



ASSOCIATION
OF JOURNALISTS
OF MACEDONIA

ANALYSIS OF THE DECISIONS OF THE PRIMARY COURT SKOPJE II SKOPJE

concerning the application of
the Law on civil liability for insult
and defamation performed by media
adopted in 2017 and 2018

A decorative graphic at the bottom of the page consists of a row of stylized human figures. Each figure is represented by a solid black circle for a head and a solid black arch for a torso. The figures are arranged in a slightly staggered pattern.

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Analysis of the decisions
of the primary court Skopje II Skopje
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The law on civil liability for insult and defamation has been in force for more than six years. The Association of Journalists of Macedonia (AJM) in cooperation with lawyers and journalists has prepared three analyzes on the application of the Law on Civil Liability for insult and defamation in the cases established against journalists and media, published on the website of AJM.

In the analysis done in June 2015, authorized persons from the AJM for seven months followed 39 litigations at 106 hearings. In that period, eight judgments were rendered, out of which seven were rejected and the civil liability for defamation and insult was not established. In only one case, the court partly accepted the claim, found that there was liability for defamation or insult, but did not make a decision for compensation of damages.

The main conclusions summarized by this analysis are:

- Judges who act on these cases properly apply the law and respect the rights of both parties in the procedure, but there are formal omissions at certain stages of the procedure that did not influence the adoption of legitimate and correct decisions.
- The length of the duration of the proceedings and the intervals between the scheduled hearings confirm the ultimate courts' inaction.

THE FEATURES OF DECISIONS

- From the moment of filing the complaint until the adoption of the first instance decision, the proceedings lasted for approximately two and half years;
- In all established procedures, both the plaintiff and the defendant were represented by lawyers;
- In all established procedures for lawsuits of plaintiffs there are written responses to lawsuits by attorneys-in-law of the defendants;
- **At none of the established procedures completed by first instance judgments was not awarded the requested amount for compensation** i.e. in every case where when damages are determined in a monetary amount, was awarded much smaller amount than requested in the lawsuit;
- In three judgments, the requested amount of non-pecuniary damage in money has not been ordered, but **the defendant was obliged to publish the judgment at its own expense** under conditions determined by the court;
- In some proceedings, the attorney representing the parties who had success in the procedure **did not receive the requested reward for the lawyer services**, but a significantly lower amount was determined;
- **Slanderers or offenders are mostly legal persons** whose media and portals through which the insult or slander was committed. Out of the individuals found to be responsible, the majority are editors or media owners.





JUDGMENT P5-34 / 16

- Plaintiff: A.A. from the village Z.
- Defendants: DTIK ATV - MK DOOEL S. as a legal entity and I.S. from S. as natural person
- Grounds: Compensation for defamation
- Value: Euro 25.000

The plaintiff A.A. is president of the political party Democratic Union for Integration - DUI. By the rendered judgment is found that the first defendant - legal entity DTIK ATV – M.K DOOEL Skopje on the website of the daily newspaper Lajm have disclosed false facts that are harmful to the plaintiff honor and reputation in the form of a threat that will exclude him from the party whose president is the plaintiff, does not have a passive identification card, due to which he cannot be held responsible for the published false facts by the second defendant.

Therefore, the primary court after the conducted procedure rendered the judgment:

The court dismissed as unfounded the lawsuit for payment of non-pecuniary damage to the plaintiff for breach of honor and reputation amounting to 15.000 euro. The court ordered the plaintiff A.A. to compensate to the first

defendant for expenses for the procedure for MKD 76.044, 00, whereas the request for the difference to the announced expenses of MKD 97.562, 00 was dismissed by the court as ungrounded.

The court upheld the lawsuit against the natural person and established a civil liability as on the website of the daily newspaper Lajm, as editor-in-chief, he allowed the publication of false facts that damaged the honor and reputation of the plaintiff. The lawsuit claiming that the defendant had to pay to the plaintiff a non-pecuniary damage for breach of honor and reputation in the amount of Euro 10 000 was dismissed and instead charged him at his expense to announce the judgment in the prime-time evening news on TV Sitel Skopje, TV Kanal 5 Skopje, TV Telma Skopje and the most read internet portal on the territory of the Republic of Macedonia at the moment of execution of the judgment, and to pay to the plaintiff for the expenses for the procedure in the amount of MKD 53.073,00.

JUDGMENT P5-73 / 16

- Plaintiff: D.PL from S.
- Defendants: S.I. from K. as a natural person and the Company for production, trade and marketing P.M. DOOEL import-export S. as a legal entity
- Grounds: Compensation for defamation on five occasions
- Value: MKD 615.000,00

By the rendered judgment is found that the first defendant S.I. from K as the editor-in-chief of the second-defendant Company for production, trade and marketing P.M. DOOEL import-export S is not liable for defamation committed against the plaintiff by publishing false facts on the website Maktel.mk on several occasions, with the intention to violate the honor and reputation of the plaintiff, because the texts, contents and comments are published on a private website that is not a medium or a means of information, and the defendant cannot be responsible for the reported facts by the second-defendant as there is no passive identity card.

Therefore, the primary court after the conducted procedure rendered judgment rejecting the lawsuit to establish that the natural person SI. is responsible for defamation committed against the plaintiff by publishing untrue facts on the web site Maktel.mk on several occasions with the intention to violate the honor and reputation of the plaintiff, as well as the lawsuit to determine that

the legal Company for production, trade and marketing P.M. DOOEL import-export S as a publisher of the portal maktel.mk, assumes responsibility as a media publisher for insult and defamation committed against the plaintiff.

The lawsuit against the natural person for payment of financial compensation for violation of the personal rights to the plaintiff in the amount of Euro 2.500 paid in MKD, as well as the request for the difference from awarded amount of the financial compensation for the established liability for defamation up to the announced amount of Euro 2.500 paid in MKD and the request for awarded amount of the financial compensation for defamation liability in the amount of MKD 20.000,00 to be expressed in euro and paid in MKD, was rejected by the court as unfounded.

The court dismissed the claim against the legal entity for payment to the plaintiff a total amount of Euro 5.000 paid in MKD with a legal penalty interest calculated from the judgment until the payment; the court dismissed it as unfounded.

Instead, the court ordered the plaintiff to compensate the defendant for the expenses for the procedure in the total amount of MKD 65.638, 00.



JUDGMENT P5-1/17

- Plaintiff: E.K. from S.
- Defendants: D.N. from S. as a natural person and Company for publishing, graphic and trade N.P.K. DOOEL S. as a legal entity
- Grounds: Compensation for defamation
- Value: Euro 25.000

The primary court rendered judgment whereby the claim was partially adopted, after the conducted procedure.

By the rendered judgment was found a civil liability for defamation and insult of the first defendant D.N. and the second defendant Company for publishing, graphic and trade N.P.K. DOOEL S. against the plaintiff because the first defendant as editor-in-chief and the second in the capacity of publisher of the portal published the text titled “Suspicious business interests ruin Kosovo good-neighbor relations”, in which untrue facts were published that were harmful to the honor and reputation of the plaintiff.

The lawsuit to charge the first defendant D.N. to pay compensation in the amount of Euro 10 000 in MKD, to the plaintiff for compensation of non-pecuniary damage for violation of personal rights of honor and reputation, while the second defendant to pay Euro 15.000 in MKD on the same basis,

and all the awarded amounts with legal penalty interest calculated from the day the complaint was filed until the payment were rejected by the court as unfounded.

The court obliged the defendants jointly to compensate the plaintiff for the expenses for the procedure in the amount of MKD 66.695, 00 while the request for expenses for the difference from the announced amount of MKD 355.340,00 to the awarded amount of MKD 66.695,00 i.e. the amount of MKD 288.645,00 rejected by the court as unfounded.

The grounds for refusing a fair financial compensation for the defamation and insulting are the circumstances of the case, which do not justify the award of a fair financial compensation, in accordance with the instructions of the Court of Appeal regarding the application of the Law on Amendments to the Media Law, which is applied since 24 of January 2014.

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JUDGMENT P5-69/15

- Plaintiff: Foundation for Internet and Society M. S.
- Defendant: S.M. from G.
- Grounds: Compensation for insult and defamation
- Value: MKD 120 000,00

The primary court after the conducted procedure of the plaintiff for determining the responsibility for the insult and defamation of the defendant S.M. who through the Internet portal Almakos published the text entitled "Paradox: Only in M. with international finances defend the regime without money" and with the intention to belittle the plaintiff expressed humiliating opinion that violated his right to reputation, rendered a judgment whereby the plaintiff's claim - Foundation for Internet and Society registered in the Republic of Macedonia with which he established responsibility for the defendant natural person S.M. from G. for committing insult, as well as responsibility for the defamation, whereby partially accepted the lawsuit and obligated the defendant at his own expense to announce the judgment at space not less than 1/8 of the page, from the first to the fifth page of the printed newspaper.

At the same time, he refused as unfounded the claim of the plaintiff for payment of compensation for non-pecuniary damage for damaged reputation, for committed offense in the amount of MKD 60.000, 00 with a legal penalty interest for the committed insult from the day the complaint was filed until the payment was made and non-pecuniary damage by the defamation in the amount of MKD 60.000, 00. It obligated the defendant to compensate the plaintiff for expenses for the procedure for MKD 27.836, 00 and he dismissed as ungrounded the request for the difference of MKD 26.562, 00 from the awarded to the requested expenses.

The basis for the accepted complaint for insult and defamation is that the court has established with evidence that the defendant has spread untruthful and disdainful opinion in order to harm the plaintiff's reputation by publishing them in the text at the Internet portal Almakos.



DECISION P5-14 / 17 and PR-15/17

A complaint with a proposal for issuing an interim measure

- Plaintiff: Joint Stock Company for Electricity Production T.N. state owned N.
- Defendant: M.S. from S. with an unknown residence
- Grounds: Compensation for damages for insult
- Value: MKD 300.000,00

After the conducted procedure for determining civil liability for insult with request for payment for violation of personal rights in the amount of MKD 300.000,00 the court determined by Decision that the filed lawsuit from the plaintiff legal entity against the defendant, with unknown residence and with appointed temporary representative - a lawyer, is deemed to be withdrawn.

The plaintiff is obliged to compensate the expenses for the procedure for MKD 7.800, 00 to the temporary representative of the defendant.

The decision stating that the lawsuit was considered withdrawn was made due to the duly summoned plaintiff and his attorney did not appear at the properly scheduled hearing and did not justify their absence.



DECISION P5-8/17

- Plaintiff: D.D. from K.
- Defendant: Society for Research, Analysis, and Marketing C. DOOEL S.
- Grounds: Compensation for defamation
- Value: MKD 60.000,00

After the conducted procedure for determining civil liability for defamation with request for compensation for the non-pecuniary damage of MKD 60.000, 00, the court determined by Decision that the submitted complaint from the plaintiff natural person through an attorney against the defendant legal entity Company for research, analysis and marketing. DOOEL S., is considered withdrawn because the plaintiff did not pay the fee for the lawsuit within the legal period of 15 days after filing the complaint.

The plaintiff is obligated to pay court fee for the reached decision for MKD 8.000, 00.



JUDGMENT P5-18 / 16

- Plaintiffs: A.K., G.N. and T.M. from S.
- Defendant: J.K. from S., through an attorney
- Grounds: Compensation for defamation
- Value: MKD 440.000,00

After the conducted procedure for submitting a lawsuit by the plaintiffs, natural persons A.K., G.N. and T.M. from S. against a defendant J.K. from S. through an attorney with a request for establishing liability for defamation committed by the defendant as editor-in-chief of the printed media - weekly newspaper "Fokus" and request to determine compensation for damages for breach of honor and reputation in the amount of MKD 120.000,00 for the first and second plaintiffs and MKD 200.000.00 for the plaintiff T.M., the court dismissed the claim as unsubstantiated.

The plaintiffs are obliged jointly to compensate the defendant for expenses for the procedure for MKD 78.756, 00.

The lawsuit was rejected as unfounded because the court, on the basis of assessment of the presented evidence, found that the defendant did not have a passive identification card, i.e. the editor-in-chief is not held responsible according to the Law on the Media, because at that moment he had another position in the particular medium, and was not editor-in-chief as indicated in the lawsuit.

The plaintiff's lawsuit to determine the responsibility for the defamation and the false facts presented in the journalist's article and the plaintiff Association of Citizens CC for defendant L.Z. to pay a financial compensation for violation of his personal rights in the amount of MKD 45.510, 00, the defendant D.P.P. to pay MKD 227.550, 00 and the defendant legal entity to pay MKD 341.940, 00, was refused as unfounded.

The court found each party to bear its expenses for the proceedings.

The refuted claim for defamation is based on the fact that the court found no defamation pursuant to Art. 8 and 10 of LCLID and Art. 10 of the ECHR.

The court accepted the claim for insult based on the evidence in the procedure and the liability in accordance with Art. 6 of LCLID due to the fact that the defendant L.Z. while giving the statement apologized to the plaintiff. According to the court, this was the reason to establish responsibility, and not to accept the request for financial compensation for violation of personal rights.

The rejected claim for defamation is based on the fact that the defendant L.Z. as a journalist, he proved that the facts he announced are true.



JUDGMENT P5-61/16

- Plaintiff: K.K. from G.
- Defendant: I.P. from S.
- Grounds: Compensation for defamation
- Value: MKD 300 000,00

After the conducted procedure for determining the defendant liability for defamation and the claim of the plaintiff for compensation of non-pecuniary damage for damaged reputation and request for amount of MKD 150.000,00, is partially adopted. The defendant's liability for defamation was detected in a television show Analiza 24 at the television channel 24 News. The lawsuit for determining the liability for insult and the plaintiff claim for violation of his honor and reputation for MKD 150.000, 00 were rejected as unfounded.

As unfounded is refused the plaintiff's claim that the defendant was liable for insult in the television show Analysis 24 at the television channel 24 News and for the pronounced insult to pay non-pecuniary damage for violation of the honor and reputation the financial compensation in the amount of MKD 150.000, 00 and at its own expense to announce the judgment in a daily newspaper on space not less than 1/8 of the page from the first to the fifth page of the printed newspaper.

The request of the plaintiff to oblige the defendant to reimburse the expenses in the procedure in the total amount of MKD 217.000, 00 was rejected as unfounded because the court determined that each party should bear its expenses for the procedure.

The established liability for defamation is based on the fact that court found that the defendant pronounced untrue facts about the plaintiff and did not prove their truthfulness in the procedure nor did he prove that he had a founded reason to violate in the truthfulness of the facts stated, thus fulfilling all the cumulative provisions stipulated in Art. 8 para. 1 of LCLID.

The lawsuit for determining the liability for insult was rejected as the requirements of Art. 6 and 7 of LCLID were not fulfilled and due to this the court did not found the defendant intention to belittle the plaintiff and for not expressing a humiliating opinion towards him in order to violate his honor and reputation.



JUDGMENT P5-17/16

- Plaintiff: J. M. from S.
- Defendants: M.N. with unknown residence as natural person and Production Company V.I - M DOOEL S. as a legal entity
- Grounds: Compensation for defamation
- Value: MKD 307.500,00

After the conducted procedure for establishing the defendant liability for defamation, the plaintiff's claim was partly adopted.

The responsibility of the first defendant M.N. was established for committed insult as the author of the text published on 02 of December 2015 on the web page and is obligated on this basis to pay the plaintiff the compensation for non-pecuniary damage due to violation of the personal rights of honor and reputation in the amount of MKD 30.000,00 with legal penalty interest calculated from the day of the judgment until the payment, as well as to reimburse the expenses in the procedure in the amount of MKD 93.682,00.

The claim of the plaintiff for compensation of damages to the first defendant, from the announced amount of MKD 153.750, 00 to the awarded amount of MKD 30.000, 00 or the amount of MKD 123.750, 00 with legal penalty interest, as well as the request for expenses for the difference from the announced amount from MKD 125.666, 00 to the amount of MKD 93.682,00 or MKD 31.984, 00, was rejected as unfounded.



It was rejected as unfounded the plaintiff's lawsuit to establish civil liability for insulting for the first defendant because in the capacity of editor-in-chief of electronic publication and the second defendant legal entity, the Production Company VI. - M DOOEL S. as publisher of the electronic publication has published and enabled access to offensive information about the plaintiff with the published text on 2 of December 2015, at www.dudinka.mk.

As ungrounded was rejected the plaintiff's claim for the second defendant, the legal entity Production Company VI-M DOOEL S. to pay for compensation for non-pecuniary damage for violation of the personal rights of honor and reputation in the amount of MKD 153.750, 00 with legal penalty interest, as well as the request to oblige second defendant to reimburse the plaintiff for the expenses in procedure.

The court ordered the plaintiff J.M. to pay the amount of MKD 42.339, 00 for the expenses for representation of the first defendant in the procedure.



JUDGMENT P5-15/16

- Plaintiff: T.T. from P, through an attorney
- Defendant: T.S. from P, through an attorney
- Grounds: Compensation for defamation
- Value: MKD 600 000,00

After the conducted procedure for the files lawsuit, the natural person T.T. against the defendant natural person T.S. through an attorney with a request for establishing liability for defamation committed by the defendant as the author of the article published on 19 of December 2015 on the Facebook page and the request to obliged the defendant for breach of plaintiff personal rights on honor and reputation for the alleged defamation expressed with the words “killer, criminal, destroyer, interference in all businesses, blackmailer, involved in black businesses even a narcotic network, father a crazy and untamed son and public usurper of everything in the city” to pay financial compensation for non-pecuniary damage in the amount of MKD 600.000,00, as well as to oblige the defendant to publicly apologize and to withdraw the given statement at the same place in the same amount and to be banned to repeat the given statement and to compensate the plaintiff for the expenses in the procedure, the court rejected the claim as unfounded.



The lawsuit was rejected as unfounded because the court, based on assessment of the presented evidence, found that the defendant did not have passive identification because the defendant in his defense claims that she is not the one who is the author of the communication for which the plaintiff claims to have elements of defamation. The plaintiff also did not submit request to the appropriate authority for determining the correct IP address of the defendant.

The plaintiff is charge for compensating the defendant expenses in the procedure for MKD 34.362, 00.



CONCLUSION

- In the previous, three analyzes prepared in cooperation with AJM, the longest period of the duration of the procedure is a key problem.

According to Article 22 of the Law on Civil Liability for Insulting and Defamation, “*the procedure for a complaint for determining liability for insult or defamation and compensation for damages is urgent.*” The court is obliged to implement the procedure without delay and within a reasonable time.

Considering that since the filing the complaint until the adoption of the first instance decision, the procedures lasted for approximately two and a half years, again in this analysis, the problem of the ineffectiveness of the courts in the proceedings was detected.

After the expiration of such periods, in the proceedings in which the claim is upheld, the judgment often does not produce the effects that the law is intended to achieve - the protection of reputation and honor, and the mitigation of the consequences of the insult or defamation.

- From the analyzed decisions, it can be seen that in cases in which one of the parties is journalist working in an online medium, the court often refuses the claim due to the lack of passive identification of the defendant. With this, the court virtually does not recognize online media portals. In two of these judgments, the court refers to the provisions of Article 6 paragraph 3 and Article 8 paragraph 3 of the LCLID, in which it is determined what constitutes a media:

“newspapers, magazines and other press, radio and television programs, electronic publications, teletext and other forms of editorial shaped program content that are published, i.e. broadcast daily or periodically in written form, sound or image, in a way accessible to the general public.”

Thus, in the judgment of the Primary Court Skopje II P5 73/16 (previously considered and quoted), the court rejects the plaintiff’s claim as unfounded because it considers that the undisputed slander and insults through a private internet portal have not been presented through a media.

At the same time, in 2018 there are examples of completed court procedures before the courts in other cities in Macedonia, for example in Ohrid and Bitola, in which the court has no dilemma that the online media are media and act upon the lawsuits.

This points to the fact that courts have different practices regarding the treatment of online media. Some of the courts recognize portals as media, and some do not.

Article 3 of the Law on Civil Liability for insult and defamation stipulates that if there is legal gap or conflict of the provisions of the Law with the European Convention for the Protection of Human Rights, to apply the provisions of the Convention and the views of the European Court of Human Rights contained in its judgments with priority over domestic law.

This means that the First Instance Court in Skopje has not yet reached the same level of practice with other courts in Macedonia, but also that it does not follow the practice of the European Court of Human Rights in Strasbourg, where online media have equal treatment with other media.

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