

SLAPPs against journalists in Europe: Exploring the role of self-regulatory bodies

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Abstract

Reports show that media freedom is under pressure worldwide. Violence against journalists has a legal facet that takes the form of Strategic Lawsuits Against Public Participation (SLAPPs) that aim at silencing critical speech. While in some countries there are legal protections against SLAPPs, in Europe a debate is only recently being carried out, mainly fostered by professional journalist associations and civil society. This article explores the role that European journalistic self-regulatory bodies perceive they (could) have in fighting SLAPPs, analysing 16 qualitative answers gathered via a questionnaire. Self-regulation has historically been a way to protect the independence of journalism and uphold its ethical standards. The open-ended responses help to understand how SLAPPs put into question the representations that media councils and professional associations use to construct their 'professional jurisdiction', and therefore, their 'territory' and the way in which they see their role in society. Our results provide food for thought on the handling of legal attacks against journalists.

Keywords

SLAPPs, media councils, ethics, professional jurisdiction, journalism

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Worldwide, violence against journalists is on the rise. The profession is risky, and attacks against journalists come in different forms (Le Cam et al., 2021: 6). Among them are the Strategic Lawsuits Against Public Participation (SLAPPs), that is, “a form of retaliatory lawsuit intended to deter freedom of expression on matters of public interest” (Borg-Barthet et al., 2021: 7). Like the other forms of violence against journalists, SLAPPs threaten fundamental rights, namely the freedoms of expression and information, as enshrined in Article 10 of the European Convention on Human Rights. As they aim to silence public watchdogs, SLAPPs constitute a major threat to democracy.

Research has shown that journalists (34.2%), media outlets (23%), activists (9.8%) and editors (9.5%) are the most targeted defendants in SLAPP cases (Bonello Ghio and Nasreddin 2022: 4). As filers are usually wealthy actors, like corporations or government bodies (Borg-Barthet et al., 2021: 7) and defendants tend to be freelance journalists or small independent media (Díaz Serrat, 2021), one of the characteristics of SLAPP cases is the great imbalance of power between the parties.

Since 2020, diverse institutional actors have warned about this growing type of legal attacks (Bonello Ghio and Nasreddin, 2022). Civil society has also mobilised through the launching, in 2021, of the Coalition Against SLAPPs in Europe (CASE), which works to monitor forms of legal harassment and intimidation, safeguard the right to criticism, and push for effective legislation in this domain. In its latest report CASE (2023) recorded over 820 cases in 35 countries across Europe, of which 161 were filed in 2022 alone.

On April 27, 2022, the European Commission presented a proposal for a directive and a complementary recommendation on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings. A directive is a legislative act that sets out goals that all EU countries must achieve, while a recommendation is not binding. The directive covers SLAPPs in civil matters with cross-border implications. It aims at introducing procedural safeguards “to provide courts with effective means to deal with SLAPPs and targets with the means to defend themselves.”¹ The recommendation complements the directive and encourages Member States to address national cases of SLAPPs. The recommendation considers “self-regulatory bodies and associations of legal professionals” of each member state as key actors in the fight against SLAPPs (EC, 2022: 14).

Journalism has its own self-regulatory institutions overseeing the ethical conduct of professionals (Frost, 2000). This article questions what they know about SLAPPs and how they conceive their role in fighting them. We circulated a qualitative questionnaire among media councils and ethics committees of journalism professional associations in Europe to investigate the position of these institutions, their structuring capacity and their role in addressing abusive legal attacks against journalists.

We considered that SLAPPs question the way in which the social *worlds* (Becker, 1988; Strauss, 1992) of journalism are structured in different European countries. Considering journalism as a *world* means to conceive it as “a chain of cooperation between players with diverse and sometimes contradictory interests, governed by conventions” (Pereira et al., 2018). It allows us to take into account the diversity of the self-regulatory bodies, whether they are media councils or ethical committees.

In the world of journalism, professional bodies establish “professional jurisdictions” (Abbott, 1988). Abbott showed that professional groups, in competition with each

other, aspire to develop “jurisdiction” and therefore “territories”, producing “jurisdictional claims”. These territories are constituted by professional knowledge and by claims to expertise or control of certain activities (Abbott, 2003). We appropriate the concept of professional jurisdiction to define, within the journalistic worlds, the territories of competence that each professional body tries to construct for itself and in relation to others. This work has clear implications for the relationship these actors build with SLAPPs. Through this perspective, we aim to understand how the journalistic self-regulatory bodies think they should, or should not, act vis-à-vis SLAPPs. Our main research question is: to what extent do self-regulatory bodies believe they have legitimacy and authority to act in relation to SLAPPs?

This article is structured in three parts: the first section summarises the institutional and academic literature on SLAPPs; the second part presents the methodology and the results of the questionnaire; and the third segment discusses the issues of professional jurisdiction among self-regulatory bodies (media councils and ethical committees of professional association) caused by this increase of legal attacks against journalists.

Literature review: the fluid boundaries of SLAPPs

In the late 1970s, the term SLAPPs appeared in the US political arena to describe the civil lawsuits filed against individuals and non-governmental groups for having communicated their views to a government body or official on an issue of some public interest (Pring, 1989:4; Pring and Canan, 1992, 1996). In the early 1990s, Pring and Canan warned about the “grave consequences” SLAPPs had for politically active citizens and for the political system (1992: 938), and concluded that the solution consists in an anti-SLAPPs legislation (Ibidem: 959). At that time, many American states already introduced “anti-SLAPP” legislation (Ibidem: 958), and nowadays up to 32 states and the District of Columbia have anti-SLAPPs laws.² Canada and Australia also have adopted similar regulations (Brander and Turk, 2023). In Europe, no country has passed legislation so far (Borg-Barthet et al., 2021). Recently, journalism professional associations and activists have criticised the limited scope of the law proposal under consideration in Malta, while Ireland has started revising its defamation law rather than creating a specific anti-SLAPP regulation, and the UK parliament has tabled amendments in the Economic Crime and Corporate Transparency Bill at Lord’s report stage to tackle SLAPPs that feature economic crimes.³

The debates in Europe around this vexatious form of lawsuits, called “poursuites-bâillons” in French, emerged already in the late 1980s, but it has only recently become a topic of political discussion, especially following the murder of Daphne Caruana Galizia in 2017. The Maltese investigative journalist had 47 open libel cases against her when she was assassinated. Civil society organisations have taken the lead in the fight against SLAPPs: reports and advocacy papers have been mostly written by NGOs, such as the CASE Coalition (2022) or Index on Censorship (Mhainín, 2021) or have been commissioned by the European Parliament (Borg-Barthet et al., 2021) or the OSCE (Griffen, 2017). In 2022, Article 19 stated that SLAPPs against journalists, media, civil society organisations, and individuals constitute a clear overall trend across Europe, and advocated for more procedural safeguards (Article 19, 2022: 6–8).

As for policy-making, besides the recent legislative initiatives of the European Commission, the Council of Europe set up a committee of experts in January 2022, with the mandate of developing recommendations to the member states by December 2023.⁴

Overall, little academic research on this topic has been carried out in Europe (Díaz Serrat, 2021), with the existing research mostly confined within law studies (Donson, 2010; Shapiro, 2010; Álvarez-Armas, 2021). The existing scientific literature acknowledges the fact that there is no single definition (Bárd et al., 2020). This fluidity complicates the identification of cases and hinders the fight against SLAPPs. The intended purpose of SLAPPs is however easily recognised. According to Hartzler, they intend “to deter or to punish a party for exercising its political rights by forcing that party to waste time and resources defending its petitioning activity in court” Hartzler (2007: 1240). These lawsuits are typically presented as cases of defamation, privacy or data protection, and copyright (Bayer et al., 2021), and are mostly filed by corporations, wealthy individuals, governmental bodies (Borg-Barthet et al., 2021: 7), or even judges, in the Croatian case (CJA, 2021). SLAPPs tend to move issues from the political to the legal sphere (Borg-Barthet et al., 2021: 7), and the mere threat of legal action often succeeds in driving issues of public interest out of the public debate (Bayer et al., 2021: 79).

Beyond their legal aspect, SLAPPs raise important societal stakes, as their ultimate objective is to prevent critical voices from being heard (Bayer et al., 2021: 6). The defendant is not the only actor affected. The “chilling effect” spread by SLAPPs weakens the entire civil society, and public participation in general, as they stifle public debate and deter civic engagement. “The concept is used to depict indirect and sophisticated controls of speech [...] that generate incertitude and fear among reporters and writers” (Díaz Serrat, 2021). This “chilling effect” discourages further investigation to avoid potential suits (Díaz Serrat, 2021), shrinks freedom of expression, the right to receive information and the right to public participation (Bayer et al., 2021: 19). Meritless litigations also hinder the proper functioning of judicial systems as they drain time and resources. This is why many actors advocate for stopping SLAPPs at an earlier stage before the procedure (Menard, 2004: 14).

Role of self-regulatory bodies

Self-regulation of journalism has developed over time in many European countries and beyond as a way to make the media responsible towards the public without the State interfering, fostering peer oversight in order to guarantee both accountability that adheres to ethical standards and independence from external pressures (Bertrand, 2000, Pritchard, 1991). Nowadays, there are 31 countries in which self-regulation takes the form of media councils -sometimes called “press councils” in their national languages with representatives of journalists, media companies and, in most cases, the public.⁵ The first media council was established in Slovenia in 1905, and the latest was created in France in 2019.

Journalistic self-regulation is polymorphous and takes different configurations depending on the political and professional context: in some countries where a media council does not exist, professional journalism associations take on the self-regulation

responsibility through ethical committees. Media councils do not have the same objectives as journalists associations. The former are responsible for ensuring that journalists adhere to ethical standards and analysing complaints about the media and journalists, while the latter are expected to defend their members. This distinction proved to be decisive in the analysis. Based on ethical guidelines widely accepted by the profession, the councils and committees study complaints about the news coverage and produce decisions that set a precedent on ethical practices. They are the most institutionalised setup for media accountability (Eberwein et al., 2011).

Nonetheless, most journalistic self-regulatory bodies are based on the initiative of journalists themselves, who wish to create an instrument that would enable them to “manage internal difficulties”. They may be the result of a variety of strategies within the journalistic world, such as preserving the legitimacy of the professional group or responding to a state request, thus assuming the responsibility of regulation rather than leaving it to the state. As a professional jurisdiction, they may also constitute a shield from external attacks. They play a central role in protecting freedom of expression. Their emphasis on ethics goes beyond the application of collective standards. It is also a way of paying attention to the quality of the news production and dissemination and to the obstacles that can affect those processes, such as attacks on journalists. Self-regulatory bodies could also assume an advocacy role to strengthen the resistance of the media world, at least in discursive terms. These institutions could appear as a panacea to address SLAPPs, as they can offer straightforward, speedy and successful services to settle disputes to their members and the public without the need to go through the regular courts. “Additionally, systems of non-statutory regulation tend to be collaborative rather than confrontational and can also, therefore, be beneficial from the point of view of journalists and publishers” (Gore and Horgan, 2010: 524). But up to now, neither their actual role nor their vision of the best way to tackle issues such as SLAPPs have been investigated.

Methodology

With the collaboration of the European Federation of Journalists, a questionnaire was sent in January 2023 to all the AIPCE⁶ members, other European media councils, and ethical committees of professional associations (n = 22). The collection phase ended in March 2023. 16 institutions responded, representing the two categories of actors involved in ethical self-regulation in Europe: 13 media councils and 3 ethical committees of professional associations. Table 1 lists their names as they were mentioned in the questionnaire, and their countries of operation. We included respondents from countries that are members of the Council of Europe, and share the same professional referents (EFJ, AIPCE), even if the upcoming EU legislative initiatives regarding SLAPPs will exclusively affect EU Member States.

The questionnaire was made up of 15 mostly open questions aimed at identifying the position of each surveyed body: its knowledge, experience, perception of SLAPPs, its way of conceiving its role and rules regarding SLAPPs, the judiciary environment of its country in that matter, and its knowledge about the European initiatives concerning these abusive lawsuits. The analysis phase consisted of coding the data collected

Table 1. Media councils and journalists associations that responded to the questionnaire. Ideally, “media councils” and “journalists associations.”

Media councils (13)	Consell de la Informació de Catalunya (CIC)	Spain
	Raad voor de Journalistiek (RVDJ)	Belgium (Flanders)
	Conseil de déontologie journalistique (CDJ)	Belgium (francophone Belgium)
	Савет за штампу	Serbia
	Këshilli i Mediave të Shkruara të Kosovës	Kosovo
	Presserat	Germany
	Raad voor de Journalistiek	Netherlands
	Le Conseil de déontologie journalistique et de médiation (CDJM)	France
	Schweizer Presserat	Switzerland
	Basin Konseyi	Turkey
	IMPRESS	United Kingdom
	Советот за етика во медиумите на Македонија	North Macedonia
	Επιτροπή Δημοσιογραφικής Δεοντολογίας	Cyprus
Journalists associations (3)	Hrvatsko novinarsko društvo	Croatia
	Nuns Nezavisno Udruženje Novinara Srbije	Serbia
	Association luxembourgeoise des journalistes professionnels (ALJP)	Luxembourg

through the questionnaire. These data have been inductively categorised according to the main themes that emerge from the answers. The categories partly reflect the survey’s structure but were designed to highlight also other elements of interest that emerged through the survey, as presented in the next section.

Results

Defining SLAPPs: different contexts, the same abuse

The data gathered through the questionnaire provided substantial material to shed light on how self-regulatory bodies in the surveyed countries conceive their potential role in reacting to SLAPPs, mapping their visions on that matter in a systematic fashion being the main purpose of the present article.

Of the sixteen respondents, fourteen confirmed knowledge of the threat posed by SLAPPs, with the only exceptions of Cyprus and Turkey. Different understandings of SLAPPs, though, emerged among respondents. While most discrepancies might arguably be context-based, they might also be the result of different experiences dealing with such threats, as some respondents had more experience in dealing with SLAPPs than others.

It is worth noting that only one country, the UK, has an internal institutional definition of SLAPPs, as underlined by IMPRESS, one of the two British media councils. They say that “[i]n the UK, [what] is being defined by the government as SLAPPs can be

characterised as an abuse of the legal process, where the primary objective is to harass, intimidate and financially and psychologically exhaust one's opponent via improper means."

Goals

The majority of the respondents emphasised the intimidating nature of SLAPPs. The verb "intimidating" was used by six respondents, followed by the verb "silence" (three occurrences). This shows that self-regulatory bodies are well aware of the "chilling effect" sought by SLAPPs and identified by the literature.

A global overview of the answers confirms that SLAPPs are generally perceived as an abuse of the judicial system that pursues a different objective from the one apparently pursued by the specific legal provision activated - most often, the right to seek compensation for defamation. This suggests that, in the present context, the worrying feature of SLAPPs does not lie in the wording of the laws, but in their actual distorted application. Regardless of how laws are written, their application for the purpose of intimidation creates the specific alarming loophole that allows for undue restriction of rights that most EU Member States have enshrined in their constitutions. Interestingly however, only two respondents - the Catalan media council and the Croatian Journalists' Association - directly pointed out that SLAPPs amount to a full-blown threat to the solidity of democratic institutions.

Actors

Six respondents indicated exclusively politicians as the actors that tend to initiate SLAPPs, and only four included economic actors - "companies" or "organisations" in the category. The most comprehensive definition in this regard was given by the Independent Journalists Association of Serbia:

"[SLAPPs] are lawsuits that are primarily used by some powerful people, but also by companies which use those lawsuits to harass and intimidate, and present some kind of threat that leads to censorship in order to prevent public participation. Their aim is not to achieve some right, but to abuse that right."

The Croatian journalists' association was the only one underlining that SLAPPs may also be launched by 'institutions,' through a questionable use of public money, which seems to be a special feature of the Croatian context.

Targets

Many among the respondents claimed to have been subjects of SLAPP attacks themselves (or their members). The Serbian association even claimed that its members are "constantly the target of SLAPP lawsuits." The Croatian association was sued by the public broadcaster HRT after they upheld a complaint about censorship, but the court later dismissed the lawsuit. In Germany and France, self-regulatory bodies have won in the courts all legal challenges to their decisions so far, which were considered to be "assessments and opinions made on a reasonable factual basis" (German media council).

Beside media councils and journalists' associations, respondents identified 'media,' 'newsrooms,' 'the press' and 'journalists' as other victims of SLAPPs. Regarding the content of journalistic activities, four respondents specified that 'investigative journalism' was more likely to be sanctioned by SLAPPs. Notably, only four media councils embraced larger definitions of SLAPP targets, such as 'the opponent', 'the critics' or 'those who disagree'. None of them, however, pointed out that the spectrum of targets of SLAPPs is broader than the media alone. Subjects other than journalists, such as civil society activists and NGOs, are also targeted through this legal instrument.

Consequences

As for the consequences of SLAPPs, five respondents mentioned the financial damages that SLAPPs subjects are forced to endure, suggesting that the imbalance of financial resources between the plaintiff and the defendant can sometimes be so large that the same amount of money that could inflict a devastating blow on the latter will probably have no significant effect on the former. Only one respondent -the CDJ in Belgium- mentioned the "time-consuming" effect of SLAPPs, emphasising the dimension of 'time' together with that of 'money', while IMPRESS stressed the "psychological" effect that victims of SLAPPs may suffer.

Furthermore, two respondents -the Belgian media councils- noted the repetitive aspect of SLAPPs. In their view, the intimidating effect of SLAPPs mainly stems from the fact that the same actor can make filing them a recurring practice. The CDJ also listed the "sowing of doubt" among the consequences of SLAPPs, thus implying that one of the systemic results of the widespread practice of SLAPPs is the general delegitimization of the entire free press in the readers' eyes. In sum, SLAPPs can be used to drain the defendant's resources of money and time, psychologically harass him or her, and erode his or her legitimacy. This is when the "chilling effect" mentioned above can kick in.

Data collection and concrete cases

For the last four years, the Croatian Journalists' Association has run an investigation gathering information on "the number of plaintiffs who [had] file[d] series of accusations with extremely high compensation claims and are in positions of power," out of the assumption that these lawsuits can constitute SLAPPs. In the survey, they noted:

"The [Croatian] legislation doesn't recognize SLAPP, judges have no education about it, and there are no official records on SLAPP; CJA's survey is the only one that deals with this. However, the latest case of the Supreme court judge suing the journalist at the local portal in Šibenik urged us to start collecting the case's files where judges are plaintiffs vs. journalists and media."

Other media councils, such as the Catalan media council, have also acted to collect data to map the phenomenon in a recent report, but the general picture among the countries surveyed is rather nuanced. Seven respondents believe that the number of SLAPPs has

increased in recent times, while five think the opposite and four did not share any assessment on the subject. The Serbian *NUNS* was the only respondent claiming to help media and journalists by “providing legal advice and assistance with representation in court”.

Only two media councils detailed concrete examples of journalists being targeted by SLAPPs. In one case, reported by the CDJ, a company that had filed several lawsuits against an investigative journalist decided to also file a complaint against his conduct with the press council, which treated it as an ordinary complaint. In a second case reported by the CDJ, it was the journalists who sought the council’s advice on its actions after the plaintiff had already withdrawn his complaint. For its part, IMPRESS explained:

“Some of the niche investigative journalism platforms regulated by IMPRESS are particularly prone to SLAPPs due to the nature of their work in holding powerful interests to account. Many of the local news publishers that we regulate also undertake investigations into local government, crime, the environment and other issues that matter to their local communities. Publishers regularly contact IMPRESS to seek regulatory advice about legal threats that are made against them.”

It can be argued that the scarcity of concrete examples to report may be related to the general idea several media councils have that it is not up to them to settle or regulate SLAPP cases, as well as that ethics committees set up within professional associations have no role to play once a lawsuit has been filed. Due to its relevance to the present study, this point will be further explored below.

The roles of self-regulatory bodies against SLAPPs

The responses show distinct understandings of the roles that the organisations think they do and should play and who they should defend when dealing with SLAPPs. Many respondents say they do not directly intervene in SLAPP cases but intervene in a round-about way or would like to do so in the future. The answers also show clear reaffirmations of the actors’ own singular postures and territory, in sum of their professional jurisdiction.

For many respondents, SLAPPs do not fall within their scope of action because of their legal nature, even though some SLAPP cases - can - have ethical implications as the truthfulness of the facts may be disputed. Nonetheless, for the respondents SLAPPs are primarily conceived as legal proceedings, which puts them outside the scope of the competencies of media councils. As the German media council explained:

“this is not within the competence of the German press council (...) No, the German press council does not deal with lawsuits, but with complaints against violations of ethical guidelines”.

Besides stressing the legal character of SLAPPs, many respondents claim that these lawsuits are unrelated to ethical considerations. They thus reaffirm their field of competence, and thus their jurisdiction, in a territory that must above all remain centred on ethical issues, in their view. The Schweizer Presserat straightforwardly explained this: “We only have a role as an ethical instance”. The Kosovo media council insisted: “We are

focused on media ethics. The Association of Journalists is more ‘responsible’ for these issues”.

It is not only the competence or the territory of the organisation that is used as an argument accounting for the choice of non-involvement of media councils in SLAPP cases. Some media councils, such as the CDJ in French-speaking Belgium also explain that, since their public role is not yet fully recognised, they do not feel entitled to take a stance in the public sphere. Several media councils (the RVDJ, Serbian media council and German media council) think that professional associations of journalists are better suited to defend media actors against SLAPPs.

When self-regulatory bodies intervene in SLAPPs, three different functions can be identified: legal representation; arbitration; research and advocacy.

Legal representation vs. arbitration: handling SLAPP-related complaints

Few self-regulatory bodies directly get involved in actual SLAPP cases handled by the judicial system in their country. The Catalan media council provides *pro bono* representation for journalists in court procedures, counselling and education about their legal rights, embracing a similar approach to the one of journalists unions. The Independent Journalists Association of Serbia, for instance, gets involved in SLAPP cases “by providing legal advice” to journalists, and has attorneys that represent some media and journalists in court. The Croatian Journalists Association also offers legal representation for journalists in court proceedings.

No other respondent claimed to have mechanisms in place to support journalists when targeted by SLAPPs. Nonetheless, self regulatory bodies in Turkey, Catalonia and the UK acknowledge to actually indirectly intervene in SLAPP cases. The Turkish media explains:

“There has been indirect involvement, so to say. As it is well known, many journalists in Turkey face a variety of civil and criminal lawsuits for their journalistic activities. In some of these cases the piece of news may have been the subject of a complaint before our PC [media council] (and the decision will have been favourable to the journalist). In other cases, the PC may have made a public statement supporting the journalist and upholding press freedom in response to judicial intervention against this journalist.”

In some cases, complaints are filed to the Turkish media council, and if the self-regulatory body’s decision is favourable to the journalist, a court procedure is opened by the plaintiff. There have been cases in Turkey where media council decisions indicating an ethical breach were presented as evidence against a journalist in court. The Turkish media councils said that “[t]here is nothing wrong with that, in our opinion”, indicating that they respect this use of their decisions. The German media council also evokes a similar circumstance of a self-regulation decision being used by the defendant in court to support his argument.

The British IMPRESS provides a “low-cost arbitration scheme (...) as the preferred means of resolving legal disputes between individual claimants and publishers”. This way they hope to “discourage the escalation of disputes into lengthy and costly legal

battles”. The procedures for arbitration are designed in ways that deter SLAPP threats, which will be discarded when detected by the media council without engaging the parties. They state that no publisher member of IMPRESS “has been successfully sued” since the establishment of the media council, but they admit that only a minority of media companies have engaged as members committed to have IMPRESS as arbiter:

“a significant proportion of the UK media sit outside of effective regulation and do not benefit from our services that deter SLAPPs”.

On this regard, it must be noted that, although most media councils refrain from intervening in SLAPP cases, some of them believe their role could change if the plaintiff’s concerns were to be treated as ethical complaints, thus shifting the procedure from the domain of law to the one of journalism. They have mechanisms to safeguard journalists from illegitimate ethics complaints, especially when repeated complaints tend to restrict the professional work of journalists.

“Before accepting the complaint against a journalist, our media council studies it and requests allegations from the media and the journalist himself. If we had evidence that the complaint only aims to paralyse the journalist’s activity, we would not accept it or resolve it against the plaintiff” (CIC).

Research and advocacy: monitoring the phenomenon and launching public awareness campaigns for anti-SLAPP measures

The media councils that are more active in defending journalists against SLAPPs also take the role of alerting the public about the negative effects of SLAPPs (UK) and denouncing specific lawsuits when they deem them as unfair (Turkey, Kosovo).

“We have often made public and publicised support visits-trips, and/or organised and/or participated in public support events for that journalist or media organ.” (Turkish media council).

Journalists associations are more engaged than media councils in these public campaigns. In Croatia the journalists association produces an annual report on SLAPP cases, and in Serbia it releases public statements. The Catalan media council has collaborated with a media observatory to produce its first report. The media councils that are more reluctant to get involved in defending journalists from SLAPPs are also adamant about not pronouncing themselves:

“We do not consider it to be the role of the German press council to become publicly involved in cases that are not brought to the Council as complaints” (German media council)

Other media councils simply say that they do not have the financial resources for launching such public awareness campaigns. Some media councils declare being open to collaborating with other stakeholders to fight SLAPPs together, even if they do not see their responsibility to be directly involved in the legal procedures. They mainly

evoke professional journalists associations, some of which are actually members of the media councils (Catalonia, Germany, France). In Turkey, they do not see other organisations addressing the problem of SLAPP, and that is why they take the initiative. The Swiss and Serbian media councils evoke ongoing national initiatives to coordinate with other national actors more closely in order to take a collective position and carry out joint actions.

All media councils and professional associations are aware of the EU-level recommendation to foster a legal framework to deter SLAPPs, and of the fact that it calls for the involvement of self-regulatory institutions in the resolution of the problem. The Catalan media council sees it as “a recognition of the function of democratic control over the media that the media councils are doing”. In Croatia the journalist’s association is sceptical about the initiative, as “implementation in member states is not obligated and depends on the political will”, but they hope that launching an EU-wide debate on the topic will encourage Croatian politicians to engage. Some organisations (Germany, French-speaking Belgium, Catalonia, Serbia) consider that the best tool against SLAPPs is actually prevention, educating journalists to protect themselves by avoiding “some traps in which they can find themselves, and reduce the possibility of filing any lawsuits”, as the Independent Journalists Association of Serbia puts it. The Belgian CDJ considers that if journalists understood better the self-regulation role the ethics bodies play, that could reduce the risk of SLAPPs:

“they continue to see us as ‘police’. If they were aware that we can give opinions on their work (as we have already done) to comfort them in their practice, we could help them. The best protection for investigative journalism begins with the respect of ethical standards”.

Discussion: what role for self-regulation in protecting journalists?

SLAPPs are difficult to circumscribe, sometimes even to detect. Bodies working in countries where SLAPPs are less common tend to have more vague and less alarming representations than those that are grappling with a lot of cases.

Different attitudes towards SLAPPs also diverged between media councils and professional associations. The former are composed of publishers, journalists, and sometimes public representatives, and mediate potentially divergent interests. The latter are professional organisations dedicated to journalists. These realities shape the vision they have about their specific territory; about that of other national professional organisations; and about the intersections between them. Media councils tend to defer the ability to act and fight against SLAPPs to the professional associations and few of them consider SLAPPs as an ethical issue, due to their legal nature. They consider them outside their field of expertise, outside their jurisdiction.

Our analysis revealed territorial tensions related to the boundaries of the ‘professional jurisdictions’ of journalistic self-regulatory bodies. Each category claims and controls specific tasks according to the way in which they conceive their role, their legitimacy, and their capacity to act. Jurisdiction is about defining boundaries: what society allows

a professional group to do, but also which missions, rights, and duties the group sets for itself.

A leading concern of media councils vis-à-vis SLAPPs, compared with professional associations, is preserving their role as an impartial third party. They advocate for the defence of media freedom and the right to report on matters of public interest. However, they consider SLAPPs as laying outside their scope of action, which is purportedly limited to sanctioning journalists' ethical misbehaviour or setting standards of good practice. This reaction may be linked to the heterogeneous composition of media councils, which in some countries include civil society representatives (sometimes even lawyers), media owners and journalists. This mixed composition is a factor that may explain why they are so cautious in dealing with SLAPPs against journalists. Journalists are indeed only one actor among others in the territory of media councils.

Professional associations are more reactive to judicial attacks against journalists because they consider it their mission to defend their members. As the scope of action of professional associations is much broader than the one of media councils, the associations mobilise other discursive and practical resources to defend journalists, their autonomy, their freedom and their ability to work. Their role as professional public representatives of journalists serves as "territorial" justification for their intervention. Ethics committees, when they exist in these associations, are intrinsically linked to their other roles, and can therefore incentivize them to act. The importance of professional jurisdictions as constructed by professional bodies is therefore a fundamental element to be taken into account in the representations and reaction to SLAPPs in the journalism worlds.

Self-regulatory bodies do not have a clearly defined vision of their role against SLAPPs. The diversity of representations of jurisdiction is just as decisive a factor as the high exposure to legal attacks and abusive procedures. Accordingly, the way the ethics bodies see their role is just as important as their knowledge of the phenomenon. In turn, both of these elements can act as a brake on action, even if a recent example suggests otherwise. The Irish media council has itself taken up the issue of SLAPPs by offering to become a central interlocutor in complaints against journalists, thereby acting as an informal ombudsman. This claiming of competence marks a clear assertion of its jurisdiction and role in society as a warrant of journalistic quality and independence.⁷

The diversity of positions between self-regulatory bodies, and also between countries, limits the possibility to mobilise these actors in the fight against SLAPPs. The issues surrounding professional jurisdictions also show how difficult it is to identify and define SLAPPs, to indicate who should and can act, and in whose name. Media councils could also be confronted with SLAPPs that affect civil society actors. This raises the question of to what extent journalists represent a privileged category for media councils. Shouldn't they react to any form of SLAPPs, since they are attacks on freedom of expression, the cornerstone of freedom of the press? This issue needs to be taken into account when discussing and devising possible legal measures to address this systemic threat to the right to accountability.

Our analysis on SLAPPs in Europe should therefore be painted against the backdrop of the thriving debate on the reconceptualization of the (self-perceived) normative role of professional journalism in a phase of accelerated technological innovation and global decline of media freedom, and ultimately on its relationship with democracy (Hanitzsch and Vos,

2017, Peters and Witschge, 2015). Media find themselves between the devil and the deep sea. On the one hand, they undergo a generalised legitimacy crisis, with growing vocal criticism of their expertise and growing public scepticism on their ability to perform their function of informing the public impartially, as also reflected in the rise of outright attacks on their independence, whose SLAPPs merely are but one sub-category. On the other hand, they are confronted with actors that have become more and more assertive in pursuing their interests, with scarce recognition of supposedly foundational values such as media freedom that are crucial for the media to properly function. Explicitly embracing a more proactive and confrontational role, though, would risk fueling that exact dynamic of (self-)delegitimization, thus spiralling into a self-fulfilling prophecy that would prove their detractors right.

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Notes

1. Directive 2022/0117 (COD), p. 3.
2. See the work of the Institute for Free Speech: <https://www.ifs.org/anti-slapp-report/>
3. See the European Federation of Journalists website (europeanjournalists.org/?s=SLAPP) and CASE (the-case.eu/latest/) for the latest developments.
4. Minutes of their meetings and a first draft of their recommendations are available at: coe.int/en/web/freedom-expression/msi-slp
5. <https://www.presscouncils.eu/comparative-data-on-mediacouncils/comparison/>
6. Alliance of Independent Press Councils of Europe.
7. <https://www.irishtimes.com/opinion/2023/04/05/defamation-legal-reform-should-facilitate-sharper-investigative-journalism/>

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