CASE ANALYSIS

Milan Savić v. Insajder tim doo Beograd (Informer);

Country: Serbia;

Judical body: Court of Appeal in Belgrade (Serbia);

Year: 2021;

Date of decision: 2.9.2021;

Case no. **Gž3 277/21;**

**Type of law: Civil law;**

**Themes:**, freedom of expression, public debate, political speech

**Case Summary and Outcome**

The Court of Appeal in Belgrade confirmed the judgment of the Higher Court in Belgrade, and have determined that the internet portal *Informer.rs* which reported the statement of one of the city councilors in Belgrade in which he challenged applicant’s reputation and honor by calling him *pest columnist, thief* and with falsely claiming that the applicant was sentenced to prison in 2005 for economic crime, demaged applicant’s reputation and honor. The Court primarily based its decision on the fact that the mentioned internet portal did not act in accordance with due media attention standard since it completely sided with the city councilor in terms of editorial equipment, title and subtitles, acting uncritically and without adequate verification (not in terms of material truth) of the relevant information.

The Court was also comparing the interest to protect applicant’s dignity and general interest to ensure a wider degree of protection when it comes to the political speech since the applicant used to be a holder of political office, and have found that there was unacceptable injury to the applicant’s reputation and honor in particular case since disputed defamatory statements do not contribute to the political debate or the debate on the general interest. The Court obliged defendants to pay applicant 100.000 dinars (approximately 900 EUR) for compensation for non-pecuniary damage due to damage of reputation and honor. However, the Court properly applied many more legal principles and pointed out that regardless of the general freedom of media reporting, individual rights need to be protected.

**Facts**

Almost two decades ago, the applicant was the general director of a utility company that deals with the construction and maintenance of roads and highways in Belgrade, the capital of Serbia. He has been retired for many years and is not involved in politics, but as an expert in the field of construction and maintenance of roads and highways, he is often invited to comment on issues considering construction projects related to the construction of roads, squares and the like. Thus, at the end of 2019, Milan Savić was invited to write a column in the well-known Serbian weekly magazine *NIN*, in which he pointed out from a professional point of view that the city government spent far more money on the reconstruction of the main square in Belgrade than the real market value for performed works is.

Immediately after the applicant’s column was published, the reaction of one of the city councilors of the city of Belgrade was followed. He forwarded the statement of denial of the the applicant’s claims to almost all influential media in Serbia. In his statement, the city councilor did not contested applicant’s argumentation, but used the opportunity to challenge his reputation and honor. He not only called him a *pest columnist* and a *thief*, but also falsely pointed out that the applicant was sentenced to prison in 2005 for economic crime.

Among the numerous other media, the internet portal *Informer.rs.* with a large number of readers, reported the statement of the city councilor and completely sided with him in terms of editorial equipment, title and subtitles, acting uncritically and without adequate verification (not in terms of material truth) of the relevant information.

The applicant filed a lawsuit against the editor-in-chief and publisher of the mentioned internet portal to the High Court in Belgrade, demanding the court to oblige the defendants to pay him compensation for non-pecuniary damage due to damage of reputation and honor.

During the court proceedings, the applicant obtained a relevant document from the competent authority (police department) and has proved that he had never been convicted in criminal proceedings and focused his argumentation around that fact while underlining that the defendants have not acted in line with due media attention standard since it published false information which was easily accessible and verifiable.

The second direction of the applicant’s legal argumentation concerned the fact that the insults towards him did not refer to the results of his work as a holder of public office and as such it do not fall under protected political speech. Those insults are aimed at personal defamation without any real striving to contribute to the public debate on the general issue.

The defendants basically stated that they only reported the statement of the city councilor which was previously published in another media, and that there is no place to apply defamation rules since it is a issue of protected political discourse. Accordingly, they denied their legal responsibility.

**Decision Overview**

The Higher Court in Belgrade have determined that the internet portal *Informer.rs* demaged applicant’s reputation and honor and The Court of Appeal in Belgrade confirmed the decision. The Court based the decision on the relevant legal norms contained in the Serbian Law on Public Information and the Media - Official Gazette of the RS, no. 83/2014, 58/2015 and 12/2016 – authentic interpretation (hereinafter: LPIM).

The LPIM in Art. 9 (2) prescribes the journalistic duty of care (media attrention standard), which is reflected in the obligation of the editor and journalist to attentively, in accordance to a given situation, before publishing information regarding a certain event, occurrence, or person, verify the source, veracity, and comprehensiveness of the information, which is especially important when it concerns statements of fact with potential to harm. This duty is justifiably imposed on the media as the visibility and reach of the material they publish may in a significant way negatively affect the rights of the person to whom the information pertains. Altough, the above position is somewhat relativized by the judicial practice according to which the media are not obligated to determine the material truth, verification of information in particular case would be easy considering that it could be done by inspecting public records. In the Court's opinion, the average reader may get the impression that the applicant was really sentenced to prison for economic crime, what was proven to be false in the proceedings. In that context, the court concluded a violation of due care, ie. violation of media attention standard.

In accordance with Art. 116 of the LPIM, journalists take no responsibility regarding the publishing of harmful information if the information was:

*accurately conveyed from a public discussion in the National Assembly or a public discussion held within a body of the National Assembly; accurately conveyed from court proceedings, pursuant to this Law; accurately conveyed from a public gathering, and the member of the media acted with due journalistic diligence; the information was contained in a document belonging to a public governing authority to which the law that regulates free access to information of public importance applies; was published in a live broadcast and the member of the media acted with due journalistic diligence.*

Taking into account stated legal position, if, in this particular case, the internet portal had reported the official announcement of a public authority, it would not be legally responsible for possible defamation. However, during the proceedings, it was proven that the statement of the city councilor was not made through the official press service, nor he was acting in an official capacity.

Regarding the conveyance of information from another media, in Serbian judicial practice, the standpoint is that despite the fact that a specific piece of information was published by one media, the defendants can still be held liable for damages. The authenticity of the conveyance of the illicit information by itself does not make publishing such information permissible. The fact that an impermissible claim is in circulation does not, by itself, justify its publishing. In such a case, conveying another’s impermissible claim is equivalent to expressing one’s own impermissible claim. In line with such legal position, the Court did not accept the argument that defendants are not legally responsible for defamation since they reported the statement of the city councilor which was previously published in another media.

Art. 8 of the LPIM states that: “An elected, appointed, or designated holder of public and political office shall be obligated to tolerate the expression of critical opinions that relate to the results of their work or the political actions they conduct and are in connection with performing their function, regardless if they feel personally insulted by the opinions expressed.” In particular case, the Court found that offensive and aggressive discourse towards the applicant does not concern the results of his work as a public office holder nor does it contribute to the public/political debate. After all, the Court referred to the general rule that the public has no interest in being informed about false information.

DECISION DIRECTION

The Court essentially applied the standard established in the ECHR jurisprudence that the journalists must systematically and formally distance themselves from the claims of other that could insult or provoke others or damage their reputation. If media outlets in any way join another’s claim by accepting it as their own (by editorializing, with the headline, title, subtitle, etc.), the claim will be considered as their own. From that legal principle, the Court concluded a violation of due media attention standard.

CASE SIGNIFICANCE

The decision establishes a persuasive precedent within its jurisdiction.