

# COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

## MODULE 5 SLAPP indicators

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

### CONTENTS

WHAT IS A SLAPP?	2
RECOGNIZING SLAPP CASES	7
A CLOSER LOOK AT THE DEFINITIONAL CHARACTERISTICS OF SLAPPS	9
THE EUROPEAN COURT OF HUMAN RIGHTS AND SLAPPS: OOO MEMO V RUSSIA	10

Co-funded  
by the European Union



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

# COUNTERING THE USE OF SLAPPS

## Module objective

The objective of this module is to ensure that course participants can recognise a SLAPP, that they are intimately familiar with the SLAPP indicators in European standards, and that they can apply them.

## Session techniques and methods

- ▶ Brainstorming exercise
- ▶ Presentation and Q&A
- ▶ Large group discussion
- ▶ Small group discussion
- ▶ Case study

## Duration

- ▶ 2.5 – 3.5 hours

## WHAT IS A SLAPP?

### → Brainstorming Exercise

Allocated time: 30 minutes

#### Guidance for trainers

A group brainstorm, facilitated by the trainer, discussing what makes a case a 'Strategic Lawsuit Against Public Participation' (a SLAPP). The trainer should ask participants how they would identify a SLAPP, and what makes a SLAPP different from a 'normal' defamation case. Participants are encouraged to share their ideas, which can be written on a flip chart, on post-it notes on the wall, or on an interactive whiteboard. At this stage there should be no discussion or critiquing of contributions or other discussion; the trainer's role is limited to listing ideas and preventing premature debate. If necessary, the trainer could gently guide the discussion by asking questions such as:

- ▶ do you think that the balance of power between claimants is a factor?
- ▶ is the strength, or weakness, of the legal foundation of the case a factor?
- ▶ is it important to look at the kind of remedies or the level of damages sought by the claimant?
- ▶ does it matter what kind of procedural tactics the claimant pursues?
- ▶ is it relevant to look at who is targeted (for example, whether a journalist is sued individually instead of a media outlet as a company)?
- ▶ is it relevant to consider whether a claimant is also launching a PR offensive, or whether they are launching multiple lawsuits?

It is true that these are all guiding questions, which generally should be avoided. However, asking one or two such 'guiding' questions may be helpful in getting a group brainstorm started. The trainer should be careful not to provide all the answers.

Once all responses are noted, the trainer facilitates feedback. This will include discussion, analysis, and categorization of the ideas that have been contributed. The trainer can wrap up the session by thanking participants for their contributions. If possible, the paper on which contributions have been noted should be left on the wall as a reminder of the various identifying characteristics that the group has come up with.

# COUNTERING THE USE OF SLAPPS

## → Presentation

**Allocated time: 25 minutes plus Q&A**

Following the brainstorming session, the trainer presents a PowerPoint presentation covering in detail the SLAPPS indicators set out in the two main European legal instruments:

- ▶ Council of Europe [Recommendation CM/Rec\(2024\)2 on countering the use of strategic lawsuits against public participation \(SLAPPS\)](#)
- ▶ European Union [Directive \(EU\) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings](#) ('Strategic lawsuits against public participation')

The presentation covers the main characteristics of SLAPPS as identified in each of the instruments.

### **Council of Europe Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPS)**

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

- ▶ They target public participation, meaning that 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;
- ▶ They can concern any cause of legal action, including but not limited to defamation, insult, invasion of privacy, conspiracy, breach of intellectual property rights, economic interference, infliction of emotional harm, as well as misdemeanours, administrative measures, or criminal charges.
- ▶ The 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.
- ▶ They can occur at any stage of legal action, 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.

Paragraphs 8 and 9 detail SLAPP indicators, which include but are not limited to the following:

- ▶ 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;
- ▶ The arguments put forward by the claimant are partially or fully unfounded;
- ▶ The remedies requested by the claimant are disproportionate, excessive, or unreasonable;
- ▶ The claims amount to abuse of laws or procedures;
- ▶ 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;
- ▶ The legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- ▶ The legal 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;
- ▶ The claimant or their representatives engage in legal intimidation, harassment, or threats, or have a history of doing so;
- ▶ The claimant or associated parties engage in multiple and coordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;
- ▶ The claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.

It is important to note that while SLAPPS do not necessarily include all these indicators, the more of them that are present or the more acute the behaviour, the more likely the legal action can be considered as a SLAPP. The

## COUNTERING THE USE OF SLAPPS

[Explanatory Memorandum](#) to the Recommendation makes it clear that some of these indicators are nearly always present:

“The following features will almost always be present: the defendant is involved in public participation in matters of public interest or clearly intends to be a clear link, direct or indirect, between the claimant, the matter of public interest and activities of the defendant exists; and a direct, indirect or potential negative effect on public participation. Negative effects in these kinds of actions impact the defendant’s activities relating to public interest.” (paragraph 78)

The Explanatory Memorandum goes on to explain that the list of indicators is not exhaustive, and encourages Member States and national courts to develop other indicators based on national law and practices. The [Explanatory Memorandum](#) also encourages national courts to weigh indicators and explains that the very strong presence of just one key indicator may be determinative of a SLAPP:

“The court should not only count but also weigh the indicators when determining if the case is a SLAPP. Strong presence of one key indicator may sometimes be sufficient to determine that the case is a SLAPP.” (paragraph 80)

The Recommendation goes on to list three especially pernicious types of SLAPPS:

1. Cross-border SLAPPS, which involve additional layers of complexity, costs, and stress. Member States should take appropriate and effective measures to limit forum shopping that is unfavourable to public participation or vexatious to the defendant, provide effective protection against third-country judgments, and ensure that a person targeted with a cross-border SLAPP case in a non-Council of Europe member state can seek compensation of the damages and costs incurred in defending the case.
2. Multiple or coordinated SLAPPS. 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 coordinated proceedings that are closely related in order to avoid the exposure of the defendant to multiple proceedings.
3. 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 confidential sources, in line with the Convention, the [Modernized 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](#).

### **European Union Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’)**

The Directive *only* 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 and abusive court proceedings.

Key definitions include:

- ▶ ‘Public participation’: The making of any statement or carrying out 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.
- ▶ ‘Matter of public interest’ means any matter that 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.

## COUNTERING THE USE OF SLAPPS

- Matters under consideration by a legislative, executive, or judicial body or any other official proceedings.
- Allegations of corruption, fraud, or any other criminal or administrative offences in relation to such matters.
- Activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including protecting democratic processes against undue interference, particularly by fighting disinformation.
- ▶ ‘Abusive court proceedings against public participation’: Court proceedings that are not brought to genuinely assert or exercise a right but have as their main purpose the prevention, restriction, or penalization of public participation, frequently exploiting an imbalance of power between the parties and pursuing unfounded claims.

The Directive lists several indicators of ‘abusive court proceedings against public participation’, many of which are similar to those found in the Council of Europe Recommendation:

- ▶ Exploiting an imbalance of power;
- ▶ Pursuing unfounded claims;
- ▶ The disproportionate, excessive, or unreasonable nature of the claim or part thereof, including the excessive dispute value;
- ▶ The existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- ▶ 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;
- ▶ 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.

The Directive states that 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.

The Directive also stipulates that 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, SLAPP protections should not be afforded.

# COUNTERING THE USE OF SLAPPS

## Overlap and differences

As regards SLAPP indicators, there is significant overlap between the Directive and the Recommendation, but the Recommendation lists a few indicators that the Directive omits:

### 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”

### Differences

Council of Europe Recommendation	EU Directive
▶ deliberately targets individuals rather than the organisations responsible for the challenged action	no equivalent
▶ legal action is accompanied by a public relations offensive	no equivalent
▶ claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim	no equivalent

However, the list of indicators in the EU Directive is non-exhaustive; therefore, indicators listed in the Council of Europe Recommendation but not in the Directive may still be used to help interpret the Directive.

# COUNTERING THE USE OF SLAPPS

## RECOGNIZING SLAPP CASES

### → Small group discussion

Allocated time: 60 minutes

#### Guidance for trainers

The trainer should divide the group into smaller groups, ideally of no more than four people. Each of the groups is asked to discuss the case studies below, discuss whether any SLAPP indicators are present, and whether the case is a SLAPP. It is crucial that participants go through the SLAPP indicators one by one and give reasons for their decisions; they should not jump to any conclusions (they should not immediately say, “this is clearly (not) a SLAPP”).

Following the small group discussions, each of the groups report back to the full group. If there are significant differences of opinion between groups, there can be follow-up discussion in the large group.

Throughout the discussions in the small group as well as during follow-up in the large group, the trainer should take care to ensure that the SLAPP indicators are methodically applied.

Some of the facts of the cases below are taken from actual litigation and court decisions. The first scenario is loosely based on the case of [Steel and Morris v. the United Kingdom](#); the second scenario is loosely based on [litigation brought against the Journalism Development Network](#); the third scenario is loosely based on [litigation brought against the media by a member of the British royal family](#); the fourth scenario is an amalgam of [various lawsuits brought by mining companies against reporters and activists](#). The trainer should be aware of this as someone in the group might recognize the scenario. However, the trainer should remind participants that their task is not to decide the scenario in line with whatever the outcome was in its real-life corollary; instead, the task is to methodically go through and apply SLAPP indicators.

#### Case studies:

##### 1. Defamation case against environmental campaigners for false accusations

Two environmental campaigners handed out a six-page leaflet entitled “What’s wrong with McDonald’s?” outside of McDonalds fast food restaurants. The leaflet, “What’s wrong with McDonald’s - everything they don’t want you to know,” accused McDonalds of encouraging littering, mistreating animals and workers, producing bad quality food, and destroying rainforests. McDonald for defamation and the two activists, without legal aid, represented themselves against McDonald’s, which had a legal team costing an estimated £10m. Despite raising £40,000 in public donations and having limited assistance from volunteer lawyers, the activists faced a daunting trial. The annual global turnover of McDonalds at the time was GBP20,000,000. One of the activists was a part-time bar-worker earning GBP3,250 a year; the other was unemployed. The case became the longest libel trial and civil case in British history, with 20,000 pages of transcripts, 40,000 pages of evidence, and 130 witnesses. It lasted nearly ten years. The judge eventually found that claims that McDonald’s was to blame for starvation or had used lethal poisons to destroy vast areas of Central American rainforest could not be proven, but that it was true that McDonald’s had “pretended to a positive nutritional benefit which their food did not match”; had exploited children in its advertising; and that it paid low wages, “helping to depress wages in the catering trade”. The Court of Appeal reduced the damages awarded by the trial judge from a total of GBP60,000 to a total of GBP40,000. McDonald’s, who had not applied for costs, have not enforced the award.

##### 2. Defamation case against online media and two of its journalists

An online news outlet published an article about an oil deal that was made in the late 2000s. The article investigated oil deals in Iraq and among the persons mentioned was the former Minister of Natural Resources of Iraqi Kurdistan, who was a citizen and resident of the United Kingdom. At the time he had responsibility for

## COUNTERING THE USE OF SLAPPS

granting oil concessions in Iraq. Prior to publication, the journalists wrote to the former Minister's lawyers, offering a right to reply. On 16 May 2021, the lawyers replied in a letter, saying there was no illegality in the oil deal, and legal proceedings for defamation would be initiated if the journalists proceeded with publication, which would include seeking substantial damages, an injunction and payment of legal costs.

Shortly after the article was published, the lawyers contacted the journalists again, calling for the article to be removed and for "corrections" to be published. In subsequent correspondence both sides exchanged proposed revisions. Eventually an editor's note was added to the article, stating "the former minister through his lawyers, has disputed the accuracy of some statements in the following article. We stand by our reporting. Nonetheless, we have agreed to add his lawyers' statement at the end of the article." The article then finished with the former minister's six-paragraph statement published in full.

Several months later, a law firm filed a defamation claim on behalf of the former minister against the two journalists and the media outlet.

### 3. Royal sues for defamation and invasion of privacy

A senior European prince, second in line to the throne of a large European country, has been under intense media scrutiny for his alleged 'party' lifestyle. In 2010 he found out that for many years, journalists had been intercepting messages from his phone. This resulted in the publication of stories detailing various aspects of his private life as well as stories that revealed how the monarch interfered with the parliamentary process in the country. So-called 'phone hacking' is a criminal offence in the country concerned.

The prince has sued four large media outlets for invasion of privacy demanding large damages, which he says will be donated to charities if he wins the case. He has hired a law firm known for its aggressive tactics and has threatened that his aim is to do significant economic damage to the media outlets concerned. He has also sued some of the individual journalists concerned, one of whom (unlike other journalists) is very wealthy.

### 4. Local media reports on mining company

In 2018, a small-town newspaper published an investigative article exposing questionable environmental practices by a large cobalt mining company. Cobalt is a key component in batteries and is crucial to reducing CO<sub>2</sub>, but the mining process can lead to environmental destruction. The article detailed how the company allegedly polluted local waterways and violated environmental regulations, causing significant harm to the community. It provided evidence from an academic expert but admitted that because of the complexity of the situation, the full facts of the pollution could not be discovered.

In response, the mining company filed a defamation lawsuit against the newspaper and its editor, claiming the article contained false and damaging statements. The company sought \$5 million in damages; a sum that far exceeded the newspaper's financial capacity. The lawsuit went on for over two years, with mounting legal fees threatening to bankrupt the newspaper. Despite the strain, the editor refused to retract the story, maintaining that the reporting was in the public interest despite the fact that he was ultimately unable to prove the facts.

# COUNTERING THE USE OF SLAPPS

## A CLOSER LOOK AT THE DEFINITIONAL CHARACTERISTICS OF SLAPPS

### → Small group discussion

Allocated time: 45 minutes

#### Guidance for trainers

The participants divide into small groups, ideally of no more than four people. Each of the groups is assigned three or four of the indicators of a SLAPP as listed in the Council of Europe Recommendation (the exact number per group will depend on the number of participants):

- 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;
- 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 action deliberately targets individuals rather than the organisations responsible for the challenged action;
- g. the legal 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;
- 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.

Each group is asked to discuss the characteristics they have been assigned and think of examples, either hypothetical or from their actual work, of cases that have these characteristics. For each such case, the groups should discuss whether cases with such characteristics are currently considered as SLAPPS in the legal system of the country, and if not, what needs to change for this to be the case.

After 20 minutes, the small groups report back to the larger group to report their findings.

# COUNTERING THE USE OF SLAPPS

## THE EUROPEAN COURT OF HUMAN RIGHTS AND SLAPPS: OOO MEMO V RUSSIA

### → Presentation

Allocated time: 45 minutes

The trainer gives a presentation of the European Court of Human Rights judgment in the case of *OOO Memo v. Russia*. This case, which concerned defamation proceedings taken by a local authority against the *Caucasian Knot*, an online media outlet that reports on the political and human rights situation in the south of Russia. This was the first time that the European Court of Human Rights referred explicitly to SLAPPs and “the growing awareness of the risks that court proceedings instituted with a view to limiting public participation bring for democracy”.

The trainer should take questions following the presentation. The trainer should be aware that the judgment does not explicitly say that the case is a SLAPP, but this can be inferred from references to the Council of Europe Commissioner for Human Rights’ Human Rights Comment “Time to Take Action Against SLAPPs” as part of the applicable legal framework together with the fact that the Court finds that the proceedings did not pursue a legitimate aim and violated the right to freedom of expression.

After the presentation, the PowerPoint slides are handed out. If there is no time for a presentation, the trainer may simply provide the PowerPoint presentation as a hand-out.

# EXERCICES – MODULE 5

## SLAPP Indicators

*(Training material to be shared with participants)*

### 1. WHAT IS A SLAPP?

#### → Brainstorming Exercise

Task for the group: how would you identify a SLAPP, and what makes a SLAPP different from a 'normal' defamation case?

Questions to guide the discussion:

- ▶ do you think that the balance of power between claimants is a factor?
- ▶ is the strength, or weakness, of the legal foundation of the case a factor?
- ▶ is it important to look at the kind of remedies or the level of damages sought by the claimant?
- ▶ does it matter what kind of procedural tactics the claimant pursues?
- ▶ is it relevant to look at who is targeted (for example, whether a journalist is sued individually instead of a media outlet as a company)?
- ▶ is it relevant to consider whether a claimant is also launching a PR offensive, or whether they are launching multiple lawsuits?

### 2. RECOGNIZING SLAPP CASES

#### → Small group discussion

Task for the groups: discuss the following scenarios, discuss whether any SLAPP indicators are present, and whether the case is a SLAPP. For each scenario, go through the SLAPP indicators one by one, do not jump to any conclusions (do not immediately say, "this is clearly (not) a SLAPP").

##### 1. Defamation case against environmental campaigners for false accusations

Two environmental campaigners handed out a six-page leaflet entitled "What's wrong with McDonald's?" outside of McDonalds fast food restaurants. The leaflet, "What's wrong with McDonald's - everything they don't want you to know," accused McDonalds of encouraging littering, mistreating animals and workers, producing bad quality food, and destroying rainforests. McDonald for defamation and the two activists, without legal aid, represented themselves against McDonald's, which had a legal team costing an estimated £10m. Despite raising £40,000 in public donations and having limited assistance from volunteer lawyers, the activists faced a daunting trial. The annual global turnover of McDonalds at the time was GBP20,000,000. One of the activists was a part-time bar-worker earning GBP3,250 a year; the other was unemployed. The case became the longest libel trial and civil case in British history, with 20,000 pages of transcripts, 40,000 pages of evidence, and 130 witnesses. It lasted nearly ten years. The judge eventually found that claims that McDonald's was to blame for starvation or had used lethal poisons to destroy vast areas of Central American rainforest could not be proven, but that it was true that McDonald's had "pretended to a positive nutritional benefit which their food did not match"; had exploited children in its advertising; and that it paid low wages, "helping to depress wages in the catering trade". The Court of Appeal reduced the damages awarded by the trial judge from a total of GBP60,000 to a total of GBP40,000. McDonald's, who had not applied for costs, have not enforced the award.

## COUNTERING THE USE OF SLAPPS

### 2. Defamation case against online media and two of its journalists

An online news outlet published an article about an oil deal that was made in the late 2000s. The article investigated oil deals in Iraq and among the persons mentioned was the former Minister of Natural Resources of Iraqi Kurdistan, who was a citizen and resident of the United Kingdom. At the time he had responsibility for granting oil concessions in Iraq. Prior to publication, the journalists wrote to the former Minister's lawyers, offering a right to reply. On 16 May 2021, the lawyers replied in a letter, saying there was no illegality in the oil deal, and legal proceedings for defamation would be initiated if the journalists proceeded with publication, which would include seeking substantial damages, an injunction and payment of legal costs.

Shortly after the article was published, the lawyers contacted the journalists again, calling for the article to be removed and for "corrections" to be published. In subsequent correspondence both sides exchanged proposed revisions. Eventually an editor's note was added to the article, stating "the former minister through his lawyers, has disputed the accuracy of some statements in the following article. We stand by our reporting. Nonetheless, we have agreed to add his lawyers' statement at the end of the article." The article then finished with the former minister's six-paragraph statement published in full.

Several months later, a law firm filed a defamation claim on behalf of the former minister against the two journalists and the media outlet.

### 3. Royal sues for defamation and invasion of privacy

A senior European prince, second in line to the throne of a large European country, has been under intense media scrutiny for his alleged 'party' lifestyle. In 2010 he found out that for many years, journalists had been intercepting messages from his phone. This resulted in the publication of stories detailing various aspects of his private life as well as stories that revealed how the monarch interfered with the parliamentary process in the country. So-called 'phone hacking' is a criminal offence in the country concerned.

The prince has sued four large media outlets for invasion of privacy demanding large damages, which he says will be donated to charities if he wins the case. He has hired a law firm known for its aggressive tactics and has threatened that his aim is to do significant economic damage to the media outlets concerned. He has also sued some of the individual journalists concerned, one of whom (unlike other journalists) is very wealthy.

### 4. Local media reports on mining company

In 2018, a small-town newspaper published an investigative article exposing questionable environmental practices by a large cobalt mining company. Cobalt is a key component in batteries and is crucial to reducing CO<sub>2</sub>, but the mining process can lead to environmental destruction. The article detailed how the company allegedly polluted local waterways and violated environmental regulations, causing significant harm to the community. It provided evidence from an academic expert but admitted that because of the complexity of the situation, the full facts of the pollution could not be discovered.

In response, the mining company filed a defamation lawsuit against the newspaper and its editor, claiming the article contained false and damaging statements. The company sought \$5 million in damages; a sum that far exceeded the newspaper's financial capacity. The lawsuit went on for over two years, with mounting legal fees threatening to bankrupt the newspaper. Despite the strain, the editor refused to retract the story, maintaining that the reporting was in the public interest despite the fact that he was ultimately unable to prove the facts.

# COUNTERING THE USE OF SLAPPS

## 3. A CLOSER LOOK AT THE DEFINITIONAL CHARACTERISTICS OF SLAPPS

### → Small group discussion

Task for the groups: Each of the groups is assigned three or four of the indicators of a SLAPP as listed in the Council of Europe Recommendation (the exact number per group will depend on the number of participants) and asked to think of examples of cases, either hypothetical or from their actual work, that have these characteristics. For each such case, the groups should discuss whether cases with such characteristics are currently considered as SLAPPS in the legal system of the country, and if not, what needs to change for this to be the case.

Characteristics:

- 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;
- 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 action deliberately targets individuals rather than the organisations responsible for the challenged action;
- g. the legal 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;
- 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.

# MODULE 5

## SLAPP Indicators

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

---

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

---

Co-funded and implemented  
by the Council of Europe

## 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

# REMINDER: THE TWO MAIN INTERNATIONAL INSTRUMENTS

---

Co-funded  
by the European Union



COUNCIL OF EUROPE



---

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

# COE RECOMMENDATION: DEFINITIONAL CRITERIA OF SLAPPS AND INDICATORS

---

Co-funded  
by the European Union



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

---

Co-funded and implemented  
by the Council of Europe

## 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



Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

---

Co-funded and implemented  
by the Council of Europe

## 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



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## 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



---

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

---

Co-funded and implemented  
by the Council of Europe

## 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



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## 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



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

# EU DIRECTIVE: DEFINITIONS

---

Co-funded  
by the European Union



COUNCIL OF EUROPE



---

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



Co-funded and implemented  
by the Council of Europe

## 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



Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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

## 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

## 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



Co-funded and implemented  
by the Council of Europe

## 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

## 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>



Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## 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

EUROPEAN UNION

CONSEIL DE L'EUROPE

## 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



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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

## 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

## 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



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe

## 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

## 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



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe

## 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

## 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



Co-funded and implemented  
by the Council of Europe