

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

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. Informeris* 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-

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 legitima.2 (gi).2 (c) 9.2j -4.6 (i) -4.8(i)-4.62I 114

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.”

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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.”

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

revealed that imprisonment as a sanction was used in EU candidate

The interviews focused on Savovic's and Stojkovic's observations relating to the protection of human dignity with respect to the protection of

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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 C162, and ordered him to pay J.P. another RSD 20,700 (approximately C225) 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

another journalist had incurred for defamation. The article was entitled “They have not punished us much for what we are”

One of the very first instances of “weaponized defamation” in Serbia involved Cedomir Cupic,¹⁰⁰

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

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-

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 t

Hague Tribunal"¹⁴⁰ and continued that "it would have been a civilized step

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 Presshad 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 Pressto 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. ."#6#1 N*"?V !"56'< &1#<15* /\$6+ „D”#\$” [Sreten Ugricic v Daily Newspapers “Pres”], G&*5<5" M#:2+ W+ /V+, * /+<15* %"#&1'2+ D”#\$+ [Response of Veljko Lalic], .+<#6% 9+ (6+7!% [Press Council], 1, 2 (2012) (Serb.).

152. ."#6#1 N*"?V !"56'< &1#<15* /\$6+ „D”#\$” [Sreten Ugricic v Daily Newspapers “Pres”], G&*5<5" K"+12+ S':%(, *#1#"+/15* &"#265"+ „Press Publishing Group” [Response of Branko Milijus], .+<#6% 9+ (6+7!% [Press Council], 1, 3 (2012) (Serb.).

153. ."#6#1 N*"?V !"56'< &1#<15* /\$6+ „D”#\$” [Sreten Ugricic v Daily Newspapers “Pres”], GUWN>N [Decision], .+<#6% 9+ (6+7!% [Press Council], 1, 4 (2012) (Serb.).

154. Id.

155. Id. at 5.

156. Smenjen Sreten Ugricic, Smenjen Sreten was Replaced, PESCANIK.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),

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 pro

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

In the following issue of *Vreme*, Ivošević pointed out that he didn't want to analyze the right of Ugrčić 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." Ivošević 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

reached the verdict that Veran Matic’s complaint was justified and that Insajder and Vucicevic were obliged to pay RSD 250,000 (approximately C2,000) 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

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 l