

## Contents

Events

Media on media

Vacancies

Free Media Help Line

**Blue envelopes aka defamation**

*By: Arijana Saračević Helać*

**What plaintiffs and defendants should know about defamation, court proceedings and Law on Protection against Defamation?**

*By: Davor Bunoza*

**Law on protection against Defamation as Ethical and not (only) Legal measure**

*By: Prof. Dr. Lejla Turčilo*

**Law on Protection against Defamation: from revolution to reaction?**

*By: Arben Murtezić*

## Editorial

### **Media and Defamation/Libel charges: What is the price for mental pain suffered?**

Milorad Dodik, Chairman of the Presidency of Bosnia and Herzegovina has recently, in front of the group of local journalists, referred to Mr. Avdo Avdic, (our journalist and colleague), as “moron”.

“Oh no. please do not ask me for that moron. He is typical moron who apparently became a “media star” in Bosnia and Herzegovina”, claimed Dodik.

Avdo Avdic, as far as general public in Bosnia and Herzegovina is concerned, has not yet pressed charges and sued Mr. Dodik for this kind of an insult and offence. However, if the situation were different, and if Mr. Avdic had used identical terms referring to Mr. Dodik, as moron, there is no doubt that Mr. Avdic would have by now been waiting in the hall of some Municipal Court waiting for hearing court proceeding to commence because of insulting Mr. Dodik's honor and reputation. He would even be charged for defamation, because these two offences often interlace so the judges themselves (during the court proceedings) often get confused in terms of where the insult/offence ends and where defamation/libel begins and vice versa. During the last two decades and since the defamation/libel has been introduced into the judiciary system of Bosnia and Herzegovina, that is, since the defamation has transformed from criminal offence into the civil dispute by the implementation of the most recent legal provision and the Defamation Law; the number of law suits and charges pressed against journalists and media entrepreneurs has enormously increased. During 2017 and according to data/information provided by the Association of BiH Journalists, there had been 173 active cases where journalists, media editors and media entrepreneurs had been charged for defamation/libel. Most charges were expectedly been pressed by local politicians, since they have often been subjects to newspaper articles and texts, including TV reports. Local governing figures, including managers of public enterprises, companies and other public institutions (at all governing levels) were right behind local politicians on this list.

Compensation claims ranged from merely few hundred BAM to several thousand BAM, depending of course from experts' official analysis and opinions, as far as “mental pain” that the plaintiff had been suffering from was concerned, but also depending on the public function that the plaintiff had been performing.

What does appear as most concerning issue here is the fact that recently, defamation/libel charges (pressed against media representatives and journalists) have been submitted by highest ranked judiciary officials; namely chief prosecutors, court presidents, members of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (VSTV). Journalists shall often claim that in such cases, based on the “judge sues you – judge judges you” principle, legal fight for journalists and media representatives was already lost. And frankly speaking, can anyone expect another outcome under such circumstances?

Consequences of failure to sanction, punish or fine criminal felonies and/or deeds, committed against journalists, display a common feeling of uncertainty, unsafe feeling, and fear, and additionally result in the emerging of self – censorship, segregations, dividing and conflicts within media community; create degradation and decline of professional quality and media credibility, also including the rise of the devaluation of fundamental democratic values.



## Events

14.July 2019  
Female Journalists started fighting

12.July 2019  
Media freedom and human rights of journalists are not for interpreted but respected

12.July 2019  
Wigemark with BH citizens: This-country has to change, regardless of EU membership

2.July 2019  
Public condemnation of political parties' involvement in TVSA's work

## Media on media

12 July 2019  
Four years in prison for attempting murder of journalist Kovačević

12 July.2019  
Media freedom: When journalists and authorities of the Western Balkans meet

## Vacancies

Consultant for developing a methodology for mapping media freedom and journalists' rights in BiH (Deadline for application is 20.July 2019)

Media Contribution to Promotion and Protection of Children Rights in BiH 2019 (Deadline for application is 31.October 2019.)

Contest for Journalistic Prize "Srđan Aleksić" (Deadline for application is 31.October 2019)



Interpretation of the three existing laws, regarding the protection from defamation/libel (including Brcko District and Entity tailored laws) has been considered as special problem to begin with. For years, there has been conflict between journalist community on one hand, and judicial community on the other hand, because of the issue concerning which party shall bear the burden of proving (during court proceeding) defamation/libel occurrence. Should defendants prove their claims, or is it the suitor (plaintiff that should prove arguments/evidence that he/she claims are not true? Naturally, one should not neglect the question of responsibility of journalists in terms of professional conduct and public words released by them. During the time where most web sites have taken over all other media sources, and news and issues that load media and public space literally exchange from minute to minute, is in fact an indicator of a reality where most journalists are time – limited to thoroughly analyze the ongoing issues, to focus on topics they create and to check their sources, so, they often and unintentionally “libel” certain public figures, because of their neglectful and fast work. On the other hand, they often do this deliberately and intentionally for different (mostly political) interests and reasons, often imposed by media entrepreneurs, owners, editors, being at the same time completely aware that only few days after these kind of posts or texts (articles) are posted in public, they shall expect a blue envelope issued by local courts with defamation charges in it. This E-bulletin edition shall cover the issues of defamation, libeling and their different aspects, including the use of charges and suits as tools and means used to impose media houses with pressure, through journalists' ethics, all the way to problems as constituent parts of legal regulations and lawyers competences and expertise that deal with these kind of problems. The above mentioned issues shall be covered in this E-bulletin edition by Dr. Lejla Turcilo, a university professor at the Faculty of Political Studies (Journalism Department), Arijana Saracevic – Helac, a local journalist, Arben Murtezic, director of Centre of Education of Judges and Prosecutors and Davor Bunoza, a local lawyer.

*By: Maja Radević*



## Blue envelopes aka defamation

By: Arijana Saračević Helac

Some twenty years ago, while at work, I began receiving blue and sealed envelopes. I emotionally opened the first one. It turned out that a post-war profiteer (so called tycoon) had pressed charges against me, because of my TV report broadcasted in “60 minutes” TV magazine (on Federal TV program). He was local powerful figure very close to governing political structures. At the time, I used to work on a story about illegal and criminal privatization process of “Krivaja”, huge pre-war factory located in the town of Zavidovici. My workmates were comforting me and tried to assure me that my story was correct and true and that its content would be easy to prove in court. I could not explain to myself why I had to appear in court and to prove the truthiness of my story, including clear, documented evidence and arguments of the abolishing “Krivaja”, once large and very successful manufacturer. Disempowered and former workers, employees and staff were my witnesses whose story was supported by video reports, recorded throughout empty and silent manufacturing facilities.

### Editing office loaded with law suits

However, the rapidity of television machine that we used to work for took me once again to another story in Tuzla and “Blue Hospital”. After posting the story, I once again expressly received another blue and sealed envelope containing new defamation charges pressed against me by the president of supervisory board of Clinical center in Tuzla. And from one week to another I kept receiving blue and sealed envelopes and at one point, I had over ten blue and sealed envelopes in my drawer. This imposed me with enormous pressure, bearing in mind that I was a female journalist and reporter, but also imposed pressure on the magazine that I used to work for. My workmates were, along with, getting ready to encounter their own legal combats as well.

### Free Media Help Line

#### Actual cases:

**Physical assault 14 May 2019**– The cameraman of RTV TK, Ademir Mešanović, was attacked on the evacuation site of two families from the surroundings of the Kreka mine. The cameraman of RTV TK was attacked on the evacuation of two families from the surroundings of the Kreka mine. The Journalists Support Line have sent a Press Release. The Journalists’ Help Line also sent a letter to the Mining Commission of Kreka for a statement about the incident that occurred. The helpline for journalists sent a letter to the police of Lukavac to inform us about the actions taken (15.05.2019). From the Management Board they gave us the answer that all was a big misunderstanding (May 16, 2019). The Police of Lukavac answered about the actions taken - To the Cantonal Prosecutor’s Office of Tuzla (June 12, 2019) BHN faced a lawsuit for defamation by Cobra Security, we wrote a letter to the Rudnik Kreka doo Tuzla administration to provide us with information regarding the protection of the mining location of Šikulje (24.06.2019). Advocate Ahmet Efendić has sent to the BH Journalists Association Legal Representative Cobra Security Ltd. Tuzla Response to Demanding Request (26.06.2019.)



**Physical assault 20 May 2019**

Journalist Midhat Dedic had traffic accidents in the center of Sanski Most. Federal Representative and President of SDA Sanski Most Asim Kamber accidentally photographed. After asking for information on why he was photographed, Asim Kamber withdrew the gun to the journalist and physically fired at him. A helpline to reporters sent a letter to the Sanski Most Police Station. Sanski Most Police Administration informed us that they had made certain actions upon application and that the case was still in operation (18.06.2019).

**Verbal threats 14 May 2019**

After publishing a text on the source.ba portal, journalist Amila Alijagić received a number of offensive threats. The helpline provided journalists with a letter to the Novi Grad Police Station in Sarajevo.

*“Regardless to one’s efforts to protect one’s family, my family realized what kind of trouble I was in, so at certain point of time, they were even sceptic and to some extent afraid of a local postman, let alone of someone else. Law suits and threats against journalists in our society have had a discouraging effect, but there was no turning back”*

Did anyone push you to do that: did anyone force you to post and release such story and ...?” Truthfully speaking, I did have my own personal issues and often wandered: „What if I lose this time”? What if they reduce my monthly wages (earnings/salary)? I would then gain more strength for new analytic reports, because I was a group member of rare media house in BiH that, at the time, worked, tended and aimed for better and honest BiH society; a country that would treat every single person equally and country whose laws would be implemented and respected. This has been my professional human duty and responsibility by all means. In time, I managed to subside and I used to receive blue sealed envelopes making jokes about myself at the same time. We even had a team of top lawyers representing us. However, at certain point of time, our editing office was packed and loaded with law suits and charges pressed against us; our lawyers had consequently to go to pre-scheduled summons (hearings) and I particularly referred to my cases and had an increasing number of cases I had to attend to. This basically was the beginning of period when I actually started to read about laws and cases where our lawyers failed to show up for court hearing sessions, I would eventually end up with a trainee (junior solicitor) and I did not feel comfortable with trainee representing me in court; but not uncomfortable in terms of professionalism; but rather in terms of having strength to fight with heavily corrupted judges. Neither of us had enough and sufficient knowledge about defamation issues. In most difficult case I had and case that was to be concluded in notime, and instead it extended for few years, I turned out be a clairvoyant.

I was working on a story about newly appointed city mayor in Bihac, who was a left – wing politically biased figure. I managed to detect certain anomalies in his work at the very initial stage of his mandate. Since the format of an investigative story and report required wider and more thorough analysis, including methodological approach at work, I decided to pay special attention to his voluntary work, such as his membership in a prestige institute with his political superior being the chairman of this institute, and the founder of the institute was, at the time, one of the most known living Bosnian male figure, whose origin of property and assets had always been questionable and rather suspicious. It was this person that was perhaps the biggest donor of “New” BiH, but also a person who had considered himself as untouchable and very much convinced that money could buy him absolutely anything. Everyone used to tell me: „We are going to lose this case“! I was desperate, but still very persistent to that extent that I went through all available archives; contacted my colleagues and all other associates that could help me with this case, because what one, on one hand, may consider as firm and solid evidence for court proceedings, does not necessarily have to be considered as evidence and arguments by the judge if the same court on the other hand.. However, during the main hearing (summons) my workmates called me and provided me with information regarding specific dark points in life of the person who had sued me. I did not sleep that night and did not feel well, ever since I was informed what kind of a person I was dealing with. Additionally, it was not easy, regardless to statistics, to appear in court, because people would recognize us, they would stop us and would also easily pass their judgment upon us. By the time the summons were done, entire neighborhood was already familiar with the case. Regardless to one’s efforts to protect one’s family, my family realized what kind of trouble I was in, so at certain point of time, they were even sceptic and to some extent afraid of a local postman, let alone of someone else. Law suits and threats against journalists in our society have had a discouraging effect, but there was no turning back.

**When judges protect suitors**

If I remember well, it was Friday 2004. Famous summons was scheduled for 9 a.m. that day. I came through, had to go through all checks and spotted our junior solicitor, a member of our lawyers’ team that

was defending us. She was standing in front of a court room. I wanted to turn around and leave the building at one point. I felt cheated and so helpless too. But, I said to myself: “let’s lose this case”. We entered the court room. Suitor’s female lawyer was looking right at me and she was slightly smiling. “Who, for the love of God, was I to make defamation stories about such a popular public figure?” she must have thought. I felt disgust inside myself because of everything that was going on. Junior solicitor remained silent and I asked her: „Where is this gentleman? Is he going to show up at all?” Judge Rada or Radmila (I forgot what her surname was) was spinning her golden pen (indeed the pen was made out of gold; not gold – coated pen) and said:” He has been sick and I went to see him and so he signed all required documents”. I asked her if he had signed them with the very same golden pen he later gave her. Her face flushed instantly.

At this moment I felt so confident and comfortable with myself for discovering laws, legal paths and remedies and felt proud of myself for being able to find out that the judge had already been bribed. I demanded to see all medical history and documents that would justify plaintiff’s missing and absence. My legal defense team demanded court trials abruption and adjournment. I silently told her to be quiet about this. There was no documents and I wanted my junior solicitor to demand the exclusion

of this particular judge (Rada). In the end,

I approached her and told her about morbid details from plaintiff’s past, which I had previously decided to use as “the ace from the sleeve”. I also told her in her face about what I thought about her (that she was bribed to the bone), because I reckoned that juridical system and journalism must have common and mutual goals. The case remained inactive for a while, but it was later appointed to, according to my personal opinion, most honest

and righteous judge, namely Judge Srdic, who happened to be brave enough and had the audacity to conclude this case.

In the meantime, every one of us used to work by applying the same dynamics, bringing stories about the occurrence of corruption, crimes, suspicious privatizations etc., and we all had our little battles inside ourselves because of constant pressure “imposed” by blue and sealed envelopes. It was also interesting that the plaintiffs would sometimes quit and give up right in the middle of court hearings. The absurd of this situation was that I have often been invited to provide various information to courts at different levels that would use these for their particular and special cases and I was sued for identical cases a decade or even two decades ago.





## What plaintiffs and defendants should know about defamation, court proceedings and Law on Protection against Defamation?

By: Davor Bunoza

We have witnessed an increasing number of cases where one person pressed charges and sued another person for defamatory statements, so therefore the term “defamation” itself or “I’ll sue you for defamatory statements” has already become a phrase that displays a proof and evidence and even the fact that a journalist wrote something was not only untrue, but also proved that the same journalist shall bear the consequences for what he/she had written, that is, he/she shall accordingly be fined (financially). Taking into consideration that I used to represent, but also sue many journalists, based on defamation charges, I might outline that, regardless to the fact that Law on Protection against Defamation (Federation of Bosnia and Herzegovina and Republic of Srpska) contained merely 15 articles, this particular field is not that simple, as far as court proceeding is concerned (including court practice) and court practice in this sense is also considered significant and important.

During court procedures, it is actually important to determine whether the righteous balance has been reached between journalists’ rights to free expression pursuant to Article 10 of the European Convention on Fundamental Human Rights and rights to protect the reputation of damaged person, which is guaranteed by Article 8 of European Convention on Fundamental Human Rights. Criteria taken into consideration include: contribution in discussing issues considered as common public interest, how popular the key figure is, what is the subject of reporting, behavior and conduct of the key figure prior to disputable texts, articles or posts. Etc.

### What is defamation?

In simple terms, defamation means exposing, releasing or sharing untrue facts about a person where these facts may harm her/his reputation and honor. There are two crucial things as far as defamation or defamatory statements are concerned: exposing, releasing or sharing untrue information, and the situation where the same information does harm the reputation and honor of the person that is subject to untrue information. If these two elements can be proved during court proceedings, the court shall most probably bring verdict to the benefit of the plaintiff and order compensation for the damage and harm caused by the defamatory statement.

However, the question is: what is untrue information? Court practice often proves that released information may not be utterly true, however it can be labelled as “value judgment”, and because of this reason, there can be presumption in regard with the responsibility deriving from defamatory statement.

### What does value judgement mean?

During the court proceedings, aimed to protect persons from defamation, there must be a clear distinction between releasing pure facts and expressing value judgements. Facts can be proved, whereas value judgements merely outline opinions, that is, they represent value – based assessments that cannot be proved and cannot serve as foundation for responsibility from defamatory statements either.

I shall refer to the case where this journalist released the article (text) claiming how an N.N. person had taken part in illegal weapons and arms sale. Journalist based these information on police reports. Therefore, these facts could have easily been checked. During this process, I managed to

*“Journalists often publish articles about public figures and politicians that usually make most claims for compensations based on defamatory statements. According to court practices, public figures must have significantly bigger tolerance degree to critical articles, texts or posts aimed against them, than common civilians unknown to general public”*



prove that the journalist wrongfully claimed that my client had been selling weapons and arms as these facts did not appear in police report, so journalist at the end released untrue information in his article (text). The procedure proved that this journalist shared untrue information. This fact could have been checked as well. Another case included yet another N.N. person that pressed charges and sued journalist, because the information released claimed that he was unsuccessful municipality mayor who happened to be responsible for the shortage of money in municipal budget. Court dismissed charges pressed by an N.N. person because this was about releasing personal opinion, that is, value judgement, therefore, it was about something that could have not been proved. This however, does not necessarily mean that journalists can continually release and post independent value judgements about some persons. Constitutional court of BiH has in several occasions highlighted and outlined that even with value judgements there must be solid foundation for such opinions, that is, there must not be arbitrarily statements and claims with value judgements being outlined.

### **How to define financial claims (compensations) in defamation processes (cases)?**

During defamation cases, defamation victim shall request financial compensation based on compensation in regard with harm and damage caused by the defamation. The question is: who and on what basis can determine the amount of compensation? Previously, compensation amounts used to be estimated pursuant to medical examining (with medical expert determining mental harms of the plaintiff (defamation victim) caused by released, exposed, announced or posted articles, posts or texts. Court practice has since been changed and compensation caused by defamatory statements was no longer subject to medical examining. Instead, it has been up to court officials to determine (based on their free evaluation which naturally

is not absolute), righteous amount taking all circumstances into serious consideration. In other words, judge leading the case shall, in case that untrue information had been released (and if this can be proved), determine to what extent the above mentioned information may harm and damage the reputation and honor of the plaintiff; also based on plaintiff attempts to deny these information; and based on these indicators, she/he shall determine righteous and appropriate compensation amount. According to my personal experience, an average compensation amount caused by defamatory statements ranges between BAM 3.000.00 with the tendency of lowering this amount.

### **Public figures and defamation**

Journalists often publish articles about public figures and politicians that usually make most claims for compensations based on defamatory statements. According to court practices, public figures must have significantly bigger tolerance degree to critical articles, texts or posts aimed against them, than common civilians unknown to general public. Normally, during the process of determining whether the disputable article, text or post, contained defamatory statements aimed against politicians or public figures, the court shall particularly pay attention to whether this article, text or post had malicious intentions and aimed to, with no real arguments or similar rational foundation, causes harm or damage to reputation and honor of the public figure.



## What is the deadline until one can press charges and claim compensation based on defamatory statements?

There are deadlines in court proceedings that must be met; otherwise the case may be proclaimed as limited legal proceeding case. Court does not pay special attention to lapse of court cases by ex officio, but instead the outlined lapse objection must be highlighted during the court proceeding if you want the court to accept your objection. Deadlines for submitting a lawsuit for defamatory statements are usually very short. Subjective deadline is three months from the day when the defamation victim had realized the occurrence of defamatory statement, or should have found out about the investigation of untrue statements and facts, and as far as the victim's identity is concerned the above mentioned deadline cannot be extended 12 months after this particular day.

The question often appearing in reality is whether the defamation victim is obliged to legally appeal and demand correction of defamatory statements, that is, to submit legal denial, as well as whether the defamation victim loses the right to submit and appeal lawsuit, if he had failed to submit an official denial. Defamation victim who failed to submit a denial, that is, to demand a correction of defamatory statement, does not lose right to press charges claiming thus the right for compensation, also based on defamatory statements, although the court mostly values the fact that the defamations victim had not taken all required activities in order to ease down and reduce the impact of damaging consequences (caused by defamatory statements), which again may produce the situation where the court would most probably reduce the compensation amount that the defamation victims seeks through his regular claim.

## How to reduce the risk of being sued for defamatory statements?

Journalists often “balance” whether they should release, announce, expose or post information that may cause charges pressed against them for releasing defamatory statements. Constitutional court has in several occasions passed decisions that news shall be treated as “momentary items”, and postponing of their releasing, even for a short period of time, may easily deprive them of their valuable and interesting story. Despite this fact, cautious approach is also required. Media are obliged to conduct their investigation surveys in good faith and before they release information, there is standard journalism – based duty to do all checks accordingly. The more serious the allegations are, the more solid and firm the foundations should be.

In other words, even during the process of investigations and criminal proceedings, as far as reporting on issues considered as common public interest is concerned, journalists must collect reliable information sources and to act in good faith, with absolutely no intention to discredit or libel any person being subject to such information.

We could conclude that the Law on Protection against Defamation, as well as court practice of the European Court for Human Rights in Strasbourg and Constitutional Court of BiH tend to provide protection for journalists, if they do their work professionally and in accordance with professional conduct and rules. This does not mean that journalists would be protected if they are legally sued because of defamatory statements – on the contrary, journalists in these cases will most likely be held responsible and will be required to compensate the damage they may have caused, if legal institutions fail to prove that they did their work in most appropriate and professional manner.





## Law on protection against Defamation as Ethical and not (only) Legal measure

By: Prof. Dr. Lejla Turčilo

One of the fundamental rights that serves as the basis for every democratic society, is the public right to be informed, that is, public right to have fore-hand and checked information about people, events and venues from their surrounding environment and their local community. According to these information, general public does make judgements, they launch discussions and make decisions about themselves and those that concern community they live in; that is, they create public opinion that public and local decision bringers must respect during the period when they represent the people and while performing their public duties and tasks.

### Public figures and level of tolerance

Law on Protection against Defamation is actually rarely considered in lights of the protection of rights of common public to be informed. In common public discourse, we have had two profiled points of view that identify protection against defamation as mechanism which should serve interests of specific interested parties (sides) during the process of media reporting. Holders of public functions and public figures reckon that Law on Protection against Defamation had been created for the purpose of their protection from criminal judgement of media, including journalists, and also aimed to protect them from questioning their work in transparent and public manner. They seem to forget that it is actually the public position that bounds and obliges them to wider range and scope of tolerance in regard with critical views and words, including public expression of opinions aimed against them. In other words, they tend to forget that by accepting the role of public figure, with all privileges they have, they in fact accept to be monitored more than other people whose jobs are not as popular as theirs.

This of course does not necessarily provide amnesty for another side (party) in this process, including media and journalists, from their duty to make their reports about public figures to be based on checked and verifiable arguments and founded on facts. As far as journalists' "pole" is concerned, these discussions that cover the issues of the protection against defamation, recently produce a disputable view and stance claiming that it is actually the number of lawsuits that represents and displays some kind of objectivity of media houses, because they are so called brave people that do not hesitate to post, publish, announce, exposé and release information about public figures that consequently press charges against the same journalists, while others are skeptical, as far releasing of such information is concerned, because they cannot be considered as independent journalists.

It is a fact that charges pressed for defamatory statements in Bosnia and Herzegovina are mostly launched by public figures, mostly including politicians and holders of public functions (most of the time), because they simply do not consider and hold themselves responsible to general public, so every critical – biased writing is considered and treated as offence and insult targeted against them, but more often, due to the fact that through reprised charges and lawsuits, they try to endanger certain media houses even when media representatives and journalists of these houses do report in most professional manner and when their reporting is based on facts. However, unfortunately we have been far off from claims that all lawsuits for defamation are precarious and unfounded including all media houses, media representatives and journalist responsible in their reporting. In this context, it is indeed incorrect to assert and affirm that the fact that someone



*“In other words, its purpose and goal is to protect the public right to get informed and to know, in terms of making guarantees that what they had encounter is in fact the truth (as the truth itself is actually truthful), but also to protect the public right to receive quality – based and well – checked information”*

has pressed charges against you may represent a sign of professionalism, even in societies such as our own; a society with exceptionally low level of consciousness demonstrated by public figures that, according to description by Ozren Kebo “the insult and offence has become a stylish figure”, have become rather frequent occurrence, so we could not allege that there have not been defamations in our media houses to that extent, so that certain media would be surprised when they receive court summons. Just as there were professional and unprofessional media houses, there have also been founded and unfounded charges and lawsuits for defamatory statements.

Yet another important aspect is to be reawakened in this discussion about defamation in public space, and it relates to raising the awareness of culture of dialogue and quality, crucial for discussions in public space. In recently established media houses, accompanied by system – based social separations (such as ours), but also the least based negative information about some person, group, institution, organization, has almost exponentially developed its range, where almost every spark can turn into hate speech, posted in both social media source’s, and also appearing in global and common space. The responsibility for spoken words, particularly the responsibility for everything that appears in public must be treated as pure claim about somebody and something which can actually be proved by presenting concrete information and this responsibility thus becomes even bigger. Of course, primary goals are not the development of dialogues, regarding the protection from defamatory statements, but they somehow serve as specific “side effects” and it is encouraging to try and understand the story this way as well.

### **Law as a reminder of professional standards**

In shortest terms, as far as we (non – solicitors) or people with limited knowledge about legal issues) that is, people that understand protection from defamatory statements in wider context, rationale, behind scenes actually relates to respecting ethical norms and deontological stance of journalist’s professional. In other words, its purpose and goal is to protect the public right to get informed and to know, in terms of making guarantees that what they had encounter is in fact the truth (as the truth itself is actually truthful), but also to protect the public right to receive quality – based and well – checked information from different and various sources, instead of releasing false news, posting false news, launching disinformation and semi – truths.

Law on Protection against Defamations is actually not there to protect anybody in terms of her/his being legally untouchable and intact, if by its professional work she/he had been present in public and considered as

responsible to the public. It is no longer repression mechanism aimed towards media houses and journalists that work on investigative stories (it is actually because of this reason that defamation has been decriminalized in most



democratic societies); however, it must no longer convince media houses with false attitude that unfounded and argument and no - evidence writing about anybody and anything may be in line with any kind of standards; on the contrary. Law is actually here, so media community could remind public about professional standards and to remind common public about their own rights to get informed about events and venues in the community they live in.



## **Law on Protection against Defamation: from revolution to reaction?**

*By: Arben Murtezić*

When laws on protection against defamation were passed in Bosnia and Herzegovina almost two decades ago, relevant authors, such as M. Halilović and M. Srđić were absolutely right when they referred to them as to “revolutionary” laws.

There are many reasons to support this kind of a description. First of all, Bosnia and Herzegovina was the first country in Europe that managed to decriminalize defamation/libel, that is, first country where defamation/libel ceased to be legally considered and treated as criminal offence or criminal deed (felony). To make a comparison, Republic of Serbia (with countless controversy that preceded) managed to erase defamation (which, until then was legally defined as criminal offence/deed) from Criminal Law in 2012 only, whereas the defamation has not been decriminalized in the Republic of Croatia yet and even in 2015 local legislators decided to pass new criminal law which they referred to as “sever embarrassment to honor and reputation”, which some considered as some kind of a replacement to defamation law

## **Undisputable and unquestioned decriminalization of defamation**

The only cession that Croatian officials did towards journalism associations was that they managed to cease prison penalties imposed for all criminal deeds jeopardizing honor and reputation. Frankly speaking, neither European Convention on Human Rights (Convention), nor any other relevant international document has not insisted on dismissing the criminal deed of defamation. For instance, the criminal deed of defamation in Germany contemplates prison sentence. However, it seems undisputedly that, apart from above mentioned different legal solutions in various countries and including the problem of the implementation of the existing legal solutions that are to be discussed below, the decriminalization of defamation does display certain approach that must not be questioned in Bosnia and Herzegovina by any means.

Furthermore, beside these two crucial characteristics, the Defamation Law (the Federation of Bosnia and Herzegovina, the Republic of Srpska and

*“There is provision, also considered as one of the most important one and relatively underestimated, that defines that court decisions about bans is not permitted before releasing the post or news, which would avoid the possibility of something that could resemble to censorship in full sense of that word”*

Brcko District) introduced several other institutes that were also considered incontestable that, along with other things, guaranteed the protection of journalists' sources, and state institutions have thus, been disabled to sue and press charges against journalists as a result. There is provision, also considered as one of the most important one and relatively underestimated, that defines that court decisions about bans is not permitted before releasing the post or news, which would avoid the possibility of something that could resemble to censorship in full sense of that word.

Why is then a legal provision whose purpose is “to ensure maximum principle of freedom and liberty of expression” (Article 3 of the Law of the Federation of Bosnia and Herzegovina, Article 2 of the Law of the Republic of Srpska), often outlined as the tool and mean used to impose pressure against freedom of journalism? Namely, from the very beginning of its implementation, the number of procedures conducted and executed against media houses has been significantly high and, through the years, vast number of legally valid and executive judgements have caused serious financial difficulties for many journalists and some media houses have also been forced to cease working and to close down their businesses.

It is a fact that laws on protection against defamation in Bosnia and Herzegovina largely rely on the Convention, even including the practice of Court in Strasbourg, which, by its own nature, seems rather encouraging. However, Convention is often referred to for guiding and general provisions only. For instance, the provision defines that the right for free expression represents one of the crucial fundamentals of democratic society guaranteed by the Convention itself, particularly as far as the issues of political and public interests are concerned (Article 2 b of the Law of the Federation of Bosnia and Herzegovina) or in terms of limiting the rights to free expression which must be clearly conformed in accordance with Article 10. (2)” (Article 7, Law of the Republic of Srpska). Along with above outlined provisions, there are few more articles and items that are literally copied down from crucial court verdicts from the Strasbourg Court. These verdicts have been considered as significantly important, although they have been mostly of declarative and general nature. According to all of this, these laws, in terms of methodological and Nomo technical approach, are in contrast with other legal provisions in Bosnia and Herzegovina.

### **Lack of precise legal provisions**

When we have in mind, along with the above listed issues, that these laws are actually rather short laws with merely 15 articles, it becomes clear that there is a very limited space for provisions that would eventually fulfil and meet defined and precise requirements, and, in the end, that would meet the predictability, which is also a requirement drafted in the Convention. Additionally, we should not underestimate the knowledge of our judges where most of them had participated special trainings in regard with the implementation of Article 10 of the Convention, which was, through JUFREX project, supported by the Council of Europe. The project included the participation of journalists and lawyers, and we truly hope that this particular project shall continue in the near future, only this time with the focus on common and mutual activities of the above mentioned groups all with the aim and purpose of better understanding of specific nature of this rather sensitive matter and in sense of observing it from different perspectives and various points of view. It was actually that during some of the above mentioned meetings, when some participants initiated the discussion where the principles deriving from subject provisions actually met the Convention requirements and Strasbourg Court practice, but also, where the implementation of Convention could not fully replace the lack of comprehensive, more precise and clearly defined provisions.

In this sense, it would be necessary to apply open discussions guided by experts and in regard with the possibility to amend the existing laws,

and even introduce new laws, where some of the existing principles should not be neglected and rejected either.

Eventual amendments should refer to specific positions and performing functions of elected and publically appointed figures, that is, their duties and obligations of larger “enduring” time, which should again represent the standard outlined in the Convention. Additionally, reporting ways during criminal procedures should also be clearly defined, which should include the possibility of limiting the compensation amounts. Of course, these are just some of the prima facie ideas and considering significant public interest, we should apply extra effort in order to have open and thorough discussions regarding all related and relevant issues.

## **Impressum**

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