

2021 Rule of Law Report – targeted stakeholder consultation

About you

I am giving my contribution as:

- Civil society organisation / NGO

Organisation name:

Blueprint for Free Speech

Main areas of work:

Anti-corruption

URL:

<https://www.blueprintforfreespeech.net/>

Country of origin:

Germany

Name:

Suelette Dreyfus

Email address:

info@blueprintforfreespeech.net

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Questions on horizontal developments

Please provide any relevant information on horizontal developments here:

We wish to respond to the following question included in Section III(C) of the Consultation's questionnaire: "Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse". We will also include comments about similar actions taken against civil society activists.

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 and others into silence.

There has been increased recognition of the problem posed by SLAPPs in recent years. The European Campaign for Press and Media Freedom (ECPMF), which identifies limitations, threats and violations faced by media workers in 43 countries, reports 222 new threats to date (see Mapping Media Freedom, available at: <https://www.ecpmf.eu/monitor/mapping-media-freedom/>). Likewise, the 14 organisations reporting to the Council of Europe's Platform for the Safety of Journalists received information on over 1,100 pending legal actions against journalists in 2019 (see 2020 Report, page 22, available at: <https://rm.coe.int/annual-report-final-en/16809f03a9>)

In some jurisdictions, the use of SLAPPs against civil society activists is either prominent or on the increase. The examples of Portugal and Poland reveal distinct threats for environmental and LGBTI activists respectively.

However, despite increased public interest, pressure from the Council of Europe and the European Union we note that in 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, 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 possible EU anti-SLAPP legislation along the lines of the model Directive (https://www.article19.org/wp-content/uploads/2020/12/Anti_SLAPP_Model_Directive-2-1.pdf);

- channel the energy into an 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 SLAPP suits in an early stage;

- introduce sanctioning measures towards who use SLAPPs or similar practices;

- use European resources to adopt measures aimed at give economic, financial and legal support to journalists and associations of journalists, which are often victims of such practices;

- introduce some corrective measures to national defamation rules in order to avoid their drift into reckless lawsuits.

Questions on developments in Member States

Framework for journalists' protection – lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

Belgium

A number of lawsuits, convictions or complaints against journalists have recently taken place in Belgium. Several complaints have been filed against investigative journalists David Leloup and Tom Cochez by companies or individuals belonging to the political and financial community of the city of Liège (<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>) following an investigation into suspected corruption. 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, including a now withdrawn complaint made by pension fund Ogeo Fund, which claimed EUR 500,000 (https://www.rtbef.be/info/regions/liege/detail_500-000-euros-reclames-a-un-journaliste?id=10192046 ; <https://www.goethe.de/ins/be/en/kul/prj/mfe/22063150.html?forceDesktop=1>).

Agro-industrial group Socfin has sued various Belgian NGOs for defamation, launching nearly 30 actions over the past decade. (<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/>). While Socfin's actions are 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, relating to a report by the NGO FIAN Belgium in Sierra Leone (11.11.11, CNCD-11.11.11, FIAN Belgium, SOS Faim Belgium and SOS Faim Luxembourg).

Newspaper EUobserver has been under the threat of legal action in 2020

([https://www.coe.int/en/web/media-freedom/detail-alert?](https://www.coe.int/en/web/media-freedom/detail-alert?p_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)

[p_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](https://www.coe.int/en/web/media-freedom/detail-alert?p_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)) after publishing 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.

According to a report made to the Council of Europe in June 2020 (<https://www.lesoir.be/306505/article/2020-06-11/lintimidation-policiere-dun-journaliste-bruxelles-sigalee-au-conseil-de-leurope>, in French), 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 in Brussels.

Bulgaria

Stoyan Tonchev, the editor of website Liberta.bg and a contributor to Bivol.bg, has been facing sustained harassment by the Bulgarian prosecutor's office and 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 involuntarily committed to a mental health institution. 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 balcony.

In June 2020, 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 into the country's judges and judicial system.

On 8 August 2020, Staykov was briefly detained by police while observing a protest rally in Sofia. He then learnt that a criminal case had been launched against him for “hooliganism”. Staykov has denounced the charge as part of a wider campaign of legal harassment.

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 Sofia summoned crime reporter Martin Georgiev of the daily newspaper Sega for questioning in relation to inquiries he had 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. His employer described the incident as a clear act of intimidation.

In June 2020, Ivo Prokopiev, 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 reporting.

In May 2020, Bulgarian freelance journalist Dimiter Petzov was arrested on drug offences – charges he claims were staged in order to intimidate him. Petrov was detained for 24 hours after local police 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.

In 2020, the Bulgarian LGBTI organisation Deystvie faced the threat of prosecution after a complaint about promoting "fascist or anti-democratic ideology" was filed by a far right political party. The complaint was directly related to work to have same-sex marriages conducted abroad recognised in Bulgaria and a demonstration sanctioned by the appropriate authorities.

France

There is an ongoing debate about SLAPP procedures in France. Protection against abusive lawsuits is limited by a maximum fine of EUR 10,000, with no possibility to claim damages. This is in no way dissuasive for wealthy complainants. Lawsuits relating to facts that have been recognized as defamatory cannot constitute abusive proceedings.

In November 2020, the deputy head of the French newspaper Libération, Willy Le Devin, was questioned by the National Police General Inspectorate (IGPN) at the request of Minister of the Interior Gérald Darmanin, in connection with a publication on the Bois-d'Aulne attack. Willy Le Devin's article quoted an internal police intelligence memo. The purpose of the questioning by the IGPN was to identify the source of the leak within the Yvelines police force (<https://rsf.org/en/news/france-rsf-denounces-use-concealment-professional-secrecy-accusation-and-calls-its-removal>).

The government has proposed a draft bill, which would create a new criminal offence for the publication of images of police officers in action. Tensions between journalists and police forces have risen 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 journalists (<https://mappingmediafreedom.usahidi.io/views/map>) since January 2020 relate to attacks, detention and imprisonment, as well as harassment and intimidation of journalists by the police.

Jean Chéritel, CEO of the Chéritel group brought defamation charges against Inés Léraud following the publication of her investigation revealing illegal workers and label fraud. The charges were dropped a few days before the trial was due to start in January 2021 (<https://ipi.media/mfrr-welcomes-dropping-of-defamation-action-against-french-journalist-ines-leraud/>). 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 (the flurry of Bolloré suits in 2018 remains a blatant example, <https://rsf.org/en/news/we-wont-be-silenced-bolloré-gag-suits>).

A defamation suit brought by the mayor of Nice, Christian Estrosi 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 reached the Cour de Cassation before being dismissed (<https://www.laprovence.com/actu/en-direct/6195388/christian-estrosi-definitivement-deboute-de-ses-poursuites-en-diffamation-contre-un-journaliste.html>).

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

Germany

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.

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 (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).

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 (Reporters Without Borders, <https://www.reporter-ohne-grenzen.de/deutschland/alle-meldungen/meldung/beunruhigendes-signal-der-einschuechterung>), 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 (<https://mmm.verdi.de/beruf/slapp-pressefreiheit-under-pressure-67367>; <https://dju.verdi.de/presse/pressemitteilungen/++co++f62356a8-570c-11eb-83c5-001a4a160119>).

2020 has 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) (Deutscher Bundestag, Drucksache 19/25940, 18.01.2021, available at <https://dip21.bundestag.de/dip21/btd/19/259/1925940.pdf>). 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.

Greece

SLAPPs in Greece need to be considered within the peculiar context of the Greek media landscape (<https://ipi.media/the-covid-19-crisis-highlights-greeces-media-problem/>). Freedom of speech in Greece, and in particular journalists, face many structural hurdles, with SLAPP being only one of many (<https://rsf.org/en/greece>).

Most defamation cases seem to be between politicians (see e.g. <https://www.thetoc.gr/tags/sukofantiki-dusfimisi/>). Reverse SLAPP lawsuits are also filed by publishers against politicians (<https://vouliwatch.gr/news/article/arsi-asylias-gia-ton-paylo-pollaki> and <https://www.efsyn.gr/node/271436>). 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. (<https://eleftherostypos.gr/politiki/583597-katadiki-polaki-gia-sykofantiki-dysfimisi-kata-toy-georgiadi-tha-katabalei-15-000-eyro/>)

28 January 2021: Publisher Kourtakis was convicted of defamation against ship-owner Nikos Pateras (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>).

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

25 February 2021: journalist Giorgos Tragkas faced a criminal lawsuit for defamation from Akis Skertos, Deputy Minister, for comments regarding the attempted cover-up of sexual abuse scandals involving minors by the government-affiliated Director of the National Theatre. Tragkas announced he will retaliate by filing criminal charges against Skertos for false accusations (<https://www.newsbreak.gr/media/182273/giorgos-tragkas-minysi-aki-skertso/> <https://www.tanea.gr/2021/03/01/greece/kougias-katatheti-anafora-gia-ton-lignadi-ston-proedro-kai-ton-eisaggelea-tou-areiou-pagou/>)

Separately, police are attempting to prevent reporting of the situation in refugee camps (<https://ipi.media/greek-police-urged-to-explain-detention-of-germany-documentary-crew/>). Reporting on this topic is also being restricted by the management of Greek public TV and radio broadcaster ERT (<https://rsf.org/en/news/greek-public-broadcaster-censors-reports-islands-about-new-migrant-camps>). New restrictions were put in place in order to restrict journalists from

covering cases of police brutality during protests and demonstrations(<https://rsf.org/en/news/greeces-new-guidelines-policing-protests-threaten-press-freedom>).

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 sets out a 'safe harbour' for editors and publishers, who could no longer be punished if they rectified statements before the beginning of the criminal prosecution (<http://www.senato.it/leg/18/BGT/Schede/FascicoloSchedeDDL/ebook/50613.pdf>). 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 (<https://www.senato.it/leg/18/BGT/Schede/FascicoloSchedeDDL/ebook/50682.pdf>).

In a decision of 9 June 2020, the Italian Constitutional Court addressed whether a prison sentence for defamation would be in line with the Italian Constitution (https://www.cortecostituzionale.it/documenti/comunicatistampa/CC_CS_20200609201114.pdf). The Court postponed the hearing to 22 June 2021, in order to allow the Parliament to consider new legislation.

According to the 2020 Reporters Sans Frontières index (see <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>), 127 journalists have been threatened in the second quarter of 2020 in Italy (see <https://www.ossigeno.info/giornalisti-le-127-intimidazioni-rilevate-da-ossigeno-in-italia-nel-secondo-trimestre-del-2020/>). Threats have also increased on social networks and online platforms.

In August 2020, MP Walter Verini announced that he would organize a hearing to follow up on the testimonies of threatened journalists and the Italian Federation of Journalists (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>).

As regards criminal investigations, the case of Roberto Saviano is widely known (see <https://www.articolo21.org/2019/03/il-processo-a-saviano-occasione-per-accendere-la-luce-sulle-querele-temerarie/> ; https://www.repubblica.it/politica/2019/03/20/news/roberto_saviano_salvini_ministro_della_mala_vita_saro_processato_e_non_scappo_-222033129/).

American investigative journalist Kelly Duda has been charged with offending “the honor or prestige of a magistrate” (Art. 343 of Italian Criminal Code), a crime which carries a potential prison sentence of 3 years. (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>).

There have also been cases where journalists have been accused of intimidation and investigations opened against them (see https://napoli.repubblica.it/cronaca/2020/05/18/news/caserta_il_giornalista_mario_de_michele_indagato_per_simulazione_di_reato-256966534/).

Malta

After the murder of Daphne Caruana Galizia, Malta saw a change in the country's approach toward SLAPPs. The Media and Defamation Act (<https://parlament.mt/media/93813/act-xi-media-and-defamation-act.pdf>, enacted on 24 April 2018) decriminalized defamation and abolished criminal libel (<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>). However, specific anti-SLAPP provisions proposed by the opposition were not included in the final version of the Act (<https://www.ecpmf.eu/archive/news/legal/malta-defamations-no-longer-a-crime-but-new-law-has-its-critics.html>).

A SLAPP suit was filed against Times of Malta by the Bulgarian co-owner of the Maltese bank Satabank (<https://timesofmalta.com/articles/view/satabank-co-owner-sues-times-of-malta-in-bulgaria.774038>).

On 8 December 2020, MaltaToday was threatened with a data protection 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 (https://www.maltatoday.com.mt/news/national/99321/azerbaijan_ruler_ilham_aliyevs_daughters_transferred_14_million_to_dubai_co_from_pilatus_accounts#.X8dV8nn7SUM).

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

Croatian Kristijan Curavić demanded that online newspaper The Shift deposit EUR 300,000 for damages he claims to have suffered as a result of articles regarding a scam he was involved in (see <https://theshiftnews.com/2020/03/17/croatian-behind-white-flag-scheme-wants-the-shift-to-pay-him-e300000/>).

Proceedings relating to threats against journalists have been often dismissed or closed with the defendant's acquittal. Neville Gafà, a former director in the Office of the Maltese Prime Minister, threatened 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. (<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).

Poland

Poland has seen a rise in the use of SLAPPs against LGBTI activists, in the wake of the establishment of Polish municipal Family Charters (also known as "LGBT free zones." The actions appear to be motivated by a desire to keep the explicitly anti LGBT elements of these charters out of the public eye (<https://balkaninsight.com/2020/03/04/polish-activists-face-legal-action-over-atlas-of-hate/>).

Ordo Iuris, a legal organisation with close links to the governing party, which is closely associated with the Charters, has launched the following defamation cases against activists who have drawn attention to these clauses:

On 25 April 2020, Jakub, Paulina and Paweł received a first court summons from Ordo Iuris, in the name of Przysucha powiat. The trial will be in Radom regional court (Sąd Okręgowy).

On 5 November 2020, Jakub, Paulina and Paweł received a second court summons from Ordo Iuris, in name of Tatra powiat. The trial will be in Nowy Sącz regional court (Sąd Okręgowy).

In February 2021, Jakub, Paulina and Paweł received a third court summons from Ordo Iuris, in the name of Przasnysz powiat. The procedure for this case has already started in court in Ostrołęka.

On 25 February 2021 Jakub, Paulina and Paweł received a fourth court summons from Ordo Iuris, in the name of Tarnów powiat. The case will be heard in Tarnów regional court. On the same day Ordo Iuris announced they would sue Sylwia Spurek MEP for her criticism of "LGBT-free zones".

On 27 February 2021 the President of Ordo Iuris, Jerzy Kwaśniewski announced in his newsletter that the next two summons are being prepared.

The cases have similar demands, calling for significant compensation and public apologies. The cases are due to be heard in 2021.

Portugal

Portugal does not have any specific Anti-SLAPP legislation in force, but the 2015 Report: Criminalization of Defamation in Portugal (http://legaldb.freemedia.at/wp-content/uploads/2015/06/PortugalCriminalDef_IPI_POR.pdf) expressed concerns about the risk of compensation payments that can reach amounts many times higher than criminal fines. Portugal has particular problems with SLAPP suits aimed at environmental activists.

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 SLAPPs, such as the newspaper Público, one of the most read in the country (see <https://www.publico.pt/2020/11/16/opiniao/noticia/proteger-povos-ue-ameaca-slapp-1939337>), has demanded 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 outlet (<https://www.publico.pt/2020/02/14/sociedade/opiniao/proteger-denuncia-atentados-ambientais-1902854>) 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" (<https://www.publico.pt/2020/02/14/sociedade/opiniao/proteger-denuncia-atentados-ambientais-1902854>). 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.

The Portuguese Press Club has also been active in this field (see <http://www.clubedeimprensa.pt/Artigo/5212>), 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.

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.

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 (see <https://www.mappingmediafreedom.org/country-profiles/romania/>).

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 (see <https://cji.ro/starea-mass-media-2020/>).

Misunderstanding of data protection rules in the journalistic context has also been an issue. 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 (see <https://euobserver.com/justice/143356>).

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 reports (see <https://cmpf.eui.eu/mpm2020-results/>) that the Council is faced with 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.

Spain

Spain does not currently have a specific anti-SLAPP legislation, but a bill submitted on 19 February 2021 (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), seeks to reinforce freedom of speech by de-criminalizing certain acts. The proposal seeks to review the Criminal Code articles, related to slandering or insulting the Spanish royal family (Art. 490(3) and Art. 491), 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 limiting the borders of criminal law in cases related to freedom of expression (<https://www.rtve.es/noticias/20210208/justicia-revisara-delitos-relacionados-libertad-expresion/2074240.shtml>).

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. (<http://libertadinformacion.cc/la-pdli-apela-al-derecho-internacional-para-instar-a-reformar-el-codigo-penal-en-materia-de-libertad-de-expresion/>). In this conference the PDLI presented a report on the adaptation to international standards on freedom of expression of the Spanish Criminal Code (http://libertadinformacion.cc/wp-content/uploads/2020/02/Informe_PDLI_C%C3%B3digo-Penal_JBARATA_2020.pdf).

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 (https://es.greenpeace.org/es/wp-content/uploads/sites/3/2020/11/InformeCorenContraManuel_castellano.pdf).

Another significant instance is the imprisonment on 16 February 2021 of rapper Pablo Hasél, sentenced to nine months for glorification of terrorism and insulting the monarchy. 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 been controversial in Spain. 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 (see <http://libertadinformacion.cc/informe-pdli-por-que-el-codigo-penal-espanol-vulnera-los-estandares-internacionales-sobre-libertad-de-expresion/>).

Hasél’s case is not isolated - Josep Miquel Arenas, a rapper commonly known as Valtonyc, was sentenced to over to three years imprisonment on similar charges and Spain has sought his extradition.

Many criminal charges against journalists do reach the courts, but the majority of them are dismissed (<https://ipi.media/in-spain-journalists-covering-corruption-are-targeted-in-court/>).