

**Committee of Experts on Strategic Lawsuits against
Public Participation (MSI-SLP)****MSI-SLP(2023)16
13 November 2023****4th meeting, 17-18 October 2023****MEETING REPORT*****Opening, agenda***

1. The Chair of the MSI-SLP, Ms Karmen Turk (Estonia), opened the meeting. The Chair handed over to Mr Patrick Penninckx, Head of the Information Society Department, Council of Europe, for his welcoming remarks. Mr Penninckx emphasised that the draft Recommendation would be an important instrument across all Council of Europe member States and may also be an important source of reference for the European Court of Human Rights in its future jurisprudence.
2. Mr Penninckx provided information on the Council of Europe [Campaign for the Safety of Journalists](#), launched on the first day of the Conference [The Pen Is Mightier than the Sword? Meeting today's challenges to freedom of expression and the safety of journalists](#), jointly organised by the Latvian Ministry of Foreign Affairs, the Ministry of Culture and the Ombudsman's Office, together with the Council of Europe, held in Riga, Latvia, on 5-6 October 2023. He also informed participants about the finalisation of the work of the [MSI-INF](#) (Committee of Experts on the Integrity of Online Information) and the [MSI-RES](#) (Committee of Experts on Increasing Resilience of Media).
3. Mr Stefan Schennach, First Vice-Chairperson of the [Committee on Culture, Science, Education and Media](#) of the Parliamentary Assembly of the Council of Europe, presented the Report '[Countering SLAPPs: an imperative for a democratic society](#)', unanimously adopted by the Committee on 10 October 2023, providing an analysis of the SLAPPs

phenomenon, an illustration of trends and impact of SLAPP cases and, an overview of current and proposed anti-SLAPP measures.

4. The MSI-SLP members adopted the meeting agenda (Appendix 1) without amendments. The list of participants to the meeting appears in Appendix 2.

Discussion on the revised draft Recommendation on countering the use of strategic lawsuits against public participation (SLAPPs)

5. The MSI-SLP subsequently examined the draft Recommendation. The drafting rapporteurs, Ms Flutura Kusari and Mr Tarlach McGonagle, drew participants' attention to the changes made in the light of the comments received by the MSI-SLP members, the CDSMI and the feedbacks transmitted in response to the [public consultation](#) phase, which ran from the 21 June to 2 August 2023.
6. The MSI-SLP discussed the draft Recommendation and related amendments and proposals section by section, with a view to finding an agreement on the text. The same exercise was conducted to allow the Committee to conclude their work and agree on the draft Explanatory Memorandum.
7. **Regarding the preamble**, the experts and participants agreed that it was important to add a reference to the Recommendation [CM/Rec\(2014\)7](#) of the Committee of Ministers to member States on the protection of whistleblowers, to ensure further synergies between the draft Recommendation and the Council of Europe's previous work on the protection of public participation.
8. **Regarding the operative part**, it was agreed to stress that a regular review of the implementation of the Recommendation should be carried out also to consider the improvement of support mechanisms for SLAPP targets and victims in place.
9. **Regarding the appendix**, the MSI-SLP decided to stress the importance of striking a careful balance between access to justice and freedom of expression. Analysing the section on key terms of the draft Recommendation, it was also agreed to include issues pertaining to sexual or gender-based harassment or violence within the matters understood as of 'public interest'. Members of the Committee further reiterated their agreement that there should be a broad, non-exhaustive, definition of both 'public interest' and 'public participation', with a view to ensure that the future Recommendation can accommodate targets and victims as SLAPPs' trends evolve.
10. Discussing the SLAPPs indicators, a revision striving for conceptual clarity and internal consistency was carried on. *Inter alia*, it was agreed to further emphasise that while not

all indicators need to be present in all cases, the acute and egregious nature of one of the characteristics and/or the presence of more of them is likely to evidence a SLAPP. This approach was mirrored in the Explanatory Memorandum, where the text was further updated to elaborate clearly on the features that will be recurring in SLAPPs, and those which are likely to suggest the existence of SLAPPs, although may not always be present.

11. The terminology of 'abuse or misuse of laws' was added throughout the draft Recommendation for the sake of consistency. In the Explanatory Memorandum, a definition of 'abuse or misuse of laws or procedure' was provided.
12. The MSI-SLP agreed that it is not necessary to reiterate throughout the recommendation, *per se* a soft-law instruments, that measures should be implemented in a way that is compatible with national laws. Indeed, members emphasised that the Recommendation should provide guidance to member States and encourage the implementation of reforms, as necessary, which would inherently align with national legal frameworks. To better combat the effects of SLAPPs, members concurred that the draft Recommendation should also foster member States to introduce rules that protect defendants from multiple or coordinated proceedings which relate to the same and/or closely related matters.
13. Taking into consideration the realities of some well-known SLAPPs cases, it was agreed to address the situation where the death or loss of legal capacity of the defendant occurs during a pending case against public participation, so as to ensure that the defendant's family members or associates have access to adequate support and relief that was available for the original defendant.
14. Discussing remedies, the MSI-SLP added reference to the acknowledgment of SLAPP victim status and linked this to the full compensation for pecuniary and non-pecuniary damages incurred.
15. In the section dealing with support for targets and victims of SLAPPs, it was noted that clarification as to the 'targets' and 'victims' terminology was necessary. Members agreed that this should be done in the Explanatory Memorandum, where the conceptual distinction was extensively elaborated and finalised. In the draft Recommendation, a revision of the section was also carried out to make the guidelines more viable and pragmatic, including by calling for the best efforts of the member States.
16. The MSI-SLP further discussed relevant paragraphs of the Explanatory Memorandum to ensure that the text satisfactorily addresses issues discussed, amended and agreed in

the text of the main instrument, the draft Recommendation. The MSI-SLP agreed on the text of the draft Recommendation, as revised during the meeting, and of the draft Explanatory Memorandum, under instruction that the Secretariat and the co-Rapporteurs should further elaborate on selected necessary amendments.

Roadmap and next steps

17. The MSI-SLP instructed the Secretariat to transmit the revised and finalised draft Recommendation and draft Explanatory Memorandum to the Steering Committee on Media and Information Society (CDMSI), for its discussion and possible approval at the next Plenary meeting, taking place on 29 November - 1 December 2023. Participants were reminded that, following the CDMSI's approval, the draft Recommendation would be transmitted to the Committee of Ministers together with the accompanying draft Explanatory Memorandum, for possible adoption.

Any other business

18. The fourth meeting having been the last of the MSI-SLP, members expressed satisfaction with the work of the Committee and its outcome, commending in particular the Chair (Ms Karmen Turk) and the drafting rapporteurs (Ms Beatriz Brown, Ms Flutura Kusari, Mr Tarlach McGonagle and Mr Zeljko Martyn Sampor) for their dedication and commitment.

19. In line with established practice, the Secretariat will share the draft meeting report with the MSI-SLP, 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

4th meeting Agenda

17-18 October 2023

Room 9, Palais de l'Europe, Strasbourg

DAY 1 - 17 October

9.30– 10.30 Start of the meeting

1. Opening of the meeting by Ms Karmen Turk, Chair of the MSI-SLP, and welcoming address by Mr Patrick Penninckx, Head of Information Society Department, Council of Europe.
2. Presentation by Mr Stefan Schennach, First Vice-Chair of the PACE Committee on Culture, Science, Education and Media, of the Report "Countering SLAPPs: an Imperative for Democratic Society".
3. Adoption of the agenda and order of business.
4. Information by the Secretariat on relevant developments in standard-setting, work in the journalists' safety field and relevant work of the Council of Europe bodies and structure.

10.30 – 11.00 - Coffee break

11.00 – 13.15

5. Discussion and finalisation of the draft Recommendation on Strategic Lawsuits against Public Participation (SLAPPs)

13.15 – 14.15 - Lunch break

14.15 – 16.00

6. Point 5 continued.

16.00 – 16.30 - Coffee break

16.30 – 18.00

7. Point 5 continued.

18.00 – End of Day 1

DAY 2 – 18 October

9.00 – 11.00

1. Discussion and finalisation of the draft Recommendation on SLAPPs.
2. Discussion and finalisation of the accompanying Explanatory Memorandum.

11.00 – 11.30 - Coffee break

11.30 – 13.00

3. Point 1 and 2 continued.

13.00 – 14.00 - Lunch break

14.00 – 17.00

4. Point 1 and 2 continued.
5. Any other business.

17.00 - End of Day 2

Appendix 2

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

*Comité d'experts sur les
poursuites stratégiques contre la participation publique (MSI-SLP)*

4th Meeting – 17-18 October 2023 / Council of Europe, Strasbourg
4^e réunion – 17-18 octobre 2023 / Conseil de l'Europe, Strasbourg

List of participants / Liste de participant.e.s

COMMITTEE MEMBERS / MEMBRES DU COMITÉ

<p>Ms/Mme Alina BARBU Legal advisor / <i>Conseillère juridique</i> designated by Ministry of Justice/ <i>désigné par le Ministère de la justice</i> Romania/Roumanie</p>
<p>Ms/Mme Evelyn BORG COSTANZI Human Rights Lawyer, BCGL advocates / <i>Avocat des droits de l'homme, BCGL advocates</i></p>
<p>Ms/Mme Beatriz Maja BROWN Policy Lead – Strategic Lawsuits Against Public Participation (SLAPPs) / <i>Responsable des politiques – Poursuites stratégiques contre la mobilisation publique (SLAPPs)</i> Ministry of Justice / <i>Ministère de la Justice</i> United Kingdom / <i>Royaume-Uni</i></p>
<p>Mr/M Peter COE Associate Professor in Law, Birmingham Law School, University of Birmingham / <i>Professeur agrégé de droit, Birmingham Law School, Université de Birmingham</i> Senior Visiting Research Fellow, School of Law, University of Reading / <i>Chercheur invité principal, Faculté de droit, Université de Reading</i> Associate Research Fellow, Institute of Advanced Legal Studies and Information Law and Policy Centre, University of London / <i>Chercheur associé, Institute of Advanced Legal Studies and Information Law and Policy Centre, Université de Londres</i></p>
<p>Mr/M Tarlach MCGONAGLE Professor of Media Law and Information Society / <i>Professeur de droit des médias et société de l'information</i></p>

<p>University of Leiden / <i>Université de Leiden</i> Senior researcher, Institute for Information Law (IViR) / <i>chercheur principale, Institute for Information Law (IViR)</i> University of Amsterdam / <i>Université d'Amsterdam</i> The Netherlands / <i>Pays-Bas</i></p>
<p>Mr/M Burkhard HESS Director / <i>Directeur</i> Max Planck Institute Luxembourg for Procedural Law / <i>Institut Max Planck Luxembourg pour le droit procédural</i></p>
<p>Ms/Mme Flutura KUSARI Legal Advisor and Media Lawyer / <i>Conseiller juridique, avocat spécialisé en médias</i> European Centre for Press and Media Freedom / <i>Centre européen pour la liberté de la presse et des médias</i></p>
<p>Mr/M Hrvoje LISIČAR (apologised/ excusé) Chair of Information Technology Law / <i>Président du droit des technologies de l'information, Faculty of Law, University of Zagreb / Faculté de droit, Université de Zagreb</i> Croatia / <i>Croatie</i></p>
<p>Mr/M Željko Martyn SAMPOR Senior State Counsel / <i>Conseiller d'État principal</i> Ministry of Culture, Office of the state secretary / <i>Ministère de la culture, Bureau du secrétaire d'État Slovak Republic / République Slovaque</i></p>
<p>Mr/M Dragan SEKULOVSKI Executive Director, Association of Journalists of Macedonia <i>Directeur général, Association des journalistes de Macédoine</i></p>
<p>Ms/Mme Anne-Sophie SIRINELLI (apologised/ excusé) Magistrate / <i>Magistrate</i> Vice-president of the judicial court of Paris / <i>Vice-présidente au tribunal judiciaire de Paris</i> France / <i>France</i></p>
<p>Ms/Mme Karmen TURK Lecturer, University of Tartu / <i>Conférencière, Université de Tartu</i> Partner at the Law Firm TRINITY / <i>Associé du cabinet d'avocats TRINITY</i> Estonia / <i>Estonie</i></p>
<p>Mr/M Dirk VOORHOOF Professor emeritus / <i>Professeur émérite</i> Ghent University and Copenhagen University / <i>Université de Gand et Université de Copenhague</i></p>

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EUROPEAN COMMITTEE ON LEGAL CO-OPERATION/ COMITE EUROPEEN DE COOPERATION JURIDIQUE	Mr/M. Elshan ORUJOV Administrator / <i>Administrateur</i>
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