Hennebel Avocats

PRAXIS · GUIDE

Lawfare and abuse of process: a practical guide

Hennebel Avocats Modus Operandi

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LAWFARE, DENIAL OF JUSTICE AND TRANSNATIONAL REPRESSION

Before you read on: if the situation is unfolding, contact the firm in confidence.

Crisis Room - Praesidium
An arrest, a search, an asset freeze, a claim served in an unexpected jurisdiction or a press campaign coordinated with legal proceedings calls for an immediate confidential assessment. Reading the full guide can wait. Urgent situations receive priority (Crisis Room). Encrypted channels available: Signal, Threema. WhatsApp for rapid coordination. Secure upload for sensitive documents. *This guide provides guidance. It cannot replace a legal consultation or determine what course to take.*

Urgent contact

Operational summary

This guide addresses a particular situation in which the opposing party acts through the law itself. Criminal proceedings comply with formal requirements, civil claims are admissible, reports to regulators have a basis in existing legislation, insolvency proceedings are duly opened - yet, taken together, these measures serve a purpose other than that for which the instruments were established. The aim is to neutralise, exhaust, silence or dispossess. Scholars and practitioners now commonly describe this phenomenon as *lawfare* or the weaponisation of the law - but terminology alone offers no defence. What is needed is a method: reserve judgement, document the facts early and demonstrate more than you assert.

The guide advances three propositions. First, the term *lawfare* expresses a conclusion reached on the evidence. Invoked on day one without substantiation, it undermines the credibility of the defence and gives the opposing side common ground in insisting that its proceedings are formally regular. Used at the end of a reasoned demonstration, it gives coherence to a case that courts, international bodies and institutional third parties can examine. Second, every defence against the weaponisation of the law rests on a continuously maintained file of contextual evidence, dated, sourced and ranked by evidential weight. Every forum willing to examine the true purpose of proceedings - a court considering abuse of process, an extradition court, the European Court of Human Rights under Article 18, UN bodies or targeted sanctions authorities - looks for mutually corroborating contextual evidence. Third, the defence cannot be purely reactive. A strategy confined to winning one case at a time leaves the opposing party in control of the timetable and the

public account of events. A counter-offensive - liability claims, costs, anti-SLAPP mechanisms, designation submissions and action to protect reputation - forms part of the defence.

The twelve steps follow a strategic order. The first four establish an understanding of the case: a working definition and its limits (step 01), the means by which legal processes can be misused (step 02), the objective indicators that distinguish stringent proceedings from those brought for an improper purpose (step 03), and the file that turns this contextual analysis into evidence (step 04). The next four put the defence into effect: domestic procedural arguments and fair trial guarantees (step 05), Article 18 of the European Convention on Human Rights and the predominant purpose test established in Merabishvili (step 06), countering international measures - police cooperation and sanctions - by reference to the specialist guides in this series (step 07), and responding to strategic lawsuits against public participation under Directive (EU) 2024/1069 (step 08). The final four steps address how to regain the initiative and bring the dispute to a close: counter-offensives (step 09), reputation (step 10), protection of counsel and of the defence itself (step 11), and negotiation and stabilisation (step 12).

One point of method applies throughout and should be understood at the outset. This guide examines *lawfare* as a concept and describes typical scenarios. It makes no such assessment of any actual case or named individual. The judgments of the European Court of Human Rights cited here - Merabishvili, Kavala, Ilgar Mammadov and Navalnyy - are cited for the legal methodology that the Court itself set out in its published decisions. This restraint goes beyond authorial caution. It is the same discipline that the guide recommends to its readers.

Executive brief: a decision in ten minutes

Executive decision. Document the facts from day one, preserve urgent remedies and reserve the term lawfare until the end. Lawfare is a conclusion that requires proof that a series of proceedings serves a purpose other than that for which the legal instruments were established. An effective defence turns disparate impressions into a body of dated evidence of selectivity, timing, disproportionality, procedural inconsistencies, coordination across proceedings and avoidance of independent review.

Desired result. Build a case for misuse that can be advanced in law, neutralise each means of pressure and maintain a consistent position on the evidence, in the proceedings and in public.

Sequence of action

- **Assessment** Define the phenomenon, map the means of pressure, identify the indicators and compile the file of contextual evidence. Deliverable: a testable hypothesis.
- **Defence** Invoke domestic safeguards, fair trial guarantees and the predominant purpose test under Article 18 ECHR. Deliverable: grounds of challenge in order of priority.
- **Neutralisation** Address police cooperation, sanctions, strategic lawsuits against public participation and other proceedings in their respective forums. Deliverable: the combined pressure is broken up.
- **Regaining the initiative** Select countermeasures, a media strategy, protection for the defence team, and arrangements for negotiation and stabilisation. Deliverable: the initiative regained.

Critical mistakes

- Turning an allegation of lawfare into a slogan or an unstructured collection of press reports.
- Pleading Article 18 ECHR without establishing an ulterior purpose, or its predominance where there are several purposes, or missing the four-month time limit, which runs separately for each complaint.
- Responding to abuse with vexatious counterclaims or a disproportionate public response.
- Negotiating the closure of one set of proceedings while leaving the other means of pressure in place.

Questions for decision-makers

- What central fact can each forum establish without accepting the case in its entirety?
- Which intermediate success would alter the overall power dynamics?
- Which team members and which data require additional protection?

This brief provides initial guidance. It cannot replace an analysis of the case or verification of the law applicable at the time of action. The twelve steps below provide the detail.

01

Name the phenomenon while keeping the assessment open

Timing: **from the first indications** · Objective: adopt a working definition while preserving the credibility of the defence

The term *lawfare* gained currency in strategic thinking in the early 2000s, notably through a paper presented in 2001 by the US military lawyer Charles Dunlap. It described the use of law as a substitute for, or complement to, more conventional means of coercion. The term has since spread well beyond its original field. As used here, it denotes the strategic use of legal proceedings - formally regular - for purposes unrelated to those for which they exist: neutralising an opponent or competitor, exhausting an adversary's financial resources, silencing a critic, forcing negotiations, destroying a reputation or securing control of assets.

This guide adopts a deliberately strict working definition because a broad definition is of little use in court. Three cumulative elements are required. First, an **existing legal instrument that can formally be invoked** - a criminal prosecution, a civil claim, a report to a regulator, insolvency proceedings or a request for international cooperation. Misuse presupposes a genuine instrument. That is precisely what distinguishes it from outright fabrication and makes it difficult to challenge. Second, a **demonstrable difference between the institutional purpose of the instrument and the purpose actually pursued**. This difference cannot be presumed. It must be established through the objective indicators described in step 03. Third, an **intended effect that extends beyond the legal outcome of the proceedings** - immobilisation, exhaustion, silence or dispossession - and which is often achieved whether the party bringing the proceedings wins or loses. This is the most distinctive feature of the phenomenon: the very existence of proceedings used for an improper purpose produces most of their effects before any judgment is given.

This working definition calls for three immediate qualifications, which are central to the first step. First, **the term has no standing as a legal category**. No treaty defines *lawfare*, and none of the mechanisms examined here makes a finding of liability "for lawfare". The term is a concept of strategic analysis that must be translated, forum by forum, into legally cognisable grounds: abuse of process, misuse of powers, a purpose not prescribed by Article 18 of the European Convention on Human Rights, the political character of a request for police cooperation, or abusive court proceedings against public participation within the meaning of Directive (EU) 2024/1069. A defence that simply pleads "lawfare" will fail. A defence that pleads the applicable legal grounds and substantiates them with contextual evidence can succeed.

Second, **using the term too early undermines the credibility of the defence**. It expresses a conclusion reached on the evidence. A person who publicly alleges weaponisation of the law on receiving the first summons, without substantiating the allegation, achieves three results contrary to their interests. The opposing party gains an easy answer - it need only point to the formal regularity of its proceedings. Institutional third parties (banks, business partners and the authorities of the State of residence) may see a defence that challenges the very fact of prosecution because it cannot answer the substance. And the defence commits prematurely to an account that may need qualification once the file of contextual evidence is complete. This guide recommends documenting the facts from day one as though misuse might one day have to be proved before the most exacting forum, and naming the phenomenon publicly only when the evidence warrants the term.

Third, **even stringent proceedings may serve their proper purpose**. A rigorous prosecution, an aggressive civil claim or an intrusive regulatory inspection may be entirely legitimate. A defence that alleges misuse whenever it encounters adversity forfeits credibility when misuse actually occurs. The case-law of the European Court of Human Rights on Article 18, examined in step 06, illustrates precisely this discipline. The Court recognises that a measure may serve several purposes and, in such cases, finds a violation only where a purpose not prescribed by the Convention proves predominant. This approach - acknowledging multiple purposes and proving predominance - provides a rigorous model for any defence faced with suspected weaponisation of the law.

What to gather

- **A complete inventory of proceedings** pending or announced: court or authority, parties, grounds, dates and stage reached
- **The personal and business chronology**: precise dates of events outside the proceedings (breakdown of a business relationship, public statement or political transition)
- **The initial documents evidencing procedural regularity**: originating documents, claim forms and summonses, in full and in translation
- **A map of the participants**: who brings the proceedings, who funds them, who amplifies them and who benefits

What not to do

- **Publicly alleging "lawfare"** as soon as the first measure is taken, before compiling the evidence
- **Committing an assessment to writing, even privately**, on unsecured channels: written statements circulate and can be used against their author
- **Neglecting the substance** of the allegations on the assumption that they serve an ulterior purpose: misuse must be pleaded alongside the defence on the merits
- **Confusing intuition with proof**: the client's firmly held belief has no independent evidential value

Key takeaway

Lawfare is a concept of analysis with no standing as a legal category. It must be **translated into legally cognisable grounds** - abuse of process, a purpose not prescribed by the Convention (Article 18 ECHR), the political character of a request for cooperation, or a strategic lawsuit against public participation. The evidence must justify the term at the end of the assessment. A bare assertion at the outset carries no weight.

02

Identify the means of pressure: forms of misuse

Timing: 1 to 2 weeks for the initial mapping · Output: a map of active and dormant means of pressure

The weaponisation of the law draws on a range of measures. The defence must map both the means of pressure already in use against the client and those still available to the opposing party - a strategy that neutralises one without anticipating the next merely shifts the attack elsewhere. The following classification sets out the means most frequently encountered in transnational cases, from the most visible to the least conspicuous.

First, criminal proceedings, particularly where they proliferate. Criminal charges are the most powerful means of pressure because they engage the coercive powers of the State: police custody, pre-trial detention, judicial supervision, seizures, director disqualification and, above all, access to international cooperation channels. Economic offences - fraud, breach of trust, misuse of corporate assets, money laundering and tax fraud - lend themselves particularly well to this use. Their constituent elements are sufficiently flexible for an ordinary business relationship to be presented as criminal conduct, and they justify immediate measures against assets. The multiplication of proceedings - several complaints, several prosecution offices and several jurisdictions, involving related facts or an artificially divided course of conduct - is itself a means of pressure. Each set of proceedings brings its own deadlines, costs, protective measures and publicity.

Second, international police and judicial cooperation. Cooperation channels can give even weak domestic proceedings worldwide reach through alerts in the INTERPOL system, requests for provisional arrest, extradition requests, letters rogatory and requests for mutual legal assistance. Misuse of these channels is subject to specific institutional review - Article 3 of the INTERPOL Constitution prohibits the Organisation from undertaking any intervention of a political character, and the Parliamentary Assembly of the Council of Europe addressed abuse of the INTERPOL system in Resolution 2161 (2017). This aspect has its own procedure, timetable and evidential requirements. The Praxis guide to INTERPOL and extradition deals with these in full, and readers are referred to that guide.

Third, civil proceedings designed to exhaust the defendant. Claims for damages, unfair competition, defamation, infringement or enforcement of guarantees may be brought for the costs they impose irrespective of their prospects of success: defence costs multiplied across jurisdictions, protective measures that constrain cash flow, discovery or compulsory production exposing sensitive information, and demands that tie up

senior management. The economics of the claim reveal its purpose. It is designed to maximise the burden on the defence, with the prospects of success a secondary consideration.

Fourth, freezing and securing control of assets. Examples include protective attachment orders obtained without notice, freezing orders in foreign criminal proceedings, listing under national or multilateral sanctions regimes, and reports to financial intelligence units that result in accounts being blocked in practice. The intended effect is financial paralysis: a person whose assets are frozen and whose banks terminate their relationships loses the very means to mount a defence. Challenges to designations and asset freezes are governed by specific rules - administrative review, judicial review and derogations for legal fees - addressed in the Praxis guide to international sanctions, to which readers are referred.

Fifth, strategic lawsuits against public participation, brought against critical voices - journalists, researchers, human rights defenders, whistleblowers and media outlets - to stifle public participation. European law now expressly recognises this means of pressure. Directive (EU) 2024/1069 of 11 April 2024 provides for the protection of persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ("strategic lawsuits against public participation"). Step 08 addresses these proceedings.

Sixth, reports to regulatory and administrative authorities. Reports concerning tax, customs, prudential supervision or anti-money laundering compliance, and complaints to professional or disciplinary bodies, trigger examination under the powers of the authority concerned. The accumulation of inquiries - even if they are subsequently closed - can create a climate of suspicion reflected in private compliance databases, due diligence checks and banking relationships. This means of pressure attracts little attention, costs the initiating party little and has lasting effects because the closure of an inquiry rarely receives as much publicity as its opening.

Seventh, insolvency proceedings and corporate governance measures. Applications to open insolvency proceedings, the removal of directors and applications for expert reviews of management decisions are among the less obvious means of dispossession available under company and insolvency law. **Eighth, filing complaints abroad**, in jurisdictions chosen for their speed, their ex parte measures, the publicity they generate or their capacity to support a subsequent request for international cooperation - here the choice of forum is itself the weapon.

Caution

One means of pressure may conceal another. The visible proceedings - a claim served or a complaint notified - may be only the visible part of an operation whose international channels (police alerts, requests for mutual legal assistance and exposure through banks) work quietly in the background. Before any international travel, the person's status in the INTERPOL system should be checked using the method set out in the INTERPOL and extradition guide. Allow time for this check - under Article 40 of the Statute of the Commission for the Control of INTERPOL's Files, as in force on 29 October 2026, the Commission should in principle decide within four months of an access request being declared admissible, may extend that period where circumstances justify it, and consults the source of the data where examination of the request so requires (Articles 34 and 35 of its Statute), which may alert the source to the request - and recognise its limits. It provides no guarantee and covers neither requests for provisional arrest sent directly from one State to another nor national alerts.

Key point

The map should distinguish **active means of pressure** (proceedings under way), **announced means of pressure** (documented threats) and **dormant means of pressure** (instruments available but not yet used). A well-prepared defence contests the first, prepares for the second and limits the scope for the third - for example, by addressing the client's position with INTERPOL and banks and securing the relevant documents in advance.

ILLUSTRATIVE CASE · ACTION ACROSS SEVERAL JURISDICTIONS

An executive targeted simultaneously in three jurisdictions by the *same opposing group*

Fictional scenario based on the means of pressure described in this step. It does not describe an actual case.

Profile	The head of an industrial group is in dispute with a former business partner who has institutional connections in their home State.
Mechanism	A criminal complaint for breach of trust in State A, a civil liability claim accompanied by protective attachments in State B, a compliance report to the principal bank in State C, and a press campaign repeating the terms of the complaint.
Strategic reading	Three coordinated means of pressure (criminal proceedings, civil proceedings designed to exhaust the defendant, and reputational and banking pressure), each apparently unremarkable in isolation. Misuse can be demonstrated only by comparing the timing, the choice of jurisdictions and the identities of those involved - the purpose of the file of contextual evidence (step 04).
Model answer	Defend the merits in each jurisdiction, compile a single chronology, challenge the attachments on proportionality grounds, make documented representations to the bank and exercise restraint in public until the file of contextual evidence is ready.

03

Assess the evidence: objective indicators of misuse

Timing: 2 to 6 weeks · Output: a written assessment addressing each indicator

The distinction between stringent proceedings and proceedings used for an improper purpose cannot be drawn from the experience of the person concerned alone. It depends on objective indicators: verifiable, dated facts on which a party can rely in proceedings. The assessment rests on the convergence of those facts - no single indicator suffices. The framework below provides the structure for the written assessment recommended in this guide. It deliberately reflects the categories of contextual evidence examined by the European Court of Human Rights under Article 18 (step 06) and by the bodies that oversee international police cooperation.

First indicator: chronology. This is the most powerful. Where proceedings are brought within days or weeks of an event outside the litigation - a breakdown in negotiations, a public statement, a refusal to sell, a candidacy, testimony or a change in political control - the timing calls for an explanation. The defence must resist drawing a premature inference of causation from correlation. A close sequence, documented event by event, nevertheless calls for an explanation that the party bringing the proceedings will find difficult to avoid. The task is to date every procedural act, every business or political event and every publication on a single timeline.

Second indicator: the forum. The choice of a jurisdiction with no substantial connection to the facts, the parties or the evidence - but offering rapid ex parte measures, extensive publicity, convenient access for the opposing party or a basis for international cooperation - can indicate purpose. The same applies to the artificial division of a single set of facts across several jurisdictions, increasing the burden on the defence without assisting the search for the truth.

Third indicator: disproportionality. The measures sought may be out of proportion to the apparent stakes - attachments exceeding the claim by several orders of magnitude, coercive measures against individuals in respect of economic conduct dating back many years, or requests for documents covering an entire business. The effort devoted to the proceedings may also be out of proportion to the initiating party's objective financial interest in the outcome. A party that spends more on litigation than it could recover by winning may have a further purpose. That possibility must be checked before an inference is drawn.

Fourth indicator: persistent pursuit. Proceedings renewed after successive failures - complaints closed and then refiled under a similar legal characterisation, claims dismissed and then brought elsewhere, requests for cooperation repeated after refusal - may reveal a degree of persistence beyond that of an ordinary litigant. Every documented setback for the opposing party is evidence. A series of favourable decisions, considered together and read in light of the reasons given, may demonstrate that persistence.

Fifth indicator: orchestrated publicity. Leaks of documents covered by investigative secrecy or confidentiality, press releases announcing proceedings before they are notified, repeated synchronisation of procedural acts with hostile publications, and media use of criminal characterisations before judgment can reveal that publicity is being orchestrated for reputational as well as legal effect. Document this indicator by comparing timestamps - procedural act, leak, publication - and identifying the channels through which the material circulated.

Sixth indicator: differential treatment. Where comparable situations - the same facts, sectors and practices - give rise to no proceedings, the selective pursuit of the opposing party alone becomes significant. This indicator requires detailed knowledge of sector practice and can be difficult to establish. Once established, it is particularly telling. **Seventh indicator: converging irregularities.** Isolated procedural defects can occur in any case. Their significance lies in a pattern - all the irregularities operate in the same direction, to the detriment of the same party.

What to gather

- **A single timeline** linking procedural acts with events outside the proceedings, with supporting evidence for each entry
- **A table of forums** recording the jurisdiction, its objective connection to the facts, the measures obtained and the stage reached
- **The favourable decisions** already obtained (closures, dismissals and refusals of cooperation), with certified translations
- **A record of the publicity**: articles, press releases, timestamped publications and certified captures
- **Comparative evidence** of differential treatment (public prosecution data for the sector)

What not to do

- **Drawing a conclusion from a single indicator**: proof depends on mutually corroborating facts and cannot rest on an anecdote
- **Asserting causation** where the evidence establishes only correlation: the forum hearing the case will distinguish the two, and overstatement costs the defence its credibility
- **Ignoring alternative explanations**: a sound written assessment examines them and gives evidence for ruling them out
- **Reconstructing the timeline from memory**: every unsourced date is a weakness that can be exploited

Spotlight

The framework of indicators reflects the categories of evidence that the most exacting forums will examine. Under Article 18, the European Court of Human Rights reasons from **mutually corroborating contextual evidence** - the chronology of the proceedings, official statements and procedural anomalies - following its recognition in Merabishvili v. Georgia (Grand Chamber, 2017) that proof of a purpose not prescribed by the Convention is subject to no special evidential rules. Assessing the case against these indicators already lays the groundwork for proof.

04

Maintain a continuous record: the central role of the file of contextual evidence

Timing: **open immediately and maintain continuously** · Objective: assemble the evidence for every subsequent line of defence

Every avenue of defence against the weaponisation of the law - the domestic court examining abuse of process, the extradition court, the Commission for the Control of INTERPOL's Files, the European Court of Human Rights under Article 18, UN bodies, targeted sanctions authorities and banks themselves - has one feature in common. Each requires documentary evidence. Since proof of misuse depends on context, a single document is rarely decisive. What matters is an organised body of material that shows how the indicators converge. In the firm's practice, this is the file of contextual evidence. Compiling it is the most

cost-effective decision the defence can make. It should be taken at the first indications of misuse - waiting until an international forum is finally seised may mean waiting years.

The file of contextual evidence serves an evidential purpose that a collection of press reports cannot fulfil. Four disciplines govern its preparation. First, dating. Date each item and retain the source of the date - a certified timestamp, a formal record, an acknowledgement of receipt or preserved metadata. The strength of the file rests on the reliability of its timeline. An approximate date compromises the inferences drawn from it. Second, provenance. Record the source of each document and how it was obtained. Improperly obtained evidence can compromise the entire case and expose the defence team itself to risk. Third, evidential weight. Distinguish facts established by official documents (decisions, procedural documents and register entries), facts established by independent third parties (reports by international organisations or established non-governmental organisations, and independently corroborated reporting), and assertions by the person concerned, which require corroboration before use. Fourth, updating. The file follows the course of the litigation: add each step taken by the opposing party, each favourable decision and each hostile publication as it is received.

A typical file contains seven sections. One, the master timeline, linking proceedings with events outside the litigation. Two, an inventory of proceedings with their essential documents, translated where the strategy requires. Three, the favourable decisions and proceedings abandoned by the opposing party - closures, dismissals, refusals of cooperation and orders lifting measures - which will document persistent pursuit and be of immediate use in dealings with banks and partners. Four, the record of hostile publicity, timestamped and archived in a form that can be relied upon in proceedings. Five, independent sources documenting the wider context: public reports on the state of the judiciary concerned, opinions of international bodies and resolutions of parliamentary assemblies - materials with which international forums are familiar and whose weight they assess. Six, evidence of harm: defence costs, termination of banking relationships, lost contracts, travel restrictions and effects on family members and colleagues - the basis for the counter-offensives in step 09. Seven, an incident log: threats, approaches and suspected surveillance, recorded at the time together with their circumstances.

One precaution applies throughout: **the file of contextual evidence is itself a target**. It brings together precisely what the opposing party would like to know - the state of the evidence, weaknesses identified and the strategy. Its safekeeping must therefore meet the information security requirements of sensitive litigation. Counsel should hold the file under legal professional privilege, distinguishing between work undertaken in the conduct of a defence, which attracts the strongest protection, and advisory work, for which privilege is subject to exceptions in certain criminal proceedings - under French law, for certain offences involving tax fraud, corruption, trading in influence, terrorist financing and the laundering of proceeds of those offences, where the legal advice or documents establish that they were used to commit or facilitate those offences (Article 56-1-2 of the Code of Criminal Procedure, as numbered on 29 October 2026, with the recodification

of the Code taking effect on 1 January 2029) - and should compartmentalise access, keep encrypted copies and use a secure transmission channel. Step 11 returns to the protection of the defence itself.

What to gather

- **Originals or certified copies** of every procedural document received, together with envelopes and proof of service
- **Timestamped digital records**: formal records, certified captures and metadata exports
- **Bank records**: requests for enhanced information, termination of relationships and written reasons
- **Relevant public reports** by international organisations and established NGOs on the institutional context concerned
- **An incident log** maintained contemporaneously, including events that seem minor at the time

What not to do

- **Collecting material without recording its provenance**: a document whose lawful origin cannot be established is a liability
- **Keeping the file on unsecured personal devices or storage media** or circulating it through ordinary messaging services
- **Mixing fact and commentary**: the file records the facts. Analysis belongs in separate notes covered by legal professional privilege
- **Waiting until a case is brought before a forum** to begin: contextual evidence deteriorates (links are removed, witnesses disperse and memories fade)

Key takeaway

The file of contextual evidence is the **foundation of every defence** against the weaponisation of the law. Adapted to the requirements of each forum, it supports a challenge to an international alert, an application under Article 18 ECHR, a request for early dismissal of a strategic lawsuit against public participation, a designation submission under a targeted sanctions regime, and the restoration of banking relationships. An hour spent documenting the facts in the first month saves weeks in the thirty-sixth.

> *Contact Hennebel Avocats*
> Do you need a confidential assessment of your situation, help organising a file of contextual evidence or coordination of your defence? Urgent situations receive priority.
>
> Contact the firm

05

Build the procedural defence: abuse of process and a fair trial

Timing: as each set of proceedings progresses · Objective: gain ground without waiting for international proceedings

Before a case reaches any international forum, the defence is conducted before the courts hearing the proceedings themselves. This is an essential point of method. The European Court of Human Rights requires proper use of effective domestic remedies. The same applies to UN treaty bodies such as the Human Rights Committee, unless the application of the remedies is unreasonably prolonged (Article 5 § 2 (b) of the Optional Protocol to the International Covenant on Civil and Political Rights). The other mechanisms examined in subsequent steps - the Commission for the Control of INTERPOL's Files, sanctions authorities and, among UN bodies, the Working Group on Arbitrary Detention and the special procedures of the Human Rights Council - impose no such exhaustion requirement and may be approached before domestic proceedings conclude, subject to the qualification specific to the Working Group (step 09). All these bodies nevertheless weigh the domestic decisions obtained, and favourable decisions carry the greatest weight in the file of contextual evidence. The procedural defence accordingly has two objectives: to win and, in winning, to build the evidence.

First, a direct defence on the merits. Treating allegations as unworthy of an answer is a strategic error. Before a French criminal court trying lesser indictable offences, any pleas of nullity that remain admissible must be raised before any defence on the merits. Written submissions seeking nullity must, in principle, be filed three days before the hearing, subject to the qualifications in Article 385 of the Code of Criminal Procedure. Even where the proceedings appear to serve an improper purpose, it remains essential to address the constituent elements of the offence, the evidence and any limitation period. Each success on the merits adds to the evidence of persistent pursuit if the opposing party continues, and deprives the misuse of its foundation. Proceedings lost by the initiating party become evidence for the defence.

Second, the court's powers to control its own proceedings. Most legal systems provide means to address abuse of the right to bring proceedings: liability for abuse of process or dilatory proceedings, civil fines, enhanced costs orders, inadmissibility for lack of a legitimate interest, powers to consolidate or stay parallel proceedings, and scrutiny of jurisdiction to prevent artificial choices of forum. The strength of these measures varies by jurisdiction. A transnational defence should identify them in each jurisdiction from step 02. In some systems, seeking a sanction for abuse provides genuine leverage. In others, its value is mainly symbolic, but it can still produce evidence - even without imposing a sanction, a judge who records that a claim was vexatious provides a reasoned finding that will carry weight elsewhere.

Third, fair trial guarantees. For States Parties, Article 6 of the European Convention on Human Rights provides the framework: the right to an independent and impartial tribunal, equality of arms, adversarial proceedings, a hearing within a reasonable time, appropriate provision for public hearings, and the presumption of innocence in criminal matters. Where the law is being weaponised, these guarantees serve two purposes. They support immediate applications - for the recusal of a judge, for an adjournment, to challenge a measure taken without hearing both parties, or to complain of public statements by the authorities that violate the presumption of innocence. They also lay the groundwork for a Convention claim. A later application to the European Court of Human Rights under Article 6 taken in conjunction with Article 18 - a combination accepted since 2024 (step 06) - requires the complaints to have been raised in substance before the domestic courts. From the first procedural act, the defence should therefore observe the discipline required for future Convention proceedings: raise complaints in writing, have them entered on the record and retain the decisions.

Fourth, consistency across proceedings. A defence spanning several jurisdictions carries a particular risk of contradiction. An argument advanced in jurisdiction A - about the location of an asset or whether an individual actually performed a given role, for example - may be used in jurisdiction B. An opposing party that coordinates an attack across jurisdictions reads the pleadings across those jurisdictions. The answer lies in the organisation of the defence. Coordinating counsel maintains a single register of positions taken in each set of proceedings and checks each new submission against it before filing. Finally, the defence must keep its own applications beyond reproach. Every forum considers the restraint shown by a party alleging abuse, and the European Court itself exceptionally rejects applications as abusive, including those deliberately based on fabricated facts (Article 35 § 3 (a) of the Convention). Proceedings brought for an improper purpose cannot credibly advance a complaint of misuse.

> *Key point*
> The procedural defence must account for what it wins **in** the proceedings and what it establishes **for** the file of contextual evidence. The refusal of an attachment on proportionality grounds, a decision to close a case or a judicial observation that the opposing party's claim was vexatious has value beyond the proceedings. These are the documents that the extradition court, the European Court of Human Rights and the banks will read.

ILLUSTRATIVE CASE · INTERNATIONAL ALERT OBTAINED BY A COMPETITOR

A businessman whose competitor obtains an *international alert*

Fictional scenario illustrating issues addressed both here and in the INTERPOL guide in this series. It does not describe an actual case.

Profile	An entrepreneur is involved in a shareholder dispute in their home State. The opposing group, which has close ties to the local prosecution authorities, secures the opening of criminal proceedings concerning the facts underlying the commercial dispute.
Mechanism	Domestic criminal proceedings, followed by a request for a red notice citing a valid arrest warrant or a judicial decision having the same effect. Consequences follow in succession: risk during transit, enhanced bank checks and publicity.
Strategic reading	A private dispute has given rise to the international exercise of public coercive powers. The relevant indicators are chronology (the prosecution followed the shareholder dispute), disproportionality (a worldwide measure for a commercial dispute) and differential treatment (the shareholder who remains in favour faces no prosecution for the same management decisions).

Model answer

Challenge the alert before the Commission for the Control of INTERPOL's Files, following the procedure and evidential approach set out in the INTERPOL and extradition guide. Rely first on Article 83(1)(a)(i) of INTERPOL's Rules on the Processing of Data, which excludes red notices for offences arising from private disputes unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organised crime (this provision applies only to red notices. A diffusion must be challenged under the general rules), and then, if the evidence supports it, on Articles 2 and 3 of the INTERPOL Constitution. Defend the merits in the home State if a defence can be conducted there. Use a single file of contextual evidence for both proceedings.

06

Invoke Article 18 ECHR: proving predominant purpose

Timing: prepare from the outset and calculate the time limit separately for each complaint: four months from the final domestic decision on the effective remedy or, for a complaint about the length of pre-trial detention where no other effective remedy remains to be exhausted, from release or the first-instance judgment on the charge (Article 35 § 1) · Objective: obtain a finding of misuse from an international court

Article 18 of the European Convention on Human Rights provides, in substance, that restrictions on the rights and freedoms guaranteed by the Convention may be applied only for the purposes for which they were prescribed. It is the Convention provision that addresses most directly the phenomenon examined in this guide: the use of a restriction for an improper purpose. For many years it was rarely applied. The Grand Chamber judgment in **Merabishvili v. Georgia (2017)** recast the case-law and established a clear methodology. Every practitioner dealing with suspected weaponisation of the law within the Council of Europe should be familiar with that methodology - and its reasoning is worth understanding beyond Europe, as it informs the proof of misuse more generally.

First contribution of Merabishvili: Article 18 is accessory in its application, but its violation is autonomous. It applies only in conjunction with a Convention right that is subject to restrictions - most often Article 5 (liberty), but also Articles 8, 10 and 11. Since the Grand Chamber judgment in *Ukraine v.*

Russia (re Crimea) (25 June 2024, §§ 1337-1338), the Court has also accepted its application in conjunction with Article 6 (fair trial), resolving a longstanding question and opening the way to challenges to judicial proceedings themselves on grounds of improper purpose - yet a violation may be found even where the restriction, taken in isolation, would satisfy the requirements of the substantive right. Detention based on reasonable suspicion within the meaning of Article 5 § 1 (c) may nevertheless breach Article 18 taken in conjunction with Article 5 if its predominant purpose falls outside the purposes for which the Convention permits such deprivation of liberty. This is precisely the structure of *lawfare* as defined in step 01: an instrument formally regular but used for an improper purpose.

Second contribution: recognition of a plurality of purposes and the predominant purpose test. The Grand Chamber accepted that a measure may simultaneously pursue several purposes - some prescribed by the Convention, others not. Where there is a plurality of purposes, a violation of Article 18 is found only where the purpose not prescribed by the Convention proves *predominant*. The Court explained that predominance must be assessed in light of all the circumstances and may change over time in a continuing situation. A purpose initially legitimate may give way to an ulterior purpose as the proceedings develop. Two thresholds remain. The complaint is examined separately only if the ulterior purpose is a fundamental aspect of the case, and proof must be established beyond reasonable doubt, although that standard may be met through sufficiently strong, clear and concordant inferences. This temporal dimension assists the defence. Even where the initiation of proceedings appears defensible, it permits a case of misuse to be made by demonstrating a shift in purpose - through the chronology, precisely what the file of contextual evidence in step 04 is designed to establish.

Third contribution, and the most important in practice: the rules of evidence. Merabishvili rejected the idea that special evidential rules required direct and incontrovertible proof of the ulterior purpose. The Court applies its ordinary approach. It may base its finding on inferences drawn from a sufficiently strong body of contextual evidence - the sequence of measures, statements by the authorities, procedural anomalies and evidence of an interest on the part of the authorities in neutralising the individual. Proof of misuse may be direct, but it is usually contextual and indirect. This is consistent with the nature of the phenomenon: those who misuse proceedings rarely record that fact in writing. The objective indicators (step 03) and the file of contextual evidence (step 04) thus have a direct application in litigation.

The case-law illustrates the practical reach of this methodology. In **Kavala v. Turkey (2019)**, the Court found a violation of Article 18 taken in conjunction with Article 5, holding that the measures against the applicant, a civil society figure, pursued the ulterior purpose of silencing him as a human rights defender. In **Ilgar Mammadov v. Azerbaijan (2014)**, it found that the deprivation of liberty of an opposition figure was intended to punish him for criticising the government. In the Grand Chamber judgment in **Navalnyy v. Russia (2018)**, it found a violation of Article 18 taken in conjunction with Articles 5 and 11. The restrictions imposed on the applicant, a political opponent, on the occasion of two of his arrests pursued the ulterior

purpose of suppressing political pluralism. In the Grand Chamber judgment in **Kavala v. Türkiye (No. 2)** (No. 2170/24, 25 August 2026), it found a violation of Article 18 taken in conjunction with Articles 5 § 1, 6 § 1, 10 and 11. The predominant purpose of the applicant's prosecution, continued detention and conviction was to punish him for his role in mass demonstrations and for expressing his views as a human rights defender, and to silence him. The Court assessed predominance in light of the duration and intensity of the restrictions. This guide cites these judgments for the methodology they apply and the findings reached by the Court itself. For practitioners, they show that the standard is demanding, that it can be met, and that what meets it is contextual evidence - force of assertion cannot substitute for proof.

The strategy extends beyond judgment. A finding of a violation of Article 18 entails obligations of execution under the supervision of the Committee of Ministers of the Council of Europe. Failure to execute the judgment may lead to infringement proceedings under Article 46 § 4 of the Convention - an exceptional procedure invoked by the Committee of Ministers in **Ilgar Mammadov** (Grand Chamber judgment of 29 May 2019) and then in **Kavala** (Grand Chamber judgment of 11 July 2022), the two instances mentioned in the Court's Guide on Article 18 as updated on 31 August 2026. The person concerned cannot initiate infringement proceedings - the Committee of Ministers refers the matter to the Court, after serving formal notice on the State and by a decision taken by a two-thirds majority - but may submit communications to the Committee of Ministers at the execution stage. For that person, these mechanisms extend the effect of the finding: they maintain institutional pressure on the State that has failed to comply and provide documents of exceptional authority for the file of contextual evidence. The conduct of Convention litigation of this kind - admissibility, exhaustion, formulation of complaints and execution - follows the general rules set out in the Praxis guide to human rights litigation strategy, to which readers are referred for procedural detail. One point must be addressed here. Since 1 February 2022, an application must be lodged within four months of the final domestic decision (Article 35 § 1 of the Convention, as amended by Protocol No. 15). This time limit is mandatory. The Court applies it of its own motion and declares late applications inadmissible. Time runs separately for each complaint, from the final domestic decision on the effective remedy. For a complaint concerning the length of pre-trial detention under Article 5 § 3, where no other effective remedy remains to be exhausted, time runs from the end of the period concerned: actual release or the first-instance judgment determining the criminal charge (*Idalov v. Russia* [GC], No. 5826/03, 22 May 2012, §§ 112 and 129-130, under the former six-month time limit). For an isolated act for which there is no effective remedy, time generally runs from the act or from the date the applicant became aware of it. Waiting for the final outcome of the criminal trial, or for release after conviction, before complaining about a completed period of pre-trial detention may render the complaint out of time. Compiling the file of contextual evidence does not suspend the time limit. The date of introduction is in principle the date on which the compliant application form was sent, as evidenced by the postmark, subject to Rule 47 §§ 5.1 and 6 (b) of the Rules of Court.

What to gather

- **An integrated body of contextual evidence**: timeline, public statements by the authorities and procedural anomalies - each item dated and sourced (step 04)
- **Proof of exhaustion of domestic remedies** and of the complaints raised in substance before the domestic courts (step 05)
- **The domestic decisions** - favourable and unfavourable - with translations, to establish the course of the proceedings
- **An analysis of alternative explanations**, prepared in writing before the respondent State advances them

What not to do

- **Submitting a collection of press reports** as a body of evidence: the Court examines how the items support one another, irrespective of their volume
- **Holding back the Article 18 complaint until the application to the Court** without laying the groundwork in the domestic proceedings
- **Overstating the case**: asserting that the ulterior purpose was predominant where the evidence establishes only its presence
- **Overlooking execution**: planning for the post-judgment stage (Committee of Ministers, Article 46) begins with the application

Spotlight - The Merabishvili methodology

Three elements: **plurality** (a measure may pursue several purposes), **predominance** (where several purposes coexist, a violation arises only if the purpose not prescribed by the Convention predominates, and it may become predominant in the course of the proceedings), **contextual evidence** (no special evidential rules: inferences may be drawn from a body of evidence - chronology, statements and procedural anomalies). This framework underpins proof of misuse even outside the scope of the Convention.

> *Common mistake*
> Pleading Article 18 as a general complaint about the prevailing climate, supported by press coverage and the applicant's indignation. Where the evidence is indirect, the Court expects an **integrated body of evidence**: each contextual element must be dated, sourced and linked to the others, and alternative explanations must be addressed fairly. A poorly prepared Article 18 complaint fails - and that failure is then used against the defence in every other forum.

07

Counter international measures: police cooperation, freezing measures and designations

Timing: from a few weeks to several years, depending on the means of pressure · Objective: cut off the international channels that extend the reach of the misused proceedings

Domestic proceedings used for an improper purpose acquire worldwide coercive force only through international channels: police alerts, extradition requests, requests for mutual legal assistance, asset freezes and designations, and recognition of judgments. Each channel has its own oversight body, procedures for challenge and evidential requirements. Each is covered by a specialist guide in this series. Step 07 sets out the overall approach and the order of priority, then refers readers to those guides for the detail.

Police cooperation and extradition are addressed using the method set out in the Praxis guide to INTERPOL, extradition and transnational defence: identify the precise measure (red notice or another notice, diffusion, extradition request or warrant), challenge it before the Commission for the Control of INTERPOL's Files under Articles 2 and 3 of the Organisation's Constitution, conduct the extradition defence before the domestic courts and coordinate it with asylum proceedings and non-refoulement. Two points connect that work with this guide. First, proof of the political character or improper purpose of a request for cooperation rests largely on the same contextual evidence as an Article 18 complaint - the file of contextual evidence compiled in step 04 supports the request to the Commission, which assesses it under INTERPOL's own rules, particularly Article 3 of its Constitution. Resolution 2161 (2017) of the Parliamentary Assembly of the Council of Europe, on abuse of the INTERPOL system, provides the institutional context for this concern. Second, the evidential discipline works both ways - the Commission's published practice shows that a general allegation of political motivation, unsupported by concrete evidence

specific to the case, will fail. The assessment in step 03 substantiates the complaint on the merits. Admissibility of a request to the Commission is governed by Article 32 of its Statute.

Asset freezes and designations - listing under sanctions regimes, asset freezes and their successive effects on banking relationships - are addressed using the method in the Praxis guide to international sanctions: identify the regime concerned, avenues for administrative review, judicial review - an action before the General Court for annulment of a listing by the Council of the European Union must be brought within two months of individual notification or, where that is impossible, calculated from the end of the fourteenth day following publication of the notice in the Official Journal, with ten days added on account of distance in either case (Article 263 TFEU and Articles 59 and 60 of the Rules of Procedure of the General Court) - and derogations - particularly for legal fees, without which it may be impossible to mount a defence. Here again, the connection is the file of contextual evidence. Successful challenges to designations turn on the inadequacy of the factual basis and the statement of reasons. The collection of favourable decisions and the evidence of persistent pursuit by the opposing party are directly relevant.

Mutual legal assistance and recognition require particular attention because they attract less notice. Requests for mutual legal assistance may seek documents, interviews or seizures that will support the misused proceedings. Their execution may be challenged before the authorities and courts of the requested State, particularly where the request discloses a purpose unrelated to establishing the truth. The substantive reasons for issuing a European Investigation Order must be challenged in the issuing State. Fundamental rights may still be invoked in the executing State (Directive 2014/41/EU, Articles 11 § 1 (f) and 14 § 2). Similarly, a declaration of enforceability or recognition of a judgment obtained through unfair proceedings may be opposed on grounds of procedural public policy. These disputes are dispersed and technical. They benefit from coordination by a single counsel who maintains the register of positions taken (step 05).

A simple rule determines the order of priority: **address first the measures that restrict personal liberty and access to the means of subsistence** - risk of arrest and surrender, and freezes that deprive a person of the means to defend themselves - then those that constrain assets and business activity, and finally those affecting reputation. Preparation on all three fronts nevertheless begins in parallel because the timetables differ markedly: a challenge to an international alert or designation may take months or years, whereas an attachment hearing may take place within weeks. Where surrender is imminent, identify any domestic remedy with suspensive effect and, if there is an imminent risk of irreparable harm, consider a request under Rule 39 of the Rules of Court of the European Court of Human Rights. A request to the CCF does not suspend surrender.

Key point

One file of contextual evidence, **three distinct uses**: before the Commission for the Control of INTERPOL's Files, it demonstrates political character or the absence of a legitimate policing purpose. Before a court or sanctions authority, it establishes the inadequacy of the factual basis. Before the European Court of Human Rights, it establishes the predominance of a purpose not prescribed by the Convention. The evidence is common to all three, but the legal tests differ - coordination gives the transnational defence its coherence. Coordination also requires choices: where the same complaints concern detention, an opinion by the Working Group on Arbitrary Detention on the merits of those complaints bars recourse to the European Court unless there are relevant new facts (Article 35 § 2 (b) of the Convention, step 09).

08

Respond to strategic lawsuits against public participation: the anti-SLAPP framework

Timing: **respond within the time allowed for submissions in each case** · Objective: secure dismissal before the proceedings exhaust the defendant's resources

Litigation intended to silence criticism - a *strategic lawsuit against public participation*, or SLAPP - is the form of weaponisation directed at public participation. Actions for defamation, invasion of privacy, disparagement or breach of trade secrets are brought against journalists, researchers, human rights defenders, whistleblowers, media outlets or civil society organisations to impose the cost, duration and risk of litigation on those who speak out, irrespective of any genuine loss for which redress might be sought - and to deter others. It operates in the manner described in step 01: the existence of the proceedings achieves the intended effect regardless of their outcome.

The European Union has adopted a specific instrument: **Directive (EU) 2024/1069 of 11 April 2024** on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ("strategic lawsuits against public participation"). Practitioners should understand its structure because it codifies the means of defence. The Directive applies to civil and commercial matters with cross-border implications. It provides, in particular, for **early dismissal** of manifestly unfounded claims, bringing proceedings to an end before their cost has the intended effect. Its financial safeguards include the power to require the claimant to provide **security** for the costs of proceedings, and an order requiring a claimant who has brought abusive proceedings to bear the **costs of proceedings**, including the defendant's legal representation costs unless excessive. It also provides for **penalties or deterrent measures** against the

party bringing abusive proceedings, and has an international dimension: **recognition and enforcement of a third-country judgment** against a person domiciled in a Member State who engages in public participation must be refused if the proceedings are manifestly unfounded or abusive under the law of the requested State (Article 16). If the proceedings are abusive and the claimant is domiciled outside the Union, the person targeted may claim damages and costs before the court of their domicile, subject to national limitations while the foreign proceedings remain pending (Article 17). Member States bound by the Directive, which does not apply to Denmark, were required to transpose it by 7 May 2026 (Article 22). On 15 July 2026, the Commission sent letters of formal notice to fourteen States for failure to communicate complete transposition measures (INF/26/1380). Protection therefore varies by jurisdiction and must be checked under the law of the forum as at the date proceedings are instituted. Where transposition is lacking, the defence must examine what can be invoked under national law interpreted in light of the Directive. In France, Decree No. 2026-337 of 30 April 2026 (Articles 499-1 to 499-3 of the Code of Civil Procedure) provides for an interim payment towards litigation costs and early dismissal of manifestly unfounded claims. Where proceedings are abusive within the meaning of Article 4, point (3), of the Directive, the court orders the party that brought them to pay the substantiated costs, including representation costs, unless excessive. The French rules cover civil and commercial proceedings whether or not they have cross-border implications, but apply only to proceedings instituted on or after 7 May 2026. In earlier proceedings, the defence relies on existing measures - an interim payment ordered by the case management judge, a civil fine for abusive or dilatory proceedings (Article 32-1 of the Code of Civil Procedure), and damages for abuse of process (Article 1240 of the Civil Code). On 5 April 2024, the Committee of Ministers of the Council of Europe also adopted Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation. This non-binding text invites Council of Europe member States, including those outside the Union, to introduce safeguards and provides a useful benchmark in non-EU States.

An anti-SLAPP defence follows a typical sequence. **One: assess the claim against objective criteria** - the defendant's public participation (journalism, research, advocacy or whistleblowing), the manifestly unfounded nature of the claim or indicators of abuse (disproportionate claims, multiple actions, documented intimidation or choice of forum). These criteria overlap with the indicators in step 03, and the file of contextual evidence supplies the material. ****Two: invoke the early safeguards** available in the jurisdiction concerned - early dismissal, security or an interim payment towards costs, and objections to admissibility - after checking who must apply and which judge has jurisdiction. In France, only the defendant may apply. The financial measure takes the form of an interim payment towards litigation costs rather than security. In written proceedings, from the time of appointment until the end of the judge's responsibility for the case, the case management judge has exclusive jurisdiction to dismiss manifestly unfounded claims (Articles 499-1 and 789, point 1° bis, of the Code of Civil Procedure) - **while maintaining the substantive defence of freedom of expression, which the European Court of Human Rights affords particularly strong protection under Article 10 where the debate concerns matters of public interest.** Three: document the chilling effect **- the impact of the proceedings on the work of the defendant and their organisation - because that**

effect matters for penalties and redress and also helps mobilise institutional support from professional organisations, media consortia, and Council of Europe and EU monitoring mechanisms. Four: preserve the right to appeal and prepare the response.** An order of the case management judge on early dismissal may be appealed within fifteen days of formal service, subject to any extension on account of distance (Article 795, point 2° bis). Costs, sanctions for abuse and redress support the counter-offensive (step 09).

The same discipline applies here as in step 01. Characterising proceedings as a SLAPP requires an assessment and cannot be a matter of convenience. A defamation claim against a journalist may be legitimate. Early dismissal requires a manifestly unfounded claim, whereas remedies for abuse require abusive proceedings. Security may be sought on the basis of participation in public debate without a prior finding of either (Articles 6 and 10). An unsupported allegation of a SLAPP weakens the defence. Apply the indicators: chronology, disproportionality, multiplicity of proceedings, publicity, and the relationship between the claim and the alleged harm.

What to gather

- **Evidence of public participation**: dated publications, investigations, advocacy or whistleblowing by the person targeted
- **A table of the opposing party's claims**: amounts, grounds and jurisdictions, compared with the alleged harm and the defendant's means
- **Prior letters of formal notice and acts of intimidation**, which often reveal the true purpose
- **Evidence of the chilling effect**: costs, time spent, projects suspended and support withdrawn
- **The status of transposition** of Directive (EU) 2024/1069 in the jurisdiction hearing the case, checked as at the relevant date

What not to do

- **Characterising every defamation claim as a SLAPP**: using the term lightly weakens the defence advancing it
- **Neglecting the substantive defence** of freedom of expression and relying exclusively on a procedural application
- **Responding in isolation** when the action also targets the organisation and its governing bodies: the defence requires coordination
- **Remaining isolated**: institutional and professional support forms part of the anti-SLAPP response

ILLUSTRATIVE CASE · STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION

A human rights defender targeted by *civil proceedings designed to exhaust their resources*

Fictional scenario informed by the public work leading to the adoption of Directive (EU) 2024/1069. It does not describe an actual case.

Profile	The head of a civil society organisation that has published a documented investigation into the practices of a corporate group.
Mechanism	Civil claims for defamation and disparagement in two Member States (criminal defamation proceedings fall outside the Directive's mechanisms), claims for damages wholly out of proportion to the organisation's means, and letters of formal notice sent separately to individual board members.
Strategic reading	The financial objective of the claims is secondary. Their intended effect is to exhaust resources, paralyse the organisation and deter its supporters. Relevant indicators include disproportionality, multiple claims, the targeting of individual members of governing bodies and the timing of the claims in relation to publication.

Model answer

Where transposition of Directive (EU) 2024/1069 makes them available, the defendant applies to the competent judge for early dismissal and for security or an interim payment towards costs. The defence also relies on freedom of expression on the merits, documents the chilling effect, seeks an enhanced costs order and sanctions for abuse, and mobilises professional and institutional support networks.

Key takeaway

Directive (EU) 2024/1069 provides the **European framework for an anti-SLAPP defence**: early dismissal, security for costs, costs and penalties, and refusal to recognise third-country judgments arising from abusive proceedings. Its transposition deadline expired on 7 May 2026. The safeguards available vary by jurisdiction and must be checked in each case - in France, the new mechanisms apply only to proceedings instituted on or after 7 May 2026 - bearing in mind that the ordinary remedies for abuse of process remain available where the law of the forum provides for them.

Before making any public statement using the term lawfare, approaching an international body or responding to action across several jurisdictions.

When to contact Hennebel Avocats

Before characterising the situation publicly, filing a challenge to an international alert, bringing an Article 18 complaint, responding to a strategic lawsuit against public participation or launching a counter-offensive. Depending on the case, the firm can act as direct counsel or as co-counsel with criminal lawyers, civil litigation specialists in the jurisdictions concerned, crisis communications advisers or information security experts. Urgent situations receive priority.

Contact the firm

09

Organise the counter-offensive: liability, costs and designations

Timing: as soon as the file of contextual evidence supports action · Objective: impose a cost on misuse and regain the initiative

A purely reactive defence against the weaponisation of the law has a structural weakness. It leaves the initiative with the opposing party, which chooses the forums, timetables and public account of events, and for which each new set of proceedings entails little additional cost. A counter-offensive is therefore a strategic necessity, independent of temperament. Its purpose is to change the opposing party's calculation by imposing a cost - legal, financial, reputational or institutional - on continued misuse. Two conditions govern its lawfulness and effectiveness. It must rest on grounds genuinely supported by the file of contextual evidence, and the defence's own conduct must remain beyond reproach. A defence that responds to abuse with abuse forfeits the moral and evidential advantage on which its strength depends.

First, liability and costs. In every jurisdiction in which the opposing party's proceedings fail, the defence examines the remedies that follow: a damages claim for abuse of process, a civil fine where available (in France, on the court's own initiative), an enhanced costs order and recovery of expenses incurred. Considered individually, these outcomes may seem modest in relation to the dispute as a whole. Taken together, they change its economics - each new set of proceedings now begins with a documented risk of a sanction, and the orders already obtained, even if symbolic, provide evidence of the opposing party's conduct in every other forum. For strategic lawsuits against public participation, Articles 14 and 15 of Directive (EU) 2024/1069 provide for costs and penalties or equivalent measures. Compensation depends on national law (step 08).

Second, international mechanisms for obtaining independent findings. Securing a finding of misuse from an independent body is a counter-offensive in its own right because it changes how third parties view the dispute. An Article 18 complaint before the European Court of Human Rights (step 06) is the most developed form of this approach within the Council of Europe. It remains subject to the four-month time limit under Article 35 § 1 of the Convention, which runs regardless of whether the file of contextual evidence is complete. Depending on the circumstances, UN bodies may also be approached. The Working Group on Arbitrary Detention delivers opinions using a category-based methodology. The communications addressed to States by the special procedures of the Human Rights Council document the situations submitted to them once they are published, making it necessary to assess the risk of identification before submission. There

are limits on combining these avenues with an application to the European Court. The rule applies to any procedure of the same nature, including the Human Rights Committee: a decision by the Committee on the merits of an identical complaint renders it inadmissible before the Court, which may raise the point of its own motion, unless there are relevant new facts (*Sanchez i Picanyol and Others v. Spain*, No. 25608/20 and others, 6 November 2025, §§ 164 and 167-169). The European Court of Human Rights considers the Working Group to be "another procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b) of the Convention (*Peraldi v. France* (dec.), No. 2096/05, 7 April 2009, *Gürdeniz v. Turkey* (dec.), No. 59715/10, 18 March 2014, and *Sanchez i Picanyol and Others v. Spain*, No. 25608/20 and others, 6 November 2025, final on 23 March 2026, §§ 162-177). Unless there are relevant new facts, it rejects complaints that are "substantially the same" - identity of facts, parties and complaints - as those on which the Working Group delivered an opinion on the merits before the Court ruled, irrespective of the order in which the two bodies were seised. The parties were held to be the same where a relative had submitted a communication seeking examination of the situation of the person concerned (*Peraldi*). Conversely, the Court retains jurisdiction where the complaints before it differ from those on which the Working Group principally ruled (*Sanchez i Picanyol*, §§ 174-176), or where no proceedings were opened before the Working Group. This includes a simple urgent intervention by the special procedures (*Kavala v. Turkey*, No. 28749/18, 10 December 2019, §§ 92-94), or a case in which no regular procedure was opened, no opinion was delivered and the communication was also withdrawn (*Ayvaz and Others v. Türkiye* (Committee), No. 14347/17 and others, 11 July 2023, §§ 7-11, judgment revised on 27 May 2025 on a point unrelated to those paragraphs). For detention attributable to a State Party to the Convention, the choice must be made before approaching either body, complaint by complaint, in light of domestic remedies, the timetable and the desired outcome: a Working Group opinion or a binding Court judgment. A Working Group opinion on the merits bars the same complaint in Strasbourg unless there are relevant new facts. If the Human Rights Committee or another UN body dealing with individual cases is already considering the same person and the same facts, the Working Group refers the case to that body (§ 33 (d) (ii) of its Methods of Work). In the other direction, several European States, including France and Germany, entered a reservation to Article 5 § 2 (a) when acceding to the Optional Protocol to the International Covenant on Civil and Political Rights. It precludes the Human Rights Committee from examining a matter already examined under another international procedure, of which an application to the European Court is the principal example (Article 5 § 2 (a) of the Protocol already precludes examination, in respect of any State Party, of a matter currently being examined under such a procedure). The order of applications must therefore also take account of the reservations of the State concerned. These mechanisms are described in the related guides in this series. Using them to establish misuse requires the same evidential discipline as every other aspect of the case.

Third, targeted human rights sanctions regimes. Where misuse forms part of a pattern of serious violations attributable to identifiable officials, targeted sanctions regimes - the US Global Magnitsky Act (2016), made permanent in 2022, and Executive Order 13818 of 20 December 2017, issued under that Act among other

authorities, the EU Global Human Rights Sanctions Regime established by Council Regulation (EU) 2020/1998 and Council Decision (CFSP) 2020/1999 of 7 December 2020, whose measures are periodically renewed - as at 29 October 2026, until 8 December 2026 - and their equivalents in other States - provide a particular avenue for a counter-offensive: preparing a designation submission for the competent authorities that documents individual responsibility. The power to designate lies with the authorities, but the quality of the material submitted matters to their assessment. The conditions, effects and limits of these regimes are addressed in the Praxis guide to international sanctions. Their use requires careful strategic assessment because it escalates the dispute and may foreclose opportunities for negotiation (step 12).

Fourth, professional responsibility. Misuse sometimes depends on assistance from professionals - counsel, public legal officers, experts or private intelligence providers - whose involvement exceeds what their professional rules permit. A disciplinary complaint supported by specific, documented facts may then be a legitimate course of action. This requires the utmost restraint. There is a narrow distinction between a substantiated complaint about professional misconduct and retaliating in kind against the opposing party's lawyers - precisely the practice against which step 11 explains how to protect the defence. This guide recommends taking action against a professional only on facts established by documentary evidence, after obtaining advice from a professional ethics specialist in the jurisdiction concerned, and in the knowledge that the action may become public and will bear scrutiny.

> *Key point*
> The test of a counter-offensive is its **effect on the opposing party's calculation**, irrespective of any emotional satisfaction it brings. A successful liability claim, a finding by an international body or a well-founded designation submission changes the additional cost to the opposing party of bringing the next case. More than anything else, that change in calculation brings an end to strategies of weaponisation that would otherwise continue.

> *Common mistake*
> Launching a counter-offensive prematurely, on an incomplete file of contextual evidence, to "regain the initiative". A liability claim that fails, a disciplinary complaint that is closed or a designation submission that is rejected becomes evidence **for the opposing party** - which will present the outcome as proof that the defence has fabricated its account of misuse. A counter-offensive begins when the evidence supports it.

10

Protect reputation and manage media coverage

Timing: **continuous, with critical points for decision** · Objective: retain control of the public account without compromising the proceedings

Contemporary forms of legal weaponisation almost always operate in two stages. The proceedings supply the material - allegations, measures, hearings - and publicity produces the effect - lasting suspicion, isolation and the breakdown of business relationships. A defence may win the cases yet lose what matters most if it loses control of the public account. Banks, partners, employers, authorities in the State of residence and professional networks read what is written about judgments more readily than the judgments themselves. Reputation is therefore a distinct part of the defence and requires the same rigour as the litigation.

First principle: the litigation strategy governs communications. Every public statement is potential evidence in all pending and future proceedings. It can be filed, translated, excerpted and used against its author. This gives rise to a practical rule: no communication about the case without approval from coordinating counsel, who checks it against the register of positions taken in each set of proceedings (step 05). This applies to the client, family members, colleagues and supporters - whose spontaneous interventions, however well intentioned, have compromised more than one defence.

Second principle: continue to exercise the public restraint in characterising the case prescribed in step 01. Until the file of contextual evidence substantiates misuse, public communications should be confined to verifiable statements of fact: disputing the allegations, recalling favourable decisions and correcting specific inaccuracies. Once the evidence is there - a series of decisions closing cases, reasoned refusals of cooperation and findings by independent bodies - public statements can document the misuse and cite the supporting material. The strength of the defence's account then lies in public documents that journalists and analysts can check for themselves: publicly delivered decisions, reasoned refusals of cooperation and findings by independent bodies. The file of contextual evidence itself is not disclosed. It contains analyses covered by legal professional privilege and documents whose disclosure may be a criminal offence - under French law, a party may not disclose to a third party copies supplied to it of documents in a judicial investigation, except for expert reports disclosed for the purposes of the defence (Articles 114 and 114-1 of the Code of Criminal Procedure). Coordinating counsel checks every document intended for the press against these rules and assesses the risk of defamation.

Third principle: examine hostile publicity as a legal issue as well as a communications issue. Leaks of confidential procedural documents, coordinated campaigns and inaccurate publications give rise to possible remedies - rights of reply, carefully framed defamation claims, reports to platforms and applications for interim relief - which must be assessed promptly and with judgement. In France, Article 65 of the Law of 29 July 1881 generally sets a three-month limitation period for public defamation, running from publication or the last valid act interrupting the period. Article 65-3 extends it to one year for the offences it lists. Some legal responses amplify the publicity they seek to counter. The defence must guard against bringing proceedings whose true purpose is to influence the public account. Applying the same test to both sides is a matter of integrity: the criteria for identifying a strategic lawsuit against public participation by the opposing party (step 08) apply equally to actions brought by the defence.

Fourth principle: plan for the long term. Suspicion created by a campaign dissipates slowly, and private compliance databases, search engines and newsroom archives have long memories. This sustained work - updating compliance databases after each favourable decision and obtaining delisting of search results where the conditions are met - forms part of the stabilisation addressed in step 12. It follows the approach described in the INTERPOL guide to the period after deletion of an alert.

II

Protect counsel and the defence itself

Timing: **from the formation of the defence team** · Objective: ensure the continuity and integrity of the defence

In advanced cases of weaponisation of the law, the defence itself becomes a target. The logic is clear: neutralising counsel is the least costly way to neutralise the defence. Bar associations, rapporteurs and international professional organisations have publicly documented practices ranging from discreet pressure to direct attacks: criminal or disciplinary complaints against lawyers for acts undertaken in their professional capacity, attempts to identify a lawyer with the client's cause, searches of law firms targeting defence files, surveillance of communications, pressure on local correspondents in the home State, professional smear campaigns, and even the inclusion of counsel on lists of persons subject to restrictive measures. A defence team that has failed to anticipate this risk may discover at the worst possible moment that it depends on exposed individuals and compromised communications channels.

First, understand and invoke the legal protections. National laws protect legal professional privilege and the lawyer-client relationship to varying degrees. The case-law of the European Court of Human Rights

protects lawyer-client communications under Articles 6 and 8 of the Convention, treating confidentiality of the defence as a condition of a fair trial itself. The Basic Principles on the Role of Lawyers, adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (principles 16 and 18), and Council of Europe standards set out the fundamental principle: lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions, and must be able to practise without intimidation or improper interference. The Council of Europe Convention for the Protection of the Profession of Lawyer (CETS No. 226), opened for signature on 13 May 2025, enshrines these guarantees in a treaty. It enters into force on the first day of the month following the expiry of three months after eight signatories, including at least six Council of Europe member States, have expressed their consent to be bound. As at 29 October 2026, only one ratification had been deposited and the Convention was not in force. Its status must be checked with the Council of Europe Treaty Office on the date it is invoked. These instruments do not apply of their own accord. They must be invoked in support of the applicable domestic and treaty guarantees - before the court examining a search of a law firm, the professional body hearing a complaint brought for an improper purpose, or international bodies where the pressure reaches the relevant thresholds.

Second, organise the team to ensure continuity. Protection begins with the organisation of the defence. Allocate responsibilities among counsel in different jurisdictions so that no local measure can incapacitate the entire team. Make advance provision for continuity of representation - named substitutes, parallel powers of attorney and shared access on the principle of least privilege. Compartmentalise files so that only those who need the most sensitive documents can access them. Maintain rigorous information security: encrypted channels for all communications, secure document storage and verified digital security practices for team members, including local correspondents and experts. The file of contextual evidence (step 04) brings the strategy together in one place and requires the highest level of protection.

Third, respond to attacks against counsel. Where a member of the legal team is targeted - by a complaint, prosecution or campaign - three rules govern the response. One: document the attack in the file of contextual evidence. Pressure on the defence is itself an indicator of misuse that international forums can assess - when the party bringing proceedings targets opposing counsel, its conduct sheds light on its purpose. Two: mobilise institutional protections - bar associations and professional regulators, national and international professional organisations and, where the case warrants it, mechanisms protecting human rights defenders - which give the incident a visibility and cost that the initiating party had not anticipated. Three: maintain continuity of the engagement, precisely because the purpose of the attack is to interrupt it. This is where the team arrangements in the second element prove their worth.

ILLUSTRATIVE CASE · THE DEFENCE UNDER ATTACK

An opposition figure in exile whose *lawyers themselves face prosecution*

Fictional scenario informed by situations documented by lawyers' professional organisations and international protection mechanisms. It does not describe an actual case.

Profile	An opposition figure living abroad, represented by a team that includes correspondents in the home State.
Mechanism	Proceedings in the home State against local correspondents for acts undertaken in the conduct of the defence, a disciplinary complaint against lead counsel in the State of residence, and a campaign portraying the lawyers as their client's accomplices.
Strategic reading	The attack targets the very capacity to mount a defence - a hallmark of an advanced case. Each proceeding against counsel is a further indicator and should be documented as such.
Model answer	Invoke the principle that lawyers must not be identified with their clients, mobilise bar associations and international professional organisations, reorganise the team to ensure continuity, and include the attacks in the file of contextual evidence supporting the client's international complaints.

> *Key takeaway*
> Pressure on counsel is a **sign of misuse** and an attack on the right to a fair trial itself. It must be documented and challenged - and anticipated. A defence team organised for continuity (allocation of responsibilities, substitutes, compartmentalisation and encryption) deprives the tactic of much of its value.

12

Bring the dispute to a close: negotiation, stabilisation and preservation of the record

Timing: over several years · Objective: turn favourable outcomes into lasting security - and recognise when to bring the matter to a close

Disputes involving the weaponisation of the law rarely end with a single decision that resolves everything. They come to an end - because the initiating party exhausts its resources, political or economic circumstances change, adverse findings accumulate, or the parties negotiate. The final step concerns this closing phase, for which preparation begins at the outset. The way the defence has conducted the preceding eleven steps determines the terms on which it can bring the dispute to a close.

Negotiation comes first. Many cases of weaponisation arise from an underlying dispute - commercial, succession-related or political - that may be capable of settlement. The negotiating position of the person targeted depends directly on the strength of the case. Every adverse proceeding neutralised, every independent finding obtained and every credible counter-offensive changes the price of settlement. Three disciplines govern this phase. One: negotiate a comprehensive settlement - an agreement that ends one set of proceedings while leaving others in place, or overlooks their international effects (alerts, freezes or publications), fails to settle the dispute. The inventory of means of pressure compiled in step 02 becomes the checklist for the agreement. Two: secure performance - specify the sequence of withdrawals, verifiable conditions precedent and mechanisms for resolving disputes under the agreement itself. Three: preserve what has been secured - certain protections already obtained (protective status, decisions of principle and international findings) should not be given up in exchange for promises, because they safeguard the person concerned if the opposing party resumes its action.

> *Caution*

> An agreement between private parties does not bind public authorities. Where the opposing party has set public enforcement mechanisms in motion - criminal proceedings, international alerts or regulatory proceedings - settlement of the private dispute does not of itself terminate those proceedings. Their outcome depends on the rules of each legal system. Negotiations must therefore distinguish what the opposing party can actually deliver (withdrawals, retractions and statements) from what must still be obtained from the authorities through legal remedies. One absolute limit also applies: a report, complaint or designation submission must never become a bargaining chip. Under French law, obtaining an undertaking, a waiver or funds by threatening to disclose facts damaging to honour or reputation may constitute blackmail (Criminal Code, Article 312-10). Reporting to a competent authority, against an identified person, facts liable to attract a sanction that the reporting party knows to be wholly or partly inaccurate may lead to prosecution for making a maliciously false report (Article 226-10). Negotiations concern private proceedings and their effects. The exercise of rights to report matters to public authorities falls outside their scope.

Stabilisation follows. The effects of proceedings outlast their conclusion. Private compliance databases, bank records, press archives and border control files retain traces of a dispute long after it has ended. Stabilisation requires work in its own right: notify banks and compliance providers of favourable decisions and ask them to update their records, resolve outstanding documentation and travel issues, seek delisting of search results where the conditions are met, and manage communications marking the conclusion of the case. The INTERPOL guide describes the equivalent process following deletion of an alert. With appropriate adjustments, it applies to all means of pressure. Allowing for this phase from the outset - in time and fees - avoids leaving the work unfinished when the client's resources are exhausted just as the litigation succeeds.

Finally, preserve the case record. The file of contextual evidence remains valuable after the dispute has ended. Archive it securely in a retrievable format, and determine the retention period and access rights when the case closes. There are three reasons. First, recurrence: a strategy of weaponisation may resume - under a different government, with a different shareholder or in different circumstances - and a defence team with an existing archive can recover in weeks what originally took years to build. Second, continuity for others: the consequences of the dispute may affect heirs, business partners and organisations. Subject to the limits on disclosure, a documented archive protects those who did not experience the case themselves. Third, contribution to wider knowledge: once anonymised and subject to legal professional privilege, experience gained in a case contributes to public understanding of the phenomenon - among oversight bodies, parliamentary assemblies and researchers - which in turn protects others. This is the final reversal proposed by the guide: the weaponisation of the law thrives where there is no clear method for detecting it. Each rigorously documented case makes it harder for the practice to go undetected.

Key point

A settlement is assessed against three criteria: **comprehensiveness** (all means of pressure, including international channels, fall within its scope), **enforceability** (sequencing and verification), and **control over what can be reversed** (protections of principle already secured are not exchanged for promises). An agreement that fails any of the three prolongs the dispute in another form.

Common mistake

Treating the case as closed upon the last favourable decision and immediately disbanding the entire defence team. Dormant means of pressure (step 02) rarely remain dormant while the underlying dispute is unresolved. **A minimum level of monitoring** - checking registers, compliance databases and alerts, and maintaining a channel through which the team can be reassembled quickly - is the cost of protecting the security already achieved.

TWELVE MISTAKES TO AVOID

Mistakes that *compromise the defence*

Where the law is being weaponised, mistakes carry a heavier cost than in ordinary litigation because the opposing party is organised to exploit them. The following are the most costly. Each refers to the step that explains how to avoid it.

01 Using the term *lawfare* publicly as soon as the first measure is taken, before assembling the evidence. A premature assessment allows the opposing party to rely on formal regularity and gives the impression that the defence is evading the substance. The term expresses a conclusion that must be earned through evidence (step 01).

02 Neglecting the defence on the merits on the assumption that the proceedings serve an ulterior purpose. Misuse must be pleaded alongside the merits. A defence that abandons the substance of the allegations loses both arguments at once (step 05).

03 Waiting until a matter is brought before an international forum to open the file of contextual evidence. Contextual evidence deteriorates - links are removed, witnesses disperse and dates must be reconstructed from memory - and what would have taken an hour in the first month takes weeks in the thirty-sixth (step 04).

04 Inferring misuse from a single indicator, or asserting causation where the documents establish only correlation. Proof depends on converging evidence. Overstatement destroys the credibility the defence will need when the evidence is complete (step 03).

05 Conducting parallel proceedings without coordinating counsel or a single register of positions. An opposing party that coordinates its actions across jurisdictions reads the pleadings across those jurisdictions. Any contradiction will be used as an admission (step 05).

06 Ignoring dormant means of pressure until they take effect. An unchecked INTERPOL status, an unanticipated banking risk or the overlooked possibility of insolvency proceedings will exact a cost at the least favourable moment (steps 02 and 07).

07 Allowing the client, family members and supporters to issue separate communications without checking them against the register of positions. Every public statement is potential evidence in every proceeding, and spontaneous remarks by those close to a client have compromised more than one defence (step 10).

08 Pleading Article 18 of the European Convention on Human Rights as a general complaint about the prevailing climate and submitting a collection of press reports. The predominant purpose test requires an integrated body of dated and sourced contextual evidence. A poorly prepared complaint fails, and its failure is used against the defence elsewhere (step 06).

09 Responding to abuse with abuse: vexatious counter-proceedings, retaliatory disciplinary complaints and disproportionate media responses. The defence thereby forfeits its moral and evidential advantage and allows the opposing party to draw the parallel it needs (steps 09 and 10).

10 Underestimating the information security needs of the defence itself. A compromised file of contextual evidence, intercepted communications or a team with no arrangements for continuity can lay even the best strategy open to the opposing party (steps 04 and 11).

11 Concluding a partial settlement that ends one proceeding while leaving other means of pressure in place - international alerts, freezes and publications. The inventory of means of pressure is the checklist for any agreement. Anything omitted will continue to have effect (step 12).

12 Disbanding the entire defence team upon the last favourable decision. Dormant means of pressure rarely remain dormant while the underlying dispute is unresolved. A minimum level of monitoring is the cost of protecting the security already achieved (step 12).

What to expect from an initial discussion with Hennebel Avocats

The initial discussion with the firm is confidential and is solely for the purpose of assessing the situation. It generally lasts between forty-five and ninety minutes and takes place by encrypted video conference, through a secure channel (Signal, Threema) or in person, depending on the circumstances of the case. The discussion is covered by legal professional privilege, subject to the conditions and limits of the applicable law, whatever course is subsequently taken.

The discussion covers three areas: a precise inventory of proceedings and measures under way or announced (prosecutions, civil actions, reports to regulators, freezes, international cooperation and hostile publicity), the chronology of the case - the suspected trigger, dated correlations, the parties involved and their interests - and the preliminary strategy: defence on the merits, the file of contextual evidence, available international forums, reputation and protection of the defence team. Following this initial discussion, the firm may, depending on the situation, offer to prepare a written assessment setting out the defence options, the recommended sequence and the possible scope of the engagement. The scope and terms of the assessment are agreed in advance.

In certain cases involving journalists, human rights defenders or civil society figures targeted by strategic lawsuits against public participation, the firm may adapt the arrangements for the initial assessment to the nature of the situation.

Urgent situations - an arrest or search in progress, an asset freeze in force, a claim requiring a response at very short notice, or a press campaign coordinated with procedural acts - receive priority (Crisis Room · Praesidium). Depending on the situation, a team may be assembled to coordinate legal action, secure communications and dealings with the institutional third parties concerned in parallel.

ANNEX - TABLE OF AUTHORITIES CITED

Instruments and decisions cited in this guide

Authorities relied upon throughout the twelve steps, with their subject matter and practical significance for the defence against the weaponisation of the law. The judgments of the European Court of Human Rights are cited for their legal methodology.

REFERENCE	SUBJECT	PRACTICAL TAKEAWAY
ECHR, Art. 6	Right to a fair trial	Basis of procedural defences: an independent and impartial tribunal, equality of arms, adversarial proceedings, a hearing within a reasonable time and the presumption of innocence.
ECHR, Art. 18	Limitation on use of restrictions on rights	Convention provision addressing the use of restrictions for an improper purpose: restrictions may be applied only for the purposes for which they were prescribed. It may be taken in conjunction with Articles 5, 8, 10 and 11, among others, and with Article 6 since *Ukraine v. Russia (re Crimea)* [GC], Nos. 20958/14 and 38334/18, 25 June 2024, §§ 1337-1338.

ECHR, Art. 35 § 1, § 2 (b) and § 3 (a)	Four-month time limit, applications already submitted to another international procedure, and abuse of the right of application	Since 1 February 2022, an application must be lodged within four months of the final decision on the effective domestic remedy, failing which it is inadmissible (Protocol No. 15). For a complaint about the length of pre-trial detention, where no other effective remedy remains to be exhausted, time runs from release or the first-instance judgment on the charge (*Idalov v. Russia* [GC], No. 5826/03, 22 May 2012, §§ 112 and 129-130). Complaints already examined under another international procedure, including by the Working Group on Arbitrary Detention, are inadmissible unless there are relevant new facts. Abusive applications, including those deliberately based on fabricated facts, are exceptionally rejected. A defence alleging misuse must keep its own applications beyond reproach.
ECHR, Art. 46 § 4	Infringement proceedings	Exceptional procedure for failure to execute a final judgment. It maintains institutional pressure following a finding of a violation.
ECtHR 2017	Merabishvili v. Georgia [GC], No. 72508/13, 28 November 2017	Article 18 methodology: recognition of a plurality of purposes, the predominant purpose test, and contextual proof through inferences without special evidential rules.

ECtHR 2019 (Kavala)	Kavala v. Turkey	Judgment in Kavala v. Turkey, No. 28749/18, 10 December 2019: violation of Article 18 taken in conjunction with Article 5, the measures against the applicant having been intended to silence him as a human rights defender.
ECtHR 2022	Kavala v. Türkiye (infringement proceedings) [GC], No. 28749/18, 11 July 2022	Second use of Article 46 § 4: a finding that the State had failed to fulfil its obligation to execute the original judgment.
ECtHR 2014	Ilgar Mammadov v. Azerbaijan	Judgment No. 15172/13 of 22 May 2014: violation of Article 18 taken in conjunction with Article 5, the deprivation of liberty of an opposition figure having been intended to silence him and punish him for criticising the government.
ECtHR 2019 (Ilgar Mammadov, Art. 46 § 4)	Ilgar Mammadov v. Azerbaijan (infringement proceedings) [GC], No. 15172/13, 29 May 2019	First use of Article 46 § 4 of the Convention - failure to execute a judgment finding a violation of Article 18 engages the State's responsibility at a further level.
ECtHR 2018	Navalnyy v. Russia [GC], No. 29580/12 and 4 others, 15 November 2018	Violation of Article 18 taken in conjunction with Articles 5 and 11: restrictions intended to suppress political pluralism.

Directive (EU) 2024/1069	Directive of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ("strategic lawsuits against public participation")	European framework for an anti-SLAPP defence: early dismissal, security for costs, costs and penalties, and refusal to recognise third-country judgments arising from abusive proceedings. Transposition deadline: 7 May 2026. In France, Decree No. 2026-337 of 30 April 2026 (Articles 499-1 to 499-3 of the Code of Civil Procedure) applies to proceedings instituted on or after 7 May 2026. For earlier proceedings, see Article 32-1 of the Code of Civil Procedure and Article 1240 of the Civil Code.
Committee of Ministers 2024	Recommendation CM/Rec(2024)2 of the Committee of Ministers of 5 April 2024 on countering the use of strategic lawsuits against public participation	Non-binding benchmark inviting Council of Europe member States to introduce anti-SLAPP safeguards, also relevant outside the European Union.
PACE 2161 (2017)	Parliamentary Assembly of the Council of Europe resolution on abusive recourse to the INTERPOL system	Institutional framework for addressing concerns about misuse of international police cooperation.
INTERPOL Constitution, Arts. 2 and 3, INTERPOL's Rules on the Processing of Data, Art. 83, and Statute of the Commission for the Control of INTERPOL's Files, Arts. 34 and 40	Respect for the spirit of the Universal Declaration of Human Rights, prohibition of interventions of a political character, exclusion of private disputes unless the activity facilitates a serious offence or is suspected of links with organised crime, extendable time limits for decisions by the Commission and consultation of the source of the data	Grounds for challenging alerts used for an improper purpose, following the method set out in the INTERPOL guide in this series.

WGAD	United Nations Working Group on Arbitrary Detention - category-based methodology	Independent finding as to the arbitrary nature of detention. The European Court treats the Working Group as another procedure of international investigation or settlement. Unless there are relevant new facts, an opinion on the merits renders substantially the same complaints inadmissible before the Court - identity of facts, parties and complaints - irrespective of the order of applications (*Peraldi v. France* (dec.), No. 2096/05, 7 April 2009, *Gürdeniz v. Turkey* (dec.), No. 59715/10, 18 March 2014, and *Sanchez i Picanyol and Others v. Spain*, No. 25608/20 and others, 6 November 2025, final on 23 March 2026, §§ 162-177). The same applies to a Human Rights Committee decision on the merits of an identical complaint (same judgment, §§ 164 and 167-169). A simple urgent intervention without the opening of proceedings, or a communication withdrawn without a regular procedure having been opened or an opinion delivered, does not have this effect (*Kavala v. Turkey*-, No. 28749/18, 10 December 2019, §§ 92-94, and *Ayvaz and Others v. Türkiye* (Committee), No. 14347/17 and others, 11 July 2023, §§ 7-11, judgment revised on 27 May 2025 on a point unrelated to those paragraphs).

Global Magnitsky 2016	US legislation on targeted human rights sanctions (made permanent in 2022), implemented in particular by Executive Order 13818 of 20 December 2017	An avenue for a counter-offensive through a designation submission documenting individual responsibility.
EU 2020/1998	Council Regulation (EU) 2020/1998 and Council Decision (CFSP) 2020/1999 of 7 December 2020 establish the Global Human Rights Sanctions Regime. The Decision is renewed and the listings are reviewed at least annually.	European equivalent: designation of persons and entities responsible for serious violations.
UN Basic Principles 1990	Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990), principles 16 and 18	Lawyers must not be identified with their clients or their clients' causes and must be able to practise without intimidation or improper interference.
CETS No. 226	Council of Europe Convention for the Protection of the Profession of Lawyer, opened for signature on 13 May 2025	First treaty to enshrine these guarantees. It enters into force on the first day of the month following the expiry of three months after eight signatories, including at least six member States, have expressed their consent to be bound. As at 29 October 2026, only one ratification had been deposited and the Convention was not in force. Its status should be checked with the Treaty Office on the date it is invoked.

Optional Protocol to the ICCPR, Art. 5 § 2	Optional Protocol to the International Covenant on Civil and Political Rights: admissibility requirements for individual communications	Available domestic remedies must be exhausted unless their application is unreasonably prolonged (b). Several European States, including France and Germany, have entered reservations to subparagraph (a) excluding examination of matters already examined under another international procedure, of which an application to the European Court is the principal example. Article 5 § 2 (a) itself precludes examination of a matter currently being examined under such a procedure.
TFEU, Art. 263, sixth paragraph	Time limit for an action for annulment before the General Court of the European Union	Listing under an EU sanctions regime: bring the action within two months of individual notification or, where that is impossible, calculated from the end of the fourteenth day following publication of the notice. Add ten days on account of distance. An action brought out of time is inadmissible.
ECtHR 2009	Peraldi v. France (dec.), No. 2096/05, 7 April 2009	The Working Group on Arbitrary Detention is "another procedure of international investigation or settlement" (Article 35 § 2 (b)). The parties were held to be the same where a relative had referred the situation of the person concerned to the Working Group.

ECtHR 2012	Idalov v. Russia [GC], No. 5826/03, 22 May 2012, §§ 112 and 129-130	In this judgment under the former six-month time limit, actual release started time running for the complaint concerning the length of the completed period of detention (§§ 129-130). A first-instance judgment on the charge also ends pre-trial detention (§ 112). It is necessary to check whether any effective remedy remains to be exhausted.
ECtHR 2014 (dec.)	Gürdeniz v. Turkey (dec.), No. 59715/10, 18 March 2014	Inadmissibility of Article 5 complaints substantially the same as those examined by the Working Group.
ECtHR 2023	Ayvaz and Others v. Türkiye (Committee), No. 14347/17 and others, 11 July 2023, §§ 7-11 (judgment revised on 27 May 2025 on a point unrelated to those paragraphs)	The Working Group had opened no regular procedure and delivered no opinion, and the communication had also been withdrawn. There was no bar to the application before the European Court.
ECtHR 2024	Ukraine v. Russia (re Crimea) [GC], Nos. 20958/14 and 38334/18, 25 June 2024, §§ 1337-1338	Article 18 may apply in conjunction with Article 6.

ECtHR 2025	Sanchez i Picanyol and Others v. Spain, No. 25608/20 and others, 6 November 2025, final on 23 March 2026, §§ 162-177	Unless there are relevant new facts, a decision on the merits of the same matter delivered before the Court rules bars its re-examination, irrespective of the order of applications. A decision by the Human Rights Committee on the merits of an identical complaint renders it inadmissible, a point the Court raised of its own motion (§§ 164 and 167-169). Distinct complaints fall outside this bar, subject to the other admissibility requirements (§§ 174-176).
ECtHR 2026	Kavala v. Türkiye (No. 2) [GC], No. 2170/24, 25 August 2026, §§ 266-279	Violation of Article 18 taken in conjunction with Articles 5 § 1, 6 § 1, 10 and 11: predominance of the ulterior purpose assessed in light of the duration and intensity of the prosecution, detention and conviction.
Code of Criminal Procedure, Art. 56-1-2	For certain offences, legal professional privilege attaching to advisory work cannot be invoked where the legal advice or documents establish that they were used to commit or facilitate the offences (numbering in force on 29 October 2026, with recodification taking effect on 1 January 2029)	Limit on the protection of a file of contextual evidence held in the course of advisory work.
Code of Civil Procedure, Arts. 499-1 to 499-3 and 789, point 1° bis	Procedural safeguards introduced by Decree No. 2026-337 of 30 April 2026 (proceedings instituted on or after 7 May 2026)	Interim payment towards litigation costs and early dismissal of manifestly unfounded claims on the defendant's application. In written proceedings, the case management judge has exclusive jurisdiction over early dismissal.

Protocol No. 15	Protocol No. 15 amending the European Convention on Human Rights	Four-month time limit under Article 35 § 1, applicable since 1 February 2022 to final domestic decisions taken on or after that date.
EO 13818 (2017)	Executive Order 13818 of 20 December 2017, Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption	Principal operative basis for US designations under the Global Magnitsky regime.

Main sources

This guide draws on the instruments and decisions listed in the table of authorities above, together with the following public materials as general sources: the paper by Charles J. Dunlap Jr. of 29 November 2001 (*Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts*), which popularised the strategic meaning of *lawfare* and records a use of the term as early as 1975 (note 5), Directive (EU) 2024/1069 and Recommendation CM/Rec(2024)2 of the Committee of Ministers of the Council of Europe on strategic lawsuits against public participation, the Methods of Work of the United Nations Working Group on Arbitrary Detention (A/HRC/36/38) and its published opinions, the Basic Principles on the Role of Lawyers (United Nations, 1990), the Council of Europe Convention for the Protection of the Profession of Lawyer (CETS No. 226, opened for signature on 13 May 2025) and other Council of Europe standards on the role of lawyers. Illustrations from French law draw on Decree No. 2026-337 of 30 April 2026 and the provisions of criminal law and criminal procedure discussed in steps 04, 10 and 12. The guide also draws on the published practice of the Commission for the Control of INTERPOL's Files. The Praxis guide to INTERPOL and extradition presents a verified selection of its decisions with references. This guide analyses *lawfare* as a concept and makes no such assessment of any actual case. The judgments are cited for their methodology. The law is stated as at 21 November 2026. Matters subject to change - the status of transposition of Directive (EU) 2024/1069, for which the deadline expired on 7 May 2026, ratification of the Council of Europe Convention for the Protection of the Profession of Lawyer, and renewal of the EU Global Human Rights Sanctions Regime - are dated at the relevant points in the text. The Praxis series does not use footnotes. The analyses in the Pacta series develop the matters addressed in this guide and provide full references.

Verification. The law is stated as at 21 November 2026. References were checked against the instruments and decisions cited as at that date.

Keywords

lawfare · weaponisation of the law · abuse of process · improper purpose · Article 18 ECHR · predominant purpose · Merabishvili methodology · strategic lawsuit against public participation · SLAPP · Directive 2024/1069 · file of contextual evidence · objective indicators · action across several jurisdictions · proceedings designed to exhaust the defendant · asset freeze · red notice · targeted sanctions · Magnitsky · protection of lawyers · legal professional privilege · reputation · legal counter-offensive · Crisis Room · Hennebel Avocats

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