

FREEDOM OF INFORMATION AND RULE OF LAW BACKSLIDING IN THE EUROPEAN UNION*

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I. THE PROGRESSIVE DEVELOPMENT OF THE “SURVEILLANCE SOCIETY” BETWEEN RULE OF LAW BACKSLIDING, DIGITALIZATION, AND WAR

European Union States, not only the so-called “illiberal”, such as Hungary, Poland, and Romania, but also the other, more democratic States, try to eliminate any kind of opposition, with the purpose of consolidating the “surveillance society”, based on the strict control of citizens. In this context of general involution, journalists are strongly exposed to the risk of being subjected to dissuasive measures to prevent proper performance.

This study focuses on the “chilling effect” of measures restricting journalists’ freedom of expression¹. It will raise awareness of the dangers facing investigative journalists and

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¹ The concept of “chilling effect” was elaborated by the U.S. Supreme Court, *Wieman v. Updegraff*, 344 U.S. 183 (1952). In this regard, see you the section “Notes” of *Columbia Law Review*, 69(5)/1969, *The Chilling Effect in Constitutional Law*, p. 808 ff. According to Judith Townend, “Freedom of Expression and the Chilling Effect”, in Howard Tumber and Silvio Waisbord (eds.), *Routledge companion to media and human rights*, Routledge (2017), 73 ss., the chilling effect is a “pervasive and popular” notion: “It metaphorically suggests a negative deterrence of communication: that a person or organization is made physically colder by inhibiting the exercise of their right to free expression”. In her opinion “The chilling effect is not an esoteric legal metaphor [...] It can, but does not have to mean, an outright obstruction of human rights relating to speech. ‘Chilling’ does not necessarily mean to make ice cold; the metaphorical suggestion of temperature suggests a scale of deterrence from cool to freezing. The chilling effect is used to describe overt censorship such as a government banning publication of a book, as well as more subtle controls such as ambiguous legislation and high legal costs that provoke uncertainty and fear among writers and journalists.” For a reformulation of this concept, see you: Valentina Faggiani, “Il chilling effect sulla libertà di informazione dei giornalisti nel quadro della crisi dello Stato di diritto,” in *Il costituzionalismo digitale: tra realtà digitale, prospettiva tecnologica e mera distopia costituzionale*, *lceonline* (www.lceonline.eu), 2 (2023), I, 1-12.

media service providers with the purpose of safeguarding their “public watchdog” role in democratic societies and upholding the rule of law.

The contribution consists of three parts. The first section analyses the negative impact of rule of law backsliding on journalists’ freedom of information. In the second part, the focus will be on the jurisprudence of the European Court of Human Rights (ECtHR) to protect such professionals. The third part will study Regulation (EU) 2024/1083, establishing a common framework for media services in the internal market (European Media Freedom Act)² and Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (Strategic lawsuits against public participation)³.

Freedom of expression and pluralistic media environment is a pillar of democracy⁴. It “is essential for the rule of law”⁵. The existence of “independent media play[s] an important role as watchdogs” of legal system and it holds “power to account”⁶. Therefore, the media should be free and independent of the eventual pressures derived by politicians and enterprises that want to control them, concentrating the market in the hands of few people. This undermines media pluralism and safeguards editorial independence.

In this regard, the Media Pluralism Monitor highlights “the risks” in this field “in all Member States”, although in the Central Eastern States and the Western Balkan countries, the situation is more serious. The main controversial areas are four: “fundamental protection of media freedom, market plurality, political independence, and the social inclusiveness of media”⁷.

These risks for the freedom of expression and information have increased for the influence of two global interconnected phenomena: the rule of law backsliding in the EU, the process of progressive erosion of ROL, and its structural elements⁸, such as pluralism and freedom of media, and digitalization. Indeed, to these two phenomena, we

² Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), PE/4/2024/REV/1, OJ L, 2024/1083 (March 17, 2024).

³ 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 (April 16, 2024).

⁴ Juan José Solozábal Echavarría, “La libertad de expresión desde la teoría de los derechos fundamentales,” *Revista española de derecho constitucional*, 11, 32 (1991), 73-114.

⁵ According to European Commission, Communication: 2024 Rule of Law Report. The rule of law situation in the European Union, Brussels, COM (2024) 800 final, (July 24, 2024) 25.

⁶ *Id.* The Recommendation of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), adopted on 5 April 2024 at the 1494th meeting of the Ministers’ Deputies, CM/Rec (2024) 2, defines the “freedom of expression the bedrock of any democratic system”.

⁷ European Commission, Shaping Europe’s digital future, Shaping Europe’s digital future, Monitoring media pluralism in the digital era, [Monitoring media pluralism in the digital era | Shaping Europe’s digital future](#), 2024.

⁸ Brian Z., Tamanaha, “The History and Elements of the Rule of Law”, *Singapore Journal of Legal Studies* (2012), 233-236; Paul Craig, “Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework”, *Public law*, 3 (1997), 467-487.

can also add other external contexts that have a great incidence: the war, particularly the conflict in Ukraine and the conflict Israel-Hamas in Gaza, and in general the existence of dictatorial States. It is sufficient to consider the case of Cecilia Sala, an Italian journalist who was arrested before Christmas 2024 without having committed any crime. She was accused to have violated the “Islamic Law”, a broad accusation without any formal charges. Sala was finally freed, after 21 days, thanks to the triple channel of intervention adopted by the Italian Government: political, diplomatic, through the negotiation with both Iran and the United States, and of intelligence. Italian Government accepted to release Abedini, Iranian engineer, accused to facilitate the transfer of drones and detained in Milan. Without any doubt a controversial exchange.

The interaction between these “threats” “has systemic impact” on fundamental rights⁹. They convert them in the “coal mine for Europe in 2023”¹⁰. The illiberal context is characterized by the adoption of measures restricting journalists, producing a “chilling effect” not only on the freedom of expression and information, but also on the democratic system, transforming it into a hybrid model of State¹¹. Journalists and other media professionals are victims of attacks, assaults, harassment, smear campaigns, murders, and economic sanctions. These trends have also increased recently within the EU, although it continues to be one of the safest spaces compared to other continents¹².

In this situation of involution, journalists are strongly exposed to the risk of being subjected to dissuasive measures to prevent their proper performance. Correct access to information is fundamental for citizens to develop their opinions, to trust institutions, and thus to participate freely in democratic processes, controlling executive actions. In fact, illiberal measures against the freedom of expression produce negative effects on public debate, communication, the freedom of the press, the right to receive objective and truthful information on matters of general interest, and they have “chain effect” on a plurality of rights. They develop a “mechanism of justice perversion”¹³, that undermines the Rule of Law, condemning an innocent person for correctly developing his works¹⁴. These professionals are under attack. Illiberal governments, but also more democratic, have an interest in maintaining control of mass media.

A recent example in this regard is the Law protecting national sovereignty, adopted by Hungary on December 12, 2023, to fight the influence of political parties and elections by foreign organizations and individuals, which constitutes a serious risk for national

⁹ Platform to Promote the Protection of Journalism and Safety of Journalists, Press Freedom in Europe: Time to Turn the Tide. Annual assessment of press freedom in Europe, Council of Europe, 2024, 11.

¹⁰ *Ibid.*, 8.

¹¹ Four are the characteristics of this erosive process, to which we must add a domino component with a powerful force to extend it to more States: intrinsic weakness, progressivity, contradiction between form and substance, and negative impact on the structural elements of Rule of Law. In this regard, see you: Valentina Faggiani, “Rule of Law Backsliding y libertad de expresión en la UE”, *Il diritto dell’Unione europea*, n. 3-4 (2021), 467-498.

¹² AA.VV., *Safety of journalists and the fighting of corruption in the EU Policy Department for Citizens’ Rights and Constitutional Affairs*, Directorate-General for Internal Policies, PE 655.187 (July 2020).

¹³ Trine Baumbach, “Chilling Effect as a European Court of Human Rights’ Concept in Media Law Cases”, *Bergen Journal of Criminal Law and Criminal Justice*, 6, 1 (2018), 113.

¹⁴ In this sense, Ana Gascón Marcén, “The Platform for the Protection of Journalists: A Mechanism for Cooperation between Non-Governmental Organisations and the Council of Europe”, *Utrecht Law Review*, 17, 2 (2021), 42-55.

security¹⁵. To this end, the law institutes an independent body, the Office for the Defense of Sovereignty¹⁶, whose function is to investigate the use of foreign funds¹⁷ with the aim of influencing decision-making processes and democratic pluralism in the interests of other states.

The Office for the Defense of Sovereignty is an administrative body. It cannot adopt sanctions, but it can perform investigations on journalists, media organizations, civil society, and anyone engaged in “advocacy”¹⁸. The Venice Commission criticized this measure, considering that “it would be necessary to include some basic principles in the law making it clear how the Office shall proceed, on what grounds it shall start investigations, and to require a ‘reasonable suspicion’ or a ‘strong reasonable suspicion’ that a person or organization has acted unlawfully”¹⁹.

In this framework, digital society facilitates these regressive trends through the distortion of modern technologies. Digitalization has changed the meaning, content, and scope of these rights, which are exercised through the Internet, online platforms, social networks, and artificial intelligence²⁰. The use of technology has the objective of eliminating any opposition and consolidating the so-called “surveillance society”, based on the strict control of citizens²¹.

The “Pegasus scandal”, also so-called “Europe Watergate”, is a clear example of a “chilling effect” measure on journalists through massive surveillance²². This spyware has affected journalists in many countries, among others. Pegasus can intercept and process relevant quantities of data. The EU member States have invoked national security to justify the use of this “unlawful and intrusive” mechanism²³. After this case, the EU Parliament, considering the “transnational and EU dimension of the use of spyware”²⁴, decided to intervene, opening an investigation that has facilitated the

¹⁵ Act LXXXVIII of 2023 on the protection of national sovereignty (as promulgated in the official gazette Magyar Közlöny 185, 21.12.2023, pp. 10 429-10 438), <https://njt.hu/jogszabaly/en/2023-88-00-00>.

¹⁶ Art. 2, Act LXXXVIII of 2023.

¹⁷ Art. 3, Act LXXXVIII of 2023.

¹⁸ In this regard, European Commission for democracy through law (Venice Commission), Hungary Opinion on Act LXXXVIII of 2023 on the protection of National Sovereignty, 138th Plenary Session, Venice, 15-16 March 2024, Strasbourg (March 18, 2024), CDL-AD (2024)001, 51 and 79.

¹⁹ *Ibid.*, 55 and 56.

²⁰ Miguel Ángel Presno Linera, “La libertad de expresión en internet y las redes sociales: análisis jurisprudencial”, *Revista catalana de dret públic* (2020), 65.

²¹ Regarding the indefinite and ambiguous nature of “chilling effect”, see you Frederick Schauer, “Fear, Risk and the First Amendment: Unraveling the Chilling Effect”, *Boston University Law Review*, 1978, 685.

²² Platform to Promote the Protection of Journalism and Safety of Journalists, Press Freedom in Europe: Time to Turn the Tide, *cit.*, 70-74.

²³ European Parliament, Setting spyware standards after the Pegasus scandal, PE 766.262 (November, 2024), [Setting spyware standards after Europe's spying scandal](#). According to the art. 2 (20), EU Regulation Media Act, “intrusive surveillance software” means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analyzing data from such products or from the natural or legal persons using such products, including in an indiscriminate manner.

²⁴ European Parliament, Investigation of the use of Pegasus and equivalent surveillance spyware, Recommendation of 15 June 2023 to the Council and the Commission following the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of

elaboration of a set of standards for using these measures only in exceptional circumstances and with a preliminary judicial authorization²⁵.

Finally, the context of war and, in general, in authoritarian states, such as Russia, Iran, and Syria, is extremely dangerous: it justifies the control of journalists' activities or their detention or arrest. In the conflict in Ukraine, for example, Russia has adopted measures to misinform the population, such as the closure of LinkedIn, Facebook, Twitter, Instagram, and WhatsApp, the sovereign Internet project (RuNet) to disconnect the state from global cyberspace²⁶. This project gives the government control over national services and content access. However, the Russian government also adopted other strong measures, such as retaliation against journalists, especially foreign ones, who were forced to suspend their activities due to the risk of being subjected to penalties of up to 15 years under the law for spreading false news about the situation in Ukraine, and in general, reprisals against people protesting the war.

In March 2022, the EU sanctioned the suspension of the Sputnik and Russia Today programs, considering them to be instruments of disinformation in the Putin's hands²⁷. This decision affects freedom of expression, being a case of censorship, but it is important to consider that in this context of exceptionality the national security of EU acquires the priority. The Court of Justice also justified, in the case *RT France*²⁸, the temporary suspension of freedom of press and information, due to the extraordinary and urgent context derived by the conflict, as part of the Pacific instruments of the EU. In its opinion, the emission of Russia Today activities and favorable propaganda against Ukrainian aggression had a prejudicial effect, integrating the characteristics of a hybrid attack.

II. THE CHILLING EFFECT ON THE JOURNALISTS: THE STANDARDS OF ECtHR

2.1. The ECtHR judgments as the basis for the protection of the rule of law

Pegasus and equivalent surveillance spyware (2023/2500(RSP)), Thursday, 15 June 2023 – Strasbourg, P9_TA(2023)0244, B9-0260/2023, par. 32.

²⁵ *Id.*

²⁶ Manuel G. Pascual, "El Kremlin da el primer paso para aislar el internet ruso del resto del mundo", *El País* (March 12, 2022) (<https://elpais.com/tecnologia/2022-03-12/el-kremlin-da-el-primer-paso-para-aislar-el-internet-ruso-del-resto-del-mundo.html>).

²⁷ Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ, n. 65 March 2, 2022). In this decision the activity of *RT- Russia Today* and *Sputnik* was suspended.

²⁸ General Court (Grand Chamber), T-125/22, *RT France vs. Council of European Union*, 198-199. According to Poli, S., and Finelli, F., "Le misure restrittive russe davanti alla Corte di giustizia dell'Unione europea: le tendenze giurisprudenziali emergenti", *Il diritto dell'Unione Europea*, 3-4 (2023), 523-567. In this regard, see you pp. 562-563, according to the authors the position of General Court in *RT France* case is positive. In their opinion "La disinformazione finalizzata a nascondere crimini compiuti dai soldati russi o a giustificare tali azioni non contribuisce al dibattito pubblico ma è paragonabile alla propaganda a favore della guerra" ... "infatti, la libertà di espressione è un diritto a doppio senso che richiede la protezione sia del diritto di espressione che del diritto ad essere informati. Tale ultimo diritto è tanto più esposto a violazioni quanto meno indipendenti sono i mezzi di comunicazione che forniscono informazioni. L'unico modo per salvaguardare il contenuto del menzionato diritto è stabilire un divieto di diffondere notizie da parte dei due organi di informazione. Non sarebbe stato possibile adottare una misura meno restrittiva costituita, ad esempio, dall'esclusione caso per caso del contenuto informativo offerto da RT".

According to ECtHR “Freedom of expression constitutes one of the essential foundations of a democratic society and the safeguards to be afforded to the press are of particular importance”²⁹. This right, which must be exercised conforming “the bounds set”, comprehends the “freedom to receive and impart information and ideas without interference by public authorities” (art. 10 ECHR)³⁰. At the same time, the freedom of information also includes “The right of journalists to protect their sources”.³¹ This is a cornerstone of the freedom of the press, and sources can be deterred from assisting the press in informing the public on matters of public interest.

In recent years, the protection of freedom of expression and information and the related rights has suffered a significant decline due to the adoption of chilling effect measures, which have reduced EU standards and violated European values (art. 2 TEU). This reduction is usually the consequence of measures or judicial decisions that produce a “chilling effect”. Their objective is to discourage individuals from exercising their rights or fulfilling their duties, such as in the case of journalists³² or, in general, professionals of Law, for fear of retaliation, being subjected to harsh sanctions, threats, or campaigns of attacks and defamation.

In this framework, the ECtHR has evaluated measures of chilling effect, adopted against journalists and freedom of press, judging cases in which these professionals are deprived of their work, have been fined, have been deprived of their personal freedom to force them to reveal their sources³³, have been threatened in order to induce them to remain silent, to prevent them from reporting certain information through the use of surveillance measures or the interception of communications by public authorities, to prevent the proper performance of their duties³⁴, or have even lost their lives.

This jurisprudence is interesting for two reasons. First, it has constituted the basis for reinforcing the protection of journalists, creating a common framework; and second, in

²⁹ ECtHR, judgment of 30 August 2022 (final 30 November 2022), *Sergey and Sorokin v. Russia*, application n. 52808/09, § 38.

³⁰ *Ibid.*, 39. According to Article 10 ECHR “1. 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 Article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” In this regard, see you: Vladimiro Zagrebelsky, Roberto Chenal, Laura Tomasi, L., *Manuale dei diritti fondamentali in Europa*, Il Mulino, Bologna (2016).

³¹ ECtHR, *Sergey and Sorokin v. Russia*, § 39.

³² Trine Baumbach, “Chilling Effect as a European Court of Human Rights’ Concept in Media Law Cases”, *Bergen Journal of Criminal Law and Criminal Justice*, 6, 1 (2018), 92-114; Ronan O. Fathaigh, “Article 10 and the chilling effect principle”, *European Human Rights Law Review*, 3, 2013, 304-313.

³³ ECtHR, Judgment of 22 February 2008, *Voskuil v. Netherlands*, n. 64752/01, § 71.

³⁴ Regarding the ECtHR judgments in this regard see you: ECtHR, Key Theme, Article 10, Protection of journalists and journalistic activities, 31.08.2024 ([Protection of journalists and journalistic activities](#)); Council of Europe, “Guide on Article 10 of the European Convention on Human Rights Freedom of expression” (August 31, 2022); Council of Europe, “Platform to promote the protection of journalism and safety of journalists, Other acts having chilling effects on media freedom”, cit..

general, it has contributed to protecting the ROL, measuring the compatibility with this clause of national measures.

In this regard, L. PECH, according to the jurisprudence of the ECtHR on protection journalists and the more recent judgments of EU Court of Justice on the judicial independence in the EU Central-Eastern States, especially Hungary, Poland, and Romania, identifies “three technics”³⁵, which produce the chilling effect:

- a. The development of an intimidating context, that induces to self-censorship for the fear of consequences.
- b. The adoption of legal acts with ambiguous provisions, which grant a wide margin of discretion to interpretation; their arbitrary application against people who show a criticism of autocratic governments, such as opposition politicians, journalists, judges, prosecutors, and lawyers.
- c. The imposition of disproportionate sanctions (Art. 52.3 EU Charter of Fundamental Rights, the Charter).

From this approximation, we can deduce that States have both “positive and negative duties”, according to which they shall refrain from such measures and oppose them because they violate the elementary core, the heart, of the ROL and therefore also of freedom of expression³⁶.

In this way, the “chilling effect” has acquired the value of parameter for evaluating whether certain measures respect the Rule of Law and, therefore, the fundamental principles of democratic system³⁷. To this end, national measures must be in accordance with the “test of proportionality” (they must be stated by law, necessary and proportioned). In this sense, the States cannot introduce distortion factors that prevent the exercise of most elementary fundamental rights.

The chilling effect is a general and ambiguous category; it is not easy to identify it. Anyway, its identification in ‘illiberal States’³⁸ could be easier. In these contexts, it is possible to identify an additional element that gives it more specificity, allowing us to discover whether these States have overcome the European values *ex art. 2 TEU*. This element is the situation of a general crisis, which is interesting to them.

Reforms excessively restrictive, which could prevent the exercise of journalists’ professional duty, represent a piece in the strategy of these States to dismantle the fundamental structures of democracy. It becomes the needle in the balancing test.

2.2. In particular, standards on the journalists’ victims of killing and on the secret of sources

³⁵ Laurent Pech, “The concept of chilling effect Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU”, European Policy Institute (2021), 5.

³⁶ *Ibid.*, 33.

³⁷ In this sense, ECtHR, judgment of 22 July 2021, *Reczkowicz c. Poland*, n. 43447/19.

³⁸ Judith Townend, *op. cit.*, 73. Frederick Schauer, *op. cit.*, p. 690, distinguish between a “*benign chilling effect*” and an “*invidious chilling effect*”.

The cases in which the victims of a killing are journalists are interesting and controversial. They must “check a connection of the crime to the journalist’s professional activity”³⁹. ECtHR in *Mazepa and Others v. Russia*, delivered in 2018, analyzed the death of Ms. Anna Politkovskaya, a journalist, who investigated the operation so-called “Second Chechen War”, a counterterrorism operation, on violations of human rights in the Chechen Republic. She was also critical of President Putin’s politics. She died in 2006 in her apartment in Moscow⁴⁰.

In this judgment, ECtHR reiterates the standards in this field and recognizes the “State’s obligation to carry out an effective investigation” inherent in Art. 2 ECHR. In this way, it is possible to discover the facts and identify and punish the guilty, doing justice through the law⁴¹. This obligation is not of the result but of means⁴². A deficient investigation prevents determination of the circumstances of the case and a deep, objective, and impartial analysis of relevant elements or the person responsible. The effectiveness is evaluated according to the following parameters (Art. 2 ECHR): the adequacy, promptness, and reasonable expedition, involvement of the deceased person’s family, and independence of the investigation⁴³.

Basing on these standards, ECtHR concluded that the investigation on the killing of Anna Politkovskaya was not effectiveness (art. 2 ECHR)⁴⁴. In fact, although it allowed condemning the five perpetrators of crime, there was insufficient information on the “mind” of the crime and regarding documents of the file⁴⁵. The only hypothesis was “a well-known Russian former politician in London”, died in 2013, and there was no unmistakable evidence⁴⁶.

The ECtHR, considering the work of the journalist on the conflict in Chechnya and the context of its country, concluded that the present investigation did not satisfy the adequacy requirement and the reasonable duration of proceeding. Its length for years, without evident results, is an index of ineffectiveness, integrating a violation of art. 2 ECHR⁴⁷.

In this framework, it is also interesting to consider the ECtHR judgments on the secrecy of journalists, in which the Court reaffirmed the right to investigate and not to reveal sources⁴⁸. Their protection is a pillar of the press. The guarantee of professional secrecy allows to the press obtaining indispensable data to inform citizens on cases of public interest, playing a “vital public-watchdog role”⁴⁹. In this regard, journalists are the first to report violations of the rule of law⁵⁰. Without this protection, the press is unable to offer

³⁹ ECtHR, Judgment of 17 July 2018 (final 17 October 2018), *Mazepa and Others v. Russia*, application n. 15086/07, § 73.

⁴⁰ *Ibid.*, §§ 6-18.

⁴¹ *Ibid.*, §§ 60 and 69.

⁴² *Ibid.*, § 74.

⁴³ *Ibid.*, § 70.

⁴⁴ *Ibid.*, §§ 83-84.

⁴⁵ *Ibid.*, §§ 75 and 76.

⁴⁶ *Ibid.*, § 77.

⁴⁷ *Ibid.*, §§ 78-84.

⁴⁸ ECtHR, 1^o April 2021 (final 1^o July 2021), *Sedletska v. Ukraine*, n. 42634/18.

⁴⁹ ECHR (GC), 27 March 1996, *Goodwin v. United Kingdom*, n. 17488/90, § 39; and ECHR, *Sedletska v. Ukraine*, § 54.

⁵⁰ According to ECtHR the concept of journalist source includes “any person who provides information to a journalist” and it considers that the “information identifying a source” “include[s] any information likely to lead to the identification of a source”, both “the factual circumstances of acquiring information from a

accurate and reliable information, producing a “chilling effect”⁵¹. It is therefore necessary to develop a national set of procedural mechanisms to protect this guarantee by strengthening the confidentiality of such information.

In *Sedletska v. Ukraine* case (2021), on the corruption of a prosecutor, investigated by the national anti-corruption authority, the ECtHR found that the access to the applicant’s communication data recorded by her mobile phone company, although authorized by the judicial authorities (a legitimate aim and a measure prescribed by law), violated Article 10 ECHR⁵². It was, in fact, a very intrusive, disproportionate, and unnecessary measure in a democratic society.

According to ECtHR, the protection of journalistic sources is of paramount importance for the freedom of the press in democratic societies. Therefore, it requires strict control of the proportionality test through careful assessment. Interference in this right can only lead when the disclosure of a source is necessary to achieve a “public interest.”

This means that the right of journalists not to reveal their sources cannot be considered a mere privilege that is granted or not granted, depending on the lawfulness or unlawfulness of their sources, but it is an element of the right to inform, which must be treated with the utmost caution. A State can introduce restrictions to uncovering certain crimes, but they cannot violate fundamental rights⁵³.

In this case there are three decisive aspects: the necessary, proportionate, and justified character of the measure, i.e. that the surveillance and geolocation was ordered by the courts to favor the prosecution of serious crimes (public interest of paramount importance); there were no reasonable alternative means of obtaining the requested information; and finally, the legitimate interest in disclosure overcomes the public interest in non-disclosure.

This judgment is interesting from the perspective of the dangers for our rights derived by the so-called “surveillance society,” whose objective is to constantly monitor citizens and all aspects of their lives. In fact, in this new context, the concept of the chilling effect assumes new worrying profiles. The more incisive, intrusive, and omnipresent character of control exercised by technologies can block citizens, who become passive actors of a new reality against which they are not able to rebel. Fortunately, the ECtHR has explicitly

source by a journalist” and “the unpublished content of the information provided by a source to a journalist” (ECtHR, *Sedletska v. Ukraine*, § 55).

⁵¹ *Ibid.* In this point, ECtHR use expressly the word “chilling effect”, affirming that “A chilling effect on the freedom of the press will arise wherever journalists are seen to assist in the identification of anonymous sources”. In this regard, see you also ECtHR (GC), judgment of 14 September 2010, *Sanoma Uitgevers B.V. v. Netherlands*, n. 38224/03, § 71.

⁵² ECtHR, *Sedletska v. Ukraine*, § 64 ff. According to ECtHR the judges should not have been sufficiently demonstrated that the interference produced by the adopted measures was “proportionate” and that responded to a “pressing social need”.

⁵³ *Ibid.*, § 62. In this concrete case, the ECtHR declared the District Court's order of 27 August 2018 to be “manifestly disproportionate”, considering the legitimate objective: to investigate an alleged leak of information and to protect the journalist’s privacy. Thus, the authorization of the Prosecutor General’s Office, without special safeguards, to recompile a wide range of data concerning the applicant’s communications about her personal and professional contacts, with the inclusion of information about the telephone numbers, time and duration of the communications, during a period of 16 months, had endangered both the sources and the journalist. The seriousness of the risk violates interests protected by Article 10 ECHR. It is interesting to highlight that the applicant was investigating cases of corruption, which involved high instances and prejudiced the Office of the Attorney General (§ 64).

stated that these measures of control are incompatible with the conventional framework. In its view, they violate the right to privacy and directly affect the exercise of the delicate functions of investigative journalists. They inhibit the pluralism of information and consequently the hard core of freedom of expression.

The *Sergey Sorokin v. Russia* case (2022) added a piece to this puzzle, analyzing the compatibility of the search of the applicant's home and the seizure of his electronic devices with Art. 10.2 ECHR. These orders present a major level of seriousness, being more intrusive than a mere revelation of sources. They are more drastic and incisive measures with a significant impact on the identity of sources, on the reputation of newspapers or publications, and on "members of the public" to receive anonymous information⁵⁴. They allow law enforcement authorities to accede to journalists' workplaces unannounced and armed and they have access to all the documentation⁵⁵.

Therefore, it needs to establish a specific procedure or safeguards, such as the preliminary review by a judge or other independent and impartial decision-making body, independent from the executive and legislative power and the parties. It has the scope to determine whether the public interest outweighs the protection of the particular interest of journalists and to examine "the potential risks and respective interests prior to any disclosure", including the possibility to apply a less intrusive measure⁵⁶.

On the contrary, an *ex post* examination after the delivery of material able to reveal such sources would undermine the essence of the right to confidentiality. And finally, it is also especially important to establish specific safeguards for the examination of electronic data carriers containing protected materials, for example, regarding the relationship between an attorney and client or the context of bulk interception of journalistic communications⁵⁷. On these premises, ECtHR concluded that, although the search and seizure measures had a legal basis in national law, the lack of procedural safeguards protecting journalistic sources and addressing the seizure and examination of data carriers makes these measure not "necessary in a democratic society" to achieve the legitimate aim pursued.

III. THE NEED TO RESPOND TO THE IMPUNITY OF JOURNALISTS' CRIMES: THE EU ACTION

3.1. The "European Media Freedom Act"

The seriousness of this situation has led the European Commission to include since its 2020 Rule of Law Report a chapter on freedom and pluralism in the media⁵⁸. In fact, this specific manifestation of freedom of expression forms part of the content of Art. 2 TEU. It is an essential element of democratic systems that does not tolerate interference by public authorities and does not consider borders (Art. 11 of the Charter)⁵⁹. In this

⁵⁴ ECtHR, *Sergey Sorokin v. Russia*, § 89-44.

⁵⁵ *Ibid.*, § 45.

⁵⁶ *Ibid.*, §§ 47 and 48.

⁵⁷ *Ibid.*, § 49.

⁵⁸ European Commission, Communication 2020 Rule of Law Report The rule of law situation in the European Union, COM/2020/580 final, 2.3.

⁵⁹ These elements are recognized not only by national Constitution and in the ECHR but also in the Art. 11 of the Charter, which establishes: "1. 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

line, the Media Observatory showed a deterioration of the situation compared to 2020, especially from the pandemic derived by Covid-19⁶⁰.

The problem of independence and pluralism and therefore the transparency of media is a challenge that affects all EU States. This has induced the EU to intervene, elaborating a package set of measures and to conduct a debate in this field. Through this action in 2024 it has adopted two interesting acts, Regulation (EU) 2024/1083 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) and Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

The legal base of the European Media Freedom Act are Art. 11 of the Charter on the right to receive and communicate information and the State's obligation to respect the freedom and pluralism of the media, and Art. 22 of the Charter on cultural, religious, and linguistic diversity⁶¹. The media (audiovisual media, radio, and press) has an essential role both for democracy and rule of law, and the internal market.

The guarantee of their freedom and pluralism by the States is more complicated in current society, characterized by the digitalization and internationalization of the market. The modern technologies, particularly Internet and artificial intelligence, broke the spatial-temporal barriers. So, the media are also able to reach a large audience through access to more languages and the translation⁶². This transnationality requires a common legal framework, "standards of protection for journalistic sources and confidential communications about coercive measures used by Member States to obtain such information"⁶³.

Based on these considerations, the European Media Freedom Act, which regulates the proper functioning of the internal market for media services and the institution of the European Board for Media Services, harmonizes certain aspects of this field. The Regulation, as an EU source, is obligatory in all elements and has direct effect (Art. 288 TFEU), but it does not affect the possibility for Member States to adopt more detailed or stricter rules", establishing "a higher level of protection for media pluralism⁶⁴ or editorial independence in accordance with this Regulation and comply with Union law"⁶⁵. The common framework aims at avoiding the fragmentation and unequal

public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected".

⁶⁰ European Commission, Communication 2020 Rule of Law Report The rule of law situation in the European Union, 3.3; Committee on Civil Liberties, Justice and Home Affairs, Report on strengthening media freedom: the protection of journalists in Europe, hate speech, disinformation and the role of platforms, 3.11.2020 - (2020/2009(INI)), A9-0205/2020. Rapporteur: Magdalena Adamowicz. European Federation of Journalists, *Rule of Law Report: Member States should improve journalists' working conditions*, <https://europeanjournalists.org/blog/2021/07/22/eu-rule-of-law-report-member-states-should-improve-journalists-working-conditions/>.

⁶¹ Cons. n. 8, Regulation (EU) 2024/1083.

⁶² Judgment of the Court of Justice of 12 December 2006, *Germany v. Parliament and Council*, C-380/03, ECLI:EU:C:2006:772, paragraphs 53 and 54.

⁶³ Cons. 2 and 3, Regulation (EU) 2024/1083.

⁶⁴ Art. 3, Regulation (EU) 2024/1083.

⁶⁵ Art. 1, par. 3, Regulation (EU) 2024/1083.

conditions between operators, developing more cooperation between the authorities and national regulatory bodies and the rational allocation of public and private resources.

The scope is to safeguard editorially and functionally independence⁶⁶ and the impartiality and plurality of media services, fighting direct and indirect interference with public opinion. These interferences can proceed by the State or other actors, such as “public authorities, elected officials, government officials, and politicians” and “shareholders and other private parties”⁶⁷. These forms of disinformation, manipulation of information, and interference by foreign players can also occur.

Journalists suffer attacks, especially when investigating crimes and corruption. The situation of investigative journalists is particularly complicated: their function is to “say truth to power.” “In almost 9 out of 10 cases, the perpetrators of these crimes go unpunished”; therefore, it urged to “do more”⁶⁸. These percentages represent a failure of justice and security systems⁶⁹. An illustrative picture is provided by some well-known and episodes: from the attack on Charlie Hebdo, the headquarters of the satirical newspaper, in 2015 in France, to the series of murders of investigative journalists: the death of Daphne Caruana Galizia in Malta in 2017⁷⁰, Ján Kuciak and his girlfriend Martina Kušnírová in Slovakia in 2018⁷¹, Giorgios Karaivaz in Greece⁷² and Peter R. De Vries in the Netherlands, 2021. These are only some sad examples.

This collective is under attack for the importance of access to information. Through free information, citizens can develop their own opinions, trust institutions, and freely participate in democratic processes, controlling the actions of the executive. For this reason, both illiberal and less illiberal governments are interested in maintaining control.

This profession exposes them to the “capture”, due to the risk of being subjected to dissuasive measures, which could prevent them from performing their duties properly, threatening their physical integrity and their lives. On too many occasions, they must resolve the difficult dilemma of balancing the proper performance of their work in pursuit of the truth and the dissemination of objective and truthful information while putting their own lives and those of their closest family members at risk.

⁶⁶ Art. 5, Regulation (EU) 2024/1083.

⁶⁷ Cons. n. 18 and Art. 4, Regulation (EU) 2024/1083.

⁶⁸ António Guterres, Stop all'impunità per i crimini contro i giornalisti: una sfida cruciale per il 2024, “Si stima che, globalmente, 9 su 10 degli omicidi di giornalisti restino impuniti. L'impunità genera ulteriore violenza. Questo deve cambiare” [Stop all'impunità per i crimini contro i giornalisti: una sfida cruciale per il 2024 – www.onuitalia.it](https://www.onuitalia.it) (2024).

⁶⁹ UNESCO. Director-General, “Mensaje de la Sra. Audrey Azoulay, Directora General de la UNESCO, con motivo del Día Internacional para Poner Fin a la Impunidad de los Crímenes contra Periodistas”, 2.11.2021, DG/ME/ID/2021/47 (unesdoc.unesco.org/ark:/48223/pf0000379587_spa).

⁷⁰ Against the journalist, specialised on fight against corruption, were have been presented 47 SLAPP.

⁷¹ European Parliament, Resolution of 19 April 2018 on the Protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová (2018/2628(RSP)), OJ, 2019/C 390/15 (18 November 2019).

⁷² Eleni Stamatoukou, News. Greek Court Rules Crime Reporter Was Murdered for His Journalism, Athens BIRN (December 19, 2024).

The problem of “media capture” is relevant for public service media providers given their proximity to the state⁷³. So, it needs to establish “procedures for the appointment and the dismissal of the head of management or the members of the management board of public service media providers” based on open, effective, and nondiscriminatory procedures and transparent, objective, nondiscriminatory, and proportionate criteria laid down in advance at the national level.

Decisions on the anticipated dismissal of the head of management or the members of the management board of public service media providers shall have a justification and they shall be exceptional, where they do not satisfy the conditions for the exercise of their functions⁷⁴. And finally, the funding procedures for public service media providers are based on transparent and objective criteria set out in advance. Member States shall designate one or more independent authorities or bodies or establish mechanisms free from political influence by governments⁷⁵.

The defense from these pressures aims at protecting “journalistic sources and confidential communications”, both online and offline. These are “raw material” to product and distribution of contents and so to reinforce the media pluralism and the editorial independence⁷⁶. Journalists play an important social role, being the content that they disseminate a public good⁷⁷.

According to Art. 4, par. 3, Regulation (EU) 2024/1083, to protect journalistic sources and confidential communications, Member States shall not:

(a) oblige media service providers or their editorial staff to disclose information related to or capable of identifying journalistic sources or confidential communications or oblige any person who, because of their regular or professional relationship with a media service provider or its editorial staff, might have such information to disclose it

(b) detain, sanction, intercept or inspect media service providers or their editorial staff or subject them or their corporate or private premises to surveillance or search and seizure for obtaining information related to or capable of identifying journalistic sources or confidential communications or detain, sanction, intercept or inspect any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have such information or subject them or their corporate or private premises to surveillance or search and seizure for the purpose of obtaining such information.

Member States can establish derogations to these provisions, limiting these rights, when it is stated by Union or national law, and when it satisfies Art. 52(1) of the Charter⁷⁸,

⁷³ Cons. 29 and 30, Regulation (EU) 2024/1083.

⁷⁴ Cons. 28 and 31 and Art. 5 Regulation (EU) 2024/1083.

⁷⁵ Cons. 31, Regulation (EU) 2024/1083.

⁷⁶ Cons. 19, Regulation (EU) 2024/1083.

⁷⁷ Cons. 17, Regulation (EU) 2024/1083.

⁷⁸ Cons. 25 and 26 and Art. 4, par. 5, Regulation (EU) 2024/1083. Art. 52 of the Charter states the guarantees according to which it is possible to limit fundamental rights: “1. Any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need

complying with the following guarantees: the provision by law, the respect of the essence of the rights and freedoms stated in the Charter, and the principle of proportionality. According to this principle, the eventual limitations of fundamental rights “may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others”.

Indeed, the interpretation and application of fundamental rights established in the Charter shall consider the “coordination clause” between the Charter and the ECHR, as indicated by Art. 52, par. 3, Charter. According to this provision “the meaning and scope” of the Charter rights must be the same as those laid down by the said Convention. It will not prevent Union law providing more extensive protection.

The limitations shall be justified on a case-by-case basis by an overriding reason of public interest, it shall be proportionate, and it shall be authorized by a judicial authority or an independent and impartial decision-making authority or, in duly justified exceptional and urgent cases, subsequently authorized by such an authority without undue delay.

The Regulation also bans the use by States of intrusive surveillance software, particularly the “spyware”⁷⁹, on any material, digital device, machine, or tool. An exception can be stated when, in addition to the requirements indicated for the other exceptions, the use of this system has the purpose of investigating persons suspected to have committed offences punishable in the Member State concerned by a custodial sentence or a detention order of a maximum period of at least three years⁸⁰ or other serious crimes punishable in the Member State imposed by a custodial sentence or a detention order of a maximum period of at least five years, as determined by the law of that Member State. In addition, it is possible to adopt this measure when other restrictive measures are more adequate and sufficient to obtain information.

The revision of surveillance measures corresponds to a judicial authority or an independent and impartial decision-making authority, who shall verify the presence of conditions that legitimize their use. The media service providers and any person with a professional relationship with them or the editorial staff have a right to effective judicial protection (Article 47 of the Charter)⁸¹.

3.2. The AntiSlapp Directive

to protect the rights and freedoms of others. 2. Rights recognized by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties. 3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection”.

⁷⁹ Cons. n. 25. It can be deployed to secretly record calls or otherwise use the microphone of an end-user device, film or photograph natural persons, machines or their surroundings, copy messages, access encrypted content data, track browsing activity, track geolocation or collect other sensor data, or track activities across multiple end-user devices.

⁸⁰ Art. 2(2) of Framework Decision 2002/584/JHA.

⁸¹ Art. 4, par. 8, Charter.

Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings is the other important measure in this field. The scope of the Directive Antislapp is to allow the victims of these proceedings to defend themselves. It frames on the judicial cooperation in civil matters with a transnational dimension (Art. 81 TFEU).

The victims of the “gag action”⁸² are journalists, particularly investigative journalists, non-governmental organizations (NGOs), academics and civil society in the Union. Therefore, it needs to protect them, establishing adequate “safeguards” “against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications” brought against natural and legal persons on account of their engagement in public participation on matter of public interest.

The concept of “matter of public interest” affects fundamental rights, public health, safety, the environment or the climate; activities of a natural or legal person that is a public figure in the public or private sector; matters under consideration by a legislative, executive, or judicial body, or any other official proceedings; allegations of corruption, fraud, or of any other criminal offence, or of administrative offences in relation to such matters; activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including the protection of democratic processes against undue interference, in particular by fighting disinformation⁸³.

The legal framework of the Antislapp Directive consists of the systematic interpretation of the Rule of Law clause ex Art. 2 TUE with Art. 10, par. 3, TUE on citizen participation in the EU democratic life, and Art. 11 of the Charter on the freedom of expression and information, which has the same mean and scope than Art. 10 ECHR, according to the jurisprudence of the ECtHR. Indeed, this right is also linked to other, such as the right to protect one’s reputation, protection of personal data and privacy (Arts. 7 and 8 of the Charter), freedom of the arts and sciences (Art. 13 of the Charter), freedom of assembly and association (Art. 12 of the Charter), the prohibition of direct or indirect discrimination (Art. 21 Charter), and the right to a fair trial in case of conflicts (Art. 47 of the Charter)⁸⁴.

The measure has incorporated the recommendations of the Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the Union⁸⁵ and the Recommendation of the European Commission (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

⁸² Justin Borg Barthet, Benedetta Lobina, Magdalena Ewa Zabrocka, *The Use of SLAPPS to Silence Journalists, NGOs and Civil Society*, Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Policies, PE 694.782- (June 2021), 61.

⁸³ Art. 4, par. 2, Directive (EU) 2024/1069.

⁸⁴ Cons. n. 3, Directive (EU) 2024/1069.

⁸⁵ European Parliament, Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs, and civil society (2021/2036(INI)).

public participation')⁸⁶. It is an example of the important debate on these issues promoted by soft law acts that has encouraged the adoption of legislation.

The Directive states minimum rules: the member States can adopt or maintain provisions that establish a higher level of protection through more effective procedural safeguards. Its implementation cannot reduce the level of safeguards already fixed by Member States in this field⁸⁷.

This Directive does not provide a definition of a journalist, which has a broad scope. It includes many subjects, such as “reporters, analysts, columnists and bloggers, others who engage in forms of self-publication in print, on the internet or elsewhere”⁸⁸, investigative journalists and media organizations “in the fight against organized crime, abuse of power, corruption, fundamental rights violations and extremism”⁸⁹, human rights defenders, academics, researchers or artists. It favors and protects the public participation of any natural or legal person.

According to this measure “abusive court proceedings against public participation” means court proceedings which are not brought to genuinely assert or exercise a right but have as their main purpose the prevention, restriction or penalization of public participation, frequently exploiting an imbalance of power between the parties and which pursue unfounded claims⁹⁰.

In these proceedings there is the presence of the following elements:

- (a) the disproportionate, excessive, or unreasonable nature of the claim or part thereof, including the excessive dispute value
- (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters
- (c) intimidation, harassment, or threats on the part of the claimant or the claimant’s representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases
- (d) the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping, or the discontinuation of cases at a later stage of the proceedings in bad faith.

SLAPPs are promoted by powerful entities, for example individuals, lobby groups, corporations, politicians, and state organs. There is an imbalance of power⁹¹.

This length of procedures, financial pressure, and simultaneous interposition of multiple abusive proceedings, sometimes promoted in several jurisdictions, and risks of forum

⁸⁶ European 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, DO L 138 (May 17, 2022).

⁸⁷ Art. 2.2 (21), Directive (EU) 2024/1069.

⁸⁸ Cons. n. 9 Directive (EU) 2024/1069.

⁸⁹ Cons. n. 10 Directive (EU) 2024/1069.

⁹⁰ Art. 4, par. 3, Directive (EU) 2024/1069.

⁹¹ Cons. n. 15 Directive (EU) 2024/1069.

shopping, have important dissuasive effects, determining self-censorship and affecting the general debate. The protection should also be extended to other persons linked to public participation on a matter of public interest, “such as lawyers, family members, internet providers, publishing houses or print shops,” eventually involved in these proceedings⁹².

The Anti-Slapp Directive requires to be interpreted with the Directive (UE) 2019/1937 on the whistleblowers, which develops an essential role in discovering and preventing crimes and to protect the wellness of society⁹³. In fact, on the one hand, potential whistleblowers usually decide not to inform because they fear reprisals; on the other hand, whistleblowers are crucial to obtain useful information to effectively detect, investigate, and judge infringements of EU law, improving transparency, accountability, and responsibility. Therefore, whistleblowing channels must be effective, confidential, and secure to protect whistleblowers from reprisals, especially against investigative journalists⁹⁴.

Such protection “should be provided both to persons who report ‘internal reporting’ about criminal issues within an organization or an ‘external reporting’”, making this information available in the public domain, for instance, “directly to the public through online platforms or social media, or to the media, elected officials, civil society organizations, trade unions, or professional and business organizations”⁹⁵.

IV. CONCLUSIONS

This contribution has analyzed the freedom of information and its main threats. These worrying challenges are Rule of Law backsliding, digitalization, and war. In this regard, it is important to understand that illiberal or authoritarian governments do not accept diversity, pluralism, or communication. They want to impose their own vision. Therefore, one of the first rights that attempts to annul is the free manifestation of thinking in all its forms.

The scope of these “chilling measures” is to control critical or dissident voices, i.e., journalists, opposition politicians, judges, prosecutors, and lawyers to silence them. To this end, modern technologies have a destructive effect and play a key role in this process.

This strategy directly attacks the heart of the ROL’s substantive dimension. The violation of freedom of expression and its corollaries produces the simultaneous infringement of a set of other rights: the right to an independent and impartial judge and, more generally, to a trial with all guarantees, the freedom of education, assembly, and association, and, of course, the rights of minorities. This creates serious effects both on substantive and procedural levels, jeopardizing “transnational judicial

⁹² Cons. n. 18 Directive (EU) 2024/1069.

⁹³ Directive (UE) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union Law, OJ L 305 de 26.11.2019.

⁹⁴ According to cons. n. 46 of the Directive (EU) 2019/1937 “Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection to whistleblowers from retaliation increases legal certainty for potential whistleblowers and thereby encourages whistleblowing also through the media. In this respect, protection of whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies.”.

⁹⁵ Cons. n. 45 of Directive (EU) 2019/1937.

communication”⁹⁶ and consequently judicial cooperation mechanisms (vertical and horizontal), blocking them⁹⁷.

To react to this context of involution, it needs to elaborate a “strategy,” conducting the package of general and specific measures proposed by the EU⁹⁸. General measures interest the effective judicial repression of crimes against journalists and cooperation between the authorities of law enforcement, the training, the access to information, and the economic and social protection.

Instead, the specific recommendations develop the general framework, focusing on the role of journalists in protests and manifestation, the need to ensure the online security and digital alphabetization, the situation of woman, that develop this work, and the belonging of minority groups or that informs on questions relating to equality. And finally, it is important to train professionals to protect journalists and people that work in the media.

In these last years, EU action has been incisive. The adoption of a legal framework, based on common provisions, has been the most important result. European Media Freedom Act and Directive on “Strategic lawsuits against public participation”, that incorporates the jurisprudence of ECtHR in this field, shows the will to actively intervene, creating a specific legal body, that should be interpreted and applied according to the other EU instruments on protection of human rights, such as Directive on whistleblowers.

The agreement on these questions is fundamental but it also demonstrates the seriousness and danger of the situation. Although one does not possess a magic sphere to see what will happen, one thing is certain: this complex conjuncture induces the suspicion that governments will increasingly resort to regressive measures aimed at controlling information, limiting pluralism and the freedom to be informed. Independently of the adoption of these measures, which are indubitably positive, their success will depend on the “state of health” of our democracy.

⁹⁶ Rafael Bustos Gisbert, “Comunicación transjudicial en Europa en defensa de la independencia de los jueces”, *Revista de derecho constitucional europeo*, 2020 (www.ugr.es/~redce/REDCE33/articulos/02_BUSTOS.htm).

⁹⁷ Valentina Faggiani, *Los derechos procesales en el espacio europeo de justicia penal. Técnicas de armonización*, Cizur Menor, 2017; Id., “Le crisi sistemiche dello stato di diritto e i loro effetti sulla cooperazione giudiziaria nell’UE”, *Diritto Penale Contemporaneo*, 2019.

⁹⁸ European 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, OJ, L 331/9 (September 20.9.2021). In 2016, the Council of Europe adopted the Recommendation CM/Rec (2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors. The Recommendation 2021/1534 contains an interesting set of “general recommendations” on key aspect of horizontal character and on “special” aspect, which specifies the general framework.