



FACTS V. LAWSUITS - TEN YEARS SINCE DECRIMINALIZATION OF DEFAMATION IN MONTENEGRO

Analysis of court proceedings for harm to honor and reputation in media 2011-2020

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TRADE UNION OF MEDIA OF MONTENEGRO

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DECADE SINCE DECRIMINALIZATION OF DEFAMATION - WHERE ARE WE NOW?

The fact that, during 10 years, more than 200 lawsuits have been filed against the media and journalists before Montenegrin courts goes in favor of decriminalization of defamation patrons, who justifiably claim that criminal liability is not the only corrective measure that may be imposed to punish public word conveyers for their unprofessional work. This fact also confirms that civil lawsuits are very “attractive” and that they are resorted to by anyone who thinks that a media outlet or journalist has harmed their honor and reputation.

The decade since the decriminalization of defamation in Montenegro is a period long enough to enable a detailed analysis of the work of the media when it comes to ethics and attitude towards those they write about and respect for basic professional standards and actions of Montenegrin courts at all levels. Apart from the mere counting of lawsuits, which, as it turned out, were not few, it is possible to see who is most often sued and when and how these proceedings end, i.e. how conscientiously Montenegrin judges impose sentences and follow the practice of the European Court of Human Rights.

After the pilot project we conducted in 2019, analyzing three-year period, the Trade Union of Media of Montenegro accepted an extensive and uncertain job of searching for data on lawsuits related to the harm to honor and reputation and their outcomes for all 10 years since the decriminalization of defamation. Among a multitude of data, which no one before us has tried to collect and unite, we have created a unique and valuable database that shows trends, trial outcomes, but also some things that are not very popular and cannot be read in the media. For example, we learned that the vast majority of lawsuits were filed by “ordinary” citizens, those who do not have sound names and surnames and whose lawsuits cannot be understood as pressure on the media, but only as an attempt to defend personal integrity that has been harmed by the media. We also learned that a significant number of lawsuits against media was filed by media, which is problematic in several respects and would require some other, targeted analysis, but also confirms that the media themselves do not believe in self-regulation. If it were otherwise, the self-regulatory body should be the first address for solving the problem, and not the courts at all. However, se-

If-regulatory bodies do not exist or are weak, and Montenegrin media are proven to be polarized. That is why hearings, where media owners, authors of texts and others confront and interrogate, abound in presenting dirty laundry and slander, and not presenting facts and confronting arguments.

Ten years is also quite a period for those who were suspicious when defamation was decriminalized in 2011 to realize that it was a big step forward in terms of media freedom in Montenegro and making it easier for journalists to do their job without fear of ending up in prison. At the same time, everyone should understand that decriminalization does not mean that everything is allowed and that others can be harmed without consequences.

The analysis, which is the most important part of the one-year project “Facts v. Lawsuits” in which our partner is the news agency Mina and which is funded by the U.S. Embassy in Podgorica, to which we thank for help and recognition of the importance of collection of data that will be useful in future work of the Trade Union of Media of Montenegro, as well as other organizations and institutions, and above all the media and journalists.

In addition, during the data collection process, cooperation with the basic courts in Montenegro was strengthened, to which we thank for the submitted data and readiness to meet our needs. Also, cooperation with the Supreme Court of Montenegro was established.

SUMMARY

The report "Facts v. Lawsuits" is part of the homonymous project funded by the U.S. Embassy in Podgorica, which aims to gain real insight into the problem of lawsuits against the media and journalists due to the harm to honor and reputation. This is probably the first comprehensive research that resulted in the first database of cases of the personality rights violations in the media, and which is an excellent source of information for further research. The project was supposed to deal with the cases of the personality rights violation in the media before second and third instance courts, as well as those submitted to the Office of the Representative of Montenegro before the European Court of Human Rights. However, during the project, we realized that only a small number of cases would have been covered in that way, so we requested data from all Basic Courts in Montenegro. However, the problem is that most courts do not keep a special record of cases and, therefore, manually search for data each time, which complicates the research. Nevertheless, the courts have shown an enormous degree of readiness to submit, often scarce, data, and our researchers have analyzed the databases and found the remaining cases.

Although the decriminalization of defamation has brought numerous benefits to the media and influenced the increase in freedom of expression, there is still a large number of lawsuits on this basis that can affect the work of the media and cause a "deterrent effect". During the ten-year period since defamation was decriminalized, the media have been sued as many as 210 times. Citizens, media and journalists most often filed the lawsuits. The sum of around 3 million Euros was claimed from the media, and the first instance courts ordered the media to pay the amount that was about 90% less than claimed. Most lawsuits were filed in 2019, which was obviously the most difficult year for the freedom of expression. Although the media often refer to influences coming from politicians, public figures and public officials, research has shown that lawsuits filed by other media and journalists are more

"dangerous".

During the decade since the decriminalization of defamation, courts terminated 142 cases by the entry of final judgments. Most of these cases were initiated during 2013, and the least in 2011. In terms of the number of lawsuits, the central region is in a leading position, with Podgorica having the absolute primacy over all other municipalities with the largest number of lawsuits. It is interesting that, during the analyzed period, the Basic Courts in Niksic and Plav also stood out in terms of the number of lawsuits. In most cases, the plaintiffs were citizens and the media, while defendants were print media, mostly Dan and Vijesti. In the analyzed period, almost three million Euros were claimed from the media, and the largest lawsuits were filed by legal entities, public figures and citizens. The first instance courts ordered that the media should pay 131,900 Euros, while the High Courts, in cases that reached that level at all, ruled that the media should pay 53,000 Euros. Only eight lawsuits reached the Supreme Court.

There are currently 68 active cases in Montenegro in which journalists and the media have been sued due to the harm to honor and reputation. These cases mostly date from 2019 and 2020, but there are also those that last longer than five years. Most of the court proceedings that are still pending were initiated in 2019. These proceedings are conducted by judges of the Basic Courts in Podgorica and Kolasin. In these cases as well, the most common plaintiffs are citizens and the media, i.e. journalists, and the total amount of claims is 352,500 Euros. The print media and portals are most often sued. It is noticeable that some trials take a very long time, and that up to 15 hearings are scheduled in individual cases.

PROTECTION OF THE PERSONALITY RIGHTS IN MEDIA - LEGAL FRAMEWORK

Defamation and insult in Montenegro have not been considered criminal offenses for ten years, because in 2011, our state, respecting the recommendations of the Council of Europe, decriminalized them. Thus, at least formally, a greater degree of freedom of expression for journalists and the media is enabled. Although they are no longer considered criminal offenses, compensation for the personality rights violation is possible before Montenegrin courts under the Law on Media and the Law on Obligations.

The Law on Media, adopted in early August 2020, states that “the state guarantees the right to free establishment of media, unhindered work of journalists and their safety in order to enable the freedom of expression, media pluralism, media independence, freedom of research, collection, dissemination, publishing and receiving information, and protecting human personality and dignity”¹.

The legislator clarifies that the freedoms of media, expression and information, guaranteed by the state, are at the level of standards contained in the international documents on human rights and freedoms (EU, Council of Europe, UN, OSCE), and that the Law on Media is interpreted and applied in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights. The Law further states that the media have freedom to publish information and opinions on phenomena, events and personalities, but that they shall respect the Constitution, the Law and the Code of Journalists of Montenegro. The new Law on Media also provides for restrictions on freedom of expression.

“Freedom of the media may be restricted only when necessary in the interest of protecting the national security and territorial integrity of Montenegro, in order to prevent riots or criminal offenses, protect health and morals, protect the reputation or rights of others, prevent disclosure of confidential information or preserve authority and impartiality of the judiciary.”²

When it comes to the protection of the personality rights, the Law on Media prescribes that it is not allowed to publish information that harms honor and reputation.

“Disclosure of information that may harm honor and reputation is permitted if the information is accurate, reports on matters of public interest and contributes to the right to information.”³

The Law also explains that caricature and satirical portrayal of a person is not considered a violation of the dignity of a person. The novelty introduced by the Law on Media is the principle of joint and several liability of the media and journalists employed by them, if there is a violation of honor and reputation. Namely, Article 24 of the Law on Media defines that the founder of the media is responsible for the published media content, but also

that the editor-in-chief, who freely and independently edits the medium, is responsible for the published content.

“The founder, editor-in-chief and journalist shall be jointly and severally liable for the damage caused by publishing untrue, incomplete or other media content, if it is proven that they acted contrary to the due journalistic attention.”⁴

The new Law on Media envisages and elaborates in detail the right of reply and correction. It is stated that anyone to whom incorrect information relates or whose right or interest has been violated by such information has the right to request a reply or correction from the editor-in-chief, free of charge. The legislator has provided in detail the manner in which the correction and reply are published, the time frame for their publication, but also the fine for non-compliance with this right. In addition, the Law regulates the manner of initiating court proceedings in order to protect this right.

The Law on Obligations defines more precisely the violation of honor and reputation, and how the amount of monetary compensation is determined when that right is violated.

“The personality rights include the right to life, the right to physical integrity, the right to mental integrity, the right to liberty, the right to honor, the right to reputation, the right to protection of private life, the right to dignity, the right to one’s own character, the right to one’s own voice, the right to correspondence and personal records, the right to personal identity, the moral component of copyright, as well as other personality rights prescribed by the Constitution, ratified and published by international treaties and generally accepted rules of international law and special laws.”⁵

The legislator further stipulates that whoever harms another person’s honor, or whoever utters or conveys false statements concerning another person, although person spreading allegations is aware, or should have been aware, that these are untrue, thus causing a pecuniary damage to such person shall be liable for damages⁶. Such a liability does not belong to the person who made a false statement concerning another without knowing that it is not true. The Law on Obligations further stipulates that, in case of violation of the personality right, a person has the right to protection “in relation to any person” who participated in that violation, but also that everyone has the right to request from a court (or other competent authority) to order the cessation of the violation of their personality rights⁷.

“In case of violation of the personality rights, the court shall, according to the gravity of the violation and the circumstances of the case, award fair compensation, regardless of the pecuniary compensation, as well as in the absence of pecuniary damage.”⁸

1 Law on Media, Article 3
2 Law on Media, Article 3
3 Law on Media, Article 39

4 Law on Media, Article 24
5 Law on Obligations, Article 207
6 Law on Obligations, Article 205
7 Law on Obligations, Article 209
8 Law on Obligations, Article 210a

As for the Code of Journalists of Montenegro, its first article obliges journalists to respect the truth and persistently search for it, having in mind the right of the public to be informed and human need for justice and humanity.

“Journalists shall never publish information that they know to be false or malicious. Journalist shall never publish unfounded allegations about others that are intended to harm their reputation.”⁹

The Code further provides for the distinction between facts and comments (comment is free and the facts are sacred), the obligation to correct and reply, but also respect for diversity.

“Race, religion, nationality, sexual orientation, gender, family status, physical and mental condition or illness, as well as political affiliation, will be mentioned by journalist only if necessary for complete information in the public interest.”¹⁰

By clarifying this principle of the Code, journalists are required not to report in a way that spreads or encourages hate speech, as well as to deal with crime reporting with particular caution. The Principle 4.3. envisages in detail the principles of work of journalists in order to avoid defamation and insult. Thus, for example, it is envisaged that the media shall act in good faith, even when they send strong criticism. It was also explained that offensive speech, which implies an unreasonable personal attack on someone, cannot be protected by the right to freedom of expression.

“Although journalistic freedom includes the possible resort to a certain degree of exaggeration, provocation or insult, defamation is not acceptable, nor are expressions that are not justified for the purpose of reporting on the issues of public interest.”¹¹

Article 7 of the Code also contains instructions for journalists in order to respect the personality rights. This article provides for respect for the right to privacy, which is inversely proportional to the function that one performs. However, it is added that journalists are obliged to respect human dignity in these situations as well.

However, despite all these legal solutions, Montenegro is still accused of strong self-censorship and the effect of intimidating journalists due to the possibility of fil lawsuit for the protection of personality rights. Such assessments could be found in the European Commission's reports on Montenegro in previous years. One of them states that “a large number of lawsuits for violation of honor and reputation indicate weak mechanisms of self-regulation”¹². The European Commission also pointed out the weak mechanisms of self-regulation in the Report on Montenegro for 2020.

“The authorities, including the judiciary need to be better prepared to apply the ECHR case law on freedom of expression.”¹³

The Council of Europe experts, who analyzed the media sector in Montenegro a few years ago, found that decriminalization was a positive step forward but were concerned about the case law. Namely, they explained that there were indications that “in some cases there is no independent judicial decision-making in defamation proceedings and there are claims

that it is under the influence of political and other government structures.”¹⁴

The director of the non-governmental organization Action for Human Rights, Tea Gorjanc-Prelevic, said that the criminal prosecution for defamation and insult in Montenegro was a serious threat to the freedom of expression because these crimes, as prescribed by the Criminal Code, were not in line with the European standards and judgments rendered by even the highest national courts did not respect those standards¹⁵. She reminded that then there was a right to protection from defamation and insult in civil proceedings, while in criminal proceedings one could still have been held liable for other acts related to expression such as inciting hatred and endangering security.

“Unfortunately, there are still some other crimes like causing panic and disorder and offences from the chapter on the protection of honor and reputation that should also be removed or at least reformulated, such as the following: Disclosure of personal and family circumstances, Violation of the reputation of Montenegro, Violation of the reputation of peoples, minorities and other national minority communities as well as harm to the reputation of a foreign state or international organization.”¹⁶

Gorjanc-Prelevic believes that both the media and journalists must be prepared to bear the liability for the damage they cause by publishing unverified information or some deliberate campaign of unfounded slander or violation of privacy.

“The media have powerful ‘weapons’ at their disposal and can do a great damage, just as they can have a very positive effect on society with their professionalism.”¹⁷

The new legal solution, contained in the Law on Media, which envisages joint and several liability of journalists, editors and founders, is considered positive “because, thus, each of them can bear liability in accordance with their part in causing the damage.” She adds that joint and several liability relieves the journalists themselves, “whose financial opportunities are the weakest”.

As for the work of courts, Gorjanc-Prelevic says that the first instance courts were the first to improve the practice and start applying the international standards, especially the practice of the European Court of Human Rights, but the conservative High and Supreme Courts largely revoked those progressive judgments. She reminded of a positive role of the Constitutional Court in two cases: first, in 2012, when it revoked the Supreme Court's judgment in favor of director Emir Kusturica, and to the detriment of the weekly newspaper Monitor and writer Andrej Nikolaidis, and second, in three cases when sister of the Prime Minister i.e. President of Montenegro sued Dan, Monitor and Vijesti.

“In all three cases, the Constitutional Court revoked the judgements of the Supreme and High Courts, which were not in accordance with the standard of the freedom of expression. However, the only problem is that it was done after a significant delay - in the case of Vijesti even four years after filing the constitutional complaints! The fact is that, unfortunately, the conservative Supreme Court refused to act upon the decision of the Constitutional Court in the case against Dan.”¹⁸

9 Code of Journalists of Montenegro, Article 2, General Principles, Article 2, URL: https://www.mminstitute.org/files/Kodeks_novinar.pdf

10 Ibid., Principle 4

11 Ibid., Principle 4.3.

12 Report on Montenegro for 2018, p. 27, URL: <https://www.eu.eu/me/mn/pregovori-o-pristupanju/dokumenti-pregovori/category/57-izvjestaji-o-napretku>

13 Report on Montenegro for 2020, p. 31, URL: <https://www.eu.eu/me/mn/pregovori-o-pristupanju/dokumenti-pregovori/category/57-izvjestaji-o-napretku>

14 Kersevan, Smokvina and others, „Analiza medijskog sektora u Crnoj Gori sa preporukama za usklađivanje sa standardima Savjeta Evrope i Evropske unije”, [Analysis of the media sector in Montenegro with recommendations for harmonization with the standards of the Council of Europe and the European Union], URL: <https://m.coe.int/analiza-medijskog-sektora-u-crnj-gori-sa/16807b4d7d>

15 Interview, Tea Gorjanc Prelevic, answers sent by e-maila, January 2021.

16 Ibid.

17 Ibid.

18 Ibid.

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The adoption of the Convention on Human Rights and Fundamental Freedoms (better known as the European Convention on Human Rights, hereinafter referred to as: the Convention¹⁹) marked the beginning of a new era in the protection of rights and freedoms, including the freedom of expression. It was adopted in Rome in 1950 and, together with the Universal Declaration of Human Rights²⁰, adopted a few years earlier, was the basis for the post-war world. The Convention was a revolutionary document on two grounds, because it was the first legally binding agreement on human rights and because it introduced the European Court of Human Rights - a mechanism in charge of respecting the rights prescribed by the Convention.

The right to freedom of expression, a key right for all public word conveyers, is defined in Article 10 of the Convention. The right to freedom of expression is not an absolute right, but it²¹ stipulates that everyone has the right to freedom of expression and that this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. However, this article prescribes the possibility for the state to request the working licenses from the media.

“The exercise of these freedoms, since it includes the duties and liabilities, may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and needed in a democratic society, in the interests of the national security, territorial integrity or public security, prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, prevention of the disclosure of confidential information, maintenance of the authority and impartiality of the judiciary.”²²

When it comes to the protection of the personality rights, primarily the prevention of defamation, the Council of Europe has its own special standards. According to the Media Defense Law Initiative director Peter Norlander, they can be summarized in four standards such as providing plenty of room for public debate on issues of public interest and making distinguish between statements of facts and opinions²³. According to the Council of Europe’s standards, journalists should be provided with the right to defend “responsible journalism” and “sanctions must always be proportionate”²⁴.

Although the European Court of Human Rights is taken as a sacred place to protect the freedom of expression, the available data²⁵ indicate that it began to deal with this freedom only ten years after its establishment. The data indicate that the first case of the European Court of Human Rights, which dealt with the freedom of expression, was *De Becker v. Belgium* (1962), and since then this court has ruled in more than 1,000 cases under Article 10 of the Convention.

According to some estimates, the European Court of Human Rights in its work most often deals with the protection of other people’s reputations, i.e. defamation. In practice, in deciding on such applications, the Court relies on a three-part test and answers three questions.

“1. whether there has been an interference with the freedom of expression (which exists if compensation has been awarded); 2. whether the interference is prescribed by law and which legitimate aim is being protected; and 3. whether the interference was necessary in a democratic society and whether it was proportionate to the legitimate aim”²⁶

An important progress in terms of freedom of expression was the adoption of the opinion of the European Court that criticism of public officials, politicians, government and other members of society was allowed, but within certain limits. That is why it is necessary to prove that slander really exists.

Among the most important cases, which paved the way for the freedom of expression and protection against violation of the personality rights and were processed by the ECHR, are the following: *Ligens v. Austria* (1986)²⁷, *Feldek v. Slovakia* (2001)²⁸, *Thorgeir Thorgeirson v. Iceland* (1992), *Flux and Samson v. Moldova* (2007) and others.

Based on the judgments of the European Court of Human Rights, it can be concluded that, although the protection of the reputation and personality rights of others is a justified restriction on freedom of expression, it still cannot be unlimited or arbitrary. This should be especially taken into account by the courts when sentencing, because punishments can also be considered an interference with freedom of expression. Penalties should therefore be “proportionate to the inflicted damage to reputation and prescribed by domestic law”²⁹.

19 *European Convention on Human Rights*, URL: https://www.echr.coe.int/documents/convention_bos.pdf

20 *Ibid*, Article 10

21 *Ibid*, Article 10

22 *Ibid*, Article 10

23 Peter Norlander, *Reforma odgovornosti za klevetu i uvredu*, [Reform of liability for defamation and insult], *Human Rights Action*, p. 27, URL: https://www.hracion.org/wp-content/uploads/2017/01/hra-reforma_odgovornosti_za_klevetu_i_uvredu.pdf

24 *Ibid*.

25 Mendel, Toby, *Sloboda izražavanja Vodiča za tumačenje člana 10 Evropske konvencije o ljudskim pravima i njegovog konteksta*, [Freedom of expression from the Guide to the interpretation of Article 10 of the European Convention on Human Rights and its context], p. 8, URL: <https://bhnovinari.ba/wp-content/uploads/2013/10/coe-slobodaizrazavanja.pdf>

26 Supreme Court of Montenegro, *Report on the Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the Practice of the Supreme Court of Montenegro, January 2015 - July 2017*, p. 48, URL: <https://m.coe.int/report-on-application-of-the-echr-in-supreme-court-of-montenegro-168092d14f>

27 *Ligens v. Austria*, URL: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/12/Ligens-protiv-Austrije.pdf>

28 *Feldek v. Slovakia*, URL: <http://www.hracion.org/wp-content/uploads/2018/11/Tematska-zbirga-biltena-CG.pdf>

29 Mendel, Toby, *Sloboda izražavanja Vodiča za tumačenje člana 10 Evropske konvencije o ljudskim pravima i njegovog konteksta*, [Freedom of expression from the Guide to the interpretation of Article 10 of the European Convention on Human Rights and its context], p. 64, URL: <https://bhnovinari.ba/wp-content/uploads/2013/10/coe-slobodaizrazavanja.pdf>

ANALYSIS: COURT PROCEEDINGS FOR VIOLATION OF THE PERSONALITY RIGHTS IN MEDIA

The Trade Union of Media of Montenegro (referred to as: the TUMM) made an analysis of court proceedings initiated for the violation of the personality rights in the media, in which journalists and/or the media were sued. The analysis included all the proceedings initiated from 2011, i.e. since the decriminalization of defamation, until 2020, and covered cases before almost all courts in Montenegro. The data that are part of the analysis were obtained in cooperation with the Basic and High Courts, and some were collected by the trial observers from the Trade Union of Media of Montenegro who monitored the active cases. The data obtained in this project are part of a single database of cases of all lawsuits concerning the harm to honor and reputation in the media, which consists of 142 legally terminated proceedings and 68 active cases, in which hearings are still held. It is important to note that all data concerning active cases, and therefore claims or judgments, are subject to change until the end of the court proceedings. Also, there is a possibility that some lawsuits on this basis are not in the database, because the courts did not recognize them and thus submitted to the Trade Union of Media Union of Montenegro. The TUMM research team searched physically and electronically all available court databases, and we found some cases ourselves.

The decade since the decriminalization of defamation, which was supposed to enable the media to work more freely, has been marked by a large number of claims for the violation of honor and reputation. In those ten years, the media have been sued as many as 210 times. According to the data, the worst year for the media was 2019, because during that year, as many as 50 claims were filed for damage compensation due to the violation of the personality rights. It is followed by 2020 when 23 claims were filed and 2013 when 22 claims were filed. The fact that, with the exception of 2011 and 2012, 15 or more claims were filed each year is worrying.

Chart 1. Number of claims filed per year



The greatest “danger” of lawsuits for the violation of the personality rights lies behind the articles about citizens, who have sued the media 103 times on this basis. Perhaps unexpectedly, but in addition to citizens, the media and journalists are most often sued by their colleagues and other media, who have filed almost 50 claims on this basis (33 by the media and 14 by journalists). Public officials and politicians have filed in total 15 claims against the media, claiming just over 100,000. Public figures and businesspersons filed a total of 10 claims amounting to 106,000 Euros.

During the first decade since the decriminalization of defamation, the media were required to pay slightly more than three million Euros (3,018,461.06 Euros) as damage compensation for the violation of honor and reputation, while the Basic Courts, according to the currently available data, ruled that the media have paid 143,700 Euros.

Analysis of cases with final judgments

The analysis of the Trade Union of Media of Montenegro included cases with final judgments in proceedings against the media or journalists, due to the violation of the personality rights. The analysis was done on the basis of the available judgements and insight into the case files, mostly provided by Montenegrin courts.

Since 2011, when defamation and insult have no longer been considered a criminal offense, 142 cases have been initiated in Montenegro for compensation for damage due to the violation of the personality rights in which journalists and the media have been sued³⁰. Majority of such lawsuits was filed in 2013 (22), 2015 (20), 2016 (19) and 2017 (17 per each year). The smallest number of cases was in 2011 - six in total.

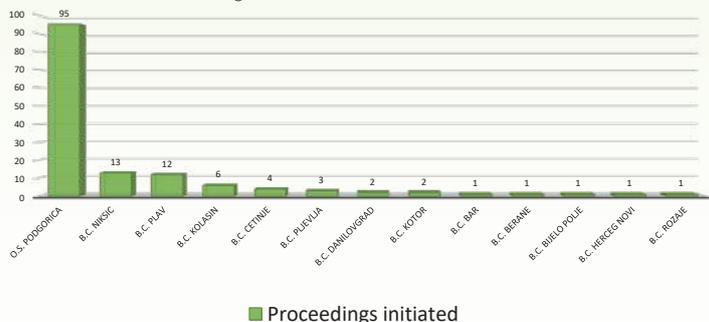
Chart 2. Number of lawsuits filed per year



³⁰ The TUMM analysis showed that during the analyzed period, there were some repeated proceedings, which were initiated again after the decriminalization of defamation, but they were not analyzed because the courts did not provide data for such proceedings.

When it comes to initiating these proceedings per municipalities, the central region is certainly in the leading position. As many as 13 Basic Courts had processed at least one such case during the analyzed period. Before the Basic Court in Podgorica, 95 proceedings were initiated in nine-year period for compensation for damages due to the violation of the personality rights. There were 13 such proceedings before the Basic Court in Niksic, and 12 before the Basic Court in Plav. The Basic Court in Kolasin had six such cases. Other courts had significantly less workload when it came to these lawsuits.

Chart 3. Proceedings initiated before individual courts

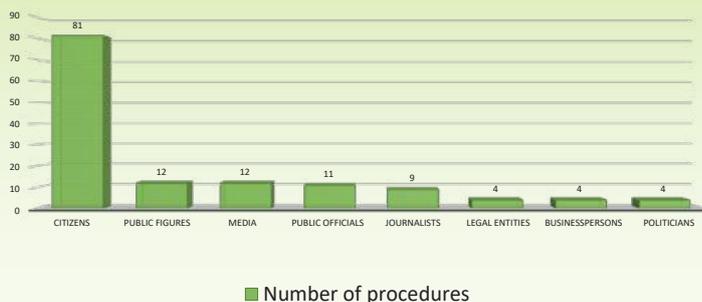


The largest number of proceedings was initiated before the Basic Court in Podgorica during 2014 (17), 16 lawsuits were filed in 2013, while the judges of this court in 2015 and 2017 had 15 cases of this type per each year. In 2012, the media were sued before the Basic Court in Podgorica 13 times. As this court has the largest number of pending cases, these cases are often delegated to other courts that have a smaller scope of work. Thus, 11 lawsuits filed before the Basic Court in Podgorica were delegated to other courts, namely one in 2015 (to the Basic Court in Niksic), seven in 2016 (six to the Basic Court in Niksic and one to the Basic Court in Cetinje), two in 2018 (one to the Basic Court in Niksic and one to the Basic Court in Cetinje) and one in 2019 (to the Basic Court in Niksic).

In Niksic, most cases were initiated in 2016, and the media were sued before that Basic Court in 2015 and 2018 as well. In Plav, lawsuits were filed against journalists and the media during 2011 (1), 2013 (6), 2018 (2) and 2019 (3). Plaintiffs mostly addressed to the Basic Court in Plav with lawsuits against the local media Glas Plava (6 lawsuits), while the independent daily newspaper Vijesti (five lawsuits) was mostly sued before the Basic Court in Niksic.

When it comes to the plaintiffs, most often they were citizens. As many as 81 proceedings for compensation for damage caused by the violation of honor and reputation in the media were initiated by citizens. The second place is shared by public figures and the media with 12 lawsuits each, while the third place is occupied by public officials (11). A significant number of cases were initiated by journalists themselves (9) and legal entities (9) who sued the media/journalists. The trend of the media and journalists suing other media and colleagues for violating the honor and reputation is still worrying, as it depicts a polarized media scene, weakens the media, and points to weak self-regulatory mechanisms.

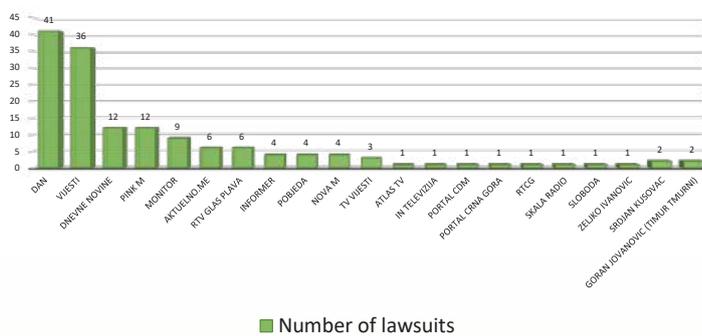
Chart 4. Number of proceedings in relation to the type of plaintiff



In most of the analyzed cases, the media were sued. However, in 21 cases the second defendants (or even the third defendants) were journalists, in two cases the second defendants were editors and in one case the media owner. There were also cases in which the second defendants were other media.

Out of the total number of initiated cases, only 4 were initiated against a natural person (who is simultaneously the owner or editor-in-chief of one of the media). Most lawsuits were filed against the daily newspaper Dan, as many as 41. In second place is the independent daily newspaper Vijesti (36). Twelve lawsuits were filed against Dnevne novine and 12 against the former Pink M television, as well as 9 lawsuits against the weekly newspaper Monitor. Six lawsuits were filed against the Aktuelno.me portal and Glas Plava television each.

Chart 5. Number of lawsuits in relation to the medium and responsible persons in the medium



According to the data we collected through the analysis, daily newspapers are most often sued, followed by televisions, in second, and portals, in third place. Radio stations are the least frequently sued media. No local public broadcaster was sued due to the violation of the personality rights, and the Public Broadcasting Service - RTCG had only one lawsuit on this basis.

During nine years, media were ordered to pay compensation for damage amounting to 2,618,961.06 Euros due to the violation of the personality rights (honor and reputation). In ten lawsuits, the amount was not specified, in seven of them only the publication of answers was requested, and in two lawsuits the publication of denials was requested. In 13 cases, the claim is not known and most of these cases ended in the dismissal of the lawsuit. The minimum amount claimed from the media or journalists in the lawsuit was 300 Euros, and the largest was almost 300,000 Euros³¹. The Universal Capital Bank claimed the largest amount from the media, from the newspaper Vijesti, but the Basic Court in Podgorica, as well as the second instance court, rejected this lawsuit. In the largest number of lawsuits - as many as 61, the amount

³¹ In eight cases with final judgments, the claims are not known, and these cases did not enter the total amount claimed. In 6 of these cases, the lawsuit was either withdrawn or dismissed.

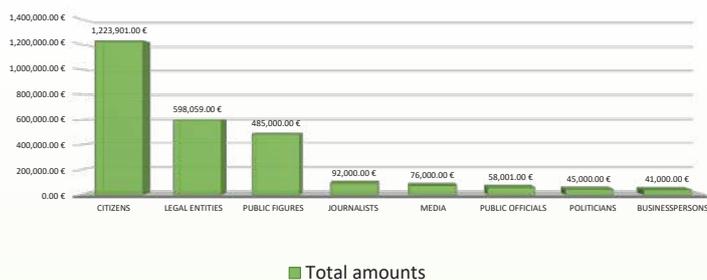
of claim ranged from 2,000 to 10,000 Euros.

Chart 6. Number of lawsuits in relation to the claimed amount



The analysis showed that the citizens in the lawsuits claimed almost 1.3 million Euros from the media due to the violation of the personality rights. The largest sums of money in lawsuits were claimed from the media or journalists by legal entities, public figures and citizens. Namely, the analysis of the judgements has shown that the largest claimed amount was in the lawsuit of a legal entity that requested almost 300,000 Euros from the medium. Citizens' claims amounted up to 250,000 Euros, and legal entities claimed compensation amounting to 200,000 Euros. Politicians and public officials had the smallest claim amounts, claiming 20,000 Euros from the media. It is interesting that the media and journalists claimed as much as 168,000 Euros as compensation for damage for the violation of the personality rights from other media and journalist. The media, as legal entities, claimed 76,000 Euros from the competition for violating this right, and the largest claim amounted to 24,000 Euros. Journalists claimed 92,000 Euros from other media, and the largest claim amounted to 30,000 Euros. Almost half a million Euros, i.e. 420,000 Euros, was claimed from the media by the sister of Montenegro's President Milo Djukanovic, Ana Kolarevic, and her family.

Chart 7. Total amounts claimed from the individual types of plaintiffs



The first-instance judgements ordered the media to have paid a certain amount of money in 66 cases, rejected the lawsuit in 49 cases, withdrew in 26 cases, and ruled in one case that the media should publish a reply. In one case, it was ruled that the media should publish a judgement. The total amount of money that the media, based on the first instance judgements, should pay, is 131,900 Euros³², or slightly more than 5% of the claimed amount. The smallest amount awarded was 100 Euros, and the largest 10,000 Euros.

Chart 8. Number of judgments in relation to the amount



When it comes to the amounts claimed from individual media, the analysis showed that the amount of money claimed from the media did not depend on the number of lawsuits. Thus, more than 1.2 million Euro was claimed from the independent daily newspaper Vijesti, out of which 12,000 Euros were awarded by the final judgment. 358,300 Euros were claimed from Dan, while 16,500 Euros were awarded. Monitor was claimed to pay 277,000 Euros, while 7,000 Euros were awarded. It is followed by Informer, which was claimed to pay 200,000 Euros, while 5,000 Euros were awarded, as well as Pink M, from which 123,000 Euros were claimed, and 9,500 Euros were awarded.

Table 1. Claimed and awarded amount per medium³³

	Claimed	Awarded
Vijesti	1256.659,06	12.000
Dan	358.300	16.500
Monitor	277.000	7.000
Informer	200.000	5.000
Pink M	123.000	9.500
Pobjeda	72.000	14.000
IN TV	50.000	0
TV Vijesti	43.000	1.000
Dnevne novine	42.500	6.500
Nova M	26.000	5.000
Aktuelno.me	14.000	2.000
Glas Plava	6.000	300
Skala radio	5.001	0
CDM	2.000	0
RTCG	2.000	1.000

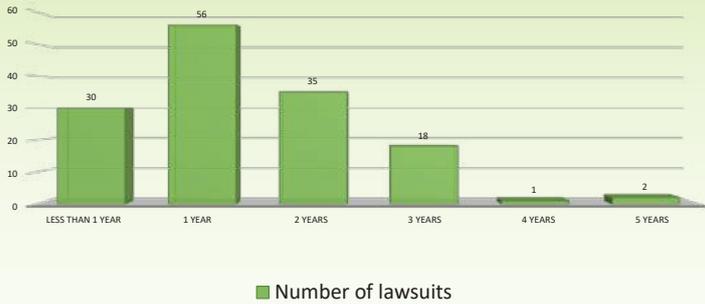
The analysis of the first instance judgements did not show that the basic courts favored some of the types of plaintiffs. However, the largest amount of the compensation in the first-instance proceedings was awarded to the media owner, who sued the competition (10,000 Euros). Out of the total amount claimed in the lawsuits against the media, the Basic Courts awarded the lawyer and sister of the President of the state, Ana Kolarevic, and members of her family, 18,000 Euros in the first instance proceedings. In three cases, her lawsuit was rejected.

When it comes to the average duration of proceedings due to claims of violation of the personality rights, it takes the Montenegrin Basic Courts two years on average to decide. The longest proceedings lasted five years, and 30 proceedings were completed in less than 12 months. The largest number of proceedings was resolved during the first year (56) or the second year (35).

³² It is not known what the court's epilogue is for the two cases, so the amount awarded may be higher.

³³ Despite several attempts, the TUMM could not obtain data on the claimed and awarded amounts for individual cases, so not all of the respondent media from the database are listed in the table.

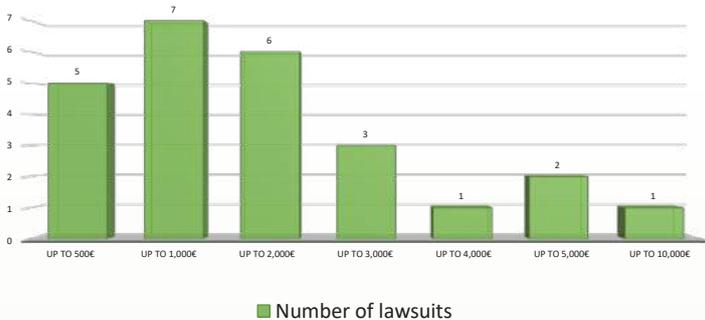
Chart 9. Number of lawsuits in relation to the proceedings duration



When it comes to the second instance procedure, the High Courts upheld the first instance decision in 55 cases (which in 33 judgments referred to the rejection of the lawsuit), revoked the decision of the Basic Courts in 18 cases, one lawsuit was rejected, one was reversed in part of the court costs and in three cases the decisions were partially upheld. Six lawsuits are currently before the High Court, and in 32 cases the parties did not seek the opinion of this court. In the second-instance procedure, a compensatory damage was awarded in 25 cases.

In nine years, the High Courts in Bijelo Polje and Podgorica have “punished” the media and journalists with a total of 53,000 Euros for violating the personality rights (defamation and insult). The average fine awarded in the proceedings instituted before these courts as a second instance courts amounted to 2,120 Euros. In one case, the High Court reversed the judgement of the Basic Court and multiplied the amount of fine, due to the violation of honor and reputation of colleagues from another medium. In that case, the High Court ruled that the just compensation for the two injured parties was 10,000 Euros, and that was also the largest fine imposed by this court.

Chart 10. Number of lawsuits before the High Court in relation to the awarded amount



When it comes to the relationship between the initial claim and the judgment of the High Court, in six cases the amount of money claimed from the media was awarded. In 18 cases, the claimed amount was usually multiple reduced. Thus, the initial claims, in terms of fines, were reduced from 500 to as much as 6,000 Euros. The High Court showed a different practice not only in relation to the plaintiffs’ claims, but also in relation to the judgments of the Basic Courts. Namely, in the first-instance proceedings, the fines imposed by the Basic Courts on the media amounted to 93,100 Euros. In the same proceedings, the High Court assessed that the amount of compensation for damage due to the violation of the personality rights should be reduced, so in the second-instance procedure, 82,000 Euros were awarded. The High Court resolved the appeal proceedings in terms of damage to honor and reputation relatively quickly. The decision of the second instance body has been waiting for less than a year.

According to the data obtained by the TUMM, eight plaintiffs claimed the third instance of decision-making. Out of eight cases related to the violation of the personality rights in the media, which were before the Supreme Court, seven judgements were confirmed and, in one case, the decision of the High Court was reversed, awarding the amount contained in the first instance decision. The parties have been waiting for a maximum of one year for the decision of the Supreme Court.

The analysis of the decisions in these cases shows that, although it is not possible to generalize, there are still some legalities in cases of lawsuits for violation of the personality rights in the media. Although our goal is not to go into the merits of the proceedings, the scope of the judgments we analyzed allows us to point out some trends. At the very beginning, the analysis of the judgements also showed how the courts saw the violation of the personality rights and how they measured the sentence severity.

“In case of violation of reputation and honor, the injured party has the right to moral satisfaction, whereby the court takes into account the intensity of the attack on the property damaged, the manner and means by which it was done, the environment in which the injured party lives, their overall personality and behavior, the consequences that followed, as well as the time flow since the violation was made. The plaintiff, as a person who suffered mental pain due to harm to honor and reputation, is entitled to fair compensation for non-pecuniary damage, because they suffered and still suffer the mental pain. The amount of compensation awarded shall be proportional to the severity of the pain suffered by the plaintiff at the time of publication of such announcement...”³⁴

In addition to the violation of honor and reputation, the basis for the lawsuit also includes the violation of the right to privacy, the violation of the presumption of innocence, but also bringing the plaintiffs into contact with acts they did not commit. The texts that are the basis for the lawsuit are most often published in the sections “politics” and “black chronicle”. While the texts concerning the black chronicle have been the subject of lawsuits throughout the analyzed period, political topics are particularly relevant during the elections. For example, during 2014, a large number of lawsuits for violation of the personality rights concerned information about some illegal activities during or before local elections. Although it is not possible to determine the legality, plaintiffs usually see a violation of their rights in headlines, while the texts are still written with greater respect for professional standards.

The media are the only ones sued in most lawsuits, however there are also cases where journalists are cited as second defendants. When it comes to judgements, the trend is to divide the awarded amount jointly and severally between journalists and the media. There were cases in which, due to the impossibility of passive legitimacy of the media, the liability for the published text was exclusively on the side of the journalist, who in the end had to pay for that omission themselves.

As the print media are most often sued, the lawsuits are most often based on texts that are used as evidence during the proceedings. But that is not always the case either. Photos or a Facebook print screen post of the plaintiff, which were not anonymized by the media but it was possible to establish the identity of the person, were used as a basis for the lawsuit during the analyzed period. Practice has shown that, even if they do their job properly, the media can be sued if they publish a poll with passers-by in which the right to honor and reputation has

34 Excerpt from the Judgment 316/19, the Basic Court in Plav

been violated. For example, one local media outlet published a survey of passers-by on current social problem, aimed at showing the views of citizens on the issue. One of the interlocutors used this opportunity to mention some local officials, who saw in that statement a violation of the right to honor and reputation. Thus, the 30-second statement resulted in three lawsuits against the media and interlocutor, which was the only such a case in ten years of court practice.

The analysis of case law has shown that both in the lawsuit and in the defense, the parties in the proceedings refer to the Law on Media, the Code of Journalists of Montenegro and the case law of the European Court of Human Rights. The courts, on the other hand, additionally refer to the Law on Obligations and the Constitution of Montenegro. It was noted that, in the judgments from previous years, the Basic Courts referred to a large number of cases of the European Court of Human Rights, and elaborated these cases on several pages of the judgment.

When it comes to respecting the professional standards, the media most often refer to the Code of Journalists and media laws if they want to emphasize the importance of the freedom of expression and their right to report in the public interest. They often refer to the articles of the Code of Journalists that refer to the protection of privacy, and especially to a greater degree of reporting on private matters of public figures. The plaintiffs, on the other hand, refer to the same document in order to strengthen their claims that the media violate the presumption of innocence, the right to privacy of children and adults. However, what both sides are equally bad at interpreting is the right of reply or correction. While the plaintiffs often miss the opportunity to seek the publication of a reply or correction (which in some cases the court interprets as an aggravating circumstance for them), the media publish them in a way that is not in accordance with professional or legal regulations. The case law has shown that, in only about 10% of cases, the media were requested to publish a correction or reply regarding the text or TV news item that is the subject of the dispute. The media published them anyway. However, the problem is that the media never publish a correction in the manner prescribed by law and professional rules (on the same page and to the same extent). In almost every lawsuit, the court interpreted this practice as an aggravating circumstance for the media, because these publications ultimately do not have the same impact on readers/viewers, since they do not have the same visibility. In one case, in which a court imposed a minimum fine (500 Euros), a judge stated that if a media outlet had published an apology or correction, it would have avoided the fine.

In addition to texts and reports, earlier judgements, court experts' findings, excerpts from registers, but also publications from other media, testimonies and even SMS and call logs were used as evidence (as proof that journalists did their best to get a defendant's reply).

The analysis of the judgements showed that the plaintiffs often decide to sue one media outlet, even if the same text or article was published in the same way by several media outlets. The courts often interpret this circumstance favorably for the media. However, during the analyzed period, there was a case where the plaintiff sued four media outlets before the same court on the same grounds and for the same matter, and during the procedure they dropped one lawsuit. In the other three cases, the court issued identical judgements and awarded the defendant compensation in the amount of 3,000 Euros (all three media outlets were "fined" 1,000 Euros each).

The plaintiffs, in addition to fine, usually request the publication of a correction or an apology, as well as the publication of an excerpt of the judgement. Sometimes these requests are general, and sometimes very specific, so it is specified where (on which pages) the judgments should be published. When it comes to electronic media, in one case it was specified that the judgment should be published in the same number of broadcasts, as well as the TV news item that was the basis for the lawsuit. Judges often ruled that the mere publication of a denial was sufficient to compensate for damage to reputation and honor.

The case law analysis has shown that Montenegrin courts have largely harmonized their decision-making processes with the case law of the European Court of Human Rights. Thus, they pointed out that value judgments cannot be the subject of a lawsuit, but also that the broadcasting of press conferences and reports from those conferences, as well as the publication of announcements from social networks - cannot be considered a violation of the personality rights by the media, because they only convey those announcements. Furthermore, the case law has shown that the fact that the plaintiffs did not use the right of reply or correction was not a justification for the fact that the media or journalists did not check the information before publishing.

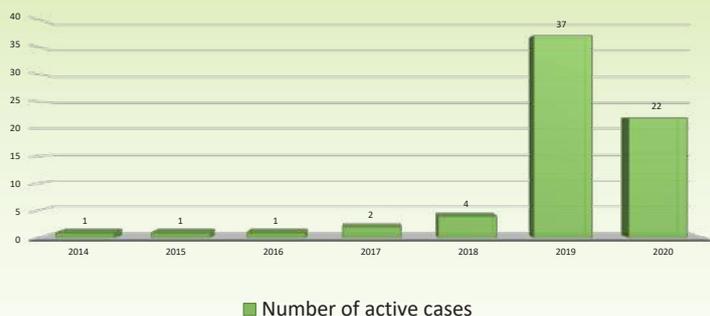
In some cases, the court had a great understanding of the nature and way the journalists do their jobs. For instance, the question mark in the headlines was not interpreted by the court as intent to offend someone, but as an expression of doubt in that claim. In some cases, the media and journalists were the ones who showed complete disrespect for professional standards, claiming that it was more important to publish information first than to get a statement from the interlocutor. In addition, there were examples when the fact that journalists did not have the plaintiffs' phone number was used as an excuse for not consulting the other party. However, in most cases, the court assessed whether the media outlet or journalist acted in accordance with the principle of good faith.

Analysis of active cases before Montenegrin courts

The Trade Union of Media of Montenegro also analyzed active cases before Montenegrin courts initiated due to violation of the personality rights – honor and reputation. Data on these cases were obtained from the courts, in such a way that they submitted case numbers to the TUMM. The TUMM team monitored the trials and thus obtained the data needed for analysis. Therefore, it is important to emphasize that there are maybe some other cases that are active on this basis but we could not get to these data. Also, almost all data concerning active cases (except the plaintiff and the defendant) are subject to changes, which very often occur at each hearing, and therefore it is necessary to interpret these data with a grain of salt.

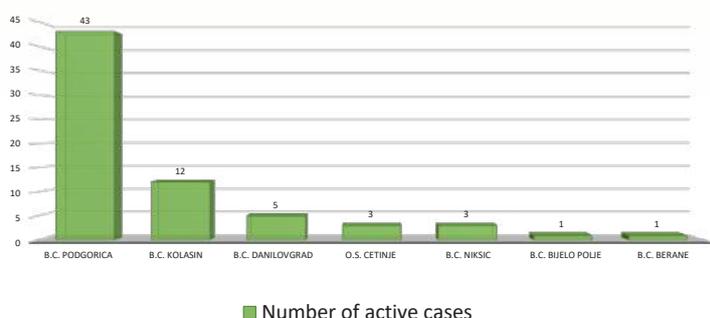
The TUMM monitoring showed that, according to the available data, 68 cases of lawsuits for the violation of the personality rights - defamation and insults in the media - are active before the Montenegrin Basic and High Courts. The active cases date mainly from 2019 and 2020, but there were also those that lasted for five years.

Chart 11. Number of active cases in relation to the date of filing a lawsuit



In relation to the cases with final judgments, it is noted that, in addition to the court in Podgorica, some new courts are dealing with currently active cases. Thus, the Basic Court in Podgorica is processing majority of cases (43), but, for example, the Basic Court in Kolasin is in second place with 12 such lawsuits. Five lawsuits were filed before the Basic Court in Danilovgrad, three in Niksic, three in Cetinje, one in Bijelo Polje and one in Berane.

Chart 12. Number of active cases before the Basic Courts

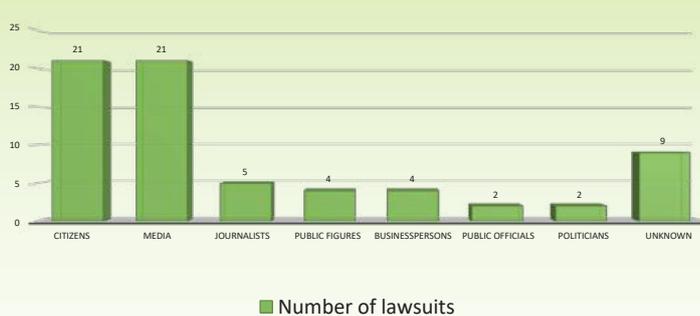


When it comes to the proceedings duration, the analysis showed that the longest proceedings were conducted before the Basic Court in Podgorica. For instance, the Basic Court in Podgorica processed all cases from 2014, 2016 and 2017 (lasting three, four and six years). The five-year dispute, which was initiated in 2015, has been conducted before the Basic Court in Cetinje.

Citizens are most often plaintiffs in active cases (21). They share first place with the media, which have filed as many as 21 lawsuits against the competition. There are currently four active cases before the courts in which the plaintiffs are businesspersons, in five cases the plaintiffs are journalists, in four cases public figures, public officials have initiated two cases and in as many cases the plaintiffs are politicians. When it comes to the lawsuits filed by public officials, the most important is certainly the one initiated by President Milo Djukanovic against Vijesti and businessman Dusko Knezevic³⁵, in which the claim amounts to 100,000 Euros (50,000 for the first and 50,000 for the second defendant). A hearing for this case has not been scheduled yet. This lawsuit was filed due to harm to honor and reputation because Vijesti published an interview with businessman Dusko Knezevic in which he claimed that he had a video showing him giving a bag of money to Djukanovic. The video has not been broadcasted yet. Plaintiffs are not known for nine cases, nor are there any familiar details about these cases, given that they were initiated in 2020 and no hearings have been scheduled yet. The Basic Court in Kolasin processes most of these cases.

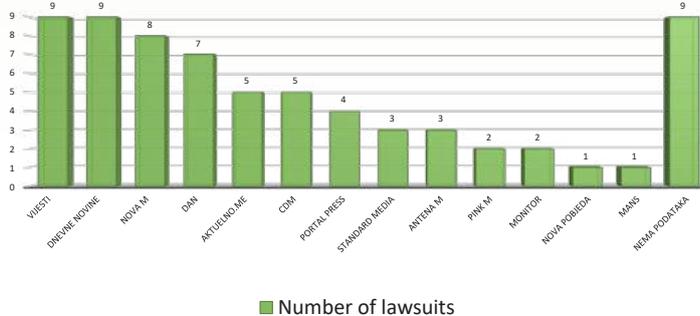
35 Vijesti.me, Đukanović tužio Vijesti, traži 100.000 eura [Djukanovic sues Vijesti, claims 100,000 Euros]. URL: <https://www.vijesti.me/vijesti/politika/382403/djukanovic-tuzio-vijesti-trazi-100-000-eura>

Chart 13. Number of lawsuits in relation to the plaintiff



In relation to the cases with final judgments, the print media are the most sued, 26 times, while among the active cases, as many as 22 refer to the lawsuits against the portals (two electronic media outlets - radios are among the sued portals). Televisions were sued in 10 active cases, and an NGO in one case. One lawsuit states that the second and third defendants are the media (specifically Dan and Vijesti).

Chart 14. Number of lawsuits in relation to the medium



The court proceeding that are still active lasts on average less than one year, i.e. lawsuits were filed less than 12 months ago (40). Twenty-three cases last from one to three years, while five cases are in the procedure for more than three years.

In 56% of active cases, the claim is not known. This information is not surprising given that these cases are the ones in which claims for monetary compensation are often changed, but in some cases (for which, for example, no hearing has been scheduled) are not even specified. There were cases when the claim was changed several times, and the final amount was 10 times less than the initial one. In these cases, the media were claimed to pay 399,500 Euros for compensation for damage for harm to honor and reputation. In relation to the total amount claimed, the analysis showed that the compensation claimed by the largest number of lawsuits amounted to 1,000-2,000 Euros. The smallest claim amounted to 1,000 Euros and the largest claim amounted to 60,000 Euros.

Chart 15. Number of lawsuits in relation to the claim



The claim requesting the largest amount of compensation (100,000 Euros) was filed by the President of Montenegro Milo Djukanovic, who claimed 50,000 Euros from both the medium and businessperson, while a businessperson claimed 60,000 Euros in a lawsuit against the media. Citizens claimed between 2,000 and 15,000 Euros from the media. In the lawsuits, public figures claimed 2,000 to 40,000 Euros from the media, and politicians 20,000 Euros. The media claimed a total of 33,500 Euros from the competition, and journalists claimed 11,000 Euros from other media and journalists. According to currently available data, the media were ordered to pay 11,800 Euros in the first instance. One lawsuit has been dismissed so far.

In 68 cases that have not yet been finalized, about 200 hearings have been scheduled, including a large number of those that have not been held. The largest number of hearings scheduled in an individual case is 13, and among those cases is one from 2019.

Cases before the European Court of Human Rights

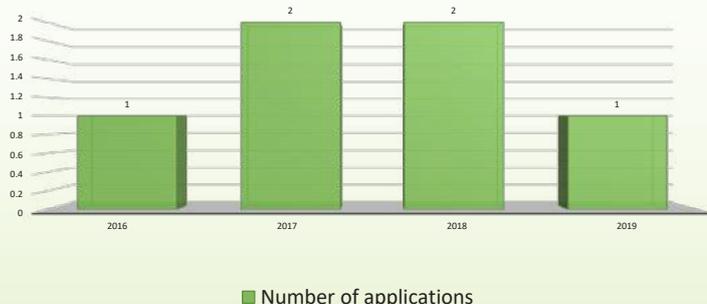
The Trade Union of Media of Montenegro also addressed the Office of the Representative of Montenegro before the European Court of Human Rights, Valentina Pavlicic, in order to obtain information on how many citizens sought protection of their rights before the court due to the violation of the right to freedom of expression.

From 2001 until the beginning of October 2020, the ECHR submitted five cases in connection with Article 10 of the European Convention, concerning the violation of the right to freedom of expression, to the Office of the Representative of Montenegro. However, as explained, the Office does not have statistical data on the number and content of all applications, because they obtain only those that have passed the ECHR filters.

"This means that our office has only those data concerning cases that have met the conditions of admissibility under Article 35 of the European Convention, passed the "filtering" section of the ECHR and accordingly submitted to our office for a statement."³⁶

However, the annual reports of the Office of the Representative of Montenegro show that, between 2016 and 2020, 6 applications against Montenegro for the violation of the right to freedom of expression were lodged with the European Court.

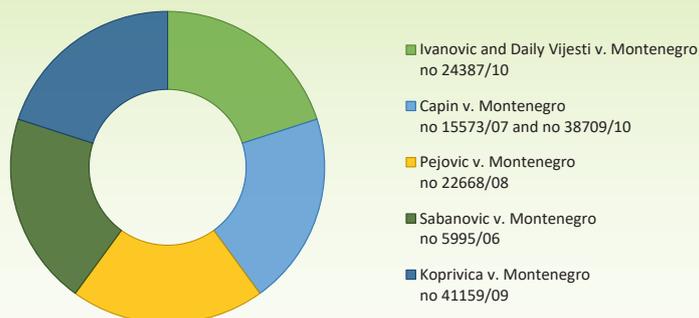
Chart 16. Number of applications per year



According to the reports of the Office of the Representative of Montenegro before the court in Strasbourg, one application was lodged in 2016 and 2019, and two in 2017 and 2018.

³⁶ Letter from the Office of the Representative of Montenegro before the court in Strasbourg, e-mail, 2020.

Chart 17. Cases submitted to the Office of the Representative of Montenegro before the ECHR



In relation to the number of applications submitted to the Office, the ECHR did not find any violation of the right to freedom of expression in the cases of Ivanovic and Daily Press v. Montenegro, Capin v. Montenegro and Pejovic v. Montenegro, while that violation was determined in the remaining two cases.

When it comes to the case of Ivanović and DOO Daily press v. Montenegro, the ECHR, as explained by the Office, considered that the appeal was unfounded and rejected it.

"(...) finding that the final decisions adopted in the civil proceedings before the national courts led to an interference with the applicants' right to freedom of expression, but that the interference was 'prescribed by law' (...) or 'necessary in a democratic society'; the judgments rendered were proportionate to the legitimate aim pursued."³⁷

The Court also dismissed the application in the case of Pejovic v. Montenegro, finding it inadmissible under Article 35 of the European Convention, on the ground that the applicant had failed to inform the court of all relevant facts concerning the application subject.

The same decision was made by the Court in the case of Capin v. Montenegro. The court found that "the applicant could not be considered a 'victim' of a violation of the right to freedom of expression"³⁸. The European Court based such a decision on the fact that the Constitutional Court and the High Court quashed the applicant's conviction, which, as they added, presented sufficient and appropriate compensation.

In the case of Sabanović v. Montenegro, the Court had a different decision. Namely, the judgment was rendered on 31 May 2011, in which the Court found a violation of the right to freedom of expression because the applicant had been sentenced to a suspended prison sentence for defamation.

"The European Court found that, although the interference with freedom of expression was lawful and had a legitimate aim, it was not 'necessary in a democratic society'.³⁹

Another case in which the ECHR found a violation of Article 10 of the Convention was Koprivica v. Montenegro. The judgment in this case was rendered on 22 November 2011 and the Court found that the damages and costs awarded in the proceedings before the national courts against Koprivica were "disproportionate to their legitimate aim". In addition, the ECHR considered that "such an interference with the applicant's right to freedom of expression was not 'necessary in a democratic society'⁴⁰ and found a violation of the right to freedom of expression.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

CASE STUDIES: HOW DO MONTENEGRIN MEDIA AND COURTS RESPECT THE PERSONALITY RIGHTS AND RIGHT TO FREEDOM OF EXPRESSION

Milorad Milosevic / Mirko Boskovic

Selected judgments of the European Court of Human Rights against Montenegro in connection with Article 10 of the European Convention

Koprivica v. Montenegro, application no. 41158/09, 22 November 2011

Facts and circumstances of the case:⁴¹

- On 24 September 1994 an article, entitled "16", was published in a Montenegrin weekly magazine, the *Liberal*, in circulation at the time, which was opposed to the Government. The article, which appeared to have been written by a special correspondent from The Hague, reported that many journalists from the former Yugoslavia were going to be tried for incitement to war before the International Criminal Tribunal for the former Yugoslavia ("the ICTY"), including sixteen journalists from Montenegro. The article named the two ICTY officials who had allegedly prepared the file and then went on to list the names of the sixteen journalists in question. The applicant in the present case was the editor-in-chief of the *Liberal* and its founder was a prominent opposition party at the time.

- On 27 October 1995 one of the sixteen journalists whose name had appeared in the article ("the plaintiff"), and who had himself been an editor of a major State-owned media outlet, filed a compensation claim against the applicant and the magazine's founder. The plaintiff claimed that the assertions contained in the article, which were later repeated through other media both within the country and abroad, were untrue and that they were harmful to his honour and reputation. He enclosed a copy of a Serbian daily newspaper, the *Politika*, published on 27 September 1994, in support of his claim that the assertions had been transmitted by other media.

- On 29 May 2002 the ICTY informed the Court of First Instance (Basic Court) in Podgorica that it had no information whatsoever concerning the plaintiff.

- In the course of the civil proceedings, the applicant maintained that he had relied on the information provided by the magazine's special correspondent. Commenting on the ICTY's statement, however, the applicant said: "I'm not interested in there being no proceedings against [the plaintiff], the contents of the ICTY ... letter, or whether [the plaintiff]

is on that list. I have personally witnessed [his] work as the editor-in-chief of the [media outlet in question] during the reporting on the Dubrovnik operation".

- On 17 May 2004 the Court of First Instance ruled partly in favor of the plaintiff, ordering the applicant and the magazine's founder, jointly, to pay him the sum of 5,000 Euros ("EUR") for the non-pecuniary damage suffered. On the basis of the ICTY's statement, the court found that the published assertions had not been true and, in particular, that the applicant had not been interested in their veracity. The court refused to hear the author of the article, considering it unnecessary in the light of the information provided by the ICTY. It considered that the applicant's proposal that the author be heard was also aimed at delaying the proceedings as the applicant did not know his exact address. In any event, the author had not mentioned in his text the number of the case file, dates or any other data which would in a convincing manner support the veracity of the information. The court held that the applicant should not have allowed the publishing of untrue information, as it represented a misuse of freedom of expression, and that he should have attempted to check its accuracy first instead of trusting his correspondent unreservedly. The court further held that personal beliefs and convictions could not justify the publishing of such information and concluded that the assertions in question had harmed the honor and the reputation of the plaintiff.

- Both the plaintiff and the applicant appealed against the judgment. The plaintiff in particular complained that the damages awarded were too low. The applicant, for his part, disputed that he, as editor-in-chief, should be held responsible for publishing information of dubious credibility. He argued that the information was of particular importance to the citizens and suggested additional evidence, namely that the court hear his colleague as an additional witness, as he was also present when the fax with the disputed information was received and with whom he consulted on whether to publish information or not. He also suggested watching a documentary broadcast in 2004 by the same media house whose editor-in-chief in the 1990s was the plaintiff himself and which allegedly contained an unfavorable reference to the plaintiff and his work at that time. The applicant concluded that, in any event, the damages awarded were too high.

- On 14 March 2008, the Podgorica High Court increased the amount of damages awarded to EUR 10,000 and estimated the litigation costs at EUR 5,505. In this way, this court upheld the reasoning of the Basic Court, adding that the applicant should have focused on the accuracy

⁴¹ *Koprivica v. Montenegro Judgment, No. 41158/09 dated to 22 November 2011, available online in Montenegrin, URL: <http://www.hraction.org/wp-content/uploads/presuda-Koprivica1.pdf>*

of the information in question, instead of publishing it as soon as possible. The Court was of the view that the credibility of the allegations could not be established by the applicant consulting the author of the article or another colleague, but only through reliable evidence, which, in the present case, did not exist. The High Court was further of the opinion that under the laws and regulations in force at the time the article was published, the editor-in-chief could, inter alia, be held responsible for publishing incorrect information (see paragraph 32 above). The court did not mention the documentary cited by the applicant.

- On 6 November 2008, the Supreme Court of Montenegro reversed the judgment of the High Court and reduced the awarded damages and costs to EUR 5,000 and EUR 2,677.50, respectively.

Applying the previously promoted standards to a specific case, the European Court found that:

- There were no reasons preventing the applicant from contacting the Tribunal himself and verifying the information, despite the fact that there was no internet and no official contact, especially bearing in mind that it was a weekly newspaper and not a daily newspaper;
- It is not, in principle, incompatible with Art. 10 of the Convention to place the burden of proving the veracity of defamatory statements on the accused in defamation proceedings, in accordance with the standards of civil law. However, the accused must be given realistic opportunities to do so, and Montenegrin courts have refused to hear the proposed witness - the special correspondent;
- The damages awarded and the costs of the proceedings were very high when compared to the applicant's income at the time, given that they were approximately 25 times higher than the applicant's pension.

After applying the arguments put forward, the European Court, relying only on the circumstances of high damages, found that there had been a violation of the right to freedom of expression, holding that the damages awarded and the costs of the proceedings were disproportionate to the legitimate aim.

The case of Ivanović and DOO "DAILY PRESS" v. Montenegro, application no. 24387/10, 5 June 2018

Facts and circumstances of the case:

- The first applicant is a journalist, co-founder and executive director of the Montenegrin daily newspaper Vijesti. The second applicant is the publisher of this newspaper.

- On 1 September 2007, Vijesti celebrated its tenth anniversary. After leaving the celebration, the first applicant was attacked in the dark and beaten by three unidentified assailants. As a result of the attack, he had a broken cheekbone and numerous hematomas and bruises.

- Between 2 and 4 September 2007, Vijesti published several articles regarding the attack, some of which included comments from the first applicant.

- Specifically, on 2 September 2007, an article was published entitled "The baton of Đukanović and his family". The first applicant said that the former Prime Minister, Milo Đukanović, had sent his kerberas yesterday morning to beat him up. The first applicant said that "those in power in Montenegro" in this way congratulated Vijesti on its tenth anniversary. "This is a congratulation message from those who rule Montenegro, and that is Milo Djukanovic and his family, biological or criminal," said the first applicant. For Radio Montenegro, [he] told Djukanovic not to send his men into an ambush in the dark, but to approach by himself instead of looking down in such situations. ... [The first applicant] considers that this was a warning to Vijesti to lay down their arms and that it was an attempt to submerge even the small islands of freedom in Montenegro, which make Djukanovic nervous."

- On the same day, a new article was published under the title "They will not scare us", which was signed by the Vijesti editorial office. The text contained, inter alia, the following: "For Vijesti, there is no doubt that the attack on Ivanovic's colleague, in addition to his sharp criticism of the local reality, is an attack on all free-thinking people gathered in and around Vijesti, but also an attack on free thought and the word in general. The motive is to silence Vijesti and all those, unfortunately still few in number, who in the transition mud and crime refuse to recognize the best of all societies. To intimidate all those who do not want to live in a country where mafia and government are intertwined beyond recognition, where the political top and mafia bottom are often at the same level, where smuggling is the backbone of the value system, and honest work and justice are ridiculed in grandiose cafes. The intention is to once again warn those who are not reconciled with this that the list of unsolved crimes can go on indefinitely. It is difficult to expect from the police, in this case as well, that they will rise above their previous limits, blockades in their head and in the organization, and shed light on the crime, arrest the attackers, expose and imprison the inspirers, the orders. Vijesti said before as well that the Montenegrin police is managed outside the police, the prosecutor's office outside the prosecutor's office, the judiciary outside the courts, that there is a parallel private secret service of either State Security or National Security Agency it does not matter. That is the Montenegrin reality and that is the real strength, in fact the impotence of the state. In any case, the objective responsibility for all that and for the attack on Ivanovic falls on the regime headed by Milo Djukanovic for 17 years, who still rules, regardless of the form. He and his people, from the top and bottom, are responsible for the environment in which journalists, writers and everyone who dares to think and speak differently suffer. Vijesti about that has no dilemma and will continue with uncompromising criticism of both the environment and the responsible people."

- In the following days, several more articles were published in Vijesti implying Mr. Djukanovic's involvement in a policy that "destroyed one country, killed hundreds of thousands and displaced millions of people", calling him a person charged before relevant investigative bodies of European countries with organized crime and criminal associations, a "boss" who developed a criminal-financial octopus, which holds Montenegro by the neck.

- On 6 September 2007, Mr. Djukanovic (hereinafter "the Plaintiff") instituted civil proceedings against the applicants, seeking compensation in the amount of EUR 1,000,000.00 for the damage caused by all the above texts and the statements of the first applicant contained therein.

- The applicants argued that all senior political and state officials, including the Plaintiff, should bear objective responsibility for the rise in crime, including attacks on, or even the murder of public figures, and that the disputed articles should be viewed in that context. They further argued that the statements in question were value judgments and that the Plaintiff, as a politician, had to show a greater degree of tolerance. They suggested that the parties to the proceedings and a number of other people be heard, and that the experts assess the level of mental pain that the Plaintiff allegedly suffered. They also argued that the amount claimed was too high and aimed at prohibiting freedom of expression. The applicants argued that the courts should take into account the context and circumstances under which the statements and articles were published. They relied, inter alia, on Article 10 of the Convention and the case-law of the Court.

- On 19 May 2008 the Podgorica Basic Court ruled partly in favor of the Plaintiff, concluding that his honor and reputation had been violated, and ordered the applicants to pay the plaintiff a total of EUR 20,000.00 in respect of non-pecuniary damage and to publish the judgment in News at their own expense. In particular, the court found that the applicant's honor and reputation had been violated by the first applicant's statements in the article "The baton of Djukanovic and his family" and the content of the article "Even the Sparrow knows he's the Chief", which described the Plaintiff and his family as criminals, and which is associated with organized crime and criminal association. The Court relied on Articles 16, 20, 34, 35 and 36 of the Constitution in force at the time, Articles 1 and 20 of the Media Law and Articles 8 and 10 paragraph 2 of the Convention.

In particular, the Court held that freedom of the press and other forms of public information, and the right to dignity and personal rights must be balanced. He found that parts of the above articles "were not value judgments, but factual information, subject to proof, which had not previously been verified or proven, aimed at discrediting not only the plaintiff but also his private and family life. By publishing the above articles containing inaccurate, unproven information, without prior verification, subsequent correction, acceptance of error or public apology to the plaintiff, the first applicant persisted in damaging the plaintiff's reputation. The first applicant, as executive director of the media, was especially expected to follow the rules when publishing information, especially that which could be harmful to others. The above articles grossly damaged the reputation and honor of the plaintiff, significantly exceeding the limits of criticism that politicians can tolerate, especially since the disputed articles did not criticize the public work of the plaintiff, but put the plaintiff and his family in a criminal context. The Basic Court further found that "the right of the media to publish negative information and criticism of politicians does not give them the right to violate basic human values, the protection of which is provided for in relation to every citizen, regardless of whether they are public figures or not ... Public officials cannot have fewer rights than others because that would be a violation of the principle of equality guaranteed by the Constitution".

- Both sides appealed the verdict. On 30 September 2009 the Podgorica Higher Court found that only the following statements had damaged the plaintiff's honor and reputation: "Djukanović sent his kerbers to (beat the first applicant)," "this is a congratulation message from those who rule Montenegro, and that is Milo Djukanovic and his family, biological or criminal," "the boss who developed the criminal-financial octopus that holds Montenegro by the neck" and "he is the head of the family, either biological or criminal, who rules Montenegro and he decides on everything, even the most valuable thing - human life". The court

further found that, instead of verifying the accuracy of the information, the applicants had repeated it. On this basis, they abused their freedom of expression, as its implementation could not offend others or harm their honor, reputation and dignity", which is also provided for in Article 10 § 2 of the Convention.

The Podgorica High Court took into account the ECHR's view that politicians should show a greater degree of tolerance for criticism, but considered that the above statements exceeded the limits set by freedom of expression and the plaintiff's obligation in that sense, especially as the applicants did not refrain from mentioning the plaintiff's family in the same offensive context. He also considered that the compensation of EUR 20,000.00 was too high and reduced it to EUR 10,000.00 in total.

Finally, the Court found that other articles and statements, in particular the text "They will not scare us", criticized the situation in Montenegrin society and represented value judgments in which no compensation could be awarded. The Court found that the applicants' arguments in that regard, which they had put forward in their appeal, were well founded, which affected the amount of compensation awarded.

Applying the relevant standards to the specific case, the European Court found that:

- the domestic courts fully recognized that the specific case involved a conflict between the right to freedom of expression and the protection of reputation or the rights of others, which they resolved by weighing the relevant circumstances;
- the High Court, taking into account that politicians must show a greater degree of tolerance towards criticism, has significantly narrowed the scope of problematic sentences in texts;
- the High Court had a sensibility to allow journalists to criticize the regime;

In the light of the above general conclusions, the Court found that the Montenegrin authorities had applied standards that were in line with the principles contained in Art. 10 of the Convention and that they relied on an acceptable assessment of the relevant facts, and that:

- the articles contained specific allegations of facts relating to the named individual, which, as such, were subject to proof;
- the case law of the European Court is clear that the more serious the allegations, the stronger the factual basis should be;
- the conclusions reached by the High Court on the basis of the establishment of a balance cannot be considered unreasonable; on that basis, the reasons given by the domestic courts in ordering the applicant to pay damages to the plaintiff were "relevant and sufficient" in the case-law.

Finally, the Court concludes that it did not find reasons to state a position which would deviate from that given in the final judgment of the High Court, and that the damages of EUR 10,000.00 were not excessive, having regard to the payment of damages is the obligation of two persons, and a large circulation of the second applicant.

a) The most important positions and guidelines of the European Court for the conduct of journalists when it comes to the scope of application of Art. 10 of ECHR:

(1) In determining liability for a violation of a person's rights (honor and reputation), domestic courts should examine and determine several key circumstances:

(2) Whether the person who is the subject of the publication has the status of a public figure or has entered the public scene;

(3) Whether the issue that is the subject of publication of public interest;

(4) Whether the publication, either separately or in their entirety, contained allegations, facts or allegations that were untrue;

(5) Whether such allegations have violated the honor and reputation of the person who is the subject of the publication;

(6) Whether there was mental pain in the person who is the subject of the publication.

(b) In this regard, journalists should, when reporting, keep in mind the following ECHR legal standards:

(1) Public figures, by entering the public scene, must be ready that their business activities, achievements, engagements, but also character and work, will be the subject of public interest, and by entering the public scene, they are obliged to adopt an expanded tolerance threshold to all public comments and allegations (judgments *Handyside v. the United Kingdom* (1976); *Observer and Guardian v. the United Kingdom* (1991)).

In addition, every private person is exposed to public criticism when enters the scene of a public debate (*Jerusalem v. Austria* (2001)).

Freedom of expression does not apply only to information that is considered desirable or non-insulting, but to all information, including insulting, shocking or disturbing (*Lepojić v. Serbia* (2007), *Filipović v. Serbia* (2007), *Dalban v. Romania* (1999)).

(1.1.) The Court has taken the view that criticism of politicians should not be limited: Politicians inevitably and willingly expose themselves to careful examination of their words and deeds by journalists and the general public (*Oberschlick v. Austria* (1991)). The Court considers that the use of offensive or excessive words against politicians can be considered a natural part of the democratic process (*Lopes Gomes Da Silva v. Portugal* (2000));

However, when criticism is directed at the private lives of politicians, even when such information is already present in public, the Court considers that those who express such criticism should use a less polemical and moderate form (*Tammer v. Estonia* (2001));

(1.2.) The Court does not accept excessive expressions directed at the police, military forces and the judiciary in the way it accepts them in relation to politicians, the state or state policy. The reason for this is the fact that these institutions play a special role in society in terms of law and order. In such cases, the Court is more concerned with the context in which the words were uttered or written, and in particular with the purpose for which they were uttered (*Thorgeirson v. Iceland* (1992)).

"The judiciary, as a guarantor of justice, a fundamental value in a state governed by the rule of law, must enjoy the trust of the public in order to be successful in performing its duties. It may therefore be necessary to protect this trust from destructive attacks that are essentially unfounded, especially given the fact that judges are under oath of secrecy which prevents them from responding to criticism" (*Prager and Oberschlick v. Austria* (1995)).

(1.3.) Any person, who is not a public figure, nor has entered the public scene by any of his engagements, does not have to be ready for his character and work to be the subject of special interest of the public.

In such situations, it is of particular importance to ensure that the presumption of innocence is respected when reporting.

(2) The Court is of the opinion that the press has a key role in the exchange of information and opinions, and given the importance of the media in transmitting information, ideas and opinions, special importance is given to it, especially with regard to public interest speeches, while the press itself precisely on the basis of the stated importance given to it, has an obligation to exchange the information it obtains (*Lingens v. Austria* (1986)).

It is emphasized that the task of the press is to communicate information and ideas on issues in the field of public importance, and not only does the press have the task of communicating such information and ideas, but the public also has the right to receive them.

The Court further found that the press has an important role to play as a "public guardian" and as such is afforded a greater degree of protection than others exercising the right to freedom of expression (*Barthold v. Germany* (1985)).

(3) When reporting, a distinction must be made between the presented facts and value judgments:

The existence of facts can be proved, while the truth of value judgments is not subject to proof;

The requirement to prove the truth of value judgments is impossible to fulfill and violates the very freedom of opinion, which is a fundamental part of the right guaranteed by Art. 10 of the Convention (*Lingens v. Austria* (1986));

In assessing the difference between factual allegations and value judgments, the Court takes into account all the circumstances of the case and the general tone of the objections, taking into account that allegations of public interest may represent value judgments rather than factual statements (*Morice v. France* (2015)). This assessment falls within the field of free assessment of state bodies, specifically domestic courts;

(3.1.) Even when a statement constitutes a value judgment, the proportionality of the interference may depend on whether there is a sufficient factual basis for the statement in question, given that even a value judgment without any factual basis to substantiate it may be excessive (*Morice v. France* (2015));

In this connection, the fact of directly accusing certain individuals by mentioning their names and positions obliges the applicants to provide a sufficient factual basis for their allegations (*Lešnik v. Slovakia* (2003)).

(3.2.) Accusations of facts, however, represent another category; the existence of a fact can be proved. Therefore, in accordance with Article 10, it is the obligation of domestic law to prescribe the obligation to prove the truth of such allegations. In this regard, journalists are obliged to substantiate the factual allegations.

In any case, Art. 10 does not guarantee full and unrestricted freedom of expression, even in relation to media coverage of issues of significant public interest and political interests;

(3.3.) According to the conditions from Art. 10 paragraph 2 the use of this freedom carries with it "duties and responsibilities", due to which the protection provided by Art. 10 to journalists in relation to reporting on matters of public interest, is subject to the condition that they act in good faith to provide accurate and reliable information in accordance with journalistic ethics (Bladet, Tromso and Stensaas v. Norway (1993));

Accordingly, when, on the one hand, a factual statement is given and insufficient evidence is provided to substantiate it, and on the other hand, when a journalist discusses issues of genuine public interest, checking whether the journalist acted professionally in good faith becomes paramount. (Flux v. Moldova) (2009).

Selected judgments of Montenegrin courts in cases against journalists and media outlets in connection with Article 10 of the European Convention

Case of Duško Bjelica v. Veseljko Koprivica and "Monitor" DOO Podgorica

- The plaintiff in this dispute, Duško Bjelica, was the President of the Management Board of the University of Montenegro in the given period of time, and previously covered other public functions.

- Defendant, journalist V.K. and the Montenegrin independent weekly "Monitor", on 19 July 2013, on pages 24 and 25, published an article entitled "Leader of the DPS invasion", with a photo of the plaintiff on the first page and the subtitle "How the omnipotent Board of Directors of the State University headed by Dusko Bjelica strictly implements party directives". The first paragraph of the text states that "if Dusko Bjelica had managed to get the helm of the Football Association of the FRY (hereinafter FAY) in 2001, he might never have had a chance to shape the fate of the University of Montenegro, especially the deans ... who now fully rules in that academic institution." Furthermore, in the fourth and fifth paragraphs of page 24 of the disputed text, citations of Dejan Savicevic are cited and they refer to challenging the plaintiff's candidacy for FAY leader, as well as Dragutin Spasojevic's reaction, in terms of negative comments on the plaintiff's work in the Football Association, and his candidacy for FAY leader of that time. The disputed text contains allegations: "Bjelica, who is presented as a scientist, is the author of several publications, including the seminar paper "Influence of fatigue on the accuracy of a shot in football in conditions of maximum shock impulse". Whoever wants to understand, must step into these depths. "In the text, in the part which quotes the speech of the plaintiff, as the

dean of the Faculty of Sports and Physical Education, on the occasion of celebrating five years of existence of the faculty, the word "ouch" is at the end. The text reviews the events at the Faculty of Political Sciences, i.e. the annulment of the election of Sonja Tomovic Sundic as the dean of this faculty, as well as the situation at the Faculty of Law regarding the dismissal of Dean Drago Radulovic, while the plaintiff's words from the interview given to Pobjeda were literally transmitted, where the plaintiff comments on the situation at the University and says "Where habits cannot be changed, people will change." After that, the controversial text reads: "You remember Stalin's advice: where is a man - there is a problem. No man - no problem." The next paragraph of the text mentions the plaintiff's membership in the DPS Main Board, i.e. the fact that he was appointed head of the newly formed Commission for Sports, Youth and Cooperation with the civil sector at the suggestion of the party's presidency, where it is also stated that "since then he doesn't stop". It is further pointed out the abuse in the distribution of 152 apartments to employees at the University, and the fact that as of this school year there are no freshmen in nine study programs. At the end of the text, and after the part which states that the students hung the banner "Faculty belongs to everyone" at the entrance to the Faculty of Law, it is stated that "in Orwellian terms, they made a little mistake - the faculties and the University belong to some people a little more thanks to the almighty Board of Directors of Dusko Bjelica, the leader of the DPS's invasion, which strictly adheres to party directives."

- The plaintiff perceived the disputed text as something disparaging, because, in his understanding and experience, the content of the text is malicious and tendentious with the aim of damaging his reputation in the community, while the plaintiff himself pointed out that in case he ran for office at the university, he would receive 95% of the vote.

- The plaintiff filed a lawsuit with the Basic Court in Podgorica, requesting that the defendants of the first and second order jointly and severally undertake to pay the plaintiff, in the name of compensation for non-pecuniary damage, due to mental pain due to injury to honor and reputation, the amount of € 10,000.00, and that the defendant of second order be obliged to publish the judgment in the weekly Monitor, with an announcement on the front page and in a place appropriate where the disputed text was published.

- In the conducted procedure, applying the practice and standards of the European Court of Human Rights, the first instance court determined the factual situation and passed a judgment rejecting the claim.

- In the reasoning of the judgment, the first instance court assessed that the plaintiff is a public figure, and that it is to be expected that the public will be intrigued and informed about his business activities and decisions made being at the head of the University of Montenegro, especially when considered the indisputable fact that the plaintiff is a current member of one political party, which additionally draws public attention to his activities. Also, given the above, the first instance court correctly finds that the plaintiff, as a public figure, must be prepared that his activities, character and work will be the subject of public interest, because by entering the public scene, the plaintiff must adopt a broader tolerance threshold for comments and allegations from the public, even those that he personally perceives as offensive, shocking and provocative.

- Among other things, the first instance court assessed that the author of the disputed text, i.e. the defendant stated his position on the importance of a certain scientific discipline for a certain society, which is a

frequent topic and dilemma in both the professional and lay public, and therefore the first instance court correctly finds that the defendant of the first order did not state or present any untrue facts in terms of title, nor in terms of the profession of the plaintiff, nor in terms of his membership in a political party, and the impression of the plaintiff according to which he finds such a title offensive, in fact represents his personal impression, which can not entail the responsibility of the defendants.

- Contrary to the unfounded allegations of the appeal, the first instance court correctly finds that, in the indisputable fact that the plaintiff did not use his right to publish the denial, which right is guaranteed to him by the provision of Art. 26 of the Law on Media and the provision of Art. 49 paragraph 3 of the Constitution of Montenegro, the plaintiff excluded the possibility of his satisfaction due to the publication of allegedly offensive and untrue allegations in the disputed text.

- On 20 November 2015, the High Court in Podgorica, deciding on the plaintiff's appeal, rejected it and confirmed the first instance judgment, as well as its allegations, in full. Finally, the second-instance court reiterated its position that, in the indisputable fact that the plaintiff did not use his right to publish the denial, which right was guaranteed to him by the provision of Art. 26 of the Law on Media and the provision of Art. 49 paragraph 3 of the Constitution of Montenegro, the plaintiff excluded the possibility of his satisfaction due to the publication of allegedly offensive and untrue allegations in the disputed text.

The case of Radoje Zugić v. the defendant "Yu Media Mont" DOO Podgorica

- The prosecutor in this case, Radoje Zugic, was a minister in the Government of Montenegro at the time of publishing the disputed text, and he was also the Governor of the Central Bank of Montenegro and performed other high-ranking functions.

- The printed and online edition of the daily newspaper Dan, whose defendant is indisputably the founder, on 13 February 2014, published the text entitled "Zugic received his doctorate in non-existent studies" while the heading of the text states that "the faculty at which the Minister of Finance obtained his diploma does not have accreditation for the enrollment of postgraduates". The subtitle of the quoted text states that "at the Faculty of Banking, Insurance and Finance, it was confirmed in oral communication to "Dan" that they do not have accreditation for doctoral studies", and that "diplomas obtained at institutions that are not accredited in Montenegro are invalid and they cannot be nostrified." The disputed text states, among other things, that: "Minister of Finance Radoje Zugic, who was proposed by the Council of the Faculty of Economics to the Senate of the University of Montenegro (UCG) for election to the academic title of assistant professor, received his doctorate from a faculty without accreditation, that is, without a license for these postgraduate studies. It is about the Faculty of Banking, Insurance and Finance in Belgrade, which should get a license for organizing doctoral studies only in September this year. However, in the biography considered by the review commission, Zugic stated that he received his doctorate from the mentioned institution in 2011 on the topic "Interdependence of structural applications and investment efficiency on the example of Montenegro." Diplomas obtained at institutions that are not accredited in the country in which they work are invalid and cannot be validated in Montenegro either. "Persons who try to validate a diploma from an institution that does not have a license to work are reported to the police and criminal charges are filed against them."

- The subject of the lawsuit in this legal matter is the plaintiff's request to oblige the defendant to pay the plaintiff in the name of compensation for non-pecuniary damage, due to mental suffering caused by reputation damage, the amount of € 15,000.00, with default interest as from the moment the judgment is rendered to the date of payment, and that the defendant be obliged to publish the judgment within 15 days of its entry into force in the daily Dan with an announcement on the front page and in the same place where the disputed text was published, and to publish the judgment in all its electronic editions, in the same way as and highlighted text.

- The first instance court also determined that the plaintiff on 12 January 2012 defended his doctoral dissertation at the Belgrade Banking Academy - Faculty of Banking, Insurance and Finance entitled "Interdependence of structural changes and investment efficiency on the example of Montenegro", which diploma of the degree of Doctor of Science was recognized by the Ministry of Education of Montenegro UP I no. 05-1-1883/2 of 22 Oct 2013. From the statement of the plaintiff given in the capacity of a litigant, it was determined that he considers the disputed text a brutal slap, because it "strikes" at something that is sacred to the plaintiff and is the product of his great work, and is related to his personality, not political activity. Based on the testimony of the examined witness Milan Sekulic, a journalist who wrote the disputed text, it follows that the witness received the initiative for the disputed text from a source from academic circles, who did not want to be revealed before the court, on the basis of which he started investigating the topic in the way that he first collected information from the website of the Belgrade Banking Academy of the Faculty of Banking, Insurance and Finance, which offers only undergraduate and master studies. It was further established from the testimony of the witness that, after realizing that there were no doctoral studies on the website of this institution, he called the secretary of this educational institution Sironja Nada by phone introducing himself as the defendant's journalist asking for information about doctoral studies. The said person told him that the Faculty did not have accreditation for doctoral studies, but that it would receive a license for it until September 2014, and that she did not know how someone could have obtained a doctorate at that faculty in 2011. According to the testimony of witness Sekulovic, after that conversation with the secretary of the faculty, he asked for an interview with the dean, and he also contacted the Ministry of Education of Montenegro with the question of how they validated the plaintiff's diploma since the faculty where he received his doctorate does not have a doctoral program, and he did so by sending them an e-mail and calling the spokesperson of that ministry several times, but to this day he has not received any answer, neither from the dean of this faculty, nor from the Ministry of Education of Montenegro.

- In order to resolve a specific legal relationship, and in the direction of proper application of substantive law, the first instance court, began to clarify the necessary issues: whether the plaintiff has the status of a public figure and whether by any of his characteristics or engagement he entered the public scene, whether the topic which the disputed text dealt with represents issues of public interest for the Montenegrin society, and then continued with determining whether the disputed newspaper article that was indisputably published by the defendant, either in some parts or as a whole, contains allegations, claims or facts, which would, as untrue, possibly violate the rights of the plaintiff, i.e. infringe his reputation and honor.

- Applying the above criteria to the established factual situation, the first instance court correctly applied the substantive law and corre-

ctly decided and rejected the plaintiff's claim as unfounded, basing the judgment on the provision of Art. 47 and 49 of the Constitution of Montenegro in connection with the provision of Art. 10 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950), and this proper application of the cited provisions is, as found by this second instance court, fully consistent with the provision of Article 19 of the International Covenant on Civil Rights (verified in the Official Gazette of the SFRY No. 7 of February 4, 1971).

- In addition to the usual legal standards, presented in a number of judgments of Montenegrin courts, and based on the case law of the European Court of Human Rights, the first instance court presented positions that are important for further establishment of Montenegrin court practice.

- Namely, the first-instance court correctly concludes that the information contained in the disputed text is not presented as certain, but its truthfulness and credibility can be considered as exposed to criticism of public opinion, ie. readers, while the disputed text in no part contains personal and offensive qualifications at the expense of the plaintiff, nor is his knowledge and skills disputed. Also, the approach of the first instance court is correct and that the disputed text did not claim that the plaintiff committed a criminal offense.

- The first instance court also correctly concludes that the defense, based on sincere intention, replaces the proof of truth, whereby no positive regulation stipulates that a journalist must ask questions of importance for his journalistic article exclusively in writing. When a journalist has a legitimate goal and when it comes to topics of importance to the public, and when reasonable efforts are made to confirm the facts, the media cannot be held accountable, even if the facts turn out to be untrue.

- Upon the appeal filed by the plaintiff, 18 November 2016, the second instance court issued a judgment rejecting the plaintiff's appeal as unfounded and confirming the judgment of the Basic Court in Podgorica P. no. 1171/2014.

- The second instance court, confirming the views of the first instance court, pointed out that although the title of the disputed text is harsh and sensationalistic, and written with a rough dose of exaggeration, but also that only for those reasons, in the presence of a legitimate right of the defendant of the text in question, and the fact that the aim of publishing the said text was not an arbitrary or personal insult of the plaintiff, it does not justify awarding the requested compensation for non-pecuniary damage, which as such would be an interference with freedom of expression which in specific case is not necessary in democratic society, in the opinion of the second-instance court.

- Confirming the established practice of the courts, the second instance court confirmed that the first instance court correctly concludes that, in the indisputable fact that the plaintiff did not use his right to publish denials, which right is guaranteed by the provision of Art. 26 of the Law on Media and the provision of Art. 49 paragraph 3 of the Constitution of Montenegro, the plaintiff excluded the possibility of his satisfaction because of the publication of allegedly offensive and untrue allegations in the disputed text.

The case of M.F. v. the defendant "Jumedia Mont" d.o.o.

- The plaintiff in this case is the M.F., employed as a teacher in the Elementary School "DR D.I.", the defendant is "Jumedia Mont" Ltd., publisher of the daily newspaper Dan, and the web site Dan on-line www.dan.co.me.

- In November 2012, the plaintiff was arrested by the Police Directorate, on reasonable suspicion that she and her brother F.B. committed the criminal offense of unauthorized production, sale and marketing of narcotic drugs, under Art. 300 of the Criminal Code of Montenegro, and after the hearing she was released to defend pending trial. In January 2013, the Higher State Prosecutor's Office dismissed the criminal complaint against the plaintiff, as there was no reasonable suspicion that the plaintiff had committed the criminal offense charged against her.

- About the event in question, among other media, in the print edition of the daily newspaper Dan, as well as on the web site Dan on-line www.dan.co.me, articles were published on 24 November 2012, in Dan no. 3104, text with the title "Brother and sister selling heroin", on 28 November 2012, in Dan no. 3108, text with the title "Arrested for drugs and then came to class", then in Dan no. 3109 of 29 November 2012, the text entitled "The principal agreed on the suspension of the teacher", in Dan no. 3116 of 6 December 2012, with the title "No indictment but the shame remains", and the text in Dan no. 3163 of 22 January 2013, with the title "Teacher returns to work".

- The plaintiff filed a claim with the Basic Court in Podgorica (P. no. 2589/13) requesting that the defendant be obliged to pay the amount of another € 50,000 as compensation for non-pecuniary damage for mental pain suffered due to violation of reputation, honor and rights of the person. The same claim requested that the defendant be obliged to publish the pronouncement of the said verdicts in the first following issue of the daily Dan, as of the date when the judgment becomes final, and on the front page of the same issue, at their own expense.

- The plaintiff claimed that the mentioned texts abused journalistic freedom and grossly violated the principles of the Journalists' Code and the Constitution of Montenegro, in which way the plaintiff suffered non-pecuniary damage, given that her honor and reputation were violated, as well as her constitutionally guaranteed rights. She further stated that the defendant violated the presumption of innocence in the procedure of reporting on the proceedings before the Higher State Prosecutor's Office, which was also established in the Report on the Work of Montenegrin Media, for the period from 1 December 2012 to 1 March 2013 prepared by the Media Council for Self-Regulation. She pointed out that since the plaintiff is an educator, a teacher at the Elementary School "DR D.I.", that she educates young generations, the authors of the texts had to keep that in mind and report with special care in the proceedings, however, they did the opposite, so caused reactions from students and parents, who demanded that the plaintiff not be allowed to come to school, which is why she was suspended, so her authority was ruined, and everything fell hard on her, so she had mental problems, and she also suffered mental pain due to damage to reputation and honor.

- In response to the lawsuit and the words at the hearing, the defendant confirmed that he published the disputed texts, but also pointed out that he received all the information he published in the daily newspaper Dan, as well as on the website, from the Police Directorate, the State Prosecutor's Office in Podgorica and the High Court in Podgorica.

He therefore accepted them as true, and the defendant did not have objective opportunities to verify the information received, but he only transmitted information obtained from the state body, because the defendant did not know that the event occurred, nor did he know the plaintiff, nor did he have any interest in inaccurately publishing information against the plaintiff here, who is neither a public nor a well-known person, in order for the defendant to deal with her. He just, in accordance with the Law on Media and professional obligations, published said information, and if that information was not correct, then the defendant was misled, and the judgment of the High Court in Podgorica took the position of case law Gz.br.2971/2012-05 that there is no responsibility of the media, for publishing information obtained by the media, and the plaintiff certainly has the opportunity to deny it. He further pointed out that the defendant transmitted information in the exact order in which he received it from the state authorities, so he reported when the plaintiff was reasonably suspected of having committed a specific crime and when she was acquitted, and the defendant's text entitled "Arrested for drugs and then came to class," he published at the insistence of the parents of the students to whom the plaintiff is teaching. He explained that in the Report of the Media Council for Self-Regulation it was stated that the defendant did not pay adequate attention to the acquittal, which is not true, given that in this case there was no acquittal, so the opinion is incorrect and the plaintiff did not provide evidence that the defendant acted unprofessionally, so having all the above in mind, it is clear that there was no illegality in the work of the defendant, nor was there any damage to the plaintiff, and therefore proposed that the court reject the claim as unfounded.

- In the direction of resolving a specific legal relationship, the first instance court, in the direction of proper application of substantive law, first of all started to clarify the necessary issues, such as: whether the plaintiff has the status of a public figure and whether she entered by any of her capacities or engagements the public scene, then, whether the question of filing criminal charges against her as a suspect for committing a serious criminal offense under Article 300 paragraph 1 of the CC of Montenegro is a matter of public interest for society, and then from determining whether the newspaper articles that the defendant indisputably published, either separately or as a whole, contained allegations, allegations or facts, which, as untrue, would be such to violate the rights of the plaintiff as a person, i.e. to injure her reputation and honor, and thus cause her mental pain, the compensation of which she seeks in a specific lawsuit.

- According to the order of the first instance court, the plaintiff, as a teacher in primary school, is not a public figure, nor did she enter the public scene by any of her engagements, so she does not have to be ready for her character and work, even if she is suspect, be the subject of public interest.

- However, the fact that a criminal complaint was filed against the plaintiff accusing her of committing a criminal offense under Article 300 paragraph 1 of the CC of Montenegro, could justify the defendant's reporting on the filing of that criminal complaint and the further course of criminal proceedings, but the defendant was obliged to adhere to professional standards and presentation of facts in writing about that topic, without exaggeration, sensationalism and pretensions to convict the plaintiff before the court did so, and to brand her as someone who undoubtedly "was selling heroin", and in the way the defendant did with his text published in the daily Dan on 24 November 2012 under the title "B.b. and M.F. arrested for drug possession - brother and sister selling

heroin", about which the Report of the Media Council for Self-Regulation was also made.

- The first instance court determines that in the quoted newspaper article the defendant in its textual part, and as it follows from it, transmitted the allegations of the Police Administration, but that the same could not be the source or reason for the defendant to give the headline such explicit content – "Brother and sister selling heroin", because this title of the text leaves no doubt to the average reader that this is an established fact - that the plaintiff in fact actually sold heroin, which can only be determined by a final court verdict finding her guilty of drug trafficking.

- According to the order of the first instance court, by acting in the manner described above, the defendant did not act in good faith to disclose information regarding the police action in particular, but, guided by sensationalism, the defendant indisputably grossly violated the plaintiff's right to presumption of innocence guaranteed by Article 35 of the Constitution of Montenegro and the provision of Article 3 of the Criminal Procedure Code, designating her as a heroin dealer, without a prior final court decision.

- Furthermore, the court had in mind other texts of the defendant covered by the lawsuit, but did not find a violation of personal rights, and this having in mind that the defendant in particular used the right to transmit words and public statements of others ("Arrested for drugs and then came to class"), that is, he only communicated the facts about that that the management of the school in which the plaintiff teaches addressed the prosecutor's office in order to get information on a specific procedure, i.e. criminal charges filed against the plaintiff, and the procedure with plaintiff's employer regarding her possible suspension from work, whereby the text clearly states that she was arrested "on reasonable suspicion that she sold drugs with her brother" (in the text "The principal agreed to suspend the teacher").

- In the end, the first instance court finds that the allegations of the text "No indictment but the shame remains" do not contain insulting allegations against the plaintiff, but this text communicates the fact that further proceedings against the plaintiff were dropped due to lack of evidence, and contains the view of parents of students who attend a school where the plaintiff teaches that it is not clear to them why the plaintiff was arrested at all, if she is not guilty, and that they are sorry that she was marked for no reason. The same is the case with the text "Teacher returns to work".

- The allegations of the title of the text published in the daily Dan dated 24 November 2012 "B. and MF arrested for drug possession - Brother and sister selling heroin" in the opinion of the first instance court, represent a factual statement whose veracity the defendant was obliged to check before publication. Namely, opinions represent attitudes or personal assessments of an event or situation and it is not possible to prove whether they are true or not (value judgment), but for the fact underlying the opinion, it can be proved whether it is true or false (factual statement).

- An untrue allegation already violates dignity, honor and reputation with its untrue content. But this lesional ability of his is not sufficient to declare his expression inadmissible, but one subjective circumstance is relevant - the relation of the declarant-publisher of information to the untruthfulness of the content.

- The journalist (editor-in-chief) before publishing the information, with due regard to the circumstances, is obliged to check its origin, truthfulness and completeness. The due regard to the circumstances is the attention that the circumstances of a particular case allowed and imposed on a good journalist, having in mind the rules of the journalistic profession. The legal standard of such attention is directly proportional to the gravity of the violation of the rights or interests that the disclosure of the information might cause. This means that the more severe the allegations that the information contains, the more careful attention is needed when checking the factual basis of the information,

- The first instance court found that in addition to violating the plaintiff's reputation, the content of the title of the disputed text also violated the plaintiff's right to presumption of innocence and her right to honor as a personal sense of self-worth, and her personality was degraded, creating a deep sense of insult, which all points to the conclusion that the plaintiff suffered mental pain.

- Based on the established facts and the application of substantive law, the first instance court partially accepted the plaintiff's claim and obliged the defendant DOO "Jumedia Mont" Podgorica to pay the plaintiff, in the name of compensation for non-pecuniary damage for mental pain due to violation of reputation, honor and personality € 1,500. The first-instance court obliged the defendant to publish the judgment in the first following issue of the daily Dan, counting from the date when the judgment becomes final, and on the front page of the same issue, at his own expense.

- Deciding on the appeals of the plaintiff and the defendant filed against the judgment of the Basic Court in Podgorica Pbr. 2589/13 dated 11 June 2014 year, in the session of the council held on 10 July 2015, the second instance court rendered a judgment which changed the amount of awarded compensation for non-pecuniary damage for mental pain suffered due to violation of reputation, parts and rights of the person, finding that the amount of awarded non-pecuniary damage was too high, so it reduced it to € 500.

- The second instance court confirmed the position of the first instance court that the presumption of innocence was violated only in the title of the text, but points out that the content of the text states that the plaintiff was detained due to a well-founded suspicion that she committed the mentioned crime, which at the time was true information obtained by the Police Directorate. Therefore, in the opinion of the second instance court, one should take into account the fact that the content of the text did not repeat the allegations stated in the title and that the plaintiff was indeed detained by the Police Directorate as a person in whose apartment drugs were found and a person suspected of committing a crime. Article 300 of the Criminal Code.

- The second instance court also took into account that the defendant did not publish the mentioned text on the front page, nor it has a particularly prominent, sensationalistic title, as stated in the plaintiff's appeal, but the text was published on the ninth page of the daily Dan.

(a) When reporting, journalists should keep in mind the following legal standard in the practice of Montenegrin courts, as a further elaboration of the legal standards of the ECHR:

(1) Acting of a journalist with sincere intention (when the journalist has a legitimate goal and when it comes to topics of importance to the public, and when reasonable efforts have been made to confirm the facts) replaces proving the truthfulness of published information.

(2) If there is no indisputable evidence for the information contained in the journalistic text, it must not be presented as undoubted, but the given information will be conceived in such a way that its truthfulness and credibility are left exposed to criticism of public opinion, i.e. readers.

(3) A newspaper article shall not contain in any of its parts personal and offensive qualifications at the expense of the person who is the subject of the newspaper text.

(4) The title of a newspaper article may be crude and sensationalistic, and written with a gross dose of exaggeration, but only in the case of a legitimate aim, thus justifying the right to address the subject matter, and the fact that intention of publication is not arbitrary nor offensive for the person in question.

(5) A journalist has no obligation to ask questions of importance for his journalistic article exclusively in writing. However, official and formal communication is important as proof of the efforts made to confirm the fact.

(6) In reporting on a potentially committed criminal offense, a journalist must show due care in respecting the presumption of innocence:

(a) The more severe the allegations, the greater and more careful attention is needed in verifying the factual basis of the information contained.

(b) The suspect/defendant may not be qualified/marked as the perpetrator of the criminal offense until the allegations are confirmed by a final court decision.

(c) A journalist who reports on criminal proceedings must precisely use the terms that determine the degree of suspicion and the stage of the proceedings (investigation - grounds for suspicion, investigation - reasonable suspicion),

(d) Violation of the presumption of innocence cannot be corrected by a precise wording that respects the presumption of innocence in the text of a newspaper article.

(e) If no public figure is in question, it is mandatory to give the name and surname of the suspect in the initial and to avoid disclosing details that can reveal their identity.

(f) Data on the procedure against the juvenile and the decision made in that procedure, as well as data on the juvenile as a participant in the procedure may not be published in the media!

(7) The media should always enable, act proactively for the person in question to express his position, and especially with regard to the publication of denials, which right is guaranteed by the provision of Art. 26 of the Law on Media and the provision of Art. 49 paragraph 3 of the Constitution of Montenegro.

SELF-REGULATION IN JOURNALISM: RULES WE SET FOR OURSELVES

The old legal wisdom says that “when you don’t know how else to do something, you do it by law”. In that sense, one would say that it is easy for journalists - it is enough for them to report in accordance with media laws and they are safe; no one will sue them, no one will pay anything, no one will be harmed. Things, however, are not that simple. Media laws, whatever they are, usually do not “cover” the whole spectrum of professional standards, all the details of a journalistic report or reportage, everything that journalists face on a daily basis. Of course, they will not find themselves in court if they do not respect professional codes of ethics, but for them, for their legal, moral, human and professional integrity, the best “recipe” is to pay attention to media codes in addition to laws relating to the media and other literature concerning the standards of our profession. So and only so, their lawyers will be calm, but also their conscience.

The instructions given here were selected on the basis of several years long monitoring of the print media and the practice of the Press Council of Serbia and, as well as it seems well known - they are the “most sensitive” points of the local media and refer to situations in which journalists most often make mistakes.

GUESS AND FREE INTERPRETATION

Theses that we are not sure about, or those that come from only one source, must be marked as such: they should not be put in the title, it should be clearly stated that they are a quote, should be carefully placed in the text, a distance should be made from them with a “question mark”. Otherwise, and this is happening more and more often in the local media, it may happen that the thesis of an interlocutor is interpreted by readers/viewers as the position of the editorial office.

This is especially important when it comes to topics of exceptional public interest, i.e. topics whose misinterpretation could have serious consequences for public health and public safety: medicine, vaccination, education, religion, the political scene, recent history, etc. During the coronavirus pandemic, both globally and locally, there was an opportunity to see how harmful and dangerous the uncritical placement of half-truths and lies about vaccines, the way the virus is transmitted, the severity of the disease it causes, etc. can be. Various quacks, but also serious doctors, whose theses and beliefs were published by the media as established facts - contributed to the general distrust, and thus to the increased infection of people.

ACCUSATIONS

Although journalists have the right to hide the identity of their source, they are obliged to - in case they make serious accusations against someone - offer the public at least some evidence for their claims: a document, a contract, a bank statement, etc. As important as the story may be, a journalist puts himself and his media in serious danger if he

does not offer anything other than the claim of an unnamed witness or the thesis that he “had insight” into the documentation.

This becomes especially important in modern times, when it is easy to falsify any document and when there are various “spin doctors” on the scene who - working in who knows whose name - can easily “plant” something that looks like evidence, and which before court or by the most basic check would be qualified as fraud.

SOURCES

Most of the world’s professional codes warn journalists against sources that provide information guided by some personal interest, saying that such sources should not be blindly trusted. On the other hand, the old rule of investigative journalism says that “if your mother tells you she loves you, find another independent source to confirm it.” Both of these principles have proven to be very useful.

In addition, journalists should never as sources use people with whom they have close friendly or business relationships: no matter how much they try to be objective, it will be difficult to avoid bias in that situation, and thus the truth of the published allegations will be questioned.

POLITICAL ORIENTATION OF JOURNALISTS

Like all other people, journalists have the right to their political and ideological orientation. Unlike the situation in the Western European and American media, in our country they are allowed to go to demonstrations and protests, but it should never happen that a journalist is active in a political party, and at the same time to do this job. Even if they do not openly propagate their party, their media and themselves - they lose credibility and are not consider objective.

The situation is especially complex with journalists who at some point in their careers perform the function of a spokesperson or media advisor to a senior state official. Although neither codes nor laws forbid them to continue their journalistic work - again we come to the problem of perception, i.e. the fact that such a person will never again be perceived as objective or deprived of a clear political belief and/or interest. Furthermore, such a journalist is always suspected, which in the long run can lead to distrust not only in analyzes and opinions they present, but also in the facts they deal with.

DISCRIMINATION AND HATE SPEECH

Journalists certainly cannot influence what their interlocutors or guests will tell them “live”. However, they are obliged to react and distance themselves if anything is said that offends feelings or discriminates at

any time - on the basis of gender, nationality, ideological orientation, sexual orientation and any other characteristics. If that happens, the journalist should warn the interlocutor about the discrimination he is committing, and immediately after that apologize to the audience and note that the position expressed is not the position of the editorial office - the media.

A more radical variant, for which there is usually no reason, is to stop the show. When it comes to print or online media, it is also necessary to emphasize in the text or box that the editorial office does not share the position of the interlocutor who considers it discriminatory or problematic.

Even the very mention of one's affiliation or orientation can in certain situations be interpreted as discriminatory and thus lead to legal problems: ethnicity is mentioned, for example, only if what we report has the most indirect connection with it: if a crime is reported which has to do with nationality (if, say, a member of a neo-Nazi group attacks or beats members of the LGBT community, Jews or Roma).

A journalist can have discriminatory attitudes in private and practice them in "his four walls", but in public such behavior is not allowed by laws or professional codes of ethics.

PRIVACY

The right to privacy has become one of the holiest and most carefully guarded in modern times - a huge number of lawsuits concerning this right are being conducted before international courts. In order to avoid lawsuits on this basis, journalists would have to look very carefully for data that could in any way be interpreted as unjustified entry into the private domain.

In addition to data that intrude on intimacy, photos taken secretly and in places that are not important to the public (beaches, etc.), the media should avoid publishing data related to personal tragedies, family relationships, gossip and the like. The privacy of public figures is limited and this fact is often invoked by journalists, but it is certainly not non-existent: in the case of public figures, privacy is also not violated, unless it is in the public interest. For example, if a member of the family of a high-ranking statesman watches a football match in a local cafe, it is irrelevant to the public. But if he watches the same game with a group of proven criminals, his privacy ceases and the media have every right to publish that information. Likewise, the privacy of minor children of public figures is most strictly protected - the media should not publish any details concerning their lives, or aspects of their parents' lives that are directly related to children (alimony, schools the child attends, where the family spends holidays, etc.)

In addition to these, journalistic everyday life and their standards are determined by other rules made with the intention of shedding light on all those strong "gray zones" in media ethics. However, for each journalist individually, more important than all these rules and codes is what this profession is for: that their only "master" be the truth and to always, no matter what happened to them in their private and professional life, serve only and exclusively to the society in which they live and to the people around him.

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