

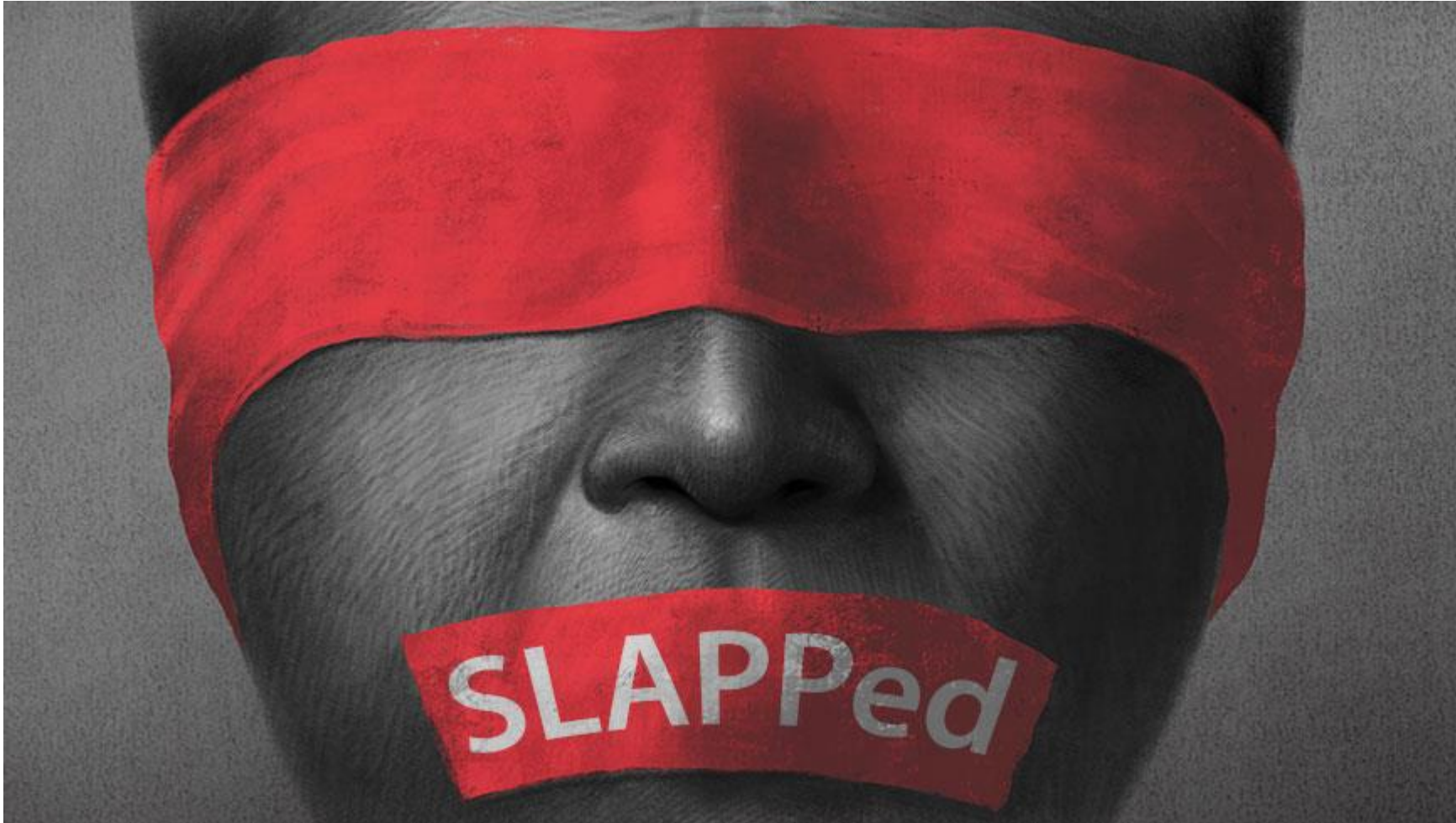
# PROTECTION OF PERSONS FROM SLAPP CLAIMS

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# SEMINAR - PROTECTION FROM SLAPP CLAIMS



# WHAT ARE SLAPP LAWSUITS

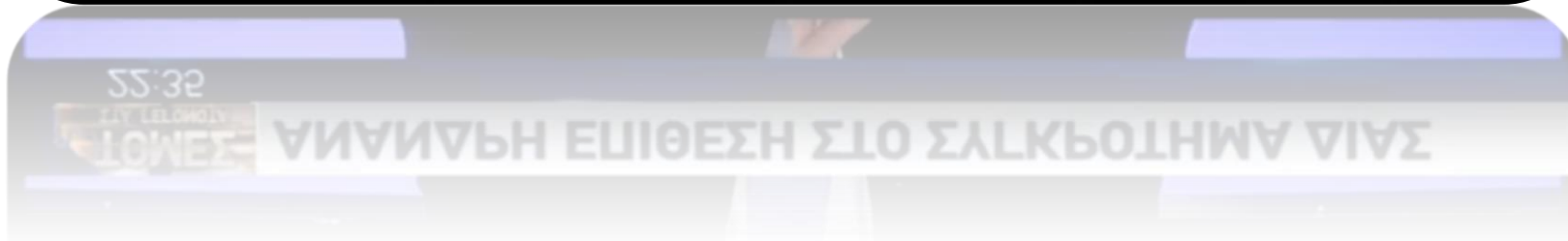
- SLAPP - "Strategic Lawsuits Against Public Participation"
- These are groundless legal proceedings filed by persons who aim to censor, intimidate and silence their critics until they stop criticising or expressing their opposition.
- Usually this objective is achieved by filing lawsuits that result in the Defendants incurring legal fees something which exerts pressure on them.

# SLAPP INCIDENTS IN CYPRUS

- There are no known examples of cases that can be classified as SLAPP
- Possibly because of the relatively low legal and court costs
- From time to time, however, cases have been made public where there has been an attempt to exert undue pressure on journalists in order to silence them - especially in the occupied territories of the Republic of Cyprus.

# ATTACK ON DIAS







# TURKISH CYPRIOT JOURNALIST ALI KISMIR







ΑΛΙ ΚΙΣΜΙΡ  
Δημοσιογράφος

προσπαθήσα να περάσω  
είπαν ότι απαγορεύεται

20:05



ΤΟ ΤΗΛΕΦΩΝΗΜΑ ΜΕ ΤΟΝ ΝΙΚΟ ΧΡΙΣΤ



Kıbrıs Ne Haber



# ATTACK AT THE OFFICES OF MC DIGITAL



# SURVEILLANCE ALLEGATIONS BY MAKARIOS DROUSIOTIS





LegalMatters Podcast. Μακάριος Δρουσιώτης



# PROSECUTION OF SENER LEVENT

8 Aralık 2017 Cuma

9 AFRİKA

## Tünel

### ALINTI

Erdogan şöyle diyor: "Ser Türkiye'nin operasyonlarına engel olmak için teröristleri koruma altına alan Amerika'nın müteakiklerini nasıl kabul edeceğiz? DEAŞ bahanesiyle yürütülen bu sinsi oyunun gizlenicek tarafı kalmamıştır. Biz Amerika'da çarmıha gemmeye çalışanların burunumuzun dibinde terör devleti kurma girişimini eli kolu bağlı, seyredecek değiliz." Amerika'nın terör örgütünü kolladığını söylüyor.

Erdogan "Amerika bu silahları nerede kullanacak" diye soruyor ve ekliyor: "DEAŞ diye bir şey mi kaldı ortada? Suriye'ye, Irak'a kurşun mi kullanacak? Ya İran ya Türkiye, sukays Rusya". Terör örgütü üzerinden

Türkiye'ye yönelik bir tehditten söz ediyor Erdogan. On gün önce Trump silah göndermeyi durduracağını söylüyor ancak, Pentagon Trump'ın verdiği sözün tekzip ediyor. Erdogan bu nedenle "Amerika'nın 28 jübati" diyimin kullanıyor, Amerika demin devleti Başkanı sallamıyor, anlamında. Erdogan Amerika ile ilgili kopartıyor. Daha ne söyleyin.

Yalçın DOĞAN (T24)

### DİPNOT

Reza Zarrab'ın sahip olduğu ARE Havacılık şirketine ait Jete İstanbul Atatürk Havalimanı'nda el konuldu. Chal-

### ARŞİV



TARİH 19 KASIM 2016

Surulan yasa öngörüsünde, tecavüzün kurbanı ile evlenmesi halinde tecavüzün cezası emeleniyor... Eğer bu evlilik tecavüzün kurbanı ile biterse, hüküm ancak o zaman uygulanıyor... Tecavüze uğrayan kurban bir de sapığı ile evlenmek zorunda bırakılıyor...

### Gözden kaçmayanlar...

#### BİTMEYEN ÇİLE...

Geçen akşam, 33 erkek, 1 kadın ve 4 çocuktan oluşan Suriyeli göçmenler bir gemiyle geldikleri Kıbrıs'ın Pırgo sahilinde tespit edildiler ve sorgulanmak amacıyla Poliy'e götürüldüler. Haber Rum basınından... Habere göre, gemiyi kullanan kişi olduğuna inanılan 37 yaşındaki bir Suriyeli tutuklandı, diğerleri Kocikotimithia'da bulunan misafirhaneye götürüldü. BOP çerçevesinde insanlara yapılabilecek bir kısım bunlar. Ortadoğu'nun bitmeyen çilesi...

### INCİR ÇEKİRDEĞİ

"Kudüs müslümanların kırmızı çizgisi."

## Posta... Posta... Posta...

### "Biz utanmıyoruz ama, siz utanmalısınız... Utancınızda siz boğulun..."

Hürriyet'teki köşesinde Murat Yekin her zamanki Oktay Ekşi üslubuyla yazmış. "Zarrab davasında dağ fare doğurabilir" diye uyarıyor.

Uyarı, bu dava ile AKP iktidarı ve Erdoğan arasında bağ kurulacağını düşünen muhaliflere.

Tabii bulunduğu konum gereği (Kolay değil, böyle bir dönemde hala Hürriyet'teki görevine devam ediyor) bu davayı tümten reddetmiyor. "Bazı sonuçları olabilir bu davanın" diyerek muhalif kesime de çaktırmadan bir selam gönderiyor.

"Muratgiller" gazeteciliğinin rüçyesi işte bu. Ne yazık ki, onun gibilerin sayısı hiç de az değil.

Hapiste ki gazetecilerin bir bölümü arkadaşları olduğu için arada onların hakazı yere hapsetlere atıldığını söyleyebiliyor. Ama iş, bu arkadaşlarımızın için ve kim tarafından zindanlara tıkıldığı meselesine gelince, üslubun öteki tarafı çıkıyor ortaya.

"Erdoğan'ın çevresi yanlış" yazıları dökülüyor. Her yazısında Saray'ın mesajlarını satırları arasında serpiştiriyor. Olmadı, Ankara'nın koidoolarında dillendirilen söylentilere dayandırıyor söyleyeceklerini. Saray'dan eleştiri gelirse müstemelen, "Bu benim düşüncem değil" diyor.

Bazen görüştüğü derin gırtlaklardan aldığı bilgileri bizimle paylaşmak lütufunda bulunuyor.

Bir gün eleştiri dozunu kaçırca critesi gün onu gayet güzel telafi ediyor.

İşte Zarrab davası ile ilgili yazısı böyle bir telafi yazısı.

"Ümutlarını ABD'deki Zarrab davasına bağlayanlar varsa, bana kaza-aktır ama bu davada dağın fare doğurması ihtimaline hazırlıklı olmalarında yarar var" diyor.

Erdoğan'la Zarrab arasındaki

### Yunan gözüyle...



İngilizlerin kanatlanmaya ihtiyacı olduğunu ileri sürüyor.

Oysa ki ABD'deki yargı sistemi, Türkiye'dekinden farklı. Savcı ile anlaşma ve itiraf denilen sistemde sanık olmaktan çıkarılan tanığın doğru söylediği kabul ediliyor. Zarrab'ın dinlenece kayıtlarını doğrulamasa, bu

dinlemelerin yasal kanıt olması anlamına geliyor.

Bir başka yazısında da Murat, "Zarrab konuştukça biz utanıyoruz. Ne de olsa Türkiye'nin bakanlarıdır, baskılarında, itibarında Amerikan mahkemesinde ortalığı dökülen." Biz utanmıyoruz ama doğru, siz utanmalısınız.

# HOW TO DEAL WITH SLAPP CASES

- What is the way to deal with SLAPP lawsuits given that they are manifestly unfounded and abusive proceedings?
- Reference will first be made to national law and to the existing mechanisms for dealing with such proceedings.
- Furthermore, the proposed Directive of the European Commission ("**Directive**") which aims to protect litigants from such proceedings will be analysed.

# EXISTING MECHANISMS FOR DEALING WITH SLAPP CASES

- The power of the Cyprus Courts to prevent abusive proceedings has been recognised in a number of Supreme Court judgments.
- Of particular importance is the judgment in the case of **the Director of Prisons v Gennaro Perrella (1995) 1 AD 217** which has been cited in other Supreme Court judgments.
- Therefore, if a court process is abusive, the Court may set it aside or order its stay.



# EXISTING MECHANISMS FOR DEALING WITH SLAPP CASES (continued)

- **Order 27 Rule 3** of the Rules of Civil Procedure is also relevant which provides the following:

*"The Court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just."*

- If it is therefore shown on the basis of the Statement of Claim that the claim is frivolous or vexatious or that no reasonable cause of action is disclosed, the Court may order that the claim is dismissed or stayed.

# DISADVANTAGES OF EXISTING MECHANISMS

- Although civil procedure rules provide protection to Defendants who face manifestly unfounded claims, there are nevertheless limitations:
  - 1) According to the case law, the striking out of an action or pleading is an exceptional measure which must be exercised sparingly
  - 2) The pleading is objectively assessed on the basis of its content, irrespective of the evidence which supports it (**In Re Pelmaco Development Ltd (1991) 1 A.A.D. 246**)

# NEW CIVIL PROCEDURE RULES

- On 1/09/2023, the new civil procedure rules will enter into force, replacing the existing rules.
- Under the new rules (**Part 24**) the Court will have the power to issue summary judgment if it considers that the Claimant has no real prospect of success on the claim.
- The Court will therefore assess the evidence and will not be limited to the Statement of Claim.



# Proposed EU Directive.



- In April 2022, the European Union published a proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)
- The Directive establishes procedural safeguards which aim to prevent and limit SLAPP actions.

# THE NEED FOR A DIRECTIVE

- The Directive establishes a common understanding in all EU Member States on the definition of SLAPP claims.
- It also establishes a common legislative framework for dealing with SLAPP claims.

# Scope of the Directive

- It applies exclusively to civil cases with cross-border implications. **(Article 1)**
- A case is considered to have cross-border implications unless the Claimant and the Defendant are domiciled in the same Member State as the court hearing the case. **(Article 4(1))**
- Regardless of the residence of the parties, the case is also considered to have cross-border implications if:
  - (a) the act in respect of which the action is initiated is relevant to more than one Member State; or
  - (b) the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in other Member States. **(Article 4(2))**

# SUBJECT MATTER OF THE DIRECTIVE

- The Directive provides protection to Defendants from "*abusive court proceedings against public participation*". These are court proceedings:
  - i. which are initiated in order to discourage "public participation", i.e. the exercise of the right to freedom of expression and information on matters of public interest.
  - ii. are fully or partly unfounded and their main purpose is to prevent or restrict public participation.

Indications of this purpose may be:

- (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof;
- (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- c) intimidation, harassment or threats on the part of the claimant or his representatives.

# DISMISSAL OF MANIFESTLY UNFOUNDED CLAIMS AT A PRELIMINARY STAGE

- Courts are to be given the power to dismiss, at a preliminary stage, in full or in part, court proceedings against public participation as manifestly unfounded. **(Article 9)**
- If the Defendant applies for an early dismissal, then the action is stayed until a final decision on that application is issued. **(Article 10)**
- The Court should consider the application for dismissal as soon as possible. **(Article 11)**
- The burden of proof that the claim is not manifestly unfounded lies on the Claimant. **(Article 12)**



# REMEDIES AGAINST ABUSIVE COURT PROCEEDINGS

- A Claimant who brings an abusive legal action to discourage public participation may be ordered to pay all costs, including all legal representation costs incurred by the defendant, unless such costs are excessive. **(Article 14)**
- A person who has suffered harm as a result of abusive court proceedings against public participation may claim and obtain full compensation for that harm. **(Article 15)**
- The courts seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive sanctions on the party that initiated the proceedings. **(Article 16)**
- Any subsequent amendments to the claims or the pleadings made by the claimant, including the discontinuance of the proceedings, shall not affect the possibility for the court seized of the matter to consider the court proceedings abusive and to impose the abovementioned remedies. **(Article 6)**

# PROTECTION AGAINST JUDGMENTS ISSUED IN THIRD COUNTRIES

- It is ensured that the *recognition and enforcement of a judgment issued in a third country is refused as contrary to public policy if the proceedings would have been manifestly unfounded or abusive if they had been brought before the courts of the Member State where recognition or enforcement is sought (Article 17)*
- In case abusive proceedings are brought before a court of a third country against a natural or legal person domiciled in a Member State, that person may seek, in the courts of the place where he is domiciled, compensation for the damages and costs incurred in connection with the proceedings before the court of the third country **(Article 18)**.

# SECURITY

- In legal proceedings brought against public participation, the court seised has the power to require the claimant to provide security for procedural costs and possible damages if it considers it appropriate in view of presence of elements indicating abusive court proceedings.  
**(Article 8)**

# IMPLEMENTATION OF THE DIRECTIVE IN CYPRUS

- The contribution of the Directive to the legal order in Cyprus will be an important step in the fight against SLAPP lawsuits.
- Since it is a Directive, it is up to each country to adopt legislation to comply with the Directive.
- The European Commission has also adopted Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings.



Thank you