



British Embassy
Pristina

Booklet on Strategic Lawsuits Against Public Participation (SLAPP Lawsuits)

For legal professionals: judges,
prosecutors, lawyers, police
and other justice system actors



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The Kosovo SLAPP Pilot Project (Strategic Lawsuits Against Public Participation) is supported by the British Embassy in Pristina and implemented by Chemonics UK. This booklet aims to raise awareness among various stakeholders, such as judges, prosecutors, lawyers, police and other legal professionals, to understand how SLAPPs are used and how to take action against them.

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1. Executive Summary

This booklet addresses Strategic Lawsuits Against Public Participation (SLAPP), which are legal actions used to intimidate, hinder, or discourage individuals from engaging in matters of public interest. This type of lawsuit is known for its abusive use of the judicial system, and is a means of intimidating journalists, activists, or other individuals who express criticism of government or powerful interests. The purpose of this document is to provide guidance to legal authorities and other relevant stakeholders in identifying and combating these practices.

This document analyses the origins and development of SLAPP lawsuits, the impact of these lawsuits in Europe and also includes information on international legislation, including Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on Opposing the Use of Strategic Lawsuits Against Public Participation (SLAPPs) and Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on the protection of persons engaging in public participation against manifestly unfounded claims or abusive judicial proceedings (Strategic Lawsuits Against Public Participation).

A particular focus is the effort to raise awareness of the risks that SLAPP lawsuits pose to freedom of expression and public participation, encouraging authorities to respond effectively to these actions that can hinder democracy and transparency.

The document also provides a description of the different types of SLAPP lawsuits, including domestic, cross-border, and multiple lawsuits, and shows which actors are most often the authors of these lawsuits, such as public figures, politicians, and large companies.

In this context, the aim of the guideline is to help authorities, courts, prosecutors and legal professionals recognize and fight SLAPP lawsuits in accordance with international commitments, protecting the right of individuals to participate in public debate without fear of punishment or intimidation.

2. Introduction

Strategic Lawsuits Against Public Participation, also known as SLAPP lawsuits, are legal actions that aim to discourage public participation and to hinder or intimidate their target. The term "SLAPP" lawsuits was first used in the United States in the 1980s, but the origins of its use can also be traced to earlier discussions and court cases.

In Europe, the use of the term SLAPP increased between 2017 and 2018 and is closely associated with Maltese investigative journalist Daphne Caruana Galizia, who was brutally murdered with a bomb planted in her car.¹ At the time of her murder, she had 47 active defamation lawsuits against her.

Since then, a series of actions have taken place in Europe by international civil society organisations and European institutions, culminating in the adoption of the European Union Directive against SLAPP lawsuits and the Council of Europe Recommendation against SLAPP lawsuits.

The purpose of this booklet is to provide information about SLAPP lawsuits and to provide guidance that can assist courts, prosecutors, and other legal professionals in identifying and combating strategic legal actions against public participation. The booklet also aims to raise awareness of the risk posed by SLAPP lawsuits, so that authorities can respond effectively to these abusive practices, in line with international commitments to protect freedom of expression and public participation.

This material is based on the CoE Recommendation against SLAPP Lawsuits and the EU Directive against SLAPP Lawsuits to protect persons engaging in public participation from clearly unfounded claims or abusive judicial proceedings.

¹ The use of the term SLAPP in the Albanian language is important due to its international use, the lack of a complete and accurate translation that preserves the nuances of the concept, and to enable professionals and institutions to understand and communicate in the same way about this legal phenomenon.

3. What are SLAPP legal actions and what is their purpose?

What are SLAPP lawsuits?

The translation of "Strategic Lawsuits Against Public Participation" in Albanian is "Padië Strategjike Kundër Pjesëmarrjes Publike", however, the Council of Europe in its recommendation against SLAPP lawsuits mentions the term "legal actions" so that SLAPP cases are not limited to those of a civil nature but also include criminal and administrative cases.

The CoE Recommendation against SLAPP Lawsuits defines strategic legal actions against public participation (SLAPP) *as legal actions that are threatened, initiated or used as a means to harass or intimidate their target, and that aim to prevent, restrict, impede or punish free expression on matters of public interest and the exercise of rights related to public participation.*

SLAPP lawsuits refer to civil lawsuits, criminal charges or ex officio investigations, and administrative proceedings and decisions that may have an impact on public participation.

The CoE's recommendation against SLAPP lawsuits covers not only situations where a civil lawsuit or criminal charges is filed but also legal actions that may precede SLAPP lawsuits, such as legal letters that lawyers send to journalists and activists threatening them with lawsuits and demands for damages if they report or speak out on a particular issue.

What is the purpose of SLAPP lawsuits?

SLAPP lawsuits aim to abuse the legal process to prevent, impede, restrict, or penalize free expression on matters of public interest and the exercise of rights related to public participation.

With these actions, claimants aim to silence critics and intimidate them through legal pressure and high costs. In most cases, claimants do not expect to win the case in court, but aim to exhaust the defendants financially and psychologically, forcing them to give up their participation in public affairs.

So the claimants' goal can be summarized in these points: silencing those who dare to publicly criticize on matters of public interest; intimidating the defendants; censorship; and destroying the defendants' reputation.

Furthermore, to clearly understand the purpose of SLAPP lawsuits, it is important to correctly understand the definitions given in the CoE Recommendation against SLAPP Lawsuits for the above terms:

- ▶ **Public participation:** The right of everyone to participate in public debate and public affairs, online and offline, without fear or discrimination, including the right to express opinions and ideas that contradict or are critical of those held by official authorities or by a significant section of public opinion, or that offend, shock or disturb the state or any sector of the population. The scope of the term also covers actions that prepare, support or facilitate public participation.
- ▶ **Public interest:** All matters that affect the public and in which the public may have a legitimate interest, especially those matters that concern social issues or that affect the well-being of individuals or the life of the community or the environment. Public interest extends to matters that may give rise to considerable controversy, but not to information about the private lives of others, or to the audience's desire for sensational and emotional news. Topics may be of public interest at a local, national or international level.

Therefore, lawsuits that aim to censor public participation and limit free expression on matters of public interest should be understood as SLAPP lawsuits.

What are the types of SLAPP lawsuits?

Based on the CoE Recommendation against SLAPP Lawsuits, specific forms/types of SLAPP lawsuits include:

- ▶ **Domestic SLAPP lawsuits:** Lawsuits filed within domestic jurisdictions, usually by powerful actors, against journalists, activists, civil society organisations, or citizens engaged in public affairs. These lawsuits aim to silence criticism, intimidate defendants, and inhibit public participation.
- ▶ **Cross-border SLAPP lawsuits:** Lawsuits filed in one or more foreign jurisdictions to exert pressure on individuals or organisations in another country. These types of lawsuits exploit legal differences between countries and often use jurisdictions where laws are more favorable to the claimant and more restrictive of freedom of expression.
- ▶ **Multiple or coordinated SLAPP lawsuits:** Multiple lawsuits filed simultaneously or in a synchronized manner against the same individual or organisation, with the aim of increasing financial and psychological burden. These lawsuits may be different in nature (for example, lawsuits for defamation, damage to reputation, violation of privacy, publication of personal data), but they all have the same goal: to hinder the activity of the targeted person or organisation.
- ▶ **SLAPP lawsuits against anonymous public participation:** Lawsuits directed at individuals who contribute to public discussions anonymously, with the aim of revealing their identities and further intimidating them. These lawsuits are usually filed against users of social networks or other online platforms where individuals anonymously express critical opinions.

These forms of SLAPPs are widely used by powerful actors to limit democratic space and stifle criticism of their interests, hindering freedom of expression and transparency in society.

Who files SLAPP lawsuits?

As mentioned above, SLAPPs can take various forms such as civil legal actions (lawsuits), legal actions based on administrative law, and criminal actions (criminal charges or ex officio investigations). They are tools that are used as a form of pressure on all public watchdogs (activists), journalists, human rights defenders, etc., directly affecting the restriction of freedom of expression. Furthermore, women and people with different sexual orientation, gender identity, gender expression, or physical sexual characteristics face particular risks in their capacity as journalists, human rights defenders, and other public watchdogs when targeted by SLAPPs. In many cases, these groups face not only SLAPPs, but also orchestrated attacks on social media, digital harassment, and gender-based threats. Using the law to censor and intimidate the voices of these groups reinforces existing norms of inequality and weakens their ability to participate in public debate.

These lawsuits are filed by powerful individuals who aim to silence critics and avoid public scrutiny. Below is a non-exhaustive list of entities that most often file SLAPP lawsuits:



Public figures and politicians – Senior officials who aim to protect their image by silencing critical voices.



Powerful entrepreneurs and large companies – Powerful corporations, companies involved in public tenders or entrepreneurs who aim to suppress reporting on their suspicious activities.



State and public institutions – Government agencies, public enterprises, or state bodies that use lawsuits to avoid oversight and accountability.



Powerful individuals in various sectors – Individuals connected to power and other influential figures.

Who are SLAPP lawsuits filed against?

SLAPP lawsuits, which often sanctify individuals and organisations that engage in public interest issues, are brought against those who have the courage to challenge authority and demand transparency. These lawsuits are primarily filed against:



Journalists and media who expose corruption, misuse of public money or mismanagement.



Civil society activists who defend human rights, freedom of expression and institutional transparency.



Engaged citizens who publicly denounce violations, sign petitions, organize protests, or disseminate information on issues of public interest.



Human rights lawyers who defend victims of abuse or engage in issues of equality and social justice.



Researchers and scholars who publish critical analyses and studies.



Women, minority groups, and other marginalized individuals to limit their activism on issues of public interest and intimidate them from participating in social debates. SLAPP lawsuits are also used to specifically silence women activists and journalists, who face not only legal challenges but also double attacks, including gender-based threats and digital violence.



Lawyers who defend the rights of women and minorities, aiming to stop their efforts to protect vulnerable groups.

In other words, if a citizen (journalist, activist, etc.) publicly complains about the actions of a company or a famous and powerful individual, the latter pay lawyers to file lawsuits in order to intimidate them, so that they will not continue to publicly express criticism of their activities.

Although claimants know very well that their lawsuits will not succeed in court, knowing that such cases take years to resolve, they use this as a circumstance to keep the defendants under threat through a legal process that is being conducted against them. Meanwhile, citizens often do not have the financial means to face the costs of paying defense attorneys who would adequately represent them in these processes. Persons who are targets of SLAPP lawsuits also face other financial challenges as a result of SLAPP lawsuits, which exceed the financial needs of legal defense, since they also face denigrating campaigns that affect the loss of jobs in certain cases, loss of development opportunities, etc. Therefore, the economic and financial effect is very wide and the damage caused is extremely high.

How to Identify SLAPP Lawsuits?

SLAPP lawsuits are distinguished from other actions by their primary purpose, which is to prevent public participation and intimidate individuals who engage in issues of public interest. They exploit the power imbalance between the parties, where the claimant has greater financial or political influence than the defendant. SLAPPs are often unfounded, seek excessive damages or sanctions, and use abusive tactics to slow down legal proceedings. They focus on individuals, not organisations, and often involve threats and intimidation to intimidate defendants. The key difference from legitimate legal actions is the abusive use of the court system to impede free expression and public participation.

The three initial elements of identifying SLAPP are:

1

Legal action is directed against public participation: Legal action aims to misuse or abuse the legal process to prevent, restrict, impede or punish free expression on matters of public interest and the exercise of rights related to public participation.

2

Inclusion of all legal claims for potential violations of the law: SLAPP lawsuits used against public participation use various legal bases including, but not limited to, defamation laws.

2

All stages of legal action: In SLAPP cases, attention should be paid to all stages of legal action, including the initial threat of a SLAPP lawsuit, which in itself can have a chilling effect on public participation.

The Council of Europe, in its Recommendation against SLAPP Lawsuits, sets out a list of indicators that serve as tools for identifying strategic lawsuits against public participation (SLAPP) and distinguishing them from other regular legal actions. These indicators are very important, as they help to shed light on the abusive nature of SLAPPs. This list is a useful tool for legal authorities and society to identify and prevent the use of this type of lawsuit to restrict freedom of expression and public participation, thus protecting democratization and maintaining a safe and open environment for public debate and engagement.

Indicators² include, but are not limited to, the following elements:

- ▶ **Abuse of power:** The claimant uses financial, political or social power to exert pressure on the defendant;
- ▶ **Unfounded arguments:** The claimant presents arguments in the lawsuit that are not based on facts;
- ▶ **Excessive demands:** The claimant seeks disproportionate, unreasonable and unfair penalties to burden the defendant;
- ▶ **Abuse of laws/judicial procedures:** The claimant seeks to achieve illegal goals through the law and judicial procedures, rather than to establish justice abuse of laws/judicial procedures;
- ▶ **Cost-exacerbating tactics:** The claimant uses legal delays and maneuvers to make the process as long and expensive as possible for the defendant;
- ▶ **Attacking individuals:** The claimant often targets individuals, not organisations;
- ▶ **Public offensive:** The claimant uses the media to attack and discredit actors who are part of the public debate;
- ▶ **Intimidation and Threats:** The Claimant or his representatives use intimidation or threats against those involved in the case in order to force them to withdraw;
- ▶ **Coordinated actions:** The Claimant may file several lawsuits simultaneously or in different locations to increase pressure;
- ▶ **Refusal of resolution through non-judicial mechanisms:** The Claimant systematically refuses the possibility of resolving the case through other means outside of court.

Although the indicators refer to civil lawsuits, they actually apply and should also serve criminal cases such as criminal charges or the development of administrative procedures to impede public participation.

For a legal action to be considered a SLAPP, it is not required that all these indicators be present, but the more of them that are present or the more serious the actions, the more likely it is that they will be considered a SLAPP.

² The indicators are translated from Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on Opposing the Use of Strategic Lawsuits Against Public Participation (SLAPP) and have been adapted to the Kosovo context.

What are the effects of SLAPP legal actions?

SLAPP lawsuits directly harm freedom of expression and impede public participation. These types of actions, which are often intended to intimidate and scare individuals or organisations engaging in public debate and discussion, create an atmosphere where individuals are reluctant to express their thoughts and opinions on important issues. This phenomenon has serious consequences for democracy and pluralistic societies, leading to a potential restriction of opportunities for the dissemination of information and ideas.

Some of the main effects of SLAPP lawsuits are presented below:

- ▶ **Financial cost:** One of the main effects of SLAPP lawsuits is the imposition of a financial burden on the defendant. Although these lawsuits have no solid legal basis, the cost of dealing with them can lead to bankruptcy or the defendant's resignation from further pursuit of public causes. Thus, claimants through SLAPP lawsuits do not aim to win the case in court, but to impose a heavy financial burden on the defendant, forcing them to withdraw from the public debate.
- ▶ **Psychological pressure:** Another consequence of SLAPP lawsuits is the psychological pressure exerted on defendants. Individuals facing these lawsuits often feel intimidated, isolated, and unable to continue their engagement in matters of public interest. In many cases, these lawsuits are accompanied by other threats, such as attacks on professional or personal integrity, creating an intimidating effect on all those who speak out publicly.
- ▶ **Reputational damage:** Defendants in these lawsuits often face public stigmatization, being portrayed as spreading false information. Even when the lawsuit is unfounded and ultimately dismissed by the court, the reputational damage can be lasting and difficult to recover. In addition, such lawsuits also have a chilling effect, causing many individuals and organisations to give up activism and reporting violations.

SLAPP lawsuits not only have immediate effects, but also long-term impacts on freedom of expression and civic engagement. The fear of facing a tedious and costly legal process leads to self-censorship, where individuals and organisations avoid sensitive issues or limit the scope of their reporting to avoid being targeted by powerful actors.

In combating the negative effects of SLAPP lawsuits, many countries have enacted legislation against them, including laws that allow for the dismissal of such lawsuits at an early stage and provide for penalties for those who abuse them. However, the need for stronger legal protections and public awareness of this problem remains a significant challenge to guaranteeing the right to expression and public participation.

4. What can courts, prosecutors, and administrative bodies do to fight SLAPP lawsuits?

In SLAPP cases, courts, prosecutors, and administrative bodies have an important role to play in ensuring that the legal system is not misused to intimidate or stop individuals and organisations from engaging in public discussion. This process requires special treatment and attention to prevent abuse.

In civil SLAPP cases, when civil lawsuits are used, the main action that can be taken by the courts is:

- **Dismissal of SLAPP lawsuit as unfounded at an early stage:** Courts should be able to identify and dismiss SLAPP lawsuits as unfounded, *based on the above indicators*, at the earliest possible stage of the proceedings after the request has been reviewed and assessed as unfounded.

The refusal in question requires legal changes, however, the courts can handle these cases with priority within the time available to minimize the harm to public participation.

In SLAPP criminal cases, when criminal charges are filed that target public participation, the main action that can be taken by prosecutors is:

- **Dismissal of abusive criminal charges and failure to initiate investigations:** Prosecutors can use the *above-mentioned indicators* to identify criminal charges that are made with the aim of intimidating and preventing public participation at an early stage and to prevent the initiation of investigations without a solid factual basis.

In administrative SLAPP cases, when dealing with administrative bodies, the main action that can be taken by the administrative bodies is:

→ **Prohibition of abuse of administrative procedures:** State administrative bodies can use the *above-mentioned indicators* to identify actions taken with the aim of abusing administrative procedures to impede public participation. Particular care should be taken especially in situations where administrative law is used for cases of public participation that may be related to journalism, activism or any other area of general interest.

Taking these actions is important to prevent defendants from facing lengthy and costly proceedings that serve only to intimidate and deter their engagement in public debate. At the same time, taking these actions by the relevant bodies helps to ensure that judicial proceedings are not used for intimidation purposes, but for the protection of legitimate rights.

5. Conclusion

In conclusion, this guideline aims to raise awareness and provide practical guidance to legal authorities, courts and prosecutors in identifying and combating SLAPP lawsuits. Building on the CoE Recommendation against SLAPP lawsuits and the EU Directive against SLAPP lawsuits, this material helps to highlight the risk that these legal actions pose to freedom of expression and public participation. Through the use of the defined indicators, legal authorities can identify and deal with SLAPP lawsuits effectively, preventing abuses that can undermine democratic processes and the rights of individuals.

Protection from SLAPP lawsuits requires awareness and concrete actions by courts, prosecutors, and lawyers to ensure a fair and transparent system, guaranteeing a safe and open environment for public debate and participation. In this context, it is important that strategies against SLAPPs take into account the diverse needs of affected individuals and groups, ensuring equal access to legal protection. Creating more effective mechanisms to address the consequences of these lawsuits will help strengthen freedom of expression and protect public participation for all.



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