

TOGETHER AGAINST SLAPPS

Polish Civil Society's Call to Action

In April 2024, the EU Anti-SLAPP Directive came into effect as a response to the phenomenon of abusive lawsuits filed against journalists, activists, and researchers for criticising powerful individuals or exposing abuses of power. Member states, including Poland, now have two years to implement it into their legal systems. However, simply incorporating the Directive into Polish legislation is not enough. We, journalists, publishers, representatives of non-governmental organisations, activist groups, and members of the academic and scientific communities, emphasise that effectively addressing the SLAPP problem requires a thorough revision of Polish law and the adoption of robust safeguards that go beyond the Directive's minimum standards.

SLAPPs, or Strategic Lawsuits Against Public Participation, are cases initiated to harass individuals or organisations speaking on matters of public importance. The initiator of a SLAPP usually holds significantly greater economic or political power than the person being sued or charged.

We welcome the public statements by Minister of Justice Adam Bodnar on the threat SLAPPs pose to freedom of expression. Given the Ministry of Justice's commitment to EU requirements and Poland's upcoming EU Council presidency, we hope that Poland will set an example as a pioneer in European anti-SLAPP legislation. To support legislative work on anti-SLAPP regulations, the Polish Anti-SLAPP Working Group, including the Helsinki Foundation for Human Rights (HFHR) alongside ARTICLE 19 and the Citizens Network Watchdog Poland, has presented a document titled 'Proposals for Legal Amendments to Implement the Directive on Protecting Individuals Engaged in Public Debate from Clearly Unfounded or Abusive Legal Proceedings (Strategic Lawsuits Against Public Participation, or SLAPP)'.

The proposal is based on an in-depth analysis of the EU Anti-SLAPP Directive, Polish law, international freedom of expression standards, and group interviews with legal experts, lawyers, judges, and prosecutors.

We, the undersigned organisations, propose the following recommendations for anti-SLAPP legal reforms in Poland:

- 1. Guarantees of Protection Against SLAPPs Must Not Be Limited to Civil Proceedings; Criminal Law Should Also Be Included.**
- 2. Introduction of a Comprehensive List of Indicators Showing That the Purpose of Proceedings Is to Suppress Public Debate.**

This list should include the most common types of abusive practices used by those initiating SLAPPs. The Directive's list of indicators should be expanded

to include key elements from international legal standards or legislation in other countries. The Council of Europe's Recommendation, which proposes a ten-point list of indicators helping to determine whether a legal action bears hallmarks of a SLAPP, are particularly important in this regard.

3. Inclusion of Domestic Cases Under Anti-SLAPP Legislation.

Since the scope of the Directive is limited to cases with a cross-border element, Polish anti-SLAPP law must also include cases that do not have such an element. We believe that, for the law to fulfil its purpose of countering SLAPP cases, it is essential at the national level to extend protections to cover all such cases.

4. The Need for Broader Criteria in the Early Dismissal Mechanism.

The early dismissal mechanism for SLAPPs is a key protective measure against such cases. The Directive requires a mechanism for the early dismissal of claims aimed at suppressing public debate on grounds of 'manifest lack of merit'. However, each country may introduce provisions establishing more effective procedural safeguards. This will be necessary in Poland, as current national court practices show that limiting this mechanism only to cases of 'manifest lack of merit' would strip this protective measure of real effectiveness. Polish courts adopt very restrictive interpretations of similar terms.

5. Implementation of All Remedies Provided for in the Directive.

The court must be empowered to impose various types of remedies if it determines that a proceeding is a SLAPP. The law should provide for the possibility of imposing sanctions on the SLAPP initiator, awarding compensation, requiring the initiator to fully reimburse court costs, and ordering the publication of the court's judgment. Only a sufficiently wide range of possible remedies will allow an appropriate response tailored to the circumstances of each case.

6. Exclusion of Active Standing for the State Treasury and Local Government Units in Defamation Cases.

A mechanism should be introduced to protect freedom of expression, based on the standard set out in the European Court of Human Rights' judgment in *OOO Memo v. Russia* of 15 March 2022 (case 2840/10).

7. Decriminalisation of Defamation and Insult.

The most important direction for criminal law reform is to abolish the provisions forming the basis for the most burdensome SLAPPs, specifically by repealing Articles 212 and 216 of the Penal Code. The repeal of these provisions should be accompanied by an appropriate reform of civil procedure.

8. Broader Changes to Substantive Criminal Law.

Consideration should also be given to amending or repealing provisions such as Article 133 (public insult of the Polish nation or the Republic of Poland), Article 135 § 2 (insulting the President of Poland), Article 137 (insulting or damaging flags, emblems, and other symbols), Article 226 (insulting a public

official or constitutional body of Poland), Article 261 (insulting a monument), and Article 196 (offending religious feelings) of the Penal Code.

9. Introduction of Changes to Criminal Procedure Law.

Several amendments should be made to criminal procedure law to ensure protective mechanisms consistent with those that the EU Directive, upon appropriate implementation, will introduce into civil law.

As representatives of various communities committed to open and transparent public debate, we underscore that SLAPPs can affect anyone, posing a serious threat to democracy. Therefore, we are joining forces to call for wide-ranging legal reforms that will effectively protect civil society.

The swift introduction of effective anti-SLAPP reforms into Polish law is necessary. SLAPPs impact not only the media and individuals but also democracy itself.

Signatories:

1. ARTICLE 19
2. Atlas Nienawiści
3. Blue Dragon Institute
4. Fundacja AUTONOMIA
5. Fundacja Basta
6. Fundacja ClientEarth
7. Fundacja „Dom tam gdzie Ty”
8. Fundacja Frank Bold
9. Fundacja Jesteśmy Ważni
10. Fundacja Lasy i Obywatele
11. Fundacja Media Forum
12. Fundacja Miasto Obywatelskie Lubartów
13. Fundacja Moc Partnerstwa
14. Fundacja Niech Żyją
15. Fundacja Reporterów
16. Fundacja Stocznia
17. Fundacja w Stronę Dialogu
18. Fundacja Wolności
19. Fundacja Wolność od Religii
20. Fundacja Wymiany Kulturowej toTU toTAM
21. Green REV Institute i European Fem Institute

22. Helsińska Fundacja Praw Człowieka
23. Inicjatywa „Nasz Rzecznik”
24. Izba Wydawców Prasy
25. Kampania Przeciw Homofobii
26. Klub Tarcza
27. NOMADA – Stowarzyszenie na Rzecz Integracji Społeczeństwa Wielokulturowego
28. OKO.press
29. Otwarta Rzeczpospolita – Stowarzyszenie przeciw Antysemityzmowi i Ksenofobii
30. Press Club Polska
31. Rada Polskich Mediów
32. Sieć Obywatelska Watchdog Polska
33. Stowarzyszenie „Jesteśmy Razem” w Kaliszu Pomorskim
34. Stowarzyszenie Amnesty International
35. Stowarzyszenie Gazet Lokalnych
36. Stowarzyszenie im. Stanisława Brzozowskiego / Krytyka Polityczna
37. Stowarzyszenie Klon/Jawor
38. Stowarzyszenie Lambda Warszawa
39. Stowarzyszenie Mediów Lokalnych
40. Stowarzyszenie Miasto Jest Nasze
41. Stowarzyszenie Praktyków Transformacji Cyfrowych
42. Towarzystwo Dziennikarskie
43. Towarzystwo na rzecz Ziemi