



YUCOM

Komitet pravnik za ljudska prava / Lawyers' Committee for Human Rights
17 Svetogorska Street, 11000 Belgrade, Republic of Serbia Tel/Fax: +381 11 33 44 235; 33 444 25;
e-mail yucomoffice@gmail.com
www.yucom.org.rs

Human Rights and Democracy Violation Early Warning *Weekly Newsletter* No. 44

Introduction

Within the framework of its publishing activity and its series *Public Files – Against Oblivion*, the Lawyers' Committee for Human Rights (YUCOM) 2005 published a book titled "The Case of Public Servant Aleksandar Tijanić" – a publication consisting mainly of quotes from statements and commentaries the present General Manager of the state-owned Serbian Broadcasting Corporation (RTS) published in various media over the period between 1976 and 2004. All those quotes were used in accordance with procedures prescribed by relevant laws, with the purpose to illustrate the viewpoints, attitudes and policies **Mr. Tijanić** has expounded and advocated throughout his journalistic career, with special emphasis on explicit misogyny, brutal degradation and indeed humiliation of political opponents, representatives of nongovernmental organizations and outstanding liberal intellectuals – a pattern of public behavior which objectively renders him inapt to occupy his present post where he was installed by former Prime Minister **Vojislav Koštunica's** Government.

The book caused a great deal of public attention. Whereas the government ostensibly ignored it, YUCOM experienced a range of inconveniences and was exposed to a brutal defamation campaign launched immediately upon its publication.

Apart from fierce public assaults on YUCOM and its representatives, RTS General Manager went to law against YUCOM's Chair, **Biljana Kovačević Vučo**. Six lawsuits were initiated:

- Criminal charge for unauthorized usage of copyright and unauthorized usage of intellectual property – rejected by the Public Attorney;
- Civil lawsuit for infringement of moral copyright – dismissed by the Public Attorney as untimely;
- Lawsuit filed with the Commercial Court for a trade law transgression – temporarily suspended pending final judgement in the copyright infringement before the Supreme Court;
- Criminal charge for insult and libel – dismissed on grounds of statute of limitation;
- Civil lawsuit for compensation of damages in the amount of 8.5 million dinars¹ – ongoing; and

¹ €1 = 95 dinars (RSD).



YUCOM

Komitet pravnika za ljudska prava / Lawyers' Committee for Human Rights
17 Svetogorska Street, 11000 Belgrade, Republic of Serbia Tel/Fax: +381 11 33 44 235; 33 444 25;
e-mail yucomoffice@gmail.com
www.yucom.org.rs

- Civil lawsuit for compensation of copyright infringement - initially set at 8.5 million dinars, ended with the decision which constitutes the subject-matter of this report.

RTS General manager's Lawsuit for copyright infringement

In the copyright infringement litigation in which the plaintiff had demanded a 8.5 million compensation, a Chamber of the Belgrade District Court -- presided over by judge **Sanja Lekić** -- passed April 11, 2006 a judgement which dismisses **Aleksandar Tijanić's** charges in their entirety, and substantiated that decision with the conclusion that the disputed book does not represent a collection of plaintiff's integral texts, but, on the contrary, quotes which illustrate the textual contents of the disputed book itself. In this volume, which represents a critique of **Aleksandar Tijanić** as a public figure, YUCOM had availed itself of the right to quote as prescribed in Art. 48 of the Law on Copyright and Related Rights².

The YUCOM publication contained clear references as to the plaintiff's authorship of the works previously published; that there had been no alterations; that quotes were accompanied by information on their author, as well as on where and when the source texts had been published. In consequence with the above stated, the District Court's ruling was that no permission by the author was necessary to use quotes from his journalistic texts.

The first-instance litigation has established beyond reasonable doubt that:

- YUCOM has 2005 published the book titled "The Case of Public Servant Aleksandar Tijanić" as part of its series *Public Files – Against Oblivion*;
- the publication consists mostly of quotes from the plaintiff's original articles and commentaries published between 1976 and 2004;
- the quotes were always accompanied by data on the source they were taken from;
- the plaintiff -- the author of the said quotes -- has not given any permission to YUCOM to use them, nor have they had a written contract to that effect.

² Art. 48. of the Law on Copyright and Related Rights reads as follows:

„ Multiplication and other forms of public communication of brief excerpts from authors' works (the right to quote) shall be allowed without author's permission and without payment of author's fees, under the following conditions:

- 1) That the work has been published;
- 2) That the said excerpts are without alteration incorporated into another work if it is necessary for the purpose of illustration, corroboration or reference, accompanied by a clear indication that it is a quote;
- 3) That information on the cited work's author, title, date and place of publication are given on a suitable spot.”



YUCOM

Komitet pravnika za ljudska prava / Lawyers' Committee for Human Rights
17 Svetogorska Street, 11000 Belgrade, Republic of Serbia Tel/Fax: +381 11 33 44 235; 33 444 25;
e-mail yucomoffice@gmail.com
www.yucom.org.rs

No disputable facts have been established during the first-instance litigation

Only legal issues are therefore disputable:

- Did YUCOM infringe the plaintiff's copyright by using his quotes without permission and without paying author's fees; and
- Did YUCOM violate the plaintiff's moral copyright (the right to publish; the right to protection of integrity; the right to oppose inappropriate usage of author's work)?

Three and a half years on, although only legal issues are disputed because the District Court had 2006 established all relevant facts beyond reasonable doubt, a Supreme Court's chamber consisting of Justices **Snežana Andrejević** (presiding), **Spomenka Zarić** and **Sonja Brkić**, deliberated on the plaintiff's appeal and pronounces a ruling³ which alters the District Court's decision, sustains the plaintiff's motion for his moral copyright to be compensated (the original 8.5 million claim was reduced by the Supreme Court to 200,000 dinars), and forbids YUCOM to further use works authored by the plaintiff, as well as to produce any additional copies of "The Case of Public Servant Aleksandar Tijanić". In addition to that, YUCOM is obliged to publish at its own cost the Supreme Court's decision in the *Politika* daily.

Excerpts from the Supreme Court's explanation of its ruling:

"The provision in the Art. 48 of the Law on Copyright and Related Rights, as well as limitations contained therein, refers to short excerpts from author's works (the right to quote), and can obviously not be applied to this case. Namely, pursuant to Art. 17 of this Law, an author has the exclusive right to protect his/her work's integrity; and especially, pursuant to para. 2 of the said Art., to oppose public communication of that work in an altered or incomplete form, paying due attention to the concrete technical form of that communication and good business practices. Pursuant to Art. 16 of the said Law, an author shall thereby have the exclusive right to publish his/her work and determine the way that work is to be published.

It is in this case that the right to protect a work authored by the plaintiff (in essence: a large number of his works) **HAS BEEN VIOLATED BY MEANS OF COMMUNICATING THESE WORKS IN AN INCOMPLETE FORM**⁴ (caps by EWS), contrary to good business practices, in the way established in this litigation⁵. By extracting the author's (plaintiff's) quotes from the

³ This took place amid the preparations to pass the controversial Law on Public Information, which curbs media freedom in Serbia substantially – see EWS Newsletter No. 43).

⁴ A quote per se represents an incomplete form.

⁵ No attempt to establish anything has been made in the course of the litigation, nor has anything been established. It is in this way that the Supreme Court of Serbia directly falsifies the entire procedure.



YUCOM

Komitet pravnika za ljudska prava / Lawyers' Committee for Human Rights
17 Svetogorska Street, 11000 Belgrade, Republic of Serbia Tel/Fax: +381 11 33 44 235; 33 444 25;
e-mail yucomoffice@gmail.com
www.yucom.org.rs

context, the meaning the author had wanted to express in his works has lost its basic message⁶ and acquired another one, with another meaning, pointedness and value.”

Curiously, the Supreme Court's verdict was delivered at the YUCOM office on the very day *Amnesty international* published its special report on the situation of human rights defenders in Serbia⁷, which states that HRDs in Serbia are at risk because, *inter alia*, “Serbian state institutions members of the government, parliament and leading public figures, use litigation as a tool to intimidate human rights defenders”. The case Aleksandar Tijanić vs. Biljana Kovačević Vučo and YUCOM is cited to illustrate this thesis.

Numerous reactions from nongovernmental organizations, prominent personalities from scientific, media and cultural circles, as well as some political parties, underline that such a verdict pronounced by the Supreme Court introduces censorship and preempts argued criticism of public figures and their activities in public. It also bans a book, which is a direct blow to the very foundation of the democratic order, freedoms and rights.

Outlook:

By using an ostensibly harmless form of protection of moral copyright, this decision by the Supreme Court introduces censorship and grants public personalities the right to determine which part(s) of their public statements and writings reflect(s) what they had intended to say. The Supreme Court's ruling represents a precedent because it abolishes the right to criticize without an author's control and consent, although it is beyond dispute that a quote always represents an incomplete form. It is in this way that criticism and freedom of expression are abolished, whereby public personalities are free of any accountability whatsoever. As such, it represents a major setback in the efforts to adopt and respect democratic values and principles worthy of Europe that Serbia declares herself willing to join.

⁶ Irrespective of its irrelevance in this litigation, this „fact“ deemed by the Supreme Court to be „indisputable“ in defining citation as distorted meaning of the work authored by the RTS General Manager has not been established in the course of the litigation, nor has it been disputable in the said litigation; it therefore represents another forgery by the Supreme Court of Serbia.

⁷ Please see: <http://www.amnesty.org/en/library/asset/EUR70/014/2009/en/62eed1a1-0150-4999-aca5-6909720e053b/eur700142009en.pdf>