

CASE STUDY

SLAPP IN CROATIA



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1. INTRODUCTION

Based on reports by different European NGO's dealing with freedom of expression and media freedom issues, **Croatia** has been recognized as one of the member states with the highest number of cases with significant SLAPP elements. There is a large recorded number of such cases, especially the ones involving *serial plaintiffs*, who brought lawsuits against different defendants for their participation in matters of public interest, even when the information in question was true, based on facts, well investigated and balanced.

The **plaintiffs** in Croatia, for the most part of such lawsuits, were politicians, public authorities, companies that are or have been working closely with to the government, and, in some cases – even entrepreneurs. On the other hand, the defendants are usually media publishers, non-governmental organizations and activists. There are also records of lawsuits brought against journalists, in their personal capacity, and even bloggers.

One of the possible differences, in relation to similar experiences in other countries, is that **damages claims** in Croatia are usually not as high as in other member states. In Croatia, the plaintiffs, for the most part, do not bring lawsuits for damages/material compensation, in the amounts that are considered disproportionately high on the European level. However, if we consider that the average amount of damages – as decided in the final court rulings in similar cases in Croatia, varies between 1.500,00 – 4.000,00 EUR, amounts of such damages in recognized SLAPP cases are three times higher and can amount to 15.000,00 EUR, which is a rather high amount in relation to Croatian average income.

Also, legal costs associated with litigation in Croatia are relatively low and, therefore, filing an unmeritorious claim in order to exert pressure by putting such a burden on the defendant, is not as effective as in other jurisdictions.

On the other hand, as stated before, Croatian SLAPP cases revolve around a **significant number** of lawsuits brought by one person or entity against the same



defendant, different defendants but for the same (published) information or by bringing civil and criminal proceedings at the same time against one person.

As publicly stated by the **victims** of SLAPP cases, it puts a great burden on their lives and businesses, not only financially and existentially, but also regarding legal uncertainty, duration of such proceedings and the time they spend in courtrooms, which prevents them from doing their journalistic work.

One of the (group of) cases that have been internationally recognized as SLAPP is the series of the cases brought by **Croatian Radio Television (HRT)**, a public broadcaster, against **Hrvoje Zovko**, their employee of twenty years and the president of the Croatian Journalists Association. This group of cases was chosen for this case study, since it clearly shows not only the intent of the plaintiff, but also the consequences of SLAPP litigation for the life of the victims (and their families), and for freedom of expression. Not less important, the chosen case(s) for this analysis shows how proper response and existing support system can make it at least somewhat easier for the victims to live through the proceedings.

2. Significant SLAPP cases in Croatia – Croatian Radiotelevision c/a Hrvoje Zovko (and Croatian Journalists' Association)

2.1. Facts of the case(s)

In June 2018, **Mr Zovko** - journalist and editor at HRT - was appointed as the President of Croatian Journalists Association (CJA). From the beginning of his mandate, his superiors acted as if they resented his role in the CJA and asked him to choose between his position of the president of CJA and his position of editor at HRT's news channel. As his statements will later show, he was often brought in for meetings with his superiors, which was felt as a form of pressure on his editorial decisions and was denied to cover stories he found were a matter of public interest.

CJA is the biggest and most influential professional organization of journalists in Croatia. CJA's primary role is to protect its members and to openly speak about problems they are encountering, pressures they are under and raising awareness campaigns, regarding attacks on media freedoms and independence and safety of Croatian journalists. CJA has previously also been dealing with problems surrounding the functioning of the public TV - HRT, issuing press releases which included criticism about the spending of public money, program and the influence and pressures of politics. Problems surrounding the functioning of HRT were also often a matter of large public debate.

One of these such press releases was issued by CJA on September 11, 2018, after Mr Zovko became the President, and two weeks before the termination of his employment **contract** by HRT. The press release stated that:

- *“The leadership of the CJA condemns the scandals that have rocked HRT recently, such as the last one, related to an attempt to re-sell tickets for the world football championship, but also the content, the method of selection and the amount paid for the project “Could it have been different?” /.../ for months HRT has been concealing the facts related to the ticket scandal in front of their own employees and citizens /.../*

and took measures only after HRT was called out by other media /.../ if such a practice has been repeated for years, we consider it inadmissible and immoral /.../ the decision to purchase a series that justifies robbery, corruption and lawlessness represents an investment in a manipulative and morally questionable project /.../ which enables external collaborators with dubious ideas and whose biographies are publicly questioned, all at the expense of citizens /.../ the journalists of HRT are forbidden to speak publicly, and the working conditions are extremely restrictive and often censoring /.../ to stop being a political prey that changes its owner, ideology and even the image of reality with electoral changes.”

In September 2018, Mr Zovko, HRT’s employee of twenty years, resigned from his editorial position at HRT (HTV4) but was planning to continue working as a journalist, as regulated by his employment contract. He sent a letter of resignation to his superior editor, stating that the reason for his resignation was, among other things, censorship (*“content control”*). On the same day, a superior editor invited him for a meeting that ended with a heated argument.

Based on that argument, that his superior reported to the leadership of HRT - claiming abuse - HRT issued an instant termination of Mr Zovko’s employment contract, without rights to severance pay or a notice period. He learned about the termination of his contract from HRT’s press release, published by various Croatian media publishers, before he received any kind of information about his status from his employer. HRT’s decision on termination, as well as the publicized press release, was based on claims that Zovko physically and mentally abused and threatened his (female) superior.

During the next couple of weeks, Mr Zovko publicly spoke up about the termination of his contract, his **argument** with the superior editor and his reasons for his resignation in HRT’s news department:

- In a statement for www.slobodnadalmacija.hr, on September 28, 2018, H.Z. stated: *“They told me not to report on HDZ, but only on SDP /.../ I resigned from the position*

of executive editor of HTV4 because of censorship, inability to choose guests and specific topics /../ couple of days before my resignation I reported significant technical problems. The reasons for the termination of my contract were my statements about censorship and generally about the situation at HRT. That is an attack on Croatia Journalists' Association and an attempt to intimidate anyone who sees journalism a public good”;

- The interview from Slobodna Dalmacija, was also published at www.jutarnji.hr, the same day;
- In an interview for www.vecernji.hr, published on September 29, 2018, H.Z. stated that *“termination has an end goal to humiliate me, what happened to me is intimidation /../ I did not have the power to choose the colleagues I wanted to work with and I was supposed to be responsible for their work. Who can agree to that? And not having, as an editor, the possibility to choose the topics that I want to deal with, what is that but censorship? /../ no investigation was launched nor did HRT deal with examining the merits of the story, which is censorship, but the whole story is built on false constructions that I am a problematic guy and that the public should deal with that, and not with HRT, which we all pay with our money”;*
- In an interview for www.telegram.hr, on October 3, 2018, H.Z. stated: *“however, my editor told me that in her opinion the party we should deal with is SDP, that she has information that the analyzes about HDZ are completely wrong /../ her opinion was that we should deal only with SDP /../ my statement was submitted to the media, they started to denounce me in order to divert attention from the merits of the matter, which are the collapse, as well as censorship at HRT /../ they are doing this because you need to get rid of all the people who think for themselves, who want to serve the public and do their job professionally /../ this is pure intimidation, a message that if we can do this to the president of the CJA, imagine what we can do to you”;*

- For TV news show, at TV Z1 - “Dogmatica”, Mr Zovko repeated previously quoted statements;
- For TV news show, at N1 TV - “Studio uživo”, Mr Zovko added that his *“dismissal is a message to other journalists about what can happen to them if they oppose the things that they think are not in the interest of the public, and a message and a blow to CJA, because the people who run HRT have an extremely negative attitude towards CJA”*.

After those **interviews** HRT has:

(i) on December 7, 2018 – filed a **civil lawsuit** for defamation, against Hrvoje Zovko, claiming 250.000,00 HRK (around 30.000,00 EUR) in damages;

(ii) on December 7, 2018, brought **criminal charges** for defamation against Hrvoje Zovko, for the same statements that were the subject of the civil lawsuit for damages;

(iii) on December 7, 2018, filed a **civil lawsuit** against Hrvoje Zovko, claiming he did not return employer’s equipment, which he was obliged to return after the termination of his employment contract, claiming the amount of 1,500 EUR.

(iv) on December 10, 2018 - filed a **civil lawsuit** for defamation, against CJA and Sanja Mikleušević Pavić – for the press release issued on September 11, 2018, claiming 250.000,00 HRK (around 30.000,00 EUR) in damages;

In October 2018, Hrvoje Zovko filed a **lawsuit** against HRT, claiming the illegality of the termination of his employment contract.

In 2020, after two years, the court brought a **final decision**, ruling that the dismissal in question was illegal and, based on the court’s final ruling, Zovko returned to his position at HRT.

A few months later, in early 2021, HRT issued a new decision to terminate his employment contract, now due to Mr Zovko’s alleged **psychological abuse** of a female colleague, which happened back in 2018. The victim of such alleged abuse never filed a

complaint to the employer (HRT) or any other competent authority. Zovko filed a new lawsuit against HRT, disputing the validity of the termination of his employment. In 2022, the court finally determined that the termination was unlawful.

For reference purposes, in 2018, HRT, as the public broadcaster in Croatia, also brought around **twenty lawsuits** (also including criminal proceedings for defamation) against different media publishers and journalists in Croatia. One of the publishers who was a victim of the largest number of lawsuits was the publisher of www.index.hr, an independent news portal in Croatia. In 2018, HRT brought at least six lawsuits against Index, claiming around 50.000,00 EUR in damages, not including legal costs and fees. All of the articles published by Index, which were the subject of those lawsuits, referred to the legitimate criticism of the public service program and spending of public resources.

For Index's article regarding Zovko's termination from HRT, HRT claimed damages in the amount of 200.000,00 HRK (around 30.000,00 EUR) alone.

2.2. Applicable laws

Lawsuits for **defamation** in the civil proceedings were based on provisions of the Croatian Media Act and Civil Obligations Act, while the criminal proceeding was based on provisions of the Criminal Code.

Provisions of Media Act (Art. 21/4) provide that *“publisher is not liable for damages if the information that caused the damage is:*

- *a faithful report from a discussion at a session of a legislative, executive or judicial authority, and a local and regional (regional) self-government unit body or at a public meeting, or it is transferred from an act of a legislative, executive or judicial authority or a local and regional (regional) unit body self-government, and its meaning has not been changed by editorial processing,*
- *published within the authorized interview,*

- *based on accurate facts or on facts that the author had good reason to believe were accurate and took all necessary measures to verify their accuracy, and there was a justified public interest in the publication of that information and if it was acted in good faith,*
- *a photograph of the injured party taken in a public place or a photo of the injured party was taken with his knowledge and consent for the purpose of publication, and the injured party did not prohibit publication, i.e. limit the right of the author of the photograph to exploit the work,*
- *correct, and it follows from the circumstances of the case that the journalist concluded in good faith that the injured party agrees with its publication,*
- *derived from the value judgments of the author whose publication was in the public interest and if this information was given in good faith.”*

The applicable provisions of the **Civil Obligations Act** are as follows:

Article 19:

(1) Every natural and legal person has the right to the protection of his personality rights under the assumptions established by law.

(2) Personality rights in the sense of this Act shall mean the rights to life, physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, freedom, etc.

(3) A legal person has all the rights of personality, except those related to the biological essence of a natural person, and especially the right to reputation and good name, honour, name, i.e. company, business secret, freedom of business, etc.

Article 1045

(1) Whoever causes damage to another is obliged to compensate for it, if he does not prove that the damage occurred through no fault of his.

Article 1100

(1) In the event of a violation of personality rights, the court, if it finds that the severity of the violation and the circumstances of the case justify it, will award fair monetary compensation, regardless of compensation for property damage, and even when there is no compensation.

(2) When deciding on the amount of fair monetary compensation, the court will take into account the strength and duration of the physical pain, mental pain and fear caused by the injury, the goal that the compensation serves, but also that it does not favor aspirations that are not compatible with its nature and social purpose.

(3) For a violation of the reputation and other personality rights of a legal person, the court, if it judges that the severity of the violation and the circumstances of the case justify it, will award it fair monetary compensation, regardless of compensation for property damage, and even when there is no compensation.”

The applicable provisions of the **Criminal Code** are as follows:

Article 149

(1) Whoever, in front of another, tells or conveys an untrue factual statement about someone that may harm his honor or reputation, knowing it to be untrue, will be fined with up to three hundred and sixty daily amounts.

(2) Whoever commits the offense referred to in paragraph 1 of this article through the press, radio, television, computer system or network, at a public meeting or in another way, due to which it became accessible to a larger number of persons, will be fined with up to five hundred daily amounts.”

2.3. Plaintiff's strategy

As stated above, the plaintiff's main tactic was to bring as **many lawsuits** against the defendant as possible, exposing him to numerous court and **legal fees**, thereby exemplifying his existential fear. The plaintiff was aware that the defendant's employment

contract had been terminated, that he had no source of income, as well as that he had an obligation to support his son and to pay a housing loan. With the lawsuit filed against CJA at the same time, the plaintiff also threatened the organization of which Mr Zovko is the president, calling into question his professional decisions and integrity.

At the same time, the leadership of HRT (the plaintiff) gave **public statements** to Croatian media, implying that Mr Zovko's employment contract was terminated due to his "*inappropriate behavior towards (female) colleagues, verbal or physical aggressiveness*"¹, "*threats and violence*" towards a female superior editor² and "*attack towards a female editor*"³.

Such statements, even though the editor in question herself did not accuse Zovko of threats or physical assault, were placed with the purpose of defaming him in public, portraying him as a bully and abuser and leaving him without any support from his colleagues, professional organizations and the wider public. **The severe consequences** of such statements made by HRT were evident from the fact that such a narrative was also taken up by the Croatian Prime Minister, who publicly repeated those untrue allegations at a press conference, exposing Zovko to even greater pressure.

Zovko was subject to **continuous intimidation**, pressure to issue a public apology to HRT and their leadership, as well as the subject of false stories accusing him of being an abuser who physically and mentally abused several women, none of which was ever confirmed. The aim was to intimidate him and jeopardize not only his livelihood, but also his public image, leaving him without any kind of support.

¹ Article published at www.novolist.hr, <https://www.novolist.hr/reagiranja/kazimir-bacic-netocno-je-da-bi-hrvoje-zovko-dobio-otkaz-bez-ikakvog-razloga/>

² Article published in Jutarnji list, at <https://www.jutarnji.hr/vijesti/hrvatska/glavni-ravnatelj-hrt-a-oslucaju-hrvoja-zovka-raskinuli-smo-s-njim-ugovor-zbog-grubog-nasrtaja-na-urednicu-cemu-su-posvjedocile-cetiri-zaposlenice-8447819>

³ Article published at <https://www.24sata.hr/news/zovko-je-dobio-otkaz-jer-je-prijetio-i-nasrnuo-na-urednicu-617397>

Plaintiff's **legal tactics**, in court proceedings, were based on claims that Zovko's statements about censorship at HRT are false and that, according to Croatian laws, censorship is a criminal offense, prescribed by the Criminal Code, which makes such statements even more harmful since they accuse the management of HRT of criminal conduct. HRT proposed the hearing of a number of witnesses, all HRT's employees, in order for them to confirm that there is no censorship at HRT. One of the main arguments was also that Mr Zovko does not differentiate censorship from the editorial policy.

An additional tactic was to set an extremely high damages claim for Croatian circumstances, in the amount of 250.000,00 HRK, which is an amount practically unheard of in the practice of Croatian courts, when it comes to compensations for damages to the reputation of legal entities. Also, by setting such high claims, the plaintiff directly influenced the amount of court and attorney's fees that Zovko had to pay during the proceedings.

Finally, HRT was represented by **well-known Croatian law firms**, so HRT's leadership had to be aware and informed about the fact that lawsuits against Mr Zovko and CJA did not have a sufficient legal basis – thus being unmeritorious. Provisions of the Media Act, Civil Obligations Act and Criminal Code, as well the way those provisions are interpreted by Croatian courts and the European Court of Human Rights gave clear direction that Mr Zovko had a right to speak up about censorship at the public broadcaster and other details regarding the termination of his employment.

2.4. Defense strategy

The defense's **assessment** at the very beginning of the court proceedings was that the actions of HRT should be publicly denounced as retaliation to Zovko, because of his public participation on topics of public interest, that is, on the functioning of HRT as a public service. In such situations, it is necessary to present the context to the public and the courts, so that they can fully understand the particular situation and events. For this reason, in all motions to courts, Zovko primarily explained the political context and events that preceded

his resignation as editor, HRT's prior relationship with the CJA and all other circumstances that were important for the court's assessment.

Secondly, it is important to note that Croatian legislation did not and still has **no provisions** regarding SLAPP cases and no mechanisms which are provided for defense purposes in these types of proceedings. That is why the defense could have been based only on the general rules governing freedom of expression.

When preparing a “defense” in cases regarding freedom of expression it is necessary to differentiate between value judgements and factual claims. The strategy in each case is different, depending on the “nature” of the information. In present cases, defense was based on proving the accuracy of the Mr Zovko’s factual claims and the validity of the presented value judgments - based on a sufficient factual basis.

Most of the information that was subject to those lawsuits were Mr Zovko’s value judgements, based on the facts that were already available to the public and largely publicly discussed, not only by the media but also in the Croatian Parliament and many professional gatherings. In fact, different **international organizations** that have prepared annual reports on media freedoms in European countries have, for several years in a row, identified the problems in the functioning of the public broadcaster in Croatia, as well as political and other types of pressure on the editorial policy. The same was also publicly confirmed by numerous journalists who worked for HRT.

Considering that the main characteristic of SLAPP lawsuits is the fact that they do not have a **sufficient legal basis**, the facts and the validity of Mr Zovko’s value judgments were not difficult to prove in court. There have been numerous news reports, personal testimonies of HRT journalists, information about the protest held by journalists in front of the HRT headquarters due to censorship, statements by members of parliament, politicians, and various bodies about the situation at HRT, as well as reports from international organizations. All of this indisputably proved that Mr Zovko's value judgments were founded in facts. Since it is also indisputable that the functioning of HRT is

a matter of significant public interest, the only ruling the court could have made is that Mr Zovko's statements are protected by freedom of expression.

During the proceedings, Mr Zovko submitted to the court all of such news reports, e-mails sent to the leadership of HRT claiming censorship, written statements by previous employees about the pressures they were under and previously published reports by international organizations. The court also heard a large number of witnesses, all regarding claims about censorship and content control at HRT.

CJA also, along with other non-governmental organizations, launched a **big awareness-raising campaign**, to show and explain to the public the situation concerning HRT and their relationship with Mr Zovko and CJA. That also included regular press conferences, round tables and collection of statistical data on the number of proceedings against journalists and broadcasters conducted by HRT, as well as on the number of proceedings initiated against the media and journalists by other persons and entities.

To minimize the costs of the court proceedings, CJA and Hrvoje Zovko were defended by pro bono attorneys - cofounders of the CJA's Centre for Freedom of Expression, founded in 2015, who were well-trained for all cases relating to freedom of expression.

Defense strategy ultimately resulted in a **strong reaction** from the Croatian public, which prompted the Media Committee of the Croatian Parliament to react and hold a special session regarding the termination of Zovko's employment and the situation at HRT. They issued a recommendation directing HRT, as a public broadcaster, to resolve the proceedings they initiated peacefully, that is, to withdraw the lawsuits brought against media publishers. However, HRT did not withdraw the lawsuits against Mr Zovko and CJA. The lawsuits against Zovko were finally decided by Croatian courts after more than three years, in 2021 and 2022, all in favor of the defendant.

3. Impact of the cases and conclusion

On the platform that was created after the lawsuits were filed against Hrvoje Zovko and CJA - the CJA, along with other NGOs fighting for democracy, developed a movement that later turned into a public campaign directed against SLAPP lawsuits in Croatia. Since HRT was now recognized as a **serial plaintiff**, this was the impetus that prompted the CJA to start collecting statistical data from media publishers on the number of proceedings initiated against them and their journalists and the amounts claimed by the plaintiffs. Those reports, which are still gathered every year, have the purpose to identify, not only the number of lawsuits, but also to identify serial plaintiffs and collect all other data that can give an accurate picture of active court proceedings each year.

CJA also started holding **special press conferences**, gathering well-known experts and journalists, in order to publicly address every new attempt to sanction public participation, when there are elements that indicate a SLAPP lawsuit. Such activities brought the attention of political elites and the general public to the problems created by SLAPP lawsuits and topic has become recognizable and well known among a wide range of citizens.

It is clear that the specific case(s), covered by this case study, had **long lasting harmful effects** on the life, health and professional development of Hrvoje Zovko, even though all court rulings were ultimately in his favor, including the rulings regarding the terminations of his employment contracts. But the consequences of the court proceedings were also reflected on his family, as well as on other journalists and other media, instilling fear about the scale of pressures each one of them can be subject to.

Still, a positive effect is that SLAPP cases have now become a topic of **continuous public debate** and the plaintiffs are largely denounced as individuals who harm democracy and the preservation of the right to freedom of expression. Thanks to the efforts of the civil sector, this topic has become one of the common topics in public discourse, which



significantly helped to raise awareness about this problem also in judicial circles and among judges.

One of the positive effects is also that the journalists who are or will be the targets of SLAPPs in the future now know there is a system that can help them in such situations, not only with advice and support, but also by providing a quality legal support, through CJA's Center for the protection of freedom of expression.