

# COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

## MODULE 9

### Support measures for SLAPP targets and victims and victims

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

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# COUNTERING THE USE OF SLAPPS

## Module objective

The objective of this module is to ensure that course participants have a thorough understanding of the support measures that European standards require to be afforded to the targets and victims and victims of SLAPPS, and that they have explored ways of providing these support measures in the national situation of their country/countries.

## Session techniques and methods

- ▶ Presentation and Q&A
- ▶ Small group discussion

## Duration

- ▶ 0.5 – 1.5 hours

## EUROPEAN STANDARDS ON SUPPORT MEASURES FOR SLAPP TARGETS AND VICTIMS

### → Presentation

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

The trainer presents a PowerPoint presentation covering in detail the support measures 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 \('Strategic lawsuits against public participation'\)](#)

This presentation, and the Q&A that follows it, is a core element of the training and may not be skipped. The time indicated for discussion is a suggested minimum; more time may be taken. The trainer may also start a discussion on the extent to which current domestic law and practice is in line with, or diverges from, the requirements set out in the Directive and Recommendation.

After the presentation, the PowerPoint slides are handed out. The hand-out lists the safeguards as set out in both the Recommendation and in the EU Directive and is a key resource for training participants.

The trainer should prepare two or three large sheets of flip-chart paper listing the support measures under the Council of Europe Recommendation and the EU Directive and hang these on the wall in the training room. They will form important reference points throughout the rest of the training.

Regarding terminology: as per the [Explanatory Memorandum](#) to the Council of Europe Recommendation, the terms 'victim' and 'target' in relation to SLAPPS are used regardless of whether the SLAPP is based in abuse of criminal, administrative or civil law. The terms do not define legal status but are used to cover all subjects that are objects of SLAPP and seek protection. A 'victim' is a direct or indirect recipient of harm resulting from violation of their rights; a 'target' generally refers to an individual or entity that the perpetrator intends to cause harm to by their actions and who has not yet suffered harm. While all victims of SLAPP are also targets and victims of SLAPP, not all targets and victims are victims, because targets and victims have yet to suffer harm.

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## Support to SLAPP targets and victims under Recommendation CM/Rec(2024)2 and EU Directive 2024/1069

Both the Directive and the Recommendation explicitly state the requirement for support to be provided to SLAPP targets and victims. This is to compensate for the damage that a claimant typically seeks to inflict. The preamble to the EU Directive states, in paragraph 46:

“It is typical in SLAPPS that those targeted suffer severe financial repercussions and psychological and reputational harm. Causing such harm is one of the aims of SLAPP claimants when they initiate abusive court proceedings against public participation.”

The Recommendation recognizes that the harm suffered may be an economic loss, physical harm, mental or emotional harm. They may be exposed to financial burdens, face stress, fear, anxiety, depression, and other psychological harms. No formal recognition of the victim or target status should be necessary to provide access to legal support or other tools and remedies described in the Recommendation. The assessment is made on a case-by-case basis as to provide expedient access to aid and not hinder access to legal tools:

“Member States are encouraged to organise, provide and ensure rapid access to a range of support and protective measures for targets and victims and victims of SLAPPS. Procedures to ensure their physical protection from any potential harm should also be put in place. Member States should facilitate the provision of support by relevant actors to targets and victims and victims of SLAPPS, such as those allocating adequate resources to provide such support. In order to be effective in practice, member States should consider organising support in consultation with victims and targets and victims, including through their specific associations, adapt the support to their specific needs and situations and take fully into consideration their personal characteristics or status. This range of measures should also be made available for secondary or indirect victims of SLAPPS, such as family members, associates or lawyers of the targets and victims and victims, who should be adequately protected against the harms caused by SLAPPS.” – Recommendation, paragraph 50

The types of support fall into six categories:

1. Legal support
2. Financial support
3. Psychological support
4. Practical support
5. Private sector support
6. Informational support

### Legal support

Paragraph 51 of the Recommendation states that Member States should consider providing adequate access to free legal assistance, and that any existing national mechanisms and instruments organising and providing legal support should be made available. Member States should also encourage and empower independent organisations specialising in legal support, associations of legal professionals, media and press councils, human rights defenders’ organisations, journalists’ unions and associations, academic institutions providing legal services, and other non-governmental organisations to provide SLAPP targets and victims with legal services. States should furthermore ensure that natural and legal persons who are targets and victims of SLAPPS should be able to obtain access to insurance for legal support under fair conditions.

The EU Directive adds, in Article 9, that associations, organisations, trade unions, and other entities which have a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation should be able to support the defendant in court. That support should ensure that the specific expertise of such entities can be brought to bear in such proceedings, thereby contributing to the assessment by the court of

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whether a case is abusive or a claim is manifestly unfounded. Such support could, for example, take the form of providing information relevant to the case, intervening in favour of the defendant in court proceedings, or be in any other form as provided for in national law. The UNESCO [Guide for Amicus Curiae Interventions in Freedom of Expression Cases](#) (2021) is worth noting in this regard.

In further recognition of the role that civil society organisations play in supporting SLAPP victims and targets, [EU Commission Recommendation \(EU\) 2022/758](#) recommends that states provide financial support towards such organisations.

### Financial support

Paragraph 52 of the Recommendation states that Member States should consider providing financial support to SLAPP victims, in collaboration with national associations of journalists, trade unions and relevant civil society organisations, including by establishing national funds, grants and/or other targeted assistance, or supporting existing funds or projects aimed at financially assisting victims and targets and victims of SLAPPs. The [Explanatory Memorandum](#) refers to a US\$9m grant made by USAID to [Reporters Shield](#), a membership organisation that provides legal defence support for investigative journalism, implying that this is an example to follow (paragraph 122).

### Psychological support

Paragraph 53 of the Recommendation states that Member States should seek to ensure that SLAPP targets and victims have access to various types of confidential and professional psychological support such as direct advice, referral to relevant health authorities or financial help to independently and directly secure support. Member States should encourage public health authorities to give due consideration to, and dedicate resources for services to, SLAPP targets and victims.

### Practical support

Sometimes, SLAPP targets and victims or victims are also targeted with threats to their physical safety. In such cases, paragraph 54 of the Recommendation states that SLAPP targets and victims should have access to early warning mechanisms such as hotlines operated by civil society organisations or independent State agencies. In exceptional situations, member States should have in place effective and gender-specific mechanisms for voluntary evacuation to a safe place and police protection. Where feasible, existing national mechanisms and instruments that are available for other types of targets and victims should be made accessible to SLAPP targets and victims as well.

### Private sector support

Paragraph 55 of the Recommendation states that Member States should ensure that “relevant private-sector actors comply with all applicable laws aimed at the protection of SLAPP targets and victims, and provide support as necessary. Such support should extend both to employees and to associates engaged in a freelance capacity.” The Explanatory Recommendation to the Recommendation makes it clear that this means that employers should provide support where their employees are victims or targets or SLAPPs in their regular course of employment (see paragraph 121). This may include special leave, paid time off, additional insurance or financial assistance. The term “employer” should be interpreted in an extensive manner, so as to include also, for example, media that freelancers co-operate with or human rights organisations that volunteers cooperate with, but that are not strictly speaking employers.

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## Informational support

Paragraph 56 of the Recommendation states that Member States should actively collect and disseminate free and easily accessible information about local and international organisations that provide various types of support to SLAPP targets and victims. Article 19 of the Directive provides, similarly, that SLAPP targets and victims should have access to information on available procedural safeguards and remedies and existing support measures, such as legal aid and financial and psychological support where available. This information must be provided in one single place in an easily accessible format via an appropriate channel, such as an information centre, an existing focal point or an electronic gateway. [EU Commission Recommendation \(EU\) 2022/758](#) recommends that states should establish a focal point that gathers and shares information on support to SLAPP targets and victims.

## DISCUSSION ON SUPPORT MEASURES

### → 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 asked to:

1. identify what forms of legal support, financial support, psychological support, practical support, private sector support, and informational support are available in the country at current;
2. identify gaps in support;
3. discuss the best ways in which these gaps can be filled.

After 20 minutes, the small groups report back to the larger group to report their findings; there may be follow-up discussion in the larger group.

# EXERCICES – MODULE 9

## Support measures for SLAPP targets and victims and victims

*(Training material to be shared with participants)*

### DISCUSSION ON SUPPORT MEASURES

#### → Small group discussion

Task for the groups: discuss the following questions:

1. identify what forms of legal support, financial support, psychological support, practical support, private sector support, and informational support are available in the country at current;
2. identify gaps in support;
3. discuss the best ways in which these gaps can be filled.

Following discussion in small groups, report-back to the larger group. There may be follow-up discussion.

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## PRESENTATION OUTLINE

Reminder: the two main international instruments

Support for SLAPP targets and victims under the CoE Recommendation and the EU Directive:

- ▶ Legal support
- ▶ Financial support
- ▶ Psychological support
- ▶ Practical support
- ▶ Private sector support
- ▶ Informational support

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# REMINDER: THE TWO MAIN INTERNATIONAL INSTRUMENTS

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## 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

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# SUPPORT FOR SLAPP TARGETS AND VICTIMS UNDER THE EU

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## EU DIRECTIVE 2024/1069

“It is typical in SLAPPS that those targeted suffer severe financial repercussions and psychological and reputational harm.

Causing such harm is one of the aims of SLAPP claimants when they initiate abusive court proceedings against public participation.” – preamble, paragraph 46

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## EU DIRECTIVE 2024/1069: ARTICLE 9

Member States shall ensure that a court or tribunal seized of court proceedings brought against natural or legal persons on account of their engagement in public participation may accept that associations, organisations, trade unions and other entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation, may support the defendant, where the defendant so approves, or provide information in those proceedings in accordance with national law.

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## EU DIRECTIVE 2024/1069: SUPPORT INCLUDING INTERVENTIONS

Associations, organisations, trade unions and other entities which have a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation, should be able to support the defendant in court.

That support should ensure that the specific expertise of such entities can be brought to bear in such proceedings, thereby contributing to the assessment by the court of whether a case is abusive or a claim is manifestly unfounded. Such support could, for example, take the form of providing information relevant to the case, intervening in favour of the defendant in court proceedings, or be in any other form as provided for in national law.

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## EU DIRECTIVE 2024/1069: ARTICLE 19

Member States shall ensure that natural or legal persons engaging in public participation referred to in Article 6 have access, as appropriate, to information on available procedural safeguards and remedies and existing support measures such as legal aid and financial and psychological support, where available.

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## EU COMMISSION RECOMMENDATION (EU) 2022/758

- ▶ Establish a focal point that gathers and shares information on support to SLAPP targets and victims
- ▶ Provide financial support towards organisations that provide guidance and support for SLAPP targets and victims, in particular to make sure that they have sufficient resources to react quickly against such proceedings.
- ▶ Ensure that legal assistance is available to SLAPP defendants in an affordable and easily accessible manner.

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## COUNCIL OF EUROPE RECOMMENDATION: GENERAL STATEMENT

- ▶ Rapid access to a range of support and protective measures for targets and victims and targets and victims of SLAPPs.
- ▶ Procedures to ensure their physical protection from any potential harm should also be put in place.
- ▶ Facilitate the provision of support by relevant actors to targets and victims and targets and victims of SLAPPs, such as those allocating adequate resources to provide such support.
- ▶ Organise support in consultation with targets and victims, adapt the support to their specific needs and situations, and take fully into consideration their personal characteristics or status.
- ▶ Secondary or indirect targets and victims of SLAPPs

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## COUNCIL OF EUROPE RECOMMENDATION: LEGAL SUPPORT

- ▶ Free legal assistance
- ▶ Member States should encourage and empower independent organisations specialising in legal support, associations of legal professionals, media and press councils, human rights defenders' organisations, journalists' unions and associations, academic institutions providing legal services and other non-governmental organisations to provide SLAPP targets and victims with legal services
- ▶ ensure that natural and legal persons who are targets and victims of SLAPPs are able to obtain access to insurance for legal support under fair conditions

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## COUNCIL OF EUROPE RECOMMENDATION: FINANCIAL SUPPORT

- ▶ Financial support to SLAPP targets and victims, in collaboration with national associations of journalists, trade unions and relevant civil society organisations, including by establishing national funds, grants and/or other targeted assistance, or supporting existing funds or projects aimed at financially assisting targets and victims of SLAPPs

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## COUNCIL OF EUROPE RECOMMENDATION: PSYCHOLOGICAL SUPPORT

- ▶ Access to various types of confidential and professional psychological support such as direct advice, referral to relevant health authorities or financial help to independently and directly secure support.
- ▶ Member States should encourage public health authorities to give due consideration to, and dedicate resources for services to, SLAPP targets and victims and targets and victims.

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## COUNCIL OF EUROPE RECOMMENDATION: PRACTICAL SUPPORT

- ▶ Where their physical safety is threatened, SLAPP targets and victims should have access to early warning mechanisms such as hotlines operated by civil society organisations or independent State agencies.
- ▶ In exceptional situations, member States should have in place effective and gender-specific mechanisms for voluntary evacuation to a safe place and police protection.
- ▶ Where feasible, existing national mechanisms and instruments that are available for other types of targets and victims should be made accessible to SLAPP targets and victims as well.

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## COUNCIL OF EUROPE RECOMMENDATION: PRIVATE SECTOR SUPPORT

- ▶ Member States should ensure that relevant private-sector actors comply with all applicable laws aimed at the protection of SLAPP targets and victims, and provide support as necessary.
- ▶ Employers should provide support where their employees are victims or targets or SLAPPs in their regular course of employment, through special leave, paid time off, additional insurance or financial assistance.
- ▶ The term “employer” should be interpreted in an extensive manner, so as to include also, for example, media that commission freelancers or human rights organizations that volunteers co-operate with, but that are not sensu stricto employers.

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## COUNCIL OF EUROPE RECOMMENDATION: INFORMATIONAL SUPPORT

- ▶ Collect actively and on an ongoing basis and disseminate free and easily accessible information about local and international organisations that provide various types of support to SLAPP targets and victims.

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*This Training Programme was developed with the financial support of the European Union and the Council of Europe joint programme "Horizontal Facility for the Western Balkans and Türkiye". Its contents are the sole responsibility of the authors. Views expressed herein can in no way be taken to reflect the official opinion of the European Union and Council of Europe.*



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