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**Comments on proposed amendments to  
the Croatian Law on Media and  
the Croatian Penal Code**

**by**

**Ms Sandra HRVATIN BAŠIĆ**

**and**

**Mr Gavin MILLAR**



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## INTRODUCTION

1. Council of Europe experts last commented in writing on the draft Media Law in August 2003<sup>1</sup>. The law was subsequently passed, but without the necessary amendments to take into account a number of our comments. The law was then annulled by the constitutional court on procedural grounds. In February we had the benefit of a visit to Zagreb<sup>2</sup> to discuss our concerns about the Media Law. The Croatian authorities now have until the end of April to reintroduce the law with any amendments. It is a proposed amended version upon which the experts now comment further.

2. Whilst in Zagreb the experts also had the opportunity to raise their concerns about the defamation provisions in the Criminal code. Again amendments have been proposed and again the experts are offered an opportunity to comment further.

3. These comments are split into three parts. First the experts assess the extent to which their general concerns, based on the requirements of the freedom of expression guarantee in **Article 10 of the European Convention on Human Rights (ECHR)** have been addressed in the current draft. Then the experts comment specifically on the deletion of the media concentration provisions in the current draft Law. Lastly, this document analyses the amendments to the Criminal Code related to defamation.

## ARTICLE 10 OF THE ECHR

4. In order that these comments, in particular in relation to the criminal defamation provisions, are fully understood it is important to recall the relevant principles by way of introduction. Article 10 of the ECHR provides:

*(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

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<sup>1</sup> ATCM(2003)018 Comments on the draft Law on the media of the Republic of Croatia, Strasbourg, 13 August 2003 & ATCM(2003)020 Additional comments on the draft Law on the media of the Republic of Croatia, Strasbourg, 27 August 2003

<sup>2</sup> ATCM(2004)007 Expertise mission on the amendments to the Law on Croatian Radio Television, the Law on Electronic Media and the Law on the Media, Zagreb, 25-27 February 2004 (Mission Report), Strasbourg, 5 April 2004

The first paragraph gives a wide, presumptive right to freedom of expression.

5. In particular:

- Art. 10(1) protects not only the substance of the ideas and information expressed but also the form of the expression - this includes the form of the actual language used (see further under “The tone of the expression” below);
- The freedom to “hold” opinions has been interpreted as the freedom to express the opinions held. Art 10 therefore protects the right to criticise, speculate and make value judgments and is not limited to “true” statements (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103). It is impossible to prove the truth of a value judgment. A legal requirement to do so would therefore offend against Art 10. The European Court of Human Rights (“E Ct HR”) in Strasbourg applies this principle strictly and will scrutinise carefully any statement the truth of which an appellant has been required to prove in a domestic court, in order to see whether it is really a statement of opinion. If it is, the interference will be unjustified provided the opinion has some foundation in fact and was expressed in good faith. Where the statement was factual, Art. 10 implies a right to prove its truth;
- Although “everyone” has the Art 10(1) right, the E Ct HR has repeatedly emphasised the special role of the media in a democracy. The media is a “watchdog” on behalf of the public. It has a duty to impart, responsibly, information and ideas on all matters of public interest. Interferences with freedom of expression of the media must therefore be strictly justified;
- Contracting states are subject to a “positive obligation” to apply the measures necessary to promote freedom of expression, especially by the media. **This may require that laws which lead to violations of the Art. 10 right are amended or repealed.**

6. State interference with the right is only lawful where it can be justified under paragraph 2 of Article 10 as:

- “prescribed by law”;
- pursuing a legitimate aim under that paragraph and;
- “necessary in a democratic society”;

(see *Lingens* paras 34-37). It is the last requirement that has produced the most argument before the European Court of Human Rights (“E Ct HR”) in Strasbourg and, in the Art. 10 area in particular, resulted in most violations. It means more than “reasonable” or “desirable”. Rather it implies a “pressing social need” for the interference.

7. A person claiming to be the victim of an unlawful interference with (“a violation of”) his/her Convention rights may complain to the E Ct HR. The court interprets “interference” very broadly. It is well established that prosecution for a criminal offence arising out of an act of expression is an interference with the Art. 10 right. So is any finding of guilt and punishment. Once the interference is established, the burden shifts to the contracting state to justify it by showing that each of the above requirements for lawful interference is made out on all the facts of that case.

8. The Strasbourg Court exercises a supervisory jurisdiction. It reviews: *whether the reasons given by the national authorities to justify [that interference] are relevant and sufficient...* In doing so it *...has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts...* [see *Zana v Turkey* (1999) 27 EHRR 667]. In essence, it must be satisfied that the restrictive measure is proportionate to the Art 10(2) aim to be achieved on the basis of a proper assessment of the facts of the case.

9. The standard of justification varies. In cases involving interferences with freedom of expression a high standard applies. Here the justification must be *convincingly established...*

10. Similarly the more substantial the restriction, the more convincing the justification must be. In *Tolstoy Miloslavsky v UK* (1995) 20 EHRR 442 the E Ct HR recognised that large damage awards in civil defamation claims were liable to be disproportionate to the damage to reputation suffered by the claimant. In doing so it emphasised the inhibiting (or “chilling”) effect that excessive damages awards have on freedom of expression (especially by the media) in general. Journalists will limit their own expression for fear that they will face civil proceedings for large amounts of damages.

11. The necessity for and proportionality of a criminal sanction will require specific justification. The court will consider in particular whether the state could have used other, less severe, means than the criminal sanction to achieve the same Art 10(2) objective - eg protecting the reputation or rights of others. An obvious example of “other means” in this context is a civil remedy in damages. The inhibiting, or “chilling effect” of possible criminal proceedings for defamation and related offences is (if anything) even greater than that which results from high damages awards. This is clearly so where imprisonment is a possible punishment.

12. The presumptive right under Art. 10(1) is very broad indeed. It covers all types of expression. Freedom of expression:

*“...constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and the development of every man. Subject to Article 10(2), it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”...”* [emphasis added]

See *Handyside v UK* (1976) (para 49).

13. Moreover, when deciding a case involving an infringement of the Art 10(1) right, the E Ct HR is faced:

*“...not with a choice between two conflicting principles, but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted...It is not sufficient that the interference involved belongs to that class of the exceptions listed in Art. 10(2) which has been invoked; neither is it*

*sufficient that the interference was imposed because its subject-matter fell within a particular category or was caught by a legal rule formulated in general or absolute terms; the court has to be satisfied that the interference was necessary having regard to the facts and circumstances prevailing in the specific case before it...*

[*Sunday Times v UK* (1979) (para 65)].

14. Political and public interest expression is accorded the highest degree of protection. Attacks on politicians and other public figures attract particular protection since:

*"...[The politician] 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..."*

15. The same is true of attacks on the state. In *Ozturk v Turkey*, the Strasbourg Court noted that:

*"...the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries..."*

16. **The Committee of Ministers Declaration on Freedom of Political Debate in the Media**, adopted on 12 February 2004, has recently re-emphasised these important principles. The Declaration also states that:

*"Damages or fines for defamation or insult must bear a reasonable relationship of proportionality to the violation of the rights or reputation of others...Defamation or insult in the media should not lead to imprisonment, unless the seriousness of the violation...makes it a strictly necessary and proportionate penalty..."*

17. The tone of the expression: Polemical, aggressive, exaggerated, provocative and insulting expression, especially by journalists, has been found to fall within the protection afforded by Art. 10(1). In *Oberschlick v Austria (No 2)* the conviction of a journalist for insult for calling a politician an "idiot" rather than a "Nazi" was held to represent a violation of Art. 10.

18. The interpretation and application of the Convention by the E Ct Hr is based upon an evolving view of what is "necessary in a democratic society". The Court repeatedly recognised that it must change, and progress, with changes in what society tolerates.

19. The above principles make it clear, that the existence of a law does not "violate" Art 10. A violation occurs because the application of the law in a particular case cannot be justified according to the principles set out above. Thus, the question to be addressed for each of the provisions in Chapter 15 of the Criminal Code is not: is it contrary to Art 10? It is rather: what is the chance that this provision will be used in a way that amounts to an unjustifiable interference with the defendant's Art 10 rights?

## THE MEDIA LAW - ARTICLE 10 AND GENERALLY

20. The experts note that some new Articles have been introduced into the law (eg a new Article 8 on privacy). Where necessary the experts will try to identify a relevant article in the current law by describing it as “old Art X”.

21. **The programme contents provisions - old Arts 2,5, and 12/13:** The experts remain concerned by these provisions. The law imposes an obligation on media organisations to determine “programme basis” in compliance with the Media Law and a “special law”, and to make a comprehensive public statement of the programme basis each year. The only apparent justification for this interference with the media’s Art. 10 rights is suggested by Art 5(1). This gives the state the power to “promote and protect pluralism and diversity of the media in the manner stipulated by the law”. These provisions leave open the possibility of state intervention against a particular media organisation on the pretext that its programme contents are not approved. This would potentially involve a serious violation of Art 10 rights. **It would be best to delete these provisions altogether.** The programme contents of a media organisation would be apparent as and when it publishes/broadcasts. Each organisation would be free to determine programme content on an ongoing basis free of these vague and generalised legal rules.

22. **Article 6(7) - Accessibility to public information:** Article 6(5) allows such information to be withheld from the media. This type of provision can be abused by public bodies to prevent legitimate debate of issues of public importance in exercise of Article 10 rights. The experts have therefore advised that the law should contain a clear statement that the court can overrule the decision of the state on grounds of public interest. **This amendment has not been made.** Instead, there is simply a vague provision for a journalist to complain of non-disclosure under a “special law”. The experts would urge that their suggested amendment is made.

23. **The new Article 8:** The introduction of a public interest defence to breach of privacy claims is to be welcomed. I note, however, that it only applies to “published information”. Privacy rights are often asserted prior to, and in order to prevent, publication. It may be better to give the protection “if in relation to the journalistic activity or information a justified interest” etc prevails.

24. **Old Arts 9-11 (new 10-12?) - The detailed registration requirements for media publishers:** These provisions have not been substantially amended. Any organisation wishing to publish in Croatia will therefore be obliged to register (giving detailed information) to the public authorities (“the competent ministry”). This requirement represents a prima facie interference with Art. 10 rights and must be justified. The justification is not clear. If there is a concern to ensure that those wishing to complain about a publication can identify the publisher, this can be achieved in other ways without involving government. For example, a requirement can be imposed to identify the publisher on the face of the publication. Alternatively, the court or some independent body could keep some sort of limited register. The concern is that a government may abuse the registration requirements and prevent unapproved publication. An additional, but separate, concern is the requirement for the publisher to have a seat in the Republic of Croatia. This could render the dissemination of many foreign publications unlawful.



25. **Old Article 15(1) - The legal obligation to respect journalistic “ethics”:** It appears that, as suggested in February 2004, this has been deleted. This is to be welcomed. As advised, the old provision contained the potential for state institutions to intervene in journalistic activity on the pretext that it was somehow “unethical”.

26. **Old Article 20(1) - Publisher’s liability in damages:** In accordance with the experts’ our previous comments the categories of damages recoverable against the media have been defined. This is to be welcomed. The courts must be alert to the risk of excessive awards of damages violating Article 10 rights - see *Tolstoy Miloslavsky v UK* referred to above.

## THE MEDIA LAW - DELETION OF THE ANTI-CONCENTRATION ARTICLES

27. Article 5 imposes obligations on the State to promote pluralism and diversity of the media. Article 5 also declaratively defines the obligations of the state in ensuring media pluralism and providing state aid in support of program contents defined in the second paragraph of the same article. For more effective implementation of this article the experts suggest that the third paragraph be changed and another paragraph added.

Decisions on state subsidies for the realisation of tasks as per Paragraph 1 of this Article shall be public and shall be passed in compliance with special regulation. A competent minister shall define conditions, criteria and procedures for the execution of regular annually announced public competition for the allocation of these funds.

Another article is added in provisional regulations which could read as follows:

Article xx

- (1) A competent minister defines conditions, criteria and procedures for the execution of regular annual public competition for the allocation of funds as defined in article 5 of the present law within 6 months of its entering into force.
- (2) The Republic of Croatia provides at least (exact sum) of the funds from state budget for the execution of public competition for the creation of program contents as defined in article 5 of this law.

28. The Republic of Croatia has committed itself in article 5 of the present law, to support and safeguard plurality and diversity of media. Besides state aid / subsidies the experts suggest that the law should also contain provisions preventing the concentration of ownership in the media market. As a proponent of this law the Ministry of Culture has decided not to include the anti-concentration provisions in the new bill arguing that all of the provisions of the market Competition Act will be implemented in the area of the media, which should provide even stricter monopoly control.

29. The main goal of anti-concentration measures in the media field is to safeguard media plurality, since it protects the fundamental right of each individual, namely the right to free speech. The experts would like to point out the existence of many European documents promoting political and cultural pluralism in the media field, many of which are based on Article 10 of the ECHR. The provisions on media pluralism are contained in the Amending Protocol to the **European Convention on Transfrontier Television** to which Croatia is a Party. Bearing in mind the work conducted within the framework of the European Union and

other international organisations in the area of media concentration and media pluralism reference can also be made to Article 11 of the **Charter of Fundamental Rights of the European Union (2000/C 364/01)** which in paragraph 2 provides: *“The freedom and pluralism of the media shall be respected“*. **Recommendation No. R(99) 1 of the Committee of Ministers of the Council of Europe on Measures to Promote Media Pluralism** recommends that *“member states should consider the introduction of legislation designed to prevent or counteract concentration that might endanger media pluralism at the national, regional or local levels”*. Regarding the regulation of ownership the Explanatory Memorandum to Recommendation reads:

*“It is considered that the notion of permissible thresholds which a single media company or group should be allowed to control in one or more media sectors is a valid one to curb media concentrations and protect pluralism. Such thresholds can be based on one or a combination of elements, such as the audience share of a company, its turnover or restrictions on capital share”*.

30. Nevertheless, the Recommendation only requests member States to consider defining the thresholds. It does not mention where the upper limits should be set. The decision about precisely where upper audience share, capital share or revenue limits should be fixed at the national level, after taking into consideration what level of diversity of ownership is economically viable for the market in question.

31. In compliance with the above and because the implementation of anti-concentration measures is one of the more important instruments for securing media pluralism the experts therefore suggest that the present article 33 be **preserved** as a constituent part of the Media Law, but in a different form. The new article 33 could read as follows:

**“Article 33**

Impermissible concentration in the sphere of the print media shall be considered the achievement of a dominant position on the market by the publisher of one or more printed news and current affairs daily papers in such a manner that the number of its sold daily papers exceeds 40% of all sold issues of news and current affairs daily papers in the Republic of Croatia.

A publisher with an impermissible concentration as per Paragraph 1 of this Article may not be the owner of, nor acquire shares in, the ownership of another print news and current affairs media.”

32. Under the umbrella of impermissible concentration in the area of print media the present article 33 treats the publishers of printed news and current affairs daily papers and the publishers of printed news and current affairs weekly papers equally. In the experts’ opinion these two types of publishers do not share the same relevant market. Thus it is suggested that article 33 should preserve the ban on impermissible concentration solely in the market of printed news and current affairs daily papers.

33. In view of this it is also suggested that the new bill should keep the existing article 34 (protection of market competition) as well.

### The criminal defamation provisions

34. Chapter Fifteen of the Criminal Code specifies “Offences against Honour and Reputation”.

35. **Arts 199 to 202:** These four provisions contain a series of offences which can be committed through speaking or writing about other individuals. Art 204 provides for these offences to be privately prosecuted by the complainant or his/her family.

36. **Article 200 – Defamation:** The experts have a number of particular concerns about the offences contained within this provision.

37. They do not appear sufficiently to recognise the important distinction between statements of fact and statements of opinion. It is assumed that both may form the basis for a prosecution. However, the relevant defence (at Art. 200(3)) extends only to proof of truth or “reasonable grounds for belief in” truth. As indicated above an opinion cannot be proved true, therefore a requirement to prove reasonable grounds to believe in truth cannot be met where the statement is of opinion. It may be that the translation is the problem here. However, a broader defence, assuming opinion is punishable, should be available in respect of good faith expression of opinion.

38. There is a limited defence under Art 203 covering journalistic, official, political etc expression where the defamatory statement was not “aimed at” damaging reputation/honour. An amendment is proposed so that liability is imposed only if the conduct was “aimed only at damaging” honour/reputation. **In either form this provision constitutes inadequate protection for Art 10 rights.** Often the speaker, particularly a journalist, will not be able or willing to deny such an intention. Further, the Strasbourg Court has expressly recognised that the protected *form* of the expression may be insulting (eg polemical or satirical writing).

39. There is, in contrast, no general public interest based defence. This is especially worrying in the case of the media. Sometimes punishment for an honest mistake of fact, on a matter of genuine public interest will lead to a violation under Art. 10. The E Ct Hr has acknowledged that sometimes such mistakes will be made even by the media acting responsibly and in good faith. This is particularly so where an urgent news item is involved. The risk of violation in these circumstances is greater where, as here, the prospective punishment is criminal.

40. The basic offence created by Article 200(1) only requires that the statement “can” damage the reputation of the other person. Again this may be a problem of translation. But if it is not, there is an obvious concern. Art 10.2 may be relied upon to justify laws which protect against actual damage to reputation. It will be much harder for a contracting party to justify laws which penalise for possible damage, without any requirement of actual damage or to establish that the statement is defamatory by reference to a definition of defamation which necessarily involves damage to reputation.

41. Art 200(2): As with the other offences in this group, the penalty range is extended where expression by the media or at in a public form. Imprisonment of up to one year is possible (compared with six months for non-media/public libels, see Art 200(1)). The potential “chilling effect” of this law is therefore exaggerated. The media is the main disseminator of information in any democratic society. Expression by the media, especially on

matters of public interest, should be given more, not less, protection than expression by private individuals.

42. **Art 199 - Insult:** This article creates a strict liability offence. It is a lesser offence than Art 200 with punishment of up to three months - six in the case of the media/public statements. The experts have similar concerns as those expressed in relation to Art 200 above as to the severity of these punishments and the extended liability of the media. The limited Art 203 defence is available. Comments are the same as above.

43. This type of insult provision has been before the ECtHR in a number of cases, most notably the *Lingens* case referred to above. The cases do not suggest that such provision is per se contrary to Art. 10, but as indicated above this is because the court does not do this. It determines the case according to the effect the application of the rule has in practice in the circumstances of the particular case before it. The significance of these cases is that they indicate that the application of such provisions is liable to cause Art 10 violations - especially when journalists or others are expressing themselves in time of political or other public controversy. **The best way to avoid the risk of such violations is to remove provisions such as this from the criminal law altogether.**

44. **Art 201 - statements about personal and family life:** The offence is again committed if the statement "can" harm the reputation of the other person. The punishment ranges in Art. 200 are increased to one year for all publications. Again there is no defence of truth/honest opinion. The limited Art 203 defence applies. Comments on these points are the same as in relation to Art 200.

45. The justification for this provision would be protection of rights under Art 8 of the ECHR. Clearly states must adopt measures to protect privacy rights. However, where the application of such measures interferes with Art 10 rights of expression, there is a delicate balancing exercise to be performed in all the circumstances of the particular case. There must be a proper assessment of any justification for the statements made. Where they are true and publication was in the public interest it may be difficult to justify any interference. In particular the private lives of politicians or others who invite publicity for their own benefit may be the subject of legitimate comment - for example where the facts indicate that they are hypocritical or seeking to falsely manipulate their public image in some way. The scale of the interference is also important here, particularly the "chilling effect" of severe punishment (see above). The experts are concerned that this provision does not allow this balancing exercise to be undertaken properly with the inevitable risk of violations of Art 10 rights, especially of journalists. In general, complaints about invasion of privacy, damaging reputation, are better resolved through the civil courts or some other form of non-criminal procedure.

46. **Art 202 - reproach about a crime:** This offence attracts a lesser punishment of up to three months imprisonment (six for the media). It is committed where a statement is made that a person has committed or been convicted of a crime made with an intention to "slight" that person. It is committed even though reputation is not damaged / the statement is true. There do not seem to be any defences.

47. Yet such statements may be made in a range of circumstances which would attract protection under Art 10 - for example in polemical or political speech or in the process of legitimate public interest comment about the seriousness or prevalence of particular crimes.

Imposition of criminal liability in these circumstances is very likely to involve violation of Art 10 rights.

48. Lastly, the following comments should be made on the offence at **Art 309(2)**. This punishes media/public comment about how a court should decide an ongoing court case. Punishment of up to six months imprisonment is specified.

49. Great care has to be taken with offences of this sort. It may be justifiable to punish behaviour which interferes with the administration of justice. But some latitude has to be allowed for comment about court cases which does not have this effect. Where a case is being tried by a judge (rather than a jury) and conducted by professional lawyers it must be assumed that their work will not be influenced or hindered by external public comment - in particular where it is not "sensationalist" but is legitimate public interest comment. **In these situations criminal punishment is liable to represent violation of Art. 10 rights.**

50. **Conclusion:** For the reasons indicated above there is a real risk that the application of these provisions in the Criminal Code will cause violations of Art 10 rights - especially of journalists. The authorities in Croatia should give consideration to removing them from the criminal code and regulating defamation, insult and breach of privacy through other means, or at the very least removing the possibility of imprisonment for these types of "speech" offences which do not involve race hate or threats of/incitement to violence/disorder.

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## APPENDIX I

### PROPOSED AMENDMENTS TO THE LAW ON MEDIA

#### Article 2

Definition of the Editor in Chief was amended and reads: “The Editor in Chief shall be a journalist authorised to edit the media, appointed by the media publisher in a manner stipulated by the Law. **The Programme Director shall be considered the Editor in Chief in the electronic media if the Editor in Chief has not been appointed.**”

Definition of public information was amended and reads: “Public information shall be every information in the possession of bodies of executive, legislative and judicial authorities **and bodies of local and regional self-government units**, as well as other legal and natural persons which perform public service or duty, which [information] pertains to their work and activities.”

It was stated in the definition of the competent ministry that this shall be the Ministry of Culture.

#### Article 5

Paragraph 3 of this Article was amended and reads: “Decisions on state subsidies for the realisation of tasks as per Paragraph 1 of this Article shall be public **and shall be passed in compliance with a special regulation.**”

#### Article 6

Paragraph 1 of this Article was amended and reads: “With the aim of publishing information through the media, bodies of executive, legislative and judicial authorities **and bodies of local and regional self-government units**, as well as other legal and natural persons who perform public service and/or duty, shall be obliged to provide accurate, complete and timely information on the issues from their scope of activities.”

Paragraph 7 was also amended and reads: “In case of withholding of public information, a journalist shall have the right **to file a complaint due to the illegal act with the competent court. The competent court** shall decide on the complaint in the emergency procedure **under a special law.**”

#### Article 8

Article 8 is a new Article and reads: “There shall be no violation of the right to the protection of privacy if in relation to the published information a justified interest of the public prevails over the protection of privacy.”

## Article 12

In Paragraph 2, Sub-paragraph 3 of this Article the wording: “programme basis” was erased so the data on the programme basis does not have to be entered into the print media registration form.

Paragraph 10 was placed after Paragraph 3 as Paragraph 4, for the purpose of consistency and clarity of the legal provision, so it would be completely clear that the registration form is also submitted by legal persons who perform the activity of distribution of print media.

## Article 16 [Interpreter’s comment: the following text is in Article 15 and not in Article 16]

Paragraph 1 which reads: “The media shall adhere to the rules of the journalists’ profession and ethics in the publishing of programme contents, respecting the right of the public to be accurately, impartially and timely informed about events, occurrences, persons, subjects or activities.”, was erased.

## Article 21

This Article is amended by Paragraph 2 defining types of damaged, and reads: “**Damage shall be reduction of someone’s property or prevention of its increase (pecuniary damage) and causing physical or mental pain, as well as fear (non-pecuniary damage) to another person.**”

## [Interpreter’s comment: the following text is in Article 20 and not in Article 21]

Paragraph 4 was amended and reads: “The publisher shall not be held responsible for the damage if the information which caused the damage is:  
- an accurate report from a discussion during the session of a body of legislative, executive or judicial authority **and bodies of local and regional self-government units** or at a public gathering or if it was transmitted from an act of a body of legislative, executive or judicial authority **or bodies of local and regional self-government unit**, without changing its meaning by editorial processing.”

## Article 22 [Interpreter’s comment: the following text is in Article 21 and not Article 22]

The following wording was erased in Paragraph 1: “the correction of an incorrect information” and the latter was amended as follows: “Non-pecuniary damage shall be compensated, as a rule, by the correction of an incorrect information, by publishing the correction of the information and with the publisher’s/broadcaster’s apology **and with the payment of compensation pursuant to the general regulations of the law on obligations.**”

Paragraph 2 was amended and reads: “A person who previously requested from the publisher/broadcaster that a correction of the disputable information is published, **that is, the publisher’s/broadcaster’s apology when the correction is not possible**, shall have the right to file a claim for the compensation of non-pecuniary damage in compliance with general regulations of the law on obligations.”



### Article 23

Article 23 is a new Article which reads: “Compensation claim may be filed not later than within three months from the day of learning about the publication of the information which caused the damage.”

### Article 32 [Interpreter’s comment: the following text is in Article 30 and not Article 32]

Paragraph 1 specifies holders of publishers’/broadcasters’ stocks and shares and the introduction of forwarding of data on the so-called connected persons, i.e. those who hold stocks/shares for themselves or other persons in enterprises to which this Law applies, and data if these persons are members of management, supervisory boards or management councils in such enterprises.

### [Interpreter’s comment: the following text is in Article 30]

Paragraph 3 was amended and reads: “The publisher/broadcaster shall be obliged to publish data as per Paragraph 1 of this Article in the “Official Gazette”. **Data on stock holders and share holders up to 1% of the value of the capital shall be published collectively.**”

### Article 33

Article 33 which regulates the limitation of concentration was erased, and it used to read: “Impermissible concentration in the sphere of print media shall be considered the achievement of a dominant position on the market by the publisher of one or more printed news and current affairs daily papers or weeklies in such a manner that the number of its sold daily papers or weeklies exceeded 40% of all sold issues of news and current affairs daily papers or weeklies in the competent market.

The publisher with the impermissible concentration as per Paragraph 1 of this Article may not be the owner nor acquire shares in the ownership of another print news and current affairs media.”

### Article 34

Paragraph 1 defines the content of financial transactions of the publisher/broadcaster and stipulates that it shall contain data on the income and market share realized in the market of readers and/or viewers and/or listeners, as well as data on the income and market share realized in the advertising market.

Paragraph 2 specifies that the Ministry of Culture should be forwarded data about distribution contracts with publishers/broadcasters and examples of general terms of business activities.

### Article 35 [Interpreter’s comment: the following text is in Article 34 and not Article 35]

Paragraph 2 was erased and it used to read: “The competent ministry, publishers/broadcasters, and other legal persons performing tasks related to public informing shall have the right to submit a request for the initiation of proceedings for the assessment of disruption of free market competition and violation of legal provisions to the body competent for the protection of market competition.”

Paragraph 3 was erased and it used to read: “The body competent for the protection of market competition shall conduct the procedure *ex officio* in cases of violation of Article 35 of this Law.”

### **Article 36**

Article 36 is a new Article and reads: **“Publishers/broadcasters, participants in the enterprises’ concentration shall be obliged to submit an application on their intent to conduct concentration in the form and manner stipulated by regulations on the protection of market competition.**

**The obligation of submitting an application shall emerge regardless whether the conditions as per Article 22, Paragraph 4 of the Law on the Protection of Market Competition, were fulfilled in that particular case.**

**The application as per Paragraph 1 of this Article shall be submitted with the Agency for the Protection of Market Competition.**

**The enterprise’s concentration, registered in compliance with the provisions of this Article, shall be assessed by the Agency for the Protection of Market Competition in compliance with the regulations on the protection of market competition.**

### **Article 41 [Interpreter’s comment: the following text is in Article 39 not Article 41]**

Sub-paragraph 10 was added to Paragraph 4, which reads: “The Editor in Chief shall be obliged to publish/broadcast a correction, except if:

- **the disputable information is correct”**

Sub-paragraph 11 of Paragraph 4 was erased and it used to read: “any of the prerequisites that exempt the publisher/broadcaster from accountability for damage as per Article 20 of this Law exists;”

### **Article 57 [Interpreter’s comment: the following text is in Article 55 and not Article 57]**

Item 8 of Paragraph 1, which used to read: “acquires impermissible concentration contrary to Article 33 of this Law;”, was erased and replaced by Item 8 which reads: “fails to submit the application of the intended entrepreneur’s concentration as per Article 36 of this Law.”

### **Article 63**

It was erased as unnecessary since the competent body, the Ministry of Culture, was defined in Article 2.

**In Zagreb, 31 March 2004**

## APPENDIX II

### THE LAW ON THE MEDIA

#### I. General provisions

##### Article 1

This Law shall regulate preconditions for the exercise of principles of the freedom of the media, rights of journalists and other participants in public informing to the freedom of reporting and accessibility to public information, rights and obligations of publishers, publicity of ownership, exercise of the right to a correction and response, the manner of distribution of the press, the manner of protection of market competition, the rights and obligations of other legal and natural persons acting in the sphere of public informing.

##### Article 2

(1) Certain terms shall have the following meanings in the sense of this Law:

The **media** shall be the following public outlets: newspapers and other print media, radio and television programmes, programmes of newspaper agencies, electronic publications, teletext and other forms of daily or periodical publishing of editorial programme contents through the transmission of recording, voice, tone or picture. Media shall not comprise books, school books, bulletins, catalogues or other holders of information publishing intended exclusively for educational, scientific and cultural process, advertising, business communication, internal operations of trade companies, institutes and institutions, associations, political parties, religious and other organisations, school papers, the "Official Gazette" of the Republic of Croatia, official papers of local and regional self-government units and other official releases, posters, leaflets, brochures, banners and video sites without a live picture (free information), unless otherwise stipulated by this Law.

**Public informing** in the sense of this Law shall be the informing which is exercised through the media.

**Programme contents** of the media (hereinafter: programme contents) shall be information of all kinds (news, opinions, notifications, messages and other information) and other authors' works published through the media with the intention of informing and satisfying cultural, scientific, educational and other needs of the public.

**Programme basis** of the media are the selected programme contents (general or specialised) which are determined and published by the publisher when establishing the media.

**Media publisher** (hereinafter: publisher) shall be every natural or legal person who publishes its programme contents through the media and participate in public informing, regardless of technical means with which its editorial programme contents are published, transmitted or are accessible to the public.

**Newspaper publisher** shall be a natural or legal person who publishes programme contents through the press.

**Journalist** shall be a person who is involved in collecting, processing, designing or classification of information for publishing through the media and is employed with the media publisher or performs journalist activities as an independent profession or on contractual basis.

**Editor in Chief** shall be a journalist authorised to edit the media, appointed by the media publisher in a manner stipulated by the Law.

**Self-regulating decrees** are the rules of journalists' profession and ethics, the statute of the media, and other decrees that determine professional and other code of conduct or regulate relations in the media profession which are independently determined by publishers, journalists and their associations.

**The press** shall be newspapers and other periodicals published at least once every six months, in the circulation of more than 500 copies. **Print work**, which is published occasionally in the circulation of less than 500 copies, shall be considered press if intended for distribution.

**General-information press** shall be the one which jointly publishes programme contents intended for informing the public continuously on current social, especially political, economic, social-welfare, cultural life and other current events in Croatia and around the world.

**Information** shall be data, text, photograph, sketch, cartoon, movie, verbal report, critical review or other report published in the media.

**Public information** shall be every data in the possession of bodies of executive, legislative and judicial authorities, as well as other legal and natural persons which perform public service or duty, which [data] pertains to their work and activities.

**Interview** shall be a conversation and statement in written or verbal form, intended for publishing in the media.

**Authorisation** shall be a confirmation of authenticity of a statement or conversation intended for publishing and consent for publishing, provided in written form or verbally, if there is a sound recording on verbal authorisation.

**Privacy** shall include personal and family life, and primarily the right to life according to one's own choice and option, physical and moral integrity, dignity, honour and reputation.

**Competent ministry** shall be the ministry which performs administrative and professional tasks in the sphere of public informing.

## II. GENERAL PRINCIPLES

### I. Freedom of the media

#### Article 3

(1) The freedom of expression and freedom of the media shall be guaranteed.

(2) Freedom of the media shall especially comprise: freedom of the expression of opinion, independence of the media; freedom to collect, research, publish and distribute information for the purpose of public informing; pluralism and diversity of the media, free flow of information and openness of the media for different opinions, beliefs and for various contents; accessibility to public information; appreciation of protection of human personality, privacy and dignity; freedom of establishing legal persons for the performance of activities in public informing, printing and distribution of press and other media from the country and abroad, production and publishing of radio and television programme, as well as other electronic media; freedom and independence of the media; autonomy of editors in chief, journalists and other authors of programme contents in compliance with the rules of profession.

(3) Limitation of the freedom of the media shall be permitted only when it is necessary and to the extent necessary in a democratic society in the interest of national security, territorial integrity or public peace and order, prevention of disorder or criminal acts, protection of health and morality, protection of reputation or rights of others, prevention of revealing confidential information or due to the preservation of authority and impartiality of the judiciary in a manner stipulated by the Law.

(4) It is forbidden to incite or glorify ethnic, racial, religious, gender, or other inequality as well as ideological and state-like entities based on such foundations and to provoke ethnic, racial, religious, gender or other hostility or intolerance, to incite violence or war by publishing programme contents in the media.

#### **Article 4**

(1) Nobody shall have the right to influence the programme content of the media by use of pressure or misuse of their position, or in any other manner illegally limit the freedom of the media.

(2) The court shall decide on the violations of the freedom of expression and freedom of the media.

### **2. Obligations of the State for promotion of pluralism and diversity of the media**

#### **Article 5**

(1) The Republic of Croatia shall promote and protect pluralism and diversity of the media in the manner stipulated by the law.

(2) The production and publishing of programme contents which pertain to the following shall be promoted:

- exercise of the right to public informing and well-informed state of all citizens of the Republic of Croatia,
- exercise of the right to public informing and well-informed state of members of Croatian national minorities and communities abroad,
- exercise of the right to public informing and well-informed state of national minorities in the Republic of Croatia,
- informing the public about national minorities and about the exercise of the rights of minorities in the Republic of Croatia, and promotion of tolerance and the culture of dialogue,
- exercise of human rights of citizens and regulation of legal and social state;
- preservation of Croatian national and cultural identity;
- promotion of cultural and artistic creativity;
- development of education, science and arts
- protection of nature, environment and human health.
- starting of new print media, especially local and non-profit media, and the media of non-governmental associations.

(3) Decisions on state subsidies for the realisation of tasks from Paragraph 1 of this Article shall be public.

### **3. Accessibility to public information**

#### **Article 6**

(1) With the aim of publishing information through the media, bodies of executive, legislative and judicial authorities, as well as other legal and natural persons who perform public service and/or duty, shall be obliged to provide true, complete and timely information on the issues from their scope of activities.

(2) Information held by persons as per Paragraph 1 of this Article, shall be accessible to journalists under equal conditions.

(3) The head of a body or a legal person as per Paragraph 1 of this Article shall be obliged pursuant to the law, to regulate the manner of providing information to the public and determine a person who ensures the accessibility of public information in compliance with this and a special law.

(4) The head of a body or a person as per Paragraph 1 of this Article and a person as per Paragraph 3 of this Article shall be obliged to provide journalists with the requested information within an adequate deadline and shall be accountable for the accuracy and truthfulness of provided information.

(5) The person as per Paragraph 5 of this Article may withhold the provision of information when:

- the requested information are defined in the stipulated manner as state or military secret for the purpose of protection of public interest;
- the publishing would represent the violation of secrecy of personal data in compliance with the law, unless its publication may prevent the conduct of a severe criminal act or prevent an immediate danger to the life of people and their property;
- an investigative or court proceeding is on-going.

(6) In the case as per Paragraph 5 of this Article, the responsible person shall explain in writing the reasons why the information was withheld, in writing or verbally, within three working days from the day the information was requested in writing.

(7) In case of withholding of a public information, a journalist shall have the right to file a complaint with the Administrative Court. The Administrative Court shall decide on the complaint in the emergency procedure.

### **4. Protection of privacy**

#### **Article 7**

(1) Every person shall have the right to the protection of privacy, dignity, reputation and honour.

(2) A person performing public service or duty shall have the right to the protection of privacy except in cases related to public service or duty that he performs.

(3) A person who draws public attention by his/her statements, behaviour and other acts in relation to his/her personal or family life may not request the same level of protection of privacy as other citizens.

### **III. RIGHTS AND OBLIGATIONS OF MEDIA PUBLISHERS**

#### **1. Publisher**

##### **Article 8**

(1) Publisher shall perform activities in the sphere of public informing in compliance with the provisions of the law.

(2) While performing his activity, the publisher may create or produce programme contents for another publisher or technical transmitter of programme contents, as well.

##### **Article 9**

A legal or a natural person that has not registered the activity of a publisher into the court or another register in compliance with this or a special law shall not be considered a publisher in the sense of this Law.

##### **Article 10**

A newspaper publisher may be established in the Republic of Croatia and entered into the court or other register as a legal or natural person if in addition to conditions determined by the law it fulfils the following special conditions:

- has a seat, that is, residence in the Republic of Croatia;
- that the editor's office seat is in the Republic of Croatia.

#### **2. Registration of the press**

##### **Article 11**

(1) A newspaper publisher shall report the publishing of the press in the Register kept by the competent ministry.

(2) The registration as per Paragraph 1 of this Article shall contain the following data:

- company and seat, that is, the name, family name and permanent residence of the publisher and the name and family name of the accountable person of the publisher,
- name of the newspaper or another print media
- programme basis or content particularities (general or specialised programme contents: politics, economy, culture, sport, etc.)
- language, script and frequency of publishing,
- planned average printing run,

- company and seat, that is, the name, family name and permanent residence of the printer,
- name, family name and permanent residence of the editor in chief,
- data on the ownership structure in compliance with this Law

(3) The excerpt from the court register or another register shall be enclosed to the registration as per Paragraph 1 of this Article. Legal and natural persons that will perform the activity of publishers in a non-profitable way shall enclose a decree which proscribes the same.

(4) The competent ministry may not refuse the issuance of the certificate on registration of the print media if the registration contains all data as per Paragraphs 2 and 3 of this Article.

(5) The competent ministry shall be obliged to issue the certificate as per Paragraph 4 of this Article within three days from the day the registration form was received, if the registration form contains all data as per Paragraph 2 of this Article or invite the publisher within the same deadline to supplement the registration.

(6) If the competent ministry does not act in compliance with Paragraph 5 of this Article, it shall be considered that the certificate on registration of the press is issued.

(7) The publisher shall be obliged to report in the Register any change of data stated in the registration form. The publisher shall be obliged to inform the competent ministry about the decision on the cessation of publishing on the day of cessation of publishing of the press, at the latest.

(8) If the publisher does not publish a new issue within a period longer than six months from the day of the registration form submission that is from the day of publishing the last issue, it shall be considered that he gave up the publishing of that print media.

(9) The obligations of the publisher as per this Article shall also adequately apply to the programmes of newspaper agencies.

(10) Legal persons that distribute the press shall also be registered with the Register from Paragraph 1 of this Article. The registration shall include the company and the seat of a legal person and a name and family name of an accountable person. An excerpt from a court register and General conditions for distribution of the press as per Article 35 of this Law shall be appended to the registration.

### **3. Information on the publisher and media of importance to the public**

#### **Article 12**

(1) The public shall have the right to be informed about the publisher's operations and programme basis of the media.

(2) The right of the public as per Paragraph 1 of this Article shall be restricted by the publication of information about the publisher and the media stipulated by this or by a special law.



### **Article 13**

- (1) The publisher shall independently determine the programme basis of the media, in compliance with this and a special law.
- (2) The publisher shall provide comprehensive information to the public through the media, at least once every calendar year, about the programme basis, ownership structure, business results, average circulation, that is, the average popularity among listeners and viewers.
- (3) Prior to basic change or important supplement to the programme basis, the publisher shall be obliged to obtain opinion of the editor's office.
- (4) The programme basis shall be an integral part of the employment contract between the publisher and the editors in chief and between the publisher and journalists. Special rights of the editors in chief and journalists which occur as a result of significant changes in the ownership structure of the media or the change of programme orientation shall be determined by collective agreement, general acts or individual contract.

### **Article 14**

- (1) The media publisher shall be obliged to ensure the publishing of the following data at the visible place of every individual holder of programme content (for example, a copy of press, television show):
  - company and seat, that is, the name and family name and permanent residence of the publisher;
  - name and family name of the editor in chief, that is, the responsible editors and names and family names of editors of individual programme groups when this is in compliance with the internal organisation of the editor's office;
  - name and family name, that is, the company and the seat of the printing house and the date of print or re-print and the number of printed copies when related to the print media;
  - date of production (month and year), when related to radio and television programme.
- (2) The obligation as per Paragraph 1 of this Article shall also pertain to publishers of electronic media in such a manner that data is published at the beginning and the end of radio and television programmes, that is, from midnight until one o'clock, if the programme is broadcast uninterruptedly, and also in an appropriate manner in case of electronic publications which have been edited.
- (3) The provision of Paragraph 1 of this Article shall not apply to holders of programme contents which are designed or multiplied in the Republic of Croatia for a foreign ordering party and are intended for broadcasting outside the territory of the Republic of Croatia.
- (4) The title, that is, the trade mark (logotype) of radio and television programme shall be published at least once during every hour of programme broadcast.

## **4. Media principles and obligations**

### **Article 15**

- (1) The media shall adhere to the rules of the journalists' profession and ethics in the publishing of programme contents, respecting the right of the public to be accurately, fully and timely informed about events, occurrences, persons, subjects or activities.
- (2) The media shall be obliged to respect privacy, dignity, reputation and honour of citizens, especially of children, youth and families. The publishing of information that would disclose identity of a child shall be prohibited if by doing so the welfare of the child is jeopardized.
- (3) The media shall be obliged to respect the right to the protection of identity of witnesses and victims of criminal acts and the media shall not disclose their identity without their knowledge and consent.

### **Article 16**

The media publisher publishes the following data, in appropriate sections of each individual programme content:

- name and family name of the author of published reports, unless an individual author decides otherwise;
- name and family name of a person or a company, the holder of copyrights pertaining to the published programme contents, except for print media and radio programmes;
- name of a legal or name and family name of a natural person who keeps the used cultural goods, archival material or appropriate reproduction;
- name of the media from which the programme report or an excerpt from the programme report was taken over, unless otherwise stipulated by a mutual agreement.

### **Article 17**

Along with the information transmitted from other domestic and foreign media, the media from which the information is being transmitted shall be indicated.

### **Article 18**

- (1) In case of war or immediate danger to the independence and unity of the Republic of Croatia and [in case of] large natural disasters, the publisher shall be obliged to publish, free of charge and upon the request of the competent state body, proclamations and official announcements of the competent state bodies.
- (2) In case of technical and technological accidents and ecological accidents and epidemics, when there is a danger to life and health of people, security of the state and public peace and order, the publisher shall be obliged to publish, free of charge and upon the request of the competent state body, proclamations and official announcements of the competent state bodies.
- (3) The request as per Paragraphs 1 and 2 of this Article shall be submitted in a written form and it shall contain data which prove its authenticity and legal well-foundedness.

## **Article 19**

(1) An advertisement shall be paid information the publishing of which is ordered by a legal or natural person with the intention of improving legal traffic of products, services, real-estate, rights or obligations, to win over business partners or achieve reputation or good name in the public. Advertising shall be conducted with financial or other type of compensation or with the aim of self-promotion. An advertisement shall be clearly marked as such and visibly separated from other programme contents. An advertisement shall not be such as to cause among viewers, listeners or readers an impression that it was a part of the programme content of the media.

(2) The following shall not be considered advertising:

- statements of the media publisher in relation to its programme contents and secondary products stemming from the programme;
- free announcements of performance of public works and services and charity activities;
- free presentation of art works.

(3) Free advertising shall be marked separately.

(4) Concealed and fraudulent advertising shall not be permitted. All journalistic forms (written text, a photograph, a picture, a drawing, etc.) which have been paid in some way and have not been clearly marked as advertisements shall be considered concealed advertising.

(5) Sponsored programme contents when published shall be clearly marked as such by the name of the sponsor or his/her symbol.

(6) The advertiser shall be exclusively responsible for the content of advertising messages.

(7) Advertising of weapons and ammunition, tobacco and tobacco products, medicine and medical procedures which are accessible only upon doctor's prescription, as well as narcotics, alcohol and alcohol beverages shall not be permitted unless otherwise stipulated by a special law.

## **5. Responsibility of the publisher for damage compensation**

### **Article 20**

(1) The publisher who causes damage to another person by information published in the media shall be obliged to compensate for that damage, except in cases stipulated by this Law.

(2) The regulations on obligations shall apply to the procedure for determining responsibility for damage compensation, unless this Law stipulates otherwise.

(3) The publisher shall not be held responsible for the damage if the information which caused the damage is:

- an accurate report from a discussion during the session of a legislative, executive or judicial authority or at a public gathering or if it was transmitted from an act of a body of legislative, executive or judicial authority, without changing its meaning by editorial processing,

- published in an authorised interview,
- based on accurate facts or facts for which the author had a justified reason to believe that they were accurate and he undertook all necessary measures to verify their accuracy, while there was a justified interest on the part of the public for the publishing of that information, and if the activity was undertaken in good faith,
- a photograph of the affected party taken in public or a photograph of the affected party taken with his knowledge and consent for the publishing, whereby the affected party failed to prohibit the publication, or restrict the right of the author of the photograph to use the work,
- accurate, while it ensues from the circumstances of the case that the journalist was able to determine with certainty that the affected party agrees with the publication thereof,
- ensuing from author's value judgments, and the publication of [information] was in public interest and if this information was provided in good faith.

(4) Paragraph 3 of this Article shall not pertain to personal data the secrecy of which is stipulated by law, information on minors and information collected in an illegal manner.

(5) The existence of preconditions of responsibility for damage shall be proven by the plaintiff, while the existence of preconditions for the release from responsibility for damage as per Paragraph 3 of this Article shall be proven by the defendant.

(6) If the information has been authorised, and certain parts thereof contain evident insults or libels, the authorisation shall not exclude solidary responsibility of both the publisher and editor-in-chief, if they failed to act in good faith.

### **Article 21**

(1) Non-pecuniary damage shall be compensated, as a rule, by the correction of a false information, by publishing the correction of the information and with the publisher's apology.

(2) A person who previously requested from the publisher that a correction of the disputable information is published shall have the right to a complaint for the compensation of non-pecuniary damage in compliance with general regulations of the law on obligations.

(3) A suit for compensation of damage can be filed within six months at the latest following the day when the information that caused the damage was published.

## **6. Editor-in-chief**

### **Article 22**

(1) Newspapers and other periodicals, radio and television stations and news agency programmes shall have an editor-in-chief, who shall be appointed and relieved of duty by the publisher, in compliance with the law and its statute. Prior to the appointment or relief of duty of the editor-in-chief, the publisher shall obtain the opinion of the editorial board, unless otherwise stipulated by the statute of the media.

(2) The editor-in-chief shall be responsible for each published piece of information, unless otherwise stipulated by this Law. Responsibility of the editor-in-chief shall also pertain to the

editorial processing of published information (the choice of title, subtitle, the text under a photograph etc.).

### **Article 23**

- (1) A person who fulfils general conditions stipulated by the law and the statute of the media may be appointed editor-in-chief.
- (2) A person who enjoys immunity from criminal responsibility may not be appointed editor-in-chief.

## **V. RIGHTS AND OBLIGATIONS OF JOURNALISTS**

### **1. The media statute**

#### **Article 24**

- (1) Relationships between the publisher, editor-in-chief and journalists, as well as their mutual rights and obligations, shall be determined by the media statute.
- (2) The statute of the media shall be a self-regulatory act which especially determines the manner of journalists' participation in the procedure of appointment and dismissal of the editor-in-chief, the freedom of work and journalists' responsibility, as well as the conditions and procedure pursuant to which the editor-in-chief, editors and journalists have the right to a resignation, along with a fair severance pay, in cases of such change in the ownership or management structure of the media which leads to a significant change in the programme basis or programme content of that media (the so-called "conscience clause").
- (3) The statute shall be adopted by the publisher and a journalists' representative, with the prior consent from the majority of a total number of journalists from the media. Journalists shall elect their representative by a majority vote.
- (4) If the publisher and the journalists' representative fail to adopt the statute within six months from the beginning of operation of the media, the statute shall be passed, upon the request of the publisher or journalists' representative, within three months from the day of receipt of the request, by an arbitration composed of an equal number of representatives of the associations of publishers and of the journalists' associations.

### **2. Journalists' right to express standpoints**

#### **Article 25**

- (1) A journalist shall have the right to express a standpoint with regard to all events, occurrences, persons, subjects and activities.
- (2) A journalist's working contract may not be terminated, his salary decreased or his position on the editorial board altered, that is, his agreed compensation or a part thereof may not be decreased or suspended from payment because of the expression of standpoints.

(3) If, in case of a dispute, a journalist presents facts which justify suspicion that the termination of a working contract, decrease of salary or altered position in the editorial board, that is, decrease or suspension from payment of agreed compensation is a consequence of expression of standpoints as per Paragraph 1 of this Article, the publisher shall bear the burden of proof.

### **3. Journalists' right to refuse to act upon an order**

#### **Article 26**

(1) A journalist shall have the right to refuse to write, prepare or participate in the drafting of a report, the content of which is contrary to the rules of the journalists' profession and ethics. A journalist shall inform the Editor-in-Chief in writing about the refusal.

(2) If a journalist refuses to act upon an order because, by doing so, he would break the rules of the journalists' profession, the employer may not terminate his working contract, decrease his salary or alter his position on the editorial board.

(3) If in case of a dispute a journalist presents the facts which justify suspicion that the termination of a working contract, decrease of salary or altered position on the editorial board are the consequence of a refusal to act upon an order as per Paragraph 1 of this Article, the publisher shall bear the burden of proof.

### **4. Protection of author's reputation**

#### **Article 27**

(1) The programme content in which the meaning was altered in the procedure of editorial processing, may not be published under the name of the author without his consent.

(2) The editor-in-chief shall be held responsible for the programme content published contrary to Paragraph 1 of this Article.

(3) If the programme content, published contrary to Paragraph 1 of this Article, damaged the reputation of the author, the author may request compensation of damage.

### **5. Protection of the source of information**

#### **Article 28**

(1) A journalist shall not be obliged to provide data about the source of published information or the information he intends to publish.

(2) The right of a journalist as per Paragraph 1 of this Article also pertains to editors, printers, authors of books and authors of published reports who are not journalists.

(3) Prior to the publication, a journalist shall be obliged to disclose to the editor-in-chief data about the non-specified source of information as per Paragraph 1 of this Article in the manner stipulated by the statute of the media. In that case, all provisions pertaining to the protection of the source of information shall be applied to the editor in chief as well.

(4) A person, state administration or judicial body which has a law-based interest, may submit a request with the competent court to order a journalist to present data on the source of published information or the information he intends to publish.

(5) The law-based interest for the limitation of protection of the source of information shall exist when that limitation is necessary due to the interests mentioned in Article 3, Paragraph 3 of this Law.

(6) The court shall order a journalist to present data on the source of published information or the information he intends to publish, if that is necessary for the protection of public interest and it involves extremely significant and serious circumstances, whereby it is indisputably estimated:

- that there is no reasonable alternative measure to the disclosure of data on the source of information or that a person or body as per Paragraph 4 of this Article, which seeks the publishing of data on the source of information, already used that measure and
- that the law-based public interest for the disclosure of data on the source of information clearly prevails over the protection of public interest of protection of the source of information.

(7) Having assessed the circumstances of the case, the court shall exclude the public in the course of the procedure of presentation of data and warn present persons that it is their obligation to keep everything they have learned in the procedure as a secret, as well as about the consequences of disclosing a secret.

## **V. PUBLICITY OF OWNERSHIP**

### **1. Transparency of the ownership structure**

#### **Article 29**

Stocks or shares in a legal person performing the activity of a publisher in the sphere of public informing shall be made out to a name.

#### **Article 30**

(1) Publishers shall be obliged to forward data on the company and its seat by 31 January of each calendar year, or first and last names and permanent residences of all legal and natural persons who have direct or indirect ownership of stocks or shares in that legal person, with the information on the percentage of stocks or share.

(2) The competent ministry shall forward a written warning, stating possible sanctions for non-compliance with the obligation, to a legal person who fails to perform the obligation as per Paragraph 1 of this Article.

(3) The publisher shall be obliged to publish data as per Paragraph 1 of this Article through the media, as well as in the "Official Gazette".

## **2. Shares of foreign persons**

### **Article 31**

The legally established provisions on the limitation of ownership shall also apply to foreign legal and natural persons, regardless of the country of their seat or permanent residence, unless otherwise stipulated by law.

## **3. Forwarding of reports on media business operations**

### **Article 32**

(1) By 30 April each year, media publishers shall be obliged to forward to the competent ministry a report on the commercial operations for the previous year, an assessment on the realized share at the market, data on advertisers or marketing agencies through which more than 10% of the media publisher's annual marketing profits were realized.

(2) Media distribution companies shall be obliged to forward data on the contracts with publishers and appropriate data on the general conditions of business operations pertaining to the distribution of electronic media programmes and general information press, the sold circulation of which exceeds three thousand copies, if this press is being sold at the market of a number of towns or counties, or exceeding a thousand copies, if it involves local market press.

## **4. Limitation of concentration**

### **Article 33**

(1) Impermissible concentration in the sphere of print media shall be considered when the publisher of one or more printed news and current affairs daily papers or newsweeklies achieves the dominant position on the market in such a manner that the number of its sold daily papers or weeklies exceeded 40% of all sold issues of news and current affairs daily papers or newsweeklies in the Republic of Croatia.

(2) The publisher with the impermissible concentration as per Paragraph 1 of this Article may not be the owner nor acquire shares in the ownership of another print media.

## **5. Protection of market competition**

### **Article 34**

(1) The regulations on the protection of market competition shall be applied to media publishers, legal persons performing the tasks of distribution of the media, as well as other legal persons performing tasks related to public informing.

(2) The competent ministry, media publishers, as well as other legal persons performing tasks related to public informing shall have the right to submit a request for the initiation of proceedings for the assessment of disruption of free market competition and of violation of legal provisions, to the body competent for the protection of market competition.



(3) The body competent for the protection of market competition shall conduct the procedure *ex officio* in cases of violation of Article 35 of this Law.

## **6. Distribution of the press**

### **Article 35**

(1) Distributors of print media shall be obliged to determine and publish in a usual manner the General conditions for distribution of the press and shall not refuse to distribute the press of another publisher who requests it and accepts the published General conditions.

(2) Distributor of print media shall have the right to reject distribution of the media lacking nameplate. By taking over distribution of the media which lacks nameplate, the distributor, along with the publisher of that media, shall take over responsibility for the information published in that media.

(3) Distributors-newsvendors in the street may sell only press. Other conditions for sale through newsvendors, such as the time and location of newsvendors' sale of the press, shall be stipulated by the town or municipal council, in compliance with the law.

(4) Distributors of print media shall be obliged to submit to the competent ministry a report on financial operations realized by means of distribution of the press by 30 April every year for the previous year and the data on the number of copies of individual print media sold through the print media distribution network or retail contract.

### **Article 36**

(1) Public exhibiting and advertising of publications with the front page containing pornographic material shall be prohibited. This prohibition shall not pertain to the sale of pornographic publications in special shops.

(2) A publication with pornographic material shall have a visible warning that it contains pornography, as well as a warning that its distribution is prohibited to underage persons.

## **VI. PUBLISHING OF CORRECTIONS AND RESPONSES**

### **1. The right to the correction of published information**

#### **Article 37**

(1) Everyone shall have the right to request from the editor-in-chief to publish, without compensation, the correction of published information which violated their rights or interests. Legal persons and other organisations and bodies shall also be entitled to the right to a correction, if the information violated their rights and interests. The purpose of a correction is correcting inaccurate or incomprehensive information.

(2) The publication of a correction may be requested within thirty (30) days from the publication of the information.

- (3) Every person that has been mentioned in the media in connection with the initiation of investigative or criminal proceedings shall have the right to the publishing of a correction within three months following the passing of a decision on abolishment of the proceedings or an acquittal.
- (4) A request for correction shall be submitted in writing to the editor-in-chief. The request must be explained and signed by the submitter and must include all the necessary information about the submitter and his/her address.
- (5) The term correction shall not only refer to the correction in narrow sense, that is, a correction of wrongful statements or incorrect claims in the published information, but also to the disclosure of facts and circumstances by which the affected party refutes, or, with the intention to refute, significantly supplements the statements in the published text.
- (6) Scientific or art criticism cannot be corrected unless the correction is correcting incorrect or offensive statements.
- (7) One cannot request a correction if a medium already published its own correction of incorrect information before the request was submitted. If a submitter of request for correction believes that the medium did not publish the correction in an appropriate way, the submitter can request the exercise of his right in accordance with this Law.
- (8) If a person the information refers to died, the right to the publishing of a correction and the right to response shall fall on the deceased person's children, adopted children, spouse, parents, adopted parents, siblings, or a legal person if the information referring to the activities of the deceased was related to the legal person.

### **Article 38**

- (1) A correction must be published without changes and supplements in the same or equivalent place within the programme area, in the same or equivalent manner in which the information, to which the correction pertains, was published. A correction may not be disproportionately longer than the information, or a part thereof, to which it pertains. A correction can be published in a changed manner only if the person who submitted the request agrees. A correction shall be published in a manner whereby it shall be obvious from the title that it is a correction. A correction shall not be published on the pages with reactions and letters of readers, viewers of listeners without consent by a submitter of the request.
- (2) In radio and television programmes, the correction shall be provided in writing and published by reading in the same programme and time period in which the information, to which the correction pertains, was published, or in the same kind of programme with similar ratings.
- (3) The Council for Electronic Media shall stipulate the rules for the exercise of the right to a correction in radio and television programmes, in a manner which is adequate to the nature of those media, but in such a manner that the provision of Paragraph 1 of this Article is respected as much as possible, as well as all other provisions pertaining to the right to a correction and response stipulated by this Law.

(4) In electronic publications a correction and information that a correction refers to shall be marked and connected with a link.

### Article 39

(1) A person who requests the publication of a correction shall state the information to which the correction pertains and the date of its publication.

(2) A correction shall be published in the first edition or, if it has arrived too late, in the second edition or programme content of the media following the receipt of the correction. During the pre-electoral campaign, a correction must be published in the first edition or programme content of the media following the receipt of the correction.

(3) A commentary to a correction or a reply to a correction may not be published together with the correction in the same edition or programme content of the media. The provisions of this Law, pertaining to the right to correction or reply, shall apply to the commentary of a correction or reply to a correction.

(4) The editor-in-chief shall be obliged to publish a correction, except in case:

- if the requested correction does not pertain to the information which the interested person invokes;
- if the requested correction does not contain facts or circumstances related to the statements about the information;
- if the publication of the correction would be contrary to the law and good customs;
- if the request for publication of the correction was not signed by the competent person from the state body or legal person;
- if the requested correction is disproportionately longer than the information which contains statements, due to which the correction is being requested, or the part thereof to which it directly pertains, unless the correction pertains to libels or offensive statements;
- if the publishing of the correction would make the publisher responsible for damage;
- if the correction is written in a language other than the language in which the contested information was published;
- if the request for the correction of information was submitted after the expiry of the deadline as per Article 37, Paragraph 2 of this Law;
- the case involves scientific and artistic criticism, except for corrections of false statements or offensive statements;
- if he/she still believes the contested information is correct;
- if any of the prerequisites that free the publisher from accountability for damage as per article 20 of this Law exist;
- if another authorised person already submitted the same correction of the same information;
- if the request for publication of the correction has the same content as the request for the correction, on the occasion of which court proceedings are being conducted due to the rejection or inappropriate manner of its publication.

(5) In the case as per Paragraph 4 of this Article, the editor-in-chief shall be obliged to notify the requesting party in writing about the reasons for non-publication of the correction within the deadline stipulated for the publishing of a correction.

#### **Article 40**

(1) The publisher shall be obliged to keep records of all published programme contents for a period of at least sixty (60) days from the day of their publication and to provide an interested person, at his expense, with an appropriate copy of a particular record within three (3) days from the receipt of a written request from the interested person, at the latest.

(2) A copy as per Paragraph 1 of this Article shall be forwarded to the interested person for personal use, exclusively. No reproduction or publication of the copy without consent of the publisher shall be allowed, except within the framework of a court proceeding.

(3) In case the publisher failed to keep the recording as per Paragraph 1 of this Article, it shall be considered that he published the information, of which the correction was requested.

#### **Article 41**

If an interested person informs in writing, within eight (8) days from the publication of the information, that he will request the publication of a correction, the editor-in-chief shall be obliged to keep a copy of the information to which the request for correction pertains as long as the requested correction has not been published, that is, the court proceeding, which is conducted in relation to the publication of the disputable information, has not been completed, that is, until legally stipulated deadlines for the exercise of the right to correction or court protection have expired.

#### **Article 42**

The publication of a correction may also be requested when the information was published by way of the media which ceased to operate. The submitter of the request for correction may request from the former publisher or from his legal successor to provide for the publication of a correction, at his own expense, in another media which is comparable to the first one by its scope and quality of transmission of programme contents.

#### **Article 43**

(1) If the editor-in-chief fails to publish a correction within the deadline and in the manner stipulated by law, the submitter of the request for correction shall have the right to file a lawsuit against the editor-in-chief before a municipal court competent in the area in which the seat or permanent residence of the publisher of the media, which published the information to which the corrections pertains, is located.

(2) The lawsuit may be filed within a maximum of thirty (30) days from the expiry of the deadline for the publication of a correction, or from the day when the correction was published in a manner which was not in compliance with the Law.

#### **Article 44**

(1) Court proceedings on the publication of a correction shall be resolved in an emergency procedure.

- (2) The first hearing of the main trial in proceedings for the publication of a correction shall take place within 8 days from the submission of the lawsuit before the court.
- (3) The defendant shall be obliged to reply to the lawsuit at the main hearing, at the latest.
- (4) In the summons for a hearing, the court shall warn the plaintiff that the lawsuit shall be considered withdrawn should he fail to appear at the first hearing. It shall warn the defendant that a verdict may be passed even in case of his absence.

#### **Article 45**

- (1) Discussion on a lawsuit for the publication of a correction shall be limited to discussion and presentation of facts related to the defendant's duty to publish the correction.
- (2) As the reason for non-publishing of the correction, the defendant shall be allowed to prove the truthfulness of facts from the published information, except if the disputable information violated the right to privacy, protected in the manner set forth by this Law, or if the disputable information invokes facts encompassed by amnesty, court rehabilitation or review of the verdict.
- (3) In disputes for the publication of a correction, the court shall reject the claim if it determines that the plaintiff's right or interest was not violated or if it determines that there is another circumstance due to which, according to the Law, there is no obligation to publish a correction.

#### **Article 46**

The proceeding for the publication of a correction shall not be suspended by the initiation of a criminal proceeding for an act caused by the publication of the information to which the correction pertains.

#### **Article 47**

In case the editor in chief of the media is replaced after the filing of charges, the prosecutor may alter the claim by the end of the main hearing and sue the new editor in chief instead of the original defendant. It shall not be necessary to obtain the agreement of the original defendant or the new editor in chief for such an alteration of the claim.

#### **Article 48**

- (1) The court shall be obliged to pass a verdict immediately after the conclusion of the main hearing.
- (2) The court shall forward a verified copy of the verdict to the parties within a maximum of three (3) days from the day of passing the verdict.
- (3) Should the court accept the claim, it shall pass a verdict imposing an obligation upon the defendant to publish a correction within the deadline and in the manner stipulated by the law.

(4) In the publication of the correction, the editor in chief shall be obliged to state that it is a statement based on the verdict and to cite the enacting clause of the verdict.

#### **Article 49**

(1) Parties may lodge an appeal before a higher court against the verdict of a court of first instance within three (3) days from the day of receipt of the verdict.

(2) An appeal shall not be forwarded for response to the opposing party. The court shall forward a timely and admissible appeal with all documents to an appellate court within two days from lodging the appeal.

(3) The appellate court shall be obliged to decide on the appeal within three (3) days from the day of receipt of the appeal.

(4) A revision shall be allowed against a verdict of the appellate court.

#### **Article 50**

The court shall immediately forward to the editor in chief of the media through which a correction needs to be published, a verified copy of the effective court verdict ordering the publication of the correction.

#### **Article 51**

In case the editor in chief of the media is replaced after the verdict ordering the publication of a correction has become effective, the obligation for publishing a correction, determined by the verdict, shall be transferred onto the new editor in chief.

## **2. The right of response to published information**

#### **Article 52**

(1) An interested natural or legal person shall have the right to request from the editor in chief to publish, free of charge, his response to the published information mentioning his name or relating to him directly in some other manner.

(2) The response as per Paragraph 1 of this Article shall refer to a text or message of identical nature and length as the published information.

(3) By way of allegations appropriate for demonstration of evidence, the response shall in essence deny or significantly supplement the disputable allegations of facts and data contained in the published information.

#### **Article 53**

(1) A response shall be published without alterations or supplements, with the exception of spelling errors.

(2) Prior to the publication, the editor in chief shall have the right to request from the author to shorten the response.

(3) The provisions of Article 39 of this Law shall apply to the response, and the editor in chief may refuse to publish responses which are equal in terms of contents, after he has already published the same [response].

(4) The editor in chief may also refuse to publish a response in case the response contains obviously false data or claims and other allegations indisputably inappropriate for demonstration of evidence.

(5) If only some data or claims are false or inappropriate for demonstration of evidence according to the opinion of the editor in chief, the editor in chief may not refuse the publicising without prior appeal to the submitter of the request for response to exclude those data and claims from the response.

#### **Article 54**

The provisions of this Law in connection with the procedure for the exercise of the right to correction shall be applied in the procedure of court protection with regard to the exercise of the right to response.

### **VIII. OFFENCE PROVISIONS**

#### **Article 55**

(1) A legal or a natural person shall be punished for an offence with a fine of up to 1,000,000.00 HRK which:

1. performs the activity of publishing programme contents although it is not registered as a publisher in the court registry;
2. 2 fails to inform the public within a calendar year about the programme basis and editorial orientation in compliance with Article 13 of this Law;
3. 3 fails to publish a statement as per Article 18 of this Law upon the request of a state administration body, without compensation;
4. 4 performs advertising [activities] contrary to the provision of Article 19 of this Law;
5. 5 acts contrary to Article 29 of this Law;
6. 6 fails to forward to the competent ministry data as per Article 30, Paragraph 2 of this Law even after 15 days from the day of receipt of a warning as per Article 30, Paragraph 1 of this Article;
7. 7 fails to forward reports and data to the competent ministry until 30 April of each year, in compliance with Article 32 of this Law;
8. 8 acquires impermissible concentration contrary to Article 33 of this Law;
9. 9 refuses to take over distribution of general-information press or performs distribution contrary to Article 35, Paragraph 1 of this Law;
10. 10 a publisher who with the publishing of programme contents violates the rights of children and youth.

(2) The responsible person in the legal person shall be punished for an offence as per Paragraph 1 of this Article with a fine of up to 100,000.00 HRK.

### **Article 56**

- (1) The following shall be punished for an offence with a fine of up to 100,000.00 HRK:
1. newspaper publisher who fails to print the nameplate on each copy of the newspapers or other publication;
  2. the editor in chief who, on the basis of a final verdict, fails to publish a correction of information or fails to publish it in the stipulated manner;
  3. the editor in chief who fails to keep records of all published programme contents within the stipulated deadline;
  4. the publisher who cancels journalist's working contract, decreases his salary or determined allowance or alters his position in the editorial board contrary to Articles 25 and 26 of this Law;
  5. a legal person who organises distribution of the press by way of newsvendors contrary to Article 35 of this Law;
  6. a legal person who acts contrary to Article 36 of this Law.
- (2) The responsible person in the legal person shall be punished for an offence as per Paragraph 1 of this Article with a fine of up to 20,000.00 HRK.

### **Article 57**

- (1) The following shall be punished for an offence with a fine of up to 50,000.00 HRK:
1. the authorised person in a body or another person who withholds an information from the scope of activities of that body from a journalist contrary to Article 6 of this Law,
  2. the media publisher who fails to report the newspaper or another publication to the competent ministry,
  3. the press distributor who fails to submit a registration as per Article 11 of this Law or fails to enclose the stipulated appendices to the registration,
  4. the editor in chief, if he significantly alters the contents or meaning of an information published in a public outlet by way of editing the text, and especially by the title;
  5. an editor in chief who allows the publishing of information that may disclose the identity of a witness or a victim of a criminal act, contrary to Article 15 of this Law.
- (2) The responsible person in the legal person shall be punished for an offence as per Paragraph 1 of this Article with a fine of up to 8,000.00 HRK.

### **Article 58**

- (1) The following shall be punished for an offence with a fine of up to 30,000.00 HRK:
1. the media publisher who fails to indicate the source of information taken over from other domestic and foreign media,
  2. the newspaper publisher who fails to report to the competent ministry the change of data stated in the registration of the newspaper within eight days from the day of occurrence of the change,
  3. the editor in chief who fails to inform in writing the submitter of the request about the reasons for non-publication of the correction;



4. a person who multiplies or publishes a copy from Article 40, Paragraph 2 of this Law without the consent of the publisher.

(2) The responsible person in the legal person shall be punished for an offence as per Paragraph 1 of this Article with a fine of up to 3,000.00 HRK.

## **IX. INTERIM AND FINAL PROVISIONS**

### **Article 59**

The provisions of this Law shall be adequately applied to the programmes of foreign newspaper agencies unless otherwise stipulated by a special law.

### **Article 60**

Publishers shall be obliged, within six months from the day of coming into force of this Law, to conform their activities, operations and general acts with the provisions of this Law.

### **Article 61**

Until the state administration body competent for public informing affairs has been established by a special regulation, the Ministry of Culture shall be considered the competent ministry pursuant to this Law.

### **Article 62**

The Council for Electronic Media shall be obliged to pass regulations as per Article 38, Paragraph 3 of this Article within 90 days from the day of coming into force of this Law.

### **Article 63**

The Ministry of Foreign Affairs shall keep the registry and perform all activities related to the registration, or erasure of registration of foreign correspondent's offices, permanent foreign correspondents and permanent employees of foreign correspondent's offices, stipulated by a special law.

### **Article 64**

The Law on Public Information ("Official Gazette", No. 83/96, 143/98 and 96/01) shall cease to be valid on the day of coming into force of this Law.

### **Article 65**

This Law shall come into force on the eighth day from the day of its publication in the "Official Gazette"

*The Law was adopted by Croatian Parliament on 01 October 2003 and published in the Official Gazette no. 163/2003 on 16 October 2003*

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## APPENDIX III

### PROPOSED AMENDMENTS TO THE PENAL CODE OF THE REPUBLIC OF CROATIA<sup>3</sup>

#### I. GENERAL PROVISIONS

##### Liability in Cases Involving Criminal Offences Committed Through Media of Public Communications Article 48

- (1) The Editor in Chief's liability for criminal acts committed in the media shall be stipulated by this Law in the same manner as for any other perpetrator, except in cases separately stipulated in this Article.
- (2) If the Editor in Chief or a person acting on his behalf at the time of publishing, is not liable as an individual perpetrator or participant in a criminal act committed in the media, he shall be culpable in the following cases:
- if the author remains unknown until the main hearing before a trial court is completed,
  - if the information was published without the author's consent,
  - if factual or legal obstacles for the initiation of criminal proceedings against the author existed at the time of publishing and they still exist.
- (3) The Editor in Chief, or the person acting on his behalf, shall not be culpable if, due to justified reasons, he was not aware of any of the circumstances mentioned in Paragraph 2 of this Article.
- (4) Pursuant to the condition as per Paragraphs 1 and 2 of this Article, the following persons shall be culpable:
- the publisher or broadcaster of a non-periodical publication, except if he denotes the author of the punishable content against whom criminal proceedings can be initiated without any obstacles,
  - the printer of a non-periodical publication if there is no publisher or broadcaster or the obstacles exist for the initiation of criminal proceedings against such a person,
  - producer in cases when a criminal act was committed via audio device, video device or similar media,
  - if a publisher, broadcaster, printer or producer are legal entities or state bodies, a person responsible for the publishing, broadcast, printing or producing activity shall be liable.
- (5) In cases when the product in this Article, containing a criminal act, was produced in a foreign country, the importer shall be liable and if it is the case of a legal entity or a state body, the person responsible for import shall be liable.

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<sup>3</sup> The existing provisions are in normal font and the proposed amendments in italics.

**Article 1**

*Article 48 of the Criminal Law ("Official Gazette", No. 110/1997, 27/1998, 129/2000 and 51/2001) is erased.*

**CHAPTER FIFTEEN (xv)****CRIMINAL OFFENSES AGAINST HONOR  
AND REPUTATION****Insult  
Article 199**

- (1) Whoever insults another shall be punished by a fine of up to one hundred daily incomes or imprisonment not exceeding three months.
- (2) Whoever insults another through the press, radio, television, in front of a number of persons, at a public assembly, or in another way in which the insult becomes accessible to a large number of persons shall be punished by a fine of up to one hundred and fifty daily incomes or by imprisonment not exceeding six months.
- (3) If the insulted person returns the insult, the court may remit the punishment for both perpetrators.

**Defamation  
Article 200**

- (1) Whoever, in relation to another, asserts or disseminates a falsehood which can damage his honor or reputation shall be punished by a fine of up to one hundred and fifty daily incomes or by imprisonment not exceeding six months.
- (2) Whoever, in relation to another, asserts or disseminates a falsehood which can damage his honor or reputation through the press, radio, television, in front of a number of persons, at a public assembly, or in another way in which the defamation becomes accessible to a large number of persons shall be punished by a fine or by imprisonment not exceeding one year.
- (3) If the defendant proves the truth of his allegation or the existence of reasonable grounds for belief in the veracity of the matter he has asserted or disseminated, he shall not be punished for defamation, but may be punished for insult (Article 199) or for reproaching someone for a criminal offence (Article 202).

**Exposure of Personal or Family Conditions  
Article 201**

- (1) Whoever exposes or disseminates a matter concerning the personal or family life of another which can damage his honour or reputation shall be punished by a fine or by imprisonment not exceeding one year.

(2) Whoever exposes or disseminates a matter concerning the personal or family life of another which can damage his honour or reputation through the press, radio, television, in front of a number of persons, at a public assembly or in another way in which the exposure of personal or family conditions becomes accessible to a large number of persons shall be punished by imprisonment for six months to one year.

**Reproach for a Criminal Offence**  
**Article 202**

(1) Whoever reproaches another for a committed criminal offence for which he has been convicted by a final court judgment shall be punished by a fine of up to one hundred daily incomes or imprisonment not exceeding three months.

(2) Whoever reproaches another for a committed criminal offence for which he has been convicted by a final court judgment through the press, radio, television, in front of a number of persons, at a public assembly or in another way in which the reproach for a criminal offence becomes accessible to a large number of persons shall be punished by a fine of up to one hundred and fifty daily incomes or by imprisonment not exceeding six months.

**Reasons for the Exclusion of Unlawfulness of Criminal**  
**Offences Against Honour and Reputation**  
**Article 203**

There shall be no criminal offence in the case of the insulting content referred to in Article 199 and Article 200, Paragraph 3, the defamatory content referred to in Article 200, Paragraphs 1 and 2, the matter concerning personal or family conditions referred to in Article 201 and the reproach for a criminal offence referred to in Article 202 of this Law, which is realized or made accessible to other persons in scientific or literary works, works of art or public information, in the discharge of official duty, political or other public or social activity, or journalistic work, or in the defence of a right or in the protection of justifiable interests, if, from the manner of expression and other circumstances, it clearly follows that such conduct was not aimed at damaging the honour or reputation of another.

*Article 23*

*In Article 203, the words: “if, from the manner of expression and other circumstances, it clearly follows that such conduct was not aimed at damaging the honor or reputation of another” are replaced with the words: “unless, from the manner of expression and other circumstances, it clearly follows that such conduct was aimed only at damaging the honor or reputation of another”.*

**Institution of Criminal Proceedings for Criminal**  
**Offences Against Honour and Reputation**  
**Article 204**

(1) Criminal proceedings for the criminal offences against honour and reputation referred to in Articles 199 to 202 of this Law shall be instituted by a private charge.

(2) If the criminal offences referred to in Articles 199 to 202 of this Code are committed against a deceased, criminal proceedings may be initiated by a private charge brought by the spouse, children, parents, adopters, adoptees, brothers or sisters of the deceased.

**Publication of Judgment for Criminal Offences Against  
Honour and Reputation  
Article 205**

The court judgment pronouncing a perpetrator culpable of the criminal offence of insult, defamation, exposure of personal or family conditions and reproach for a criminal offence committed through the press, radio or television may be announced by the same means, in whole or in part, following a request by the aggrieved person at the cost of the perpetrator.

**Duress Against Officials Engaged in the Administration of Justice  
Article 309**

(1) Whoever makes demands on a judge, State Attorney, notary public, Public Defence Attorney by force, threat or another form of coercion to undertake actions or pass a decision, within or outside the framework of his authority, or whoever mediates in such acts or demands, if by so acting some other criminal offence for which a more severe punishment is prescribed is not committed, shall be punished by imprisonment for six months to five years.

(2) Whoever, during proceedings before a court, but prior to the rendering of the final judgment, expounds his opinion in the public media, at a public rally or in front of a body of persons on how the official engaged in the administration of justice should act in a particular case or which decisions he should pronounce, shall be punished by a fine of up to one hundred and fifty daily incomes or by imprisonment not exceeding six months.

(3) There shall be no criminal offence referred to in Paragraph 2 of this Article if the act is committed by the defendant or his defence counsel, if they expressed their opinion following an official statement to the general public by the State Attorney or the judge regarding the case in question.

***Article 34***

*In Article 309, Paragraph 1, the words: "Public Defence Attorney" are erased.*