

Extraordinary session of the Meeting of the Parties to the Aarhus Convention
(ExMoP3)

Round Table on Environmental Defenders

Geneva, 24 June, 2022

Keynote address of judge Ksenija Dimec, EUFJE

The role of judiciary in protecting environmental defenders; main challenges and suggestions regarding SLAPP suits

We all know what SLAPP suits (Strategic Lawsuits Against Public Participation) are and we are aware that SLAPPs constitute a serious threat for the exercise of human rights and fundamental freedoms such as freedom of association and public participation and thus have, in turn, a severe chilling effect on public participation. We also agree that environmental defenders are vital to the preservation of the environment across the globe and that we should protect them against SLAPPs. Although in theory everything is clear in practice it is not so clear. Therefore I will point out some problems in practice with SLAPPs from my point of view as a judge.

There are two main problems regarding SLAPPs from my point of view.

We can not expect that respective judge will, when he/she receives a suit, have an idea that it is not a “normal“ suit, but SLAPP suit. It is impossible to expect that from judge because each SLAPP suit has its background (or better to say “rich history“). In the background there are usually administrative proceedings (in majority of cases permitting proceedings) and sometimes other proceedings (criminal/civil). But, respective judge who has to deal with this particular suit, does not know for that. He/she does not know for the whole mosaic in the background. He/she can only see a little part of that mosaic and from that little part it is impossible to conclude about SLAPPs. Therefore there is a big role of defendant (environmental defender) to file objection that it is a SLAPP suit. As SLAPPs are rather new issue, it is not expected that defendants have knowledge about that and that they will raise this objection. But, I think that this problem will disappear with the election of an independent Special Rapporteur on environmental defenders who will, as I expect, enable

a rapid response mechanism to protect environmental defenders when they are faced with SLAPPs. So, if environmental defender seeks help from the Special Rapporteur concerning law suit lodged against him, he (Special Rapporteur) will, for sure identify SLAPP suit and help defendant in protection of his/her rights before the court suggesting defendant to file SLAPP objection (objection that it is SLAPP suit, not “normal“ suit).

Another problem is problem that bothers respective judge- how to establish/ recognize/identify SLAPP suit and not to violate plaintiff's right to access to justice. It is very sensitive task. We have to bear in mind that SLAPP suits are not obvious/apparent. They look like “normal“ suits. Once the defendant files objection that there is a SLAPP suit, respective judge has very difficult task, especially at the early stage of the proceedings without much evidences. Defendant's objection should be supplied with the facts and evidences, but *onus probandi* that it is not SLAPP suit should be left to plaintiff's side. Even when it is obvious for the defendant that it is a SLAPP suit, judge may still have some doubts because with haste decision he/she may violate palintiff's right to access to justice. Therefore, there should exist guidelines for judges to help find “right way“ when SLAPPs objection is filed. Of course, each case is different and deciding on SLAPPs objection is always on a “case by case basis“, but guidelines could be helpful.

Once the suit is identified as a SLAPP suit, there should be established “penalty system“ for SLAPPs with strong dissuasive effect (together with the refusal of the claim).

In conclusion... First problem will be solved by election of the Special Rapporteur who will help environmental defenders faced with the claims, esp. to check if it is SLAPP suit and if he considers the suit as SLAPP, to file objection supplied with relevant facts and evidences. The second problem - how to deal with SLAPPs objection still exists and a sort of guidelines should help together with organized training for judges and raising awarness about SLAPPs because majority of judges are not familiar with SLAPPs. The final goal should be “zero SLAPPs“ and in order to achieve that goal, there should be implemented measures with dissuasive effect on filing SLAPPs.

Thank you very much for your attention.