

ECHR Case-law on SLAPPs

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Presentation Plan

- General Principles and Key Notions
- Criminal Proceedings and Penalties
- Civil and other measures
- Positive Obligations of States
- Article 18: examples from case-law

General Principles and Key Notions

- State's duties: not only not to interfere but also to adopt positive measures (*Palomo Sánchez and Others v. Spain* [GC], 2011, § 59)
- Favourable environment for participation in public debate (*Tagiyeva v. Azerbaijan*, 2022, § 78)
- Chilling effect on the exercise of the freedom of expression (*Nikula v. Finland*, 2002, § 55)
- Censorship intended to discourage the press from expressing criticism (*Bédat v. Switzerland* [GC], 2016, § 79)
- Prohibition on restrictions of Convention rights for purposes other than those prescribed in the Convention (Article 18)



Criminal Measures

- Pretrial detention : producing a range of adverse effects, chilling effect, intimidating civil society and silencing dissenting voices (*Şahin Alpay v. Turkey*, 2018, § 182)
- In principle, imposition of a prison sentence for a press offence will be incompatible with Article 10 (*Cumpăună and Mazăre v. Romania* [GC], 2004, § 115)
- Criminal nature of a measure is more important than the minor nature of the penalty (*Stoll v. Switzerland* [GC], 2007, § 154)
- The fact of being convicted at all is likely to deter journalists from contributing to public discussion (*Dammann v. Switzerland*, 2006, § 57).
- Even without a conviction, criminal proceedings brought against an applicant pursuant to the same criminal law provision for similar facts or being threatened with criminal prosecution on account of complaints lodged or could be regarded as a form of harassment (*Ali Gürbüz v. Turkey*, 2019, § 67 and *Altuğ Taner Akçam*, 2010, § 75)



Civil and Other Measures

- Chilling effect of an order to pay damages (*Timpul Info-Magazin and Anghel v. Moldova*, 2007, § 39)
- Potential chilling effect of a retraction, an apology or a judgment in a defamation case (*Axel Springer SE v. Germany*, 2023, § 33)
- Seizure of copies of a publication can be disproportionate (*Kaos GL v. Turkey*, 2016, §§ 61 and 63)
- Search carried out in the applicants' professional premises, the copying and retention of materials - serious chilling effect in respect of other journalists or other whistle-blowers employed by the State, (*Görmüş and Others v. Turkey*, 2016, §§ 73-74)



Positive Obligations of States

- Positive obligations under Article 10 of the Convention: an effective system for the protection, a favourable environment (*Dink v. Turkey*, 2010, § 137)
- *Özgür Gündem v. Turkey*, 2000: a campaign of attacks on journalists/others associated with the newspaper and legal steps taken against the newspaper and its staff - violation of Article 10
- *Khadija Ismayilova v. Azerbaijan*, 2019: The acts of a criminal nature committed against the applicant, apparently linked to her journalistic activity, no other plausible motive for the harassment: violation of Article 10



Article 18

Interdiction of Restrictions of rights for ulterior motives

- ***Navalnyy v. Russia (no. 2) (2019)***: Political activist's house arrest with restrictions on communication, correspondence and use of Internet, aimed at suppressing pluralism
- ***Kavala v. Turkey (2019)***: Extended detention of a human-rights defender with the ulterior purpose of reducing him to silence: violation
- ***Miroslava Todorova v. Bulgaria (2021)***: Disciplinary proceedings and sanctions against the President of the judges' association in retaliation against her criticism of the Supreme Judicial Council and the executive



THANK YOU !

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