PROPOSED ANTI-SLAPP LEGISLATION IN POLAND REQUIRES FURTHER CHANGES

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Introduction

The Polish anti-SLAPP working group welcomes the efforts of the Polish government in developing national anti-SLAPP legislation. The current proposal to implement the EU Anti-SLAPP Directive 2024/1069 into national law, presented by the Codification Commission for Civil Law, includes a number of important safeguards against judicial harassment and goes beyond the minimum standards set by the Directive. However, the proposed measures are insufficient for effective protection against vexatious lawsuits. In particular, the key mechanism of early dismissal, in its current form, may remain merely symbolic and ineffective. Moreover, the draft does not repeal the standing of public authorities or legal entities exercising public power to launch lawsuits for the protection of their 'reputations'.

Although this opinion concerns the draft presented by the Codification Commission for Civil Law, it must be noted that the government has yet to present any plan for a comprehensive defamation reform in Poland. Changes to civil procedure must be accompanied by the decriminalisation of defamation and insult, as well as appropriate amendments to criminal procedure. The threats to freedom of expression posed by SLAPPs should be considered in a broader context than just civil law and defamation offences – particularly taking into account statutory provisions and judicial practices related to specific offences of insult concerning public officials, state symbols, or religious symbols.

Below, the Polish anti-SLAPP working group presents a set of recommendations, focused primarily on civil law, aimed at strengthening the ongoing work on the draft reform. At the same time, we stress that measures intended to protect against SLAPPs will only be effective if they are part of a comprehensive reform encompassing both civil and criminal law.

The situation with SLAPPs in Poland

For years, Poland has been among the countries with the largest number of SLAPPs (strategic lawsuits against public participation) in Europe. Furthermore, local civil society organisations point out that the recorded numbers are likely underestimated, due to under-reporting, lack of awareness, and fears of reprisals. The situation reflects the pressure that government officials, politicians, and companies put on journalists, human rights defenders, and activists.

Abusive legal proceedings do not only interfere with access to information and freedom of expression but also produce significant financial and psychological toll on activists and journalists. It is particularly concerning that Poland continues to maintain provisions on defamation and insult in its criminal law. Alongside other restrictions, the threat of criminal prosecution fosters self-censorship and ultimately creates a powerful chilling effect on journalism and civic activism.

Measures proposed in the draft

In January 2025, the Codification Commission for Civil Law presented a draft law for the transposition of the EU Anti-SLAPP Directive 2024/1069: the **Draft Law on the Protection of Persons Participating in Public Debate Against Manifestly Unfounded Claims or Abusive Court Proceedings**.

Key concepts of the draft

The draft centres around 'claims aimed at suppressing, restricting, or disrupting public debate or at harassing someone for participating in it' (pursued in civil court proceedings). The draft distinguishes between claims aimed *solely* at this purpose and those *primarily* aimed at this purpose. Furthermore, among the claims primarily aimed at this purpose, the draft specifies a subcategory of *manifestly unfounded claims*[1], as defined in Article 191¹ of the Civil Procedure Code.

The draft includes an open list of circumstances that may indicate that the proceedings are primarily aimed at suppressing, restricting, or disrupting public debate, or at harassing someone for participating in it (Article 5). These include:

1. Disproportionate demands or excessive or unjustified claims;
2. Initiating other court proceedings against the same defendant, or initiating similar court proceedings against other individuals concerning the same subject of public debate;
3. The conduct of the claimant or persons acting on their behalf before and during the proceedings directed against participants in public debate, particularly threats or intimidation;
4. Undertaking procedural actions in bad faith, including actions intended to cause delay.

[1] This conclusion can be drawn from Article 1 of the draft, which provides for protection against claims primarily aimed at suppressing, restricting, or disrupting public debate, including manifestly unfounded claims.

Specific forms of terminating proceedings aimed at silencing, restricting, or disrupting public debate, or at harassing someone for participating in it

a) dismissal of manifestly unfounded claims

According to Article 7 in connection with Article 1 of the draft, if the court finds that the proceedings are primarily aimed at suppressing, restricting, or disrupting public debate or at harassing someone for participating in it and that the claim is manifestly unfounded, it may dismiss the claim in accordance with the existing mechanism set out in Article 191[1] of the Code of Civil Procedure.

The draft introduces certain modifications to the general procedure for dismissing manifestly unfounded claims through Article 8. Under the proposed special procedure, the court should dismiss a manifestly unfounded claim within six months. Moreover, if the defendant submits a request for dismissal of the claim as manifestly unfounded, the draft provides for the claimant to respond to this request and for the possibility of a hearing – thus incorporating elements of adversarial proceedings.

b) dismissal of a lawsuit on the grounds that its initiation constitutes an abuse of procedural law

If the court finds that the sole purpose of bringing the claim is to suppress, restrict, or disrupt public debate, it may consider the initiation of the proceedings for an abuse of procedural law and reject the claim (Article 10 of the draft). In this case, the draft does not specify a timeframe within which the court would be required to apply this measure.

Additional protective measures

In addition, the draft provides for certain sanctions and other supplementary protective measures that may be applied by the court:

1. The option of imposing a financial penalty on the claimant (Article 13(1)–(2) of the draft);
2. The option of requiring the claimant to publish the operative part of the judgment at their own expense (Article 13(4) of the draft);
3. The option of ordering the claimant to reimburse the defendant's legal costs, including the full amount of legal representation expenses incurred by the defendant (Article 14 of the draft).

The court may impose a financial penalty and award reimbursement of full legal representation costs in two situations: (1) when it dismisses the claim (in whole or in part) and finds that the claim was primarily aimed at suppressing, restricting, or disrupting public debate or at harassing someone for participating in it; or (2) when it rejects the claim, finding that its sole purpose was to suppress, restrict, or disrupt public debate and that it constitutes an abuse of procedural law.

The obligation to publish the judgment at the claimant's expense, on the other hand, may only be ordered in the first scenario – i.e. when the claim is dismissed and found to be primarily aimed at the aforementioned purpose.

Additionally, during the course of proceedings, the court may, at the defendant's request, require the claimant to post a **security deposit for the legal costs** if the defendant demonstrates at least one of the following: a) the claim is primarily aimed at suppressing, restricting, or disrupting public debate or at harassing someone for participating in it; or b) failure to provide such security would prevent or seriously hinder the enforcement of a future judgment on legal costs (in a case falling within the scope of the proposed law). The deposit should correspond to the expected reimbursement amount, including full legal representation costs (Article 3 of the draft).

Commentary on the draft law

Members of the working group believe that although the draft law represents a step in the right direction, the solutions proposed in its current form are likely insufficient to effectively counter legal harassment of journalists and activists in Poland.

First, it should be acknowledged that the draft law goes beyond the minimum requirements set out in Directive 2024/1069 in several respects. In particular, the draft is not limited to cross-border cases but also applies to domestic proceedings. Additionally, the introduction of a second, additional special procedure for terminating SLAPP proceedings is a positive development – besides dismissing the claim due to its manifestly unfounded character (which is the minimum required by the Directive), the draft also provides for the possibility of rejecting a claim as an abuse of procedural law (which is an additional measure). Similarly, the introduction of both the possibility of imposing a financial penalty and the obligation for the claimant to publish the operative part of the judgment at their own expense is also a positive step (the Directive requires the introduction of only one of these measures).

At the same time, the design of some solutions in the draft law could significantly limit their practical effectiveness – some measures may end up remaining purely theoretical. Additionally, there are certain mechanisms missing that would address the specific characteristics of SLAPPs in Poland.

Conditions for applying special procedures for terminating SLAPP proceedings

The harmful nature of SLAPPs largely stems from drawing the defendant into a prolonged legal process, which can burden them both mentally and financially. Therefore, the ability to end the proceedings early and swiftly in a way that benefits the defendant is a key protective measure against SLAPPs.

As indicated earlier, the draft provides for two special ways of terminating proceedings (different from dismissing a claim in the standard procedure): dismissal of the claim due to its manifestly unfounded character and rejection of the claim due to abuse of procedural law. Unfortunately, the design of the conditions for applying both of these measures carries a high likelihood that, in practice, they will not be used at all – even in the case of evident SLAPPs.

Dismissal of manifestly unfounded claims

Dismissal of a claim due to its manifestly unfounded character in the procedure outlined in the draft will be possible only if two conditions are met simultaneously:

- The claim is primarily aimed at suppressing, restricting, or disrupting public debate or at harassing someone for participating in it; and simultaneously
- The claim is manifestly unfounded.

While the draft lists circumstances that may indicate the occurrence of the first condition (i.e., when the claim is primarily aimed at such a purpose – Article 5 of the draft), it does not provide a definition of a ‘manifestly unfounded claim’ in the context of anti-SLAPP protections. Instead, the legislator has referred to the existing criteria under Articles 191¹ and 391¹ of the Civil Procedure Code, with only marginal modifications. This allows us to assume that the concept of ‘manifestly unfounded claim’ in the draft should be interpreted in the same way as the identical concept in Article 191¹ of the Civil Procedure Code. In the absence of a clear statutory definition, it received a highly restrictive interpretation in both legal doctrine and case law. Moreover, although Article 191¹ of the Civil Procedure Code was introduced in the 2019 amendment, this term has been known in Polish civil procedure since the interwar period, and it has been consistently interpreted both in doctrine and case law over time.

As Ł. Błaszczak notes in a monograph dedicated to the issue of manifestly unfounded claims, 'In contemporary doctrine, the approach to this issue has not changed and generally replicates the previous statements of scholars' (reaching back to the interwar period), and decisions from the 1930s 'remain fully relevant in light of today's regulations.[2]' It is therefore hard to imagine that after the adoption of the proposed draft, nearly a century of consistent interpretation of this term would undergo any significant change – especially since the legislator provides no basis for such modification.

According to this established interpretation, a lawsuit is manifestly unfounded when 'the plaintiff has formulated a claim unknown to the law or, in light of the provisions of substantive law, 'inadmissible,[3]' or when 'it is absolutely clear to any lawyer, without the need to analyse the case in terms of facts and law, that the lawsuit cannot be upheld[4]' – with the understanding that 'any doubt that arises, both in terms of facts and law, in any case constitutes a denial of the required obviousness'[5].

Additionally, the difficulty in recognising SLAPPs as 'manifestly unfounded claims' stems from the legal regime of 'personal rights' under Polish civil law (lawsuits for the protection of personal rights are one of the most commonly used instruments to initiate SLAPP-type proceedings in Poland). The violation of a personal right and the unlawfulness of the perpetrator's actions are subject to a separate legal assessment – with the presumption of unlawfulness of the infringement.

The above is also confirmed by the current judicial practice regarding Article 191¹ of the Civil Procedure Code, which has been analysed by the Helsinki Foundation for Human Rights (HFHR). The responses from 70% of all district courts in Poland indicate that, in many courts, this provision has never been applied in cases involving the protection of personal rights. Moreover, none of the few cases in which the court applied Article 191¹ of the Civil Procedure Code in matters of personal rights protection correspond to the characteristics of a SLAPP[6].

Dismissal of a lawsuit due to abuse of procedural law

According to the draft, the court will be able to dismiss a lawsuit if it finds that the sole purpose of filing the lawsuit is to suppress, limit, or disrupt public debate or harass someone for participating in it. In such a situation, the court will be able to consider the filing of the lawsuit as an abuse of procedural law, as referred to in Article 4¹ of the Civil Procedure Code.

However, the dismissal of the lawsuit in this case is based solely on procedural grounds and does not result in *res iudicata*. This is a significant point, as it allows for the possibility of the same claims being refiled multiple times. Moreover, a claim that constitutes an abuse of procedural law is not subject to expedited proceedings, and therefore the six-month deadline for processing such cases does not apply.

[2] M. Błaszczak, Chapterł 2: 'Istota powództwa oczywiście bezzasadnego', in *Powództwo oczywiście bezzasadne. Art. 191(1) k.p.c.* (Warsaw, 2021).

[3] O. M. Piaskowska, in M. Anaszkiewicz, M. Eysymontt, D. Horodyski, E. Jaceczko, M. Kuchnio, A. Majchrowska, K. Panfil, J. Parafianowicz, A. Partyk, T. Partyk, A. Rutkowska, D. Rutkowski, K. Sacharuk, A. Turczyn, and O. M. Piaskowska, *Kodeks postępowania cywilnego. Komentarz. Art. 1–505(39)*, vol. I, Warsaw, 2024, Article 191¹; see also Ł. Błaszczak, *op. cit.* for further discussion.

[4] J. Gudowski, Article 191¹ [Manifestly Unfounded Claims], in *Kodeks postępowania cywilnego. Orzecznictwo. Piśmiennictwo*, vol. II, Warsaw, 2025.

[5] T.Żyznowski, in: *Kodeks postępowania cywilnego. Komentarz. Tom I. Artykuły 1–366*, ed. T. Wiśniewski, Warsaw 2021, Article 191¹; see also the judgment of the Constitutional Tribunal of 16 June 2008, P 37/07, OTK-A 2008, No. 5, item 80.

[6] The Helsinki Foundation for Human Rights (HFHR) submitted a request under the Act on Access to Public Information to all 47 regional courts in Poland, inquiring about the application of Article 191¹ of the Code of Civil Procedure in cases concerning the protection of personal rights, including reputation. Responses were received from 33 courts (70% of all regional courts). According to the replies, 21 courts had never applied Article 191¹ in personal rights protection cases. In 12 courts, such cases had occurred; however, an analysis of 62 disclosed rulings showed that none of them qualified as SLAPP-type cases. The remaining 14 regional courts did not provide the requested information. The analysis covered the period 2019–2023. See: P. Milewska, Z. Nowicka, K. Siemaszko, *SLAPP. Strategic lawsuits aimed at silencing public debate – selected aspects of the practice and jurisprudence of Polish courts in journalistic cases*, April 2024, Helsinki Foundation for Human Rights.

The current interpretation of Article 4¹ of the Civil Procedure Code has also remained restrictive, as demonstrated in the analysis by the HFHR. Moreover, of the 29 district courts that responded to the public access requests, none applied Article 4¹ of the Civil Procedure Code to any lawsuit concerning the protection of personal rights.[7]

Unfortunately, simply clarifying the consequences of recognising the filing of a lawsuit as an abuse of procedural law is unlikely to result in this provision being used in practice for SLAPP cases. Its application will only be possible if the *sole* purpose of the lawsuit is to suppress, limit, or disrupt public debate, or harass someone for participating in it. Even if suppressing public debate is clearly *the primary* (dominant) objective of the proceedings, the court will not be able to dismiss the lawsuit, as the legislator has artificially created two sub-categories of cases. In other words, the presence of any other goal, even a secondary one, alongside the main goal (aimed at disrupting public debate), would mean that the provision for dismissal could not apply – because disrupting the debate would no longer be the sole (exclusive) purpose.

In practice, it may be challenging to completely exclude the possibility that the proceedings, even to a minimal degree, serve some additional purpose, such as protecting the plaintiff's legal interests.

The application of this provision seems particularly unlikely in cases involving the protection of personal rights – also due to the distinction between determining whether a violation has occurred and assessing whether that violation was unlawful. If the defendant has, in any way, damaged the plaintiff's reputation (which, as mentioned earlier, is not uncommon), it would be difficult to exclude the possibility that an ancillary purpose of the lawsuit is to protect the plaintiff's reputation – even if the primary goal is to suppress public debate.

The list of circumstances that may indicate that the proceedings primarily aim to suppress, limit, or disrupt public debate, or harass someone for participating in it

Establishing that the proceedings primarily intend to suppress, limit, or disrupt public debate, or harass someone for participating in it is a necessary condition for applying any of the measures outlined in the draft (for certain measures, additional, more far-reaching criteria must also be met). Therefore, the list of circumstances that indicate such a direction in the proceedings, as set out in Article 5 of the draft, is of fundamental importance to the entire regulation. In this context, it is important to note that the conditions outlined are largely similar to the criteria listed in Article 4(3) of Directive 2024/1069, with one significant exception.

The list makes no reference to the imbalance of power between the parties. This omission is particularly surprising, as this characteristic is frequently cited in the literature as a key definitional element.[8] The imbalance of power between the parties is mentioned in the aforementioned Article 4(3) (‘often in cases where there is an imbalance of power between the parties’), as well as in Recital 15 (‘In such cases [i.e., SLAPP lawsuits], there is often an imbalance of power between the parties – the plaintiff holds a stronger financial or political position than the defendant’) and Recital 42 (‘Sanctions and other measures should take into account the potential for such proceedings to have a chilling effect on public debate or the economic situation of the plaintiff, who has exploited the imbalance of power’). This issue

[7] Ibidem. In this case as well, the analysis covered all 47 regional courts in Poland (29 of which responded) and concerned the years 2019–2023.

[8] Bárd, P., Bayer, J., Luk, N. C., and Vosyliute, L. (2020), *SLAPP in the EU Context: Literature Review and Preliminary Analysis on Ad-Hoc Request*, Brussels: CEPS. This has also been noted in Polish legal doctrine; see: M. Mrowicki, ‘Freedom of Expression of Journalists: Commentary on the Judgment of the Supreme Court of 9 May 2023, III KK 433/22’, *Państwo i Sprawiedliwość* 2024, no. 3, pp. 87–96; M. Wyrzykowski, ‘Substantive Administrative Law of the Future: From Current Problems to New Challenges’, in M. Cherka, P. Gołaszewski, J. Piecha, and M. Wierzbowski (eds), *Crisis, Stagnation, Renaissance? The Future of Administrative Law: Jubilee Book for Professor Jacek Jagielski*, Warsaw, 2021.

is also addressed in Paragraph 8a of the Council of Europe Recommendation CM/Rec(2024)2: 'The party initiating the proceedings attempts to exploit the power imbalance between the parties, such as financial advantage or political or social influence, to exert pressure on the opposing party.' While this characteristic (like other circumstances) should not be treated as an essential condition for recognising a case as a SLAPP, it is an important indicator – making its complete absence from the draft difficult to justify.

Aside from the lack of reference to the imbalance of power, the proposed criteria seem to be limited to the minimum standards outlined in Directive 2024/1069. An approach that meets only the minimal requirements may prove insufficient in the Polish context, where an abuse of legal proceedings is a widespread issue. A more comprehensive set of indicators can be found in the Council of Europe Recommendation CM/Rec(2024)2.

For instance, one of the elements mentioned in the Council of Europe Recommendation, which is absent from the draft law, is the situation where the plaintiff systematically refuses to utilise alternative dispute resolution mechanisms. Another is when the lawsuit is filed against individuals rather than the organisations responsible for the actions central to the case. As a point of comparative law, it is particularly worth highlighting a criterion from the UK draft anti-SLAPP law: 'The party initiating the proceedings failed to respond to requests for comment or clarification made in good faith prior to publication, when the proceedings concern that publication.'[9]

Speed of proceedings

here are concerns as to whether the proposed provisions will effectively ensure the timely resolution of cases. This is a critical aspect of protection against SLAPPs, as outlined in both Directive 2024/1069 and Recommendation CM/Rec(2024)2. Prolonged proceedings and the uncertainty they create often benefit plaintiffs who abuse the legal system, while simultaneously creating a chilling effect and incurring additional costs for the defendants. Influential individuals or corporate entities use lengthy legal processes as a tactic to avoid public scrutiny. Recommendation CM/Rec(2024)2 explicitly urges the establishment of an efficient case management system to curb the use of delay tactics by bad-faith plaintiffs.

The current draft law appears to introduce a differentiated approach to the speed of proceedings depending on the grounds for early dismissal:

1. First, a clear six-month deadline is set for dismissing 'manifestly unfounded' SLAPPs.
2. Second, it is stipulated that claims whose 'sole purpose is to suppress, limit, or disrupt public debate, or harass someone for participating in it' may be dismissed 'at any stage of the proceedings,' although no specific time frame is provided.
3. Third, the draft does not set any requirements for the speed of proceedings in cases that 'primarily aim to suppress, limit, or disrupt public debate, or harass someone for participating in it.'

It is difficult to justify such a discrepancy in the approach to the speed of proceedings. As mentioned, Polish courts have consistently adopted a very narrow interpretation of the term 'manifestly unfounded' claims under Article 191[1] of the Civil Procedure Code, which means that the six-month deadline applying only to this category of SLAPPs may prove being an ineffective safeguard.

Clear and consistent rules regarding the speed of proceedings and specific deadlines must apply to all types of SLAPPs.

[9] Strategic Litigation Against Public Participation Bill (Bill 216, 2023–24, as amended in Public Bill Committee), Article 6(4), available at: https://publications.parliament.uk/pa/bills/cbill/58-04/0216/230216.pdf. A similar provision was previously included in the model UK anti-SLAPP bill presented by freedom of expression organisations: https://antislapp.uk/wp-content/uploads/2023/05/Model-UK-Anti-SLAPP-Law-Final-Version.docx.pdf.

The burden of proof

Directive 2024/1069 prescribes two key requirements as to the burden of proof. Firstly, the claimant must prove that the claim is well-founded, rather than simply claim a violation. Secondly, in determining the ground for early dismissal, even if initiated by a motion by the defendant, the burden of proof still rests on the plaintiff.

These procedural safeguards do not seem to be explicitly articulated in the draft bill. As a result, the general rules concerning the distribution of the burden of proof would apply. In cases involving the protection of personal rights, this distribution is very favourable to the plaintiff: the plaintiff must prove the existence of the personal right and the threat or violation of that right, whereas the defendant must prove that the threat or violation was not unlawful.[10] In the vast majority of defamation cases, the dispute revolves around the question of unlawfulness. Therefore, leaving the general rules of the burden of proof applicable to personal rights protection cases in SLAPP cases raises concerns in light of the requirements of the anti-SLAPP directive. According to the general procedural rules, the burden of proof in determining that the claim is justified in the sense of its lawfulness rests largely, and crucially, on the defendant . This is inconsistent with Article 12 of the anti-SLAPP directive. Therefore, specific rules regarding the burden of proof in SLAPP cases must be introduced.

Penalties and other remedies

It is worth acknowledging that the draft law provides for several types of protective measures that may be applied by the court: a financial penalty, reimbursement of the defendant's costs in full, and an obligation to publish the judgment. In this regard, the proposal generally reflects the provisions of Directive 2024/1069.

However, the draft does not seem to recognise the status of the victim of the abuse of judicial proceedings against participants in public debate, nor does it address the issue of compensation beyond the reimbursement of the direct legal costs incurred by the injured party. International human rights standards require that violations of human rights be fully remedied. In the context of SLAPPs, it is crucial that legal measures against them have both a deterrent effect on the plaintiff who abuses the proceedings and a compensatory character for the defendant whose right to freedom of expression has been violated.

Recommendation CM/Rec(2024)2 states:

Member States should make adequate provision for SLAPP victims to be acknowledged as such and to be fully compensated for damages incurred as a result of the SLAPP, covering both pecuniary and non-pecuniary damages, such as loss of income and emotional distress as well as compensation for costs and expenses, for example to cover legal and administrative costs.

It is clear that SLAPP victims in Poland suffer numerous negative consequences that go beyond incurring costs for organising their legal defence. SLAPPs constitute a form of legal harassment, which takes financial and psychological toll on activists and journalists, with dire consequences for their ability to engage in civic activities and journalism. These harms must be comprehensively compensated by abusive plaintiffs.

[10] P. Nazaruk, in B. Bajor, D. Bierecki, J. Bocianowska, J. Ciszewski, M. Ciszewski, G. Karaszewski, J. Knabe, J. Mucha-Kujawa, G. Sikorski, B. Sitek, R. Tanajewska, and P. Nazaruk, *Kodeks cywilny. Komentarz aktualizowany*, LEX/el. 2024, Article 24; B. Janiszewska, in *Kodeks cywilny. Komentarz. Volume I: General Part, Part 1 (Articles 1–55⁴)*, ed. J. Gudowski, Warsaw, 2021, Article 24.

The absence of provisions on compensation in the draft bill means that individuals affected by a SLAPP would only be able to seek compensation under general legal principles, i.e., by initiating a separate legal action.

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Moreover, it is difficult to consider the option of obtaining compensation through a separate, often multi-year legal process as an 'equally effective remedy' as envisaged in Article 15 of Directive 2024/1069 – that is, a remedy with the same effectiveness as the sanctions imposed by the court handling the SLAPP case within the same proceeding.

Non-exclusion of public authorities

Restrictions imposed with the objective to protect reputations are compatible with the right to freedom of expression only insofar as they serve to protect the 'reputation **of others**.' The state's interest, as well as that of its components – legal entities exercising public authority – in protecting reputation is of a completely different nature than the rights of individuals or the interests of legal entities. Under international human rights law, only individuals, not States, or its constituent parts, have reputations. In OOO MEMO v. RUSSIA, which concerned a defamation claim brought by a regional administration, the European Court of Human Rights noted:

civil defamation proceedings brought, in its own name, by a legal entity that exercises public power may not, as a general rule, be regarded as being in pursuance of the legitimate aim of "the protection of the reputation ... of others" under Article 10 § 2 of the Convention.

Legal entities exercising public authority, by the nature of democratic principles, must be subject to public scrutiny and tolerate a very high degree of criticism. These institutions have resources that allow them to respond to criticism in various ways, rather than use public funds to initiate legal proceedings against citizens who engage in public debate. Therefore, in order to curb the practice of shielding the government and its agents from criticism, Poland should effectively implement the standard established by the European Court of Human Rights and exclude the standing of state authorities and other public bodies in defamation cases.

Criminal defamation

Although this brief focuses on the draft prepared by the Civil Law Codification Commission, we would like to reiterate that it is essential for the reform of civil legislation to be accompanied by the decriminalisation of defamation and insult (Articles 212 and 216 of the Polish Penal Code).

SLAPPs as a phenomenon are not limited to civil lawsuits. As Council of Europe's Recommendation CM/Rec(2024)2 urges, criminal defamation is an even more powerful way to curb journalism and public participation. It would be ultimately unproductive to implement robust protections against SLAPPs in civil litigation and retain criminal provisions on defamation and insult, which are actively applied in Poland.

The Polish criminal defamation provisions prescribe heavy sanctions, including imprisonment. We note that, not only are criminal defamation laws outdated and unduly harsh, but they are also unnecessary and disproportionate measures to protect the reputation of others. Progressive international standards, including the Human Rights Committee's General Comment No. 34 on the right to freedom of expression, favour the process of de-criminalisation of defamation in national legal systems. Imprisonment is always a manifestly disproportionate sanction for any defamation offense, as reiterated by the Human Rights Committee.

We note with concern that the penal reform process does not envisage full de-criminalisation of defamation and insult. According to the available information, The Criminal Law Codification Commission is only in favour of limiting the scope and prescribed sanctions under the defamation provisions, leaving criminal liability for defamation in place, and not altering the provision on insult at all. This truncated approach is neither effective for addressing the issue of vexatious litigation against public participation nor compliant with the international freedom of expression standards.

Remarks on Article 4 of the draft

The wording of Article 4(1) and (2) of the draft bill introduces the criterion of the statutory objectives of a non-governmental organisation as a condition for participating in proceedings or submitting relevant information in cases related to public debate. According to the provision these rights are granted only to organisations whose statutory purposes include:

- the protection of individuals participating in public debate (para. 1), or
- objectives relating to the subject of the public debate in connection with which the proceedings are taking place (para. 1 and 2).

In practice, such wording may lead to an unintended and overly restrictive limitation of the group of organizations that may make use of these mechanisms.

In practice, many civil society organisations operating in the fields of freedom of expression, the right to information, human rights protection, anti-censorship, or support for journalists and whistleblowers do not explicitly refer to the term ‘public debate’ in their statutes, nor do they list the ‘protection of individuals participating in public debate’ as a statutory objective. Their aims are often formulated more broadly, yet their actual expertise and work clearly relate to and support public debate.

As a result, there is a legitimate concern that courts – relying on the literal wording of the provisions – may interpret statutory language too narrowly. This could lead to:

- limiting the ability of organisations specialised in combating SLAPPs to join proceedings,
- excluding from procedural support organisations with significant experience in protecting freedom of expression and the public interest,
- unequal treatment of civil society actors based solely on the phrasing of their statutes.

We therefore propose amending the wording of Article 4(1) and (2) to replace the rigid requirement of statutory objectives relating specifically to public debate with broader and more appropriate references to the scope of an organisation’s work related to the protection of human rights, such as freedom of expression or freedom of information.

Recommendations

We underline that only a comprehensive reform, encompassing both civil and criminal law, can effectively respond to the challenge of curbing public participation through abusive litigation. In the area of civil law, the changes must consider relevant judicial practice and the actual nature of SLAPPs in Poland, so that the measures introduced are not merely theoretical but effective and able to be actively implemented by the courts. We propose the following recommendations:

1. Implement a comprehensive list of indicators of SLAPP-type proceedings, conditioning the application on the robust list of protective measures, using Council of Europe’s Recommendation CM/Rec(2024)2 as key guidance.
2. Ensure that the possibility of early dismissal of SLAPP-type proceedings is based on realistic criteria that truly reflect the national legal and practical context. Relying on terms like 'manifestly

unfounded' and 'exclusive/sole purpose' is likely to render this key protective measure ineffective in practice.

3. Ensure expediency of proceedings, i*nter alia*, through implementing an effective case management system and setting clear and uniform procedures and deadlines for dismissal of cases for all types of SLAPPs.
4. Ensure that the burden of proof in determining that the claim is groundless rests on the plaintiff, both in the sense of proving that one's reputation was damaged as well as in relation to the assessment of the unlawfulness of this violation.
5. Create effective and expedient avenues for seeking compensation, including, ensuring that remedies can be directly awarded by the court handling the SLAPP case.
6. Exclude the possibility of initiating proceedings for the protection of reputation by the State Treasury and local government entities.
7. Combine changes in civil law with reforms in criminal law, particularly by decriminalising defamation and insult: repeal Articles 212 and 216 in their entirety, rather than implement cosmetic changes to these provisions.
8. Extend the personal scope of Article 4 to include non-governmental organisations working to protect human rights – such as freedom of expression, freedom of information, or freedom of assembly.

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