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## The Scope of Judicial Discretion when Considering the Admissibility of Claims Filed against Gender-Based Violence Survivors

### ABSTRACT

Strategic Lawsuits Against Public Participation (SLAPP) represent an increasingly prevalent mechanism for constraining the freedom of expression of gender-based violence survivors. This study argues that defamation lawsuits filed against survivors constitute continued psychological and economic violence under Georgian law, functioning as instruments of intimidation and manipulation. Drawing upon European Court of Human Rights jurisprudence – particularly *Ismayilova v. Azerbaijan* regarding states' obligations to ensure safe environments for public participation – the analysis examines how SLAPP litigation intersects with Georgian procedural frameworks.

Employing hermeneutical and comparative legal methodologies, the study analyses Georgian judicial practice alongside anti-SLAPP mechanisms in California (Code of Civil Procedure para. 425.16) and Canada (Courts of Justice Act para. 137.1). The research demonstrates that Georgian legislation provides adequate foundation for protecting survivors' expression rights through Article 5(2) of the Law on Freedom of Speech and Expression, which affords defendants procedural opportunity to petition for dismissal at the preparatory stage. Analysis of Tbilisi City Court and Supreme Court decisions reveals that the fundamental challenge lies in courts' formalistic interpretation – particularly restrictive application of courtroom speech privilege failing to protect statements submitted to law enforcement or the Public Defender's Office.

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The paper acknowledges competing constitutional values including due process rights, presumption of innocence, and legitimate reputational interests. Nevertheless, it recommends that courts reallocate evidentiary burdens according to the *in dubio pro libertate* principle and adopt progressive interpretations of courtroom speech privilege encompassing statements submitted to competent authorities.

**Keywords:** SLAPP Litigation; Courtroom Speech Privilege; Defamation; Admissibility Stage; Freedom of Expression

## I. Introduction

Gender-based violence continues to constitute a significant global challenge, and Georgia is no exception.<sup>1</sup> Yet contemporary research indicates that the reporting rate among victims of violence remains low,<sup>2</sup> a trend often linked to social and institutional barriers,<sup>3</sup> including a relatively new phenomenon – the use of defamation lawsuits against women who publicly speak about violence perpetrated against them.

This practice, known as SLAPP (Strategic Lawsuit Against Public Participation), represents an attempt to silence women by restricting their freedom of expression, which, in turn, negatively impacts the women's movement in general.<sup>4</sup> A defamation lawsuit filed against a woman who has experienced violence may be considered a form of psychological<sup>5</sup> or economic<sup>6</sup> violence, as it effectively functions as a means of intimidation, humiliation, and psychological manipulation.<sup>7</sup> The weaponization of defamation lawsuits against violence survivors represents a manifestation of broader SLAPP dynamics that extend beyond gender-based violence cases. SLAPP litigation operates across multiple spheres – corporate, political, and governmental – as a mechanism to suppress inconvenient speech and public participation.<sup>8</sup> While this analysis focuses

<sup>1</sup> See: Kirtava and Okruashvili, 2024; World Health Organization, 2021; Council of Europe, 2022.

<sup>2</sup> Global Database on Violence against Women, <<https://evaw-global-database.unwomen.org/>> [06.01.2025].

<sup>3</sup> Mala and Weldon, 2018, 50.

<sup>4</sup> Leader, 2019, 2.

<sup>5</sup> Law of Georgia “On Prevention of Violence Against Women and/or Domestic Violence, Protection and Assistance of Victims of Violence”, Art. 4(b).

<sup>6</sup> Ibid., Art. 4(e).

<sup>7</sup> Lucindo, 2022, 597.

<sup>8</sup> Borg-Barthet, 2024, 841.

specifically on cases involving gender-based violence survivors, it is essential to recognize that anti-SLAPP protections serve multiple constitutional values, and address systemic power imbalances that transcend any single category of targeted speech.

Georgian legislation protects both freedom of expression<sup>9</sup> and a person's right to defend their reputation.<sup>10</sup> However, balancing these two rights becomes particularly difficult when it concerns statements made by women who have experienced violence.<sup>11</sup>

During the course of one of the most popular women's movements in recent times, the #MeToo campaign,<sup>12</sup> various legal challenges became evident in terms of realizing freedom of expression.<sup>13</sup> Women who have experienced violence encounter numerous challenges when attempting to speak publicly about experiences of gender-based violence, with particularly significant concerns being the threat of defamation lawsuits and the problem of shifting the burden of proof onto the victim.<sup>14</sup>

A 2024 study revealed that the low rate at which violence survivors approach relevant authorities remains a significant challenge. Among other factors, sexist attitudes prevalent in society were identified as a contributing cause to this phenomenon.<sup>15</sup> Promoting public discourse about gender-based violence is an effective means of reducing stereotypes,<sup>16</sup> with the sharing of personal experiences directly by women who have survived violence being particularly important.<sup>17</sup> In turn, speaking openly about violence and naming perpetrators serves as a means of warning others, which indeed constitutes a public interest.<sup>18</sup>

The research examines the scope of judicial discretion in the admissibility phase of lawsuits filed against women who have experienced violence. The study aims to develop recommendations on how courts should exercise their discretionary authority when identifying SLAPP lawsuits, in order to prevent secondary victimization of violence survivors and unjustified restrictions on freedom of expression, while promoting both procedural transparency and predictability, as well as implementing

<sup>9</sup> Constitution of Georgia, Art. 17(1); Law of Georgia "On Freedom of Speech and Expression", Art. 3(1).

<sup>10</sup> Civil Code of Georgia, Art. 18(2).

<sup>11</sup> See: ბახტაძე, 2024, 85-86 [bakht'adze, 2024, 85-86].

<sup>12</sup> Me too, <<https://metoomvmt.org/>> [06.01.2025].

<sup>13</sup> Ligon, 2020, 962.

<sup>14</sup> Andrews, 2022, 127.

<sup>15</sup> Kirtava and Okruashvili, 2024, 13.

<sup>16</sup> The World Bank, 2017, 76; Gogolashvili, 2023, 11.

<sup>17</sup> Ni Ma, 2024, 7741.

<sup>18</sup> Doty, 2020, 64.

gender-sensitive approaches in SLAPP lawsuit proceedings. This analysis builds upon established international scholarship recognizing SLAPP litigation as continued victimization, with particular attention paid to applications within Georgian legal frameworks. While the conceptual linkage between strategic litigation and ongoing abuse has been explored in other jurisdictions, the specific intersection with Georgian procedural law and judicial discretion presents unique interpretive challenges. The paper employs hermeneutical research methodology to analyze Georgian legislation and judicial practice regarding the exercise of court discretion at the admissibility stage. Using comparative legal methodology, it examines legal approaches to the scope of judicial discretionary authority. The research analyzes how courts should balance interests between freedom of expression and protection of reputation at the admissibility stage, particularly in cases involving women who have experienced violence.

The work is structured in four main sections. The first and final sections are dedicated to the introduction and conclusion, respectively. The second section consists of two subsections: the first examining the identification of SLAPP lawsuits as a form of ongoing violence, and the second exploring the court's role in preventing secondary victimization. The third section, through three subsections, analyzes judicial freedom of speech, standards for distributing the burden of proof, and the practical application of gender-sensitive and victim-centered approaches.

## **II. Contextualizing SLAPP Lawsuits at the Admissibility Stage**

Strategic Lawsuits Against Public Participation (SLAPP) are defined as legal actions aimed at restricting an individual's right to participate in public discourse through litigation filed not with genuine expectation of success, but rather to intimidate or punish the defendant.<sup>19</sup> The integrity of public discourse is fundamentally compromised when intimidation becomes a normalized or acceptable tactic.<sup>20</sup> SLAPP lawsuits are problematic not only because they are unfounded and unsubstantiated, but also because they restrict public participation and threaten free communication. Although SLAPP suits manifest in various forms, defamation represents the most prevalent allegation within these actions.<sup>21</sup>

<sup>19</sup> Ligon, 2020, 966.

<sup>20</sup> Braun, 1999, 972.

<sup>21</sup> Lucindo, 2022, 590-591.

SLAPP lawsuits impede the constitutional right of the public to effect political change.<sup>22</sup> For cases involving defamation claims against women who have experienced violence, assessing the genuine purpose of the litigation at the initial admissibility stage is essential for reaching fair and objective decisions. This assessment becomes particularly critical considering that survivors are frequently compelled to undergo protracted and costly evidence-gathering processes, encompassing numerous compulsory procedures, including the obligation to testify and provide explanations on case-related matters against their will.<sup>23</sup> This procedural burden creates additional trauma for survivors, and may effectively silence legitimate testimony about abuse, undermining both individual justice and broader social accountability mechanisms. However, the legal response to strategic litigation involves more than a simple binary between freedom of expression and reputation protection. Anti-SLAPP mechanisms must balance multiple competing values: due process rights, equal access to courts, prevention of secondary victimization, protection of legitimate defamation claims, preservation of judicial resources, and maintenance of public discourse integrity.<sup>24</sup> This multi-dimensional framework requires nuanced judicial analysis that considers the interconnected nature of these constitutional and procedural principles.

### **1. Identifying SLAPP Lawsuits as Continued Violence at the Admissibility Stage**

Defamation lawsuits filed against women who have experienced violence must necessarily be examined through a gender-sensitive approach.<sup>25</sup> This approach primarily entails activating anti-SLAPP mechanisms at the initial admissibility stage of litigation. Such early intervention is critical because defamation lawsuits against survivors often function as instruments of continued psychological and economic violence, strategically deployed to silence legitimate testimony and deplete survivors' financial and emotional resources.<sup>26</sup> In jurisdictions where freedom of expression legislation incorporates anti-SLAPP provisions, additional procedural mechanisms are

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<sup>22</sup> Johnston, 2002-2003, 288.

<sup>23</sup> Ligon, 2020, 965.

<sup>24</sup> Borg-Barthet and Farrington, 2024, 848.

<sup>25</sup> Convention of Council of Europe "On Preventing and Combating Violence against Women and Domestic Violence", Art. 12 (1).

<sup>26</sup> George, 2025, 294.

established to reject defamation lawsuits at the admissibility stage.<sup>27</sup> Such regulatory frameworks for protecting freedom of expression provide a defensive strategy against defamation claims, specifically enabling the dismissal of lawsuits that interfere with constitutional free speech rights and aim to harass those who exercised their freedom of expression, where the plaintiff's genuine objective is merely to exhaust the defendant's energy and resources.<sup>28</sup> Anti-SLAPP regulations equip defendants with the opportunity to file special motions to dismiss unfounded lawsuits in cases where the sole purpose of the litigation is to silence the defendant.<sup>29</sup>

Evidence of gender-based violence experiences may be substantiated through various formal channels, including appeals to law enforcement authorities that result in criminal proceedings or restraining orders,<sup>30</sup> court-issued protective orders,<sup>31</sup> or even recommendations establishing instances of sexual harassment or gender discrimination issued by the Public Defender.<sup>32</sup>

The judicial identification of the genuine objectives behind lawsuits filed against women who have experienced violence represents a practical realization of the *ubi jus ibi remedium* principle (where there is a right, there is a remedy).<sup>33</sup> In cases involving restrictions on the freedom of expression of women who have experienced violence, national legislation establishes a burden of proof distribution standard, whereby the proponent of the restriction (the plaintiff) must substantiate their claim.<sup>34</sup> The plaintiff must present evidence that the defendant directly disseminated false information about them.<sup>35</sup> While such distribution of the burden of proof creates a standard for fair and objective consideration of defamation cases that have already been admitted to proceedings, it does not provide a legal basis for identifying and rejecting SLAPP lawsuits at the admissibility stage. The current judicial practice in Georgia demonstrates a critical gap: at the admissibility stage of lawsuits involving survivors of vio-

<sup>27</sup> Code of Civil Procedure of California, Section 425.16.

<sup>28</sup> Weisbrot, 2020, 356-357.

<sup>29</sup> ბახტაძე, 2024, 90 [bakht'adze, 2024, 90].

<sup>30</sup> Law of Georgia "On Prevention of Violence against Women and/or Domestic Violence, Protection and Support of Victims of Violence", Art. 10 (1).

<sup>31</sup> Ibid.

<sup>32</sup> Law of Georgia "On Elimination of All Forms of Discrimination", Art. 6.

<sup>33</sup> ბახტაძე, 2024, 54 [bakht'adze, 2024, 54].

<sup>34</sup> Law of Georgia "On Freedom of Speech and Expression", Art. 7(6).

<sup>35</sup> Decision of the Civil Chamber of the Supreme Court of Georgia of February 20, 2012, №as-1278-1298-2011.

lence, courts do not evaluate whether a complaint constitutes a SLAPP action, as the court has not deliberated on this issue during the admission of cases to date.<sup>36</sup>

Consequently, SLAPP lawsuits present a significant challenge to the realization of the right to participate in public discourse, particularly for women who have experienced violence. Despite the existence of anti-SLAPP mechanisms and the recognized need for gender-sensitive approaches, Georgian judicial practice does not identify SLAPP lawsuits at the admissibility stage. This complicates the protection of women who have experienced violence from continued psychological and economic abuse, perpetrated through defamation lawsuits. The established uniform practice confirms the necessity for a methodological shift to ensure effective filtration of SLAPP lawsuits at early stages of judicial proceedings.

## **2. The Significance of Judicial Discretion in Preventing Secondary Victimization**

Secondary victimization refers to the victimization process that occurs not as a direct result of criminal conduct, but rather due to the attitudes and responses directed toward victims by institutions and individuals.<sup>37</sup> This phenomenon represents a particularly pernicious form of non-primary victimization, wherein claims regarding the victim's personal character are asserted,<sup>38</sup> constituting the fundamental basis of SLAPP lawsuits filed against them. Such procedural victimization operates as a sophisticated form of continued abuse that exploits legal mechanisms to perpetuate power imbalances and control dynamics.

The protection of gender-based violence survivors' rights during judicial proceedings constitutes an integral component of their right to privacy and dignity.<sup>39</sup> The European Court of Human Rights has emphasized in numerous decisions the necessity of safeguarding against secondary victimization and stigmatization during legal proceedings.<sup>40</sup> This jurisprudential consensus highlights the critical function of judicial discretion in creating procedural environments that recognize the unique

<sup>36</sup> Decision of the Civil Cases Board of Tbilisi City Court of November 21, 2023, №2/18681-22; Decision of the Civil Chamber of Tbilisi Court of Appeals of December 9, 2020, №2b/318-20.

<sup>37</sup> Handbook on Justice for Victims, 1999, 9.

<sup>38</sup> შალიკაშვილი, თანდილაშვილი და ბახტაძე, 2023, 34 [shalik'ashvili, tandilashvili da bakht'adze, 2023, 34].

<sup>39</sup> J.L. v. Italy [ECtHR], App. no. 5671/16, 27 August 2021, para. 119.

<sup>40</sup> Ibid., paras. 139-141; C. v. Romania [ECtHR], App. no. 47358/20, 30 October 2022, paras. 82-85.

vulnerabilities of survivors, and implement appropriate protective measures without compromising the fundamental principles of due process.

States maintain a positive obligation to protect individuals from violence perpetrated by third parties,<sup>41</sup> including domestic violence,<sup>42</sup> cyberbullying,<sup>43</sup> workplace harassment,<sup>44</sup> sexual harassment in professional environments,<sup>45</sup> and other forms of abuse. The state fulfills this positive obligation partly through judicial protection of the privacy and dignity of women, who have experienced violence, during court proceedings. This protection becomes particularly imperative in cases involving survivors of sexual violence, for whom judicial proceedings frequently constitute a form of “ordeal” or profound distress.<sup>46</sup> The institutional recognition of these proceedings as potentially traumatic experiences necessitates specialized judicial approaches that balance evidentiary requirements with trauma-informed practices.

Therefore, the prevention of secondary victimization is intrinsically linked to the appropriate exercise of judicial discretion throughout legal proceedings. This discretion represents a crucial instrument for safeguarding victims’ rights and privacy, particularly in defamation cases that may function as continued abuse mechanisms. The implementation of gender-sensitive approaches at the admissibility stage of litigation serves as a preventive measure against the weaponization of legal processes, and contributes to maintaining the integrity of judicial systems as venues for substantive justice rather than instruments of continued victimization.

### III. Court Ruling on Case Dismissal Georgia

Anti-SLAPP legislative mechanisms were first developed in common law jurisdictions, specifically in the United States and Canada.<sup>47</sup> In the United States, these laws aim to reduce the abusive use of litigation intended to suppress activities protect-

<sup>41</sup> Sandra Janković v. Croatia [ECtHR], App. no. 38478/05, 5 March 2009, para. 45; C. v. Romania [ECtHR], App. no. 47358/20, 30 October 2022, paras. 62-66.

<sup>42</sup> Buturugă v. Romania [ECtHR], App. no. 56867/15, 11 February 2020, paras. 74, 78-79.

<sup>43</sup> Volodina v. Russia (no. 2) [ECtHR], App. no. 40419/19, 14 December 2021, paras. 48-49.

<sup>44</sup> Špadijer v. Montenegro [ECtHR], App. no. 31549/18, 9 November 2021, para. 100.

<sup>45</sup> Khamtokhu and Aksenchik v. Russia [ECtHR], App. nos. 60367/08 and 961/11, 13 March 2014, para. 82.

<sup>46</sup> Aigner v. Austria [ECtHR], App. No. 28328/03, 10 May 2012, para. 37; F. and M. v. Finland [ECtHR], App. no. 22508/02, 17 October 2007, para. 58; S.N. v. Sweden [ECtHR], App. no. 34209/96, 2 July 2002, para. 47; Vronchenko v. Estonia [ECtHR], App. no. 59632/09, 18 July 2013, para. 56.

<sup>47</sup> Bollinger, 2023, 6.

ed by the First Amendment of the federal Constitution, and to encourage public participation.<sup>48</sup> Currently, more than thirty U.S. states have adopted anti-SLAPP legislative provisions, either as specialized legislation or as provisions within civil procedure codes.<sup>49</sup> These laws, while varying in scope and criteria for identifying SLAPP cases, share a fundamental characteristic – they effectively ensure the identification of such cases at an early stage of proceedings and provide mechanisms for their dismissal. For example, California’s civil procedure norms protect freedom of expression related to public interest matters, allowing defendants to file special motions to strike such lawsuits.<sup>50</sup>

Georgian legislation does not recognize anti-SLAPP mechanisms; nevertheless, the current legal framework adequately safeguards the freedom of speech of women who have experienced violence. The Georgian Law on “Freedom of Speech and Expression” provides defendants with the opportunity to petition the court at the preparatory stage to refuse the admission of a lawsuit.<sup>51</sup> During the court’s consideration of such petitions, the fair distribution of the burden of proof aimed at protecting freedom of speech, and the application of gender-sensitive approaches, constitute effective means for protecting the freedom of speech of women who have experienced violence. This dual approach – procedural protection combined with substantive sensitivity – creates a critical safeguard in cases where vulnerability intersects with expression rights.

The development of anti-SLAPP mechanisms in common law systems demonstrates that effective legal protection requires both a clear legislative framework and the active role of courts in interpreting and applying these provisions. Although in Georgia these mechanisms are presented only as general provisions in the Law on “Freedom of Speech and Expression”, the role of judicial practice is decisive – it is precisely the courts’ interpretation of the law and its broad application that determines how effectively freedom of expression will be protected from SLAPP lawsuits. This interpretive authority permits the judiciary to develop robust protections even in the absence of explicit statutory language, creating a potential pathway for jurisprudential evolution that could strengthen expression rights without requiring legislative amendment.

<sup>48</sup> Simpson, 2016, 173.

<sup>49</sup> State Anti-SLAPP Laws, <<https://anti-slapp.org/your-states-free-speech-protection>> [06.01.2025].

<sup>50</sup> Code of Civil Procedure of California, Part 2, Title 6, Chapter 2, Art. 1, para. 425.16(a), (b)(1), and (e).

<sup>51</sup> Law of Georgia “On Freedom of Speech and Expression”, Art. 5 (2).

## 1. Judicial Speech Privilege

Judicial speech privilege represents a fundamental principle of democratic justice that enjoys special protection within the Georgian legal framework.<sup>52</sup> Georgian legislation establishes a robust legal structure that ensures a high standard of freedom of expression for participants in judicial proceedings. The legislature's use of broad language – protecting statements made “before various public institutions” – suggests intentional inclusivity that extends beyond formal courtroom proceedings to encompass pre-litigation institutional engagement.<sup>53</sup>

Correspondingly, procedural legislation establishes mechanisms that ensure the effective realization of this privilege.<sup>54</sup> The court is obligated, even at the preparatory stage of a case and with the participation of the parties, to verify the existence of grounds for applying this privilege.<sup>55</sup> Simultaneously, the law insulates statements made within the scope of judicial speech from any liability.<sup>56</sup> It is precisely this legislative procedure that ensures individuals do not encounter obstacles when freely expressing their positions in court.

Despite the relatively progressive legislative mechanism, its practical implementation presents numerous challenges regarding the protection of freedom of expression for women who have experienced violence. The essence of effective anti-SLAPP legislation lies in the recognition that legislative norms alone are insufficient to protect targeted individuals, as the filing party does not need to win the case for the lawsuit itself to serve as a weapon against the targeted individuals.<sup>57</sup> The qualification of a statement as privileged judicial speech is interpreted in an extremely formalistic manner, and does not consider statements made by women who have experienced violence about their experiences of violence as protected by this privilege, despite the fact that these statements are made before the Public Defender or law enforcement agencies.<sup>58</sup> This restrictive interpretation creates a significant protection gap precisely where vulnerability intersects with truth-telling, undermining both access to justice and public discourse on matters of significant societal concern.

<sup>52</sup> *Ibid.*, Art. 3 (1).

<sup>53</sup> *Ibid.*, Art. 5 (1)(b).

<sup>54</sup> Civil Procedure Code of Georgia, Art. 209 and 273.

<sup>55</sup> Law of Georgia “On Freedom of Speech and Expression”, Art. 5 (2).

<sup>56</sup> *Ibid.*, Art. 18.

<sup>57</sup> Braun, 1999, 984.

<sup>58</sup> Decision of the Civil Cases Panel of Tbilisi City Court of November 21, 2023, Case №2/18681-22; Decision of the Civil Cases Chamber of Tbilisi Court of Appeals of December 9, 2020, Case №2b/318-20.

The Georgian legal system provides important guarantees for judicial speech privilege, expressed through both substantive and procedural protection mechanisms. The law not only recognizes the privilege of judicial speech, but also ensures its effective implementation at the preparatory stage of proceedings, and protects statement authors from potential liability. However, the practical implementation of these norms faces numerous obstacles, particularly in their application to gendered contexts. The formalistic interpretation fails to account for the power dynamics inherent in cases involving violence against women, creating a systemic disadvantage that undermines both individual justice and broader social accountability mechanisms.

Consequently, when courts deny privilege to survivors' statements that mirror official submissions, they effectively create disincentives for institutional engagement, undermining both the Public Defender's investigative function and law enforcement complaint processes – contradicting the privilege's systemic purpose of encouraging official participation.

## **2. Standards Governing the Allocation of Evidentiary Burden in Expression-Related Litigation**

If the interests of proper case preparation for court proceedings require it, the judge is authorized to schedule a preparatory hearing.<sup>59</sup> Defamation lawsuits filed against women who have experienced violence are precisely the type of cases that necessitate preparatory hearings.<sup>60</sup> At the preparatory stage, both the plaintiff and the defendant are obligated to prove the circumstances upon which they base their claims and objections.<sup>61</sup>

Regarding the distribution of the burden of proof, the Law of Georgia "On Freedom of Speech and Expression" establishes principles that ensure the priority protection of freedom of expression in the legal system.<sup>62</sup> The primary mechanism for effective protection of freedom of expression is the restriction of rights only on the basis of incontrovertible evidence.<sup>63</sup> This approach derives from international legal practice, according to which restrictions on fundamental human rights must be strictly regulated and substantiated.<sup>64</sup> Articles 3, 4, and 5 of the Georgian Law

<sup>59</sup> Civil Procedure Code, Art. 205, Part 1.

<sup>60</sup> Law of Georgia "On Freedom of Speech and Expression", Art. 5 (2).

<sup>61</sup> Civil Procedure Code of Georgia, Art. 102 (1).

<sup>62</sup> Law of Georgia "On Freedom of Speech and Expression", Art. 7.

<sup>63</sup> *Handyside v. United Kingdom* [ECtHR], App. no. 5493/72, 7 December 1976, para. 49.

<sup>64</sup> *Sunday Times v. United Kingdom* [ECtHR], App. no. 6538/74, 26 April 1979, para. 59.

“On Freedom of Speech and Expression” establish the principle of *in dubio pro libertate* (in case of doubt, decide in favor of liberty) in various contexts. Specifically, in matters of determining public figure status, public attention, and opinion status, any doubt is resolved in favor of freedom.<sup>65</sup>

With respect to the distribution of burden of proof, Article 7, Paragraph 6 of the law is paramount, stipulating that the burden of proof falls upon the initiator of the restriction. This approach aligns with European Court practice, where the justification for restricting freedom of expression is incumbent upon the state regarding the impossibility of proving any evaluative judgment.<sup>66</sup> Only with a fair distribution of the burden of proof can the court properly investigate and determine whether the statement was disseminated within the bounds of freedom of speech. First instance courts merely formally note in their decisions that the statement is not protected by the legally established privilege.<sup>67</sup> The challenge of balancing expression rights with reputation protection becomes further complicated when considering the presumption of innocence principle. When survivors publicly discuss experiences involving alleged criminal conduct,<sup>68</sup> courts must navigate the tension between protecting legitimate speech about matters of public concern and preserving fair trial rights for accused individuals. This balance requires judicial recognition that anti-SLAPP protections serve not only free speech values, but also access to justice principles, while simultaneously ensuring that procedural safeguards do not inadvertently undermine due process rights. The *in dubio pro libertate* standard must therefore be applied with careful attention to these competing constitutional imperatives, particularly when public statements concern conduct that may be subject to parallel criminal proceedings.

The challenge of developing mixed legal systems and protecting freedom of expression for victims of gender-based violence is gaining significant importance in the contemporary legal landscape, although anti-SLAPP legislation in European Union member states is still evolving.<sup>69</sup> Consequently, studying the judicial practices of

<sup>65</sup> Linton, Otchakovsky-Laurens and July v. France [ECtHR], App. nos. 21279/02 and 36448/02, 22 October 2007, para. 46.

<sup>66</sup> Lingens v. Austria [ECtHR], App. no. 9815/82, 8 July 1986, para. 46.

<sup>67</sup> Tbilisi City Court Civil Chamber Decision of January 31, 2020, N2/4250-18, para. 5.8.

<sup>68</sup> Brandt, 2021, 6.

<sup>69</sup> European Parliament legislative resolution of 27 February 2024 on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), P9\_TA(2024)0085.

leading states in this direction – the United States and Canada – becomes particularly relevant. This examination will substantially benefit both the proper conceptualization of the issue in Georgian reality, and the search for problem-solving approaches. The Canadian system, which has developed into a fully-fledged hybrid of continental and common law traditions,<sup>70</sup> represents a unique example of the harmonious coexistence of various legal institutions. The practice of U.S. courts, especially in matters of freedom of expression, serves as an essential guiding source for developing democracies,<sup>71</sup> and the Georgian model of protecting freedom of expression largely shares American ideals.<sup>72</sup> Georgia's legal system, which is primarily based on continental law principles and is gradually integrating elements of common law, will be able to better protect the rights of gender-based violence victims and ensure a fair balance between freedom of expression and the proper administration of justice by adopting the experiences of these two countries.

The 2024 decision by the United States District Court for the Eastern District of Virginia establishes a significant precedent regarding the protection of freedom of expression for survivors of gender-based violence. This case examines the balance between safeguarding rights under Title IX of the Educational Amendments of 1972 (20 U.S.C. paras. 1681-1688), and preventing the abuse of judicial processes. The plaintiff initiated a defamation lawsuit against a former student, who subsequently filed an anti-SLAPP motion. The defendant argued that the lawsuit was filed in retaliation for her sexual harassment complaint. This dispute exemplifies the delicate balance that courts must maintain: the court determined that defamation lawsuits often navigate the boundary between freedom of expression and abuse of judicial process.<sup>73</sup> The court partially granted the defendants' motion and dismissed the case against the survivor of violence, resulting in the termination of eight out of nine complaints on various grounds, including qualified privilege and lack of evidence.<sup>74</sup> The court's reasoning reflects a nuanced understanding of how retaliatory litigation can function as a silencing mechanism against misconduct reporters in academic settings where power dynamics are pronounced.

Various U.S. courts have established in numerous cases that the Constitution does not protect lawsuits that lack reasonable basis and factual foundation, but which are

<sup>70</sup> Jukier and Howes, 2024, 160.

<sup>71</sup> Tsomidis, 2022, 383.

<sup>72</sup> Gegenava, 2022, 97.

<sup>73</sup> *Wright v. The Rector & Visitors of George Mason Univ.*, 1:24-cv-2 (PTG/IDD) (E.D. Va. Sep. 19, 2024).

<sup>74</sup> *Ibid.*

instead filed for retaliatory purposes.<sup>75</sup> In such instances, courts are obligated to ensure fair application of disciplinary and legal processes within the framework established by Title IX of the Educational Amendments of 1972 (20 U.S.C. paras. 1681-1688), avoiding gender bias and maintaining appropriate balance.<sup>76</sup> This case demonstrates judicial evolution in analyzing the intersection of defamation law and anti-retaliation protections, establishing methodological criteria for distinguishing legitimate claims from those designed to silence complainants.

In another defamation case, the court examined the defendant's anti-SLAPP motion under Section 137.1 of the Canadian "Courts of Justice Act", placing the burden of proof on the defendant regarding the connection between the alleged defamatory statements and public interest. After the defendant confirmed that her statement concerned protection from workplace harassment, the court concluded that the public interest in protecting such expression outweighed the damage to the plaintiff's reputation, rejected the defamation lawsuit, and thus prevented the use of legal proceedings as a weapon against freedom of expression.<sup>77</sup> Both U.S. and Canadian judicial approaches demonstrate transnational recognition of the need to protect public interest speech in misconduct allegation contexts, through frameworks that balance reputational interests against broader societal benefits.

In a case examined by the Tbilisi City Court, a female survivor of violence faced defamation claims regarding statements made on social media that mirrored those simultaneously submitted to investigative authorities. The defendant motioned for the court to request information from investigative agencies, which the judge granted, procuring case materials. Despite the court's verification of the defendant's good faith – as her social media statements precisely matched those made to investigators regarding her experience of violence – the court declined to classify the statement as privileged court speech and proceeded with the case.<sup>78</sup> In another notable case reviewed by the Supreme Court of Georgia, statements made by a female violence survivor concerning sexual harassment committed against her were substantially identical to findings established by the Public Defender. Nevertheless, the court failed to properly redistribute the burden of proof, and disregarded the fact that the violence survivor, who openly discussed gender-based discrimination against her in the me-

<sup>75</sup> *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743 (1983); *Darveau v. Detecon, Inc.*, 515 F.3d 334, 341 (4th Cir. 2008).

<sup>76</sup> *Wright v. The Rector & Visitors of George Mason Univ.*, 1:24-cv-2 (PTG/IDD) (E.D. Va. Sep. 19, 2024); *Sheppard v. Visitors of Virginia State University*, 993 F.3d 230, 237-38 (4th Cir. 2021).

<sup>77</sup> *Marcellin v. LPS*, 2022 ONSC 5886 (Ontario Superior Court).

<sup>78</sup> Tbilisi City Court Civil Cases Panel decision of November 21, 2023, №2/18681-22.

dia, should have been protected by privileged court speech immunity, given that she made identical statements before the Public Defender.<sup>79</sup>

While Georgian legislation does not explicitly define a SLAPP lawsuit, European Union recommendations provide systematic indicators for identifying strategic lawsuits that Georgian courts can apply at the admissibility stage. Courts should evaluate whether litigation demonstrates: (a) exploitation of power imbalances through superior resources or institutional influence; (b) legally insufficient or factually unfounded arguments; (c) disproportionate remedies designed to burden rather than compensate; (d) cost-escalating procedural tactics including forum manipulation or excessive motions; (e) targeting of individual speakers rather than responsible institutions; (f) accompanying intimidation or public discrediting campaigns; (g) patterns of litigation harassment or refusal to pursue alternative resolution; or (h) coordinated multiple lawsuits based on identical circumstances.<sup>80</sup> The presence of multiple indicators – particularly power exploitation, procedural abuse, and intimidation tactics – creates strong presumptions that a litigation serves strategic silencing purposes rather than legitimate defamation remedies.

Comparative practice demonstrates that U.S. and Canadian courts extend qualified privilege to institutional misconduct reporting, presume retaliatory intent when defamation suits follow official complaints, and prioritize public accountability over reputational concerns. Georgian courts systematically reject these approaches despite statutory authorization establishing the *in dubio pro libertate* principle, and placing burden of proof on restriction initiators. Judicial practice demonstrates excessive formalism in interpreting speech privileges, declining to protect survivors' statements that mirror official submissions, and applying restrictive interpretations that favor plaintiffs over expression rights. This formalistic approach particularly disadvantages violence survivors whose testimonies, even when corroborated by official findings, receive inadequate procedural protection. The implementation gap between legislative intent and judicial application creates deterrent effects on reporting and public discourse participation, undermining both violence mitigation objectives and transparency regarding systemic gender-based discrimination, while demonstrating that effective anti-SLAPP protection requires consistent application of existing principles rather than new legislation.

<sup>79</sup> Supreme Court of Georgia Civil Cases Chamber ruling of April 13, 2022, №36-358-2021.

<sup>80</sup> Council of Europe, Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), 2024, para. 8.

### 3. Implementation of Gender-Responsive Judicial Frameworks in Victim Protection

The filing of SLAPP lawsuits aimed at silencing women who have experienced violence has severe consequences and intimidates victims.<sup>81</sup> Ensuring unimpeded public debate about gender-based violence, particularly enabling women who have experienced violence to disseminate information about their personal experiences, constitutes an exceptional circumstance where free and unrestricted exchange of information is essential.<sup>82</sup> Public discourse on sexual violence has broad social implications.<sup>83</sup> Consequently, it is imperative that alleged perpetrators cannot silence victims through fear of expensive and protracted litigation.<sup>84</sup>

In its decision on the Ismayilova case, the European Court emphasized the state's obligation to ensure a safe environment for individuals to participate in public debates without fear, particularly regarding sensitive issues such as gender-based violence.<sup>85</sup> This approach enables outcome-oriented, healthy public discourse on socially significant issues, as even a public statement by a single woman who has experienced violence about her personal experience may sufficiently relate to the public interest.<sup>86</sup>

The Supreme Court of Georgia<sup>87</sup> and the European Court of Human Rights<sup>88</sup> have disregarded formalistic and rigid approaches in numerous civil case decisions. In one defamation case filed against women who had experienced violence, the court placed the burden of proof on the plaintiff to demonstrate that the information in the defendant's statement was untrue and that she acted with malicious intent.<sup>89</sup> This approach should be unequivocally assessed as positive, though insufficient in combating SLAPP lawsuits.

The court should, on the one hand, examine the evidence presented by the parties, which in this case comprises documents submitted by the defendant to the rele-

<sup>81</sup> Doty, 2020, 55.

<sup>82</sup> Hurry, 2022, 100.

<sup>83</sup> Leader, 2019, 473.

<sup>84</sup> Ligon, 2020, 350.

<sup>85</sup> *Khadija Ismayilova v. Azerbaijan* [ECtHR], App. nos. 65286/13 and 57270/14, 10 April 2019, para. 158.

<sup>86</sup> Leader, 2019, 470.

<sup>87</sup> Decision of the Civil Chamber of the Supreme Court of Georgia dated July 5, 2024, No. 36-1492-2023, para. 27.3.3; Decision of the Civil Chamber of the Supreme Court of Georgia dated October 9, 2024, No. 36-816-2024, para. 25.

<sup>88</sup> *Bartaia v. Georgia* [ECtHR], App. no. 10978/06, 26 July 2018, para. 34.

<sup>89</sup> Decision of the Civil Chamber of the Supreme Court of Georgia dated November 27, 2020, No. 36-1705-2019.

vant authorities. On the other hand, the court should request case materials from investigative services, courts, or the Public Defender's Office. The reliability of evidence presented by parties, and the ability to authentically establish their validity and genuineness, is essential for reaching a correct and objective decision.<sup>90</sup> In cases where the court determines that a woman who has experienced violence has addressed relevant authorities with a statement substantially similar in content to her public statement, such a statement should be considered courtroom speech and granted the privilege established by law. This approach primarily constitutes a disregard for formalism,<sup>91</sup> which is particularly important for ensuring a fair balance between essentially unequal subjects (a woman who has experienced violence and a potentially vindictive perpetrator). Privilege determinations remain subject to interlocutory appeal to prevent irreversible harm from erroneous admissibility decisions.

Georgian court practice has established that courts evaluate evidence based on their inner conviction, which must be founded on comprehensive, complete, and objective examination of such evidence.<sup>92</sup> This principle necessitates implementing a gender-sensitive approach that recognizes power dynamics and systemic barriers in gender-based violence cases.

The gender-sensitive approach extends courtroom speech privilege to statements about which the victim has already addressed relevant authorities. This procedural safeguard acknowledges the interconnected nature of legal proceedings and survivor testimony, preventing strategic bifurcation of survivor speech across different forums. This approach ensures their protection from SLAPP lawsuits, and contributes to healthier public discourse on gender-based violence. It represents a critical advancement in balancing defamation concerns with the public interest, while preserving remedies for genuinely defamatory speech. Such an approach fully aligns with standards established by the European Court of Human Rights, and facilitates the fulfillment of the state's positive obligation to create a safe environment. This alignment strengthens domestic legal frameworks and demonstrates a commitment to evolving standards, recognizing the intersection of gender justice, free expression, and procedural fairness.

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<sup>90</sup> Decision of the Civil Chamber of the Supreme Court of Georgia dated December 6, 2024, No. 36-1050-2024, para. 62.

<sup>91</sup> Volokh, 1995, 576.

<sup>92</sup> Decision of the Civil Chamber of the Supreme Court of Georgia dated November 28, 2024, No. 36-112-2024, para. 9.

## IV. Conclusion

The use of SLAPP lawsuits against survivors of violence represents a form of continued victimization specifically designed to constrain their freedom of expression and inhibit their participation in public discourse. While Georgian legislation lacks dedicated anti-SLAPP mechanisms, the existing legal framework nevertheless provides sufficient jurisprudential foundation for protecting survivors from such strategic litigation.

Critical analysis of judicial practice reveals that the fundamental challenge lies not in legislative deficiencies, but rather in the courts' formalistic interpretation of existing provisions. Particularly problematic is the restrictive application of courtroom speech privilege, which fails to extend protection to statements previously submitted by survivors to law enforcement authorities, judicial bodies, or the Public Defender's Office.

The incorporation of international jurisprudential approaches, particularly those developed in the United States and Canada, is essential for the evolution of Georgia's judicial framework. These comparative jurisdictions demonstrate that effective anti-SLAPP protections can be implemented within existing legislative structures when courts adopt gender-sensitive interpretive methodologies and establish appropriate equilibrium between expressive freedoms and legitimate reputational interests.

The parameters of judicial discretion at the admissibility stage necessitate comprehensive implementation of gender-sensitive and survivor-centered approaches, comprising three interconnected elements:

1. Conceptualizing SLAPP litigation as a manifestation of continued victimization, thereby acknowledging the systemic deployment of legal mechanisms against survivors of gender-based violence;
2. Reallocating evidentiary burdens according to the *in dubio pro libertate* principle, thereby ensuring procedural equity and recognizing power asymmetries between litigants;
3. Advancing progressive interpretations of courtroom speech privilege that encompass statements previously submitted to competent authorities, thereby preserving the efficacy of institutional protection mechanisms.

Effective implementation requires robust safeguards against privilege abuse, while maintaining protection integrity. Courts must distinguish between legitimate

privilege claims and attempts to immunize defamatory speech through procedural manipulation. Key safeguards include: documentary verification requirements that prevent fabricated institutional submissions; temporal limitations that connect privilege to genuine institutional engagement rather than retrospective justification; substantive similarity standards that ensure privilege protects institutional speech rather than unrelated public statements; and clear exceptions for malicious fabrication or substantial factual divergence between official and public statements. These safeguards preserve both expression rights and reputational protections, while preventing legal system weaponization by any party.

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