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**MEDIA
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CENTER**

MONITORING OF DEFAMATION ACTIONS LITIGATIONS

SKOPJE, JULY 2015

USAID PROGRAM FOR STRENGTHENING INDEPENDENT MEDIA IN MACEDONIA,
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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 April-June 2015, 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.



PROLONGED PROCEDURE, DOUBLE STANDARDS, COMPENSATIONS OF NON- PECUNIARY DAMAGES

In the period April-June 2015, MDC followed 28 defamation action trials at the Basic Court Skopje 2 in Skopje, in a total of 52 hearings. During this quarter, four new defamation litigations that involve journalists or media outlets as litigants were initiated at the Basic Court Skopje 2. By the time of writing of this report, no pre-trial hearings were held in any of the four cases which are all in the stage of waiting to the response to the lawsuit.

Over the past 12 months, a total of 56 cases have been concluded. On the other hand, the majority of judgments have not yet been served to the litigants, while several cases have not completed the procedure at the Appellate Court.

The delays in the drafting and preparation of judgments at the Basic Court and the late serving of judgments to the litigation parties has led to a situation in which some defamation take more than two years to complete from the moment a lawsuit was filed to the definitive judgment. Such delays are in violation of the Law on Civil Liability for Defamation which prescribes, in Article 22, paragraph 1, that defamation litigations are urgent.

One of the reasons for the prolonged procedures may be the fact that defamation cases are heard and tried by just three judges who also try and hear cases in other areas of civil law. MDC learns from unofficial sources close to the Court that the slow process of drafting and preparation of judgements is due, to some degree, to the fact that political parties have used the Court

administration to employ loyal members who lack expertise and competence to perform their tasks.

Journalism remains the most common profession among defendants in defamation action cases. That is due to the large number of cases against journalists and media and the trend to use defamation actions filed under the Law on Civil Liability for Defamation as an instrument of pressure and control against critical journalists and media in Macedonia.

During the period covered by this report, the following cases were concluded at the Basic Court Skopje 2:

1. P4 333/14 Sergej Samsonenko v. Plus Media Sport, Nikola Gjurovski, Stevan Canevski and Vladimir Bulatovski;
2. P5 42/15 Sašo Ordanovski v. Pande Kolemiševski;
3. P4 436/14 Dragan Pavlović-Latas v. Saše Ivanovski and Maktel
4. P4 229/13a Edmond Karliu v. Dejan Nikolovski and NETPRESS; and
5. P4a 4/14 Elizabeta Kančevska-Milevska v. Petre Šilegov

The published judgments lead to the conclusion that the double-standards of deliberation still remain with judges protecting the freedom of expression only in cases that don't involve high-ranking government officials. In cases when government officials are involved as litigants, the judges rule in favour of government

and neglect the European Convention of Human Rights and the case-law of the European Court of Human Rights.

It should be noted that, in the period covered by this report, the Court increasingly applied the principle of awarding no monetary compensation and relying on other instruments that may ensure a sufficient restoration of the reputation of the plaintiff.

For example, in the case No. P4 229/13a and P4a 4/14, the Court ruled that defendants were responsible of defamation, but didn't award any compensations to the plaintiffs. The two decisions shall be analyzed after the conclusion of the procedure with definitive judgments. *Анализа на правосилни пресуди*

ANALYSIS OF DEFINITIVE JUDGMENTS

GORDANA JANKULOVSKA V. PETRE ŠILEGOV

In this case, the plaintiff Gordana Jankulovska, at the time holding the office of Minister of the Interior, sued the defendant Petre Šilegov, the spokesperson of the opposition party SDSM, for defamation, demanding 1,000,000 MKD (app. €16,000) in damages, claiming that he presented, at a press conference of his party, false facts and information that harmed her honour and reputation and violated her personal rights.

The Court of first instance ruled, on basis of presented evidence and witness testimonies, to partially accept the claims of the plaintiff. It ruled that defamatory statement was used and charged the defendant to pay the plaintiff compensation of 500,000 MKD (app. €8,300). Šilegov said, in an SDSM conference for the press, that: "Gordana Jankulovska, after she sat in the chair of Minister of Interior, increased the value of its property card by €200,000 in new apartments alone. Can one make €200,000 in five years on a minister's salary alone? How did our honest and humble minister manage to increase her real-estate portfolio so much with just to salaries paid by the state administration?"

The defendant appealed the decision and the Appellate Court accepted its arguments and

remanded the case to the Basic Court for a retrial. The Appellate Court ruled that the Basic Court committed several violations of litigation procedures, i.e., it ruled that the judgment was unclear, difficult to understand and didn't offer sufficient rationale for the key facts which led the court of first instance in its deliberation of the case. The Appellate Court also found violations of material law and ruled that the Basic Court wrongly and incompletely established the factual situation of the case.

MDC believes that the Appellate Court correctly ruled that the Basic Court failed to determine if defamation was committed in this particular case and whether the evidence prove the existence of malicious intent of the defendant to degrade the personality of the plaintiff, or if his goal was, as a spokesman of a political party and under Article 10 of ECHR, to express his opinion and present serious criticism based on facts received from the State Commission for Prevention of Corruption.

The Basic Court also failed to determine if the aim of the defendant was to initiate a procedure at the competent bodies charged with the task to check the origin of plaintiff's assets and property. At the time, the plaintiff performed public office, the office of the Minister of Interi-



or (which implies that it is a matter of interest to the general public), and as such she should have exhibited higher threshold of tolerance for public criticism.

At the same time, the Basic Court didn't determine if the defendant, when reading the property cards issued by the State Commission on Prevention of Corruption, had no reason to doubt the presented data of if he should have suspected its veracity. Therefore, the Basic Court didn't determine if defendant's statements constituted a personal attack against the plaintiff or if he, as a spokesman of a political party acted within his prerogative in line with the freedom of public expression and freedom of political debate, presented data received by a competent body with the aim to protect the public interest and promote public debate on the matter.

Although the decision of the Appellate Court is correct, the question is why the Court, in spite of all available evidence and detected omissions of the Basic Court, didn't reverse the decision of the basic court?

By ordering a retrial, the Appellate Court actually transferred the responsibility back to the Basic Court. The dilemma is whether it did so with the intent to avoid possible pressure knowing that the defendant is a former Minister of Interior and high ranking official of the ruling party. Other questions that remain are why the Appellate Court didn't adopt its decision sooner and whether it would rule the same if Jankulovska remained Minister of Interior.

IGOR SERAFIMOVSKI V. LJUBIŠA ARSIĆ

The Court's decision in Igor Serafimovski v. Ljubiša Arsić is a fine example of proper implementation of the Law on Civil Liability for Defamation, international standards and principles and an example of creation of positive jurisprudence.

In this case, the plaintiff asked the Court to establish responsibility for defamation because

the defendant, in the article "To NATO with Mom and Dad" published in "Globus" weekly, stated that "the new employees of the Ministry of Defence are paid in accordance to the work they did for the party and how close they are to the governing bodies, not in accordance with their expertise. For example, the driver of deputy minister Igor Serafimovski has a salary of 30,000 MKD, the same as the salary of a assistant department head, a position that requires university degree and at least 5 years of past working experience".

When deliberating on the merits and the evidence of the case and in its ruling, the Court fully followed the provisions of the Law and the international acts. The Court correctly ruled that the defendant, as a journalist, had no intent to harm the honour and reputation of the plaintiff and his reporting was motivated by the intent to open a debate on a question of public interest, i.e. the employment of sons and daughters of high-ranking officials of the Ministry of Defence and their salaries. The very title of the disputed article indicates that its focus lies primarily on the persons employed with the help of their parents who hold public offices.

MDC believes that the Court correctly ruled that the defendant acted with good intents, on a matter of public interest, that he honoured the obligations and responsibilities that arise from the exercise of his freedom of expression and adhered to the journalistic standards in the presentation of a list of persons employed, on time-limited contracts, at the Ministry of Defence through the "Prospect" Employment Agency based in Prilep.

The fact that several MPs raised the issue of salaries and employments at the Ministry of Defence in the MPs inquiries session at the Parliament only confirms that the information presented by the defendant constituted a matter of public interest.

SEAVUS AND MAKFAX NEWS AGENCY V. RISTO POPOVSKI, DZVEZDAN GEORGIEVSKI AND GLOBUS MEDIA SYSTEM

The plaintiffs SEAVUS (an IT Company) and MAKFAX News Agency sued the defendants Risto Popovski, Dzvezdan Georgievski and “Globus” Media System (publisher of “Globus” online magazine) for defamation in an interview that Popovski gave to “Globus” weekly magazine. The plaintiffs claim that Popovski in the interview, published under the title “I demand from SEAVUS to give MAKFAX back to me”, aimed to harm them through presentation of false facts. The plaintiffs asked the Court to find Georgievski responsible for defamation because he, as assistant to the editor in chief of the magazine, approved the article for publication. During the procedure, the plaintiffs retracted the charges against “Globus” magazine, so that Georgievski, who was sued as assistant editor was now sued as the journalist that prepared the disputed interview.

The Court ruled that the article didn’t contain any false facts that would harm the reputation of the plaintiffs and that defendant Popovski just expressed his subjective opinion on the situation at MAKFAX News Agency. Such a verdict constitutes an effort to establish good case-law that is based on compliance with the European Convention on Human Rights.

MDC believes that the Court ruled correctly to determine that the defendant Georgievski, as the author of the interview with the first charged Popovski, couldn’t be held responsible for defamation because he couldn’t be responsible for the words presented by Popovski, ergo, represent a case of presenting “words of others”. ECHR’s case *Jersild v. Denmark* (1994) ruled that a journalist can’t be held responsible for the views of his or her sources or persons being interviewed, nor is there a formal obligation for a journalist to publicly distance him/herself from such views.

CONCLUSIONS

Over the past 12 months, a total of 56 cases have been concluded. On the other hand, the majority of judgments have not yet been served to the litigants, while several cases have not completed the procedure at the Appellate Court. The prolonged drafting and preparation of judgments at the Basic Court and the late serving of judgments to the parties of litigation has led to a situation in which some defamation take more than two years to complete from the moment a lawsuit was filed to the definitive judgment. Such delays are in violation of the Law on Civil Liability for Defamation which prescribes that defamation litigations are tried in urgent procedure.

One of the reasons for the prolonged procedures may be the fact that defamation cases are heard and tried by just three judges who also try and hear other cases that refer to other legal matters and disputes. MDC learns from unofficial sources close to the Court that the slow process or drafting and preparation of judgements is due, to some degree, to the fact that political parties have used the Court administration to employ loyal members who lack expertise and competence to perform their tasks.

The published judgments lead to the conclusion that the double-standards of deliberation still remain with judges protecting the freedom of expression only in cases that don't involve high-ranking government officials. In cases

when government officials are involved as litigants, the judges rule in favour of government and neglect the European Convention of Human Rights and the case-law of the European Court of Human Rights.

It should be noted that, in the period covered by this report, the Court increasingly applied the principle of awarding no monetary compensation and relying on other instruments that may ensure a sufficient restoration of the reputation of the plaintiff.

In *Jankulovska v. Šilegov*, the Appellate Court accepted the appeal of the defendant and ordered a retrial. Although the decision of the Appellate Court is correct, the question is why the Court, in spite of all available evidence and detected omissions of the Basic Court, didn't rule to strike down or change the decision of the basic court?

By remanding the case for a retrial, the Appellate Court actually transferred the responsibility back to the Basic Court. The dilemma is whether it did so with the intent to avoid possible pressure knowing that the defendant is a former Minister of Interior and high ranking official of the ruling party. Other questions that remain are why the Appellate Court didn't adopt its decision sooner and whether it would rule the same if Jankulovska remained Minister of Interior.



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ANNEX 1

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

(APRIL-JUNE 2015)

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SKOPJE, JULY 2015



REPORT

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 on the implementation of the Law on Civil Liability for Defamation and the defamation action trials that involve journalists and media 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 pečat and Večer; one weekly - Fokus; the main newscasts of the national TV broadcasters: Kanal 5 TV, Telma TV, MRT1 and 24 Vesti TV; and internet news sites: A1on.mk, Kurir.mk, Republika.mk, Plusinfo.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.

In the period from April 1 to June 30, 2015, the monitoring registered a total of 470 journalistic articles and other items dedicated to media legislation and media freedoms published in the monitored media. Of them, 15 (3,2%) 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.

The bulk of the coverage refers to one concluded case, Gordana Jankulovska v. Petre Šilegov, and announcement by then Director of the

Administration for Security and Counterintelligence (Macedonian abbreviation UBK) Sašo Mijalkov that he intended to file defamation action lawsuit against SDSM leader Zoran Zaev.

On April 1, 2015, Dnevnik, Večer, Kurir.mk, 24 Vesti TV and Sloboden pečat published and aired reports informing the public about Mijalkov's intent, immediately after SDSM released the 15th so-called "bomb" with intercepted phone conversations discussing the manner in which the communications surveillance equipment was procured by UBK.

Five media reported the decision of the Appellate Court to rule in Šilegov's favour and reverse the decision of the court of first instance.

The small number of articles 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, which is not the case with defamation litigations involving high-positioned government or state officials.

The reporting on "defamation and libel" issues, mostly relies on statements and opinions of relevant persons and institutions, and the media 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 and reports.