

**Protection against persecution
and harassment (SLAPP cases,
unreasonable costs)**

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Obligations under article 3 paragraph 8 of the Aarhus Convention

- ▶ "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings."
- ▶ Some opinions and findings given by the Aarhus Convention Compliance Committee:
- ▶ The exercise of these rights would include situations in which the provisions of the Convention concerning access to information, public participation in decision-making and access to justice set out in articles 4 to 9 of the Convention are applicable and also situations covered by the general provisions of article 3 of the Convention, but is not limited to them. Accordingly, the Committee finds that article 3, paragraph 8, applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being.
- ▶ The Committee notes that the wording of article 3, paragraph 8, is not limited in its application to acts of public authorities as defined in article 2, paragraph 2, of the Convention, but rather covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity. **It also covers penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent.**

SLAPP (strategic lawsuit against public participation) cases

SLAPP cases are intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. In the typical SLAPP, the plaintiff does not normally expect to win the lawsuit. The plaintiff's goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs, or simple exhaustion and abandons the criticism. Such lawsuits have been made illegal in many jurisdictions on the grounds that they impede freedom of speech.

In practice, the main difficulty is to **recognize** SLAPP (to make distinction between SLAPP and “ordinary“ lawsuit).

SLAPP usually appears in a form of lawsuit for damages (civil claim) or in a form of private claim for defamation (criminal claim).



SLAPP cases in Croatia - Golf resort Srđ



The developers of golf resort in natural areas behind Dubrovnik have taken to the court NGO Zelena akcija and their responsible persons.

How did it come to this? Local activists have been fighting for the preservation of Srđ hill since 2006. In 2010, NGO Zelena akcija and the 'Right to the City' movement joined them, and the initiative Srđ je naš (Srđ is ours) was created.

While it has enjoyed undivided support from all major political parties from the start, it is hugely unpopular with the public. In a 2013 referendum organised by Srđ je naš, 84% of local residents who voted came out against it. While the turnout was lower than would have been needed for the referendum to be binding, it was a clear demonstration of public discontent. Nevertheless, the project continues to enjoy political backing – in spite of its planning permits consistently being annulled by the Croatian courts after legal complaints from Srđ je naš.

- First, in 2014 it secured the annulment of a 2006 decision to triple the size of the project - from 100 to 310 hectares.
- Srđ je naš won its second legal case in September 2016, when an environmental permit granted to the project in 2013 was overturned. This was followed a few months later, in February 2017, by the annulment of a location permit.
- Although more than 10 years passed since the project has started, so far nothing has happened (construction) and the project is still on its starting point.
- Therefore, in September 2017, the investor filed a €500 million claim against the Republic of Croatia at an arbitration tribunal because the "state [had taken] away their development licences". The claim was made through the Croatia-Netherlands bilateral trade deal, which allows investors to sue states for ruling in the public interest, if they feel their profits may be harmed. A crucial detail: these licences were not taken away, but annulled in a judicial procedure, in which they took part.
- Unfortunately, their tactics seem to be working. Just five weeks after the arbitration claim was filed, the state issued a new environmental permit, followed soon after by a new location permit. In doing this, the state ignored the ruling of the its own court, which gave specific instructions on how to properly assess whether a project is environmentally acceptable or not. The new decision was based entirely on the old documents, meaning the 'new' Environmental permit was simply a copy of the original which had been overturned by the court.

The activists now not only have to prove once again what that these permits are illegal, but must now also defend themselves against at least two additional court cases brought against them by the investor.

Investor (Razvoj golf-entrprise), as a plaintiff, filed civil lawsuit before Zagreb Commercial Court for damages against NGO Zelena akcija, as a defendant. Plaintiff seeks: 1) declaration that poster with inscription “Racket, not golf“ caused them mental pains, 2) to prohibit defendant the same behaviour in the future and 3) seeks damages in amount of 35.000,00 Croatian kuna (around 4.700 eur) + interest+ costs of the proceedings (legal fees and court fees). No hearings have been held so far.

Investor also filed private criminal lawsuit before Zagreb Municipal Criminal Court for defamation against president and two vice-presidents of NGO Zelena akcija. No hearings have been held so far.

PROBLEM!!!!!!!!!!

Recognize whether lawsuit is “ordinary”
one or SLAPP;

- administrative proceedings are held in Dubrovnik,
- administrative disputes are held before Administrative Court in Split
- criminal proceedings have been pending before Municipal Criminal Court
- civil proceedings have been pending before Zagreb Commercial Court.

Problems of costs

1. Only natural persons may get a free legal aid. Access to legal aid is denied to NGOs, which is not in accordance with the Aarhus Convention (Article 9, Paragraph 4 and Article 9, Paragraph 5). Namely, according to the Croatian Free Legal Aid Act, legal persons cannot be beneficiaries of free legal aid.

2. Since April 2017 there is on force change of Act on Administrative Disputes which regulates costs of the proceedings in a way that a party who loses a case should bear all costs of the proceedings (his/her costs+cost of opposite party who wins the case). This is step backwards because before that change the rule was that each party bears his/her expenses. This new regulation is also not in accordance with the Aarhus Convention (Article 9, Paragraph 4 and Article 9, Paragraph 5). So judges have problem; whether to apply national legislation or international legislation (Aarhus Convention); some of them apply national law, some of them Aarhus convention which contributes to legal insecurity.

In the end....

Question for our discussion-Measures which could be helpful to prevent these situations



Thanks for your attention!!!