



## Contents

Events

Media on Media

Press Releases

Vacancies/Competitions

Incoming Events

Free Media Help Line

**The Conference on Implementation of the Law on Protection against Defamation recommendations**

**Implementing of the Law on Protection against Defamation: Judicial practice generates self-censorship**

*By: Suzana Mijatović*

**Decriminalizing defamation failed to reduce the number of court proceedings**

*By: Sanela Gorušanović-Butigan*

**Law on Protection against Defamation in Judicial Practice:**

*By: Duško Miloica*

**The Law on Protection against Defamation (“Defamation Law”) does not recognize the nature of online media: Non – transparent Web Sites as Paramedia Space**

*By: Nusmir Huskić*

## Events

14 Jan 2015

**Journalists should persist in protecting their labor rights**

“Without mutual support and firm and solid media union, media staff cannot expect better working conditions and respect of their rights by the officials”, participants emphasized this thesis during the workshop regarding the protection of journalists’ rights in local media houses. The workshop was held in Gorazde. Elma Geca, president of the Union Organization of the RTV BPK Gorazde, stated that the significance of the union organizing is unquestionable. “The Union fight is not a simple task and it can also cause additional problems, but at the end, it does have its benefits too. This Union has, during crucial moments, managed to protect journalists and reach the agreement with its founders, by applying and using rather unusual methods. It would be necessary for the Union to gain trust and unity of all journalists involved”, said Geca at the end.

*Details*

## Editorial

Law on Protection against the Defamation passed in BiH Entities and Brcko District ten years ago shifted defamation deeds from criminal law into civil rights, which resulted in the creation of new practice for both, judges and journalists and it instigated greater rights for journalists and freedom of speech. However, by its inappropriate implementation, this law has been turned into its own inverse and polarity and has thus become a tool for imposing pressure upon journalists and media houses.

Prosecutors do not obey Article 8 of the Defamation Law which includes mediatory process prior to court trials. They also do not use the opportunity to submit appeals and complaints to the Press Council of BiH, as a result to texts posted / published in printed sources and online media sources as well.

With great number of appeals submitted against them, journalist and media staffs have been imposed with great amount of pressure being forced to pay enormous fines / penalties for harms often characterized as “mental shock”. Media and journalists, that is, freedom of expression suffers severely because of this kind of implementation of the Law on Protection against the Defamation and this particular court practice could only instigate and encourage censure and auto censure emerging.

One of the reasons why “Slobodna Bosna”, printed weekly magazine, terminated with its publishing, as its management had been put under pressure and they have to face causing defamation appeals and charges pressed against them. There have been over 50 defamation court processes against this magazine. Last two cases resulted in significant fines / penalties imposed and “Slobodna Bosna” management had to pay due to defamation appeals and verdicts, that is, for statements stated publicly by their collocutors during the interviews. This way introduced and emerged censorship for both journalists and collocutors. By following this logic, journalists should have therefore acted as police officer that would check the authenticity of statements and thesis stated by their collocutors in advance and prior to interviews.

According to statistics provided by Free Media Help Line during the period between 2002 and 2012, 700 law suits cases were filed in courts of Sarajevo, while 1000 cases were registered in courts throughout BiH. The implementation of the provisions of the Law on Protection against the Defamation violates journalists’ rights for freedom of expression, their rights to post critics of elected officials in public, rights to anonymous sources and rights to survey private lives with the purpose of providing wide public audience with information. This edition of E – Bulletin shall cover the issue of the implementation of provisions of the Law on Protection against the Defamation through texts provided by **Suzana Mijatovic**, Slobodna Bosna journalist, **Dusko Miloica**, judge with the Elemental Court of Prijedor, **Sanela Gorusanin – Butigan**, judge with Elemental Court of Sarajevo, and **Nusmir Huskić**, a lawyer.

*Adis Šušnjar, BH Journalists Association*

## Implementing of the Law on Protection against Defamation

### Judicial practice generates self-censorship

*By: Suzana Mijatović*

“Slobodna Bosna” (weekly magazine) journalists and editors shall remember 2015 as the year in which, after thousands of posted / published articles / texts, this weekly magazine ceased with its publishing and as of 1 Jan 2016 “relocated” its business (contents) to a new, digital platform. Faced with long – term political pressures imposed against them, particularly through marketing industry, ruthless market rules and numerous defamation verdicts, the “Slobodna Bosna” editing management was, at the end, forced to find “more affordable” way to reach their readers.

Due to implementations of court judgments and fines / penalties being imposed to them, business bank account of “Slobodna Bosna” were blocked in 2015, thus disabling them to operate legally, although the Law on Protection against Defamation clearly states that the Court, while passing its judgment, remains obliged to appreciate all consequences of particular case, (among other things), should the amount of imposed fine / penalty

## Events

11 Jan 2015

### Journalists warn about the political crisis in Mostar lasting too long

Round table about media monitoring and media role and journalists in long – term political crisis in Mostar, was held in this city and was organized by BH Journalists' Club of Mostar. Some participants of this meeting emphasized that Mostar is currently undergoing so called "conspiracy silence", particularly by the ruling party official authorities, but also the members of international community. "Political crisis in Mostar has lasted for a very long period of time. For years, the city had no legislative official bodies, since no elections had been held in Mostar for a very long time", reminded Faruk Kajtaz, president of the Mostar Journalists' Club, also emphasizing that, during the entire period of open crisis, Mostar public audience was quite unfamiliar and unaware about the nature and scope of negotiations held, since press and printed media source have not been provided with appropriate information or in many cases they have not been provided with any information whatsoever.

[Details](#)

26 Dec 2015.

### Foreign Affairs Minister visits Banjaluka Journalists' Club

"Media represent an important segment in any society. I am familiar with the profession of journalists and thus appeal to, as much as possible, work more openly, more fair with no pressure being imposed upon your work, without censure and auto censure, because only in this way you could serve the public in best possible way and rectify everything the politicians do", stated Crndak and expressed conviction da everything him and his associates work and do in the Ministry of Foreign Affairs of BiH will be even closer to public. Sinisa Vukelic, president of Banjaluka Journalists' Club emphasized that journalists made it clear to the Foreign Office Minister that there can be no compromise as far as media rights are concerned.

[Details](#)

22 Dec 2015

### No improvements can be made without Union Organizing

"Una – Sana Canton journalists must demonstrate greater level of courage and solidarity in order to attain their labor rights and in order to preserve the dignity of journalism", claimed journalists during the workshop covering the issue on labor rights of journalists and Bihac Union organizing. Workshop participants emphasized that journalists were in poor position due inapposite and inappropriate conduct of authorities towards journalists and media staff. USC journalists often encounter different forms of violation of their labor rights and in addition to this, institutions with no adequate tools to protect journalists' rights and penalize media entrepreneurs make this problem even bigger.

[Details](#)

result in great material difficulties or bankruptcy of this particular media house.

During the period of last two months in 2015, the amount of BAM 13.400.00 was transferred from "Slobodna Bosna" business bank account as a result of fines / penalty imposed by the official authorities and this amount had to be paid pursuant to two defamation charges pressed against "Slobodna Bosna" staff. Charges were pressed against my female colleagues by Vitomir Popovic, the Dean of Banjaluka Faculty of Law and Gabrijele Ljoljic, a female officer in Brcko District Government. Vitomir Popovic sued editing management of "Slobodna Bosna" after they had posted the interview with Dragomir Babic who, at the time, was the president of Narodni front, a non - governmental organization. Popovic also sued and pressed charges against Mr. Babic for the defamation.

Popovic claimed that "Slobodna Bosna" collocutor made severe defamation facts and presented vast lies about him, though Popovic did withdraw charges against Dragomir Babic during the trials. At the end, "Slobodna Bosna" journalists paid the highest price – due to defamations expressed against Vitomir Popovic and exposed by Mr. Babic. Due to the fact that our female colleague journalist transmitted and posted these defamations, we were imposed with BAM 8.400.00 fine / penalty. The other case was even more absurd, because of the allegations about Gabrijele Ljoljic- Đurđević, a government officer being involved in the corruption affair, expressed in public by Jakov Grcevic, Brcko District Elementary Court judge, during the interview with our female colleague. Brcko Appeal Court judges however concluded that Jakov Grcevic (their colleague), was indeed lying, but the fine / penalty invoice was once again forwarded to "Slobodna Bosna" address. We were once again fined / penalized and consequently had to pay BAM 5.000.00 to Gabrijele Ljoljic- Đurđević as a result of damage.

What we ask ourselves is what kinds of standards we are obliged to obey and are they set by both male and female judges, who eventually make decision pursuant to defamation charges? Two cases that I mentioned previously confirmed that journalists were not held responsible for their own authoring; instead we have now been held responsible for statements provided by our collocutors, whose credibility, at least in the case of the Brcko District Elementary Court judge, should have not been questioned. Does this mean that, in the future, we would have to censure all our collocutors' statements and words spoken out, since court practice had already produced anticensorship at least in my own case and cases of my colleagues?

We are facing the situation where any information provided must be supported with firm and material evidence that is often very difficult to find, because journalists are neither the police officers, not prosecutors and they dispose of no proper tools, including the required police infrastructure.

At the same time, the only evidence "the other side" presents, that is, those that tend to sue journalists, includes the kind of evidence that they simply just have to hand in / submit and this evidence is mostly accepted by local court officials with no thorough checking and examining. This evidence also often includes medical examination confirming that the "harmed side" suffered mental shock and local doctors usually provide them (their "clients") with these confirmations on identical piece of paper where they (doctors) only have to change personal data (name and



Suzana Mijatovic, "Slobodna Bosna", journalist at the Conference regarding the Implementation of the Law on Protection against the Defamation; Banja Luka 30 Nov 2015

surname), and these confirmations are often provided “retroactively”?!

Current experience of “SB” staff, after tens of court cases, confirm that judges, passing enormous verdicts in terms of fines / penalties (amount exceeding BAM 10.000.00), failed to take into consideration that fines / penalties should neither imposed because the other party could gain material benefits out of it, nor should they be aimed to sanction media house representatives; instead, they should be imposed in order to establish the balance between the right to freedom of expression and rights to protect one’s reputation. Unfortunately, briefly and sometimes tendentiously or with no solid legislative fundamentals, the interpretations of the Law on Protection against Defamation by many judges has encouraged political and criminal elite members to increase the number of charges they often press against journalists. For some it is most effective way to prevent any critic implied against them and for others this is a chance to make money easy way.

All our appeals directed to VSTV (High Judicial and Prosecutorial Council of Bosnia and Herzegovina) that is, addressed and directed to the Office of the Disciplinary Prosecutor to be more precise, had been rejected and the official exposition was that the judges were allowed to pass court decisions based upon their free state of mind, even if these appeals represented roughest assaults and attacks on the freedom of expression and even if they directly endangered media liberties and freedoms or caused the cessation of newspapers publishing that managed to remain operative in BiH market for more than twenty years.

## Implementing of the Law on Protection against Defamation

### Decriminalizing defamation failed to reduce the number of court proceedings

*By: Sanela Gorušanić-Butigan*

The Law on Protection against the Defamation of the Federation was passed in 2002 and The Law on Protection against the Defamation of the Republic of Srpska was passed in 2001. Both laws treat this issue almost identically.

Basic goal of passing these laws was to decriminalize the emerging of defamation which should contribute in larger proportion of freedom of speech with media houses, including basic democratization of community. Also, during the passing of these laws the focus was on synchronizing these laws with European standards in this particular field and this was especially marked in Article 10 of the European Convention on Human Rights and Fundamental Freedoms. Consequently, the responsibility for defamation shall be based on civil – legal nature and these laws should actually regulate the damage to someone’s reputation caused by defamation. Regulation of responsibility caused by defamation in civil – legal based field may be considered as advancement in accomplishing highest international standards in terms of freedom of expression. The law defines defamation as action which harms the reputation of both physical or legal entity / party by exposing or transmitting untrue or false expressions, facts which again identify or expose these entities / parties to a third party.

Certain allegations relating to certain events, objective state or situations, deed, actions taken or similar which altogether may be subject to objective defining and assessment and must relate directly to a particular person may be considered as subject of transmitting or releasing certain information. Definiteness of a person does not necessary have to be specific, but in relation with circumstances released in a statement, it must be clearly defined to whom this statement does indeed refer to.

In order to determine the defamation during the lawsuit it is necessary to fulfill the following conditions on cumulative basis: existence / releasing of untrue content (releasing/exposing and transmitting), harming either physical or legal entities / parties, intention or particular degree of disregarding, identification of person being harmed and expressing something about persons to third parties.

Regarding the latter manner of expression exposing anything about certain persons (especially contents being available in public), court practice encountered disputable issue questioning whether the defamation released in public broadcasting sources may held the above mentioned persons responsible pursuant to Article 2, item 6 (author, editor in charge, publisher or person that may have supervised by any means the content of such releasing / expressing) or defamation may find any person responsible (item 1 of the above mentioned Article) that has exposed the defamation content to newspapers either directly or indirectly.

For instance, Supreme Court has in its decision numbered 070-0-Rev-09-000749 altered the first instance and second instance (appeal judgment) (P- 4376/05) accepting the appeal of the prosecutor pursuant to Article 6, item 1 of the Law on Protection against the Defamation (Defamation Law). Supreme Court of the FBiH has in the subject case released its opinion stating that the accused party, in this case not being the author of disputed texts had not been passively interrogated in case where expression has been released through public media

## Press Releases

14 Jan 2015

### **Protest against the criminal investigation launched against Senad Avdic, "Slobodna Bosna", editor and lawyer**

Board of Directors of the Association of BiH Journalists is convinced that the decision passed by the Sarajevo Cantonal Prosecutor's Office, seriously violated rights to freedom of expression and rights to use unanimous sources, in order to open criminal investigation process against Senad Avdic, editor and lawyer of "Slobodna Bosna". This process can be interpreted as intolerant pressure imposed by the Sarajevo Cantonal Prosecutor's Office and aimed against "Slobodna Bosna" magazine and it biased the criminalizing the character of editor-in-chief and lawyer of this weekly magazine, with the purpose of ensuring the additional legal space in order to provide special protection for the public official working with the Ministry of Internal Affairs of Sarajevo Canton, who had already used his civil right to press charges for the defamation against "Slobodna Bosna".

[Details](#)

6 Dec 2015

### **Press release due to open invitation for violence through social networks**

Board of Directors expressed their concerns due to brutal spreading of hate speech, inter-religious and inter-ethnic intolerance, as well as invitations for violence against children / kids, school pupils and any person in BiH. It is unacceptable that media – editors and journalists post and publish contents, articles and texts that invite parties to lynch, expands spreading of hate and intolerance, that is, search private issues resulting in under aged persons being judged by the public, including their families. These actions are certainly against the journalism code, ethics, standards of professional and responsible journalism, as well as against international conventions on the protection of fundamental human rights, children rights and fundamental freedoms. This practice also represents criminal deed (felony) pursuant to BiH law provision and is in contrast with all human and democratic values.

[Details](#)

31 Dec 2015

### **Banjaluka Journalists' Club condemns inappropriate all accusations by the Minister of Internal Affairs of RS**

Banjaluka Journalists' Club deemed this public appearance completely inappropriate including accusation by Dragan Lukac, Minister of Internal Affairs of RS claiming that "Slobodan Vaskovic, though his blog, encourages the destruction of institutions of RS, particularly the Ministry of Internal Affairs of RS". Banjaluka Journalists' Club reminded minister Dragan Lukac that if he was convinced that allegations Slobodan Vaskovic had posted on his blog had no fundaments and no evidence to support them, he should have seek protection in accordance with the Law on Protection against the Defamation, instead of characterizing someone's writing as undermining the institutions of RS.

[Details](#)

29 Dec 2015

### **Press Release due to termination of printed edition of Slobodna Bosna**

Termination of publishing of this magazine, after twenty years of printing of over 1000 numbers represented unmeasurable loss for the loss of jour-

sources, because no person can be considered as the author providing information or statement to public means of informing. According to legal provision, the author can be any person, linked with the term editor and publisher, analyzing certain issue or subject regarding released information.

Therefore, according to this decision brought by the Supreme Court, any expression in texts published through sources of public informing shall held responsible persons described in item 2, Article 6 of Law on Protection against the Defamation (Defamation Law), rather than accusing physical entity / party and the Supreme Court thus assessed the established revision objection appealed by the accused person thus rejecting the appeal of the prosecutor.

The appeal numbered AP- 5582/10 was filed in against the above mentioned decision and was accepted indicating thus the violation of Article II/3.e) of the Constitution of Bosnia and Herzegovina and Article 6, item 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It is important to mention that there are certain exceptions in terms of defamation responsibility. This occurs if opinion followed the expression or if that expression is fundamentally true and if it's considered untrue in certain non – important elements, that is, if the accused is obliged by the law to expose or transfer the expression or had previously transmitted expression during the legal, court or administrative procedure and if such expression / transmitting of information was reasonable and appreciated by the court in any event

Namely, the idea and the goal of Law on Protection against the Defamation (Defamation Law), was to provide "affirmative information flow" in order to provide common information to the public in all fields, that is, promotion of rights to freedom of expression which was why the Law prescribed the obligation of easing the damage at the end.

Therefore, the accused person becomes obliged to take all actions required in order to ease the harm caused by expressing untrue and false facts, especially to submit the enquiry to harmed person for the re-correction of such expression. However court practice does not reject the appeal should the accused person, prior to the appeal submission fail to file in the request for the re-correction of such expression, since the law does not clearly prescribes that the issues is about process and legal assumption for pressing charges against the other party.

Also, due to ensuring the principles of free expression, the protection of classified sources is prescribed. Journalist and other physical entity / party being involved in journalist – based investigation, receiving or releasing information to the public which had receive information from classified sources, has the right not to reveal the identity of such source.

Finally, if during the lawsuit the expression of the accused is identified as defamatory, the harmed party as person that had pressed the charges would be provided with reimbursement that should be equal with the damage and harm resulting in the damage of the reputation of the harmed party in terms of compensating the harmed party. Compensation amount depend on the all elements provided that all circumstances had been taken into consideration, that is, the actions taken by the accused party in order to ease the fine are taken into consideration, including weather the rectifying and recalling of expression had taken place, including public apology for releasing untrue and false facts and weather the accused person gained material benefits deriving from such expression etc.

## Press Releases

nalists' community in BiH and every single citizen of BiH. Slobodna Bosna was one of the very few independent media houses in BiH that managed to resist powerful political pressures and decided not to cease with critics regarding all events they considered significant to Bosnian public. They also managed to discover corruption and criminal affairs, raised voice against nationalism, fascism and associated non – democratic behaviors and also managed to spread media freedoms and liberties, including information pluralism and attitude and opinion diversities.

[Details](#)

22 Dec 2015

### **Protests against VSTV (High Judicial Council for Bosnia and Herzegovina) due to their assault against FTV and BiH Media houses**

BHJA and FMHL strongly condemned the institutional pressure imposed on FTV journalists of this media house, launched with an aim to detract FTV and the entire media community in BiH with reporting on judiciary institutions and making critics about the work of certain judges, critics about their earnings and behavior which cannot be in accordance with the existing law provisions, moral principles or higher degree of public responsibility and transparency that every single public person should be recognized by including judiciary officials. An attempt to detract media rights and deprive journalists of rights to criticize the work of judges and prosecutors represented a serious assault on freedom of media and use of rights to express the freedom of critics of public persons, guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, including many other international acts and declarations.

[Details](#)

although the Court may not approve polemic and even aggressive voice used by journalists, Article 10 does not only protect the core / content of the ideas expressed and information, but also protects the form through which they have been expressed. The choice of shape and way of presenting information remain autonomous right of any journalist and editors and this right is protected by Article 10 and that neither courts (both European and local) to impose media with desirable shape and scope of expression of ideas and information

- Limits of permitted critics are by far exceeded in terms of their use and reference of politicians and other public figures in comparison with other civilians. Politicians are often exposed to interrogation on voluntary basis and consciously, including the questioning of their own words, by either journalists or entire public. They accordingly must demonstrate vast tolerance level (verdict Lopez Gomez da Silva v. Portugal, 2000)

- Caution during the examination of every case in order to make distinction between information (fact) and opinion (assessed value). Truthfulness of the prior must be proved unlike the latter (verdict Lingens v. Austria 1986).

I am convinced that certain amount of compensation money shall be well – balanced and that the accused party should not be imposed with further material difficulties nor should the other harmed side gain excessive material benefits.

Statistically, decriminalization, that is, processing lawsuits caused by the defamation did not reduce nor decrease the number of court proceedings.

Also, court practice confirms that from the very beginning of these proceedings, the international standards have been implemented based on this field, especially standards contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

European Court for Human Rights has in its practice regarding the limitations of freedom of expressions of media houses and journalists, determined certain standards implemented by local courts in similar cases such as:

- Journalists' liberties and freedoms, pursuant to Court interpretations, among other things contain "a possibility of undertaking a certain level of exaggerating and even provocations. Furthermore,



**Sanela Gorušanić-Butigan**, judge of the Elemental Court of Sarajevo at the Conference regarding the Implementation of the Law on Protection against the Defamation; Banja Luka 30 Nov 2015

## Law on Protection against Defamation in Judicial Practice

By: Duško Miloica

Taking into consideration that providing information and mutual community understanding play major role in an overflow of both, moral crisis and endangering of associated human values, the significance of precise and accurate true public information providing, as well as the expression of opinion by journalists, altogether represents the crucial role in any society. Due to the above mentioned, legislator has, throughout BiH and in order to support freedom of expression (as oppose to some other legal systems), decriminalized the defamation process, resulting in no criminal responsibility for an individual committing defamation, if it occurs. Defamation responsibility was somehow shifted to civil – legal based zone and money reimbursement / compensation should represent the satisfaction for harm/s caused to ruin someone's reputation, as a result of defamation based expressions.

## Media on Media

5 Jan 2016

**RAK (CRA) vacancy post for general manager**  
Communication Regulatory Agency in BiH (origin. RAK), posted a vacancy on 31 Dec 2016 for the position of a general manager of RAK, confirmed Faruk Boric, member of the Council of this Agency for "Oslobodjenje" daily newspaper. He added that the deadline for applications expires 30 days from the vacancy posting and the conditions have not been changed in regard with previous vacancy notice, when RAK received 15 applications in total.

*Detalji*

5 January 2016

**BHRT facing shutdown**

BHRT Union representatives sent a letter to media, including all other relevant institutions in BiH warning about difficult situation in this media house, assessing that the entire system is facing shutdown and the biggest problem represents the tax payments that should solve the problem with BHRT financing.

House of Representatives of the Parliamentary Assembly of BiH discussed this topic few days ago and passed several conclusions provided by the Commission for traffic and Communications of this legislative House.

*Details*

the forbidden zone of defamation liability / responsibility on a daily basis, thus being exposed to prosecutions and charges pressed against them with rather significant amount of money (as fine) imposed, we shall attempt to outline some actual cases occurred with the Constitutional Court of BiH and European Court, focusing on these court's opinions and these opinions may assist many journalists in terms of understanding this rather complex issue.

Constitutional Court of BiH determined in its appeal no. AP 758/09, in the case where factual description from certain daily newspaper titled "12 criminals accused" and subtitle "Stealing and beating our citizens; returnees from Germany", and they mostly "worked in groups", that the defamation definitely appeared here (basically it conformed the opinion of the Supreme Court of RS), considering that these allegations did not derive from the indictment, but instead he "purchased a drill from a person with initials Z.S. type "Makebo", for BAM 150,00 although and based on the contract price, he should have been aware that the drill had been purchased illegally and that by purchasing this item he was absconding the criminal deed as well ..."

Appeal against the decision of the Supreme Court of RS, resulted in the discovery by the Supreme Court officials, that in the publically published and posted article, the appellant posted untrue information undermining thus claimant's reputation within his family and community he had been part of. During the assessing of the compensation / reimbursement, officials, taking into consideration that the appellant's daily newspaper with disputed article being published in it, had large circulation and had also been available throughout BiH, estimated that by publishing such articles, the claimant suffered from mental pain infliction, which was confirmed by the medicine court expert from the field of neuropsychiatry.

During the compensation/reimbursement assessment, the court estimated and took into consideration the fact that claimant's reaction was not published and posted as a result of disputed article in terms of the demand for its re-correction.

The amount of BAM 8.000.00 was adjudged as compensation / reimbursement. In the appeal to the Constitutional Court of BiH, the appellant claimed that the case included "genuine truthfulness", disputed expression and that the verdict passed by the Supreme Court of RS does not fulfill the "proving standards" deriving from Article 7 of the Defamation Law<sup>1</sup>, which *must contain reasons for*

We should emphasize here that this occurrence represents a significant advancement and contribution imposed by the BiH legislative authorities in terms of media freedoms / liberties and informing, because due to international standards in this particular field, criminal prosecutions for defamation deeds do not represent the violation of the European Convention for the Protection of Fundamental Human Rights and Freedoms (hereinafter European Convention) and still persists as criminal deed in number of countries.

By definition and also in terms of public and folk common opinion, the defamation represents and includes rumors, insults / offending one's honor, degrading, disdaining or providing statement outlining untrue and false facts, despite being aware of their untruthfulness, in order to create and produce a negative image of an individual, group, people or state / country etc.

According to BiH laws, the defamation is described as action conducted with an aim of ruining the reputation of either physical or legal entity / party by exposing, releasing or transmitting expressions that are untrue / false and addressing / directing these expressions to a third party.

The Law on Protection Against the Defamation of the Federation of BiH ("Defamation Law") was posted in the *Official Gazette* of the Federation of BiH (edition number 59) in 2002, and the Law on Protection Against the Defamation of the Republic of Srpska was posted in the *Official Gazette* (edition number 37) in 2001 and they both treat this issue in almost identical way.

Bearing in mind the significance of this issue for journalists, especially when taking into consideration the fact that they "may" enter



Duško Miloica, president of the Elemental Court of Prijedor at the Conference regarding the Implementation of the Law on Protection against the Defamation; Banja Luka 30 Nov 2015

## Vacancies

### Invitation to all students for internship program

Internship program shall last three years and must be fully completed (continuously). Full time students, part time students, undergraduate and postgraduate students are encouraged to apply with a possibility of an employment upon the completion of this program. Deadline for application submission is **18 Jan 2016** to the following e-mail address: [praksa@dnevni-list.ba](mailto:praksa@dnevni-list.ba).

### Invitation for film submissions for BELDOCS 2016

BELDOCS, an international documentary festival hereby encourages authors, producers and distributors to apply and submit their feature – length documentaries for the ninth consecutive festival competition. Deadline for application is 1 Feb 2016.

[Details](#)

*the frontiers of freedom* of expression pursuant to Article 10, item 2 of the European Convention.

Pursuant to the appeal, Constitutional Court concluded that the defamation did occur and there was no violation of freedom of expression according to Article II/3. (h) of the Constitutional Court of Bosnia and Herzegovina and article 10 of the European Convention<sup>2</sup>, since “interference” with the appellant’s right to freedom of expression was in conformance with the law and was thus aimed to protect “*the reputation or right of others*” and was also found as “necessary in democratic society”. Constitutional court’s explanation stated that the freedom of speech was considered as unnecessary precondition for functioning and subsistence / survival of any democratic society and would therefore serve as the guarantee of all human rights and freedoms in case of eventual discrepancy of this right with other guaranteed human rights and freedoms. The court must have therefore taken care about the fact that freedom of expression frontiers purposed to protect other human rights and guaranteed by the constitution may have represented the exception to this rule.

Further, the explanation refers to Article 10 of the European Convention<sup>1</sup> where first item defines protected freedoms and the second item prescribes circumstances under which the public authorities are allowed to interfere in exercising the freedom of expression. They also outline the protection of expression that may potentially bear the risk of endangering or indeed endanger the freedom of others. Additionally, Article 10 does not only protect the information and ideas accepted affirmatively or are not considered dangerous, or without clear attitude towards them, but it also includes those that insult, offend, shock and disturb others and this is exactly what tolerance and pluralism without which there can be no democratic society, requires (see European Court, *Handyside Vs. United Kingdom, verdict from 1976*).

Constitutional court emphasizes that the above mentioned does not mean that freedom of speech is absolute and cannot be absolute; on the contrary, in democratic and law abiding surroundings almost no human rights and freedom, regardless to how primary and significant they may appear, are not and cannot be absolute and unlimited and in order to have legal balance established between guaranteed freedom and rights in democratic society, the way upon which certain law fundamentals is interpreted and implemented in practice and consequently becomes crucial. Furthermore, as explained through Article 2 of the European Convention, no government can interfere in accomplishing freedom of expression if three cumulative conditions are fully met:

- a) if the interference by governing officials is prescribed by the law;
- b) if interference is aimed to protect a single or more than one assumed interest or value and c) if interference is considered necessary in democratic society and it claims that these conditions are fully met and fulfilled.

Under a) interference is defined by the Law on Public Information and Law on Obligatory Relations Acts; under b) the goal is aimed to protect the reputation and rights of others and c) interference considered necessary in society, is accomplished by the balance between the two protected goods, freedom of expression and protection of reputation.

Constitutional Court of BiH finds further that the appellant used (as the fundament for publishing disputed text) charges that undoubtedly produced the fact that the claimant had been convicted for the criminal deed of suppressing, however, the appellant, by having this text published, withdrew from the alleged indictment

#### *Liability exceptions*

Article 6: No party shall be held responsible for defamation in the following cases: a) in case of opinion expressing or when the expression is genuinely considered to be true;

#### *Standard proving*

Article 7: In case of determining the liability and compensation / reimbursement amount in terms of this law the necessity of this law’s implementation including the frontiers to the rights for free expression, must be clearly defined pursuant to Article 10

(2) European Convention on Human rights and Court Practice by the European Court of Human Rights

<sup>2</sup> Article 10 of the European Convention:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.

This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

in terms of posting untrue information and facts about the claimant, resulting in pressing charges against the claimant accused for robbery, criminal robbery and grand larceny, thus concluding that, according to untrue and incorrect information released, the appellant violated claimant's reputation within his family and in his community.

According to the above mentioned, we can see that the text posted by the journalist could have not been supported on the "freedom of expression" basis, and was thus set free from the compensation / reimbursement penalty accordingly, such as in the European Court case of *Dalban Vs. Romania, 1999*<sup>3</sup>, where European Court basically admitted the defense based on the "genuine intentions" which represented a substitute for confirming the truthfulness.

When a journalist or posted text are aimed to represent / display a legitimate goal, when the text covers the issue significant to the public and when reasonable efforts are devoted in order to prove facts, media sources shall not be held responsible even if the outcome proves that provided information are false, untrue or incorrect.

Namely, according to genuine intentions, media sources are allowed to have "free media space for mistakes". The above mentioned case *Dalban Vs. Romania, 1999*; European Court clearly stated that "*there has been no evidence that the event description posted in this particular article / post, had been utterly incorrect and false and its purpose was to agitate the defamation campaign launched against the GS...*"

Besides, given clear distinction between the information (fact) and opinion (value assessment), European Court claimed that "facts provided can be proved, whereas the truth according to the value assessment can be provided with proofs... As far as the value assessment is concerned, request can be completed and this directly influences the freedom of expression which displays the fundamental right guaranteed by the Article 10 of the Convention..." Opinions on the other hand, represent personal thoughts and observations of certain event or situation and cannot thus be backed up / supported and confirmed with proofs or denied accordingly, basic facts that opinions are based upon, can be proved or denied, provided appropriate evidence. European Court has also, in the case *Dalban vs. Romania, in 1999*, claimed the following: "*It would be unacceptable to disallow any journalist to release his / her critical views if he / she failed to prove it*".

In the following case occurring in the European Court (*Lingens Vs. Austria, 1986*), the following journalist had in several articles openly criticized Austrian Chancellor for certain political actions, including announcements that chancellor's party would form a collation with another political party led by a person openly supporting and clearly releasing and expressing Nazi ideas. Journalist Lingens referred to chancellor's behavior as „immoral“ “inappropriate” with “low” optimism level and Austrian courts concluded that these statements displayed defamation and the journalist was accordingly fined/penalized.

However, European Court stated that the access of local / domestic based courts would be a mistake, since opinions (value assessments) cannot be shown and displayed and hence cannot be backed up and supported by proofs and that "*Little Press cannot cross the established and developed frontiers in order to, along with other things, protect the reputation of others*"; their duty was to provide information and ideas in regard with political issues, as well as other questions being publically considered as significant. The press would thus not only be aimed to provide information and transmit them; the public would accordingly be entitled to take / use them (...). According to this, Court could not accept the opinion released in verdict passed by the Appeal Court in Vienna confirming that the press had been purposed to transmit information, whose interpretation must have been available mainly to readers and viewers in the first place.

Yet another case in the European Court, *Thorgeirson Vs. Iceland*, with Thorgeirson posting allegations on the widely spread brutality of the local police in Iceland and referred to the police officers as to "*beasts in uniforms*", "*immature people with mental level of a baby, due to force and martial art moves they disposed of; the police officers and bouncers learnt and exercised spontaneous brutality*" and he referred to the police defense as to "*provocation, lies, illegal actions, superstitious deeds, impetuous and incompetence*". In his own homeland Iceland, Thorgeirson was prosecuted and was fined / penalized too for defamation he had produced. European Court decided that the appellant instigated the question of the police brutality in his own country:"...the duty of press was to transmit

## Incoming Events

- **Opening** of Mostar Journalists' Club
- Association of BiH Journalists **General Assembly**
- Media Circle **project research**

information and ideas regarding the questions concerning public interests", as well as the fact that "court practice in his country displayed nothing that would indicate distinction ... between political discussions and discussions on other issues concerning public interests". European Court, at the end, characterized the fine / penalty as "potentially discouraging for an open discussion regarding issues concerning public interests". With this attitude, European Court undoubtedly led to freedom of press providing thus powerful protection in public debates in relation with issues significant to public interests.

Finally, we would like to point out that it is rather difficult to provide a unique

<sup>3</sup> In *Dalban vs. Romania* case, where a journalist accused a politician for corruption and misuse of public property, European Court stated that "journalist freedom may include the use resort to a certain degree of exaggerating even provocations."



formula regarding journalists' writings and posts regarding the issue of defamation, but some principles that we should embrace and that were actually accepted by the European Court in its decisions as standard include the following:

- a) It does not protect the revealing of information or opinions that without valid or convincing evidence, are used to accuse someone for committing a crime or are used to pronounce another party guilty during the criminal proceedings and before the first instance verdict occurs thus violating presumption of innocence and affecting court proceeding and endangering the rights of the accused person to receive fair trials,
- b) Journalists' freedoms include the possibility of resorting to a certain degree of exaggerating including provocations and they do not only imply the content of expressed and released opinions and facts, but also the form, through which they are expressed, that is, the choice of a form and manner of presenting the facts / evidence thus remains the right of any journalist and editor and is consequently protected,
- c) Frontiers allowing critics by the journalists have expended in terms of public figures and politicians as oppose to ordinary citizens, since the first ones are deliberately exposed to thorough examinations of their actions and deeds by both journalist and the public and they therefore must demonstrate large degree of tolerance.
- d) Serious public interest based issues, especially political discussion, have the protection on a highest level, which particularly includes public discussions during the pre – election campaigns
- e) any case must have the attention in terms of making a distinction between the facts and opinions and the truthfulness of the prior must be proved, unlike the truthfulness of the latter
- f) special protection is granted to media and media, due to their particularly important functions and fines / penalties applied against journalists, and media representatives, because of the facts or because of the revealing opinions, covering certain public issues, shall become subjects to most sever interrogations by courts and in any event must be justified by rather firm and solid reasons.
- g) Posting a disclaimer definitely may have an impact in eventual court proceedings

**The Law on Protection against Defamation (“Defamation Law”) does not recognize the nature of online media**

## Non – transparent Web Sites as Paramedia Space

By: Nusmir Huskić

The period of ten years of implementation of the Law on Protection against Defamation (“Defamation Law”), starting from its last amendments in 2005, undoubtedly imposed several court decisions by municipal courts in the Federation of BiH that may be subject to further discussion thus produce new conclusions in terms of the manner of this law's implementation and “evaluation” of damages. I believe that court practice is basically balanced, similar in terms of the amounts of indemnifications of damages (with few thousands of BAM differences, depending on cases). However, I found the subject of connections between defamation and media interesting, with “on – line media sources” and “on – line web sites” with their “articles”, “news” and “false facts and lies” being part of this issue. They will most certainly create a complete new practice in our courts in the forthcoming period.

I am quite convinced that, (according to my personal experience and several cases I had been engaged with; 7 cases to be more precise, which had basically been based upon the posting of false facts and lies on web sites), that courts had no doubts in terms of “media” term as such, that is, they never expressed concerns weather the web site with false facts and lies being posted on an online media sources, had indeed been treated as “on line media source’ (which would be the media house whose ownership structure was transparent, with the existing editing policy includ-



Nusmir Huskić,  
Sarajevo lawyer  
at the Confer-  
ence regarding the  
Implementation of  
the Law on Protec-  
tion against the  
Defamation; Banja  
Luka 30 Nov 2015

ing experts being engaged in this media house and legally registered scope of work etc.), or some other internet web site (with the domain being registered on the server outside BiH, its entrepreneur being UI person or simply a person who normally develop this web site or designed its content) and courts thus easily proceeded with legal merits, threatening the above mentioned persons as authors, editors, publisher etc.

Can we say that this is correct from the point of the fact that Article 6 of the Defamation Law clearly states that “defamation publically announced in any public media source shall hold its author responsible, editor in charge, publisher and any person supervising the content of such announcements”, since the Law does not by any means precisely describe the term “online source of public informing” for any web sites owned by an unidentified persons. Anyone treating such internet media sites as “public media” and can this be acquired by already existing media houses, such as printed media houses that simultaneously post their contents on line on their official web sites, or TV houses or the legal registration of web domain should do the work, particularly domains with no evidence of their ownership (for instance “.com”, “.net”, “.info” etc.), that is all domains with no “.ba” at the end of web site address.

I personally consider this non – transparency as potential problem in order to publish defamation content on web sites that “register” their business somewhere “overnight” and become packed with contents through different social networks (Face book, Twitter, LinkedIn etc.) thus attracting visitors to “click’ on sensational titles and headlines that are usually filled in with whole bunch of lies and untrue facts and often contain lines against community moral principles. When such “case’ in presented on the desk and when appropriate charges must be prepared we then encounter the line of other associated problems, starting with virtual persons posting their comments from different profiles or even persons writing and expressing their opinions anonymously which at the end increases the number of views of disputed articles / posts on the internet and it finally allows more space thus harming the accused party more excessively since such posts is “promoted” through many social networks.

The point is that there are no legal rules that regulate the line of crucial issues regarding the internet portal web sites including the following: author’s signature, is he obliged to sign his full name, is he engaged on full time basis employment, is he a freelancer, how do we make comments on the articles provided (anonymously, from our FB profile, full name etc.). Due to the above mentioned, particularly due to the fat that I have been unaware that these issues could be sorted by the CRA policy, Press Council, UTIC and perhaps get regulated by the FBIH Criminal Law provisions, I allow myself to state that the pro - media space and content came into existence and that Defamation Law failed to identify and recognize, including other legal provisions. Beside all of the above mentioned facts that the damaged party may be facing regarding defamation texts and articles posted in an unregistered internet web sites, I often receive enquiries by authors of certain articles / posts whose works often have no permits to be transferred further to and through different web sites. These works are often altered and posted on such web sites and there have been cases that the assignee had been changed and in order to create sensationalism, the signature of reputable university professor was used instead. At the end, we must ask ourselves why anyone would do something like this. First and common sense reason include the material benefit that may derive consequently, since the “click” on such news and more visitors would enable someone to have a well visited site, thus potentially better price for internet advertisement, web site entrepreneurs are willing to go further. Another reason is an influence and pressure against certain persons, group or community in order to provide particular interest – based groups in acquiring their goals.

Finally, the lack of practice covering the fundamental issues of defamation publishing or posting using internet web site sources creates thus the decreasing of real free media sources with quality contents and true investigative reports and articles / texts. On the other hand, the number of texts being stolen ordered or actually false fact based is increasing.

## Free Media Help Line

### Present Cases:

**Senudin Safić** – Senudin Safic, a journalist was threatened through social networks by Jasmin Kamer, brother of Asim Kamber, federal parliament representative. Also, Asim Kamber, the representative himself, via his own blog, INMEDIA.BA, threatened Mr. Sefic in articles posted on this blog, such as “Branko Copic”, associating Mr. Sefic with Islamic terrorist group “Boko Haram” and using inappropriate and rude words in order to offend Mr. Sefic.

**Edin Skokić** – Tuzla Canton Prosecutors Office informed us about their proposal directed to Tuzla Municipal Court for an instruction to requisite phone call list, including text messages directed to our colleague Mr. Skokic’s private phone. BH Telecom determined that on 13 March 2015 registered threats came from the international / foreign number from Germany and they hence cannot identify the user of this phone number.

**Press Release** – Association of BiH Journalists and Free Media Help Line sent a public protest notice to High Judicial and Prosecutorial Council of Bosnia and Herzegovina as a result of inappropriate assessment about media work, particularly about the reporting ways on the situation in BiH Judiciary system, through Federal TV programs and especially through “Posteno” and “Mreza”, Federal TV political TV magazine programs.

**Press Release** – Board of Directors of the Association of BiH Journalists encourages all media editors in BiH, particularly the editors of news web sites and online media platforms to work with more responsibility, sensibility and professional journalism reporting on the forthcoming anniversary of 9 January – national day of the Republic of Srpska, including present cases regarding tragic death of Mahir Rakovac, 14 years boy from Sarajevo.

**The Conference on Implementation of the Law on Protection against Defamation held on November 30, 2015 recommendations, which can will be implementation in future period of several years, are in following:**

- Harmonization and changes to the law throughout the country (in the definitions of libel and public figures, the amount of compensation and expertise; the duration of the court proceedings);
- Standardization of court and juridical practices in implementation the Low of Protection Against Defamation throughout the territory of Bosnia and Herzegovina;
- Implementation of mediation as a pre-trial procedure in order to reduce the number of libel suits, reduce trial costs and improve the application of mediation as a legitimate pre-trial procedure;
- Initiating of defamation cases resolving through the regular mediation activities by Regulatory Agency for Communication and Press Council in Bosnia and Herzegovina, aimed to improve implementation of professional and ethical standards trough media contents;
- Organizing professional and continuous monitoring of the trial on defamation cases by professional media institutions and organization as well as by Institution of Ombudsmen and international organizations, which are focused on freedom of expression and human rights protection;
- Preparing a guide / manual for journalists / lawyers / judges;
- Organize the joint education of journalists, lawyers and judges through practical examples which were processed and resolved within the BiH judicial system as well as at the Court of Human Rights in Strasbourg;
- Establishing a Fund for the defense of journalists before the courts in BiH, which could be used to pay for a lawyer, who defend journalists before the courts in cases of defamation, as well as other cases of attacks on journalists, death threats against journalists and endangering the safety of journalists ... and
- Launch activities for the establishment of office for media or media ombudsman in the Institution of Ombudsman for Human Rights, to ensure the effective institutional protection of journalists and contributed by a regular reporting and monitoring of the human rights of journalists and other media workers in Bosnia and Herzegovina.

## Impressum

### Bulletin Board of Editors

Faruk Kajtaz  
Siniša Vukelić  
Borislav Vukojević  
Bedrana Kaletović  
Amer Tikveša

### Editor

Adis Šušnjar

### Art Editor

Arman Fazlić

## BH Journalists Association

Kralja Tvrtka 5/5, Sarajevo, Bosnia and Herzegovina  
Tel/Fax +387 33 223 818; + 387 33 443 072  
e-mail: bhnovinari@bhnovinari.ba;  
web: www.bhnovinari.ba