

Protection of journalists and human rights defenders from manifestly unfounded or abusive court proceedings

2022/0117(COD) - 27/04/2022 - Legislative proposal

PURPOSE: provide protection to natural and legal persons who engage in public participation on matters of public interest, in particular journalists and human rights defenders, against court proceedings, which are initiated against them to deter them from public participation (commonly referred to as strategic lawsuits against public participation or ‘SLAPPs’).

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: strategic lawsuits against public participation or ‘SLAPPs’ are a particularly harmful form of harassment and intimidation used against those who work to protect the public interest.

They are unfounded or exaggerated legal proceedings usually initiated by powerful individuals, pressure groups, companies and state bodies against parties who express criticism or communicate messages that are disturbing to the plaintiffs on a matter of public interest. Unlike regular proceedings, SLAPP suits are not brought with the aim of exercising the right of access to justice and obtaining a successful outcome or redress. Rather, the aim is to **intimidate defendants and drain their resources**. The aim is to achieve a chilling effect, silencing defendants and deterring them from continuing their work.

Typical targets of SLAPPs are **journalists and human rights defenders**. This extends beyond individual persons to media and publishing houses and civil society organisations, such as those involved in environmental activism. Other persons engaged in public participation such as researchers and academics may also be targeted.

SLAPP-initiating entities and individuals can base their claims on various grounds. The allegations often relate to defamation, but they also relate to breaches of other rules or rights (e.g. data protection or privacy laws). These are often combined with damages/tort claims or at times injunctions (prohibiting or at least delaying publication).

Journalists have an essential role in facilitating public debate and in imparting information, opinions and ideas. Investigative journalists play a key role in combating organised crime, corruption and extremism. A robust system of safeguards is needed to enable them to fulfil their crucial role as watchdogs on matters of legitimate public interest. **Human rights defenders** should be able to participate actively in public life and make their voice heard on policy matters and in decision-making processes without fear of intimidation.

The prevalence of SLAPPs has been identified as a matter of serious concern in some Member States in the context of the 2020 and 2021 Rule of Law Reports. Many SLAPPs occur in domestic context and do not have cross-border implications. However, **SLAPPs often have a crossborder nature** and where cross-border implications exist, they add an extra layer of complexity and costs, with even more adverse consequences for defendants.

CONTENT: the proposed Directive provides **safeguards against manifestly unfounded or abusive legal proceedings** in civil matters having cross-border implications against natural and legal persons, in particular journalists and human rights defenders, on account of their participation in public debate. It applies to civil and commercial matters with cross-border implications, irrespective of the nature of the jurisdiction.

The main elements of the proposal are as follows:

Early dismissal of manifestly unfounded court proceedings

Member States should empower courts to adopt accelerated procedures to dismiss, in whole or in part, court proceedings which distort the public debate as manifestly unfounded. If the defendant has applied for an early dismissal, the burden of proof that the claim is not manifestly unfounded would lie with the claimant.

Remedies against abusive court proceedings

Member States should take the necessary measures (i) to ensure that a claimant who has brought abusive court proceedings against public participation can be ordered to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant, unless such costs are excessive; (ii) to ensure that a natural or legal person who has suffered harm as a result of abusive court proceedings against public participation is able to claim and to obtain **full compensation** for that harm.

Courts dealing with abusive legal proceedings that distort the public debate would be able to impose effective, proportionate and dissuasive sanctions on the party that initiated such proceedings.

Protection against decisions third-country judgements

Member States should refuse to recognise a third-country judgement against a person domiciled in a Member State if the proceedings are found to be manifestly unfounded or abusive under the law of that Member State.

Furthermore, where abusive court proceedings against public participation have been brought against a natural or legal person domiciled in a Member State in a court or tribunal of a third country, that person can **seek compensation of the damages and the costs incurred in connection with the proceedings** before the court or tribunal of the third country, irrespective of the domicile of the claimant in the proceedings in the third country.