

## **Recommendation to include academics in any legislative proposal designed to combat strategic lawsuits against public participation (SLAPPs)**

March 2022

### **Recommendation**

In line with the European Democracy Action Plan,<sup>1</sup> recognise the role of academics in combatting disinformation and misinformation including by ensuring that they are protected by any legislative proposal designed to combat strategic lawsuits against public participation (SLAPPs).

### **Impact of SLAPPs on academics & academic freedom**

The status of academic freedom is worsening in some parts of Europe and the world. In 2021 the Scholars at Risk (SAR) network documented 332 attacks on higher education communities in 65 countries and territories.<sup>2</sup> The 2022 release of the global Academic Freedom Index (AFI) reveals that almost two in five people worldwide live in countries where academic freedom has suffered a 'significant decline' during the past ten years.<sup>3</sup> The study shows the decline appears to have accelerated in Western Europe,<sup>4</sup> and pointedly highlights Poland, Hungary and Turkey as countries indicative of 'substantial, statistically significant decreasing cases of academic freedom'.<sup>5</sup>

Threats to academic freedom manifest through a wide range of conduct, from violent or coercive attacks on scholars, to administrative actions or legal coercion.<sup>6</sup> Legal coercion can take many forms, including strategic litigation against public participation ('SLAPPs'). SLAPPs are utilised to target academic conduct or expression directly, or to intimidate or harass members of the higher education community. Such actions are of particular concern where they are brought by State actors, their proxies, as well as commercial stakeholders, who can marshal extensive resources to overwhelm and even bankrupt private civil defendants including academics, rendering the suit itself—regardless of the outcome—an effective tool to silence critics, and to control information.

While the number of SLAPP cases on public record in connection with scholars is not extensive, numbers of cases are on the rise. (See **Annex I** for examples of SLAPP cases against scholars in the EU.) Looking to other jurisdictions, such as the US, Canada (the targeting of academic librarians<sup>7</sup>), and Australia, SLAPPs against scholars are prevalent. We can also see their use in EU candidate countries such as Turkey. Moreover the monitoring of attacks on academic freedom within the EU is not systematic, and therefore the opportunity to comprehensively document these cases is limited. Additionally, there are reported incidents of scholars receiving threatening legal letters that do not proceed to litigation but meet the intended objective of silencing the scholar. (The example in Austria cited in the annex is illustrative of this problem).

<sup>1</sup>European Democracy Action Plan para. 3.2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>

<sup>2</sup> *Free to Think* 2021, Scholars at Risk Network, available at: <https://www.scholarsatrisk.org/resources/free-to-think-2021>.

<sup>3</sup> Academic Freedom Index Update 2022, available here: <https://www.pol.phil.fau.de/files/2022/03/afi-update-2022.pdf>. See Times Higher education, 'Two in five live under 'significant decline' in academic freedom', Ben Upton, (March 3, 2022), <https://www.timeshighereducation.com/news/two-five-live-under-significant-decline-academic-freedom>

<sup>4</sup> Academic Freedom Index Update 2022, pg 3, available at <https://www.pol.phil.fau.de/files/2022/03/afi-update-2022.pdf>

<sup>5</sup> Academic Freedom Index Update 2022, pg 6-7, available at <https://www.pol.phil.fau.de/files/2022/03/afi-update-2022.pdf>

<sup>6</sup> Scholars at Risk submission to Report to the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (2020), available here:

[https://www.ohchr.org/Documents/Issues/Opinion/Submissions/NGOs/Scholars\\_at\\_Risk\\_submission.pdf](https://www.ohchr.org/Documents/Issues/Opinion/Submissions/NGOs/Scholars_at_Risk_submission.pdf)

<sup>7</sup> Kandiuk, M. and Sonne de Torrens, H.M. (2015), "Librarians in a Litigious Age and the Attack on Academic Freedom", Current Issues in Libraries, Information Science and Related Fields (Advances in Librarianship, Vol. 39), Emerald Group Publishing Limited, Bingley, pp. 3-45., available online here: [https://tspace.library.utoronto.ca/bitstream/1807/98060/1/2015-Kandiuk-Sonne-Librarians\\_in\\_a\\_Litigation\\_Age.pdf](https://tspace.library.utoronto.ca/bitstream/1807/98060/1/2015-Kandiuk-Sonne-Librarians_in_a_Litigation_Age.pdf)

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Academics have both a right and an obligation to express themselves within their areas of expertise, and in this way, contribute to public discourse.<sup>8</sup> The Bonn Declaration on Scientific Freedom encourages and supports “research organisations in their efforts to communicate scientific processes and results and to engage with society in order to suppress the distortion of facts and disinformation campaigns.”<sup>9</sup> In a recent report by the All European Academies (ALLEA) on how to tackle science disinformation (‘information that is known to be false, but that is deliberately planted and disseminated nevertheless’<sup>10</sup>) one of the key recommendations is for serious engagement of scientists with the public when exercising or communicating research. However, if doing so might expose them to meritless legal, and oftentimes repeated harassment, academics may be discouraged and perhaps even prevented from engaging in public discourse. Members of the public should have access to information about essential questions. As a society, we need to actively support those engaged in the production of knowledge and its dissemination, to ensure that the democratic debate can happen on an informed basis. The COVID-19 crisis made the need for academics to communicate evidence-based research and analysis all the more apparent.

SLAPPs may force scholars to disengage from public discourse by refraining from publishing (news articles, blogs, twitter) or speaking on a topic in a public forum (tv and radio interviews/debates, conferences etc), thereby limiting the distribution of new knowledge and ideas. This may allow certain narratives to go unchallenged, and past narratives, particularly ones concerning historic events, are at risk of being rewritten to align with ideology. SLAPPs may serve to discourage the pursuit of a particular type of research, encouraging self-censorship, both in respect of the targeted party but also others so engaged in that field of study. This may result in a more cautious approach to the type of work pursued, or avoid a particular topic altogether, ultimately serving to deprive the public of evidence-based research. SLAPPs purposefully tie parties into time-consuming and resource-exhausting litigation serving to distract scholars from their work but may also hamper their ability to attract grants to support the continuation of that work. SLAPPs also hold significant potential to damage reputations.

### **Objective of including academics in any legislative proposal designed to combat SLAPPs**

The European Democracy Action Plan recognises that to empower citizens to make informed decisions the EU must ensure that academic freedom in higher education institutions is at the “core of all higher education policies developed at EU-level”.<sup>11</sup> For academic freedom to truly be at the core of these policies, the EU must support practical measures to protect it, and those members of the academic community who practice it. Legal intimidation that forces academics to retract critical publications or avoid publishing altogether is a direct violation of academic freedom. If scholars are to be encouraged and indeed expected to speak out in public forums, then they must be afforded real protection from vexatious, abusive and meritless legal suits. Robust anti-SLAPP measures will also combat the chilling effect of threats of legal action.

The inclusion of academics in anti-SLAPP measures would serve to publicly highlight the crucial role of scholars in combatting disinformation and misinformation. It would send a powerful message that the EU understands and seeks to actively protect those that use their voice to both create and share evidence-based knowledge. It would also demonstrate that the EU fully recognises the interdependence

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<sup>8</sup> According to the [Rome Ministerial Communiqué- Annex 1, Statement on Academic Freedom, 2020](#), academic freedom “designates the freedom of the academic community - including academic staff and students – in respect of research, teaching and learning and, more broadly, the dissemination of research and teaching outcomes both within and outside the higher education sector. In essence the concept ensures that the academic community may engage in research, teaching, learning and communication in society without fear of reprisal”.

<sup>9</sup> [Bonn Declaration on Freedom of Scientific Research, 2020](https://www.ria.ie/sites/default/files/bonn_declaration_on_freedom_of_scientific_research.pdf), available here: [https://www.ria.ie/sites/default/files/bonn\\_declaration\\_on\\_freedom\\_of\\_scientific\\_research.pdf](https://www.ria.ie/sites/default/files/bonn_declaration_on_freedom_of_scientific_research.pdf)

<sup>10</sup> ALLEA, ‘Fact or Fake? Tackling Science disinformation’ (2021), pg 3 available here: <https://allea.org/wp-content/uploads/2021/04/Fact-or-Fake-Discussion-Paper.pdf>

<sup>11</sup> [European Democracy Action Plan](#) para 4.3.

of academic freedom, human rights, democracy and the rule of law, which would work to reinforce the role of higher education communities in safeguarding those values.<sup>12</sup>

## About Scholars at Risk Europe

Scholars at Risk Europe is the European office of the global Scholars at Risk network. Scholars at Risk was founded in 2000 and is an international network of over 550 higher education institutions in 42 countries working to protect threatened scholars and to promote academic freedom. SAR's European office, hosted by Maynooth University, Ireland, supports and coordinates the activities of 13 Scholars at Risk sections and 10 partner networks across Europe to strengthen our collective voice at the European level and contribute to informed policymaking for the greater protection of scholars and increased respect for academic freedom worldwide. SAR Europe coordinates Inspireurope, an EU-funded, 10-partner initiative to support researchers at risk. SAR Europe also works to expand, coordinate, and support advocacy in Europe to promote academic freedom, including convening the European Coordinating Committee for Academic Freedom Advocacy. SAR Europe was granted Observer Status with the Council of Europe Steering Committee for Education (CEDU) in 2021. SAR Europe is a member of the Coalition Against SLAPPs in Europe.

## Contact Information

SAR Europe is ready to provide additional background information or context as helpful, or to assist in identifying relevant stakeholders to include in any related consultations on this topic. Please contact Denise Roche, Advocacy Manager, at [denise.roche@mu.ie](mailto:denise.roche@mu.ie) with any questions.

## ANNEX I

### Examples of cases against scholars within the EU

The following is not an exhaustive list of cases with SLAPP characteristics but a sample of those reported through Scholars at Risk's Academic Freedom Monitoring Project<sup>13</sup> as well as incidents that have come to our attention through the SAR network, the European Coordinating Committee for Academic Freedom Advocacy, convened by SAR Europe,<sup>14</sup> as well as through our membership of the Coalition Against SLAPPs in Europe. These cases illustrate how the law can be misused and abused to bring scholars participating in public debate before criminal and civil courts.

#### Austria:

- In 2019, Sarah Spiekermann, head of the Institute for Business Informatics and Digital Society at the Vienna University of Economics and Business and an expert in digital ethics, recounted her experience of receiving a cease-and-desist declaration following her criticism of the data collection practices of the Austrian Post (postal service), who threatened her with court action if she did not comply.<sup>15</sup>

<sup>12</sup> Academic freedom commitments are outlined in the European Commission's European Strategy for Universities which was accompanied by a proposal for a Council Recommendation, (January 2022), the European Commission toolkit to help mitigate foreign interference in research and innovation, (January, 2022) and the European Research Area (ERA) Policy Agenda 2022-2024 (November, 2021). Horizon Europe Programme (which runs from 2021 to 2027) established by Regulation (EU) 2021/695 of the European Parliament and of the Council explicitly states that in 'order to guarantee scientific excellence, and in line with Article 13 of the Charter, the Programme should promote the respect of academic freedom in all countries benefiting from its funds' (see para. 72). Similarly, according to Regulation 2021/817 establishing Erasmus+, it should be ensured that academic freedom is respected by the countries receiving funds under the Programme, in line with Article 13 of the Charter of Fundamental Rights (see para. 64).

<sup>13</sup> Academic Freedom Monitoring Project, available here: <https://www.scholarsatrisk.org/actions/academic-freedom-monitoring-project/>

<sup>14</sup> European Coordinating Committee for Academic Freedom Advocacy, membership list available here: <https://www.maynoothuniversity.ie/sar-europe/advocacy/advocacy-committee>

<sup>15</sup> 'University professors without media law help' (2019), available here <https://wien.orf.at/stories/3010984/>

- In 2020, the Austrian Constitutional Court decided in favour of political scientist and political analyst, Peter Filzmaier, who was being sued following public criticism of a politician.<sup>16</sup>

#### **Belgium:**

- In 2021, the virologist Prof. Marc van Ranst (University of Leuven) was in court due to critical remarks he made in a newspaper interview and on twitter about Mr. Willem Engel, the founder of a Dutch anti-vax organisation (Viruswaarheid, 'Virus truth'). It was argued that public allegations such as calling someone an 'extreme right-winger', 'a swindler' and a 'virus denier' were defamatory. The court ruled that it had no jurisdiction to hear this case but Willem Engel lodged an appeal. The case will not be heard until 2023.<sup>17</sup>
- In 2021, ViruswaanZin failed in a separate suit against philosopher Prof. Johan Braeckman (Ghent University) for a number of statements he made on television in relation to their organisation. According to the court, there was no question of defamation under the law, and ordered ViruswaanZin to pay Prof. Braeckman compensation.<sup>18</sup>
- In 2021, Prof. Van Ranst was successful in his counterclaim that asserted that a new private prosecution by Mr Willem Engel for alleged defamation was vexatious and frivolous litigation. This time, Engel had taken offence at an interview with Van Ranst in VTM news. The court established that Van Ranst had only said that he did not agree that nobody should be allowed to call Engel a virus denier, and even if Van Ranst had called Willem Engel a virus denier, the court ruled that this was not defamation. Van Ranst was awarded damages.<sup>19</sup>

#### **Denmark:**

- In 2021, Prof. Stig Markager (Department of Bioscience at Aarhus University) was unsuccessfully sued for defamation by a special interest organisation in Denmark, (Bæredygtigt Landbrug 'sustainable agriculture'), following comments he made in the public based on his research that conflicted with their organisation's narrative.<sup>20</sup>

#### **France:**

- In 2019, Huawei Technologies instigated proceedings against Valerie Niquet, a researcher at the Paris-based Foundation for Strategic Research, for remarks she made on television connecting the company to the Chinese state. Huawei didn't include the broadcast networks in the suit but instead chose to target the researcher who spoke in her capacity as an expert on China.<sup>21</sup>
- In 2017, the Chimirec company lost the appeal it had brought against the academic Laurent Neyret for defamation, following an article he had published in a legal journal. In its judgment the court considered that the proceedings brought were abusive and ordered the plaintiffs to pay damages to the author of the article and to the publisher.<sup>22</sup>

<sup>16</sup> ORF.at, 'VfGH: Filzmaier's "plemplem" sayings about Stronach are permissible' (2020), see <https://orf.at/stories/3195580/> and DerStandard, 'The constitutional court sees Filzmaier's "plemplem" finding about Stronach in the context of freedom of expression', (2020), available here: <https://www.derstandard.de/story/2000122847396/verfassungsgericht-sieht-filzmaiers-plemplem-befund-ueber-stronach-im-rahmen-der>

<sup>17</sup> Inform's Blog, 'Anti-SLAPP: Professor goes free after vexatious and frivolous suits', Dirk Voorhoof (2022), available here: <https://inform.org/2022/01/04/anti-slapp-professor-goes-free-after-vexatious-and-frivolous-suit-dirk-voorhoof/> and reported Legal Human Academy, (2022), available here: <http://legalhumanacademy.org/slapps-also-an-issue-in-belgium/>

<sup>18</sup> See 17.

<sup>19</sup> See 17.

<sup>20</sup> See Omnibus, Independent Newspaper at Aarhus University 2 July, 2021, <https://omnibus.au.dk/arkiv/vis/artikel/au-professor-stiig-markager-frifundet-i-injuriesag/>

<sup>21</sup> Independent, 'Huawei sues critics over China claims', (2019) <https://www.independent.ie/business/technology/huawei-sues-critics-over-china-claims-38720179.html>. See also <https://www.engadget.com/2019-11-25-huawei-suing-french-critics-ties-to-chinese-state.html> <https://www.techdirt.com/2019/11/26/huawei-files-slapp-suits-france-against-critics-who-highlighted-companys-ties-to-chinese-government/>

<sup>22</sup> Le Monde, 'Freedom of expression: justice supports researchers,' (2017), [https://www.lemonde.fr/police-justice/article/2017/10/03/procedures-baillons-la-cour-d-appel-de-paris-au-soutien-de-la-liberte-d-expression-des-chercheurs\\_5195406\\_1653578.html](https://www.lemonde.fr/police-justice/article/2017/10/03/procedures-baillons-la-cour-d-appel-de-paris-au-soutien-de-la-liberte-d-expression-des-chercheurs_5195406_1653578.html)

- In 2013, a French court dismissed a legal action against economics professor Bruno Deffains of the University Panthéon-Assas. The case was brought by Xavier Niel, the founder of the telecommunications company, Iliad. It concerned a study by Professor Deffains on the impact of the arrival of Free in mobile telephony to which Mr Niel objected. The decision found that an earlier court should not have granted Mr. Niel's request to seize Prof. Deffains computer documents relating to his research.<sup>23</sup>

#### **Netherlands:**

- In 2020, a legal claim was made against researchers from Utrecht University, who had investigated the treatment of victims of sexual abuse in the community of Jehovah's Witnesses. The Jehovah's Witnesses claimed that the study was defamatory. The court, however, dismissed their claim and held that the research was conducted with due care, that the statements made in the report were factual and that the report served the public interest.<sup>24</sup>

#### **Poland:**

- In 2021, in a case that raised questions about freedom to research Poland's wartime past, a court of appeal overturned a ruling against two leading Holocaust historians, (Prof. Engelking and Prof. Grabowski), accused of defamation. The judge determined that the courtroom was an inappropriate venue for interpreting research methodology or source material, such that the case attempted to mount "an unacceptable form of censorship and interference in the freedom of research and scientific work". The suit was instigated by the niece of a person described in their research, and she was supported in her action by the Polish Anti-Defamation League, an organization which purportedly aims to "defend Poland's good name," and is known to have strong links to the current Polish government.<sup>25</sup>
- On April 9, 2021, a Polish court defended scholars' rights to analyse antisemitic motives in texts and iconography. Prof. Michał Bilewicz was the unsuccessful target of a suit after he critiqued a cartoon of Mr. Krzysztopa as anti-Semitic.<sup>26</sup> The court found that the lecture was an action in defence of a legitimate public interest, and through his scholarly and public pursuits, Prof. Bilewicz contributed to raising public awareness of a social evil - anti-Semitism.<sup>27</sup>
- Prof. Wojciech Sadurski, a constitutional scholar, has faced a string of charges and lawsuits in Poland for his outspoken criticism of the governing party, PiS, and its allies. In 2021 he was acquitted of criminal defamation charges in the Polish Appeals Court related to criticisms he made of Polish state broadcaster TVP in 2019. TVP is expected to seek leave to appeal to the Supreme Court while two further civil defamation cases remain pending.<sup>28</sup>

#### **Slovenia:**

- The ruling SDS party unsuccessfully sued Rudi Rizman, a professor emeritus of sociology at the Faculty of Arts, University of Ljubljana and an honorary member of the Slovenian Sociological Society.<sup>29</sup> The case arose following the presentation of a public letter from 150 intellectuals who warned against authoritarian tendencies, incitement and political polarization during the formation of the current government coalition. A suit was filed against Prof. Rizman after he mentioned

<sup>23</sup> L'OBS, 'When Xavier Niel has an academic's computer searcher', (2013)

<https://www.nouvelobs.com/economie/20130213.OBS8713/quand-xavier-niel-fait-fouiller-l-ordinateur-d-un-universitaire.html>

<sup>24</sup> DUB 'Judge protects scientific freedom by verdict on Jehovah's report', by Ries Agterberg, (2020) <https://www.dub.uu.nl/en/news/judge-protects-scientific-freedom-verdict-jehovahs-report>

<sup>25</sup> The Guardian, 'Polish appeals court overturns ruling against Holocaust historians', (16 August 2021), available here: <https://www.theguardian.com/world/2021/aug/16/polish-appeals-court-overturns-ruling-against-holocaust-historians>

<sup>26</sup> The Algemeiner, Ben Cohen, 'Antisemitic Images, Cartoons, Flood Polish Press as Holocaust Law Dispute Festers' (2018), available here: <https://www.algemeiner.com/2018/02/26/antisemitic-images-cartoons-flood-polish-press-as-holocaust-law-dispute-festers/>

<sup>27</sup> The International Association of Jewish Lawyers and Jurists blog: <https://www.ijl.org/michal-bilewicz/>

<sup>28</sup> The #WithWoj campaign page sets out information and a list of sources about the PiS campaign against Sadurski, available here: <https://www.democratic-decay.org/withwoj>

<sup>29</sup> 'SDS withdraws lawsuit against Šarec', (2022) <https://sloveniatimes.com/sds-withdraws-lawsuit-against-sarec/>

information that had been reported by the media several times before, the possible financing of the party from abroad.<sup>30</sup>

## Annex II Related Resources

- 2021, Free to Think 2021, Report of SAR Academic Freedom Monitoring Project (including especially pps. 13-16 discussing academic freedom and its protection under international law).
- 2021, Katrin Kinzelbach, Janika Spannagel & Robert Quinn, Free Universities; Putting the Academic Freedom Index Into Action, and the subsequent [2022 release](#)
- 2021, Input to the Neighbourhood, Development and International Cooperation Instrument (NDICI) programming for human rights and democracy 2021-2024, SAR Europe
- 2020, UN Special Rapporteur for Freedom of Opinion and Expression: Report on Academic Freedom
- 2020, Council of Europe Report Recommendation Resolution & Reply on Threats to Academic Freedom and Autonomy of Higher Education Institutions in Europe
- 2020, Rome Ministerial Communique- Annex 1, Statement on Academic Freedom, 2020
- 2020, Bonn Declaration on Freedom of Scientific Research, 2020, as supported by the 2021 SFIC Opinion
- 2020, Promoting Higher Education Values: A Guide for Discussion, Scholars at Risk
- 2019, Obstacles to Excellence: Academic Freedom & China's Quest for World-Class Universities, Scholars at Risk
- 2014, Robert Quinn & Jesse Levine, Intellectual-HRDs and claims for academic freedom under human rights law, The International Journal of Human Rights, 18:7-8, 898-920
- Monitoring: Academic Freedom Index & SAR's Academic Freedom Monitoring Project

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<sup>30</sup> 'There is no settlement in SDS's lawsuit against Rizman over allegations that the party is financed by a foreign regime', (2020) <https://www.rtv slo.si/slovenija/v-tozbi-sds-a-proti-rizmanu-zaradi-ocitka-da-stranko-financira-tuj-rezim-ni-poravnave/542335>