



**Organization for Security and Co-operation in Europe  
Office of the Representative on Freedom of the Media**

**SPECIAL REPORT**

**LEGAL HARASSMENT AND ABUSE OF THE JUDICIAL SYSTEM  
AGAINST THE MEDIA**



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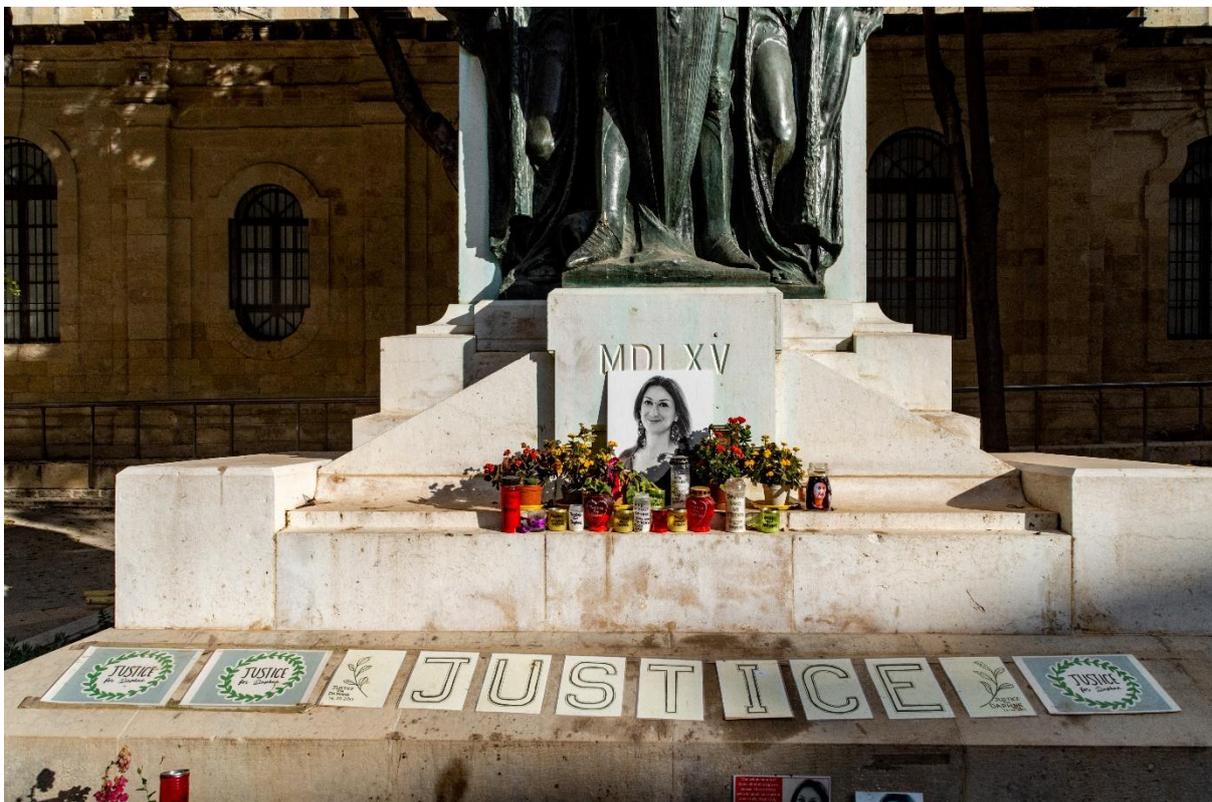
## *Introduction*

In October 2017, on the day she was killed for doing her work as an investigative journalist, Maltese reporter Daphne Caruana Galizia had over 40 lawsuits filed against her by officials, companies and individuals.

Unfortunately, this case of a journalist being sued just for doing her work is not an isolated one in the OSCE region. Aside from the threat of physical and online violence, many journalists and other media workers face a genuine risk of being targeted with legal harassment and abusive litigation, with the law being misused to prevent them from doing their work, or as a means of retaliation for their unwanted investigations or reporting.

This risk comes in many forms, ranging from administrative sanctions or criminal prosecution, to (the threat of) extensive and expensive civil litigation by powerful individuals and organisations – a phenomenon that is oftentimes also referred to as Strategic Lawsuits Against Public Participation (SLAPP). Such legal harassment can pose a serious threat to the safety of media and the economic basis of outlets and, hence, has a strong chilling effect on media pluralism, undermining journalistic freedom in the OSCE region.

The OSCE Representative on Freedom of the Media (RFoM) therefore considered it timely to publish this special report, which partly builds upon earlier publications of the RFoM Office. This concise document does not aim to cover the complete and vast area of legal harassment of the media, but rather focuses on three of the most poignant and current topics: “extremism” and terrorism related charges under public law; defamation claims under public law; and abusive private lawsuits against journalists and other media workers. The report aims to provide general guidance to the OSCE participating States regarding their related commitments.



## *I. OSCE principles and commitments on legal safety of media*

The use of legal instruments and procedures to harass, intimidate, hinder and stifle journalistic work is in stark contradiction to the safety of media workers as established in various OSCE principles on freedom of expression and freedom of the media. In the more than 40 years since the founding of the OSCE, the participating States have made numerous commitments that underline the importance of independent media being able to do their work freely and safely.

This culminated in the *2018 Decision on Safety of Journalists*, in which the OSCE Ministerial Council is mindful that “everyone has the right to freedom of opinion and expression, in accordance with the Universal Declaration of Human Rights, particularly Article 19, and the International Covenant on Civil and Political Rights (ICCPR), particularly Article 19, and that it constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and development”. It also reaffirms that “independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms, as stated in the 1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE”.<sup>1</sup>

The Ministerial Council also recognizes “the importance of investigative journalism, and that the ability of media to investigate, and to publish the results of their investigations, including on the Internet, without fear of reprisal, can play an important role in our societies, including in holding public institutions and officials accountable”. It further states its concern about the fact “that the use of undue restrictive measures against journalists can affect their safety, and prevents them from providing information to the public, and thus negatively affects the exercise of the right to freedom of expression”.

In this Decision, the Ministerial Council acknowledges a broad safety concept, which includes legal safety of the media, showing itself “deeply concerned by all human rights violations and abuses committed in relation to the safety of journalists, including those involving [...] intimidation, harassment and threats of all forms, such as physical, legal, political, technological or economic, intended to suppress their work”. Moreover, the Ministerial Council condemns publicly and unequivocally “all attacks and violence against journalists such as [...] intimidation, harassment, and threats of all forms, such as physical, legal, political, technological or economic, used to suppress their work and/or unduly force closure of their offices [...]”.

The Ministerial Council consequently calls upon the participating States to “bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference”.

Finally, the Ministerial Council urges the participating States to ensure that “defamation laws do not carry excessive sanctions or penalties that could undermine the safety of journalists and/or effectively censor journalists and interfere with their mission of informing the public and, where necessary, to revise and repeal such laws, in compliance with participating States’ obligations under international human rights law”.

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<sup>1</sup> Organization for Security and Co-operation in Europe, Ministerial Council, Milan, 7 December 2018; *Decision No. 3/18 Safety of Journalists*. <https://www.osce.org/chairmanship/406538>

Two additional OSCE documents include some specific commitments regarding the use of legal means to hinder the freedom of expression and free media.

In the *Istanbul Charter for European Security* of 1999, the participating States express deep concern about “the use of legal restrictions and harassment to deprive citizens of free media” and underline “the need to secure freedom of expression” as “an essential element of political discourse in any democracy”.<sup>2</sup>

In the *2004 Decision on Promoting Tolerance and Media Freedom on the Internet*, the OSCE participating States stipulate that the work of the RFoM includes early warning “when laws or other measures prohibiting speech motivated by racist, xenophobic, anti-Semitic or other related bias are enforced in a discriminatory or selective manner for political purposes which can lead to impeding the expression of alternative opinions and views”.<sup>3</sup>

## ***II. Public law***

The use of public law<sup>4</sup> against media workers has a long and notorious history. Public law involves the exercise of state power and the use of state resources and is known to be particularly prone to abuse, in order to silence media reporting on issues that are sensitive or critical to the authorities, sometimes resulting in long prison sentences or penalties so heavy that they are likely to trigger the complete shutdown of a media outlet.

The abuse of public law ranges from, but is not limited to, accusations and injunctions against media workers regarding invasion of privacy, contempt of court or disclosure of classified information, up to coercive measures for those who do not wish to reveal their confidential sources. It also includes the abuse of administrative or criminal sanctions, penalties, house arrest and detention for defamation, tax violations, possession of drugs, incitement of national and religious hatred, breaching curfews, hooliganism, participation in unwanted organizations, breaches of laws on public gatherings and public order, or, at the far end of the spectrum, for disclosure of state secrets, extortion, espionage, “extremism” and terrorism.<sup>5</sup>

All too often, accusations and charges are trumped up. In such cases, the authorities abuse elements of public law procedures to intimidate and hinder media workers – for instance by arresting them and keeping them detained for hours or days; by seizing their office and homes and confiscating their property, papers and equipment, including compulsory hand-over of research materials; or by summoning them to come over to the police station to testify multiple times.

As the harmful and chilling effect of such legal procedures strongly conflicts with the commitments of OSCE participating States and international human rights standards regarding

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<sup>2</sup> Organization for Security and Co-operation in Europe, Istanbul, November 1999, January 2000/Corr.; *Charter for European Security*, as part of the *Istanbul Document*, PCOEW389. <https://www.osce.org/files/f/documents/4/2/17502.pdf>

<sup>3</sup> Organization for Security and Co-operation in Europe, 11 November 2004; *Decision No. 663, Promoting Tolerance and Media Freedom on the Internet*, PC.Dec/633. <https://www.osce.org/files/f/documents/8/1/16912.pdf>

<sup>4</sup> Public law covers all matters of law that can arise between the state and the public, which means that it involves criminal, tax and constitutional and administrative law. In some countries and legal systems, private persons can also initiate a criminal procedure.

<sup>5</sup> In its almost 25 years of existence, the RFoM has made numerous interventions, on almost of all of these types of criminal prosecution against media workers in the OSCE region.

freedom of expression and media freedom, the RFoM recommends the authorities of the participating States to show utmost restraint in the use of public law against journalists and other media workers, and use it only as a means of last resort, ensuring that any possible interference is justified by an overriding requirement in the public interest and proportionate to the legitimate aim pursued.

The RFoM also recommends that the authorities of the participating States ensure adequate and genuinely independent judicial oversight over public law procedures against journalists and other media workers.

The RFoM further urges all participants in such legal procedures, especially the judicial authorities, to be on alert for abuses of public law for political expediency.

As stated before, this report focuses on a few selected topics. These merit attention in their own regard, but also serve as examples of the problematic nature of the abuse of the judicial system against journalists and other media workers. Many of the stated principles in the next two sections therefore generally apply to the abuse of all other public law provisions against the media. The following section addresses charges for “extremism” and terrorism, while the fourth chapter focuses on the use of public law regarding defamation.

### ***III. Public law: “extremism” and terrorism related charges***

While fully recognizing the need for the authorities of all participating States to protect their citizens against violent and terrorist conduct, the RFoM has noted with great concern a tendency of authorities to use “extremism” and terrorism related charges against journalists and other media workers.

Already in 2014, the RFoM stated that “OSCE participating States are responding to threats from extremists by creating laws that include provisions which might seriously limit free expression and free media online and offline”.<sup>6</sup> In 2016, the RFoM noted with concern that “in many participating States, media reporting about sensitive issues, including terrorism or anti-government activities, are considered as supporting terrorism”.<sup>7</sup> In many participating States this trend is accompanied by so-called anti-extremist provisions and anti-terrorist provisions that criminalize the disclosure of classified information and simultaneously undermine the right of journalists to maintain their sources’ confidentiality.

All of this makes legislation on these issues a powerful tool in the hands of those wanting to silence unwelcome voices or avoid public scrutiny. Even more so, these laws regularly contain vague definitions and broad scopes, which allows for the arbitrary use of such legislation. They oftentimes fail to clearly define the core elements, and use instead a heterogeneous, wide or open list of offences that include components like “public explanation and justification of terrorism”, “agitation of social enmity”, “propaganda of religious superiority”, “libellous

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<sup>6</sup> Organization for Security and Co-operation in Europe, The Representative on Freedom of the Media Dunja Milatovic, 7 October 2014; *Communiqué by the OSCE Representative on Freedom of the Media on the impact of laws countering extremism on freedom of expression and freedom of the media* (No. 06/2014). <https://www.osce.org/fom/125186>

<sup>7</sup> Organization for Security and Co-operation in Europe, The Representative on Freedom of the Media Dunja Mijatović, 1 September 2016; *Communiqué by the OSCE Representative on Freedom of the Media on free expression and the fight against terrorism* (No. 6/2016). <https://www.osce.org/fom/261951>

accusations of extremism against public officials”, “provision of information services to extremists”, and “hooliganism”.

Laws like these are especially problematic when they do not properly define the criteria and safeguards which are necessary to guarantee their fair interpretation and enforcement and for the proper balancing with media freedom and freedom of expression. Moreover, in several cases the explanation and implementation of these laws is put in the hands of politically controlled bodies that lack independent judicial oversight.



Naturally, when violence is incited or used, or activities represent a direct and imminent threat to basic constitutional pillars of democratic society or human rights, authorities may – and are even obliged by international human rights standards to – react accordingly. However, any response that aims to protect against incitement to violence, violent acts and terrorism should always be balanced against the fundamental right to freedom of expression and media freedom, which allows for controversial and provocative political views, as part of pluralistic and democratic debates. Even in difficult times, authorities must create environments conducive to the free flow of information and media pluralism, including the right of journalists and other media workers to work freely and safely, and to maintain the confidentiality of their sources.

In short, all limits to free expression and free media imposed by anti “extremism” and anti-terrorism regulations should always respect OSCE commitments and international law, notably Article 19 of the ICCPR that protects the right to freedom of expression.

Therefore, the RFoM recommends that all participating States expressly acknowledge that the media have the freedom to report on “extremism” and terrorism, and that reporting about these topics is of public interest, crucial to public debate, and is not the same as supporting them.

The RFoM further recommends that the participating States clearly and appropriately define, in line with international human rights law and standards established by intergovernmental bodies, such as the Venice Commission of the Council of Europe,<sup>8</sup> the legal notions used in legislation, programmes and initiatives aimed to prevent or counter “extremism” and terrorism.

The RFoM also recommends that the participating States provide legal procedural safeguards securing journalists’ right to non-disclosure of sources and adequate judicial scrutiny before law enforcement and intelligence agencies can access journalists’ records.

#### ***IV. Public Law: defamation***

A substantial number of charges against media workers and outlets are based on defamation (libel and slander) laws or similar provisions on insult (including special laws protecting the reputation or honour of particular persons or groups of people, or the “honour” of the state and state symbols), blasphemy and religious insult laws.<sup>9</sup> In 2017, a study commissioned by the RFoM revealed that three-quarters of participating States have criminal defamation and insult laws on their statute books. The authors also found that imprisonment was a possible sanction in the vast majority of these legislations, with other types of sanctions including fines and, less commonly, corrective labour or the loss of certain political rights.<sup>10</sup>

From its inception, the RFoM has advocated for the decriminalization of defamation – to end the chilling effect that even the potential of sanctions on the basis of such laws can have on media freedom, with provisions that tend to strangle dissent and debate and that provide authorities with an opportunity to discourage, threaten and sanction media who (plan to) publish on critical or sensitive issues.

Other human rights and media freedom organizations and institutions have voiced the same concerns. Already in 2002, the UN Special Rapporteur on Freedom of Opinion and Expression and the OAS Special Rapporteur on Freedom of Expression joined the RFoM in a declaration stating that: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished [...]”<sup>11</sup>

Eight years later, when joined by the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, these international rapporteurs stated that “all criminal

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<sup>8</sup> See for instance: European Commission for Democracy through Law (Venice Commission), Strasbourg, 20 June 2012; *Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation, Opinion no. 660 / 2011 CDL-AD(2012)016 Or. Engl.* Adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012). [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)016-e)

<sup>9</sup> A variety of national differences within the OSCE region can be found in the usage of terms like “defamation”, “libel”, “slander”, “insult”, etc., as well as differences between the legal components of the relevant provisions. For the purpose of this report, the term defamation is understood to cover all legal provisions regarding defamation and insult issues in the respective public law statutes of the participating States.

<sup>10</sup> Organization for Security and Co-operation in Europe, (commissioned by) OSCE Representative on Freedom of the Media, Author/Lead Researcher: Scott Griffen, Director of Press Freedom Programmes, International Press Institute, Managing Editor: Barbara Trionfi, Executive Director, International Press Institute, March 2017; *Defamation and Insult Laws in the OSCE Region: A Comparative Study*. <https://www.osce.org/files/f/documents/b/8/303181.pdf>

<sup>11</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, 2002; *International mechanisms for promoting freedom of expression joint declaration*. <https://www.osce.org/fom/39838>

defamation laws are problematical” and declared criminal defamation to be one of the ten key threats to freedom of expression.<sup>12</sup>



Both the UN Human Rights Committee<sup>13</sup> and the European Court of Human Rights (ECtHR) have taken similar stances, with the latter adding in a 2004 judgment that “the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence”.<sup>14</sup> In subsequent cases, the ECtHR even found that the imposition of a prison sentence in defamation cases amounts to a violation of freedom of expression as enshrined in Article 10 of the European Convention on Human Rights regardless of whether or not the finding of criminal liability itself could be justified.<sup>15</sup>

Concerns about criminal defamation are voiced particularly strongly when the supposed victim is a senior public official. In 2000, the RFoM together with the UN and OAS rapporteurs stated that “defamation laws should reflect the importance of open debate about matters of public concern and the principle that public figures are required to accept a greater degree of criticism

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<sup>12</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2010; *Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom Of Expression in the Next Decade*. <https://www.osce.org/files/f/documents/d/e/41439.pdf>

<sup>13</sup> UN Human Rights Committee, 102nd session Geneva, 12 September 2011; *General comment No. 34 (CCPR/C/GC/34)*. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>14</sup> Council of Europe, European Court of Human Rights, Strasbourg, 17 December 2004; *Case of Cumpănă and Mazăre v. Romania*, (Application no. 33348/96). <http://hudoc.echr.coe.int/eng?i=001-67816>

<sup>15</sup> See, for instance: Council of Europe, European Court of Human Rights (Second Section), Strasbourg, 24 September 2013; *Case of Belpietro v. Italy*, (Application no. 43612/10), or Council of Europe, European Court of Human Rights (First Section), Strasbourg, 19 December 2013; *Case of Affaire Mika v. Greece*, (Application no. 10347/10). <http://hudoc.echr.coe.int/eng?i=001-139487>

than private citizens” and urged for the repealing of “laws which provide special protection for public figures”.<sup>16</sup> The Joint Declaration of 2010 specially mentioned the failure of many defamation statutes to require public officials and figures to tolerate a greater degree of criticism than ordinary citizens.

A year later, the UN Human Rights Committee stated that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant”.<sup>17</sup> The ECtHR stated on numerous occasions that the limits of acceptable criticism are wider with regard to a politician acting in a public capacity than in relation to a private individual: “In a democratic society, the government’s actions must be subject to the close scrutiny not only of the legislative authorities but also of the press and public opinion.”<sup>18</sup>

Considering this, the RFoM recommends that all OSCE participating States recognize the chilling effect that public law provisions on defamation have on the right of the media to freely publish news as well as the public’s right to receive information and ideas, and therefore recommends the authorities of all OSCE participating States to refrain from charging journalists and other media workers on counts of defamation.

The RFoM recommends all OSCE participating States to remove defamation from their criminal law statutes.

As a possible intermediate step to removal from all public law, the RFoM suggests that authorities could move defamation from criminal law to their administrative law statutes, provided that the relevant provisions have a much less punitive effect and that these exclude any form of detention.

However, as administrative law still involves the use of state power – and thus contains the risk of a chilling effect and abuse – and oftentimes lacks independent judicial oversight, the RFoM recommends that the OSCE participating States recognize that defamation is a civil wrong that should be dealt with through private law. The limitations to the possible amount of damages to be awarded for civil defamation should be proportionate, to prevent a possible chilling effect on journalists and media workers by threatening their economic existence.

## V. *Abuse of private law*

Unfortunately, private law<sup>19</sup> can, in the hands of malicious parties, also turn into a vicious instrument for censoring, intimidating and silencing critical voices as well as for burdening media workers and media outlets with the cost of legal defence until they abandon their

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<sup>16</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, 2000; *International mechanisms for promoting freedom of expression joint declaration*. <https://www.osce.org/fom/40190>

<sup>17</sup> UN Human Rights Committee, 102nd session Geneva, 12 September 2011; *General comment No. 34 (CCPR/C/GC/34)*. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>18</sup> European Court of Human Rights, 8 July 1986; *Case of Lingens v. Austria*, (Application no. 9815/82). <http://hudoc.echr.coe.int/eng?i=001-57523>

<sup>19</sup> Private law is often defined as the part of the law that deals with such aspects of relationships between individuals that are of no direct concern to the state. It includes the law of property and of trusts, family law, the law of contract, mercantile law, and the law of tort. Note that in certain circumstances public officials and bodies may also act as private legal entities, in which case they are subject to private law.

reporting. Since most civil procedures are known to provide less safeguards to respondents than public law procedures do, such lawsuits can pose a serious problem.

Legal harassment through private law usually starts with the sending of threatening legal communication and can proceed with the filing of (a series of) lawsuits, the defence of which can cost a fortune and tie up significantly the respondents' time and resources. Claims can be based on many legal grounds, including, but not limited to, defamation, (economic) torts, labour law, injunctions, and privacy law.



This type of legal harassment and judicial abuse has gained considerable attention in the past decades, mainly under the term Strategic Lawsuits Against Public Participation, or SLAPP. Originally used to describe civil complaints or counterclaims<sup>20</sup>, according to some scholars and experts the term SLAPP has evolved to encompass all types of legal actions, including public law procedures like the ones mentioned in the previous parts of this report.

The practice of vexatious, abusive lawsuits and litigation tactics is generally characterized by three specific features, which all contradict the genuine exercise of a right or a legitimate redress: (1.) their basis, which is mostly meritless, frivolous, or highly exaggerated; (2.) their intent<sup>21</sup> and aim, which is to intimidate, censor, exert a chilling, silencing effect and to exhaust and deplete the respondent both financially and psychologically; and (3.) the demanded remedies, which are usually outrageously large.

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<sup>20</sup> George W. Pring, *SLAPPs: Strategic Lawsuits against Public Participation*, 7 Pace Envtl. L. Rev. 3 (1989).  
<https://digitalcommons.pace.edu/pelr/vol7/iss1/11>

<sup>21</sup> It is noteworthy to mention that in the literature on anti-SLAPP regulation, there is argument about the question whether the use of the “intent” criterion should be used, as it may lead to ineffective legal or policy strategies on all but the most blatantly malicious or manifestly ill-founded lawsuits.

In addition to these characteristics, such abusive claims are often characterized by a disparity in power and resources (inequality of arms) between the claimant and the respondent. Also, this type of litigation tends to result in an extended, stretched process, with as many legal obstacles and procedural hurdles that the claimant can invoke.

Recognizing the importance of the need to address this abuse of the judicial system and to protect respondents against this form of legal harassment, in recent times several calls and initiatives have been made for new regulations (for instance in the European Union<sup>22</sup> and with the Council of Europe<sup>23</sup>) and for a change of (international) laws to prevent claimants to engage in “forum shopping” to countries with claimant-friendly laws for starting such abusive procedures.

Although a few OSCE participating States have adopted some form of regulation, affording varying degrees of protection and benefits to defendants who are sued for speech-based claims, such statutes are still the exception.

Since the legal safety of media workers is enshrined in different OSCE principles and commitments, and since abusive lawsuits can gravely undermine media freedom, the RFoM recommends that the authorities of all participating States recognize the worrying and chilling effect of litigation and lawsuits, initiated to censor, intimidate, silence and exhaust media workers and outlets, and that they therefore consider some form of protection or safeguards, including through regulations, for journalists and other media workers against such abusive lawsuits.

The creation of regulations to prevent abusive litigation, however, is not an easy task, as this does not have a long, well-founded legal history and since some perceive it to be in contradiction with the right of access to justice and fair trial. In addition, new regulations always include the risk of abuse on their own. These considerations notwithstanding, some general remarks can be made that could serve as points of departure and guidance to tackle the detrimental use of vexatious and abusive lawsuits against journalists and other media workers.

Since the possibility of protracted, high legal costs serves as the main chilling effect that abusive lawsuits have on respondents, one of the more important challenges lies in the early identification of such litigation without having to go through a (complete) trial. The establishment of some form of early dismissal procedure – a system in which pre-trial motions and preliminary evidence can be weighed and in which the harm of dismissal can be balanced against the harm of letting the trial proceed – could form a first step forward.

Next, some form of aid could be offered to the targets of such abusive lawsuits, for instance through financial means and through legal or psychological assistance. Regulations could also provide for a way of holding malicious litigants responsible for their abuse of the law, including by making them pay for the costs of the process and the costs of the respondent. Additionally,

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<sup>22</sup> The European Commission recently held a public consultation on SLAPP, which should feed into an initiative against SLAPP, as announced in the European Democracy Action Plan. [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders_en). On 11 November 2021, European Parliament adopted a resolution on *Strengthening democracy, media freedom and pluralism in the EU* (P9\_TA(2021)0451), proposing a series of measures to counteract the threat of SLAPPs: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0451\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0451_EN.pdf)

<sup>23</sup> Joint call by over 100 civil rights organizations; *The need for a Council of Europe Recommendation on measures to deter and remedy the use of SLAPPs*. <https://www.ecpmf.eu/wp-content/uploads/2021/03/The-Need-for-a-Council-of-Europe-Recommendation-Final-1.pdf>

training on recognizing and dealing with these abusive lawsuits could be offered to the different participants in the litigation process. Finally, the possibility for malicious claimants to go “forum shopping” between different states and legal regimes, in order to bring their meritless and frivolous claims in a claimant-friendly environment, should be limited as much as possible.

## ***VI. Summary of recommendations***

1. The RFoM recommends the authorities of the participating States to show utmost restraint in the use of public law against journalists and other media workers, and use it only as a means of last resort, ensuring that any possible interference is justified by an overriding requirement in the public interest and proportionate to the legitimate aim pursued.
2. The RFoM recommends that the authorities of all participating States ensure adequate and genuinely independent judicial oversight over public law procedures against media workers.
3. The RFoM urges all participants in legal procedures, especially the judicial authorities, to be on the alert for abuses of public law for political expediency.
4. The RFoM recommends that the authorities of all participating States expressly acknowledge that the media have a right to report on terrorism and extremism and acknowledge that reporting about these topics is not the same as supporting it.
5. The RFoM recommends that the authorities of all participating States clearly and appropriately define, in line with international human rights law and standards established by intergovernmental bodies, the legal notions used in legislation, programmes and initiatives aimed to prevent and counter “extremism” and terrorism.
6. The RFoM recommends that the authorities of all participating States provide legal procedural safeguards securing journalists’ right to non-disclosure of confidential sources and adequate judicial scrutiny before law enforcement and intelligence agencies can access journalists’ records.
7. The RFoM recommends that the authorities of all OSCE participating States recognize the chilling effect that public law provisions on defamation have on the right of the media to freely publish news as well as the public’s right to receive information and ideas, and therefore recommends the authorities of all OSCE participating States to refrain from charging journalists and other media workers on counts of defamation.
8. The RFoM recommends that the authorities of all participating States remove defamation from their criminal law statutes.
9. The RFoM suggests that the authorities of all participating States could, but only as a possible intermediate step to removal from all public law, move defamation from criminal law to their administrative law statutes, provided that the relevant provisions have a much less punitive effect and that these exclude any form of detention.

10. The RFoM recommends that the authorities of all participating States recognize that defamation is a civil wrong that should be dealt with through private law. The limitations to the possible amount of damages to be awarded for civil defamation should be proportionate, to prevent a possible chilling effect on journalists and media workers by threatening their economic existence.
  
11. The RFoM recommends that the authorities of all participating States recognize the worrying and chilling effect of litigation and lawsuits, initiated to censor, intimidate, silence and exhaust media workers and outlets, and that they therefore consider some form of protection or safeguards, including through regulations, for journalists and other media workers against such abusive lawsuits.