

**AS FAR AS ACCUSATIONS ARE USEFUL TO THE REPUBLIC,
SO SLANDER IS PERNICIOUS.**

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The recent entry into force of [Directive \(EU\) 2024/1069](#) of the European Parliament and of the Council of 11 April 2024 on "strategic legal actions against public participation", reminded me of the wise words of Niccolò Machiavelli on the safeguarding of liberty in the Republic. He said that "to those who are proposed in a city for the guard of their liberty, no more useful and necessary authority can be given than that of being able to indict the citizens before the people, any magistrate or council, whenever they sin anything against the free state." At the same time, he warned that "slander is used more where accusation is used less and where cities are less ordered to receive it." Machiavelli understood that to repress slander, one cannot repress the possibility of accusing, but the opposite: the power to accuse is fundamental to freedom and must not be restricted. Rather, the powers of the magistrates should be ordered so that they could distinguish accusation from calumny and punish the latter.

The [Directive](#) says it aims to "remove obstacles to the proper conduct of civil actions while ensuring protection for natural and legal persons involved in public participation in matters of public interest". Among those targeted by the need for protection are entities with "public participation", namely, journalists and academics, but also political office holders. Among the instigators against whom they deserve special protection are the somewhat mysterious "powerful entities, such as individuals, lobbying groups, large commercial corporations, politicians, and organs of the state."

The [Directive](#) states that "it is important to protect natural and legal persons from abusive court proceedings against public participation". It emphasizes that these proceedings "are not initiated for the purpose of access to justice, but to silence public debate and prevent the investigation and reporting of breaches of Union and national law, usually resorting to harassment and intimidation."

And so, it obliges member states to create special safeguards to make it more difficult to bring proceedings against entities with public participation, namely, that the courts may require the provision of security and the so-called "corrective measures against abusive judicial proceedings against public participation", such as increased court costs and fines.

Confronting Machiavelli with the purposes of this Directive (EU) 2024/1069, the clash between Machiavelli's warning and what the Directive imposes on the Member States of the European Union becomes clear. It is therefore necessary to ask, politically, whether we are not encouraging slander by making it more difficult to prosecute entities with public participation; whether the European institutions are not reacting hotly in the face of recent circumstances; and whether it is legitimate for politicians to include themselves as beneficiaries of these measures.

From a legal point of view, we must ask whether there are not already sufficient means, at least in our legal system, to react against so-called abusive actions. In Portuguese civil procedure, in addition to the possibility of preliminary dismissal, naturally limited by the adversarial principle, there is the institution of bad faith litigation, which allows the court to impose fines of its motion on those who make improper use of the right of action. In criminal proceedings, it is up to the Public Prosecutor's Office, even in crimes that depend on private prosecution, to accuse or not to accuse; Which, things being done well, can only happen when there is enough evidence to bring the defendant to trial.

It is also left to the constitutionalists to ask whether, by making it difficult for some and not others, to access the courts for reasons that are difficult to objectify, we are not calling into question Article [20 of the Constitution of the Portuguese](#)

¹ The quotations from Niccolò Machiavelli in this article are from *the Discourses on the First Decade of Titus Livy*, 1, 7 and 8.

Republic, which establishes for everyone the right to access the law and to effective judicial protection, which means that everyone is granted the right to access the courts.

Above all, since freedom and equality are at stake, it is up to all of us to reflect on whether we want to pursue this path of restricting access to the courts to present our claims. And if, since the means already exist, we should not rather be more demanding of our judicial magistrates in sanctioning abusive actions, in "punishing slander" as Machiavelli would say, instead of creating restrictions on access to the courts for a few and only for the benefit of a few. For my part, I can only intuit that continuing this path will increase the Republic's exposure to slander and the risks of losing our freedom.

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