

ANTI-SLAPP MECHANISMS MONITORING STUDY



Bulgaria
Justice and Environment 2021

Introduction

Justice and Environment (J&E) is participating in a European anti-SLAPP NGO coalition called CASE (www.the-case.eu) in order to investigate legal challenges faced by environmental activists and other watchdogs throughout Europe. Significant research has been published on this topic already (e.g. by the [Law Clinic of the University of Amsterdam](#)) but J&E would also like to contribute to the analysis of SLAPPs via its own means.

A SLAPP case consists of four components:

- * legal proceedings (generally civil lawsuits but also criminal complaints where these can be pursued privately)
- * filed by a private party (generally corporations or wealthy individuals, including government officials acting in a private capacity)
- * with the intent to silence another private party (generally activists, journalists, NGOs, or other public watchdogs)
- * in response to acts of public participation (including advocacy or criticism).

Our targets are the anti-SLAPP mechanisms enacted in Member State legislation or case law. We are not researching SLAPP cases. We are researching anti-SLAPP mechanisms in the law (or case law). We are looking for procedural rules or decisions, not limited to environmental ones.

Questions and Answers

1. Has law or case law defined SLAPP cases in any way? (e.g., by a court judgment calling a case frivolous or vexatious for having certain features, etc.)? If yes, in what way?

SLAPP cases are not defined specifically as a special category of cases in the law. However, there are general legal principles for prohibiting of abuse of rights stated in the Constitution “Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others.”(Art.57 (2), which is complimented by the provision of Art. 8(2) of the Law on Obligations and Contracts „Individuals use their rights to satisfy their interests. They may not exercise these rights contrary to the interests of society.” and against abuse of process in Art. 3 of the Civil Procedure Code “Persons participating in court proceedings and their representatives for fear of liability for damages are obliged to exercise the procedural rights granted to them in good faith and in accordance with good morals.”

There are some legal instruments that could be applied to silence public participation and civic activism on environmental matters.

Civil defamation (claim for non-material damages)

Art. 45 of the Law on Obligations and Contracts states that “Every person is obligated to redress the damage he has faultily caused to another person.

In all cases of tort fault is presumed until otherwise proved.” Art.52 stipulates that “Compensation for a personal tort shall be determined by the court in equity. “

Criminal insult and defamation

The criminal insult is defined in Criminal Code Art. 146(1):

“A person who says or does something degrading to the honour and dignity of another in the presence of the latter, shall be punished for insult by a fine from BGN one thousand up to three thousand. In such a case the court may also impose the punishment of public censure.”

According to Art. 148 (1) Criminal code for insult:

1. inflicted publicly;
2. spread through printed matter or in some other way;
3. of an official or a representative of the public, during or in connection with the fulfilment of his duties or function, and
4. by an official or representative of the public, during or in connection with the fulfilment of his duties or function, the punishment shall be a fine from BGN three thousand up to ten thousand as well as public censure.

Pursuant to Art. 148(1) in connection with Art.146 (1) of the Criminal Code the eco-activist and member of the Greens Party (now renamed Green Movement) Borislav Sandov was sentenced to pay BGN 5,000 for insulting with a Facebook post businessman Lachezar Tsotsorkov. The second instance court stayed the sentence of the first instance court. The sentence is fine of 1500 BGN, 3000 BGN for the civil compensation for the tort and 333.33 BGN for the attorney’s fee of the claimant.

The criminal defamation/slander is defined in Art.147(1) of the Criminal Code:

“A person who makes public a disgraceful fact about someone or ascribes to him a crime, shall be punished for slander by a fine from BGN three thousand up to seven thousand, as well as by public censure.”

Tax law

The Supreme Cassation Prosecutor's Office started checking the property status of the founders and journalists in the investigative site "Bivol" - Asen Yordanov and Atanas Chobanov. Excessive court costs in administrative cases could be a form of procedural SLAPP (see p.2).

2. Is there any law or case law that puts limits on cases with SLAPP characteristics (e.g., by defining lawful causes or capping the amount of compensation, etc.)? If yes, in what way?

In practical terms, private parties (corporations or wealthy individuals) who want to silence NGO activists (e.g., in environmental procedures) could employ a SLAPP mechanism of claiming high attorney fees in case of winning the case. The principle of awarding the costs in Art. 78(1) of the Civil Procedure Code applied also in administrative case procedures is that the fees paid by the plaintiff, costs of the proceedings and remuneration for one lawyer, if he had one, shall be paid by the defendant in proportion to the respected part of the claim.

As anti-SLAPP measure and defence of the environmental activists, for example, they could request the court to rule that the lawyer's remuneration paid by the party is excessive according to the actual legal and factual complexity of the case and the court may, in this case, award a lower amount of costs, but not less than the minimum amount according to Art. 36 of the Bar Act. (Art. 78(5) Civil Procedure Code applies by subsidiarity to the administrative cases (Art.144 Administrative Procedure Code). The contestant, the authority which issued the administrative act, as well as all persons concerned, shall be parties to the case (Art.153(1) APC). If the persons concerned support the administrative decision and the court rejects the contestation or the appellant withdraws the appeal, the party for which the administrative act is favourable is entitled to be awarded costs (Art.143(3) APC) and they could claim an extremely high lawyer's fee. So, in this case the anti-SLAPP strategy is to hire a good lawyer who would defend well their rights in the court.

The same for claiming redress for the damage caused by the environmental activists, for example, which has faultily caused to another person. (Art. 45 of the Law on Obligations and Contracts). The anti-SLAPP defence will be asking the court to reduce the claimed compensation for a personal tort which is determined by the court in equity.

3. If there are anti-SLAPP mechanisms in law or case law, are they effective, i.e., do they slow or stop the filing of lawsuits with the intention of silencing private parties?

As mentioned above, a SLAPP mechanism could be high court costs imposed on the defendant (e.g., NGO activists¹) and the anti-SLAPP measure could be asking the court to reduce the fee.

¹ In a case before the Administrative Court of Pernik, confirmed by the Supreme Administrative Court, the parties are an environmental NGO (appellant) and the Regional Inspectorate for Environment and Water (RIEW), and the person concerned is a municipality. Ruling No. 312 adm. case No. 132/2015 Administrative Court Pernik, confirmed by the Supreme Administrative Court adm. case No.733/2016

In case the lawyer's remuneration paid by the party is excessive according to the actual legal and factual complexity of the case, the court may, at the request of the other party, award a lower amount of costs in this part, but not less than the minimum amount according to Art. 36 of the Bar Act. However, if the other party does not object against the excessive amount of the remuneration the court does not act ex officio. The same with the defence against high compensation for a personal tort which is determined by the court in equity. See above.

4. Is there law or case law to protect whistle-blowers? If yes, does that contain any reference to SLAPP cases and if yes, in what way?

Not specifically, the whistle-blowers could claim the same fundamental rights guaranteed by the Constitution of Republic of Bulgaria in Art. 39. *Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way. This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.* They are also defended by other principles, e.g., for awarding the costs in procedural codes (civil and administrative). The planned new anti-SLAPP Directive², once in force will definitely impact the development of the national law.

5. If, as mentioned above, there is law or case law to protect whistle-blowers, does this law in practice actually stop or slow SLAPP lawsuits?

Since in Bulgaria there is not yet a legal definition of whistle-blowers and special laws and case law on SLAPP and protection of whistle-blowers, we could not access the practical effect on the anti-SLAPP measures in the lawsuits as much as they exist under the current legislation.

6. Are there any additional laws in your jurisdiction which might protect parties against SLAPP suits, even if they were not designed for that specific purpose?

The institution of the Ombudsman³ is one extra-judicial way in protection of citizens' rights and obligations. S/he accepts and considers complaints and signals for violations of rights and freedoms by the state and municipal bodies and their administrations, by the persons assigned to provide public services, as well as by private legal entities;

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/9ef99899e044f9d0c22580a30041dbb8?OpenDocument>

² https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders_en

³ There should be incentives for people who submit signals about irregularities to do it by ensuring clear protection." This is what Ombudsman Diana Kovacheva said during the round table "Protection of whistle-blowers in Bulgaria" organised by the Transparency International Association. <https://transparency.bg/en/what-we-do/whistleblowers-protection-in-bulgaria/>

- makes inspections on the received complaints and signals;
- responds in writing to the person who has referred it to him;
- makes proposals and recommendations for restoration of the violated rights and freedoms before the respective bodies, their administrations and the complainants;
- makes proposals and recommendations for the promotion and protection of the endangered rights and freedoms of citizens by private legal entities. ((Art.19(1) Law on Ombudsman). S/he could act on complaint on his/her own initiative when s/he finds that the necessary conditions for the protection of citizens' rights and freedoms are not created. (Art.19(3) Law on Ombudsman)

7. Which laws in your jurisdiction, civil or criminal, are commonly weaponized as SLAPPs to silence parties? Do you have any notable examples where these laws have been abused?

Based on limited practice of SLAPP cases, there is no clear tendency, with two notable cases, one civil and one criminal. The company Biovet and its daughter company GreenBurn have filed two tort lawsuits of a total of BGN 150,000 BGN⁴ against Ms Zlatka Tsveeva, the chairwoman of the Initiative Committee against Dirty Air in the town of Peshtera, because of her statement that in Peshtera there are "smokes and smells".

An example of criminal case of defamation and insult is the lawsuit filed in 2014 by the late chairman of the Supervisory Board of Assarel-Medet AD Lachezar Tsotsorkov against the green political leader Borislav Sandov⁵. Tsotsorkov, considered de facto owner of the mining company, felt offended by the terms "oligarch" and "poisoner", which Sandov used in his Facebook comment posted on October 2, 2014. The Pazardzhik district court hearing the case confirmed the truth of the facts presented by Sandov in support of the used term and acquitted him of the accusation of defamation. However, the court sentenced him for insult to pay an administrative fine of BGN 1,500 and 3000 BGN representing compensation for the non-pecuniary damages caused by the crime, together with the legal interest from the date of the damage.

8. Has international legislation played a role in SLAPP lawsuits in your jurisdiction? (e.g., European Union GDPR) If yes, to what end?

We could not access the impact of the international legislation on the SLAPP lawsuits since the few relevant cases do not support such a statement.

⁴ 1 BGN = approx. 0.5 EUR

⁵ Borislav Sandov was appointed as a Minister of Environment and Waters in the new government on December 13, 2021.

9. In SLAPP cases, do litigants tend to invoke due process rights? If yes, how do judges weigh the right to due process when balanced against concern about frivolous suits?

We do not have access to the court case documents to make such an assessment but based on the sentence of the criminal case we have seen; we could say that the court have taken balanced position and the right to due process was respected.

10. Is there a need to reform legislation on a national level to prevent frivolous or SLAPP cases? If yes, what might that look like?

There is a need of a legal definition of whistle-blowers and better legislation which defends the freedom of speech, incl. in the media on one hand, but on the other hand, protects against media harassment which could be another weapon against environmental activists and NGO, so that the rights and interests of environmental defenders and other parties are in balance. The planned new anti-SLAPP Directive, once in force will definitely impact the development of the national law.

11. Are there rules codified into professional or bar association codes of conduct which could prevent or punish lawyers from filing SLAPPs? If yes, are these rules typically enforced?

The Lawyer's Code of Ethics does not provide for such specific rules. The general rule is that the lawyer shall act in accordance with the law, with the rules of the Code and the legitimate interests of the client and shall not be influenced by his personal interests, shall not succumb to external pressure or foreign influence and shall provide legal assistance based on his inner conviction. The lawyer shall oppose any encroachment on his independence and shall not violate the professional ethics in order to please the client, the authorities or third parties. (Art.3(2-3) of the Code of Ethics)

12. What are the broad takeaways from SLAPP lawsuits in your jurisdiction? Are there unwritten norms or patterns which the cases tend to follow?

The SLAPP cases are used to silence and to threaten the environmental defenders and provide warning for the others, though they are presented as defending the rights and interests of the claimants. Media coverage does not always present well the objective facts and could distort the public opinion about the cases.

13. Based on your experience, what types of advocacy action can best prevent the initial filing of SLAPPs? What types of advocacy actions can be best for getting such suits dismissed once they are filed?

In our opinion, the media pressure with false or stigmatizing publications aiming at leading environmental activists and NGOs has more negative impact on the public opinion and threatens the exercising of the rights of environmental defenders and activists. There is a need for protecting them as confirmed by a decision establishing a rapid response mechanism for the protection of environmental defenders was adopted by the Meeting of the Parties to the Aarhus Convention at its seventh session on 21 October 2021. This is the first such mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure. The decision promotes in practical terms the advancement of environmental democracy and contributes to upholding of the universal right to a clean, healthy and sustainable environment as recognized by the UN Human Rights Council⁶.

The SLAPP cases are not many in number for Bulgaria, and though the few landmark cases presented above have had some negative impact, personally and as a general tendency, on the environmental activists, they are not main weapon used to silence the active civil society.

Contact information

Association Justice and Environment, z.s.
European Network of Environmental Law Organizations
33 Udolní, 602 00 Brno, Czech Republic
Birgit Schmidhuber, Csaba Kiss
Co-leaders / Aarhus Convention Topic Team
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org



The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.

⁶ <https://news.un.org/en/story/2021/10/1102582>