

THE PRESS COUNCIL IN BOSNIA AND HERZEGOVINA

realized

the Seminar for judiciary representatives

JUDICIARY AND MEDIA SELF-REGULATION

Article 10 of the European Convention on Protection of Human Rights and Essential Freedoms and the Practical Implementation of the Law on Protection against Defamation of BiH

The Press Council in BiH successfully realized another in a row of educational activities intended for judiciary and media representatives. The Seminar “Judiciary and Media Self-Regulation” was held on 28.09.2013, in Sarajevo as part of the Council of Europe in BiH project “Promotion of Professionalism and Tolerance in the Media in Bosnia and Herzegovina”. The topic was “Article 10 of the European Convention on Protection of Human Rights and Essential Freedoms and the Practical Implementation of the Law on Protection against Defamation of BiH”. The Seminar gathered 46 representatives of the judiciary, the prosecution, and the media, members of the Complaints Commission of the Press Council in BiH, as well as representatives from the Council of Europe in BiH.

The Seminar was opened by Ms. Ljiljana Zurovac, Executive Director of the Press Council in BiH and Ms. Mary Ann Hennessey, Head of the Council of Europe in BiH Office.

Ms. Nani Jansen, High Legal Counsel of the Media Legal Defense Initiative from London, spoke about the practice of the European Court for Human Rights in Strasburg and the implementation of Article 10 of the European Convention on the Protection of Human Rights and Essential Freedoms, which guarantees the freedom of expression.

- The European Court for Human Rights provides significant guidelines for domestic courts, on the basis of Article 10 of the European Convention on the Protection of Human Rights and Essential Freedoms, for balance in the best manner the often conflicting interests in cases of defamation. Namely, in defamation cases, we most often encounter the situation that the persons reputation is at stake on one side, while it is in the media’s interest to reveal certain information regarding that person on the other side - explained Ms. Jansen.

Guidelines of the European Court for Human Rights

Key guidelines of the European Court for Human Rights regard the following criteria:

Proportionality of Compensation and Penalty: The European Court clearly notes that when awarding compensation the focus should always be on the alleged damage suffered by the defamed person. Further, an appropriate balance needs to be achieved. General provisions foresee that the compensation or penalty has to be proportional to the influence of the journalist or media in question.

Public Figures shall tolerate a higher degree of criticism: This principle regards politicians, government officials, large corporations and private figures who enter the sphere of public life.

Facts vs. Opinions: The courts have to distinguish amongst statements of facts and statements of opinions. It is not possible to prove the accuracy of an opinion, even though the journalists must dispose of facts on which they base their opinions.

Repetition of defamatory statements made by others: In principle, journalists should not be responsible for statements made in their interviews. Under certain circumstances, journalists can base their comments on stories that can be heard amongst citizens.

The right to error: The press should be allowed to publish stories of public interest, under condition that the journalists act in good faith as to provide accurate and reliable information in accordance with journalism ethics. These are the key elements of responsible journalism: we need to rely on journalists who do their job in good faith and in accordance with professional ethics.

Context: We always need to take the context into account, never individual and isolated statements.

Public Interest: The public interest of the context of the publication is key

Furthermore, the European Court of Human Rights in Strasburg very clearly notes that criminal processes against persons who allegedly made defaming statements should be initiated only as the last possible mechanism.

- Preference is always given to the civil proceeding, and only when all possible options are exhausted and in extreme situations shall criminal proceedings be initiated - explained Ms. Jansen.

Implementation of the Law on Protection against Defamation of BiH

Bosnia and Herzegovina was the first country in the Western Balkans to decriminalize

defamation. The Law on Protection against Defamation in the Republic of Srpska was adopted in 2001, and a year later in the Federation, while it was adopted in 2003 in the Brcko District. Still, even after a decade since adoption, present is the problem of harmonizing judicial practices of implementing the Law on Protection against Defamation, the challenge of harmonizing the domestic judicial practice and that of the European Court for Human Rights in Strasburg, as well as numerous dilemmas of interpretation and consistent application of the Law on Protection against Defamation.

- Our Laws on Protection against Defamation are based on the highest democratic standards and Article 10 of the European Convention on the Protection of Human Rights and Essential Liberties, but the problem lies in the implementation. Also, several key dilemmas remain, as for example, who is responsible - the author of the statement or the author of the story, or maybe both? Then, who is responsible for proving it - the defendant or the plaintiff? The European practice says that this responsibility lies upon the plaintiff; it is not up to the journalist to prove that he has not defamed, but it is up to the plaintiff to prove that he has been defamed. Our judicial practice is opposite - concluded Ms. Borka Rudic, Secretary General of the Association BH Journalist, presenting the results of the Analysis “Ten Years of the Implementation of the Law on Protection against Defamation.”

Ms. Rudic also presented valuable statistical data - from 2006 to 2012, a total of 640 defamation law suits have been filed in BiH, out of which 520 have been against journalists and owners of media. The most suits have been filed in Sarajevo, much less in Banja Luka, 11 in Mostar, and 9 in Brcko.

- We had compensation requests for up to 1 million Marks, but by introducing court taxes based on the compensation amount sought; these requests were reduced to reasonable brackets. Now the compensation requests fall between 5,000 and 10,000 KM, while the average amounts awarded range from 1,000 to 5,000 KM. The biggest compensation awarded in BiH amounted to 20,000 KM - said Ms. Rudic.

Practical Experiences from the Media in BiH

Ms. Vildana Selimbegovic, editor in chief of the daily “Oslobodjenje” spoke about the practical experiences from the media in BiH regarding defamation law suits, court proceedings and the implementation of the Law on Protection against Defamation.

- What struck me the most from the proceedings against “Oslobodjenje” regarding suits for defamation were the results of psychiatric evaluations of the plaintiffs’ emotional distress and the unacceptably long duration of the trials. Of course, I am not saying that it is just the courts’ fault; I know that they are overwhelmed with cases, but I also think that there are intentional delays. Further, I must note that up to today, the outcome of the investigations of attacks on journalists and media that occurred from 1996 till today, which there were several tens of, is still not known - noted Ms. Selimbegovic.

Also discussed at the seminar was Article 8 of the Law on Protection against Defamation of BiH, stipulating that prior to turning to the court, all possibilities of alleviating the damage shall be exhausted through submitting requests for the publications of corrections or denials, as well as the role of the Press Council in BiH, which provides citizens with the opportunity to submit complaints to unprofessional coverage of the press and online media.

The Seminar “Judiciary and Media Self-Regulation”, as the continuation of previously began and realized educational activities for representatives of the judiciary and media, advanced and strengthened the successful cooperation between judiciary institutions, the media and the Press Council in BiH, as the sole self-regulatory body for print and online media.