

Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media

LEGAL ANALYSIS

of the Draft Law of Ukraine 'On the Protection of Public Participation from Manifestly Unfounded Claims or Abuse of Judicial Proceedings'

Amendments to the Law of Ukraine 'On Free Legal Aid'

Amendments to the Law of Ukraine 'On Ensuring the Safety of Persons Participating in Criminal Proceedings'

Amendments to the Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights'

Amendments to the Law of Ukraine 'On the International Private Law'

Amendments to the Law of Ukraine 'On the Court Fee'

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Executive Summary

The provisions included in the Draft Law of Ukraine 'On the Protection of Public Participation from Manifestly Unfounded Claims or Abuse of Judicial Proceedings,' Amendments to the Law of Ukraine 'On Free Legal Aid,' Amendments to the Law of Ukraine 'On Ensuring the Safety of Persons Participating in Criminal Proceedings,' Amendments to the Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights,' Amendments to the Law of Ukraine 'On the International Private Law' and Amendments to the Law of Ukraine 'On the Court Fee' largely align with the principles and requirements set out in the relevant Council of Europe Recommendation on countering the use of strategic lawsuits against public participation and the EU Directive on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings, in some instances even providing enhanced protection for individuals targeted by SLAPPs. Overall, the legislative approach is sound and reflects both the spirit and substance of the European framework.

However, several areas warrant refinement to ensure full consistency and effectiveness. The scope of protection for public participants under Article 5 of the Draft Law on the Protection of Public Participation from Manifestly Unfounded Claims or Abuse of Judicial Proceedings appears narrower than European standards and could be expanded to include supporting individuals such as relatives and other non-professional actors. Similarly, Article 6 introduces a more restrictive threshold for associations, limiting participation to those specifically focused on human rights or public participation; broadening this to include entities with a "legitimate interest" would better reflect the Directive's approach. Article 7 correctly incorporates early dismissal mechanisms but omits the requirement for claimants to demonstrate that their claim is not manifestly unfounded once challenged; including this safeguard would strengthen procedural protections. In addition, provisions relating to applicable law in cross-border cases risk enabling forum shopping or libel tourism and should be more tightly circumscribed.

Beyond issues of formal alignment, further improvements could enhance the practical effectiveness of the framework. While the inclusion of alternative dispute resolution mechanisms is welcome, their implementation should take into account inherent power imbalances between parties, which may undermine fairness if not properly addressed. Finally, the proposed protections would benefit from a more explicit integration of gender-sensitive measures, including data collection, targeted support services, and training for judicial actors to address the specific risks faced by women, particularly journalists.

Article-by-Article Summary of Comments

Preamble and Article 1 – Scope of the Law. The Draft Law should retain its broad application to all forms of judicial process and to manifestly unfounded claims or other judicial pressure intended to prevent, restrict or penalise public participation. Its scope should not be confined to civil or commercial matters, as under the EU Anti-SLAPP Directive. The reference to threats, procedural abuse and other forms of judicial pressure is welcome because SLAPPs may achieve their purpose before proceedings are formally initiated.

Article 2 – Definitions. The definition of 'close person' is a useful addition, reflecting the need to protect family members, guardians and carers affected by SLAPPs. 'Public participation' and 'matters of public interest' should remain broadly defined, covering journalism, research, teaching, advocacy, artistic and scientific activity, human-rights work, environmental protection, public health, corruption, official proceedings and other matters of legitimate public concern, rather than being limited to elections or political debate. The definition of 'public participant' should remain non-exhaustive and expressly cover journalists, media organisations and employees, whistleblowers, civil-society organisations, academics, researchers, artists, writers, human-rights defenders and other persons contributing to public debate. The definition of 'public formations' should exclude entities, such as political parties or arbitration courts, that are not normally vulnerable to the power imbalance characteristic of SLAPPs. The list of indicators of abusive proceedings should be retained and should include both the indicators identified in the Directive and the additional factors proposed in the Draft Law: coordinated or repeated proceedings, procedural-rights abuse, intimidation, harassment or threats, and systematic refusal to use alternative dispute resolution. These additions appropriately address judicial pressure extending beyond a single formal lawsuit.

Article 5 – Protection of Public Participants. State protection should extend beyond relatives to lawyers, associates, service providers, publishers, printers, Internet providers and other persons who support or assist public participation. This would bring the provision closer to the Directive and the Council of Europe Recommendation, which recognise indirect or secondary victims of SLAPPs.

Article 6 and Article 11 – Institutional and Third-Party Support. The role of the Ukrainian Parliament Commissioner for Human Rights and the possibility for relevant public formations to intervene as third parties should be retained. However, the requirement that supporting organisations have a specific mandate relating to human rights or public participation may be narrower than the Directive's reference to entities with a legitimate interest. The eligibility criterion should therefore be reconsidered or clarified.

Article 7 – Burden of Proof and Non-Material Damage. The claimant should bear the burden of proving that the claim is well founded. The Draft Law should also incorporate the Directive's specific rule that, once the defendant applies for early dismissal, the claimant must substantiate that the claim is not manifestly unfounded. The proposed limitation on awards for moral damage, requiring intent by the public participant and observance of reasonableness and fairness, should be retained, provided that it does not deter legitimate public participation.

Article 8 – Recognition of Victims. The provision recognising victims of SLAPPs and granting them remedies should be retained. Lawmakers should consider whether the reference to violations of "rights, freedoms or legitimate interests" is sufficiently precise or should be expressly linked to rights associated with public participation.

Article 9 – Legal Succession. The right of legal successors to join proceedings after the death, incapacity or termination of the original public participant appropriately implements the Council of Europe Recommendation and should be retained.

Article 10 – Compensation. Victims should be entitled to compensation for material losses, legal costs and moral or non-material damage. Express recognition of non-material harm is particularly valuable because SLAPPs may cause psychological and reputational injury that cannot be captured by financial losses alone.

Article 12 – Negotiation and Mediation. The possibility of resolving disputes through negotiation or mediation should be maintained. Any implementing measures should address the inherent power imbalance between the parties so that alternative dispute resolution does not become another means of pressuring the public participant.

Article 13 – Information and Publication. Public participants should have easy access to information about remedies, safeguards, legal aid, support services and educational resources through a single, accessible judicial portal. Final decisions should be published in an accessible format and entered into the relevant register once legally effective.

Articles 14 and 15 – Data, Transparency and Registers. SLAPP-related proceedings should be recorded separately, with statistics covering their number, outcomes, subject matter and the parties involved. A free, public and regularly updated register of final decisions identifying abusive proceedings should be created. These data should, however, be interpreted cautiously because many SLAPPs never reach court and will therefore remain invisible in formal statistics.

Amendments on Free Legal Aid. Public participants and, where appropriate, close relatives should receive free secondary legal aid for proceedings connected with public participation. Authorities should also encourage independent legal, media, academic and civil-society organisations to provide assistance and should consider mechanisms for affordable legal-support insurance.

Amendments on Safety. Public participants facing threats to their physical safety should have access to existing protection measures, including personal and property protection, confidentiality, relocation and protective surveillance. The framework should also consider early-warning mechanisms, emergency assistance and gender-specific protection, given the disproportionate targeting of women journalists.

Amendments on International Private Law. Ukrainian courts should refuse to apply foreign law that provides weaker protection for freedom of expression or public participation. The proposed choice allowing an injured person to select the law most favourable to their rights should be narrowed, as it may facilitate forum shopping. Ukrainian courts should retain jurisdiction over compensation claims arising from abusive foreign proceedings and should refuse recognition or enforcement of foreign judgments found to result from SLAPPs.

Amendments on Court Fees. Defendants in anti-SLAPP proceedings should remain exempt from court fees at every stage. Courts should also be required to postpone, reduce or waive fees where necessary to secure access to justice and prevent procedural abuse. Although this does not expressly require claimants to pay the defendant’s full legal costs, it is consistent with the protective purpose of the Directive and the Recommendation.

Specific Recommendations

The provisions under analysis overall implement the principles and provisions from the Recommendation and Directive both in spirit and in detail. In a few cases, they even seem to provide additional protection to SLAPP victims, which is welcome.

Nonetheless, the following should be noted:

- Article 5 of the Draft Law on the Protection of Public Participation from Manifestly Unfounded Claims or Abuse of Judicial Proceedings extends the protection granted to public participants to relatives and non-professional figures who support the applicant, appearing narrower than recommended European standards. Both the Recommendation and the Directive cover additional figures in this regard. Lawmakers should consider extending the scope of this provision to include such other figures.
- Article 6 of the Draft Law on the Protection of Public Participation seems to introduce a more stringent requirement than the Directive, requiring joining associations to have a specific focus on human rights or public participation rather than merely 'a legitimate interest.' Although this is in principle compatible with the Directive, lawmakers may consider extending the scope of this provision to grant broader protection to relevant associations.
- Article 7(1) of the Draft Law correctly transposes Article 12(1) of the Directive, whereas the further requirement introduced with the second paragraph of Article 12 of the Directive (equivalent to Paragraph 31 of the Recommendation) that a claimant, following a defendant's application for early dismissal, needs to substantiate their claim as 'not manifestly unfounded,' is currently missing. Lawmakers may consider including the same in the Draft Law.
- An Article currently unnumbered, featured in the proposed amendments to the Law of Ukraine on the International Private Law but apparently to be added to the Civil Code, provides ample choice to plaintiffs to choose which of three laws governs their case. Lawmakers should thus consider restricting the circumstances under which an injured party may deliberately choose 'the law guaranteeing the rights of the person who suffered such harm' and potentially exploit libel tourism.

Below are, instead, further considerations concerning aspects of the provisions under analysis which, despite not being directly incompatible with either the Recommendation or the Directive, could be further strengthened to offer more effective protection:

- Article 12 of the Draft Law on the Protection of Public Participation from Manifestly Unfounded Claims or Abuse of Judicial Proceedings provides for the possibility of extrajudicial dispute settlement through negotiations or mediation. When implementing this provision in national law, competent authorities should be cognisant of the fact that power imbalances between the parties are inherent in this field and may hamper any negotiation or mediation process if they are not adequately addressed.
- Amendments to the Law on Ensuring the Safety of Persons Participating in Criminal Proceedings provide a series of protections to public participants; lawmakers may reflect

on including more specific and comprehensive gender-specific protections in this context. These may include, in a non-exhaustive fashion, that Articles 14-15 of the Draft Law require the collection of gender-relevant data in relation to SLAPP claims; that Article 13 of the Draft Law is amended to include, in the 'available support measures, in particular, on free legal aid and the conditions for obtaining it, as well as to data on relevant information and educational activities carried out, including in cooperation with civil society' made available to victims of SLAPPs, appropriate gender-specific resources, such as for instance protection training and educational materials, and that civil society organisations with a focus on women safety are expressly involved in relevant projects; promoting programmes to increase awareness among judicial personnel on gender-specific dynamics affecting the safety of female journalists especially in relation to harassment and abuse, offline and online, and gender-specific hindrances to access to justice.[1]

[1] See, for further reference, OSCE, *Safety of Female Journalists Online. A #SOFJO Resource Guide* (OSCE 2020) at https://rfom.osce.org/sites/default/files/f/documents/2/9/468861_0.pdf.

Part I: International Standards and General Considerations on the Issue of SLAPPs

International Standards

Ukraine is a founding member of the United Nations, an OSCE participating State since 1992, and a member of the Council of Europe since 1995. The International Convention on Civil and Political Rights (ICCPR),[2] the European Convention on Human Rights (ECHR),[3] as well as decisions made by the European Court of Human Rights, are legally binding on its national authorities. Ukraine has official EU candidate status since 2022 and has successfully completed its screening process in 2025.

Freedom of expression and of the media are protected by relevant provisions in fundamental rights treaties at both the regional and international level. Both Article 19 ICCPR and Article 10 ECHR consist of three distinct layers: an unfettered freedom to hold opinions and two qualified rights to receive (a passive aspect) and to impart (an active aspect) information and ideas. The first paragraph of Art 10 ECHR guarantees these latter two layers of the right against interferences by public authorities and regardless of frontiers; Art 19 ICCPR also established a principle of technological neutrality in that it clarifies that the exercise of the right does not depend on the specific medium utilised. In regard to limitations, the second paragraph of Art 10 ECHR introduces the notion that 'formalities, conditions, restrictions or penalties' may be imposed under certain limited circumstances, and provides for a general framework to assess the compatibility of any such restrictions with the Convention. The framework consists of a three-part test requiring any restriction to have a basis in the law of the country where it is imposed (test of legality), to be in pursuit of one of the aims listed exhaustively in paragraph 2, i.e. 'national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary' (test of legitimacy) and to be necessary, and the least intrusive measure possible among those effective enough, to reach the designated objective (test of necessity and proportionality). Paragraph 3 of Art 19 ICCPR contains a shorter list of legitimate aims (the respect of the rights or reputations of others; the protection of national security or of public order (*ordre public*), or of public health or morals), however restrictions must undergo similar tests of necessity and proportionality. The provisions from Art 10 ECHR and Art 19 ICCPR mirror very closely those of other regional treatises for fundamental rights, including Article 11 of the EU Charter of Fundamental Rights.

In this respect, it is a well-established and widely accepted principle that journalists exercise their role in the public interest, as the mirroring equivalent and an enabler of the wider societal right to access information for democratic debate and self-governance, and that legal safeguards and privileges for journalists should be granted with this special role in view.[4] Given

[2] International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, formally adopted by the UN General Assembly on December 16, 1966, and entered into force on March 23, 1976.

[3] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221.

[4] See ECtHR, *The Sunday Times v. the United Kingdom (no. 2)*, App. no. 13166/871991, 26 November 1991, para. 50; *Bladet Tromsø and Stensaas v. Norway* [GC], App. no. 21980/93, 20 May 1999, paras 59 and 62; *News*

that journalists today largely perform their role, and the public largely accesses news and commentary, through digital means, the above principle needs to be interpreted in light of the United Nations General Assembly's finding that 'the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice.'[5]

In light of the fundamental societal role of journalism in facilitating the enjoyment of the fundamental right to receive information, it is not surprising that the safety of journalists and their protection from physical attacks and non-physical harassment are considered a priority in international and regional instruments. Among these is the UNESCO Resolution on 'Condemnation of Violence against Journalists',[6] which conceptualises the assassination of journalists as a societal, rather than merely individual, concern and urges States to investigate and punish such crimes, including by passing legislation to prosecute and sentence those responsible. The OSCE Ministerial Council Decision (3/18) on the Safety of Journalists expressly connects the respect and fulfilment of international obligations with the protection of journalist safety and in particular calls on participant States to '[f]ully implement … their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers [and to b]ring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments.'[7]

The aforementioned obligations thus include positive, not merely negative, dimensions, and apply with a broader scope, as the notion of journalism ought to be interpreted from a functional perspective.

In regard of the first perspective (positive obligations to protect journalism), the UNESCO standard framework for the safety of journalists requires States to prevent, prosecute and punish violence against journalists[8] and to ensure that attacks and threats against journalists are promptly and impartially investigated, those responsible are held accountable, and victims receive appropriate remedies.[9] In the context of growing digitalisation of the media industry, guidance from the OSCE recognises that States are the ultimate 'duty-bearers under international human rights law and hold a positive obligation to protect human rights from interference by others, including private actors or individuals' and therefore recommends that they develop 'a human rights policy with emphasis on salient human rights issues, including freedom of expression, freedom of the media, privacy, non-discrimination, and right to life, liberty and security.'[10] Likewise, the European Court of Human Rights has long held that State authorities must establish effective mechanisms to protect journalists and create a favourable environment for participation in public debate, so that all those concerned can express their

Verlags GmbH & Co.KG v. Austria, App. no. 31457/96, 11 January 2000, para. 56; *Pedersen and Baadsgaard v. Denmark* [GC], App. no. 49017/99, 17 December 2004, para. 71; *Axel Springer AG v. Germany* [GC], App. no. 39954/08, 7 February 2012, para. 79; *Bédat v. Switzerland* [GC], App. no. 56925/08, 29 March 2016, para. 51; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], App. no. 931/13, 27 June 2017, para. 126.

[5] Resolution adopted by the Human Rights Council, 'The promotion, protection and enjoyment of human rights on the Internet', A/HRC/20/L.13, 2012, para. 1.

[6] UNESCO, Resolution 29 'Condemnation of violence against journalists' adopted on the report of Commission IV at the 27th plenary meeting, on 12 November 1997.

[7] OSCE, Decision no. 3/18 on the Safety of Journalists, MC.DEC/3/18, 2018, p. 3.

[8] See UNESCO, 'The United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity' 2012 https://unesdoc.unesco.org/ark:/48223/pf0000214945

[9] OSCE, Decision no. 3/18 (n 7 above) para. 6.

[10] OSCE, 'Spotlight on Artificial Intelligence and Freedom of Expression. A Policy Manual', 2022, p. 45-46.

opinions and ideas without fear.[11] Recent conceptualisations of journalist safety recommend a holistic approach that considers and addresses several key dimensions of the concept in context, including, alongside the most obvious dimension of physical safety, other dimensions such as legal and economic security, mental and emotional well-being, digital safety, and gender- and identity-based considerations.[12] Intimidation, harassment, and threats of all forms,[13] sexual harassment,[14]discreditation, smear campaigns[15] and, specifically, SLAPPs[16] are among the issues that affect journalists' safety online and offline and their ability to fulfil their role successfully in the interest of society as a whole.

In regard to the second perspective (a functional notion of journalism), international and regional authorities have long embraced this view. General Comment No. 34 of the UN Human Rights Committee recognises that journalism is a broad activity that may be carried out by a range of actors, including bloggers and individuals who self-publish in print or online.[17] The UN Special Rapporteur considers that 'neither the concept of a journalist nor the practice of journalism is limited to those employed by news publishers', and therefore legal protection should be granted having in mind 'the nature of the content and its public interest function' more than 'the professional designation of the individual'.[18] Similarly, the European Court of Human Rights does not offer a fixed definition of journalism, but instead emphasises that many actors contribute to public debate and may fulfil the essential role of a 'public watchdog'.[19] This includes not only members of the press, but also non-governmental organisations, academic researchers, authors, bloggers and social media users.

The Issue of SLAPPs (Strategic Litigation Against Public Participation)

Academic and policy work on the issue of SLAPPs dates back to at least the mid-1980s, when an interdisciplinary research programme known as the Political Litigation Project was established at the University of Denver, USA. The original conceptualisation, which remains valid today, examined the problem of 'a growing body of civil-damage lawsuits' filed against 'citizens or groups for advocating a viewpoint on a public issue in a government decisional process' which, despite their appearance as 'ordinary, apolitical, judicial claims,' are in reality 'clearly reactions against past or anticipated opposition on political issues' and thus constitute 'threats to an active polity.'[20] In fact, not only has the academic debate developed earlier, but

[11] See ECtHR, *Dink v. Turkey*, Apps Nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, para. 137; *Khadija Ismayilova v. Azerbaijan*, Apps Nos 65286/13 and 57270/14, 10 January 2019, para. 158.
[12] See OSCE, 'Safeguarding Media Freedom in the Age of Big Tech Platforms and AI. A Policy Manual', 2025, 111.
[13] OSCE, Decision no. 3/18 (n 7 above) para. 3.
[14] Ibid., para. 4.
[15] Ibid., 112.
[16] Ibid., 123.
[17] General Comment No. 34, 'on Article 19 Freedoms of Opinion and Expression of the ICCPR', United Nations, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para 44.
[18] Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 'Reinforcing media freedom and the safety of journalists in the digital age', A/HRC/50/29, 2022, paras. 15-16.
[19] ECtHR, *Animal Defenders International v. The United Kingdom*, App. no. 48876/08, 22 April 2013, para. 103; *Magyar Helsinki Bizottsag v. Hungary*, App. no. 18030/11, 8 November 2016, para. 166; *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, App. no. 18597/13, 9 January 2018.
[20] Penelope Canan and George W. Pring, 'Studying Strategic Lawsuits against Public Participation: Mixing Quantitative and Qualitative Approaches' 1988 22(2) Law & Society Review 385, 385-386.

legislative efforts have also begun sooner and are now at a more advanced stage in the United States and Canada, with over 30 US States and three Canadian Provinces having adopted anti-SLAPP laws as of 2025.[21]

The European Union included the issue in its Democracy Action Plan of 2020, defining SLAPPs as 'a particular form of harassment increasingly used against journalists and others involved in protecting the public interest [and consisting of] groundless or exaggerated lawsuits initiated by state organs, business corporations or powerful individuals against weaker parties who express criticism or communicate messages that are uncomfortable to the litigants, on a matter of public interest [with the aim to] censor, intimidate and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition.'[22] A crucial characteristic, and one of the main reasons for concern, is the inherent risk of a chilling effect that SLAPPs can have on journalists.[23]

Shortly afterwards, a study commissioned by the European Commission recommended that courts may identify SLAPPs on the basis of criteria such as: the speaker being a journalist, NGO, or whistle-blower with less power than the plaintiff; the lawsuit being meritless or frivolous; the claim being disproportionate to the severity of the harm; the defendant's prior activities or published content being in the public interest; and the sanction sought being likely to have a chilling effect on democratic participation. Additional recommendations were proposed to reduce the damage caused by vexatious litigation, including strengthening the legal aid system to make it more broadly accessible to defendants facing SLAPP-suspicious cases or cases involving freedom of expression; for civil defamation, the proposal called for making the defences of good faith and public interest a strong and central part of legal defence strategies. It also recommended protecting press professionals and NGO staff from personal liability by establishing a 'single-personal-liability' system, where only the publisher or the NGO's responsible executive leader bears personal liability.[24]

In 2022, the European Commission delivered a Recommendation on protecting journalists and human rights defenders from SLAPPs.[25] The Recommendation urged Member States to reform their legal frameworks to establish robust safeguards against manifestly unfounded or abusive court proceedings, ensuring these protections extend even to domestic cases, enabling the early dismissal of SLAPPs and providing effective legal remedies, including the imposition of costs and penalties on those who initiate such abusive legal actions. The support mechanism guidelines urge Member States to ensure that individuals targeted by SLAPPs and those serving as defendants can access independent, individual support and legal assistance. To strengthen this infrastructure, countries should establish a central focal point dedicated to gathering and sharing information about organisations that provide these essential

[21] See Peter Coe, Rebecca Moosavian and Paul Wragg, 'Addressing strategic lawsuits against public participation (SLAPPs): a critical interrogation of legislative, and judicial responses' (2025) 17(1) Journal of Media Law 103, 105.

[22] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'On the European democracy action plan' COM(2020) 790 final, 14.

[23] Ibid.

[24] See Judit Bayer, Petra Bárd, Lina Vosyliute and Ngo Chun Luk, *Strategic Lawsuits Against Public Participation (SLAPP) in the European Union. A comparative study*. EU-CITZEN – Service Contract JUST/2016/RCIT/PR/RIGH/0078, 2021, 9.

[25] Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

services. Further indications included in this Recommendation (but beyond the scope of the Ukrainian laws under analysis) focus on definition and decriminalisation of defamation, balancing data protection with freedom of expression, training and awareness-raising initiatives.

In 2023, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs published a study commissioned to examine SLAPP cases and threats brought forward in the EU during the previous two years. The study captured the difficulty of quantifying the full extent of the SLAPP phenomenon, since claimants often seek to have matters resolved at a pre-litigious phase without public scrutiny. Five litigation tactics were identified: filing multiple lawsuits, pursuing multiple targets, focusing on a single individual, requesting excessive damages, and seeking moral damages. Practical recommendations put forward for a comprehensive approach to addressing SLAPPs included centring the definition of SLAPPs on two key elements, such as whether an act of public participation occurred and what litigation tactics the claimant employed, rather than focusing on the claimant's motivation or purpose in bringing a dispute; extending the remedy of early dismissal to all abusive court proceedings against public participation; including inequality of arms between the parties, the targeting of individual persons, or the targeting of multiple legal or natural persons in a non-exhaustive list of indicators of abuse.[26]

Meanwhile, the issue has also been attracting considerable attention in the civil society sector. While main civil society organisations and campaigns are now active on SLAPPs across Europe, the Coalition Against SLAPPs in Europe (CASE), launched in March 2021, operates as the central coordinating force for over 120 non-governmental organisations from across Europe and beyond. As part of its law reform advocacy campaign, CASE devised a framework to combat SLAPPs[27] consisting of three main principles: Principle 1 focuses on rapid disposal of SLAPP cases by requiring claims targeting public participation to meet a high threshold before advancing to trial, preventing abusive lawsuits from being stretched out, and giving judges discretion to filter out cases exhibiting abusive qualities or disproportionate impacts on freedom of expression. Principle 2 aims to ensure that SLAPP targets face minimal costs while receiving full compensation for harm and legal expenses, making legal aid or other support available so targets can complete their defence without being forced to abandon it before resolution. Principle 3 aims to impose sufficiently high costs on SLAPP filers to deter future SLAPPs through effective, proportionate, and dissuasive sanctions combined with substantial damages, with sanctions proportionate to the claimant's resources to provide an effective deterrent against such tactics.

The two main policy and legal frameworks, currently in force in Europe, are the Council of Europe's Recommendation on countering the use of SLAPPs[28] (hereinafter 'the Recommendation') and the EU's Anti-SLAPP Directive[29] (hereinafter 'the Directive'), both approved in 2024. Pursuant to the Directive, defendants in SLAPP cases can request early

[26] See Justin Borg-Barthet and Francesca Farrington, 'Open SLAPP Cases in 2022 and 2023: The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union' (Policy Depart for Citizens' Rights and Constitutional Affairs, European Parliament, Nov 2023).
[27] See CASE Standards for Transposition, 2026. CASE Standards for Transposition – CASE.
[28] Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs) (Adopted by the Committee of Ministers on 5 April 2024 at the 1494th meeting of the Ministers' Deputies).
[29] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

dismissal of manifestly unfounded claims. If a claim is deemed abusive, courts may require the claimant to cover legal costs and, where appropriate, provide financial security to ensure compensation for the defendant. The Directive requires decisions on dismissal and security be made swiftly, and courts may also impose penalties or similar measures to deter abusive litigation. Furthermore, State authorities are expected to ensure that associations, organisations, and trade unions can support defendants or contribute information in proceedings. They must also provide a single, accessible source of information on the procedural safeguards and remedies available to SLAPP victims.

The Ukrainian laws under analysis aim to implement the CoE Recommendation and the EU Directive at the domestic level. Earlier versions of the relevant drafts were reviewed as part of the Council of Europe Project 'Safeguarding Freedom of Expression and Freedom of the Media in Ukraine – Phase II' (SFEM-UA – Phase II), resulting in a legal opinion 'On Legislative Changes on the Protection of Public Participation from manifestly unfounded claims or abuse of judicial proceedings in Ukraine' released in February 2026.

Part II: Legal Analysis

Draft Law of Ukraine 'On the Protection of Public Participation from Manifestly Unfounded Claims or Abuse of Judicial Proceedings'

Scope of the Law

The Preamble states that the Draft Law in analysis is developed for the purpose of implementing the provisions of the EU Anti-SLAPPs Directive and the Council of Europe's Recommendation, and to protect individuals and legal entities engaging in public participation on matters of public interest from manifestly unfounded claims, other forms of judicial pressure, or the abuse of procedural rights.

Article 1 indicates that the Draft Law applies 'regardless of the type of judicial process, as well as against other manifestly unfounded claims aimed at preventing, hindering, restricting or penalising public participation.' The scope appears to coincide with that of Article 1 of the Directive, likewise reflecting the dual emphasis on 'manifestly unfounded claims or abusive court proceedings.' Meanwhile, this Law is not limited to civil or commercial matters, unlike the Directive, a limitation arising from the legal basis of this EU provision and widely considered a shortcoming. The wider scope of this domestic statute is thus welcome. The reference to 'other forms of judicial pressure, or the abuse of procedural rights' also suggests a wider scope, potentially going beyond actual lawsuits. It could potentially be a welcome broadening of the scope in order to address the issues of lawfare and power imbalance, and the fact that SLAPPs do not always reach the court stage, as the mere threat of a suit is often sufficient for the claimant to achieve their aim.[30]

Definitions

Article 2 of the Draft Law defines a few key terms and concepts.

Article 2.1.1 provides a definition of 'close person' as someone who has a close family relationship with the victim, or who serves as the victim's guardian or caretaker. The notion of 'close person' does not feature in the Directive; however, para. 39 of the Recommendation acknowledges that family members can be impacted by actions of this kind and indicates that family members and associates of the original defendant, in case of the death or loss of capacity of the latter, should be able to continue a pending case and have access to the same remedies and support. In light of this teleological connection, providing a legal definition of 'close person' appears a welcome addition.

Article 2.1.2 defines 'public participation' as 'any statement or activity of a natural or legal person, public formations without the status of a legal entity, which relate to issues of public interest, while exercising the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, the rights to elect, be elected and participate in a referendum, as well as any other preparatory, supporting and assisting action in the exercise of the aforementioned rights and directly related to them.' This wording makes direct reference to political engagement in the narrower sense, i.e., engagement related to elections and referendums.

[30] See Coalition Against SLAPPs in Europe, *A 2024 Report on SLAPPs in Europe: Mapping Trends and Cases*, 2024, 7. CASE-2024-report-vf_compressed-1.pdf

Connected to the above is the definition of 'matters of public interest' under Article 2.1.6, which describes the notion at stake as 'any matter which affects the public to such an extent that the public may legitimately take an interest in it, in particular regarding' a broader list of fields such as 'fundamental rights, public health, safety, education, religion, culture, history, environmental or climate protection, scientific discoveries', the activities of public figures in the public or private sector, legislative or other official proceedings, allegations of corruption or other administrative offence, and democratic values. This more extensive list aligns better with the approach to the notion of public interest matters indicated by the European Court of Human Rights acknowledging that 'there is no warrant in its case-law for distinguishing … between political discussion and discussion of other matters of public concern.'[31] With a similar emphasis, the Recommendation (para. 4.b) also defines the same notion in broad terms and independent from elections and referendums: 'Public participation can thus include a wide variety of activities such as advocacy, journalism, investigating and reporting violations of the law or ethical norms, academic research, teaching, debate, writing to government officials or corporate customers, circulating petitions, being parties in litigation designed to advance social change or protect existing rights or the environment, engaging in peaceful protests or boycotts, engaging with regional or international mechanisms, or simply speaking out against misuse or abuse of power, human rights abuses, corruption, fraud or indeed commenting on any matter of public interest. The scope of the term also covers actions preparing, supporting or assisting public participation.' This broad notion of 'matters of public interest', not limited to the exercise of the rights to political participation, is thus in line with both the Directive and Recommendation.

Article 2.1.3 defines a 'public participant' as any 'natural person, legal person, or public formation without the status of a legal entity, which carry out public participation' and this notion may include, among others, 'journalists, publishers, media entities and their employees, whistleblowers, civil society organisations, professional and creative unions and their members and employees, artists, researchers, scientists, writers, other individuals who disseminate public interest information and/or facilitate its dissemination and discussion or defend universally recognized human rights and fundamental freedoms, exercise the right to freedom of assembly and association, the right to elect, be elected and participate in a referendum or promote its exercising.' The Directive does not provide any such definition in a single given article, but provides examples dispersed across Recitals, acknowledging that figures like journalists (Recital 8), particularly investigative journalists and media organisations (Recital 10), human rights defenders (Recital 11), academics, researchers or artists (Recital 12) are included. The Recommendation (para. 4.a) similarly offers a broad understanding of who is a public participant ('The notion of "everyone" encompasses all public watchdogs and contributors to public debate and all participants in public affairs, including, but not limited to: journalists, media organisations, media professionals and other media actors, such as citizen journalists; civil society organisations, for example environmental and anti-corruption associations and activists; unions; whistle-blowers; academics; bloggers; human rights defenders; legal professionals; users of social media; cultural actors and creative industry actors'). It appears clear that both the Directive and the Recommendation aim to grant ample protection to whomever may find themselves in the position of engaging in public participation (which is intended itself as a broad notion) irrespective of their professional or social status. Therefore, the definition offered in the Law aligns with the intent of both the Directive and the

[31] ECtHR, *Thorgeir Thorgeirson v Iceland*, App. No. 13778/88, 25 June 1992, para 64.

Recommendation, both in the list of figures who may in principle qualify for protection and in the list being intended as non-exhaustive.

Article 2.1.4 defines ‘public formations’ as ‘public associations, local branches of public associations with the status of a legal entity, trade unions, their associations, trade union organizations provided for by the trade union charter and their associations, creative unions, local branches of creative unions, employers' organizations, and their associations.’ The Directive and the Recommendation do not include a similar definition. An earlier review of this Law had recommended expunging the categories of political parties and arbitration courts, originally included in the scope of the provision, stressing how such entities normally have other means available to protect their reputation and are normally not on the weaker end of a power imbalance, which is instead a foundational premise of the whole concept of SLAPPs.

Article 1.2.5 provides a non-exhaustive list of 11 indicators to determine the abusive nature of judicial proceedings. This approach is in line with the Directive, Article 4(3), which similarly provides a list of indicators, albeit shorter. The indicators suggested in the Directive are included in the law under analysis: the attempt to exploit an imbalance of power, an unfounded argument, disproportionate, excessive or unreasonable requests, an abuse of laws or procedures, the use of litigation tactics to delay a resolution or drive up legal costs, the deliberate targeting of natural over legal persons, and public relations conduct designed to offend, intimidate the defendant or divert attention from the public issue at stake. The law under analysis adds to these a few more, such as participation in several or coordinated judicial proceedings against the same defendant with the same or similar subject matter and grounds, the abuse of procedural rights (open-ended clause), the use of intimidation, harassment or threats before or during the consideration of the case, and the systematic refusal to engage in alternative dispute resolution mechanisms, all of which appears in line with the inclusion in the statute of 'other forms of judicial pressure' (preamble), to which the above may be referred.

Protection of public participants

Article 5 of the Draft Law provides that the State ought to protect public participants and their relatives. This provision aligns with the content of Recital 18 of the Directive, which indicates that ‘safeguards … should apply to any natural or legal person who directly or indirectly engages in public participation. They should also protect natural or legal persons who, either on a professional or on a personal basis, support, assist or provide goods or services to another person for purposes directly linked to public participation on a matter of public interest, such as lawyers, family members, internet providers, publishing houses or print shops, which face or are threatened with court proceedings for supporting, assisting or providing goods or services to persons targeted by SLAPPs.’ The Recommendation (para. 50) similarly stresses that support measures ‘should also be made available for secondary or indirect victims of SLAPPs, such as family members, associates or lawyers of the targets and victims, who should be adequately protected against the harms caused by SLAPPs.’ As such, the scope of the Law, limited to relatives and not professional figures who support the applicant, appears narrower than recommended European standards.

Article 6 of the Draft Law indicates the Ukrainian Parliament Commissioner for Human Rights to be responsible for protecting public participation, in accordance with the procedure established by law. Connected to this provision are also article 11 of the same Draft Law, which allows public formations with a mandate on public participation or fundamental rights to join

cases related to public participation as third parties, with the consent of the public participant who is a party to the case, and the proposed amendment to Article 13 of the Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights,' pursuant to which the Commissioner may intervene, personally or through a representative, as a third party on the defendant's side in cases involving signs of abuse of judicial proceedings against public participation. Recital 35 of the Directive indicates that 'associations, organisations, trade unions and other entities which have, in accordance with the criteria laid down by national law, a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation, should be able to support the defendant in court proceedings brought in relation to public participation, with the defendant's approval'. Article 9 of the Directive allows 'associations, organisations, trade unions and other entities' to support the applicant in court proceedings. The provisions under analysis thus implement the principles emerging from the Directive; the wording of Article 6 of the Draft Law On the Protection of Public Participation may however be interpreted as more restrictive than the scope of the Directive, as it seemingly introduces a more stringent requirement than the Directive, with joining associations needing to have a specific focus on human rights or public participation rather than merely 'a legitimate interest' as indicated in the Directive. However, the same Recital also provides that national statutes may set out 'criteria'; overall, this could be reconsidered, but it is not in and of itself incompatible with the Directive.

Article 7(1) of the Draft Law establishes that, in cases relating to public participation, it is for the claimant to prove that the claim is well founded. This provision corresponds Article 12(1) of the Directive, which analogously provides that a claimant who brings the action ought to bear the burden of proving that the claim is well founded. The second paragraph of Article 12 of the Directive, however, introduces a subsequent provision, equivalent to Paragraph 31 of the Recommendation, indicating that, following a defendant's application for early dismissal, the claimant then needs to substantiate their claim as 'not manifestly unfounded.' While the Draft Law replicates the general principle introduced in the first paragraph of Article 12 of the Directive, it fails to also introduce the special procedure that the Directive introduces in the second paragraph, in the case a defendant has filed an application for early dismissal. It is recommended that the same is included in the Draft Law as well.

Paragraph 2 of the same Article of the Draft Law provides that courts should 'award compensation for moral (non-material damage) … only if there is intent on behalf of the public participant' also considering 'the consequences of the claimant using the possibilities of out-of-court, in particular pre-trial, settlement of the dispute. Paragraph 3 indicates that, if awarded, such damages 'must comply with the principles of reasonableness and fairness and must not have a deterrent effect on public participation and encourage the filing of claims against public participation,' which is in principle in line with the spirit of the Recommendation (since in fact the 'disproportionate, excessive or unreasonable' nature of the remedies requested by the claimant is one of the indicators to identify a SLAPP pursuant to Paragraph 8).

Article 8 of the Draft Law defines a victim of a SLAPP as 'a public participant whose rights, freedoms or legitimate interests have been violated as a result of such abuse' and, therefore, they have 'the right to demand the cessation of such abuse and/or to apply for protection to the court with claims for compensation for the losses, material and moral (non-material) damage.' A close person of a public participant can also fit in this category. This provision appears to be connected with paragraph 41 of the Recommendation, which indicates that a SLAPP victim should be 'acknowledged as such'. The provision introduced in Article 8

defines a victim on the basis of rights, freedoms or legitimate interests having been violated as a consequence of a SLAPP, while the Recommendation includes multiple references to SLAPPs being connected with restrictions on or penalties for the 'rights associated with public participation' (i.e. Paras. 1, 5, 22 and 32). The scope of 'rights, freedoms or legitimate interests' considered in the Draft Law may coincide with the category of 'rights associated with public participation' in the Recommendation, although it may also lend itself to being interpreted as broader. While this could be a (legitimate) deliberate choice, lawmakers may however want to consider whether more specific wording is needed in case it was not.

Article 9 of the Draft Law provides that the legal successor of a public participant can join the case at any stage in the event of the victim's death, restriction of civil capacity, or termination in the case of a legal entity. While the Directive is silent on this point, the Recommendation, at para. 39, indicates that family members and associates of the original defendant, upon the death or loss of legal capacity of the latter, should be able to continue in a pending case against public participation and have access to the same remedies and support as the original defendant, or even further protection as necessary, should they be less equipped to deal with the original claim. The provision in the Draft Law effectively implements the principle expressed in the Recommendation.

Article 10 of the Draft Law provides that victims have a right to compensation for losses, including material damage and recovery for moral (non-material) damage caused by the abuse of judicial proceedings against public participation. Paragraph 14 of the Recommendation indicates that it should be possible to seek compensation for the damages and costs incurred in connection with the proceedings; Article 17 of the Directive similarly provides that a SLAPP victim 'may seek … compensation for the damage and the costs incurred in connection with the proceedings'. The provision in question operationalises the principle expressed in both European frameworks, with an explicit acknowledgement of the possibility of compensating non-material damage which, despite not featuring in either framework, is nonetheless welcome for its attempt to respond effectively to the reality of SLAPPs causing psychological and reputational harm, rather than merely financial loss.[32]

Support of public participation

Article 12 of the Draft Law provides for the possibility of the extrajudicial settlement of a dispute through negotiations or mediation. While the Directive appears silent on this possibility, the Recommendation (para. 46) does indicate that effective access to 'non-judicial remedies, such as alternative dispute resolution, mediation and press councils' should be made available through 'appropriate means.' The provision in the Draft Law thus implements a principle expressed in the Recommendation. However, in light of the need for appropriate means stressed in the Recommendation itself, national authorities may wish to bear in mind, especially in any future measures operationalising this provision, that power imbalances between the parties are inherent in this field and may hamper any negotiation or mediation process if they are not adequately addressed.

Article 13 of the Draft Law requires public participants to have easy access to information about remedies, procedural safeguards, support measures, legal aid, and relevant

[32] See CASE Report, *A 2025 Report on SLAPPs in Europe: Democracy in the Dock*, prepared by The Daphne Caruana Galizia Foundation on behalf of the Coalition Against SLAPPs in Europe, 2026, 5. CASE-2025-Report-layoutted-vf.pdf

assistance and educational resources. It also requires this information to be published on the judiciary's official web portal and allows court decisions in such cases to be published in the public register without access restrictions. Connected to the above is also the provision in Article 7.5 of the Draft Law, requiring that an electronic copy of a court decision that has entered into force be entered in the Unified State Register of Cases of Abuse of Judicial Proceedings against Public Participation. Recital 46 of the Directive indicates that state authorities should provide a free, single access point for information on SLAPP-related safeguards, remedies and support measures. This should also include details of organisations that offer legal, financial and psychological assistance to targets of SLAPPs. Article 19 of the Directive accordingly requires that people involved in public participation should be provided with easy access to information on procedural safeguards, remedies and support measures, including legal, financial and psychological assistance; such information should be available in one accessible place, and final appeal or highest-court judgments should also be published online in an accessible format. The provisions under analysis align satisfactorily with those in the Directive.

Articles 14 and 15 of the Draft Law set out a series of provisions on the transparency of individual decisions and broader trends concerning SLAPPs. Article 14 provides that judicial statistics on SLAPP-type cases must be recorded separately from other cases. The reports should track how many such proceedings are opened, closed, refused, dismissed, upheld in whole or in part, and classify them by type, subject of appeal, and the kinds of claimants and defendants involved. Article 15 requires creating a public register of final court decisions finding SLAPP abuse, with details about the parties, case, grounds, findings and any sanctions; the register must be updated quickly, remain uncensored, be freely accessible at all times, and be adjusted or deleted if the underlying court decision changes. These provisions aim to implement the 'culture of transparency' recommended by the Recommendation (paras. 47-48) for state authorities to foster. In particular, the Recommendation indicates that authorities should ensure transparency in cases identified as SLAPPs, including by allowing courts' findings to be published; they should also keep a public, regularly updated register of SLAPP cases, accessible free of charge, and may require authorities to inform bar associations of the outcome of such cases. Articles 20 and 21 of the Directive require that data on relevant applications and decisions be collected, in particular the number of abusive court proceedings against public participation initiated in any given year, the number of court proceedings classified by type of defendant and claimant, and the type of claim submitted on the basis of the Directive. Five-yearly reports are then expected to help assess how the situation concerning abusive proceedings is developing. Overall, the provisions in the Draft Law align with both the spirit and the detail of the Recommendation and Directive. Nonetheless, and despite this going beyond the specific indications of the two European frameworks, lawmakers may be invited to reflect on the fact that formal SLAPP cases that move into court proceedings and are therefore recorded and easier to count make up only a small portion of all SLAPP cases.[33] Any data recorded in compliance with the provisions under analysis should be interpreted in light of the situation described above.

[33] See Borg-Barthet and Farrington (n 23 above); Coe, Moosavian and Wragg (n 18 above), 106.

Amendments to the Law of Ukraine 'On Free Legal Aid'

Article 14 provides that public participants, and where specified by law their close relatives, have a right to free secondary legal aid for all legal services related to protecting their rights in connection with public participation. The Recommendation (para. 51) indicates that authorities should ensure adequate access to free legal assistance for SLAPP targets, making use of existing national legal support mechanisms and encouraging independent organisations, legal professionals, media and press councils, human rights defenders, journalists' unions, academic institutions and other NGOs to provide legal services. They should also work with stakeholders to guarantee that SLAPP targets can obtain legal support insurance under fair conditions. The Directive includes instead only an indirect reference to legal aid, providing that information on it should be made accessible, 'where [such measure is] available.' The Coalition Against SLAPPs in Europe, in its proposed Standards for Transposition, also recommends that 'legal aid or other support should be made available to those targeted for acts of public participation.'[34] The provision under analysis thus operationalises a welcome principle.

Amendments to the Law of Ukraine 'On Ensuring the Safety of Persons Participating in Criminal Proceedings'

Article 2 provides that public participants are entitled to security assurance through the measures specified in Articles 1 and 7 of the same Law, where there are appropriate grounds. It is understood that such measures 'can include' personal protection, protection of housing and property; issuance of special personal protective equipment and notification of danger; use of technical means of control and listening to telephone and other conversations, visual surveillance; replacement of documents and change of appearance; change of place of work or study; relocation to another place of residence; placement in a preschool educational institution or an institution of social protection bodies; ensuring confidentiality of information about the person; closed trial. The Recommendation (para. 54) indicates that SLAPP targets with threatened physical safety should have access to early warning mechanisms such as hotlines run by civil society organisations or independent state agencies; in exceptional cases, authorities should provide effective, gender-specific evacuation to safety and police protection, and where feasible, make existing national protection mechanisms available to SLAPP targets as well. The provision under analysis thus operationalises this important principle. Lawmakers may, however, be invited to reflect on the inclusion in the Recommendation of a reference to gender-specific protection. The OSCE's work[35] has demonstrated that threats and smear campaigns are more likely to disproportionately target women journalists, and it has identified a series of tailored support mechanisms that authorities may take to minimise such issues, which could be considered in these circumstances too.

Amendments to the Law of Ukraine 'On the International Private Law'

Article 49 provides that, when someone is sued for damages stemming from their public participation, national courts will not apply foreign law if that foreign law offers weaker

[34] Principle 2.
[35] See OSCE, *Countering Online Abuse of Female Journalists*, 2016. Countering Online Abuse of Female Journalists | OSCE Projects

protections than Ukrainian law for freedom of expression, participation in public debate or protection against abuse of judicial proceedings against public participation. By requiring that national courts do not enforce foreign laws that would undermine the fundamental rights at stake, this provision prevents plaintiffs from suing Ukrainian public participants in Ukraine using foreign laws with weaker legal protections.

Article ** (currently unnumbered) sets out which law applies when a media entity causes harm (including harming someone's human rights through disseminated information). The injured person can choose which of these three laws governs their case: the law that best protects their rights (the law guaranteeing the rights of the person harmed); the law of the country where the media owner/founder lives or is located; or the law of the country where the media entity is registered. This provision seemingly sits at odds with the general spirit of the other proposed amendments. It is, in principle, compatible with the EU Court of Justice's so-called mosaic approach, giving plaintiffs in cases of online infringements of personality rights a choice among the person's centre of interests (usually habitual residence), the publisher's establishment, and any Member State where the content is accessible for local damage only.[36] The Directive (Recital 17), however, is concerned with the issue of cross-border lawsuits (also known as 'forum shopping') creating significant hardships for defendants, in the form of financial pressure, length and variety of procedures. In this spirit, Article 17 of the Directive indicates that foreign plaintiffs may seize courts or tribunals of the place where the defendant is domiciled. Lawmakers should thus consider restricting the circumstances under which an injured party may deliberately choose the first of three options ('the law guaranteeing the rights of the person who suffered such harm') currently available under this proposed amendment, most easily exploitable by an injured party.

Article 76 gives Ukrainian courts jurisdiction, other than in cases specified by Ukrainian law or international treaties, over cases involving a foreign element where someone living in Ukraine seeks compensation (for losses, material damage, moral damage, or legal expenses) because they were sued abroad in a case that amounts to abuse of judicial proceedings against public participation. Article 81 sets the rules for recognizing and enforcing foreign court decisions in Ukraine: as a general rule, foreign court decisions in civil, labour, family, commercial, and criminal cases (regarding compensation), plus foreign arbitration decisions, can be recognised and enforced in Ukraine once they are final. As an exception, foreign court decisions involving a person's public participation (journalism, activism, public commentary) cannot be recognised or enforced in Ukraine if the court finds there was an abuse of judicial proceedings against public participation under Ukraine's anti-SLAPP law. Article 16 of the Directive requires state authorities to refuse recognition and enforcement of third-country judgments in cases where a person (natural or legal) domiciled in an EU Member State was sued for public participation, if those foreign proceedings are deemed manifestly unfounded or abusive under domestic law where recognition or enforcement is sought. The two aforementioned provisions align with the Directive.

Amendments to the Law of Ukraine 'On the Court Fee'

Article 4 establishes court fee rates for different types of cases. For regular courts handling claims to protect honour, dignity, or business reputation, non-material claims cost 0.4

[36] See CJEU, *eDate Advertising GmbH and Others v X and Société MGN Limited*, Joined Cases C-509/09 and C-161/10, Judgment of the Court (Grand Chamber), 25 October 2011.

times the subsistence minimum for able-bodied persons. Claims for moral damage compensation follow a percentage-based system: if the claim is up to 100 subsistence minimums, the fee is 1.5 percent of the claim price (with a minimum of 1 subsistence minimum); for claims between 100 and 300 subsistence minimums, the fee is 5 percent; and for claims exceeding 300 subsistence minimums, the fee rises to 10 percent. In commercial courts, material claims cost 1.5 percent of the claim price, with a minimum of 1 subsistence minimum and a maximum of 350 subsistence minimums, while non-material claims cost exactly 1 subsistence minimum for able-bodied persons.

Article 5 grants court fee exemption to defendants in cases handled under Ukraine's anti-SLAPP law ('On the Protection of Public Participation from Manifestly Unfounded Claims or Abuse of Judicial Proceedings'). The exemption applies throughout all court instances during the case's consideration, meaning defendants in SLAPP cases do not need to pay court fees from the initial filing through any appeals.

Article 8 allows courts to postpone, defer, reduce, or exempt court fee payment based on a party's financial situation. Courts may postpone or defer payment until the case decision is made if: the court fee exceeds 5% of the individual's annual income from the previous year, or the defendant is a public participant in cases related to their public participation. Additionally, courts may reduce or exempt court fees on the grounds listed in paragraphs 1-4 of part one of the same Article. Courts are obligated to reduce or exempt fees when necessary to ensure a public participant's access to court in cases involving their public participation and to prevent abuse of judicial proceedings against public participation. The Recommendation (para. 40) states that there should be appropriate legislative or other provisions to ensure that costs for SLAPP claims are kept to an absolute minimum. The Directive (Article 14) provides that SLAPP claimants must pay defendants' full legal costs, and if statutory fee tables don't cover the full amount, governments must provide alternative mechanisms to ensure complete cost coverage. Although the provisions under analysis technically differ from the Directive, not requiring that claimants bear the relevant costs, nonetheless they align with the rationale of shielding the defendant from having to bear such burden.