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Feedback from the PATFox
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The Council of Europe Draft
Recommendation of the
Committee of Ministers to
member states on countering
the use of SLAPPs

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The Council of Europe Draft Recommendation of the Committee of Ministers to member states on countering the use of SLAPPs

Feedback from the PATFox consortium

Pioneering anti-SLAPP Training for Freedom of Expression (PATFox) is a two-year project co-funded by the European Commission and involving civil society organisations from 11 EU member states. PATFox is designing Europe's first anti-SLAPP curriculum and using it to provide training to legal professionals in Bulgaria, Croatia, Cyprus, Germany, Malta, Hungary, Poland, Romania, Slovakia, Slovenia, and Spain.¹

Since the beginning of the project in February 2022, the pan-European consortium has been working on the development of a comprehensive anti-SLAPP legal curriculum based on international expertise and European human rights principles, as well as local procedural knowledge and case law. All materials produced until now have been made freely available on the PATFox website (www.antislapp.eu/curriculum-hub), after having been tested and evaluated during the first round of training.

Over the first year of the project, high demand meant the project reached nearly twice as many lawyers as had originally been anticipated. Between November 2022 and February 2023, almost 200 lawyers attended the cycle of workshops organised in each country. Trainees included general lawyers, human rights lawyers, independent lawyers focusing on environmental cases, lawyers working with or for independent media and NGOs, representatives of bar associations and associations of lawyers, state attorneys, lawyers from public institutions, public prosecutors, and - in some cases - judges.

Since SLAPPs as an issue are still not routinely addressed at law schools and other training institutions, the PATFox consortium has also delivered a series of lectures with the goal of raising awareness about the phenomenon among postgraduate students and lawyers-in-training, as well as of promoting high ethical standards among the next generation of legal professionals.

All seminars were designed and delivered together with experienced practitioners with a thorough understanding of the local context. The PATFox legal network includes lawyers with expertise in human rights, press and media law, copyright, media, information and IT law, defamation law, criminal, civil and labour law.

A second phase of training workshops is being held over the course of 2023. The Curriculum Hub will be continuously updated until the end of the project in February 2024, responding to feedback provided by participants as well as needs detected during the course of workshops.

The PATFox Consortium welcomes the Invitation to Comment made by the Committee of Experts on Strategic Lawsuits against Public Participation of the Council of Europe Draft Recommendation of the Committee of Ministers to member states on countering the use of SLAPPs, and would like to contribute to this important debate by presenting the following comments and proposals of amendments.

¹ Pioneering anti-SLAPP Training for Freedom of Expression (PATFox), a 2- years project (February 2022-February 2024), co-funded by the European Commission (project number 101051559). More information is available on the website at www.antislapp.eu

Education, training and awareness-raising

PATFox's experience clearly demonstrates that there is a great need and – indeed - significant untapped demand for anti-SLAPP educational, training and awareness-raising initiatives. Therefore, the Consortium broadly welcomes Section IV of the Draft Recommendation, which focuses on “Education, training and awareness-raising”.

Despite the increasing number of SLAPPs being filed by the political and business elite to intimidate public watchdogs in many European countries, SLAPPs are a rather new issue. Hence, these preventive measures can be key to sensitising all actors involved, possible victims, legal professionals, in particular judges and lawyers, and the public to the issue.

However, while Draft Recommendation correctly points out that it is essential to promote public and professional awareness, the remaining parts of Section IV are rather general and broad in their formulation. The Consortium, therefore, believes that the current text of this Section could be considerably improved in the following ways:

Detailed Recommendations

- **Define the bodies responsible for implementing anti-SLAPP educational and training initiatives**

The Draft Recommendation's Article 52 says that “*member states should encourage relevant bodies to give prominence to this recommendation in educational and training programmes*”. However, it does not provide any further reference to identify the bodies responsible to ensure the implementation of these preventive measures.

PATFox's trainees frequently pointed out the need for detailed, in-depth, and effective human rights education of legal professionals, especially judicial officials, enabling them to apply such standards in concrete situations, be aware of how existing procedures can be abused, and keep up to date with the ever-evolving standards and case law.

Law faculties and professional associations of lawyers have the ability to reach across the range of legal professionals, from those in training and early in their careers to those who are more established. However, these at present do not generally offer appropriate education on SLAPPs and related issues. Similarly, adequate training of prospective judges and prosecutors before they take up their posts as well as in-service training on human rights jurisprudence are not often guaranteed.

The Consortium, hence, believes the text of Article 52 could be improved by specifying relevant bodies - including law faculties, professional associations and, particularly, judicial training bodies - which are best placed to run the above-mentioned activities.

- **Emphasise the importance of consulting with civil society**

PATFox is a pan-European consortium composed of civil society organizations which are filling a gap in training legal professionals.

Given the burden of SLAPPs falls most heavily on the media, civil society and other public watchdogs, the Consortium suggests that another improvement to Article 52 would be to incorporate a reference to the importance of ensuring cooperation between the bodies responsible for the training and educational activities and civil society organisations, including - but not limited to – those who have been the targets of SLAPPs themselves.

- **Ensure training monitoring and evaluation**

Article 52 does not include any reference to monitoring, and evaluation of training programmes. However, the Consortium stresses the importance of conducting regular assessments reflecting both the quality and volume of such educational and training programmes. Additionally, the SLAPP landscape is constantly evolving, so there is a need to ensure that training content remains relevant to the situation on the ground.

As such, the Consortium strongly advises to consider including provisions for monitoring and evaluation in the final version of the Recommendation.

- **Do not be unduly restrictive in terms of those affected**

Article 53 defines media actors “and other public watchdogs” as the groups most likely to be faced with SLAPPs. While journalists and media organisations are the most well-known group to be regularly targeted with SLAPPs, the list of affected groups is notably diverse. It includes environmental and other activists, human rights defenders, community groups, civil society organisations and researchers.

Connected to the point above about the need for the bodies responsible for training to consult with civil society, the Consortium considers there is a danger that, as currently formulated, the training envisioned under the Recommendation could be unduly narrow. In particular, looking at the constrained nature of the public policy debate on SLAPPs that has materialised in some CoE countries, the Consortium considers it is important to mitigate the possibility of taking SLAPPs as an issue that relates primarily, or even solely, to established media organisations.

The Consortium, therefore, recommends clarifying the wording of Article 53 in order to emphasise the importance of civil society organisations and human rights defenders as targets of SLAPPs, in line with the spirit of the Recommendation.

- **Identify the training recipients**

Article 52 generally refers to “legal professionals”, who presumably include lawyers, attorneys, judges, legal scholars, and “relevant public bodies”, as recipients of anti-SLAPP training.

Given feedback from our training programme, the Consortium recommends to clearly indicate those who are expected to be the recipients of anti-SLAPP training and to also include postgraduate students and lawyers-in-training since human rights education is a life-long journey, which should begin in law schools. Our efforts notwithstanding, the network of lawyers with specialist knowledge and experience in defending against SLAPPs is still limited in a number of CoE countries.

Additionally, considering that SLAPPs can be launched on a range of different legal bases, the Consortium see a good case for the issue to be raised to legal professionals in training who are destined to work in many different specialist areas.

- **Cross-border training**

In its current version, the draft does not include any reference to cross-border training. However, SLAPP cases can have a cross-border dimension. Legal trainers involved in the PATFox project stressed the relevance of transnational strategising.

Therefore, the Consortium strongly advises to consider cross-border training in the final version of the Recommendation.

Conclusion

The PATFox Consortium the Council of Europe Draft Recommendation of the Committee of Ministers to member states on countering the use of SLAPPs, and look forward to working with the Committee of Experts on Strategic Lawsuits against Public Participation by sharing the experience of the PATFox project.

For more information, please contact: contact@antislapp.eu