

# ANTI-SLAPP MECHANISMS MONITORING STUDY



**Greece**  
**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](http://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?

There is no definition of SLAPP either in statutory law or in case-law.

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 - on the contrary, the European Court of Human Rights has often found Greece in violation of Article 10 of the European Convention on Human Rights precisely over criminal sanctions imposed on journalists. Similarly, rather high damages awards have been made by civil courts against journalists. It should be noted that a bill was submitted in July 2020, calling for the amendment of the relevant articles (on libel / defamation) of the relevant laws (Civil Code, Criminal Code, Law on the Press), with a view to bringing them in line with Article 10 standards.

Should these amendments be adopted, defendants in SLAPP actions will also stand to benefit. As of the date of writing (November 2021), the bill has not been tabled for discussion.

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?

There are no such mechanisms in the Greek legal order.

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?

Regarding statutory law, Greece has yet to transpose Directive (EU) 2019/1937 *On the protection of persons who report breaches of Union law*; a draft law is currently under review by an ad hoc law drafting committee, the term of which is set to expire on 15 November 2021. Different laws (Article 29 Law 4622/2019 regarding the setting up of internal control units in Ministries, Art 39 Law 4443/2016 regarding reports to Hellenic Capital Market Commission) provide for internal and external reporting procedures in particular circumstances but they mostly concern state authorities / bodies and are not considered effective and / or in compliance with the relevant provisions of the aforementioned Directive. Whistle-blowers are not afforded any particular protection from reprisals / harassment and have to rely on the relevant provisions of labour law as well as general provisions of the Civil Code. More extensive protection is afforded to whistle-blowers in criminal proceedings regarding bribery of state officials. These provisions make no reference to SLAPP cases.

According to the Greek Chapter of Transparency International, "... the protection of whistle-blowers in the Greek legal order is palpably deficient and should be reinforced; the mere amendment of the existing legal provisions will not be enough. The same conclusion applies as to the operation of internal and external reporting procedures, both in the state and the private sector".<sup>1</sup>

In terms of case law, the most high-profile case currently pending before domestic courts is that of a food specialist who is currently facing a series of civil and criminal proceedings filed by members of as well as the company he worked for. According to the food specialist, the company used significant quantities of a food disinfectant that posed a threat to consumers' health as well as to the environment, that it did not observe the relevant procedures when cleaning its fishnets and that it disposed of fish that had died due to diseases by dumping it to

<sup>1</sup> Transparency International, Greek Chapter, Position Paper 2/2020, *Effective transposition of the EU Directive On the Protection of Whistle-blowers*, 7 November 2020, available in Greek at: [https://www.transparency.gr/wp-content/uploads/2020/09/%CE%9A%CE%B5%CE%AF%CE%BC%CE%B5%CE%BD%CE%BF-%CE%98%CE%AD%CF%83%CE%B5%CF%89%CE%BD-%CE%94%CE%94-%CE%95\\_WHISTLEBLOWING\\_7\\_9\\_20.pdf](https://www.transparency.gr/wp-content/uploads/2020/09/%CE%9A%CE%B5%CE%AF%CE%BC%CE%B5%CE%BD%CE%BF-%CE%98%CE%AD%CF%83%CE%B5%CF%89%CE%BD-%CE%94%CE%94-%CE%95_WHISTLEBLOWING_7_9_20.pdf), page 14.

the bottom of the sea. Perhaps the most important of these proceedings is the action for damages for defamation and loss of revenue filed against him by the company. Whereas the First Instance Court rejected the lawsuit (in which the company requested damages to the amount of 1 million EUR), the Appeals Court recently (October 2021) quashed the first instance court decision and awarded the company 10,000 EUR in damages and 1,000 EUR in legal costs and expenses.

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?

Not applicable.

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?

Not applicable. Reference has to be made to Article 580 of the Greek Criminal Procedure Code, whereby the plaintiff whose criminal complaint is rejected by the prosecutor / the indictment chamber / the court, can be sentenced to legal costs if the complaint is found to have contained knowingly false allegations. Nevertheless, the costs are relatively modest whereas prosecutors / courts usually do not find that the complaints filed against journalists / activists were knowingly false; as a result, they do not impose the relevant costs.

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?

The legal provisions most likely to be used in the context of SLAPP proceedings are Articles 361, 362, 363 and 364 of the Criminal Code (insult, defamation, slanderous defamation and defamation / slanderous defamation of a legal entity respectively) and Article 57 of the Greek Civil Code (right to personality). The main problem does not appear to be the content / wording of the legal provisions themselves but rather the restrictive interpretation adopted by the Greek courts and their reluctance to apply them in light of the case law of the European Court of Human Rights (ECtHR). As a result, courts often award disproportionate damages awards that can have both an essentially punitive character as well as a chilling effect on journalists, activists or whistle-blowers.

In one of the latest judgments against Greece by the ECtHR, the latter held that a damages award of 15,000 EUR together with 1,500 EUR in legal costs and expenses imposed on a journalist for allegedly defaming a former mayor and MEP was disproportionate (*Dimitriou v. Greece*, no 62639/12, 11 March 2021). It is noted that this damages award is considerably

higher than the one awarded (10,000 EUR) to the plaintiff company in the case of the food specialist referred to above and which concerned both defamation and loss of revenue (the latter being more easily ascertainable and quantifiable than loss of reputation), suggesting that Greek courts might have started partly revisiting their approach on this issue. This conclusion however is without prejudice to whether the damages award in the latter case was not, in light of the context of the case, also disproportionate. IPI and other members of the Media Freedom Rapid Response (MFRR) have characterised the lawsuit as a SLAPP.<sup>2</sup>

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

No. As noted, Greek courts regularly flout the directly applicable provisions (and their authoritative interpretation by the ECtHR) of the European Convention on Human Rights. An interesting case raising issues of compliance with GDPR is currently pending before the domestic courts, with a manager of a gold extraction company active in the north of Greece filing a damages lawsuit against a journalist asking for 100,000 EUR in compensation for referring to him by name in an article regarding his (the manager's) and other company official's final criminal conviction for surface water contamination and bringing about the degradation of the environment. The plaintiff argues that the journalist should have respected his right to privacy and protection of sensitive personal data (in this case, his criminal conviction) and referred to him only by his initials.

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?

Yes. Defendants often invoke relevant domestic legal provisions (such as Article 367 of the Greek Criminal Code which lays down some defences to charges to insult / defamation) as well the ECtHR's jurisprudence on freedom of expression cases. Nevertheless, courts appear to be more concerned with protecting the plaintiff's right to reputation rather than striking a fair balance between the competing interests.

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?

It would appear that the problem lies not so much in the legislation as it stands (although it would be greatly improved if the bill referred to above in the answer to question 2 were adopted) but rather in the mentality of judges who attach greater importance to the protection of the right

<sup>2</sup> IPI, *SLAPP lawsuit in Greece underscores need for swift EU directive*, 16 November 2021, available in English at: <https://ipi.media/slapp-lawsuit-in-greece-underscores-need-for-swift-eu-directive/>

to reputation, at the expense of all other relevant considerations. Adopting new legislation therefore, without raising the awareness of judges as to the need to balance the competing interests, might not be adequate in addressing the underlying problem.

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?

Not applicable.

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

National judges often fail to differentiate between statements of facts and value judgments, award disproportionately high damages award without providing robust reasoning on why such high awards are called for and fail to carry out a balancing exercise between competing interests by giving priority to the protection of the right to reputation.

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?

Save for wholly unmeritorious SLAPP lawsuits before criminal courts that should be dismissed at an as early stage as possible, we do not feel it is possible (or indeed desirable) to quickly dispose of such cases merely on grounds that they might contain SLAPP elements. Such a course of action would tilt the balance in favour of journalists / activists and to the expense of the in principle legitimate interests of the plaintiff. While not strictly speaking an advocacy action, emphasis should be placed on providing additional training to prosecutors / judges on the principles emanating from the relevant jurisprudence of the ECtHR on issues outlined above. Moreover, additional training should be provided to journalists who at times flout the standards contained in the various media codes of ethics.

In terms of advocacy action, courts should allow interested third parties (NGOs, experts) to take part in both criminal and civil proceedings by filing amicus curiae briefs or place themselves at the disposal of journalists / activists facing SLAPP charges in order to be examined as expert witnesses. This would allow judicial officials to benefit from their expertise and bring prosecutors and judges up to speed with relevant developments at the international level. Furthermore, it could be useful to call upon institutions such as e.g., the Supreme and Civil Court's Prosecutor's Office with a view to adopting a circular on identifying and handling criminal cases that present SLAPP characteristics. It is noted that in the past the Supreme

Court's Prosecutor's Office has issued circulars regarding the proper implementation of environmental criminal law.

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