

Media Defamation and Croatian Legislation

Hasty Media and Greedy Politicians and Tycoons

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April 1, 2005

Croatia is quite slowly and hesitatingly shedding a sad, but deserved reputation earned in 2001 when the State Department Report on Human Rights cited 1200 lawsuits against journalists and media in Croatia¹. If one had wanted to calculate the average number of media lawsuits per capita at the time, the figure would have been bigger than in any other country on the planet. In the meantime, Croatia reached its teenage transition age; laws and other media regulations were changed at a rarely seen dynamic rate², but courts remained the worst nightmare of journalists (and publishers) – and an expense that brought some minor papers to the brink of bankruptcy. True, provisions on media defamation were somewhat changed in this period in favor of journalists, but the changes were not extensive enough to completely abolish the chilling effect of this legal institute on the critical and control function of media.

The Long Shadows of the Nineties or ...About the Social and Political Context

Soon after the first multiparty elections, as early as the so-called Christmas Constitution of the Republic of Croatia of 1990, Article 38 institutionalized the standard foundation of democratic media (right to freedom of thought and speech; freedom of press and other means of information; freedom of speech and public appearance; freedom to establish media; prohibition of censorship; establishment of journalists' right to freedom of reporting and access to information; right to denial)³. In

¹ Dr. Alan Uzelac, Assistant Professor at Zagreb Law School, in a preliminary report on the project "Lawsuits in Media in 1990-2000 in the Republic of Croatia" estimates that there were more than 1000 civil or criminal lawsuits in the period.

² In fifteen years of political pluralism in Croatia, the Law on Croatian Radio and Television was changed seven times in the section that regulates its management (with one more change to come), which resulted in four completely new laws being written. The basic law (at the moment under the name Media Law) was written three times, while regulations that deal with defamation in media were changed four times (another initiative for a change has not been finished due to expiration of the parliament's mandate).

³ Article 38 belongs to the chapter on fundamental freedoms and rights. Its provisions can only be restricted by the law in cases of protection of rights and freedom of other people, protection of the legal

addition to the Constitution, the starting point for media legislation are ratified international agreements.⁴

However, establishment of a really democratic media system soon proved to be music of the future. Authorities treated the most powerful Croatian medium, Croatian Radio and Television, as winner's prey. True, they abolished at once the socialist restrictions on ownership for other media, but at the same time they developed a differentiated register of measures for using media as instruments: from questionable privatization, selective taxation, arbitrariness and favoring certain clients in allocating radio and television concessions, through numerous lawsuits filed by members of the ruling circles for compensation of "inflicted mental anguish" against disobedient publishers, special operations carried out by secret agencies, to appointment of highly ranked party members to top positions at Croatian Radio and Television, co-opting leading editorial personnel of Croatian Radio and Television to top positions in the HDZ party, or favoring "submissive journalists".

Although the strategy was nurtured by the long "neither-peace-nor-war" situation in the country, the autistic media policies of Tudjman's semi-presidential democracy had a number of dramatic episodes⁵. In such circumstances, media development in the nineties could occur only in a step-by-step mode (and not necessarily always in the desired direction). Constant pressure exerted by foreign partners upon the Government played an important role in this. Media modernization on the domestic scene was advocated only by professional organizations⁶ and some independent media, as well as other non-governmental organizations, along with not too numerous media experts in the country. The then opposition parties' contribution was less than modest. When a large part of them formed the government after the elections in 2000, it proved, generally speaking, that even this part of the political spectrum was driven primarily by utilitarian motives and that it could hardly accept all consequences of true media independence⁷.

system, public morale and health, and in addition to this, these rights need not be elaborated by laws and can be applied directly.

⁴ Of special importance is the European Council Convention for Protection of Human Rights and Fundamental Freedoms with corresponding protocols and The European Convention on Transfrontier Television.

⁵ Demonstrations in Zagreb (in November 1996) due to the license of the popular Radio "101" being revoked were one of the most massive anti-government protests in the last fifteen years.

⁶ For instance, Forum 21, Association of Journalists of Croatian Electronic Media, Croatian Journalists' Association and Journalists' Trade Union, and Association of Independent Radio Stations.

⁷ It took a whole year for the coalition government to develop a new law on Croatian Radio and Television. Professional (in)competence of the project can be illustrated by such provisions as the one

However, it was not always just a matter of the eternal aspiration of all politicians to control media. Modern legislative solutions were sometimes opposed with equal persistence by parts of the civil sector, even certain legal experts.⁸ True, the overall ideological and political climate, with the change in government in 2000, really did change. The media (probably thanks, among other things, to modernization of legislation in the 2001-2003 period) moved considerably away from a position of being a servant to politics and became a factor of social power; the idea of the role that media play in democratic society, generally speaking, considerably evolved. Still, attitude to the democratic function of media among political, even non-government and professional circles, remained markedly contradictory, due to which some important legal institutes in the area are still overshadowed by the political ideas of the nineties.⁹

Media Legislation¹⁰

The last set of innovations to fundamental media laws in the 2001-2004 period was conducted under the aegis of harmonization with EU legal traditions, and the government, of course, claimed that the complex task was successfully accomplished. It is true that numerous provisions were rewritten or solved in a new way; the whole sector of electronic media was removed from the "technical" Law on Telecommunications and elaborated in a separate law on media; some important issues (such as ownership transparency, concentration restrictions, protection of authors and journalists in newsrooms) were undoubtedly significantly amended. Perhaps the most efficient progress was made in the field of electronic media: detaching the Transmitters and Links Department from Croatian Radio and

forbidding journalists of public radio and television to comment on events, in order to restrict them to bare transmission of news. The parliamentary majority had to save the bill in parliamentary debate by adding numerous amendments which led to the final version of the law which is, to put it mildly, inconsistent.

⁸ Thus, a group of experts in criminal law were the main advocates of toughening criminal responsibility for media defamation, which led to the adoption of the old Penal Code of the Republic of Croatia from 1993, under the patronage of the allegedly liberal coalition government.

⁹ Instead of making any comments, it is worthwhile to cite UN Resolution 59(1) from 1964: "Freedom of information is a fundamental human right of every individual and it is a touchstone for all other freedoms that the United Nations strive to..."

¹⁰ The basic corpus of media laws comprises the following: The Law on Croatian News Agency (2001), The Law on Croatian Radio and Television (2003), The Law on Electronic Media (2003) and The Law on Media (2004). Some other laws that are important for the media are: The Law on Telecommunications (it regulates technical aspects of radio and television signals), election laws (they restrict program independence of Croatian Radio and Television and electronic media with national

Television and establishing it as an independent company, privatization of the Croatian Radio and Television third channel, and introduction of a second television operator with a national license (RTL), which all finalized the shaping of the dual system – a highly propulsive privately owned radio and television sector was established along with public radio and television. Also, significant emancipation of Croatian Radio and Television occurred – it is more than symbolic that as of 2001, for the first time since political pluralism was introduced, the manager is no longer appointed by the founder, but by the independent Programming Council of this institution. However, legal application of some basic components of freedom of information has still remained disputable.

In general, in regulating the most important component – independence of media – a huge amount of energy was dedicated to controlling media power¹¹, while numerous issues related to social quality of media, i.e. their ability to help people in social and political orientation, received almost insignificant attention of legislators. Thus, with much less public consideration and polishing of legal formulations, guarantees and incentives for ownership pluralism were regulated, as well as provisions on

concessions in general), stipulations of the Penal Code on defamation and libel (2004), a number of regulations on protection of data, special protection of children, criminal and litigation procedures, etc.

¹¹ For example, the first "coalition" Law on Croatian Radio and Television from 2001 established a so-called plural council (composed of directly elected representatives of civil society institutions, without representatives of political parties and parliament; the only connection to politics being three non-party members appointed by the president of the country, prime minister and president of parliament) and introduced the position of chief editor against the position of manager within the internal organizational structure. Soon, a serious managerial and editorial crisis occurred and only two years later a dramatic transformation of management and social control was introduced. The monocratic model of internal management was restored. Today, the Programming Council of Croatian Radio and Television is appointed by parliament in a complicated procedure similar to a consensus between candidates who apply for a public contest or are nominated by civil institutions. This solution has been criticized from the very beginning as a very poorly disguised renewal of political control over Croatian Radio and Television (however, the new body proved to be as politically independent as the former plural council in the appointment of management of Croatian Radio and Television in 2004). The presently ruling HDZ party uses this criticism as the main reason for its wish to change the Law. The first initiative coming from the Ministry of Culture at the beginning of 2004, on the eve of the mentioned appointment of Croatian Radio and Television management, was perceived by the public as a maneuver to gain control over public radio and television; due to vehement opposition, the incentive had to be euthanized, but the authorities from time to time, whenever they find it appropriate, issue warnings to the new management that the option is still viable. The majority of other aspects of media independence – primarily programming, followed by statutory, organizational, business and financial autonomy, have drawn incomparably less attention and are regulated routinely and sometimes even poorly. Thus, for example, Article 22/8 of the Law on Electronic Media went by unnoticed; it obligates the media to treat election candidates according to election laws and (sic!) guidelines of the bodies that control elections. The coalition government (which otherwise deserves a lot of credit for numerous improvements in media legislation!) adopted the Law on Election Procedures for Members of Parliament (a similar provision can be found in the Law on Election of President of the Republic /1992/), which says that electronic media with national coverage (the limitation is restricted to them only!) should put responsibility to candidates before obligations to the audience. This way, freedom of

ownership and restrictions on media concentration¹², financial incentives to programming diversification, standards of minimum programming obligations for electronic media (as a form of pay-in-kind compensation for use of frequencies), such as minimum daily and weekly duration of broadcasting, share of own production in the program, minimum amount of informative programming, or share of European TV production in the program. However, some suggestions from professional associations were adopted, leading to significant strengthening of journalists' newsroom freedom¹³, which should contribute to internal pluralism of public media, especially in big systems.

The law imposed on public television, due to its very nature, even more detailed programming obligations related to presentation of diverse political and general ideas and interests. But, it has become clear that HTV (Croatian Radio and Television), pressured by competition posed by commercial televisions, has resorted to systematic commercialization of its programs, neglecting its public service obligations, as relevant institutions such as HAZU (Croatian Academy of Arts and Science) and the Central Croatian Cultural and Publishing Society recently warned sharply. Therefore, it seems that the legal programming obligations of Croatian Radio and Television were defined so loosely that they present too weak an obstacle to introduction of extensive changes of the programming profile of this media outlet.

program creation was suspended for electronic media at election time when it is extremely important, by the very nature of the issue, that media fulfill their essential social role.

¹² The Law on Electronic Media (Articles 44-57) regulates in a more transparent and detailed way ownership relations and criteria of unlawful media concentration than the previous Law on Electronic Media, as well as the relationship between the profession and newspaper publishers, i.e. marketing agencies. In principle, one publisher may broadcast only one radio or television program, while a newspaper publisher may not be granted a radio or television license. Restrictions on various combinations of shares in the capital of other publishers have been set for electronic media publishers. Changes in ownership structure have to be updated and reported to the Council for Electronic Media and Agency for Protection of Market Competition. If a publisher violates the legal restrictions, his license may be withdrawn.

For the first time in 2003, the Law on Media regulated concentration of ownership in journalism. Merger of daily newspaper publishers, i.e. publishers of weeklies, is not allowed if it results in more than a 40% share of sold issues in the total circulation of the particular type of newspapers.

¹³ According to the Law on Media (Articles 27 and 28), a journalist has the right to express his/her point of view and he/she must not be forced to act contrary to professional and ethical standards. In case of a dispute with the publisher, the publisher must prove that there was no harassment of the journalist. Additionally, the Law instituted a so-called consciousness clause, which orders that the editor-in-chief and editors have the right to terminate their work contracts and get fair compensation in case of a dramatic change of program policies.

A third sensitive issue related to application of media freedoms regards provisions on so-called permitted restrictions. The Media Law provides only a general provision¹⁴ which is, however, in a very important detail contrary to the letter and spirit of the Constitution of the Republic of Croatia and Convention on the Protection of Human Rights and Fundamental Freedoms of the Council of Europe. Namely, the cited legal provision allows restriction of media freedom "in a way that is legally prescribed". Article 10/2 of the Convention, among other strict stipulations on restriction of these freedoms¹⁵, prescribes that they can be stipulated by the law (and not "in a way that is legally prescribed", i.e. by decree-level regulations). As already mentioned, even the Constitution of the Republic of Croatia (Article 10) prescribes that human rights can only be restricted by the law, with an additional constitutional obligation that such laws must be adopted by qualified majority vote.

True, the mentioned provision of the Media Law is actually unnecessary because this issue is already legally regulated by the Constitution and Convention. Since they take precedence over laws, the disputable provision should not pose particular problems from a legal point of view. However, it is interesting as an indication of a desire to "smuggle" into the law a guarantee of a particular right, a right that is evidently below the already reached level of protection in the same legal system, namely, as a sign of power of those who are in favor of restrictive interpretation of freedom of information in public life. On top of this, since media laws are not written only for legally educated individuals, but also serve as instructions for media people, politicians, etc., such imprecision might easily become a source of pragmatic confusion.

A particular case of permitted restrictions on media freedom are provisions that protect the privacy of individuals from publicity. Generally, it is not questionable that media are obliged to protect the privacy, dignity and reputation of individuals, especially children, youth and families. This is also stipulated by the Media Law. The Law also contains a general provision, according to which public interest (not the interest of the public!), in case of dispute, has precedence over protection of privacy. In numerous countries, among them Croatia, a certain circle of publicly exposed

¹⁴ Article 3, par. 3, reads: "The freedom of media can be limited only when and if it is in the vital interest of democratic society for reasons of national security, territorial integrity or public law and order, prevention of riots or punishable acts, protection of public health and morale, protection from disclosure of confidential information or protection of the authority and independence of the judiciary only in a way prescribed by the law."

individuals – in the name of strict respect of the right to information - do not enjoy the same degree of protection of privacy as other citizens. In the existing Media Law, this restriction is related to “individuals who perform public service or duty”. In the previous law¹⁶, the restriction was related to "public persons¹⁷", i.e., it was much broader, and thus the new provision greatly limits freedom of information.

Regulation of media defamation is based on similar ideological and professional controversy. In the Croatian legal system, violation of reputation and dignity may be treated either as a civil law offence or a criminal offense.

Media Defamation as a Civil Law Offense

According to the Media Law, a publisher should, in principle, compensate for damage caused by information that is published. Violation of one's reputation and dignity is not specified in the Law, but it is a case of consequential damage¹⁸. However, consequential damage, in addition to libel and defamation, can originate in other ways too – for instance, by unauthorized media impingement upon one's privacy or by hate speech. Damage can be caused by factual allegations or value judgments. The legislator considers publication of a correction and apology the main form of satisfaction for consequential damage, while possible financial compensation follows general regulations of compulsory law. Of course, the damaged party has the right to sue for damages only if he first requested a correction to be issued.

The defendant can be exculpated if it is proven that the information published was based on true facts. If this cannot be proven, the court evaluates whether publication in the particular case was justified¹⁹ due to the importance of freedom of information, public interest and the right of the public to information. Justification of publication is proven by a professionalism test; the defendant has to prove that the author had

¹⁵ According to the Convention, the restrictions must fulfill three related conditions: a) they must be prescribed by the law; b) they must be justified by some reason (i.e. protect some of the values specified in the article, and c) they must have the nature of necessity in a democratic society.

¹⁶ The Law on Public Information of 1996.

¹⁷ Public people are those individuals who have earned their reputation in the community due to various reasons and who have been significantly involved in public life. People who appear frequently in public in some specific field when they arbitrarily choose to participate in a public dispute are also considered to be public people.

¹⁸ Consequential damage is defined in the law as "infliction of physical or psychological anguish or fear to a person".

¹⁹ Even the best of journalists can make mistakes in good faith. The very nature of journalism does not allow time for positive proof of truthfulness and thus penalties for all untruthful information would jeopardize the public interest to obtain timely information.

justified reason to believe that the information was true, that he did everything possible to verify its truthfulness, that the published information was justified by the interest of the public, and that the author acted in good faith. (Along with this general formula, the legislator adopted some standard cases of exclusion of responsibility, i.e. the publisher is not liable when publishing accurate statements from debates in state institutions, from state documents, authorized interviews, photographs taken in public places, etc.). If the defendant was sued for a value judgment, the publisher will be acquitted if he proves that publication was in public interest and that he acted in good faith.

The vital elements of a publisher's civil law responsibility for damage have not been changed in relation to the provisions of the previous Law on Public Communications²⁰. At any rate, these solutions are in significant agreement with recommendations of European experts in media legislation as regards purposes of protection, truthfulness test, relatively high level of protection of value judgments and short terms for lawsuits. Perhaps the greatest specific novelty in the Media Law is the conditionality of lawsuits by a prior request for denial, which is an important detail in Croatian circumstances that shifts the focus of satisfaction from financial compensation to mending damage by publication means. It should also be mentioned that claims for damages are no longer settled in urgent procedures, which may discourage plaintiffs who started this kind of practice as a sort of secondary profession.²¹

Media Defamation as a Criminal Offense

Violation of dignity and reputation by means of press, radio or television (as well as in other ways that reach a large number of people) is sanctioned in the Croatian legal system as a serious form of defamation (publication or dissemination of something untrue that can cause damage to a person's dignity or reputation) or insult (publication or dissemination of something that is insulting to another person, regardless of its truthfulness). Related criminal offenses refer to bringing up personal

²⁰ However, significant changes were brought by the Law on Public Information in 1996. The narrowed truthfulness test, which allowed exculpation of true information only if it directly referred to the public service of the plaintiff (while in other circumstances truthfulness of information was not sufficient for acquittal) was abolished. Protection of value judgments was broadened in such a way that it was sufficient that public interest and good faith existed; it was no longer necessary to explain the author's opinion, to refer only to the public service of the plaintiff and not be formulated in an insulting way.

²¹ A former politician instituted eight simultaneous legal proceedings for compensation of "mental anguish".

or family circumstances that might damage one's reputation and dignity; when used in media, these offenses are also qualified more seriously. Criminal offense proceedings are always initiated by a private suit, and the most serious penalty for these offenses is imprisonment.

According to the Penal Code, no offense is committed when defamatory content that otherwise has characteristics of defamation, libel, bringing up personal circumstances or insinuating alleged criminal activities, is published in the course of practicing the journalistic profession²², unless it is obvious from the mode of expression and other circumstances that the sole purpose was to inflict damage to one's reputation and dignity²³.

This way the legislator gives preference to the mode of expression and other circumstances that were intentionally used to damage one's reputation over the truthfulness of the incriminated information. When such intention is not present, there is no media libel, defamation or qualified form of offense for bringing up personal circumstances and insinuation for alleged criminal activities. Even when the plaintiff proves the intention, the defendant can be acquitted of defamation charges if he proves the truthfulness of his allegation or provides a justified reason for believing the truthfulness of the content that was disseminated or expressed. In this case, although the defendant mediated the truth, the defendant can be sentenced for insult or insinuation of alleged criminal activities. From the point of view of the profession, and even the general legal duties of a journalist, this is an unacceptable situation. Journalists not only have the privilege but, according to the Media Law, it is their duty

²² The legislator envisaged the same reasons for the exclusion of responsibility in cases of scientific and literary works or public information, execution of official duty, political or other public or social activity, or protection of a certain right or justified interests.

²³ Such structure of this group of offenses originated with the transformation of the Penal Code in 2004. The previous solution of the Penal Code from 1998 (Article 203) foresaw the exclusion of unlawfulness only in cases when the defendant proved that the purpose of the text was not to insult someone, based on the mode of expression and other circumstances. However, in the middle of the campaign for harmonizing fundamental media laws with European legislation, the Ministry of Justice of that same coalition government managed to transform the Penal Code so that the reason for exclusion of responsibility was no longer applied in cases of defamation, but only in cases of insult, bringing out personal circumstances, etc. Those who put forward the change even claimed that the change was really necessary because Article 203 legalized "the right of certain individuals, especially journalists, to defame other individuals". Journalist associations and some non-governmental organizations and media lawyers disputed the allegation of the so-called criminal law experts and vehemently resisted the change, having stressed that it meant a serious restriction of media freedoms and the social role of media. However, the project was adopted, allowing a temporary revival of Penal Code regulations adopted back at the beginning of Tudjman's era. Namely, the changes in the Penal Code from 2003 were in the meantime overruled for formal reasons by the Constitutional Court and soon a new change of the notorious Article 203 occurred, as described above.

to disseminate the truth. According to the provisions of the Croatian Penal Code, however, a journalist who speaks the truth, but in an offensive and aggressive way – can be punished for offense, while a journalists who brings out something untrue, but in a way that does not show an intention to insult, cannot be prosecuted for defamation!

Criminal legislation in this context, as opposed to the Law on Public Information, does not know of the institutes of public interest and good faith. Thus, if a value judgment offends someone, the defendant cannot defend himself on the basis of acting in public interest and in good faith. This creates an absurd situation: by claiming to have acted in public interest and good faith, a publisher would be acquitted of civil responsibility, while in criminal proceedings the court would not be able to accept the same reasons and would penalize the author for offense. The same is true of the Penal Code which equally protects privacy, not discriminating between public and truly private persons. A publisher would thus be exculpated for invading into the privacy of a public person, while the author would be sentenced in criminal proceedings for bringing out personal and family circumstances, regardless of whether it is a public person or not.

Media are Requesting True Decriminalization of Defamation

Croatian regulations that regulate the responsibility of publishers and authors in proceedings regarding violation of reputation and dignity are not only incoherent, but they also cannot be considered consistent with the standards of contemporary media laws, especially criminal standards. These, of course, are not purely academic problems but issues that restrict pluralism and the control function of media in Croatia on a practical level. Namely, proceedings against media in Croatia are not only numerous but, according to the previously mentioned research by A. Uzelac, compensation is very high²⁴ (in principle, compensation is significantly higher than compensation for consequential damage in cases such as physical disability or loss of a family member in an accident), which is in discrepancy with the European Court of Human Rights practices. Some small publishers were actually driven to the brink of bankruptcy²⁵. Quite a number of litigations were based on political disputes in

²⁴ Most often, compensation approximates the average annual net income, but very high amounts are not rare either, in extreme cases being seven to eight times higher.

²⁵ Perhaps the most impressive case is that of the monthly *Hrvatska Ljevica* (Croatian Left), which had to pay fifty thousand kunas in 2002 in damages to a former politician who was mentioned in an investigative report about the alleged execution of civilians in Sisak during the war. Regardless of

which plaintiffs used provisions on violation of reputation to curb criticism. Politicians, (especially former), judges and other public servants are relatively the most numerous among the plaintiffs, and their compensation is several times higher than that awarded to common people. After the change in political circumstances in 2000, the number of lawsuits against media seems to have become relatively smaller, but the astronomic compensation to members of the political establishment still survives, with an increasing number of criminal proceedings against journalists brought in by county executives, members of parliament, judges, state attorneys and tycoons as the most common plaintiffs. Not only that, some oddities in media proceedings²⁶ correspond to some other indications of serious dysfunction of the Croatian judicature.

In any case, regulations that sanction responsibility for violation of reputation, dignity and privacy, including court decisions on the matter, exemplify the sore spot of application of freedom of information in the country, while the judicature – due to relatively advanced emancipation of media from executive authority – has remained a tool of the most massive interference of the state in this area of human rights²⁷. True, the latest revision of Article 203 of the Penal Code, pragmatically speaking, should provide huge progress (the effects of which have still not been proved in judicial practice) because for the first time in Croatian judicial practice the plaintiff has to take labors to prove the defendant's maliciousness, which significantly simplifies journalists' defense strategies. However, the transformation of Article 203 was a relatively simple legal operation which does not affect the described structural deficiencies of regulations in the field. The Croatian Journalists' Association and publishers, along with some non-government organizations and media law experts,

whether the judgment on the publisher's responsibility is founded, it is important to mention that under the Law on Public Information, the court should have taken into account the circulation of the paper. This provision was obviously not applied because the damages were equal to those of papers with ten times higher circulations. The monthly was eventually saved by charity donations. The weekly Nacional saved itself from similar difficulties by re-registration of the company and Feral Tribune by increasing the price of the paper.

²⁶ The deputy district attorney from Zadar pressed defamation charges against the editor-in-chief of Novi List from Zadar, N. Pavic, before the county court in Šibenik in 2004. In the meantime, the Penal Code was changed to such a degree that charges in the case should have been dropped, but the plaintiff (who is a judicial official) and the judge proceeded with the case in line with the abolished regulations, which is close to harassment of the defendant, even though the Penal Code strictly stipulates application of the milder law against the defendant.

²⁷ The Media Council of the Croatian Helsinki Committee warned the Supreme Court of the Republic of Croatia of these circumstances in a letter from 2002. Believing that the situation can considerably be improved, especially in (the most numerous) civil proceedings for protection of reputation – by adhering to European legal standards in applying the laws in effect – the Council proposed the Court to issue its legal stand in this regard and thus improve court practice. The Court turned a deaf ear to the request.

advocate decriminalizing defamation in Croatia as the most favorable general solution. It is believed that dignity and privacy can successfully be protected by civil law regulations. If no understanding is found for such a modern solution, at least imprisonment for this offense should be abolished. Improvements can also be achieved by introducing into the Croatian Penal Code a number of important institutes (principle of public interest, acting in good faith, and limited protection of privacy of public persons) that are already included in the Media Law and some international agreements that Croatia has already ratified. And last but not least, a very important advance in harmonizing freedom of information with protection of dignity and privacy can be achieved by establishing an autonomous (self-regulatory) system²⁸ of regulation and control of professional and ethical standards in media. Moreover, establishment of a self-regulatory system would not only partly compensate for the inevitable legal and market flaws as regulatory tools of social quality of the media; it would also activate and more effectively articulate the inner ethical strength of the profession.

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²⁸ Although more than half of European countries today have various self-regulatory models (Presserat, national ombudsman, newsroom ombudsman), Croatia today has only an embryo of such a system – namely the Council of Honor of the Croatian Journalists' Association. The journalists' Code of Ethics, the foundation for Council decisions, is in significant harmony with standards of serious journalism in countries on the Old Continent. Three of its articles contain relevant provisions on protection of reputation and privacy. However, publishers do not take part in standardization or application of these norms. In countries with developed media, both social partners (owners and journalists) are included in the system and, in some instances, advocates of consumer interest are also included. A group of activists from the Media Council of the Croatian Helsinki Committee, Croatian Journalists' Association, Association of Newspaper Publishers, Croatian Association of Radio and Television, and university teachers developed a self-regulatory model for Croatia in 2004. The idea enjoys relatively broad public approval, but there is still a lot of work to be done due to various interest requirements among the social partners and the fragmentary nature of their organizations.