

**Consultation on the draft text of the Committee of Ministers  
Recommendation on Countering Strategic Lawsuits against Public  
Participation (SLAPPs)**

*Submitted by the Georgian Anti-SLAPP Platform*



**HUMAN  
RIGHTS  
HOUSE**  
Tbilisi



Institute for Development  
of Freedom of Information



**RIGHTS  
GEORGIA**  
საერთაშორისო  
სადასაცემო ცენტრი



**GEORGIAN  
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**HUMAN RIGHTS CENTER**  
საერთაშორისო  
სადასაცემო ცენტრი



**GEORGIAN  
DEMOCRACY  
INITIATIVE**

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## *About us:*

The Georgian Anti-SLAPP platform [was established](#) on June 29<sup>th</sup>, 2023 and unites 7 non-governmental organizations. The anti-SLAPP platform aims to develop the best anti-SLAPP standards through joint efforts. Moreover, we intend to safeguard and empower the media, human rights defenders, and civil society activists against the perils posed by groundless defamation and other forms of SLAPP cases, which are used to silence them.

The anti-SLAPP platform currently unites the following organizations:

**1. Georgian Democracy Initiative (GDI)** - GDI is an independent, non-governmental, non-profit organization dedicated to research, analysis, and education, aiming to advance the country's democratic development and Euro-Atlantic integration. Since its establishment (in 2012), GDI has been actively working on freedom of expression and media issues by providing legal aid to journalists, activists, and many other groups, litigating strategic cases, doing advocacy work, and providing capacity-building activities for targeted groups. Currently, GDI actively engages in providing legal support to victims/targets of SLAPPs and represents journalists/CSOs in 13 defamation cases that could be qualified as SLAPPs. Moreover, GDI leads the work of the Georgian Anti-SLAPP platform.

**2. Georgian Young Lawyers Association** - The Georgian Young Lawyers' Association (GYLA) is a non-governmental organization based on membership, established in 1994. For nearly three decades GYLA has been at the forefront of protecting human rights, promoting democratic reforms, building democratic institutions and providing free legal aid, including strategic litigation in the European Court of Human Rights and UN Bodies. As of January 2023, GYLA operates through nine offices located in regional centers of Georgia. With such a presence and institutional capacity, the organization has been able to provide legal relief to over 1 million individuals.

**3. Human Rights Center** - The Human Rights Center, was founded on December 10, 1996 in Tbilisi, Georgia. The Human Rights Center is dedicated to protection and promotion of human rights, rule of law and peace in Georgia. The Human Rights Center believes that everyone is entitled to exercise her/his civil, political, social, economic and cultural rights freely and without any discrimination as guaranteed by national and international law. HRC considers that protection and promotion of these rights and respect for rule of law are the key preconditions for building sustainable peace and democracy in Georgia. HRC actively works on freedom of speech and expression therefore it provides legal aid to journalists, activists, and other vulnerable groups.

**4. Transparency International – Georgia** - Transparency International is an international non-governmental organization that fights against corruption in the world. The organization operates by means of the International Secretariat and more than 100 independent national chapters at the local, national and international levels.

Transparency International Georgia (TI Georgia) was established in 2000 and has been fighting corruption in Georgia as a local NGO by promoting transparency and accountability. The mission of TI Georgia is to be a reliable source of information about the anti-corruption reform under way in Georgia; to help the government and the society at large to advance the processes of reforming

those sectors in which corruption still persists; and to build and empower institutions and to promote good governance. In recent years, TI Georgia has become a leading advocacy-based non-governmental research organization in Georgia. The goal of TI Georgia is to help build and empower institutions, develop the rule of law and good governance, and ensure the transparency of public bodies and their accountability to the public.

**5. Human Rights House Tbilisi** - Human Rights House Tbilisi (HRHT) is a membership-based organization and unites five Georgian civil society organizations, working on different fields of Human Rights. The member organizations of HRHT are: The Human Rights Center (HRIDC), Rights Georgia, Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT), Sapari and Media Institute. Strategic directions of HRH Tbilisi are the support, protection and empowerment of human rights defenders and human rights organizations; raising awareness about human rights issues, that includes providing educational or capacity building activities for different groups, implement media campaigns and advocacy on different topics related to human rights protection, particularly protection of human rights defenders.

Based in Tbilisi, it was registered in 2010 as a non-governmental organization with the support of Human Rights House Foundation. HRHT became a member of the network of Human Rights Houses in the same year. The HRH Network defends, empowers and supports human rights defenders and their organizations.

**6. Rights Georgia** - Rights Georgia is an independent, non-profit organisation that has been protecting human rights since 1997. Over the past years, the organisation has focused on providing free legal aid to vulnerable groups such as victims of gender-based and domestic violence, migrants, asylum seekers, and refugees (including war-affected Ukrainians), as well as media actors and human rights defenders. In addition to providing legal aid, the organisation is actively involved in awareness raising and advocacy on policy issues related to the judiciary, gender equality, media freedom, etc.

**7. Institute for Development of Freedom of Information** - The Institute for Development of Freedom of Information (IDFI) is a non-profit organization aimed at promoting transparency, accountability, open governance, protection of human rights and freedom of media, strengthening rule of law and democratic institutions. IDFI operates with the mission of enhancing access to information and empowering citizens to actively participate in public decision-making processes. Through research, advocacy, and capacity-building initiatives, IDFI strives to foster government accountability, combat corruption, and strengthen civil society's role in Georgia and beyond. IDFI raises civil awareness through sound informational reports, research and recommendations, advocates for initiating & implementing reforms of policies, laws and practices to enhance democratic governance.

## ***Introduction***

Within the proposed document, the Anti-SLAPP Platform of Georgia presents its observations to the draft recommendations put forth by the Committee of Experts on Strategic Lawsuits against Public Participation (MSI-SLP). Our primary objective is to offer insights into the context of SLAPP disputes in Georgia, share our observations, and highlight the critical areas that require consideration while formulating recommendations. By doing so, we aim to empower member states, including Georgia, with effective strategies to combat SLAPPs more effectively.

In 2021-2023, there has been a notable increase in SLAPP lawsuits filed against critical media organizations and human rights defenders in Georgia, primarily based on allegations of defamation. An increased rate of defamation lawsuits initiated in courts was recorded in 2021. However, the trend continued to gain momentum, and by 2022-2023, the number of defamation lawsuits addressed to the Courts against critical media and human rights defenders [reached](#) as high as 38.<sup>1</sup>

Considering the frequency of SLAPP disputes in Georgia, this document highlights the significant aspects identified through the observation of Georgia's Anti-SLAPP platform. The ensuing response seeks to make a meaningful contribution to the finalization of recommendations on countering SLAPPs, taking into account the unique context of all Member States. We firmly believe that addressing these key areas holds the potential to establish more effective measures in combating SLAPPs across Europe.

### **Consultation on the draft text of the Committee of Ministers Recommendation on Countering Strategic Lawsuits against Public Participation (SLAPPs):**

#### ***(1) Issues of public interest***

**Recommendation:** Paragraph 4 (ii) of the Recommendation to be modified as follows: “Public interest” refers to all matters which affect the public and in which the public may legitimately take an interest, especially those matters concerning important social issues or affecting the well-being of individuals or the life of the community. The public has the right to receive information and ideas and thus to be informed about matters of public interest and journalists and the media have the task of imparting such information and ideas. The public interest extends to issues which may give rise to considerable controversy but it cannot be reduced to the public’s thirst for information about the private life of others, or to an audience’s wish for sensationalism or voyeurism. Politics, current affairs, human rights, justice, social welfare, education, health matters, religion, culture,

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<sup>1</sup> For a comprehensive understanding of the context surrounding SLAPP cases in Georgia, Please read: <https://gdi.ge/storage/files/doc/SLAPP%20Report.pdf>

history, climate, **corruption, the efficient utilization of the state budget, criminal investigation matters** and environmental issues are thus all examples of topics of public interest, unlike individuals' strictly private relationships or family affairs **that do not have a direct link with the functions or duties of a public person**. Topics may be of public interest at local, national or international levels.

**Comment:** Along with all other issues that are mentioned as examples of topics of public interest, we believe it is crucial to specifically include issues related to corruption, the efficient utilization of the state budget, and investigations. These matters, among others, are of great public concern and statements concerning corruption, state budget efficiency, and ineffective investigations frequently become the basis of SLAPP disputes.

Therefore, it is important to include issues related to corruption, the efficient utilization of the state budgets, and criminal investigations as issues of public interest.

In addition, it is crucial to distinguish between private relationships or family affairs and issues directly related to the functions and obligations of public figures. While private matters should generally be excluded from public scrutiny, there are cases where investigating and reporting certain issues involving public figures is in the public interest. This particularly might apply to situations where there are allegations of crimes, or the protection of crimes, by family members of politicians, public figures, and other individuals in the public eye. In such instances, it is essential to address and report on these matters to ensure transparency and accountability in the public domain.

## ***(2) SLAPP indicators***

**2.1 Recommendation:** Paragraph 8 (v) to be modified as follows: “The legal action targets individuals or organisations, or other individuals or organisations associated with them **with the purpose of imposing financial, psychological, reputational, or other forms of damages on them.**”

**Comment:** The term "targets" could be vague and cover many other cases. To make it more straightforward, it would be preferable to add the aims that may accompany the targeting of the respondents.

As in these disputes, claimants seek to impose financial, psychological, reputational, or other damages on the respondent, we believe that it is essential to include these criteria in the mentioned paragraph.

**2.2 Recommendation:** Paragraph 8 to be modified as follows: “Although SLAPPs manifest themselves in different ways, various characteristics can be used as indicators for identifying the purpose of the legal actions. While SLAPPs do not necessarily include all of these characteristics, the more of them that are present, the more likely the legal action can be considered as a SLAPP. Such indicators include **but are not limited to:**”

**Comment:** As SLAPP is a common phenomenon, it can be characterized by various indicators, each within the specific context of Member States. In light of this diversity, we emphasize the importance of clarifying through the recommendation that the indicators mentioned in Paragraph 8 are not exhaustive and may vary based on the unique circumstances of each case and context of each Member State.

**2.3 Recommendation:** To incorporate the following SLAPP indicator: “The legal action aims the protection of personal non-property rights of a governmental or administrative body, although the claimant is an individual”

**Comment:** Several defamation cases in Georgia show that the claimants do not act individually for the reparation of their own dignity/reputation but rather as members (parts) of the governmental campaign to silence journalists/activists and cause the “chilling effect”. Hence, they are abusing their rights, qualifying such cases as SLAPPS.

According to paragraph 6.4 of the [Law of Georgia On Freedom of Speech and Expression](#), "Litigation on defamation may not concern the protection of personal non-property rights of a governmental or administrative body." However, governmental bodies in Georgia, such as Ministries, have found alternative ways to indirectly appeal to the court by using their own apparatus (for example, lawyers of the governmental body are representing the individuals working there), trying to protect the "reputation" of the governmental body by attacking critical media and making freedom of expression the target of the judiciary.<sup>2</sup>

Considering this, we believe that it is important to consider as one of the criteria of “slapping” a case where an individual applies to the court with a claim that actually serves to protect the governmental or administrative body from criticism.

**2.4 Recommendation:** To incorporate the following SLAPP indicator: “The claimant him/herself explicitly states the true purpose of the legal action (e.g. him/herself emphasizes that his/her aim is to punish public participation and prevent further publication of unwanted information).”

**Comment:** While some cases may leave doubts about the true purpose of the lawsuit, there are also cases where the plaintiffs themselves indicate the real purpose of their legal action. At such times, plaintiffs may use phrases such as "to punish journalists for lying", "to protect the plaintiff from criticism", etc.

For instance, in Georgia, there was a case involving Davit Patsatsia, the Minister of Internally Displaced Persons of the Autonomous Republic of Abkhazia and brother-in-law to the Leader of the Parliamentary Majority, Irakli Kobakhidze. He filed a lawsuit against a critical TV company, TV 'Pirveli.' During the trial, when asked about the reasons for seeking substantial moral damages,

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<sup>2</sup> For a comprehensive understanding of the context surrounding the lack of independence and impartiality of the judiciary in Georgia, Please see our comment under section 5 of the document (“Procedural Safeguards”)

Davit Patsatsia openly admitted that his intention behind the legal action was to punish the media and journalists for their statements.

Another case involves the Mayor of Tbilisi, Kakha Kaladze, who filed a lawsuit against TV Pirveli and journalist Maia Mamulashvili. In this instance, the plaintiff's representative openly acknowledged that the true purpose of the lawsuit was not to defend the plaintiff's honor and dignity but rather to protect the state institutions and authorities from criticism.

Therefore, it is important to note as a SLAPP criteria when the claimant themselves openly disclose the real purpose of their legal action.

**2.5 Recommendation:** To incorporate the following SLAPP indicator: “The claimant does not apply other legal or non-legal remedies for the protection of its rights, such as applying to the self-regulation bodies, using the right to reply, giving proper answers to the journalists, etc.”

**Comment:** We strongly believe that the claimant's true intentions become apparent when they resort to filing a lawsuit in court without considering other resolution options. In countries where self-regulatory bodies or the "right to reply" are available, choosing litigation suggests a hostile and damaging approach against the defendant, thus revealing the claimant's intentions.

Moreover, In Georgia, there is a noticeable trend among those initiating SLAPP disputes: they often avoid answering questions when approached by journalists. As a result, journalists are unable to present the opposing side's perspective, even when they are working on a story related to it. As a consequence, when journalists release the information they have gathered, SLAPP initiators respond by filing lawsuits, accusing defamation for statements they could have addressed when approached by journalists before the story was prepared. This suggests a deliberate tactic of creating artificial grounds for SLAPP lawsuits by avoiding engagement with journalists and withholding their own perspectives. This strategy hampers the journalistic process and raises concerns about the legitimacy of the claims made in SLAPP cases.

Hence, we consider this pattern of behaviour as one of the indicators of SLAPP tactics.

### ***(3) Specific forms/types of SLAPPs:***

**Recommendation:** To incorporate the following paragraph regarding the importance of ensuring the confidentiality of sources: “Judicial authorities of member states should ensure the confidentiality of the source that defendants are not obliged to name the identity of the confidential sources. Moreover, the refusal to reveal the identity of the confidential/anonymous source alone should not be used as the sole basis for satisfying the lawsuit.”

**Comment:** It is important that paragraph 9 (ii) should also focus on safeguarding the confidentiality of sources used by respondents, particularly in cases involving journalists. It is a well-known fact that journalists often rely on information provided by confidential sources to present stories of public interest. While the Law on Freedom of Speech and Expression of Georgia explicitly states that the sources of professional secrets should be protected by absolute privilege, and that no one has the right to demand disclosure of the source, certain court decisions have raised

concerns.

In particular, in a number of decisions, some courts have questioned the reliability of confidential sources and indirectly pressured journalists to reveal the identities of their sources. This creates a chilling effect and compromises the fundamental principle of source confidentiality in journalism.

Therefore, it is crucial to emphasize within the same paragraph the importance of ensuring the confidentiality of sources.

#### ***(4) Legal framework***

**4.1 Recommendation:** Note for the judicial authorities of Member States to apply legislation that provides greater guarantees of freedom of expression;

Among others, judicial authorities of Member States should be advised to shift the burden of proof that provides stronger protection for freedom of expression, i.e. to the claimant.

**Comment:** To effectively handle slapping disputes, it is crucial for Member States' judicial authorities to be guided by standards that prioritize the protection of freedom of expression. One key aspect to consider is the correct allocation of the burden of proof, which plays a vital role in safeguarding the SLAPP targets. Therefore, it is essential for the judicial authorities of Member States to carefully guide the allocation of the burden of proof in a manner that provides greater guarantees of freedom of expression.

In this regard, the example of Georgia is noteworthy. According to article 7.6 of the Law of Georgia on Freedom of Speech and Expression stipulates that: a) The burden of proof for limitation of freedom of speech shall lie with the initiator of the limitation. Any reasonable doubt that cannot be confirmed under the procedure established by the law shall be resolved against the limitation of the freedom of speech.

Despite such standard, the practice established by the courts is completely contrary to the legislation of Georgia. According to the court rulings, not the plaintiff (as provided by the law), but the defendant is obliged to prove that the information published by him/her was not defamatory when it comes to statements about participation in alleged criminal acts.

The courts justify this shifting of the burden of proof by referring to the case law of the European Court of Human Rights (ECHR), often citing the *McVICAR v. THE UNITED KINGDOM* case. However, Georgian courts manipulate the interpretation of ECHR judgements and ignore the fact that the ECHR does not have a mandatory standard for the distribution of the burden of proof, but it depends on the legislation of the member countries themselves.

Thus, the national courts should be guided by the legislation of Georgia, which establishes high guarantees of freedom of speech and expression. However, shifting the burden of proof has led to an increase in the number of SLAPP lawsuits and the number of cases in which the courts have satisfied such lawsuits.



Therefore, it is crucial to include in the recommendation that judicial authorities should apply legislation that offers stronger protections for freedom of speech and expression. This entails ensuring that the burden of proof is placed on the party seeking to limit these fundamental rights, in line with the clear provisions of the Law of Georgia on Freedom of Speech and Expression. By doing so, the courts can uphold the principles of free expression, discourage the filing of SLAPP lawsuits, and safeguard the rights of individuals and media organizations to freely express their opinions and report on matters of public interest.

**4.2 Recommendation:** Paragraph 19 to be modified as follows: “Member states should take the necessary legislative and other measures to prevent the frivolous, vexatious or malicious use of the law and legal process to intimidate and silence any legal or natural persons engaging in public participation. They should also exercise vigilance to ensure that legislation and sanctions and remedies are not applied in a discriminatory or arbitrary fashion against public participation. When national legal system allows, member states should put in place dedicated Anti-SLAPP national laws. **Moreover, even in the absence of specific anti-SLAPP regulations, the judicial authorities of Member States should be encouraged to consider the SLAPP context while reviewing a case.**”

**Comment:** When discussing the legal framework, it is essential for the recommendation to address situations in member states where the adoption of Anti-SLAPP laws might not be deemed necessary or its adoption is prolonged. Even in such cases, it remains crucial for judicial authorities not to disregard the SLAPP context and the potential indicators of SLAPP suits simply due to the absence of specific legislation.

Considering this, we recommend incorporating a provision in the recommendation that encourages the judicial authorities of Member States to take the SLAPP context into consideration when reviewing a case.

#### *(5) Procedural safeguards*

**Recommendation:** To incorporate the following paragraph regarding the procedural safeguards: “Member states should ensure that even if the ruling favors the claimant and the case is not classified as a SLAPP, the public statements describing it as a SLAPP should not be subject to any legal liability.”

**Comment:** It is crucial for member states to establish regulations ensuring that statements describing a case as a SLAPP are not subjected to any legal liability. This becomes especially significant in cases where the court has ruled in favor of the claimant and public statements had been still made qualifying the case as a SLAPP. Such regulations are vital to prevent abuse by claimants who could misuse the court's ruling to initiate additional defamation lawsuits.

Furthermore, such regulations hold even greater significance in those CoE countries where there are concerns regarding the independence and impartiality of the judiciary. An exemplary case is Georgia, which has faced notable issues concerning the lack of judicial independence and

impartiality, garnering criticism from both international and national actors tasked with monitoring the situation in the country. For instance, the [2022 U.S. State Department report](#) highlights some of the problems regarding the serious problems with the independence of the judiciary, along with investigations and prosecutions widely considered to be politically motivated, including “the impact of the High Council of Justice’s (HCOJ) powers on the independence of individual judges, manipulation of the case distribution system, a lack of transparency in the High Council’s activities, and shortcomings in the HCOJ’s appointments of judges and court chairpersons.” It is noteworthy that the implementation of a transparent and effective judicial reform strategy was one of the EU Commission’s [recommendations](#) in order to grant Georgia the candidate status for membership of the European Union.

Unjustified court decisions in politically motivated cases, significant changes in the composition of the High Council of Justice and the presence of an influential group of judges within the system (so called “Clan”) leads to a conclusion that there is a judicial bias in the justice sector. The existing problems regarding the lack of independence and impartiality of the judiciary in Georgia are also confirmed by the fact that the U.S State Department sanctioned four judges in Georgia, one of whom is a former judge, and three of whom are current, life-term judges. In particular, on April 5, 2023 US Secretary of State Anthony Blinken issued a [statement](#) announcing that the US Department of State has publicly designated Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia and Valerian Tsertsvadze under Section 7031(c) visa restriction authorities. “These individuals abused their positions as court Chairmen and Members of High Council of Justice, undermining the rule of law and the public’s faith in Georgia’s judicial system” – reads the statement.

Hence, state officials and individuals affiliated with the ruling party have high expectations to win cases before the national courts. Unfortunately, there is a similar trend in SLAPP suits, making the Georgian context more complex and challenging. In such situations, the rulings of judicial bodies should not be a hindering factor for CSOs to talk about the abuse of justice system and having SLAPP cases in the country.