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Training Lawyers to Defend Victims of SLAPPs

Chamber of Advocates Conference Hall,
25th January 2023, 14:00 – 17:00



Agenda

- 14:00 to 14:10 Welcome Address: aditus foundation & Chamber of Advocates
- 14:10 to 14:45 Introduction to the Topic: Malta and SLAPPs
Existing Legal Instruments to Combat SLAPPs in the local framework
Outline and Implications of the Maltese Media Reform Bills
Dr. Michael Zammit Maempel, specialised in IP, Media, Freedom of Expression & Technology law
- 14:45 to 15:00 Q&A
- 15:00 to 15:30 Coffee Break and Refreshments
- 15:30 to 16:00 The European Perspective:
Human Rights and SLAPPs
The Proposed EU Anti-SLAPP Directive
Private International Law and SLAPPs
Freedom of Information and Subject Access Requests
Prof. Justin Borg-Barthet, Dr Erin Ferguson, Anti-SLAPP Research Hub at the School of Law, University of Aberdeen
- 16:00 to 16:15 Q&A
- 16:15 to 16:45 Panel Discussion: Perspectives in Practice SLAPPs in Malta
Dr. Therese Comodini Cachia, specialised in Constitutional Law and Human Rights Law
Dr. Joseph Zammit Maempel, specialised in Media Law, Civil and Commercial law
Martina Urso, CEO Daphne Caruana Galizia Foundation member of Coalition Against SLAPPs in Europe (CASE)
Moderator: Dr. Michael Zammit Maempel
- 16:45 to 17:00 Q&A
- 17:00 Closing Remarks

Malta and SLAPPs

- *What's the current situation?*
- *How does Maltese law shape up?*
- *What does the future hold?*



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First, some basics ...

- What does **SLAPP** mean?
 - *Strategic Lawsuits Against Public Participation*
 - *The aim of SLAPPs is typically that of burdening critics with legal defence costs to censor, intimidate and silence them.*



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SLAPP In Malta (1)

- *Strategic Lawsuits Against Public Participation*
- *The aim of SLAPPs is typically that of burdening critics with legal defence costs to censor, intimidate and silence them.*



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SLAPP In Malta (2)

- **Why are SLAPPs a concern in Malta?**
- **Experience has shown them to be an effective tool in silencing critics and stifling free speech**
- **“Chilling effect”**
- **Lack of specific anti-SLAPP legislation**



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What kind of actions are we looking at?

SLAPPs can take different forms, but the laws that are usually (ab)used in this way are:

- Press/Media laws, including libel law
- Freedom of Information laws
- Data Protection laws



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Freedom of Information / Data Protection

- Local experience indicates that many FOL requests are denied without basis, and appeals are similarly filed without sufficient basis.
- Data privacy is also used as a pretext on which to threaten journalists not to dig, or not to publish.



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Press Law / Libel & Defamation

- Cap 579 introduced in 2018, and modelled closely on English Defamation Act 2013, which has in the meantime been amended, most lately in August 2022.
- Both laws introduced the ‘single publication rule’, which protects against repeated or continuous publication/s on the internet.



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Defamation Act 2013 (England & Wales)

The key problem with this Act has been the introduction of Section 9, which allows a person NOT domiciled in the UK to bring action against any defendant if they can show that England and Wales is “*clearly the most appropriate place in which to bring an action in respect of the statement*”.



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Media & Defamation Act Malta

Preliminary hearing (Art. 10)

- First hearing scheduled within 20 days from the deadline for filing defence pleas
- Court may send parties to mediation, or give time for agreement to be reached, or for apology to be made. Damages in these cases are not to exceed €1K.



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General Defences (1)

- Motion to dismiss on the grounds that suit lacks merit; although in practice the Court will almost always proceed to hear merits of the case.
- Early intervention can avoid unnecessary legal fees and limit damage.

General Defences (2)

- Arguing that the lawsuit was brought with the primary intent to silence or punish the defendant for exercising their right to free speech.
- At a stretch, filing a counter-claim for the abuse of process.



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Other forms of prevention/protection

- Filing police report, especially if threats of harm are involved, or if threats are carried out by means of electronic communications (i.e. computer misuse).



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Publicity & Media Attention

SLAPPs often thrive on silence and fear:

- Chilling effect. Stories may be discontinued or suppressed, and never make it to publication.
- Legal letters are often marked 'Confidential', and warn the receiver not to make the matter public. There is no legal basis for this.



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Publicity & Media Attention

- Publicising the threat or the litigation and bringing media attention to the case is usually beneficial, because it forces the claimant to deal with negative publicity.
- Can be effective in demonstrating that suit is frivolous and intended to censor/intimidate.



The Role of the Court

- Court's crucial role in protecting individuals from SLAPP litigation
- Dismissing such cases early on and awarding costs to defendant if case is found to be frivolous.
- Maltese law allows courts to award double-costs



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Education & Awareness

- Lawyers' important role in educating clients about SLAPP litigation and available defence strategies
- Raising awareness within the legal community and general public about the need for anti-SLAPP legislation in Malta

Conclusions

- SLAPP litigation can be a powerful tool to silence critics and stifle free speech
- Malta currently lacks specific anti-SLAPP legislation, meaning the system is vulnerable and open for exploitation
- Lawyers in Malta can use various strategies to defend clients against SLAPP suits

Case Studies

Examples of SLAPP litigation in Malta and how it was handled.



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International Best Practices

Anti-SLAPP legislation has been proposed by the EU.

- Will this be sufficiently effective? Does the proposed Directive go far enough?
- In what ways can Maltese law go beyond the Directive?



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Question Time



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Thank you

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EVALUATION QUESTIONNAIRE

we would be most grateful if you could provide feedback on the conference.

Please complete the survey below using the reference number: **101051559**.

The survey has been elaborated by the European Commission and it should take you no more than 5 minutes to complete.



Thank you for providing your feedback!