

ARTICLE19

State of SLAPPs in Spain

Country Report

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ARTICLE 19’s research is part of the Media Freedom Rapid Response (MFRR), which tracks, monitors, and responds to violations of press and media freedom in EU Member States and Candidate Countries. This project provides legal and practical support, public advocacy, and information to protect journalists and media workers. The MFRR is organised by a consortium led by the European Centre for Press and Media Freedom (ECPMF) including ARTICLE 19, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the Institute for Applied Informatics at the University of Leipzig (InfAI), International Press Institute (IPI), and CCI/Osservatorio Balcani e Caucaso Transeuropa (OBCT). The project is co-funded by the European Commission. www.mfr.eu



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Executive summary

In this report, ARTICLE 19 examines the state of strategic litigation against public participation (SLAPPs) in Spain through examination of legal frameworks used to bring such lawsuits against journalists and media outlets. In particular, it explores how specific provisions of civil and criminal law are used against those who shed light on corruption and other wrongdoings and suppress engagement in public debate.

SLAPPs are a form of legal harassment against critical voices, pursued by powerful individuals and organisations who seek to avoid public scrutiny. Rather than obtaining a remedy for particular wrong, their aim is to drain the target's financial and psychological resources and chill critical voices to the detriment of public participation. While the preliminary findings of this report are insufficient to conclude that there is a clear and upward trend of SLAPPs in Spain, both criminal and civil law provisions on reputation give potential to bring such cases and are often abused by powerful forces in the society to silence critics.

The report provides an overview of international freedom of expression standards applicable to the laws and cases reviewed. Then, it examines the scope of civil and criminal legislation on protection of reputation along with its judicial interpretation and safeguards to protect the role of journalists and the media. Each section provides available examples to illustrate the respective issue. The findings are based on publicly available information.

The report makes the following key findings:

- The Spanish Penal Code contains a number of problematic speech-related offences that are used against journalists and the media outlets. These include criminal insult and defamation, offences against public officials and public institutions, and revelation of secret information. Criminal complaints are often initiated by public officials or the police. Although the prosecutions for defamation and insult against satirical materials are often dismissed by courts, and the Constitutional Court overturned some convictions resulting from disclosing private information in corruption-related reporting,

the mere existence of overbroad provisions and the possibility of their abuse that creates a chilling effect on freedom of expression.

- The offence of revelation of secret information is misused against those reporting on corruption by public officials – such as former mayors and provincial presidents, high-ranking police commissioners, or businessmen. The publications included evidence in the form of private conversations, financial information, and private documents that demonstrated mismanagement of public funds, corruption, and irregularities in obtaining academic degrees. While the convictions are overturned on appeal or by the Constitutional Court, **journalists are still forced to dedicate years of their time and resources to their defence** and face permanent threats of criminal sanctions for doing their work.
- Journalists are also targeted by civil law provisions on protection of honour, privacy, and one's own image. Spanish courts have set the standards of **relevant defences that the media can use, including reasonable publication or public interest defence**, and found that **public officials should tolerate a higher level of criticism than private individuals**. However, public officials involved in the mismanagement of funds and corruption can still misuse these provisions to target journalists.
- Criminal prosecutions and abusive civil lawsuits also have implications for the **financial sustainability of the media**. Journalists must bear the costs of legal proceedings and the consequences of being under investigation, sometimes for years, until a verdict is reached and regardless of the result of the judicial proceedings.

ARTICLE 19 considers that the Spanish Government should comprehensively review the legal framework that limits the protection of the right to freedom of expression and prevent public officials, institutions, and influential individuals from bringing SLAPP cases against journalists and the media.

Recommendations

- The Penal Code should be thoroughly reviewed aiming to bring it in compliance with international freedom of expression standards. Articles 208–216, 490(3), 491(1) and (2), 504, and 543 should be repealed. In the interim, either the government or the legislative body should impose a moratorium on the application of these criminal provisions.
- Article 197 of the Penal Code on revelation of secret information should be amended to incorporate explicit exception for disclosure of information in the public interest.
- Article 7(7) of Organic Law 1/1982 should be amended in order to abolish the reference to ‘value judgments’ that negatively impact the dignity of a person, undermining their reputation or attacking their sense of self-worth. Instead, Articles 7(3) and 7(7) of Law 1/1982 should ensure that the scope of protection of honour and reputation is limited to false statements of fact that cause actual harm to an individual’s reputation.
- Article 8 of Organic Law 1/1982 should be amended to reflect that exceptions under Article 8.2. a) – which concerns limitations on protecting privacy of people in public positions and individuals with public notoriety or visibility – are applicable to protection of honour and any realm of individuals’ privacy.
- Spanish courts should uphold the broad protection of opinions and stop relying on the lack of a ‘right to insult’ under the Spanish Constitution to restrict offensive opinions or critical discourse used in journalistic material and reporting.
- Opinions on matters of public interest should not be subject to a necessity threshold. Spanish courts should impose a moratorium on the application of this standard. Instead, the courts should look into the circumstances in which an assessment is required to determine whether the claims involve facts or value judgments.
- Spanish courts should apply the rules of good faith under Article 247 of the Civil Procedure Law 1/2000 to ensure that journalists and media outlets do not face

unnecessary civil proceedings as a result of ill-founded or meritless claims brought with the sole aim of silencing or intimidating the exercise of freedom of expression – in particular freedom of information under the Spanish legal framework.

Introduction

Journalists and the media face various obstacles to carrying out their work in Spain. Over the last decade, apart from the economic and political pressures,¹ they have been subject to a number of legal actions as a result of covering protests, reporting on matters of public concern or engaging in public debate through satirical and humoristic expression.

Typically, these cases are initiated by public officials, businesspeople, mayors, and police officers. Typically, these legal actions – so-called strategic lawsuits against public participation (SLAPPs) – are brought solely to harass or subdue an adversary and prevent an exercise of fundamental rights. Those targeted by costly civil lawsuits are often ill-equipped to defend themselves.

In this report, ARTICLE 19 looks at the scope and interpretation of criminal and civil law provisions used to bring such legal actions against journalists and the media and some case examples that illustrate existing practice. The report is not an exhaustive review of all legislation that can be used against journalists, but focuses on those provisions that could fall under the concept of SLAPPs.² It also identifies what defences and procedural safeguards are needed under the Spanish legal framework to prevent occurrence of SLAPPs.

The structure of the report is as follows:

- First, the report outlines the applicable international freedom of expression standards that should provide the basis for any restrictions on freedom of expression in Spain.
- Second, the report outlines the speech-related offences in criminal law that provide a useful context for SLAPPs in Spain.
- Third, the report reviews civil legislation that can be used to bring SLAPP-type cases in Spain and outlines some key problems with the legislation and practice from the perspective of international freedom of expression standards. Key trends are illustrated through some emblematic publicly available cases. Information about cases was obtained mostly from news reports and research into publicly available judicial decisions.³

- Finally, the report offers specific recommendations how the legislation and judicial practice should be improved to protect the media, journalists, and activists from SLAPPs and to fully comply with relevant international and regional standards.

This report is part of a wider analysis under the framework of the [Media Freedom Rapid Response](#) (MFRR), which aims at documenting the use of SLAPPs across the EU and candidate countries and in advocating for an EU Anti-SLAPP Directive. While it does not provide an exhaustive account of this complex phenomenon, this report aspires to be a reference document for further analysis in this area that complements existing analysis of the legal framework and the application thereof in restricting freedom of expression in Spain.⁴

Applicable international standards

The European Convention on Human Rights (European Convention) and the International Covenant on Civil and Political Rights (ICCPR) are part of the Spanish legal system. This is established under Article 10(2) of the Spanish Constitution which stipulates that fundamental rights recognised therein must be interpreted in conformity with the international human rights treaties ratified by Spain.⁵ They form the basis of the assessment of the Spanish law and practice in this report.

The protection of the right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights,⁶ and given legal force through Article 19 of the ICCPR.⁷ At the European level, Article 10 of the European Convention protects the right to freedom of expression in similar terms to Article 19 of the ICCPR.⁸ Within the EU, the right to freedom of expression and information is guaranteed in Article 11 of the Charter of Fundamental Rights of the European Union.⁹

The scope of the right to freedom of expression is broad. Article 19 of the ICCPR and Article 10 of the European Convention require States to guarantee to all people the freedom to seek, receive or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice; this also includes the Internet and digital media.¹⁰ General Comment No. 34 of the UN Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States' compliance with the ICCPR, explicitly recognises that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.¹¹

International and regional human rights recognised the role that journalists, media and human rights organisations play in a democratic society and the functions they serve for the exercise of freedom of expression. For instance:

- The HR Committee recognises that the ICCPR places particularly high value upon uninhibited expression whose content involves political discourse, particularly in circumstances of public debate concerning public figures in the political domain and public institutions.¹²
- Similarly, the European Court of Human Rights (European Court) has emphasised the ‘public watchdog’ function of the media¹³ as well as that of non-governmental organisations. They both play important roles in holding governments to account in a variety of issues – from environmental causes to the protection of human rights and the rule of law.¹⁴ Further, the European Court has consistently held that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed.¹⁵

Moreover, international and regional bodies have recognised that journalism encompasses different forms, practices, and activities that can be performed by a wide range of actors, including bloggers and others who engage in forms of self-publication in print, on the Internet, or elsewhere¹⁶ (so-called ‘functional definition of journalism’). Accordingly, States should not create systems of registration or licensing aimed at limiting the scope of protection or recognition of their role under domestic law.¹⁷

Limitations on the right to freedom of expression

Under international and European human rights law, the right to freedom of expression is not an absolute right. It can, however, be limited only under exceptional circumstances. Under the so-called three-part test, any restriction on freedom of expression must be:

- **Provided by law:** Restrictions must have a basis in law, which must be publicly available and accessible, and formulated with sufficient precision to enable citizens to regulate their conduct accordingly.¹⁸
- **The restriction must pursue a legitimate aim** that are those exhaustively enumerated in Article 10 para 2 of the European Convention and Article 19 para 3 of the ICCPR: respect of the rights or reputations of others, or the protection of national security or of public order (*ordre public*), or of public health or morals.

- **The restriction must be necessary in a democratic society:** The restriction must respond to a 'pressing social need'¹⁹ and must be the least restrictive to achieve the legitimate aim. States must demonstrate in a specific and individualised fashion the precise nature of the threat and a direct and immediate connection between the expression and the threat.²⁰

Freedom of expression and protection of the reputation

As noted above, protection of reputation and protection of the rights of others are legitimate grounds for restrictions under Article 19 para 3 of the ICCPR²¹ and Article 10 para 2 of the European Convention.²² However, restrictions on the right to freedom of expression to respect the rights or reputation of others may not put in jeopardy the right itself.²³

Protection of reputation is guaranteed in Article 17 of the ICCPR; however, States must ensure that individuals are free from 'attacks' on their honour and reputation and not that they enjoy a positive reputation. Restrictions to freedom of expression cannot be justified when its purpose or effect is to protect against harm to a reputation that persons do not have or do not merit.²⁴

The European Convention also does not recognise protection of reputation as a self-standing right: the respective claims are considered under Article 8 which guarantees protection to private and family life. At the same time, the European Court has stipulated that 'attacks on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life';²⁵ and that 'Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions.'²⁶

States do have an obligation to provide adequate legislation and provision for everyone to be able to protect themselves effectively against any unlawful attacks on their reputation, and to have an effective remedy against those responsible.²⁷ However, the purposes of such laws and provisions must be limited to that end and ensure freedom of expression safeguards and defences – particularly in relation to the press, journalistic freedom, and

public interest. There is also a growing recognition that they should not be of criminal nature.²⁸

International and regional human rights bodies further specified the extent to which States can restrict freedom of expression on the basis of protecting reputation. In particular:

- **Purpose of defamation laws** should be to protect a person from *false* statements of *facts* that cause serious damage to a person's reputation.²⁹ They should not provide protection from opinions, criticism, or other value judgements unrelated to factual statements.
- **Politicians and public officials** must tolerate a higher level of criticism than ordinary citizens due to their public function.³⁰ The European Court expanded the application of this rule to 'anyone who is part of the public sphere, either because of their action or by their position. In other words, one must distinguish between private individuals and individuals acting in a public context.'³¹ These include actors, members of royal families, celebrities, and other public figures as well as individuals whose financial, business, and commercial activities influence and impact public affairs.³² The intrusion can be in 'a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate'.³³ In this respect, the European Court has put a higher value on information which would contribute to public debate rather than a lesser interest in merely providing to the public curiosity.³⁴
- **Value judgements and statements of fact:** In defamation cases, distinction should be made between value judgements and facts that may require supporting evidence when reputational interests are claimed. The European Court has consistently sustained that the truthfulness of value judgements is not susceptible of proof and that any requirement to prove them, either by law or in court proceedings, infringes freedom of opinion.³⁵

Criminal law: context for SLAPPs in Spain

Provisions of the Spanish Penal Code³⁶ are the first choice of those who want to target journalists and media outlets, in particular the offences on criminal defamation and insult and the offence of revelation of secret information.

Criminal defamation

Criminal defamation is prohibited in Articles 208–216 of the Penal Code. Article 208 defines defamation as ‘the actions or expression that injure the dignity of another person, undermining their reputation or attacking their self-esteem’. It further specifies that only defamation that, due to its ‘nature, effects and circumstances, is considered as serious by public at large’³⁷ constitutes a serious offence; this covers situations when ‘attributing acts to another... has been carried out knowingly of the falsehood thereof or with recklessly disregards of the truth’. Under Article 209, severe defamation perpetrated with publicity is punishable by the penalty of a fine from six to fourteen months and, otherwise, with a fine of three to seven months. According to Article 211, insult and defamation are perpetrated with publicity when committed by means of the printing press, by radio broadcasting, or any other similarly effective means. Under Article 209, severe defamation perpetrated with publicity is punishable by a penalty of a fine from six to fourteen months and, otherwise, with that of three to seven months.³⁸

Article 210 provides defence of truth in cases when impugned statements were ‘against civil servants concerning events in exercise of their duties of office or referring to the commission of criminal or administrative offences’. Further, Article 215 stipulates that the offences under this section (Articles 208–216) shall be prosecuted upon request of the affected party unless the offence is committed against a ‘public official, authority or agent of an authority concerning the exercise of their duties’.

ARTICLE 19 has long argued that these provisions do not comply with international human rights law and called for their repeal.³⁹ In particular, we have pointed out the following arguments:

- First, the only legitimate purpose of a defamation law is to protect people from false statements of fact that cause damage to their reputation. It is not legitimate for a defamation law to be crafted to protect subjective feelings or a subjective understanding of one's own sense of honour.⁴⁰
- Second, no one should be held liable for the expression of an opinion.⁴¹
- Third, international human rights bodies increasingly recognise that criminal sanctions are *never* a proportionate penalty for defamation and recommend States to repeal *all* criminal defamation and insult laws on the basis that individuals' reputational rights can be more effectively protected through the civil law.⁴² The criminalisation of a particular activity implies a clear State interest in controlling it and imparts a social stigma to it, neither of which we believe to be justified in relation to the protection of individuals' reputations. International courts have stressed the need for governments to exercise restraint in applying criminal remedies when restricting fundamental rights. For instance, the European Court has repeatedly stated that criminal sanctions should only be used as a last resort, and only in the most extreme circumstances.⁴³ The paucity of criminal defamation cases in the established common law democracies suggests that such an offence is unnecessary. Defamation should be dealt with through the civil law.

Use of criminal defamation provisions

These provisions can be misused against satirical magazines, cartoonists, and comedians, as well as media outlets and digital newspapers reporting on corruption-related matters or contributing to public debate. For example:

- In 2017, the National Police filed a criminal complaint against the director and one journalist of the satirical magazine *El Jueves* for a headline alluding that police officers deployed in Catalonia during the independence referendum had been using drugs.⁴⁴ The Examining Court No. 20 of Barcelona dismissed the claims after preliminary investigations on the basis of the protection of journalists' exercise of freedom of expression.⁴⁵

- In 2019, four police trade unions filed a criminal complaint against the cartoonist Toni Galmés under charges of insults against public authorities. Galmés was the author of an illustration picturing police officers using drugs and harassing women during the 2017 protests in the context of the independence referendum in Catalonia.⁴⁶ The case was dismissed in April 2021 by the Court of First Instance No. 12 of Palma de Mallorca under an order whereby the judge recognised that freedom of expression protects even ‘the most tasteless criticism and not only harmless or indifferent ideas but also those that hurt, offend or are inopportune’.⁴⁷
- In 2008, the Criminal Court of Madrid No. 6 sentenced radio journalist Federico Jiménez Losantos for criticism of Alberto Ruiz-Gallardón, former mayor of Madrid. Losantos criticised Ruiz-Gallardón for his alleged lack of commitment in bringing justice to the victims of the 2004 Madrid train bombings (known as 11-M in Spain) in Atocha, where 191 people were killed and around 2,000 injured. Losantos was ordered to pay a fine of 36,000 euros (USD 42,727).⁴⁸ The Criminal Court concluded that the accusations raised by Losantos against Ruiz-Gallardón during his radio programme lacked factual basis, and the veracity of his critical statement was unproved and therefore justified the limitation of the right to freedom of expression.⁴⁹ In 2009, the Court of Appeals denied the journalist’s appeal against the sentence. The Appeal Court upheld the conviction and stated that the criminal liability was met not only on the basis of the offensive expressions but also because they were connected with the investigation of the 11-M attacks, which were unjustified and had the purpose to discredit the former mayor.⁵⁰ Although the Constitutional Court in 2010 denied to admit a constitutional remedy against the Court of Appeals resolution, Losantos won a case at the European Court of Human Rights in 2016 that found a violation of his right to journalistic freedom of expression.⁵¹

Insult to royal family

The Penal Code contains a number of offences that provide heightened protection to the royal family (so-called *lèse-majesté*). Namely:

- Article 490(3) criminalises ‘slander’ and ‘insult’ against various members of the Spanish Royal Family during or related to the exercise of their official functions.⁵²
- Article 491(1) criminalises ‘slander’ and ‘insults’ against various members of the Spanish Royal Family, without the connection to the exercise of their official functions.⁵³
- Article 491(2) criminalises the use of images of past, present, or future Kings or Queens, or other present members of the Royal Family, ‘in any way that could damage the prestige of the Crown’.⁵⁴

ARTICLE 19 notes that these provisions do not meet the criteria of legality, necessity, and proportionality set out in light of international freedom of expression standards⁵⁵:

- First, these provisions do not meet the criteria of legality as they are formulated in an overly broad manner, leaving wide discretion for its application and implementation, and are open to broad interpretation and potential abuse.
- Second, these provisions set disproportionate and unnecessary restrictions on the right to freedom of expression. As noted earlier, international human rights courts have, however, consistently held that public officials should tolerate more, not less, criticism than ordinary citizens, in particular the officials of the highest rank, such as heads of state and unelected monarchy.⁵⁶
- Further, the Penal Code sets disproportionate levels of sanction for the violation of these provisions. As noted above, defamation should be fully decriminalised. Under no circumstances, therefore, should legislation provide any special protection for public officials or public figures, whatever their status or rank.

Provisions of this kind are a hallmark of repressive regimes.⁵⁷ Their existence, even as historical relics, in the Penal Codes of democracies, including when they do not lead to prosecutions, sets a regressive example internationally.

The research shows that these provisions are used mostly against satirical publications. For instance, Guillermo Torres and Manuel Fontdevilla, journalists for the satirical magazine *El Jueves*, were targeted by a lawsuit filed by the Royal Family with the National

Court (Audiencia Nacional) in 2007. Torres and Fontdevilla authored a satirical illustration picturing the Prince and Princess of Asturias during sexual intercourse. The court of first instance found the journalists guilty and ordered the withdrawal of all copies of the magazine, the destruction of the mould to print the newspaper, and the closure of the website *eljueves.es*. The National High Court sentenced the two journalists to a fine of 3,000 euros (USD 3,561) each, asserting the cartoon had ‘notably tarnished the institutional prestige’ of the Royal Family.⁵⁸

Discovery and revelation of secret information

Article 197 of the Penal Code prohibits the revelation of secret information.⁵⁹ Although protection of privacy is a legitimate reason to limit the right to freedom of expression, ARTICLE 19 found that these provisions are misused to initiate criminal prosecutions of investigative journalists for uncovering corruption. For instance:

- Isabel Carrasco Lorenzo, former president of the Provincial Council of León, brought a criminal complaint under these provisions against the digital newspaper *leonoticias.es* and journalist Luis Javier Calvo Montero for a 2011 article which revealed she misappropriated and mismanaged public funds. The article also published Carrasco Lorenzo’s bank statements as evidence.⁶⁰ Both the Criminal Court 1 of León and the Second Instance Court (the Collegiate Court of the Third Section of the Provincial Court) confirmed the conviction. Calvo received the penalty of six months in prison and a fine of 1,800 euros (USD 2,136). This sentence was excluded from the appeal due to the reforms carried out in 2015 in the Criminal Procedure Law and the case ended up in the Constitutional Court. In February 2019, the Constitutional Court quashed the sentence, finding that the publication was protected by the right to freedom of expression as the published information was of public interest and was true.⁶¹
- In 2015, former Police commissioner José Villarejo and businessman Javier de la Rosa filed a criminal complaint against journalist Patricia López from the newspaper *Público* for the publication of a private phone conversation between the two plaintiffs on the case of corruption of former president of the Catalan Regional Government, Jordi Pujol, which the plaintiffs claimed was illegally obtained by the journalist.⁶² The dismissal of

the case was subsequently confirmed in the appeal by the Chamber of Section 30 of the Provincial Court of Madrid in February 2017.⁶³ The Court confirmed that the publication was 'journalistically relevant' and the dissemination of the information 'was justified in the exercise of the right to freedom of information, which constitutes one of the pillars of the rule of law'.⁶⁴

- In 2018, former president of the Region of Madrid, Cristina Cifuentes, filed a criminal complaint against the digital news outlet *elDiario.es* after publishing an article revealing that Cifuentes irregularly obtained her master's degree. Cifuentes alleged that the documents mentioned in the article were illegally obtained and their interpretation biased. In January 2021, the Madrid Examining Court No. 29 dismissed Cifuentes' complaint on the grounds that freedom of information protects the dissemination of public interest data. The court decision established that the information published by *elDiario.es* met 'all the necessary constitutionality requirements'.⁶⁵ Following this verdict, Cifuentes appealed the decision before the Provincial Court of Madrid, which dismissed the appeal.⁶⁶

Aside from a first instance conviction of Calvo Montero – later overturned by the Constitutional Court – no final convictions were rendered against the journalists in any of these cases, as the courts found that the information shared by the journalists was in the public interest, and this falls precisely under their role of public watchdogs.⁶⁷

Trends in criminal cases against journalists and the media

As demonstrated above, most of the cases of journalists prosecuted under various provisions of the Penal Code are **eventually dismissed by the courts** on the basis of the broad protection of freedom of expression. However, claimants voluntarily continue filing these criminal complaints and the law enforcement authorities are pursuing them. In fact, the cases in which this type of claimants did not appeal the dismissal suggests that these offences are abused to intimidate the critics.

Moreover, **lengthy criminal proceedings** have a serious chilling effect on freedom of expression. For example, journalist Calvo Montero, who was sued by Carrasco Lorenzo,

under the offence of revelation of secret information, went through four years of criminal proceedings.⁶⁸ Eventual dismissals of criminal cases by higher courts and their support to protection of the right to freedom of expression may require years of judicial proceedings. In these proceedings, journalists and media outlets are forced to **dedicate significant time and resources to their defence**. Criminal proceedings thus have serious financial and professional implications for journalists.

Permanent threats of possible criminal sanctions create a **serious chilling effect on journalism**, in particular for journalists who report on corruption and other public interest related matters. Our research has shown that criminal proceedings generate high pressures on journalists and their ability to freely carry out their journalistic activities, contributing to episodes of self-censorship and a general climate of fear in expressing criticism,⁶⁹ irrespective of the potential dismissal of cases or the opportunity to challenge a case before the European Court.

The possibility of criminal lawsuits has deep implications on the financial sustainability of media outlets. Injunction orders can ultimately amount to prior censorship of public interest information and add to the financial hurdles to the sustainability and survival of media outlets.⁷⁰

SLAPPs under civil law

The SLAPP-type cases in Spain can be initiated under the civil defamation provisions, provided in Articles 2 and 7 of the Organic Law 1/1982 on the civil protection of the right to honour, personal and family privacy, and one's own image. It should be noted that criminal defamation proceedings are the first choice for those who target journalists and media outlets in Spain for alleged defamatory material. In fact, the statement of purpose of Law 1/1982 states that criminal actions to protect honour, namely offences on insult and slander, should be of preferential application over civil law.⁷¹

Although there is no sufficient evidence to assert that there is a clear trend of SLAPPs against public watchdogs in Spain, the reach and impact of existing attempts to silence critical and public interest reporting by using civil law can create a chilling effect and undermine media freedom in Spain.

Protection of reputation in the civil law

Scope of protection

Article 7 of the Organic Law 1/1982 provides protection against unlawful interferences in an individual's private life.⁷² Specifically, Article 7(4) protects against '[t]he disclosure of facts related to the private life of a person or family that could affect their reputation and good name, as well as the disclosure or publication of the content of letters, memoirs or other personal writings of a private nature.' Article 7(7) protects against 'the incrimination of facts or the manifestation of value judgments through actions or expressions that in any way negatively impact the dignity of another person, undermining their reputation or attacking their sense of self-worth.'

Claims under these provisions are often based on the 'right to honour'⁷³ recognised under the Spanish Constitution (Article 18.1), Organic Law 1/1982, and the interpretation of Spanish Courts. The Constitutional Court has established that the right to honour is 'an autonomous and volatile right'. It has long maintained that its content and scope include 'the preservation of the good reputation of a person, protecting the individual against

expressions and messages that cause detraction from others by [expressions] that discredit or disparage the person or that fall under the public concept of disgraceful'.⁷⁴

In terms of the relationship between freedom of expression and the 'right to honour', the Constitutional Court sustains that the latter is not only a legitimate aim to limit freedom of expression but a fundamental right in itself that seeks the indemnity of the image that others may have of a person.⁷⁵

Balancing freedom of expression with other interests

Article 8 of Law 1/1982 contains several exceptions to the protection of honour, privacy, and one's own image. It stipulates that interferences whose purposes follow a historical, cultural, and scientific interest shall not be considered illegitimate (Article 8.1). Article 8.2 elaborates on specific exceptions applicable to the protection of an individual's own image, namely '[t]he right to one's own image will not impede (a) obtaining, reproducing or publishing information that concerns people in public positions, individuals with public notoriety or projection [visibility] and when their image is taken at public events or in public spaces; (b) caricatures of these people, according to the social use rules; and (c) graphic information about a public event or occurrence when the image of a certain person appears as merely accessory. Exceptions (a) and (b) will not apply in circumstances where authorities or people perform functions that require the anonymity of the person who exercises them.'

Interpretation of the 'right to honour' puts limitations on restrictions of the right to freedom of expression. Spanish courts repeatedly held that the Spanish Constitution does not recognise a 'right to insult', and 'insulting expression' (*expresiones formalmente injuriosas*) should not be used under an excuse of exercising freedom of expression.⁷⁶ Spanish courts developed further guidance to determine whether offensive and insulting speech that impacts the right to honour of persons falls under the respective provisions. On the basis of the courts' interpretation, when determining the cases, judges should consider:

- **Public interest of the speech in question:** The Constitutional Court states that while opinions fall under the right to freedom of expression, their protection is afforded 'to

those statements that, although they affect the honour of others, are necessary for the exposition of ideas and opinions of public interest'.⁷⁷

- **Necessity threshold:** The Constitutional Court sustains that *absolute* insulting opinions are unjustified under the right to freedom of expression.⁷⁸ Opinions whose aim is not to present facts or objective data should be limited when they meet the following considerations: (i) there is no relation between the opinion or idea and the expression sought to disseminate, and (ii) when the expression is found to be unnecessary for the exposition of the idea or opinion. Hence, what is prohibited under the Constitution is 'offensive or disgraceful expression that, given the circumstances of the cases, and regardless of their veracity or inveracity, are impertinent to express the opinions and information in question.'⁷⁹
- **Public function of plaintiffs:** Courts should consider whether 'the material or critical information is targeting people who hold public office or a profession of notoriety or public visibility, in which case the weight of freedom of information is more intense'.⁸⁰ Further, 'when plaintiffs are public persons or persons with public notoriety, they are obliged to bear a certain risk that their subjective rights of personality are affected by opinions about matters of general interest. Opposed to average citizens who may aspire to a different protection of its privacy, which does not apply to public persons.'⁸¹
- **Defence of reasonable publication:** Although the Law 1/1982 does not contain an explicit defence of reasonable publication, the Constitutional Court has developed it under a standard called 'veracity requirement'. This rule is based on Article 20.1.d of the Spanish Constitution which recognises the freedom to inform and receive truthful information – also called *freedom of information* under Spanish jurisprudence. These provisions provide a broad protection to the role of the media and journalists, who are required to observe the requirement of veracity when reporting. The Constitutional Court stated that this requisite is met when journalists and informers carry out reasonable or due diligence in contrasting newsworthy content pursuant existing professional rules, regardless of future controversy over the total exactitude of the facts or that it can later be unconfirmed or disproved.⁸²

Burden of proof

Plaintiffs have the burden to prove their claims under Spanish civil law framework. Article 9, para 3 of Law 1/1982 establishes that 'damage will be presumed provided that the illegitimate interference is proven'. Further, the Civil Procedure Law 1/2000 formulates a burden of proof principle whereby 'those who believe they require legal protection are the ones who have to request it, determine the claim with sufficient precision, provide arguments, prove the facts and adduce the legal bases corresponding to the claims'.⁸³

Remedies

Provision of remedies in reputation-related cases is governed under Article 9 of Law 1/1982. Without prejudice of the right to reply procedure, they include:

- Total or partial publication of the sentence at the cost of the defendant when found liable with at least the same public dissemination as had the information that caused the interference.⁸⁴
- Measures to prevent imminent or subsequent interference.⁸⁵
- Compensation for caused damages.⁸⁶
- Ownership of defendant's profit obtained with the illegitimate intrusion to privacy.⁸⁷

Compensation extends to non-pecuniary damage, the amount of which will result from an assessment that considers the circumstances of the case, the severity of the harm caused, the means of dissemination, or the audience thereof through which the harm was caused.⁸⁸

These criteria are adequate from a proportionality perspective. In a case found during the research, the Supreme Court applied these considerations to reduce the amount requested by the plaintiff – from 12,000 euros (USD 14,240) to a fixed amount of 7,000 euros (USD 8,307).⁸⁹ At the same time, it is clear that public figures request exorbitant amounts in damages, although they are often or eventually dismissed. For example, the 50,000 euros (USD 59,347) requested by the family of former dictator Franco against journalists and TV producers of a TV programme⁹⁰, or the 500,000 euros (USD 593,447) claimed by the

former mayor of O Grove, Alfredo Bea Gondar, for the information in the book *Fariña*⁹¹, or the 70,000 euros (USD 81,182) requested by actor Antonio Resines to CTXT's journalist Francisco Pastor and director Miguel Mora⁹². These disproportionate amounts in damages create a chilling effect and threaten individuals and organisations ill-equipped to defend themselves against these lawsuits.

Problems with civil law provisions

Despite some positive features of the defamation provisions in the civil law, ARTICLE 19 notes that the scope of protection of reputation goes way beyond international and regional human rights standards. In particular:

- Under international standards, the protection of individuals' reputation and freedom of expression should aim to protect people against *false* statements of fact which cause damage to their reputation.
- The necessity threshold to protect opinions is problematic. Under international law, statements of opinion have been accorded very significant protection and no one should be found liable under defamation law for an opinion. This is because statements of opinion, which do not contain factual allegations, cannot be proven true or false; the law should not decide which opinions are correct and which are not, but should allow citizens to make up their own minds. Determining whether a statement is one of fact or of opinion can sometimes be difficult. Sometimes, a statement may contain elements which, taken literally, are of a factual nature, but which are clearly intended to be understood as an opinion. Courts should study the context of statements to determine whether they should reasonably be interpreted as a factual allegation or as an opinion.

Safeguards against abusive lawsuits or SLAPPs

Article 247 of the Civil Procedure Law 1/2000 stipulates that parties in any civil process must comply with the rules of good faith. Article 247, para 2 stipulates that the courts should fundamentally reject the cases 'that are formulated with manifest abuse of rights or involve legal or procedural fraud'.⁹³ If courts consider that parties acted in violation of the rules of good procedural faith, they can impose a fine in a separate decision. Fines should be justified and 'respect the principle of proportionality' and may range from 180 to 6,000 euros (USD 214–7,120), without in any case exceeding a third of the amount of the dispute.

These procedural rules are relevant in the context of SLAPP-type suits. Although ARTICLE 19 did not find an example where judges have rejected parties' claims or actions under said examination power, it can potentially counterbalance any procedural unfairness faced by journalists, editors, producers, and media outlets sued for contributing to public debate. It is, however, unclear whether this safeguard can be raised by a party or is exclusive to the discretion of judges.

Recommendations

Based on the foregoing, ARTICLE 19 makes the following recommendations to the Spanish Government:

- The Penal Code should be thoroughly reviewed aiming to bring it in compliance with international freedom of expression standards. Articles 208–216, 490(3), 491(1) and (2), 504, and 543 should be repealed. In the interim, either the government or the legislative body should impose a moratorium on the application of these criminal provisions.
- Article 197 of the Penal Code on revelation of secret information should be amended to incorporate explicit exception for disclosure of information in the public interest.
- Article 7(7) of Organic Law 1/1982 should be amended in order to abolish the reference to ‘value judgments’ that negatively impact the dignity of a person, undermining their reputation or attacking their sense of self-worth. Instead, Articles 7(3) and 7(7) of Law 1/1982 should ensure that the scope of protection of honour and reputation is limited to false statements of fact that cause actual harm to an individual’s reputation.
- Article 8 of Organic Law 1/1982 should be amended to reflect that exceptions under Article 8.2.a – which concerns limitations on protecting privacy of people in public positions and individuals with public notoriety or visibility – are applicable to the protection of honour and any realm of individuals’ privacy.
- Spanish courts should uphold the broad protection of opinions and stop relying on the lack of a ‘right to insult’ under the Spanish Constitution to restrict offensive opinions or critical discourse used in journalistic material and reporting.
- Opinions on matters of public interest should not be subject to a necessity threshold. Spanish courts should impose a moratorium on the application of this standard. Instead, the courts should look into the circumstances in which an assessment is required to determine whether the claims involve facts or value judgements.

- Spanish courts should apply the rules of good faith under Article 247 of the Civil Procedure Law 1/2000 to ensure that journalists and media outlets do not face unnecessary civil proceedings as a result of ill-founded or meritless claims brought with the sole aim of silencing or intimidating the exercise of freedom of expression – in particular, freedom of information under the Spanish legal framework.

Endnotes

¹ See J. Sierra, [Freedom of the press, expression, and information in Spain](#), Open Society Foundations, January 2015; FeSP, [Economic crisis in the media](#), Federation of Unions of Journalists; APM, [Annual reports 2010–2019](#), Madrid Press Association.

² For instance, the report does not examine the application of so-called ‘Gag Law’ (the Law 4/2015 on Protection of Citizens’ Security), under which journalists face sanctions on the basis of ‘disrespecting public authorities’, ‘using unauthorised pictures of public authorities’, or ‘disrespecting authorities’.

³ Information about cases was obtained mostly from news reports and research into judicial decisions, as well as through keyword searches in the Centre of Judicial Documentation of the General Council of the Judicial Power and the Constitutional case-law search engine of the Spanish Constitutional Court.

⁴ ARTICLE 19, [Spain: Briefing on the Penal Code and threats to freedom of expression](#), March 2020; International Press Institute, [The state of press freedom in Spain: 2015: Report of the international mission](#) (in Spanish), March 2015; J. Barata, [Defamation and Insult Laws in the OSCE region: A comparative study](#), March 2017; PLI, [Legal report on the adaptation to international standards on freedom of expression of certain precepts of the Spanish Penal Code](#) (in Spanish), February 2020.

⁵ [Spanish Constitution](#).

⁶ Although as a UN General Assembly resolution, the Universal Declaration of Human Rights is not strictly binding on States, many of its provisions are regarded as having acquired legal force as customary international law; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

⁷ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, [UN Doc. A/6316](#). Spain ratified the ICCPR on 27 April 1977.

⁸ Council of Europe, [Convention for the Protection of Human Rights and Fundamental Freedoms](#), Rome, 4 September 1950.

⁹ European Commission, [EU Charter of Fundamental Rights](#), 26 October 2012, 2012/C 326/02.

¹⁰ Human Rights Committee (HR Committee), [General Comment No. 34](#) on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011. See also the Human Rights Council resolution: [The promotion, protection and enjoyment of human rights on the Internet](#), A/HRC/20/L.13, 29 June 2012.

¹¹ General Comment No. 34, *ibid*, para 12.

¹² *ibid*, para 38.

¹³ See e.g. European Court, *Lingens v. Austria*, App. No. 9815/82, 8 July 1986, para 41.

¹⁴ See e.g. European Court, *Steel Morris v. the UK*, App. No. 68416/01, 15 May 2005, para 95; *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, 14 April 2009, para 27; *Vides Aizsardzības Klubs v. Latvia*, App. No. 57829/00, 27 May 2004, para 42; *Youth Justice Initiative for Human Rights v. Serbia*, App. No. 48135/06, 25 June 2013.

¹⁵ See e.g. European Court, *Thoma v. Luxemburgo*, App. No. 38432/97, 26 June 2001, paras 45 and 46; or *Lingens v. Austria*, para 42.

¹⁶ HR Committee, [General Comment No. 34](#), para 44. See also Council of Europe, [Recommendation No. R \(2000\)7 of the Committee of Ministers to Member States on the right of journalists not to disclose their sources of information](#), adopted 8 March 2000.

¹⁷ HR Committee, [General Comment No. 34](#).

¹⁸ See e.g. European Court, *The Sunday Times v. UK*, App. No. 6538/74, 26 April 1979, para 49.

- ¹⁹ See e.g. European Court, *The Observer & Guardian v. the UK*, App. No. 13585/88, 26 November 1991, para 59.
- ²⁰ *The Observer & Guardian v. the UK*, para 22.
- ²¹ See also HR Committee, [General Comment No. 16: Article 17 \(Right to Privacy\)](#), 8 April 1988, para 1.
- ²² See also European Court, *Axel Springer AG v. Germany*, App. No. 39954/08 (GC), 7 February 2012, para 83.
- ²³ HR Committee, [General Comment No. 34](#), para 21.
- ²⁴ ARTICLE 19, [Defining defamation: Principles on freedom of expression and protection of reputation](#), Principle 2, revised version, 2017.
- ²⁵ See e.g. *Axel Springer AG v. Germany*, paras 83–84.
- ²⁶ *Axel Springer AG v. Germany*.
- ²⁷ See e.g. HR Committee, *Khidirnazar Allakulov v. Uzbekistan*, Comm. No. 2430, CCPR/C/120/D/2430/2014, 22 August 2017.
- ²⁸ HR Committee, [General Comment No. 34](#), para 47; Council of Europe Parliamentary Assembly's Resolution 1577 (2007) [Towards decriminalization of defamation](#); the Response of the Committee of Ministers, adopted at the 1029th meeting of the Ministers' Deputies, 11 June 2008; Joint Declaration: [Challenges to freedom of expression in the next decade](#), 2 February 2010. See also Organization for Security and Co-operation in Europe (OSCE), [Ending the chilling effect – Working to repeal Criminal Libel and Insult Law](#), November 2004. See e.g. UN Economic and Social Council, *Civil and political rights including the question of freedom of expression*, [UN Doc. E/CN.4/2000/63](#), 18 January 2000, para 52; and [UN Doc. E/CN.4/2001/64](#), 26 January 2001.
- ²⁹ *ibid.* See also European Court, *Bladet Tromsø v. Norway*, App. No. 21980/93, 28 October 1999 (in which the Court stated that reputation claims should be accounted from two key elements: privacy and truth).
- ³⁰ See e.g. Council of Europe, [Declaration on political debate in the media](#) (adopted at the 872nd meeting of the Ministers' Deputies), 12 February 2004; or European Court, *Thoma v. Luxemburgo*, para 47; *Colombani v. France*, App. No. 51279/99, 25 September 2002, para 56; *OOO Izdatelskiy Tsentri Kvaritirnyy Ryad v. Russia*, App. No. 38748/05, 18 September 2017, para 38; or *Colombani v. France*.
- ³¹ See e.g. European Court, *Morar v. Romania*, App. No. 25217/06, 7 July 2015, para 55; or *Verlagsgruppe News GmbH v. Austria (No. 2)*, App. No. 10520/02, 14 December 2006, para 36.
- ³² See European Court, *Morar v. Romania*; *Verlagsgruppe News GmbH v. Austria (No. 2)*. According to the Court, the relevant factors for striking the right balance between the rights to respect for private life and freedom of expression in this type of cases include: contribution to a debate of general or public interest; the degree of notoriety of the person affected; the subject of the report and the nature of the information; prior conduct of the person concerned; method of obtaining the information; content, form, and consequences of the impugned publication; and the severity of the sanction imposed. See European Court, *Couderc and Hachette Filipacchi Associates v. France*, App. No. 40454/07, 10 November 2015, para 93; *Ólaffsson v. Iceland*, App. No. 58493/13, 16 March 2017, para 48.
- ³³ See e.g. European Court, *Eon v. France*, App. No. 26118/10, 14 March 2013, para 60; or *Bodrožić v. Serbia*, App. No. 32550/05, 2 June 2009, para 51.
- ³⁴ See e.g. European Court, *Von Hannover No. 2 v. Germany*, App. No. 59320/00, 24 September 2004, para 110.
- ³⁵ See e.g. European Court, *Bodrožić v. Serbia*, *OOO Izdatelskiy Tsentri v. Russia*, para 42; or *Lingens v. Austria*.
- ³⁶ Organic Law 10/1995 of November 23 of the Penal Code.

- ³⁷ According to Article 211, insult and defamation are perpetrated with publicity when committed by means of the printing press, by radio broadcasting, or any other similarly effective means.
- ³⁸ The fines system under the Penal Code sets a minimum and maximum amount of money per day.
- ³⁹ See also ARTICLE 19, [Defining defamation](#).
- ⁴⁰ ARTICLE 19, [Defining defamation](#), Principle 2 (vi).
- ⁴¹ See e.g. European Court, *Oberschlink v. Austria*, 23 May 1991, Series A No. 204, para 13. See also ARTICLE 19, [Defining defamation](#), Principle 19.
- ⁴² HR Committee, [General Comment No. 34](#), para 47; and ARTICLE 19, [Defining defamation](#).
- ⁴³ See e.g. European Court, *Gavrilovici v. Moldova*, App. 25464/05, 15 December 2009, para 60; *Cumpana & Mazare v. Romania*, App. 33348/96, 17 December 2004, para 115; *Mahmudov & Agazade v. Azerbaijan*, App. 38577/04, 18 December 2008, para 50; *Bodrožić & Vujić v. Serbia*, App. 38435/05, 23 June 2009, para 39; or *Tolstoy Miloslavsky v. the UK*, App. 18139/91, 13 July 1995.
- ⁴⁴ *El País*, [‘Director of ‘El Jueves’, investigated for insults against the police’](#), 3 November 2017.
- ⁴⁵ RTVE, [‘Court of Barcelona file the criminal investigation of ‘El Jueves’ for the satirical content against the National Police’](#), 27 May 2019.
- ⁴⁶ *La Vanguardia*, [‘Polemic caused by a comic parody that Balearic Police consider “insulting”’](#), 12 June 2019.
- ⁴⁷ *elDiario.es*, [‘Justice protects satirical comic 1-0 under freedom of expression protection reported by police unions’](#), 15 April 2021. See also EuropaPress, [‘Author of comic from 1-0 ‘Ón és l’Estella?’ ensures that he didn’t intent to offend the security forces’](#), 30 January 2020.
- ⁴⁸ *El Mundo*, [‘Federico Jiménez Losantos wins before the ECHR against Alberto Ruiz Gallardón’](#), 14 June 2016.
- ⁴⁹ Criminal Court of Madrid No. 6, [Decision SJP 11/2008](#), Resolution 213/2008, 11 June 2008.
- ⁵⁰ Court of Appeals (Audiencia Nacional) of Madrid, [Decision 235/2009](#), 14 May 2009.
- ⁵¹ See European Court, *Jiménez Losantos Spain*, App. No. 53421/10, 14 June 2016. The Court found a violation of the journalist’s right to freedom of expression, upholding that journalistic opinions can also contain a certain degree of exaggeration and provocation, and that these styles are protected under the guarantees of this right. The European Court also questioned Spanish courts for invoking the argument related to the lack of veracity of the journalist’s assertions: the requirement of truthfulness should not be applied in value judgments, and these belong to the realm of protected speech. The European Court also highlighted that the criminal sentence inflicted against Losantos was disproportionate and that it can create a chilling effect among journalists.
- ⁵² The offence is punishable with six months to two years’ imprisonment for ‘serious’ offences, and a fine of 6–12 months. The fines system under the Penal Code sets a minimum and maximum amount of money per day. In this case, according to Article 50, the amount per day can vary between 2 and 400 euros (USD 2–475 for individuals and 30 to 5,000 euros (USD 37–5,934) for legal entities.
- ⁵³ The offence is punishable with a fine of 4–20 months.
- ⁵⁴ The offence is punishable with a fine of 6–24 months.
- ⁵⁵ ARTICLE 19, [Spain: Briefing on the Penal Code and threats to freedom of expression](#), 12 March 2020.
- ⁵⁶ HR Committee, [General Comment No. 34](#), para 38.
- ⁵⁷ See e.g. Office of the High Commissioner for Human Rights, [Thailand: UN rights expert concerned by the continued used of lèse-majesté prosecutions](#), 7 February 2017.

⁵⁸ National High Court of Spain, [Decision SAN 4623/2007](#), Resolution 62/2007, 13 November 2007.

⁵⁹ Article 197 of the Penal Code states ‘whoever seizes or takes possession of third parties’ documents, letters, emails or any other documents or personal belongings, or intercepts their telecommunications or uses technical listening devices, transmission, recording or reproduction of sound or image, or of any other method of communication without the third party’s consent, for the purposes of disclosing or revealing secrets or violating individuals’ privacy. These practices are punishable with imprisonment of one to four years and a fine of twelve to twenty-four months’ (Article 197(1)). Same penalties apply to those ‘who seizes, uses or modifies, to the detriment of a third party, confidential personal or family data, without authorisation, that is recorded in a computer, electronic or telematic files or media, or in any other type of file or public or private records. The same penalties will be imposed when someone accesses the data by any means and who alters or uses them causing damage to the owner of the data or a third party’ (Article 197(2)). Section 4 of Article 197 stipulates that these offences are subject to increased imprisonment penalties of three to five years when ‘a) they are committed by those in charge of or responsible for the files, computer, electronic or telematic supports, files or records; or b) are carried out through the unauthorized use of the victim’s personal data. If confidential data has been disseminated, transferred or disclosed to third parties, the penalties will be imposed in its upper half.’ Under Article 210, defence of truth in cases when impugned statements were ‘against civil servants concerning events in exercise of their duties of office or referring to the commission of criminal or administrative offences’.

⁶⁰ See *Confitegal*, [‘Constitutional Court annuls the sentence against the article that published Isabel Carrasco’s irregular transportation charges’](#), 4 March 2019.

⁶¹ Spanish Constitutional Court, [Decision of the Constitutional Court No. 24/2019 of 25 February 2019](#) (BOE (Official State Gazette) number 73, of 26 March 2019), ECLI:ES:TC:2019:24 (in Spanish).

⁶² See *Público*, [‘This is how comisario Villarejo negotiated with Javier de la Rosa in a report that gave rise to “case Pujol”’](#), 26 October 2015.

⁶³ See PLI, [‘New judicial support for journalistic leaks’](#), 6 February 2017.

⁶⁴ *ibid.*

⁶⁵ *elDiario.es*, [Court dismisses Cifuentes’ lawsuit against Ignacio Escolar y Raquel Ejerique for the case Master](#), 21 January 2021.

⁶⁶ *elDiario.es*, [The Provincial Court dismisses Cifuentes’ lawsuit against journalists from elDiario.es who revealed the case Master](#), 18 March 2021.

⁶⁷ However, Calvo Montero was convicted for the revelation of secret information by lower courts; these convictions were overturned by the Constitutional Court in 2019.

⁶⁸ *idem.*

⁶⁹ See e.g. Resource Centre on Media Freedom, [SLAPPs: Strategic Lawsuits Against Public Participation](#), 19 December 2019. Further, according to Jacobo Dopico, Professor of Criminal Law at University Carlos III of Madrid and director of Working Group about Freedom of Expression ([LibEx](#)), this tendency generates a chilling effect among journalists, who are often faced with criminal charges for exercising their legitimate work. *CTXT*, [‘Hurt feelings cannot be the basis of limitation to freedom of expression’](#), 3 February 2021.

⁷⁰ See e.g. *20 minutos*, [Judge of the Olmo orders to remove magazine ‘El Jueves’ from all kiosks for a comic strip of the Prince of Asturias](#), 20 July 2007.

⁷¹ BOE, [Organic Law 1/1982 on the civil protection of the right to honour, personal and family privacy and one’s own image](#), *Official State Gazette*, 14 May 1982.

⁷² Organic Law 1/1982, “Article 7(1). The placing, in any location, of listening devices, filming devices, optical devices or any other medium suitable for recording or reproducing people’s private life. Article 7(2). The use of listening devices, optical devices, or any other means to gain knowledge of anyone’s private life or of

manifestations or private letters not intended for those who seek to make use of such things, as well as their recording or reproduction. Article 7(3). The disclosure of facts related to the private life of a person or family that could affect their reputation and good name, as well as the disclosure or publication of the content of letters, memoirs or other personal writings of a private nature. Article 7(4). The disclosure of private data of a person or family discovered through the professional or official activity of the person disclosing them. Article 7(5). The capture, reproduction or publication by means of photography, film, or any other procedure, of the image of a person in places or moments of their private life, or outside such moments, except in the cases envisaged under Article 8(2). Article 7(6)...Article 7(7). The incrimination of facts or the manifestation of value judgments through actions or expressions that in any way negatively impact the dignity of another person, undermining their reputation or attacking their sense of self-worth.”

⁷³ Examples: (i) magazine *CTXT* sued in 2016 by a famous actor for an article that reported on his participation in alleged mismanagement of funds of the Arts and Cinematography Academy; and (ii) journalist Nacho Carretero, author of the book *Fariña*, and his editor, *Libros de K.O.* sued by a mayor as a result of the book that portrayed him as being involved in drug trafficking during the 1980s–1990s, a crime for which he had been acquitted by the Supreme Court.

⁷⁴ Constitutional Court, Decision [STC 170/1994](#), legal basis 4, 7 June 1994; and the Decision [STC 93/2021](#), legal basis 5, 10 May 2021.

⁷⁵ Constitutional Court, Decision [STC 204/2001](#), legal basis 7, 15 October 2001; and the Decision [STC 180/1999](#), legal basis 5, 11 October 1999.

⁷⁶ Constitutional Court, Decision [STC 107/1988](#), legal basis 4, 8 June 1988, Constitutional Court, Sentence [STC 53/1985](#), legal basis 8, 11 April 1988, [STC 93/2021](#), legal basis 4.

⁷⁷ Constitutional Court, Decision [STC 107/1988](#), legal basis 4, 8 June 1988; Constitutional Court, Sentence [STC 204/2001](#), legal basis 4, 15 October 2001; and Constitutional Court, Decision [STC 181/2006](#), legal basis 5, 19 June 2006.

⁷⁸ Constitutional Court, Decision [STC 9/2007](#), 15 January 2007, [STC 204/2001](#), 15 October 2001.

⁷⁹ Decision [STC 9/2007](#).

⁸⁰ Supreme Court, Civil Chamber, Decision STS 3906/2014, legal basis Fifth, F.

⁸¹ Supreme Court, Civil Chamber, Decision STS 2130/2021, and Constitutional Court, 6 May 2002.

⁸² Constitutional Court, STC 29/2009, legal basis 5, 26 January 2007; and Supreme Court Civil Chamber, STS 2130/2021, [Resolution No. 331/2021](#), 17 May 2021, legal basis Second.

⁸³ BOE, [Law 1/2000, 7 January, Civil Procedure](#), *Official State Gazette*, 8 January 2000, Statement of Purpose Section VI.

⁸⁴ Article 9 of Law 1/1982, Section two. a).

⁸⁵ *ibid*, Section two. b).

⁸⁶ *ibid*, Section two. c).

⁸⁷ *ibid*, Section two. d).

⁸⁸ *ibid*, Section three.

⁸⁹ Supreme Court, STS 3906/2016.

⁹⁰ *elDiario.es*, [“Franco's grandchildren prosecute journalists investigating his fortune for generating “hatred” against the family”](#), 27 December 2021.

⁹¹ *El País*, [“Judge executes the kidnapping of ‘Fariña’, the book about the Gacilian narcos”](#), 5 March 2018.

⁹² CTXT, [The Provincial Criminal Court of Madrid dismisses Resines' claim against CTXT](#), 1 December 2019. On 8th September 2021, the Provincial Court of Madrid dismissed the civil lawsuit started by Antonio Resines against Francisco Pastor and Miguel Mora; Resines appealed this sentence before the Supreme Court of Spain.

⁹³ Article 247: '1. The parties involved in all types of processes must comply with the rules of good faith in their actions. 2. The courts will fundamentally reject the petitions and incidents that are formulated with manifest abuse of rights or involve legal or procedural fraud. 3. If the Courts consider that any of the parties has acted in violation of the rules of good procedural faith, they may impose, in a separate piece, by means of a reasoned agreement, and respecting the principle of proportionality, a fine that may range from 180 to 6,000 euros, without in any case exceeding a third of the amount of the dispute. To determine the amount of the fine, the Court must take into account the circumstances of the event in question, as well as the damages that may have been caused to the procedure or to the other party. In any case, the Lawyer of the Administration of Justice shall record the fact that motivates the corrective action, the allegations of the person involved and the agreement adopted by the Judge or the Chamber. 4. If the Courts understand that the action contrary to the rules of good faith could be attributable to any of the professionals involved in the process, without prejudice to the provisions of the previous section, they will transfer such circumstance to the respective professional associations in case the imposition of some type of disciplinary sanction could proceed.'