

# EU Commission: Fighting Strategic Law Suits (SLAPP)

When activists are to be intimidated, the legal profession is meant to help

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In the EU, an increasing number of abusive strategic law suits against journalists, environmental activists and people who stand up for minorities are occurring. The Maltese journalist Daphne Caruana Galizia, who was murdered in October 2017 had about 47 of Slapp (Strategic Lawsuits Against Public Participation) running against her. There are also a number of such law suits pending in France and Poland. The law suits are characterised by an economic inequality between the plaintiff and the defendant. Slapp suits are usually brought by influential institutions, such as individuals, lobby groups, companies and state organisations. Their aim is not so much to win the case as to intimidate the defendant (and third parties).

The EU Commission published a draft directive in April 2022 which aims to facilitate the dismissal of such lawsuits. According to the draft, court proceedings could be dismissed at an early stage at the request of the defendant, when the claims are obviously unfounded. The burden of proof is then reversed - the plaintiff must prove that the action is not manifestly unfounded. The costs of the other party, including lawyers' fees are to be borne by the plaintiff, and the defendant is entitled to damages.

The EU's legislative competence obviously extends only to cross-border cases. Such a cross-border situation however is not just assumed where the place of residence and the place of jurisdiction differ, but also if the subject matter of the dispute has cross-border significance.

The Commission's draft is a good start, but in the further legislative process it is very dependent on the support of the member states. Because of the limited legislative competence, the EU Commission advises the member states in a communication paper to introduce similar legislation for purely national cases.

According to the recommendation, lawyers and other legal professions should be specially trained for Slapp claims. The right to freedom of expression, the right to information and other fundamental rights under the EU Charter of Fundamental Rights and the European Convention on Human Rights, as well as national legislation should be covered in these training sessions.

Member States are encouraged to provide information on procedural guarantees and other safeguards. Law firms should defend victims of abusive legal proceedings free of charge, according to the recommendation. However, to rely exclusively on pro bono in such an important issue is not sufficient. Instead, financial support for legal costs should be considered.