

# COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

## MODULE 8

### Legal remedies against SLAPPS

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

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# COUNTERING THE USE OF SLAPPS

## Module objective

This module will provide participants with a detailed discussion of the remedies outlined in the Council of Europe (CoE) Recommendation and the EU Directive designed to assist SLAPP targets and victims. The aim is to develop a thorough understanding of the various remedies required under European standards for SLAPP victims and targets, and to explore ways to implement these remedies within national laws and regulations.

## Session techniques and methods

- ▶ Case study
- ▶ Presentation
- ▶ Brainstorming

## Duration

- ▶ 60 – 90 minutes

## DISCUSSING LEGAL REMEDIES THROUGH CASE STUDY EXERCISES

### → Case study

Allocated time: 30 – 45 minutes

#### Guidance for Trainers

The case study method involves forming 3-5 small groups, each of which will receive the case facts once the groups are created. There are two case studies available so that participants do not hear similar arguments from all groups. 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.

### Case study 1: “Enjoy” versus Diana Strong and Hannah Clarks

#### Facts of the case

In the legal case of “Enjoy” versus Diana Strong and Hannah Clarks, the dispute has emerged from a protest organised by two students against a global corporation. Enjoy, a multi-billion-dollar corporation renowned for its production of French fries, is seeking substantial damages from Diana Strong and Hannah Clarks, who are activists with the non-governmental organisation “Protect the Environment.”

The controversy began when Strong and Clarks, both environmental issues students based in the capital city of your country, staged a protest outside Enjoy’s headquarters. They criticised the company’s products as unhealthy and used their social media platforms—Instagram, X, and Meta—to spread their message. Their posts and subsequent organised demonstrations, which went viral and were shared extensively, included statements such as “French fries contribute to poor health,” “Enjoy should prioritise producing foods that genuinely benefit our bodies,” and “Corporations are harming our health with unhealthy food options.” These actions had significant repercussions. Enjoy’s operations were notably disrupted, leading to the temporary halting of its business activities and the layoff of thousands of employees.

## COUNTERING THE USE OF SLAPPS

In response, Enjoy filed a defamation lawsuit against Strong and Clarks in the competent court in your capital city, demanding 300,000 euros in damages from each activist, with potential total legal fees amounting to 100,000 euros. The corporation also sought an injunction to prevent the activists from approaching its headquarters and filed a criminal complaint alleging public disorder.

In the aftermath of these events, Enjoy hired a public relations firm to manage the crisis. The firm's communications accused Strong and Clarks of having a hidden agenda to undermine the company, despite Enjoy not initially reaching out to the activists for dialogue before pursuing legal action. The case is now pending in court. Activists believe this is a SLAPP case and intend to use procedural safeguards and remedies available under national law to counter it. This section of the training focuses solely on remedies.

Your task is to analyse and discuss the available remedies for the activists' case based on the following guiding questions.

- ▶ Does your national law allow courts to acknowledge SLAPP victim status? If not, what legal requirements would it take to enable courts with such powers?
- ▶ Does your national law provide for capping of damages in SLAPP defamation cases? If not, do you think such a remedy should be available? What legal changes would it take for it to happen?
- ▶ Can a SLAPP victim seek compensation for psychological harm, time lost in a case, or consequences in their profession?

Do you think the names of legal and natural persons who filed SLAPPs should be published in full or in part? Does your national law allow for such publication?

### Case study 2: Anita Rasmø versus journalist Jacob Kusko

#### Facts of the case

Jacob Kusko is a well-known journalist in your capital city, covering corruption, migration, and daily politics. In his 30 years of experience, he has published investigations revealing corruption at the highest levels of politics, produced over 50 documentaries, appeared regularly as an expert on corruption investigations on prominent TV channels, and is one of the most awarded journalists.

Anita Rasmø is the most-voted female member of parliament from the current ruling party in your capital city. She is a member of a conservative political party and has a strong stance against migrants. Last year, she proposed tightening laws to make it extremely difficult for people from poor and conflict zones to enter the country and to easily expel migrants who break national laws.

On the day Rasmø announced her legal proposals, Kusko was invited to a TV program where, in response to a question from the anchor, he said, "these individuals have risked their lives and left their families due to war and poverty, not for sightseeing. People like Rasmø, who propose such measures, are bastards; they don't care about human rights and are doing it purely for political gain."

In response, Rasmø filed a defamation lawsuit against Kusko in the competent court in your capital city, demanding €300,000 in damages from the journalist, with potential total legal fees amounting to €100,000. She also sought an injunction to prevent Kusko from ever calling anyone a "bastard" in the future and filed a criminal complaint alleging harassment. In the aftermath of these events, Rasmø engaged a public relations firm to manage the crisis. The firm's communications accused Kusko of having a hidden agenda to undermine her and to support opposition parties. The case is now pending before the court.

Kusko believes this is a SLAPP case and intends to use procedural safeguards and remedies available under national law to counter it. This section of the training focuses solely on remedies.

## COUNTERING THE USE OF SLAPPS

Your task is to analyse and discuss the available remedies for the journalist based on the following guiding questions.

- ▶ Does your national law allow courts to acknowledge SLAPP victim status? If not, what legal requirements would it take to enable courts with such powers?
- ▶ Does your national law provide for capping of damages in SLAPP defamation cases? If not, do you think such a remedy should be available? What legal changes would it take for it to happen?
- ▶ Can a SLAPP victim seek compensation for psychological harm, time lost in a case, or consequences in their profession?
- ▶ Do you think the names of legal and natural persons who filed SLAPPs should be published in full or in part? Does your national law allow for such publication?

### PRESENTATION OF LEGAL REMEDIES AGAINST SLAPPS

#### → Presentation

Allocated time: 10 minutes

<p><b>RESTITUTION OF LEGAL COSTS</b></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.</p> <p>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><b>DEATH OR LOSS OF LEGAL CAPACITY OF THE DEFENDANT</b></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>

## COUNTERING THE USE OF SLAPPS

<b>ACKNOWLEDGEMENT OF SLAPP VICTIM STATUS AND COMPENSATION FOR DAMAGES</b>	<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>
<b>CAPPING OF DAMAGES FOR THE CLAIMANT</b>	<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>
<b>CAPPING OF COSTS</b>	<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>
<b>DISSUASIVE MEASURES</b>	<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. Aggravated penalties for repeat SLAPP claimants should also be considered. 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 seized 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>

## COUNTERING THE USE OF SLAPPS

<b> GROUNDS FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT</b>	Not covered	<i>Grounds for refusal of recognition and enforcement of a third-country judgment</i>  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.
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### DISCUSSION WITH PARTICIPANTS ON PRACTICAL IMPLICATIONS OF USE OF REMEDIES

#### → Brainstorming Exercise

Allocated time: 15 minutes

Following Sessions 1 and 2 of this module, the trainer will organise a brainstorming exercise to facilitate discussions on the practical legal implications of providing remedies under national law. The trainer will listen to and record the ideas and comments on remedies, categorising the responses to ensure that subsequent discussions are well-structured.

# EXERCICES – MODULE 8

## Legal remedies against SLAPPs

*(Training material to be shared with participants)*

### → Case study

#### Case study 1: “Enjoy” versus Diana Strong and Hannah Clarks

##### Facts of the case

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The controversy began when Strong and Clarks, both environmental issues students based in the capital city of your country, staged a protest outside Enjoy’s headquarters. They criticised the company’s products as unhealthy and used their social media platforms—Instagram, X, and Meta—to spread their message. Their posts and subsequent organised demonstrations, which went viral and were shared extensively, included statements such as “French fries contribute to poor health,” “Enjoy should prioritise producing foods that genuinely benefit our bodies,” and “Corporations are harming our health with unhealthy food options.” These actions had significant repercussions. Enjoy’s operations were notably disrupted, leading to the temporary halting of its business activities and the layoff of thousands of employees.

In response, Enjoy filed a defamation lawsuit against Strong and Clarks in the competent court in your capital city, demanding 300,000 euros in damages from each activist, with potential total legal fees amounting to 100,000 euros. The corporation also sought an injunction to prevent the activists from approaching its headquarters and filed a criminal complaint alleging public disorder.

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- ▶ Does your national law provide for capping of damages in SLAPP defamation cases? If not, do you think such a remedy should be available? What legal changes would it take for it to happen?
- ▶ Can a SLAPP victim seek compensation for psychological harm, time lost in a case, or consequences in their profession?

Do you think the names of legal and natural persons who filed SLAPPs should be published in full or in part? Does your national law allow for such publication?

# COUNTERING THE USE OF SLAPPS

## Case study 2: Anita Rasmø versus journalist Jacob Kusko

### Facts of the case

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Anita Rasmø is the most-voted female member of parliament from the current ruling party in your capital city. She is a member of a conservative political party and has a strong stance against migrants. Last year, she proposed tightening laws to make it extremely difficult for people from poor and conflict zones to enter the country and to easily expel migrants who break national laws.

On the day Rasmø announced her legal proposals, Kusko was invited to a TV program where, in response to a question from the anchor, he said, "these individuals have risked their lives and left their families due to war and poverty, not for sightseeing. People like Rasmø, who propose such measures, are bastards; they don't care about human rights and are doing it purely for political gain."

In response, Rasmø filed a defamation lawsuit against Kusko in the competent court in your capital city, demanding €300,000 in damages from the journalist, with potential total legal fees amounting to €100,000. She also sought an injunction to prevent Kusko from ever calling anyone a "bastard" in the future and filed a criminal complaint alleging harassment. In the aftermath of these events, Rasmø engaged a public relations firm to manage the crisis. The firm's communications accused Kusko of having a hidden agenda to undermine her and to support opposition parties. The case is now pending before the court.

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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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## COUNTERING THE USE OF SLAPPS – MODULE 8

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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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## COUNTERING THE USE OF SLAPPS – MODULE 8

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## COUNTERING THE USE OF SLAPPS – MODULE 8

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## COUNTERING THE USE OF SLAPPS – MODULE 8

<p><b>DISSUASIVE MEASURES</b></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. Aggravated penalties for repeat SLAPP claimants should also be considered. 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 seized 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><b>GROUND FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT</b></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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