



**COUNCIL OF EUROPE  
DEPARTMENT FOR THE EXECUTION OF JUDGMENTS  
OF THE EUROPEAN COURT OF HUMAN RIGHTS  
STRASBOURG, FRANCE  
Email: DGI-Execution@coe.int**

Zagreb, February 17, 2021  
Ref. No: KLJP-08-02/2021

## **RULE 9.2. COMMUNICATION**

concerning

**Stojanović group of cases v. Croatia  
No. 23160/09**

(Marunić v. Croatia App. No.51706/11  
Narodni list d.d. v. Croatia App. No. 2782/12)

from

**Human Rights House Zagreb**

1. This submission responds to the Government's Action Plan Updates of August 13, 2018<sup>1</sup> and of January 4, 2021<sup>2</sup>, which proposes to close the examination of general measures in this group of cases considering that the general measures taken can prevent similar violations. This submission aims to update the Committee of Ministers that full and effective implementation of general measures has not yet been achieved, which is why the closure of examination of general measures would be premature.

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<sup>1</sup> Government of the Republic of Croatia, Office of the Representative of the Republic of Croatia before European Court of Human Rights, Action Plan Update, 10 August 2018, Class: 004-02/18-05/02, Reg.: 50447-02/02-18

<sup>2</sup> Government of the Republic of Croatia, Office of the Representative of the Republic of Croatia before European Court of Human Rights, Action Plan Update, 4 January 2021, Class: 004-02/18-05/02, Reg.: 50447-04/2-20-25



2. This submission is prepared by *Human Rights House Zagreb*, a civil society organization registered in Croatia. *Human Rights House Zagreb*<sup>3</sup> is a human rights watchdog and advocacy organization founded in 2008 as a network of civil society organizations with the goal to protect and promote human rights and fundamental freedoms through research, monitoring, public advocacy, and education.

### I. Background

3. These cases concern violations of the applicants' right to freedom of expression (violations of Article 10).
4. In *Stojanović*, the applicant was ordered to pay damages to the Minister of Health in defamation proceedings for statements in two articles criticizing the Minister. The domestic courts held the applicant liable for the article's title even though the domestic legislation provided that such responsibility could only be imputed to the editor-in-chief.
5. In *Marunić*, the applicant, a director of the municipal company was dismissed following her public statements in response to its chairman's criticism. In the ensuing civil proceedings for wrongful dismissal, in 2009, the Supreme Court rejected her claims considering that she exceeded the limits of permissible criticism.
6. In the *Narodni list d.d.*, the applicant's company was ordered to pay damages following the publication of an article found to defame a judge. The amount of non-pecuniary damages that the applicant company was ordered to pay was HRK 50,000 (some EUR 6,870).
7. In all these cases, ECtHR established that domestic courts had erroneously qualified the applicants' statements as factual statements rather than value judgments, and respectfully in the *Narodni list* case domestic courts ordered the newspaper's publisher to pay disproportionate damages which discouraged an open discussion on matters of public concern (*Narodni list d.d.*, §§ 70, 71).
8. The following paragraphs address the relevant sections of general measures of the Action Plan Update, and indicate shortcomings in ensuring that domestic courts make proper distinction between the "statements of fact" and "value judgments". In addition to and considering the **issues raised by the ECtHR in the *Narodni list d.d.* case have not been properly addressed by the Government's Action plan Update. Human Rights House Zagreb will propose additional general measures that should be addressed before the cases can be closed. These are:**

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<sup>3</sup> <http://www.kucaljudskihprava.hr/en/>



- (a) Measures aimed at ensuring media freedoms in Croatia;**  
**(b) Measures ensuring that domestic courts properly assess whether controversial value judgments fall within proportionate free speech;**  
**(c) Measures ensuring that the amount awarded in damages should be proportionate to the injury to reputation suffered.**

## II. PROPOSED GENERAL MEASURES

### A. Measures aimed at ensuring media freedoms in Croatia

9. Human Rights House Zagreb would like to highlight a range of issues relating to media freedoms and defamation in Croatia. According to the 2019 Annual Ombudswoman Report, the Croatian Journalists' Association (HND) pointed to an increasing number of lawsuits against journalists and the media for publishing facts, transmitting statements, and defamation, which has a chilling effect on reporting on prominent individuals and social problems.<sup>4</sup>
10. In support of this, according to the Croatian Journalists' Association, the 2019 data indicates that a total of 1,163 court proceedings were conducted against journalists and editors-in-chief of 19 media outlets. Although the 2020 data shows lower numbers (905 lawsuits) against journalists and the media in Croatia, it is obvious that these lawsuits are aimed at censorship and intimidation. Burdening media outlets with legal proceedings represent a serious and dangerous mechanism that threatens media freedoms<sup>5</sup>.
11. In the context of a large number of lawsuits against journalists for insults, defamation, and public shaming (more than 1000 in 2018)<sup>6</sup> and their extremely negative impact on freedom of speech and media freedom, a protest of journalists was held in March 2019<sup>7</sup>, which among other things sought an urgent amendment of the penal legislation to prevent misuse of lawsuits as means of pressure on journalists<sup>8</sup>.

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<sup>4</sup> Annual Ombudswoman Report 2019, page 125, link available at: <https://www.ombudsman.hr/wp-content/uploads/2020/03/lzvješće-pučke-pravobraniteljice-za-2019.pdf>

<sup>5</sup> Croatian Journalists' Association, CJA's Poll: Over 905 Lawsuits against Journalists and the media currently active in Croatia, 3 May 2020, link available at: <https://www.hnd.hr/eng/cja-s-poll-over-905-lawsuits-against-journalists-and-the-media-currently-active-in-croatia>

<sup>6</sup> Human Rights House Zagreb, *Human Rights in Croatia: Overview of 2018*, link available at: <https://www.kucaljudskihprava.hr/wp-content/uploads/2019/03/Ljudska-prava-u-Hrvatskoj-2018.pdf>

<sup>7</sup> Croatian Journalists' Association, A protest that united journalist, 2 March, 2019, link available at: <https://www.hnd.hr/prosvjed-koji-je-ujedinio-novinare>

<sup>8</sup> Human Rights House Zagreb, *Human Rights in Croatia: Overview of 2019*, para 52, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP\\_godisnjelzvjesce2019\\_ENG\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjelzvjesce2019_ENG_web.pdf)



12. According to the results of an annual poll conducted by the Croatian Journalists' Association, until May 2020 of the total number of 905 lawsuits, 859 refer to civil lawsuits over violation of honor and reputation led against the publishers, their editors and journalists for published texts and articles, while the other 46 are currently active criminal lawsuits. The most prominent among prosecutors are politicians, businessmen, public figures, local government units, companies, associations, chambers and even judges themselves<sup>9</sup>.
13. In 2019, there were cases of intimidation of journalists: death threats, public verbal assaults, and insults directed against journalists attempting to disable recording and reporting, bomb threat to the newsroom, threatening messages on the Croatian Journalists' Association building, and threatening graffiti on buildings and in the vicinity of newsrooms. The public condemnation of these incidents by officials and institutions was absent, as well as the lack of effective and prompt investigation, prosecution, and punishment of perpetrators in cases of intimidation and threats against journalists.<sup>10</sup>
14. Threats and intimidation against journalists and the media are of particular concern when they come from officials and members of political parties. Defamation and insults lawsuits that are often brought against journalists and the media by high-ranking state officials, members of parliament and their families, judges, institutions and the public media outlet are putting additional pressure on critical and investigative journalism.<sup>11</sup>
15. In 2020, Croatia ranks 59th out of a total of 180 places on the Reporters without Borders' media freedom rankings<sup>12</sup> which represents an improvement of five places compared to 2019, but Croatia remains at the back of EU countries and behind some countries in the region in terms of media freedom.
16. Reporters Without Borders states that the Croatian government has not stopped meddling in the affairs of public TV broadcaster HRT, and HRT's management

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<sup>9</sup> Croatian Journalists' Association, CJA's Poll: Over 905 Lawsuits against Journalists and the media currently active in Croatia, 3 May 2020, link available at: <https://www.hnd.hr/eng/cja-s-poll-over-905-lawsuits-against-journalists-and-the-media-currently-active-in-croatia>

<sup>10</sup> Human Rights House Zagreb, *Human Rights in Croatia: Overview of 2019*, para 55, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP\\_godisnjelzvjesce2019\\_ENG\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjelzvjesce2019_ENG_web.pdf)

<sup>11</sup> Human Rights House Zagreb, *Human Rights in Croatia: Overview of 2019*, para 57, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP\\_godisnjelzvjesce2019\\_ENG\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjelzvjesce2019_ENG_web.pdf)

<sup>12</sup> Reporters Without Borders, *2020 World Press Freedom Index*. Available at: <https://rsf.org/en/ranking#>



continues to sue employees who have complained about this problem and has gone so far as to bring a complaint against the Croatian Journalists' Association. Additionally, physical attacks, along with threats and cyber-violence, continue to be a major problem for journalists without any reaction from the authorities.<sup>13</sup>

17. For the fifth year in a row, Croatia is without a valid media strategy which has not been developed in 2020 either. A clearly defined media policy should have been a basis for the announced media legislation change.
18. There is still a lack of support for the work of non-profit media. A total of HRK 30 million was planned from the European Social Fund for the financing of community media (non-profit media). The allocation of funds was pending for three years. Finally, in May 2019 the Ministry of Culture launched a call for proposals for only HRK 15 million.
19. In 2019, there were legislative changes within the Criminal Code which the government presented as a positive development for media freedoms in Croatia. Notably, the criminal offense of serious shaming was deleted, and the offense of insult was further defined in a way that does not apply to journalists.<sup>14</sup> However, the Croatian Journalists' Association stressed that the criminal offense of serious shaming did not represent a threat to media freedoms and freedom of expression in contrast to criminal offenses against honor and reputation which should be decriminalized.<sup>15</sup>

#### **B. Measures ensuring that domestic courts properly assess whether controversial value judgments fall within proportionate free speech**

20. Even though the supervision of the implementation of measures has been closed in *Radobuljac v. Croatia* (App.no. 51000/11), HRHZ would like to highlight the similarity with the *Narodni list d.d.* case. In both cases, the ECtHR found a violation of Article 10 where domestic courts wrongly characterized something as insulting and outside the acceptable free speech, when it should have been regarded as permissible. Although the supervision of the above-mentioned case was closed in 2018 on the grounds that it was an isolated incident, *Narodni list d.d.* case from 2019 indicates the opposite.

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<sup>13</sup> Reporters Without Borders, *Croatia, Problematic public TV*, link available at:

<https://rsf.org/en/croatia>

<sup>14</sup> Human Rights House Zagreb, *Human Rights in Croatia: Overview of 2019*, para 57, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP\\_godisnjelzvjesc2019\\_ENG\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjelzvjesc2019_ENG_web.pdf)

<sup>15</sup> Croatian Journalists' Association, *CJA welcomes delation of the criminal offence of serious shaming from the Criminal Code*, 24 October 2019, link available at: <https://www.hnd.hr/hnd-pozdravlja-brisanje-kaznenog-djela-teskog-sramocenja-iz-kaznenog-zakona>



21. Furthermore, on 27 December 2018, the Zagreb Municipal Court rendered a non-final judgment against the NewsBar satirical-humorous internet portal for insulting another journalist, Velimir Bujanec, and awarding him HRK 12.000 in compensation for non-pecuniary damage for his tarnished reputation, as well as HRK 12.050 with respect to costs of proceedings.<sup>16</sup>
22. This judgment raised public concern about media freedoms and freedom of expression. The University of Zagreb Law Professor Maja Munivrana Vajda pointed out that: “The NewsBar TV is a satirical-humorous portal. The news published on the portal was invented with the aim of creating a satirical-humorous peace and should therefore not be taken seriously. The essence of the criminal offense of defamation is the perpetrators’ attempt to present untrue facts as true and this was clearly not the case”.<sup>17</sup>
23. Additionally, numerous lawsuits were filed against journalists by high-ranking politicians. Notably, Milijan Brkić, at that time a vice-president of the Parliament and the former Deputy Director of the Police, won a defamation lawsuit against the publisher of the weekly magazine Lider because of the article entitled “Politics is a whore” stating that Brkić has plagiarized his dissertation and informed the war crimes suspects that police will arrest them (although it was previously proven that he copied his dissertation and that he admitted that he reported on what was being prepared for the war crimes suspects).<sup>18</sup>
24. Additionally, in 2020, the Croatian Journalists Association informed about a new wave of lawsuits against journalists and media initiated by former Minister Tomislav Tolušić, former MP Branimir Glavaš and a Rector of the University of Zagreb Damir Boras. Notably, Tomislav Tolušić, a former Government Minister filed a dozen lawsuits against the media for disputed articles referred to Toulusic’s winery as well as to the procedure initiated against him due to incorrect filling in of the property card. The president of the CJA stated that “Any criticism of their work is addressed by filing lawsuits as a form of intimidating journalists and imposing censorship”.<sup>19</sup>

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<sup>16</sup> ius-info.hr, Article: “Judgements for satire blur the boundaries of what is acceptable and what is unacceptable”, 7 January 2019, link available at: <https://www.iusinfo.hr/aktualno/dnevne-novosti/36486>

<sup>17</sup> ius-info.hr, Article: “Judgements for satire blur the boundaries of what is acceptable and what is unacceptable”, 7 January 2019, link available at: <https://www.iusinfo.hr/aktualno/dnevne-novosti/36486>

<sup>18</sup> Croatian Journalist Association, Judicial Attack on the media: For mental anguish freedom of expression is being amputated”, 6 January 2019, link available at: <https://www.hnd.hr/pravosudni-udar-na-mediije-zbog-dusevnih-boli-amputira-se-sloboda-izrazavanja>

<sup>19</sup> Novilist.hr, New wave of SLAPP lawsuits against Croatian journalists and media: Tolušić, Glavaš and Boras are suing the most”, 4 November 2020, link available at: <https://www.novilist.hr/novosti/hrvatska/novi-val-slapp-tuzbi-protiv-hrvatskih/>



25. Moreover, of particular concern are situations in local communities where the influence of local political structures can have a negative impact on journalistic freedom. Notably, Vice president of the Croatian Journalists' Association and editor-in-Chief of the Virovitica.net portal expressed their concern that local media are especially exposed to pressure and lawsuits from "local sheriffs".<sup>20</sup>
26. The above cases are only examples of what kind of decisions are being rendered at municipal courts in Croatia. Even though those are not final judgments it is obvious that the first instance courts do not properly apply the proportionality test, i.e. courts do not take into account the necessity to make a proper distinction whether a controversial value judgment falls within the proportionate free speech. Therefore, it remains to be seen whether domestic courts will have operated this proportionality test in their case-law in order to align it with the requirements of Article 10 and jurisprudence of ECtHR, for which reason the closing of supervision of this group of cases would be premature.

### **C. Measures ensuring that the amount awarded in damages should be proportionate to the injury to reputation suffered**

27. In the *Narodni list d.d.* case, ECtHR noted that a domestic court ordered the applicant's company to pay HRK 50.000 of non-pecuniary damages, which is disproportionate to the injury to reputation suffered. As a comparison and to put in the relation, this amount equals two-thirds of the sum awarded for mental anguish resulting from the wrongful death of a sibling<sup>21</sup>.
28. In 2019, domestic courts continued awarding high and disproportionate amounts of damages for insults and public shaming against journalists. Even though those judgments are non-final, the first instance courts practice is worrying<sup>22</sup>.
29. According to the poll conducted by the Croatian Journalists' Association in 2019, the HRT filed 35 lawsuits against journalists and editors-in-chief claiming a total value of HRK 2,027.500 HRK in non-pecuniary damages<sup>23</sup>.

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<sup>20</sup> Croatian Journalists Association, HND warns of a new wave of lawsuits against journalists and media, 28 October 2020, link available at: <https://hnd.hr/hnd-upozorava-na-novi-val-tuzbi-protiv-novinara-i-medija>

<sup>21</sup> See §71 of the *Narodni list d.d. v. Croatia* Judgement.

<sup>22</sup> Human Rights House Zagreb, *Human Rights in Croatia: Overview of 2019*, para 54, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP\\_godisnjelzvilesce2019\\_ENG\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjelzvilesce2019_ENG_web.pdf)

<sup>23</sup> Croatian Journalist' Association, Number of HRT lawsuits against journalists and media, link available at: <https://www.hnd.hr/broj-tuzbi-hrt-a-protiv-novinara-i-medija>

30. According to information provided to CJA from the Ministry of Justice as of December 31st, 2019, the total number of active criminal cases in which the defendants are journalists in all courts in Croatia was 111. Additionally, during 2019, a total of 416 civil lawsuits were filed against journalists with claims for damages<sup>24</sup>.

### III. Conclusions and recommendations

31. The Human Rights House Zagreb considers the information provided above demonstrates the further work on general measures by the Croatian Government which is still needed to ensure full and effective implementation of the judgments in the *Stojanović* group of cases and that the closure of general measures would be premature.

32. Furthermore, having in mind that general measures proposed by the state are insufficient, Human Rights House Zagreb recommends the additional measures set out below and therefore invites the Committee of Ministers to request the Croatian government to adopt them.

33. For the purpose of effectively implementing all measures stated in the Government's Action Plan aimed at ensuring that domestic courts make proper distinction between the "statements of fact" and "value judgments", and adopting additional general measures in order to ensure full and effective implementation of the judgments, HRHZ kindly asks the Committee of Ministers of the Council of Europe to request the Croatian government to take:

1. Measures aimed at ensuring media freedoms in Croatia;
2. Measures ensuring that domestic courts properly assess whether controversial value judgments fall within proportionate free speech;
3. Measures ensuring that the amount awarded in damages should be proportionate to the injury to reputation suffered.

34. In further specifying of the above general measures for implementation particular attention should be placed on:

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<sup>24</sup> Croatian Journalists' Association, CJA's Poll: Over 905 Lawsuits against Journalists and the media currently active in Croatia, 3 May 2020, link available at: <https://www.hnd.hr/eng/cja-s-poll-over-905-lawsuits-against-journalists-and-the-media-currently-active-in-croatia>

- Ombudswoman's 2019 recommendation<sup>25</sup> to the Ministry of Culture to draft a new Media Strategy for public discussion as soon as possible;
- Recommendation CM/Rec(2016)4 to ensure independence of the media and safeguard media pluralism, including the independence and sustainability of public-service media and community media, which are crucial elements of a favourable environment for freedom of expression;<sup>26</sup>
- Amending the Criminal Code in line with the Recommendation CM/Rec(2016)4<sup>27</sup> in order to ensure that in the criminal offence of defamation the illegality is excluded for journalistic and artistic work if it derives from the manner of expression and other circumstances where the perpetrator did not act with the predominant goal of damaging honor and reputation;
- Recommendation CM/Rec(2016)4 that investigations into killings, attacks and ill-treatment must be effective and therefore respect the essential requirements of adequacy, thoroughness, impartiality and independence, promptness and public scrutiny and to take all necessary steps to bring the perpetrators of crimes against journalists and other media actors to justice, whether they are State actors or not;<sup>28</sup>
- To enhance educational activities for judges concerning the question of "relevant and sufficient reasons" as well as distinction between "statements of fact" and "value judgements" in order to be fully applied and explained when rendering judgements and to include in educational activities ECtHR freedom of expression case law;
- Recommendation to the Judicial Academy to conduct round tables, seminars and other educational activities regarding application of the Orientational criteria of the Supreme Court of the Republic of Croatia for awarding non-pecuniary damages for defamation;

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<sup>25</sup> Annual Ombudswoman Report 2019, page 130, link available at: <https://www.ombudsman.hr/wp-content/uploads/2020/03/lzviešće-pučke-pravobraniteljice-za-2019.pdf>

<sup>26</sup> Recommendation CM/Rec(2016) of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies, link available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806415d9#\\_ftn1](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1)

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.



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- Recommendation the Judicial Academy to develop a partnership with civil society organisations and the media for the promotion of best practices for the protection of journalists and other media actors and for combating impunity in line with CM/Rec(2016)4. This should involve putting into practice the principles of open government and open justice and adopting a constructive and responsive attitude to civil society and media reporting on threats and violence against journalists and other media actors, highlighting gender-specific and other issues, as appropriate. It should also involve active co-operation in publicising and educating about relevant issues and standards;<sup>29</sup>

Sincerely,

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<sup>29</sup> Ibid.