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Human Rights Violations Committed Against Human Rights Defenders Through the Use of Legal System: A Trend in Europe and Beyond

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Abstract
Human rights defenders (HRDs) fight for various human rights and address concerns related to corruption, employment, the environment, and other issues. They also challenge powerful state and private stakeholders and seek justice for human rights abuses. Therefore, HRDs are increasingly becoming targets of violent attacks and abuse with the aim of silencing them. This article begins by providing a brief definition of HRDs and then proceeds to outline the risks associated with their work in defending human rights. It also identifies the perpetrators responsible for these violations. The article categorises the types of abuses against HRDs into two main categories, with a particular focus on the widespread tactic of using the legal system to target and silence defenders in Europe, which is also emerging globally. It introduces a taxonomy of various types of violations through the legal system. By categorising the types of violations against HRDs and establishing a taxonomy to aid in identifying these tactics, the article seeks to deepen understanding and awareness of the varied abuses experienced by HRDs, as well as their deviation from human rights standards, providing a valuable resource for academics, practitioners, and defenders.

Keywords Human rights defenders · Criminalisation · The use of law · Lawfare · Europe

Introduction

Human rights defenders (HRDs) are essential to the realisation of human rights, democracy, and the rule of law, as they work to create a society that is fair, just, and equal for all. Defenders who can be individuals, group of individuals and

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organisations, are known for their fight to promote human rights, speak out against violations and corruption by documenting human rights abuses and bringing them to the attention of international and regional institutions, non-governmental organisations, media, and government officials in the hope that public pressure can lead to change (Ohchr.org (n.d.)). They can be found anywhere in the world, from western states to authoritarian states and armed conflicts. HRDs also work to hold governments to account for violations of human rights and democratic principles and to ensure that the rule of law is respected. In addition, defenders work closely with victims of human rights violations, offering legal and psychological assistance and giving them a voice in the fight for justice (Ohchr.org (n.d.)). In essence, with their activities, defenders play a crucial role in creating an enabling environment for the enjoyment of human rights and in upholding the rule of law and democracy. HRDs often work to provide protection and advocacy for vulnerable groups, such as women, children, and minorities. They speak out for policies and practices that promote the equal treatment of all individuals and work to combat discrimination and prejudice, while bringing to the fore abuses puts extra pressure on states.

The work of an HRD involves uncovering uncomfortable truths and pointing out flaws in the democratic system, which can be viewed as an attack by those who are criticised. Consequently, HRDs may face various forms of retaliation, including efforts to silence them, divert their attention from their human rights work, or discredit their findings. When defenders are attacked and silenced, this may discourage others who may wish to speak out against human rights abuses or work towards justice and accountability. Furthermore, targeted attacks and mistreatment of defenders may also impede their ability to carry out human rights activities, resulting in fewer voices advocating against human rights violations and hostile policies. HRDs are often subjected to serious violations, such as threats, murders, enforced disappearances, torture, and killings (Forst 2018). However, in addition to the 'conventional' types of violations and attacks against defenders, there is a growing trend of using the legal system, either through its laws or administrative and punitive mechanisms, to target and silence defenders. This article introduces the binary of violations occurring through the legal system and those taking place outside of it, focusing specifically on violations through the legal system. Its aim is to foster an understanding of these tactics and policies used to threaten the lives and existence of defenders and impede their activities, thereby undermining the realisation of human rights as well as deviating from human rights standards. On this basis, it introduces and engages with the following taxonomy: (a) creating and using laws explicitly targeting HRDs, (b) using existing laws that have a differential effect on HRDs, and (c) using punitive instruments to impact HRDs.

Depending on their location and operations, the challenges may vary, with violations occurring outside of the legal system being the most prevalent means of attacking defenders. In regions such as South America, Africa, and Asia, physical attacks on defenders, enforced disappearances, and murders are widespread, while the use of the legal system as a means of retaliation against HRDs also occurs, though not as commonly as in Europe. In contrast, in Europe, the use of the legal system is more common, constituting the primary strategy against defenders (Front Line Defenders 2023; Front Line Defenders 2021; Forst 2018). Essentially, the use of law as

a phenomenon is not limited to Europe, as it appears to be progressively becoming a global trend. However, the article specifically focuses on Europe for several reasons. Firstly, because the use of law is more widespread in Europe, it facilitates the identification and analysis of each category. Europe has also shown dynamism in the protection of HRDs, while defenders have played a crucial role as partners of the Council of Europe Commissioner for Human Rights, who is responsible for enhancing their protection and promotion in the region (Council of Europe (n.d.)). In addition, supporting defenders is a major priority in the European Union's external human rights policy (European Union 2008; European Commission 2022). However, as argued in this article, although traditional violations against defenders are not as common in Europe as in other parts of the world, the use of the legal system appears to be growing, which poses a paradox and raises questions about consistency in human rights protection in Europe.

When it comes to sources and methodology, given the limited literature in this field, this article seeks to engage with the available knowledge and current challenges, consolidate existing concepts and trends, and ultimately encourage further research that can mitigate the risks faced by defenders and the threats to the achievement of human rights and the rule of law. To understand and engage with the risks and malpractices, particularly how the law is misused to target and silence defenders, the study primarily relies on a legislation as well as soft law and non-legally binding UN instruments' documents, as well as research reports produced by non-governmental organisations focused on the protection and support of HRDs, such as Front Line Defenders, which holds Special Consultative Status with the UN Economic and Social Council and observer status with the African Commission on Human and Peoples' Rights and well-respected NGOs that also act as HRDs, such as Amnesty International as well as websites of international and regional organisations.

The differentiation between violations through and outside the legal system, alongside the taxonomy, stems from various violations reported by UN instruments, NGOs, and defenders post-2001. This period marks a crucial turning point for societies, signifying a notable shift in how governments employed the law to combat terrorism, and therefore, this piece specifically considers violations occurring after 2001 in developing and discussing the taxonomy. While it includes examples of certain laws, such as anti-terrorism laws, defamation laws, or abortion laws, or cases of criminalisation, it is important to note that these are not the only ways in which the law is used to harm and silence defenders. The selected examples serve as common occurrences in Europe and are used here to facilitate the analysis of each category. The purpose of the article is to introduce and establish the taxonomy, highlight the legal deviation from human rights standards, and place emphasis on the misuse of law to target defenders, enabling other laws and practices against defenders to be related to each category accordingly and enhance the understanding of how law is used against defenders. The inclusion of the Russian Agent Law, as a case to understand laws adopted to target defenders, is not arbitrary either. Although Russia is currently outside the Council of Europe, as will be discussed later in the article, the Russian Foreign Agent Law has been influential in shaping the approach of other jurisdictions in Europe towards restricting the right to access funding, which is pivotal for the effective operation of human rights activities. The European Court of

Human Rights (ECtHR) has ruled on the legality of the Russian Foreign Agent Law, making *the Ecodefence and others v. Russia* case, which is the only case thus far specifically related to the use of law to target the promotion of human rights activities, central to the analysis. Similar ruling on a foreign agent legislation in the EU modelled after the Russian law has also been issued by the Court of Justice of the European Union.

In relation to structure, it is crucial to understand the scope of the term 'human rights defender', and therefore, the 'Who Can Be Classified as Human Rights Defenders' section engages with the definition of the term, which is broad enough to include all individuals and organisations who promote human rights in a peaceful way. For many defenders, the promotion of human rights comes with significant risks and serious human rights violations, so the 'Violations Against Human Rights Defenders' section examines the abuses committed against defenders as well as discusses the identity of their violators. The section also looks at the entities and figures in power who react to criticism or face the prospect of unpleasant truths about the human rights anomalies in the society being exposed. These perpetrators resort to attacking and discrediting defenders to silence them and divert attention away from their own shortcomings. The 'Violations Against Human Rights Defenders' section also categorises the violations into violations through the legal system and violations outside the legal system. Based on selected laws and practices, the 'Violations Through the Legal System in Europe' section discusses the three types of legal actions used to hinder the work of HRDs. The objective is to emphasise the legal deviation and the impact on human rights.

Impunity is a significant issue encountered by defenders for various reasons. For instance, states often shield violators from facing the consequences of their actions and fail to provide remedies for abuses, while defenders themselves may not hold their perpetrators accountable (Koula 2020). This situation has increased the vulnerability of defenders and perpetuated the perception that violations against defenders are either licenced or at least accepted and tolerated (Koula 2020). Although impunity does not constitute a violation within or outside the legal system, it is, in fact, perceived as a failure of the legal system to bring violators to justice and is an abuse in itself. Leaving violations unaddressed and unpunished only perpetuates further abuses against defenders. However, the article does not address impunity for the crimes committed against defenders, primarily because it seems that in Europe, it is not as widespread as, for example, in countries of South America (Front Line Defenders 2023). Therefore, discussing it would go beyond the scope of the article, deviating from the primary focus on distinguishing violations occurring within and outside the legal system and understanding the emerging trend of using the law to target defenders.

Who Can Be Classified as Human Rights Defenders

The 'term human rights defenders' is widely used, and people and organisations are now familiar with it. Other terms, such as human rights activists, or simply activists, and human rights workers are also interchangeably used. However, there is no

specific definition of who qualify as 'human rights defenders'. The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly known as the Declaration on HRDs, does not define the term, but it derives from Article 1 which states that 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels' (UN General Assembly 1998).

The Declaration on HRDs, which bestowed recognition and legitimacy on HRDs (Spannagel 2017), established an activity-based approach, emphasising the activity of promoting and protecting human rights (Koula 2019). On this basis, all persons or groups of persons who fight for human rights to promote and protect fundamental freedoms fall under the term. HRDs can be persons of any gender, of all ages, from all sorts of professional or other backgrounds, and with different interests. The activity-based approach allows for a broad and inclusive definition, which can accommodate all persons and organisations carrying out human rights activities. However, such a broad definition fails to distinguish those defenders that may be at a greater risk, and in need of support and protection, which leaves crucial issues, such as the length of the human rights activity, unaddressed (Koula 2019). The term 'human rights defenders at risk' is used to refer to those defenders who are in a serious danger because of their human rights activities (Nah et al. 2013).

To add clarity to the scope of the Declaration, the Office of the UN High Commissioner issued a non-binding research report (Fact Sheet 29). In relation to the definition, Fact Sheet 29 suggests that a defender should meet three requirements: firstly, a defender should accept the universality of human rights; secondly, their arguments should not necessarily be factually or legally correct; and thirdly, the defender should promote human rights through 'peaceful actions' (Fact Sheet 2004). The EU Guidelines on Human Rights Defenders, adopted by the Council of the European Union, are in line with this perspective. Article 3 of the Guidelines emphasises that the EU's definition of human rights defenders '[..] does not include those individuals or groups who commit or propagate violence' (European Union 2008). In essence, a defender should not commit human rights violations and should promote freedoms and rights in a non-violent matter. The definition that derives from Article 3 seems to be widely used in international instruments and accepted by non-governmental organisations (NGOs) that work with HRDs and defenders themselves (UN Office of the High Commissioner of Human Rights 2011).

This term is used to describe a wide spectrum of individuals and groups who advocate for or safeguard human rights, including professionals, such as lawyers, journalists, and trade unionists (Bennett et. al. 2015), so the activities of defenders vary greatly. In particular, they act as human rights watchdogs, speaking out against human rights violations and corruption and challenging state authorities as well as non-state actors, seek remedies for victims of human rights abuses, exert pressure on governments to comply with the laws and their human rights obligations, and call business actors upon to implement the UN Guiding Principles of Business and Human Rights (Birchall 2020). International NGOs, acting as HRDs, also engage in campaigning and lobbying to bring about policy changes. In other words, HRDs are

the key partners of supranational organisations, such as the UN Special Rapporteurs, the Council of Europe Commissioner, and multinational companies, who want to implement the UN Guiding Principles on Business and Human Rights.

Defenders are often identified by the specific human rights issues they advocate for. For instance, although most defenders of women's rights are women, people of all genders who promote women's rights and rights related to gender equality are known as Women Human Rights Defenders (WHRDS) (Ohchr.org (n.d.); UN General Assembly 2019). Similarly, those promoting environmental protection, access to natural resources, and land rights are known as Environmental Human Rights Defenders.

Moreover, HRDs have long been integral to the advancement of fundamental rights, predating the formal recognition of their role in the 1998 UN Declaration on HRDs. Throughout history, HRDs have fought for essential rights such as labour rights and freedom of expression, operating in diverse political contexts ranging from democratic states to authoritarian regimes and armed conflicts (Young 2001). While the Declaration on HRDs has provided international recognition for defenders in human rights law (Spannagel 2017), it has also reinforced their ongoing struggle for the realisation of human rights.

In addressing a multitude of human rights issues across society, from gender-based violence and LGBTQ+rights to labour rights violations, corruption, injustice, and environmental and indigenous rights, HRDs play a vital role. Their crucial work has been instrumental in holding both state and non-state actors accountable for human rights abuses, promoting compliance with human rights standards, and advancing human rights, democracy, and the rule of law.

Violations Against Human Rights Defenders

The Cost of Human Rights Work and the Violators of Human Rights Defenders

The cost of promoting and fighting for human rights is excessively high. HRDs challenge the interests of powerful stakeholders who use atrocious tactics to threaten, intimidate, and silence them. Restrictive laws that undermine freedom of association, expression, and peaceful assembly, prosecution on false charges, surveillance, abuses, death threats, arbitrary arrests, and detention, forced disappearances, torture, and assassination are commonly used methods against all defenders with the aim of frustrating the defence of human rights (Front Line Defenders 2023).

In many cases, state authorities are responsible for abuses against defenders in an attempt to stop them from challenging government's policy and interests. The responsibility for violations against defenders can be attributed directly or indirectly to state authorities. This is particularly evident in cases involving the police, security forces, and national intelligence agencies, who are often implicated in arbitrary arrests, torture, illegal searches, and unlawful surveillance. Government officials also frequently propose and implement restrictive laws to control the actions of defenders, while the judiciary imposes pre-trial detention and harsh sentences,

thereby depriving defenders of their freedom and rights precisely when the protection of human rights is crucial (Koula 2020).

Non-state actors may also commit human rights violations. The term 'non-state actors' includes people, corporations, groups, and organisations not being state agents and mechanisms (Clapham 2017). That means a range of people may be responsible for abuses against defenders. More specifically, a significant number of violations against defenders are also committed by isolated individuals who do not agree with defenders' beliefs and activities (UN General Assembly 2010). Private corporations are also responsible for serious abuses against defenders (Koula 2024). Companies exploiting natural resources are in conflict with local populations, as the latter see their properties and nature be destroyed, having little control over how development can proceed within their territory (UN General Assembly 2010). As seen elsewhere, defenders fighting for environmental and land rights are the mostly attacked group of defenders. The media are also involved in violations committed against defenders (UN General Assembly 2010). In several cases, defenders have been subjected to smear campaigns in press and have been portrayed as 'troublemakers'. Undoubtedly, this label leads to stigmatisation of defenders and legitimises attacks against them (Brooks 2015). As a result, HRDs need to go into hiding to protect themselves and their family from abuses and severe violations of their rights.

Two Categories of Violation Committed Against Human Rights Defenders: Violations Outside the Legal System and Violations Through the Legal System

According to the UN Office of the High Commissioner for Human Rights (OHCHR) and NGOs, from 2015 to 2019, 1323 defenders were killed across the globe because of their human rights activities (UN General Assembly 2020). In 2020 alone, despite the lockdown and COVID-19 restrictions, more than 20% of defenders were subjected to physical attacks, torture. and other forms of harassment, and 331 defenders were killed (Front Line Defenders 2021).

In addition to these types of violations, in 2021, 20% of defenders were forced to refrain from their human rights activities on the grounds of national security and public order, and a similar percentage of defenders were charged with defamation charges and support of terrorism (Front Line Defenders 2021). It is now evident that the criminalisation of defenders has become a common trend of targeting HRDs.

There appear to be two primary methods of abusing defenders: violations outside the legal system and violations through the legal system which result in the criminalisation of HRDs. The oxymoron term 'legal violations' is also used in this article to refer to violations through the legal system wherein legal means are employed to target and impede defenders. Even if the criminalisation of defenders is not as cruel as, for instance, torture and other violations outside the legal system, the motive and the end result are the same; defenders suffer serious human rights violations which silence them forever or render them inefficient for a period of time.

In fact, the variety of tactics used to target HRDs through legal means can be summarised into three main types: (a) creating and using laws explicitly targeting HRDs, (b) using existing laws that have a differential effect on HRDs, and (c) using

punitive instruments to impact HRDs. As demonstrated in the analysis of each category below, all three categories involve the abuse of elements within the legal system or the targeting of defenders through legal means, resulting in a negative impact on the defence of human rights. The distinction between the first two categories lies in the following: (a) laws specifically introduced and adopted to restrict the rights of defenders and (b) laws that have been adopted for different cases or specific situations but are also exploited to target defenders. On the other hand, the third category (c) pertains to the use of punitive instruments to harm defenders. Essentially, the first two categories are substantive based, while the latter is procedural/process based.

These tactics are used by both state and non-state actors who aim to keep defenders away from their jobs. Sometimes state authorities and non-state actors may have the same interests at stake and work together,[1] but state actors are those who have greater access to resources and the power to use the legal system to target defenders. However, as seen below, non-state actors extensively sue defenders, deliberately involving them in lengthy judicial proceedings that aim to impose significant financial and legal burdens, ultimately exhausting them.

Violations through the legal system to target and attack defenders are a form of 'lawfare'. The term was reportedly used in 1975 by Carlson and Yeoman, who aimed to criticise the adversarial nature of Western legal systems (Carlson and Yeoman 1975, 155). In 2001, Dunlap introduced the term as an innovative form of warfare, where law is used to achieve traditional military objectives (Dunlap 2001). A decade later, he defined lawfare as 'the strategy of using – or misusing – law as a substitute for traditional military means to achieve a warfighting objective' (Dunlap 2011, 315). Over time, the term has evolved, extending its applicability to circumstances that may not necessarily involve conventional warfare. Lawfare's most active growth area diverges from traditional battlefields, as exemplified by Juan Zarate's book, 'Treasury's War: The Unleashing of a New Era of Financial Warfare'. In particular, Zarate describes how the US Treasury employed various laws to 'attack' the financial structures of twenty-first-century adversaries, including terrorists (Zarate 2013). Essentially, in the context of lawfare, a perceived threat is addressed not through military means but by employing legal strategies. In the case of HRDs, it could be said that their activities and their voice pose a threat to the policy, acts, and the overall interests of state and non-state actors, and the legal system is then employed as a weapon against them, akin to a battle scenario.

Examining the data below that the OHCHR, in collaboration with other UN instruments and NGOs, collected and published, one can conclude that at least one defender has fallen victim of human rights violations at some point in all UN Member States across the globe. Violations outside the legal system and violations through the legal system occur in all places, but killings that fall under the umbrella

[1] For example, Honduran state agents and business sector conspired in the assassination of Berta Caceres, a prominent environmental rights defender in Honduras. See for example, D. Jimenez, T. Rodrigez, and G. Navas et al., 'From Chico Mendes to Berta Caceres' in B. Bustos et al. (eds), *Routledge Handbook of Latin America and the Environment* (Routledge, 2023) Chapter 25.

of violations outside the legal system happen predominantly in Latin America, Africa, and South-eastern Asia (Table 1). On the other hand, the use of legal measures and mechanisms seems to be a more common method of eliminating defenders in Europe, though this does not imply a zero absence of lethal dangers (Front Line Defenders 2021; Front Line Defenders 2023).

According to the findings of the UN Special Rapporteur on the situation of HRDs and NGOs, from 2015 to 2020, environmental and indigenous rights defenders were by far the most targeted group, with LGBTQ + rights defenders, freedom of expression, and women's rights defenders following (Front Line Defenders 2020, 2019, 2018, 2017, 2016; Global Witness 2021). The latest data are fully in line with the previous years, and defenders fighting for forests, land, water, and climate change remain the most-attacked group of defenders, and the rates for the other categories, such as women's rights defenders, are steady (Front Line Defenders 2020, 2021).

No research findings and data suggest that the defence of human rights has been restricted in the areas mostly affected by attacks and abuses against defenders. Defenders, regardless of their expertise, remain active and resilient even during times of global crisis, such as the COVID-19 pandemic (Coen et al. 2022, p. 18), and continue to work peacefully for human rights, despite facing daily threats, killings, and abuses. However, systematic attacks and abuses against certain groups of defenders, rendering them unable to carry out their human rights activities, could gradually impact the rights they focus on. With fewer defenders in action and many struggling to stay safe and continue speaking out against hostile policies and seeking redress for rights violations, fewer voices might be raised and heard. Human rights violations may occur and go unpunished, while there may be room for laws and actions that breach human rights and fundamental freedoms. Based on the existing data from the sources cited in this piece, if violations against those groups mostly targeted do not cease, a significant deterioration in environmental rights, women's rights, LGBTQ + rights, and restrictions on fundamental freedoms in democratic societies should be anticipated. Therefore, it is crucial to fully understand the challenges faced by defenders in order to effectively address these issues.

Violations Through the Legal System in Europe

In the aftermath of two World Wars within a period of 20 years and the Holocaust, European states cooperated to ensure that atrocities would never happen again and adopted the European Convention on Human Rights (ECHR). The Convention has been one the oldest legally binding treaties on human rights and is considered the most effective international convention on the protection of human rights (Helfer 1993). It has also influenced the creation and development of law and legal systems

Table 1 Number of cases of killings of human rights defenders

Regions	2015		2016		2017		2018		2019		2020	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
World	46	303	33	344	46	324	46	430	43	314	48	345
Sub-Saharan Africa	6	21	1	18	0	16	0	19	3	13	1	7
Northern Africa and Western Asia	8	61	3	61	6	38	1	49	1	17	2	17
Central and Southern Asia	5	24	4	32	3	40	2	48	2	26	9	34
Latin America and the Caribbean	19	147	25	198	24	174	31	259	34	212	31	259
Oceania	1	0	0	0	0	0	0	0	0	0	0	0
Europe and Northern America	2	12	3	3	3	2	5	9	1	2	1	1

Incidents occurred from 1 January to 31 December of each year. Source: The Office of the United Nations High Commissioner for Human Rights (OHCHR) in collaboration with the UN Educational and Cultural Organisation (UNESCO) and the International Labour Organisation of the United Nations (ILO)

in most of the Council of Europe member states[2] and still plays an essential role in maintaining democratic values and fundamental freedoms (Helfer 1993, 193). On this basis, it is not surprising that human rights are sufficiently implemented in Europe. Although 19 state parties to the ECHR are not members of the European Union, the EU has also made an extraordinary contribution to protecting and promoting human rights and the rule of law in Europe (Dougles-Scott 2011).

Despite the high rate of implementation of human rights in member states of the Council of Europe and at regional level, when it comes to HRDs, the use of the law against them and the criminalisation of their activities are becoming a common practice. One could say that the reason behind this is because after the 9/11 attacks and during the subsequent years marked by the combat against terrorism, the more recent refugee crisis, and the rise of nationalism (Mendelsohn 2017), interferences with human rights have become more usual. As a result, the fight for human rights has become imperative, prompting more people to speak out against wrongdoings and leading to a more dynamic presence and the emergence of a greater number of defenders (Mendelsohn 2017; Zafeiri 2016). Hence, Europe has resorted to using the legal system sneakily, as they aim to avoid undermining the otherwise satisfactory image of rights implementation in the region, refraining from obvious and conventional abuses, such as enforced disappearances and murders. It is worth noting the use of law is not a new phenomenon to target defenders; for example, Defamation Laws and Strategic Lawsuits against Public Participation (SLAPPs) were first employed against civil rights activists in the 1960s in Claiborne County, Mississippi (Adams 1989). The use of law as a weapon is also known in the context of 'lawfare', as discussed elsewhere, and has been widely used.

As stated above, the main forms of criminalisation appear to be three and are common across the globe. The following sections examine examples of how these practices occur in Europe. By no means is the practice exhaustive to those tactics discussed, but rather aims to provide an understanding of the nature of restrictions, so that further cases of criminalisation taking place inside Europe or outside can be related to those categories.

Creating and Using Laws Explicitly Targeting HRDs

Restrictions on the Defence of Human Rights

The defence of human rights, especially those rights associated with it, such as freedom of association and freedom of expression, is currently facing significant challenges. Various primary and secondary legislation along with administrative measures are being introduced and implemented with the aim of restricting these rights. The right to peaceful assembly and protest is under attack in good health democracies, and the impact on the defence of human rights is remarkable. Recently, in the name of public order and safety, governments in major European states relied

[2] The Russian Federation ceased to be a member of the Council of Europe on 15 March 2022 following the invasion of Ukraine, and also, ceased to be a party to the ECHR on 16 September 2022.

on vague legislations or used urgent administrative measures to block pro-Palestinian protests in London, Berlin, and Paris, with tens of thousands gathering to show solidarity with Gaza, where over 1 million Palestinians have been displaced since Hamas militants attacked Israel on 7 October 2023, and in response, Israel imposed a siege (The Washington Post 2023; Reuters 2023; The Guardian 2023). It should be noted, though, that banning pro-Palestinian protests and events and silencing voices is not a new phenomenon. Even before October 2023, there had been 'widespread restrictions of the right of assembly and freedom of expression' related to criticism of Israel (ELSC 2023). According to the European Legal Support Centre (ELSC), 53 incidents between 2017 and 2022 were recorded in Germany, Austria, and the UK, in which individuals, groups, and organisations were prevented from exercising their right to freedom of expression and eventually targeted for promoting Palestinian rights, condemning Israel's practices and policies and criticising Zionism as a political ideology. The reasons for such unconditional support towards Israel fall outside the scope of the article.

The most prevalent type of legislation used to restrict the activities of individuals and organisations defending human rights, which strikes at the core of human rights defence, is legislation that requires civil society organisations to declare the sources of their funding and whether they receive funding from abroad. As noted below, failure to comply with human rights standards (Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights 1984) such legislation may constitute a breach of the right to access funding (UN General Assembly 1998, Article 13). This tactic is widely used, with the UK and Greece and other states in Europe having legislation in place that impose the duty to register and a series of financial limits (The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014; Law 4662/2020 Greece (n.d.)). The most well-known example, though, is the Russia Foreign Agent Law which has served as a model for such restrictive laws on civil society organisations and defenders. Accordingly, this section focuses on this legislative measure to understand its rationale, the harm it inflicts upon defenders, and its incompatibility with human rights standards, as the ECtHR recently ruled on this matter for the first time. The same analysis can be applied to any legislative measure aimed at restricting the rights to defend human rights.

The right to receive funding derives from Article 13 of the Declaration on HRDs, and albeit non-binding, it constitutes an inherent element of the right of association as well as the right of expression which are both rights set out in international and regional treaties. The Special Rapporteur on the situation of HRDs stressed that in order for HRDs and organisations committed to the promotion of human rights to continue their operations, it is absolutely necessary that they are able to carry out their activities without impediments, including funding restrictions' (UN Human Rights Council 2012). In essence, the ability to seek, receive, and use funding is so essential to organisations acting as defenders that they would not be able to exercise the right of association and the freedom to express ideas, make criticism, and conduct research. Limited interference with the rights above, such as the obligation to declare funds, could be justified on the ground of national security in the sense that the receipt of foreign funding can be used to influence governments to serve

the interests of foreign bodies, governments, or private institutions. Moreover, some restrictions on the right to access foreign funding could be legitimate in the context of the fight against terrorism and money-laundering (Scherer et. al. 2013). However, even if state sovereignty and financial transparency are valid justifications, these should never be used as justification to undermine the right and impede the legitimate work of organisations (UN Human Rights Council 2012, para. 94).

The Russian government adopted in 2012 the Foreign Agent law, which was amended in 2017 to designate media as foreign agents, and very recently in late 2022 expanded it to almost any person or organisation, regardless of nationality, who expresses opinions about Russian policies or officials.[3] Under the law, all organisations engaging in civil activism must register with the Justice Ministry as 'foreign agents' if they receive even small amounts of funding from any foreign sources, governmental or private. They must also note on its publications and materials, such as books, brochures, and official statements that 'such materials are published and/or distributed by a non-commercial organization performing the functions of a foreign agent'. It is worth noting that the term 'foreign agent' has a strong negative connotation, as this term is closely associated with the term 'spy' or 'traitor' and widely used by Russian newspapers and authorities. This has been proved by a large-scale survey conducted in 2016 by the Levada Centre, a Russian non-governmental institute for sociological research. The survey shows that 62% and 57% of participants, in September 2012 and December 2016, respectively, perceived the term 'foreign agent' negatively. While the majority usually associate the phrase with words like spy, foreign intelligence agent, and infiltrator, it is remarkable that 7% of respondents stated the term evokes notions, such as enemy, enemy of Russia, traitor, and fifth column (Levada Centre 2013) A more recent survey conducted by the same institute found that the vast majority of people have a negative attitude towards individuals, media, and organisations who are named as foreign agents (Levada Centre 2017). In addition, for those NGOs receiving foreign funds, the law requires tighter control: annual audits, separate accounts on the use of foreign funds, half-yearly activity reports, and quarterly financial reports. Non-compliance or failure of an NGO receiving foreign grants to register with the government body entails administrative and criminal sanctions.

In June 2022, the ECtHR finally ruled in the *Ecodefence and others v. Russia*; Russia's Foreign Agent Law was incompatible with the freedom of expression and association, violating the rights of civil society organisations and HRDs. According to ECtHR case law, any interference must adequately and clearly be prescribed by law in such a way as to make the possible consequences of a given action reasonably foreseeable (Sunday Times v. United Kingdom 1979; Gorzelik and others v. Poland 2004).

[3] The article discusses the Foreign Agent Law as if it were one cohesive law. The 'Foreign Agent Law' is made up of multiples amendments passed through multiple different Acts. The initial Act originally passed in 2012 is Legislation on Making Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents, Federal Law 121-FZ (2012).

The Constitutional Court of Russia attempted to define the concept of 'political activity' by stating that 'a fundamental criterion for assessing whether an NGO's action can be regarded as political is whether it aims to influence state policies (directly or by shaping public opinion), and whether it intends to generate a public response and draw the attention of state bodies and civil society' (Decision of the Russian Constitutional Court No 10-P 2014, para. 3.3.). On the other hand, in its judgement, the Strasbourg Court concluded that applying Foreign Agent Law to organisations was not prescribed by law in the sense that the notions of 'political activity' and 'foreign funding' set out in the legislation were not sufficiently foreseeable (Ecodefence and others v. Russia 2022). The ECtHR ruled that the restrictions imposed by the law on those engaged in civil activism were not necessary in a democratic society as no sufficient reasons related to national security and financial transparency were provided that would justify the creation of the status of the 'foreign agent' (Ecodefence and others v. Russia 2022). Indeed, the majority of foreign organisations that support Russian NGOs are highly respected and trusted organisations, as they adhere to open and transparent funding processes, such as the European Commission, the Council of Europe, and the MacArthur Foundation (Ecodefence and others v. Russia 2013). The Court also found that the legal regime imposed a 'strong deterrent and stigmatising effect on their operations', while also considering the disproportionate nature of fines and the need for defenders to decide whether to seek or accept foreign funding (Ecodefence and others v. Russia 2022). In fact, following the imposition of substantial fines, several NGOs that were unable to handle the additional operational expenses suspended their activities and stopped their operation in Russia (Van der Vet 2019). The Russian Federation has ceased to be a state party to the ECHR, and the impact of the judgement is expected to be rather limited. However, it constitutes a landmark case where the Court established legal standards, creating a precedent that can be used in future cases concerning Russia-style foreign agent laws or similarly restrictive laws targeting human rights defenders, both within and beyond the Council of Europe.

Moreover, in 2017, Hungary adopted a foreign agent type law which required civil society organisations carrying out activities in the country's territory and receiving at least €26,000 in grants from abroad to register the details of their donors to Hungarian authorities and label themselves as 'foreign-funded' organisation on their website and in any publications. The Court of Justice of the European Union (CJEU) on 18 June 2020 ruled that the Hungarian law violated fundamental principles and values of the EU and, more specifically, the free movement of capital and EU law rights on the respect of private life, protection of data, and freedom of association (Commission v. Hungary 2020).

Defenders and civil society organisations are human rights watchdogs, so any law that seeks to criminalise and impose restrictions on their activities in an attempt to cease their activity should be seen as abuse of the legal system. Since their work is integral to the functioning of a democratic society, any interreference with the access to funding and freedom of association and expression should only be justified in exceptional circumstances and after the state has established that restrictions are necessary in a democratic society and proportionate to the aim being pursued.

Use of Laws that Have a Differential Impact on HRDs

The vast majority of laws used to halt activities and silence defenders fall in this category. These laws have been originally enacted for entirely different purposes and are rather irrelevant to the defence of human rights. However, they can be exploited as pretexts to impede and silence defenders. The section examines the most common examples and discusses emerging trends, although it is important to note that the analysis is not exhaustive.

Counter-Terrorism Legislation

In the 2000s, following massive terrorist attacks in the USA, London, and Madrid, states perceived terrorism as a grave threat to international peace and national security. In line with this concern, the UN Security Council unanimously passed Resolution 1373, which called on all Member States to 'prevent and suppress the financing of terrorist acts' and 'take the necessary steps to prevent the commission of terrorist acts' (UN Security Council 2001). It also stipulated that all states 'should also ensure that terrorist acts are established as serious criminal offenses in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served' (UN Security Council 2001). While the Security Council mandated states to take action, it did not provide a precise definition of 'terrorist acts', leaving the interpretation of the term to the discretion of Member States.

States have adopted laws to combat terrorism in various ways, but the legal conceptions of terrorism still vary across states, and there is a range of formulations of terrorism even within the domestic legal order of one state (Alston and Goodman 2012). The perception of terrorism varies among different states, and the experience of terrorist attacks can significantly influence the development of counter-terrorism laws and policies. As terrorism is an evolving and complex threat, states create ambiguous laws so that they can be interpreted broadly and applied to a wide range of situations in the name of national security. Because counter-terrorism legislation is vague and can be interpreted broadly, the counter-terrorism legislation has widely been used to stigmatise defenders and stop or curtail their activities (Bennett et. al. 2015). Several times defenders monitoring the implementation of human rights have been characterised as terrorists (UN General Assembly 2012). In Europe, Turkey has weaponised anti-terrorism legislation against peaceful individuals defending human rights and speaking out against violations (Amnesty International 2021). For example, prominent Turkish HRD Raci Balici, the Chairperson of the Diyarbakır Branch of Human Rights Association (IHD) and national Vice-Chairperson of IHD, was arrested, detained, and tried for 'membership of a terrorist organisation' and 'undermining national unity and state security' (Front Line Defenders 2020). Notably, during the last three months of 2021 alone, approximately 1220 defenders experienced judicial harassment or reprisals based on anti-terrorism legislation (OMCT 2021).

It should be noted though that despite the absence of a clear and accepted definition, common elements to definitions of terrorism are the intention to inflict fear; serious acts of violence; and, in some cases, compelling governments to undertake

a particular act or abstain from something (Bantekas and Oette 2020). Importantly, as the key element to terrorism is violence, defenders cannot act as terrorists. As argued earlier, peaceful activities are one of the requirements to be a defender, so an individual or a group of individuals using violence for any reason cannot be a defender. In other words, a defender cannot be, by definition, a terrorist and vice versa (Koula 2020).

In addition, in the context of taking preventative counter-terrorism measures, states infringe on a series of fundamental rights, mainly the freedom of expression, freedom of association, and movement. They adopt laws prohibiting 'encouragement', 'glorification', and 'justification' of terrorism and travel bans (UN Human Rights Committee 2011). For instance, the Terrorism Act 2006 in the UK introduced several new offences, including 'the direct or indirect encouragement or other inducement' (Terrorism Act 2006). In essence, the terms 'encouragement' and 'other inducements' are very broad and vague, so the law can easily target people promoting human rights and condemning human rights violations. Honeywood suggests that under this law, Nelson Mandela's fight against apartheid would be deemed illegal (Honeywood 2016). On this basis, activists who would be affected by this, among other restrictions, could face passport seizures,[4] which would prevent them from attending international conferences or traveling abroad, limiting their participation in international forums.

Therefore, any restriction should first meet the international human rights standards. Besides, given that those provisions link an individual to terrorism and limit their right to freedom of expression, the pressing social need that should be fulfilled must be related to statements of people made in public and with the intent that the message incites violence, and most importantly be spoken in a context where the audience could, in reality, be led to violence (UN General Assembly 2006). Governments should ensure that their anti-terrorism laws are not used to suppress legitimate civil society activities or to target individuals who are exercising their right to freedom of expression, association, and assembly.

Defamation Laws and Strategic Lawsuits Against Public Participation (SLAPPs)

Defamation laws are designed to protect a person's or legal entity's reputation from false and unprivileged statements that could harm their reputation. The misuse of defamation laws is a rather common way to silence defenders who speak out and challenge the interests of influential figures, such as government officials and private organisations (UN General Assembly 2018; Forst 2018). Defenders all over the world have been sued or even prosecuted after they criticised the government's policy or a company's human rights record and practices. In countries with criminal defamation laws, defenders may be punished with time in prison or fines for making allegedly defamatory statements. In countries without criminal defamation laws, defenders are involved in costly and time-consuming civil proceedings which deter them from fighting for human rights. Although the use of the legal system

[4] For example, Counter-Terrorism and Security Act 2015, Schedule 1.

is associated with state authorities, who possess the power to exploit the law, the misuse of defamation law and similar tactics is primarily perpetrated by non-state actors who exploit such legal instruments to drag defenders into legal proceedings. Undoubtedly, this undermines the principles of democracy as it restricts the freedom of expression and criticism, poses a threat to the integrity of the justice system, and discourages HRDs from fulfilling their duties.

Strategic Litigation against Public Participation (SLAPPs) is a primary example of how non-state actors, such as politicians, corporations, and people in power can turn the law into a weapon. SLAPPs are brought as claims based on defamation law and are different to other legal actions as they are used to silence those who play a watchdog role in the society and prevent them from disclosing the truth about policies and human rights violations (Barthet et al. 2021). SLAPP cases are frequently without merit and are thus likely to by rejected by the courts, although this may happen only after lengthy judicial proceedings (Bayer 2021). In the meantime, defenders are involved in lengthy and expensive legal battles that divert their attention and resources away from their primary work. This vicious strategy is employed to financially drain defenders, create doubt about their activities, and, above all, distract them from their work and prevent the truth from being exposed.

According to the Business and Human Rights Resource Centre, between 2015 and 2018, 24 SLAPPs were filed against 71 defenders by giant oil and gas corporations seeking more than $904 million (€ 851 million) in damages (Business & Human Rights Resource Centre 2019). SLAPPs have mushroomed across Europe in recent years and particularly, in Bulgaria, Slovakia, Italy, and Greece, are a common method of silencing defenders and journalists (Bayer 2021). Although SLAPPs interfere with the right to a fair trial (Article 6 of the ECHR), they have low chances of reaching ECtHR. As stated above, SLAPP cases are usually meritless and are dismissed by the Court once it has assessed the merits of the claim. Even if the domestic court ruled in favour of the defendant, it would be highly unlikely defenders would spend more money on legal proceedings to take their case before the ECtHR, given the long waiting time for the Court to hear and decide on the case.[5] On the other hand, in April 2022, the European Commission put forward a proposal for a directive aimed at tackling SLAPPs. The Commission's initiative outlines ways for providing much needed protection for HRDs. In particular, the proposed Directive allows judges to quickly dismiss obviously unfounded lawsuits against defenders (Proposal for a Directive on Protecting Persons who Engage in Public Participation from Manifestly Unfounded or Abusive Court Proceedings 2022). In addition, it sets up various protective measures and courses of action, including damages compensation and penalties intended to discourage the filing of abusive lawsuits (Proposal for a Directive on Protecting Persons who Engage in Public Participation from Manifestly Unfounded or Abusive Court Proceedings 2022). The proposed Directive is far from being implemented, but it is indeed a promising step towards lifting a

[5] According to the Court, it takes the Court approximately five to six years to process, hear, and decide on a case.

growing threat to the work of HRDs, and the rule of law in the European Union and could also serve as a model in other regional systems and jurisdictions.

Criminalising Certain Conducts and Behaviours

Another practice that is also common is states targeting defenders through legislation that criminalises a conduct that, if promoted or encouraged, would be considered illegal. In particular, states render the exercise of certain activities illegal, and as a result, any individual or organisation that promotes those activities in practice encourages the commission of a crime, and their activities are suspended and themselves are also considered criminals. Although speaking out against criminalisation does not necessarily make someone a criminal, Poland's abortion legislation stands out as a prominent example of how advocating for a criminalised conduct can potentially lead to the criminalisation and prosecution of defenders. The legislation is restrictive, and abortion is permitted on two grounds: where the pregnancy endangers the life or health of the pregnant woman and where it is the result of a rape or incest (The Act on Family Planning, Protection of Human Foetus and the Conditions to the Admissibility of Pregnancy Termination 1993; Amendment of other Acts 1996). Essentially, criminalising the abortion opens the door for criminalisation and prosecution of those women and reproductive rights defenders who may speak out for the decriminalisation of abortion and access to abortion or those who assist healthy women who wish to terminate their pregnancy for their own personal reasons. In fact, in Poland, women and reproductive defenders have been prosecuted for supporting people in need of abortion (Amnesty International 2023).

In addition, since 2015, Europe has witnessed an unprecedented refugee crisis, characterised by the largest influx of refugees since World War II. Moreover, European states have struggled to effectively address the overwhelming influx, revealing hostility towards refugees and migrants in the name of national sovereignty (Koula 2021). Consequently, individuals and groups advocating for the rights and dignity of refugees and migrants have become targets. For instance, in Switzerland, France, Malta, Croatia, Greece, and Italy, migrant and refugee rights defenders have been prosecuted and convicted on numerous occasions merely for providing shelter, offering support to asylum seekers or irregular migrants, or providing humanitarian aid. These charges have been based on violations of immigration law (Amnesty International 2021).

Using Punitive Instruments to Impact HRDs

Arbitrary arrests and detentions, false charges against defenders, failure to inform defenders of charges brought against them, and to admit key evidence as well as lengthy judicial proceedings and prolonged pre-trial detention are only a few of the flaws in the judicial systems of states that are used against defenders to silence or penalise them (Front Line Defenders 2021).

The misuse of punitive instruments to impact defenders which is actually harassment seems to be possible in countries where the judiciary is not independent, or where

there is a lack of respect for the rule of law. In Europe, this is such a common case compared to regions like South America, where for instance, the Inter-American Commission on Human Rights (IACHR) reported instances of defenders being subjected to criminalisation, with prosecutors emphasising the accusations to bring forth more severe charges that warrant pre-trial detention (Martín 2015). On the other hand, in Ukraine, after the Russian invasion in 2022, numerous defenders have been abducted, detained with no access to lawyer, and sentenced to many years of imprisonment (Front Line Defenders 2023).

Harassment by the police and judiciary is so broad that some tactics, such as arbitrary arrests during a peaceful assembly, can be employed to stop the truth or criticism against the state and powerful figures even in states where human rights are overall well-respected (Forst 2018). More specifically, as stated elsewhere, in Greece, refugee and migrant defenders are harassed, detained, and interrogated (Front Line Defenders 2023). Furthermore, in France, arbitrary arrest and temporary unlawful deprivation of liberty of peaceful protesters fighting for pensions in the context of the right to adequate living or speaking out against economic injustices have been reported on many occasions (Amnesty International 2021; France 24 2023; Fitzpatrick 2023). Moreover, recently in the UK, during the coronation of King Charles, several peaceful anti-monarchist protestors were arrested without warrants, while no criminal prosecutions followed. In a released footage, a police officer can be heard instructing one of the protestors to leave the site without any valid grounds (The Guardian 2023). The apparent intention behind these actions was to remove them arbitrarily from the site, while the global spotlight was on the UK. At that time, one could argue that such incidents posed an alarming threat to the right to protest, likely impacting future defenders who might challenge malpractices or human rights policies in the UK. Sadly, this threat materialised a few months later during pro-Palestinian demonstrations in the UK, where police made numerous arrests on various grounds, such as participating in an illegal protest, committing racially aggravated public order offences, or showing support for a proscribed organisation (The Independent 2024; BBC 2023). Such arrests occurred not only in the UK but also in several other European countries and cities, particularly when people were rallying in support of Palestinians and advocating for a ceasefire (Reuters 2023). Consequently, the recent widespread use of punitive measures, such as arrests, to silence and deter defenders, particularly targeting pro-Palestinian protestors, is the latest development that confirms the prevailing practice.

In essence, failure to protect HRDs from harassment and retaliation can have broader implications for the realisation of human rights. When defenders are unable to carry out their human rights work, abuses and human rights malpractices may go unaddressed, which, in turn, can perpetuate cycles of violence and discrimination, eroding the rule of law and undermining democratic institutions.

Conclusion

HRDs have always been part of the history and now HRDs work in different contexts and regions around the world, fighting for all sorts of human rights. However, in Europe, their presence did not seem to be extensive. In fact, the well-established

Council of Europe, along with the EU and its high values and principles, strengthened a region of democracies that respect fundamental democratic principles and rights. Despite some deviations, rights were well-respected in most of the states. Both the Council of Europe and the EU have shown dynamism in highlighting the work of defenders, promoting their role, and including them in their efforts to promote human rights and democratic principles in the region. Several crises over the years, such as terrorist attacks, refugee influxes, and the rise of nationalism, led to the adoption of laws and measures that gradually limited rights or even attacked human rights essential to the core of democracy. This, in turn, resulted in the emergence of more defenders.

The majority of healthy European democracies, with a few exceptions of some authoritarian democracies, refrain from resorting to conventional methods to target defenders, such as threats, enforced disappearances, and even killings, as doing so would clearly violate their international and regional human rights obligations. Instead, they sneakily use the law, legal processes, and measures to target defenders and eventually silence them. Non-state actors in the European territory follow the states' lead and avoid the common practices, and instead use defamation laws, and through SLAPPs aim to involve defenders in lengthy judicial battles which financially drain them, raise suspicion of their activities, and, most importantly, distract them from their work. Such tactics are inconsistent with the human rights standards of the Council of Europe as well as the fundamental values of the European Union. This emerging phenomenon is expanding and seems to have become a trend beyond Europe. Therefore, this piece established a categorisation of violations committed through the use of the legal system to enhance the understanding of such repressive governance and emphasised its deviation from human rights standards.

In fact, such tactics reveal the hypocrisy and immorality of the EU and of all states in the region, regardless of their membership of the EU or the Council of Europe. On the one hand, they appear to be strong supporters and allies of HRDs, but on the other hand, they cynically use the legal system, by abusing its laws and mechanisms, to suppress the activities of defenders. In essence, legal tactics are employed as weapons to silence and undermine the efforts of defenders, similar to warfare but executed through legal channels, thus embodying this strategy as a form of 'lawfare'.

Using the law to silence those who advocate for rights and democracy may be a double blow to the rule of law and democracy. Firstly, individuals or groups have had their rights violated in a system that should protect them with laws and mechanisms, ultimately leaving them with no redress. Essentially, this demonstrates a failure of laws to function properly and reflects the failure of institutions to fulfill their obligations. Secondly, a society with repressive policies may emerge as fewer voices are available to protest and document malpractices and human rights violations. In other words, these tactics require critical attention to understand the extent to which they undermine the rule of law. While this goes beyond this article's scope, which is primarily focused on understanding the use of the legal system to target HRDs, future work should draw upon political theories and adopt a socio-legal approach to fully comprehend the underling threat posed to the rule of law and the realisation of human rights by these legal tactics employed against defenders.

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Consent to Participate This research does not include human or animal participants, and therefore, no informed consent was required.

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