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27 Septembre 2023

**Joint public hearing<sup>2</sup> with the Committee on the Honouring of Obligations and Commitments by Member States on**

**“SLAPPs as a threat to media pluralism and measures implemented to counteract them”**

**Mr Pier Luigi Parcu**, Director, Centre for Media Pluralism and Media Freedom, European University Institute, Florence, Italy

**Ms Giulia Lucchese**, Media and Internet Governance Division, Information Society Department, Directorate General of Human Rights and Rule of Law, Council of Europe

**Mr Stefan Schennach**, rapporteur of the Committee on Culture, Science, Education and Media on “Countering SLAPPs: an imperative for a democratic society”

The **Chairperson of the Monitoring Committee** opened the hearing. He introduced the guests and emphasised that, according to the Reykjavik principles, “free, independent, plural and diverse media constitutes one of the cornerstones of a democratic society and journalists and other media workers should be afforded full protection under the law”. In its work, including in the context of periodic monitoring, the Committee was hearing ever more frequent reports of SLAPPs being used to silence troublesome voices. To protect whistleblowers and journalists against such procedures there had to be effective laws but these also had to be applied by the courts. The rule of law, democratic institutions and human rights had to function together.

The **Chairperson of Committee on Culture, Science, Education and Media** pointed out that promoting respect for media freedom was one of the priorities of the Latvian presidency of the Committee of Ministers. She praised Mr Schennach’s work in his capacity of rapporteur on countering SLAPPs.

**Mr Parcu** stressed that SLAPPs sought to restrict freedom of expression and undermined democracy. He then provided details on the use of SLAPPs in different Council of Europe member States, according to the data of the Centre for Media Pluralism and Media Freedom, indicating that the number of SLAPPs had recently increased in Poland, Slovakia, Greece and Serbia. In the countries of the former communist bloc, SLAPPs were brought about all by individuals or institutions close to those in power, and this was for political reasons, whereas in the founding countries of the European Union – they were brought by companies or businessmen. Those who used SLAPPs took advantage of legal loopholes and, in particular, criminal law provisions on defamation (which had been decriminalised in only six of the 32 countries studied by the Centre for Media Pluralism and Media Freedom). Accordingly, the means of defence against them were limited, as confirmed by the case of the Maltese journalist Daphne Caruana Galizia, who had been assassinated in 2017. Discussions were ongoing within the European Union’s institutions on a proposal for a directive aimed at protecting individuals against SLAPPs, but the most recent amendments made to the text

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<sup>1</sup> Approved and declassified by the Committee on Culture, Science, Education and Media during its meeting on Tuesday 10 October 2023.

<sup>2</sup> Held in Strasbourg on Tuesday 20 June 2023 from 11 am to 12.30 pm (Room 10).

reduced its scope. Mr Parcu recommended adopting the original version of the draft directive, decriminalising defamation and creating a SLAPPs database as well as a European compensation fund for journalists. He thought that damages should be awarded to the journalists targeted by SLAPPs. In conclusion, he stressed that those who used SLAPPs usually lost their court cases. (the full text of his statement is available from the Secretariat).

**Ms Lucchese** said that the Council of Europe was currently working on a draft Committee of Ministers recommendation on countering SLAPPs, which would set out a definition of SLAPPs and be applicable to all types of judicial proceedings. It would encourage the member States to pass legislation enabling anyone participating in public life to do so in safety and without fear as well as specific anti-SLAPP laws. The recommendation would also cover procedural safeguards, such as the early dismissal of cases against participants in public life, the allocation of court costs, the reimbursement of procedural costs and also damages for victims. It would also urge the member States to take measures in the areas of training and awareness-raising. It was likely that the Committee of Ministers would adopt it at the beginning of 2024. Ms Lucchese added that, under the Latvian presidency, the Council of Europe would soon launch a campaign to promote the implementation of Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors. (the text of her statement is available from the Secretariat).

**Mr Schennach** elaborated on the definition of SLAPPs that he would use in his future report. He saw them as “abusive litigation and legal tactics designed to prevent the dissemination of information on sensitive issues and to silence those wishing to report on a matter of public interest”. This definition highlighted the fact that SLAPPs were intended to block the dissemination of information on sensitive issues, such as environmental protection and the fight against corruption, and their use was conditioned by the existence of legal loopholes. SLAPPs were infringements not only of freedom of expression but also of the freedoms of NGOs and rights defenders reporting on matters of public interest. Mr Schennach proposed five key actions to combat this phenomenon: defining it more clearly, laying down procedural rules in cases brought using SLAPPs, introducing deterrents, providing appropriate assistance to victims and taking steps to raise awareness. His report would be ready in October.

**Mr Jensen** asked the experts how the compensation fund for journalists could be organised and how it might function in practice.

**Lord Foulkes** recalled that the question of countering SLAPPs had been closely examined by three general rapporteurs on media freedom and considered recently by the Committee on Culture, Science, Education and Media during an exchange of views in London. Russian oligarchs had often deployed this technique against British journalists but the United Kingdom had recently passed new legislation enabling judges to dismiss cases at an early stage of the proceedings when a SLAPP was potentially involved.

**Ms Iordanova** said that it continued to be a problem in Bulgaria but in most cases the judges had ruled in favour of the journalists. A major insurance company had recently brought a lawsuit against journalists. The European draft directive covered only civil cases, which was regrettable. SLAPPs targeted not only individual journalists but also media outlets.

**Mr Efstathiou** said that the duration of court proceedings should also be taken into account. In Cyprus, a case could be examined by a judge for five to seven years. Moreover, some journalists might be deterred from defending themselves by high legal costs.

**Mr Lacroix** said that SLAPPs were brought by the financially and politically powerful. As the Assembly’s general rapporteur on the rights of LGBTI persons’ rights, he was well aware that journalists wanting to report on such figures were often targeted by SLAPPs on the basis of vague legislative provisions. He wished to know whether there were defence strategies according to the origin of SLAPPs and what could be done to prevent the phenomenon.

**Ms Nora Wehofsit** (*Human Rights House Foundation and CASE - Coalition against SLAPPs in Europe*) pointed out that SLAPPs were brought not only against journalists but also against rights defenders, whistleblowers and members of the academic community. She welcomed the Council of Europe's work on the draft recommendation on combating this phenomenon and proposed that it include recommendations on the role of the judge in such cases.

**Ms Karamehić-Abazović** was concerned that SLAPPs also targeted civil society militants and the academic community and stressed the need to protect the academic freedom of scientists.

**Mr Parcu** was in favour of a compensation fund for journalists. He believed that high legal costs could prevent journalists, and freelance journalists in particular, from defending themselves in court. The SLAPPs problem was also linked with the problem of criminal cases brought on grounds of defamation. The European Union directive would be an important step forward in defending journalists' rights, as it set out guidelines that could be used not only in transnational cases but elsewhere.

**Ms Lucchese** stressed that the Council of Europe recommendation applied not only in civil cases but also in criminal and administrative cases. It also focused on the issues of gender equality and awareness-raising programmes and was applicable to all persons participating in public life, including legal persons.

**Mr Schennach** proposed to set up a platform along the lines of the platform for the protection of journalists so that SLAPP cases were also covered. Recalling a case in which a British law firm had worked for Russian oligarchs and taken steps to bring pressure to bear on journalists, he welcomed the recent legislative changes in the United Kingdom.