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

2022/0117(COD) - 27/02/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 546 votes to 47, with 31 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation").

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Subject matter and scope

The purpose of this Directive is to eliminate obstacles to the proper functioning of civil proceedings, while providing protection for natural and legal persons who engage in public participation on matters of public interest, including journalists, publishers, media organisations, whistleblowers and human rights defenders, as well as civil society organisations, NGOs, trade unions, artists, researchers and academics, against court proceedings initiated against them to deter them from public participation.

This Directive provides **safeguards against manifestly unfounded claims or abusive court proceedings** in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation.

The protection will apply to **all cross-border cases** except when both the defendant and claimant are from the same EU country as the court or when the case is only relevant to one Member State.

Minimum requirements

Member States may introduce or maintain provisions that are more favourable to protect persons engaged in public participation against manifestly unfounded claims or abusive court proceedings against public participation in civil matters, including national provisions that establish more effective procedural safeguards relating to the right to freedom of expression and information.

Common rules on procedural safeguards

Where legal proceedings are brought against natural or legal persons on the grounds of their participation in the public debate, such persons should be able to request: (a) **security** for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant as well as, where provided for under national law, damages; (b) **early dismissal** of manifestly unfounded legal claims at the earliest possible stage of the proceedings; (c) **remedies** in response to abusive legal proceedings which distort the public debate.

The amended text stated that Member States should ensure that applications may also be **treated in an accelerated manner**, where possible, in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.

Burden of proof and substantiation of claims

The burden of proving that the claim is well founded rests on the claimant who brings the action. Where a defendant has applied for early dismissal, it should be for the claimant to substantiate the claim in order to enable the court to assess whether it is not manifestly unfounded.

Award of costs

Member States should ensure that a claimant who has brought abusive court proceedings against public participation can be ordered to **bear all types of costs of the proceedings** that can be awarded under national law, including the full costs of legal representation incurred by the defendant unless such costs are excessive.

Where national law does not guarantee the award in full of the costs of legal representation beyond what is set out in statutory fee tables, Member States should ensure that such costs are fully covered, unless they are excessive, by other means available under national law.

Penalties or other equally effective appropriate measures

Member States should ensure that courts or tribunals seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the **payment of compensation for damage** or the publication of the court decision, where provided for in national law, on the party who brought those proceedings.

Jurisdiction for actions related to third-country proceedings

Member States should ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country.

Information and transparency

EU governments should also make sure that potential victims of abusive lawsuits can access information in a **single place** on procedural safeguards and remedies, including legal aid and financial and psychological support.

Member states should ensure legal aid is provided in cross-border civil proceedings. They should also publish all final judgments in SLAPP (strategic lawsuits against public participation) cases and gather detailed data about them.