

DEFAMATION AS A “WEAPON” IN EUROPE AND IN SERBIA: LEGAL AND SELF- REGULATORY FRAMEWORKS

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This article examines the legal framework for defamation in Europe and in the Republic of Serbia. It offers a possible definition of the term “weaponized defamation.”

In the first part, regional organizations, such as the Council of Europe and European Union, are analyzed to identify their legal framework for defamation. This Article focuses on the legal system of the Republic of Serbia, examined from two points of view - that of media legislation and that of the Journalist’s Code of Ethics, as a self-regulatory framework.

The following section of the article focuses on the decriminalization of defamation in Europe at the end of the 20th and beginning of the 21st century. The paper shows that there are countries where defamation is not a criminal offence anymore, while in some countries defamation still poses a criminal threat to journalists.

The case law of Serbia at the European Court of Human Rights relevant for defamatory statements (Article 10 (2)) and its positions on them are looked at next, after decisions were made by the European Court of Human Rights. This article will illustrate the misunderstanding of the term “defamation” and the frequent lack of understanding of the differing levels of protection for the honor and reputation of a “public figure” in comparison to that of an individual.

The final part of the research focuses on several case studies that may fall into the “weaponized defamation” category as well as the consequences such offenses could have on its victims. The article will deal with the cases in front of national courts: the European Court on Human Rights, and the

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Regulatory Authority for Electronic Media and the Press Council. The article will try to offer an answer to why citizens tend to turn to the Press Council in order to protect their reputation, although it offers only moral consequences and no legal powers, as well as to why national courts have started to take the Journalist’s Code of Ethics as relevant for their judgments.

I. INTRODUCTION

In this article, the term “*weaponized defamation*” is used for the defamation that fulfils the following criteria: it is constituted for a long time (usually in the form of a long-term campaign in the media), with serious damage to someone’s honour and reputation, or resulting in life-threatening situations and consequences. The cases presented contain at least two out of three conditions, while in some cases (as in *Veran Matic vs. Informer*)¹ all three conditions are fulfilled.

There is a new trend in Serbian tabloid media, where tabloids establish long-term campaigns against opponents. That long-lasting campaign is weaponized in a way that a) lasts for a long period of time,² and b) does not allow the other side to express an opinion (either in the form of a right, or a reply, or correction, or in the form of a statement of an opinion). There are two media that lead this trend and have specialized the format—TV Pink and the newspaper *Informer*.³ There were numerous campaigns that the owner of TV Pink has held against various opponents.⁴ One of the first, *Cedomir Cupic v. TV Pink* is analyzed in more depth below.

1. See пресуду [The Verdict], 6 P.Z. Виши суду београду [Higher Ct. Belgrade] 2017, No. 50/15 (Serb.).

2. A Long Campaign in this case does not reflect only the number of days. As will be presented, a long campaign can be one that only lasts for one day, yet for the entire day in every news broadcast.

3. For example, through open letters that are published in the newspaper *Informer*, Zeljko Mitrovic, the owner and editor of TV Pink, often clashes with various individuals. The editor-in-chief of *Informer* then comes to TV Pink to read his front page freshly printed. See, e.g., Zora Drčelić, *Letters Opened By Zeljko Mitrovic*, VREME (Aug. 25, 2016), <https://Verne.com/cams/view.php?id=1422560>.

4. Those who have been victims of Mitrovic’s open letters include: Dragan Djilas, who was the mayor of Belgrade at the time; Sasa Jankovic, the ombudsman and later the opposition candidate for President of the Republic of Serbia; Bosko Obradovic, leader of the “Dveri” political party, Sasa Radulovic, leader of the “Enough is Enough” political party, Aleksandar Rodic, owner of “Kurir” newspapers, “Danas, newspapers, etc. *Id.* The similar thread running through these cases is that open letters were written by the owner and editor-in-chief of TV Pink, a television station with national coverage in the Republic of Serbia, read several times a day in full (lasting for several minutes) by a speaker of news without any opportunity for the other side to react or respond to it. *Id.*

The tabloid newspaper “*Informer*” utilizes a similar tactic as TV Pink. It directs campaigns against various people, usually public figures, either on its own initiative or by printing a TV Pink campaign in its edition. The case of *Veran Matic v. Informer* is analyzed in the context of *weaponized defamation*, its influence on a person’s private and professional life, as well as the incorporation of both legal and ethical norms by Serbian courts.

Finally, a Press Council⁵ is “an independent, self-regulatory body that brings together publishers, owners of print and online media, news agencies and media professionals. It has been established for monitoring the observance of the Journalist’s Code of Ethics, solving complaints made by individuals and institutions related to media content.”⁶ One of the defamatory cases that could be identified as “*weaponized*,” which the Press Council dealt with, is *Sreten Ugricic v. Press newspapers*, which is analyzed in this article.

II. THE THEORETICAL APPROACH TO DEFAMATION

Defamation is one of the permissible restrictions of freedom of expression. Article 10, paragraph 2 of the European Convention on Human Rights prescribes that freedom of expression can be limited due to the protection of honour and reputation of others. Defamation is not easy to define as a legal term.

The most common definition of defamation states that it is “the publication of an untrue statement about a person that tends to lower his reputation in the opinion of right-thinking members of the community or to make them shun or avoid him. Defamation is usually in words, but pictures, gestures, and other acts can be defamatory.”⁷ The test of whether someone’s reputation is lower in the opinion of the right-thinking members of the society “has been found satisfied even in cases where the only proper response of a right-thinking person to the publication complained of would in fact be no contempt or disapproval, but sympathy or indifference.”⁸

5. Founders of the Press Council are Veselin Simonovic, on behalf of the Association of Press Publishers and Electronic Media; Vladan Filipcev for the Association of Independent Local Media “Lokal pres”; Nadezda Gace, for the Independent Journalists’ Association of Serbia (IJAS) and Ljiljana Smajlovic (for the Journalists’ Association of Serbia). See *Founders*, PRESS COUNCIL, <http://www.savetzastampu.rs/english/about-us> (last visited Dec. 15, 2017).

6. *About Us*, PRESS COUNCIL, <http://www.savetzastampu.rs/english/founders> (last visited Dec. 15, 2017).

7. Jonathan Law, A DICTIONARY OF LAW 179 (8th ed. 2015).

8. “The effect of stretching the definition of what is defamatory in this way has been to protect individuals against the publication of some private and personal material.” Michael Tagendhat & Iain Christie, THE LAW OF PRIVACY AND THE MEDIA 357 (Nicole Moreham et al. eds., 3d ed. 2016).

In legal theory there are different approaches in Anglo-Saxon and Continental law. For example, in England, but not in Scotland, there are two types of defamation. The first is “slander” and is spoken (so not in a permanent form), while the other type is “libel” and requires the defamation to be in permanent form.⁹ The other characteristic of the English legal system towards defamation is that “Common Law” places greater protection on honor and reputation¹⁰ in comparison to freedom of expression. Therefore, Great Britain is famous for celebrities bringing cases against British tabloids, as they usually win the cases. As the result of such practice, the responsibility of an individual and the media is often equalized.¹¹

One of the effective mechanisms that should always be a first step towards the minimalization of the effects of defamation are right of reply and right to correction. Goldberg et. al. state that the right of reply is “one means by which media law addresses our ability to obtain access to the media.”¹² Furthermore, they add that the right of reply may be characterized “either as an element or an individual’s right to freedom of expression or as a derogation from that right,”¹³ in terms of ‘protection of the reputation or rights of others’.¹⁴

Warren and Brandeis looked at defamation from the breach of privacy point of view by saying that “the intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.”¹⁵ Wacks considers that “a violation of privacy is sufficiently distinguishable from an attack on an individual’s reputation to warrant clear separation. ‘The mental injuries suffered by a privacy plaintiff’ in the words of one commentator ‘stem from exposure of the private self to public view. The mental injuries suffered by a defamation victim, by contrast, arise as a consequence of the damage to reputation, either real or perceived. Thus, both torts provide

9. *Compare Id.*, with David Goldberg et al., *Media Law and Practice* 375 (2010) with Richard Clayton et al., *THE LAW OF HUMAN RIGHTS* 1015 (2009).

10. *Compare*, Clayton, *supra* note 9 at 1014.

11. *Id.*

12. Goldberg, *supra* note 9, at 47.

13. *Id.*

14. European Convention on Human Rights, *Convention for the Protection of Human Rights and Fundamental Freedoms*, art. 10, 213 U.N.T.S. 221 (Nov. 4, 1950) (hereinafter ECHR).

15. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 196 (1890).

redress for 'wounded feelings,' but the source of the harm differs substantially.' Moreover, while there is an obvious overlap between the two wrongs, in the case of defamation 'the injuries result from real or imagined harm to reputation, and objectively determinable interest. In privacy, actions the injuries arise solely from public exposure of private facts.'"¹⁶

Vodinelic considers that two domains are leading in frequency of breach of the honor and reputation by public expression of opinion and in heaviness of injury caused: "yellow" newspapers and political clash of opinions. In this paper, we will mostly cover the tabloid (yellow) media, bearing in mind that, although they are not openly participating in a political arena, they surely give a great support to the (current) government¹⁷ and therefore their publishing can be looked at through a political lenses, as well.

III. DEFAMATION: INTERNATIONAL LEGAL FRAMEWORK

A. *Council of Europe*

The European Convention on Human Rights prescribes that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers."¹⁸ However, this human right is not absolute and it can be restricted or subject to other "formalities, conditions or penalties. . .that are prescribed by law and are necessary in a democratic society. . . for the protection of the reputation or rights of others."¹⁹ In order for freedom of expression to be restricted it is necessary that the restriction is prescribed by law, with a legitimate aim and that it is necessary in a democratic society.

The Council of Europe has regulated the issue of defamation within several specific documents. The Parliament Assembly (PACE) adopted two documents on October 4, 2007: *Recommendation 1814 Towards*

16. Raymond Wacks, *PRIVACY AND MEDIA FREEDOM VII* (2013).

17. "Pink has great political and ideological significance... The fact is that every Government here always chose media with which to advertise and that the current Government chose Pink for your private public service." Interview with Snjezana Milivojevic, Belgrade Faculty of Political Sciences Professor, *Free Europe: Why Is Pink Vucicev a Private Public Service?*, KURIR (Dec. 6, 2015, 8:01 PM), <https://www.kurir.rs/vesti/drustvo/2048047/slobodna-evropa-zasto-je-pink-postao-vucicev-privatni-javni-servis>.

18. ECHR, *supra* note 13, art. 10.

19. *Id.*

decriminalization of defamation²⁰ and *Resolution 1577 Towards decriminalization of defamation*.²¹ In its Recommendation, PACE “urges the Committee of Ministers to instruct the competent intergovernmental committee, the Steering Committee on the Media and New Communication Services (CDMC) to prepare. . . a draft recommendation to member states laying down detailed rules on defamation with a view to eradicating abusive recourse to criminal proceedings.”²² In the Resolution, there are several layers of requests sent to the member states: that the anti-defamation laws are applied with great caution, with the avoidance of criminal responsibility,²³ that the statements made in the public interest, even if not accurate, “should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm and that their truthfulness was checked with proper diligence.”²⁴ Further on, the Resolution condemns the misuse of defamation by public authority in order to hush the media or provoke self-censorship,²⁵ as well as abolish the prison sentences for defamation.²⁶ Finally, the PACE is aware “that abuse of freedom of expression can be dangerous, as history shows. As recently acknowledged in a framework decision applicable to member countries of the European Union, it must be possible to prosecute those who incite violence, promote negationism or racial hatred, conduct inimical to the values of pluralism, tolerance and open-mindedness which the Council of Europe and the European Convention on Human Rights promote.”²⁷

The next important document is the Declaration of the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect to Defamation, “Libel Tourism,” to Ensure Freedom of Expression, adopted on July 4, 2012.²⁸ “Libel Tourism” is “a form of “forum shopping” when a complainant files a complaint with the court thought most likely to provide a favourable judgment (including in default cases) and where it is easy to sue. In some cases, a jurisdiction is chosen by

20. EUR. PARL. ASS. *Recommendation 1814 Towards Decriminalization of Defamation*, 34th Sitting, Doc. No. 11305 (2007).

21. EUR. PARL. ASS. *Res. 1577 Towards Decriminalization of Defamation*, 34th Sitting, Doc. No. 11305 (2007).

22. Eur. Parl. Ass., *Recommendation 1814 Towards Decriminalization of Defamation*, Doc. No. 11305 (2007).

23. EUR. PARL. ASS. *Res. 1577* art. 6, *supra*, note 21.

24. *Id.* art. 7.

25. *Id.* art. 8.

26. *Id.* art. 11 & 13.

27. EUR. PARL. ASS. *Res. 1577* art. 15, *supra*, note 18.2 (20).

28. COMM. OF MINISTERS, *Declaration on the Desirability of International Standards Dealing with Forum Shopping in Respect of Defamation, “Libel Tourism”, to Ensure Freedom of Expression*, 1147th Meeting (July 4, 2012).

a complainant because the legal fees of the applicant are contingent on the outcome (“*no win, no fee*”) and/or because the mere cost of the procedure could have a dissuasive effect on the defendant. The risk of forum shopping in cases of defamation has been exacerbated as a consequence of increased globalisation and the persistent accessibility of content and archives on the Internet.”²⁹ The countries are expected to reform their media legislation and offer better protection to freedom of expression in balancing between this freedom and right to reputation of others.

B. *European Union*

The Audio-visual Media Services Directive³⁰ dominantly regulates the audio-visual sector in the European Union. It does not deal with defamation nor offer any legal remedies.³¹ Instead, it recommends to “any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies.”³² One of the most important characteristics of the right of reply – its urgent matter – is very well defined through the AVMSD, by obliging member states to make sure that the right of reply “is not hindered by the imposition of unreasonable terms and conditions.”³³ The Directive also recognizes the importance that the reply is “transmitted within a reasonable time,”³⁴ as a very essential condition, following the valid request and “at a time and in a manner appropriate to the broadcast to which the request refers.”³⁵ Furthermore, the Directive does not distinguish among broadcasters, stating that the right of reply and rules on equivalent remedies have to apply to all broadcasters.³⁶ Member States of the European Union have the obligation to incorporate the relevant procedures establishing the right of reply or the equivalent remedies and their adequate exercising in their national legislation, ensuring the permission for satisfactory duration of the right of reply for any natural or legal person residing or being established in another Member State.³⁷ The request for

29. *Id.*

30. Council Directive 2010/13, 2010 O.J. (L 95) (EU).

31. “Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law,” *Id.*, art. 28.

32. *Id.*, art. 18.

33. *Id.*, art. 28.

34. *Id.*

35. *Id.*

36. *Id.*, art. 23.

37. *Id.*, art. 23.

exercising of the right of reply may be rejected only when a reply is not justified,³⁸ or is not in accordance with the civil, administrative or criminal laws of the Member States, or when it could possibly indicate a punishable act, cause the broadcaster to be liable to civil law proceedings or would disobey the public decency standards.³⁹ Any possible dispute related to exercising of the right of reply or equivalent remedies will be subject to judicial review⁴⁰.

The AVMS Directive prescribes situations when the right of reply may be rejected:” if such a reply is not justified [...] if it would involve a punishable act, would render the broadcaster liable to civil-law proceedings or would transgress standards of public decency.”⁴¹

C. The Republic of Serbia

The legal system of the Republic of Serbia is examined from both the media legislation point of view and the Journalist’s Code of Ethics, as a type of “self-regulation.”

The Constitution of the Republic of Serbia guarantees the right to freedom of expression in its Article 46 and at the same time prescribes its restrictions, of which one of them is the “right and reputation of others.”⁴²

The Law on Public Information and Media (LPIM) prescribes that “It is not permitted to publish information that violates a person’s honour, reputation or piety, or portrays a person untruly by assigning him/her features or characteristics that he/she does not have or denying him/her features or characteristics that he/she does have, unless the interest for publishing information prevails over the interest of the protection of dignity and right to authenticity, and particularly if it does not contribute to the public debate on an occurrence, an event or a person that the information refers to.”⁴³ At the same time, this law incorporates the standpoint of the European Court on human rights related to the higher level of criticism that public figures have to withstand: “The elected, appointed, i.e., assigned holder of public office shall be obliged to be subjected to the expression of critical opinions that pertain to the results of their performance, i.e., the

38. “In accordance with Paragraph 1 of Article 28, which means that the legitimate interest of the applicant has not been “damaged by an assertion of incorrect facts in a television programme.” *Id.*, art. 28

39. *Id.*, art. 23

40. *Id.*; see also Jelena Surčulija Milojević, *The Right of Reply: A Tool for an Individual to Access the Media*, 9 Y.B. OF THE FAC. OF POL. SCI. 225, 229-230 (2015).

41. Council Directive 2010/13 art. 46, *supra*, note 30.

42. Ustav Republike Srbije (2006) [Constitution] art. 46 (Serb.).

43. Law on Public Information and Media art. 79, Службени гласник РС [Official Gazette of RS], No. 83/2014 (Serb.).

policy they implement, and the opinions are in relation to performing their function – regardless of whether they feel personally affected by the expression of these opinions.”⁴⁴

The Law on Electronic Media (LEM) puts the defamation in electronic media into the scope of the work of the Regulator, by saying that it shall “determine specific rules relating to programme content in relation to the protection of human dignity and other personal rights, protecting the rights of minors, prohibition of hate speech etc.”⁴⁵ In addition, the LEM prescribes that the “Media services shall be provided in a manner that respects human rights and personal dignity in particular.”⁴⁶ And, “the Regulator shall ensure that all programme content respects dignity and human rights [...]”⁴⁷ This law is in line with AVMSD as it goes a step further and forbids the disrespect of human dignity in an audio-visual commercial communication.⁴⁸ Finally, the Law on Public Service Broadcasting⁴⁹ prescribes that the “respect for privacy, dignity, reputation, honour, and other basic human rights”⁵⁰ shall be in the public interest and maintained by the public service broadcaster through its programming.

The independent regulatory authority, namely the Regulatory Agency for Electronic Media (REM), has adopted the *Statute on Protection of Human Rights when providing media services*⁵¹ where Article 26 prescribes that “the provider of audio-visual media service shall respect the dignity of a person and the right to authenticity of the person within the information published. In extraordinary circumstances, the provider of audio-visual media service may broadcast information that violates the honour, dignity and piety of a person the information relates to, if the interest for the information to be published prevails over the protection of the dignity of such a person, and especially when the subject matter contributes to public debate.”⁵²

44. *Id.* art. 8.

45. Закон о електронским медијима [Law on Electronic Media] art. 22, Службени гласник РС [Official Gazette of RS], No. 83/2014 (Serb.).

46. *Id.* art. 50.

47. *Id.*

48. *Id.* art. 56.

49. Закон о јавним медијским сервисима [Law on Broadcasting], Службени гласник РС [Official Gazette of RS] No. 86/2006 (Serb.).

50. *Id.* art. 7.

51. *See generally* о заштити људских права у области пружања медијских услуга [Statute on Protection of Human Rights in the Field of Media Services], Службени гласник РС [Official Gazette of RS] July 16, 2015, No. 83/14 (Serb.).

52. Article 26 of the Statute on Protection of Human Rights in providing of audio-visual media services, Official Gazette of the Republic of Serbia No. 55/15.

Finally, the Press Council’s work is based on monitoring the respect of the Journalist’s Code of Ethics and reactions to complaints. The authenticity of reporting is regulated in Chapter I, where in Point 2 it specifies that “it is the right of the media to have different editorial concepts, but it is the obligation of journalists and editors to make a clear distinction between the facts they transmit and comments, assumptions and speculations,”⁵³ while in Point 5 it says that the “publishing of speculative charges, defamation, rumors and fabricated letters [...] are incompatible with journalism.”⁵⁴ “In cases that a journalist estimates that the publication of unverified information or speculation is in the public interest, he is obliged to emphasise clearly and unambiguously that the information is not confirmed.”⁵⁵ Nevertheless, the journalists’ responsibilities are prescribed by Chapter VI, Point 1 in that “a journalist is primarily responsible to his readers, listeners and viewers. This responsibility must not be subordinate to the interests of others, particularly the interest of publishers, the government and other state institutions. A journalist must oppose all those who violate human rights or promote any kind of discrimination, hate speech and incitement to violence.”⁵⁶

IV. THE PROCESS OF DECRIMINALIZATION OF DEFAMATION IN EUROPE AND IN SERBIA

This article focuses on the decriminalization of defamation in Europe at the end of the twentieth and beginning of twenty-first century.

There is no unilateral opinion on whether defamation should be a criminal act or not. The ongoing legal debate includes questions about whether the fines for defamation should be criminal or civil, whether the financial fine for non-pecuniary damage should be higher or lower, etc. In the last two decades, the European legal system has been characterized by the *legal battle* of international organizations (e.g. the Council of Europe, OSCE, UN) for defamation to be decriminalized. The arguments for decriminalization are usually that prison is a too harsh a sentence for words said, but also that the criminal offences were usually used by politicians against journalists. In 2002, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression pointed out in one of their Joint Declarations that “Criminal defamation is not a

53. Indep. Journalists’ Ass’n of Serbia & Journalists’ Association of Serbia, SERBIAN JOURNALIST’S CODE OF ETHICS, 7 (4th ed. 2015).

54. *Id.*

55. *Id.*

56. *Id.* at 23.

justifiable restriction on freedom of expression,” and that “all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”⁵⁷

The Council of Europe and OSCE lead the decriminalization of defamation “movement,” but there are still many countries in Europe where defamation is a criminal offence. Spaic et. al. found that “out of 28 EU countries, 25 treat defamation as a criminal offence. Of those 25, 21 impose imprisonment as a sanction.”⁵⁸ In Serbia, defamation was decriminalized in 2012 by simply deleting Article 171 of the Criminal Code.

Even the European Court on Human Rights does not have a firm position on that issue. In the case of *Radio France and Others*, the Court noted that “in view of the margin of appreciation left to Contracting States by Article 10 of the Convention, a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued.”⁵⁹ This was reaffirmed in the later case of *Lindon, Otchakovsky-Laurens and July v. France*.⁶⁰ On the other hand, in the case of *Bodrozic and Vujin v. Serbia*, the Court found that “recourse to criminal prosecution against journalists for purported insults raising issues of public debate, such as those in the present case, should be considered proportionate only in very exceptional circumstances involving a most serious attack on an individual’s rights.”⁶¹ In civil matters, the Court measures whether an alternative to a fine is offered, such as right of reply, right to correction, a public apology or the publishing of the court decision.⁶²

The International Press Institute (IPI) conducted research in January 2015 that showed that in the period of five years prior to the research, journalists in 15 EU countries were convicted of defamation as a criminal offence, either in the form of a fine or imprisonment (e.g. Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, Poland, Portugal and Spain).⁶³ The same research

57. JOINT DECLARATIONS OF THE REPRESENTATIVES OF INTERGOVERNMENTAL BODIES TO PROTECT FREE MEDIA AND EXPRESSION (Ambeyi Ligabo ed. 2002).

58. Spaic, A., et al., (2016) *Decriminalization of Defamation - The Balkans Case: A Temporary Remedy or a Long-Term Solution?*, 47 INT’L J. L., CRIME & JUST. 21 (2016).

59. *Radio France v. France*, 2004-II, Eur. Ct. H.R. 83,117-118.

60. *Lindon, Otchakovsky-Laurens and July v. France*, 2007-IV, Eur. Ct. H.R. 125, 159-160.

61. *Bodrozic v. Serbia*, App. No. 38435/05, Eur. Ct. H.R. 1, 9 (2009.)

62. *Sloboda Izrazavanja i Kleveta* [FREEDOM OF EXPRESSION AND DEFAMATION] 53-58 (Tarlach McGonagle, et. al, eds. 2016).

63. See generally Scott Griffen, OUT OF BALANCE, DEFAMATION LAW IN THE EUROPEAN UNION: A COMPARATIVE OVERVIEW FOR JOURNALISTS, CIVIL SOCIETY AND POLICYMAKERS (Barbara Trionfi ed. 2015).

revealed that imprisonment as a sanction was used in EU candidate countries, such as Montenegro, Serbia and Turkey.⁶⁴

The situation in the OSCE region is even more “*eye-opening*”: in 2017, “three-quarters (42) of the 57 OSCE participating states maintain general criminal defamation laws. In the vast majority of these cases, defamation and/or insult carries a potential penalty of imprisonment.”⁶⁵ On the other hand, “most non-EU member states in South East Europe have fully repealed general criminal provisions on defamation and insult.”⁶⁶ One of the reasons for the withdrawal may be the strong influence of various international organizations in the region, namely OSCE and CoE, that have a clear statement that defamation should not be criminal as it may have a “chilling effect” on journalists.⁶⁷ Politicians, who often see themselves as victims of defamation, usually take the position that the fines for defamation should be higher. In a poll conducted by Stefan Eklund, “Swedish MPs were asked to comment on statements that all involve restrictions on publishing and freedom of expression [...] 49 per cent think that the fines for damages for defamation are “ridiculously low” and should be increased substantially. The effect of increased fines would inevitably be more cautious journalism; important and revealing stories might not be written.”⁶⁸

In Serbia, Insult,⁶⁹ Defamation, and Dissemination of Information on Personal and Family⁷⁰ life were all criminal offences under Chapter Seventeen of the Criminal Code of the Republic of Serbia,⁷¹ dealing with criminal offences against honor and reputation. In 2012, the defamation reference was simply deleted from the Criminal Code, while insult and dissemination of information on personal and family life remained.

In order to gain the opinion of media attorneys specializing in defamation, two interviews were conducted. One was with Mrs. Krupa Savovic,⁷² senior associate at the Zivkovic & Samardzic law office and the other with Mr. Dusan Stojkovic,⁷³ partner of the Stojkovic law office.

64. *Id.* at 14.

65. Scott Griffen, DEFAMATION AND INSULT LAWS IN THE OSCE REGION: A COMPARATIVE STUDY 8 (Barbara Trionfi ed. 2017).

66. *Id.* at 11.

67. *Id.* at 7.

68. THE LEGACY OF PETER FORSSKAL 250 YEARS OF FREEDOM OF EXPRESSION 106 (Ulla Carlsson & David Goldberg eds. 2017).

69. Кривични законик (Criminal Code), art. 170 (Serb.).

70. Кривични законик (Criminal Code), art. 172 (Serb.).

71. *See* Кривични законик (Criminal Code) (Serb.).

72. Interview with Krupa Savovic, Senior Associate, Zivkovic & Samardzic (Jan. 3, 2017 & Dec. 20, 2017).

73. Interview with Dusan Stojkovic, Partner, Stojkovic Law Office (Dec. 20, 2017).

The interviews focused on Savovic's and Stojkovic's observations relating to the protection of human dignity with respect to the protection of a person's reputation after the decriminalization of defamation and their observations. Savovic said that several years ago there were media who were sued by physical persons. Now, the victims of defamatory statements by the tabloids have become investigative journalists who critically report on the authorities. "In order to protect themselves from campaigns that can last for months, journalists are forced to press charges against tabloid media."⁷⁴

One of the downsides of decriminalization of defamation, pointed out by Dusan Stojkovic, a founder and partner of the Stojkovic law office, was that the moral damage claims were very low (app. 830-125 EUR) from the point of view of a client and that clients often had very little material satisfaction for moral damage. Stojkovic claims that the media are not intimidated by potential claims, so that fake news with the purpose of sensationalism, higher circulation and other interests blossoms.⁷⁵

Another downside of the decriminalization of defamation that Savovic notes, is that in civil law "legal persons do not have any mechanism to protect their reputation anymore, as they are required to prove material damage, which cannot be shown in every defamatory case, while a legal person, under the Serbian legal system, cannot claim moral (non-pecuniary) damage."⁷⁶ "The courts in Serbia are firm and persistent in their understanding that a legal entity cannot claim compensation for moral damage. An injury to the reputation of a legal person does not constitute a legally recognized and recoverable type of non-pecuniary loss, as there can be no legally relevant mental suffering caused by it. Therefore, legal entities are not entitled to equitable compensation for moral damage."⁷⁷ However, Montenegro⁷⁸ and Croatia⁷⁹ have incorporated the right to reputation of the legal person in their civil legal system.

74. Interview with Kruna Savovic, Senior Associate, Zivkovic & Samardzic (Jan. 3, 2017 & Dec. 20, 2017).

75. Interview with Dusan Stojkovic, Partner, Stojkovic Law Office (Dec. 20, 2017).

76. Interview with Kruna Savovic, Senior Associate, Zivkovic & Samardzic (Jan. 3, 2017 & Dec. 20, 2017).

77. See Marija Karanikić Mirić, *Non-Pecuniary Loss in Serbian Tort Law: Time for a Change in Paradigm?*, 2 SEEEU CLUSTER OF EXCELLENCE IN EUR. & INT'L L. SERIES PAPERS 25 (2016).

78. *Zakon o obligacionim odnosima* [L. on Obligations] arts. 149, 151 & 207, Službeni List CG [Official Gazette of Montenegro] Aug. 7, 2008, No. 47/2008.

79. See Aldo Radolovic, *Pravo osobnosti u novom Zakonu o obveznim odnosima* [Right on Personality in the New Law on Obligations], 27 ZBORNIK PRAVNOG FAKULTETA SVEUČILIŠTA U RIJECI (Zb. Prav. Fak. Sveuč. Rij.) 129 (2006).

V. CASE STUDIES: DEFAMATION

A. The Defamatory Cases against Serbia at the European Court of Human Rights

Although these are “regular” defamatory cases and not “weaponized defamation,” they provide a context for understanding the way national courts decide defamatory matters. It is often opposite from the ECHR case law in defamatory cases, especially when public figures are involved. This article presents three of the six⁸⁰ cases in which ECHR found that Serbia had violated someone’s freedom of expression, due to the respect of right to honor and reputation of others, as prescribed by Article 10 (2).

Local courts, especially the lower ones, had tended to decide that “the honour, reputation and dignity of ... [a public person]... had more significance than the honour, reputation and dignity of an ordinary citizen.”⁸¹ This was stated by the Municipal Court and is the first case of a Serbian citizen taken to ECHR on the occasion of a breach of Article 10 (2) in infringing the right to honor and the reputation of others.⁸² However, “the Court notes that [...] the target of the applicant's criticism was the mayor, himself a public figure, and the word “*sumanuto*” (“*insane*”) was obviously not used to describe the latter's mental state but rather to explain the manner in which he had allegedly been spending the money of the local taxpayers. [...] Although the applicant was unable to prove before the domestic courts that his other claims were true, even assuming that they were all statements of fact and, as such, susceptible to proof, he clearly had some reason to believe that the mayor might have been involved in criminal activity and, also, that his tenure was unlawful [...]. In any event, although the applicant's article contained some strong language, it was not a gratuitous personal attack and focused on issues of public interest rather than the mayor's private life, which transpired from the article's content, its overall tone as well as the context. [...] Finally, the reasoning of the criminal and civil courts, in ruling against the applicant, was thus “relevant” when they held that the reputation of the mayor had been affected.⁸³ Finally, in view of the above and especially bearing in mind the seriousness of the criminal sanctions involved, as well as the domestic courts' dubious reasoning to the

80. These cases were selected from the HUDOC database, based on the criteria on cases from Serbia, related to Article 2, restriction of freedom of expression because of the respect of right to honor and reputation of others. Eur. Ct. of Hum. Rts., HUDOC, <https://hudoc.echr.coe.int/> (last visited Jan. 15, 2019).

81. Lepojic v. Serbia, App. No. 13909/05 Eur. Ct. H.R. art. 16 (2008).

82. *Id.*

83. *Id.* art. 77.

effect that the honor, reputation and dignity of the Mayor “had more significance than ... [the honor, reputation and dignity] ... of an ordinary citizen”⁸⁴ the ECHR found here that the interference was not necessary in a democratic society thus that there was a violation of Article 10 of the ECHR.

In the second case, after historian, J.P., was a guest on a Novi Sad television show, expressing controversial statements towards national minorities in the autonomous province Vojvodina, such as that “Slovaks, Romanians and above all Hungarians in Vojvodina were colonists,”⁸⁵ ... that “there are no Croats in Vojvodina, whereas the Hungarians are mainly Slavs because they have ‘such nice Slavic faces’,” his public appearance provoked the applicant, the journalists of the newspaper *Kikindske*, to write an article “The Floor is Given to the Fascist, J.P.” The *Zrenjanin Municipal Court*, had ruled “that describing someone as a ‘fascist’ was offensive, given the historical connotations of that expression, representing tragedy and evil.”⁸⁶ “The court fined the applicant 15,000 Serbian dinars (RSD), or approximately €162, and ordered him to pay J.P. another RSD 20,700 (approximately €225) to cover the costs of the proceedings.”⁸⁷ In addition, J.P. had initiated a civil procedure where he had filed “a civil claim for compensation for non-pecuniary damage – and that the domestic courts ordered the applicant to pay him compensation in the sum of RSD 50,000 (approximately €540).”⁸⁸ However, ECHR noted when it heard the case that “the applicant’s statements must be seen in context. The applicant had reacted to certain controversial statements made by J.P. on public television concerning the existence and the history of national minorities in Vojvodina, a multi-ethnic region, 35% of whose population was non-Serbian, according to the 2002 census. This large minority was made up mostly of Hungarians, but also of Slovaks, Croats and others.”⁸⁹ Responding to the Government’s claims that J.P. was not a public figure, but a historian, the Court stated that “even private individuals lay themselves open to public scrutiny when they enter the arena of public debate”⁹⁰ and therefore J.P. “must have been aware that he might be exposed to harsh criticism by a large audience” and where he should show “a greater degree of tolerance in this context.”⁹¹

In the third case of *Bodrozic and Vujin v. Serbia*,⁹² one of the applicants (Bodrozic) was a journalist at *Kikindske*, a local newspaper in Vojvodina, while the second applicant was the editor of the page “Amusement,” publishing anagrams, jokes, a crossword and a horoscope. Bodrozic wrote “an article criticizing several criminal convictions he and

84. *Id.* art. 78.

85. *See* Bodrozić v. Serbia, App. No. 32550/05 Eur. Ct. H.R. art. 7(2009).

86. *Id.* art. 17.

87. *Id.* art.16.

88. *Id.* art. 20.

89. *Id.* art. 52.

90. *Id.* art. 54.

91. *Id.*

92. *See* Bodrozić and Vujin v. Serbia, App. No. 38435/05 Eur. Ct. H.R.

another journalist had incurred for defamation. The article was entitled “They have not punished us much for what we are”⁹³ asking whether the judge D.K had punished them mildly and whether the lawyer S.K. had “deservedly ripped” them off.⁹⁴ At the same time, on the “Amusement” page a picture of a blonde woman in her underwear was published next to the text “JPICK and the manager were visited by a blonde the other day. On that occasion the blonde was whistled at by the workers who were not on strike. And she wasn’t even a lawyer...” while “on the left of the photograph, there was a small box containing three anagrams, the first of which was an anagram of S.K.’s name.”⁹⁵ S.K. claimed criminal offense – insult and the Kikinda Municipal Court convicted the applicants of it.⁹⁶ While the Government had claimed that the lawyer (S.K.) was not a public figure as he was not known outside the local area, the ECHR disagreed with this and stated that he was known to the population of Kikinda, and the newspapers were also local.⁹⁷ The Court did not find any “pressing social need” to restrict the applicant’s freedom of expression, thus finding a violation of Article 10 of the Convention.⁹⁸

That common thread in these three cases is that a) the applicants are (investigative) journalists whose freedom of expression was restricted by domestic courts, under criminal charges; b) the ECHR found violations of Article 10.⁹⁹ In these cases, the ECHR rightly protected the right of journalists to criticize public figures in the interest of the public.

In the next part, cases are reviewed in which tabloid media used “*weaponized defamation*” against public figures, along with the legal and self-regulatory norms that were implemented.

B. Instances of “*Weaponized Defamation*” in Serbia: *Cedomir Cupic v. TV Pink*

93. See *Bodrožić and Vujin v. Serbia*, App. No. 38435/05, art. 7 Eur. Ct. H.R. (2009).

94. *Id.*

95. *Id.* art. 8.

96. *Id.* art. 9-10.

97. *Id.* art. 25.

98. *Id.* art. 43.

99. By December 30, 2017, Serbia had lost six cases in Strasbourg based on the claim of protection of the rights of others, as a permissible restriction of Article 10 (2). See *Bodrozić v. Serbia*, App. No. 32550/05 Eur. Ct. H.R. (2009); *Bodrozić and Vujin v. Serbia*, App. No. 38435/05 Eur. Ct. H.R. (2009); *Filipović v. Serbia*, App. No. 2793/05 Eur. Ct. H.R. (2007); *Lepojic v. Serbia*, App. No. 13909/05 Eur. Ct. H.R. (2006); *Stojanović v. Croatia*, App. No. 23160/09 Eur. Ct. H.R. (2013); *Tesic v. Serbia*, App. No. 50591/12 Eur. Ct. H.R. (2014).

One of the very first instances of “*weaponized defamation*” in Serbia involved Cedomir Cupic,¹⁰⁰ a professor at the faculty of Political Sciences and member of the Anticorruption body at the time he was attacked by Zeljko Mitrovic, the owner and editor-in-chief of TV Pink. It is also relevant to mention that Cupic had been a member of the OTPOR movement,¹⁰¹ heavily involved in fighting for democratic change in Serbia during the 1990s, while Mitrovic was then a member of the political party “JUL”¹⁰² led by Mirjana Markovic, the wife of the former president of Serbia, Slobodan Milosevic. After the appointment of Cupic to the Anticorruption body, he stated in interviews that the first priority should be the Lustration Law, as well as taking down illegally built buildings in Belgrade, some of which belonging to ordinary citizens had been brought down, while those of the wealthy Karic family¹⁰³ and of TV Pink were never mentioned or touched.¹⁰⁴ For these reasons, Cupic named those buildings as examples of selective implementation of the law, in an unauthorized interview given to the newspaper “*Gradjanski list*” (*Citizens’ Newspaper*).¹⁰⁵ On February 16-17, 2002, the newspapers published an interview with him under the title “*Illegal construction of TV Pink and palaces of Karic family should be destroyed as an example to citizens.*”¹⁰⁶ The main evening news of the public service broadcaster RTS transmitted extracts from the interview, with a picture of the TV Pink building, shots of a meeting of the Minister of Culture with Mitrovic, the owner of TV Pink, as well as the fences outside the Karic palaces.¹⁰⁷

The same evening, TV Pink broadcast a very personal open letter written by Mitrovic to Cupic in which he strongly condemned the allegations that the TV Pink building was illegal and accused Cupic of

100. Cupic, in his book, presents a precise chronological archive of all events, broadcasting, publishing, etc that were related to the media campaign TV Pink held against him, as well as the newspaper articles of support by various groups and individuals and copies of court decisions. *See* Cedomir Cupic, *Medijska etika i medijski linč* [MEDIA ETHICS AND MEDIA LYNCH] 83-360 (2010).

101. For information regarding the OTPOR movement *see* Lester Kurtz, *Otpor and the Struggle for Democracy in Serbia 1998-2000*, INT’L. CTR. ON NONVIOLENT CONFLICT (Feb. 2010), <https://www.nonviolent-conflict.org/otpor-and-the-struggle-for-democracy-in-serbia-1998-2000>.

102. *See* Jelena Grujic, *Zeljko Mitrovic – owner of RTV Pink*, VREME BR 582 (Feb. 28, 2002), <http://www.vreme.com/cms/view.php?id=308803> (last visited Jan. 15, 2019).

103. A wealthy family in Serbia *See* *Net Worth Leaks*, NETWORKLEAKS.COM, <https://www.networkleaks.com/bogoljub-karic> (last visited Jan. 16, 2019).

104. Cupic, *supra* note 100, at 91.

105. *Id.* at 92.

106. *Id.* at 92.

107. *Id.* at 94.

being “in a destructive mode” regarding the TV Pink building. The open letter was read almost every hour for 26 hours¹⁰⁸ and Cupic received numerous calls from worried friends and colleagues. Afterwards, the Anticorruption Council responded on February 22, 2002,¹⁰⁹ stating that “every citizen has a right to freely and publicly express themselves about issues of general interest.” Cupic had used that right, they added. Further, the Council called on TV Pink to “stop abusing its media power for a personal clash with Professor Cupic”¹¹⁰ and to stop its media attacks. The Anticorruption Council reaction triggered even stronger response from Zeljko Mitrovic, so he wrote a new open letter that was read as the first news (lasting six minutes) every hour on TV Pink from February 23-24, 2002. In that letter, many issues were raised related to the honor and reputation of Cupic (whether he was fulfilling the conditions to become an associate professor, his income, housing) as though “offering material evidence” of Cupic’s corruption.¹¹¹ That letter triggered responses from the academic community, various associations, students and professors in independent media,¹¹² public figures,¹¹³ journalists¹¹⁴ and private citizens.¹¹⁵ Cupic filed a complaint against Mitrovic for defamation, which was at that time a criminal offence, on April 11, 2002.¹¹⁶ On December 6, 2004, in an oral hearing the Court decided that Mitrovic was guilty of insult.¹¹⁷ Later, on June 8, 2005, the court delivered a written decision¹¹⁸ in which it held the criminal offence was an “Insult” and prescribed the fine. After appeals filed by both sides,¹¹⁹ the District court rejected both complaints and affirmed the Decision of the Second Basic Court in Belgrade K. No. 851/02 from December 6, 2004 that the appellant Mitrovic Zeljko was found guilty of the criminal act of insult under Article 93, Para 2 and was fined 30,000 RSD, in addition to covering court expenses.¹²⁰

108. *Id.* at 98-100.

109. *Id.* at 103-104.

110. *Id.*

111. Cupic, *supra* note 100, at 105-107.

112. *Id.* at 127-135.

113. *Id.* at 137-150.

114. *Id.* at 150-168.

115. *Id.* at 169-174.

116. *Id.* at 183.

117. *Id.* at 212.

118. Presudu [Decision], XI K. No. 851/02 Drugi osnovni sud u Beogradu [District Ct. in Belgrade] (2005) (Serb.); *see also* Cupic, *supra* note 100, at 215-231.

119. Zalba Privatnog Tuzioca [Appeal from a Private Prosecutor], XI K. No. 851/02 Drugom Opstinskom Sudu u Beogradu [Second District Ct. in Belgrade] (2002) (Serb.) (complaint); *see also* Cupic, *supra* note 100, at 232-241.

120. Пресудч [Judgement], Kz. No. 2274/2005 Drugom Opstinskom Sudu u Beogradu [Second District Ct. in Belgrade] (Serb.).

This case marks the beginnings of the open letters written by Zeljko Mitrovic under the same scenario: open letters were read hour by hour, day by day on his television station.

C. Dragan Djilas v. TV Pink

On June 19, 2013, then-mayor of Belgrade Dragan Djilas filed a complaint to the then-Republican Broadcasting Agency¹²¹ related to the content of TV Pink's informative program. In the complaint, Djilas stated that "TV Pink was, contrary to professional standards, using a national frequency for personal battles." The broadcaster declared that the complaint was untrue overall and unfounded, without stating which parts of the complaint were not true. The broadcaster also declared that Dragan Djilas had been given the opportunity to present his arguments, but had declined the offer.¹²²

On August 7, 2013, the Agency issued a warning to the broadcaster, Pink International Company, (TV Pink) based on TV Pink's abuse of a national frequency on several occasions, one of which was the filed complaint by Dragan Djilas and two others that the Agency enacted "*ex officio*."¹²³

The first warning stated that the editor-in-chief of TV Pink had run "illegitimate broadcasts of unilateral attacks on the personality of and led a long-lasting campaign" against Dragan Djilas for 8 days (between June 11-25, 2013).¹²⁴ The open letter had been written by Zeljko Mitrovic, owner and editor-in-chief and had been read by a speaker during the "National News" program several times each day. The letter was between three and four minutes long and there was no information about any response by the other side (Mr. Djilas's). The letters were written in a very defamatory way, accusing the mayor of being involved in many possibly corrupt transactions, without offering proof of that, such as that the mayor had stolen from other citizens, including his wife and children and abused public funds.¹²⁵

The next warning concerned a letter written by Mitrovic and addressed to Veselin Simonovic, then-editor of *Blic* newspaper, regarding his so-

121. The organization is now referred to as The Regulatory Agency for Electronic Media. See REGULATORY AGENCY FOR ELECTRONIC MEDIA, <http://www.rirm.org/en/rem-regulatory-authority-of-electronic-media-2/> (last visited Jan. 16, 2019).

122. Решење [Decision], Републичке агенције за радиодифузије [Republican Broadcasting Agency] 7, 12-13.

123. *Id.* at 12-13.

124. *Id.* at 1-3.

125. *Id.* at 9-10.

called relationship with Dragan Djilas. It was read over the period of July 23-26, 2013, repeating the strategies of a long-lasting campaign. Mitrovic asked Simonovic why he “neighed like a horse” instead of speaking the truth about Djilas, also citing an alleged Facebook group that called upon *Blic* newspapers to change its name to “Smelly papers” (“*Smrdljive novine*”).¹²⁶

The third warning came after strong protest by the Independent Journalist’s Association of Serbia (IJAS), where IJAS called on the Regulator to respond to the campaign run by TV Pink and its misuse of the national frequency by insulting Simonovic, editor of the *Blic* newspaper.¹²⁷ Mitrovic’s third campaign, this time against IJAS had started on July 25, 2013. In this case, the TV Pink news speaker read a new open letter of an offensive nature from Mitrovic, this time referring to IJAS, which was followed by a picture on the screen in which Simonovic was drawn as a horse with a sign around its neck with the name “Blic” on it, while Dragan Djilas was riding the horse, surrounded by lots of money.¹²⁸

The Regulator found that the Code of Conduct for Broadcasters was breached in all three cases of the long-lasting campaigns against Mayor, the editor of *Blic* newspapers and IJAS. In its conclusions, the agency found breaches of provisions on impartiality of reporting¹²⁹ and on the right to hear the other side,¹³⁰ while in the third case where TV Pink broadcasted an open letter to IJAS, the REM found the use of extremist and defamatory

¹²⁶ *Id.* at 11.

¹²⁷ *Id.* at 10-11.

¹²⁸ *Id.* at 12.

¹²⁹ “Impartiality: Broadcasters have a right to their own editorial policy, with respect to minimal lack of bias in reporting. Minimal fairness means that broadcasters should identify a clear difference between facts and someone’s attitude, opinion or comment. The broadcaster needs to make sure that personal belief and opinion and that of the journalists cannot influence the choice of a topic or the way it is presented in any discriminatory way. It is not permitted to manipulate with statements, press releases... with the aim to change an original meaning [...]. This instruction does not refer to the classical editing of a picture or a tone, but to the manipulation of a picture, tone and content that twists the basic meaning of the report.” See ОПШТЕ ОБАВЕЗУЈУЋЕ УПУТСТВО ОПОНАШАЊУ ЕМИТЕРА (КОДЕКС ПОНАШАЊА ЕМИТЕРА) [*General Binding Instruction on the Behavior of Broadcasters (Code of Conduct for Broadcasters)*], Републичке радиодифузне агенције [REGULATORY AGENCY FOR ELECTRONIC MEDIA] art. 2.3, http://rem.rs/uploads/files/Obavezujuca_uputstva/3951-Opste-obavezujuca-upustva-rra.pdf.

¹³⁰ “The right to hear the other side: When reporting on debates that include conflict of any kind, the broadcaster is obliged to offer the opportunity to all parties to participate in a debate in an equal way. It is not permitted to launch unilateral attacks on a personality nor run long-lasting or repeated campaigns against persons, groups or institutions without any new, relevant details, that would justify long or repeated reporting on the same phenomenon, event, institution or person.” *Id.* art. 2.8.

speech¹³¹ and issued a further warning (*upozorenje*) to TV Pink.¹³² The warning was issued (as a higher measure) and took into consideration that on October 29, 2009, the first notice (*opomena*) had been sent to TV Pink for breach of the Broadcasting law¹³³ so the higher measure could be applied on them this time. In addition, TV Pink was made to broadcast the REM Decision on its program.¹³⁴ In its final decision,¹³⁵ the Broadcasting Agency had also concluded that it was “legitimate to criticize someone’s work especially if that person was working in the public interest (as a mayor does). The Agency stressed that the duty of journalists is to criticize public figures, but in a serious way, while long-lasting campaigns against persons, without allowing them to participate in the debate, was not permitted.¹³⁶

The mayor of Belgrade was dismissed from his position on September 24, 2013, which may indicate that the campaign helped his opponents meet their goal.¹³⁷

D. *Sreten Ugricic v. Pres newspapers*

On January 11, 2012, Andrej Nikolaidis¹³⁸ published an article on the “Analitika” web site titled “What is Left of Greater Serbia” (“*Šta je ostalo od velike Srbije?*”)¹³⁹ where he called the 20th year celebration of *Republika Srpska* “a celebration of what was created from the crimes committed at the

131. “Extremism and Defamatory Speech: Broadcasters shall suppress extremism and insult in their program, either in the speech of the host of the program or the expression of the guests.” *Id.* art. 10.2.

132. *Id.*

133. Решење [Decision], Републичке агенције за радиодифузије [Republican Broadcasting Agency], *supra* note 122 at 22.

134. *Id.*

135. *Id.* at 1.

136. *Id.* at 19.

137. Ever since the Democratic party lost the national elections, the current ruling (Progressive Party of Serbia – SNS) had also tried to win elections in the capital, Belgrade. After a long-lasting campaign in various media, of which the case of TV Pink is presented here, the mayor was discharged from office. See *Councilors Vote to Remove Belgrade Mayor From Office*, B92 (Sept. 24, 2013, 4:56 PM), https://www.b92.net/eng/news/politics.php?yyyy=2013&mm=09&dd=24&nav_id=87773.

138. Nemanja Cabric, *Serbia Library Chief Purged for ‘Backing Terrorism*, BALKAN INSIGHT, (Jan. 23, 2012), <http://www.balkaninsight.com/en/article/analysis>.

139. Iva Martinovic, *Medijska hajka na Nikolaidisa u Srbiji* [*Media hue (hajka) of Nikolaidis in Serbia*], RADIO SLOBODNA EVROPA [RADIO FREE EUROPE], (Jan. 18, 2012) https://www.slobodnaevropa.org/a/beograd_uputio_demars_podgorici_zbog_nikolaidisa/24455727.html (last accessed on Jan. 16, 2019).

Hague Tribunal¹⁴⁰ and continued that "it would have been a civilized step forward if the dynamite and rifles, previously brought into the room "Borik,"¹⁴¹ were used there."¹⁴² This column triggered a huge debate in both Serbia and Montenegro about whether the article was a real call for a breach of national security or whether it was just the writer's opinion. As Nikolaidis was, at the time, the advisor to the president of the Montenegrin Parliament, the Government of Serbia filed a diplomatic protest note to the Ministry of Foreign Affairs of Montenegro.¹⁴³ The diplomatic conflict and public attack on Nikolaidis, triggered the Forum of Writers of Serbia to file a petition in which the freedom of expression of Nikolaidis was supported.¹⁴⁴ The petition was publicly announced and one of those who signed it was Sreten Ugrić, Manager of the National Library of Serbia.

Ugrić's signature of the petition generated wide national interest and a new media outcry. One of the titles was "The Manager of the National Library of Serbia has supported the assassination of Tadić,"¹⁴⁵ published by the newspaper *Press*¹⁴⁶ on February 19, 2012 in both its print and internet edition. Ugrić had filed a complaint to the Press Council claiming that he had clarified to journalists that all of his answers were to be published "without any shortages or interventions, including the statement that, of course, he did not support any anti-Serbian viewpoints, which unfortunately was not published."¹⁴⁷ On behalf of the newspapers, the response was sent by Veljko Lalić, editor of *Press* and Branko Miljusić, the director general of the *Press Publishing Group*. Lalić, in his response, stated that he had not implicated by name that Ugrić was a terrorist, adding that the manager of the National Library should "promote Ivo Andrić¹⁴⁸ and Njegoš¹⁴⁹ and not

140. See *International Criminal Tribunal for the Former Yugoslavia 1993-2017*, UNITED NATIONS INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS, <http://www.icty.org> (last accessed on Jan. 16, 2019).

141. The hall where the celebration was held.

142. *Id.*

143. Beta, *Demarš Srbije zbog Nikolaidisa* [*Serbia Protests Because Of Nikolaidis*], B92 (Jan. 18, 2012, 1:36 PM), https://www.b92.net/info/vesti/index.php?yyyy=2012&mm=01&dd=18&nav_category=167&nav_id=574826.

144. *Proglas javnosti* [*Public Proclamation*], PESCANIK (Jan. 17, 2012), <http://pescanik.net/proglas-javnosti>.

145. President of the Republic of Serbia at the time of publication. The article is no longer available for scholarly review. See Tanjug, *National Library Director Supports Terror*, B92 (Jan. 19, 2012, 7:14 PM), https://www.b92.net/eng/news/politics.php?yyyy=2012&mm=01&dd=19&nav_id=78367.

146. *Id.*

147. Sreten Ugrić protiv dnevnog lista „Pres“ [*Sreten Ugrić v Daily Newspapers "Pres"*], Савега за штампугу [*Press Council*], 1 (2012) (Serb.).

148. *Id.* at 2.

149. *Id.*

Andrej Nikolaidis,¹⁵⁰ who calls upon the assassination of the highest public figures.¹⁵¹ Branko Miljus, in his response, said that *Press* found “their professional obligation to be to inform the public about the activities of both the governments of Serbia and of Montenegro, as well as of their state servants, as related to the text of Andrej Nikolaidic. He stressed that the title itself was supposed to provoke the responsibility of state servants (in which it succeeded), and to lead to the dismissal of the manager of the National Library of Serbia, which also happened in the end.”¹⁵² The Press Council reached its decision on Ugricic’s complaint anonymously, stating that the newspaper *Press* had breached the Journalists’ Code of Ethics, Chapter I, point 2 and Chapter II, point 1 that prescribe that there should be “the clear distinction between the facts they transmit and comments, assumptions and speculations”¹⁵³ and that the “title of the text must not be in contradiction with the essence of the text.”¹⁵⁴ The Commission for Appeals found that the title which stated that Ugricic supported the assassination of the president, without mentioning the assassination in the text itself, had “breached the cornerstone of the Code of Ethics that refers to truth in reporting”¹⁵⁵ and obliged the newspaper *Press* to publish that decision.

On January 20, 2017, Ugricic was dismissed from the position of manager of the National Library of Serbia, in an urgent Government session (held by phone), as initiated by the Minister of Interior and Minister of Culture.¹⁵⁶ The Forum of Writers reacted again with a public petition that was signed by more than a thousand people (writers, artists, university professors and others) in less than 24 hours,¹⁵⁷ asking the government to

150. *Id.*

151. Сретен Угричић против дневног листа „Прес” [Sreten Ugricic v Daily Newspapers “Pres”], Одговор Вељка Лалића, главног уредника Преса [Response of Veljko Lalic], Савету за штампу [Press Council], 1, 2 (2012) (Serb.).

152. Сретен Угричић против дневног листа „Прес” [Sreten Ugricic v Daily Newspapers “Pres”], Одговор Бранка Миљуша, генералног директора „Press Publishing Group” [Response of Branko Milijus], Савету за штампу [Press Council], 1, 3 (2012) (Serb.).

153. Сретен Угричић против дневног листа „Прес” [Sreten Ugricic v Daily Newspapers “Pres”], ОДЈУКУ [Decision], Савету за штампу [Press Council], 1, 4 (2012) (Serb.).

154. *Id.*

155. *Id.* at 5.

156. *Smenjen Sreten Ugricic* [Smenjen Sreten was Replaced], PEŠCANIK.NET (Jan. 21, 2012), <https://pescanik.net/smenjen-sreten-ugricic/>; *Smenjen Sreten Ugricic: Beograd – Sreten Ugricic je smenjen s mesta upravnika Narodne biblioteke Srbije na telefonskoj sednici Vlade Srbije, saznaje B92*, [Sreten Ugricic was Replaced Belgrade - Sreten Ugricic was removed from the headquarters of the head of the National Library of Serbia on a phone session of the Government of Serbia] B92 (Jan. 20, 2012), https://www.b92.net/info/vesti/index.php?yyyy=2012&mm=01&dd=20&nav_id=575568 (Serb.).

157. Forum of Writers, *1001 signatures of the Petition*, PESCANIK (Jan. 24, 2012), <http://pescanik.net/potpisite-peticiju>.

withdraw the dismissal on the grounds that the Constitution prescribes that “no one can bear consequences for signing a petition, unless a criminal act is committed from that.”¹⁵⁸ The Petition was calling the Constitutional court to react. However, that call did not have any impact on the final government decision.

The *Ugricic* case triggered a great deal of public debate among Serbian intellectuals and has raised to a higher level the examination of permissible restrictions to freedom of expression. Two law professors, Vesna Rakic-Vodinelic and Zoran Ivošević, both human rights activists, have used this case to exchange their views in the weekly magazine *Vreme*.¹⁵⁹ The subject of the debate were two issues: whether Ugricic had a right to freedom of expression as a writer, even while serving public office; and whether he should have freedom of expression even if others disagree with him.

First, Ivošević¹⁶⁰ explained that Sreten Ugricic had been a public figure, and not a public servant, as the government of the Republic of Serbia had appointed him to that higher position. Ivošević pointed out that the differentiation was important as “public figures are less protected in the media.”¹⁶¹ He added that the narrowing of freedom of expression of public figures is prescribed by the Law on Public Information, the Journalistic Code of Ethics and many European media standards, including ECHR decisions. “Another aspect of the importance of the public function that Sreten Ugricic had, was that Ugricic, from the moment he was appointed manager of the National Library, “could not *divide* into writer and public figure as his integrated body was exposed to the public.”¹⁶²

Rakic-Vodinelic responded in the next issue of *Vreme* asking “whether it is accurate that within the legal system a public figure cannot be divided personality to ‘public’ and ‘professional’?”¹⁶³ Rakic-Vodinelic recalled the *Wille v. Liechtenstein* case.¹⁶⁴ She asserted that in the *Ugricic* case the court could apply the same standard – that he had a right to freedom of

158. Forum Pisaca, *Zahtev Foruma pisaca* [The Writers Forum Request], PEŠČANIK.NET (Jan. 23, 2012) (quoting CONSTITUTION OF THE REPUBLIC OF SERBIA Sept. 29, 2006, art. 56, ¶ 3), <https://pescanik.net/zahtev-foruma-pisaca>.

159. See ZORAN IVOŠEVIĆ, PRAVNI(ČKI) POGLED NA SLUČAJ UGRIČIĆ, *Vreme* (Feb. 2, 2012), <https://www.vreme.com/cms/view.php?id=1032828>; Vesna Rakić-Vodinelic, Još jedan pravnički pogled – “Slučaj Ugričić,” *VREME* (Feb. 9, 2012), <https://www.vreme.com/cms/view.php?id=1034169>.

160. Former Supreme Court Judge.

161. IVOŠEVIĆ, *supra* note 159.

162. *Id.*

163. Rakić-Vodinelic, *supra* note 159.

164. *Wille v. Liechtenstein*, 1999-VII Eur. Ct. H.R. 1.

expression as a writer, which is his profession, did not necessarily align with his public function.¹⁶⁵

In the following issue of *Vreme*, Ivosevic pointed out that he didn't want to analyze the right of Ugricic to freedom of expression as a writer or as a public figure, but that he was questioning whether the freedom of expression was permissibly restricted or not. Therefore, he was dealing with the *content* of the text, considering that "whoever, through public speech, jeopardizes its values, is not furthering the hygiene of freedom of expression, but its pathology." Ivosevic added that "the freedom [of expression] cannot be more important than the right to life and health, the right to physical and psychological integrity, moral, national security and the safety of citizens."¹⁶⁶ Finally, his standpoint was that "whoever (ab)uses freedom of expression above its permissible borders is not deserving of a public function, whatever his profession is outside of that function. Therefore, Ugricic cannot, in the opinion of Ivosevic, be at the same time writer and public figure."¹⁶⁷

In her final response in the exchange, Vesna Rakic-Vodinelic reminded that Ugricic was dismissed for "expressing his opinion as an individual and not a public figure. He had signed the Appeal of the Forum of Writers, which did not call for violence, but for the right of Andrej Nikolaidis to speak freely. Rakic-Vodinelic sees a parallel between the *Wille* case and the case of Ugricic only in so far as both Wille and Ugricic "should bear legal responsibility for opinions expressed publicly, not as public figures, but rather as professionals."¹⁶⁸ In her conclusion, Rakic Vodinelic reminds that in order to restrict someone's freedom of expression the principles of legality, legitimacy, proportionality and the necessity of restriction must be considered and that all of these should be simultaneously fulfilled.

E. *Veran Matic v. Informer Newspapers*

In the period from August 2014 until May 2015 the newspaper *Informer* held a long-term campaign against Veran Matic, editor of the Informative Programme of Broadcasting Company B92 and one of the minor stakeholders of that company. As a result of these negative texts, Matic pressed charges against the "Insajder Tim company", its publisher, and Dragan Vucicevic, editor of the "independent daily newspaper *Informer*". After its main session was held, the Higher Court in Belgrade

165. Rakić-Vodinečić, *supra* note 159.

166. Rakić-Vodinečić, *supra* note 159 at 32.

167. *Id.*

168. *Id.*

reached the verdict that Veran Matic’s complaint was justified and that Insajder and Vucicevic were obliged to pay RSD 250,000 (approximately €2,000) to Matic for breach of his honor and reputation.¹⁶⁹

In his complaint, Matic said that ever since the *Informer* was founded in 2012, he had been a target, always in a negative context. The false information was always presented as factual information received by an anonymous source. Matic stated that such writings influenced his feelings, resulted in the creation of certain stereotypes in the wider public about him that could lead to the permanent damage of his reputation due to the very high circulation of the *Informer*.¹⁷⁰ In addition, such a negative public image threatened the charity, Fund B92, which depended on the high contributions of donors. Finally, the descriptions made Matic look as if he had grown rich with money earned in unsavory ways, potentially adding to the insecurity he and his family already faced, having had permanent police security since 2011.¹⁷¹ The following texts were the subject of Matic’s complaints:

The first was published on August 4, 2014 when the *Informer* claimed that Matic intended to become the new director of the Public Service Broadcaster – RTS, which was a statement that came immediately after the sudden death of the long-time director Aleksandar Tijanic (who died of a heart attack). The headline read, “Hit: Matic elected himself as the boss of RTS,” with the subtitles, “Veran Matic uses all of his connections in the EU and media” and “Tijanic is turning over in his grave.” The article itself said that Matic was “asking his connections in the EU to lobby for his election and he was so sure of his new position that had already announced it to his colleagues.”¹⁷² Further on, the text claims that Matic had already had talks with then-Prime Minister Vucic “with whom he shares the same view on the future of public service.”¹⁷³

The second text on September 19, 2014 announced the alleged dismissal of Veran Matic from his position, due to the (forthcoming) privatization of B92. The title was “Veran fired from B92.” The text says that “as we have found out, Greek owners of this TV were very unsatisfied with the critique expressed by Matic with respect to the editorial and business policy of this company and they intend to make him redundant. In accordance to our sources, the management of the television station has

169. пресуду [The Verditct], 6 P.Z. Виши суду београду [Higher Ct. Belgrade] 2017, No. 50/15, 1, 1 (Serb.).

170. *Id.* at 2.

171. *Id.*

172. пресуду [The Verditct], 6 P.Z. Виши суду београду [Higher Ct. Belgrade] 2017, No. 50/15, 1, 2-3, 10 (Serb.).

173. *Id.* at 3.

decided to fire Matic as they believe that he has exceeded his authority. Matic will continue to be one of the co-owners of B92 but will have to receive a salary at another place.”¹⁷⁴

The next text published on December 2, 2014 speculated on the value of Matic’s share in B92, his managerial contract and his high severance pay. The title was “Veran has a golden parachute worth €3,100,000” with the subtitle “Rich Man Journalist” next to his picture, along with other sensationalistic titles. The purpose of the text, in Matic’s explanation, was “to create the inaccurate picture of him as someone who has become rich in a questionable way, which in one way hurts his reputation and creates damage, but on the other hand seriously endangers his security.”¹⁷⁵

On January 27, 2015 the *Informer* published the information that Matic didn’t want the position at RTS, with the title “*Veran promises: I will not go to RTS.*” Further on, under his picture a quotation states, “I won’t. I swear, Mom” (“*Necu, mame mi*”), a Serbian expression that indicates saying “no” when meaning “yes.”¹⁷⁶

On May 25, 2015 the newspaper stated that Tasovac (Minister of Culture at the time) had given Matic RSD 3,880,000 (approximately €35,000) presenting it as though Matic had received that money personally and not explaining that it had been given to Fund B92 as a regular tender by the Ministry of Culture.

On May 27, 2015 the newspaper published a new title “How our money is distributed – Veran Matic’s ANEM gets RSD 9,710,00,” (approximately €80,000).

In his court arguments, Veran Matic stated that “the intention of the *Informer* was to falsely present him in public, with a confirmed intention to create various affairs against the plaintiff that have lasted for years, and this was just one of them.”¹⁷⁷ Matic added that even when the newspapers published his reply, it was done in a nearly invisible way or, for example, instead of stating that he didn’t want the position, that information was only communicated through comments next to his photo that said, “I won’t. I swear, Mom,” by which his response was neutralized and the purpose of it lost.¹⁷⁸ Regarding the Association of Independent Electronic Media (ANEM), Matic explained that ANEM “was established in 1993 and that he was its first president until 2004, after which he hadn’t held any position in

174. *Id.*

175. *Id.* at 4.

176. *Id.*, at 4, 10.

177. *Id.* at 5.

178. *Id.* at 5.

the organization.”¹⁷⁹ Matic added that he had never had any intention to become the director of RTS, nor had he spoken to the prime minister about that position nor had he lost his position at B92, “even four months after the fake text in the *Informer*.”

Informer denied that the texts published created the atmosphere of a lynching [...] as well as that the texts seriously disturbed Matic and his family, friends and colleagues. Ironically, Informer used Matic’s argument that he had been a target from the beginning of their work to say that in its defense: such texts had been published since 2012, and the prosecutor reacted to it only on February 4, 2015.¹⁸⁰ This statement shows that Informer was fully aware of its actions.¹⁸¹ Further on, Informer, answered that there was nothing controversial in those articles as they all “deal with events and persons about which the public has a justified interest to know and that part of the disputable content presents value judgments.”¹⁸² Informer added that the text published on September 20, 2014 was an opinion column and not a journalistic article.¹⁸³

At the higher-level trial, the Court of Appeals stressed that, “in accordance with Article 10 of the European Convention on Human Rights and the Journalist’s Code of Ethics, the conclusion of the Supreme Court related to the text from September 20, 2014 (e.g. “Did you sell B92?”) [...] for which the defendant claimed that it was an opinion column and not news, the Court of Appeals disagreed and found that it transmitted untrue information about the plaintiff, while the context in which the statements were made confirmed the ill intention of the journalist, as well as jeopardizing the plaintiff’s credibility as a public figure, a long-term journalist and editor, thus this text had breached the plaintiff’s mental pain and hurt his honor and reputation.”¹⁸⁴

The Court of Appeals confirmed the Higher Court Decision P. No. 50/15 from February 2, 2017, except in the part regarding the amount of compensation for non-pecuniary damage. There, the defendant was required to pay RSD100,000 (approximately €830), while another RSD 150,000 requested by the plaintiff and assigned by the Higher Court was denied as

179. *Id.* at 6.

180. *Id.* at 6.

181. B92, *Urednik Informera izgubio sudski process protiv Matica* [*Informer’s Editor Lost the Court Procrss Against Matic*], B92 (Aug. 10, 2017, 3:21 PM), https://www.b92.net/info/vesti/index.php?yyyy=2017&mm=08&dd=10&nav_category=12&nav_id=1291886 (last accessed on Jan. 16, 2019).

182. пресуду [The Verdict], 6 P.Z. Виши суду београду [Higher Ct. Belgrade] 2017, No. 50/15, 1, 6 (Serb.).

183. *Id.*

184. *Id.* at 3.

the Court obliged Vucicevic, in accordance to Article 120 of the Law on Public Information, to publish its judgment in the second next issue of the newspaper, at the latest, in both its print and electronic editions.¹⁸⁵ The defendant was also required to pay RSD 86,000 for the costs of the civil trial.¹⁸⁶

This case is important as here the Court of Appeals acknowledged not only the legal norms, Article 10 of the ECtHR, the Law on Public Information, and the Obligation Law, but also the ethical norms of the Journalistic Code of Ethics, stating that “the obligation of journalists is to publish accurate, objective, complete information, without delay, about events of public importance, respecting the right of the public to know the truth and the basic standards of the journalist’s profession.”¹⁸⁷ This sentence is of extreme importance as it acknowledges the standards of the journalistic profession as valuable to the final decision. Also, this was a rare occasion when the newspaper implemented the court order and published the court decision on its web site.¹⁸⁸

VI. CONCLUSION

As seen, “weaponized defamation” has a tendency to seriously impact the defamed person’s life with a number of negative consequences: dismissal from a job, problems with the perception of the general public, the loss of the reputation of a company and finally – life threats. Although there is a solid legal framework on the both international and national level (for Serbia), the enforcement of such laws and the satisfaction of the victim of defamation is an issue. The question that attorney Stojkovic asked was - is the current financial sanction enough for tabloid media to refrain from defaming a person? On the other hand – is a public announcement of a lost court case or an apology enough satisfaction for a person who has been a victim of weaponized defamation? How can a person “gain back” his or her life that is ruined in some part and what if that is not possible at all? Ever? Despite the public support of “*right-thinking*” members of public? What if someone’s mental condition has been seriously damaged due to the stress involved? Or if he/she is recognized by a wider population and has to live with negative shouting on the street on a daily basis or threats via social

185. *Id.* at 8.

186. *Id.* at 1-2.

187. *Id.* at 4.

188. Apelacioni Sud u Beogradu: Presuda [*Court of Appeals in Belgrade: Decision*], NEZAVISNE DNEVNE NOVINE INFORMER (Nov. 10, 2017, 1:35 PM), <http://informer.rs/vesti/drustvo/356522/apelacioni-sud-u-beogradu-presuda> (last accessed on Jan. 16, 2019).

networks, caused by the stereotypes from the tabloid media? How can a decision on the breach of defamatory legislation reinstall someone’s life? And what if it won’t? These are questions to which there are no answers, yet.

The author, as a media lawyer, is aware of all the downsides of strict regulation of defamation, either as a criminal offence or as civil offence with very high fines. Such a legal definition can have a significantly negative impact on the daily work of journalists and their possible self-censorship. On the other hand, the reality is that in Europe and in Serbia there are no proper legal solutions for the type of *weaponized defamation* that could seriously ruin someone’s life.

One of the solutions may be keeping the regulation of defamation within civil laws, but prescribing much stronger sanctions for *weaponized defamation* with safeguards to prevent abuse by public authorities against media freedom. This is certainly a serious challenge both for international organizations to offer a new model as well as for the individual countries to implement it.

Until then, self-regulatory mechanisms should continue to be supported, such as the Press Council, although it has only moral and no legal powers. Still, it offers the fastest satisfaction to the victim of defamation by, at least, saying that (tabloid) media have breached professional and ethical norms. The new practice of Serbian courts to cite the Journalist’s Code of Ethics is also an important step forward in deciding media law cases, as the courts do not depend on the media’s explanation of the issue, but are able to conclude for themselves.

Finally, pure satisfaction after winning a court case is not enough. Proper enforcement of court decisions is an important element in the fight against the “*weapon*” discussed.