Western Balkan's Regional Platform for Advocating Media Freedom and Journalists' Safety

Analysis of Implementation of Law on Protection against Defamation and Impact of Court Practice on Media Freedom

Introduction

There is no single law on protection against defamation at the national level in Bosnia and Herzegovina and instead there are three separate laws (at the level of both entities and in Brčko District, BD), which were passed by relevant parliaments over a three-year period (2001 – 2003)[i]. The laws were passed on the initiative of the High Representative based on drafts developed by a mixed group of local and foreign experts. Until 1999, court proceedings for defamation and insult were conducted under penal codes.

The main objective in passing the new laws was to decriminalize defamation, which was supposed to contribute to greater freedom of expression and general democratization of society. The laws are founded on the highest democratic principles contained in the European Convention on the Protection of Human Rights and Fundamental Freedoms[ii], recommendations/declarations of the Council of Europe on protection of media freedom[iii], and standards established by judgments of the European Court of Human Rights[iv].

Laws on protection against defamation regulate civil liability for harm caused to the reputation of a natural or legal person by the disseminating of false fact. There are no crucial differences among these laws in Bosnia and Herzegovina except some linguistic and legal wording.

As these laws have been implemented for a decade and a half, it is essential to evaluate court practice as well as impact on freedom of expression and especially on media, as media have a key role in democratic processes and in informing the public. The analysis will show

how the key principles, which are laid out in the next section, are implemented in court practice as well as media practice.

This is the second analysis produced by the Association *BH Journalists* on the implementation of these laws on protection against defamation in B&H, along with a number of other activities (conferences, roundtables and workshops with journalists and representatives of the judiciary) on this subject.

Key principles of laws

The laws on protection against defamation in Bosnia and Herzegovina strike a balance between the right to freedom of expression for everyone (not just journalists) and protection of a person's reputation and dignity.

The right to freedom of expression is protected equally as the contents of an expression as well as the manner in which it is made (form) and "is not only applicable to expressions that are received as favorable or inoffensive," but also to "those that might offend, embitter or disturb" (Article 2, paragraph b) under the Law in FB&H[v], and "those that might offend, shock or disturb" (Article 1, paragraph b) under the Law in the Republika Srpska[vi]. The laws specify that they are to be interpreted "so as to ensure that the application of (their) provisions maximizes the principle of the freedom of expression" (Article 3 of the Law in FB&H and Article 2 of the Law in the RS)[vii].

Defamation in these laws is defined as the causing of "harm…by making or disseminating an expression of false fact" (Article 6, paragraph 1, Law of FB&H) and the "making or disseminating of a falsehood" (Article 5, paragraph 1, Law of RS). Both wordings may be disputed for linguistic reasons, but that does not affect application. In addition, both laws, like the Law of BC, as key elements of defamation lay out the following requirements that determine the concept of defamation: identification of the injured person, existence of harm (to dignity and reputation), dissemination to a third person (i.e. by making or in some other way disseminating information) and, finally, willfulness and/or negligence.

These laws bar government institutions and all public authorities from filing requests for compensation of harm. This right is only awarded to natural and legal persons. Public officials and public servants may file requests exclusively in their personal capacity.

Responsibility for defamation made through media outlets is shared (jointly or individually) by the author, editor or publisher or someone who otherwise exercises control over disseminated contents. If another person is quoted (interviews, etc.), that person may also be liable. The plaintiff may sue all persons, several or just one. In case of false fact regarding a deceased person, an heir may bring a request under the condition that the expression caused harm to them.

The laws also lay out principles when there is no liability for defamation. They regard, primarily, the right to the expression of an opinion (value judgment), cases when the disseminated information is substantially true and only false in insignificant elements, when the expression is disseminated in the course of legislative, judicial or executive/administrative proceedings… There is no liability if the expression was reasonable. The laws specifically list seven circumstances that the court must take into account in making such a determination (the manner, form and time of making or disseminating the expression, the nature and degree of harm caused, consent by the injured person, whether the expression constitutes a fair and accurate report, whether it concerns a matter of private life or involves a matter of political or public concern…). Most important for media and journalists is a provision that relieves them of liability if they acted in good faith and adhered to generally-accepted professional standards (Article 7.2 of the Law of FB&H and Article 6.v of the Law of RS).[viii]

It is exceptionally important that these laws give full guarantees to journalists and all other persons in the process of obtaining and disseminating information for protection of confidential sources and all documents obtained from such sources. Such guarantees, however, do not relieve anyone of liability for dissemination of false fact willfully or contrary to professional standards.

The laws also state that injured persons shall “take measures” (request a correction or apology) to mitigate any harm. But this is only provided as an option, not an obligation for the injured party or a requirement for bringing a lawsuit. At the same time, media are not

obligated to issue a correction or apology. But the laws do obligate the court "in making a determination of compensation … to have regard for all of the circumstances of the case, particularly any measures undertaken to mitigate the harm, such as: issuance of a correction and retraction of expression or an apology…" The laws also provide the option of an amicable settlement between the parties (plaintiff and defendant) "if the court estimates that the conditions have been met[ix]."

Finally, in addition to prescribing limitation periods, responsible courts and efficacy of court protection, these laws prescribe compensation for injured persons. No monetary amounts are prescribed (either lowest or highest), but only principles. Two are most important: (first) "compensation shall be proportionate to the harm caused" and (second) the court must have regard for "whether the amount of damages awarded would likely result in severe financial distress or bankruptcy for the person who caused the harm."

These laws do not allow a court order prohibiting the disseminating of an expression of "false fact" prior to publication, but do provide the option of a preliminary court order "only if the injured person can make probable with virtual certainty that he or she will suffer irreparable harm."

Increase in number of lawsuits

The starting question in this analysis is related to quantification of court practice. Have the new laws (hereinafter referred to as: the law) contributed to reducing or increasing the number of court proceedings against media and journalists? That was one of the motivations for decriminalization of defamation.

There are no reliable statistics, because courts do not keep separate records of proceedings for protection against defamation. They are conducted and recorded like all civil proceedings for compensation of damage. Nevertheless, even based on such records, i.e. based on the names of plaintiffs and defendants, some statistics can be derived. In the first ten years of implementation of the law, "at least 100 court proceedings for defamation" were conducted every year on average (estimates by journalists and judicial representatives). Many proceedings are conducted over a very long period. They often take years, although the law prescribes urgent procedure ("procedures for compensation of damage caused by

defamation made in media shall be considered urgent"[x]). This is also a factor that stands in the way of obtaining reliable statistics.

The Special Report on the Status and Cases of Threats against Journalists in Bosnia and Herzegovina, issued by the *Ombudsmen of B&H* in June 2017,[xi] states that "according to information from the HJPC (*High Judicial and Prosecutorial Council)*, in 2015 the courts of B&H received 263 defamation lawsuits and in 2016 as per 21 October 2016 they received 226 defamation lawsuits." The report does not say whether all lawsuits were accepted, whether some were withdrawn in the meantime and whether and when the court proceedings started. And, if they did start, whether some were completed in the meantime.

According to data of Sarajevo Municipal Court[xii], which as a rule receives a large number of lawsuits and where most court proceedings for compensation of damage for defamation are conducted, the largest number of new lawsuits arrived in 2013 – a total of 116. In the next two years, the court received 82 lawsuits (in 2014) and 70 (in 2015). After that, the number of new lawsuits rose again: 77 in 2016 and 103 in 2017 (as of 15 November 2017). It was not possible to obtain reliable data on how many lawsuits were rejected for not meeting formal requirements or were withdrawn on the plaintiff's request, how many court proceedings were conducted, how many were completed and how they ended.

It is well known that some lawsuits were withdrawn before the pretrial hearing or in the time between the pretrial hearing and main hearing. If not all, at least some of these proceedings are a form of pressure on journalists because journalists and editors are forced to respond to lawsuits, to seek and pay lawyers and, finally, to spend time in court.

According to data of the Association *BH Journalists*, 176 defamation trials were active in courts in B&H at the beginning of June 2017[xiii]. These court proceedings were mostly against journalists.

There are no reliable statistics on the amount of damage requests made by plaintiffs either. In the first years, these requests were very high and, according to information gathered by the Association *BH Journalists*, ranged from 50,000 to 250,000 KM. Several requests for amounts in millions were also reported (the highest was 3.4 million KM in a lawsuit brought by the *Lijanovic* company against journalists and editors of *Oslobodjenje;* the lawsuit was

withdrawn before the pretrial hearing). According to data of the Association *BH Journalists* and insight into a number of lawsuits and judgments, in recent years the majority of damage requests did not exceed 5,000 KM and a considerable number were below that level. Public figures and politicians from higher levels of government typically seek higher damage compensations.

Although most lawsuits are brought by senior political and state/entity and local officials against journalists, editors and publishers, some lawsuits regard mutual court disputes between public figures (Milorad Dodik vs. Mladen Bosić, Bakir Izetbegović vs. Milorad Dodik, Željka Cvijanović vs. Aleksandra Pandurević, etc.). These lawsuits, usually on the insistence of both the plaintiffs and defendants, receive considerable media attention, an accompanying aspect of such court proceedings.

Compared to the first ten years of implementation of the Law on Protection against Defamation, when most defamation lawsuits were filed against each other by the founders and owners, as well as journalists and editors, of two dailies (*Dnevni avaz* and *Oslobodjenje*), in the last four years there have practically been no such cases. In recent years, the number of lawsuits against mainstream media has been reduced and has increased against authors and editors of content published in online media and on social networks.

Some lawsuits are likely a consequence of unprofessional conduct on the part of media, as a result of which they are forced to "learn" from their mistakes and pay a high price for that. High professionalism of other media, which adhere to professional standards even when dealing with the biggest journalistic challenges (*CIN, BIRN, Al Jazeera, N1 TV*, etc.), demonstrates that this law poses no threat to journalists, as some think, but is rather a legislative guarantee of full exercise of media rights and freedoms.

Court practice

Analyzing court practice based on several tens of judgments and based on the opinions of both journalists and representatives of the judiciary and non-governmental organizations, several conclusions arise. First, the following positive experiences were gained in the practice of local courts:

1. After initial ‘disorientation’, unpreparedness of courts, as well as ‘thirst for vengeance’ expressed by some public figures, which was reflected in the amount of compensation requests (from several tens of thousands of KM to several hundreds of thousands, even millions!), today’s situation shows that some progress has been made. Courts do not ‘shy’ from these proceedings (although numerous judges ‘do not like them’ even today) and plaintiffs have considerably reduced their ‘appetites’ for enormous compensations, although the previously observed ‘thirst for vengeance’ and frequency of lawsuits brought by holders of public office have not completely disappeared;
2. Court practice is more even in the two entities and Brčko District today than just five or six years ago. What largely contributed to that are additional education of local judges and familiarization with standards established in the judgments of the European Court of Human Rights;
3. In some judgments, we can see references to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10 of the Convention) and judgments of the European Court. Nevertheless, that is insufficient, it is not a rule and is actually sporadic;
4. What also contributes to improvement and standardization of criteria in court practice are decisions of the Constitutional Court of B&H on applications lodged by dissatisfied parties over violations of Article 10 of the European Convention in judgments of local courts. However, that influence is insufficient and decisions of the Constitutional Court of B&H are not accepted in new court proceedings in the degree that is necessary and binding;
5. In a number of judgments of local courts, reference can be seen to the Press Code[xiv] or Broadcast Code of Practice[xv] in order to assess based on these ethical norms whether journalists acted professionally in specific cases;
6. Courts in recent years have ordered relatively low monetary compensation (between 1,000 and 2,000 KM, less commonly from 3,000 to 5,000 KM, and very rarely above that amount). This is largely in line with the primary objective of the law to give legal and moral satisfaction as soon as possible to persons who were unlawfully defamed and sustained non-pecuniary harm, where monetary compensation is not at the forefront.

The following inadequacies and negative practices of local courts are evident in the implementation of the Law on Protection against Defamation and acceptance of principles and standards of the European Convention and judgments of the European Court:

1. Based on an analysis of judgments, the first thing that can be observed is unpreparedness (incompetence?) of some local courts to distinguish between value judgment (which cannot be the subject of a defamation lawsuit) and fact (which of course can, provided other requirements are met). The position of the European Court is that no one (not only journalists!) may be restricted in the right to free expression and that "in case of opinions this requirement (to prove the truth) is impossible to meet" and it "infringes freedom of opinion itself."[xvi]

   This conclusion is supported by decisions of the Constitutional Court on violation of Article 10 of the European Convention due to courts' failure to differentiate between value judgment and fact. Examples: Constitutional Court Decision AP 2907/14 (application by *RTFB&H*, overturned second-instance ruling of Banja Luka District Court); Constitutional Court Decision AP 4881/14 (application by DOO "*NPC Internacional*" Banja Luka and Đoko Kesić, overturned second-instance ruling of Banja Luka District Court); Decision AP 4808/14 (application by *RTFB&H*, overturned second-instance ruling of Banja Luka District Court); Decision AP 293/13 (application by "*MM Company"* d.o.o. Sarajevo, overturned final ruling of Sarajevo Cantonal Court);
2. Local courts do not apply other important standards of the European Court either in judgments over violation of Article 10 of the European Convention. They are, among others, the court's obligation during a proceeding to consider all circumstances of the case and whether the presented (disseminated) information is of importance for public and political debate. This can be found very rarely in statements of grounds in judgments passed by first-instance and second-instance courts. What is also missing is the court's assessment on whether journalists (and other defendants) acted in good faith and in line with professional norms. The court's obligation is also to consider and accept even provocative language in public debates, especially in relation to top public officials…

The European Court has laid down important standards in that regard. In judgment[xvii] 2013, the European Court concluded that a local court in France had violated Article 10 of the European Convention in the case of an activist who called the French president during the election campaign a "sad prick." The European Court in *Lingens v. Austria*[xviii] established three key positions: freedom of political debate is at the very core of the concept of a democratic society, the limits of criticism are accordingly wider as regards a politician than as regards private individuals, a politician consciously places him or herself in this position and must thus have more tolerance for criticism.

Examples: Constitutional Court of B&H Decision AP-1236/14 (application by Đoko Sedlarević, overturned second-instance ruling of Bijeljina District Court). A positive example is a ruling by Sarajevo Municipal Court no. 65 0 P 118333 17 P 2 (*Slobodna Bosna*, very thorough statement of grounds), while a negative example is a ruling by Banja Luka Basic Court no. 71 0 P 236530 16 P (*Alternativna TV*, inadequate statement of grounds, not all circumstances were analyzed).

3. A consequence of this stand is the fact that local courts usually stick to an arbitration role, do not sufficiently consider the possibility of an amicable settlement between the parties and only ask the parties in the dispute to suggest their evidence and in most cases place the burden of proof on the defendant;
4. Local courts consider different criteria in determining the character of non-pecuniary damage (mental anguish), which ultimately leads to uneven court practice. Courts in the Federation of B&H as a rule accept the suggestions of the parties and rely on a neuropsychiatrist's medical report, while courts in the Republika Srpska and in Brčko District generally make decisions at their discretion. True, there are exceptions on both sides and the public is familiar with cases of medical expertise at the court in Banja Luka, as well as *copy-paste* medical reports in both parts of B&H.

   The standard of discretion is applied in most European countries and is in line with the position of the Constitutional Court of B&H and judgment of the Supreme Court of FB&H (Judgment Gž–37/04 of 15 June 2004): "When determining compensation of damage for defamation, there is no need to determine the intensity and duration of mental anguish sustained by the injured

party, but how much the expression (defamation) might hurt the honor and dignity of the person according to the understanding of the community in which they live and (according to) generally accepted social norms";

5. Although local courts have in recent years harmonized criteria for determining monetary compensation and reduced its amount to a reasonable level, these compensations are still too high today, especially in cases when they are awarded to top political and state officials (often between 5,000 and 10,000 KM!). This has a chilling effect on journalists and media freedom. Monetary compensation should be awarded only if other means (issuance of a correction, apology or disposition of the judgment, possibly the whole judgment, etc.) are insufficient to compensate the harm.

   In *Filipović v Serbia*[xix], the European Court repeated its conclusions from *Tolstoy Miloslavsky* and *Steel and Morris* that the amount of compensation awarded must bear a reasonable relationship of proportionality to the moral injury and to the income and resources of the plaintiff. In this case, although the defendant had falsely accused the plaintiff of embezzlement, the fact is that the plaintiff had been under investigation for tax evasion. For that reason, the moral injury was not great. The awarded compensation was equal to the defendant's six-month salary, an amount the Court held to be excessive and in breach of Article 10. It should also be pointed out that the European Court rarely awards compensation for sustained injury. The usual conclusion is that it is sufficient to rule that someone's right was violated, a position that local courts could follow as much as possible;

6. Most disputes since the start of implementation of the Law on Defamation have been caused by implementation of Article 10 (3) of the Law of FB&H and Article 11 (3) of the Law in the RS – on preliminary court orders "to prohibit disseminating or further disseminating an expression of false fact…"[xx]. In the first years, the courts issued four such measures which were met with reactions by the news community and public. After that, according to available data, one such preliminary court order was issued (Travnik Municipal Court, 26 December 2016, case of three police officials vs. *RTFB&H*). The order was retracted following an

appeal and protests by the Association *BH Journalists* and the public. There were more requests of this kind, but they were rejected.

The Law in B&H prescribes that a temporary court order to prohibit "disseminating or further disseminating an expression of false fact" may only be issued if the injured person "can make probable with virtual certainty that the expression caused harm" and that the "injured person will suffer irreparable harm" if it continues. However, the question that arises regards the efficacy of this kind of measure when the provisions of this law do not allow the dissemination of "false fact" anyway. There is also the question of why a temporary order over "false fact" if the truthfulness of the facts is yet to be established in the court proceeding. The European Court exceptionally allows temporary measures (preventing unrest, crimes, national security), while in the case of media it concludes that "news is a perishable commodity" and that "to delay its publication, even for a short period, may well deprive it of all its value and interest."[xxi]

Media landscape

Implementation of the law and court practice have impacted, to a degree, an increased level of media accountability and adherence to professional standards. But this conclusion does not apply to all media, especially so-called new media (news websites, online media, blogs) and social networks, which are also accepted as an expanded space of the media landscape. On the other hand, frequent defamation lawsuits have impacted the appearance of self-censorship due to fear of retaliation from political officials, especially among some media at the local level.

Without going into specific inadequacies related to adherence to ethical norms and into detailed explanation of their importance in assessing journalists' conduct, we will focus on only two aspects which occasionally cause dilemmas for media: issuance of a correction (apology) and dissemination of information from other media sources. Failure to issue a correction in the first years after the law was passed was grounds for conviction in at least two cases (both convictions against *RTFB&H*).

Although some journalists think even now that issuance of a correction means 'admission of mistakes and confirmation of lack of professionalism,' that is changing. Today there are virtually no media, either mainstream or new, which do not issue corrections. Issuance of a correction and/or apology is considered an act of full responsibility toward the public and confirmation of professional duty.

Journalists in court proceedings for defamation, on the other hand, often refer to the fact that they disseminated a 'disputed expression' from another media outlet and do not consider themselves responsible for damage made to plaintiffs. This opinion is not justified, because the law also prescribes accountability in case of 'disseminating an expression of false fact' or 'falsehood.'[xxii]

It is in the nature of media, of course, to disseminate information from all sources, including other media. According to generally accepted international standards, it is maintained that journalists have the right to disseminate even information that harms someone's reputation, provided the information is faithfully quoted and disseminated with an appropriate level of professional coverage. It goes without saying that the level of attention must be much higher and that additional checks must be made if information is taken from less reliable sources (social networks, internet as a whole, tabloids, etc.). In controversial cases, good professional conduct and good faith are confirmed by giving the other side an opportunity to respond.

Journalist Help - Line

As the Association *BH Journalists* operates a *Journalist Help-Line,* this service has, among others, received requests from journalists (and media organizations) who are faced with threats and/or lawsuits by public figures and political and state officials for alleged defamation. The *Journalist Help-Line* has hired lawyers who participated in these court proceedings. For the purposes of this analysis, we will mention several characteristic cases:

1. Lawsuit against journalists of the news website *Buka*. In the first-instance judgment, Bijeljina Municipal Court accepted the request of the plaintiff (Prof. Aleksa Milojević) and awarded him 1,000 KM as compensation for non-pecuniary harm. According to the lawsuit, after an interview by *Buka* journalists with Aleksa Milojević was

published, a comment was posted the next day by a person signed as Zoran Krunić, who negatively characterized Prof. Milojević (the comment contains elements of defamation). After being warned about it by the plaintiff, *Buka* issued an apology and removed the comment, but the lawsuit and first-instance verdict followed nevertheless. The second-instance court, Bijeljina District Court, accepted *Buka*'s appeal, rejected the plaintiff's request as unfounded and ordered the plaintiff to cover all court expenses (judgment no. 80 0 P 044470 14 Gž, 2015).

Referring to the practice of the European Court, the District Court concluded that the plaintiff "as a public figure… knew he was exposed to the watchful eye of the general public, which means that he expressed willingness to subject his actions, both in private as in public life, to criticism of higher intensity…".

2. Lawsuit filed by a journalist (Faruk Kajtaz) against a public figure and political official (Zijad Hadžiomerović). A first-instance judgment was passed in favor of the journalist and compensation of damage in the amount of 6,000 KM was awarded (judgment no. 65 0 P 459331 14 P);
3. In the course of 2014, 23 court proceedings were conducted against journalists and editors of *Slobodna Bosna* (owner "Pres-sing" doo, Sarajevo), 20 of which were first-instance proceedings. In a letter to the Association *BH Journalists* of 18 November 2014, *Slobodna Bosna*'s editorial board pointed out that they were "…faced with a dramatic financial situation caused by a number of, to put it mildly, legally unfounded, suspicious and tendentious court judgments, which have seriously jeopardized the fate and existence of our media outlet…"

   A year later, on 31 December 2015, the 1000th issue of *Slobodna Bosna* was published, after which the print edition of the paper stopped coming out and only the online edition was left.

   The publicly best-known case of a court proceeding against *Slobodna Bosna* journalists and editors lasted exactly six years and recently ended, in a repeated first-instance proceeding, in favor of the defendant (*Slobodna Bosna)*. The plaintiffs were senior officials of the SDP party and government bodies at the time the lawsuit was filed (Zlatko Lagumdžija, Željko Komšić and Damir Hadžić), for articles published at the end of 2009 on a corruption scandal, an issue that was also covered by other media ("racketeering scandal"). A Municipal Court on 21 February 2011 in first-

instance judgment no. 65 0 P 118333 09 P. had ordered the defendant, "*Pres-sing"* d.o.o Sarajevo, to compensate the three plaintiffs for non-pecuniary harm in the amount of 3,000 KM each (9,000 KM in total), along with the legally prescribed default interest, starting on 27 November 2009.

After Sarajevo Cantonal Court overruled the judgment, Sarajevo Municipal Court in a repeated proceeding on 13 July 2017 passed a first-instance judgment (no. 65 0 P 118333 17 P 2) rejecting the plaintiffs' request and ordering the plaintiffs to jointly compensate the defendant (*Slobodna Bosna)* for the costs of the proceeding in the amount of 7,228.08 KM. "Considering the presented evidence and correlating it, the court found that the article was based on journalists' information which they received from their source and that it was not about gross negligence or a desire to portray the plaintiffs in a poor light." The court also took into consideration the fact that the plaintiffs were public figures, that the raised issues were in public interest, and finally concluded that the published article and "presentation of facts, satire and insults are not sanctioned by the Law on Protection against Defamation."

Conclusions and recommendations

As has been pointed out in this analysis, the decade and a half since the start of implementation of the Law against Defamation has been marked by both positive and negative appraisals. The most important appraisal is that the process of decriminalization of defamation has taken root, that it contributes to society's democratization and encourages freedom of expression for all, not only journalists, and that it establishes rules that all social actors should adhere to. The previously mentioned negative aspects of court practice, on one hand, and inadequacies in media practice, on the other, are not discouraging. Quite the contrary; their identification is a starting point for improvements on both sides, in the judiciary as well as in journalism.

An extremely large number of defamation lawsuits (263 in 2015 and 226 in nine and a half months of 2016, according to information from HJPC and Ombudsmen of B&H) is at the same time an illustration of the perceptions and intolerance in society and of the attitude of public figures toward public dialogue. Some senior officials deal with their unpreparedness for public criticism through court proceedings and confrontations with journalists. If the

names of plaintiffs in lawsuits against journalists/editors and publishers of media are analyzed, it is easy to see that most of them are presidents (of political parties or government bodies), prime ministers, ministers, directors and other public figures. It is also evident that their compensation requests are highest: usually between 5,000 and 10,000 KM, occasionally even higher.

Defamation lawsuits against journalists are also seen as a means of pressure on media. An important factor that confirms this is the frequency of lawsuits brought by some political figures – from several lawsuits to several tens of lawsuits. Lawsuits and threats against journalists in small local communities have an especially chilling effect on journalists.

The conclusion on political pressure could be checked if we had reliable data on the number of filed lawsuits and number of withdrawn lawsuits, as well as on the amounts of compensation requests. This practice is quite wide-spread, but courts do not keep these kinds of records. Another common trend is that public figures announce lawsuits through the media, but never file them. There is no doubt that this is also a message and threat to journalists and media.

For adequate implementation of the Law on Protection against Defamation and the highest democratic standards, including judgments of the European Court of Human Rights, new additional education is needed for judges and journalists, because these norms have not been implemented here before. Education can be separate as well as joint and so far it has given good results.

The recommendation for the High Judicial and Prosecutorial Council is to provide separate keeping of statistics on cases conducted against journalists/editors/media in light of the exceptional role that media play in a democratic society. If such records are established, it is recommended that all court proceedings under Article 10 of the European Convention be included.

The Association *BH Journalists* will participate in education programs for journalists/judges and in future discussions on possible amending of this and other laws of importance for the journalist profession.

[i] http://bhnovinari.ba/bs/?s=zakon+o+za%C5%A1titi+od+klevete
[ii] http://msb.gov.ba/dokumenti/medjunarodni/?id=2665
[iii] http://bhnovinari.ba/bs/2004/02/19/deklaracija-o-slobodi-politike-debate-u-medijima/; http://bhnovinari.ba/bs/2009/06/09/evropska-povelja-o-slobodi-tampe/; http://bhnovinari.ba/bs/2007/10/31/deklaracija-vijeca-ministara-o-zatiti-i-promociji-istraivackog-novinarstva/
[iv] http://www.echr.coe.int/Pages/home.aspx?p=home
[v] http://bhnovinari.ba/bs/2011/04/09/zakon-o-zatiti-od-klevete-federacije-bosne-i-hercegovine/
[vi] http://bhnovinari.ba/bs/2001/08/09/zakon-o-zatiti-od-klevete-republike-srpske/
[vii] http://bhnovinari.ba/bs/?s=zakon+o+za%C5%A1titi+od+klevete
[viii] http://bhnovinari.ba/bs/2011/04/09/zakon-o-zatiti-od-klevete-federacije-bosne-i-hercegovine/ and http://bhnovinari.ba/bs/2001/08/09/zakon-o-zatiti-od-klevete-republike-srpske/
[ix] Article 11, http://bhnovinari.ba/bs/2011/04/09/zakon-o-zatiti-od-klevete-federacije-bosne-i-hercegovine/ and Article 9, http://bhnovinari.ba/bs/2001/08/09/zakon-o-zatiti-od-klevete-republike-srpske/
[x] Article 14 (1) of the Law of FB&H, http://bhnovinari.ba/bs/2011/04/09/zakon-o-zatiti-od-klevete-federacije-bosne-i-hercegovine/
[xi] http://ombudsmen.gov.ba/documents/obmudsmen_doc2017082415202346bos.pdf, p. 52.
[xii] Data received on request
[xiii] http://www.startbih.info/Aktuelnost.aspx?id=90073
[xiv] http://bhnovinari.ba/bs/2011/04/09/kodeks-za-tampu/
[xv] http://bhnovinari.ba/bs/2011/04/09/kodeks-za-tampu/
[xvi] Lingens v. Austria, Judgment 1986, Series A no. 103.
[xvii] Eon v. France, Application No. 26118/10, Judgment of 13 March 2013.
[xviii] Lingens v. Austria, 1986, Series A no. 103.
[xix] Filipović v. Serbia, Request no. 27935/05, Judgment of 20 November 2007.
[xx] http://bhnovinari.ba/bs/2011/04/09/zakon-o-zatiti-od-klevete-federacije-bosne-i-hercegovine/ and http://bhnovinari.ba/bs/2001/08/09/zakon-o-zatiti-od-klevete-republike-srpske/
[xxi] Observer and Guardian v. United Kingdom, 1991, paragraph 60.
[xxii] http://bhnovinari.ba/bs/2011/04/09/zakon-o-zatiti-od-klevete-federacije-bosne-i-hercegovine/ and http://bhnovinari.ba/bs/2001/08/09/zakon-o-zatiti-od-klevete-republike-srpske/

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