

CASE STUDY

SLAPP IN CYPRUS



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DISCLAIMER

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1. INTRODUCTION

Cyprus is experiencing a variety of challenges to freedom of expression for both journalists and human rights defenders. Strategic Lawsuits Against Public Participation (SLAPPs) form part of a complex picture, which is exacerbated by the difficulty of obtaining comprehensive information in a relatively small country, where awareness of SLAPPs as an issue is low.

This low level of awareness of SLAPPs as an issue in Cyprus exacerbates some of the established problems with gathering information about the prevalence of these cases. In a study of SLAPPs in Europe produced in 2022, the Coalition Against SLAPPs in Europe (CASE) does not list a single SLAPP instance in Cyprus,¹ despite highlighting one case filed in the Cypriot courts, which will be discussed further in this document.²

A similar picture could be discerned from other reporting mechanisms: the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists (“the Council of Europe Platform”), which has collated reports on media freedom issues since 2014, and and Media Freedom Rapid Response (MFRR), which started receiving reports in March 2020.

MFRR associates ten reports with Cyprus, between 1 March 2020 and 31 December 2022, of which one report is categorised as a SLAPP (the Ali Kismir case discussed later in this report, in Chapter 2.1).³ Among the MFRR reports on Cyprus are the intimidation and surveillance of journalist and writer Makarios Drousatis case is also listed. While not an instance of a SLAPP, this points to distinct challenges to freedom of expression in Cyprus. While only eight EU member states are associated with fewer MFRR reports, his is more

¹ Coalition Against SLAPPs in Europe (2022) Shitting out Criticism: How SLAPPs threaten European Democracy. pp. 21, 35
<https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/6231bde2b87111480858c6aa/1647427074081/CASE+Report+on+SLAPPs+in+Europe.pdf>

² Please see Chapter 2.2 for an account of the SLAPP action against independent journalists Stelios Orphanides and Sara Farolfi

³ https://www.mapmf.org/explorer?f.from=2020-03-01&f.to=2022-12-31&f.eu_membership=EU+Member+States&f.country=Cyprus

likely to be a facet of the means of information gathering than an accurate representation of the situation in Cyprus.

Likewise, the Council of Europe Platform lists only a modest number of alerts for Cyprus, with only six alerts recorded for the same period. While they may not fit comfortably under the rubric of SLAPP, four out of these six Council of Europe Platform reports are categorised under ‘harrasment and intimidation of journalists’.⁴

As such, the main information-sharing platforms may not reflect the true picture of SLAPPs in Cyprus. The CASE study shows a dramatic increase in the use of legal procedures against journalists and human rights defenders in recent years, with a manifold increase in the incidence of these cases since 2016. Nevertheless, CASE’s report still underestimates the true picture, as many legal threats do not result in litigation. Almost by definition, those threats that are most successful in silencing their targets do not appear in these figures. It is in fact, rather difficult to obtain information about this aspect of the SLAPP phenomenon.

There is good reason to suppose that the true prevalence of SLAPPs is greater than has been reported. In 2020 the UK-based think tank the Foreign Policy Centre (FPC) conducted a survey of investigative journalists and the resulting report gives an indication of the extent to which journalists internationally are facing SLAPP-like legal threats.⁵ The prevalence of such threats appears to be rather frequent – experienced by over 50% of the journalists surveyed - at least for those reporters working on corruption and related issues.

Among other cases, this report will highlight the case of an investigative journalist who felt he had to leave Cyprus in order to continue his work⁶. For those investigative journalists who are still working in the country, it is not unlikely that legal threats are received with greater frequency than has previously been reported.

⁴ <https://fom.coe.int/en/pays/detail/11709496>

⁵ Foreign Policy Centre (2020). Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world.

<https://fpc.org.uk/publications/unsafe-for-scrutiny/>

⁶ Stelios Orphanides, whose case is discussed in Chapter 2.2

While the best-known – and perhaps most frequent – targets of SLAPPs are either journalists or the media organisations they write for, the range of potential targets is in fact rather broader than this. The CASE study – based, of course, on only those recorded cases that made it as far as court proceedings – notes cases lodged against academics, activists, non-governmental organisations and even cartoonists.⁷

Here we run into even greater problems of data collection as, to the best of our knowledge, there is no systematic reporting of SLAPP or SLAPP-like threats where academics, lawyers, public servants, human rights defenders been silenced. There is, in short, a significant an information gap regarding SLAPP-like threats against public watchdogs.

As a result, we have visibility into these cases only when they have received significant attention from national or international bodies, which may be more likely to be the case when there appears to be a pattern of events over time. As such, the final case – or rather group of cases – we have included in this document is that of the non-governmental organisation KISA, in Chapter 2.3.

Since 2010, the organisation, which works in the field of non-discrimination and migrant rights, has been the target of defamation suits, criminal indictment of its employees and, most recently, deregistration from the Cyprus charity register in 2021. The deregistration of KISA has been criticised by a range of intergovernmental organisations and human rights bodies, which renders it noteworthy, notwithstanding that it does not fit comfortably into the sense of SLAPPs as abusive litigation that underpin the European Commission’s proposals in this area.⁸

⁷ Coalition Against SLAPPs in Europe (2022), pp. 25

⁸ Proposal for a Directive on strategic lawsuits against public participation

(SLAPP):https://commission.europa.eu/document/cdaae121-5e89-45bd-a6c8-e12006ce1f77_en

2. Significant features of the legal system in Cyprus

There are some long-standing features of the legal system in Cyprus that are particularly relevant to the issue of SLAPPs. While Cyprus benefits from not having criminal defamation laws, which have frequently been highlighted as detrimental to freedom of expression, the European Commission’s Rule of Law Report for 2022 highlights some features of the legal system in Cyprus that could increase the perceived cost of defending a case for those on the receiving end of a SLAPP.

The underlying purpose of SLAPPs is to censor individuals, primarily through burdening them with the cost of a legal defence⁹ (as opposed to vindicating a legal claim). Therefore in legal systems where the perceived or actual costs of defending a case are relatively high, SLAPPs as a strategy can be particularly effective in silencing individuals.

While the financial cost of defending a legal case in Cyprus is not excessive by the standards of many EU member states due to the existence of a statutory fee system, the length of proceedings is “among the highest in the EU” and it is not unusual for cases to take many years to resolve. Studies have cited the typical length of legal proceedings in Cyprus as nine years.¹⁰

Even according to official figures, the average length of administrative, civil and commercial proceedings in Cyprus at first instance is over 1000 days.¹¹ Some cases detailed in this report have not been resolved after a decade or more.¹² The European Commission identifies “continuous postponements” as a key factor behind these delays.¹³ That Cyprus

⁹ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), pp. 1

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>

¹⁰ Bayer et al (2021). Strategic lawsuits against public participation in the European Union - a comparative study. pp.66 https://commission.europa.eu/system/files/2022-04/slapp_comparative_study_0.pdf

¹¹ European Commission (2022). 2022 Rule of Law Report: Country Chapter on the Rule of Law Situation in Cyprus, pp. 6. https://commission.europa.eu/system/files/2022-07/31_1_194047_coun_chap_cyprus_en.pdf

¹² See, in particular, the chapter on the case of Stelios Orphanides.

¹³ 2022 Rule of Law Report pp.7

has the lowest state funding of the court system in the EU in both relative and absolute terms may also explain this in part.¹⁴

Concerns about judicial independence are another factor that might dissuade SLAPP targets from mounting a legal defence. Cyprus lies in the bottom half of the rankings for perceived judicial independence among the general public and companies.¹⁵ The case of KISA (chapter 2.3), has also been cited as a concern by a number of organisations, some of whom allege that the treatment of the organisation has not been impartial.

Finally, the situation in the occupied territories in the north of Cyprus, particularly the influence brought to bear on authorities there by Turkey, has a material impact on the phenomenon of SLAPPs in Cyprus.

The position of the media in Turkey falls well below the minimum expected standards in the European Union – indeed, the country has one of the world’s worst records for freedom of the press. Turkey is ranked 149th out of the 180 countries in the 2022 World Press Freedom Index published by Reporters Without Borders (RSF).¹⁶ According to the Stockholm Center for Freedom’s “Jailed and Wanted Journalists in Turkey” database, 174 journalists are currently behind bars in the county, while 167 are wanted and are either in exile or remain at large.¹⁷ Furthermore, the Turkish government is also known to target journalists resident outside the immediate jurisdiction. Turkey’s misuse of the Interpol Red Notice system in order to target political opponents for extradition is well documented.¹⁸

This particular geopolitical dynamic accounts for part of the SLAPP (or SLAPP-like) activity seen in Cyprus, particularly in the occupied territories in the north of the island.

¹⁴ EU Justice Scorecard 2022, figs 33-34

¹⁵European Commission (2022). EU Justice Scorecard 2022, figs 50, 52.

https://commission.europa.eu/system/files/2022-05/eu_justice_scoreboard_2022.pdf

¹⁶Reporters Without Borders (RSF). Country File: Turkey. <https://rsf.org/en/country/turkey>

¹⁷ <https://www.turkishminute.com/2021/01/25/cypriot-journalist-faces-investigation-over-comments-insulting-turkish-state/> [accessed 3/10/2022]

¹⁸Stockholm Centre for Freedom (2021). Turkey’s Abuse of Interpol. <https://stockholmcf.org/turkeys-abuse-of-interpol-how-erdogan-weaponized-the-international-criminal-police-organization-for-transnational-repression/>

The case of Ali Kismir, discussed in Chapter 2.1 is representative, but we could equally have selected others.

As an example, Turkish Cypriot newspaper publisher was sentenced to one year's imprisonment *in absentia* by a Turkish court in April 2022.¹⁹ Levent had been convicted on a charge of offending the president according to Article 299/1 of the Turkish Penal Code.²⁰ Levent had previously been acquitted on an identical charge by a court in the occupied territories of northern Cyprus.

Despite the relatively small number of recognised SLAPP cases in Cyprus, there are some key examples where legal threats or proceedings have been used to deter individuals, some acting together as members of organisations, from exercising the rights of expression and assembly. Some illustrate dynamics specific to Cyprus, others may be directly comparable to cases elsewhere.

In order to give a broad impression of the current situation in Cyprus, this report goes on to describe a selection of cases where it was publicly reported and/or alleged that individuals or organisations were facing intimidation for exercising their rights of expression, regardless of whether such conduct has been formally classified as a SLAPP.

¹⁹<https://cyprus-mail.com/2022/04/26/turkish-cypriot-newspaper-publisher-jailed-for-one-year-by-ankara-court/>

²⁰ The case concerned a satirical cartoon published on December 8 of 2017 in the Turkish Cypriot newspaper *Avrupa*.

2.1 Case 1 - Ali Kışmir

Ali Kışmir is a journalist and the union leader of the Cypriot Press Workers Union from the Turkish Cypriot Community in the Occupied Territory of Cyprus. As a journalist, he has been critical of Turkey's ruling AKP and the influence of Turkish politicians in the Occupied Territory.

A first sign that Kışmir had come to the attention of the Turkish authorities came on 9 October 2021. Kışmir was denied entry to Turkey, as he attempted to transit Istanbul airport on his way back from an EFJ meeting in Croatia. At this time it was reported that his entry had been restricted on the grounds that he “poses a security threat to Turkey.”²¹ After a short period, he was allowed to continue his journey to Cyprus.

On 22 February 2022, Kışmir was notified by security forces in the occupied territory that he could be facing up to 10 years imprisonment as a result of an opinion piece, named “The White House”, written against the regime some 18 months earlier²². The article specifically criticized Turkey and the AKP government for their interference with Turkish Cypriot affairs and the electoral process in the occupied territory²³.

Specifically, the journalist was charged for “insulting and mocking the security forces” in violation of Article 26 of the Military Crime and Penalty Law. Prosecutors also made a request for a travel ban which would essentially confine him in the territory²⁴.

Kışmir was due to appear in court to object to the charges against him on Monday 28 February 2022. His lawyer, Hasan Esendağlı, the head of the local Bar Association, noted that there was no option but to rebut the claims against his client given that his prosecution is a direct attack on the freedom of thought and conscience²⁵. He also highlighted that this

²¹<https://www.mapmf.org/alert/24342> [accessed 20/12/2022]

²² <https://cyprus-digest.com/turkish-journalist-ali-kismir-faces-risk-of-years-in-prison/> [accessed 30/9/2022]

²³ <https://cyprus-mail.com/2022/02/23/journalists-unite-in-support-of-t-c-colleague-charged-over-article/>

²⁴ <https://lgcnews.com/journalist-faces-up-to-10-years-in-prison/> [accessed 30/9/2022]

²⁵ <https://lgcnews.com/journalist-faces-up-to-10-years-in-prison/> [accessed 30/9/2022]

is a tactic adopted by “outdated and oppressive regimes”, it is “used as a weapon to make people shut up and refrain from speaking or writing”²⁶.

The news of the charge against Kışmir sparked a widespread response from various parties who emphasised the importance of the freedom of expression and the press. Statements in support of Kışmir were made by the Turkish and Cypriot Journalists' Unions, and the EFJ and IFJ. Turkish Cypriot political figures also opposed the arrest.

The head of the Cyprus Union of Journalists, George Frangos, stated that:

“Kışmir is not just a struggling journalist, fighting a wrongful arrest, but also a colleague with whom we cooperated for years”

“We will be at his side for as long as he needs us, standing for the freedom of the press and for our Turkish Cypriot friends’ right to express their own opinions.”

Mustafa Kuleli, General Secretary of Turkey’s Journalist Union (TGS) explicitly linked the action taken against Ali Kışmir to his country’s government:

“This lawsuit should be seen as an operation to oppress critical voices. We know that this is the practice of authoritarian regimes. These efforts to intimidate and silence critical journalists and media outlets in Northern Cyprus are gaining momentum under the guidance of the Erdogan government.

*“We have stood up against those who intimidated us in the past through solidarity. We shall do it again, whenever necessary”.*²⁷

Greek Cypriots showed their support by protesting against the court in the occupied Nicosia²⁸. Solidarity was also shown by the Cypriot left-wing political party “AKEL” which

²⁶ <https://lgcnews.com/journalist-faces-up-to-10-years-in-prison/> [accessed 30/9/2022]

²⁷ <https://europeanjournalists.org/blog/2022/02/22/northern-cyprus-heavy-criminal-charges-against-the-president-of-the-journalists-union/>

²⁸ <https://greekcitytimes.com/2022/03/01/greek-cypriots-protest-in-support-of-arrested-turkish-cypriot-journalist-ali-kismir/> [accessed 30/9/2022]

denounced the silencing effect of this trial²⁹. In the event, the degree of media attention appears to have had an impact on the progress of the case.

Likely thanks to the extensive national and international attention, the 28 February committal hearing was abandoned and the case indefinitely postponed.³⁰ An impromptu press conference was heard outside the court. Kışmir's lawyer stated that no substantive issues had been discussed and he expected the charges to be dropped.³¹

In the wake of Kışmir's arrest, a group of MEPs submitted a written question to the EU Commission asking what can be done to protect journalists in the occupied territories³². The European Parliament Committee on Foreign Affairs' Report on the 2021 Commission Report on Turkey expresses "particular alarm" about the treatment of Kışmir for his criticism of the Turkish government.³³

While the criminal prosecution appears to be in abeyance, Turkish action against Ali Kışmir and other public figures in the occupied territory continues. In November 2022, Kışmir was one of eight Turkish Cypriots banned from entering Turkey.³⁴

While the Ali Kışmir case clearly has its roots in Cyprus' unique geopolitical situation, these events clearly speak to the importance of publicity in limiting the damaging impact of SLAPPs and similar acts of legal intimidation.

²⁹ <https://akel.org.cy/solidarity-with-the-turkish-cypriot-journalist-ali-kismir/?lang=en> [accessed 30/9/2022]

³⁰<https://europeanjournalists.org/blog/2022/02/22/northern-cyprus-heavy-criminal-charges-against-the-president-of-the-journalists-union/>

³¹<https://voicekibrishaber.com/gazeteci-kismire-teblig-edilen-ceza-davasi-gorusulmedi/349879/> [accessed 20/12/2022]

³² https://www.europarl.europa.eu/doceo/document/E-9-2022-000801_EN.html [accessed 30/9/2022]

³³https://www.europarl.europa.eu/doceo/document/A-9-2022-0149_EN.html paragraph 14

³⁴<https://cyprus-mail.com/2022/11/18/eight-more-turkish-cypriots-barred-from-turkey/>

2.2 Case 2 - Stelios Orphanides

Freelance journalists are particularly vulnerable to legal threats, and attempts to threaten individual journalists, as opposed to the invariably better-resourced publications they write for, have been seen as a hallmark of SLAPPs. Sara Farolfi, an Italian freelance journalist, worked with Cypriot journalist Stelios Orphanides to investigate a whistleblower's claims regarding a Libyan-owned company in Limassol, Cyprus.

Orphanides, who worked at Cypriot English-language daily Cyprus Mail and faced a number of legal threats in the past, understood that his usual outlet would find it hard to publish the allegations.

Their report titled “Cyprus Records Sheds Light on Libya’s Hidden Millions” was published by the Organised Crime and Corruption Reporting Project (OCCRP).³⁵ The report outlines how Ali Ibrahim Dabaiba the former head of Libya’s Organization for Development of Administrative Centers (ODAC) had siphoned off billions of dollars during the Gadaffi era, partly by awarding contracts to international companies he and his family had an interest in.

Dabaiba had gone into exile following the fall of Gadaffi and, by 2013, investigators in Libya were trying to enlist international assistance to trace and recover embezzled funds. Estimates of the sum lost to Libya over the 22 years Dabaiba controlled the ODAC are in the region of 6 to 7 billion US dollars.

A significant part of this activity, and the laundering of these gains, appears to have been achieved through bank accounts and companies based in Cyprus. At least seven companies in Cyprus linked to Dabaiba had issued invoices to ODAC, according to documents viewed by Farolfi and Orphanides.

Companies in the network had also been established in Germany, Switzerland and other jurisdictions. Other international financial institutions have since been linked with

³⁵<https://www.occrp.org/en/investigations/8366-cyprus-records-shed-light-on-libya-s-hidden-millions>

the ODAC funds and Dabaiba.³⁶ Ultimately, part of the money seems to have funded real estate transactions in a number of countries including the UK, Canada and Switzerland.³⁷

In August 2018, a lawyer peripherally connected to the story and quoted in the investigatory article filed a lawsuit against Orphanides and Farolfi. That lawyer is named as a plaintiff, alongside four other individual lawyers from two law firms he has an association with.

The lawsuit alleges that Orphanides and Farolfi's investigation defamed the lawyers, interfered with their professional gravitas and reputation - which opens the possibility to the award of higher damages in Cypriot law - and exposed them to humiliation and contempt. It also alleges that Orphanides and Farolfi violated their human rights to a private and family life.³⁸ The lawsuit demands compensation "either together and/or separately" in the amount of EUR 2 million from the journalists. That similar threats in Cyprus have stipulated identical amounts of damages is suggestive of their status as SLAPPs.

One of the law firms involved in the suit had previously been found guilty of corruption and bribery in an unrelated corruption scandal involving Cyprus' former Chief Prosecutor. The second law firm was set up in the wake of this scandal.³⁹

In an interview with Index on Censorship, Farolfi reported feeling "scared" and "alone" as a result of the legal action. At an event in late 2021, Orphanides spoke about the personal and professional impact of being served with legal action:

³⁶<https://www.occrp.org/en/suisse-secrets/libyans-who-looted-gaddafis-graft-ridden-development-fund-banked-at-credit-suisse>

³⁷<https://www.theguardian.com/news/2016/may/16/gaddafi-insider-accused-of-using-state-cash-to-buy-luxury-scottish-hotels>

³⁸ The claims are based on Sections 17 and 25 of Cyprus's Civil Code, Article 15 of Cyprus's Constitution Article of the Charter of Fundamental Rights of the European Union, and Article 8 of the European Convention on Human Rights (ECHR) and Fundamental Freedoms. The case reference number is 1749/2018 and it is pending before the District Court of Limassol.

³⁹<https://www.cyprusnewsreport.com/2017/03/ex-state-prosecutor-erotokritou-jailed-bribery-conviction/>

“Of course it meant for us that we had to leave our work and start preparing for this case. For the plaintiffs, it was an easy thing to file a lawsuit because it's something they do all the time, it's their job.

For us however it involved a significant series of obstacles. It involved a very steep learning curve in how to deal in such cases. It also involved finding lawyers, dedicating a lot of time finding documents for the trial and of course explaining the case to our lawyers, and so on.

We both have dedicated several weeks of working time just to prepare for this lawsuit.”

Legal fees are regulated in Cyprus, which means that the financial cost of defending a case is lower than it might be in other jurisdictions – estimated at between 5000 and 10,000 Euro over the course of a case. However, this also has the effect of lowering the barrier for plaintiffs wanting to bring a case.

Orphanides expressed his concerns that the workload and time involved for journalists defending a case was much higher than that experienced by plaintiffs in bringing it – and this is even more so in a situation where the plaintiffs are themselves legal professionals.

In similar circumstances, many freelancers find themselves entirely without legal support. In this instance, OCCRP immediately reassured the journalists that they would support them and eventually hired both of them. This proved to be particularly important for Orphanides to be able to continue his work.

On 1 March 2019, the main plaintiff in the case against the journalists bought a controlling interest in Orphanides’ then-employer, the Cyprus Mail. Shortly after the investment was made, previous critical coverage appears to have been deleted from the Cyprus Mail’s website.⁴⁰

⁴⁰<https://www.occrp.org/en/daily/9301-founder-of-disgraced-cypriot-law-firm-buys-the-cyprus-mail>

Orphanides soon left Cyprus, feeling unable to continue his investigative journalism there.

The lawsuit is still pending. A first hearing had been scheduled for October 2022 before the death in late 2021 of the main plaintiff caused further uncertainty. As of November 2021, Stelios Orphanides told an international audience that the other plaintiffs were likely to continue with the legal action. In December 2022, the case was still pending with four plaintiffs, with a procedural hearing still some months away.

Both Farolfi and Orphanides have expressed concerns over the length of the proceedings, which are not unusual by the standards of similar cases. Media cases can take five years to reach discovery stage and a case that is appealed all the way to the Supreme Court, could easily take a decade to resolve.

In late 2021, Orphanides emphasised that the duration of the case, together with the possibility of facing millions of Euros in damages, meant that it was a continual background presence in his life:

“Just thinking about what's going to happen if you lose, while you have to focus all your efforts on not losing.”

Orphanides described facing SLAPP cases as a kind of ever-present anxiety that would keep him awake at night notwithstanding his confidence in the quality of his journalism, which is primarily based on source documents.

These concerns were compounded by worries about problems in Cyprus's democratic culture and the possibility of judges being swayed by extra-legal concerns. In addition, Cyprus does not have the community of specialist media lawyers that can be found in other jurisdictions, meaning it can be challenging to locate the expertise necessary for this kind of legal defence.

International attention, access to networks and external pressure

The Farolfi-Orphanides case has widely been recognised as a SLAPP by international experts. The case was the subject of a Mapping Media Freedom alert in 2018⁴¹ and was identified by Index on Censorship as one of six examples of journalists under threat. The case was then featured at the first UK Anti-SLAPP Conference in London in November 2021.

The reach of OCCRP as an international media organisation well-connected to civil society actors is an important part of this story and may explain why this case has become one of the rare public examples of a Cypriot SLAPP. Nevertheless, it is unclear whether that attention will lead to a resolution of the case, which looks set to run into its fifth year.

⁴¹<https://www.mapmf.org/alert/23796>

2.3 Case 3 - Kisa

In general, Cyprus is considered to have an open civil society space.⁴² The experience of the non-governmental organisation KISA does, however, raise concerns about freedom of assembly in Cyprus. In its 20 years of existence, the organisation has faced defamation suits, arrest of its staff and, in 2020, deregistration and its bank account being frozen. The experience of KISA has been cited by a number of governmental and human rights bodies as a rule of law issue.

KISA (Movement for Equality, Support and Anti-Racism) is a non-governmental organisation established in 1998, in the wake of increased migration into Cyprus and other countries on the EU's southern border.⁴³ The organisation has highlighted problems with the treatment of refugees and migrants in Cyprus, including many individual cases that have proven embarrassing or otherwise problematic for the Cypriot government.

The organisation campaigns against discrimination and runs a network for support centres which provide free legal and other advice for refugees, migrants and asylum seekers. KISA's advocacy for migrants has generated controversy in Cyprus and the organisation's relationship with Cyprus' Ministry of the Interior has been described as "contentious."⁴⁴

There have been several incidents where the organisation has faced censure from official bodies

In June 2020 a decision of the Cyprus Supreme Court saw KISA fined 10,000 Euro for defamation and forgery, on the basis of a draft petition that had been leaked to one of the individuals it criticised. The 2010 petition alleged that two individuals, who had been

⁴²Rule of Law report 2022 p16, citing CIVICUS index

⁴³KISA website

⁴⁴US State Department 2021 Cyprus Human Rights Report https://www.state.gov/wp-content/uploads/2022/03/313615_CYPRUS-2021-HUMAN-RIGHTS-REPORT.pdf

appointed to positions on international human rights bodies, were the authors of an anonymous blog dedicated to independent journalist Makarios Drousiotis.

The International Federation of Human Rights (FIDH) among other organisations was highly critical of this decision, which it described as “ a series of attacks and acts of harassment against KISA for its work defending human rights”.⁴⁵

In November 2020, KISA Executive Director Doros Polycarpou was arrested in the wake of the organisation's annual Rainbow Festival, which had come under attack from anti-immigration protesters.

The riot charges laid against Polycarpou drew criticism from a number of human rights bodies, including the local office of the UN High Commissioner on Human Rights and were the subject of significant media attention.⁴⁶ The case went to trial and Polycarpou was eventually acquitted in June 2012 after police witness were found to be “not credible”.

The 2020 incident was not the first time Doros Polycarpou had been detained by police in Cyprus. The Observatory for the Protection on Human Rights Defenders lists half a dozen earlier incidents in which Mr Polycarpou and his colleagues had faced charges, the majority of which had ended in acquittal.⁴⁷

Several public statements made by Minister of the Interior Nicos Nouris about KISA and other NGOs have been seen as potentially defamatory.⁴⁸

On 14 December 2020 the Cypriot government deregistered KISA as a charity and froze its bank accounts. An August 2020 amendment to the relevant Law on Associations had required the submission of audited accounts and a revised constitution to be submitted within a two-month timeframe. For some organisations, constitutional amendments would

⁴⁵<https://www.fidh.org/en/issues/human-rights-defenders/cyprus-sentencing-of-kisa-an-ngo-working-for-the-rights-of-migrants>

⁴⁶<https://www.statewatch.org/news/2012/june/cyprus-human-rights-defender-acquitted-as-police-accusations-are-found-not-credible/>

⁴⁷<https://www.fidh.org/en/issues/human-rights-defenders/cyprus-police-abuse-and-arbitrary-detention-against-mr-doros>

⁴⁸<https://www.opendemocracy.net/en/can-europe-make-it/nationalism-meets-racism-divided-cyprus/>

require general meetings to be held, which some would inevitably find challenging at a time when pandemic restrictions still applied.

KISA maintains that it had informed General Registrar of Associations on several occasions in the second half of 2020 that it was still active, had prepared audited accounts and intended to submit all paperwork after its scheduled General Meeting in December.⁴⁹ Formal paperwork was eventually submitted in January 2021.

This administrative action against KISA again generated significant media attention, partly due to the history of antagonistic relations between the organisation and the government of Cyprus.

On 10 March, Council of Europe human rights commissioner Dunja Mijatovic wrote a letter to the Cypriot government, noting that paperwork had been filed shortly after the deadline and that KISA should not be penalised in a disproportionate manner for a technical issue⁵⁰:

“Freedom of association is an essential component of a democratic society protected by article 11 of the ECHR. According to it, restrictions on this freedom must be “prescribed by law and necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. Furthermore, the dissolution of an NGO can only be applied for serious misconduct, as provided for by the Recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe on the legal status of non-governmental organisations in Europe.

It should also only be used as a measure of last resort, when all less restrictive options have been unsuccessful, and “never be used to address minor infractions”, as set out in the joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association.

⁴⁹<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26312>

⁵⁰<https://rm.coe.int/letter-to-mr-nicos-nouris-minister-of-interior-of-cyprus-by-ms-dunja-m/1680a1c09b>

It is difficult to reconcile the requirement of proportionality and necessity that these standards impose with measures that de-register and dissolve NGOs as a result of their failure to comply with formal requirements. This applies even more forcefully when the NGO at stake complies with such requirements with a delay, as it is reportedly the case of the NGO KISA, which has been struck out of the Association Register and is currently facing a dissolution procedure.”

Human Rights Watch also made a statement drawing on Mijatovic’s letter, noting that the ability of international human rights organisations to understand what was happening within particular jurisdictions was dependent on the ability of local organisations to observe events on the ground.⁵¹ Amnesty International also made a statement, expressing the organisation’s opinion that the action that had been taken against KISA was disproportionate.⁵²

Also in March 2021, five UN Special Rapporteurs noted their “grave concern” about the deteriorating respect for freedom of association in Cyprus,⁵³ noting in particular the August 2020 changes and the treatment of KISA in particular, which they alleged was a form of official retaliation against the organisation:

“KISA appears to have been targeted in relation to the exercise of its rights to freedom of association and freedom of expression in support of migrants and combatting racial discrimination and xenophobia in Cyprus. The deregistration of associations prevents it from carrying out its activities; we are hence gravely concerned that these measures do not meet the criteria of necessity and proportionality of the aim pursued set forth in international human rights law, specifically Articles 19 and 22 ICCPR.”

KISA was not the only NGO to be affected by deregistration at the time – a large number of entities were deregistered, many of which were effectively defunct, as was the original purpose of the law. Shortly after the announcement of the decision on 17 December

⁵¹<https://www.hrw.org/news/2021/07/06/cyprus-moves-shutter-local-human-rights-group>

⁵²<https://www.amnesty.eu/news/cyprus-halt-the-dissolution-of-leading-anti-racism-organization/>

⁵³<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26312>

2021, KISA made representations to the General Registrar of Associations, with a request for an extension to supply the required documentation. This request was rejected on 7 January on the basis that granting KISA extra time would violate the principle of equal treatment.

KISA appears to be the only organisation to challenge the administrative ruling in court, which it did the day after receiving the final decision of the General Registrar.⁵⁴ 2022 according to the EC Rule of Law Report 16.

KISA filed its case against the decision of the Ministry of the Interior at the Administrative court in January 2021. In advance of an expedited hearing in March that year, 38 human rights organisations signed a joint letter calling for KISA to be reregistered, for international bodies to condemn the “judicial harassment” of KISA and for arrangements for NGO registration in Cyprus to be brought in line with international standards.⁵⁵

The decision of the Administrative Court was issued on 10 June 2021, rejecting the appeal.⁵⁶ Following this ruling, KISA proceeded to register as a non-profit company (rather than a charity).

Deregistration has impacted the activities of KISA in significant ways. It has an impact on the organisation’s access to officials and facilities. It means, for example, that in 2021 it was unable to inspect conditions at immigration detention centres, as it had done in the past.⁵⁷ Government ministers have refused to speak in fora where representatives of KISA are present.⁵⁸ The organisation has been effectively blacklisted in official terms, notwithstanding its reregistration on the company register.

⁵⁴The relevant case number is Appeal 25/2021, filed on 8 January 2021.

⁵⁵<https://picum.org/organisations-denounce-the-ongoing-harassment-against-kisa-and-call-on-the-cypriot-authorities-to-reinstate-their-official-registration-as-a-non-governmental-organisation-ngo/>

⁵⁶ Decision of the Administrative Court of 10 June 2021 in the case 25/2021. <https://kisa.org.cy/wp-content/uploads/2021/06/KISA-Dereg-Court-ruling-10062021-EL.pdf>

⁵⁷https://www.state.gov/wp-content/uploads/2022/03/313615_CYPRUS-2021-HUMAN-RIGHTS-REPORT.pdf

⁵⁸<https://cyprus-mail.com/2021/09/20/minister-a-no-show-at-mp-grilling-over-divided-family/>

Freezing KISA's bank account has had an even more severe impact, making it difficult for the organisation to continue ongoing project work. By the end of 2021, with this issue still unresolved, KISA was forced to lay off its permanent employees and was evicted from its premises.

The case is now under appeal at the Supreme Court. KISA is believed to be the only NGO to challenge deregistration in the Cypriot courts, though others did seek an administrative appeal, some of which were upheld.⁵⁹

In its submission to the ECs 2022 Rule of Law Report, the government of Cyprus committed to establishing a new platform to facilitate communication between NGOs and associations and state bodies.

⁵⁹<https://rm.coe.int/reply-of-mr-nicos-nouris-minister-of-the-interiorof-cyprus-to-the-lett/1680a1cb15>

3. Impact of cases reported

It is worth learning from the cases highlighted in an effort to implement policies, best practices and legal frameworks to prevent or minimise the impact of silencing.

While two of the three cases reported in this document highlight the silencing of journalists, this does not mean that silencing of other individuals in other professions - academia, legal, accounting, public sector and so on - does not take place in Cyprus. One common feature of the cases described here is that they received attention from national and international media and civil society.

Journalists – and, for that matter, non-governmental organisations that are members of established international networks - have the knowledge and the means to be able to promote and disclose the cases of silencing whereas others do not have these means and may not know where to turn. Publicity is not a cure-all, but as the visibility of SLAPP as a phenomenon increases in Cyprus, we would expect more cases to come to light.

It is clear that certain features of the Cypriot legal system – not least the length of time it takes for cases to move through the court system, which is very high by EU standards – increase the burden on potential SLAPP targets. Even if the financial cost of defending a case is relatively low, there is clearly a burden in terms of assembling a defence and the psychological cost of cases not being resolved for considerable periods of time.

Also of great relevance is the absence of a community of lawyers in Cyprus who specialise in defending journalists or media organisations. The kind of training that PATFox has begun to provide in Cyprus has the potential to be extremely valuable.

Common to many of these concerns is raising awareness of the threat posed by SLAPPs, the distinctive features that make a case a SLAPP and why seeking prompt dismissal of these cases is a priority for realising the rights of freedom of expression and assembly. That the cases described have led to strong reactions by journalist's unions,

politicians and civil society suggests that society is no longer tolerant of freedom of speech violations.

Raising awareness on the matter will ensure that the three branches of the state, the executive, the legislature and the judiciary will be more sensitive on issues of curtailment of freedom of expression and that the right mechanisms will be put in place to deal effectively with such cases. At the same time professionals can learn from the cases discussed in an effort to implement best practices and protect the victims of SLAPP related cases.

4. Conclusion

Freedom of expression is a human right, as is freedom of assembly. If one is limited beyond what is proportionate and necessary in a democratic society, the consequences will be a compromised democratic culture and a diminishing likelihood that corrupt, illegal or unethical behaviour will come to light.

Although the legal framework in Cyprus contains mechanisms to protect the exercise of the right to freedom of speech in particular, nevertheless there are further steps that may be taken in order to fully realise this right.

The EU through the Proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”) (“SLAPP Directive”) offers an avenue of protection when legal silencing is taking place in cross border cases. While this by no means accounts for the entirety of SLAPP cases, the smooth implementation of the SLAPP Directive in Member States including Cyprus will result to enhanced protection of individuals exercising their right of freedom of speech.

It is also important to note that the European Commission has issued recommendations addressed to Member States on how they can effectively address SLAPP cases (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’), including those that do not fall within the remit of the draft Directive.

It will be extremely important to review the domestic legal framework in Cyprus in line with the Recommendation and/or the Directive in order to ensure that the maximum protection is offered to victims of SLAPP cases.