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MONITORING OF DEFAMATION ACTIONS LITIGATIONS

SKOPJE, APRIL 2015

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. 5
(JANUARY-MARCH 2015)

WRITTEN BY:
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INTRODUCTION

The Media Development Centre (MDC), 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, in the period January-March 2014, monitored the defamation action cases tried in accordance with the Law on Civil Liability for Defamation at the Basic Court Skopje 2 in Skopje.

Having in mind the importance of the Law for the freedom of expression and media freedoms in the Republic of Macedonia, and the uncertainties surrounding the effects of its implementation, the Media Development Center implements a continuous monitoring of defamation action trials in which journalists, editors and media outlets appear as defendants. In addition, MDC follows the defamation

action cases in which state officials appear as plaintiffs.

In addition to the direct monitoring of the cases through physical presence of our observers in the hearings, MDC maintains constant communication with the Court of Appeals, on the matter of whether it has adopted a ruling on the appeals on the decisions in defamation action cases of the Basic Court.

The monitoring focuses primarily on the implementation of the Law on Civil Liability for Defamation, the conduct and actions of the judges in the implementation of material and process law in trials, the implementation of the case law of the European Court of Human Rights, the European Convention on Human Rights and the other international documents and principles in the area of protection of freedom of expression, or the work of the court clerk.



DEFAMATION TRIALS IN THE FIRST QUARTER OF 2015

In the period January – March 2015, the Media Development Centre followed 33 trials, in a total of 68 hearings, held at the Basic Court Skopje 2 in Skopje. By the time of writing of this report, 51 trials in defamation action cases have concluded, but the sentences are not executable because of ongoing appeals procedure.

In the first quarter of 2015, 26 new defamation lawsuits were filed with the Basic Court Skopje 2, one half of them (13 cases) involving journalists and media outlets as litigants. By the time of writing of this report, no pre-trial hearings were held for any of the new cases, having in mind that the decision of who shall be the presiding judge has not been made for the majority of cases, while in a number of cases the response to the claims are yet to be submitted by the defendants.

The number of new cases reinforces the trend of journalists being sued for defamation, the journalists being the most common profession among the defendants in defamation cases. That trend and the past practice indicate that courts and defamation action trials are among the most common instruments of pressure on the journalists and their work.

The Media Development Centre's monitoring also identified a trend of journalist suing fellow journalists for defamation. In 2014, Sitel TV's Dragan Pavlović-Latas filed a series of lawsuits against journalists and media outlets for reporting information on the "Visaris" affair, presented in a conference for the press held by a political party.

During the period covered by this report, however, the Basic Court Skopje 2 dismissed Pavlović-Latas's claims against journalist and editor Branko Gerovski, and ruled that his lawsuit had no grounds. That decision of the Court is a fine example of how the courts should protect the freedom of information and freedom of expression.

During the period covered by this report, three cases were concluded with a definite judgment from the Skopje Appellate Court:

1. Case No. P4 34/13a – Bojo Andrevski v. Jadranka Kostova;
2. Case No. P4 a 53/13 - Slavko Koteski v. Ivana Kostovska, Zoran Andonovski and NIK NOva Print DOOLE Export-Import Skopje; and
3. Case No. P4 227/14 - Gorjance Petrevski v. "Lektorska agencija Vezilka" DOO Skopje.

The Appellate Court upheld the decisions of the Court in all three cases. In the view of the Media Development Centre, the Court fully applied the Law on Civil Liability for Defamation, the European Convention and the case-law of the European Court of Human Rights in Strasbourg. The courts, therefore, establish a good practice that they need to apply in all defamation cases, including the cases that involve as plaintiffs politicians and state and government officials. MDC's monitoring indicates that the judges fully apply the law and international standards only in those case that don't involve politicians from the ruling parties. On the other hand, they evidently apply different standards to the cases that involve government officials

and representatives of the ruling parties as litigants.

The defamation action trials are heard by three judges at the Basic Court Skopje 2: Jovanka Spirovska Paneva, Vesna Kalkovska and Nuhi Rustemi. At the Skopje Court of Appeals, the appeals are reviewed by a council composed of Judge Lidija Dimcevska, the President of the Court, and judges Stanka Zafirova and Enver Bexheti.

CASE NO. P4 34/13A – BOJO ANDREVSKI V. JADRANKA KOSTOVA

In this case, the plaintiff Bojo Andrevski claimed from the defendant Jadranka Kostova, the editor in chief of “Fokus” weekly magazine, compensation of MKD 120,000 (app. €2,000) for damages to his honour and reputation caused by the article titled “Ljupčo and Ljube will eat themselves because they covered up Dzingo’s (Ljubisav Ivanov, former MP and media owner, our note) crimes for just 3,000,000 German Marks”, that Kostova allowed to be published. The plaintiff accused Kostova of presenting false and incorrect information about him with the aim to damage his honour and reputation. The article claimed that Bojo Andrevski made his fortune smuggling oil and selling university diplomas, and that as a person that held the rank of ensign in the former JNA (the Yugoslav People’s Army) quickly earned two doctorates and professor’s title, as well as other false facts.

The Media Development Centre believes that the Court ruled correctly in this case by dismissing the claims of the plaintiff as fully unfounded. In the procedure, the Court found that the article subject to plaintiff’s lawsuit contains no claims presented by Kostova herself, but presented quotes from a letter submitted by the person Zoran Azmanov to the Basic Prosecution Office. The Court also found that, before publication, the defendant applied all professional journalistic standards and checked the facts with the Prosecution Office and allowed that parts of

the letter be published only after she confirmed its authenticity.

The Court applied Article 2 of the Law on Civil Liability for Defamation which provides legal guarantees for the freedom of expression and information, and Article 10 of the European Convention on Human Rights, which states that every person has the right to freedom of expression, a right that encompasses the freedom of opinion and the freedom to receive and impart information and ideas.

The Court also implemented correctly the provisions of Article 10 of the Law on Civil Liability for Defamation which prescribe the grounds for exemption from liability for defamation. Article 10 of the Law states that no liability for defamation shall be found if the reporting of the facts damaging to one’s honour and reputation was conducted while performing the journalistic profession and if the media present facts that constitute a matter of public interest, by invoking serious sources treated by the defendant with due diligence and attention, in accordance with the standards of journalistic profession. The Court, when deliberating on the existence of public interest in this particular case, invoked correctly the provisions of Article 5 of the Law on Civil Liability for Defamation that provides a list of areas of public interest.

SLAVKO KOTESKI V. IVANA KOSTOVSKA, ZORAN ANDONOVSKI AND NIK NOVA PRINT SKOPJE

In this case, the plaintiff Slavko Kotevski asked the Court to find that the plaintiffs Kostovska, Andonovski and “Nova Print” defamed him and to charge them to pay damages to the total amount of MKD 310,000 (app. €5,000). The plaintiff claimed that Ivana Kostovska as the author of the article, and Zoran Andonovski as managing editor at “Nova Makedonija” daily, defamed the plaintiff by presenting false facts damaging to his honour and reputation. Accord-



ing to the plaintiff, Kostovska inserted several comments left by online readers in her article “Auditors to Investigate the Distribution of European Funds”, including the disputed comment that asked for investigation into the property acquired by the plaintiff over the previous two or three years, as well as an investigation into the business interests of his uncle Slavko Kotevski.

The Court ruled that the plaintiff’s claims were unfounded and dismissed them, correctly applying the Law on Civil Liability for Defamation, international standards and principles. The Court found, on basis of presented evidence, that the defendant Ivana Kostovska was not signed as the author of the disputed text and that the disputed text was, in fact, an online comment posted by a user that signs with the handle “Obama”. The Court also ruled correctly that the defendant played no role in the process of definition of daily’s editorial policies and had no authority to decide whether and which comments by third persons may be inserted in her article. At the same time, the Court found that Kostovska’s article contained no false facts, and found no intent to harm the plaintiff’s honour and reputation.

As far as the managing editor Zoran Andonovski was concerned, the Court found that the contents of the disputed article in itself couldn’t cause any damages to the honour and reputation of the plaintiff. According to the case-law of the European Court of Human Rights, such contents fell well within the framework provided by Article 10 of the European Convention of Human Rights. The Court upheld the role of media in a democratic society which allows for stronger criticism and opinions in the case of holders of public offices, which ought to have higher threshold of tolerance for critical speech directed at them.

GORJANČE PETREVSKI V. “LEKTORSKA AGENCIJA VEZILKA” DOO SKOPJE

In *Petrevski v. Vezilka*, the plaintiff asked the Court to find the defendant responsible of defamation and to award compensation of non-pecuniary damages to the amount of MKD 922,500 (app. €15,000). The plaintiff claimed that “Vezilka” published on its web-site that the “Snows of Klimentina Evin”, a children’s book written by the plaintiff included in the elementary school curriculum, was shocking depiction of pedophilia, without a single word of condemnation of pedophilic practices, and that the opus of the plaintiff discuss subjects and are filled with contents not suited for elementary school children.

In this case, the Court dismissed the claims of the plaintiff because of lack of passive legitimacy of the defendant. It was a correct decision by the Court in view of the fact that the plaintiff failed to prove in the procedure that the defendant publishes the MKD.MK website, or to prove which legal entity published and/or edited the website. The presented evidence offered no proof of any connection between the defendant and MKD.mk website.

The Court correctly implemented the provisions of Article 6 of the Law on Civil Liability for Defamation which prescribes that for defamation and libel committed in the media, the responsibility will be collectively shared between the author of the defamatory statement, the editor or his/her deputy, and the legal entity that publishes the media.

CONSTITUTIONAL COURT RULED ON THE CONSTITUTIONALITY (OR THE LACK THEREOF) OF THE LAW

During the period covered by this report, and full 20 months after the Media Development Centre and the Front for Freedom of Expression filed their Initiative to the Constitutional Court to assess the constitutionality of the Law on

Civil Liability for Defamation, in its session of February 18, 2015, the Constitutional Court adopted a Decision not to start the procedure for assessment of the constitutionality of the Law and the individual disputed provisions thereof.

There was, however, a dissenting opinion by Constitutional Court Judge Nataša Gaber-Damjanovska, who stated in her opinion that the Constitutional Court should have started the procedure in view of the fact that any good national legislation should offer reasonable balance between the need to protect and promote the freedom of expression and to protect one's honour and reputation from defamation. The implementation of the Law, Gaber-Damjanovska noted, should not result in self-censorship motivated by fear of rigorous legal consequences, because it undermines and destroys critical journalism, while the very essence of democratic debate in a society is lost. In her dissenting opinion, Judge Gaber-Damjanovska also notes that the Constitutional Court should adopt a position on the manner in which the Law was adopted, but also on the material and essential aspects of the subject regulated by the Law. She says that the Law on Civil Liability for Defamation regulates issues of procedural nature and should, therefore, have been adopted by a two-third majority of the votes of the total number of MPs in the Parliament, and not with a simple majority as it was adopted. Furthermore, in her view, the initiative was right to claim that the Law violates Article 13, paragraph 1 of the Constitution of the Republic of Macedonia that defines the principle of presumption of innocence, as well as Article 18, paragraph 1 of the Constitution which guarantees the safety and confidentiality of personal data.

Gaber-Damjanovska also reacted on the issue of temporary measures that may be declared by the courts, and on the Article that offers a list of exemptions from responsibility for defamation. According to the existing legal provisions, the person that made the defamatory or libellous statement is given no opportunity

to comment on motions to the court to issue a temporary restrictive measures or challenge the decision. The provision, in absence of any procedural guarantees for the defendant, raises the question of equality of parties in litigation, as one of the elements of fair trial prescribed in articles 6 and 10 of the European Convention.

COURT CLERK

In the first quarter of 2015, the website of the Basic court Skopje 2 was not regularly updated with publication of the adopted decisions and judgments, the lists of scheduled hearings. Furthermore, it was almost completely non-functional and it wasn't possible to access the information posted on the website. That seriously undermines the transparency and accountability of the Court.

Certain improvements were noted with the Office of Summons, due to the fact that only an insignificant number of hearings had to be postponed because of failure to present the summons in a timely fashion. The improved diligence of the Office of Summons allows for unimpeded holding of hearings and avoids unnecessary expenses and costs for the litigants, such as the costs of procedure to get the exact home address of the defendants from the Ministry of Interior or the costs of presentation of summons through public notaries and executioners.

Improvements were noted in the area of technical equipment in the courtrooms that have secured the necessary conditions to record the hearings and review recordings on CD, presented as evidence by the litigants.



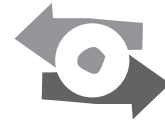
CONCLUSIONS

In the first quarter of 2015, 26 new defamation lawsuits were filed with the Basic Court Skopje 2, one half of them (13 cases) involving journalists and media outlets as litigants. The total number of new cases reinforces the trend of journalists being sued for defamation, the journalists being the most common profession among the defendants in defamation cases. That trend and the past practice indicate that courts and defamation action trials are among the most common instruments of pressure on the journalists and their work.

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ANNEX 1

MONITORING OF MEDIA COVERAGE OF THE LAW ON CIVIL LIABILITY FOR DEFAMATION AND DEFAMATION AC- TION CASES BROUGHT AGAINST JOURNALISTS IN MACEDONIA

(JANUARY-MARCH 2015)

PREPARED BY:
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SKOPJE, APRIL 2015



INTRODUCTION

The NGO Infocentre, 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 implemented by the Media Development Center, conducted a continuous monitoring and analysis of the public debate in Macedonian media.

This analysis covers the implementation of the Law on Civil Liability for Defamation and defamation and libel cases tried by Macedonian courts in which journalists and media were involved as litigants.

A total of 16 traditional and online media outlets were included in the this monitoring: the daily newspapers - Utrinski vesnik, Nova Makedonija, Dnevnik, Sloboden pecat and Vecer; one weekly - The Fokus Weekly; the central newscasts on Kanal 5 TV, Telma TV, MRT1 and 24 Vesti TV; and internet news sites A1on.mk, Kurir.mk, Republika.mk, Plusinfo.mk, Libertas.mk and NovaTV.mk.

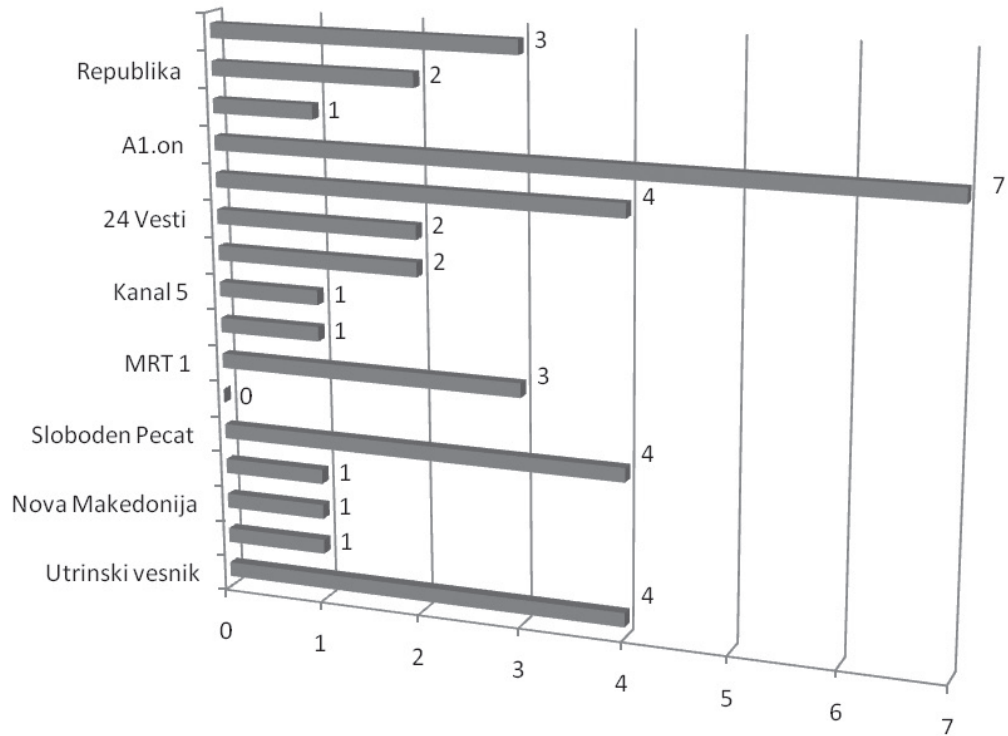
For the purposes of this report, we analyzed journalistic articles, columns, editorials and op-ed articles, photographs and other illustrations related to or covering the topics that are subject to this monitoring.

QUANTITATIVE OVERVIEW

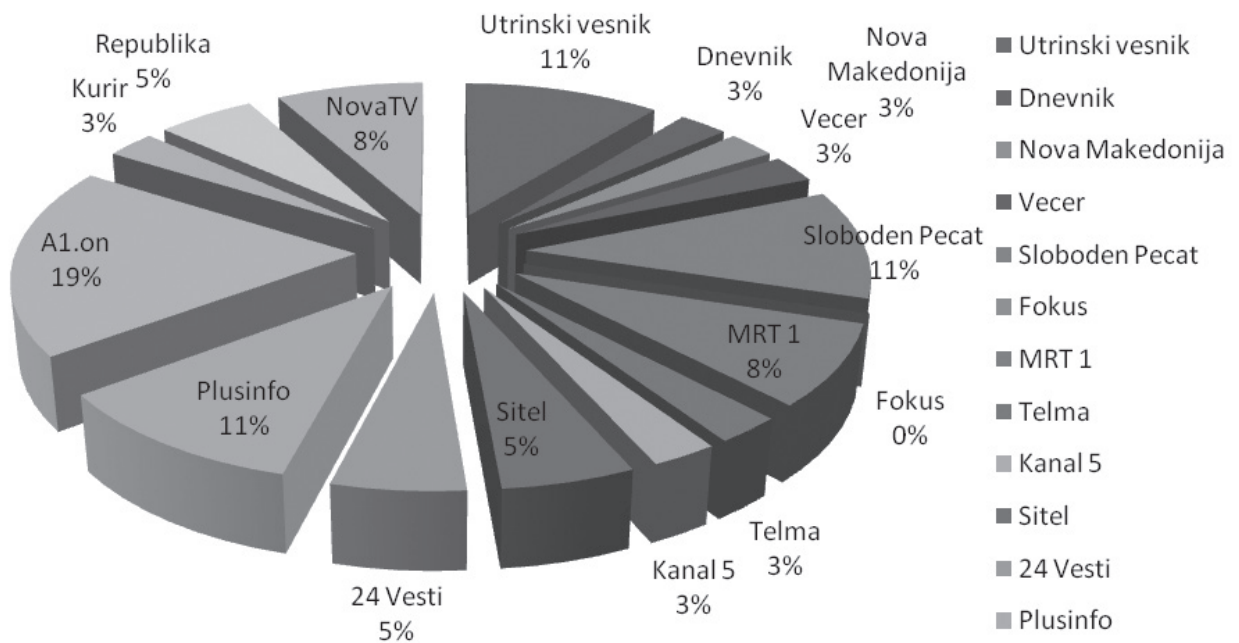
In the period from January 12 to March 31, 2015, the monitoring registered a total of 709 journalistic articles and other items dedicated to media legislation and media freedoms published in the monitored media. Of them, 37 (5.2%)

were dedicated to the Law on Civil Liability for Defamation and defamation and libel cases tried by Macedonian courts in which journalists and media were involved as litigants.

NUMBER OF ARTICLES PER MEDIA:



INDIVIDUAL MEDIA'S COVERAGE AS PERCENTAGE OF THE TOTAL NUMBER OF ARTICLES:



QUALITATIVE OVERVIEW

The small number of articles on the subject of defamation and defamation action cases, registered in the first quarter of 2015, indicates a falling interest of the media to follow and cover the implementation of the Law and its impact and influence on the freedom of expression, even in cases that involve journalists or media outlets as defendants in defamation action cases.

That falling interest is evident in spite of the fact that the data available from the Basic Court Skopje 2 shows that defamation lawsuits against journalists, in Skopje alone, make up one third of all defamation action cases.

“Of the total of 367 defamation action lawsuits, 119 were filed against journalists. Those are the latest figures presented today, on the Day of Macedonian Judiciary, by Sanja Tomić, the spokesperson of Basic Court Skopje 2”. (“Utrinski vesnik” daily, March 31, 2015)

In the first quarter of the year, a total of 26 new defamation actions were filed with the Basic Court Skopje 2 Skopje. One half of those lawsuits were filed against journalists and media outlets, reinforcing the trend that sees journalists facing defamation lawsuits and making the journalists the profession most commonly involved in trials and litigations.

The Association of Journalists of Macedonia (AJM) presented similar findings and figures at the promotion of its new Journalists’ Manual on Defamation. The promotion, held on March 24, 2015, was covered by three media - “Utrinski vesnik” daily, “Nova Makedonija” daily and 24 Vesti TV.

“Litigations that take forever to conclude and an incredible 330 defamation lawsuits that

involve journalists as defendants. That was the situation in the area of freedom of expression and defamation that prompted, three years ago, the initiative for decriminalisation of defamation, resulting in the adoption of the 2012 Law on Civil Liability for Defamation. Today, when defamation is not a criminal offense anymore and journalists charged with defamation can’t be sentenced to prison term and the defamation trials have moved from criminal to civil courts, the situation has evidently changed. At the end of last year, there were a total of 19 active defamation litigations in the country, 11 of which involving journalists suing fellow journalists for defamation”. (“Nova Makedonija” daily, March 25, 2015)

The media, in their reporting on defamation and libel issues, mostly rely on statements and opinions of relevant persons and institutions, and published few, if any, analytical articles on the subject. The journalists don’t make effort to promote topics and issues. Rather, they follow the events and their coverage is dominated by reporting genres - news, reports and interviews.

During the period covered by this report, several new cases or announced lawsuits got in the focus of media attention.

The media demonstrated greatest interest in the defamation lawsuit filed by the Deputy Prime Minister and Minister of Finance Zoran Stavrevski against Petre Šilegov, SDSM Spokesman, which was covered in 8 articles and news reports. The media reported the statement issued by the Ministry of Finance which stated that Šilegov didn’t offer an apology within the legal 48 hours deadline.

“The 48 hours legal deadline of Article 13 of the Law on Civil Liability for Defamation, during

which the spokesman Petre Šilegov could have apologized to Deputy Prime Minister and Minister of Finance Zoran Stavrevski for the defamatory statement made on January 11 and 12, passed. In his statement, Šilegov alleged that Stavrevski signed the agreement for reconstruction of the sewer network in Prilep with the German company “Ludvig Pfeiffer”, states the Ministry of Finance in a press release.” (A1on.mk, January 14, 2015)

It should be noted that the sole analytical article during the period covered by this report was published by “Utrinski vesnik” daily and refers to this case - “Petre Šilegov - the Spokesperson with Largest Number of Lawsuit”, January 23, 2015.

The pro-government “Kurir” and “Republika” showed interest only in the lawsuit filed by Jakim Nedelkov, president of the Trade Union for Education, Science and Culture (SONK), against several members of the Trade Union. They used editorial comments to inform the readers about Nedelkov’s intentions as they saw them.

“SONK president Jakim Nedelkov will sue all those who dare oppose his policies or fail to agree with his opinion on any given subject. After his failed attempt to organize a strike, Nedelkov lost his nerve and started filing lawsuits against those members of SONK who publicly expressed their opinion and opposition to the decision to go on strike”. (Republika, January 27, 2015)

“Nedelkov is nervous and faced with the failure of the strike started filing lawsuits against fellow members of the trade union and turned against everybody else”. (Kurir.mk, January 27, 2015)

“Utrinski vesnik” daily alone reported, in an article on its online edition of February 15, 2015, the announcement by DUI’s MP Artan Grubi to file lawsuits against eight media outlets.

“Artan Grubi, MP and Chief of Cabinet of DUI’s president Ali Ahmeti, started a war against the media, announcing, in a single day, six lawsuits against three Albanian language media. Grubi announced a total of eight lawsuits against sev-

eral Albanian language media, including “Lajm” daily, Almakos, TetovaSot, Tetova1 portals, and TV show host Milenko Nedelkovski...” (“Utrinski vesnik” daily, February 15, 2015)

The media included in this monitoring didn’t report the apologies offered to Grubi by the media outlets and journalist.

During the period covered by this report, the court concluded the Milenko Nedelkovski v. activist Žarko Trajanovski case. The case was covered by “Sloboden pečat” daily, A1on.mk and Plusinfo.mk portals.

“The statement that earned Trajanovski a lawsuit, was given in reaction to Nedelkovski’s public calls for liquidation of dissenting journalists, to which the Association of Journalists of Macedonia also reacted in a strongly worded statement of condemnation.” (Plusinfo.mk, February 24, 2015)

At the end of March 2015, the Constitutional Court of the Republic of Macedonia decided to dismiss the initiative that challenged the constitutionality of the Law on Civil Liability for Defamation. The initiative was filed by the informal civic coalition “Front for Freedom of Expression” in the first half of 2013.

The decision of the Constitutional Court didn’t attract the attention of the media included in this monitoring. The public was informed about the decision indirectly, through the two reports on the dissenting opinion of Constitutional Court Judge Nataša Gaber-Damjanovska, published by NovaTV.mk and A1on.mk portals.

“Against the majority of judges, Gaber-Damjanovski stands on the position that the constitutionality of the Law can be questioned knowing that the Parliament adopted it with a plurality vote, in spite of special legal provisions on judicial procedures”. (NovaTV.mk, March 24, 2015)



CONCLUSIONS

In the first quarter of 2015, the media demonstrated little interest for the defamation action cases tried in Macedonian courts and the freedom of expression in general.

Even the information presented by the Basic Court Skopje that one third of the defamation actions involve journalists and media outlets as litigants didn't attract any attention of the media.

Several new cases and announced lawsuits attracted media coverage. Such were the defamation lawsuit filed by the Deputy Prime Min-

ister and Minister of Finance Zoran Stavrevski against SDSM spokesman Petre Silegov.

The media, in their reporting on defamation and libel issues, mostly rely on statements and opinions of relevant persons and institutions, and published few, if any, analytical articles on the subject. The journalists don't make effort to promote topics and issues. Rather, they follow the events and their coverage is dominated by reporting genres - news, reports and interviews.