CENTRE FOR DEMOCRACY AND LAW MIKO TRIPALO

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP)

IN THE REPUBLIC OF CROATIA

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Introduction

This document is a report on research conducted by the Centre for Democracy and Law Miko Tripalo (CMT) on the topic of SLAPP lawsuits against the media. SLAPP stands for *Strategic Lawsuits Against Public Participation*.

The project was carried out in collaboration with the Croatian Journalists' Association (HND), taking into account previous HND surveys on how legal proceedings have affected media outlets and journalists. These studies are presented in a separate report.

The project was financially supported by the British organization Justice for Journalists Foundation and with cooperation from the international organization Coalition Against SLAPPs in Europe (CASE). The importance of studying SLAPP arises from the fact that such lawsuits are often used as tools for intimidation and preventing individuals and/or organizations from reporting and informing the public on matters of legitimate public interest. Protecting individuals and/or organizations from SLAPP is therefore also a protection of the right to freedom of expression, guaranteed by national constitutional laws and international legal regulations.

The goal of this part of the research was to collect data and analyse court decisions in civil and criminal cases brought against publishers, editors, and journalists (collectively, the media) for publicly published texts and articles. The study identifies potential SLAPP indicators and analyses the key features of SLAPP cases.

At the time of the writing this report, the Croatian legal system does not have a regulation defining SLAPP. For the purposes of this project, SLAPP cases were defined as those brought before the courts containing a sufficient number of indicators to suggest that the lawsuit is evidently unfounded and/or malicious, with the sole intent of the plaintiff being to intimidate or harass the opposing party (i.e., the defendant) with the goal of censorship, as well as to achieve a chilling effect on third parties regarding public criticism or dissemination of messages of public interest. Based on this definition, we analysed whether these SLAPP indicators appear in court decisions and records.

For the purpose of the research, CMT obtained 1,333 court rulings and decisions in cases against the media and journalists from the period between 2016 and 2023 through the Ministry of Justice, Administration and Digital Transformation, as well as municipal and county courts of the Republic of Croatia, most of which became final during this period. CMT extends its

gratitude to the Ministry of Justice, Administration and Digital Transformation and the courts for their assistance.

1. Context and Importance of SLAPP

The importance of SLAPP lawsuits is evident when placed in the context of exercising the right to freedom of expression, which is a fundamental human right necessary for a democratic and civil society. The right to freedom of expression includes the freedom to present information and criticism on topics of public interest. Freedom of expression not only enables pluralism of opinions and viewpoints, but it is also crucial for the realization of citizens' legal, social, and political participation.

In Croatian national law, the right to freedom of expression is guaranteed by Article 38, Paragraph 1 of the Constitution of the Republic of Croatia, with Paragraph 2 of the same article explicitly stating that freedom of thought includes, in particular, the freedom of the press and other means of communication, the freedom of speech and public performance, and the free establishment of all public information institutions. Furthermore, the Constitution of the Republic of Croatia explicitly prohibits censorship and stipulates that journalists have the right to report freely and access information.[1]

In the international context, the right to freedom of expression is guaranteed by a number of international legal instruments at the European and global levels. For example, Article 11 of the Charter of Fundamental Rights of the European Union states that this right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The Charter, just like the Constitution of the Republic of Croatia, specifically emphasizes freedom of expression concerning the media.[2] Additionally, the right to freedom of expression is guaranteed by the European Convention on Human Rights, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.[3] Therefore, these provisions, which regulate the right to freedom of

[1] Constitution of the Republic of Croatia (Narodne novine br. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014).
[2] Charter of Fundamental Rights of the European Union (2016/C 202/02), Official Journal of the European Union, 07.06.2016
[3] European Convention for the Protection of Human Rights and Fundamental Freedoms (Međunarodni ugovori br. 18/1997, 6/1999, 14/2002, 13/2003, 9/2005, 1/006, 2/2010, 13/2017). Universal Declaration of Human Rights, adopted and promulgated by the General Assembly by Resolution 217 A (III) 10.12.1948. International Covenant on Civil and Political Rights, adopted at the General Assembly of the United Nations,, 16.12.1966., (Resolution No. 2200 A /XXI/), entered into force 23.03.1976.

expression, also establish media freedom as an essential and most important element of freedom of expression.

Although this right is not absolute, it is important to understand that regulations strive for extensive protection of freedom of expression and media freedom. However, there remains the need to determine whether a lawsuits or claims related to public participation in matters of public interest are aimed at creating the so-called chilling effect, or if they are legitimate legal proceedings.

The goal of SLAPP is to prevent the media from exercising their right to freedom of expression and informing the public about topics related to citizens' participation in the political, legal, and social spheres of a democratic society. Namely, private plaintiffs, through evidently unfounded and often malicious proceedings, attempt to use the courts to block activities that are of public interest. Besides the goal of prevention, such proceedings also aim to influence other actors in society by creating a chilling effect on the dissemination of information to the public that is of broader public interest. Plaintiffs in such cases are often powerful individuals or organizations (politicians, judges, corporations, or other business entities), while defendants are journalists, editors, publishers, activists, civil society organizations, and others. In addition to the frequent existence of an imbalance of power, there is also a financial issue, as the defendant often does not have equal or comparable financial and other resources.[4]

In addition to the aforementioned problem, SLAPP can cause numerous issues for defendant journalists employed by legal entities, i.e., media publishers, regarding job security due to the fear of dismissal, as well as difficulties in finding new employment with another employer. This is especially the case when the plaintiff directs the lawsuit simultaneously against the journalist as an individual and against the media publisher. Moreover, SLAPP, or the existence of multiple proceedings against a media outlet, can pose a problem for companies advertising through that media outlet.

Therefore, to prevent SLAPP, clear legal provisions and mechanisms are needed to stop them, thereby ensuring the full and essential realization of the right to freedom of expression

The significance of SLAPP is evident in the case law of the European Court of Human Rights, which first mentioned the term SLAPP in the case of Memo v. Russia, where it found that a defamation lawsuit, filed by a governmental body against an online media outlet, as well as the

[4] The existence of an imbalance indicator in a specific case does not represent a necessary condition for a certain case to be considered to represent the so-called SLAPP case.

subsequent approval of the claim, was not in line with the legitimate aim of protecting the reputation of others. This ruling highlighted the issue of SLAPP and established that there was a violation of the applicant's freedom of expression.[5]

Although the topic of SLAPP has long been present in both academic and public discussions, its importance has recently been emphasized in European legal frameworks. Significant progress has been made at the European level, with certain steps forward, as reflected in the aforementioned Directive. On December 1, 2023, an agreement was reached between the European Parliament and the Council of Europe on new legal rules aimed at protecting journalists and human rights activists from strategic lawsuits against public participation (SLAPP). The Directive came into effect on 6 May 6 2024.

On 6 May 2024, the Directive (EU) 2024/1069 of the European Parliament and the Council from 11 April 2024, on the protection of persons involved in public action from clearly unfounded or malicious legal proceedings ("*strategic lawsuits against public participation*") (hereinafter referred to as the "Directive") came into force. In this context, the Directive requires EU member states to harmonize their national legislation, administrative, and other measures with the provisions of the Directive by 7 May 2026. The Directive's preamble emphasizes the intent to curb "libel tourism" and the practice of forum shopping, which refers to selecting the most favorable legal jurisdiction for the plaintiff. Additionally, it should not be overlooked that even before the Directive was enacted, the issue of SLAPP lawsuits in the European Union gained attention following the death of Maltese journalist Daphne Caruana Galizia, who, at the time of her death, was involved in over forty legal proceedings initiated against her by other individuals and legal entities. Even today, after her death, some of these proceedings continue, now against her heirs.

2. Definition and Indicators of SLAPP

The term SLAPP was first introduced by professors George W. Pring and Penelope Canan in their 1996 book, *SLAPP: Getting Sued for Speaking Out*. However, it should be noted that there is no unified or universally accepted definition of SLAPP cases within the professional community.

[5] Memo against Russia (request no. 2840/10), dated March 15, 2022.

For the purposes of this project, a SLAPP case, a term originating from American scholars in the 1980s and 1990s, is considered to be a legal case brought before a competent court that contains a sufficient number of indicators suggesting that it is an evidently unfounded and/or malicious legal proceeding, where the sole aim of the plaintiff is to intimidate and harass the opposing party (i.e., the defendant) for the purpose of censorship, and to create a so-called "*chilling effect*" on all third parties regarding the dissemination of criticism or a particular message of public interest. Defendants can be journalists, human rights activists, media outlets, publishing houses, civil society organizations, trade union representatives, or members of the academic community, while the plaintiff is typically a powerful individual or organization. It is important to reiterate that, at the time of writing this report, the Croatian legal system does not have a statutory definition of SLAPP cases.

CMT identified the following as potential indicators of SLAPP cases:

- The plaintiff is a powerful individual, lobbying organization, corporation, and/or government body filing a lawsuit against a defendant who has expressed criticism and/or conveyed a message about an issue of public interest that is simultaneously inconvenient for the plaintiff.
- The plaintiff holds a stronger position, such as financially or politically, compared to the defendant.
- The nature of the lawsuit or a particular part of it is excessive, disproportionate, or unreasonable.
- The claim involves a relatively high demand, i.e., the value of the dispute is set unreasonably high.[6]
- The subject of the legal proceeding concerns the defendant's public participation regarding an issue of public interest.
- The plaintiff has initiated multiple legal proceedings or is a related entity connected to similar issues involving harassment, intimidation, or threats by the plaintiff or their representatives.

[6] For the purposes of this project, CMT took amounts from EUR 2,000.00 onwards as a relatively high compensation amount. Several factors were taken into account during the selection process. The legal understanding taken by the Supreme Court of the Republic of Croatia, under number Su-IV-47/2020-5 at the second session of the Civil Division of the Supreme Court of the Republic of Croatia (2/20), as well as the determination of the European Court of Human Rights in the case Narodni list d.d. v. Croatia in 2018, in which he determined that the awarded damages were disproportionate to the severity of the injury to the judge's reputation. Namely, the court assessed that the damage to the judge's reputation was not so serious as to justify the amount of compensation for non-property damages of HRK 50,000.00, because Croatian courts award 2/3 of that amount for mental pain due to the death of a sibling

- Certain procedural tactics applied in bad faith are evident in the court rulings – delaying the legal proceedings (e.g., postponing hearings), creating disproportionate costs for the defendant by setting an excessively high value on the dispute, or choosing the most favorable court for the plaintiff.
- Evidence submitted during the legal proceeding is not necessary for the case but is proposed solely to prolong the legal process and increase court and attorney costs, as well as interest penalties.

It is important to note that the presence of a SLAPP indicator in a case does not necessarily or definitively mean that the case is a SLAPP. However, if a case contains multiple SLAPP indicators, this points to a high probability that it is indeed a SLAPP case.

3. Research Methodology

The research methodology included the approach to data collection, the criteria for sample selection, and the method of data analysis.

Approach to Data Collection and Criteria for Sample Selection

The first step taken by CMT for the research portion of the project was submitting a request for access to information to the Ministry of Justice, Administration, and Digital Transformation (hereinafter referred to as "the Ministry") under the provisions of the Law on the Right to Access Information.[7] The request sought court decisions, specifically rulings and verdicts, in civil and criminal cases against media and journalists from 2016 to 2022, in accordance with Article 2, Paragraph 1, Points 1 and 7 of the Media Law (Narodne Novine, No. 59/04, 84/11, 81/13, 114/22). The Ministry then forwarded the request to all first-instance courts in the Republic of Croatia. After the request was forwarded, the first-instance courts of the Republic of Croatia issued different and inconsistent decisions regarding the request. Some courts accepted the request and provided the text of anonymized court decisions, others rejected or dismissed CMT's request, while a third group of courts accepted CMT's request and provided court decisions along with records.

When denying or dismissing CMT's request for access to information, courts cited various reasons. Some claimed that access to case files could only be requested by proving a legitimate

[7] Law on the right to access information (Narodne Novine No. 25/2013, 85/2015, 69/2022).

interest under the Court Rules of Procedure. One court argued that CMT „*did not specify the data*“ and therefore could not locate the requested court decisions based on the description provided in the access to information request. Some courts informed CMT via letters that they were unable to comply with the access to information request due to various technical difficulties, lack of staff, or the dislocation of files, among other reasons.

CMT subsequently sent follow-up letters to the courts that had not complied with its request, asking them to provide any court decisions they were objectively able to supply. However, even in these cases, the request was not granted. Finally, a small number of courts have yet to make any decision regarding CMT’s request for access to information.

The next step in the research involved submitting a request for access to information to all county courts in the Republic of Croatia that had not responded to the request, despite the Ministry's letter indicating that the request had been forwarded to „*all*“ courts. Regarding the decisions of the county (second-instance) courts, discrepancies and inconsistencies were also evident in how CMT's request was handled, citing similar or identical reasons as those provided by the municipal (first-instance) courts, with some county courts advising that the requested information should be obtained from municipal courts.

In total, approximately 438 court decisions and records were collected through this process.

Given the generally weak response from the courts, CMT once again approached the Ministry. The Ministry subsequently provided CMT with 861 final decisions from municipal courts in civil cases and 191 decisions in criminal cases in electronic format, totalling 1,052 final court decisions.

The final number of cases was determined by comparing the decisions obtained directly from the courts in the Republic of Croatia with those provided by the Ministry. Since some decisions were submitted twice (by both the courts and the Ministry), and there were overlaps, the final result does not represent a simple sum of the received decisions but rather the actual number of decisions without duplicates.

Data Analysis Method

The analysis of the collected court decisions and records included several steps of quantitative, qualitative, and comparative analysis. Quantitative analysis was used for statistical processing of the data. This included calculating the number of court decisions and records provided by the municipal and county courts and the Ministry; calculating the delivery in relation to all courts individually; the number of civil and criminal cases; the number of court decisions

(judgments and rulings) and records; the frequency of cases with at least one SLAPP indicator; the type of decision rendered in the court case; the type of case; and the duration of the case until it became final. Qualitative analysis was conducted by reviewing the content of court decisions and records to identify key patterns and motivations behind the initiation of legal proceedings. Legal arguments, the strategies of plaintiffs, the defence of the defendants, and the final outcomes of the legal proceedings were analysed. This analysis enabled a deeper understanding of the legal and societal implications of SLAPP lawsuits, revealing that a certain number of plaintiffs/private plaintiffs frequently initiated legal proceedings based on published information related to them. Finally, a comparative analysis was performed to compare the court decisions and records provided by the municipal and county courts with those provided by the Ministry to prevent any duplication of the submitted court decisions.

4. Court Decisions Database

A database in Excel format was created, containing anonymized data on the following aspects of court decisions: the court that rendered the decision, the case number and date of the decision, data on the parties, the basis for the lawsuit (e.g., the published article), the factual and legal claims of the parties (the legal arguments of the plaintiff and defendant), SLAPP indicators (if any exist), special circumstances of the case (the duration of the proceedings, whether the court referred to the case law of the European Court of Human Rights in the reasoning, etc.), the claimed and awarded damages (if applicable), the awarded legal costs, and any appellate decisions (if the first-instance decision was analysed). This structured database enables comprehensive analysis and easier data searching, providing key information needed for researching and understanding SLAPP lawsuits.

The database contains four sections (sheets). The first section relates solely to civil cases, the second to criminal cases, the third to cases with at least one SLAPP indicator, and the fourth to cases where the judge appears as an actively involved party (plaintiff or private plaintiff).

Since multiple data sources were identified during the research (the Ministry of Justice, Administration, and Digital Transformation, municipal and county courts), a check was conducted to ensure CMT received all relevant court decisions. Informally, CMT also received information from certain media outlets and journalists, as well as editors-in-chief, who were parties in civil and criminal proceedings against them, about specific legal proceedings.

One limitation of the collected court decisions and records is that some of the court decisions and/or records were anonymized, making comprehensive qualitative research to identify potential SLAPP indicators more difficult. This limitation makes it challenging to determine whether the defendant/accused was writing about a topic of legitimate (public) interest and whether the subject of the court case pertained to the public participation of the defendant/accused in an issue of public interest, as well as to identify the characteristics of the plaintiff/private plaintiff (whether they are a public figure, a powerful individual—politician, judge, lawyer, etc.).

Another limitation is that, in most cases where the parties settled their dispute amicably and/or the plaintiff withdrew the lawsuit, the exact motives for the withdrawal, peaceful settlement, and the presence of SLAPP elements cannot be discerned from the court decisions. This particularly hinders the determination of whether the plaintiff in such cases managed to achieve a so-called chilling effect on the media (journalist, publisher, editor-in-chief, etc.).

An additional limitation is that, in many cases, it is not always clear from the court decisions and records, or from the reasoning of the court decisions, whether the plaintiff employed certain bad faith procedural tactics (e.g., delaying hearings, proposing unnecessary evidence, etc.). A full analysis of the case file would be required to assess this. Identifying SLAPP cases thus requires a more detailed analysis of the context and the plaintiff's intentions, as well as the legal arguments and strategies used in the proceedings. SLAPP cases can only be identified with certainty by combining quantitative and qualitative analysis methods, which allows distinguishing them from legitimate, justified legal actions.

5. Main Results: Statistics, Observed Problems, Special Cases, Judges as Plaintiffs, and Other Findings

Presence of SLAPP Indicators

An analysis of 1,333 court decisions (and records) showed that, according to CMT's assessment, at least one SLAPP indicator was present in over 40% of the analysed civil and criminal cases, while two or more indicators were present in half of those cases.

Table 1: Number of Decisions and Records Collected in Relation to the Institution That Provided the Information

COURT OR GOVERNMENT BODY THAT PROVIDED THE DECISIONS AND RECORDS	NUMBER OF DECISIONS AND RECORDS COLLECTED
Municipal and county courts that provided information	438
Ministry of Justice, Administration, and Digital Transformation	1.046

Table 2: Number of decisions containing at least 1 (one) SLAPP indicator

TOTAL NUMBER OF DECISIONS AND MINUTES ANALYZED	CONTAINS SLAPP INDICATOR
1.333	551

Table 3: Number of decisions containing 1 (one) or more SLAPP indicators

ONE SLAPP INDICATOR	TWO OR MORE SLAPP INDICATORS
551	259

Duration of Court Proceedings

The analysed data shows that court proceedings take a long time. For all civil lawsuits that ended with a final judgment, the average duration was 1,557 days, or 52 months, which equals 4.3 years.[8] When considering the duration of all proceedings, including those that ended with a judgment and those that ended with withdrawal or dismissal of the lawsuit, the average

[8] According to the file obtained by the Ministry, which contains 862 cases.

duration was not much shorter: 1,326 days, or 44 months, which equals 3.6 years. Thus, the difference in duration between cases that end with a judgment (a decision that addresses the merits of the claim) and those that do not (for example, due to the withdrawal of the lawsuit or dismissal of the case) is not significant. In both scenarios, the media and journalists face significant burdens due to the length and uncertainty of the legal proceedings, litigation costs, and potential interest penalties that accumulate on the claimed amount if the court rules in favour of the plaintiff.

For criminal proceedings, unfortunately, the data collected did not allow for a precise determination of the duration of the cases. However, when comparing the first 10 cases, they only became final between 3 and 5 years after the year in the case number.[9] In one of these cases, it took 7 years to reach a final decision.

Success Rate of Lawsuits

Interestingly, in criminal cases, only 24% ended with a judgment, and of those, only one-third (i.e., a total of 8% of the cases) resulted in a judgment in favour of the private plaintiff, while two-thirds ended with acquittals. Thus, the vast majority of cases conclude with either the withdrawal of the charges or a judgment dismissing the claim.[10]

Of the 18 judgments in favour of the plaintiff, all but one resulted in penalties of less than 1,200 EUR, and in 4 cases, conditional sentences were issued.

The low percentage of "successful" lawsuits suggests that the prevailing motivation of the plaintiffs is likely to generate legal and attorney costs for the opposing party, as well as to discourage the media, which can be achieved even without winning the lawsuits, especially due to the uncertainty heightened by the long duration of the proceedings.

In civil cases, less than 40% of lawsuits end with a judgment, and of those, less than half, or approximately 18% of the total number of lawsuits, succeed in obtaining damages. This indicates that discouragement of the media is also a dominant motivation in civil cases.

[9] Via the e-Predmet website, it was determined whether there was a change in the business case number in a particular case
[10] For unknown reasons, in some court decisions judgments have been made dismissing the charge, even though the prosecutor has actually dropped the prosecution

Accumulation of Lawsuits

Plaintiffs often initiate multiple civil proceedings against the same defendant, and sometimes simultaneously initiate criminal proceedings, mainly for defamation, which is still considered a criminal offense under Croatian law. The accumulation of claims is also common, where plaintiffs simultaneously seek damages, the publication of a correction, and/or an apology, all of which further burden the defendants due to possible legal uncertainty. Additionally, with the same factual basis, plaintiffs sometimes file lawsuits against multiple defendants, which also leads to legal uncertainty for the defendants due to the possibility of different court rulings on the submitted lawsuit.

During the research, it was found that a certain number of plaintiffs (often referred to as „serial plaintiffs“) frequently file lawsuits against the media, with some of them often repeating the same factual claims and requesting the same amount of damages. In this context, it can be concluded that these plaintiffs evidently aim to create a so-called „chilling effect“.

Amounts of Claimed Damages and Awarded Compensation

The legislator has not specified the amount of compensation for non-material damages, including mental anguish caused by media articles, leaving it to the courts to decide. In 2002, the Supreme Court of the Republic of Croatia published Guidelines and Amounts for Determining the Amount of Fair Monetary Compensation for Non-Material Damage (hereinafter: "Guidelines")[11]. However, these Guidelines do not specify the amount of compensation for mental anguish in media disputes, leaving the decision to the discretion of judges (within the limits of the claim). For comparison, it is useful to note that the Guidelines set compensation for mental anguish due to the death of a brother or sister, or the loss of an unborn child, at 75,000 HRK (approximately 10,000 EUR). Furthermore, compensation for one day of severe pain (with three levels of pain: mild, moderate, and severe) is set at 370 HRK, or about 50 EUR per day. The Supreme Court of the Republic of Croatia did not explain the method used to determine these guidelines.[12]

[11] Su-1331-VI/02 and 1372-11/02, dated November 29, 2002. in connection with the Extract from the minutes of the second session of the Civil Department of the Supreme Court of the Republic of Croatia (2/20) held on March 5, 2020 and June 15, 2020, number: Su-IV-47/2020-5.

[12] In 2020, these amounts have been increased by 50% due to inflation and the increase in average wages. Changed Orientation Criteria, Supreme Court of the Republic of Croatia, https://www.vsrh.hr/promijenjeni-orientijanski-kriteriji.aspx.

The Ministry's data shows that in more than half of the cases involving claims for non-material damages, the value of the dispute is indicated as being above 5,300 EUR (median), with the average being 9,300 EUR. The awarded final compensations were lower, with a median of just under 2,700 EUR and an average of just over 5,300 EUR. The highest compensations were awarded to three judges as private plaintiffs—one received over 13,000 EUR, while the other two each received over 9,000 EUR, with accrued interest for about 4 years.

The amounts of claimed and awarded damages appear disproportionate when compared to the prescribed compensation for severe physical pain. During the period when most cases were initiated, the average compensation for mental anguish due to media articles was equivalent to more than 100 days of severe physical pain, as determined in the Supreme Court's Guidelines prior to the latest revaluation. The highest aforementioned compensation was equivalent to 265 days of inflicted severe physical pain.

The disproportion between the amounts of damages awarded against the media by Croatian courts was also pointed out by the European Court of Human Rights in the case of Narodni List d.d. v. Croatia in 2018.[13] The European Court of Human Rights found that the awarded compensation of 50,000 HRK was disproportionate to the severity of the damage to the judge's reputation. The court concluded that the harm to the judge's reputation was not serious enough to justify such an amount of non-material damages, especially since Croatian courts typically award 2/3 of that amount for mental anguish caused by the death of a plaintiff's brother or sister. The European Court of Human Rights also warned that such a high amount of compensation could discourage citizens from engaging in open debate on matters of public interest.

In the aforementioned case, it was determined that the Republic of Croatia violated the right to freedom of expression of the publisher Narodni List d.d., guaranteed by Article 10 of the European Convention on Human Rights. Narodni List published an article titled „*Judge B. Should Be Pilloried*“, which criticized the judge for attending the opening of a newspaper owned by a controversial local businessman and for previously issuing a search warrant for Narodni List's premises. After the newspaper refused to publish an apology, the judge filed a civil lawsuit seeking compensation for a violation of personal rights. The first-instance and appellate courts ruled in his favour, awarding him 50,000 HRK in non-material damages. The

[13] Subject Narodni list d.d. against the Republic of Croatia (application no. 2782/12), from November 8, 2018. (https://uredzastupnika.gov.hr/UserDocsImages/dokumenti/Presude%20i%20odluke/NARODNI%20LIST%20D.D.%20protiv%20Hrvatske.pdf).

Constitutional Court subsequently dismissed the publisher's constitutional complaint. The publisher then appealed to the European Court of Human Rights, arguing that the damages awarded for harming the judge's reputation violated its freedom of expression under Article 10 of the Convention. The European Court applied the principles established in the case Europapress Holding d.o.o. v. Croatia and assessed whether the interference with freedom of expression was justified in a democratic society. The court emphasized the importance of assessing the proportionality of restrictions on freedom of expression, including distinguishing between statements of fact and value judgments.

The European Court of Human Rights concluded that the domestic courts correctly assessed that the article in question contained value judgments, but they did not examine whether those judgments were based on facts. The court found that the interference with freedom of expression was prescribed by domestic laws and aimed at the legitimate goal of protecting the judge's reputation, but that it was not necessary in a democratic society. The court also noted that the high amount of 50,000 HRK was disproportionate and could deter open debate on matters of public interest.

Furthermore, in paragraph 71 of the above-mentioned judgment, the European Court of Human Rights stated the following:

> *„When placed in the appropriate context, this compensation amounts to two-thirds of the amount typically awarded by Croatian courts for mental anguish caused by the death of a brother or sister (see the guidelines of the Supreme Court cited in the case of Klauz v. Croatia, No. 28963/10, paragraph 31, July 18, 2013). The Court finds it difficult to accept that the damage to Judge B.B.'s reputation in this case was so serious as to justify this amount of compensation. The Court considers that such an amount of compensation could deter citizens from engaging in open debate on matters of public interest."*[14]

However, this ruling by the European Court of Human Rights did not prompt the Supreme Court of the Republic of Croatia to adequately revise its Guidelines.

On the positive side, some courts have begun to refer to the above-mentioned decision of the European Court of Human Rights when reducing requested compensation claims. For example,

[14] *Ibidem.*

the County Court in Varaždin, in its judgment and ruling with case number 35 Gž-1860/2018-2, dated July 3, 2019, in a case where a judge was also the plaintiff, stated that

> „*Taking into account the content of the article in question and the testimony of the plaintiff, this court considers that there are no circumstances in this case (despite the presence of certain distinguishing elements from the case examined by the European Court of Human Rights) that would justify non-material damages exceeding 20,000 HRK, and that this amount represents fair monetary compensation."*

Default Interest Rates and Court Costs

Default interest rates are set by law at a high level, calculated as the average interest rate for loans to non-financial companies plus 3 percentage points, and later as the central bank's discount rate plus 5 percentage points. Interest rates on loans to non-financial companies reflect credit risk, which does not exist in this case, and the central bank's discount rate is also, by definition, a type of penalty rate. Therefore, further increases lead to inappropriately high default interest rates in this context. This creates additional motivation for some plaintiffs to prolong the duration of the dispute.

At the same time, the legal costs that the parties must bear in the proceedings, like attorney fees, depend on the value of the dispute as indicated by the plaintiff. The plaintiff has discretion, especially in cases where monetary compensation is not sought, but rather non-monetary claims (such as publishing a correction or an apology). Namely, the higher the value of the dispute, the higher the costs.[15]

Inconsistent Case Law

There are numerous indications that case law is inconsistent. Some courts require proof of damages and award monetary compensation only in more severe cases, i.e., when the violation truly justifies the award of compensation. For example, the legal opinion evident from the

[15] When the value of the subject of the dispute is relevant for determining jurisdiction, composition of the court and in other cases provided for in this law, only the value of the main request is taken into account as the value of the subject of the dispute. In other cases, when the claim does not refer to a sum of money, the value of the subject matter of the dispute indicated by the plaintiff in the claim is relevant. (Art. 35 in connection with the provision of Art. 40, paragraph 2 of the Civil Procedure Act).

judgment of the County Court in Bjelovar, case number Gž-1023/2019-2, dated April 17, 2020, states:

> *„However, this appellate court also finds that the first-instance court correctly concluded that none of the plaintiff's personal rights were violated to an extent that would justify the award of fair monetary compensation, especially considering that, at the plaintiff's request, the defendant published a correction of the information regarding the disputed article."*

Furthermore, the following legal stance is evident from the judgment of the County Court in Pula-Pola, case number Gž-78/2021-2, dated March 17, 2021:

> *„Considering the claim for non-material damages for harm to reputation and honour, such damages are awarded when the violation is particularly severe, and the actual manifestations in the injured party are so evident that they clearly indicate harm to reputation and honour caused by the published information, all in accordance with Article 1100 of the Obligations Act ("Narodne Novine", No. 35/05, 41/08, 125/11, 78/15, and 29/18 - hereinafter ZOO).*
>
> (...)
>
> *Based on the testimony, it was concluded that the plaintiff's distress from the publication of the article was not of such intensity and duration that the conditions of Article 1100 of the ZOO, which would justify the award of fair monetary compensation, were met, considering that prior to and after the publication of the article, a series of articles were published about the plaintiff covering the same topics. Therefore, it seems illogical that the plaintiff's described distress, family, and friends' inquiries were specifically caused by this article, and especially that there were intra-party pressures due to this publication, as the plaintiff did not prove that the alleged violation of personal rights was linked to this article, or that the difficulties were causally connected with this article. Nor did the plaintiff's distress indicate severe mental anguish but rather some negative emotional experiences due to inquiries prompted by the article.*
> (...)
> *Thus, the claim was dismissed because neither the causal connection for the damages nor the severity and intensity of the violation justifying compensation were proven."*

Additionally, the legal opinion is evident from the judgment of the County Court in Bjelovar, case number Gž-1139/2022-2, dated March 9, 2022:

„*12.3) Given the facts mentioned – on one hand, that the plaintiff was a public political figure (a former minister...) and that his photograph was included solely due to the increased public interest in the criminal case in which the plaintiff was heard as a witness, and on the other hand, that public political figures are not immune to criticism and scrutiny, and that, except in cases of serious and baseless attacks, they can be subject to broader acceptable criticism by both ordinary citizens and the media – the appellate court finds that accepting the plaintiff's claim for the protection of his dignity, reputation, and honour due to the publication of his photograph alongside the article and the information that he was heard as a witness in a criminal case against other individuals would unjustifiably disrupt the fair balance between the two opposing rights to the detriment of the guaranteed freedom of thought and expression."*

However, other courts consider that it is sufficient for the acceptance of the claim that the information in question was „*objectively capable of causing harm to the plaintiff*", or they accept the plaintiff's statement that they had to answer inquiries from family and acquaintances, which caused them emotional distress, as sufficient evidence of the harm. This „objective capability" legal stance is evident from the judgment of the Municipal Civil Court in Zagreb, case number 53 Pn-386/18-45, dated October 28, 2021.

Such varying interpretations contribute to legal uncertainty. The „objective capability" argument has also been applied in cases where it was clear that the newspaper article did not cause any „additional" harm, especially in light of other rulings that dismissed similar claims in other factually similar cases.

From the judgment of the Municipal Civil Court in Zagreb, case number LX Pn-1162/18-16, dated December 20, 2019, it is evident that the competent court, when deciding on the merits of the claim and determining the amount of compensation, took into account the allegations of emotional distress supposedly caused by inquiries from family and acquaintances:

„When determining the amount of compensation, the court considered that the plaintiff was affected both in her family life and at work, noting that as a doctor, she has evidently built her career in a very challenging manner and thus earned her reputation, honour, and dignity, while bearing a special burden both at work and outside of it. The published article and its insinuations affected not only the plaintiff but also her family. Therefore, the court decided – taking into account all of the above – that fair monetary compensation for the plaintiff amounts to 40,000 HRK for non-material damages for

the violation of personal rights, mental peace, reputation, honour, and dignity, especially considering the negative impact of the article, which also extended to the plaintiff through her family and social surroundings in daily life and work."

Court practice regarding decisions on accumulated claims is also inconsistent. In some cases, there is a practice of almost „automatic“ awarding of compensation without sufficiently or at all considering facts such as previously published corrections and/or apologies. For example, one court expressed the legal opinion that „*it is plainly known that corrections are not read“,* which is seen as an additional reason for awarding compensation in monetary form. However, it should be noted that in practice, plaintiffs often request the publication of corrections that are unnecessarily lengthy and difficult to read.

Article headlines can play a significant role in lawsuits and legal proceedings against the media. It is a well-known fact that media outlets often exaggerate in headlines or use so-called "clickbait" titles to attract and lure potential readers and the broader audience. However, such headlines can be grounds for a lawsuit in court. In the ruling of the Constitutional Court of the Republic of Croatia, case numbers U-III-1876/2018 and U-III-1898/2018, dated November 14, 2019.[16] The court stated that it is a notorious fact that

“a *considerable number of readers, at least sometimes, read only the headlines of certain articles and view the accompanying photographs, some readers do this often, and some do it (almost) always. Considering such readers, it is undoubtedly the case that for the average such reader, the headline in question creates a negative impression. Ignoring these facts resulted in the lower court neglecting to address whether the plaintiffs must endure harm concerning such readers. Furthermore, Article 35 of the Constitution protects not only reputation but also the sense of honour and, ultimately, human dignity*.”

Additionally, the Supreme Court of the Republic of Croatia expressed its legal opinion in the ruling, case number Rev-1414/16-2, dated September 14, 2016, stating:

„Contrary to the legal opinion of the first and second-instance courts, this court holds that, in its entirety, the headline alone is capable of causing a violation of the personal right to reputation, good name, and honour under Article 19, Paragraph 2 of the

[16] By constitutional decision, the applicant's lawsuit was unanimously accepted and the judgment of the County Court in Velika Gorica, business number Gž-1483/2016-2, dated February 6, 2018, was abolished. and the judgment of the Municipal Court in Novi Zagreb, business number Pn-2/2016-44 dated April 27, 2016. and the case was returned to the Municipal Court in Novi Zagreb for retrial.

Obligations Act ('Narodne Novine', No. 35/05, 41/08, 125/11 – hereinafter: ZOO), which, under Article 1100, Paragraph 1 of the ZOO, justifies the award of fair monetary compensation. This is because the content of the published article must be viewed as a whole, including the headline and sub headline, as the headline does not correspond to the article's content but distorts the information from the article and assigns a different significance to this distorted information."

However, despite the aforementioned stance of the Supreme Court of the Republic of Croatia (also confirmed in later decisions, such as the ruling, case number Rev-400/2018-8, dated 4 July 2018), that a headline alone can cause a violation of personal rights, courts must exercise caution and not disregard the case law of the European Court of Human Rights (ECHR), which generally allows for a degree of exaggeration in headlines.

According to the ECHR's case law, freedom of the press includes the possibility of using a certain degree of exaggeration, and even provocation (Pedersen and Baadsgaard v. Denmark, § 71). Neither the ECHR nor national courts should substitute their views for those of the press on which reporting techniques journalists should use in any given case (Jersild v. Denmark, § 31; Eerikäinen and Others v. Finland, § 65). Journalists enjoy the freedom to choose, from the news that comes to their attention, what to report and how to report it (Couderc and Hachette Filipacchi Associés v. France [GC], §§ 31 and 139).[17]

Moreover, Article 10 of the European Convention on Human Rights (ECHR) also includes artistic freedom, which offers the opportunity to participate in public debate and the exchange of political, cultural, and social information and ideas of all kinds. The ECHR has noted several times that satire is a form of artistic expression and social commentary which, by its very nature of exaggeration and distortion of reality, is aimed at provoking and unsettling. Therefore, any interference with the right of artists—or anyone else—to use this form of expression must be carefully examined (Welsh and Silva Canha v. Portugal, § 29; Eon v. France, § 60; Alves da Silva v. Portugal, § 27; Vereinigung Bildender Künstler v. Austria, § 33; Tuşalp v. Turkey, § 48; Ziembiński v. Poland (No. 2), § 45; Handzhiyski v. Bulgaria, § 51). In this regard, several variations of satirical expression can be recognized in the ECHR's case law: an image (Vereinigung Bildender Künstler v. Austria, § 33), a sign with a political message (Eon v. France, § 53), a fictional interview (Nikowitz and Verlagsgruppe News GmbH v. Austria, § 18), an advertisement (Bohlen v. Germany, § 50), a caricature (Leroy v. France, § 44; Patrício

[17] Guide on Article 10 of the European Convention on Human Rights, Freedom of expression, European Court of Human Rights, ažurirano 31.08.2022.

Monteiro Telo de Abreu v. Portugal, § 40), a newspaper article in a local newspaper (Ziembiński v. Poland (No. 2), § 45), and public mockery of a monument by disguising it (Handzhiyski v. Bulgaria, § 51).[18]

Obligation to Publish the Verdict

In criminal cases, the Criminal Code provides that the convicted person may be ordered to publish either part or the entire verdict, with the first option (publishing part of the verdict) being more commonly ordered in practice.[19]

In civil disputes, court practice changed after 2017. Up until 2017, the prevailing legal stance was that the Media Act, as *lex specialis* in relation to the Obligations Act, did not provide for the publication of either part or the entire verdict as a form of compensation. This position had been repeatedly upheld by the Supreme Court of the Republic of Croatia, and in the reviewed judgments, we found no indication that the lower courts deviated from this stance.[20]

However, in 2017, the Supreme Court of the Republic of Croatia, outside of ruling on a specific case, changed its legal interpretation. On December 18, 2017, during a session of the Supreme Court's Civil Division (4/17), the following legal position was adopted:

> *"Publication of a final verdict in print media is an allowable form of compensation for non-material damages to the injured party in proceedings governed by the provisions of the Media Act."(*Su-IV-270/17-10).[21]

The Supreme Court of the Republic of Croatia did not provide any explanation for this change in its legal interpretation.

To understand why the Supreme Court changed its legal stance, CMT contacted the Supreme Court of the Republic of Croatia in June 2024, requesting access to the full text of the minutes related to this agenda item. The Supreme Court rejected this request, and CMT filed an appeal with the Information Commissioner, whose decision is still pending. Interestingly, in its

[18] Guide on Article 10 of the European Convention on Human Rights, Freedom of expression, European Court of Human Rights, ažurirano 31.08.2022.
[19] The public announcement of the verdict is provided for in Article 80 of the Criminal Code (Narodne Novine No. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/ 2022, 114/2023, 36/2024).
[20] For example, the decision of the Supreme Court of the Republic of Croatia, business number Rev-1661/10, dated November 3, 2010; decision of the Supreme Court of the Republic of Croatia, business number Rev-1933/14, dated December 23, 2014; decision of the Supreme Court of the Republic of Croatia, business number Rev-798/16-2, dated April 27, 2016. The second-instance courts also took the same position (for example, see the decision of the County Court in Bjelovar, business number Gž-3758/13-2, dated February 27, 2014.
[21] Extract from the minutes of the fourth session of the Civil Division of the Supreme Court of the Republic of Croatia (4/17) held on December 18, 2017, Number: Su-IV-270/17-10, Zagreb, December 18, 2017.

response, the Supreme Court stated that the decision was made without any written material as its basis. All three documents (the request for access to information, the Supreme Court's response, and CMT's appeal) are included in Annex 3.

CMT believes that in cases where the plaintiff's claim is successful, the plaintiff certainly has the right to have their success publicized. However, since court rulings often contain lengthy explanations, which frequently repeat details about the calculation of default interest multiple times and are written in a style that would deter an uninterested reader (paragraphs spanning over a page, long chains of compound sentences that make the argument difficult to follow), the obligation to publish the full text of the verdict is unlikely to provide informational value. Instead, it imposes disproportionately large and objectively unnecessary costs on the convicted print media and journalists.[22] This problem could easily be solved by publishing only the ruling or a summary of the verdict, while the full verdict could be published on the court's website. Therefore, CMT considers that by changing its legal position without explanation, the Supreme Court of the Republic of Croatia has unjustifiably enabled the disproportionate increase in costs for print media in such civil proceedings, against which this opinion is explicitly directed.

Judges as Plaintiffs Against the Media

The decisions obtained from the Ministry of Justice, Administration, and Digital Transformation shows that in 19 legal cases, judges were private plaintiffs. In our analysis, we found that in 14 of the 18 court rulings obtained, at least one SLAPP indicator was present.[23]

In three criminal cases, one resulted in a conditional fine, another in a fine of 1,000 EUR, and the third was dismissed.

Of the 16 civil cases, two were withdrawn, one was dismissed due to bankruptcy, six were dismissed for other reasons, and in seven cases, the judges were awarded damages. What stands out is that the judgments in favour of judges were significantly higher than in other cases. The median amount awarded to judges was twice as high as the median for all cases, and the average

[22] The opinion only talks about the obligation to publish in print media.

[23] The fact that a particular case contains a SLAPP indicator does not necessarily mean that one can confidently assume that it is a SLAPP case. However, by identifying a greater number of indicators in a particular decision, one can more likely assume that it is a SLAPP case. The decision is formally 19, but in fact it is about 18 cases, given that one of the decisions refers to the correction of the decision of the first instance court.

amount was 50% higher. As mentioned earlier, the three highest individual damages were awarded to judges.

Although judges as plaintiffs often fail in their lawsuits, the negative public impact when they succeed, and the influence their high claims have on awarded damages in other cases, cannot be underestimated. Notably, none of the court rulings obtained took into account the provisions of the Judicial Code of Ethics, which requires judges to refrain from responding to public criticism.[24]

From other publicly available sources, it is evident that some judges have filed lawsuits multiple times as plaintiffs. In at least one of these publicly available cases, it is clear that the harm could have been corrected by publishing a one-sentence correction, but instead, a lawsuit was pursued, resulting in a high claimed and ultimately awarded amount of damages. When rendering the verdict, the court did not consider that the article's content regarding the problems of prolonged proceedings was in the public interest, while the error was merely an incorrect attribution of responsibility to specific judges.

An interesting question of transferring the jurisdiction of the municipal court arose in one of the cases. Since the private plaintiff was a judge of the immediately superior county court, who could decide on the procedural aspects of the case (regarding legal remedies) and also plays a role in the advancement of municipal court judges, the municipal court judge assigned to the case, along with the court itself, requested the delegation of jurisdiction to another court. However, the Supreme Court of the Republic of Croatia rejected this request (Supreme Court decision, case number II 4 Kr 98/2020-3, dated December 7, 2020).

In another case, the Supreme Court of the Republic of Croatia rejected the proposal of the Municipal Court in Split to transfer local jurisdiction for the following reason:

> „*The fact highlighted in the proposal that the private plaintiff is a judge of the criminal department of the County Court in Split and therefore decides on legal remedies against the decisions of the criminal department of the Municipal Court in Split does not, in the*

[24] *"Judges are expected to refrain from responding to public criticism. Sometimes individuals, as well as members of the executive and legislative authorities, publicly express their views on the mistakes and limitations of judges and their individual final decisions, that is, they criticize the work of judges. Judges should refrain from getting involved in public debates about their work, because by accepting "political silence" they also accept that they will not publicly respond to provocative criticism. It is a much better and smarter way to ignore a scandalous attack, than to generate the strength of the initiated "action" by getting involved.* The guidelines for the application of the Code of Judicial Ethics are based on the international principles contained in the documents listed individually in the introduction of the Code of Judicial Ethics, and were drawn up in accordance with the Commentary on the Bangalore Principles of Conduct for Judges (United Nations, Office on Drugs and Crime), and in accordance with the Guidelines for Application of the Code of the Association of Croatian Judges, https://www.iusinfo.hr/korisni-dokumenti/DDHR20220208N175.

*opinion of the Supreme Court of the Republic of Croatia, represent other significant reasons, in the sense of Article 28, Paragraph 1 of the Criminal Procedure Act (ZKP/08), that justify the transfer of local jurisdiction, especially considering the content of Article 50, Paragraph 1 of the Regulations on the Work of the eFile System ('Official Gazette', No. 35/15, 123/15, 45/16, 29/17, 112/17, and 119/18), according to which cases based on appeals against judgments of municipal courts in criminal matters are assigned for consideration to all county courts, proportionately to the size of each county court." (*Supreme Court decision, case number II-4 Kr 42/2019-3, dated May 15, 2019).

For this reason, it would be useful to consider and reflect on the proposal of the President of the Supreme Court of the Republic of Croatia, Mr. Radovan Dobronić, *that "so-called SLAPP cases should be resolved only before county courts, which would handle such cases in the first instance,"* [25] *E*specially in instances where the plaintiffs are individuals holding judicial office.

Conclusions

The conducted research has shown that there is a clear problem with SLAPP in the Croatian legal system, and that the Croatian legal system fails to sufficiently prevent the use of civil proceedings for such purposes.

The main factors that contribute to achieving potential SLAPP goals are as follows: (i) the very long duration of proceedings until a final decision (over 4 years), (ii) the absence of guidance for awarding compensation for mental anguish caused by media articles in the so-called Guidelines for Compensation for Non-Material Damage issued by the Supreme Court of the Republic of Croatia, (iii) the high amounts of damages for mental anguish in disputes against the media compared to practices and criteria for mental anguish in other cases, as noted by the European Court of Human Rights, which unfortunately did not prompt the Supreme Court of the Republic of Croatia to appropriately amend or supplement the aforementioned Guidelines, (iv) the possibility of imposing the obligation to publish the full text of the verdict, instead of a summary or just the so-called ruling, at the expense of the defendant, which, given the style of writing of the judgments, has minimal informational value while simultaneously imposing

[25] Report of the President of the Supreme Court of the Republic of Croatia on the state of the judiciary for 2023, Supreme Court of the Republic of Croatia, Zagreb, April 2024, https://www.vsrh.hr/EasyEdit/UserFiles/izvjestaji/2024/izvjesce-predsjednika-o- state-of-judicial-power-for-2023.pdf.

disproportionately high costs on the defendant, (v) the practice of awarding exceptionally high damages when judges appear as private plaintiffs, which influences other cases while simultaneously having negative effects on the perception of judicial impartiality.

The research revealed that a significant number of analysed court decisions (and records) contain so-called SLAPP indicators (out of 1,333 analysed decisions and records, 551 contained indicators). Specifically, 40% of all cases have at least one SLAPP indicator, and more than 50% of those with a SLAPP indicator contain several (more than one). For a certain number of these cases, it can be concluded with a higher degree of certainty that they are SLAPP cases.

Furthermore, the analysis of court decisions and records showed that civil (litigation) proceedings predominate in the Croatian legal system, in which plaintiffs seek monetary compensation for damages. In most cases against the media, relatively high amounts are sought, averaging over 9,000 EUR, with half of the cases (median) requesting amounts higher than 5,000 EUR. In a smaller number of civil proceedings, plaintiffs also request the publication of the final verdict at the plaintiff's expense.

The high amounts sought in damages correlate with the level of court and attorney fees, which can often have a chilling effect on defendants, in addition to the uncertainty of the outcome of the proceedings. It should not be overlooked that these amounts are further increased by default interest that accrues throughout the duration of the proceedings. Given the prolonged duration of the proceedings, averaging over 4 years until becoming final, default interest can significantly impact the amount the defendant owes to the plaintiff if the court grants the claim. In this regard, a review of appellate decisions shows that appellate courts often reduce the compensation amounts awarded by first-instance courts.

Plaintiffs frequently initiate multiple civil proceedings against the same defendant and sometimes simultaneously initiate criminal proceedings. Although a smaller number of cases against the media are criminal in nature, they are often pursued for charges of defamation or insult, which still constitute a criminal offense in the Croatian legal system. The accumulation of claims is also common, where plaintiffs simultaneously seek damages, the publication of a correction, and/or an apology, all of which further burden the defendants. Additionally, in connection with the same factual basis, plaintiffs sometimes file actions against multiple defendants, increasing litigation costs and legal uncertainty, especially if courts do not issue consistent rulings despite the same factual basis.

In civil proceedings, courts often fail to consider the circumstance that the defendant published a timely and complete correction of the published information prior to the plaintiff's lawsuit and do not adequately justify whether the circumstances of the case truly warrant the awarding of non-material damages.

The analysis of court decisions identified 12 so-called "serial" plaintiffs who frequently file lawsuits against the media and journalists, using the same or similar arguments and demanding the same amount of damages (for example, 5,308.91 EUR). Most lawsuits against the media are initiated by individuals who could be considered powerful, such as politicians, members of parliament, and judges, with the amounts sought being relatively high in the context of the economic conditions in the Republic of Croatia.

Recommendations

Based on the conclusions drawn, CMT presents the following recommendations:

a. ***Amend the guidelines to align compensation for mental anguish due to media publications with other provisions regarding compensation for mental anguish***

In accordance with the opinion of the European Court of Human Rights in the case of Narodni List d.d. v. Croatia, which identified a problem with determining disproportionately high damages, the Supreme Court of the Republic of Croatia should amend the Guidelines to align compensation for mental anguish due to media publications with other provisions regarding compensation for mental anguish, limiting it, for example, to the level currently provided for 20 days of severe physical pain (1,500 EUR). In the absence of action by the Supreme Court of the Republic of Croatia, such a limitation can be established by law.

b. ***Publish all verdicts against the media on court websites***

All first-instance and appellate court rulings, as well as all rulings from the Supreme Court of the Republic of Croatia and the Constitutional Court of the Republic of Croatia against the media, should be published immediately on court websites without prior anonymization procedures, as these are matters of public interest, with possible exceptions for family and similar relations.

c. ***Provide broader protection to the media in relation to Directive (EU) 2024/1069 of the European Parliament and of the Council of April 11, 2024 on the protection of persons involved in public activity against manifestly unfounded lawsuits or malicious legal proceedings ("strategic lawsuits directed against public activity"), especially for national subjects.***

The so-called anti-SLAPP Directive (EU) 2024/1069 applies only to disputes with cross-border implications and only to civil proceedings, excluding criminal ones. For this reason, preventing SLAPP lawsuits requires broader interventions in domestic legal and other acts, such as framework guidelines, legal regulations governing civil and criminal procedures, and the Media Act, as well as changes and harmonization of case law.

The Ministry of Culture and Media claims that provisions for early recognition and dismissal of SLAPP lawsuits will be included in the new Media Act. These proposals are not yet known.[26]

d. ***Legally define the concept of SLAPP***

When defining the term SLAPP, it is important to be very careful, as the definition has significant implications for the scope of protective mechanisms, known as anti-SLAPP mechanisms, available to defendants. In agreement with the anti-SLAPP curriculum for training lawyers and legal professionals in Croatia, GONG and PATFox, the definition should stipulate that the defendant must prove the abuse of rights only concerning the specific case, rather than having to demonstrate that the plaintiff is filing the lawsuit as part of a broader strategy to suppress public participation. Additionally, care should be taken to ensure that the definition is not too broad, such as merely stating "*obviously unfounded case*," as this could complicate proving the case.[27]

[26] "Also, in the new Media Act, we intend to implement the measure adopted in the National Plan for the Development of Culture and Media from 2023 to 2027 and the associated Action Plan - a mechanism for early recognition and dismissal of SLAPP lawsuits. In addition to the recommendations of the EC, which we are already implementing, we express our satisfaction with the Directive on protection against strategic lawsuits directed against public action, which was adopted in May 2024 and which refers to cross-border cases, and which, in the two-year period foreseen by the European Commission, will be transposed into national legislation, in order to and in this way ensured quality protection of journalists from unfounded or malicious court proceedings." for-shaping-the-policy-to-suppress-slap-lawsuits/22216).

[27] When defining the concept of SLAPP, it is suggested to take into account Commission Recommendation (EU) 2022/758 of April 27, 2022 on the protection of journalists and human rights activists involved in public participation from patently unfounded or malicious legal proceedings ("strategic lawsuits against public participation"), as well as the Recommendation of the Council of Europe or the Recommendation CM/Rec(2024)2 of the Committee of Ministers of Member States on suppressing the use of strategic lawsuits against public participation (SLAPP), which refer to SLAPP indicators (item 8).

e. ***Legally provide for three key legal remedies in proceedings claimed to represent a SLAPP case***

These remedies should include:

- Provision by the plaintiff of security for the payment of litigation costs,
- Filing of a request by the defendant for early dismissal of the lawsuit in a special expedited procedure because it constitutes a SLAPP case, with the option to appeal to the appellate court if the judge does not accept the request; if the request is accepted, it must be a ruling that represents a final decision between the parties,
- The possibility of imposing effective, proportional, and deterrent sanctions on the party that initiated a malicious lawsuit against public participation.

The second legal remedy should be the most effective in terms of protecting the media, allowing the media, as defendants, to request an early suspension of the proceedings in the sense of an early dismissal of the lawsuit in a special, expedited procedure, while the main proceedings would be suspended until a decision is made on the possible dismissal of the lawsuit. In this regard, unlike the provisions of the Directive, CMT believes that media outlets and journalists, as defendants, should be allowed to appeal to the county court as the appellate court against court decisions dismissing their request for early dismissal of the lawsuit. This is important due to the possibility of oversight and potential "correction" by the appellate court of any incorrect and unlawful decisions made by the first-instance court; for the purpose of harmonizing case law; and for maintaining transparency and trust in the judicial system.

It is important to emphasize that the ruling the court would make if it accepted the defendant's request for dismissal of the lawsuit because it constitutes a SLAPP case should not be considered a procedural ruling but rather a ruling that would acquire the status of a final decision, meaning that it would represent a *res judicata* concerning the parties. Thus, such a ruling must represent *res iudicata* in the sense that once the ruling dismissing the lawsuit becomes final, no new lawsuit can be filed, as this would represent a negative procedural prerequisite for submitting a new lawsuit.

In this context, a statutory time frame for the proceedings and a time frame for initiating the expedited procedure should be established.

Moreover, contrary to the provisions of the Directive, the regulations should also include property claims raised in criminal proceedings.

f. ***Amend the law to require the publication of only a short summary or ruling of the verdict at the defendant's expense in print media***

Legislative amendments should be introduced that make sure that only a brief summary or ruling of the verdict is published (rather than the entire text, which can be published on the websites of the courts or on websites that publish relevant case law) at the expense of the defendant in print media, and at the request of the plaintiff. This should also apply to media such as radio and TV, which were excluded from the aforementioned legal interpretation by the Supreme Court of the Republic of Croatia.

g. Allow the participation of civil society organizations in legal proceedings as support for individuals facing lawsuits or as sources of relevant information

The possibility of allowing civil society organizations to participate in legal proceedings as support for individuals facing lawsuits or as sources of relevant information should be considered. This initiative would enable civil society organizations to provide legal support, relevant information, and arguments to the court, participating in the process to ensure a fair outcome. Additionally, the presence of civil society organizations in legal proceedings can help strengthen transparency and protect the rights of citizens involved in public debates or activism. This step has the potential to reduce the financial burden and stress on defendants and provide greater support for those facing legal threats due to their activities in the public sphere.

h. ***Ensure systematic monitoring of proceedings against the media and SLAPP cases***
The establishment of a central location to collect and share information about all organizations providing advice and support to individuals targeted by unfounded and abusive lawsuits against public participation is proposed. This initiative is supported by the „Commission Staff Working Document“, which accompanies the Proposal for a Directive of the European Parliament and Council on the protection of persons engaged in public participation from obviously unfounded or abusive legal proceedings ("Strategic Lawsuits Against Public Participation") and in the Proposal for Recommendations by the Commission on the protection of journalists and human rights defenders participating in public participation from obviously unfounded or abusive legal proceedings ("Strategic Lawsuits Against Public Participation"). The established central location would facilitate easier access to information and support for individuals facing such

legal threats, thereby contributing to strengthening legal security and protecting freedom of expression and public participation.

i. Organize additional training for judges on the specifics of proceedings against the media, as well as training for lawyers and the broader public

Through the education of judges, efforts should be made to harmonize case law in the following directions. Compensation for damages awarded as fair monetary compensation should be the exception, not the rule. Thus, monetary compensation should be awarded only if the publication of a correction or apology, as well as the publication of a final court ruling, does not constitute sufficient compensation for the plaintiff. In this regard, special emphasis should be placed on the provisions of Article 1100, Paragraphs 1 and 2 of the Obligations Act, whereby the competent court should take into account the severity and duration of the physical pain, mental anguish, and fear caused by the violation, the purpose for which this compensation is intended, and ensure that it does not favour aspirations that are incompatible with its nature and social purpose. In cases of „automatic“ awards of fair monetary compensation, without the court reviewing whether the severity of the violation, mental anguish, etc., truly justifies such an award and whether the alleged damage has already been compensated in another form (for example, a prior publication of a correction by the defendant), such conduct may encourage plaintiffs to file these lawsuits, effectively favouring aspirations that are incompatible with the nature and social purpose of fair monetary compensation, specifically profitability that is inconsistent with the nature and social purpose of fair monetary compensation.

The plaintiff in the proceedings must prove the alleged damage, meaning that in cases involving non-material damages and when seeking the awarding of fair monetary compensation, there must indeed be an exceptionally strong attack that, in terms of its intensity, duration, and contextual circumstances, causes a clearly manifested violation of honour and reputation. Consequently, for compensation, CMT believes that mere claims about the alleged inquiries from the plaintiff's friends and/or only the plaintiff's statements about their mental anguish should not be sufficient.

In civil proceedings for damage compensation, courts should evaluate whether the plaintiff requested a correction and whether the defendant, before filing the lawsuit, published the requested correction (as well as whether it was published without delay and/or whether it was published voluntarily, without request) and whether the published correction constitutes

sufficient compensation for the plaintiff. The argument that it is allegedly notorious that corrections are not read is unfounded; otherwise, the need for public publication of court rulings at the expense of the defendant would also need to be questioned.

In this regard, the Media Act already stipulates that everyone has the right to request from the editor-in-chief that a correction of the published information that has violated their rights or interests be published free of charge. Legal entities and other organizations also have the right to a correction if their rights and interests have been violated by the information. The purpose of corrections is to rectify inaccurate or incomplete information. Courts should ensure that lawsuits concerning the publication of corrections are resolved expeditiously and that the discussion on the lawsuit for the publication of a correction is limited to addressing and proving the facts concerning the defendant's obligation to publish the correction. Therefore, such proceedings should not take long given the need for urgency and the limited scope of discussions and evidence.[28]

In damage compensation proceedings, consideration should be given to the specifics when legal entities (such as corporations or companies) claim that their personal rights have been violated and seek compensation. Legal entities, due to their specific nature, should be required to substantiate the existence of a violation of personal rights with additional evidence (e.g., termination of collaboration due to the publication of an article, non-renewal of certain contracts due to the publication of an article, etc.).

Judges, when deciding on the merits of the claim, should take into account whether the plaintiff is a public figure. While public figures certainly have the right to dignity, they are less protected in other respects and more exposed to the public, as by being public figures, they have in some way already consented to a certain degree of expropriation of their personality. There is often public interest in the proceedings involving the plaintiff as a public figure, as well as in events related to them, which is under special scrutiny and of particular interest to the public.

It is crucial to highlight the case before the European Court of Human Rights, *Axel Springer AG v. Germany* (Application No. 514058/12) from September 21, 2017.

In such cases, it is necessary to weigh which right or protected value should take precedence in the specific situation, which is addressed through the so-called "balancing" test of relevant facts as follows:

[28] Articles 40 and 48 of the Media Act (Narodne Novine No. 59/2004, 84/2011, 81/2013, 114/2022).

- The court should assess whether the contribution to the public debate is in the public interest,
- To what extent the person is a public figure,
- What the content of the given statements is,
- What the previous behaviour of the person to whom the statement relates was.

In this sense, we remind of the relevant provisions of the Media Act, which relate to the protection of privacy and stipulate that a person holding a public office has the right to privacy protection, except in cases related to the public office or duty that the person performs. A person who attracts public attention through their statements, behaviour, and other actions regarding their personal or family life cannot demand the same level of privacy protection as other citizens. There is no violation of the right to privacy if, concerning the information, the legitimate public interest outweighs the protection of privacy concerning the journalist's activity or the information.[29]

Furthermore, the case of *Lingens v. Austria* (Application No. 9815/82) from July 8, 1986, is significant, where the European Court of Human Rights established that politicians should expect much greater criticism of their actions and conduct than ordinary individuals. Despite the fact that the media should not cross boundaries, including the protection of others' reputations, the boundaries of acceptable criticism by the media are *"broader when it comes to politicians than when it comes to private individuals*." The European Court further noted that although politicians also have the right to protect their reputations even when they are not acting in a private capacity, "*claims for such protection must be weighed against the interests of open discussion of political issues*."[30]

In another case, *Bladet Tromsø and Stensaas v. Norway* (Application No. 21980/93) from May 20, 1999, the European Court of Human Rights found a violation of the right to freedom of expression, emphasizing that Article 10 protects ideas that offend, shock, or disturb. The

[29] Article 7 and 8 of the Media Act (Official Gazette No. 59/2004, 84/2011, 81/2013, 114/2022).

[30] In that case, the European Court of Human Rights emphasized the special importance of the media in conveying *"information and ideas about political issues as well as those in other areas of public interest*" and the judgment is considered one of its "classic" judgments. Defamation legislation should therefore give them less, not more, protection, as was the case in many countries at the time. The judgment remains the cornerstone of the jurisprudence of the European Court of Human Rights in the field of freedom of expression
Lingens v. Austria, Global freedom of expression, Columbia University,
https://globalfreedomofexpression.columbia.edu/cases/lingens-v-austria/.
See more following decisions: José Angel Patitó v. Diario La Nación, Editorial Río Negro S.A. v. Neuquén, Grupo Clarín S.A. v. Poder Ejecutivo Nacional, Canicoba Corral v. Acevedo, Tešić v. Serbia, Burundian Journalists' Union v. Attorney General, Herrera-Ulloa v. Costa Rica, Pavel Ivanov v. Russia, Plessis-Casso v. France, Mladina dd. Ljubljana v. Slovenia, Dzhugashvili v. Russia, Steel and Morris v. United Kingdom, Murphy v. Ireland, The Case of Bekir Coşkun et al.

European Court also highlighted that the responsibility of mass media is to convey information and ideas on issues of public interest.[31]

Regarding public figures, the case *Feldek v. Slovenia* (Application No. 29032/95) from October 12, 2001, should also be noted, where it involved a government member, and the boundaries of acceptable criticism are wider than in the case of a private individual. The European Court remarked that the applicant's statement contained sharp words but was not devoid of factual basis, and there was no suggestion that the statement was made in any way other than in good faith, pursuing a legitimate goal of protecting the democratic development of the newly established state of which the applicant was a citizen.[32]

In this context, even if the court finds the journalist or activist liable for an act that was in the public interest, the concept of public interest may sometimes be used to reduce or completely eliminate the damage that the defendant must pay to the plaintiff.

Moreover, if the plaintiff accumulates claims—seeking compensation for alleged damages through monetary payment/publication of an apology/publication of a final court ruling/publication of a correction—the judges must consider whether compensation is fully covered by adopting only one (or some) of the multiple claims raised. Thus, the court should not „*automatically*," after establishing that the claim is founded, grant the claim in full and award all requested forms of compensation if only one of them is sufficient to fully compensate the plaintiff.

Courts should evaluate in proceedings whether the plaintiff frequently files lawsuits against the media, publishers, journalists, or editors, seeking monetary compensation. Especially if the same or similar amounts of money are often requested, and the plaintiff literally "copies" the same factual statements and the same and/or similar legal arguments about the alleged mental anguish in different proceedings.

If the plaintiff files multiple lawsuits against the same person before the same court or if multiple proceedings involving the same person as an opponent of various plaintiffs or

[31] The applicants were a commercial company that published a newspaper and the editor of that newspaper. Newspapers published articles based on the findings of an officially appointed inspector traveling on a sealing vessel. The report claimed that sealers were acting illegally by failing to comply with regulations. The Ministry of Fisheries temporarily banned the publication of the report because the named individuals had been charged with criminal offences. After the crew members instituted defamation proceedings against the applicant, certain statements were declared defamatory and therefore null and void. The applicants were ordered to pay compensation to the crew members.

[32] The European Court of Human Rights, in the case of Feldek v. Slovenia (application no. 29032/95), dated October 12, 2001. also noted that the applicant's statement constituted a value judgment whose veracity was not subject to proof. The Court did not consider the applicant's mere use of the term "fascist past" to constitute a statement of absolute fact; this term is broad and may encompass different concepts of its content and meaning; one of these meanings could be that the person participated in a fascist organization as a member, without implying concrete activities of propagating fascist ideals

defendants are ongoing before the same court, and the same type of proceedings is foreseen in which an individual judge presides, the practice of consolidating all these proceedings for joint discussion should be encouraged, of course, if this would expedite the proceedings or reduce costs. This is applicable if it is genuinely expected that the proceedings can be expedited or costs reduced. For example, if a plaintiff files two lawsuits against the same defendant before the same court—one for damages and the other for the publication of a correction—or, for instance, if the plaintiff files multiple lawsuits against the same defendant, one for print and one for electronic publication. This could also apply if the same information (the same factual basis) published by multiple defendants is the basis for the plaintiff's lawsuits against different defendants who published the same or similar articles. Thus, if it pertains to the same factual and legal basis.

Following the above, it is essential to increase judges' awareness to utilize the legal remedies already provided by law to enforce procedural discipline among parties in the proceedings. Courts should enforce procedural discipline and reject evidence proposals that are not necessarily related to the case at hand but are merely proposed to increase costs and/or delay the proceedings.[33]

j. Decriminalize the offense of insult

One of the purposes of punishment is deterrence, in terms of both general and specific prevention, influencing the offender and others not to commit crimes by raising awareness of the dangers of criminal acts and the justice of punishment.[34] Many critics argue that the use of SLAPP in criminal proceedings achieves a so-called deterrent effect regarding the publication of information in the public interest.

The offense of insult is defined in Article 147 of the Criminal Code, with its basic form stipulated in paragraph 1, which provides for a fine of up to ninety daily amounts for anyone who insults another person. Paragraph 2 of the same article defines a qualified form of the offense, leading to harsher punishment (up to one hundred eighty daily amounts) for anyone who commits the offense of insult via print, radio, television, computer systems, or networks, at a public gathering, or by any other means that makes the insult accessible to a larger

[33] V. Point 27 of Commission Recommendation (EU) 2022/758 of April 27, 2022 on the protection of journalists and human rights activists involved in public participation from patently unfounded or malicious legal proceedings ("strategic lawsuits against public participation").
[34] Article 41 of the Criminal Code.

audience. However, the Criminal Code does not provide a legal definition of the offense of insult, which leaves room for various interpretations.[35] If the offender was provoked by the victim's improper behaviour, or if the victim accepted their apology in court, the court may acquit the offender.

Regarding the offense of insult, the previously mentioned case before the European Court of Human Rights, namely Lingens v. Austria, is again relevant. The European Court of Human Rights stated that the right to freedom of expression is "applicable" not only to "information" or "ideas" that are favourably received or considered harmless or unimportant but also to those that offend, shock, or "disturb." International human rights law does not recognize a "right" not to be offended and protects speech that may be subjectively perceived as "offensive" by an individual. Consequently, the criminalization of insult can never be justified by the protection of others' rights.[36]

Since its leading judgments in the cases of Lingens v. Austria and Oberschlick v. Austria (No. 1), the European Court of Human Rights has emphasized the need to carefully distinguish between factual statements on one hand and value judgments on the other. While the existence of facts can be proven, the truth of value judgments is not subject to proof (McVicar v. the United Kingdom, § 83; Lingens v. Austria, § 46). Therefore, the requirement to prove the truth of a value judgment is impossible to fulfil and constitutes a violation of freedom of opinion, which is a fundamental part of the right guaranteed by Article 10 (Morice v. France [GC], § 126; Dalban v. Romania [GC], § 49; Lingens v. Austria, § 46; Oberschlick v. Austria (No. 1), § 63).[37]

[35] V. HND: We ask the Government to decriminalize all acts against honor and reputation, Croatian Journalists' Association, nd-we-ask-the-government-to-decriminalize-all-acts-against-honor-and-reputation, page accessed: 15.09.2024.
[36] See Croatia: Decriminalise insult and defamation, Article 19, https://www.article19.org/resources/croatia-decriminalise-insult-and-defamation/, stranici pristupljeno: 15.09.2024.
[37] Guide on Article 10 of the European Convention on Human Rights, Freedom of expression, European Court of Human Rights, ažurirano 31.08.2022.

Appendices

Appendix 1 – Statistical Data Processing

Appendix 2 – Analysis of Selected Cases with Two or More SLAPP Indicators

Appendix 3 – Request for Access to Information to the Supreme Court of the Republic of Croatia, Response from the Supreme Court of the Republic of Croatia, Appeal to the Information Commissioner

Justice for Journalists
Foundation for International
Investigations of Crime against Media

Justice for Journalists Foundation *is a London-based charity (Registered Charity Number 1201812) whose mission is to fight impunity for attacks against media. Justice for Journalists Foundation monitors attacks against media workers and funds investigations worldwide into violence and abuse against professional and citizen journalists. Justice for Journalists Foundation organises media security training and creates educational materials to raise awareness about the dangers to media freedom and methods of protection from them.*

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Centre for Democracy and Law Miko Tripalo