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# MONITORING OF DEFAMATION ACTIONS LITIGATIONS

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SKOPJE, OCTOBER 2015

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

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This publication was produced for review by the United States Agency for International Development. It was prepared by Media Development Center. The authors views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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# MONITORING OF DEFAMATION ACTIONS LITIGATIONS

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**REPORT NO. 7**

(JULY 2015 - SEPTEMBER 2015)

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WRITTEN BY:  
VLADIMIR MEDARSKI, LL.M

SKOPJE, OCTOBER 2015



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# INTRODUCTION

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**T**he 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 July-September 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.



# DEFAMATION ACTION LITIGATIONS

In the period July 1 – September 30, 2015, MDC followed 24 trials, in a total of 34 hearings, held at the Basic Court Skopje 2 in Skopje.

## PROCESSING OF LAWSUITS IS SLOW

During the period covered by this report, the Basic Court Skopje 2 in Skopje started two new defamation action cases involving journalists and media outlets as litigants. By the time of writing of this report, pre-trial hearings were not scheduled in any of the two cases. According to the information available to MDC, the pre-trial hearings were not held because the Court has not yet delivered the lawsuit to the defendants.

The slow processing of lawsuits and their delivery to the defendants is one of the reasons that result in long defamation litigations. Some cases have been “dragging around the Court” for more than two years. That is in collision with provision of Article 22, paragraph 1 of the Law on Civil Liability for Defamation, which prescribes that urgent procedures shall apply to defamation action trials.

As noted in the previous report, the delays and prolongations of trials (from the moment a lawsuit is filed to the definitive decision) are due primarily to the fact that all defamation cases are tried by just three judges, who also hear other cases, under different material laws.

## CASES CONCLUDED AT THE BASIC COURT SKOPJE 2 - SKOPJE

During this monitoring period, the Court reached verdicts and presented the litigants with its decisions in four cases:

1. **P4 695/14** - Dragan Pavlovik Latas v. Saše Ivanovski and the “Popularni Medii DOOEL” Production, Trade and Marketing Company

2. **P4 436/14** - Dragan Pavlovik Latas v. Saše Ivanovski and the “Popularni Medii DOOEL” Production, Trade and Marketing Company

3. **P4 333-14** - Sergey Borisovich Samsonenko v. “Sport Info Media”, Nikola Gjurovski and Stevan Canevski

4. **P4a 122/13** - Milenko Nedelkovski v. Mladen Čadikovski and Dobrivoj Budimski

In cases **P4 695/14** and **P4 436/14**, the plaintiff Dragan Pavlovik Latas sued and asked the court to find the defendant Saše Ivanovski, as editor-in-chief of the Maktel.mk website, responsible for defamation and libel, claiming that the defendant “on several occasions and in a number of articles published by Maktel.mk presented/published false facts and insults that violated and harmed his honour and reputation”. The defendant asked the Court to dismiss the claims as unfounded on grounds that the defendants lacked the standing to be sued - Ivanovski is not an editor-in-chief of Maktel.mk, which is a private website and not a medium in which the defendant could the position of editor-in-chief, while defendant “Popularni Medii DOOEL” company is not the publisher or owner of the private website, but is registered in the competent registry by “Popularni Knigi DOOLE” company. The Court, nevertheless, decided to accept partially the claims of the plaintiff in both cases and ruled that the defendant was responsible for defamation and libel.

In **P4 695/14**, the Court ruled that there was responsibility for defamation, but it accepted the position of the defendants lack a standing

to be sued and can't be held accountable as editor in chief and media outlet, respectively. The Court found the defendant responsible of defamation, but not as a journalist/editor-in-chief, but as a private citizen and physical person.

The Court based its decision on the provisions of the Law on Media which prescribes, in Article 11, the rights and obligations of journalists employed by media outlets and the protection to which they are entitled, and the changes to the Law on Media which excluded the electronic publications and electronic media from the definition of media as means of public information.

In view of said provisions of the Law on Media, the Court ruled to accept the defendants' objections on grounds of lack of standing to be sued and be held responsible for defamation.

The Court applied the Law on Civil Liability for Defamation and found that the actions of defendant Ivanovski, as a private physical person, contained elements of defamation in accordance with Articles 13 and 14 of the Law on Civil Liability for Defamation which state that every physical and legal person shall be held liable if, in front of other persons or the general public, it published insulting or false facts over an internet website or a computer system. The Court applied the Law on Civil Liability for Defamation and found that the actions of defendant Ivanovski, as a private physical person, contained elements of defamation in accordance with Articles 13 and 14 of the Law on Civil Liability for Defamation which state that every physical and legal person shall be held liable if, in front of other persons or the general public, it published insulting or false facts over an internet website or a computer system.

On basis of the monitoring of the trial, MDC believes that the Court, in its decision to find defendant Ivanovski liable for defamation, accepted the defendant as the author of the disputed text, without securing evidence that he was, indeed, the author of the text. It remains to be seen if the decision will be upheld or corrected by the

court of second instance. Furthermore, MDC believes that the decision has no legal ground, and that the Court should have dismissed the claims of the plaintiff because the defendant lacks standing to be sued. The Court's decision creates a possibility for journalists working for internet portals and websites to be "sanctioned" to pay much higher compensations of damages for defamation than those prescribed for journalists, limited at €2000.

In **P4 436/14** the Court invokes the same legal provisions and offers similar explanations as in the previous case, with the difference that in this case, the defendant admitted that he was the author of the disputed statements and articles, and that he already apologized and removed the disputed articles from the website. The Court ruled, on basis of defendant's statements and on grounds that an apology and removal of articles doesn't necessarily mean full restoration of the harmed honour and reputation, to find the defendant liable for defamation and awarded compensation for plaintiff Dragan Pavlovik Latas for the damages to his personal rights. In view of the fact that the defendant has appealed this decision of the court of first instance, MDC shall come forward with detailed comments on the case after the definitive decision of the Appellate Court.

The decision of the court in **P4 333/14** - Sergey Borisovich Samsonenko v. "Sport Info Media", Nikola Gjurovski and Stevan Canevski is another addition of a fine decision to the growing case-law, as it is adopted on basis of correct application of the Law on Civil Liability for Defamation and relevant international standards and principles.

In this case, the plaintiff asked the Court to find that the plaintiffs were liable for defamation for publishing false facts about him that violated and harmed his honour and reputation in articles on the website Ekipa.mk and to charge them to pay damages to the total amount of MKD 600.000 (slightly less than €10,000).



MDC finds that the Court's decision to dismiss that claims of the plaintiff as unfounded was based on full application of material law and international standards and principles for protection of freedom of expression. The Court ruled correctly that the article written by co-defendant Cenevski contained no elements of defamation or insult, because the defendant didn't use any words that aim to humiliate, and that the text wasn't published with the intent to harm the honour and reputation of the plaintiff. The Court also correctly applied the provisions of articles 8 and 9 of the Law and ruled that the disputed text didn't present facts, but presented the personal opinion of the defendant which is not subject to presentation of proof.

In MDC's view, the Court acted correctly in this case because a different ruling would constitute a direct violation of provisions of Article 10 of the European Convention of Human Rights that guarantees the freedom of expression, the freedom to hold opinion, the freedom to receive and impart information and ideas, without interference by public authority.

In **P4a 122/13**, plaintiff Milenko Nedelkovski asked the Court to find that the plaintiffs Mladen Čadikovski, Dobrivoj Budimski and Vladimir Tevčev defamed him in an interview aired by A1 Television, the contents of which included the claim that "Milenko Nedelkovski owes salaries to his employees", thus violating the plaintiffs personal rights to honour and reputation. Nedelkovski asked the court to charge the defendants to pay him compensations of damages to the amount of MKD 600,000 (slightly less than €10,000).

Again, the Court ruled correctly and dismissed the claims of the plaintiff as unfounded and found that, in the disputed contents, the sued journalists had no intention to present false facts about the plaintiff with intent to harm his personal rights, but the statement was given by the third co-defendant, who was discontent over unpaid claims by the plaintiff.

MDC finds that, in deliberating the case, the Court fully applied to the laws and regulations, as well as international standards that guarantee the freedom of expression. The Court also implemented correctly the provisions of the Law on Civil Liability for Defamation and the provisions of Article 10 of the European Convention.

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# CONCLUSIONS

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- In the third quarter of 2015, the Appellate Court didn't adopt any definitive judgments in defamation action cases, while the Basic Court Skopje 2 Skopje adopted four decisions in the first instance.
- During the period covered by this report, two new defamation action cases involving journalists as litigants were filed in the Court. By the time of writing of this report, pre-trial hearings were not scheduled in any of the two cases. According to the information available to MDC, the pre-trial hearings were not held because the Court has not yet delivered the summons informing the defendants about the lawsuits.
- The slow processing of lawsuits and their delivery to the defendants is one of the reasons that result in long defamation litigations. Some cases have been “dragging around the Court” for more than two years. That is in collision with provision of Article 22, paragraph 1 of the Law on Civil Liability for Defamation, which prescribes that urgent procedures shall apply to defamation action trials.
- The delays and prolongations of trials (from the moment a lawsuit is filed to the definitive decision) are due primarily to the fact that all defamation cases are tried by just three judges, who also hear other cases, under different material laws, as well as the fact that “party soldiers and activists” were employed in the Court who lack proper training, instead of those positions going to qualified personnel that already completed their internships in the Court.







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ANNEX 1

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

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(JULY – SEPTEMBER 2015)

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SKOPJE, OCTOBER 2015



# REPORT

The NGO Infocentre, for the purposes of the USAID Programme for Strengthening of Independent Media and the Project for Media Legal Reform and Responsible Media, implemented by the Media Development Centre, implements a continuous monitoring and analysis of the public debate and the media coverage regarding the Law on Civil Liability for Defamation and defamation action trials that involve journalists and media outlets as litigants.

The monitoring covers 16 mainstream and online media: the dailies *Utrinski vesnik*, *Nova Makedonija*, *Dnevnik*, *Sloboden pečat* and *Večer*; one weekly magazine – *Fokus*; the main newscasts of the national television broadcasters *Kanal 5 TV*, *Sitel TV*, *Telma TV*, *MRT1* and *24 Vesti TV*; and online news sites *A1on.mk*, *Kurir.mk*, *Republika.mk*, *Plusinfo.mk* and *NovaTV.mk*.

The analysis covers journalistic articles and news reports, columns, editorials and op-ed articles, photographs and other images used to illustrate the articles and the topics included in the monitoring.

In the period July – September 2015, the monitoring registered a total of 178 journalistic ar-

ticles and news stories dedicated to the media legislation and media freedoms. Of that total, only 7 were dedicated to the Law on Civil Liability for Defamation and the defamation action trials that involve journalists and media as litigants.

Of the seven articles, six were reports from the publication of the report with the findings of the monitoring conducted by the Media Development Center, and one article covered the news about the defamation lawsuit against *NovaTV.mk* newssite, filed by Russian businessman Sergey Samsonenko.

Those figures indicate that there is no real interest in the media in the implementation of the Law and its influence on the freedom of expression and the functioning and editorial policies of the media.

Another notable finding is that the trend to report statements and positions of relevant officials, persons and institutions, with total absence of analytical articles on these topics.