

IN THE EUROPEAN COURT OF HUMAN RIGHTS

App No. 16777/23

BETWEEN:

MESKHIDZE

Applicant

v.

GEORGIA

Respondent

WRITTEN COMMENTS OF THE THIRD-PARTY INTERVENER

20 February 2026

Introduction

1. These submissions are filed by Media Defence (the ‘Intervener’), pursuant to leave granted by the President of the Court in accordance with Rule 44 of the Rules of Court.¹
2. The present case concerns defamation proceedings brought against the applicant arising from public allegations of harassment, including sexual harassment, that she made against her hierarchical superior, a public official. An independent investigation conducted by the Public Defender's Office substantiated the applicant's allegations. Notwithstanding these findings, the domestic courts found that the applicant had defamed the claimant and ordered her to publicly retract her allegations.
3. This Court has recognised the importance of ensuring appropriate protection for individuals where they face retaliatory legal proceedings for alleging that they have been subjected to acts of sexual harassment.² The Intervener submits that this case presents the Court with an opportunity to provide authoritative guidance on the relevant factors to be considered in defamation proceedings concerning allegations of sexual harassment and other forms of abuse. The Intervener's interest in the outcome of this case lies in particular with the implications of that outcome for the ability of the press to report on such allegations, particularly where they relate to the conduct of officials within state institutions.
4. There have been significant recent legislative developments at the level of the Council of Europe and in other jurisdictions addressing strategic lawsuits against public participation (SLAPPs). These developments recognise that the conduct of legal proceedings - including defamation actions - can constitute abusive litigation tactics designed to silence public participation on matters of public interest. In the Council of Europe region, the Recommendation on SLAPPs approved by the Committee of Ministers in April 2024 (the ‘Recommendation’) provides a framework for the implementation of robust protections from SLAPP lawsuits.³ In the European Union the Directive on SLAPPs (the ‘Directive’), which came into force in April 2024, seeks to eliminate obstacles to the proper functioning of civil proceedings, while providing protection for natural and legal persons engaged in public participation on matters of public interest.⁴
5. From the perspective of the press, the Intervener submits that the balancing exercise between the protection of reputation and the right to report on allegations of sexual harassment and related conduct should take account of those legislative developments, which have been explicitly designed to counter abusive litigation tactics. With

¹ Letter dated 30 January 2026 received from the Court granting Media Defence leave to intervene.

² ECtHR, *Allée v. France*, app. no. 20725/20, para 52, 18 January 2024.

³ Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs) (Adopted by the Committee of Ministers on 5 April 2024 at the 1494th meeting of the Ministers' Deputies) available at <https://www.coe.int/en/web/freedom-expression/-/council-of-europe-adopts-recommendation-oncountering-the-use-of-slapps>. The status of a Recommendation at the Council of Europe is that while nonbinding, it is anticipated it will provide guidance to member states in how they address issues that are addressed in the recommendation.

⁴ European Union Recital no.6, EU GDPR – available at: <https://www.privacy-regulation.eu/en/recital-6-GDPR.htm#:~:text=EU%20GDPR,personal%20data%20has%20increased%20significantly>

reference to those developments, the Intervener makes submissions on the following matters, relying on international and comparative law standards:

- (i) The scope of the media’s role as a public watchdog in reporting on public-facing allegations of misconduct, including sexual harassment and abuse within state institutions, and the distinct public interests served by such reporting;
- (ii) The relevant criteria for assessing the lawfulness of interference with such reporting, particularly in light of legislative developments addressing SLAPPs;
- (iii) Comparative legal approaches to defamation and related claims arising from allegations of sexual harassment and other forms of abuse, including in jurisdictions where anti-SLAPP frameworks have been adopted.

The media’s ‘watchdog’ role in reporting on allegations of sexual harassment and related conduct

6. This Court has consistently held that journalists play an essential role in providing the public with information on subjects of general interest,⁵ with a corresponding right of the public to receive that information.⁶ The role of the press has been described as not only “a vector for disseminating debates on matters of public interest, but it also has the role of revealing and bringing to the public’s attention information capable of eliciting such interest and of giving rise to such a debate within society”.⁷ The emphasis is on the public’s interest in receiving information to facilitate participation in informed debate and deliberation.⁸ The availability through the media of a range of information on matters of public concern and controversy allows for informed public opinion to emerge.
7. According to the Court’s case-law the public interest relates to matters “which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community”.⁹ Specifically, it has highlighted “matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about”.¹⁰ It is a fundamental principle of the Court’s jurisprudence that there is little scope “for restrictions on ... debates on questions of public interest”.¹¹
8. In the context of whistleblowing the Court has held that “information concerning unlawful acts or practices is undeniably of particularly strong public interest. Information concerning acts, practices or conduct which, while not unlawful in

⁵ ECtHR, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, para. 126, 27 June 2017

⁶ ECtHR, *Observer and Guardian v. United Kingdom*, no. 13585/88, para. 59, 26 November 1991

⁷ ECtHR, *Couderc and Hachette Filipacchi Associés v France* [GC], no. 40454/07, para. 114, ECHR 2015 (extracts)

⁸ ECtHR, *Observer and Guardian v. United Kingdom*, no. 13585/88, para 59, 26 November 1991

⁹ ECtHR, *Halet v. Luxembourg* [GC], no. 21884/18, para 132, 14 February 2023

¹⁰ *Ibid.*

¹¹ ECtHR, *Dichand and Others v. Austria*, no. 29271/94, para 39, 26 February 2002

themselves, are nonetheless reprehensible or controversial may also be particularly important”.¹² Allegations of sexual harassment or related conduct in a state institution are self-evidently a matter of public interest. The press has a key role as a public watchdog to report on public-facing allegations of misconduct, including sexual harassment and abuse in that context. In so doing it serves a number of distinct public interests.

9. First, such reporting contributes to transparency and accountability within public institutions. Where serious abuse, including sexual harassment, occurs within the context of an official’s exercise of hierarchical authority, the public has a legitimate interest in being informed. Connected to this, the Court has consistently emphasised the related principle that for the press, “the limits of acceptable criticism are wider with regard to a politician acting in his public capacity than in relation to a private individual”.¹³ Consistent with this well-established principle, the Court has also recognised that reports concerning the proper functioning of public institutions and potential institutional failures are matters of public interest warranting heightened protection under Article 10.¹⁴
10. Second, reporting on such allegations serves a deterrent function. Public exposure of misconduct may deter similar behaviour by other officials who fear being identified and held accountable. This factor was recognised by the Court in *Allée v. France*, where it held that the applicant's criminal conviction for defamation following her allegations of sexual harassment violated Article 10.¹⁵ The Court made the following observation regarding the excessive evidentiary burden imposed on that applicant –

“Stressing the need, under Article 10, to provide appropriate protection to individuals alleging that they have been subjected to mental or sexual harassment, the Court considers, in line with the Advocate General in his aforementioned opinion (paragraph 21 above), that the domestic courts, by refusing to adapt to the circumstances of the case the notion of a sufficient factual basis and the criteria of good faith, imposed an excessive burden of proof on the applicant by requiring her to provide proof of the facts which she intended to report.”¹⁶

11. Crucially, the Court found that a conviction of the type involved in that case “entails, by its nature, a chilling effect liable to discourage people from reporting acts as serious as those amounting, in their view, to psychological or sexual harassment”.¹⁷ When appropriate safeguards are in place to allow for allegations of this type to be made, potential perpetrators know that misconduct is more likely to be exposed, creating a deterrent against such behaviour. Conversely, where there is a real prospect of being subjected to defamation proceedings for speaking out, this chilling effect also signals to potential perpetrators that they are unlikely to be held accountable.

¹² See also, ECtHR, *Gawlik v. Liechtenstein*, no. 23922/19 para. 79, 16 February 2021; ECtHR, *Heinisch v. Germany*, no. 28274/08, paras 88-90, 2011

¹³ ECtHR, *Bédat v. Switzerland* [GC], no. 56925/08, §58, 29 March 2016.

¹⁴ See for example ECtHR, *Thorgeir Thorgeirson v. Iceland*, no. 13778/88, 25 June 1992, concerning allegations of police brutality.

¹⁵ ECtHR, *Allée v. France*, no. 20725/20, 18 January 2024.

¹⁶ *Ibid.* para. 52.

¹⁷ *Ibid.* paras. 54.

12. Third, reporting on cases of abuse and sexual harassment might encourage those who have experienced similar conduct to come forward, thereby addressing the problem of underreporting in this context. This serves a critical public interest, long recognised in the criminal justice context. Where perpetrators engage in patterns of abusive conduct over time, early victims may become isolated, disbelieved, or deterred from reporting. Public reporting can break this pattern by demonstrating that others have had similar experiences and that their accounts will be taken seriously. The Court has recognised the importance of ensuring victims of sexual violence are protected and supported.¹⁸ Public reporting can facilitate this. This factor applies equally to sexual harassment and to other forms of abuse in the workplace.
13. A good example of how this factor works occurred in the United Kingdom where, following the broadcast in October 2012 of a documentary investigating allegations of sexual abuse by the late television presenter Jimmy Savile, hundreds of individuals made allegations of abuse to the authorities. The subsequent police investigation formally recorded over 200 crimes. Many victims reported that they had not come forward earlier because they feared they would not be believed or would face retaliation.¹⁹
14. From a legal perspective, the public interest in victims coming forward extends beyond the prosecution of individual perpetrators.²⁰ Where multiple victims come forward following public reporting, this can reveal systemic issues requiring institutional reform, contribute to the development of more effective safeguarding procedures, and inform policy responses to prevent future abuse. The capacity of public reporting to facilitate these outcomes constitutes an important public interest that must be weighed in the balance when assessing whether restrictions on such reporting are necessary in a democratic society.
15. Fourth, reporting facilitates informed public debate about the adequacy of institutional responses to sexual harassment. Where, as in the present case, an independent authority has made a finding that harassment, including sexual harassment, has taken place, the public has an interest in understanding why, in that situation, officials remain in their positions or whether any steps are being taken to address issues that have been identified.

Relevant factors for assessing lawfulness of interference with reporting in sexual harassment and related cases

16. SLAPPs can be defined as “legal actions that are threatened, initiated or pursued as a means of harassing or intimidating their target, and which seek to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation”.²¹ They are characterised by factors that indicate a misuse of the judicial process for purposes other than genuinely asserting a right. They are designed to intimidate and can involve legal proceedings over extended periods intended to overwhelm the respondent, cast doubt on their

¹⁸ ECtHR, *M.C. v. Bulgaria*, no. 39272/98, §§150-153, 4 December 2003

¹⁹ Metropolitan Police Service and NSPCC, *Giving Victims a Voice: Joint report into sexual allegations made against Jimmy Savile* (11 January 2013)

²⁰ See *Guja v. Moldova* [GC], no. 14277/04, § 74, 12 February 2008 where the Grand Chamber noted that matters relating to the proper functioning of a public service may be matters of public interest.

²¹ Council of Europe Anti-SLAPP Appendix, para 1.

allegations, and suppress public interest debate.²² Increasing recognition in the Council of Europe region that defamation and related proceedings can be used as abusive litigation tactics to silence public participation on matters of public interest has led to legislative changes.²³

17. This is a highly relevant consideration in the context of reporting on allegations of sexual harassment.²⁴ In the US, where anti-SLAPP laws originated, courts have been grappling with how to address defamation claims brought against defendants alleging abuse, including sexual harassment. When New York amended its anti-SLAPP statute in 2020, the bill's sponsor stated that the law previously in existence had created "a broken system" that "led to journalists, consumer advocates, survivors of sexual abuse and others being dragged through the courts on retaliatory legal challenges solely intended to silence them".²⁵
18. One of the key concerns is that defamation and related proceedings are capable of causing a chilling effect for those making the allegations, and for the press. For this reason, the most careful scrutiny is called for when a legal system provides for sanctions that are capable of discouraging participation in debates by the press on matters of legitimate public concern.²⁶ It has recently been confirmed by this Court that this principle extends beyond the press to anyone communicating on a matter of public interest.²⁷
19. Relatedly, this Court has repeatedly recognised that the effective exercise of freedom of expression does not depend only on the state's duty to refrain from interference, but may also require positive measures of protection, including from actions by private individuals.²⁸ In particular, this Court has noted that states are required "to create, while establishing an effective system for the protection of journalists, a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even if

²² See, for example, European Law Blog, *The GDPR enters the SLAPP scene: GDPR proceedings as emerging forms of strategic litigation against public participation*, 22 February 2022, available at: <https://www.europeanlawblog.eu/pub/the-gdpr-enters-the-slapp-scene-gdpr-proceedings-as-emerging-forms-of-strategic-litigation-against-public-participation/release/1>

²³ Council of Europe Anti-SLAPP Recommendation. See also, Human Rights Council, *Resolution adopted by the Human Rights Council on 6 October 2022 – the safety of journalists*, A/HRC/RES/51/9, 12 October 2022, available at: <https://digitallibrary.un.org/record/3992428?ln=en&v=pdf#files>. The resolution expresses concern about the increasing threat SLAPPs pose to media freedom and the public's right to information and was adopted during the Council's 51st session. The resolution specifically highlights SLAPPs as a growing concern, recognising them as abusive litigation tactics used to suppress information on matters of public interest. It also calls on governments to "take measures to protect journalists and media workers from strategic lawsuits against public participation, where appropriate, including by adopting laws and policies that prevent and/or alleviate such cases and provide support to victims."

²⁴ See for example a report focusing on defendants in SLAPP claims in the UK and Ireland by Index on Censorship, *From Survivor to Defendant, How the law is being weaponised to silence victims of sexual violence*, October 2025, available at <https://www.indexoncensorship.org/2025/10/the-legal-system-is-being-weaponised-to-silence-survivors-of-sexual-and-gender-based-violence/>

²⁵ Senator Brad Hoylman, Press Statement on S.52A/A.5991A (22 July 2020), available at <https://www.nysenate.gov/newsroom/press-releases/2020/brad-hoylman-signal/trump-attacks-free-press-legislature-passes-senator>; see also New York State Assembly Press Release (22 July 2020), available at <https://nyassembly.gov/Press/files/20200722a.php>.

²⁶ ECtHR, *Bladet Tromsø v Norway* (2000) 29 EHRR125 para 64.

²⁷ ECtHR, *OOO Memo v Russia* [2022] ECHR 229 at para 23.

²⁸ ECtHR, *Gaši and Others v. Serbia*, application no. 24738/19, judgment of 6 September 2022, para 77.

irritating or shocking to the latter”.²⁹ The threat to robust debate on issues of public interest requires that national authorities take steps to deter SLAPPs and minimise their punitive effect.

20. Where defamation or related proceedings are brought following allegations of sexual harassment or related conduct, courts should examine whether the proceedings exhibit indicators of abusive litigation and should ensure that the balance between freedom of expression and the protection of reputation is not unduly weighted against those making or reporting on those allegations.
21. A defamation claim that follows publication of an allegation of sexual harassment, even after a finding by an independent body that the allegation is true, is capable of having a chilling effect, for obvious reasons. For the person making the allegation they will be subjected to the prospect of having to give evidence that is traumatic, being subject to cross examination on intimate details of their life, and having to face the individual against whom the allegation has been made in an adversarial context. For the press the chilling effect arises as a consequence of the prospect of being tied up in expensive litigation, over an extended period. Of course, those latter considerations also apply to the person who is being sued over the allegation.
22. A key feature of the emerging legislative approach to SLAPPs is recognition that even legal claims which, viewed in isolation, appear to have some merit may nevertheless constitute abusive litigation where particular tactics are employed. The EU Anti-SLAPP Directive defines manifestly unfounded or abusive court proceedings as those “initiated or continued, in whole or in part, for the predominant purpose of preventing, restricting or penalising public participation”.³⁰ This requires courts to examine the broader context in which claims are pursued, including other legal steps taken or not taken by a claimant.
23. The Council of Europe Anti-SLAPP Recommendation provides that to advance their claim to trial, claimants targeting public participation should be required to establish a reasonable cause of action at the earliest possible stage and that courts should have the power to dismiss SLAPPs early in the proceedings, on their own initiative or at the request of the defendant.³¹ It also recommends that the defendant’s application for early dismissal stays the main proceedings until a final decision on that application is taken, and that the claimant should be barred from amending their pleadings with the aim of avoiding a order of dismissal.³² The importance of early dismissal in SLAPP claims relating to allegations of abuse, including sexual harassment, cannot be overstated. As noted below, it is a core feature of long-standing anti-SLAPP legislation in other jurisdictions.³³

²⁹ ECtHR, *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, judgment of 10 January 2019, para 158.

³⁰ Directive (EU) 2024/1069, Article 3(1)

³¹ Council of Europe Anti-SLAPP Recommendation para 25.

³² *Ibid.* para 35.

³³ See for example para 27 below. In particular the procedure in California is clear, where a respondent can file a motion to strike out the complaint, which the court will hear within 30 days and from that point of filing all discovery proceedings and related activity are paused from the time the motion is filed until the court has ruled on it, subject to limited exceptions - California Code, Code of Civil Procedure para 425.16(b)(1) and (f)

24. The Recommendation provides a comprehensive framework for identifying and addressing SLAPP lawsuits, including by providing a non-exhaustive list of SLAPP indicators relating to the conduct of litigation. While not all indicators need to be present, the Recommendation emphasises that the more indicators present, or the more pronounced the behaviour in relation to any one indicator, the higher the likelihood that the legal proceedings should be considered a SLAPP³⁴ -

Exploitation of an imbalance in power

Sexual harassment and other types of abusive conduct invariably involve an imbalance in power. This imbalance is exacerbated where the allegations concern a hierarchical superior within a state institution.³⁵ It may be exploited through defamation proceedings, particularly where the claimant has access to greater financial resources or institutional support. The EU Directive describes the impact of the power imbalance in the following way – “where present, such an imbalance of power contributes significantly to the potential of SLAPPs to produce harmful consequences for the targets, with chilling effects for public debate as a result. SLAPPs can have a deterrent effect also on other potential targets, who may decide not to assert their right to investigate and report on issues of public interest. This risks leading to self-censorship”.³⁶

Disproportionate remedies

Where a claimant seeks remedies that are excessive or unreasonable in relation to any alleged reputational harm, this may indicate abusive litigation. This is particularly relevant where, as often occurs in sexual harassment cases, the claimant seeks not merely correction or compensation, but public retraction designed to discredit the person making the allegation, and the publisher.

Targeting one prospective defendant over others

In the journalistic context, where proceedings are brought against a journalist reporting on allegations of abuse or sexual harassment, rather than against the media outlet that publishes the story, or where they are brought solely against the person who has made the allegation, this may indicate an intention to intimidate and silence rather than to vindicate reputation. The case of *Kacki v. Poland* concerned allegations published in a daily newspaper that a member of the European Parliament had offered one of his assistants paid employment in exchange for sexual favours. The Court considered the impugned party to be a public figure on the basis of his role and functions within that institution. The only legal proceeding taken was a criminal case brought against the journalist who published the accusations. The Court held that this was a disproportionate response to the allegedly defamatory publication.³⁷

³⁴ Council of Europe Anti-SLAPP Recommendation para 8.

³⁵ *Ibid.* at p.1, “Being aware that asymmetries in political, financial and other forms of power in society can give rise to inequalities in public debate and that the misuse and abuse of power and privilege by threatening or taking legal action to harass, intimidate or silence minority or critical voices have a chilling effect on public participation.”

³⁶ EU Directive Explanatory Memorandum available at <https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:52022PC0177>

³⁷ ECtHR, *Kacki v. Poland*, no. 10947/11, Judgment of 4 July 2017, para 53 – “The Court notes also that M.C. did not request a correction or retraction from the newspaper. He did not institute civil or criminal

Public intimidation campaigns

Where a claimant engages in public campaigns or makes public statements designed to discredit the person making allegations or to deflect attention from the substance of the allegations, this may indicate that the primary purpose of proceedings is to silence rather than to vindicate reputation.

Failure to pursue other remedies or ignoring inconvenient findings by independent bodies

Where a claimant has access to non-judicial remedies but chooses to initiate legal proceedings, particularly where those proceedings involve disproportionate civil remedies, this may indicate abusive litigation. This is particularly relevant where, as in many abuse or sexual harassment cases, internal institutional procedures are available and in circumstances, as in the present case, where a finding has been made in favour of the individual alleging abuse or sexual harassment. Where such findings are in the public domain this constitutes further evidence that the legal proceedings can be considered as being used for an improper purpose.

25. The Council of Europe Recommendation emphasises that judicial and other competent authorities should have legal powers to assess SLAPP indicators and to fully or partly discontinue claims where appropriate.³⁸ It further recommends that “[m]ember States should make adequate provision for SLAPP victims to be acknowledged as such and to be fully compensated for damages incurred as a result of the SLAPP”.³⁹ The Intervener submits that where defamation proceedings are brought following allegations of sexual harassment that have been substantiated by a competent independent authority, as in the present case, courts should examine whether the proceedings exhibit indicators of abusive litigation and should ensure that the balance between freedom of expression and the protection of reputation is not unduly weighted against those making or reporting on such allegations.

Comparative approaches to defamation claims in sexual harassment and related cases

26. In the United States, several jurisdictions have adopted anti-SLAPP statutes that provide for early dismissal of claims that target public interest speech. California’s anti-SLAPP law provides a good example of how an early dismissal mechanism operates. The law allows a defendant to file a motion to strike out the complaint, which the court will hear within 30 days.⁴⁰
27. Crucially, both New York and California have taken steps to prevent SLAPP claims being brought where allegations of sexual harassment are made. The response in California to retaliatory defamation lawsuits against allegations of sexual misconduct provides a compelling example of legislative action addressing SLAPPs in this

proceedings against A.R. Likewise, he did not institute civil proceedings against the applicant or editor of the newspaper through which the alleged interference with his right to reputation could have been remedied. Instead, he chose to lodge a private bill of indictment against the applicant with a criminal court.”

³⁸ Council of Europe Anti-SLAPP Recommendation, “[j]udicial and other competent authorities should have the legal powers to make an assessment of the [SLAPP] indicators... and fully or partly discontinue the claim”. para 26.

³⁹ *Ibid.*, para 41.

⁴⁰ California Code, Code of Civil Procedure para 425.16(f).

context. Assembly Bill 933, which took effect on 1 January 2024, establishes as privileged any communication made by an individual, without malice, regarding an incident of sexual assault, harassment, or discrimination that the individual personally experienced.⁴¹

28. This privilege applies to individuals who have, or at any time had, a reasonable basis to file a complaint of sexual assault, harassment, or discrimination, regardless of whether a formal complaint was ever filed. The statute defines “communication” broadly to encompass factual information related to the incident, including statements about workplace harassment or discrimination, failure to prevent such acts, retaliation against persons reporting misconduct, housing discrimination, and cyber-sexual bullying. The legislation was enacted following a defamation case brought by a politician against a lobbyist over claims she had made that he had sexually assaulted her. Prior to the defamation case being brought, those claims had been substantiated following an investigation by the Californian legislature.⁴²
29. New York’s anti-SLAPP statute explicitly protects defendants from liability when they make a “communication in ... a public forum in connection with an issue of public interest,” which encompasses “any subject other than a purely private matter”.⁴³ (emphasis added). Public allegations of sexual harassment and related conduct have been consistently recognised as matters of public interest and therefore entitled to protection under the anti-SLAPP law.⁴⁴ The express legislative purpose of providing protection from retaliatory litigation reflects the broader recognition in anti-SLAPP frameworks that claims which may have some merit on their face can nonetheless constitute abusive litigation where the predominant purpose is to silence public participation. The identification of defamation proceedings as a mechanism for suppressing allegations of sexual harassment and other wrongdoing underscores the need for courts to examine the broader context and purpose of litigation, rather than focusing narrowly on whether individual elements of a defamation claim can be formally established.⁴⁵
30. The Colombian Constitutional Court has also developed jurisprudence recognising that defamation proceedings against those reporting sexual harassment can constitute ‘judicial harassment’.⁴⁶ One case concerned a constitutional action (*amparo*) initiated by a famous movie director against two journalists who had published accusations from eight women who made allegations of sexual harassment and violence against him. The Court, in finding that the case constituted ‘judicial harassment’, applied the following criteria: (i) had the claimant made use of the right to litigate with the

⁴¹ California Assembly Bill 933, Privileged communications: incident of sexual assault, harassment, or discrimination 10 October 2023, available at <https://legiscan.com/CA/text/AB933/id/2845352>

⁴² See *Dababneh v. Lopez*, California Court of Appeal, Third District (appeal from Sacramento County Superior Court), decided 1 October 2021 (unofficial citation)

⁴³ N.Y. Civ. Rights Law paras 76-a(a), 76-a(d)

⁴⁴ See for example *Reeves v. Associated Newspapers, Ltd.*, 2024 WL 3892069, N.Y. App. Div. 1st Dep’t, 22 August 2024, where the court held that an article about domestic violence, arrests and criminal proceedings concerned matters of public interest.

⁴⁵ See also, *Sagaille v. Carrega*, 2021 N.Y. Slip Op. 1369 (N.Y. App. Div. 2021), Index No. 154010/18 Appeal No. 13314 Case No. 2020-02369, 9 March 2021 (US)

⁴⁶ Constitutional Court of Colombia, T-452/22, *Ciro Guerra Picón v. Catalina Ruiz-Navarro and Matilde de los Milagros Londoño*. In this case the court applied rules on ‘abuse of the law’ to designate SLAPPs as a form of ‘judicial harassment’ against freedom of expression. Media Defence filed an amicus brief in this case. The decision can be found here - <https://www.corteconstitucional.gov.co/relatoria/2022/t-452-22.htm>

purpose of silencing expression on a public interest matter; (ii) was there was a power imbalance between the parties; (iv) had the claimant requested the granting of disproportionate remedies to be satisfied by the defendants; (v) was the action was filed in order to generate a chilling effect.

31. The Constitutional Court also relied on the concept of ‘specially protected speech’ under the Colombian Constitution to assess whether the information published by the journalists was in the public interest. The court reiterated that, in line with previous judgments, both feminist discourse in general, and speech that involves specific reports about sexual harassment, abuse and violence in particular, enjoy special protection under the Constitution. The publication concerned allegations of sexual abuse and violence against the claimant, leading the court to conclude that the matter concerned political and public interest issues warranting the application of that protection. The court emphasised that this type of speech is particularly necessary to confront discrimination against women and gender-based violence in society and concluded that the purpose of the publication was to contribute to the public debate about violence against women, which was a matter of significant public concern.⁴⁷

Conclusion

32. The Intervener submits that these comparative approaches demonstrate growing recognition that allegations of sexual harassment, and related forms of abusive conduct, raise particular considerations that justify heightened protection for those making or reporting on such allegations. The specific recognition in California and New York’s legislative reforms that safeguards must be in place to ensure protection from retaliatory litigation underscores the importance of examining whether defamation proceedings are being used as a mechanism to silence public participation rather than to vindicate reputation. The Council of Europe’s Recommendation provides an appropriate legal framework within which that examination can take place. Defamation proceedings to silence public discussion of sexual harassment, particularly where the allegations concern officials within state institutions, should be subject to strict scrutiny in order to avoid a chilling effect on the reporting of sexual harassment and other forms of abusive conduct.

Padraig Hughes
Media Defence

⁴⁷ Ibid. para 430, “All of the above becomes even more relevant in the context of complaints of harassment or sexual violence, which often pursue avenues other than criminal law and, in particular, are guided by the vigorous exercise of freedom of expression. As already explained, this decision is marked by situations of systematic abuse of women’s rights and, therefore, by historical patterns of discrimination that prevent them from *speaking out*. It is also marked by the inadequacy of judicial processes for the effective protection of women’s rights, a deficiency already identified by various human rights treaties and constitutional jurisprudence. Furthermore, it is marked by the existence of evidentiary dynamics that undermine the dignity of complainants or that make proving the facts virtually impossible. Finally, it is a means of prevention, through word of mouth that alerts other women to a real risk.”