

IN THE EUROPEAN COURT OF HUMAN RIGHTS

App No. 27105/24

BETWEEN:

Aladin PAUČINAC

Applicant

and

Serbia

Respondent

WRITTEN COMMENTS OF THE THIRD-PARTY INTERVENER

12 November 2025

Introduction

1. These written comments are filed by Media Defence (the ‘Intervener’), pursuant to leave granted by the Court in accordance with Rule 44 of the Rules of Court.¹
2. The present case concerns a civil society activist’s conviction for insulting public officials on social media. Importantly, it appears that in consequence of the same social media post the applicant continues to be subject to multiple legal proceedings initiated by one of the officials and that the total financial burden of those proceedings on the applicant is considerable and far in excess of the fine imposed on him in the criminal case. The case provides the Court with an opportunity to recognise SLAPPs as a specific violation of Article 10 of the Convention and indicate anti-SLAPP measures that national authorities are required to adopt. By so doing, the Court would build on its previous observations on “the risks that court proceedings instituted with a view to limiting public participation bring for democracy”.²
3. The Intervener submits that a SLAPP is a distinct form of a violation of freedom of expression. In such cases a finding in favour of the defendant may not be enough to undo the severe financial, psychological, professional, and reputational costs the legal proceedings have inflicted on them. Conversely, when a case bearing elements of a SLAPP is decided for the claimant and, taken in isolation, the decision may be compatible with Article 10 of the Convention, the defendant’s freedom of expression may still be violated if the claimant simultaneously pursues other legal action connected to the same facts or takes steps to inflate the legal costs for the defendant or increase the complexity or length of the legal proceedings.
4. In addressing the profoundly damaging impact of SLAPPs on free expression, and highlighting the necessity of ensuring adequate safeguards are put in place to protect speech, these written comments will focus on the following issues, with reference to relevant international and comparative law and commentary –
 - (i) SLAPPs as a distinct and serious threat to freedom of expression;
 - (ii) The salient features of a SLAPP claim;
 - (iii) Positive measures required to counter SLAPPs.

SLAPPs as a distinct and serious threat to freedom of expression

5. SLAPPs can be defined as “legal actions that are threatened, initiated or pursued as a means of harassing or intimidating their target, and which seek to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation”.³ They constitute a deliberate misuse of legal remedies that exist to protect legitimate interests, such as reputation. SLAPPs’ actual aim has little to do with obtaining justice – indeed, SLAPPs often do not even have a realistic prospect of succeeding in court. Rather, they are intended to suppress

¹ Letter dated 24 September 2025 received from the Court granting Media Defence leave to intervene. As stipulated in that letter, these submissions do not comment on the facts or merits of the case, focusing only on the general principles applicable to the determination of the case, and the points raised in the letter requesting leave to intervene.

² ECtHR, *OOO Memo v. Russia*, application no. 2840/10, para. 43, 15 March 2022.

³ Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), Appendix, para 1.

and deter the legitimate public scrutiny of powerful and well-resourced individuals who bring them forward. The legal process itself becomes a form of punishment, as it traps journalists and other public watchdogs targeted by SLAPPs in protracted and costly proceedings that drain them of their time and financial and psychological resources.⁴ In fact, where the potential costs of litigation are prohibitively expensive for independent journalists and smaller media organisations, a mere threat of a legal action, no matter how specious, may be sufficient to produce the desired effect. While SLAPPs are often initiated on the basis of defamation laws, other causes of action can be, and increasingly are, weaponised in the same manner, including, for example, privacy, confidentiality, and data protection.⁵

6. In recent years, the threat posed by SLAPPs has been increasingly recognised by international and regional bodies. In its 2022 Safety of Journalists resolution, the UN Human Rights Council expressed “serious concern” at the rise of SLAPPs designed to “exercise pressure, intimidate or exhaust the resources and morale of journalists, and thereby stop them from critical and/or investigative reporting on matters of public interest”.⁶ It called on states to introduce measures to counter SLAPPs and support victims of SLAPPs. In 2025, the Human Rights Council reiterated its concern and set out the measures that states should adopt against SLAPPs. The UN Special Rapporteur on Freedom of Expression has also spoken to the increasing use of SLAPPs and their pernicious impact on freedom of expression, while also calling on states to adopt legislative measures that discourage SLAPPs.⁷ The Special Rapporteur has pointed out that SLAPPs “not only threaten the economic viability of media outlets but also constitute an abuse of the judicial system. They have a strong chilling effect on critical media and reduce media pluralism.”⁸ At the regional level, the Inter-American Court of Human Rights has expressly recognised SLAPPs as a threat to freedom of expression that states must take steps to address.⁹
7. In Europe, the Council of Europe Commissioner for Human Rights drew attention to the increasing use of SLAPPs against public watchdogs in a comment published in 2020. In it, she called for Council of Europe countries to adopt measures to counter SLAPPs through earlier dismissal, sanctioning abusive claimants, and supporting

⁴ See European Parliament, Briefing, Strategic lawsuits against public participation (SLAPPs), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI\(2022\)733668_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf)

⁵ Katharine Bleyer-Simon et al., *Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union and Candidate Countries in 2023* (European University Institute, Centre for Media Pluralism & Media Freedom 2024), p. 50, available at: <https://data.europa.eu/doi/10.2870/378835>.

⁶ United Nations Human Rights Council, *The safety of journalists*, Res. A/HRC/RES/51/9 (adopted 6 Oct. 2022), https://digitallibrary.un.org/record/3992428/files/A_HRC_RES_51_9-EN.pdf.

⁷ See, e.g., Irene Khan, *Reinforcing Media Freedom and the Safety of Journalists in the Digital Age: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/50/29 (Apr. 20, 2022), paras. 67 and 113, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5029-reinforcing-media-freedom-and-safety-journalists-digital-age>.

⁸ Irene Khan, *Visit to Serbia and Kosovo: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/56/53/Add.2, 2 May 2024, para 62. Available at: <https://documents.un.org/doc/undoc/gen/g24/059/74/pdf/g2405974.pdf>

⁹ See Inter-American Court of Human Rights, *Palacio Urrutia et al. v. Ecuador*, Judgment of 24 November 2021, Series C No. 451, para. 95. See also IACtHR, *Baraona Bray v. Chile*, Judgment of 24 November 2022, Series C No. 481, para 91.

victims of SLAPPs.¹⁰ The subsequent report of the Secretary General on current trends in threats to freedom of expression echoed these concerns and shed additional light on the scale of the problem in Europe.¹¹ These growing concerns over SLAPPs crystallised in a 2024 Council of Europe Recommendation on Countering the Use of Strategic Lawsuits Against Public Participation (SLAPPs) (hereafter ‘the Council of Europe’s Anti-SLAPP Recommendation’).¹² Taking a comprehensive approach to the problem, the recommendation provides useful guidance on identifying SLAPPs and outlines a range of positive measures that are necessary to deter SLAPPs and mitigate their effect on their victims. In parallel, the European Union also set out some specific standards by adopting an anti-SLAPP Directive.¹³ While limited in its application to cross-border civil and commercial matters, the Directive provides further evidence that SLAPPs are a threat to freedom of expression that necessitates a targeted response.

8. Alongside this standard-setting process, more data has become available to show the prevalence of SLAPPs in the Council of Europe region. Although not intended as a comprehensive survey, the most recent report published by the Coalition against SLAPPs in Europe (CASE) identified 166 SLAPPs initiated across Europe in 2023 and a total of 1049 cases initiated since 2010. The European Commission’s Rule of Law report for 2024 acknowledged the prevalence of SLAPPs in a number of Council of Europe countries, including Bulgaria,¹⁴ Greece,¹⁵ Croatia,¹⁶ Italy,¹⁷ and Poland.¹⁸ It also identified it as a concern in Serbia, pointing to “a significant increase in recent years in the number of strategic lawsuits against public participation (SLAPP), notably launched by members of national and local authorities, against human rights defenders”.¹⁹ This observation is seconded by the UN Special Rapporteur on Freedom of Expression, who, following her visit to Serbia and Kosovo, observed that “[i]ncreasingly, journalists and activists are being subjected to judicial harassment through vexatious or frivolous libel claims initiated by powerful public figures who demand exorbitant damages in retaliation for critical reporting or investigations”.²⁰

¹⁰ Council of Europe Commissioner for Human Rights, *Time to Take Action Against SLAPPs* (27 October 2020), <https://www.coe.int/en/web/commissioner/-/time-to-take-action-against-slapps>.

¹¹ Council of Europe Secretary General, *Current Trends in Threats to Freedom of Expression: Interference with the Coverage of Public Events, Broadcasting Bans and Strategic Lawsuits* (SG/Inf(2021)36), <https://rm.coe.int/native/0900001680a4a958>.

¹² Council of Europe, *Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on Countering the Use of Strategic Lawsuits Against Public Participation (SLAPPs)* (5 March 2024).

¹³ *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)*.

¹⁴ European Commission, *Commission Staff Working Document — 2024 Rule of Law Report: Country Chapter on the rule of law situation in Bulgaria*, SWD(2024) 802 final, p. 30.

¹⁵ European Commission, *Commission Staff Working Document — 2024 Rule of Law Report: Country Chapter on the rule of law situation in Greece*, SWD(2024) 808 final, p. 22.

¹⁶ European Commission, *Commission Staff Working Document — 2024 Rule of Law Report: Country Chapter on the rule of law situation in Croatia*, SWD(2024) 811 final, pp. 26-27.

¹⁷ European Commission, *Commission Staff Working Document — 2024 Rule of Law Report: Country Chapter on the rule of law situation in Italy*, SWD(2024) 812 final, p. 30.

¹⁸ European Commission, *Commission Staff Working Document — 2024 Rule of Law Report: Country Chapter on the rule of law situation in Poland*, SWD(2024) 821 final, p. 28.

¹⁹ European Commission, *Commission Staff Working Document — 2024 Rule of Law Report: Country Chapter on the Rule of Law Situation in Serbia*, SWD(2024) 831 final, p. 23.

²⁰ Visit to Serbia and Kosovo, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/56/53/Add.2, 2 May 2024, para 60. Available at: <https://documents.un.org/doc/undoc/gen/g24/059/74/pdf/g2405974.pdf>

9. These international and regional developments in recognising SLAPPs as a distinct and serious threat to public watchdogs and public-interest speech as well as increasingly available data on their prevalence in Europe, including the respondent state in the present case, are yet to translate into effective legal responses to SLAPPs, including by courts, in most Council of Europe countries. On that basis, there would be considerable merit in this Court recognising explicitly that SLAPPs are incompatible with Article 10 of the Convention and providing guidance to national courts on how SLAPPs can be identified and mitigated in cases involving speech on issues of public interest.

Salient features of a SLAPP claim

10. The Council of Europe's Anti-SLAPP Recommendation provides useful guidance on the constituent elements of a SLAPP that should help courts to identify such abusive claims even when they are not obviously frivolous or unfounded. It is an important feature of the recommendation's approach that even legal claims that, when considered on their own, appear to have some merit may be turned into a SLAPP by specific tactics employed by the claimant. In such a case, the court needs to consider the broader context in which the claim is pursued and the other legal steps taken or not taken by the claimant – which in turn may require the court to consider evidence it would not normally examine in the context of such proceedings.

Targeting speech on a matter of public interest

11. It is a condition precedent to the assessment of whether the restriction on speech can be considered a SLAPP that the impugned expression must concern a matter of public interest. Litigation, or the threat of litigation, should not be allowed to stifle expression on matters of public interest. In balancing the right to free expression against other, countervailing rights, such as, in defamation claims, the right to private and family life, an important factor concerns the extent to which the reporting contributes to a debate of general interest. This Court has consistently described this aspect of the balancing exercise as an “essential criterion”²¹ and held there is “little scope [...] for restrictions on political speech or on debate on matters of public interest”²²
12. Matters of public interest are those that “affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community”.²³ Naturally, this would include an issue of public health²⁴ such as the COVID-19 pandemic. In that respect, the Court considers that the “limits of acceptable criticism” are much wider as regards individuals with a public status than private individuals.²⁵

Abuse of laws or judicial procedures

²¹ ECtHR, *von Hannover v Germany* (no. 2), Appl. No. 40660/08 and 60641/08, para 109, 7 February 2012,.

²² See, e.g., *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], Appl no. 931/13, para 126, 27 June 2017.

²³ *Ibid*, para 171.

²⁴ ECtHR, *OOO Regnum v Russia*, Appl no. 22649/08, paras 68 – 69, 8 September 2020,.

²⁵ ECtHR, *Paloma Sanchez v Spain* [GC], Appl nos. 28955/06, 28957/06, 28964/06, para 71, 12 September 2011,.

13. While abuse of laws and procedures is listed in the Council of Europe’s Anti-SLAPP Recommendation as one of the many potential indicators of a SLAPP, it is fair to say that some form of abuse of the legal process is an indispensable feature of any SLAPP. Indeed, most of the other indicators represent a certain specific form of abuse, such as litigation tactics to deliberately drive up the costs of the proceedings for the defendant, choosing the most unfavourable legal form, or submitting multiple coordinated claims. As a matter of strategy, claimants seeking to chill speech or tie a journalist or media outlet up in litigation, will rely on whichever legal route provides the best means to secure that outcome.
14. Choosing the most onerous legal avenue to pursue a claim may be one of the telling signs of a SLAPP. This is particularly true when a claimant resorts to a criminal complaint when civil-law remedies are also available. The threat of imprisonment, the stigma of a criminal record, and the chilling effect from criminal complaints empowering authorities to search an individual’s electronic devices, make criminal laws especially menacing to the public’s right to free expression. The Court has frequently stated that criminal sanctions are disproportionate when civil remedies are available and has accordingly stressed that complaining parties should seek “recourse to means of civil law which, in the Court’s view, are appropriate in cases of defamation.”²⁶ The Court has likewise repeatedly held that “imposing criminal sanctions on someone who exercises the right to freedom of expression can be considered compatible with Article 10 [the free expression provision of the European Convention on Human Rights] ... only in exceptional circumstances, notably where other fundamental rights have been seriously impaired” [emphasis added]. The ECtHR has clarified that such “exceptional circumstances” which might warrant criminal sanctions constitute “cases of hate speech or incitement to violence.”²⁷

Multiple coordinated litigation

15. Claimants often rely on multiple, coordinated legal proceedings to suppress speech, often on the same or similar facts, and often relying on the same or related causes of action. In a case related to the abuse of judicial proceedings, with clear elements of a SLAPP lawsuit, Brazil’s Federal Supreme Court (STF) in a May 2024 decision, declared ‘judicial harassment’ of journalists unconstitutional.²⁸ The STF’s decision defined the practice of filing numerous lawsuits on the same issue in different locations with the intent to harass the defendant and complicate their defence as ‘judicial harassment’. The case related to a journalist who was sued in over 140 lawsuits relating to a single tweet criticising the relationship between evangelical and government politics. The lawsuits were filed in every state in Brazil except the one in which the journalist lived. The STF held that once the practice of judicial harassment is established, the defendant can request that all relevant cases be consolidated into one case heard in their city of residence.

Targeting the weakest potential defendant

16. A further tactical selection claimants can make in SLAPP cases is to target a vulnerable party, ignoring other parties that might be better able to resist the SLAPP. The COE Recommendation recognises the phenomenon of individual journalists

²⁶ ECtHR, *Kubaszewski v Poland*, Appl no 571/04, para 45, 2 February 2010.

²⁷ ECtHR, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, para 50, ECHR 2004-XI; see also, ECtHR, *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, para 50, 18 December 2008.

²⁸ CPI, *Brazil’s top court acts to protect journalists from judicial harassment*, 24 May 2024, available at <https://cpj.org/2024/05/brazils-top-court-acts-to-protect-journalists-from-judicial-harassment/>

being targeted, rather than their media organisations. In practical terms, where a SLAPP actor faces wide-spread public criticism, they may choose to target only one or some individuals who are more vulnerable or because they expect that it will have a chilling effect on others. In a defamation case in Northern Ireland the court identified this practice as an indicator of a SLAPP, noting that:

The absence of any defamation proceedings in respect of the wide reporting over the years that Mr Kelly shot Mr Adams, taken together with recent proceedings having been instituted only against these two particular freelance journalists, suggests that, rather than being a genuine attempt to defend a reputation which has been damaged by an untruth, the proceedings are what has been referred to as a SLAPP, namely an attempt to silence two bothersome journalists with the threat of legal costs. The proceedings appear to be a strategic effort to intimidate them, to deprive them of time and resources, and ultimately to silence them. This would amount to the proceedings having been brought for an improper collateral purpose.²⁹

Power imbalance

17. The EU Directive highlights that “where present, such an imbalance of power contributes significantly to the potential of SLAPPs to produce harmful consequences for the targets, with chilling effects for public debate as a result. SLAPPs can have a deterrent effect also on other potential targets, who may decide not to assert their right to investigate and report on issues of public interest. This risks leading to self-censorship.”³⁰
18. That is not to say that in cases where such a dynamic exists the litigation can be considered to have been improperly brought. However, where a public official acts as a claimant, there is likely to be an inherent power asymmetry.³¹ This Court has consistently held that the limits of permissible criticism of a politician or public figure are wider than in respect of a private individual.³² While private individuals are awarded higher protection of their private life³³ and for them, “the zone of interaction which may fall within the scope of private life is enlarged”, a lesser degree of protection is awarded to public figures as they have not only voluntarily exposed themselves to public scrutiny but also have greater access to the media to provide explanations for their conduct.³⁴ This heightened protection for speech concerned with the scrutiny of

²⁹ *Kelly v O’Doherty* [2024] NIMaster 1, available at <https://www.judiciaryni.uk/files/judiciaryni/decisions/Gerard%20Kelly%20and%20Malachi%20O%E2%80%99Doherty.pdf>.

³⁰ EU Directive Explanatory Memorandum available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0177>

³¹ Recommendation CM/Rec(2024)2 of the Committee of Ministers to member states on countering the use of strategic lawsuits against public participation (SLAPPs) at p.1, “Being aware that asymmetries in political, financial and other forms of power in society can give rise to inequalities in public debate and that the misuse and abuse of power and privilege by threatening or taking legal action to harass, intimidate or silence minority or critical voices have a chilling effect on public participation.”

³² ECtHR, *Lingens v. Austria*, App No. 9815/82, 8 July 1986; ECtHR, *Incal v. Turkey*, App No. 41/1997/825/1031, 9 June 1998.

³³ ECtHR, *von Hannover v Germany (no. 2)*, App. Nos. 40660/08 and 60641/08, 7 February 2012, para 110.

³⁴ ECtHR, *Flinkkilä and others v Finland*, App No. 25576/04, 6 April 2010, para 82; ECtHR, *von Hannover v Germany (no. 2)*, Appl. No. 40660/08 and 60641/08, 7 February 2012, para 95; ECtHR, *Sciaccia v Italy*, 11 January 2005, App. No. 50774/99, para 29.

public officials and public figures would be negated if such actors were allowed to leverage their influence and superior resources to use SLAPP claims to effectively intimidate and silence public watchdogs.

Positive measures to counter SLAPPs

19. This Court has repeatedly recognised that the effective exercise of freedom of expression does not depend only on the state's duty to refrain from interference, but may also require positive measures of protection, including from actions by private individuals.³⁵ In particular, this Court has noted that states are required "to create, while establishing an effective system for the protection of journalists, a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even if irritating or shocking to the latter".³⁶ The threat SLAPPs pose to public watchdogs and robust debate on issues of public interest requires that national authorities take steps to deter SLAPPs and minimise their punitive effect.
20. The need for such positive measures is reflected in the Council of Europe's Anti-SLAPP Recommendation, which includes procedural safeguards and remedies, such as effective case management, an early dismissal mechanism, restitution of legal costs, capping damages for the claimant, and enabling a victim of a SLAPP to seek damages from the bad-faith claimant.³⁷ Specific safeguards, including early dismissal and recovery of costs, can also be found in the EU Anti-SLAPP Directive and EU Anti-SLAPP Recommendation.³⁸
21. At the international level, the Human Rights Council's recent resolution on the safety of journalists has called on states to "adopt laws and policies that prevent, disincentivize and/or alleviate [SLAPPs], including by ensuring early dismissal of unfounded proceedings, remedies for victims of abusive lawsuits and appropriate penalties against those who brought cases found to be abusive".³⁹ Similarly, the UN Special Rapporteur on Freedom of Expression has recommended that states adopt laws and policies that allow early dismissal of SLAPPs, limit the damages claimed against journalists and media outlets, and sanction those who engage in SLAPPs, among other measures.⁴⁰
22. It is of particular importance that states make it possible for SLAPPs to be dismissed early in the proceedings. As already mentioned, a SLAPP's ulterior purpose is to

³⁵ ECtHR, *Gaši and Others v. Serbia*, application no. 24738/19, judgment of 6 September 2022, para 77.

³⁶ Ibid, para. 78. See also, e.g., *Khadija Ismayilova v. Azerbaijan*, application nos. [65286/13](#) and [57270/14](#), judgment of 10 January 2019, para 158.

³⁷ Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs) paras. 24-45. ('COE Recommendation')

³⁸ 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') and Recommendation (EU) 2022/758 on protecting journalists and human rights defenders from unfounded or abusive court proceedings.

³⁹ United Nations Human Rights Council, *The safety of journalists*, A/HRC/59/L.20 (adopted 7 July 2025), available at: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session59/res-dec-stat>

⁴⁰ *Reinforcing Media Freedom and the Safety of Journalists in the Digital Age: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/50/29 (Apr. 20, 2022), para 113, available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc5029-reinforcing-media-freedom-and-safety-journalists-digital-age>.

intimidate or exhaust its target. Even when a SLAPP claim is eventually dismissed (often, only on appeal), much of the damage it was intended to cause the defendant will already be sustained if the case is allowed to run its course in a regular manner. Or, in the absence of a possibility to have the claim dismissed at an early stage, the potential economic and psychological costs of full-blown litigation may force the defendant to settle an unmeritorious claim, including through removing truthful and accurate information, no matter how strong their defence might be.

23. Consequently, the Council of Europe's Anti-SLAPP Recommendation provides that, to advance their claim to trial, claimants targeting public participation should be required to establish a reasonable cause of action at the earliest possible stage and that courts should have the power to dismiss SLAPPs early in the proceedings, on their own initiative or at the request of the defendant.⁴¹ Such early dismissal procedures should be based on the adversarial principle and handled by courts with due expediency.⁴² It is also recommended that the defendant's application for early dismissal stays the main proceedings until a final decision on that application is taken and that the claimant should be barred from amending their pleadings with the aim of avoiding a dismissal order.⁴³
24. The importance of early dismissal is borne out by the practice of countries that have adopted specific anti-SLAPP legislation. Introduced in 1992, California's anti-SLAPP law provides a good illustration of how an early dismissal mechanism operates. The law allows a defendant to file a motion to strike out the complaint, which the court will hear within 30 days.⁴⁴ Discovery and disclosure proceedings and related activity are paused from the time the motion is filed until the court has ruled on it, subject to limited exceptions. In determining an application to strike out a claim under this legislation, the court will first decide whether the defendant established that the lawsuit arose from one of the statutorily defined protected speech activities.⁴⁵ If so, the application will succeed unless the claimant can show a probability that he will prevail on the claim.⁴⁶
25. In the Council of Europe region, a SLAPP-specific early dismissal safeguard can be found in the United Kingdom's Economic Crime and Corporate Transparency Act ("ECCTA"), which came into force on 18 June 2025.⁴⁷ Section 194 of the ECCTA requires that the civil procedure rules make provision for courts to strike out a claim if (i) it is a SLAPP for the purposes of ECCTA and (ii) the claimant has failed to show that it is more likely than not that their claim would succeed at trial. While the application of the ECCTA is limited only to SLAPPs that target public statements related to economic crime, their definition under Section 195 is otherwise reflective of the salient features of SLAPPs discussed above. In particular, Section 195 refers to the existence of public interest in the disclosure targeted by the claim and to the fact that the claimant's behaviour is intended to cause the defendant harm or inconvenience beyond what is ordinarily encountered in the course of properly conducted litigation.

⁴¹ COE Recommendation para 25.

⁴² *Ibid.* para 29.

⁴³ *Ibid.* para 35.

⁴⁴ California Code, Code of Civil Procedure para 425.16(f).

⁴⁵ *Braun v. Chronicle Publishing Co.*, 61 Cal. Rptr. 2d 58 (Cal. Ct. App. 1997).

⁴⁶ California Code, Code of Civil Procedure para 425.16(b)(1).

⁴⁷ Economic Crime and Corporate Transparency Act, ss 194-195, available at <https://www.legislation.gov.uk/ukpga/2023/56/contents>

26. Enabling a defendant targeted by a SLAPP to recover the legal costs from the claimant is another effective way of attenuating the effect of litigation. The Council of Europe’s Anti-SLAPP Recommendation calls for appropriate provisions in national legal systems that enable courts to order SLAPP claimants to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant.⁴⁸ To illustrate how this remedy can be put into practice, California’s anti-SLAPP law gives a defendant who has successfully shown that the claimant filed the lawsuit to harass or silence them the ability to file a so-called ‘SLAPPback’ lawsuit against that person in order to recover damages for abuse of the legal process.⁴⁹
27. The successful implementation of these and other safeguards against SLAPPs may – and, probably, for the most part, does – require new legislation. The UK’s ECCTA and Malta’s Strategic Lawsuits Against Public Participation (SLAPP) Order, 2024⁵⁰ are, the Intervener understands, the only laws in Europe that expressly addresses SLAPPs – and in a very limited way. The ECCTA is confined to economic crimes. The Maltese law, which purports to transpose the EU Directive into law, does so in a way that doesn’t properly incorporate the indicators of a SLAPP in a way that ensures meaningful protection from unmeritorious litigation.⁵¹ Cases in which European courts have recognised the phenomenon of SLAPPs, let alone identified SLAPPs, also remain extremely rare. However, even in the absence of anti-SLAPP legislation and SLAPP-specific safeguards, national courts in many jurisdictions may be able to dismiss a SLAPP early on in the proceedings or, at least, mitigate its impact on the defendants, as long as they are alert to any aspects of the claim or the claimant’s behaviour that point to the abuse of the legal process and intent to intimidate and exhaust the defendant.
28. It is not uncommon for countries to have some procedural rules for filtering out unfounded or abusive lawsuits. In England and Wales, for example, courts are able to issue a summary judgment if ‘the party has no real prospect of succeeding’ and there is ‘no other compelling reason why [it] should be disposed of at a trial’.⁵² This mechanism may be sufficient at least for the early dismissal of SLAPP claims that are manifestly unfounded. In addition, in that jurisdiction a court may strike out all or part of a case if there are ‘no reasonable grounds for bringing or defending the claim’, it ‘is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings’, or where there has been ‘failure to comply with a rule ... or court order’.⁵³
29. In France, Article 122 of the Code of Civil Procedure permits the court to declare a claim inadmissible if it is manifestly unfounded, dilatory or abusive, without needing

⁴⁸ COE Recommendation, para 38.

⁴⁹ *Ibid.* para 425.18.

⁵⁰ *Strategic Lawsuits Against Public Participation (SLAPP) Order, 2024* (Legal Notice 177 of 2024), available at <https://legislation.mt/eli/ln/2024/177/eng>

⁵¹ *Ibid.* s.2

⁵² Civil Procedure Rules 24.3 - Summary Judgment, “The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—

(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
(b) there is no other compelling reason why the case or issue should be disposed of at a trial.” Available at <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part24>

⁵³ Civil Procedure Rules 3.4 – Strike Out, available at <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03#3.4>

to proceed to trial. Provisions allowing for early dismissal of ungrounded and/or abusive claims can also be found in other European countries, including Italy (Article 348-bis of the *Codice di procedura civile*), Spain (Article 404 of the *Ley de Enjuiciamiento Civil*), Poland (Article 191 of the Code of Civil Procedure, Article 17 §1(3) of the Code of Criminal Procedure, and Article 339 §3(2) of the Code of Criminal Procedure), and Bulgaria (Article 3 of the Civil Procedure Code).

30. Similarly, courts may be able to sanction SLAPP claimants on the basis of existing procedural rules. For instance, Article 32-1 of the French Code of Civil Procedure provides that a claimant who initiates proceedings in an abusive manner may be ordered to pay damages to the defendant. In the case of *Bolloré Group v France Télévisions*, the French court ordered the claimant to pay 10,000 EUR in damages for frivolous proceedings after the company sued the media organisation for 50 million EUR in damages over a report scrutinising the company's activities in Africa.⁵⁴
31. Existing procedural rules related to case management may also enable courts to tackle the deliberate multiplication of SLAPP claims in respect of essentially the same facts. In England and Wales, for instance, Civil Procedure Rule 3.1 gives courts the power to consolidate proceedings and try two or more claims on the same occasion. In considering using these powers, the court's aim is to avoid wasting party and court resources in a multiplicity of proceedings that involve identical or similar issues, and to protect defendants from the cost and vexation of having to defend separate proceedings against essentially the same allegations.⁵⁵
32. The decision of the High Court of Justice of Northern Ireland in the case of *Kelly v O'Doherty* referred to above provides a helpful example of how a national court may use pre-existing procedural rules and legal doctrines to effectively counter a SLAPP even in the absence of SLAPP-specific laws.⁵⁶ The court in that case identified the defamation lawsuit as a SLAPP and, relying on the well-established concept of 'an improper collateral purpose', ordered that the matter be struck out.⁵⁷ The court also used the existing mechanism of indemnity costs to enable the journalist to fully recover the legal costs of his defence from the plaintiff. On this point, it observed that "where a court is satisfied on the balance of probabilities that a defamation action amounts to a SLAPP, then an award of costs to the defendant on an indemnity basis is an inevitable consequence as a demonstration of the court's repudiation of the way in which a plaintiff has abused the processes of the court".⁵⁸

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⁵⁴ See Council of Europe Safety of Journalists Platform, France 2 TV channel sued in a Commercial Court by the Bolloré Group, available at <https://fom.coe.int/en/alerte/detail/18507311>

⁵⁵ Civil Procedure Rule 3.1 available at <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03#3.1>

⁵⁶ *Kelly v O'Doherty* [2024] NIMaster 1, <https://www.judiciaryni.uk/files/judiciaryni/decisions/Gerard%20Kelly%20and%20Malachi%20O%E2%80%99Doherty.pdf>.

⁵⁷ *Ibid*, para 72.

⁵⁸ *Ibid*., para 117.