

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

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The European Parliament adopted by 498 votes to 33, with 105 abstentions, amendments to the proposal for a directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (Strategic lawsuits against public participation).

The matter was referred back to the committee responsible for inter-institutional negotiations.

Subject matter and scope

Members specified that the Directive provides a set of minimum standards of protection and safeguards against manifestly unfounded or abusive court proceedings in civil matters, as well as the threats thereof, with cross-border implications brought against natural and legal persons engaging in public participation.

The scope of the proposed Directive should apply to matters of a civil or commercial nature having cross-border implications, including interim and precautionary measures, counteractions or other particular types of remedies available under other instruments, whatever the nature of the court or tribunal. It should not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority.

Definitions

Members clarified the definition of public participation to mean any statement or activity by a natural or legal person expressed or carried out in the exercise of the right to freedom of expression and information, academic freedom, or freedom of assembly and association on a matter of public interest. This includes complaints, petitions, administrative or judicial claims, the participation in public hearings, the creation, exhibition, advertisement or other promotion of journalistic, political, scientific, academic, artistic, satirical communications, publications or work.

Matters of public interest are those that affect the public in areas such as:

- fundamental rights, including gender equality, media freedom and consumer and labour rights, as well as public health, safety, the environment or climate;
- activities of a person or entity in the public eye or of public interest, including governmental officials and private entities;
- allegations of corruption, fraud, embezzlement, money laundering, extortion, coercion, sexual harassment and gender-based violence, or other forms of intimidation, or any other criminal or administrative offence, including environmental crime;
- activities aimed to protect the values enshrined in Article 2 TEU, the principle of non-interference in democratic processes, and to provide or facilitate public access to information with a view to fighting disinformation;
- academic, scientific, research and artistic activities.

Assistance to natural or legal persons engaging in public participation

Member States should ensure that natural or legal persons engaging in public participation have access, as appropriate, to support measures, in particular the following: (a) comprehensive and independent information and advice which is easily accessible to the public and free of charge on procedures and remedies available, on protection against intimidation, harassment or threats of legal action, and on their rights; and (b) legal aid, legal counselling or other legal assistance; (c) financial assistance and support measures, including psychological support, for those targeted by abusive court proceedings against public participation.

Guarantees

In the context of legal proceedings against public participation, the court or tribunal seized has the power to require the claimant to provide security for costs of the proceedings, including the full costs of legal representation incurred by the defendant and damages, if it considers such security appropriate.

Member States should take the necessary measures to ensure that a natural or legal person who has suffered harm as a result of an abusive court proceedings against public participation is able to claim and to obtain full compensation for that harm, covering material or non-material harm, including reputational harm, without the need to initiate separate court proceedings to that end.

Member States should ensure that courts or tribunals imposing penalties take due account of: (i) the economic situation of the claimant; (ii) the nature and number of the elements indicating an abuse identified.

Jurisdiction for defamation claims

A new article has been included stating that in defamation claims or other claims based on civil or commercial law which may constitute a claim under this Directive, the domicile of the defendant should be considered to be the sole forum, having due regard to cases where the victims of defamation are natural persons. In claims regarding a publication as an act of public participation, the applicable law should be considered to be the law of the place to which that publication is directed.

One-stop shop

Members included a new article establishing a one-stop shop comprising dedicated national networks of specialised lawyers, legal practitioners and psychologists, which targets of SLAPPs can contact, and through which they can receive guidance and easy access to

information on, and protection against SLAPPs, including regarding legal aid, financial and psychological support.

Training of practitioners

Members proposed that, with due respect for the independence of the legal profession, Member States should recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of strategic lawsuits against public participation and the procedural safeguards against them provided for in this Directive.

Cooperation and coordination of services

Member States should take appropriate action to facilitate cooperation between Member States to improve the access of those targeted by manifestly unfounded or abusive court proceedings against public participation to information on procedural safeguards provided for in this Directive and under national law. Such cooperation should be aimed at least at: (a) the exchange of current practices; and (b) the provision of assistance to European networks working on matters directly relevant to those targeted by manifestly unfounded or abusive court proceedings against public participation.

Publicly accessible national register

To ensure that the public can become aware of court decisions, Member States should establish a publicly accessible national register of relevant court decisions falling within the scope of this directive, in accordance with Union and national rules on the protection of personal data. The Commission should establish a publicly accessible Union register on the basis of the information from the registers of the Member States concerning relevant court decisions falling within the scope of this Directive, in accordance with Union rules on the protection of personal data.