Thursday 11 November 2021

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

P9_TA(2021)0451

Strengthening democracy, media freedom and pluralism in the EU

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

(2022/C 205/01)

The European Parliament,

— having regard to the Treaty on European Union (TEU) and in particular Article 2, Article 3, Article 4(3) and Articles 5, 6, 7 and 19 thereof,

— having regard to the Treaty on the Functioning of the European Union (TFEU) and in particular Articles 70, 81, 82, 114 and 352 thereof,

— having regard to the Charter of Fundamental Rights of the European Union ('the Charter') and in particular Articles 11, 12, 15, 20, 47, 48 and 54 thereof,

— having regard to Protocol No 1 on the role of national parliaments in the European Union and Protocol No 2 on the application of the principles of subsidiarity and proportionality, annexed to the TEU and the TFEU,

— having regard to the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ([1]),

— having regard to the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (Brussels I) ([2]),

— having regard to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law ([3]),

— having regard to Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014 ([4]),

([1]) OJ L 199, 31.7.2007, p. 40.
([2]) OJ L 351, 20.12.2012, p. 1.
([3]) OJ L 305, 26.11.2019, p. 17.
([4]) OJ L 156, 5.5.2021, p. 1.

— having regard to Regulation (EU) 2021/693 of the European Parliament and of the Council of 28 April 2021 establishing the Justice Programme and repealing Regulation (EU) No 1382/2013 ([5]),

— having regard to the case law of the Court of Justice of the European Union,

— having regard to the communication entitled 'Commission Work Programme 2021 — A Union of vitality in a world of fragility' (COM(2020)0690),

— having regard to the Commission communication entitled 'On the European democracy action plan' (COM(2020)0790),

— having regard to the Commission communication of 5 March 2020 'A Union of Equality: Gender Equality Strategy 2020-2025' COM(2020)0152,

— having regard to the Commission communication of 30 September 2020 entitled '2020 Rule of Law Report — The rule of law situation in the European Union' (COM(2020)0580), and its 27 accompanying country chapters on the rule of law in the Member States (SWD(2020)0300-0326),

— having regard to the Commission communication of 12 November 2020 entitled 'Union of Equality: LGBTIQ Equality Strategy 2020-2025' (COM(2020)0698),

— having regard to the Commission recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union (C/2021/6650),

— having regard to the Commission's follow-up to the European Parliament non-legislative resolution of 3 May 2018 on media pluralism and media freedom in the European Union,

— having regard to the report by the European Union Agency for Fundamental Rights entitled 'Challenges facing civil society organisations working on human rights in the EU' published on 17 January 2018, to its bulletins on the fundamental rights implications of the coronavirus pandemic in the EU published in 2020, and to the Agency's other reports, data and tools, in particular the European Union Fundamental Rights Information System (EFRIS),

— having regard to the Universal Declaration of Human Rights and in particular Article 19 thereof,

— having regard to other UN instruments on the protection of human rights and fundamental freedoms, and to the recommendations and reports of the UN Universal Periodic Review, as well as to the case law of the UN Human Rights Treaty Bodies and the special procedures of the Human Rights Council,

— having regard to the UN Declaration on Human Rights Defenders of 8 March 1999,

— having regard to the report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association on SLAPPs and FoAA rights,

— having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the case law of the European Court of Human Rights and the European Committee of Social Rights, and to the conventions, recommendations, resolutions, opinions and reports of the Council of Europe Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner, the European Commission Against Racism and Intolerance, the Steering Committee on Anti-Discrimination, Diversity and Inclusion, the Venice Commission and other bodies of the Council of Europe,

— having regard to the declaration of the Council of Europe of 4 July 2012 on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, 'Libel Tourism', to Ensure Freedom of Expression,

— having regard to the Council of Europe Recommendation of the Committee of Ministers to Member States of 13 April 2016 on the protection of journalism and safety of journalists and other media actors (CM/Rec(2016)4[1]),

([5]) OJ L 156, 5.5.2021, p. 21.

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— having regard to the recommendation of the Council of Europe of 28 November 2018 on the need to strengthen the protection and promotion of civil society space in Europe (CM/Rec(2018)11),

— having regard to the recommendation of the Council of Europe to Member States of 7 March 2018 on media pluralism and transparency of media ownership (CM/Rec(2018)1),

— having regard to the resolution of the Council of Europe Ministerial Conference of 11 June 2021 on the safety of journalists,

— having regard to the article by the Council of Europe Commissioner for Human Rights entitled 'Human Rights Comment: Time to take action against SLAPPs' published on 27 October 2020,

— having regard to the 2021 annual report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists,

— having regard to the recommendations and reports of the Office for Democratic Institutions and Human Rights, the Representative on Freedom of the Media and other bodies of the Organization for Security and Co-operation in Europe (OSCE),

— having regard to the EU-CITZEN Network study entitled 'SLAPP in the EU context' of 29 May 2020 ([6]),

— having regard to the call for an anti-SLAPP directive by a coalition of non-governmental organisations ([7]),

— having regard to the study entitled 'The Use of SLAPPs to Silence Journalists, NGOs and Civil Society' of June 2021 commissioned by the European Parliament Policy Department at the request of the Committee of Legal Affairs,

— having regard to its briefing entitled 'European added value of an EU mechanism on democracy, rule of law and fundamental rights — Preliminary Assessment' of 23 April 2020,

— having regard to its resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU ([8]),

— having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights ([9]),

— having regard to its resolution of 19 April 2018 on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level ([10]),

— having regard to its resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová ([11]),

— having regard to its resolution of 3 May 2018 on media pluralism and media freedom in the European Union ([12]),

([6]) https://ec.europa.eu/info/sites/default/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf
([7]) https://rsf.org/en/news/rsf-and-60-other-organisations-call-eu-anti-slapp-directive
([8]) OJ C 55, 12.2.2016, p. 33.
([9]) OJ C 215, 19.6.2018, p. 162.
([10]) OJ C 390, 18.11.2019, p. 117.
([11]) OJ C 390, 18.11.2019, p. 111.
([12]) OJ C 41, 6.2.2020, p. 64.

— having regard to its resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights ([13]),

— having regard to its resolution of 13 February 2019 on experiencing a backlash in women's rights and gender equality in the EU ([14]),

— having regard to its resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia ([15]),

— having regard to its resolution of 18 December 2019 on the Rule of Law in Malta, after the recent revelations around the murder of Daphne Caruana Galizia ([16]),

— having regard to its resolution of 15 January 2020 on the annual report 2018 on human rights and democracy in the world and the European Union's policy on the matter ([17]),

— having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights ([18]),

— having regard to its resolution of 25 November 2020 on Strengthening Media Freedom: the Protection of Journalists in Europe, Hate Speech, Disinformation and the Role of Platforms ([19]),

— having regard to its resolution of 26 November 2020 on the situation of Fundamental Rights in the European Union — Annual Report for the years 2018-2019 ([20]),

— having regard to its resolution of 17 December 2020 on the Multiannual Financial Framework 2021-2027, the Interinstitutional Agreement, the EU Recovery Instrument and the Rule of Law Regulation ([21]),

— having regard to its resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone ([22]),

— having regard to its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the Rule of Law conditionality mechanism ([23]),

— having regard to its resolution of 29 April 2021 on the assassination of Daphne Caruana Galizia and the rule of law in Malta ([24]),

— having regard to its resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter ([25]),

— having regard to Rule 54 of its Rules of Procedure,

— having regard to the joint deliberations of the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs under Rule 58 of the Rules of Procedure,

— having regard to the opinion of the Committee on Culture and Education,

— having regard to the report of the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A9-0292/2021),

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([13]) OJ C 363, 28.10.2020, p. 45.
([14]) OJ C 449, 23.12.2020, p. 102.
([15]) OJ C 108, 26.3.2021, p. 107.
([16]) OJ C 255, 29.6.2021, p. 22.
([17]) OJ C 388, 13.11.2020, p. 100.
([18]) OJ C 395, 29.9.2021, p. 2.
([19]) OJ C 425, 20.10.2021, p. 28.
([20]) OJ C 425, 20.10.2021, p. 107.
([21]) OJ C 445, 29.10.2021, p. 15.
([22]) Texts adopted, P9_TA(2021)0089.
([23]) Texts adopted, P9_TA(2021)0103.
([24]) Texts adopted, P9_TA(2021)0148.
([25]) Texts adopted, P9_TA(2021)0245.

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A. whereas the rights to freedom of expression, to information and to public participation, are among the cornerstones of democracy; whereas freedom of expression is indispensable for the realisation of the principles of transparency and accountability; whereas public participation by a natural or legal person engaging on a matter of public interest can take a variety of forms; whereas public participation can include the online and offline exercise of public scrutiny and the dissemination of public information, such as journalistic communications, publications or works, including editorial content, communications, publications or works of a political, scientific, academic, artistic nature, commentary or satirical material, including when those concerned are, among others, figures open to public scrutiny, in the context of broader interests in open discussion of political issues; whereas publications which contribute to debates on matters of public interest or general concern enjoy a higher threshold of protection; whereas the limits of acceptable criticism are wider for public figures, especially politicians and state officials;

B. whereas independent impartial, professional and responsible journalism as well as access to pluralistic information are key pillars of democracy; whereas the information, reports, opinions, claims, arguments and other statements by civil society are vital for any democracy to thrive; whereas the shrinking space for civil society in certain countries has become an increasingly worrying issue and may negatively impact democracies; whereas independent and high quality journalism and civil society organisations play a crucial role as guardians of democracy and the rule of law by holding power to account and fighting disinformation and misinformation, as well as foreign political interference and manipulation;

C. whereas in recent years, journalists and media actors in Europe and abroad are increasingly being threatened, physically attacked and assassinated because of their work, particularly when it focuses on the misuse of power, corruption, fundamental rights violations and criminal activities; stresses that the effective exercise of freedom of expression requires a range of positive measures for the protection for journalists, including to protect life and to investigate assassinations, as well as the effective protection of their sources; notes that these threats are not only of a violent nature and that intimidation against journalists also stems from legal, political, socio-cultural and economic pressures;

D. whereas the right to freedom of expression is a fundamental right that must be exercised with sense of duty and responsibility, taking into account people's fundamental right to obtain impartial information as well as the respect for the fundamental right to protect one's reputation ([26]) and privacy; whereas, in cases of a conflict between these rights, all parties must have access to courts if the situation was not resolved amicably;

E. whereas Strategic Lawsuits Against Public Participation (SLAPPs) are lawsuits or other legal actions (e.g. injunctions, asset-freezing) brought forward by private individuals and entities, and also by public officials, public bodies and publicly controlled entities, directed at one or more individuals or groups, using a variety of legal bases mostly in civil and criminal law, as well as the threats of such actions, with the purpose of preventing investigation and reporting on breaches of Union and national law, corruption or other abusive practices or of blocking or otherwise undermining public participation; whereas this has a direct and detrimental impact on democratic participation, societal resilience and dialogue, and runs counter to the values enshrined in Article 2 TEU;

F. whereas public participation includes but is not limited to investigating, speaking out about, reporting or otherwise exposing matters of public interest, inter alia, practices that threaten fundamental rights and freedoms, democracy, the rule of law or good governance, and engaging in advocacy through the exercise of civil liberties such as the freedom of association, freedom of peaceful assembly and freedom of expression and of information;

G. whereas victims of SLAPPs are most commonly sued for expressing critical views on the behaviour, or denouncing the wrongdoing, of private individuals and entities as well as of public officials, public bodies and publicly controlled entities, through online or offline forms of expression, or in retaliation for their involvement in campaigns, court cases,

([26]) Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

actions or protests; whereas SLAPPs are commonly characterised by claims that lack any legal merit, are manifestly unfounded, exhibit an imbalance of power and the abuse of rights or of process by the plaintiff making excessive claims in matters in which the defendant is exercising a legally protected right, and therefore using the judicial process for purposes other than genuinely exercising a right;

H. whereas, according to civil society organisations, academics, legal practitioners and victims that work on this topic, SLAPPs are becoming more sophisticated and more effective, with one of the techniques used being multiple lawsuits filed against the same person on the same subject matter, meaning that all of them have to be defended and dealt with simultaneously and in parallel by the same person, which increases costs disproportionally; whereas SLAPPs are often grounded in claims of defamation, libel or slander, which still constitute criminal offences in most Member States, and SLAPP victims find themselves facing criminal charges while being sued for civil liability purportedly arising from the same conduct; whereas SLAPPs often infringe on victims' right to defence recognised by the Charter, possibly also impacting on their right to a fair trial and the presumption of innocence;

I. whereas the lack of a consistent and comprehensive legal and judicial approach within the Union does not allow SLAPP suits to be swiftly identified and efficiently addressed; whereas the level of protection against SLAPP suits remains very fragmented across Member States, frustrating legal certainty and SLAPP victims' right to an effective remedy; whereas one of the main challenges in drafting anti-SLAPP legislation lies in how to address abusive claims, without prejudice to claimants' rights deriving from Member States' constitutions and their obligations under the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights;

J. whereas evidence shows that SLAPPs have become an increasingly widespread practice, as demonstrated by many cases throughout the Union, such as the chilling case of investigative journalist Daphne Caruana Galizia, who was reportedly facing 47 civil and criminal defamation lawsuits (resulting in the freezing of her assets) across multiple jurisdictions on the day of her strongly condemned assassination on 16 October 2017, and the lawsuits her heirs continue to face; whereas other illustrative and alarming cases against independent journalists and media include Realtid Media, which was repeatedly threatened with a lawsuit in a different jurisdiction from where the reporting in question took place, and Gazeta Wyborcza, which continues to be sued by a number of public entities and officials on a regular basis;

K. whereas SLAPPs are frequently used by public authorities or its proxies, such as state-funded media outlets, state-funded NGOs or state-owned companies;

L. whereas SLAPPs can be a tool to reduce media pluralism at the systemic level by exercising a chilling effect on independent media; whereas SLAPPs are deliberately initiated with the intent of making the litigation expensive, protracted and complicated for the defendants, including by intimidating and draining the financial and psychological resources of their targets; whereas SLAPPs not only have a detrimental impact on victims, but also on their families and on broader public participation;

M. whereas reference to SLAPP victims and targets covers journalists, publishers and media organisations, academics, NGOs, civil society and other actors engaging in public participation, such as those working on human rights and environmental issues;

N. whereas SLAPPs within the Union are often cross-border in nature, which results in reporting delays or incomplete information, as illustrated in many cases, often relating to human rights and environmental protection, financial fraud and/or corruption, where they constitute a clear attempt to delay publication of information by halting or discrediting the work of individual journalists and publishing entities, hence depriving citizens of their right to information and impacting media pluralism, freedom and diversity; whereas SLAPPs and SLAPP threats may also be brought against watchdogs within the Union by actors in third countries and before courts in third countries;

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O. whereas domestic SLAPP cases are increasingly used within the Member States with the aim of limiting free speech and the right to information, producing a chilling effect against SLAPP victims by relying on psychologically and financially draining their targets in order to force them to give up on exposing matters of public interest;

P. whereas the lack of direct legislation in any Member State on SLAPPs together with often ambiguous and broad national defamation provisions in this context, as well as harsh penalties, including of a criminal nature, significantly contribute to the growth in the number of these abusive lawsuits and the subsequent intimidation of their targets;

Q. whereas the criminalisation of journalists for their work is a particularly grave issue; whereas criminalised defamation remains in legislation in 23 Member States, in spite of the repeated calls for its abolition by, among other organisations, the UN, the Council of Europe and the OSCE, and prestigious NGOs such as Index on Censorship, the International Press Institute and the Committee to Protect Journalists;

R. whereas soft law measures are a welcome complementary measure to accompany a legislative proposal and the revision of certain private international laws currently in force, but on their own they do not provide full judicial protection;

S. whereas raising awareness on SLAPPs plays a crucial role in creating awareness of this issue among both the public and legal professionals, in particular judges and lawyers;

T. whereas where SLAPP suits are issued by public officials, public bodies or publicly controlled entities such as state-owned companies, they become a tool for exerting political power and the damage to SLAPP victims can be even greater;

Effects on fundamental rights and the rule of law

1. Highlights that SLAPPs are vexatious, a direct attack on the exercise of fundamental rights and freedoms, and aim to silence the diversity of critical public thought and opinion, including through journalistic self-censorship; underlines that fundamental rights and democracy are linked to upholding the rule of law, and that undermining media freedom and public democratic participation, including the freedoms of expression and information, of assembly and of association threatens Union values as enshrined in Article 2 TEU; is of the opinion that SLAPPs are particularly worrying if they are funded directly or indirectly from state budgets and are combined with other indirect and direct state measures against independent media outlets, independent journalism and civil society; welcomes the fact that the Commission's 2020 rule of law report includes SLAPP lawsuits in its assessment of media freedom and pluralism across the Union, and that this report points to concrete measures and best practices for countering them; calls for future annual reports to include a thorough assessment of the legal environment for the media and investigative journalism in particular, and to look more thoroughly at challenges affecting journalists and civil society and the chilling effect that SLAPPs can have on these actors; highlights that SLAPP lawsuits are a threat to a free and pluralist media; calls on the Commission to also issue country-specific recommendations and assess their progress, including on issues concerning the situation of media freedom within the Member States;

2. Expresses concern about the shrinking space for civil society organisations and the threat to journalists who communicate on important matters in the public interest and are critical of powerful members of society, and about the growing use of SLAPPs as a way to silence and intimidate SLAPP victims; encourages Member States to include media literacy and critical thinking in national curricula and to work closely with journalists on this at all levels of society, especially with young people and those vulnerable to misinformation, disinformation and manipulation; welcomes the introduction of new actions to enhance media freedom, quality journalism and media literacy under the cross-sectoral strand of the Creative Europe Programme;

3. Recalls that the Member States' obligation to facilitate the exercise of the rights of freedom of expression, peaceful assembly and association includes the duty to establish and maintain a favourable environment for public participation and public watchdogs; stresses that it is important for all actors engaging in public participation to be able to operate freely and without fear that they may be subjected to any threats, acts of intimidation or violence; highlights that Member States must also guarantee the right of journalists to protect their sources;

Effects on the internal market

4. Emphasises that public participation also has an important role to play in the proper functioning of the internal market, as well as in the enforcement of Union legislation and policies, as it is often through public participation that breaches of Union law, including violations of fundamental rights, corruption and other abusive practices threatening the proper functioning of the internal market, are made known to the public; underlines that protective measures against the practice of SLAPP suits are essential to addressing the risks that this abusive practice poses to the enforcement of EU law and policies;

5. Highlights that the use of SLAPPs has a negative impact on the enjoyment of internal market freedoms by individuals and organisations engaging in public participation and who are vulnerable to such claims, as the lack of the same level of protection against these claims in Member States may discourage them from operating confidently throughout the Union; underlines, moreover, that SLAPPs cases, or the threat of SLAPPs, runs counter to the effective enjoyment of the rights to freedom of establishment and free movement of services, as it has a chilling effect particularly on journalists, who might exercise self-censorship instead of reporting on matters of public interest in other Member States because they run the risk of then facing SLAPPs in different and unknown legal systems;

6. Draws attention to the fact that media pluralism and diversity is at risk when the very existence of small media providers has been affected by the deliberate threat of disproportionate damages by claimants through libel tourism;

7. Considers, in this regard. that by contributing to the enforcement of Union law and preserving the effective functioning of national justice systems and of the common space of judicial cooperation, protection from SLAPPs lawsuits would substantively contribute to the proper functioning of the internal market;

Effects on justice systems

8. Points out that SLAPPs not only severely undermine the right of effective access to justice of SLAPP victims, and thereby the rule of law, but also constitute a misuse of Member States' justice systems and legal frameworks, especially by hampering the ability of Member States to successfully address ongoing common challenges outlined in the Justice Scoreboard, such as the length of proceedings and the quality of justice systems, as well as caseload administration and case backlogs; recalls that a properly functioning and independent justice system delivers judgements without undue delay, and manages judicial resources so as to maximise efficiency, and that this is only possible where judges and judicial bodies perform their duties with complete independence and in an impartial manner, and are not burdened with the handling of unfounded claims that are later on dismissed as abusive and lacking in legal merit; considers that the early dismissal of a SLAPP suit could be based on objective criteria, such as the number and nature of lawsuits or actions brought by the claimant, the choice of jurisdiction and law applicable to the case, or the existence of a clear and burdensome imbalance of power between the claimant and the defendant; stresses therefore that SLAPPs severely hamper the effective access to justice, possibly undermining the right to a fair trial;

9. Stresses that judicial independence is integral to judicial decision-making and is a requirement resulting from the principle of effective legal protection enshrined in Article 19 TEU; is concerned with the efforts of some Member State governments to weaken the separation of powers and the independence of the judiciary, as well as to use SLAPPs to silence critical voices;

10. Stresses that the independence, quality and efficiency of national justice systems are crucial for the achievement of effective justice; underlines that the availability of legal aid and the level of court fees can have a major impact on access to justice; stresses that the Charter has the same legal value as the Treaties; notes that, in accordance with the guidance of the Court of Justice of the European Union, the Charter is applied by Member States' judicial authorities only when implementing Union legal acts, but that it is, however, important for the rights as enshrined in the Charter to always be taken into account in order to foster a common legal, judicial and rule of law culture;

Hate speech

11. Highlights that in recent years hate speech and discrimination in the media, both online and offline, as well as cyber-violence, have become increasingly widespread against journalists, NGOs, academics, rights defenders and other civil society actors, including those defending LGBTIQ rights, gender equality issues, religion or belief, thus threatening media

freedom, freedom of expression information and assembly, as well as public safety; recalls that online hate speech can incite offline violence; recalls the need to promote the Commission's code of conduct on countering illegal hate speech online; emphasises that female journalists face the same pressures as their colleagues for content-related issues. but are more often the victims of sexual violence and harassment;

12. Stresses the importance of common European standards and a coordinated approach for dealing with hate speech, particularly in the online environment;

Current situation in the Union

13. Stresses that SLAPPs are often meritless, frivolous or based on exaggerated and often abusive claims, and that they are not initiated for the purposes of obtaining a favourable judicial outcome but rather to intimidate, professionally discredit, harass, tire out, put psychological pressure on or consume the financial resources of those they target with the ultimate objective of blackmailing and forcing them into silence through the judicial procedure itself; stresses that SLAPPs cause not only a financial burden but also dire psychological consequences for their targets as well as their family members, aggravated by the fact that the latter may also inherit those abusive proceedings upon the target's death; points out that SLAPPs have a great chilling effect, leading to self-censorship, suppressing participation in democratic life, and also discouraging others from reporting on similar issues from entering into these professions or from engaging in relevant associated activities;

14. Points out that litigants that resort to SLAPPs mostly use and abuse criminal defamation laws, civil lawsuits for libel, protection of one's reputation or intellectual property rights such as copyright; notes, however, that a variety of other instruments are also misused to silence public participation, such as labour sanctions (dismissal), criminal charges of tax fraud, tax audit procedures and data protection rules;

15. Deplores the fact that journalists have paid with their own lives for simply doing their jobs and being the guardians of our democracies;

16. Underlines that an imbalance of power between the claimant and the defendant, particularly in terms of financial resources, and unpredictably large damages award claims in matters such as libel are common features of SLAPPs;

17. Stresses, with regard to this problem, that all Member States lack legislation on minimum safeguards which protect people from becoming SLAPP targets and ensure that their fundamental rights are upheld in all Member State jurisdictions; underlines that judicial independence is paramount to preventing members of government, public entities and public authorities from succeeding in bringing SLAPPs against people and organisations legitimately participating in public debate; notes, in this regard, the need for concrete measures towards creating and maintaining a safe environment for journalists and media workers; calls on the Member States to guarantee media pluralism and ensure transparency of media ownership; calls on the Commission and Member States to develop an ambitious, robust and complete legal framework in its future Media Freedom Act; acknowledges that the digital shift has profoundly changed the media landscape; calls on all Member States to swiftly implement Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) ([27]) as revised in 2018 in all its provisions; welcomes the establishment of the European Regulators Group for Audiovisual media services (ERGA) and encourages cooperation between audiovisual regulatory bodies in the internal market, as well as with other regulatory bodies of relevance for online news activities;

18. Is aware that victims or potential victims of SLAPP suits are currently only receiving financial and psychological assistance from other colleagues who have faced similar lawsuits or are knowledgeable about the character and procedure of SLAPP suits, in order to be able to understand and potentially even contest the lawsuit they have been served with; considers nevertheless that, while commendable, such aid is insufficient and that further measures must be put in place;

([27]) OJ L 95, 15.4.2010, p. 1.

19. Commends civil society's important and useful work in raising awareness of the harmful effects of SLAPPs, as well as the support it gives to victims and potential targets of SLAPPs;

20. Is alarmed that the COVID-19 pandemic has had an impact on the whole media sector, in particular through a revenue drop and deteriorating working conditions for journalists, thus potentially increasing their vulnerability to SLAPPs; warns that governments have been using the coronavirus emergency as an excuse to implement restrictive measures limiting the freedom of expression;

SLAPPs at global level

21. Regrets that no Member State has so far enacted targeted legislation to provide protection against SLAPPs; notes however that anti-SLAPP legislation is particularly well-developed in some states of the United States and Canada as well as in Australia; encourages the Commission to analyse anti-SLAPP best practices currently applied outside the EU which could provide valuable inspiration for Union legislative and non-legislative measures on the matter; underlines the importance of a common Union approach committing to the most ambitious legislation and best practices currently in force to discourage the use of SLAPPs in the Union;

Need for legislative action

22. Agrees with the numerous civil society organisations academics, legal practitioners and victims who point to the need for legislative action against the growing problem of SLAPPs; urgently calls, therefore, for the Brussels I and Rome II Regulations to be amended in order to prevent 'libel tourism' or 'forum shopping' by establishing that the court having jurisdiction and the law applicable to criminal or civil lawsuits concerning defamation, reputational damage and protection of an individual's reputation should, in principle, be that of the place in which the defendant is habitually resident; including the introduction of a uniform and predictable applicable law rule for defamation; urgently calls the Commission to present proposals for binding Union legislation on common and effective safeguards for victims of SLAPPs across the Union, including through a directive establishing minimum standards for protection against SLAPPs, respecting rights and principles enshrined in the Charter; argues that without such legislative action, SLAPPs will continue to threaten democracy, the rule of law and the fundamental rights of freedom of expression, association and peaceful assembly and information in the Union; is concerned that if measures only address defamation lawsuits, actions on other civil matters or criminal procedures may still be used at the initiative of claimants based in or outside the Union;

Legal basis

23. Affirms that legislative measures at Union level could be based on Article 81 TFEU (for cross-border civil lawsuits) and Article 82 TFEU (for criminal lawsuits), and separately on Article 114 TFEU to protect public participation, in order to ensure the proper functioning of the internal market by allowing corruption and other abusive practices to be exposed; asserts that the latter measure could also address SLAPPs, understood as lawsuits that are used for purposes other than genuinely asserting or exercising a right seeking to prevent investigation and reporting on breaches of Union law using a similar approach to the one that led to the adoption of Directive (EU) 2019/1937 (the 'Whistleblower Directive'); is of the opinion that the above legal bases could address SLAPPs consisting of both criminal and civil lawsuits, albeit through separate legislative instruments; calls for effective safeguards against SLAPPs throughout the Union on the basis of these Commission proposals together with actions by the Member States for those safeguards to also apply to domestic cases;

General protective rules and civil justice

24. Considers that it is essential to adopt a legislative measure protecting the role of SLAPP victims in preventing, reporting and denouncing breaches of Union law and ensuring the proper functioning of the internal market and full respect for fundamental rights; urges the Commission to present a proposal for legislation that sets out common safeguards for persons investigating and reporting on or otherwise exposing these matters of public interest;

25. Urges the Commission to present a proposal for a measure to address SLAPP cases such as rules for the early dismissal of SLAPPs and other court actions that have the purpose of preventing public participation, which should include appropriate sanctions such as civil penalties or administrative fines, consideration of abusive motives even if the lawsuit or

action is not dismissed, costs and damages suffered by the victim (economic, reputational, psychological or otherwise); stresses that the modalities for applying for an early dismissal should take account of the challenges faced by SLAPP victims, in particular by requiring that the claimant justifies why the action is not abusive, allocating the legal costs of procedures to the claimant and granting legal and financial support to the defendant; strongly encourages Member States to also apply such civil procedure safeguards to domestic SLAPPs cases and not just to cross-border cases; calls on the Commission, further, to address issues giving rise to forum shopping and libel tourism in the forthcoming review of the Brussels I and Rome II Regulations while also taking account of work carried out at The Hague Conference on Private International Law; calls on the Commission, finally, to raise awareness among judges and prosecutors across the Union about SLAPPs, which including the provision of information on the need for early dismissal of such lawsuits, as well as on the proper implementation of the case law of the European Court of Human Rights on defamation;

26. Recalls that the *res judicata* principle prevents SLAPP initiators from bringing other actions related to the same facts and against the same parties; considers that courts should duly take into account the fact that a party has previously initiated SLAPPs (even when the facts and the parties are not exactly the same, but are similar and/or connected) when examining a submission on SLAPPs;

27. Believes that any revision of the relevant rules in the Brussels I Regulation should be properly mirrored by an equivalent revision of the Lugano Convention so as to ensure a cohesive application of international jurisdiction rules in civil and commercial matters beyond the Union and where Union citizens are concerned;

Criminal justice

28. Urges the Commission to address the seriousness of SLAPPs brought through criminal proceedings by presenting a proposal for measures to ensure that defamation, libel and slander, which constitute criminal offences in most Member States, cannot be used for SLAPPs through public or private prosecution; underlines the calls of the Council of Europe and OSCE for the decriminalisation of defamation; invites the Commission to address SLAPP as lawsuits that are used for purposes other than that of genuinely asserting or exercising a right; notes that defendants often face criminal charges while at the same time being sued for civil liability allegedly arising from the same conduct, and invites the Commission to introduce common minimum procedural safeguards against combined SLAPPs;

29. Recalls that inherent to and at the very core of the right to a fair trial under Article 47 of the Charter is the concept of equality of arms between parties in administrative, civil and criminal proceedings; is concerned that the imbalance of power and resources between parties in SLAPPs cases undermines equality of arms, and thus the right to a fair trial;

Legitimate interest of claimants

30. Declares that due and timely process and the balanced protection of legitimate rights such as the right to protect one's reputation, arising from Union law must be ensured by Member State courts and cannot be jeopardised, including the rights which are routinely cited in abusive lawsuits; underlines, therefore, that anti-SLAPP measures should be without prejudice to legitimate court actions and claimants' right of access to justice; defends at the same time that it is necessary to prevent any abusive use of justice systems and those rights in a manner which is manifestly contrary to the legislators' intention when conferring them upon natural or legal persons in order to guarantee the right to a fair trial; considers that to that end, safeguards are needed not only in order to protect the victims of SLAPPs, but also to prevent and sanction the misuse of measures against SLAPPs, e.g. in cases when authoritarian governments weaponise anti-SLAPP clauses to protect their government-organised NGOs against legitimate defamation lawsuits; notes that preventing such abuse is equally necessary for the correct and uniform application of Union law, thereby safeguarding its effectiveness;

Possible soft law measures

31. Underlines the urgent need for a robust fund for supporting victims of SLAPPs and organisations supporting them provided the funds are directly used for legal fees or the provision of legal aid and psychological support; stresses the importance for victims and potential victims of SLAPPs to have easy and accessible information about these types of cases, legal aid and support, including psychological support for victims and their family members;

32. Considers that support for independent bodies that can hear complaints and provide assistance to potential victims of SLAPPs and adequate training of judges and lawyers can substantively contribute to building knowledge and capacity in how to detect and deal with SLAPPs as lawsuits used for purposes other than that of genuinely asserting or exercising a right, and the threat of SLAPPs;

33. Considers it necessary to collect data on SLAPP cases and raise awareness about the nature and detrimental effects of SLAPPs;

34. Welcomes the Commission's recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union (C/2021/6650); notes the increasing use of freelancers, particularly young journalists and media workers at the start of their career, to cover high-risk areas and conflict zones; is concerned by the precarious working and deteriorating safety conditions under which freelancers operate in high-risk areas and conflict zones; calls on the Member States to fully implement the Council of Europe recommendation on the protection of journalism and safety of journalists and other media actors;

Complementarity with other instruments and policies

35. Considers that the new anti-SLAPP legislative and non-legislative measures should complement other EU instruments and policies; welcomes the Union Strategy to tackle Organised Crime 2021-2025, and calls for efforts to be stepped up in this regard; notes that legislative and soft law measures cannot be effective in Member States where there are concerns about the independence of the judiciary or the fight against corruption; reiterates, in this regard, the critical need for an EU mechanism on democracy, the rule of law and fundamental rights as proposed by Parliament;

36. Recalls the importance of Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget, which has applied to all commitment and payment appropriations since 1 January 2021; underlines that the Union's financial interests are to be protected in accordance with EU values and commitments, and that the Commission should use the conditionality mechanism if Member States fail to protect these values; commends in this light the important work of investigative journalists in exposing cases of abuses of EU funds, and emphasises the importance of journalists being able to exercise their profession without being hindered by SLAPPs;

37. Stresses that Union level measures to combat SLAPPs should be complementary and consistent with other available tools, such as the mechanism for the protection of democracy, the rule of law and fundamental rights, policies on combating corruption, and current financial programmes to support civil society and justice systems;

38. Highlights that the fight against corruption is essential for preserving democracy, fundamental rights and rule of law, as corruption, which can take many forms, undermines our values, the proper functioning of states and enables organised crime;

39. Calls on the Commission to strengthen, in the framework of the annual mechanism on democracy, the rule of law and fundamental rights, the regular, inclusive and structured dialogue with national authorities, NGOs, professional associations and other stakeholders in order to protect and support journalists, and other civil society representatives at risk of SLAPPs, prosecution or harassment;

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40. Calls on the Commission to come forward with proposals on the basis of the annex to this resolution;

41. Instructs its President to forward this resolution to the Council and the Commission.

Thursday 11 November 2021

ANNEX

1. A package of both soft law and hard law

Legislative measures — a package addressing SLAPPs ***including early dismissal mechanisms,*** should include proposals:

— for general rules providing protection against SLAPPs; specific legislation that sets common minimum standards on supporting and deterrent measures providing protection from SLAPPs;

— specifically addressing questions of civil justice; which Member States are strongly encouraged to apply also to domestic cases of SLAPPs, and private international law, including judicial cooperation and forum shopping;

— addressing in particular issues of criminal justice.

Non-legislative measures — this package should further include:

— adequate training of judges and legal practitioners on SLAPPs;

— assessment of the interplay between different fields of law, such as national media laws and constitutional laws in this context;

— a specific Union fund to provide support to victims of SLAPPs and their family members, including in terms of financial aid, legal assistance and psychological support;

— support for independent bodies (such as ombudspersons) able to deal with complaints from persons threatened or faced with SLAPP suits, and to provide assistance to them as well as for media self-regulatory bodies;

— a publicly accessible Union register of relevant court decisions;

— a 'one-stop-shop'/support hub supported by dedicated national networks of specialised lawyers, legal practitioners and psychologists, which victims of SLAPPs can contact and where they can receive guidance and easy access to information on and support against SLAPPs, including regarding 'first aid', legal aid, financial and psychological support, including through peer exchange networks.

2. General rules

A legislative proposal for a general protection measure would have the dual aim of protecting, in line with the fundamental rights and principles recognised in particular by the Charter persons investigating, reporting or otherwise exposing matters of public interest concerning breaches of Union law, which includes abusive practices which do not appear to be unlawful but defeat the object or the purpose of the law, and protecting the proper functioning of the internal market.

The legislative measure should also provide:

(a) a clear definition of SLAPPs, including the definition of public participation on a matter of public interest;

(b) rules on confidentiality of investigations and reports, including of information sources;

(c) rules on the prohibition of retaliation and effective and dissuasive penalties against SLAPP actions;

(d) rules preventing the misuse of measures provided against SLAPPs;

(e) support measures, including:

(i) effective assistance, information and practical advice and support provided by a 'one-stop-shop' for 'first aid' to SLAPP victims;

(ii) legal and financial aid;

(f) effective measures to protect against retaliation stemming from imbalances of power between the parties and allowing potential damages suffered to be repaired.

3. Civil procedure

A legislative proposal for a civil procedure measure applicable in SLAPP cases, which Member States are strongly encouraged to apply also to domestic cases, should develop judicial cooperation in civil matters by providing for common rules on SLAPPs arising from claims of civil law and include:

(a) that the claimant in cases concerning public participation shall specify and provide justification as to why the action is not abusive;

(b) that courts shall summarily dismiss abusive lawsuits, at the earliest stage possible, either ex officio or following a request by the defendant based on his or her right to file a motion for early dismissal;

(c) that courts shall consider the abusive element in any final decision;

(d) that third parties may intervene and subrogate to the defendant's rights and obligations, in accordance with national procedural law;

(e) that courts shall consider the public interest and the balance of financial resources between parties when assessing costs and the award of damages;

(f) means to protect victims against SLAPPs brought outside the Union;

(g) the right to the full award of costs;

(h) the right to damages for material and immaterial harm, including economic, reputational, psychological or other damages suffered;

(i) rules on preventing further abusive litigation by a party that filed a SLAPP lawsuit in relation to the same facts, namely by taking into account that circumstance when examining a new case.

A proposal from the Commission, aiming to achieve legal certainty and predictability and following the review of private international law instruments should establish:

(a) a recast of the Brussels I Regulation with an explicit rule that, in defamation claims or other claims based in civil and commercial law which may constitute a SLAPP, the habitual residence of the defendant as the sole forum, having due regard to cases where the victims of defamation are private persons;

(b) that the applicable law is the law of the place to which a publication is directed or, should that place not be possible to identify, the place of editorial control or relevant activity with regard to the public participation.

4. Criminal procedure

A legislative proposal regarding criminal law aspects of SLAPPs, should:

(a) specify that where defamation, libel and slander constitute an offence, they cannot be used for SLAPPs, in particular through private prosecution;

(b) specify provisions to safeguard the rights of individuals so that prosecution cannot be used to silence victims of SLAPPs;

(c) facilitate mutual recognition of judgements and judicial decisions, and police and judicial cooperation in criminal matters;

(d) set common minimum procedural safeguards to protect defendants facing SLAPPs based on combined criminal charges and civil liability actions allegedly arising from the same conduct.

These measures should be complementary to current Commission activities, legislation already adopted and future initiatives.