



THE ANTI-SLAPP

LEGAL TOOLKIT



Co-funded by
the European Union

DISCLAIMER

This report was developed for the Pioneering anti-SLAPP Training for Freedom of Expression (PATFox). The PATFox project has received funding from the European Union under grant agreement n° 101051559.

Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union. Neither the European Union nor the granting authority can be held responsible for them.

Detailed information about the project can be found on: <https://www.antislapp.eu/>

Table Of Contents

1. INTRODUCTION	4
2. HOW TO USE THIS DOCUMENT	4
3. PHASE 1: Recognising SLAPPs	5
Guideline 1: Listen, learn, and engage with clients or potential clients	5
Guideline 2: Define if the legal action against your client is a SLAPP	6
4. PHASE 2: Practical consideration	9
Guideline 3: Understand and manage the associated risks	9
Guideline 4: Consider multidisciplinary teams	11
5. PHASE 3: Legal considerations	12
Guideline 5: Make SLAPP claims visible	12
Guideline 6: Refer to relevant national and European jurisprudence	13
6. PHASE 4: Ecosystems of support, advocacy, and storytelling	13
Guideline 7: Consult with the PATFox legal network	14
Guideline 8: Build-up alliances	14
Guideline 9: Engage with media	15
7. PHASE 5: Post-judgment considerations	15
Guideline 10: Framing the outcome and managing any backlash	15
8. LIST OF USEFUL RESOURCES	16

1. INTRODUCTION

The toolkit has been developed in the framework of the Pioneering anti-SLAPP Training for Freedom of Expression Project (the PATFox Project), which seeks to train lawyers defending journalists and media organizations, NGOs and activists against companies and official bodies using lawfare to shut down legitimate criticism.

The guide is part of the PATFox curriculum, composed by this document and the training materials available on the project webpage (www.antislapp.eu), which is intended to equip European practising lawyers and prospective practitioners to better represent clients against Strategic Lawsuits Against Public Participation (SLAPP). This guide aims at becoming a long-lasting companion to all those involved, now or in the future, in anti-SLAPP defence.

2. HOW TO USE THIS DOCUMENT

This toolkit is designed to offer key information and provide guidance to practising lawyers and prospective practitioners to better represent clients against Strategic Lawsuits Against Public Participation (SLAPP).

It is structured in five sections:

- **Phase 1** highlights the importance of thinking strategically and reflects on the key “big picture” questions that need to be asked early on.
- **Phase 2** reflects on practical considerations that need to be taken into account from the outset.
- **Phase 3** provides an overview of some of the legal considerations that may inform anti-SLAPP strategy.

- **Phase 4** focuses on the importance of ecosystems of support, advocacy, and storytelling.
- **Phase 5** addresses post-judgment considerations such as navigating the outcome of the case and its impact.

3. PHASE 1: Recognising SLAPPs

This first section highlights the importance of thinking strategically and reflects on the key ‘big picture’ questions that need to be asked early on. SLAPPs (Strategic Lawsuits Against Public Participation) are a concerning but fairly recent phenomenon. A key analytical problem with SLAPPs is to distinguish from legitimate lawsuits, which is part of the reason they are so intimidating.

Guideline 1: Listen, learn, and engage with clients or potential clients to understand their realities and the context

At the outset of your considerations listening, learning, and engaging with clients or potential clients should be a priority.

In fact, SLAPPs usually appear in a specific context. They constitute a form of harassment solely used for a variety of tangential and overarching abusive purposes including retaliating against, or punishing targets for speaking out, halting particular acts, or opposing political activities, and offering a highly visible warning to others who might wish to express an opinion. SLAPPs are, in fact, political by nature, as they transform a public dispute into a private adjudication, where the defendant is cast into a significantly disadvantageous position.

Therefore, when you start to look at a case that could be a SLAPP, it is important to consider the relationship between the legal action and the activities of the victim, past and present. The PATFox project has put together a series of case studies which illustrate the varying forms SLAPP cases can take:

- Bulgaria <https://www.antislapp.eu/curriculum-hub/tag/bulgaria>
- Croatia <https://www.antislapp.eu/curriculum-hub/tag/croatia>
- Cyprus <https://www.antislapp.eu/curriculum-hub/tag/cyprus>
- Germany <https://www.antislapp.eu/curriculum-hub/tag/germany>
- Hungary <https://www.antislapp.eu/curriculum-hub/tag/hungary>
- Malta <https://www.antislapp.eu/curriculum-hub/tag/malta>
- Poland <https://www.antislapp.eu/curriculum-hub/tag/poland>
- Romania <https://www.antislapp.eu/curriculum-hub/tag/romania>
- Slovakia <https://www.antislapp.eu/curriculum-hub/tag/slovakia>
- Slovenia <https://www.antislapp.eu/curriculum-hub/tag/slovenia>
- Spain <https://www.antislapp.eu/curriculum-hub/tag/spain>

Guideline 2: Define if the legal action against your client is a SLAPP

No one ever willingly admits to filing a SLAPP, and often, these lawsuits are "camouflaged" as ordinary legal actions. SLAPPs can take on several forms in different jurisdictions and a selection of different definitions have been offered to assist in identification of these lawsuits. While SLAPPs are often centred around defamation claims, that is by no means the sole cause of action that is deployed. Copyright, privacy, and data protection may also feature. Notwithstanding this diversity, common features are discernible.

Therefore, a potential SLAPP case should be tested against a few key questions:

1. Is your client a key SLAPP target – a journalist, member of the media, activist, or human rights defender, whistleblower, etc.?

SLAPPs target journalists, independent media outlets, researchers, whistleblowers, activists, human rights defenders, as well as all those acting in the public interest.

2. Is the SLAPP filer a powerful subject, i.e., corporation, wealthy individual, or even a governmental body or a government official?

SLAPP suits are usually filed by powerful entities - corporations, wealthy individuals, or even governmental bodies or government officials - wishing to protect their personal, financial, or reputational interests against weaker parties who express an opinion or convey information on a public matter that is perceived as unfavorable or otherwise uncomfortable to the powerful.

3. Do the legal claims refer to an act of public participation and a matter of public interest?

SLAPPs are distinct from legitimate legal proceedings in that they are used to suppress activities of public interest. One telltale sign of a SLAPP is when the wrongful activity of which the victims has been accused is really an act of public participation, referring to matters which affect the public and in which the public may legitimately take an interest.

SLAPPs can involve, for example, journalism, calling for a boycott, negative reviews of businesses, and other forms of expression. In fact, they have gained traction as a strategy for silencing critics in virtually any area of public interest, such as environmental protection, anti-corruption, migrant rights, civic rights, or political criticism.

4. Is the legal claim meritless or abusive?

SLAPPs are more strategic than tactical, as their power comes not from the strength of the filer's legal position, but through the strategic use of the legal arena to intimidate the target and to exhaust their resources. Consequently, such suits are generally based on meritless, frivolous, or exaggerated claims, and may not have a realistic chance of prevailing in court. Another telltale sign of a SLAPP is when the person or the company filing the lawsuit does not provide any real evidence that the victim has engaged in wrongful behavior.

Nevertheless, suits that are not entirely without merit may *also* be conducted in an abusive way that marks them out as SLAPPs. Yet another tell-tale sign of a SLAPP is the behaviour of the litigant who often may try to drag out the case as long as possible and drive-up costs. The aim of distracting or intimidating is often achieved by rendering the legal proceedings expensive and time consuming through included motions, injunctions, and other costly disclosure processes.

Other abusive tactics have been observed. Demands for damages are often exaggerated. In some cases, several lawsuits are initiated at once in an effort to overwhelm the counterpart in expensive litigation. Another common feature of SLAPPs is the engagement in the practice of "forum shopping" as a further hurdle for the defendant. Cross-border SLAPPs, initiated overseas, are particularly challenging and expensive to defend against.

5. Has your client been the target of other forms of intimidation?

These strategic actions aimed at stifling public debate may be accompanied by other forms of intimidation, such as online harassment or physical threats. Creating a hostile environment online or in other publications may be an attempt to form a context where abusive litigation is more acceptable.

If your case provides a positive answer to the first four questions, then you may well have a SLAPP case at hand.

For more on the general characteristics of a SLAPP suit and the varying definitions that have been offered in law, see Chapter 2 of An Anti-SLAPP Curriculum for Lawyers in the European Union <https://www.antislapp.eu/curriculum-hub/anti-slapp-curriculum>

4. PHASE 2: Practical consideration

Slapping back can be frustrated by a number of challenges, which have to be known and taken into consideration when planning the strategy.

Guideline 3: Understand and manage the associated risks

SLAPP suits can have a highly destructive impact on those they target – that is, indeed, exactly what they are intended to do. It is important to consider both the strategic and more concrete priorities of your clients and the wider community that they represent. Being targeted with a SLAPP entails an array of potential harms:

- Psychological harms

SLAPPs are highly adversarial and aggressive; fighting them can become emotionally charged. By tying targets up in abusive, lengthy and therefore costly legal proceedings, SLAPPs can be a nerve-wracking and frightening experience for the victims and their families and can deter organizations' work while legal cases are being resolved. The more extended a trial, the weightier the pressures and fears faced by the targets. These risks may also extend beyond the direct team and client to their partners and family members.

- *Financial harms*

Litigation is costly and can be highly resource intensive, requiring financial means, expert knowledge, and personnel. Court proceedings can last for several years, particularly if several instances are involved, and the total costs of defending a case can be difficult to predict at the outset. The costs of fighting a case, as well as the likely duration of doing so, can vary considerably between jurisdictions.

- *Privacy and confidentiality*

The highly adversarial nature of SLAPPs means that the usual duties of confidentiality and protecting legal professional privilege may require special protection. In the context of other threats materialising online (such as harassment on social media), clients may feel that their sensitive information is at risk of being compromised. Adopting information security protocols can therefore increase client confidence as well as protect information.

The PATFox project has produced a guide to Cybersecurity Best Practices for Anti-SLAPP Lawyers:

<https://www.antislapp.eu/curriculum-hub/cybersecurity-best-practices-for-anti-slapp-lawyers>

- Risks of being SLAPPED back*

Consider that SLAPPs not only target human rights activists or journalists, but in some cases also target the lawyers who defend them.

Guideline 4: Consider multidisciplinary teams including technical experts, researchers, economists in your team

Multidisciplinary teams can be force multipliers. SLAPP defences may benefit from the input of external experts. In particular, for that subsection of SLAPPs that represent a form of retaliation against a whistleblower, there are additional EU-wide legal protections that are likely to prove useful to a legal defence. An understanding of financial forensics may support the factual grounding of the client's case.

The PATFox project has produced the following supporting document:

- Forensic Investigation - what you need to know to avoid being caught up in a SLAPP case
<https://www.antislapp.eu/curriculum-hub/forensic-investigation-what-you-need-to-know-to-avoid-being-caught-up-in-a-slapp-case>
- Whistleblowing
<https://www.antislapp.eu/curriculum-hub/guide-to-whistleblowing>

Whistleblower protections are a potentially valuable tool for a particular group of SLAPP defendants. This Guide is crafted to equip legal practitioners with specialized knowledge concerning Europe's current whistleblower protection regime, providing both background on the relevant EU Directive protecting and its relation with other sources of whistleblower protection in Europe, principally the case law of the European Court of Human Rights. Using this foundation, this Guide then presents several practical defensive approaches, that may help legal practitioners and their SLAPP clients.

5. PHASE 3: Legal considerations

This section provide provides an overview of some of the legal considerations that may inform anti-SLAPP strategy. No anti-SLAPP legislation yet exists at the EU level – though an Anti-SLAPP Directive, providing some protections across cross-border litigation, will become law sometime in 2024. Without specific legislation aimed at addressing this phenomenon, SLAPPs are treated in most Member States as regular civil or criminal lawsuits, and the usual procedural rules are applied. The absence of specific safeguards against SLAPPs makes national judicial systems vulnerable to SLAPPs and leaves targets with limited protection offered by existing norms, such as provisions on damages and costs and safeguards against abusive practices such as vexatious, frivolous, or excessive claims.

Guideline 5: Make SLAPP claims visible

SLAPPs are purely vexatious in nature but often masquerade as ordinary lawsuits, which contributes to some courts' inability to distinguish and deal with them readily. In addition, many national courts are still unfamiliar with the term. However, over the years the number of cases has reached the point where the issue has gained the attention of international and regional institutions, which recognise the detrimental consequences to democracy that these threats could bring if they continue to occur at the current rate.

Importantly, the European Court of Human Rights (ECtHR) has made reference to the phenomenon of SLAPPs in a recent European Court of Human Rights (ECtHR) judgment, *OOO Memo v. Russia* decided on the 15 March 2022 (application number 2840/10). For more information, see An Anti-SLAPP Curriculum for Lawyers in the European Union <https://www.antislapp.eu/curriculum-hub/anti-slapp-curriculum>

Guideline 6: Refer to relevant national and European jurisprudence

International human rights case-law provides a route through which innovative legal defenses can be developed, especially at courts that sit at the apex of the regional human rights systems as the European Court of Human Rights. The PATFox project has produced a brief guide to ECtHR case law for Anti-SLAPP Defense: <https://www.antislapp.eu/curriculum-hub/ecthr-case-law>

Likewise, national jurisprudence is an important resource, which the PATFox local curriculum materials can provide a starting point to explore:

- Bulgaria <https://www.antislapp.eu/curriculum-hub/tag/bulgaria>
- Croatia <https://www.antislapp.eu/curriculum-hub/tag/croatia>
- Cyprus <https://www.antislapp.eu/curriculum-hub/tag/cyprus>
- Germany <https://www.antislapp.eu/curriculum-hub/tag/germany>
- Hungary <https://www.antislapp.eu/curriculum-hub/tag/hungary>
- Malta <https://www.antislapp.eu/curriculum-hub/tag/malta>
- Poland <https://www.antislapp.eu/curriculum-hub/tag/poland>
- Romania <https://www.antislapp.eu/curriculum-hub/tag/romania>
- Slovakia <https://www.antislapp.eu/curriculum-hub/tag/slovakia>
- Slovenia <https://www.antislapp.eu/curriculum-hub/tag/slovenia>
- Spain <https://www.antislapp.eu/curriculum-hub/tag/spain>

6. PHASE 4: Ecosystems of support, advocacy, and storytelling

This section addresses the importance of ecosystems of support, advocacy, and storytelling.

Guideline 7: Consult with the PATFox legal network

SLAPPs are an international phenomenon and tactics that inhibit public speech in one jurisdiction invariably end up being used in others. Consulting with colleagues can be extremely useful, and particularly so in cross-border cases.

The PATFox legal network is composed of experienced legal trainers working in 11 EU Member States <https://www.antislapp.eu/experts>

Guideline 8: Build-up alliances

By threatening public participation SLAPPs are part of a complex and dynamic network of actors that includes not just litigators and SLAPP filers, but also civil society and organisations supportive of media freedom. Experience shows that building a support network is essential to any complex and long-term strategy. Public advocacy campaigns can provide invaluable support to targets of SLAPPs in a variety of ways.

Potential allies may include journalists and media organisations, civil society organisations, and trade unions and organised labour. It is worth trying to identify:

- Who are the allies?
- Who else has an interest in the issue and what are those interests?
- Will they support the client's position?

For further guidance, you can reach out to PATFox partner organisations (<https://www.antislapp.eu/partners>) or the Coalition Against SLAPPs in Europe (CASE), the umbrella organisation for civil society organisations in Europe who are concerned about the use of SLAPPs (<https://www.the-case.eu/>).

Guideline 9: Engage with media

An important step in any anti-SLAPP strategy is to develop a media and communication strategy. Establishing in public that a course of legal action is abusive, unequal and set against public speech can produce significant public sympathy for SLAPP defendants: it is not unheard of for litigants to back off entirely in these circumstances. On the other side, a well-connected SLAPP filer may have their own media reach, which can disadvantage the reception of your client's case in public for a. Therefore, it is worth considering how best to frame the story in court papers as well as in public discourse. The media strategy should aim to enhance public knowledge and potentially contribute to public support.

PATFox has developed a guide to Strategic Legal Communication in anti-SLAPP defence: <https://www.antislapp.eu/curriculum-hub/strategic-legal-communication>

7. PHASE 5: Post-judgment considerations

SLAPP concerns don't end at the final ruling. This, last, section of the toolkit addresses considerations that come into play once a ruling is in, navigating the outcome of the case and its impact.

Guideline 10: Framing the outcome and managing any backlash

Once the legal action has been resolved, frame the outcome for your own communication and for the larger media narrative: describe how the win was deserved and how it will impact the legal landscape, or include the next steps and why the fight is not yet over

In some situations, there may be backlash against a legal victory. When this is the case, you as well as your target's allies need to be prepared to keep pushing the issue by applying the force of public opinion.

8. LIST OF USEFUL RESOURCES

An Anti-SLAPP Curriculum for Lawyers in the European Union

<https://www.antislapp.eu/curriculum-hub/anti-slapp-curriculum>

Cybersecurity Best Practices for Anti-SLAPP Lawyers

<https://www.antislapp.eu/curriculum-hub/cybersecurity-best-practices-for-anti-slapp-lawyers>

ECtHR case law for Anti-SLAPP Defense

<https://www.antislapp.eu/curriculum-hub/ecthr-case-law>

Forensic Investigation - what you need to know to avoid being caught up in a SLAPP case

<https://www.antislapp.eu/curriculum-hub/forensic-investigation-what-you-need-to-know-to-avoid-being-caught-up-in-a-slapp-case>

Strategic Legal Communication

<https://www.antislapp.eu/curriculum-hub/strategic-legal-communication>

PATFox Guide to Whistleblowing Protection

<https://www.antislapp.eu/curriculum-hub/guide-to-whistleblowing>

PATFox local curriculum materials

<https://www.antislapp.eu/curriculum-hub/tag/local+curriculum>

PATFox case studies

<https://www.antislapp.eu/curriculum-hub/tag/case+study>