

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION – MEASURES OF PROTECTION AGAINST MANIFESTLY UNGROUNDED CLAIMS OR ABUSIVE LITIGATION. A POLISH PERSPECTIVE

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ABSTRACT

Lawyers have been observing a growing number of SLAPPs (Strategic Lawsuits Against Public Participation) – lawsuits designed to trigger a freezing effect and intimidate individuals speaking out on socially essential topics – filed in Poland and multiple European countries. Individual states have been coming up against this negatively perceived phenomenon of corporations (businesses) with a strong market position bringing personal interest lawsuits against journalists, reporters, bloggers and/or activists. Cross-border cases are a particular challenge for defendant entities. Judicial proceedings are prolonged and costs aggregated, not to mention the forum shopping (beneficial jurisdiction choosing) practice. In all actuality, civil lawsuits (and, occasionally, indictments) are intended to prevent inconvenient witness accounts regarding assorted irregularities (including corruption) from reaching the public opinion.

Attempts at resolving the issue have been made under Directive (EU) 2024/1069 of the European Parliament and of the Council of April 11th 2024. The law obliges Member States to provide defendants with a catalogue of safeguards: security, motions to dismiss manifestly unfounded claims, reimbursement of the costs of proceedings (charged to the plaintiff), and sanctions against plaintiffs initiating SLAPPs. While the Directive specifies minimum requirements, a standard higher than that guaranteed by the Directive can be applied.

Poland is a European Union member state with a disquietingly high SLAPP count. It has been noted that SLAPPs are filed by business entities – a typically West European phenomenon – as well as by state administration authorities, with the use of the prosecution service and/or police force. Both civil and criminal law institutions are reached for.

While the deadline for the implementation of the Directive remains distant (May 7th 2026), rigorous efforts have been made already to address the problem. The purpose of the paper is to discuss aforesaid efforts in a measure hopefully assisting the international debate designed to develop optimum solutions for European Union member states.

Keywords: *abuse of the letter of law, Directive (EU) 2024/1069, intimidation, lawsuits, public opinion, SLAPP*

1. INTRODUCTION

A fundamental right and freedom of the individual and a significant rule of law implement, the right to fair trial is a universal principle. It is referred to as the right to justice, the right to legal protection, the right to judicial remedy or – last but not least – the right to be tried by a jury of one's peers, or right to protection before a court of law.¹ Aforementioned assumptions and values are realised in individual legal orders, allowing all citizens to assert any violated freedoms or rights. Fair hearing before an independent, impartial and autonomous court shall be guaranteed – as swiftly as reasonably possible.²

Procedural law ought to be moral, fair and reflective of a specific axiological system.³ Judicial trial presupposes respect for due process (*honeste procedere*), i.e. honest and loyal behaviour both towards the opponent in court as well as the court itself.⁴ This concept dictates that parties to the process primarily assume a positive obligation to act in accordance with values as duly indicated, behaviour in breach of said obligation to be investigated and analysed as a secondary measure only, with a view to prevent, restrict, and, if necessary, penalise.⁵

Both parties to the judicial process – the one asserting its right or legal relationship and the entity rejecting the demand conveyed – may make specific use of their procedural powers, ideally designed to achieve the goal as expressed by the letter of law. Each and every entity determines its actions through the desire to pursue individual interests, adopting a particular procedural strategy. That said, it is obvious that parties do occasionally take actions contrary to the procedural purpose of their powers, processual economics and/or good morals, in an attempt to achieve effects and goals not reflected in substantive law.

Lawyers have been observing a growing number of SLAPPs (Strategic Lawsuits Against Public Participation) – lawsuits designed to trigger a freezing effect and intimidate individuals and/or other entities speaking out on socially essential topics – filed in Poland and multiple European countries.⁶ Measures taken before courts

¹ Zembrzusi, T., *Skarga kasacyjna. Dostępność w postępowaniu cywilnym* (Cassation Complaint Availability in Civil Proceedings), Warsaw 2011, p. 72 *et seq.*

² Pietrkowski, H., *Prawo do sądu* (Right to Fair Trial), "Przegląd Sądowy" Nos. 11-12, 1999, p. 3 *et seq.*

³ Allerhand, M., *Podstęp w procesie* (Subterfuge in Judicial Proceedings), Lviv 1907, p. 3 *et seq.*

⁴ Zembrzusi, T., *Nadużycie prawa procesowego de lege lata* (Abuse of Procedural Law de lege lata), in: Kosonoga, J. (ed.) *Przeciwdziałanie nadużyciu uprawnień procesowych w postępowaniach sądowych* (Preventing Abuse of Procedural Rights in Judicial Proceedings), Warsaw 2022, p. 150 *et seq.*

⁵ Weitz, K., *Nadużycie "prawa" procesowego cywilnego* (Abuse of Procedural "Rights" in Civil Law Proceedings), "Polski Proces Cywilny", No. 1, 2020, p.11.

⁶ The verb "to slap" conveys the purpose of the institution rather well.

of law are objectively unhelpful and as such unreliable, while acquiring mere appearance of lawful action. The only correct response thereto ought to extend beyond negative assessment into profound reflection designed to restrict and prevent them. This is a challenge individual states as well as organisations and institutions international in nature are coming up against, one which can and should be addressed by European Union law.

2. DESCRIPTION OF SLAPP SUITS

SLAPPs are a global phenomenon, first observed and diagnosed in the common law system. In the 1980s, the term was used in the United States to describe lawsuits brought against individuals who had used their right to petition arising from the First Amendment to the United States Constitution. These lawsuits were originally used to suppress statements political in nature⁷, intentions including freedom of speech restrictions and silencing critics of authorities.⁸ Thousands of citizens “*have been sued into silence*”⁹ on such, later also broader grounds.

SLAPP (*Strategic Lawsuit Against Public Participation*) features include an imbalance of powers, plaintiffs organisationally, financially and/or politically stronger than defendants. Such lawsuits are most frequently brought by influential entities attempting to subdue public debate, remove certain content from the public domain, preclude the publication of such content, or – at the very least – divert attention therefrom. Plaintiff actions are intentional and deliberate, designed to restrict (whether directly or indirectly) statements made by other individuals, take non-legislative measures to chastise active opponents, or even intimidate entities potentially interested in participating in public interest-related cases.¹⁰ The act of filing a lawsuit is in itself intended to discourage the exercising of freedom of expression, if not outright pushing for so-called self-censorship. Individual states have been coming up against this negatively perceived phenomenon of corporations (businesses), lobbying groups, politicians and/or state authorities raising doubtful and objectively unjustified claims against a diverse community of entities

⁷ Canan, P.; Pring, G.W., *Studying Strategic Lawsuits against Public Participation: Mixing Quantitative and Qualitative Approaches*, Law & Society Review, No. 2, 1988, p. 385 *et seq.*

⁸ Bodnar, A.; Gliszczyńska-Grabias A., *Strategic Lawsuits against Public Participation (SLAPPs), the Governance of Historical Memory in the Rule of Law Crisis, and the EU Anti-SLAPP Directive*, European Constitutional Law Review, No. 4, 2023, p. 642 *et seq.*

⁹ Pring, G.W., *SLAPPs: Strategic Lawsuits Against Public Participation*, Pace Environmental Law Review, No. 7, 1989, p. 506 *et seq.*

¹⁰ Tomczyk, E., *Regulacje prawne dotyczące strategicznego powództwa zmierzającego do stłumienia debaty publicznej (SLAPP) jako nowy instrument ochrony prawnej w postępowaniu cywilnym (Legal Regulations Regarding Strategic Lawsuits against Public Participation (SLAPPs) as a New Instrument of Legal Protection in Civil Law Proceedings)*, Europejski Przegląd Sądowy, No. 12, 2025, p. 12 *et seq.*

– chiefly journalists (civic journalists included), reporters, bloggers, whistleblowers, social and other activists, or even scientists.¹¹ Some actions taken in judicial proceedings are incompatible with their intended purpose, and may thus be classified as violation of procedural law.

Civil lawsuits – and the occasional indictment – are actually brought with intent to prevent inconvenient witnesses’ accounts regarding various irregularities (such as abuse of power, or corruption, for example) from reaching the public. Demands are most frequently filed on grounds of personal rights protection; the institution of offence under criminal law is resorted to as well. Alleged harm ostensibly caused by action taken by harassed and intimidated citizens is the factor pointed to most often.¹² Compensatory claims are sometimes exorbitant, beyond reason or market conditions, the European record sum having reached EUR 17.6 million. The average and median are currently over EUR 360,000 and EUR 15,100, respectively – there is no shortage of lawsuits for a symbolic one euro, costs of legal proceedings in themselves potentially sufficient to intimidate and silence an opponent.¹³

Claim validity assessment is primarily based on the subject matter of the lawsuit, i.e. the claim and facts as presented. Plaintiff SLAPP claims are superficial in nature, the circumstances invoked occasionally doubtful or difficult to verify *a priori*. It usually turns out after the fact that defendant statements – i.e. grounds for initiating proceedings recognised as grounds for initiating proceedings ending in judicial rulings – had been well within the scope of permissible criticism, and in no way defamatory or insulting.¹⁴

SLAPPs are best described as a type of particular penalty, psychological and financial in nature.¹⁵ Manipulation of justice is what we are dealing with in this case. As pointed out before, such claims are not brought with intent to secure actual legal protection – they are designed to achieve non-legislative goals. Respondents are dragged into money, time, and energy-consuming court battles without legal ba-

¹¹ Clark, M., Grech, A., *Journalists Under Pressure: Unwarranted interference, fear and self-censorship in Europe*, Brussels 2017, p. 20 *et seq.*

¹² Canan, P.; Pring, G.W., *Strategic Lawsuits Against Public Participation*, Social Problems, No. 5, 1988, p. 506 *et seq.*

¹³ Cydzik, S., *Polska liderem Europy w SLAPP*, 2023, [<https://legalis.pl/polska-liderem-europy-w-slapp/>], Accessed 1 March 2025.

¹⁴ Sobczak, J., *Prawo do krytyki a kontratyp zniesławienia (Right to Criticise v. Lawful Excuse for Slander)*, Studia Medioznawcze, No. 2, 2013, p. 45 *et seq.*

¹⁵ Farrington, F.; Zabrocka, M., *Punishment by Process: The Development of Anti-SLAPP Legislation in the European Union*, Era Forum, No. 4, 2023, p. 521 *et seq.*

sis¹⁶, plaintiffs in all actuality focused on exposing defendants to the risk of covering high costs of legal proceedings. The perspective of covering said costs is in itself intended as a defendant pressuring mechanism. Judicial proceedings are intentionally prolonged, the expenses aggregated, not to mention the forum shopping (beneficial jurisdiction choosing) practice. Plaintiffs are frequently successful in reaching their intended objective. That said, the vantage point of final outcomes and comprehensive assessment of the phenomenon does prove that lawsuits are occasionally dismissed, settlements reached, actions withdrawn at later stages of judicial proceedings. All in all, SLAPPs merit vehement criticism as a pathological measure disrupting the proper functioning of pluralist societies in democratic states.¹⁷

3. THREATS TO AND PROTECTION OF ENTITIES ENGAGING IN THE PUBLIC DEBATE IN THE EUROPEAN UNION

Protecting freedom of expression and unfettered participation in public debate in contemporary Europe is of fundamental and unquestioned significance. Pursuant to Article 11 of the Charter of Fundamental Rights of the European Union¹⁸, everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (clause 1); the freedom and pluralism of the media shall be respected (clause 2). The Convention for the Protection of Human Rights¹⁹ can be referenced as well as an act guaranteeing everyone the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (Article 10 (1)).

The *Coalition Against SLAPPs in Europe – CASE*²⁰ focuses on monitoring negative phenomena and European trends colliding with aforesaid values and assumptions. Reports published from 2010 onwards have been revealing a regular and disquieting increase in the number of SLAPPs.²¹ The *Daphne Caruana Galizia* case re-

¹⁶ Beder, S., *SLAPPs – Strategic Lawsuits Against Public Participation: Coming to a Controversy Near You*, Current Affairs Bulletin, No. 3, 1995, p. 25 *et seq.*

¹⁷ Nowicka, Z., *Instrumenty ochrony przeciwko SLAPP-om w polskim postępowaniu cywilnym (analiza zagadnienia na tle projektowanych regulacji UE) (Instruments of Protection against SLAPPs in Polish Civil Law Proceedings (Issue Analysis against the Backdrop of Planned EU Regulations))*, Państwo i Prawo, No. 1, 2024, p. 76 *et seq.*

¹⁸ Charter of Fundamental Rights of the European Union of December [2000] OJ C 364/1.

¹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms [1950] ETS No. 005

²⁰ *The Coalition Against Slapps in Europe (CASE)*, [<https://www.the-case.eu/>], Accessed 1 March 2025.

²¹ Five hundred and seventy and as many as 820 were identified in 2022 and 2023, for example.

mains most notorious as regards the use of SLAPPs in the European Union – the Maltese journalist had been repetitively raising the issue of corruption in the Maltese government.²² Prior to her death close to home following the explosion of a bomb planted in her car, she had had as many as 47 SLAPP brought against her.²³

The European Commission has been raising the alarm several years ago already, pointing to the increasing number of alerts related to attacks, aggression and harassment against journalists and other media professionals in EU Member States.²⁴ The European Parliament has also accentuated the need for strengthening freedom and pluralism of the media in the European Union, given the undue use of actions under civil and criminal law to silence journalists and other entities engaging in public debate.²⁵ It has been pointed out that physical threats and symptoms of intimidation had occasionally morphed into unlawful acts of crime and/or terrorism.²⁶ The rise in SLAPP volumes has been decried as well.

The manner and frequency of reaching for SLAPPs varies in individual European states. In Poland, notably, SLAPPs are filed by business entities – a typically West European phenomenon – as well as by state authorities, with prosecution service and/or police force interventions. Civil and criminal law institutions are put to use. Personal property protection lawsuits prevail, as do cases of private prosecution for crimes of offence or slander.²⁷ Insult to religious belief (blasphemy) provisions, and even Hunting Law regulations have been used (against game hunt-protesting activists).

The phenomenon has become particularly blatant in post-2015 Poland, tying closely in with the contemporaneous rule of law crisis swell.²⁸ Poland remains in

²² Issues she brought to light would result in pre-term elections in Malta in 2017.

²³ Milewska, P., *SLAPPs, Daphne's Law, and the Future of Journalism*, 2023, [<https://verfassungsblog.de/slapps-daphnes-law-and-the-future-of-journalism/>], Accessed 1 March 2025.

²⁴ See third motive of (EU) Commission Recommendation 2021.1534 of September 16th 2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union [2021] C/2021/6650, OJ L 331/8.

²⁵ European Parliament resolution of November 11th 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society [2021] 2021/2036(INI), OJ C 205/2.

²⁶ Assassination of investigative journalist Daphne Caruana Galizia apart, the most notorious cases include the terrorist attack against the *Charlie Hebdo* weekly in France in 2015 (12 people were killed), and the assassination of journalist Ján Kuciak in Slovakia in 2018.

²⁷ Poland is unique among European Union Member States in that seeking criminal prosecution for defamation is common. See Nowicka, *op. cit.*, note 18, p. 77.

²⁸ Zembrzuski, T., *Remedying the Judiciary System in Poland – Restoring the Rule of Law*, in: Duić, D., Petrašević, T. (eds.), *EU at the Crossroads – Ways to Preserve Democracy and Rule of Law*, Vol. 8, 2024, p. 666 *et seq.*

the unfortunate lead in the infamous European Union member state ranking of SLAPP threats (“*SLAPP state of the year*”)²⁹ – Malta, France and Croatia with their considerable volume of SLAPPs are noteworthy listings as well.

4. STANDARDS OF PROTECTION LAID OUT IN DIRECTIVE 2024/1069

European Union legislation has been attempting to address contemporary threats to freedom of expression arising from the proliferation of SLAPP actions. 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’*)³⁰ came into force as of May 6th 2024.³¹ The act of introducing the Directive is an expression of the European Union’s attempts to safeguard fundamental rights, such as freedom of expression, media pluralism, or the citizens’ rights to participate in public life. The intent was to provide genuine protection to individuals engaging in public debate against claims brought by entities using the legal system to intimidate, silence criticism, and suppress freedom of speech.

The Directive applies to cross-border judicial proceedings considered abusive in that they are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and pursuing objectively unfounded claims (Article 4(3) of the Directive). The purpose of the Directive is thus to eliminate obstacles to the correct course of civil proceedings. Entities engaging in public debate with a focus on issues coinciding with public interest deserve increased protection. The population of entities recognised as meriting protection includes journalists, publishing houses, media organisations, whistleblowers and human rights defenders, as well as civil society organisations, NGOs, trade unions and artists, as well as scientists and university teachers.

While Directive provisions in principle have no direct effect on horizontal relationships, the Directive does oblige European Union Member States to provide defendants with a catalogue of appropriate protection measures. Pursuant to Ar-

²⁹ Cydzik, S., *Polska liderem Europy w SLAPP*, 2023, [<https://legalis.pl/polska-liderem-europy-w-slapp/>], Accessed 1 March 2025.

³⁰ OJ L 2024/1069.

³¹ Proposal for a Directive of the European parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”) [2022] COM/2022/177 final, available at: [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0177>], Accessed 1 March 2025.

ticle 6(1) of the Directive, these include: 1) the option of filing a motion for the claimant providing security for estimated costs of the proceedings (which may include the costs of legal representation incurred by the defendant), and (if provided for in national law), damages; 2) early dismissal of manifestly unfounded claims; 3) application of other measures, such as requiring the plaintiff (claimant) to cover all costs of legal proceedings. Article 7(1) of the Directive requires Member States to ensure that aforesaid measures be treated in an accelerated manner (in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial); furthermore, a decision granting early dismissal is subject to an appeal (Article 13 of the Directive).

The Directive sets minimum requirements – Member States are free to introduce standards above and beyond those safeguarded therein. This ought to encourage European Union Member States to undertake detailed analyses of their legal status, and engage in comprehensive reviews of domestic legislation with intent to ensure an optimum level of protection to entities engaging in public debate – in cross-border as well as non-cross-border cases.

The implementation deadline for Directive 2024/1069 remains rather distant, its provisions to be transposed into domestic law by May 7th 2026. Individual EU Member States have already been making intense efforts to develop optimum legal solutions, the group including Poland – as aforementioned, an EU Member State with alarmingly high SLAPP volumes.

5. SLAPP – THE POLISH PERSPECTIVE

Poland has taken dynamic action to implement Directive 2024/1069. Rather than expand processual law – the Code of Civil Procedure³² - to include new solutions, a separate piece of legislation has been proposed: a draft law regarding the protection of persons engaging in public participation against manifestly unfounded claims and/or abusive judicial proceedings.³³ The law is to adopt a broad definition of the term(s) “*public participation / public debate*”, to conform with and reflect the definition ensconced in Article 4 (1) of Directive 2024/1069³⁴, while vis-

³² Code of Civil Procedure Law of November 17th 1964, uniform text: Journal of Laws 2024, item 1568, as amended), hereinafter referred to as “*CPC*”.

³³ Draft law prepared by the Civil Law Codification Committee under the aegis of the Ministry of Justice of the Republic of Poland, as part of legislative works, hereinafter referred to as “*the draft law*”.

³⁴ The Directive defines “*public participation*” as the making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest.

ibly including all and any matters of major significance to public interest. Owing to the above, protection will not be limited to traditional forms of public debate, such as political or media statements, but extend to other forms of civic activity: freedom of arts and sciences, and freedom of assembly and association.

Of all proposals laid out by the Polish legislator, the early claim dismissal suggestion merits particular attention. This solution is to be backed by a modification (in the spirit of Directive 2024/1069) of the manifestly unfounded lawsuit measure already in use, having been made part of Polish civil law proceedings pursuant to the law of July 4th 2019³⁵, i.e. prior to European Union-level SLAPP-preventing efforts.

De lege lata, pursuant to Article 191¹ of the CPC, should a justice – having analysed the claim, attachments and facts of the case – decide to exercise the norm ensconced in the aforesaid provision, he/she may dismiss the action in closed session, without serving the claim to the individual named as the defendant therein or considering the plaintiff's individual demands. Measures concerning lawsuit endorsement, including action to identify formal and/or fiscal defects of pleadings, review the valuation of the subject matter of the dispute, or examine the court's jurisdiction, may be omitted. The court shall draw up a respective justification of the decision *ex officio* in writing, listing reasons for finding the claim to be manifestly unfounded. The decision shall be served to the plaintiff (claimant) only, the appeal procedure identically simplified (Article 391¹ of the CPC), any cassation complaint inadmissible.

Polish case law defines manifestly unfounded lawsuits as circumstances beyond reasonable doubt of the plaintiff's claim meriting no legal protection to be extended, such conclusion reachable immediately upon the claim and its factual and legal basis having been revealed.³⁶ It is further presupposed that such unfoundedness should be indubitable not only to a representative of a legal profession, but to any reasonable participant of legal proceedings.³⁷ Introduced to the Polish legal system in 2019, the mechanism of preventing so-called apparent lawsuits was received with caution and restraint³⁸ as well as criticism, threats to the principle

³⁵ Law of July 4th 2019 amending the Code of Civil Procedure Law and selected other laws, Journal of Laws 2019, item 1469, hereinafter referred to as “CPC”.

³⁶ Judgement of the Court of Appeals in Białystok of October 19th 2021, Ref. No. I ACa 888/21, Lex No. 3262378.

³⁷ Judgement of the Court of Appeals in Łódź of October 30th 2020, Ref. No. I ACa 1050/20, Lex No. 3108148.

³⁸ Judgement of the Court of Appeals in Cracow of May 29th 2020, Ref. No. I ACa 231/20, *Legalis*.

of fair trial having been identified.³⁹ That said, European Union-level solutions enshrined in Directive 2024/1069 would suggest a review of previous doubts and concerns, as bestowing a new role and new significance to the procedural measure pondered herein.

It goes without saying that not every lawsuit dismissal as a manifestly unfounded claim ought to be automatically tied to abuse of procedural law, or associated with SLAPP measures. In each and every case, an examination of the facts behind the plaintiff's intentions ought to be recognised as essential to determining whether the plaintiff has brought action to secure reasonable and effective legal protection, or for different reasons altogether. It can be well assumed *a priori* that SLAPPs are a manifestly unfounded claim category, since their purpose is to initiate legal proceedings designed to prevent or restrict public debate rather than assert a right⁴⁰. In case of SLAPPs, we are by definition dealing with claims completely unfounded, reflected in no facts or any substantive law provisions. Article 5 of the draft law assumes that CPC provisions already in force (Articles 191¹ and 391¹) will apply thereto, any applicable modifications duly recognised. Should, for example, the defendant file an out-of-court motion for dismissal of the claim as manifestly unfounded, the presiding judge will notify the plaintiff of a deadline by which a preparatory pleading shall be drafted for purposes of responding to said motion. Moreover, the court can also hear parties in closed session (Article 6 of the draft law). The plaintiff is thus provided with an option of proving that the lawsuit is not of the SLAPP category, and thus becoming eligible to protection against a wrongful and unjustified application of a statutory solution.

Regardless, the Polish draft law provides for an option of a SLAPP claim remaining judicially unexamined once classified by a court as an abuse of law pursuant to Article 4¹ of the CPC. In such case, a justice – having concluded that the lawsuit had been brought with sole intent of suppressing, restricting or interfering with public participation – may issue a ruling dismissing the claim, said ruling no more than a formal decision (Article 8 of the draft law). Prior to exercising the aforesaid

³⁹ Piaskowska, O.M., *Prawo do sądu a oddalenie oczywiście bezzasadnego powództwa w świetle projektu zmian z 27.11.2017 r. do Kodeksu postępowania cywilnego* (*The Right to Fair Trial v. Dismissal of Manifestly Unfounded Claim in View of the Draft Amendments of November 27th 2017 to the Code of Civil Procedure*), "Studia Prawnicze", No. 1, 2018, p. 34 *et seq.*; Zembrzusi, T., *Powództwo oczywiście bezzasadne a dostęp do ochrony prawnej w postępowaniu cywilnym* (*Clearly Unfounded Claims in the Context of Access to Legal Protection in Civil Proceedings*), [in:] Flaga-Gieruszyńska, F., Flejszar, R., Marszałkowska-Krzes E., *Dostęp do ochrony prawnej w postępowaniu cywilnym* (*Access to Legal Protection in Judicial Civil Proceedings*), Warsaw 2019, p. 169 *et seq.*; Błaszczak, Ł., *Powództwo oczywiście bezzasadne (art. 191¹ k.p.c.)* (*Manifestly Unfounded Claims (Article 191¹ of the Code of Civil Procedure)*), Warsaw 2021, p. 133 *et seq.*

⁴⁰ Tomczyk, *op. cit.*, note 11, p. 20.

procedural measure, the court shall inform parties to the process of such intent, notifying them further of a deadline for preparatory pleadings to be filed, their positions concerning the ruling to be presented therein.

The modification to the early claim dismissal mechanism and claim dismissal mechanism apart, the Polish draft law provides i.a. for an option of requiring the plaintiff (upon the defendant's motion)⁴¹ to pay a deposit to cover the cost of judicial proceedings (Article 3 of the draft law).⁴² To that end, the defendant shall be obliged to present a *prima facie* case that the action has been chiefly brought with intent to suppress, restrict or interfere with public participation, or that the absence of a deposit will thwart or seriously impede any ruling concerning cost of proceedings payment. The draft law will provide for a right of appeal against the deposit-related ruling.

The draft law further allows the entity whose action has been classified as a SLAPP to be fined. Potentially reaching the equivalent of one hundred times the minimum wage, the maximum amount of such additional court-imposed penalty is intended to discourage SLAPP suits. Fine proceeds will be payable to the state budget (Article 11 of the draft law).

Since the majority of Polish SLAPPs are domestic in nature, implementation measures for Directive 2024/1069 have been expanded to include further protection, applicable to strictly domestic procedures. It is expected that mechanisms developed in Poland will help balance out the chances of parties to the process. Regulations have been designed to protect individuals, non-governmental organisations, journalists and activists as the most frequent targets (as shown in practice) of lawsuits designed to intimidate or silence them. On the other hand, sporadically voiced concerns have accentuated the need to make sure that none of the planned implements are distorted or applied in reverse, i.e. to suppress public debate, and/or protect individuals or entities suppressing public participation.⁴³ In view of the entirety of suggestions made, it seems unlikely that entities affected by genuine

⁴¹ The court shall examine the defendant's motion no later than within a term of two weeks as of its filing.

⁴² The deposit shall reflect the expected amount of the reimbursable cost of judicial proceedings. Should case examination prove the deposit to be insufficient as coverage for the cost of judicial proceedings, the defendant may demand that another deposit be posted.

⁴³ Kunicki, I., *Kilka uwag na temat projektu Dyrektywy Parlamentu Europejskiego i Rady w sprawie ochrony osób, które angażują się w debatę publiczną, przed ewidentnie bezpodstawnymi lub stanowiącymi nadużycie postępowaniami sądowymi („strategiczne powództwa zmierzające do stłumienia debaty publicznej”) (A handful of comments regarding the draft Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (“Strategic lawsuits against public participation”))*, Kultura Prawna, 2023 available at: [<https://thelegalculture.com/legal/article/view/119/144>], Accessed 1 March 2025.

violation of personal property rights or dissemination of false information would lose eligibility to seek any claims due to them. Keeping a close eye on anti-SLAPP action taken by other European Union Member States will be of considerable importance as well.

6. FINAL COMMENTS

Wrongful use of the right of access to justice stands in contradiction thereto, and may be interpreted as abuse of procedural rights. Arguably, critical perception of SLAPPs (Strategic Lawsuits Against Public Participation) centres less on the negative assessment of plaintiff intentions than on its ultimate outcome – destructive impact on the freedom of expression⁴⁴. Taking legal action with intent to silence critics and suppress public debate, while nothing new, is increasingly common. Intimidating and harassing journalists and other entities, using threats and violence against them, and the impunity of perpetrators remain the most serious challenges faced by media freedom.

The introduction of Directive 2024/1069 and its transposition to domestic legal orders sends a clear signal that the use of judicial proceedings as tools of pressure or repression will not be acceptable by European Union Member States. This is hugely important in terms of efforts to preserve media pluralism in the digital age in light of ownership concentration, poor transparency of media proprietorship and funding, and social and political disputes weakening public broadcasters⁴⁵. Strengthening protection measures extended to the freedom of speech and expression ought to improve the quality and openness of public debate alike.

Any attempts to prevent the phenomenon under analysis herein ought to be seen as positive and desirable. Just like in common law systems⁴⁶, taking co-ordinated action on the European Union level is conducive to developing harmonised solutions across European Union Member States. The resultant array of mechanisms can prove effective and efficient in the face of violation diversity and related circumstances. While procedural law regulations will never be completely unified across all European Union Member States – in view of the procedural autonomy principle, not to mention the varied traditions and specificity of individual legal orders – the implementation of Directive 2024/1069 may become a yet another

⁴⁴ Shapiro, P., *SLAPPs: Intent or Content? Anti-SLAPP Legislation Goes International*, Review of European Community & International Environmental Law, No. 1, 2010, p. 14 *et seq.*

⁴⁵ Clark, Grech, *op. cit.*, note 12, p. 61 *et seq.*

⁴⁶ Saftstrom, J., *Time to SLAPP Back: Advocating Against the Adverse Civil Liberties Implications of Litigation that Undermines Public Participation*, LSU Law Journal for Social Justice & Policy, No. 3, 2023, p. 125 *et seq.*

stage proving the justifiability of and need for developing a legal order based on identical rules and values, without which Europe will be neither powerful nor secure.

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