

## DEFAMATION LAW: THE HYPOCRISY OF MINISTERIAL PROTECTION

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August 17, 2004

Last month, Croatia almost joined the rare countries that (still) send journalists to prison. Miroslav Juric, 56, former editor-in-chief of a former local bi-weekly in Slavonski Brod (provincial town in the north of the continental part of the country), "Novi Brodski List," on July 19 went to serve a 70-day prison sentence for refusing to pay, as a sign of protest, a 12,600 kuna (close to 2,000 EUR) fine pronounced for alleged defamation. In his paper, in the year 2000, the editor Juric just carried a report from the much higher circulation (yellow) weekly "Imperijal," published in the capital Zagreb, which accused two local court officials of corruption. It is interesting that the two accused local court strongmen did not sue for defamation the weekly "Imperijal," which had originally brought the incriminated accusations, i.e. the alleged defamation regarding their corruption, but rather the local paper that just carried the report, and that they won the suit in a local court.

Justice Minister Vesna Skare Ozbolt, faced with the unpleasant fact that the journalist would go to prison, which immediately triggered harsh condemnation not just of the local public, but the international one as well, and threatened Croatia's pro-European image achieved with difficulty in the recent confirmation of candidacy for EU admission, decided to make an unusual and, according to many, very dubious move. She decided to pay from her own pocket the fine for the journalist Juric who, arriving with great media pomp outside the district prison, found a surprise, unpleasant for him – not being able to go to prison and thus express his protest against the shameful court decision.

Some are already criticizing the journalist Juric for being inconsistent, claiming that if he had really wanted to go to prison, he had had mechanisms available to turn down the "gallant" minister and exercise his "right." However, criticism is aimed even more at the minister herself, accused by both the political and the legal profession of acting unlawfully, which does no credit to anyone, least of all a justice minister. This bizarre event, when stripped of the media and political sensationalism

and when its substance is examined more deeply, actually speaks about the still heavy problems burdening both the Croatian judiciary and the Croatian media situation.

Only a little while before the spectacular attempt of the first Croatian journalist to go to prison, with a lot less media “pomp,” for the first time, although suspended and still not final, a Croatian journalist was sentenced to prison. Ljubica Letilic in her item for one of Croatian national television’s most watched programs, “Latinica,” which speaks very critically about anomalies in Croatian society, analyzed the illegal and shady dealings of a tycoon from Split and for that, “for defamation and libel,” was given a two-month suspended prison sentence.

Cynics would ask the question that if the journalist Ljubica Letinic, during the time of her suspended sentence, does not hold out and goes back to her journalistic “vice,” seeking the truth, and again calls some things by their real name, which is often translated in court as “defamation and libel,” and if the prison sentence is actually activated, will Minister Ozbolt, if she still holds that position, take on the burden and, instead of the journalist, go to – prison. More to the point, the minister’s move to pay the sentenced journalist’s fine is not harmless and could cost her a fortune. Namely, several other journalists who earned their sentences for “defamation and libel” writing for well-known print media such as Feral Tribune, Nacional and Slobodna Dalmacija, at this moment face the same problems as the sentenced Juric and have threatened to turn their substantial fines into – prison days.

Minister Ozbolt, on the other hand, claims that in the world journalists do not go to prison and that, under the new provisions of the Penal Code due to go into effect in October, this will not be the case in Croatia either. But journalists, legal experts and international factors that monitor the media situation in Croatia (OSCE, Reporters without Borders) are not so sure. The fact is that “defamation” in Croatia is still a part of the Penal Code, although contemporary democratic judicial practice, especially when it comes to the media, is trying to decriminalize it entirely. Spokesman for the OSCE mission to Croatia until recently and a man who professionally and critically monitored Croatian media changes over the past four years, Alesandro Fracaseti says the OSCE Media Freedom Office based in Vienna advocates the decriminalization of defamation in the whole of Europe, dropping it from the Penal Code and possibly settling disputes in civil suits. Quoting OSCE Media Freedom Representative Miklos Harazsti “that outdated laws related to defamation...are damaging for modern democracy,” he warns that keeping defamation in the Penal Code, even when prison sentences are not stipulated, is a constant threat to the journalist and has a negative effect on his freedom.

And that, it seems, is a possibility that the authorities are counting on. It is hard to explain in any other way that even during the process of media liberalization unfolding in Croatia since the defeat of Tudjman's authoritarian regime, Ivica Racan's government, only after a lot of pressure from the Croatian Journalist Society, dropped prison sentence for defamation from the Penal Code, which it had originally wanted to maintain. The new Ivo Sanader government, when it modified the Penal Code, did not drop defamation either, nor prison sentence, but only made defense easier. But, if defamation is proven, a journalist can still be punished by prison. True, one can find defamation even in the penal codes of European countries with developed democracies (which modify fundamental codes such as the penal code rarely and with great difficulty), but judicial practice eliminated the possibility of this incrimination a long time ago. The Croatian judiciary has still not accepted this practice although it might use as an example a brave move by the Zagreb judge Ranko Marijan who in the late 90's, back during the time of the Tudjman regime, rejected a suit filed by the entire Croatian government spearheaded by then Prime Minister Zlatko Matesa against the then director of one of Croatia's highest reputed weeklies "Globus," Davor Butkovic, who had also only carried in his paper the results of research carried out by an international institution on the flourishing of corruption in the Croatian government.

Of course, rejection of criminalization of journalistic defamation does not mean an idealization of the media situation in Croatia. Many analyses and a lot of research, such as the Croatian Helsinki Committee report for last year, indicate an increase in non-professionalism and misinformation in the Croatian media, while the latest book by the excellent media analyst Dr. Gordana Vilovic, where she analyzed the reporting of two of Croatia's highest circulation weeklies in the 1999-2000 period, among other things, shows the frequency of untrue information, deceit of the audience, violation of fundamental human rights, etc. A broad criminal range, in any case.

By the way, Croatia is at the top of countries in transition by the number of court cases against journalists and media in which financial penalties are sought for various kinds of defamation and libel or inflicting what is called mental anguish upon the damaged party (often including, unfortunately, different political and public strongmen). The number of these lawsuits has exceeded one thousand and the total damage requests amount to millions of euros. Croatian Helsinki Committee research "Media in court proceedings" (1999 – 2000) encompassed more than 500 such cases with total compensatory damage requests reaching almost five million euros. The number of these lawsuits has been declining, but they are still a powerful tool for putting strong pressure on journalists and the media and bringing some of them practically in the face of bankruptcy by way of grave requests for damages, such as in 2001 in the case of the well-known Split weekly "Feral Tribune."

On these problems, unfortunately, the justice minister, as well as most of the Croatian political establishment both in the government and opposition, is silent. The journalist mentioned at the beginning of this story, Miroslav Juric, even if freed of the prison sentence, i.e. paying 12,600 kunas, remains indebted for 130,000 kunas. This is the fine that the publisher of his paper was sentenced to pay for carrying the disputed “defamatory” article, and which burdens him too, as a solidarity debtor. Will the minister pay this amount too?

Of course she will not, and this just shows the hypocritical attitude towards the whole issue. This issue is very complex and very important for the development and progress of media and journalists in Croatia. Defamation and libel, unfortunately, are an integral part of the Croatian media space. But they cannot be fought by financially destroying individual papers, or by locking up journalists. It is really time to make serious effort to create a social environment and professional standards in which serious violations of the journalistic code and journalistic honor would question the credibility of both the papers and the journalists violating them, and thereby also their market, social and professional survival. This is a threat that would concern many people much more than prison sentences and fines.

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