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By: *Ena Kljajić Grgić*

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By: *Dorđe Vujatović*

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Introduction

Draft Law on Amendments to the Criminal Code of Republic of Srpska: First step towards media darkness and repression

On March 23, members of the National Assembly of the Republic of Srpska approved the Draft Law on Amendments to the Criminal Code of Republic of Srpska, with 49 votes for and 21 votes against, thus criminalising defamation/slander and insults.

By approving the Draft Law on Amendments to the Criminal Code of Republic of Srpska, the official authorities introduced criminal liability for insult, defamation, and disclosure of personal and family information, including criminal liability for public mocking based on racial, religious or ethnic background. The amount of the sanctions foreseen for the aforementioned crimes shall range up to BAM 120,000. Now the public consultation is open, which will last sixty days. At the end of the consultation, the assembly will be called again to express itself on the law. So, at the end and despite severe opposing by the opposition, the initiative that had last year been personally initiated and launch by **Milorad Dodik**, president of the Republic of Srpska was implemented. He announced the amendments of Criminal Code of the RS in his Twitter account.

For weeks, many professionals and journalists were protesting throughout BiH, including members of non – governmental organizations and civil society activists. It was all for nothing. They would send warnings to official governing authorities in the RS and demanded the withdrawing of the controversial bill, including the officials of European Union institutions, United Nations Special Envoys, members of embassies in BiH Etc. First concrete step towards media darkness, repression and media liberty suffocating was conducted, but not only for journalists and media houses, but also for all citizens of the Republic of Srpska that may dare openly criticise government's actions and moves and disclosure political and corruption affairs by public officials.

Events

10.02.2023.

Media outlets in BiH don't have adequate internal mechanisms to protect journalists

18.03.2023.

Free Press Unlimited: How to improve the safety of female journalists in Bosnia and Herzegovina

30.03.2023.

BH Journalists: Presentation of the research "Indicators of the level of media freedom and safety of journalists in BiH 2022"

This E-Journalist edition shall cover the issue of what the criminalisation of defamation and insults might mean in practice and reality, including what provisions shall be constituent parts of the Draft of Criminal Code and what consequences shall this bill have once it officially comes into force. **Ena Kljajić Grgić** from Transparency International of BiH, **Aleksandar Jokić**, a lawyer from Banja Luka, **Đorđe Vujatović**, journalist from Balkan Investigative Network of BiH (BIRN) and **Elvir Padalović**, BUKA magazine journalist and editor shall write about this subject in the 81st edition of E-Journalist.

Maja Radević, E-Journalist editor

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When governing official authorities violate the Constitutional rights of their citizens

By: *Ena Kljajić Grgić*



Press releases

19.03.2023.

BH Journalists: Dodik, Stanivuković and the police are responsible for the violence against journalists and activists

23.03.2023.

BH Journalists: We call on the Prosecutor's Office of BiH to urgently make decisions in the cases against Jasmin Mulahusić!

23.03.2023.

BH Journalists: Today's decision of the NSRS is a defeat for democracy, free society and free journalism!

24.03.2023.

SafeJournalists: Journalists are Targets of Threats and Online Hate Speech in Bosnia and Herzegovina

30.03.2023.

BH Journalists: The city authorities of Zenica are again denying journalists access to City Council sessions

Ministry of Justice of Republic of Srpska proposed, suggested and recommended controversial amendments and Criminal Law (Code) of Republic of Srpska and this became priority public focus not just by citizens and media, but it also became focus point by both local and international entities, as part of social and political activities in Bosnia and Herzegovina. Until this moment, no amendments of Criminal Code (as there were many of them in the past), have questioned the credibility of the proposing and recommending party in legal processes, namely, the Ministry of Justice, thus putting them under public eye and focus.

At the beginning of March this year, it has officially become known that Draft Law (Code) amendments of Criminal Law (Code) of Republic of Srpska, defining and settling, among other things, new criminal offences (felonies) against reputation and honour: Defamation, insult, disclosure of personal and family information and Public Disclosure to Shame and Mockery due to racial, religious or ethnic background. Ministry of Justice of RS violated the provisions and acts if we knew that Guidelines for consultation required the drafting of rules, regulations and other common acts of the RS, because they significantly shorten the deadline for submission of eventual complaints, recommendations, proposals and suggestions regarding the Draft Law (Code) and the regular period of 15 days was thus reduced and shorten to the period of 7 days only. Guidelines clearly defined the way and procedure of implementing and conducting required consultations with the public, based upon which the Government of Republic of Srpska was legally obliged to act, including all republic – based governing and administrative bodies during the period of Law (Code) drafting, and it would all be with the purpose and aim to contribute in having general public taking part in drafting legal regulations, thus producing better informing, more efficient decision making and social responsibility respectively.

Dishonest practice

Ministry of Justice of Republic of Srpska posted the Draft Law (Code) on their official web site on 3 March 2023 and at the same time they concluded that:”

Media on media

02.03.2023.

EFJ condemned the police interrogation of journalist Nikola Morača

06.03.2023.

Protection of interests or suppression of independent media: What does the new Law on Defamation and Insult in the RS represent

10.03.2023.

BH Journalists made a request to Zukan Helez for a public apology to the journalists of Tačno.net portal

29.03.2023.

The State Department Report: Pressures, threats and intimidation of journalists in Bosnia and Herzegovina continue

"This Law represents public interest and the Law was posted on internet web site with 7 days due date for submitting complaints and suggestions and that there were no complaints or suggestions to proposed text". Therefore, general public became familiar and aware for one day only with the text of Draft Law (Code) with the public being additionally deceived, since the 7 days due date (deadline) required for submission of complaints or suggestions had already expired.

Also, it was obvious that the action taken prior to the approval of the Draft Law (Code) amendments of Criminal Code of RS was not implemented pursuant to the Rules required for laws (codes) and other regulations of Republic of Srpska. Namely, Ministry of Justice had on its official web site posted different text of sub – draft and Draft Law (Code), precisely the sub – draft content does not contain criminal felonies, offences or deeds against honour and reputation. This rather, dishonoured deed made an impact disallowing and disabling thus anyone from addressing and submitting eventual complaints and suggestions, even during the period while the Draft Law (Code) text was in its preparation stage, that is, while it was in sub draft phase.

Rules required for laws drafting and other regulations on Republic of Srpska define that republic bodies authorised to process normative acts are obliged to provide and ensure the availability of information in sub – draft of the law and make them available to general public that may show interest and to make them accessible on their official internet web site. Also, rules specify that, when authorised republic body processes and tailors sub – draft, which in this concrete case was Ministry of Justice of RS, it would be compulsory and essential that consultations with other republic and administrative bodies, to which the draft content refer must be conducted, and when required as necessary, consultations must be conducted with civil associations that may show interests in this issue too, including other legal entities and business companies. Furthermore, based on consultation outcomes regarding the sub – draft of the law (code), the draft law additionally goes into its preparation stage.

The constitution of Republic of Srpska guarantees to all its citizens the right to publically express their opinion and view regarding the work of public and Entity institutions and other bodies and organizations, including petitions, recommendations and suggestions and also enables them to receive replies, answers and responses by official governing authorities. However, there is very little that citizens can actually do when their rights, again, guaranteed by the constitution, are violated by highest ranked governing official authorities in Republic of Srpska. Transparency International in Bosnia and Herzegovina have, because of these reasons, launched an initiative to Legislative Committee of the National Assembly of Republic of Srpska, demanding them to re-consider the implementation of the Rules required for laws drafting and other regulations in Republic of Srpska by the Ministry of Justice of RS (as proponents and proposers of controversial law). Other associations, journalists and individuals soon joined our organization making it clear that what authorised institutions had done, in terms of failing to obey regulations and violating human rights, did not go obscure and neglected.

When approaching the analysis of proposed criminal felonies, offences or deeds against honour and reputation, as part of the Draft Law (Code), it is almost impossible not to notice that these deeds had literally been copied from criminal laws from regional and neighbouring countries and their legislations (Serbia and Croatia) and that there was even a rather clumsy attempt to combine the two entities together regarding certain acts and provisions.

For instance, a perpetrator shall be imposed with fine ranging from BAM 8.000.00 to BAM 30.000.00 for defamation and slander in case that she or he disclose or share untrue information that may damage other party's honour or reputation, at the same time being aware that the information revealed, released, disclosed, exposed or shared were untrue. Based on the above mentioned, we come to a conclusion that incorrect or untrue expression does not necessarily have to damage someone's reputation or honour; instead the possibility of damaging someone's honour or reputation is sufficient enough and legally acceptable.

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	UKUPNO
Banja Luka	2	6	8	34	15	25	19	16	25	45	49	75	46	365
Bijeljina	1	2	-	1	2	2	-	2	2	1	4	11	5	33
Višegrad	-	-	-	10	-	-	-	3	-	-	-	1	1	15
Vlasenica	2	5	-	4	-	8	30	-	1	2	2	1	1	56
Gradiška	-	-	-	2	-	-	-	2	2	1	1	1	1	10
Derventa	-	1	-	-	-	1	-	-	-	-	-	-	-	3
Doboj	-	-	-	-	-	-	-	-	-	-	-	1	1	2
Zvornik	-	1	2	2	1	3	1	3	2	2	4	3	1	25
K. Varoš	-	-	-	-	-	-	-	-	-	3	2	2	-	7
Modriča	-	-	-	-	1	-	-	-	-	-	-	-	1	2
M. Grad	-	-	1	-	-	-	-	3	1	-	-	1	1	7
N. Grad	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Prijedor	-	-	2	1	4	1	2	1	3	1	3	9	5	32
Prnjavor	-	2	1	-	3	3	1	1	-	-	1	1	1	14
Sokolac	-	-	-	-	-	-	-	-	-	-	-	-	-	-
I. Sarajevo	-	-	1	-	2	-	1	1	3	1	2	5	9	25
Tešić	-	-	1	-	-	2	-	-	1	3	2	-	-	9
Trebinje	2	2	1	2	5	2	2	6	8	11	3	6	5	55
Foča	-	-	-	-	-	-	-	1	1	-	-	-	-	2
Srebrenica	-	-	-	1	-	1	-	1	1	1	1	3	2	11
Samac	-	-	-	-	-	-	-	-	-	-	-	-	-	-
K. Dubica	-	-	-	-	-	-	-	-	-	-	-	3	3	6
UKUPNO	7	19	17	57	33	48	56	40	50	71	74	123	84	679

Number of cases launched indictments pursuant to Law on Protection against Defamation – Basic courts in Republic of Srpska

The existing Law on Protection against Defamation of RS, in terms of and in sense of civil and legal proceedings defines that any person may be held responsible for defamation if she or he is, in business terms, capable of causing the damage to reputation of another legal or physical entity by disclosure or sharing the untrue and incorrect information. It does not seem as common sense that civil and legal protection from defamation treats that the damage had emerged (occurred) as a result of defamation and slandering expression and that, in criminal and legal sense, the occurrence of damage is not treated and considered at all, while, on the other hand, a very high fines may occur as a result.

At the same time, with criminal felony of insult and offences, it is not clearly defined that if one insults another party shall be fined with fine ranging from BAM 5.000.00 to BAM 20.000.00 where we have no concrete and particular proof of what is actually legally defined as an insult. Insult, as criminal offence is better defined by the existing Law on Public Law and Order of RS and it clearly determines the perpetrator as any person that by sever insulting of another person, based on political, religious or ethnic background or by other intolerant behaviour or conduct, may cause the feeling of physical endangerment or disturbance of citizens.

In exposition of the Draft Law (Code) amendments of Criminal Code of RS, it is stated that the reasons required for approving the draft law (code), regarding the committing criminal felony against someone's honour and reputation are founded in Article 13 of the Constitution of Republic of Srpska and circumstances that criminal legislation of surrounding and neighbouring countries, even including criminal legislation of some European Union countries, defines this issue as criminal offence committed against honour and reputation.

„It is incontestable that human dignity, physical and mental integrity, human privacy, personal and family lives are inviolable and thus must be protected; however, referring to article from the constitution itself and comparing this issue with other countries it does not seem convenient enough in terms of introducing new criminal felonies, offences and deeds as constituent parts of Criminal Law (Code)“

It is incontestable that human dignity, physical and mental integrity, human privacy, personal and family lives are inviolable and must thus be protected, however, referring to article from the constitution itself and comparing this issue with other countries, this does not seem convenient enough, in terms of introducing new criminal felonies, offences and deeds as constituent parts of Criminal Law (Code). The proponent was expected to conduct a further analysis of the existing situation and obliged to determine key and crucial problems as this is important for the entire society to have all these criminal felonies, deeds and offences well defined and regulated.

Investigation of Transparency International of BiH

Transparency International of BiH conducted a survey and research and received data (information) from local courts and prosecutors' offices in Republic of Srpska stating that during the period of last 12 years civil and legal protection in 679 cases sought legal protection from defamation at 21 Basic courts in Republic of Srpska. As far as criminal offence of Violation of freedom of expression of opinion is concerned, during this period, also in the territory of Republic of Srpska, Banja Luka District Prosecutor's Office was the only entity to register 5 official complaints only, as a result of this particular felony; however no indictment had been filed accordingly. For criminal deed of Public encouraging and instigation of violence and hate, the total of 77 criminal charges were registered for the same period of time in Republic of Srpska, with 50 of them being officially filed and registered in Banja Luka District Prosecutor's Office and only 12 indictments were filed and legally confirmed and verified. We could, based on the above listed views, conclude that citizens believing that they had been damaged by untrue expression decide to launch procedures for protection from defamation with authorised and local courts, that is, they use the existing legal mechanisms, while, on the other hand, rather limited number of confirmed indictments raised by prosecutor's offices comparing to registered submitted files emerged.

In part of Draft Law (Code) that relates to the estimate and assessment of influence, Ministry of Justice officials claimed, based on ad hoc principles that: *“The existing legislative solution does not clearly determine and define the classification of criminal felonies, offences and deeds against honour and reputation, while in reality and practice, there are many misuses of these legal gaps and inappropriate sanctions for this rather unwanted and negative social occurrence”*, where there was no exposition or explanation what frequent misuses actually would consist of and to what legal gap they would refer to, considering that this particular field was settled in details with civil and legal protection and minor charges protection.

Not even an explanation justifying such high fines ranging from BAM 5.000.00 to even BAM 120.000.00 was provided and these proposed provisions (acts), that had been copied from abroad, were the only items that actually made significant difference between our country and surrounding (neighbouring) countries, as far as this issue was concerned.

It is important to remember that Draft Law (Code) amendments of Criminal Code of RS was not planned by the Action Plan of Republic of Srpska for 2023 and that the reasons from submitted exposition provided by Ministry of Justice had not been on the expected level of republic authorised and official bodies. At the end, the most concerning thing here was the announcement that one of the most obvious indicators required to follow, monitor and valuing the effect of law implementation, shall be displayed through the number and quality of first instance verdicts defined for criminal felonies, offences or deeds and that we may additionally expect positive and affirmative impact and influence imposed upon republic budget, again as a result of payments deriving from imposed fines for newly introduced criminal deeds against honour and reputation.

(The Author is manager of Advocacy and Legal Advice Centre of Transparency International of BiH)

Criminal Felony/Offence/Deed	District Public Prosecutor's Offices	Registered Complaints	Orders demanding requested Investigations	Orders not demanding and requesting Investigations	Orders demanding and requesting suspension of Investigations	Issued indictments	Confirmed/verified indictments	Complaints resolved in other ways (ceding, cessation, abatement, call processing, incompetence)	Complaints/investigations without decisions passed by prosecutors
Violation of freedom of expression and opinion	B.Luka	5	-	3	-	-	-	1	1
	Bijeljina	-	-	-	-	-	-	-	-
	Doboj	-	-	-	-	-	-	-	-
	I.Sarajevo	-	-	-	-	-	-	-	-
	Trebinje	-	-	-	-	-	-	-	-
	Prijedor	-	-	-	-	-	-	-	-
TOTAL		5	-	3	-	-	-	1	1
Public encouraging and instigation of violence and hate	B.Luka	50	19	21	8	7	7	3	11
	Bijeljina	8	5	-	1	2	2	-	-
	Doboj	2	2	-	-	-	-	-	-
	I.Sarajevo	9	2	6	-	2	2	-	-
	Trebinje	2	-	-	-	-	-	1	-
	Prijedor	6	3	-	1	1	1	-	3
TOTAL		77	31	27	10	12	12	4	14
TOTAL for both criminal felonies/offences/deeds		82	31	30	10	12	12	5	15

Number of cases (criminal charges, investigations, indictments...) from criminal felonies, offences and deeds regarding the Violation of freedom of expression and Public encouraging and instigating of violence and hate - District Public Prosecutor's Offices in Republic of Srpska (period 2010 - 2022).



Free Media Help Line

Current cases:

1. Hate speech/Endangering safety - BIRN BiH

On March 17, 2023, an indictment was brought against Nail Čehić who, on August 7, 2020, made a serious threat to attack the life and body of employees in the BIRN BiH newsroom - aware that he was endangering their safety and causing disturbance, which he wanted to do - sent a message containing a serious threat from his user Facebook profile to the Facebook profile "Detektor", the newsroom of BIRN BiH in Sarajevo.

Criminalizing defamation in Republic of Srpska – hidden prison threat following the words spoken in public

By: Aleksandar Jokić

Law on Protection against Defamation in Republic of Srpska was officially passed in 2001; the Federation of Bosnia and Herzegovina passed this law in 2002 and in 2003 Brčko District passed this law as well. Court practice, comprehension of courts, regarding the significance and methods of proving the defamation and consequential harm and damage, had ever since been crystallised. Even though it had taken certain period of time, including numerous decisions passed by the Constitutional Court of Bosnia and Herzegovina, we might, from today's perspective, conclude, that there have not been unknown and uncertain issues any more, as far as the implementation of this particular law is concerned.

Before anything else, this law shall enable civil and legal protection from defamation, slander or libelling. This means that civil charge or charges pressed against the person responsible for defamation should make this person to financially compensate the damaged party for ruining her/his public reputation and honour. It is rather important to outline here that these financial compensations do not necessarily represent legal sanctions. This means that sanctions imposed on persons obliged to pay fines defined by the provisions of this particular Law, are strictly, but not legally implemented and that these persons do not necessarily have to be legally prosecuted either.

Law and Court Practice

For the purpose of this review, but at the same time, having in mind actual and current situation, that is, taking the criminalization of defamation in Republic of Srpska into serious consideration, I shall remain focused on the Law on Protection against Defamation in Republic of Srpska, being completely aware of resemblance, similarities or assort of legal regulations in both Bosnian Entities.

Article 2 of the Law on Protection against Defamation in Republic of Srpska, clearly defines the guidelines concerning certain provisions and it also states the following: *"the interpretation of this law shall, in the first place, ensure and provide, in its greatest possible extent, the principles of freedom of expression"*.

This clearly displays that the intention of legislator was to, in this rather complex collision issue concerning two rights, approach very cautiously to this sensitive issue and to keep freedom of expression as intact as possible.

Article 4, item 1 of this Law clearly defines and states the following:

"This law shall be implemented regarding all legal charges and lawsuits concerning compensation if they are filed in and submitted due to illegal and unlawful harms and damages of reputation by revealing, releasing, exposing or sharing untrue information, regardless to type of lawsuits".

In this therefore important to outline key elements of the defamation/slander/libelling here and they include the following:

- Releasing, revealing, exposing or sharing certain information
- Untrue information and
- Damage and harm caused as a consequence

In order to speak about the existence of defamation, the *conditio sine qua non* principle represents these three elements. If one of these elements is not fully accomplished, we could not even see the emerging of defamation into consideration. Only, if and once the existence of defamation is confirmed, we could approach with determining the responsibility and, as Article 5, Item 2 accordingly define that the person shall be held responsible for caused damage if she or he had deliberately or unintentionally released, revealed, exposed or shared untrue information. When expression concerns the issues of political or public significance, then the condition for responsibility causing the damage is even more complex and is defined in Article 5, item 3 of the law, stating that this person shall, in this case, be held responsible if “she or he had known that expression was untrue or if she or he had neglected the deception of expression”.

Only once the defamation is concretely confirmed and if the person who had created the defamation, causing harm and damaging the other party; the court should approach with defining the amount of compensational damage. In absence of certain objective parameters and methods of accounting and assessing, the compensation amounts are in many cases allocated, pursuant to discrete court decisions. In most cases these amounts range from BAM 2.000.00 and BAM 6.000. 00. However, since there have been no strict rules, as far as compensational amounts are concerned, the legislator has defined certain guidelines that have, as a result of practice in reality, remained cold facts on paper.

I in the first place refer here to the responsibility of easing the damage as defined by Article 8 which states the following: *“Prosecutor shall, in terms of this particular law, take all actions and measures required to ease and abate all harms and damages caused by alleged defamation – biased expression, particularly including the request demanding the correction that prosecutor addresses to the accused person”*. This kind of acting in practice by prosecutor is not necessary at all and often does not prove an obstacle for passing court decision. It is clear that practice has neglected this specific duty of alleviating and that prosecutors, lead by this practice, more often decide to press legal charges before even the denying and confute emerge is legally submitted. From media point of view, whose representatives may (just as any other human beings) make a mistake in their work; this duty of mitigating the damage was first warrant that media houses and their journalists would not be financially fined severely due to such writing. Neglecting of this provision and inability to evaluate the amount of damage caused, may additionally create an ad hoc method of assessing and evaluating the compensational amount without any impact and influence of real scope of damage and prosecutor’s failure to reduce damage amount.

“Compensation for damage is carried out exclusively with the intention of compensating the damage caused to the reputation of the injured party, and this compensation must be proportional to the damage caused. When determining and defining compensation for damages, the court takes into account all the circumstances of the case, especially including all measures taken to mitigate the damage caused, such as: publication of a correction, revocation of the statement or apology, the fact whether the harmed person obtained a financial benefit by making the statement or passing on the expression, or the fact that the amount of damages awarded could result in great financial difficulties or bankruptcy of the victim”.

2. Hate speech on social networks - Dalija Hasanbegović-Konaković

After she announced that she's waiting a baby, journalist of Al Jazeera Balkans Dalija Hasanbegović-Konaković received a number of offensive comments from Jasmin Mulahusić and others via social networks.

Although, as we have already mentioned, courts may in reality resort the method of discrete ad hoc defining of caused damage, these guidelines from Article 11, item 1, clearly indicate the legislator's intention to make damage as much concrete as possible and to additionally preserve the injured party from emerging material and existence problems.

According to this short view and analysis of legal text and general review of court practice, we may clearly conclude that prosecutors in practice have been in better position from those intended by legislator. The fact that damage emerging is not determined and that acting of damaged does not reflect the amount of damage only supports this thesis. Furthermore, we may conclude that the protection of people and companies from damages resulted by defamation adequate and appropriate, and that the only disadvantage is absence of clear criteria and ways of determining and defining emerging damages and this is the question that has never been easy to respond and reply to. What is crucial here is the fact that damage has occurred, which additionally requires financial compensation.

Executive and official governing authorities in the Republic of Srpska have, based on such foundations and the issue of defamation settled such as it is, recommended and proposed the amendments of Criminal Law, that may anticipate and envisage, among other issues, new (and old) criminal offences directed against reputation and honour, including the defamation as criminal deed as well.

Criminal Offence Stigma

Before going into thorough details of criminal offence, fine, punishment and processing and leading legal cases, I reckon that it would be necessary to outline that criminal procedures, as oppose to civil procedures (lawsuits) have their own consequences imposed upon suspects even prior to verdicts. Along with constant responsibility to respond to court calls, including the stigma that person shall be legally processed, vast problem also is the fact that during the procedure, this person shall not be able to have a no criminal record certificate, which is in most cases essential and mandatory document required for job applications (vacancies), grants, subventions, permits and even visas for certain countries. Although it does not appear and seem formally like that, however, **citizens subject to lawsuits and legal charges pressed against them, become to a certain level, low ranked citizens.** This is important, because all of those willing to return defamation into criminal legislation, justifying that surrounding countries actually practice this, are actually wrong.

Serbia and Montenegro, before other regional countries, decriminalised defamation in 2011 and 2013, while in Croatia one party can legally sue other party for defamation based on private lawsuits (which means that not the entire state apparatus, prosecutor's offices and police officials act against citizens; instead the damaged person launches and leads the procedure). These procedures do not represent an obstacle to obtain no criminal procedure certificate upon which she or she is prosecuted based on *ex officio*. Because of this, all arguments of this specific type fail. An argument, even stronger, is the fact that many European Union countries practice criminal laws. This is a deliberate and intentional logical mistake, where in a situation when defamation, as common trend, is decriminalised, we tend to go 2001 settings, where defamation, in the same shape and form, was considered genuine criminal offence.

We literally return 23 years back in time, justifying this with European values. Greatest and crucial European value and trend has always been that citizens should have more, rather than less freedoms and liberties. When we refer to Serbian practice (despite the fact that defamation has not been considered as criminal offence), than in would be fair that, according to Serbian Constitution, defamation could not be incriminated again, because Article 20, item 2 of the Law clearly states that “**Acquired level of human rights and ethnic communities cannot be diminished**”. We obviously tend to be swimming upwards and claim that our direction is following river stream.

PREDLOŽENE KAZNE

UVREDA

Ko drugog vrijeđa putem medija ili na javnom skupu

20.400 – 51.200

KLEVETA

Ko o drugome kaže ili prenese neistinito putem medija ili na javnom skupu

15.200 – 82.000

IZNOŠENJE PORODIČNIH PRILIKA

Ako u medijima ili na javnom skupu što što iz običnog ili porodičnog života osobe može nastati ugovorj časti ili ugledu

20.000 – 102.000

25.400 – 122.000

How actually Defamation is defined as criminal offence and what are the recommendations pursuant to new Draft Amendments and Annexes to Criminal Laws?

„(1) Whoever states or conveys something untrue about another person that may harm her or his honour or reputation, knowing that what she or he states or conveys is untrue, shall be fined from BAM 8.000,00 to BAM 30.000,00.

(2) If the act referred to in Article 1 of this article was committed through the press, radio, television or through social media, at a public meeting or in another way, due to which it became available to a large number of persons, it shall be fined with BAM 15.000,00 to BAM 80.000,00.

(3) “If what is presented or conveyed has led or could lead to serious consequences for the injured party, the perpetrator shall be fined from BAM 20.000,00 to BAM 100.000,00”

First thing, along with enormous fines, that becomes obvious is that the definition of defamation in this Draft represent smoother and wider term than the defamation as constituent part of the Law on Protection against Defamation. It means that it appears easier to commit a crime that to be held responsible for defamation as part of civil lawsuit. This is clear message by the governing authorities where they clearly demonstrate that they want to process the cases that they had failed to “win” during civil lawsuit procedure. And I claim this because of the following: we have already indicated basic elements of defamation (1) Releasing, revealing, exposing or sharing certain information; (2) Untrue information and (3) Damage and harm caused as a consequence. However, the essence of criminal offence does not necessarily assume that the damage had occurred; instead it only means that the content being revealed, released, exposed or shared **may harm** the person it refers to, but does not mean that it had already harmed or damaged her or him.

“Media freedoms and liberties have not been attacked like this in recent history, and the misuse of defamation, which is obvious in civil proceedings to a much lesser extent, is now spilling over into criminal law with the threat of ending freedom of expression in the Republic of Srpska and Bosnia and Herzegovina”

Media and citizens as targets

Real intention of legislator is obvious in second items where the defamation has occurred via printed press, radio, television or social media, qualified form and shape of defamation for which fines from BAM 15.000.00 to BAM 80.000.00 emerge. This clearly indicates what the purpose is and who shall be targeted as a result of these provisions and these are primarily media houses and citizens who express their opinion in public.

I must refer to recent and new occurrence, in terms of *nomotechnical* sense and this is defining the minimum and maximum of concrete fines. The entire Criminal Law is led by the rule that fine is evaluated and estimated based on special rules with the purpose of tailoring individually based fined, in order to jeopardize and endangered the person being subject to sanctions and fined. On exception from this rule may actually lay in here, because from criminal offences concerning damaging and harming reputation and honour, for each individual form and shape, a wide range of financial fines, which is obviously disproportional and misbalanced with incomes our citizens receive and dispose of. It is obvious that one or two fines like this would most certainly shot down media houses as subject to legal fine and person against whom the fine would be imposed would have to serve the prison sentence as an alternative method for not being able to pay the fine in money. Additionally, this is conducted in accordance with the rule that one day in prison is around BAM 50, 00, however the sentence duration should in that case, not exceed and last longer than 2 years and surprise, surprise, the amount of recommended fine of BAM 80.000.00 matched exactly the duration of 1600 days, which means the person being fined with this amount could, unless she or he is able to pay this fine, would end up in prison for the period of two years.

This represents hidden imprisoning threat due to words spoken in public which is wrapped up in gift paper of fine. Media freedom and liberties have in recent history not been under such strikes and misuse o defamation which is obvious and significantly less in civil proceedings is now overspilling into a criminal law with the threat that freedom of expression has finally terminated in Republic of Srpska and Bosnia and Herzegovina.

(Author of this text is a lawyer from Banja Luka)



3. Physical attack on journalists - Vanja Stokić, Ajdin Kamber and others

Journalist and editor of eTrafika Vanja Stokić was beaten on March 18th in Banja Luka after a group of hooligans attacked journalists and LGBT activists. Hooligans smashed a bottle on the head of photojournalist Ajdin Kamber. Melani Isović and Vanja Šunjić were also attacked.

Criminal Law shouts “Journalists = slanderers”

By: *Dorđe Vujatović*

First stage of intimidation is over; 49 hands were more than sufficient to pass the Amendments of the Draft of Criminal Law of the Republic of Srpska, including defamation and insult/offence, as most critical and crucial public words in this process.

So far, the Draft was initiated and forwarded to public debate with 60 days due period, and we shall, after this period, be able to see whether the governing officials authorities have still been persistent in imposing limits and boundaries to public words and public opinion. Furthermore, we should also be able to see to what extent all of this seemed as big smoked screen that would attract general public attention, on one hand, while other political process, on the other hand, may occur at the same time.

During the period of last few months, actually beginning from the moment when passing of this particular law was introduced and announced, politicians, but also, many other legal counsellors and advisors raised the following question and issue to journalists' community: Why are we afraid and scared? A list of fears is rather long and only few examples are more than sufficient to lose trust and faith in official institutions that, by surprise, we pay so they could provide us with protection.

Media as political weapon

The explanation of this particular law and its provisions confirms that the Draft had been available on the official Government web site for a week and that there had not been any complaints, criticisms regarding its content and core. This is correct, however, the content of the Draft posted on Government's official web site did not contain the outlined and controversial provisions; instead it only consisted of parts concerning unauthorised posting, exposing, releasing or revealing of someone else's contents, portraits, video, audio recordings and footages, as well as provisions related to sexual harassment. Therefore, the remaining part was additionally annexed and added which clearly displayed untrue and insincere intentions and that the entire issue, in colloquial terms, seemed to be some sort of a ramp or cheat.

Naturally, no one complained against unauthorised and illegal recording and releasing (posting) of someone else's posts, since we also notably oppose and are obviously against this anomaly.

On the other hand, some fifteen days prior to Draft's open presenting, the Minister of Justice was in rather inapt and inefficient way replying and responding to questions asked by his colleagues who wanted to know what about the Law itself, that is, what constituent part of its contents was and who actually its author was as well.

It seemed and the general impression was that he had been either unaware or unfamiliar with issues that he later defended in front of the Assembly or he was simply deceiving general public.

“With local judiciary system, like we have in our country, criminalisation of defamation/libelling does gain a certain note of significance. It seems like giving kids real weapon to play with. Dodik alone, as genuine proponent of this law claims that incompetent people performing key functions in prosecutors’ office should not concern him, even though that fact that he may eventually “charge” them for new inquisition, might at the end be considered as both, his and our problem too“

After many complaints by locals and international officials, particularly journalists’ associations, politicians have been tending to relax and ease us, claiming that the disputed Law was not directed against media, but instead, its aim would rather concern a general situation in our society, especially situations related to “internet violence”, and then, it would accordingly attempt, during Assembly discussions, to solve and sort out all problems within “media community”.

The same community has for years been warning, that passing the Law on media would be necessary and required, because the law in force was written early in the 90s last century. Many doors by local institutions were consequently closed to us. Should they wanted, media field would have by now been settled many times, however, they have never had a true and genuine desire to do this because of a simple reason – it was because they had turned many media houses into their political and inferior subjects making them additionally their political means and weapons.

What does false media refer to? Media are considered true media houses as soon as they reach general public. The fact that their publishers, editors or the entrepreneurs of web site are unknown persons does not make them false media houses. These only represent false information that are deliberately and posted on purpose in their political fight with the purpose of having general public kept in fear from constant from constant assaults and to discredit political opponents.

The situation is similar with the administrators of certain social media groups, shallow people that share such information from obscure web pages that had in the first place been established and tailored for a single purpose – to provide public with false and incorrect information. Journalists should not be doing this; political propagandists should be doing this rather than journalists.

The question is why journalists are under pressure carrying burden of being treated as slanderers all the time, when we all know that it is the local politicians that impose vast impact and influence on media houses that the same journalists work for, including economic powerful figures that again, have political contacts, and additionally finance biased media houses?

Although, most issues in this respect concerned defamation, slander, libelling, insult and offences, there was rather sensitive provision and it concerned releasing, revealing, exposing, posting or sharing personal and family – based issues that at the end may have significant consequences to investigative reporting as part of professional journalism.

And yes, many will say that family is a sacred synonym and no one should be allowed to touch it, but they will also remain silent when it comes to conflict of interests and jobs in public enterprises, that is, jobs paid with public money, to members of families by many politicians that are still in power. How can journalists write or post about conflicts of interests since the legislator claims that: *“Truth or untruth of posted or shared content concerning personal or family life of any individual cannot be confirmed or proved unless in cases deriving from Article 208 of this Law”*.

After that, can anyone claim that son/father/uncle/daughter have been given jobs in public sector by their close relative?

4. Pressures on journalists – Nikola Morača, Banja Luka

Journalist of Euroblic and Srpskainfo portal Nikola Morača was interrogated at the Banja Luka Police Department because of the author's text about the rape of an eighteen-year-old girl, for which one person is suspected. In the presence of prosecutor Gordana Mijatović, the police inspectors on duty demanded that the journalist reveal "who gave him the information" about the person suspected of rape, and confiscated his mobile phone, even though they did not have a legal court order to do so.



If the Law defines that the truth of such claims cannot be proved and confirmed it could only mean one thing – sentence. It is this entire part which relates to criminal offence against reputation and honour for sharing personal or family issues and which specifies the biggest fine; up to BAM 120.000. 00.

Could real journalist be considered a slanderer? The answer is no, regardless to the fact that untruth sometimes emerges from good journalist's pen? Sometimes, authenticity of certain information cannot be checked due to time limited or due to information hiding by local institutional authorities and this often results in wrong interpretation. This is exactly why denials are there for, so they could correct particular articles, texts and posts, including apologies Etc. Finally, the "Law on Prohibition of Defamation" does exist for this reason in civil proceedings.

Again, we have to take courts and prosecutors into consideration, as far as this issue is concerned. With local judiciary system, like we have in our country, criminalisation of defamation/libelling does gain a certain note of significance. It seems like giving kids real weapon to play with. Dodik alone, as genuine proponent of this law claims that incompetent people performing key functions in prosecutors' office should not concern him, even though that fact that he may eventually "charge" them might at the end be considered as both, his and our problem too.

Members of the ruling coalition have been discussing about this issue, also criticising the law that they had to support and vote for, because no voting was conduct based on true consciences but instead the entire voting process was founded on interests. Do journalists have trust in judiciary system? No, they don't, especially after the case of Nikola Moraca and is there a better case and sample than this? He was accused of criminal felony regarded as the "Violation of classified proceedings", although he had never been an official (public) figure, nor had he ever taken part in the process he had been reporting on.

Prosecutor's Office requested his telephone confiscating due to suspicion that it may have been used in criminal felony. Therefore, for longer than one month our colleague was deprived of fundamental mean required for work and communications, namely his mobile phone.

5. Political pressures on journalists – Klix.ba and BN TV

After the portal Klix reported the statement he made at the press conference in Zagreb, Minister Konaković directly called out the journalist of this portal, Senjo Mahinić, saying that Mahinić is "intrigued to make a story" out of everything he (Konaković) "does personally". Milorad Dodik verbally attacked BN TV journalists at a press conference in the RS Government building. When asked by a journalist about the abuse of public functions, Dodik, instead of answering, told her that the word "fraud" should be next to her name. After journalist Vladimir Kovačević, who survived an assassination attempt in 2018, reacted to those insults, Dodik told him to "heal his frustrations elsewhere". After that, Dodik called BN journalists Tijana Milinković and Milan Kovač "paranoid" and prevented them from asking him more questions.

This destiny seems to be awaiting all journalists, but also any person may encounter this faith in BiH if the disputed Criminal Law with proposed and recommend amendments comes into force. When the "damaged" party submits a claim suspecting the emerging of criminal felony, the prosecutor brings a decision whether the investigation should be launched and what processed actions and procedures shall be used accordingly.

At the end, even if the verdict of release occurs, all those processing words shall display as classical haunting of media community and their members, which can be seen in most severe dictatorship regimes throughout the globe. Searches, confiscation of documents, PC's, phones or any other means that may be related to criminal felony committing, including confiscation of passports, waiting for indictment, trials, court proceeding duration Etc.

Cancel controversial provisions

Therefore, there shall be no true and genuine liberty in life, concerning both, life and/or work, even by changing jobs because many application processes consists and include the "Are there any legal charges pressed against you" question. We can forget about annual holiday leave with our families, including conference trips and special seminars anywhere abroad. 60 days are ahead of us. Those that supported and raised their hands for this Draft invite and encourage media staff to take active part in public debates, discussions and there is a dilemma in journalists' community whether they (journalists) should respond to these calls and invitations and whether this all makes sense, especially once we take no appeal, claim or depreciation forwarded, submitted or simply sent by journalists during past period had not been accepted and consequently passed.

Should anyone respond to invitation for public discussion and debates where people applaud to statements that journalists were "shapes" that smile where true Law proposer claims that there were indications destroy and damage their own property?

What is the most effective and efficient way that can be used in order to talk to a person that claims to understand problems concerning journalism; that journalists are underpaid and underestimated and on the other hand, would not miss the opportunity to put those journalists in the dock.

Sinisa Vukelic, our colleague, said: "If we accept the invitation and call, we shall go but with one attitude only – cancel controversial provisions from all procedures". Politicians in BiH, which is a commonly known fact, show very little solidarity for each other political trading seems to be important where each and every party involved in this process seek best and most convenient negotiating position.

Should negotiations fail, many of us shall, during the interrogation and questioning hear the words, that had been heard before in case of Nikola Moraca and these were: "It is time that we stopped you".

(The author of this text is Balkan Investigative Network - BIRN journalist)



Criminalisation of defamation in Republic of Srpska: The dark was officially lit

By: Elvir Padalović

„The Law on Criminalisation of Defamation and Insults is problematic by many issues because if this were an issue to be neglected, there would have not been much ado, including many ambassadors that have also been in contact with members of the National Assembly of Republic of Srpska and this is something nobody should be running away from“ (A comment by Nenad Stevandic, president of National Assembly of Republic of Srpska).

Ruling majority at the National Assembly of Republic of Srpska approved the Draft Law by which the defamation and insults would be re – introduced to Criminal Code of Republic of Srpska. Draft Law was approved by 49 votes for, while 21 of them voted against and no indecisive votes. It approval also staggered both local and international community.

Much disapproval, objections and opposing produced no affirmative result whatsoever, regarding the approval of this code. Despite opposing by wide journalists' community and regardless to their professional background and regardless to which editing office they may come from, despite disapproval by professional media community, representatives of international institutions, from EU to UN, this Draft Law (code) managed to pass its first step.

Draft Law actually went through first of many other steps, until it reached the official totalitarian stage and it is only a matter of time in which form it will become openly exposed and released in public. Soon after the approval of Draft Law (Code), media houses had, in their own ways, expressed their dissatisfaction and revolt by darkening the screens on their broadcasting sources, posting specialised banners on their internet (web site) pages, posting photos of broken pencils, bandaids covering lips (mouth) Etc. The message was symbolic, but at the same time it was very clear: there will be no negotiations regarding the law that may be used as foundation for imprisoning people, confiscating their telephones, PC's, Etc and this is exactly what this law might introduce in reality and practice.

Public interest (by politicians)

Although Miloš Bukejlović (minister of justice in the government of Republic of Srpska) had in his final addressing, claimed that the Draft Law (Code) was approved in order to provide protection of dignity, both physical and mental integrity and protection of personal and family life for all citizens. Delivering public speech by the member of ruling coalition did not seem to confirm the above listed benefits of the Draft Law (Code).



„This law is neither directed nor addressed against media not independent critics against governing official authorities, but INSTEAD it is directed and addressed against every single person who dares, one way or another, to criticise the existing governing system. It could happen to any citizen at any place including children birthday parties, on streets where two persons may witness against you and you could face serious accusations“

Members of the ruling political coalition have mostly focused on their personal interests and how certain defamation and slander had been directed against them and targeted their families. However, according to analysis conducted by our colleagues (professional journalists) in regard with the Draft Law (Code), public interest seemed to be avoided, that is, the justification of why this law was presented, as the law that would protect public interests in Republic of Srpska. It appears that public interests here have been altered with personal interests by ruling and individual politicians that seem to be disturbed by any critical opinion which might differ from their own.

BUKA (local web site) was sued and subject to legal charges pressed against them by Nikola Špirić for defamation and damaging person's honour and reputation. A four year legal dispute finally terminated in favour of BUKA magazine, pursuant to the approved Appeal of the Constitutional Court of Bosnia and Herzegovina.

According to amended verdict passed by Banja Luka District Court „right to freedom of expression is guaranteed by European Convention and is implemented not only for information and ideas that are widely and positively acceptable or those that are considered as non – insulting, non - offensive and those caused by ignorance, but is also implemented to those that insult, shock or disturb, because these are the requests of pluralism, tolerance and wide opinion without which there could be no true and genuine democratic society, so the requirements required to limit defendant's freedom of expression were not fully met and fulfilled“.

In other words, a politician, as public figure must display more tolerance, as far as his honour and reputation are concerned.

The question is how come this argumentation was not applied and conducted during the verdict passed by the same Banja Luka District Court when, Tanja Topic had sued Milorad Dodik, president of the Republic of Srpska, regarding defamation charges as well? Dodik referred to Mrs. Topic as confirmed agent of the BND (BND stands for Bundesnachrichtendienst; a foreign intelligence service of the Federal Republic of Germany), and called her a “foreign mercenary”. The court, among other things, confirmed that Tanja Topic was “public figure and an activist in nongovernmental sector, as well as “political analyst” and that it was undisputed that the first defendant (Milorad Dodik), his political activity and programs had constantly been criticised by “political analysts”, including public activity by the plaintiff (Tanja Topic), which meant that the plaintiff had failed to respect the right of the defendant as a person, and consequently, why would the defendant show any respect for the plaintiff in return”, the court officials stated.

On the other hand, in regular and normal states and countries, in case of defamation/slander emerging, politicians have the right to seek justice and protection of their rights. In such cases, one must be very cautious in terms of finding proper balance between the rights for freedom of speech and rights for protection of reputation and honour, in order to avoid the limits of freedom of expression.

However, courts in most European countries usually apply and implement more strict rules and standards regarding the process of proving defamation and slander, taking into consideration that politicians are often exposed in public and accordingly exposed to criticism as well. European courts, by their practice only show and demonstrate that they do support freedom of speech and opinion.

In other words, if you, our dear members of parliament, use arguments, in order to support and say YES to approve the Draft Law (Code) just so you could use your own examples and you should consequently know that criticism addressed against you shall be treated differently either. According to the above mentioned verdict (in case BUKA vs. Nikola Špirić), you were neither exempted from insults and offences, nor from disclosing the information that “shock or disturb”, because this is exactly what a DEMOCRATIC SOCIETY is all about. Without this principle everything becomes a single and narrow minded.

However, this may present us with yet another danger. Namely, approving and integrating defamation and slander into Criminal Code of Republic of Srpska, might become a powerful instrument used to trample and suffocate media freedom and liberties, including freedom in general and Freedom again.



This particular instrument could be withdrawn in moments when journalists and media face investigation processes, and furthermore when they face criminal prosecutions for defamation, slander or insults caused by their writing, posting or sharing and that may be considered inappropriate or unacceptable by political or other powerful public figures. This is already happening through civil proceedings, but by entering the field of criminal legislation, things become more serious and more dangerous.

Bandaids covering the mouth

In order to avoid misuses of defamation aimed to scare and frighten media and critics of governing officials, it is crucial to ensure righteous and unbiased judiciary system that would righteously proceed in defamation and slander cases, without imposed pressure, influence or impact by politicians or other public figures. This accordingly is where we encounter the ultimate argument AGAINST this controversial Law.

Namely, criminalisation of defamation and slander, as well as other forms and shapes of expression of opinion in the country where journalists are insulted and offended on daily basis and where politicians hope and wish that journalists’ “hearts would stop” and in country which, according to all reports covering human rights field and media freedoms and liberties, is drowning deeper and deeper, may be used as weapon to suffocate media freedoms and liberties, as well as instrument used to choke all criticism addressed and directed against governing official authorities.

Defamation and slander, pursuant to Criminal Code of Republic of Srpska is a dangerous tool that may put bandaid on mouth to everyone who thinks differently than governing official authorities.

And yes, this Law (Code) is not directed against media only, but also against every single individual and this actually represents an argumentation that is mostly used – this law is neither directed against media not independent critics against governing official authorities, but INSTEAD against every single person who dares, one way or another, to criticise the existing governing system. It could happen to any citizen at any place including children birthday parties, on streets where two persons may witness against you and you could face serious accusations.

There is a potential danger that, if you post something (on your social media page) that someone else may consider as an insult or defamation (slander) and let's say that you posted this particular content by using your mobile phone, this device of yours may easily get confiscated for "investigative" purposes for long period of time. The question is what will happen if you indeed become a part of the entire process because you will not be able to travel outside your country and apply for jobs (vacancies) either; basically you will practically not be able to do anything and this is the whole point here. The point is to frighten an individual to that extent so she or he would not even think, ever again, about writing, posting, discolouring, and revealing, releasing, exposing, sharing or even saying anything in public that may put them in trouble which altogether represents this as the second last step of totalitarian system. Severe fines or imprisoning represent last step in this process.

In one word and because of written word, our future may have no lights or brightness at all.

Criminalisation of defamation and insult has just turned the dark on in our country. Good night.

(The author of this article/text is BUKA magazine journalist and editor)

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