

FREEDOM OF SPEECH AND DEMOCRACY IN EUROPE: LEGAL CHALLENGES AND INSTITUTIONAL RESPONSES

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ABSTRACT

Freedom of speech is a fundamental pillar of democracy, enabling citizens to participate in public debate, hold governments accountable, and advocate for social and political change. In the European Union (hereinafter: EU) and the Council of Europe (hereinafter: CoE), legal frameworks such as the European Convention on Human Rights (hereinafter: ECHR) and the Charter of Fundamental Rights of the EU (hereinafter: EU Charter) safeguard this right. However, freedom of speech is increasingly challenged by legal and political pressures, including Strategic Lawsuits Against Public Participation (hereinafter: SLAPPs), disinformation, and restrictions on media freedom. These threats pose significant risks to democratic resilience in Europe, necessitating stronger legal protections and policy responses.

This paper explores the relationship between freedom of speech and democracy in the EU and CoE, examining how institutions such as the European Court of Human Rights (hereinafter: ECtHR) and the European Court of Justice (hereinafter: CJEU) interpret and enforce free speech protections. The ECtHR has played a critical role in defining the boundaries of free expression, balancing the right to speech with concerns such as hate speech, national security, and privacy rights.

At the policy level, the European Democracy Action Plan represents a key initiative by the European Commission to strengthen media freedom, combat disinformation, and protect journalists from legal harassment. In response, legislative initiative such as the Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings aim to prevent the abuse of legal systems to suppress dissent.

By analyzing key legal cases, policy developments, and institutional responses, this paper underscores the need for continued vigilance in protecting freedom of speech as a core democratic value in Europe.

Keywords: Council of Europe, Court of Justice of the EU, democracy, European Union, European Court of Human Rights, freedom of expression, freedom of speech, SLAPP

1. INTRODUCTION

Freedom of speech stands as a foundational pillar of democratic societies, enabling citizens to engage in open public debate, scrutinize those in power, and advocate for social and political reform. In Europe, the right to freedom of expression is enshrined in key legal instruments, most notably the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (EU Charter). Article 10 of the ECHR and Article 11 of the EU Charter both guarantee the right to hold opinions and to receive and impart information and ideas without interference by public authorities, underscoring the centrality of this right to the European legal order. However, the exercise of free speech is not absolute; both instruments recognize that it may be subject to certain restrictions necessary to protect the rights of others, national security, or public order.

Despite these robust legal protections, freedom of speech in Europe faces mounting challenges. In recent years, legal and political pressures such as Strategic Lawsuits Against Public Participation (SLAPPs), the proliferation of disinformation, and increasing restrictions on media freedom have emerged as significant threats to democratic resilience. SLAPPs, in particular, are used to intimidate and silence journalists, activists, and public figures, undermining the essential role of free speech in holding power to account. The digital transformation of the public sphere has further complicated the landscape, as online platforms and algorithms increasingly shape public discourse, enabling both the rapid dissemination of valuable information and the spread of harmful content such as hate speech and disinformation.

This paper employs a doctrinal legal research methodology, analyzing primary legal sources including international treaties, European legislation, and landmark judicial decisions from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). Through systematic examination of case law such as *Handyside v. United Kingdom*, *Delfi AS v. Estonia*, and *Google Spain SL v. Agencia Española de Protección de Datos* the paper explores how European courts have interpreted the boundaries of free expression, particularly in the context of balancing this right against competing interests like privacy, national security, and the prevention of hate speech. The research also incorporates

policy analysis, reviewing initiatives such as the European Democracy Action Plan and the Anti-SLAPP Directive, which aim to strengthen media freedom, combat disinformation, and protect those who participate in public debate from abusive legal actions.

By combining doctrinal legal analysis with policy review, the paper aims to provide a comprehensive understanding of the evolving relationship between freedom of speech and democracy in Europe. Special attention is paid to the challenges posed by the digital age, where the speed and reach of information dissemination have both empowered democratic participation and heightened the risks of manipulation and abuse. The findings underscore the importance of a balanced approach that reinforces legal protections, enhances judicial safeguards, and promotes media literacy, ensuring that freedom of speech remains a vibrant and effective cornerstone of European democracy.

2. FREEDOM OF SPEECH – LEGAL BASIS IN THE EU AND JUDICIAL INTERPRETATIONS OF FREE SPEECH PROTECTIONS

Freedom of speech represents a fundamental component of democratic societies. It enables individuals to engage in public discourse, hold authorities accountable, and advocate for social and political reform. The right to freedom of expression is protected by national constitutions and international treaties. It implies that it is superior to the rights granted by the laws in the hierarchy of legal norms.¹ The right to freedom of speech represents third generation of human rights, environmental and other rights.² It is established primarily by the Declaration of Human Rights (1948), in Article 19. Similarly, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) defines freedom of expression as the right to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one’s choice.” The Covenant also emphasizes that this right is not absolute, but is accompanied by specific duties and responsibilities. Any limitations on its exercise must be clearly established by law and must be necessary for the protection of legitimate interests.³ Still, in the Europe, the most important charter of human rights and freedoms are CoE’s European Convention on Human Rights (hereinafter: ECHR) and EU’s Charter of Fundamental Rights of the

¹ Tucak, I., *Analysis of Freedom of Speech*, JURA 2011/1, P.133.

² Smerdel, B.; Sokol, S., *Ustavno pravo*, Fourth Edition, Official Gazette, Zagreb 2009, p. 107.

³ Petrašević, T.; Duić, D.; Sudar, V., *Overview of the ECJ and ECHR Practice on Human Rights - Freedom of Speech*, Harmonius J. Legal & Soc. Stud. Se. Eur. 119, 2022, p. 120.

European Union (hereinafter: EU Charter). "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers" this is what it states in Article 10 ECHR. Furthermore, it also says that "This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."⁴ Very similar expression of the same right is contained in the Charter in Article 11. There, more precisely, it states that the right to freedom of expression "shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".⁵ The ECHR and the EU Charter exhibit a shared commitment to the protection of fundamental rights; however, their differing judicial interpretations reveal notable structural and normative distinctions. The EU Charter, developed in response to the democratic demands of the 21st century, embodies a more nuanced approach to rights protection by including explicit provisions that are not present in the broader and more general framework of the ECHR. A salient instance of this divergence can be observed in their respective approaches to media freedoms. While Article 10 of the ECHR implicitly acknowledges media freedom through its generalized protection of the right to expression, Article 11(2) of the Charter explicitly enshrines media pluralism as an independent obligation, firmly stating that "the freedom and pluralism of the media shall be respected".⁶ This represents a significant development, as it acknowledges media pluralism as an autonomous legal obligation rather than an implied component of general expression rights.

While both the ECHR and the EU Charter, demonstrate a shared commitment to the protection of fundamental freedoms, their legal structures and interpretative frameworks reveal notable distinctions. The ECHR, adopted in the mid-20th century, offers a broad and flexible protection of rights that has been progressively interpreted by the European Court of Human Rights. In contrast, the Charter, developed in response to the evolving democratic and technological landscape of the 21st century, provides a more detailed and context-specific articulation of rights. The inclusion of explicit provisions on media freedom and pluralism within the Charter reflects this modern approach and aligns with the EU's broader commitment to safeguarding democratic values in an increasingly complex information environment.

⁴ European Convention on Human Rights, Official Gazette – International Agreements, No. 6-142/99, 18.5.1999, Article 10; Petrašević, T.; Duić, D.; Sudar, V., *op. cit.*

⁵ Charter of Fundamental Rights, OJ C 326, 26.10.2012, p. 391–407, Article 11; Petrašević; Duić; Sudar, *op. cit.*

⁶ *Ibid.*

2.1. Case Law

In their judicial practice, the ECtHR and the CJEU significantly contributed to the protection of the right to freedom of expression by establishing a legal framework for the interpretation of the provisions of the Convention and the Charter. ECtHR has, in some cases, acted to uphold EU law when a national court failed to ask the CJEU for a preliminary ruling. In certain situations, the ECtHR has found that this failure violated Article 6(2) of the ECHR, which guarantees the right to a fair trial.⁷ Human rights are becoming more important in EU law and policy. The CJEU is handling more and more cases related to human rights, covering many different issues. Since the EU Charter of Fundamental Rights was adopted, the CJEU has shown that it is willing to annul EU laws that go against the Charter.⁸

Both European courts have developed a body of case law that balances the right to free speech with other fundamental rights and societal interests. The ECtHR, interpreting Article 10 of the European Convention on Human Rights, has addressed various aspects of free expression. In *Handyside v. United Kingdom* (1976)⁹, the ECtHR emphasized that freedom of expression applies not only to information and ideas that are favorably received but also to those that offend, shock, or disturb. In *Lingens v. Austria* (1986)¹⁰, it distinguished between facts and value judgments, holding that the value judgments do not require proof of truth, thus protecting political criticism. In *Jersild v. Denmark* (1994)¹¹, the ECtHR protected a journalist who aired racist remarks during an interview, recognizing the importance of context and the journalist's intent to expose rather than promote such views. The ECtHR has also dealt with the liability of internet intermediaries; in *Delfi AS v. Estonia* (2015)¹², it upheld the liability of a news portal for offensive comments posted by users, considering the portal's failure to prevent such comments despite having moderation mechanisms, and in *Axel Springer AG v. Germany* (2022)¹³ the ECtHR has highlighted that reporting on politicians' conduct serves the public interest and generally outweighs privacy claims, reinforcing robust political discourse. However, the ECtHR found in *Sanchez v. France* (2023)¹⁴ that politicians could be held criminally liable if they failed to remove hateful comments made by third parties on social media, justifying the interference with

⁷ Craig, P., De Burca, G., *EU Law, Text, Cases, and Materials*, Sixth Edition, 2015, p. 426.

⁸ *Ibid.*, p. 427.

⁹ Case of *Handyside v. The United Kingdom*, Application No. 5493/72.

¹⁰ Case of *Lingens v. Austria*, Application No. 9815/82.

¹¹ Case of *Jersild v. Denmark*, Application No. 15890/89.

¹² Case of *Delfi AS v. Estonia*, Application No. 64569/09.

¹³ Case of *Axel Springer Se v. Germany*, Application No. 8964/18.

¹⁴ Case of *Sanchez v. France*, Application no. 45581/15.

the applicant's right by the legitimate aim of protecting the reputation or rights of others and preventing disorder or crime in a democratic society.

The CJEU, interpreting Article 11 of the EU Charter, has also contributed to the development of free expression rights. In *Google Spain SL v. Agencia Española de Protección de Datos* (2014), the CJEU recognized the “right to be forgotten,” allowing individuals to request the removal of personal data from search engine results under certain conditions, thereby balancing privacy rights with freedom of information. In *Glawischnig-Piesczek v. Facebook Ireland Limited* (2019), the CJEU held that platforms could be required to remove illegal content and prevent its reappearance, addressing the responsibilities of online intermediaries in combating hate speech.

These cases illustrate the European courts' efforts to adapt traditional free speech principles to the challenges posed by digital communication, ensuring that freedom of expression is protected while also considering the rights of others and the need for responsible discourse in the public sphere. It is clear that courts are keeping pace with social developments and developing new jurisprudence in parallel, despite sources of law that are older.

3. LEGAL CHALLENGES - CHALLENGES TO FREEDOM OF SPEECH

3.1. Disinformation, Misinformation, Hate Speech, and Freedom of Speech in the Digital Age and the Digital Public Sphere

The digital public space today includes many new forms of communication, such as blogs, podcasts, and videos by influencers. It also includes major platforms like WhatsApp, YouTube, Facebook, Instagram, TikTok, and X (Twitter). On these platforms, people do not only talk to each other for personal or business reasons, but also take part in political discussions. The flow of information is shaped by algorithms—computer programs used by search engines like Google and social media platforms. These algorithms decide what content each person sees, based on what they are assumed to like or prefer.¹⁵ Digital technology has changed how people form their opinions. Traditional forms of communication, such as newspapers, radio, or public debates at community events, are now being supplemented or even replaced by online tools. One major advantage of digital communication is that people can access and share important information quickly, easily, and

¹⁵ Von Ungern-Sternberg, A., *Freedom of Speech goes Europe* – EU Laws for Online Communication, in: von Ungern-Sternberg, A. (ed.), *Content Moderation in the EU: The Digital Services Act*, Trier Studies on Digital Law, Trier 2023 (Forthcoming), p. 3.

across national borders. However, the digital space also creates risks. First, harmful content such as hate speech or disinformation can spread very quickly. Second, some platforms use questionable methods, such as promoting sensational content to keep users engaged. Third, there is an important debate about how much power these large platforms have in shaping public opinion. Their influence raises concerns about fairness, transparency, and accountability in the digital age.¹⁶

In that the digital era, the rapid spread of disinformation, misinformation, and hate speech presents serious threats to democratic societies, public trust, and fundamental rights. Disinformation refers to deliberately false information spread to deceive people. According to the European Union, disinformation is false or misleading information that is shared on purpose to trick people or gain political or economic benefits. This kind of content can harm society, especially when it spreads widely. The key feature of disinformation is intentional deception it is created and shared with the goal of causing harm or gaining something unfairly.¹⁷ On the other hand, misinformation involves sharing of false information or misleading, but without bad intentions. For example, someone might send incorrect information to family or friends, thinking it is true. Even though there is no intent to harm, misinformation can still cause damage, especially during health crises or elections.¹⁸ The idea of focusing on the intent behind disinformation can be tricky. It is hard to judge what someone was thinking when they shared something. In some cases, like satire or parody, people purposely change facts for humor or criticism, which is protected as free speech. But even these can be used in bad faith to confuse or mislead others, creating effects similar to disinformation. According to that, the EU's Code of Practice¹⁹ tries to stop disinformation, especially in political advertising. This includes any message created to support or oppose a political actor or to influence elections, laws, or public decisions. The rules are meant to

¹⁶ *Ibid.*; Kucina, I., *Effective Measures Against Harmful Disinformation in the EU in Digital Communication*, Conference paper, Conference: The 8th International Scientific Conference of the Faculty of Law of the University of Latvia, 2022, p. 147.

¹⁷ Koltay A., *Freedom of Expression and the Regulation of Disinformation in the European Union*, in: Krotoszynski, Jr. RJ, Koltay A, Garden C, (eds.) *Disinformation, Misinformation, and Democracy: Legal Approaches in Comparative Context*. Cambridge University Press; 2025:133-160, p. 135.

¹⁸ *Ibid.*

¹⁹ 2022 Strengthened Code of Practice on Disinformation - The Code of Practice on Disinformation is an early and important set of rules designed to fight the spread of false information online. It was first introduced in 2018 and created with the help of key groups, including tech companies and policy makers. In 2022, the Code was updated and made stronger to meet new digital challenges. The goal was to have it officially accepted as a Code of Conduct under the Digital Services Act (DSA), a major EU law for safer online spaces. On 13 February 2025, the European Commission and the European Board for Digital Services agreed to include the updated 2022 version of the Code as part of the DSA system, making it a formal tool to help reduce disinformation in the EU.

make sure that political communication is fair and transparent. It is important to treat disinformation and misinformation differently. Disinformation, which is shared to deceive, may require strong action. Misinformation, shared by people who mean well, needs a more careful approach. If both are punished the same way, it could discourage people from joining public debates, especially those without access to fact checking tools.²⁰ The most dangerous disinformation is that which comes from governments or official sources, because people often trust them. The third problem is the hate speech that targets individuals or groups based on race, religion, gender, or other identities, often inciting discrimination, hostility, or violence. These phenomena are amplified by digital platforms, where content can reach wide audiences quickly and with minimal regulation. According to von Ungern-Sternberg (2023), disinformation and hate speech thrive in these spaces because content circulates rapidly, originators are hard to trace, and moderation standards vary widely across platforms. This undermines journalistic standards and creates an uneven playing field for fact-based discourse.²¹

Disinformation also affects democracy and the rule of law. It is often used to manipulate elections, discredit political institutions, and stir social division. Research commissioned by the European Parliament notes that both foreign actors and domestic political figures have exploited disinformation to gain influence, sometimes blending falsehoods with real societal concerns. This manipulation reduces public trust in media, science, and democratic processes, especially when spread by high-authority individuals.²²

To counter these risks, experts recommend a multilayered approach. First, critical media literacy must be promoted across all age groups, helping people recognize false or manipulative content. Second, affirmative information strategies such as trustworthy science communication and networks of reliable media should be developed to preempt disinformation before it spreads.²³ Finally, platform regulations must balance the need to remove harmful content with the obligation to protect freedom of speech and diversity of opinion.²⁴

²⁰ Koltay A., *Freedom of Expression and the Regulation of Disinformation in the European Union*, *op. cit.*, p. 136.

²¹ Von Ungern-Sternberg, *Freedom of Speech goes Europe...*, *op. cit.*, note 15, pp. 4-5; Vukušić, I., *Comparative and dogmatic Issues of Hate Speech – Traditional and Modern Acts of Commission*, in: Petrašević, T.; Duić D. (eds.), *EU and comparative law issues and challenges series*, Vol. 7, 2023, Faculty of Law Osijek, p. 504.

²² Von Ungern-Sternberg, *Freedom of Speech goes Europe...*, *op. cit.*, note 15, p. 3.

²³ Bayer, J., *Disinformation and propaganda: impact on the functioning of the rule of law and democratic processes in the EU and its Member States*, Policy Department for External Relations Directorate General for External Policies of the Union, 2021, p. 17.

²⁴ *Ibid.*, p. 102.

As Shearer and Maurer emphasize, the internet has the potential to support global democracy by providing universal access to information and public discourse. However, this requires a shared ethical foundation one that protects the right to speak freely while also ensuring that communication is fair, respectful, and evidence based.²⁵

3.2. Strategic Lawsuits Against Public Participation (SLAPPs)

A possible reason for the appearance of SLAPP lawsuits is misinformation that is increasingly numerous in the media and digital public space. Strategic Lawsuits Against Public Participation (SLAPPs) represent a misuse of procedural rights. These lawsuits are typically unfounded and initiated with malicious intent. They are commonly filed by powerful individuals, interest groups, corporations, or state institutions against journalists, human rights defenders, or other individuals who publish information in the public interest. Novak²⁶ adopts the definition originally proposed by Pring and Canan (1988)²⁷, describing SLAPPs as legal actions aimed at silencing criticism and discouraging public participation. A similar definition is provided by Zdravković²⁸, who, citing the *Merriam-Webster* dictionary, emphasizes that SLAPPs are „often based on defamation claims and are intended to intimidate, burden, punish, or harass individuals for expressing views critical of the plaintiff“.²⁹ In line with these perspectives, Directive (EU) 2024/1069 defines SLAPPs as “malicious legal proceedings against public action.” According to the Directive, these proceedings are not brought to genuinely assert or protect legal rights. Instead, their primary purpose is to obstruct, limit, or penalize public engagement, exploiting the power imbalance between the parties involved.³⁰

SLAPP lawsuits are not a recent phenomenon, particularly in the United States, where the concept and terminology first emerged. The earliest systematic research on SLAPPs was conducted in the 1970s by scholars Penelope Canan and George W. Pring. They carried out a study analyzing 228 cases classified as SLAPP law-

²⁵ Shearer, J., Maurer, H., *Is Democracy Possible in the Internet?*, Journal of Universal Computer Science, Vol. 8, no. 3, 2002, pp. 396-407, p. 400.

²⁶ Novak, *Anti-SLAPP directive: between the freedom of expression and the right to access to court*, Zbornik Pravnog fakulteta u Zagrebu, 74(2), 2024, pp. 279-303, p. 281.

²⁷ Canan, P.; Pring, G.W., *Strategic Lawsuits against Public Participation, Social Problems*, Published By: Oxford University Press, Vol. 35, No. 5, 1988, pp. 506-519.

²⁸ Zdravković, A. M., *Slapp abuse of the right to judicial protection with the aim of restricting freedom of expression*, Strani Pravni život (Foreign Legal Life), Vol. 1, 2022, pp. 75-96, p. 77.

²⁹ *Ibid.*

³⁰ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’), PE/88/2023/REV/1, OJ L, 2024/1069, 16 April 2024.

suits, most of which were aimed at silencing critics of government policies and authorities in general.³¹ The criteria used by Canan and Pring to identify and categorize SLAPP cases included the following: the lawsuit was a civil claim or counterclaim (seeking monetary damages and/or injunctive relief); it was filed against non-governmental organizations or individuals; and it was triggered by their communication concerning government bodies, officials, or matters of public interest. This analytical framework served as the basis for the definition of SLAPPs referenced earlier.³² In Europe, SLAPP lawsuits have become a growing concern in recent years. This trend has prompted efforts to develop mechanisms to mitigate the rising number of such cases. A particular source of alarm has been the increase in physical and online threats and attacks directed at journalists, activists, and human rights defenders since 2020. This situation is addressed in Commission Recommendation (EU) 2021/1534³³, which highlights the need to protect freedom of expression and democratic values. The Recommendation is partly based on an analysis of the growing number of attacks against journalists during that period. In highlighting the urgency of the escalating threats against journalists, activists, and human rights defenders, the European Commission recalls a series of serious incidents that have shaped the current discourse on the need for stronger protections. The Commission references the 2015 terrorist attack on the French weekly *Charlie Hebdo*, in which 12 individuals were killed, as a pivotal moment. This was followed by the murders of investigative journalist Daphne Caruana Galizia in Malta (2017), and of Ján Kuciak and his fiancée Martina Kušnírová in Slovakia (2018). These events served as a strong warning regarding the vulnerability of journalists and the need for institutional responses. The urgency remained through to 2021 and beyond, with more recent high-profile cases under investigation, including the killings of Greek journalist Giorgios Karaivaz and Dutch journalist Peter R. de Vries.³⁴ These incidents have continued to underscore the risks faced by individuals engaged in public interest reporting. According to the *Media Pluralism Monitor* report for 2022, which assessed the state of media freedom across the 27 EU Member States and five candidate countries (Albania, Montenegro, North Macedonia, Serbia, and Turkey), the safety of journalists is in decline. The report documents numerous physical attacks and a notable rise in online threats and harassment. Only in 2021, the number of physical attacks on journalists increased

³¹ Pring, G.W., *SLAPPs: Strategic Lawsuits against Public Participation*, Pace Environmental Law Review, Vol. 7, Issues 1, 1989, p. 5.

³² *Ibid.*, p. 6.

³³ Commission Recommendation (EU) 2021/1534 of 16 September 2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, C/2021/6650, OJ L 331, 20.9.2021, pp. 8–20.

³⁴ *Ibid.*

by 61%, while cases of harassment and intimidation rose by 57% in the countries surveyed. Within the same year, two journalists were killed in the EU, and this number increases to three when candidate countries are included.³⁵

SLAPP lawsuits are most commonly initiated by wealthy individuals or legal entities with significant political or public influence. These actors typically seek to protect their political or economic reputation through legal means. On the opposing side are frequently journalists, media outlets, activists, human rights defenders, scientists, researchers, or other citizens who engage in public discourse. These individuals often share information of public interest or express views that may conflict with the interests of powerful political or economic actors. The legal basis for such lawsuits usually involves claims of defamation or damage to honor and reputation. As a result, both civil and criminal proceedings may be initiated.³⁶ However, the underlying objective of SLAPP lawsuits is not the protection of legal rights per se, but rather the creation of a *chilling effect*. This effect aims to intimidate the defendant, deplete their financial and emotional resources³⁷, and discourage further public engagement. In doing so, such lawsuits serve as a warning to others, thereby promoting self-censorship and restricting freedom of expression.³⁸

4. POLICY RESPONSES AND INSTITUTIONAL INITIATIVES

In order to prevent hate speech and the spread of disinformation, the European Union has responded with legislative initiatives such as the Digital Services Act (DSA), aiming to increase platform accountability and protect users from harmful content. While these laws seek to limit the spread of illegal or deceptive information, they also raise concerns about censorship and the overreach of private companies in moderating speech. Critics worry that platform control may restrict legitimate expression and reduce transparency, especially when moderation lacks public oversight.³⁹

4.1. European democracy

Democracy is defined as a system of government and governance in which political power belongs to and derives from the people, who exercise it directly or,

³⁵ Rafał Mańko, *Strategic lawsuits against public participation (SLAPPs)*, EPRS | European Parliamentary Research Service, 2024, p. 2.

³⁶ Zdravković, *op. cit.*, note 28.

³⁷ Novak, *op. cit.*, note 26.

³⁸ Zdravković, *op. cit.*, note 26.

³⁹ Von Ungern-Sternberg, *Freedom of Speech goes Europe – EU Laws for Online Communication*, *op. cit.*, note 15, p. 3.

most commonly, through elected representatives. The term comes from the Greek words *dēmos* (people) and *kratos* (rule), meaning “rule by the people”.⁴⁰ In modern terms, democracy has numerous forms, for example, direct democracy held directly by the people themselves and representative democracy a system of government in which power is held by elected representatives who are freely voted for by the people.⁴¹ Key characteristics of democratic systems include free and fair elections, protection of human rights, the rule of law, and the separation of powers among government branches. These elements ensure that governance is conducted with the consent of the governed and that there are mechanisms to hold leaders accountable.⁴²

The concept of liberal democracy further integrates principles of individual liberties and civil rights, ensuring that majority rule does not infringe upon minority rights. This form of democracy emphasizes not only the procedural aspects of elections but also the substantive protection of freedoms such as speech, assembly, and religion.⁴³

Democracy’s effectiveness relies on active citizen participation, informed public discourse, and institutions that uphold democratic norms and values. While the ideal of democracy is universally lauded, its implementation varies across different societies, and it continually evolves to address emerging challenges and the diverse needs of its populace.

Democracy is a fundamental European value and a prerequisite for EU membership, while EU citizens themselves consider democracy, the rule of law and human rights to be its most important advantage.⁴⁴ In the context of European democracy, freedom of speech and expression constitutes both a foundational right and a practical mechanism through which citizens participate in governance, critique public policy, and hold authorities accountable; its robust protection under EU charters and national constitutions reinforces pluralism, fosters informed debate,

⁴⁰ Britanica, [<https://www.britannica.com/topic/democracy>], Accessed 10 May 2025; Pezo, V. (ed.) *Pravni leksikon*, Leksikografski zavod Miroslav Krleža, 2007, p. 202.

⁴¹ Cambridge dictionary, [<https://dictionary.cambridge.org/us/dictionary/english/democracy>], Accessed 10 May 2025; Vidaković Mukić, Marta, *Opći pravni riječnik*, Narodne novine, Zagreb, 2006, p. 136.

⁴² United Nations, [<https://www.un.org/en/global-issues/democracy>], Accessed 10 May 2025; Merriam Webster Dictionary, [<https://www.merriam-webster.com/dictionary/democracy>], Accessed 10 May 2025.

⁴³ Britanica, [<https://www.britannica.com/topic/democracy>], Accessed 10 May 2025; Hlebec, I., Gardašević, Đ., *Pravna analiza govora mržnje*, p. 11.

⁴⁴ Komunikacija Komisije Europskom parlamentu, Vijeću, Europskom gospodarskom i socijalnom odboru i Odboru regija o akcijskom planu za europsku demokraciju, Bruxelles, 3.12.2020., COM(2020) 790 final.

and thus enhances the legitimacy of democratic institutions. However, the unrestrained circulation of hate speech and disinformation⁴⁵ can corrode social cohesion, marginalize vulnerable groups, and distort electoral processes, prompting the EU and member states to adopt targeted regulations.⁴⁶ Striking an effective balance requires transparent rule-making, clear definitions of prohibited content, and proportionate enforcement that respects due process and judicial oversight; it also demands investment in media literacy, support for independent journalism, and inclusive online forums to cultivate critical engagement.⁴⁷ By combining legal safeguards with participatory initiatives, European democracies aim to preserve the vibrant exchange of ideas that underpins democratic legitimacy, even as they seek to protect individuals and communities from the destabilizing effects of hate and falsehood.

One of the most dangerous tools used against democracy is precisely the aforementioned disinformation, spreading false or misleading content with the intention of confusing, manipulating or dividing the public. Disinformation campaigns, especially those originating from foreign actors, are linked to efforts to destabilize European societies by targeting controversial issues, such as migration or public health crises such as COVID-19 in 2020.

4.2. Anti-SLAPP Directive and Legislative Proposals

As a response to the increasing number of SLAPP lawsuits, the EU decided to adopt an appropriate legislative framework that would direct the actions of the courts and at least somewhat limit the growing global problem. The already mentioned Recommendation of the Commission (EU) 2021/1534⁴⁸ provided an exhaustive analysis of the needs for the protection of the right to freedom of speech and expression, as well as the Recommendation of the Commission (EU) 2022/758 on journalists and human rights activists involved in the protection of public activities against clearly unfounded lawsuits or malicious legal proceedings

⁴⁵ Koltay A., *Freedom of Expression and the Regulation of Disinformation in the European Union*, in: Krotozyski, Jr. RJ.; Koltay A.; Garden C. (eds.), *Disinformation, Misinformation, and Democracy: Legal Approaches in Comparative Context*. Cambridge University Press, 2025, pp.133-160.

⁴⁶ Mounk, Y., *Free Speech Crumbles in Europe*, 2025, [<https://thedispatch.com/article/europe-germany-britain-free-speech-democracy-restriction/>], Accessed 10 May 2025; CoE, Freedom of Expression, [<https://www.coe.int/en/web/freedom-expression>], Accessed 10 May 2025.

⁴⁷ Commissioner for Human Rights, *The Alarming Situation of Press Freedom in Europe*, The Regent's Report 2014, [<https://www.coe.int/en/web/commissioner/-/the-alarming-situation-of-press-freedom-in-europe>], Accessed 10 May 2025.

⁴⁸ Commission Recommendation (EU) 2021/1534, *op. cit.*, note 33.

(“strategic lawsuits directed against public activities”)⁴⁹ provided an introduction to the adoption of Directive (EU) 2024/1069 of the European Parliament and the Council of April 11, 2024 on the protection of persons involved in public activity from clearly unfounded lawsuits or malicious court proceedings (“strategic lawsuits directed against public activity”)⁵⁰, commonly known as the Anti-SLAPP Directive. Directive represents a significant advancement in the European Union’s efforts to protect individuals engaged in public participation from strategic lawsuits aimed at silencing them. These lawsuits, often initiated by powerful entities, seek to intimidate and burden critics such as journalists, activists, and human rights defenders—with costly and time-consuming legal proceedings, thereby discouraging them from exercising their right to freedom of expression.

The Directive introduces several procedural safeguards to counteract such abusive litigation. Notably, it allows for the early dismissal of manifestly unfounded claims, shifting the burden of proof to the claimant to demonstrate the merit of their case. Additionally, courts are empowered to impose financial penalties on those who initiate SLAPPs, including ordering them to cover the legal costs of the defendant and, where appropriate, provide compensation for damages suffered. These measures aim to deter the misuse of legal systems to suppress public discourse and ensure that individuals can participate in matters of public interest without fear of retribution.

However, the Directive’s effectiveness may be influenced by certain ambiguities and implementation challenges. For instance, the definition of “public participation” and “matters of public interest” remains broad and open to interpretation, potentially leading to inconsistent application across Member States. Furthermore, the Directive primarily addresses cross-border cases, which may limit its applicability to domestic SLAPPs unless Member States choose to extend its provisions. Critics also point out that the Directive does not sufficiently address the balance between protecting freedom of expression and ensuring access to justice for legitimate claims, raising concerns about potential misuse of its safeguards to evade accountability.

⁴⁹ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’), C/2022/2428, OJ L 138, 17 May 2022, pp. 30-44.

⁵⁰ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’), PE/88/2023/REV/1, OJ L, 2024/1069, 16 April 2024.

At the end, while Directive (EU) 2024/1069 marks a commendable step toward safeguarding freedom of expression and public participation, its success will largely depend on the clarity of its definitions, the consistency of its implementation across Member States, and the careful balancing of rights to prevent potential abuses of its provisions.

The ECtHR has also addressed the issue of SLAPPs in its case law. In 2022, for the first time, the ECtHR used the term SLAPP in the case *OOO Memo v. Russia*⁵¹, recognizing the growing concern over such lawsuits. The ECtHR applied the principle of proportionality, assessing whether the actions taken were necessary and balanced. It acknowledged that, under Russian law, the civil defamation case brought against the applicant may have been legally allowed. However, the ECtHR concluded that the lawsuit did not serve a legitimate purpose and therefore violated Article 10 of the Convention, which protects freedom of expression. The ECtHR also clarified an important point: defamation claims brought by state authorities themselves cannot justify restrictions on freedom of speech under Article 10. However, individual public officials, as private persons, may still bring such claims if they believe their personal reputation was harmed.⁵²

4.3. Freedom of expression and SLAPPs in Croatia

The Republic of Croatia is, according to a report by the Coalition Against SLAPPs in Europe (CASE), the sixth country in terms of the number of SLAPP lawsuits per year. The number of SLAPP lawsuits is monitored in the period from 2010 to 2023, and the data collected covers 29 European countries and 41 countries across Europe.⁵³ Number of active civil defamation cases: 951, which indicates that Croatia has a problematic situation with SLAPP, where large-scale lawsuits against media actors have become so common that collecting statistical data is impracticable. Moreover, as CASE states, members of the judiciary are often the plaintiffs in SLAPP cases. There are no mechanisms that provide protection to persons covered by SLAPP in these proceedings.⁵⁴

However, even before CASE submitted its first report in 2022, the Government of the Republic of Croatia – Ministry of Culture and Media convened an Expert Working Group with the aim of shaping a policy for combating SLAPP lawsuits and harmonizing case law. This was followed by a public debate and several educational

⁵¹ Case of *Ooo Memo v. Russia*, Application no. 2840/10.

⁵² Novak, *op. cit.*, note 26, p. 286.

⁵³ CASE, *A 2024 Report on SLAPPs in Europe: Mapping Trends and Cases*, Third Edition, p. 15.

⁵⁴ CASE, [<https://www.the-case.eu/slapps/>], Accessed 6 June 2025.

workshops for judges and journalists.⁵⁵ By the end of 2023, the Government of the Republic of Croatia adopted the National Plan for the Development of Culture and Media for the period from 2023 to 2027 with key measures to ensure the protection of journalists from unfounded and malicious legal proceedings, and by establishing a mechanism for the early recognition and rejection of obviously unfounded or malicious legal proceedings - SLAPPs.⁵⁶ The aforementioned expert working group is carrying out a series of activities with the aim of raising awareness of SLAPP lawsuits in general, how to recognize them, but also raising awareness among the professional and general public about the negative consequences of SLAPP.

The research on SLAPP lawsuits against the media in Croatia was conducted by the Center for Democracy and Law Miko Tripalo (CMT) and the Croatian Journalists' Association (HND) as part of the Fighting SLAPP in Croatia project with financial support from the British organization Justice for Journalists Foundation, in cooperation with the international organization CASE.⁵⁷ The aim of the research was to collect data and analyze court decisions in civil and criminal proceedings that were conducted in the Republic of Croatia against publishers, editors and journalists for publicly published texts and reports. The study identifies SLAPP indicators and analyzes the most important features of possible SLAPP cases.⁵⁸ The research used quantitative analysis for statistical data processing (calculation of court decisions in relation to municipal and county courts and the Ministry, delivery in relation to all courts individually, number of civil and criminal cases, number of court decisions and minutes, frequency of cases in which at least one SLAPP indicator appears, type of decision made in the court case; type of case appearing and duration of the case until finality) and qualitative analysis for processing the content of court decisions and minutes in order to identify key patterns and motives for initiating court proceedings.⁵⁹ The research sample was based on data provided by the Ministry of Justice, Administration and Digital Transformation: 861 final decisions of municipal courts in civil and civil cases and 191 decisions of municipal courts in criminal cases, i.e. a total of 1,052 final court decisions.⁶⁰ The analysis of collected court decisions (and minutes) showed that

⁵⁵ Stručna radna skupina za oblikovanje politike suzbijanja SLAPP tužbi, [<https://min-kulture.gov.hr/strucna-radna-skupina-za-oblikovanje-politike-suzbijanja-slapp-tuzbi/22216/>], Accessed 6 June 2025.

⁵⁶ Ministarstvo kulture i medija, Nacionalni plan razvoja kulture i medija za razdoblje od 2023. do 2027. godine, prosinac 2023., [https://min-kulture.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20razvoja%20kulture%20i%20medija/Nacionalni%20plan_objava.pdf/], Accessed 6 June 2025.

⁵⁷ [file:///C:/Users/Korisnik/Downloads/SLAPP_Report_final_eng-3.pdf], Accessed 6 June 2025.

⁵⁸ Centar za demokreciju i pravo Mirko Tripalo, [<https://tripalo.hr/strateske-tuzbe-protiv-javne-participacije-slapp-u-republici-hrvatskoj/>], Accessed 6 June 2025.

⁵⁹ [file:///C:/Users/Korisnik/Downloads/SLAPP_Report_final_eng-3.pdf], Accessed 6 June 2025, pp. 9-10.

⁶⁰ *Ibid*, p. 9.

at least one given SLAPP indicator is present in over 40% of analyzed civil and criminal cases, while two or more occur in half of these cases.⁶¹ It is particularly interesting that the analysis of the collected data revealed so-called “serial” plaintiffs, 12 of them, who often file lawsuits against the media and journalists, using the same or similar arguments and demanding the same amount of damages (for example, 5,308.91 EUR).⁶²

It is evident that there is a problem with SLAPP in the Croatian legal system and that the Croatian legal system does not sufficiently prevent the use of civil proceedings for such purposes. Most lawsuits against the media are initiated by natural persons who could be concluded to be powerful individuals, such as politicians, members of parliament, judges, and the requested compensation is relatively high in the context of the economic situation in the Republic of Croatia.⁶³

The Directive’s (EU) 2024/1069 provisions align with existing legal frameworks that already offer certain protections against abusive litigation. Nonetheless, the Directive’s emphasis on procedural safeguards and its potential to harmonize anti-SLAPP measures across the EU could enhance the protection of public participation in Croatia and beyond. Novak⁶⁴ also highlights the importance of upholding journalistic standards and ethical practices, suggesting that the Directive should reinforce the responsibility of media professionals to adhere to the highest principles of their profession. This approach would strengthen media pluralism and freedom while respecting the rights and freedoms guaranteed by the European Convention on Human Rights.

5. CONCLUSION

The analysis presented in this paper demonstrates that freedom of speech is not only a fundamental right but also a dynamic and evolving concept within European legal and political frameworks. The ECHR and the EU Charter provide a strong foundation for the protection of free expression, and the jurisprudence of the ECtHR and CJEU has played a pivotal role in clarifying the scope and limits of this right. Through landmark cases, European courts have consistently emphasized that freedom of expression extends to information and ideas that may offend, shock, or disturb, as well as to those that are favorably received. At the same time, the courts have recognized the necessity of balancing free speech with

⁶¹ *Ibid.*, pp. 26-27

⁶² *Ibid.*, p. 27.

⁶³ *Ibid.*, p. 26

⁶⁴ Novak, *Anti-SLAPP directive...*, *op. cit.*, note 26, p. 281.

other legitimate interests, including the prevention of hate speech, the protection of privacy, and the maintenance of public order.

The research highlights that the digital transformation of the public sphere presents both opportunities and challenges for the protection of freedom of speech. On one hand, digital platforms have democratized access to information and enabled new forms of civic engagement. On the other hand, they have facilitated the rapid spread of disinformation, hate speech, and other harmful content, raising complex questions about the responsibilities of online intermediaries and the appropriate scope of regulation. The European response has been multifaceted, combining judicial interpretation with legislative and policy initiatives. The European Democracy Action Plan and the Anti-SLAPP Directive represent important steps toward safeguarding media freedom, protecting journalists and activists, and ensuring that legal systems are not abused to stifle dissent.

The analysis of legal texts, systematic review of case law, and policy evaluation enables a nuanced understanding of the legal and institutional responses to the challenges facing freedom of speech in Europe. The findings indicate that while significant progress has been made, continued vigilance is required to protect this core democratic value. Overly restrictive measures risk chilling legitimate speech and undermining democratic engagement, while insufficient regulation may allow harmful practices to flourish. Achieving the right balance requires ongoing dialogue among legislators, courts, civil society, and the media, as well as a commitment to upholding the principles of transparency, accountability, and pluralism.

In conclusion, the protection of freedom of speech in Europe is at a critical juncture. The interplay between legal safeguards, judicial interpretation, and policy innovation will determine the resilience of European democracies in the face of evolving threats. By fostering a legal and institutional environment that both protects free expression and addresses its potential harms, Europe can ensure that freedom of speech continues to serve as a cornerstone of democratic life, enabling robust public debate, accountability, and social progress for generations to come.

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