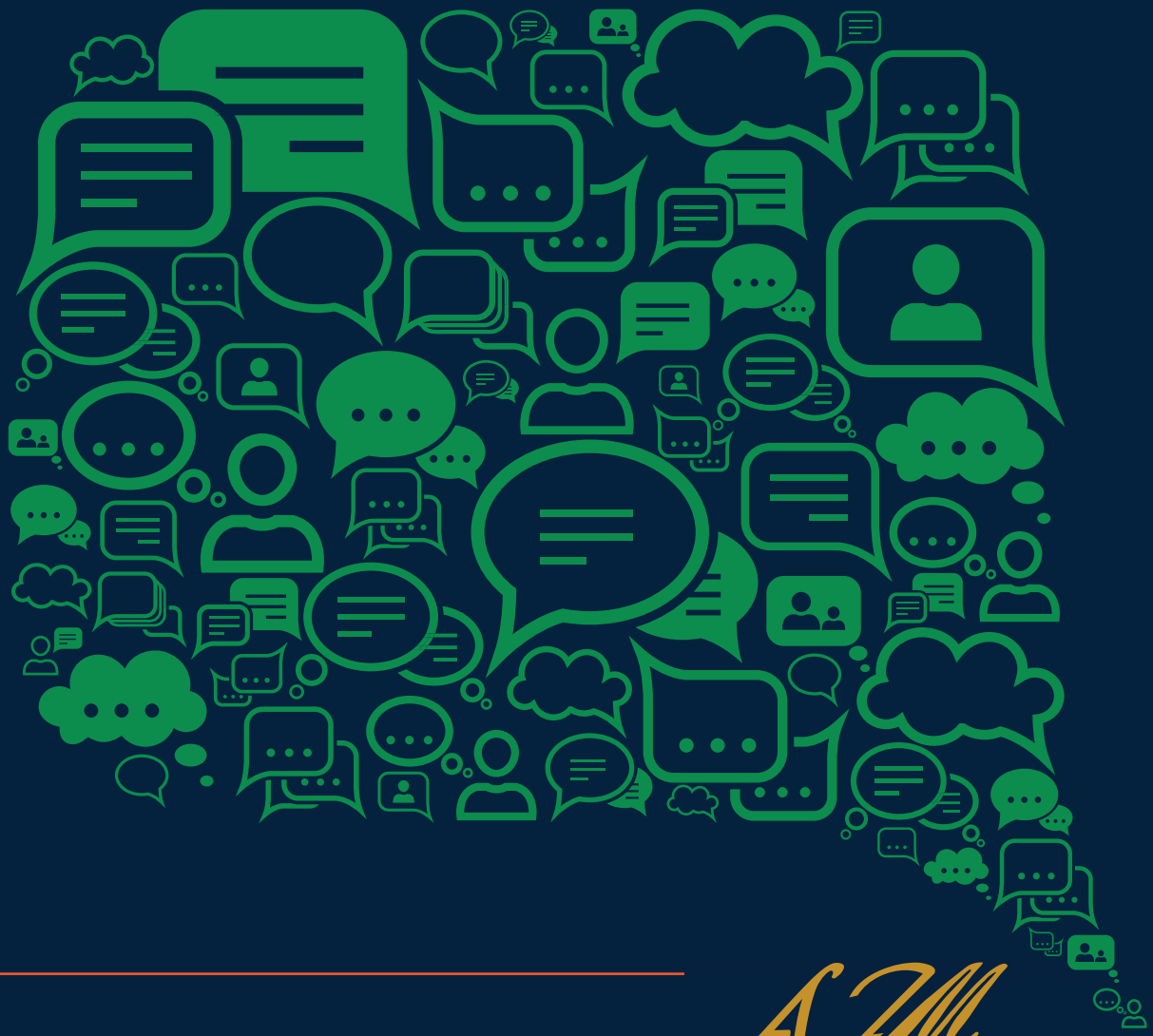
ANALYSIS

HOW TO ENSURE MORE EFFECTIVE PROTECTIONFROM STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPPS)?



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Association of Journalists
of Macedonia

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FREEDOM of the Press,
if it means anything at all,
means the FREEDOM
to criticize and oppose

George Orwell

1. TABLE OF ACRONYMS

1.	SLAPP	Strategic lawsuit against public participation
2.	ECtHR	European Court of Human Rights
3.	CASE	Coalition against SLAPPs in Europe
4.	NGO	Non-governmental organisation
5.	USA	United States of America
6.	EU	European Union
7.	ECHR	European Convention on Human Rights
8.	LCP	Law on Civil Procedure
9.	LO	Law on Obligations
10.	LCLID	Law of Civil Liability for Insult and Defamation
11.	KRIK	Crime and Corruption Reporting Network in Serbia
12.	BIA	Security Information Agency in Serbia

2. INTRODUCTION

This analysis was done as part of the project involving journalists and media workers, the media community and relevant institutions, and the aim is to contribute to raising awareness of the risk that strategic lawsuits against public participation (SLAPPs) pose to freedom of expression, through preventive tools, which will educate the stakeholders.

PROJECT OBJECTIVE

1 **EDUCATIONAL COMPONENT**

To come up with specific guidelines that will define this type of lawsuits in a local context and the potential consequences that might arise.

2 **MONITORING SLAPPS**

By publicly speaking about the challenges related to strategic lawsuits against public participation, to strengthen the vigilant monitoring of the negative consequences of SLAPPs on public interest and the right of the people to be informed.

2.1 Analysis structure

The analysis consists of three parts.

The first part addresses the definition of SLAPP and the essential elements of this phenomenon, including a brief overview of the SLAPP situation in Europe.

The second part focuses on mapping and assessing the national legislation to ensure a clear systematization of the relevant regulation pertaining to the existing protection mechanisms

against SLAPPs. At the same time, this section refers to the principles that provide the basis for the protection against SLAPPs, which derive from the ECtHR case law. The authors made an effort to select and analyse several cases on the topic under discussion. The language used in this section is clear and simple, while retaining the legalistic precision and consistency of ECtHR's argumentation.

The third part concerns the establishment of guidelines for defining the strategic lawsuits against public participation in the local context, through case studies from the country and from other Western Balkan countries, to encourage learning and exchange, as well as legal recommendations relevant to the local context, in order to recognize and prevent and to improve the legal protection of journalists.

2.2 What is the purpose of this analysis?

The analysis has two objectives:

1. To be a roadmap of sorts for the guidelines for defining strategic lawsuits against public participation (SLAPPs) in the local context. This objective is closely correlated with one of the special objectives of the project to increase the capacity, knowledge and skills of journalists, activists, analysts, lawyers and civil society organizations in recognizing SLAPPs and playing a proactive role in detecting and countering this phenomenon;

2. The second objective of the analysis is to increase awareness, not only of journalists and civil society organizations, but also of the general public, about the risk that strategic lawsuits against public participation (SLAPPs) pose on the freedom of public expression, freedom of speech, public performance and public informing.

2.3 Methodological approach

The data provided in this analysis are documented with the help of the analytical and synthetic method with a detailed description and a graphic representation of the research results. A combination of a comparative and a descriptive method was used for the comparison and description of the legislative framework, ECtHR's case law and the interviews conducted in order to establish the guidelines for defining SLAPPs.

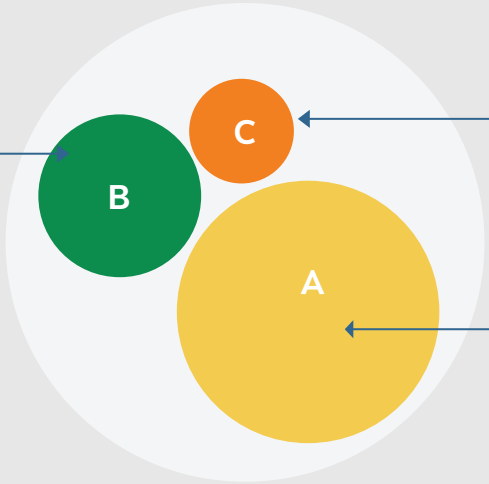
METHODOLOGY

2. RESEARCH ACTIVITIES

Conducting consultative interviews regarding challenges and issues related to journalist safety and the situation with SLAPPs.

1. ANALYSIS OF RELEVANT DOCUMENTS

Defining SLAPPs, analysis of relevant domestic and international acts/documents, analysis of cases in the country, the Balkans and the EU.



3. PREPARING GUIDELINES

Preparation of guidelines for defining strategic lawsuits against public participation in the local context and through case studies.

3. WHAT IS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP)?

3.1 Definition of the Term SLAPP

The term SLAPP - Strategic Lawsuit Against Public Participation - was originally coined by Professors George W. Pring and Penelope Kanan in their book ***"SLAPPs: Getting Sued for Speaking Out (1996)"*** [1]**.** The term generally refers to a lawsuit filed by powerful subjects, i.e., entities (for example: a corporation, public official, high-profile business person) against civil society organizations or individuals, such as journalists or others who have expressed a disapproving, i.e., critical stand on an essential issue of a certain political interest or of social significance.[2]

Defining a SLAPP remains one of the most elusive goals of all of the legislation there is against this phenomenon. Is it too much to expect that there should be some attempt at consistency between the three European bodies (including our government) in establishing a definition, in order to assist lawyers who, moving forward, may find themselves at a loss as to how best to operate in this complex area?[3]

1 Pring and Cannan, SLAPPs: Getting Sued for Speaking Out (1996) https://books.google.mk/books?id=SEaAjENdpJkC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

2 European Centre for Press and Media Freedom: https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/

3 The Law Society Gazette, https://www.lawgazette.co.uk/commentary-and-opinion/three-types-of-slapps/5116441.article

According to American legal thought, a SLAPP is something different from a "mere" attack on free speech: A SLAPP aims to shut down critical speech by intimidating critics and draining their resources, undermining their active public engagement. Moreover, one basic characteristic of this type of action is the inequality of power and resources between the claimant and the defendant.

SLAPPs don't just apply to journalists. SLAPPs can also refer to civil society organizations, analysts, lawyers, public figures, i.e., essentially against anyone who can initiate a public debate or raise a certain issue affecting the public interest. In essence, the SLAPP phenomenon is not so simple to describe or define, given the fact that the indicators immanent to SLAPPs are not always clear and obvious.

Often, these types of lawsuits are unfounded or abusive, disguised as lawsuits for defamation or alleged violation of constitutional and/or civil rights, which are filed against journalists or activists for exercising their political rights and/or their freedom of expression and information in connection with matters of public interest or social importance.

They are usually filed not with the intention of obtaining justice, but to intimidate, silence, and drain the financial and psychological resources of SLAPP targets. They are often characterised by a great imbalance of power between the claimant and the defendant, where one has the resources and ability to effectively silence the other through litigation techniques that amplify the psychological and economic burden of protracted proceedings.[4]

A SLAPP is aimed at exhausting the defendant's resources, including the motivation to continue working on a particular story, project, or gathering information in order to present it to the public.

One of the most significant characteristics of these actions is seen through their intended effect. Powerful political, business or social entities, which initiate these lawsuits, are not truly motivated by the amount of compensation they would achieve, but their actual motivation is to prevent an issue to be raised at all before the relevant institutions. And where better to highlight the issues that these entities would not like to be discussed, than in front of the courts, where the parties are equal and the evidence for and against is presented. The ultimate effect of these lawsuits is actually to achieve this deterrent effect, i.e. "chilling effect" on the defendant/s, in order to hinder their normal operation and functioning, but also to obstruct their corporate and personal rights.

As underlined by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, the environment of a particular country can be more or less conducive to

4 Rafał Mańko Members' Research Service PE 733.668, SLAPP- BRIEFING EU Legislation in Progress, July 2023

SLAPPs. It depends on a variety of factors, such as how expensive legal fees are, the elasticity of laws referring to speech (especially defamation), and the existence of safeguards (e.g., anti -SLAPP statutes (i.e., regulations) or costs awards against abuse of process). For example, these three requirements are perfectly met in the American context: hence, the free speech group Censorship Index has identified civil litigation as one of the growing threats to media freedom in the United States.[5]

Often based on ambiguous and elastic legal provisions, SLAPPs employ several strategies to drain resources and morale, generally involving excessive demands for damages and allegations designed to defame, harass, and overwhelm activists and/or civil society organizations.

There is no definition that will simply explain this phenomenon.

However, in general, these lawsuits include the following key features:

BASIC FEATURES OF SLAPPS

DISGUISE
Being disguised as defamation lawsuits or violation of constitutional and/or civil rights. Allegations of smear-campaigning and insulting.

INTIMIDATION
The lawsuits do not aim to have justice served, rather to intimidate and silence a journalist/activist/organisation.

INEQUALITY
An imbalance of power and resources between the plaintiff and the defendants is typical.

EXCESSIVE DEMANDS
Extreme and unreasonable claims for compensation, intended to drain the financial and psychological resources of the defendant.

A DETERRING (CHILLING) EFFECT
Determent and obstruction of the normal business functioning of the defendant.

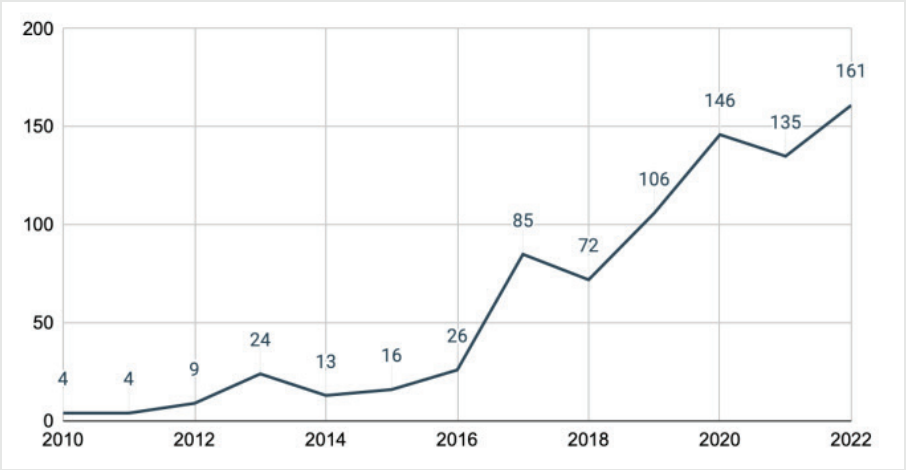
5 *Ibid*

Hence, by definition, SLAPPs represent: ***defamation lawsuits filed to prevent active public participation, including public interest journalism, peaceful protests or boycotts, advocacy, whistleblowing, academic commentary, or simply speaking out against the abuse of power. SLAPPs target anyone who works to hold the powerful accountable or deals with issues of public interest: so-called "public watchdogs." This broad category includes journalists, activists, human rights defenders, whistleblowers, campaigning organisations, trade unions or trade associations and academics[6].***

3.2 SLAPPs shown by numbers - the example of Europe

According to a comprehensive CASE[7] study published in 2023, there has been a sharp increase in SLAPP cases across Europe in the last four years - with 539 cases across Europe today, a fifth of that number was recorded in 2021 alone. A record number of SLAPPs was recorded in 2022, with 161 cases registered. However, in reality, the number is actually much higher because detecting and identifying such cases has proven to be a really big challenge.

Registered SLAPP cases in the period 2010-2012 in Europe



According to the policy paper, "SLAPPs in Europe, How the EU Can Protect Watchdogs from Abusive Lawsuits", Malta, Slovenia, Croatia and Ireland top the list. Malta had the highest rate of SLAPP cases per capita, with 3 per 100,000 people, followed by Slovenia with 1.9 and Croatia with 0.6. **With 0.29 per 100,000 people, Macedonia is in the top 10 countries with the highest SLAPP rate per population.**

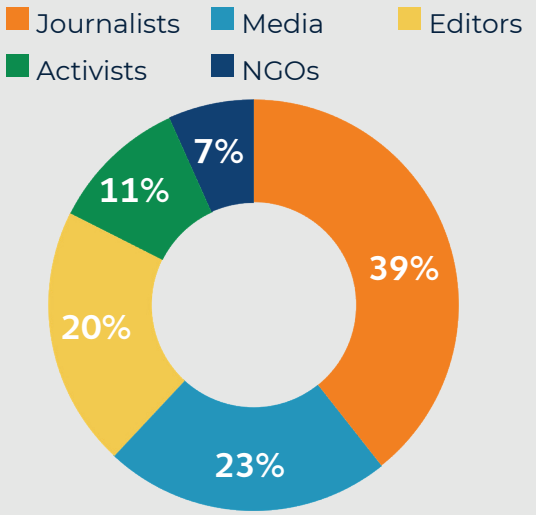
6 Coalition Against SLAPPs in Europe (CASE), SLAPPs: A TREATH TO DEMOCRACY CONTINUES TO GROW, A 2023 Report Updated, page 7

7 Coalition Against SLAPPs in Europe (CASE), an umbrella group that unites a range of watchdog organizations.

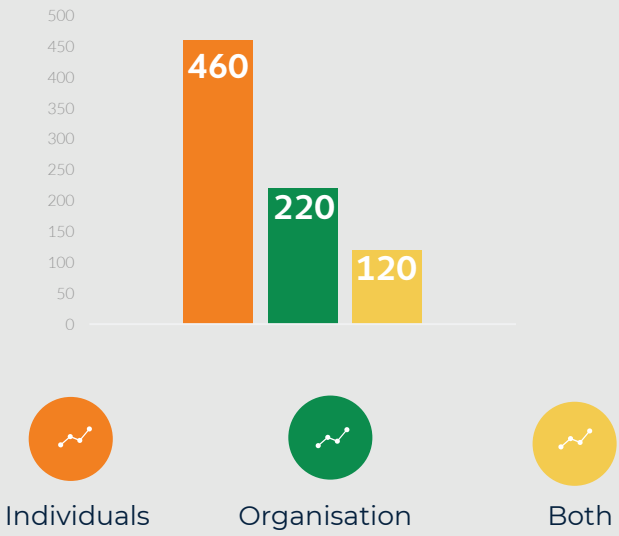
3.3 Who are the most common SLAPP victims?

The cumulative data shows that journalists in their individual capacity remain the most likely targets of SLAPPs, followed by the media, editors, activists and NGOs. Other likely defendants include lawyers, academics, politicians, book authors (writers) and publishers. In the vast majority of cases, the target remains an individual versus an organization (graphic representation below).

Most common victims



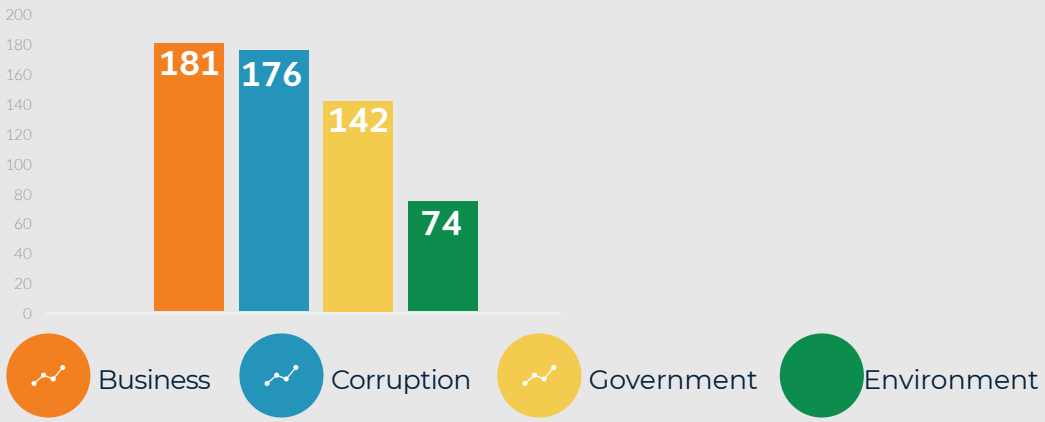
Individuals vs organizations



3.4 What are the most common grounds for a SLAPP?

In 2022, the largest number of mapped lawsuits against public participation in Europe were related to published articles and information about shady or questionable business dealings (34%), followed by corruption (23%), government (10%) and the environment (8.3%).

Grounds and reasons for filed lawsuits against public participation



3.5 Who is the most common claimant and SLAPP filer?

During 2022, businessmen and business entities filed the most lawsuits (40%), followed by state entities (26.8%) and politicians (25%). This ratio represents a trend of several years. As can be seen in the chart below, between 2010 and the end of 2022, the most common SLAPP litigants were those in positions of power; namely, businessmen and politicians.

Who are the most common plaintiffs, i.e., filers of SLAPPs?

State entities and politicians
A high percentage (between 26 and 27%) of the plaintiffs are politicians and state bodies / entities

Businessmen
Businessmen and business entities comprise 40% of the total number of lawsuits, making them the most represented category

4. THE CASE OF MALTA AND THE BIRTH OF "DAPHNE 'S LAW"

In 2017, journalist Daphne Caruana Galizia was murdered in Malta. At the time of her murder, she was facing 48 strategic lawsuits against public participation (SLAPPs) from politicians, including the former prime minister and cabinet ministers. SLAPPs are lawsuits that do not primarily aim for compensation, but to harass or subdue the media and other critical voices in society and create a chilling effect on the right to freedom of expression.

Moreover, Daphne Caruana Galizia faced the threat of such a SLAPP from a third country, i.e., from the United Kingdom and the USA. According to research by the Coalition Against SLAPPs in Europe (CASE), Caruana Galizia remains the individual who has been subject to the largest number of SLAPP cases in Europe. To her critics, Caruana Galizia was a "hate blogger" and a "poison pen writer" - the "witch of Bidnija ". The vitriol was, in part, a result of bitter tribal behaviour in Malta's two-party political system.

As a direct result of the advocacy of Daphne ‘s family and civil society, the anti -SLAPP movement has grown to address SLAPPs in Europe. In memory of Daphne Caruana Galizia’s legacy, the draft directive proposed by the European Commission, in April 2022 has become known as “ Daphne’s Law”. Meanwhile, the Council of Europe will publish a comprehensive report with anti-SLAPP recommendations in early 2024.

Therefore, it is safe to say that Malta is, in fact, the country where the initial spark was lit on the territory of Europe for this issue to be addressed with all of its seriousness, not only in terms of journalists and civil society organizations, but also in the wider context in society, especially in the rule of law.

5. ANTI-SLAPP LAWS

Anti-SLAPP regulations are intended to limit and/or deter potential claimants from filing harassment lawsuits that are not aimed at protecting rights, but instead are aimed at harassing defendants. Such regulations usually allow for early dismissal of such lawsuits, awarding costs incurred by the defendant and they provide some measures for penalizing abuse, such as a fine for the claimant.

One challenge in drafting anti-SLAPP legislation is determining how to target abusive lawsuits without denying the rights of those pursuing legitimate claims. This is, in fact, both the hardest part of the job and the biggest challenge.

Anti-SLAPP laws are more developed in the US, Canada, and Australia—where they largely emerged from the context of environmental law—while in Europe, SLAPPs remain largely unrecognized, with little consideration of their use and impact. According to some scholars, this difference is based on the different consideration of the right to freedom of expression in the constitutional systems of the countries. While freedom of speech is protected as an almost absolute right by the US First Amendment, a necessary balance between this fundamental right and other interests – such as reputational rights – is ensured in European domestic and regional systems (e.g., by Article 10 (2) of the European Convention on Human Rights).

Since February 2018, a group of MEPs have been calling on the EU Commission to promote an EU anti-SLAPP directive, which would give investigative journalists and media groups the power to seek the swift dismissal of “vexatious lawsuits” and create a fund to financially support media groups that oppose such lawsuits. Moreover, the MEPs also proposed the creation of a

new EU register that would “name and shame” firms practicing SLAPPs. One of the reasons that induced the EU MEPs to promote such regulation is the case of Daphne Caruana Galizia, the Maltese investigative journalist that was murdered in a car bomb last October. Following this case, last April, Malta decriminalized defamation: however, the anti-SLAPP amendments were not included.

5.1 Draft directive proposed by the European Commission

On April 27, 2022, the European Commission adopted the proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”) and the recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive lawsuits (“Strategic lawsuits against public participation”).[8]

The purpose of this directive is to eliminate obstacles in relation to the proper functioning of civil proceedings, while ensuring the protection of natural and legal persons involved in public participation on matters of public interest, especially journalists and human rights defenders, proceedings against the court, that are brought against them to dissuade them from public participation (commonly referred to as “strategic lawsuits against public participation“ or “SLAPPs”).[9]

According to this proposal for a directive, it is necessary to take into account that public participation is not always carried out in good faith. Spreading disinformation should not be protected by this directive. To that end, the rules in this directive should give sufficient discretion to the court or tribunal concerned with the matter, in order to consider whether the application of the relevant safeguards is appropriate in a particular case. For instance, if the allegations made by the defendant are fabricated and intended to harm the claimant’s reputation, the defendant should not be afforded protection.[10]

8 Council of the European Union, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177

9 Ibid

10 Ibid

5.2 Draft Recommendation of the Committee of Ministers on Countering the Use of SLAPPs

The Council of Europe, realizing the necessity of greater protection of journalists, has drawn up a draft recommendation on countering SLAPPs ("Strategic lawsuits against public participation").

In the preamble of this recommendation, the Council of Europe refers, first of all, to the obligation of the Member States to the right to freedom of expression and information, guaranteed by Article 10 of the European Convention on Human Rights as interpreted by the European Court of Human Rights in its case law. The Council of Europe also refers to their negative obligation to refrain from interfering with the right to freedom of expression and to their positive obligation to create a safe and favourable environment for everyone to participate in public debate, without fear, even when their opinions are opposed to those defended by official authorities or significant sections of the public. In addition, in the preamble, the Council of Europe provides a definition of SLAPP, stating that it *is a practice that aims to cause an intimidating effect on freedom of expression, public debate and public participation through the vexatious or malicious use of legal proceedings to strategically intimidate and ultimately silence anyone who wants to participate in public debate or public affairs, including by threatening or taking legal action for wholly or partially unfounded claims and exploiting imbalances in financial, political or social power.*

In the operational part of the recommendation, the Council of Europe, in accordance with Article 15, establishes and recommends to the Member States to urgently implement the guidelines that are given in addition to this recommendation in accordance with its principles, to pay specific attention to SLAPPs in the context of their review of legislation, policies and practices in accordance with the Directive on the protection of journalism and the safety of journalists and other media actors. The operational part also provides for the promotion of the objectives of the recommendation at the national level and the establishment of cooperation with all stakeholders to achieve those goals and regular follow-up on the status of the implementation of the recommendation and informing the Council of Ministers about the measures taken by the Member States and other stakeholders, the progress achieved and the challenges they face.

Within the framework of the draft recommendation, the Council of Europe provides clear definitions of the key terms for the purposes of the recommendation, starting from the ECHR and the established practice of the ECtHR. In this section, the Directive primarily defines public participation and public interest, which as terms are very specific and context-dependent.

The essential part of the recommendation is the indicators that the recommendation defines for identifying the purpose of initiating a court case. The recommendation defines 8 indicators, which a court action does not necessarily have to have in order to be considered a SLAPP. These indicators include:

(1) The claimant's intention to exploit the imbalance of power, such as their financial advantage or political or social influence, to exert pressure on the defendant.

(2) The aggressively formulated arguments presented by the claimant are partially or completely unfounded.

(3) If the claimant submits legal remedies, which are disproportionate to the defendant.

(4) If the claimant uses procedural and litigation tactics, such as delaying the proceedings, choosing a forum in which the law or other aspects of the proceedings are favourable to them, causing an increased workload, filing appeals with little or no prospect of success, and causing disproportionate costs to the defendant.

(5) Conducting court proceedings is aimed at individuals or organisations, or individuals or organisations related to them.

(6) If the court proceedings are accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in the public debate or aimed at diverting attention from the essential issue in the specific case.

(7) If the claimant or his representatives engage in legal intimidation, harassment or threats, or have experience in performing such activities.

(8) The claimant or related parties are involved in multiple and coordinated or cross-border court proceedings based on the same facts or in connection with similar matters.

The Recommendation also provides for specific forms of SLAPPs, recognizing cross-border SLAPPs and SLAPPs that target anonymous public participation.

In the area of protection against SLAPPs, the recommendation provides, in a clear and unambiguous manner, essential safeguards, remedies, and transparency in SLAPP cases. Namely, in the area of protective mechanisms, the recommendation foresees two types: legal and procedural protective mechanisms. The legal mechanisms envisage the adoption of legislation that ensures that every person can participate in public debates and in public life without fear and threats that will be in accordance with the ECHR. In the area of procedural mechanisms, the

recommendation provides for the following: effective case management, early dismissal of lawsuits against public participation, non-amendment of the claim of SLAPP lawsuits, shortened procedures in case of SLAPP lawsuits, costs of the procedure and compensation for damages, compensation of costs of court proceedings in the case of a SLAPP, stay of court proceedings in the event of the death of the defendant.

In addition to protective mechanisms, the recommendation also provides for the following remedies in case of SLAPP cases: award of the costs of the procedure, compensation for damages to SLAPP victims, limitation of the amount of non-pecuniary damage to the claimant, SLAPP deterrence measures. Regarding transparency in SLAPP cases, the recommendation provides for the publication of court findings, when it comes to SLAPPs, as well as the name of the claimant in accordance with positive laws for the protection of personal and European standards for human freedoms and rights. In addition to publication, the recommendation also provides for the introduction and maintenance of a public registry of court cases and decisions considered as a SLAPP.

Finally, the recommendation provides ways to comprehensively support SLAPP targets and victims, providing for legal assistance, financial support, psychological support, practical support, and private sector support.

From the aspect of general prevention, the recommendation highlights the importance of educational programs and training programs for legal professionals and public authorities based on the practice of the ECtHR and international standards and mechanisms, with an emphasis on gender representation. On the other hand, the recommendation envisages the development of strategies and measures to raise public awareness among the general public about SLAPPs and the damage that can occur in public life and the public interest from them.

This Council of Europe document is of particular importance for the recognition and prevention of SLAPPs, as well as strong support for the fight against existing SLAPP cases. The importance of the recommendation is in its comprehensive approach, through which, in fact, it seeks to establish a system in the Member States of the Council of Europe that will guarantee the prevention, identification and fight against all forms of prevention or limitation of public speaking, participation in the public space and informing about the public interest in accordance with the standards established by the ECHR through its mechanisms and the practice of the ECtHR.

5.3 Is there a need for a distinction between the protection of journalists and other actors

A synonym for public participation, that is, participation of the public is achieved through journalists. They are always on the front line because they have the role of reporting, transmitting and commenting on events and news, primarily in the field of public law and public entities, but also within private law entities. However, other entities that aren't considred media and journalists *per se* have their own participation in public debates, comments and criticisms.

Perhaps the best answer to this question is provided by the proposed EU directive, which makes a kind of, not so big, but, nevertheless, distinction between journalists and other participants in public participation.

According to the draft directive, journalists play an important role in facilitating public debate and in transmitting and receiving information, opinions and ideas. They should be able to carry out their activities effectively, in order to ensure that citizens have access to the plurality of views in European democracies. It is essential to leave the necessary space for journalists to contribute to an open, free and fair debate and to resist disinformation, information manipulation and interference. Journalists should be able to carry out their activities effectively to ensure that citizens have access to the plurality of views in European democracies. The protection given to journalists under the right to freedom of expression, in recognition of their important role, is subject to the provision that they should act in good faith, in order to provide accurate and reliable information, in accordance with the ethics of journalism.

This directive does not provide a definition of a journalist, as the aim is to protect every natural and legal person for their engagement in public participation. However, it should be underlined that journalism is a function shared by a wide array of actors, including reporters, analysts, columnists and bloggers, as well as others engaged in forms of self-publishing in print, online or elsewhere.[11]

11 Ibid

6. OVERVIEW OF THE RELEVANT LEGAL FRAMEWORK AGAINST SLAPP IN RN MACEDONIA

There is no special anti-SLAPP regulation in the Republic of North Macedonia. This, however, does not mean that the defendants in such processes have been left without any protection, but that they exercise their rights, i.e., protection within the overall framework of positive law, without making a distinction between what is a SLAPP lawsuit and what does not fall under this category.

These cases, of whatever nature they may be, gravitate around several procedural and substantive laws. Some of them are lex generalis, such as the Law on Civil Procedure (LCP), the Law on Obligations (LO), LSC or they are lex specialis as the Law on Civil Liability for Insult and Defamation (LCLID).

However, in order to examine the provisions of these laws, we must consider the constitutional framework.

6.1 Constitution of the Republic of North Macedonia

According to the Constitution, freedom of speech and thought is guaranteed.[12] The basic values also include

> *...the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution*[13]

This means that not only those given and prescribed by the Constitution, but also those prescribed by international law, as supreme, are recognized and affirmed by the Constitution and by our legal order.

6.2 Laws

6.2.1 Law of Civil Liability for Insult and Defamation

The Law on Obligations, in essence, regulates the principles on the basis of which damage occurs, the principles on the basis of which responsibility is considered and determined, that is, damages are compensated for an insult or defamation.

12 Constitution of the Republic of North Macedonia, Article 16

13 Constitution of the Republic of North Macedonia, Article 8, Fundamental values

The law is a lex specialis vis a vis the Law of Obligations, where the institutes of damage are generally prescribed.

Since the right to freedom of expression is a relative right (i.e., it can be subject to restrictions, but in precisely defined cases), in order to avoid arbitrary interpretation, exceptions have been defined when there is no liability for insult, that is, defamation. Why is that important? Because they represent a kind of dam or a protective mechanism against SLAPP proceedings, although this type of lawsuit is not specifically singled out, i.e., identified in this Law.

For an offense committed, the exceptions are given in Article 7.[14]

For defamation, exceptions are provided in Article 10.[15]

6.2.1.1 Shifting the burden of proof

Immanent in cases of defamation is that the burden of proof, that is, onus probandi is to the defendant. The defendant (journalist, civil society organization etc.), in fact, has to prove that the claim made is true, or that they had a valid reason to believe in the accuracy of what was presented. This inverse burden of proof does not necessarily mean that it is unfavourable for the defendant in SLAPP cases, because the very possibility of the defendant to further elaborate and prove what has been presented is to the detriment of the claimant. Therefore, these lawsuits, that is, the possibility of filing them, are aimed at achieving the "chilling effect" so that the defendants do not present allegations at all, in order not to be exposed to all the negative aspects of the procedure, both on a personal and professional level. This shifting of the burden of proof means that the defendant has the task of proving that what was presented or conveyed was true. Such a burden of proof is a protective mechanism for the claimant, but also an aid to the court, because it is really difficult to prove the negative facts that would be presented (for example, that there is no embezzlement, that there is no adultery, that funds are not misused, etc.)

6.2.1.2 Safeguards in SLAPP Cases

The safeguards provided in SLAPP cases can theoretically be divided into 2 parts:

- Safeguards of process nature
- Safeguards of material-legal nature.

14 Law on Civil Liability for Insult and Defamation Official Gazette of the Republic of North Macedonia No. 251/2022 of 22.11.2022, Article 7

15 Law of Civil Liability for Insult and Defamation Official Gazette of the Republic of North Macedonia No. 251/2022 of November 22, 2022, Article 10

From the point of view of special safeguards of a procedural nature, there are no special provisions in the LCLID, except for the general provisions, which are conditio sine qua non to initiate a procedure.

As for the safeguards of a material-legal nature, the situation is somewhat better. Both the insult section and the defamation section, which is particularly interesting from a SLAPP perspective, there are provisions that exclude liability. Since SLAPP cases usually involve public figures from politics or business, which touch or are related to the public interest, the provision of Article 7 paragraph 3, 4 and 5 (which refers to the insult)[16] and Article 10 paragraph 1 point 4 (which refers to of defamation).[17]

In any case, the strongest safeguard of substantive legal nature, which can apply to SLAPP cases, is the general principle regulated in Article 2 and Article 3[18] of this law.

This means that the domestic legislation cannot be an excuse by itself when it comes to the limitation of the right to freedom of expression, therefore the legal opinions expressed in the judgments of the ECtHR are also taken as a source of law, which is in accordance with the Constitution and the law for the courts.

6.2.2 Law on Obligations (LO)

The principles of LO given in Article 8 and 9 mean that the right to personal, that is, professional integrity is an absolute right and everyone has a duty to ensure that no damage is caused to personal rights, which are recognized, and to legal entities.[19]

LCLID refers to the LO as a regulation when determining the compensation for damages. There are no specific provisions that would be applicable exclusively to SLAPP cases, but within the general provisions for assessing damages, it can be concluded that care is generally taken to ensure that there are no excessive damage claims that would be arbitrary, and as such awarded, which is itself a deterrent to those intending to file a SLAPP suit against a defendant journalist, CSO, etc.

The provision of Article 187-a, 188 and 189[20], is particularly interesting, where the scope and method of compensation for non-material damages are prescribed, that is, the distinction made between moral satisfaction and material satisfaction. And this possibility can be a deterrent in itself.

16 Article 7 of LCLID

17 Law on Civil Liability for Insult and Defamation Official Gazette of the Republic of North Macedonia No. 251/2022 of 22.11.2022, Article 7 and Article 10

18 Law of Civil Liability for Insult and Defamation Official Gazette of the Republic of North Macedonia No. 251/2022 of 22.11.2022, Article 2 and Article 3

19 Law of Civil Liability for Insult and Defamation Official Gazette of the Republic of North Macedonia no. 251/2022 of 22.11.2022, Article 8 and Article 9

20 Law of Civil Liability for Insult and Defamation Official Gazette of the Republic of North Macedonia No. 251/2022 of 22.11.2022, Article 187-a, Article 188 and Article 189.

6.2.3 Law on Securing Claims

This regulation belongs to the domain of procedural legislation, but it also contains provisions of substantive law. With this regulation, in fact, a certain claim is secured, which is commonly known as the assignment of temporary measures.[21] Since SLAPP cases usually have large monetary claims in the name of damages, this means that such measures require securing a monetary claim against a journalist, CSO, before or during the initiation of the procedure.

In practice, in the Republic of North Macedonia there have been cases where the Court was asked to assign a temporary measure that would prohibit the publishing or publicizing of a book and/or article, but there is no uniform position on the question of whether and how effective they are.

What is most important in relation to this regulation is that the list of temporary measures provided by the Law is not final, but rather instructive, because it contains the phrase "any measure that achieves the goal of such securing can be allowed, in particular.[22]

6.2.4 Law on Civil Procedure

LCP is a procedural law, which regulates the very procedure in which these lawsuits are carried out. This law does not have specific provisions, which would be directly applicable to lawsuits of this type, but can be applied mutatis mutandis. When we say applied, we mean that there is a mechanism by which those lawsuits, if identified, will be subjected to stricter scrutiny.

In essence, the court does not have much room for manoeuvring to intervene with the current legal solution. It is left with the possibility of adjudicating, which comes at the end of the procedure itself. However, certain provisions, if elaborated and refined, or interpreted more extensively, can find their application in the phase that precedes the adjudication.

Declaratory judgement is an interesting instrument, where the proof of legal interest in conducting such a dispute is provided. SLAPPs usually have a claim, not just for declaratory judgment, but contain a condemnatory petitum, requesting a certain action or restraint, or restitution. However, it exists as an opportunity to demand proof of legal interest on the part of the claimant, even if in this narrower scope. Of course, the possibility of legislative intervention in this direction in the future is not excluded.

Basically, the only possibility where the court could intervene, at least theoretically and potentially, is the stage of preliminary examination of the lawsuit, as well as the stage of the preparatory hearing.

21 Ibid

22 Ibid

6.3 European Convention on Human Rights in the fight against SLAPPs

The ECHR is part of the domestic legal order and may not be derogated from by law. It is even more interesting that its views, i.e., the views of the court expressed in the judgments, are applied directly in the domestic legal order. Article 10 is relevant for the issue of SLAPPs, certainly from the point of view of the Convention.[23]

6.3.1 Exceptions to freedom of expression under the ECHR

There are 2 tests used to examine potential restrictions on freedom of expression under Article 10, looking into whether such restrictions:

1) are prescribed by law

2) have a legitimate purpose

3) are necessary in a democratic society

(a) "prescribed by law"

Interference with freedom of expression shall be considered a violation of the Convention if it does not satisfy the criteria set out in the second paragraph of Article 10. It must, therefore, be determined whether it is "prescribed by law". National authorities, and especially courts, should interpret domestic law. Unless the interpretation is arbitrary or manifestly unreasonable, the court's role is limited to determining whether the effects of that interpretation are compatible with the Convention (Cangi v. Turkey, § 42).

(b) Whether the interference was aimed at a "legitimate goal", i.e. it was "necessary in a democratic society"

According to the practice of the ECtHR, the court has underlined several times that the list of legitimate goals given in paragraph 2 of Article 10 is exhaustive. Strictly interpreted, this position - exceptionally, given its special role in society - gives protection to only one branch of public authority, the judiciary.[24]

The Court has long considered that the right to protection of reputation is a right that is protected by Article 8 of the Convention, as part of the right to respect for private life. The concept

23 European Convention on Human Rights, Article 10

24 Morice v. France [GC], no. 29369 /10, §§ 128-30, ECHR 2015)..

of “private life” is a broad term, not subject to exhaustive definition, which includes both the physical and psychological integrity of a person. However, for Article 8 to come into play, the attack on a person’s reputation must reach a certain level of seriousness and in a way that causes an infringement of the personal enjoyment of the right to respect for private life (see, with further references, Medžlis Islamske zajednice Brčko and Others v. Bosnia and Herzegovina [GC], no. 17224/11, § 76, 27 June 2017).

c) are necessary in a democratic society

The general principles for assessing the necessity of interference with freedom of expression, reiterated many times by the Court since its judgment in Handyside v. the United Kingdom, were summarized in Stoll v. Switzerland [GC] (§ 101) and restated in Morice v. France [GC] (§ 124) and Pentikäinen v. Finland [GC] (§ 87).

Accordingly, the Court in its jurisprudence has developed the autonomous concept of whether the interference is “proportional to the legitimate aim”, which is determined taking into account all the circumstances of the case, using criteria established in the jurisprudence of the court and with the help of various principles and interpretive tools.

6.3.2 Excerpts from ECtHR jurisprudence relevant to SLAPPs

As for cases in Europe, there are various principles of case law that can be the legal basis for anti-SLAPP regulations, starting with the case of the European Court of Human Rights (ECtHR) Handyside v. UK (1976), which states that a democratic society should also tolerate those ideas “which offend, shock or disturb the State or any section of the population”.

Another key case is Steel and Morris v. United Kingdom (2005), where the ECtHR found a violation of Art. 10 of the Convention: the applicants, namely two members of London Greenpeace, were requested compensation of 40,000 euros for damage to the reputation of the McDonald’s company through a pamphlet titled “What’s wrong with McDonald’s?”. According to the court, the violation stems from the inability of the state to guarantee legal aid to the activists - who were individuals with very low incomes, against one of the richest companies in the world - and the amount of the award against them.

However, the ECtHR made a reference to SLAPPs for the first time in 2022, in the case of OOO Memo v. Russia.

● *Memo v. Russia*

The case concerns a civil defamation lawsuit filed by a Russian regional state body against a media company. The media company was ordered to post a retraction on its website, stating that it had published false statements thereby damaging the claimant's business reputation. The ECtHR found that, while civil defamation proceedings were open to private or public companies to protect their reputation, this could not be the case for a large tax-payer-funded executive body such as the claimant in this case. The court ruled that the interference with the media company's right to freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights (ECHR), was not justified by a "legitimate aim" because the Russian regional state could not rely on "protection of the reputation and rights of others", as stated in Article 10 § 2 ECHR.

Furthermore, the ECtHR found that allowing executive bodies to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and may have an unavoidable chilling effect on the media in carrying out their task of providing information and monitoring the public.

The judgment in the case of OOO Memo v. Russia is a new alarm signal that SLAPPs, as a form of abusive litigation, threaten the right to freedom of expression in a democratic society, as recently highlighted in policy documents, action plans and recommendations of The European Commission and the European Parliament, and as documented in the annual reports of the Council of Europe platform on promoting the protection of journalism and the safety of journalists. SLAPPs occur in various types of legal actions, with defamation being the claimants' primary choice, followed by claims brought under privacy and data protection laws. One of the first European institutions to highlight the worrying phenomenon of SLAPPs in Europe was the Commissioner for Human Rights of the Council of Europe. In her Human Rights Comment of 27 October 2020, "It's time to take action against SLAPPs ", Commissioner Dunja Mijatović called for effective action against SLAPPs to be taken urgently.

● *Gelevski against North Macedonia*[25]

In September 2020, the European Court of Human Rights delivered a judgment which determined that Mr. Gelevski's freedom of expression was violated according to Article 10 of the European Convention on Human Rights and ordered the Republic of North Macedonia to pay compensation in the amount of 3,000 euros to Nikola Gelevski due to the violated right to freedom of expression.

This verdict is related to and refers to the case in which the then editor-in-chief of Sitel television and editor-in-chief of the newspaper "Vecer" - Pavlović, initiated a court

25 CASE GELEVSKI against NORTH MACEDONIA (App no. 28032/12), Judgment, 08.10.2022 https://hudoc.echr.coe.int/fre/#{%22itemid%22:[%22001-204818%22]}

case against Nikola Gelevski because of his text "Megaphones from the Führer's Alley" („Мегафоните од фиреровиот сокак"), published on March 31, 2009 in "Utrinski Vesnik". Pavlovic then thought that Gelevski hurt his feelings. It took a year to finalise the court case, and Pavlović, before the Macedonian courts, won the private lawsuit for insult and defamation against the former columnist of "Utrinski Vesnik", Nikola Gelevski.

After the verdict against Gelevski was confirmed by the Court of Appeal and the Constitutional Court, Gelevski submitted a lawsuit to the Court of Human Rights in Strasbourg, which ruled in his favour. In the reasoning of the verdict, it is stated that **"the Government admitted that there was an interference with the freedom of expression of the complainant". The court notes that the applicant was a regular columnist in a daily newspaper. The interference must therefore be examined in the context of the essential role of media freedom in ensuring the proper functioning of a democratic society."**

Also, regarding the language used by Gelevski, the court reiterates that **"individuals, and especially journalists participating in a public debate on an issue of general interest, are allowed to use a certain degree of exaggeration or provocation". Finally, the court considers that "the criminal sentence handed down to Gelevski can undoubtedly have a chilling effect on the media in the political debate on important issues ".**

● *Makraduli against the Republic of Macedonia*

The judgment of the European Court of Human Rights delivered in this case resulted from two separate applications submitted by the same applicant, Mr. Jani Makraduli, who at the time of conducting the domestic proceedings in question was the vice-president of the opposition party SDSM and a member of the Macedonian Parliament. With it, the court deals with the merits of his appeal allegations that the criminal defamation convictions led to a violation of his freedom of expression guaranteed by Article 10 of the European Convention on Human Rights.

Hence, the European Court of Human Rights passed two verdicts for defamation against a politician in the Republic of Macedonia, which are an unjustified restriction of the right to freedom of expression. A Macedonian opposition politician was accused of defamation, after making critical statements towards the head of the Security and Counterintelligence Agency at official press conferences of the political parties. He appealed to the court after domestic courts upheld his rulings, arguing that the rulings struck an appropriate balance between the rights to freedom of expression and the protection of reputation. The Court emphasized that political speech enjoys particularly strong protection under the European Convention on Human Rights, and that, although politicians are entitled to the protection of their reputation, "politicians inevitably and knowingly lay themselves open

to close scrutiny of his every word and deed, both by journalists, and from the public as a whole, and they must display a greater degree of tolerance" (para. 71).

When establishing a violation of Article 10, the court also addressed the issue of the nature and severity of the imposed sanctions, emphasizing that even the relatively modest nature of the fines, in itself, does not negate the risk of a "chilling effect" on the further exercise of the freedom of expression. He judged that even though the imposed fine could no longer be collected, given the legal changes that decriminalized defamation, the conviction of the applicant had a chilling effect on the political debate that he raised on issues of general interest. Overall, the court found that the standards applied in the contested proceedings were incompatible with the principles embodied in Article 10 of the Convention and the domestic courts had failed to strike a fair balance between the conflicting interests at stake. Consequently, the interference was disproportionate to the objective and was not "necessary in a democratic society" within the meaning of Article 10 paragraph 2.

6.3.3 Examples of SLAPPs in the world and in the region

SLAPP practices are increasing worldwide and do not just consist of civil lawsuits. Instead, some strategic criminal claims can be made to silence unwanted voices. In Italy, for example, defamation charges are very often used against critical journalists, especially when they have covered stories about public figures or famous entrepreneurs. If journalists are unable to defend themselves against such cases, they may result in criminal sanctions or orders to compensate those allegedly harmed by the disputed statements. This is the case, for example, of investigative journalist Amalia De Simone, who in the last few years has suffered several abusive lawsuits (mainly criminal defamation cases) from wealthy businessmen as well as public officials after reporting on their allegedly illegal activities. The charges, which are still pending, were rejected by the public prosecution before they reached the court of first instance.

As with the De Simone case, SLAPPs often do not result in a final ruling against the defendant. Claimants know from the outset that their charges are baseless or exaggerated. However, they also know that suing and facing investigations and eventual trial is expensive and time-consuming. Consequently, abusive lawsuits can have major chilling effects, deterring a journalist, media operator or unwanted speaker from ever again exercising their right to criticize or report.

Some interesting blatant examples of SLAPPs from the US are the following two cases:

The SLAPP Case and Sacha Baron Cohen

In 2006, a woman filed a lawsuit against Sacha Baron Cohen, the television network Channel 4 and "Da Ali G" show on HBO, claiming that Cohen, while playing the role of "Ali G", mentioned her by name and defamed her during a fake interview with historian Gore Vidal.

In handing down the verdict in 2009, the court held that *"no reasonable person could consider the statements made by Ali G in the program to be factual and true"*, and therefore they did not meet the offense and qualification of defamation.

The Case of Texas Ranchers v. Oprah Winfrey

In perhaps the most famous SLAPP, Oprah Winfrey was sued by Texas ranchers in 1996, following a show called "Dangerous Food" in which she invited mad cow disease experts and declared that she would never eat hamburgers again.

The ranchers filed a lawsuit seeking more than $12 million in damages. Texas has no anti-SLAPP law, so Winfrey fought the SLAPP for six weeks before a jury ruled in her favour. On appeal in 2000, the US Fifth Circuit affirmed the ruling.

There is an interesting SLAPP case from a neighbouring country. The Serbian crime and corruption reporting network Krik has been fined for publishing news about a crime gang trial in Serbia.

Krik cited court material from a public trial against a local crime gang called "Jotka's group" in April 2021. The media quoted the defendants saying that the group had ties to the Minister of Interior, who is also a senior member of the Serbian Progressive Party and a former head of Serbia's Security Information Agency (BIA). An intercepted conversation, which the defendant claims may be heard, is the basis of this lawsuit. It is alarming that the husband of the judge who sentenced "Krik" is a close friend of another Serbian minister from the Progressive Party. The lawsuit is one of 12 SLAPPs targeting Krik since last year and has been the subject of backlash from multiple media outlets and organizations.

6.4 SLAPP cases in national courts

In the national courts of the Republic of North Macedonia, there is no easy way of making a clear identification of SLAPP cases, due to the fact that during the period in which they were processed, indicators were not updated to determine that it was a SLAPP. For cases that were processed and are being processed before the courts in RNM, there is representation of SLAPP in all court proceedings, i.e., in civil and criminal before the courts.

In the potential SLAPPs, in addition to the civil proceedings in the period 2008-2016, and after this period there were cases that were initiated by the public prosecutor's office, that is, investigative and judicial authorities and courts were abused by the executive power to limit the freedom of speech and public participation.

The first characteristic case of organized crime is the so-called case "Cobweb" (Пајажина), in which the subject of investigation were A1 television and other companies of the Ramkovski family. Namely, in the period before the opening of the investigation against the businessman Velija Ramkovski, he was a fierce critic of the government because of its autocratic and corrupt rule. This case was characterized by the intensity and extent of the mechanisms that were employed and used, both by the Public Revenue Office and other financial institutions, which have investigative powers. This case ended with convictions for the owner of A1 television, as well as for his family members and associates, but the final effect of this case was the shutdown of A1 television, which was the most vocal against the government that was the creator of the so-called captive state and what was ascertained by Reinhard Priebe's expert group. It was in the Priebe Report that the following recommendation was made, which could be said to apply to SLAPP. "Defamation actions should not be used as a means of stifling debate or preventing public figures from being held accountable. There is particular concern when politicians sue journalists for defamation, but also when they also sue other political figures instead of resolving their differences through other means such as public debate."

The second, also characteristic criminal case was the "Liquidation" („Ликвидација") case, in which, among the other eight, the journalist Tomislav Kezharovski was sentenced, initially to 4.5 years, and then his sentence was reduced to 2 years of effective imprisonment. The journalist Tomislav Kezharovski was convicted because in 2008, in the magazine "Reporter 92", he allegedly revealed the identity of the protected witness in this court case. The journalist Kezharovski was involved in the case "Liquidation" immediately after the announcements of his research on the traffic accident in which the owner of the weekly "Focus" Nikola Mladenov, one of the most prominent critics of the government at the time, lost his life. In the end, the proceedings were stopped due to statute of limitations.

The third criminal case did not refer to a SLAPP against journalists and media, but was aimed at the farmer Dushko Ilievski, a person who made public appearances as a leader of the protests against the "Svedmilk" dairy factory, which was a foreign investment supported by the Government of the Republic of Macedonia. Ilievski was arrested for allegedly growing marijuana together with his brother. After more than ten days spent in detention, Ilievski and his brother were released because it was ascertained that it was wild hemp that grew as a volunteer plant, not cultivated marijuana. After several years, Ilievski was accused of assaulting an official during the so-called Colourful Revolution from the same government because of its active role in these protests as well.

These were three distinctive court cases, which were the subject of criminal proceedings, through which the political elite, in effect, used SLAPP to initially remove them, and if that was not possible, to restrict them from operating in the public space.

In the area of civil proceedings, there is a developed case law due to the fact that in 2012 they were decriminalized with the adoption of the Law on Civil Liability for Insult and Defamation. In this analysis, we would like to review some of the judgments that could have SLAPP elements, which were pointed out by the lawyers interviewed.

1. Ali Ahmeti v. ATV Media Company DOOEL Skopje and Isen Saliu

The claimant Ali Ahmeti, with the lawsuit, demanded to establish that ATV Media Company DOOEL Skopje and Isen Saliu were responsible for the defamation committed against him due to the fact that the defendants allowed the publication of untrue facts, harmful to the honour and reputation of the claimant, through the website of the daily newspaper "Lajm", where it was announced that "Ali Ahmeti threatened Rafiz Aliti that he would expel him from the Democratic Union for Integration party." At the same time, the claimant Ahmeti demanded from ATV Media Company DOOEL Skopje to pay him non-material damages in the amount of 15,000 euros, while the person Isen Saliu in the amount of 10,000 euros, as well as the defendants to be ordered to publish the verdict in the prime news on three national televisions and on the most read internet portal in the Republic of Macedonia, at their own expense. The Basic Court Skopje 2 Skopje passed Judgment P5-17/18, with which it rejected the lawsuit as unfounded because it did not establish elements of defamation. This judgment was confirmed by the Skopje Court of Appeal with the Judgment GZ-57/19 of 13.2.2019.

2. The Left (political party) against Jabir Derala

The political party The Left, as the claimant, has filed a defamation lawsuit against the journalist Jabir Derala for defamation in two columns published in the "Rafal" column on the website www.civilmedia.mk, which were republished in "Sloboden Pecat" and in the electronic media outlet Plusinfo, because in them the defendant stated untruths: "They showed that they work for the Kremlin. Apasiev, the friend of the "Veles Goebbels", as he is called in his hometown, 'prances' around with his beard and spreads the Moscow-Vmro stench. But that didn't stop him from re-

ceiving donations from Western donors, such as the one from the Rosa Luxemburg Foundation for leftist funds in Dojran. Part of the strategy of the destructive anti-Western installations is to do just that - to set up and fund as many hotbeds and cells as possible"... The Right/Left disrupted their Sunday afternoon comfort and did not allow themselves to despair too much about the failure of their Russian campaign. No matter how ridiculous and grotesque the actions of these so-called leftists, who have been seen-through a long time ago, their "Announcement" is a signal that neither the Russian Embassy in Skopje, nor the Family (at least part of it) are not giving up the battle to destabilize and keep Macedonia in the past." The claimant Levica did not request compensation for damages because their honour and reputation were harmed. The basic civil court in Skopje passed Judgment P5-4/19, with which it rejected the claimant's lawsuit as unfounded in its entirety. The judgment of the Basic Civil Court was confirmed by the Judgment GZ-819/20 by the Court of Appeal Skopje.

3. Milenko Nedelkovski against Mladen Chadikovski, Vladimir Tevchev and Dobrivoj Budimski

The claimant in this case is journalist Milenko Nedelkovski, who filed a lawsuit against journalists Mladen Chadikovski, Vladimir Tevchev and Dobrivoj Budimski for the purpose of determining defamation due to publication of the content of "Milenko Nedelkovski owes salaries" published on A1 television. With the lawsuit, the claimant Nedelkovski also demanded compensation for non-material damage from Mladen Chadikovski, as editor-in-chief, in the amount of 400,000 denars, from the second defendant journalist Vladimir Tevchev, in the amount of 100,000 denars, and from Dobrivoj Budimski, in the amount of 100,000 denars. The Basic Civil Court of Skopje issued Judgment P4-a-122/13, which rejected the claimant's lawsuit as unfounded in its entirety. The judgment of the Basic Civil Court was confirmed by GZ-822/16 by the Skopje Court of Appeal.

If the mentioned cases are taken into account, it is easy to see that political leaders or entities aim to influence the discourse of reporting and informing by journalists by initiating court cases against some of them. In the specific cases, it is interesting that they, in the part of compensation for damage, differ drastically, because in one court case compensation for non-material damage is not required at all, while in the other two it is explicitly required. What is interesting is the fact that the journalist Milenko Nedelkovski only demanded compensation for damages, but not a public apology for publishing untruths that have harmed his personal reputation, but both the first and second instance courts determined that in this particular case it is not a matter of defamation.

7. INTERVIEWS WITH RELEVANT STAKEHOLDERS

Within the framework of the analysis, the authors conducted interviews with the parties who are most often involved in court proceedings for which there is a risk of being categorised as SLAPPs, i.e., with the lawyers who are most often involved in the representation and defence of journalists, the judges who act on lawsuits and indictments against journalists, as well as the journalists themselves who are most often sued, i.e., accused because of their work.

Starting from the fact that the SLAPP itself can be conducted in several proceedings, the judges who conduct criminal and civil proceedings were approached, in which journalists can be called as defendants or indicted. Therefore, as part of the planned interviews, interviews were held with a judge from the Basic Criminal Court Skopje and a judge from the Basic Civil Court Skopje, as courts in which the largest number of court cases against journalists were conducted or are being conducted, and they participate in this type of cases.

At the beginning of the interviews, the judges emphasized the role of journalists as watchdogs the public interest, but also their vulnerability due to excessive exposure to attacks by interest groups that have power in various segments of society, political, economic, financial, security and other segments.

In the section of criminal proceedings, a judge from the Criminal Court emphasized the decriminalization of defamation and insult, but that has not completely taken away the pressure. Namely, there are two types of pressure, i.e., influence to limit or prevent journalists from participating in the public space. The pressure in the form of a SLAPP, in the criminal procedure, occurs within the framework of accusations for various criminal acts of the type of Disclosure of state secret (where the journalist Ljupco Zlatev was accused), Piracy (where the owner of the Infomax portal was accused) or Spy (among the defendants was the journalist Zoran Bozinovski). In addition to these crimes, which are primarily related to informing, there are other crimes that were the subject of the Special Public Prosecutor's Office, the "Trevnik" case, where journalist Dragan Pavlović Latas - editor of the television station Sitel - was accused of building an illegal building and the "Tiffany" case - where the journalist Ivona Taleska was accused of unjustified expenses in a legal entity - a leading journalist at Sitel television, which in the period 2008-2016 was pro-government oriented.

Regarding the possibility of recognition of SLAPPs, the judge stated that it can be seen from the indictment filed by the public prosecution or the accusations made by the private claimant.

Unlike criminal cases, which are basically SLAPPs and which are not very numerous, there is a greater possibility of a SLAPP in civil defamation and insult proceedings. In the interview with the civil judge, it was emphasized that there is a mechanism for SLAPP prevention through

the so-called “litigation out of rage”, but it is delicate because there is a risk of limiting citizens’ right of access to court. Therefore, careful consideration should be given to how to identify court cases that would have elements of a SLAPP. In the part of compensation for damages, the civil judge emphasized that in practice, judges only go for a public apology if it is a matter of established slander or insult, while only in a small number of cases compensation for damages is awarded in amounts that are not high. The civil judge, in the section on the duration of the court procedure, emphasized that on average the trials have 2 to 3 hearings and that they are completed within a reasonable time.

In the part of the application of the international and national legislation, the judge emphasized that both before and now, according to the Law on Civil Liability for Insult and Defamation, judges can and do directly apply the European Convention on Human Rights, as well as the case law of the European Court of Human Rights. Special modules have been created for the application of the ECHR and the practice of the ECtHR in the Academy for Judges and Public Prosecutors for initial and continuous training of judges and public prosecutors. However, despite the training and the specificity of the cases in which defamation and insult are tried, there is no special department or other form in which judges specialized in defamation and insult would adjudicate.

In addition to the judges from the basic courts of Skopje, interviews were also conducted with the lawyers who mostly appeared as legal counsel of the sued journalists and other persons participating in public life in North Macedonia. In the conversation, the lawyers, as well as the judges, emphasized the need for caution when creating procedural mechanisms for SLAPP prevention in the Macedonian legal system. The lawyers especially pointed out that there is especially great pressure when it comes to investigative journalists, citing the example of the Investigative Reporting Lab - IRL, against which court cases are multiplying, just to limit their research, which reveals corrupt affairs, not only within the state authorities, but also in the private sector.

The lawyers pointed out that it is important to follow the practice of the European Court of Human Rights, especially as it relates to North Macedonia, which should be incorporated into the legal and judicial system. In the area of the actions of the judges, the lawyers emphasized that there is diversity in the actions, as well as in the decision-making in the cases of defamation and insult, which creates legal uncertainty, which can additionally be considered as an advantage for SLAPPs.

The lawyers also emphasized that it is necessary to strengthen continuous education for judges about the practice of the European Court of Human Rights, with a special emphasis on SLAPPs. Education is the simplest way to present SLAPP as a hidden danger to limit participation in the public space and information by the media and journalists, as well as citizens’ associations and

activists, when they criticize negative trends and phenomena that directly harm the public interest.

The authors of this analysis also spoke with investigative journalists who are directly exposed to SLAPPs in their daily work. As a SLAPP prevention, journalists believe that a preliminary hearing should be used, where a judge could evaluate whether it is a SLAPP or an alleged defamation and insult. Hence, the journalists consider that the preparatory hearing is a part of the judicial procedure that the court conducts more formally than substantively, because the judges do not evaluate whether there is a legal interest of the claimant in filing a lawsuit.

Journalists, as well as lawyerse[26], believe that special attention should be paid to provide training for the specialization of judges for defamation and insult resulting from their previous experience. The established system, according to which all judges judge defamation and insult, represents a risk of legal uncertainty and for the quality of decisions in these specific cases. Consequently, the journalists believe that in the larger courts there should be a department in which there would be judges specializing in defamation and insult.

Also, the investigative journalists stated that there is a great need to familiarize the public with the meaning and dangers of SLAPPs, in order to increase public pressure towards the actors who are the creators of SLAPPs. At the same time, it was also emphasized that the public's familiarization should go in that direction, so that they have knowledge that the purpose of SLAPPs is to silence journalists or at least censor them.

Regarding the costs of the procedure and compensation for damages, the journalists pointed out that their media outlet covers a part of them, while the Association of Journalists of Macedonia, which provides special support in court cases, covers the majority of them.

In the end, the journalists emphasized that the Council of Europe should make a special commitment in protecting journalists from SLAPPs, by raising awareness through the member states of the people living in them. It is also necessary for the Council of Europe to provide clear guidelines for the prevention of SLAPPs, as well as the education of judges and public prosecutors to easily recognize the elements of SLAPPs, in order to ensure normal conditions for the participation of journalists in the public space and to work for the protection of the public interest.

26 Code on the professional ethics of lawyers, legal professional associates, and legal trainees of the Bar Association of the Republic of Macedonia, https://www.mba.org.mk/index.php/mk/akti/kodeks-etika?showall=1

8. CONCLUSIONS AND FINDINGS FROM THE CONDUCTED INTERVIEWS

According to the Mapping Media Freedom Report for 2022,[27] 11 warnings were documented for North Macedonia in which 11 individuals or media outlets were involved. Following the trend across Europe, the vast majority of these incidents concerned cases of verbal attacks (9), including intimidation, followed by physical attacks (3) against journalists.

Insults and verbal threats against journalists were directed by public officials, including insults against Macedonian journalists as a group, who were called "prostitutes" on Facebook by a Member of Parliament, as a sign of dissatisfaction with media coverage of the start of EU accession negotiations in July 2022. Intimidation also came from the police, who called in a journalist for questioning in connection with an article published a month earlier. Also, there were other such cases following a complaint from a person who was quoted in the journalist's article. In both cases, individuals, dissatisfied with the media coverage, managed to threaten the journalists through police officers, who followed inappropriate procedures. The third warning documents the misconduct of a police officer who ended up damaging a TV reporter's camera. Four reporters suffered violent physical attacks. Journalists who work for television are often insulted and pushed. The general situation with the protection of journalistic work and the pressures they face in the country leaves much to be desired. Therefore, in order to get a complete picture of the SLAPP proceedings in North Macedonia, the team of experts conducted an interview with two (2) criminal judges and four (4) lawyers who have experience with such proceedings.

9. SLAPP CASES, FROM A LEGISLATIVE AND PRACTICAL POINT OF VIEW

The priorities should include identifying and defining the indicators through which the existence of a SLAPP is recognized. It is the starting point from which policies will be built and legislation will be created.

9.1 Indicators for Identifying a SLAPP

According to all that is stated in the theory, practice, court sentences and precedents and the different notions of the term in different countries, it is not simple to define the indicators that are immanent to this process phenomenon. The challenge is, first of all, that there is no clear-

27 Media Freedom Rapid Response (MFRR), Mapping Media Freedom, Monitoring Report – 2022 https://www.mappingmediafreedom.org/wp-content/uploads/2023/02/MFRR-Monitoring-Report-2022.pdf

ly demarcated border between highlighting a human rights claim that is really aimed at the protection of personal benefactors, of a person or a specific legal entity, and those that are disguised as such, and have a completely different goal. In the absence of a legislative definition, we must look to practice, domestic and international, in order to find common denominators. Recognising SLAPPs is no simple task. In its draft recommendation on opposing the use of SLAPP, the Council of Europe makes an attempt through an open and broader approach to define the indicators for SLAPP identification. However, despite that, it is not easy to distinguish what is a lawsuit, i.e., an initiated process aimed at realizing a legitimate legal interest, with a legitimate purpose and a legitimate claim, from what is aimed at obviously achieving obstacles in the functioning of the defendant, and they are not a priority.

From practice, interviews, and collected experiences, the following common denominators can be drawn as indicators of SLAPPs.

I.	Often, these types of lawsuits are patently baseless, contain offensive language, and are disguised as defamation lawsuits or alleged violations of constitutional and/or civil rights, and are usually brought against journalists or activists for exercising their political rights and/or their freedom of expression and information regarding issues of public interest or social importance.
II.	They are usually not filed with the intention of obtaining justice, but to intimidate, silence and waste the financial and psychological resources of the SLAPP targets, which is obvious, because the approach is excessive, with a demonstration of too much power, hiring a large number of legal advisers, media, highlighting huge claims and the like.
III.	They are often characterized by a large power imbalance between claimant and defendant, where one has the resources and ability to effectively silence the other through litigation techniques, which increase the psychological and economic burden of protracted proceedings.[28]
IV.	The scope of the claim, including whether there is a real risk that it will deter public participation beyond the points of contention;
V.	The excessive or unreasonable nature of the claim, or part thereof, including but not limited to the legal demands sought by the claimant;
VI.	Existence of a request for a temporary measure, to prohibit a certain investigation, story, book or similar from being broadcast or rebroadcast.
VII.	Any disproportion that can be identified between the resources employed by the claimants and the likely legitimate benefit of the proceedings to the claimant if the claim succeeds;

28 Rafał Mańko Members' Research Service PE 733.668, SLAPP- BRIEFING EU Legislation in Progress, July 2023

VIII.	The claimant's handling of the dispute through the use of expansion strategies for excessive demands for the delivery of data or the use of aggressive legal threats before initiating the procedure;
IX.	Any failure to respond to claims made in good faith for comment prior to publication or to provide clarification, indicates the SLAPP nature of that proceeding;
X.	The seriousness of the alleged error and the extent of the prior disclosure;
XI.	The history of litigation between the parties and previous actions brought by the claimant against the party or others against acts of public participation;
XII.	Any refusal without reasonable justification to resolve the claim through alternative dispute resolution (mediation, arbitration, etc.);
XIII.	Tangential or simultaneous actions in other forums to silence or intimidate guilty or connected persons;
XIV.	Any feature that suggests that the action is brought with the purpose of harassing, intimidating or otherwise coercing the defendant into silence or withdrawal.

9.2 General Guidelines and Recommendations for SLAPP Protection

- Educating the public about SLAPPs. This will help people understand what SLAPPs are, how they work, and how to protect themselves from them.
- Raising awareness of SLAPPs in the media. It will help shed light on this issue and make a SLAPP more difficult to succeed.
- Training legal professionals on how to identify and respond to SLAPPs. It will help ensure that potential SLAPP victims have access to the legal aid they need.
- Empowering potential SLAPP Victims. This can be done by providing them with information about SLAPPs, helping them connect with legal resources, and offering them emotional support.
- Strengthening Anti-SLAPP Support. This can be done by contacting elected officials, writing letters to the editor, and supporting organizations working to combat SLAPP.

CONCRETE STEPS TO BE TAKEN IN THE FUTURE

The Assembly, as a legislature, within its powers, should take the following steps for the prevention and preclusion of SLAPPs against journalists, as well as activists working in the segment of public interest protection:

In the period of 6 to 18 months:

I.	To make interventions to the draft law on civil procedure, which is in the process of adoption, in the direction of a preparatory hearing in the LCP to strengthen it by examining the possibility of proving the legal interest in the proceedings for insult and defamation.
II.	The defamation provisions in the Law on Civil Liability for Insult and Defamation should be revised in order to provide protection only for false statements of facts that cause significant damage to the claimant's reputation, and these two conditions must be met cumulatively. On the other hand, protective mechanisms should be put in place so that these rights to information are not abused, that is, adequate deterrent mechanisms should be put in place.

The government as the proposer of the laws, within its powers, should take the following steps for the prevention and preclusion of SLAPPs against journalists, as well as activists working in the segment of public interest protection:

In a period of 6 to 12 months:

I.	To provide and propose anti-SLAPP mechanisms in laws,
II.	To consider the possibility of passing a special law, where, among other things, a fixed ceiling would be established on the amount of compensation that can be awarded for non-material damage to reputation - that is, damage that cannot be quantified in monetary terms - but, there shouldn't be a statutory minimum level of compensation.
III.	To propose the legal establishment of stricter criteria for proving legal interest in cases that have SLAPP indicators.

Courts, as one of the authorities that distributes justice, should take the following steps within its jurisdiction for the prevention and prevention of SLAPPs against journalists, as well as activists working in the segment of public interest protection:

I.	Establishing a practice for considering the possibility, when it comes to legal claims in cases of defamation and insult, in relation to the amounts, to make a distinction between the actions of the defendant with intent, i.e., when they acted with knowledge of the untruth of the statement and had specific intent to cause damage to the claimant, as opposed to negligence or carelessness, and to apply the instrument of "litigating out of rage."
II.	The amount of compensation awarded should never be disproportionate to the damage done and should take into account all non-material ways of moral satisfaction, such as the publication of an apology or the exercise of the right of retort, as well as the level of compensation awarded in other cases.
III.	The amount of the awarded compensation should in any case take into account the actual financial ability of the defendant.
IV.	Recognition of the functional nature of journalism needs to be strengthened. Not only journalists, but also all other natural and legal persons who are regularly or professionally engaged in collecting and disseminating information to the public through any means of mass communication, or make analyses, reports, investigations that interfere with the public interests of the wider community should be brought under the umbrella of SLAPP protection.
V.	In the case of a SLAPP, the injury to a person's reputation must reach a certain threshold of significance before it can justify a restriction on freedom of expression; specifically, it must cause "serious harm."
VI.	In their assessments of cases brought by public officials, politicians and public figures, courts should recognize that these persons must have a wider tolerance for criticism than ordinary citizens, since they are directly involved in matters of public interest.
VII.	In their assessment of cases, courts should ensure that no one is held liable for defamation for expressing an opinion. Courts should consider all the circumstances of a statement, including the language and genre used, when assessing whether a statement is opinion. Where it is apparent that a statement is understood by the audience to be made in a humorous, provocative or satirical tone, it should be considered an opinion.

The Academy for Judges and Public Prosecutors, as the only point of entry into the judiciary through basic training and provider of continuous legal education, should take the following steps:

In a period of 6-12 months:

I.	Preparation of curricula through which training will be introduced to improve the capacity of the judiciary to apply international and regional standards for freedom of expression in cases of defamation and strategic lawsuits, especially the jurisprudence of the European Court of Human Rights and the standards in these judgments.
II.	Preparation of training curricula for the application of stricter criteria for proving legal interest in cases that have SLAPP indicators.

10. APPENDICES

(1) Ali Ahmeti v. ATV Media Company DOOEL Skopje and Isen Saliu - Verdict P5-17/18 of 25/09/2018 of the Basic Court Skopje 2 Skopje and Verdict GZ-57/19 of 13/02/2019 of the Court of Appeal Skopje.

(2) The Left v. Jabir Derala - Judgment P5-4/19 of November 26, 2019 of the Basic Civil Court and Judgment GZ-819/20 of June 9, 2020 of the Skopje Court of Appeal.

(3) Milenko Nedelkovski v. Mladen Chadikovski, Vladimir Tevchev and Dobrivoj Budimski - Verdict P4-a-122/13 of 19/5/2015 of the Basic Court Skopje 2 Skopje and Verdict GZ-822/16 of 17/11/2016 of the Court of Appeal Skopje.

Association of Journalists
of Macedonia