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MONITORING OF DEFAMATION ACTIONS LITIGATIONS

SKOPJE, MARCH 2014

USAID PROGRAM FOR STRENGTHENING INDEPENDENT MEDIA IN MACEDONIA,
PROJECT FOR RESPONSIBLE MEDIA AND MEDIA LEGAL REFORM

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MONITORING OF DEFAMATION ACTIONS LITIGATIONS

REPORT NO. 1

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INTRODUCTION

The Media Development Center, under the auspices of the USAID Programme for Strengthening of Independent Media in the Republic of Macedonia and the Project for Media Legal Reform and Responsible Media, monitored the civil litigation cases tried under the Law on Civil Liability for Defamation in the period from February 1, 2013 and February 28, 2014.

With the adoption of the Law on Civil Liability for Defamation in November 2013, defamation was decriminalized and moved from criminal to civil courts. The media and expert communities praised the decriminalisation of defamation. However, they did point out that the new legal solution offers numerous weaknesses that can have negative effect on freedom of expression and promote self-censorship. In 2012, the Media Development Center prepared and published the “Analysis of the Draft-Law on Civil Liability for Defamation”¹, in which it points out at a number of weak points in the offered legal solution. After the adoption of the Law, in cooperation with the Front for Freedom of Expression, MDC filed an initiative to the Constitutional Court of the Republic of Macedonia², in April 2013, to challenge the constitutionality of certain provisions of the law. Eleven months later, the Constitutional Court has not yet taken the Initiative into Consideration.

In view of the importance that the Law on Civil Liability for Defamation has for freedom of expression and freedom of media in the Republic of Macedonia, and the uncertainties surrounding the effects of its implementation, the

Media Development Center conducts a continuous monitoring of court defamation actions that involve journalists, editors and media outlets as parties of litigation, but also the cases in which state and public officials are involved as parties of litigation.

The monitoring focuses on:

- The implementation of the Law on Civil Liability for Defamation;
- The manner in which the judges implement the material and procedural law in litigation procedures;
- The implementation of the case law of the European Court of Human Rights, the European Convention for Protection of Human Rights and Fundamental Freedoms, and the other international documents and principles on protection of freedom of expression;
- The work of the Court’s clerks and administrative services.

Over the course of the monitoring, MDC maintained a generally (with some exceptions) good communication and cooperation with the Chairman of the Basic Court Skopje 2 Skopje, the competent judges and the offices of the Court.

This Report covers primarily the defamation actions that involve journalists, editors and media outlets. Over a period of 13 months, at the Basic Court Skopje 2, Skopje, the Media Development Center monitored 45 defamation action cases³ involving journalists, editors and media outlets. Journalists, editors or media outlets appear as plaintiffs in just seven cases. In all other cases the journalists, editors and media outlets

¹ www.mdc.org.mk

² www.mdc.org.mk

³ Annex 1: Monitored Defamation Cases



were defendants. By the time of conclusion of this report, a total of 15 cases were concluded, but the verdicts are not yet definitive and appeals have been filed. Of the total number of monitored cases, 26 were transferred from criminal to civil court after the adoption of the Law on Civil Liability for Defamation.

The defamation cases are presided by three judges: Jovanka Spirovska Paneva, Vesna Kalkovska and Nuhi Rustemi.

Having in mind the fact that, up to the moment of writing of this report, no definitive

judgement was issued in any of the cases, MDC can't engage in full analysis of strong and weak points of the implementation of the Law on Civil Liability for Defamation. The definitive judgments are the key factor for a comprehensive analysis of the implementation of the material law and the international documents, principles, practices and standards. The case law of the Strasbourg Court also indicates that no comments should be made on judgements that are not definitive because the proceedings have not concludes and any public comment could constitute an attempt to pressure the courts.

JUDGES' CONDUCT AND APPROACH TO DEFAMATION CASES

The Media Development Center, under the auspices of this monitoring, follows the implementation of the Law on Civil Liability for Defamation and the conduct and actions of the judges in the implementation of material and procedural law in the trial of cases, as well as the application of the case law of the European Court of Human Rights, the European Convention of Human Rights and Fundamental Freedoms, and other international documents and principles for protection of freedom of expression.

At the time of writing of this report, of the cases that are subject to monitoring, the court of first instance has completed a total of 15 trials⁴. The cases completed in the first instance don't offer a conclusion if the judges have sufficiently and essentially implemented the inter-

national documents, principles and standards when making their judgments, or the manner of implementation of material law, having in mind the fact that there are definitive judgments so far.

The findings of the monitoring indicate that the judges apply the case law of the European Court of Human Rights and the European Convention. However, only after definitive judgments are made we may be able to see if the case law of ECHR and the Convention are applied properly and consistently.

In general, the judges presiding over the cases that were subject to MDC's monitoring provided equal opportunity to the litigants to submit and present the evidence of the case and allowed them the right to speak in hearings. Therefore, we could conclude that the Court mostly sticks to the provisions of Article

⁴ Annex 2: Completed cases in the Court of First Instance

6 of the European Convention on Human Rights and Fundamental Freedoms which protects the right to a fair trial. There were some exceptions, i.e. a number of trials in which the actions of the Court took different course, allowed for accelerated proceedings, shortened the schedule of hearings and allowed for some trials to be concluded in a more expedite manner. Such “accelerations” were noted in cases when plaintiffs were high-ranking government officials. For example, the case of Prime Minister Nikola Gruevski vs. Tito Petkovski, or the case of Minister of Interior Gordana Jankulovska vs. Petre Silegov. The Gruevski vs. Petkovski case was concluded in an express fashion, in a single hearing. In comparison, the other cases need an average of five hearings before a verdict is issued. MDC will continue to monitor the work of the judges closely to see if they will continue the trend to give priority to trials that involve state officials, especially in view of the fact that the case law of the Strasbourg Court prescribes that holders of public offices should have higher threshold for defamation cases, which is not the case in Macedonia.

In the monitoring of the cases, we determined that only a fraction of them were renewed trials which were previously (before the adoption of the Law on Civil Liability for Defamation) tried in a criminal procedure. Of the total of 45 cases, 26 (55,5%) were renewed cases transferred from criminal procedures. In a number of instances, the judges charged the parties in the trials to present the decisions that terminated the criminal procedures in order to determine if they observed the prescribed 30-day term to file a lawsuit under the Law on Civil Liability for Defamation. Due to differences in the determination of responsibility of the defendants in civic procedure, which offers different definition of defamation, different grounds for release from responsibility and other passive parties, some criminal defamation actions were not renewed in civil defamation actions. In a number of cases,

the charges were revoked or the parties settled out of court.

Such were the following cases: P4 60/13a – The Health Insurance Fund of the Republic of Macedonia vs. Jadranka Kostova; P4 35/13a – Kanal 5 TV vs. Branko Gerovski; P4 71/13a – Kirača Trajkovska vs. Goran Momirovski; P4 80/13a – Gjorge Vukov vs. Valentina Stojančevska, etc.

In several cases renewed in civic procedure, the plaintiffs based their cases on the evidence presented in the criminal trial. That practice to present evidence already presented in criminal procedures is illegal, knowing that evidence presented in criminal trial can't be used again in civil procedure. One example in which the plaintiff based his case on evidence presented in criminal trial is the case P4-a 152/13, Slavčo Despotov vs. Branko Geroski.

MDC will continue to monitor carefully if the judges will hear and assess the evidence already presented in criminal trials in the hearings and when making their judgments, or will act in accordance with the positive legislation.

Of the total of 14 completed cases that were covered by the monitoring of the Media Development Center, the court found the defendants liable for defamation in three cases: P4 57/13, Kanal 5 TV vs. Vesna Kovačevska-Trpčevska (former employee of Kanal 5 TV); P4 46/13, Vančo Takovski vs. Goran Momirovski and Kanal 5 TV; and P4 30/13, Sašo Mijalkov vs. „Fokus“ weekly, Jadranka Kostova, Vlado Apostolov and Igor Ilievski.

In the trials concluded at the Basic Court Skopje 2, Skopje, in two cases the court awarded compensations for non-pecuniary damages:

P4 57/13a, Kanal 5 TV vs. Vesna Kovačevska Trpčevska. In that case, the Court awarded compensations for non-pecuniary damages in the amount of 120,000.00 Denars, and

P4 30/13a, Sašo Mijalkov vs. “Fokus“, Jadranka Kostova, Vlado Apostolov and Igor Ilievski. In that case, the editor Jadranka Kostova was charged to pay non-pecuniary damages in the



amount of €5,000.00, and the journalist Vlado Apostolov was charged to pay non-pecuniary damages in the amount of €1,000.00.

MDC finds the awarded compensations for non-pecuniary damages to be high, although they fall well within the legally prescribed amounts. We could freely say that the high compensations are a major weakness of the Law on Civil Liability for Defamation, a fact pointed out by MDC and the media community during the process of drafting and adoption of the Law. The Law prescribes the maximum amounts of compensations in defamation cases to €2,000.00 for the journalist, €10,000.00 for the editor and €15,000.00 for the media outlet. If one person sues for defamation a journalist, an editor and a media outlet, the court can award total non-pecuniary damages in the amount of €27,000. The maximum limits for non-pecuniary damages are set high, compared to the media industry income and don't take into account the specific characteristics of individual types of media existing in the market. For example, a national TV broadcaster can afford to pay the compensations and avoid serious disturbance of current operations, but a local radio broadcaster or a smaller media outlet, a newspaper or an internet portal, will hardly be able to survive the obligation to pay two compensations. Therefore, such high limits could have a "chilling effect" and promote self-censorship, and be considered a punishment instead of compensation for suffered damages, which is in collision with the fundamental principles on which the Law should be based, especially the principle that the Law doesn't exist to punish the party that made the defamatory statement, but to compensate the suffered damages and heal the injuries of the plaintiff.⁵

While the decriminalisation of defamation allowed for more expedite and shorter trials in civil courts, it didn't make the cases more economical. Compared to the court fees charged by the criminal court, the lawsuit, judgment and

⁵ Analysis of the Draft-Law on Civil Liability for Defamation, MDC 2012

appeal fees charged by the civil courts are dramatically higher⁶. That is an additional burden on the journalists, editors and the media outlets that are already faced with great numbers of lawsuits and high prescribed compensations for non-pecuniary damages. They face the dilemma whether it would be better for them to pay the compensation and refrain from appeal, or appeal and risk to lose and suffer even greater costs. Furthermore, if they lose the case, they will also be charged to pay the costs incurred by the plaintiff.

Regarding the implementation of process law, the conclusion could be made that the judges tend to be more lenient towards the plaintiffs and no stick fully to the letter of Article 101, Paragraph 1 of the Law on Civil Procedure, which prescribes that briefs and lawsuits filed by an attorney, which are unintelligible or fail to contain all the necessary information as prescribed in Article 98 of the Law, shall be rejected. The judges justify such actions with the novelty of the defamation action procedures which are completely different from the criminal defamation cases. One example is found in case P4 30/13a, Saso Mijalkov vs. "Fokus", Jadranka Kostova and others. In spite of the insistence of the defendants' attorneys that the lawsuit should be rejected as incomplete – the lawsuit, for instance, didn't list the address or the Unique Master Citizen Number of the plaintiff - the judge decided to continue with the procedures, noting that, in his view, a submission was made that offers

⁶ The fee for submission of criminal lawsuit at the Basic Court Skopje 1, Skopje, was set at 800 MKD, regardless of the amount of compensations sought, while the fee for submission of civil lawsuit at the Basic Court Skopje 2, Skopje, depends on the amounts of the compensations sought, as follows: from 0 to 10,000.00 MDK, the fee is set 480.00 MKD; from 10,000.00 to 20,000.00 MKD the fee is set at 800.00 MKD; from 20,000.00 to 40,000.00 MKD the fee is set at 1,200.00 MKD; from 40,000.00 to 60,000.00 MKD the fee is set at 1,600.00 MKD; from 60,000.00 to 100,000.00 MKD the fee is set at 2,000.00 MKD; and over 100,000.00 MKD, 2% of the difference to the total amount are added to the prescribed fee of 2,000.00 MKD for amounts of up to 100,000.00 MKD; but the maximum fee is limited to 48,000.00 MKD. The fees for appeals are set at double the lawsuit fees.

more precise information about the lawsuit. However, when the lawyers of the defendants asked to see the said submission in the hearing, the judge responded that it was not for them to assess if a lawsuit brief was complete and that, if they believed that the procedural law was incorrectly applied, they could file a complaint.

Although the Law on Civil Liability for Defamation prescribes that urgent proceedings for defamation cases, the findings of the monitoring so far indicate that, in certain cases, they are excessively delayed, mostly because of failure to serve summons to the defendants. In such situations, the judges didn't accelerate the process with decision to serve the summons via the Court's notice board or to appoint a temporary custodian for the defendant.

Such were the following cases: P4 108/13a, Citizens for European Macedonia (Macedonian abbreviation GEM) vs. Aleksandar Bicikliski; and P4 45/13a, "Toplifikacija AD" Skopje vs. Ivona Talevska. In both cases, although the defendants are well-known public personalities, they didn't accept the summons served by the Court's courier service. Attempts were made to serve them the summons in their respective work-places, but to no avail. It remains unclear why the judges, instead of appointing temporary custodian and publish the summons on the announcement board, insist unnecessarily on new attempts to serve the summons to the parties involved in a case.

For the duration of the monitoring, the sole exception from the rule of public hearings was applied to the cases of Sasko Kedev and Ganka Samoilovska Cvetanova vs. Sonja Kramarska, the editor-in-chief of "Utrinski vesnik" daily. On a request of the lawyer of the plaintiffs, the judge decided to close the whole procedure to the public. In the explanation of that decision, the presiding judge said that evidence and facts may be presented in the proceedings which, if released to the public, could constitute a violation of plaintiffs' privacy. The Law on Civil Pro-

cedure, in Article 293⁷, allows for the public to be excluded from the hearings in certain cases. However, since that case has not been concluded with a definitive judgment, MDC cannot, at this time, comment if the decision of the presiding judge was justified or not. MDC will continue to follow that and all other cases, with the aim to analyse the justification of the application of that legal provision in a future report.

⁷ Article 293 of the Law on Civil Procedure:

- (1) The Council can exempt the public from the main hearing or a part of the main hearing if such decision is deemed necessary to preserve an official, business secret or privacy of the litigants, the interests of public order or morality.
- (2) The Council may exempt the public in cases when measures to maintain order in the courtroom prescribed by this Law prove to be insufficient to ensure uninterrupted hearing.



COURT OFFICES

The monitoring shows that some clerical offices of the Court didn't perform their tasks and obligations fully, with negative effect on litigation procedures.

SERVING THE SUMMONS

The Court clerk's office, for example, often fails to serve the summons for hearings to the involved parties. It is symptomatic that failed serving of summons usually happens in cases that involve state officials and other public personalities, for which the address to which the summons should be presented is easy to find. Court clerks regularly report that serving of summons was incomplete and almost never state that parties refuse to receive the summons. With such conduct, they violate the provisions of Article 139 of the Law on Civil Procedure which states: "If a person to whom a notice of summons is addressed, or an adult member of his or her household, or an authorized official or employee of a state body or a legal entity, without justified reason, refuses to accept the summons, the courier shall leave the notice of summons in the home or at the work-place of the addressee, or shall nail the summons to the door of the apartment or the office. In the receipt, the courier shall enter the day, the hour and the reason for the refusal of acceptance, as well as the location in which the summons were left, and the serving of notice shall be considered to have taken place".

Many hearings were unnecessarily delayed due to tardiness on behalf of court clerks and courier services, i.e. of the total of 152 hearings,

53 (34.8%) were postponed because of incomplete serving of summons.

Also, because of incomplete serving of summons, the plaintiffs have to suffer unnecessary costs, such as additional costs of getting the information on the exact address of the defendants from the Ministry of Interior, or the costs of serving summons through public notaries and executors.

OFFICE OF THE COURT CLERK

Our communication with the clerks that work in the Office of the Court Clerk of the Basic Court Skopje 2, Skopje, leads to the conclusion that they are not well informed about the positive legislation and regulations in the Republic of Macedonia. For example, the clerks refused to provide MDC with information on scheduled hearings in cases tried under the Law on Civil Liability for Defamation that involve journalists, editors and media outlets, believing that it could lead to violation of Article 2 (paragraph 1) and Article 23 of the Law on Protection of Personal Data.

We find that explanation to be unfounded because of the fact that MDC didn't request all the information on the persons that appear as parties in the litigations. MDC only sought the information if one of the litigants was a journalist, editor or media outlet. In addition, all trials, in accordance with the Law on Civil Procedure, are public and the people present in the courtroom will learn the names of the involved par-

ties, their occupations and professional qualifications.

COURT ADMINISTRATION AND PUBLIC RELATIONS OFFICE

The communication we maintained with the Court Administration and the Public Relations Office also indicate certain omissions in the performance of their tasks. During the monitored period, the Court's website was not updated regularly with the new information on scheduled hearings. Due to the fact that that section of the website was updated once in three months, the information it offered was incomplete, retroactive and with many omissions. For example, the website was updated on July 1, 2013 with infor-

mation on scheduled hearings through the end of September, and the next updating was conducted in November 2013. The website was also irregularly updated with information on the ongoing cases and the judgements and decision of the judges in the course of individual cases were published late or weren't published at all.

Regarding the working conditions and proper conduct of procedures, the monitoring found that almost all courtrooms lack proper equipment for reviewing of audio and video footage, so that the judges had to assess and appraise such evidence only on basis of transcripts provided by the parties of the litigation. Also, several courtrooms don't have the proper equipment to meet their legal obligation to record the audio from the hearings.



CONCLUSIONS AND RECOMMENDATIONS

1. Although the Law on Civil Liability for Defamation prescribes that defamation actions are urgent, almost 15 months since its adoption, there were no definitive judgments in cases that involve journalists, editors and media outlets as litigants. That is a serious obstacle in the effort to make concrete conclusions and analysis of the strong and weak aspects of the Law and its implementation.
2. The monitoring found that certain cases are subject to unnecessary delays, mostly because of failure to serve the summons to the defendants in the respective cases. In such situations, the judges didn't accelerate the process with decision to serve the summons via the Court's notice board or to appoint a temporary custodian for the defendant. It happens even in cases when defendants are public personalities well-known to the public. They refuse to receive the summons served by the Court's couriers. Attempts were made to serve them the summons in their respective work-places, but to no avail. It remains unclear why the judges, instead of appointing temporary custodian and publish the summons on the announcement board, insist unnecessarily on new attempts to serve the summons to the parties involved in a case.
3. In general, the judges presiding with the trials offer equal conditions to all parties in a litigation. There were some exceptions, which were indicative, i.e. a number of trials in which the actions of the Court took different course, allowed for accelerated proceedings, shortened the schedule of hearings and allowed for some trials to be concluded in a more expedite manner. Such "accelerations" were noted in cases when plaintiffs were high-ranking government officials. MDC will continue to monitor the work of the judges closely to see if they will continue the trend to give priority to trials that involve state officials, especially in view of the fact that the case law of the Strasbourg Court prescribes that holders of public offices should have higher threshold for defamation cases, which is not the case in Macedonia.
4. In the monitoring of the cases, we determined that only a fraction of them were renewed trials which were previously tried in a criminal procedure. Of the total of 45 cases, 26 (55%) were renewed cases transferred from criminal procedures. In several cases renewed in civic procedure, the plaintiffs based their cases on the evidence presented in the criminal trial. That practice to present evidence already presented in criminal procedures is illegal, knowing that evidence presented in criminal trial can't be used again in civil procedure. MDC will continue to monitor carefully if the judges will hear and assess the evidence already presented in criminal trials in the hearings and when making their judgments, or will act in accordance with the positive legislation.
5. So far, the awarded compensations for non-pecuniary damages are extraordinarily high, although they fall well within the legally prescribed amounts. We could freely say that the high compensations are a major weakness of the Law on Civil Liability for Defamation, a fact pointed out

by MDC and the media community during the process of drafting and adoption of the Law. The maximum limits for non-pecuniary damages are set high, compared to the media industry income and don't take into account the specific characteristics of individual types of media existing in the market. Therefore, such high limits could have a "chilling effect" and be considered a punishment instead of compensation for suffered damages, which is in collision with the fundamental principles on which the Law should be based, especially the principle that the Law doesn't exist to punish the party that made the defamatory statement, but to compensate the suffered damages and heal the injuries of the plaintiff.

6. An additional burden on the journalists and the media were the high court fees charged in the civil defamation actions. Compared to the court fees charged by the criminal court, the lawsuit, judgment and appeal fees charged by the civil courts are dramatically higher. Therefore, the journalists face the dilemma whether it would be better for them to pay the compensation and refrain from appeal, or appeal and risk to lose and suffer even greater costs.
7. In the making of judgments in the determination of liability for defamation the judges should adhere to the principle of "awarding non-monetary compensations", i.e. to give priority to instruments of non-monetary compensations, if they should restore, to a significant level, the reputation of the plaintiff. Monetary compensations of damages should apply only to those cases in which non-monetary compensations shall not suffice to compensate for the damages caused by the defamatory statements. The judges should also adhere to the principle of "monetary compensations for damages", i.e. when determining the amount of monetary compensations, they should take into consideration the "chilling effect" as a form

that promotes self-censorship. Also, the awarded damages should be proportionate to the caused damages and should not exceed the usual compensations awarded in other civil procedures. The awarded non-pecuniary damages and compensations for losses suffered due to defamatory statements should correspond to the real determined damages.

8. Regarding the implementation of process law, the conclusion could be made that the judges tend to be more lenient towards the plaintiffs and no stick fully to the letter of Article 101, Paragraph 1 of the Law on Civil Procedure, which prescribes that briefs and lawsuits filed by an attorney, which are unintelligible or fail to contain all the necessary information as prescribed in Article 98 of the Law, shall be rejected.
9. The monitoring shows that some clerical offices of the Court didn't perform their tasks and obligations fully, with negative effect on litigation procedures. The Court clerk's office, for example, often fails to serve the summons for hearings to the involved parties. It is symptomatic that failed serving of summons usually happens in cases that involve state officials and other public personalities, for which the address to which the summons should be presented is easy to find. Court clerks regularly report that serving of summons was incomplete and almost never state that parties refuse to receive the summons. To avoid unnecessary delays of hearings, MDC believes that the Court's Courier Office should be reorganized and should get the necessary technical equipment for electronic serving of summons, briefs and other documents. The judges, on the other hand, should not stick to certain manners of serving the summons, but should apply other manners of serving prescribed in the Law on Civil Procedure, such as serving of summons by



registered mail, through execution office, public notary, etc.

10. Our communication with the clerks that work in the Office of the Court Clerk of the Basic Court Skopje 2, Skopje, leads to the conclusion that they are not well informed about the positive legislation and regulations in the Republic of Macedonia. MDC believes that court clerks need training on the positive legislation in the Republic of Macedonia, especially the Law on Protection of Personal Data.
11. The Court Administration and the Public Relations Office should update the Court's website timely and regularly. This is especially true of the section on scheduled hearings and in terms of the legal obligation for timely publication of the judgements adopted by the judges.
12. Regarding the working conditions and proper conduct of procedures, the monitoring found that almost all courtrooms lack proper equipment for reviewing of audio and video footage, so that the judges had to assess and appraise such evidence only on basis of transcripts provided by the parties of the litigation. In order to be able to implement the provisions of the Law on Civil Procedure that prescribe that all hearings should be recorded, and to be able to listen to audio recordings submitted as evidence in individual cases, the Court should ensure that the necessary technical equipment is installed in all courtrooms.

ANNEX 1

MONITORED DEFAMATION CASES

Case	Judge	Litigants
1. P4 47/13a	Jovanka S. Paneva	Srgjan Kerim vs. Jadranka Kostova and "Fokus"
2. P4 59/13a	Jovanka S. Paneva	IVZ vs. Atanas Kirovski
3. P4 76/13a	Jovanka S. Paneva	Municipality of Aerodrom vs. Branko Gerovski, Aleksandar Todorovski, Gordana Miloševska Veljanovska and „Plus Produkcija“
4. P4 62/3a	Jovanka S. Paneva	Marjan Načevski vs. Goran Mihajlovski, Toni Apostolski, Ljupčo Popovski and Lidija Bogatinova
5. P4 115/13a	Jovanka S. Paneva	Stojanče Angelov vs. Dragan Pavlović Latas, "Sitel TV" and Ivan Kirovski
6. P4 119/13a	Jovanka S. Paneva	Ivan Mirčevski vs. Branko Geroski
7. P4 46/13a	Jovanka S. Paneva	Vančo Takovski vs. Goran Momirovski and "Kanal 5 TV"
8. P4 30/13a	Jovanka S. Paneva	Sašo Mijalkov vs. "Fokus", Jadranka Kostova, Vlado Apostolov and Igor Ilievski
9. P4-93/13a	Jovanka S. Paneva	Sašo Joksimovski vs. Snežana Lupevska
10. P4 34/13a	Jovanka S. Paneva	Bojo Andreovski vs. Jadranka Kostova
11. P4 89/13a	Jovanka S. Paneva	Dragan Pavlović Latas vs. Goran Mitrevski
12. P4 81/13a	Jovanka S. Paneva	Melita Rakičević vs. Goran Mihajlovski and Milica Džarovska
13. P4 44/13a	Jovanka S. Paneva	"Toplifkacija" vs. Robert Popovski
14. P4 103/13a	Jovanka S. Paneva	Shukrete Beluli Salihu vs. Naser Pajaziti



15.	P4 99/13a	Jovanka S. Paneva	Milenko Nedelkovski vs. Biljana Sekulovska and Žarko Trajanovski
16.	P4 90/13a	Jovanka S. Paneva	GEM (Branko Geroski, Nikola Gelevski, Roberto Beličanec, Žarko Trajanovski and Vladimir Milčin) vs. Zoran Stavrevski
17.	P4 57/13a	Jovanka S. Paneva	Kanal 5 TV vs. Vesna Kovačevska Trpčevska
18.	P4 69/13a	Nuhi Rustemi	Ivan Mirčevski vs. Aco Kabranov and Zoran Vasilevski
19.	P4 71/13a	Jovanka S. Paneva	Kiraca Trajkovska vs. Goran Momirovski
20.	P4a 152/13a	Jovanka S. Paneva	Slavčo Despotov vs. Branko Geroski
21.	P4 183/13a	Jovanka S. Paneva	Stanka Kirovska vs. Žaklina Cvetkovska
22.	P4a 35/13	Vesna Kalkovska	Kanal 5 TV vs. Branko Gerovski and “Article 16” Civil Association
23.	P4a 39/13	Vesna Kalkovska	Stojanče Angelov vs. Dragan Pavlović Latas
24.	P4 38/13a	Vesna Kalkovska	Gjorgi Trenkovski vs. Kristina Mačkić
25.	P4 45/13	Vesna Kalkovska	“Toplifkacija” vs. Ivona Talevska
26.	P4 60/13a	Vesna Kalkovska	The Health Insurance Fund vs. Jadranka Kostova
27.	P4 85/13a	Vesna Kalkovska	Anita Begova vs. Jadranka Kostova
28.	P4 100/13a	Vesna Kalkovska	Dejan Šepelić, Toni Naumov and “Kredit net” DOOEL vs. Snežana Lupevska and Kanal 5 TV
29.	P4 91/13a	Vesna Kalkovska	Branko Geroski and 14 other persons vs. Boban Bogdanovski Andrevski
30.	P4 108/13a	Vesna Kalkovska	GEM (Branko Geroski, Nikola Gelevski, Roberto Beličanec, Žarko Trajanovski and Vladimir Milčin) vs. Aleksandar Bičikliski
31.	P4 77/13a	Vesna Kalkovska	Dragan Pavlović Latas vs. Saše Dimovski

32.	P4 136/13a	Vesna Kalkovska	Igor Serafimovski vs. Ljubiša Arsić
33.	P4 143/13a	Vesna Kalkovska	GAMA AD Skopje vs. Faktor.mk portal
34.	P4 137/13a	Vesna Kalkovska	SEAVUS DOO Skopje vs. Risto Popovski, Dzvezdan Georgievski and “Globus Media System”
35.	P4 113/13a	Vesna Kalkovska	Blagica Miladinovska Coneva vs. Saše Dimovski and Jadranka Kostova
36.	P4 69/13a	Vesna Kalkovska	Ivan Mirčevski vs. Aco Kabranov, “Glinka” and Zoran Vasilevski
37.	P4 50/13a	Vesna Kalkovska	Milenko Nedelkovski vs. Predrag Petrović and Razme Najdovski
38.	P4 194/13a	Vesna Kalkovska	Predrag Petrović vs. Milenko Nedelkovski
39.	P4a 125/13	Nuhi Rustemi	Ganka Cvetanovska vs. Sonja Kramarska and Valentina Todorovska
40.	P4 48/13a	Nuhi Rustemi	Zoran Stefanovski vs. Dragan Pavlović Latas
41.	P4a 139/13	Nuhi Rustemi	Vasil Pišev vs. Zoran Andonovski and Iskra Opetčeska
42.	P4a 133/13	Nuhi Rustemi	Petar Arsovski vs. Milenko Nedelkovski
43.	P4 58/13a	Nuhi Rustemi	Kanal 5 TV vs. Sky.mk, Jovan Sokolovski
44.	P4 80/13a	Nuhi Rustemi	Gjorgi Vukov vs. Valentina Stojančeska
45.	P4 126/13a	Nuhi Rustemi	Blagojka Risteska vs. Sašo Kokalanov

ANNEX 2

COMPLETED PROCEDURES
IN THE COURT OF FIRST INSTANCE

Case	Judge	Litigants
1. P4 47/13a	Jovanka S. Paneva	Srgjan Kerim vs. Jadranka Kostova and “Fokus”
2. P4 59/13a	Jovanka S. Paneva	IVZ vs. Atanas Kirovski
3. P4 62/3a	Jovanka S. Paneva	Marjan Načevski vs. Goran Mihajlovski, Toni Apostolski, Ljupčo Popovski and Lidija Bogatinova
4. P4 46/13a	Jovanka S. Paneva	Vančo Takovski vs. Goran Momirovski and “Kanal 5 TV”
5. P4 30/13a	Jovanka S. Paneva	Sašo Mijalkov vs. “Fokus“, Jadranka Kostova, Vlado Apostolov and Igor Ilievski
6. P4-93/13a	Jovanka S. Paneva	Sašo Joksimovski vs. Snežana Lupevska
7. P4 34/13a	Jovanka S. Paneva	Bojo Andrevski vs. Jadranka Kostova “Toplifkacija”
8. P4 44/13a	Jovanka S. Paneva	vs. Robert Popovski
9. P4 57/13a	Jovanka S. Paneva	Kanal 5 TV vs. Vesna Kovačevska Trpčevska
10. P4 71/13a	Jovanka S. Paneva	Kiraca Trajkovska vs. Goran Momirovski
11. P4a 35/13	Vesna Kalkovska	Kanal 5 TV vs. Branko Gerovski and “Article 16” Civil Association
12. P4a 39/13	Vesna Kalkovska	Stojanče Angelov vs. Dragan Pavlović Latas
13. P4 60/13a	Vesna Kalkovska	Health Insurance Fund vs. Jadranka Kostova
14. P4 80/13a	Nuhi Rustemi	Gjorgi Vukov vs. Valentina Stojančeska
15. P4 126/13a	Nuhi Rustemi	Blagojka Risteska vs. Sašo Kokalanov

ANNEX 3

DEBATE: „WHAT DID THE DECRIMINALISATION OF DEFAMATION BRING TO THE TABLE?“

(Discussions and interventions)

The Media Development Center (MDC), under the auspices of the USAID Project for Media Legal Reform and Responsible Media organized, on March 13, 2013, at the Journalists' Club in Skopje, the debate “What did the Decriminalisation of Defamation Bring to the Table?”

The debate was moderated by journalist **Saše Dimovski**, with participation by panelists **Filip Medarski**, attorney-at-law; **Jadranka Kostova**, Editor-in-chief of “Fokus” Magazine; and **Naser Selmani**, President of the Association of Journalists of Macedonia (AJM). A number of journalists, former judges, media and human rights experts, and representatives of international institutions and members of the diplomatic corps participated in the debate, which focused on the findings of the first Report from the monitoring of defamation action cases, conducted by MDC in the period February 1, 2013 to February 28, 2014.

Although invited, the President of the Basic Court Skopje 2 – Skopje and the judges that hear the defamation action cases, didn't come to the debate.

Most participants of the debate concluded that the adoption of the Law on Civil Liability for Defamation in November 2013 didn't achieve the purported goal of the decriminalization of defamation.

They noted that the limits for non-pecuniary compensations were set too high and are not aligned to the situation in the market and the

financial conditions of Macedonian media. If a media (especially the smaller operations) were sentenced to pay the maximum allowed non-pecuniary damages of €27,000, it would mean its certain “death”, it would have to fold, which may be the intended aim of the legislators. For that reason, it was emphasized in the debate, AJM and the other media associations should work towards implementation of changes to the Law, especially in the provisions that define the limits for non-pecuniary damages that can be awarded. It was noted that the limit should not exceed 10% of the amounts listed in the existing Law.

Another problem faced by the journalists are the high court fees, which can reach up to 48,000 MKD (app. €800) to file a lawsuit and 96,000 MKD (app. €1,600) for appeals. If we add the costs of legal defense, the journalists face a very real dilemma whether they can afford an appeal or if should accept the decision in the first instance, even when they lose the case. Also, due to the high limits set for the non-pecuniary compensations, the Law is repressive, promotes self-censorship and prior censorship.

The experts in the area of human rights pointed out at another issue with the Law, i.e. the possibility given to state institutions to file defamation actions, which is against the case law of the European Court of Human Rights in Strasbourg. Other noted problems were the presentation of expert testimonies of psychiatrists as evidence in the trials, as basis for the demands for compensation of non-pecuniary dam-



ages. The experts believe that expert psychiatric testimonies should not be accepted as evidence because the Law protects the honor and reputation as social goods, and there is no need for the Court to deliberate on the effects and the way in which the slander or libel reflected on the “psychological well-being” of the plaintiff. Such testimonies should not have any relevance in terms of determination of the just compensation. Rather, the Court should take into account the relevant objective injury to one’s honor and reputation as social categories. According to the panelists, another problem in the implementation of the Law is the fact that, in a number of cases, the three-part test was not applied by the Court when deliberating on a case.

Similar to criminal procedure, in civil courts, too, the problem of “political dimensions” of the cases emerges. The available case law demonstrates that the judges, in spite of evident legal grounds, don’t dismiss lawsuits if high-ranking state officials appear as plaintiffs. Another cause of concern is that standard that emerges whenever high-ranking state officials appear as plaintiffs. In all such cases, Judges rule in favor of the officials, awarding extremely high non-pecuniary damages, which is not the case when plaintiffs are ordinary citizens. That is contrary to the case law of the Strasbourg Court which states that state officials should have higher threshold of tolerance for defamation.

The protection for honor and reputation (especially of state officials), in the view of the participants in the debate, is used as an instrument to undermine the freedom of expression.

All voids and defects of the Law should be complemented with the case law of the ECHR, the European Convention on Human Rights and Fundamental Freedoms, and other international standards and principles. Also, the courts need to change the way they manage the case-load. It is worrying that defamation actions at Basic Court Skopje 2 – Skopje are delegated to just three judges and in the other courts in Macedonia a single judge is responsible for def-

amation action cases. It is necessary to increase the number of judges that hear defamation action cases.

One benefit of the decriminalization is the falling number of defamation actions filed with the civil courts, compared to criminal courts. Another strong feature of the Law is that it also increased the implementation of the ECHR case law in the trials. On the other hand, the fact that the possibility for an apology and correction is available only after the start of the trial, not in the pre-trial procedure.

The majority of the panelists concluded that the Law ultimately failed to achieve its goals that the situation in the area of freedom of expression in Macedonia has not improved. Rather, Macedonia continues to drop down in the international rankings of countries in terms of freedom of expression and media freedoms every year.