

ARTICLE¹⁹



Co-funded by
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Croatia: Criminal Code Amendments – Prohibiting ‘unauthorised disclosure of information about criminal investigations’

June 2024



**MEDIA FREEDOM
RAPID RESPONSE**

First published by ARTICLE 19, June 2024

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Executive summary

In this legal analysis, ARTICLE 19 comments on the introduction into the Criminal Code of Croatia sanctions for disclosure of “non-public” information, such as details of an investigative report or evidentiary actions, in a criminal proceeding (the Amendments).

ARTICLE 19 analyses the Amendments for their compliance with relevant international and regional standards on freedom of expression which Croatia has signed and ratified and must implement in national legislation. In particular, we review how the Amendments meet international and regional standards on the protection of journalists and journalistic sources. We argue that when restricting disclosure of information about criminal investigations in order to protect fair trial rights and the impartiality of the judiciary, Croatia should be guided by the standards developed in the jurisprudence of the European Court of Human Rights.

ARTICLE 19 finds that the Amendments fail to satisfy the requirement that any restrictions on freedom of expression and information must be “necessary to meet a pressing social need” and must be “proportionate” to one of the legitimate aims mandated by international and regional standards. Namely, the Criminal Code of Croatia already protects the relevant legitimate interests of the secrecy and impartiality of the justice process. There is no “pressing social need” to introduce a new crime, which treats the breach of confidentiality in a formalistic way, without linking the penalties to any actual adverse effects of the disclosure on the presumption of innocence and due process. The implementation of the Amendments will produce a significant “chilling effect” on the ability of journalists to gather information on criminal justice and the eagerness of public officials and other actors to divulge information to the benefit of the public. Finally, the choice of criminal law and imprisonment as the applicable sanction are manifestly disproportionate to the impugned legitimate aims.

ARTICLE 19 recommends that the Croatian Government repeals the adopted Amendments in their entirety. It is recommended instead to focus on creating positive policy options to protect whistleblowers and strengthen measures against strategic lawsuits against public participation (SLAPPs) in Croatia.

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Introduction

In this legal analysis, ARTICLE 19 reviews the Amendments,¹ known as ‘Lex AP,’ recently adopted by the Parliament of Croatia, for their compliance with relevant international and regional standards on freedom of expression.

The Amendments, in particular Article 307a, introduce criminal penalties for disclosing information about investigative actions or evidence in a criminal proceeding.

The questions related to protection of journalistic sources and other risks of interference with the media are discussed. In particular, this brief addresses the question of balancing the legitimate aims of protecting the rights of others, preventing the disclosure of information received in confidence, and maintaining the authority and impartiality of the judiciary on the one hand with the risks of interference with journalism and unnecessary barriers for gathering information about criminal investigations for the benefit of the general public on the other hand.

Although the Amendments include a number of exceptions from the penalised conduct, namely the performance of a journalistic function and the public interest exception, the punitive nature of the applicable sanctions, as well as the chilling effect they produce on the exercise of the right to freedom of expression, render them to be a disproportionate interference with free speech. ARTICLE 19 finds the introduction of the new offense unnecessary, as the Criminal Code of Croatia already protects the secrecy and integrity of the judiciary. The fear of criminal sanctions, in particular imprisonment, will certainly discourage officials and other actors from participating in the public debate on criminal justice matters directly or by engaging with journalists in confidence.

ARTICLE 19 is also concerned about the potential impact of the Amendments on the media community and their public watchdog function in the larger context of challenges faced by journalists in Croatia. In particular, we have long documented that Croatia is among the EU member states with the highest number of SLAPPs and limited protection against them.² Instead of introducing further restrictions on media freedom, the Government should address the legislative gap enabling SLAPPs.

As such, ARTICLE 19 calls on the legislators in Croatia to repeal the Amendments in their entirety. Instead, they should focus on avoiding implementing measures that might obstruct the work of journalists and consider developing effective public policy options to protect whistleblowers.

¹ ARTICLE 19’s analysis is based on an unofficial translation of the Amendments. ARTICLE 19 accepts no responsibility for errors based on faulty or misleading translation.

² The Pioneering anti-SLAPP Training for Freedom of Expression, the 2024 report on Croatia, [Case Study - SLAPP in Croatia — PATFox \(antislapp.eu\)](https://www.article19.org/resources/view/case-study-slapp-in-croatia/).

Applicable international human rights standards

Protection of the right to freedom of expression and information

Croatia ratified the International Covenant on Civil and Political Rights on 12 October 1992. Article 19 of the ICCPR protects the right to freedom of expression in broad terms. Under that provision, States parties are required to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. General Comment No. 34 of the UN Human Rights Committee, adopted in July 2011, sets out the authoritative view of the Committee on Article 19:

This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse [...].

Freedom of expression is also protected in the European human rights system, namely under Article 10 of the European Convention on Human Rights (European Convention), which was ratified by Croatia in 1997.

Both Article 19 of the ICCPR and Article 10 of the ECHR also include the right of access to information held by public bodies. This entails the right of the media to have access to information on public affairs and the right of the general public to receive media output.³

The rights to freedom of expression and information are not absolute but may be restricted only under permissible grounds and in compliance with certain conditions:

- First, the restrictions must be “**provided by law.**” The European Court of Human Rights (the European Court) has stated that this requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”⁴
- Second, the interferences must pursue a **legitimate aim**. They may only be imposed for one of the grounds set out in Article 19(3)(a) or (b) of the ICCPR and Article 10(2) of the European Convention. This includes the respect of the rights of others, including

³ Human Rights Committee (HR Committee), General Comment No. 34, Freedoms of Opinion and Expression (Article 19), CCPR/C/GC/34, 12 September 2011, para 18.

⁴ European Court, *The Sunday Times v. United Kingdom*, 26 April 1979, App. No. 6538/74, para 49.

the right to privacy and fair trial rights. Article 10 of the European Convention also provides for the legitimate aims of preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

- Third, they must conform to the strict tests of **necessity and proportionality**. The principle of proportionality requires that any restriction must be the least intrusive measure to achieve the intended legitimate objective. Further, the specific interference in any particular instance must be directly related and proportionate to the need on which they are predicated. The European Court uses the test of “relevant and sufficient” reasons to assess the justification presented for a given restriction of free speech.⁵ The “chilling” effect which disproportionate sanctions, or even the threat of such sanctions, may have upon the free flow of information and ideas must be taken into account when assessing the legitimacy of restrictions.

It is further important to stress the utmost importance that the European Court ascribes to matters of public interest: “there is little scope ... for restrictions on political speech or debates on questions of public interest.”⁶ The European Court has rejected any distinction between political debate and other matters of public interest, stating that there is “no warrant” for such distinction.⁷

Protection of journalists and journalistic sources

Definition of journalism

It is firmly established in international human rights law that journalists perform the indispensable role of a “public watchdog”, which is essential for the realisation of the right of the public to receive information of public interest.⁸

Under international standards, journalism should be understood as a civic activity rather than a regulated profession. In this respect, the Human Rights Committee clearly defines journalism through functional interpretation rather than as a rigid professional status: “a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”.⁹

In its jurisprudence, the European Court expanded the role of a public watchdog to other actors in a democratic society. For example, the Court has accepted that when an NGO draws

⁵ European Court, *Du Roy and Malarie v. France*, 3 October 2000, App. no. 34000/96, para 27.

⁶ European Court, *Dichand and others v. Austria*, 26 February 2002, App. no. 29271/95 para 39.

⁷ European Court, *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, App. No. 13778/88, para 64.

⁸ See, for instance, European Court, *Lingens v Austria*, 1986, App. No. 9815/82, para 44; *The Observer and Guardian v. the UK*, 26 November 1991, App. No. 13585/88, para 59; *Busuioc v. Moldova*, 21 December 2004, App. No. 61513/00, para 56.

⁹ General Comment No.34, *op.cit.*, para 44.

attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press¹⁰ and may be characterised as a social “watchdog” warranting similar protection under the European Convention as that afforded to the press.¹¹ It has recognised that civil society makes an important contribution to the discussion of public affairs.¹²

In its jurisprudence, the European Court expressly stated that the gathering of information as an essential preparatory step for journalism is an inherent protected part of the freedom of the press. Furthermore, similar protection for the gathering of information in public interest is afforded to other actors, including non-governmental organisations¹³ or even a private individual.¹⁴

Similarly, the OSCE Member States stated, in the Concluding Document of their 1986-1989 Vienna Follow-Up Meeting that:

[Participating States must ensure that] journalists ... are free to seek access to and maintain contacts with public and private sources of information and that their need for professional confidentiality is respected.¹⁵

Protection of sources

The importance of the protection of journalistic sources has been recognised in international and regional standards. For instance, in its jurisprudence, the European Court has repeatedly recognised that the right of journalists to protect their sources is part of the freedom to “receive and impart information and ideas without interference by public authorities” and “one of its important safeguards.”¹⁶

The protection of journalists’ sources is an essential element of freedom of expression. The media routinely depend on contacts for the supply of information on issues of public interest. Individuals sometimes come forward with secret or sensitive information, relying upon the reporter to convey it to a wide audience in order to stimulate public debate. In many instances, anonymity is the precondition upon which the information is conveyed from the source to the journalist; this may be motivated by fear of repercussions which might adversely

¹⁰ European Court, *Animal Defenders International v. the United Kingdom* [GC], App. No. 48876/08, 22 April 2013, para 103.

¹¹ European Court, *Magyar Helsinki Bizottság v. Hungary* [GC], App. No. 18030/11, 8 November 2016, para 166.

¹² European Court, *Steel and Morris v. the United Kingdom*, 2005, App. No. 68416/01, para 89; and *Magyar Helsinki Bizottság, op.cit.*, para 166.

¹³ European Court, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v Austria*, 28 November 2013, App. No. 39534/07, paras 34-36.

¹⁴ European Court, *Kenedi v. Hungary*, 26 May 2009, App. No. 31475/05.

¹⁵ Conference for Security and Co-operation in Europe, Follow-up Meeting 1986-1989, Vienna, 4 November 1986 to 19 January 1989, Concluding Document, para 40.

¹⁶ See e.g. European Court, *Goodwin v. the United Kingdom*, 27 March 1996, App. no. 17488/90; *Sanoma v Uitgevers B.V. v the Netherlands*, App. No. 38224/03, [GC] 14 September 2010, para 50.

affect the source's physical safety or job security. If they cannot promise sources anonymity, journalists often cannot report at all.

Information collected or created for journalistic purposes enjoys a special degree of protection from interference by the authorities. A search and seizure operation, the purpose of which is to uncover the identity of an anonymous source, is a particularly drastic measure, as was confirmed by the European Court.¹⁷ This also applies to the protection of identity of civil servants who provide journalists with confidential information.¹⁸ Searches and seizures produce a chilling effect both on the willingness of journalists to gather information and inform the public and on the readiness of anonymous sources, including those among the authorities, to engage with the media. The European Court's case law on protection of sources has evolved to protect journalists beyond the prohibition of searches and seizures but also from less intrusive forms of interference aimed at the identification of anonymous sources.¹⁹

European standards on balancing disclosure of information about criminal investigations with fair trial rights and the impartiality of the judiciary

Reporting on matters of justice, including criminal investigations, firmly belongs to the core functions of journalism. The disclosure of information about the justice process contributes to the principle of publicity and is consonant with Article 6(1) of the European Convention, which sets the requirements for public hearings.²⁰

The principles of a balancing exercise between the rights of freedom of expression and the interest in confidentiality of certain elements of the justice process have been developed through the jurisprudence of the European Court and recommendations of the Committee of Ministers of the Council of Europe.

The Committee of Ministers of the Council of Europe recommended that:

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.²¹

¹⁷ European Court, *Roemen and Schmit v. Luxembourg*, 25 February 2003, App. No. 51772/99, para 57.

¹⁸ European Court, *Ernst and Others v. Belgium*, 15 July 2003, App. No. 33400/96, para 94.

¹⁹ *Sanoma Uitgevers, op.cit.*, paras 69-72.

²⁰ The relevant part reads, "Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

²¹ Recommendation [Rec\(2003\)13](#) of the Committee of Ministers to Member States on the provision of information through the media in relation to criminal proceedings. The principles that are further cited in the Recommendation are namely the presumption of innocence, prevention of prejudicial influence, and protection

In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly.

In its jurisprudence, the **European Court** has put a strong emphasis on the importance of reporting on criminal proceedings and endorsed the Recommendation of the Committee of Ministers (cited above). In particular, the Court:

- Emphasised that the media “have the right to inform the public in view of the public’s right to receive information [in view of] the importance of media reporting on criminal proceedings in order to inform the public and ensure public scrutiny of the functioning of the criminal justice system;” and that the public “must be able to receive information about the activities of judicial authorities and police services through the media and that journalists must therefore be able to report freely on the functioning of the criminal justice system.”²² While journalists must abide by criminal law, the considerations of confidentiality have to be balanced against the interest of the public to be informed.²³
- Rejected claims that the mere fact of communicating a piece of confidential information in a judicial investigation was sufficient for establishing the offence. The Court considered the relative importance of the disclosed piece of information, the applicable degree of confidentiality, the fact that certain information might have made it to the public domain;²⁴ and that the investigation in question had almost been completed when the disclosure was made.²⁵ It also considered whether the publication of information about pending criminal investigation hampered the integrity of the criminal proceedings in any significant way.²⁶
- Recognised that states can legitimately demand certain discretion from a public official serving in the judiciary, as long as these demands are required to preserve the impartiality of the judiciary. However, the prohibitions imposed on members of the judiciary cannot be absolute but must be balanced against the right of public officials, including judges, to exercise their right to freedom of expression.²⁷

of privacy, particularly in relation to victims, witnesses, suspects, accused, and convicted.

²² European Court, *Dupuis v. France*, 7 June 2007, App. No. 1914/02, para 42. The case concerned disclosure by a journalist of the documents that came from the judicial investigation files. The Court concluded that the imposition of fines for the disclosure was not justified or proportionate, as the publication contributed to the debate of public interest and the government failed to concretely demonstrate how the disclosure endangered any specific aspect of the administration of justice, such as the presumption of innocence.

²³ *Ibid.*, paras 43-44, 48.

²⁴ European Court, *Weber v. Switzerland*, 22 May 1990, App. No. 11034/84, paras 49-52.

²⁵ *Ibid.*, para 20.

²⁶ European Court, *Campos Damaso v Portugal*, 24 April 2008, App. No. 17107/05.

²⁷ European Court, *Baka v. Hungary*, 23 June 2016, App. No. 20261/12, paras 162-167.

- Recognised that potential conflict between freedom of expression and the presumption of innocence cannot prevent the authorities from informing the public about criminal investigations in progress; while authorities must “do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected.”²⁸

Thus, the ‘necessity’ standard developed in European Court’s case law means that a disclosure of a detail of an ongoing investigation must be assessed against the relative importance of the disclosed information for the administration of justice. In particular, it might be necessary to prohibit disclosure if it prejudices a key element of due process, for example the presumption of innocence or the impartiality of the judges. A blanket prohibition of any disclosure of previously confidential information about criminal investigations or a judicial process is ‘unnecessary’, as it is the content of the disclosed information and context in which it is made that must be assessed. In any event, the restrictions to prevent harmful disclosure must always be balanced against considerations of public interest and the chilling effect that sanctions may produce.

Importantly, the use of criminal sanctions to address disclosure of confidential information, which legitimately requires protection and is not overridden by considerations of public interest, must be assessed in the light of the proportionality test.²⁹

²⁸ European Court, *Alenet de Ribemont v. France*, 10 February 1995, App. No. 15175/89, para 38. In this case, the Court found a violation of Article 6-2 (presumption of innocence) because the authorities made a public statement, without any qualification or reservation, about the applicant’s involvement in a murder, which “prejudged the assessment of the facts by the competent judicial authority”.

²⁹ *C.f. Campos Damaso, op.cit.*, para 39, in which the European Court stated that the very fact of criminal prosecution of a journalist, albeit in a form of a modest fine, produced a chilling effect; or *Baka v. Hungary, op.cit.*, para 167, where same standard of avoiding “chilling effect” was applied in relation to the sanctions against members of the judiciary.

Analysis of the Amendments

The new Article 307a in the Criminal Code reads as follows:

- 1) A judicial officer or civil servant in a judicial body, a police officer or official, a defendant, a lawyer, a trainee lawyer, a witness, an expert, a translator or an interpreter who, during a previous criminal proceeding that is considered non-public under the law, discloses without authorization the contents of an investigative report or evidentiary actions, with the aim of making it publicly available, will be punished by a prison sentence of up to 3 years.
- 2) Committing, aiding or abetting the criminal offense referred to in paragraph 1 of this article cannot be committed by a person who performs journalistic work.
- 3) There is no criminal offense referred to in paragraph 1 of this article if the offense was committed for the purpose of protecting the victim of a criminal offense, in the interest of the defense in criminal proceedings or in another predominantly public interest.

The Amendments need to be analysed for their compliance with international and regional standards on freedom of expression, namely the three-part test for restrictions.

ARTICLE 19 reiterates that while the legislation is arguably pursuing several recognised legitimate aims, namely the protection of the rights of others, prevention of the disclosure of information received in confidence, and maintaining the authority and impartiality of the judiciary, the Amendments raise concerns as to the third prong of three-tier test: necessity and proportionality. The test of necessity implies the existence of “a pressing social need” to protect a legitimate interest. Only an individualised nature of the threat to that interest can justify introduction of restrictive measures by the State.

Here, ARTICLE 19 makes several observations.

Necessity of restrictions

First, we note that the necessity to introduce a new criminal offense into the current penal legislation of Croatia must first be evaluated in **the context of the existing provisions in the Criminal Code**, which already protect the secrecy and integrity of the judiciary. We observe that Article 307 of the Criminal Code criminalises the breach of secrecy of judicial proceedings, Article 308 criminalises disclosure of the protected witness’ identity, and Article 145 criminalises disclosure of ‘professional secrets’ without authorization and applies in particular to attorneys-at-law and defence counsels.³⁰ These provisions, especially if seen in conjunction with other punishable conduct, such as obstruction of evidence, are more than sufficient to respond to instances of disclosure of evidence that threaten the justice process. Protection of

³⁰ The Criminal Code of Croatia ([Kazneni zakon \(nn.hr\)](http://www.kazneni.zakon.hr)).

the secrecy of proceedings under Article 307 has a wide application and extends to criminal proceedings, administrative proceedings, protection of juveniles, and disciplinary proceedings. Neither is it limited in personal scope to a narrow group of officials. Therefore, we believe there is no need to introduce an additional offense into penal legislation, which would only produce a counter-productive effect and restrict access to information.

Second, we are concerned that the Amendments employ a **formalistic approach to protection of confidentiality**. The conduct under the disposition of the article is punishable simply on the basis of the procedural ‘non-public’ nature of the disclosed document. This approach is at odds with the practice of the European Court, cited above, which takes a number of factors into account in assessing the necessity of protecting evidence and documents relating to the criminal justice process. It follows from the analysis of the jurisprudence that restrictions are more likely to be justified when the disclosure has led to the actual damage to the integrity of the justice process.³¹

Pressing social need

We believe that this formal breach of confidentiality is not sufficient. A “**pressing social need**” to restrict one’s freedom to impart information about an ongoing investigation arises when the disclosure threatens to prejudice the judicial process, in particular in relation to the need to protect the presumption of innocence of the accused. It is also key to examine whether the disclosed piece of information, even though formally contained in a confidential investigative document, had already been in the public domain. If that is the case, damage to the justice process is negligible, if at all present, and, thus, should not be penalised.

Further, we appreciate the attempt of the Government to mitigate the adverse impact on journalism and the right of the public to receive relevant information. Namely, the punishable conduct does not cover the performance of journalistic work and disclosure for the purpose of protecting the victim of a criminal offense, in the interest of the defense in criminal proceedings or in another *predominantly* public interest. However, we find these **exceptions insufficient to prevent a considerable chilling effect on the exercise of the right to freedom of expression** and the right to information on matters of administration of justice. In particular:

- First, the term ‘journalism’ risks being interpreted in narrow formalistic terms, excluding the work of actors, such as human rights groups and civil society organisations, who may perform a journalistic function. We recall that the public watchdog function is a civic activity that is shared between the press and a range of other societal actors in a democratic society. To provide an example for the present context, a human rights lawyer involved in a criminal proceeding can certainly perform the public watchdog function of the press by informing the public on a matter of criminal justice.

³¹ *Dupuis v France, op.cit., Campos Damaso v Portugal, op.cit., and Weber v. Switzerland, op.cit.*

- Second, the public interest exception, as it is formulated at present, contains the word ‘predominant’ attached to it. This opens the door for abuse where, in the eyes of the prosecutors or the courts in Croatia, certain disclosures about a justice process in public interest would not pass the test of ‘*predominant* public interest.’

More broadly, as pointed out by the Croatian Association of Journalists,³² the implementation of the Amendments would obstruct the possibility of journalists to collect information about criminal investigations. We worry that this will result in reduced media reporting—and thus reduced access of the public to relevant information—on important matters of public interest. Reporting on matters of justice, especially when it concerns politically sensitive cases such as corruption or abuse of power, is not possible without engagement with inside sources: police officers, investigators, prosecutors, lawyers, and others. We are concerned that the Amendments will have a significant chilling effect on the willingness of the latter actors to engage with the media. Furthermore, an investigation into the crime of disclosure by a civil servant or other official would provide the possibility for the investigative authorities to obstruct the work of the journalist with whom that official cooperated, for example, by demanding the journalist’s testimony and pressuring the journalist to disclose their sources.

While the media play an important role as a public watchdog and often as an intermediary between the general public and government-held information, they do not hold an exclusive right to impart information about criminal investigations. Progressive international standards on freedom of information encourage proactive disclosure of information by the government. Public officials, including those employed in the judiciary branch, are not stripped of their right to freedom of expression in relation to information they hold by virtue of their position, although they do carry additional “duties and responsibilities” in exercising their rights. Moreover, the Amendments extend criminal responsibility to actors who are not strictly or not necessarily public officials, including a defendant, a lawyer, a trainee lawyer, a witness, an expert, a translator or an interpreter.

Proportionality of the sanctions

We also find that the Amendments prescribe manifestly **disproportionate sanctions**. We recall that the restrictions of the right to freedom of expression must meet the requirement of proportionality. This means that the least restrictive measure must be used to achieve the intended protection of a legitimate interest. These requirements are not met:

- First, resorting to criminal law to regulate disclosure of information is a matter of concern. On the conceptual level, criminal law is designed to respond to serious threats to public order. In the context of freedom of expression, this includes, for example, criminalisation of incitement to commit a crime. Here, the Amendments take a formalistic approach to

³² The Croatian Association of Journalists, [Open letter from CJA to citizens about the dangers of amendments to the Criminal code](#), March 2024.

criminalisation of any disclosure of ‘non-public’ information, without linking the sanctions to the actual adverse effects of disclosure on the elements of a fair trial, such as the impartiality of the judges and the presumption of innocence.

- Second, we believe there are viable alternatives that would protect the integrity of the justice process without the need to resort to criminal sanctions. Namely, the government should instead explore options for disciplinary sanctions, particularly for civil servants and other officials, with due regard to the public interest exception and protection of whistleblowers.
- Third, the unequivocal choice of imprisonment of up to three years as the applicable sanction by the Amendments raises major concerns. The fear of incarceration will undoubtedly discourage an array of actors involved in matters of criminal justice from engaging with journalists or exposing potential violations and abuses inside the judiciary. The discussion of the jurisprudence above clearly shows that even modest fines have been recognised by the European Court as disproportionate to the aim of protecting the secrecy or integrity of the justice process. Thus, the sanction of imprisonment, as prescribed by the adopted law, is manifestly in violation of the proportionality test.

ARTICLE 19’s recommendations

ARTICLE 19 recommends to repeal Article 307a in its entirety.

The adopted measures are not necessary to protect due process or fair trial rights because relevant offenses, including the breach of secrecy of the proceedings, are already penalised under Croatian penal law.

The Amendments follow a formalistic approach and penalise disclosure of any ‘non-public’ information without requiring any adverse effect on due process. The introduction of a new crime will produce a significant chilling effect on the willingness of public officials, lawyers, witnesses, experts, and other sources to disclose information about criminal justice matters. It may also result in additional interference with journalistic work and compromise the anonymity of their sources.

The sanctions prescribed by the Amendments are particularly severe—imprisonment of up to 3 years—which is a grossly disproportionate restriction. The exceptions of ‘predominant’ public interest and journalism are insufficient to tame the aforementioned adverse effects.

About ARTICLE 19

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, under implementation in domestic legal systems. The organisation has produced a number of standard setting publications which outline international and comparative law and best practice areas such as defamation law, freedom of expression and equality, access to information and broadcast regulations.

On the basis of this publications and ARTICLE 19's overall legal expertise, the organisation published a number of legal analysis each year, comment on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform effort worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <https://www.article19.org/law-and-policy/>.

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