



Sued Into Silence

How the rich and powerful use legal tactics to shut critics up

Contents

Glossary	3
Executive summary	5
Introduction	8
SLAPPs in the EU	18
Who is affected?	21
Who brings the threats?	30
The way forward	36

Glossary

The definitions provided here are for illustration purposes and are not to be considered exhaustive.

Civil society

The wide array of non-governmental and not-for-profit organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil society organisations include community groups, non-governmental organisations (NGOs), labour unions, indigenous groups, charitable organisations, faith-based organisations, professional associations and foundations.

Claimant

A party that starts a lawsuit (also a plaintiff).

Defamation

An untrue expression (written or oral) that harms someone's reputation. Depending on the relevant national law, it may be a criminal offence and/or entail civil liability.

Defendant

A party that is being sued in a lawsuit.

Domicile

The place where one lives in a permanent manner. The exact legal definition depends on the applicable domestic law.

Fundamental rights

In the EU legal framework, “human rights” are defined as “fundamental rights”. Fundamental rights are enshrined in the Charter of Fundamental Rights of the European Union.

Libel

Defamation in written form.

Non-governmental organisation

All non-state, not-for-profit structures, non-partisan and non-violent, through which people organise to pursue shared objectives and ideals, whether political, cultural, social or economic.

Plaintiff

A party that starts a lawsuit (also a claimant).

Racketeering

A crime involving the extortion of money from the victim. From a legal point of view, the exact definition of this offence depends on the applicable national law.

Executive Summary

Across the EU, journalists, activists, academics and their organisations are facing legal threats or fighting lawsuits designed to shut them up. These lawsuits, brought by companies or powerful individuals and designed to silence critics, are called SLAPPs – Strategic Lawsuits Against Public Participation.

The term SLAPP has its roots in the United States but, as this report shows, the practice is also widespread in Europe.

SLAPPs often target journalists and media outlets. However, they are also used against activists and NGOs, and academics who speak out in the public interest. In Germany, for example, coal giant RWE is suing a 24-year-old climate activist for encouraging acts of civil disobedience in response to the climate crisis. In France, construction company VINCI has brought a defamation case against the NGO Sherpa which accused the company's Qatari subsidiary of using forced labour. In Poland, state broadcaster TVP sued legal professor Wojciech Sadurski for criticism expressed on Twitter.

Many SLAPPs are based on national defamation laws. They can take the form of criminal lawsuits, depending on the national law. In Italy, over 9,000 criminal defamation lawsuits were filed in 2017 alone, many of which would count as SLAPPs. But SLAPPs can also be based on other legislation. In Hungary, the EU's General Data Protection Regulation has reportedly been used to intimidate journalists. US company Energy Transfer Partners sued Greenpeace International and BankTrack, both registered in the Netherlands, under an anti-mafia law, the Racketeer Influenced and Corrupt Organisations Act (RICO).



Anti-coal protest in Germany - © Alle Dörfer Bleiben / Bund / Campact / Naturfreunde Deutschlands / Greenpeace
Coal giant RWE is suing climate activist Daniel Hofinger for encouraging anti-coal protests.

The threat of a lawsuit is often sufficient to achieve the objective. This is because claimants often seek damages that are disproportionate to the conduct targeted by the lawsuit, and could even financially ruin the defendant. For example, Spanish meat producer Coren is demanding €1 million in damages from environmental activist Manuel García who accused the company of illegal livestock waste management practices.

Claimants may also use procedural manoeuvres to drive up the length and cost of the litigation, and bring cases in jurisdiction they perceive to be favourable for their case, rather than to the court best placed to hear the claim. For example, Malta's Pilatus Bank sued Maltese journalist Daphne Caruana Galizia for defamation in both the UK and the US.

SLAPPs may also target individuals rather than the organisations they belong to. For example, UK businessman Arron Banks sued journalist Carole Cadwalladr, not for her journalism directly, but in relation to comments she made in TV talks and tweets, a move apparently intended to isolate her from the institutional protection of her newspaper, *The Observer*.

These tactics mean that SLAPPs are a particular problem for freelance journalists, individual activists or academics or small organisations such as independent media outlets or NGOs. Faced with the threat of lengthy litigation and expensive legal fees, many are forced into silence.

While the full extent of the SLAPPs is unknown, it is clear that SLAPPs are a threat to anybody acting as a ‘watchdog’ in society, exposing wrongdoing by powerful businesses and individuals. The result is a tangible limitation of the EU’s fundamental rights to freedom of expression and information, and the right to protest.

Parts of the US, Canada and Australia have introduced specific laws to protect against SLAPPs. However, no such protections exist in the EU, either in any of the member states or for the EU as a whole.

More than 100 NGOs and 32 members of the European Parliament have called for an EU anti-SLAPP directive and funds to support all victims of SLAPPs. European Commission vice-president Vera Jourová has signalled repeatedly that she would take action against SLAPPs. Given the breadth of the problem, as documented in this report, it is high time that these announcements are put into practice.

Introduction

“I spent a couple of bucks on legal fees and they spent a whole lot more. I did it to make his life miserable, which I’m happy about.”¹

With these words, Donald Trump described his satisfaction at a failed lawsuit that he brought against journalist Timothy O’Brien. Trump sought US\$5 billion in damages with the aim of silencing criticism – in this case, a book by O’Brien suggesting that Trump’s net worth is far lower than the billions he generally claims. A well-connected and litigious businessman threatening a critic with financial ruin is fairly typical of Strategic Lawsuits Against Public Participation – SLAPPs.

The term SLAPP has its roots in the United States but, as this report shows, SLAPPs are also widespread in the European Union.² Twenty-eight US states, in addition to the Philippines and some

¹ Farhi, P. (2016) “What really gets under Trump’s skin? A reporter questioning his net worth” *The Washington Post*, 8 March, https://www.washingtonpost.com/lifestyle/style/that-time-trump-sued-over-the-size-of-hiswallet/2016/03/08/785dee3e-e4c2-11e5-b0fd-073d5930a7b7_story.html

² Initially by Professor George W. Pring. Resource Centre on Media Freedom in Europe (2019) “SLAPPs: Strategic Lawsuits Against Public Participation”, <https://www.rcmediafreedom.eu/Publications/Academic-sources/SLAPPs-Strategic-Lawsuits-against-Public-Participation>

parts of Canada and Australia now have anti-SLAPP laws that protect public interest watchdogs such as journalists, activists, academics, and non-governmental organisations (NGOs).³ However, no such protections exist in the EU, either in any of the member states or for the EU as a whole.

What are SLAPPs?

Strategic Lawsuits Against Public Participation are legal cases brought with the intention of silencing or intimidating acts of public participation, including advocacy, activism, and reporting in the public interest. SLAPPs are filed against investigative journalists, activists, NGOs, academics or any other citizens who have exposed wrongdoing or expressed critical positions on matters of political or social significance.⁴

While all SLAPPs are intended to have a chilling effect and to silence critics, they can take different forms in different contexts. One of the core features of SLAPPs is a massive imbalance of power and resources. Otherwise, these lawsuits are characterised by a series of overlapping similarities:

Intent to drain resources

Apart from silencing, intimidating and distracting critics, SLAPPs strive to drain their resources.⁵

The Maltese journalist Daphne Caruana Galizia, who was facing more than 40 SLAPP cases at the time of her murder⁶ explained:

“There is no penalty to be paid by those who file cases unnecessarily, even if they eventually lose the case. Meanwhile, the journalist who has been sued has to pay a lawyer to defend him/her, pay fees to file a formal response to the suit, and go to many court hearings over the course of several years.

³ Allaby, E (2019) “After journalist’s murder, efforts to combat SLAPP in Europe”, 24 April, <https://www.cjr.org/analysis/slapp-daphne-caruana-galizia-malta.php> ; Preston J. (2013) “Participation from the Deep Freeze “Chilling” by SLAPP Suits”, 20 March, http://greenaccess.law.osaka-u.ac.jp/wp-content/uploads/2013/04/18en_preston.pdf

⁴ Miyandazi, F. (2019) “How to stop SLAPPs – the intentional silencing of critical voices”, 23 December, <https://www.ecpmf.eu/how-to-stop-slapps-the-intentional-silencing-of-critical-voices/>

⁵ Verza, S. (2018) “SLAPP: the background of Strategic Lawsuits Against Public Participation”, 31 July, <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>

⁶ Caruana Galizia M., Caruana Galizia A., Caruana Galizia P. (2019) “Written evidence to the UK’s House of Commons Foreign Affairs Committee (GMF0025)”, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-fco-and-global-media-freedom/written/102583.html>



Daphne Caruana Galizia memorial, Malta - © Continentaleurope (CC BY-SA 4.0) — When Maltese journalist Daphne Caruana Galizia was killed, she was facing more than 40 civil and criminal defamation lawsuits from an array of business people and politicians.

Even if the journalist is cleared of libel, he or she has still paid a heavy price in terms of stress, time wasted and money spent.”⁷

Her example shows how SLAPPs are extremely onerous for the defendant. They are often characterised by procedural manoeuvres to extend the length of the case or drive up costs, such as failing to turn up at court or pursuing appeals with little chance of success.⁸

A number of media outlets and NGOs have reported increases in insurance premiums, or difficulties in taking out liability insurance, due to the risk of SLAPPs.⁹

Engaging in the process is more important than winning

The objective of SLAPPs is not to bring justice, but rather to impose a burden on critical voices. Indeed, what counts is not winning but starting the litigation, or even threatening the possibility of it. In addition, the judicial process may force the disclosure to courts of documents that could reveal the defendant’s work-

⁷ International Press Institute (2017) “Q&A: the abuse of libel laws in Malta”, 1 February, <https://ipi.media/qa-the-abuse-of-libel-laws-in-malta/>

⁸ Alba, E. and Jaramillo L. (2020) Personal interview, 9 January

⁹ Rose, A. (2020) Personal interview, 14 January; Kusari, F. (2020) Personal interview, 14 January

ing methods or sources. Consequently, the mere prospect of a SLAPP can have a deterrent effect, discouraging journalists or activists from investigating specific politicians or corporations with a reputation for being litigious.¹⁰

The sheer cost of mounting a defence can be so high that publishers, newspapers and NGOs agree to delete or alter content to ward off the threat of litigation. For example, *Malta Today* reported that it had withdrawn articles “not because they were wrong, but because it could not afford the astronomical costs of fighting a lawsuit in the United States [where the legal claims were lodged].”¹¹ Other major Maltese newspapers and online portals reported removing articles due to similar threats.¹² “The threat itself can be enough to silence the story” says Caroline Muscat, an experienced investigative journalist based in Malta and founder of *The Shift News*.¹³

“Such suits are a particular problem for independent media outlets and other small organisations” according to Jodie Ginsberg, Chief Executive of Index on Censorship. “They are financially draining and can take years to process. Faced with the threat of a lengthy litigation battle and expensive legal fees, many who receive such threats are simply forced into silence.”¹⁴

Disproportionate claims for damages

SLAPP claimants often seek damages that are disproportionate to the conduct targeted by the lawsuit.¹⁵ This can involve demanding exorbitantly high compensation that could financially ruin the victims. In the US, Energy Transfer Partners, the firm behind the controversial Dakota Access Pipeline, filed a US\$900 million suit against Greenpeace International and others that was dismissed in February 2019.¹⁶ Pilatus Bank filed a US\$40 million defamation

¹⁰ Kusari, F. (2020) Personal interview, 14 January

¹¹ Agius, M. (2017) “IGM calls for action against SLAPP lawsuits”, *Malta Today*, 29 December, https://www.maltatoday.com.mt/news/national/83370/igm_calls_for_action_against_slapp_lawsuits#.XiONfxd7lla

¹² Borg-Barthet, J. (2019) “Advice concerning the introduction of anti-SLAPP legislation to protect freedom of expression in the European Union”, *University of Aberdeen Centre for Private International Law*, p.4; Editorial (2017) ‘Pilatus Bank: Malta’s media freedom SLAPPed in the face’, *The Malta Independent*, 17 December, <http://www.independent.com.mt/articles/2017-12-17/newspaper-leader/TMIS-Editorial-Pilatus-Bank-Malta-s-media-freedom-SLAPPed-in-the-face-6736182724>

¹³ Muscat, C. (2020) Personal interview, 28 January

¹⁴ Demarco, I. (2020) “Index on Censorship project to expose ‘vexatious’ legal threats on journalists”, *The Shift News*, 10 January, <https://theshiftnews.com/2020/01/10/index-on-censorship-project-to-expose-vexatious-legal-threats-on-journalists/>

¹⁵ Business & Human Rights Resource Center (2019) “Silencing the Critics: How big polluters try to paralyse environmental and human rights advocacy through the courts”, <https://www.business-humanrights.org/en/silencing-the-critics-how-big-polluters-try-to-paralyse-environmental-and-human-rights-advocacy-through-the-courts>

¹⁶ Greenpeace International (2019) “US Federal Court dismisses \$900 million pipeline company

case against Daphne Caruana Galizia in Arizona in 2017.¹⁷

We can find similar examples in the EU. In 2016, the Bolloré group (a large French transport, paper and energy company) demanded €50 million from the news channel France 2 for defamation and damage to its brand.¹⁸ In 2020, Spanish industrial meat producer Coren sued environmental activist Manuel García for a million euro.¹⁹ In the UK case *EDF Energy v No Dash for Gas*, the energy giant filed a £5 million claim against 21 environmental campaigners for “aggravated trespass”.²⁰ Far smaller amounts can also be financially ruinous for individuals or small organisations (see *Holzindustrie Schweighofer v Hans Hedrich*, below).

Disparity of power and resources

The aggressive exploitation of “the disparity of power and resources of the parties” is a core feature of many SLAPP cases.²¹ This often includes the targeting of individual activists and journalists to isolate them from legal protection of their organisation.²²

The case brought by Arron Banks, multimillionaire funder of the Leave.EU campaign, against the investigative journalist Carole Cadwalladr is a clear example of this tactic. Instead of suing Cadwalladr for her journalism directly, Banks brought a £1 million defamation lawsuit against her in relation to comments made in two public talks and two tweets, a move apparently intended to isolate the journalist from the institutional protection of her newspaper, *The Observer*.²³ If Cadwalladr loses she is threatened with

lawsuit against Greenpeace”, 15 February, <https://www.greenpeace.org/international/press-release/20993/us-federal-court-dismisses-900-million-pipeline-company-lawsuit-against-greenpeace/>

17 Vella, M. (2018) “Pilatus lawyers said damages for US lawsuit against Malta journalists would reach \$40 million”, *Malta Today*, 6 February, <https://www.maltatoday.com.mt/news/national/84289/pilatus-lawyers-said-damages-for-us-lawsuit-against-malta-journalists-would-reach-40-million#.XxfaBZ4zabh>

18 Keslassy, E. (2016) “Vincent Bolloré’s Company Sues France 2 TV Channel, Claims 50 Million Euros in Damages” *Variety*, 22 July, <https://variety.com/2016/tv/global/vincent-bollores-sues-france-2-50-million-euros-1201820554/>

19 20 Minutos (2020) “Un ecologista se enfrenta a una demanda de Coren por aparecer en un programa de TV denunciando vertidos en A Limia” 28 February, <https://www.20minutos.es/noticia/4169485/0/un-ecologista-se-enfrenta-a-una-demanda-de-coren-por-aparecer-en-un-programa-de-tv-denunciando-vertidos-en-a-limia/>

20 Finchett-Maddock (2013), “Responding to the Private Regulation of Dissent: Climate Change Action, Popular Justice and the Right to Protest” *Journal of Environmental Law* Vol. 25, Issue 2, p.293

21 European Environmental Bureau (2018), “Challenge Accepted? How to Improve Access to Justice for EU Environmental Laws”, p.12, <https://eeb.org/publications/105/sustainability-governance/96092/challenge-accepted-report.pdf>

22 *Resolute v. Greenpeace*, Case No. 17-cv-02824-JST; Vincent, R. (2020) Personal interview, 10 January

23 Pegg, J. (2019) “Judge makes preliminary ruling in Carole Cadwalladr libel case” *The Guardian*, 12 December, <https://www.theguardian.com/law/2019/dec/12/judge-makes-preliminary-ruling->

bankruptcy and losing her home. But even if she wins, the case is keeping her away from other reporting.²⁴

Campaigners and journalists have criticised the case as “another example of a wealthy individual appearing to abuse the law in an attempt to silence a journalist and distract from these issues,” noting that “the increasing deployment of what appear to be SLAPP lawsuits in the UK poses a threat to media freedom and public interest advocacy.”²⁵

SLAPPs can pose particular risks to freelance journalists, who do not necessarily receive the protections afforded to permanent staff of media organisations. In the UK, for example, legal provisions that allow media organisations’ in-house lawyers to act for freelancers in the case of libel law do not extend to data protection or privacy cases.²⁶

Attacks on free speech

SLAPPs are a direct attack on free speech and most commonly take the form of defamation cases.²⁷ The available data is very limited, but to give a sense of the scale it might be noted that there are over 900 open defamation cases against journalists in Croatia alone, and many more in Italy.²⁸

SLAPPs can take many other forms, however. In the UK, libel cases are increasingly accompanied by privacy and data protection claims, which can help plaintiffs circumvent the “public interest” defence against defamation.²⁹ In Hungary, the EU’s General Data Protection Regulation has also reportedly been used to intimidate journalists.³⁰

[in-carole-cadwalladr-libel-case](#); Perfect, J (2019) “Index calls on Arron Banks to drop SLAPP lawsuit against Carole Cadwalladr”, 13 December <https://www.indexoncensorship.org/2019/12/index-calls-on-arron-banks-to-drop-slapp-lawsuit-against-carole-cadwalladr/>;

24 Zerofsky, E. (2019) “The Investigator”, *Colombia Journalism Review*, Fall, https://www.cjr.org/special_report/guardian-carole-cadwalladr.php

25 Webster, P., R. Vincent et al. (2019) “Letter: press freedom campaigners call for action on ‘vexatious lawsuits’” *The Guardian*, 20 July, <https://www.theguardian.com/world/2019/jul/20/letter-press-freedom-campaigners-call-for-action-on-vexatious-lawsuits>

26 Phillips, G. (2020) Personal interview, 9 January

27 Resource Centre on Media Freedom in Europe (2019) “SLAPPs: Strategic Lawsuits Against Public Participation”, <https://www.rcmediafreedom.eu/Publications/Academic-sources/SLAPPs-Strategic-Lawsuits-against-Public-Participation>

28 Total Croatia News (2020) “905 Lawsuits Against Journalists and Media Outlets Active in Croatia”, 2 May, <https://www.total-croatia-news.com/politics/43332-journalists>; Pierobon, C. and Rosà, P. (2019) “SLAPPs: The Italian Case”, 12 November, <https://www.rcmediafreedom.eu/Tools/Legal-Resources/SLAPPs-the-Italian-Case>

29 Phillips, G. (2020) Personal interview, 9 January

30 Index on Censorship (2020) “A gathering storm: the laws being used to silence the media” <https://www.indexoncensorship.org/wp-content/uploads/2020/06/a-gathering-storm.pdf>



Greenpeace Canada action at Montreal's Mount Royal Cross - © Dan Mathieu / Greenpeace — Greenpeace Canada activists transformed the monument into 'scales of justice' representing the imbalance of power between the destructive practices of Canada's largest logging company, Resolute Forest Products and the defenceless Boreal Forest.

Elsewhere, SLAPPs have also been brought using a variety of other legal channels, ranging from trademark violations to both racketeering and anti-mafia statutes.

SLAPP as a specialised business

In the US, many of the most notorious SLAPP cases are brought by the same law firms. Kasowitz Benson Torres, which represented Trump against O'Brien, was also responsible for filing the US\$900 million Energy Transfer Partners suit against Greenpeace International and other environmental organisations, as well as a US\$300 million suit brought by logging company Resolute against Greenpeace US and Greenpeace International and other environmental campaigners.³¹

³¹ Hertsgaard, M. (2017) "Greenpeace beats back a SLAPP lawsuit – for now", *The Nation*, 25 October, <https://www.thenation.com/article/greenpeace-beats-back-slapp-lawsuit-for-now/>

In Europe, some London-based law firms, including Mishcon de Reya and Carter-Ruck, have made themselves a name for what it is known as “reputation management”. “British law firms have a reputation for muscling in on journalists and silencing critics with the threat of ruinous court action,” according to Matthew Vella, editor of *Malta Today*.³²

In 2017, Mishcon de Reya sent “harassing and threatening letters” to Daphne Caruana Galizia on behalf of Henley & Partners, Malta’s concessionaire for a cash for passports scheme.³³ The firm also threatened Maltese newspaper *Malta Today*, on behalf of businessman Robert Baker, over reporting of a complex company structure linked to Pilatus Bank. “Our client is entitled to an apology, an award of damages and his costs... our client’s attitude to these remedies will be determined by your response to this letter,” Mishcon de Reya wrote, demanding the take-down of the article in question and ‘instructing’ not to publish the legal threat.³⁴

SLAPPs issued by Carter-Ruck include a threat of libel proceedings against the Soil Association (the UK’s organic farming certification body) after it objected to a planning application for an intensive pig farm in 2011.³⁵ Carter-Ruck suggested on behalf of Midland Pig Producers (MPP) that the planning objection was defamatory and should be withdrawn. This attempt to use libel law to interfere with a democratic planning process was condemned as “legal bullying.”³⁶

While SLAPPs are by definition brought by private actors, including politicians and state officials in their private capacity, these law firms are also used by governments to carry out similar tactics. In 2019, Carter-Ruck sent legal threats on behalf of the Maltese government to Manuel Delia, one of the co-authors of “Murder on the Malta Express: Who Killed Daphne Caruana Galizia?”.³⁷ It

32 Malta Today Staff (2018) “UK legal threat against *Malta Today* over Azeri-Pilatus connection report”, 6 May, https://www.maltatoday.com.mt/news/national/86652/uk_legal_threat_against_maltatoday_over_azeripilatus_connection_report#.XutiU2gzblV

33 Caruana Galizia, D. (2017) “Why it was in November that the Prime Minister’s chief of staff instructed Henley & Partners to threaten to ruin me financially by suing me in a London court”, 31 May, <https://daphnecaruanaGalizia.com/2017/05/november-prime-ministers-chief-staff-instructed-henley-partners-threaten-ruin-financially-suing-london-court/>

34 Malta Today Staff (2018) “UK legal threat against *Malta Today* over Azeri-Pilatus connection report”, 6 May, https://www.maltatoday.com.mt/news/national/86652/uk_legal_threat_against_maltatoday_over_azeripilatus_connection_report#.XutiU2gzblV

35 Lawrence, F. (2011) “Soil Association given libel warning after objection to huge pig farm” *The Guardian*, 18 January, <https://www.theguardian.com/world/2011/jan/18/soil-association-libel-pig-farm>

36 Lawrence, F. (2011) “Soil Association given libel warning after objection to huge pig farm” *The Guardian*, 18 January, <https://www.theguardian.com/world/2011/jan/18/soil-association-libel-pig-farm>

37 Council of Europe (2019) “Attempted Intimidation of Journalists Carlo Bonini, John Sweeney and Blogger Manuel Delia”, 24 October, No. 129/2019 https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR

also threatened several UK-based media outlets, including the *Financial Times*, on behalf of the Hungarian government, after they wrote critically about the government's policies.³⁸

In jurisdictions in both the UK and US, SLAPPs and related legal tactics seem to emerge as a specialisation for a small number of law firms. SLAPPs as an area of legal practice, involving the abuse of court proceedings and otherwise legitimate legal tools such as libel and privacy laws, call into question some firms' adherence to the core principles of the legal profession, notably the "respect for the rule of law and the fair administration of justice". According to these principles, a lawyer "must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend".³⁹

Forum shopping

One of the markers of law firms specialising in SLAPPs is that they bring cases in what they perceive to be the most favourable legal jurisdiction, rather than the defendant's domicile. Trump's US\$5 billion case was likely brought in New Jersey because it is one of a minority of US states that has no anti-SLAPP statute. The UK has long been a destination for 'libel tourism', with cases brought there because of the country's relatively stringent libel laws. It can also cost more to defend cases in London, and disempower the defendant, which appears to have been a motivating factor in Pilatus Bank's decision to sue Daphne Caruana Galizia for defamation in both the UK and US.⁴⁰

In another example of libel tourism, London-based law firm Schillings wrote to journalist Rafael Marques de Morais who was writing in Angola for an Angolan publication about the looting of Angola's sovereign wealth fund. The person he had written about was not a British citizen, nor did he reside in the UK. Schillings said it reserved its right to take legal action on behalf of its client in any jurisdiction.⁴¹

[coesojportlet_alertId=53683549](#)

38 444 (2019) "A legsúlyosabb londoni ügyvédekkel próbálnak nyomást gyakorolni a Magyarországról kritikusan író nemzetközi lapokra", 25 October, <https://444.hu/2019/10/25/a-legsulyosabb-londoni-ugyvedekkel-probalnak-nyomast-gyakorolni-a-magyarorszagrol-kritikusan-iro-nemzetkozi-lapokra>

39 Council of Bars and Law Societies of Europe (CCBE) (2006), "Charter of Core Principles of the European Legal Profession".

40 Borg-Barthet, J. (2019) "Advice concerning the introduction of anti-SLAPP legislation to protect freedom of expression in the European Union", *University of Aberdeen Centre for Private International Law*, p.3

41 TAX3 Committee of the European Parliament (2018) "Public hearing: lessons learned from the Paradise Papers" verbatim report, 21 June, https://www.europarl.europa.eu/cmsdata/152987/TAX3%2021%20June%202018_Verbatim%20report_EN.pdf

In Austria, a civil lawsuit was brought against Kyrgyzstani news website 24.kg in relation to an article discussing the breakdown of a business partnership in Kyrgyzstan. The case was brought by T & F Trade and Finance, one of the companies named in the article. The Austrian court ruled that the website should pay €40,000 in damages to the company that brought the case, but the defendants had little opportunity to prepare their defence as they were unaware of the case until months after it was originally filed.⁴²

⁴² ARTICLE 19 (2019) "ARTICLE 19 urges Austrian court to halt 'libel tourism' case", 9 July, <https://www.article19.org/resources/article-19-urges-austrian-court-to-halt-libel-tourism-case/>

SLAPPs in the EU

SLAPPs have long been a problem in the EU, but the issue rose up the political agenda in Brussels after the murder of Daphne Caruana Galizia.

In February 2018, a cross-party group of members of the European Parliament called on the European Commission to table anti-SLAPP legislation, mirroring similar measures in many US states.⁴³ After the European election of 2019, another group of MEPs renewed the call in May 2020.⁴⁴

European Commission vice-president Vera Jourová signalled repeatedly that she would take action against SLAPPs. During her October 2019 confirmation hearing, she noted the “direct relevance” of SLAPPs to her values and transparency portfolio and said she would study “the possibility of updating the law”. Jourová added: “I see some possibilities in international private law, but it may not be the only possibility”. Some of the more concrete ideas

43 Casa, D. et al. (2019) “Letter to Vice-President Timmermans”, 19 February, https://www.eppgroup.eu/sites/default/files/pr_attachment/Timmermans%20Letter_SLAPP.pdf

44 Strugariu R. et al. (2020) “Letter to Vice-President Jourova”, 28 May, <https://ramonastrugariu.eu/2020/05/28/scrisoare-deschisa-catre-vice-presedinta-comisiei-europene-pe-tema-legislatiei-anti-slapp/>

were the “possibility of creating a system of legal aid or some form of helpline for journalists under threat,” as well as enhanced monitoring as a means to identify the scale of the problem.⁴⁵

In June 2020, she reiterated her intention to fight SLAPPs. She announced plans to review existing EU regulations to end forum shopping for defamation cases, while remaining vague about the prospects of new legislation that would set a binding minimum standard of protection against SLAPPs across the EU for all those affected.

As research by the Resource Centre on Media Freedom in Europe has shown, it is difficult to quantify the extent of SLAPPs.⁴⁶ Proxy measures can offer some insight. For example, in Italy, 9,479 criminal defamation lawsuits were filed in 2017 alone, two-thirds of which were dismissed at a preliminary stage. Many of these cases could be considered SLAPPs. It is worth noting that the figures only relate to criminal defamation, and do not count other SLAPPs cases which use other laws to target civil society actors.⁴⁷

These numbers don’t tell the whole story, however, because out-of-court settlements and acts of self-censorship as a result of the threat of SLAPPs cannot be quantified.⁴⁸ In addition, many cases go unreported because the victims fear the consequences of publicising their cases.⁴⁹

45 European Parliament (2019), Vera Jourova hearing, 25 September <https://www.europarl.europa.eu/news/en/headlines/priorities/commission-hearings-2019/20190910STO60712/vera-jourova-czech-republic>

46 Pierobon, C. And P. Rosà (2019) “SLAPPs: The Italian Case”, 12 November, <https://www.rcmediafreedom.eu/Tools/Legal-Resources/SLAPPs-the-Italian-Case>

47 Pierobon, C. And P. Rosà (2019) “SLAPPs: The Italian Case”, 12 November, <https://www.rcmediafreedom.eu/Tools/Legal-Resources/SLAPPs-the-Italian-Case>

48 Pierobon, C. And P. Rosà (2019) “SLAPPs: The Italian Case”, 12 November, <https://www.rcmediafreedom.eu/Tools/Legal-Resources/SLAPPs-the-Italian-Case>

49 Aba, E. and L. Jaramillo (2020) Personal interview, 9 January

Overview of SLAPP cases in Europe

Ireland

Ryanair brought defamation cases against former pilots and members of the Ryanair Pilots Group, who were trying to form a trade union.

Billionaire Denis O'Brien has brought defamation cases against multiple media outlets in Ireland, leading *The Irish Times* to call him a "wealthy serial litigator".

France

Teodoro Obiang, president of Equatorial Guinea, brought defamation claims against French NGOs and newspapers, including Transparency International France, *Le Parisien* and *L'Express* for investigating corruption and misconduct.

Bolloré or affiliated companies launched more than twenty defamation lawsuits against journalists, lawyers and activists investigating alleged human right abuses.

Portugal

Eucalyptus pulp producer Celtejo sued activist Arlindo Marquês over accusations that the company pollutes the Tagus River.

Spain

Industrial meat producer Coren sued activist Manual García for saying the company's poor livestock waste management was polluting As Conchas reservoir.

United Kingdom

Appleby sued *The Guardian* and the BBC to prevent the further reporting of tax-avoidance "The Paradise Papers".

Arron Banks brought a £1 million lawsuit against journalist Carole Cadwalladr for two public talks and two tweets.

Belgium

Investigative journalists David Leloup and Tom Cochez were targeted with numerous legal suits on reporting on corruption involving MP Alain Mathot and companies in Liège.

Germany

German coal giant RWE sued a 24-year-old climate activist who had called for acts of civil disobedience in response to the climate crisis.

Corporate accountability campaigners SumOfUs were hit with defamation and trademark infringement cases for a peaceful protest outside PayPal's headquarters

Austria

Holzindustrie Schweighofer brought a defamation case against the vice-president of Romanian NGO, Neuer Weg, campaigning against illegal logging.

T & F Trade and Finance sued Kyrgyzstani news website 24.kg for €40,000.

Poland

Legal professor Wojciech Sadurski faces three criminal and civil defamation suits based on tweets critical the country's ruling party PiS and the state broadcaster.

PiS and state-owned companies have brought over 40 lawsuits against the newspaper *Gazeta Wyborcza*.

Slovakia

OFZ, a dump management company, sued campaigner Ján Šimún for reporting high levels of arsenic in the Orava river.

Romania

Elena Popa, a Romanian caregiver in Austria, was sued by recruitment companies for creating a closed Facebook group about abusive employers of domestic workers in Austria.

Italy

Over 9,000 criminal defamation lawsuits against journalists were filed in 2017 alone.

Roberto Saviano, world-renowned journalist, was sued in a criminal defamation suit by politician Matteo Salvini.

In December 2019, the investigative journalist Federica Angeli won her 111th defamation lawsuit. She lives under police protection for her work.

Malta

Daphne Caruana Galizia had more than 40 SLAPP cases open against her at the time of her murder.

Malta's largest newspapers all removed or amended stories because they could not afford to challenge legal actions.

Croatia

A Dutch company, Elitech, and its Croatian subsidiary sued Zelena akcija (Friends of the Earth Croatia) for its campaign against a golf resort in Dubrovnik.

Croatian journalists and media outlets are facing 905 active lawsuits. Although it is not possible to know if all are SLAPPs, they attest to the hostile environment reporters face.

Who is affected?

SLAPPs are a threat to anybody who plays a watchdog role. This section explores some of the typical targets of SLAPPs and provides a few examples to illustrate the problem.

Media

Journalists and media organisations are common targets for SLAPP lawsuits, often facing multiple cases at the same time.

When Maltese journalist Daphne Caruana Galizia was killed, she was facing more than 40 civil and criminal defamation lawsuits from an array of business people and politicians, brought by multiple law firms.⁵⁰ These include suits filed by Pilatus Bank, which had its European banking license withdrawn due to money-laundering claims; Joseph Muscat, who stood down as Prime Minister of Malta in January 2020 over his mishandling of the Caruana Galizia case; Keith Schembri, Muscat's former Chief of Staff, who

⁵⁰ Caruana Galizia, M., Caruana Galizia A. and Caruana Galizia P. (2019) "Written evidence to House of Commons Foreign Affairs Committee (GMF0025)", <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-fco-and-global-media-freedom/written/102583.html>

has been arrested and questioned in relation to Caruana Galizia's murder; and a number of cabinet ministers and political donors.

In July 2019, Caruana Galizia's widower and sons were still fighting 27 of these costly and damaging SLAPP defamation cases against her, more than 21 months after her assassination.⁵¹ "We are in a situation where lawyers acting for government officials, including the prime minister, are cross-examining a murder victim's family on her sources and their confidential exchanges," wrote Matthew, Andrew and Paul Caruana Galizia, Daphne's three sons, in written evidence to the UK Parliament.⁵² Caruana Galizia was clear that the multiple legal threats against her did "not impact on the subjects I choose", although she noted that many of Malta's newspaper staff and editors were "generally terrified of libel suits to a degree that has a chilling effect on the way stories are reported."⁵³

SLAPPs against journalists and media organisations have also been reported in other EU countries.⁵⁴ As of May 2020, journalists and news outlets in Croatia were facing over 905 lawsuits.⁵⁵ Many of these cases include the offence of "shaming", which is still part of the Croatian Criminal Code, and involves compensation claims made by politicians and rich people for alleged damages such as "mental anguish" or "tarnished reputation".⁵⁶

In Italy, Amalia De Simone, a prominent investigative journalist, has faced a long string of SLAPPs (mainly criminal defamation cases). Every single one of these cases has been dismissed by the Public Prosecutor's Office before they reached the first instance court, but the plaintiffs routinely appeal these dismissals to drag out the process. As a result, "De Simone has still faced very long

51 Webster, P et al (2019) "Letter: press freedom campaigners call for action on 'vexatious lawsuits'", *The Guardian*, 20 July, <https://www.theguardian.com/world/2019/jul/20/letter-press-freedom-campaigners-call-for-action-on-vexatious-lawsuits>.

52 Caruana Galizia, M., Caruana Galizia A. and Caruana Galizia P. (2019) "Written evidence to House of Commons Foreign Affairs Committee (GMF0025)", <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-fco-and-global-media-freedom/written/102583.html>

53 International Press Institute (2017) "Q&A: the abuse of libel laws in Malta", 1 February, <https://ipi.media/qa-the-abuse-of-libel-laws-in-malt>

54 Rosà, P. And C. Pierobon (2019) "Croatia and Italy, the chilling effect of strategic lawsuits", 29 October, <https://www.balcanicaucaso.org/eng/Areas/Croatia/Croatia-and-Italy-the-chilling-effect-of-strategic-lawsuits-197339>; International Press Institute (2019), "Italy: Hostility to press is on the rise and it's being stoked by politicians", 8 October, <https://ifex.org/italy-hostility-to-press-is-on-the-rise-and-its-being-stoked-by-politicians/>

55 Total Croatia News (2020) "905 Lawsuits Against Journalists and Media Outlets Active in Croatia", 2 May, <https://www.total-croatia-news.com/politics/43332-journalists>; European Federation of Journalists (2019) "Croatian journalists stage protest against abusive lawsuits", 5 March, <https://europeanjournalists.org/blog/2019/03/05/croatian-journalists-stage-protest-against-abusive-lawsuits/>

56 Council of Europe (2019b) "Wave of Lawsuits Against Journalists in Croatia", No.27/2019 https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesojportlet_alertId=45706786

inquiries and has been subject to continuous legal proceedings that are both expensive and time consuming.”⁵⁷

A study in Germany found that media legal departments received an average of three “press law information letters” per week, which “try to intimidate and influence the editors... through emphasising financial risks emerging from an eventual publication.”⁵⁸

Campaigners and NGOs

SLAPP lawsuits also target campaigners, non-governmental organisations and trade unions.

In France, the VINCI construction group brought a defamation case against the NGO Sherpa, which accused the company’s Qatari subsidiary of using forced labour and working conditions that amounted to servitude.⁵⁹

In Germany, corporate accountability campaigners SumOfUs were hit with a SLAPP in November 2019 for mounting a peaceful protest outside the headquarters of PayPal.⁶⁰ The protest was part of a campaign urging the online payment firm to shut down the account of Pro Chemnitz, a right-wing extremist group.

SumOfUs drove a mobile billboard around PayPal’s German headquarters to mock PayPal, connecting far right imagery with the company’s “It’s easy with PayPal” slogan. The billboard was clearly identifiable as satire, and SumOfUs had checked with a lawyer in advance to ensure that no laws were violated.⁶¹ Despite this, the company alleged defamation as well as claiming that the billboard amounted to a violation of trademark law.

SumOfUs decided that it could afford the risk of pushing ahead with its campaign. It used PayPal’s efforts to silence criticism in its social media efforts and the Pro Chemnitz case quickly became a PR problem for the firm. Two weeks after the billboard protest, PayPal removed Pro Chemnitz from its payment platform and the

⁵⁷ Verza, S. (2018) “Vexatious Cases Hindering Investigative Journalism in Italy”, *Global Freedom of Expression*, 27 March, <https://globalfreedomofexpression.columbia.edu/updates/2018/03/vexatious-cases-hindering-investigative-journalism-italy/>

⁵⁸ European Federation of Journalists (2019) “Germany: lawyer’s attempts to influence reporting are increasing”, 12 August, <https://europeanjournalists.org/blog/2019/08/12/germany-lawyers-attempts-to-influence-reporting-are-increasing/>

⁵⁹ Sherpa (2017) “SLAPPs Brought by VINCI against Sherpa: A New Victory”, 4 July, <https://www.asso-sherpa.org/slapps-brought-by-vinci-against-sherpa-a-new-victory>; Business and Human Rights Resource Center (2019) “Vinci lawsuits (re forced labour in Qatar)” <https://www.business-humanrights.org/en/vinci-lawsuit-re-forced-labour-in-qatar?page=1>

⁶⁰ SumOfUs (2019) “Can you chip in to help us fight back against PayPal?” <https://actions.sumofus.org/a/can-you-chip-in-to-help-defend-us-against-paypal>

⁶¹ Bock, C. (2020) Personal interview, 28 January

legal action against SumOfUs was dropped.⁶²

The case shows that SLAPPs can be turned into a “positive legal or media opportunity” if those targeted are in a position to challenge efforts to silence them.⁶³

In Ireland, Ryanair brought five defamation cases against former pilots and members of the Ryanair Pilots Group, who were attempting to form a trade union.⁶⁴ Ryanair hired a Belfast-based law firm specialising in libel and reputation management, which brought a case against three pilots whom it said had unfairly questioned the airline’s market integrity. The defence lawyer in the case, Paul O’Higgins, accused Ryanair of bringing the case to silence its critics, wanting to “shut the beaks of anyone who might open them.”⁶⁵ Ryanair lost the case. While this case is different from many other examples of SLAPPs, unions are a crucial platform to hold corporations to account for their business practices, and a retaliatory lawsuit for forming a union is a lawsuit against public participation. Moreover, this lawsuit was filed to preemptively block further criticism.

SLAPPs also affect EU-based organisations for their work supporting environmental and human rights campaigns outside the EU.

In 2013 the Natural Fruit Company filed several lawsuits against British migrant rights activist Andy Hall, alleging criminal and civil defamation, as well as violation of Thailand’s computer crimes laws. Hall’s interviews with factory workers and fieldwork in Thailand were the basis of a report by the NGO Finnwatch, which alleged several labour and human rights violations at Natural Fruit Company’s pineapple processing plant.⁶⁶ After numerous cases and appeals, Bangkok’s Prakanong Court ruled against Hall, who was found liable for civil defamation and was ordered to pay 10 million baht (€281,000) to Natural Fruit Co along with legal and court fees.⁶⁷

62 Beuth, P (2019) “PayPal wickelt keine Spenden an Pro Chemnitz mehr ab” Spiegel, 25 November, <https://www.spiegel.de/netzwelt/web/paypal-stoppt-spenden-an-pro-chemnitz-a-1298187.html>

63 Hilson, C. (2016) “Environmental SLAPPs in the UK: Threat or Opportunity?”, p.2 https://www.researchgate.net/publication/283635992_Environmental_SLAPPs_in_the_UK_threat_or_opportunity

64 Golden, D. (2018) “Ryanair’s Secret” *Jacobin* 12 October, <https://jacobinmag.com/2018/10/ryanair-union-strikes-pilots-regulation>

65 RTÉ (2017) “Ryanair loses High Court defamation action”, 21 December, <https://www.rte.ie/news/courts/2017/1221/929091-courts-ryanair-pilots/>

66 UN Office of the High Commissioner on Human Rights (2018), “Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall” <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23095&LangID=E>

67 Business and Human Rights Centre (2018) “Natural Fruit Company lawsuits (re defamation suits against Andy Hall, Thailand)”, <https://www.business-humanrights.org/en/natural-fruit->

In May 2018, a group of UN human rights experts issued a statement condemning the use of defamation legislation against Hall, and criticising the cases against him as an example of the use of SLAPPs.⁶⁸

In August 2017 Energy Transfer Partners filed a US\$900 million lawsuit in the US alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), an anti-mafia statute. The case was brought against Greenpeace International and BankTrack, both of which are NGOs registered in The Netherlands, as well as Greenpeace USA, five individual activists (including a Greenpeace employee) and Earth First!, an activist group.⁶⁹ In its lawsuit, the company alleged a criminal conspiracy to disrupt and damage the Dakota Access Pipeline, as well as lodging separate claims of defamation (against Greenpeace), racketeering and criminal trespass. This included a claim that Greenpeace spread lies about the environmental impact of the Dakota Access Pipeline in order to raise money for itself. The court dismissed all of these claims in February 2019.⁷⁰

BankTrack's involvement in the case shows how corporate claimants in the US can make this type of RICO accusation without much of a basis. Its involvement in the campaign mainly involved writing letters to international banks cautioning them against funding the Dakota Access Pipeline – a common tactic used by this small NGO, which employs seven people.

The case forced BankTrack, as well as Greenpeace, to “divert its time and resources into defending a baseless lawsuit” – one of the hallmarks of SLAPP cases.⁷¹

This was the second RICO case that Greenpeace International had to defend itself against in recent years, following a separate CAD\$300 million lawsuit brought against it by Resolute Forest Products in May 2016.⁷² The case was dismissed by a California

[company-lawsuits-re-defamation-suits-against-andy-hall-thailand](#); Finnwatch (2019) “Appeals Court orders Andy Hall to pay 10 million baht in damages to Natural Fruit”, <https://finnwatch.org/en/news/625-appeals-court-orders-andy-hall-to-pay-10-million-baht-in-damages-to-natural-fruit>

68 UN Office of the High Commissioner on Human Rights (2018), “Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall” <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23095&LangID=E>

69 United States District Court for the District of North Dakota (2019) “Energy Transfer Equity et al. VS. Greenpeace International et al.”, <https://www.greenpeace.org/usa/wp-content/uploads/2019/02/ETP.pdf>

70 Greenpeace (2019) “Federal Court Dismisses \$900 Million Pipeline Company Lawsuit Against Greenpeace”, 14 February, <https://www.greenpeace.org/usa/news/federal-court-dismisses-900-million-pipeline-company-lawsuit-against-greenpeace/>

71 Simons, M. (2017) “Defending BankTrack – Standing Up for Free Speech in Defense of Human Rights and the Environment”, 1 December, <https://earthrights.org/blog/defending-banktrack-standing-free-speech-defense-human-rights-environment/>

72 Moas, A. (2019) “10 reasons a California judge’s decision is good for the planet”, 22 January,

court in January 2019, with the judge ordering Resolute to pay a portion of Greenpeace's legal fees under California's anti-SLAPP law.⁷³

While Greenpeace has considerable experience in defending against lawsuits like these, this is not the case for other NGOs that have been targeted by SLAPPs elsewhere. Shipbreaking Platform, a Brussels-based NGO that campaigns for clean and safe ship recycling, is one such example. In 2017, a €12.5 million case was lodged in an Indian court against the NGO, in addition to receiving legal threats in the US and Belgium. The case is brought against Shipbreaking Platform itself, a number of current and ex staff, individual board members in the US and India, and two organisations that are members of the Shipbreaking Platform's network. This targeting of individuals as well as organisations is typical of SLAPP cases. The delaying tactics adopted by the plaintiffs are also typical, with the intended result of using up the time and resources of Shipbreaking Platform's Indian members.

Individual citizens and academics

Activists are also common victims of SLAPPs. As when targeting journalists, plaintiffs often isolate individuals from their organisations to increase the disparity of power and resources between the parties.

In Spain, environmental activist Manuel García has been sued for €1 million by intensive livestock business Coren. The 2020 criminal lawsuit is linked to García's comments about Coren's alleged illegal livestock waste management practices causing pollution of the As Conchas reservoir in a TV programme aired in September 2019.⁷⁴ This lawsuit came after Coren had threatened to sue other activists and scientists who were researching the nitrate levels in the local waters.⁷⁵

In Portugal, prison-guard-turned-environmental-activist Arlindo Marquês was sued for €250,000 by eucalyptus pulp mill operator Celtejo, which he had accused of polluting the Tagus River

<https://www.greenpeace.org/usa/10-reasons-california-judges-decision-good-planet/>

73 Moas, A. (2019) "10 reasons a California judge's decision is good for the planet", 22 January, <https://www.greenpeace.org/usa/10-reasons-california-judges-decision-good-planet/>

74 20 Minutos (2020) "Un ecologista se enfrenta a una demanda de Coren por aparecer en un programa de TV denunciando vertidos en A Limia", 28 February, <https://www.20minutos.es/noticia/4169485/0/un-ecologista-se-enfrenta-a-una-demanda-de-coren-por-aparecer-en-un-programa-de-tv-denunciando-vertidos-en-a-limia/>; RTVE (2019) España Directo (García's intervention starts at minute 26), <https://www.rtve.es/alcarta/videos/espana-directo/espana-directo-18-09-19/5390902/>

75 Serafín González Prieto, scientist at Instituto de Investigaciones Agrobiológicas de Galicia (2020) Personal interview.



Factory farm in Spain - © Tania Garnica / Greenpeace — Industrial meat producer Coren is suing environmental activist Manuel García for comments about water pollution linked to their activities.

(Rio Tejo).⁷⁶ Since 2015, Marquês had been posting video and photographic evidence of the pollution in the river on social media networks, as well as sending it to the relevant authorities.⁷⁷ In its 2017 defamation suit, the company sought damages for “offences to its credibility and good name”.⁷⁸ Marquês responded by accusing the company of “psychological terrorism” and pledged to keep speaking out against river pollution. His claims were backed up by the Portuguese Environment Agency’s own evidence that the firm is a “significant contributor to pollution in the upper section of the [Tagus].”⁷⁹ In March 2019, having received considerable negative publicity, Celtejo withdrew its defamation case.⁸⁰

In Germany, coal giant RWE is suing a 24-year-old student and climate activist for calling for acts of civil disobedience in response to the climate crisis, following earlier threats linked to climate

⁷⁶ Civicus (2018) “Company targets environmental activist in SLAPP lawsuit” 7 March, <https://monitor.civicus.org/updates/2018/03/07/company-targets-activist-SLAPP-lawsuit/>

⁷⁷ PPL (2018) We are all Arlindo Marques, <https://ppl.pt/en/causas/somos-todos-arlindo-marques>

⁷⁸ Civicus (2018) “Company targets environmental activist in SLAPP lawsuit” 7 March, <https://monitor.civicus.org/updates/2018/03/07/company-targets-activist-SLAPP-lawsuit/>

⁷⁹ Civicus (2018) “Company targets environmental activist in SLAPP lawsuit” 7 March, <https://monitor.civicus.org/updates/2018/03/07/company-targets-activist-SLAPP-lawsuit/>; Civic Space Watch (2018) “PORTUGAL: campaign ‘We are all Arlindo Marques’ reaction to SLAPP by Celtejo”, 23 February, <https://civicspacewatch.eu/portugal-campaign-we-are-all-arlindo-marques-reaction-to-slapp-by-celtejo/>

⁸⁰ Publico (2019) “Desistência de processo judicial da Celtejo é “vitória para o Tejo””, 26 March, <https://www.publico.pt/2019/03/26/sociedade/noticia/desistencia-processo-judicial-celtejo-vitoria-tejo-1866885>

protests he participated in.⁸¹

In Slovakia, activist Ján Šimún was sued by the company OFZ for libel. Šimún had given a speech at the city council in 2016 where he alleged leaks of arsenic from a OFZ-managed dump to the local Orava river.⁸²

In Poland, the Law and Justice party (PiS), and public broadcaster TVP have brought one criminal and two civil defamation lawsuits against University of Sydney Professor Wojciech Sadurski, a constitutional law scholar and public intellectual.⁸³ The cases are based on two tweets that Sadurski posted criticising the ruling party and state broadcaster. In Poland, it is highly unusual (though legally permissible) for a plaintiff to initiate civil and criminal defamation lawsuits against the same defendant and on the basis of the same act, contributing to the perception of legal harassment. At the time of publication of this report, the cases are still ongoing. The criminal indictment was quashed in first instance on 18 March 2019, but the claimant lodged an appeal and the court ordered a re-examination of the case. One of the civil cases was due to be heard on 28 January 2020, but the hearing was adjourned at the last moment.⁸⁴

If Sadurski loses, potential fines of up to 20,000 Zloty (€4,600) are compounded by a demand from TVP for a home page apology in a major news portal (at a cost of 100,000 Zloty or €23,000), plus considerable legal costs and – in the case of the criminal defamation suit – the threat of a jail term of up to one year. The potential costs are beyond Sadurski's financial means.⁸⁵

As with other SLAPPs, the potential for harm lies beyond the risk of losing legal cases. Briefing lawyers, discussing with them and traveling for cases takes around 40 percent of the time Sadurski can usually dedicate to research and writing, he estimates. While Sadurski is wary of over-emphasising the personal impacts of the cases, "it obviously takes a toll on my life, well-being, and sense of happiness" he says. He also points to the human rights

81 VICE (2019) "Darum soll Klimaaktivist Daniel dem Energiekonzern RWE 50.000 Euro zahlen", 11 June, <https://www.vice.com/de/article/pajxqy/braunkohle-daniel-hofinger-soll-rwe-50000-euro-zahlen-ende-gelaende-klimaschutz>

82 Slovak Spectator (2016) "Activist complaining about arsenic in water is sued", 29 November <https://spectator.sme.sk/c/20396565/activist-complaining-about-arsenic-in-water-is-sued.html>

83 Sadurski, W. (2020) Personal correspondence, 2 June 2020; Article19 (2019) "Poland: Ruling Law and Justice party and public broadcaster TVP must drop SLAPP defamation lawsuits against Law Professor Sadurski", 25 November <https://www.article19.org/resources/poland-ruling-law-and-justice-party-and-public-broadcaster-tvp-must-drop-slapp-defamation-lawsuits-against-law-professor-sadurski/>; On TVP's transformation since PiS came to power, Eyre, M. And. M. Goillandeau (2019) "Poland's Government Is Systematically Silencing Opposition Voices" *Foreign Policy* 31 May, <https://foreignpolicy.com/2019/05/31/polands-government-is-systematically-silencing-opposition-voices-gazeta-wyborcza-adam-michnik-pis-kaczynski-kurski-tvp/>

84 Sadurski, W. (2020) Personal correspondence, 2 June 2020.

85 Sadurski, W. (2020) Personal interview, 24 January 2020.

dimension of the cases: “My article 10 [of the European Convention on Human Rights] right to freedom of expression is being systematically and blatantly breached. The silencing of a critic of ruling politicians, is the epitome of what this article should protect against.”⁸⁶

A series of defamation cases have also been brought against academics in France, including for written opinions expressed in law journals. In response, the French government commissioned an expert report (The Mazeaud Commission) which has recommended, amongst other measures, that civil fines of up to €15,000 are introduced for bringing a lawsuit that hinders the freedom of expression of the defendant.⁸⁷

⁸⁶ Sadurski, W. (2020) Personal interview, 24 January 2020.

⁸⁷ Abo, E. (2017) “Lawsuits by companies seek to silence accountability advocates”, <https://www.business-humanrights.org/en/lawsuits-by-companies-seek-to-silence-accountability-advocates>

Who brings the threats?

SLAPPs are brought by big companies, as well as rich and powerful people. Often they act against small organisations or single activists, attempting to isolate them from broader institutional support.

Corporations

Corporations frequently use the imbalance of power and resources in their favour in such cases, as the examples of the lawsuits brought by VINCI, Celtejo, Coren, Pilatus Bank and Energy Transfer Partners demonstrate.

Another such example is the case of legal proceedings brought in 2016 by Holzindustrie Schweighofer (now HS Timber Group), one of Europe's leading wood processing companies, against Hans Hedrich, vice-president of the small Romanian NGO Neuer Weg, in what the activist describes as retaliation for a series of legal challenges alleging that the company processed illegally logged

wood at its processing plants in Romania.⁸⁸

Hedrich stated that he could not afford a lawyer to represent him in the legal proceedings that were going on in Austria, so the court decided against him and placed an injunction on the NGO. The company was also awarded €4,000 in court costs. Hedrich did not pay since, as he explains, “(1) I did not have this amount of money, (2) I believed and still believe that my statements towards the company were true and proven ... (3) I was convinced that the owner and the management of the company would not have been interested in recovering such a small amount of money for them, considering also the worsening of their image in Romania, in particular in the context of the loss and attempts to regain FSC [Forest Stewardship Council] certification.”⁸⁹

The company then returned to the case in 2019 and was granted a request in a Vienna court to freeze the bank accounts of both Hedrich and Neuer Weg.⁹⁰

In France, companies linked to the Bolloré group have engaged in around 20 defamation lawsuits aimed at silencing critics of this business group, which includes the companies Socfin and Socapalm.⁹¹ These cases include lawsuits against NGOs Sherpa and ReAct for defamation in 2018 for publishing land-grabbing accusations from villagers and farmers in Cameroon.⁹² Numerous journalists, publications, non-governmental organisations, lawyers and photographers have also been targeted.⁹³

In Croatia, Dutch-based Elitech and its Croatian subsidiary Razvoj golg d.o.o sued Zelena akcija (Friends of the Earth Croatia) in response to its “Srđ je naš” (Srđ is ours) campaign against the development of a golf resort in Dubrovnik. The corporation is demanding around €30,000 from the NGO, which could force it

88 Fekete, I. (2019) “Timber firm asks legal costs from Transylvanian environmentalist”, 20 August, <https://transylvanianow.com/timber-firm-asks-legal-costs-from-transylvanian-environmentalist/>

89 Hedrich, H. (2019) “APEL LA DONAȚII: Firma SCHWEIGHOFER blochează conturile unor ecologiști INCOMOZI!”, 12 August, (trans. M. Cimmino), <http://www.neuerweg.ro/apel-la-donatii-firma-schweighofer-blocheaza-conturile-unor-ecologisti-incomozii/>

90 Fekete, I. (2019) “Timber firm asks legal costs from Transylvanian environmentalist”, 20 August, <https://transylvanianow.com/timber-firm-asks-legal-costs-from-transylvanian-environmentalist/>

91 Le Monde (2018) “Des journalistes et des ONG dénoncent des « poursuites bâillons » de la part du groupe Bolloré”, 24 January, https://www.lemonde.fr/idees/article/2018/01/24/des-journalistes-et-des-ong-denoncent-des-poursuites-baillons-de-la-part-du-groupe-bollore_5246496_3232.html

92 GRAIN (2018) “We will not be silenced by Balloré SLAPP lawsuits”, 24 January, https://www.grain.org/bulletin_board/entries/5873-we-will-not-be-silenced-by-bollore-s-slapp-lawsuits; Sherpa (2018) “Sherpa, React, Mediapart, Le Point & l’Obs facing a defamation suit filed by one of Bolloré’s company, Socfin”, 25 January <https://www.asso-sherpa.org/sherpa-react-mediapart-point-lobs-facing-a-defamation-suit-filed-by-one-of-bollores-company-socfin>

93 GRAIN (2018) “We will not be silenced by Balloré SLAPP lawsuits”, 24 January https://www.grain.org/bulletin_board/entries/5873-we-will-not-be-silenced-by-bollore-s-slapp-lawsuits

to close down.⁹⁴ On top of that, the investors are also seeking a court order to prevent Zelena akcija from speaking out in public about the project.⁹⁵ As the European Environmental Bureau notes:

“The lawsuit against Zelena akcija appears to have the aim to frighten off the activists from further pursuing their fight for environmental justice against the project. In addition, Zelena akcija has to devote valuable time and resources to defend itself from the attack by the investor on top of the preparation for the lawsuit against the ‘new’ permits. An order for Zelena akcija not to speak about the project would further completely defy basic democratic freedoms and would thus set dangerous precedent.”⁹⁶

In the UK, the Appleby law firm launched breach of confidence proceedings against *The Guardian* and the BBC in an attempt to prevent the further reporting of tax-avoidance by some of the world’s largest companies and most powerful individuals.⁹⁷ Close to half of the 13.4 million documents that formed part of “The Paradise Papers” leak originated from Appleby, which the BBC describes as “one of the world’s largest offshore law firms” specialising in legal advice to “companies, financial institutions and the wealthy”.⁹⁸

The super rich

Irish billionaire Denis O’Brien has brought defamation cases against media outlets in the country on an almost annual basis for the past decade. O’Brien’s most recent case was brought against the *Sunday Business Post*, which had accurately reported on the financial pressures faced by the billionaire in the wake of the 2008 financial crisis. It was reported in court that the newspaper’s editors had discussed the “fear factor” concerning O’Brien’s litigious reputation.⁹⁹ A jury dismissed the case in March

94 Zelena Akcija (2018) “Golf lawsuit threatens to shut down Friends of the Earth Croatia”, 12 February, <https://www.foeeurope.org/golf-lawsuit-threatens-shutdown-foe-croatia-120218>

95 European Environmental Bureau (2018), “Challenge Accepted? How to Improve Access to Justice for EU Environmental Laws”, p.12, <https://eeb.org/publications/105/sustainability-governance/96092/challenge-accepted-report.pdf>

96 European Environmental Bureau (2018), “Challenge Accepted? How to Improve Access to Justice for EU Environmental Laws”, p.13, <https://eeb.org/publications/105/sustainability-governance/96092/challenge-accepted-report.pdf>

97 Business & Human Rights Resource Centre (2018) “Appleby lawsuit against BBC & The Guardian (re Paradise Papers)”, <https://www.business-humanrights.org/en/appleby-lawsuit-against-bbc-the-guardian-re-paradise-papers>

98 BBC (2017) “Paradise Papers: Who are Appleby, the lawyers at the centre of the leak?”, 5 November, <https://www.bbc.com/news/business-41878881>

99 Healy, T. (2019) “Defamation action brought by Denis O’Brien is ‘disgraceful’, court is told”



Srđ je naš protest in Croatia - © Luka Tomac / Friends of the Earth Europe — Dutch-based Elitech and its Croatian subsidiary Razvoj golg d.o.o sued Zelena akcija (Friends of the Earth Croatia) in response to its campaign against the development of a golf resort in Dubrovnik.

2019. O’Brien has also brought defamation cases and issued legal threats against Irish public broadcaster RTÉ, *The Irish Independent*, *The Irish Times*, Associated Newspapers (publishers of the *Irish Daily Mail*), *The Phoenix* (a current affairs magazine), and satirical news website *Waterford Whispers News*.

Co-owner of Maltese bank Satabank, Christo Georgiev, sued Maltese independent journalist Manuel Delia in Bulgaria for a 2018 blog entry, in which Delia explained how he had chosen to remove a story on money laundering by the bank after receiving legal threats. The journalist affirmed: “I had removed the first blog-post after Christo Georgiev threatened me through his Maltese lawyers with a SLAPP suit that his lawyers suggested would be so overwhelmingly expensive that it would drive me to suicide.”¹⁰⁰

The Irish Independent, 26 February, <https://www.independent.ie/irish-news/courts/defamation-action-brought-by-denis-obrien-is-disgraceful-court-is-told-37856419.html>

100 Manuel Delia (2020) “SLAPP suit filed against manuedelia.com by Satabank owner”, 22 February, <https://manuedelia.com/2020/02/slapp-suit-filed-against-manuedelia-com-by-satabank-owner/>

In the UK, millionaire businessman and Leave.EU founder Arron Banks appears to engage in SLAPPs frequently. Before Carole Cadwalladr was herself sued by him, she had already documented a series of his attempts to use legal intimidation to silence his critics. In April 2017, she wrote:

“To date, Arron Banks’s strategy with the press has been this: if he doesn’t like what they say, he instructs his lawyers at Mishcon de Reya and threatens to sue. He threatened to sue Matthew Elliott – the director of the official Vote Leave campaign – for calling Leave.EU racist. He threatened to sue an Atlantic Council report, which featured him in an article entitled “The Kremlin’s Trojan Horses”. He threatened to sue the Guardian for publishing his business dealings as described in the Panama Papers. He threatened to sue a newspaper that described him as having business interests in Belize. And he threatened to sue a commentator on CNN for making certain statements about him on air.”¹⁰¹

Politicians, political parties and government-controlled agencies

There are many examples of politicians and political parties, as well as government controlled entities bringing or threatening lawsuits against critics and opponents. The cases brought by the former Maltese prime minister Joseph Muscat against Daphne Caruana Galizia, and the defamation cases brought by Poland’s ruling PiS party and state broadcaster TVP against Professor Sadurski are amongst the most prominent examples, but they are far from isolated incidents.

In Italy, the far-right politician Matteo Salvini brought a criminal defamation suit against the investigative reporter Roberto Saviano, who faces six years in prison if found guilty.¹⁰²

Numerous SLAPPs have also been brought by local politicians against local media in Italy.¹⁰³ These can be particularly effective at silencing criticism because precarious and freelance employment, common in this sector, makes local journalists highly vul-

¹⁰¹ Cadwalladr, C. (2017) “Arron Banks: ‘Brexit was a war. We won. There’s no turning back now’”, *The Observer*, 7 April, <https://www.theguardian.com/politics/2017/apr/02/arron-banks-interview-brexit-ukip-far-right-trump-putin-russia>

¹⁰² Committee to Protect Journalists (2019) “Italy’s Interior Minister pursues criminal defamation suit against Roberto Saviano”, 29 March, <https://ifex.org/italys-interior-minister-pursues-criminal-defamation-suit-against-roberto-saviano/>

¹⁰³ Rosà, P. (2020) Personal interview, 8 January

nerable to the threat of having to use up time and resources defending against legal actions.¹⁰⁴

Many of the defamation cases against journalists in Croatia were filed by politicians from the HDZ party, or brought by government controlled organisations.¹⁰⁵ Some of these cases were brought by public broadcaster HRT, also against its own staff.¹⁰⁶

104 P. Rosà and C. Pierobon (2020) "SLAPPs: Strategic Lawsuits Against Public Participation", <https://www.balcanicaucaso.org/eng/ECPMF/ECPMF-news/SLAPPs-Strategic-Lawsuits-Against-Public-Participation-198695>

105 Council of Europe (2019b) "Wave of Lawsuits Against Journalists in Croatia", No.27/2019 https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesojportlet_alertId=45706786

106 OSCE (2019) "OSCE Representative Désir concerned about numerous lawsuits against journalists in Croatia and disputes involving public service broadcaster HRT", 6 March, <https://www.osce.org/representative-on-freedom-of-media/413483>

The way forward

SLAPPs are a threat to peoples' fundamental rights such as the freedom of speech and the right to protest¹⁰⁷ as well as to our democracies.

Their occurrence is not an isolated phenomenon but part of a broader repertoire of methods to silence critical voices – smear campaigns, social media bullying, legal restrictions on NGOs, and repressive laws limiting the right to protest, which makes them part of a wider trend of shrinking space for civil society and activism.

At a time when there is no anti-SLAPP legislation in place in any EU country, a package of strong legally binding measures and funding to support SLAPP victims would send a strong political message that the EU is prepared to stand up for its citizens and protect fundamental rights.

Importantly, anti-SLAPP measures need to protect everybody, since victims are not defined by a specific profession or type of

¹⁰⁷ In the EU legal framework, the term “fundamental rights” is used to indicate “human rights”. See the glossary for more information.

organisation. They should cover all citizens and organisations, amongst others activists, academics, civil society organisations and their members, as well as journalists and the media.

An EU-wide legally binding response could take the form of an anti-SLAPPs directive to harmonise safeguards against SLAPPs. This directive should include the following elements:

- **Early dismissal mechanism.** The ability for national courts, at the request of one party or on their own initiative, to halt proceedings at any time when these are found to fulfil a statutory definition of SLAPP, e.g. the proceedings are considered abusive or harassing, unreasonable or disproportionate damages are requested, or the case is designed to restrict freedom of expression in public debates.
- **Compensation and support for victims.** EU member states should act to redress the imbalance in SLAPP proceedings between the wealthy politicians and businesses that bring such cases, with the help of specialised law firms, and the individual activists and journalists targeted by them. Measures could include legal aid, including advice and representation, both when victims are threatened and in the actual proceedings, as well as compensation for damages (e.g. loss of income, stress). This could take the form of a legal fund to assist in defending against SLAPP suits.
- **Deterrent measures.** EU member states should ensure that proportionate deterrents measures are introduced, including a system of fines for bringing vindictive and meritless lawsuits. For example, Italy is currently debating an anti-SLAPP statute that would include punitive damages of “not less than a quarter of the claimed damage.”¹⁰⁸ Another deterrent could involve judges ordering the publication of a notice of the ruling, including the name of the law firm representing the plaintiff, in selected printed and online media, when they have determined that a case is a SLAPP. Repeat offenders could be ordered to publish notices or details of the rulings in company public records for a certain period of time.

EU lawmakers can draw on experience in other jurisdictions to see how legislation could be used to protect against SLAPPs. The Speak Free Act, a bipartisan proposal for anti-SLAPP legislation at federal level in the US, offers a strong model.¹⁰⁹ Lawmakers

¹⁰⁸ Rosà, P. (2020) Personal interview, 8 January

¹⁰⁹ Public Participation Project (2016) “The Speak Free Act of 2015”, <https://anti-slapp.org/speak-free-act>

should also be proactive in heading off the import of new SLAPP techniques from the US – notably, the use of anti-racketeering laws (RICO suits) against non-governmental organisations.

In addition to a specific anti-SLAPP directive, there is scope for amending existing regulations and directives. For example, the Brussels I Regulation could be amended to ensure that defamation cases are exclusively brought in the country where the defendant is domiciled.¹¹⁰ At present, defamation cases fall within the competence of the judge of the state in which the damage is deemed to have occurred. This gives claimants the option to launch SLAPP lawsuits in a choice of jurisdictions. They no longer should have this option.

Funds to support SLAPP victims should be made available, especially to cover the victim's legal defence. Furthermore, funds from the EU's Justice Programme should be used to train judges and practitioners.

Bar associations and law societies in Europe should monitor carefully whether lawyers and law firms remain within the boundaries of professional ethics. They should strictly enforce codes of conduct against abuses of procedures, and consider reviewing them if they do not prevent such abuses.

Finally, civil society and media organisations can coordinate efforts to protect themselves through practical support and solidarity. This can include training on the best way to deal with legal threats, the creation of a depository of pro-bono legal advice, and even just the sharing of stories to help people identify SLAPPS and give them the backing needed to stand up to meritless lawsuits and legal bullying.

To conclude, the EU has the opportunity to become a global anti-SLAPP leader. It should introduce legally binding measures and financial support to protect all those affected by SLAPPS, to strengthen our democracies and defend the EU fundamental rights to freedom of expression and participation.

¹¹⁰ Borg-Barthet, J. (2019); Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/1 (hereinafter 'Brussels I Recast'), Arts 4 and 7(2). The scope of this reform would, however, be limited to cases that potentially involve more than one EU member state.

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