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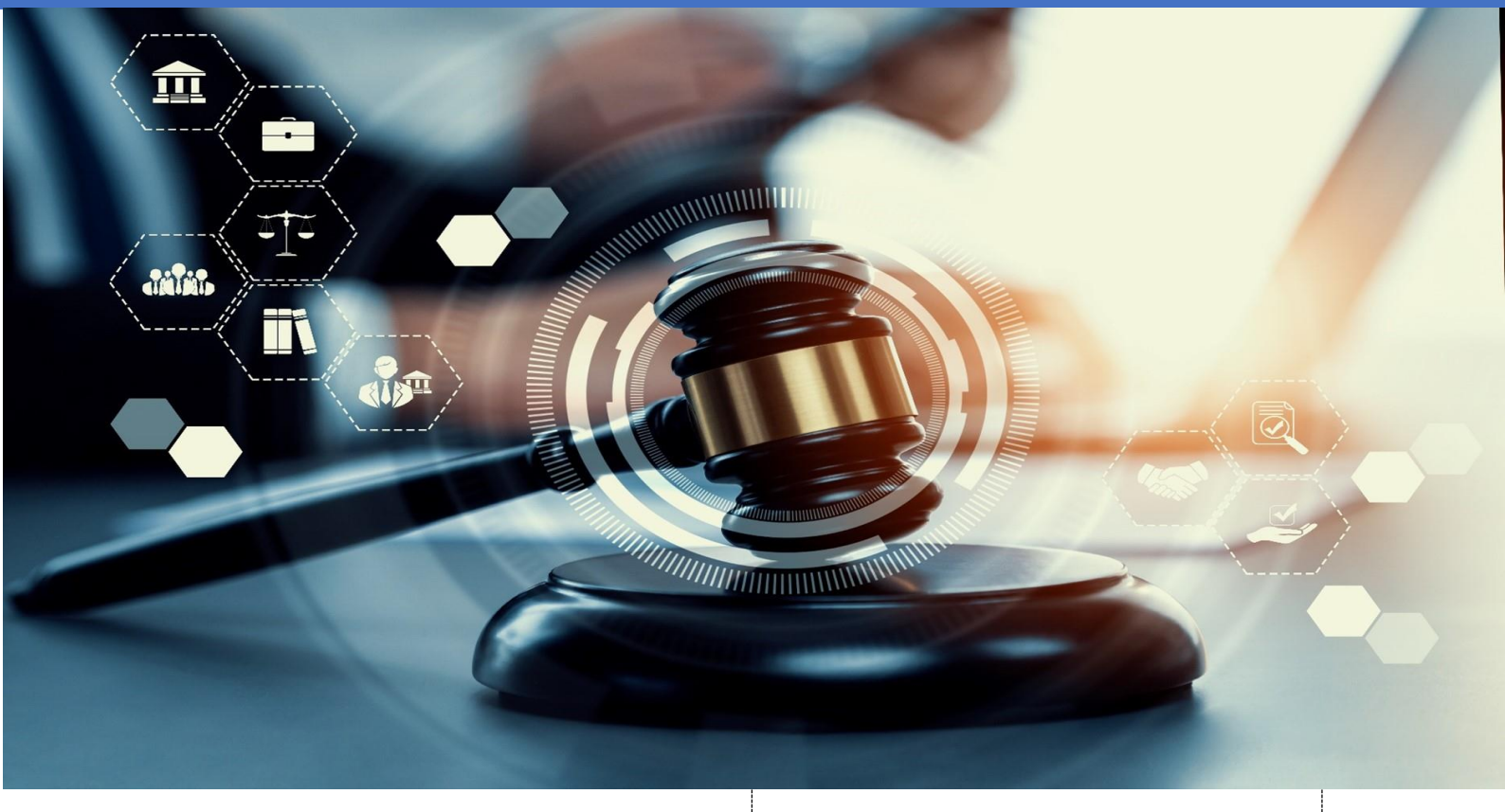
(1 January 2016- 1 June 2022)



Analysis | **2023**

Co-funded by the European Union

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This publication was developed in the framework of the Horizontal Facility II programme and it was translated and published in the framework of the Horizontal Facility III programme, with the financial support of the European Union and the Council of Europe.

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(1 January 2016 – 1 June 2022)

prepared by

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Co-funded by the European Union

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List of Abbreviations

CC	Criminal Code
CPA	Criminal Proceedings Act
CvPA	Civil Proceedings Act
DUI/BDI	Democratic Union for Integration
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GDU	Citizens' Democratic Union
ILO	International Labour Organisation
KFM	Basketball Federation of Macedonia
LCLID	Law on Civil Liability for Insult and Defamation
NGOs	non-governmental organizations
MAN	Macedonian Association of Journalists
SDSM	Social Democratic Union of Macedonia
SSM	Association of Trade Unions of Macedonia
SSNM	*Trade Union* of *Macedonian Journalists* and Media *Workers*
UN	United Nations
US	United States of America
VMRO-DPMNE	Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity
AJM	Association of Journalists of MacedoniaCDEF

Executive Summary

This study has been commissioned by the Council of Europe, within the framework of the *European Union* and *Council of Europe* Horizontal Facility joint action "Freedom of Expression and Freedom of the Media in North Macedonia (JUFREX 2)". It was conducted in the period between 15 July and 31 October 2022 to assess the developments in the domestic judicial case-law and the possible impact of its previous capacity building activities in this respect.

It provides a thorough overview of the most relevant cases handled by the domestic courts in the period under review. Furthermore, it identifies deviations from the well-established European standards and suggests how they could be dealt with in future to achieve full harmonisation of domestic jurisprudence.

At the outset, it shows that both the legislative and judicial bodies demonstrated their commitment to ensuring the effective enjoyment of freedom of expression. The decriminalisation of defamation was one of the key steps forward in this respect. As a result, the domestic case-law is, to a great extent, aligned with the European standards, also as regards the amount of compensation to be awarded to plaintiffs who are successful in their defamation claims.

However, this analysis reveals that there are areas which still pose challenges.

For instance, hate speech does not seem to be properly tackled either by the legislature or by the courts and law enforcement agencies.

Moreover, freedom of speech in the digital space opens many new issues which need to be addressed. Thus, despite the progress being made so far, there are still certain instances of inconsistent case-law regarding the civil liability for defamation of online portals.

Securing the safety of journalists by putting in place adequate legislative and judicial mechanisms is also considered to be a matter of particular concern.

Therefore, this analysis leads to a general conclusion that the continuation of efforts is needed to improve coherence and predictability of the domestic case-law on freedom of expression, as well as to increase public confidence in the judiciary.

Following the findings contained in this analysis, the recommendations provided by this document concern the further action that could be taken to deliver effective training and design specific raising awareness activities for domestic judges and prosecutors about their role in the protection of various aspects of the freedom of expression as a cornerstone of democracy.

They also address the need to establish focal points or introduce other changes in the institutional structures of the domestic judicial institutions which will enable them better address the concerns relating to freedom of expression and the safety of journalists.
The recommendations concern each of the areas analysed in this study.

As regards hate speech, it is recommended to design specialised trainings on hate speech, to develop a Handbook on Hate Speech, as well as to appoint focal points on hate speech among judges and prosecutors within the respective public prosecution offices and courts.

In respect of defamation, it is recommended to secure consistency in the application of the European standards by enabling participation to future trainings to an increased number of civil judges from all first-instance and appellate courts throughout the country and running round tables among civil judges from different courts and levels of jurisdiction to share their practical experience and discuss the main challenges they are faced with when adjudicating defamation cases.

It is further concluded that the issue of compensation for defamation, as well as the topic of interim injunctions should be properly addressed during the future trainings on Article 10. In addition, it is advisable to promote the establishment of certain clear criteria for damages to be awarded in certain types of cases.

Concerning the Internet and freedom of expression, it is recommended to conduct specialised trainings on the freedom of expression on the Internet, which will also address all aspects related to the civil liability of online media for defamation, as well as to develop a Handbook on Internet and Freedom of Expression, that should help domestic judges improve their drafting skills and align the reasoning of their judgments in defamation cases to European standards. Both the trainings and the Handbook should integrate a specific chapter on hate speech online.

As to the protection and safety of journalists, it is recommended to provide specialised trainings, in particular for criminal judges and public prosecutors to raise their awareness about their role in securing the safety of journalists by carrying out an effective investigation into attacks on and ill-treatment of journalists, but also to organise round tables which will include mixed groups of judges, public prosecutors and journalists, in order to secure an inter-sectoral approach in the discussion of the key challenges in the implementation of the European standards on freedom of expression and safety of journalists and other media actors. Additionally, one of the recommendations concerns the appointment of focal points on freedom of expression and safety of journalists within all public prosecutor's offices, the Skopje Basic Criminal Court and the criminal law departments of other first-instance/appellate courts.

With respect to the freedom of expression and good administration of justice and freedom of expression in the workplace, it should be ensured that the training activities on Article 10 sufficiently address these issues, as well. Moreover, it is advisable to organise round tables which will include mixed groups of participants (judges, public prosecutors and lawyers), during which a special focus will be put on the conduct of all categories of legal professionals within the judicial proceedings, as well as on their communication with media.

Overall, the document at hand will provide a solid ground for reinforcing the freedom of expression and media freedoms by facilitating the operation of the Macedonian judiciary to secure more effective practical application of European standards at the domestic level. It could also be seen as a roadmap intended both for the national authorities and their international partners and in particular the Council of Europe on what should be done in the future to bolster the implementation of the regional safeguards on freedom of expression in the country.

Introduction

Objective of the analysis

Since the Macedonian authorities have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "the European Convention on Human Rights", "the Convention", "the ECHR") on 10 April 1997, they have become legally bound to respect the rights set forth in the Convention and to ensure their protection. Consequently, Macedonian judges and prosecutors have been faced with many challenges in the application of European human rights standards.

For many years, the Council of Europe has provided support and advice to domestic authorities, through technical cooperation programmes, to strengthen their capacities to apply the standards stemming from the Convention, including on freedom of expression.

This analysis looks at the impact of the ongoing capacity-building activities carried out by the Council of Europe in terms of making progress in ensuring that domestic case-law is fully compliant with the ECHR standards.

It aims at providing an overview of the current state of judicial adherence to the principles flowing from Article 10 of the European Convention on Human Rights in the field of freedom of expression and safety of journalists and other media professionals. It *takes stock of the current situation* and seeks to provide guidelines on how to ensure further advancements in aligning domestic judicial practice to the standards enshrined in the Convention and developed in the jurisprudence of the European Court of Human Rights (hereinafter: "the Court", "the Strasbourg Court", "the ECtHR").

The importance of conducting this analysis lies in the principle of subsidiarity, which is viewed as a cornerstone of the Convention system. It highlights the primary responsibility of national authorities in *States Parties* to the Convention to ensure that the Convention rights are fully respected.[1]

[1] Following the entry into force of Protocol no. 15 on 1 August 2021 the principle of subsidiarity was formally introduced in the text of the Convention. See Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms (https://www.echr.coe.int/Documents/Protocol_15_ENG.pdf)

The obligation of the State to comply with the international standards on freedom of expression stems from Article 8[2] and Article 16[3] of the Macedonian Constitution.[4] More specifically, the obligation to align the domestic jurisprudence in civil defamation cases to the ECHR standards is enshrined in Articles 2 and 3 of the Law on Civil Liability for Insult and Defamation (hereinafter: "the LCLID").[5]

Pursuant to Article 2 of the LCLID, the freedom of expression and information is guaranteed as one of the main foundations of a democratic society. The restrictions to the freedom of expression and information are subject to strict requirements laid down in the national legislation in line with the European Convention on Human Rights and the case-law of the European Court of Human Rights.

Pursuant to Article 3, if a (domestic) court, by the application of the provisions of this Law, cannot decide upon a particular matter related to the establishment of liability for insult or defamation, or it deems that there is a legal loophole or conflict between the provisions of this Law and the Convention, based on the principle of its precedence over the national law, it shall apply the provisions of the Convention and the standpoints of the European Court of Human Rights contained in its judgments.

These provisions have established a high level of protection of freedom of expression, by affording priority to the application of the ECHR standards, as they directly refer to the Convention, as well as to the case-law of the Strasbourg Court as key legal sources, which also constitute an integral part of the applicable domestic law. This is also in line with Article 118 of the Macedonian Constitution, which stipulates that "[t]he international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law."

The Court has held in numerous cases that a lack of relevant and sufficient reasoning on the part of the domestic courts or a failure to consider the applicable standards in assessing the interference in question will entail a violation of Article 10 (see, *Uj v. Hungary*, §§ 25-26; *Sapan*

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[2] Under Article 8 "Fundamental freedoms and rights of the individual and the citizen, recognized by the international law and established in the Constitution, are one of the fundamental values which constitutional order in the Republic of Macedonia rests on."

[3] Pursuant to Article 16 "Freedom of personal belief, conscience, thought and public expression of thought shall be guaranteed.
Freedom of speech, public address, public information and establishment of institutions for public information shall be guaranteed.
Free access to information and freedom of receiving and imparting information shall be guaranteed.
Right of reply via the mass media shall be guaranteed.
Right of correction in the mass media shall be guaranteed.
Right to protect a source of information in the mass media shall be guaranteed.
Censorship shall be prohibited."

[4] Constitution of the Republic of Macedonia ("*Official Gazette* of the *Republic of Macedonia" no.* 52/1991), 22 November 1991

[5] Law on Civil Liability for Insult and Defamation ("Official Gazette of the Republic of Macedonia", no. 143/2012, 14 November 2012, entered into force on 22 November 2012)

v. Turkey, §§ 35-41; *Gözel and Özer v. Turkey*, § 58; *Scharsach and News Verlagsgesellschaft v. Austria*, § 46; *Cheltsova v. Russia*, § 100; *Mariya Alekhina and Others v. Russia*, § 264).

Consequently, proper reasoning of domestic judicial decisions which will also incorporate the methods of analysis used by the Strasbourg Court is vital to ensure that no further violations of Article 10 of the Convention are found by the Court in future cases.

Accordingly, the objective of this analysis will be threefold: 1) to analyse to what extent the domestic case-law is currently in line with the European standards in the area of freedom of expression and safety of journalists; 2) to identify the key deficiencies which need to be addressed and to provide concrete recommendations on how to advance the domestic judicial application of the ECHR standards; and 3) to evaluate the impact of the JUFREX judicial training programme on the capacity of domestic judges and prosecutors to properly apply ECHR standards and to suggest any further action in that respect.

So far, the ECtHR has handed down four judgments in Macedonian cases: *Selmani and Others*,[6] *Makraduli*,[7] *Gelevski*[8] and *Kostova and Apostolov*[9]. In all of them, it found that there was a violation of freedom of expression under Article 10. They will be discussed briefly in the respective parts of this analysis, depending on the specific issues they have raised.

In this context, the present review could be seen as a valuable general measure of execution of the ECHR judgments on Article 10, as its recommendations could ensure that certain progress is made and thus have an impact on preventing the occurrence of similar violations of the Convention in future.

The methodology used in the analysis

A wide range of methods has been applied to carry out a comprehensive and thorough analysis of the state of play of the case-law of the Macedonian courts on freedom of expression and safety of journalists with regard to the relevant European human rights standards.

The selection of appropriate research methods is considered essential to enable proper review, systematisation by categories and analysis of the relevant domestic case-law.

The methodology employed was designed to ensure that the general thematic areas dealt with in the specific modules of the JUFREX Freedom of Expression Training Handbook would be covered and that cases would be categorised and analysed under the following topics, included in the Handbook: hate speech; defamation; Internet and freedom of expression; safety of journalists; freedom of expression and good administration of justice; and freedom of expression in the workplace.[10]

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[6] *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, 9 February 2017
[7] *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, 19 July 2018
[8] *Gelevski v. North Macedonia*, no. 28032/12, 8 October 2020
[9] *Kostova and Apostolov v. North Macedonia*, no. 38549/16, 5 April 2022
[10] In this respect, it shall also be noted that the numbering of the chapters included in this assessment will, in principle, correspond to the numbering of the respective modules contained in the JUFREX Training Handbook.

The methodology included a combination of several methods of data gathering, processing and analysis, such as desk research, qualitative analysis of relevant case-law collected by the courts and prosecution offices, as well as a focus group discussion with legal professionals.

During the **initial desk research**, all relevant information and materials which concern the state of freedom of expression and safety of journalists have been identified and reviewed. A special emphasis was placed on the reports, studies, analyses and other documents which have been produced by domestic human rights non-governmental organisations and international organisations. A reference to some of them will be provided, where it is deemed relevant.

The key activity was the **compilation and analysis of the relevant case-law** of Macedonian courts. The latter has been provided by the eleven largest first-instance courts, including the two major first-instance courts in Skopje (the Skopje Basic Civil Court and the Skopje Basic Criminal Court), as well as both civil and criminal law departments of nine other largest first-instance courts (in Tetovo, Gostivar, Kumanovo, Ohrid, Bitola, Prilep, Veles, *Sht*ip and Strumica). These courts have been chosen as proper reference points as they deal with the vast majority of cases in the country.

In principle, the case-law, which is under review, consists only of legally binding judicial decisions that became final before 1 June 2022. Therefore, the case files obtained by the courts include both first-instance judgments and decisions (mostly, of a procedural nature), as well as judgments and decisions adopted by the four appellate courts (in Skopje, Bitola, Gostivar and Shtip) and/or the Supreme Court, as the highest court with cassation jurisdiction. Moreover, the analysis involves prosecutorial files which were attached to the court files of particular criminal cases.[11] Such an approach in the selection of cases has enabled to analyse the quality of judicial decisions given in all judicial instances, as well as, to monitor any differences in the practice established by different instances or among courts at the same level and to detect any inconsistency in the case-law (in respect of similar legal issues) when it comes to the application of the ECHR standards related to the freedom of expression.

Furthermore, the analysis of the domestic judicial practice has encompassed judgments and decisions which were adopted and became final within six years and five months (between 1 January 2016 and 1 June 2022). This could help evaluate whether there is any difference or progress made in the Macedonian judicial practice over a certain period.

Finally, the review will include only judgments decided on the merits. Cases that were declared inadmissible for various reasons (because civil lawsuits were brought out of time or the

[11] There will be only one exception. In order to illustrate the current practice concerning interim measures this document will include one case in which the impugned defamation proceedings are still pending and there had been no final order issued by the domestic courts upon the request for granting an injunction. However, this case will be only summarized by presenting the facts of the case and the reasoning given in the orders issued by the domestic courts. In any event, it will not provide any comment whatsoever as to the way they dealt with the case, to avoid prejudging their final decisions. For an overview of this case, see Chapter 3: Defamation, section 3.9. on Interim measures (Injunctions), in particular case no. II П5-11/19, Skopje Basic Civil Court, order of 11 March 2019, overturned by the Skopje Court of Appeal, order of 23 April 2019 (ГЖ-1730/19).

criminal prosecution had become time-barred; due to territorial incompetence of the court or due to lack of standing of some of the parties to the proceedings, etc.) will not be included.

In total, **160 case files** (125 civil cases and 35 criminal cases) were reviewed at the initial stage of this assessment. Most of them were collected in close cooperation with the Macedonian Academy for Judges and Public Prosecutors (hereinafter: "the Academy") via their Secretariat, while a certain number of cases have been obtained through additional desk research, given that, regrettably, the current centralised database of domestic case-law (*http://www.sud.mk/*) is not sufficiently user-friendly. For this reason, it does not allow for the precise allocation of cases by use of certain key search criteria which hinders any attempt by researchers or legal practitioners to find the relevant cases they need for research or other professional purposes.

In particular, the cases that will be considered and analysed could be categorised into the following four groups: 1) civil defamation cases; 2) criminal cases brought by the competent prosecution office or by a private individual for certain incriminations prescribed in the Macedonian Criminal Code (hereinafter: "the CC") which are related to the freedom of expression;[12] 3) criminal cases involving journalists or other media professionals; and 4) cases of contempt of court.

As stated above, regarding criminal cases, case files which were under consideration included both court decisions and prosecutorial charges received by the respective courts and prosecution offices operating throughout the country. This has allowed observing how a particular case proceeded through different stages starting from issuing the initial indictment by the public prosecution and ending with the final judicial decision, regardless of whether it led to conviction or acquittal of the defendant(s).

Lastly, in addition to the case-law analysis, this document will also reflect the opinions of the JUFREX trainers and trainees (2016-2022) from the ranks of judges and prosecutors and other legal professionals that took part in two separate **focus groups,** covering respectively civil law and criminal law issues. They took place on 6 October 2022 at the premises of the Academy and brought together 15 participants, including 10 judges, 3 prosecutors and 2 lawyers. The focus groups were facilitated to allow the participants to discuss the preliminary findings of

[12] More precisely, the request for providing court files of criminal cases included the following incriminations: threatening the safety by means of information system (Article 144 (4) of the Criminal Code); undermining the reputation of the Republic of Macedonia (Article 178); exposure of the Macedonian people and members of communities to ridicule (Article 179); undermining the reputation of a foreign state (Article 181); undermining the reputation of an international organization (Article 182); incitement to a violent change of the constitutional system (Article 318); incitement to hatred, discord or intolerance on national, racial, religious and any other discriminatory ground (Article 319); calling, encouraging or supporting the creation of a terrorist organization (Article 394-a (3)); spreading racist and xenophobic material via an information system (Article 394-d); approving or justifying genocide, crimes against humanity or war crimes (Article 407-a); racial or other discrimination (Article 417); unauthorized publication of personal notes (Article 148); prevention to print and distribute printed material (Article 154); unauthorized disclosure of a secret (Article 150); disclosure of a state secret (Article 317); disclosure of a military secret (Article 349); disclosure of an official secret (Article 360); abuse of state, official or military secret (Article 360-a (2)); violation of the secrecy of the proceedings (Article 369) and disclosure of the identity of a threatened or protected witness, justice collaborator or victim in the capacity of a witness (Article 369-a).

the analysis and share their views on the effects on their work of the capacity building received under JUFREX. They addressed key concerns of legal practitioners in the judiciary who have already gained valuable experience in adjudicating civil defamation cases or criminal judges and prosecutors who have examined criminal cases where the enjoyment of freedom of expression was significantly affected. The significant feedback received by justice professionals involved in these focus groups has been taken into utmost account when drafting the conclusions and recommendations of this review.

Structure of the analysis

As already mentioned above, the structure of this analysis will, in principle, follow the structure of the JUFREX Handbook's theme-based chapters.

At the outset, each chapter will provide a brief introduction to the ECHR standards as regards the theme dealt with in that particular chapter and if possible, a reference to the respective judgment(s) delivered by the ECHR in respect of the Macedonian cases.

The most considerable part of the review includes a summary and analysis of selected **70 cases (50 civil and 20 criminal)** which have been identified to serve as an example of good practice in respect of each thematic area. A joint comment is provided in respect of those cases in which domestic courts have followed a similar pattern of reasoning for their decisions.

Reference is frequently made to more than one case to illustrate how Macedonian courts dealt with specific issues under Article 10 of the ECHR. Cases which touch upon more than one topic may be referred to in more than one thematic chapter.

The cases selected will be presented shortly and concisely with a particular focus on the judicial application of European standards. Thus, the analysis of each case will comprise a brief summary of the facts and reasoning provided by the domestic courts, followed by a comment on whether they have correctly applied the respective standards to the specific facts and circumstances of that particular case.

The review will assess the quality of domestic decisions from the angle of alignment to the ECtHR case-law on freedom of expression and safety of journalists in domestic jurisprudence. It will focus on evaluating the level of understanding by Macedonian judges of some key concepts, as well as the extent to which they have employed the adjudication methods of the ECtHR in the reasoning of their own decisions. It will also look at whether – apart from referring to the Court's key principles and standards – domestic judges also cite relevant landmark ECtHR judgments. In fact, this might help them reinforce the reasoning for their decisions in a Convention-compliant manner.

Moreover, the review will show whether there is a well-established practice regarding particular legal issues and whether such practice is consistent or, on the contrary, there are certain discrepancies in the application of the domestic laws and the ECHR standards. To this aim, in addition to cases which are considered examples of good practice, other cases which display certain deviations from the ECHR standards will also be included in the review,

regardless of whether they clearly demonstrate a certain trend in the domestic case-law or rather seem to be an isolated exception to a predominant trend.

Furthermore, the analysis includes comments of a more general nature about the main trends that are discernable in the current practice of the domestic courts, based on the overall analysis of the materials taken into consideration.

On the whole, this analysis provides an overview of the key jurisprudential trends and developments, but it also highlights the gaps which should be filled and address the main challenges in aligning the domestic case-law to the relevant ECHR standards. In this sense, apart from the summaries of selected cases, the analysis will include more general comments about the main trends present in the current practice of the domestic courts. The latter will be formulated on basis of the entire materials under review.

The concluding observations and recommendations will be essential to discuss whether there is any room for further improvements in the area of freedom of expression and safety of journalists. They seek to ensure more effective and systematic integration of European standards in this field into the domestic judicial practice.

Finally, they suggest what should be done to increase the impact of the JUFREX activities on the day-to-day work of Macedonian judges and prosecutors, to provide further support to their efforts to bring the domestic jurisprudence in line with the European standards and enhance their capacity to properly apply those standards in the future.

1. Hate speech

1.1. European standards on hate speech

A significant challenge for Macedonian judges and prosecutors remains addressing and punishing hate speech, which is often considered an abuse of the freedom of expression used to spread hatred against a certain group and "to insult an individual on the account of that person's race, ethnic, religious or other groups to which he/she belongs".[13]

It is worth noting that there is no universally accepted definition of the term "hate speech". An implicit definition of hate speech is contained in **Recommendation No. R (97) 20 of the Committee of Ministers on "hate speech"**. In this context, it is to be understood as a term covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.[14] This definition has also been relied on by the European Court of Human Rights.[15]

Apart from the above definition, the **ECtHR** has frequently referred to its own understanding of hate speech as "a speech that covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance"[16]. Additionally, it has through its case-law developed several elements of hate speech: 1) an intent to spread hatred against a certain group; 2) the contents and the context of a specific expression, and 3) the consequences i.e. the proscribed results arising from hate speech.

The most recent **Recommendation CM/Rec(2022)16 of the Committee of Ministers on combating hate speech** provides its own definition of hate speech.[17] It "is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as "race", colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation."[18]

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[13] *Mihajlova*, *E*., *Bacovska*, *J*. and *Shekerdjiev*, *T*. (*2013*). *Freedom* of *expression* and *hate speech*. *OSCE* Mission to *Skopje,* p.24.

[14] See Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech" (Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies), available at: https://rm.coe.int/1680505d5b. Its Macedonian language version is available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680767c01 .

[15] For instance, see *Gündüz v. Turkey*, no. 35071/97, § 22, ECHR 2003-XI.

[16] *Erbakan v. Turkey*, no. 59405/00, § 56, 6 July 2006

[17] Council of Europe, Recommendation CM/Rec(2022)16 of the Committee of Ministers to member states on combating hate speech (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers), available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955 .

[18] See Appendix to Recommendation CM/Rec(2022)16, paragraph 2.

Recommendation CM/Rec(2022)16 further clarifies that "hate speech covers a range of hateful expressions which vary in their severity, the harm they cause and their impact on members of particular groups in different contexts". Therefore, member states are called to adopt a comprehensive approach that should be fully aligned with the Convention and the relevant case-law of the Court regarding the measures to be put in place to effectively prevent and combat hate speech. More specifically, they should differentiate between:

"a. i. hate speech that is prohibited under criminal law; and

ii. hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and

b. offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights, but nevertheless call for alternative responses, … such as: counter-speech and other countermeasures; measures fostering intercultural dialogue and understanding, including via the media and social media; and relevant educational, information-sharing and awareness-raising activities."[19]

The Recommendation also lists the key factors which should be taken into account by the member states' authorities (including the courts), in assessing the severity of hate speech and determining which type of liability, if any, should be attributed to any specific expression. They include: the content of the expression; the political and social context at the time of the expression; the intent of the speaker; the speaker's role and status in society; how the expression is disseminated or amplified; the capacity of the expression to lead to harmful consequences, including the imminence of such consequences; the nature and size of the audience, and the characteristics of the targeted group.[20]

As to the legal framework, the Recommendation calls on member states to ensure that a comprehensive and effective legal framework is in place, consisting of appropriately calibrated provisions of civil, administrative and criminal law. It emphasises that "criminal law should only be applied as a last resort and for the most serious expressions of hatred."[21] This also means "that effective legal protection against hate speech is provided under their civil law and administrative law, in particular general tort law, anti-discrimination law and administrative offences law."[22]

The Recommendation also includes important guidance for member states, which is equally applicable to courts, to "adhere to and effectively implement relevant European and international instruments."[23]

[19] Appendix to Recommendation CM/Rec(2022)16, paragraph 3
[20] Appendix to Recommendation CM/Rec(2022)16, paragraph 4
[21] Appendix to Recommendation CM/Rec(2022)16, paragraph 7
[22] Appendix to Recommendation CM/Rec(2022)16, paragraph 13
[23] Appendix to Recommendation CM/Rec(2022)16, paragraph 63

1.2. The ECtHR decision in *Osmani and Others*

The only ECtHR case which has dealt with hate speech in the Macedonian context was ***Osmani and Others***.[24]

The applicant, the elected mayor of Gostivar, held a meeting at which he called citizens of Albanian ethnic origin to ensure that the Albanian flag would not be removed from the front of the town hall. The Constitutional Court had ordered that the local authorities remove the flag, as it declared unconstitutional the decision of the municipal council to display the Albanian and Turkish flags. Moreover, inter-community tensions arose when citizens of Macedonian ethnic origin tried to remove the Albanian flag. The applicant was suspended from his public function and subsequently found guilty of stirring up national, racial and religious hatred, disagreement and intolerance by a public official and two other offences. He was initially sentenced to thirteen years and eight months' imprisonment, later reduced by the appellate court to seven years. The Constitutional Court dismissed his complaint that his right to freedom of expression had been infringed. It observed that the applicant directly called citizens of Albanian origin to resist the implementation of a final court decision, thereby encouraging inter-ethnic tensions and creating a general feeling of insecurity among the population. He was eventually granted an amnesty and dispensed from serving the rest of his prison sentence.

The applicant lodged complaints before the ECtHR under Articles 10 and 11 (freedom of assembly and association). The Court held that the applicant's conviction constituted an interference with the exercise of his freedom of peaceful assembly which was prescribed by law and pursued the legitimate aims of prevention of disorder and crime, national security and public safety as well as protection of freedoms and rights of others. It paid special attention to the content of the applicant's speech and its context, to determine whether they can be considered as inciting to violence. The Court concluded that some parts of his speech delivered at the assembly and addressed to citizens of Albanian origin encouraged the use of violence. Besides, the applicant, who was a well-respected figure in the Albanian community, convened the assembly and delivered his speech in full knowledge of the Constitutional Court's decision and the risk that his conduct would cause public riots, disorder and clashes with the police. Overall, his speech and the meeting he organized undoubtedly played a substantial part in the occurrence of the violent events of May and July 1997.

Given these elements, the Chamber of the ECtHR held that the criminal law measures taken by the domestic courts answered a pressing social need and sufficient reasons were given by the domestic authorities to justify the applicant's conviction. It further observed that the applicant was not charged immediately after his speech, but only after its consequences were felt and his conviction was not only based on his having convened an assembly and making the impugned speech but also on the enforcement of the local council's decision to display the

[24] *Osmani and Others v. the former Yugoslav Republic of Macedonia*, no. 50841/99, decision of 11 October 2001

flags in breach of the Constitutional Court's decision. Moreover, the applicant benefited from an amnesty after having served one year and three months of his sentence, which was initially quite severe. As a result, the time he spent in prison could not be considered disproportionate.

All in all, the Court ruled that the applicant's complaints were manifestly ill-founded within the meaning of Article 35 § 3, and the application was declared inadmissible.

1.3. Relevant domestic case-law

The case-law concerning hate speech obtained by the courts for this review mainly concerns criminal cases, which leads to the conclusion that there is a predominance of criminal law mechanisms over civil and administrative ones.

In the Macedonian legal system, certain provisions criminalise the abuse of freedom of expression that incites violence or other violations of the equal freedoms and rights of others or the expression of discriminatory behaviour towards others.

Accordingly, certain elements of hate speech could be identified in several cases in which the competent domestic courts have convicted defendants charged with the criminal offences of racial and other discrimination (Article 417 paragraph 3 of the CC),[25] spreading racist and xenophobic material via an information system (Article 394-d of the CC),[26] as well as causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground (Article 319 of the CC).[27]

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[25]Article 417 of the Criminal Code reads as follows: "(1) Whosoever based on the difference in sex, race, skin color, class, membership in a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement, violates the basic human rights and freedoms acknowledged by the international community, shall be sentenced to imprisonment of six months to five years.
(2) The sentence referred to in paragraph (1) shall also be imposed to whosoever prosecutes organizations or individuals because of their efforts for equality of the people.
(3) Whosoever spreads ideas about the superiority of one race over another, or who advocates racial hate, or instigates racial discrimination, shall be sentenced to imprisonment of six months to three years."

[26] This provision actually incriminates hate speech through a computer system. It prescribes that "(1) Whosoever via a computer system spreads in the public racist and xenophobic written material, photo or other representation of an idea or theory helping, promoting or stimulating hatred, discrimination or violence, regardless against which person or group, based on sex, race, skin color, class, membership in a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement, shall be sentenced to imprisonment of one to five years.
(2) The sentence referred to in paragraph (1) of this Article shall be also imposed against whosoever commits the crime via other public information means.
(3) Whosoever commits the crime from paragraphs (1) and (2) of this Article by abusing his position or authorization or if those crimes resulted in disorder and violence against people or in property damage of greater extent, he shall be sentenced to imprisonment of one to ten years."

[27] Article 319 of the Criminal Code reads as follows: "(1) Whosoever by force, maltreatment, endangering the security, mocking of the national, ethnic, religious and other symbols, by burning, destroying or in any other manner damaging the flag of the Republic of Macedonia or flags of other states, by damaging other people's objects, by desecration of monuments, graves, or in any other discriminatory manner, directly or indirectly, causes or excites

It should also be noted that none of the cases reviewed concerned the offence of exposure of the Macedonian people and communities to ridicule that is incriminated in Article 179 of the CC, even though it also contains certain elements of hate speech.[28]

The most relevant cases on hate speech, including hate speech online,[29] are briefly presented below.

XXIII К.6р. 303/21, Skopje Basic Criminal Court, judgment of 9 February 2021: The defendant was found guilty of the offence of spreading racist and xenophobic material via an information system (Article 394-d of the CC). On 28 January 2020, he posted via his Instagram profile a video that he had recorded on his mobile phone showing him insulting a group of citizens of South Korea in the vicinity of the Ministry of Foreign Affairs in the centre of Skopje and asking them to leave as they were spreading the Coronavirus. This video was followed by numerous comments and shared among other users of the social network, thus inciting hatred towards this specific group on grounds of race, colour and nationality. Consequently, the defendant was sentenced to three months imprisonment, suspended for one year.

VI К.6р. 2031/19, Skopje Basic Criminal Court, judgment of 18 November 2020: The defendant was found guilty of the offence of spreading racist and xenophobic material via an information system (Article 394-d of the CC). On 22 May 2020, he posted via his Facebook profile insulting words against persons of the Muslim religion, cursing them, their prophet Muhammed and the Islamic Religious Community as an institution. By doing so, he promoted and incited hatred, discrimination and violence against a person or group on grounds of their religion or religious convictions. After pleading guilty, the defendant was sentenced to six months imprisonment suspended for one year. The Skopje Basic Criminal Court took into consideration all aggravating circumstances (the type and degree of criminal responsibility, the manner of committing the offence and the possible long-term adverse consequences that the offence might have caused), as well as all mitigating circumstances (that the defendant was only 30 years old, that he was never convicted and there were no other criminal proceedings carried out against him, he was not married and the offence was committed owing to his affective disorder).

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hatred, discord or intolerance on grounds of gender, race, color of the skin, membership in marginalized group, ethnic membership, language, nationality, social background, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or in any other ground foreseen by law on ratified international agreement, shall be sentenced to imprisonment of one to five years.
(2) Whosoever commits the crime referred to in paragraph (1) of this Article by abusing his position or authorization, or if because of these crimes, riots and violence were caused against the people, or property damage to a great extent was caused, shall be sentenced to imprisonment of one to ten years."

[28] Article 179 prescribes, in particular, that "A person, who with the intention to ridicule, shall publicly make a mockery of the Macedonian people and the members of the communities that live in the Republic of Macedonia shall be punished with a fine.",

[29] Some cases which concern hate speech online will be outlined in the chapter on Internet and freedom of expression, in particular in section 4.2.4. Criminal offences involving online hate speech.

K-84/19, Bitola Basic Court, judgment of 4 April 2019; indictment no. KO.6p.583/18 filed by the Bitola Basic Prosecutor's Office on 25 February 2019: The defendant (who was of Albanian ethnic origin) was found guilty of the offence of causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground (Article 319 of the CC). On the night between 11 and 12 April 2018, he had drawn graffiti with a spray on the building of an old store in a village near Demir Hisar, whose owner was a person of Macedonian ethnic origin. The graffiti stated, in the Albanian language: "UCK, Kosovo*, Adem Jashari are calling us – Kosovo" (*UCK, Kosova, Adem Jashari po na thret- Kosova*). Therewith, he incited hatred and disturbance on grounds of ethnic affiliation with the Macedonians living in that village.

Without providing any detailed reasoning or reference to the Council of Europe's, the ECHR or other international standards concerning hate speech and hate crime, the Bitola Basic Court sentenced the defendant to one-year imprisonment, suspended for two years. Moreover, it failed to elaborate on the entire context, the meaning of the words expressed through the graffiti in Macedonian, and the fact that there were different interpretations between people of Macedonian and Albanian origin regarding certain figures or events in the recent history of the Balkans. For instance, the Bitola Court failed to take into account that while UCK was considered to be a national liberation army for the Albanians in Kosovo and by Macedonian citizens of Albanian ethnic origin, it was perceived by Serbs and Macedonians as a paramilitary terrorist organisation. Similarly, whereas Adem Jashari, who was one of UCK's founders, was seen by Albanians in the region as a symbol of Kosovar independence and their national hero, Serbs and Macedonians considered him a terrorist.

K-213/18, Bitola Basic Court, judgment of 19 June 2018; indictment no. KO.6p.213/18 filed by the Bitola Basic Prosecutor's Office on 27 April 2018: The defendant (who was of Macedonian ethnic origin) was found guilty of the offence of racial and other discrimination (Article 417 (1) of the CC). On 18 January 2018 at 2:30 a.m., together with another person, he had propagated racial hatred by drawing three graffiti on the main street in Bitola. The graffiti conveyed the following messages: "Death for Albanians" (*Смрт за шиптарите*), both in Macedonian and Albanian language, and "Law is Law" (*Закон си е закон*) in Macedonian. Without providing any detailed reasoning or reference to the international standards on hate speech and hate crime, the Bitola Basic Court sentenced the defendant to four months imprisonment suspended for two years.

K.6p.588/20, Strumica Basic Court, judgment of 22 January 2021: The defendant was found guilty of the offence of racial and other discrimination (Article 417 (1) of the CC). More precisely, it was established that on 31 March 2020 he, as owner and manager of a grocery store in a village near Strumica, displayed a notice banning the persons employed with the local hotel from entering the store. The hotel was used, in the period between 29 March and

*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

12 April 2020, as a quarantine facility in the context of the Covid-19 pandemic for accommodating persons who entered the country and were travelling from high-risk countries. It was ruled that with his act the defendant directly discriminated against the hotel staff on grounds of their health status. Given his plea guilty, but also considering all mitigating and aggravating circumstances, the Strumica Basic Court sentenced the defendant to six months imprisonment suspended for one year. In particular, it took into account as a mitigating circumstance the motive for the commission of the offence (the information provided by the competent bodies at the beginning of the pandemic that the persons confined in the hotel were coming from high-risk countries).

General comment on hate speech cases:

There is a tendency at the domestic level towards excessive criminalisation of hate speech, which is not in line with the Council of Europe's and ECHR standards. It is more likely that hate speech will be prosecuted, instead of tackling it through other, non-criminal law mechanisms. Therefore, more systematic changes should be introduced in the domestic jurisprudence to align it with the Council of Europe's standards and in particular, to the Recommendation CM/Rec(2022)16 on combating hate speech.[30]

Moreover, the domestic courts have not sufficiently elaborated on whether – in the circumstances of each particular case – the elements of hate speech as defined in the Court's case-law were present, in order to conclude that the defendant committed an offence which amounted to some form of hate speech. As stated above, these elements include: 1) an intent to spread hatred against a certain group; 2) the contents and the context of a specific expression, and 3) the consequences of hate speech.

For instance, in their judgments, the courts have frequently referred to the intent to spread hatred against a certain group, while they have failed to provide a more detailed analysis of the content and the entire national and local, political and societal context in which the contested expression was made. On top of that, Macedonian judges have not engaged in a more thorough discussion about the factual consequences or potential implications arising from hate speech, given the circumstances of each particular case.

Finally, in most of these cases, the domestic courts tend to impose only suspended prison sentences. Given the capacity of hate speech to seriously damage the societal fabric and its potential to lead to hate crime, it is questionable whether the application of such penalties is in keeping with international standards and whether they would help Macedonian society tackle this phenomenon and effectively fight against it.

[30] The lack of understanding of hate speech and the lack of reasoning of the criminal judgments pertaining to hate speech was also addressed at the focus group on criminal law that took place on 6 October 2022. All participants (both criminal judges and prosecutors) acknowledged that they are lacking knowledge in this regard which is reflected in the case-law of their institutions.

2. Defamation

2.1. Introduction

Popovski[31] was the first case in which the ECtHR examined complaints related to defamation in the Macedonian context, even though not from the angle of Article 10 of the Convention. The case concerned an article published about the applicant and the subsequent criminal proceedings for defamation he brought against the editor-in-chief of the newspaper and the journalist who had written the article.

The Court found that there was a violation of Article 6 § 1 of the ECHR (right to a fair trial) for the excessive length of the impugned proceedings which did not meet the "reasonable time" requirement.[32] More importantly, owing to the significant delays in the proceedings, the trial court stayed them because the prosecution had become time-barred. Accordingly, the Court concluded that the manner in which the criminal-law mechanism was implemented in the instant case was defective to the point of constituting a breach of the respondent State's positive obligations under Article 8 of the Convention (right to respect for private and family life).[33]

The Law on Civil Liability for Insult and Defamation (14 November 2012, entered into force on 22 November 2012) has decriminalised the offences previously encompassed in Chapter 18 of the Criminal Code titled "Crimes against Honour and Reputation".[34] At the time of preparation of this document, there has been an initiative for introducing amendments to this law.[35]

Given the priority granted by Articles 2 and 3 of the LCLID to the Convention as directly applicable in defamation cases, it is extremely important for the Macedonian judiciary to focus on the incorporation of the principles set out in the case-law of the European Court of Human Rights, as well as on the proper reference and citation of ECtHR landmark judgments.

Most case files reviewed concern civil defamation proceedings and it has been a huge challenge to identify the most relevant ones. To have a clear overview of the trends in the domestic judicial practice as regards the specific thematic issues which appear in defamation cases, each selected case outlined below is analysed within a certain section of this chapter, depending on the key issues which arose in that particular case. However, sometimes it is also possible that different issues and concerns have been addressed in one single case and one case can, hence, be included in different sections of this chapter.

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[31] *Popovski v. the former Yugoslav Republic of Macedonia*, no. 12316/07, 31 October 2013

[32] For more details, see §§ 65-70 of the judgment.

[33] §§ 91-92 of the judgment

[34] This Law regulates "the civil liability for damage inflicted on the honour and reputation of a natural person or a legal entity by an insult or defamation" (Article 1 of the LCLID).

[35] Since the legislative amendments have not yet been adopted and this analysis is focused on the domestic case-law established as a result of the application of the LCLID of 2012, which is still in force, it is deemed to be irrelevant to make a further reference to the proposed amendments. For more details, see the Press Release of the Ministry of Justice, 7 February 2022, available at: https://www.pravda.gov.mk/vest/6296.

2.2. Statements of fact and value judgments

Regarding the liability for defamation, Article 8 paragraph 1 of the LCLID stipulates that "[a] person shall be held liable for defamation if he/she presents or disseminates, before a third party, false facts harming the honour and reputation of another person with an established or apparent identity, with the intention of harming his/her honour and reputation, while knowing or has been obliged to know and may know that the facts are false." Furthermore, Article 8 paragraph 2 of the LCLID prescribes that "[l]iability for defamation shall also exist if the false statement contains facts harmful to the reputation of a legal entity, a group of persons or a deceased person."

For defamation to exist, the following three elements must therefore be met: 1) there should be ***an intention*** to harm the individual's honour and reputation; 2) ***false facts*** should have been presented that the person disseminating them could have known or ought to have known to be false, and 3) such facts should have been presented ***before a third person***. In the absence of the third element of defamation, i.e., were the false facts presented only before the person whose reputation is harmed, then it may be a matter of insult, rather than defamation.

Whether the facts in question were true or false is one of the essential elements to be determined to establish that there was defamation. The LCLID also regulates the ***burden of proof*** in this respect. According to Article 9 paragraphs 1 and 2, defendants are obliged to prove the truthfulness of the facts contained in their statement and if they prove their truthfulness or that they had a ***justified reason to believe*** in their truthfulness, there would be no liability for defamation. Moreover, certain exceptions from this general rule are prescribed in Article 9 paragraphs 3 and 4. For instance, in paragraph 3 it is envisaged that the burden of proof falls on a plaintiff who holds a public office whenever he/she is legally obliged to provide an explanation for the facts that are directly related to or are of importance for the performance of his/her office, provided that the defendant had proved that he/she had justified reasons to make the impugned statement in the public interest. Proving the facts is also generally excluded as regards the personal life of the plaintiff, except in the cases listed in Article 9 paragraph 4.

It follows that the relevant national legislation has completely incorporated the ECHR standards as regards the distinction to be made between statements of fact and value judgments, as well as the legal standard on the burden of proof.

In practice, the review of the relevant domestic case-law has shown that irrespective of the different and inconsistent terminology which is used by judges in the reasoning of their judgments in defamation cases, when they are explaining the difference between these two categories, they mostly display a sound understanding of such a distinction and apply it correctly to their particular cases. This is illustrated by several examples of good practices of domestic Macedonian courts presented below.

2.3. Political speech and debates over issues of public interest

Even though Article 10 of the Convention does not apply solely to certain types of information or ideas or forms of expression and it equally covers various forms of artistic expression (*Müller and Others v. Switzerland*, § 27), as well as commercial expression (*Markt intern Verlag GmbH and Klaus Beermann v. Germany*, § 26; *Casado Coca v. Spain*, §§ 35-36; *Mouvement raëlien suisse v. Switzerland* [GC], § 61; *Sekmadienis Ltd. v. Lithuania*), a large number of cases which are under consideration concerned expression that was of a purely political nature.

The analysis of these cases is of significant importance, as one of the leading judgments on Article 10 handed down by the ECtHR in Macedonian cases was *Makraduli*.[36] **Consequently, it might help identify whether there was any progress in the domestic application of the standards laid down in this judgment.**

2.3.1. The ECtHR judgment in Makraduli

***Makraduli* was the first Macedonian defamation case examined under Article 10 before the ECtHR. It concerned two sets of criminal defamation proceedings initiated against the applicant, Mr** Jani Makraduli, who was a president of the opposition party Social Democratic Union of Macedonia (hereinafter: "the SDSM") and an MP at the Macedonian Assembly. The impugned proceedings were launched upon private criminal charges filed by Mr S.M., then Prime Minister's cousin, who was at the time a senior member of the ruling political party VMRO-DPMNE and a head of the Security and Counter Intelligence Agency. The first case related to the applicant's allegations that Mr S.M. had misused his powers and the police wiretapping equipment to influence trading on the stock exchange and to achieve personal financial gain. The second case concerned alleged irregularities in the public sale of State-owned building land to a company close to Mr S.M.

The applicant was convicted of defamation under Article 172 of the CC, as in force at the material time, and fined. Based on the legislative amendments which followed with the adoption and entering into force of the LCLDI in November 2012, the trial judge stayed the execution of the sanction in both sets of proceedings. Consequently, he paid only the trial costs, but not the fine which was imposed on him.[37]

The applicant's appeals for the protection of his rights and freedoms before the Constitutional Court were dismissed due to the untruthfulness of the impugned statements and the applicant's failure to prove the contrary.[38]

In its judgment, the Court reaffirmed that there is very little scope under Article 10 § 2 for restrictions on political speech or debates on matters of public interest. Therefore, as a rule, it

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[36] *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, 19 July 2018

[37] For an overview of the impugned criminal proceedings, see §§ 6-16 and §§ 20-28 of the judgment. As noted in § 19, following the outcome of the first set of criminal proceedings, Mr S.M. brought a civil dispute in which his compensation claim was upheld and he was awarded 550.000,000 Macedonian Denars (approximately 9,000 Euros).

[38] For more details about the proceedings before the Constitutional Court, see §§ 17-18 and §§ 29-30 of the judgment.

grants a high level of protection of freedom of expression and a particularly narrow room for appreciation by the states in such cases.[39]

In applying these principles to the facts of the instant case, the Court particularly took into consideration the following relevant aspects: 1) the position of the plaintiff and the applicant, who acted as a defendant in the domestic proceedings, 2) the subject matter of the applicant's statements, as well as 3) their qualification by the domestic courts and 4) the domestic court's approach to justifying the interference in question.[40]

The Court noted that the statements were made by the applicant as a vice-president of the then opposition party, at press conferences held in the headquarters of his party, on behalf of his party and in a political context. Moreover, it was highlighted that the applicant was an MP, and therefore, as an elected representative of the citizens, he enjoyed the higher level of protection reserved for political speech. The ECtHR emphasised that Mr S.M., the plaintiff before domestic courts, taking into consideration his position, should have displayed a greater degree of tolerance to criticism since the limits of acceptable criticism are wider for State officials than for private individuals. In the same vein, the ECtHR stressed that although the domestic courts acknowledged his status as a State official, they did not accept that freedom of expression was subject to wider limits of acceptable criticism as far as views on, or criticism of, such officials were concerned nor did they consider the fact that he was also a senior politician.[41]

As to the content and the subject matter of the impugned statements, the Court found problematic that they were qualified as statements of fact, rather than value judgments. Indeed, they concerned allegations of irregular conduct in the performance of official duties by Mr S.M and constituted fair comment on issues of legitimate public interest, as they touched upon the need for transparency and prevention of abuse of power and they aimed at strengthening public integrity and maintaining public confidence in public institutions.[42] Consequently, this judgment has sent a clear message to the national authorities as regards the so-called "presumption of falsity" applied by the courts when they required the applicant acting as a defendant to prove the veracity of his statements. The Court took a stance that such an approach was, by all means, unjustified and went beyond the already established ECtHR standard of "due diligence".[43]

As to the nature and severity of the sanctions imposed, the Court highlighted that even the relatively moderate nature of the fines does not suffice in itself to negate the risk of a chilling effect on the further exercise of the freedom of expression. Although the imposed fine could have no longer been executed given the statutory changes of November 2012, the applicant's

[39] §61 of the judgment
[40] §64 of the judgment
[41] §§ 65-73 of the judgment
[42] §§ 74 and 81 of the judgment
[43] § 75 of the judgment

conviction had a chilling effect on the political debate that he raised on issues of public interest.[44]

All in all, the Court established that the standards applied to the impugned proceedings were incompatible with the principles embodied in Article 10 of the Convention as the domestic courts failed to strike a fair balance between the competing interests which were at stake. Consequently, the interference was disproportionate to the aim and it was not "necessary in a democratic society" within the meaning of Article 10 § 2.[45]

2.3.2. Relevant domestic case-law on political speech

2.3.2.1. Domestic case-law in line with the ECHR standards

As illustrated in the examples provided below, in most of the reviewed cases on political speech, the competent courts relied on the ECHR standards and the relevant case-law, to reach a conclusion that politicians should display a higher degree of tolerance towards any criticism of their work and statements they expressed in public. *This is even more valid* when the criticism towards politicians or other holders of public office was made on issues of legitimate public interest and could be seen as part of a lively debate which had been already raised by the politicians themselves, the media, civil organisations or other stakeholders in the society.

XXXII П5-59/19, Skopje Basic Civil Court, judgment of 29 October 2020, upheld by the Skopje Court of Appeal, judgment of 23 September 2021 (ГЖ-511/21)

Facts: At the material time the plaintiff, Aleksandar Kiracovski, was an MP at the Macedonian Assembly from the political party SDSM and its Secretary General. The defendant, Dimche Arsovski, was the spokesperson of the political party VMRO-DPMNE. At a party press conference held on 6 September 2019, the defendant stated that the investigation conducted by the public prosecution for organised crime and corruption in the case known as "Racketeering" *(Рекет)* had been in contravention of the principles of law. The investigation failed to prevent those who ordered the commission of the impugned offences to tamper with the evidence and exerting influence over the witnesses and whoever else. In this context, he mentioned that the plaintiff was also one of those who were involved in the criminal activities, as a mediator between the key suspect, Bojan Jovanovski (known as "Boki 13"), and the mayors and businessmen who had been racketeered.

Reasoning: The Skopje Basic Civil Court analysed the entire context, including the events which occurred prior to the press conference and were deemed relevant for its assessment. In particular,

it observed that the plaintiff's name was mentioned by the defendant only in relation to his interrogation by a prosecutor and his response to a question posed by a journalist as regards

[44] §§ 63 and 83 of the judgment

[45] §§ 84-85 of the judgment. For further details about the case, see Delovski, V., *Freedom of Political Expression in Democratic Societies in light of the ECtHR judgment Makraduli v. the Republic of Macedonia*, May 2019, available at: https://justiceobservers.org/article/68860/63647/188.

his contacts as an MP with persons connected with the impugned criminal offence. Namely, immediately after his interrogation at the premises of the Prosecutor's Office on 5 September 2019, the plaintiff made a statement to all media in the country which became available to the entire Macedonian public, in which he admitted that he had been present at several meetings with the key suspect in the case. The Skopje Basic Civil Court held that that statement raised doubts and opened a public debate about the conduct of the public officials who were paid by the State budget. Therefore, it was justified that the opposition party raised these issues at the press conference.

The Skopje Basic Civil Court also referred to the ECtHR's well-established practice of distinguishing between facts and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. It also noted that the requirement to prove the truth of a value judgment is impossible to fulfil and it leads to an infringement of the freedom of opinion as guaranteed under Article 10.

Additionally, the Skopje Basic Civil Court considered the criteria established by the ECtHR in balancing the right to private life, as secured by Article 8 of the Convention (which includes the right to protection of honour and reputation), with the freedom of expression, guaranteed under Article 10 of the Convention. It further listed the key elements that are relevant to be considered when applying the balancing test, such as: whether the impugned information contributes to a debate of general/public interest; whether the person concerned is well known to the public; what is the object of information; the prior conduct of the person concerned; the circumstances to which the statement relates; the manner and circumstances of obtaining the information; the content, form and the consequences of the impugned publication.

It had further considered the stances taken by the ECtHR in the judgment of *Lingens v. Austria*. In that judgment, it was indicated that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.[46] Moreover, the Skopje Basic Civil Court referred to the relevant parts of the ECtHR judgment in *Makraduli,* which concerned political speech.[47]

In its analysis, the Skopje Basic Civil Court observed that the defendant must have had a wider scope of freedom of expression, as a representative of the opposition political party, especially since issues of public interest were concerned. On the other hand, as the politicians are under public scrutiny for the statements they make, they must display a greater degree of tolerance,

[46] *Lingens v. Austria*, 8 July 1986 § 42, Series A no. 103

[47] "As regards the level of protection, the Court recalls that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest. Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest. A degree of hostility and the potential seriousness of certain remarks do not obviate the right to a high level of protection, given the existence of a matter of public interest." (*Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 61, 19 July 2018)

even if, as in this particular case, there was a certain degree of exaggeration in the impugned statement or the photograph shown during the press conference. Accordingly, the plaintiff as an MP, a holder of a public function, should have displayed a higher degree of tolerance of the criticism by the citizens when it comes to issues of public interest that are related to his conduct as a politician, as he had been elected by the citizens to represent them in a democratic society.

Apart from that, the Skopje Basic Civil Court highlighted that the impugned statement was triggered by a debate which had been already opened in the public interest through the media as regards an ongoing criminal case of corruption and racketeering. The defendant, in his capacity of representative of the opposition political party, had grounds to believe in the truthfulness of such allegations as they related to the information previously revealed by the plaintiff but also taking into consideration the plaintiff's meetings with the key suspect, their joint photographs and the fact that they jointly attended several events, of which the public had already been reported by the media. Indeed, the defendant did not state that the plaintiff had committed an offence, but he only criticised how the investigation of the case had been carried out by the competent public prosecution.

Consequently, the Skopje Basic Civil Court ruled that it was not necessary in a democratic society to interfere with the defendant's freedom of expression and dismissed the plaintiff's claim as unfounded. This conclusion was also based on Article 10 of the LCLID which excludes liability when issues of public interest are concerned.

The Skopje Court of Appeal reiterated the reasoning provided by the first-instance court, adding that it correctly assessed that according to the domestic statutory provisions, the conditions for exclusion of the defendant's liability were fulfilled, given that his statements were made in the public interest as a critical view and value opinion concerning the work of a holder of a public office.

Comment: It is to be noted that the domestic courts, and in particular, the first-instance court which heard the case at hand provided detailed and plausible reasoning and quite successfully incorporated in their own judgments the well-established ECHR standards on political speech. As a result, they have also shown that they rightly understood the core message of the Court's judgment in *Makraduli*. Moreover, when balancing the plaintiff's freedom of expression vis-à-vis the defendant's freedom of expression, the Skopje Basic Civil Court also stressed the status of the plaintiff as an MP. Its reasoning was, thus, in conformity with the Court's position regarding the freedom of expression for members of parliament as political speech *par excellence*.[48] Even though the Skopje Basic Civil Court did not qualify the defendant's statements as statements of fact or value judgments (opinions), its omission was redressed on

[48] In its case-law, the Court has consistently emphasised that the freedom of expression is especially important for elected representatives, who represent their electorate, draw attention to their preoccupations and defend their interests (*Karácsony and Others v. Hungary* [GC], § 137; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], §§ 242-245; *Castells v. Spain*, § 42; *Piermont v. France*, § 76; *Jerusalem v. Austria*, § 36; *Otegi Mondragon v. Spain*, § 50; *Lacroix v. France*, § 40; *Szanyi v. Hungary*, § 30).

appeal. In substance, its judgment was also compatible with the view of the ECtHR that the requirement of tolerance is even more pertinent from politicians when they themselves make public statements that are susceptible to criticism (*Mladina d.d. Ljubljana v. Slovenia*, § 40; *Pakdemirli v. Turkey*, § 45).

П5-7/20, Prilep Basic Court, judgment of 16 June 2021

Facts: At the material time, the plaintiff, a doctor, was the mayor of the Municipality of Prilep. He lodged a defamation claim against a member of the opposition party VMRO-DPMNE and MP candidate for the Macedonian Assembly, for a statement the latter had made at a press conference held before the parliamentary elections in 2020. The impugned statement was disseminated by several local media and Internet portals and posted on the defendant's Facebook profile. In the statement, the defendant argued that while all citizens were burdened with the health crisis the plaintiff unlawfully signed a permit to amend the *basic architecture project for the* construction of a *residential and commercial building, without the necessary approval of the municipality supervisor (контролор)*.

Reasoning: In its assessment, the Prilep Basic Court stated that under the case-law of the ECtHR, there is little room for limiting political speech, when a debate relates to issues of public interest. For the same reason, a high level of protection should be granted to freedom of expression, whereas a certain degree of hostility and the potential seriousness of certain remarks does not eliminate such a high level of protection.

The Prilep Basic Court turned to elaborate on the distinction between factual assertions and value judgments by reference to the case-law of the ECtHR. In that context, it concluded that in this particular case, there was a sufficient factual basis for the impugned statement, given that the undisputed fact that the plaintiff's permit was not signed by the competent supervisor was also supported by the oral evidence produced at the hearing. It also took into consideration that the impugned statement was made at a press conference in the period preceding the parliamentary elections when the defendant was also running for election. Therefore, it accepted the defendant's submission that the entire statement, which was established to have a factual basis, was made in a political context, as a criticism of the work of the plaintiff and political speech which should enjoy a high level of protection.

Moreover, it was observed that the plaintiff held a public office and was to be considered a high-ranking state official. According to the ECtHR case-law the limits of acceptable criticism as regards holders of public office are wider than those regarding private persons. Furthermore, they are even wider for high-ranking state officials.[49]

[49] In this regard, the Prilep Basic Court referred to *Lingens v. Austria* to reiterate that in a democratic society the actions or omissions of the authority should be subjected to a close examination, not only by the legislative and judicial organs, but also by the public opinion. Every word and deed of a holder of public office is subjected to a careful scrutiny by the wider public and he must consequently display a higher degree of tolerance towards public criticism and restrain to recourse to court proceedings for protection of his reputation.

In addition, the Prilep Basic Court noted that freedom of expression applies not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (*Lingens v. Austria*, § 41; *Handyside v. the United Kingdom*, § 49; *Observer and Guardian v. the United Kingdom*, § 59).

Relying on the ECtHR case-law, including the judgment in *Makraduli*, but also on its own assessment of the facts and the evidence adduced by the parties to the proceedings, it ruled that in the particular case, the conditions for establishing the defendant's liability for defamation were not met. Accordingly, the Prilep Basic Court dismissed the plaintiff's claim as unfounded.

Comment: This is a telling example where the first-instance court has correctly applied the ECHR standards on political speech in an election context, as well as the distinction between statements of fact and value judgments. More *importantly,* its persuasive reasoning was sufficiently supported by reference to specific judgments of the ECtHR, that were adequately cited.

I-П5-5/2019, Tetovo Basic Court, judgment delivered on 24 December 2019, pronounced publicly on 30 December 2019

Facts: The plaintiff, Samojle Noveski, claimed that he was defamed by the untrue facts which were publicly presented in the TV show *My Appointment*, broadcast on 11 April 2017 on *TV 24 News* and subsequently uploaded on the YouTube channel of the same TV station. He filed a lawsuit against Samka Ibraimoski, who was then president of a Roma political party, and the TV news broadcasting company. During the TV show, the first defendant accused the plaintiff of being one of the "loan sharks" (*лихвари*) who lent money to Roma people and, as a result, became the owner of several houses in Tetovo, as their previous owners were not able to pay off their loans. He also showed in *front of the camera* a complaint that had been lodged with the Ministry of Interior against the plaintiff, in which allegations of fraud and moneylending were made against him. In addition, he gave the example of an 80-year-old woman of Roma origin who was fooled and whose signature was counterfeited. Eventually, allegedly because of the corrupted judiciary, her house was purchased by the plaintiff for 13 000 Euros, against a market value of 270 000 Euros. In his opinion, there were other similar cases and it was up to the Ministry of Interior to take some action.

Reasoning: The Tetovo Basic Court held that the conditions for defamation had not been met in this case, as the first defendant did not make untrue assertions and he made the impugned allegation without an intent to damage the plaintiff's reputation, but solely on the basis of material evidence, including the complaint submitted to the Ministry of Interior and the relevant court decisions. As regards the second defendant, it ruled that it could not be held responsible for the words expressed in a live TV programme, as they were expressed neither by its employee nor by the editor of the TV show.

A more detailed reasoning was provided in the judgment of the Gostivar Court of Appeal. It noted that the first defendant made the impugned allegations as a president of a Roma party in order to disseminate the allegations contained in the complaints he had received from members of the ethnic group he represented. His statements were based on evidence, such as the complaint and the legally binding court decisions which were submitted to him, which were justified grounds to believe in the truthfulness of the facts he had shared with the public. He made the impugned statements on behalf of the ethnic group whose interests he represented and not to pursue his personal goals. Thus, his goal was to protect the public interest. They were made in a live TV show enabling the defendant to express his opinions about the current political and social situation with the purpose of protecting the public interest, and not in a press release, statement or own editorial program produced by the TV station.

Finally, the Gostivar Court of Appeal referred to the distinction between statements of fact and opinions made in the case-law of the Strasbourg Court, where the existence of facts must be presented and proven, while value judgements are views about certain situations and events that are not always susceptible of proof. Value judgements expressed in politics as regards issues of public interest or criticism conveyed towards the government or public bodies should enjoy a wider degree of tolerance. Lastly, since the impugned statements could have been covered by the protection of the public interest, the Gostivar Court of Appeal concluded that civil liability for defamation should be excluded and the plaintiff's claim should be dismissed as unfounded.

Comment: The present case is another good example of the implementation of the ECHR standards on political speech in a democratic society, especially when it concerns matters of public interest. Still, what was missing in the reasoning of the domestic courts, was a more direct reference to the leading cases of the ECtHR, where the relevant standards have been laid down.

2.3.2.2. Domestic case-law in which the ECHR standards were inconsistently applied

The material under review also shows the presence of decisions adopted by domestic courts which - unlike the case-law discussed above in section 3.3.2.1. – reveal instances of inconsistent application of the relevant standards. In particular, this section reviews occurrences in which the same case has been adjudicated differently by different courts or similar cases have been inconsistently decided by different judges within the same court.

By the same token, there are several cases with a similar factual background, where the same first-instance court had applied in a divergent manner the well-established ECHR standards regarding freedom of political expression and the importance of public interest debates.

For instance, the facts concerning cases nos. **П5-4/21**, **judgment of 23 November 2021**, **П5-5/21**, **judgment of 16 November 2021** and **П5-6/21, judgment of 23 November 2021,** all **decided by the Prilep Basic Court**, related to the defamation allegedly committed by the

spokesperson and the vice-president of the municipal committee of the opposition political party VMRO-DPMNE through his video address to the public at a press conference held on 12 July 2020, which was subsequently uploaded on the Facebook profile of that party branch in Prilep.

At the outset of the press conference, the defendant announced that he would inform the public how the managers of the local tobacco manufacturing company enriched themselves in the two years following their assignment to managerial positions. He further named them stating that it remained unclear how the three managers of the company had purchased flats in Skopje almost simultaneously, over a period of several months, while the tobacco producers made tremendous efforts to ensure that their tobacco will be paid a real price.

In case no. **П5-5/21**, **judgment of 16 November 2021**, the **Prilep Basic Court** dismissed the defamation claim lodged by a neurologist who was also a head of the department of neurology in the Prilep General Hospital and was married to one of the managers in the tobacco company.

Reasoning: The Prilep Basic Court initially noted that the statement was made at a press conference of the opposition party by the defendant in his capacity as a spokesperson and vice-president of the party's municipal committee, prior to the parliamentary elections in 2020. Thus, the statement was made in the performance of his political activity and he only disseminated the standpoint of his party as regards the work of the managers of the tobacco company which excluded the defendant's civil liability. Since the defendant acted as a member of the opposition party and the plaintiff's husband was a manager in a company with dominant state ownership, by expressing the words at the press conference in an interrogatory form, the defendant sought to open a debate on issues related to the work of the company, as a matter of public interest.

In this regard, the Prilep Basic Court emphasised that under the case-law of the ECtHR there is little room for limitation on political speech or the debate on issues of public interest. On the contrary, a high level of protection of the freedom of expression should be granted in this respect and a certain degree of hostility and potential seriousness of certain remarks does not eliminate such a high level of protection.

It further elaborated on the Court's understanding of the concept of public interest, as it was presented in the Grand Chamber judgment of *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*.[50] More precisely, "[p]ublic interest ordinarily relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which

[50] *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, no. 931/13, 21 July 2015

are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about."[51]

Additionally, the Prilep Basic Court reaffirmed the ECtHR's position that "the promotion of free political debate is a very important feature of a democratic society. It attaches the highest importance to the freedom of expression in the context of political debate and considers that very strong reasons are required to justify restrictions on political speech".[52]

Lastly, the Prilep Basic Court stressed that the freedom of expression is particularly important for political parties and their active members and any interference with that freedom of a politician, especially of members of an opposition party, like the applicant, calls for the closest scrutiny.[53]

A similar reasoning, with reference to the ECHR case-law, was provided in the case no. **ГЖ-92/22, Bitola Court of Appeal, judgment of 18 April 2022**, by which the Court of Appeal overturned the **judgment of the Prilep Basic Court in the case no. П5-4/21 of 23 November.** The Prilep Basic Court had upheld the claim for defamation lodged by the general manager of the tobacco manufacturing company. When deciding the case it had considered the content of the impugned statements, the way they were expressed, as well as the number of people who could learn about them. In particular, it noted that the defendant had alleged that a flat had been purchased because of enrichment of the plaintiff in the period while he was performing his function, but he had failed to prove the veracity of that allegation. On the other hand, the plaintiff had submitted evidence to prove the untruthfulness of such an allegation as he had purchased the flat on a bank loan.

Reasoning: Since it was true that the plaintiff purchased a flat in Skopje and the defendant obtained that information from an official document, the Bitola Court of Appeal held that the latter neither presented untrue facts nor had the intention to harm the plaintiff's honour and reputation. Moreover, he did not address the public in his personal capacity, but in the performance of political activity while acting on behalf of his political party. Relying on Article 10 of the LCLID, the Bitola Court of Appeal held that the conditions for exclusion of civil liability for defamation had been met. Furthermore, it found that the first-instance court wrongly concluded that the defendant intended to harm the plaintiff's honour and reputation since he acted as a member of a political party and the case concerned a company owned by the state. This triggered the interest of the public, whereas the words expressed by the defendant aimed at opening a debate over the operation of the tobacco company, which was an issue of public interest.

In the case no. **П5-6/21, judgment of 23 November 2021,** the Prilep Basic Court upheld the defamation action brought by one of the managers in the tobacco manufacturing company

[51] § 171 of the judgment
[52] *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII
[53] *Incal v. Turkey*, 9 June 1998, § 46, *Reports of Judgments and Decisions* 1998-IV

as to similar allegations on the purchase of a flat, made at the press conference of 12 July 2020.

Reasoning: The Prilep Basic Court found that the defendant had the intent to damage the plaintiff's honour and reputation by stating "false facts". This consisted of the allegation that the plaintiff had gained money to purchase the flat to the detriment of the tobacco producers, while the plaintiff submitted evidence that the flat was actually purchased on a bank loan. The impugned words were not expressed in an interrogatory form to open a public debate about the performance of the plaintiff in the state-owned tobacco company. Contrarily, they were aimed at violating the plaintiff's honour and reputation. In addition, the Prilep Basic Court noted that the defendant did not submit any evidence attesting that at the moment when he made the impugned allegation, he performed any role in a political party. It observed that from the context in which the allegations were made, it followed that he did not present a press statement of a political party, but he had rather made his own personal statement. At the same time, the Prilep Basic Court concluded that the plaintiff was not a holder of public office appointed by any government and consequently, his work did not fall under the concept of public interest of a holder of public office. Given the mental suffering of the plaintiff, the Prilep Basic Court awarded him a sum of 20,000 Macedonian Denars (approximately 330 Euros). It considered that it would be a proportionate and just satisfaction in respect of the non-pecuniary damage.

Comment: To summarise, the first-instance court (in the case no. П5-5/21, judgment of 16 November 2021) and the appellate court (in the case no. ГЖ-92/22, judgment of 18 April 2022) rendered well-reasoned judgments which are fully compliant with the ECHR jurisprudence. Furthermore, their legal argumentation was reinforced with a proper reference to the relevant case-law concerning the public interest (in both cases) and the freedom of expression of opposition politicians (in П5-5/21).

On the contrary, an apparent lack of understanding of the concept of public interest could be observed in the judgments in the cases nos. П5-4/21 and П5-6/21, both delivered on 23 November 2021 by the Prilep Basic Court. In particular, the second case reflected a certain confusion as regards the question of whether the conduct of the managers in state-owned companies should be subjected to public scrutiny. Moreover, in that case, the first-instance court required that proof is submitted to it of the defendant's political activity, a requirement which appears to have amounted to excessive formalism in the circumstances of that particular case.

In conclusion, these cases are significantly important, as they exemplify the inconsistent application of the ECHR standards, which led to different judicial outcomes even within the same first-instance court. This phenomenon should be properly addressed in order to prevent the divergent judicial practice to become a source of legal uncertainty and to further diminishing the public trust in the judiciary.

III П5-4/17, Kumanovo Basic Court, judgment of 18 May 2018, remitted by the Skopje Court of Appeal, judgment of 3 May 2019 (ГЖ-5479/18); III П5-4/19, Kumanovo Basic Court, judgment of 5 July 2019, upheld by the Skopje Court of Appeal, judgment of 24 March 2021 (ГЖ-629/20)

Facts/ Reasoning: The plaintiff, Maksim Dimitrievski, the mayor of the Municipality of Kumanovo and a former MP, sued for defamation the opposition party VMRO-DPMNE and one of its members. The latter made statements against the plaintiff at a press conference held on 7 April 2017, subsequently uploaded on the webpage of the party. In particular, he accused the plaintiff of having physically attacked a young boy during a night party. For that reason, he called the police and the public prosecution to take action against the plaintiff to prevent him from re-offending, as there should be no impunity and he must be held accountable for his acts.

Initially, the first-instance court upheld the plaintiff's claim holding that the defendant conveyed untrue facts which were harmful to the plaintiff's honour and reputation, even though he knew or ought to have known that they were untrue. He failed to prove the veracity of the facts since there was no final judgment convicting the plaintiff in respect of the alleged offences. According to the first-instance court, the impugned statements could not be considered a serious criticism of the plaintiff as a politician, as they did not concern the performance of his political function. As to the plaintiff's claim for compensation of 1 Euro, it was upheld in full as a symbolic compensation for the damages.

On appeal, the case was referred back to the first-instance court. It was held that the lower court had not evaluated whether the conditions for exclusion of liability had been met and whether the impugned allegations could be deemed as a serious criticism of the conduct of the plaintiff as a public office holder, who should be susceptible to criticism with a view to the protection of the public interest. It was also noted that the incident of violence referred to in the impugned statement had in fact occurred and it was reported to the police. Moreover, before making the impugned allegations in public, the second defendant checked their veracity by filing a formal request with the Basic Public Prosecution's Office in Kumanovo for access to information of public interest. He requested to be informed whether there was a criminal complaint filed in respect of that incident. His request was dismissed. The Skopje Court of Appeal instructed the first-instance court to consider whether there were any statutory grounds for exemption from civil liability in this particular case under Articles 7 and 10 of the LCLID.

When reconsidering the case, the first-instance court noted that the criminal complaint for violence filed against the plaintiff was rejected by the competent public prosecutor as there was no suspicion that he had committed that offence. Hence, it held that the impugned allegations made by the defendant did not amount to a justified and serious criticism of the conduct of the plaintiff as a public office holder, in absence of a final judgment convicting the plaintiff. They were also in contravention of the principle of presumption of innocence.

Consequently, the plaintiff's claim was upheld and he was awarded the symbolic compensation of 1 Euro. This judgment was confirmed on appeal.

Comment: As stated above, the initial judgment handed down by the first-instance court was not upheld by the appellate court, which remitted the case and properly instructed the first-instance court on what elements should be taken into account when reconsidering the case in order not to violate the defendant's freedom of expression. However, it seems that by not recognising the wider limits of acceptable criticism in the political arena and the public interest in the presentation of the impugned allegations, as well as by imposing a heavy burden of proof on the defendant, in the instant case the domestic courts may have failed to meet the requirements of the Convention system under Article 10 of the ECHR.

2.3.2.3. Domestic case-law not in conformity with the ECHR standards

The thorough analysis of the case files in defamation cases leads to another worrying conclusion that domestic judicial practice is not always aligned with European standards, particularly as regards political speech.

A few relevant examples will be summarised below.

VII П5-6/18, Skopje Basic Civil Court, judgment of 28 December 2018, upheld by the Skopje Court of Appeal on 15 May 2019 (ГЖ-1554/19)

Facts: The Skopje Basic Civil Court established that the former Prime Minister, Nikola Gruevski was liable for defamation in respect of the statement he made on 29 October 2017 at a press conference held at the headquarters of his political party, VMRO-DPMNE. The press conference was broadcast live on several TV stations and it was subsequently uploaded on several national Internet portals and YouTube. The defendant commented that the local elections were poorly organized and there were numerous irregularities during the elections. He also argued that the leader of the political party GROM, Stevcho Jakimovski, was attacked with a knife by Esad Rahic, a former MP from the political party SDSM, who had allegedly been under house arrest after he had been charged with drug trafficking. Following the press conference, the latter asked in writing the defendant to apologise to him, as his honour and reputation were damaged. On 7 November 2017, an announcement was published on the official website of the political party VMRO-DPMNE acknowledging that a mistake had been made at the press conference since the statement in question did not relate to Esad Rahic, but instead to his brother Sead Rahic. The same announcement was published in the daily newspaper *Vecer* in its edition of 11-12 November 2017.

Reasoning: In its reasoning, the Skopje Basic Civil Court referred to the ECtHR standards which concern political speech. In particular, it reiterated that the ECtHR attaches the highest importance to the freedom of expression in the context of a political debate and considers that political speech could not be limited without justified reasons. Referring to the case of

Piermont v. France,[54] the Skopje Basic Civil Court also stressed that there should be greater tolerance towards remarks made in an election context. It was also noted that freedom of expression is not absolute, but it could be limited and sanctioned under certain conditions if the rights of others have been infringed as a result of its exercise.

As regards the case at hand, the Skopje Basic Civil Court highlighted that it should be taken into consideration that the impugned statement had adversely affected the plaintiff's personality, as well as his private and social life, since it was made during an election period and therefore, it caused doubt in the public to whom the plaintiff was known as a politician and as a former MP. The defendant did not prove that he made an unintentional mistake when mentioning the plaintiff, instead of his brother. Moreover, he was obliged to act diligently when making his statement given the seriousness of his assertions, which he failed to do. Consequently, the Skopje Basic Civil Court ruled that the defendant was liable for defamation. While the plaintiff claimed to be awarded a compensation of 400,000 Macedonian Denars (over 6,650 Euros), the largest part of his claim was dismissed and the defendant was ordered to pay the plaintiff a sum of 60,000 Macedonian Denars (approximately 1,000 Euros) for non-pecuniary damage.

In his appeal against the first-instance court's judgment, the defendant argued that even though the Skopje Basic Civil Court referred to the ECHR jurisprudence concerning political speech in an election context, in substance it failed to protect such speech in this particular case. The defendant did not intend to defame the plaintiff, but rather to raise a public interest debate and to call the competent institutions to act in the case of a physical assault of a member of another political party. Furthermore, the Skopje Basic Civil Court had not provided an explanation of how it had applied the criteria established by the ECtHR as regards the balancing of Articles 8 and 10 of the ECHR, as well as how it had applied the proportionality test which should lead to a conclusion whether the limitation of Article 10 rights was necessary in a democratic society.

Without providing any direct response to arguments submitted by the defendant, the Skopje Court of Appeal upheld the first-instance court's judgment, reiterating its findings that the defendant had not acted in good faith when making his statement as he had not been cautious when he indicated the defendant's name. Moreover, with his untrue statement, he had overstepped the margin of tolerance for political speech in an election period.

Comment: This case illustrates a specific situation of the exercise of freedom of political expression during elections. Whereas the domestic courts have properly placed a special emphasis on the higher degree of tolerance towards criticism in an election context, as required by the ECHR in similar cases, it appears that they have failed to afford the appropriate level of protection to the political speech among the political opponents in contravention with the ECHR requirements.

[54] *Piermont v. France*, 27 April 1995, Series A no. 314

9 П5-61/18, Skopje Basic Civil Court, judgment of 22 April 2019, upheld by the Skopje Court of Appeal, judgment of 9 October 2019 (ГЖ-3569/19)

Facts: The plaintiff, Vice Zaev, who was a brother of the then Macedonian Prime Minister, Zoran Zaev, launched defamation proceedings against Aleksandar Nikoloski, the Vice-President of the main opposition party VMRO-DPMNE for his statement made in a TV interview broadcast on 24 October 2018 at 1 TV. In that interview, he stated that it was well known that his political party was Western-oriented, towards NATO and the EU, and that, indeed, it was the first political party which promoted the country's NATO and EU integration. In addition, he argued that it could not be considered European to conduct suspicious procurement procedures and other business operations, in which the members of the Prime Minister's family had been involved, including his brother who was allegedly becoming a key business player in the state. That statement was subsequently uploaded on several news web portals.

Reasoning: At the outset, the Skopje Basic Civil Court noted that the plaintiff was a businessman and a manager of several companies, but also a brother of the former Prime Minister. It recognised the importance of freedom of expression for the development and fostering of democratic processes in society, including the freedom to criticise the Government and its members. However, it did not accept the defendant's argument that his statement was based on the content of several posts in the electronic media (he had also submitted as evidence) which created a sufficient factual basis to believe in their truthfulness and to form his own opinion about the size of business undertakings of the plaintiff, as a ground for exclusion of his liability under Article 9 paragraph 2 of the LCLID.

On the contrary, the Skopje Basic Civil Court observed that the defendant's statement was made with an intent to damage the plaintiff's honour and reputation as his allegations about suspicious procurement procedures he had been involved in fell beyond the limits of acceptable criticism. For this reason, also bearing in mind the distinction between statements of fact and value judgments made by the ECtHR, the Skopje Basic Civil Court held that the defendant had to prove the truthfulness of his allegations, in order for his liability to be excluded, which he failed to do. Additionally, he had no sufficient factual ground to believe in their veracity, as he had neither submitted to the first-instance court any evidence demonstrating the suspicious business conduct he referred to in his statement nor requested the competent bodies to examine the legality of the public procurement procedures in question. Furthermore, he had submitted no evidence that there was any procedure initiated against the persons who had allegedly been involved in the activities mentioned in his statement.

While acknowledging the importance of the political debate on issues of public interest under the case-law of the ECtHR, the Skopje Basic Civil Court observed that the plaintiff was not performing any public office and thus, he could not have been subjected to criticism. It also concluded that in the circumstances of this particular case, it was necessary to interfere with the defendant's freedom of expression, as its exercise was directed at damaging the plaintiff's reputation by stating facts, that the defendant failed to prove. It further held that the

upholding of the plaintiff's claim for defamation should be deemed as a just satisfaction in respect of the non-pecuniary damage. Accordingly, it dismissed his claim for damages in the amount of 30 000 Macedonian Denars (approximately 500 Euros).

Comment: By misinterpreting the case-law of the ECtHR the first-instance court referred to, it decided the case so that it restricted to very narrow limits the room for political speech which should be left free to the opponents of the policies of the ruling party/parties and the representatives of the opposition. Regrettably, the appellate court did not use the opportunity to provide redress for the apparent shortcomings in the first-instance court's judgment, but it confirmed the latter as a whole. As a result, both rulings given in the present case significantly deviated from what is considered the well-established practice of the ECtHR and was also reflected in the Court's findings in *Makraduli*, as the most relevant case on political freedom of expression in the Macedonian context, which the domestic courts should also have in mind in similar cases.

П5-4/18, Gostivar Basic Court, judgment of 27 May 2019, upheld by the Gostivar Court of Appeal, judgment of 27 August 2019 (ГЖ.бр.758/2019)

Facts: The plaintiff, a head of a department at the Municipality of Gostivar and a former head of the cabinet of the then mayor, Nevzat Bejta, initiated defamation proceedings against the spokesperson of the Municipality of Gostivar for the allegations he made at two separate press conferences held on 18 and 19 October 2013. Those allegations concerned the purchase of technical equipment for the municipality, which was allegedly made without conducting a public procurement procedure and with the involvement of the plaintiff. They were posted on the official webpage of the Municipality of Gostivar and disseminated by two local TV channels and two online news portals, as well as posted on Facebook.

Reasoning: The Gostivar Basic Court held that the defendant made the impugned allegations without supporting them with any evidence whatsoever and he failed to comply with the obligation to verify that they were true before making them in public. It noted the defendant's argument at the court's hearing that he had grounds to believe in such allegations due to the financial reports he had read before the press conference. Noting that the defendant failed to prove the defamatory allegations he made, which was his official duty, especially as he was a spokesperson of the municipality, the Gostivar Basic Court ruled in favour of the plaintiff and awarded him 30 000 Macedonian Denars (approximately 500 Euros) in respect of the non-pecuniary damage he had suffered.

Comment: In the case at hand, neither the first-instance court nor the appellate court, which fully confirmed the lower court's findings, recognised the existence of a public interest to discuss the possible abuse of office by the plaintiff. Moreover, they did not make a proper distinction between statements of fact and value judgments, and, therefore, they based their judgments mainly on Article 9 paragraphs 1 and 2 of the LCLID, which place the burden of proof on the defendant to prove the truthfulness of the facts contained in the statement.

Simultaneously, they disregarded the exceptions from this general rule set out in Article 7 paragraphs 1 and 2[55] as well as in Article 9 paragraph 3 of the LCLID.[56]

П5. бр.11/16, Strumica Basic Court, judgment of 4 January 2017, upheld by Shtip Court of Appeal, judgment of 20 September 2017 (ГЖ-273/17)

Facts: The plaintiff who was employed in the Strumica Municipality lodged a defamation claim against the spokesperson of the opposition political party VMRO-DPMNE Strumica. At a press conference held on 19 May 2016 at the premises of VMRO-DPMNE, the defendant alleged that the civil servants employed in the municipal institutions were transported and brought to party protests throughout Macedonia organised by the ruling political party SDSM. This was characterised by the defendant as impertinent treatment of the employees, who were forced to pursue party goals instead of performing their working duties. The defendant further posed a question of whether these persons, also naming some of them, including the plaintiff, were employed in municipal institutions and enterprises or worked at the party headquarters of SDSM in Skopje.

Reasoning: The Strumica Basic Court ruled that the defendant could not be held liable for defamation as by making the impugned statements she did not make any allegations about the plaintiff which would have harmed her honour and reputation. Instead, she formulated her statement in a question form thus expressing certain doubt. In conclusion, there were no untrue facts presented by the defendant as an important element to establish civil liability for defamation and the plaintiff's action was consequently dismissed as unfounded.

Comment: The reasons adduced by the first-instance court to dismiss the plaintiff's action were based on the domestic statutory provisions. However, following its own assessment of the facts of the case, the Strumica Basic Court failed to acknowledge the existence of a public interest to discuss the possible abuse of the civil service by the ruling political parties and the need to grant higher protection of political speech, particularly when it is exercised with a view to opening a debate on issues of legitimate public concern. As a result, even though the

[55] Article 7 of the LCLID envisages that: "(1) There shall be no liability for insult in the cases of: 1) giving a statement when participating in the work of the Assembly of the Republic of Macedonia, in the work of the councils of the municipalities and of the City of Skopje, in the course of an administrative or court procedure or before the Ombudsman, unless the plaintiff proves that the statement has been given maliciously; 2) communicating an opinion contained in an official document of the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, the administrative bodies, the courts or other state bodies, a press statement or other documents of international organizations or conferences, a press statement or any other document for informing the public issued by competent state bodies, institutions or other legal entities, a press statement or any other official document of investigations of committed criminal offences or misdemeanors;…".

[56] Pursuant to Article 9 paragraph 3 of the LCLID: "[a]s an exception to paragraphs (1) and (2) of this Article, the burden of proof shall fall upon the plaintiff who, as a public office holder, has a legal obligation to provide an explanation of specific facts which are related in the most direct way to, or are important for, the performance of his/her office, provided that the defendant proves that he/she has had reasonable grounds to present the statement in the public interest."

outcome of the case did not lead to a violation of the freedom of expression, the reasoning of the judgment itself was insufficient and not in line with the ECHR standards.

2П5-27/16, Skopje Basic Civil Court, judgment of 29 March 2018, upheld by the Skopje Court of Appeal, judgment of 27 September 2018 (ГЖ.бр.3629/18)

Facts: The plaintiff in the present case was the ruling political party Democratic Union for Integration (BDI/DUI). It filed a defamation lawsuit against Ljuchi Daim, the head of the youth forum of the opposition political party *Movement BESA*. The lawsuit was related to his statements made before the representatives of several electronic media during an event organized in the Old Bazaar in Skopje on 6 February 2016. On that occasion, he criticised the current politics of the BDI/DUI qualifying them as "a crime against Albanians". In particular, he stated that gifted young people are forced to become members of the political party BDI/DUI in order to get employed and many of them who did not meet such a requirement left the country. In addition, he accused the BDI/DUI of taking bribes of at least 5,000 Euros to secure them a (government) job. Lastly, he alleged that once they got their jobs, young people were blackmailed to vote at the elections for BDI/DUI as a condition to keep their jobs.

Reasoning: Without providing any plausible argumentation, the Skopje Basic Civil Court observed that with the impugned statements the defendant presented untrue facts about the plaintiff, which were disseminated to the wider public and became available to everyone. He acted so although he knew or ought to have known that they were untrue and he could have checked their veracity before presenting them publicly. For that reason, the Skopje Basic Civil Court concluded that the defendant knowingly presented the contested statements with a clear intent to express a humiliating opinion by using insulting and defamatory language which could discredit the plaintiff's authority and reputation. While upholding the plaintiff's claim to establish that it was defamed, the Skopje Basic Civil Court dismissed its claim to award 10,000 Euros in respect of non-pecuniary damage. It held that the determination of liability for defamation should constitute sufficient "personal and moral satisfaction" for the plaintiff who enjoyed high authority and reputation in the social life of the country.

Comment: The findings of the first-instance court in this particular case are disputable for several reasons. First of all, it disregarded the right of opposition parties to comment on and criticise the politics of ruling parties. Second, it created confusion about what is considered a statement of facts and what amounts to a value judgment, by characterising the contested allegations as statements of fact, which should have been proven. Such a requirement was impossible to be met, as under the case-law of the ECtHR the truth of value judgments is not susceptible of proof and it infringed the freedom of opinion itself. Third, the first-instance court did not recognise any public interest in the debate opened with the allegations made by the defendant, but it wrongly observed that such allegations spread hatred against the plaintiff.

Moreover, the first-instance court showed excessive respect for the plaintiff's reputation while it failed to strike a fair balance between it and the defendant's freedom of expression. For

instance, the wording of its order not to award damages was also problematic as it referred to the "personal and moral satisfaction" for the plaintiff, even though such satisfaction is more likely to be afforded to private individuals, rather than to legal entities, as the plaintiff was. All in all, the present judgment demonstrates a lack of fundamental understanding of the Convention concepts and principles on freedom of expression. Finally, the first-instance court failed to apply properly the domestic legislation on defamation, but its omissions were not rectified at the appellate stage, since its judgment was confirmed in its entirety by the higher, appellate court.

2.4. Forms of expression other than political speech

Apart from political speech, in one of the cases under consideration, the importance of satire as a specific form of expression has also been acknowledged.

XIX. П5-62/19, judgment of 10 November 2020, Skopje Basic Civil Court, upheld by Skopje Court of Appeal on 16 December 2021 (ГЖ-1178/21)

Facts: The plaintiff, Viktor Kanzurov, a journalist, filed a defamation lawsuit against the defendant, Sasho Tasevski, an artist and actor employed in the Drama Theatre Skopje, in respect of a Facebook post of 20 June 2019. The defendant had posted a text which was accompanied by a video he recorded and uploaded, in which he played a song in Bulgarian. In the impugned material, he argued that the plaintiff might be a mercenary (*платеник*) of a foreign secret service tasked to undermine the Macedonian national consciousness. He also stated that he did not assert that the plaintiff was a mercenary, but simply contemplated the topic of secret services and payment of their collaborators. In addition, he expressed his disagreement with the plaintiff's opinions expressed in a TV show that Bulgarian national enlightenment had begun in Macedonia and that there would be no progress for Macedonians unless they acknowledged that their national heroes were actually Bulgarians. In addition, he expressed his own views about some historical issues that were a matter of bilateral dispute between Macedonia and Bulgaria.

Reasoning: The Skopje Basic Civil Court found that the defendant intended solely to express his own opinion, rather than to defame the plaintiff and consequently, it dismissed the defamation claim as unfounded. Regrettably, it provided scarce reasoning, which was mainly focused on the absence of intent on the part of the defendant to harm the plaintiff's honour and reputation.

The Skopje Court of Appeal confirmed this judgment, providing more detailed reasoning. In particular, it held that the defendant wrote his text on his personal Facebook profile as he was triggered to do so by the opinions that were expressed by the plaintiff in the TV show *Openly* which was broadcast by *Alfa TV* on 17 June 2019. The defendant commented that the plaintiff might have been a foreign mercenary as a reaction to the comments made by TV viewers and the plaintiff's answer given to the moderator's question during the TV show denying that he was a mercenary and stating that he was earning for life with a modest salary. Thus, the defendant had solely expressed his opinion in a form of satire, as he normally used his

Facebook profile to promote his satires, articles, and novels, as well as the stand-up performances and theatre plays in which he took part, but also to express his personal opinions about the political and the social life of public figures in the country and to criticise the current affairs which concerned the wider public.

Even though the defendant used rather offensive and obscene language, the Skopje Court of Appeal did not consider that there was malicious intent on the part of the defendant to humiliate the plaintiff and damage his honour and reputation. It held that the first-instance court had rightly established that the defendant's statements did not present facts which could be proven, but the defendant's subjective opinions whose truth was not susceptible of proof. In this context, the Skopje Court of Appeal took into account the distinction between statements of fact and subjective opinions made in the case-law of the ECtHR.[57] Given the content of the defendant's statement and the manner in which it was made, as well as his position that he was not claiming anything about the plaintiff, but only contemplating and expressing his own opinion, the Skopje Court of Appeal concluded that there should be no civil liability for insult and defamation in this particular case.

Comment: This is an example where the appeal court demonstrated greater judicial activism and significantly improved the reasoning provided by the first-instance court in order to better underpin its findings and conclusions. It had thus met the requirement for providing sufficient reasoning for domestic judicial decisions which would be compatible with the principles of rule of law and legal certainty. Also, it applied correctly the distinction between statements of fact and value judgments to the circumstances of the present case. What is even more important, both judicial instances examining the case provided a high level of protection for speech, which was a bit provocative and exaggerated, putting it into the category of satire. Though, they failed to consider whether the extremely provocative language used by the plaintiff to deny the Macedonian nation could have also been perceived as amounting to an abuse of freedom of expression, which is prohibited under Article 17 of the Convention.

Finally, the courts could have further reinforced their argumentation by relying on the ECHR jurisprudence which defines satire as a form of artistic expression and social commentary that, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, it requires that any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care (*Welsh and Silva Canha v. Portugal*, § 29; *Eon v. France*, § 60; *Alves da Silva v. Portugal*, § 27; *Vereinigung Bildender Künstler v. Austria*, § 33; *Tuşalp v. Turkey*, § 48; *Ziembiński v. Poland (no. 2)*, § 45; *Handzhiyski v. Bulgaria*, § 51).

[57] It also reiterated that while the existence of facts could be demonstrated, the truth of subjective opinions was not susceptible of proof. Since the requirement to prove the truth of a value judgment was impossible to meet, it led to a breach of the freedom of opinion as an integral part of Article 10 of the Convention. On the other hand, even a subjective opinion may in certain instances be penalized if it was not grounded on any factual basis and it was excessive.

2.5. The role of media

П5.6р.1/10, Shtip Basic Court, judgment of 17 November 2020, upheld by the Shtip Court of Appeal, judgment of 25 March 2021 (ГЖ-215/21)

Facts: The case concerned a libel action brought by Petar Kolev, the head of the political party Citizens' Democratic Union (GDU) against Ivancho Bojadziski, author of an article who was also editor-in-chief of the local newspaper *The Voice of Shtip*.

In January 2019 the defendant wrote that the plaintiff, speaking in the Bulgarian language, had argued in both Bulgarian and Macedonian media that the Macedonian nation did not exist and that indeed, Macedonians were Bulgarians. He further added that the plaintiff was allotted a lot of time one day weekly on the regional TV Star to teach (*поучва*) the citizens of Shtip what was good and what was bad politics. He further alleged that the plaintiff was fighting to become an MP in some next parliamentary elections and that the plaintiff recruited slanderers (*вербува кодоши*), who needed him to pursue his political goals. According to the defendant, the plaintiff had no morals, ethics, philanthropy, or solidarity. He further wrote that the plaintiff, who did not know what his nationality was, "encouraged" one of the municipal councillors of Shtip, who was legitimately elected by the people, to publicly slander those councillors who would not like to be solidary according to the "perverted" criteria of the plaintiff for solidarity and to donate half of their lump sum (*наушал*) for charity, as it was proposed by that particular councillor.

The plaintiff argued in front of the Macedonian courts that with the impugned statements the defendant libelled him with an intention to inflict damage on his honour and reputation.

In the first instance, the Shtip Basic Court took into consideration that the plaintiff as a politician had appeared several times on national and regional TV stations during the last years, both in Macedonia and abroad. For instance, he gave an interview on the TV show *At the Centre*, which was titled "On the Bulgarian passports" (*За българските пасоши*) and broadcast by a Macedonian TV station. In that programme, the plaintiff stated that he would talk in the Macedonian dialect, as a large part of the audience had not been taught in the Bulgarian standard language. He further acknowledged that he had obtained a Bulgarian passport several years ago. In another TV show broadcast by a Bulgarian national TV, speaking in the Bulgarian language, he stated as follows: "[f]or over 20 years we have been raising our small brother Macedonia, we behaved absolutely gently with him, but at a certain point he grew up, he became a man and he started making troubles not only at home but also at school. He also went to Brussels and made trouble there… We should love him as our smaller brother, but sometimes we should also slap him to make him obedient."

Reasoning: In its reasoning, the Shtip Basic Court stressed that the LCLID and the ECHR protect not only the right to expression but also the right to have their own opinion. According to the case-law of the ECtHR, the press and other media play a substantial role in respect of the right to freedom of expression in a democratic society as a public watchdog, whereas a

special emphasis is being placed on the protection of statements of political nature, as well as statements on broader issues which concern a legitimate public interest.

Given the case-law of the ECtHR on the role of the press and taking into consideration the established fact that the defendant was a journalist, the Shtip Basic Court noted that when exercising their freedom of expression and in particular, when reporting on issues of (legitimate) public interest, journalists may use strong words and express their view to an extent of exaggeration, and even provocation.

In addition, since the plaintiff was the head of a political party, the Shtip Basic Court held that he as a politician and a public figure must have demonstrated a greater degree of tolerance towards criticism. Unlike private figures, politicians with their public appearances inevitably and knowingly lay themselves to a close scrutiny of every word and deed, both by journalists and by the wider public. Therefore, the given statements regarding politicians could be limited only when it is absolutely necessary.

The Shtip Basic Court further observed that the statements contained in the impugned article were not made with the sole purpose of diminishing the plaintiff as a person or damaging his honour and reputation. On the contrary, they were value assessments, i.e. critical subjective value judgments and the defendant had submitted sufficient evidence to prove that he had a justified reason to believe in the truth of the subjective critical value judgments he had published. The words he expressed in writing had a legitimate aim, and that was through the exercise of the freedom of the press regarding issues of public interest to enable the public to be informed about the ideas and positions of the plaintiff as a leader of a political party, who sought to be part of the government. The defendant did not touch upon the plaintiff's private life, and bearing in mind that the plaintiff was a public figure and a politician, he had to show a greater degree of tolerance towards criticism on issues of public interest. In this particular case, the defendant made his subjective critical value judgment as a reaction to the provocation based on the speech and the statements made by the plaintiff during his public appearances in the media.

In conclusion, the Shtip Basic Court found that the defendant should not be held liable for insult and defamation and it dismissed the plaintiff's claim as unfounded.

The Shtip Court of Appeal mainly reiterated the findings of the Shtip Basic Court. Moreover, it highlighted that when the plaintiff accepted to exercise a public function and entered politics, he had also put himself in a position to be criticised and to accept criticism for his work and public appearances, and he should, accordingly, also had a higher degree of tolerance. The appellate court held that no damage was caused to the plaintiff's political party with the impugned statements. The plaintiff himself as a leader of that party knowingly exposed himself to careful examination, both by journalists and by the wider public. As a result, he should have been aware that his words and deeds would also have an impact on his political rating.

Comment: In the present case, the domestic courts have reaffirmed the higher degree of tolerance towards criticism which should be demonstrated by politicians and other holders of

public office, given their position in society and the need for their work to be scrutinised by the wider public. More importantly, it highlighted the significant role of the press as a public watchdog and the freedom that should be given to journalists to comment on the way politicians perform their office, as well as the statements they make to the public.

2.6. Defamation proceedings involving legal entities (associations, companies)

In several civil cases which were taken into consideration, parties to the defamation proceedings were activists of non-governmental organisations (NGOs). Such cases were an opportunity for domestic courts to highlight the role of "public watchdog", similar to that of the press, which the Court recognised that NGOs should play in a democratic society (*Animal Defenders International v. the United Kingdom* [GC], § 103; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], § 86; *Cangi v. Turkey*, § 35).

This analysis will also review a few cases in which the exercise of freedom of expression has affected companies and business entities. In this regard, the ECtHR indicated that there is a difference between the reputation of an individual concerning his or her social status, which might have repercussions on his or her dignity, and the commercial reputational interests of a company, which is devoid of that moral dimension (*Uj v. Hungary*, § 22; *OOO Regnum v. Russia*, § 66). It also emphasised that, as well as the public interest in open debate about business practices, there is a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good (*Steel and Morris v. the United Kingdom*, § 94).

П5.6р.9/20, Shtip Basic Court, judgment of 1 July 2020, upheld by the Shtip Appeal Court, judgment of 28 April 2022 (ГЖ-639/21)

Facts: The defendant, Kristina Ampeva, was the president of a civil association advocating for the protection of the rights of textile workers. She was sued by a shoe manufacturing company, for defamation allegedly committed through a Facebook post. In the impugned post, she claimed that the dismissals of several workers of the plaintiff company would be annulled since they were discriminatory and aimed to frighten those workers who were rebellious so that they would be obedient to the company's management. She concluded that this kind of company should be shut down, as there was harsh exploitation of the workers and they were not properly paid.

Reasoning: The Shtip Basic Court took into account the defendant's position as president of a NGO, which aimed at addressing the workers' problems, as well as raising the workers' awareness of their rights and securing their participation in the preparation of the relevant legislation. Moreover, it encouraged workers who were facing any infringements of their rights to report them to the association. Later, such complaints were reported to the State Labour Inspectorate and to the Association of Trade Unions of Macedonia (SSM).

The Shtip Basic Court also noted that following the disruption of the working process at the plaintiff company there was a meeting at which the defendant participated together with two other employees. On that occasion, an agreement was signed between the President of the SSM and the plaintiff. It regulated the payment of the remaining unpaid salaries and the additional payment for those workers whose incomes did not reach the amount of a minimal wage. One of the employees present at the meeting, together with two other workers got dismissed, and this triggered the defendant to publish the impugned post. Indeed, the latter was published with reference to the news broadcast by a regional TV station informing about the dismissals in the plaintiff company.

In addition, the Shtip Basic Court carefully analysed the entire context in which the defendant's allegations were made. In particular, it noted that in her post the defendant also stated that over 200 lawsuits were filed against the plaintiff company and that numerous final, legally binding judgments had already been handed down in favour of its employees, but were difficult to be enforced. She also alleged that even though the plaintiff company was receiving state aid for payment of minimum wages, it continued to provide wages to its employees in the amount of 80% of the said minimum.

She further commented that it was a shame for the company that it had dismissed its employees with over twenty years of experience in the same company. Namely, only three women were charged with breaching the disciplinary rules due to their five days' absence within one year, even though at the respective time all workers were told by their chiefs that they should not go to work as at present there was no work to do. At the end of her post, the defendant called the media, the NGOs, the State Labour Inspectorate and the Ombudsman, as well as trade unions to stand behind the dismissed employees.

The Shtip Basic Court evaluated whether the interference was necessary in a democratic society and whether it struck a fair balance between the defendant's right to freedom of expression, on one hand, and the plaintiff company's interest in the protection of its reputation, on the other hand.

Referring to *Steel and Morris v. the United Kingdom*,[58] it noted that the plaintiff was a large company, whose managers inevitably and knowingly laid themselves to close scrutiny of their acts and business activities, Thus, the limits of acceptable criticism were wider in the case of such companies and they should tolerate a greater degree of criticism. Additionally, it considered the defendant's position. Although she posted her words via her personal profile, she did not write them in her personal capacity, but as a president of an association, which affected approximately 7 000 followers. She did not share publicly allegations related to her job post, as she was not employed in the plaintiff company, but she announced information that she gained from the plaintiff company's employees and through her participation at the meetings with the plaintiff and the representatives of the SSM. Given that her association had

[58] *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II

a significant contribution to the public debates, the Shtip Basic Court held that this association, playing a role similar to that of the press, could be categorised as a social watchdog.[59]

It was further highlighted that the ECHR protects not only the right to freedom of expression but also the right to hold opinions, whereby special protection is given to the statements which relate to broader issues of legitimate public interest. Such were also the questions which concern the practices in the textile and shoemaking industry.

While considering whether the words used in the defendant's post expressed factual assertions or value judgments, the Shtip Basic Court had in mind the content of the posted text as well as the manner of its expression. It, thus, concluded that the impugned words had not been stated solely with the aim to degrade the plaintiff as a legal entity and to diminish its honour and reputation, but they presented a value assessment, i.e., a critical subjective value judgment. Such wording was a reaction to the news article broadcast on a regional TV and demonstrated the defendant's disagreement with the absence of corporate social responsibility and the failure of the plaintiff company to fulfil the labour rights of the textile workers.

According to the Shtip Basic Court, the posted text was published in good faith with a view to the protection of workers' rights as the defendant doubted that they had been infringed. Therewith she actually instructed those workers whose rights had been violated to report the violations to the labour inspectorate. In her post, the defendant had used the term exploitation in accordance with the definition given by the International Labour Organisation (ILO) to describe the working conditions of the plaintiff's employees, where there was no regular payment of wages and allowances. The latter value judgment was created on basis of the information acquired by the plaintiff's employees and it was also supported by the generally accepted categorisation of the textile industry as one of the most capital- and labour-intensive *branches*, whose workers' net salaries were among the lowest at the state level. Hence, it was established that the defendant had a well-founded factual basis to believe that the critical subjective value judgment she posted was true.

Additionally, the Shtip Basic Court observed that due to the conduct of the plaintiff, which dismissed certain workers who had participated in the negotiations with the SSM, the defendant had justified reasons to believe that the plaintiff dismissed them in a discriminatory and selective manner. It elaborated that each company's reputation is built through socially responsible conducts, which also include the attitude towards its employees. It noted several labour-related court proceedings against the plaintiff company relating to the payment of wages and allowances which ended to the detriment of the plaintiff company, as well as court proceedings for annulment of dismissals due to alleged breach of the working order and discipline and the working obligations. Accordingly, it dismissed the plaintiff's lawsuit as

[59] In this respect, a reference was made to the case of *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 27, 14 April 2009.

unfounded, given that the damage to the plaintiff's reputation was not the defendant's fault, but a foreseeable consequence of its own actions.

Comment: In sum, in this particular case, the Shtip Basic Court recognised the concept of social "watchdog" and extended it to NGOs and their representatives. Besides, it referred directly to the case-law of the ECtHR that is pertinent to companies. Thus, it followed the developments in the jurisprudence of the ECtHR. Furthermore, it correctly applied the distinction between statements of fact and value judgments. Consequently, when ruling that there was no civil liability for defamation it highlighted that impugned statements constituted a critical value judgment, published by the defendant as a president of an association that is a social watchdog, in good faith as it pursued a legitimate aim, i.e. to open a public interest debate about companies' corporate social responsibility.

9П5-25/19, Skopje Basic Civil Court, judgment of 8 July 2019

Facts: The plaintiff, a private trading company, *Skopski Pazar AD*, filed an action against the Internet portal www.faktor.mk, its owners, founders and managers, for three articles posted on 21 and 23 February 2018 and on 5 March 2018 in which the work of the company was sharply criticised. Amongst others, there were statements affirming that the company had shut down 10 supermarkets, that some other establishments were rented to its former competitors, that another company initiated court proceedings against the plaintiff company and that the entire management of the plaintiff company was faced with criminal responsibility for suspicious shares, etc. Moreover, a question was raised about the ability of the plaintiff company to build a "green market", when it was in debt, its employees had moved to other companies and its income was decreasing.

Reasoning: In the present case, the Skopje Basic Civil Court noted that the content of the impugned articles was already posted on other Internet portals and it should, therefore, be considered as information previously published which was only disseminated by the defendants. Moreover, they contained value judgments which had a sufficient factual basis, since the conclusions made in those articles derived from the information which had been made available by the plaintiff company on its webpage, including the financial report and its public calls for the sale and renting of its real estate. They were also supported by the fact that there were proceedings initiated against the plaintiff company. The Skopje Basic Civil Court bore in mind the doctrine established by the ECtHR as regards the public interest debate, which required being cautious when interfering with the right to freedom of expression. Accordingly, it concluded that the impugned articles were acceptable criticism of the business operations of the plaintiff company, thus opening a public interest debate. Finally, it relied on Article 10 paragraph 1 (1) of the LCLID which excludes civil liability for defamation made by

disseminating statements contained in an announcement or document published by a legal entity, when it ruled that the plaintiff company's claim should be dismissed as unfounded.[60]

Comment: The Skopje Basic Civil Court delivered another judgment in line with the Strasbourg Court's case-law. On the other hand, it did not refer directly to the relevant ECHR standards, such as, for instance, those that require that private companies should restrain from launching defamation proceedings, as their business activities should be subjected to a close scrutiny by the public, and as a result, the limits of acceptable criticism of their operation should be wider and they should tolerate a greater degree of criticism.

2.7. Defamation proceedings involving academic researchers

The ECtHR took the view that academic researchers (see *Başkaya and Okçuoğlu v. Turkey* [GC], §§ 61-67; *Kenedi v. Hungary*, § 42; and *Gillberg v. Sweden* [GC], § 93) and authors of literature on matters of public concern (see *Chauvy and Others v. France*, § 68, and *Lindon, Otchakovsky-Laurens and July v. France* [GC], § 48) should enjoy an equally high level of protection as NGOs and the press.

In one of the cases which concerned freedom of expression of university professors, **VII П5-83/16, Skopje Basic Civil Court, judgment of 12 April 2018, upheld by the Skopje Court of Appeal, judgment of 13 February 2019 (ГЖ-117/19),** the courts dismissed the claim for insult lodged by Prof. Dr Aleksandar Klimovski, a university professor at the Faculty of Law in Skopje, against the journalist who was the author of the impugned TV news report, the editor-in-chief of the information news program of *TV Telma* and the owner of that TV station.

Facts: The plaintiff argued that he was insulted as in the impugned report it was asserted that the statements he had made in an interview showed his fundamental lack of knowledge of both domestic and international law, which might question whether he was competent in his area of expertise. In fact, this report presented to the public various comments on the plaintiff's statements made in the interview (that had been broadcast by several online media), in which he criticised the possible acquisition by a company incorporated in London of the Macedonian oil company, which was the owner of TV Telma.

Reasoning: The Skopje Basic Civil Court held that when preparing the impugned TV news report, the journalist had at her disposal sufficient relevant data and she acted in accordance

[60] The relevant parts of Article 10 paragraph 1 (1) of the LCLID read as follows: "In addition to the grounds for exemption from liability for defamation referred to in Article 9 paragraphs (2), (3) and (4) of this Law, the liability for a statement of facts which harm the honor and reputation of another person presented in a scientific, literary or art work, in a serious criticism, in the performance of an official duty, journalistic profession, political or other social activity, in the defense of the freedom of public expression of thought or of other rights, or the protection of public interest or other justified interests shall be exempted in the cases where: 1) **a statement contained in a press statement, decision or another document of a state body, institution or legal entity** is presented or disseminated, or the statement is presented at a public gathering, in court proceedings, or any other public event regarding an activity of state bodies, institutions, associations or legal entities or a statement publicly stated by another is disseminated;…"

with the professional standards of the journalistic profession. In that report, she presented the professional biography of the plaintiff and his opinions expressed in the interview, but also the views of other legal experts. It was concluded that the journalist had not overstepped the margin envisaged in Article 10 of the ECHR since while exercising her right to freedom of expression she did not act to the detriment of the plaintiff's rights. Furthermore, following his public appearance and when expressing his own opinions regarding questions of public interest for the citizens, the plaintiff should have been ready to accept that certain issues on which he provoked a debate would also be analysed by other legal experts who may have diverging opinions. Such opinions were indeed reported by the journalist in her TV broadcast.

Comment: The Skopje Basic Civil Court focused primarily on the freedom of the press by implicitly applying the concept of journalistic duties and responsibilities, while it neglected the role of university professors as "public watchdogs" which could give a significant contribution to the debate on matters of public concern, as understood in the relevant ECHR jurisprudence.

VII П5-51/17, Skopje Basic Civil Court, judgment of 28 December 2018, upheld by the Skopje Court of Appeal, judgment of 21 May 2020 (ГЖ-22/20)

Facts: The plaintiff, Dragi Zmijanac, who is the president of an NGO for children's rights, filed a lawsuit against Prof. Dr Mirjana Najchevska, a professor at the Institute for sociological, political and legal research. He argued that she had insulted him by expressing a humiliating opinion against him on her Facebook profile.

On 25 June 2017, the defendant published an article on her official blog commenting on an article previously published by a human rights LGBTI activist where child sexuality and paedophilia were discussed, also in light of the author's personal history as a sexually abused given that he himself as a child had been a victim of sexual abuse. In her article, the defendant argued that the minimum conditions to open a debate on this issue in Macedonia were absent.

On 26 June 2017, the plaintiff shared the text posted on the official Facebook profile of his organisation, in which it was stated that the Omdusman's office would be informed about the impugned article of the LGBTI activist. On the same day, the defendant posted on her personal Facebook profile that the plaintiff should not have entered this debate because it exceeded his intellectual capacities. She further added that this was the stupidest thing he did among many many others in the last few years. Moreover, she criticised the work of the organisation that was led by the plaintiff, alleging that it lacked understanding of the human rights concept as well as of the concept of protection of children's rights. She further blamed the organisation's employees for being conservative populists who defended positions close to those of the then-ruling party VMRO-DPMNE.

Reasoning: The defamation claim was dismissed as unfounded. In its assessment, the Skopje Basic Civil Court took into consideration several elements, including the content of the impugned statement, the context in which it was given, as well as the specific circumstances of those involved. It concluded that the defendant had not exceeded the margin of freedom of expression, which is provided by Article 10 of the ECHR, notwithstanding that she had used

harsh wording in her Facebook post. Namely, her statements were made within the framework of a debate on rather sensitive issues of public interest during which contradictory opinions had been expressed.

The Skopje Basic Civil Court held that the defendant focused her statements on a serious criticism towards the work of the plaintiff's organisation and her interest was not directed at the plaintiff's personality as such, but rather at his opinions and the positions advocated by his organisation. According to the Skopje Basic Civil Court, even though the defendant expressed a seriously negative opinion, her intention was not to humiliate or degrade the plaintiff, thus damaging his honour and reputation.

Furthermore, it was noted that given their positions in society the individuals involved in the public debate should be aware that they would sometimes be exposed to stricter criticism and negative opinions. It is, therefore, required that they would show a higher degree of tolerance in favour of the legitimate aim of freedom of expression on topics of general interest of which the public has the right to be informed.

Comment: The Skopje Basic Civil Court demonstrated a solid understanding of the concept of a debate over issues of public interest. It stressed that it should always be encouraged in a democratic society, regardless of how harsh the wording used by some of the participants may be. However, it missed the opportunity to highlight that university professors and public opinion makers, such as the defendant, as well as NGOs and their representatives as it was the plaintiff, should, in fact, play the role of public watchdogs as far as matters of public concern are concerned. In that regard, it could have also enhanced its reasoning by referring to the relevant ECHR case-law stating that associations lay themselves open to scrutiny when they enter the arena of public debate (*Jerusalem v. Austria*, § 38). Once they are active in the public domain, they must show a higher degree of tolerance towards criticism made by opponents about their aims and the means employed in that debate (*Paturel v. France*, § 46).

X П5-62/20, judgment of Skopje Basic Civil Court of 21 July 2021, upheld by the Skopje Court of Appeal, judgment of 2 February 2022 (ГЖ-3953/21)

Facts: The plaintiff, the newspaper publishing company *KOHA*, argued that the defendant, the Institute for the spiritual and cultural heritage of Albanians, should be held liable for defamation due to the defamatory and untrue statements made by its director, Skender Asani, in a public letter that was published on the news web portal www.lider.com. In that letter, the Institute's director criticised the plaintiff company for using anti-Semitic language and making unjustified criticism of the Institute's work by giving space to statements of political representatives who had allegedly disseminated hate speech by questioning how it was possible that the Institute for the spiritual and cultural heritage of Albanians had been transformed into the Holocaust and Protestantism Institute. Moreover, the Institute's director argued that the anti-Semitism of the plaintiff company became a tool to intimidate and deter the management of the Institute from carrying out further research on the Holocaust.

Reasoning: The Skopje Basic Civil Court reaffirmed the ECHR standards in respect of freedom of expression. It emphasised that this freedom includes both the freedom of opinion as an absolute right and as a precondition for the enjoyment of freedom of expression, as well as the freedom of dissemination of information and ideas, which is a relative right important for the development and the promotion of democratic processes in a society. It emphasised the pluralism of ideas, tolerance and broadmindedness, without which there is no democratic society, thus recognising the importance of freedom of expression, irrespective of the form, and whether it is conveyed by a person, a group or by whatsoever media. Moreover, the Skopje Basic Civil Court referred to the limitations to freedom of expression under paragraph 2 of Article 10 of the ECHR.

The Skopje Basic Civil Court acknowledged the distinction between facts and value assessments, whereby the existence of facts must be demonstrated, and the veracity of value assessments is not susceptible of proof. It also considered that from the content of the text as a whole, it appears that the impugned statement amounted to a critical value opinion of the Institute's director which was acceptable in a democratic society, as it raised a public interest debate, even though there was a certain degree of exaggeration or even provocation. Furthermore, it referred to the Court's approach taken in *Lingens v. Austria* that freedom of expression applies not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.[61]

By the same token, the Skopje Basic Civil Court held that a higher degree of tolerance should be demonstrated in cases like the one at hand because the impugned words should have been exposed to a critical examination both by journalists and by the wider public. As a result, it dismissed the plaintiff's claim. It found that the impugned statement, in which a critical view was expressed on the work of the defendant, contributed to raising a debate on issues of public interest relating to topics which were of importance for the citizens of Albanian ethnic origin.

Comment: This judgment is a good example of a case in which domestic courts have recognised the importance of the debate on issues of public interest which involves both media and other stakeholders in a democratic society, such as representatives of research institutes. Nonetheless, the courts deciding the case did not expressly highlight the role of the academic community as a public watchdog, which should be like that played by the press.

2.8. The amount of compensation and the chilling effect

The issue of whether there has been a breach of Article 10 of ECHR is closely linked to the issue of whether such an interference produces a chilling effect on the exercise of the right to freedom of expression.

The ECtHR has made clear that the domestic courts should refrain from ordering the defendants to pay damages when this would indirectly stifle the exercise of the individual's

[61] *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103

freedom of expression. The dissuasive effect of damages has, for instance, been recognised in those defamation cases where damages that had been ordered to be paid would be likely to discourage the person concerned from making any similar criticisms in future (*Stojanović v. Croatia*, § 39).

The ECtHR has also set certain parameters which might be useful for domestic courts when determining the amount of the compensation to be awarded as a financial redress for the damage suffered to an individual's honour and reputation. For instance, what might be crucial for the Court when assessing the proportionality of compensation is whether the amount awarded for damages may have serious consequences for the applicant's economic situation (for an absence of harmful effects of a damages award, see *Delfi AS v. Estonia* [GC], § 161; for the disproportionate nature of a pecuniary award in the light of the applicant's economic situation, see *Kasabova v. Bulgaria*, § 43, and *Tolmachev v. Russia*, §§ 53-55). The Court may also refer to certain reference values, such as the minimum salary in force in the respondent State in question (*Tolmachev v. Russia*, § 54).

Articles 15[62] and 16[63] of the LCLID provide the domestic legal basis for awarding damages in defamation proceedings.

The domestic practice reviewed shows that there is a decrease in the amounts of damages awarded for defamation, as compared to earlier cases. This is also the case when the compensation claims were made by politicians belonging to the ruling parties or by other holders of public office. In addition, courts tend to avoid awarding in full the claim made by plaintiffs in this respect. On the contrary, they award lower amounts of damages than those claimed by the plaintiffs.

For example, in one case the defendant, a former Prime Minister, was ordered to pay the plaintiff, a politician from the ruling party, a sum of 60,000 Macedonian Denars (approximately 1,000 Euros).[64] This constitutes one of the highest amounts awarded for non-pecuniary damages in all cases reviewed for the purpose of the present analysis.

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[62] Pursuant to Article 15 of the LCLID "(1) Compensation for non-pecuniary damage for insult is awarded if the person committing the insult has not apologized and has not publicly retracted the insulting statement or if he/she has repeated the insult following the court ruling prohibiting such repetition.
(2) The amount of the pecuniary compensation for damages should be proportionate to the damage inflicted on the reputation of the aggrieved party and, in its determination, the court should take into consideration all the circumstances of the case, …, as well as the financial status of the defendant. (3) The compensation for the pecuniary damage that has been proved may consist of pecuniary compensation for the actual damage and the lost profit."

[63] Similar to Article 15, Article 16 of the LCLID prescribes that the compensation for damages for defamation "(1) [s]hould be proportionate to the damage caused and should include the non-pecuniary damage inflicted on the honour and the reputation of the aggrieved party, as well as the proven pecuniary damage as actual damage and lost profit. (2) In determining the amount of the pecuniary compensation, the court should take into account all the circumstances of the case, …, as well as the financial status of the defendant…
(4) For the purpose of reducing the damage, the defendant may prove that he/she has apologized, offered an apology or in any other manner has made a serious attempt to eliminate the harmful consequences of the defamation."

[64] VII П5-6/18, judgment of Skopje Basic Civil Court of 28 December 2018, upheld by the Skopje Court of Appeal, judgment of 15 May 2019 (ГЖ-1554/19)

In another case, which also concerned political speech, after ruling in favour of the defendant the competent court awarded him 30,000 Macedonian Denars (approximately 500 Euros) in respect of the non-pecuniary damage he had sustained.[65]

In a third case, where the successful plaintiff also belonged to the ruling political party, the first-instance court upheld his claim for compensation of 1 Euro as it considered that it would be a symbolic compensation for the damages.[66] This shows a new development in the domestic judicial practice, but also a higher level of understanding of freedom of expression by the plaintiff, who was a politician.

Nonetheless, it is noteworthy that according to the ECHR jurisprudence, in certain cases, an order to pay damages, even of symbolic sums, might have a restrictive impact and a chilling effect on the enjoyment of the right to freedom of expression and may, therefore, be considered as a form of unjustified interference with that right, despite being a relatively light one (*Brasilier v. France*, § 43; *Paturel v. France*, § 49; *Desjardin v. France*, § 51).

A slight decrease, compared to the previous practice, may be observed also in the amounts awarded as compensation in proceedings initiated by politicians against journalists. For instance, the Macedonian Association of Journalists (MAN) was ordered to pay 61,690 Macedonian Denars (approximately 1,000 Euros) separately in respect of each of the plaintiffs, a former Minister and her husband, a high-ranking police officer.[67] Such a compensation order demonstrates that the domestic courts have received the message sent in the judgment of *Kostova and Apostolov*.[68]

In two separate sets of proceedings, which involved defamation claims made by and against media actors, the same first-instance court took a different decision as to whether it would be necessary to award damages. In the first one, it ordered the newspaper publishing company and its editor-in-chief to pay 500 Euros and 300 Euros, respectively.[69] In the second set of proceedings, it was considered that the determination of civil liability for defamation would itself constitute an adequate just satisfaction in respect of the non-pecuniary damage suffered by the plaintiff.[70] In another case where a woman journalist was insulted by her man colleague, who was an editor of an Internet portal, another first-instance court awarded 10,000

[65] See П5-4/18, Gostivar Basic Court, judgment of 27 May 2019, upheld by the Gostivar Court of Appeal, judgment of 27 August 2019

[66] III П5-4/17, Kumanovo Basic Court, judgment of 18 May 2018, remitted to retrial by the Skopje Court of Appeal, judgment of 3 May 2019 (ГЖ-5479/18); III П5-4/19, Kumanovo Basic Court, judgment of 5 July 2019, upheld by the Skopje Court of Appeal, judgment of 24 March 2021 (ГЖ-629/20)

[67] 39П5-45/19, Skopje Basic Civil Court, judgment of 19 March 2019, overturned by the Skopje Court of Appeal, judgment of 19 May 2020 (ГЖ-2969/19) and upheld by the Supreme Court, judgment of 2 November 2021(Рев2.бр.399/2020)

[68] *Kostova and Apostolov v. North Macedonia*, no. 38549/16, 5 April 2022. For more details about this judgment, see below in Chapter 5: Safety of Journalists, section 5.4.2.: Politicians against journalists.

[69] VII П5-58/16, Skopje Basic Civil Court, judgment of 18 October 2017, upheld by the Skopje Court of Appeal, judgment of 27 September 2018 (ГЖ-3601/18)

[70] 27. П5-31/20, Skopje Basic Civil Court, judgment of 16 June 2021, upheld by the Skopje Court of Appeal, judgment of 2 February 2022 (ГЖ-3977/21)

Macedonian Denars (approximately 165 Euros) to the plaintiff, which it considered to constitute a just monetary compensation and sufficient satisfaction for the plaintiff.[71]

In contrast, in several other cases, the domestic courts established that there should be civil liability for defamation, but they rejected the compensation claims in respect of non-pecuniary damage, holding that the finding of civil liability for defamation should be in itself regarded as a sufficient personal and moral satisfaction for the plaintiff, without the need to award any monetary compensation.[72] Similarly, in some cases, the first-instance court which heard the cases held that the upholding of the plaintiff's claim for defamation should be deemed as a just satisfaction in respect of non-pecuniary damage.[73]

Moreover, there are also examples where the courts dismissed the compensation claims with the same argumentation, i.e., that the determination of liability for defamation will itself constitute a sufficient personal and moral satisfaction for the plaintiff. Instead of awarding damages, they ordered the defendant to publish the operative part of the judgment on the same page(s) as the impugned article, thus upholding the plaintiff's request in that respect.[74]

Finally, in some cases where private persons were involved, the competent court awarded a rather low amount of 80 Euros as compensation for the defamation made online.[75] Indeed, this is one of the rare cases under review in which the court which dealt with the compensation claim considered the plaintiff's economic situation, the fact that she and her husband were unemployed and that she had not gained any income. It further justified its compensation order with the fact that she had already removed her comment posted online, as well as that she had apologised to the plaintiff for her defamatory statements.

In conclusion, there is an apparent trend towards lowering the level of compensation that is awarded in defamation cases, in line with the ECtHR case-law. Despite that, it seems that there is no uniform approach neither within different courts throughout the country nor within the same courts. Therefore, it will be necessary to consider introducing certain clear criteria or, even, a table of damages to be awarded in certain types of cases, depending on the type of speech, the context in which the statements were made, as well as the persons involved.[76] This

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[71] П5-4/18, Ohrid Basic Court, judgment of 10 January 2019, upheld by the Bitola Court of Appeal, judgment of 17 May 2019 (ГЖ-801/19)

[72] For instance, see case no. 2П5-6/17, Skopje Basic Civil Court, judgment of 25 September 2019, upheld by the Skopje Court of Appeal, judgment of 22 April 2021 (ГЖ-1592/20); and 2П5-27/16, the Skopje Basic Civil Court, judgment of 29 March 2018, upheld by the Skopje Court of Appeal, judgment of 27 September 2018 (ГЖ.бр.3629/18)

[73] 9 П5-61/18, Skopje Basic Civil Court, judgment of 22 April 2019, upheld by the Skopje Court of Appeal, judgment of 9 October 2019 (ГЖ-3569/19)

[74] II П5-3/17, Skopje Basic Civil Court, judgment of 17 December 2018, upheld by the Skopje Court of Appeal, judgment of 29 May 2019 (ГЖ-1733/19)

[75] III П5-3/19, Kumanovo Basic Court, judgment of 1 November 2019

[76] It appears that in practice, the largest Macedonian courts dealing with a great deal of defamation and insult lawsuits have already created such tables, even though most of them are not available to the public. This was also confirmed by the some of the participants present at the focus group on civil law issues which took place on 6 October 2022. Moreover, the Bitola Court of Appeal has published such table on its official webpage. This could be considered as an excellent step forward with a view to strengthening the transparency and the public trust in the

table might serve as a useful practical tool to instruct and help judges in the calculation of the damages to be awarded in the particular circumstances of a given case. Thus, it might also facilitate the harmonisation of the judicial case-law at the domestic level.

2.9. Interim measures (Injunctions)

As regards interim measures (injunctions), the European Court of Human Rights stated that generally speaking Article 10 does not prohibit prior restraints on publication as such. However, the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the Court's part. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (*Observer and Guardian v. the United Kingdom*, § 60 and *Cumpănă and Mazăre v. Romania* [GC], § 118). Such restraints must therefore form part of a legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent any abuses (*Ahmet Yıldırım v. Turkey*, § 64).

In certain cases, the Court emphasised that it must carry out a close examination of the procedural safeguards embedded in the system to prevent arbitrary encroachments on freedom of expression, and it examined the scope and duration of the interim injunction, the reasoning for it, and the ability to contest the measure before it was adopted (*Cumhuriyet Vakfı and Others v. Turkey*, §§ 61-74).

The Court was particularly attentive in cases concerning a general and absolute prohibition on publication as a means for protecting the reputation of others or for maintaining the authority of the judiciary, as well as in other cases where either a sanction imposed amounted to a form of censorship intended to discourage the press from expressing criticism (*Bédat v. Switzerland* [GC], § 79) or the suspension of a publication or distribution of newspapers, considered unjustified even for a short period of time, amounted to a form of censorship (*Ürper and Others v. Turkey*, § 44 and *Gözel and Özer v. Turkey*, § 63).

Article 23 of the LCLID provides for the possibility of imposing interim injunctions, but only when rather strict requirements are met. This provision reads as follows:

work of that particular institution. See the Table of awarded amounts in respect of just monetary compensation for the suffered damage of insult and defamation [*Табела на досудени износи на име справедлив паричен надомест за претрпена штета од навреда и клевета*], available at: http://www.vsrm.mk/wps/wcm/connect/asbitola/980b8dd2-a24e-4eb1-983a-44599139ca23/Tabela_navreda_i_kleveta.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L088F0A1K8MT8K00B1-980b8dd2-a24e-4eb1-983a-44599139ca23-lLTJoRP. However, it should be considered upgrading the existing tables so that they would include all relevant ECHR criteria necessary for calculation of the compensation in cases of insult and defamation.

Temporary court injunctions

Article 23

(1) Along with submitting the complaint for determination of liability and compensation for damage, the aggrieved party may submit a request for issuing a temporary court injunction banning any further publication of the insulting or defamatory statements to the competent court.

(2) The request should include the grounds of belief which refer to the insulting or defamatory character of the statement and its harmfulness to the honour and reputation of the aggrieved party.

(3) The court shall adopt a temporary injunction banning further publication only if the insulting or defamatory statement has been already published and if it has a grounded belief that its further publication shall cause irreparable non-material or material damage to the aggrieved party.

(4) The court shall, by a decision, decide on ordering a temporary ban within a period of three days as of the submission of the request. The ban shall apply solely to the specific insulting or defamatory statement.

(5) The court shall reject the request referred to in paragraph (1) of this Article if it does not contain enough grounds to believe that it refers to an insulting or defamatory statement which damages the plaintiff, or if the court deems that there are grounds for exemption from liability for insult or defamation in that specific case. The requesting entity shall have the right to file an appeal against the decision to the higher instance court within a period of three days as of its submission.

Three cases are selected for review in this section. In the first case, the competent first-instance court refused the request for interim measures. In the second case, such a request was granted. In the third case, it was initially granted by the first-instance court and later refused by the appellate court.

VII П5-34/19, Skopje Basic Civil Court, order of 18 July 2019

Facts: The Medical Chamber of Macedonia filed a request to the first-instance court to issue an injunction imposing a ban on publishing of all contents on the Facebook profile of Dr Jadranka Biban. Such a request was filed in addition to the plaintiff's request for a public apology and retraction of her Facebook posts of 1, 2, 19 and 20 March 2019.

In her posts of 1 and 2 March 2019, the defendant wrote that the official representatives of the Medical Chamber of Macedonia should stop using this professional organisation as an instrument to manipulate the public and discredit the medical profession. She stated that they could not terrify her and silence her, as she was telling the truth. She also used harsh words against her colleagues from the Medical Chamber of Macedonia, characterising them as the

most difficult disease of the health system and blaming them for ill-treating and frightening hundreds of doctors, destroying the medical profession and destroying the people's health.

Additionally, in her post of 19 March 2019, she wrote that the Minister of Health, Dr Venko Filipche, and the President of the Medical Chamber of Macedonia, Dr Kalina Grivcheva Stardelova, appearing at the TV show *360 degrees* broadcast on *Alsat-M TV*, threatened to punish her because of her critical opinion on the functioning of the health system. She called on the President of the Medical Chamber of Macedonia to appear in a public debate together with her so that she could describe her work, as the President was asking herself who was monitoring her work. In her post of 20 March 2019, she wrote that it was a scandal that the management of the Medical Chamber of Macedonia disseminated a public letter calling the media not to invite as guests doctors who have their own opinion on how the health system should operate.

The defendant's posts followed the press release issued by the plaintiff, which had been published by several media and depicted the defendant as incompetent and lacking expertise about the topics she discussed during her appearance in the TV show *The best advice*. On that occasion, she talked about the shortcomings of the health system and gave her own views on how to address them. Moreover, with the press release the media were asked to take into consideration that the defendant and several other doctors with their appearances misinformed the public, disseminated false or untrue information and as a result, endangered public health.

Reasoning: According to the Skopje Basic Civil Court, the defendant did not aim to harm the plaintiff's reputation, but she reacted to the press release. As a result, it refused the request to issue an injunction. It reasoned that the conditions for upholding the request had not been met, as they were stipulated in Article 23 of the LCLID.[77] The Skopje Basic Civil Court held that, contrary to the statutory provisions, the plaintiff's request was directed at general and imprecise content of the defendant's statements as a ban on any texts and contents which will be published on the defendant's Facebook profile. Hence, it concerned any future, implied texts which may harm the plaintiff's reputation. Moreover, it was questionable how the requested injunction would be enforced, given that the impugned statements were made on the defendant's Facebook profile.

Comment: In principle, the decision at stake was in line with the ECHR standards and the reasons adduced for refusing the request for interim injunction were quite well justified by the Skopje Basic Civil Court. However, the legal reasoning could have been more persuasive by making reference to the ECHR case-law establishing that, while Article 10 does not prohibit

[77] As stipulated in that provision, the request should aim at imposing a ban on the further publication of the insulting or defamatory statements (paragraph 1) and the injunction should concern only the specific insulting or defamatory statement (paragraph 4). Moreover, the requirement for imposing such a ban is that the insulting or defamatory statement has already been published (paragraph 3), as well as that the aggrieved party has grounds to believe that its further publication shall cause an irreparable non-pecuniary or pecuniary damage to the aggrieved party.

prior restraints on publication as such, the dangers inherent in prior restraints are such that they call for the most careful scrutiny by the courts. Even though in the Court's view this is especially so as far as the press is concerned (*Observer and Guardian v. the United Kingdom*, § 60; see also *Cumpănă and Mazăre v. Romania* [GC], § 118), it is worth noting that such dangers are equally relevant to the circumstances of the case at hand, where the publication was made online. Accordingly, the domestic courts could have taken into consideration the Court's position that injunctions which had a character of a rather general and absolute prohibition on publication as a means for protecting the reputation of others could amount to a form of censorship intended to discourage expressing criticism.

П5-1/16, Gostivar Basic Court, order of 4 August 2016, upheld by the Gostivar Court of Appeal on 26 January 2017 (ГЖ-948/16)

Facts: Along with his defamation claim brought against Kiro Kiproski and Gojko Jakovleski the plaintiff, Ivan-Dzo Petreski, requested an injunction to ban putting at the disposal of the public and further public use, sale and purchase of the book titled "Macedonia- my life" (*Македонија-мојот живот*) by the defendants and by any third legal or physical person whom the defendants would have transferred such rights. Indeed, the book was a monograph of the life of its author, Kiro Kiproski (the first defendant). According to the Gostivar Basic Court, the main source of information was Gojko Jakovleski (the second defendant). On two pages it contained allegations that the plaintiff was a spy hired by the former Yugoslav counter-intelligence service (UDBA). The book counted 550 pages in a print run of 500 copies and it was launched in September 2015.

Reasoning: Relying on Articles 22 and 23 of the LCLID, the Gostivar Basic Court held that the request for injunction contained a ground to believe that the words used had insulting and defamatory character and they were harmful to the plaintiff's honour and reputation. It held that pending the decision on the merits of defamation claims and without prejudice to it, further putting at someone's disposal the impugned book containing such words might have caused irreparable pecuniary and non-pecuniary damage to the plaintiff.

It further held that the defendants would not suffer damage because of the imposed ban, while the plaintiff would have been protected from any possible damage which might have occurred if the defendants had the book at their disposal, until the delivery of a final, legally binding decision in the defamation proceedings. This would have fulfilled the purpose of both the Law on securing claims and the LCLID.

Consequently, the request was upheld, but only in respect of the defendants. In contrast, the Gostivar Basic Court refused the plaintiff's request to impose a temporary ban as to the putting at disposal and public use, sale and purchase of the book by any third legal or physical person whom the defendants had transferred such right. That claim was deemed to be disproportionate since such a ban would have been absolute in respect of all legal or physical persons which was considered to be legally impermissible.

Comment: Despite its detailed assessment as to the justification of the requested interim measure and its refusal to impose an absolute prohibition on any further use, sale and purchase of the impugned book, the Gostivar Basic Court failed to recognise the potential detrimental chilling effect of the prohibition imposed on the effective enjoyment of the freedom of artistic expression of the first defendant. In addition, it disregarded the possible impact such a ban might have on the democratic debate on issues of public interest (in this case, about the role of the plaintiff in the past), as understood by the ECtHR and elaborated in its rich body of jurisprudence.

II П5-11/19, Skopje Basic Civil Court, order of 11 March 2019, overturned by the Skopje Court of Appeal, order of 23 April 2019 (ГЖ-1730/19)

Facts: Along with a defamation claim against Stojan Andov, a former politician and Speaker of the Macedonian Assembly, the plaintiff, Prof. Dr Ljubomir Danailov Frchkoski, a university professor and a former Minister of Interior, requested an injunction to prohibit the sale and disposal of the book titled "Before and after the assassination" (*До атентатот и по него*) whose author was the defendant. In that book, the defendant accused the plaintiff that he had committed several criminal offences. Among others, he labelled the plaintiff a "murder" (*убиец*), stating that, in his capacity as Minister of Interior, he was the organiser and executor of the assassination of the former Macedonian President Kiro Gligorov.

Reasoning: The Skopje Basic Civil Court granted the request and imposed a prohibition on the sale of the contested book and putting it at disposal of the public which would be in force until the termination of the defamation proceedings and the adoption of a final, legally binding decision in those proceedings. It observed that the book contained numerous "defamatory facts" which were not corroborated by any evidence. *When issuing the injunction, the* Skopje Basic Civil Court found that with the publication of the contested book irreparable damage had been caused to the plaintiff's reputation, honour, right to privacy and in general, to his personal rights. Additionally, given the gravity of the accusations made against the plaintiff, it concluded that there was an intent to harm the reputation of the plaintiff, who e*njoyed the reputation* of an esteemed university professor a*mong his colleagues, students and fellow citizens. The injunction was further justified with the fact that as the book was still on sale it was necessary to prevent the danger that its further sale would have posed to the plaintiff's personal rights of honour and reputation.*

The Skopje Court of Appeal quashed the initial order for granting interim measures, as it was unclear and poorly reasoned and there was a fundamental breach of the provisions governing civil proceedings.[78] In brief, it held that the defendant's complaints were founded, since it remained unclear how the first-instance court determined that the conditions for issuing an injunction were met. In particular, it was not sufficiently clear that there was a ground to believe

[78] Pursuant to Article 343 of the CvPA.

that the further dissemination of the book shall cause irreparable non-pecuniary or pecuniary damage to the defendant.

In addition, the Skopje Court of Appeal stressed that the first-instance court failed to examine whether the lawsuit was filed within the statutory time-limit set out in Article 20 paragraph 1 of the LCLID.[79] This deadline was also relevant for the injunction. Also, the first-instance court did not determine whether the plaintiff should have directed his request against the publishing company, instead of the book's author, given that the injunction in question concerned the sale of the book and putting it at disposal of the public and the author had transferred all rights in that respect to the publisher.

On appeal, it was also noted that, when issuing the initial injunction, the first-instance court did not consider whether the prohibition could have affected solely those parts of the book which contained the specific insulting or defamatory statement(s), as required by Article 23 paragraph 4 of the LCLID, instead of the book as a whole. In the same vein, the Skopje Court of Appeal held that the ban could not be imposed on the book as a whole, as it was voluminous and its content did not concern only the plaintiff.

Finally, the Skopje Court of Appeal observed that the first-instance court prejudged the decision on the merits of the claim, without holding a hearing or adducing and assessing the evidence before it. Namely, the first-instance court stated in its order that the book's content was "full of defamatory facts" and that there was an intent to inflict damage to the plaintiff's reputation without these circumstances being proved.

Accordingly, the Skopje Court of Appeal instructed the first-instance court to reconsider its order regarding the interim measure and to comply with its instructions to examine whether the lawsuit was filed timely and whether the statutory conditions were met and in particular, whether the ban should concern the book as a whole or solely those parts for which there were grounds to believe that they had defamatory content.[80]

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[79] That provision reads as follows: "(1) The deadline for submission of a complaint under the provisions of this Law shall be three months as of the day the plaintiff has found out or should have found out of the insulting or defamatory statement and of the identity of the person who has caused the damage, but not later than a year as of the day the statement has been communicated to a third person." In the appeal it was submitted that the impugned book had been released on 13 November 2018, while the lawsuit was filed on 18 February 2019. However, the first-instance court did not establish the fact when the plaintiff had found out or whether he ought to have found out of the insulting or defamatory statement and of the identity of the person who had caused the damage.

[80] It should also be noted that following the remittal on 4 May 2021 the Skopje Basic Civil Court delivered a judgment on the merits of the case (П5-12/19). However, on 7 April 2022 the Skopje Court of Appeal rendered a decision (ГЖ-3636/21) quashing that judgment and remitting the case for reconsideration. In particular, the appellate court stressed that the lawsuit was filed out of time. It instructed the first-instance court to re-examine whether only some parts of the book were defamatory, bearing in mind that its author also referred to events other than the assassination of the President. Furthermore, it noted that in the judgment it quashed, the first-instance court ruled contradictorily as regards the request for an interim measure. Namely, it granted it by imposing an obligation on the defendant to withdraw the book from further sale, while at the same time it refused the request to prohibit the further sale of the book and making it available for public use. Therefore, the appellate court instructed the lower court also to re-examine its decision as regards the request for an interim measure.

Comment: Both the defamation proceedings and the proceedings upon the request for an interim measure were pending before the first-instance court and no final court decisions had been given before 1 June 2022, the date when the period covered with this analysis ends. For this reason, the present document will limit itself to outlining the facts and the reasoning of the competent courts involved in the adjudication of this particular case, without providing any further comment on whether the orders in question were in conformity with the ECHR standards concerning interim measures.

All in all, it appears that the domestic courts tend to issue interim measures without carrying out an assessment of whether the imposition of such measures is likely to produce a chilling effect or a form of censorship on the exercise of the right to freedom of expression of the person concerned. Furthermore, in some of the court orders discussed above there was no detailed analysis as to the scope and duration of the interim injunction which was requested, as elements which will help determine whether the injunction might potentially have a restrictive impact on the enjoyment of freedom of expression in the circumstances of a particular case.

3. Internet and freedom of expression

3.1. Civil liability for online defamation

The most important issue which needs to be addressed in respect of civil cases for defamation online is access to judicial proceedings against online media outlets and their liability.

For a certain period, which preceded the one covered by this analysis, domestic courts, including the Skopje Basic Civil Court as the largest first-instance court, tended to deny access to judicial proceedings by dismissing defamation lawsuits against online media outlets and declaring such cases inadmissible *ratione personae*.

These developments in the domestic case-law followed the amendments to the Media Law of 2014[81] which removed "electronic publications" from the scope of the definition of media. As a result, in the reasoning of their decisions, Macedonian judges noted that online portals "are not media" and consequently, they lack standing to be sued and cannot be held liable for any damage caused by publications on an online portal. Such case-law is problematic in light of the ECHR jurisprudence, where no distinction has been made between traditional mainstream media and online media.

3.1.1. Civil liability of online media for defamation

In many of the cases reviewed, domestic courts decided on the merits of the claims for insult or defamation or upon the criminal charges brought for offences committed via Facebook or other online social networks, blogs, or via Internet portals. However, a considerable number of cases, particularly those brought against online portals, still remained where Macedonian judges have dismissed the defamation lawsuits due to alleged lack of standing to be sued, regardless of the status of the defendant i.e. whether the defendant was a legal entity, an owner and registrant of the online media outlet, its editor according to the legal notice (*impressum* or *импресум*), or the author of the contested material.

A few examples are provided below.

П5-3/2017, Tetovo Basic Court, judgment delivered on 25 May 2017, pronounced publicly on 1 June 2017: The case concerned a defamation claim for statements disseminated through the Internet portal against the company that owned an Internet portal and its owner. The Tetovo Basic Court found that the defendants were neither authors of the impugned text, nor they could have in any manner whatsoever participated in its drafting, and thus, they could not be sued for defamation. The fact that the company as a legal person was a registrant of the respective domain did not automatically imply that it or its manager were authors of the text. Furthermore, there could be no implied responsibility for defamation and insult if the impugned statements are not edited, especially since the webpage was not a media outlet according to the definitions laid down in the LCLID and the Media Law, as amended on

[81] Media Law (Official Gazette of the Republic of Macedonia no.184 of 26 December 2013), as amended with Official Gazette of the Republic of Macedonia no.13 of 23 January 2014

23 January 2014. As a result, the portal against which the proceedings have been instituted neither had an editor nor a legal notice and it could not be subjected to scrutiny and held liable for the publication. Consequently, the defamation claim was dismissed as unfounded.

8к.П5-73/16, Skopje Basic Civil Court, judgment of 13 December 2016, upheld by the Skopje Court of Appeal, judgment of 6 December 2017 (ГЖ-3036/17): The plaintiff, Dragan Pavlovic Latas who was at the material time a journalist and editor-in-chief at *Sitel TV*, argued that his reputation was infringed as a result of the articles posted on the webpage www.maktel.mk on 3 February 2014, 9 February 2014 and 20 March 2014 by the defendants (the company owning the portal and the manager of that portal, Mr Sashe Ivanovski Politiko).

As it was held by the Skopje Basic Civil Court, although the second defendant, Sashe Ivanovski Politiko, was a manager of the portal, he was not a journalist, neither the Internet portal www.maktel.mk could be treated as a media outlet since its content was not edited, there was no editorship, it was not obliged to publish a legal notice, nor it was subjected to scrutiny and verification by any state or other body. Since the impugned articles were posted on a private Internet page, which did not constitute a media outlet, neither the company could be considered as a media publisher, nor the second defendant could be held responsible as an editor of a media. Consequently, it was decided that the defendants could not be sued for defamation. This ruling was substantiated by reference to the amendments to the Media Law which excluded electronic publications and electronic media from the scope of the definition of media.

Likewise, despite the fact that in the impugned articles the second defendant criticised the plaintiff's work and expressed his own opinion on how he performed his journalistic duty, he also published facts, whose truth he failed to prove, even though they were susceptible of proof. This showed that he presented those facts to the public with the aim to violate his honour and reputation. Still, he could not be held liable for defamation due to the absence of standing to be sued.

VII П5-43/15, Skopje Basic Civil Court, 6 March 2018, upheld by the Skopje Court of Appeal, judgment of 10 January 2019 (ГЖ-5086/18): The claim lodged by the plaintiff, a human rights activist who advocated for the rights of marginalised communities, was dismissed as the alleged defamatory statements directed against him were disseminated via an Internet portal, which was not considered as a media pursuant to the amendments to the Media Law of 23 January 2014.

It is also noticeable that the practice of the Skopje Basic Civil Court was sometimes contrary to the case-law of the Ohrid Basic Court which upheld defamation claims and established liability

for defamation by Internet portals and their editors/authors. On top of that, its decisions were upheld by the Bitola Court of Appeal.[82]

The inconsistent practice of domestic courts as regards the admissibility of civil actions brought against Internet portals as key online media outlets existed until 2019 when the case-law has changed. Subsequently, the claims against Internet portals have been declared admissible, following the adoption of the conclusion of the four appellate courts in March 2019.[83] It stated that "[t]here is a liability for insult and defamation of the editor-in-chief of the publishers of electronic publications and in general, for all other types of electronic media as regards the contents published in them".

In consequence, civil judges in principle, and with few exceptions, no longer dismiss claims of liability of electronic media for lack of standing to be sued. They have thus brought their case-law in line with European standards. This was achieved without amending the LCLID to explicitly envisage the liability of Internet portals for insult and defamation. Given the need for self-regulation of online media, on the one hand, and the legal basis provided in Article 3 of the LCLID for direct application of the Convention and the Strasbourg case-law in case of a legal lacuna or a conflict between the provisions of the LCLID and the ECHR, on the other hand, it seems that there is a solid ground for the harmonisation of the domestic case-law in this respect, without any need for further legislative interventions.

Many recent domestic cases confirm that Internet portals can be held liable for defamation. Accordingly, the domestic courts examined the merits of those cases.

For example, in the case no. **2 П5-58/18, Skopje Basic Civil Court, judgment of 21 December 2018, upheld by the Skopje Court of Appeal, judgment of 10 September 2019 (ГЖ-975/19)**, the defendants were the renowned journalist Aco Kabranov and the publishing company he founded and co-owned. Dragan Pavlovic Latas, a journalist and editor-in-chief of a daily newspaper, sued them for an article posted on 14 November 2013 on the company's webpage *www.libertas.mk*. In that article, the plaintiff's work was harshly criticised. The domestic courts held that the defendants presented false assertions whose veracity they failed to verify while being obliged to do so before presenting them to the wider public. They rejected the defendants' argument that they did not have standing to be sued, as the first of them was the founder and a co-owner of the company (second defendant) and at the material time when the contested article was published the second defendant was a registrant of the domain *www.liberty.mk*.

There are many more positive examples of cases where domestic courts decided on the merits of cases involving online media. In most of them, they have properly implemented the relevant

[82] See Ivan Breshkovski, Preliminary report on the state of the application of the Law on Civil Liability for Insult and Defamation [*Прелиминарен извештај за состојбите поврзани со примената на Законот за граѓанска одговорност за клевета и навреда*], Skopje, 2018, p.16, available at: https://metamorphosis.org.mk/izdanija_arhiva/

[83] The full text of this conclusion is available at: https://znm.org.mk/zakluchok-na-chetirite-apelaczioni-sudo/

European standards on freedom of expression. Many of these cases are briefly outlined below in this chapter or in other chapters of the analysis.

Still, albeit this is not a prevailing judicial practice, there are recent cases where the courts have dismissed the claims lodged against online portals as inadmissible.

For example, in the case below the domestic courts recognised the liability of online portals for defamation, but they were reluctant to hold its manager liable because he was neither the author nor the editor of the impugned content. Hence, it seems that they released him from any responsibility for the content of the online portal that was in his ownership.

9П5-53/19, Skopje Basic Civil Court, judgment of 28 January 2020, upheld by the Skopje Court of Appeal, judgment of 12 May 2021 (ГЖ-1574/20): The plaintiff, Aleksandar Kiracovski, an MP in the Macedonian Assembly and a member of the central committee of the political party SDSM, initiated defamation proceedings against the manager of a news publishing company which was a registrant of the domain *www.republika.mk* in respect of a text posted on its webpage. The impugned article accused the plaintiff of having received a bribe in order to exert pressure on the municipal councillors of Bitola to legalise an unlawfully constructed building that was owned by a private construction company. The plaintiff claimed that these allegations caused damage to his image and reputation and adversely affected his professional credibility and authority.

At the outset, the Skopje Basic Civil Court observed that the text raised a debate on issues of public interest and referred to the ECHR well-established doctrine that whenever such debates are opened, the authorities should be careful when interfering with one's right to freedom of expression. It rejected the defendant's argument that they had no standing to be sued as a portal, since electronic publications would be exempted from the scope of application of the amended Media Law. Relying on Article 8 paragraph 3,[84] as well as on Article 11[85] of the LCLID, the Skopje Basic Civil Court stated that there was a sufficient legal basis for the defendant to

[84] Article 8 paragraph 3 of the LCLID reads as follows: "If the presentation or dissemination of false statements of facts has been made by a mass medium (newspapers, magazines and other print media, TV and radio programs, electronic publications, teletext, and other forms of editorial program contents that are published, that is, broadcast on a daily basis or periodically, in the form of a text, sound or image, in a manner which is accessible to the general public), the author of the statement, the editor or the person replacing him/her in the mass medium and the legal entity may be held liable for defamation. Upon filing the complaint, the plaintiff shall have the freedom to decide against whom of the persons referred to in this paragraph it shall file the complaint for determination of liability and compensation for damage caused by the defamation."

[85] Article 11 (Liability of the electronic publication) of the LCLID reads as follows: "(1) The editor of an electronic publication shall assume the liability, along with the author, for compensation for the damage caused by the provision of access to insulting or defamatory information.
(2) The editor of the electronic publication shall not be held liable for the stated insult or defamation resulting from the provision of access to insulting or defamatory information if he/she proves that:
1) the author of the information published in the electronic publication has not acted under direct or indirect control or influence of the editor of the electronic publication and
2) he/she has not been aware nor should have been aware that an insulting of defamatory material has been published in the electronic publication or, within a period of 24 hours after becoming aware of the insulting and defamatory character of the published text or information, he/she has taken all technical and other measures to remove that information. A request for removing information may also be filed by the aggrieved party."

be held liable for defamation, as the impugned statements were transmitted by the news portal as a means for informing the public.

However, the Skopje Court of Appeal noted that the plaintiff was a public figure and that he should, as such, be open to criticism. Hence, he should have a greater threshold of tolerance towards criticism. The plaintiff's claim was eventually dismissed by the first-instance court, on the ground that the owner of the portal, who was neither an editor nor an author of the impugned article, could not be liable. The ruling was confirmed on appeal.

Similarly, in the case no. **2 П5-15/19, Skopje Basic Civil Court, judgment of 17 May 2019, upheld by the Skopje Court of Appeal, judgment of 27 May 2020 (ГЖ-4657/19),** the first-instance court dismissed the defamation claim lodged by the plaintiff, the Macedonian Posts, a state-owned company, against two companies that run the Internet portal *www.zurnal.mk* and their owners. The impugned statement was contained in a post published on their Internet page in Albanian language on 13 June 2016. It stated that according to the official data obtained by the Public Procurement Bureau, the procurement for servicing the vehicles of the Macedonian Posts reached an amount of 1,5 million Euros and half of the director's family was employed in the company. The defamation claims were dismissed as unfounded, on the ground that according to the provisions of the Media Law, as amended on 23 January 2014, private Internet portals could not be considered as media. Moreover, pursuant to the Law on Audio and Audiovisual Media Services, no liability could have been determined in respect of the defendants who were owners of the Internet portal as from the evidence submitted to the court it did not appear that they were the authors of the published text, neither that they acted in any manner whatsoever with an intention to cause damage to the plaintiff's honour and reputation.

In the case no. **42 П5-28/20, judgment of the Skopje Basic Civil Court of 3 June 2021,** the plaintiff, Aleksandar Panev, alleged that he was defamed by a text published on the web portal *www.vecer.mk* on 15 May 2020 in which it was stated that he considered Macedonians to be Bulgarians and part of the contemporary Bulgarian State. He, therefore, sued the consultancy and marketing company which had registered the domain of the web portal. The first-instance court dismissed the action as unfounded since there was no data available about the ownership of the Internet portal at the moment of the publication, and it did not have either a legal notice or any other data regarding its publisher and owner.

3.1.2. Civil liability for online defamation of politicians

XXXIIП5-51/18, Skopje Basic Civil Court, judgment of 31 January 2020, upheld by the Skopje Court of Appeal, judgment of 9 December 2021 (ГЖ-3067/20)

Facts: Bojan Marichikj, an Advisor to the Macedonian Government at the material time, filed a lawsuit against the founding and publishing company of the Internet portal *www.infomax.mk*, as well as Aleksandar Mitovski, the founder, owner and manager of the said company. The lawsuit concerned a text published on 10 June 2018 on the portal stating that the plaintiff became a millionaire in less than a year after he had become a part of the Government's team

and got directly involved in the negotiations about the name issue with Greece. As a result, he purchased a land parcel located in a central locality in Skopje. He became not only an owner of that parcel, but he also intended to invest in the construction of a new five-floor 1,000 *square meters* building. Further, the text posed a question of how he had become a millionaire so quickly and whether the assets he owned were acquired as a result of his participation in the negotiations on the name issue.

Reasoning: Relying on the relevant domestic legislation, in particular the Media Law, the Skopje Basic Civil Court dismissed the plaintiff's claim in respect of Aleksandar Mitovski, as the legal notice of the portal was unknown at the time when the text was posted and, as a result, it could not be determined with certainty that he was its editor at the material time.

Regarding the company, it upheld the plaintiff's argument that in accordance with Article 8 paragraph 3 of the LCLID, web portals could not be completely exempted from civil liability. As they were not included in the definition of media laid down in the Media Law as *lex specialis*, the LCLID would be applicable as *lex generalis*. The latter did not intend to exclude them, especially as there was a continuous proliferation of news portals and the exclusion of liability for them may also entail a proliferation of "fake news".

In its reasoning, the Skopje Basic Civil Court noted the distinction between facts and value judgment made under the ECtHR case-law. As the classification of a certain statement as a fact or as a value judgment is a matter which falls within the margin of appreciation of the national authorities, it turned to determine the nature of the impugned statements. It observed that the company failed to verify in advance of its publication the veracity of the statement that the plaintiff was an investor in a new building, although such data were made publicly available by the Agency for Real Estate Cadastre.

The Skopje Basic Civil Court found in favour of the plaintiff. It highlighted that he was a holder of a public office and, as such, he should have shown a higher degree of tolerance to the criticism which concerned issues of public interest. Nevertheless, certain limits should not be overstepped when publishing data on issues of public interest in order not to ruin one's reputation. Following a reasonable assessment of the facts in this particular case, the Skopje Basic Civil Court held that by spreading information that the plaintiff had gained millions in assets in a short period of time as a result of the performance of his office, without providing evidence of their truthfulness, the defendant company exceeded the limits of acceptable criticism that are wider when it comes to holders of public office. Therefore, in view of the Skopje Basic Civil Court, those untrue allegations constituted a direct attack on the plaintiff's personality and overstepped what could be tolerated as an acceptable criticism in a debate of public interest.

Referring to the Court's three-step proportionality test, the Skopje Basic Civil Court considered that the interference with the defendant company's freedom of expression was necessary in a democratic society in order to protect the plaintiff's reputation and rights. In particular, it noted that the posts on Internet portals with false content speedily become available to a

wider circle of users and they certainly constitute an attack able to cause damage to the defendant's reputation, by entailing negative reactions in the public.

Consequently, the plaintiff was awarded a sum of 50,000 Macedonian Denars (approximately 800 Euros) in respect of the non-pecuniary damage he had suffered due to the violation of his honour and reputation. Pursuant to Article 24 of the LCLID, the defendant was ordered to publish the operative part of the judgment on the Internet portal and in one daily newspaper.

Comment: As to the admissibility of the defamation claim lodged in this case, the Skopje Basic Civil Court correctly applied the ECHR standards regarding the civil liability of news web portals. Moreover, deciding on the merits, it expressly referred to the well-established distinction between facts and value judgments. It also recognised the existence of a public interest to be informed about the conduct of the plaintiff as a holder of public office and the legitimate expectation that he should be more tolerant of criticism. Additionally, it underlined the specific features of the Internet as a communication tool enabling any content published there to become rapidly available to a wide circle of users, which in case of untrue or false information, might be considered as an attack on individuals' personality and reputation.[86] As to the portal's failure to verify the truthfulness of the information it published about the plaintiff, it could have also made recourse to the ECHR case-law pertaining to the "duties and responsibilities" of journalists which should be equally applicable to an online portal producing and publishing its own news. Lastly, it may be further discussed if the first-instance court struck a fair balance between the interest of the public to receive information on issues of public interest, on one hand, and the plaintiff's right to reputation, on the other hand.

П5-3/20, Veles Basic Court, judgment of 11 November 2020

Facts: The plaintiff, a doctor, environmental NGO activist and a member of the Council of the Municipality of Veles, sued a citizen of Veles for the content of a public post on the defendant's Facebook profile. By using obscene language, the latter called the plaintiff "a communist son of a bitch" (*копиле комуњарско*) and labelled his family as being "communist" (...*фамилијата комуњарска*).

Reasoning: At the outset, relying on the respective provisions of the LCLID and the jurisprudence of the ECtHR regarding the criteria for justified limitation of the freedom of expression, the Veles Basic Court established that the defendant had verbally assaulted the plaintiff's honour and reputation. In particular, it took into consideration that the plaintiff was a politician and at the critical time he was a member of the municipal council. It, therefore,

[86] In this regard, the Strasbourg Court considered that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (*Delfi AS v. Estonia* [GC], § 133; *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, § 63; *Węgrzynowski and Smolczewski v. Poland*, § 98).

noted that as a holder of political function, he should have a higher degree of tolerance as regards the criticism by citizens when issues of public interest are concerned.[87]

However, it was concluded that in this particular case, the defendant's offensive words did not constitute any criticism whatsoever related to the work of the plaintiff as a politician, but they amounted to an insult that was expressed as a unilateral act with the sole purpose to humiliate the plaintiff and to express a degrading opinion about him in the public.

The Veles Basic Court also noted that while the plaintiff as a politician and holder of a public function should have a higher degree of tolerance towards public criticism, there must still be certain limits of permissible criticism, including even admissible exaggeration or provocation.[88] It held that the offensive words used against the plaintiff and his family in a personal context also involved indecent labelling of his political affiliation. As such, the defendant gravely overstepped the limits of admissible criticism towards a current politician and a holder of a public function and he went beyond what can be tolerated even in a public interest debate.

Consequently, the Veles Basic Court held that the limitation on the plaintiff's freedom of expression was necessary in a democratic society, and it awarded the plaintiff a non-pecuniary damage of 15,000 Macedonian Denars (approximately 250 Euros), which equalled one minimal monthly wage in the country at that time. It, therefore, considered that the interference in the defendant's freedom of expression did not amount to an inadequate and excessive burden. On the contrary, the restrictive measure imposed was proportionate and it had reached the required balance between the defendant's right to freedom of expression, on one hand, and the legitimate aim of protection of the plaintiff's reputation, on the other hand.

Comment: In the instant case, the domestic courts posed limitation on the exercise of the freedom of expression, bearing in mind the abusive language used by the defendant who intended to insult the plaintiff and his family, without raising any substantial issue of public interest which would concern the manner in which he had run his office as a municipal councillor. Their reasoning was quite detailed and in keeping with the ECHR requirements in similar cases, involving not only the reaffirmation of the well-established ECHR standards, but also an appropriate reference to the relevant case-law in this regard.

3.1.3. Civil liability for online defamation of private individuals

III П5-3/19, Kumanovo Basic Court, judgment of 1 November 2019

Facts: The plaintiff, who was a paediatrician running her own private medical practice, filed a lawsuit against another woman, for the allegations expressed on 19 February 2019 in a Facebook women's group, which had over 150 000 members, including both the plaintiff and

[87] In this context, it referred to the respective parts of the following two judgments handed down by the ECtHR: *Dmitriyevskiy v. Russia*, no. 42168/06, § 96, 3 October 2017 and *Brosa v. Germany*, no. 5709/09, § 41, 17 April 2014.
[88] It then referred to *Mamère v. France*, no. 12697/03, § 25, ECHR 2006-XIII and *Do Carmo de Portugal e Castro Câmara v. Portugal*, no. 53139/11, § 43, 4 October 2016.

the defendant. The latter argued that she had found out that children died because of medical errors committed by the plaintiff.

These allegations were made as a comment in response to a question posed by another member of the same Facebook group, who was asking whether anyone had any opinion or experience with medical treatment of their own children by the plaintiff. Following a request sent by the plaintiff, the defendant apologised for her allegations through the same Facebook group and by sending a letter sent by regular mail to her.

Reasoning: The Kumanovo Basic Court ruled that the plaintiff's honour and reputation were damaged, both in her professional and family environment, but also among her friends and relatives. It considered that the defendant's neighbour was a mother of a deceased child and their mutual conversations made her believe that it was the plaintiff's fault that her child passed away. However, it held that those circumstances could not be considered a justified reason for excluding liability for defamation.

Moreover, her allegations amounted to statements of fact, rather than her subjective opinions. While the former and their veracity may be proven through the assessment of evidence, the latter and their veracity are not susceptible of proof. In this respect, the Kumanovo Basic Court noted that the defendant learned from her neighbour, the mother of a deceased child, that the criminal proceedings which had been initiated against the plaintiff had not yet come to an end. Therefore, she could not know their outcome, yet she alleged that the plaintiff was guilty. On the other hand, the plaintiff submitted as evidence an order issued by the investigating judge showing that the investigation against her on charges of severe offences against the health of people under Article 217 (4) in conjunction with Article 207 (3) of the Criminal Code was terminated as the impugned offence could not be prosecuted *ex officio*.

In sum, the Kumanovo Basic Court ruled that the claim was well-founded and it awarded the plaintiff a sum of 5,000 Macedonian Denars (approximately 80 Euros) as monetary compensation for non-pecuniary damage. When determining the amount of compensation, it bore in mind the plaintiff's economic situation, the fact that she and her husband were unemployed and that she had not gained any income in 2018. Moreover, it took into account that she removed her comment the day after posting it and that she apologised to the plaintiff immediately after she had received her written request for an apology.

Comment: The Kumanovo Basic Court demonstrated its solid understanding of the distinction between factual statements and value judgments, even though it failed to refer directly to the case-law of the ECtHR. Furthermore, it applied properly this distinction to the facts of this particular case before concluding whether the plaintiff's claim for defamation should be upheld. Nonetheless, the reasoning in the present judgment would have been complete if the first-instance court also referred to the existence of a vivid debate on an issue of public interest which was developed virtually, namely, a debate on the quality of medical services received from medical professionals, which might, or given the circumstances of each particular case,

might not prevail over the need to protect one's professional reputation by unjustified assaults by the public.[89]

In the case no. **П5-6/20, Prilep Basic Court, judgment of 5 February 2021**, the plaintiff filed a lawsuit against the defendant for a status posted on his Facebook profile. The impugned text contained rather vulgar insults to the plaintiff after stating that he blocked the defendant, who had made negative remarks about politicians from the political party SDSM. The Prilep Basic Court found that the plaintiff was insulted given the manner in which the defendant published his comments on Facebook, to which a huge number of users have access. It was undisputed that the defendant intended to humiliate the plaintiff. However, since on 13 May 2020 he published an apology to the plaintiff for his comments, the Prilep Basic Court decided not to award the plaintiff any non-pecuniary damages, especially as the apology was made under the post itself and comments related to that post, by using the same means via a social network. In brief, while the judicial reasoning in this particular case is in line with the respective domestic legislation, it lacks a more clear statement why the use of abusive or offensive language should not be protected as an acceptable form of expression.

3.1.4. Civil liability for online defamation by reproducing content created by others

П5-4/20, Prilep Basic Court, judgment of 20 January 2021

Facts: The plaintiff, the only municipal high school in Krushevo, initiated defamation proceedings against the *Association for promotion of cultural values in Pelagonia "Markukule" Prilep*. The defendant was a registrant of an Internet free access portal *www.markukule.mk*. In an article posted on the website, the defendant asked a question about who would be held responsible for a traffic accident in which the official vehicle owned by the high school was involved and its window was broken, and who would reimburse the damage sustained.This article only referred to the content of a press release which had been issued by the Union of Youth Forces of the political party VMRO-DPMNE Krushevo. The plaintiff held that, as a result, its reputation as a public institution was infringed, in particular as the defendant did not verify the truthfulness of the information it had posted.

Reasoning: Relying on the evidence submitted to it, the Prilep Basic Court concluded that the defendant through its Internet portal reproduced the allegations that had been previously made and disseminated to the public via Facebook by the Union of Youth Forces. Thus, it did not impart untrue facts which were harmful to the plaintiff's honour and reputation. Therefore, there was no need to verify those statements, as it only transmitted the content that had already been released to the public. In this context, it was highlighted that the dissemination of statements and opinions of another person, as well as statements and opinions of other stakeholders in the society, such as political parties, could not be a basis to establish liability

[89] For instance, in one case the Court did not find that a doctor's undoubted interest in protecting his professional reputation was sufficient to outweigh the important public interest in the freedom of the press to impart information on matters of legitimate public concern (see *Bergens Tidende and Others v. Norway,* § 60).

for insult and defamation of the person who disseminates them, in particular if that person is performing a journalistic activity. The only exception from this rule would be applicable to a situation where conveying such statements or opinions would amount to allowing access to insulting and defamatory material. It further noted that any different decision of this or any other court would lead to a limitation of access to information and to unnecessary and harmful self-censorship in the performance of a journalistic activity. As a result, the plaintiff's claim was dismissed as unfounded.

Comment: The case at hand raised the issue of whether a publisher or web portal could be held liable for the content, which is not created by the defendant itself, but reproduced and transmitted from other sources. In that regard, the ECtHR held that journalists using information obtained from the Internet should not be held liable unless such duty has been imposed on them with the national legislation so that they could have foreseen to the appropriate degree the consequences which the impugned publication might entail (*Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, § 66).

3.2. Statements online constituting criminal acts

The criminal cases under consideration mostly concerned the offence of violation of the reputation of a foreign state pursuant to Article 181 of the CC, the offence of threatening the safety (Article 144 paragraph 4 of the CC) and the offence of spreading racist and xenophobic material via an information system (Article 394-d of the CC). Unlike the first offence, the other two offences can be perpetrated against both public officials and private persons.

3.2.1. Criminal offences against foreign states

In two criminal cases, the defendants were prosecuted and convicted of the offence of violation of the reputation of a foreign state (Article 181 of the CC). It prescribes that "[a] person, who with the intention to ridicule shall publicly make a mockery of a foreign state, its flag, arm or anthem, or the head of a foreign state or a diplomatic representative of a foreign state in the Republic of Macedonia, shall be punished with a fine, or with imprisonment of up to three years."

XXXII K.6p. 761/17, Skopje Basic Criminal Court, judgment of 31 May 2017: The defendant (a Turkish citizen) was found guilty of the offence envisaged by Article 181 of the CC. Namely, it was established that on an uncertain date in November 2016, he posted via his Facebook profile insulting and curse words in the Turkish language against the President of Turkey, Recep Tayyip Erdoğan, with the intention to ridicule him by publicly mocking him as a chief of a foreign state. In addition, he also presented two photographs of the President of Turkey and a caricature where he was depicted with a chicken body. Consequently, the defendant was sentenced to a fine of 24,600 Macedonian Denars (approximately 400 Euros) to be paid within three months or to be converted into 40 days' imprisonment in the event of default.

XII K.6p. 1657/1, Skopje Basic Criminal Court, judgment of 16 November 2017: The defendant (a Macedonian national) was convicted of the same offence as it was established

that in the period between 14 and 16 April 2016 via his personal Facebook profile he posted indecent comments on the official Facebook page of the US Embassy in Macedonia. In particular, his comments contained obscene wording against the US Ambassador, Jess L. Baily, his family and the official staff of the US Embassy. The Skopje Basic Criminal Court held that defendant's comments reflected his dissatisfaction with the political crisis in the country and the presence of the US Ambassador in the Macedonian media. Thus, he breached the honour and reputation of a diplomatic representative of a foreign state. Consequently, the defendant was sentenced to a fine of 24,600 Macedonian Denars (approximately 400 Euros) to be paid within fifteen days or to be converted into 40 days' imprisonment in the event of default. Accordingly, the US Embassy as an aggrieved party was instructed to initiate a civil dispute in respect of its pecuniary claim. The Skopje Basic Criminal Court also noted that the defendant regretted and publicly apologised to the US Embassy for the offence he had perpetrated.

Comment: The outcomes of the above two cases might be problematic considering the standards set out by Strasbourg judges. The incrimination of the impugned conduct in Article 181 of the CC appears to be a remnant from the communist period. Therefore, it might be discussed whether it should be kept in the text of the Criminal Code.[90] Indeed, the Court has stated that providing increased protection for heads of State and Government by means of a special law will not, as a rule, be in keeping with the spirit of the Convention (*Otegi Mondragon v. Spain*, § 55; *Pakdemirli v. Turkey*, § 52; *Artun and Güvener v. Turkey*, § 31; for foreign heads of State, see *Colombani and Others v. France*, § 67).

3.2.2. Criminal offences against politicians

K-142/19, Bitola Basic Court, judgment of 12 April 2019; indictment no. KO.6p.96/19 filed by the Bitola Basic Prosecutor's Office on 1 April 2019: The defendant was found guilty of the offence of threatening the safety (Article 144 paragraph 4 of the CC). On 11 January 2019, she alleged via her personal Facebook profile that Zoran Zaev, the Prime Minister at the relevant time, was a traitor no. 1, a mentally ill person, who should be hung in the central square. Thus the defendant endangered his safety, by expressing a serious threat to kill him. She was sentenced to two months' imprisonment, suspended for one year, without any further elaboration.

K.6p.253/19, Shtip Basic Court, judgment of 12 June 2019; indictment no. Ko.6p.291/19 filed by the Shtip Basic Prosecutor's Office on 3 June 2019: The defendant was declared guilty of spreading racist and xenophobic material via an information system (Article 394-d of the CC), after it was established that during an evening live TV show broadcast on 3 April 2019 where the guest was Zoran Zaev, the Prime Minister at the relevant time, he posted five comments via his Facebook profile through which he expressed death threats to him and the members of his family. The Shtip Basic Court sentenced the defendant to three months'

[90] This opinion was also shared by some of the participants at the focus group dealing with criminal law aspects of freedom of expression which took place on 6 October 2022. They criticised the current domestic case-law under Article 181 of the CC and expressed their view that such offence should be removed from the Criminal Code.

imprisonment, suspended for one year, after it took into consideration all aggravating circumstances, such as the gravity of the criminal offence, the social harm incurred with the committed offence, the degree of the defendant's criminal responsibility, as well as all mitigating circumstances (that he was not convicted before and there were no other criminal proceedings pending against him, as well as his age).

К-95/21, Prilep Basic Court, judgment of 4 April 2019; indictment no. КО.бр.26/21 filed by the Prilep Basic Prosecutor's Office on 9 February 2021: The defendant was found guilty of spreading racist and xenophobic material via an information system (Article 394-d of the CC), since on 28 October 2020 the defendant via his Facebook profile commented the photographs of members of the political party VMRO-DPMNE posted on another Facebook profile titled "Macedonia" (*Македонија*). He wrote that the persons in the photographs were the thieves (*арамии и плачкаши*) of Macedonia who later surrendered the country (*ја предадоа*) and that if there was a [rule of] law, they should have been hung publicly as traitors. Accordingly, the Prilep Basic Court ruled that he had committed the impugned offence against a group of persons on grounds of their political affiliation, thus encouraging public hatred, discrimination and violence against them. Without providing any detailed reasoning or reference to the ECHR standards pertaining to hate speech, the Prilep Basic Court sentenced the defendant to three months' imprisonment, suspended for one year.

XXVII К.бр.937/20, Skopje Basic Criminal Court, judgment of 30 June 2020: The defendant was convicted of threatening the safety (Article 144 paragraph 4 of the CC), as in the period between 29 and 31 March 2020 he threatened to commit murder via his personal Facebook profile. In particular, on 29 March 2020, he posted a text stating that those who had stolen from the people should be arrowed in the city's main square. He attached a photo of the Secretary-General of SDSM, Dragi Rashkovski, and an article, in which the then leader of the opposition party, Hristijan Mickoski, stated that Dragi Rashkovski was stealing the money that was allocated for transporting persons confined in the state quarantine facilities during the Covid-19 pandemic. On 31 March 2020, he posted a text with the following content: "We should stone him" (*Треба да го каменуваме*). At the bottom of his post, there was a photo of Dr Venko Filipche, the Minister of Health, with the following comment: "People have spat at Venko and his donation number." (*Народот го исплука Венко и неговиот број за донации.*). It was found that the defendant published these texts and posts due to the political affiliation, as well as the personal and social status of the persons indicated in his posts. Following an assessment of all aggravating and mitigating circumstances, the defendant was sentenced to two years' imprisonment.

XVIII К.бр.289/22, Skopje Basic Criminal Court, judgment of 9 February 2022: The defendant was convicted of threatening the safety (Article 144 paragraph 4 of the CC). It was established that on 20 September 2017, he threatened via his personal Facebook profile that he would murder the highest state officials (an offence incriminated under Article 309 of the CC), including Zoran Zaev, at that time the Prime Minister, due to his social and family status. In his post which was also sent to the Facebook group "Macedonia-Macedonian-

Macedonians" (*Македонија- македонско- Македонци*), he stated, in particular, that "[t]hat son of a bitch from Murtino" *(копилето муртинско)* took the power without having obtained a majority. It is enough- he has shaken Macedonia in the last three months. It is time to exterminate all anti-Macedonian structures. Slowly, but surely, with a knife in the hand, all bastards (*изроди*) will be exterminated. Extermination of the entire Zaev family. First of all, his children." After it had taken into consideration all circumstances of this particular case, the Skopje Basic Criminal Court sentenced the defendant to three months imprisonment, suspended for two years.

3.2.3. Criminal offences against private individuals

K-455/20, Bitola Basic Court, judgment of 22 December 2020, upon an indictment no. KO.6p.501/20 filed by the Bitola Basic Prosecutor's Office on 14 July 2020: The defendant, a former employee at the company *Kromberg & Schubert Macedonia DOOEL Bitola*, was declared guilty of threatening the safety (Article 144 paragraph 4, in conjunction with Article 45, of the CC) as a continuing criminal offence. More specifically, it was established that on 28 June 2020 via the Facebook fan page of a travel agency from Bitola, which was licensed to transport the workers of *Kromberg & Schubert Macedonia DOOEL Bitola*, he threatened to kill both the employees of the travel agency and of the company, as a retaliation for his discriminatory and arbitrary dismissal from work. On a previous occasion in April 2020, he had sent a threatening message via a fake Facebook profile in which he announced that he had installed bombs in the vans and buses transporting the workers and that they would be activated as soon as they come in front of the factory. With the aforementioned acts, he created fear and uncertainty for the manager of the travel agency.

Moreover, it was established that on several occasions between July 2019 and July 2020 via a fake Facebook profile he threatened that he would kill the commercial manager and the human resources manager at his former employer. Also, he caused fear and uncertainty for these managers, both women, by threatening that he would rape both of them which was accompanied by a photo of an automatic gun.

In consequence, the defendant was sentenced to one year's imprisonment, suspended for two years. In addition, the Bitola Basic Court imposed as a precautionary measure a ban from approaching and maintaining contacts or relations with the victims, as well as with any other employees at the travel agency and with his former employer. It was then noted that the defendant pleaded guilty voluntarily, freely and being aware of the legal consequences of his plea. When determining the penalty, the Bitola Basic Court took into consideration all aggravating circumstances, such as the degree of criminal responsibility and the gravity of the criminal offence, the fact that he threatened a large number of employees, as well as all mitigating circumstances (among others, that the defendant pleaded guilty and he regretted the offence he committed, he apologised for the insulting and defamatory words expressed to all persons concerned and he had not been convicted before and there were no other criminal proceedings conducted against him).

3.2.4. Criminal offences involving online hate speech

XXIX К.бр. 1043/18, Skopje Basic Criminal Court, judgment of 13 May 2019, upheld by the Skopje Court of Appeal, judgment of 21 January 2020 (КЖ-682/19): The defendant was convicted of spreading racist and xenophobic material via an information system (Article 394-d of the CC). It was established that on 15 June 2016, he posted on his personal Facebook profile pictures of weapons and threatening comments calling for the physical elimination of the then Prime Minister Zoran Zaev. He also promoted and incited violence against the members of the so-called Colourful Revolution, including Zoran Zaev, on basis of their political affiliation.

The defendant's lawyer argued that the impugned comments referred to the Colourful Revolution and they did not directly concern Zoran Zaev; there was no proof that the defendant wrote that he would kill him; there were no direct threats against him or any other person. Further, the contested picture was posted only in a symbolic manner in order to express the defendant's protest and anguish, since the participants in the Colourful Revolution desecrated the monument of the children refugees from Aegean Macedonia. However, such arguments were dismissed by the Skopje Basic Criminal Court. It held that there was a clear intention on the part of the defendant to commit the offence he was charged with since the pictures he posted could have caused negative reactions by the opponents to the Colourful Revolution and the negative comments contained in his post could have overstepped the limits of permissible criticism and amounted to promotion and incitement to violence.

Referring to the case-law of the ECtHR, the Skopje Basic Criminal Court stressed that each individual who is engaging in a political debate on matters of general interest, including the defendant, should not overstep certain limits, especially in order to respect the honour and rights of the others, as it was Zoran Zaev in this particular case as a member of the Colourful Revolution. The latter was described by the Skopje Basic Criminal Court as a social gathering through which certain political opinions were expressed, that the defendant qualified as disturbing. It also held that it was allowed for the defendant to use certain dose of exaggeration, even provocation, and to be immoderate in his statements. However, he was neither allowed to upload photographs on Facebook which showed weapons, nor allowed to post threatening comments.

Furthermore, the Skopje Basic Criminal Court refused the arguments that Zoran Zaev was not a victim (*оштетен*) and thus, he did not have the right to press criminal charges against the defendant in this case. It held that although his name was not directly mentioned in the defendant's post, he was still a potentially damaged person as he belonged to the Colourful Revolution as a form of civil society organisation.

In its detailed reasoning, the Skopje Basic Criminal Court reiterated that the right to access to Internet serves for informing and enjoyment of the freedom of speech and it should not be undermined as such. At the same time, one should have in mind the obligations envisaged in the international human rights instruments, including the ECHR and the UN International

Covenant on Civil and Political Rights, which allow for restrictions whenever the Internet is used as an instrument to incite hatred, violence, hostility, discrimination or to perpetrate genocide. The right to use the Internet must be balanced with other human rights and primarily with the right to privacy, while an individual should always be careful that the discussions, comments and posts on the Internet would not cause consequences for the safety of the person concerned.[91]

It was also highlighted that in line with the ECHR case-law, in a democratic society it is necessary to sanction or prevent all forms of speech that encourage, spread, promote or justify hatred or endanger personal safety based on intolerance, whereby the restrictions, formalities and penalties must be proportionate to the legitimate aim which is sought to be achieved. In this respect, the domestic authorities have a positive obligation to undertake protective measures in order to prevent cybercrime, in particular the use of hate speech via social networks, including the Internet, and thus, to prevent endangering fundamental human rights.

The Skopje Court of Appeal confirmed the findings and the reasoning of the Skopje Basic Criminal Court. It also clarified that Zoran Zaev was a member of the Colourful Revolution whose members expressed by public protest their views and disagreement as to how numerous political issues were resolved, as well as with the political views of the then ruling coalition. Thus, its members were defined as a group of people who expressed certain political affiliations and the defendant's activities were, therefore, explicitly directed against them.

K-734/20, Prilep Basic Court, judgment of 15 December 2019; indictment no. КО.6р.538/20 filed by the Prilep Basic Prosecutor's Office on 28 October 2020: The defendant was found guilty of spreading racist and xenophobic material via an information system (Article 394-d of the CC) in relation to events that occurred during the state of emergency declared due to the Covid-19 pandemic. Measures for the protection and prevention of the spreading of the disease were introduced, including a compulsory 14-days quarantine for the Macedonian citizens returning from abroad who were accommodated in certain hotels. On 28 March 2020 the defendant, via his Facebook profile, called everyone to set fire to all hotels where the "devils" (*Џаолите*) were accommodated. He also added that anyone leaving those hotels should have been shot, as this was the only way to save Macedonia. In view of the first-instance court, his post with the photographs of the buses that transferred persons from the border checkpoints to the hotel "Epinal" in Bitola caused public hatred, discrimination and violence against the impugned group of persons on basis of their health condition. Without providing any detailed reasoning or making reference to the relevant international standards concerning hate speech and hate crime, the Prilep Basic Court sentenced the defendant to three months' imprisonment, suspended for one year.

К.6р.196/21, Shtip Basic Court, judgment of 10 May 2021, upon an indictment no. Ко.6р.188/21 filed by the Shtip Basic Prosecutor's Office on 23 April 2021: The defendant

[91] In addition, the Skopje Basic Criminal Court also referred to the Council of Europe's Cyber Convention *on Cybercrime* of 2001 (*Budapest, 23.XI.2001, European Treaty Series-No*. 185).

was found guilty of spreading racist and xenophobic material via an information system (Article 394-d of the CC) and, accordingly, he was sentenced to three months imprisonment, suspended for one year. Namely, it was established that in the period between 5 September 2020 and 18 March 2021 via his Instagram profile he posted photographs with text insulting and threatening with death the Jehovah's Witnesses, the members of the mosque board and the Macedonians of Christian belief. Thus, the defendant promoted and encouraged hatred and violence against these groups of persons on basis of their religion and religious belief.

K.6p.270/19, Shtip Basic Court, judgment of 10 May 2021; indictment no. Ko.6p.188/21 filed by the Shtip Basic Prosecutor's Office on 23 April 2021: The defendant was convicted of spreading racist and xenophobic material via an information system (Article 394-d of the CC). The trial court established that on 16 March 2019 he spread an idea which incited violence against a group on grounds of its religion and violence to a religious object. In fact, via his Instagram profile, he shared an article taken from the Internet portal *www.vecer.mk* about the terrorist attack on a mosque in New Zealand the previous day. Next to it, he posted that the same should be done inside a church so that everyone would die. Following his guilty plea, without providing any explanation or making reference to the relevant international standards on hate speech and hate crime, the trial court sentenced the defendant to six months' imprisonment, suspended for one year. When determining the penalty, it took into consideration all aggravating circumstances (the gravity of the criminal offence, the social harm incurred with the offence, the degree of the defendant's criminal responsibility, in particular bearing in mind that it concerned a hate crime), as well as all mitigating circumstances (that the defendant regretted the offence he committed, he behaved correctly in the course of the criminal proceedings and with his plea he contributed to the efficient termination of the criminal proceedings, he appeared alone before the court without being summoned, he was not convicted before and he had not committed other offences, etc.).

General comment on cases concerning statements online constituting criminal acts:

All in all, the analysis of criminal cases presented above which involved hate speech expressed via online platforms leads to conclusions like those in relation to judgments dealing with hate speech in general (see Chapter 2: Hate Speech).

In sum,

- there is a general trend of prosecuting hate speech cases, whereas it does not seem that any other, non-criminal law mechanisms have been put in place in order to address this phenomenon, as required by the Council of Europe's Recommendation CM/Rec(2022)16 on combating hate speech;
- both the prosecution and the judicial authorities have developed a practice where all offensive or harmful types of expression are considered as hate speech, despite the Council of Europe's standards that they should be sufficiently severe to be legitimately restricted under the ECHR;
- such practice is even more obvious when the contested speech is directed against politicians from the ruling political parties, which raises certain doubts about whether all similar cases are prosecuted, regardless of whether the victim was a politician or a private individual;
- with a few exceptions, the judgments under review are rather brief, lacking proper reference to the main concepts and definitions of hate speech which are provided at the international level, including standards developed by the ECtHR;
- similarly, they do not consider the elements of hate speech, which include 1) an intent to spread hatred against a certain group; 2) the contents and the context of a specific expression, and 3) the consequences of hate speech;
- in most of the cases, the defendants were sentenced to suspended prison sentences; this opens questions about whether the current penal policy is appropriate or should be reconsidered to ensure effective prevention against similar crimes in future.

As to other types of criminal cases which could not be categorised as hate speech, regardless of whether the offences the defendants were convicted of targeted politicians or private individuals, it is apparent that most of the criminal judgments were not well reasoned or at least, their reasoning did not incorporate any parameters which have been set out by the ECtHR.

4. Protection and safety of journalists

4.1. Introduction

The jurisprudence of the European Court of Human Rights stresses the role of media as public watchdogs in a democratic society.

The Court has on many occasions stated that although the press must not overstep certain bounds, in particular regarding the protection of the reputation and rights of others, its task is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (*Bladet Tromsø and Stensaas v. Norway* [GC], §§ 59 and 62; *Pedersen and Baadsgaard v. Denmark* [GC], § 71; *Von Hannover v. Germany (no. 2)* [GC], § 102).

Recommendation CM/Rec(2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors[92] provides guidelines on ensuring the effective protection of journalism and safety of journalists and other media actors. Those guidelines are organised into four pillars: prevention, protection, prosecution (including a specific focus on impunity) and promotion of information, education and awareness-raising. In particular, Recommendation CM/Rec(2016)4 highlights that it is imperative that everyone involved in killings of, attacks on and ill-treatment of journalists and other media actors is brought to justice, following an effective investigation into such crimes that must be prompt, adequate, thorough, impartial and independent and is subjected to public scrutiny. It is also emphasized that otherwise, in absence of criminal responsibility for any threats to, intimidation of or acts against journalists, a culture of impunity can arise.[93]

As to the general situation at the domestic level, it is important to note that in its latest enlargement report of 2022, the European Commission observed that the "[f]reedom of expression and pluralistic viewpoints continued to thrive in a generally favourable overall political context." However, it highlighted that "[l]ast year's recommendations remain valid" and it called the authorities, *inter alia* to "promptly address all instances of threats and acts of violence against journalists and ensure that the perpetrators are brought to justice."[94] In addition, it presented certain figures showing the current trends regarding incidents involving

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[92] Council of Europe, Recommendation CM/Rec(2016)4[1] of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors *(*Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies*)*, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1 .

[93] *Appendix to Recommendation CM/Rec(2016)4*, **I. Guidelines,** at paras. 17, 18 and 19.

[94] Brussels, 12.10.2022, SWD(2022) 337 final COMMISSION STAFF WORKING DOCUMENT North Macedonia 2022 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy {COM(2022) 528 final} - {SWD(2022) 332 final} - {SWD(2022) 333 final} - {SWD(2022) 334 final} - {SWD(2022) 335 final} - {SWD(2022) 336 final} - {SWD(2022) 338 final}, available at: https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2022_en, at p.27.

journalists.[95] It was also noted with concern that "[o]nline harassment and verbal attacks on journalists, notably on social media, have continued", as well as that "[o]ld cases of physical attacks against journalists remain unresolved". Finally, the European Commission expressed its view that "[t]he existing legal framework provided sufficient mechanisms for law enforcement authorities and the Public Prosecutor's Office to bring perpetrators to justice", but "[f]urther action is needed to ensure impartial, speedy and effective investigations."[96]

Against this background, it could be concluded that the safety of journalists and other media professionals remains a matter of concern in the country. A positive step forward in complying with the European Commission's recommendations might be the appointment at the beginning of October 2022 of a focal point within the Skopje Basic Prosecutor's Office, who will be charged with following-up on the internal processing of cases involving journalists, regardless of whether they had a status of an *aggrieved party* or a witness in the relevant proceedings.[97]

It should also be pointed out that notwithstanding that the lack of effective response to incidents involving journalists was not due to the loopholes in the domestic legislation, there have also been other significant initiatives, also mostly taken by the Association of Journalists of Macedonia (AJM) and the *Trade Union* of *Macedonian Journalists* and Media *Workers* (SSNM), to strengthen the normative protection of journalists and other media professionals by introducing appropriate changes to the Criminal Code. To that aim, it is proposed that journalists and other media professionals are to be considered as "public officials" and accordingly, certain crimes should be prosecuted *ex officio* if they are perpetrated against them. Such crimes will include: murder, coercion, threatening the safety and preventing an official person in the performance of an official act.[98]

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[95] For instance, it noted that in 2021, the Ministry of Interior recorded eight cases of attacks against journalists, while in 2020 there were ten such cases recorded. Criminal charges were brought in three cases (for a crime committed during a protest, a breach of copyright and related rights and an online threat) and investigations for the remaining five attacks are ongoing. It also indicated that the Association of Journalists of Macedonia (AJM) recorded five attacks, three of them against female journalists and the number of such attacks increased during the 2021 local elections.

[96] *Supra note* 94, at p.28.

[97] This action was taken upon initiative of the Association of Journalists of Macedonia (AJM) and the *Trade Union* of *Macedonian Journalists* and Media *Workers* (SSNM). For more details, see the Press Release issued by the prosecution authorities (https://jorm.gov.mk/ojo-skopje-naznachi-javen-obvinitel-za-kontakt-za-predmeti-povrzani-so-bezbednosta-na-novinarite/). In this press release it was also stated that the Macedonian prosecution authorities shall grant priority to the examination of cases relating to the safety of journalists and to that end, they shall advance the cooperation with the journalists' associations, with a view to punishing of each criminal offence which endangers the freedom of expression.

[98] See the draft-amendments to the Criminal Code [*Предлог на закон за изменување и дополнување на Кривичниот законик*], July 2021, available at: https://www.pravdiko.mk/wp-content/uploads/2021/09/predlog_krivicen_zakonik_-_alb_2.pdf

4.2. The ECtHR judgment in *Selmani and Others*

The landmark judgment regarding the safety of journalists in the Macedonian context is ***Selmani and Others***.[99] In fact, it represents the first Macedonian case in which the ECtHR found a violation of Article 10 of the Convention. Moreover, it provides a lesson to the domestic institutions that they must secure the safety of journalists and other media works to such an extent that they would be able to fulfil their professional duty to report events which are in the public interest.

The case concerned the forcible removal of journalists from the Parliament gallery, a designated area for journalists authorised to report on the work of Parliament. The incident happened on 24 December 2012 while the journalists were reporting on a parliamentary debate about the approval of the State budget for 2013 and at the same time two opposing groups of people were protesting in front of the Parliament building.

At the outset, the Court noted that the disorder in the parliamentary chamber and the way in which the authorities handled it were matters of legitimate public interest. The media, therefore, had the task of imparting information on the event and the public had the right to receive such information. The Court reaffirmed its position that the media played a crucial role in providing information on the authorities' handling of public demonstrations and the containment of disorder. The Court also underlined that any attempt to remove journalists from the scene of demonstrations had to be subject to strict scrutiny.[100] For the same reason, the Court observed that the applicants' removal entailed adverse effects that instantaneously prevented them from obtaining first-hand and direct knowledge based on their personal experience of the events unfolding in Parliament, and thus the unlimited context in which the authorities were handling them.[101] On the whole, the Court considered that the Government failed to establish convincingly that such interference was necessary in a democratic society and met the requirement of "pressing social need". The Constitutional Court, without holding an oral hearing, found that the security staff had considered that the journalists needed to be moved for their own protection. In the Court's view, while the reasons provided by the Constitutional Court were relevant, they cannot be regarded, in the circumstances, as sufficient to justify the applicants' removal from the gallery.[102]

Given that the Court established a violation of Article 10 of the Convention, it awarded each applicant a sum of 5,000 Euros in respect of non-pecuniary damage, plus any tax that may be chargeable.[103]

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[99] *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, 9 February 2017

[100] § 75 of the judgment

[101] § 84 of the judgment

[102] § 85 of the judgment. Apart from the violation of Article 10 of the Convention, there was also a violation of Article 6 of the Convention (right to a fair hearing) on the account of the Constitutional Court's failure to hold an oral hearing.

[103] § 90 of the judgment

4.3. Criminal proceedings relating to safety of journalists

The Council of Europe's platform for the safety of journalists has reported that as of 2015 by the end of November 2022 a total number of 20 cases against journalists and media workers have been alerted in the country, including ten attacks on physical safety and integrity of journalists, three cases of detention and imprisonment of journalists, three incidents of harassment and intimidation of journalists, one case of impunity and three cases which concerned other acts having chilling effects on media freedom.[104] However, during the review, only one criminal case has been provided by the courts concerning physical assaults on journalists or other media professionals, as most of them have reported that no such cases have been registered in their databases in the period covered by this analysis. This is not an unexpected development, given the lack of an effective criminal response to the incidents reported in practice that was addressed at the beginning of this Chapter.

Two cases concerning threats of murder to a renowned journalist are included in this analysis.[105]

In the first case, **XXIX K.6p.212/20, Skopje Basic Criminal Court, judgment of 16 March 2020**, Emil Jakimovski, an employee at the Central Registry and a member of the political party VMRO-DPMNE, was convicted of threatening the safety (Article 123 of the CC) of his former wife and Meri Jordanovska, a renowned journalist and editor in the online portal *a1on.mk* and the news agency *Makfax* by sending her messages via several social media platforms. He was sentenced to one year and six months imprisonment. Given his medical condition established by a medical expert, the Skopje Basic Criminal Court also ordered the application of the coercive measure of compulsory psychiatric treatment and confinement in a health institution (Article 63 of the CC and Article 525 of the CPA).

The Skopje Basic Criminal Court considered as an aggravating circumstance that the threatened journalist was targeted as a woman and a media editor, especially as the defendant believed that she belonged to an opponent political group, which was not true. Although this judgment is final it would not be elaborated and commented in detail, since the trial court ruled the case solely on the applicable domestic criminal legislation, while it failed to refer specifically to the role of journalists and the importance of protecting their safety, among others, by reference to the ECHR jurisprudence in this respect.

The second case, **I K.6p.1807/18, Skopje Basic Criminal Court, judgment of 17 May 2019,** is briefly presented below.

Facts: The trial court convicted Toni Mihajlovski, a popular Macedonian actor, of threatening the safety (Article 144 paragraph 4 of the CC) of Branko Trichkovski, a famous journalist. It was established that on 16 June 2017, he stated via his personal Facebook profile that he was

[104] These data are available at: https://fom.coe.int/en/pays/detail/11709590. Also see the statistical data provided by the Ministry of Interior referred to at footnote 93.

[105] One of this cases was provided by the Skopje Basic Criminal Court, whereas the other one was identified as a result of an additional desk research.

capable of murdering him. It was considered that as a result of this act, he had incited his physical elimination and he had endangered his safety given his social status as a journalist. Consequently, he was sentenced to three months imprisonment, suspended for one year.

Reasoning: When determining the penalty, the Skopje Basic Criminal Court took into consideration all aggravating circumstances, but focused its assessment on the mitigating circumstances (the fact that the defendant pleaded guilty and he regretted the offence, that he was married and a father of two children, that he was neither convicted nor any other criminal proceedings were conducted against him, that he promised not to re-offend, as well as that the aggravated party neither had joined the criminal prosecution nor he had lodged a compensation claim).

Comment: This judgment, as the vast majority of judgments delivered in criminal cases which are part of this analysis, is rather brief and lacks detailed reasoning, in particular when it comes to referring to the case-law of the Strasbourg Court. The trial court may have stressed the State's positive obligations to establish an effective mechanism for the protection of journalists in order to create a favourable environment for participation in public debate, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even if they are irritating or shocking to the latter (*Dink v. Turkey*, § 137; *Khadija Ismayilova v. Azerbaijan*, § 158).

4.4. Defamation proceedings involving journalists

The initiation of defamation proceedings could be considered as a serious legal threat to the full and unhindered enjoyment of the media freedom, especially if such proceedings are brought by politicials or holders of public office. It might also diminish any efforts to create favourable or enabling environment for freedom of expression in a democratic society.

4.4.1. Journalists' "duties and responsibilities"

The strengthened protection afforded to the press under Article 10 "is subject to the condition that they comply with their consequent obligation of "responsible journalism". Thus, the task of imparting information necessarily includes duties and responsibilities, as well as limits that the press must impose on itself spontaneously (*Mater v. Turkey*, § 55). It is not for the Court, or for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists in any given case (*Jersild v. Denmark*, § 31; *Stoll v. Switzerland* [GC], § 146). It follows that the Court's role in this respect is essential for providing adequate protection of the journalistic freedom of expression, but also its restriction whenever it is necessary as certain limits have been unjustifiably overstepped.

In only a couple of cases domestic courts have dealt with the concept of "duties and responsibilities" inherent in the exercise of freedom of expression by journalists. Under this concept, as defined by the Strasbourg Court, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and that they provide "reliable and precise" information in accordance with the ethics of journalism (*Axel Springer AG v. Germany*

[GC], § 93; *Bladet Tromsø and Stensaas v. Norway* [GC], § 65; *Pedersen and Baadsgaard v. Denmark* [GC], § 78; *Fressoz and Roire v. France* [GC], § 54; *Stoll v. Switzerland* [GC], § 103; *Kasabova v. Bulgaria*, §§ 61 and 63-68; *Sellami v. France*, §§ 52-54; *Bergens Tidende and Others v. Norway*, § 53; *Goodwin v. the United Kingdom*, § 39; *Fressoz and Roire v. France* [GC], § 54).

The existence of good faith can be established by referring to the facts and circumstances of each particular case as well as by monitoring the compliance with journalistic ethics, particularly given the influence wielded by the media in contemporary society and in a world in which the individual is confronted with vast quantities of information (*Stoll v. Switzerland* [GC], § 104).

The concept of "responsible journalism" could be defined as full compliance with the rules of journalistic "ethics" and "professional codes" in the performance of the professional activity by journalists. It enjoys the protection of Article 10 of the Convention and is equally relevant in relation to editorial decision-making. In the Court's view, because they help to provide authors with a medium for the expression of their ideas, publishers not only participate fully in the exercise of the freedom of expression of the authors published by them but also share the latter's "duties and responsibilities". Article 10 does not, therefore, preclude publishers, even if they are not personally associated with the opinions expressed, from being penalised for publishing a text whose author has disregarded these "duties and responsibilities", subject to the conditions envisaged in paragraph 2 (*Orban and Others v. France*, § 47). For instance, there was no violation found by the Court when a newspaper director was convicted and imposed a suspended prison sentence for publishing a defamatory article about two judges. The Court held that, as a newspaper director, the applicant had the power and the duty to ensure that political debate did not degenerate into insults or personal attacks (*Belpietro v. Italy*, § 41).

The responsibilities of editors have also been addressed in several cases the domestic courts dealt with within the period covered in this analysis.

8к. П5-18/16, Skopje Basic Civil Court, judgment of 15 March 2017, upheld by the Skopje Court of Appeal, judgment of 15 November 2017 (ГЖ-4985/17)

Facts: Three university professors at the Skopje Faculty of Law, Aleksandar Klimovski, Goce Naumovski and Timcho Mucunski, initiated civil proceedings for libel against Jadranka Kostova, the editor-in-chief of the weekly newspaper *Focus*. Their action concerned the article published in that newspaper on 19 June 2015 in which it was stated that Timcho Mucunski got approval from the Ministry of Finance to be employed as an assistant at the Faculty of Law with the support of the other two plaintiffs, who were members of the same political party as him.

Reasoning: The Skopje Basic Civil Court dismissed the plaintiffs' action, finding that the journalist who wrote the impugned article had published it after she gained appropriate information about the recruitment of Timcho Mucunski through personal communication and email correspondence with another professor from the same Faculty. Additionally, the defendant could not be sued as she only took care of the general editorial policy of the

newspaper and she neither supervised nor approved the content of the publications. It was rather a duty of another editor within the newspaper.

The Skopje Basic Civil Court relied on Article 8 paragraph 3 of the LCLID. It prescribes that: "[i]f the presentation or dissemination of false statements of fact has been made by a mass medium (newspapers, magazines and other print media, TV and radio programs, electronic publications, teletext, and other forms of editorial program contents that are published, that is, broadcast on a daily basis or periodically, in the form of a text, sound or image, in a manner which is accessible to the general public), the author of the statement, the editor or the person replacing him/her in the mass medium and the legal entity may be held liable for defamation". Furthermore, according to Article 14 paragraph 1 of the Media Law, which should be applicable to the particular case as *lex specialis*, each media outlet has a duty to publish data about the person(s) responsible for the content published. In light of this provision, it was observed that the newspaper *Focus* complied with its statutory duty by putting the name of another editor in its legal notice. Therefore, the latter should have been sued, and not the defendant as editor-in-chief.

Comment: The reasoning of the first-instance court, confirmed on appeal, was based on domestic law, especially as regards the duties and responsibilities of the journalist who was the author of the impugned article. However, this was not supported by any internationally accepted standards relating to the duties and responsibilities of media editors.

II П5-3/17, Skopje Basic Civil Court, judgment of 17 December 2018, upheld by the Skopje Court of Appeal, judgment of 29 May 2019 (ГЖ-1733/19)

Facts: The *Foundation Open Society Macedonia* ("the Foundation") launched proceedings for libel against Ivona Talevska, the editor-in-chief of the daily newspaper *Vecer*, regarding an article published in that newspaper on 27 October 2015. The latter contained accusations that the Foundation together with the USAID awarded a financial grant of around 230 000 US Dollars to eight NGOs led by 20 activists who were associated with the Foundation and the political party SDSM, in addition to 2 million US Dollars which had been given to the NGOs on a regular basis. The money was allegedly granted to support the protests organised by SDSM and the so-called Colourful Revolution and each project proposal was given a sum of 32,000 US Dollars within the framework of the project "Citizens for democratic reforms". Lastly, it was stated that the Foundation developed training on organising protests jointly with an NGO from Serbia.

Reasoning: In its submissions, the defendant argued that the impugned article was prepared in a professional manner, by using numerous sources of information, including the official reports drawn up by the plaintiff, that its publication was in the public interest and that some of the allegations were already published by other daily newspapers and they were not disputed by the plaintiff. Accordingly, there was a justified ground to believe in the veracity of the impugned statement.

Nevertheless, the Skopje Basic Civil Court held that the published content was untrue and with its publication the defendant aimed at damaging the plaintiff's honour and reputation. The defendant's liability was established on basis of Article 8 paragraph 4 of the LCLID which reads as follows: "[t]he publisher, the editor or the person replacing him/her in the mass medium and the legal entity that publishes the mass medium, shall be held liable for defamation made by a journalist in the respective mass medium who is the author of the statement, based on the principle of presumed liability".

In addition, the defendant as editor-in-chief had a duty to verify the content of each publication in the newspaper, as well as to check the reliability of the source of information in case when certain material was transmitted from another newspaper, as it was argued in this case. Besides, the Skopje Basic Civil Court put a special emphasis on the fact that the author of the published article remained unknown and it was placed as a headline on the front page of the newspaper.

The plaintiff's compensation claim of 600,000 Macedonian Denars (approximately 10,000 Euros) was dismissed, as it was considered that the establishment of liability for defamation itself would constitute sufficient personal and moral satisfaction for the plaintiff. Instead, the Skopje Basic Civil Court ordered the defendant to publish the operative part of the judgment on the same page(s) as the impugned article, thus upholding the plaintiff's request in that respect.

In the appellate court's judgment, it was stressed that the published content did not have a sufficient factual basis, as the defendant in her capacity as an editor-in-chief failed to check its veracity prior to its publication. Thus, she exceeded the margin of her right to freedom of expression to the detriment of the rights of others. The Skopje Court of Appeal upheld the first-instance court's judgment, holding that the order instead of awarding damages to impose an obligation for publishing the judgment in the defendant's newspaper would be proportionate to the damage sustained. This was also in accordance with Articles 15 and 16, paragraphs 1 and 2 of the LCLID.

Comment: In the instant case, the domestic courts, to a certain extent, relied on the concept of "duties and responsibilities" regarding the role of editors and their liability for the content published. However, the reasoning provided both by the first-instance court and the appeal court was based only on the assessment of the facts of the case and on the domestic legislation without any reference to the relevant case-law of the Strasbourg Court. On the other hand, the competent courts completely disregarded the importance of the interest of the public to be informed on how the money given to civil society organisations was spent, as an important question in a democratic society, particularly due to their role of public "watchdogs" and the respect and credibility they should enjoy among the citizens. Finally, once again, as in the case no. 2П5-27/16, discussed above, the same first-instance court used an inappropriate terminology, when it referred to the "personal and moral satisfaction" which should have been

achieved with the order to publish the judgment instead of awarding damages, even though the plaintiff was not a private individual, but a legal entity.[106]

2П5-6/17, Skopje Basic Civil Court, judgment of 25 September 2019, upheld by the Skopje Court of Appeal, judgment of 22 April 2021 (ГЖ-1592/20)

Facts: A private individual and his company brought a civil action for libel against the daily newspaper *Vecer and its editor*-in-*chief*, Ivona Talevska, as regards a series of articles published in November and December 2016 and on 9 January 2017. The articles stated that the plaintiff, who was a friend of the then Prime Minister Zoran Zaev and was chairing the committee on energy within his political party SDSM, earned huge profits by supplying gas for a double price to the local gas distribution enterprise, which was operating in Strumica, the birthplace of Zoran Zaev. In support of these allegations, the author of the text noted that the company owned by the plaintiff were *awarded public procurement* contracts on three occasions, meaning that only his company was allowed to supply gas to the Municipality of Strumica. It was also noted that the information was obtained after a search had been carried out on all databases available on the Internet. Upon a complaint lodged by the plaintiff's legal representative, on 9 January 2017, the *Council of Media Ethics* of *Macedonia* decided that Articles 1, 3 and 13 of the Code of the Ethics of the Journalists of Macedonia had been violated as a result of the publication of the impugned articles.

Reasoning: The Skopje Basic Civil Court upheld the plaintiffs' action holding that the defendants intended to harm the plaintiffs' reputation. It dismissed their compensation claim, finding that the establishment of civil liability for defamation should constitute sufficient personal and moral satisfaction for the first plaintiff and thus, there was no need to award any material satisfaction. The same findings were confirmed by the appellate court.

Comment: Unlike in many other cases, in the instant case the competent courts automatically accepted that the editor-in-chief should be held responsible for the articles written by her colleagues without providing any plausible explanation thereof. Moreover, these judgments did not contain any analysis which will incorporate the concept of "duties and responsibilities", nor elaborated on how the editor-in-chief had failed to meet the "duties and responsibilities" in the performance of her professional activities.

It is also noteworthy that there was no discussion about the legitimate public concerns which might have been raised with the impugned articles as regards the potential abuse of office or any shortcomings which have been detected in the public procurement procedures in question. All in all, the domestic judges did not provide sufficient reasoning which would satisfy the requirements of the Convention system of protection of fundamental rights and freedoms.

[106] See Chapter 3: Defamation, section 3.3.2.3: Domestic case-law not in conformity with the ECHR standards.

4.4.2. Politicians against journalists

In its ruling in ***Kostova and Apostolov***,[107] the ECtHR found a violation of Article 10 in respect of the domestic civil defamation proceedings against the applicants, editor-in-chief and a journalist in the weekly newspaper Focus, which were initiated in relation to two articles they had published in that newspaper. The articles concerned Mr S., who at the relevant time was a senior member of the then ruling political party and director of the Security and Counter-Intelligence Agency. In the articles, they quoted Mr I., a former Macedonian Ambassador to the Czech Republic who had told them, among other things, that Mr S. had abused his power by taking actions and exerting substantial verbal pressure on the then Macedonian President (G.I.) and the Minister of Foreign Affairs (N.P.) that had adversely affected Mr I.'s interests in a personal matter concerning the alleged abduction of his minor child by his former wife. The second article in its last sentence also stated that Mr S. "unofficially" owned a "business empire in the Czech Republic".

Both the Skopje Basic Civil Court and the Skopje Court of Appeal found that the applicants had tarnished Mr S.'s reputation in that they had published false facts, which they described as "rumours", without having previously tried to verify their veracity. The courts held that the information published had not served any public interest and that the private life of Mr I. had been unjustifiably linked with the public office held by Mr S. The first applicant was ordered to pay 5,000 Euros and the second applicant 1,000 Euros to Mr S. in respect of non-pecuniary damage. Those findings were subsequently upheld by the Constitutional Court that decided upon the request for protection of freedoms and rights lodged by the applicants.

At the outset, the Court accepted that the protection of the rights and reputation of Mr S. could be accepted as a "legitimate aim" for interference with the applicants' freedom of expression, as advanced by the domestic courts. Notwithstanding the fact that the articles primarily discussed issues related to Mr I.'s personal life, they also touched upon issues of public concern.[108]

The Court agreed with the domestic courts that the articles at issue contained statements of fact susceptible of proof. While all the factual allegations consisted essentially of references to "stories" or "rumours", as found by the domestic courts, the courts failed to weigh the fact that these did not emanate from the applicants. In part, the applicants were only reporting what was being recounted by Mr I., who had approached them and provided them with his own written account of events based on his personal experience and in the articles, the applicants clearly identified the statements emanating from Mr I. Moreover, the Court noted that it was not established in the impugned proceedings that the published content was altogether untrue or merely invented. The Court further observed that the second applicant unsuccessfully tried to verify the story presented in the second article with the official spokesperson of the Agency prior to its publication. Consequently, the Court has concluded

[107] *Kostova and Apostolov v. North Macedonia*, no. 38549/16, 5 April 2022
[108] §§ 7 and 8 of the judgment

that the applicants acted with the diligence expected of responsible journalists reporting on a matter of public interest and cannot be criticised for having failed to ascertain the truth of the disputed allegations.[109]

Lastly, the Court held that the amounts of damages awarded to the applicants, notwithstanding the fact that the applicants did not pay them and they were covered by the solidarity fund of the Association of Journalists of Macedonia, could be seen as having a chilling effect "of discouraging open discussion of matters of public concern. In conclusion, the domestic courts failed to ensure that there was a reasonable relationship of proportionality to the injury to reputation allegedly suffered by Mr S.[110]

In connection to the violation of Article 10 of the Convention, the Court awarded the applicants jointly 3,000 Euros in respect of non-pecuniary damage, plus any tax that may be chargeable.[111]

As reported by the Association of Journalists of Macedonia (AJM), in recent years there has been a drastic reduction in the number of defamation and insult lawsuits against journalists and media. Indeed, this number has dropped dramatically since defamation and insult were decriminalised. Such positive development persisted during the entire period which is under consideration in this analysis. Thus, while in 2012 there were 330 newly registered lawsuits for insult and defamation against journalists and media, in 2016 that number dropped to 40. In 2017 the number of newly registered lawsuits for defamation and insult against journalists was 39 and in 2020 only 33 such lawsuits were registered in the domestic courts. For instance, according to the data received from the Skopje Basic Civil Court, the total number of active cases in which a journalist or media outlet was a party in 2021 was 20. AJM was, therefore, confident that this shows that insult and defamation are less used as an instrument of pressure on journalists and media.[112]

Nevertheless, a considerable number of cases of defamation lawsuits brought by politicians against journalists have been provided during this research. While some of them have been already summarised above, in this section there will be a reference only to one case which exemplifies the specific relations between journalists and politicians.

39П5-45/19, Skopje Basic Civil Court, judgment of 19 March 2019, overturned by the Skopje Court of Appeal, judgment of 19 May 2020 (ГЖ-2969/19) upheld by the Supreme Court, judgment of 2 November 2021 (Рев2.6р.399/2020)

Facts: The first plaintiff was the then Minister of Labour and Social Policy, Frosina Tashevska Remenski, who was also a Vice-President of the political party SDSM, while the second plaintiff was her husband, Jovche Remenski, a high-ranking police officer. They launched civil

[109] §§ 9 and 11 of the judgment
[110] § 10 of the judgment
[111] § 12 of the judgment
[112] Spirovski, M., Nasteska Kalanoska B. (2022), NORTH MACEDONIA: Indicators for the degree of media freedom and journalists safety in 2021, Skopje, Association of Journalists of Macedonia, available at: https://znm.org.mk/wp-content/uploads/2022/05/MK-ENG-2021.pdf, at p.13

defamation proceedings against the Macedonian Association of Journalists (MAN) regarding a press release issued on 17 May 2016 and published by several electronic media. In that press release, MAN called on the political party SDSM to stop exerting pressure on journalists and intimidating them. It was also stated that the second plaintiff had been unlawfully promoted immediately after the first plaintiff's party colleague had taken the office of a Minister of Interior. Furthermore, MAN alleged that the first plaintiff threatened the *editor*-in-*chief* of the daily newspaper *Vecer*, Ivona Talevska, via a Facebook post, after she had published an article. MAN affirmed that the article showed that the first plaintiff in fact possessed the party archives of intercepted phone communications, including those concerning a members of MAN, and that she used them to threaten journalists, while her husband (the second plaintiff) was allegedly involved in their dissemination. Furthermore, MAN called on the competent institutions and the diplomatic representations which allegedly supported such politics of SDSM to instigate proceedings regarding the threats made by the first plaintiff. Lastly, the press release addressed the phenomenon of abuse of unlawfully intercepted communications by the highest officials of SDSM and their collaborators as a means of racketeering for political and financial purposes.

Reasoning: The Skopje Basic Civil Court upheld the plaintiffs' action finding that the defendant knowingly presented untrue facts about the plaintiffs before third parties which were able to discredit their personality, authority and reputation, even though it knew or it ought to have known that they were untrue, as their veracity could have been verified before presenting them to a broader public. In support of this conclusion, it stated that there no investigation or criminal proceedings were initiated against any of the plaintiffs concerning the allegedly unlawful distribution of intercepted communications of a journalist. Accordingly, it awarded each of the plaintiffs a sum of 61,690 Macedonian Denars (approximately 1,000 Euros) for the non-pecuniary damage they had suffered.

On appeal, the Skopje Court of Appeal overturned the judgment given by the first-instance court, holding that there were no grounds to establish liability for defamation in this particular case. It underlined that the case concerned public persons whose degree of tolerance should be wider so that they should always be susceptible to greater criticism. Moreover, the allegations made by the defendant had been already published in the electronic edition of the daily newspaper, as well as in several other electronic media and publications and two Internet pages. In particular, the Skopje Court of Appeal highlighted the importance of critical journalism for a democratic debate and the journalists' duty to act in good faith with a view of obtaining true and reliable information in accordance with journalistic ethics, as required by the ECHR standards. Lastly, it stressed that the publicity and accountability of those holding public offices should also be taken into consideration whenever reporting about this category of persons.

The Supreme Court upheld the appeal on points of law lodged by the plaintiffs and confirmed the findings of the first-instance court. It reiterated that the right to freedom of expression is not an absolute one, that journalists have certain duties and responsibilities to secure reliable

and true information in accordance with journalistic ethics and that they should act in good faith and verify any information which concerns a particular individual, in order to protect his or her reputation and rights.[113] Even though holders of public office should have a higher degree of tolerance in respect of the information of general public interest, since the defendants failed to comply with the ECHR standards concerning their duty to verify the veracity of certain factual assertions which concerned the plaintiffs, it was concluded that they could not be exempted from civil liability for their conduct. The Supreme Court also confirmed that non-pecuniary damage was correctly awarded by the Skopje Basic Civil Court.

Comment: The case at hand shows that the level of understanding of the importance of the freedom of expression of journalists in a democracy and their role in addressing issues of public interest which concern the accountability of the holders of public office varies among judges deciding the same case at different court instances. Unlike the other two instances, it appears that the appeal court has displayed a more profound approach in this respect, even though its reasoning was not accepted by the adjudicating panel of the Macedonian Supreme Court.

4.4.3. Journalists against journalists

The first Macedonian case before the ECtHR regarding defamation proceedings among journalists was ***Gelevski***.[114] In that case, the applicant, a columnist in the daily newspaper *Utrinski Vesnik*, was criminally convicted of defamation for having criticised D.P.L., a journalist and editor-in-chief of a television channel and another daily newspaper, in an opinion piece. The defendant argued that the plaintiff had allegedly transformed journalism and working for the public into a spin service of a political and mafia-type partnership with the "fascist" government of Nikola Gruevski.

Acting upon the criminal complaint lodged by D.P.L. the Skopje Basic Criminal Court found the applicant guilty of defamation and insult and imposed on him a fine of 600 Euros with thirty days' imprisonment in the event of default. The Skopje Court of Appeal ruled partly in favour of the applicant and upheld his conviction only in respect of defamation. It reduced the fine to 320 Euros, with sixteen days' imprisonment to be imposed in the event of the applicant defaulted on payment. The Skopje Court of Appeal wrongly qualified the contested article as containing a "factual assertion …", whereby "the burden of proof is on the… accused." Moreover, the Constitutional Court dismissed the applicant's complaint of a violation of his freedom of conscience, thought and public expression of thought. While it correctly noted that "[i]t is clear that the article articulates the author's personal opinion about the policies of the ... political party [in power] in the Republic of Macedonia, with which he obviously disagrees.", it held that reasons provided by the courts of general competence "are acceptable and that

[113] In this respect, the Supreme Court referred to the case of *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, 17 December 2004.
[114] *Gelevski v. North Macedonia*, no. 28032/12, 8 October 2020

the State's interference is proportionate to the legitimate aim of protecting the reputation of the victim ..."[115]

In its assessment, the ECtHR observed that the applicant was a regular opinion writer in a daily newspaper and thus, the interference must be examined in the context of the essential role of a free press in ensuring the proper functioning of a democratic society. The Court also noted that the plaintiff as a well-known journalist and editor-in-chief of a television channel and a daily newspaper knowingly exposed himself to a close scrutiny of his professional actions and opinions by both journalists and the general public and must therefore show a greater degree of tolerance. It was so in particular regarding a discussion whether he complied with the "duties and responsibilities" of a journalist and media editor-in-chief and whether he acted in accordance with the tenets of responsible journalism and the ethics of journalism.[116]

In the Court's view, the article written by the applicant was not directed at the plaintiff's private activities, but it was rather a statement of his disagreement with the Government policies whose supporter was the plaintiff. Thus, it contributed to an ongoing political debate which in itself was a matter of public interest.[117] Additionally, his qualification of Government policies as "fascist" carried a clear element of value judgment which was not fully susceptible of proof.[118] As to the language used by the applicant, it was reiterated that individuals, and in particular journalists, who take part in a public debate on a matter of general interest are allowed to have recourse to a degree of exaggeration or provocation. In this regard, the Court held that the applicant's statements did not exceed the acceptable limits of criticism.[119]

Lastly, the Court considered that the applicant's criminal conviction could have undoubtedly had a chilling effect on the political debate between members of the media on matters of importance and it concluded that the interference in question was disproportionate to the protection of the reputation of others as a legitimate aim pursued and was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention. Accordingly, it awarded the applicant 3,180 Euros in respect of the non-pecuniary damage he had suffered.[120]

Regrettably, such worrying practice of litigation among journalists themselves which have been recorded for the first time over 20 years ago, has also continued in the reporting period covered by this review.

VII П5-58/16, Skopje Basic Civil Court, judgment of 18 October 2017, upheld by the Skopje Court of Appeal, judgment of 27 September 2018 (ГЖ-3601/18)

Facts: In an article published in the daily newspaper *Vecer* on 18 May 2016, two journalists of the web portal *NOVA TV*, Borjan Jovanovski and Sashka Cvetkovska, were labelled as "Soros

[115] §§ 7, 8, 10 and 11 of the judgment
[116] §§ 22 and 24 of the judgment
[117] § 25 of the judgment
[118] § 28 of the judgment
[119] § 29 of the judgment
[120] §§ 30, 31 and 36 of the judgment

bots" and "Polycolor condoms" (*Соросови ботови, Поликолорни куртони*). It was also alleged that the first plaintiff had gained financial support from Soros, EU and USAID funds and that he was coming from a family of known snitches (*кодоши*). They sued *Vecer press*, the newspaper publishing company, and its editor-in-chief, Ivona Talevska, for defamation. The competent courts ruled in favour of the plaintiffs and ordered each of the defendants to pay 500 Euros and 300 Euros, respectively for damages.

Reasoning: The Skopje Basic Civil Court held that the defendants failed to prove the truthfulness of their assertions in the impugned article, which would have allowed them to publish them without entailing their liability for defamation. With specific regard to the assertions on the family of the first plaintiff, the Court recalled that they should have verified them before their publication by obtaining publicly available information from the Lustration Commission, as the first plaintiff argued that there was no decision adopted by the Commission declaring that his father had been a collaborator of the communist secret services. This was further confirmed by the letter drawn up by the Commission that was sent to his father and was also submitted as evidence in the impugned proceedings.

The Skopje Basic Civil Court concluded that the defendants overstepped the limits of their right to freedom of expression as envisaged under Article 10 of the ECHR, as they expressed a degrading and humiliating opinion as regards another person and not an opinion that concerns public interest. It also considered that the impugned assertions had been made in a turbulent period prior to holding the parliamentary elections. As a result, the defendants had a serious intent to depict the plaintiffs as journalists who work contrary to the interests of their own people and carry out their activities with foreign funds. By labelling the plaintiffs as self-proclaimed investigating journalists and bots, the defendants presented them as people who were lacking integrity and who were guided by another centre. Thus, they damaged their honour and reputation, both professionally and privately. They further breached the rules and standards of the journalistic profession as stipulated in the Code of Journalists of Macedonia. Moreover, the impugned assertions could have encouraged other person(s) to take harmful actions against the plaintiffs which would have damaged their health and life.

The Skopje Basic Civil Court considered irrelevant the defendants' allegations that there was a ground for exclusion of civil liability in this particular case, as the impugned statement in respect of the first plaintiff's father was previously posted publicly by another journalist, Mirka Velinovska, via electronic publications. It emphasised in this context that the anonymous journalist who conveyed such allegations was obliged to verify them before publishing the impugned article.

When determining the amount of compensation to be awarded to the plaintiffs, the Skopje Basic Civil Court assessed the character and the severity of the defamatory statements, along with their impact on the plaintiffs' life, personality and family. It concluded that the awarded compensation was sufficient to provide reparation for the violation of the plaintiffs' honour and reputation.

Comment: It appears that in the cases at hand, the domestic courts have properly applied the concept of "duties and responsibilities" when considering whether the conduct of journalists in the performance of their professional duties was in accordance with journalistic ethics and the ECHR standards. Moreover, the courts followed the ECtHR approach as regards the award of damages thus preventing any chilling effect on the defendants' journalistic activity in future.

27.П5-31/20, Skopje Basic Civil Court, judgment of 16 June 2021, upheld by the Skopje Court of Appeal, judgment of 2 February 2022 (ГЖ-3977/21)

Facts: The plaintiff, Goce Mihajloski, a renowned TV journalist, was the information program editor at *Channel 5 TV* and a moderator of a TV show, where he interviewed politicians and other public figures. He lodged a defamation claim against Milenko Nedelkovski, another journalist, in respect of allegedly defamatory statements he had published on his personal Facebook page in three posts on 10 April 2020 and in an additional post on 11 April 2020. In particular, in his posts, the defendant claimed that the plaintiff infected the leaders of the two major political parties, SDSM and VMRO-DPMNE with the COVID-19 virus while interviewing them. The plaintiff had allegedly kept hidden the information that his father had been infected and was suffering from a serious health condition. The defendant further commented that the plaintiff had displayed an unprofessional, inhuman and irresponsible attitude and intentionally infected his guests.

Reasoning: In its analysis, the Skopje Basic Civil Court reiterated the distinction which should be made between facts and value judgments, noting that the existence of facts can be demonstrated, while the truth of subjective opinions is not susceptible of proof. Turning to this particular case, it held that the defendant did not only express his value judgment regarding the plaintiff's behaviour, but he also made factual assertions about him whose truthfulness he was obliged to prove. However, he failed to prove so, or that he had grounds to believe in the truthfulness of his assertions. Indeed, given the content of the journalistic material provided by different media he relied upon, it appeared that there was no factual basis for his remarks. Namely, in different articles published on 10 April 2020, the same date when he posted his initial remarks, it was clearly stated that the leaders of the two major political parties were self-isolated after it had been found out that the plaintiff had infected them with COVID-19, but both of them tested negative. As a result, the Skopje Basic Civil Court noted that the defendant had exceeded the limits of his freedom of expression, since when he posted the impugned texts on his Facebook profile, he did not intend only to exercise his freedom of expression, but also sought to damage the plaintiff's honour and reputation.

Consequently, the plaintiff's claim was upheld, while his compensation claim in respect of non-pecuniary damage was dismissed, as it was considered that the determination of civil liability for defamation would itself constitute an adequate just satisfaction, both in line with the relevant provisions of the LCLID and the case-law of the ECtHR.

Comment: While not referring directly to any particular ECtHR case where the distinction between facts and value judgments had been made, the domestic courts demonstrated a

sound understanding of this concept and applied it properly to the circumstances of this particular case. However, both the first- and the second- instance courts' judgments lacked further elaboration on the "duties and responsibilities" of the defendant as a journalist, to secure reliable and true information in accordance with journalistic ethics. Likewise, they did not highlight that a journalist should act in good faith and verify any information which concerns a particular individual, in order to protect his or her reputation and rights. It seems that such "duties and responsibilities" were inevitably applicable to the defendant, notwithstanding the fact that he had posted the impugned remarks via his personal Facebook account.

П5-4/18, Ohrid Basic Court, judgment of 10 January 2019, upheld by the Bitola Court of Appeal, judgment of 17 May 2019 (ГЖ-801/19)

Facts/Reasoning: The renowned investigative journalist Sashka Cvetkovska, filed a lawsuit against Sashko Denesovski, the editor of *www.ohridsky.com* as the latter insulted her through the Internet portal on 7 July 2016. More precisely, he stated that she was lacking intellectual capacity and she did not possess the qualities to be a journalist, but she had actually built her career by saying bad words about her colleagues and thanks to the love affairs she had with important persons in the journalistic profession. The Ohrid Basic Court ruled that the claim was well-founded as the published text had insulting content and it expressed a humiliating opinion about the plaintiff, thus damaging her honour and reputation. Accordingly, it awarded the plaintiff 10,000 Macedonian Denars (approximately 165 Euros) which it considered to constitute a just monetary compensation and sufficient satisfaction for the plaintiff.

Comment: While the above judgment seems reasonable, it lacks detailed reasoning of all elements which should be well elaborated before establishing the defendant's civil liability. For instance, in addition to the insulting language used by the defendant, the first-instance court could have stressed the position of the plaintiff as a journalist, whose professional integrity was tarnished and the fact that the impugned comments were not directed at the performance of her professional duties but, have unjustifiably encroached on her private life.

5. Freedom of expression and good administration of justice

5.1. Introduction

Only a small number of cases analysed involve the freedom of expression of members of the judiciary (judges and prosecutors), lawyers, defendants, witnesses or other participants in the context of judicial proceedings, either about their conduct in the courtroom or as to their statements made outside the courtroom, particularly to the press.

5.2. Freedom of expression of judges

П5-6/21, judgment of 26 October 2021, Veles Basic Court, upheld by the Skopje Court of Appeal on 11 May 2022 (ГЖ-4864/21)

Facts: The plaintiffs, a law firm and two lawyers employed with it, filed a lawsuit against a judge of the Skopje Basic Civil Court, alleging that they had been humiliated by the content of a written statement submitted by the defendant. In that statement, the defendant stated that one of the women lawyers employed with the plaintiff's law firm disrespected the court as an institution when – in an offensive and impertinent manner (*нападно и дрско без почитување на институцијата во која се наоѓа*) – she entered the courtroom without prior notice and asked the defendant to carry out an inspection of the case file, even though she knew that other litigants were also waiting to attend their scheduled hearings. Moreover, the defendant stated that on another occasion, disrespecting the court order in a rather impertinent manner (*без почитување на редот во судот,... крајно дрско и безобразно*), she requested the defendant to submit three submissions and qualified the behaviour of her colleague who was a representative of the other party to the proceedings as insolent and hostile.

Reasoning: The Veles Basic Court held that the impugned words were contained in a written statement made by the defendant which was a part of the court proceedings and followed the plaintiffs' request for her exclusion to sit as a judge in a particular case. Therefore, the submission of such a statement should be considered a procedural activity of the defendant as a judge which was prescribed in the provisions of the Civil Proceedings Act (hereinafter: "CvPA") and amounted to an opinion expressed within the framework of the process of adjudication of a specific case. Thus, she acted only within the court proceedings and within the limits of her capacity as a judge of the Skopje Basic Civil Court. As a result, relying on Article 10 of the LCLID the Veles Basic Court held that the defendant could not be held liable for defamation for the factual statements made in the performance of her official duty as a holder of a judicial function.[121]

[121] Article 10 (Exemption from liability) reads as follows: "In addition to the grounds for exemption from liability for defamation referred to in Article 9 paragraphs (2), (3) and (4) of this Law, the liability for a statement of facts which harm the honor and reputation of another person presented in a scientific, literary or art work, in a serious criticism, in the performance of an official duty, journalistic profession, political or other social activity, in the defense of the freedom of public expression of thought or of other rights, or the protection of public interest or other justified interests shall be exempted in the cases where:

In addition, the Veles Basic Court referred to Article 100 of the Constitution, as amended with Amendment XXVII, where in paragraph 2 it is stipulated that a judge cannot be held criminally responsible for an opinion expressed or decision taken in the process of delivery of a court decision. Similarly, it relied on the provisions laid down in Articles 65 and 66 of the Law on Courts, which exclude any liability of judges for a stated opinion and the manner of deciding during the adoption of a court decision. Consequently, the plaintiffs' claim was dismissed as unfounded.[122]

Comment: This particular case has been decided solely relying on domestic constitutional and statutory provisions which guarantee the independence of judges by excluding liability regarding the way they carry out the court proceedings or the decisions they take. In any event, the reasoning of the domestic courts' judgments in cases like the present one could also incorporate the methodology of judicial reasoning developed by the ECtHR, with a reference to the relevant principles and case-law. More precisely, the domestic courts could have pointed out the importance, in a State governed by the rule of law and in a democratic society, of maintaining the authority of the judiciary. They could have also emphasised that the proper functioning of the courts would not be possible without relations based on consideration and mutual respect between the various protagonists in the justice system, at the forefront of which are judges and lawyers (*Morice v. France* [GC], § 170).

5.3. Freedom of expression of lawyers

The ECtHR has acknowledged the specific status of lawyers giving them a central position in the administration of justice as intermediaries between the public and the courts. Therefore, they play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence (*Morice v. France* [GC], §§ 132-139; *Schöpfer v. Switzerland*, §§ 29-30; *Nikula v. Finland*, § 45; *Amihalachioaie v. Moldova*, § 27; *Kyprianou v. Cyprus* [GC], § 173; *André and Another v. France*, § 42; *Mor v. France*, § 42; and *Bagirov v. Azerbaijan*, §§ 78 and 99).

For members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (*Morice v. France* [GC], § 132; *Kyprianou v. Cyprus* [GC], § 175). That special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with

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1) a statement contained in a press statement, decision or another document of a state body, institution or legal entity is presented or disseminated, or the statement is presented at a public gathering, in court proceedings, or any other public event regarding an activity of state bodies, institutions, associations or legal entities or a statement publicly stated by another is disseminated; 2) the person who presents or disseminates such statement has been prevented from exercising the right to access public information contrary to the regulations on free access to information, which he/she invokes to in his/her defense; 3) the false facts contained in the statement are of marginal importance compared to the truthful facts to which the statement refers and do not significantly alter its general sense of a truthful statement; or 4) facts related to matters of public interest are presented in a mass medium by making a reference to reliable sources of information regarding their truthfulness, which have been treated with due attention by the defendant in accordance with the professional standards of the journalistic profession."

[122] Law on Courts ("Official Gazette of the Republic of Macedonia" nos. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018)

regard to their conduct (*Morice v. France* [GC], § 133; *Van der Mussele v. Belgium*; *Casado Coca v. Spain*, § 46; *Steur v. the Netherlands*, § 38; *Veraart v. the Netherlands*, § 51; *Coutant v. France* (dec.)). Whilst they are subject to restrictions on their professional conduct, which must be discreet, honest and dignified, they also enjoy exclusive rights and privileges that may vary from one jurisdiction to another – among them, usually, a certain latitude regarding arguments used in court (*Morice v. France* [GC], § 133; *Steur v. the Netherlands*, § 38).

None of the cases under consideration in this chapter concerns statements or other forms of expression made by judges, prosecutors and lawyers outside the courtroom, whereas only one of the cases relates to defamation proceedings brought against lawyers in respect of their statements made in the context of legal representation of their clients.

The latter might be quite relevant as the full and unimpeded exercise of the lawyer's freedom of expression and the free exchange of arguments between the parties in the judicial proceedings may in certain circumstances also affect the lawyer client's right to a fair trial. Under the Court's case-law, lawyers have the duty to "defend their clients' interests zealously", which means that they sometimes must decide whether they should object to or complain about the conduct of the court. The Court held that if the impugned remarks are not repeated outside the courtroom (*Morice v. France* [GC], §§ 136-137), such criticisms, voiced by a lawyer within the courtroom and not through the media, should be considered as having a procedural character and, accordingly, they cannot amount to personal insult (*Nikula v. Finland*, § 52; see also *Lešník v. Slovakia*).

П5. бр.4/20, Strumica Basic Court, judgment of 4 June 2021, upheld by the Shtip Court of Appeal, judgment of 22 February 2022 (ГЖ-608/21)

Facts: The plaintiff brought defamation proceedings against an attorney in law who, while pleading for a client during a criminal trial in which he was the victim (*оштетен*), argued that there was an indictment filed against the plaintiff for tax evasion.

Reasoning: The Strumica Basic Court ruled that the defendant could not be held liable for defamation as he had learned from his client that an indictment had been filed against the plaintiff, whereas he had not been precisely informed about the course of the impugned proceedings. Indeed, the criminal charges had been brought only in respect of another person and a company. Thus, he made his statement only in the course of the defence of his client, without any intention to harm the plaintiff's honour and reputation. Consequently, the plaintiff's claim was dismissed as unfounded.

Comment: The reasoning of domestic courts in the case at hand could have been strengthened with proper reference to the ECHR standards. For instance, the Court has held that the conviction of a lawyer for mere negligent defamation on account of her criticism of the strategy adopted by the public prosecutor in criminal proceedings, even if that conviction was ultimately overturned by the Supreme Court and the fine imposed on her lifted, was liable to have a chilling effect on defence counsel's duty to defend their clients' interests zealously (*Nikula v. Finland* § 54).

5.4. Freedom of expression of witnesses and other parties to court proceedings

П5-5/20, Prilep Basic Court, judgment of 29 October 2020

Facts: The plaintiff filed a lawsuit against the defendant, a police officer employed at the Prilep police station, for the statement he made at the Prilep Basic Court in the course of a criminal trial conducted against a third person who was convicted of violence committed against the plaintiff. The defendant was summoned as a witness as he intervened after the incident had been reported to the police. During the witness examination, the defendant stated that the plaintiff had behaved aggressively and apparently had mental health problems.

Reasoning: Relying on the evidence obtained from the impugned criminal proceedings, including the transcript from the trial, the Prilep Basic Court concluded that the defendant had no intention to damage the plaintiff's honour and reputation. Moreover, he acted in the capacity of a witness in a criminal trial. Therefore, he did not make his statement on his own initiative, but after he had been summoned to describe the event in which he intervened as a police officer. Indeed, he acted upon a complaint received in the police station, in respect of which the criminal proceedings were subsequently initiated. His intention was only to describe the event in question, which actually triggered the criminal proceedings, as well as to describe the plaintiff's behaviour during the incident. Furthermore, he made his statement in front of a limited number of persons who were present in the courtroom. All in all, as laid down in Article 8 paragraph 1 of the LCLID, given the absence of an intent to harm the plaintiff, it was found that the statutory requirements for civil liability had not been met and accordingly, the plaintiff's claim was dismissed as unfounded.

Comment: As in the case discussed above, the judgment appears to provide a sufficient analysis of all elements relevant to the circumstances of this specific case, even though without any specific reference to the ECHR standards.

П5-25/18, Skopje Basic Civil Court, judgment of 26 September 2017, overturned by the Skopje Court of Appeal, judgment of 30 May 2019 (ГЖ-5447/18) upheld by the Supreme Court, judgment of 28 October 2021 (Рев2.6р.389/2019)

Facts: The plaintiffs, Ali Ahmeti, head of the Democratic Union for Integration (DUI/BDI), and Musa Dzaferi, the party's Vice President and Vice President of the Macedonian Government, brought defamation claims against Slobodan Bogoevski, the former Macedonian Deputy Secretary for State Security. Their claims were related to the statement made by the latter as a witness on request of the US Securities and Exchange Commission in proceedings carried out by the US District Court from the Southern District of New York as part of a Foreign Corrupt Practices Act case. His witness testimony was given on 28 December 2014 before a public notary in Skopje, in the presence of the defendant's legal representative, a legal counsel of the US Securities and Exchange Commission and an interpreter. It was later published on the webpage of the US District Court in New York. In his statement, the defendant alleged that in 2005 the former Prime Minister Vlado Buchkovski and the two plaintiffs took 2.5 million Euros

each in bribes, amounting to a total of 7.5 million, to help Deutsche Telekom keep its monopoly on the Macedonian telecommunication market.[123]

Reasoning: The Skopje Basic Civil Court upheld the plaintiffs' claims, finding that with his testimony the defendant imparted untrue facts which were harmful to the plaintiffs' honour and reputation.

The Skopje Court of Appeal overturned the first-instance judgment. It noted that the plaintiffs were high-ranking politicians of the first-instance court. It held that the first-instance court had erroneously applied domestic law. It specified that under Article 10 paragraph 1 (1) of the LCLID civil liability for defamation is excluded for a statement of facts about another person presented in court proceedings.

In particular, the Skopje Court of Appeal held that the statement made by the defendant was a testimony given during court proceedings in the United States, as shown by the notification provided by the US Securities and Exchange Commission. Pursuant to that notification, according to US law, any person summoned as a witness could not be put at risk of being sued for defamation for the statements given, while witnesses could not be intimidated for the statements they have made. In this context, the Skopje Court of Appeal noted that the defendant's testimony given in court proceedings should be granted protection. It also emphasised that he did not make his statement directly to the public and that its dissemination by domestic media, including several Internet portals, followed its publication on the webpage of the US judicial authorities.

Furthermore, the defendant had a statutory duty to present everything he knew about the case before the competent judicial authorities in the United States. Thus, his intention was not to degrade or humiliate the plaintiffs. Accordingly, the persons in front of which he gave the testimony could not be considered third parties, but they were public officials who acted as such in judicial proceedings. They were, thus, obliged to keep secret what they have learned in the course of the impugned proceedings.

Referring to the case-law of the ECtHR, the Skopje Court of Appeal established that the defendant's statement had elements of a value judgment and it would be the task of the competent US courts, not the Macedonian domestic courts, to assess its credibility. It highlighted that a fair balance should be struck when weighing between the rights protected under Articles 10 and 8 of the Convention. In its view, holding the defendant liable for defamation would have amounted to a disproportionate interference with his right to freedom of expression as a prerequisite of a democratic society, which is also guaranteed under Article

[123] The domestic courts' decisions only indicated that the defendant's testimony was adduced as evidence in the court proceedings carried out in the District Court of New York, while they did not mention any details as to the subject matter of the proceedings. For the background of the case, also see: Marusic J.S., *Macedonian Politicians Deny Telecom Bribe Claims,* September 9, 2015, available at: https://balkaninsight.com/2015/09/09/macedonian-politicians-deny-telecom-scam-claims-09-07-2015/

16 of the Constitution. Finally, it would also have affected the proper administration of justice and compliance with the procedural safeguards afforded under Article 6 of the Convention.

The Supreme Court confirmed the judgment of the appellate court, reiterating its findings and reasoning.

Comment: In the present case, the first-instance court failed to provide sufficient reasons for its judgment and it significantly deviated from the established ECHR standards. However, its omissions were redressed by the higher courts and, in particular, by the Skopje Court of Appeal. The latter followed, to a great extent, the case-law of the ECtHR which allows for exemption from civil liability regarding the statements made as witness testimony in the course of judicial proceedings.

П5-4/18, Veles Basic Court, judgment of 6 July 2018, upheld by the Skopje Court of Appeal, judgment of 20 December 2018 (ГЖ-4996/18)

Facts/ Reasoning: The Veles Basic Court upheld the plaintiff's action for insult brought against another person, who insulted her during the court hearing in the course of the defamation proceedings he had previously initiated against her. The Court found that the defendant had uttered the offending statements during a hearing before a judge, of which a record existed. They had been pronounced in bad faith, with the exclusive intent of humiliating the plaintiff, despite the fact that the latter had already offered his apologies for the insults previously proffered against the defendant on Facebook. Having regard to both the domestic legislation and the ECHR standards, the Veles Basic Court held that there was no ground for an exemption from civil liability for the insult made by the defendant in the course of court proceedings, as envisaged in Article 7 of the LCLID. In particular, the Veles Basic Court noted that the defendant's statements were not made in connection to the subject matter of the proceedings, but mere unprovoked insults. The defendant was obliged to pay the plaintiff an amount of 15,000 Macedonian Denars (approximately 250 Euros) in respect of non-pecuniary damages. The first-instance court's judgment was fully confirmed on appeal.

Comment: The competent domestic courts made a clear distinction between the situations where a person could be held liable for insult or defamation with respect to a statement made before a court, depending on whether such a statement is related to the claim of the dispute or not. Also, it was well elaborated why the high standards of freedom of expression of the parties to the judicial proceedings are not applicable to the circumstances of this particular case.

5.5. Contempt of court

So far, the ECtHR has never rendered a judgment on cases in which contempt of court before the Macedonian courts was at stake from the angle of Article 10 of the ECHR. However, one such case was communicated to the Government.[124]

In that case, the applicant, ***Nenad Trifunovski***, a lawyer practising in Tetovo, was fined 1,000 Euros for contempt of court in respect of statements he made in an appeal he submitted against a first-instance judgment given by the Tetovo Basic Court. The latter dismissed the applicant's claim in employment-related proceedings in which he was representing his father (a former judge). In the appeal the applicant criticised the court and the opponent, alleging, among others, that the first-instance court was biased and it had incorrectly applied the law, adopting a contradictory, confusing, cacophonic, incorrect and unlawful judgment. In the court's decision it was stated that with the text in the appeal, the representative of the claimant insulted the Tetovo Basic Court and its President, and, therefore, he should be fined in accordance with Article 102 of the CvPA.[125]

The applicant appealed, arguing *inter alia* that the statements referred to in the decision had not been insulting, but had merely been an expression of the claimant's discontent with the manner in which the proceedings had been conducted and with the unlawful decision. He complained of a lack of reasoning as to why the court had considered that the statements amounted to an insult, as well as in respect of why the maximum fine had been imposed. However, the Skopje Court of Appeal dismissed the applicant's appeal, reiterating that the statements made in the appeal amounted to an insult to the court.

The applicant did not lodge a complaint to the Court under Article 10, but he complained under Article 6 of the Convention that the judicial decisions on contempt of court had not been sufficiently reasoned.[126] This case was resolved by a Committee's decision striking the case out of its list, following a friendly settlement reached between the parties. According to the text of the friendly settlement declaration, the Government waived its right to enforce the fine imposed on the applicant.[127]

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[124] *Nenad Trifunovski v. the former Yugoslav Republic of Macedonia*, no. 24094/11, lodged on 4 April 2011, communicated to the Government on 3 December 2014

[125] The respective parts of Article 102 read as follows: "(1) A fine in the range of 200 Euros to 1,200 Euros would be imposed by the civil court to the person who, in a written submission, insulted the court, the party or another participant in the proceedings…

(3) if the fined imposed with a final decision was not voluntarily paid in the deadline determined by the court, it would be enforced upon a motion of the court as a pecuniary claim under the Enforcement Act. …"

[126] For more details, see the Statement of Facts, available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Nenad%20Trifunovski%22],%22documentcollectionid2%22:[%22JUDGMENTS%22,%22COMMUNICATEDCASES%22],%22itemid%22:[%22001-150286%22]}

[127] *Nenad Trifunovski v. the former Yugoslav Republic of Macedonia*, no. 24094/11, decision of 2 June 2015, available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Nenad%20Trifunovski%22],%22documentcollectionid2%22:[%22JUDGMENTS%22,%22DECISIONS%22,%22COMMUNICATEDCASES%22],%22itemid%22:[%22001-155866%22]}

The domestic case law reviewed counts only two cases in which courts fined parties to the proceedings for contempt of court.[128]

The first one presented below attracted considerable media attention.

09 КОК-40/18, Skopje Basic Criminal Court, judgment of 16 October 2018, upheld by the Skopje Court of Appeal, judgment of 17 December 2018 (КОКЖ-47/18); decision of the Constitutional Court of 29 May 2019 (У.бр.57/2019)

Facts: In the context of a trial before the Skopje Basic Criminal Court, in a case of organised crime and corruption, a hearing in which a protected witness was to appear was moved to a different building and delayed. All present defence attorneys (twenty-five in total) protested for the lack of adequate conditions to perform their professional duties. The trial judge warned them that they will be sanctioned if they continue to disrupt the conduct of the proceedings. After they had failed to comply with this request, the judge fined each of them by issuing individual decisions. They were fined 61,500 Macedonian Denars (1,000 Euros) for breaching the order and discipline in the courtroom pursuant to Article 361 of the Criminal Proceedings

[128] In the same vein, all judges participating at the two focus groups on 6 October 2022 confirmed that they tend to be more tolerant in the courtroom, even in situations when they are witnessing use of offensive language by some of the participants in the proceedings. As a result, they are reluctant to fine the persons involved in the proceedings and they were hardly able to recall any such case in the previous years. This is an indicator that there is no well-established case-law on contempt of court.

Act,[129] as well as for contempt of court pursuant to Article 88 of the Criminal Proceedings Act.[130]

[129] Article 361 (Punishment for violations of the order and discipline) of the CPA reads as follows: "(1) The Presiding Judge of the Trial Chamber shall forewarn any public prosecutor, defendant, defense counsel, injured party, legal representative, proxy, witness, expert witness, translator, i.e. interpreter or any another person who attends the main hearing and disturbs the order or does not yield to the orders of the presiding judge for the purpose of maintaining the order. If such a warning is ineffective, the Trial Chamber may order for the defendant to be removed from the courtroom, whilst all other persons present may not just be removed, but the Trial Chamber may also impose a fine as provided for in Article 88 paragraph 1 of this Law.
(2) Following a decision by the Trial Chamber, the defendant may be removed from the courtroom for a certain time, and if he or she disturbs the order at the main hearing again, the defendant shall be removed for the remainder of the duration of the evidentiary hearing. Before the evidentiary proceeding is over, the Presiding Judge of the Trial Chamber shall summon the defendant and inform him or her about the course of the main hearing. If the defendant continues to disturb the order and insults the dignity of the court, the Trial Chamber may remove him or her from the session again. In such an event, the main hearing shall be completed in the absence of the defendant, and he or she shall be notified about the judgment by the Presiding Judge or a member of the Trial Chamber, in the presence of the court recorder.
(3) The Trial Chamber may deprive the defense counsel or the proxy from any further defense, i.e. representation at the main hearing, if, after being fined, he or she continues to disturb the order. In such an event, the party shall be invited to appoint another defense counsel i.e. proxy. If it is not possible for the defendant or the injured party to do so immediately, without any detriment to their interests, or, if a new defense counsel or a proxy may not be appointed immediately in a case of mandatory defense, the main hearing shall be adjourned or postponed, and the defense counsel, i.e. the proxy shall be ordered to pay all the expenses incurred as a result of the adjournment or postponement. (4) If the Court removes the private plaintiff or his or her legal representative from the courtroom, the main hearing shall continue in their absence, but the court shall advise them about their right to a proxy.
(5) If the public prosecutor disturbs the order, the presiding judge shall inform the basic public prosecutor thereof, and he or she may also adjourn the main hearing and ask the basic public prosecutor to assign another person to plead the prosecution case.
(6) Whenever the court penalizes an attorney who has disturbed the order, it shall inform the Bar Chamber of the Republic of Macedonia accordingly.
(7) An appeal with the higher court shall be allowed against the penalizing decision. (8) Any specific appeal against other decisions that pertain to maintaining the order and presiding over the main hearing shall not be allowed."
[130] Article 88 (Penalty for offending the court) of the CPA reads as follows: "(1) The court shall punish any participant in the procedure, with a pecuniary fine of 200 to 1200 Euros, payable in Macedonian Denars, who, in the motion or verbally, or in any other manner offends either the court or the person who participates in the procedure. The penalty decision shall be brought by the court before which the statement has been made, and if the offence has been made in the motion, by the court that rules on the motion itself.
(2) An appeal shall be allowed against this decision which shall be ruled upon by the Trial Chamber referred to in Article 25 paragraph 5 of this Law.
(3) The court shall inform the competent public prosecutor of the Public Prosecution Office about any punishment of a public prosecutor.
(4) The Bar Association of the Republic of Macedonia shall be informed by the Court about any punishment of an attorney.
(5) When the public prosecutor leads the preliminary procedure, and in doing so establishes that a participant in the procedure has offended the court in a certain statement or motion, the public prosecutor or another person who participates in the procedure, shall deliver a copy of the specific motion of statement to the competent court, which may then bring a penalty decision as referred to in paragraph 1 of this Article.
(6) The punishment under paragraph 1 of this Article shall not influence the prosecution and the verdict for the crime committed with the offence.
(7) If, pursuant to paragraph 1 of this Article, the court continues to be offended besides the imposed fine, the court may then impose a fine in an amount that is ten times higher than the amount of the fine referred to in paragraph 1 of this Article."

The decision was upheld by the Skopje Court of Appeal which adopted a single decision for all complainants while reducing the fine to 500 Euros.

Two of the lawyers, Pavlina Zefic and Panche Toshkovski, filed a request for the protection of rights and freedoms under Article 110 (3) of the Constitution.

Reasoning: The Constitutional Court established that there was an infringement of their right to freedom of thought and public expression of thought, as guaranteed under Article 16 of the Constitution. Accordingly, it annulled the previous decisions adopted by the first-instance court and the appellate court in respect of both of them. The Constitutional Court mainly relied on the criteria set up in the Grand Chamber judgment of *Morice v France*,[131] with emphasis on the specific status of lawyers and their position in the administration of justice and the need to distinguish between remarks made by lawyers inside and outside the courtroom. In this respect, it underlined the importance of freedom of expression for enabling lawyers to provide effective representation of their clients. Additionally, it noted that the remarks they made during the trial did not amount to contempt of court; instead, they were made to contribute to a debate on a matter of public interest. Finally, it observed that the sanctions imposed might have had a "chilling effect" on the exercise of the freedom of expression of lawyers. In addition to the ECHR case-law, the Constitutional Court also took into consideration the relevant domestic legal framework (in particular, the Bar Act and the Code of Professional Ethics of the Macedonian Bar Association).[132]

Comment: The first two decisions demonstrate an inappropriate practice of the ordinary domestic courts, which have fully disregarded the ECHR standards on Article 10. However, the Constitutional Court appeared to be an effective mechanism for the protection of freedom of expression of lawyers in this particular case. Following a proper application of the ECHR jurisprudence, it concluded that the sanctioning of lawyers by the courts amounted to a disproportionate and excessive limitation on the lawyers' freedom of expression. Consequently, it prevented this case to be brought before the Court, which might have found another violation of Article 10.

П5-9/16, the Ohrid Basic Court, decision of 22 March 2017, upheld by the Ohrid Basic Court, decision of 2 May 2017

Facts/Reasoning: The instant case concerned the defamation proceedings initiated by the former mayor of Ohrid, Nikola Bakracheski, against the civil association *SOS Balkan Media Ohrid*, which was running an Internet portal, and its owner Sashko Denesoski. The Ohrid Basic Court imposed a fine on the second defendant Sashko Denesoski in the amount of 1,000 Euros for contempt of court, as the defendant shouted at the judge hearing the case during the preparatory hearing and addressed her with indecent and insulting words asking her to fine him. The fine was imposed pursuant to Article 102 paragraph 1 of the CvPA. While confirming

[131] *Morice v. France* [GC], no. 29369/10, ECHR 2015

[132] The full text of the decision of the Constitutional Court is available at: http://ustavensud.mk/?p=18219. There is also a dissenting opinion written by one of the judges, attached to the decision: http://ustavensud.mk/?p=18221 .

the first-instance decision, on appeal, the Ohrid Basic Court stated that since the defendant qualified the judge in the courtroom as an immoral person and a shame for the Macedonian judiciary, the defendant had in fact insulted the judge. It amended the initial decision only as regards the amount of the fine, decreasing it to 800 Euros.

Comment: Even though the analysed decision was, in principle, not contrary to the European practice relating to contempt of court, it remains unclear how the domestic courts determine the amount of fine to be imposed on the parties to proceedings in cases of contempt of court. In absence of many similar decisions given in the period covered with this analysis, it would be impossible to detect what is the prevailing practice, if any.

6. Freedom of expression in the workplace

The European Court of Human Rights has found that Article 10 of the Convention applies in the context of labour relations, including where these are governed by the rules of private law (*Herbai v. Hungary*, § 37; *Fuentes Bobo v. Spain*, § 38).

Article 10 of the Convention applies to statements which seek to draw attention to unlawful or morally reprehensible conduct, and specific protection is provided for such statements in the Court's case-law. Two distinct categories exist in this connection: whistle-blowers, and the reporting of irregularities in the conduct of State officials or civil servants (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], §§ 80-84). This distinction has made it possible to identify specific protection criteria under Article 10 of the Convention.

With regard to the first category of cases, the legitimate aims pursued are, in particular, to prevent the disclosure of information received in confidence and/or to protect the rights of others, while for the second category, the protection of the reputation and rights of others is more frequently raised as justification. The status of whistle-blowers necessarily implies a work-based relationship and raises the issue of the duty of loyalty, reserve and discretion owed by employees to their employer (*Guja v. Moldova* [GC], § 70), Moreover, reporting always concerns a State official (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], § 80; *Zakharov v. Russia*; *Siryk v. Ukraine*; *Sofranschi v. Moldova*), while whistle-blowing does not necessarily concern the conduct of civil servants and protection for whistle-blowers may be granted to both private- and public-sector employees (*Guja v. Moldova* [GC], § 8; *Bucur and Toma v. Romania*, § 7; *Langner v. Germany*, § 6; *Heinisch v. Germany*, § 44).

There is no particular judgment handed down in Macedonian cases in which the ECtHR considered whether there was a violation of Article 10 of the ECHR in labour-related context.

Nonetheless, such issues were raised in the case of ***Micevski***.[133] The examination of that case was terminated after a friendly settlement had been reached between the applicant and the respondent Government.[134] It concerned the disciplinary proceedings launched against the applicant, a basketball referee, by the Basketball Federation of Macedonia (KFM), after he alerted the KFM on alleged irregularities in how it was run. Some of his statements were also reproduced and published in the *Nova Makedonija* daily newspaper. The KFM's Disciplinary Commission, relying on section 22 of its Disciplinary Rules, issued an order suspending the applicant from performing any basketball-related activities for one year (*забрана на вршење работи во кошаркарскиот спорт во времетраење од една година*), as a sanction because

[133] *Micevski v. the former Yugoslav Republic of Macedonia*, no. 75245/12, lodged on 19 November 2012, communicated to the Government on 23 February 2016

[134] *Micevski v. the former Yugoslav Republic of Macedonia*, no. 75245/12, decision of 15 November 2016, available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Micevski%22],%22documentcollectionid2%22:[%22JUDGMENTS%22,%22DECISIONS%22],%22itemid%22:[%22001-169822%22]}

he "[o]n several occasions made false allegations about the work of the bodies and organs of the KFM which damaged its reputation." On appeal, the Arbitration Commission, as a second-instance body within the KFM, dismissed the applicant's appeal and upheld the order of the Disciplinary Commission. After the applicant unsuccessfully challenged those decisions before the Skopje Basic Civil Court, he complained under Article 6 of the Convention that he was denied access to court with respect to his grievances against the KFM's order. He further alleged that by having restricted his access to court, the respondent State did not protect his right to freedom of expression under Article 10 of the Convention.

Relevant issues concerning the freedom of expression in the workplace appeared in several of the cases under review.

П5-8/20, Prilep Basic Court, judgment of 18 March 2021

Facts: The plaintiff, a conservator and a director of the Prilep Institute for Protection of Monuments and the Prilep Museum ("the Institute"), lodged a claim against his colleague, an archaeologist with the same Institute. He alleged that the defendant had insulted and defamed him with the statements made on his Facebook profile in which he revealed some details related to the work of the Institute. In particular, the defendant described the plaintiff as a person who was not interested in the Institute's work. The defendant also wrote that he had initiated correspondence with the Ministry of Culture in order to find out why the archaeological projects he proposed for funding were refused by the Ministry. Afterwards, he received the Ministry's response in which it was stated that the Prilep Institute would be the only institution in the country which would not receive any funds to support archaeological projects. Moreover, the defendant noted that during the Institute's team meeting the plaintiff expressly stated that as long as he was a director "there will be no archaeology (*нема да има археологија*)", since funds should be allocated to the protection of churches instead. Lastly, the defendant expressed concern about the development of archaeology in the region and the fate of the four archaeologists who were working at the Institute. By indicating an example of the archaeological site of Stibera which remained unexplored, he criticised the practice of the Ministry of leaving the identification of priority projects to the directors of each cultural institution.

Reasoning: In its assessment, the Prilep Basic Court noted that with his post the defendant sought to address the importance of the archaeology in Prilep, bringing special attention to the site of Stibera. Thus, he took a critical approach to the work of the Institute. It dismissed the claim as unfounded, relying on Article 7 paragraphs 2 and 3 of the LCLID[135], as well as on

[135] Article 7 paragraph 2 of the LCLID provides grounds for exclusion of civil liability for a humiliating opinion concerning another person if it was expressed in public interest, without intent to diminish one's honour or reputation. Under Article 7 paragraph 3 of the LCLID there is no liability if the impugned humiliating opinion concerns a holder of public function and it was proven that it was based on truthful facts, or that there was a reasonable ground to believe in the truthfulness of those facts, or if it contained justified criticism or incited a public interest debate. A person shall not be held liable for expressing a humiliating opinion of a public office holder on a matter of public interest, if he/she proves that it is based on truthful facts, or if he/she proves that he/she has had a reasonable ground to believe in the truthfulness of such facts, or if the statement contains a justified criticism or

the ECHR standards which entail a higher degree of protection of freedom of expression when an issue of public interest is concerned and leaves a little room for limitations on the debate on issues of public interest. In this context, the Prilep Basic Court reiterated that in accordance with the established practice of the ECtHR, the limits on permissible criticism are wider for holders of public functions, than those for private persons. In a democratic society, the actions or omissions of the authorities should be subjected to careful examination by the broader public and the holders of public function must display a higher degree of tolerance towards public criticism. They should also restrain to resort to court proceedings for the protection of their reputation, especially if other means to reply to attacks and criticism are also at their disposal. For instance, the plaintiff had the possibility to make a statement for a regional weekly newspaper, which he used, as indicated in his statement given before the court.

П5-5/20, Veles Basic Court, judgment of 9 December 2020, upheld by the Skopje Court of Appeal, judgment of 9 September 2021 (ГЖ-472/21)

Facts: The plaintiff, who was employed as a medical laboratory technician at the Veles Centre for Public Health ("the Centre"), sued for defamation a doctor specialised in microbiology and parasitology, who at the material time was appointed as a director of the Centre. Initially, a local news portal uploaded a short 22-seconds audio, allegedly recorded illegally. It showed an argument during a meeting with the previous director, in which the defendant insulted the plaintiff. The article accompanying the impugned audio recording was headlined: "Scandal: The Director …is mistreating an employee" (*Скандал: Директорката на Центарот за јавно здравје малтретира вработен*). It posed a question of whether after such a scandal the Minister of Health would dismiss the defendant.

A letter of denial (*демант*) sent by the defendant was promptly published in the same news portal. In the letter, she argued that the content of the audio recording was wrongly presented, especially as only some parts of it were uploaded. This took place six months after the meeting had been recorded, during an election campaign. The defendant further argued that the article and the audio recording were posted with the intent to attack her, especially as the journalist who wrote the article remained anonymous and failed to ask her to present her version of the incident. According to the defendant, such conduct was unprofessional and amounted to spreading fake news to the public.

In addition, the defendant alleged that the plaintiff made errors and omissions in her workplace, which adversely affected the work of the entire institution and even the public health of the citizens. As to the recorded argument, she clarified that it was caused by the plaintiff, who threatened her and attacked her verbally in a rather unprofessional and indecent manner. This was witnessed by four other colleagues. In contrast, in her judicial action, the plaintiff denied these allegations as untrue and she argued that the negative comments about her negligent conduct in the workplace humiliated her as a person, adversely affected the

it provokes a public interest debate or if it has been presented in accordance with the professional standards and ethics of the journalistic profession.

Centre as an institution and stirred distrust in that institution among the patients and the citizens.

Reasoning: The Veles Basic Court noted that freedom of expression is a relative right whose exercise is related to certain obligations and responsibilities. Furthermore, it indicated the difference between facts and value judgments in light of the ECtHR jurisprudence, stressing that value judgments must have a sufficient factual basis. The Veles Basic Court held that the defendant's letter was written and published in response to the impugned article and audio recording that had been posted previously on the same Internet portal. Her letter did not intend to defame the plaintiff, but it only aimed at clarifying the impugned situation and providing her own view on the argument which was presented in the audio. Thus, the statements in her letter were made in a good faith and she only expressed her own value judgment as a doctor and as a plaintiff's supervisor, whereas her value judgment had a sufficient factual basis. As a result, the plaintiff's claim was dismissed as unfounded.

П5-2/21, Prilep Basic Court, judgment of 26 August 2021, overturned by the Bitola Court of Appeal, judgment of 26 August 2021 (ГЖ-1287/21)

Facts: The plaintiff, who became a manager of the Prilep communal enterprise on 7 January 2019, initiated defamation proceedings against an employee, who retired on 31 December 2019 after 23 years of service in the same enterprise. On 14 February 2020, the defendant posted on Facebook a photo of the plaintiff, accompanied by a text announcing that he had filed a criminal complaint for abuse of office by the managing body of that enterprise. He alleged that the management caused damage to the budget of the enterprise by allowing newly recruited employees to receive their salaries regularly, despite their unjustified absence from their workplace.

Reasoning: The Prilep Basic Court upheld the defamation claim holding that the defendant neither proved his argument that the same allegations had already been made at a public meeting, nor that he had justified reasons to convey a statement which is in the public interest. He was held liable for defamation as he expressed the impugned allegations to intentionally harm the plaintiff's honour and reputation in front of other people using Facebook, although he knew or ought to have known that such allegations were untrue.

The Bitola Court of Appeal overturned the ruling of the Prilep Basic Court and dismissed the plaintiff's claim as unfounded.

At the outset, it noted that the finding of civil liability for defamation depended on whether the defendant had a specific intent to harm the plaintiff's honour and reputation rather than making the impugned statement in good faith and in the public interest. As submitted by the defendant, he expressed the impugned words on basis of the information he obtained at public gatherings and meetings with his colleagues from the communal enterprise and therefore, he believed them to be true. He thus intended to trigger a debate on the social network on what was going on in the enterprise, rather than to harm the plaintiff's honour and reputation.

Being the plaintiff a manager of a public enterprise, the Bitola Court of Appeal further held that it was in the public interest to establish whether the employees in that enterprise were recruited in accordance with the law. It held that the defendant proved that he had justified reasons to make an assertion which was in the public interest, whereas the plaintiff as a holder of public function did not provide any explanation as to the plaintiff's allegations concerning the recruitment in the enterprise, although she had a statutory duty to do so.

It ruled that the first-instance court's conclusion that the burden of proof rested on the defendant was wrong. It was the plaintiff who should have proven that the impugned facts contained in the defendant's assertion were not made in the public interest, but she failed to do so. In this connection, the Bitola Court of Appeal referred to Article 9 paragraph 3 of the LCLID, which stipulates a reversal of the burden of proof as to the veracity or falsity of the impugned statements, when the plaintiff is a holder of a public function.[136]

Furthermore, the Bitola Court of Appeal held that the first-instance court incorrectly applied the ECHR standards which envisage that a high level of protection should be afforded to the freedom of expression when issues of public interest are concerned, thus leaving only little room for limitation on the debate on issues of public interest. It wrongly ruled that in this particular case, there was no permissible criticism of the defendant, but on the contrary, the plaintiff's honour and reputation were breached.

In this context, the Bitola Court of Appeal reiterated that in accordance with the established practice of the ECtHR, the limits on permissible criticism are wider for holders of public functions than those for private persons. In a democratic society, the actions or omissions of the authorities should be subjected to careful examination by the broader public and the holders of public function must display a higher degree of tolerance towards public criticism. They should also restrain to resort to court proceedings for the protection of their reputation, especially if other means to reply to attacks and criticism are also at their disposal. For instance, the plaintiff had the possibility to respond to the attacks and the criticism by the defendant. Moreover, in line with Article 9 of the LCLID, she was also obliged to provide a plausible explanation as to the specific facts stated by the defendant. However, she failed to prove that what was alleged by the defendant was not true.

[136] Article 9 paragraph 3 of the LCLID provides that: "[a]s an exception to paragraphs (1) and (2) of this Article, the burden of proof shall fall upon the plaintiff who, as a public office holder, has a legal obligation to provide an explanation of specific facts which are related in the most direct way to, or are important for, the performance of his/her office, provided that the defendant proves that he/she has had reasonable grounds to present the statement in the public interest."

General comment on cases concerning freedom of expression in the workplace:

The cases included in this chapter show that, in principle, domestic courts tend to decide defamation cases involving statements made in relation to the workplace without engaging in a thorough analysis of the elements incorporated in the Strasbourg jurisprudence that are relevant for the freedom of expression in the work environment.

First and foremost, in this type of cases domestic courts have mainly relied on domestic legislation and in particular, on the LCLID. In their reasoning, they have incorporated certain general concepts developed by the ECtHR, for example, when evaluating whether the impugned statements could be categorised as statements of fact or value judgments. This enabled them to decide whether the defendant might be held liable as such statements were made with a clear intent to insult or defame or, on the contrary, they aimed at opening a debate on matters of public interest about the functioning of certain institutions or the performance of the public office, etc.

Apparently, when discussing the entire context in which the statements were made, the Macedonian courts have been reluctant to take into account the specific elements which are pertinent to the labour-related context in which the contested speech took place. For example, they do not take into account whether the employer was a public body or a private company, as well as whether the employee was a civil servant or working with a private company. For instance, in some cases, they disregarded the status of the employer as a public body, which might have entailed a duty of confidentiality and loyalty to the employer, etc. Conversely, they did not evaluate whether, in a given case, it was more pertinent to accept the opposite view under the ECHR case-law, that signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. It is so where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large (*Guja v. Moldova* [GC], § 72; *Marchenko v. Ukraine*, § 46; *Heinisch v. Germany*, § 63; *Goryaynova v. Ukraine*, § 50).

Additionally, in the cases being considered there was no analysis of whether the defendant fell under the category of whistle-blowers or he/she was solely reporting of irregularities in the conduct of State officials or civil servants. As whistle-blowing by an employee regarding the alleged unlawful conduct of his or her employer requires special protection under Article 10 of the Convention (*Langner v. Germany*, § 47; *Heinisch v. Germany*, § 43,). if the defendant was a whistle-blower the domestic courts should have necessarily applied in their analysis the six criteria set out by the Court for assessing the proportionality of an interference with

whistle-blowers' freedom of speech in the case of *Guja v. Moldova* [GC], §§ 74-78.[137] Even though these criteria concerned a public-sector employee, they are also transposable to employment relationships under private law. The domestic courts should have been familiar of the latter ECtHR judgment and applied the aforementioned criteria whenever it was needed to weigh the employees' right to signal illegal conduct or wrongdoing on the part of their employer against the latter's right to protection of its reputation and commercial interests (*Heinisch v. Germany*, § 64).

[137] Briefly, those criteria include the following: 1) that the disclosure of the information in question should be made in the first place to the person's superior or other competent authority or body; 2) that there is a public interest involved in the disclosed information; 3) the authenticity of the information disclosed; 4) to weigh the damage, if any, suffered by the public authority as a result of the disclosure in question and to assess whether such damage outweighed the interest of public in having the information revealed; 5) the motive behind the actions of the reporting employee; and 6) the penalty imposed on the applicant and its consequences.

7. Conclusions and recommendations

7.1. General remarks

First of all, it should be noted that many national training institutions for judges and prosecutors do not have in place any sustainable and applicable methodology and tools for assessing the effectiveness and impact of their (human rights) training curricula.[138] In light of this, the present document should be perceived as an endeavour to help both the Council of Europe and the Macedonian Academy for Judges and Public Prosecutors to evaluate whether there was any impact of the existing training programmes on Article 10 of the ECHR on the jurisprudence of the domestic judicial institutions.

Even though it is a difficult task to carry out such an assessment, it could be concluded that, in principle, as a result of the considerable efforts made by the Council of Europe and the Academy for Judges and Public Prosecutors over the last several years to implement training programmes for domestic judicial actors, significant ***progress*** has been observed in the judicial application of the ECtHR standards under Article 10 of the Convention. As a result, the latest case on Article 10 communicated to the Macedonian Government was brought to the Court on 28 April 2016.[139] Consequently, a ***direct link*** can be established between the trainings provided within the JUFREX project and the capability of domestic justice professionals to implement those standards in their everyday work.[140]

In fact, this demonstrates that the trainings implemented so far enabled the domestic justice professionals to reach all four levels which compose Kirkpatrick's model of evaluation of learning. This has resulted in improving the behaviour and capability for implementation/application of the knowledge acquired (level 3) and creating a positive impact on the larger community (level 4).[141] The latter has been proven with the positive developments in the domestic case-law which is, to a great extent, aligned with the ECtHR jurisprudence. In that sense, the examples of good practice discussed in this analysis could be considered key indicators of the change which has occurred primarily in the jurisprudence of the domestic courts.

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[138] Assessment of the existing systems/mechanisms for evaluation and impact of human rights training. Recommended methodologies and tools. Ivana Roagna, February 2021, available at: https://rm.coe.int/methodology-for-evaluation-of-hr-training-eng-/1680a2732f, at p.9.

[139] Actually, it was the case of *Kostova and Apostolov*, communicated to the Government on 11 October 2018. See: https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22respondent%22:[%22MKD%22],%22article%22:[%2210%22],%22documentcollectionid2%22:[%22COMMUNICATEDCASES%22],%22itemid%22:[%22001-187549%22]}. As stated above, the latest Court's judgment finding a violation of Article 10 concerned this case.

[140] Most of the participants at the two focus groups which took place on 6 October 2022 expressly stated that they have increased their knowledge and expertise on freedom of expression primarily as a result of the JUFREX training activities they were involved into. Moreover, they expressed their strong interest to continue participating in similar activities in future.

[141] *Supra note* 138, at p.14.

Notwithstanding the progress already made, *there is still* ***room for improvement****, given the* ***inconsistencies*** *which frequently appear with regard to the understanding and incorporation of certain ECHR concepts and principles when cases are decided by the domestic courts.*

Based on the present analysis some key issues and challenges can be identified to further promote the capacities of judicial actors to ensure that domestic case-law aligns with the requirements of Article 10 ECHR, as interpreted by the ECtHR.

To that end, this Chapter will take note of the most challenging aspects of the judicial application of the ECHR standards in respect of each specific thematic area. This will be followed by recommendations, which the Council of Europe and the Academy for Judges and Public Prosecutors might wish to consider when planning their future capacity-building activities in the field of freedom of expression and the safety of journalists.

7.2. Specific conclusions and recommendations

7.2.1. Hate Speech (Chapter 2):

Despite the widespread phenomenon of hate speech in society, only a small number of cases decided by domestic courts involved some form of hate speech. Moreover, there is a tendency at the domestic level towards an excessive criminalisation of hate speech. Hate speech cases are mostly dealt with by recourse to criminal law mechanisms, contrary to the recently adopted Recommendation CM/Rec(2022)16 of the Committee of Ministers on combating hate speech. The latter emphasises that criminal law should only be applied as a last resort and for the most serious expressions of hatred, while effective legal protection against hate speech should also be provided under civil law and administrative law, in particular general tort law, anti-discrimination law and administrative offences law.

It follows that more systematic changes should be introduced in the practice of both the courts and the prosecution in order to align their jurisprudence to the Council of Europe's standards and in particular, to the Recommendation CM/Rec(2022)16. In this respect, it will be necessary for hate speech to be regarded as a criminal offence only when certain criteria are met, given that there would be a risk to freedom of expression if the area of criminalisation of speech is enlarged beyond what is strictly necessary in a democratic society.

On the other hand, it could be observed that ***public prosecutors do not always recognise hate speech*** *and hence,* ***they are reluctant to investigate and prosecute related offences***. It is also questionable whether they are fully aware of the danger which hate speech might cause to society and its potential to lead to hate crimes.[142]

Once hate speech has been prosecuted, it appears that ***the judgments are rather brief and they lack detailed reasoning with reference to the main elements of hate speech which are provided at the international level, including the standards established in the jurisprudence of the European Court of Human Rights in that respect.*** In most of the cases,

[142] As confirmed by all the participants at the focus group on criminal law that took place on 6 October 2022.

the domestic courts have neither provided a sufficient analysis of the circumstances of each particular case, bearing in mind the entire context in which the abusive expression was made, nor they have engaged in a more thorough discussion about the factual consequences or potential implications arising from hate speech.

Moreover, ***the persons convicted of offences involving hate speech are most commonly sentenced to suspended prison sentences. Such penal policy is not considered to be in keeping with international standards, including the standards laid down in the Recommendation CM/Rec(2022)16.***

Recommendations on Hate Speech

● ***Designing specialised trainings on hate speech*** which should comprise not only a general, introductory module relevant for all judges (both civil and criminal) and prosecutors, but also separate modules which will be tailor-made to address the specific needs of civil and criminal judges (in terms of improving their legal drafting and legal reasoning skills to allow them properly apply the ECtHR standards in their judgments) and public prosecutors (in terms of making them capable of recognising hate speech and identifying when it is necessary to file indictments in respect of such type of offences).

● Trainings ***should not be delivered only to judges and prosecutors within the continuous training curriculum***, but they *should also be* ***integrated into the initial training curriculum and made available as compulsory modules for all candidate judges and prosecutors*** who are enrolled at the Academy for Judges and Public Prosecutors.

● Furthermore, a ***Handbook on Hate Speech should be developed*** that will include case studies and concrete guidelines which should help justice professionals improve their practical skills for drafting indictments (for public prosecutors) and reasoning of judgments in hate speech cases (for civil and criminal judges). The Handbook shall integrate both the relevant domestic legislation and the ECHR standards and shall provide a clear ***checklist*** of the elements which have to be taken into consideration when issuing indictments and rendering judgments in hate speech cases.

● Lastly, a certain number of ***judges and prosecutors shall be appointed to serve as focal points on hate speech*** within their respective (basic or higher) public prosecution offices or within their respective (first-instance or appellate) courts. They should be trained through the specialised trainings suggested above on how to handle hate speech cases. Subsequently, they could be tasked with ensuring the implementation of a coherent case processing methodology and establishing a practice within their institution which will be compatible with the international standards in this field.

7.2.2. Defamation (Chapter 3):

In most of the analysed cases concerning **political speech**, the competent courts have relied on the ECHR and the relevant case-law, to reach a conclusion that politicians should display a higher degree of tolerance towards any criticism of their work.

Irrespective of the different terminology used by judges in defamation cases, they have mostly demonstrated a sound understanding of the **distinction between statements of fact and value judgments** made in the case-law of the ECtHR. Accordingly, they have correctly applied such a distinction to their particular cases.

However, inconsistent practice and incoherent application of the ECHR standards have been observed not only among various first-instance courts, or in the adjudication of similar cases by different court instances, but also when examining similar cases within the same court.

Another matter of concern is that in several cases it was noted that because of the misinterpretation or misapplication of the ECHR case-law the domestic courts developed a judicial practice which is contrary to the European standards.

These deficiencies should be properly addressed to prevent the divergent judicial practice to become a source of legal uncertainty and to further diminishing the public trust in the judiciary.

Recommendations on defamation and political speech

● In this respect, in order to promote consistency in the application of ECtHR standards, ***the participation to future trainings should be extended to cover an increased number of civil judges to all first-instance courts and judges from all four Macedonian appellate courts***.[143]

● In order to secure that the trainings are effective and tailored to the various needs of all categories of justice professionals, it could be considered to divide the participants into two groups, depending whether they have already gained some previous knowledge on freedom of expression, in general, and on defamation, in particular. Accordingly, ***the trainings shall be designed and carried out at both basic and advanced levels***.[144]

● ***Round tables should be organised*** among civil judges from different courts and levels of jurisdiction which shall present a forum for peer-to-peer exchanges of their practical experience and discussion about the main challenges they are faced with when adjudicating defamation cases. The round tables shall also aim at addressing the divergences in judicial practice and proposing solutions to overcome such divergences.

[143] This was also one of the conclusions of the focus group on civil law issues of 6 October 2022. Namely, all judges participating at this focus group agreed that all their colleagues dealing with defamation cases should be included in the future capacity building activities.

[144] This was an additional remark made by the participants in the same focus group.

As to the **compensation**, there is an apparent trend towards lowering the level of compensation that is awarded to plaintiffs who are successful in their defamation claims, in line with the ECtHR case-law.

In most of the cases, the courts tend to award amounts of non-pecuniary damages which were not excessively high in comparison to what was the previous practice in similar cases, both in defamation proceedings initiated by politicians belonging to the ruling parties against the politicians from the opposition and in the proceedings initiated by politicians against journalists.

Moreover, in none of the cases reviewed the domestic courts have fully upheld the plaintiffs' compensation claims. Instead, they have awarded lower amounts of damages than those claimed by the plaintiffs.

There were also several cases where the domestic courts awarded only symbolic amount of compensation or they rejected the compensation claims in respect of non-pecuniary damage, holding that the finding of civil liability for defamation should be itself regarded as a sufficient satisfaction for the plaintiff and there was, accordingly, no need to award any material satisfaction. In addition, in some cases, instead of awarding damages they ordered the defendant to publish the operative part of the judgment in the same publication where the defamatory content was published.

While in some cases the domestic courts considered the plaintiff's economic situation when determining the amount of compensation to be awarded, in general, there are no clear parameters which will be followed by the courts in the calculation of damages.

Consequently, despite the progress being made towards awarding compensation which will be proportionate to the damage actually suffered by the plaintiff, in line with the ECHR case-law, there is no uniform approach neither within the same courts nor throughout the entire judicial system in the country.

Recommendations on compensation for defamation

● ***Address the issue of compensation in defamation cases during the future trainings on Article 10 which will be tailor-made for civil judges***.

● ***Promote the establishment of certain clear criteria or, even, developing a table of damages to be awarded in certain types of cases***, depending on the type of speech, the context in which the statements were made, as well as the persons involved. This table might serve as a useful practical tool to instruct and help judges in the calculation of damages to be awarded in the particular circumstances of a given case. Thus, it might also facilitate the harmonisation of the judicial case-law at domestic level.

Regarding the requests for **interim injunctions**, the domestic courts have been reluctant to enter into an assessment of whether the imposition of such measures, including their scope and duration, is likely to produce a chilling effect or a form of censorship on the exercise of

the right to freedom of expression of the person concerned. Furthermore, they have often disregarded the importance of a certain publication for opening a public interest debate.

Recommendations on interim injunctions

● Even though it is not a common practice to request or order interim injunctions, ***more attention should be paid to this topic in future trainings on Article 10 ECHR***.

7.2.3. Internet and Freedom of Expression (Chapter 4)

Ensuring the full enjoyment of the freedom of expression on the Internet remains a huge challenge for the Macedonian judiciary, in both civil and criminal cases.

Above all, more work is needed with a view to harmonisation of the domestic case-law on the **civil liability** for defamation **of online portals**.

The adoption of the conclusion of the four appellate courts in March 2019 has entailed changes in the domestic judicial practice towards meritorious examination of the defamation claims lodged against online media outlets, confirming that the online portals could also be held liable for defamation. This seemed to have discontinued the previous practice of the domestic courts which had hindered access to judicial proceedings against online portals.

Nonetheless, despite the new positive trends, a considerable number of cases remain in which courts have dismissed defamation claims against online portals due to the alleged lack of standing of the latter to be sued.

On the other hand, in the cases in which the courts examined the merits of the defamation claims brought against online portals or against private individuals as regards their statements made online, a noticeable step forward has been made towards ensuring full protection of the freedom of expression online, while limiting and sanctioning any abuse of this freedom.

Recommendations on the liability of internet news portals

● More efforts are needed to overcome the existing inconsistencies in the current judicial practice by ***conducting specialised trainings on the freedom of expression on the Internet for the civil judges*** of all first-instance courts, as well as for the civil judges of the four appellate courts**.** In particular, they shall focus on familiarising the participants with the ECHR standards and addressing all problematic aspects related to the civil liability of online media for defamation.

● ***Developing a Handbook on Internet and Freedom of Expression***, in addition to the specific Handbook on Hate speech**.** It shall cover all relevant issues and provide guidelines that should help domestic judges improve their drafting skills and align the reasoning of their judgments in defamation cases to European standards.

The conclusions regarding hate speech in general are also valid in respect of **hate speech online.** In essence, more systematic changes should be introduced in the practice of both the courts and the prosecution to align their case-law to the Council of Europe's standards and in particular, to the Recommendation CM/Rec(2022)16.

As regards **hate speech and <u>statements online constituting criminal acts</u>**, it is to be noted that with a few exceptions, in general the judgments under review are rather brief, lacking sufficient analysis of the circumstances of each particular case, including the entire context in which the abusive expression was made, but they are also devoid of adequate reasoning with reference to the ECHR standards.

Recommendations on hate speech online

● *When designing the trainings on hate speech for criminal judges and public prosecutors* ***special attention to be paid to the hate speech online.***

● **A *specific chapter on hate speech online might be integrated into the future Handbook on Hate Speech*** that will include case studies and concrete guidelines which should help justice professionals improve their practical skills for drafting indictments (for public prosecutors) and reasoning judgments in cases of hate speech online (for judges). It shall also provide a clear ***check list*** on the elements which have to be taken into consideration when issuing indictments or rendering judgments in such cases.

7.2.4. Protection and Safety of Journalists (Chapter 5)

The safety of journalists and other media professionals remains a matter of concern in the country, given the low number of criminal cases in which perpetrators of offences against journalists have been prosecuted and convicted, despite the high number of incidents involving journalists or other media professionals that have been recorded, reported or alerted. Such practice is not in accordance with the requirements laid down in Recommendation CM/Rec(2016)4
of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors.

In defamation cases involving journalists, the domestic courts have mainly acknowledged the significant role of the press as a public watchdog and the freedom that should be given to journalists to comment how politicians perform their office, as well as the statements they make to the public.

Accordingly, they have issued judgments which have been, to a considerable extent, in accordance with the ECHR standards and which have substantially incorporated the concept of "duties and responsibilities" when balancing the freedom of expression of journalists against the right to protection of one's reputation.

However, the case-law which concerns the "duties and responsibilities" of the media editors for the content produced by their colleagues is often ambiguous and it is not supported by the relevant internationally accepted standards in this area.

Moreover, in all defamation cases involving journalists and/or media editors, there have been identified certain elements of inconsistency as to how different court instances have adjudicated the same case.

Recommendations on the protection and safety of journalists

● ***Provide specialised trainings for civil judges from all levels of jurisdiction which will deal with the issues covered by Chapter 5*** of this analysis in a more structured manner.

● Design and conduct ***specialised trainings for criminal judges*** *and* ***public prosecutors*** to raise their awareness about their role in securing the safety of journalists by carrying out an effective investigation into attacks on and ill-treatment of journalists.

● Organise ***round tables*** in cooperation with the Academy for Judges and Public Prosecutors and the Association of Journalists of Macedonia ***which will include mixed groups of judges, public prosecutors and journalists***. They would enable to secure an inter-sectoral approach in the discussion of the key challenges in the implementation of the European standards on freedom of expression and safety of journalists and other media actors.

● Support the practice of appointing ***focal points on freedom of expression and safety of journalists*** within all public prosecutor's offices throughout the country, but also within the Skopje Basic Criminal Court and the criminal law departments of other first-instance/appellate courts. They should be trained through a specialised training module that should strengthen their capacities to perform effectively their task to follow-up on the internal processing of cases involving journalists.

7.2.5. Freedom of Expression and Good Administration of Justice (Chapter 6)

Defamation cases which concern the freedom of expression of judges in the courtroom are decided solely relying on the domestic constitutional and statutory provisions which guarantee an independent position of judges by excluding any liability regarding the way they carry out the court proceedings or the decisions they take. The judgments handed down in such cases have so far not incorporated the methodology of judicial reasoning which has been developed by the ECtHR.

Likewise, judgments adopted in cases which concern defamation claims against lawyers in respect of their statements made in the context of legal representation of their clients have not at all referred to the relevant ECHR standards.

Apparently, there are not many cases where the domestic courts have fined the parties to the proceedings for contempt of court. At first sight it does not seem that this is contrary to the European practice relating to contempt of court. However, it remains unclear how the domestic courts determine the amount of fine to be imposed in such cases. In absence of many similar decisions given in the period covered with this analysis, it would be impossible to detect what is the prevailing practice regarding contempt of court, if any.

Recommendations on freedom of expression and good administration of justice

● Ensure that ***training activities on Article 10 sufficiently address the issues discussed in Chapter 6***, particularly in light of the ECHR case-law on this matter.

● Organise ***round tables*** in cooperation with the Academy for Judges and Public Prosecutors and the Macedonian Bar Association which will include ***mixed groups of participants (judges, public prosecutors and lawyers)***. During those round tables the key ECHR standards, as well as the pertinent issues shall be discussed, with a special focus on the conduct of all categories of legal professionals within the judicial proceedings, as well as on their communication with media.

7.2.6. Freedom of Expression in the Workplace (Chapter 7)

In principle, domestic courts tend to decide defamation cases in work-related cases without engaging in a more thorough analysis of the elements incorporated in the Strasbourg jurisprudence which are relevant for the freedom of expression in the work environment.

First and foremost, in this type of case, the domestic courts have mainly relied on domestic legislation and in particular, the LCLID. While in the reasoning of their judgments they have incorporated certain more general concepts developed by the ECtHR, they have been reluctant to take into account the specific elements which are pertinent to the labour-related context in which the contested speech has taken place, such as, whether the employer was a public body or a private company, as well as whether the employee was a civil servant or working with a private company.

Apart from that, in this type of case, there has been no analysis on whether the defendant fell under the category of whistle-blowers or he/she was solely reporting irregularities in the conduct of State officials or civil servants.

Recommendations on freedom of expression in the workplace

● Ensure that ***the issues discussed in Chapter 7 are sufficiently addressed in training on Article 10***, so that the domestic civil judges will get acquainted with the relevant ECHR jurisprudence and they will be able to apply it in their everyday work.

***

<u>Note:</u> The successful implementation of the recommendations contained in this document, as well as the mid-term impact of the capacity building activities suggested above shall be evaluated by carrying out a similar, follow-up analysis of the trends in the application of European standards in the case-law of Macedonian courts on freedom of expression and safety of journalists (preferably, within a period of 3-5 years).

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The joint European Union and Council of Europe programme "Horizontal Facility for the Western Balkans and Türkiye" (Horizontal Facility III) is a co-operation initiative, running from 2023 until 2026. The programme covers actions in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia and Türkiye. It enables the Beneficiaries to meet their reform agendas in the fields of human rights, rule of law and democracy and to comply with European standards, which is also a priority for the EU enlargement process.*

The action "Protecting freedom of expression and of the media in North Macedonia (PROFREX)", implemented under the Horizontal Facility III, enables the beneficiary institutions and civil society organisations in Beneficiary to progress towards meeting their reform agendas in the field of freedom of expression and freedom of media, in line with the European standards. It aims at strengthening the exercise, in particular by journalists and media actors, of the rights of freedom of expression, in a more pluralistic and safer media environment, in line with the standards set by Article 10 of the European Convention of Human Rights.

This publication was developed in the framework of the Horizontal Facility II programme and it was published in the framework of the Horizontal Facility III programme, with the financial support of the European Union and the Council of Europe

** This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence*

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The Member States of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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