



CASE

COALITION AGAINST SLAPPS IN EUROPE

SLAPPS: A THREAT TO DEMOCRACY CONTINUES TO GROW

A 2023 REPORT UPDATE

THE COALITION AGAINST SLAPPS IN EUROPE
JULY 2023



This report was prepared by **The Daphne Caruana Galizia Foundation** on behalf of the Coalition Against SLAPPs in Europe, and published in August 2023.

SECOND EDITION

Acknowledgements

Firstly, we would like to again thank the Amsterdam Law Clinics (ALCs) who had established the methodology and primary data set used in [CASE's first report](#), upon which this second edition was developed.

We would also like to thank all the CASE member organisations and the national experts they are connected to, who frequently provide information on lawsuits in their countries for CASE's mapping and advocacy purposes, and who make such mapping efforts possible.

We would like to especially thank the SLAPP targets themselves - many of whom reached out to the mapping team throughout 2022 and 2023 to provide information about their respective cases, hoping that their situation could be significant in documenting and portraying the reality of vexatious lawsuits in Europe.

Last, but not least, we want to acknowledge the targets who were indirectly involved in this study. Ultimately, our aim and objective is that the increased awareness of SLAPPs (Strategic Lawsuits Against Public Participation) across Europe will help free them from the crippling impact of vexatious lawsuits filed against them by the rich and powerful, and help stop the silencing of the watchdogs of democracy once and for all.

About The Coalition Against SLAPPs in Europe (CASE)

CASE is a broad coalition of 110+ non-governmental organisations from across Europe, united in recognition of the threat posed to public watchdogs by SLAPPs (Strategic Lawsuits Against Public Participation). Pursued by wealthy and powerful litigants, SLAPPs are an abuse of the legal system and a threat to democracy. They attempt to intimidate and silence public watchdogs through lengthy and expensive litigation that drains a target's resources and chills critical voices. On behalf of journalists, activists, whistleblowers, rights defenders and other watchdogs targeted by these tactics, CASE works to expose legal harassment and intimidation, to protect the rights of those who speak out, and to advocate for comprehensive protective measures and reform.

In the last four years, CASE has worked to convince European Union institutions and member states to legislate against SLAPPs. The European Commission's proposed anti-SLAPP Directive is currently in trilogue stage. Besides advocacy on EU and national levels, CASE has also built up an extensive database on SLAPP lawsuits, and provided advocacy for targets of such lawsuits.

About The Daphne Caruana Galizia Foundation

The team at The Daphne Caruana Galizia Foundation ("the Foundation") is inspired by Daphne Caruana Galizia's life, journalism, and unwavering commitment to the public interest. The Foundation works to ensure justice for Daphne's assassination and to continue her fight for press freedom and liberal democracy. The Foundation's council set out to create a non-governmental organisation that is designed to provide a framework for the advocacy activities of those fighting for justice for Daphne, who was also facing 48 vexatious lawsuits at the time of her death.

Any use of the content of this report must credit The Daphne Caruana Galizia Foundation and CASE. All rights reserved. The Daphne Caruana Galizia Foundation is a non-profit organisation (VO/1633) and legal entity (LPF-280) registered in Malta.

Table of Contents

| | |
|--|-----------|
| Acknowledgements | 3 |
| About The Coalition Against SLAPPs in Europe (CASE) | 4 |
| About The Daphne Caruana Galizia Foundation | 4 |
| Table of Contents | 5 |
| Introduction | 6 |
| Terminology and definitions | 7 |
| Methodology | 9 |
| Limitations | 11 |
| Presenting the updated data | 13 |
| 1. Number of SLAPP lawsuits around Europe | 13 |
| Growth | 13 |
| SLAPPS per country | 14 |
| Legal basis | 16 |
| Figure 5: CASE-recorded SLAPP legal cases from 2010 - 2022, legal theories | 16 |
| Geographical spread | 16 |
| 2. Cross-border cases | 17 |
| 3. Who is the SLAPP target? | 18 |
| 4. Who is the SLAPPer? | 20 |
| 5. Issues targeted | 21 |
| Damages | 21 |
| 6. Conclusion | 23 |

Introduction

In March of 2022, CASE published its findings in the form of its report **Shutting out Criticism: How SLAPPs Threaten European Democracy**, which provided insight into the rising threat of SLAPPs in Europe in such a broad and thorough manner for the first time.

Based on over 500 SLAPP cases from 29 European countries, the report painted a detailed picture of how the rich and powerful are using lawsuits to intimidate and silence acts of public participation all over the continent.

The report presented some shocking findings, including that, of all the cases documented in the study, Daphne Caruana Galizia was the most frequently targeted individual; that SLAPPs are a pan-European phenomenon that needs to be tackled regionally and coherently, addressing both domestic and cross-border cases; and that the number of SLAPP cases across Europe is increasing year on year.

In April 2022, Vice President of the European Commission Věra Juorová, announced anti-SLAPP measures including a draft directive that she nicknamed 'Daphne's Law'.¹

Fast-forward 15 months, and there are an additional 200+ lawsuits in the CASE SLAPP database. Meanwhile, the trilogues are underway between the European Union institutions as they debate the legal technicalities which will determine the strength of the protection against vexatious lawsuits offered to journalists and activists in the European Union.

CASE's hope is that this report acts both as a window onto the gravity of the situation and as a stimulus for debate about the vital need for robust anti-SLAPP legislation.

Again, CASE emphasises that the study is not an exhaustive survey of SLAPP cases around Europe. For a number of reasons, including the limitations of the nature of the research, a scoping exercise such as this can only ever scratch the surface of the SLAPP problem in Europe. What is presented hereunder is only a snapshot of the issue of SLAPPs in Europe between 2010 till 2022. It is intended to give an updated, general overview of the nature of SLAPPs in Europe and the common trends and patterns identifiable in the documented cases.

¹ <https://twitter.com/VeraJourova/status/1519608269253353472?s=20>

Terminology and definitions

Prior to presenting the data, it is necessary to set out the terminology that is used throughout the report as well as define SLAPPs and their various elements.

SLAPPs: abusive lawsuits filed to shut down acts of public participation, including public interest journalism, peaceful protest or boycotts, advocacy, whistleblowing, academic comments, or simply speaking out against the abuse of power. SLAPPs target anyone who works to hold the powerful to account or engage in matters of public interest: so-called “public watchdogs”. This broad category includes journalists, activists, rights defenders, whistleblowers, campaigning organisations, unions or trade associations, and academics. Ultimately, the categorisation of a case as a SLAPP is a value judgement, since one can only ever *infer* an improper purpose from the circumstances of the case.

Public watchdog: SLAPPs target a range of societal actors, united by a common function of holding the powerful to account and exposing wrongdoing. Some of the public watchdogs most frequently targeted by SLAPPs include:

- journalists, particularly investigative reporters,
- activists, particularly environmental and transparency/anti-corruption activists,
- human rights defenders,
- civil society organisations, in particular NGOs and campaigning organisations,
- academics,
- whistleblowers, and
- trade unions and professional associations.

SLAPP tactics: These can take various forms, including legal threats that do not proceed to lawsuits, and the number of these cannot be accounted for in this report. When SLAPP tactics are employed, very often the acts of public participation are shut down even before a lawsuit is initiated and the victims are so fearful that they do not speak about it, especially since a SLAPP threat routinely includes a ban on publication or public discussion of the threat.

Cross-border cases: In the European Union, cross-border cases are possible under the Brussels Ia Regulation, which allows libel proceedings to be brought in a jurisdiction in which the harmful event occurred or may occur.² A cross-border

² Borg-Barthet, J., Lobina, B., Zabrocka, M. (2021). ‘The Use of SLAPPs to Silence Journalists, NGOs and Civil Society’. *European Parliament*, p. 14. Retrieved from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU\(2021\)694782_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU(2021)694782_EN.pdf).

case is classified as such when the case is brought in a Member State that is not the domicile of the defendant.

Politicians/public services: This category refers to any holder of an elected office, as well as individuals who are professionally involved in politics and/or the civil service. Members of the judiciary are not included in this category.

State-owned entities: This includes entities that are state-owned and state-controlled, as well as those that are substantially state-funded.

Public participant: A public participant is any natural or legal person engaged in matters of public interest.

Population: This refers to the data collected for the purpose of this research, which is a sample size of the total number of SLAPP cases filed throughout Europe from 2010 and 2022.

Legal theory: This refers to the legal basis of a SLAPP. SLAPP cases are typically based on defamation but can also concretise on other legal grounds, including torts, labour law, GDPR and privacy law, and injunctions.

Public interest: This report maintains a broad interpretation of the public interest. It includes all that can be related to a shared political, social, economic, environmental, or other, concern, also having regard to the potential or actual impact on the welfare of society or part of it.

Public participation: Any behaviour of a natural or legal person directed at engagement on a matter of public interest through the disclosure, dissemination or promotion to the public in any form of information, findings, ideas, opinions or testimonies, and any preparatory action thereof. This includes the exercise of freedom of expression and information, assembly, association and other rights relevant to participation, such as access to justice.

Their aim and effect being primarily that of dissuading engaged individuals and organisations from freely expressing views on matters of public interest, SLAPP suits frustrate the flow of information which can serve to inform the public and competent national and regional authorities.

Methodology

Data collection for this report followed the same methodology used in the 2022 report, that is through a “snowball sampling” method³. Member organisations of CASE, from a broad range of countries in Europe, provided information on SLAPP cases in their countries as they happened throughout 2022. Occasionally, cases from previous years also emerged, details of which were also provided to the CASE mapping team to input into the SLAPPs database.

For the lawsuits filed between 2010 and 2021, the majority of cases were compiled, assessed, and verified by researchers at the Amsterdam Law Clinics. NGOs, media outlets, journalists, activists, politicians, and others around Europe had helped to contribute information on SLAPP cases filed in 30 European jurisdictions from 2010 to 2021, namely Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Kosovo, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, United Kingdom, and Ukraine.

Based on this data, CASE identified 570 legal cases from across Europe as SLAPPs, as assessed against the indicative qualities described in Figure 1.

³ Snowball sampling refers to a method of chain referral sampling that involves “collecting a sample from a population in which a standard sampling approach is either impossible or prohibitively expensive, for the purpose of studying characteristics of individuals in the population.” See more in: Handcock, M. S. and Gile K. J. (2011). “On the Concept of Snowball Sampling”. *Sociological Methodology*, 41(1), p. 368. Retrieved from: <https://arxiv.org/pdf/1108.0301.pdf>.

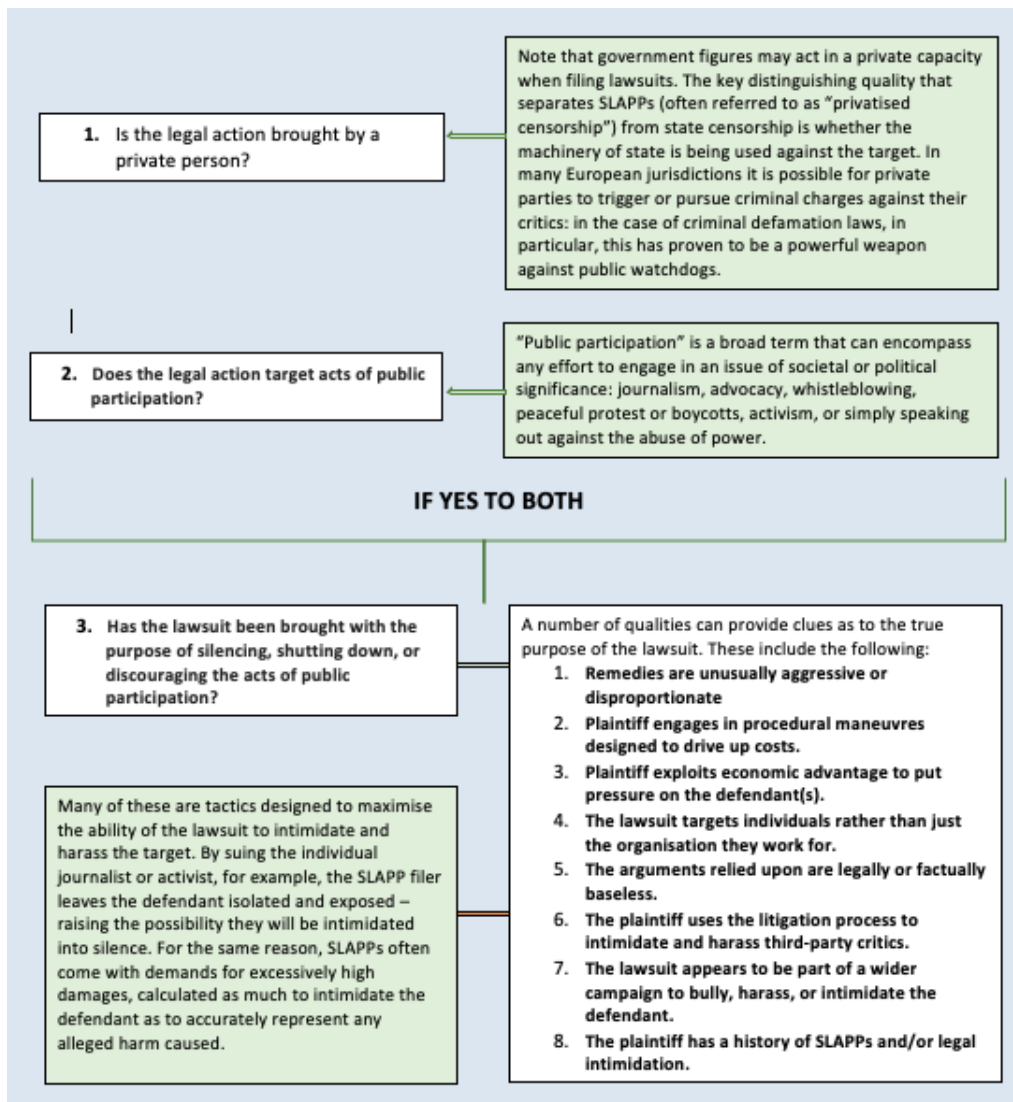


Figure 1 - Identifying a SLAPP flowchart⁴

Following the publication of the 2022 CASE report, through till the end of that year, another 240 cases were collected, that had been filed either in 2022 (157 cases) or in previous years.

Again, by analysing the updated database, trends and patterns continued to solidify and in some instances were altered by the additional data. This was particularly true in the cases of specific countries within which an influx of lawsuits was filed in 2022, such as Croatia, Georgia, and France. These trends and patterns are further explored in the sections that follow.

⁴ <https://www.the-case.eu/slapps/>

Other methods of assessing the data included the following.

- **Assessing publicly-available information.** Research was conducted through the use of online materials, including media and academic articles, court judgements, reports by NGOs and international organisations, and domestic legislation.
- **Emails and interviews.** These were conducted with various CASE members, as well as journalists, academics, lawyers, and other stakeholders.
- **CASE's contact form.** In numerous cases, it was SLAPP targets themselves who approached CASE with information about the lawsuits they are currently faced with, either to reach out for advocacy purposes, or to simply provide their information for mapping purposes.

Limitations

While this data helps to illustrate the nature of SLAPPs in Europe and identify the conditions that give rise to SLAPPs, it cannot fully represent the full scale of the problem for several reasons, including the following.

- Given the sheer quantity of legal threats received by media outlets and other public watchdogs - and the practical difficulties involved in cataloguing these threats - the data gathered for this report only covers court-recorded lawsuits, and does not therefore consider the extent to which the act of issuing an aggressive legal threat can itself shut down acts of public participation (i.e., by causing an immediate retraction).
- Furthermore, any efforts to collect SLAPPs are impeded by the chilling effect such lawsuits create, with many SLAPP victims preferring not to draw attention to their case out of fear of further retaliation or reputational damage.
- In specific countries CASE found that journalists, activists, and/or media outlets are so inundated with lawsuits that compiling information about each case would require resources that the target does not have access to. For this reason, it is impossible to find out the exact number of SLAPP lawsuits, especially since each lawsuit would have to be analysed for specific criteria before classifying it as a SLAPP. This was particularly common in Poland and Croatia.
- In some instances, obtaining information about lawsuits requires complicated and time-consuming tasks, such as obtaining judgements



through Freedom of Information requests, that CASE did not have the capacity to undertake.

Presenting the updated data

1. Number of SLAPP lawsuits around Europe

Following our first report in 2022, SLAPP lawsuits continued to be filed throughout the year, while more lawsuits from previous years were made known to CASE and inputted into the CASE database. From the 570 cases that were analysed in 2022, CASE's database increased to over 820 cases in 2023 – 161 of which were lawsuits filed in 2022, a significant jump compared to the 135 filed in 2021.

Growth

Following the pattern reported last year, throughout 2022 the number of mapped SLAPPs further increased. Meanwhile, the number of lawsuits from previous years also increased, as additional cases were documented.

Cases recorded annually

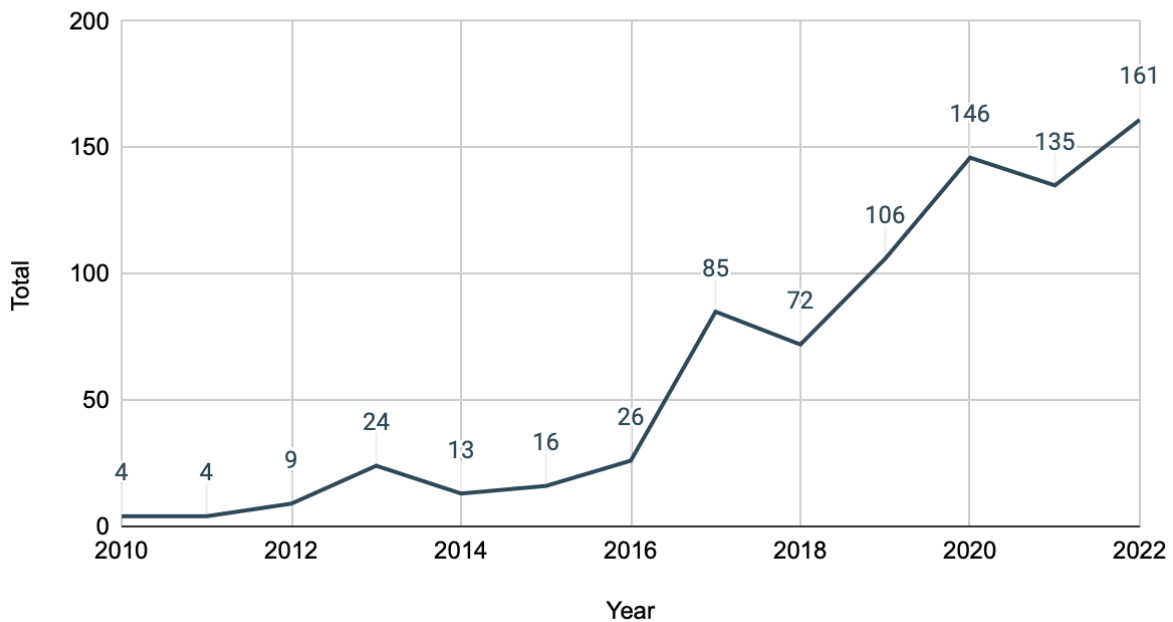


Figure 2 - CASE-recorded SLAPP legal cases from 2010 to 2022

Again, in some European jurisdictions, this was more noticeable than in others, and it is important to note that, due to limitations mentioned previously, in some countries, the number of lawsuits mapped by CASE only scrapes the surface when compared to the actual number of cases filed.

For example in Croatia, over 245 new lawsuits were initiated against journalists⁵ in 2022, according to the data of the Ministry of Justice and Public Administration. However, CASE was unable to independently verify all the cases using its own criteria to determine which are SLAPP lawsuits.

The mapping team at CASE came across a similar situation in Poland where activists – such as women’s rights activist Marta Lempart⁶ – who were facing several lawsuits and therefore did not have the resources to compile the necessary documents required for verification for them.

SLAPPS per country

SLAPPS per country per year

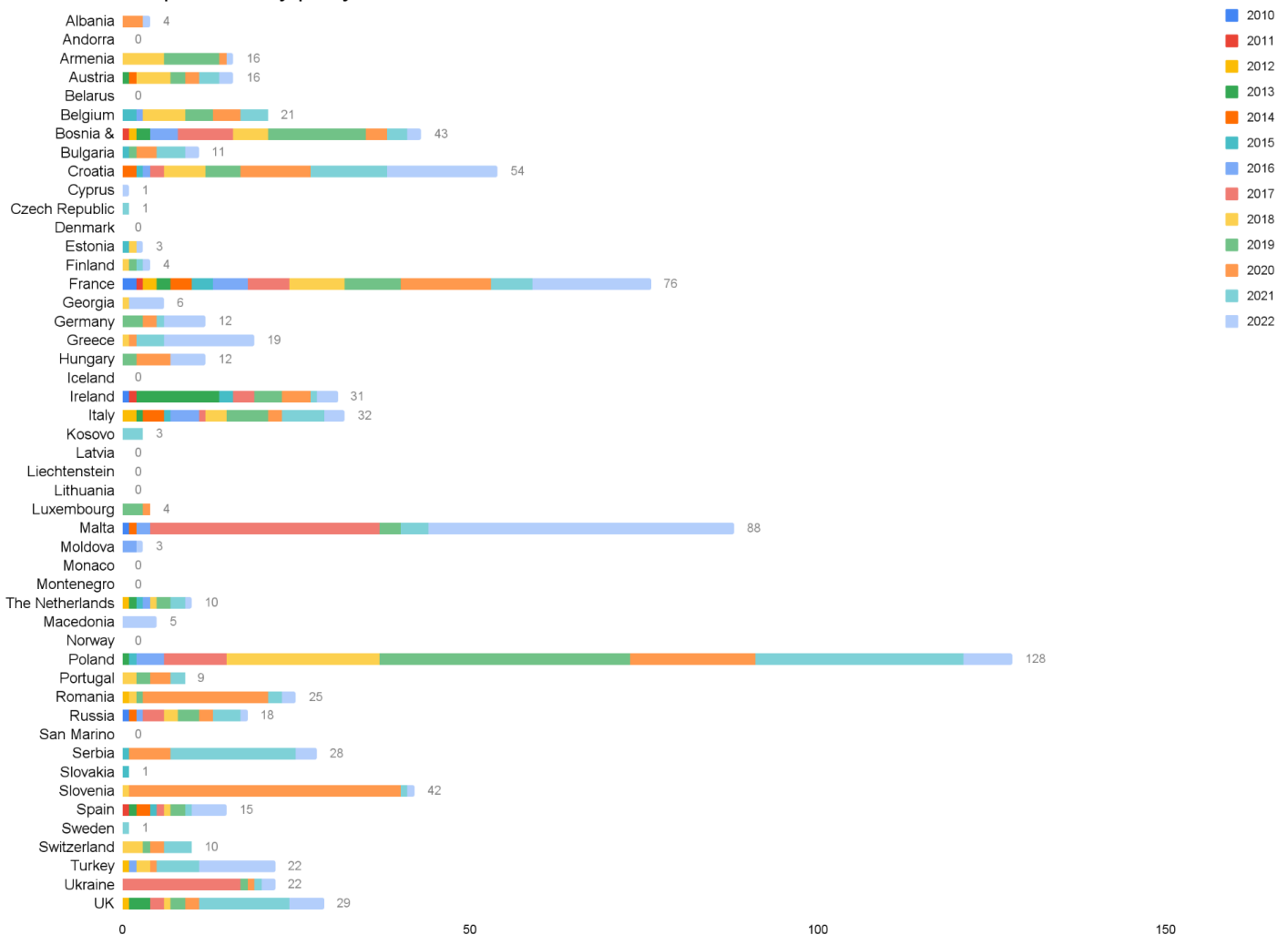


Figure 3 - CASE-recorded SLAPP legal cases per country per year

⁵ <https://www.balkanicaucaso.org/eng/Areas/Croatia/Croatia-at-least-945-ongoing-lawsuits-against-journalists-and-media-outlets-225181>

⁶ <https://europe.ippf.org/media-center/polish-prosecutors-indict-womens-human-rights-defenders-and-plan-go-ahead-another-sham>

In 2022, a notable number of SLAPP lawsuits were mapped in Malta, France, Croatia, Greece, the United Kingdom, Turkey, and Georgia.

Moreover, the figure below illustrates the number of cases recorded per country for every 100,000 people, where Malta's number has increased significantly since the last report with 19.93 cases per 100,000 people, when compared with 8 cases per capita in 2021. This increase is mostly due to 40 Freedom of Information requests filed by the editor of the Maltese online investigative portal The Shift News that were subsequently challenged in court by the government⁷.

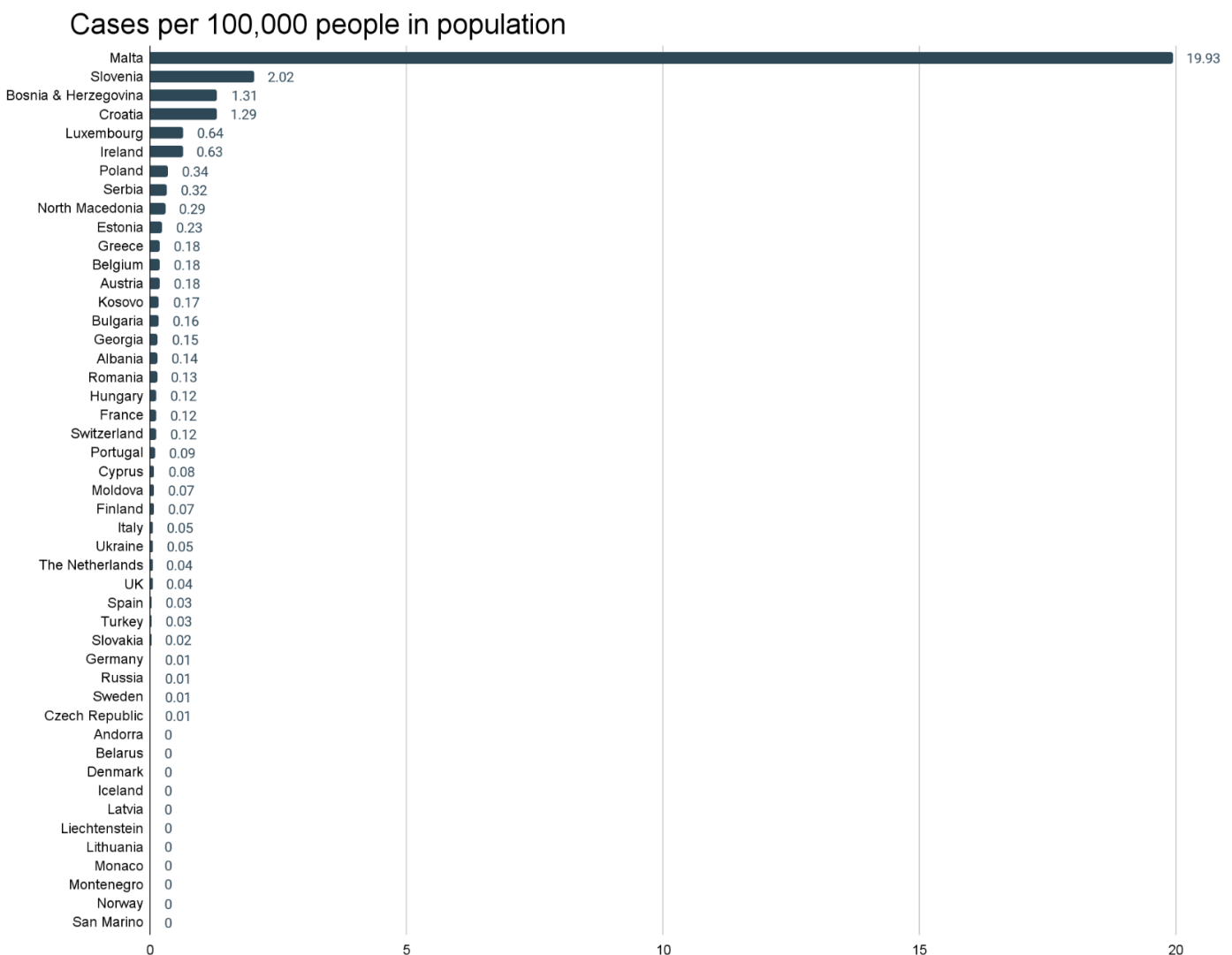


Figure 4 - CASE-recorded SLAPP legal cases per 100,000 people

7

<https://theshiftnews.com/2022/08/08/11-international-ngos-back-the-shift-in-foi-court-battle-we-call-for-these-cases-to-be-immediately-dropped/>

Legal basis

By the end of 2022, the majority of cases filed were civil lawsuits (69.6%), while 20.9% were criminal lawsuits. 6.5% of cases were injunctions.

While the large majority of lawsuits are based on national defamation laws or similar provisions on insult or honour, a number of other legal grounds were relied upon as a vehicle for SLAPPs, as illustrated in Figure 4.

Legal theory

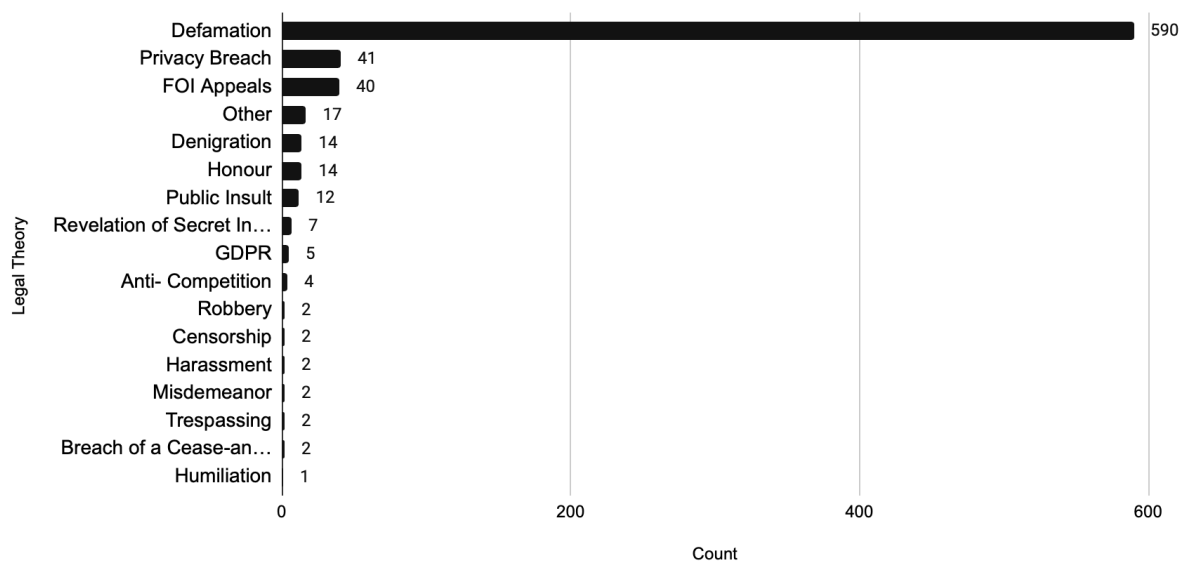


Figure 5: CASE-recorded SLAPP legal cases from 2010 - 2022, legal theories

Geographical spread

In CASE's first report, the data collected covered 29 European countries, namely; Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Kosovo, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, United Kingdom, and Ukraine.

Since then, lawsuits from other countries have been identified, broadening the geographical spread of CASE's analysis while mirroring the pan-European nature of the issue. These countries are **Georgia, North Macedonia, Greece, Cyprus, Moldova, Czech Republic** and **Sweden**. CASE has therefore now identified SLAPP lawsuits in 35 countries across Europe.

2. Cross-border cases

Out of the cases recorded between 2010 till 2022, 9.5% (81)⁸ were cross-border cases on the traditional understanding of the concept, a classification determined by the narrowest possible definition of “cross-border” meaning the plaintiff and the defendant are domiciled in different countries. This reflects the dominance of exclusively-domestic SLAPP cases filed in 2022.

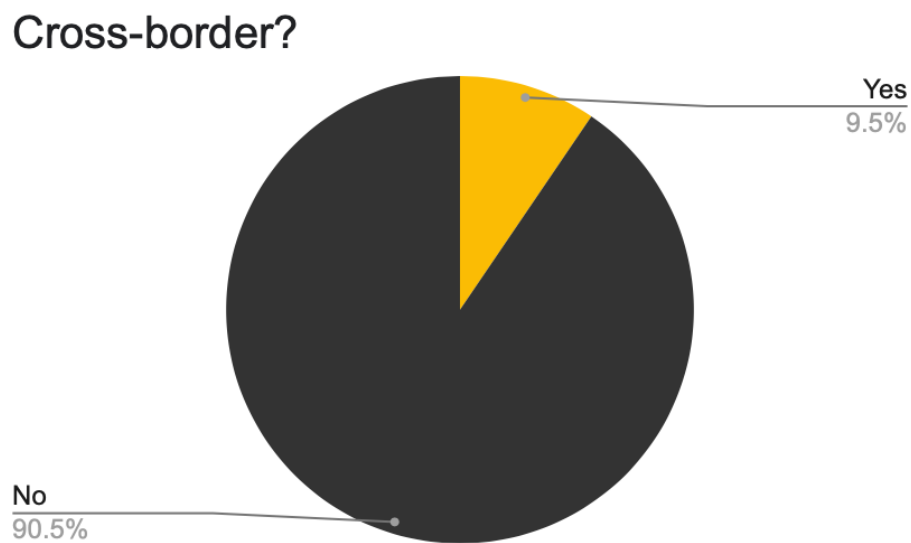


Figure 6: CASE-recorded SLAPP legal cases from 2010 - 2022, cross-border

⁸ A broader definition of “cross-border”, as proposed by the European Commission’s draft Anti-SLAPP Directive, refers to litigation concerning an issue that affects more than one EU Member State. Undertaking a review of documented SLAPP cases according to the broader definition would lead to a much greater number of cases being classified as cross-border. However, this exercise is outside the scope of the current report.

3. Who is the SLAPP target?

As can be seen in Figure 7, the cumulative data gathered shows that journalists in their individual capacity remain the most likely target of a SLAPP, followed by media outlets, editors, activists and NGOs. Other likely defendants include lawyers, academics, politicians, book authors (writers), and publishers.

Status of defendant

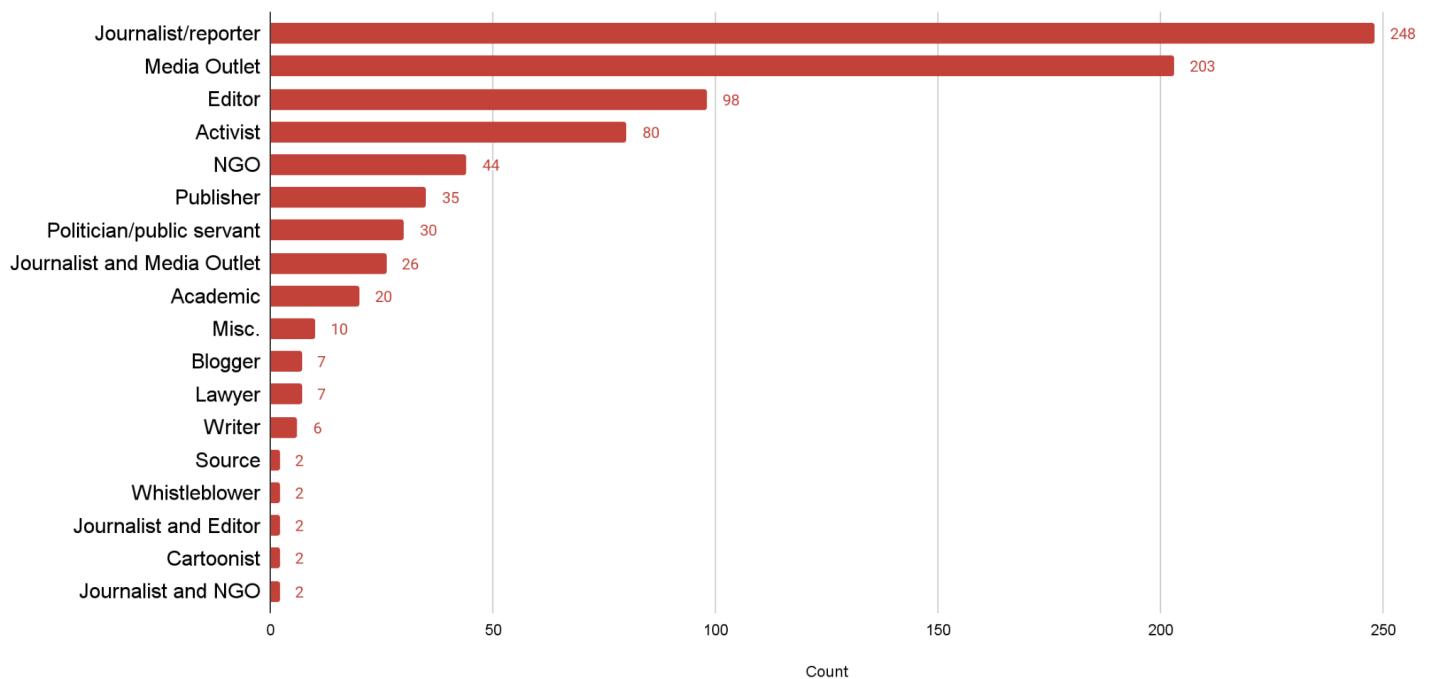


Figure 7: CASE-recorded SLAPP legal cases from 2010 - 2022, status of defendant

In the vast majority of cases, the target remains an individual, as opposed to an organisation. This shows how critical it is that support channels are easily accessible so that individuals facing SLAPP cases receive the necessary support.

Individual or organisation

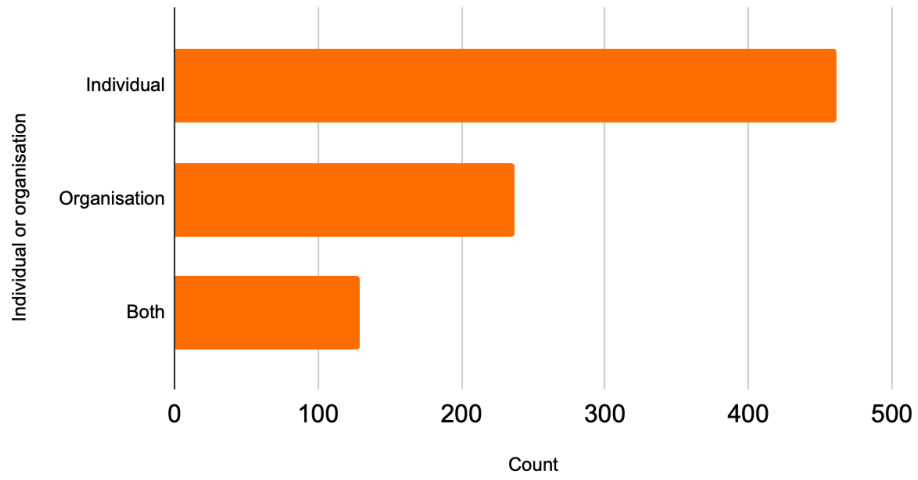


Figure 8: CASE-recorded SLAPP legal cases from 2010 - 2022, Individual or Organisation

4. Who is the SLAPPer?

Throughout 2022, businesses / business persons filed the most lawsuits (39.9%), followed by state-owned entities (26.8%) and politicians (25%). This follows the pattern of previous years. As can be seen in Figure 9, between 2010 till the end of 2022 the most common SLAPP litigants were those in positions of power; namely, businesses and politicians.

Status of plaintiff

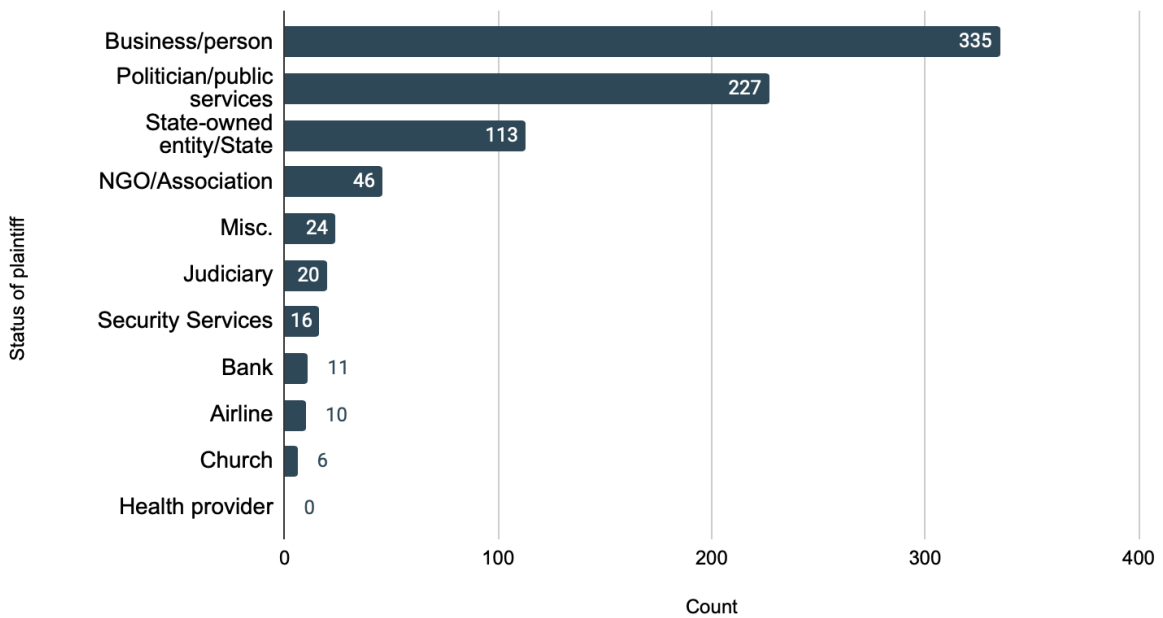


Figure 9: CASE-recorded SLAPP legal cases from 2010 - 2022, status of plaintiff

5. Issues targeted

Acts of public participation on business-related issues were on the receiving end of the most lawsuits filed and mapped in 2022 (33.7%), followed by corruption (23.1%), government (10.1%) and environment (8.3%).

Therefore, as can be seen in Figure 10, corruption, government, business and environmental issues remain the topics that are most frequently SLAPPed.

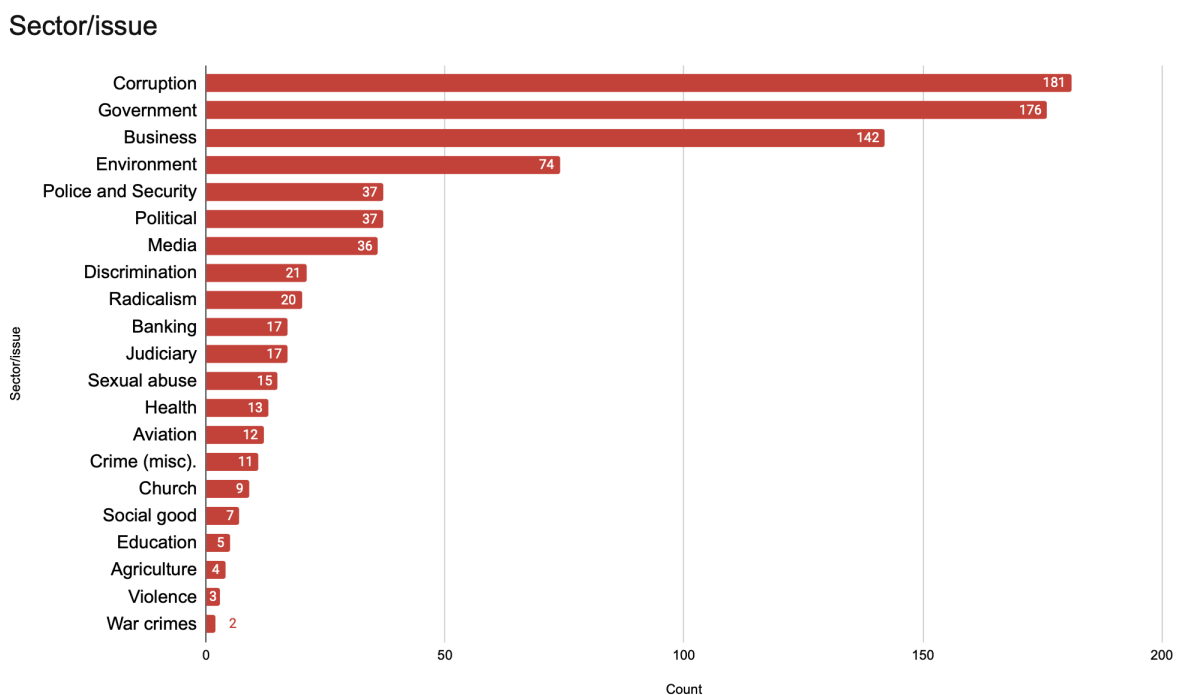


Figure 10: CASE-recorded SLAPP legal cases from 2010 - 2022, sectors/issues

Damages

In 2022, lawsuits costs continued to include some exorbitant demands in value of damages, with the highest totalling some **€17.6 million**⁹, and the lowest a mere €1 as a symbolic gesture. In 8.3% of the cases in 2022, defendants faced criminal repercussions, such as incarceration. The median value of damages claimed was **€15,150**, and the average **€360,659**.

⁹

<https://www.rcmediafreedom.eu/News/Spain-Energy-company-launches-17.6-million-SLAPP-lawsuit-against-El-C onfidencial>

Even though the chilling effect of a lawsuit increases the more exorbitant the value of damages, the latter is not the only factor that contributes to such a stifling effect. Cost orders can sometimes be a bigger threat in some jurisdictions than damages, e.g. the UK. SLAPP litigants will often take advantage of this factor, hence the fact that claiming 1 euro in damages does not itself mean the case is not a SLAPP. A recent example of this is the SLAPP case against Carole Cadwalladr who, in July 2019, was targeted by British businessman and political donor, Arron Banks for a TED Talk in which Cadwalladr briefly questioned the legality of Banks' donation to the Brexit campaign. In May 2023, Cadwalladr was ordered to pay 60% (interim figure of £400,000) of Banks' legal costs and a third of his legal costs for the hearing at the Court of Appeal after he partially won an appeal of the verdict at the UK Court of Appeal.¹⁰

Aspects such as the number of cases filed, legal expenses, and time spent on the case, must also be considered in terms of costs.

¹⁰ <https://www.womeninjournalism.org/timelines-all/carole-cadwalladr>

6. Conclusion

The findings of CASE's research presented in this report indicate that year after year, SLAPPs are increasingly a worrying threat to democracy across Europe. On a rolling basis, CASE is identifying an increasing number of vexatious lawsuits that shut down acts of participation, and the list of countries around Europe that are home to such lawsuits is growing.

The findings of this report show that in 8.3% of the cases in 2022, defendants faced criminal repercussions, such as incarceration. Meanwhile, the median value of damages claimed was **€15,150**, and the average **€360,659**.

Europe's SLAPP problem is broader than the extent CASE has been able to identify and report through its mapping initiatives so far. It is important to keep in mind that much information about lawsuits is not accessible to CASE, and that, in many instances, victims of SLAPP lawsuits choose to not report their situation for fear of retaliation.

In 2022, CASE mapped SLAPP lawsuits from Georgia, North Macedonia, Greece, Cyprus, Moldova, Czech Republic and Sweden – countries that were not mentioned in the first CASE report. In Georgia and Greece specifically, not only have cases now been identified, but the large number of identified cases in both countries positions them high on CASE's rankings.

The findings of this report show that the main category of SLAPP defendants is journalists, and that journalists are targeted personally, rather than the organisations they work for or represent. The strategy of targeting individuals as opposed to organisations aggravates concerns over defendants' vulnerability – financially and psychologically, among other factors.

The fact that media and journalists are the main targets of SLAPPs naturally also raises concern about the increasing threat to press freedom – and, consequently, to democracy – across Europe .

The findings of CASE's current report underscore the importance and urgency of anti-SLAPP protection measures, particularly robust legislation providing a strong safety shield on both national, and, in the case of cross-border SLAPPs, international levels.