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University of San Francisco

**Press Freedom under Threat in Europe: A Case Study Analysis of the
increasing threat to Press Freedom in Greece, Italy, and Hungary**

An Honors Thesis submitted in partial satisfaction
of the requirements for the distinction of
Honors
in the International Studies Department
in the College of Arts and Sciences

by

Maya O'Leary-Cyr

December 2022

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ABSTRACT

This research critically examines the legal systems of European countries and their relationship to press freedom. This research focuses on the vexatious legal threats used by government officials and corporations to silence journalists. These legal threats are known as SLAPPs (strategic lawsuits against public participation) and their use has increased exponentially in the last decade. Considering the scope of the problem, this research analyzes the issue through the lens of European countries Greece, Italy, and Hungary. Being members of the European Union, each of these countries have an obligation to uphold the democratic standards put forth by the EU as well as international agreements regarding human rights. Journalists are a vital aspect of the democratic processes of each of these countries, and are protected by both domestic laws and binding international agreements. In recent years, SLAPPs targeted at journalists served by politicians and authoritative figures have made their role difficult. The intention behind each case being questionable. This research aims to answer the question of whether current domestic and international law is being enforced in a manner that protects journalistic authority. Corruption within governments who are stated as democracies is on the rise, and the inability of European countries to recognize and prevent these attacks against journalists is cause for increasing concern. The current governmental systems in place show a declining respect for the profession of journalism and the increase in legal threats targeted at journalists insinuates a shift from democratic values to more authoritarian practices. This leaves both governments and civil society vulnerable to corruption.

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KEYWORDS

European Union, Press Freedom, Journalism, Free speech, Corruption, Legislation, Civil Society, Democracy, Greece, Italy, Hungary

INTRODUCTION

“Without freedom of the press, there are no real democratic societies. Without freedom of the press, there is no freedom” (António Guterres, Secretary General of the UN)

The freedom of the press is one of the most vital components of a democracy. Journalists are vital in the process of sharing information and communicating issues of public interest. This communication allows for citizens to effectively participate within civil society. Journalists are also tasked with the responsibility of checking the government by keeping it accountable for corruption and human rights violations. These aspects must be respected and protected by all parties in order to keep a functional democracy. The recent difficulties faced by journalists around the world in the last decade show that their role in society is not respected. Not only do violations of press freedom threaten democracy, but they also threaten the universal right of free speech, making the issue relevant to all individuals.

The following research will examine the use of “vexatious legal threats”, one of the most common methods of silencing journalists. These lawsuits are also known as Strategic Lawsuits Against Public Participation (SLAPPs) and are mainly used by government officials and politicians. Government officials have been using these lawsuits at an increasing rate, manipulating their power to silence the release of vital information to the public and using the lack of safeguards within International and state government legislation to their advantage. SLAPPs targeted at journalists for fulfilling their watchdog role threatens the idea of press freedom in its entirety. The number of cases has reached the point where the issue has gained the

attention of international institutions such as the United Nations and the European Union, both recognizing the detrimental consequences to democracy that these threats could bring if they continue to occur at the current rate.

As recently as May 3, 2022, the United Nations has acknowledged the importance of press freedom and has spoken out about the detrimental effects that these lawsuits can have on journalists and the democracies they work to support. Other entities such as the European Union and its sub-organizations recognize press freedom to be a fundamental right to all citizens of its member states, and expects each member state to protect this right.

The vitalness of press freedom to any democracy is clear, with evidence of this clarity being seen in the International and domestic law that has been written to protect this right. While national constitutional laws on press freedom vary from state to state, all states that are members of the European Union have signed and agreed to international laws (in practice both directly and indirectly protecting press freedom) that each member state is obligated and expected to implement into their domestic systems (see list of relevant International Laws listed in Appendix 1).

These laws exist because freedom of information and opinion is vital to the existence of a stable democracy. Greece, Italy, and Hungary are all members of the European Union and claim to be democracies. The inaction of these European states to create legislation or follow existing legislation that prevents these lawsuits is concerning. Disregarding recommendations for systematic change made by the European Commission and ignoring international law by allowing violations of press freedom to continue, reveals a disconnect between the stated functioning of a democracy and the reality of the functioning of each country's governments.

LITERATURE REVIEW

The goal of this literature review is to outline some of the major issues regarding press freedom that have been written about in academia, and to give a better understanding of how these issues are seen by the European Government. It also aims to further explore the shifting perspective of the relationship between journalism and civil society.

Understanding the Broadness of the Issue of Press Freedom

To this present date, the concept of media freedom has been subject to little, if any, well-developed body of theory or empirical research within academia. This being said, there are still some scholarly interpretations to what the meaning of media freedom is, given the broadness of the term, which makes it difficult for such academic research to be done. In 2020, authors Matthew Powers and Adrienne Russell published their book *Rethinking Media Research for Changing Societies*. In their work, they explain how the concept of media freedom throughout history was consolidated compared to the complexities we see within the subject presently. For example, before 1974, the first press freedom index classified media systems on a scale from “Free Press system; normally no government controls” up to “Authoritarian Press Systems”. (Nixon, 1960) More complex perspectives on media freedom arose after 1974, when David Weaver identified three components to media freedom: “absence of government constraints, absence of nongovernmental constraints, and structures that aided dissemination of ideas to large audiences”. (Weaver, 1974) Because of the broadness of the subject, the authors categorized the perspectives on press freedom by thinking of who the subject of press freedom is. Commercial media owners are one subject of press freedom where state and government intervention or

regulation is a major concern. The freedom of the individual journalist is another aspect of press freedom that will be focused on throughout this study. Looking at press freedom from the perspective of a journalist, government intervention is usually the biggest threat, but from this perspective, political intervention, media ownership concentration, political intervention by media ownership, and poor labor market conditions are other increasing threats. The last subject of press freedom that is considered is the public as the subject. Press freedom is vital in order for the public to be able to access information, to have their stories heard and for their concerns to be addressed in public debate. (Powers, Russell, 2020)

Both public discussion and scholarly debate regarding press freedom have been guided by the work of Freedom House and Reporters Without Borders. It is interesting to note that both of these sources are produced by activist organizations, with methodology that is not based on social science theory in any systematic way. This has caused these organizations to be criticized for their lack of systematic basis for the methodology. Although there could be bias on behalf of these organizations, it is vital that we acknowledge that these, among other activist organizations, are the ones bringing the subject of press freedom to the attention of scholars in the social science fields, making it possible for the subject to be analyzed in a systematic manner in the future. Given the broadness of the subject and how it interacts with many different aspects of society, it will take time to gather the sufficient amount of academic analysis needed to be analyzed in a systematic way.

It is widely accepted in Europe that press freedom is considered a pillar of democracy. What complicates the issue, is that *how* press freedom should be formed and implemented within society varies from country to country. This has caused press freedom often to be overlooked as too complex of an issue or taken for granted entirely. To better understand the scope of press

freedom throughout Europe, we must look at the systems within society that directly interact and influence the freedom of the press and the media as a whole. Authors Andrea Czepek, Melanie Hellwig, and Eva Nowak highlight this point in their analysis of press freedom in their book *Press Freedom and Pluralism in Europe: Concepts and Conditions*. It is important to understand that the issues of press freedom are not solved by stating whether or not it is guaranteed by the constitution or laws of a country. The structural pre-conditions of a country need to be analyzed to just start to understand the complexities of the issue. Within a country's framework, there are subsystems, all of which interact with media systems. The objectives of these subsystems overlap, which in turn influences not only the content of the media, but how media is produced. The main subsystems that need to be considered when looking into media freedom in any European country include, the political system, the economic system, religious institutions, educational systems, and cultural traditions. These are all aspects of a country's society that all have the power to influence the media, directly or indirectly. To give an example, present day economic systems have just as much influence on the media as do political systems. Economic constraints especially influence press freedom. Market mechanisms such as high return margins limit the reporting journalists can do and have the capability to take away their power to speak freely. (Czepek, Hellwig, Nowak, 2009).

Although it is important to acknowledge the subsystems that interconnect and influence media freedom, the most literature and academic research has been done on the relationship between different styles of government and its correlation to the increase or decrease in press freedom within that political atmosphere. In his research study “The Enemy of the People”: Populists and Press Freedom. Paul D. Kenny analyzes the relationship and extent to which populist parties within governments have on the limitations of press freedom. Kenny's research

reveals that there is a common consensus of what press freedom means throughout Europe. He cites the definition stated by Denis McQuail, that media freedom is “the right to publish without any prior censorship or license and without incurring penalties, within the limits of other legal obligations.” (McQuail, 2000, pg. 146-47) The continued erosion of press freedom also has common consensus throughout Europe as being a “variety of actions taken by a government ranging from the harassment and prosecution of critical journalists, the censoring of press output, the closure through legal or illegal means of opposition-aligned media outlets, and the saturation of the media environment through state-owned or sympathetic private media.” (Kenny, 2019, n.p.) Populism is relevant to this explanation of press freedom as it is a core objective of populist parties. Another core objective of party leaders throughout Europe is the control of the media, whereas other parties rely on organizational support or other outlets to gain support. By analyzing data from 1980 until 2014, it was found that there was a consistent trend in associating populist rule and the decline in press freedom in all categories. Although Kenny does not explicitly state it, the rise of populism throughout Europe could be a factor in recent widespread acts against freedom of expression and the decrease in press freedom.

Other academic studies have been done similar to Paul D. Kenny’s that connects the levels of press freedom within European countries to their level of political and economic corruption. It is commonly understood that a truly independent press acts as a barrier to corruption. The traditional role of the press is to monitor, investigate, and denounce any official corruption that may be occurring. Research and analysis done by Sebastian Freille, Emranul Haque, and Richard Kneller shows that the relationship between press freedom and corruption is not that simple. Elements of press control will differ from country to country, as well as the ethics of individual journalists, which is not a perspective heavily looked at within the literature

but is vital to take into consideration. This research also shows that the developmental level of a country has a major effect on the resources available to journalists to detect corruption in the first place. For example, Ukraine and Italy have extremely high levels of economic and political control over the media compared to other developed countries, making reporting on corruption risky to any independent journalist, even though corruption in those two countries is high. Even given the differences in regulations from country to country, the research concurs with the common understanding that restrictions to press freedom led to higher levels of corruption, “we obtain that both political and economic influences on the media are strongly and robustly related to corruption, while detrimental laws and regulations influencing the media are not strongly associated with higher corruption.” (Freille, Haque, Kneller, 2007, pg. 840)

The struggles of Press Freedom and European legal systems/Legislation

One of the most common ways that governments and corporations have attempted to silence journalists and press freedom is by the use of SLAPP lawsuits. SLAPP stands for Strategic Lawsuits Against Public Participation. The term came to light when two professors, George W. Pring and Penelope Canan published their book *SLAPP: Getting Sued for Speaking Out* (1996). The book covers the history of SLAPPs and how courts have addressed these suits from the 1970s up till the 1990s. Although the book is dated, the information regarding SLAPPs is still relevant to the understanding of the issue and scope of the issue today. “Most lawsuits intimidate. Many are strategic, not just tactical. Many are motivated by retaliation, or filed to stop particular behavior, punish certain speech, or counter certain political speech.” (Pring, Canan, 8, 1996). The authors acknowledge that the ability to speak out against a government is a well-known standard to the upholding of a democracy and that although SLAPP cases are a

direct counter to that value, and that there should be laws that help minimize these cases, they are not the only tool used to prohibit journalists from doing their work.

Opinion and analysis regarding the relationship between SLAPP cases and European legislation has not been widely researched in the world of academia. The timeliness of this research comes at the height of threats against journalists throughout Europe and is at a point where the freedom of the press is severely at risk. Greenpeace, one of the world's largest NGOs, published a report in 2020 that calls for immediate European legislation in the form of an anti-SLAPP directive. The authors of this report agree with authors like Pring and Canan in acknowledging that SLAPP suits are not the only threat to press freedom and civil society but are a part of a broader range of systems that restrict freedom of expression throughout Europe.

Following the work of NGOs such as Greenpeace, the European Parliament has begun to acknowledge in their own literature that “it is uncontroversial that SLAPPs are intended to suppress the legitimate right to freedom of expression, as enshrined in the Charter of Fundamental Rights and the ECHR.” (Borg-Barthet, Lobina, Zabrocka, 2021, pg. 23) The study where this quote was taken from had been requested by the JURI committee of the European Parliament. The study was aimed to analyze the legal definitions of SLAPPs and to assess the compatibility of EU law and anti-SLAPP legislation. The request of this study exhibits that the threats against journalists throughout the EU have reached a point where they have started to affect civil society and have become a threat to democracy. The acknowledgement of the European Parliament that they must get involved in the issue is an important step, as the issue has been known and escalating since the 1970s. The study analyzes the compatibility of an anti-SLAPP directive with legal documents such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Treaty on European Union, the Treaty on

the Functioning of the European Union as well as the compatibility of European legal systems, such as the Court of Justice of the European Union, European Court of Human Rights, and the European Court of Justice. The study admits that it will take time for proposed legislation to become law in all member states and advocates that states adopt non-legislative measures for the time being, in order to begin the process of repairing the protection of public participation. The European Commission states that they will begin to take action against states that continue to fail to protect the fundamental rights stated in the Treaties above. This in and of itself can be seen as a step in the right direction.

Article 19 of the Declaration of Human Rights protects the right to freedom of opinion and expression. “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” (United Nations, 1948) This protection is relevant in almost all human rights treaties that have been ratified by members of the European Union. Author Emily Howie provides literature on the relationship between International Law and the right to freedom of expression in her study titled “Protecting the human right to freedom of expression in international Law”. Howie recognizes the importance of the freedom of expression not only on an individual level, but also as a vital foundational aspect of democratic society. Because of its inclusion in the UDHR (Universal Declaration of Human Rights), the freedom of expression is well known as a customary norm within International Law. Even though the right to freedom of expression is an aspect of civil and political rights that are highly valued in the west, this study agrees with other academic literature in acknowledging that freedom of expression is under threat globally. This issue was vocalized by the UN expert on freedom of expression in 2016, stating that “individuals seeking to exercise their right to

expression face all kinds of government-imposed limitations that are not legal, necessary, or proportionate. Targets of restrictions include journalists and bloggers, critics of government, dissenters from conventional life, provocateurs, and minorities of all sorts.” (UN general assembly, 2016, n.p.) Howie uses the passage of metadata retention laws as an example to amplify this concern. A fundamental aspect of journalism is the access to information and the ability to keep sources safe and confidential. (Howie, 2017) By increasing surveillance of peoples’ telecommunication metadata, the confidentiality and safety of journalistic sources is at risk. Not only is this recognized as a violation of privacy, it is also seen as a violation of press freedom, as government authorities are able to collect and use cell phone and email metadata to pursue and find the identities of journalists' sources. Ironically, the study reveals that the European Court of Justice has spoken out about this issue, stating “The fact that the data is retained without the subscriber or registered user being informed is likely to cause the persons concerned to feel that their private lives are the subject of constant surveillance... The impact of this scheme could have an effect on the use of means of electronic communication and, consequently, on the exercise by the users of their freedom of expression.” (European Court of Justice, 2016, para. 100) This study, along with the exhibition of literature above, clearly shows that there is a disconnect between the values of the government regarding press freedom and the liberal enforcement of related legislation.

The Intersection of Journalism and Civil Society

“The problem of the press is confused because the critics and the apologists expect the press to ... make up for all that was not foreseen in the theory of democracy. ” (Walter Lippmann, 1922)

Not only are journalists a part of civil society, but they play a substantial role in the upkeep of democracy. The relationship between the media and civil society is seen throughout the literature as one of the most pertinent relationships within a democracy. Scholar Craig L. Lamay writes of this relationship in his research titled “Nurturing Civil Society-Civil Society and Media Freedom: Problems of Purpose and Sustainability in Democratic Transition”, published in the *International Journal of not-for-profit law*. Lamay states that although literature on the topic of civil society and journalism has increased in the past two decades, the analyses are “muddy at best” and do not contain much depth. In his analysis of civil society and democracy, Lamay states the similarities between the citizens that make up any given civil society and those within the realm of journalism and the media. Although they have differences, they both share the common interest of producing information and making meaning of it. (Lamay, 2004) Lamay uses the idea of social systems (similar to the ideas of Czepek, Hellwig, and Nowak) to define civil society as the function of democracy. Examples of said social systems would be churches, neighborhoods, clubs, civic groups, and any other non-governmental or economic association. These systems are understood as the ones to “blow the whistle” when the government acts in irresponsible ways. It is well known throughout western culture that journalism acts as a barrier between these groups and the political and economic organizations more associated with governance. They do this by looking for, researching, and reporting these instances of civil unrest. This relationship is also known to work the other way around, with the journalists being the ones to “blow the whistle” and the citizens being the ones to act on the information within legal limits. He explains this relationship clearly in the following quote, “News organizations act as informal hubs in civil society networks, taking in information and sending critical bits of it back out, in the process composing a more or less coherent profile of public attitudes and values.

Civil society associations and independent media organizations are thus interdependent and may even overlap.” (Lamay, 2004, n.p.) It is worth noting that media organizations are also known to serve communities with specific interests, such as women, racial minorities, factory workers, etc., by doing work to identify and report on the issues within these systems. In other words, journalists do work to enhance the social wellbeing of the citizens within these groups, in turn, deepening the relationship between civil society and journalism. It has been noted that this relationship between civil society and journalism comes with its complexities. Just as journalists are known to receive editorial pressure from political and economic institutions, this pressure is also felt from groups within civil society, who have differing views as to how they think they should be covered within the media. Lamay makes a good point, that while the interests of civil society and journalism may overlap, they are not the same. “Civil society and independent media may therefore be necessary conditions for each other, but neither is a sufficient condition for the other.” (Lamay, 2004, n.p.) It is pertinent to note that while journalism is known to be a vital contributor to civil society, it has been recognized as being embedded within economic society as well. Lamay notes that inevitably, journalists rely on funding to do their work, and the independence of such work depends not on the news organization, but where the news organization gets their funding. This is an issue that is recognized by scholars but needs more attention in the literature going forward if we are to truly understand the role of journalism in civil society.

Although there are complexities in regard to the funding of journalism, recent literature has come out in the last few years that suggests the merging of civil societal organizations and journalism could have positive implications on the issue of press freedom. The merging of these two systems is seen as controversial to some, as it overturns the industries’ (journalisms) value of

neutrality. Acknowledging this, we must also acknowledge that the field of journalism has been hit hard in recent years, with its traditional way of funding lending itself to censorship and economic control. Those who embrace the idea, see it as the best way forward in the attempt to increase the quantity and quality of investigative journalism. (Carson, Farhall, 2018) By collaborating with civil society groups, journalists are able to gain access to the tools and resources they need to fund their reporting. Despite the fact that the idea of collaborative journalism has gained interest from scholars and researchers in the last decade, the amount of literature and research on the subject is limited, especially in regard to the systems that allow for a successful collaboration to occur. These systems include but are not limited to, updated technological systems, the tools to collect a vast amount of material and content, and the resources to network and share the story (s) to a large audience. Researchers Joy Jenkins and Lucas Graves found that collaborative journalism has had success in Europe. While the European journalists that were interviewed during the study had different perspectives regarding stories, documents, and research methods, they all shared the same goals of finding out “what really happened or what really is going on”. This made it easier for them to agree to work in an environment similar to an NGO, rather than the traditional newsroom, as they all shared similar values. For example, The Bureau Local is a news organization that stemmed from the London - based Bureau of Investigative Journalism. The Bureau Local functions very similarly to an NGO, with participants carrying a range of abilities, some being journalists and others not. A quote taken from Jenkins and Graves study by an investigative journalist that worked for the Bureau Local explains this well, “There’ll be mentoring roles that people will take up. People ... with particular reporting skills will help people who perhaps don’t have those skills. Or, indeed, people who aren’t journalists, who have other sets of skills, will help others. There’s very much a

sense of collaboration also being about information sharing, journalism no longer being so much of a competitive sport.” (Jenkins, Graves, 2022, n.p.) This study exhibits the positive outcomes that can come from journalism and civil society working together, instead of working alongside each other or in competition with one another. By sharing tools and resources, the stories published reach a larger audience and have a greater scope of influence. Although the following research will not focus mainly on this topic, it is pertinent to mention that the idea is not fully accepted throughout the journalism field. Collaborative journalism is a new concept that is gaining popularity, but journalists and scholars alike maintain doubts regarding the journalistic independence of such collaborations and the risks of potential bias.

METHODS STATEMENT

The gravity of the issue of press freedom throughout Europe is vaguely recognized by the public, but the depths of the issue are only truly known by those in the field who have experienced threats as well as those in the field of activism on the specific issue. The question of how current European law and legal systems affect the freedom of the press was the inspiration of this research and will be examined through an analysis of three case studies, each case focusing on the scope of press freedom in one European country. Although the threat to press freedom is now prevalent throughout Europe, considering the length of this study, I have chosen to look at the issue through the lens of Greece, Italy, and Hungary. While the relationship between international legislation and domestic legislation on press freedom is important, the underlying and possibly more pressing question that needs to be considered is whether current legislation within Greece, Italy, and Hungary is effectively protecting journalists from the increasing legal threats coming from politicians and authoritative figures, and the implications of

these threats on both the field of journalism and the societies of these countries. To better understand the depth of each case study, the legal systems throughout the EU that are put in place to protect the freedom of the press against unethical legal treatment must be kept in mind. Although this research will not be focusing on overall EU legislation on freedom of the press, Greece, Italy, and Hungary are all member states of the EU. Therefore, it is important to understand the EU legislation on the topic, as it has a strong influence over the governmental systems of these countries. Because of its relevance, brief explanations of overall EU and international legal standards on press freedom will be referred to within each case study.

The aim of each case study will be to highlight the violations and/or threats to press freedom in each country by analyzing a small variety of real-world examples. Each case study will include the following within its analysis: an overview of relevant country specific legislation and laws in place regarding press freedom, real world examples of violations to said legislation or laws, an analysis of the effectiveness of the legislation, and whether it was enforced. Any relevant EU, IGO, or NGO recommendations regarding any of the violations that could change the outcome of similar cases in the future will be included in the conclusion of this analysis.

For the purpose of organization, I have compiled a list of the most important components that are relevant across each case study and divided them into two groups. The first group of components being legal systems. As stated above, each case study will include the country specific legislation in effect regarding press freedom, as well as any relevant press regulations. The following are other elements of the legal systems that will be taken into consideration (it is important to note that not all of these elements will be relevant in each example, and the amount

of analysis of each element will be subjective to the issue): country specific legislation regarding the press and its protections, the criminal status of defamation, potential bias in law enforcement, and political climate. Any gaps or limitations found in these elements will be included in the final analysis. Limitations to this component of the analysis will be the vague nature of each law and the lack of sources stating the intentions of political and corporate officials.

The second group of components that will be analyzed alongside the components above are examples of threats that journalists have experienced. Cases of SLAPP and defamation lawsuits will be heavily focused on, but instances of violence, censorship, and other types of corruption and public silencing will be considered. As noted above, the relevance of each element in this group will be subjective to each case. Limitations to this component of the analysis will be the subjectivity of each case, as well as any question of journalistic authority and ethical standard regarding the journalist (s) work. Given the nature of these cases, and the fact that the ethicality of each journalist's work has not been put into question, this aspect will not be addressed in this study. Other limitations include accuracy of translated material, as many resources for the cases being analyzed are not in English and must be translated by AI.

The social impact of these cases is not the focus of this research, but it goes without saying that press freedom has a direct impact on society. Given this, the elements of how these cases affect the civil society of each country will be considered, but not analyzed in depth. The element of journalists' role as watchdogs is vital to consider when discussing how a democracy is affected when its press professionals are censored and threatened to speak their opinion. When

freedom of opinion is silenced within the press, the threat trickles down to the public's ability to speak their mind against the government or any other authority. Although this aspect is not the subject of this research, it is vital to consider as these issues are directly related to the civil society of any democracy.

FINDINGS

CASE STUDY 1: Greece

The media landscape in Greece is just as complex as its political landscape. Years of economic unrest have caused the country to suffer on all fronts, the press not being excluded. The country's tumultuous political system has trickled down into the framework of the media and the two have melded together. There are now very few news outlets that are not controlled by the state in some form, if any at all. This combination has allowed for a disproportionate amount of press violations to occur, with no government action taken against them. The lack of legal enforcement regarding violations of press freedom has caused an overall distrust of the media by Greek citizens. Greece has consistently been at the bottom of the press freedom index for years, with its lowest ranking being in 2022, sitting at 108 out of 180 countries. In 2021, the RSF¹ index ranked the country 70th out of 180, showcasing that press freedom has drastically gotten worse in the last year alone (180 being the worst ranking and 1 being the best in terms of freedom). It is important to note that this fragmentation of the media and press freedom has come

¹ RSF Reporter Without Borders is an international non-governmental, non-profit organization based in Paris, France with the aim of safeguarding the right to freedom of information.

from years of political polarization and corruption, and has only now come to the attention of international viewers with more recent events.

One of the major grounds for the lack of press freedom in Greece can be pinned to the economic state of the country. The financial crisis of the last decade has caused a decrease in overall readership as well as a drop in advertising budgets. Because sufficient funding cannot be found in advertising, news outlets have had to turn to the government and the public for their funding. Knowing that citizen budgets run low, a majority of the funding for news outlets comes from either the government, or pro-government business outlets. This causes issues as there is a lack of transparency in regard to the allocation process of these funds, which allows businesses and political entities to have power over the outlets they fund. While the details of media ownership are a major player in this issue, for the sake of time and specificity, this research will not go fully into depth on this aspect of the issue.

In order to understand the gravity of these violations, there first must be an understanding of the current legal systems in place in Greece. By understanding the laws and the legal system, we can more easily decipher whether existing laws need to be reformed and news laws drafted, or if the issue instead lies on the enforcement side.

At the basic level, a brief overview of the Greek constitution shows that there are two articles directly related to press freedom. Article 5a - The Right to Information ², and Article 14

² The Greek Constitution: Article 5A- The Right to Information: “1. All persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties.”

- The Freedom of Expression and of the Press³. Both articles give Greek citizens the right to know information about the systems of their country, as well as the right to speak openly about any topic, agreeing with popular opinion or going against it. Government influence and control over the press is a clear violation of both of these basic human rights. Not only does this prevent there from being a check on the government, but “creates a significant obstacle for the public’s access to information and, subsequently, their informed participation in the democratic process.” (MFRR, 2021) By simply comparing these articles to the press violations that will be analyzed later in this analysis, it is accurate to assume that the issue lies not with a lack of legal protections, but with a lack of judicial enforcement.

The articles mentioned above from the constitution are simply a backbone to starting to understand the relationship between the media and the Greek government. The primary authority when it comes to media regulation in Greece is the *Ministry of Digital Policy, Media and Telecommunications*, which is a relatively new organization, formed in 2016. The purpose of the creation of this organization was to bridge the gap between old media and new media in the age of growing technology. Although this organization is the technical authority over all media in Greece, the NCRTV⁴ is the organization tasked with creating and enforcing any rules and codes of ethics regarding journalism, political programs, advertising, and any other sources of information. For example, the NCRTV issued the Code of Journalist Ethics, as well as the Code of Ethics for Journalists and Audio-Visual Programs, which was signed into law in 1990.⁵ It is

³ The Greek Constitution: Article 14- The Right to Freedom of Expression and the Press: “2. *The press is free. Censorship and all other preventive measures are prohibited.*”

⁴ The National Council for Radio and Television

⁵ This document was decreed by the *National Council of Broadcasting* as part of a contract between the *ESIEA (Association of Athenian Journalists)* and the management of *ERT, Greek Public Broadcasting*

vital to note here that by law, all broadcast media (which includes both tv and radio) can only be run by the state. This leaves written media (journalism) as the only form of media that is not state run by law, adding additional obstacles that print journalists must deal with to make their voices heard and respected.

The last legal framework that is relevant to this analysis is the Greek Penal code, specifically relating to cases of libel and defamation. In Greece, both libel and defamation are considered criminal offenses, although in certain circumstances can be a civil offense. Both libel and defamation offenders face jail time, although the amount is subjective to the type of offense. According to Article 366 of the Penal Code, journalists have the ability to invoke good faith and public interest in their defense if charged with defamation and if said defamation is true and affects the public interest.⁶ This does not include punishment for insult, which journalists are not exempt from. Considering that good faith and public interest are the only viable defenses for journalists in these cases, it is very difficult for a journalist to not end up in jail. Taking into consideration that many political figures take any criticism towards them as an insult, many journalists end up with fines and jail time for relying on any information about a politician that does not serve them positively, even if the information is factual.

Before last year, libel and defamation were the only criminal offenses journalists had to be wary of. As of November 11, 2021, journalists can now be sentenced to prison for the publication of “fake news”. According to an amendment made to article 191 of the criminal code, “Whoever in public or via the Internet disseminates or disseminates in any way false news

⁶ Penal Code, Art. 366, Paragraph 1

that is capable of causing concern or fear to citizens or to shake public confidence in the national economy, the country's defense capability or public health shall be punished with imprisonment of at least three (3) months and a fine. ” (PC,191) The amendment brought immediate backlash from journalist organizations around the country as well as other international press freedom organizations such as the CPJ.⁷ The JUADN⁸ petitioned to the Minister of Justice to have the amendment revoked, citing that its definition of “fake news that is capable of causing concern or fear to citizens etc.” was too vague and outwardly contradicted the constitution's right to freedom of expression and a free press. As mentioned above, Article 14 (2) of the Greek constitution states that “The press is free. Censorship and all other preventive measures are prohibited. ”. The law not only contradicts and violates the country's constitution and EU standards of freedom of speech, but further, does not strictly state who makes the decision as to what is considered “fake news”, leaving each case to the scrutiny of the government. The passage of the amendment to article 191 is another clear example of judicial inaction at enforcing the domestic constitutional law in Greece. Even though the amendment was petitioned to be revoked by multiple international journalistic organizations, no judicial action was taken to consider amending the law to protect the press, even given its clear violations of the constitution.

The event that brought the state of the press in Greece to the world stage was the murder of Giorgos Karaivaz, a highly respected Greek investigative journalist. Karaivaz was gunned down by two men in broad daylight on April 9, 2021. Authorities at the time suspected the killing was done by an organized crime group Karaivaz had investigated in the past and deemed

⁷ Committee to Protect Journalists: U.S. based non-profit that promotes press freedom and defends the rights of journalists around the world

⁸ Journalists’ Union of Athens Daily Newspapers

the case as an “absolute priority”. Despite the amount of evidence that has been collected since, there lacks a sense of urgency coming from the government around solving the case a year later, leaving journalists and press freedom organizations such as MFRR and RSF suspicious and demanding action. All requests for information about the case made by journalists have been denied, and progress on the case has been questionably slow, contrary to the promises of a fast investigation made by the authorities. (EFJ, 2022) This case is important as it showcases the attitudes towards journalists who criticize and investigate crime and politics in the country. Although Karaivaz worked primarily for national TV channels, he also ran a website called bloko.gr, where he covered issues relating to law enforcement, focusing in particular on the relationship between police, organized crime, politicians, and businessmen. (Stavros Malichudis, 2021) He was known to call out National Intelligence Service agents for spreading false information, illegally tracking phone activity, and in some cases planning murders in the interest of the mafia. The lack of transparency in the government's investigation into his murder sends a signal that validates Karaivaz's claims of deep corruption in the top ranks of the Hellenic Police. By keeping the investigation at a preliminary status, the authorities can keep information about the case hidden, as preliminary investigations are confidential under the Greek Criminal Code. “Solving the Karaivaz murder, on its own, will not end these others threats to journalism. But not solving it – and sending the message that those who attack journalists can get away with it – will undoubtedly put Greek journalists at even greater risk.” (Stavros Malichudis, 2021) Though the case goes unsolved to this date, it has brought a wave of international awareness to the press situation in Greece, gaining the attention of many press freedom organizations as well as the European Union.

The government's lack of transparency in George Karaivaz's case shows the disconnect between government authorities and the press, as well as the lack of legislative action to both provide justice to Karaivaz's work and the prevention of these threats occurring in the future. One of the biggest issues and threats that many journalists have had to deal with behind the scenes are SLAPPs.⁹ In a publication in early March of 2022, IPI¹⁰ deputy director Scott Griffen spoke out about the dangers that these lawsuits could bring to the field of journalism, "We fear that these recent cases are the tip of the iceberg of a far deeper problem of legal threats and pressure against journalists carrying out watchdog reporting in Greece. We strongly condemn these types of lawsuits and call upon Greece to urgently pass anti-SLAPP legislation to prevent such cases from ever reaching court." (Griffen, 2022, n.p.) The Greek government has shown no intention of creating anti-slapp legislation in the near future. The cases in question involve multinational companies targeting journalists who have published information about their business in the public interest. In February of 2020, investigative reporter Thodoris Chondrogiannos was targeted with a lawsuit by Rewarding Packaging Recycling, a recycling company in Greece with strong ties to the government. The company filed the suit claiming 80,000 euros on defamation charges against both Chondrogiannos and industry.gr (the news outlet where the story was published). Published in February, the article had been based on leaked documents from a public agency within the Greek Ministry of the Environment. The documents had revealed the inner workings of the Recycling company and detailed how most of the packaging the company received was not recycled. After the initial legal complaint was made by the company, Chondrogiannos updated the article to include the legal notice, but did not take

⁹ Strategic Lawsuit Against Public Participation

¹⁰ International Press Institute

it down. During the trial, the company argued that they had needed more time to respond to the allegations Chondrogiannos had sent them. In actuality, Chondrogiannos had never received a request for more time from the company, receiving a message that read “We have no desire to answer any of your questions.” Chondrogiannos had given his contact information on all his attempts to speak with the company, but had received no responses, deeming the companies claims to be false. Chondrogiannos continued to report on the company at Reporters United after receiving another information leak. In January, 2021 the company would send out another legal notice threatening the journalist as well as Reporters United with another lawsuit.

Thodoris Chondrogiannos is one of the many journalists who have been targeted with SLAPPs in Greece. Defamation charges are also not abnormal, being one of the top threats that journalists face in the country. These cases are not national either. In November of 2021, four journalists from the Greek newspaper *Dimokratia* were charged with insulting the Turkish president, Recep Tayyip Erdoğan¹¹. Although the Greek government (as well as the staff themselves) have no intention of going to trial in Turkey, if convicted in absentia, they could face up to five years in Turkish prison. The journalists will likely experience difficulty traveling internationally as well, as the Turkish government notified Dimitris Rizoulis¹² that they plan to place an order with Interpol for the team's arrest. (Carassava, 2021) Although the Greek government agreed to not send the team of journalists to trial and potential imprisonment, no further actions were taken in their defense.

¹¹ The suit came after the paper published an article regarding the Greek/Turkish standoff over drilling rights in the Mediterranean Sea, with a headline that included a Turkish swear word that was allegedly used to “lash out” against the Turkish president.

¹² Chief/managing editor of *Dimokratia* (Greek daily newspaper)

Given the instances and cases described above, it is clear that these criminal charges are brought against journalists to impede on their work and taint their reputations. Despite the pleas from national and international journalistic organizations, as well as recommendations made by the European Union, the Greek government has made no steps to implement protections or increase enforcement that would lessen the expanse of SLAPPs. It is important to recognize that the European Union has published multiple reports that remind the Greek government of their obligation to uphold the international rules¹³ and values that they had agreed to upon joining the EU, all including clauses protecting the right of press freedom.

CASE STUDY 2: Italy

Italy has long had issues with distinguishing a difference between journalism and the government. Journalism in Italy is highly politicized, being heavily shaped by influences from the government and the Italian parliament. It is not uncommon for citizens to solely watch or read news that tells them what they want to hear or agrees with their personal line of political thought. This politicized environment can partly be traced back to the government's deep involvement in the regulation of the media, as well as a lack of ethical code naming the press as independent of the government. The legal systems in place (or lack thereof) regarding journalism's role within the country have created a gray area, where journalists can be targeted and threatened for speaking out in the name of public interest, with the government having no accountability for their protection.

¹³ Referring to Greece's obligation of upholding the rights outlined in the UDHR, ICCPR, CFREU, and the ECHR, with which they have signed and are a party to.

As mentioned above, Italian media is deeply shaped by the government and the Italian parliament. Just as politics has an influence over other areas of Italian society, the political atmosphere has a heavy influence on the media landscape as well. This makes it difficult to find a coherent opinion on the amount of political influence that should be allowed in the media. This is mainly because most Italian politicians have close relationships to media outlets (some of whom provide funding for these outlets as well), which influences the stance of the reporting coming from these outlets. When looking deeper into the laws and regulatory systems involving the press, the distinction between the media and government becomes additionally foggy.

While Italy has official regulatory laws and organizations on the functions of the press, it has no official accountability system for press. This also means that there is no legal legislation (aside from Article 21 of the Italian constitution¹⁴) that prohibits any government organization or agency from interfering with the press. This aspect alone indirectly violates Italy's international obligations of protecting and promoting the existence of a free press¹⁵. With television and radio being the main forms of media taken in by the public, "*Legge Gasparri*"¹⁶ is the main law that outlines the functions of the media. Print media has no specific regulatory law, leaving the medium to fall under the blanket of this law. The regulatory body AGCOM (Autorità per le Garanzie nelle Comunicazioni) is the regulatory body that is most closely related to the regulation of the media, being in charge of overseeing Italy's entire communications sector (radio, tv, print, new media). This body is not independent, as each member is handpicked and appointed by members of the Italian parliament. This causes the members of AGCOM to reflect

¹⁴ Article 21, Freedom of Expression, Freedom of the Press

¹⁵ Italy is a party to all declarations and treaties mentioned in Appendix 1 and is expected to uphold the rights regarding press freedom in all.

¹⁶ Law No.112/2004

the political stance of the politicians who appointed them, likely causing their decisions to be political and not for the good of the public. Another agency whose functions give a better understanding of the dubious relationship between the government and its control over the media is the Parliamentary Committee for the Orientation and the Control over Broadcasting. This agency is especially important to consider during elections, as it has the power to give out strict instructions as to how each election is to be covered, taking away journalists' independence and impartiality, limiting the editorial choices they can make in their reporting.

Despite not having official regulatory laws, print journalism has rules of its own, albeit vague. As an example, all Italian journalists are required by law to become members of the *Ordine dei Giornalisti*, and pass an exam¹⁷ administered by the organization. The law went into effect in 1963, with the intention that the organization would aid in the upkeep of ethical standards and recruitment within the profession. Because of deep seeded political influences that have built up over the last few decades, the maintenance of ethical standards by the organization has become difficult, forcing the organization to move its focus to healthcare benefits and pensions. This gives further evidence of Italy's lack of ethical standards when it comes to journalism and its relationship to the government. "The inability of *Ordine dei Giornalisti* to establish a shared regime of ethics reinforces the system's weaknesses." (Mancini, Gerli, 2022, n.p.)

One of the two biggest threats to press independence that directly concerns journalists are SLAPPs, with the second being extortion related to press advertising. While both threats are grave, the latter will not be analyzed in detail within this research. In Italy, the main intention of

¹⁷ Italy is one of the only countries in Europe to require journalists to take an exam of this magnitude in order to work professionally.

SLAPPs is to intimidate reporters from reporting on issues of public interest that involve government officials, politicians, corporations, or big-name businesses. Thousands of journalists in Italy have been dealt SLAPPs, a vast majority of them being related to defamation. Although journalists have been dealing with these lawsuits for decades, the damage that these suits do to press freedom has only come to light in the last decade, due to journalists and their publications speaking out about the issue themselves. In past decades, evidence of these lawsuits has been difficult to get ahold of, as government agencies were previously unresponsive when inquired about data. In 2015, the IPI submitted a request to the Italian statistics agency for criminal justice data on defamation cases relating to journalists, and received no response. It is because of journalists working alongside organizations such as IPI, MFRR, and the RCMFE, that government agencies have started to have a harder time safeguarding this data.

Defamation is mainly considered a criminal offense in Italy. Article 595 of the Italian Penal code states the definition of defamation and the different levels of charges that can be brought to both journalists and citizens. In 2020, the constitutionality of the imprisonment of journalists for defamation came into question by the Italian Constitutional Court. On June 9, 2020, the court held a hearing in regards to the legitimacy of both Article 13¹⁸ of the law on the press and Article 595 of the penal code. The court ruled that while they agreed that reform to both articles was necessary, that the matter was the responsibility of the parliament, whom the court deferred the decision¹⁹. It is important to mention that the court had stipulated that if parliament did not pass legislation to amend the law by June of 2021, then the court themselves

¹⁸ Law 47/1948 Article 13 (Press Law) states that defamation committed by press is a criminal offense punishable by fine of no less than 10,000 lire (550 euro) or imprisonment of 1-6 years

¹⁹ Article 19, a non-profit organization focused on solving issues of freedom of expression, published a series of articles regarding this court decision from 2020-2021

would abolish the charge of prison sentences. By 2021, the Italian parliament did not meet the deadline given by the court and failed to legislate on the issue. In a follow up hearing, the court ruled that Article 13 of the law on the press in fact was not compliant with the constitution, but did rule Article 595 (3) to be compliant, reasoning that it was constitutional as it allowed judges to order imprisonment only in cases of “exceptional severity”. The court did not uphold its promise to abolish prison sentences in light of zero parliamentary action, instead renewing its call on parliament to reform the legislation. In a functional democracy, the court has the power to rule on the constitutionality of articles of this nature. The court's inaction to use this power signifies that the checks and balances within the Italian governmental system are skewed, not allowing laws to be correctly enforced. To make this imbalance even more clear, the Italian parliament has yet to legislate on any amendment to article 595, allowing the misuse of this law to continue. The increasing prevalence of SLAPP cases and criminal defamation cases has reached the attention of the European Commission, their concern outlined in the 2022 European Commission Rule of Law Report.²⁰ This lack of parliamentary action and recognition of international concern signals that maintaining a free press is not a priority of the government, allowing for the increase of SLAPPs and the erosion of independent press to continue.

According to the Italian National Statistics Institute, 9,479 proceedings for defamation were initiated against journalists in 2017 with 60% being dismissed and 6.6% going to trial. This amount has increased in the last 5 years, with many cases having little legal merit, but continuing to put journalists in pressuring financial situations. On September 1, 2022, journalist Sara Manisera was sued for defamation by a local administration of the municipality of Abbiategrasso

²⁰ 2022 ECRLR; section 2.3 Media Pluralism and Media Freedom

located outside of Milan²¹. Manisera had made remarks on the company at an awards ceremony for the *Diego Tajani prize* in Croto, Calabria a few months before, where she won the award. The award is named after Diego Tajani, who was the first judge to bring the attention of the Italian parliament to the relationship between criminal organizations and politics. In her acceptance speech, she warned her audience of the mafia's potential presence and connections to local administrations in Abbiategrasso. Following her speech, the local administration of Abbiategrasso filed a lawsuit against Manisera without prior discussion claiming defamation. The suit was named a SLAPP under Article 21 of Lombardia²². The administration argued that Manisera had directly accused the current administration of connections to the mafia. Manisera's speech shows no direct accusations, instead speaking of the history of known mafia-related institutions that had been allegedly connected to the administration in the past, with the focus of her speech leaning towards environmental and land protection. While the case is still ongoing, it is important to mention that a few months before the lawsuit was filed, the administration of Abbiategrasso had denied the request to create an anti-mafia commission in the province. Given the doubtful grounds for the accusation made and the violation of the constitution, the case will likely not make it to trial. This shows that the intention of the administration was not to debate the issue in court, but to send a message to Manisera to not speak about the issue again.

The above is an example of the most common legal threats journalists receive in Italy. Although many of these cases do not end up going to trial, they leave journalists with a tarnished confidence in the system and financial burdens that many of them have to handle on their own. An example that is not as common, but provides deeper evidence for the extent that these

²¹ Source: Mapping Media Freedom (database by European Center for Press and Media Freedom)

²² Another name for the Italian constitution

lawsuits can have on a journalist's work and person, is that of Antonella Napoli, a freelance journalist who is of high esteem in the international journalism community. In 1998, Napoli became involved in a criminal case after publishing two articles involving Alessandro Fedullo, judge of the Regional Administrative court. The articles that brought the complaint detailed Fedullo's involvement in secretive abortions. Fedullo had charged Napoli for defamation and initiated a claim for compensatory damages in 2006. Because of the lengthy proceedings, the court of Naples dismissed the case in 2007. Four years later, after Fedullo's death in 2011, the legal proceedings against Napoli were re-initiated by members of Fedullo's family, claiming compensation for moral, pecuniary²³, and non-pecuniary damages totaling 100,000 euros. The case has yet to be resolved, meaning that Napoli has been dealing with this case for over 25 years. "No journalist should spend decades in court to defend her work and no country should allow powerful people to abuse its judicial systems. I hope Antonella's case will be resolved soon and Italy will undertake the very much needed reforms to ensure its courts are no longer abused." Senior legal advisor of the ECPMF²⁴ said after the organization committed to provide legal support to Napoli as she works through her case. Napoli's legal battle is an exemplary case of how individuals with power use their influence to silence journalists who are doing their job. "You feel gagged and tied, especially if you are a freelance journalist. If you get your hands on big news about a public figure with the tendency to sue, you'll think twice. I have never stopped, but many give up because they fear consequences that they can't afford." (Napoli, 2022, n.p.)

²³ Monetary damages/ non-monetary damages such as mental distress

²⁴ European Center for Press and Media Freedom: the organization has created a program that assists journalists facing legal issues of different varieties, mainly aiding journalists who face defamation charges and push back from their governments in accessing public documents.

Regardless of the extent of the threat, these abuses of power taint the democracy that Italy claims to illustrate.

This imbalance of political power over journalists in Italy whose job it is to keep the public informed about those who make decisions for them is evident. Organizations such as the Coordination Center on the Phenomenon of Intimidating Acts Against Journalists²⁵, the ECPMF, Reporters with Borders, along with many others have done tremendous work to bring awareness to the issue and to provide support to journalists in not only Italy but globally. Despite the work of these organizations, powerful individuals will continue to silence and intimidate anyone who wishes to speak out, as they know their power and influence will allow them to get away with any legal loophole. Despite the recognition of the issue and discussions within the European Union to make change²⁶, an issue of this magnitude will only be solved by systematic change and legislation reform done from inside the Italian government.

CASE STUDY 3: Hungary

The tumultuous relationship between the press and the Hungarian government has been recognized by international actors for years. Government intervention in the media is a well-used tactic that politicians have formed to gain political power. Although Hungary runs on a parliamentary system that on paper appears to be democratic, actions made by the prime minister in the last decade have shifted the country's political power to be right-wing populist and

²⁵ Organization that works alongside the Italian Press Association to collect testimonies and reports from threatened journalists and offers protection on a case-by-case basis.

²⁶ Council conclusions on the protection and safety of journalists and other media professions, June 2022

nationally-conservative. Since 2010, the Hungarian government has started and continued a concerning trend of removing checks and balances from their government, which has had a heavy effect on the independence of the press.

"As holder of the EU presidency, Hungary should embody the EU's principles and values, but when it comes to human rights, Hungary is moving in the wrong direction."

(Leicht, 2011, n.p.)

The country would continue to move in this direction for the next 10 years, with Hungarian Prime Minister Viktor Orbán continuing to put effort into systematically eroding the freedom of the media, especially independent journalism, in the hopes of furthering his pro-government narrative. (IPI, 2022) These actions show a decrease in the relevance of international rules and obligations within the country.

The regulatory bodies and laws surrounding the press in Hungary have been deemed to be a major reason for the immense amount of government influence that is tolerated. An important distinction between journalism in Hungary and journalism in other European countries is that because of the political divide within the country, there is not one singular journalist association with one code of ethics. Instead, there are two main Journalism Associations, the Hungarian Journalists Association²⁷ and the Hungarian Journalists Community.²⁸ This has made all known ethical codes inefficient, as two journalists can work under two different ethical codes at once. This has made it very difficult to form a unified ethical code for all journalists to follow

²⁷ The organization that left-wing/liberal journalists associate themselves with.

²⁸ The organization that right-wing/conservative journalists associate with.

and be held accountable to. In addition, this lack of unity has hindered journalists' ability to combat pressures from the government, making it easier for them to be controlled.

The current system that rules the press contradicts the original function of the press that is outlined in the country's constitution. As for laws regarding the freedom of the press, Article 9 (IX) of the Hungarian constitution grants the right to the freedom of expression²⁹ and the freedom of the press³⁰. It is pertinent to note that even given its existence, many of the actions taken by the Fidesz and the prime minister have violated Article 9 (2) of the constitution. For example, allowing funding to only go towards outlets who are pro-government is a clear violation of the government's duty to "...recognize and protect the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information...". (Article 9(2), 2016) The immense number of lawsuits against investigative journalists and other media sources mentioned later in this analysis also violate the statements made in the constitution. The ongoing hypocrisy between the constitution and the reality of press protections can be traced back to the functioning of the media council and the passage of the Hungarian Press and Media Act of 2010.³¹

The passage of this act gained the attention of the Human Rights Watch, who criticized the law for its further endangerment of press freedom and disregard for international protections³² that already existed, which Hungary is obligated to follow as a member of the EU.

²⁹ Article 9 (1) *"Everyone shall have the right to freedom of speech."*

³⁰ Article 9 (2) *"Hungary shall recognise and protect the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion."*

³¹ The act went into effect on January 1st, 2011.

³² Hungary has signed and ratified the UDHR, ICCPR (1974), CFREU, and the ECHR, all including clauses protecting the right of press freedom.

The law created an authoritative body with the purpose of monitoring all media, ultimately giving the body the power to control what is published. It is important to note that there was no consultation with professional authorities, non-governmental organizations, or opposition parties before the act was put into place. The body has the ability to impose fines of up to 700,000 euros (which today is about the same amount in US dollars) for reasons including “unbalanced news coverage” or coverage that is deemed to violate “public morality”. This law is similar to Greece’s recent amendment regarding fake news, but with worse implications for journalists. In addition, the law also removed legal protections against the disclosure of journalists' sources, allowing any authoritative body to order a journalist to give up their source at any given time. This is not only a clear violation of Article 9 of the Hungarian constitution, but a violation of EU standards on press freedom and the Universal Declaration of Human Rights, a document the country has signed and committed to upholding. The ambiguity of the law is another aspect that was met with scrutiny, “in the lack of clear guidelines the journalists cannot know when they are breaking the law” said Dunka Mijatovic, manager of freedom of the press for OSCE³³. Human Rights Watch director Lotte Leicht stated that the law undermines the freedom of the media and is incompatible with Hungary's human rights obligations as a member of the EU, also stating that “it’s vital for the Commission and other EU member states to press Hungary to repeal the media law and improve its wider record in accordance with its international and regional legal human rights obligations.” (Leicht, 2011, n.p.)

Because of the passage of this act, the current media council (which was appointed by the Fidesz³⁴), has the power to deny and block broadcast licenses for outlets the council deems to

³³ Organization for Security and Co-operation in Europe: <https://www.osce.org/>

³⁴ The right-wing conservative party, who holds the majority opinion within the Hungarian government, which is currently ruled by prime minister Viktor Oban.

not be in line with the government. They have also blocked the ability for independent outlets to merge resources and collaborate. Which is an important aspect to both media pluralism and the functioning of civil society. The Fidesz has molded the media into what seems to be a propaganda tool, only allowing content that aligns with the party. Although investigative journalism still exists in the country, any journalist who wishes to publish information on corruption is shut down by the state news agency and public media. To the Hungarian government, journalists are seen as “political actors”, not as individuals who collect important information for the interest of the public. Considering this, the Fidesz avoid blame for corruption by having business partners buyout independent media outlets, making it seem as though it is purely market forces that are putting an end to independent media.³⁵

The act mentioned above is not the latest legislation passed that threatens journalists’ ability to work independently. Being similar to Greece’s recent amendment to their penal code, Hungarian lawmakers recently voted on amendments to their own penal code that would allow the imprisonment of up to five years of any journalist who published false information regarding the Covid-19 pandemic³⁶ or impeded on the government's efforts to provide health care. The amended act was a part of a larger act, Act XII of 2020 on the Containment of the Coronavirus.³⁷ Similarly to the passage of the Hungarian Press and Media Act of 2010, this act was passed in parliament without any opposition present. The passage of the amended act was criticized by international organizations such as the Commissioner for Human Rights of the Council of

³⁵ Source: IPI Press Freedom Mission Report https://ipi.media/wp-content/uploads/2022/03/HU_PressFreedomMission_Report_IPI_2022.pdf

³⁶ Source: <https://cpj.org/2020/03/proposed-hungarian-laws-could-imprison-journalists/>

³⁷ Act allows the government to rule by decree during declared state of danger and take “other necessary extraordinary measures”: [https://www.loc.gov/item/global-legal-monitor/2020-05-26/hungary-national-assembly-adopts-act-giving-government-special-powers-during-coronavirus-pandemic/#:~:text=The%20new%20law%2C%20Act%20XII,force%20on%20March%2031%2C%202020.&text=The%20act%20empowers%20the%20government,%E2%80%9D%20\(Act%20C%20A7%202.\)](https://www.loc.gov/item/global-legal-monitor/2020-05-26/hungary-national-assembly-adopts-act-giving-government-special-powers-during-coronavirus-pandemic/#:~:text=The%20new%20law%2C%20Act%20XII,force%20on%20March%2031%2C%202020.&text=The%20act%20empowers%20the%20government,%E2%80%9D%20(Act%20C%20A7%202.))

Europe, who argued that the bill did not meet constitutional requirements. Senior editor at one of Hungary's largest still operating independent news outlets said that the law would have a "chilling effect" on the media landscape, also stating that the law will lead to more outlets having to self-censor their content.³⁸

A critical, relevant aspect of the Coronavirus act barred independent journalists from entering and reporting on hospitals and health-care facilities from the beginning of the pandemic. The only reporters allowed to enter and report on these facilities being journalists who worked for the government run television station and state news agency. The argument for the barring was that the government could not risk "false news" being published that would lead to distrust in the government. This has led to a further divide between journalists in Hungary that heavily skewed the public's knowledge and opinions on the pandemic.

The laws mentioned above all give the government power to control the press. While the government does have a right to enact certain laws during a crisis, it is the job of the judicial division to oversee the use of these laws and place checks on the government's power when the laws in question are misused. In the instances of the misuse of the Hungarian Press and Media Act and the amendment made to the Act XII of 2020 on the Containment of the Coronavirus, the courts failed to shut the laws down. Not only did the Hungarian judicial system fail to shut down these laws when they started to be misused by politicians, the courts failed to acknowledge that they were being misused in the first place. This exhibits the broader theme of a system that has started to break down its original set of checks and balances that had previously made it a democracy. Journalists can only be a productive part of society if their rights are respected within

³⁸ See: <https://www.theguardian.com/world/2020/apr/03/hungarian-journalists-fear-coronavirus-law-may-be-used-to-jail-them>

a democratic system, but when the system of democracy itself is not upheld, journalists will not be able to do their jobs properly without backlash.

Aside from legislation, defamation lawsuits are an extremely prevalent way in which authoritative figures target journalists. According to the Hungarian criminal code, defamation is a criminal offense that can carry up to 2 years of prison if convicted. The case of Júlia Halász's is an example of the type of defamation cases that journalists in Hungary experience regularly. In May of 2021, Júlia Halász's, a reporter for one of Hungary's largest still running independent newspapers 444.hu, was convicted with a criminal defamation charge. The charge came from an article that she had published back in 2017, where she accused a Budapest city district councilor of harassment when she attempted to cover him at a party forum. The counselor, László Szabó, is a member of the Fidesz (the ruling right-wing political party), denied the harassment with other members of the Fidesz being his only witnesses. The harassment in question involved Szabó accusing Halász of filming without permission, and physically forcing her out of the room while taking her phone and deleting all the photos she had of him. When the incident occurred, Halász had filed a criminal complaint, yet Hungarian authorities dismissed the complaint due to lack of evidence. CPJ³⁹ and 444.hu editor Péter Uj, spoke out on the grounds that the incident was a clear violation of Halász's rights both as a journalist and as a citizen. But, given the laws in place that allow the government to regulate what gets published, political leaders such as Szabó are able to file complaints such as the one described above, with no penalty for their own actions, leaving the journalists who speak out burdened with criminal charges.

³⁹ See: <https://cpj.org/2021/05/hungarian-court-convicts-reporter-julia-halasz-on-criminal-defamation-charge/>

Another example that exhibits the political abuse of press freedom is the case of András Dezső. In 2018, Hungarian investigative journalist András Dezső was reprimanded by a court in Budapest for the alleged misuse of personal information that he had published in an article earlier that year. The personal information in question was the video of a Swedish-Hungarian activist (by the name of Natalie Contessa af Sandeberg) who had made controversial claims comparing immigration levels and safety in Budapest and Sweden. These statements had been made on a Hungarian state TV station which was known to have an anti-migrant view. The article Dezső had published contained the video (although never mentioning Sandeberg's name), along with findings of Sandeberg's convictions of defamation, harassment, and "violations of public trust" during her stay in Sweden. As mentioned above, Sandeberg sued Dezső for misuse of personal information with the backing of the Hungarian government. A pertinent fact of the case is that the information regarding Sandeberg's convictions was published on an official Swedish database, accessible to anyone, which Dezső had accessed legally. This was later confirmed by the authorities.

A possible ground for the suit could be Hungary's fairly recent amendment to its civil code, which grants claimants monetary compensation for any instance of violation of one's personality rights, regardless of evidence.⁴⁰ During his first trial, Dezső had been found not guilty of any crime. The Budapest prosecutor's office would appeal this decision in 2020 on the grounds of procedural error, reopening the case. During this time period, Dezső was targeted with multiple other legal threats from pro-government media. "Democracy demands due process with respect for a diversity of viewpoints" editor-in-chief of RSF Pauline Adès-Mével said

⁴⁰ Hungary amended its civil code in 2014. Although not directly related to this analysis, it is important to understand that these cases arise from both civil and criminal grounds. Source: <https://ipi.media/wp-content/uploads/2017/03/Hungary-Civil-Defamation-web-small-2.pdf>

regarding Dezső's case. "An EU member country cannot allow a veteran journalist to be convicted for doing his job in a normal manner and simply using publicly available information." (Adès-Mével, 2020)

The international attention that Dezső's case brought to the increasing number of threats to press freedom in Hungary is positive, yet the issue is not simply solved by passing new legislation. In the case of Hungary, the issue of press freedom is more closely related to the country's declining value of democracy, which freedom of the press is a vital aspect of. When a government does not value and actively maintain systems that promote democracy, there will be no true freedom of the press. The cases outlined above show a projection of a changing government that has begun to shift the profession of journalism from its traditional role as a government watchdog to one that is used to aid the government's agenda.

CONCLUSION

The case studies analyzed above are the tip of the iceberg of legal attacks against press freedom and present larger themes within these countries regarding the future of both journalism and democracy. The ability to speak out against a person of higher power (even in a negative manner) is vital to democracy. A journalist's job is to pass on information to the public that the public themselves do not have easy access to. Any actions done by a government that contradicts the purpose of the profession of journalism, cannot consider themselves a democracy.

International bodies have begun to recognize this, "The European Court of Human rights has vindicated several journalists, who have lashed out at public officials, calling them all sorts

of names, on the grounds that their criticism adds to pluralism and democracy – even if offensive and provocative at times.” (Rizoulis, 2021) Freedom of speech and opinion does not insinuate that one has to be respectful or agree with another's thoughts. It is exactly the opposite. The true definition of democracy insinuates the respect of all opinions, not only does this need to be codified into law (which in the case studies above it is), but it must also be respected and upheld by those of authority. The latter is where Greece, Italy, and Hungary fall short. Considering this and the actions of the governments of Greece, Italy, and Hungary explained in this analysis, questions the veils of democracy that these countries exhibit, placing them realistically more in the category of authoritarian governments.

This conclusion can be made by outlining three major themes that are shown in the case studies of these countries. The first theme being the disconnect between legislative action and judicial action. This is highlighted in the passage of legislation that inherently violates these countries' constitutions, with no judicial action being taken. The passage of Greece and Hungary's “fake news” legislation being a prime example. These laws should have been questioned by the judicial divisions and ultimately shut down as the main goal of these laws violates the freedom of opinion clause as well as the press freedom clause in both state constitutions. The second theme is the unwillingness of governments to recognize the questionable nature of the use of targeted lawsuits that are made by authoritative figures to intimidate individuals (mainly journalists), which keep them from exercising their rights. The third major theme that came from this analysis is the relevance (or lack thereof) of broader international norms and rules outlined by the EU and other Human Rights organizations regarding the right to press freedom. By being members of the EU, these countries have agreed

to implement EU values and legislation domestically. In the case of press freedom, these countries have not lived up to their word.

“Democracy is based on the exercise of the right to freedom of opinion and expression and the freedom of information, both offline and online. This is at the core of the profession of journalism and must be accompanied by an environment that is able to provide protection and safety to journalists and media professionals.” (European Council, June, 2022)

Although there have not been steps taken domestically to combat the legal threats against journalists, international institutions have begun to recognize the magnitude of the issue. A 2021 annual report done by partners of the Council of Europe, “Defending Press Freedom in Times of Conflict”, shows that the ministers of the Council of Europe have approved a plan to establish a legal framework for improved protection against abusive and vexatious legal threats targeted at journalists. The European Commission has expressed that it will consider the amendment of current EU legislation regarding conflicts of law and jurisdictional regimes, with the goal of ceasing cross-border SLAPP cases. These amendments would make it harder for political figures to target journalists who are not nationals to their state who have published work about them. The commission has also presented a proposal for a directive on SLAPPs that would suggest additional safeguards against these lawsuits and provide guidance to member states on the matter. The recent discussion of creating new European legislation to combat SLAPP cases is positive and looking at the issue optimistically might be the push needed to force countries such as Greece, Italy, and Hungary to make their own domestic legislation.

What we are starting to see here is the erosion of public trust in the governments of these countries. People in power are using their authority (particularly politicians) as they see fit for their personal benefit, undermining the public's trust to serve their own interests, instead of serving for the interest of the people. What this analysis shows is that international regulations only go so far in the protection of press freedom. These threats will only decrease once the issue is recognized domestically and systematic change is put in place. Although the profession of journalism is deemed necessary and respected on the surface, the current functioning of the governmental systems of Greece, Italy, and Hungary show a declining respect for the profession. Looking at the issue holistically, the increase in threats against journalists insinuates a shift from democratic values to more authoritarian practices, leaving civil society vulnerable to corruption. This connection between declining press freedom and increasing authoritarianism must be made clear as a system that does not respect the right to the truth and those who deliver it does not deserve the title of a democracy.

APPENDIX

(1) LIST OF RELEVANT INTERNATIONAL LAWS/TREATIES

1. Article 19 of the Universal Declaration of Human Rights

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

2. Article 19(2) of the International Covenant on Civil and Political Rights

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

either orally, in writing or in print, in the form of art, or through any other media of his choice.”

3. Article 11 of the Charter of Fundamental Rights of the European Union

(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.”

(2) “The freedom and pluralism of the media shall be respected.”

4. Article 10 of the European Convention on Human Rights

(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.”

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