

PUSHING BACK ON SLAPPS

The negative impacts of SLAPPs on civil society and recommendations for how to address them

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Current landscape of SLAPPs

Over the past years, there has been a rise in powerful actors such as corporations and political figures using baseless lawsuits to target individuals and collectives that are exercising their civic freedomsⁱ. According to CASE's database, the number of Strategic Lawsuits Against Public Participation frequently known as SLAPPs has increased from 570 cases in 2022 to over 820 cases in 2023, solely in Europeⁱⁱ. Specifically, industries such as fossil fuels are known for its predominance in filing such lawsuits, as indicated by The Business & Human Rights Resource Centre, where half of the numbers of SLAPP cases documented were targeting environmental, land rights, climate and labour rights defendersⁱⁱⁱ. Additionally, corruption, along with government, business and environmental issues have been documented as the topics most frequently recorded in SLAPP cases between 2010-2022.^{iv}

This brief will touch upon the negative impacts on civil society and propose actions that civil society actors can undertake to push back on SLAPPs.



Definition of SLAPPs	Typical Perpetrators and Targets
Strategic Lawsuits Against Participation (SLAPPs) refer to lawsuits or threats of legal action which use abusive litigation tactics with the aim or effect of suppressing public participation and critical reporting on public interest matters ^v .	Perpetrators: corporations, governmental bodies, or other wealthy and powerful individuals Targets: activists, social movements, journalists, media, academics, civil society organisations, and other public watchdogs ^{vi} .

Impacts on civil society

Difficulties with identifying SLAPP cases

Despite the characteristics described above, identifying, and proving SLAPP charges still represents a significant challenge. This is in part due to the difficulty of establishing the motives behind a possible SLAPP case. The challenge with documenting SLAPPs therefore makes it difficult to establish the actual number of SLAPP cases that are filed, and it is possible that actual numbers of SLAPPs are higher than those recorded by different actors.

SLAPP lawsuits masquerade as legitimate lawsuits, which makes them difficult to identify. However, SLAPPs do have some defining characteristics including:

- Power imbalances between the claimant and the target.
- They pertain to matters of public interest.
- They are frequently civil rather than criminal lawsuits.
- They do not necessarily look to address an actual grievance, rather they aim to exhaust the defendants financial, emotional, and other resources.
- Disproportionate claims of damages or other abusive legal tactics.

Example from Kosovo

Shpresa Loshaj, an environmental activist from Decan, Kosovo, faced a defamation lawsuit after opposing the construction of hydropower plants in her hometown. Kelkos Energy, a hydropower company, filed the suit, demanding an exorbitant amount in legal damages, in an attempt to silence not only Shpresa but also other civil society actors in Kosovo. Similarly, the company tried to harass and intimidate Shpresa using a variety of other tactics such as threats. A group of local organizations organized to form an anti-SLAPP coalition and supported Shpresa throughout the case. This has enabled Shpresa to continue with her activism in face of the SLAPP suit^{vii}.



Power imbalance: Consequences for civil society actors

As mentioned above, SLAPP cases are often characterized by a significant power imbalance between the claimants and the defendant. Human rights- and environmental defenders and public watchdogs often find themselves struggling to access the financial resources needed to defend a lawsuit, whereas claimants, usually private companies, or political actors, have institutional and financial capacity to continue the lawsuit. As a result, the prolonged court proceedings typically end up draining the time and resources of those targeted, even if the lawsuit does not prevail. Frequently, this is the actual purpose of the suit rather than accessing a judicial remedy for an actual grievance. Consequently, it has significant impacts on the work of civil society actors as well as, more broadly, the democratic dialogue, as it might deter public watchdogs to shed lights on issues of public interest, including environmental, corruption and human rights violations.

Recognizing the diverse nature of SLAPP cases

Despite the general characteristics of SLAPPs, they do take different forms in different contexts^{viii}. In some contexts, the issue lies within the legal process itself in SLAPP cases due to the costliness and draining nature of the lawsuits for HRDs. In other contexts, such as Georgia, the effect of SLAPPs is seen through the actual outcome of the court cases. Most lawsuits are brought by powerful individuals or persons affiliated with the ruling party. The latter is more prevalent in contexts, where the judiciaries frequently side with the interests of the government in SLAPP cases that target critical media outlets, public watchdogs, and NGOs^{ix}. **This underscores the importance of recognizing the diverse nature of SLAPP cases and having a customized approach to the specific regional context to address SLAPP cases effectively.**

Direct consequences for targets of SLAPP cases	Broader consequences
Psychological and financial costs for the individual targets	Broader chilling effect on the democratic dialogue as people might refrain from speaking out due to fear of SLAPPs
Forces the individual targets to stop engaging in their activism, advocacy, or critical speech in order to settle the claims	Discourages public participation and repressive effect on the exercise of civic freedom
The lawsuit is time-consuming which leads to the lawsuit itself draining the target and challenging time and energy towards the court case rather than the core work of the individual targets.	Prevent other activists or civil society movements to exercise their civic freedoms



Combatting SLAPPs

There have been several initiatives from states and official bodies to combat SLAPPs. In early 2024, the European Union passed an anti-SLAPP directive, which sets minimum standards to address SLAPPs in the region^x. While the EU directive marks an important step of combatting SLAPPs, it still has some concerning gaps and

leaves considerable discretion for States in its implementation. There is therefore still an important role for civil society in pushing for a robust implementation of the EU directive on national level. On that note, below we present some suggested actions that civil society can take in order to effectively combat SLAPPs.

1) Conceptualizing SLAPPs

- **Conducting analysis** to identify both unique and frequent features of SLAPPs, recognizing their changing and diverse nature.
- **Creating a stronger methodology** to help identify SLAPPs.
- **Understanding SLAPPs within a broader framework** of national and international processes and contexts of growing polarization.

2) Raising awareness

- **Increase awareness among activists:** Ensuring activists are informed about SLAPPs, are aware of the threats, and know where to find support.
- **Raise awareness in the public debate about the lawsuits** to disincentivize potential filers of SLAPPs.

3) International advocacy and coalition building

- **Building diverse anti-SLAPP coalitions ensuring an inclusive representation** of a wide range of ideologies and communities
- **Engaging in international advocacy** through regional and international coalitions.
- **Sharing best practises** and experiences of combatting SLAPPs through international meetings & anti-SLAPP conferences.

4) Document and provide legal support

- **Identifying potential SLAPP cases** by approaching individuals and groups that may have been targeted with SLAPPs.
- **Identifying repetitive filers** of SLAPP cases.
- **Building trust** among public watchdogs and potential targets of SLAPPs to ensure they feel sufficiently secure to exchange information.
- **Funding legal support** for individuals or collectives facing SLAPPs & providing penalties for SLAPP filers.

5) Stronger legal regulations

Pushing for anti-SLAPP law and legal regulations, ensuring:

1. **Protection and compensation** for targets of SLAPPs
2. **Deterrent for SLAPP litigants** through costs and penalties
3. **A broad definition of public participation**
4. **An early dismissal mechanism** for unfounded suits
5. **A shift the burden of proof** to filers instead of the targets
6. **Training** for lawyers and judges

Endnotes:

ⁱ Liberties 2022. SLAPPS I Europe: How the EU Can Protect Watchdogs From Abusive Lawsuits. *Liberties* 13th of January 2022. Link: <https://www.liberties.eu/en/stories/slapp-case-submission/43948>

ⁱⁱ CASE 2023. *How SLAPPs increasingly threaten democracy in Europe*. Coalitions Against SLAPPs In Europe. Link: <https://www.the-case.eu/latest/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/>.

ⁱⁱⁱ Business & Human Rights Resource Centre 2024. SLAPPs: A global phenomenon threatening climate activism experts say. *Business & Human Rights Resource Centre* 2024. Link: [SLAPPs: A global phenomenon threatening climate activism, experts say - Business & Human Rights Resource Centre \(business-humanrights.org\)](https://www.business-humanrights.org/en/latest/slapps-a-global-phenomenon-threatening-climate-activism-experts-say/)

^{iv} CASE 2023. *SLAPPs: A threat to democracy continues to grow*. Coalitions Against SLAPPs In Europe. Link: <https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>

^v OHCHR 2024. *The impact of SLAPPs on human rights and how to respond*. United Nations Human Rights Office of the High Commissioner. Link: <https://www.ohchr.org/sites/default/files/documents/publications/briefer-the-impact-slapps-hr-how-resond.pdf>

^{vi} European Parliament 2021. *The Use of SLAPPs to Silence Journalists, NGOs and Civil Society*. The European Parliament S Committee on Legal Affairs. Link: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU\(2021\)694782_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU(2021)694782_EN.pdf)

^{vii} Amnesty International 2021. Kosovo: Defamation Lawsuits Seeking To Silence Environmental Activists Must Be Withdrawn. *Amnesty International* 28th of June 2021. Link: <https://www.amnesty.org/en/latest/news/2021/06/kosovo-defamation-lawsuits-seeking-to-silence-environmental-activists-must-be-withdrawn-2/>

^{viii} UNDP 2023. *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*. United Nations Development Programme. Link: https://www.undp.org/sites/g/files/zskgke326/files/2023-07/eng_slapp_text_30_june_online_final.pdf

^{ix} GDI 2022. *Report on SLAPP cases in Georgia*. Georgian Democracy Initiative. Link: https://gdi.ge/storage/files/doc/Report%20on%20SLAPP%20cases_GDI.pdf

^x EUR-Lex 2024. *Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')*. Link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32024L1069>

Additional Readings:

SLAPPs generally

INCL 2020. *Protecting Activists from Abusive Litigation*. International Center For Not-For-Profit Law. Link: <https://www.icnl.org/post/report/slapps-in-the-global-south-report>

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CASE 2024. *About*. Coalitions Against SLAPPs In Europe. Link: <https://www.the-case.eu/about/>

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CASE 2024. CASE Guidebook – How To Prevent SLAPPs Or Get Help If It's Too Late. *Coalitions Against SLAPPs In Europe 10 June 2024*. Link: [CASE Guidebook – How to prevent SLAPPs or get help if it's too late – CASE \(the-case.eu\)](https://www.the-case.eu/latest/case-guidebook-how-to-prevent-slapps-or-get-help-if-it-s-too-late-case-the-case.eu)

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CASE 2024. The Anti-SLAPP Directive creates a promising minimum standard for Member States. . *Coalitions Against SLAPPs In Europe 27 February 2024*. Link: <https://www.the-case.eu/latest/the-anti-slapp-directive-creates-a-promising-minimum-standard-for-member-states/>

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