



Blueprint for Free Speech

Media Freedom Facing SLAPP

Submission to the European Commission consultation (2021 Rule of Law report) regarding strategic lawsuits against public participation (SLAPPs)

March 2021

Blueprint for Free Speech

Media Freedom Facing SLAPP

Submission to the European Commission consultation (2021 Rule of Law report) regarding strategic lawsuits against public participation (SLAPPs)

1. INTRODUCTION

This report is Blueprint for Free Speech's ("**Blueprint**") submission to the Commission's stakeholder consultation for the preparation of the 2021 Rule of Law Report ("**Consultation**").

¹ It's a response to the question included in Section III(C) of the Consultation's questionnaire: "*Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse*". This memorandum examines cases selected from a number of EU Member States such as: Belgium, Bulgaria, France, Germany, Greece, Italy, Malta, Portugal, Romania, and Spain ("**Memorandum**").

In line with the instructions included in the Consultation's questionnaire, for each relevant EU jurisdictions this Memorandum aims to cover feedback and developments with regard to Strategic Lawsuits Against Public Participation ("**SLAPPs**"), convictions against journalists as well as any significant developments both as regards the legal framework and its implementation in practice.

SLAPPs are abusive lawsuits usually filed by powerful individuals (e.g. politicians or public officials acting in their private capacity) and companies as a means of silencing critical expression (e.g. journalism, peaceful protest or whistleblowing). SLAPPs can take many forms, they typically use long and costly legal procedures (such as claims of defamation, interference with contractual relations, and invasion of privacy or infringement of intellectual property) or the threat thereof to intimidate and harass journalists into silence.

The last section of this Memorandum includes also a list of possible initiatives and requests that may be submitted in the context of the Consultation, based on the analysis carried out in each jurisdiction.

Table of Contents

1.	INTRODUCTION	1
2.	BELGIUM	1
3.	BULGARIA	2
4.	FRANCE	3
5.	GERMANY	4
6.	GREECE	5
7.	ITALY	5
8.	MALTA	6
9.	PORTUGAL	7
10.	ROMANIA	8
11.	SPAIN	9
12.	CONCLUSIONS	9

2. BELGIUM

There is no current regulation in Belgium to prevent SLAPPs or to protect journalists from intimidations or other forms of abuses. To the best of our knowledge, the adoption of such a regulation is not currently foreseen in Belgium. The only recent development related to the Belgian legal framework applicable to journalists was the Draft Law of 7 May 2019 for the modification of the law of 11 December 1998 regarding classification and clearances, certificates and safety notices². Under Article 22 of the Draft Law, any journalists would have been exposed to criminal penalties if they were to reveal classified information. However, shortly after the publication of the draft law, the Belgian Vice Prime Minister confirmed that the law proposal would be modified in order to remove the provision related to classified information.³ To the best of our knowledge, no further version of the draft law has been published and there has been no update from the Belgian government on the timing for the adoption of the Draft Law.

A number of lawsuits, convictions or complaints against journalists have recently taken place in Belgium. According to a number of reports⁴, several complaints have been filed against Belgian investigative journalists David Leloup and Tom Cochez by companies or individuals belonging to the political and financial community of the city of Liège following an investigation into a suspected corruption case. It was reported that five complaints and two threats of complaints were made in 2018. The Belgian Association of Journalists has expressed concerns about the number of complaints targeting these journalists. This included a complaint made by pension fund Ogeo Fund, which claimed EUR 500,000 from the journalists⁵. However, Ogeo Fund has reportedly withdrawn the complaint before the court case started.⁶

Similarly, it has been reported that Socfin sued various NGOs in Belgium for defamation.⁷ Socfin is an agro-industrial group, which has expanded its plantations in several countries in Africa and Asia for several years. The negative impacts have been documented in numerous NGO reports and press articles. For ten years, nearly thirty defamation proceedings have been launched against NGOs and journalists. While these proceedings were almost never successful, they allegedly aim to intimidate NGOs and journalists. Recent complaints for defamation and violation of privacy were brought by Socfin in Belgium in December 2019. They relate to a report by the NGO FIAN Belgium in Sierra Leone, as well as to a series of press releases from NGOs (11.11.11, CNCD-11.11.11, FIAN Belgium, SOS Faim Belgium and SOS Faim Luxembourg).

Further, European newspaper EUobserver has been under the threat of legal action in Belgium in 2020.⁸ In this case, EUobserver published an article which alleged that Maltese authorities had hired Chelgate to defend the image of former Prime Minister Joseph Muscat during the investigation into the murder of Daphne Caruana Galizia and that Chelgate used a private intelligence firm in Luxembourg, Sandstone SA, to compile a report on Caruana Galizia's killing. EU Observer published some excerpts of the Sandstone's report. Sandstone filed a criminal complaint against EUobserver with the Luxembourg public prosecutor and now reportedly intends to sue EUobserver before civil courts in Belgium.

In addition to lawsuits and convictions, some cases of intimidation of journalists in Belgium have been reported. For instance, a case of Police intimidation of a journalist in Brussels was reported to the Council of Europe in June 2020.⁹ According to the report, a police officer confiscated the press card and identity papers of a journalist who was filming an arrest in a public space during a "*Black Lives Matter*" protest against racism in Brussels.

3. BULGARIA

The Bulgarian Constitution provides the main legal safeguards for the protection and activities of journalists and media (See Art. 39, 40 and 41). However, Bulgaria does not have legislation specifically protecting journalists against lawsuits and convictions, nor is there any perceived need by the legislator to adopt such legislation.

Attacks on journalists and attempts for intimidation continued to be frequently reported during the last months of 2020 and the beginning of 2021. Most recent examples are provided in the following paragraphs and mainly relate to criminal charges brought against journalists uncovering corruption cases.¹⁰

Stoyan Tonchev, the editor of the website Liberta.bg and a contributor for the Bivol.bg investigative outlet, has been facing sustained harassment by the Bulgarian prosecution office and the police in apparent retaliation for his journalistic work. He alleges that law enforcement agencies brought fabricated charges against him in an unsuccessful attempt to have him sectioned, or "involuntarily committed" to a mental health institution. In addition, Tonchev was informed that police had opened a pre-trial investigation for the charge of "hooliganism" against him for allegedly shouting at children from his house's balcony.

In June 2020, a well-known Bulgarian investigative journalist Nikolay Staykov of the Anti-Corruption Fund began receiving threatening phone calls as part of what he called a "coordinated" campaign of harassment he believes was linked to an ongoing investigative documentary about alleged state corruption.

The same Staykov, on 8 August 2020, was briefly detained by police while observing a protest rally in Sofia. Later he then learnt that a criminal case had been launched against him for "hooliganism". Staykov has denounced the "hooliganism" charge as trumped up and part of a wider campaign of legal harassment and pressure in retaliation for his documentary investigation into the country's judges and judicial system.

Investigative journalist Dimitar Stoyanov, a contributor to Bivol.bg and Bird.bg, is the target of a preliminary criminal investigation after a complaint by Bulgarian businessman Yordan Hristov, who is close to Prime Minister Boyko Borisov. On 8 August 2020, Stoyanov confronted Mr. Hristov in a public place and requested an interview regarding allegations of his involvement in an international money laundering scheme in Barcelona involving his wife, Borislava Yovcheva, and the current Prime Minister.

On 14 September 2020, police in the Bulgarian capital Sofia summoned crime reporter Martin Georgiev of the daily newspaper Sega for questioning in relation to inquiries and images he'd sent to the Interior Ministry about the behaviour of police officers during anti-government protests. The journalist said he was interrogated for half an hour without a lawyer present and his employer described the incident as a clear act of intimidation. The summons was launched

after Georgiev sent written questions to the press office of the Ministry regarding alleged uniform violations by the police at the protest the previous day.

In June 2020, Ivo Prokopiev, one of Bulgaria's biggest newspaper publishers and owner of the Economedia group, faced criminal charges in a fraud case which press freedom organisations warned may have been a politically motivated attempt to silence his outlet's critical reporting on the government.

In May 2020, Bulgarian freelance journalist Dimiter Petzov was arrested on drug offences – charges he claims were staged in order to intimidate him. Petzov, an award-winning investigative journalist focusing on local corruption in Bulgaria, was arrested on charges of illegal drug possession. He was detained for 24 hours after local police officers allegedly found 11.7 grams of ecstasy, 7.2 grams of heroin, 13 grams of amphetamine and 7.2 grams of cannabis in his car. Petzov denies the charges and him being in possession of drugs.

4. FRANCE

There is a reasonable amount of awareness and certainly an ongoing debate at the government level and in the public sphere in relation to SLAPP procedures. In 2017, Thierry Mandon, then Secretary of State for Higher Education and Research, even commissioned a report be drafted specifically on the topic. However, there is still no specific provision in the law concerning the safety of journalists, who are granted protection just as any other citizen. This is the case also in relation to protection against abusive lawsuits, which are sanctioned by a maximum fine of EUR 10,000, with no possibility to claim damages. Such level of fine is in no way dissuasive for large corporations or other complainants with considerable means which frequently engage in SLAPP procedures. Furthermore, according to the jurisprudence, lawsuits relating to facts that have been recognized as defamatory cannot constitute abusive proceedings.

However, France is working on the implementation of the EU Whistleblowing Directive, which also provides for certain protections for journalists who assist whistleblowers.¹¹ This comes at the right time. Indeed, in November 2020, the deputy head of the French newspaper Libération, Willy Le Devin, was questioned by the National Police General Inspectorate (so-called "IGPN") at the request of the Minister of the Interior Gérald Darmanin, in connection with a publication on the Bois-d'Aulne attack, during which a middle-school teacher, Samuel Paty, was decapitated for having shown his students cartoons of the Prophet Mohammed published in the paper Charlie Hebdo. Willy Le Devin's article quoted an internal police intelligence memo and the purpose of the questioning by the IGPN was to identify the source of the leak within the Yvelines police force.¹²

Sadly, in parallel, at the legislative level, we note an alarming development regarding the protection (or in this case, lack thereof) of journalists in their dealings with the police in France. The French government has proposed a draft bill, which is still under consideration before the legislature, which would create a new criminal offence for the publication of images of police officers in action (during demonstrations but also during police operations generally). Tensions between journalists and police forces have grown to the point that half of the 20 alerts published by the Council of Europe's Platform to promote the protection of journalism and safety of journalists¹³ since January 2020 relate to attacks, detention and imprisonment, as well as harassment and intimidation of journalists by the police. This includes, by way of example, journalists being arrested while reporting, confiscation of filming equipment, as well as flyers inciting hatred against journalists being made available in police stations.

We are also aware of a few additional lawsuits (or threat of) against journalists in France since the publication of the 2020 Rule of Law report. Jean Chéritel, CEO of the Chéritel group, for example, brought defamation charges against French journalist Inés Léraud following the publication of her investigation revealing illegal workers and label fraud by the Chéritel Group. The charges were dropped a few days before the trial was due to start in January 2021,¹⁴ similarly to the defamation charges that were previously brought against her by Christian

Buson,¹⁵ but such actions are a tried and tested way for influent businessmen and public figures in France to attempt to muzzle journalists and others speaking in the public interest.¹⁶

Similarly, it took going all the way to the Cour de Cassation for the mayor of Nice, Christian Estrosi, to finally lose his defamation suit against David Thompson in relation to statements in his book accusing the mayor of not having taken any action against an ISIS recruiter operating in the region.¹⁷

At the international level, we note that in October 2020, Turkey threatened legal actions over a cartoon of President Erdogan in the magazine Charlie Hebdo.¹⁸

On the NGO side, PPLAAF and Global Witness are currently facing defamation charges brought by Afriland First Bank RDC and businessman Dan Gertler in Paris for publishing a report accusing them of corruption, complicity in money laundering and violating the US sanctions system.¹⁹

5. GERMANY

Germany does not have legislation specifically protecting journalists against lawsuits and convictions, nor is there any perceived need by the legislator to adopt such.

The German Basic Law (constitution) protects and guarantees every person's freedom of speech, freedoms of press and reporting, as well as generally prohibits any censorship (Art. 5(1) of the Basic Law). This is enshrined in the German legal order through various protective mechanisms. These range from legislative guarantees for the independence of media and the press, to a journalist's rights to refuse evidence in civil, criminal and public procedural law. The freedoms of press and speech are limited only by the rights of other persons, as is manifested in criminal penalties for insults or defamation (the public claiming of untrue facts).

Nonetheless, a 2019 study by Otto Brenner Stiftung on lawyers' preventive strategies against the media found that publishers in Germany are increasingly inclined to sign a cease-and-desist declaration instead of pursuing legal proceedings.²⁰

With respect to potential and ongoing lawsuits, we note the two following examples we are aware of:

- In June 2020, the German Federal Minister of Internal Affairs Horst Seehofer announced in a newspaper interview that a criminal complaint would be filed against journalist Hengameh Yaghoobifarah after her controversial newspaper column on the "abolition of the police". The announcement received significant backlash, including from organizations such as Reporter ohne Grenzen,²¹ ultimately leading to an announcement that he would refrain from filing a criminal complaint.
- The German journalist union dju in ver.di has filed an appeal against the decision of the Higher Regional Court of Berlin which granted Georg Friedrich Prince of Prussia a preliminary injunction. The subject of the injunction were remarks in an article regarding more than 120 warnings and lawsuits the Prince recently filed against journalists, scientists and other organizations that have made statements related to the house of Hohenzollern.²²

The independence of and protection for journalists is generally deemed strong in Germany. There is very limited information on or occurrence of lawsuits against journalists in Germany. 2020 has nevertheless seen a sharp increase in crimes against the media (not limited to journalists). The statistics published by the German government reported 252 occurrences, more than double the number reported in 2019 (i.e. 104).²³ Page 5 of the report provides a full breakdown of the crimes by category, but we note for example that 30 were violent in nature, and while 144 were attributed to far-right groups/movements/association, only 42 to the far left. The increase has been attributed to volatility in and around demonstrations about the COVID-

19 measures. Journalists have criticized slow responsiveness from the German police in ensuring their safety in the lead-up and aftermath of attacks.

6. GREECE

There is no specific provision in Greek law to prevent SLAPPs against journalists. SLAPPs in Greece take the form of criminal charges for insult, defamation and slander.²⁴

Legislative reforms in 2016 aimed to limit compensation under libel laws²⁵ and in 2019 the *flagrante delicto* special procedure was abolished for defamation through the press.²⁶ At the time of the *flagrante delicto*, journalists could seek and obtain the arrest of the other party for false accusation so that both parties were arrested and put to trial the next day - this however was not possible when the accuser was a politician in the Greek parliament.

SLAPPs in Greece need to be considered within the peculiar context of the Greek media landscape.²⁷ Freedom of speech in Greece, and in particular journalists, face many structural hurdles, with SLAPP being only one of many.²⁸ There are many ways to influence the media and journalists.²⁹

This context is frequently mirrored in SLAPP lawsuits. Most defamation cases seem to be between politicians.³⁰ Often SLAPP-reverse lawsuits are filed from news outlets publishers against politicians.³¹ Generally, the more provocative, controversial and politically affiliated the news outlet or journalist is, the more likely it is to face/provoke a defamation lawsuit from the “opposing” side.³²

Therefore, it should be noted that it is often hard to distinguish between abusive SLAPP lawsuits against investigative journalism and transparency for accountability, and genuine claims against defamation, and false claims. Some recent SLAPP cases in Greece are provided in the following paragraphs.

- (1) 28 January 2021: Publisher Kourtakis was convicted of defamation against ship-owner Nikos Pateras.³³
- (2) 28 May 2020: A former aquaculture employee who uncovered an alleged scandal of toxic fish feed by the now largest Greek fish farmer, Andromeda, was sued by the company which requested EUR 1 million compensation. The civil law suit was rejected but there are further pending court cases.³⁴
- (3) 25 February 2021: Famous journalist Giorgos Tragkas faced a criminal lawsuit for defamation from Akis Skertos, Deputy Minister, for his comments regarding the government’s stance and alleged attempted cover-up of the sexual abuse scandals involving minors by the government-affiliated Director of the National Theatre. Police was reportedly trying to arrest the journalist, who is rumoured to be preparing the launch of a right-wing party in the coming weeks, which would harm the governing party. Tragkas announced he will retaliate by filing criminal charges against Skertos for false accusations.³⁵

Separately, it is worth mentioning that the police are attempting to prevent reporting of the situation in refugee camps.³⁶ Reporting on this topic is also being restricted by the management of Greek public TV and radio broadcaster ERT.³⁷ New restrictions were also put in place in order to restrict journalists from covering the increasing cases of police brutality during protests and demonstrations.³⁸

7. ITALY

In February 2021, two bills were submitted to the Italian Parliament which are relevant to SLAPPs. The first bill proposes the elimination of prison as a sanction for defamation in the press (and instead an increase of the financial penalties) and sets out a 'safe harbour' for editors and publishers, who could no longer be punished if they rectified their statements or

publications before the beginning of the criminal prosecution.³⁹ The second bill proposes to introduce the possibility for the plaintiff to receive compensation in the event the judge confirms the abusiveness of the litigation.⁴⁰

In a decision of 9 June 2020, the Italian Constitutional Court addressed the question of whether a prison sentence for defamation in the press would be in line with the Italian Constitution.⁴¹ The Court acknowledged the existence of bills aimed at tackling this point and postponed the hearing to 22 June 2021, in order to allow the Parliament to intervene with new legislation.

In the last months, journalists, activists, and other public watchdogs are increasingly facing SLAPP suits and other type of attacks such as intimidations and threats,⁴² insults,⁴³ smear,⁴⁴ and physical assaults.⁴⁵

According to the 2020 Reporters Sans Frontières index,⁴⁶ Italy ranks 41st in the world in relation to freedom of the press. In fact, it was found that 127 journalists have been threatened in the second quarter of 2020 in Italy.⁴⁷ The threats and attack against journalist have also increased on social networks and online platforms.⁴⁸

In August 2020, MP Walter Verini, Coordinator of the Committee of the Anti-Mafia Parliamentary Commission for the Protection of Threatened Journalists in Italy, announced that he would organize a hearing to follow up on the testimonies of threatened journalists and the Italian Federation of Journalists (IFJ).⁴⁹

As regards criminal investigations against journalists, the case of Roberto Saviano is widely known: in a Facebook post, he called the former Minister of Interior Affairs, Matteo Salvini, “*minister of the underworld*”. Salvini subsequently accused Saviano of defamation.⁵⁰

Kelly Duda, an American investigative journalist, has been criminally charged for having offended “*the honor or prestige of a magistrate*” (Art. 343 of Italian Criminal Code), a crime passible of a prison sentence of up to three years, for her criticism of an Italian public prosecutor’s behavior.⁵¹

However, there have been cases where journalists have been accused of intimidation, with the consequence of investigations being open against them.⁵²

8. MALTA

After the murder of Daphne Caruana Galizia, there were mass protests in the country, Prime Minister Joseph Muscat was forced to resign, and Malta saw a change in the country’s approach toward SLAPPs. These events led to a media reform and the adoption of the Media and Defamation Act⁵³ that decriminalized defamation and abolished criminal libel.⁵⁴ However, specific anti-SLAPP provisions proposed by the opposition were not included in the final version of the Act.⁵⁵

Journalists and public watchdogs are exposed to serious risks in Malta. Such risks can manifest themselves in different shapes: intimidation and threats,⁵⁶ insults,⁵⁷ harassment,⁵⁸ smear,⁵⁹ denial of access to information or press events,⁶⁰ arrest and detention,⁶¹ physical assaults resulting in injury or worse.

On 23 February 2021, Vince Muscat, who was arrested in connection with Galizia’s murder, was sentenced to 15 years in prison and EUR 42,000 in court fees.⁶² Muscat radically changed his trial strategy, pleading guilty but the full pardon requested by Muscat for his cooperation was refused.

Some of the most striking and recent cases include the SLAPP suit filed against Times of Malta (one of the most widely read online papers in Malta) by the Bulgarian co-owner of the Maltese bank Satabank.⁶³

On 8 December 2020, MaltaToday was threatened with data protection legal action by a banker demanding the removal of an article from the outlet's website alleging that the publication of the name amounts to the unlawful processing of her personal data.⁶⁴

Furthermore, a British/Azeri entrepreneur has been threatening defamation actions against five Maltese media outlets. Between May and June 2020, Times of Malta, MaltaToday, Malta Independent, Lovin Malta and The Shift News received letters contesting opinions and news articles and demanding that online articles be removed, noting that legal action would otherwise be taken to prevent defamation.⁶⁵

The request of the Croatian Kristijan Curavić goes in the same direction. He demanded that The Shift deposit EUR 300,000 for damages he claims to have suffered as a result of articles that were published by the online newspaper regarding a scam he was involved in.⁶⁶

On the contrary, the proceedings relative to threats against journalists have been often dismissed or closed with defendant's acquittal. Examples include the case of Neville Gafà, a former director in the Office of the Maltese Prime Minister, who threatened the well-known Italian journalist Nello Scavo on social media. On 29 August 2020 it was reported that Maltese police decided there was sufficient evidence to arraign Gafà over the alleged threat. On Tuesday 15 December 2020, after a number of delayed hearings, Neville Gafà was cleared of threatening Nello Scavo on social media. The judge found that there was insufficient evidence to support the criminal charge and acquitted Gafà.⁶⁷

The 2020 Reporters Sans Frontières index ranks Malta on the 81th place.⁶⁸

9. PORTUGAL

Portugal does not have any specific Anti-SLAPP legislations in force.⁶⁹

The 2015 Report: Criminalization of Defamation in Portugal⁷⁰ expressed concerns about the risk of paying high compensations that can reach amounts many times higher than criminal fines.

In terms of concrete examples, one of the most known SLAPP cases in Portugal was the lawsuit by the eucalyptus pulp producer Celtejo (Altri group) against the activist Arlindo Marquês, who accused the company of polluting the Tagus River. Since 2015, Marquês had been posting video and photographic evidence of the pollution in the river on social media networks, as well as sending it to the relevant authorities. Celtejo had advanced with a lawsuit in which it demanded EUR 250,000 in damages. However, the company announced in March 2019, that it ended the dispute.

In the course of 2020, Portuguese news sources have been active in defending citizens across the EU from the threat of SLAPP, such as the newspaper Público, one of the most read in the country,⁷¹ defending that broad EU legislation should be adopted as a priority. Público claimed that specific laws should be adopted in the EU to allow SLAPP actions to be rejected in the first stages of proceedings, punish SLAPP initiators for abusing laws and courts, and provide measures that allow victims to defend themselves.

The same news outlet⁷² reported the story of Pedro Triguinho, an activist against the pollution that faced a lawsuit by the vegetable oils manufacturer Fabrióleo. The prosecution asked for a prison sentence because, in the course of a popular demonstration, the environmentalist allegedly denounced Fabrióleo as a true polluter "cancer".⁷³ Pedro Triguinho, activist of the "BASTA" Movement, was acquitted in March 2019 by the Torres Novas Court of defamation charges brought by an administrator and owner of the company Fabrióleo, installed in Carreiro da Areia, in the city of Torrejana, who accused him of defamation for published statements about pollution on the Boa Água stream.

Pedro Triguinho faces another Fabrióleo lawsuit, moved by statements made in 2017 at the end of a demonstration by the Protejo movement, in Terreiro do Paço, in Lisbon, when he mentioned the high incidence of cancer in the population living in the area surrounding Fabrióleo's facilities.

From the two national examples given, we can conclude that there is a connection between SLAPP cases, environmental protection and activists in that sector.

The Portuguese Press Club has also been active in this field,⁷⁴ claiming that press freedom is constantly threatened by personalities in positions of power, who have sufficient social and financial resources to silence journalists and using as an example the Maltese journalist Daphne Caruana Galizia case.

10. ROMANIA

The rights to freedom of expression and access to information are enshrined in the Romanian Constitution, however Romanian media faces a series of challenges. Information on the types of adversities is scarce but based on a review of public sources, we note there are a few recurrent topics of concern. These largely relate to:

- Threats and general pressures that journalists are subject to both externally and internally within their organizations. For example:
 - The European Centre for Press & Media Freedom reported how journalists of the daily newspaper “*Libertatea*” faced legal action after denouncing irregularities in the management of a Romanian public television. The television was counselled by a large Romanian law firm and had the required funds to proceed with legal action and pressure the journalists.⁷⁵
 - A study conducted by the Centre for Independent Journalism in Romania (CIJR Study) reported that journalists employed by media institutions are often subject to the owners' private interests, which do not give weight to the public interest and could lead to journalists breaching ethical rules.⁷⁶
- Misunderstanding of data protection rules in the journalistic context – after the GDPR became applicable, there have been reported scenarios where the Romanian Data Protection Authority attempted to gain information about journalistic sources by misusing data protection provisions.⁷⁷

Romania's public interest guarantor for audio-visual communications is the Audio-Visual National Council (Council) whose competences are regulated under the Audio-Visual Law (Law No. 504/2002). The Council must ensure, amongst others, (i) observance of pluralistic ideas and opinions of transmitted content, and (ii) pluralistic sources of information. The Media Pluralism Monitor reports⁷⁸ that the Council is faced with low risks in terms of independence and effectiveness, however the CIJR Study shows that the Council fails to fulfil its mission and apply the same set of standards across the board. At EU level, the revised Audiovisual Media Services Directive, introduced additional provisions to ensure the independence of national media regulators. However, Romania is on the list of EU Member States that have failed to meet the transposition deadline.

Potential solutions to overcome some of the above issues in Romania could be (i) diversifying the sources of financing for media outlets – the CIJR Study considers this vital, particularly as journalists tackle topics that are not aligned with the financiers views; (ii) regulating strict conditions for bringing lawsuits that can hinder freedom of expression; and (iii) a correct application of data protection rules to ensure such rules do not impede investigative journalism and freedom of expression.

11. SPAIN

Spain does not currently have a specific anti-SLAPP legislation, but recently, on 19 February 2021,⁷⁹ it was submitted a bill to amend the Spanish Criminal Code seeking to reinforce the protection of the freedom of speech by de-criminalizing certain acts. The proposal seeks to review the Criminal Code articles, related, amongst others, to prison sentence and economic penalties for slandering or insulting the Spanish royal family (Art. 490(3) and Art. 491) and to economic penalties on slandering, insulting or seriously threatening the Government, certain Court members and judges and members of Army and Security forces (Art. 504). In this regard, the Spanish Government has recently supported the view of limiting the borders of criminal law in cases related to freedom of expression.⁸⁰

In terms of public society's initiatives, the Platform in Defence of Freedom of Information ("PDLI") held a conference in February 2020 to show Spain's failures to regulate and apply the limits to freedom of expression.⁸¹ In this conference the PDLI presented a report on the adaptation to international standards on freedom of expression of the Spanish Criminal Code.⁸²

One of the main SLAPP cases in 2020 in Spain was the EUR 1 million claim for damages launched by the industrial meat producer Coren against activist Manuel García, who claimed that the company's mismanagement of farming waste was polluting the As Conchas reservoir in A Limia, Orense. On 19 November 2020 Greenpeace⁸³ denounced Coren's practices to silence people critical of its business model and industrial farming.

Another significant instance worth of mention is the imprisonment on 16 February 2021 of rapper Pablo Hasél, sentenced to nine months for glorification of terrorism and insulting the monarchy. Pablo Hasél has a number of sentences pending over him. Hasél was again convicted in September 2018 for similar charges. The rapper's first conviction dates back to March 2015, a two-year prison sentence for the crime of exaltation of terrorism, for the lyrics of his songs and his tweets. The trials against Pablo Hasél and his recent imprisonment have made many voices in Spain rise. The PDLI argues that the proceedings against Hasél have not met international standards for freedom of expression and may be in violation of human rights.⁸⁴

Hasél's case is not isolated - Josep Miquel Arenas, a rapper commonly known as Valtonyc, was sentenced to over to three years imprisonment similar charges.

As regards specifically to legal actions against journalists in Spain, no journalist has been sentenced to prison for these charges in recent years.⁸⁵ According to the IPI, many criminal charges do reach the courts, but the majority of them are dismissed.⁸⁶

According to Joan Barata, media expert, the Constitutional and Supreme Courts' case law mostly aligns with that of the ECtHR, even though there are exceptions, specifically regarding criminal cases. Without prejudice, the mapping of media freedom of the ECPM which identifies limitations, threats and violations faced by media workers in 43 countries, reports 222 new threats to date.⁸⁷

12. CONCLUSIONS

Many steps have been taken towards greater recognition of high value of freedom of speech. However, despite increased public interest, pressure from the Council of Europe and the European Union it shall be noted that many key jurisdictions (such as Malta, Italy, Spain, Romania and Bulgaria,) no anti-SLAPP measures or safeguards against procedural abuses exist.

The European Union has a great responsibility in this regard. Therefore, due to the gravity and the growing relevance of the problem, we kindly ask the European competent authorities – the European Commission in particular – to:

- initiate discussions and organize joint meetings with Member States, national and local authorities, NGOs and all interested parties in order to raise awareness on gag lawsuits, conceive and seek approval on new and effective anti-SLAPPs measures, including policy, budgetary, legal measures;
- call and engage a wide range of experts including academics, lawyers, practitioners, policy and advocacy specialists, to look into a possible EU anti-SLAPP legislation;
- channel the energy into a European massive strategy and policies addressed to grant uniform and coherent protection to media and press professionals in all EU Member States and take consequent follow up actions;
- take appropriate measures, at legislative and soft law level, first of all by enacting a specific directive, in order to deter and remedy the use of SLAPPs and provide a regulatory framework with which the EU Member States can comply;
- ensure legal certainty with regard both to applicable law and to place of the hypothetical proceedings in order to prevent the use of forum shopping;
- ensuring a minimal set of legal and practical guidelines on how to protect the right to freedom of expression and other acts of public participation that the EU Member States shall follow in drafting and implement anti-SLAPPs tools;
- introduce mechanisms to dismiss SLAPPs suits in an early stage;
- introduce sanctioning measures towards who use SLAPP or similar practices;
- use the European resources to adopt measures aimed at give economic, financial and legal support to journalists and associations of journalists, which are victim of such SLAPP practices;
- introduce some corrective measures to national defamation rules in order to avoid their drift into reckless lawsuits

ENDNOTES

- ¹ See https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report_en
- ² <http://www.raadvst-consetat.be/dbx/avis/66143/projet>, in French
- ³ https://www.rtb.be/info/belgique/detail_didier-reynders-pret-a-modifier-le-texte-sur-les-informations-classifiees-qui-inquiete-les-journalistes?id=10308993
- ⁴ <https://rm.coe.int/annual-report-final-en/16809f03a9> and <https://www.ecoi.net/en/file/local/2022212/Threats+to+media+freedom+and+journalists+security+in+Europe+%5BDoc.+15021%5D.pdf>
- ⁵ https://www.rtb.be/info/regions/liege/detail_500-000-euros-reclames-a-un-journaliste?id=10192046
- ⁶ <https://www.goethe.de/ins/be/en/kul/prj/mfe/22063150.html?forceDesktop=1>
- ⁷ <https://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/belgique-socfin-poursuit-en-diffamation-des-ong-suite-%C3%A0-la-documentation-de-l'impact-de-ses-plantations-sur-les-communaut%C3%A9s-locales-en-afrique-et-en-asie/>
- ⁸ https://www.coe.int/en/web/media-freedom/detail-alert?p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=7&sojdashboard_WAR_coesojportlet_alertPK=74621674
- ⁹ <https://www.lesoir.be/306505/article/2020-06-11/l'intimidation-policiere-dun-journaliste-bruxelles-signalée-au-conseil-de-leurope>, in French
- ¹⁰ <https://www.mappingmediafreedom.org/country-profiles/bulgaria/>

11 https://s1.sphinxonline.net/resp/ENQUETES-JUSTICE/Transposition_directive_lanceurs_alerte/notice_consultation_publicue_transposition_directive_lanceurs_d_alerte.pdf

12 <https://rsf.org/en/news/france-rsf-denounces-use-concealment-professional-secrecy-accusation-and-calls-its-removal>

13 <https://mappingmediafreedom.ushahidi.io/views/map>

14 <https://ipi.media/mfrr-welcomes-dropping-of-defamation-action-against-french-journalist-ines-leraud/>

15 https://www.liberation.fr/debats/2020/05/08/defendons-la-liberte-d-informer-sur-le-secteur-agro-alimentaire_1787668/

16 The flurry of Bolloré suits in 2018 remains a blatant example, <https://rsf.org/en/news/we-wont-be-silenced-bollore-gag-suits>

17 <https://www.laprovence.com/actu/en-direct/6195388/christian-estrosi-definitivement-deboute-de-ses-poursuites-en-diffamation-contre-un-journaliste.html>

18 <https://www.bbc.co.uk/news/world-europe-54717587>

19 <https://www.fidh.org/en/region/europe-central-asia/france/france-reprisals-against-pplaa-and-global-witness-intensify-with-new>

20 See for example: <https://www.otto-brenner-stiftung.de/wissenschaftsportal/informationsseiten-zu-studien-neue-anwaltsstrategien-gegen-medien/>; https://www.otto-brenner-stiftung.de/fileadmin/user_data/stiftung/02_Wissenschaftsportal/03_Publikationen/AH99_Journalisten_Juristen.pdf

21 Reporters Without Borders, <https://www.reporter-ohne-grenzen.de/deutschland/alle-meldungen/meldung/beunruhigendes-signal-der-einschuechterung>

22 <https://mmm.verdi.de/beruf/slapp-pressefreiheit-under-pressure-67367>;
<https://dju.verdi.de/presse/pressemitteilungen/++co++f62356a8-570c-11eb-83c5-001a4a160119>

23 Deutscher Bundestag, Drucksache 19/25940, 18.01.2021, available at <https://dip21.bundestag.de/dip21/btd/19/259/1925940.pdf>

24 <https://greeklaw.github.io/gr/%CF%83%CF%85%CE%BA%CE%BF%CF%86%CE%B1%CE%BD%CF%84%CE%B9%CE%BA%CE%AE-%CE%B4%CF%85%CF%83%CF%86%CE%AE%CE%BC%CE%B7%CF%83%CE%B7.html>

25 <https://ipi.media/greece-passes-bill-aiming-to-combat-abuse-of-defamation-law-against-journalists/>

26 <https://www.thepressroom.gr/media/simantiki-allagi-sta-mme-katargeitai-aytoforo-gia-adikimata-dia-toy-typoy>

27 <https://ipi.media/the-covid-19-crisis-highlights-greeces-media-problem/>

28 <https://rsf.org/en/greece>

29 <https://www.news247.gr/media/paraitithike-i-dimitra-kroystalli-apo-to-vima-kataggellei-pieseis-apo-to-maximoy.9082824.html> and <https://www.news247.gr/media/elena-akrita-paraitithike-apo-ta-nea-meta-to-kopsimo-toy-keimenoy-tis.9079253.html>

30 See e.g. <https://www.thetoc.gr/tags/sukofantiki-dusfimisi/>

31 <https://vouliwatch.gr/news/article/arsy-asylas-gia-ton-paylo-pollaki> and <https://www.efsyn.gr/node/271436>

32 <https://eleftherostypos.gr/politiki/583597-katadiki-polaki-gia-sykofantiki-dysfimisi-kata-toy-georgiadi-tha-katabalei-15-000-eyro/>

33 See <https://www.documentonews.gr/article/akoma-mia-fora-enoxos-o-koyrtakhs-gia-sykofantikh-dysfhmish-toy-patera> and earlier conviction in 2017 <https://www.iefimerida.gr/news/337998/poini-fylakisis-3-eton-ston-ekdoti-ton-parapolitikon-gia-sykofantiki-dysfimisi-toy-n>

34 See <https://tvxs.gr/news/ellada/dikaiosi-toy-ixthyokalliergiti-stalakato-gia-tis-ixthyokalliergeies-poy-mas-taizoyn-toks>

35 <https://www.newsbreak.gr/media/182273/giorgos-tragkas-minysi-aki-skertso/> and <https://www.tanea.gr/2021/03/01/greece/kougias-katathetei-anafora-gia-ton-lignadi-ston-proedro-kai-ton-eisaggelea-tou-areiou-pagou/>

36 <https://ipi.media/greek-police-urged-to-explain-detention-of-germany-documentary-crew/>

37 <https://rsf.org/en/news/greek-public-broadcaster-censors-reports-islands-about-new-migrant-camps>

38 <https://rsf.org/en/news/greeces-new-guidelines-policing-protests-threaten-press-freedom>

39 <http://www.senato.it/leg/18/BGT/Schede/FascicoloSchedeDDL/ebook/50613.pdf>

40 <https://www.senato.it/leg/18/BGT/Schede/FascicoloSchedeDDL/ebook/50682.pdf>

41 https://www.cortecostituzionale.it/documenti/comunicatistampa/CC_CS_20200609201114.pdf

42 By way of example, we can mention a suspected car fire attack towards Claudio Brambilla and Luisa Biella, see https://www.ansa.it/lombardia/notizie/2020/10/14/a-fuoco-2-auto-di-giornalisti-in-brianza_0a4334fc-727d-47ff-a600-bf5bbc7528b0.html. On 10 October 2020, web reporter Saverio Tommasi was insulted and threatened by anti-face mask protesters as he was reporting from a demonstration in Rome, see <https://www.fnsi.it/giornalista-accerchiato-dai-negazionisti-a-roma-fnsi-e-sugc-identificare-e-denunciare-gli-aggressori>. On 19 October 2020, the journalist Mimmo Rubio was forced to barricade himself inside his house after receiving threats and intimidation from individuals allegedly linked to an organised crime group, see <https://www.fnsi.it/arzano-cori-e-insulti-a-cronista-barricato-in-casa-mauri-lo-stato-al-fianco-di-mimmo-rubio>. On 28 October 2020, two TV operators were intimidated and robbed of their equipment by black-clad men as they were covering anti-curfew protests in the Sicilian city of Palermo, see <https://www.fnsi.it/palermo-nuova-aggressione-a-troupe-rai-usigrai-intollerabile>. On 1 December 2020, a TV journalist was intimidated and forced to delete images taken from the location of an alleged murder, see <https://www.fnsi.it/manfredonia-aggredito-giornalista-della-tgr-rai-di-puglia-la-solidarieta-del-sindacato>.

43 On 30 October 2020, Valerio Lo Muzio, a video reporter was threatened by unidentified individuals while he was following a march in Bologna against Covid-19 measures, see <https://www.fnsi.it/bologna-minacce-al-videomaker-valerio-lo-muzio-la-solidarieta-del-sindacato>.

44 On 14 October 2020, the journalist Paolo Berizzi was targeted in a smear by a suspected neo-fascist group, see <https://www.fnsi.it/cologno-monzone-nuovi-insulti-a-paolo-berizzi-il-giornalista-non-fermerete-il-mio-lavoro>.

45 On 31 October 2020, the photojournalist, Tommaso Germogli, was diagnosed with a head trauma after being attacked while reporting on the adherence to the government's COVID-19 regulations, see <https://www.fnsi.it/firenze-fotoreporter-presi-a-pugni-assostampa-toscana-basta-aggressioni-ai-giornalisti>. Since 18 August 2020, the president of the Italian Federation of is victim of online intimidation after he publicly defended journalists who had been threatened for debunking an inaccurate report about migrants, see <https://www.ilfattoquotidiano.it/2020/08/21/minacce-dallestrema-destra-al-presidente-del-sindacato-giornalisti-beppe-giulietti-attacchi-perche-ha-difeso-chi-parla-di-migranti/5906933/>.

46 See <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>

47 See <https://www.ossigeno.info/giornalisti-le-127-intimidazioni-rilevate-da-ossigeno-in-italia-nel-secondo-trimestre-del-2020/>

48 By way of example, see <https://www.fnsi.it/il-tirreno-minacce-sui-social-alla-sede-di-pistoia-a-livorno-agredito-un-cronista-fnsi-e-ast-basta>

49 See <https://www.politicanews.it/altre-notizie/minacce-a-borrometi-verini-pd-solidarieta-al-giornalista-giovedi-audizione-in-comitato-antimafia-per-la-tutela-dei-giornalisti-minacciati-33094>

50 See <https://www.articolo21.org/2019/03/il-processo-a-saviano-occasione-per-accendere-la-luce-sulle-querele-temerarie/> and <https://www.repubblica.it/politica/2019/03/20/news/roberto-saviano-salvini-ministro-della-mala-vita-saro-processato-e-n-on-scappo-222033129/>

51 See https://www.ossigeno.info/ossigeno-assiste-kelly-duda-il-giornalista-usa-denunciato-a-napoli-da-un-pm/?preview_id=13200; <https://www.mediadefence.org/news/year-review-our-2019-annual-report>

52 See <https://napoli.repubblica.it/cronaca/2020/05/18/news/caserta-il-giornalista-mario-de-michele-indagato-per-simulazione-di-reato-256966534/>

53 <https://parlament.mt/media/93813/act-xi-media-and-defamation-act.pdf>, enacted on 24 April 2018

54 <http://iurismalta.com/media-defamation-act-2018/#:~:text=The%20Media%20and%20Defamation%20Act%2C%202018%20was%20enacted%20on%20the,defamation%2C%20slander%20under%20Maltese%20law>

55 <https://www.ecpmf.eu/archive/news/legal/malta-defamations-no-longer-a-crime-but-new-law-has-its-critics.html>

56 For instance: OPM official Neville Gafa threatens Times of Malta reporter, see <https://twitter.com/BorgJake/status/1204767906518704133>; Arson attack on car of well-known journalist Dione Borg, <https://www.maltatoday.com.mt/news/national/102540/car-belonging-to-pn-journalist-and-floriana-fc-secretary-general-dione-borg-set-on-fire#.YDaDRjGSmU>.

57 Minister tells reporter she should be sacked after she asked a question, see <https://timesofmalta.com/articles/view/watch-pn-slams-ministers-behaviour-with-net-journalist.837377>.

58 Maltese Blogger and Italian journalist harassed while leaving court, see <https://timesofmalta.com/articles/view/italian-journalist-threatened-by-neville-gafa-insulted-outside-court.821461>.

59 Official in PM's office smears The Shift News as "fake news", see <https://www.maltatoday.com.mt/news/national/78741/lorizzont-editor-who-called-journalists-traitors-lands-castille-job#.YDaK6zGSmUn>.

60 Journalists detained illegally by the Office of the Prime Minister, see <https://newsbook.com.mt/en/journalists-held-hostage/>; Shift News journalists denied access to MP tax declarations, see <https://theshiftnews.com/2021/02/23/the-shift-objects-to-denial-of-access-to-mps-tax-declarations/>.

61 Journalists detained illegally by the Office of the Prime Minister, see <https://newsbook.com.mt/en/journalists-held-hostage/>.

62 <https://www.maltatoday.com.mt/news/court-and-police/107896/live-three-men-accused-of-murdering-caruana-galizia-are-back-in-court#.YDZX1zGSmUk>

63 <https://timesofmalta.com/articles/view/satabank-co-owner-sues-times-of-malta-in-bulgaria.774038>

64 <https://www.maltatoday.com.mt/news/national/99321/azerbaijan-ruler-ilham-alievys-daughters-transferred-14-million-to-dubai-co-from-pilatus-accounts#.X8dV8nn7SUm>

65 <https://theshiftnews.com/2020/07/07/slapp-threat-from-azerbaijani-british-national-turab-musayev/>

66 See <https://theshiftnews.com/2020/03/17/croatian-behind-white-flag-scheme-wants-the-shift-to-pay-him-e300000/>

67 <https://timesofmalta.com/articles/view/neville-gafa-cleared-over-nello-scavo-threatening-tweet.839057>; <https://www.maltatoday.com.mt/news/court-and-police/106513/neville-gafa-acquitted-of-threatening-italian-journalist-in-migration-tweet#.YDT1yDGSmUk>

68 <https://rsf.org/en/ranking#>, see also <https://theshiftnews.com/2019/03/07/reporters-without-borders-condemns-latest-threat-against-the-shift-news/>

69 <https://www.ecpmf.eu/archive/news/ecpmf/letter-to-ec-vp-vera-jourova-on-anti-slapp-legislation.html>

70 http://legaldatabase.freemedia.at/wp-content/uploads/2015/06/PortugalCriminalDef_IPI_POR.pdf

71 See <https://www.publico.pt/2020/11/16/opinio/noticia/proteger-povos-ue-ameaca-slapp-1939337>

72 <https://www.publico.pt/2020/02/14/sociedade/opinio/proteger-denuncia-atentados-ambientais-1902854>

73 <https://www.publico.pt/2020/02/14/sociedade/opinio/proteger-denuncia-atentados-ambientais-1902854>

74 See <http://www.clubedeimprensa.pt/Artigo/5212>

75 See <https://www.mappingmediafreedom.org/country-profiles/romania/>

76 See <https://cji.ro/starea-mass-media-2020/>

77 See <https://euobserver.com/justice/143356>

78 See <https://cmpf.eui.eu/mpm2020-results/>

79 https://www.congreso.es/web/guest/proposiciones-de-ley?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&iniciativas_mode=mostrarDetalle&iniciativas_legislatura=XIV&iniciativas_id=122/000124

80 <https://www.rtve.es/noticias/20210208/justicia-revisara-delitos-relacionados-libertad-expresion/2074240.shtml>
81 <http://libertadinformacion.cc/la-pdli-apela-al-derecho-internacional-para-instar-a-reformar-el-codigo-penal-en-materia-de-libertad-de-expresion/>
82 http://libertadinformacion.cc/wp-content/uploads/2020/02/Informe_PDLI_C%C3%B3digo-Penal_JBARATA_2020.pdf
83 https://es.greenpeace.org/es/wp-content/uploads/sites/3/2020/11/InformeCorenContraManuel_castellano.pdf
84 See <http://libertadinformacion.cc/informe-pdli-por-que-el-codigo-penal-espanol-vulnera-los-estandares-internacionales-sobre-libertad-de-expresion/>
85 <https://www.indexonensorship.org/campaigns/the-laws-being-used-to-silence-media/>
86 <https://ipi.media/in-spain-journalists-covering-corruption-are-targeted-in-court/>
87 See Mapping Media Freedom, available at: <https://www.ecpmf.eu/monitor/mapping-media-freedom/>