

LEGAL RESPONSIBILITY FOR THE OFFENSES COMMITTED THROUGH THE MEDIA IN KOSOVO



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Abstract

The purpose of this paper is to provide an overview of how the media generally function in relation to their responsibilities to the State. Knowing that despite the legal protection enjoyed by the media under international conventions and in general domestic legislation, all criminal offenses committed through the media are defined in one way or another by adequate legal norms to prevent and sanction such offenses abusive.

During the different periods of Law adoption in Kosovo, it is evident that the area of criminal and civil liability for criminal offenses committed through the media has changed. This is due to the fact that various provisions have not infrequently been used to restrict freedom of expression, which is otherwise the most basic, but also the most sensitive provision provided by Article 10 of the International Covenant on Human Rights. Therefore, in this paper will be explained the variability of the legislation on criminal and civil liability for criminal offenses committed through the media and that starting from International Conventions, the Constitution of the Republic of Kosovo, International Legislation compared to domestic, comparison of provisions which with the old codes have been defined as criminal offenses, while today those offenses are considered of a civil character and for these offenses there is only civil liability.

1. Introduction

Various private and public mass media, Internet, TV, various newspapers, radio, etc. have a special significance in everyday life. Today, human society finds it impossible to function without the Mass Media as a source of information and as a form of communication with public opinion.

It is well known that the means of public communication have a great influence on the creation of public opinion and with special emphasis when such information is related to crime and criminality in general. In order to prevent and fight abuses in the field of information and communication with the public, every genuine society has issued legal provisions, its legislation in the

civil and criminal field in order to prevent these special types of abuses.

In everyday life there are many abuses in the field of public information, which in essence exceed the legal competencies for which these public and private mass media were established. Although, it is known that a large number of media outlets are managed, financed and directly or indirectly influenced by various interest groups, be they political, economic, legal, etc.

Various mass media such as internet, social networks, TV, radio, print media, etc. often serve and place in the public opinion information which is not fully verified, lies, information (with certain background of financial gain illegally) that can harm not only certain natural and legal persons, but also a society whole.

It is also known that the media in modern times and in the democratic system represent an important pillar of influence of all currents and processes in society, so they are in fact the fourth pillar of the separation of powers. This is further reinforced by the fact that the media have such great power in orienting public opinion in certain areas of life that they determine the thoughts of people (as viewers, readers and listeners) in the face of events of a political, economic, social, social nature, etc.

The media can also change the mentality of the people in one way or another because by serving classified information they direct the human mind in certain directions and quite efficiently.

When we talk about the general level, it is indisputable that the media today play a relevant and influential role in the lives of people in general, despite the fact that such an impact has negative and abusive effects at certain stages of development of human society.

Technical-technological development in some segments of Mass media, especially those related to the Internet, today have almost become quite dangerous and very difficult to manage. Unfortunately, today critical thinking is done by a very small percentage of people and this is exactly what has created a general opinion about the trust of information disseminated through the Mass media, especially through the internet. Today, the power of the media has reached such a degree of collective influence that it can elevate people's morale, but at the same time can attack it to the point of creating emotional and psychological distress. Precisely due to the great influence of the Press, Radio, Television, Internet and other means of public information and communication, the need to regulate this area with national legislation has emerged.

The Constitution of the Republic of Kosovo in its Article 40 speaks about freedom of expression where freedom of expression is guaranteed and includes the right to express, disseminate and receive information, opinions and other messages, without being hindered by anyone. However, the same article clearly states that freedom of expression may be restricted by law in cases where it is necessary to prevent incitement to violence and hostility on the grounds of racial, national, ethnic or religious hatred (The Constitution of the Republic of Kosovo, article 40).

Freedom of expression is guaranteed by Article 10 of the European Convention on Human Rights where paragraph 1 states that: Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of cinematographic or television

broadcasting undertakings (Bychaëska- Siniarska, 2018) Whereas, par.3 make clear the fact that the exercise of these freedoms, which contains obligations and responsibilities, may be subject to those formalities, conditions, restrictions or sanctions provided by law and that are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the protection of law and order and the prevention of crime, for the protection of health or morals, for the protection of the dignity or rights of others, to prevent the spread of confidential data or to guarantee the authority and impartiality of the judiciary. (Bychaëska-Siniarska, 2018).

Also, the Constitution of Kosovo, in article 42 which speaks about the freedom of the media guarantees the freedom and pluralism of the media, censorship is prohibited and no one can prevent the dissemination of information or ideas through the media, unless such a thing it is necessary to prevent inciting and provoking violence and hostility on the basis of racial, national, ethnic or religious hatred. According to this constitution, everyone has the right to correct fake, incomplete, or inaccurate information published, if it violates his/her rights or interests, in accordance with the law.

But unfortunately today the press and other media outlets exceed authorizations for different purposes and most often for certain purposes of daily politics, certain interest groups that have an impact on the political currents in the country and in some media (privately or publicly owned), but also to benefit financially or other forms of interest, by posting untrue, modified information, which is of interest to the public.

In these situations and circumstances, the media use unverified information, fabrications and lies and thus publish or transmit "fabricated" data, half-truths or misinformation, through which they endanger and seriously damage the freedoms, rights and human beings and citizens (Dragusha, 2010), but also severely attack the values of a society which is going through a phase of long-term transition, such as Kosovo. These abuses of the mass media definitely have negative effects in relation to the international community - states as subjects of international law, but also with international mass media.

From the prism of criminal law it should be noted that various mass media, such as the Internet, Press, Radio, Television and other means of information and public communication not only affect a large number of people across the globe, but with their misuse can also be committed a large number of criminal offenses and consequently affect the increase of crime in general.

2. Criminal Responsibility of Persons Who Perform Criminal Offenses Through the Media

Today, the technical-technological development and the constantly changing trend of becoming a Journalist and publishing information to the public poses a great complexity in terms of criminal responsibility of persons who commit crimes through the media. Social networks which have conquered the world and at the same time have conquered the mind and control of the thinking of people in general, are a rather difficult form of management and as such adequate mechanisms for their control have not yet been established. Their lack of control and without the opportunity to determine the criminal responsibility of persons who through social networks as a form of information and communication place various information, this information that often represents criminal offenses, is making it even more difficult to establish criminal responsibility of these persons. The criminal offenses committed are of a very high intensity and which are by no means rare.

The system in Kosovo gives sufficient space to the persons responsible for publishing various information and as such the source of information very often leads to the fulfillment of the conditions for a criminal offense committed. The publication of some data including various Court files very often hinders the criminal procedure but not only. This information that is disseminated to the general public also damages the image of many people whose compensation can never be made in proportion to the damage caused. The Criminal Code in force of the Republic of Kosovo in article 66 (Order for publication of Judgments) stipulates that the Court may order the publication of a Judgment when it deems that publication is in the general interest of the injured party or other persons. The order for the publication of the Judgment requires that the Judgment be published, in whole or in part, in a newspaper or broadcast on radio or television. The publication is done at the expense of the convict and the date and duration of the publication are set by the court. The newspaper, radio station or television station publishes the verdict sent to them by the Court. (Code No. 06 / L-074 Criminal of Republic of Kosovo, 2019) Among other things this article in par.5 says that the publication of the Judgment is not ordered if such publication endangers official secrecy, the privacy of persons or the morals of society.

The mass media in a democratic system where freedom of expression is a right guaranteed not only by the Constitution but also by International Conventions, today has a host of protections for the work they do and for the way they access information. Also, thanks to the development of technology and great technological achievements, the issue of making news has been

simplified knowing that we now live in the era of digitalization but not only. Today, social networks are facilitating the benefit of the media and their efficiency because already with information are contributing a lot and "active" citizens using personal phones through which they provide photos, video recordings, conversations, etc. This trend has led to many acts being considered criminal today, but such a thing has not yet been created as awareness by society in general. The non-sanctioning of such persons is increasingly giving strength to this trend and as such should be prevented as soon as possible because otherwise the damage will be great and very long-term in every sphere of life. Photographing and other unauthorized recordings are a criminal offense under the Criminal Code of the Republic of Kosovo in force. Anyone who without authorization photographs, films, videos or otherwise records the other person in his personal residence or in any other place where the person has reasonable expectations for privacy and thus substantially violates the privacy of the other, shall be punished by a fine or with imprisonment of one (1) to three (3) years; Whoever, without authorization, passes, displays or gives access to a third party to the photograph, film, videotape or any other recording obtained in violation of the paragraph of this article, shall be punished by imprisonment of one (1) to three (3) years. (Criminal Code No. 06 / L-074 of the Republic of Kosovo, 2019).

3. Responsibility in the Field of Media According to Some Comparative Legislations

Kosovo has advanced legislation compared to other countries in the region in relation to the protection of journalists' resources. It is one of the few countries that has adopted a law on the protection of journalists' resources. Journalists and other media professionals have it the right to remain silent about their sources of information. According to this law, the declaration of the source of information can be made only at the request of the competent court, and this, only if this information can not be disclosed by other means and that is important for the preservation of someone's life (Law No. 04 / L-137 on the Protection of Journalism Resources, 2013).

Other countries also have regulated the issue of protection of information sources. Montenegro has regulated this issue with the Law on Media and Electronic Media. However, through self-regulatory mechanisms such as the Code of Ethics, journalists in Montenegro have envisioned that sources of information be protected but also that the motives of confidentiality are verified before this source can be considered credible. In fact, the self-regulation of journalists is seen as the best form of regulation of the exercise of the profession of journalism. This is because, in this way, the abuse of the rights of journalists in general and the

protection of the source of information in particular would be prevented.

Protecting journalists' resources has been problematic in other countries as well. Although all countries have determined that journalists' sources of information are protected, there have been cases where this right has been restricted. Croatia, in the Law on Criminal Procedure, has provided the possibility for journalists, in closed session, to indicate the source of information, if this information avoids any other crime. The form of regulation in Croatia is similar to that of Kosovo.

In Serbia, the protection of journalists' sources is done by the Law on Public Information, in its Article 32, which specifies the right of journalists to protect their sources of information. However, Article 41 of the Criminal Code of the Republic of Serbia, which leaves the possibility of keeping the source of information secret, unless it is a criminal offense punishable by at least five years of imprisonment or if it is necessary to prevent an offense such. Such a definition is similar to the restriction set in the Kosovo law on the protection of journalistic sources, except that in this case, the restriction is set in the criminal code. (Ejupi & Abazi 2015: 7).

4. Civil Media Responsibility and Protection of the Source of Information According to the Legislation in Kosovo

Regarding freedom of expression and the media, the Criminal Code of the Republic of Kosovo contains a whole chapter which sets out the provisions on criminal liability for criminal offenses committed through the media. Such a Criminal Code contains 4 articles in total (Articles 37, 38, 39 and 40) regarding the criminal liability of natural and legal persons (3 of which have been repealed by Law No. 04 / L-129 on amending and supplementing Criminal Code of the Republic of Kosovo No. 04 / L-82 (Salihu & Zhitija & Hasani, 2014) Article 37 defined the hierarchy of criminal responsibility for any criminal offense committed through the media (first the author, then the editor-in-chief, then the publisher and finally the producer).

Article 38 was directly related to the Law on the Protection of Journalistic Sources and stated that the media was not criminally liable if they refused to disclose the source of the information - unless the court considered that disclosure of information was necessary to prevent an attack which posed an imminent threat to the life or bodily integrity of any person. Article 39 meanwhile simply defined the applicability of the general provisions on criminal liability. These articles have been repealed in Kosovo after the great influence that the mass media and civil society have made in relation to the changes required and implemented. As a result, only Article 40 remains in the Criminal Code, which

defines the criminal liability of legal persons. This article expressly stipulates that: It follows that the legal person is responsible for the criminal offense of the responsible person, who has committed a criminal offense acting on behalf of the legal person within his powers, for the purpose of gaining benefit or has caused harm to that legal person. The liability of the legal entity exists even if the actions of the legal entity have been contrary to the business policies or orders of the legal entity (Salihu, Zhitija & Hasani, 2014).

According to the legislation in force in Kosovo, the legal person is also responsible for the criminal offense in cases where the responsible person has committed a criminal offense is not punished for that criminal offense, and the responsibility of the legal person is based on the guilt of the responsible person.

It should be noted as a "sui generis" case the omission of this article and the removal of the other three because there is no consistency in the criminal liability mentioned. The Criminal Code leaves legal entities under criminal responsibility, but on the other hand removes criminal liability from natural entities, from whose responsibility the criminal liability of legal persons actually derives.

However, the Criminal Code of the Republic of Kosovo sufficiently manages to formally define the two issues, both privacy and freedom of expression and media.

5. Compensation of Damage by Civil Media Liability

The damages caused by various information coming precisely from the means of public communication are very great, the compensation or reward can be at least as a modest satisfaction for the attacked subjects. Too much information is so harmful that it morally, psychologically and psychologically affects certain subjects, so much so that they may lose the authority that society enjoys and their personal and family integrity. This abusive information seriously violates fundamental human rights and freedoms, which are guaranteed by national legislation and international conventions.

Knowing that the responsibility for damages caused by criminal offenses committed through the media is already of a civil nature, the regulation of compensation for damages caused is done in accordance with the Law on Compulsory Relations (LMD) and that related to Article 139 (request to cease to violate the rights of the personality) according to which everyone has the right to request from the court or other competent body to order the cessation of action that violates the integrity of the human personality, personal and family life, and other rights. of his

personality and that the court, respectively the other competent body may order to cease the action under the threat of payment of a certain amount of money, set in total or in certain periods of time in favor of the injured party (Law No. 04 / L-077 On Obligations, 2012).

Also, this law in article 182 (pronouncement of the judgment and correction of the error) clearly states that in case of violation of the right to personality, the court may order the pronouncement of the verdict, respectively the correction at the expense of the injured party, or order the injured party to withdraws the statement by which the violation was committed, or something else by which the purpose achieved by reward can be accomplished. (Law No. 04 / L-077 on Obligations, 2012).

The Law on Obligations also Article 185 provides for monetary compensation in special cases (violation of dignity) which is one of the most common forms of damage by the media and information disseminated by various means of public communication. According to this article, the right to compensation for monetary damage due to the emotional pain suffered belongs to a person who, through fraud, violence or abuse of any relationship of submission or dependence, has been pushed into punishable sexual intercourse or into punishable unnatural sexual act, as well as the person against whom another criminal offense has been committed against the dignity of personality and morals. (Law No. 04 / L-077 on Obligations, 2012).

Whereas, article 183 (monetary reward) for the physical pains suffered, for the spiritual pains suffered due to the reduction of life activity, ugliness, violation of authority, honor, freedoms or rights of personality, the death of a relative, as well as fear, the court, if it finds that the circumstances of the case especially the intensity of pain and fear and their duration justify this, will judge the fair compensation in money, regardless of the compensation of material damage as well as from lack of material damage.

In deciding on the claim for compensation of non-pecuniary damage, as well as the amount of its compensation, the court will take care of the importance of violating the good and the purpose for which this compensation serves, but also for the fact that with not to favor goals that are not in line with its nature and social purpose. (Law No. 04 / L-077 on Obligations, 2012).

With sufficient legal mechanisms and institutions, Kosovo, in legal terms, has created a good climate for practicing the profession of journalism. However, law enforcement and the proper functioning of institutions is essential to ensure a safe

climate for journalists. Institutional mechanisms created by state institutions or by self-initiative are not sufficiently functional.

In terms of legal framework, Kosovo stands quite well. It is one of the few countries that has adopted a special law on the protection of journalists' resources and has decriminalized defamation as a legal violation. Institutional mechanisms are in place and journalists enjoy legal remedies for practicing their profession. Defamation is not dealt with in the Criminal Code of the Republic of Kosovo. Most other European countries treat defamation as a criminal offense. In some European countries and countries aspiring to European integration, defamation is punishable by a fine, which in some cases is even more serious through the media. In other countries, prison sentences of defamation or insult are also provided. (Ejupi & Abazi, 2015: 12-15).

The Republic of Kosovo has regulated criminal and civil liability for criminal offenses committed through the media differently in the previous legislation. Initially defining with special provisions such acts committed through the media and then introducing this responsibility in the general provisions of the new criminal code, but in particular we emphasize that this issue of regulation and sanction has remained in the field civil law, specifically the Civil Law against Defamation and Insult (Law No. 02 / L-65 Civil Law against Defamation and Insult, 2008).

The Republic of Kosovo is a supporter of the principle "societas delinquere potest", therefore even in criminal liability for criminal offenses committed through the media it is sanctioned in cases where criminal offenses can be committed that are provided by the Criminal Code but that criminal liability is sanctioned only under the responsibility of legal persons. This is done with the sole purpose of creating a strong legal basis for the prevention and fight against crime in general, and especially when carried out by legal entities, where with special emphasis we distinguish that carried out by the mass media with the status of legal entities. (Law No.02 / L-65 Civil Law against Defamation and Insult, 2008).

6. Conclusions

Various mass media such as the Internet, TV, radio, newspapers, etc. have always been and remain one of the most important forms of creating public opinion in all areas of life. Today it is impossible to think of the functioning of political, economic, social life, etc. without the mass media and information provided by these media.

Daily politics today is oriented precisely by the mass media and the creation of a favorable climate for people who directly or

indirectly influence this information, offer them various benefits, not only material.

A convenience of providing and receiving information would not be created if the legislation did not specify specific and general cases for the operation of the mass media. Therefore, over different periods of time, based on the change of human society and human rights in general, the right to freedom of expression has gone hand in hand with this. Freedom of expression today is a fundamental human right which is guaranteed by International Conventions, but also by local-national legislation, including the constitution as the highest legal act.

Of course, freedom of expression is also restricted in certain cases because this is presented as a need in cases where there is an attempt to abuse this right. For this reason, legal mechanisms "lex specialis" have been issued to prevent and combat abuses of this nature. Also, in cases of causing damages in Kosovo now there is only civil liability and compensations are made in accordance with the Law on Obligations.

In conclusion, a very favorable climate has been created in Kosovo for the exercise of the profession of journalism, ie for the functioning of the mass media in general, respecting and protecting in particular freedom of expression as a fundamental human right and thus modifying criminal responsibility in civil liability which as a sanction has only compensation for the damage caused by that offense.

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