

ARTICLE 19

SLAPPs against journalists across Europe

Media Freedom Rapid Response

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Executive summary

This report provides a Europe-wide overview of lawsuits that are taken to stifle scrutiny and public debate on issues such as corruption, mismanagement of public resources, and human rights violations. Such lawsuits, known as strategic lawsuits against public participation (SLAPPs) are taken by powerful individuals in society not necessarily to win cases, but to drag their critics through legal processes that drain them financially and psychologically and ultimately prevent them from exercising their fundamental rights (including freedom of expression or freedom of assembly and association).

This report is based on in-depth research on SLAPP litigation against journalists in 11 countries across Europe over the last four years: Belgium, Bulgaria, Croatia, France, Hungary, Ireland, Italy, Malta, Poland, Slovenia, and the UK. Several trends emerge from the country studies.

- First, and most importantly, there is a clear overall trend of SLAPP cases targeting journalists, media, civil society organisations, and individuals in nearly every country researched. The majority of SLAPP cases against journalists are taken **at the national level**. None of the countries surveyed have dedicated legislation on SLAPPs, and national legislation (for example, civil procedural law) does not provide sufficient protection against the abuse of existing legislation and preventing it from being abused in SLAPPs. Cross-border cases against journalists are less frequent and currently no protection exists against these cases.
- SLAPPs cases are characterised by a **severe power imbalance** between the plaintiff and the defendant. The SLAPP cases surveyed for this report were overwhelming brought by politicians, businesspeople, or corporations; and in some countries, there are close links between these three categories. All three of these categories of claimants have considerable financial resources, and bringing lawsuits is simply a cost of doing business for them – whether that business is commercial or engaging in politics. Meanwhile the defendants in the cases are a small group of independently minded media and journalists, many of them defending multiple cases simultaneously – sometimes dozens of them. The cases may be won, lost, or settled, but the aim of the process is to financially and otherwise drain them and stop the critical reporting. Media

and journalists rarely, if ever, recover their full legal costs, let alone the time and other resources invested in defending the case.

- **Claimants don't always win but that's not necessarily 'good news' for independent journalists.** Claimants do not in fact win many of the cases they bring: a large number are dropped before they come to trial or are ultimately lost, either at first instance or on appeal. For the media, this is not necessarily 'good news', particularly if they were prohibited for the duration of the case of reporting on the issue at stake. If a case is only won after several years, then the story that the journalist sought to report on may no longer be relevant and the media outlet concerned may have been forced to invest time and money in a pyrrhic victory.
- Depending on the legal system and framework of each country, various types of legal action are taken, ranging from claims of reputational damage and intellectual property infringements to intrusions to private life or other legal claims. **Defamation is the primary law of choice but claims taken under privacy and data protection laws are increasingly used.**
- It is notable that, in a number of countries, many SLAPP cases do not reach the courts – and frequently they are not even filed: **the mere threat of litigation can suffice** to scare a journalist, media outlet or non-governmental organisation (NGO) into withdrawing a critical report or taking down a news article. Several law firms, most notably in the UK but also in other countries, have developed very aggressive tactics to essentially bully journalists and media outlets into self-censorship, usually on behalf of wealthy clients.
- **The process itself can be the punishment** as it is an expensive journey down a long and tortuous road. The cases surveyed in this report usually involved lengthy and complex legal processes. Cases are rarely resolved in less than a year, and often remain pending for around three years; in a number of countries, it was not unusual for cases to remain unresolved even for 10 years. Throughout this time, defendants have to engage the services of lawyers and invest time and resources in the defence of a case that would be better spent on their work. Even if they do eventually prevail and are able to recoup some of their legal costs, the payments they are required to make upfront and

throughout the case put them at a disadvantage (it is rare for a lawyer to only bill at the end of a case, particularly one that lasts many years).

- **There is a need for procedural safeguards, in particular the early dismissal of cases at the national and cross-border levels:** the few countries or jurisdictions in the world that have legislated against SLAPPs include in these laws provisions that allow for SLAPP cases to be dismissed at an early stage.¹ This is a key safeguard against SLAPP lawsuits. However, in most countries surveyed in this report, early dismissal is either impossible or very difficult; only the claimant can force early termination, by withdrawing a claim (another aspect of the power imbalance). Cases must be litigated to the end, leading defendants down a long and, in most cases, expensive legal process.
- **Protection against cross-border cases is insufficient.** There is a relatively small but very impactful practice of suing media outlets and individual outlets in countries other than their own, and often other than the claimant's. The UK is a particular example of this: courts have allowed claimants to bring cases when there is only the merest link to the country, for example on the grounds that the claimant had property or some business interests there (and given the fact that many SLAPP claimants are businesspeople or corporations and London is a global financial hub where wealthy individuals from around the world own property and do business, this is often the case). For individual journalists and small media outlets, such cases are extremely difficult to defend, also because lawyers in the UK are by far the most expensive in all of Europe (a case that goes to trial can cost several hundreds of thousands of pounds). A 2020 global survey of investigative journalists working on financial crime and corruption found that the UK is by far, the most frequent international country of origin for legal threats.² This is not, however, uniquely a UK problem: the practice occurs in other countries as well, such as France, Belgium, and Bulgaria. The practice leads to journalists having to defend themselves against claims brought in a foreign country, often in a foreign language, and in a legal system that is completely alien to them. They struggle even to find lawyers. This burden is disproportionate, particularly when the claimant is, as discussed, often in a privileged financial situation.

- **SLAPP cases as part of an eroding climate for media freedom.** In many countries, the increasing problem of SLAPP lawsuits comes in conjunction with other threats to independent journalists. For example, SLAPP cases can be brought in parallel with a smear campaign that seeks to undermine a journalist or media outlet's reputation and credibility or, as the research in the UK discovered, even alongside (illegal) surveillance campaigns. In these situations, a media outlet or journalist will need considerable resources to counter these threats on multiple fronts, or even be forced to pick one and leave other threats unchallenged. Similarly, if a SLAPP case is brought against a media outlet in a country where threats to media freedom are already high (for example, through verbal abuse or physical violence against journalists, or by denial of advertising income), the SLAPP will further amplify the overall threat to the outlet.

The report concludes that SLAPPs represent a real threat to freedom of expression and to participate on matters of public concern in countries concerned. As democracy and the rule of law come increasingly under pressure in a number of Member States, this report proposes the call for legislative action to protect public watchdogs and keep the democratic debate alive.

Key recommendations

At the European regional level

- The **European Commission** should urgently put forward an anti-SLAPP directive providing for common procedural and other safeguards against SLAPPs **at national and transnational levels** based on the recommendations set out in the model EU anti-SLAPP Directive.³
- The **Council of Europe** should elaborate and promulgate a Recommendation setting forth a full set of principles on how to protect the right to freedom of expression and other acts of public participation from the threat of SLAPPs.⁴

At the national level

States should:

1. Decriminalise defamation

- All criminal defamation laws – including insult, libel, or slander – should be abolished without delay, even if they are seldom or never applied. They should be replaced, where necessary, with appropriate civil defamation laws.⁵
- A moratorium should be imposed on the use of all criminal defamation laws still in force.

In recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, the subsequent recommendations on SLAPPs in criminal cases are made as a practical matter on an interim basis, until those provisions are fully decriminalised.

- No-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below.
- The offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed.
- Public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official.
- Prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media or to practise journalism or any other profession, excessive fines, and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

2. Adopt comprehensive safeguards against SLAPP in civil cases

Such safeguards should include for instance the following measures:

Early dismissal

- A defendant against whom a claim is brought or who receives a threat of legal action which she or he believes is an abusive lawsuit against the exercise of the right to freedom of expression and public participation activities should be able to file a claim for dismissal of that claim at the earliest opportunity, along with an incidental claim for damages.
- A case should be dismissed if the defendant can show that the statement in question was made in connection with an official proceeding or about a matter of public interest, unless the claimant can prove that the claim has legal merits, that it is not manifestly unfounded, and that there are no elements indicative of an abuse of rights or of process laws in which case the motion shall be denied.
- Claims for early dismissal should be examined as soon as possible, at the latest within 90 days from the filing of the motion, and be decided swiftly.

Deadline for bringing cases

- Claims regarding statements on a matter of public interest or in connection with official proceedings should not be brought more than six months after the statement was made or published (including its first publication online).

Discovery/disclosure

- Defendants in defamation cases should have access to all material in the possession of the claimant that is relevant to the determination of the claim.
- Discovery proceedings against the defendant should be stayed pending resolution of the anti-SLAPP law or introduction of early dismissal mechanisms.

Multiple cases

- When a number of cases are brought regarding the same, or a substantially similar, publication, all but one of these should be stayed pending the final outcome of the pilot case (including any appeals).
- In some jurisdictions, cases may simply be brought together where applicable.

Forum shopping

- Where a claim that arises from public participation on matters of public interest is led in a court or tribunal of another State against a defendant who is domiciled in their State, States should take the measures necessary to ensure that the defendant has access to appropriate remedies before the national courts or tribunals in the State as are necessary to dissuade the pursuance of the claim in those other courts. Remedies should include the possibility to claim a summary award of damages in sums which are at least equal to the sums claimed in damages in those other courts seized, as well as the imposition of penalties.

Legal aid

- Defendants against whom a claim is asserted which arises from public participation on matters of public interest should have access to legal assistance free of charge. Further support should be granted for third-party interventions and trial monitoring of SLAPP cases.

Costs

- A successful defendant should always be able to claim all reasonable costs made in connection with the defence of a case. This should include lawyers' and expert witnesses' fees, as well as other costs incurred, including staff and other resources that have been invested in the case and any necessary travel. Interim cost awards should be made if it is determined that without such an award, the defendant's financial situation would prevent them from effectively exercising the right of defence.

- Defendants in a case brought regarding a statement on a matter of public interest or in connection with official proceedings should only be liable to proportionate contribution towards a claimant's legal costs, bearing in mind the defendant's financial position.
- In a case regarding a statement on a matter of public interest or that was made in connection with official proceedings, defendants shall not be required to make any surety payments into courts or have their bank balances frozen (fully or partially).

Cap on damages

- The law should set reasonable and proportionate maximum amounts for awards for damages that may be claimed in cases that arise from the exercise of the right to freedom of expression and related public participation activities. Awards should not exceed the median equivalised net income per country and they should take into account the defendant's individual circumstances as well as the broader chilling effect that the award may have on the exercise of the right to freedom of expression.

Penalties

- Penalties in the form of a fine should be applicable to claimants of a claim which is the object of a dismissal decision. In determining the amount of the penalty, due consideration should be given to (i) the abusive nature of the claim; (ii) the excessive or unreasonable nature of claims; (iii) the damages suffered by the defendant; (iv) the existence of previous dismissal decisions brought by the same claimant; and (v) the economic situation of the claimant.

Registry of cases

- National registries of court decisions concerning cases relating to SLAPPs should be established. Registries should be made publicly accessible and free of charge at point of use, in accordance with national rules on the protection of personal data. Entries in registers should in no way affect the rights of the parties in any other judicial proceedings

Judicial training and awareness-raising

- Training should be provided to judges at all relevant courts to aid them in recognising SLAPPs, including on relevant European human rights standards and the case law of the European Court of Human Rights relating to SLAPPs.

Media organisations

- Media organisations should stand by and support their employee or contracted journalists facing SLAPPs, including ensuring adequate indemnity insurance, legal support, and counselling for SLAPP victims.
- Mechanisms should be created to support journalists in reporting SLAPP cases in the media and to the Coalition Against SLAPPs in Europe (CASE) platform of which they or other media/journalists are the victim.

Introduction

This report provides a Europe-wide overview of lawsuits that are taken out against journalists to stifle scrutiny and public debate on issues such as corruption, mismanagement of public resources, and human rights violations. These legal actions – often called strategic lawsuits against public participation (SLAPPs)⁶ – are typically initiated solely to drain resources and harass or subdue those who do not align with the interest of the powerful forces in the society, and to prevent them from exercising their fundamental rights. The claimants are often wealthy businesspeople or well-resourced politicians for whom the expense of bringing a lawsuit case is a negligible cost. The defendants, on the other hand, are typically poorly resourced small media outlets, journalists, or activists; for whom the cost of hiring lawyers and investing resources in defending the lawsuit is very significant. Claimants exploit this disparity to force defendants to settle the lawsuits, abandon the criticism (usually a report or a series of reports in a newspaper) and issue an apology, thus whitewashing the claimant's reputation and shielding them from criticism. Recognising the threat that SLAPPs pose to democratic debate and public participation, anti-SLAPP legislation has been passed at a state level including in California and Oregon in the USA and Ontario in Canada to stop such lawsuits.⁷

The issue of SLAPPs in Europe came to prominence following the assassination of Daphne Caruana Galizia, Malta's leading investigative journalist, in October 2017. Upon her death it emerged she was facing over 40 SLAPP actions from politicians and businesspeople in Malta and the USA. Coverage of the SLAPPs against Caruana Galizia led more journalists across the EU to speak about the SLAPPs they were facing. Meanwhile, advocacy efforts at the European Commission level, led by CASE of which ARTICLE 19 is a member, pushed for an EU anti-SLAPP Directive.⁸

The European Parliament has called for specific anti-SLAPP legislation since 2018. In November 2021, the Parliament adopted an own-initiative report on SLAPP. The report calls for the Commission to present a comprehensive package of measures against SLAPP, including legislation.⁹ In 2020, the European Commission – aware of the need to counter this phenomenon within the EU – committed itself to promoting measures to

counter SLAPPs within the EU block.¹⁰ The Commission is currently preparing an initiative to protect journalists and rights defenders against abusive litigation, planned for 2022, and in October 2021 it published a [roadmap](#)¹¹ and launched an [open public consultation](#) in preparation for the initiative against SLAPP.

Recognising that SLAPPs pose a serious threat to media freedom in States beyond the EU, including the UK, the coalition is also calling for a Council of Europe Recommendation against SLAPPs.¹²

This report is intended to support these efforts. It provides an overview of the extent of SLAPP cases against journalists since the assassination of Daphne Caruana Galizia in 11 countries across Europe: Belgium, Bulgaria, Croatia, France, Hungary, Ireland, Italy, Malta, Poland, Slovenia and the UK. These countries were selected on the basis of reports or anecdotal evidence of SLAPPs against journalists in these jurisdictions. Country researchers – each of them practising lawyers, well versed in law and practice in their country – followed a standardised research template to identify the laws and procedural characteristics that are exploited by claimants in SLAPP cases.

While the research is not exhaustive and further in-depth research into other jurisdictions in Europe is necessary, this report provides an overall trend analysis across the region. It furthermore sets out the main international standards that are relevant to SLAPP cases, and provides recommendations for reform, anchored in these international standards and informed by the trend analysis.

ARTICLE 19 holds that SLAPPs are not only a violation of fundamental rights, but they also present a threat to European values of media freedom and transparency and to the EU Common Market. We therefore hope that this report will inform and support advocacy for legal reform to prevent these abusive lawsuits in the EU and beyond.

The concept of SLAPPs

There is no uniform definition of SLAPPs and different definitions are used in laws and advocacy. For example:

- The Supreme Court of Canada recently defined SLAPPs as “lawsuits initiated against individuals or organisations that speak out or take a position on an issue of public interest. SLAPPs are generally initiated by plaintiffs who engage the court process and use litigation not as a direct tool to vindicate a bona fide claim, but as an indirect tool to limit the expression of others. In a SLAPP, the claim is merely a façade for the plaintiff, who is in fact manipulating the judicial system in order to limit the effectiveness of the opposing party’s speech and deter that party, or other potential interested parties, from participating in public affairs.”¹³
- American Civil Liberties Union defines SLAPP suits as “a civil complaint or counterclaim filed against people or organisations who speak out on issues of public interest or concern”.¹⁴
- Greenpeace defines SLAPPs as a “lawsuit brought by a private individual (including those brought by public officials acting in a private capacity) with the intention of shutting down acts of public participation”.¹⁵ Greenpeace also recognises that identifying these lawsuits is difficult and proposes a number of indicative criteria to identify them:
 - The remedies sought are unusually aggressive or disproportionate to the conduct targeted
 - The plaintiff engages in procedural manoeuvres intended to drag out the cost or drive up costs, such as pursuing appeals with little prospect of success
 - The plaintiff appears to be exploiting its economic advantage to put pressure on the defendant
 - The lawsuit targets individuals rather than just the organisation they work for
 - The arguments relied on are factually or legally baseless
 - The plaintiff uses the litigation process to intimidate and harass third-party critics (for example, through the discovery process)

- The lawsuit appears to be part of a wider public relations offensive or broader campaign to bully, harass, or intimidate the target; and
- The plaintiff has a history of SLAPPs and/or legal intimidation (for example, threats designed to scare critics into silence).¹⁶

ARTICLE 19 refers to SLAPPs in policies on defamation¹⁷ and protest.¹⁸ Underpinning ARTICLE 19's position on and recommendations against SLAPPs is the obligation of States and the need to prevent the chilling effect of litigation from potential abusive claimants. To mitigate the impact of abusive litigation in the context of reputational claims, defendants should have an **effective remedy against plaintiffs bringing clearly unsubstantiated cases** with a view of exerting a chilling effect on debates of public concern. Either by law or procedural rules, the court should have the power, at the requests of the defendant or on their own motion, to dismiss defamation claims that target a contribution to a debate of public concern and are frivolous, clearly unsubstantiated, or otherwise clearly lacking any chance of success.

In the context of abusive claimants against protesters, ARTICLE 19 approaches the issue from the State duties regarding liability and sanctions against protesters. This means that States must restrict the possibility of civil law remedies being used to silence protesters and to obstruct the work of human rights defenders in protests (including SLAPPs). States should adopt legislation that considers **SLAPP as an abuse of the judicial process which aims to restrict legitimate exercise of the right to protest.**

In relation to the use of injunctions, ARTICLE 19's position stems from the need to comply with the principles of due process, necessity, and proportionality.¹⁹

This approach reflects the key principles of anti-SLAPP statutes/laws that have been adopted in some countries.²⁰ In practice, the scope, purpose, and procedural application of anti-SLAPP measures have the following general characteristics:

- **Purpose:** The aim of anti-SLAPP legislation or provisions is to mitigate the harmful effect of SLAPPs on public interest expression. For instance, the Ontario anti-SLAPP regime aims to circumscribe proceedings that adversely affect expression made in

relation to matters of public interest in order to protect that expression and safeguard the fundamental value that is public participation in democracy.²¹

- **Regulation:** Special laws, statutes, or civil law procedural rules include mechanisms for early procedural review under special motions to dismiss or strike any civil action in which a plaintiff brings a claim that is based on the defendant's right to freedom of expression. In some cases, it is considered a pretrial motion under which the question to answer is whether the statement or publication pertains to a public interest matter rather than an assessment of the merits or characterisation of the expression. These regimes are not limited to defamation and reputational claims.
- **Burden of proof:** The mechanism that allows the defendant to file a motion to dismiss or strike out the complaint puts the burden of proof on the defendant to convince the court that the speech in question is directly related to or arising from expressions and matters of public concern. If the defendant meets the threshold required to satisfy the judge, the burden of proof is put on to the plaintiff to demonstrate whether there exists a degree of probability that the claim will prevail.²² Plaintiffs may also be required to prove the following in order to proceed with the examination of the case: (i) the underlying procedure has a substantial merit; (ii) the defendant has no valid defence; and (iii) the alleged harm is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression in question.²³
- **Courts' review:** Under the motion to dismiss proceeding, the judge conducts a balancing exercise between the public interest allowing meritorious lawsuits to proceed and the public interest in protecting expression on matters of public interest.
- **Remedies:** Defendants may be entitled to attorney fees and costs in case the court determines that the motion to dismiss prevails over the plaintiff claims. Otherwise, in case the special motion is determined to be frivolous or a tactic to unnecessarily delay the process, the plaintiff may be awarded with costs and attorney's fees.²⁴

These regimes are not bulletproof and are always prone to abuse as civil proceedings tend to be lengthy, extremely technical, and costly in practice; however, they are playing a role

to mitigate the negative impacts of vexatious litigation against media and journalists and to protect the exercise of journalistic freedom of expression from indirect restrictions by third parties. They are relevant because they are in line with the standards of fair trial, due process, effective remedy, and protection of the right to freedom of expression under international human rights law.

Criminal law and SLAPPs

The country-specific research carried out for this report revealed that in a number of countries in Europe, criminal law provisions are abused to take out SLAPPs. This is particularly the case in countries where defamation, insult, and other issues linked to the protection of reputation are criminal matters. The mode through which these cases are taken varies from country to country: sometimes they are taken through the public prosecutor's office, in other instances they are taken through private prosecutions, and in a number of countries criminal and civil cases are taken out in parallel, i.e. a claimant asking for damages or a similar remedy in civil proceedings, whilst pursuing the defendant through the criminal justice system. This can increase the burden on the defendant and pressure them even further to drop the defence and settle the case.

Applicable international standards

The protection of the right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights,²⁵ and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).²⁶ At the European level, Article 10 of the European Convention on Human Rights (European Convention) protects the right to freedom of expression in similar terms to Article 19 of the ICCPR.²⁷ Within the EU, the right to freedom of expression and information is guaranteed under Article 11 of the Charter of Fundamental Rights of the European Union.²⁸

The scope of the right to freedom of expression is broad. Article 19 of the ICCPR and Article 10 of the European Convention require States to guarantee to all people the freedom to seek, receive, or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice; this also includes the Internet and digital media.²⁹ General Comment No. 34 of the UN Human Rights Committee, the treaty body of independent experts monitoring State compliance with the ICCPR, explicitly recognises that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.³⁰

The Human Rights Committee also recognises that the right to freedom of expression includes, inter alia, political discourse, commentary on one's own and on public affairs, journalism, and expression that may be regarded as deeply offensive.³¹ Similarly, the European Court on Human Rights (European Court) has repeatedly stated that the protection of Article 10:

Is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued.³²

International and regional human rights standards highlight the role that journalists and media play in a democratic society and the functions they serve for the exercise of freedom of expression and information. Importance of the media for democracy and society has been repeatedly recognised by international and regional human rights bodies. For instance, the Human Rights Committee states that:

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other [rights guaranteed by the ICCPR]. It constitutes one of the cornerstones of a democratic society. The [ICCPR] embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.³³

The Human Rights Committee also recognises that the ICCPR places particularly high value upon uninhibited expression whose content involves political discourse, particularly in circumstances of public debate concerning public figures in the political domain and public institutions.³⁴ Similarly, the European Court has stressed the ‘public watchdog’ function of the media³⁵ as well as that of NGOs.³⁶ Further, the European Court has consistently held that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed.³⁷ The European Court has emphasised that:

Freedom of the press ... affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders ... freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the [European Convention].³⁸

Moreover, international and regional standards stress that journalism encompasses different forms, practices, and activities performed by a wide range of actors whose protection is determined by the functions they serve in a democratic society rather than on

formal regimes of or procedures for recognition. The Human Rights Committee recognises that journalism is not limited to “professional full-time reporters and analysts”, but also covers “bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere”.³⁹ Accordingly, States should not create systems of registration or licensing aimed at limiting the scope of protection or recognition of their role under domestic law, States should take into account that journalism is a function shared by a wide range of actors.

Limitations on the right to freedom of expression

Under international and European human rights law, the right to freedom of expression is not an absolute right, but rather one which can be legitimately restricted by the State provided certain conditions are met. Such conditions comprise a three-part test against which any proposed restriction on freedom of expression must be scrutinised:

- 1. The restriction must be provided by law:** This means that it must have a basis in law, which is publicly available and accessible, and formulated with sufficient precision to enable citizens to regulate their conduct accordingly.⁴⁰ Assurance of legality on limitations to Article 19 of the ICCPR should comprise the oversight of independent and impartial judicial authorities.
- 2. The restriction must pursue a legitimate aim:** Legitimate aims are those exhaustively enumerated in Article 10 para 2 of the European Convention and Article 19 para 3 of the ICCPR: respect of the rights or reputations of others; or the protection of national security or of public order (*ordre public*), or of public health or morals.
- 3. The restriction must be necessary in a democratic society:** This requirement encapsulates the dual principles of necessity and proportionality. It demands an assessment of, first, whether the proposed limitation satisfies a ‘pressing social need’,⁴¹ and second, it must be established whether the measures at issue are the least restrictive to achieve the aim. States are required to demonstrate in a specific and individualised fashion the precise nature of the threat establishing a direct and immediate connection between the expression and the threat.⁴²

Assessing the necessity and proportionality of a restrictive measure requires a careful consideration of the particular facts of the case. The assessment should always take as a starting point that it is incumbent upon the State to justify any restriction on freedom of expression, including freedom of the press.⁴³ As a party to the ICCPR and the European Convention, all States must subject any interference to freedom of expression and information in general – and freedom of the press in particular – to the strict requirements of the three-part test. This means that the three-part test applies to all branches of government (executive, legislative, and judicial) and other public or governmental authorities at national, regional, or local level.⁴⁴

Legal protection of the media

States have the obligation to respect and ensure the right to freedom of opinion and expression for all, including for journalists and the media.⁴⁵ In General Comment No. 31, the Human Rights Committee stated that States also have a positive duty to protect against any undue limitation or restriction on freedom of expression from both State agents and private parties.⁴⁶ In practice, this means that States must guarantee a broad protection of the right to freedom of expression in the national legal system and also should undertake all necessary measures to give effect to the right and protect its exercise from undue restrictions. States must adopt legislative, judicial, administrative, or special measures geared towards safeguarding the exercise of freedom of expression in line with international and regional human rights standards.⁴⁷

The positive obligation is central to addressing situations when legal actions are brought solely to harass or subdue an adversary and prevent an exercise of fundamental rights and the right to freedom of expression. This applies to SLAPPs.

Although there is no uniform definition of SLAPPs and different concepts are used in laws and advocacy, the impact of SLAPPs on freedom of expression and human rights has been widely recognised. For instance:

- The UN Special Rapporteur on the right to freedom of peaceful assembly and of association, and the UN Special Rapporteur on extrajudicial, summary, or arbitrary execution have raised concerns over the use of SLAPPs against assembly organisers.

This concerned, in particular, instances where business entities seek injunctions and civil remedies against protesters on the basis of trespass or defamation laws. The mandate holders established that States have the obligation to ensure due process and to protect assembly organisers from civil actions that lack merit.⁴⁸

- In General Comment No. 24, the UN Committee on Economic, Social and Cultural Rights established that “actions [instituted] by corporations to discourage individuals or groups from exercising remedies, for instance by alleging damage to a corporation’s reputation, should not be abused to create a chilling effect on the legitimate exercise of such remedies”.⁴⁹
- The UN Working Group on Business and Human Rights recommended States enact anti-SLAPP legislation to ensure that human rights defenders are not subjected to civil liability for their activities.⁵⁰
- The Resolution on Safety of Journalists, adopted by the UN Human Rights Council (UN HRC) at its 46th session, recognised SLAPPs against the media as an attempt to silence journalists and media workers and as a means used by business entities and individuals to exercise pressure on journalists and stop them from critical and/or investigative reporting.⁵¹

International freedom of expression standards establish that the positive obligation of States to protect the right to freedom of expression from undue interferences entails the creation of an enabling legal environment for journalists and the media to operate freely and without undue interferences; to proactively take all necessary measures – in law, procedure, and practice, to eliminate the obstacles and interferences to exercising the right to freedom of expression in relation to matters of public interest; and to adopt legislation or any special measures to protect journalism from further interferences undermining their social function.⁵² Hence, States should address the chilling effect of abusive litigation and provide effective remedies against abusive claimants that resort to the judicial system to intimidate or silence journalists and the media in retaliation for their work on matters of public concern.⁵³

Due process and procedural protection against SLAPPs

The problem of SLAPPs also engages the protection of the right to a fair trial/due process, and access to court, protected under Articles 14 and 16 of the ICCPR and Article 6 of the European Convention. In civil proceedings, the right to fair trial applies to both the claimant and the defendant involved in any civil dispute at domestic level. Both claimants and defendants must be able to argue their case with the requisite of effectiveness⁵⁴ and with respect for procedural safeguards.

An important aspect of the right to fair trial is the principle of procedural fairness and 'equality of arms', which requires that neither party is put in a disadvantageous position compared to the other party. The principle of 'equality of arms' means that in the various stages of the legal process, the parties must stand in an equal position and enjoy the same reasonable opportunity to present their case.⁵⁵ Therefore, procedural safeguards may be necessary (i) to counterbalance any procedural unfairness indirectly caused by existing protections to everyone's right to a fair trial and (ii) to protect individuals' opinions and public debate on matters of public concern from civil claims that lack merit.⁵⁶ In these cases, courts should strike a fair and proper balance between the public interest allowing adversarial and meritorious lawsuits to proceed and the public interest in protecting expression on matters of public concern.⁵⁷

In addition, the European Court has stated that provision of legal aid or simplification of applicable procedures may constitute means to guarantee the right to a fair trial in general, and ensure equality of arms in particular.⁵⁸ Legal aid schemes, however, should be limited to those cases where it is necessary for a fair hearing and is indispensable for effective access to court.⁵⁹ Hence, legal aid may be required when the rights to freedom of expression and proper defence of journalists and the media are at stake as a result of unequal conditions to comply with legal and procedural conditions before a trial. The European Court has established that the necessity of legal aid "must be determined on the basis of the particular facts and circumstances of each case and will depend, inter alia, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively".⁶⁰

In *Steel and Morris v. the United Kingdom*, the European Court found that the denial of legal aid to applicants acting as defendants to protect their right to freedom of expression in a defamation case brought by a global corporation deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms.⁶¹ The European Court considered various factors to reach to a conclusion of potential unfairness, including but not limited to the length of the proceeding, the financial consequences for the applicants of failing to comply with the civil judge requirements, the amount of claimed damages compared to the applicant's incomes, along with the scale and complexity of the proceedings.⁶²

In the context of SLAPPs brought under defamation legislation (or protection of reputation), States should adopt safeguards against potential abusive claims and ensure that only viable and well-founded reputational damage claims are brought. Defendants should have an effective remedy available against plaintiffs bringing clearly unsubstantiated cases with a view of exerting a chilling effect on debates of public concern. Such an effective remedy can either take the form of specific SLAPPs legislation or result from general procedural rules. In either case, courts should have the power, at the requests of the defendant or on their own motion, to dismiss defamation or reputational-related claims that target a contribution to a debate of public concern and are frivolous, clearly unsubstantiated, or otherwise clearly lacking any chance of success.⁶³

SLAPPs trends from country studies

None of the countries in Europe explicitly recognize the concept of SLAPPs (as identified in the earlier section of this report) in their legislation and they do not provide specific protection against them. As the concept of SLAPPs is not recognised, there are no official statistics of the phenomenon. The data gathered for this report is anecdotal and by definition incomplete; many cases that fulfil the SLAPP criteria will have gone below the radar. But even this anecdotal and incomplete data shows that SLAPPs are being initiated in nearly every country under the review.

This section reviews trends that emerge from the country studies gathered in this report.

Severe power imbalance between defendants and claimants

The SLAPP cases surveyed for this report were overwhelmingly brought by politicians, businesspeople, or corporations; and in some countries, there are close links between these three categories. All three of these categories of claimants have considerable financial resources, and bringing lawsuits is simply a cost of doing business for them – whether that business is commercial or engaging in politics. They usually retain lawyers and law firms on an ongoing basis for various purposes, one of which may be to ‘manage’ their reputation or ensure that they can conduct their activities without interference or public scrutiny. The cost of retaining these lawyers is usually small compared to their other business expenses and is usually tax-deductible.

The defendants are usually media companies, individual journalists or editors, and NGOs or public associations. Of these, only the larger media companies have resources that come close to those of the claimants and can afford to hire lawyers; for small and independent outlets, NGOs and individual journalists and editors, the cost of defending cases can be an insurmountable obstacle. In some countries, defendants reported struggling even to find a lawyer willing to defend a case against a powerful plaintiff; lawyers are concerned at being seen to be aligned with anti-government people or organisations. In some countries even large media companies balk at the prospect of defending cases. With their business models in disarray – a threat that has been

exacerbated by the financial impact of the Covid-19 pandemic – the finances of many media companies are in a precarious state and struggle to break even.⁶⁴

There is, in short, a clear power imbalance between claimants and defendants. Some claimants exploit this power imbalance by bringing a large number of cases against the same defendants, often small online investigative news outlets, with the aim of overwhelming them. Practice of this was evident in a number of countries, including Italy, Belgium, Malta, Poland, and Slovenia.

In many countries, the financial impact of SLAPP cases is exacerbated by rules that require media to report SLAPP claims on their balance sheets (sometimes to the tune of several million euros), or that bar them from claiming their legal fees in full even if they successfully win a case. For example, in Italy, where defamation demands can range into millions of euros, defendants are required to report these amounts as potential liabilities on their balance sheets; and in countries including the UK, Malta, Belgium, and France, the media are estimated to be able to recoup only a portion of their actual legal defence costs. A journalist in Bulgaria reported that they had had their bank balances frozen for the duration of a case. Very few companies or outlets have insurance, and in some countries (particularly the UK and Ireland) insurance is very expensive and often does not cover all costs.

Journalists' unions and media outlets have spoken publicly of the burden on them of defending cases and the lack of equality of arms in the cases brought against them. For example, the Slovenian Association of Journalists has warned:

[W]e do not want to deny those who are affected by journalistic articles the legitimate right to defend their good name, but at the same time we warn that legal remedies can be abused to exhaust journalists in time, financially and mentally. Particularly vulnerable are the smaller media and journalist teams, which do not have the human and financial resources to fight and defend their rights.⁶⁵

As a result, media and journalists are frequently forced into settlements purely for financial reasons, even if they believe that they can defend their journalism. The *Malta Independent* wrote in an editorial, commenting on a settlement it had been forced into:

[Our] legal advice was that the case is certainly a winnable one, [but we] had to consider that the costs would be financially crippling ... So, once all was weighed in the balance, the decision to remove some of our online content was taken ... This is another unfortunate case in which money talks.⁶⁶

Claimants do not always win – but this is not necessarily good news

An essential characteristic of a SLAPP case is that it has been brought with the primary aim of silencing a critical voice. This can be achieved not just by winning a case, but also by wearing down the person voicing the criticism, forcing them to run up unaffordable legal bills, or exhausting them by dragging them through a lengthy legal process.

The practices surveyed in this report clearly show this. Claimants do not in fact win many of the cases they bring: a large number are dropped before they come to trial or are ultimately lost, either at first instance or on appeal. For the media, this is not necessarily ‘good news’, particularly if they were prohibited for the duration of the case of reporting on the issue at stake. If a case is only won after several years, then the story that the journalist sought to report on may no longer be relevant and the media outlet concerned may have been forced to invest time and money in a pyrrhic victory.

The laws abused: mostly defamation, but also privacy and data protection laws

Many of the cases surveyed in this report were so-called ‘defamation’ cases. The very nature of defamation law easily lends itself to a SLAPP case: when a journalist has published something that alleges wrongdoing by another person, this fulfils two essential criteria for a defamation case. First, a public allegation is made against a person or entity, and second, that person or entity’s reputation is potentially tarnished (through the allegation of wrongdoing). All that the person of whom wrongdoing is alleged needs to do is bring a complaint claiming that the journalist’s report is untrue, and the burden shifts to the journalist to defend the allegation. In most countries surveyed, the claimant is not required to bring any proof other than an affidavit in which they testify that the claim made against them is untrue; the burden is entirely on the defendant.

In a smaller but still significant number of cases, such as in Croatia, Poland, and Slovenia, the related concepts of ‘insult’ or ‘honour’ can be used to bring a claim. In such cases, the

claimant alleges that the words used against them are 'insulting', for example, because vulgar terminology was used.

Privacy laws are also used to bring SLAPP cases. Like defamation, these laws easily lend themselves to abuse: when media reporting alleged corruption, financial irregularities or other wrongdoing and includes aspects that relate to the personal sphere (such as financial affairs or family relations), claimants can bring a complaint that this reporting violates their privacy. The burden of proof then shifts to the journalist or media outlet to show that the reporting was justified, for example because it was 'in the public interest'. Depending on the country and legal system concerned, this can be a heavy burden. A rising number of privacy cases are reported against the media in the UK, and the research conducted in Belgium also saw the use of privacy law to silence journalists there.

The use of data protection law, which allows claimants to sue over any inaccuracies in personal information even if the information is not defamatory, is on the rise in a number of countries, including Bulgaria, Hungary, Malta, and the UK. This was particularly apparent in Hungary, where one of the richest industrial families in the country has been able to use data protection laws stop reporting on aspects of its business activities. Privacy and data protection laws also lend themselves to the bringing of injunctions: court orders that prohibit reporting on certain matters pending the outcome of a full trial (which can last many years).

In most European countries, privacy and defamation cases can be brought under criminal as well as civil law – and sometimes, criminal and civil cases are brought in parallel.

In a number of countries, it appeared that the substantive law in defamation cases did not align with requirements posed under the European Convention.⁶⁷ This puts defendants in SLAPP cases at an obvious and very serious disadvantage. In other countries, such as Croatia and Malta, there were reports that the judgments of lower courts did not always align with the judgments of the European Court on Human Rights requirements. Whilst the findings of such lower courts were overturned on appeal, this forced defendants to invest time and resources in appeal processes – again, putting them at a disadvantage, especially when they cannot recoup their legal fees.

Various other laws were also used to bring SLAPP lawsuits, depending on the situation. These included copyright and trademark laws (against NGOs who satirise company logos), media laws that legislate for a right of reply, anti-harassment laws, and various minor criminal offences, for example alleged breaches of Covid-19 lockdown rules.

Under many of these laws, the threat of disproportionate sentences, including imprisonment or defamation awards in the hundreds of thousands and even millions of euros, has a clear chilling effect on anyone who wants to speak truth to power.

Not all cases go to court: bullying and censorship by lawyers' letters

It is notable that, in a number of countries, many SLAPP cases do not reach the courts – and frequently they are not even filed: the mere threat of litigation can suffice to scare a journalist, media outlet, or NGO into withdrawing a critical report or taking down a news article. Several law firms, most notably in the UK but also in other countries, have developed very aggressive tactics to essentially bully journalists and media outlets into self-censorship, usually on behalf of wealthy clients.

A particularly egregious case was that of Maltese journalist Daphne Caruana Galizia who was assassinated for her reporting on corruption in Maltese business and politics. Prior to her assassination she was reportedly 'bombarded' with threats of libel action by the law firm, Mishcon de Reya, leading her sons to say, after her death, that:

*The firm sought to cripple her financially with libel action in UK courts. ... Had our mother not been murdered, they would have succeeded.*⁶⁸

Lawyers' letters are not limited to defamation actions: the same tactic is also used in alleged privacy or data protection cases, or any other legal basis that lawyers identify as the possible basis for a threatening letter. The purpose of these letters is not to win a case: it is primarily to scare and intimidate.

Some media outlets have resorted to publishing legal threats against them, shining a light on this practice.⁶⁹ While this is brave, it is understandable that those outlets with limited budgets would want to avoid provoking claimants with apparently aggressive appetites for litigation – and resources to match.

The process is the punishment: an expensive journey down a long and tortuous road

The cases surveyed in this report usually involved lengthy and complex legal processes. Cases are rarely resolved in less than a year, often remain pending for around three years, and in a number of countries it was not unusual for cases to remain unresolved even for 10 years. Throughout this time, defendants have to engage the services of lawyers and invest time and resources in the defence of a case that would be better spent on their work. Even if they do eventually prevail and are able to recoup some of their legal costs, the payments they are required to make upfront and throughout the case put them at a disadvantage (it is rare for a lawyer to only bill at the end of a case, particularly one that lasts many years).

The few countries or jurisdictions in the world that have legislated against SLAPPs include in these laws provisions that allow for SLAPP cases to be dismissed at an early stage. For example, California's Anti-SLAPP statute allows a defendant to file a motion to have a case against them dismissed if it was brought in response to "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest".⁷⁰ This is a key safeguard against SLAPP lawsuits. However, in most countries surveyed in this report, early dismissal is either impossible or very difficult; only the claimant can force early termination, by withdrawing a claim (another aspect of the power imbalance). Cases must be litigated to the end, leading defendants down a long and, in most cases, expensive legal process.

Some countries, such as Belgium, France, and Hungary, allow a successful defendant to countersue for 'vexatious litigation' (bringing a case purely to harass or subdue a defendant). However, even in the rare cases where this has been successful, penalties imposed and compensation awarded to victims of vexatious litigation are low and so in practice this does not deter claimants in SLAPP cases. In France, for example, a businessman found to have maliciously sued the media was ordered to pay the journalists involved a total of EUR 10,000; hardly a deterrent for a billionaire.⁷¹

Insufficient protection against cross-border cases

There is a relatively small but very impactful practice of suing media outlets and individual outlets in countries other than their own, and often other than the claimant's.

The UK is a particular example of this: courts have allowed claimants to bring cases when there is only the merest link to the country, for example on the grounds that the claimant had property or some business interests there (and given the fact that many SLAPP claimants are businesspeople or corporations and London is a global financial hub where wealthy individuals from around the world own property and do business, this is often the case). For individual journalists and small media outlets, such cases are extremely difficult to defend, also because lawyers in the UK are by far the most expensive in all of Europe (a case that goes to trial can cost several hundreds of thousands of pounds). A 2020 global survey of investigative journalists working on financial crime and corruption found that the UK is by far the most frequent international country of origin for legal threats.⁷²

This is not, however, uniquely a UK problem: the practice occurs in other countries as well, such as France, Belgium, and Bulgaria. The practice leads to journalists having to defend themselves against claims brought in a foreign country, often in a foreign language, and in a legal system that is completely alien to them. They struggle even to find lawyers. This burden is disproportionate, particularly when the claimant is, as discussed, often in a privileged financial situation.

SLAPP cases in context

In many countries, the problem of SLAPP lawsuits is one of a number of issues threatening media freedom; and SLAPP lawsuits are often brought alongside other threats.

For example, SLAPP cases can be brought in parallel with a smear campaign that seeks to undermine a journalist or media outlet's reputation and credibility or, as the research in the UK discovered, even alongside (illegal) surveillance campaigns. In these situations, a media outlet or journalist will need considerable resources to counter these threats on multiple fronts, or even be forced to pick one and leave other threats unchallenged. Similarly, if a SLAPP case is brought against a media outlet in a country where threats to media freedom are already high (for example, through verbal abuse or physical violence

against journalists, or by denial of advertising income), the SLAPP will further amplify the overall threat to the outlet.

Country case studies

Belgium

Civil as well as criminal law provisions are used to bring SLAPP cases against journalists. In some cases, claimants can request a summary proceeding (injunction) to have a court order to prevent the broadcasting of a report, stop the distribution of a book or magazine, or have online content removed from the Internet.

Most cases against journalists are brought under Article 1382 of the Civil Code,⁷³ which sets out the general principle that a person who 'causes damage to another' is required to make reparations. The claimant has to demonstrate that the journalist is at fault, that the claimant suffered damage, and that there is a causal link between the publication by the journalist and the damage suffered. In addition, the general principles of civil law provide that 'fault' can be found when a journalist acted differently than a normal and careful journalist would have done under the same circumstances, when they committed a specific criminal offence (such as defamation, described below), or as a result of a breach of another law, such as data protection legislation. A claimant can also initiate proceedings to request an injunction, for example to have content taken down. A court decision in injunction proceedings is immediately enforceable, and although it can be appealed, this requires lengthy and costly proceedings: lawyers estimate that summary proceedings in first instance can take up to three months and cost EUR 20,000; appeal proceedings are likely to last six months and cost a minimum of EUR 15,000.

Under criminal law, complaints can be brought on grounds of defamation, slander, or insult;⁷⁴ and some recent cases have been brought on grounds of harassment – 'seriously disturbing the peace' of a person.⁷⁵ Criminal procedures against the written press are burdensome and costly for the State to prosecute and are therefore rarely brought;⁷⁶ but cases can be more easily brought against radio and TV journalists. In criminal proceedings, the civil party can also claim damages and request the court to order restorative measures, such as the publication of a summary of the decision or (rarely) the removal of the articles/video concerned. In criminal cases it is a defence for a journalist to prove that an allegation was true, except in certain cases (for example, in privacy or harassment cases).

There is no mechanism under Belgian law whereby unmeritorious or SLAPP cases can be dismissed at an early stage. In criminal cases, there are pretrial proceedings to determine whether there is a reasonable case for the prosecution to proceed to a trial. Most cases do not pass this stage. However, to get to this stage, the defendant will already have suffered through a lengthy investigation, several hearings and possibly an appeal – a heavy burden. Therefore, even though the costs in the pretrial phase are limited, the investigation still weighs heavily on the accused. As mentioned above, if the claimant files as a civil party, the investigative judge must complete the entire investigation.

Under Belgian criminal procedure, the claimant can also directly summon a defendant before the criminal courts, in which case there are no pretrial proceedings. This form of private prosecution for defamation was rarely applied in Belgium until recently, but in 2021 [three such cases](#) were handled by criminal courts.⁷⁷ In each of the cases, the defendants – a journalist and two university professors – were acquitted, and in one case the [court awarded the defendant damages](#) for vexatious and frivolous litigation by the plaintiff for an amount of EUR 4,000.⁷⁸ Despite this fine and the dismissal of the case by the criminal court of first instance, the claimant in this case has drawn-out the judicial harassment of the defendant by [bringing the case before the Court of Appeal in Antwerp](#), which has noted that the case will not be heard until 2023.⁷⁹

There are few theoretical opportunities for defendants to countersue for vexatious litigation:

- Under Article 780bis of the Judicial Code, a person who ‘uses court proceedings’ to delay or obstruct another person may be fined up to EUR 2,500;⁸⁰
- A successful defamation defendant might countersue under Article 1382 of the Civil Code for damage done to them as a result of a lawsuit that has been brought maliciously; or
- A defendant might demand a higher-than-normal procedural indemnity.

In practice, none of these has ever been accepted in a defamation case. Successful defendants may claim their legal fees back from the claimant, but this is capped at EUR 12,000 for claims below EUR 1 million. The average amount recovered is only EUR 1,440,

whereas defence lawyers estimate that costs can easily surpass EUR 20,000 per instance of proceedings.

In practice, journalists are able to win most legal cases against them. However, because it is hard to get cases dismissed early and proceedings are lengthy and costly, it is still quite attractive for a claimant who wishes to silence a journalist or media outlet to bring a case against them.

A recent set of cases brought against the investigative news site, Apache, and several of its journalists, illustrates the problem. All of them have been brought by the same claimants: an Antwerp real estate developer, and the company Land Invest Group – both of them with very close connections to the political establishment, which has resulted in Land Invest Group netting lucrative contracts. One set of cases was brought in 2017 against Apache's editor and publisher by Land Invest Group together with the Mayor of Antwerp's former head of cabinet, alleging that certain reports were factually incorrect. After proceedings that lasted until 2021, the court held for Apache.⁸¹ The same year, the Antwerp real estate developer brought a complaint under criminal law against the editor and an Apache journalist over a video that showed that almost the entire city council of Antwerp at his birthday party, at the same time as he was negotiating with the city over a real estate project. Following a two-year criminal investigation, the case was referred to court, and in January 2021 the complaint was dismissed by the criminal court. The real estate developer has, however, appealed, and so the case remains hanging over the journalists' heads. The defendants have thus far spent in excess of EUR 25,000 in lawyers' fees.

More cases were brought in 2019. Ogeo Fund, one of the shareholders of Land Invest Group, brought civil proceedings against two journalists (one from Apache, one from another publication, *LeVif/L'Express*) over allegations of corruption. Ogeo claimed an indemnity of EUR 500,000 but withdrew the complaint even before the case had started. The same year, two Ogeo board members filed complaints against the same journalists with the Council for Journalism over the same report; the complaint was dismissed as unfounded. Then, in 2020, several cases were filed in response to an Apache article reporting that the property developer (who in the meantime had sold Land Invest Group)

was once again active as a lobbyist in the real estate sector. The property developer demanded – and received – a one-month injunction to remove the offending article; launched civil proceedings to have the articles permanently removed; launched a criminal complaint before an investigative judge; and instigated proceedings before the Council for Journalism. The civil proceedings began in April 2021; the criminal proceeding is still active but in a secret investigative phase; the Council for Journalism case is ongoing.

Apache has never lost any of the cases against it, but they constitute a severe burden: journalists are forced to spend time preparing for legal cases whilst they should be reporting and doing journalistic work, and the company is left out of pocket financially (lawyers' fees thus far are estimated to be in excess of EUR 50,000). The legal cases also exert a chilling effect on other media outlets in the country.

Bulgaria

Over the past few years, media freedom in Bulgaria has significantly deteriorated.⁸² There is a high concentration of media ownership and significant political influence over media content. Investigative journalism struggles, editorial independence is weak, and the country is ranked in the lower reaches of the annual press freedom rankings.⁸³ SLAPPs are one of several tools that are used to suppress independent and oppositional voices.

Under Bulgarian law, journalists and activists can be sued for defamation under civil law and prosecuted under various offences under criminal law. These are the main legal grounds used for initiating SLAPP proceedings against journalists and activists.⁸⁴ Following the entry into force of the General Data Protection Regulation,⁸⁵ there has been an increase in data protection cases brought before the Commission for Personal Data Protection.⁸⁶ In 2019, the Constitutional Court struck down one of the main provisions in the data protection act, with the result that cases in which the 'journalistic exemption' for data processing is invoked are now assessed on a case-by-case basis.⁸⁷

Criminal cases against journalists are brought under prohibitions of insult,⁸⁸ defamation,⁸⁹ and insult and defamation of public officials.⁹⁰ Offences are punishable with a fine. In defamation cases, defendants can plead that the statement is true, or that they reasonably believed it to be true or not to be defamatory. The Bulgarian courts also take into account

the wider public interest in cases, particularly defamation cases involving public officials and politicians. Claimants may also demand financial compensation. Although cases are pursued through a private prosecution, a claimant may request the assistance of the police and other law enforcement institutions, but in SLAPP cases this rarely happens.

Alongside a criminal case, a case may also be brought in civil court, demanding damages. Claimants in civil cases must prove that they suffered damages as a direct result of the wrongful conduct; compensation for non-material damages typically ranges between EUR 500 and EUR 15,000 (more is awarded in particularly egregious cases).⁹¹ The main defence available to defendants is to establish that the claimant suffered no damage, whether material or non-material.

In data protection cases, a defendant may file to the Commission for Personal Data Protection for the early dismissal of complaints that are manifestly ill-founded or excessive.⁹² The legislation is relatively new and because the Commission does not publish all its decisions, there is as yet no data on whether and how often this procedure has been used successfully. There is no mechanism for the early dismissal of civil cases, but if a defendant establishes that a SLAPP claim was brought against them was abusive, or was brought in bad faith, with the purpose of harming their rights and legitimate interests, or contrary to the public interest, they may be able to claim damages. There is a high evidentiary threshold for the defendant to prove this, and in practice, applications to have a case dismissed are rarely successful.⁹³

There are no national statistics on the number of SLAPP cases or the legal provisions most abused for SLAPP purposes; but anecdotal evidence suggests that cases are regularly filed. Recent cases include a case brought by Stoyan Mavrodiev, director of the Bulgarian Development Bank, against Rossen Bossev, a high-profile journalist and chair of the Association of European Journalists in Bulgaria. Bossev received a EUR 500 fine⁹⁴ for comments he had made about Mavrodiev when he was chair of the Financial Services Commission, alleging that the Commission had used its power to impose fines to suppress reporting, under the veil of preventing market manipulation. As part of the case, armed officers carried out searches of various premises where it was thought Bossev resided. Additionally, Bossev has written articles about the inconsistencies in the work of

the judge-rapporteur appointed in the case, Patya Krancheva.⁹⁵ She refused to recuse herself despite the journalist's request to do so.

In an example of a cross-border SLAPP case, the Bulgarian co-owner of the Maltese bank Satabank, Christo Georgiev, sued a Maltese blogger, Manuel Delia, along with the newspaper, *Times of Malta*, for defamation over their reporting that Georgiev was being investigated in relation to money-laundering allegations within Satabank.⁹⁶ In 2018, Satabank had been forced to stop its operations and freeze its clients' assets, and in 2019 was fined EUR 3.7 million for money-laundering.⁹⁷ Georgiev asked for the articles to be removed, as well as financial damages. The blogger reported that he had also been forced to remove a previous post following a threat of legal proceedings in the UK.⁹⁸ In December 2021, [Delia finally won his appeal](#) against the SLAPP.

In an October 2020 survey, journalists told of the drain and stress on them of defending SLAPPs. One said:

I am the respondent in a lawsuit filed by a magistrate for allegedly damaging their reputation, although in my publication I merely cite information that is available in the public domain, which the respondent has never disputed. Because of the lawsuit my bank account is under distraint and I have not had access to it for several months. In the past I have been threatened by a prosecutor that he would bring charges against me, if I refused to disclose the source of my information.⁹⁹

Croatia

In Croatia, most SLAPP cases are brought under one of three civil law statutes: the Media Act,¹⁰⁰ the Electronic Media Act,¹⁰¹ and the Civil Obligations Act.¹⁰² The burden is on the defendant to prove that they acted lawfully; a 'lack of duty of care' is presumed.¹⁰³

A smaller but still significant number of SLAPP cases are brought under the Penal Code, which criminalises defamation,¹⁰⁴ shaming,¹⁰⁵ and insult.¹⁰⁶ Under criminal law, journalists are sued personally – not the media company – and they often do not get financial assistance from their employers to defend a case. Given the financially precarious nature of the journalistic profession, the burden of having to defend cases alone is a significant chilling factor in itself. Cases are often brought by public figures. In one recent example, a

group of public figures lodged a criminal defamation complaint against a journalist and editor of a website that monitors hate speech, demanding the imposition of the maximum fine;¹⁰⁷ in another, a former Agriculture Minister filed a criminal lawsuit for ‘insult’ against a journalist who had accused him of abusing his position as minister and who had likened him to a leader in the Ottoman army. The journalist was acquitted, but the claimant has appealed.¹⁰⁸

It is not uncommon for claimants to bring a civil defamation case for financial damages following a criminal case in which a journalist has been found guilty. Publication of defamation or insult in the media is considered an aggravating circumstance, attracting higher penalties;¹⁰⁹ it is a defence to argue that the statement was published “in journalism or defence of a right, and [...] in the public interest or for other justified reasons”.¹¹⁰

Many civil law cases are brought by politicians, businesspeople, or others usually with significant financial resources and for whom the financial cost of bringing a case is comparatively insignificant. Courts outside Zagreb, the Croatian capital, often lack experience and knowledge of international freedom of expression standards and it is not unusual for their decisions to be contrary to standards set by the European Court. Even if a media or journalist defendant is able to overturn such rulings on appeal, this still exposes them to unnecessary long legal processes which constitute a disproportionate burden on them. There is no mechanism whereby clearly ill-founded cases can be dismissed early, and claimants exploit three elements: lengthy processes (cases typically last three years or longer), the financially precarious position of many journalists and outlets, and the inconsistency in rulings, to bring cases against journalists purely by way of harassment; creating an atmosphere of self-censorship. Damages for violations of personality rights (a broad term that encompasses defamation as well as privacy) range between EUR 2,500 and EUR 6,600, which for individual journalists and small outlets is a significant amount. While the Civil Obligations Act allows claimants to demand that an article is removed and the final ruling in a case is published, in most SLAPP cases claimants only seek monetary compensation, indicating that their overwhelming motive is to inflict financial punishment.

As in other countries, there are no official statistics on SLAPP cases, but international media freedom NGOs have signalled a growing number.¹¹¹ A telling example of a SLAPP was a group of cases brought by Hrvatska radiotelevizija (HRT), the public broadcaster, in 2017 and 2018 against media outlets and journalists (including one of its own employees as well as the president of the Croatian Journalists' Association) in response to criticism of HRT's management and programming. HRT sought up to EUR 25,000 from each of the parties sued and was represented by a well-known law firm. Following a public outcry, the cases were withdrawn in 2019. HRT is not the only publicly funded body that uses defamation laws to suppress reporting and criticism of it: in 2020, the Croatian Tourist Board initiated defamation proceedings against the owner of a tourism website who had criticised the Tourist Board's reaction to the Covid-19 pandemic and had published a satirical post on his website. The Croatian Tourist Board is claiming EUR 13,000 in reputational damage.¹¹²

Politicians regularly bring SLAPP cases against the media. The former Minister for War Veterans Mijo Crnoja has several cases outstanding in which he is suing media outlets over their reporting on a loan he allegedly received to build a house – an issue that eventually forced his resignation;¹¹³ and another one in which he is suing over media reporting of his alleged involvement in the illegal payment of veterans' benefits.¹¹⁴ In a similar case, a former Agriculture Minister is suing a media outlet for defamation over reporting on his properties.¹¹⁵

Reacting to these lawsuits, the president of the Croatian Journalists' Association stated:

They expect us to hire lawyers and defend ourselves in courtrooms so we may not have time for new stories. ... These lawsuits are pure intimidation. Journalists are being dragged through the courts in order to dissuade them from looking into serious, important topics.¹¹⁶

The case brought by Romana Nikolić against Faktograph.hr and various other media outlets provides another telling example. Nikolić, a member of the Croatian parliament, is suing for defamation over Faktograph's reporting on his criminal conviction in 2009 for making death threats to a colleague. He is seeking EUR 2,500 from each of the

respondents – a significant amount for the websites involved, which are non-profit media, published by Croatian NGOs. The cases are ongoing.

France

The main legal basis on which SLAPP suits are brought in France is defamation, which can be pursued under both civil and criminal law.¹¹⁷

A criminal defamation claim leads to an automatic indictment (*mise en examen*), which lasts until the trial; this typically takes place one to three years after the initial claim. The maximum fine for defamation is EUR 12,000;¹¹⁸ this penalty may be increased to one year's imprisonment and a fine of EUR 45,000 if the defamation is committed against a person because of their origin or membership of a particular ethnic group, nation, race or religion, or because of their sex, sexual orientation, gender identity or disability. Claims can be defeated if the defendant shows that the publication was true; was made in good faith; that the statement was not defamatory; or if there are certain procedural defects in the claim.¹¹⁹

In civil law cases, defendants cannot file a motion to have a claim dismissed early; they must wait until trial even for unmeritorious claims (the claimant may abandon his or her claim at any point).¹²⁰ Defendants can claim damages for the intentional institution of 'frivolous proceedings', but there is a high evidentiary threshold for this and in practice claims are rarely admitted;¹²¹ in the rare cases where it has been applied, the low maximum fine that can be imposed has been criticised as constituting insufficient deterrent for deep-pocketed claimants (which those who bring SLAPPs invariably are). In a criminal case, a successful defendant may ask the court to award him or her compensation, which is generally paid by the State, although the court may order that it be paid by the claimant;¹²² in civil claims, a successful defendant can make a claim for legal costs but awards made by courts are usually less than the actual costs incurred.¹²³ These characteristics make French defamation law attractive for claimants who initiate lawsuits with the purpose of intimidating their targets, rather than obtaining a redress for a certain wrongdoing.¹²⁴ Even if orders are made more frequently against SLAPP claimants, the amount of the fines and awards made is low and SLAPP claimants would most likely see them as both negligible and a cost of 'doing business'.

Some SLAPPs are brought under competition law – in particular the action of ‘disparagement’, which is defined as publicly discrediting the products of a competing company¹²⁵ – and under copyright law, particularly when journalists or activists reproduce all or part of the brand or logo of a company as part of their reporting or campaigning.¹²⁶ Trademark counterfeiting is a criminal offence punishable by a fine of up to EUR 300,000 and three years of imprisonment and may give rise to a separate civil claim.¹²⁷

In practice, most SLAPP suits brought before French courts are initiated by large corporations and influential businesspeople.¹²⁸ Among the dozens that have been brought over the years,¹²⁹ two sets of cases are emblematic: one brought by the influential agricultural business owner Jean Cheritel, and another group of cases brought by billionaire businessman Vincent Bolloré. Both have made strategic use of defamation law to silence individuals or media outlets critical of their businesses. Cheritel’s cases include one against online newspaper *basta!*, which had alleged questionable business and employment practices. The case was withdrawn only after Cheritel was prosecuted and sentenced to a EUR 99,000 fine and a suspended prison sentence for the practices that the media had reported on.¹³⁰ As a result of the case, the journalist who had led the reporting was sued for defamation by another businessman (who dropped the matter just before the final hearing) and she lost funding for the translation of one of her books.¹³¹ In an earlier case, Cheritel and his company had sued the newspaper *Le Télégramme*, which had reported on the company’s illegal employment of several Bulgarians citizens in France. He won the defamation case,¹³² but two years later Cheritel and his company were convicted for employment irregularities – indicating how difficult defamation law makes it for media to report on wrongdoings even when the gist of their reporting is true.¹³³

Bolloré is another repeat claimant in defamation cases against the media. In one, against the director and a journalist for the newspaper *Mediapart*, he sought financial damages for a report that alleged that he had used his close relationship with the Cameroonian government to get out of an adverse court judgment against him in Cameroon; the journalists eventually won on appeal following a three-year battle.¹³⁴ Other cases brought by Bolloré include two against media outlets and journalists who had reported on questionable business practices in Africa; the media outlets concerned won both following lengthy court battles but were only able to recoup part of their legal costs.¹³⁵ In yet another

case, Bolloré sued France Télévisions in three parallel proceedings: two in France for disparagement and defamation, and the third in Cameroon. After a legal battle lasting several years, the claims in France were both rejected.¹³⁶ A final example is a case brought by Vivendi, a media company controlled by the Bolloré group: in 2017, it sued a journalist who had alleged that Bolloré had stopped his reports from being broadcast. The journalist eventually won the case, but was awarded only EUR 3,000 towards his legal costs, less than he had been forced to spend.¹³⁷

NGOs are also at the receiving end of SLAPP cases. Throughout the early 2000s, Greenpeace was repeatedly sued for trademark infringement by the oil company Esso for using its name, with dollar signs for the letter 's'.¹³⁸ Recently, the NGO Sherpa, which advocates for social justice and defends victims of economic crimes, was countersued for defamation by a construction company against whom it had brought a claim for forced labour, concerning the working conditions of its employees in Qatar. Sherpa eventually won the case.¹³⁹

The financial cost of defending a case is a significant burden, even if the journalist or media outlet concerned eventually wins. Journalists and media outlets are rarely, if ever, awarded their full legal costs, and in the rare event that they win a judgment against a malicious claimant for launching proceedings abusively, the maximum amount of damages awarded is EUR 10,000 – a very small sum to the multimillion euro companies and billionaire businesspeople who bring SLAPPs.¹⁴⁰ The length of proceedings – typically around four years – is another strong factor dissuading journalists and media outlets from reporting on questionable practices and wrongdoings by the wealthy and powerful. A 2017 report ordered by the government concerning SLAPP suits against teachers and researchers advocated for law reform, including the introduction of a civil fine to punish the deliberate infringement of the exercise of right to freedom of expression.¹⁴¹

Hungary

Like other European jurisdictions, Hungarian law does not recognise a category of SLAPPs as such. SLAPP proceedings can be initiated before civil as well as criminal courts. Civil and criminal cases can be taken in parallel, but political figures usually take SLAPPs through the criminal courts.

Under the Criminal Code, the main provisions concern defamation,¹⁴² slander,¹⁴³ making false accusations,¹⁴⁴ misleading public authorities,¹⁴⁵ and ‘scaremongering’.¹⁴⁶ Criminal cases are taken through private prosecutions, except when the complainant is a public official in which the public prosecutor leads the case. The maximum penalty in a criminal defamation case is a year’s imprisonment; in cases concerning false accusations, prison sentences of up to eight years can be imposed. In practice, prison sentences are often converted into a fine.

The main civil law provisions under which SLAPP cases are brought have provisions on ‘personality rights’ that also include protection of reputation,¹⁴⁷ protection of personality of politically exposed person,¹⁴⁸ and defamation.¹⁴⁹ Civil claims are judged on a case-by-case basis; there is no cap on the maximum award that can be made. Civil law SLAPP cases in Hungary are, in a large part, fuelled by political motivation and are usually targeted at the independent media, NGOs, and members or supporters of the political opposition. Through case law, the courts have recognised that public figures need to tolerate criticism of their functioning,¹⁵⁰ but they have found that such criticism is not unlimited and insults and untrue allegations are beyond the bounds of protected speech.¹⁵¹

Recently, two other legal grounds have been used for SLAPPs. First, data protection law is responsible for a growing number of cases, either through court injunctions that may be issued prior to publication on the grounds that publication would do irreparable harm¹⁵² or through complaints to the National Authority for Data Protection and Freedom of Information. Second, during recent protests, hundreds of criminal cases were taken against protesters under various ‘petty offences’ provisions of the Infringements Act, for example for protests in which people honked their car horns.¹⁵³

Civil claims can be dismissed early only if there are procedural defects in the claim (for example, if the case is brought out of time); courts cannot dismiss a civil claim on the grounds that it clearly lacks merit.¹⁵⁴ Criminal procedures can be terminated when a case clearly lacks merit.¹⁵⁵ A successful defendant in a SLAPP case can claim their legal fees and other costs, including a loss of earnings, from the claimant – as long as they can provide evidence of the costs.¹⁵⁶ SLAPP defendants cannot lodge a counterclaim for vexatious litigation unless the claim has affected one of their legal rights and the

defendant has suffered damage as a result. Essentially this then becomes a defamation counterclaim.¹⁵⁷ There is no direct action available for vexatious criminal cases, unless the case rises to the level of ‘false accusation’, which constitutes a criminal offence,¹⁵⁸ or the accusation is itself defamatory.

In practice, the biggest obstacle in both criminal and civil proceedings is the duration of cases and the various procedural twists and turns that a claimant can direct a case to take, forcing defendants to spend time and energy defending claims for years on end. It is not unusual for cases to be dropped following lengthy pretrial wrangling. In such instances, the objective of the SLAPP – to force a defendant through legal proceedings, incurring legal costs and diverting time and energy away from journalism – has been achieved without the claimant needing to go through the actual court proceedings. For a defendant who has been forced to spend time and resources defending the claim, this does not necessarily represent a ‘win’; particularly if the claim started with a temporary injunction and the news story at the heart of the matter is no longer relevant by the time the injunction is lifted.

Criminal cases can similarly last for several years; a period of three to five years is regarded as ‘standard’.¹⁵⁹ Defence lawyers indicate that in sensitive cases, for example when a case is taken by a powerful politician, defendants often struggle to find a lawyer willing to represent them, and that sometimes when a case is lost, defendants are so tired by the legal process that they prefer to pay a fine rather than suffer through a lengthy and traumatising appeal. When cases are defended by public attorneys, through the State legal aid system, they are usually not specialists in defending freedom of expression cases and are therefore unable to deliver a high standard legal defence. For these various reasons, the mere threat of criminal proceedings exerts a strong chilling effect.

Not many SLAPP cases are pursued to a final judgment, partly because claimants can frustrate and delay the publication of material that is critical of them through procedural means. A typical example is the case taken by the owners of Hell Energy (an energy drink company) against the publisher, Forbes. Forbes had notified the family who own the company that they would be featured on its annual list of wealthy figures. The family objected and, in December 2019, obtained a temporary injunction prohibiting Forbes from

publishing any personal data related to them. Forbes appealed but the injunction was upheld by the Court of Appeal and the Supreme Court; the case is currently pending before the Constitutional Court and is not expected to be decided for another two or three years. The injunction will remain in force until then. Parallel to the injunction, the claimants also pursued a civil claim for violation of data protection law, which is still pending; and a claim to the National Data Protection Authority, which found that Forbes failed to carry out a 'legitimate interest test' or give sufficient information about the publication to the data subjects and imposed a fine.¹⁶⁰ The adverse finding by the National Data Protection Authority has been appealed to the courts.¹⁶¹

In a similar case, the owners of Hell Energy also launched legal proceedings against investigative journalism outlet Magyar Narancs which intended to publish a story that included the fact that two of the members of the family have criminal convictions (for attempted murder and tax fraud). A temporary injunction was granted under data protection law and the matter is currently pending in court – Magyar Narancs has, in the meantime, published a version of their story omitting the disputed information and indicating that they have been sued.¹⁶²

Both publications are assisted in their defence by expert media lawyers provided by the Hungarian Civil Liberties Union (HCLU). Without the HCLU's expert assistance (whose capacity is limited and which is funded through charitable donations) it is doubtful that smaller publishers or individual journalists could afford to defend themselves in lengthy and multi-faceted legal procedures such as these.

Ireland

In Ireland, most SLAPP cases against journalists and human rights activists are brought under the civil law tort of defamation.¹⁶³ The main governing legislation is the Defamation Act 2009, as interpreted in line with European law and the Irish Constitution, and along with common law.¹⁶⁴

The main concepts in the 2009 Act have been elucidated through case law: for example, holding that a statement must be 'unarguably defamatory' in order to be actionable and that no cause of action can be derived from a mere vulgar reprimand;¹⁶⁵ and that

statements must be interpreted in the context in which they appear.¹⁶⁶ The main defences to a defamation claim are set out in the 2009 Act: that a statement was true, that its publication was privileged, that it represented an honest opinion, or that it constituted a fair and reasonable opinion on a matter of public interest.¹⁶⁷ Cases are typically drawn-out: the time from when a case is certified until an allocation date for a hearing is on average 12 months.¹⁶⁸ Cases must be brought within a year of publication.¹⁶⁹ Defending a case is very expensive: the cost of defending an action at the High Court – the first stage of a case, not including any appeals – is estimated at being in the region of EUR 250,000 in legal costs alone.¹⁷⁰ The amount of damages awarded is high and extremely unpredictable; juries have made defamation awards exceeding EUR 1 million. These high awards are reduced on appeal but still cause a significant chilling effect (also because having to appeal means incurring further legal costs, which themselves are the second highest in Europe).¹⁷¹ The number of defamation cases in court increases year on year, fuelled in part by social media disputes. The average claim in a case is EUR 50,000.

There is no rule requiring claimants to show that their case is not a SLAPP, and it is very difficult to have a SLAPP action dismissed without going through a full trial. While a court may dismiss a defamation action if it is satisfied that the statement complained of is not defamatory, this concerns only the technical and procedural meaning of the words complained of; any arguments as to the substantive merits of the action are only dealt with at trial.¹⁷² The only other way to have a case dismissed prior to trial is through an offer of amends, which will typically involve publication of a correction and apology, and an agreed sum in compensation and costs.¹⁷³

There are no penalties for lodging an abusive action as such, although a claimant who is found to make misleading statements in a verifying affidavit may be subject to a maximum fine of EUR 50,000 and five years' imprisonment, which constitutes some disincentive to abusive claims.¹⁷⁴ If a claimant is found to have made an abusive claim, the court may impose an order stopping the claimant from issuing any further proceedings against the same defendant without permission of the court.¹⁷⁵ Such orders are very rare, however, and have never been made in a SLAPP case.¹⁷⁶ Costs are ordered against a claimant when a defamation claim brought is found to be frivolous and vexatious.¹⁷⁷

Research suggests that 80% of all defamation cases are brought against the media, indicating that defamation laws are widely used to restrict reporting that speaks truth to power.¹⁷⁸ The duration and cost of proceedings, along with the fact that juries that hear cases often award very high sums in damages, have a significant chilling effect on the media – as noted by the Press Council as well as by the Press Ombudsman.¹⁷⁹ A 2016 survey showed that between 2010 and 2015, Irish media spent more than EUR 30 million defending defamation actions (in awards, settlements, as well as legal costs).¹⁸⁰

In their submissions to a formal review of the 2009 Act, two of the main Irish media outlets have indicated that the current legislative regime, and in particular the resulting financial costs to the media of defending cases, causes a high level of self-censorship. The *Irish Times* stated:

*Defamation action is often used by powerful and wealthy figures to try to intimidate the media. The high cost of defending legal actions, the possibility of having such high awards given against you, and the risk of defeat that is inherent in almost all court actions, contributes significantly to the ability of those with the wealth to do so, to use the courts and the defamation laws, to bully the media. [It] is almost impossible to prevent that bullying having some effect.*¹⁸¹

The *Irish Times* went on to emphasise that purely because of financial reasons, it sometimes does not defend defamation claims that it thinks are winnable: “Wildly escalating legal costs are one of the principle related reasons why newspaper lawyers advise clients not to go to court even with a strong case.”¹⁸²

Independent News and Media, Ireland’s largest media company, has similarly said that “the ongoing financial burden of fighting defamation claims has a major impact. Money that is spent fighting and settling cases is money that should be spent on quality journalism ... the ever-present threat of expensive litigation is always at the back of one’s mind when working in newspapers.” Whilst acknowledging that people have a right to vindicate their reputation, Independent News and Media went on to say that “protecting freedom of speech and people’s reputations should not be reduced to a grubby bidding war” and warned that claimants see lodging a defamation case as “easy money”.¹⁸³ Even the EU Commissioner for Justice has called for reform, stating that “frequent defamation

legal cases, high cost of defence and high damage awards by Irish courts are seen as an inducement to self-censorship".¹⁸⁴

Italy

SLAPP cases against journalists and media in Italy may be brought under both civil and criminal defamation law.

In the Criminal Code, the key offences are defamation, punishable with up to one year imprisonment or a fine of up to EUR 1,032, with enhanced penalties for defamation committed through the media or allegations of specific facts.¹⁸⁵ Defamation is also a criminal act under the Press Law.¹⁸⁶ Article 185 of the Criminal Code establishes that a person to whom damage has been caused, including non-material damage, may demand compensation for that damage. A criminal complaint must be brought within three months.¹⁸⁷

In criminal cases, it is a defence to establish the truth of specific facts alleged only when the allegations made concern a public official and the exercise of their duties, or if criminal proceedings have been opened in relation to the allegations.¹⁸⁸ In civil cases, defendants can plead that an allegation was, or was reasonably believed to be, true; that it concerned a matter of societal interest; and that the statement was made in a 'civilized' manner.¹⁸⁹

Under the criminal procedure, preliminary investigations can take up to 18 months.¹⁹⁰ This stage is not public, and the defendant is generally not involved. In recent years around two thirds of complaints brought against journalists and the media have been closed at the end of this phase, suggesting that the vast majority of complaints that are filed against them are without merit.¹⁹¹

Civil defamation cases, under Article 2043 of the Civil Code, may be brought up to five years after publication.¹⁹² Civil cases concerning allegations made through the press are required to go through a mandatory mediation phase;¹⁹³ if that is unsuccessful, court proceedings may commence. Civil cases typically last up to three years for the initial trial; up to another three years for an appeal; and up to five years for a final appeal to the Court of Cassation. The court may order the seizure of assets if this is deemed necessary to ensure payment of a fine or potential damages in the case. If, during the course of

proceedings, a media outlet goes out of business, the individual journalist or editor may be held solely liable for all damages.

Legal fees in civil cases are generally agreed in writing between the parties and their lawyers. In the absence of such agreement, the law sets out the parameters and the legal costs depend on the amount claimed: for example for a case worth between EUR 260,000 and 520,000, the fees are generally EUR 38,400 at first instance; EUR 34,400 for an appeal; and EUR 18,400 for a cassation appeal.¹⁹⁴

There is no specific procedure whereby SLAPP actions can be dismissed early. Civil procedure law provides generic remedies to vexatious litigation, which typically involves a court order to pay costs plus additional damages suffered as a result of the litigation.¹⁹⁵ For such an order to be made, the defamation case must have been dismissed in its entirety, and the defendant in the defamation case needs to prove that the claimant should have been aware that the case was wholly without merit and that the damages sought were suffered as a result.¹⁹⁶ This is a high threshold. In criminal proceedings, a successful defendant in a defamation case may be awarded their legal fees, as well as, in case of gross negligence by the complainant, vexatious litigation damages.

There have been a number of SLAPP cases in Italy in recent years as noted, for example, by the Council of Europe Commissioner on Human Rights.¹⁹⁷ Extremely high damage awards have been sought in some of these. For example, a high-ranking figure in the Catholic church implicated in a corruption scandal is suing the weekly magazine, *L'Espresso*, for EUR 10 million, arguing that its reporting on alleged embezzlement is defamatory of him.¹⁹⁸ While the case remains pending, *L'Espresso* is required to report the demand as a potential liability on its balance sheets. In another case, a businessman sued a journalist of local newspaper *La Gazzetta del Mezzogiorno* for EUR 150,000 (a large amount for a local newspaper) in damages over his reporting of a settlement in complex criminal proceedings.¹⁹⁹ *La Gazzetta del Mezzogiorno* has faced other cases as well,²⁰⁰ the ongoing drain on it and other newspapers of fighting multiple lawsuits, forcing journalists to invest time and effort defending disproportionate claims that take them away from their actual job – reporting on the news and informing the public – has a real chilling effect on the media.

The length of time that cases remain pending, together with the large sums of potential damages hanging over a media outlet or an individual journalist's head remains a serious threat to media freedom. For example, a case brought by the car company Fiat against the national broadcaster, RAI, and one of its journalists for EUR 7 million in defamation damages over the review of a new car model was pending for eight years before RAI was able to defeat it (a first instance ruling had held for Fiat).²⁰¹ Editors and journalists are liable to defend cases, even long after the media outlet concerned has ceased to exist. For example, a number of defamation cases were started against the newspaper *L'Unità* during 2008–2011. The newspaper ran into financial difficulties in 2014 and was forced to close, but the managing director at that time, Concita De Gregorio, was, as of 2021, still defending 50 lawsuits from that period – causing her significant financial distress.²⁰²

The sheer number of cases brought against journalists is another factor. Nicola Baldarotta, director of the local outlet *Il Locale News*, was the target of seven defamation lawsuits in eight years; none of the charges were upheld in court.²⁰³ Another local newspaper, *Cronache Maceratesi*, was the target of 12 defamation suits in 20 years; as with the cases against Baldarotta, none of the claims were upheld in court.²⁰⁴ Marco Travaglio, the online director of *Ilfattoquotidiano.it*, has reportedly been sued for defamation more than 200 times; many of the cases were brought by political figures or people linked to them (for example, Tiziano Renzi, the father of the Senator and former Prime Minister, Matteo Renzi, is the claimant in several of them).²⁰⁵ Even when cases are defeated, the defence is an ongoing drain on the media's resources. Travaglio has appealed to his readership for support saying that defending the cases has become unsustainable;²⁰⁶ other journalists and media outlets who have defended a large number of cases self-censor in order to avoid more lawsuits.²⁰⁷

Finally, it should be noted that even cases in which relatively small awards are made can become insurmountable obstacles, especially for freelance journalists and small media outlets. For example, in 2016 a former Mafia boss sued a freelance journalist for allegedly defamatory remarks in a book concerning a [train bombing in 1984](#). While the journalist quoted only public domain information from the court proceedings at the time, she was nevertheless ordered to pay EUR 18,000 in damages and legal costs (in addition to bearing her own legal costs). There was crowdfunding to cover the damage award and she did not

appeal for fear of incurring further legal costs and even higher damages being ordered against her.²⁰⁸

Malta

Malta's defamation law is the main source of SLAPP threats in the country and has been described by the European Parliament as a "key factor limiting freedom of expression in Malta".²⁰⁹ The Media and Defamation Act 2018 introduced reforms, abolishing criminal defamation and stopping any pending criminal prosecutions – but not civil cases (although a mediation requirement was introduced for pending cases that had been brought recently).²¹⁰ A significant additional number of SLAPP cases was brought overseas and judgments obtained in these cases can be enforced in Malta without sufficient protection for the defendants.

The 2018 Act defines defamation as the publication of any statements that "cause serious harm or are likely to seriously harm to the reputation of the specific person or persons". Actions may be brought against the individual journalist, the editor, or the publisher. The Act provides for several defences, including truth, honest opinion, and a public interest defence. Moral damages are capped at EUR 11,640, in addition to material damages; this can be lowered to EUR 5,000 (USD 5,669) if an apology or reply was published before the proceedings were started.²¹¹

There is no early dismissal mechanism for unmeritorious cases. There is opportunity for mediation, but it is unlikely that a claimant in a SLAPP case would want to avail themselves of this.²¹² The Act does prevent multiple actions being brought against the same person for statements that are substantially similar, thus limiting the number of cases that can be brought. The Civil Code bars frivolous appeals, but not the bringing of frivolous or vexatious cases at first instance. If a case is found to have been brought frivolously or has been unnecessarily prolonged by one of the parties, a court may order payment of enhanced judicial costs to the court. While in theory, the payment of lawyers' fees by the losing party ought to safeguard against SLAPPs, in practice only about 25% of costs are recouped this way.²¹³ As such the cost of taking a SLAPP is low and this penalty is not a deterrent to wealthy individuals seeking to harass journalists.

Despite the reforms brought by the 2018 Act, legal threats and actions remain a persistent and aggressive reality for journalists in Malta, in particular those who have investigated the assassination of the journalist Daphne Caruana Galizia and followed up on her investigations.²¹⁴ European oversight and legislative bodies, including the European Parliament and the Venice Commission for Democracy through Law, have identified numerous shortcomings related to the rule of law – in particular a lack of judicial independence – which have the effect of intensifying the climate of fear and intimidation facing the media.²¹⁵ Observers have noted that the lower courts do not always apply correct legal standards in defamation cases against journalists, forcing them through costly appeals to defeat SLAPP cases.²¹⁶

Numerous SLAPP cases are pending in court, including a number that remain pending under pre-2018 law. These include cases brought against Daphne Caruana Galizia prior to her assassination, liability for which has been inherited by her estate.²¹⁷ Matthew Caruana Galizia, Daphne's son, is facing SLAPP cases himself – one brought by the former Prime Minister Joseph Muscat²¹⁸ and another brought by two businesspeople against Matthew Caruana Galizia together with Caroline Muscat (another journalist who frequently receives libel threats) – over tweets on links between the businesspeople and a convicted money launderer who was also suspected but acquitted in the case of a journalist murdered in Slovakia.²¹⁹

Many cases are brought only to be dropped before they are concluded, forcing defendants to run up legal costs as well as time and effort that should instead be spent on journalistic work. Such cases, which can only be seen as a form of harassment through the courts, include cases brought by two senior ministers and the Prime Minister's Chief of Staff against Daphne Caruana Galizia, independent newspapers, and the former Leader of the Opposition.²²⁰ While the government claims that statistics show that the number of defamation cases has gone down, opposition politicians claim that harassment has increased.²²¹

Another key shortcoming, and one that has a significant chilling effect on Maltese media and activists, is the lack of effective protection against proceedings brought against them in other countries and which they are forced to defend because judgments obtained in

these cases can be enforced in Malta. Such proceedings are often taken, or threatened, by corporations or other powerful actors, sometimes as proxies for the government.²²²

Maltese journalists and media outlets have repeatedly received legal threats and lawsuits from abroad, especially from the UK and the USA²²³ but also from Russia, Bulgaria, and Croatia.²²⁴ Public officials have been implicated in such cases; one English law firm told members of the European Parliament that they bring proceedings only if they get “at least an informal ‘OK’ of the key decision makers”.²²⁵

A prominent example is the litigation by Pilatus Bank against several media outlets who had reported that the bank had facilitated potentially corrupt transactions involving Maltese as well as foreign political figures. The bank threatened legal action in the UK and USA, and the potential cost of defending the matter was enough to persuade the media to delete or alter their reports.²²⁶ Other examples include litigation against Daphne Caruana Galizia, who was reportedly ‘hounded’ by Mishcon de Reya (an English law firm whose tagline, ‘It’s business. But it’s personal’, ironically illustrates the aggressive tactics used in SLAPP cases), exploiting the willingness of the English courts to entertain defamation cases against foreign defendants;²²⁷ and litigation threatened by another English law firm, Carter Ruck, instructed by the Maltese Government to silence journalists who had asked questions about potential involvement in the murder of Daphne Caruana Galizia.²²⁸

In what may foreshadow a trend, data protection lawsuits have recently been threatened against the media to stifle reporting. In one, English law firm Schillings threatened proceedings against the media outlet *Malta Today* over its reporting on potentially corrupt money flows between the Azerbaijan ruling family and various companies in Dubai;²²⁹ in another, the Daphne Caruana Galizia Foundation received a demand for the removal of posts on Daphne Caruana Galizia’s blog.²³⁰

The financial impact of defending cases is high and has a significant chilling effect on the media. Caroline Muscat, editor of the *Shift News*, is quoted in a recent report as saying that “[t]he threat [of litigation] itself can be enough to silence the story”.²³¹ The *Malta Independent* wrote tellingly of the financial consequences of defending the defamation case that had been brought against it in the USA and UK by Pilatus Bank:

The legal advice was that Pilatus (the claimant, a bank – ed.) did not have a leg to stand on and that the case is certainly a winnable one, albeit in a foreign land – the UK and USA jurisdiction having been chosen specifically, discarding Maltese jurisdiction. On the other hand, this publishing house had to consider that the costs associated with fighting such a case instituted in the courts of the United States and the United Kingdom would be financially crippling for a business such as ours. ... So, once all was weighed in the balance, the decision to remove some of our online content was taken. ... This is another unfortunate case in which money talks.²³²

Poland

In Poland, SLAPP cases are brought under both civil and criminal law.

Article 212 of the Penal Code provides that defamation of a person, group of people, institution, legal person, or business entity is punishable by a fine and restriction of movement;²³³ enhanced penalties including imprisonment are available if the defamation is committed through the mass media. Defamation is defined as including remarks “about conduct or characteristics that may discredit [the aggrieved person] in the face of public opinion, or result in a loss of confidence necessary to perform in a given position, occupation or type of activity”. Article 213 of the Penal Code provides for various defences, including that the statement was true, or that it concerned someone carrying out a public function or a matter of public interest. Article 216 establishes, separately, the offence of ‘insult’. This is also punishable by a fine, restriction of movement, or imprisonment; unlike the offence of ‘defamation’, there are no defences. Both offences are prosecuted in a private procedure unless there is an important public interest involved in which case the public prosecutor may take the case. As a rule, court hearings are held behind closed doors unless the injured party requests an open hearing.²³⁴ Prosecutions must be brought within three years. The European Court of Human Rights has found several violations of the right to freedom of expression in cases in which the criminal law had been applied,²³⁵ and NGOs have long advocated for the repeal of section 212.²³⁶

The most commonly used provisions of the Civil Code are Articles 23 and 24 that protect ‘personality rights’ (a broad and undefined category which includes the protection of

image, dignity, and privacy) and allow an impugned party to demand financial compensation as well as an apology. The aggrieved party must show that significant harm was done to them in the eyes of society, not just that they felt aggrieved.²³⁷ Courts have held that it is a defence for a journalist to prove that they acted ‘in defence of a socially justified interest’.²³⁸ Under Article 191 of the Code of Civil Procedure, claims can be dismissed if they are manifestly unfounded, but in practice this does not happen.

An important additional cause of action for cases against the media is provided in the Press Law: Article 31a provides that a media outlet must publish “free of charge, the subject-matter and factual correction of inaccurate or untrue press material”. Such corrections may be up to double the length of the original material. This can be abused for political purposes: for example, in 2020 a State-owned and State-governed museum demanded that investigative news outlet OKO.press publish a correction on its website in response to an article in which it had criticised the politicisation of the museum’s work.²³⁹

In practice, cases are often brought concurrently under the Civil Code and under criminal law. The civil claim typically demands compensation (or a payment to a charity, to avoid the appearance that the claimant seeks to enrich themselves) and an apology, while the parallel criminal procedure threatens a fine or imprisonment as well as financial claims. Such combined procedures and the resulting requirement on media and journalists to invest significant resources to defend themselves has an obvious chilling effect and prevents journalists and bloggers, particularly those at the local level who lack the resources to defend legal challenges, from reporting or speaking out on issues of public interest.

Since 2015, there have been a high number of SLAPP cases using civil as well as criminal law, and journalists defending them are forced to run up high legal costs. Civil cases are often brought by the ruling party of individual politicians and businesspeople associated with it, or by State-owned companies. The newspaper *Gazeta Wyborcza* received 55 serious legal threats between 2015 and 2020, brought by various public officials and State-owned companies and forcing it to run up a very high legal bill;²⁴⁰ and OKO.press²⁴¹ has been at the receiving end of seven serious legal challenges since 2018. Individual journalists are hit hard as well: one, who requested to remain anonymous, reported

spending EUR 20,000 to defend cases against him that are still ongoing, and expects to be spending more as the cases go on.

A recent group of cases against OKO.press illustrates the practice. OKO.press has been forced to defend at least seven cases since 2018, including one brought by a supreme court judge and a district court judge who are suing over the reporting by OKO.press of their political links. Other cases include one brought by Poland's 'poultry king', a well-known businessman, over the OKO.press reporting of the environmental impact of the meat and livestock industry; and one brought by the son of a high-profile public figure over a report that exposed the financing of private business activities with public funds.²⁴² Other individuals and media outlets are also frequently targeted with SLAPP cases. Examples include several civil and criminal cases against an academic who had posted a tweet characterizing the ruling Law and Justice party as 'an organized criminal group' and calling on citizens to boycott an 'Independence March' to be held in Warsaw; *Gazeta Wyborcza*'s three-year legal battle to defend an opinion piece that it had published on the controversial presidential pardon of two politicians;²⁴³ and another case against *Gazeta Wyborcza* brought by the president of the ruling party for reporting on his personal involvement in the construction of a skyscraper on land owned by the ruling party, with the involvement of a State-owned bank.²⁴⁴

A significant group of cases has been brought against Holocaust scholars, alleging that their reporting and scholarship harms 'the good name of Poland and Poles'.²⁴⁵ Examples include the defamation case against professors Engelking and Grabowski, who were sued by a niece of a person described in their publication about the persecution of Jews by Poles during WWII;²⁴⁶ a private prosecution for insult brought by a professor whose publications had been described as 'anti-Semitic' by another professor;²⁴⁷ and a case brought by a cartoonist for a right-wing magazine whose cartoons had been described as 'anti-Semitic'.²⁴⁸

Slovenia

SLAPP cases can be brought under criminal or civil law. It is possible to bring a case under both criminal and civil law, in which case the judge in the civil case will usually await the outcome of the criminal proceedings. Civil cases are taken under the Obligations Code, which provides that any person who inflicts damage on another is required to pay compensation.²⁴⁹ Personal rights are specifically protected through Article 134, under which a court may order the cessation of activity that infringes personal rights, as well as award damages.²⁵⁰

There is no procedure whereby unmeritorious or abusive cases can be dismissed prior to trial. Once a case has been filed, there is a possibility of mediation. If this is not successful – and in a SLAPP action, when the point is to force a journalist or media outlet to run up costs, it is highly unlikely that a claimant would settle – then court proceedings are commenced. Cases normally take up to two and a half years until final judgment. Each case typically costs the defendant around EUR 2,000; a successful defendant can have their costs awarded only if they win the case in full.²⁵¹ A motion to dismiss a case during trial is successful only if the defendant can prove that the claimant is abusing the court process, and therefore lacks standing. If this is found – and the research conducted for this report did not turn up a single successful instance – the court may impose a fine.²⁵² A second option to dismiss a case early is when a large number of actions are brought on the same, or similar, factual and legal basis; in such cases, a defendant may request the court to stay all proceedings except for one, which becomes the ‘pilot’ case on the basis of which the others are then decided. This procedure has never been successfully implemented in a SLAPP case.

The Criminal Code has a suite of offences designed to protect personality rights. Article 158 establishes a fine²⁵³ or imprisonment for up to three months for insult; there is a public interest defence, but only if the manner of expressing the words or other circumstances indicate that the statement was not intended to be derogatory. Article 159 criminalises slander (spoken defamation), establishing a penalty of a euro fine or imprisonment for up to six months. Article 160 criminalises defamation, defined as making false statements capable of damaging another’s honour or reputation, establishing a fine or imprisonment for up to three months. Defendants can defeat a claim

by proving the truth of the statement or claiming that they had reasonable grounds to believe that the statement was true. Article 161 establishes a specific offence for defamation involving the publication of someone's personal or family affairs, in a manner 'capable of injuring that person's honour and reputation'; the offence is punishable by a fine or imprisonment of up to three months. Defendants can plead a 'truth' defence, or that they reasonably believed the allegation to be true, only if they can also establish that there is a public interest in the issue. For all these offences, penalties can be doubled if they are committed through the media, and quadrupled if the slander, defamation, or insult results in 'grave consequences' for the aggrieved party, such as loss of employment or severe psychological trauma. Finally, Article 162 provides that falsely and maliciously accusing someone of a crime, 'with the intention of exposing that person to scorn', is punishable by a fine or imprisonment of up to three months; double if the offence has been committed through the media.²⁵⁴

Prosecutions under Articles 158–162 of the Criminal Code may only be prosecuted as a private action. Proceedings typically take up to 18 months, and the defence costs are usually around EUR 1,000.²⁵⁵ Defendants can file a motion for dismissal at any stage of the case, including pretrial, if it is clear that the minor nature of the offence outweighs the consequences of its prosecution; but the research for this report did not find any instances in which this had been used in a SLAPP case.

There are no official statistics on SLAPP cases, nor are there statistics on the number of cases taken against the media. In a 2015 survey, twelve media outlets reported that over a five-year period 127 cases had been initiated against them. Of these, 46 were criminal proceedings and 76 civil; in the civil proceedings, damage claims totalled EUR 3.2 million.²⁵⁶ Of the 82 cases that had been finalised, the media or journalists concerned were found guilty or culpable in only six – less than 10%. The 'good news' reading of that is that media rights were upheld in the vast majority of many cases – a fact to be celebrated; however, it also indicates that the vast majority of cases against the media are without merit and are brought with no purpose other than to force them through legal proceedings and run up lawyers' bills.

The Slovenian Association of Journalists has raised the alarm over the ‘systemic persecution’ of journalists at several small outlets. Businessman Rok Snežič, a tax expert and unofficial financial adviser to Slovenian Prime Minister Janez Janša, who is under investigation for financial crimes,²⁵⁷ reportedly has 39 cases pending against three journalists at the investigative news outlet, Necenzurirano.si.²⁵⁸ Another journalist, reporting for online news outlet Požareport.si, reported in July 2020 that he had had 22 criminal cases against him – he had been acquitted in all.²⁵⁹ The Association of Journalists warned:

[W]e do not want to deny those who are affected by journalistic articles the legitimate right to defend their good name, but at the same time we warn that legal remedies can be abused to exhaust journalists in time, financially and mentally. Particularly vulnerable are the smaller media and journalist teams, which do not have the human and financial resources to fight and defend their rights.²⁶⁰

UK

The UK, and in particular England,²⁶¹ has grown infamous for legislating the largest number of SLAPP cases, both domestically and transnationally. This is due to the nature of the legal system, especially its defamation laws that are still seen as ‘claimant friendly’, despite reforms to English defamation law introduced in the 2013 Defamation Act; the high financial cost of defending a case (calculated in a 2009 Oxford University study at 140 times the average elsewhere in Europe);²⁶² the risk of having to pay the claimant’s (expensive) lawyers;²⁶³ and the availability of highly skilled and aggressive law firms acting for claimants. The role that London plays as a global hub for the super wealthy, including those enriched through illicit schemes, is a further contributing factor: many have a home or business dealings there and avail themselves of the UK courts (particularly the London courts) even against foreign defendants. Brexit has caused uncertainty as regards future cases involving foreign defendants.

The main laws that give rise to SLAPPs are defamation, privacy, and data protection laws. Of these, defamation law is the most frequently used. While the 2013 reforms introduced a serious harm threshold, a public interest defence, a single publication rule, and tightened up jurisdictional checks,²⁶⁴ in other respects the law remains burdensome and

procedurally complex, leading to cases taking years to be resolved. Although a defendant can in theory use several legal mechanisms to have a claim that is clearly without merit dismissed early, in practice a defendant will have spent tens of thousands on lawyers' fees just to reach that point and so this is not a real deterrent. Mounting a defamation defence in court is very expensive – estimated by practising defamation lawyers as in the tens of thousands at the very least, and potentially into the hundreds of thousands²⁶⁵ – and the process can take years before there is a resolution.²⁶⁶ For most freelance journalists or small media outlets, this is a prohibitively expensive prospect.

There are no statistics on the number of SLAPP cases as such, but anecdotal evidence shows a steady number of cases in court. Examples include the case brought against British journalist Carole Cadwalladr, best known for her work uncovering the Facebook–Cambridge Analytica scandal and investigations into campaign funding around the 2016 Brexit referendum, by businessman Arron Banks, who co-founded and funded the Leave.EU campaign, for two of Cadwalladr's tweets and two public talks. She is forced to crowdfund her legal defence costs;²⁶⁷ her opponent is a millionaire businessman, illustrating the imbalance of power that typifies these cases. Other cases include an action taken by alleged dissident republican terrorists to compel disclosure of Sunday Newspapers Limited sources;²⁶⁸ and a case brought to the Court of Appeal on the basis of privacy and data protection rights regarding public domain information.²⁶⁹ NGOs also raised concerns regarding SLAPP cases against investigative journalists Catherine Belton and Tom Burgis, who were sued as individuals, as well as their book publishers which were going through the London High Court in 2021.²⁷⁰

A 2020 global survey of investigative journalists working on financial crime and corruption by the Foreign Policy Centre think tank found that the UK is by the far the most frequent international country of origin for legal threats.²⁷¹ The English courts allow cases to proceed as long as a foreign claimant can show a link with the UK. In an increasingly globalised world this is often easily established – owning a home, having a business registered in the UK or some other business interest often suffices. In one case, an Azeri member of parliament was able to sue a Romanian journalist reporting for an investigative journalism website registered in the USA over articles regarding corruption in Azerbaijan.²⁷² In another recent example, a Swedish publication and three of its journalists

were sued in London by a Monaco-based Swedish businessman over reporting on business dealings.²⁷³ As a result of cases such as this, journalists based abroad are deeply concerned about libel laws in the UK. For example, the Balkans Investigative Reporting Network, which reports on countries in Southern and Eastern Europe, has created a guide for its journalists specifically on English libel law.²⁷⁴

Many SLAPPs do not reach the courts; in a number of cases media or journalists are forced to accept settlements for fear of losing a case in court and then facing costs that could bankrupt them. The case brought against Maltese investigative journalist Daphne Caruana Galizia, who was eventually assassinated, illustrates this practice of harassment by legal letter. The UK law firm Mishcon de Reya reportedly hounded Daphne Caruana Galizia with letters threatening legal action, leading her sons to say, after her death, that “[t]he firm sought to cripple her financially with libel action in UK courts. ... Had our mother not been murdered, they would have succeeded.”²⁷⁵

Some media outlets have resorted to publishing legal threats against them, shining a light on this practice.²⁷⁶ OpenDemocracy, a global current affairs media outlet, has written of a defamation threat against it in Northern Ireland (where the reforms of the 2013 Act do not apply), which was withdrawn just before court proceedings were due to commence:

*We were advised that if we went to court to defend our reporting, we risked bankrupting openDemocracy. We had staff worrying they would lose their homes. [The claimant] dragged the ordeal out over two years [which] cost us a lot. We spent months dealing with legal letters, burning through thousands of pounds and precious time that would otherwise have been spent on our journalism. The psychological toll was even higher. We wanted to defend our story, but how would it play out in a Belfast court, under laws that have been said to ‘invite libel tourism’? The tactic of issuing time-consuming legal proceedings but not serving them on the defendant is a familiar one for many journalists. Experts speak of the ‘chilling effect’. These are the stories that go unwritten, the leads left unpursued, while the fear of being put out of business hangs over you.*²⁷⁷

There has been a shift towards using data protection law, which allows a claimant to sue over any inaccuracy even if the publication is not defamatory, malicious, or clearly private

or confidential, and privacy law more broadly. For example, in 2017 a law firm at the heart of a tax abuse scandal sued the BBC and *The Guardian* for 'breach of confidentiality' (a category of privacy law).²⁷⁸ Neither outlet had been involved in obtaining the information, which had been leaked by hackers, and they published the material alongside 94 other news organisations worldwide; yet they alone were sued. In May 2018, the media outlets were forced into a confidential settlement.²⁷⁹ Another example includes a case against Bloomberg by an anonymous claimant who was able to obtain an injunction to stop the publication of an article containing confidential information obtained from a UK law enforcement agency which was investigating a businessman; media are concerned this is a further shift in the use of privacy law in favour of claimants.²⁸⁰

There are indications that a growing number of cases are being brought in Northern Ireland. The defamation law reforms of 2013 that somewhat lightened the burden on defendants do not apply to Northern Ireland, making this an even more claimant-friendly jurisdiction than England and Wales; cases are also being brought under privacy, data protection, and anti-harassment laws. Recent cases include a case brought by an alleged terrorist to attempt to silence reporting about alleged criminality;²⁸¹ and a right to life and privacy action brought by an alleged dissident republican to attempt to silence reporting about alleged criminality.²⁸²

Often, legal threats against a journalist or media outlet are brought in parallel with smear campaigns, online harassment and surveillance. Noting how UK law firms operate in combination with a network of public relations consultants, corporate investigators and private protection agencies,²⁸³ one journalist described the practice as 'exercises in deception' worth tens of millions to public relations companies.²⁸⁴ Another described how during his investigation into a financial technology firm at which he uncovered widespread fraud he had been subject to "furious online abuse, hacking, electronic eavesdropping, physical surveillance and some of London's most expensive lawyers".²⁸⁵

Recommendations

As this report has shown, SLAPP cases against journalists, human rights defenders, and activist groups across Europe present a real threat to protection of the rights to freedom of expression, freedom of assembly and association, and the right to participate on matters of public concern as well as the media freedom. As democracy and the rule of law come increasingly under pressure in a number of the EU Member States, this report proposes the call for legislative action to protect public watchdogs and create enabling environment for freedom of expression.

ARTICLE 19 makes the following recommendations to provide protection against SLAPPs and ensure protection of fundamental rights.

At the European regional level

The **European Commission** should urgently put forward an anti-SLAPP directive providing for common procedural and other safeguards against SLAPPs **at the national and transnational levels** based on the recommendations set out in the model EU anti-SLAPP Directive.²⁸⁶

The **Council of Europe** should elaborate and promulgate a Recommendation setting forth a full set of principles on how to protect the right to freedom of expression and other acts of public participation from the threat of SLAPPs.²⁸⁷

At the national level

States should:

1. Decriminalise defamation

- All criminal defamation laws – including insult, libel, or slander – should be abolished without delay, even if they are seldom or never applied. They should be replaced, where necessary, with appropriate civil defamation laws.²⁸⁸
- A moratorium should be imposed on the use of all criminal defamation laws still in force.

In recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, the subsequent recommendations on SLAPPs in criminal cases are made as a practical matter on an interim basis, until those provisions are fully decriminalised.

- No-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below.
- The offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed.
- Public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official.
- Prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media or to practise journalism or any other profession, excessive fines, and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

2. Adopt comprehensive safeguards against SLAPP in civil cases

Such safeguards should include for instance the following measures:

Early dismissal

- A defendant against whom a claim is brought or who receives a threat of legal action which she or he believes is an abusive lawsuit against the exercise of the right to freedom of expression and public participation activities should be able to file a claim for dismissal of that claim at the earliest opportunity, along with an incidental claim for damages.

- A case should be dismissed if the defendant can show that the statement in question was made in connection with an official proceeding or about a matter of public interest, unless the claimant can prove that the claim has legal merits, that it is not manifestly unfounded, and that there are no elements indicative of an abuse of rights or of process laws in which case the motion shall be denied.
- Claims for early dismissal should be examined as soon as possible, at the latest within 90 days from the filing of the motion, and be decided swiftly.

Deadline for bringing cases

- Claims regarding statements on a matter of public interest or in connection with official proceedings should not be brought more than six months after the statement was made or published (including its first publication online).

Discovery/disclosure

- Defendants in defamation cases should have access to all material in the possession of the claimant that is relevant to the determination of the claim.
- Discovery proceedings against the defendant should be stayed pending resolution of the anti-SLAPP law or introduction of early dismissal mechanisms.

Multiple cases

- When a number of cases are brought regarding the same, or a substantially similar, publication, all but one of these should be stayed pending the final outcome of the pilot case (including any appeals).
- In some jurisdictions, cases may simply be brought together where applicable.

Forum shopping

- Where a claim that arises from public participation on matters of public interest is led in a court or tribunal of another State against a defendant who is domiciled in their State, States should take the measures necessary to ensure that the defendant has access to appropriate remedies before the national courts or tribunals in the State as are

necessary to dissuade the pursuance of the claim in those other courts. Remedies should include the possibility to claim a summary award of damages in sums which are at least equal to the sums claimed in damages in those other courts seized, as well as the imposition of penalties.

Legal aid

- Defendants against whom a claim is asserted which arises from public participation on matters of public interest should have access to legal assistance free of charge. Further support should be granted for third-party interventions and trial monitoring of SLAPP cases.

Costs

- A successful defendant should always be able to claim all reasonable costs made in connection with the defence of a case. This should include lawyers' and expert witnesses' fees, as well as other costs incurred, including staff and other resources that have been invested in the case and any necessary travel. Interim cost awards should be made if it is determined that without such an award, the defendant's financial situation would prevent it from effectively exercising the right of defence.
- Defendants in a case brought regarding a statement on a matter of public interest or in connection with official proceedings should only be liable to proportionate contribution towards a claimant's legal costs, bearing in mind the defendant's financial position.
- In a case regarding a statement on a matter of public interest or that was made in connection with official proceedings, defendants shall not be required to make any surety payments into courts or have their bank balances frozen (fully or partially).

Cap on damages

- The law should set reasonable and proportionate maximum amounts for awards for damages that may be claimed in cases that arise from the exercise of the right to freedom of expression and related public participation activities. Awards should not exceed the median equivalised net income per country and they should take into

account the defendant's individual circumstances as well as the broader chilling effect that the award may have on the exercise of the right to freedom of expression.

Penalties

- Penalties in the form of a fine should be applicable to claimants of a claim which is the object of a dismissal decision. In determining the amount of the penalty, due consideration should be given to (i) the abusive nature of the claim; (ii) the excessive or unreasonable nature of claims; (iii) the damages suffered by the defendant; (iv) the existence of previous dismissal decisions brought by the same claimant; and (v) the economic situation of the claimant.

Registry of cases

- National registries of court decisions concerning cases relating to SLAPPs should be established. Registries should be made publicly accessible, free of charge at point of use, in accordance with national rules on the protection of personal data. Entries in registers should in no way affect the rights of the parties in any other judicial proceedings.

Judicial training and awareness-raising

- Training should be provided to judges at all relevant courts to aid them in recognising SLAPPs, including on relevant European human rights standards and the case law of the European Court of Human Rights relating to SLAPPs.

Media organisations

- Media organisations should stand by and support their employee or contracted journalists facing SLAPPs, including ensuring adequate indemnity insurance, legal support, and counselling for SLAPP victims.
- Mechanisms should be created where journalists are supported in reporting SLAPP cases in the media and to the CASE platform of which they or other media/journalists are the victim.

Endnotes

¹ [Cal. Civ. Proc. Code § 425.16\(e\)\(1-4\)](#)

² Foreign Policy Centre, [Unsafe for scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world](#), 2 November 2020.

³ Protecting Public Watchdogs Across the EU: [A proposal for an EU Anti-SLAPP Law](#): 2020.

⁴ CASE, [Statement on the need for a Council of Europe Recommendation on measures to deter and remedy the use of SLAPPs](#).

⁵ In line with [ARTICLE 19's Revised defining defamation principles](#), 2016.

⁶ The term 'SLAPP' was coined in the USA to refer to lawsuits against citizens that appealed to the government for a response to an issue of public concern through the Petition clause provided for in the Constitution. These suits are brought by private entities in retaliation for calling governments to respond with the aim to intimidate their opponents and transform a political dispute into a technical and legal one. See e.g. Pring and P. Canan, *SLAPPs Getting Sued for Speaking Out*, Temple University Press, 1996, p.7–10.

⁷ In 2015, Ontario amended the Courts of Justice Act introducing anti-SLAPP legislation: ss.137.1 to 137.5. British Columbia and Quebec (2018 ONCA 685, 142 O.R. (3d) 161).

⁸ ARTICLE 19, [EU: A call to action to combat SLAPPs](#), 1 December 2020.

⁹ European Parliament resolution of 11 November 2021 on strengthening the democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society ([2021/2036\(INI\)](#)).

¹⁰ European Commission, [European Democracy Action Plan](#), 3 December 2020.

¹¹ The feedback period ended on 1 November 2021.

¹² CASE, [The need for a Council of Europe Recommendation on SLAPPs](#).

¹³ Supreme Court of Canada, *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, Judgment 10 September 2020, [2].

¹⁴ American Civil Liberties Union of Ohio, [SLAPPed: A tool for activists. Part 1: What is a SLAPP suit?](#)

¹⁵ University of Amsterdam/Greenpeace International, [SLAPP research: Provisional conclusions](#), 2020.

¹⁶ Ibid.

¹⁷ ARTICLE 19, [Defining defamation: Principles on freedom of expression and protection of reputation](#), 2017, Principle 6.

¹⁸ ARTICLE 19, [The right to protest: Principles on the protection of human rights in protests](#), 2016, Principles 16.5 and 16.6.

¹⁹ Ibid. Principle 16.6 unpacks the standards that courts should observe in order to comply with the necessity and proportionality standards.

²⁰ In 2015, Ontario amended the Courts of Justice Act introducing anti-SLAPP legislation: ss.137.1 to 137.5. British Columbia and Quebec (2018 ONCA 685, 142 O.R. (3d) 161).

²¹ 1704604 *Ontario Ltd. v. Pointes Protection Association*.

²² See [California Code of Civil Procedure CCP § 425.16](#). or [Massachusetts MGL c.231 § 59H](#)

²³ 1704604 *Ontario Ltd. v. Pointes Protection Association*.

²⁴ *Ibid.*

²⁵ Although as a UN General Assembly resolution, the Universal Declaration of Human Rights is not strictly binding on States, and many of its provisions are regarded as having acquired legal force as customary international law; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

²⁶ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, [UN Doc. A/6316](#).

²⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 September 1950.

²⁸ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02.

²⁹ UN Human Rights Committee, [General Comment No. 34](#) on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011. See also UN Human Rights Council, [The promotion, protection and enjoyment of human rights on the Internet](#), A/HRC/20/L.13, 29 June 2012.

³⁰ UN Human Rights Committee, [General Comment No. 34](#), para 12.

³¹ *Ibid.*, para 11.

³² European Court of Human Rights (European Court), *Handyside v. United Kingdom*, App. No. 5493/72 (1976), para 49.

³³ [General Comment No. 34](#), para 13.

³⁴ *Ibid.*, para 38.

³⁵ European Court, *Lingens v. Austria*, App. No. 9815/82 (1986), para 41.

³⁶ European Court, *Steel and Morris v. United Kingdom*, App. No. 68416/01, (2005), para 95; *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05 (2009), para 27; *Vides Aizsardzības Klubs v. Latvia*, App. No. 57829/00 (2004), para 42; *Youth Justice Initiative for Human Rights v. Serbia*, App. No. 48135/06 (2013).

³⁷ European Court, *Thoma v. Luxemburgo*, App. No. 38432/97, 26 June 2001, paras 45 & 46.

³⁸ European Court, *Lingens v. Austria*, para 42.

³⁹ [General Comment No. 34](#), para 44.

⁴⁰ European Court, *The Sunday Times v. UK*, App. No. 6538/74 (1979), para 49.

⁴¹ European Court, *The Observer & Guardian v. the UK*, App. No. 13585/88 (1991), para 59.

⁴² *Ibid.*, para 22.

⁴³ European Court, *Lingens v. Austria*, para 41.

⁴⁴ Human Rights Committee, [General Comment No. 31](#), 29 March 2004, CCPR/C/21/Rev.1/Add. 1326, May 2004, para 4.

⁴⁵ Article 2 of the ICCPR read in conjunction with Article 19. Article 1 of the European Convention read in conjunction with Article 10.

⁴⁶ [General Comment No. 31](#), paras 6 & 8.

⁴⁷ *Ibid.* See also European Court's interpretation in *Hokkanen v. Finland*, (1994) and *López-Ostra v. Spain*, (1994) where it interprets the positive obligation of State parties in similar terms as the UN Human Rights Committee.

- ⁴⁸ UN HRC, [Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary execution on the proper management of assemblies](#), UN Doc.A/HRC/31/66, 4 February 2016, para 84.
- ⁴⁹ UN Committee on Economic, Social and Cultural Rights, [General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of Business Activities](#), E/C.12/GC/24, 10 August 2017.
- ⁵⁰ UN Working Group on Business and Human Rights, [Guidance on National Actions Plans on Business and Human Rights](#), 2016, p. 31.
- ⁵¹ UN HRC, [Resolution 45/18 on the Safety of Journalists](#), A/HRC/45/L.42/Rev.1, 1 October 2020, p.3.
- ⁵² UN HRC, [Resolution 33/2 on Safety of Journalists](#), A/HRC/RES/33/2, 2017, point 5; European Court, *Dink v. Turkey*, App. No. 2668/08, 6102/08, 30079/08 (2010), para 27 or *Castells v. Spain*, App. No. 11798/85 (1992), para 43.
- ⁵³ See [General Comment No. 24](#), and UN Special Rapporteur on the right to freedom of peaceful assembly UN Doc.A/HRC/31/66 in endnote 47.
- ⁵⁴ See European Court, *H. v. Belgium*, App. No. 8950/80 (1987), para 53.
- ⁵⁵ See European Court, *Ocalan v. Turkey*, App. No. 46221/99 (2005), para 140; *Mammadov v. Azerbaijan*, App. No. 60802/09 (2017), para 19; or *Steel and Morris, De Haes and Gijssels v. Belgium*, App. No. 7/1996/626/809 (1997).
- ⁵⁶ UN Doc.A/HRC/31/66.
- ⁵⁷ See European Court, *Brandstetter v. Austria*, App. No. 11170/84; 12876/87; 13468/87 (1991); and *Thorgeir Thorgeirson v. Iceland*, App. No. 13778/88 (1992).
- ⁵⁸ See European Court, *Steel and Morris*, paras 59–61; *Airey v. Ireland*, App. No. 6289/73 (1979), para 26.
- ⁵⁹ *Steel and Morris*.
- ⁶⁰ *Ibid.*, para 61.
- ⁶¹ *Ibid.*, paras 63 & 71.
- ⁶² *Ibid.*, paras 63–71.
- ⁶³ ARTICLE 19, *Defining defamation*, Principle 6. The particular remedy will vary between jurisdictions, but possible options include the right to bring a case for abuse of civil process and/or the availability of a procedural mechanism to strike out the claim early on in the proceedings unless the plaintiff or claimant can show some probability of success. Anti-SLAPP laws traditionally provide a mechanism that allows the defendant, after service of the complaint, to file a motion to strike out or dismiss the complaint as targeting speech directly related to and arising from a matter of public concern. The burden of proof is upon the defendant to convince the court that the speech in question is directly related to, and arising from, a matter of ongoing public concern, and to set forth the legal justifications for publication. In the event that the court agrees that the speech is directly related to, and arising from, a matter of ongoing public concern, the claim is deemed to be a SLAPP case and the following substantive and procedural rules apply: (a) all collateral litigation, including discovery and/or disclosure demands, is immediately frozen; (b) the burden of proof is upon the plaintiff or claimant to show with convincing clarity from the four corners of the complaint alone

that they would prevail in a libel trial; and (c) in the event that the plaintiff or claimant fails to show the above, the court can award appropriate legal fees and costs to the prevailing defendant. In countries where no specific legislation has been adopted, malicious prosecutions may be dealt with by general rules of procedure that allow the courts to condemn the plaintiff or claimant for abusive proceedings, if the judge finds that: (i) the proceedings are clearly unsubstantiated; or (ii) are otherwise lacking any reasonable prospect of success.

⁶⁴ As described, for example, in the [Annual Reports](#) of the Council of Europe Secretary General.

⁶⁵ Slovenian Association of Journalists, [Misuse of lawsuits to intimidate and financially and administratively drain the media?](#) (in Slovenian), 25 September 2020.

⁶⁶ *Malta Independent*, [Pilatus Bank: Malta's media freedom slapped in the face](#), 17 December 2017.

⁶⁷ This finding aligns with statistics published by the European Court, which show a violation of the right to freedom of expression in the majority of defamation cases brought before it (see case reports in the [Court's database](#)).

⁶⁸ *The Guardian*, [Murdered Maltese reporter faced threat of libel action in UK](#), 1 June 2018.

⁶⁹ See e.g. *Shift News*, [Henley and Partners threatens legal action against The Shift](#), 24 December 2017; or *Shift News*, [SLAPP threat from Azerbaijani – British National Turab Musayev](#), 7 July 2020; or Kobre and Kim, [Letter to the Centre for Investigative Journalism](#), 12 October 2020.

⁷⁰ [Cal. Civ. Proc. Code § 425.16\(e\)\(1-4\)](#)

⁷¹ In one of the cases in which Bolloré was eventually found to have brought the proceedings maliciously, the Court awarded the defendant journalist EUR 9,000, and the publishing director only EUR 1,000: see Court of Appeal of Paris, 1 July 2020, No. 19/04979.

⁷² Foreign Policy Centre, [Unsafe for scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world](#), 2 November 2020.

⁷³ [The Civil Code](#), 1804-03-21/30, 13 September 1807, Article 1382.

⁷⁴ [Criminal Code](#), 1867-06-08/01, 15 October 1867, Articles 443, 448 and 449.

⁷⁵ *Ibid.*, Article 442bis.

⁷⁶ Proceedings need to be brought before a specially convened court (Hof van Assisen/Cour d'Assises) and tried by jury.

⁷⁷ <https://inform.org/2022/01/04/anti-slapp-professor-goes-free-after-vexatious-and-frivolous-suit-dirk-voorhoof/>

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ [The Judicial Code](#), 1967-10-10/01, 1 November 1970, Article 780bis.

⁸¹ Case numbers 16/5530/A and 16/5391/A, 22 February 2021.

⁸² SeeNews, [Council of Europe says media freedom in Bulgaria on decline](#), 1 April 2020.

⁸³ See e.g. Reporters Without Borders, [2021 World Press Freedom Index](#).

⁸⁴ Proceedings can also be taken under legal provisions that protect privacy and prohibit false news, but these are in less active use.

⁸⁵ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016](#) on the protection of natural persons with regard to the processing of personal data, and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁸⁶ According for lawyers interviewed for this study. See also the [Commission for Personal Data Protection](#), Bulgaria.

⁸⁷ Decision No.8 from 15.11.2019 of the Constitutional Court

⁸⁸ The [Bulgarian Criminal Code](#), Prom. DV. No. 26 of 2 April 1968, as subsequently amended, in force since 1 May 1968, Article 146 states: "(1) Whoever says or does something humiliating to the honor or dignity of another in his presence, shall be punished for insult with a fine of one thousand to three thousand leva. In this case, the court may also impose a penalty of public reprimand. (2) If the offended has responded immediately with an insult, the court may release both of them from punishment."

⁸⁹ *Ibid.*, Article 147 states: "(1) Whoever discloses a disgraceful circumstance about another or attributes a crime to him shall be punished for defamation by a fine of three thousand to seven thousand leva and by public censure. (2) The offender shall not be punished if the truth of the disclosed circumstances or of the imputed offence is proven."

⁹⁰ *Ibid.*, Article 148 states: "For insult: 1. inflicted in public; 2. disseminated through a printed work or otherwise; 3. to an official or a member of the public in the course of or in connection with the performance of his office or function and 4. by an official or a member of the public in or on the occasion of the performance of his office or function, the penalty shall be a fine of three thousand to ten thousand leva and public censure. (2) For defamation committed under the conditions of the preceding paragraph, as well as for defamation from which grave consequences have occurred, the penalty shall be a fine of five thousand leva to fifteen thousand leva and public censure."

⁹¹ [Law on Obligations and Contracts](#), Article 45.

⁹² [Personal Data Protection Act](#), Promulgated, State Gazette (SG) No. 1, 4 January 2002, as subsequently amended, in force as from 1 January 2002.

⁹³ Under Article 45 of the Law on Obligations and Contracts. Researchers for this study were not able to locate any cases where a journalist had been able to make use of this.

⁹⁴ Association of European Journalists-Bulgaria, [AEJ-Bulgaria condemns sentence against journalist Rossen Bossev](#), 30 May 2019.

⁹⁵ For more information on the criticism and concerns raised by Bossev, see [Fact-based opinions are now considered a crime in Bulgaria](#).

⁹⁶ See e.g. *Times of Malta*, [Satabank co-owner sues Times of Malta in Bulgaria](#), 27 February 2020; *Times of Malta*, [Billions of euros in Satabank transactions deemed 'highly suspicious'](#), 27 January 2019.

⁹⁷ The fine was subsequently reduced; see *Times of Malta*, [Satabank's €3.7m money laundering fine Slashed to €851,000](#), 28 December 2020.

⁹⁸ *Times of Malta*, [Satabank co-owner sues](#).

⁹⁹ Journalism without a mask, [2020 Annual Survey of Media Freedom in Bulgaria](#).

¹⁰⁰ [The Media Act](#), Consolidated version, *Official Gazette of the Republic of Croatia*, 59/04, 84/11, 81/13.

¹⁰¹ [The Electronic Media Act](#), *Official Gazette of the Republic of Croatia*, 153/09; 84/11.

¹⁰² The Civil Obligations Act, *Official Gazette of the Republic of Croatia* 35/05, 41/08 and 125/11. In particular Article 19 protects personality rights; and Articles 1045–1048 allow for the demand of financial damages for wrongful acts.

¹⁰³ *Ibid.*, Article 1045.

¹⁰⁴ The Penal Code, *Official Gazette of the Republic of Croatia*, 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, Article 149. Defamation is defined as knowingly presenting or disseminating untrue facts about a person before a third party that may harm that person's honour or reputation. The penalty is a fine up to 360 times the daily rate.

¹⁰⁵ *Ibid.*, Article 148. Shaming is defined as the presentation or dissemination of facts about a person before a third party that may harm that person's honour or reputation. The penalty is a fine up to 180 times the daily rate.

¹⁰⁶ *Ibid.*, Article 148.

¹⁰⁷ Zagreb Municipal Court, case numbers K-1339/18, K-1340/18, K-1341/18, K-1343/18, K-1344/18, K-1345/18 and K-1348/18.

¹⁰⁸ Mapping Media Freedom, [Croatia: A journalist from a local news portal won a defamation case started by former minister](#), February 2021.

¹⁰⁹ The Penal Code, Article 147. Insult is defined as insulting another person. The penalty is a fine up to 90 times the daily rate.

¹¹⁰ *Ibid.*, Article 148a.

¹¹¹ See e.g. European Federation of Journalists, [New wave of SLAPPs hits Croatian media and journalists](#), November 2020; International Press Institute, [Vexatious lawsuits a SLAPP in the face for journalists in Croatia](#), November 2020.

¹¹² Zagreb Municipal Court, Case numbers Pn-2010/2020 and Pn-2037/2020.

¹¹³ Currently being heard in the appeals courts, the cases have been won by the media defendants at first instance but appealed by Crnoja.

¹¹⁴ Zagreb Municipal Court, Case number Pn-743/2019.

¹¹⁵ Mapping Media Freedom, [Croatia: Virovitica portal and its editor-in-chief facing defamation lawsuits](#), December 2020.

¹¹⁶ *Ibid.*

¹¹⁷ A case that has started as a criminal defamation claim may also be pursued as a civil claim. If the criminal case results in a conviction, then the amount of damages will be decided in the civil case. However, if a case has started as a civil case, a claimant cannot later bring a criminal complaint (Code of Criminal Procedure, Article 5).

¹¹⁸ Freedom of the Press Act of 29 July 1881, Article 32.

¹¹⁹ Freedom of the Press Act of 29 July 1881, Articles 29, 35, 55, and 56. A claim of 'good faith' succeeds when the journalist can show that (i) they relied on a sufficient factual basis, and the statement (ii)

concerned a debate of general interest, and (iii) was expressed in an objective and moderate manner without personal animosity against the claimant.

¹²⁰ Freedom of the Press Act of 29 July 1881, Article 49.

¹²¹ Code of Criminal Procedure, Articles 226-10 and 472; Code of Civil Procedure, Article 32-1. In theory a defendant can also bring a criminal complaint for 'false accusation', but this is long and time-consuming procedure.

¹²² Article 800-2 of the French Code of Criminal Procedure. Article 475-1 of the French Code of Criminal Procedure only states that the perpetrator can be condemned to bear the legal fees of the victim of the criminal offense.

¹²³ Code of Civil Procedure, Article 700.

¹²⁴ Although recent decisions may indicate that the French courts are getting more sensitive to SLAPP cases, in June 2020, the Paris Court of Appeal ordered a civil fine of EUR 3,000; and in July, the Paris Court of Appeal ordered damages in a case brought by Bolloré (Case No. 19/04979, discussed below).

¹²⁵ Civil Code, Article 1240.

¹²⁶ Intellectual Property Law, Article 713-2.

¹²⁷ Intellectual Property Law, Article 716-10 ; Civil Code, Article 1240.

¹²⁸ There have also been instances of foreign states bringing cases: recently, the governments of Morocco and Azerbaijan attempted to bring defamation lawsuits against media outlets and journalists. Both cases were dismissed by the Supreme Court: Criminal Chamber, 6 February 2018, No. 17-83857; General Assembly, 10 May 2019, No. 17-84509.

¹²⁹ There are no statistics, but anecdotal evidence indicates a steady use of the law to stop those who speak truth to power.

¹³⁰ *Basta!*, [Chéritel's withdrawal: A victory for basta! and the journalist Inès Léraud](#), 28 January 2021; Bretagne Region, [Flagrant offense of deception on the origin of tomatoes in Brittany](#), 20 January 2020.

¹³¹ Council of Europe, [Subject to repeated intimidation, journalist Inès Léraud faces new defamation charges](#), 28 January 2021.

¹³² Judgment of the Paris Civil Court, 5 October 2016, No. 15/127175.

¹³³ Ouest France, [Cheritel fined €261,000](#), 11 December 2018.

¹³⁴ [The Bolloré group has lost its lawsuit against Mediapart](#), 12 February 2021.

¹³⁵ Court of Appeal of Paris, 1 July 2020, No. 19/04979; French Supreme Court, Criminal Chamber, 7 May 2018, No. 17-82663. See also *Arret Sur Images*, [Bolloré: definitively released, Bastamag paid 13000 euros](#), 10 May 2018.

¹³⁶ Council of Europe, [France 2 TV channel sued in a Commercial Court by the Bolloré Group](#), 11 June 2019.

¹³⁷ Court of Appeal of Paris, 26 February 2020, No. 19/05620.

¹³⁸ See e.g. Ruling of the Paris Court of Appeal of 6 November 2005, RG No. 04/12417; and the ruling by the Court of Cassation of 8 April 2008, No. 06-10.961.

¹³⁹ Paris Court of Appeal, 28 June 2017, RG No. 16/09177.

¹⁴⁰ For example, in one of the cases in which Bolloré was eventually found to have brought the proceedings maliciously, the Court awarded the defendant journalist EUR 9,000, and the publishing director only EUR 1,000: see Court of Appeal of Paris, 1 July 2020, No. 19/04979.

¹⁴¹ Ministry of Higher Education, Research and Innovation, [Report of the Mazeaud Commission on gagging procedures](#) (in French), 20 April 2017.

¹⁴² [The Criminal Code](#), Act C of 2012, promulgated on 13 July 2012, Articles 226, 227, 268, 271 and 337.

¹⁴³ *Ibid.*, Article 227.

¹⁴⁴ *Ibid.*, Article 268.

¹⁴⁵ *Ibid.*, Article 271.

¹⁴⁶ *Ibid.*, Article 337.

¹⁴⁷ [The Civil Code](#), Act V of 2013, promulgated on 26 February 2013. Articles 2:43, entitled Specific personality rights, states: “The following, in particular, shall be construed as violation of personality rights: a. any violation of life, bodily integrity or health; b. any violation of personal liberty or privacy, including trespassing; c. discrimination; d. any breach of integrity, defamation; e. any violation of the right to protection of privacy and personal data; f. any violation of the right to a name; g. any breach of the right to facial likeness and recorded voice.”

¹⁴⁸ *Ibid.*, Article 2:44. Protection of the personality rights of politically exposed persons, states: “Exercising the fundamental rights relating to the free debate of public affairs may diminish the protection of the personality rights of politically exposed persons for overriding public interest, to the extent necessary and proportionate, without prejudice to human dignity.”

¹⁴⁹ *Ibid.*, Article 2:45, Right to integrity and reputation states: “(1) The integrity of a person is considered violated when a false and malicious oral statement is uttered publicly to damage that person’s reputation, and to make people have a bad opinion of such person. (2) Defamation means when something bad about someone that is not true, or a true fact with an untrue implication is published or disseminated in an abusive attack on that person’s good name.”

¹⁵⁰ BH No. 2004.3.104.

¹⁵¹ BDT No. 2017.3670; BDT No. 2018.3808; EBH No. 2018.B.19.

¹⁵² [The Code of Civil Procedure](#), Act CXXX/2016, Article 108, and Civil Code, Article 2:43(e).

¹⁵³ Act CCII of 2015 amending Act II of 2012 on infringements, infringement procedures and the system for registering infringements. [Cases reported by the Hungarian Civil Liberties Union: Help, inform, protect: HCLU’s response to the human rights crisis following the COVID19 pandemic](#), 4 August 2020.

¹⁵⁴ The Code of Civil Procedure, Article 176.

¹⁵⁵ The Code of Criminal Procedure, Articles 372, 381(1).

¹⁵⁶ The Code of Civil Procedure, Article 83; Criminal Procedure Act Articles 575 and 782.

¹⁵⁷ The Civil Code, Articles 2:52 and 2:53.

¹⁵⁸ The Criminal Code, Article 268.

¹⁵⁹ For example, in the case of a 444.hu reporter that was lodged in 2017, judgment was not delivered until November 2020. See Council of Europe, [Hungarian journalist Júlia Halász attacked and violently expelled from Fidesz's Public Meeting in Budapest](#), 12 May 2017.

¹⁶⁰ European Data Protection Board, [Hungarian DPA Fines Forbes](#), 8 September 2020.

¹⁶¹ The ruling would appear to be in violation of established case law of the European Court; see also *Mosley v. the United Kingdom*, App. No. 48009/08 (2011).

¹⁶² See TASZ, [GDPR weaponized – Summary of cases and strategies where data protection is used to undermine freedom of press in Hungary](#), 23 November 2020. See also International Press Institute, [In Hungary, GDPR is the new weapon against independent media](#), 3 November 2020.

¹⁶³ B. M. E. McMahon and W. Binchy, *Law of Torts*, Bloomsbury Professional, 4th edition (2013), 1.09.

¹⁶⁴ A review of the 2009 Act was started in 2016 and remains underway as of February 2022.

¹⁶⁵ *Hickey v. Sunday Newspapers* [2011] 1 IR 228.

¹⁶⁶ *Travers v. Sunday Newspapers Ltd* [2012] IEHC 185.

¹⁶⁷ Other, more procedural, defences are available as well: see Sections 16–27 of the 2009 Defamation Act.

¹⁶⁸ Court Service, [Annual Report 2019](#).

¹⁶⁹ Defamation Act 2009, Section 38(1). In exceptional circumstances this may be extended to two years.

¹⁷⁰ J. Ní Mhainín, [A Gathering Storm: The laws being used to silence the media](#), p. 11.

¹⁷¹ See e.g. *Irish Times*, [Irish system is unusually generous with libel damages](#), 15 February 2017; A&L Goodbody, [Time to say goodbye: Why Ireland should remove juries from defamation cases](#), 10 July 2020; and the European Commission, [Rule of Law Report 2020](#).

¹⁷² McMahon and Binchy, *Law of Torts*, 34.118. See also E. O'Dell, [Ireland: Man wins 'fleeting defamation' case and is awarded €500, should the law of defamation really concern itself with such a trifle?](#) Informm, 15 December 2019.

¹⁷³ Defamation Act 2009, Section 22(5).

¹⁷⁴ Defamation Act 2009, Section 8(7). See also McMahon & Binchy, *Law of Torts*, 34.09.

¹⁷⁵ Known as an 'Isaac Wunder order': A. Moore, 'Isaac Wunder Orders', *Judicial Studies Institute Journal*, p.142.

¹⁷⁶ See Ní Mhainín; A rare recently reported instance of such an order did not concern a case against the media but was a case where an individual had habitually and persistently instituted proceedings of a frivolous or vexatious nature against someone else: *Morris v. Ryan* [2019] IECA 86.

¹⁷⁷ For example, *Fowler v. Marks and Spencer (Ireland) Limited*, No. 2018/02998; *Sunner v. Dealz and Lodge Services (Dublin) Limited*, No. 2017/04762.

¹⁷⁸ P. Duparc Portier, [Media reporting of trials in France and in Ireland](#), *Judicial Studies Institute Journal*, 2006, p. 203. Annual Court Services reports indicate a higher number of cases are brought in the High Court, which usually involve the media: [Court Services Reports](#) 2019, 2018, 2017, 2016 and 2015.

¹⁷⁹ Press Council of Ireland, [Annual Report 2019](#); see also McMahon and Binchy, *Law of Torts*, 34.03.

¹⁸⁰ NewsBrands Ireland, [Submission on Review of Defamation Act 2009](#), January 2017.

¹⁸¹ *The Irish Times*, [Submission to the review of the Defamation Act 2009](#), December 2016.

¹⁸² Ibid.

¹⁸³ *Independent News and Media*, [Submission to the review of the Defamation Act 2009](#), December 2016.

¹⁸⁴ In [evidence to the Joint Oireachtas Committee on European Union Affairs](#), 9 March 2021.

¹⁸⁵ [Criminal Code](#), Article 595.

¹⁸⁶ Provisions on the Press, Defamation, Crimes Committed against the Profession and Criminal Procedure, [Law No. 47/1948](#), Article 13.

¹⁸⁷ [Criminal Code](#), Article 124.

¹⁸⁸ [Criminal Code](#), Article 596.

¹⁸⁹ Court of Cassation, Decision No. 5259/1984 (so called 'sentenza decalogo'). The principles set out in this decision have been followed and further specified by the subsequent case law. See Court of Cassation No. 9710/2020 and Court of Cassation No. 17211/2015.

¹⁹⁰ Code of Criminal Procedure, Article 407.

¹⁹¹ Around 67% of the criminal complaints pursuant to Law No. 47/1948 (defamation committed by means of the press, consisting of the allegation of a specific fact) were archived at the conclusion of the preliminary investigations in 2011 (3057 out of 4524) and 2017 (6357 out of 9479). See OBC Transeuropa, [Dossier: SLAPP, the lawsuit threatening freedom of expression](#).

¹⁹² Civil Code, Article 2947(3).

¹⁹³ Under Legislative Decree No. 28/2010.

¹⁹⁴ Decree of the Ministry of Justice No. 55/2014.

¹⁹⁵ Code of Civil Procedure, Article 96; Code of Criminal Procedure, Article 427.

¹⁹⁶ Court of Cassation No. 23341/2019; Court of Cassation No. 24158/2017; Court of Cassation No. 7409/2016; Court of Cassation No. 19583/2013.

¹⁹⁷ Commissioner for Human Rights, [Time to take action against SLAPPs](#), 27 October 2020.

¹⁹⁸ 'E, [Becciu's astonishing attack on L'Espresso \(and on the Pope\)](#) (in Italian), 18 November 2020; or ARTICLE 19, [Italy: MFRR condemns 'absurd' €10 million lawsuit against L'Espresso magazine by sacked Vatican Cardinal](#), 2 February 2021.

¹⁹⁹ *Articolo 21*, [Quarried for reporting an environmental disaster](#) (in Italian), 24 March 2017.

²⁰⁰ For example, Ossigeno per l'Informazione, [Bari: Scagliarini acquitted. It was not defamation](#) (in Italian), 14 February 2019.

²⁰¹ *FIAT (now Fiat Chrysler Automobiles) v. Claudio Formigli and RAI*, Corriere, ['Annozero' and the MiTo, Formigli acquitted. Judgment overturned in appeal: 'criticism lawful'](#).

²⁰² C. De Gregorio, [I pay the causes of Berlusconi to the Unit, the Pd has disappeared](#) (in Italian), 7 February 2019.

²⁰³ *Il Locale News*, [Million euro lawsuit. The Locale News, Baldarotta and Sciacchitano acquitted and the plaintiff convicted](#) (in Italian), 1 September 2020.

²⁰⁴ *Chronace Macaratesi*, [Intimidating complaints: our battles won chronicles goes forward](#) (in Italian), 30 January 2020.

- ²⁰⁵ See e.g. *di Martedì*, [Siparietto Floris-Travaglio: I have 200 trials for libel, I consider it out of competition](#) (in Italian), *La 7*, 25 September 2019; *Il Fatto Quotidiano*, [Tiziano Renzi: Il Fatto acquitted for four articles of investigation and condemned for two comments and a title](#) (in Italian), 22 October 2018.
- ²⁰⁶ *Huffington Post*, [Marco Travaglio after the sentence to compensate Tiziano Renzi: 'A couple more blows like these and Il Fatto closes'](#) (in Italian), 23 October 2018.
- ²⁰⁷ See e.g. *Articolo 21*, [Fearful complaints. Intimidations at zero cost](#) (in Italian), 29 November 2019.
- ²⁰⁸ FNSI, [The repented boss asks for 100 thousand euros in damages. solidarity of Fnsi and Sugc to the journalist Giuliana Covella](#) (in Italian), 15 December 2016.
- ²⁰⁹ European Parliament, [European Parliament resolution of 15 November 2017 on the rule of law in Malta \(2017/2935\(RSP\)\)](#), 15 November 2017.
- ²¹⁰ [Act No. XI of 2018 – Media and Defamation Act](#), 24 April 2018.
- ²¹¹ Media and Defamation Act 2018, Sections 3(4), 4, 5, 9, and 11. There is a maximum of EUR 5,000 for slander (spoken rather than published defamations).
- ²¹² Media and Defamation Act 2018, Section 10.
- ²¹³ Code of Organisation and Civil Procedure, Sections 195(7); 223; 229(9), and Schedule A. The figure of 25% was indicated by defence lawyers interviewed for this report.
- ²¹⁴ Council of Europe (Safety of Journalists Platform to promote the protection of journalism and safety of journalists), [Investigative journalist Daphne Caruana Galizia killed by car bomb](#), 3 March 2021.
- ²¹⁵ Venice Commission, Opinion CDL-AD(2018)028-e, 14 December 2018.
- ²¹⁶ See e.g. *Times of Malta*, [Journalist successfully appeals libel judgments; articles were not defamatory](#), 8 March 2019.
- ²¹⁷ Daphne Caruana Galizia Foundation, [Defence against frivolous and vexatious libel suits](#). The cases are defended by her heirs, through a legal mechanism that requires the family of deceased individuals to continue to defend legal claims. A group of 19 cases brought by the same claimant was finally ceded in April 2021: *Times of Malta*, [Silvio Debono drops 19 Caruana Galizia libel cases following settlement](#), 19 April 2021.
- ²¹⁸ *The Shift*, [Prime Minister sues Matthew Caruana Galizia over Facebook post](#), 19 March 2018.
- ²¹⁹ *The Shift*, [MFSA bans two from holding directorships for five years](#), 15 May 2020.
- ²²⁰ *Times of Malta*, [Keith Schembri drops libel cases against Daphne Caruana Galizia](#), 9 December 2019; *Times of Malta*, ['I was damn right. Konrad Mizzi is corrupt': Busuttill says as minister drops libel cases](#), 7 February 2019.
- ²²¹ Government of Malta, [Press release by the Ministry for Justice, Culture and Local Government](#), 18 April 2019; *Times of Malta*, [Opposition tables anti-SLAPP Bill](#), 26 February 2020.
- ²²² In one case brought by Maltese lawyers, it is a matter of record that litigation was threatened with the agreement of the Prime Minister. See Running Commentary, [BREAKING/Prime Minister and chief of staff use @josephmuscat.com addresses to deal secretly with Henley & Partners chairman, who addresses them as 'Keith and Joseph' \(in that order\)](#), 31 May 2017.

²²³ See e.g. *The Times*, [Law firm 'hounded' Maltese journalist Daphne Caruana Galizia before murder](#), 2 June 2018; *Truth Be Told*, [Pilatus filed lawsuit in the USA against Daphne Caruana Galizia. She never knew](#), 26 January 2018.

²²⁴ See e.g. Reporters Without Borders, [New threat against the Shift News in Malta highlights growing international abuse of defamation laws](#), 7 March 2019; Council of Europe, [Croatian businessman requests The Shift to deposit €300,000 in damages](#), 27 October 2020; Council of Europe, 27 October 2020.

²²⁵ *The Shift*, [Henley and Partners says it only sues Maltese journalists if government gives its 'OK'](#), 7 May 2018.

²²⁶ *TMIS Editorial*, 17 December 2017.

²²⁷ *The Times*, [Law firm 'hounded'](#), 2 June 2018.

²²⁸ Council of Europe, [Attempted intimidation of journalists Carlo Bonini, John Sweeney and Blogger Manuel Delia](#), 24 October 2019.

²²⁹ Mapping Media Freedom, [MaltaToday threatened with data protection legal action](#), December 2020.

²³⁰ *Ibid.*

²³¹ Greenpeace, [Sued into silence: How the rich and powerful use legal tactics to shut critics up](#), July 2020.

²³² *TMIS Editorial*, 17 December 2017. In 2018, the claimant in the case against the *Malta Independent*, the perhaps ironically named 'Pilatus Bank', had its licence withdrawn by the European Central Bank after its chairman and owner was charged in the USA in connection with money-laundering and fraud. See *The Guardian*, [Malta's Pilatus Bank has European licence withdrawn](#), 5 November 2018. Although the owner was convicted during the appeal, the prosecutors dropped the case due to procedural defects. At the time of writing of this report, several related legal proceedings remaining ongoing.

²³³ As stipulated in Article 34 of the Penal Code, 'restriction of movement' is a penalty that is imposed for a fixed period of time, requiring the performance of community work and prohibiting a person from changing their place of residence without court permission.

²³⁴ Article 359 of the Code of Penal Procedure (CPP). Act of 6 June 1997 – Code of Criminal Procedure, Dz. 1997 Nr 89 poz. 555.

²³⁵ See e.g. European Court, *Maciejewski v. Poland*, App. No. 3447/05 (2015).

²³⁶ Polish and international organisations advocating for its repeal include the Ombudsman, institutions of the Council of Europe and the UN, as well as Polish and international non-governmental organisations (NGO), including the Helsinki Foundation for Human Rights, which launched the social campaign 'Delete 212 PC', the International Press Institute, Reporters Without Borders and others. NGOs have asked the Committee of Ministers of the Council of Europe hold that decriminalising the offense of defamation, or at least removing the sanction of imprisonment, is the only way to stop repeat violations; see [Letter to the Committee on the Execution of Judgments](#), 11 February 2020.

²³⁷ Judgment of the Supreme Court of 26.10.2001, Case No. V CKN 195/01. See also M. Pazdan in: Civil Code, Commentary to art. 1-44910, Vol 1, (ed.) K. Pietrzykowski, art. 23 k.c., Legalis.

²³⁸ Judgment of the District Court in Warsaw of 30.09.2016, Case No. VI ACa 390/15, LEX nr 2279523.

²³⁹ Case No. IV C 1300/20, District Court in Warsaw.

- ²⁴⁰ European Centre for Press & Media Freedom, [The Media Freedom Rapid Response supports Gazeta Wyborcza in Poland](#), 6 July 2020.
- ²⁴¹ OKO.press received the [Index on Censorship's 2020 journalism award](#).
- ²⁴² See European Centre for Press & Media Freedom, [Poland: OKO.press bears huge financial burden for legal threats against it](#), 23 November 2020.
- ²⁴³ *Wyborcza*, ['Wyborcza' won over PiS. 'Mafia state' is an acceptable criticism](#), 11 October 2019.
- ²⁴⁴ *Wyborcza*, [Kaczynski sued us for Srebrna. By describing the negotiations on the skyscraper, 'we hurt his personal interests'](#), 7 May 2019.
- ²⁴⁵ A. Gliszczyńska-Grabias and M. Jabłoński, [Is one offended Pole enough to take critics of official historical narratives to court?](#) Verfassungsblog.
- ²⁴⁶ Case No. III C657/19, Regional Court in Warsaw.
- ²⁴⁷ Case No. III K 536/17, Regional Court of Praga Północ in Warsaw.
- ²⁴⁸ Case No. I C 954/18.
- ²⁴⁹ Obligations Code, No. 001-22-117/01, 11 October 2001, Article 131.
- ²⁵⁰ *Ibid.*, Article 34.
- ²⁵¹ If one party wins the litigation only in part, costs are decided by the court, see Code of Civil Procedure Act, Article 154.
- ²⁵² Article 11, Code of Civil Procedure.
- ²⁵³ The amount of the fine is calculated according to a formula that takes into account the financial situation of the defendant.
- ²⁵⁴ Articles 163–165 of the Slovenian Criminal Code establish criminal offences of insult to the state and related matters, but these are not generally used in SLAPP cases.
- ²⁵⁵ Successful defendants are reimbursed their costs by the complainant or the private prosecutor, see Criminal Procedure Act, Article 69.
- ²⁵⁶ Slovenian Association of Journalists, [Analysis of lawsuits and media denunciations](#) (in Slovenian), 23 April 2015.
- ²⁵⁷ *Sarajevo Times*, [Large investigation in Slovenia, Croatia, and BiH: Millions of euros laundered in a well-designed scheme](#), 8 March 2021.
- ²⁵⁸ Slovenian Association of Journalists, [Misuse of lawsuits to intimidate and financially and administratively drain the media?](#) (in Slovenian), 25 September 2020.
- ²⁵⁹ Catch 22, [I never publish something that I know is not true](#). (in Slovenian), 31 July 2020.
- ²⁶⁰ Slovenian Association of Journalists, [Misuse of lawsuits](#), 25 September 2020.
- ²⁶¹ The UK has three separate legal systems: England and Wales, Scotland, and Northern Ireland (and while the legal system is the same as that of England, Wales has had its own parliament since 2007). There is a substantial overlap between these systems, but there are also significant differences. Importantly with regard to SLAPP cases, defamation law is the same in England and Wales, but different in Scotland and different again in Northern Ireland. This section is focused on defamation law in England and Wales, where most SLAPP actions are taken, as well as Northern Ireland, which has seen a rise in the number of SLAPP

cases. The Defamation and Malicious Publication (Scotland) Act 2021 has brought significant reform to Scots defamation law; the impact of this will be seen in future cases.

²⁶² [Comparative study of costs of defamation proceedings across Europe](#), Programme in Comparative Media Law and Policy at the Oxford Centre for Socio-Legal Studies, 2009.

²⁶³ It has been reported, for example, that Meghan Markle is seeking GBP 1.5 million in legal costs following her High Court privacy victory against British tabloids, see *Evening Standard*, [Meghan Markle seeking £1.5 million in legal costs after High Court privacy victory](#), 2 March 2021.

²⁶⁴ Foreign Policy Center, [The increasing rise, and impact, of SLAPPs: Strategic Lawsuits Against Public Participation](#).

²⁶⁵ See Lord Justice Jackson, [Review of civil litigation costs: final report](#), December 2009, tables 32 and 33; Ministry of Justice, [Costs protection in defamation and privacy claims: the Government's proposals: the Government's Response](#), 29 November 2018, pp.6, 7.

²⁶⁶ In England and Wales, the winning party in civil litigation is entitled to recover costs from the losing party. However, there is sometimes a discrepancy between the actual costs of litigation, which are the costs that each party pays to its own lawyers for running the case, and the recoverable costs, which the winning party recovers from the losing party by order of the court or by agreement. [See Review of civil litigation costs: Supplemental report fixed recoverable costs](#), the Right Honourable Lord Justice Jackson, July 2017.

²⁶⁷ See Carole Cadwalladr, [Support me against Arron Banks](#), Crowd Justice.

²⁶⁸ *Duffy and Anor v. Sunday Newspapers Limited* [2017] NIQB 71.

²⁶⁹ *Arthurs v. News Group Newspapers* [2017] NICA 70.

²⁷⁰ See ARTICLE 19, [UK: 19 organisations condemn the lawsuits against Catherine Belton and HarperCollins, deeming them 'SLAPPs'](#); IFEX, [UK: Rights groups condemn SLAPPs brought against journalist Tom Burgis by Kazakh mining company ENRC](#).

²⁷¹ Foreign Policy Center, [Unsafe for scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world](#).

²⁷² The case was dropped only after the defendant journalist had, in his own words, invested “vast amounts of time, energy, and money ... taking me away from my work for long periods”. See Global Investigative Journalism Network, [How to successfully defend yourself in Her Majesty's Libel Courts](#), 26 February 2020.

²⁷³ See ARTICLE 19, [SLAPP lawsuit suing Swedish online magazine Realtid filed in London](#), 4 December 2020. The obvious choice for the country to sue would have been Sweden, but under Swedish law the businessman would not have been able to sue the journalists personally – and by suing in London, the journalists are forced to run up significant legal costs.

²⁷⁴ See Foreign Policy Centre, [The UK as a key nexus for protecting media freedom and preventing corruption globally](#).

²⁷⁵ *The Times*, [Law firm 'hounded'](#), 2 June 2018.

²⁷⁶ See *Shift News*, [Henley and Partners](#), 24 December 2017 or [SLAPP threat from Azerbaijani](#), 7 July 2020; or Kobre and Kim, [Letter to the Centre for Investigative Journalism](#), 12 October 2020.

²⁷⁷ OpenDemocracy, [Jeffrey Donaldson sued us. Here's why we're going public](#), 10 May 2021.

- ²⁷⁸ Council of Europe, [BBC and The Guardian taken to court over Paradise Papers](#), 6 December 2018.
- ²⁷⁹ BBC, [Paradise Papers: BBC, Guardian and Appleby agree settlement](#), 4 May 2018.
- ²⁸⁰ *ZXC v. Bloomberg LP* [2020] EWCA Civ 611 (15 May 2020). See also Society of Editors, [Bloomberg ruling 'provides rich and powerful with smokescreen'](#), 15 May 2020.
- ²⁸¹ *Fulton v. Sunday Newspapers Limited* [2017] NICA 45.
- ²⁸² *McAuley v. Sunday Newspapers Limited* [2015] NIQB.
- ²⁸³ Foreign Policy Center, [A scandal of corruption and censorship: Uncovering the 1MDB case in Malaysia](#), 9 December 2020.
- ²⁸⁴ E. Caesar, [The reputation-laundering firm that ruined its own reputation](#), *New Yorker*, July 2018.
- ²⁸⁵ D. McCrum, [Wirecard and me: Dan McCrum on exposing a criminal enterprise](#), *Financial Times*, September 2020.
- ²⁸⁶ Protecting Public Watchdogs Across the EU: [A proposal for an EU Anti-SLAPP Law](#): 2020.
- ²⁸⁷ CASE, [Statement on the need for a Council of Europe recommendation on measures to deter and remedy the use of SLAPPs](#).
- ²⁸⁸ In line with ARTICLE 19's revised *Defamation principles*.

ARTICLE 19



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