

AJM

Association
of Journalists
of Macedonia (AJM)

ANALYSIS OF CASES OF DEFAMATION AND INSULT



SEPTEMBER 2015

ANALYSIS

OF CASES OF DEFAMATION AND INSULT

September 2015

In the period from October 2014 until June 2015, the Association of Journalists of Macedonia followed 39 cases, with total of 106 held hearings where as defendants and plaintiffs for defamation and insult were journalists. The purpose of these activities was to analyze the implementation of the Law on Civil Liability for Defamation and Insult and the Law on Civil Procedure by the Basic Court Skopje 2. The main objective of the monitoring of these cases was to see to what extent this Court applies practice of the European Court of Human Rights in Strasbourg. At the same time was monitored manner in which attorneys were representing journalists in court. The monitoring of all cases was conducted by journalists with their presence the judicial hearings. Earlier journalists had training by lawyers and detailed questionnaires were developed to monitor each session individually. The data from each session were recorded in special questionnaire, and then entered into tables for easy carrying conclusions about the implementation of parts of the law.

AFTER ANALYZING THE DATA RECORDED IN THE QUESTIONNAIRES THE FOLLOWING WAS DETERMINE:

1

Out of 39 cases, with total of 106 held hearings, the Court issued eight judgments, out of which in 7 verdicts dismissed the plaintiff's claim, and a partially upheld the request; according to the monitoring of cases as of June 2015, the court has not yet taken decision on 31 complaint. For comparison, on July 15, 2014 the number of active cases where defendants as well as claimants for defamation and insult are journalists is 54, on which is noted decreasing rate¹.

1 Response from Basic Court 2 from 28.11.2014 on prior request from AJM to access to public information.

2

Out of the seven rejected claims for cases in which verdicts was received, it can be concluded that the court acted in accordance with the Law on Civil Liability for Defamation and insult and calls on the jurisprudence of the European Court of Human Rights in Strasbourg. So, in one case the court finds that the journalist had no intention of harming the plaintiffs and that the journalist published topic of public interest. In the case where the complaint was partially upheld, the Court concluded that there was defamation, but did not awarded non-pecuniary damage.

3

Out of these 39 cases, 17 are journalists against journalists.

4

The data from the hearings that relate to the amount of time for delaying hearings during the procedure shows that the average delay time from one to another over a period from October to December, when the first sectional analysis of data was done, **was 48 days**. In the next period, January-May the delay period increased to **56 days**, with the shortest period of delay was **8 days and the longest 86 days**. In the period May-June **delay period increased to 80 days, with the longest delay was 122 days**. The reason for this is the beginning of the holiday period, when according to the law courts do not work with clients, except in urgent cases.

Does this delay is much or little depends on the particular case, the evidence, the completeness of lawsuits, judge occupancy to rule on other cases, the period of the year and other factors. According to the method of operation of courts in Macedonia in the civil area, within acceptable delay in the hearings for cases is between **30 and 40 days**.

Therefore, in cases where there is delay, it is necessary to ask delays to be with shorter term because everything that is more than 40 days for this kind of actions can be interpreted as the yielding of the procedure and provides an opportunity for doubt that the trial not in a reasonable time. This omission can be overcome by increasing the number of judges handling these cases.

The conclusion remains that according to the time left between two hearings, still there is insufficient information to conclude whether the court by the public exposure of one of the parties gives priority to action in some cases.

The fact that for that period out of 39 cases were resolved, only 8, points out that the court tolerated behavior of the plaintiffs in the procedure, which should not be tolerated. This is because in most of the cases it is seen that is allowed to initiate the procedure, although plaintiffs did not provide any evidence that they were required to submit with the complaint. ▶

► Thus, in most of the cases are brought to delay preliminary hearings once or twice without obtaining the plaintiffs acceptable excuse why were not adduced evidence, which could obtain or had. It was determined that out of 106 scheduled hearings, were held 55 hearings and 51 were delayed even before start. A fact, which shows formal delict of the law

Another reason for the delay in preparatory sessions once or multiple times is significant prolonging of the proceedings and improper delivery of the lawsuit to the defendant. The reason for this is usually incorrect address of the defendant or sloppiness and inefficiency of the delivery service of the court.

Drastic example is the postponement of the hearing in one of the subjects for 101 days. The hearing has been postponed, despite opposing from the defendant's attorney, given that the request for postponement of any plaintiff with the justification that at the home had construction servicers and could not come despite the earlier held hearing, which also was postponed at his request, he was warned that the next hearing will be held in any case and without his presence. A fact which, indicates clearly favoring the plaintiff groundless and contrary to law. It was verified conclusion that some of the complainants, including the plaintiff in this case, the objects shaped by their actions without cause are stalled, thus increasing the costs borne by the court of the parties.

5

From the data for the judgments already adopted, can be seen that it is respected the obligation to publish the decisions, but not the deadlines for their publication within the period specified by law. In addition, journalists who followed the hearings had no access to the judgments on the website of the court and to communicate electronically with the court because the court had no internet connection.

6

The courts in the whole period during the monitoring of cases during actions fully followed the regularity of lawsuits, compliance with the provisions of formal initiation of any discussion, respected the rights of the parties without limitation, respected the will of the parties for extrajudicial settlement where they have requested, by delaying of the hearing for another date and allowing time to negotiate.

7

From the data for the following items relating to whether it is given opportunity for full disclosure of the parties' claims and evidence they suggested it was determined that in none of the cases that right of the parties was not impeded or restricted. Neither as it was not limited to nor the right to propose additional evidence at the preparatory hearing.

8

In all observed cases except in one, the parties were represented by proxies - lawyers or other professionals (graduates who are apprentices in a law office), indicating that the parties in those items they needed professional help in dealing.

9

The recorded data show that courts did not restrict freedom of declaration of the parties. That and the fact that were not recorded order breaches during the hearings, confirms that the court keep order in the courtroom in all cases.

10

The lack of observations concerning the accuracy of the input of statements in the minutes and any objections in this regard, suggest that during the hearings what the parties have said is exactly entered in the minutes of held hearings.

11

The data presented in the evidence list in the section that refers to the identification of the parties, their attorneys and others at the hearing, show that during the period there was deviation from the legal obligation for formal legitimization of everyone present at the debate with personal document. From the allegations stems out that the court usually did because the parties were known as celebrities and proxies because often encountered in its actions, and therefore was not disputed their identity.

This treatment leads to the conclusion that in that part the court does not comply with the law, because in cases where the identity is not disputed, the formal identified persons in the minutes of hearings held by default are missing data that are important for the further course of the proceedings (no correct addresses, precise unique identification numbers, data on whether identity documents are still valid or expired validity, etc.). These data are particularly important if should be carry out debt by way of compulsory enforcement. For these reasons and despite undeniable famous identity of the participants in the proceedings, it is necessary the formal identification to be entered, all relevant data from their personal and official documents.

12

From the data in the list of evidence cannot be determined whether the processing of court cases sought evidence to establish the circumstances of exclusion of liability for defamation (the existence of public interest for the presented defamatory or insults from the defendant) or taken measures for liability for defamation (request for public apology or withdrawal sent by the plaintiff to the defendant before filing the lawsuit). This is so even though they are the basis for the continuation or termination of the procedure.

The fact that only in 6 cases was concluded request from the court to prove the public interest as one of the conditions for the adoption of lawful judgment does not mean that the court cared for it, mostly because it is undoubtedly expressed in lawsuits or filings submitted to the court during the procedure. For these reasons, it cannot be formed opinion whether the court takes care for the existence of those circumstances in the proceedings.



Botschaft
der Bundesrepublik Deutschland
Skopje



Liberté • Égalité • Fraternité
RÉPUBLIQUE FRANÇAISE

AMBASSADE DE FRANCE
EN MACÉDOINE



Association of Journalists of Macedonia
Gradski Zid, blok 13
1000, Skopje, Macedonia
TEL: 00389 (02) 3298-139
FAX: 00389 (02) 3116-447
EMAIL: contact@znm.org.mk
www.znm.org.mk

ANALYSIS OF CASES OF DEFAMATION AND INSULT

The German and the French Embassy in Skopje supported the preparation of this publication, within the project “Monitoring the implementation of media legislation and court practice in Macedonia”. The content of this publication does not necessarily reflect the position or the opinions of the German and the French Embassy.