



SLAPPS AND LAWYERS

What every EU lawyer needs to know



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Strategic lawsuits against public participation (SLAPPs) and lawyers: What every EU lawyer needs to know

EU anti-SLAPP directive: an introduction

Pia Lindholm, Deputy Head of Unit
Civil Justice, DG Justice and Consumers
European Commission

Zoom Webinar, 25 October 2023



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EU Anti-SLAPP Package – April 2022

Most efficient way to fight SLAPPs and prevent them from growing roots in the EU is a combination of:

- **Legislative measures:** targeted legislation - **proposed Directive** consisting of procedural safeguards against SLAPPs in cross-border civil proceedings
- **Non-legislative measures:** **Commission Recommendation** to Member States to complement the legislative instrument by focusing on training, awareness raising, support to targets and monitoring; applies to all proceedings (civil, criminal and administrative)

Evidence on SLAPPs is provided in a **Staff Working Document** accompanying the initiative.

Proposal for a Directive

- **Only cross-border civil and commercial matters:** need of EU legal basis
- To define or not "matters with cross-border implications"?
- Balance between freedom of expression and access to justice
- Broad personal scope: natural and legal persons; journalists, human rights defenders and others

Proposal for a Directive

Three key pillars of protection:

- Early dismissal of manifestly unfounded court proceedings (or claims)
- Remedies against abusive court proceedings: award of costs, compensation of damages and penalties; claimant can also be required to provide a security to cover costs and damages
- Protection against third country SLAPP-judgments

From lawyer's perspective

- Be aware
- Possibility: deontological rules for legal professionals



Next steps

- The proposed Directive is currently still under negotiation between the European Parliament and the Council (representing the Member States)
- Once adopted, the Directive needs to be transposed into national law in the Member States
- The Commission Recommendation is directly applicable and it already being implemented



Strategic lawsuits against public participation (SLAPPs) and lawyers: What every EU lawyer needs to know

Overview of SLAPP cases in the EU

Dirk Voorhoof

Human Rights Centre UGent/Legal Human Academy

Member of MSI SLP Expert Committee CoE

Zoom Webinar, 25 October 2023



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SLAPPs : steady increase of reported cases

Annual Report 2023 by the partner organisations to the **Council of Europe Platform** to Promote the Protection of Journalism and Safety of Journalists (p. 51-58)

“The use of legal actions aimed at intimidating and silencing journalists and media – by dragging them into courts and wasting their time and money – is a favourite tool for certain politicians, businessmen and other powerful figures”.

Platform only shows **top of the iceberg**



SLAPPs and abusive legal actions against journalists



“SLAPPs continue to mushroom across Europe”



Abusive litigation and legal threats targeting **journalists and activists** – who expose and report on abuses of power – are to be recognised as **one the most pressing challenges** for the universal right to speak and right to know.

<https://www.the-case.eu/latest/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/>

Art19 report about 9 countries: “even this anecdotal and incomplete data shows that SLAPPs are being initiated in nearly every country under the review”

<https://www.article19.org/wp-content/uploads/2022/03/A19-SLAPPs-against-journalists-across-Europe-Regional-Report.pdf>

ARTICLE¹⁹

SLAPPs : CASE reports

<https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>



CASE Report 2022 published research findings based on the analysis of over 500 SLAPP cases identified in 29 European countries – the first such broad and thorough report examining the scale and impact of abusive litigation in Europe.

The **2023 CASE report** provides the most recent overview. The updated analysis comprises 200+ abusive lawsuits identified as SLAPPs.

CASE's database has increased from **570 cases in 2022** to over **820 cases in 2023**

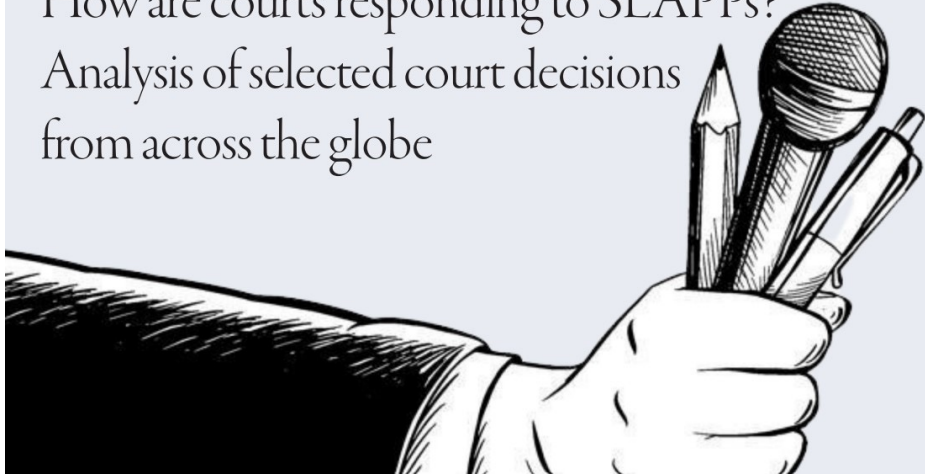
SLAPPs : what's wrong with strategic litigation?

- It is to silence voices that need to be heard
- Intimidation / harassment / culture of fear
- Public participation / matters of public interest
- The right of the public to be properly informed about issues that matter for society
- Abuse of the judiciary (“lawfare”), aimed at interferences with FoE that violate Article 10 ECHR – “chilling effect”

Vexatious or abusive legal action with a desire to intimidate public watchdogs and bully them into self-censorship or force them to considerable sacrifices. SLAPPS affect the livelihood of the defendants, their ability to work, their financial and economic situation, and even their family life; and have a chilling effect on other public watchdogs.



How are courts responding to SLAPPs?
Analysis of selected court decisions
from across the globe



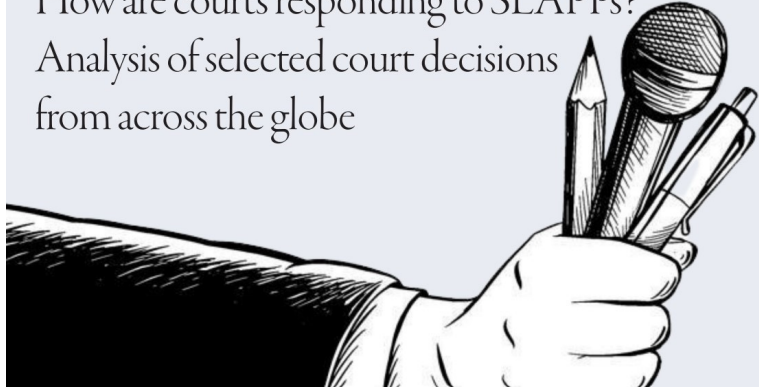
Global SLAPP Report 2023

Columbia University NY

<https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/04/GFoE-Article19-SLAPPs-paper.pdf>

SLAPPs are a form of abusive litigation that **intimidate and harass** journalists, media outlets, protesters, or environmental and human rights defenders. These lawsuits are typically initiated by politicians, public officials, wealthy businesspeople, big companies, and public figures **aiming to silence critical voices and stifle scrutiny and public debate.**

How are courts responding to SLAPPs?
Analysis of selected court decisions
from across the globe



Global SLAPP Report 2023 Columbia University NY

<https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/04/GFoE-Article19-SLAPPs-paper.pdf>

Because these lawsuits drain defendants in lengthy and expensive judicial processes, they have a **chilling effect** on those who are critical of governments, public institutions, and other powerful actors.

It is vital that any **anti-SLAPP protections ensure that SLAPPs can be disposed of at an early stage** to avoid dragging journalists, media outlets, or activists into **years of costly legal proceedings**

See also John Oliver on SLAPPS in the US:

<https://www.youtube.com/watch?v=UN8bJb8biZU>

SLAPPs : a risk for democracy



THIRD SECTION

CASE OF *OOO MEMO v. RUSSIA*

(Application no. [2840/10](#))

JUDGMENT

In a judgment of 2022 in the case of *OOO Memo v. Russia* the ECtHR referred to the call by the **COE Human Rights Commissioner** to take urgent and robust action against SLAPPs.

The **ECtHR** showed awareness about “the risks that court proceedings instituted with a view of limiting public participation bring for democracy”.

Similar concerns have been expressed by the **Commission** of the EU (package 22 April 2022 Proposal of Directive and Recommendation / Democracy Action Plan); by the **European Parliament**; in a recent report by the **Parliamentary Assembly of the Council of Europe**, the PACE Committee on Culture, Science, Education and Media under the title “**Countering SLAPPs: an imperative for a democratic society**” and in a draft Recommendation which is in a final stage of approval by the **Committee of Ministers** of the COE.



General characteristics of SLAPP cases

- Increase of reported cases (still underreported)
- Crossborder cases ('libel tourism/abusive forum shopping') / domestic
- Who are the targets?
- Who are the SLAPPers?
- What is the legal basis
- Where in the EU/COE?



Reported increase of SLAPP cases in Europe

Growth

Following the pattern reported last year, throughout 2022 the number of mapped SLAPPS further increased. Meanwhile, the number of lawsuits from previous years also increased, as additional cases were documented.

Cases recorded annually

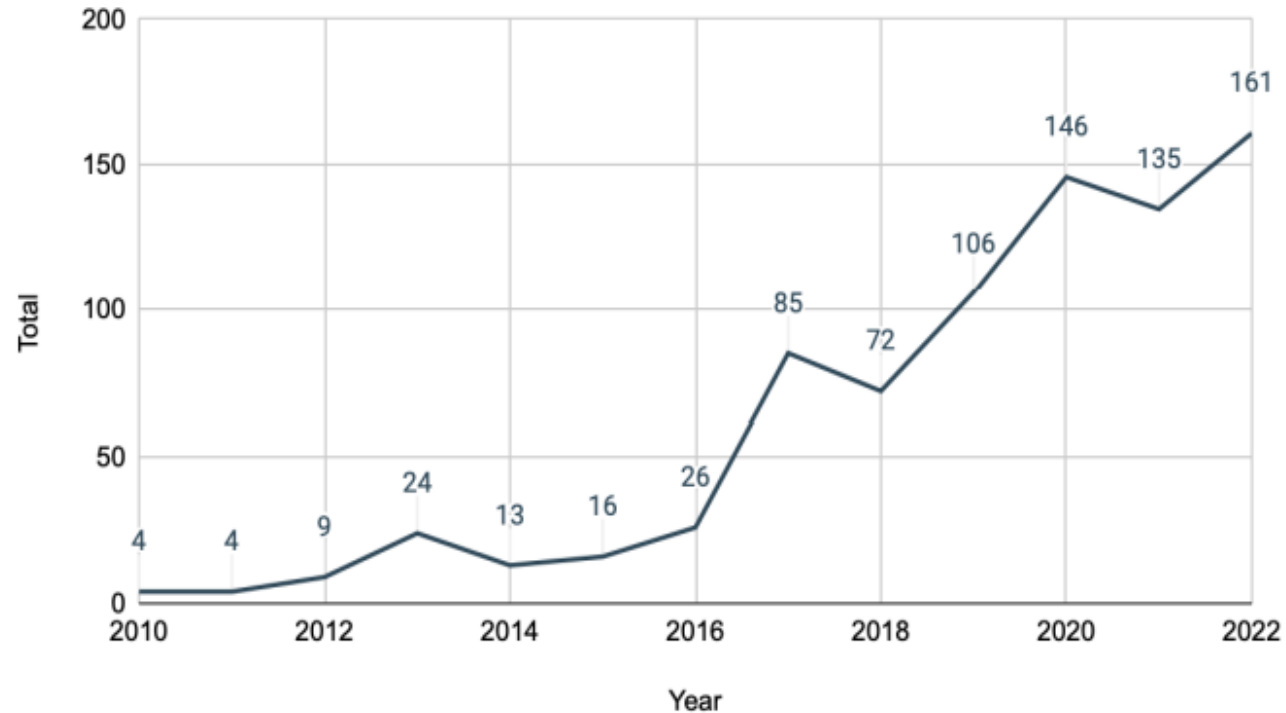


Figure 2 - CASE-recorded SLAPP legal cases from 2010 to 2022

Cross-border / domestic

2. Cross-border cases

Out of the cases recorded between 2010 till 2022, 9.5% (81)^a were cross-border cases on the traditional understanding of the concept, a classification determined by the narrowest possible definition of “cross-border” meaning the plaintiff and the defendant are domiciled in different countries. This reflects the dominance of exclusively-domestic SLAPP cases filed in 2022.

Cross-border?

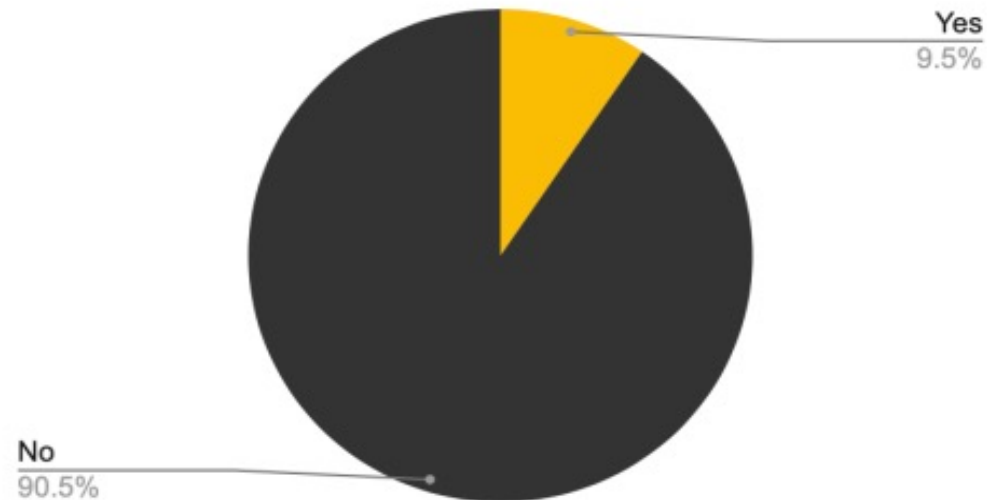


Figure 6: CASE-recorded SLAPP legal cases from 2010 - 2022, cross-border

Who are the targets?

3. Who is the SLAPP target?

As can be seen in Figure 7, the cumulative data gathered shows that journalists in their individual capacity remain the most likely target of a SLAPP, followed by media outlets, editors, activists and NGOs. Other likely defendants include lawyers, academics, politicians, book authors (writers), and publishers.

Status of defendant

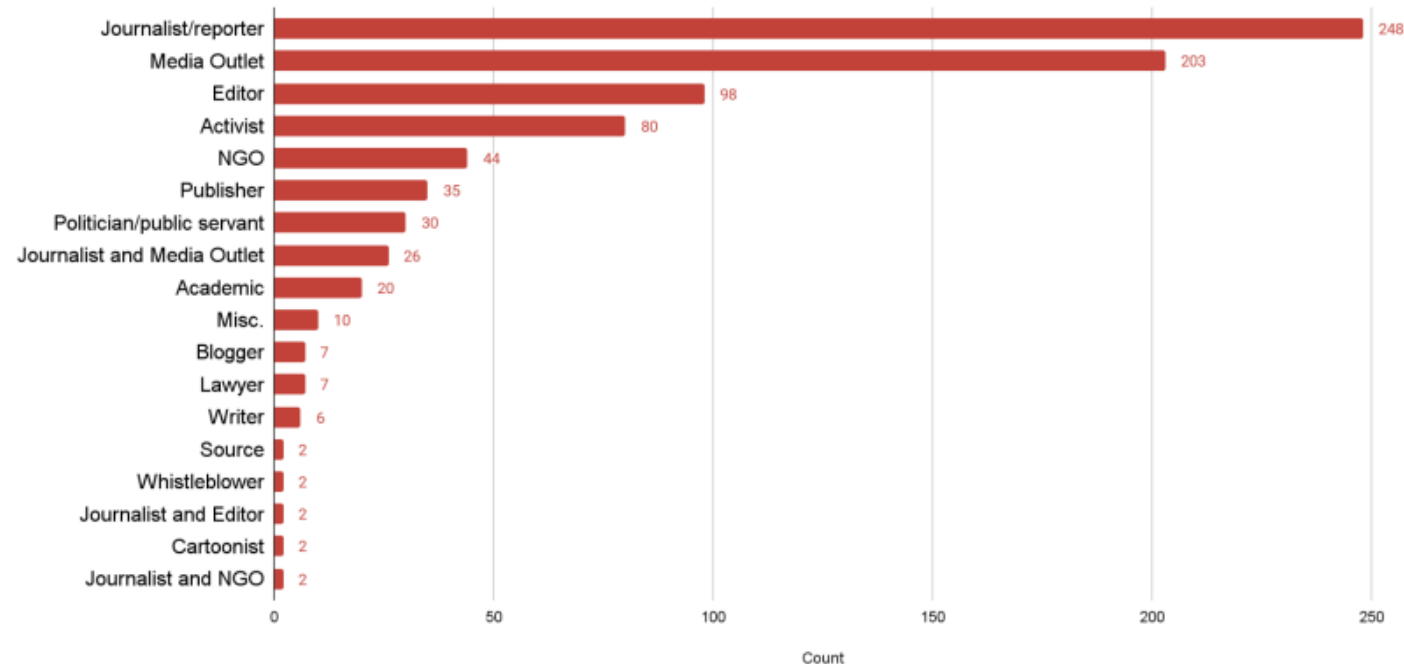


Figure 7: CASE-recorded SLAPP legal cases from 2010 - 2022, status of defendant

Who are the initiators / claimants?

4. Who is the SLAPPer?

Throughout 2022, businesses / business persons filed the most lawsuits (39.9%), followed by state-owned entities (26.8%) and politicians (25%). This follows the pattern of previous years. As can be seen in Figure 9, between 2010 till the end of 2022 the most common SLAPP litigants were those in positions of power; namely, businesses and politicians.

Status of plaintiff

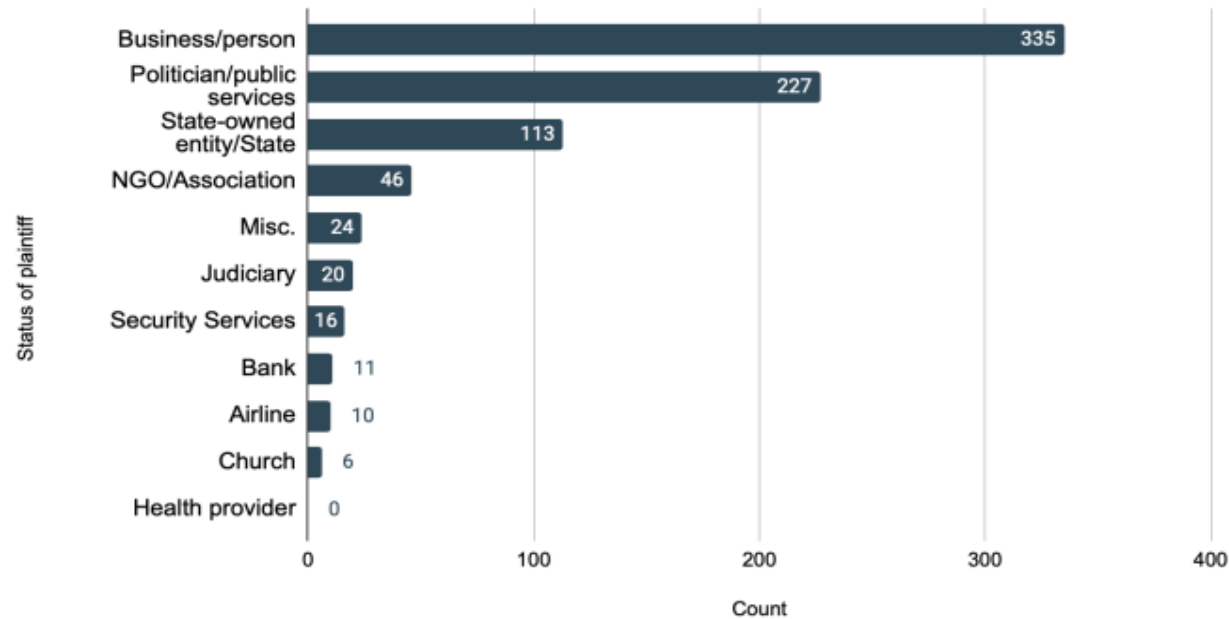


Figure 9: CASE-recorded SLAPP legal cases from 2010 - 2022, status of plaintiff

What is the legal basis?

- defamation, libel, insult
- privacy / protection of personal data
- cybercrime
- stalking or harassment
- intellectual property rights, esp. trademarks and copyright
- protection of trade secrets, professional secrecy or confidentiality



Journalists have also been harassed with abusive legal claims in order to reveal their sources.

While SLAPPs will generally mean a civil lawsuit, in some jurisdictions it is possible for claimants to trigger or pursue criminal charges against their critics such as criminal defamation laws or breach of public order or national security, or administrative lawsuits (eg GDPR based).

Where?

<https://www.the-case.eu/slapps/>

<https://docs.google.com/document/d/188gHLmYXeOuJpHDWAcYzKzXk-icRc9lifeMJlBa8Zf8/edit#heading=h.h3k16lpxy0i>



Some examples...

- Poland : Gazeta Wyborcza + 60 SLAPPs

- Malta :



- France: SLAPPs by Socfin / Bolloré group against journalists, lawyers, NGOs reporting on human rights violations in palm oil plantages in Africa

- UK: Libel tourism, high costs, lengthy proceedings, “specialized law firms”

The Guardian: two or three SLAPP threats per week, needs extra legal staff to follow up + specific harassment of female journalists



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FOUNDATION



The
Guardian



Some examples...

- Croatia: case of the former president of Croatia, Mr Stjepan Mesić vs the Internet news portal Dnevno.hr



Article in 2015 on news portal, based on a press release from and contacts with the Finnish Prosecutor General, reported that Mesić had received bribes in 2013 in relation to the procurement of armoured vehicles for the Croatian army from the Finnish company Patria.

Mesić requested that the news portal Dnevno.hr publish a correction in relation to the impugned article which he considered to be false and injurious to his honour and reputation. The newsportal refused to correct the article, explaining it had a factual basis and relied on thorough journalistic research. Still in 2015 Mesić brought a civil action against the news portal arguing that the allegations about his involvement in the Patria case were false and had breached his honour and reputation because he had been portrayed as a corrupt politician and a criminal.

First the Zagreb Municipal Civil Court and later in appeal the Zagreb County Court dismissed the claim of Mesić. Also Mesić's application with the Constitutional Court failed: the article at issue was responsible journalism on an issue of public interest about a top politician, based on verified information.

But still Mesić continued his case before the ECtHR invoking a violation of Article 8 ECHR.

On 30 May 2023 the ECtHR found no violation of the rights of Mesić

Judgment by the European Court of Human Rights, Second Section, in the case of Mesić v. Croatia (no. 2), Application no. 45066/17, 30 May 2023, <https://merlin.obs.coe.int/article/9801> and <https://hudoc.echr.coe.int/eng/?i=001-224963>

* A Finnish employee of Patria was acquitted in 2016 as a Finnish court found no proof of the accusation of the bribe. But this was after the publication of the article in 2015.



Erik van der Paal vs Apache 2017-2022



Belgian project developer Erik Van der Paal filed several separate proceedings against news site [Apache](#)'s chief editor Karl van den Broeck and journalist Stef Arends.

In one of the cases, Van der Paal accused the journalists of having stalked him and of violating the Personal Data Processing Act, among other things, after Arends used a hidden camera to capture Van der Paal welcoming a number of guests to his birthday party at a well-known restaurant in Antwerp, in 2017. The images were made secretly from the public road and were published on the Apache website to show the tight relationship between the real estate developer and members of the Antwerp city council.

Apache was acquitted in both the first instance case, as well as in an appeal lodged by Van der Paal. The Court of Appeal noted how Van der Paal had the intention of financially exhausting Apache and putting a halt to its critical reporting about him. Van der Paal was convicted himself for abuse of procedure ("vexatious and reckless proceedings"). An appeal by Van der Paal with the Court of Cassation was finally dismissed on 18 October 2022. Legal costs for Apache to defend these cases run up to about 125.000 EUR.

<https://www.leuvenpubliclaw.com/news-site-acquitted-for-stalking-and-breach-of-privacy-in-belgian-slapp-case/>



<https://www.the-case.eu/gallery-of-shame/>

Media, journalists, whistleblowers, NGOs and “academia” ...

Academics as targets/victims of SLAPPs

- Wojciech Sadurski in Poland
- Stiig Markager in Denmark
- Marc van Ranst in Belgium



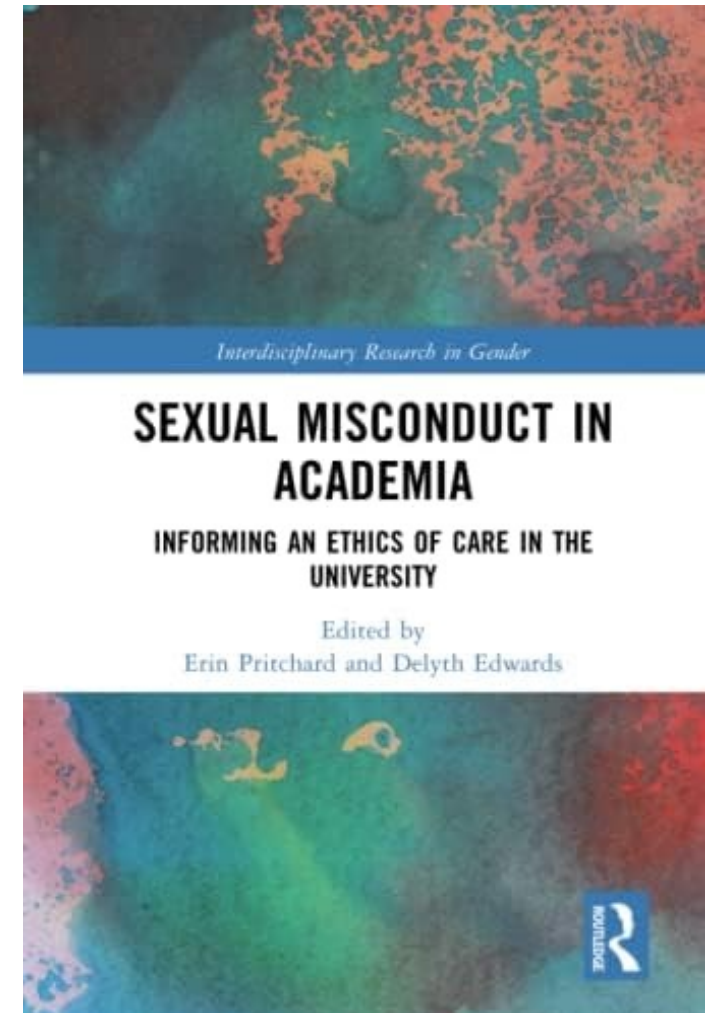
Effect of pre-trial SLAPP

Book by group of researchers, some with personal experiences, reporting about indecent behavior at the job

The intention is to promote an open dialogue about the realities of **sexual misconduct and power abuse in academia**. But the book is taken out of circulation by the publisher after receiving “**a series of legal threats from various parties, including from a leading UK law firm**” regarding the content of one specific chapter.

<https://www.buala.org/en/mukanda/open-letter-to-routledge-taylor-francis-group>

<https://newsroom.taylorandfrancisgroup.com/statement-on-sexual-misconduct-in-academia/>



That chapter describes cases of sexual and moral harassment at Coimbra University, Centre for Social Studies (*Centro de Estudos Sociais (CES)*), without revealing names. A star professor has identified himself as the actor of some of the reported acts of transgressive behavior and has threatened the publisher with legal action. In a reaction the publisher has removed the book from its website and the circulation of the book is suspended.

The authors of the chapter at issue are now also facing criminal prosecution for defamation and insult, by the professor and by a researcher at CES at Coimbra University.

The known number of former CES female researchers accusing the professor of transgressive behaviour has recently risen to 8.

<https://legalhumanacademy.org/academic-censorship-on-sexual-harassment/>

<https://www.buala.org/en/mukanda/public-statement>

https://allegralaboratory.net/newsletter/?email_id=5

https://en.wikipedia.org/wiki/Boaventura_de_Sousa_Santos



Conclusion/1



- SLAPPS are a **risk for a democracy** and an **abuse of the judiciary**
- SLAPPs are increasing and appear in **many forms**, in many countries, while still **underreported**
- Often the **threat with legal action is enough** to silence or intimidate the target
- Especially the **length and costs** of the proceedings have a chilling effect on the targets
- Need to strike a **new balance** between the rights under Article 10/11 ECHR and the right of access to justice and fair trial under Article 6, the right to privacy and reputation under Article 8 and the right to an effective remedy under Article 13 ECHR

Conclusion/2



- It is not only a challenge for international and European institutions and members states and judicial authorities within the EU/CO to take action, **also civil society** will need to play an important role to help to monitor and to combat SLAPPs
- On **lawyers, advocates, law firms and the bar & law societies** and other lawyers' organisations rests a **serious responsibility to help to make and end of SLAPPs** both in pre-trial threatening with abusive legal action as in initiating and assisting in SLAPPs
- + role in **supporting or assisting** SLAPP targets and victims
- + **monitoring** SLAPPs against lawyers and human rights defenders
- + lawyers: **join** your national anti-SLAPP Working Group / CASE



Take away



From the PACE report (18 September 2023 – AS/CULT (2023)20)
Committee on Culture, Science, Education and Media

As bar associations have a central role to play in combatting SLAPPs, PACE calls on member states to:

14.3 Encourage the regulatory authorities of the legal profession to include the fight against SLAPPs explicitly in their **code of ethics**, to improve the **training** of their members to make them aware of the phenomenon and to require them, on pain of **disciplinary action, to refrain** from knowingly participating in the action of clients who are clearly seeking to abuse the legal system by bringing SLAPPs and deliberately prolonging such proceedings.

Countering SLAPPs: an imperative for a democratic society



Strategic lawsuits against public participation (SLAPPs) and lawyers: What every EU lawyer needs to know

The Council of Bars and Law Societies of Europe's position on
SLAPPs

Elisabeth SCHEUBA

Chair of the CCBE Access to Justice Committee
Head of the Austrian Delegation to the CCBE

Zoom Webinar, 25 October 2023



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Table of Contents

- Lawsuits as Instruments Granting Access to Justice
 - Lawsuits – What can make them Abusive?
 - Abusive Lawsuits – Definition and Indicators
 - Three Different Roles Lawyers may play in Lawsuits
 - Lawyers` Ethics
- Public Participation – Definition
 - Matters of Public Interest
 - Public Participation by Lawyers – Impact on their Domestic Procedural Rights?
- How to identify SLAPP in Every Day Life?
 - Let`s Start with an Example – Facts – Issues of Law
 - Questions to be Answered to Identify SLAPP
 - First Résumé from the Lawyers` Perspective
- How SLAPP Cases have been Tackled by Now
- Draft Directive – Legal Basis, Subsidiarity
 - Limitation to Cross Border Cases?
 - Some Measures Proposed – Going (too) far?
- Conclusions from the Lawyers` Perspective

Lawsuits as Instruments Granting Access to Justice

- It is the fundamental, common consensus and social achievement in the EU-Member States: The **competence and authority to settle** controversial civil law questions between two persons is **within** the judicial power of Civil **Courts**.
- Whenever the (civil) rights of a person are infringed or disputed or questioned: This person **is entitled to bring the claim before the court** and to apply for a court decision to have the dispute settled by jurisdiction. Individuals are not entitled to enforce their claims by lynch-law nor to take the law into his/her own hands.
- The **instrument** made available to the individual person to bring a case before a court for seeking justice in case of infringed rights: Lawsuits.
- Lawsuits are, hence, instruments **granting** to the individual **access to justice** and a court decision in order to settle a dispute within the framework of the principle governing all civil procedure rules, ie the **right to a fair trial** (Art 6 ECHR).

Lawsuits – What can make them Abusive?

(according to Point 2 of the Explanatory Memorandum to the Proposal for the Directive)

- In case the **aim** of a claim is **not** access to justice,
but harassment and
silencing of the defendant.
- In case the **purpose** of the civil proceedings is **not** gaining access to justice,
but mere tactics.

Abusive Lawsuits – Definition and Indicators

(according to Art 3.3. of the Draft Directive)

Court proceedings (brought in relation to public participation)

fully or partially unfounded

main purpose to prevent or

restrict or

penalize public participation.

Possible **indicators** for such a **purpose**:

nature of the claim

disproportionate

excessive

unreasonable

multiple proceedings

initiated by the claimant

or associated parties

in relation to similar matters

on the **part of the claimant** or his/her representatives

intimidation

harassment

threats

Three Different Roles Lawyers may play in Lawsuits

Lawyers may either

- defend Lawsuits on behalf of clients or
- issue Lawsuits on behalf of clients or
- be confronted with Lawsuits launched against themselves.

Lawyers, hence, may with reference to abusive lawsuits either

- defend Lawsuits launched against clients in an attempt to silence the client or
- be victims of lawsuits launched in an attempt to silence themselves or
- issue Lawsuits on behalf of clients, which may turn into SLAPP cases.

Lawyers` Ethics

(Lawyers` Deontology is a National Competence)

Lawyers **being given an instruction** from a client

to abuse court procedures

to silence and intimidate a defendant
through a lawsuit to be launched
without a legal basis

have to advise the client that the courts cannot be abused in this way.

Public Participation – Definition

(according to Art 3.1. and Art 3.2. of the Draft Directive)

Any statement expressed
activity carried out
in the exercise of the right to freedom of expression and information
on
any matter of public interest, ie on any matter which
affects the public
to such an extent
that the public may
legitimately
take interest in it.

Matters of Public Interest

(according to Art 3.2. of the Draft Directive)

Public interest

any matter

affecting the **public**

to such an extent that

the **public** may

legitimately

take an **interest** in it.

How to deal with this **circularity** in every day life?

Lack of any **reference to the importance** of the matter for the welfare of the general public?

Public Participation by Lawyers – Impact on their Domestic Procedural Rights?

For **Lawyers**, **when** acting either on behalf of clients
or for themselves
any statement expressed
any activity carried out
in the exercise of the right to freedom of expression and information
on any matter
affecting the public to such an extent that
the public may legitimately
take interest in it,

the **question** arises as to the **impact on the practice of law**: Will practising lawyers

either benefit from the suggested measures against SLAPP,
when being victim of a lawsuit launched in an attempt to silence the lawyers
themselves

or be restricted in the **practice** of their profession, esp in their **domestic procedural rights**
by the suggested measures against SLAPP
when issuing lawsuits on behalf of clients which later may turn into a SLAPP
case in the course of the proceedings?

How to identify SLAPP in Every Day Life?

Let`s start with an example - Facts

Journalist D questions in a publication

the effectiveness of the medical product C

Producer C launches lawsuits
against Journalist D
for defamation
slander
fake news.

Let`s Start with an Example – Issues of Law

- Is **C`s proceedings** brought in relation to Journalist D`s public participation fully or partially **unfounded**?
- Is the **main purpose** of C`s court proceedings to **prevent, restrict** or **personalize** public participation of Journalist D?

Are any **Indications** for such a purpose to be seen?

- Is the nature of C`s claim unreasonable, disproportionate, excessive?
- Are there multiple proceedings initiated by C (or C`s associates) in similar matters?
- Is there on C`s part intimidation of D? harassment of D? threats?

Question to be Answered to Identify SLAPP

1. Is the claim – with reference to the legal basis – **manifestly unfounded**? Or can the claim find a **basis** in the **applicable substantive law**?
2. Is the **aim** of the claim abusive? Or are the claimant`s **intentions** and attitudes covered by the **legitimate interest** to pursue his/her rights (infringed by the Defendant)?
3. Is the **main purpose** of the court proceedings abusive? Or is the purpose of the court proceedings **gaining access to justice**?

First Résumé from the Lawyers` Perspective

SLAPPS are an **abuse** which must be **stopped**.

The questions to be answered to identify SLAPP are difficult to answer in Court practice: There are only **indicators** given in the Draft Directive to enable the Courts to **draw conclusions** on the Claimant`s **intention** to **either** gain access to justice by the court proceedings **or** to abuse the claim for silencing the defendant. There has **no definition** of SLAPP been proposed by now.

The possible **impact** of the measures against SLAPP on the domestic procedural rights of lawyers acting on behalf of their clients is not yet clear.

How SLAPP Cases have been Tackled by Now

The **legal systems** of several Member States **already provide instruments** to tackle abusive and manifestly unfounded court proceedings:

There are instruments

to deal with parties' tactics in the proceedings aiming at
delaying these proceedings,

to sanction inadequate behaviour of parties in the proceedings,

and

to discipline claimants (and defendants) not following civil
procedural rules or judges' instructions.

The civil procedure rules of the Member States differ substantially.

Several domestic civil procedure codes already provide for certain instruments that prevent abusive proceedings. However, this is **not** a common approach in **all** Member States.

Will the implementation of the Directive be the adequate way to deal with SLAPP cases?

Is the Directive the best way to deal with SLAPP?

Draft Directive – Legal Basis, Subsidiarity

Art 81 (2) f EU Treaty on Functioning of Europe

“judicial cooperation in civil matters having cross border implications”

Does this Article provide sufficient basis for the EU

- to rule on domestic procedural issues or
- to impose new court procedures?

Principle of Subsidiarity

Whether - objective of envisaged measure can be achieved more effective at Union level

- extent of measures does not go beyond what is necessary to achieve its objective

would still need to be clarified examined in detail.

Draft Directive - Limitation to Cross Border Cases?

Broad definition (according to Article 4.2. of the Draft Directive):

Act of Public participation

concerning a matter of public interest

against which court proceedings are initiated

is relevant for more than one Member State.

Questions to be discussed:

Does this broad definition undermine each Member State`s national competence in procedure law?

Is it disproportional and inconsistent with the principle of subsidiarity?

Would EU legislation de facto cover all domestic proceedings in which public participation is facing an opposing party?

Draft Directive - Some Measures Proposed – Going (too) far?

Third party Intervention (Art 7) – Is it coherent with the civil procedure rules in several Member States and compatible with Member States legal systems?

Security of costs (Art 8):

Can these measures result into a conflict with the principles of Access to Justice? Are these measures compatible with Art 6 of the European Convention on Human Rights? How can

Early dismissal (Art 9):

legitimate doubts, as to whether these measures are in compliance with the rule of law, be removed?

Burden of proof (Art 12):

The good intention to mitigate and eliminate the abuse of court proceedings and to tackle SLAPP, ie when

the aim of a claim and
the purpose of the civil proceedings

are **abusive**

should not limit or restrict the access to justice,

or result into a denial of justice

for those claimants, whose rights have been infringed by defamation slander or fake news.

Re: Anti-SLAPP-Measures vs Fair Trial & Access to Justice

Conclusions from the Lawyers` Perspective

SLAPPs are an abuse which must be stopped

There has been no definition of SLAPP proposed by now.

The measures proposed, however, need a definition of SLAPP to identify the cases, when the measures proposed are appropriate.

The measures proposed on EU-level to tackle SLAPP (once identified) should find their legal basis in Art 81 (2) f of the EU Treaty on Functioning of Europe.

Some measures proposed may conflict with the principles of access to justice (as part of the rule of law).

The compatibility of some measures proposed with Art 6 of the European Convention on Human Rights should be examined.



**Strategic lawsuits against public participation
(SLAPPs) and lawyers:
What every EU lawyer needs to know**

**European Commission's Recommendation on
SLAPP and its impact on lawyers' ethics**

Jonathan Goldsmith

Zoom Webinar, 25 October 2023



Co-funded by the European Union

The Recommendation

- 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')
- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022H0758>

Para. 9 - ethics

- Member States should take appropriate measures to ensure that the deontological rules that govern the conduct of legal professionals and the disciplinary sanctions for violation of those rules consider and include appropriate measures to discourage [SLAPPs]. Member States should encourage self-regulatory bodies and associations of legal professionals to align their deontological standards, including their codes of conduct, with this recommendation. Appropriate awareness raising and training is also recommended.

CCBE position

- ‘highlights that when carrying out their duties, lawyers shall respect principles of dignity, conscience, integrity and loyalty. These principles are prescribed in the CCBE Code of Conduct and the Charter of Core principles of the European Legal Profession, as well as in the national ethical/deontological rules set by relevant national Bars. This competence of national Bars and Law Societies of Member States is considered as one of the utmost important cornerstones of self-regulation of the legal profession and should therefore be respected.’

CCBE Charter of Core Principles of the European Legal Profession (1)

- 6. The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice.
- Principle (e): Some of the most delicate problems of professional conduct arise from the interaction between the principle of loyalty to the client and principles which set out the lawyer's wider duties – principle (d) (dignity and honour), principle (h) (respect towards professional colleagues) and in particular principle (i) (respect for the rule of law and the fair administration of justice).

CCBE Charter of Core Principles of the European Legal Profession (2)

- Principle (i): We have characterised part of the role of the lawyer as acting as a participant in the fair administration of justice. The same idea is sometimes expressed by describing the lawyer as an “officer of the court” or as a “minister of justice” ...
- ... the handling of this apparent conflict between the interests of the client and the interests of justice presents delicate problems that the lawyer is professionally trained to solve. The lawyer is entitled to look to his or her bar association for assistance with such problems. But in the last analysis the lawyer can only successfully represent his or her client if the lawyer can be relied on by the courts and by third parties as a trusted intermediary and as a participant in the fair administration of justice.

Research on bar rules

- No EU bar has specific reference to SLAPPs in its code of conduct
- Nearly all had some reference to how a lawyer should behave in the face of being asked to conduct abusive, intimidatory or unmerited litigation
- 8 bars had clear reference to such conduct e.g. pursuing claims with undue harshness to enforce the client's claims is not allowed
- 6 had possible reference e.g. lawyer must always uphold the principles of dignity, righteousness and discretion
- 1 had no reference at all

Paras. 10 & 11- training

- (10) Member States should support training opportunities on [SLAPPs] for legal professionals such as judiciary and judicial staff at all court levels, qualified lawyers as well as for potential targets of such court proceedings. The focus of trainings should lie on building expertise to detect such proceedings and react appropriately.
- (11) Member States should encourage associations of legal professionals and legal training providers to offer training on how to deal with [SLAPPs] ... Legal practitioners and their professional associations should be involved in the development, organisation, conduct and evaluation of the training.

Paras. 12-15 - content of training

- EU Charter of Fundamental Rights of the European Union and the European Convention on Human Rights
- practical guidance on how to apply Union law, national case law, the case law of the Court of Justice of the European Union and the case law of the European Court of Human Rights
- procedural safeguards against SLAPPs
- obligation for Member States under GDPR to reconcile, by law, the protection of personal data with the right to freedom of expression (more GDPR content in Annex to Recommendation)
- (15) Member States should consider embedding such training in training on freedom of expression and legal ethics.

CCBE references – and thanks

- [CCBE position on abusive litigations targeting journalists and right defenders - 10/12/2021](#)
- [CCBE position on the draft anti-SLAPP directive and the Recommendation – 31/03/23](#)

Thank you!