

**Defamation and Libel in Serbian Press**  
**TWO SIDES OF THE COIN: MEDIA – FROM CRITICISM TO SLANDERING**  
**CRUSADES, PLAINTIFFS – SEEKING THE SCAPEGOAT IN MEDIA**

Milan Milosevic

March 2, 2005.

Early English and German legislation punished libel by cutting out one's tongue. Of course, the press tends to lean towards limiting the possibility of defamation charges, which for example is a part of the history of the American and Western liberal approach to the press, and where 1735 represented a significant date, when a jury acquitted the publisher John Peter Zenger for libel in essays that criticized the corrupt policies of New York's colonial governor William Cosby. The American liberal understanding of the press was encouraged in 1964 following the decision of US Supreme Court judge Earl Warren (the same man that chaired the committee established to investigate the assassination of President Kennedy) that the defamation law is in contravention of the First Amendment, which guarantees freedom of press and makes it the plaintiff's duty to prove that an allegation was published with extreme malice, knowing that it was untrue, or with wanton indolence towards the truth. In the past fifteen years, the extent of freedom of press in Serbia passed through both the abovementioned points, but also through a state that is described in a recommendation from a nineteenth-century journalism textbook: "Use your imagination to describe reality!"

**Media – Tool for Government, Weapon for Opposition**

During the 1990s, the press in Serbia, which enjoyed the support of the regime, had almost absolute freedom for demonizing political opponents. That was a time when fundamental standards that had been established during the previous period, particularly in the 1970s and 1980s, were obliterated. The press that had been independent of the authorities became involved with opposition leaders in the struggle against the despised regime, and despite cases of principled defense of humanism, relied greatly in internal politics on opposition press conferences where facts were often despised and a rhetoric demonizing the "red bandits" fostered.

Once the power of the independent press had increased, during a very complicated situation (threat of war) in Serbia, a restrictive public information act was passed on October 20, 1998, according to which a number of newspapers and editors were drastically punished by misdemeanor judges. The Serbian Parliament passed the legislation by urgent procedure, ending the Decree on Special Measures under the Threat of NATO Armed Assault, which was in effect for two weeks. More than 1.5 million euros in fines (calculated according to the official, depreciated exchange rate at the time) was collected during the period that this legislation was in effect. Misdemeanor courts threw out defamation lawsuits filed against media associated with the authorities, or fined them to a much lesser degree. For example, while “Monitor” was fined 2.8 million dinars, and “Evropljanin” 2.4 million, the pro-government “Politika” had to pay only 150,000 dinars for defamation charges filed by Democratic Party leader Zoran Djindjic.

The cases were handled by misdemeanor courts – which were government bodies according to the constitutional system, rather than part of the judicial system – which was in contradiction with the basic principle of division of powers. The misdemeanor judges were appointed by the Serbian Government and could be dismissed through a simplified procedure. Court proceedings with very short deadlines were provided, making it impossible to prepare one’s defense. The main hearing would be held only 24 hours after the “serving”. According to Article 72 of the then Law on Information, the serving of the summons for the hearing was considered regular even if it was announced via the media.

The 1998 law made it difficult to determine the truth and facilitated the fining of the media (editors and publishers) if the misdemeanor judge routinely determined that the media were carrying statements by third persons that contained elements of defamation and libel, incited national, racial or religious hatred, called for the toppling of the constitutional system or for the infringement of the territorial integrity and independence of the Republic of Serbia, or any other punishable act. Coincidentally, all the mentioned acts are considered crimes under the Penal Code. This legislation does not provide for journalists to be punished.

The implementation of this law was suspended after the changes in 2000, which was one of the campaign promises made by the Democratic Opposition of Serbia (DOS). Two major processes took place during this period. First, the winning side retaliated against the former Socialist and Radical majority, as well as businessmen and members of the state leadership of the period, filing charges and leaking confidential documents. The press gobbled up this material; newspapers that had been independent during the previous period accepted this as an opportunity to retaliate for the repression and demonizing that they had been subjected to during the previous period, and other formerly regime newspapers joined the victors' celebration in order to cover up the wrongdoings during the previous period.

During this period, there was a split in the DOS, with at least two dozen scandals that mostly developed in the media. In analyzing the scandals from the period of the DS-DSS conflict (Djindjic-Kostunica), sociologist Slobodan Antonic noticed a certain regular repetition: in the first phase, the "violated side" presents certain grave accusations against the opposing faction. In the second phase, the attacked faction launches strong counter-accusations, where these accusations are either related to the original scandal or a scandal created subsequently. Finally, in the third phase, both factions are exhausted by the media battle, the scandal subsides and a temporary ceasefire follows. However, the third phase usually ends with the rise of another scandal, which begins yet another round of mutual accusations.

An additional misfortune is that just like in the previous period, the crown public witnesses included persons that were of suspicious credibility, or sentenced persons, or people that would prove to exist in the gray zone between the secret services and crime, having previously portrayed themselves as patriots, and later as the frontline fighters on October 5. The press exploited the mystery of the secret services with a sweet shudder.

After the assassination of Serbian Prime Minister Djindjic on March 12, 2003, the government stated with a delay that his assassination had been preceded by the demonizing of him and the government in certain newspapers and they announced that a committee would be formed with the task of analyzing criminal influences on the press. Several of these newspapers (including "Identitet," which was later shut down) were prohibited during the state of emergency. Yet, the committee that was to investigate the press reports was not formed and the entire thing ended with an

objective analysis of press reports on Zoran Djindjic performed by Ebart Media Documentation, which reported that Djindjic did not have the support of the press, but that no conclusion could be made that the press was preparing for the assassination. Researchers have lately focused on the problem of so-called tabloidization of the press, its sensationalism, but everything boiled down to whether it was worth being angry with the lion for wanting to eat you.

A new law on information was passed during this state of emergency, on April 22, 2003, which had been prepared for a long time by journalist organizations. Prior to putting it to a vote, the government eliminated several stipulations that made it an unexpectedly repressive act. Hence, Article 16 of this law granted the government the right to prohibit the dissemination of any information that urged violence (which was a completely undefined designation), and journalists were required to reveal the sources of their information to the authorities, in cases involving acts that carried a prison sentence of five years or more. But, the media still fought to retain the right to protect their sources. New experiences (the Vasic case involving the eavesdropping on attorney Biljana Kajganic and her client, fugitive Dejan Milenkovic Buggy) illustrated that the state authorities still tended to thwart the protection of sources, with the investigation now moving towards potential “deep throats” in the state organization (which was again described by part of the public as a battle of factions, retaliation by the present authorities against the previous ones, etc.).

### **Compromise Instead of Decriminalization of Defamation**

According to Article 79 of the Law on Public Information, every person who is the subject of untrue, incomplete or other information whose publication is prohibited by the law, as well as a person whose correction has not been published, has a right to compensation for material and consequential damages. According to Article 80 of the same law, the journalist, editor-in-chief or founder of a media outlet who could have established the untruthfulness or incompleteness of information prior to its publication, is responsible for material and consequential damages caused by its publishing.

The same obligation exists for damage caused by the publication of truthful, but prohibited information (private life, accusations for a perpetrated crime, etc.). According to Article 81 of this law, the author of the information is the journalist. If it is proven that damage was caused by his/her fault, he/she is held responsible for the damage caused by the publication of the untruthful, incomplete or other information whose publication is prohibited.

Following the government's recommendation, the Serbian Parliament adopted amendments to the law on criminal procedure in 2004. However, there were no changes in the Penal Code that apply to defamation (fines, burden of proof, special protection for public figures). Actually, the threat of imprisonment for defamation was not abolished (so-called decriminalization). The Serbian government did announce during 2004 new amendments to the Penal Code aimed at revising the provisions involving defamation, but the new draft law also includes the threat of a prison sentence. The Serbian Minister of Justice hinted that he was prepared to make a compromise – there was a possibility that the threat of a prison sentence might be removed from the draft law, but this issue will be decided by the balance of political powers in the Serbian Parliament.

Journalists still urged for defamation and libel to be decriminalized – or at least for prison sentences to be abolished. Article 93 of the Penal Code of the Republic of Serbia states: "Whoever commits libel against another person shall be fined or sentenced up to three months in prison. If the libel was uttered in the press, then the sanction shall be even greater, the perpetrator shall be fined or sentenced up to six months in prison." The legislator does not define what libel is, or disparaging of someone's honor and reputation, and this remains to be assessed based on judiciary practice. The Penal Code implies libel to be the presenting or carrying of something untrue that may harm someone's honor or reputation, and if carried out by way of the press it is sanctioned by up to a year in prison.

The following analysis will primarily show that journalists in Serbia often fail to act in accordance with Article 3 of the Law on Public Information and verify the completeness and accuracy of information prior to publication. They very often relay the views of only one side in the conflict, creating the impression in public that it is the only and entire truth.

According to some assessments, there are more than 300 pending cases against journalists and media in Serbia. The report "Court cases against journalists in Serbia for defamation, mental anguish and damaging of reputation," compiled by the Independent Journalists Association of Serbia (IJAS), covers the period between February 2001 and May 2004, and contains the description of around 160 cases against journalists. The report shows that there are a large number of charges filed by incumbent and former state officials and public figures against the media and journalists. Many of them seek compensation of several million dinars for mental anguish and damage of reputation.

It appears that the public discourse has remained such that one might conclude that defamation and lawsuits are a significant characteristic of public communication in Serbian society. Politicians sue politicians, politicians sue journalists, businessmen sue journalists, businessmen sue state officials, defendants and suspects sue journalists. At the moment when this article was being written, the Serbian Parliament Administrative Committee was reviewing a request made by the First Municipal Court in Belgrade on whether to lift the immunity of 13 Serbian Renewal Movement (SPO) MPs whom Danica Draskovic, wife of SPO President Vuk Draskovic, had filed defamation charges against.

### **Disrespect of Journalist Ethics**

In 2004, Media Center from Belgrade organized an Attorney Pool aimed at providing adequate legal defense for journalists in court cases. The Pool represented journalists in more than sixty cases, including a large number of cases that ended with acquittals in criminal matters or with the case being ruled in favor of the defendant in civil court. However, the Pool pointed out that there were quite a few violations of the law in the press, and through a survey warned journalists that they should cut down the number of reasons for lawsuits. The Media Center Attorney Pool determined that most of the criminal charges against journalists and editors were in connection with acts against the honor and reputation, primarily for defamation and libel. Researchers from the MC Attorney Pool monitored seven daily newspapers in February and March 2004 ("*Politika*," "*Vecernje Novosti*," "*Kurir*," "*Blic*," "*Glas Javnosti*," "*Balkan*" and "*Danas*") and noted 172 items that contained grounds for potential lawsuits. This means that the main newspapers break the law three times a day. The analysis showed that defamation was actually dominant in the press, identified in 55.23% of the disputed items, while libel was identified in 6.4%.

The strong impression is that journalists and particularly editors have an ironic outlook of the “price of mental anguish” of those who are victims of defamation. We will illustrate this underestimated phenomenon with a quote from a court verdict: “... This damage to honor and reputation, and the psychological state that the plaintiff was in, led to him to cease to be school principal, to stop teaching, to the mathematics exercise book that he was the editor of no longer being sold, to him no longer being employed and to him living from giving private lessons, to people no longer regarding him as they did before the publication of the disputed articles – as a respected teacher and principal, but in another way – which has led to his mental pain and anguish...”

There are many cases in Serbian press that indicate a dangerous excess of zeal, when journalists assume the role of investigator, prosecutor and judge, even for minor causes. Persecution, tirade, ignoring the presumption of innocence, as well as lack of elementary concern for the victim’s dignity, is apparent in the press. It is not rare that drastic photographs of mutilated corpses of victims, or severed human heads so that every facial feature is recognizable, are printed on front pages, even during the period of “truth, catharsis and reconciliation.” Some of the promoters of the new values have even reached the rhetoric ferocity of the former fighters for national interests; the former use words such as “criminal,” while the latter had used words such as “traitor” and “mercenary.”

This is where one should note that part of this practice actually appeared as a consequence of the inertia of war propaganda that had engulfed the local media, but also because of a lack of consideration on the part of reputable foreign media that reported from the Balkan frontlines, as if it was some sort of a free hunting ground for necrophiles, publishing enlarged photographs of the horrors in a manner not used when reporting about accidents in their own country, and lightly classifying those involved. The local media had no trouble imitating this model, although they already “have their PhD” in this “discipline.” It is apparent from recent practice that in many sensitive cases the media do not understand that they must act restrained and carefully even when they have noble intentions. There was a report from a hospital recently, with an obvious violation of doctors’ ethics, saying that an infant had been sexually abused, most likely by the father or stepbrothers. The report caused great uproar with the public, which had until recently considered this subject taboo. The case was highlighted by appalled comments. The problem was that the report on this case contained many details, so it was possible to identify the place where this had

allegedly happened, as well as the names of the parents and infant, even before it was determined what had actually happened. However, then it emerged that it was likely that there was no sexual abuse in the specific case, but that the poor infant's rectum injury had occurred on account of someone's unskilled constipation intervention.

Court documents reveal that there is a certain frame for the prosecution policy, at least in cases of open and severe libel that have flooded the Serbian press since the 1990s. In a trial (Gz. br. 3774/00- P. br. 7607-98) before a first-level court in Belgrade, for example, it was determined that "Dama" magazine, no. 10 for 1998, stated in the article "Throw the trash out of the King's palace" that "there is no significant difference between Duchamp bringing a toilet bowl into the gallery and Verica Rakocevic entering City Hall"; that the person "in the Biljana Panovic (self-proclaimed Vilimon) talk show had sat with her legs spread in such a way that it is not easy to consider her a lady." The court assessed that this article did not represent a critical opinion as claimed by the defense, but rather a comment slighting and defaming the plaintiff's person, bearing in mind that the plaintiff is a public figure, working in the area of fashion, who has received awards locally and abroad for her work. The higher court confirmed the decision of the first-level court, holding the publisher NIP Profil, editor-in-chief Milomir Maric and the article author Nebojsa Pajkic liable to pay the plaintiff compensation of 100,000 dinars for publishing this information that causes injury to honor and reputation.

The problem is that defamation and libel have become a mandatory part of political communication. Expressions such as "crook", "thief", "criminal" or "traitor" are not unusual in the vocabularies of the most responsible political representatives, who not only go unpunished, but customarily have no problem in publicly launching such statements. In the greatest number of analyzed cases, it appears that the journalists often allow public persons and people with power to use the media as a "megaphone," stated the MC Pool. It was not uncommon for the journalist to allow the interviewee to defame or offend someone. The journalist often did not have any opinion on a slandering statement by the interviewee, apparently believing this to be normal and that it was enough that he was giving someone the opportunity to state their opinion. In the "Profession: Journalist" study carried out by Media Center in 2003, it is apparent that a portion of journalists believe that they have carried out their professional duty if they truthfully report someone's statement regardless of its

content. Mutual “smearing” by guests in many talk shows is something desirable; of course it is dull without slurring – the peplemeter does not react.

Since the struggle among political participants for access to public media had lasted a full decade, and the criteria of socially acceptable manners of communication had not been fostered, the conquest of freedom has resulted in increased pollution of public communication. Rough, defamatory language in political communication has a long history. The so-called Cicvaric press (named after publisher Krsto Cicvaric) in the early twentieth century was particularly good at this. For example, an old political poster read “Kill yourself, better kill yourself than vote for a thief and cutthroat,” followed by the name of an MP candidate.

### **Problems with Carrying Statements of Participants**

Certain cases from judicial practice illustrate how such a controversial practice has become habitual through the mechanism of protecting freedom of speech of political partakers. The First Municipal Court in Belgrade (Gž. 4940/99-P. br. 7732/98) dismissed as unfounded a lawsuit filed by the SPO and SPO President Vuk Draskovic, who were seeking 5,000,000 dinars, plus interest, in compensation for damage from each the editor-in-chief of “Demokratija,” Ljubinka Milincic, responsible editor Cvijetin Milojevic, the author of the information Dr. Vojislav Seselj, and the paper’s journalist Vladimir Sudar. The first-level court established that the daily newspaper “Demokratija” published an interview with the defendant Dr. Vojislav Seselj on December 4, 1997, signed by one of the other defendants, the journalist Vladimir Sudar. In this interview, it was stated in particular that in a certain television program Draskovic “was obviously on drugs; when he sniffs cocaine, he comes across as being a brave man and as soon as the effect passes he becomes a coward... people that visited him in prison have testified to his abstinence crises.” The second-level District Court determined that as it is generally known, and there is no need to prove it, drug addiction is a vice, and that the article with the given content is defamatory, so it confirmed the finding of the Municipal Court that the injured party has the right to sue the founder, publisher, editor-in-chief, responsible editor, and the author of the information for compensation. According to the Law on Information that was in effect at the time, the term author implied the person that collected and compiled the information, i.e. the journalist. According to this verdict, the journalist and editor were not responsible for damage caused by the untruthfulness of the information, since the third defendant (interviewee Seselj) took responsibility.

However, since the third defendant was not one of the responsible persons listed in Article 13 of this law (neither a journalist, nor editor or publisher), the higher court ruled that the first-level court was correct in dismissing the case against the third defendant, Seselj. It was dismissed because in that particular case the court was bound by the lawsuit filed by the plaintiff and had to rule within this lawsuit and was not authorized, nor could it get involved in discussing and ruling on other forms of damages that were not named in the plaintiff's lawsuit. In this case, compensation had not been sought according to general regulations on compensation, but exclusively in connection with Article 13 of the Law on Public Information...Therefore, a lawsuit could have been filed citing the Penal Code, but it had not been. As we will see, in many cases MP immunity *de facto* prevented timely charges based on the Penal Code.

Passage of time did not much change the controversies that originate from uncritically allowing interviewees to offend and defame in public media. In its analysis, the MC Attorney Pool gave as an example a quote from "Vecernje Novosti," dated February 29, 2004, from an interview with Tomislav Nikolic of the Serbian Radical Party (SRS), published under the headline "Dinkic Must go to Prison," where the journalist without any opinion allowed the interviewee to offend and defame all his political opponents, for example in a statement about the Vojvodina Provincial Assembly Speaker Nenad Canak, that "everything that he is doing now is just like a pig rolling around in the dirt and making mud."

On February 25, 2004, in an article titled "I Will Go all the Way", "Novosti" carried, without any distancing or comments, statements made by Aleksandar Vucic, also an official of the Serbian Radical Party, including a statement that Vuk Hamovic and Vojin Lazarevic are a criminal group "that has robbed Serbia of 150 million dollars." Hamovic and Lazarevic were questioned by a parliamentary committee of inquiry on electricity trade with the Belgrade Electrical Distribution company, but it did not reach a similar conclusion, and the state authorities did not launch any procedure. However, the Radicals announced that they would be filing criminal charges.

Article 82 of the Penal Code states only that a journalist, editor-in-chief or legal entity that is the founder of a media outlet cannot be held responsible for damage if the untruth or incomplete information was truthfully carried from a public parliamentary debate or public debate in a parliamentary body, or in a court procedure or document of a competent state authority. Aside from this context, statements by politicians should be treated like any other journalist source – hence, they cannot be published if they contain elements of criminal acts. Ultimately, the need will come to restrict public media access in cases where the law is violated, when personal dignity is threatened or when basic norms of political correctness are threatened.

### **Violation of Presumption of Innocence**

After a long delay, the law on availability of information was passed, which should facilitate journalists and citizens in obtaining information of public importance, but constitution of a board of trustees for access has still not been completed. In theory, this should lead to healthier public communication. The problem is that even when they provide information in public communication, the state authorities often violate the law by violating the principle of presumption of innocence.

Aleksandar Tijanic sued the government official in charge of public relations, Vladimir Popovic, and sought compensation because his name had been mentioned at briefings for editors-in-chief in the context of a group of journalists organized for media pressure against the assassinated Prime Minister Djindjic (he received compensation), and he sued “Politika” for the untruthful claim that he had been detained by police during Operation Saber, as reported in the article “Police tightens the noose around the killer.”

The MC Attorney Pool determined, for example, that the greatest number of disputed views and statements came from police statements in connection with criminal charges filed against certain individuals, where the persons against whom the police had only filed charges were already “declared guilty” for various crimes. The analysis (of the Media Center Attorney Pool) of the writing in the daily “Blic,” for example, pointed out that defamation was most often accompanied by violation of Article 95 of the Law on Public Information, in conjunction with Article 37 – which protects the presumption of innocence. In the daily “Politika,” cases of defamation by carrying police statements were dominant, according to the MC Attorney Pool

analysis, where persons that have only been charged by the police are already being referred to as guilty. For example, on February 10, 2004, in an article that was accompanied by a photograph of the suspect, and titled "Robber Apprehended", it is stated that "by making threats with a weapon, he seized daily takings from sales stands, kiosks and stores." On the same day and same page, this time with photographs of three men that were only suspects, the following title was brought: "Founded a Bogus Company – Fraudsters Arrested".

According to the Law on Information, the responsible editor of a media outlet, if a report is published naming someone as being the perpetrator of a punishable act, or declared guilty or responsible prior to a final decision of a court or other competent authority, shall be fined between 30,000 and 200,000 dinars (Article 37). The Media Center Attorney Pool stated that journalists in Serbia often carry parts of an indictment in such a manner that the impression is created that it is the verdict. In other words, they carry parts of the indicting document as if it has already been proven in court procedure and a final verdict has been passed. The daily "Danas" published an article titled "Guilty of the Murder of 192 Prisoners of War" on March 9, 2004, at the beginning of a trial for war crimes committed at the Ovcarica farm, carrying the contents of the indictment as though it was a sentence.

According to the MC Attorney Pool analysis, it often happens that a defamatory headline is placed above a correct article. For example, the headline of an otherwise correct article on the trial of the accused for the murder of Ivan Stambolic in "Kurir," on February 23, 2004, was "Murderers in Court," as though the allegations of the indictment did not need to be proven in court. Also, the subtitle for an otherwise correct article on the trial of the accused for the assassination of Prime Minister Djindjic, on February 7-8, 2004, read "Trial of Prime Minister Zoran Djindjic's killers will continue on Monday and last until February 20." In "Glas Javnosti," news items written based on police statements on criminal charges being filed against certain individuals also have booming headlines, such as "Pushed Heroin", "Stole Food", "Grew Marihuana", "Embezzled Two Million Dinars" (titles are quoted from issues published on February 29, and March 2, 2004), or "Wanton Professor" (headline on March 12, 2004).

The examples given here did not end up in court, but according to the Attorney Pool they could give ground for lawsuits. According to the report "Court cases against journalists in Serbia for defamation, mental anguish and damaging of reputation, February 2001 May 2004," authored by IJAS, as previously mentioned, similar cases often went to court. Former *Yumco* manager Nenad Stankovic sued journalists from five media outlets ("Novosti," "Politika," "Blic," "Glas Javnosti" and "Slobodna Rec") over a report from a police press conference in August 2000 where police officials claimed that Stankovic had been arrested for selling uniforms to the former Liberation Army of Presevo, Bujanovac and Medvedja (UCPBM). After Stankovic was acquitted, he sued the reporters of the mentioned media even though they also reported of his release. In the end, on January 10, 2003, Stankovic dropped the charges.

The Municipal Court in Novi Sad sentenced Ljiljana Jokic-Kaspar, a journalist for the "Gradjanski List," to six months in prison, two years probation, for defamation. Charges against Kaspar were filed by Miroslav Savic, a former surgeon for the Special Operations Unit, in connection with an article where the journalist claimed that in addition to his duties as a surgeon, Savic also worked as a sniper for the Unit. During a police campaign against organized crime following the assassination of Serbian Prime Minister Zoran Djindjic in 2003, the media reported that the former police surgeon and "sniper" worked at the Institute for Cardiovascular Illnesses in Sremska Kamenica. Savic denied that he had ever been a sniper and filed defamation charges against numerous editorial boards in Belgrade and Novi Sad, but dropped many of them. Savic did not drop the lawsuit against Kaspar even though her article was published much after the information on him was published.

Both the media and journalist associations take an aggressive stand when it comes to court decisions that are against them, although according to the law they are obliged not to comment on court rulings against them. This is partially concealed by fostering the "revolutionary pathos," where the judiciary system is described as the "Bastille of the old regime." Although there had undoubtedly been great influx of politics in judicial rulings on media cases in the past, it would be better if the media were to understand that the courts operate with their own inertia, which is not always negative. Correct conclusions can be drawn even from disputed cases, leading to a lower number of violations of this law and personal dignity. Criteria are established through court verdicts; interpretations of certain issues certainly affect future rulings, even public opinion.

The First Municipal Court in Belgrade heard an interesting lawsuit which illustrates an occurrence that is not very rare in Serbian journalism – holding a crime against someone. The first-level court (Gž. br. 5645/97- P. br. 3346/96) established that in an article published in “Nasa Borba” on June 21, 1995, with the headline “Autocracy, Abuse, Revenge,” and in an article on June 22, 1995, titled “Colak on Strike for Fourth Day,” it is stated, among other things, that the dismissal of D.R. (who was principal of a secondary school in Belgrade at the time) is being requested for abuse of social position, but also for a sin in his youth, for which he had spent time in jail. In the second article published in the same newspaper, it was said that a teacher at the school had stated that D.R. should not have been made school principal since he was responsible – for the rape of a minor. The first-level court ruled that by carrying such a statement, the respect and honor of the plaintiff D.R. had been damaged, as a man and a citizen, and that the indicted newspaper could not prove in court that the information was true, and should pay 60,000 dinars in compensation for consequential damages to D.R. The court of appeals accepted the conclusion of the first court that the authenticity of the information for which the plaintiff had been sentenced had not been proven, even though the plaintiff had made it incontestable in the lawsuit that he had been sentenced for raping a minor in his youth.

“How is that?” many journalists will ask, since there is a lack of understanding here that certain cases mentioning something that had actually happened can still represent untruthful information. Perhaps because of the existence of inadmissible information. Based on the ruling of the Belgrade District Court (K. br. 31/69), which came into effect on October 21, 1969, the abovementioned D.R. was declared guilty for the act of rape through assistance, according to Article 279, para. 1, in conjunction with Article 20 of the Penal Code, and the court sentenced him to 18 months in a high security prison. According to a report from the Pozarevac penitentiary, dated May 13, 1991, it is apparent that the sentence was carried out between April 30, 1970 and September 30, 1971, and that he was released on parole on May 24, 1971, and that at the penitentiary he had made the utmost effort in his work and was a model prisoner. Based on the decision of the Belgrade District Court (K. br. 31/69 Kv. br. 721/91), dated June 6, 1991, it was decided that this prison sentence would be erased from the court register, since the court had determined that the offender had completed his sentence on September 30, 1971. A memo from the Danilovgrad police department, dated March 26, 1991, makes it clear that the offender D.R. had been convicted in the case in question, and that he had never

been sentenced before or after it. In the end, the court declared that there is no doubt that it is true that the plaintiff had committed the act of rape by assistance. However, it is a fact that the plaintiff had been completely rehabilitated for this deed, and that not only had the legally defined period passed since the completion of his rehabilitation, but as much as 30 years had passed, and that from the aspect of the legal system it is as though he had never committed the crime, and was never sentenced. The court, therefore, assessed that the fact that D.R. was sentenced is true, but that it cannot be published, and that publishing such facts is treated as publishing untrue facts. The court also ruled that from the aspect of criminal law, the holding of a crime against someone when the perpetrator had been rehabilitated for the act – represents an offense.

Should this be so in all cases? Careful judgment is warranted before publication. In January 2004, in connection with the appointment of Interior Minister Jovic, a wrongdoing from his youth was mentioned (burglary of a newspaper stand), but there were no lawsuits over this probably because of the common understanding that in the case of public officials the right of the public to know has precedence over protection of the personal dignity of the individual.

### **The Main Plaintiffs are at the Same Time the Main Media Targets – Politicians**

It remains a rule that the avalanche of accusations against public officials starts when they leave office. This was a widespread occurrence after the changes in 2000, but this phenomenon could also be noted to a lesser degree in the electoral transfer of government in 2003. Hence, the custom of demonizing the opposition continued. The demonstrations on March 9, 1991 were caused by defamatory allegations victimizing SPO leader Vuk Draskovic (a report in the RTS Dnevnik news program falsely claimed that he had a villa on Lake Geneva and that he was helping the Croatian Democratic Community – HDZ).

In the IJAS report (“Court cases...”), it is apparent that politicians are the dominant plaintiffs, and that they include a significant number of officials from the former regime. Nedeljko Sipovac, a former high-ranking official of the Socialist Party of Serbia (SPS), sued for defamation the editor of “Gradjanski List” from Novi Sad, the editor of “Blic,” TV Politika, and the journalist Cosic for mentioning his son in a negative light, i.e. for reporting that charges had been filed against his son and the son of Dragan Tomic for tax evasion. Gorica Gajevic, former SPS Secretary General,

sued "Blic" for the article "Oilmen Give Gorica Gajevic an Apartment." Dragan Tomic sued an RTS journalist for publishing a report that he has a Swiss bank account, and for running a facsimile of a bank account in the name of a certain Dragan and Biljana Tomic together with his reply. (The journalist Dragan Vasiljevic was freed of the charges.) Mirko Marjanovic sued "Politika" reporters for defamation and libel over claims that a bulletproof car and bodyguards wait from him every day in front of the Progress office building in Zmaj Jovina Street, in Belgrade. Goran Vesic, an official of the Democratic Party, sued "Srpska Rec" over claims that he had been sentenced to two years for dodging military service.

What should be kept in mind here is the fact that most of these articles were written during the period after the regime was toppled and the new authorities started filing charges against the former authorities, or revealing compromising facts about them – which were not proven in court any time soon. The syndrome of the "triumph of the victor" was present here where "the defeated powers" (incidentally, a term that was created during the so-called "anti-bureaucratic revolution" in 1988, during the populist triumph of Slobodan Milosevic) did not have a realistic option of defending themselves in public.

Accusations not only of crimes where the statute of limitations has expired, but even crimes where verdicts had not been passed, are often used in political showdowns in Serbia, including journalist campaigns that announce and follow such conflicts. The most common causes are actually low-level political conflicts. Different political headquarters swamp journalists with spicy details compromising the other side and editorial boards are always in a dilemma whether to use them, citing the public's right to know. It is similar with lawsuits filed by businesspeople. Accusations against them reach the media at the time when the investigation is launched; they are accepted uncritically, and often amplified in a sensationalistic manner. One of the forms is filing criminal charges. The trumpeted criminal charges are accepted by the media without criticism, just as statements by the incumbent government were handled before, as well as after, the "Serbian revolution."

On the other hand, since many of the launched investigations were not verified in court, the media were in trouble once again, since the defendants started suing them. For example, former Electrical Distribution Company (EDB) manager Branislav Uskokovic sued "Politika," "Danas" and "Vreme." According to the report "Court cases against journalists in Serbia for defamation, mental anguish and damaging of reputation – February 2001, May 2004," Uskokovic is on the run, because he is being investigated for embezzlement at the EDB, and only his attorney has appeared at the hearings. In several cases, businesspeople announced lawsuits following discoveries by state authorities regarding their business operations (Miodrag Kostic, after the sugar trade case, who coincidentally had the support of the media).

A lawsuit by Dusan Spasojevic is interesting (who was later named by the police as the leader of the Zemun clan, and shot during Operation Saber by the police), filed against "Vreme" over the article titled "Asphalting the Sky," where among other things, a statement by Interior Minister Dusan Mihajlovic was quoted, according to which Spasojevic had kidnapped Miroslav Miskovic, a businessman from Belgrade and owner of the Delta company.

Businessman Vladimir Sekerevski won the first-instance case against "Vreme" journalists Milos Vasic and Jovan Dulovic, in connection with the article "Corruption Metastasis" (5,000,000 dinars sought, 150,000 ruled). Marko Milosevic, son of the former FRY President, sued "Blic" over an article published on November 4, 2000 – "Daddy's Boy's Failed Deals." The Kragujevac municipal mayor filed several lawsuits against *Svetlost* from Kragujevac. The Ministry of Transportation filed lawsuits over articles claiming that members of the Zemun clan were involved in the asphaltting of a highway, etc.

Court cases against journalists sometimes last very long and outlast the regime. The First Municipal Court in Belgrade sentenced "Ekspres" journalist Rade Negojevic to four months probation for defamation against businessman Bogoljub Karic over an article published in 1997 where it was written that Karic was "a candidate of the Albanian [derog.] terrorist leaders."

Journalist associations would have grounds for seeking systemic protection from false defamation charges, which are obviously used by a number of businesspeople, politicians and people suspected of committing crimes. Before that, the journalist profession and editorial teams must make an effort to cut down on the reasons for such lawsuits. This can be achieved by strictly adhering to the customs of the journalist profession, honoring the rules of reporting, distancing oneself from sources, honoring the right of the other side to state its view, avoiding crude labeling and jumping to conclusions, and reducing sensationalism.

The Serbian judicial practice is starting to form the rule that public persons must be prepared to endure greater criticism than common citizens, although this increasingly applies to when they step down. For example, a series of lawsuits filed by Vladimir Beba Popovic, former head of the Serbian Government Office of Communications, against "NIN," "Vecernje Novosti," "Balkan," "Vreme," B92 and the Humanitarian Law Center, garnered publicity. Some of them have been dropped in the meantime, while others are still pending. Vladimir Beba Popovic clashed with several media outlets while he was head of the government's Office of Communications and filed lawsuits against several journalists, during and after the state of emergency. One of the cases that Popovic launched was against weekly "Blic News" editor Zeljko Cvijanovic, based on an article published 11 months earlier, which ended with a 50,000 dinar fine (900 dollars). Cvijanovic resigned stating that he cannot be the editor of "Blic News" in line with the principles of free and open journalism.

There was an interesting outcome in Popovic's lawsuit against the weekly "NIN," where he demanded one million dinars for mental anguish. The cause was "NIN's" examination of Popovic's status as a government employee after Djindjic disassociated himself from him. Slobodan Reljic, the "NIN" editor-in-chief, and the journalist Marijana Milosavljevic were acquitted (Belgrade First Municipal Court, verdict XVIII P. nr. 4776/03, dated December 3, 2003), after the court ruled that: the defendant Marijana Milosavljevic, a NIN journalist, had tried to get in touch with the plaintiff Vladimir Popovic; that Office of Communications employee Katarina Spasic had informed her that Popovic was not giving interviews, and that at the same time the journalist Milosavljevic was warned by way of an intermediary that charges would be pressed if the article was published. The court ruled that the journalist had collected data by following press and agency reports, following instructions from the editorial board, and everything was tied to whether the plaintiff was still head of the

Serbian Government Office of Communications or whether and how he had stepped down.

The court did not accept Popovic's claim that the disputed articles in "NIN" were part of a campaign against him, and his perception of the articles as being offensive was judged by the court to be a personal and subjective view which cannot have priority over the interest and need for all information to be available and published in a timely fashion. Based on the stipulations of Article 18 of the Constitution of the Republic of Serbia, and Articles 1-4 of the Law on Public Information (Official Gazette of the Republic of Serbia, No. 43/03), the District Court ruled that the defendant, the author of the disputed articles, had acted with due care considering the circumstances at the time when the articles were published, aimed at informing the public which had reasonable interest to be informed about the work of state officials.

The Beba Popovic case had another chapter – after a series of lawsuits against the media, he made serious statements against some twenty public figures and institutions in an interview for B92 (January 2005), which was followed by announcements that an investigation would be launched into his claims - apparently against him, not the journalists.

### **Solutions – Advancement of Professionalism, Continuous Education and Accepting the Obligation of Self-Criticism**

The role of the media as the mediator of public communication in Serbia, which it has performed poorly in the past, is increasing. The role of the press in controlling public figures is also increasing, but since most media apply the "snatch and run" strategy, this role is greatly compromised by carelessness and sensationalism. Lack of a critical view of official sources, ignoring judicial practice and the classic principles of the journalist profession, and a tendency to disqualify before passing judgment in a sober and refrained fashion, speak of the poor level of preparation of the media in Serbia for the challenge of the moment and the challenges of investigative reporting. Careless perception of facts, as well as lack of elementary consideration for their interpretation, will only make the position of the Serbian media more difficult.

The fact that lawsuits against journalists in many cases are an attempt to conceal real faults and socially unacceptable conduct gives the journalist profession the right to defend its members in an organized fashion. A debate on measures for thwarting the pressing of false charges is definitely needed. This requires patient work to create an atmosphere where the public need to have insight into the work of public officials is placed above the need to protect the dignity of their persons, but this must be approached with much more measure. Since the culture of public communication is low, and the tendency to ignore the dignity of person of both the guilty party and the victim is high, it is primarily necessary to encourage subtlety rather than ferocity that is not supported by facts. The first step is perhaps for editorial boards to take measures aimed at reducing reasons for prosecution. Refraining from interpreting facts, distancing oneself from sources, strictly honoring the right to reply, which has greatly been ignored, honoring the right to correction and apology for mistakes, would greatly reduce tension. The media should be instructed not only to respect the right to reply and correction, but also to accept the responsibility of the media to self-criticism. The possibility of introducing a media ombudsman, a respected person that could autonomously and publicly criticize steps taken by the media within the media outlets themselves, could reduce in-court repercussions and would increase control of the functioning of the media, as well as their credibility. Training journalists, as well as editors as the “moral agents,” will turn out to be inevitable. It will become clear that it is necessary to hire lawyers in editorial boards and to consult with them before publishing potentially problematic articles. Otherwise, many media could be financially drained, or even worse, lose credibility, which is already much depleted at this moment.

---

*Milan Milosevic, longtime journalist with the Belgrade weekly “Vreme,” analyst, researcher of the Serbian media and political landscape.*

*The article was written in the framework of the project Media Stumbling in South East Europe. The project is supported by the South East European Network for the Professionalization of the Media (SEENPM) and implemented by Media Plan Institute Sarajevo with partner organizations – Media Center Belgrade, Albanian Media Institute Tirana, International Center for Journalist Education Opatija, Macedonian Media Institute Skopje and Montenegrin Media Institute Podgorica. All articles will be available at the end of April in a book in English and Bosnian/Serbian/Croatian.*