

ENNHRI submission to the consultation on the EU package against abusive litigation (SLAPP) targeting journalists and rights defenders

Response to the Questionnaire.

As part of the [European Democracy Action Plan](#), the European Commission launched [an initiative](#) to protect journalists and human rights defenders in strategic lawsuits against public participation (SLAPP). While NHRIs play a crucial role in protecting human rights defenders from SLAPPs, as human rights defenders themselves NHRIs can also face SLAPPs in fulfilling their mandate.

The [ENNHRI](#) submission to the initiative's consultation builds on [its submission](#) to the roadmap and provides more details responding to the survey. At the same time, ENNHRI encourages its NHRI members from EU Member States to contribute to the consultation with their country-specific information.

ENNHRI remains available to cooperate with the European Union on this initiative, activities under the European Democracy Action Plan, the implementation of the Charter of Fundamental Rights and the rule of law instruments to support and protect human rights defenders and civil society in the EU.

Who is the target (defendant) in the SLAPP you know of?

- Body or institution defending human rights

NHRIs as rights defenders, face defamation, harassment, and attacks that constitute SLAPP. The Polish Commissioner for Human Rights [faced civil action](#) for a statement made in his professional capacity as head of the institution, in a wider context of actions seeking to undermine the NHRI. In Cyprus, the Commissioner for Administration and the Protection of Human Rights [faced official audits and investigations](#) beyond its remit that could limit NHRIs' independence and hinder their activity.

Are you aware of the field of activity on which these targets are active? Please specify

- Yes

NHRIs are independent state-mandated bodies with a broad mandate to protect and promote the full range of human rights. Due to their work monitoring human rights violations, raising awareness of systemic issues, reporting and issuing recommendations to authorities and publicly promoting human rights, NHRIs and their staff can face threats. These threats include, among others, defamation, harassment, and legal action amounting to SLAPP.

Do you think that the lack of EU-wide safeguards against SLAPP poses a problem to public participation?

- Yes, it is a serious problem

SLAPPs have impact on the role of public watchdogs including rights defenders, they hinder public scrutiny, decrease transparency and prevent public debate on topics of general interest. For independent bodies, such as NHRIs, this can be an obstacle in delivering their mandate and then eventually ensuring accountability in cases of human and fundamental rights violations.

What measures do you think would effectively curb the use of SLAPP in the EU?

- Legislation (e.g. procedural safeguards against SLAPP)
- A combination of legislation and non-legislative measures
- Financial support for bodies that specialize in supporting targets

What type of legislative measures do you think would make a real difference in this area?

- Civil procedural safeguards against SLAPP, such as early dismissal of a lawsuit and accelerated proceedings
- Legal aid to targets of SLAPP
- Third-party interventions and allowing representative organisations to act on behalf of targets of SLAPP

What assistance do you think targets (defendants) in SLAPP need?

- Information on SLAPP
- Information about legal professionals or other bodies/people that could help
- Monitoring of SLAPP

Are you aware if, in your country, there are associations or other legal bodies offering assistance (e.g. information or legal assistance) to targets of SLAPP?

- Yes, there are.

Under their broad human rights protection mandate NHRIs can work alongside other rights defenders to monitor, report, and raise awareness of SLAPP. They also protect targets of SLAPPs, by engaging in strategic litigation and third-party interventions. The extent to which NHRIs can assist targets of SLAPP is dependent upon their national context, specific mandate, resources and capacity.

Should there be such an association/body in every EU country?

- Yes.

Which of the following non-legislative measures do you think would help curb the use of SLAPP?

- Raising awareness of SLAPP
- Training legal professionals
- Sharing good practices among EU countries
- Sharing good practices among legal professionals
- Monitoring SLAPP in the EU
- Other – please explain

The EU should create and maintain a mechanism for rights defenders to report attacks, register risks, map trends and activate timely and targeted support and work alongside ENNHRI in support of NHRIs facing threats. It should further support ENNHRI's role to strength NHRIs across the EU to address SLAPPs via exchange of practices and dialogue.

To whom should awareness-raising activities be addressed?

- Citizens
- Journalists and human rights defenders
- Legal professionals
- Others

National authorities, judicial authorities, national human rights bodies including NHRIs, equality bodies, ombuds institutions. NHRIs themselves, could integrate topic of SLAPPs into trainings on freedom of expression issues or other awareness raising activities.

What should training activities on SLAPP focus on?

Training activities should strengthen national authorities, legal practitioners and rights defenders, including NHRIs, in recognising SLAPPs and trigger mechanisms that lead to SLAPPs. They should be trained on legal ethics, codes of conduct and procedural safeguards available on national, and international levels to counter SLAPPs. Additionally, a specific set of legal ethics rules should be in place to prevent SLAPPs and provide disciplinary sanctions to lawyers that systematically enable SLAPPs to be brought to the court.

Please comment or give any additional information you would like to give on SLAPP. The Commission would like to know your views on specific aspects of this initiative and/or references to relevant research.

As highlighted in ENNHRI's submission to the roadmap on the EU package against abusive litigation (SLAPP) targeting journalists and rights defenders, NHRIs are independent state-mandated bodies, with a broad mandate to protect and promote human rights at the national level, and as such are rights defenders. They are also referred to as 'rights defenders' in the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU (Charter Strategy), and in the Council Conclusions on Strengthening the application of the Charter.

In line with the Charter Strategy, NHRIs monitor the application, implementation and promotion of the Charter on the ground. They provide support to victims of fundamental rights violations and can do so for victims of SLAPPs. However, as rights defenders themselves, NHRIs can also face SLAPPs.

SLAPPs against NHRIs are incompatible with the UN Paris Principles, which outline that the decision-making body and staff of NHRIs must enjoy protection from criminal and civil liability for official actions and decisions undertaken in good faith, in order to guarantee that the NHRI can carry out its human rights mandate effectively and independently.

NHRIs are both responsible for protecting rights defenders against SLAPP and are themselves subjected to threats and SLAPP. As such, there is a lack of sufficient safeguards for both NHRIs and the targets they protect. Therefore, EU legislative safeguards should create a strong

protection system, under which NHRIs, given their role in the human rights protection infrastructure, are able to protect other rights defenders without themselves being vulnerable to threats, legal harassment and SLAPP.

ENNHRI recommends that in its legislative measures under this initiative the EU should:

- include reference to NHRIs as human rights defenders, thereby ensuring consistency with EU policies, including the Charter Strategy and the Council Conclusions on application of the Charter;
- recognise and support the role of NHRIs in countering attempts to silence pluralistic public debate and protecting journalists and other rights defenders in line with the Charter Strategy and the Council Conclusions on application of the Charter;
- cover threats and legal harassment, such as SLAPPs, against NHRIs and their staff carrying out their human rights mandate, thereby aligning with international standards safeguarding NHRIs' protection from criminal and civil liability for official actions and decisions; and
- put forward uniform safeguards in the legislative proposal which should offer protection to all those engaging in public participation including rights defenders.

As previously recognised by the European Commission and Parliament, effective and independent NHRIs are indicators of a healthy democracy and rule of law. They monitor, report and raise awareness of SLAPPs and contribute to understanding the targets, subject matter and consequence of SLAPPs on individuals and on the civil society space more broadly. NHRIs also work to ensure a timely and effective response by for example, engaging in strategic litigation to protect targets of SLAPPs.

Therefore, in parallel to legislative measures, the Commission should consider non-legislative measures that recognise and support the work of NHRIs to protect public participation and strengthen rule of law.

ENNHRI recommends that the EU should:

- create and maintain a mechanism in the EU for rights defenders to report attacks, register risks, map trends and activate timely and targeted support and work with ENNHRI in support of NHRIs facing threats;
- ensure synergies and complementarity of the SLAPP initiative with the Commission's policies and instruments on the rule of law and fundamental rights, in particular;

- the relevance of rule of law monitoring to better map and monitor the SLAPP phenomenon;
- the possibility to address SLAPPs also as part of the implementation of the Charter Strategy (for example cases of SLAPPs which are based on abuse of EU law such as GDPR or intellectual property rights);
- the opportunity to devote specific CERV funding to support actors, like NHRIs, that can provide assistance to SLAPP victims;
- provide NHRIs with support to ensure they have adequate resources and legal protection to enable them to effectively monitor and report on SLAPPs, as well as to provide support for targets of SLAPPs; and
- further support ENNHRI's role to enable NHRIs' across the EU to address SLAPPs via:
 - exchange of good practice on assistance provided to SLAPP victims;
 - exchange of good practice on resilience against SLAPPs;
 - dialogue among NHRIs on legislative and other measures to counter SLAPPs; and
 - monitoring and data collection on SLAPPs by NHRIs.

About ENNHRI

ENNHRI is the European Network of National Human Rights Institutions. We bring together over 40 National Human Rights Institutions (NHRIs) to enhance the promotion and protection of human rights in Europe. Our network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level.