

BAYLAT Scholarship Experience Report

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Research Title: SLAPPs (Strategic Lawsuits Against Public Participation) in Brazil - An Analysis of Judicial Harassment Against Journalists

About the Researcher

Rachel Drobitsch is a recent graduate from the Faculty of Law at the University of São Paulo (USP) in Brazil. From April to June 2024, she researched at the University of Munich (Ludwig-Maximilians-Universität - LMU) on a BAYLAT scholarship. Her research focused on SLAPPs (Strategic Lawsuits Against Public Participation) against journalists and their impact on the freedoms of expression, the press, and information, which was the topic of her undergraduate thesis at USP.

During her undergraduate studies, Rachel interned at the São Paulo Court of Justice and the Brazilian Association of Investigative Journalism (ABRAJI). She contributed as a researcher to the Monitor of Judicial Harassment Against Journalists in Brazil and the Ctrl-X Project at ABRAJI. She also did undergraduate research on the limits of parliamentary immunity and freedom of expression. She was a teaching assistant for Constitutional Law I and II at USP and was an active member of the Advanced Constitutional Law Study Group (DCA), the Law, Internet, and Society Center (NDIS) at USP, and the Criminal Law Study Group (GEDP) at Fundação Getúlio Vargas (FGV).

She also took part in an exchange program at the University of Munich (LMU), where she earned a certificate in the Fundamentals of German Law (*Zertifikat in den Grundzügen des Deutschen Rechts*). She is a native Portuguese speaker, fluent in English and German, and has an intermediate proficiency in Italian.

Research Topic: SLAPPs (Strategic Lawsuits Against Public Participation) Against Journalists

The study "**SLAPPs (Strategic Lawsuits Against Public Participation) in Brazil - An Analysis of Judicial Harassment Against Journalists**" explores the phenomenon of SLAPPs and their impact on journalism. The research uncovers lawsuits that, under the pretext of protecting honor and other personal rights, actually aim to silence journalists and restrict debate on matters of public interest. This misuse of the legal system threatens fundamental rights such as freedom of expression, press, and information. The importance of this study is highlighted by the growing number of SLAPP cases worldwide and the specific challenges in Brazil, including violence against the press, judicial censorship, and the lack of proper regulation of journalistic activities. By examining bibliographic sources and practical cases, the research sought to answer the question: What legal and judicial tools are needed to prevent SLAPPs against journalists in Brazil? The goal is to contribute to the understanding, discussion, and identification of SLAPPs, and to propose measures to enhance freedom of expression and to protect the press in Brazil.

Chapter I defines the term SLAPP and its main characteristics, outlines the current criteria for identifying this phenomenon, and discusses the impacts of such litigation on democracy and journalistic activity. **Chapter II** examines the occurrence of SLAPPs in Brazil. Through a brief historical overview, it was highlighted that the development of the Brazilian press has been marked by censorious behavior from state authorities towards the media. By distinguishing between types of censorship (*a priori* and *a posteriori*), the concept of judicial censorship is presented as the current form of censorship in the country. Additionally, the study aligns SLAPPs with the concept of “judicial harassment against journalists” and addresses the specific strategies of SLAPPs in Brazil. It examines the use of the criminal justice system against journalists and the abuse of civil mechanisms (characterized by exorbitant claims for moral damages, multiplicity of lawsuits, and misuse of expedited procedures in Small Claims Courts) to silence journalists.

To demonstrate these strategies, the study critically explores several cases drawn from the database of the Monitor of Judicial Harassment Against Journalists in Brazil, developed by the Brazilian Association of Investigative Journalism (ABRAJI). This database was built

from reports by journalists targeted by lawsuits, the sharing of notorious cases by civil society organizations, and the extraction of cases from the precedents archives of the São Paulo State Court. From 2009 to 2024, this study identified 654 cases cataloged as judicial harassment. The present research selected some of the identified abusive cases to illustrate SLAPP strategies in Brazil.

It is important to note that this case survey was not intended to be exhaustive but rather to provide a panoramic view, aiming to familiarize the public with the concept of SLAPPs, their existence in Brazil, and the main strategies of abusive litigation in the realm of freedom of expression and press. One of the challenges faced by SLAPP researchers is developing databases that systematize and monitor this phenomenon. Due to the appearance of legality, lack of regulation, and non-recognition of SLAPPs in the legal framework, there is underreporting of cases and a misleading impression that press freedom is fully protected. Until May 2024, Brazilian law did not recognize “judicial harassment against journalists”.

The research shows that this scenario changed with the rulings on Direct Actions of Unconstitutionality 6792 and 7055 by the Supreme Federal Court, which did not previously recognize judicial harassment or the term SLAPP in legal decisions. These rulings transformed the legal landscape by recognizing the phenomenon and proposing measures to prevent abusive lawsuits, such as consolidating multiple actions and holding the trial in the defendant’s domicile to preserve the journalist’s right to defense. This chapter examines these decisions and the principles applied by the Court, specifically the doctrine of actual malice and the preferential position of freedom of expression in conflicts with other fundamental rights.

Subsequently, **Chapter III** analyzes the European landscape regarding SLAPPs. Europe was chosen as the focus of analysis due to the increase in identified SLAPP cases across the continent in recent years. Simultaneously, the debate on the topic has intensified with increased academic research on the subject, the emergence of civil society organizations dedicated to combating SLAPPs, and actions by the European Parliament directed at member states, such as studies, recommendations, and directives. In this context, the present study focuses on the specifics of the European anti-SLAPP Directive (known as Daphne’s Law) which mandates the development of anti-SLAPP legislation within European member states, and interprets this document as a model for Brazil to consider. It then critically examines the

case *OOO Memo v Russia*, adjudicated by the European Court of Human Rights, and explores the Court's premises regarding freedom of expression and press.

Chapter IV analyzes SLAPPs in Germany, chosen for its robust protection of freedom of expression and the press. Both Brazil and Germany share a civil law tradition, prohibit offenses against honor and hate speech, and employ the proportionality theory to resolve conflicts between fundamental rights. The study investigates whether SLAPPs are a concern in Germany and if the country has established legal or judicial mechanisms to combat the issue, considering the potential for similar measures to be adopted in Brazil.

The research revealed that this has not yet occurred due to the absence of an anti-SLAPP law and judicial decisions specifically addressing the phenomenon. Germany is not completely protected from attacks on press freedom, despite its high standards and landmark Constitutional Court decisions on freedom of expression and the press (such as the *Caroline* Decision - BVerfGE 101, 361-396, *Spiegel* Decision - BVerfGE 20, 162, *Blinkfuer* Decision - BVerfGE 25, 256, *Tendenzbetrieb* Decision - BVerfGE 52, 183, and *Cicero* Decision - BVerfGE 117, 244). The study highlighted challenges to full journalistic activity in Germany, including cancel culture, agenda-cutting, and violence - manifested in physical and verbal attacks against journalists, particularly during coverage of demonstrations.

Furthermore, a panoramic case survey revealed that SLAPPs in Germany occur, predominantly targeting academics and environmental rights activists. Among the emblematic SLAPP cases in Germany, the study examines: (i) attacks on scientific research by the Hohenzollern family against researchers, journalists, and media outlets; (ii) lawsuits filed by Südtirol farmers against the Umweltinstitut München, Alexander Schiebel, and the Oekom publishing house in response to environmental rights advocacy; and (iii) attacks on the coverage of environmental protests by MIBRAG (*Mitteldeutsche Braunkohlengesellschaft*).

In conversations with German experts, it was reported that mapping SLAPP cases is challenging because they are not yet legally or judicially defined, and there are few initiatives to map these cases in the country. This results in underreporting and creates a false impression that Germany is immune to the SLAPP phenomenon, particularly when compared to countries with more comprehensive SLAPP case coverage, such as Italy and Poland.

This chapter also presents current proposals by German researchers to fight SLAPPs. The proposals include: (i) adopting the Daphne Law into domestic legislation; (ii) creating a financial support fund to cover the legal expenses of individuals and organizations targeted by SLAPPs; and (iii) raising awareness within the judiciary through training, courses, and informational materials about SLAPPs.

Moreover, it suggests launching awareness campaigns aimed at civil society to emphasize the need for legal intervention and gather public support for these measures. Other recommendations include: (i) publishing a database of German SLAPP cases; and (ii) publicly naming parties who engage in abusive litigation to intimidate and silence critics, which would promote transparency and increase public awareness of such actions.

Finally, **Chapter V** outlines possible mechanisms to combat SLAPPs in Brazil, with recommendations for journalists and the Judicial and Legislative branches.

References

In addition to the scientific articles, books, and websites cited in the references of my undergraduate thesis, I explored physical books available in the LMU libraries. To understand the legal basis of freedom of expression and the press in Germany, I found constitutional law books to be essential, such as:

- *Staatsrecht - Systematische Erläuterung des Grundgesetzes* by Peter Badura;
- *Grundgesetz für die Bundesrepublik Deutschland - Kommentar* by Hans D. Jarass and Martin Kment.

To further investigate the cases judged by the German Constitutional Court and the European Court of Human Rights regarding freedom of expression and the press, I selected the following books for study:

- *Casebook Verfassungsrecht* by Christian Bumke and Andreas Voßkuhle;
- *Verfassungsrecht in Fällen - Entscheidungen des Bundesverfassungsgerichts: Meinungs- und Pressefreiheit* by Christian Starck;
- *Das “Caroline”-Urteil des Europäischen Gerichtshof für Menschenrechte* by Daniel Eckstein and Christian W. Altenhofen;

- *Freiheit und Journalismus*, edited by Hellwig Czepek, with emphasis on the chapter *Freiheit und Journalismus. Die Verdachtsberichterstattung im Spannungsverhältnis zwischen Pressefreiheit und Persönlichkeitsschutz*, written by Kerstim Liesem;
- *Human Rights and The Protection of Privacy in Tort Law - A comparison between English and German Law* by Hans-Joachim Cremer, with emphasis on the chapter *The European Court of Human Rights - Caroline von Hannover judgment and its reverberations* in the book;
- *Kommunikationsfreiheit. Ein internationaler Vergleich* by Christian Breunig; and *Pressefreiheit in regionalen Menschenrechtssystemen* by Sibylle Gering.

Finally, I highlight the literary works:

- *Journalism and the Future of Democracy* by Denis Muller;
- *Press Freedom and Pluralism in Europe* by Andrea Czepek, Melanie Hellwig, and Eva Novak;
- *Kampf um das freie Wort - Zur Semantik von Pressefreiheit und Zensur in den deutschen und französischen Charlie-Debatten (2015-2017)* by Anna Gvelesiani.

Scholars Contacted

During the scholarship, I had the opportunity to connect with European experts on free speech and SLAPPs. In this regard, I would like to highlight the valuable insights and recommendations shared by professors at the IfKW (Institute for Communication Science and Media Research) at LMU, Carsten Reinemann and Benjamin Krämer, as well as Philipp Wissing, researcher and coordinator of PATFox (Pioneering Anti-SLAPP Training for Freedom of Expression) in Germany. PATFox was developed to train lawyers who defend media organizations, NGOs, and activists against companies and public authorities that use legal processes to suppress legitimate criticism. Moreover, researchers Konrad-Bleyer-Simon and Simone Benazzo provided assistance with questions and offered suggestions on the topic.

Participation in Events

In addition to bibliographic research and discussions with scholars, I attended events on freedom of expression, press, and SLAPPs. Importantly, I participated in the Anti-SLAPP International Conference in Warsaw, organized by Article 19. The event featured lawyers,

journalists, human rights defenders, activists, and professors who shared their expertise on the Polish context of SLAPPs and the broader European situation. Some of the panels I attended include: "SLAPPs in Europe - scope of the problem and case studies", "SLAPP under European regulations - analyzing European Union and Council of Europe regulations on SLAPPs", "Non-legal instruments for countering SLAPP: training, advocacy, financial support, and journalistic associations initiatives", and "SLAPPs under Polish regulations: practice of national courts and existing legal instruments for protecting public debate". Key figures in the fight against SLAPPs took part on the event, such as Matthew Caruana Galizia, Flutua Kusari, Shannon Maguire, Aleksandra Gliszczyńska-Grabias, Stevan Dojčinović, and Charlie Holt.



I also attended the lecture "Dire tutta la verità: Da Socrate a Julian Assange" at the "Parrhesia - libertà di parola" event, hosted by the *Teatro Olimpico di Vicenza*. This lecture provided a philosophical perspective on freedom of expression and the press. It was presented by Maria Michela Sassi (University of Pisa), Laura Pepe (University of Milan), and Stefania Maurizi (journalist for *Il Fatto Quotidiano*).

The event was significant in reconstructing references from Socrates, Aeschylus, and Aristophanes, as well as for deepening the understanding of the Wikileaks case that led to Julian Assange's imprisonment. Analyzing the criminalization of journalistic activities through Assange's case is crucial for assessing the risks faced not only by journalists but also by fundamental rights such as freedom of thought, information, and the press. SLAPPs are viewed as another form of violence against journalists and other public watchdogs of democracy, including activists, teachers, and whistleblowers. These individuals are already subjected to threats, online attacks, physical violence, persecution, and in the most severe cases, imprisonment, and even death.

Achievements, Lectures, and Future Steps

My research received the highest grade from the examining committee, which included Professor Dr. Virgílio Afonso da Silva and freedom of expression expert Luna van Brussel Barroso, both from the University of São Paulo.

After submitting my thesis, I was invited to speak at the 19th International Congress of Investigative Journalism, organized by the Brazilian Association of Investigative Journalism (ABRAJI). There, I led a discussion titled [“What is Judicial Harassment and How to Protect Yourself”](#), addressing the importance of freedom of expression and the press for democracy, and examining SLAPPs in Europe and Latin America. I also shared strategies with journalists and journalism students on how to protect themselves against abusive lawsuits.



Furthermore, to continuously raise awareness about SLAPPs among journalists, authorities, and civil society members, I have published various contributions on the topic. These include my work on the research and publication of the [Monitor of Judicial Harassment Against Journalists in Brazil report](#), as well as other news on ABRAJI's website regarding the [launch of the Monitor](#), Senate President Rodrigo Pacheco's decision to [adopt an anti-SLAPP law in Brazil](#), and a text [on judicial harassment of journalists through the criminal justice system, along with a proposal to decriminalize offenses related to protecting honor](#).

Moreover, I have been chosen as a researcher for the Freedom of Expression and Crimes Against Honor (LECH) research group from the University of São Paulo. This project focuses on studying the decriminalization of offenses that protect honor from the perspective of criminal law and human rights, with a special focus on freedom of expression. It also

includes studying regional systems for human rights protection (Inter-American, European, and African). During my research stay in Bavaria, I analyzed decisions by the European Court of Human Rights on violations of Article 10 (right to freedom of expression) of the European Convention on Human Rights, which I believe will greatly enhance my contributions to the research group.

Finally, I have been accepted into the Master's program in International Law at the Geneva Graduate Institute (IHEID - *Institut de hautes études internationales et du développement*) in Geneva, Switzerland. Starting in the second semester of 2024, I will pursue my master's studies, aiming to deepen my understanding of freedom of expression and the press, as well as international law, with a particular focus on constitutional law and international criminal law.

Advice for Future Scholarship Students

My main advice for students interested in researching in Germany is to learn German. Even though Bavaria is quite international, knowing the language is immensely helpful for dealing with complex tasks such as handling bureaucracy and understanding German scientific literature, as well as for everyday activities like grocery shopping or asking for directions. Fluency in the language gives you a sense of independence and security, and allows you to build meaningful relationships with locals.

Another piece of advice is to reach out to individuals with experience in your research area or who can assist you with it. I contacted journalism professors at LMU, European SLAPPs researchers, German lawyers, and Brazilian students in postgraduate programs at the university. They all provided me with valuable bibliographic recommendations, tips on using library resources, and suggestions for future research.

Among the positive aspects of researching in Munich, I would highlight the rich LMU libraries, and the abundant cultural opportunities (museums, cinemas, and musical events). Bavaria's natural beauty is also impressive. It has parks, trails, lakes, and mountains. For someone from an urban center like São Paulo, the greenery in Munich is striking. Another positive aspect of my experience was feeling very safe in Germany, which can often be a challenge for women living alone in other parts of the world.



On the downside, expatriates often face loneliness and a sense of not belonging. It takes time to adapt to a new country without having family and friends around. The research period can intensify this feeling, as it is inherently solitary and requires long periods of study. In this context, my advice is to prioritize your mental health. Allow yourself to make new friends, build a support network, establish healthy habits, and seek therapy. Explore unique opportunities in Germany, like visiting castles, enjoying beautiful mountains and lakes, and trying delicious local dishes like Münchner Schnitzel, Schweinebraten mit Knödel, and Apfelstrudel.

Finally, I would like to express my gratitude to Professor Christian Walter for welcoming me to the University of Munich, to Professor Virgílio Afonso da Silva, for his invaluable guidance and support throughout the research, and to BAYLAT for awarding the research scholarship, which has been a remarkable opportunity in my academic and personal journey.



