

Implementation of the Defamation Law in BiH: Some are protected, and some are scared

In Bosnia and Herzegovina in the last few years the courts receive over 260 claims for defamation (annually), basically it seems that there is one claim minimum per every working day. Statistically this also means that each media outlet and every tenth journalist is sued at least once a year. Although, since 2002, Bosnia and Herzegovina has legislation on defamation law, which according to the assessments of the Reporters Without Borders, is among most liberal in the world, number of media outlets closing their doors because of the “sanctions” is increasing, as well as number of journalists who are openly saying that they are afraid of the Defamation Law. The Defamation Law exists on entity level as in Brčko District and the text is almost identical.

They are adopted under the pressure of the international organisations and journalist associations in order to de-criminalise defamation, to encourage media freedoms and investigative journalism and general society democratisation.

Defamation – consciously claiming untruth

The defamation is defined as civil-legal liability for conscious publication or transferring lies with the goal to damage someone’s reputation, but not only transcribing what is being said, but publication of only those parts that can be objective and focus on certain person.

The Law says that “the right of expression protects the content of expression, as also a way the expression is made and is not applicable not only to expressions that are considered commending or condemning, but also expressions that could offend, shock or upset.” The law had determined that for defamation in media responsibility is with author, editor-in-chief, publisher, as well as person which in any other way have done supervision over the content of the expression.

“Defamation, if confirmed, has “sanction” in a form of material compensation of the defamed, in “proportion to the damage of the person’s reputation”, and “the amount of the damages should not create financial difficulties or bankruptcy.”

The court practice, according to the available data, created sanctions, in the beginning it went up to 20.000 BAM, and in the last few years 4 to 5 thousands of BAM, and sometimes only for one BAM, all increased with the court fees. (The Law does not define the height of financial sanctions, and it is upon the judge to decide, the journalist of Center for Investigative Journalism recorded the following: the judges in Brčko made a ruling that the President of the same court should be awarded with 20.000 BAM in one instance, and in two more instances with 16.000 BAM to ease his suffering due to emotional pain.)

“The prosecutor has to prove that the published facts damaged him by being shared with third person. The defendant, in most cases the journalist, has to prove that the publication is true, or as it is in accordance with European standards that the journalists did not act with bad intent,

that the un-true information is not published on purpose, but are maybe the consequence of the truthful ones. The judges just have to follow fact, and the difficult part is with the journalist.” – **Explains Sanela Gorušanović – Butigan, the judge of the Municipal Court Sarajevo.**

According to data available at High Judicial and Prosecutorial Council in BiH, of these 260 claims that are submitted during the year, the part was retracted, once the claimant gets satisfaction through publication of corrections, or mediation by Press Council, or the Regulatory Communication Agency in BiH, the part of claims are rejected by courts for formal reasons.

Different jurisprudence

The Association BH Journalists conducted analyses on the tenth anniversary of the Defamation Law implementation, and they do warn that the Law still has the possibility which provides the court with the possibility to give temporary measure to ban writing about the claimant by the media outlet or journalists. The analyses also says that the Law is not decisive on the issue of “passive legitimation” responsibility – is it still an issue if the responsibility is on the person “tied” with a media outlet, or any person can be responsible if they have given the defamation content. (It is not unusual that the media outlet is being charged for defamation, for the fact someone has stated in an interview, published by the media outlet).

They are also warning that the courts in BiH have uneven practice when setting damages or payments, so the field actually has uneven criteria in the implementation of the same laws and standards while practice has shown that major damages are mainly given to the politicians who are most often filing defamation claims.

“Uneven practices related to the sentencing, is partially enabling the representatives of public authorities and high ranked politicians, to use court proceedings for defamation as pressure measure for media and press” – is the warning of the BH Journalists Association.

Similar position is taken by the ombudsmen for human rights in BIH, who in June 2017 issued special report on rights of the journalists. They are warning that litigation are started based on the claims of the politicians, and are being handled within the deadlines, significantly shorter than the average timeline for such procedures, and that representatives of public authorities are using these claims as a mean with which they try to discourage or prevent publication of the articles they do not like.

“Ombudsmen are worried for the fact that courts in their decision description are not taking into account the practice of the European Human Rights Court, which asks for higher threshold of the tolerance in the cases when reporting on the property of the persons who are performing at the public functions. Towards which the public has the right to be informed might venture into private lives of the persons. Sometimes that information is useful and important just if it is timely so sometimes this justifies the absence of detailed checking.”

Everyone, but journalists, profited

At the end of 2015 Bosna stopped with their print edition – high defamation sanctions and court expenses destroyed them.

In one instance they had to pay defamation to the person, who was being processed at the other court, exactly for the things Bosna reported on. **Editor in Chief and co-owner of Slobodna Bosna Senad Avdić** says that he does now know how many claims was there against his company, and he thinks that the Defamation law is making profit for everyone except media outlet and journalists, while profit is gained by: judges, prosecutors, court experts...

“He sued me at this “turf” at court in Sokolac, where the court was won by Milovan Cicko Bjelica – war and post war Lord of Romaina, just because we published explanation by OHR based on which he as “part of Radovan Karadzic assistants” he was removed from the position, arrested and put in jail. Many of the claimants and this is mainly politicians and their close “economist” or rather criminals, have made very lucrative job with this. It has happened main times that we were sued by the claimants, because we were writing about the court cases those people had. After the court case would collapse, these criminals would sue the state and media which was reporting “One sides”, or rather participated in defamation and smear campaign. “states Avdic.

Political Impact on Judiciary

Experienced editor in chief of Oslobođenje and former media assessment of the Ombudsman Mehmed Halilović is warning that the media in BiH are full of defamation as result of negligence.

«The journalist forget to check their sources in the case of controversial topics, and they do not respect the basic alphabet of journalists to ask the second side – the Law is balanced it also foresees the right of expression and but also protection of dignity and respectability and image of each person.” - reminds Halilović.

According to Avdic, the whole thing about the case is simple because the “destiny of the judge involved in the case of politician, holds the whole HJPCS in their hands.

“Some 20 years ago I was in front of the judge whose husband that was a minister of justice, and I was sued me by the head of the personnel office of the party that appointed him. I was not convicted. Then the old Law was still valid but I was not sent to prison. And that would not look well for the governing Bosniak party. It was good time after all, and then we had reforms”. – concludes Avdic.

Judge Gorušanović- Butigan emphasise that de-crimination of defamation did not decrease number of court proceedings and is remaining that the truth of the information has to be proved but not off the opinion.

“It is important to have journalist come to trial, to give their statement and to be active, to quote the opinion of the Supreme Court FBIH that expertise is not mandatory, as claimants are asking for it often, the judge accepts, and the expenses have to be settled by the journalists if found guilty. – explains Gorušanović- Butigan.

Good or not, the Defamation Law is influencing journalists – over half of journalists surveyed for Indicator of the media freedom and journalists security level (December 2016) says (34%) that when writing they are scared of the Law, or 27% says that it affects their writing.

The content of this text is the sole responsibility of author and BH Journalists Association and can in no way be taken to reflect the views of the European Union. 

Biography:

For the last nine years she has been working in the START BiH Magazine.

Previously she worked “Nezavisne novine”, and before that as a journalism trainer at IREXProMedia, AIM, FERN Radio, formerly Radio Studio 99 ... She is a certified trainer for investigative journalism of Reuters, and was also a bh-coordinator in within the Danish international SCOOP Media Assistance Project. She likes to write about (hidden) public money flows and human rights.