



November 19–20, 2025
SICL, Lausanne



Institut suisse de droit comparé
Schweizerisches Institut für Rechtsvergleichung
Istituto svizzero di diritto comparato
Swiss Institute of Comparative Law

The Role of Judicial Actors in Shaping Private International Law: A Comparative Perspective

35th Day of Private International Law at the SICL

Wednesday, 19 November 2025

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|--------------|---|
| 17:30 | Arrival and Registration |
| 18:00 | Nadjma YASSARI and Ilaria PRETELLI
Welcome Address |
| 18:30 | Frank KLINKHAMMER
Keynote |
| 19:30 | End of the first day |

Thursday, 20 November 2025

- 09:00 – 11:00** **Private International Law in Supranational Settings**
Chair: Lukas HECKENDORN URSCHALER
Henrik SAUGMANDSGAARD ØE
The interpretation of Private International Law by the Court of Justice of the European Union, illustrated in recent judgments
Valesca R. B. MOSCHEN and Isabela T. C. DONDONE
Conferences on Private International Law of the Organization of American States – CIDIPs: 50 years and their relevance in the Brazilian Legal System
Asya OSTROUKH
The Role of the Caribbean Court of Justice in the Development of Private International Law in the Caribbean Region
- 11:00 – 11:30** **Coffee Break**
- 11:30 – 13:00** **National Experiences of Judicial Innovation in Private International Law**
Chair: Michel HEINZMANN
Özlem BURDURLU AHLAT and Ezgi Fulya AKKUŞ
Party Autonomy in International Employment Contracts vs. Constitutional Limits: A Twofold Criticism towards the Landmark Ruling of the Turkish Constitutional Court
Aygun MAMMADZADA
Judicial Innovation and Property: The Role of English Courts in Reframing Private International Law in the Age of Digital Assets
- 13:00 – 14:00** **Lunch**
- 14:00 – 15:30** **The role and engagement of legal practitioners**
Chair: Franz WERRO
Marie-Elodie ANCEL
Le Palais et la Faculté, itinéraires français du droit international privé
Ross ANDERSON
Private international law in adversarial litigation: an advocate's perspective
- 15:30 – 16:00** **Coffee Break**
- 16:00 – 17:30** **SLAPP and Strategic Litigation in Private International Law: Courts as Gatekeepers of Transnational Justice**
Chair: Ilaria PRETELLI
Harrith AL-DABBAGH
La GPA transnationale dans l'ordre juridique québécois : La jurisprudence combattue par la loi
Caterina D'OSUALDO
The EU Anti-SLAPP Directive: Scope, Challenges, and Judicial Implications
- 17:30** **End of the Conference**

Speakers and Chairs

Ezgi Fulya AKKUŞ, Afyon Kocatepe University, Turkey

Harrith AL-DABBAGH, University of Montreal, Quebec

Marie-Elodie ANCEL, University Paris-Panthéon-Assas, France

Ross ANDERSON, Faculty of Advocates, Edinburgh, Scotland

Özlem BURDURLU AHLAT, Afyon Kocatepe University, Turkey

Isabela T. C. DONDONE, Federal University of Espírito Santo, Brazil

Caterina D'OSUALDO, European Commission

Lukas HECKENDORN URSCHALER, Swiss Institute of Comparative Law, Switzerland

Michel HEINZMANN, University of Fribourg, Switzerland

Frank KLINKHAMMER, German Federal Supreme Court

Aygun MAMMADZADA, Swansea Law School, United Kingdom

Valesca R. B. MOSCHEN, Federal University of Espírito Santo, Brazil

Asya OSTROUKH, University of the West Indies, Barbados

Ilaria PRETELLI, Swiss Institute of Comparative Law, Switzerland

Henrik SAUGMANDSGAARD ØE, Gorrissen Federspiel, Denmark

Franz WERRO, University of Fribourg, Switzerland and Georgetown University, USA

Nadjma YASSARI, Swiss Institute of Comparative Law, Switzerland

The conference will take place at the Swiss Institute of Comparative in Lausanne

Interventions will be conducted in English and French

Registration is free but mandatory: events@isdc-dfjp.unil.ch

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Abstracts provided by the speakers

Frank KLINKHAMMER

The keynote will highlight the role of case law in the development of the law and its distinction from legal policy. The case law of the German Federal Court of Justice concerning the recognition of surrogacy arrangements carried out abroad will serve as an example.

In Germany, there are two ways to approach the issue of surrogacy arrangements carried out abroad. On the one hand, there is *procedural recognition*, which applies when a court abroad has established or bindingly determined the legal parenthood of the intended parents. On the other hand, there is *recognition under conflict of laws*, which presupposes the applicability of the foreign legal system that gives rise to the intended parents' legal parenthood. These two types of recognition have led to different outcomes in two groups of cases. In the widely acclaimed California decision of 2014, the Federal Court of Justice, despite the domestic ban on surrogacy recognised the judgement issued in California, which established the parenthood of the intended parents.

However, the Federal Court of Justice reached a different conclusion in two rulings on surrogacy in Ukraine, handed down in 2019. In these cases, Ukrainian law would have been applicable only if the child had had its habitual residence in Ukraine. Since the Federal Court of Justice ruled that this was not the case, German law applied, as the child was living in Germany with its intended parents shortly after its birth. Under German law, the legal mother was the Ukrainian surrogate mother - the woman who had given birth to the child.

Are the decisions issued on the same subject therefore contradictory?

New development can be observed in Ukraine. . In cases before the lower courts, German intended parents have now also submitted Ukrainian court decisions establishing their legal parenthood. Does this demonstrate how quickly those involved in the surrogacy business in so called "provider jurisdictions" – in this case Ukraine – adapt to the legal requirements of "demand jurisdictions" – such as the Federal Republic of Germany? Were the Ukrainian decisions rendered in violation of Ukrainian law on international jurisdiction, or is this question beside the point?

The keynote aims to contextualise these developments. It raises questions of the legal implications of German case law and the distinction between legal development and legal policy. The tendency towards openness in German case law is contrasted with the restrictive case law of the Swiss Federal Supreme Court, which, based on the outcome achieved, namely the refusal to assign legal parenthood to the intended parents and the resulting need for adoption, shares the view of the Swiss Ethics Commission that the current situation is unsatisfactory, but considers that a solution can only be achieved through legislation.

What options are available under national legislation, given that at the beginning of the last legislative period Germany sought, for the first time, to put altruistic surrogacy to the test under the heading of "reproductive self-determination"? Can clarification be expected from the European Union's plans for a Regulation on Parenthood or from the long-standing project of the Hague Conference on Private International Law on parenthood and surrogacy?

What forces are at play and what role is played by the jurisprudence of the national courts, the ECJ and the ECtHR?

Henrik SAUGMANDSGAARD ØE

Henrik (former Advocate General at the Court of Justice of the European Union (the Court of Justice), today Partner at the Danish law firm, Gorrissen Federspiel) will illuminate the interplay between EU law and Private International Law in his presentation “*The interpretation of Private International Law by the Court of Justice of the European Union, illustrated in recent judgments*”.

Focus will be on jurisdiction under the Bruxelles 1 bis Regulation (Regulation 1215/2012), in particular the distinction between ‘contractual’ and ‘tortious’ liability under Article 7(1) and (2), respectively. In making this distinction, Mr Saugmandsgaard Øe will discuss the Court of Justice’s judgment of 24 November 2020 (C-59/19, *Wikinghof*) in which the Court of Justice settled the uncertainties of prior case-law as to whether ‘contractual’ liability supersedes ‘tortious’ liability (known as the ‘principle of non-cumulation’).

Furthermore, the difficulties of determining (and the importance of) jurisdiction will be illustrated via the Court of Justice’s judgments of 9 December 2021 (C-422/20, *HRVATSKE ŠUME*) and 11 April 2019 (C-603/17, *Bosworth and Hurley*).

In closing, the Member States’ duty to request the Court of Justice for preliminary ruling when in doubt of the application of EU law will be explained to highlight the implications of failing to do so as well as the interplay between EU law and Private International Law.

Valesca R. B. MOSCHEN and Isabela T. C. DONDONE

In 1975 the Organization of American States (OAS) General Assembly launched the first Specialized Conference on Private International Law (CIDIP). Despite not being the first measure of the OAS to codify Private International Law, 7 Conferences and 27 instruments later, CIDIPs provided a structured framework of Inter-American Private International Law (PIL), that addresses broad themes such as international civil procedure, commercial law and family protection.

According to Fresnedo, the codification process within the framework of the CIDIPs resulted in multiple conventions, which suggests that the Conferences are an effective mechanism for codifying inter-American law, as can be seen from the number of Conventions approved (C. F. AGUIRRE, *Curso de Derecho Internacional Privado* (Fundación Cultura Universitaria, 2003), 153). In particular, the impact of the CIDIPs is notable in the Latin American region, especially in the first Conferences, which had contributions from intellectuals and experts of the region, classified by Arroyo (*La Codificación del derecho internacional privado en América Latina*, (EUROLEX, 1994) 142) as a “teaching content”.

In Brazil, the relationship with the CIDIPs was ambiguous, especially in the first four editions, when notable experts were sent to represent the country, such as Haroldo Valladão (CIDIP-I and II), Antônio Augusto Cançado Trindade and Anna Maria Villela (CIDIP-III). As a result, Brazil has signed almost all the conventions, although it had not ratified any at the time (J.A SAMTLEBEN, *Codificação Interamericana do Direito Internacional Privado no Brasil*, in P. BCASELLA; N. AARAUJO (d.). *Integração jurídica interamericana: as Convenções Interamericanas de Direito Internacional Privado (CIDIPS) e o direito brasileiro*. (São Paulo: Ltr, 1998), 41-42). It was only in the 1990s that the signed conventions began the ratification process, with 15 conventions ratified to date.

The relevance of CIDIPs in Brazil remains controversial, whereas the Brazilian authorities have given more attention to the agenda of the Hague Conference on Private International Law (D. T. Vargas, *Convenções das CIDIPs nos tribunais superiores brasileiros: as populares, as conhecidas e as ignoradas*, in P. M. ALL (ed.) *CIDIP-OEA: influencia y aplicación en los ordenamientos jurídicos interamericano* (Santa Fé, 2024) 179). In addition, the relevance of CIDIPs in the regional context overall is questioned. Over 10 years have passed since the last CIDIP and 26 years since the last Convention was adopted. In addition, the model of codification of CIDIPs has proved difficult to sustain.

Therefore, this paper aims to analyze the impact of the CIDIPs on the Brazilian legal system and the role of Brazilian courts in shaping this regional framework. Based on a qualitative-quantitative approach, the study draws on the analysis of 35 judicial decisions from various Brazilian courts, collected by the Jurisprudence Observatory of the LABCODEX Research Group (CNPq) between 2020 and 2025. By examining these decisions, the research seeks to assess the influence of the CIDIPs on the resolution of cross-border disputes in Brazil and to outline future perspectives—particularly their impact on the Draft Bill of the Brazilian General Law on Private International Law.

Asya OSTROUKH

This presentation examines the still-nascent contribution of the Caribbean Court of Justice (CCJ) to the development of private international law in the Caribbean region. While the CCJ was established in 2005 with the dual mandate of serving both as a treaty court (in its original jurisdiction) and as a final appellate court for several Member States, its jurisprudence has so far developed predominantly in the domains of public international law, constitutional law, human rights and regional integration law, rather than in the classical sphere of conflict of laws. After twenty years of operation, unfortunately, the CCJ has not delivered a single pure private international law decision—that is, one addressing directly choice of law, inter-state jurisdiction, or recognition of foreign judgments. Nevertheless, the Court remains capable of advancing private international law through two complementary functions: adjudication and harmonization.

The paper situates the CCJ within the broader landscape of Commonwealth Caribbean supranational courts, including the Judicial Committee of the Privy Council and the Eastern Caribbean Supreme Court, and asks whether the CCJ can evolve into a regional court of private international law. It argues that, despite the absence of an explicit private international law mandate in the Agreement Establishing the CCJ, the Court nonetheless contributes indirectly to the harmonization of private-law rules—particularly through its interpretation of the Revised Treaty of Chaguaramas and the consolidation of commercial law principles under the Caribbean Single Market and Economy (CSME).

Two distinct lines of cases are explored:

First, in its original jurisdiction, decisions such as *Trinidad Cement Ltd and TCL Guyana Inc v Co-operative Republic of Guyana* (2009), *The State of Belize v The State of Trinidad and Tobago* (2014), and *Hummingbird Rice Mills Ltd v Suriname* (2012) do not constitute pure private-international-law judgments. Yet they employ a quasi-PIL rhetoric, invoking concepts analogous to conflict-of-laws reasoning—jurisdictional allocation, mutual recognition, and cross-border coordination of rights—within the framework of regional economic integration.

Second, in its appellate jurisdiction, cases such as *BCB Holdings Ltd and Belize Bank Ltd v Attorney General of Belize* (2013) and *Belize Bank Ltd v Attorney General of Belize* (2017) could have become the Court's first genuine private-international-law precedents, particularly regarding recognition and enforcement of foreign

arbitral awards. Instead, the CCJ approached these disputes through a constitutional and sovereignty lens, framing them as questions of constitutional supremacy and public policy. As a result, what might have been the foundation of a Caribbean doctrine on international enforcement became a missed opportunity to develop regional conflict-of-laws principles.

The CCJ's contribution to private international law is embryonic but conceptually significant. It stands at the intersection of public international law, regional integration law, and private cross-border justice. While it is not yet a regional court of private international law, it possesses the institutional legitimacy and regulatory tools to evolve into one—if its future jurisprudence integrates comparative conflict-of-laws reasoning with the broader Caribbean integration project.

Özlem BURDURLU AHLAT and Ezgi Fulya AKKUŞ

On November 5, 2024, the Turkish Constitutional Court annulled Article 27(1) of the Turkish Private International and Civil Procedural Law Act (Turkish PILA), which had allowed parties to international employment contracts to freely choose the applicable law, provided that the chosen law offered higher protection for the employee than the law of the habitual place of work. The decision, published in the Official Gazette on March 10, 2025, marks a historic precedent as the first instance in Turkish legal history where a conflict of laws rule was annulled for breaching a constitutional right. The Court justified its decision on the grounds that Article 27(1) conflicted with Article 49 of the Constitution on the '*Right to Employment*' which imposes a positive obligation on the state to protect employees' rights.

The Court reasoned that in practice, the freedom to choose the applicable law could lead to disparities in the protection afforded to employees of Turkish companies operating internationally. Specifically, it argued that if both the chosen law and the law of the habitual place of work failed to provide sufficient protection mechanisms, the employee could be left with fewer rights and minimal protection compared to his colleagues working within Turkey. Therefore, the Court concluded that Article 27(1) infringed the state's constitutional duty to protect and balance the interest of workers under Article 49. In the presentation a dual critique of the Court's approach will be offered. First, from the perspective of private international law theory, conflict of laws rules—though enacted by national legislators—form part of an international legal order aimed at resolving transnational disputes. Their function is not limited to protecting solely the national interest, but rather to ensure legal predictability and fairness in cross-border relations involving national and foreign entities and individuals. By annulling Article 27(1), the Court effectively prioritized domestic concerns over the balancing function of conflict of laws rules.

Second, from a constitutional standpoint, the Court's ruling reveals a problematic interpretative methodology. The constitutional incompatibility did not arise *de jure* from the legal text of Article 27(1) itself, but *de facto* from its operational application, where judicial practice failed to ensure adequate protection for employees. Instead of direct annulment, the Court could have employed a constitutionally conforming interpretation (interpretative rejection), preserving the provision by relying on the existence of Article 5 of Turkish PILA, which permits the exclusion of foreign law provisions incompatible with Turkish public policy. This interpretive solution would have addressed concerns over insufficient employee protection while simultaneously upholding freedom of choice.

Following the annulment, legislative intervention was required to fill the legal void left by Article 27(1)'s cancellation. In this context, the Article 27 of the Turkish PILA was amended in June, 2025. The presentation will also set out the relevant provision and include a discussion of the revisions introduced by the new version.

Aygun MAMMADZADA

The emergence of digital assets has disrupted conventional categories of private law and raised complex questions that challenge the foundations of private international law. These assets, inherently borderless, defy traditional rules on *situs*, connecting factors, and resolution of cross-border disputes. As legislative responses evolve, courts have increasingly become the primary site for legal innovation in this area by shaping how digital property is to be conceptualised, protected, and governed across jurisdictions. Perhaps nowhere is this more evident than in England, where the judiciary has played a formative role in reframing digital assets and addressing their private international law implications.

This paper explores the evolving jurisprudence of English courts in addressing digital assets and examines their role as norm entrepreneurs in the development of private international law. Focusing on cases such as *AA v Persons Unknown*, *Ion Science v Persons Unknown*, *Fetch.ai v Persons Unknown*, *Tulip Trading v Bitcoin Association for BSV*, *D'Aloia v Persons Unknown*, and *Osbourne v Persons Unknown*, the paper traces how courts took a pioneering stance by recognising certain digital assets—especially cryptocurrencies—as property long before legislative proposals emerged. These rulings laid the doctrinal foundation that directly influenced the Law Commission's subsequent reform initiatives, culminating in the *Property (Digital Assets etc) Bill [HL] (2024)*. As the Commission itself acknowledged, judicial reasoning was instrumental in shaping the contours of the proposed legislative framework, particularly its endorsement of digital assets as a novel, third category of personal property.

Marie-Elodie ANCEL

Situation paradoxale dans le pays du Code Napoléon, le droit international privé français est seulement fondé sur quelques dispositions codifiées, anciennes et/ou imparfaites. Pour une très large part, il tire donc sa vitalité et sa sophistication de l'inventivité des acteurs judiciaires, avocats, à la cour et aux Conseils, et magistrats, du fond et de la Cour de cassation. Mais pour mettre en lumière et stimuler cette inventivité, et pour œuvrer à une véritable théorie du droit international privé français, il a fallu aussi des universitaires attentifs à la pratique judiciaire, voire eux-mêmes impliqués dans cette pratique. On mesure ainsi combien les liens personnels et les lieux d'échange entre le Palais et la Faculté peuvent être bénéfiques à la discipline.

Harrieth AL-DABBAGH

Professor Al-Dabbagh proposes to discuss the recent reforms to Quebec's surrogacy laws. Until 2023, Quebec prohibited surrogacy arrangements under Article 541 of the Civil Code, which states that any agreement whereby a woman agrees to conceive or carry a child for another person is « absolutely null ». At the federal level, offenders could also face severe penalties for paying surrogates or intermediaries to arrange services. Despite these prohibitions, commercial surrogacy arrangements have continued to take place abroad.

Through a liberal interpretation of the law, Quebec Courts have gradually and carefully undermined the legal ban by allowing intended parents to establish legal parentage (filiation). In response, Lawmakers have had to react to counter an interpretation that evolved in an undesired direction. Bill No. 12-2023 establishes a highly regulated framework for cross-border surrogacy arrangements. While making such agreements enforceable, the reform leaves several important questions unanswered and could lead to unforeseen outcomes that may run counter to lawmakers' original objectives.

Caterina D'OSUALDO

Strategic Lawsuits Against Public Participation (SLAPPs) are abusive court proceedings. They are a particular form of harassment increasingly used against journalists, human rights defenders and others engaged in public participation in a matter of public interest.

The EU Anti-SLAPP initiative provides a solid toolbox of safeguards to protect persons who engage in public participation from manifestly unfounded claims or abusive court proceedings. It is a combination of legislation by way of a Directive, and non-legislative measures to complement the legislative instrument in the form of a Recommendation focusing on training, awareness raising, support to targets and monitoring. The Directive is currently being transposed by Member States with the transposition deadline on 7 May 2026. The Commission Recommendation is directly applicable and its implementation has started.

In accordance with the restrictions in the EU legal basis, the Directive covers only SLAPPs with cross-border implications in civil and commercial cases. The Recommendation complements the Anti-SLAPP Directive as it covers also domestic cases, as well as criminal and administrative proceedings. The Directive protects broadly all natural and legal persons who engage in public participation on matters of public interest. This includes journalists, publishers, media organisations, whistleblowers and human rights defenders, as well as civil society organisations, NGOs, trade unions, artists, researchers and academics.

The three key pillars of the Directive are early dismissal of manifestly unfounded claims, remedies against abusive court proceedings and protection against third country SLAPP-judgements.

The Anti-SLAPP Directive poses key challenges in its transposition and interpretation.

Once the Directive is transposed into national law, the role of courts will be crucial for its successful application, for example when assessing the abusive nature of court proceedings or ensuring an accelerated treatment of SLAPPs.

Research material retrievable and provided by the speakers and scientific committee

Henrik SAUGMANDSGAARD ØE

1) C-59/19, Wikingerhof

- a. <https://curia.europa.eu/juris/document/document.jsf?jsessionid=D5EC9A3ECFE0E3941D9649B5B3D975DE?text=&docid=234206&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8113619>
- b. National decision following the CJEU'S one: <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=6254bd5e0dda2042f911700a25a667de&nr=118030&anz=1&pos=0>

2) C-422/20, HRVATSKE ŠUME

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62020CJ0242&qid=1659500492639>

3) C-603/1,7 Bosworth and Hurley

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=212908&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8115871>

Asya OSTROUKH

1. Trinidad Cement Ltd and TCL Guyana Inc v Co-operative Republic of Guyana (2009)

https://ccj.org/wp-content/uploads/2021/08/2009-CCJ-5-TCL-v-Guyana-2_CD.pdf

2. The State of Belize v The State of Trinidad and Tobago (2014)

https://ccj.org/wp-content/uploads/2021/08/2014-CCJ-2-Tomlinson-v-Belize-1_CD.pdf

3. Hummingbird Rice Mills Ltd v Suriname (2012)

https://ccj.org/wp-content/uploads/2021/08/2012-CCJ-2-Hummingbird-Rice-Mills-v-Suriname-2_CD.pdf

4. BCB Holdings Ltd and Belize Bank Ltd v Attorney General of Belize (2013)

https://ccj.org/wp-content/uploads/2021/08/2009-CCJ-5-TCL-v-Guyana-2_CD.pdf

5. Belize Bank Ltd v Attorney General of Belize (2017)

[Belize-Bank-Limited-v-Attorney-General-of-Belize-2017-CCJ-18-AJ-1.pdf](#)

Özlem BURDURLU AHLAT and Ezgi Fulya AKKUŞ

1. English translation of the Turkish Private International and International Procedural Law Act (Please note that this version of the translation does not contain the amendments done on the Article 27 after June, 2025)

<https://rm.coe.int/law-on-international-private-and-procedure-law/1680a3bcae>

2. **Information on the role of the Turkish Constitutional Court, see the official page in English**

<https://www.anayasa.gov.tr/en/home-page/>

3. **Unofficial Translation of the Turkish Constitutional Court Decision done with the help of AI Tools and revised by the Authors (Marie Laure, possiamo caricarla noi, nel nostro sito?)**

Aygun MAMMADZADA

1. **AA v Persons Unknown**

<https://www.bailii.org/ew/cases/EWHC/Comm/2019/3556.html>

2. **Ion Science v Persons Unknown,**

<https://www.bailii.org/ew/cases/EWHC/Comm/2020/3688.html>

3. **Fetch.ai v Persons Unknown,**

<https://www.bailii.org/ew/cases/EWHC/Comm/2021/2254.html>

4. **Tulip Trading v Bitcoin Association for BSV,**

<https://www.bailii.org/ew/cases/EWHC/Ch/2022/667.html>

5. **D'Aloia v Persons Unknown,**

<https://www.bailii.org/ew/cases/EWHC/Ch/2024/2342.html>

6. **Osbourne v Persons Unknown**

<https://www.bailii.org/ew/cases/EWHC/KB/2023/2974.html>

7. **Property (Digital Assets etc) Bill [HL] (2024)**

<https://bills.parliament.uk/bills/3766>

Laura GUERCIO/ Ilaria PRETELLI

United States Court of Appeals for the Ninth Circuit 323 F.3d 1233 (2003)

<https://law.justia.com/cases/federal/appellate-courts/F3/323/1233/575851/>

Caterina D'OSUALDO

Directive (EU) 2024/1069 of the European Parliament and of the Council 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')

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401069