO MEMO V. RUSSIA: CASE COMMENT

“it creates an extra obstacle for defamation claims by executive bodies. As such it contributes to preventing SLAPPS initiated by such bodies and it paves the way, if such claims are initiated, for early dismissal of such claims as obviously violating Article 10 ECHR in the absence of a legitimate aim. With the judgment in OOO Memo v. Russia the ECtHR itself has contributed to the “growing awareness” of the dangers of at least one type of SLAPPS”

“the judgment in OOO Memo v. Russia makes clear that the problem of SLAPPS has also come on the radar of the ECtHR”

Strasbourg  
Observers



**BY DIRK VOORHOOF**

Human Rights Centre, Ghent  
University, Legal Human Academy  
and a member of the MSI-SLP.

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe