

June 13, 2022

A Broader Perspective on SLAPPs

Statement by Association Justice and Environment, z.s. (J&E) on behalf of the European Eco Forum and CASE for the Extraordinary Session of the Meeting of the Parties to the Aarhus Convention on 23 (pm) - 24 June 2022

Honorable Chair
Distinguished Delegates

In the name of Justice and Environment, on behalf of the European Eco Forum and CASE, we would like to present the following statement on Strategic Lawsuits Against Public Participation a.k.a. SLAPPs.

If we look at SLAPP cases from an overly legalistic viewpoint, they may pose a purely legal problem. There is a plaintiff, there is a defendant, there is a forum and there is a legal ground on which an allegedly lawful claim is based and presented for adjudication. However, this legal phenomenon is a perfect example of something that is in fact not what it looks like. SLAPP is a travesty of a legitimate claim, or how the British legal slang calls it: a lawfare.

And we all know that. We all know that the purpose of a SLAPP case is to vexatiously drain the resources (financial as well as mental ones) of the defendant whose only guilt is to have exercised their human and constitutional right to free speech or public participation. What is having key importance in this regard is whether the legislators see it alike and whether there is sufficiently strong political will, on the international, EU and national levels, to put a halt to this trend. We are afraid that this can be called a trend because research data by CASE, the Coalition Against SLAPPs in Europe show that the number of SLAPP cases in Europe is on the rise.

Luckily, the legislators in the EU, at least the European Commission, see this as a real problem. This approach motivated the EC to start a legislative process (including the publication of a Roadmap and a draft EU Directive (the latter on 27 April), and to run two online public consultations so far, the latter ending on 29 June) to regulate at least cross-border SLAPP cases. Due to limitations on the powers of the Union lawmaker, purely domestic SLAPP cases do not fall under the competence of the EU therefore only a non-binding Commission Recommendation was issued in this regard on the same day as the Directive draft (27 April).

J&E on behalf of European Eco Forum and the CASE coalition welcomes these developments.

We also would like to welcome the work done under the auspices of the Council of Europe which is supposed to result in the adoption of a Recommendation on SLAPPs likely by the end of 2023.

We are confident that these developments, once complete, will provide grounds for critically approaching SLAPP cases and see them not how they disguise themselves but how they are in reality. A lawfare.

It is possible that these developments already influence the mindset of people and contribute to a few progressive events that happened lately in this matter, in contrast to earlier judgments. A few earlier and also more recent court cases are to be highlighted here.

In France, Valérie Murat, daughter of a winemaker and activist and her organization had discovered residues of a number of pesticides in 22 wines with the HVE (la haute valeur environnementale) label in a study. However, the pesticide contamination

was within the legal permissible range. The French judiciary has fined her heavily on charges of defamation for publicly denouncing pesticide residues in Bordeaux wines. A court in the southwestern town of Libourne, not far from Bordeaux, in February 2021 imposed damages of 125,000 euros on Valérie Murat, thus the court upheld the complaint filed by the winegrowers' association.

In Italy, the Bolzano Court made a judgment on 6 May in the so-called Umweltinstitut München case. In 2017, Karl Bär, an employee of the Umweltinstitut München, was charged with defamation and trademark infringement. The charges were brought by the provincial minister for agriculture of the Autonomous Region of Bolzano Arnold Schuler, along with more than 1,370 farmers. The case was luckily dismissed and the reason given by the judge was the inadmissibility of the proceedings. After more than two years of investigation and twenty months of proceedings, this brought an end to one of the most well-known abusive SLAPP lawsuits against an environmental organization in Europe.

In the UK, in a non-environmental case, following a five-day trial in January 2021, the High Court announced its judgment on 13 June 2022 in the defamation case brought by Arron Banks against Carole Cadwalladr, concluding that Cadwalladr's reporting was done in the public interest, and dismissing Bank's claim. Cadwalladr was sued on the basis of a TED talk and a corresponding tweet sharing a link to the talk, in which she alleged that Banks had lied about his relationship with the Russian government. Although the judge did not consider the case a SLAPP, Reporters Without Borders, a civil society organization have repeatedly considered this case to be an example of a SLAPP, as it is vexatious in nature and intended to silence Cadwalladr's courageous investigative journalism.

However, today still too much depends on sporadic and often non-strategic domestic legislation and the individual approach of particular judges. What needs to be had instead is a system that is able to tackle with this new kind of threat against freedom of expression. For this reason, the enacting of those pieces of legislation mentioned in the foregoing is indispensable.

Civil society with the participation of the CASE coalition, the European Eco Forum and not the least Justice and Environment achieved progress already, but this is absolutely not the end of the journey. Our plans for the future contain more advocacy actions until we achieve that the EU private international law framework is reformed, defamation is decriminalized, support to victims is offered, professional ethical standards for lawyers and law firms are amended and implemented, civil society is enabled and its capacities are built, awareness raising and training to stakeholders is offered and data on SLAPPs is collected.

All these developments have very heavy impacts on the status of environmental human rights defenders. Exactly for this reason we welcome the Decision VII/9 of the MOP7 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention and we are looking forward to cooperating with the Special Rapporteur in order to defend the defenders also from SLAPP cases and help guarantee freedom of speech in the ECE region.

Thank you for your attention!

J&E
European Eco Forum
CASE