

**Municipal Criminal Court of Zagreb
Case number 7. K-26/11**

Non-certified English translation

**Judgment of
26 January 2015**

Abbreviations:

SIPO – State Intellectual Property Office of the Republic of Croatia.
[Croatian: DZIV - Državni zavod za intelektualno vlasništvo]

CC – Criminal Code of the Republic of Croatia.
[Croatian: KZ – Kazneni Zakon]

CPA – Criminal Procedure Act of the Republic of Croatia.
[Croatian: ZKP – Zakon o Kaznenom Postupku]

REPUBLIC OF CROATIA

Municipal Criminal Court of Zagreb
Ilica - Selska. Ilica 207

IN THE NAME OF THE REPUBLIC OF CROATIA

JUDGMENT

The Municipal Criminal Court of Zagreb under judge Marijan Bertalanić as the sole judge, with the court registrar Jasmina Popović, in a criminal complaint against the defendant Vesna Stilin concerning charges under Art. 199, par. 2 and Art. 200 par. 2 of the Criminal Code of 1997 (CC/97), pursuant to a private prosecution filed by Željko Topić on 4.2.2011, amended by the submission of 28.04.2014, and following a hearing in the presence of the private plaintiff Željko Topić accompanied by his legal representative, attorney Janjko Grlić and the accused Vesna Stilin accompanied by her defense counsel, attorney Jadranka Sloković, on 26 January 2015,

rules that

Pursuant to Art. 453 par. 1 of the Criminal Procedure Act of 2008 (CPA/08):

The accused STILIN Vesna, the daughter of Milan and Ruzica r. Bekavac, born 21.4.1954 in Zagreb, resident at Biokovske stube 4, a Croatian citizen, having a graduate degree in legal studies (LL.B.), married, no children, no criminal record,

IS ACQUITTED OF THE CHARGES

according to which [*it was alleged that*]:

1. On 22 November 2010 in the letter sent to the Croatian Government, the Prime Minister Jadranka Kosor, which was also sent to the Croatian Parliament (deputy Bianca Matković) for information, as well as to the Minister of Economy, Labor and Entrepreneurship, the Minister of Science, Education and Sports, the Minister of Administration, the Minister of Foreign Affairs and European Integration, the Minister of Culture and the Minister of Finance and Miljenko Pavlaković in HEP, in order to harm the reputation and honor of the private plaintiff by making false statements about him, she stated among other things the following:

- "Due to the manner in which Topić ignored the aforementioned problems, the writers have suffered financial damage because they should have been receiving compensation for the lending of their books in public libraries for at least the past two years."

- "Željko Topić bought his second term as the Director of the State Intellectual Property Office by paying approximately 500,000.00 HRK to the Ministry of Education and Sports (MZOS) during the period of over two years (from May 2007, when the agreement in question was signed, until July 2009, when Primorac left the Ministry), which I also mention, among other things, in the Constitutional complaint no.: U-III 5023/08, which is still sub judice, and where I have challenged Topic's reappointment as the Director in fact, I also submitted my nomination for the position of the Director of the Office after this person, at the end of 2007, secretly ... abolished my department [of the SIPO] without complying with the prescribed statutory procedure ..." "

- "Topic's decisions concerning procedures relating to PLR, which have caused the writers to suffer financial damage and which led to a serious violation of my right to work, at the same time meet the criteria of the criminal offense of "abuse of position and authority" and "negligent performance of duty" ... "

- That the financial resources of the SIPO were used to pay for "the SIPO fleet of six luxury cars, including the supervision of the MZOS, and that he allowed himself to use, in addition to the Audi 6, also a new luxury E-class Mercedes for himself which was hidden among the shelves in the archives in order to cover up the squandering of funds from the state budget."

- "Topic himself has for years provided false information about the number of officials working in my Department (he claimed that there were twice as many officials working there compared to the actual number employed) to the Ministry of Administration which forwarded the received information to the Government of the Republic of Croatia."

- "... Because of Topic's lies, his incompetence for which he compensated by bribery, and due to the lack of supervision [of the SIPO], I am obliged to continue with this procedure which has been unduly protracted in such a disgraceful manner ..."

- ".... for years I have worked overtime managing the aforementioned Department and, unlike Topic and others, I have never requested nor received any financial compensation for this ..."

- "From the perspective of criminal law, Topic's actions in this case comply with the criteria of criminal offenses: negligent performance of duty, abuse of office, abuse in performance of duties, discrimination, violation of the right to work and other labor rights and corruption [bribery] ... "

- "If the supervisory bodies had conducted a proper administrative audit of the Office, i.e. of Mr. Topic, and subjected him to criminal prosecution, he would have been dismissed from his position at the beginning of 2008. The announced reconstruction of the Government should also have led to the dismissal of Mr. Topic, since the disclosure of this information in public would certainly have harmed the Government."

all of which [is alleged to have] damaged the honor and reputation of the private plaintiff, that is, in the described manner, she [is alleged to have] made a false claim which was liable to damage the honor of the other person as the [alleged] defamation became accessible to a large number of persons,

2. On 22 November 2010 in the letter sent to the Croatian Government, the Prime Minister Jadranka Kosor, which was also sent to the Croatian Parliament (deputy Bianca Matković) for information, as well as to the Minister of Economy, Labor and Entrepreneurship, the Minister of Science, Education and Sports, the Minister of Administration, the Minister of Foreign Affairs and European Integration, the Minister of Culture and the Minister of Finance and Miljenko Pavlaković in HEP, in order to belittle and insult the private plaintiff, she stated among other things the following:

- "In the last conversation with Topic (April 2008) in response to my inquiry about what was going to happen with the PLR (due to my dismissal), Topic answered that it was my personal thing. It simply cannot be my personal thing and such a reaction is completely incompetent, which should not come as a surprise, as the person in question completed his education in another country (an economist from Bosnia) and has never passed the professional state examination in Croatia",

such that as described above, the other person was offended due to the [alleged] insult becoming accessible to a large number of persons,

and therefore, by acting in the manner described above, she [is alleged to have] committed the criminal offense against honor and reputation – by defamation - defined and punishable under

Art. 200 par. 2 CC/97, and partly under item 2. the criminal offense against honor and reputation - an insult - described and punishable under Art. 199 par. 2 CC/97, all with the application of Art. 60, par. 1 CC/97.

Pursuant to Art. 143 par.3 CPA/08 the private plaintiff is ordered to reimburse the costs of criminal proceedings according to Art. 145 par. 2, subpar. 1-6 CPA/08, all necessary expenses of the defendant and all necessary expenses and fees of the defendant's legal counsel.

Statement of Grounds

At the commencement of the proceedings, the private plaintiff accused the defendant Vesna Stilin of having committed the offences which are detailed in factual and legal terms above.

The defendant was charged with having committed the criminal offences of defamation and insult on 22.11.2010 before the entry into force of the new CC/11. As the former CC/97 ceased to be valid from the date of entry into force of the new CC/11, it is necessary to consider, pursuant to Art. 3, par. 3 CC/11, the question of legal continuity of the repealed criminal offences of defamation under Art. 200, par. 2 CC/97 and insult under Art. 199, par. 2 CC/97. The court found that in the present case in view of the relevant criminal offences provided for in the new CC/11, legal continuity existed between the repealed criminal offense of defamation [“klevete”] under Art. 200, par. 2 CC/97 and the new criminal offense of dishonor [“sramoćenja”] under Art. 148, par. 2 CC/11, and likewise between the criminal offense of insult under Art. 199, par. 2 CC/97 and the criminal offense of insult under Art. 147, par. 2 of CC/11. Thus the factual description of the alleged offenses with which the defendant is charged may be considered to comply with the legal definition of the criminal offenses under Art. 147, par. 2 and Art. 148, par. 2 CC/11.

When asked to comment on the merits of the complaint, the defendant said that she did not consider herself to be guilty of the offenses with which she was charged.

During the taking of evidence, the defendant and the following witnesses were heard:

- Željko Topić (page no. 221);
- Ružica Cindori (page no. 230);
- Jadranka Oklobdžija (page no. 234); and
- Darinka Vedrina (page no. 235),

and the following documents were read:

[Note: The references to page numbers which follow are to the official file of the proceedings.]

- Letter of Vesna Stilin dated 22 November 2010 (pages no. 5-13),
- Leasing Agreement dated 29 June 2007 (page no. 128a),
- Notification of expiry of Leasing Agreement dated 14 May 2010 (page no. 128),
- Letter from the State Intellectual Property Office (SIPO) dated 9 July 2007 including annexes (pages no. 147-147a),
- Statement of remuneration paid to employees of the SIPO for 2007 (page no. 169),
- Report on the financial audit of the SIPO dated 15 January 2008 (pages no. 170-181),
- Authorization making the leased vehicle available dated 16 May 2007 (page no. 199),
- Agreements for temporary use of official SIPO vehicles dated 17 May 2007 and 17 May 2008 (pages no. 201 and 202),

- List of vehicles owned by the SIPO and vehicles acquired under leasing agreements (pages no. 203 and 204),
- Letter from the SIPO dated 8 April 2008 (page no. 301),
- Decision of the Croatian Government dated 10 April 2008 (page no. 301a),
- Letter from the SIPO dated 19 February 2008 (page no. 302), and
- Regulation on the Internal Organizational Structure of the SIPO dated 6 March 2008 (page no. 308).

In her defense (page no. 309), the defendant **Vesna Stilin** stated that, contrary to what the private plaintiff claimed, she had not written the impugned letter with the intention of defaming him, but for the purpose of defending the public interest, the interests of writers and her own personal interests with respect to the termination of her employment at the State Intellectual Property Office (SIPO). All of the allegations made in her letter were supported by annexes and evidence. In her opinion, the competent authorities who were authorised to conduct administrative audits of the SIPO had failed to fulfil their obligations in relation to the allegations of criminal misconduct raised against the present private plaintiff. She had been relieved of her duty as Assistant Director of the SIPO in 2008 by a decision of the Croatian Government. She was the only one of the five SIPO Assistant Directors at that time to be relieved of duty. The formal reason given for her dismissal was the abolition of the Copyright and Related Rights Department of which she was in charge in her role as Assistant Director. This Department was abolished by means of an amendment to the Regulation on the Internal Organizational Structure of the SIPO issued by the Government and based on a proposal submitted by the private plaintiff in his capacity as SIPO Director at that time. However, in his capacity as Director, the private plaintiff had failed to comply with the prescribed procedure which was confirmed by the testimony of the witness Jadranka Oklobdžija. The private plaintiff acted in this manner with the sole aim of getting rid of her as Assistant Director. After she had been notified of the decision to dismiss her, she subsequently discovered that the private plaintiff had previously sent a letter containing damaging and untrue allegations about her performance as Assistant Director to the then Prime Minister Ivo Sanader. Following her dismissal she continued to receive her official salary for a further year, after which she registered with the Bureau for Employment where she remains on the register to this day. In her opinion, the fact that she was relieved of her duty as Assistant Director could not be considered as sufficient grounds for the termination of her employment with the SIPO because at the time of her dismissal she had the employment status of a permanent civil servant rather than that of a public official. These considerations led her to file a complaint with the Administrative Court but this complaint was rejected. She then submitted an application to the European Court of Human Rights which is still pending before that court in Strassburg. She stated that the competent authorities have not yet ruled on an application which she submitted for the revocation of the Government's decision to dismiss her.

Concerning item 2. of the complaint, it was not her intention to insult the private plaintiff but rather to draw attention to his lack of professional competence in view of the fact that he was an economist by profession, rather than a lawyer or engineer, as is normally the case with the Directors of Intellectual Property Offices in other countries. The point here was that the SIPO is responsible for a specialised type of administrative proceedings [*involving specialised legal and technical considerations*].

The defendant declined to answer the questions of the private plaintiff.

In his testimony (page no. 221), the private plaintiff **Željko Topić** stated that he held the position of Director of the SIPO from 2004 to 2012. The defendant worked at the SIPO until 1998 when she was dismissed from the civil service. She was appointed as an Assistant Director of the SIPO by the

Croatian Government in 2004 and held this position until 2008 when the Croatian Government relieved her of this duty because her term of appointment had expired. He had previously proposed to the Government to relieve her of duty because, in his capacity as Director, he was dissatisfied with her performance as an Assistant Director. The defendant had conducted a systematic campaign against him from 2008 onwards. He had expected her to desist from her unreasonable defamation following the filing of his private complaint, but she had continued to act in the same manner after this and still continues to do so. He stated that he has been a Vice-President of the European Patent Organization since 2012. The defendant had also continued to defame him in front of this international organization. Her statement in the impugned letter that he had ignored the issue of the Public Lending Right as SIPO Director and that Croatian writers had suffered financial damage as a consequence of this because of the fees due for lending their books by public libraries was not true. The fact of the matter was that the Copyright Act defined the competences of the SIPO in relation to the collective management of such rights. On this basis, the SIPO had issued an administrative order granting collective management rights to organizations that represented holders of copyright and it had performed regular audits of the operations of such organizations. In the case under consideration, it was the Ministry of Culture and not the SIPO which had acted as an intermediary between the copyright holders and the beneficiaries. All of these facts had been well known to the defendant at the time when she made this false statement. Moreover, the statement of the defendant according to which he had paid HRK 500,000.00 for his second term of office was untrue. In addition to being completely unfounded, this statement was absurd in view of the fact that he had been appointed as SIPO Director on four occasions by three different Prime Ministers. Based on this statement the defendant had brought criminal charges against him which had been dismissed as unfounded. The defendant's statement that, acting in his capacity as SIPO Director, he had seriously violated her right to work was also untrue. The fact was that she had been relieved of her duty as an Assistant Director of the SIPO by a decision of the Government rather than on the basis of his proposal due to expiry of her appointment because of the change in government following which she was never reappointed. In his capacity as Director he had also received an official communication relieving him of this duty following which he had been reappointed by the new Government. After his reappointment as Director for a further term of office, he did not propose to the Government that she be reappointed as an Assistant Director. Her employment status was regulated by the Public Officials Act as opposed to the Civil Servants and Employees Act. The statement that, in his capacity as SIPO Director, he secretly abolished her Department was untrue. The Government was responsible for changing the organizational structure of such a state institution and this had been done in the present case by amending the Regulation on the Organizational Structure of the SIPO.

As to her claims concerning the official vehicles, the SIPO never had more than three vehicles available for official purposes. Following his appointment as Director, he discovered that three vehicles had been written off for accounting reasons. In view of this he authorized the procurement of three new official vehicles under a leasing arrangement in compliance with the prescribed procedure which involved obtaining prior approval from the Ministry of Finance. Concerning the alleged concealment of a Mercedes in the SIPO archives, this vehicle was parked in an area of the garage beside a door on which an "Official Garage" sign was displayed in a prominent manner. The vehicle in question was used on a daily basis by SIPO staff so that, contrary to the defendant's claims, it was not concealed. Furthermore, the vehicle was parked by the official chauffeur rather than by the private plaintiff himself.

The statement of the defendant alleging that, in his capacity as SIPO Director, he had supplied false information to the Ministry of Administration about the number of employees in the SIPO was untrue. Such information was provided periodically by the Human Resources Department of

the SIPO on the basis of official notices relating to assignments to the various positions. The defendant's statement that he had received compensation for overtime work in his capacity as SIPO Director was also untrue. The only compensation which he had received was that which had been paid to him for his work as a member or chairman of the Examination Committee for patent agents. This money was not paid from the state budget because it was the examination candidates who were responsible for paying the costs of the Examination Committee.

In his capacity as SIPO Director, he had signed an agreement with the Ministry of Science and Education according to which the SIPO had made one of its official vehicles, an Audi A6, available for use by the Ministry on a temporary basis whenever this vehicle was required. The Ministry had used the vehicle on a temporary basis over a period of 2 years, during which time the SIPO had paid the associated leasing costs. He assumed that the vehicle was used by Dragan Primorac who was the Minister at that time. The results of an audit of the SIPO conducted by the Ministry of Science stated specifically that this vehicle had been leased after the required approval had been obtained. As far as he was aware, it was common practice for vehicles to be reallocated among state authorities based on current requirements. As far as the official Mercedes was concerned, this vehicle had been procured on the basis of a leasing arrangement. Following the expiry of the lease, the leasing company requested the SIPO to either return the vehicle or to purchase it. According to the relevant Government decision in force at the time, state institutions, including the SIPO, were not permitted to purchase vehicles. He therefore requested permission to purchase the Mercedes on behalf of the SIPO because he considered that it would be a good bargain, but the request was not approved. The SIPO returned the vehicle to the leasing company and then he purchased it from the leasing company in a private capacity for the sum of HRK 75,000.00 which was the asking price quoted by the leasing company. At the time of this purchase, the vehicle was 3 years old and its registered mileage was 60,000 km.

Having analyzed the private plaintiff's testimony, the court did not accept its veracity in the part where he stated that the defendant was relieved of her duty as Assistant Director of the SIPO due to the expiry of her term of appointment. This testimony is contradictory to the statement of grounds provided in the decision dismissing her (page no. 301a) where it is stated that she is being relieved of duty on the basis of the proposal of the SIPO Director, and it is likewise contrary to the certificate signed by the private plaintiff himself (page no. 303) where it is stated that the defendant had acted as an Assistant Director of the SIPO on a permanent basis.

In her testimony (page no. 234), the witness Jadranka Oklobdžija stated that she had worked at the SIPO as an administrative lawyer from 1994 to 2012. She is now retired. In 2008, she was the representative of the public sector staff union at the SIPO. According to her recollection, at that time the internal organizational structure of the SIPO was modified in accordance with the Internal Organizational Structure Regulation. According to Art. 79 of the Collective Bargaining Agreement for Civil Servants and Employees, the private plaintiff, in his capacity as SIPO Director at the time, was under an obligation to inform the union of the proposed changes to the organizational structure. However, in the present case he omitted to do so despite the fact that these were significant alterations to the organizational structure of the SIPO. For example, the entire Copyright and Related Rights Department, where the defendant and another employee worked, was closed down. The witness has known the defendant for many years and she states that the latter carried out her duties in the SIPO conscientiously, she remained at work after office hours and was totally committed to her job. She is aware that the private plaintiff purposely omitted to invite the defendant to participate in briefing meetings. She is also aware that, at one point in time, the SIPO had six official vehicles, but the number was later reduced to three. One of these vehicles was the Mercedes which she never actually saw. She is aware that another one of the

vehicles, an Audi A6, was used by the then Minister of Science, Dragan Primorac. At that time the archives of the SIPO were located in an area of the building adjacent to the garage. She never went to the area of the building where the archives were located.

Having analyzed the testimony of the witness Jadranka Oklobdžija, the court accepted it as true in its entirety having found no reason to question its veracity.

In her testimony (page no. 235) the witness Darinka Vedrina stated that she worked as a legal graduate (LL.B) at the SIPO from 1993 until 2008 when she was re-assigned to the Ministry of Economy following the restructuring of the SIPO. She recalls that the internal organizational structure of the SIPO was modified by the Regulation without the staff union being given any prior notification about the changes. This reorganization resulted in the closure of the Copyright and Related Rights Department. In addition to the defendant, one other employee was working in that Department. The witness claims that the defendant, who was her former colleague with whom she had a very good relationship, performed her official duties with a higher level of dedication than that normally expected of a civil servant. She often remained at work after office hours. The witness also remembers that the Mercedes was one of the official vehicles of the SIPO at that time. She recalls having seen it parked in the auxiliary archives despite the fact there was sufficient room to park it in the garage area reserved for the official vehicles.

Having analyzed the testimony of the witness Darinka Vedrina, the court accepted it as true in its entirety having found no reason to question its veracity.

It is apparent from the testimony of Ružica Cindori (page no. 230) that she has no immediately relevant knowledge of the subject-matter of the present proceedings and consequently the court did not analyse this testimony in detail.

Concerning the alleged offense under item 1.

According to item 1. of the present complaint, the defendant is accused of disseminating false information in the form of the impugned allegations contained in the letter which she sent to several state authorities (page nos. 5-12) and with making such false statements for the purpose of damaging the honor and reputation of the private plaintiff such that her actions qualify in legal terms as a criminal offense of defamation according to Art. 200, par. 2 CC/97.

It is not disputed that the defendant is the author of the impugned letter nor that she sent it to various state authorities nor that the letter contains the aforementioned impugned allegations about the private plaintiff.

First of all, it must be noted that defamation can only arise on the basis of a factual statement (for example: about the action of a person, a specific event, an objective situation, capacity, quality or relationship) whose veracity can be objectively determined in a manner such that the finding can be accepted by everybody. Consequently, defamation cannot arise on the basis of a value judgment, a subjective assessment, a conclusion or an opinion about another person.

Having analyzed the available evidence, the court found a number of the impugned allegations to be true, such that they cannot *per se* be considered to be of a defamatory nature. With respect to some of the allegations, the defendant was found to have had legitimate grounds for considering them to be true. Some allegations were found not to be factual statements, such that they cannot *per se* be considered to be of a defamatory nature. Finally, some allegations were found to be substantially defamatory in nature, but these allegations were made in defense of legal rights and for the purpose of safeguarding a legitimate interest of the defendant, and they were not disseminated with the sole intent of damaging the private plaintiff's honor and reputation.

These findings are explained in detail below for each one of impugned allegations:

- "Due to the manner in which Topić ignored the aforementioned problems, the writers have suffered financial damage because they should have been receiving compensation for the lending of their books in public libraries for at least the past two years."

From the overall content of the impugned letter (page nos. 5-12) it emerges that the allegation implies that the private plaintiff, in his capacity as SIPO Director, ignored (i.e. neglected) the issue of the Public Lending Right, which led to financial damages being suffered by the writers as the holders of such rights. The court judges that the allegation that the private plaintiff ignored (i.e. neglected) the issue of the Public Lending Right does not amount to a factual statement whose veracity can be objectively determined, but rather it expresses the opinion and the critical judgment of the defendant concerning the manner in which the private plaintiff acted as SIPO Director. It is noted in this regard that the defendant provided an explanation for her opinion and judgment in the impugned letter (page nos. 8 and 9). The question as to whether or not a person has ignored (i.e. neglected) something depends on subjective individual judgment and, consequently, it is not and cannot be subject to objective determination.

- "Željko Topić bought his second term as the Director of the State Intellectual Property Office by paying approximately 500,000.00 HRK to the Ministry of Education and Sports (MZOS) during the period of over two years (from May 2007, when the agreement in question was signed, until July 2009, when Primorac left the Ministry), which I also mention, among other things, in the Constitutional complaint no.: U-III 5023/08, which is still sub judice, and where I have challenged Topic's reappointment as the Director in fact, I also submitted my nomination for the position of the Director of the Office after this person, at the end of 2007, secretly ... abolished my Department [of the SIPO] without complying with the prescribed statutory procedure ..."

The private plaintiff was reappointed as Director of the SIPO by the decision of the Government dated 19 March 2008 (page no. 105). On 7 May 2007, the private plaintiff, acting in his capacity as SIPO Director, leased a luxury Audi A6 vehicle having the value of EUR 80,063.93 purportedly for official SIPO-related purposes (page no. 140). On 17 May 2007, i.e. immediately following the procurement of said vehicle, the private plaintiff, again acting in his capacity as SIPO Director, placed the vehicle at the disposal of the Ministry of Science, Education and Sport (page nos. 201 and 202) while the SIPO undertook to cover the costs of the leasing payments.

A logical question thus arises: for what purpose did the private plaintiff procure the vehicle in question? Considering the fact that the vehicle was used by the then Minister of Science, Education and Sport, Dragan Primorac, who was at the time a member of the Croatian Government, the defendant had legitimate grounds for concluding that - in a manner of speaking - the private plaintiff had effectively “purchased” his second term of office as SIPO Director [i.e. by bribery].

Concerning the allegation that the private plaintiff “secretly ... abolished my Department without complying with the prescribed statutory procedure”, having analyzed it in the overall context of the impugned letter where it was made, the court is of the opinion that it does not amount to a factual statement, but rather that it expresses an opinion and a critical judgment of the defendant concerning the manner in which the private plaintiff acted as SIPO Director. It is noted in this regard that the defendant provided an explanation for her opinion and judgment in the impugned letter (page no. 8).

- "Topic's decisions concerning procedures relating to PLR, which have caused the writers to suffer financial damage and which led to a serious violation of my right to work, at the same time meet

the criteria of the criminal offense of "abuse of position and authority" and "negligent performance of duty" ... "

Having analyzed the allegation in the overall context of the impugned letter where it was made, the court is of the opinion that this allegation does not constitute a factual statement, but rather expresses an opinion and a critical judgment of the defendant concerning the manner in which the private plaintiff acted as SIPO Director and for which she provided a detailed explanation in the impugned letter (page no. 7).

- That the financial resources of the SIPO were used to pay for "the SIPO fleet of six luxury cars, including the supervision of the MZOS, and that he allowed himself to use, in addition to the Audi 6, also a new luxury E-class Mercedes for himself which was hidden among the shelves in the archives in order to cover up the squandering of funds from the state budget."

It emerges from the list of cars owned by SIPO and from the leasing contracts contained in pages no. 203 and 204 of the file that the SIPO used a total of 6 passenger vehicles for official purposes between 1 December 2003 and 31 December 2009, namely:

- | | |
|--------------------------------|----------------------------------|
| – an Audi A6 3.0 TDI Quattro, | – an Audi A6 2.8 Quattro, |
| – an Audi A4 2.0, | – a Mercedes E 280 CDI, |
| – a Skoda Octavia 1.9 TDI, and | – a Skoda Octavia Combi 1.9 TDI. |

Consequently, in making the impugned allegation the defendant did not make any untrue statement about the aforementioned vehicles.

From the testimony of Jadranka Oklobdžija who was at that time an employee of the SIPO, it emerges that she never saw the official Mercedes. From the testimony of the former SIPO employee Darinka Vedrina, whose duties at that time included performing archival services, it emerges that she saw the official Mercedes parked in the area of the SIPO's auxiliary archives despite the fact that there was sufficient room to park it in the garage area reserved for SIPO's official vehicles. A photograph of an official SIPO Mercedes E class vehicle parked in the area adjacent to the archive shelves is attached to page no. 123 of the file is. In view of the foregoing, the defendant had valid grounds for considering that the official Mercedes E class was hidden among the shelves of the archives.

- "Topić himself has for years provided false information about the number of officials working in my Department (he claimed that there were twice as many officials working there compared to the actual count) to the Ministry of Administration which forwarded the received information to the Government of the Republic of Croatia"

From the testimony of Darinka Vedrina who was at that time an employee of the SIPO, it emerges that up until 2008 the defendant and one other staff member were employed in the Copyright and Related Rights Department. It emerges from the letter of the SIPO dated 9 July 2007 and the attached civil service registration plan (page nos. 147-147a) that the SIPO provided false information to the Ministry of Administration, in particular that the Copyright and Related Rights Department employed four persons, whereas in fact it only had two employees.

The letter was signed by the private plaintiff in his capacity as SIPO Director which is why his testimony according to which he claimed that such information was provided to the Ministry of Administration by the Human Resources Department of the SIPO is hereby found to be untrue. Accordingly, the impugned allegation of the defendant concerning the provision of false information to the Ministry of Administration does not contain any untrue statement.

- "... *Because of Topić's lies, his incompetence for which he compensated by bribery, and due to the lack of supervision [of the SIPO], I am obliged to continue with this procedure which has been unduly protracted in such a disgraceful manner ...*"

From the impugned letter (page no. 7), it emerges that the expression "Topić's lies" refers to statements which the private plaintiff made in his capacity as SIPO Director in the proposal of 19 February 2008 (page no. 302) requesting that the defendant be relieved of her duty as Assistant Director. In the relevant proceedings, the defendant did not succeed in establishing that the proposal contained any lies in consequence of which the impugned allegation concerning "Topić's lies" may be considered to be of a *prima facie* defamatory nature.

However, according to Art. 203 CC/97, in the case of defamation made in defense of a right or in order to safeguard a legitimate interest a criminal offense of defamation shall not be deemed to have been committed unless it clearly emerges from the manner of expression and the relevant circumstances that the impugned conduct was intended solely to damage a person's honor or reputation. It emerges from the statement of grounds of the Government decision dated 10 April 2008 which relieved the defendant of her duty as Assistant Director of the SIPO (page no. 301a) that one of the reasons on which her dismissal relied was the proposal from the private plaintiff. In response to the statements contained in said proposal, the defendant filed a private complaint against the private plaintiff alleging a criminal offense of defamation (page no. 40). It is therefore self-evident that the defendant made the impugned allegation concerning "Topić's lies" in defense of her own honor and reputation and her employment rights and it cannot be inferred from the overall content of the impugned letter and the circumstances surrounding its composition that her sole intent was to damage the private plaintiff's honor and reputation.

With respect to the impugned allegation concerning "Topić's incompetence", the court judges that this is not a factual statement whose veracity is capable of being established in an objective manner such that it cannot *per se* constitute defamation. It is in effect an opinion and value judgment of the defendant concerning the manner in which the private plaintiff acted as SIPO Director. It is noted in this regard that the defendant provided explanations for this opinion and judgment in the impugned letter (page nos. 8 and 9). The question as to whether or not a person is competent is not and cannot be subject to objective determination since it ultimately depends on subjective individual judgment.

- "... *for years I have worked overtime managing the aforementioned Department and, unlike Topić and others, I have never requested nor received any financial compensation for this ...*"

The defendant makes a claim here to the effect that the private prosecutor received financial compensation for overtime work. It is noted in this regard that it emerges from the summary of payments made to SIPO staff in 2007 (page no. 169) that the private plaintiff received remuneration having the total gross amount of HRK 119,769.51 for his membership in the Examination Committee for professional examinations. In view of the fact that these professional examinations were held outside normal office hours, this remuneration for participation in the Examination Committee may legitimately be considered as a form of remuneration for overtime work. Consequently, the defendant did not make any untrue statement in relation to this remuneration.

- "... *From the perspective of criminal law, Topić's actions in this case comply with the criteria of criminal offenses: negligent performance of duty, abuse of office, abuse in performance of duties, discrimination, violation of the right to work and other labor rights and corruption /bribery] ...*"

In the impugned letter, the defendant detailed a series of alleged irregular acts and omissions attributed to the private plaintiff in his capacity as SIPO Director and which she found to match the statutory definition of various criminal offenses. Accordingly, this is not a factual statement to the effect that the private plaintiff had committed a criminal offense, but rather the statement of an opinion by the defendant to the effect that he had committed a criminal offense and for which she gave a reasoned explanation in the impugned letter.

- "If the supervisory bodies had conducted a proper administrative audit of the Office, i.e. of Mr. Topić, and subjected him to criminal prosecution, he would have been dismissed from his position at the beginning of 2008. The announced reconstruction of the Government should also have led to the dismissal of Mr. Topić, since the disclosure of this information in public would certainly have harmed the Government."

The above allegations do not contain any factual statements, but are merely assumptions and speculations, which cannot *per se* constitute an act of defamation.

Concerning the alleged offense under item 2.

According to item 2. of the present complaint, the defendant is accused of insulting the private plaintiff by the impugned allegation such that her actions are claimed to qualify in legal terms as a criminal offense of defamation under Art. 199, par. 2 of CC/97.

The court judges that the impugned allegation that the private plaintiff was incompetent "*because [he] completed his education in another country (an economist from Bosnia) and has never passed the professional state exam in Croatia*" constitutes an insult.

It effectively accuses the private plaintiff of being incompetent solely on the basis of the fact that he is "an economist from Bosnia" which clearly belittles the private plaintiff on a personal level. However, according to Art. 203 of CC/97, a criminal offense of insult shall not be deemed to have been committed in the case of an insult made in defense of a right or in order to safeguard a legitimate interest, unless it clearly emerges from the manner of expression and other relevant circumstances that the impugned conduct was solely intended to damage a person's honor or reputation. As has already been established above, the impugned letter was a reaction of the defendant to the allegations contained in the proposal submitted by the private plaintiff in his capacity as SIPO Director requesting that she be relieved of her duty as Assistant Director and this proposal was relied upon as one of the reasons for her dismissal. In view of the foregoing, it is clear that the defendant made the impugned allegation in defense of her own honor and reputation and her employment rights and it cannot be derived from the overall content of the impugned letter and the circumstances surrounding its composition that her sole intent was to damage the private plaintiff's honor and reputation.

Having analyzed all of the impugned allegations in the overall context of the letter and having regard to the circumstances surrounding its composition, the court judges that the entire content of said letter was directed towards defending the honor and reputation of the defendant and it was not disseminated with the sole intention of damaging the honor and reputation of the private plaintiff. The impugned letter does not contain any allegation relating to the plaintiff's private life, but is solely concerned with matters relating to his official position as SIPO Director and it was sent to competent state authorities whom the defendant believed were entitled to be informed about how said person had acted in this official capacity.

Consequently, the court acquitted the defendant of the charges pursuant to Art. 453, par. 3 of CPA/08 because the private plaintiff had failed to demonstrate that she had committed the criminal offence with which she was charged.

In view of the fact that the defendant is acquitted of the charges, pursuant to Art. 149, par. 3 of CPA/08 the private plaintiff is ordered to pay the costs of the criminal proceedings under Art. 145, par. 2, subpar. 1-6 of CPA/08, the necessary expenses incurred by the defendant, and the necessary expenses and fees due to her legal counsel.

MUNICIPAL CRIMINAL COURT OF ZAGREB

26 January 2015

COURT REGISTRAR:

Jasminka Popović

JUDGE:

Marijan Bertalanič

INFORMATION CONCERNING THE RIGHT OF APPEAL

Either party may file an appeal against this judgment within 15 days of receiving a copy thereof. The appeal should be submitted in triplicate to this court and shall be decided upon by the County Court of Zagreb.

Authorised person responsible for the accuracy of the copy

Snježana Perišić

signature and stamp