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Defending Human Rights Defenders in the European Union:

Protection Mechanisms, Structural Gaps and Hybrid Repression

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Abstract

Human rights defenders play a vital role in turning human rights, democracy and the rule of law into lived practice. However, within the EU, those who document violations, support affected communities, litigate public-interest cases or challenge abuses of power increasingly face criminalisation, abusive litigation, security-based narratives, surveillance, funding insecurity and bureaucratic obstruction. This thesis uses the concept of hybrid repression to capture how such distinct pressures may converge across legal, administrative, political, financial, technological and discursive domains, narrowing the space in which human rights work remains possible.

This thesis examines the safeguards available to defenders within the EU and the wider European legal and institutional setting, and asks why they often remain insufficient when pressure takes cumulative and dispersed forms in Member States. Its focus is the Union's internal sphere, rather than EU external human rights policy or defenders outside the EU as a distinct field. Methodologically, it combines doctrinal analysis of EU, Council of Europe and OSCE instruments with socio-legal and political-science insights into cumulative pressure on rights-defending activity. Selected national examples are used to illustrate recurring patterns, without developing country case studies.

The thesis shows that EU law and policy provide important resources for defenders, including fundamental-rights guarantees, sector-specific instruments, monitoring channels, funding tools and broader European standards. However, these resources remain dispersed and unevenly accessible. Their effectiveness is constrained by limited recognition of defenders in that capacity, inconsistent implementation, delayed remedies and limited capacity to respond to cumulative patterns of pressure. The thesis concludes that effective protection depends on practical recognition, institutional coordination, early response, accessibility and sustained follow-up, so that rights-defending activity remains viable in practice.

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I dedicate this thesis to my father and to all human rights defenders who, despite profound political shifts and mounting threats, continue to uphold human dignity, human rights and the possibility of a more just world.

Table of Abbreviations

CASE	Coalition Against SLAPPs in Europe
CERV	Citizens, Equality, Rights and Values Programme
Charter	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CoE Commissioner Report	Council of Europe Commissioner for Human Rights, *Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions*
CSO	Civil society organisation
CSOs	Civil society organisations
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
EESC	European Economic and Social Committee
ENNHRI	European Network of National Human Rights Institutions
EU	European Union
EU Guidelines	European Union Guidelines on Human Rights Defenders
FRA	European Union Agency for Fundamental Rights
GDPR	General Data Protection Regulation
HRD	Human rights defender
HRD Declaration	United Nations Declaration on Human Rights Defenders
HRDs	Human rights defenders
LED	Law Enforcement Directive
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NGO	Non-governmental organisation
NGOs	Non-governmental organisations
NHRIs	National human rights institutions
ODIHR	Office for Democratic Institutions and Human Rights

OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
OSCE Guidelines	OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders
SLAPP	Strategic lawsuit against public participation
SLAPPs	Strategic lawsuits against public participation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNGA	United Nations General Assembly

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Chapter 1. Introduction

1.1 Background and Research Problem

Human rights do not enforce themselves. They depend on individuals and organisations that document violations, support victims, litigate public-interest cases, monitor state power and keep civic space open. Through these practices, human rights defenders transform rights from formal guarantees into social, political and legal claims capable of being asserted against power. They therefore occupy a dual position: as rights-holders under human rights law and as actors within the infrastructure through which human dignity, democracy and the rule of law become effective.

This role, however, also explains their vulnerability. Those who expose abuses, challenge official narratives, contest discriminatory policies or assist marginalised groups often operate at the point where rights protection meets political resistance. The UN Declaration on Human Rights Defenders recognises this connection by affirming that everyone has the right, individually and in association with others, to promote and strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.[1] It also links this right to the responsibility of the state to create the legal, political, social and other conditions necessary for the effective enjoyment of rights, and to protect defenders against violence, threats, retaliation, pressure or arbitrary action resulting from their legitimate activities.[2]

The conceptual and protective significance of the HRD category lies in making visible a particular form of exposure: the risks arising from rights-defending activity. The UN Special Rapporteur's Commentary to the Declaration makes clear that the Declaration reaffirms rights that are instrumental to the defence of human rights, including freedom of association, peaceful assembly, expression, access to information, legal assistance and the development of new human rights ideas.[3] Recognition of defenders is therefore best understood as an activity-based

[1] UNGA Res 53/144, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' (9 December 1998) UN Doc A/RES/53/144, annex ('HRD Declaration') art 1.
[2] HRD Declaration (n 1) arts 2, 12.
[3] Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (July 2011) ('Commentary') 5.

protection category. It identifies the social and legal conditions under which ordinary rights can be exercised for the purpose of defending the rights of others.

Within the European Union, this question has a particular constitutional resonance. The Union presents itself as a legal order founded on human dignity, freedom, equality, democracy, the rule of law and respect for human rights.[4] Its own Fundamental Rights Charter framework places CSOs and HRDs among the actors who bring these values to life in constitutional democratic societies. The Commission's 2022 Charter Report describes civil society organisations and rights defenders as essential actors in giving practical effect to Article 2 TEU values and Charter rights, while also acknowledging that legal, administrative and political measures have increasingly narrowed civic space in the Union.[5]

This is the core paradox from which the thesis proceeds. The EU legal order depends on HRDs for the practical realisation of its foundational values, but its internal framework has not yet developed a coherent way of recognising and protecting them as a distinct category of risk.

This paradox is reinforced by an internal–external asymmetry. The EU has developed an extensive vocabulary of HRD protection in its external action, where defender protection forms part of its human rights relations with third countries.[6] Internally, however, the position is less settled. HRDs operating within EU Member States are protected through general fundamental rights guarantees, sectoral legislation, funding programmes, monitoring tools and broader European standards. Yet these elements do not amount to a coherent internal EU regime that recognises and protects HRDs as defenders.

The problem is not that the EU lacks relevant protection altogether. The Charter protects freedom of expression and information, freedom of assembly and association, personal data, private life and effective judicial protection.[7] The Union has also begun to respond to particular threats. The Anti-SLAPP Directive, for example, expressly includes HRDs among those

[4] Consolidated Version of the Treaty on European Union [2012] OJ C326/13 ('TEU') art 2; Charter of Fundamental Rights of the European Union [2012] OJ C326/391 ('Charter') preamble.
[5] European Commission, 'A Thriving Civic Space for Upholding Fundamental Rights in the EU: 2022 Annual Report on the Application of the EU Charter of Fundamental Rights' COM (2022) 716 final ('2022 Charter Report') 3–4.
[6] Council of the European Union, 'Ensuring Protection: European Union Guidelines on Human Rights Defenders' (2008) ('EU Guidelines') para 1.
[7] Charter, arts 7, 8, 11, 12, 47.

protected from abusive court proceedings initiated to deter public participation.[8] The Commission's earlier Anti-SLAPP Recommendation similarly framed abusive litigation as a threat to journalists and HRDs, capable of exhausting resources, damaging reputation and inducing self-censorship.[9] These developments matter. They show that EU law increasingly recognises the vulnerability of actors engaged in public participation.

The difficulty is that contemporary pressure on HRDs rarely appears through one legal form alone. It may emerge through criminalisation of solidarity work, strategic litigation, securitising narratives, surveillance, funding restrictions, administrative obstruction, hostile public discourse or the cumulative burden of formally lawful procedures. FRA's work on civic space in the EU already identified a range of challenges affecting organisations working on human rights, including disadvantageous legal changes, funding obstacles, limited access to decision-makers, attacks, harassment and delegitimising discourse.[10] In such conditions, the harm is not confined to isolated interferences with individual rights. It lies in the cumulative weakening of the environment in which rights can be defended.

This thesis therefore examines the protection of HRDs in the European Union through a human rights lens, supplemented by the concepts of structural fragmentation and hybrid repression. The human rights lens is the starting point: HRDs are treated both as rights-holders and as actors whose work enables others to claim rights. Structural fragmentation and hybrid repression then explain why existing guarantees may fail when pressure is cumulative, indirect and dispersed across legal, administrative, political, financial and technological domains. The question is whether EU protection can address the specific risks generated by the act of defending rights, rather than only the general rights affected by individual interferences.

[8] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') [2024] OJ L 16.4.2024 ('Anti-SLAPP Directive') recitals 6, 11, 14.

[9] Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation') [2022] OJ L138/30 ('Anti-SLAPP Recommendation') recitals 7, 9, 12.

[10] European Union Agency for Fundamental Rights, *Challenges Facing Civil Society Organisations Working on Human Rights in the EU* (Publications Office of the European Union 2018) ('FRA, Challenges') 7–8, 13.

1.2 Research Question and Argument

The thesis addresses this problem through the following research question:

What protection mechanisms exist for human rights defenders operating within the European Union and the wider European framework relevant to EU Member States, and what legal, institutional and practical obstacles limit their effectiveness against emerging forms of hybrid repression through criminalisation, strategic litigation, securitisation and surveillance?

This question has two connected dimensions. The first is descriptive and doctrinal: it asks which protection mechanisms are available under EU law and policy, and how they are complemented by Council of Europe and OSCE standards applicable to EU Member States. This includes general fundamental rights guarantees, sectoral instruments such as anti-SLAPP and data-protection law, institutional monitoring and funding mechanisms. The second dimension is contextual and evaluative, drawing on existing empirical and institutional evidence: it asks whether these mechanisms can address the specific risks faced by HRDs when pressure takes the form of a cumulative pattern of legal, administrative, political, financial, technological and discursive constraints.

The central argument of the thesis is that the EU framework is normatively dense yet structurally fragmented. It contains numerous legal and institutional elements that can protect aspects of human rights defence, but it does not yet provide a coherent internal protection regime for HRDs as defenders. McCourt's mapping of the European protection landscape identifies this internal gap, including the asymmetry between the EU's external protection architecture and the absence of a comparable internal mechanism within the Union.[11]

The thesis treats fragmentation as a coordination and recognition problem. A multi-layered framework may be valuable where different risks require different tools. Its weakness emerges where pressure on HRDs is distributed across legal fields, institutions and actors; a fragmented

[11] Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Mapping Paper* (Civil Society Europe and European Civic Forum 2024) ('McCourt, Mapping Paper') 4.

protection framework may then fail to recognise the pattern connecting those pressures. What may disappear is the rights-defending context that gives separate measures their cumulative meaning.

Accordingly, the thesis argues that effective protection requires recognition, coordination, accessibility, prevention and continuity. Protection must be able to identify patterns, respond before pressure becomes irreversible, and preserve the conditions under which defenders can continue their work. The adequacy of EU protection therefore depends on whether the framework can protect human rights defence as an activity, rather than merely responding to separate interferences with individual rights.[12]

1.3 Scope and Delimitations

The scope of this thesis is limited to the protection of HRDs within the EU and its Member States. Its focus is internal rather than external. This delimitation is territorial and institutional: the thesis concerns protection questions arising within the EU legal and institutional space, not the nationality of individual defenders. The EU's external human rights policy, including the EU Guidelines on Human Rights Defenders and related protection instruments for defenders in third countries, is considered only insofar as it reveals an asymmetry between the Union's developed external language of protection and its less coherent internal framework.[13]

The thesis does not provide a separate institutional analysis of the United Nations protection system. The HRD Declaration, the Special Rapporteur's Commentary and selected thematic reports are used as normative, interpretative and evidential reference points where they clarify the right to defend rights or identify relevant patterns of pressure. The procedures, institutional practice and follow-up mechanisms of UN treaty bodies, special procedures and universal monitoring mechanisms fall outside the scope. The focus remains on the adequacy of EU and wider European mechanisms available to defenders operating within EU Member States.[14]

[12] Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Pathways Towards an Effective Protection Ecosystem* (Civil Society Europe and European Civic Forum 2024) ('McCourt, Pathways') 4–5.
[13] EU Guidelines (n 6) para 1.
[14] HRD Declaration (n 1) art 1; Commentary (n 3) 5–6.

The thesis also does not examine HRDs located outside the EU as a separate category, nor does it assess EU visa, asylum or relocation policy in detail. These issues are relevant to the broader protection ecosystem, but they raise distinct questions of migration law, diplomatic protection and external action. They are therefore discussed only where they illuminate the internal protection gap or the wider European framework relevant to EU Member States.[15]

The analysis is not structured as a country-by-country comparative study. Examples from Member States are used illustratively, not as exhaustive case studies. This choice follows from the nature of the research problem. Hybrid repression often operates through recurring patterns rather than through identical national models. The thesis therefore adopts a trend-based approach, examining how criminalisation, strategic litigation, securitisation, surveillance and administrative obstruction affect the conditions under which human rights defence is carried out.

Finally, the thesis treats CoE and OSCE standards as part of the wider European protection framework, rather than as external comparators. This is necessary because EU Member States are embedded in overlapping European legal and political regimes, and because the protection of HRDs in Europe cannot be understood through EU law alone.[16] At the same time, the central question remains an EU-focused one: whether the Union's internal legal and institutional framework, read alongside wider European standards relevant to EU Member States, is capable of protecting HRDs against cumulative and hybrid forms of pressure.

1.4 Theoretical Framework

The thesis employs an interdisciplinary theoretical framework that integrates legal analysis with political science and socio-legal perspectives. Its starting point is the concept of HRDs as an activity-based category of protection. Defenders are defined not by a formal status granted by the state, but by the peaceful promotion and protection of human rights. This understanding derives from Article 1 of the HRD Declaration and is developed in detail in Chapter 2. The

[15] European Union Agency for Fundamental Rights, *Protecting Human Rights Defenders at Risk: EU Entry, Stay and Support* (FRA 2023) ('FRA, Protecting') 5–7, 10.
[16] Council of Europe Commissioner for Human Rights, *Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions*, CommDH(2019)10 (29 March 2019) ('CoE Commissioner Report') paras 39–55; OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014) ('OSCE Guidelines') para 7.

HRD category identifies persons, groups and organisations whose exposure to risk arises from rights-defending activity: documenting violations, mobilising claims, assisting victims, litigating, protesting, monitoring authorities and challenging abuses of power.[17]

The second central concept is *hybrid repression*. In this thesis, hybrid repression denotes configurations of pressure that constrain human rights defence through interacting legal, administrative, political, financial, technological and discursive measures. The concept draws on Meier, Peña and Nah's account of hybrid repression as modalities of dissidence suppression involving state and non-state actors in varying degrees of autonomy, cooperation or enablement.[18] Its value for this thesis is that it shifts the analysis away from a purely state-centred model of repression. Pressure on defenders may be generated by public authorities, as well as by private litigants, media actors, corporations, hostile communities or informal alignments between public and private power.

The term "hybrid" is used here in a precise analytical sense. It does not describe any loose mixture of difficulties faced by defenders. It refers to a configuration in which distinct forms of pressure interact, so that their combined effect exceeds the effect of each measure considered separately. Criminalisation, SLAPPs, surveillance and administrative obstruction are therefore treated as tactics or mechanisms that may form part of a hybrid repressive configuration. Securitisation functions primarily as a framing logic through which human rights work, protest or solidarity may be recoded as risk, disorder or threat. The chilling effect is the cumulative outcome of these pressures: defenders may recalibrate their work in anticipation of legal, financial, reputational or security costs.

For this thesis, hybrid repression is used only where three elements are present. First, there must be a plurality of analytically distinct pressures, such as legal proceedings, administrative burdens, public stigmatisation, surveillance, funding insecurity or private litigation. Secondly, those pressures must functionally converge, reinforcing one another or producing a restrictive effect on the defender's ability to act that cannot be captured by analysing each measure in isolation. Thirdly, the pressure must be connected to the person's or organisation's human rights work, rather than merely reflecting a general regulatory environment applicable in the

[17] HRD Declaration (n 1) art 1; Commentary (n 3) 5–6.
[18] Larissa Meier, Alejandro M Peña and Alice M Nah, 'From Collusion to Autonomy: Patterns of Hybrid Repression and Human Rights Activism' (2025) 60 Government and Opposition 773, 773–75.

same way to comparable actors. These criteria do not create a rigid test. They define the threshold at which the concept becomes analytically useful.

The framework is also socio-legal because it treats law in context, as both a source of protection and a potential instrument of repression. Legal systems may protect defenders through rights, remedies and safeguards, but they may also be used to burden or silence them. Koula's analysis of violations through the legal system is important here: legal pressure may arise from laws that explicitly target defenders, ordinary laws applied in ways that disproportionately affect defenders, or punitive instruments and procedures that obstruct human rights work.[19] This helps explain why formally lawful measures may still produce repressive effects when they function cumulatively.

Finally, the thesis draws on three related concepts: securitisation, shrinking civic space and chilling effect. These concepts link individual interferences to broader structural consequences. Securitisation explains how protest, solidarity or advocacy may be reframed as risk, disorder or threat. Shrinking civic space captures the gradual deterioration of the environment in which rights-defending work takes place. Chilling effect describes the anticipatory self-restraint produced when defenders alter or abandon legitimate activities because the cost of continuing becomes too high.[20] Together, they connect doctrinal analysis of protection mechanisms with political and socio-legal analysis of how pressure is produced, justified and experienced. The central theoretical claim is that the effectiveness of protection cannot be assessed solely by asking whether separate rights and remedies exist. It must also be assessed by asking whether the framework can recognise cumulative patterns of pressure affecting human rights defence as an activity.

1.5 Methodology

The thesis adopts a qualitative, desk-based and interdisciplinary approach combining doctrinal legal analysis with socio-legal and political analysis. The doctrinal component identifies and interprets the legal and institutional mechanisms relevant to the protection of HRDs within the

[19] Aikaterini-Christina Koula, 'Human Rights Violations Committed Against Human Rights Defenders Through the Use of Legal System: A Trend in Europe and Beyond' (2024) 25 Human Rights Review 99, 99–102.
[20] FRA, Challenges (n 10) 7–8, 13; Anti-SLAPP Recommendation, recitals 9, 12; CoE Commissioner Report (n 16) paras 26–28.

European Union and the wider European framework relevant to EU Member States. It examines EU primary law, the Charter of Fundamental Rights, sectoral secondary legislation, soft-law instruments, Commission reports, FRA materials, CoE and OSCE standards, and selected Member State examples. The analysis reconstructs how available instruments operate collectively as a protection framework when read in relation to one another.

The socio-legal and political components supplement the legal analysis. They are used to explain how formally legal, administratively ordinary or institutionally dispersed measures may interact over time and affect the practical conditions of human rights defence. The methodology therefore links the interpretation of legal protections with the conditions under which those protections can be recognised, accessed and used by HRDs.

The research relies on primary legal and policy materials, including the HRD Declaration as the normative baseline, the Charter as the EU constitutional framework, the Anti-SLAPP Directive and related Commission Recommendation as examples of sectoral protection, and CoE and OSCE instruments as part of the wider European protection environment.[21] It also relies on institutional reports by FRA, the European Commission and civil society actors to identify recurring patterns of pressure, protection gaps and practical obstacles.[22] Academic literature is used to develop the conceptual framework, particularly in relation to HRDs as an activity-based category, hybrid repression, securitisation, shrinking civic space and chilling effect.

The thesis is trend-based rather than case-study-based. Member State examples are used to illustrate patterns, without attempting a comprehensive comparative assessment of national systems. This methodological choice reflects the object of analysis: hybrid repression is best understood as a cumulative, cross-sectoral configuration of pressure rather than as a single legal measure or a uniform national model. The thesis evaluates whether existing EU and wider European mechanisms are capable of recognising and responding to patterns that cut across criminal law, civil procedure, administrative regulation, security discourse, funding conditions and surveillance practices.

[21] HRD Declaration (n 1) art 1; Charter, arts 7, 8, 11, 12, 47, 51; Anti-SLAPP Directive, recitals 6, 11, 14; Anti-SLAPP Recommendation, recitals 7, 9, 12; CoE Commissioner Report (n 16) paras 39–55; OSCE Guidelines (n 16) xi–xii, paras 2–7.
[22] FRA, Protecting (n 15) 5–7, 10; FRA, Challenges (n 10) 7–8, 13; 2022 Charter Report (n 5) 3–6; McCourt, Pathways (n 12) 4–5.

This approach has limits. The thesis does not conduct interviews, surveys or quantitative measurement of attacks against defenders. Nor does it claim to offer a full empirical mapping of all Member States. Its contribution is instead analytical and normative: it reconstructs the existing protection framework, identifies structural obstacles to its effectiveness, and evaluates whether a more coherent defender-centred approach is needed to address hybrid repression within the EU.

AI-based and digital writing tools were used solely as auxiliary editorial and technical tools. Grammarly was used for spelling and grammar, without using its AI revision function. ChatGPT (OpenAI, GPT-5.5) was used for limited editorial assistance, including identifying formatting issues and inconsistencies in footnote cross-references. These tools were not used as independent sources of legal authority, evidence, substantive analysis or text generation. All legal arguments, source selection, citations and final wording were reviewed and remain the responsibility of the author.

1.6 Contribution and Structure

The contribution of this thesis lies in bringing together two bodies of literature that are often discussed separately. The first concerns the protection of HRDs and the conditions necessary for their work to be safe, legitimate and sustainable. The second concerns contemporary forms of repression, especially those operating through legal, administrative, political, financial, technological and discursive pressure. By applying the concept of hybrid repression to the EU's internal protection framework, the thesis shows why the existence of many protective instruments does not necessarily amount to effective protection. This allows the analysis to move beyond the formal existence of separate legal safeguards and to ask whether they can recognise cumulative patterns of pressure affecting rights-defending activity.

The structure of the thesis follows this argument. Chapter 2 defines HRDs as a legal and analytical category of protection and explains why recognition of defenders is not a privilege but a means of identifying the risks associated with rights-defending activity. Chapter 3 maps the existing EU and wider European protection framework, including the Charter, sectoral EU instruments, institutional monitoring, funding mechanisms, and CoE and OSCE standards. Chapter 4 analyses the main trends of hybrid repression affecting HRDs in EU Member States:

criminalisation, strategic litigation, securitisation, surveillance and administrative obstruction. Chapter 5 identifies the structural gaps and practical obstacles that limit the effectiveness of existing mechanisms. Chapter 6 brings these findings together, answers the research question and develops the thesis's final conclusions on the need for a more coherent internal protection approach within the EU.

Chapter 2. Human Rights Defenders as a Legal and Analytical Category of Protection

2.1 The Legal and Policy Meaning of 'Human Rights Defender'

The category of the human rights defender appears, at first sight, self-explanatory: it refers to those who defend human rights. Yet this apparent simplicity conceals a more complex legal and political construction. HRDs are not defined by profession, institutional mandate, citizenship, registration or formal accreditation. The point of departure is instead functional. Article 1 of the HRD Declaration recognises the right of everyone, 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'.[1] The category thus begins not with a status conferred by the state, but with the activity of promoting and protecting rights.

The Declaration is central to this thesis because it gathers existing human rights and specifies their relevance for those who act to make rights effective in practice. It does not place defenders above ordinary law or turn them into a professional status group. Gómez Isa describes the Declaration as a historic achievement because it explicitly recognised the right to defend human rights and legitimised the work of those contributing to their realisation.[2] The Special Rapporteur's Commentary gives this reading more concrete content. It presents the Declaration as protecting the right to defend human rights and identifies the rights through which that protection is expressed: association, peaceful assembly, expression, access to information, legal assistance and the development of new human rights ideas.[3] The rights are not peripheral to human rights defence. They are the practical conditions through which such defence becomes possible.

[1] UNGA Res 53/144, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' (9 December 1998) UN Doc A/RES/53/144, annex ('HRD Declaration') art 1.
[2] Felipe Gómez Isa, 'The UN Declaration on Human Rights Defenders: From Momentum to Contestation' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 8–9.
[3] Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (July 2011) ('Commentary') 5; HRD Declaration (n 1) arts 5–9, 12–13; Gómez Isa (n 2) 9–10.

The legal meaning of the category is therefore relational. A person becomes relevant as an HRD through their rights-defending activity in a concrete context. Lawyers, journalists, community organisers, environmental activists, migrant solidarity actors, academics, whistle-blowers, informal collectives and CSOs may all fall within the category when they promote or protect human rights. Conversely, none of these labels is sufficient on its own. The concept is not identical with civil society, activism, journalism or legal practice. It cuts across those fields and identifies the rights-defending function that may expose particular actors to pressure.

This functional understanding also explains the category's distinctive ambiguity. The Declaration itself does not use the term 'human rights defender' in either its title or substantive provisions. Morondo Taramundi stresses that this omission was not accidental: it reflected the difficulty of reaching political consensus and the reluctance of some states to recognise a specific category of defenders.[4] The text speaks in universal terms of 'individuals, groups and organs of society' rather than defining a closed legal status. This formulation preserves the universality of the right to defend rights, but it also leaves open the question of who should be recognised as a defender for the purposes of protection.

The same tension appears in regional standards. The OSCE/ODIHR Guidelines state that the right to defend human rights is a universally recognised right and that HRDs act individually or with others to promote and strive for the protection and realisation of human rights.[5] At the same time, the Guidelines emphasise that they do not create 'special' rights for defenders, but focus on protecting those at risk because of their human rights work.[6] That distinction prevents the HRD category from being misunderstood as immunity or privilege. Recognition instead makes visible why certain persons and groups are exposed to threats, retaliation, stigmatisation or legal pressure: their activity contributes to the defence of rights.

This chapter therefore clarifies the subject whose protection the thesis later assesses. The difficulty is that this subject is both necessary and unstable. It is necessary because attacks on defenders affect not only individual rights-holders but also the social and democratic

[4] Dolores Morondo Taramundi, 'What's in a Name? The Debate on Human Rights Defenders in the European Union' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 25–26.
[5] OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (OSCE/ODIHR 2014) ('OSCE Guidelines') xi, 1, 23–25.
[6] OSCE Guidelines (n 5) xi.

infrastructure through which rights are claimed, monitored and enforced. It is unstable because recognition depends on an activity-based category whose boundaries are not fixed in advance. The following sections develop this tension: the breadth of the HRD category is one of its protective strengths, but it is also the source of definitional and recognition problems that later reappear as gaps in protection.

2.2 Activity-Based Definition, Breadth and Peaceful Action

The activity-based character of the HRD category becomes clearer in the post-Declaration interpretative materials. OHCHR Fact Sheet No 29 develops the functional reading of Article 1 by defining an HRD as a person who, individually or with others, acts to promote or protect human rights. It then adds the decisive interpretative point: defenders are identified above all by what they do, through their actions and the contexts in which they work.[7]

This interpretative move matters because Article 1 itself does not establish a closed category. As Morondo Taramundi notes, the Declaration recognises a universal right to promote and strive for the protection and realisation of human rights, while later instruments identify HRDs as those who act on that right.[8] The EU Guidelines follow this approach. Drawing expressly on Article 1, they define HRDs as individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. They include work on civil and political rights, economic, social and cultural rights, and the rights of groups such as indigenous communities.[9]

The protective value of this approach lies in its breadth. Fact Sheet No 29 makes clear that human rights defence may be professional or non-professional, paid or voluntary, continuous or occasional.[10] The OSCE Guidelines adopt the same broad understanding: lawyers, journalists, trade unionists, public servants, medical professionals, students, members of informal groups and NGO staff may all be defenders where their conduct has a human rights character.[11] The category resists reduction to a professionalised NGO model. It captures the

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[7] Office of the United Nations High Commissioner for Human Rights, *Human Rights Defenders: Protecting the Right to Defend Human Rights* (Fact Sheet No 29, United Nations 2004) ('FS 29') 2.
[8] Morondo Taramundi (n 4) 26–27.
[9] Council of the European Union, 'Ensuring Protection: European Union Guidelines on Human Rights Defenders' (2008) ('EU Guidelines') paras 2–3.
[10] FS 29 (n 7) 6–8.
[11] OSCE Guidelines (n 5) 24–25.

diverse ways in which rights are monitored, claimed, translated into local demands and defended against violation.

This breadth has limits. Fact Sheet No 29 sets out three minimum requirements: acceptance of the universality of human rights, the human rights character of the claim, and peaceful action.[12] These criteria preserve openness while preventing the HRD label from legitimising conduct that contradicts the human rights framework itself.

The universality requirement is normatively necessary, but it should be applied with care. A person cannot claim the authority of human rights defence while denying the equal rights of others. Yet many defenders operate without professional human rights training and in politically charged local contexts. Eguren and Patel therefore suggest a contextual approach: the relevant question is whether the activity adopts a rights-based orientation and remains attentive to the rights and needs of others.[13] Universality should function as an ethical boundary, not as a credentialing test.

The second requirement protects defenders from exclusion merely because authorities dispute their legal interpretation or factual allegations. A defender need not be legally correct in every claim. The relevant issue is whether the activity seeks to promote or protect a human right.[14] This is crucial where defenders challenge official narratives or expose violations that state institutions deny.

Peaceful action marks the outer boundary of the category. The EU Guidelines exclude individuals or groups who commit or propagate violence, and the OSCE Guidelines similarly require peaceful means.[15] This exclusion is necessary because human rights defence cannot justify violence against others. Still, peaceful action should not be equated with passivity, institutional politeness or strict compliance with every domestic rule. Civil disobedience, disruptive assembly, public criticism or humanitarian solidarity may breach domestic law and remain within the field of human rights defence. Eguren and Patel warn that 'peaceful action'

[12] FS 29 (n 7) 9–10.
[13] Luis Enrique Eguren Fernández and Champa Patel, 'Towards Developing a Critical and Ethical Approach for Better Recognising and Protecting Human Rights Defenders' (2015) 19 The International Journal of Human Rights 896, 901–02.
[14] FS 29 (n 7) 9.
[15] EU Guidelines (n 9) para 3; OSCE Guidelines (n 5) 1, 25.

and 'non-violence' are not always identical and must be assessed in context: the former may mean action without violence, the latter a broader moral and strategic approach to social change.[16]

For this thesis, the activity-based definition should therefore be read as broad, contextual and bounded. It encompasses formal and informal, individual and collective, professional and occasional forms of human rights work. It excludes rights-denying conduct and violence. Between these poles lies the difficult field where recognition decisions are made. The breadth that allows inclusion of marginal, grassroots and politically inconvenient defenders also creates disagreement over who is recognised, by whom, and for what protective purpose.[17]

2.3 Recognition, Ambiguity and the Protective Function of the HRD Category

The breadth of the HRD category raises a further question: why should this category carry a distinct protective function at all? The answer lies in the character of the harm. Krain, Murdie and Beard put the point empirically: HRDs are categorised by what they do, and the activities that make them important – raising awareness, reframing issues, exposing abuses, identifying perpetrators and broadcasting information – are also what places them at risk.[18] Pressure against defenders affects the individual or group directly targeted, but it also weakens the wider conditions through which rights are claimed, documented, litigated and made visible. A threat against a lawyer assisting victims of police violence, a smear campaign against a migrant solidarity organisation, or administrative obstruction of an environmental group may therefore impair others' ability to seek information, obtain assistance, challenge violations and participate in public debate.

Regional standards express this point without turning HRDs into a privileged legal class. The OSCE Guidelines emphasise that they do not create special rights for defenders, but reaffirm existing rights that are instrumental to the right to defend human rights. The CoE Declaration similarly calls on member states to create an environment conducive to defenders' work, ensure

[16] Eguren Fernández and Patel (n 13) 902.
[17] Alice M Nah and others, 'A Research Agenda for the Protection of Human Rights Defenders' (2013) 5 Journal of Human Rights Practice 401, 403–05; Aikaterini-Christina Koula, 'The UN Definition of Human Rights Defenders: Alternative Interpretative Approaches' (2019) 5(1) Queen Mary Human Rights Law Review 1, 2–3.
[18] Matthew Krain, Amanda Murdie and Abigail Beard, 'Silencing Human Rights Defenders Once and for All? Determinants of Human Rights Defenders' Killings' (2024) 77 Political Research Quarterly 401, 402.

effective remedies, prevent attacks and harassment, and hold those responsible to account.[19] This framing locates HRD protection within ordinary human rights obligations. HRDs rely on the same freedoms of expression, association, assembly, participation, privacy and remedy as other rights-holders. What makes their situation distinctive is the connection between interference with those rights and the defence of the rights of others.

The protective function of the category therefore depends on recognition. If an actor is recognised as a defender, interference with their work may be understood as an attack on human rights defence. If the same actor is seen only as a disruptive protester, political opponent, foreign-funded organisation, suspect, trespasser or public-order problem, the rights-defending character of the activity may disappear. Recognition does not determine the legal outcome of every dispute. It does, however, require institutions to ask whether a measure that appears formally ordinary is connected to the suppression, punishment or deterrence of human rights work.

This is where definitional ambiguity becomes practically consequential. The literature has repeatedly noted that many defenders do not call themselves HRDs and that the Declaration does not establish a procedure for status determination.[20] Openness allows the category to include informal, collective, occasional and locally embedded forms of human rights work. At the same time, uncertainty may allow authorities or protection actors to recognise only the most professional, visible or institutionally acceptable defenders. A more regulatory strand of recent literature responds to this difficulty by calling for clearer frameworks, training and legal clarity. Rawaqa, for example, proposes a framework for identifying, empowering, protecting, training and licensing HRDs, and presents licensing or certification as a possible means of strengthening legitimacy, access to resources and institutional support.[21] That concern is understandable, especially where untrained or self-identified actors may claim HRD status in ways that confuse protection practice. Yet the licensing route is dangerous if it shifts the concept from activity-based protection towards bureaucratic permission. A formal authorisation model could narrow the category, increase gatekeeping and give states a new tool

[19] OSCE Guidelines (n 5) xi, 1, 23–27; Council of Europe Committee of Ministers, 'Declaration on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote Their Activities' (6 February 2008) preamble, paras 1–2.
[20] Karen Bennett and others, 'Critical Perspectives on the Security and Protection of Human Rights Defenders' (2015) 19 The International Journal of Human Rights 883, 888.
[21] Sana Rawaqa, 'Identifying and Regulating Human Rights Defenders (HRDs)' (2025) 29 The International Journal of Human Rights 1735, 1754, 1760.

to decide who is entitled to be recognised as a defender. Legal clarity is desirable, but it should clarify access to protection rather than convert HRD status into an administrative licence.

Risk offers a more useful way of linking definition to protection. Koula argues that threats to safety, life, livelihood and fundamental rights as a consequence of rights-defending activity distinguish HRDs from persons who merely support human rights in a general sense.[22] This connects recognition to the purpose of protection. The HRD label becomes most urgent where human rights work exposes a person or group to retaliation, harassment, stigmatisation, legal pressure or other adverse consequences. Yet risk should not become a strict precondition. If applied too rigidly, it may exclude defenders whose exposure is emerging, indirect or difficult to prove. It may also encourage a reactive model in which protection begins only after harm has become visible. For this thesis, risk is better understood as an operational trigger for protection, not as the sole criterion of HRD status.

A contextual approach also prevents protection from being reduced to physical safety. This is particularly important for women HRDs and LGBTI defenders, whose exposure may be intensified by gender- or sexuality-based stigma attached to the rights defended, the defender's identity or their perceived social role.[23] Protection may include legal, psychological, economic, digital and collective dimensions. A defender who avoids arrest but loses funding, public legitimacy, access to beneficiaries or the ability to assemble with others may still be effectively prevented from defending rights. Research on the security and protection of HRDs is important here because it treats risk, security and protection as situated concepts shaped by defenders' own contexts and experiences, rather than as fixed technical categories imposed from outside.[24]

Morondo Taramundi's analysis brings this recognition problem into sharper focus. Her question – "what's in a name?" – is not merely semantic. Naming affects vulnerability and protection. A more precise or more consistently applied HRD category may help protect individuals and groups from labels that expose them to rights-restricting laws and practices, such as "terrorists", "traitors" or "enemies of development and the people".[25] The point is not that every contested actor must automatically receive the HRD label. Rather, the category

[22] Koula (n 17) 17–19.
[23] Commentary (n 3) 6–7; OSCE Guidelines (n 5) 27.
[24] Bennett and others (n 20) 885; Nah and others (n 17) 405–06.
[25] Morondo Taramundi (n 4) 22–23, 28–30.

prevents the rights-defending dimension from being erased by hostile or reductive classifications.

With this definitional point established, the remaining issue is institutional: whether European mechanisms can recognise the rights-defending context when protection is needed. This is the conceptual bridge to the later chapters. Chapter 3 maps the rights and mechanisms through which defenders may be protected. Chapter 5 returns to the same definitional issue as a structural gap: where institutions fail to recognise defenders as defenders, protection may remain formally available but practically misdirected.

2.4 The EU Recognition Problem

The definitional problem has a specific EU dimension. The Union has already accepted the HRD category as a workable legal and policy vocabulary. The EU Guidelines adopt the Declaration's activity-based understanding of defenders and carry the same peaceful-action boundary into EU policy.[26] The EU therefore does not lack a language of human rights defence: it has adopted one, linked it to the UN Declaration, and used it to identify defenders as a distinct object of attention.

The difficulty lies in the field of application. The Guidelines are expressly situated within the EU's external human rights policy. Their purpose is to guide EU action in relations with third countries, multilateral fora and EU missions outside the Union.[27] Morondo Taramundi identifies a central tension: while concern for HRDs within EU Member States has increased, European institutions often hesitate to designate those actors as HRDs when the pressure arises within the Union. Persons defending the rights of irregular migrants, housing rights or environmental rights may be described as activists, climate activists, migrant-rights actors, NGOs or named organisations, rather than being situated within the broader category of human rights defence.[28] Saura-Freixes frames the same tension normatively: the right to promote and protect human rights should not be guaranteed only through external action, because stronger

[26] EU Guidelines (n 9) paras 2–3.
[27] EU Guidelines (n 9) paras 1, 7.
[28] Morondo Taramundi (n 4) 24.

protection ad extra alongside weaker recognition ad intra risks undermining the EU's own constitutional construction.[29]

Here, the issue is one of definition and recognition. The alternative may be descriptively accurate and legally useful. A person may indeed be a journalist, lawyer, protester, NGO worker, volunteer or environmental activist. Yet the HRD category adds something that these labels may miss: the connection between the pressure faced by the actor and the defence of rights. Without that connection, the same conduct may be read as ordinary activism, public disorder, migration assistance, professional activity or political controversy, while its rights-defending character remains institutionally underdeveloped.

A vocabulary of HRD protection exists, but, as the following chapters will show, its clearest operational form within EU practice remains external action. Inside the Union, the category remains less settled. That uncertainty does not exhaust the protection problem; it marks the point at which the later structural gaps begin.

2.5 Interim Conclusion

This chapter has argued that HRDs are best understood as an activity-based category of protection. Its openness is protective: human rights defence may be professional or informal, individual or collective, continuous or occasional. Yet the same openness creates difficulties of recognition: institutions must decide when contested activity should be understood as human rights defence, and when limits such as universality, human rights orientation and peaceful action exclude a claim to that category. Risk helps identify when protection becomes urgent, but it should trigger protection rather than restrictively define status. Calls for clearer frameworks and training are therefore justified, while licensing or certification models risk shifting the concept towards bureaucratic authorisation. The central conclusion is that the definition functions as the first condition of protection. Chapter 3 turns from this subject of protection to the mechanisms available within the EU and the wider European framework.

[29] Núria Saura-Freixes, *Human Rights Defenders and the Law: A Constitutional and International Legal Approach* (Routledge 2023) 203.

Chapter 3. Protection Mechanisms for Human Rights Defenders in the European Union and the Wider European Framework

3.1 Protection Without a Single Internal HRD Regime

The EU protects many of the activities through which human rights defence is carried out, but it has not organised those protections into a dedicated internal framework for HRDs. The Charter of Fundamental Rights secures the core freedoms and remedies through which human rights defence is exercised, while sectoral instruments address specific pressures, especially SLAPPs and unlawful data processing. Institutional mechanisms monitor civic space, rule-of-law concerns and access to funding; beyond the EU legal order, the CoE and OSCE add Convention-based obligations, institutional advocacy and HRD-oriented soft-law standards. This breadth should not be mistaken for coherence: FRA states that current EU law does not "explicitly protect" HRDs and that there is "no common, consistent EU approach",[1] while recent mapping describes a rich but scattered protection landscape rather than a common internal pathway.[2]

The existing framework is better understood as a layered architecture than as a unified regime. At the first level, the Charter provides the foundational rights on which human rights defence depends. At the second level, sectoral legislation addresses particular threats or contexts relevant to defenders, including abusive litigation, data protection and migration law, where EU rules may both enable protection and generate exposure to criminalisation. At the third level, institutional and political mechanisms – such as the Commission's Charter reporting, the Rule of Law Report, FRA monitoring, European Parliament activity and funding programmes – seek to sustain civic space through monitoring, visibility, support and political pressure rather than through a dedicated individual protection procedure. Because EU discourse typically frames these issues through the language of 'civic space' and 'civil society', these mechanisms protect defenders indirectly by sustaining their broader operating environment, even though

[1] European Union Agency for Fundamental Rights, *Protecting Human Rights Defenders at Risk: EU Entry, Stay and Support* (FRA 2023) ('FRA, Protecting') 4, 7.
[2] Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Mapping Paper* (Civil Society Europe and European Civic Forum 2024) ('McCourt, Mapping Paper') 4, 13, 18, 21.

HRDs are not reducible to CSOs.[3] Finally, the EU has developed a distinct external and diplomatic layer, centred on the EU Guidelines on Human Rights Defenders and related support tools for defenders outside the European Union.[4]

The internal–external asymmetry is clearest in the EU Guidelines. Although the HRD concept is rooted in the 1998 UN Declaration, the EU has operationalised it most fully in external relations: the Guidelines draw on the Declaration's definition and guide EU Delegations and Member State missions in third countries.[5] They also prescribe practical support, including regular contact, visible recognition, trial observation, the raising of individual cases, human rights dialogues, liaison officers and action where defenders face immediate or serious risk.[6] Within the EU, by contrast, no comparable defender-specific regime has been developed. As Knoll-Tudor, Pardavi and Achler observe, support for HRDs remains a priority of the EU's external policy, while within the Member States there is no EU legal instrument other than the Charter that recognises or protects defenders as such.[7]

The asymmetry matters because it shows that the EU already possesses a defender-centred vocabulary and a repertoire of protection tools; what remains absent is their comparable institutionalisation within the Union. The analysis, therefore, begins with the Charter, which supplies the constitutional framework for the general rights through which human rights defence is exercised.

3.2 The Charter of Fundamental Rights as the Constitutional Baseline

The Charter of Fundamental Rights occupies a foundational position within the EU legal order. Since 2009, it has held Treaty-equivalent status, binding EU institutions and Member States in

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[3] European Commission, 'A Thriving Civic Space for Upholding Fundamental Rights in the EU: 2022 Annual Report on the Application of the EU Charter of Fundamental Rights' COM (2022) 716 final ('Charter Report') 5; McCourt, Mapping Paper (n 2) 6–7.

[4] Elena Beck and others, *In Defence of Defenders: A Practical Guide to Legal Means and Advocacy Tools for Criminalised Human Rights Defenders in Europe* (Hope Barker and Elena Beck eds, Heinrich-Böll-Stiftung and Border Violence Monitoring Network 2023) 61, 69–78.

[5] Council of the European Union, 'Ensuring Protection: European Union Guidelines on Human Rights Defenders' (2008) ('EU Guidelines') paras 1–3; Wolfgang Benedek, 'The EU's Engagement with Human Rights Defenders' in Jan Wouters and others (eds), *The European Union and Human Rights: Law and Policy* (OUP 2020) 504–05.

[6] EU Guidelines (n 5) paras 8, 10–11.

[7] Bernhard Knoll-Tudor, Márta Pardavi and Marta Achler, 'Cartel of Silence: How the European Union Undermines the Work of its Human Rights Defenders in the OSCE' (2023) 15 Journal of Human Rights Practice 284, 286.

all activities when implementing EU law.[8] For HRDs, this makes the Charter indispensable as the primary normative framework codifying the fundamental rights central to their work, within the limits imposed by Article 51.

The Charter's relevance to defenders lies in the range of general rights that become operationally indispensable when human rights work is under pressure. Freedom of expression and information, together with freedom of assembly and association, protect the communicative and collective activities through which defenders document abuses, disseminate findings and mobilise support. Rights to liberty and security, private life and data protection are engaged when repression takes the form of arbitrary detention, surveillance or device searches. The right to an effective remedy and to a fair trial becomes essential where defenders are subjected to criminal proceedings, administrative sanctions or other forms of legal harassment. The Charter thus offers a broad rights-based grammar for contesting discrete interferences with defenders' work, grounded in general fundamental-rights guarantees rather than in protections tailored to HRDs' risks.[9]

The Charter operates within a broader human rights framework rather than as an autonomous ceiling of protection. Article 52(3) requires Charter rights corresponding to ECHR rights to have the same meaning and scope as their Convention counterparts, while allowing EU law to provide more extensive protection. Article 53 prevents the Charter from being interpreted in a way that restricts rights recognised by EU law, international law, the ECHR, or Member States' constitutions, thereby placing it within the broader European rights architecture addressed later in this chapter.[10]

The Charter's reach, however, is not general. Under Article 51(1), it binds the institutions and bodies of the Union in all their activities, but applies to Member States only when they are implementing Union law. This includes, for example, giving effect to EU legislation through national measures, acting in fields where EU law imposes concrete obligations or permits derogations, and implementing programmes financed by EU funds.[11] For HRDs, this boundary is decisive: where pressure arises within the scope of EU law, the Charter may provide a

[8] Charter Report (n 3) 1; Charter of Fundamental Rights of the European Union [2012] OJ C326/391 ('Charter') art 51(1).
[9] Charter, arts 6–8, 11–12 and 47.
[10] Charter, arts 52(3) and 53.
[11] Charter, art 51(1); Charter Report (n 3) 1–2.

powerful standard of review before national courts and, ultimately, the Court of Justice; where the conduct is purely domestic, protection must instead be sought through national law or the wider European human rights framework.

The distinction is especially relevant in migration law. As *In Defence of Defenders* emphasises, where the criminalisation of migrant-rights defenders is linked to the national implementation of EU legislation such as the Facilitators Package, Charter rights may be invoked against those measures. By contrast, comparable measures unrelated to the implementation of EU law would not, by that fact alone, bring the Charter into play.[12] The Charter's protective value is thus real, but conditional: it is strongest where the threat to defenders is mediated through EU law itself.

The Charter provides robust protection against discrete violations within the scope of EU law, enabling defenders to contest detention, surveillance, protest restrictions, associational interference or unfair proceedings through general fundamental-rights claims. Its protective force depends, however, on two conditions: the presence of a link to EU law and the possibility of translating pressure on HRDs into general rights claims. Where constraints on defenders accumulate across multiple rights and legal fields, more targeted sectoral and institutional mechanisms are required.

3.3 Sectoral EU Protection: Risk-Specific Safeguards Without a Unified Regime

With the Charter established as the general constitutional baseline, sectoral EU law offers more targeted protection against concrete forms of obstruction: abusive litigation, unlawful processing of personal data and, in a less straightforwardly protective field, the legal treatment of assistance to irregular migrants. These instruments partly compensate for the absence of a unified internal HRD regime, but their protection remains confined by material scope, territorial reach, procedural design and national implementation.

3.3.1 Anti-SLAPP protection

Strategic lawsuits against public participation are not merely weak claims brought against public actors. Their distinctive feature is the instrumental use of legal proceedings to prevent,

[12] Beck and others (n 4) 62.

restrict or penalise participation on matters of public interest. The Anti-SLAPP Directive defines abusive court proceedings as proceedings not genuinely brought to assert a right, but mainly intended to prevent, restrict or penalise public participation, often through unfounded claims, procedural tactics or an imbalance of power. The Anti-SLAPP Recommendation makes the same point more directly: such proceedings are aimed at harassment and silencing, with duration, cost and sanctions operating as tools of intimidation.[13] Thus, anti-SLAPP protection marks an important shift: it recognises that legal process itself may become a mechanism of repression, even where the formal language of rights and remedies remains intact.

For HRDs, the harm does not depend on the claimant's success. Costly and protracted litigation can divert resources from advocacy, exploit disparities of power and deter others from speaking. Schiavon characterises SLAPPs as a form of lawfare in which the legal system itself is instrumentalised to intimidate targets into abandoning critical speech; Beck and others similarly emphasise that the burden of defence may impair, or even prevent, defenders and their organisations from continuing their work.[14] Anti-SLAPP protection therefore concerns more than access to justice in the individual case: it preserves the conditions for public-interest advocacy itself.

What makes the EU response notable is that anti-SLAPP law is one of the few internal instruments that expressly refer to HRDs. The Directive recognises their role in promoting accountability and defending fundamental rights, but its operative trigger is *public participation* rather than formal recognition as an HRD. It protects statements and activities linked to expression, information, assembly and association on matters of public interest; the Recommendation follows the same structure, naming journalists and HRDs as exposed groups while framing protection around participation in public debate.[15] The result is defender-aware, but not defender-specific.

[13] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') [2024] OJ L 16.4.2024 ('Anti-SLAPP Directive'), art 4(3); Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation') [2022] OJ L138/30 ('Anti-SLAPP Recommendation'), recitals 9, 11–12.
[14] Alessia Schiavon, 'Time to Take Action against SLAPPs: Defending Human Rights Defenders. Experiences from the PATFox Project' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 96; Beck and others (n 4) 66.
[15] Anti-SLAPP Directive, recitals 6 and 11, arts 1 and 4(1); Anti-SLAPP Recommendation, recital 7, point 1.

The Directive gives this recognition procedural force. In cross-border proceedings, courts must be able to require security for costs, dismiss manifestly unfounded claims at an early stage, and impose effective, proportionate and dissuasive remedies, including full costs and, where appropriate, compensation for damage.[16] These measures target the coercive value of litigation itself: expense, duration and uncertainty. They are more tailored than ordinary fair-trial protection, as they seek to prevent abusive claims from functioning as instruments of intimidation.

The scope of that response is nevertheless narrower than the phenomenon it addresses. The Directive applies only to civil or commercial matters with cross-border implications, excludes criminal matters and does not cover purely domestic proceedings. The Recommendation is broader: it recognises that abusive proceedings may arise in civil, criminal and administrative law and urges Member States to extend safeguards to domestic cases, alongside training, legal assistance, awareness-raising and data collection.[17] The resulting structure is revealing: the EU has recognised the wider ecology of SLAPPs, yet its binding response covers only one part of it. Even within that field, the effectiveness of formal safeguards depends on institutional capacity, which explains the Recommendation's emphasis on training legal professionals to identify abusive proceedings.[18]

Anti-SLAPP law is, so far, the clearest example of an internal EU measure moving beyond general rights protection towards a targeted response to a recognisable HRD risk. Its importance lies in recognising abusive procedure as a threat to public participation, while its protection remains limited by its sectoral and procedural scope.

3.3.2 Data protection and surveillance-related safeguards

Data protection is relevant to HRDs not merely because they are data subjects, but because information is integral to both their work and the ways that work can be obstructed. Digital technologies allow HRDs to document violations, communicate and organise across borders, but they also expose their whereabouts, activities and networks, generate digital traces and

[16] Anti-SLAPP Directive, arts 10, 11, 14, 15.
[17] Anti-SLAPP Directive, arts 1–2; Anti-SLAPP Recommendation, recitals 10, 20, points 3–4, 10–24, 29–32.
[18] Anti-SLAPP Recommendation, recitals 26–29 and points 9–18.

facilitate surveillance or interception. Hankey and Ó Clunaigh accordingly treat information and communications as recurrent targets through which adversaries monitor, intimidate and disrupt human rights work.[19] In this context, data protection concerns more than informational privacy: it protects the conditions under which defenders can communicate, associate and work without their own data becoming a means of control.

EU data-protection law gives this concern concrete form through two instruments. The GDPR governs general processing, including unlawful disclosure or excessive processing by organisations, employers, platforms or public bodies. The LED applies to processing by competent authorities for law-enforcement purposes, including policing, investigations and public-order operations. Both instruments require lawfulness, purpose limitation and data minimisation, restrict sensitive-data processing, and provide rights of information, access, rectification and remedy.[20] For HRDs, these rules may constrain practices that enable monitoring, profiling, reputational harm or future legal action, especially where inaccurate, excessive or sensitive data remain in private or official records. The protection is indirect but concrete: HRDs are not a special category, but the informational practices enabling pressure become legally regulated.

Covert surveillance exposes the limits of this layer. The GDPR excludes processing in activities outside EU law, including national security, while the LED is confined to law-enforcement processing by competent authorities.[21] Yet national security does not automatically remove all surveillance-related measures from EU law: FRA notes that CJEU case law subjects certain obligations imposed on private service providers to retain or transmit communications data to EU law and Charter scrutiny.[22] The result is uneven: some surveillance-related practices fall within EU data-protection and fundamental-rights law, while others depend on national intelligence frameworks and the wider European human rights system.

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[19] Stephanie Hankey and Daniel Ó Clunaigh, 'Rethinking Risk and Security of Human Rights Defenders in the Digital Age' (2013) 5 Journal of Human Rights Practice 535, 535–36.

[20] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [2016] OJ L119/1 ('GDPR'), arts 2(1), 5(1)(a)–(c), 6(1), 9(1), 13–16, 77, 79; Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data by competent authorities for criminal-law enforcement purposes [2016] OJ L119/89 ('LED'), arts 1(1), 2(1), 4(1)(a)–(c), 8(1), 10, 13–14, 16, 52, 54.

[21] GDPR, art 2(2)(a); LED, arts 1(1), 2(1).

[22] European Union Agency for Fundamental Rights, *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU – 2023 Update* (FRA 2023) ('FRA, Surveillance') 8–11.

Secrecy also weakens ordinary remedial logic. Data-subject rights usually presuppose that the person affected can identify and challenge the processing; covert surveillance often prevents this. FRA links effective intelligence-surveillance remedies to independent oversight, remedial bodies with adequate access to information, and notification or equivalent review once secrecy is no longer justified.[23] For HRDs, this is crucial because surveillance may expose contacts and networks before any formal legal interference becomes visible.

Data-protection law is therefore powerful yet incomplete. It can constrain unlawful processing, profiling and retention where the activity falls within scope, and Charter-based oversight may reach some state monitoring practices. Its logic remains centred on data processing and remedial review, not the broader security of HRDs and their networks. It is strongest once an interference can be legally identified; covert surveillance may already have compromised sources, contacts and operational safety before an effective remedy becomes available.

3.3.3 Migration law and the Facilitators Package

Migration law occupies the most tension-filled position within the sectoral layer. Unlike anti-SLAPP and data-protection law, it is not primarily protective of HRDs; in migrant-rights work, EU law may itself contribute to the legal environment in which defenders are criminalised. The central framework is the Facilitators Package: Directive 2002/90/EC requires sanctions for intentional assistance to unauthorised entry or transit, and requires financial gain only for facilitation of residence; Framework Decision 2002/946/JHA adds the penal framework for those offences.[24] The legal effect of this design is that assistance connected with border crossing may fall within the EU offence even where it is not profit-seeking. Peña Mallona shows that the Package leaves humanitarian assistance and migrants' rights defence vulnerable to criminal-law treatment rather than clearly excluding them from it.[25]

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[23] FRA, Surveillance (n 22) 37–40, 46.
[24] Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence [2002] OJ L328/17 ('Facilitation Directive'), art 1(1); Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence [2002] OJ L328/1, art 1(1).
[25] Araitz Peña Mallona, 'Saving Lives Is Not a Crime! Legal Persecution of Migrants' Rights Defenders at Greek and Spanish Borders' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 164–65, 177.

The Directive's humanitarian clause only partially reduces that risk. Article 1(2) permits Member States not to sanction assistance to unauthorised entry or transit where the aim is humanitarian, but it does not require an exemption. Protection is therefore structurally weak: a broad EU offence is paired with an optional national safeguard, producing divergent implementation and legal uncertainty for HRDs at borders.[26]

The Commission's 2020 Guidance acknowledged this uncertainty, noted that only eight Member States had enacted a specific humanitarian exemption, and clarified that humanitarian assistance mandated by law, especially lawful search and rescue at sea, "cannot and must not be criminalised".[27] Yet the Guidance does not amend the binding structure of the Package. It mitigates the risk interpretatively, while leaving protection dependent on national exemptions and case-by-case assessment.

The Commission's proposed replacement legislation confirms rather than resolves the point. COM (2023) 755 final acknowledges that the broad offence definition and optional humanitarian exemption have not delivered sufficient clarity or legal certainty; it proposes a narrower offence linked to financial or material benefit or serious harm, and states that humanitarian assistance or support for basic human needs provided in compliance with legal obligations is not intended to be criminalised.[28] Until replacement legislation enters into force, however, the 2002 Package remains the binding framework.

That is only one side of the field. Migration law also has a protective dimension. For HRDs at risk, entry and stay rules may enable emergency evacuation, temporary stay, rest and respite, participation in international activities or longer-term relocation through Schengen visas, national long-stay visas and residence permits.[29] Several Member States have also developed dedicated relocation initiatives for defenders under pressure. Yet FRA emphasises that access

[26] Facilitation Directive, art 1(2); European Commission, 'Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence' [2020] OJ C323/1 ('Commission Guidance') 4; Peña Mallona (n 25) 177.
[27] Commission Guidance (n 26) 4–6.
[28] European Commission, 'Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA' COM (2023) 755 final, 4, 9–11, recital 7, art 3(1).
[29] FRA, Protecting (n 1) 5–7, 22–23.

remains uneven and that there is still no common, consistent EU approach to HRD entry and stay.[30]

Hence, migration law exposes the limits of sectoral protection more sharply than the other fields examined above. It can provide routes to safety for HRDs at risk, while also exposing those defending migrants' rights to prosecution. This duality illustrates the weakness of a framework in which safeguards and risks sit in separate instruments, without an HRD-centred mechanism capable of reconciling them.

3.4 Institutional and Political Mechanisms

Not all protection depends on adjudication or individual remedies. Many risks faced by HRDs are environmental: regulatory burdens, funding restrictions, exclusion from participation, stigmatisation, attacks and surveillance. EU institutional mechanisms respond to this civic-space dimension through monitoring, political visibility, funding, participation and administrative accountability. FRA's 2018 report was an early EU-level articulation of the problem, grouping challenges into regulatory environment, finance and funding, participation, and safe space, while recognising their mutually reinforcing effects.[31] The Commission's 2022 Charter Report later framed EU action around protecting, supporting and empowering CSOs and HRDs, including through rule-of-law monitoring, anti-SLAPP measures, funding and enforcement action.[32]

A first group of mechanisms operates through monitoring and political visibility. The annual Rule of Law Report examines civic space under the pillar of institutional checks and balances; the 2023 report states that this assessment now covers funding, the legal framework, civil society participation in policymaking and a free and safe operating environment.[33] This brings defender-related concerns within a recurring EU rule-of-law process. Its function, however, remains diagnostic and political: it can identify patterns, recommend action and increase

[30] FRA, Protecting (n 1) 6–7, 33–38.
[31] European Union Agency for Fundamental Rights, *Challenges Facing Civil Society Organisations Working on Human Rights in the EU* (Publications Office of the European Union 2018) ('FRA, Challenges') 7, 13.
[32] Charter Report (n 3) 35.
[33] European Commission, '2023 Rule of Law Report: The Rule of Law Situation in the European Union' COM (2023) 800 final, 2, 29.

pressure on Member States, while leaving individual protection to other legal or institutional channels.

FRA's role is different but complementary. While it does not create remedies for HRDs, it supplies an evidential infrastructure for EU action by documenting patterns of pressure, identifying gaps in data and formulating opinions addressed to the EU and Member States. In its 2018 report, FRA noted the lack of reliable EU-wide data on attacks against civil society actors, funding conditions, participation channels and the regulatory environment; it also proposed an EU-level space for exchange and dialogue with civil society. Fragmented protection often begins with fragmented knowledge: without comparable data and regular reporting, attacks on HRDs remain episodic rather than visible as a structural problem.[34]

The European Parliament adds a more explicitly political layer. In its 2022 resolution on shrinking civic space, Parliament described HRDs, activists and informal groups as key civil society actors, condemned harassment, stigmatisation, criminalisation, surveillance and SLAPPs, and called for stronger EU action. Most importantly, it called for a comprehensive civil society strategy, an EU alert mechanism for CSOs and HRDs, and internal HRD guidelines corresponding to those already used in EU external action.[35] The resolution is non-binding, but it shows that the internal protection gap has been recognised institutionally.

A second group of mechanisms operates through support, participation and funding. Article 15(1) TFEU links openness in EU institutional work to civil society participation, while the Commission treats EU funding as part of the enabling environment for CSOs and rights defenders. The CERV programme is central here: with a budget of EUR 1.55 billion for 2021–2027, it is described by the Commission as the largest fundamental-rights fund inside the EU and supports CSOs, rights defenders and other stakeholders at different levels.[36] Funding can strengthen HRDs' capacity for advocacy, litigation, monitoring and public education, but it remains a support mechanism rather than a protective one.

[34] FRA, Challenges (n 31) 3, 12.
[35] European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe (2021/2103(INI)) [2022] OJ C347/2, recitals B, J, L, N, paras 7, 9, 22, 28.
[36] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 15(1); Charter Report (n 3) 23.

The European Ombudsman adds a narrower non-judicial accountability route. The Ombudsman may receive complaints about maladministration in Union institutions, bodies, offices and agencies, and may conduct own-initiative inquiries into repeated, systemic or particularly serious maladministration.[37] For HRDs, this may matter where the interference is connected to EU administration, access to EU documents, EU funding or the conduct of EU bodies. The mechanism remains limited: it does not cover Member State authorities as such, and its outcomes are recommendations, proposals for solutions, suggestions for improvement and reports rather than binding remedies.[38]

Taken together, these mechanisms strengthen the EU's internal protection framework indirectly. They monitor civic space, generate evidence, fund civil society, create political visibility and provide limited avenues for complaints about EU administration. Their value lies in recognising that threats to HRDs are also structural pressures on the environment in which human rights work is possible. Their limit is that they depend on reporting, recommendations, funding choices and political follow-up; they do not provide a standing pathway to urgent, tailored HRD protection.

3.5 The EU Guidelines on Human Rights Defenders and the External–Internal Protection Gap

The EU's clearest HRD-specific framework remains external. The EU Guidelines on Human Rights Defenders draw on the 1998 UN Declaration, define HRDs by reference to peaceful work for universally recognised human rights, and guide EU Delegations and Member State missions in third countries.[39] Their relevance here is that they demonstrate how explicitly the EU can recognise HRDs when acting externally.

The Guidelines also contain an operational repertoire: monitoring and reporting, contact with HRDs, liaison officers, trial observation, detention visits, individual cases, public statements, démarches and political dialogue.[40] These tools treat HRDs as actors exposed to specific risks,

[37] TFEU, arts 20(2)(d), 228; Charter, art 43; Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom [2021] OJ L253/1 ('European Ombudsman Statute'), arts 1(3), 2(1), 3(1), 3(3).
[38] European Ombudsman Statute, arts 1(3)–(4), 4(1)–(3), 4(5).
[39] EU Guidelines (n 5) paras 1–3; Benedek (n 5) 504–05.
[40] EU Guidelines (n 5) paras 8, 10–11.

not merely as ordinary rights-holders. The point should not be overstated: Bennett shows that implementation has produced good practices but remains patchy and inconsistent across EU missions.[41] Even so, the external framework contains a defender-specific vocabulary and practical tools that have no internal equivalent.

ProtectDefenders.eu makes this asymmetry even clearer. It is the EU HRD Mechanism, financed by the European Commission and led by a consortium of 12 human rights NGOs; it provides urgent assistance, practical support, temporary relocation, shelter support, training, capacity-building, monitoring and coordination for HRDs at risk.[42] Yet this mechanism belongs to the EU's external protection system. FRA describes its focus as being on at-risk defenders outside the EU, while Morondo Taramundi notes that it does not provide support to HRDs who hold EU citizenship or to organisations registered within the EU.[43] This exclusion shows that the gap is not merely semantic: the EU has created a specialised global protection channel that stops precisely where an internal EU defender regime would have to begin.

The gap is best understood as a difference between two logics of protection. Externally, EU practice is organised around an explicit HRD vocabulary, operational guidelines and a dedicated support mechanism. Internally, as the preceding sections have shown, HRDs may rely on the Charter, sectoral safeguards, institutional monitoring, funding and political pressure, but these mechanisms remain dispersed and indirect. They protect the rights, activities and civic-space conditions on which HRDs depend, yet they do not reproduce the Guidelines' dedicated vocabulary, operational tools or individual-protection orientation. The gap is therefore both operational and conceptual: external action recognises, engages with and supports HRDs as defenders; internal protection remains mediated through general rights, sectoral safeguards and civic-space governance.[44]

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[41] Karen Bennett, 'European Union Guidelines on Human Rights Defenders: A Review of Policy and Practice Towards Effective Implementation' (2015) 19 The International Journal of Human Rights 908, 908–09.
[42] FRA, Protecting (n 1) 49.
[43] Beck and others (n 4) 76–78; Dolores Morondo Taramundi, 'What's in a Name? The Debate on Human Rights Defenders in the European Union' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 32.
[44] Núria Saura-Freixes, *Human Rights Defenders and the Law: A Constitutional and International Legal Approach* (Routledge 2023) 181–82; McCourt, Mapping Paper (n 2) 4; Knoll-Tudor, Pardavi and Achler (n 7) 286.

3.6 Council of Europe Framework

The Council of Europe framework differs from the EU framework in both legal form and protective orientation. At its core stands the European Convention on Human Rights, which binds Member States and provides judicially enforceable rights before the ECtHR. Like the Charter, however, the Convention does not create a separate legal status for HRDs. Its relevance lies instead in protecting the rights through which human rights work is carried out: liberty, fair trial, private life, expression, assembly, association and effective remedy. This gives the CoE framework a distinctive profile: it offers binding judicial protection while requiring pressure on HRDs to be translated into Convention claims.[45] Saura-Freixes describes this as a dual structure of HRD protection, combining judicial guarantees through ECtHR case law with institutional support from the Commissioner for Human Rights.[46]

The Committee of Ministers adds an HRD-focused soft-law layer. Its 2008 Declaration recalls the UN Declaration, condemns attacks on defenders by state and non-state actors, and calls on Member States to create an enabling environment, protect defenders, prevent harassment, investigate attacks and ensure effective remedies. It also links defenders' work to Articles 10 and 11 ECHR.[47] The Declaration is not directly enforceable, but it clarifies how Convention obligations should be understood where restrictions target human rights work.

The Court's case law protects several practical conditions of HRD work. In Magyar Helsinki Bizottság v Hungary, the Grand Chamber held that access to state-held information may fall within Article 10 where it is necessary for freedom of expression, particularly when an NGO acts as a social watchdog. When NGOs scrutinise the state, obstacles to accessing information may prevent them from reporting effectively on matters of public interest. The refusal to provide the requested information amounted to a violation of Article 10.[48] For HRDs, this

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[45] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ('ECHR') arts 5, 6, 8, 10, 11, 13, 19, 34, 46.
[46] Saura-Freixes (n 44) 180–81.
[47] Council of Europe Committee of Ministers, 'Declaration on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote Their Activities' (6 February 2008) ('CoE Committee Declaration') preamble, paras 1–2.
[48] *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (ECtHR, 8 November 2016) paras 158–59, 164, 166–68.

protects documentation, information-gathering and public reporting as preconditions for exposing abuse.

The Court has also protected protest-related activity through the combined logic of expression and assembly. In *Bumbeș v Romania*, the applicant, a civic activist, was sanctioned for a short and peaceful protest against a mining project. The Court examined the case under Article 10 read in the light of Article 11, holding that expression covers both the substance and form of ideas, and that assembly rules cannot become an end in themselves. Because domestic courts had prioritised formal unlawfulness without properly assessing disruption or necessity, the sanction was incompatible with the Convention.[49] For HRDs, the case confirms that peaceful public-interest activism may be unconventional in form without losing Convention protection.

The strongest HRD-focused line appears where the Court identifies retaliatory misuse of criminal law. In *Aliyev v Azerbaijan*, the applicant was a human rights lawyer and civil society activist who represented applicants before the ECtHR and worked on documentation of political prisoners. The Court found that his arrest and pre-trial detention were aimed at silencing and punishing him for his human rights activities and preventing him from continuing his work as an HRD. The Court found violations of Article 5 §1, Article 5 §4 and Article 8, and, crucially for the present analysis, Article 18 in conjunction with Article 5. It also treated the case as part of a wider pattern of arbitrary arrest and detention of government critics, civil society activists and HRDs through retaliatory prosecution and misuse of criminal law.[50] Article 18 gives this finding its particular doctrinal force: it requires the Court to examine whether a formally legal measure pursued an ulterior purpose. In HRD cases, that makes it possible to identify detention, prosecution or investigation as reprisals where their real function is to silence rights-defending activity.

The same logic was reinforced in Kavala v Turkey. There, the Court found that the applicant's pre-trial detention lacked reasonable suspicion and that the prosecution file relied substantially on lawful NGO activity, contacts with civil society actors and cooperation with international institutions. More importantly for the present thesis, the Court held that the detention pursued an ulterior purpose under Article 18 in conjunction with Article 5 § 1: to silence Kavala as an

[49] *Bumbeș v Romania* App no 18079/15 (ECtHR, 3 May 2022) paras 5, 63, 69–70, 92–98.
[50] *Aliyev v Azerbaijan* App nos 68762/14 and 71200/14 (ECtHR, 20 September 2018) paras 7–11, 223.

HRD and NGO activist. The judgment is significant because it expressly linked the individual measure to a wider chilling effect, finding that the contested restrictions were likely to dissuade the work of HRDs more generally.[51]

Alongside the Court, the Commissioner for Human Rights provides an institutional mechanism focused more directly on HRDs. The Commissioner's mandate includes support for defenders, protection and the development of an enabling environment; the Commissioner raises individual cases and structural concerns through dialogue with authorities, public statements, country work, thematic reports and third-party interventions before the Court.[52] The Commissioner's 2019 report identifies attacks, intimidation, administrative and judicial harassment, criminalisation, restrictive regulation, smear campaigns and digital surveillance as continuing challenges across the CoE area, and recommends rapid-response mechanisms, effective investigations, remedies, non-criminalisation of legitimate human rights activity and the creation of a safe legal and public environment for defenders.[53] Yet the Commissioner's role remains non-judicial and non-binding. It can generate pressure, visibility and authoritative guidance, while enforceable individual remedies remain within the judicial system.

The CoE framework complements the EU framework in three ways. First, it supplies binding judicial protection through the ECHR and ECtHR case law. Secondly, it contains soft-law standards centred on HRDs through the Committee of Ministers and the Commissioner. Thirdly, Article 18 is the Convention doctrine closest to the problem of hybrid repression: it allows the Court to examine whether powers that appear lawful or legitimate on their face have been used for an ulterior purpose. This is especially relevant for HRDs because reprisals against lawyers, NGOs and civil society actors undermine the watchdog, advocacy and accountability functions protected by the Convention, especially under Articles 10 and 11. The doctrine's limits remain significant. Article 18 is demanding, exceptional and largely retrospective; it can expose disguised repression after the fact, yet it does not itself create a rapid protection channel for HRDs at risk. It nevertheless supplies an essential regional baseline against which EU and Member State responses should be assessed.

[51] *Kavala v Turkey* App no 28749/18 (ECtHR, 10 December 2019) paras 157, 223–24, 230–32.
[52] Council of Europe Commissioner for Human Rights, *Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions* CommDH(2019)10 (29 March 2019) ('CoE Commissioner Report') paras 1–2; CoE Committee Declaration (n 47) para 4.
[53] CoE Commissioner Report (n 52) paras 9–18, 20–28, 56–63, 71, 75, Recommendations to Council of Europe member states, points 1(a)–(f), 2(a)–(k), 4(a).

3.7 OSCE Framework

The OSCE adds a distinct regional logic through its human dimension. The OSCE/ODIHR Guidelines state that human-dimension commitments are matters of direct and legitimate concern to all participating States, and that violations of HRDs' rights are not solely internal affairs. States should therefore protect defenders both domestically and abroad.[54] For this chapter, that logic is significant because it permits scrutiny of civic-space restrictions across borders, including within EU Member States.

The Guidelines are one of the most detailed HRD-oriented soft-law standards in the wider European security space. They define HRDs functionally, by reference to peaceful activity for the promotion and protection of human rights, and state that defenders face work-related risks requiring specific and enhanced protection.[55] They also formulate state obligations in defender-centred terms: States must refrain from violating HRDs' rights because of their work, protect them from third-party abuse and take proactive steps to secure the right to defend rights. The safe-and-enabling-environment standard then connects HRD protection to expression, assembly, association, participation, movement, private life and access to international mechanisms.[56]

The Guidelines cover threats and attacks, judicial harassment, criminalisation, arbitrary arrest and detention, stigmatisation, access to information, assembly, association, NGO registration, funding, participation, movement, privacy and communication with international bodies.[57] Thus, their vocabulary is closer to the lived experience of HRDs than much of EU internal law: it speaks directly of work-related interference, rather than only of data subjects, defendants, associations, public participants or funding beneficiaries.

The implementation provisions are equally practical. Participating States are encouraged to review laws and practices affecting HRDs, strengthen NHRIs, establish inter-institutional bodies, develop protection programmes, provide training and cooperate with ODIHR. The Guidelines also include external-support tools: diplomatic contact with HRDs, trial

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[54] OSCE Office for Democratic Institutions and Human Rights, *Guidelines on the Protection of Human Rights Defenders* (OSCE/ODIHR 2014) ('OSCE Guidelines') para 7.
[55] OSCE Guidelines (n 54) paras 2–4.
[56] OSCE Guidelines (n 54) paras 5–6.
[57] OSCE Guidelines (n 54) paras 12, 23, 37, 42–46, 55–58, 63, 65–85, 90–92.

observation, public statements, emergency visas and relocation support for defenders at imminent risk in other OSCE participating States and third countries.[58] This resembles the EU Guidelines, but without the same formal internal–external divide.

The main weakness of the OSCE framework is institutional and political rather than normative. As Steinbrück Platise and Peters explain, the OSCE is not a traditional international organisation: it rests on political commitments and informal governance, while also possessing significant institutional features and a broad human-dimension mandate.[59] This explains why the Guidelines can be normatively rich yet dependent on peer review, diplomatic pressure and participating States' willingness to treat restrictions on HRDs as common concerns. Knoll-Tudor, Pardavi and Achler argue that the EU and its Member States have weakened this peer-review logic by avoiding open criticism of serious human-dimension problems within the Union. Their account of a "cartel of silence" shows how a strong defender-centred framework can be blunted when states decline to use it against one another.[60]

The OSCE framework therefore adds one of the clearest HRD vocabularies in the European regional setting. It identifies the cumulative pressures central to HRD vulnerability – legal harassment, stigmatisation, restrictions on association, surveillance and obstruction of international contact – and frames them as matters of legitimate regional concern. Its practical value for HRDs inside the EU turns on activation: implementation, peer review and the willingness of Member States to use existing standards in concrete cases.

3.8 Interim Conclusion

Chapter 3 has shown that internal HRD protection in the EU is assembled through partially connected legal and institutional channels: the Charter, sectoral EU law, institutional mechanisms, funding and political debate, plus CoE and OSCE standards. Together, these elements safeguard many rights and operating conditions on which HRDs depend, while

[58] OSCE Guidelines (n 54) paras 93–100.
[59] Mateja Steinbrück Platise and Anne Peters, 'Transformation of the OSCE's Legal Status' in Mateja Steinbrück Platise, Carolyn Moser and Anne Peters (eds), *The Legal Framework of the OSCE* (Cambridge University Press 2019) 334–38.
[60] Knoll-Tudor, Pardavi and Achler (n 7) 285–86, 291–92, 300.

leaving intact FRA's finding that EU law provides no explicit and specific protection for HRDs and no common, consistent internal approach.[61]

The practical effectiveness of these mechanisms ultimately depends on national institutions: courts, police, prosecutors, ministries, NHRIs, equality bodies, ombuds institutions, funding bodies and local administrations. This implementation dependency is one of the structural limits examined in Chapter 5.

The external comparison sharpens this point. The EU Guidelines on HRDs and ProtectDefenders.eu show that the Union can use defender-specific vocabulary, operational guidance and support tools tailored to HRD risk. Internally, by contrast, protection remains mediated through general rights, sectoral rules and civic-space governance. The wider European framework strengthens this environment, but its practical impact depends on litigation, institutional advocacy, political follow-up, peer review and Member State willingness. It does not create an internal EU protection pathway.

Measured against the post-1998 HRD protection regime described by Bennett, Ingleton, Nah and Savage – multi-level, multi-actor and oriented towards recognition, tailored protection, civic space and enabling environments – the EU internal framework remains incomplete.[62] It contains many components of protection, but lacks a stable focal point, a rapid-response mechanism, systematic reporting of attacks, and a dedicated route to urgent protection and follow-up.

The significance for the thesis lies in the cumulative nature of the risks examined here. Criminalisation, SLAPPs, surveillance, securitisation and administrative obstruction rarely operate as isolated violations. A fragmented framework may respond once a risk becomes legally visible, but it is less able to recognise patterns, prevent escalation or provide timely support. Chapter 3 confirms the core argument that the EU has meaningful protective elements, but not yet a coherent internal HRD protection regime needed to address cumulative hybrid repression.

[61] FRA, Protecting (n 1) 4, 10.
[62] Karen Bennett and others, 'Critical Perspectives on the Security and Protection of Human Rights Defenders' (2015) 19 The International Journal of Human Rights 883, 884.

Chapter 4. Trends of Hybrid Repression in EU Member States

4.1 From Direct Repression to Hybrid Repression

The protection mechanisms mapped in Chapter 3 are most easily activated where pressure on HRDs takes the form of a discrete and legally identifiable interference: an arrest, a criminal charge, a surveillance measure, a refusal of funding, a court claim, or a restriction on assembly. Hybrid repression presents a more difficult problem. Its force lies in accumulation: legal, administrative, political, financial, technological and discursive pressures may interact in ways that make human rights defence more costly, precarious and difficult to sustain.

Building on Chapter 1's definition of hybrid repression as a configuration involving state and non-state actors, different tactics, institutions and forms of justification, this chapter applies that framework to the principal trends affecting HRDs in EU Member States. The European context matters. The pressures examined here are often less spectacular than those associated with openly authoritarian settings. They may appear through legality, procedure, public discourse and institutional routine: law enforcement, migration control, public order, national security, counter-terrorism, defamation, financial accountability or data processing. Their repressive quality may become visible only when the measures are read together.[1]

Hybrid repression allows the chapter to examine how separate forms of pressure may converge without requiring a single command centre or an openly repressive legal form. A migrant-rights organisation may simultaneously face police scrutiny, reputational attacks, funding insecurity, access restrictions and criminal allegations. A climate movement may be framed as extremist, subjected to protest restrictions, monitored through security databases and exposed to litigation. In each case, the harm lies in the cumulative narrowing of the space in which rights can be defended.

Criminal proceedings, civil lawsuits, surveillance measures or administrative burdens can each be examined through familiar rights categories: liberty, fair trial, privacy, data protection, expression, assembly, association or access to justice. Those categories remain indispensable.

[1] Larissa Meier, Alejandro M Peña and Alice M Nah, 'From Collusion to Autonomy: Patterns of Hybrid Repression and Human Rights Activism' (2025) 60 Government and Opposition 773, 774–78.

Yet they may obscure how formally separate measures reinforce one another over time. Koula's account of violations through the legal system and FRA's warning about the cumulative burden of legislative and administrative measures point to this difficulty: legality may protect defenders, but it may also become the form through which pressure is organised and normalised.[2]

The following sections analyse the principal tactics and framing logics through which hybrid repression manifests in EU Member States: criminalisation, strategic litigation, securitisation, surveillance and administrative obstruction. They are separated for analytical clarity, but should not be mistaken for separate realities. Their significance lies in how they converge, reinforce one another and narrow the practical space in which rights are defended. Together, they demonstrate that HRD protection in the EU ultimately turns on whether formal guarantees can keep that space open.

4.2 Criminalisation of Human Rights Defence

Criminalisation is one of the clearest points at which hybrid repression becomes legally visible. It recasts human rights defence as suspected illegality through conviction or imprisonment, investigation, police attention, procedural burden and public stigma. Its force often lies before judgment: in the opening of a case, a summons, an arrest, a search, a device seizure, a movement restriction or prolonged uncertainty. Criminalisation is therefore both a legal tactic and a symbolic mechanism. It burdens the individual defender through procedure while signalling to others that similar forms of human rights work may carry personal, financial and reputational costs.

Koula distinguishes violations committed through the legal system from those occurring outside it. The claim is not that every use of law against a defender is abusive. HRDs, like all persons, remain subject to ordinary law. The problem arises where the legal system is used because of the rights-defending character of the activity, or where formally neutral provisions are applied in a way that disproportionately targets those who document abuse, support victims, challenge public authorities or assist marginalised groups. Koula's taxonomy

[2] Aikaterini-Christina Koula, 'Human Rights Violations Committed Against Human Rights Defenders Through the Use of Legal System: A Trend in Europe and Beyond' (2024) 25 Human Rights Review 99, 100–02, 105–06; European Union Agency for Fundamental Rights, *Challenges Facing Civil Society Organisations Working on Human Rights in the EU* (Publications Office of the European Union 2018) ('FRA, Challenges') 7–8.

identifies three principal modes of legal-system-based repression: laws explicitly targeting HRDs, existing laws that have a differential effect on HRDs, and punitive instruments or procedures used to obstruct their work.[3] In Europe, the key problem is often the *selective mobilisation* of legality.

The rule-of-law implications are direct. Koula further argues that HRDs are among the actors who make the rule of law socially effective by exposing corruption, discrimination, injustice and human rights violations. Criminalisation affects individual liberty and reputation, and weakens the actors who monitor the legality of public power, making rule-of-law erosion harder to contest and further legal pressure easier to normalise.[4]

The practical literature on criminalised defenders confirms that criminalisation extends beyond trial or conviction. *In Defence of Defenders* distinguishes between formal and informal criminalisation. Formal criminalisation includes detention, trials and legal proceedings, including cases where defenders are falsely accused of criminal conduct. Informal criminalisation is subtler and may involve threats, intimidation, disruption of services, physical pressure and repeated acts of repression that make humanitarian and human rights work insecure and unpredictable. The two forms often interact. A formal investigation may be accompanied by leaked accusations; an acquittal may arrive only after years of stigma; a police search may interrupt organisational work even if no conviction follows. A case need not end in a conviction in order to wear down a defender.[5] The figures support this point: Koula notes that, in the EU in 2023, out of 117 criminalised defenders, 42 faced legal proceedings and 40 were acquitted.[6] The high number of acquittals shows that criminalisation may operate through process, cost and stigma even where prosecution ultimately fails.

Migration-related human rights defence illustrates this dynamic particularly clearly. The CoE Commissioner identified the criminalisation of humanitarian assistance as an emerging tendency in several European countries, including France, Italy, Greece, Belgium and Hungary, referring to prosecutions and fines for acts of solidarity, accusations of human smuggling for

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[3] Koula (n 2) 105–06.
[4] Aikaterini Christina Koula, 'Strengthening the Rule of Law: The Necessity of Protecting Human Rights Defenders from Criminalisation' (2026) 26 Human Rights Law Review ngaf039, 1–2, 14.
[5] Elena Beck and others, *In Defence of Defenders: A Practical Guide to Legal Means and Advocacy Tools for Criminalised Human Rights Defenders in Europe* (Hope Barker and Elena Beck eds, Heinrich-Böll-Stiftung and Border Violence Monitoring Network 2023) 17–18.
[6] Koula (n 4) 13.

providing shelter, and criminal-law pressure against persons assisting migrants.[7] UN reporting gives this trend a quantitative dimension: the Special Rapporteur cites ReSOMA research documenting 171 individuals in 13 EU Member States criminalised for acts of solidarity with migrants, and PICUM data identifying at least 89 people criminalised in the EU between January 2021 and March 2022.[8] Amnesty International's case studies show how the pattern operated in practice: in Croatia, Are You Syrious and the Centre for Peace Studies faced pressure after documenting pushbacks; in France, defenders assisting people near the Italian border or distributing basic necessities near Calais faced prosecutions and police harassment; in Greece, Sarah Mardini and Seán Binder spent more than 100 days in pre-trial detention and faced allegations including facilitation of irregular entry, espionage, money laundering and forgery; and in Italy, sea-rescue NGOs faced numerous investigations, many of them later dropped, alongside smear campaigns, a restrictive code of conduct and rules limiting rescue activity.[9] These examples show how criminalisation turns assistance into complicity and how it rarely operates alone: it may be combined with police harassment, access restrictions, prolonged pre-trial detention, public stigma, regulatory pressure or restrictions on rescue activity. The closer defenders come to persons whose rights are at risk, the easier it becomes to portray support as participation in illegality.

Migration-related criminalisation is not solely a matter of national discretion, since the Facilitators Package requires Member States to sanction assistance to unauthorised entry or transit, while the humanitarian exemption remains optional.[10] Bayer and others record that the EU offence does not require financial or material benefit for facilitation of entry or transit. They found that only Germany, Ireland, Luxembourg and Portugal required a profit motive, while Belgium, Denmark, Estonia, Greece, Finland, Croatia, Latvia, Lithuania, Malta, Romania and Slovenia were recorded as criminalising some forms of not-for-profit assistance,

[7] Council of Europe Commissioner for Human Rights, *Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions* CommDH(2019)10 (29 March 2019) ('CoE Commissioner Report') 5–6.
[8] Special Rapporteur on the situation of human rights defenders, 'Refusing to Turn Away: Human Rights Defenders Working on the Rights of Refugees, Migrants and Asylum-Seekers' UN Doc A/77/178 (18 July 2022) ('Refusing to Turn Away') paras 39–42.
[9] Amnesty International, *Punishing Compassion: Solidarity on Trial in Fortress Europe* (Amnesty International 2020) 28–33, 34–46, 48–53, 54–69; Judit Bayer and others, *Strategic Lawsuits Against Public Participation (SLAPP) in the European Union: A Comparative Study* (EU-CITZEN Academic Network on European Citizenship Rights 2021) 54.
[10] Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence [2002] OJ L328/17 ('Facilitation Directive'), art 1(1), (2); Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence [2002] OJ L328/1, art 1(1).

including free food, shelter or transport for undocumented migrants.[11] The difficulty lies in the interaction between national misuse of criminal law and an EU legal framework that creates a broad offence while leaving protection of humanitarian assistance dependent on uneven national exemptions.

Criminalisation also extends to protest movements, climate activists and public-interest campaigns. These actors may face public-order offences, counter-terrorism narratives and penalties for disruptive action; Koula notes the emergence of restrictions on peaceful assembly and protest even in liberal democracies that formally protect dissent.[12] Disruptive action may still be regulated. The problem lies in the politically contestable boundary between protest, civil disobedience and criminal disorder, which hybrid repression can exploit by narrowing the zone of acceptable dissent and attaching legal risk to conduct outside it. A related risk concerns legal support actors: the CoE Commissioner notes harassment of lawyers monitoring possible pushbacks in the Evros region and representing applicants before the ECtHR.[13] Such pressure weakens the infrastructure through which violations become visible and victims reach remedies, so that access to justice remains formally available but practically thinner.

Across these settings, legal uncertainty itself becomes a mode of governance. Defenders involved in humanitarian assistance, rescue work, border monitoring, protest, documentation of pushbacks or legal support must weigh human rights requirements against the risk that their conduct may later be characterised in criminal proceedings. Organisations may reduce activities, avoid certain locations, limit contact with migrants, or redirect resources towards legal risk management. The chilling effect stems from the possibility of being drawn into criminal proceedings at all. For EU protection mechanisms, this is a serious problem: they may respond to an arrest, charge or conviction, but they are less able to address the attritional process through which criminal suspicion, administrative control, public stigma and funding insecurity converge before any final judgment.[14]

[11] Bayer and others (n 9) 53–54.
[12] Koula (n 4) 12.
[13] CoE Commissioner Report (n 7) 5–6.
[14] Araitz Peña Mallona, ‘Saving Lives Is Not a Crime! Legal Persecution of Migrants’ Rights Defenders at Greek and Spanish Borders’ in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 164; Gustavo de la Orden Bosch, ‘No Aid Without Surveillance: The Facilitators Package and the Expansion of Crimmigration Towards Civil Society’ in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 199.

4.3 Strategic Litigation Against Public Participation

SLAPPs reveal the procedural and public-private dimensions of hybrid repression. Unlike criminalisation, which usually speaks the language of public enforcement, SLAPPs often operate through civil or defamation proceedings initiated by private actors, corporations, public officials or politically connected claimants. Their coercive force lies in converting public-interest activity into legal risk: the defender is compelled to respond to litigation rather than continue the work that provoked it. The courtroom remains formally available as a site of justice, but litigation itself becomes a means of intimidation.

Schiavon identifies the common features of SLAPPs: they are usually brought by powerful claimants against weaker parties, often in response to speech on matters of public interest, and their force comes less from legal strength than from intimidation, cost and resource exhaustion.[15] Their typical targets include journalists, independent media, academics, whistle-blowers, HRDs and civil society actors engaged in matters of public interest.[16]

Updated mapping confirms that SLAPPs are a European trend rather than a collection of isolated cases. CASE's 2025 report identifies 1,303 SLAPP cases across Europe between 2010 and 2024, including 167 new lawsuits initiated in 2024 alone. The data now cover 43 countries, while CASE stresses that court-recorded cases understate the scale of the problem. The same report records that only 8.5 per cent of cases were cross-border under the narrow definition, meaning that the overwhelming majority occur domestically, even where the underlying public-interest issue may have wider European significance. Journalists were the most frequent targets, followed closely by media outlets, activists, editors and NGOs. SLAPPs are relevant to HRD protection even where the target is not formally named as an HRD: what matters is the public watchdog function and the attempt to make that function financially and procedurally hazardous.[17]

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[15] Alessia Schiavon, 'Time to Take Action against SLAPPs: Defending Human Rights Defenders. Experiences from the PATFox Project' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 95–96.
[16] Justin Borg-Barthet, Benedetta Lobina and Magdalena Zabrocka, *The Use of SLAPPs to Silence Journalists, NGOs and Civil Society* (European Parliament, PE 694.782, 2021) 7–10; Bayer and others (n 9) 19–27.
[17] Coalition Against SLAPPs in Europe, *A 2025 Report on SLAPPs in Europe: Democracy in the Dock* (The Daphne Caruana Galizia Foundation on behalf of CASE 2026) ('CASE 2025') 5, 7–8, 10–12, 18–21.

CASE's 2025 data show how varied the legal vehicles of SLAPPs are. By the end of 2024, 65 per cent of recorded cases were civil lawsuits, 20 per cent were criminal lawsuits, 2.5 per cent combined civil and criminal claims, and 5.4 per cent involved injunctions. Most recorded actions still relied on defamation, insult or honour-based claims, but CASE also records the use of GDPR and erasure requests, privacy and personality rights, intellectual property, commercial and competition law, interim injunctions, precautionary warrants and strategic criminal complaints. The hybrid character of SLAPPs therefore lies less in a single legal form than in the capacity of ordinary legal avenues to be redirected against public watchdog activity.[18]

Resource asymmetry gives this mechanism its force. In Defence of Defenders emphasises that defending against SLAPPs requires time and money regardless of the outcome: HRDs and their organisations may lose capacity while preparing a defence, face longer-term disruption and, in some cases, be unable to continue their work.[19] CASE's 2025 report records that damage claims in documented SLAPPs continued to include demands of up to the equivalent of EUR 45,756,750, while SLAPP targets may also face custodial sentences in criminal defamation contexts. Koula gives the HRD-specific corporate-accountability dimension: between 2015 and 2018, 24 SLAPPs were filed against 71 defenders by major oil and gas corporations seeking more than USD 904 million, approximately EUR 851 million, in damages. These figures show how litigation can turn public-interest scrutiny into financial exposure that few defenders or organisations can absorb, regardless of whether the claim ultimately succeeds.[20]

The chilling effect extends beyond the immediate defendant. A lawsuit against one journalist, NGO, environmental defender or community advocate can serve as a warning to others. The message is that criticism carries a price. CASE's updated data identify the public-interest fields most often affected: between 2010 and 2024, documented SLAPPs most frequently concerned corruption-related matters, with 283 cases relating to corruption more broadly and a further 45 addressing corruption-specific claims; environmental matters accounted for 126 cases, while freedom of expression and judicial independence also appeared as recurring issues. CASE also stresses that its data exclude many legal threats that never reach court, even though such threats

[18] CASE 2025 (n 17) 16–18, 24–26.
[19] Beck and others (n 5) 66.
[20] CASE 2025 (n 17) 26–27; Koula (n 2) 115.

may shut down public participation before a claim is filed.[21] Hence the repressive effect operates both through litigation and through the anticipation of litigation, shaping what is investigated, published, documented or said before any court becomes involved.

The Anti-SLAPP Directive confirms that abusive proceedings against public participation have become a distinct procedural risk within EU law. Its express reference to HRDs connects that risk to actors whose work depends on exposing matters of public interest. In this section, the Directive is relevant as confirmation of recognition, without requiring another doctrinal reconstruction of its definition, safeguards or scope. The narrower point is that SLAPPs change the practical focus of the dispute: attention moves from the public-interest issue raised by the defender to the defender's need to answer the claim, justify the publication or activity, and absorb the costs of proceedings.[22]

SLAPPs occupy a central place in the analysis of hybrid repression. Their pressure stems from familiar legal forms activated in a context of unequal power: ordinary causes of action, procedural duties and litigation costs can alter the practical conditions under which watchdog activity is carried out. A lawsuit may remain formally private and procedurally regular while making public-interest scrutiny depend on the defender's capacity to endure litigation. Where this happens, watchdog work becomes a test of solvency, stamina and legal survival.

4.4 Surveillance, Datafication and Digital Repression

Surveillance is a less visible but especially corrosive tactic within hybrid repression. Its force lies in uncertainty: who is watching, what is being recorded, how information will be used, and whether contacts, sources or beneficiaries may be exposed. Human rights defence depends on relationships of trust: between lawyers and clients, journalists and sources, NGOs and communities, rescuers and people in distress, movements and their members. Surveillance weakens those relationships even where no formal sanction has yet been imposed.

[21] CASE 2025 (n 17) 10–12, 23–25.
[22] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') [2024] OJ L 16.4.2024 ('Anti-SLAPP Directive'), recitals 6, 11, arts 1–2, 4(3).

Surveillance operates organisationally as much as individually: it can map networks, identify associates, expose strategies, chill communication, and weaken cooperation. Hankey and Ó Clunaigh treat digital risk as a threat to the infrastructure of human rights defence itself: communications, contacts and organisational links can all become means of monitoring, intimidation and disruption.[23]

The treatment of environmental defenders in Europe illustrates this dynamic. Forst reports that police in several countries have used measures drawn from organised crime frameworks to conduct extensive investigations and surveillance of environmental defenders. Examples include police tailing in France, Poland and Spain; phone tapping and vehicle tracking in France, Germany and Spain; early-morning home raids in France, Germany and Spain; and, in France and Spain, arrests by counter-terrorist units.[24] Such practices bring peaceful protest movements into an intelligence-led logic. The movement itself becomes an object of monitoring, beyond individual acts of alleged wrongdoing.

Migration-related human rights defence faces a similar risk in a different field. Thematic reporting by the Special Rapporteur on the situation of human rights defenders identifies a pattern of wiretapping and surveillance of journalists in Italy by public prosecutors dating from 2017. Those targeted included staff of humanitarian relief organisations and HRDs covering the central Mediterranean migration situation. The report refers to the wiretapping of freelance journalist Nancy Porsia's mobile telephone, the recording of communications, geolocation tracking, and the collection of personal details, contact information and names of sources.[25] This example exposes a distinctive harm: surveillance may compromise the infrastructure through which border violence, detention conditions and pushbacks become knowable.

Amnesty's account adds an EU-level dimension. In the context of migration control, Amnesty records that Frontex attempted in 2019 to contract a surveillance company to monitor the social media activity of NGOs in relation to departures of refugees and migrants from Africa towards Europe. The tender was cancelled after challenges by privacy-rights groups. Amnesty also

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[23] Stephanie Hankey and Daniel Ó Clunaigh, 'Rethinking Risk and Security of Human Rights Defenders in the Digital Age' (2013) 5 Journal of Human Rights Practice 535, 535–36.

[24] Michel Forst, *State Repression of Environmental Protest and Civil Disobedience: A Major Threat to Human Rights and Democracy* (UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, February 2024) 15.

[25] Refusing to Turn Away (n 8) para 74.

notes that similar activity by the European Asylum Support Office was challenged by the EDPS for lacking a legal basis.[26] The point is that humanitarian organisations were approached as possible objects of border intelligence, rather than as actors whose rights-defending role required protection.

Datafication deepens the problem. Once defenders, organisations or movements are translated into data points – names, contacts, locations, travel patterns, online activity, organisational links – that information can travel across institutional settings. It may inform policing, border management, funding scrutiny, registration decisions, criminal investigations or reputational attacks. For affected organisations, the consequences are both practical and legal: they may restrict communication, avoid sensitive work, reduce cooperation and document violations more cautiously. These reactions are rational responses to digital exposure, especially where defenders cannot know what has been collected, retained, shared or inferred.[27]

FRA's analysis of intelligence-surveillance remedies shows why this is difficult to contest: covert surveillance often prevents affected persons from knowing what has been collected or how it is used, while effective remedies depend on independent oversight, access to information by remedial bodies, and notification or equivalent review once secrecy is no longer justified.[28] This is particularly dangerous where monitoring a lawyer, journalist, border monitor or humanitarian organisation may also expose victims, witnesses, migrants, asylum-seekers or sources.

Unlike arrests, prosecutions and lawsuits, surveillance may work through databases, risk assessments, procurement contracts, policing files or border technologies – which makes it especially difficult for EU protection mechanisms to address. Its harm is dispersed and often invisible, yet immediate: it narrows the conditions of trust, confidentiality and association without which human rights defence cannot be sustained. It supplies the informational infrastructure of control; securitisation, examined next, supplies the language through which such control is made politically defensible.

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[26] Punishing Compassion (n 9) 19.
[27] Hankey and Ó Clunaigh (n 23) 535–36.
[28] European Union Agency for Fundamental Rights, *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU – 2023 Update* (FRA 2023) ('FRA, Surveillance') 37–40, 46.

4.5 Securitisation of Protest and Human Rights Work

Securitisation is the framing logic that makes other tactics of hybrid repression easier to justify. Through securitisation, human rights defence, protest, rescue work and solidarity are recoded as risk, disorder, extremism or threat. Once that recoding takes hold, measures that might otherwise appear excessive can be presented as responses to public order, border control, terrorism, radicalisation or national security. The move is semantic before it is legal: the defender is moved from the field of democratic participation into the field of danger.[29]

Jackson's analysis of counter-terrorism rhetoric helps explain this translation. He argues that the language of the "war on terrorism" is a constructed public discourse rather than a neutral description of policy reality, and that such discourse makes exceptional practices appear reasonable, responsible and necessary. The comparison here is limited: EU responses to protest are not equated with the post-9/11 "war on terrorism". The point is that counter-terrorism and public-order vocabularies can normalise institutional practices by producing a field of meaning in which coercion appears defensive rather than repressive.[30]

Dejean de la Bâtie and Okunrobo Perez describe this trend as the reframing of peaceful or disruptive but non-violent activism as terrorism or extremism, focusing on France, Spain, Germany and the Netherlands as part of a wider European pattern.[31] In France, environmental activists opposing water-reservoir projects at Sainte-Soline were described by the Minister of the Interior as engaging in "eco-terrorism", and proceedings were initiated to dissolve *Les Soulèvements de la Terre* under the 2021 Separatism Law.[32] In Spain, the Prosecutor General's annual report placed the activities of Extinction Rebellion and Futuro Vegetal under "National Terrorism"; in Austria and Germany, *Letzte Generation* became subject to organised-crime and terrorism-related investigations; and in the Netherlands, Schiphol airport attempted to impose lengthy bans on Extinction Rebellion activists by framing their protest as a serious security risk.[33] These examples show how securitisation manifests through concrete institutional

[29] Alice Dejean de la Bâtie and Sharon Okunrobo Perez, 'Labelling Activists as Terrorists: The Securitisation of Peaceful Protest in Europe' (2026) International Journal for the Semiotics of Law 1, 3, 6–7; Richard Jackson, 'Security, Democracy, and the Rhetoric of Counter-Terrorism' (2005) 1 Democracy and Security 147, 147–48.
[30] Jackson (n 29) 147–48.
[31] Dejean de la Bâtie and Okunrobo Perez (n 29) 1, 3.
[32] Dejean de la Bâtie and Okunrobo Perez (n 29) 2.
[33] Dejean de la Bâtie and Okunrobo Perez (n 29) 5, 10.

practices: ministerial rhetoric, dissolution proceedings, prosecutorial classification, organised-crime investigations and exclusion measures.

Forst's 2024 position paper confirms that this is a broader European pattern rather than isolated rhetoric. He identifies political stigmatisation, restrictive legislation, heavy policing, prosecution and court practices against peaceful environmental protest and civil disobedience, including the use of terrorism, extremism and organised-crime framings. His examples include political figures in Austria, France, Germany, Spain and Sweden portraying environmental movements as threats to democracy, "ecoterrorists" or criminal organisations; the inclusion of environmental activism in terrorism or extremism-related assessments in the EU TE-SAT report and in Denmark and Spain; and the use of organised-crime or counter-terrorism-style measures against environmental defenders in France, Germany and Spain.[34]

Securitisation changes the legal and political meaning of the same act. A blockade, rescue operation, occupation, monitoring activity or act of solidarity may be understood as civic participation, civil disobedience, humanitarian assistance or public-interest advocacy. Descriptors such as "extremist", "terrorist", "radical" or "security risk" do not merely describe defenders; they move them into categories of suspicion.[35] Once dissent is placed near terrorism or extremism, the burden shifts: defenders must first rebut suspicion before their claims can be heard.

The securitisation of migrant solidarity follows a related logic. Amnesty International records that European authorities and political leaders have treated acts of humanity towards refugees and migrants as threats to national security and public order, using immigration and counter-terrorism regulations to restrict the right to defend human rights.[36] Thematic reporting by the Special Rapporteur on the situation of human rights defenders similarly observes that migrant-rights defenders are often accused of being people smugglers, foreign agents, traffickers and terrorists.[37] These labels turn proximity to vulnerable persons into proximity to illegality.

[34] Forst (n 24) 7–10, 15.
[35] Dejean de la Bâtie and Okunrobo Perez (n 29) 6–7.
[36] *Punishing Compassion* (n 9) 8.
[37] *Refusing to Turn Away* (n 8) paras 4–5.

The same framing can authorise preventive and intelligence-oriented measures. Dejean de la Bâtie and Okunrobo Perez show how counter-terrorism frameworks can legitimise administrative sanctions, pre-emptive policing, biometric identification, predictive watchlists and intelligence databases.[38] Forst's account gives this a concrete environmental-defender dimension: he records the use of organised-crime legislation to justify extensive investigation and surveillance, including police tailing, phone tapping, vehicle tracking, home raids, workplace searches, infiltration of movements and arrests by counter-terrorist units.[39] The significance here is the justificatory route: threat labels make monitoring and pre-emptive intervention appear proportionate.

The effects extend beyond formal legal measures and reshape public perception: if a movement is persistently labelled extremist or terrorist, the public may become less willing to defend its rights, even where the underlying cause concerns climate protection, migrant rights, anti-discrimination, police accountability or access to asylum. Dejean de la Bâtie and Okunrobo Perez note that terrorist labelling can reduce sympathy for activists' causes, isolate activists and produce chilling effects that deter others from engaging in protest.[40]

FRA's earlier work on civil society space confirms the broader European relevance of this pattern. FRA warned that measures taken to address terrorism have had a particularly negative impact on freedom of peaceful assembly.[41] The CoE Commissioner likewise identified the abuse of anti-terrorism legislation, blacklisting and travel bans as forms of administrative and judicial harassment used against defenders.[42]

Within hybrid repression, securitisation links state authority, media discourse, administrative discretion and public fear before formal legal action begins. By the time a protest is banned, an NGO is investigated, a defender is monitored or a rescue actor is prosecuted, much of the justificatory work may already have been done. It gives dispersed measures a shared security rationale, even where they remain legally and institutionally separate.

[38] Dejean de la Bâtie and Okunrobo Perez (n 29) 2, 8–9, 12–13.
[39] Forst (n 24) 15.
[40] Dejean de la Bâtie and Okunrobo Perez (n 29) 7–8.
[41] FRA*, Challenges* (n 2) 7–8.
[42] CoE Commissioner Report (n 7) 5.

4.6 Administrative Obstruction and Resource Restrictions

Administrative obstruction is one of the least dramatic yet most effective tactics through which hybrid repression operates. It rarely announces itself as repression, appearing instead as registration, certification, inspection, reporting, access control, policing of permits, local orders, funding scrutiny or minor sanctions. These measures may be lawful in principle and even necessary in some contexts. The problem arises when they converge against rights-defending work or impose disproportionate burdens on it. Bureaucracy then becomes attrition: defenders may remain formally able to act while becoming slower, poorer, more cautious and less present where violations occur.

Administrative obstruction fits Koula's account of legal-system-based pressure. Her taxonomy also covers punitive instruments and procedures used to obstruct human rights work.[43] Administrative pressure is particularly well suited to liberal legal orders because each measure can appear routine in isolation. A registration request, fine, police check or funding audit rarely appears abusive on its own, but, as FRA warned, separate legislative or administrative measures may cumulatively increase the regulatory burden on civil society, undermining its capacity to operate.[44] The issue is therefore convergence, not administration as such.

At the level of principle, restrictions on registration, legal personality and resources engage the freedom of association. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has recommended a notification regime for associations, under which legal personality does not depend on prior state approval, and has stressed that associations should be able to seek, receive and use domestic, foreign and international resources as an essential component of association.[45] The HRD Declaration also recognises the right of everyone, individually and in association with others, to solicit, receive and utilise resources for the purpose of promoting and protecting human rights.[46] Against this standard, burdensome

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[43] Koula (n 2) 117.

[44] FRA, *Challenges* (n 2) 7–8.

[45] Special Rapporteur on the rights to freedom of peaceful assembly and of association, 'Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai' UN Doc A/HRC/20/27 (21 May 2012) para 95; Special Rapporteur on the rights to freedom of peaceful assembly and of association, 'Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai' UN Doc A/HRC/23/39 (24 April 2013) paras 16–17.

[46] UNGA Res 53/144, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' (9 December 1998) UN Doc A/RES/53/144, annex, art 13.

registration, certification or funding controls become especially problematic where they restrict independent human rights work rather than merely regulate it.

In Greece, new requirements restricted NGOs' access to reception and detention places, required certification by the Ministry of Citizen Protection, and were accompanied by planned inspections by task forces involving police, immigration, labour and finance officials. In 2020, further legislation established registration requirements for members and staff of NGOs working on migration under the Ministry for Immigration and Asylum.[47] Such measures do not need to ban humanitarian work expressly. They can make lawful presence conditional, discretionary and revocable.

In her 2022 report on defenders working with migrants, refugees and asylum-seekers, the Special Rapporteur on the situation of human rights defenders noted that many States had introduced restrictions on those working on migration, refugees or asylum, including onerous new NGO requirements, and that some organisations working on these issues had been dissolved or deregistered.[48]

Her report also records reprisals against organisations working on migrants' rights in Hungary: special procedures mandate holders had raised concerns that legislation stigmatised foreign-funded NGOs, created a criminal offence of "supporting and facilitating illegal immigration", and introduced a 25 per cent tax on funding for organisations that "promote migration", with reported effects on cooperation with UN entities, self-censorship, research, advocacy and reporting.[49] This example brings together administrative control, funding pressure, criminalisation and stigma in a single configuration.

In Commission v Hungary (Transparency of Associations), the Grand Chamber held that Hungary's 2017 Transparency Law, which required civil society organisations receiving foreign support above a statutory threshold to register, disclose information and present themselves publicly as organisations in receipt of support from abroad, imposed unjustified restrictions on foreign donations contrary to Article 63 TFEU and limited the rights protected by Articles 7, 8 and 12 of the Charter. The Court did not treat the regime as a neutral

[47] *Punishing Compassion* (n 9) 52–53.
[48] *Refusing to Turn Away* (n 8) para 12.
[49] *Refusing to Turn Away* (n 8) paras 108–111.

transparency measure: it found that labelling and publication obligations, read in light of the law's premise that foreign support could jeopardise Hungary's political and economic interests, were liable to deter donors, hinder associations' activities and create a generalised climate of mistrust and stigma. Nor had Hungary shown a genuine, present and sufficiently serious threat capable of justifying reliance on public policy or public security.[50]

The aftermath illustrates the limits of judicial correction within a fragmented framework. Hungary repealed the 2017 law only in 2021, while replacing it with a new transparency framework that Di Gaetano analyses as a form of creative compliance.[51] The recurrence of the same technique is evident in Hungary's later Sovereignty Protection framework, adopted in December 2023 and operationalised in 2024, which created an authority with broad investigative powers over organisations suspected of serving foreign interests or threatening national sovereignty.[52] Comparable tensions also appear at EU level. The Commission's Defence of Democracy proposal would create transparency obligations for interest representation carried out on behalf of third countries; civil society organisations, UN Special Procedures mandate holders and the EESC have warned that, despite its safeguards, the proposal risks reproducing the stigmatising logic of foreign-agent legislation.[53] The episode supports this thesis's central claim: fragmentation is not only a remedial weakness. It also reflects an unresolved tension in the EU's own response to techniques that it condemns when used against civil society in Member States.

Access restrictions are especially serious because they separate defenders from those whose rights are at risk. The Special Rapporteur describes the Poland–Belarus border state of emergency, where activists and journalists were effectively barred from an "exclusion zone".

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[50] Case C-78/18 *Commission v Hungary* (Transparency of Associations) EU:C:2020:476, paras 91–96, 116–19, 132, 134, 140–43.
[51] Martina Di Gaetano, 'Ball in the Commission's Court: Ensuring the Effectiveness of EU Law the Day After the Court Ruled' (2023) 8 European Papers 243, 243–45, 255–56.
[52] European Commission for Democracy through Law (Venice Commission), Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty, CDL-AD(2024)001 (18 March 2024) paras 9–13, 55–59.
[53] European Civic Forum, *Defence of Democracy Package: An Analysis of the Foreign Funding Directive* (European Civic Forum, January 2024) 1–2, 4–6 <https://civic-forum.eu/wp-content/uploads/2024/01/Defence-of-Democracy-an-analysis-of-the-foreign-funding-directive.pdf> accessed 30 June 2026; UN Special Procedures, Communication to the European Union, OL OTH 122/2024 (2 September 2024) 3–5 <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29303> accessed 30 June 2026; European Economic and Social Committee, 'European Economic and Social Committee Warns Defence of Democracy Package Might Not Deliver on Its Promises' (EESC, 24 April 2024) <https://www.eesc.europa.eu/en/news-media/press-releases/european-economic-and-social-committee-warns-defence-democracy-package-might-not-deliver-its-promises> accessed 30 June 2026.

This prevented HRDs from monitoring authorities' actions and from providing humanitarian relief to asylum-seekers.[54] Such measures do more than regulate space. They control visibility. By keeping defenders away from camps, borders or emergency zones, they keep violations away from documentation.

The scale of low-level harassment is where accumulation becomes visible. In northern France, Amnesty records a pattern of obstacles to aid delivery and hostile policing against people assisting migrants and refugees: arbitrary restrictions on where, when and by whom aid could be provided, frequent identity checks, parking fines, abusive language, threats of arrest, assaults and, in some cases, detention and prosecution.[55] Between November 2017 and June 2018, local humanitarian organisations recorded 646 instances of police abuse against volunteers and humanitarian workers, including unjustified parking fines, recording by police officers using personal phones, identity checks, searches, insults, threats and assaults.[56] A single parking fine may be minor; hundreds of such encounters, combined with searches, threats and access restrictions, change the conditions in which solidarity work remains possible.

A similar logic appeared in Slovenia, where the CoE Commissioner described lawsuits and fines against peaceful demonstrators as financial and administrative harassment. The Commissioner criticised attempts to require peaceful demonstrators to reimburse the costs of policing unregistered public assemblies and called for lawsuits claiming police costs and fines against participants in peaceful demonstrations to be discontinued.[57] This example shows that financial liability can transform protest participation into an administrative and personal risk even where the underlying assembly is peaceful.

Environmental defenders face a comparable pattern. Forst records identity checks, vehicle searches, confiscations, minor fines and indiscriminate arrests against peaceful environmental protesters in several European countries, including France, Spain, Italy, Portugal and Denmark.[58] These measures sit at the border between administrative order and punishment. They operate with less symbolic force than terrorism labels or criminal trials, yet still narrow

[54] Refusing to Turn Away (n 8) para 45.
[55] Punishing Compassion (n 9) 45.
[56] Punishing Compassion (n 9) 46.
[57] Council of Europe Commissioner for Human Rights, 'Slovenia: Lawsuits and Fines Against Peaceful Demonstrators Should Be Dropped' (Statement, 25 May 2022) <https://www.coe.int/nb/web/commissioner/-/slovenia-lawsuits-and-fines-against-peaceful-demonstrators-should-be-dropped> accessed 5 June 2026.
[58] Forst (n 24) 11–14.

participation through friction rather than prohibition: defenders must plan for police checks, fines, delays, equipment loss, travel restrictions and possible custody.

Resource restrictions intensify this attritional effect. Funding is both a material basis of NGO work and a condition of organisational independence. Where registration rules, reporting duties, inspections or public suspicion make donors cautious, an organisation's ability to plan, hire staff, litigate, visit border areas or support victims is weakened. Less visible than criminalisation, financial pressure may determine whether defenders can continue after the dramatic moment has passed.

The Commission's 2022 Charter Report documents this at EU level: in the consultation prepared for that report, 49 per cent of responding organisations reported obstacles within the financing framework, while 40 per cent reported barriers to funding. The report also identifies politicised distribution of public funding to the benefit of government-organised NGOs, including concerns about Hungary's centralised funding through the National Cooperation Fund and Poland's National Institute of Freedom. It also refers to restrictions connected with Ireland's electoral funding rules, continuing uncertainty in Germany over the tax-exempt status of CSOs engaged in political activity, and exclusion from public funding for CSOs working on LGBTI rights, gender equality and other sensitive fields.[59]

Within hybrid repression, administrative obstruction operates through friction: repeated checks, reporting duties, access restrictions, minor sanctions and funding uncertainty can absorb the time and capacity needed for human rights work. It does not need to destroy an organisation. It can make it spend its life maintaining the right to exist.

This presents a particular difficulty for EU protection mechanisms: administrative obstruction often does not fit neatly into a single dramatic rights violation. It may implicate association, assembly, expression, access to justice, non-discrimination or data protection, but its real effect is cumulative. A fragmented protection framework may respond to an unlawful fine, an excessive inspection or a disproportionate access restriction. It is less able to see how those measures combine with stigma, surveillance, funding pressure and legal uncertainty to reduce

[59] European Commission, 'A Thriving Civic Space for Upholding Fundamental Rights in the EU: 2022 Annual Report on the Application of the EU Charter of Fundamental Rights' COM (2022) 716 final ('2022 Charter Report') 14, 18–19, nn 173–178.

defenders' everyday capacity to act. Thus, administrative obstruction is not a peripheral problem. It is one of the ordinary forms through which hybrid repression becomes sustainable.

4.7 Chilling Effect as the Connecting Mechanism

The chilling effect is the mechanism through which the tactics analysed in this chapter work together. Criminalisation, SLAPPs, securitisation, surveillance and administrative obstruction each impose specific burdens. In combination, they alter the conditions under which defenders decide whether, where and how to act. The defender need not be convicted, banned, bankrupted or formally silenced. It may be enough that continuing the work becomes legally risky, financially precarious, reputationally damaging, physically exposed or organisationally exhausting.

FRA's warning that separate legal and administrative measures may be difficult to assess in isolation, but cumulatively undermine civil society's ability to operate, captures the problem precisely.[60] Each measure has its own legal form; the chilling effect emerges from their convergence.

Meier, Peña and Nah's account of hybrid repression captures this convergence directly: repression may involve different actors, tactics and threat perceptions converging on the same rights-defending activity without a single command centre.[61] In EU Member States, this convergence often operates through lawful or semi-lawful channels, making the chilling effect difficult to capture within ordinary legal categories. It takes shape before the final decision, before conviction, and sometimes even before any formal measure is challenged. It belongs to the space between law and behaviour: the moment when defenders adapt their conduct because the cost of continuing has become too high.

The effect is visible at the individual level. Forst records that environmental defenders reported fear, psychological pressure and deterrence arising from harassment, arrest, detention and the treatment of peaceful protest through organised-crime or counter-terrorism measures.[62] The Special Rapporteur on the situation of human rights defenders describes a related pattern

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[60] FRA, *Challenges* (n 2) 7–8.
[61] Meier, Peña and Nah (n 1) 774–78.
[62] Forst (n 24) 7, 16–17.

among migrant-rights defenders, including those forced to work in secret for fear of reprisals, and notes that existing protection mechanisms often fail to address the needs of defenders whose work cannot safely be made visible.[63] In these settings, self-restraint is a rational response to an environment in which visibility itself may produce risk.

At the organisational level, organisations may reduce field presence, avoid border areas, decline to publish sensitive reports, limit communication with partners, refuse funding that might later be stigmatised, or spend disproportionate time on compliance and legal defence.[64] Continued activity may itself take place under altered conditions of risk. Protection has to preserve the capacity to act while pressure is unfolding, rather than merely provide remedies after a discrete violation has been established.

At the structural level, the chilling effect narrows civic space while leaving many formal guarantees intact. Restrictions on civil society may operate through legal procedures, administrative burdens, surveillance technologies and smear campaigns that formally pursue legitimate aims while reducing the practical capacity of civil society to act.[65] The result is a thinner democratic environment: fewer actors are willing or able to monitor borders, document police violence, challenge environmental harm, support migrants, litigate rights claims or criticise public authorities.

Rights-based safeguards are usually strongest when a discrete interference can be identified: a prosecution, a ban, an unlawful data practice, a court claim, or a refusal of access. Hybrid repression works partly before and around those moments. The EU's fragmented framework can respond to individual measures, but it struggles to recognise the anticipatory environment that leads defenders to withdraw, self-censor, or redirect resources from defending rights to defending themselves.

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[63] Refusing to Turn Away (n 8) paras 53–59.
[64] Schiavon (n 15) 96; FRA, *Challenges* (n 2) 7–8.
[65] Antoine Buyse, 'Shrinking Space for Civil Society: Paradoxes and Responses in the Defence of Human Rights' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 44.

4.8 Interim Conclusion

Chapter 4 has traced how hybrid repression takes legal, procedural, technological, discursive and administrative form in EU Member States. The central finding of the chapter is convergence. Criminalisation, SLAPPs, surveillance, securitisation and administrative obstruction have been analysed separately, but their significance lies in how they affect the same rights-defending activity over time. They may require defenders to simultaneously answer allegations, defend publications, protect sources, rebut suspicion, comply with administrative demands, and secure resources. The harm therefore lies not in any single measure alone, but in the cumulative pressure placed on the capacity to continue human rights work.

These pressures often retain the appearance of legality. A prosecution may end in acquittal; a lawsuit may fail; a surveillance measure may remain hidden; a registration rule may look technical; a public-order justification may appear plausible. Their interaction can still push defenders away from the spaces, communities and conflicts where their presence is most needed. This is the distinctive force of hybrid repression: rights may remain formally guaranteed while their practical exercise becomes hazardous.[66]

The chapter also confirms FRA's warning that individual legislative and administrative measures may be difficult to assess in isolation, while their cumulative effect can undermine civil society's ability to function.[67] For HRDs, that effect is felt through time, cost, uncertainty, reputational damage and exhaustion. It may alter behaviour before any final legal finding is reached, pushing defenders to avoid sensitive spaces or redirect resources from rights defence to self-protection.

This directly challenges the protection framework analysed in Chapter 3. EU law contains important rights and sectoral safeguards, but these mechanisms remain better equipped to address identifiable interferences than patterns of pressure unfolding across several legal fields and actors. The question for Chapter 5 is whether the EU has an internal protection architecture capable of recognising such patterns early enough to preserve the practical space in which

[66] Meier, Peña and Nah (n 1) 774–78.
[67] FRA, Challenges (n 2) 7–8.

rights are defended. McCourt's call for a protection ecosystem capable of registering attacks, responding rapidly and adapting law and policy to longer-term protection needs points to the institutional problem that now has to be addressed.[68]

[68] Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Pathways Towards an Effective Protection Ecosystem* (Civil Society Europe and European Civic Forum 2024) 4, 10.

Chapter 5. Structural Gaps and Obstacles in the EU Protection Framework

5.1 From Protection Mechanisms to Structural Limits

The preceding analysis leaves a narrower question for Chapter 5: whether the existing EU and wider European mechanisms can provide protection at the point of use, when pressure on HRDs is dispersed across legal fields, institutional levels and procedural forms. The issue is organisational capacity: recognition, coordination, accessibility and timely remedy and follow-up.

This organisational question arises because institutions usually encounter pressure on defenders through the procedural channel by which a complaint, case or request reaches them. That procedural entry point determines the mandate, remedy, evidentiary threshold and timeframe. For HRDs, the protection need often concerns the combined effect of several procedures on their capacity to act. The structural problem lies in a mismatch between institutional classification, which focuses on the legal character of a measure, and protection analysis, which requires attention to its practical effect on rights-defending work.

This chapter therefore proceeds through four structural gaps. Section 5.2 analyses the recognition gap created by fragmentation and the absence of an internal HRD protection regime. Section 5.3 addresses the remedy gap produced by weak enforceability, delayed remedies and uneven implementation. Section 5.4 examines the coordination gap that emerges when discrete rights protection confronts cumulative pressure. Section 5.5 turns to the accessibility gap created by cost, expertise, resources and security barriers. Section 5.6 then asks how these elements could be connected within a more integrated internal protection approach.

For this chapter, the relevant dimension of HRD protection is institutional visibility for rights-defending activity within ordinary legal and institutional analysis. Attacks on defenders affect individual rights and the social infrastructure through which rights, democracy and the rule of law are made effective. Bennett, Ingleton, Nah and Savage describe the protection regime as multi-level and multi-actor, oriented towards recognition, tailored protection, civic space and enabling environments.[1] Measured against that standard, the EU's internal framework remains incomplete. It protects many of the rights exercised by defenders. Those protections are not yet organised into a coherent internal pathway for HRDs.

5.2 Fragmentation and the Absence of an Internal HRD Protection Regime

The first structural gap is fragmentation. In this section, fragmentation refers less to the number of available instruments than to the absence of a dedicated, coordinated and internally consistent route through which HRD-related risk can be recognised, assessed and followed up. Existing safeguards are activated through separate legal and institutional categories. As a result, the same rights-defending activity may be processed as migration assistance, public-order protest, defamation dispute, data-processing issue, funding compliance or ordinary administration, while the protection question remains secondary: is the pressure connected to the defence of rights?

FRA states the problem directly: current EU law does not provide explicit, specific protection for HRDs, and there is no common, consistent EU approach.[2] McCourt's Mapping Paper reaches the same structural conclusion regarding the EU's internal protection landscape. It notes that the EU adopted external Guidelines on HRDs in 2004 and created ProtectDefenders.eu in 2015 to support urgent protection and temporary relocation outside the Union, but nothing similar exists internally.[3] The resulting asymmetry is clear: externally, the EU possesses a defender-centred vocabulary and protection repertoire; internally, defenders are usually addressed through adjacent categories such as civic space, civil society, rule of law, public participation or fundamental rights. These categories are necessary, but not equivalent to a dedicated internal HRD protection regime.

This distinction is not semantic. "Civil society" is broader than human rights defence, while "human rights defender" is not reducible to organisational status. Defenders may act through NGOs, but also as lawyers, journalists, volunteers, community organisers, climate activists,

[1] Karen Bennett and others, 'Critical Perspectives on the Security and Protection of Human Rights Defenders' (2015) 19 The International Journal of Human Rights 883, 884–85.
[2] European Union Agency for Fundamental Rights, *Protecting Human Rights Defenders at Risk: EU Entry, Stay and Support* (FRA 2023) ('FRA, Protecting') 4, 10.
[3] Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Mapping Paper* (Civil Society Europe and European Civic Forum 2024) ('McCourt, Mapping Paper') 4.

migrant solidarity actors, academics, whistle-blowers, informal collectives or individuals compelled to respond to violations in their local environment. McCourt therefore stresses that any future protection mechanism must adopt a broad understanding of the HRD category, including those who do not self-identify as defenders and those operating in contexts where the term itself is not commonly used.[4] Fragmentation is thus also a recognition problem. Where institutions see only a suspect, litigant, protester, migrant-assistance actor, data subject or CSO, they may miss the rights-defending context that gives the risk its specific meaning.

Morondo Taramundi adds a further critical layer to this recognition problem. She argues that the EU's differentiated approach to internal and external HRD protection can be read through the lens of the coloniality of power: human rights are more readily projected outward as standards for others than accepted inward as limits on the Union's own political action.[5] On this reading, the weaker internal recognition of HRDs is linked to a European self-image in which human rights are presumed to be protected within the Union and therefore mainly defended elsewhere. This deepens the institutional explanation developed here by showing that the internal–external asymmetry is also shaped by the way the EU imagines its own relationship to human rights.

This recognition problem is visible, for instance, in the treatment of sea-rescue organisations. Adding to the patterns analysed in Chapter 4, Mediterranea Saving Humans illustrates how one rights-defending activity may be routed through several legal and institutional frames at once. Its members have faced criminal proceedings connected to alleged facilitation of illegal immigration; its rescue operations have been affected by administrative detention, fines and distant-port practices; and its founders were among Italian civil society actors identified in the 2025 Paragon/Graphite spyware controversy.[6] The case shows how fragmentation shapes

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[4] McCourt, Mapping Paper (n 3) 6.
[5] Dolores Morondo Taramundi, 'What's in a Name? The Debate on Human Rights Defenders in the European Union' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 32–34, 37–39.
[6] Angelo Amante, 'Italian Activists Face Trial for Migrant Sea Rescue in Legal First' (Reuters, 29 May 2025) <https://www.reuters.com/world/italian-activists-face-trial-migrant-sea-rescue-legal-first-2025-05-29/> accessed 3 June 2026; UN Special Procedures, Communication to Italy, AL ITA 4/2024 (31 May 2024) 2, 4–5 <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29122> accessed 3 June 2026; Bill Marczak and others, 'Virtue or Vice? A First Look at Paragon's Proliferating Spyware Operations' (Citizen Lab, 19 March 2025) <https://citizenlab.ca/research/a-first-look-at-paragons-proliferating-spyware-operations/> accessed 3 June 2026; Amnesty International, 'Europe: Paragon Attacks Highlight Europe's Growing Spyware Crisis' (Amnesty International, 19 March 2025) <https://www.amnesty.org/en/latest/news/2025/03/europe-paragon-attacks-highlight-europes-growing-spyware-crisis/> accessed 3 June 2026.

institutional perception. Different layers of pressure are processed as migration control, administrative compliance, public order, national security or data protection, although they affect the same capacity to defend rights at sea.

The broader HRD protection literature highlights that protection should be based on a comprehensive understanding of security, covering physical, digital, wellbeing and conditions for defenders.[7] Nah, Bennett, Ingleton and Savage point out that legal and administrative repression, protection mechanisms, enabling environments and technology remain central unresolved issues.[8] For the EU, this means that separate rights claims may be insufficient where defenders require coordinated legal, political, financial, digital and psychosocial support.

Fragmentation also obscures responsibility. If pressure on a defender involves criminal procedure, public-order policing, data processing, hostile rhetoric and loss of funding, no single EU mechanism is clearly responsible for recognising the whole configuration as a protection problem. The Charter may apply only where Member States act within the scope of EU law. Anti-SLAPP rules apply only within their procedural and material limits. Data protection law may address unlawful processing but not public vilification or prosecution. Rule of law monitoring may identify general trends, but not necessarily provide an individual remedy. Funding programmes may sustain capacity, but not urgent protection. Many actors hold partial responsibility, while no institution is clearly required to treat the situation as an HRD protection problem as such.

Knoll-Tudor, Pardavi and Achler sharpen this point through their analysis of the EU and the OSCE. They argue that OSCE commitments provide broader recognition and more tools for protecting HRDs than are available at EU level, while EU support for defenders remains primarily an external-policy priority. Their point is that, within Member States, EU-level protection of defenders remains anchored mainly in the Charter, without a dedicated internal legal instrument recognising or protecting HRDs as such.[9] Their "cartel of silence" argument concerns EU's reluctance to confront Member State problems in the OSCE context, but its

[7] Bennett and others (n 1) 884.
[8] Alice M Nah and others, 'A Research Agenda for the Protection of Human Rights Defenders' (2013) 5 Journal of Human Rights Practice 401, 403.
[9] Bernhard Knoll-Tudor, Márta Pardavi and Marta Achler, 'Cartel of Silence: How the European Union Undermines the Work of its Human Rights Defenders in the OSCE' (2023) 15 Journal of Human Rights Practice 284, 285–86.

broader relevance lies in exposing the political dimension of fragmentation: the EU recognises defenders as indispensable actors abroad, while internally it often treats their protection as derivative of civic space, rule of law or national implementation.

The first structural gap, then, lies in the absence of a route that links recognition, responsibility and follow-up. Existing instruments remain valuable, but they reach HRD risk through their own mandates: rights protection, sectoral safeguards, monitoring, funding or political pressure. The missing element is a way of connecting those mandates when pressure is directed at the same rights-defending function. Without that connective logic, human rights defence remains protected through its components rather than being treated as a distinct object of internal protection.

5.3 Weak Enforceability, Delayed Remedies and Uneven Implementation

The second structural gap concerns operational weakness. Even where relevant standards exist, their protective value depends on enforceability, institutional follow-up and implementation by Member States. Several mechanisms mapped in Chapter 3 are not direct protection procedures: civic-space monitoring, institutional reports, parliamentary resolutions, funding programmes and CoE/OSCE soft-law standards can guide, monitor, recommend, fund or interpret, but they do not by themselves compel an immediate response when a defender is threatened, prosecuted, surveilled or publicly vilified.

The OSCE Guidelines illustrate this dependence on implementation. They state that HRDs should have access to effective remedies, legal aid and protection policies, and that states should develop protection programmes in consultation with civil society.[10] Normatively strong, such standards still depend operationally on national authorities adopting policies, allocating resources and treating attacks on defenders as requiring specific protection.

Legally binding mechanisms are also limited by delay and procedural thresholds. Charter rights may provide a powerful standard where Member States act within the scope of EU law, but they do not apply to every domestic act affecting defenders. A migrant-rights defender

[10] OSCE Office for Democratic Institutions and Human Rights, *Guidelines on the Protection of Human Rights Defenders* (OSCE/ODIHR 2014) ('OSCE Guidelines') paras 17–23.

prosecuted under national facilitation rules may therefore need to frame the case through the connection between national criminal law and EU facilitation law before the Charter scrutiny can be invoked. ECHR litigation remains essential, but it usually requires exhaustion of domestic remedies and may arrive only after years of litigation. Data protection complaints can be important where defenders are unlawfully processed, profiled or entered into databases, but surveillance is often hidden, difficult to prove or framed through security competences. A defender who suspects covert monitoring may lack the notification or evidence needed to activate those remedies. Anti-SLAPP safeguards may reduce the burden of abusive litigation, but only where the relevant proceedings fall within the scope of the applicable instrument and where courts recognise the abusive character of the claim. A purely domestic claim may therefore remain outside the binding EU anti-SLAPP framework. Remedies exist, but defenders must first fit their situation into the correct legal category and remain able to use them effectively.

This creates a remedy gap. The weakness is primarily temporal. Legal mechanisms may assess legality only after the procedure has already imposed costs, uncertainty or exposure on the defender. For HRDs, delay can itself alter what work remains possible while proceedings, complaints or reviews continue. Protection that arrives only after the damage has been absorbed is formally meaningful but practically incomplete.

The experience of migrant-solidarity defenders in northern France illustrates this temporal weakness. Amnesty International documented harassment, intimidation, fines, arrests, threats of prosecution and police violence against HRDs assisting migrants and refugees around Calais and Grande-Synthe. Tom Ciotkowski, a British HRD monitoring police conduct during food distribution in Calais, was arrested and prosecuted after filming police conduct; he was later acquitted and pursued a complaint against the officers involved.[11] The case shows how a legal vindication may eventually arrive without preventing the procedure itself from burdening rights-defending work.

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[11] Amnesty International, *Targeting Solidarity: Criminalization and Harassment of People Defending Refugee and Migrant Rights in Northern France* (Amnesty International 2019) 22–23 <https://www.amnesty.org/en/documents/eur21/0356/2019/en/> accessed 3 June 2026; Amnesty International, *Punishing Compassion: Solidarity on Trial in Fortress Europe* (Amnesty International 2020) 44 <https://www.amnesty.org/en/documents/eur01/1828/2020/en/> accessed 3 June 2026.

Uneven implementation intensifies this weakness at the national level. A formal safeguard may exist, yet its protective force depends on judicial practice, independent oversight and the resources of supervisory bodies. The broader lesson is that protection depends on the institutional capacity to activate available standards as pressure unfolds, rather than solely on the abstract availability of those standards.

The problem is especially acute where national institutions are themselves implicated in the pressure. If the risk arises from abusive prosecution, politicised policing, securitised monitoring or administrative harassment, the defender is required to seek protection from the same legal order that may be producing the harm. Domestic remedies remain indispensable, but their effectiveness depends on judicial independence, prosecutorial restraint, police accountability, access to legal aid and the willingness of national authorities to recognise rights-defending activity as legitimate. The CoE Commissioner's 2019 report reflects this concern, identifying threats, physical attacks, administrative and judicial harassment, abuse of anti-terrorism legislation, blacklisting and travel bans as continuing challenges across the CoE area.[12] Implementation may fail precisely at the institutional level on which protection depends.

Knoll-Tudor, Pardavi and Achler show that weak enforceability may also be diplomatic and political. Their analysis of EU practice within the OSCE argues that the EU's pursuit of unity has produced a "cartel of silence" in which Member States avoid open criticism of human-dimension violations inside the Union. This weakens the OSCE's peer-review logic and shows that protection standards may be weakened both by formal legal status and by political non-use.[13]

McCourt's Pathways Paper identifies the missing operational link: protection systems must move from reporting and documentation to response, support and accountability.[14] Section 5.6 returns to this operational gap by asking how scattered mechanisms could be integrated into a more coherent internal protection pathway.

[12] Council of Europe Commissioner for Human Rights, *Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions* CommDH(2019)10 (29 March 2019) paras 9–18.
[13] Knoll-Tudor, Pardavi and Achler (n 9) 291–92.
[14] Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Pathways Towards an Effective Protection Ecosystem* (Civil Society Europe and European Civic Forum 2024) ('McCourt, Pathways Paper') 4–6.

The second structural gap is operational. Protection may exist in legal form, yet fail to operate as protection at the moment when HRDs need it. Where safeguards depend on slow litigation, uneven national implementation or political willingness, violations may be recognised without preserving the conditions needed for defenders to continue their work. The central issue is whether standards can be activated in time, implemented consistently and followed by concrete support and accountability.

5.4 Hybrid Repression and the Limits of Discrete Rights Protection

The third structural gap is the inadequate fit between hybrid repression and mechanisms designed around discrete rights violations. EU and European protection tools are strongest where pressure can be translated into a legally identifiable interference: a protest restriction, criminal charge, unlawful data processing, abusive lawsuit or unfair trial. Legal accountability requires courts and institutions to identify the right at issue, the applicable standard and the responsible actor. Yet hybrid repression often functions differently. Its harm lies in the interaction between measures.

A single administrative inspection may not, in isolation, amount to repression. A single police summons, hostile statement, funding delay, security check or lawsuit may be presented as ordinary governance. But where such measures are repeated, combined or selectively directed at those engaged in human rights work, they may narrow the practical space in which defenders can operate. FRA made this point in relation to CSOs already in 2018: individual legislative or administrative measures may be difficult to assess in isolation, whereas a series of measures across different areas may together increase the regulatory burden on civil society actors to the point that their ability to operate is undermined.[15] This captures the legal difficulty at the centre of hybrid repression: the whole is not merely the sum of its parts.

The EU framework is less well equipped to respond to this cumulative quality because its instruments usually enter through separate doors: anti-SLAPP protection addresses abusive litigation; data protection law addresses unlawful processing; fair-trial rights address procedural guarantees; freedom of assembly protects protest; and rule-of-law monitoring

[15] European Union Agency for Fundamental Rights, *Challenges Facing Civil Society Organisations Working on Human Rights in the EU* (Publications Office of the European Union 2018) ('FRA, Challenges') 7–8.

addresses broader institutional conditions. Doctrinally, such categorisation is necessary. Analytically, it can obscure how these measures reinforce one another: surveillance may strengthen criminalisation, securitising rhetoric may legitimise restrictive policing, and administrative burdens may weaken an organisation's capacity to defend litigation.

Buyse's account of shrinking civic space is useful here because it avoids a simple opposition between law and repression. He shows that restrictions on civil society often arise from paradoxes: legal, administrative and technological infrastructures may simultaneously enable participation and discipline it.[16] The same legal order that protects public participation can exhaust public participants; transparency rules can stigmatise; and digital technologies that document violations can expose defenders to surveillance. Hybrid repression need not abandon legality; it may operate through legality's ordinary forms.

This is why the issue in this section is analytical fit. A mechanism may correctly assess a single interference while still missing the configuration that gives that interference its repressive force.

The existing European standards recognise many of these risks, but they are not fully institutionalised within the EU as an internal protection system. The OSCE Guidelines expressly address protection against judicial harassment, criminalisation, arbitrary detention, stigmatisation, administrative misuse, and undue restrictions on fundamental freedoms associated with human rights work.[17] They therefore treat the defender's activity as the organising point of analysis. By contrast, the EU internal framework more often protects defenders through the general rights implicated by particular measures. This distinction is important: a defender-centred approach asks whether the measure affects the ability to defend rights, whereas a discrete-rights approach asks whether a specific legal entitlement has been violated. These questions overlap, but they are not identical.

The recognition problem analysed in section 5.2 also has a cumulative dimension. Once defenders are recoded through categories of suspicion – extremist, smuggler, foreign agent,

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[16] Antoine Buyse, 'Shrinking Space for Civil Society: Paradoxes and Responses in the Defence of Human Rights' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 44.
[17] OSCE Guidelines (n 10) paras 23–44.

public-order threat or political agitator – ordinary legal powers can interact more easily across policing, prosecution, surveillance, funding and public discourse.[18] The result is a framework in which separate measures become mutually reinforcing.

The third structural gap is therefore one of analytical fit. A discrete-rights approach remains indispensable, because protection must still identify rights, standards and responsible actors. Its limit is that it may treat connected pressures as separate legal events. Hybrid repression requires an additional layer of analysis: whether different measures, lawful or unlawful in isolation, together weaken the practical capacity to continue human rights defence.

The relevant question is whether the EU framework can do more than recognise violations after the fact: whether it can keep open the conditions under which HRDs continue to defend rights as pressure unfolds.

5.5 Practical Accessibility and Resource Gaps

The fourth structural gap concerns practical accessibility. Even where protection mechanisms exist formally, defenders may be unable to use them effectively due to cost, time constraints, lack of legal expertise, language barriers, insecurity, limited institutional knowledge, or the absence of trusted referral pathways. Protection therefore cannot be assessed only by asking whether a legal avenue exists. It must also ask whether defenders can realistically identify, reach and use that avenue while under pressure.

The accessibility gap is particularly visible in the material capacity of civil society actors. FRA's 2018 report on CSOs working on human rights in the EU identifies funding challenges, including shrinking budgets, short-term project funding, complex procedures, disproportionate reporting requirements, co-financing difficulties, payment delays and negative campaigns against foreign-funded organisations.[19] These obstacles affect whether an organisation has the time, staff, expertise and stability needed to seek legal advice, document pressure, pursue complaints, maintain digital security and continue human rights work while responding to administrative or reputational attacks.

[18] Morondo Taramundi (n 5) 22–23.
[19] FRA, Challenges (n 15) 32.

Resource constraints therefore operate as access barriers. A defender or CSO under pressure may formally have several avenues available – litigation, complaints to supervisory bodies, engagement with NHRIs, public advocacy or international reporting – but each requires capacity. Where funding is insecure or staff are already absorbed by compliance demands, protection becomes harder to activate precisely when it is most needed.

The complexity of the protection landscape can itself become an access barrier. Beck, Gajšek, Kobold and O'Grady's practical guide maps possible routes across UN, OSCE, CoE, EU, diplomatic, national and data-protection mechanisms.[20] The breadth is valuable, but it also underscores how much specialised knowledge is required. A defender facing criminal investigation, digital surveillance or administrative harassment may need immediate legal, digital and advocacy advice; instead, they may be confronted with a complex institutional map that is difficult to navigate.

The ENNHRI exchange confirms this access problem from the perspective of national institutions. It identifies practical protection needs including solidarity networks, safe spaces, documentation and reporting, urgent focal points, psychosocial counselling, physical and digital protection, relocation, legal support, flexible funding and access to justice.[21] It also presents NHRIs as possible bridges between HRDs, CSOs and the state, able to monitor, investigate, report, provide advice, engage in strategic litigation, refer defenders to relevant mechanisms and create spaces for exchange.[22] This role is significant because accessible protection requires trusted intermediaries alongside formal norms.

McCourt's Pathways Paper frames this as a problem of usable access: dispersed mechanisms require trusted and reachable entry points rather than expecting defenders to assemble protection themselves.[23] Section 5.6 develops this as a question of integrated protection design.

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[20] Elena Beck and others, *In Defence of Defenders: A Practical Guide to Legal Means and Advocacy Tools for Criminalised Human Rights Defenders in Europe* (Hope Barker and Elena Beck eds, Heinrich-Böll-Stiftung and Border Violence Monitoring Network 2023) 5–8.
[21] European Network of National Human Rights Institutions, *ENNHRI Exchange on NHRIs' Role in the Protection of Human Rights Defenders: Outcomes and Recommendations* (ENNHRI 2024) ('ENNHRI Exchange') 4–5.
[22] ENNHRI Exchange (n 21) 1, 10–11.
[23] McCourt, Pathways Paper (n 14) 4–6.

The accessibility gap shows that protection is also a matter of institutional usability. A framework may be normatively sophisticated and still fail defenders if it is slow, expensive, obscure or dependent on informal networks. An effective internal EU approach must make protection legible, reachable and usable before pressure becomes irreversible.

5.6 Towards an Integrated Internal Protection Approach

The structural gaps identified in this chapter do not necessitate the conclusion that the EU lacks protective norms. The more precise point is that those norms are not yet organised into an internal protection approach capable of recognising HRD-related risk across different procedures and bodies. An integrated approach would not confer immunity on defenders or remove them from ordinary legal responsibility. It would organise existing rights, sectoral safeguards, civic-space monitoring and wider European standards so that the rights-defending context becomes visible as pressure builds.

At a minimum, such an approach would need to combine four elements. First, it would require recognition: defenders should be identifiable as rights-protecting actors even when they do not operate through formal NGOs or self-identify as HRDs. Secondly, it would require coordination: existing EU, CoE, OSCE, national and civil society mechanisms should be connected so that defenders are not left to navigate the protection landscape alone. Thirdly, it would require early warning and rapid response: the framework should be capable of identifying patterns of harassment before they culminate in criminal conviction, organisational closure, bankruptcy or serious physical harm. Fourthly, it would require follow-up and accountability: reporting should lead to investigation, remedy and, where necessary, action against state or non-state perpetrators.

McCourt's Pathways Paper points in this direction by distinguishing between alert and investigation systems and rapid response mechanisms, while insisting that both must be connected to broader monitoring, early warning and long-term policy change.[24] The ENNHRI exchange similarly identifies NHRIs as potential bridges between defenders, civil society and state authorities, capable of monitoring attacks, providing advice, supporting complaints or

[24] McCourt, Pathways Paper (n 14) 4–6.

litigation, and referring defenders to relevant mechanisms.[25] This does not mean that NHRIs alone can carry the burden of protection. It means that any internal protection ecosystem must include trusted national access points linked to regional standards and institutions.

The OSCE Guidelines provide a useful normative baseline. They call on states to ensure effective remedies, legal aid, protection policies, adequate funding for physical and psychological protection, and proactive measures against judicial harassment and stigmatisation.[26] Protection must extend beyond retrospective legality review to the preservation of the conditions that allow defenders to continue their work.

The implication is modest but important. The EU does not need to replace existing rights protections with a separate regime detached from ordinary law. It needs to organise those protections more coherently around the activity of defending rights. A genuinely internal approach would treat criminalisation, SLAPPs, securitisation, surveillance, administrative obstruction and funding pressure as possible components of a broader pattern that affects the democratic function of human rights defence.

5.7 Interim Conclusion

Chapter 5 has located the main weakness of the EU internal framework in the organisation of protection. Existing guarantees, monitoring tools and wider European standards reach HRD-related risk through separate mandates, thresholds and access routes. When pressure is cumulative, this structure can leave the rights-defending context under-recognised, remedies delayed, patterns dispersed across legal categories and access dependent on resources or trusted intermediaries.

This finding refines the thesis's central hypothesis. EU protection is meaningful, yet its effectiveness cannot be measured by formal legal availability alone. The assessment of protection is therefore practical as well as formal: rights and mechanisms must be capable of preserving the conditions in which rights-defending work can continue.

[25] ENNHRI Exchange (n 21) 1, 4–5, 10–11.
[26] OSCE Guidelines (n 10) paras 68–72, 89–95.

Chapter 6. Conclusion

6.1 Answering the Research Question

This thesis set out to answer the following research question: what protection mechanisms exist for human rights defenders in the European Union and the wider European framework relevant to EU Member States, and what legal, institutional and practical obstacles limit their effectiveness against emerging forms of hybrid repression through criminalisation, strategic litigation, securitisation and surveillance in EU Member States? The answer developed across the thesis is that the EU possesses a substantial but incomplete framework of protection. Its weakness does not lie in the absence of relevant norms. It lies in the fact that those norms remain dispersed across legal fields, institutions and levels of governance, and are not yet organised around HRDs as defenders.

The first part of the question can therefore be answered affirmatively, with qualification. Internally, HRDs may rely on the Charter, which protects the core freedoms through which human rights defence is exercised: expression, assembly, association, privacy, data protection and effective judicial protection.[1] Sectoral instruments add targeted safeguards. The Anti-SLAPP Directive expressly recognises HRDs among those exposed to abusive court proceedings connected with public participation, while the GDPR and the LED provide tools against unlawful processing, excessive retention, profiling and certain surveillance-related interferences.[2] These protections are supported by EU institutional monitoring, rule-of-law scrutiny and funding programmes, and by CoE and OSCE standards within the wider European framework.[3]

[1] Charter of Fundamental Rights of the European Union [2012] OJ C326/391 arts 7, 8, 11, 12, 47.
[2] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') [2024] OJ L 16.4.2024, recitals 6, 11, arts 1, 2, 4; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [2016] OJ L119/1, arts 2(1), 5(1)(a)–(c), 6(1), 9(1), 13–16, 77, 79; Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for criminal-law enforcement purposes [2016] OJ L119/89, arts 1(1), 2(1), 4(1)(a)–(c), 8(1), 10, 13–14, 16, 52, 54.
[3] European Commission, 'A Thriving Civic Space for Upholding Fundamental Rights in the EU: 2022 Annual Report on the Application of the EU Charter of Fundamental Rights' COM (2022) 716 final, 3–5, 18, 23, 35; European Union Agency for Fundamental Rights, *Challenges Facing Civil Society Organisations Working on Human Rights in the EU* (Publications Office of the European Union 2018) ('FRA, Challenges') 7–8, 13, 32; Council of Europe Commissioner for Human Rights, *Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions* CommDH(2019)10 (29 March 2019) paras 1–2, 7, 54–55; OSCE

These mechanisms still fall short of a coherent internal EU protection regime. The EU protects many of the rights defenders rely on, yet not the activity of human rights defence as a distinct object of internal concern. Defenders must often translate risks arising from their human rights work into separate legal categories: expression, association, data protection, fair trial, public participation, funding or protection from abusive litigation. That translation may be legally possible, but it is institutionally fragile. This is the structural significance of FRA's finding: EU law does not provide explicit and specific protection for HRDs, and there is no common, consistent EU approach.[4]

The second part of the research question concerns effectiveness against hybrid repression. The thesis has shown that criminalisation, strategic litigation, securitisation, surveillance and administrative obstruction rarely operate as isolated interferences. Their significance lies in convergence. Taken separately, each pressure may appear as ordinary law enforcement, civil procedure, security policy, data processing or administrative regulation. Taken together, they may produce a chilling effect that makes human rights defence more costly, risky and unsustainable. Existing EU mechanisms are therefore better equipped to respond to discrete violations than to cumulative patterns of pressure. The central conclusion is consequently that the EU framework is normatively dense but structurally fragmented: it contains important elements of protection, yet it has not organised them into an internal commitment capable of recognising, preventing and responding to the cumulative suppression of human rights defence.

6.2 Confirmation and Refinement of the Hypothesis

The thesis's central hypothesis was that the EU's framework for HRD protection is meaningful, but fragmented, reactive and insufficiently adapted to hybrid repression. The analysis confirms and refines this hypothesis: available protections are distributed across separate rights, legal fields and institutional mechanisms, while the pressures faced by defenders increasingly operate through cumulative and interacting forms.

Office for Democratic Institutions and Human Rights, *Guidelines on the Protection of Human Rights Defenders* (OSCE/ODIHR 2014) ('OSCE Guidelines') paras 2–7, 17–23.

[4] European Union Agency for Fundamental Rights, *Protecting Human Rights Defenders at Risk: EU Entry, Stay and Support* (FRA 2023) ('FRA, Protecting') 10; Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Mapping Paper* (Civil Society Europe and European Civic Forum 2024) ('McCourt, Mapping Paper') 4, 20–21.

Chapter 3 confirmed the first element of the hypothesis: the EU framework is substantial, including the Charter, sectoral legislation, institutional monitoring, funding instruments, rule-of-law scrutiny and wider CoE/OSCE standards, yet it is not organised into a single internal HRD regime. Protection exists, but through adjacent categories such as fundamental rights, civil society, public participation, data protection, anti-SLAPP safeguards and civic space.[5]

Chapter 4 explained why this fragmentation matters. Hybrid repression operates through convergence: criminalisation, strategic litigation, securitisation, surveillance and administrative obstruction may reinforce one another even where each measure is formally presented as ordinary law enforcement, civil procedure, security policy or administrative regulation. The chilling effect links these pressures by causing defenders to calculate the personal, financial, reputational and organisational costs of continuing their work before any institution has formally recognised a violation.[6]

Chapter 5 then confirmed the third element: existing EU mechanisms remain constrained by weak internal recognition, uneven implementation, delayed remedies and practical accessibility gaps. These weaknesses mean that institutions may fail to recognise defenders as defenders; remedies may arrive only after the chilling effect has occurred; implementation may depend on national capacity and political will; and mechanisms may be hardest to activate precisely when defenders are under pressure.[7]

The necessary refinement is that fragmentation is not inherently defective. A multi-layered system may be appropriate where different risks require different legal and institutional responses. The weakness emerges when fragmentation is not accompanied by coordination, pattern recognition and timely response. Then a fragmented protection framework meets

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[5] FRA, Protecting (n 4) 4, 7, 10; McCourt, Mapping Paper (n 4) 4, 6, 20–21; Bernhard Knoll-Tudor, Márta Pardavi and Marta Achler, 'Cartel of Silence: How the European Union Undermines the Work of its Human Rights Defenders in the OSCE' (2023) 15 Journal of Human Rights Practice 284, 284–86.

[6] Larissa Meier, Alejandro M Peña and Alice M Nah, 'From Collusion to Autonomy: Patterns of Hybrid Repression and Human Rights Activism' (2025) 60 Government and Opposition 773, 774–78; Aikaterini-Christina Koula, 'Human Rights Violations Committed Against Human Rights Defenders Through the Use of Legal System: A Trend in Europe and Beyond' (2024) 25 Human Rights Review 99, 99–102, 105–06; FRA, Challenges (n 3) 7–8.

[7] FRA, Protecting (n 4) 5–7, 10; McCourt, Mapping Paper (n 4) 4, 6; Kersty McCourt, *Realising Protection for Human Rights Defenders and Civil Society Organisations in Europe: Pathways Towards an Effective Protection Ecosystem* (Civil Society Europe and European Civic Forum 2024) ('McCourt, Pathways') 4–6.

cumulative repression without the connective logic needed to see the whole. The thesis therefore confirms that the EU's internal protection framework is not empty, but structurally under-organised. It contains many of the necessary protection components, but lacks the defender-centred approach necessary to make those parts work together when repression accumulates.

6.3 Synthesis of the Argument

The thesis rests on one structural proposition: HRD protection begins with recognition, but becomes effective only when recognition translates into an organised protection framework. Chapter 2 showed that HRDs form an activity-based category identifying persons, groups and organisations exposed to risk because they promote, protect or seek the realisation of human rights. This does not create a privileged legal status. It makes visible a specific connection between the exercise of ordinary rights and the defence of the rights of others. Where that connection is missed, the person may be treated only as a protester, litigant, suspect, foreign-funded actor, activist or data subject, and the rights-defending function of their activity may disappear from legal and institutional analysis.[8]

Chapter 3 showed that this recognition problem is reproduced within the EU's internal framework. The Union has a developed external vocabulary for HRD protection, but internally, protection remains mediated through general rights, sectoral safeguards and civic-space governance. The result is an external–internal asymmetry: the EU speaks about defenders as defenders outside the Union more clearly than it has institutionalised such recognition within the Union.[9]

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[8] UNGA Res 53/144, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' (9 December 1998) UN Doc A/RES/53/144, annex, art 1; UN Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (July 2011) 5; Dolores Morondo Taramundi, 'What's in a Name? The Debate on Human Rights Defenders in the European Union' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 22–23, 25–27.

[9] Council of the European Union, 'Ensuring Protection: European Union Guidelines on Human Rights Defenders' (2008) paras 1–3, 7–11; McCourt, Mapping Paper (n 4) 4, 6, 20–21; Knoll-Tudor, Pardavi and Achler (n 5) 284–86.

Chapter 4 explained why this matters in practice. Hybrid repression exploits precisely those spaces between legal categories. It need not abolish rights openly; it may combine criminalisation, litigation, securitising narratives, surveillance, administrative burdens and delegitimising discourse to make ongoing human rights work increasingly difficult. The chilling effect is the connecting mechanism. It converts dispersed pressure into anticipatory restraint: defenders may avoid certain cases, reduce public criticism, limit contact with vulnerable groups, withdraw from protest, or redirect organisational resources from rights defence to self-protection. In this sense, the harm lies not only in discrete violations, but in the gradual narrowing of the practical space in which rights can be defended.[10]

Chapter 5 identified the structural mismatch at the centre of the thesis. It showed that separate mechanisms may miss the cumulative field of constraint experienced by defenders. The central issue is whether the EU framework can recognise the pattern behind individual incidents and preserve the conditions that allow HRDs to continue their work. The thesis answers that question cautiously: the EU has the components of such protection, but not yet the internal architecture needed to make them operate as a coherent protection system.

6.4 Contribution and Implications

The thesis contributes to the existing literature by bringing together three discussions that are often treated separately: HRD protection, the EU's internal fundamental-rights framework, and hybrid repression. Much of the EU literature on HRDs has focused on external action, while internal debates are more often framed through civic space, civil society, rule of law or public participation. The contribution is to show that the internal protection gap becomes clearer through hybrid repression: fragmentation becomes a structural weakness where repression itself operates cumulatively.[11]

This analytical framing also clarifies the practical implications of the research. The thesis does not suggest that the EU should replace existing rights protections with a separate status detached from ordinary law. HRDs remain rights-holders subject to the same lawful limitations

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[10] Meier, Peña and Nah (n 6) 774–78; Koula (n 6) 99–102, 105–06; FRA, Challenges (n 3) 7–8; Antoine Buyse, 'Shrinking Space for Civil Society: Paradoxes and Responses in the Defence of Human Rights' in Felipe Gómez Isa and Gorka Urrutia Asua (eds), *Human Rights Defenders Under Siege* (Edward Elgar 2025) 43, 48.
[11] Meier, Peña and Nah (n 6) 773–78; Buyse (n 10) 43, 48; McCourt, Mapping Paper (n 4) 4, 20–21.

as others. The point is different: the rights-defending context of their activity must become institutionally visible. An integrated internal approach would therefore organise existing protections more coherently around the activity of defending rights, rather than leaving defenders to navigate separate mechanisms in isolation.

The practical implication is that recognition, coordination, early warning, rapid response and accountability must operate together as parts of a single protection approach. Recognition makes the rights-defending context visible; coordination prevents defenders from having to piece together protection from scattered mechanisms; early warning and rapid response matter because hybrid repression often takes effect before final judicial findings; and accountability gives reporting mechanisms institutional consequence.[12]

McCourt's ecosystem logic points in this direction, but it should be understood as a direction rather than a ready-made blueprint. The precise institutional design would require further development; for this thesis, the underlying principle is that protection should preserve the conditions that enable HRDs to continue their work. The EU already possesses many of the relevant norms, institutions and vocabularies. The remaining task is to connect them in a way that reflects the cumulative character of the risks defenders face.[13]

6.5 Limits and Further Research

This thesis is a desk-based and qualitative study. Its examples are used illustratively to identify recurring patterns, not to provide an exhaustive account of the situation in each Member State. Its trend-based approach makes it possible to analyse hybrid repression as a cumulative and cross-sectoral phenomenon, but does not allow for a full assessment of national implementation practices, institutional cultures or the practical effectiveness of remedies in individual legal systems.

These limits point to several areas for further research. Comparative work could examine how national courts, equality bodies, ombuds institutions, NHRIs and civil society networks recognise and respond to risks faced by HRDs. Further research should assess the

[12] McCourt, Mapping Paper (n 4) 6; McCourt, Pathways (n 7) 4–6; OSCE Guidelines (n 3) paras 2–6, 17–23, 37–41, 68–72, 93–100.
[13] McCourt, Pathways (n 7) 4–6, 9–10; OSCE Guidelines (n 3) paras 93–100.

implementation and effectiveness of the Anti-SLAPP Directive after national transposition, especially regarding domestic proceedings and the interaction among civil, criminal and administrative forms of legal harassment. Further study could also examine NHRIs and independent bodies as entry points into a more coherent protection ecosystem, as well as the differentiated risks faced by women HRDs, LGBTI defenders, migrant-rights defenders and environmental defenders, whose exposure to repression may be shaped by the rights they defend, the communities they support and the public narratives attached to their work.

6.6 Final Conclusion

The central argument of this thesis has been that the EU's internal framework for HRD protection is meaningful yet structurally incomplete. The Union possesses many of the norms, institutions and legal vocabularies needed to protect those who defend rights. Yet these elements remain dispersed across different fields and are not yet organised into a coherent internal commitment. The consequence is a mismatch between the form of protection and the form of pressure. HRDs may rely on important rights and remedies, but hybrid repression often works through cumulative constraint, delayed harm and the gradual narrowing of the space in which rights can be defended.

Protecting HRDs cannot be reduced to extracting individuals from danger, important as that remains. Emergency response and structural reform are not alternatives; they are two tempos of the same obligation. Addressing the conditions that make defenders vulnerable in the first place – hostile laws, enabling discourses, institutional silence and fragmented responsibility – requires sustained political will and structural change, not merely procedural safeguards. The remaining task is therefore to make the dispersed framework usable: an internal architecture of recognition, response and accountability. This is a legal and institutional question, but also one about the kind of democratic order the Union intends to sustain.

Research has its own role in this task. Concepts can make visible what practice cannot always name in the moment: hybrid repression, chilling effect, structural fragmentation and the internal–external asymmetry of protection. When defenders, institutions and advocates can see the pattern behind individual incidents, the threshold for collective response changes. In this sense, the work of scholarship and the work of defending rights are not separate enterprises.

They share a common aim: keeping open the space in which rights can be asserted, monitored and made real.

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