

CommDH/Speech(2022)6

European Anti-SLAPP Conference

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Strasbourg, 20 October 2022
Room 1, Palais de l'Europe

Dear President Metsola, Dear Vice-President Jurová, Dear Secretary General Pejčinović Burić, dear friends, ladies and gentlemen,

I can hardly see a better occasion than today's conference to reinforce synergies to tackle SLAPPs, which are the second most dangerous threat to freedom of expression and dissent after physical violence.

I wish to thank the European Centre for Press and Media Freedom and the Coalition Against SLAPPs in Europe for having set this process in motion and convened today's meeting.

The phenomenon of powerful people abusing the justice system to silence dissenters, journalists, lawyers, human rights defenders and activists is not new. Already in the '80s the US and Canada were faced with this problem. Anti-SLAPP legislation has since then been adopted there.

However, European countries and international organisations have been slow in reacting to the problem. When Daphne was murdered and many of the lawsuits which had targeted her were inherited by her family, it became impossible to ignore the human and societal costs of SLAPPs.

Daphne gave a good definition of what a SLAPP is and what it means for society. She said that "laws that were designed to protect people who are genuinely hurt are being used as a tool of abuse and aggression by people in power against people with no power."

And Daphne was right! SLAPPs are one of the most hurtful tools to stifle free speech. The simple threat of filing such a lawsuit is sometimes enough to bring about the desired effect of halting activism or journalists' investigations and reporting.

SLAPPs represent a serious threat to freedom of expression, freedom of assembly and to the right to acquire information for public interest. They also pose a problem for the justice system and the rule of law more generally because courts are occupied by specious civil or criminal suits filed by individuals or companies taking advantage of democratic institutions to undermine pillars of democracy.

Soon after I took up office as Council of Europe Commissioner for Human Rights, I started working on alerting governments to the dangers that SLAPPs pose to our democracies. In 2020, I published a Human Rights Comment outlining the main problems and calling on the authorities of member states to tackle SLAPPs more resolutely. Since then, I have continued alerting governments through my human rights monitoring. I did so in reports and memoranda on Malta, Poland, and Slovenia. Two weeks ago, I published a letter to the Prime Minister of Malta where I also refer to the problematic use of SLAPPs by state agencies in response to freedom of information requests.

Two days ago, I published a memorandum on my mission to Kosovo in which I also refer to SLAPPs against journalists. And in December I will hold discussions both with the PACE Committee on Culture,

Science, Education and Media and with the committee of experts of the Council of Europe which is preparing the Recommendation to prevent SLAPPs.

The urgency to act is clear to me. SLAPPs occur every day in Europe, in many of our member states, targeting professionals - like recently journalists in France and Greece who are being sued by powerful companies and public institutions - but also young activists who speak out to protect their community or the environment. Like two young environmental activists from Bosnia and Herzegovina who are currently being targeted by several lawsuits brought by a private company for having publicly spoken about the environmental impact of a hydropower plant on the Kasindolska river. Like many other activists and human rights defenders, they have faced pressure for years already, as I mentioned in a Human Rights Comment of last year. Now the threat of a costly lawsuit further endangers them and the region they want to protect.

The situation is worrying, but not hopeless. Awareness of the problem is growing. In a landmark judgment delivered last March in the case of *OOO Memo v. Russia* the European Court of Human Rights found that the use of SLAPPs by state bodies should be restricted. In other cases, the European Court has made it very clear that unreasonably high damages awarded in defamation claims could have a chilling effect on freedom of expression. States are therefore required to create a favourable environment for participation in public debate by all, enabling everyone to express their opinions and ideas without fear.

The Court's emerging case-law is clear: member states should refrain from any interference with individual's legitimate freedom of expression, and have a positive obligation to protect freedom of expression from any infringement, including by private individuals.

National authorities and the judiciary are the first line of protection for the human rights enshrined in the Convention. They are therefore expected to apply the Court's case-law, as well as other international standards, to prevent the abuse of the justice system to silence freedom of expression, including when it happens as part of public assemblies.

For this to happen, they should ensure that national legislations allow the early dismissal of SLAPPs, foresee measures to punish abuse of the justice system and guarantee practical support and free legal aid to those who are sued.

In addition, it is necessary to decriminalise defamation and libel for cases which do not concern incitement to hatred, racism, or violence. At the same time civil proceedings should not be used as a weapon to silence defendants through disproportionate claims for sanctions.

There are also other steps to take: We should strengthen synergies between monitoring experiences at national and international levels to provide comprehensive, reliable and timely independent monitoring of violations. We should provide assistance to victims and promote awareness about the problems they face. My own experience of cooperating with international actors - like the partners of the Council of Europe Platform - and national ones - like Ossigeno per l'informazione in Italy and the Platform for the Defence of Freedom of Information in Spain to cite a few - reinforces my appreciation for their work and the belief that there is potential for further cooperation across Europe.

Whoever controls the flow of information and can influence freedom of expression has a great deal of power. We must ensure that these fundamental aspects of human activities and of democracy remain free and at the service of the public interest.

By joining forces, we can make it happen.

I wish you a successful discussion today and look forward to further cooperating with you.

Thank you