

COUNTERING THE USE OF SLAPPS

TRAINING PROGRAMMES

Division for Cooperation on
Freedom of Expression

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The [Division for Cooperation on Freedom of Expression](#) has developed a range of training programmes designed to strengthen knowledge and capacities of judges, prosecutors, legal professionals, police staff, journalists and media actors, and public servants from relevant public authorities, in key areas: Countering the use of SLAPPs, Safety of Journalists, and Access to Information in the context of Freedom of Expression .

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This Council of Europe Training Programme on Countering the Use of SLAPPs was developed by Council of Europe international experts Flutura Kusari and Peter Noorlander.

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Indicative Agenda

DAY 1

Opening remarks

- ▶ Objectives, methodology, and pre-course test knowledge
- ▶ Methodology and how to use this curriculum (applicable only for ToT)

Module 1

- ▶ Introduction: SLAPPS and human rights

Coffee break

Module 2

- ▶ SLAPPS Testimony

Lunch break

Module 3

- ▶ The right to freedom of expression and role of media and other public watchdogs

Module 3

- ▶ Group work exercise based on ECtHR case law on media freedom and freedom of expression

Reflections – end of first day

DAY 2

Module 4

- ▶ European instruments on countering the use of SLAPPS – Presentation

Module 4

- ▶ European instruments on countering the use of SLAPPS – Group work exercise

Coffee break

Module 5

- ▶ SLAPPS indicators - Presentation

Lunch break

Module 5

- ▶ SLAPPS indicators – Group work exercise

Module 6

- ▶ Procedural safeguards – Presentation

Module 6

- ▶ Procedural safeguards – Group work exercise

Reflections – end of second day

DAY 3

Module 7

- ▶ Legal remedies against SLAPPS – Presentation

Module 7

- ▶ Legal remedies against SLAPPS – Group work exercise

Coffee break

Module 8

- ▶ Support for SLAPPS victims and targets

Module 9

- ▶ Documentation of SLAPPS on various platforms

Lunch break

Discussion

- ▶ Implementation of European Anti-SLAPP standards at national level

Post-course test knowledge & evaluation

End of the training

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Methodology and how to use this curriculum

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INTRODUCTION

This Training Curriculum aims to ensure that judges and other legal professionals can recognise Strategic Lawsuits Against Public Participation (SLAPPs) and apply European standards in dealing with them.

SLAPPs are legal actions that are brought primarily to intimidate, silence, or punish individuals or organisations for exercising their right to free speech, particularly in matters of public interest. These lawsuits are typically filed by corporations, government entities, or wealthy individuals against critics, activists, journalists, or community members who have spoken out on issues such as environmental concerns, corruption, or on human rights issues. The primary objective of a SLAPP is not necessarily to win the lawsuit but to burden the defendant with the cost, time, and stress of having to mount a legal defence, thereby discouraging them and others from continuing their advocacy or criticism.

SLAPPs exploit the legal system to create a so-called “chilling effect” on free speech, deterring others from speaking out due to the fear of litigation. Despite their often-weak legal basis, SLAPPs can be effective because of the financial and emotional toll they impose on defendants. In response, a number of jurisdictions have enacted anti-SLAPP laws, designed to quickly dismiss such lawsuits and protect individuals’ rights to participate in public discourse without the threat of retaliatory legal action. These laws aim to preserve the fundamental democratic principle of free expression in matters of public concern.

In recognition of the danger posed by SLAPPs to the right to freedom of expression and the enjoyment of other rights, the Council of Europe Committee of Ministers in 2024 adopted [Recommendation CM/Rec\(2024\)2 on countering the use of strategic lawsuits against public participation \(SLAPPs\)](#).¹ This Recommendation, which followed an earlier [statement from the Human Rights Commissioner](#), a [European Court of Human Rights judgment expressing concern about SLAPPs](#), and a [Resolution](#) and [Recommendation](#) from the Parliamentary Assembly urging action on SLAPPs,² provides a definition of SLAPPs and recommends states to develop effective legislative and policy frameworks to counter SLAPPs, in particular regarding structural and procedural safeguards, remedies, transparency, support for targets and victims. The Recommendation also urges the development of education, training, and awareness raising programmes.

Because SLAPPs are lawsuits, or threats of lawsuits, the judiciary and members of the legal profession play a crucial role in countering them. It is of the utmost importance that they recognise SLAPPs and are able to use legal tools to counter them and to provide remedies to SLAPP victims and targets.

This Curriculum is therefore designed to provide judges and legal professionals with tools and equip them with the skills to identify Strategic Lawsuits Against Public Participation (SLAPPs), and to apply European standards when addressing them.

The Curriculum consists of nine substantive modules:

- ▶ **Module 1:** Introduction to Strategic Lawsuits Against Public Participation;
- ▶ **Module 2:** SLAPPs testimony;
- ▶ **Module 3:** The right to freedom of expression and the role of the media and other public watchdogs;
- ▶ **Module 4:** European instruments on countering the use of SLAPPs;
- ▶ **Module 5:** SLAPP indicators;
- ▶ **Module 6:** Documentation of SLAPPs on various platforms;
- ▶ **Module 7:** Procedural safeguards;
- ▶ **Module 8:** Legal remedies against SLAPPs;
- ▶ **Module 9:** Support measures for SLAPP targets and victims and victims

1. Adopted by the Committee of Ministers on 5 April 2024 at the 1494th meeting of the Ministers’ Deputies, available at <https://rm.coe.int/0900001680af2805>.

2. Time to take action against SLAPPs, Commissioner for Human Rights, 27 October 2020; OOO Memo v. Russia, Application no. 2840/10, 15 March 2022; PACE Resolution 2531 (2024) and Recommendation 2267 (2024), Countering strategic lawsuits against public participation (SLAPPs): an imperative for a democratic society, 25 January 2024.

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Training for trainers

For each of these modules, this curriculum provides template PowerPoint presentations for use by trainers, learning exercises and teamwork, hand-outs, and guidance to trainers. In addition to these modules, the curriculum provides guidance to trainers on good practices in conducting training for legal professionals.

Knowledge tests will be conducted twice: a pre-course test, to be taken by course participants at the beginning of the curriculum; and a post-course test, to be taken at the end of the curriculum.

The curriculum is designed to be delivered over a period of two to five days. The exact length of the training will depend on time available. An indication of the length of time required to deliver each module is given at the start of each chapter; but it is up to the trainer to decide on the exact timing.

Key hand-outs

The two main legal instruments discussed in this training must be provided as hand-outs to training participants:

- ▶ [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 \('Strategic lawsuits against public participation'\)](#)

METHODOLOGY

The curriculum is designed for face-to-face delivery, which fosters deeper engagement, personal connection, and a richer learning experience. In-person teaching enables real-time feedback, dynamic discussions, and better adaptation to students' needs through non-verbal cues. The social aspect also enhances collaboration and community building. While online delivery is possible, trainers should address its limitations by actively encouraging participation, feedback, and discussion. Videoconferencing tools like break-out rooms, polls, quizzes, and chat functions can help maintain engagement.

This curriculum uses a training methodology that mixes presentations with exercises. It uses case-based learning, simulations and role-playing, collaborative learning, and problem-based learning approaches. It also uses peer-learning, recognizing that training participants are qualified legal professionals, including judges from the highest courts, who bring a significant amount of expertise in various legal fields and who will have a solid understanding of basic concepts of human rights law. It is important that trainers are confident in using these techniques.

Case-based learning involves presenting participants with real or hypothetical legal cases and asking them to apply legal principles and reasoning to resolve the issues presented. Case-based learning mirrors the real-life challenges that legal professionals face, making the learning experience more relevant and practical. It encourages learners to think critically, analyse facts, and explore multiple perspectives before reaching a conclusion. Moreover, it provides opportunities for discussion and debate, allowing learners to deepen their understanding through interaction with peers.

Simulations and role-playing mimic courtroom scenarios or similar settings. Through these scenarios, participants can practise legal skills in a controlled environment. Role-playing allows them to step into the shoes of different legal stakeholders, such as judges, lawyers, or clients, gaining insights into the dynamics of legal processes and the perspectives of others involved.

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Collaborative learning uses group work and peer-to-peer learning to allow participants to share knowledge, challenge each other's thinking, and develop solutions together. For legal professionals, working in teams to solve legal problems can mirror the collaborative nature of legal practice, where working with colleagues and experts is often necessary. This approach not only enhances learning outcomes but also fosters a sense of community and support among participants. Trainers should however be vigilant that everyone participates in group work.

The following pages summarize the teaching techniques used in this curriculum, along with tips on effectively utilizing each one.

Small group discussions

Group discussion is one of the best ways to share ideas and experiences within the group. It requires participants to apply and validate newly acquired knowledge, making the training more rewarding and new concepts are more likely to be retained and applied in practice. Small group discussions are more conducive to getting every participant to be engaged and involved than discussions in a large group, where some participants are almost inevitably not involved.

However, group work can present challenges. Poorly managed discussions can lead to frustration and disengagement. This is why careful preparation and awareness of discussion techniques are essential to ensure that all trainees benefit fully from the experience. Key steps for effective small group discussion include the following:

- ▶ To form groups, have participants count off to form the number of groups you need. For instance, if there are twenty trainees and you want five groups of four people, have them count sequentially up to five (1-2-3-4), with the next person starting back at 1. Each person will end up with a number between 1 and 4. Remind them to remember their number and pay attention to others with the same number.
- ▶ Provide clear instructions to the group, such as "All 1's, please move to this corner of the room; all 2's, please move to the other end of the room with your chairs..." This ensures that each group is seated face to face and positioned away from the others.
- ▶ If possible, instruct some groups to move outside the training room for their small group work, saying, "Please find a spot where you can sit in a circle, select a speaker, and wait for me—I'll join you shortly."
- ▶ Instruct the groups to first select a speaker among themselves. This person may take notes and should be ready to present their group's views to the larger group later.
- ▶ Distribute the written task to each group or announce the topic for discussion. Specify how long the groups have to complete their discussion. Make sure you are clearly heard.
- ▶ Allow the groups a few minutes to settle in, choose their speaker, and start thinking about the topic. Then, move from one group to the next, offering guidance. Encourage the group to choose a speaker based on willingness rather than by assigning the role.
- ▶ Begin by asking each group who their speaker is. If they haven't chosen one yet, wait for them to do so. Then ask if anything on the paper needs clarification or if there's anything about the discussion topic that needs further explanation. Address these queries quickly to allow sufficient time for discussion.
- ▶ During your rounds, focus on answering questions and providing the clarifications requested by the groups. Avoid offering examples or suggestions that might influence their thinking. Work efficiently, ensuring you do not spend too much time with one group at the expense of others.
- ▶ Emphasise that the speaker's role is to convey the group's discussion to the larger group, not to share their own views unless they align with the group's. They should feel free to present any dissenting opinions.

During the reporting-back from the small groups to the main group, ensure that each speaker is listened to attentively by the larger group. Particularly when all groups have the same topic, encourage speakers to build on what has already been said rather than repeat it. As the facilitator, carefully listen to all contributions and gently guide speakers to avoid unnecessary repetition.

This curriculum uses the 'small group discussion' method frequently. The trainer should ensure that the groups are not always formed of the same people.

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Large group discussion

Under the guidance of the trainer, participants answer questions and share their opinions within the group. This interactive method may appear simple at first glance, but it can present challenges. To effectively use this method, the following points are important:

- ▶ insofar as time allows, ensure that everyone who raises their hand has the opportunity to speak—no one should be overlooked
- ▶ gently prevent any participant from dominating the discussion
- ▶ listen carefully to each speaker and, when necessary, rephrase their statements to ensure that everyone, including the facilitator, understands
- ▶ avoid repeating each speaker's words, as research shows this can cause trainees to tune out the speaker and wait for the facilitator's repetition
- ▶ resist the urge to comment after each speaker
- ▶ discourage participants from simply stating their opinions without engaging with or listening to previous speakers
- ▶ redirect the conversation if it strays off-topic
- ▶ subtly address any participants who are not listening or who are talking among themselves, either by gently approaching them or catching their attention discreetly

The trainer should maintain an open and welcoming demeanour throughout the discussion, smiling and accepting all opinions expressed. This approach will encourage participation and help those who are hesitant to speak feel more comfortable contributing.

Presentations

PowerPoint presentations are an appropriate learning tool when used in the context of other, more interactive, teaching methods. Presentations allow complex legal concepts and information to be presented in a clear, structured manner, making it easier for learners to follow and understand key points. Visual aids such as charts, diagrams, and case summaries can help reinforce learning and provide a visual reference that complements verbal explanations.

The effectiveness of PowerPoint lies in its integration with interactive methods. For instance, after presenting key information, trainers can encourage group discussions, case studies, or role-playing exercises to deepen understanding and promote critical thinking. This approach prevents passive learning and engages participants actively, making the learning experience more dynamic. PowerPoints can also be used following group discussions or group brainstorming sessions, to galvanise what has been said or to demonstrate links between participants' contributions and external resources such as ECtHR judgments.

Brainstorming

Brainstorming can be used to spark discussion following a presentation. Participants are encouraged to share ideas, which are written on a flip chart without any discussion or rejection, with the trainer's role at this stage limited to listing ideas and preventing premature debate. Once all responses are noted, discussion, analysis, and categorisation of the ideas can follow as appropriate.

To ensure a smooth brainstorming session, the following steps can be taken:

- ▶ outline the rules of the exercise and set a time limit
- ▶ ask trainees to generate and save their ideas
- ▶ use a flip chart or interactive white-board to record ideas
- ▶ clearly explain the question to be discussed
- ▶ hang full sheets on the wall
- ▶ continue until new ideas stop emerging
- ▶ summarise and wrap up the ideas

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If discussion is slow to take off, or gets stuck, the trainer can encourage contributions by:

- ▶ suggesting a few of their own ideas (whilst taking care not to pre-empt discussion by being seen to give “the right answer”)
- ▶ clearly identifying the problem and ensuring quick, accurate writing
- ▶ ensuring that no ideas are dismissed or undermined
- ▶ asking the right questions
- ▶ managing time effectively and ensuring all ideas are recorded accurately without slowing the process

Opinion poll

An opinion poll exercise stimulates lively discussions, allowing participants to explore various aspects of legal regulations and their application to real-world situations. The core of this exercise is identifying a proposition: a statement that reflects a logical conclusion related to a specific situation, incident, or observation. For instance, consider a poem expressing disappointment over a failed assassination attempt on a head of state perceived by some as a brutal dictator. The proposition might be that the author of the poem should be convicted for praising a crime or criminal.

To conduct this exercise, trainers should follow these steps:

1. Write the proposition on a flip chart, concealing it behind a few pages until the appropriate time. To easily locate the page, place a colourful sticker on its side.
2. Select five spots around the room with ample space for participants to stand. Label each spot with one of the following: “I Completely Agree,” “I Agree,” “I am Undecided,” “I Disagree,” and “I Completely Disagree.” Prepare the room during a break before the exercise, ensuring the walls aren’t damaged when hanging the labels.
3. Gather the group in the open area of the U-shaped seating arrangement, facing the flip chart. Stand next to the chart and give the following instructions:
 - ▶ In a few minutes, I’ll read a proposition aloud, and you’ll be able to read it simultaneously. Carefully consider the proposition and decide where you stand. If you completely agree, stand in front of the “I Completely Agree” sign, and so on.
 - ▶ Once everyone has chosen their spot, I’ll ask those willing to explain why they are standing there. Be prepared to justify your position and listen closely as others explain theirs.
 - ▶ Any questions? If not, I’ll reveal the proposition. Please ensure the room remains quiet so everyone can hear the reasoning behind each participant’s choice.

After everyone has spoken, or at least a few people from each group have shared their views, you can ask if anyone wishes to change their position based on what they’ve heard. If someone changes their spot, allow them to explain their new reasoning. This moment is an opportunity to discuss how listening to different perspectives can lead to changing one’s stance, and how this is a sign of open-mindedness rather than a lack of conviction.

Key considerations for the opinion poll exercise:

- ▶ ensure that the proposition is clearly and correctly worded to encourage a distribution of participants across the five positions. A proposition that is too obvious will prevent meaningful discussion.
- ▶ place the flip chart where it is visible to all participants, regardless of their position in the room
- ▶ only reveal and read the proposition after giving instructions to ensure participants are focused on listening to you.
- ▶ when asking for volunteers to speak, start with the group with the fewest members
- ▶ allow participants to respond to each other’s statements and change their positions if they wish, but maintain control of the flow to ensure everyone has a chance to participate.
- ▶ conclude the exercise with a summary that highlights the diversity of reasons behind similar positions, reinforcing the importance of understanding different perspectives.

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Resource person

The 'resource person' method is an engaging approach that helps participants develop empathy, consider diverse perspectives, and highlight positive role models. A resource person is typically defined as an individual with relevant knowledge, experience, skills, or expertise to provide guidance, deliver talks, or offer firsthand information on a specific subject. This could be a respected media professional who has been through a SLAPP or a judge from the European Court of Human Rights.

Trainers should follow several key steps when inviting a resource person to contribute to the training:

1. Ensure the selected individual has a strong reputation, deep knowledge in the relevant area, and effective communication skills.
2. Inform the resource person about the subject matter and the types of questions they may receive from trainees. It is advisable to meet with the resource person to discuss the goals, subject matter, and the trainees' level of knowledge. Clearly communicate expectations, such as motivating the trainees, highlighting challenges.
3. The resource person should start with a clear framework to help trainees understand the subject. They should provide necessary details and clarify any professional jargon used during their presentation.

When inviting a resource person, trainers should be mindful of the following considerations:

- ▶ The facilitator should be present during the session and intervene only if the discussion veers off-topic. For instance, during Q&A sessions, discussions might stray beyond the exercise's purpose. In such cases, the trainer should encourage the group to refocus on the training module's topic.
- ▶ The resource person should not attempt to impose their opinions on the trainees. The facilitator should remind everyone that the goal is not to reach consensus, but to increase awareness of different perspectives.
- ▶ Before the session begins, discuss ground rules with trainees, such as listening to others, keeping mobile phones silent, and respecting differing viewpoints.

Case study

A case study involves presenting a specific incident or scenario, along with relevant background information, for detailed analysis with the goal of identifying a solution. This method allows participants to understand and apply principles and rules to real or hypothetical situations. Case studies often don't provide clear-cut answers but are meant to raise questions, guiding trainees through the decision-making process to arrive at their own solutions. A case study can be used as a standalone session or can be integrated throughout a training program, revisited as the course progresses.

This curriculum provides several case studies so trainers will not need to develop their own.

Key considerations when conducting a case study exercise include:

- ▶ use small groups for case studies to encourage peer learning and reflection on personal approaches. In larger groups, a facilitator should manage discussions to ensure all participants engage and contribute
- ▶ allowing sufficient time for group discussions
- ▶ provide opportunities for groups to debrief, with rapporteurs reporting their findings to the larger group
- ▶ inform groups in advance to appoint a rapporteur
- ▶ ensure all participants contribute to discussions, intervening if necessary to encourage quieter participants
- ▶ participants should be strongly encouraged to apply newly-taught points of law or methods of analysis, not fall back on 'old' methods
- ▶ the trainer should only step in when necessary and allow trainees to apply their knowledge without taking over the discussion
- ▶ make sure that the room and materials (e.g., whiteboards, flipcharts) are adequate for the planned activities

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TEN TIPS FOR SUCCESSFUL TRAINING

Adult learning and teaching professionals

Adult learning, and in particular teaching of professionals, is very different from teaching at a school or university level. Participants in this course are professionals who have already accumulated a lot of knowledge and experience, and will be interested in practical results and knowledge that can be applied immediately. Trainers should emphasise this whenever they can.

Trainers need to recognise that the highly educated professionals who are likely to participate in this course are not receptive to imposed teaching or anything that is perceived as 'forced re-education'. The main teaching strategy is to recognise pre-existing knowledge and skills, and use that as the basis on which to build further knowledge and skills. Furthermore, trainers need to be sensitive that experienced legal professionals will want to understand the legal principles and approaches behind concepts that may be 'novel' to them. They may also want to engage in discussion as to why domestic legal and judicial practices may need to be changed. Trainers should be ready to engage with these discussions, being sensitive to participants' current knowledge and experience whilst taking care to point out the primacy of European Convention on Human Rights, the status of judgments of the European Court of Human Rights, and areas where international human rights law has moved on from pre-existing knowledge that participants may have. For example, there may be a new line of judgments from the European Court of Human Rights that participants are not yet aware of which may require them to change a particular practice or decide particular legal points differently. The key is in teaching whilst avoiding being (perceived as) patronising.

To ensure maximum impact it is crucial that trainers follow the training methodology outlined in this curriculum, focusing in particular on the interactive, experiential and peer-learning elements. Trainers should not 'just' focus on lecturing; they should take equal care to guide interactive elements. Common mistakes are for a trainer to 'sit back' during group work, not engage in group discussions or suggestions, or not to recognise or be willing to engage in discussions that may challenge some of the teaching. It is precisely in these moments that participants are most open to learning and trainers should capitalise on this. The hand-outs in this curriculum aim to equip trainers with the tools to engage with participants and respond to their questions, for example by referring to case-law of the European Court of Human Rights or to specific elements of soft law around SLAPPS.

Build on pre-existing knowledge

The objective of the training is to train legal professionals to counter SLAPPS by effectively implementing European and international standards on freedom of expression. To achieve this, it is important to gauge the participants' existing knowledge base. Trainers should assess what the participants already know about human rights law, the right to freedom of expression, and the European Convention on Human Rights, and identify knowledge that can be built on as well as any gaps or areas that require further development. This approach reinforces prior knowledge and empowers participants to confidently and competently handle cases and situations where freedom of expression is at stake, in accordance with European and international legal standards.

Avoid lengthy lectures

To provide concise and valuable information to participants, traditional lectures should be avoided, as they often rely on lengthy monologues that limit engagement. Instead, trainers should focus on speaking less and listening more, using open-ended questions to encourage participants to think critically and engage deeply with the material.

While this curriculum does envisage the use of PowerPoint presentations, trainers should build in frequent stops to ask for feedback or questions, and ensure that they still have the participants' full attention. It is important to allow ample time for questions and contributions, both during and at the end of any presentations. The

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trainer should from time to time ask questions such as, “Is this clear?”; “Do you have any questions regarding [the topic presented on a particular slide]?”; or similar. Longer feedback and discussion can be elicited by asking questions such as, “How does what I just presented compare with your current practice?”. Another technique to elicit participation, especially when participants are quiet, is to break participants into small groups at the end of a presentation and ask them to discuss their feedback.

Link topics with current practice

One of the best ways to get participants’ attention is to link the concepts being presented with everyday practice. For example, when SLAPP indicators are discussed, there may be a recent or well-known case in the country that has numerous SLAPP characteristics. That would be an ideal link to make in order to get participants to realise the relevance of the curriculum. To this end it is always useful to make sure that the trainer is up-to-date on current practices in the country concerned. When the trainer is not aware of current cases, the trainer can instead ask participants: “Are there any recent cases that share these characteristics?” As an added bonus, that adds an element of interactivity.

Align with participant’s motivation

Participants are likely to have their own motivations for wanting to take part in the curriculum. For some it may be as straightforward as it being a requirement for their continuing professional development (in many countries, lawyers are required to do a certain number of hours of training); but others may have particular reasons. It can be useful to find out what those reasons are and then to come back to these reasons throughout the course, ensuring that participants remain motivated. As professionals are generally internally motivated and autonomous, their motivation will remain high when they feel that their views are sought and there is enough flexibility in the training approach of trainers to allow their active participation.

Make it enjoyable

Professional training and learning should be enjoyable. When participants are engaged and having fun, they are more likely to retain information, participate actively, and apply what they’ve learned in real-world situations. Enjoyable training sessions create a positive atmosphere that reduces stress, fosters creativity, and encourages collaboration. This leads to a more dynamic learning environment where professionals feel motivated to learn and grow.

To ensure that training sessions are enjoyable, here are some tips and techniques:

- ▶ **interactivity:** incorporate icebreakers, group discussions, and hands-on exercises that encourage active participation and keep energy levels high
- ▶ **variety:** use a mix of teaching methods, such as presentations, videos, case studies, and role-playing, to cater to different learning styles and prevent monotony
- ▶ **real-world applications:** connect the material to real-life scenarios relevant to the participants’ work, making the content more meaningful and interesting
- ▶ **humour:** contrary to popular belief, legal professionals and even judges have a sense of humour. Appeal to it! That does not mean you have to do a stand-up comedy routine, but occasionally use light and appropriate humour, which can make the learning experience more enjoyable and memorable.
- ▶ **comfort:** ensure that the physical environment is conducive to learning, with comfortable seating, good lighting, and snacks or refreshments to keep participants relaxed and focused.

Have good ice-breakers

Icebreakers are effective short exercises that can be given to trainees at the start of a training session to help them feel more comfortable and quickly get acquainted with one another before starting the main activities. These exercises also allow trainers to familiarise themselves with the group.

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There are many ways to do ice-breaker exercises and the trainer should be sensitive to what may be appropriate in a particular cultural or professional setting, and how much time there is. Here are three suggested ones, designed to be relevant, engaging, and respectful of the experience and professionalism of the participants:

- ▶ “Legal landmarks”: ask participants to speak, for no more than two minutes, about a landmark case or pivotal moment in their legal career. This could be a case that challenged them, taught them something valuable, or significantly influenced their professional path. This icebreaker not only helps participants get to know each other but also allows them to share their expertise and experiences, fostering mutual respect and understanding.
- ▶ “Common ground”: divide the group into small teams of 3-4 people and ask them to discover three things they all have in common, professional or otherwise. These could be hobbies, places they have visited, or life experiences. At the end, each team shares their commonalities with the larger group. This exercise builds camaraderie by highlighting connections that may not be immediately apparent, helping participants see each other as more than just colleagues.
- ▶ “Case Study Swap”: Ask each participant to think of a challenging legal case they’ve worked on recently. They should summarise the case (keeping client confidentiality intact) and present a key question or issue that arose during the case. After sharing, participants can briefly discuss how they might have approached the issue differently or share insights.

Be an effective facilitator

To be an effective facilitator in discussions, trainers must have a range of skills including listening, summarising, observing, clarifying, and managing differences. These skills are underpinned by personal qualities such as balance, self-confidence, assertiveness, openness, flexibility, positivity, and consistency. While trainers should avoid unnecessary intervention or imposing their views, they should occasionally share their perspectives to enrich the discussion, ensuring mutual respect and clear understanding by reframing key points.

Key suggestions for effective facilitation include:

- ▶ maintain a positive demeanour
- ▶ convey enthusiasm, ensuring that trainees understand the value of thinking, exploring, creativity, and collaboration as integral parts of the learning process
- ▶ provide clear and concise instructions, and observe participants as you do so; repeat instructions if necessary
- ▶ ask open-ended questions
- ▶ summarise discussions regularly
- ▶ keep discussions focused and stick to time
- ▶ read and interpret body language
- ▶ genuinely listen to participants, even during breaks
- ▶ connect different points of the discussion
- ▶ when sharing your own views, do so without disrupting the flow of discussion among participants

Be open to questions and to being challenged

Trainers should be open to questions and challenges because this fosters a more dynamic and engaging learning environment. Participants bring a wealth of experience and knowledge, which can enhance discussions and lead to deeper understanding when their input is welcomed. By being open to questions, trainers encourage critical thinking and active participation, helping learners to better grasp complex concepts and apply them in real-world situations.

COUNTERING THE USE OF SLAPPS

Being receptive to challenges also demonstrates a trainer's confidence and flexibility, showing that they value diverse perspectives and are willing to consider alternative viewpoints. This openness builds trust and respect between the trainer and participants, creating a collaborative atmosphere where learners feel comfortable exploring ideas and contributing to discussions. Ultimately, this approach enhances the overall effectiveness of the training, leading to more meaningful learning outcomes.

Unusual but effective training settings

Professional training settings outside the traditional classroom environment offer great opportunities for more dynamic and engaging learning experiences. For example, conducting training on-site at a workplace allows participants to immediately apply what they have learned to their actual tasks, bridging the gap between theory and practice. This can deepen understanding and improve retention as learners see the direct impact of their training. Outdoor or retreat-style settings provide a relaxed atmosphere that can reduce stress and encourage open communication. These environments are particularly effective for interactive training, where the informal setting fosters creativity and collaboration. Additionally, these settings often incorporate physical activities that can enhance bonding and provide a refreshing break from the usual routine. It has been shown that exercise, in particular walking, can stimulate thought, especially in green settings. If time and settings allow, you might consider the following as a combination of exercise and training:

- ▶ at the start of the day, take the group for a walk. This can also be a great ice breaker. This can be in nature, or if the training takes place in a town with a historic centre, take a walk through the town. You can also take the group for a walk after lunch or at the end of a day.
- ▶ When asking participants to divide into duos or small groups, instead of sitting at a table you might ask them to go outdoors or take a short walk.

However, trainers should always be mindful of participants' abilities and ensure that all participants can take part in an exercise. For example, wheelchair-bound participants are unlikely to be able to join a walk. Not all disabilities are visible and trainers should be careful in dealing with this.

COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

MODULE 1

Introduction to Strategic Lawsuits Against Public Participation

(Training material to be shared with trainers only)

CONTENTS

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COUNTERING THE USE OF SLAPPS

Module objective

The aim of this session is to introduce Strategic Lawsuits Against Public Participation (SLAPPs), including their historical context, impact on human rights, and the formation of the European movement that led to the European response to these challenges. The session will also explain how anti-SLAPP measures are designed to prevent misuse of the legal system in ways that undermine the right to freedom of expression while still upholding justice for genuine cases of defamation, privacy invasion, and other rights.

Session techniques and methods

- ▶ Brainstorming
- ▶ Presentations

Duration

- ▶ 60 - 75 minutes

HOW FAMILIAR ARE YOU WITH STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION?

→ Brainstorming Exercise

Allocated time: 10 -15 minutes

Guidance for Trainers

The training on SLAPPs will begin with a group brainstorming session, facilitated by the trainer, to discuss participants' familiarity with Strategic Lawsuits Against Public Participation (SLAPPs).

The trainer should ask participants whether they know what SLAPPs are and if they have ever encountered them. This can be particularly relevant for judges or those involved in SLAPP cases as lawyers, victims, or in any other capacity. The trainer can also ask how participants dealt with SLAPPs, if applicable.

Participants are encouraged to share their thoughts, which can be written on a flip chart, on post-it notes placed on the wall, or on an interactive whiteboard. At this stage, there should be no critique or discussion of the contributions; the trainer's role is limited to listing ideas and preventing premature debate.

Once all responses have been noted, the trainer will facilitate feedback, including discussion, analysis, and categorization of the ideas contributed. The trainer can wrap up the session by thanking participants for their contributions. If possible, the paper on which the contributions have been noted should be left on the wall as a reminder of the various identifying characteristics that the group has developed.

Questions to guide the discussions:

- ▶ Are you familiar with SLAPPs?
- ▶ Have you heard of any national or international SLAPP cases? If yes, which case(s)?
- ▶ How would you define SLAPPs, and what elements are relevant to recognizing them?
- ▶ Have you experienced or been involved in any SLAPP case?
- ▶ Do you know of any available support for SLAPP victims or targets?

COUNTERING THE USE OF SLAPPS

SLAPPS AND HUMAN RIGHTS

→ Presentation

Allocated time: 20 - 30 minutes

Guidance for trainers

The training on SLAPP will continue with a Power Point Presentation on Strategic Lawsuits Against Public Participation, what they are and their main goals. The impact abusive lawsuits have on free expression, public participation, and the tactics used to create a chilling effect on public watchdogs are explained in detail. The presentation will also touch upon the need to balance various competing rights, especially the right to a fair trial. The text below is largely taken from the [Explanatory Memorandum](#) to Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs). Participants will receive a copy of the explanatory memorandum after this presentation. Although this will be a presentation, the trainer should allow adequate opportunity for participants to ask questions and contribute to discussions at some stage of the presentation.

Definition of SLAPPs

Strategic Lawsuits Against Public Participation (“SLAPPs”) are understood as legal actions that are threatened, initiated, or pursued as means of harassing or intimidating their targets, and that seek to prevent, inhibit, restrict, or penalise free expression on matters of public interest and the exercise of rights associated with public participation. This definition is provided in Europe through the [Recommendation CM/Rec\(2024\)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation \(SLAPPs\)](#).

Detailed presentation of Recommendation CM/Rec(2024)2 will be done at Module 4.

Apart from legal actions, SLAPPs can often be accompanied by aggressive reputation management practices which seek to discredit the defendant or reshape the claimant’s reputation to undermine the defendant’s argument. Unlike legal practitioners, reputation management firms are hardly regulated, making it much harder to challenge or counter their activities via official channels. Those affected by SLAPPs may find that the accompanying attacks on their character or professional integrity undermine their ability to pursue further investigations in future.

SLAPPs have far-reaching consequences: they impede individual rights to expression whilst undermining the free exchange of ideas and information essential in a pluralistic society. SLAPPs can lead to self-censorship and a ‘chilling effect’ on free speech, as journalists or other affected parties withdraw investigations and publications fearing legal and financial consequences they cannot afford to bear. Media outlets and other actors may move away from lines of investigation expected to attract legal risk through intimidatory actions that are core to SLAPPs, such that the public loses access to information.

Apart from direct harm caused to affected parties, SLAPPs can have important consequences in terms of shutting down debate on matters of public interest. Where SLAPPs are not challenged and jurisdictions are perceived to be lenient towards this type of threat, this leads to a ‘chilling effect’ where media and public interest actors refrain from critiques or investigations, thus impoverishing public discourse. Scrutiny, transparency and accountability necessary for robust debate are jeopardised by the silencing of voices that challenge powerful actors that employ SLAPP tactics.

COUNTERING THE USE OF SLAPPS

Difference between SLAPPs and other forms of human rights infringements

SLAPPs differ from genuine defamation, privacy, copyright, or other legal claims, which arise out of the need to genuinely protect rights. SLAPPs aim at obstructing public participation rather than protecting rights. By targeting journalists, human rights defenders, and other civil society actors who contribute to public interest matters, SLAPPs undermine a wide range of their rights, including their rights to freedom of expression, assembly, association, and public participation¹.

SLAPPs do not solely challenge the right to freedom of expression but can also affect the enjoyment of a number of other essential rights protected by the Convention, including the right of access to a court (Article 6, right to a fair trial); the right to reputation (Article 8, right to respect for private and family life); and the right to an effective remedy (Article 13). Assessing whether a violation of these rights has occurred requires a careful balancing exercise between the competing interests at stake.

The impact of SLAPPs can be particularly felt in relation to the Court's detailed articulation of various Convention Articles. Article 6 provides that everyone has the right to a fair trial and that they must be able to present their case effectively before a court, in keeping with the principles of procedural fairness and equality of arms. The right of access to a court for the purposes of Article 6 is an inherent aspect of the safeguards enshrined in Article 6. However, the 'right to a court' and the right of access are not absolute.

They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought. Various procedural safeguards, which will be discussed later, are intended precisely to maintain a balance between competing rights.

Use of the term SLAPPs in Europe

The term 'SLAPP' was first popularised in the United States in the 1980s, but its origins can be traced back to earlier legal discussions and cases. The concept behind SLAPP lawsuits had been recognised by legal scholars and activists for some time before the term was coined. In the United States, SLAPP suits date back to cases when citizens were sued for speaking out against government corruption. With the rise of political activism in the 1960s and 1970s, suits to suppress speech became a popular tool to stifle those perceived to be obstacles or a threat.²

In Europe, usage of the term SLAPPs grew between 2017 and 2018 and is closely linked with the assassination of Maltese investigative journalist Daphne Caruana Galizia, who was brutally killed by a car bomb. At the time of her assassination, she had 47 active defamation lawsuits against her.

1. UN Office of the High Commissioner, [The impact of SLAPPs on human rights & how to respond](#).

2. SLAPP: the background of Strategic Lawsuits Against Public Participation, <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>

COUNTERING THE USE OF SLAPPS

TIMELINE OF EVENTS LEADING TO EUROPEAN INITIATIVES TO COUNTER SLAPPS

→ Presentation

Allocated time: 10 -15 minutes

Guidance for trainers

This presentation offers a brief timeline of events leading to the development of European instruments on Anti-SLAPPS. To make it more user-friendly for participants, the PowerPoint presentation will be accompanied by pictures and references for each event.

- ▶ **16 October 2017** – Maltese investigative journalist Daphne Caruana Galizia is assassinated.
- ▶ **10 April 2018** – Member of Parliament David Casa calls on the European Commission to come forward with Anti-SLAPP legislation.
- ▶ **13 June 2018** – 12 November 2019 – At least three events are organised by civil society and academia in Brussels and Aberdeen to discuss SLAPPS, including the preparation of a European Model Bill.
- ▶ **24 February 2020** – [Coalition Against SLAPPS in Europe \(CASE\)](#) – at that time a small group of people – gathered in Amsterdam to write its strategy on how to combat SLAPPS in Europe. CASE became the leading civil society coalition in Europe against SLAPPS.
- ▶ **27 October 2020** – Council of Europe Human Rights Commissioner Dunja Mijatović [called for action against SLAPPS](#).
- ▶ **1 December 2020** – CASE submitted to the European Commission an [EU Anti-SLAPP model law](#).
- ▶ **3 December 2020** – The European Commission established an [expert group against SLAPPS](#) consisting of 35 experts.
- ▶ **26 March 2021** – CASE called on the Council of Europe to adopt a stand-alone recommendation on SLAPPS.
- ▶ **11 November 2021** – European Parliament adopted an Own Initiative Report (INI) on strengthening democracy, media freedom, and pluralism in the EU: [the undue use of actions under civil and criminal law to silence journalists, NGOs, and civil society](#).
- ▶ **1 January 2022** – Council of Europe established the [Committee of Experts on Strategic Lawsuits Against Public Participation \(MSI-SLP\)](#).
- ▶ **15 March 2022** – The European Court of Human Rights published a judgment where it mentioned SLAPPS for the first time, referring to Dunja Mijatović's call for action blog. Case [OOO Memo v. Russia](#), Application no. 2840/10, 15 March 2022.
- ▶ **27 April 2022** – European Commission presented the [Recommendation \(EU\) 2022/758 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings](#) ('Strategic lawsuits against public participation').
- ▶ **5 April 2024** – The Committee of Ministers of the Council of Europe adopted [Recommendation CM/Rec\(2024\)2 on countering the use of Strategic Lawsuits Against Public Participation \(SLAPPS\)](#).
- ▶ **11 April 2024** – The European Parliament adopted [Directive \(EU\) 2024/1069 of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings](#) ('Strategic lawsuits against public participation').

COUNTERING THE USE OF SLAPPS

SLAPPS AS A PROBLEM ACROSS EUROPE

→ Presentation

Allocated time: 10 minutes

London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19³

The report focuses on legal cases recently brought to the London High Court against investigative journalists and their publishers that bear the hallmarks of SLAPPS. It explores the challenges that they have faced in defending themselves, highlighting issues within the English and Welsh legal system that can create a more 'claimant friendly' environment, despite reforms in 2013. The report concludes that those wealthy enough can evade scrutiny regardless of how effectively a particular law has balanced out rights to privacy and free speech, because it is the process of being subject to abusive legal threats that is the punishment for media and can force them to concede.

Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington⁴

This study was commissioned by the Committee of Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament to analyse SLAPP cases and threats which were initiated in 2022 and 2023. It provides a detailed analysis of the topics of public interest associated with the identified legal actions or legal threats, and to the extent possible, information about claimants and defendants, the cause of action, and whether there was a cross border element.

Between 01 January 2022 and 31 August 2023, based on the databases searched, 47 legal actions against 102 defendants were identified. Political figures and public officials were the most common claimants, accounting for 42.6% of total claimants followed by companies (21.3%), legal professionals (10.7%), other individuals (8.5%), civil society (6.4%), political parties (4.2%), local government (4.2%), and States (2.1%). While 47 cases were identified, these cases involved a total of 102 defendants. A relative majority of defendants were individual journalists (44.1%). Individual journalists were, at times, targeted even when the publication was published by a media outlet. It was not uncommon for both the media outlet and an individual journalist to be joined to the same legal action. Media outlets accounted for 28.4% of defendants, while editors-in-chief or directors of media outlets accounted for 7.8%. Nongovernmental organisations amounted to 13.7%. The remainder of defendants were publishers (3%), followed by an activist (1%), a journalistic source (1%), and other individuals (1%).

SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation⁵

Following the first CASE report in 2022, SLAPP lawsuits continued to be filed throughout the year, while more lawsuits from previous years were made known to CASE and inputted into the CASE database. From the 570 cases that were analysed in 2022, CASE's database increased to over 820 cases in 2023 – 161 of which were lawsuits filed in 2022, a significant jump compared to the 135 filed in 2021.

3. London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19, <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-publication-April-2022.pdf>

4. Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU\(2023\)756468_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU(2023)756468_EN.pdf)

5. SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation, <https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>

COUNTERING THE USE OF SLAPPS

SLAPPS AT NATIONAL LEVEL

→ Presentation

Allocated time: 10 -15 minutes

In this section, the national expert offers an overview of SLAPPS, including relevant background information, contextual insights, and available statistics. It is essential to present this information in a way that highlights the specific characteristics and impact of SLAPPS within the national context. To provide a clearer understanding, the expert should incorporate concrete case studies and examples that illustrate how SLAPPS manifest in the country.

EXERCICES – MODULE 1

Introduction to Strategic Lawsuits Against Public Participation

(Training material to be shared with participants)

HOW FAMILIAR ARE YOU WITH STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION?

→ Brainstorming Exercise

Questions to guide the discussions:

- ▶ Are you familiar with SLAPPS?
- ▶ Have you heard of any national or international SLAPP cases? If yes, which case(s)?
- ▶ How would you define SLAPPS, and what elements are relevant to recognizing them?
- ▶ Have you experienced or been involved in any SLAPP case?
- ▶ Do you know of any available support for SLAPP victims or targets?

After the discussion, the trainer goes through the PowerPoint presentation to provide responses and feedback on the discussions.

MODULE 1

Introduction to Strategic Lawsuits Against Public Participation

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

- ▶ SLAPPS and human rights
- ▶ Timeline of events leading to European initiatives to counter SLAPPS
- ▶ SLAPPS as a problem across Europe
- ▶ SLAPPS at national level

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HOW FAMILIAR ARE YOU WITH STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION?

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QUESTIONS TO GUIDE THE DISCUSSIONS

- ▶ Are you familiar with SLAPPs?
- ▶ Have you heard of any national or international SLAPP cases?
If yes, which case(s)?
- ▶ How would you define SLAPPs, and what elements are relevant to recognizing them?
- ▶ Have you experienced or been involved in any SLAPP case?
- ▶ Do you know of any available support for SLAPP victims or targets?

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SLAPPS AND HUMAN RIGHTS

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DEFINITION OF SLAPPS

Strategic Lawsuits Against Public Participation (“SLAPPs”) are understood as legal actions that are threatened, initiated, or pursued as means of harassing or intimidating their targets, and that seek to prevent, inhibit, restrict, or penalise free expression on matters of public interest and the exercise of rights associated with public participation. This definition is provided in Europe through the Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs).

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ACCOMPANIED BY AGGRESSIVE REPUTATION MANAGEMENT PRACTICES

Apart from legal actions, SLAPPS can often be accompanied by aggressive reputation management practices which seek to discredit the defendant or reshape the claimant's reputation to undermine the defendant's argument. Unlike legal practitioners, reputation management firms are hardly regulated, making it much harder to challenge or counter their activities via official channels. Those affected by SLAPPS may find that the accompanying attacks on their character or professional integrity undermine their ability to pursue further investigations in future.

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SLAPPS FAR-REACHING CONSEQUENCES

SLAPPS impede individual rights to expression whilst undermining the free exchange of ideas and information essential in a pluralistic society. SLAPPS can lead to self-censorship and a 'chilling effect' on free speech, as journalists or other affected parties withdraw investigations and publications fearing legal and financial consequences they cannot afford to bear. Media outlets and other actors may move away from lines of investigation expected to attract legal risk through intimidatory actions that are core to SLAPPS, such that the public loses access to information.

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CHILLING EFFECT

Apart from direct harm caused to affected parties, SLAPPS can have important consequences in terms of shutting down debate on matters of public interest. Where SLAPPS are not challenged and jurisdictions are perceived to be lenient towards this type of threat, this leads to a '**chilling effect**' where media and public interest actors refrain from critiques or investigations, thus impoverishing public discourse. Scrutiny, transparency and accountability necessary for robust debate are jeopardised by the silencing of voices that challenge powerful actors that employ SLAPP tactics.

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DIFFERENCE BETWEEN SLAPPS AND OTHER FORMS OF HUMAN RIGHTS INFRINGEMENTS

“SLAPPs differ from genuine defamation, privacy, copyright, or other legal claims, which arise out of the need to genuinely protect rights. SLAPPs aim at obstructing public participation rather than protecting rights. By targeting journalists, human rights defenders, and other civil society actors who contribute to public interest matters, SLAPPs undermine a wide range of their rights, including their rights to freedom of expression, assembly, association, and public participation.”

UN Office of the High Commissioner, the impact of SLAPPs on human rights & how to respond

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SLAPPS IMPACT THE ENJOYMENT OF OTHER RIGHTS

SLAPPS do not solely challenge the right to freedom of expression but can also affect the enjoyment of a number of other essential rights protected by the Convention, including the right of access to a court (Article 6, right to a fair trial); the right to reputation (Article 8, right to respect for private and family life); and the right to an effective remedy (Article 13). Assessing whether a violation of these rights has occurred requires a careful balancing exercise between the competing interests at stake.

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USE OF TERM SLAPPS IN EUROPE

The term 'SLAPP' was first popularised in the United States in the 1980s, but its origins can be traced back to earlier legal discussions and cases. The concept behind SLAPP lawsuits had been recognised by legal scholars and activists for some time before the term was coined.

The term SLAPPS in Europe emerged between 2017 and 2018 and is closely linked with the assassination of Maltese investigative journalist Daphne Caruana Galizia, who was brutally killed by a car bomb. At the time of her assassination, she had 47 active defamation lawsuits against her.

SLAPP: the background of Strategic Lawsuits Against Public Participation, <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>

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TIMELINE OF EVENTS LEADING TO EUROPEAN INITIATIVES TO COUNTER SLAPPS

- ▶ **16 October 2017** – Maltese investigative journalist Daphne Caruana Galizia is assassinated.
- ▶ **10 April 2018** – Member of Parliament David Casa calls on the European Commission to come forward with Anti-SLAPP legislation.
- ▶ **13 June 2018 – 12 November 2019** – At least three events are organised by civil society and academia in Brussels and Aberdeen to discuss SLAPPS, including the preparation of a European Model Bill.

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COUNTERING THE USE OF SLAPPS – MODULE 1

- ▶ **24 February 2020** – Coalition Against SLAPPS in Europe (CASE) – at that time a small group of people – gathered in Amsterdam to write its strategy on how to combat SLAPPS in Europe. CASE became the leading civil society coalition in Europe against SLAPPS.
- ▶ **27 October 2020** – Council of Europe Human Rights Commissioner Dunja Mijatović called for action against SLAPPS.
- ▶ **1 December 2020** – CASE submitted to the European Commission an EU Anti-SLAPP model law.
- ▶ **3 December 2020** – The European Commission established an expert group against SLAPPS consisting of 35 experts.
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COUNTERING THE USE OF SLAPPS – MODULE 1

- ▶ **11 November 2021** – European Parliament adopted an Own Initiative Report (INI) on strengthening democracy, media freedom, and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs, and civil society.
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- ▶ **15 March 2022** – The European Court of Human Rights published a judgment where it mentioned SLAPPS for the first time, referring to Dunja Mijatović’s call for action blog. Case OOO Memo v. Russia, Application no. 2840/10, 15 March 2022.
- ▶ **27 April 2022** – European Commission presented the Recommendation (EU) 2022/758 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’).

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COUNTERING THE USE OF SLAPPS – MODULE 1

- ▶ **5 April 2024** – The Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2024)2 on countering the use of Strategic Lawsuits Against Public Participation (SLAPPs).
- ▶ **11 April 2024** – The European Parliament adopted Directive (EU) 2024/1069 of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

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SLAPPS AS A PROBLEM ACROSS EUROPE

London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19

London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19, <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-publication-April-2022.pdf>

Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington

Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU\(2023\)756468_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU(2023)756468_EN.pdf)

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COUNTERING THE USE OF SLAPPS – MODULE 1

SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation

SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation, <https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>

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COUNTERING THE USE OF SLAPPS

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MODULE 2 SLAPPS Testimony

(Training material to be shared with trainers only)

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Q & A WITH PARTICIPANTS AND RESOURCE PERSON	3

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COUNTERING THE USE OF SLAPPS

Module objective

This session will provide training participants with an interactive and moderated discussion with a SLAPP victim or target (resource person) from the country or region where the training is being held. The aim of the session is to hear firsthand experience on how public watchdogs are targeted with SLAPPs, the impact it has on their professional and personal life, how they managed to deal with abusive litigation, what helped them, and what can be done so others don't experience the same.

Session techniques and methods

- ▶ Interview with resource person
- ▶ Large group discussion

Duration

- ▶ 60 - 90 minutes

TESTIMONY – GUIDING QUESTIONS FOR THE INTERVIEW

→ Resource Person Discussion, Q&A

If no Resource person is available, the discussion may be led by the trainer

Guidance for Trainers

The module will be in the format of an interview moderated by one of the international trainers or other competent individuals selected by the training organiser. The person providing his or her testimony can also be someone with relevant international experience on SLAPPs and can be any public watchdog or contributor to public debate and all participants in public affairs, including, but not limited to: journalists, media organisations, media professionals and other media actors, such as citizen journalists; civil society organisations, environmental and anti-corruption associations and activists etc. The interviewer should become thoroughly familiar with the facts of the case well in advance. At the beginning of the discussion, the interviewer introduces the resource person and provides a brief biography. After the introduction by the interviewer, the discussion proceeds based on the below listed questions. If it's not possible to have an in-person testimony, a video testimony can be prepared in advance and played during the training.

Questions to guide the interview with the resource person:

- ▶ Introduce the work you do and what led to this SLAPP case.
- ▶ Did you know it was a SLAPP? How did you identify it, and which elements did you consider?
- ▶ Have you received legal letters before the actual lawsuit? If yes, what type of wording did they contain and what was their content?
- ▶ Do you know if the claimant has a history of using legal tactics against public watchdogs?
- ▶ How did the procedure before the court develop? Did it take national courts a long time to manage the case?
- ▶ How long did the case last, overall?
- ▶ Evidence: Were you asked to provide evidence to the court to support your response? How do you save evidence after you complete an investigation?
- ▶ Did you have any support (financial, legal)?

COUNTERING THE USE OF SLAPPS

- ▶ What was the impact of this case on you personally (emotionally, financially etc.)
- ▶ How much of your time was taken up defending the case, doing additional research required by the court/lawyers, travelling to/from the court (especially if they were sued in a city other than their residence)?
- ▶ Did it mean that you had far less time for your work as a journalist, reporting and investigating?
- ▶ What is the status of the case now?
- ▶ Do you think the new European rules and instruments will help you in the future?

Q & A WITH PARTICIPANTS AND RESOURCE PERSON

→ Large group discussion

Guidance for Trainers

After concluding the interview, participants are given the floor to make comments, ask questions, and engage with the resource person. Depending on the size of the group, sufficient time should be allowed for this interaction. Participants may be asked if they have experience with SLAPPS, as a defendant, or as a lawyer or as a judge dealing with a SLAPP case. If participants are hesitant—an understandable reaction—the interviewer may conclude the session before the 30 minutes allocated for discussion are over and invite participants to an informal follow-up exchange with the resource person.

COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

MODULE 3

The right to freedom of expression and the role of the media and other public watchdogs

(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 build a basic understanding of the right to freedom of expression as protected under the European Convention on Human Rights. This includes an understanding of the importance of the right to freedom of expression; the role of the media and other watchdogs; and the circumstances in which the right to freedom of expression may be legitimately restricted.

Session techniques and methods

- ▶ Brainstorming exercise
- ▶ Large group discussion
- ▶ Small group discussion
- ▶ Presentation followed by discussion
- ▶ Case study

Duration

- ▶ 2.45 – 3 hours

THE IMPORTANCE OF FREEDOM OF EXPRESSION

→ Brainstorming Exercise

Allocated time: 20 minutes

Guidance for trainers

A group brainstorm, facilitated by the trainer, on different aspects of the importance of the right to freedom of expression.

The trainer should ask the question: “Why is freedom of expression important?”

Participants are encouraged to share their ideas, which can be written on a flip chart, on post-it notes on the wall, or on an interactive whiteboard. At this stage there should be no discussion or critiquing of contributions or other discussion; the trainer’s role is limited to listing ideas and preventing premature debate.

If necessary, the trainer may gently guide the discussion to go beyond the obvious reasons (freedom of expression is crucial to democracy) and try to elicit the following:

- ▶ to be able to express oneself is a key element of what makes us human
- ▶ freedom of expression is important to the realisation of other rights
- ▶ freedom of expression is important to hold power to account
- ▶ freedom of expression is important to the fight against corruption
- ▶ freedom of expression is important to economic development

Once all responses are noted, the trainer facilitates feedback. This will include discussion, analysis, and categorization of the ideas that have been contributed. The trainer can wrap up the session by thanking participants for their contributions. If possible, the paper on which contributions have been noted should be left on the wall as a reminder of the various reasons for why the right to freedom of expression is important.

COUNTERING THE USE OF SLAPPS

The right to freedom of expression is guaranteed in the European Convention on Human Rights as well as in other human rights treaties and declarations. Following the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations in 1948, the European Convention, which was drafted in the early 1950s and entered into force in 1953, was the first legally binding human rights treaty.

Article 10 of the Convention states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The right to freedom of expression is a cornerstone of democratic society and plays a central role in the protection of other rights. This has been affirmed by the European Court of Human Rights in dozens of judgments, including the following:

- ▶ [Handyside v. the United Kingdom](#), Application no. 5493/72, 7 December 1976: "Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man."
- ▶ [Manole and Others v. Moldova](#), Application no. 13936/02, 17 September 2009: "Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself."

The right to freedom of expression protects all forms of expression. In practice, the Court has distinguished between political speech, discussion on matters of public importance, artistic expression, information of a commercial nature, and entertainment such as music. Political expression and debate on matters of public importance is especially protected:

"[F]reedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention" ([Lingens v. Austria](#), Application no. 9815/82, 8 July 1986)

A high level of protection is afforded to discussion of all matters of public importance:

- ▶ Discussion of historical genocides ([Perinçek v. Switzerland](#), Application no. 27510/08, 15 October 2015)
- ▶ Criticism of the actions of the police ([Savva Terentyev v. Russia](#), Application no. 10692/09, 28 August 2018)
- ▶ Criticism of disproportionate pay increases for the director of a large car manufacturer ([Fressoz and Roire v. France](#), Application no. 29183/95, 21 January 1999)
- ▶ Discussion on the privatisation of a major national insurance provider ([Radio Twist a.s. v. Slovakia](#), Application no. 62202/00, 19 December 2006)
- ▶ Allegations of mis-selling of insurance products ([Haldimann v. Switzerland](#), Application no. 21830/09, 24 February 2015)
- ▶ Discussion on employment law and policy, aimed at professionals in the human resources sector ([Herbai v. Hungary](#), Application no. 11608/15, 5 November 2019)

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The European Court has emphasised that the scope of information and ideas protected is extraordinarily broad. The only type of expression that falls outside the scope of the right to freedom of expression is hate speech. Examples of what the Court has understood as being part of “information and ideas” include:

- ▶ Information about someone’s private life: publication of photographs to illustrate a news story ([Von Hannover v. Germany \(2\)](#), Applications nos. 40660/08 and 60641/08, 7 February 2012).
- ▶ Information about abortion: ([Open Door and Dublin Well Woman v. Ireland](#), Application nos. 14234/88; 14235/88).
- ▶ Criticism of the founder of the state: ([Murat Vural v. Turkey](#), Application no. 9540/07)
- ▶ Criticism of religion: ([Dubowska and Skup v. Poland](#) (dec.), Application Nos. 33490/96 and 34055/96, 18 April 1997)

Freedom of expression applies to words that shock, offend or disturb. As the author, Salman Rushdie, has remarked: “What is freedom of expression? Without the freedom to offend, it ceases to exist.” The European Court of Human Rights has emphasised:

“Freedom of expression ... is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’” ([Handyside v. the United Kingdom](#), Application no. 5493/72, 7 December 1976).

COUNTERING THE USE OF SLAPPS

THE ROLE OF THE MEDIA AND OTHER PUBLIC WATCHDOGS

→ Small group discussion

Allocated time: 20 - 30 minutes

Guidance for trainers

The trainer should divide the group into smaller groups, ideally of no more than four people. Each of the groups is asked to discuss the following questions:

Who/what are the media in the present-day media environment?

What is the role of the media in fulfilling the right to freedom of expression, including in relation to various ways in which freedom of expression is important as discussed in the previous session?

What are 'other public watchdogs' whose status might be akin to the media?

The trainer should instruct each of the groups to first select a speaker among themselves. This person may take notes and should be ready to present their group's views to the larger group later. Allow the groups a few minutes to settle in, choose their speaker, and start thinking about the topic. Then, the trainer should move from one group to the next, offering guidance. The trainer should ask if the questions need clarification. Address any queries quickly to allow sufficient time for discussion. The trainer should avoid offering examples or suggestions that might influence the thinking of the group. The trainer should work efficiently, ensuring they do not spend too much time with one group at the expense of others.

During the reporting-back from the small groups to the main group, ensure that each speaker is listened to attentively by the larger group. As the facilitator, carefully listen to all contributions and write them on a flip chart. Do not give an opinion on 'wrong' contributions.

If possible, at the end of the session the paper on which contributions have been noted should be left on the wall as a reminder of the various reasons for why the media and other public watchdogs play such an important role.

The media play a particularly important role in relation to the right to freedom of expression. Whether online, through radio or television or in print, they are the means through which the vast majority of people receive news and information on issues of public interest:

"Although the press must not overstep certain bounds, regarding in particular the protection of the reputation and rights of others, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'" ([Pedersen and Baadsgaard v. Denmark](#), Application no. 49017/99, 17 December 2004)

This applies to online media, bloggers and particularly popular social media users as well as to 'traditional' media:

"Given the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information, the function of bloggers and popular users of the social media may be also assimilated to that of "public watchdogs" in so far as the protection afforded by Article 10 is concerned." ([Magyar Helsinki Bizottság v. Hungary](#), Application no. 18030/11, 8 November 2016)

COUNTERING THE USE OF SLAPPS

NGOs inform the public and alert them to issues of public interest. Like the media, they are therefore also considered 'public watchdogs' with an important role in society:

"The function of creating forums for public debate is not limited to the press. That function may also be exercised by non-governmental organisations, the activities of which are an essential element of informed public debate. The Court has therefore accepted that non-governmental organisations, like the press, may be characterised as social "watchdogs". In that connection their activities warrant similar Convention protection to that afforded to the press ..."
[\(Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria](#), Application no. 39534/07, 28 November 2013)

COUNTERING THE USE OF SLAPPS

PERMISSIBLE LIMITATIONS ON THE RIGHT TO FREEDOM OF EXPRESSION

→ Presentation

Allocated time: 15 - 25 minutes

Guidance for trainers

The trainer presents a PowerPoint presentation explaining how, under Article 10(2) of the European Convention on Human Rights, restrictions may be imposed on the right to freedom of expression. Following the presentation, the PowerPoint slides are handed out; they contain key European Court of Human Rights judgments and are self-explanatory. If there is no time for a presentation, the trainer may simply provide the PowerPoint presentation as a hand-out.

When a case comes before the Court in which an applicant claims that their right to freedom of expression has been restricted in violation of Article 10, the Court follows a specific logic.

First, it assesses whether there has been an 'interference' with the right to freedom of expression. If the answer is 'yes', the Court then moves on to assess whether this interference was justified. This assessment itself consists of three stages, and is often referred to as "the three-part test". This test follows the logic of the text of Article 10(2):

1. The restriction must have been prescribed by law;
2. The restriction must have been imposed in pursuit of a legitimate aim; and
3. The restriction must be demonstrated to have been 'necessary in a democratic society'.

All three parts of this test must be met; if one or more of these three conditions are not met, then the restriction violates the right to freedom of expression.

In applying the 'prescribed by law' test, the Court uses a substantive test. It considers that the term 'law' includes legal provisions passed by parliament, but also ministerial regulations and similar norms, as well as judicial interpretations of the law. In [Ekin Association v. France](#) (Application no. 39288/98, 17 July 2001), it held:

"[T]he concept of 'law' must be understood in its 'substantive' sense, not its 'formal' one. It therefore includes everything that goes to make up the written law, including enactments of lower rank than statutes and the court decisions interpreting them."

Further requirements include:

- ▶ The legal measure on which the restriction is based must be 'adequately accessible'. Unpublished internal regulations cannot provide a basis for a restriction. As the Court has held, "The law must be foreseeable, meaning 'formulated with sufficient precision to enable the citizen to regulate their conduct'" ([Sunday Times v. the United Kingdom](#), Application no. 6538/74, 26 April 1979). Journalists and other professionals are expected to take special care and, if necessary, to seek legal advice (see, in particular, [Delfi v. Estonia](#) (GC), Application no. 64569/09, 16 June 2015)
- ▶ The law must afford protection against abuse and arbitrary or excessive use of the law ([Centro Europa 7 S.R.L. and Di Stefano v. Italy](#) (GC), Application no. 38433/09, 7 June 2012)
- ▶ The law must provide for the possibility of judicial review ([Ahmet Yildirim v. Turkey](#), Application no. 3111/10, 18 December 2012)

The legitimate aims mentioned in Article 10(2) are the protection of national security, territorial integrity or public safety; the prevention of disorder or crime; the protection of health or morals; the protection of the reputation or rights of others; the prevention of the disclosure of information received in confidence; and maintaining the authority and impartiality of the judiciary.

COUNTERING THE USE OF SLAPPS

The requirement of “necessary in a democratic society” means that any restrictions “must be narrowly interpreted and the necessity for any restrictions must be convincingly established” ([Observer and Guardian v. the United Kingdom](#), Application no. 13585/88, 26 November 1991). In the case of [Sunday Times v. the United Kingdom \(No. 1\)](#) (Application no. 6538/74, 26 April 1979), the Court elaborated on the strict meaning of the word “necessary”:

“[W]ilst the adjective ‘necessary’, within the meaning of Article 10 (2), is not synonymous with ‘indispensable’, neither has it the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’ ... it implies the existence of a ‘pressing social need.’”

In determining whether there is a ‘pressing social need’ that would justify a restriction as being ‘necessary in a democratic society’, the Court requires that the following questions are addressed:

1. Are the reasons given for the restriction ‘relevant and sufficient’? As part of this, it needs to be assessed whether the authorities based themselves on an acceptable assessment of the relevant facts; and whether they applied standards that were in conformity with the principles embodied in Article 10?
2. Is the restriction proportionate to the legitimate aim pursued?

Various factors are taken into consideration to assess whether or not a restriction is proportionate to the aim pursued, including:

- ▶ The nature and severity of the restriction, and how long it was imposed for (see, for example, [Sunday Times v. United Kingdom \(No. 1\)](#), Application no. 6538/74, 26 April 1979);
- ▶ The position of the applicant and his/her role in the public debate;
- ▶ The impact of the expression in question: how many individuals have read, seen or heard it (for example, in [Tamiz v. the United Kingdom](#), Application no. 3877/14, 19 September 2017, only a limited number of people had accessed an impugned blog post and so it had limited impact);
- ▶ The right of the public to be informed on matters of general importance
- ▶ Whether the authorities have struck a fair balance between the right to freedom of expression and other rights (see, for example, [Cumpăna and Mazăre v. Romania](#), Application no. 33348/96, 17 December 2004)
- ▶ Whether the authorities have applied the least restrictive means possible to achieve the legitimate aim (see, for example, [Ürper and Others v. Turkey](#), Applications nos. 14526/07 and others, October 2009))

National courts need to ensure procedural fairness in all cases before them. This may require taking steps to ensure equality of arms between parties. In [Steel and Morris v. the United Kingdom](#) (Application no. 68416/01, 15 February 2005), the Court found that a defamation case taken by McDonalds against two individuals of whom one was unemployed and the other earned £65 a week, and who were unable to afford lawyers to represent them, violated the right to freedom of expression. States must ensure that legal costs are not excessive. In [MGN v. the United Kingdom](#) (Application no. 39401/04, 18 January 2011), the Court found that a large award of legal costs against a newspaper constituted a violation of the right to freedom of expression.

COUNTERING THE USE OF SLAPPS

→ Case study

Allocated time: 45 minutes including reporting back

Guidance for trainers

The trainer should divide the group into smaller groups, ideally of no more than four people. Each of the groups is asked to apply the three-part test to the following scenario, taken from a European Court of Human Rights case. The groups should be instructed to apply the three-part test rigorously, step-by-step.

Following the case study, the trainer should request that a Rapporteur for each of the groups reports back on the group's discussions, detailing how they applied the three-part test.

Case study

A company had manufactured drugs containing an ingredient known as thalidomide. The drugs were prescribed as sedatives for pregnant women. In 1961, around 450 women who had taken the drugs while they were pregnant gave birth to children suffering from severe deformities. The company withdrew all drugs containing thalidomide from the market.

Between 1962 and 1966 the parents of seventy of the children sued the company for negligence; most of these cases were settled in 1968. Following the settlement, nearly four hundred other suits were filed by other parents and their children and the company said that it would establish a charitable trust fund for all children and parents who had been affected. Eventually, a settlement involving the setting up of a significant trust fund was worked out and was expected to be submitted for court approval.

A newspaper had reported on the 'thalidomide children' throughout the proceedings, and it had criticised the 1968 settlement. In 1972, it published an article examining the settlement proposal and described it as "grotesquely out of proportion to the injuries suffered", criticising various aspects of domestic law in personal injury cases, and complaining of the delay that had elapsed since the births. A footnote to the article announced that a future article would trace how the tragedy occurred, including an investigation into whether the drug company had carried out proper tests on the drug, and whether it had been aware that thalidomide could have a negative impact on the unborn foetus.

The country's minister of justice applied for and was granted an injunction prohibiting publication of this future article on the grounds that it would constitute 'contempt of court'. 'Contempt of court' is a legal process that is well-known in the country to protect the administration of justice but which was not based in written law. The injunction was granted.

The applicant applied for the injunction to be lifted but was ultimately unsuccessful. Parallel to the appeal proceedings, a public debate on the issue ensued, including a debate in Parliament and articles in other newspapers referring to issues similar to those the future article in the applicant's newspaper would have addressed. The injunction was finally lifted in 1976, after a settlement had been reached and approved by the courts. The contentious article was published four days later.

→ Presentation

Allocated time: 15 minutes including Q&A

Following the report-back on the case study, the trainer may present a PowerPoint presentation covering the case of [The Sunday Times v. the United Kingdom \(No. 1\)](#) (Application no. 6538/74, 26 April 1979), which the above scenario has been drawn from, illustrating how the European Court of Human Rights applied the three-part test in the case.

COUNTERING THE USE OF SLAPPS

STATUS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS UNDER NATIONAL LAW

→ Large group discussion

Allocated time: 30 minutes

The group should discuss the status under national law of (1) the European Convention on Human Rights, and (2) judgments of the European Court of Human Rights, focusing on two aspects:

- ▶ Are each of these considered to 'override' national law?
- ▶ As a practical matter, how are ECtHR judgments pleaded before national proceedings, especially as concerns judgments that have not been translated into national languages, and how frequently does this happen?

If time permits, there may be discussion on how national laws and practices can best be brought in line with the requirements of the European Court of Human Rights.

EXERCICES – MODULE 3

The right to freedom of expression and the role of the media and other public watchdogs

(Training material to be shared with participants)

1. THE IMPORTANCE OF FREEDOM OF EXPRESSION

→ Brainstorming Exercise

Task for the group: discuss why freedom of expression is important?

Questions to guide the discussion:

- ▶ Can there be democracy without freedom of expression?
- ▶ Is being able to express oneself a key element of what it means to be human?
- ▶ How is freedom of expression important to the realisation of other rights?
- ▶ How is freedom of expression important to hold power to account?
- ▶ How is freedom of expression important to the fight against corruption?
- ▶ How is freedom of expression important to economic development?

2. THE ROLE OF THE MEDIA AND OTHER PUBLIC WATCHDOGS

→ Brainstorming Exercise

Questions for small group discussion:

- ▶ Who/what are the media in the present-day media environment?
- ▶ What is the role of the media in fulfilling the right to freedom of expression, including in relation to various ways in which freedom of expression is important as discussed in the previous session?
- ▶ What are 'other public watchdogs' whose status might be akin to the media?

COUNTERING THE USE OF SLAPPS

3. PERMISSIBLE LIMITATIONS ON THE RIGHT TO FREEDOM OF EXPRESSION

→ Brainstorming Exercise

Scenario

A company had manufactured drugs containing an ingredient known as thalidomide. The drugs were prescribed as sedatives for pregnant women. In 1961, around 450 women who had taken the drugs while they were pregnant gave birth to children suffering from severe deformities. The company withdrew all drugs containing thalidomide from the market.

Between 1962 and 1966 the parents of seventy of the children sued the company for negligence; most of these cases were settled in 1968. Following the settlement, nearly four hundred other suits were filed by other parents and their children and the company said that it would establish a charitable trust fund for all children and parents who had been affected. Eventually, a settlement involving the setting up of a significant trust fund was worked out and was expected to be submitted for court approval.

A newspaper had reported on the 'thalidomide children' throughout the proceedings, and it had criticised the 1968 settlement. In 1972, it published an article examining the settlement proposal and described it as "grotesquely out of proportion to the injuries suffered", criticising various aspects of domestic law in personal injury cases, and complaining of the delay that had elapsed since the births. A footnote to the article announced that a future article would trace how the tragedy occurred, including an investigation into whether the drug company had carried out proper tests on the drug, and whether it had been aware that thalidomide could have a negative impact on the unborn foetus.

The country's minister of justice applied for and was granted an injunction prohibiting publication of this future article on the grounds that it would constitute 'contempt of court'. 'Contempt of court' is a legal process that is well-known in the country to protect the administration of justice but which was not based in written law. The injunction was granted.

The applicant applied for the injunction to be lifted but was ultimately unsuccessful. Parallel to the appeal proceedings, a public debate on the issue ensued, including a debate in Parliament and articles in other newspapers referring to issues similar to those the future article in the applicant's newspaper would have addressed. The injunction was finally lifted in 1976, after a settlement had been reached and approved by the courts. The contentious article was published four days later.

4. STATUS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS UNDER NATIONAL LAW

Questions for group discussion:

1. Does the European Convention on Human Rights 'override' national law? If not, what is their status vis-à-vis national law?
2. Do judgments of the European Court of Human Rights 'override' national law? If not, what is their status vis-à-vis national law?
3. As a practical matter, how are ECtHR judgments pleaded before national proceedings, especially as concerns judgments that have not been translated into national languages, and how frequently does this happen?
4. How can national laws and practices best be brought in line with the requirements of the European Convention on Human Rights, and relevant judgments by the European Court of Human Rights?

MODULE 3

The Importance of the Right to Freedom of Expression and the Role of the Media and other Public Watchdogs

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

- ▶ International and national sources of the right to freedom of expression
- ▶ The importance of freedom of expression
- ▶ The role of the media, NGOs and other ‘public watchdogs’
- ▶ Definition of the right to freedom of expression (content and form)

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INTERNATIONAL AND NATIONAL SOURCES OF THE RIGHT TO FREEDOM OF EXPRESSION

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FREEDOM OF EXPRESSION IN INTERNATIONAL HUMAN RIGHTS LAW

The right to freedom of expression is guaranteed in the European Convention on Human Rights as well as in other human rights treaties and declarations.

Following the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations in 1948, the European Convention, which was drafted in the early 1950s and entered into force in 1953, was the first legally binding human rights treaty.

Other global and regional legal instruments that recognize the right to freedom of expression:

- ▶ Universal Declaration of Human Rights, protects freedom of expression at Article 19
- ▶ International Covenant on Civil and Political Rights, protects freedom of expression in Article 19 and has been ratified by all Council Europe member states
- ▶ African Charter on Human and Peoples' Rights, protects freedom of expression at Article 9
- ▶ American Convention on Human Rights, protects freedom of expression at Article 13
- ▶ the ASEAN Human Rights Declaration, protects freedom of expression at Article 23

Freedom of expression is truly globally recognized.

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EUROPEAN CONVENTION ON HUMAN RIGHTS, ARTICLE 10:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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THE IMPORTANCE OF FREEDOM OF EXPRESSION

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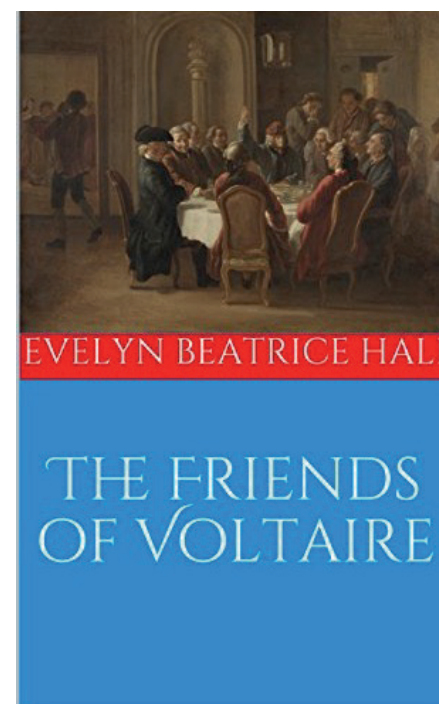


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THE IMPORTANCE OF FREEDOM OF EXPRESSION

“I disapprove of what you say, but I will defend to the death your right to say it”

Evelyn Beatrice Hall, The Friends of Voltaire



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THE IMPORTANCE OF FREEDOM OF EXPRESSION

The right to freedom of expression is a cornerstone of democratic society and plays a central role in the protection of other rights.

“Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man.”

Handyside v. the United Kingdom, 7 December 1976

“Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself.”

Manole and Others v. Moldova, 17 September 2009

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THE IMPORTANCE OF FREEDOM OF EXPRESSION (CONTINUED)

The right to freedom of expression protects all forms of expression. In practice, the Court has distinguished between political speech, discussion on matters of public importance, artistic expression, information of a commercial nature, and entertainment such as music.

Political expression and debate on matters of public importance is especially protected: “freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention”

Lingens v. Austria, 8 July 1986

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THE IMPORTANCE OF FREEDOM OF EXPRESSION (CONTINUED)

A high level of protection is afforded to discussion of all matters of public importance:

- ▶ Discussion of historical genocides (*Perinçek v. Switzerland*, 15 October 2015)
- ▶ Criticism of the actions of the police (*Savva Terentyev v. Russia*, 28 August 2018)
- ▶ Criticism of disproportionate pay increases for the director of a large car manufacturer (*Fressoz and Roire v. France*, 21 January 1999)
- ▶ Discussion on the privatization of a major national insurance provider (*Radio Twist a.s. v. Slovakia*, 19 December 2006)
- ▶ Allegations of mis-selling of insurance products (*Haldimann v. Switzerland*, 24 February 2015)
- ▶ Discussion on employment law and policy, aimed at professionals in the human resources sector (*Herbai v. Hungary*, 5 November 2019)

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THE ROLE OF THE MEDIA, NGOS AND OTHER 'PUBLIC WATCHDOGS'

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THE ESSENTIAL ROLE OF THE MEDIA

The media play a particularly important role in relation to the right to freedom of expression. Whether online, through radio or television or in print, they are the means through which the vast majority of people receive news and information on issues of public interest.

“Although the press must not overstep certain bounds, regarding in particular the protection of the reputation and rights of others, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’”

Pedersen and Baadsgaard v. Denmark, 17 December 2004

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THE ESSENTIAL ROLE OF THE MEDIA (CONTINUED)

This applies to online media, bloggers and particularly popular social media users as well as to 'traditional' media:

“Given the important role played by the Internet in enhancing the public’s access to news and facilitating the dissemination of information, the function of bloggers and popular users of the social media may be also assimilated to that of “public watchdogs” in so far as the protection afforded by Article 10 is concerned.”

Magyar Helsinki Bizottság v. Hungary, 8 November 2016

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NGOS AND OTHER 'WATCHDOGS'

NGOs inform the public and alert them to issues of public interest.

Like the media, they are therefore also considered 'public watchdogs' with an important role in society:

"The function of creating forums for public debate is not limited to the press. That function may also be exercised by non-governmental organisations, the activities of which are an essential element of informed public debate. The Court has therefore accepted that non-governmental organisations, like the press, may be characterised as social "watchdogs". In that connection their activities warrant similar Convention protection to that afforded to the press ..."

Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria,
28 November 2013

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FREEDOM OF EXPRESSION: CONTENT, FORM, SCOPE

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DEFINITION OF THE RIGHT TO FREEDOM OF EXPRESSION

A careful and precise reading of the text of Article 10 of the European Convention on Human Rights is fundamental to understanding its meaning.

Here is the text of the first sentence again, with key words and phrases separated and in bold:

Everyone has the right to freedom of expression. This right shall include freedom to ***hold opinions*** and to ***receive*** and ***impart*** ***information*** and ***ideas*** ***without interference by public authority*** and ***regardless of frontiers***.

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DEFINITION (CONTINUED)

- ▶ Everyone: regardless of age, status, nationality, etc. This includes legal persons as well as non-citizens including migrants and stateless individuals.
- ▶ Freedom to hold opinions is absolute: no-one can restrict another's thoughts
- ▶ Freedom to impart protects the act of providing information and ideas.
- ▶ Freedom to receive protects the act of receiving information.
- ▶ Freedom of expression protects both factual information and ideas.
- ▶ Without interference by public authority: there can be no interference, unless justified under Article 10 (2)
- ▶ Regardless of frontiers: freedom of expression cannot be restricted just because the information or ideas expressed originate from another country.

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FORM AND TECHNICAL MEANS OF EXPRESSION

The right to freedom of expression protects all forms of expressive activity, including but by no means limited to:

- ▶ Speaking
- ▶ Writing
- ▶ Sending someone a text
- ▶ Film, photography, or sound recording and transmission
- ▶ Using the way a person dresses to express something
- ▶ Throwing paint on a statue
- ▶ Setting fire to a national flag

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FORM AND TECHNICAL MEANS OF EXPRESSION (CONTINUED)

The right to freedom of expression also protects interference with equipment, such as:

- ▶ The technical means of communication, such as broadcasting or internet equipment
- ▶ Photo cameras or microphones.

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SCOPE OF EXPRESSION

The European Court has emphasized that the scope of information and ideas protected is extraordinarily broad. The only type of expression that falls outside the scope of the right to freedom of expression is hate speech.

Here are a few examples of what the Court has understood as being part of “information and ideas”:

- ▶ Publication of photographs to illustrate a news story: *Von Hannover v. Germany* (2)
- ▶ Information about abortion: *Open Door and Dublin Well Woman v. Ireland*
- ▶ Criticism of the founder of the state: *Murat Vural v. Turkey*
- ▶ Criticism of religion: *Dubowska and Skup v. Poland*

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LAST BY NO MEANS LEAST

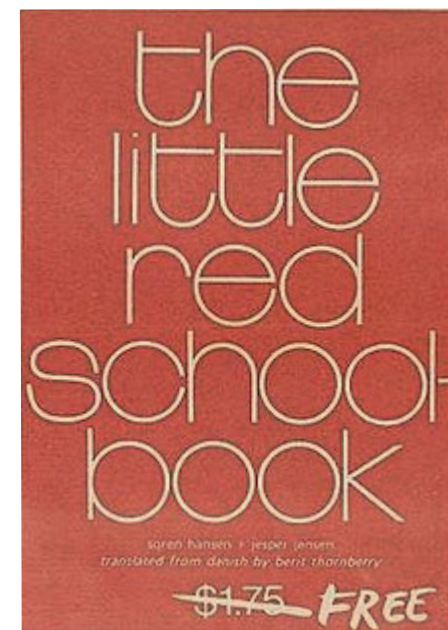
Freedom of expression applies to words that shock, offend or disturb.

“What is freedom of expression? Without the freedom to offend, it ceases to exist.”

Salman Rushdie

“Freedom of expression ... is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”

Handyside v. the United Kingdom, 7 December 1976



The “Little Red Schoolbook” was written in the 1960s and included advice on sex, drugs, alcohol and tobacco. It was censored in many countries and subject of the case of *Handyside v. the United Kingdom* before the European Court.

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MODULE 3

Restrictions on the right to freedom of expression

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MODULE OUTLINE

- ▶ Permissible restrictions
- ▶ Application of the three-part test

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PERMISSIBLE RESTRICTIONS

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RESTRICTIONS ON FREEDOM OF EXPRESSION

When a case comes before the Court in which an applicant claims that their right to freedom of expression has been restricted in violation of Article 10, the Court follows a specific logic.

First, it assesses whether there has been an ‘interference’ with the right to freedom of expression.

If the answer is ‘yes’, the Court then moves on to assess whether this interference was justified. This assessment itself consists of three stages, and is often referred to as “the three-part test”.

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EUROPEAN CONVENTION ON HUMAN RIGHTS, ARTICLE 10:

The test for restrictions is firmly based on the text of Article 10, which allows for restrictions only under specific circumstances. As highlighted in the text:

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, **may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary** in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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APPLICATION OF THE THREE-PART TEST

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THE 'THREE-PART TEST'

The so-called 'three-part test' follows the logic of the text of Article 10(2) :

- (1) The restriction has must have been prescribed by law;
- (2) The restriction must have been imposed in pursuit of a legitimate aim; and
- (3) The restriction must be demonstrated to have been 'necessary in a democratic society'.

All three parts of this test must be met ; if one or more of these three conditions are not met, then the restriction violates the right to freedom of expression.

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1) PRESCRIBED BY LAW

In applying the ‘prescribed by law’ test, the Court uses a substantive test. It considers that the term ‘law’ includes legal provisions passed by parliament, but also ministerial regulations and similar norms, as well as judicial interpretations of the law.

In *Ekin Association v. France* (17 July 2001), it held:

“[T]he concept of ‘law’ must be understood in its ‘substantive’ sense, not its ‘formal’ one. It therefore includes everything that goes to make up the written law, including enactments of lower rank than statutes and the court decisions interpreting them.”

In common law countries, it also includes unwritten common law.

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1) PRESCRIBED BY LAW (CONTINUED)

Further requirements include:

The legal measure on which the restriction is based must be ‘adequately accessible’. Unpublished internal regulations cannot provide a basis for a restriction.

The law must be foreseeable, meaning ‘formulated with sufficient precision to enable the citizen to regulate their conduct’ (*Sunday Times v. the United Kingdom*, 26 April 1979). Journalists and other professionals are expected to take special care and, if necessary, to seek legal advice (see, in particular, *Delfi v. Estonia (GC)*, 16 June 2015)

The law must afford protection against abuse and arbitrary or excessive use of the law (*Centro Europa 7 S.R.L. and Di Stefano v. Italy (GC)*, 7 June 2012)

The law must provide for the possibility of judicial review (*Ahmet Yildirim v. Turkey*, 18 December 2012)

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2) A LEGITIMATE AIM

There must be a realistic link between the expression that is restricted and the legitimate aim pursued; there cannot just be a hypothetical or uncertain possibility.

The legitimate aims are:

- ▶ **National security:** e.g. *Hadjianastassiou v. Greece* (16 December 1992): conviction of a military engineer who had sold classified military information to a private company pursued the legitimate aim of protecting national security.
- ▶ **Territorial integrity or public safety:** e.g. *Sürek v. Turkey* (No. 3) (8 July 1999): the publication of separatist propaganda which advocated recourse to violence could be legitimately restricted in order to protect territorial integrity and public safety
- ▶ **The prevention of disorder or crime:** e.g. *Rekvényi v. Hungary* (20 May 1999): political activities of police officers could be legitimately restricted in order to prevent disorder

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COUNTERING THE USE OF SLAPPS – MODULE 3

- ▶ **The protection of health or morals:** e.g. *Müller and Others v. Switzerland* (24 May 1988): paintings showing explicit sex acts could be temporarily removed from a public gallery that was accessible to children
- ▶ **The protection of the reputation or rights of others:** e.g. *MGN v. the United Kingdom* (18 January 2011): a newspaper was found to have violated the right to privacy of a well-known model by publishing about her treatment for drug addiction
- ▶ **Preventing the disclosure of information received in confidence:** e.g. *Stoll v. Switzerland* (10 December 2007): conviction for publishing “secret official deliberations” concerning compensation due to Holocaust victims for unclaimed assets justified to prevent the disclosure of information received in confidence
- ▶ **Maintaining the authority and impartiality of the judiciary:** e.g. *Worm v. Austria* (29 August 1997): conviction of a journalist who had written an article which was extremely critical of a defendant in a criminal trial, and which the Austrian courts had decided could influence the outcome of a criminal trial, was justified

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3) NECESSARY IN A DEMOCRATIC SOCIETY

Exceptions to the right to freedom of expression “must be narrowly interpreted and the necessity for any restrictions must be convincingly established” (*Observer and Guardian v. the United Kingdom*, 26 November 1991)

In the case of *Sunday Times v. the United Kingdom* (No. 1), (26 April 1979), the Court elaborated on the strict meaning of the word, “necessary”:

“[W]hilst the adjective ‘necessary’, within the meaning of Article 10 (2), is not synonymous with ‘indispensable’, neither has it the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’ ... it implies the existence of a ‘pressing social need.’”

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3) NECESSARY IN A DEMOCRATIC SOCIETY: ELEMENTS OF THE TEST

In determining whether there is a 'pressing social need' that would justify a restriction as being 'necessary in a democratic society', the Court requires that the following questions are addressed:

1. Are the reasons given for the restriction 'relevant and sufficient'? As part of this, it needs to be assessed whether the authorities based themselves on an acceptable assessment of the relevant facts; and whether they applied standards that were in conformity with the principles embodied in Article 10?
2. Is the restriction proportionate to the legitimate aim pursued?

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3) NECESSARY IN A DEMOCRATIC SOCIETY: PROPORTIONALITY

Various factors are taken into consideration to assess whether or not a restriction is proportionate to the aim pursued, including:

- ▶ The nature and severity of the restriction, and how long it was imposed for (see, for example, *Sunday Times v. United Kingdom* (No. 1))
- ▶ The position of the applicant and his/her role in the public debate
- ▶ The impact of the expression in question: how many individuals have read, seen or heard it (for example, in *Tamiz v. the United Kingdom* (19 September 2017) only a limited number of people had accessed an impugned blog post and so it had limited impact)

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3) NECESSARY IN A DEMOCRATIC SOCIETY: PROPORTIONALITY (CONTINUED)

Further factors are taken into consideration to assess whether or not a restriction is proportionate to the aim pursued:

- ▶ The right of the public to be informed on matters of general importance
- ▶ Whether the authorities have struck a fair balance between the right to freedom of expression and other rights (see, for example, *Cumpăna and Mazăre v. Romania* (17 December 2004))
- ▶ Whether the authorities have applied the least restrictive means possible to achieve the legitimate aim (see, for example, *Ürper and Others v. Turkey* (20 October 2009))

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PROCEDURAL FAIRNESS AND LEGAL COSTS

National courts need to ensure procedural fairness in all cases before them.

This may require taking steps to ensure equality of arms between parties. In *Steel and Morris v. the United Kingdom* (15 February 2005), the Court found that a defamation case taken by McDonalds against two individuals of whom one was unemployed and the other earned £65 a week, and who were unable to afford lawyers to represent them, violated the right to freedom of expression.

States must ensure that legal costs for are not excessive. In *MGN v. the United Kingdom* (18 January 2011), the Court found that a large award of legal costs against a newspaper constituted a violation of the right to freedom of expression.

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MODULE 3

The Sunday Times v. the United Kingdom (No. 1)

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FACTS

Between 1962 and 1966 the parents of seventy of the children sued the company for negligence; most of these cases were settled in 1968. Following the settlement, nearly four hundred other suits were filed by other parents and their children and the company said that it would establish a charitable trust fund for all children and parents who had been affected. Eventually, a settlement involving the setting up of a significant trust fund was worked out and was expected to be submitted for court approval.

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FACTS (CONTINUED)

A newspaper had reported on the ‘thalidomide children’ throughout the proceedings, and it had criticised the 1968 settlement. In 1972, it published an article examining the settlement proposal and described it as “grotesquely out of proportion to the injuries suffered”, criticising various aspects of domestic law in personal injury cases, and complaining of the delay that had elapsed since the births. A footnote to the article announced that a future article would trace how the tragedy occurred, including an investigation into whether the drug company had carried out proper tests on the drug, and whether it had been aware that thalidomide could have a negative impact on the unborn foetus.

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FACTS (CONTINUED)

The government applied for and was granted an injunction prohibiting publication of this future article on the grounds that it would constitute ‘contempt of court.’ ‘Contempt of court’ is a legal process that is well-known in the United Kingdom to protect the administration of justice but which was not based in written law. The injunction was granted.

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FACTS (CONTINUED)

The applicant applied for the injunction to be lifted but was ultimately unsuccessful. Parallel to the appeal proceedings, a public debate on the issue ensued, including a debate in Parliament and articles in other newspapers referring to issues similar to those the future article in the applicant's newspaper would have addressed. The injunction was finally lifted in 1976, after a settlement had been reached and approved by the courts. The contentious article was eventually published, four years after its intended publication.

The publishers launched a case at the European Court of Human Rights.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

45. It is clear that there was an “interference by public authority” in the exercise of the applicants’ freedom of expression, which is guaranteed by paragraph 1 of Article 10 (art. 10-1). Such an interference entails a “violation” of Article 10 (art. 10) if it does not fall within one of the exceptions provided for in paragraph 2 (art. 10-2). The Court therefore has to examine in turn whether the interference in the present case was “prescribed by law”, whether it had an aim or aims that is or are legitimate under Article 10 (2) (art. 10-2) and whether it was “necessary in a democratic society” for the aforesaid aim or aims.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

49. In the Court’s opinion, the following are two of the requirements that flow from the expression “prescribed by law”. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

52. ... the Court does not consider that the applicants were without an indication that was adequate in the circumstances of the existence of the “prejudgment principle”. Even if the Court does have certain doubts concerning the precision with which that principle was formulated at the relevant time, it considers that the applicants were able to foresee, to a degree that was reasonable in the circumstances, a risk that publication of the draft article might fall foul of the principle.

53. The interference with the applicants’ freedom of expression was thus “prescribed by law” within the meaning of Article 10 (2) (art. 10-2).

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

57. It remains to be examined whether the aim of the interference with the applicants' freedom of expression was the maintenance of the authority and impartiality of the judiciary ...The reasons why the draft article was regarded as objectionable by the House of Lords (see paragraphs 29 to 33 above) may be briefly summarised as follows:

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

- ▶ by «prejudging» the issue of negligence, it would have led to disrespect for the processes of the law or interfered with the administration of justice;
- ▶ it was of a kind that would expose Distillers to public and prejudicial discussion of the merits of their case, such exposure being objectionable... as it inhibits suitors generally from having recourse to the courts;
- ▶ it would subject Distillers to pressure and to the prejudices of prejudgment of the issues in the litigation, and the law of contempt was designed to prevent interference with recourse to the courts

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

- ▶ prejudgment by the press would have led inevitably in this case to replies by the parties, thereby creating the danger of a “trial by newspaper” incompatible with the proper administration of justice;
- ▶ the courts owe it to the parties to protect them from the prejudices of prejudgment which involves their having to participate in the flurries of pre-trial publicity.

The Court regards all these various reasons as falling within the aim of maintaining the “authority ... of the judiciary” as interpreted by the Court in the second sub-paragraph of paragraph 55 above.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

Was the interference “necessary in a democratic society” for maintaining the authority of the judiciary?

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

59. The Court has already had the occasion in its above-mentioned Handyside judgment to state its understanding of the phrase “necessary in a democratic society”, the nature of its functions in the examination of issues turning on that phrase and the manner in which it will perform those functions.

The Court has noted that, whilst the adjective “necessary”, within the meaning of Article 10 (2) (art. 10-2), is not synonymous with “indispensable”, neither has it the flexibility of such expressions as “admissible”, “ordinary”, “useful”, “reasonable” or “desirable” and that it implies the existence of a “pressing social need” (p. 22, para. 48).

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

62. It must now be decided whether the “interference” complained of corresponded to a “pressing social need”, whether it was “proportionate to the legitimate aim pursued”, whether the reasons given by the national authorities to justify it are relevant and sufficient under Article 10 (2).

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

The proposed Sunday Times article was couched in moderate terms and did not present just one side of the evidence or claim that there was only one possible result at which a court could arrive; although it analysed in detail evidence against Distillers, it also summarised arguments in their favour and closed with the words: “There appears to be no neat set of answers ...”. In the Court’s opinion, the effect of the article, if published, would therefore have varied from reader to reader. Accordingly, even to the extent that the article might have led some readers to form an opinion on the negligence issue, this would not have had adverse consequences for the “authority of the judiciary”, especially since, as noted above, there had been a nationwide campaign in the meantime.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

On the other hand, publication of the proposed article might well have provoked replies. However, the same is true, to a greater or lesser extent, of any publication that refers to the facts underlying or the issues arising in litigation. As items in that category do not inevitably impinge on the “authority of the judiciary”, the Convention cannot have been intended to permit the banning of all of them. Moreover, although this particular reason for the injunction might possibly have been “relevant” under Article 10 (2) (art. 10-2), the Court cannot decide whether it was “sufficient” without examining all the surrounding circumstances.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

As the Court remarked in its Handyside judgment, freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (p. 23, para. 49).

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

These principles are of particular importance as far as the press is concerned. They are equally applicable to the field of the administration of justice, which serves the interests of the community at large and requires the co-operation of an enlightened public. There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialised journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

To assess whether the interference complained of was based on “sufficient” reasons which rendered it “necessary in a democratic society”, account must thus be taken of any public interest aspect of the case.

66. The thalidomide disaster was a matter of undisputed public concern. It posed the question whether the powerful company which had marketed the drug bore legal or moral responsibility towards hundreds of individuals experiencing an appalling personal tragedy or whether the victims could demand or hope for indemnification only from the community as a whole; fundamental issues concerning protection against and compensation for injuries resulting from scientific developments were raised and many facets of the existing law on these subjects were called in question.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

As the Court has already observed, Article 10 (art. 10) guarantees not only the freedom of the press to inform the public but also the right of the public to be properly informed (see paragraph 65 above).

In the present case, the families of numerous victims of the tragedy, who were unaware of the legal difficulties involved, had a vital interest in knowing all the underlying facts and the various possible solutions. They could be deprived of this information, which was crucially important for them, only if it appeared absolutely certain that its diffusion would have presented a threat to the “authority of the judiciary”.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

In September 1972, the case had, in the words of the applicants, been in a “legal cocoon” for several years and it was, at the very least, far from certain that the parents’ actions would have come on for trial. There had also been no public enquiry.

It is true that, if the Sunday Times article had appeared at the intended time, Distillers might have felt obliged to develop in public, and in advance of any trial, their arguments on the facts of the case (see paragraph 63 above); however, those facts did not cease to be a matter of public interest merely because they formed the background to pending litigation. By bringing to light certain facts, the article might have served as a brake on speculative and unenlightened discussion.

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ECTHR JUDGMENT (EXCERPTS, REFERENCES OMITTED):

67. Having regard to all the circumstances of the case and on the basis of the approach described in paragraph 65 above, the Court concludes that the interference complained of did not correspond to a social need sufficiently pressing to outweigh the public interest in freedom of expression within the meaning of the Convention. The Court therefore finds the reasons for the restraint imposed on the applicants not to be sufficient under Article 10 (2) (art. 10-2). That restraint proves not to be proportionate to the legitimate aim pursued; it was not necessary in a democratic society for maintaining the authority of the judiciary.

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COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

MODULE 4

European instruments on countering the use of SLAPPS

(Training material to be shared with trainers only)

CONTENTS

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COUNTERING THE USE OF SLAPPS

Module objective

This module will provide participants with information on European standards related to Anti-SLAPP. This includes a focus on Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on Countering the Use of Strategic Lawsuits Against Public Participation (SLAPPs) and Directive (EU) 2024/1069 of the European Parliament and of the Council on Protecting Persons Who Engage in Public Participation from Manifestly Unfounded Claims or Abusive Court Proceedings. The aim of this session is to provide participants with a deeper understanding of European standards on Anti-SLAPP.

Session techniques and methods

- ▶ Small group discussion
- ▶ Presentation
- ▶ Brainstorming

Duration

- ▶ 90 – 120 minutes

UNDERSTANDING THE COUNCIL OF EUROPE'S AND EU'S STANDARDS AGAINST SLAPPS

→ Small group discussion

Allocated time: 30 minutes

Guidance for Trainers

Participants are divided into three or four groups, each focusing on a specific aspect of Anti-SLAPP measures: legislators (members of parliament and government), judges and prosecutors, lawyers, and civil society representatives. Each group will address a specific question listed below and select a representative to summarise their discussions and proposals.

Task for participants

Question for legislators (members of parliament and government):

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose legal changes to counter SLAPP lawsuits, which may include a new Anti-SLAPP law (mention key aspects of that law), new sections in existing laws (be specific), or amendments to various laws (specify which laws you would amend).

Question for judges and prosecutors:

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose specific provisions or legal changes that would assist you in your role as a judge or prosecutor in handling SLAPP lawsuits. Focus on procedural safeguards.

Question for lawyers:

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose specific provisions or legal changes that would assist you in your work as a lawyer in dealing with SLAPP lawsuits. Focus on remedies.

COUNTERING THE USE OF SLAPPS

Question for civil society representatives:

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose measures that would assist you in your role as a civil society representative in dealing with SLAPP lawsuits. Focus on measures where civil society can play a role.

The trainer should aim to guide the discussion in a way that leads participants toward proposing measures similar to those outlined in Recommendation CM/Rec(2024)2 and Directive (EU) 2024/1069.

PRESENTATION OF COUNCIL OF EUROPE AND EUROPEAN UNION INSTRUMENTS ON SLAPPS

→ Presentation

Allocated time: 20 minutes

After the participants have compiled a list of measures to counter SLAPPS, the trainer will proceed to present an overview of European instruments. Following the general presentation of these instruments, participants will receive detailed information about SLAPP indicators in Module 5.

The Council of Europe and the European Union have adopted three significant international legal instruments to address Strategic Lawsuits Against Public Participation (SLAPPS). These instruments are:

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 \('Strategic lawsuits against public participation'\)](#).
3. [Commission Recommendation \(EU\) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings \('Strategic lawsuits against public participation'\)](#).

Member states of the Council of Europe and the European Union have international obligations to implement and transpose these instruments at the national level to ensure effective protection of public participation. It is important to note that the EU Directive constitutes hard law, and that both instruments set minimum standards, allowing member states to provide stronger anti-SLAPP protections than those required. Once these instruments are implemented, various stakeholders—including judges, prosecutors, police officers, and lawyers—will have critical roles in ensuring their application. The content of these instruments is vital for civil society representatives, journalists, environmental activists, and other public watchdogs who rely on such protections to perform their roles effectively.

This session of the module will provide a comprehensive overview of Recommendation CM/Rec(2024)2 and Directive (EU) 2024/1069, including a detailed presentation and comparison of the two instruments to inform participants about their content and implications.

COUNTERING THE USE OF SLAPPS

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SCOPE	Applies to administrative, civil and criminal matters	Applies only to civil matters with cross-border implications
DEFINITIONS	Strategic lawsuits against public participation (“SLAPPS”) are understood as legal actions that are threatened, initiated or pursued as a means of harassing or intimidating their target, and which seek to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation.	‘Abusive court proceedings against public participation’ mean court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims
KEY TERMS	Public participation Public interest	Public participation Matter of public interest Abusive court proceedings against public participation

COUNTERING THE USE OF SLAPPS

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SLAPP INDICATORS	<p>a. 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;</p> <p>b. the arguments put forward by the claimant are partially or fully unfounded;</p> <p>c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;</p> <p>d. the claims amount to abuse of laws or procedures;</p> <p>e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;</p> <p>f. the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;</p> <p>g. 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;</p> <p>h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;</p> <p>i. the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;</p> <p>j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.</p>	<p>a. the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;</p> <p>b. the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;</p> <p>c. intimidation, harassment or threats on the part of the claimant or the claimant's representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;</p> <p>d. the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith.</p>

COUNTERING THE USE OF SLAPPS

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
TYPES OF SLAPPS	Domestic SLAPPS Cross border Multiple or coordinated SLAPPS SLAPPS targeting anonymous public participation	Cross border SLAPPS on civil matters
LEGAL ACTION STAGES	All stages of legal action, including an initial threat of legal action, as well as enforcement proceedings.	All stages of civil legal action, including procedures for interim and precautionary measures, counteractions or other particular types of remedies available under other instruments.
EARLY DISMISSAL	a. courts, on their own initiative, to dismiss a claim as a SLAPP early in the proceedings; and, b. 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.	Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law.
STAY OF PROCEEDINGS	When national law permits, member States should ensure that, if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.	Not covered
SECURITY FOR PROCEDURAL COSTS	Member States should introduce rules, in line with national law and practice, to ensure that in court proceedings against public participation, judicial and other competent 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 (above).	Member States shall ensure that in court proceedings brought against natural or legal persons on account of their engagement in public participation, the court or tribunal seised may require, without prejudice to the right of access to justice, that the claimant provide security for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages .

COUNTERING THE USE OF SLAPPS

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
RESTITUTION OF LEGAL COSTS	<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>
DEATH OR LOSS OF LEGAL CAPACITY OF THE DEFENDANT	<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>
ACKNOWLEDGEMENT OF SLAPP VICTIM STATUS AND COMPENSATION FOR DAMAGES	<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>

COUNTERING THE USE OF SLAPPS

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
CAPPING OF DAMAGES FOR THE CLAIMANT	<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>
CAPPING OF COSTS	<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>
DISSUASIVE MEASURES	<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>Member States shall ensure that courts or tribunals seised 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

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
 GROUNDS FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT	Not covered	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.
 PROTECTION AGAINST THIRD COUNTRY JUDGMENTS	Member States are encouraged to introduce rules to ensure that, where SLAPPS have been brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, that person may seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country.	Member States shall ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country.
 SUPPORT FOR TARGETS AND VICTIMS OF SLAPPS	Member States should ensure rapid access to comprehensive support for SLAPP targets, including physical protection, legal assistance, financial aid, psychological support, and practical help.	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. Member States shall ensure that legal aid in cross-border civil proceedings is provided in accordance with Council Directive 2003/8/EC (7).

COUNTERING THE USE OF SLAPPS

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
CULTURE OF TRANSPARENCY	<p>Member States should ensure full transparency for SLAPP cases by allowing the publication of court findings and creating a public register of SLAPP cases that is regularly updated and accessible online and offline. They should also provide data to bar associations about the outcomes of these cases, adhering to European human rights and data protection standards.</p>	<p>Member States should publish all final judgments from national courts of appeal or highest courts. Additionally, they should provide information on awareness-raising campaigns, preferably in collaboration with civil society organisations, through a readily accessible channel. (Summarised by the author)</p>
ENTER INTO FORCE & TRANSPOSITION TIMELINE	<p>In force.</p>	<p>Transposition deadline: 7 May 2026</p>

COUNTERING THE USE OF SLAPPS

DISCUSSION WITH PARTICIPANTS ON PRACTICAL IMPLICATIONS OF INSTRUMENTS ON SLAPPS

→ Brainstorming Exercise

Allocated time: 20 minutes

Guidance for trainers

Following Sessions 1 and 2 of this module, the trainer will organise a brainstorming exercise to facilitate discussions on the practical implications of implementing the Council of Europe Recommendation and the EU Directive and Recommendation at national level. The trainer will listen to and record the ideas and comments and will categorise the responses to ensure that subsequent discussions are well-structured. The following questions should be disseminated to participants for discussion.

Questions for discussion

1. Early dismissal of lawsuits and other claims against public participation

Does national law allow judges to dismiss cases early due to abuse of procedural laws? Can such national provisions be used for the dismissal of SLAPPs?

2. Stay of proceedings

Does national law enable the stay of proceedings in civil, administrative, or criminal cases? If yes, under which legal criteria?

3. Security for procedural costs

Do courts have the power to require the claimant to provide security for procedural costs, or for both procedural costs and damages? If yes, can such provisions be applied in SLAPP cases?

4. Compensatory damages

Does national law allow defendants to seek compensatory damages for an abusive lawsuit brought against them? If yes, can similar provisions be used by SLAPP targets and victims?

5. Restitution of legal costs

Does national law allow courts, upon determining that a legal claim is abusive, to order the claimant to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant?

6. Death or loss of legal capacity of the defendant

Are there any rules or provisions that regulate access to remedies and support for family members and associates of the original defendant after the death of the defendant?

7. Acknowledgement of SLAPP victim status and compensation for damages

Are there rules or provisions that enable victims of SLAPPs to apply for victim status, allowing them to be 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 (e.g., legal and administrative costs)? If not, are there rules or provisions for human rights violations that could serve as an example when amending legislation (e.g., legislation or rules regarding whistleblowers)?

COUNTERING THE USE OF SLAPPS

8. Capping of damages for the claimant

Is there a law or provision that limits the damages the claimant can recover from the defendant?

9. Facilitation of non-judicial remedies

Is there an effective press council in your jurisdiction? Are press councils used by claimants before they address the courts?

Is there an independent regulatory body for television and radio (broadcast regulators)? Is it used by claimants before addressing the courts?

Is it common in your country for politicians, businessmen, or other powerful bodies to use the Information and Data Protection Agency/body to complain about privacy violations by the media, civil society, and other public watchdogs (note that some SLAPPs are based on data protection laws)?

Are decisions of the press council and/or broadcast regulators binding on national courts?

Are proceedings before administrative bodies, such as data protection regulators, or self and co-regulatory bodies such as Press Councils, abused as a forum for SLAPPs?

10. Support for targets and victims of SLAPPs

Is there any type of support—financial, legal, psychological, or practical—provided to SLAPP victims and targets? Can public watchdogs targeted by SLAPPs benefit from national legal aid laws?

11. Cross border SLAPPs

Are there rules or provisions that provide effective protection against third-country judgments? Does national law allow a person to seek compensation as described above?

According to national law, what are the grounds for refusal of recognition and enforcement of a third-country judgment?

12. Dissuasive measures

Are there dissuasive penalties to deter claimants from filing abusive lawsuits or claims?

Are there rules or provisions that enable courts to request claimants to disseminate information concerning court decisions, such as the publication of judgments in part or in full?

Are there ethical or legal rules or provisions that oblige lawyers not to file abusive lawsuits or claims?

13. Education, training and awareness raising

Is there any state initiative to promote Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)?

Is there any civil society or other initiative to promote Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)?

Is there any training or capacity-building program that trains judicial, legal professionals, and relevant public authorities on SLAPPs? If yes, please provide detailed information.

EXERCICES – MODULE 4

European instruments on countering the use of SLAPPS

(Training material to be shared with participants)

1. UNDERSTANDING THE COUNCIL OF EUROPE AND EU STANDARDS AGAINST SLAPPS

→ Small group discussion

Task for participants

Question for legislators (members of parliament and government):

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose legal changes to counter SLAPP lawsuits, which may include a new Anti-SLAPP law (mention key aspects of that law), new sections in existing laws (be specific), or amendments to various laws (specify which laws you would amend).

Question for judges and prosecutors:

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose specific provisions or legal changes that would assist you in your role as a judge or prosecutor in handling SLAPP lawsuits. Focus on procedural safeguards.

Question for lawyers:

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose specific provisions or legal changes that would assist you in your work as a lawyer in dealing with SLAPP lawsuits. Focus on remedies.

Question for civil society representatives:

You are a member of a working group tasked with drafting legislation to address the issue of Strategic Lawsuit Against Public Participation (SLAPP). Please propose measures that would assist you in your role as a civil society representative in dealing with SLAPP lawsuits. Focus on measures where civil society can play a role.

The trainer should aim to guide the discussion in a way that leads participants toward proposing measures similar to those outlined in Recommendation CM/Rec(2024)2 and Directive (EU) 2024/1069.

COUNTERING THE USE OF SLAPPS

2. DISCUSSION WITH PARTICIPANTS ON PRACTICAL IMPLICATIONS OF INSTRUMENTS ON SLAPPS

→ Brainstorming Exercise

1. Early dismissal of lawsuits and other claims against public participation

Does national law allow judges to dismiss cases early due to abuse of procedural laws? Can such national provisions be used for the dismissal of SLAPPS?

2. Stay of proceedings

Does national law enable the stay of proceedings in civil, administrative, or criminal cases? If yes, under which legal criteria?

3. Security for procedural costs

Do courts have the power to require the claimant to provide security for procedural costs, or for both procedural costs and damages? If yes, can such provisions be applied in SLAPP cases?

4. Compensatory damages

Does national law allow defendants to seek compensatory damages for an abusive lawsuit brought against them? If yes, can similar provisions be used by SLAPP targets and victims?

5. Restitution of legal costs

Does national law allow courts, upon determining that a legal claim is abusive, to order the claimant to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant?

6. Death or loss of legal capacity of the defendant

Are there any rules or provisions that regulate access to remedies and support for family members and associates of the original defendant after the death of the defendant?

7. Acknowledgement of SLAPP victim status and compensation for damages

Are there rules or provisions that enable victims of SLAPPS to apply for victim status, allowing them to be 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 (e.g., legal and administrative costs)? If not, are there rules or provisions for human rights violations (e.g., whistleblowers) that could serve as an example when amending legislation?

8. Capping of damages for the claimant

Is there a law or provision that limits the damages the claimant can recover from the defendant?

9. Facilitation of non-judicial remedies

Is there an effective press council in your jurisdiction? Are press councils used by claimants before they address the courts?

Is there an independent regulatory body for television and radio (broadcast regulators)? Is it used by claimants before addressing the courts?

Is it common in your country for politicians, businessmen, or other powerful bodies to use the Information and Data Protection Agency/body to complain about privacy violations by the media, civil society, and other public watchdogs (note that some SLAPPS are based on data protection laws)?

Are decisions of the press council and/or broadcast regulators binding on national courts?

COUNTERING THE USE OF SLAPPS

10. Support for targets and victims of SLAPPS

Is there any type of support—financial, legal, psychological, or practical—provided to SLAPP victims and targets? Can public watchdogs targeted by SLAPPS benefit from the national Legal Aid Law?

11. Cross border SLAPPS

Are there rules or provisions that provide effective protection against third-country judgments?

CoE Recommendation on SLAPPS foresees the following: “If a SLAPP is successfully brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, can that person seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country?” Does the national law allow a person to seek compensation as described above?

According to national law, what are the grounds for refusal of recognition and enforcement of a third-country judgment?

12. Dissuasive measures

Are there dissuasive penalties to deter claimants from filing abusive lawsuits or claims?

Are there rules or provisions that enable courts to request claimants to disseminate information concerning court decisions, such as the publication of judgments in part or in full?

Are there ethical or legal rules or provisions that oblige lawyers not to file abusive lawsuits or claims?

13. Education, training and awareness raising

Is there any state initiative to promote Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPS)?

Is there any civil society or other initiative to promote Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPS)?

Is there any training or capacity-building program that trains judicial, legal professionals, and relevant public authorities on SLAPPS? If yes, please provide detailed information.

MODULE 4

European instruments on countering use of SLAPPs

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

Understanding the Council of Europe's and EU's standards against SLAPPS

Presentation of Council of Europe and European Union instruments on SLAPPS

Discussion with participants on practical implications of instruments on SLAPPS

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UNDERSTANDING THE COUNCIL OF EUROPE'S AND EU'S STANDARDS AGAINST SLAPPS

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SMALL GROUP DISCUSSION

Participants are divided into three or four groups, each focusing on a specific aspect of Anti-SLAPP measures: legislators (members of parliament and government), judges and prosecutors, lawyers, and civil society representatives. Each group will address a specific question listed below and select a representative to summarise their discussions and proposals.

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PRESENTATION OF COUNCIL OF EUROPE AND EUROPEAN UNION INSTRUMENTS ON SLAPPS

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COUNTERING THE USE OF SLAPPS – MODULE 4

The Council of Europe and the European Union instruments

- ▶ Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on countering the use of strategic lawsuits against public participation (SLAPPs).
- ▶ 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').
- ▶ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SCOPE	Applies to administrative, civil and criminal matters	Applies only to civil matters with cross-border implications
DEFINITIONS	Strategic lawsuits against public participation (“SLAPPs”) are understood as legal actions that are threatened, initiated or pursued as a means of harassing or intimidating their target, and which seek to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation.	‘Abusive court proceedings against public participation’ mean court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims.
KEY TERMS	Public participation Public interest	Public participation Matter of public interest Abusive court proceedings against public participation

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SLAPP INDICATORS	<p>a. 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;</p> <p>b. the arguments put forward by the claimant are partially or fully unfounded;</p> <p>c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;</p> <p>d. the claims amount to abuse of laws or procedures;</p> <p>e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;</p> <p>f. the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;</p> <p>g. 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;</p> <p>h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;</p> <p>i. the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;</p> <p>j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.</p>	<p>a. the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;</p> <p>b. the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;</p> <p>c. intimidation, harassment or threats on the part of the claimant or the claimant’s representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;</p> <p>d. the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith.</p>

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
TYPES OF SLAPPS	Domestic SLAPPS Cross border Multiple or coordinated SLAPPS SLAPPS targeting anonymous public participation	Cross border SLAPPS on civil matters
LEGAL ACTION STAGES	All stages of legal action, including an initial threat of legal action, as well as enforcement proceedings.	All stages of civil legal action, including procedures for interim and precautionary measures, counteractions or other particular types of remedies available under other instruments.
EARLY DISMISSAL	a. courts, on their own initiative, to dismiss a claim as a SLAPP early in the proceedings; and, b. 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.	Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law.
STAY OF PROCEEDINGS	When national law permits, member States should ensure that, if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.	Not covered

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SECURITY FOR PROCEDURAL COSTS	Member States should introduce rules, in line with national law and practice, to ensure that in court proceedings against public participation, judicial and other competent 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 (above).	Member States shall ensure that in court proceedings brought against natural or legal persons on account of their engagement in public participation, the court or tribunal seised may require, without prejudice to the right of access to justice, that the claimant provide security for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages .

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
RESTITUTION OF LEGAL COSTS	<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. 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>
DEATH OR LOSS OF LEGAL CAPACITY OF THE DEFENDANT	<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>

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
ACKNOWLEDGEMENT OF SLAPP VICTIM STATUS AND COMPENSATION FOR DAMAGES	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.	Not mentioned explicitly but articles 14 and 15 provide for cost awards, penalties for SLAPP claimants and compensation for damages.
CAPPING OF DAMAGES FOR THE CLAIMANT	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.	Not covered
CAPPING OF COSTS	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.	Not covered

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
DISSUASIVE MEASURES	<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>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>
 GROUNDS FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT	<p>Not covered</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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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
PROTECTION AGAINST THIRD COUNTRY JUDGMENTS	<p>Member States are encouraged to introduce rules to ensure that, where SLAPPs have been brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, that person may seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country.</p>	<p>Member States shall ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country.</p>

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SUPPORT FOR TARGETS AND VICTIMS OF SLAPPS	<p>Member States should ensure rapid access to comprehensive support for SLAPP targets, including physical protection, legal assistance, financial aid, psychological support, and practical help.</p>	<p>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.</p> <p>Member States shall ensure that legal aid in cross-border civil proceedings is provided in accordance with Council Directive 2003/8/EC (7).</p>
CULTURE OF TRANSPARENCY	<p>Member States should ensure full transparency for SLAPP cases by allowing the publication of court findings and creating a public register of SLAPP cases that is regularly updated and accessible online and offline. They should also provide data to bar associations about the outcomes of these cases, adhering to European human rights and data protection standards.</p>	<p>Member States should publish all final judgments from national courts of appeal or highest courts. Additionally, they should provide information on awareness-raising campaigns, preferably in collaboration with civil society organisations, through a readily accessible channel. (Summarised by the author)</p>

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COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
ENTER INTO FORCE & TRANSPOSITION TIMELINE	In force.	Transposition deadline: 7 May 2026

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DISCUSSION WITH PARTICIPANTS ON PRACTICAL IMPLICATIONS OF INSTRUMENTS ON SLAPPS

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Following Sessions 1 and 2 of this module, a brainstorming exercise to facilitate discussions on the practical implications of implementing CoE recommendations and EU directives and recommendations at national level will be organised. Participants will receive a list with questions.

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COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

MODULE 5 SLAPP indicators

(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 can recognise a SLAPP, that they are intimately familiar with the SLAPP indicators in European standards, and that they can apply them.

Session techniques and methods

- ▶ Brainstorming exercise
- ▶ Presentation and Q&A
- ▶ Large group discussion
- ▶ Small group discussion
- ▶ Case study

Duration

- ▶ 2.5 – 3.5 hours

WHAT IS A SLAPP?

→ Brainstorming Exercise

Allocated time: 30 minutes

Guidance for trainers

A group brainstorm, facilitated by the trainer, discussing what makes a case a 'Strategic Lawsuit Against Public Participation' (a SLAPP). The trainer should ask participants how they would identify a SLAPP, and what makes a SLAPP different from a 'normal' defamation case. Participants are encouraged to share their ideas, which can be written on a flip chart, on post-it notes on the wall, or on an interactive whiteboard. At this stage there should be no discussion or critiquing of contributions or other discussion; the trainer's role is limited to listing ideas and preventing premature debate. If necessary, the trainer could gently guide the discussion by asking questions such as:

- ▶ do you think that the balance of power between claimants is a factor?
- ▶ is the strength, or weakness, of the legal foundation of the case a factor?
- ▶ is it important to look at the kind of remedies or the level of damages sought by the claimant?
- ▶ does it matter what kind of procedural tactics the claimant pursues?
- ▶ is it relevant to look at who is targeted (for example, whether a journalist is sued individually instead of a media outlet as a company)?
- ▶ is it relevant to consider whether a claimant is also launching a PR offensive, or whether they are launching multiple lawsuits?

It is true that these are all guiding questions, which generally should be avoided. However, asking one or two such 'guiding' questions may be helpful in getting a group brainstorm started. The trainer should be careful not to provide all the answers.

Once all responses are noted, the trainer facilitates feedback. This will include discussion, analysis, and categorization of the ideas that have been contributed. The trainer can wrap up the session by thanking participants for their contributions. If possible, the paper on which contributions have been noted should be left on the wall as a reminder of the various identifying characteristics that the group has come up with.

COUNTERING THE USE OF SLAPPS

→ Presentation

Allocated time: 25 minutes plus Q&A

Following the brainstorming session, the trainer presents a PowerPoint presentation covering in detail the SLAPPs indicators 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 \('Strategic lawsuits against public participation'\)](#)

The presentation covers the main characteristics of SLAPPs as identified in each of the instruments.

Council of Europe Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPs)

Chapter I of the Recommendation discusses the definitional criteria of SLAPPs:

- ▶ They target public participation, meaning that the legal action seeks to misuse or abuse the legal process to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation;
- ▶ They can concern any cause of legal action, including but not limited to defamation, insult, invasion of privacy, conspiracy, breach of intellectual property rights, economic interference, infliction of emotional harm, as well as misdemeanours, administrative measures, or criminal charges.
- ▶ The definition also extends to "legal intimidation tactics": interlocutory or interim measures, aggressive subpoenas, or simple threats designed to intimidate the other party into backing down.
- ▶ They can occur at any stage of legal action, including an initial threat of legal action, which is in itself capable of having a chilling effect on public participation, as well as enforcement proceedings.

Paragraphs 8 and 9 detail SLAPP indicators, which include but are not limited to the following:

- ▶ 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;
- ▶ The arguments put forward by the claimant are partially or fully unfounded;
- ▶ The remedies requested by the claimant are disproportionate, excessive, or unreasonable;
- ▶ The claims amount to abuse of laws or procedures;
- ▶ The claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload, and pursuing appeals with little or no prospect of success;
- ▶ The legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- ▶ 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;
- ▶ The claimant or their representatives engage in legal intimidation, harassment, or threats, or have a history of doing so;
- ▶ 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;
- ▶ The claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.

It is important to note that while SLAPPs do not necessarily include all these indicators, the more of them that are present or the more acute the behaviour, the more likely the legal action can be considered as a SLAPP. The

COUNTERING THE USE OF SLAPPS

[Explanatory Memorandum](#) to the Recommendation makes it clear that some of these indicators are nearly always present:

“The following features will almost always be present: the defendant is involved in public participation in matters of public interest or clearly intends to be a clear link, direct or indirect, between the claimant, the matter of public interest and activities of the defendant exists; and a direct, indirect or potential negative effect on public participation. Negative effects in these kinds of actions impact the defendant’s activities relating to public interest.” (paragraph 78)

The Explanatory Memorandum goes on to explain that the list of indicators is not exhaustive, and encourages Member States and national courts to develop other indicators based on national law and practices. The [Explanatory Memorandum](#) also encourages national courts to weigh indicators and explains that the very strong presence of just one key indicator may be determinative of a SLAPP:

“The court should not only count but also weigh the indicators when determining if the case is a SLAPP. Strong presence of one key indicator may sometimes be sufficient to determine that the case is a SLAPP.” (paragraph 80)

The Recommendation goes on to list three especially pernicious types of SLAPPS:

1. Cross-border SLAPPS, which involve additional layers of complexity, costs, and stress. Member States should take appropriate and effective measures to limit forum shopping that is unfavourable to public participation or vexatious to the defendant, provide effective protection against third-country judgments, and ensure that a person targeted with a cross-border SLAPP case in a non-Council of Europe member state can seek compensation of the damages and costs incurred in defending the case.
2. Multiple or coordinated SLAPPS. Member States should introduce rules to prevent the claimant from initiating additional proceedings related to the same matter, as well as rules to enable judicial or other authorities to effectively manage coordinated proceedings that are closely related in order to avoid the exposure of the defendant to multiple proceedings.
3. SLAPPS targeting anonymous public participation. Some SLAPPS seek to force the disclosure of the identity of the defendant who spoke out anonymously or under a pseudonym, often due to fears for their safety if they were to speak out under their real names. Member States should put in place appropriate and effective safeguards to protect the identity of anonymous public participants and confidential sources, in line with the Convention, the [Modernized Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data \(CETS No. 223\)](#), and [Recommendation CM/Rec\(2014\)7 of the Committee of Ministers to member States on the protection of whistleblowers](#).

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’)

The Directive *only* applies in matters of a civil or commercial nature with cross-border implications brought in civil proceedings. Article 3 protects “persons engaged in public participation” against manifestly unfounded claims and abusive court proceedings.

Key definitions include:

- ▶ ‘Public participation’: The making of any statement or carrying out any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting, or assisting action directly linked thereto and which concerns a matter of public interest.
- ▶ ‘Matter of public interest’ means any matter that affects the public to such an extent that the public may legitimately take an interest in it in areas such as:
 - Fundamental rights, public health, safety, the environment, or the climate.
 - Activities of a natural or legal person that is a public figure in the public or private sector.

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- Matters under consideration by a legislative, executive, or judicial body or any other official proceedings.
- Allegations of corruption, fraud, or any other criminal or administrative offences in relation to such matters.
- Activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including protecting democratic processes against undue interference, particularly by fighting disinformation.
- ▶ ‘Abusive court proceedings against public participation’: Court proceedings that are not brought to genuinely assert or exercise a right but have as their main purpose the prevention, restriction, or penalization of public participation, frequently exploiting an imbalance of power between the parties and pursuing unfounded claims.

The Directive lists several indicators of ‘abusive court proceedings against public participation’, many of which are similar to those found in the Council of Europe Recommendation:

- ▶ Exploiting an imbalance of power;
- ▶ Pursuing unfounded claims;
- ▶ The disproportionate, excessive, or unreasonable nature of the claim or part thereof, including the excessive dispute value;
- ▶ The existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- ▶ Intimidation, harassment, or threats on the part of the claimant or the claimant’s representatives before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;
- ▶ The use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping, or the discontinuation of cases at a later stage of the proceedings in bad faith.

The Directive states that claims made in abusive court proceedings against public participation can be either fully or partially unfounded. This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive if a manifestly excessive amount or remedy is claimed. On the other hand, if the claimant in court proceedings pursues claims that are founded, such proceedings should not be regarded as abusive.

The Directive also stipulates that where the public participation is not in good faith, such as in cases where, through the public participation, the defendant disseminated disinformation or fabricated allegations for the purpose of damaging the claimant’s reputation, SLAPP protections should not be afforded.

COUNTERING THE USE OF SLAPPS

Overlap and differences

As regards SLAPP indicators, there is significant overlap between the Directive and the Recommendation, but the Recommendation lists a few indicators that the Directive omits:

Overlap

Council of Europe Recommendation	EU Directive
▶ claimant tries to exploit an imbalance of power	▶ exploiting an imbalance of power
▶ claimant arguments are partially or fully unfounded	▶ pursuing unfounded claim
▶ remedies requested by the claimant are disproportionate, excessive or unreasonable	▶ disproportionate, excessive, unreasonable nature of claim, including the excessive dispute value
▶ multiple and co-ordinated or cross-border legal actions on the basis of same facts/in relation to similar matters	▶ multiple proceedings by the claimant/associated parties concerning similar matters
▶ claimant engages in legal intimidation, harassment or threats, or has a history of doing so	▶ intimidation, harassment or threats, during or before proceedings as well as in similar cases
▶ tactics designed to drive up costs, such as delaying proceedings, selecting a forum that is unfavourable or vexatious, provoking an onerous workload, pursuing appeals with little or no prospect of success	▶ bad faith in procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping, discontinuation of cases at a late stage of the proceedings
▶ claim amounts to abuse of laws or procedures	▶ applies to “abusive court proceedings”

Differences

Council of Europe Recommendation	EU Directive
▶ deliberately targets individuals rather than the organisations responsible for the challenged action	no equivalent
▶ legal action is accompanied by a public relations offensive	no equivalent
▶ claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim	no equivalent

However, the list of indicators in the EU Directive is non-exhaustive; therefore, indicators listed in the Council of Europe Recommendation but not in the Directive may still be used to help interpret the Directive.

COUNTERING THE USE OF SLAPPS

RECOGNIZING SLAPP CASES

→ Small group discussion

Allocated time: 60 minutes

Guidance for trainers

The trainer should divide the group into smaller groups, ideally of no more than four people. Each of the groups is asked to discuss the case studies below, discuss whether any SLAPP indicators are present, and whether the case is a SLAPP. It is crucial that participants go through the SLAPP indicators one by one and give reasons for their decisions; they should not jump to any conclusions (they should not immediately say, “this is clearly (not) a SLAPP”).

Following the small group discussions, each of the groups report back to the full group. If there are significant differences of opinion between groups, there can be follow-up discussion in the large group.

Throughout the discussions in the small group as well as during follow-up in the large group, the trainer should take care to ensure that the SLAPP indicators are methodically applied.

Some of the facts of the cases below are taken from actual litigation and court decisions. The first scenario is loosely based on the case of [Steel and Morris v. the United Kingdom](#); the second scenario is loosely based on [litigation brought against the Journalism Development Network](#); the third scenario is loosely based on [litigation brought against the media by a member of the British royal family](#); the fourth scenario is an amalgam of [various lawsuits brought by mining companies against reporters and activists](#). The trainer should be aware of this as someone in the group might recognize the scenario. However, the trainer should remind participants that their task is not to decide the scenario in line with whatever the outcome was in its real-life corollary; instead, the task is to methodically go through and apply SLAPP indicators.

Case studies:

1. Defamation case against environmental campaigners for false accusations

Two environmental campaigners handed out a six-page leaflet entitled “What’s wrong with McDonald’s?” outside of McDonalds fast food restaurants. The leaflet, “What’s wrong with McDonald’s - everything they don’t want you to know,” accused McDonalds of encouraging littering, mistreating animals and workers, producing bad quality food, and destroying rainforests. McDonald for defamation and the two activists, without legal aid, represented themselves against McDonald’s, which had a legal team costing an estimated £10m. Despite raising £40,000 in public donations and having limited assistance from volunteer lawyers, the activists faced a daunting trial. The annual global turnover of McDonalds at the time was GBP20,000,000. One of the activists was a part-time bar-worker earning GBP3,250 a year; the other was unemployed. The case became the longest libel trial and civil case in British history, with 20,000 pages of transcripts, 40,000 pages of evidence, and 130 witnesses. It lasted nearly ten years. The judge eventually found that claims that McDonald’s was to blame for starvation or had used lethal poisons to destroy vast areas of Central American rainforest could not be proven, but that it was true that McDonald’s had “pretended to a positive nutritional benefit which their food did not match”; had exploited children in its advertising; and that it paid low wages, “helping to depress wages in the catering trade”. The Court of Appeal reduced the damages awarded by the trial judge from a total of GBP60,000 to a total of GBP40,000. McDonald’s, who had not applied for costs, have not enforced the award.

2. Defamation case against online media and two of its journalists

An online news outlet published an article about an oil deal that was made in the late 2000s. The article investigated oil deals in Iraq and among the persons mentioned was the former Minister of Natural Resources of Iraqi Kurdistan, who was a citizen and resident of the United Kingdom. At the time he had responsibility for

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granting oil concessions in Iraq. Prior to publication, the journalists wrote to the former Minister's lawyers, offering a right to reply. On 16 May 2021, the lawyers replied in a letter, saying there was no illegality in the oil deal, and legal proceedings for defamation would be initiated if the journalists proceeded with publication, which would include seeking substantial damages, an injunction and payment of legal costs.

Shortly after the article was published, the lawyers contacted the journalists again, calling for the article to be removed and for "corrections" to be published. In subsequent correspondence both sides exchanged proposed revisions. Eventually an editor's note was added to the article, stating "the former minister through his lawyers, has disputed the accuracy of some statements in the following article. We stand by our reporting. Nonetheless, we have agreed to add his lawyers' statement at the end of the article." The article then finished with the former minister's six-paragraph statement published in full.

Several months later, a law firm filed a defamation claim on behalf of the former minister against the two journalists and the media outlet.

3. Royal sues for defamation and invasion of privacy

A senior European prince, second in line to the throne of a large European country, has been under intense media scrutiny for his alleged 'party' lifestyle. In 2010 he found out that for many years, journalists had been intercepting messages from his phone. This resulted in the publication of stories detailing various aspects of his private life as well as stories that revealed how the monarch interfered with the parliamentary process in the country. So-called 'phone hacking' is a criminal offence in the country concerned.

The prince has sued four large media outlets for invasion of privacy demanding large damages, which he says will be donated to charities if he wins the case. He has hired a law firm known for its aggressive tactics and has threatened that his aim is to do significant economic damage to the media outlets concerned. He has also sued some of the individual journalists concerned, one of whom (unlike other journalists) is very wealthy.

4. Local media reports on mining company

In 2018, a small-town newspaper published an investigative article exposing questionable environmental practices by a large cobalt mining company. Cobalt is a key component in batteries and is crucial to reducing CO₂, but the mining process can lead to environmental destruction. The article detailed how the company allegedly polluted local waterways and violated environmental regulations, causing significant harm to the community. It provided evidence from an academic expert but admitted that because of the complexity of the situation, the full facts of the pollution could not be discovered.

In response, the mining company filed a defamation lawsuit against the newspaper and its editor, claiming the article contained false and damaging statements. The company sought \$5 million in damages; a sum that far exceeded the newspaper's financial capacity. The lawsuit went on for over two years, with mounting legal fees threatening to bankrupt the newspaper. Despite the strain, the editor refused to retract the story, maintaining that the reporting was in the public interest despite the fact that he was ultimately unable to prove the facts.

COUNTERING THE USE OF SLAPPS

A CLOSER LOOK AT THE DEFINITIONAL CHARACTERISTICS OF SLAPPS

→ 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 assigned three or four of the indicators of a SLAPP as listed in the Council of Europe Recommendation (the exact number per group will depend on the number of participants):

- a. 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;
- b. the arguments put forward by the claimant are partially or fully unfounded;
- c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;
- d. the claims amount to abuse of laws or procedures;
- e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;
- f. the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- g. 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;
- h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;
- i. the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;
- j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.

Each group is asked to discuss the characteristics they have been assigned and think of examples, either hypothetical or from their actual work, of cases that have these characteristics. For each such case, the groups should discuss whether cases with such characteristics are currently considered as SLAPPS in the legal system of the country, and if not, what needs to change for this to be the case.

After 20 minutes, the small groups report back to the larger group to report their findings.

COUNTERING THE USE OF SLAPPS

THE EUROPEAN COURT OF HUMAN RIGHTS AND SLAPPS: OOO MEMO V RUSSIA

→ Presentation

Allocated time: 45 minutes

The trainer gives a presentation of the European Court of Human Rights judgment in the case of *OOO Memo v. Russia*. This case, which concerned defamation proceedings taken by a local authority against the Caucasian Knot, an online media outlet that reports on the political and human rights situation in the south of Russia. This was the first time that the European Court of Human Rights referred explicitly to SLAPPs and “the growing awareness of the risks that court proceedings instituted with a view to limiting public participation bring for democracy”.

The trainer should take questions following the presentation. The trainer should be aware that the judgment does not explicitly say that the case is a SLAPP, but this can be inferred from references to the Council of Europe Commissioner for Human Rights’ Human Rights Comment “Time to Take Action Against SLAPPs” as part of the applicable legal framework together with the fact that the Court finds that the proceedings did not pursue a legitimate aim and violated the right to freedom of expression.

After the presentation, the PowerPoint slides are handed out. If there is no time for a presentation, the trainer may simply provide the PowerPoint presentation as a hand-out.

EXERCICES – MODULE 5

SLAPP Indicators

(Training material to be shared with participants)

1. WHAT IS A SLAPP?

→ Brainstorming Exercise

Task for the group: how would you identify a SLAPP, and what makes a SLAPP different from a 'normal' defamation case?

Questions to guide the discussion:

- ▶ do you think that the balance of power between claimants is a factor?
- ▶ is the strength, or weakness, of the legal foundation of the case a factor?
- ▶ is it important to look at the kind of remedies or the level of damages sought by the claimant?
- ▶ does it matter what kind of procedural tactics the claimant pursues?
- ▶ is it relevant to look at who is targeted (for example, whether a journalist is sued individually instead of a media outlet as a company)?
- ▶ is it relevant to consider whether a claimant is also launching a PR offensive, or whether they are launching multiple lawsuits?

2. RECOGNIZING SLAPP CASES

→ Small group discussion

Task for the groups: discuss the following scenarios, discuss whether any SLAPP indicators are present, and whether the case is a SLAPP. For each scenario, go through the SLAPP indicators one by one, do not jump to any conclusions (do not immediately say, "this is clearly (not) a SLAPP").

1. Defamation case against environmental campaigners for false accusations

Two environmental campaigners handed out a six-page leaflet entitled "What's wrong with McDonald's?" outside of McDonalds fast food restaurants. The leaflet, "What's wrong with McDonald's - everything they don't want you to know," accused McDonalds of encouraging littering, mistreating animals and workers, producing bad quality food, and destroying rainforests. McDonald for defamation and the two activists, without legal aid, represented themselves against McDonald's, which had a legal team costing an estimated £10m. Despite raising £40,000 in public donations and having limited assistance from volunteer lawyers, the activists faced a daunting trial. The annual global turnover of McDonalds at the time was GBP20,000,000. One of the activists was a part-time bar-worker earning GBP3,250 a year; the other was unemployed. The case became the longest libel trial and civil case in British history, with 20,000 pages of transcripts, 40,000 pages of evidence, and 130 witnesses. It lasted nearly ten years. The judge eventually found that claims that McDonald's was to blame for starvation or had used lethal poisons to destroy vast areas of Central American rainforest could not be proven, but that it was true that McDonald's had "pretended to a positive nutritional benefit which their food did not match"; had exploited children in its advertising; and that it paid low wages, "helping to depress wages in the catering trade". The Court of Appeal reduced the damages awarded by the trial judge from a total of GBP60,000 to a total of GBP40,000. McDonald's, who had not applied for costs, have not enforced the award.

COUNTERING THE USE OF SLAPPS

2. Defamation case against online media and two of its journalists

An online news outlet published an article about an oil deal that was made in the late 2000s. The article investigated oil deals in Iraq and among the persons mentioned was the former Minister of Natural Resources of Iraqi Kurdistan, who was a citizen and resident of the United Kingdom. At the time he had responsibility for granting oil concessions in Iraq. Prior to publication, the journalists wrote to the former Minister's lawyers, offering a right to reply. On 16 May 2021, the lawyers replied in a letter, saying there was no illegality in the oil deal, and legal proceedings for defamation would be initiated if the journalists proceeded with publication, which would include seeking substantial damages, an injunction and payment of legal costs.

Shortly after the article was published, the lawyers contacted the journalists again, calling for the article to be removed and for "corrections" to be published. In subsequent correspondence both sides exchanged proposed revisions. Eventually an editor's note was added to the article, stating "the former minister through his lawyers, has disputed the accuracy of some statements in the following article. We stand by our reporting. Nonetheless, we have agreed to add his lawyers' statement at the end of the article." The article then finished with the former minister's six-paragraph statement published in full.

Several months later, a law firm filed a defamation claim on behalf of the former minister against the two journalists and the media outlet.

3. Royal sues for defamation and invasion of privacy

A senior European prince, second in line to the throne of a large European country, has been under intense media scrutiny for his alleged 'party' lifestyle. In 2010 he found out that for many years, journalists had been intercepting messages from his phone. This resulted in the publication of stories detailing various aspects of his private life as well as stories that revealed how the monarch interfered with the parliamentary process in the country. So-called 'phone hacking' is a criminal offence in the country concerned.

The prince has sued four large media outlets for invasion of privacy demanding large damages, which he says will be donated to charities if he wins the case. He has hired a law firm known for its aggressive tactics and has threatened that his aim is to do significant economic damage to the media outlets concerned. He has also sued some of the individual journalists concerned, one of whom (unlike other journalists) is very wealthy.

4. Local media reports on mining company

In 2018, a small-town newspaper published an investigative article exposing questionable environmental practices by a large cobalt mining company. Cobalt is a key component in batteries and is crucial to reducing CO₂, but the mining process can lead to environmental destruction. The article detailed how the company allegedly polluted local waterways and violated environmental regulations, causing significant harm to the community. It provided evidence from an academic expert but admitted that because of the complexity of the situation, the full facts of the pollution could not be discovered.

In response, the mining company filed a defamation lawsuit against the newspaper and its editor, claiming the article contained false and damaging statements. The company sought \$5 million in damages; a sum that far exceeded the newspaper's financial capacity. The lawsuit went on for over two years, with mounting legal fees threatening to bankrupt the newspaper. Despite the strain, the editor refused to retract the story, maintaining that the reporting was in the public interest despite the fact that he was ultimately unable to prove the facts.

COUNTERING THE USE OF SLAPPS

3. A CLOSER LOOK AT THE DEFINITIONAL CHARACTERISTICS OF SLAPPS

→ Small group discussion

Task for the groups: Each of the groups is assigned three or four of the indicators of a SLAPP as listed in the Council of Europe Recommendation (the exact number per group will depend on the number of participants) and asked to think of examples of cases, either hypothetical or from their actual work, that have these characteristics. For each such case, the groups should discuss whether cases with such characteristics are currently considered as SLAPPS in the legal system of the country, and if not, what needs to change for this to be the case.

Characteristics:

- a. 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;
- b. the arguments put forward by the claimant are partially or fully unfounded;
- c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;
- d. the claims amount to abuse of laws or procedures;
- e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;
- f. the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- g. 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;
- h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;
- i. the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;
- j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.

MODULE 5

SLAPP Indicators

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

Reminder: the two main international instruments

CoE Recommendation: Definitional criteria of SLAPPs and indicators

EU Directive: Definitions

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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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COE RECOMMENDATION: DEFINITIONAL CRITERIA OF SLAPPS AND INDICATORS

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RECOMMENDATION CM/REC(2024)2

Chapter I of the Recommendation discusses the definitional criteria of SLAPPs:

- ▶ Targeting public participation (paragraph 5)
- ▶ Any cause of legal action (paragraph 6)
- ▶ Any stage of legal action (paragraph 7)
- ▶ SLAPP indicators (paragraphs 8 and 9)
- ▶ Specific forms/types of SLAPPs (paragraph 10)

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 5

Targeting public participation:

“The legal action seeks to misuse or abuse the legal process to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation.”

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 6

Any cause of legal action:

- ▶ all types of statutory or common law to prevent, inhibit, restrict or penalise contributions to public debate, including, but not limited to:
 - defamation, insult, invasion of privacy, conspiracy, breach of intellectual property rights, economic interference or infliction of emotional harm.
- ▶ includes misdemeanours, administrative measures or criminal charges
- ▶ definition also extends to “legal intimidation tactics”: interlocutory or interim measures, aggressive subpoenas or simple threats designed to intimidate the other party into backing down.

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 7

Any stage of the legal action:

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

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 8

SLAPP indicators include, but are not limited to, the following:

- a. 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;
- b. the arguments put forward by the claimant are partially or fully unfounded;
- c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;
- d. the claims amount to abuse of laws or procedures;

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 8

(continued)

- e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;
- f. the legal the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- g. 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;

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 8

(continued)

- h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;
- i. the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;
- j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 10

Specific forms/types of SLAPPS:

i. cross-border SLAPPS

These involve additional layers of complexity, costs and stress. Member States should:

- ▶ take of the damages appropriate and effective measures to limit forum shopping that is unfavourable to public participation or vexatious to the defendant, including as set out in the Declaration of the Committee of Ministers on “Libel Tourism”.
- ▶ provide effective protection against third-country judgments
- ▶ ensure that a person targeted with a cross-border SLAPP case in a non-CoE member state can seek compensation and the costs incurred in defending the case

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 10

Specific forms/types of SLAPPs (continued):

ii. multiple or co-ordinated SLAPPs

- ▶ Courts and other authorities should take due account of and take appropriate and effective measures to eliminate or at least reduce the aggravating impact of multiple or co-ordinated SLAPPs against defendants.
- ▶ Member States should introduce rules to prevent the claimant from initiating additional proceedings related to the same matter, as well as rules to enable judicial or other authorities to effectively manage co-ordinated proceedings that are closely related, in order to avoid the exposure of the defendant to multiple proceedings.

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RECOMMENDATION CM/REC(2024)2: PARAGRAPH 10

Specific forms/types of SLAPPs (continued):

iii. SLAPPs targeting anonymous public participation

Some SLAPPs seek to force the disclosure of the identity of the defendant who spoke out anonymously or under a pseudonym, often due to fears for their safety if they were to speak out under their real names.

Member States should put in place appropriate and effective safeguards to protect the identity of anonymous public participants and of confidential sources, in line with the Convention, the Modernised Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223), and Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers.

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EU DIRECTIVE: DEFINITIONS

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EU DIRECTIVE 2024/1069

Applies in matters of a civil or commercial nature with cross-border implications brought in civil proceedings.

Article 3: Protects “persons engaged in public participation” against

- ▶ manifestly unfounded claims
- ▶ abusive court proceedings

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EU DIRECTIVE 2024/1069 (CONTINUED)

Key definitions (Article 4)

‘public participation’: the making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest

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EU DIRECTIVE 2024/1069 (CONTINUED)

Key definitions (Article 4) (continued)

‘matter of public interest’ means any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as:

- ▶ fundamental rights, public health, safety, the environment or the climate;
- ▶ activities of a natural or legal person that is a public figure in the public or private sector;
- ▶ matters under consideration by a legislative, executive, or judicial body, or any other official proceedings;
- ▶ allegations of corruption, fraud, or of any other criminal offence, or of administrative offences in relation to such matters;
- ▶ activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including the protection of democratic processes against undue interference, in particular by fighting disinformation

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EU DIRECTIVE 2024/1069 (CONTINUED)

Key definitions (Article 4) (continued)

‘abusive court proceedings against public participation’ mean court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims.

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EU DIRECTIVE 2024/1069 (CONTINUED)

Key definitions (Article 4) (continued)

Indicators of ‘abusive court proceedings against public participation’:

- a. exploiting an imbalance of power
- b. pursuing unfounded claims
- c. the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;
- d. the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- e. intimidation, harassment or threats on the part of the claimant or the claimant’s representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;
- f. the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith

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EU DIRECTIVE 2024/1069 (CONTINUED)

Unfounded claims (Preamble, paragraph 29)

Claims made in abusive court proceedings against public participation can be either fully or partially unfounded.

This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed.

On the other hand, if the claimant in court proceedings pursues claims that are founded, such proceedings should not be regarded as abusive.

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EU DIRECTIVE 2024/1069 (CONTINUED)

Exclusions (Preamble, paragraph 7)

The court should not apply the relevant safeguards for example where the public participation is not in good faith such as in cases where, through the public participation, the defendant disseminated disinformation or fabricated allegations for the purpose of damaging the claimant's reputation.

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EU DIRECTIVE AND COE RECOMMENDATION: OVERLAP

Council of Europe Recommendation	EU Directive
▶ claimant tries to exploit an imbalance of power	▶ exploiting an imbalance of power
▶ claimant arguments are partially or fully unfounded	▶ pursuing unfounded claim
▶ remedies requested by the claimant are disproportionate, excessive or unreasonable	▶ disproportionate, excessive, unreasonable nature of claim, including the excessive dispute value
▶ multiple and co-ordinated or cross-border legal actions on the basis of same facts/in relation to similar matters	▶ multiple proceedings by the claimant/associated parties concerning similar matters
▶ claimant engages in legal intimidation, harassment or threats, or has a history of doing so	▶ intimidation, harassment or threats, during or before proceedings as well as in similar cases
▶ tactics designed to drive up costs, such as delaying proceedings, selecting a forum that is unfavourable or vexatious, provoking an onerous workload, pursuing appeals with little or no prospect of success	▶ bad faith in procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping, discontinuation of cases at a late stage of the proceedings
▶ claim amounts to abuse of laws or procedures	▶ applies to “abusive court proceedings”

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EU DIRECTIVE AND COE RECOMMENDATION: DIFFERENCES

Council of Europe Recommendation	EU Directive
<ul style="list-style-type: none">▶ deliberately targets individuals rather than the organisations responsible for the challenged action	
<ul style="list-style-type: none">▶ legal action is accompanied by a public relations offensive	
<ul style="list-style-type: none">▶ claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim	

The list of indicators in the EU Directive is non-exhaustive (it states “[i]ndications of such a purpose include for example...”).

Therefore indicators listed in the CoE Recommendation but not in the Directive may still be used to help interpret the Directive.

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MODULE 5

The European Court and SLAPPs: the case of OOO Memo v. Russia

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OOO MEMO PUBLISHES AWARD-WINNING ONLINE MEDIA “CAUCASIAN KNOT” WHICH REPORTS ON HUMAN RIGHTS AND POLITICS



Awards [\[edit\]](#)

In 2007, Caucasian Knot was awarded the [Free Press of Eastern Europe award](#), which is given out jointly by the German charity [ZEIT-Stiftung](#) and the Norwegian free speech organisation [Fritt Ord](#).^[22]

In 2009, Caucasian Knot was awarded with the Prize of the Union of Journalists of Russia for defending the interests of the professional community.^[23]

The editor received the Dutch [Geuzenpenning](#) award in 2012 for his work with Memorial and Caucasian Knot.^[1]



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OOO MEMO V. RUSSIA: FACTS

Online media Caucasian Knot, published an article discussing the suspension of a subsidy from Volgograd Region to Volgograd City. The article claimed the conflict was partly political, following the regional elections, and also linked to a lost bus factory tender.

Volgograd's Regional Authority sued, alleging that the following statements are defamatory:

- “[T]here are two main reasons for the financial conflict that stemmed from the order of the Administration of the Volgograd Region to suspend the allocation of subsidies from the regional budget to the City of Volgograd. ... Undoubtedly, the first reason is a political one. It is linked to the [results] of the regional elections.”

- “Recently the Mayor’s Office held an open call for tenders to buy buses. The Administration of the Volgograd Region lobbied on behalf of the Volzhanin factory to win the call for tenders, but it was won by another company.”

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OOO MEMO V. RUSSIA: FACTS (CONTINUED)

- ▶ “The officials of the Administration came down on the Mayor’s Office, saying, ‘How come you did not support the local producer?’ It appears to me that the refusal of the Mayor’s Office to do business with the Volzhanin factory was one of the main reasons for the regional officials’ anger.”
- ▶ “[T]he suspension of the allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tenders.”
- ▶ “The officials of the Administration came down on the Mayor’s Office, saying, ‘How come you did not support the local producer?’ It appears to me that the refusal of the Mayor’s Office to do business with the Volzhanin factory was one of the main reasons for the regional officials’ anger.”

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OOO MEMO V. RUSSIA: FACTS (CONTINUED)

- ▶ “[T]he suspension of the allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tenders.”

The Caucasian Knot argued that the excerpts had been value judgments and that the claimant – a public body – should, in any case, expect a higher degree of criticism than a private individual. The first-instance court disagreed, holding that the statements were false and tarnished the Volgograd Region Authority’s reputation, and ordering that a retraction to that effect be published, with the operative part of the judgment being published on the company’s website. That judgment and the reasoning were upheld by the Moscow City Court on appeal.

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT

Relevant legal framework: includes Human Rights Comment by the Council of Europe Human Rights Commissioner

“SLAPPS: lawsuits with an intimidating effect

The Annual Report of the Council of Europe Platform to promote the protection of journalism and safety of journalists highlights groundless legal actions by powerful individuals or companies that seek to intimidate journalists into abandoning their investigations. In some cases, the threat of bringing such a suit, including through letters sent by powerful law firms, was enough to bring about the desired effect of halting journalistic investigation and reporting.

This problem goes beyond the press. Public watchdogs in general are affected. Activists, NGOs, academics, human rights defenders, indeed all those who speak out in the public interest and hold the powerful to account might be targeted. SLAPPS are typically disguised as civil or criminal claims such as defamation or libel and have several common features.”

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

Council of Europe Human Rights Commissioner Human Rights Comment (continued)

“First, they are purely vexatious in nature. The aim is not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism. Litigants are usually more interested in the litigation process itself than the outcome of the case. The aim of distracting or intimidating is often achieved by rendering the legal proceedings expensive and time-consuming. Demands for damages are often exaggerated.

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

Another common quality of a SLAPP is the power imbalance between the plaintiff and the defendant. Private companies or powerful people usually target individuals, alongside the organisations they belong to or work for, as an attempt to intimidate and silence critical voices, based purely on the financial strength of the complainant.

Member states therefore have a positive obligation to secure the enjoyment of the rights enshrined in Article 10 of the Convention: not only must they refrain from any interference with the individual's freedom of expression, but they are also under a positive obligation to protect his or her right to freedom of expression from any infringement, including by private individuals."

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

The Court's Assessment

Whether the interference pursued a "legitimate aim"

- ▶ The claimant in the defamation proceedings under consideration is the executive authority of a constituent entity of the Russian Federation
- ▶ As regards public bodies seeking legal protection of their reputation, in *Lombardo and Others v. Malta* (no. 7333/06, 24 April 2007) the Court, noting that it was only in exceptional circumstances that a measure proscribing statements criticising the acts or omissions of an elected body could be justified with reference to "the protection of the rights or reputations of others", was prepared to assume that this aim could be relied on as legitimate in the context of defamation proceedings brought by the local council of a town with a population of under 12,000

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

The Court's Assessment

Whether the interference pursued a "legitimate aim" (continued)

"considering the growing awareness of the risks that court proceedings instituted with a view to limiting public participation bring for democracy, as highlighted by the Council of Europe Commissioner for Human Rights (see paragraph 23 above), and in view of the power imbalance between the claimant and the defendant in the present case, the Court considers it appropriate to establish in the present case whether the interference complained of – that is, the civil defamation proceedings brought by the Administration of the Volgograd Region against the applicant company, a media outlet – was in pursuance of the legitimate aim of "protection of the reputation of others"

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

The Court's Assessment

Whether the interference pursued a "legitimate aim" (continued)

"shielding bodies of the executive, which have the ability to respond to any adverse allegations in the "court of public opinion" through their public relations capabilities, from media criticism by way of according them protection of their "business reputation" may seriously hamper freedom of the media. Allowing executive bodies to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and could have an inevitable chilling effect on the media in the performance of their task as a purveyor of information and public watchdog"

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

The Court's Assessment

Whether the interference pursued a “legitimate aim” (continued)

“the interests of a body of the executive vested with State powers in maintaining a good reputation essentially differ from both the right of natural persons to a reputation and the reputational interests of legal entities, private or public, that compete in the marketplace.

It follows that civil defamation proceedings brought, in its own name, by a legal entity that exercises public power may not, as a general rule, be regarded as being in pursuance of the legitimate aim of “the protection of the reputation ... of others”

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

The Court's Assessment

Whether the interference pursued a “legitimate aim” (continued)

“the claimant in the domestic defamation proceedings is the highest body of the executive of the Volgograd Region. It is hardly conceivable that it had an “interest in protecting [its] commercial success and viability”, be it for “the benefit of shareholders and employees” or “for the wider economic good” (see *Steel and Morris*, cited above, § 94), that would warrant legal protection. Nor could it be said, given the scale of its operations, that its members were as “easily identifiable” as members of the Water and Forestry Commission in Luxembourg (see *Thoma*, cited above, § 56) or members of the Fgura Local Council in Malta, representing 12,000 inhabitants (see *Lombardo and Others*, cited above). In any event, the defamation case was brought on behalf of the legal entity as such, not any of its individual members.

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OOO MEMO V. RUSSIA: EUROPEAN COURT JUDGMENT (CONTINUED)

The Court's Assessment

Whether the interference pursued a "legitimate aim" (continued)

Accordingly, the Court finds that the civil defamation proceedings instituted by the Administration of the Volgograd Region against the applicant company did not pursue any legitimate aims enumerated in paragraph 2 of Article 10 of the Convention."

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OOO MEMO V. RUSSIA: CASE COMMENT

“it creates an extra obstacle for defamation claims by executive bodies. As such it contributes to preventing SLAPPS initiated by such bodies and it paves the way, if such claims are initiated, for early dismissal of such claims as obviously violating Article 10 ECHR in the absence of a legitimate aim. With the judgment in OOO Memo v. Russia the ECtHR itself has contributed to the “growing awareness” of the dangers of at least one type of SLAPPS”

“the judgment in OOO Memo v. Russia makes clear that the problem of SLAPPS has also come on the radar of the ECtHR”

Strasbourg
Observers



BY DIRK VOORHOOF

Human Rights Centre, Ghent University, Legal Human Academy and a member of the MSI-SLP.

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COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

MODULE 6

Documentation of SLAPPS on various platforms

(Training material to be shared with trainers only)

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BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE - SLAPPS DATABASE	7
NATIONAL CONTEXT	7

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COUNTERING THE USE OF SLAPPS

Module objective

This session will provide information about available platforms that document SLAPP claims in Europe. The aim of this session is to familiarise participants with the Platform to Promote the Protection of Journalism and the Safety of Journalists, as well as the Mapping Media Freedom platform, focusing on their roles in documenting SLAPPS.

Session techniques and methods

- ▶ Presentation

Duration

- ▶ 30 – 45 minutes

COUNCIL OF EUROPE PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND THE SAFETY OF JOURNALISTS

→ Presentation

Allocated time: 10 minutes

Guidance for trainers

The trainer will prepare a PowerPoint presentation to provide information about the platforms. In addition to using the presentation, the trainer will navigate the platform's website during the session, allowing participants to see the website firsthand, become acquainted with it, and learn how to find information. When possible, it is recommended to invite a partner organisation of the platform to share their experiences with the participants.

Information about the platform

The Platform for the Protection of Journalism and Safety of Journalists facilitates dialogue between governments and journalist organisations to address press freedom violations and ensure journalist safety in Council of Europe member states. Established in 2015, it compiles and disseminates information on media freedom concerns as guaranteed by Article 10 of the European Convention on Human Rights.

Partner organisations, including international NGOs and journalist associations, issue alerts and publish annual reports on media freedom and journalist safety in Europe. The Platform enables the Council of Europe to systematically monitor media freedom issues, respond effectively, and propose appropriate policy measures.

How does the platform work?

On 4 December 2014, the Council of Europe and the Platform's [Partner Organisations](#) signed a [Memorandum of Understanding](#). Today, 15 international NGOs and associations of journalists are partners to the Platform. In conformity with the Memorandum, the Platform allows the contributing partners to post alerts, subject to their own verification processes and standards. When submitting an alert to the Platform, the Partner Organisation ensures that the information provided fulfils the following criteria:

- ▶ is it a serious concern with regard to media freedom?
- ▶ is the alleged threat or violation in one of the 46 Council of Europe member states, or in Belarus or Russia)?

COUNTERING THE USE OF SLAPPS

- ▶ is the information reliable and based on facts?
- ▶ is the information already in the public domain? If not, have persons who are identified or identifiable given their consent to publish this alert?

The member states are expected to act and address the issues and inform the Platform on the actions taken in response to the alerts.

Documentation of SLAPPS on the platform

Partner organisations register cases of SLAPPS as alerts. These alerts include the facts and circumstances of the case, information about claimants and defendants, the judicial or other procedures involved, the amount of awards sought, details on other requests received, and upcoming hearings (when available). The alert also indicates what follow-up action is requested from the Member State(s) concerned. Once an alert is published, the information is officially transmitted to the Member State concerned, which is requested to respond with their position on the specific case and on the requested follow-up action. The alerts collected throughout the year are used to create a chapter on SLAPPS on the Platform's annual report.

Examples of documented SLAPPS on the platform

Slovenia No. 112/2020

39 Lawsuits against Journalists from Necenzurirano

State replied

Updated 01 Dec 2021 · Created 30 Sep 2020

Partners: INDEX ; RSF ; IPI ; ECPMF

Other acts having chilling effects on media freedom ⓘ Source of threat: Non-State Level 2 ⓘ

Rok Snežič, a friend and tax policy adviser to Prime Minister Janez Janša, has filed 39 lawsuits against three journalists from the online news outlet Necenzurirano.si.

Primož Cirman, Vesna Vuković and Tomaž Modic are facing 13 criminal defamation lawsuits each over a series of articles relating to Snežič's business dealings and connections to a 2017 Bosnian loan to Janša's Slovenian Democratic Party (SDS), worth €450,000. Under Slovenian law, criminal defamation is punishable with a fine or up to a year in prison.

The articles were initially published on Siol.net, and later on Necenzurirano.si. Since March 2020, when Janša's government came to power, Snežič repeatedly mentioned his intention to file the lawsuits in various media linked to SDS, Snežič's family members, and Hungarian companies linked to Viktor Orbán.

Cirman and his colleagues said the lawsuits are an effort to intimidate by draining them of time and money, and by attempting to damage their professional reputations.

The journalists have also been subject to smear campaigns in recent months. In August 2020, Snežič accused them of "cheating the taxpayers" and made sexist remarks about Vesna Vuković, accusing her of being an "intimate friend" of a former president of the Executive Council of the then-Socialist Republic of Slovenia.

In a 25 September statement, the Slovene Association of Journalists cautioned that the initiation of civil and criminal proceedings against journalists "may be abused to intimidate and financially and administratively deplete the media." Prime Minister Janša subsequently retweeted a post from an SDS party member, who had tweeted "Panic!" along with a link to an article that accused the Association of putting "pressure on the court".

In a 26 September tweet, the State Secretary for national security, Žan Mahnič, called for an investigation into Necenzurirano.si.

<https://fom.coe.int/en/alerte/detail/72423132;globalSearch=true>

COUNTERING THE USE OF SLAPPS

Malta No. 42/2020

Croatian Businessman Requests The Shift to Deposit €300,000 in Damages

No State reply ⓘ

Updated 07 Jun 2022 · Created 16 Apr 2020

Partners: ECPMF ; EFJ/IFJ

Harassment and intimidation of journalists ⓘ Source of threat: Non-State Level 2 ⓘ

RESOLVED

On 17 March 2020, Kristijan Curavić, the executive director of the NGO Ocean Alliance, demanded that the online news portal The Shift deposits €300,000 into a bank account in compensation for damages he claims to have suffered as a result of articles exposing an alleged scam. The Shift had published a series of articles on a "White Flag" scheme, under which Ocean Alliance issued a "white flag" designation to a number of swimming areas in Malta that it certified as being litter-free. According to a letter sent on behalf of Ocean Alliance by a law firm located in Zagreb, Croatia, 15 articles contain insulting and untrue allegations. The letter provides the bank details into which the money should be deposited within 15 days. It also requests a public apology and correction of "all false allegations". The Shift refuted all claims made in the letter and replied saying documentary evidence was available to support its reports.

RESOLVED

07 June 2022

On 7 June 2022, as no follow-up was given to the letter, the partner organisations to the Platform declared this case to be "resolved", concluding it was no longer an active threat to media freedom.

<https://fom.coe.int/en/alerte/detail/62749755;globalSearch=true>

COUNTERING THE USE OF SLAPPS

France No. 267/2022

Several Media Sued for Defamation by Avisa Partners


No State reply ⓘ

Updated 25 Oct 2023 · Created 22 Sep 2022

Partners: EFJ/IFJ

Harassment and intimidation of journalists ⓘ Source of threat: Non-State Level 2 ⓘ

RESOLVED



The French group Avisa Partners, specialising in economic intelligence and online influencing strategy, brought defamation proceedings against the media outlets Mediapart, Arrêt sur Images and Reflets. The group also gave formal notice to the media organisations Next Impact, ADN and Les Miroirs du Nord to remove specific references relating to its activities and especially to the disinformation campaigns carried out on behalf of large companies or foreign governments from their journalistic investigations.

On 20 September 2022, the targeted media denounced what they said were strategic lawsuits against public participation (SLAPPs).

<https://fom.coe.int/en/alerte/detail/107638032;globalSearch=true>

COUNTERING THE USE OF SLAPPS

Documentation of SLAPPs through platform's annual reports

2024 - Press Freedom in Europe: Time to Turn the Tide

"SLAPPs are a major concern and impediment, especially for journalists investigating corruption, conflicts of interest and financial crimes. Most of the lawsuits are based on alleged defamation or damage to reputation and their impact is aggravated by the fact that in many countries, defamation is still at least nominally a criminal offence."

2023 - War in Europe and the Fight for the Right to Report

"Abusive legal threats and Strategic Lawsuits Against Public Participation (SLAPPs) have not subsided, contributing to an atmosphere of intimidation and legal bullying."

2022 - Defending Press Freedom in Times of Tension and Conflict

"Legal action against journalists by three-piece suit lawyers may appear less crude than contract killings, online threats or street violence, but such cases bring serious risks for journalism. SLAPPs (Strategic Lawsuits Against Public Participation) continued to be used as a tool to silence critical media."

2021 - Wanted! Real action for media freedom in Europe

"Journalists and media workers continue to be the target of abusive legal proceedings aimed at inhibiting critical reporting, including through strategic lawsuits against public participation (SLAPPs). Lawsuits were brought by powerful individuals or companies that had little legal merit and were designed to intimidate and harass journalists by introducing burdensome legal costs. Criminal defamation and insult laws remain widespread in Europe."

MAPPING MEDIA FREEDOM

→ Presentation

Allocated time: 10 minutes

Information about platform

Mapping Media Freedom tracks press and media freedom violations across Europe. It offers an interactive Alert Explorer for exploring, filtering, and searching documented incidents. Regular monitoring reports and fact sheets provide detailed analysis and statistics on press freedom conditions. The platform features downloadable data visualisations and Special Topic Pages for specific issues, like SLAPPs, harassment and attacks on journalists.

The monitoring system uses various sources, including networks across countries, direct reports through ReportIt, and AI-based tools to detect violations in news articles and Tweets. Each incident is verified by experts before being published. Managed by the European Centre for Press and Media Freedom (ECPMF) and part of the Media Freedom Rapid Response (MFRR), the platform supports journalists and media workers through legal aid, advocacy, and information.

Anyone can report media freedom violations through [ReportIt](#). Reports can be submitted anonymously or with contact details for follow-up. Providing detailed information and supporting materials, like news articles or footage, helps with verification. Submitted alerts are reviewed by experts before publication.

Examples of documented SLAPPs on the platform

Businessman files SLAPP against Dutch daily Het Financieele Dagblad

<https://www.mapmf.org/alert/30670>

Times of Malta SLAPPed by co-owner of Satabank

<https://www.mapmf.org/alert/23221>

Albanian journalist sued for reporting pressure to international networks

<https://www.mapmf.org/alert/24994>

COUNTERING THE USE OF SLAPPS

BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE - SLAPPS DATABASE

→ Presentation

Allocated time: 10 minutes

The Business and Human Rights Resource Centre is composed of 12 trustees and over 70 colleagues working on advancing human rights in business. The organisation has information on local contexts through its staff members located across major regions, including Africa, Asia and the Pacific, Europe and Central Asia, North America, Latin America, and the Middle East. They have offices in London, New York, Berlin, and Bogotá.

The Resource Centre has established a database of SLAPP cases from around the world. This dataset includes cases filed from January 1, 2015, to November 2022, covering the period during which the Resource Centre has been tracking attacks against human rights defenders.

Examples of documented SLAPPS on the platform

Bosnian environmental defenders targeted with defamation lawsuits by Green Invest owned company

<https://www.business-humanrights.org/en/latest-news/sun%C4%8Dica-kova%C4%8Devi%C4%87-2/>

French Apples and Pears Association sues Greenpeace France over 'Poisoned Apples' article

<https://www.business-humanrights.org/en/latest-news/greenpeace-france-3/>

Pilatus Bank sues Malta journalist Daphne Caruana Galizia in Arizona court

<https://www.business-humanrights.org/en/latest-news/daphne-caruana-galizia-2/>

NATIONAL CONTEXT

This part will include information on national databases to document SLAPPS when the handbook will be adapted to national contexts.

MODULE 6

Documentation of SLAPPs on various platforms

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

Council of Europe Platform to Promote the Protection of Journalism and the Safety of Journalists

Mapping Media Freedom

Business and Human Rights Resource Centre - SLAPPS Database

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COUNCIL OF EUROPE PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND THE SAFETY OF JOURNALISTS

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INFORMATION ABOUT THE PLATFORM

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HOW DOES THE PLATFORM WORK?

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REGISTERING ALERTS

When submitting an alert to the Platform, the Partner Organisation ensures that the information provided fulfills the following criteria:

- ▶ is it a serious concern with regard to media freedom?
- ▶ is the alleged threat or violation in one of the 46 Council of Europe member states, or in Belarus or Russia)?
- ▶ is the information reliable and based on facts?
- ▶ is the information already in the public domain? If not, is there a consent of persons who are identified or identifiable to publish this alert ?

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DOCUMENTATION OF SLAPPS ON THE PLATFORM

Partner organisations register cases of SLAPPs as alerts. These alerts include the facts and circumstances of the case, information about claimants and defendants, the judicial or other procedures involved, the amount of awards sought, details on other requests received, and upcoming hearings (when available). Once an alert is published, the information is officially transmitted to the Member States of the Council of Europe, which are requested to respond with their position on the specific case. The alerts collected throughout the year are used to create a chapter on SLAPPs in the Platform's annual report.

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COUNTERING THE USE OF SLAPs – MODULE 6

Slovenia No. 112/2020

39 Lawsuits against Journalists from Necenzurirano

[State replied](#)

Updated 01 Dec 2021 · Created 30 Sep 2020

Partners: INDEX ; RSF ; IPI ; ECPMF

Other acts having chilling effects on media freedom ⓘ Source of threat: Non-State Level 2 ⓘ

Rok Snežič, a friend and tax policy adviser to Prime Minister Janez Janša, has filed 39 lawsuits against three journalists from the online news outlet Necenzurirano.si.

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The articles were initially published on Siol.net, and later on Necenzurirano.si. Since March 2020, when Janša's government came to power, Snežič repeatedly mentioned his intention to file the lawsuits in various media linked to SDS, Snežič's family members, and Hungarian companies linked to Viktor Orbán.

Cirman and his colleagues said the lawsuits are an effort to intimidate by draining them of time and money, and by attempting to damage their professional reputations.

The journalists have also been subject to smear campaigns in recent months. In August 2020, Snežič accused them of "cheating the taxpayers" and made sexist remarks about Vesna Vuković, accusing her of being an "intimate friend" of a former president of the Executive Council of the then-Socialist Republic of Slovenia.

In a 25 September statement, the Slovene Association of Journalists cautioned that the initiation of civil and criminal proceedings against journalists "may be abused to intimidate and financially and administratively deplete the media." Prime Minister Janša subsequently retweeted a post from an SDS party member, who had tweeted "Panic!" along with a link to an article that accused the Association of putting "pressure on the court".

In a 26 September tweet, the State Secretary for national security, Žan Mahnič, called for an investigation into Necenzurirano.si.

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COUNTERING THE USE OF SLAPPS – MODULE 6

Malta No. 42/2020

Croatian Businessman Requests The Shift to Deposit €300,000 in Damages

No State reply ⓘ

Updated 07 Jun 2022 · Created 16 Apr 2020

Partners: ECPMF ; EFJ/IFJ

Harassment and intimidation of journalists ⓘ Source of threat: Non-State Level 2 ⓘ

RESOLVED

On 17 March 2020, Kristijan Curavić, the executive director of the NGO Ocean Alliance, demanded that the online news portal The Shift deposits €300,000 into a bank account in compensation for damages he claims to have suffered as a result of articles exposing an alleged scam. The Shift had published a series of articles on a "White Flag" scheme, under which Ocean Alliance issued a "white flag" designation to a number of swimming areas in Malta that it certified as being litter-free. According to a letter sent on behalf of Ocean Alliance by a law firm located in Zagreb, Croatia, 15 articles contain insulting and untrue allegations. The letter provides the bank details into which the money should be deposited within 15 days. It also requests a public apology and correction of "all false allegations". The Shift refuted all claims made in the letter and replied saying documentary evidence was available to support its reports.

RESOLVED

07 June 2022

On 7 June 2022, as no follow-up was given to the letter, the partner organisations to the Platform declared this case to be "resolved", concluding it was no longer an active threat to media freedom.

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COUNTERING THE USE OF SLAPPS – MODULE 6

France No. 267/2022

Several Media Sued for Defamation by Avisa Partners

No State reply ⓘ

Updated 25 Oct 2023 · Created 22 Sep 2022

Partners: EFJ/IFJ

Harassment and intimidation of journalists ⓘ Source of threat: Non-State Level 2 ⓘ

RESOLVED



The French group Avisa Partners, specialising in economic intelligence and online influencing strategy, brought defamation proceedings against the media outlets Mediapart, Arrêt sur Images and Reflets. The group also gave formal notice to the media organisations Next Impact, ADN and Les Miroirs du Nord to remove specific references relating to its activities and especially to the disinformation campaigns carried out on behalf of large companies or foreign governments from their journalistic investigations.

On 20 September 2022, the targeted media denounced what they said were strategic lawsuits against public participation (SLAPPs).

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DOCUMENTATION OF SLAPPS THROUGH PLATFORM'S ANNUAL REPORTS

2024 - Press Freedom in Europe: Time to Turn the Tide

“SLAPPs are a major concern and impediment, especially for journalists investigating corruption, conflicts of interest and financial crimes. Most of the lawsuits are based on alleged defamation or damage to reputation and their impact is aggravated by the fact that in many countries, defamation is still at least nominally a criminal offence.”

2023 - War in Europe and the Fight for the Right to Report

“Abusive legal threats and Strategic Lawsuits Against Public Participation (SLAPPs) have not subsided, contributing to an atmosphere of intimidation and legal bullying.”

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MAPPING MEDIA FREEDOM

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INFORMATION ABOUT PLATFORM

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The monitoring system uses various sources, including networks across countries, direct reports through ReportIt, and AI-based tools to detect violations in news articles and Tweets. Each incident is verified by experts before being published. Managed by the European Centre for Press and Media Freedom (ECPMF) and part of the Media Freedom Rapid Response (MFRR), the platform supports journalists and media workers through legal aid, advocacy, and information.

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EXAMPLES OF DOCUMENTED SLAPPS ON THE PLATFORM

- ▶ Businessman files SLAPP against Dutch daily Het Financieele Dagblad
<https://www.mapmf.org/alert/30670>
- ▶ Times of Malta SLAPPED by co-owner of Satabank
<https://www.mapmf.org/alert/23221>
- ▶ Albanian journalist sued for reporting pressure to international networks
<https://www.mapmf.org/alert/24994>

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BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE – SLAPPS DATABASE

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INFORMATION ABOUT THE DATABASE

The Business and Human Rights Resource Centre is composed of 12 trustees and over 70 colleagues working on advancing human rights in business. The organisation has information on local contexts through its staff members located across major regions, including Africa, Asia and the Pacific, Europe and Central Asia, North America, Latin America, and the Middle East. They have offices in London, New York, Berlin, and Bogotá.

The Resource Centre has established a database of SLAPP cases from around the world. This dataset includes cases filed from January 1, 2015, to November 2022, covering the period during which the Resource Centre has been tracking attacks against human rights defenders.

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EXAMPLES OF DOCUMENTED SLAPPS ON THE PLATFORM

- ▶ Bosnian environmental defenders targeted with defamation lawsuits by Green Invest owned company
<https://www.business-humanrights.org/en/latest-news/sun%C4%8Dica-kova%C4%8Devi%C4%87-2/>
- ▶ French Apples and Pears Association sues Greenpeace France over 'Poisoned Apples' article
<https://www.business-humanrights.org/en/latest-news/greenpeace-france-3/>
- ▶ Pilatus Bank sues Malta journalist Daphne Caruana Galizia in Arizona court
<https://www.business-humanrights.org/en/latest-news/daphne-caruana-galizia-2/>

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COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

MODULE 7 Procedural safeguards

(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 anti-SLAPP procedural safeguards required under European standards, including as regards codes of ethics for lawyers, and that they have explored ways of implementing these safeguards under national laws and regulations.

Session techniques and methods

- ▶ Brainstorming exercise
- ▶ Presentation and Q&A
- ▶ Large group discussion
- ▶ Small group discussion

Duration

- ▶ 1.5 – 2 hours

PROCEDURAL SAFEGUARDS

→ Brainstorming Exercise

Allocated time: 30 minutes

Guidance for trainers

A group brainstorm, facilitated by the trainer, discussing what kind of procedural safeguards participants think are required to prevent and minimise the harmful effects of SLAPPS

The trainer should ask participants to adopt a 'blue sky' thinking mentality, and look at potential solutions. They should not solely look at current national practice and be constrained by current rules and practices which may prevent solutions; rather they should be solution-oriented in their thinking and come up with ways of preventing and minimising the harmful effects of SLAPPS.

Participants are encouraged to share their ideas, which can be written on a flip chart, on post-it notes on the wall, or on an interactive whiteboard. At this stage there should be no discussion or critiquing of contributions or other discussion; the trainer's role is limited to listing ideas and preventing premature debate. If necessary, the trainer could gently guide the discussion by asking questions such as:

- ▶ should courts look at how they can improve the management of cases?
- ▶ are there ways that a case might be dismissed at an early stage?
- ▶ should the regulatory body for lawyers (a national lawyers' society, or lawyers' council) draw up rules to prevent the use of excessively aggressive tactics?
- ▶ can claimants be asked to lodge a security in advance of bringing a claim, tied to the size of the damages they request?
- ▶ can SLAPP cases be dismissed at an earlier stage?

It is true that these are all guiding questions, which generally should be avoided. However, asking one or two such 'guiding' questions may be helpful in getting a group brainstorm started. The trainer should be careful not to provide all the answers.

Once all responses are noted, the trainer facilitates feedback. This will include discussion, analysis, and categorisation of the ideas that have been contributed. The trainer can wrap up the session by thanking participants for their contributions. If possible, the paper on which contributions have been noted should be left on the wall as a reminder of the various identifying characteristics that the group has come up with.

COUNTERING THE USE OF SLAPPS

EUROPEAN STANDARDS ON PROCEDURAL SAFEGUARDS

→ Presentation

Allocated time: 25 minutes plus Q&A

Following the brainstorming session, the trainer presents a PowerPoint presentation covering in detail the procedural safeguards 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 defining characteristics of a SLAPP 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.

Safeguards under Recommendation CM/Rec(2024)2 and EU Directive 2024/1069

The EU Directive requires two procedural safeguards:

1. Security for costs (Article 10)
2. Early dismissal of manifestly unfounded claims (Articles 11-13)

The Directive specifies that applications for procedural safeguards must be treated in an accelerated manner, which in itself provides an additional safeguard.

The Recommendation provides more detail and specifies five sets of procedural safeguards:

1. Effective case management (paragraph 24)
2. Early dismissal of claims against public participation (paragraphs 25-34)
3. Stay of proceedings (paragraphs 35-36)
4. Security for procedural costs and damages (paragraph 37)
5. Safeguards in case of death or loss of legal capacity of the defendant (paragraph 39)

COUNTERING THE USE OF SLAPPS

In summary, as outlined in Module 4:

	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
EARLY DISMISSAL	<p>a. courts, on their own initiative, to dismiss a claim as a SLAPP early in the proceedings; and,</p> <p>b. 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.</p>	Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law.
STAY OF PROCEEDINGS	When national law permits, member States should ensure that, if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.	Not covered
SECURITY FOR PROCEDURAL COSTS	Member States should introduce rules, in line with national law and practice, to ensure that in court proceedings against public participation, judicial and other competent 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 (above).	Member States shall ensure that in court proceedings brought against natural or legal persons on account of their engagement in public participation, the court or tribunal seized may require, without prejudice to the right of access to justice, that the claimant provide security for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages.
RESTITUTION OF LEGAL COSTS	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.	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. 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.
DEATH OR LOSS OF LEGAL CAPACITY OF THE DEFENDANT	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.	Not covered

COUNTERING THE USE OF SLAPPS

Effective case management

Effective case management is an important safeguard. The Recommendation states in paragraph 24 that “[t]o achieve effective case management, the judicial and other competent 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.” This builds on Rule 49 of the [ELI-UNIDROIT Model European Rules of Civil Procedure](#), which have been developed by academics in comparative procedural law and are a model for all European countries. The underlying idea is that judges should be involved at the earliest stage of proceedings, and where necessary accelerate procedures. The Consultative Council for European Judges has similarly noted that “member States should provide for an accelerated or urgent enforcement procedure where delay might cause an irreversible wrong” ([Opinion No.13 on the role of judges in the enforcement of judicial decisions](#) (CCJE(2010)2-Final), par. 17).

Expedient processing of SLAPP applications

Any application that a case is dismissed as a SLAPP should be dealt with in an expedient manner. The Recommendation states that “[a]pplication for early dismissal or any appeal therefrom is treated in an accelerated procedure” (Paragraph 34); the Directive requires that Member States “ensure that applications [for security or early dismissal] are treated in an accelerated manner in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy, and the right to a fair trial” (Article 7).

Security for costs

Article 10 of the EU Directive requires that States ensure that a “court or tribunal ... may require, without prejudice to the right of access to justice, that the claimant provide security for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages.” Note the somewhat ambiguous language: “may” (twice); “without prejudice to the right of access to justice”; “if provided for in national law.”

The Recommendation provides that states should “[e]nsure that in court proceedings against public participation, judicial and other competent 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” (paragraph 37).

Early dismissal

Early dismissal of cases is a key safeguard and at the heart of the regimes of both the Directive and the Recommendation. The Directive provides: “Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded at the earliest possible stage in the proceedings in accordance with national law” (Article 11). It should be noted that there is no early dismissal required of abusive claims; Articles 14 and 15 of the Directive require cost awards and sanctions for such claims but no early dismissal. Member states may however provide for early dismissal of abusive claims under national law; the Directive provides only a minimum level of protection.

Article 12 of the Directive provides that the claimant must prove that a claim is well-founded: “[t]he burden of proving that the claim is well-founded rests on the claimant who brings the action. Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to substantiate the claim in order to enable the court to assess whether it is not manifestly unfounded.”

The Recommendation covers early dismissal in paragraphs 25-34. Paragraph 25 states:

“Member States should make adequate and appropriate provisions in their national legal frameworks, in line with the European Convention on Human Rights and the principles of the case law of the Court, to enable:

- a. Courts, on their own initiative, to dismiss a claim as a SLAPP early in the proceedings; and
- b. 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.

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Such provisions should require claimants targeting public participation to establish a reasonable cause of action at the earliest possible stage in proceedings in order to advance to trial.”

National authorities are left discretion on how to implement this. Paragraph 27 suggests two criteria:

1. Whether the claim is unlikely to succeed at trial; and
2. Whether the proceeding amounts to abuse of process in light of the SLAPP indicators.

Paragraphs 28-34 state that time limits for the exercise of the right to file an application for early dismissal should be proportionate; both parties should be heard; it should be for the claimant to provide evidence against dismissal; the claimant should have the possibility to establish the application is not a SLAPP; applications should be heard in an accelerated procedure. Appeals should be available; and administrative bodies should have a similar power to dismiss SLAPP actions early. Pending an application for dismissal, proceedings should be stayed:

Safeguards for family members

Paragraph 38 of the Recommendation states that “Member States should ensure that where, 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. Member States are encouraged to provide further protection as necessary, as these new defendants may be less equipped to deal with the original claim.”

The Directive has no equivalent requirement, although states may decide to introduce this under national law, going over and beyond the minimum level of protection that the Directive requires.

COUNTERING THE USE OF SLAPPS

DISCUSSION ON PROCEDURAL SAFEGUARDS

→ 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 discusses the following topics:

To achieve effective case management, the judicial and other competent authorities should ensure that parties present their claims, defences, factual allegations and offers of evidence as early and completely as possible. How can the judicial and other competent authorities better manage proceedings in order to enable effective termination of the case and to avoid any delaying tactics?

Courts should be able, on their own motion or upon a motion by the defendant, to dismiss SLAPP cases at an early stage in the proceedings. What is needed in order to make this requirement a reality?

How best can the EU Directive requirements regarding early dismissal be implemented in your country, considering they provide only the minimum level of protection and countries can go beyond this (particularly in relation to abuse applications)?

Courts should 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. If this practice already exists in the country, how can it be improved? If the practice does not already exist, how can it be introduced?

Each group is asked to discuss the characteristics they have been assigned and think of examples, either hypothetical or from their actual work, of cases that have these characteristics. For each such example, the groups should discuss whether cases with such characteristics are currently considered as SLAPPS in the legal system of the country, and if not, what needs to be changed for this to be the case.

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 7

Procedural Safeguards

(Training material to be shared with participants)

1. PROCEDURAL SAFEGUARDS

Task for the group: discuss what kind of procedural safeguards participants think are required to prevent and minimise the harmful effects of SLAPPS. The group is asked to adopt a 'blue sky' thinking mentality and look at potential solutions. Do not be constrained by current rules and practices which may prevent solutions; instead, be solution-oriented and come up with ways of preventing and minimising the harmful effects of SLAPPS.

Questions to guide the discussion:

- ▶ should courts look at how they can improve the management of cases?
- ▶ are there ways that a case might be dismissed at an early stage?
- ▶ should the regulatory body for lawyers (a national lawyers' society, or lawyers' council) draw up rules to prevent the use of excessively aggressive tactics?
- ▶ can claimants be asked to lodge a security in advance of bringing a claim, tied to the size of the damages they request?
- ▶ can SLAPP cases be dismissed at an earlier stage?

3. DISCUSSION ON PROCEDURAL SAFEGUARDS

Task for the groups: discuss the following topics and report back to the group as a whole. Under each topic, think of examples, either hypothetical or from actual work, of cases that have these characteristics. For each such example, discuss whether cases with such characteristics are currently considered as SLAPPS in the legal system of the country, and if not, what needs to be changed for this to be the case.

- a. To achieve effective case management, the judicial and other competent authorities should ensure that parties present their claims, defences, factual allegations and offers of evidence as early and completely as possible. How can the judicial and other competent authorities better manage proceedings in order to enable effective termination of the case and to avoid any delaying tactics?
- b. Courts should be able, on their own motion or upon a motion by the defendant, to dismiss SLAPP cases at an early stage in the proceedings. What is needed in order to make this requirement a reality?
- c. How best can the EU Directive requirements regarding early dismissal be implemented in your country, considering they provide only the minimum level of protection and countries can go beyond this (particularly in relation to abuse applications)?
- d. Courts should 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. If this practice already exists in the country, how can it be improved? If the practice does not already exist, how can it be introduced?

MODULE 7

Procedural safeguards

(Training material to be shared with trainers only)

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PRESENTATION OUTLINE

Reminder: the two main international instruments

Procedural safeguards under the CoE Recommendation and the EU Directive

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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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PROCEDURAL SAFEGUARDS UNDER THE COE RECOMMENDATION AND THE EU DIRECTIVE

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RECOMMENDATION CM/REC(2024)2

Part B of Chapter II of the Recommendation covers procedural safeguards:

- ▶ Effective case management (paragraph 24)
- ▶ Early dismissal of claims against public participation (paragraphs 25-34)
- ▶ Stay of proceedings (paragraphs 35, 36)
- ▶ Security for procedural costs and damages (paragraph 37)
- ▶ Safeguards in case of death or loss of legal capacity of the defendant (paragraph 39)

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EU DIRECTIVE 2024/1069

The EU Directive requires two procedural safeguards:

- ▶ Security for costs (Article 10)
- ▶ Early dismissal of manifestly unfounded claims (Articles 11-13)

The Directive specifies that applications for procedural safeguards must be treated in an accelerated manner, which in itself provides an additional safeguard.

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EFFECTIVE CASE MANAGEMENT/ SPEEDY RESOLUTION

Paragraph 24 of the **Recommendation**:

“To achieve effective case management, the judicial and other competent 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.”

Paragraph 34: “application for early dismissal or any appeal therefrom is treated in an accelerated procedure”

Article 7 of the **Directive**:

“Member States shall ensure that applications [for security or early dismissal] are treated in an accelerated manner in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.”

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SECURITY FOR COSTS

Article 10 of the **EU Directive** requires that States ensure that a “court or tribunal... may require, without prejudice to the right of access to justice, that the claimant provide security for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages”.

Note the somewhat ambiguous language “may” (twice); “without prejudice to the right of access to justice”; “if provided for in national law”.

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SECURITY FOR COSTS (CONTINUED)

Paragraph 37 of the **Recommendation** provides that States should:

“ensure that in court proceedings against public participation, judicial and other competent 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”

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EARLY DISMISSAL

Early dismissal of cases is a key safeguard and at the heart of the regimes of both the Directive and the Recommendation. The Directive provides (Article 11):

“Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law.”

It should be noted that there is no early dismissal required of abusive claims (the Directive imposes sanctions for such claims, but no early dismissal). Member states **may** however provide for early dismissal of abusive claims under national law; the Directive provides only a minimum level of protection.

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EARLY DISMISSAL (CONTINUED)

Article 12 of the Directive provides that the claimant must prove that a claim is well-founded:

- “1. The burden of proving that the claim is well founded rests on the claimant who brings the action.
2. Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to substantiate the claim in order to enable the court to assess whether it is not manifestly unfounded.”

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EARLY DISMISSAL (CONTINUED)

Paragraphs 25-34 of the **Recommendation** concern early dismissal. Paragraph 25:

“ Member States should make adequate and appropriate provisions in their national legal frameworks in line with the European Convention on Human Rights and the principles of the case law of the Court to enable:

- a. courts, on their own initiative, to dismiss a claim as a SLAPP early in the proceedings; and,
- b. 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 claimants targeting public participation to establish a reasonable cause of action at the earliest possible stage in proceedings in order to advance to trial.”

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EARLY DISMISSAL (CONTINUED)

National authorities are left discretion how to implement this:

“27. 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:

- a. whether the claim is unlikely to succeed at trial; and
- b. whether the proceeding amounts to abuse of process, in light of the SLAPP indicators set out in paragraph 8 (above).”

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EARLY DISMISSAL (CONTINUED)

Paragraphs 28-34 state:

- ▶ time limits time for the exercise of the right to file an application for early dismissal should be proportionate
- ▶ both parties should be heard
- ▶ administrative bodies should have a similar power to dismiss SLAPP actions early
- ▶ it should be for the claimant to provide evidence against dismissal
- ▶ the claimant should have the possibility to establish the application is not a SLAPP
- ▶ appeals to early dismissal decisions should be available
- ▶ applications should be heard in an accelerated procedure

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STAY OF PROCEEDINGS PENDING EARLY DISMISSAL APPLICATION

Paragraphs 35-36 of the Recommendation provide that pending an application for dismissal, proceedings should be stayed:

“35. When national law permits, member States should ensure that, if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken. Furthermore, the 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 judicial or other competent authority. Amendment of pleadings should not be allowed once the application for early dismissal is filed by the defendant.

36. The refusal of a request for early dismissal of the proceedings 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.”

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STAY OF PROCEEDINGS PENDING EARLY DISMISSAL APPLICATION

There is no equivalent requirement in the Directive, although states may go beyond its minimum requirements and provide for a stay of proceedings in national law.

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SAFEGUARDS FOR FAMILY MEMBERS

Paragraph 38 of the **Recommendation** provides:

“Member States should ensure that where, 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.

Member States are encouraged to provide further protection, as necessary, as these new defendants may be less equipped to deal with the original claim.”

The **Directive** has no equivalent requirement although states may decide to introduce this under national law, going over and beyond the minimum level of protection that the Directive requires.

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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)

CONTENTS

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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.

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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

RESTITUTION OF LEGAL COSTS	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.	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. 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.
DEATH OR LOSS OF LEGAL CAPACITY OF THE DEFENDANT	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.	Not covered

COUNTERING THE USE OF SLAPPS

<p>ACKNOWLEDGEMENT OF SLAPP VICTIM STATUS AND COMPENSATION FOR DAMAGES</p>	<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>
<p>CAPPING OF DAMAGES FOR THE CLAIMANT</p>	<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>
<p>CAPPING OF COSTS</p>	<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>
<p>DISSUASIVE MEASURES</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>

COUNTERING THE USE OF SLAPPS

 GROUNDS FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT	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

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.

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?

COUNTERING THE USE OF SLAPPS

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.

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?

MODULE 8

Legal remedies against SLAPPS

(Training material to be shared with trainers only)

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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

The trainer will form 3-5 small groups, each of which will receive the case facts once the groups are created. There are two case studies available. 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.

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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

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

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COUNTERING THE USE OF SLAPPS – MODULE 8

ACKNOWLEDGEMENT OF SLAPP VICTIM STATUS AND COMPENSATION FOR DAMAGES	<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>
CAPPING OF DAMAGES FOR THE CLAIMANT	<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>
CAPPING OF COSTS	<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>

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COUNTERING THE USE OF SLAPPS – MODULE 8

<p>DISSUASIVE MEASURES</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>GROUND FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT</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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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)

CONTENTS

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DISCUSSION ON SUPPORT MEASURES	5

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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.

COUNTERING THE USE OF SLAPPS

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

COUNTERING THE USE OF SLAPPS

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.

MODULE 9

Support measures for SLAPP targets and victims and victims

(Training material to be shared with trainers only)

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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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SUPPORT FOR SLAPP TARGETS AND VICTIMS UNDER THE COE

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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 of 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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