

Amendments to the Civil Procedure Law: Ill-effects on the media resembling the model from the 90s

The Draft Civil Procedure Law, currently under public debate, stipulates a number of unacceptable provisions that limit citizens' access to justice by imposing payment of (high) court fees. If adopted in its current form, its ill-effects on local media could be compared to the ones of the infamous 1998 Law on Information. In a situation where media have been facing so-called SLAPP lawsuits in recent months, in which private companies close to the government are demanding multimillion amounts from them for critical reporting, such legislation could lead to a complete close-down of local media under the financial burden of procedural obligations imposed by the new law. For these reasons, the existing Draft Law is deemed utterly unsustainable. We therefore invite you to join our request for its withdrawal as soon as possible.

The key shortcomings of the current Draft Law are the following:

- **The filing of a complaint, counter-statement and appeal is conditioned by paying the full amount of court fees in advance** – *if the fee is not paid within the given deadline, the application is considered withdrawn.*
- **Retroactive application of the law** – *immediately after entering into force, the new legislation shall be applied to ongoing proceedings initiated under the provisions of the earlier law but which have not been completed by the time the new law is passed.*
- **Non-participatory and non-transparent drafting procedure** – *the procedure completely excluded the participation of representatives of professional civil society organizations in the working group for drafting the law.*

The proposed amendments to the CPL contain a provision stipulating that the parties in the procedure **shall be denied access to the court if they fail to pay the court fees** (which can range up to 97,500 dinars) **in full and within 8 days**. Given that court fees are paid not only when filing a complaint, but also when issuing a counter-statement to a lawsuit filed against you, the right of the defendant to present his defense is also conditioned by the payment of the court fee. **As the amount of the court fees is defined in proportion to the claim, this leads to a situation where an economically stronger plaintiff can exhaust the defendant financially simply by filing a lawsuit with a high enough claim, even if and when his claim has no legal and factual grounds.**

The ill effects of such legislation could be catastrophic for all citizens of Serbia, especially local media that were targeted with so-called SLAPP lawsuits in the previous months – a trend that is, as it seems, just starting. For example, in April of this year, the media reported that the company “Millennium team” had filed 11 actions for damages against various media, including small local media outlets such as the portal “InfoVranjske” and the agency “JugPress”, with identical claims amounting to 100.000 EUR, or 11.75 million RSD each. The reason for the lawsuits was the reporting of these media from the press conference of the People’s Party (Narodna stranka) in Vranjska Banja, where the party’s president Vuk Jeremic spoke critically about this company and its engagement in several large state construction projects. **Pertaining to the provisions of the new law, the defendants would lose their right to issue a counter-statement and present their defense if they failed to pay within 8 days the court fee for**

counter-statement in the full amount of 48.750 RSD. Also in April, the Vojvodina Research and Analytical Center (VOICE) faced two actions for damages filed by individuals linked to the “Niveus team”, claiming one million RSD each. Complaints were filed against 6 VOICE journalists with damages claims that exceed by far the amounts typically awarded by the courts in these types of disputes. It is therefore clear that the purpose of such lawsuits is economic exhaustion of media for their critical reporting. On the other hand, in case a legal action is filed against them, publishers, editors-in-chief and journalists are obliged by the provisions of the Law on Public Information and Media to file a counter-statement within 8 days from the day they received the complaint. All this can clearly lead to a very dangerous situation in which publishers, editors-in-chief and journalists, in order to meet the legal obligation, must secure (in certain cases) significant funds for the court fees in a very short period of time. Moreover, if they fail to pay the fee and do not file a counter-statement, they are risking a ruling against them due to omission, which obliges them to pay proceedings costs to the plaintiffs, including compensation of the fee for filing a lawsuit in the amount of 97.500 RSD. **In case of a verdict due to omission, the court makes its decision only based on facts and evidence presented by the plaintiff in the lawsuit. In this way, one who cannot even afford to pay for a fee loses every opportunity to present evidence in his defense that would prevent the court from ruling in favor of the prosecutor, and oblige that media outlet to pay millions in damages.** Under the provisions of the new law, filing an appeal against such a judgment would also be conditioned by the prior payment of the fee. In keeping with the legal restrictions, **it is not allowed to present new evidence and facts when appealing a verdict that is issued due to omission, which further prevents the financially less potent party from defending itself.** In this way, the defendant, who is obliged to pay damages by the first-instance verdict, may be discouraged from filing an appeal out of fear of paying an additional appeal fee in a very short period of time.

Shortly after this first round of lawsuits, the owners of the company “Millennium team” took personal legal actions against the “InfoVranjske” portal for the same texts, with a damages claim of 2 million RSD. **It is evident that, should the new Civil Procedure Law be adopted in this form, filing several such lawsuits against the same media outlet – and this includes multiplying the costs of filing a counter-statement – would easily lead to its financial exhaustion and inability to operate in the future.**

To make matters worse, in addition to all mentioned above, the Draft Law foresees its retroactive application. Namely, all **ongoing court proceedings that are not concluded by the entry into force of the new law will be governed by the provisions of the newly adopted legislation. It is not clear from the Draft itself what implications this will have on unpaid court fees, or whether, and within what period, lawsuits and counter-statements, for which fees have not been paid yet, will be considered withdrawn.**

It is also important to note that the **law drafting process itself was neither transparent nor inclusive.** This resulted in legal solutions that are in line with the interests of the participants in that process, but against the interests of most citizens. This is extremely questionable, bearing in mind that this is a law of immediate importance for a vast majority of people. **The exclusion of representatives of professional civil society organizations from the drafting process has resulted in an unacceptable proposal, which is now irreparable in this form.**

For these reasons, we urge the Ministry of Justice to withdraw the Draft Law on Civil Procedure without delay and to start a new drafting process that will include and involve all relevant actors and which would take into account all potentially negative effects of the proposed solutions. The solutions presented in the existing Draft Law are very similar to the legal solutions of the infamous law from 1998, which provided for an urgent procedure, with the presumption of guilt on the part of the accused media outlet, and shifting the burden of evidence onto their side. It is obvious that the creators of the 1998 Law on Information have learnt how to effectively re-establish a mechanism for systemic media suppression in a less perceptible and direct manner.

Signatories:

Local Independent Media Association Local Press

Slavko Ćuruvija Foundation

Civic initiatives

Independent Journalists' Association of Vojvodina (NDNV/IJAV)

Independent Journalists' Association of Serbia (NUNS/IJAS)