

COUNTERING THE USE OF SLAPPS – MODULE 8

MODULE 8

Legal remedies against SLAPPS

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

Discussing legal remedies through case study exercises

Presentation of legal remedies foreseen Council of Europe and European Union instruments on SLAPPs

Discussion with participants on practical implications of providing remedies for SLAPP targets and victims

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DISCUSSING LEGAL REMEDIES THROUGH CASE STUDY EXERCISES

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The trainer will form 3-5 small groups, each of which will receive the case facts once the groups are created. There are two case studies available. Each group will have 15-20 minutes to read the case, analyse it, answer the guiding questions, and brainstorm possible solutions. Each group will appoint a rapporteur to present a summary of the discussion on a flip chart.

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**PRESENTATION OF LEGAL REMEDIES
FORESEEN COUNCIL OF
EUROPE AND
EUROPEAN UNION INSTRUMENTS ON
SLAPPS**

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THE COUNCIL OF EUROPE AND THE EUROPEAN UNION INSTRUMENTS

1. Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on countering the use of strategic lawsuits against public participation (SLAPPs).
2. Directive (EU) 2024/1069 of the European Parliament and of the Council, dated 11 April 2024, on protecting individuals who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

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<p>RESTITUTION OF LEGAL COSTS</p>	<p>Member States are encouraged to make appropriate provisions in their national legal systems to enable courts, upon determination that a legal claim constitutes a SLAPP, to order the claimants to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant.</p>	<p>Member States shall ensure that a claimant who has brought abusive court proceedings against public participation can be ordered to bear all types of costs of the proceedings that can be awarded under national law, including the full costs of legal representation incurred by the defendant unless such costs are excessive. Where national law does not guarantee the award in full of the costs of legal representation beyond what is set out in statutory fee tables, Member States shall ensure that such costs are fully covered, unless they are excessive, by other means available under national law.</p>
<p>DEATH OR LOSS OF LEGAL CAPACITY OF THE DEFENDANT</p>	<p>Member States should ensure that, upon the death or loss of legal capacity of the defendant, in a pending case against public participation, family members and associates of the original defendant who continue the court proceedings have access to the same remedies and support as the original defendant.</p>	<p>Not covered</p>

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<p>ACKNOWLEDGEMENT OF SLAPP VICTIM STATUS AND COMPENSATION FOR DAMAGES</p>	<p>Member States should make adequate provision for SLAPP victims to be acknowledged as such and to be fully compensated for damages incurred as a result of the SLAPP, covering both pecuniary and non- pecuniary damages, such as loss of income and emotional distress as well as compensation for costs and expenses, for example to cover legal and administrative costs.</p>	<p>Not mentioned explicitly but articles 14 and 15 provide for cost awards, penalties for SLAPP claimants and compensation for damages.</p>
<p>CAPPING OF DAMAGES FOR THE CLAIMANT</p>	<p>Member States should, within the possibilities of their national legal systems, provide for the capping of damages, in order to pre-empt abusive or disproportionate financial penalties for the defendants, which would have a chilling effect on their public participation, and to avoid creating financial incentives for filing legal action.</p>	<p>Not covered</p>
<p>CAPPING OF COSTS</p>	<p>Member States should, within the possibilities of their national legal systems, provide for the capping of costs, to ensure defendants are able to mount an effective defence and protect against court procedures being drawn out to exhaust the financial resources of defendants, which would have a chilling effect on their public participation.</p>	<p>Not covered</p>

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<p>DISSUASIVE MEASURES</p>	<p>Member States should implement effective, proportionate, and dissuasive penalties to deter SLAPPs, considering the claimant’s resources. They should provide damages and fines for particularly egregious conduct and compensate for the time lost and psychological harm caused to the defendant.</p> <p>Aggravated penalties for repeat SLAPP claimants should also be considered.</p> <p>Additionally, legislative provisions should allow for the publication of information about SLAPP cases, including the identities of claimants, at the defendant’s request and expense, while adhering to European human rights and data protection standards. (summarised)</p>	<p><i>Penalties or other equally effective appropriate measures</i></p> <p>Member States shall ensure that courts or tribunals seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings.</p>
<p>GROUND FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT</p>	<p>Not covered</p>	<p><i>Grounds for refusal of recognition and enforcement of a third-country judgment</i></p> <p>Member States shall ensure that the recognition and enforcement of a third-country judgment in court proceedings against public participation by a natural or legal person domiciled in a Member State is refused, if those proceedings are considered manifestly unfounded or abusive under the law of the Member State in which such recognition or enforcement is sought.</p>

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**DISCUSSION WITH PARTICIPANTS ON
PRACTICAL IMPLICATIONS OF
PROVIDING REMEDIES FOR SLAPP
TARGETS AND VICTIMS**

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