

ANTI-SLAPP MECHANISMS MONITORING STUDY



Croatia
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?

No, SLAPP is not defined by law or case law in any way.

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?

No, there is no law or case law that sets limits to cases that can be called SLAPP cases.

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?

No, there are no anti-SLAPP mechanisms in law or case law, which would have any impact on the filling of lawsuits with the intention of silencing private parties. Quite contrary, there is a provision of Environmental Protection Act, which environmental CSOs consider as SLAPP mechanism and as barrier to access to justice in environmental cases. (Please, see details about it bellow, under 10.)

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?

There is a law on whistle-blowers or in correct translation - Act on protection of applicants of the irregularities (HR Zakon o zaštiti prijavitelja nepravilnosti (ZZPN), NN 17/19), which entered into force as of 1st July 2019 and is popularly called Whistle-blowers Act.

Link to full text <https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti>
Prior to the enactment of this Act, the protection of whistle-blowers was partially regulated in some other laws, but this Act for the first time systematizes and regulates in detail issues related exclusively to whistle-blowers and protects them from employer sanctions related to reporting.

Ministry of Judiciary and Public Administration (Ministarstvo pravosuđa i uprave) also provides detailed information about goals and procedures of that law: <https://pravosudje.gov.hr/zakon-o-zastiti-prijavitelja-nepravilnosti/21297>

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?

Related to protection of whistle-blowers which could be applicable to SLAPP cases. So, the Act determines that when the whistle-blower reports the irregularity, from the moment of reporting it to a confidential person, the Ombudsman or the public and / or the media, the whistle-blower shall be protected by the provisions of the Act. Therefore, the employer must not put him at a disadvantage, meaning: dismissal, harassment, inability to advance, non-payment and reduction of salary and other benefits, initiating disciplinary proceedings, imposing disciplinary measures or penalties, denial of work, change of working hours, disabling education and professional training, non-payment of bonuses and severance pay, transfer to another job, non-protection from harassment of other persons, arbitrary referral to health examinations, etc.

Furthermore, in case of violation of these provisions, i.e., if he has suffered a harmful action in connection with the report of irregularities, the whistle-blower has the right to apply to the competent court and obtain judicial protection by filing a lawsuit. Judicial protection by filing a lawsuit may be exercised within three years from the time when the applicant learned of the harmful work, or within five years from the time when the harmful action against the applicant was taken.

There is still lack of data on implementation of this Act in general so there is no data on application of specific provisions on SLAPP cases, but in my opinion, there is still no application in SLAPP cases since fortunately there are not so many SLAPP cases in Croatia in general. Probably, there are more but are not reported so also not available.

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?

There is no additional law in Croatia which can be used against SLAPP, but Aarhus Convention was used in few cases.

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?

It is usual to use criminal law for SLAPPs against activists and journalists, stating that some investor has been subject to slander or insult, so criminal acts against honour are used. It happened to Zelena akcija in current case in which company Razvoj golf is claiming that Zelena akcija insulted them with campaign Srđ is ours.

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

We are not aware of such matters.

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?

There is still not enough data to give answer to this question, judges are not aware that they have SLAPP cases in front of them.

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?

Many environmental CSOs in Croatia are hesitant to even participate in some environmental procedures and even more afraid to go to court in env. cases since there is one provision in Environmental Protection Act which can be considered as SLAPP mechanism. So, Environmental Protection Act (Art 171) determines following: „If a particular act by a public authority body is not valid due to the request submitted in accordance with Article 169 of this

Act¹, and for that reason the developer, operator or another legal or natural person to which that act refers to, decides to wait until the legal validity of the act, in case it is established that the applicant has abused his right under the provisions of this Act, then the developer, operator or another legal or natural person has the right to demand compensation for damages and a loss of profit from the person who has submitted the request.“

The quoted article is contrary to Article 3, Paragraph 8 of the Aarhus Convention and Article 9, Paragraph 4 of the Aarhus Convention. A provision like this one does not exist in any other law within the Croatian legal system, and it is absurd that it exists in the Act which determines the principle of access to justice as one of the fundamental principles.

The formulation “in case it is established that the applicant has abused his right under the provisions of this Act” can easily become the basis for arbitrary proceedings. The provision is vague and does not provide any guidelines to what it means to abuse the right to submit a complaint in the administrative procedure. In situation like this, individuals who exercise right to judicial review of acts of public authority bodies are placed in an uncertain position of a possibility of bearing enormous costs of damage compensation, because there are no clear criteria to determine whether they abused their right to complaint defined by law.

So, the first step should be to delete that provision from EPA which CSO are asking for many years now every time that EPA was undergoing changes.

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?

No, there are no such rules.

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

There is still not enough data to give answer to this question.

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?

Firstly, there should be some public awareness campaign since media, citizens, but also government, lawyers and judges are not aware of what SLAPP is. After that or in parallel to that, there should be an educational campaign for government and parliament members so

¹ Challenging decisions, actions and omissions of public authorities and actions or omissions of legal and natural persons in matters of environmental protection

there can be even some possibility to start a public dialogue about anti-SLAPP mechanisms. In my opinion, it is a long battle but worth of fighting for sure.

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