



Draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers to member states on countering the use of SLAPPs

Preamble

- a. Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage, *inter alia* by promoting common policies and standards;
- b. Recalling the commitment of member states to the right to freedom of expression and information, as guaranteed by Article 10 of the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) (ETS No. 5, hereinafter referred to as “the Convention”) and as interpreted by the European Court of Human Rights (hereinafter “ECtHR”) in its case-law;
- c. Recalling also the equal importance of other rights guaranteed by the Convention, including the right to a fair trial (Article 6), the right to respect for private and family life (Article 8), the right to freedom of assembly and association (Article 11) and the right to an effective remedy (Article 13);
- d. Recalling and reaffirming that member states, in addition to their negative obligation to refrain from interfering with the right to freedom of expression, also have a positive obligation to ensure a safe and favourable environment for participation in public debate by everyone, without fear, even when their opinions run counter to those defended by official authorities or significant parts of the public;
- e. Reiterating that free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system and that there is accordingly little scope for restrictions on political expression or debate on questions of public interest;
- f. Stressing that the public interest is to be understood broadly as it covers all issues that affect and concern the public, including controversial issues, and that the public has the right to be informed about matters of public interest and journalists and the media have the task of imparting information and ideas about such matters;

- g. Underscoring that the inclusion of diverse voices and perspectives, including minority and other opinions outside the mainstream, is essential for ensuring pluralistic public debate and a well-informed and active citizenry;
- h. Being aware that asymmetries in political, financial and other forms of power in society can give rise to inequalities in public debate and that the misuse and abuse of power and privilege by threatening or taking legal action to harass, intimidate, or silence minority or critical voices creates a chilling effect on public participation;
- i. Being gravely concerned at the persistence throughout Council of Europe member states of a wide range of intimidation, threats, violence, killings and other crimes against individuals or organisations acting as public watchdogs, and at the chilling effect that those threats have on public participation, especially when they go unpunished;
- j. Being alarmed at the chilling effect on freedom of expression, public debate and public participation caused by the vexatious or malicious use of legal proceedings to strategically intimidate and ultimately silence anyone wishing to participate in public debate or public affairs, including by threatening or taking legal action on fully or partially unfounded claims and exploiting imbalances in financial, political or societal power while doing so, a practice often referred to as Strategic Lawsuits Against Public Participation (hereinafter “SLAPPs”);
- k. Being aware that SLAPPs are often civil law actions, but that they appear in the administrative and criminal law context as well, and that when such proceedings provide for administrative measures and criminal sanctions they can be particularly restrictive and more easily weaponised against public watchdogs, resulting in a more severe impact on the individual and a greater chilling effect;
- l. Noting with concern that women face specific gender-related dangers in their capacity as journalists, human rights defenders and other public watchdogs, including when targeted by SLAPPs, and noting the need to address the differentiated impact of the risks and challenges they encounter;
- m. Seeking to consolidate and build on the legal and political responses already taken by the Council of Europe, in line with the case-law of the ECtHR and Recommendations and Declarations by the Committee of Ministers, such as [Recommendation CM/Rec\(2016\)4](#) on the protection of journalism and safety of journalists and other media actors and [Recommendation CM/Rec\(2022\)4](#) on promoting a favourable environment for quality journalism in the digital age, and recognising at the same time the importance of achieving consistency and coherence among different instruments and initiatives at the European and international levels;
- n. Recognising the urgency of devising comprehensive and effective strategies to counter SLAPPs;

Operative part

Under the terms of Article 15.b of the [Statute of the Council of Europe](#) (ETS No. 1), the Committee of Ministers recommends that governments of member states:

- i. implement, as a matter of urgency and through all branches of State authorities, the guidelines set out in the appendix to this recommendation, taking full account of the principles included there, in particular regarding structural and procedural safeguards, remedies and transparency, support for targets and victims, education and capacity building.
- ii. pay specific attention to SLAPPs in the context of their reviews of relevant domestic laws, policies and practices, including in accordance with CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, to ensure full conformity with member states' obligations under the Convention;
- iii. promote the goals of this recommendation at the national level as well as in relevant European and international fora and engage and co-operate with all interested parties to achieve those goals;
- iv. regularly review the status of implementation of this recommendation with a view to enhancing its impact and inform the Committee of Ministers about the measures taken by member states and other stakeholders, the progress achieved and any remaining shortcomings.

Appendix to Recommendation CM/Rec(20XX)XX

I. Scope and definitional approach

1. For the purposes of this recommendation, Strategic Lawsuits Against Public Participation (SLAPPs) are understood as legal actions that are initiated or pursued as a means of harassing or intimidating their target, with the strategic aim of preventing or hindering public participation. More specifically, SLAPPs are legal claims, proceedings and other actions brought in relation to public participation and expression on matters of public interest that have as their main purpose to prevent, restrict or penalize the exercise of rights associated with public participation.

2. The central aim of this recommendation – to protect public participation against SLAPPs and prevent the further use of SLAPPs in Council of Europe member states – is to be realised as part of member states’ fulfilment of their broader obligations under the Convention to ensure a safe and favourable environment for participation in public debate, which is an essential feature of pluralistic democratic societies that fully respect the rule of law and human rights. The fulfilment of those obligations is guided by an awareness that a range of different kinds of threats create a chilling effect on participation in public debate and lead to self-censorship, thereby depriving societies of the pluralistic offer of information and ideas that individuals need in order to make informed decisions.

3. SLAPPs can take many different forms and are subject to various provisions in national legislative frameworks. One of the challenges for member states in their efforts to prevent SLAPPs and counter their harmful effects is to be able to identify SLAPPs expeditiously and ensure that all SLAPPs are subject to legislative and other safeguards. This recommendation therefore clarifies key terms and provides guidance on the definitional criteria of SLAPPs in order to help member states to identify SLAPPs and to calibrate appropriate and effective legal safeguards, responses and other measures to counter their harmful effects. It also sets out various indicators.

Key terms

4. For the purposes of this recommendation and in line with the rights enshrined in the Convention, as interpreted by the ECtHR in its case-law, the following key terms are understood in a comprehensive and inclusive manner:

(i) “**Public participation**” refers to everyone’s democratic right to participate in public debate and public affairs, online and offline, and without fear or discrimination. This right includes the right to express opinions and ideas that run counter to or are critical of those defended by the official authorities or by a significant part of public opinion, or which offend, shock or disturb the State or any sector of the population, as clarified by the ECtHR. Everyone encompasses all public watchdogs and contributors to public debate and all participants in public affairs, including: journalists and other media actors, including citizen journalists; civil society organisations, including environmental and anti-corruption associations and activists;

unions; whistleblowers; academics; bloggers; human rights defenders; legal professionals; popular users of social media; cultural; creative industry actors and others.

Public participation also refers to the right to freedom of assembly and association and the right to vote and stand in elections. Public participation can thus include a wide variety of activities such as advocacy, journalism, investigating and reporting violations of the law or ethical norms, writing to government officials or corporate customers, circulating petitions, being parties in litigation designed to advance social change, engaging in peaceful protests or boycotts, engaging with regional or international mechanisms, or simply speaking out against misuse or abuse of power, human rights abuses, corruption, fraud or indeed commenting on any matter of public interest. The scope of the term also covers actions preparing, supporting or assisting public participation.

(ii) “**Public interest**” refers to all matters which affect the public and in which the public may legitimately take an interest, especially those matters concerning important social issues or affecting the well-being of individuals or the life of the community. The public has the right to receive information and ideas and thus to be informed about matters of public interest and journalists and the media have the task of imparting such information and ideas. The public interest extends to issues which may give rise to considerable controversy but it cannot be reduced to the public’s thirst for information about the private life of others, or to an audience’s wish for sensationalism or voyeurism. Politics, current affairs, human rights, justice, social welfare, education, health matters, religion, culture, history, climate and environmental issues are thus all examples of topics of public interest, unlike individuals’ strictly private relationships or family affairs. Topics may be of public interest at local, national or international levels.

Definitional criteria

5. Targeting public participation - The legal action is filed with the main purpose of using the legal process to prevent, inhibit, restrict or penalize the exercise of rights associated with public participation by intimidating, harassing or draining the resources of the defendant.

6. Covering all causes of legal action – Legal actions may entail the misuse, abuse or threatened use of all types of statutory or common law to prevent, inhibit, restrict or penalise contributions to public debate, including defamation, libel, insult, invasion of privacy, conspiracy, breach of intellectual property rights, economic interference or infliction of emotional harm. While this will generally mean a civil lawsuit, in some jurisdictions it is possible to trigger misdemeanours, administrative measures or criminal charges against their critics. This definition can also extend to so-called “legal intimidation tactics” – interlocutory or interim measures, aggressive subpoenas, or simply threats designed to intimidate the other party into backing down.

7. All stages of legal action –All stages of legal action are relevant, including an initial threat of legal action, which is of itself capable of having a chilling effect on public participation, as well as enforcement proceedings.

SLAPP indicators

8. Although SLAPPs manifest themselves in different ways, various characteristics can be used as indicators for identifying the purpose of the legal actions. While SLAPPs do not necessarily include all of these characteristics, the more of them that are present, the more likely the legal action can be considered as a SLAPP. Such indicators include:

- (i) The claimant tries to exploit an imbalance of power, such as their financial advantage or political or societal influence, to put pressure on the defendant.
- (ii) The arguments put forward by the claimant are aggressively formulated partially or fully unfounded.
- (iii) The claimant seeks remedies that are disproportionate to the defendant.
- (iv) The claimant engages in procedural and litigation tactics such as delaying proceedings, selecting a forum in which the law or other aspects of the litigation are favourable, provoking onerous workload, pursuing appeals with little or no prospect of success, and causing disproportionate costs to the defendant.
- (v) The legal action targets individuals or organisations, or other individuals or organisations associated with them.
- (vi) The legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake.
- (vii) The claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so.
- (viii) The claimant or associated parties engage in multiple and coordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters.

Specific forms/types of SLAPPs:

9. In addition to the general characteristics of SLAPPs, member states should take due account of the distinctive characteristics of specific types of SLAPPs and their legal consequences, and take appropriate and effective measures to address the specific threats posed:

(i) Cross-border SLAPPs

10. Compared to domestic SLAPPs pursued within one national legal system, cross-border SLAPPs, or SLAPPs pursued in different jurisdictions, involve additional layers of complexity, costs and stress. To successfully defend cross-border SLAPPs requires expert knowledge of multiple national legal systems. This typically involves engaging lawyers who are professionally active in or who have expertise of the relevant jurisdictions, thereby increasing the overall time and costs spent on preparing and defending the legal actions and exacerbating the chilling effect.

11. Member states should take appropriate and effective measures to limit forum-shopping, including as set out in [Declaration of the Committee of Ministers](#) on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, “Libel Tourism”, to Ensure Freedom of Expression;

12. Member states should also provide effective protection against third-State judgments, bearing in mind, as relevant, emerging European and international standards in this respect.

(ii) SLAPPs targeting anonymous public participation

13. A distinctive feature of SLAPPs targeting anonymous public participation is that the claimant seeks to force the disclosure of the identity of the defendant whose participation has been done anonymously or under a pseudonym, often due to fears for their safety if they were to speak out under their real names. Once the public participant's identity has been revealed, they are more susceptible to threats, intimidation, abuse and attacks.

14. Member states should put in place appropriate and effective safeguards to protect the identity of anonymous public participants and to limit the disclosure of their identity to the extent necessary for the proper administration of justice, including in line with the Council of Europe's [Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, Recommendation CM/Rec\(2014\)7](#) of the Committee of Ministers to member states on the protection of whistleblowers and other relevant standards on privacy and data protection.

(iii) Multiple or coordinated SLAPPs

15. The pressure and harassment caused by the frivolous, vexatious or malicious use of the law and legal process are compounded and aggravated, and the legal costs increased, when a defendant or a group of defendants is subjected to multiple and/or coordinated SLAPPs.

16. The judicial authorities of member states should, when assessing whether a legal claim constitutes a SLAPP, or otherwise considering a SLAPP case, take due account of and take appropriate and effective measures to eliminate or at least reduce the aggravating impact of multiple or coordinated SLAPPs on defendants.

II. Safeguards, remedies and transparency

17. Member states should ensure that their national legal systems and their implementation provide a comprehensive legal framework and coherent set of structural and procedural safeguards to prevent and minimize the harmful impact of SLAPPs, as well as a full set of remedies and support measures for the harms caused by SLAPPs. They should also take necessary and appropriate measures to ensure a culture of transparency around legal claims that have been found to constitute SLAPPs.

A. Legal framework

18. Member states should put in place a comprehensive legislative framework that enables everyone to participate in public debate and public affairs effectively, in safety and without fear.

19. Member states should take the necessary legislative and other measures to prevent the frivolous, vexatious or malicious use of the law and legal process to intimidate and silence any legal or natural persons engaging in public participation. They should also exercise vigilance

to ensure that legislation and sanctions and remedies are not applied in a discriminatory or arbitrary fashion against public participation. When national legal system allows, member states should put in place dedicated Anti-SLAPP national laws.

20. The legislative framework should be kept under regular review to assess and ensure the compliance of the framework and its application with the Convention. The reviews should cover all existing and draft legislation and secondary legislation, as well as legal practice, that concerns the rights to freedom of expression, peaceful assembly and association, and other participatory rights. Member states should, where relevant, take any legislative and other appropriate measures to safeguard those rights.

B. Procedural safeguards

- Effective case management

21. Member states should empower judiciary and other authorities to manage actively and effectively the proceedings in order to enable effective termination of the case and to avoid any delaying tactics. To achieve effective case management, the judicial and other authorities should ensure that parties present their claims, defences, factual allegations and offers of evidence as early and completely as possible and as appropriate to the careful conduct of litigation in order to secure procedural expediency.

- Early dismissal of claims against public participation

22. Member states should make adequate and appropriate provisions in their national legal frameworks, when national laws allow, to enable: (i) courts, on their own initiative, to dismiss a claim as a SLAPP early in the proceedings, and (ii) defendants to file applications for early dismissal of claims against public participation, in order to counter the harmful effects of SLAPPs on debate of public interest matters. Such provisions should require claims targeting public participation to meet a higher threshold of proof such as specification of claim at the earliest possible stage in proceedings in order to advance to trial.

23. Judicial and other authorities should be equipped with legal powers to make an assessment and fully or partly dismiss the claim if it is unfounded, abusive or would otherwise have a disproportionate impact. The opportunity to dismiss the claim should be considered based on the adversarial principle and decided, where possible, in light of anti-SLAPP legislation, notwithstanding national rules on concurrent proceedings, or the SLAPP indicators set out in paragraph 8 (above).

24. The conditions for the admissibility of applications for early dismissal should be determined by national law and could, for instance, include judicial consideration of the following cumulative criteria: (i) whether the claim is unlikely to succeed at trial, and (ii) whether the proceeding amounts to abuse of process, in light of the SLAPP indicators set out in paragraph 8 (above).

25. Time limits for the exercise of the right to file an application for early dismissal should be established by law. They should be proportionate and not render it impossible or excessively difficult to exercise this right.

26. Applications for early dismissal of SLAPPs should include the right for both parties to be heard, should be treated with due expediency by judicial and other authorities, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial, and applying the SLAPP indicators set out in paragraph 8.

27. Member states should equally enable administrative bodies to dismiss administrative claims against public participation early in the proceedings.

28. When the defendant files an application for dismissal of claims against public participation bringing evidence that the claim arises from public participation on a matter of public interest and a number of the SLAPP indicators are present, and when the judicial and other authorities accepts the application, it is for the claimant to provide evidence against dismissal. This does not prevent member states from introducing rules of evidence that are more favourable to defendants.

29. The claimant should be given the equal possibility to prove that the legal claim is likely to succeed at trial or in an administrative procedure and does not aim to prevent, restrict or penalize the exercise of rights associated with public participation.

30. Member states should ensure that the final decision on merit will be appealable and managed in an accelerated procedure in accordance with national laws.

- Stay of proceedings

31. Member states shall ensure that if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.

32. When national law permits, rules on stay of proceedings should not allow the claimant to amend the pleadings in the proceeding with the aim of avoiding a dismissal order. Any amendment of pleadings should be subject to the approval of the court. Amendment of pleadings should not be allowed once the application for early dismissal is filed by the defendant.

33. The dismissal of a request for early dismissal of the proceedings, on the grounds (i) whether the claim is unlikely to succeed at trial, and (ii) whether the proceeding amounts to abuse of process, in light of the SLAPP indicators set out in paragraph 8 (above), should not have the effect of preventing the defendant from arguing again, before the judge deciding on the merits, that the proceedings against them constitute a SLAPP or to seek monetary compensation in this regard.

- Accelerated procedure

34. Member states shall ensure that an application for early dismissal is treated in an accelerated procedure, taking into account the circumstances of the case and the right to an effective remedy and the right to a fair trial.

- Procedural costs and damages

35. Member states should introduce rules, in line with national law and practice, to ensure that in court proceedings against public participation, judicial and other authorities have the power to require the claimant to provide security for procedural costs, or for procedural costs and

damages, if it considers such security appropriate in view of the presence of SLAPP indicators, as set out in paragraph 8.

- Cost-shifting

36. Member states should make appropriate provisions in their national legal systems to enable courts, upon determination that a legal claim constitutes a SLAPP, to order the claimants who brought the claim to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant.

- Discontinuation of cases upon death of the defendant

37. To protect the family and associates of the deceased defendant, Member states should adopt legislative measures providing for the discontinuation of claims against public participation upon the death of the defendant, either automatically, if the national system allows, or based on a motion.

C. Remedies

- Award of procedural costs

38. Member states should make appropriate legislative provision to ensure that costs for SLAPP targets are kept to an absolute minimum and that the actual legal costs spent should be awarded to targets of SLAPPs. Member states should ensure that those defending acts of public participation in court are eligible for legal aid. Eligibility conditions should be set by national law.

- Compensation of damages for the SLAPP victim

39. Member states should make adequate provision for SLAPP victims to be fully compensated for damages incurred as a result of the SLAPP, covering both material and immaterial damages, such as loss of income and emotional distress. Where a judicial or other authority determines that a claim is a SLAPP costs must be awarded to the defendant on a full indemnity basis.

- Capping of immaterial damages for the claimant

40. Member states should, within the possibilities of their national legal systems, provide for the capping of immaterial damages to be recuperated by claimants, in order to pre-empt abusive or disproportionate financial penalties for the defendants, which would cause a chilling effect on their public participation, and to avoid creating financial incentives for filing legal action.

- Dissuasive measures

41. Member states should put in place a system of effective, proportionate and dissuasive penalties to deter further SLAPPs. This must be proportionate to the resources available to the claimant so as to provide an effective deterrent to potential future SLAPP claimants. In addition to costs being made available on a full indemnity basis, member states should provide for damages or fines for cases where the claimant has exhibited particularly egregious conduct, and where the time and psychological harm caused to the defendant should be compensated.

Member states should also consider, as further deterrence, the possibility of imposing aggravated penalties for claimants recurrently filing SLAPPs.

42. Member states should make appropriate legislative provision to ensure that in case of legal action deemed as SLAPP, judicial or other authorities may order, at the request of the respondent and at the expense of the claimant, appropriate measures for the dissemination of the information concerning the decision, including publishing it in full or in part.

D. Culture of transparency

43. Member states should take appropriate measures to ensure full transparency and publicity around cases which are found by national courts to constitute SLAPPs, including by providing the possibility for the judge to order the publication of courts' findings that a case was a SLAPP, the names of the legal or natural persons who filed the SLAPP, in compliance with existing European human rights and data-protection standards.

44. Member states should enable the collection of data concerning SLAPP cases. To this end, they should provide for the establishment of a public register of cases that have been classified as SLAPPs. The registers should be kept up to date and made available to the public free of charge and without delay. With a view to guaranteeing full access to the data, member states should make the register accessible off- and online, in compliance with existing European human rights and data-protection standards.

45. Member states should make appropriate legislative provision to ensure that judicial or other authorities provide information to bar associations about the outcome of SLAPP cases.

III. Support for targets and victims of SLAPPs

46. Member states should organise, provide and ensure rapid access to a comprehensive range of necessary support and protective measures, such as legal, financial, psychological and practical measures. Procedures to ensure their physical protection from any potential harm should also be put in place. In order to be effective in practice, support should be organised in consultation with the victims and targets, including through their specific associations, tailored to their specific needs and situations, and take fully into consideration their personal characteristics or status.

47. *Legal support* –where necessary and according to national legislation, member states should consider providing adequate access to free legal assistance. Existing national mechanisms and instruments organising and providing legal support such as state legal assistance should be made accessible to targets. Member states should encourage and financially empower independent organisations specialising in legal support to provide SLAPP targets with legal services, as well as 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. Member states should, in cooperation with relevant stakeholders, strive to ensure that natural and legal persons who are targets of SLAPPs, are able to obtain access to insurance for legal support under fair conditions.

48. *Financial support* - SLAPP targets who are unable to work or practise their profession in any manner because a pending SLAPP lawsuit should be entitled to temporary subsistence costs to cover living expenses incurred during the unemployment period. Financial support for targets could be organised by state actors or civil society actors.

49. *Psychological support* - SLAPP targets may have access to various types of confidential and professional psychological support such as direct advice, referral to relevant health authorities or financial funds to independently and directly secure support. Member states should encourage that public health authorities to dedicate resources to pay special consideration and services to SLAPP targets.

50. *Practical support* – In cases where their physical safety is threatened, SLAPP targets 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. Existing national mechanisms and instruments that are available for other types of victims should be made accessible to SLAPP targets as well.

51. *Private-sector support* – Member states should ensure that relevant private-sector actors comply with all applicable laws and policies aimed at the protection of SLAPPS targets and provide support as necessary. Such support should extend both to employees and to associates engaged in a free-lance capacity.

IV. Education, training and awareness-raising

52. Member states should encourage relevant bodies to give prominence to this recommendation – and to educational materials dealing with the issues it addresses, including gender-specific issues – in educational and training programmes. Such programmes should include tailor-made training of legal professionals and relevant public authorities, taking into account the established case-law of the ECtHR, the existing procedural tools and the substantive standards.

53. Member states should encourage, while respecting the editorial freedom of journalists and the media, awareness-raising activities for the benefit of journalists and other media actors, as well as other public watchdogs about the issues addressed in this recommendation. Such activities should stress the importance of acting in accordance with journalistic, legal or other professional ethics as the first shield against SLAPPs. Such activities should also facilitate access to resources and mechanisms, international, regional, national and local, for the protection of all actors when they are targeted by SLAPPs.

54. Member states should develop or facilitate the development of wider awareness-raising strategies and measures aimed at the general public that focus on SLAPPs and their harmful impact.

V. National coordination and international cooperation

55. Member states should promote the goals of this recommendation at the national level, including in the national, regional and minority languages of the country, engage and cooperate with all interested parties to achieve the widest possible dissemination of its content in a variety of publicity materials.

56. Member states should coordinate their activities in a constructive and inclusive manner with competent national authorities and a wide range of actors.

57. To achieve the aims of this Recommendation, and also with a view to continue contributing to the development of relevant complementary standards and mechanisms against SLAPPs, member states should enhance the co-operation and exchange of information, expertise and best practices with other States and in relevant European and international fora.