

***Committee of Experts on Strategic Lawsuits
against Public Participation (MSI-SLP)***



**MSI-SLP(2022)04
2 May 2022**

1st Meeting – 4-5 April 2022 (hybrid)

MEETING REPORT

Opening, agenda, elections

1. Mr Patrick Penninckx, Head of the Information Society Department, Council of Europe, opened the meeting. He provided information on the financial and legal implications of the cessation of membership of the Russian Federation within the Council of Europe, including that the Russian Federation will cease to participate and have representatives in steering and expert committees and, as a consequence, a new member State representative shall be elected as MSI-SLP member by the [Steering Committee on Media and Information Society \(CDMSI\)](#).
2. Mr Penninckx reminded members the importance of their task, to draft a recommendation on SLAPPs, with a view to pushing back a phenomenon greatly impacting the work of public watchdogs. In this context, he referred to the webinar organised on 31 March by the Council of Europe together with the Group of Friends on the Safety of Journalists and Media Freedom in Strasbourg, and the testimony offered by Ms Anna Murlykina, journalist from Mariupol and editor-in-chief of the biggest independent news portal in the Donbass region, to further stress the crucial work carried out by journalists to safeguard public participation, also in war times. Mr Penninckx reminded the chilling effect of SLAPPs, aimed at silencing their targets while also destructing the right of everyone to be informed. He invited members to find guidance in

the relevant judgements of the European Court of Human Rights and in previous relevant instruments of the Council of Europe. He also informed about the motion tabled by the Parliamentary Assembly to the Council of Europe (PACE) Committee on Culture, Science, Education and Media that could lead to the adoption of a resolution and recalled the EU package soon to be adopted on relevant SLAPP-related aspects.

3. Mr Taavo Lumiste, Chair of the CDMSI, welcomed members and participants and provided information on the CDMSI, to which the MSI-SLP is a subordinate body, as well as on its activities and priorities within the current biennium and beyond. He further stressed the importance of the task before the MSI-SLP and noted how this work will be complementary to the other two subsidiary committees to the CDMSI, in light of the common goals pursued. He therefore encouraged the members cooperate as appropriate with the mother Committee as well as, where necessary, with the [Committee of Experts on Increasing Resilience of Media \(MSI-RES\)](#) and [Committee of Experts on the Integrity of Online Information \(MSI-INF\)](#).
4. The MSI-SLP members adopted the meeting agenda (Appendix 1) without amendment. The list of participants to the meeting appears in Appendix 2.
5. Ms Giulia Lucchese, Secretary to the MSI-SLP, introduced the main objectives of Council of Europe standard-setting work and presented the working methods and procedures of expert committees, in line with Resolution [CM/Res\(2021\)3](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods. She also provided some background to the MSI-SLP's Terms of Reference and the expected deliverable, as well as a brief overview of the Council of Europe standard-setting and other documents of relevance for the MSI-SLP (the list of reference documents is available on the MSI-SLP website).
6. The members of the MSI-SLP held a *tour de table*, they introduced themselves and briefly shared their expectations from the work of the Committee.
7. The MSI-SLP proceeded to elections. With only one candidate proposed for each of the functions, the MSI-SLP unanimously elected Ms Karmen Turk (Estonia) as its Chair and Mr Željko Martyn Sampor (Slovak Republic) as its Vice-Chair. Ms Evelyn Borg Costanzi was appointed as Gender Equality Rapporteur.

8. The meeting was further chaired by the newly elected Chair. Members of the MSI-SLP presented their initial views on the most outstanding issues to be addressed in the draft Council of Europe recommendation on SLAPPs that it is expected to be finalised and submitted to the CDMSI for approval by the end of its mandate in December 2023. Once approved by the CDMSI, the draft recommendation will be transmitted to the Committee of Ministers for adoption.

Conclusions and decisions

9. The Committee considered that the draft recommendation should be a clear, focused and self-standing instrument. The members of the Committee reiterated the importance of complementing existing instruments and of operationalising relevant standards and principles, in particular those deriving from the case-law of the European Court of Human Rights and relevant Council of Europe instruments. It was also noted that the Committee should show positional awareness, taking into account policies addressing relevant SLAPPs-related issues adopted by domestic, regional and international fora and avoid unnecessary duplication or contradictions (e.g., questions of jurisdiction). It was therefore agreed to complement the future recommendation with an accompanying explanatory memorandum as an interpretative support tool.
10. The MSI-SLP also agreed that the draft recommendation should provide concrete guidance to member States and stressed the importance of designing both legal and other complementary measures providing meaningful guidance, with a view to have a concrete impact on addressing SLAPPs. At the same time, they also agreed that the draft recommendation should be flexible enough to be effectively implemented in different domestic legislations and to enable effective international cooperation.
11. The MSI-SLP considered that the recommendation should address SLAPPs in a comprehensive fashion, covering all breeds of public watchdogs, also in consideration of the European Court of Human Rights' approach towards the protection of the participation in public debate, online and offline. To this end, the members agreed to strive for a formulation of a working definition of SLAPPs which should identify the key features and criteria, be broad and open ended.

12. The Expert Committee discussed the possibility to address certain measures to relevant stakeholders other than member States, such as the judiciary, legal professionals and press councils. They agreed to focus on legal measures such as preliminary procedure, burden of proof and preventive mechanisms, including training, awareness raising and educational programmes, and to reflect on the opportunity to provide for sanctioning measures, such as shifting of legal costs. The experts noted that the cross-border dimension is relevant and agreed to consider further this aspect once the EU package on SLAPPs will be adopted and made public. The experts also agreed that targets of SLAPPs should have access to financial and legal mechanisms providing support if such don't exist or are not sufficient.
13. The MSI-SLP designated Ms Flutura Kusari and Mr Tarlach McGonagle as drafting Rapporteurs for the draft recommendation and its explanatory memorandum.
14. The Expert Committee agreed to hold its next meeting on 18-19 October 2022. Should the public health situation permit, the meeting will again be held onsite in Strasbourg, with a possibility for online participation.

Any other business

15. In line with the established practice, the Secretariat will share the draft meeting report with the MSI-SLP members, allowing for comments within five full working days. In the absence of comments, the report will be deemed agreed, uploaded on the website of the MSI-SLP and transmitted to the CDMSI for information.

Appendix 1

1st Meeting Agenda

4-5 April 2022, 10.00-12:30, 14:00-16.30

Hybrid - Room G03, Agora Building, Council of Europe, Strasbourg and
Online via KUDO

Day 1 - 4 April

09:30-10:00 CET – KUDO tests

Opening of the meeting

Patrick PENNINCKX, Head of Information Society Department

1.

Taavo LUMISTE, Chair of the Steering Committee on Media and
Information Society (CDMSI)

2. **Adoption of the agenda**

MSI-SLP (2022)1

Information by the Secretariat

3.

- Introduction to the working methods and procedures of
intergovernmental committees and subordinate bodies

[CM/Res\(2021\)3](#)

- Information on the aims and working methods of the
Committee of Experts on strategic lawsuits against public
participation

[Extract from
CM\(2021\)131-
addfinal](#)

4. **Tour de table**

Brief introduction by the Committee Members

Lunch Break

5.

Elections

Election of Chair and Vice-Chair and appointment of the Gender Equality Rapporteur

Discussion of the Terms of Reference of the MSI-SLP

6. The Committee of Experts will discuss the structure and scope of the text which it is expected to deliver at the end of its mandate: *Draft Recommendation on strategic lawsuits against public participation (SLAPPs)* and will designate the drafting rapporteur(s).

[Terms of reference of the MSI-SLP](#)

Day 2 – 5 April

09:30-10:00 CET – KUDO tests

6. **Discussion of the Terms of Reference of the MSI-SLP - Continued**
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Lunch Break

6. **Discussion of the Terms of Reference of the MSI-SLP - Continued**
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7. **Discussion of the timeline for the MSI-SLP (2022-2023)**
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8. **Any other business**
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9. **Date and place of next meeting**
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Appendix 2

1st Meeting – 4-5 April 2022 (Hybrid)1^e réunion – 4-5 avril 2022 (hybride)**List of participants / Liste de participant(e)s****COMMITTEE MEMBERS / MEMBRES DU COMITÉ**

CROATIA / CROATIE	Mr/M Hrvoje LISIČAR Chair of Information Technology Law, Faculty of Law, University of Zagreb <i>Président du droit des technologies de l'information, Faculté de droit, Université de Zagreb</i>
ESTONIA / ESTONIE	Ms/Mme Karmen TURK Lecturer, University of Tartu and Partner at the Law Firm TRINITI <i>Conférencière, Université de Tartu, et associé du cabinet d'avocats TRINITI</i>
THE NETHERLANDS / PAYS-BAS	Mr/M Tarlach MCGONAGLE Professor of Media Law and Information Society, University of Leiden and Senior researcher, Institute for Information Law (IViR), University of Amsterdam <i>Professeur de droit des médias et société de l'information, Université de Leiden et chercheur principale, Institute for Information Law (IViR), Université d'Amsterdam</i>
ROMANIA / ROUMANIE	Ms/Mme Alina BARBU Legal advisor, Directorate for European Affairs and Human Rights, Ministry of Justice <i>Conseillère juridique, Direction des affaires européennes et des droits de l'homme, Ministère de la Justice, Roumanie</i>
SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE	Mr/M Željko Martyn SAMPOR Senior State Counsel, Ministry of Culture, Office of the state secretary <i>Conseiller d'État principal, Ministère de la culture, Bureau du secrétaire d'État</i>
UNITED KINGDOM / ROYAUME-UNI	Ms/Mme Beatriz Maja BROWN Policy Lead – Strategic Lawsuits Against Public Participation (SLAPPs), Ministry of Justice <i>Responsable des politiques – Poursuites stratégiques contre la mobilisation publique (SLAPPs), Ministère de la Justice</i>

INDEPENDENT EXPERTS / EXPERT(E)S INDÉPENDANT(E)S

	<p>Ms/Mme Evelyn BORG COSTANZI Human Rights Lawyer, BCGL advocates <i>Avocat des droits de l'homme, BCGL advocates</i></p>
	<p>Mr/M Peter COE Lecturer in Law, University of Reading, Associate Research Fellow, University of London <i>Maître de conférences en droit, Université de Reading ; chercheur associé, Université de Londres</i></p>
	<p>Mr/M Burkhard HESS Director Max Planck Institute Luxembourg for Procedural Law <i>Directeur Institut Max Planck Luxembourg pour le droit procédural</i></p>
	<p>Ms/Mme Flutura KUSARI Legal Advisor and Media Lawyer, European Centre for Press and Media Freedom <i>Conseiller juridique, avocat spécialisé en médias, Centre européen pour la liberté de la presse et des médias</i></p>
	<p>Mr/Mme Dragan SEKULOVSKI Executive Director, Association of Journalists of Macedonia <i>Directeur général, Association des journalistes de Macédoine</i></p>
	<p>Mr Dirk VOORHOOF Professor emeritus, Ghent University and Copenhagen University <i>Professeur émérite, Université de Gand et Université de Copenhague</i></p>

COUNCIL OF EUROPE MEMBERS STATES / ÉTATS MEMBRES DU CONSEIL DE L'EUROPE

ESTONIA / ESTONIE	<p>Mr/M Taavo LUMISTE Chair of the CDMSI - Steering committee on media and information society <i>Président du CDMSI - comité directeur sur les médias et la société de l'information</i></p>
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GREECE / GRÈCE	Ms/Mme Christina VRETTOU Lawyer of the Bank of the Greece and expert of the European Commission on SLAPP issues <i>Avocat de la Banque de Grèce et expert de la Commission européenne sur les questions SLAPP</i>
TURKEY / TURQUIE	Ms/Mme Emel SAPMAZ Expert, Radio and Television Supreme Council of Turkey <i>Expert, Conseil suprême de la radio et de la télévision expertes de la Turquie</i> Mrs/Mme Tanseli GÜRÜN Media expert, Radio and Television Supreme Council of the Republic of Turkey <i>Expert des médias, Conseil suprême de la radio et de la télévision de la Turquie</i>

OTHER PARTICIPANTS / AUTRES PARTICIPANT.E.S

COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE <i>CONSEIL DES BARREAUX EUROPÉENS</i>	Ms/Mme Indra BULE Legal Advisor <i>Conseiller juridique</i>
EUROPEAN BROADCASTING UNION (EBU) <i>UNION EUROPÉENNE DE RADIO-TÉLÉVISION (EBU)</i>	Ms/Mme Nicola FRANK Head of Institutional and International Relations <i>Responsable des relations institutionnelles et internationales</i>
EUROPEAN COMMISSION / COMMISSION EUROPÉENNE	Ms/Mme María ZAFRA SAURA Policy officer / <i>Chargé de mission</i> DG Justice and Consumers / <i>DG Justice et Consommateurs</i> Unit D3 – Union citizenship rights and free movement / <i>Unité D3 - Droits de citoyenneté de l'Union et libre circulation</i>
CONFERENCE OF INGOS / CONFERENCE DES OING	Mr/M Daniel SIMONS Senior Legal Counsel Strategic Defence <i>Conseiller juridique principal, Défense stratégique</i> Greenpeace International
ORGANISATION OFR SECURITY AND CO-	Mr/M Ton VAN DEN BRANDT Senior Adviser <i>Conseiller principal</i>

OPERATION IN EUROPE (OSCE) <i>ORGANISATION POUR LA SECURITE ET LA COOPERATION EN EUROPE (OSCE)</i>	Ms/Mme Julia HAAS Project Officer <i>Responsable de projet</i>
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NON-MEMBER STATES / ÉTATS NON-MEMBRES

MOROCCO / MAROC	Ms / Mme Chanaz EL AKRICHI Head of Division of Cooperation, <i>Ministry of Culture, Youth and Sports- Department of Communication</i> <i>Cheffe de Division de la Coopération, Ministère de la Culture, de la Jeunesse et des Sports- Département de la Communication</i>
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MSI-SLP SECRETARIAT / SECRETARIAT DU ADI/MSI-DIS

INFORMATION SOCIETY DEPARTMENT / SERVICE DE LA SOCIETE DE L'INFORMATION	Ms/Mme Giulia LUCHESE Secretary to the Committee of Experts on Strategic Lawsuits against Public Participation (MSI-SLP) <i>Secrétaire du Comité d'experts sur les poursuites stratégiques contre la participation publique (MSI-SLP)</i>
INFORMATION SOCIETY DEPARTMENT / SERVICE DE LA SOCIETE DE L'INFORMATION	Ms/Mme Emma GRUDEN Assistant, Media and Internet Governance Unit <i>Assistante, Unité des médias et gouvernance de l'Internet</i>
INFORMATION SOCIETY DEPARTMENT / SERVICE DE LA SOCIETE DE L'INFORMATION	Ms/Mme Joanna SZELEZNIAK Assistant, Media and Internet Governance Unit <i>Assistante, Unité des médias et gouvernance de l'Internet</i>

COUNCIL OF EUROPE SECRETARIAT / SECRETARIAT DU CONSEIL DE L'EUROPE

DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW / DIRECTION GENERALE DROITS DE	Mr/M Jan KLEIJSSSEN Director, Information Society – Action against Crime Directorate, Directorate General Human Rights and Rule of Law
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L'HOMME ET ETAT DE DROIT	<i>Directeur, Direction de la société de l'information et de la lutte contre la criminalité, Direction générale Droits de l'Homme et Etat de droit</i>
INFORMATION SOCIETY DEPARTMENT / SERVICE DE LA SOCIETE DE L'INFORMATION	Mr/M Patrick PENNINCKX Head of Information Society Department <i>Chef du Service de la société de l'information</i>
INFORMATION SOCIETY DEPARTMENT / SERVICE DE LA SOCIETE DE L'INFORMATION	Ms/Mme Artemiza-Tatiana CHISCA Head of Media and Internet Division, Secretary to the Steering committee on media and information society (CDMSI) <i>Chef de la Division médias et internet, Secrétaire du Comité directeur sur les médias et la société d'information (CDMSI)</i>
INFORMATION SOCIETY DEPARTMENT / SERVICE DE LA SOCIETE DE L'INFORMATION	Ms/Mme Urška UMEK Head of Unit. Media and Internet Division <i>Chef d'unité. Division médias et internet</i>

INTERPRETERS / INTERPRÈTES**Mr/M Luke TILDEN****Ms/Mme Lucie DE BURLET****Ms/Mme Bettina LUDEWIG****TECHNICIAN KUDO / KUDO TECHNICIEN****Ms/Mme Margaux FABRE****Mr/M. Renaud MOREUILLE****Mr/M. Julien RICHARD**

*All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

* Toute référence au Kosovo mentionnée dans ce texte, qu'elle concerne le territoire, les institutions ou la population, doit se comprendre en plein conformité avec la Résolution 1244 du Conseil de Sécurité de l'Organisation des Nations Unies et sans préjuger du statut du Kosovo.

Appendix 3

ROADMAP MSI/SLP

2022

4-5 April	MSI/SLP 1st meeting Introduction to working methods and discussion of the Terms of Reference. Preliminary agreement on the main issues to be addressed in the recommendation, the general approach and a possible outline. Election of the Chair and Vice-Chair, appointment of drafting rapporteur(s) and Gender Equality Rapporteur.
7 April	CDMSI Bureau meeting Report on work progress
1-2 June	CDMSI Plenary meeting Report on work progress
18-19 October	MSI/SLP 2nd meeting
November/December	CDMSI Plenary meeting

2023

March/April	MSI/SLP 3rd meeting
May/June	CDMSI Plenary meeting
July/August	Consultation with CoE bodies and public consultation with and external stakeholder
September/October	MSI/SLP 4th and final meeting
November/December	CDMSI Plenary meeting Discussion and possible approval of the draft Recommendation on SLAPPs by the CDMSI with a view to its submission to the Committee of Ministers for adoption.