



Strategic Litigation Against Public Participation SLAPP

The Chilling Effects of Abusive Lawsuits on
Journalists & Activists

SEMINAR

STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION (SLAPPS):

THE CHILLING EFFECTS OF
ABUSIVE LAWSUITS ON
JOURNALISTS AND ACTIVISTS

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VENUE: VC101 (IT SERVICES) UOM

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TIME: 12:00 – 13:30

**How did SLAPPs
come about?**

Free Expression

A fundamental human right

- The right to free expression is perhaps the ‘Queen’ of all human rights. Without being free to express our thoughts, opinions and creativity, we deny our own sense of being human.
- It’s not only favourable or commonly held views that need protection, but especially those views that ‘**shock, offend or disturb**’ society or parts of it. Without shocking or disturbing others with uncomfortable truths we can never bring change.
- Journalism and activism are human activities that, in modern democratic societies, serve as checks on power and governance. They are a vital part of a functioning democracy.

Mosta protest: Remind politicians that they answer to you, activists tell crowd

The attempt to remove trees was 'a symptom' of Malta's environmental problem

National Mosta Environment

15 November 2023 | Jessica Arena | 23

3 min read



Mosta trees to stay as mayor reverses transplanting decision

Councillors agree on U-turn following public anger and political pressure

National Mosta Environment

15 November 2023 | Times of Malta | 131

3 min read



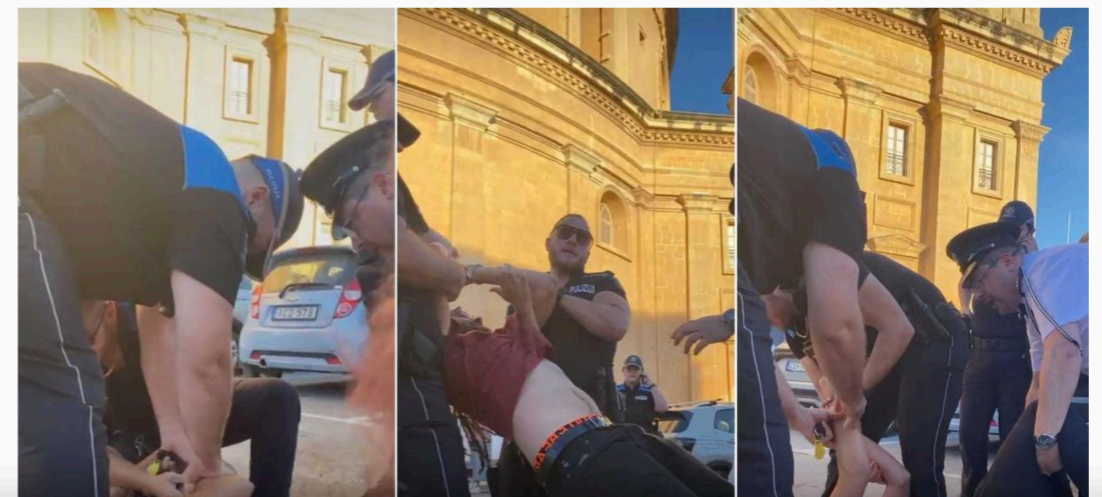
Watch: Police drag protester as crowd defending Mosta trees grows

Activists pulled away ahead of planned transplanting on Tuesday night

National Mosta Environment

14 November 2023 | Times of Malta | 194

5 min read



Libel and Defamation

The limits of free expression

- Although the right to free expression remains the fundamental rule, there are exceptions and limits.
- Libel and defamation are the obvious examples. Defamation occurs when someone makes a **false statement** about someone else, and that statement has the effect of **lowering the reputation of the victim** in the eyes of the average person. When this occurs in writing, it amounts to libel.
- Opinions are different to facts. There is a difference between these two statements:
 - *The Prime Minister is a fool.*
 - *The Prime Minister is a drug trafficker.*
- Opinions are sacred and not subject to libel laws.



Sometimes the truth
shames those who fear it

SLAPPs

What are they?

- SLAPPs refer to strategic litigation against public participation. In simple terms, this refers to those lawsuits that are filed with strategic motives, which are not primarily to seek justice, but chiefly to cause harm, hardship, fear and financial ruin of a journalist or activist.
- Usually these take the form of libel actions, filed when the claimant knows full well that there is no basis for the action, and that what is being said is substantially true.
- In Malta, they also take the form of objections by the Government to providing information in terms of the Freedom of Information Act.

Why are SLAPP suits problematic?

What are their effects?

- SLAPPs have three key effects:
 - *They restrict free expression*
 - *They have a ‘chilling effect’ on investigative journalism and activism*
 - *They have a psychological impact on journalists and activists*
- Over and above these effects there are serious financial implications on media houses generally and on individual journalists/activists.

Cross-Border SLAPPs

When SLAPPs go on tour

- The lack of territorial borders in online speech has meant that different jurisdictions have stopped making a distinction on where the parties are physically based, and instead consider where the effect of that speech is felt.
- A Russian oligarch, who lives in Dubai, but who has business interests in London, may sue a Maltese journalist before the English Courts if he can show that the writing can cause harm to his London business interests. The scope for abuse is HUGE.
- Claimants can go on an international 'forum shopping spree' to seek out the jurisdiction that can cause the maximum harm, and complete financial ruin of the journalist/activist.

In recent years, there have been several SLAPPs targeted at Maltese journos.

Poland and Malta: EU capitals for legal harassment of journalists



Poland and Malta are the worst places in Europe for legal harassment of journalists, in what NGOs called a "worrying threat to democracy".

**What's happening to
change this?**

In Malta? Not much.

**Within the EU, an attempt has
been made to regulate SLAPP**

EU Draft Directive 2022/177

“The Daphne Law”

- European Commission has proposed legislation to regulate cross-border SLAPPs. This has been reviewed by the European Parliament and the European Council ... and the results are less than ideal.
- The Directive originally proposed a number of measures:
 - Early dismissal
 - Deposit on judicial/legal costs
 - Penalties for manifestly unfounded cases
- Parliament has stretched too far; Council has watered the whole thing down to nothing.

How did it all start?

How did SLAPPs appear in Malta?

When and how did they become a problem?

- The answer is: gradually. This was not an overnight development.
- Daphne was the catalyst. Her reporting made the political class and big business uncomfortable. Because she was independent, and not answerable to any media house, she could not be 'controlled' in the usual way.
- The libel suits started gradually, and early on included a Magistrate as a claimant. These included criminal libel suits. Very often the suits would be abandoned before judgement.
- *'Pour encourager les autres'*. The traditional media houses stayed away from investigative reporting.
- This started a cycle where Daphne was left increasingly isolated, and the libel suits increased. At the time of her murder, she was defending 43 libel suits + 5 criminal suits. Some of these are STILL active today.

**“ ... an intimidation strategy
as they retreat under siege”.**

Daphne Caruana Galizia

What is the current situation?

Are SLAPPs still a problem?

- SLAPPs have not disappeared - they have become less visible and more sophisticated.
- With Daphne gone, claimants are now emboldened to bully media houses with threats that cannot be afforded. Resources are wasted in responding to legal threats that have the sole scope of intimidating the media.
- State institutions are heavily politicised, and Freedom of Information laws are now used overtly as a tool to suppress journalistic activity, and to conduct 'wars of attrition' intended solely to make life difficult, and drain time and money.
- Government pays lip service to anti-SLAPP measures. In reality its Ministers, MEPs and other officers are still engaging in SLAPP techniques.

What's next?

What developments are lined up?

- The anti-SLAPP Directive:
 - A good idea, but is it enough?
 - How will it be transposed into Maltese law? Indications are that barest minimum levels will be adopted.
 - So far, legal practitioners consider it a start, but have reservations.
 - Directive only addresses libel/defamation suits.

The way forward

Putting things right again

- When the rule of law starts to slide, free expression is usually the first casualty.
- There need to be far stricter checks and balances on member states where this happens. If the EU seriously believes it is a Union based on the rule of law and the respect for human rights, then it needs to act accordingly. Words are cheap.
- The best tool against SLAPPs has been to attract as much attention as possible to what is happening ('Streisand Effect'). SLAPPs are not as effective when public opinion is brought in against the aggressor(s).
- Public inquiries can be an effective tool in identifying where things are going / have gone wrong, but are rendered useless unless there's a corresponding political will to change.
- Extra-territorial dimension is important. SLAPPs in Malta are largely interlinked with cross-border issues, with imbalanced legal systems.

**How do media and law
students come into this?**

Question Time



Thank you.

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