



RESEARCH ARTICLE

The Right to Privacy in the Republic of Kosov

Dardan Vuniqi¹, Arsim Thaçi²

^{1,2}University "Ukshin Hoti" Prizren, Faculty of Law, Republic of Kosovo

ARTICLE INFO	ABSTRACT
Received: Oct 24, 2024 Accepted: Dec 11, 2024 Keywords Freedom of expression Privacy Right Electronic media Punishment	This paper has analysed the characteristics and possibilities of the protection of the right to privacy in the print and electronic media in the Republic of Kosovo. The paper has examined the relation between the right and the right to free expression. To this end, there are self-regulatory documents of the Republic of Kosovo in the field of media, presenting the ethical standard of the conduct of journalists: the Code of the print media, adopted in 2015 and the Law on Media in the Republic of Kosovo, the observance of which is mandatory by the media community. The research is based on the analysis of cases of violation of the right to privacy, dignity and integrity of persons, based on a comparative analysis of media reporting. The first monitoring was carried out by the analysis of publications in electronic media and beyond. The analysis proved that there were privacy violations on the portals, the majority of which were in the Chronicle column. The privacy of victims has been violated more than the privacy of suspects. Despite the clear point stated in the Code, on the need to protect the identity of minors, there have been numerous violations of the child's privacy, again in the Chronicle column.
*Corresponding Author: arsim.thaqi@uni-prizren.com	

INTRODUCTION

Freedom of expression is one of the fundamental human rights, guaranteed by the regulatory documents, and international and domestic self-regulatory component. Every human being thinks, and accordingly enjoys subjective and unlimited freedom of thought. Another question is whether the process of thought is correct or not. The freedom of thought of a person cannot be abolished with the outside intervention.

However, man as a social being needs to communicate the results of his thought to others, therefore this second freedom is intersubjective and may encounter obstacles. Freedom of a person to express his opinion is subject to external influences that may limit it (McStay, 2017). In short, freedom of thought cannot be limited because it does not endanger others, while the expression of that opinion can be limited in case of violation of various rights (rights to privacy, protection of minors' rights, protection of copyright, and hate speech).

This right is not an absolute right and can be limited to protect other rights (Loon, 2010: 58). One of the rights that can limit freedom of expression is the right to privacy as an essential prerequisite for achieving personal freedom, autonomy, security and identity and as foundation and protection of individual freedoms (Mills, 2015). The first text on civil liberties, freedom of expression, its limitations and the freedom of religious feelings in Europe is considered to be a reflection on civic freedom of Peter Foškol (2015), in which he expresses his position on the need to limit freedom of expression when there is a possibility that the enjoyment of this freedom will harm or injure other people.

The freedom of the media is associated with the freedom of expression, as an asset and foundation of democratic societies and the foundation as a prerequisite of the right to information, showing a complex

relationship within the freedom of media, but also the fact to what extent the realization of the human rights, and democratic and free society (Kosovo, 2022). It is the duty of journalists to know what constitutes a legitimate sphere of public interest and relevant information, worth to become a piece of news, based on professional and ethical standards and regulations. In the Republic of Kosovo, the Code of Journalists of Kosovo has been approved (Press Council, 2015), as a form of self-regulation in the field of media, and then in 2016, the Guidelines on Implementation of the Code of Journalists of Kosovo in an online environment (Press Council, 2016).

1. DETERMINING THE RIGHTS TO PRIVACY

The right to privacy, one of the latest human rights, was recognized in the 20th century as a right regulated within the right to life, rather than as an independent right (Kosovo A. o., 2022). Prior to the twentieth century, the word privacy, derived from the Latin word, *privatus*, and denoted people who were isolated from other people, excluded from society, and were antisocial, and it was only later that the word privacy lost its negative meaning, and instead denoted the right to be left on one's own hands, respectively on one's own peace (Center, 2019).

As justification the protection of the right to privacy has a "moral value" and is confirmed in regulatory, and international and regional self-regulation documents, as well as in the documents of the Republic of Kosovo. The reasons that Jaquet presents support of the ethical protection of privacy are also the protection of individual freedoms, the thesis assumption that persons should be respected as moral purposes, valuable in themselves, the requirement that should be accomplished, for individuals to achieve happiness and avoid anxiety and distress.

Jaquet (2007: 253) says that the right to privacy is considered as the most profound foundation of individual freedom. The protection of the right to privacy is morally justified as something contributing to individual freedom, that has an internal moral value, a value which is not requiring evidence, that is, a value in itself and for itself (compared to the instrumental value of things that are valuable only for achieving some purpose) (Jaquet, 2007: 254).

The second reason, respect for a person as a moral purpose in itself, is associated to the distinction between intrinsic and moral value, so the individual should be perceived as an autonomous person, as someone who manages oneself, someone with intrinsic value, and by not respecting his privacy proper moral respect should not be paid to him, but the individual is treated as something that has a pure instrumental value, as means and materials for work.

Another reason that relies on a psychological fact is that most people want to preserve their private lives to some extent and, therefore, it is morally impermissible to violate the privacy of another person, especially in cases where it is known that this will cause them pain, distress and mental distress when suffering. (Jaquet, 2007: 257).

The term private life, as stated by Ivana Roagna (2012), is much broader than the term privacy and includes a field in which each individual can freely develop and fulfil his personality in relation to others and the outside world. The right to privacy is protected in comparison with the state and other individuals or organizations (Accession to the EU, 2022).

In contrast to the right to privacy as a human right, the right to privacy in comparison with other people or organizations, most often refers to the violation of this right by the media, which includes publication of personal photographs, personal information and silence by journalists and the photographers. As it is said: *"Disclosure of information can lead to moral abuse, and violation of the right to privacy is allowed when it is in the public interest, that is, when relevant information is obtained in this way"*.

Let us compare the right to privacy and the right to freedom of expression, it is important that these rights are not absolute rights and both allow limiting one right to protect the other right. Freedom of expression may be limited if in a democratic society it is necessary to protect the interests and rights of others, while

the right to privacy is limited when there is a legitimate public interest to know a piece of certain information (Europe, 2022).

Many scholars have emphasised the mutual dependence of these two rights when they say: ***"It is clear that there is an ongoing and serious problem creating a relationship between these two fundamental human rights. The fundamental, natural human right, the right to honour and reputation, the right to personal dignity and the right to privacy may be threatened by another fundamental human right on which the free democratic process is based, the right to freedom of expression, to obtaining and communicating information"***.

Therefore, the question of "the misuse of one right to assert another right" is used. In the field of media, there is a conflict between the protection of the right to free expression in the media, the protection of the right to privacy, so in contemporary practice, priority is given to the right to free reporting. As pointed out, with the first argument, the protection of economic freedoms, the protection of free media coverage is associated with a broader demand for the protection of freedom: ***"Most media companies are market-oriented, and the flow of information through the media can be seen as a specific form of market participation. Since modern society is expected to provide citizens freedom to do business in the market, limiting the exchange of information through media can be considered as a limitation of economic freedoms"***.

The second argument, the prevention of censorship, is based on the fact that state censorship of media texts objects the freedom of speech, as a fundamental human right, and this approach is based on the assumption, as any prevention of media from presenting information for free. The consent of those to whom the information relates is equal to state censorship and contrary to the protection of freedom of speech. Another argument aimed at ensuring the free presentation of information, without prior consent of the individual, to whom the information refers, is the protection of the public interest and this argument begins with the claim that "in order to protect its interests, the public, is entitled to be informed about various issues, including those related to the private life of persons in responsible posts, which is also important for achieving higher transparency and accountability in the work of public bodies".

The emergence of the Internet imposed new considerations in the field of traffic and the protection of human rights. It is believed that ***"New media enable that type of communication that maximally expands the field of freedom, but it also concurrently shows its dark side, the possibility of abuse, destruction, subversion"***. Along with advantages, Nicolas Ne Groponte (1998: 22) draws attention to ***"The commercial side of new technologies, as one of the basic motivations for their expansion"***.

Freedom of expression, media and information remain fundamental rights for the development of Kosovan society. Despite the progress made over the years, overall challenges remain within the framework of freedom of expression and information, the legislative and regulatory framework, as well as independence, security and transparency. On the one hand, Kosovo provides a sufficient legal framework to ensure freedom of expression, information and media. There is also freedom to work as a journalist; there is no discrimination that prevents foreign journalists from carrying out their work, while the media are free to distribute content in the language(s) of their choice. However, within each section of this report, a number of issues remain and should be addressed. The first part, ***"Freedom of expression and information"***, covered a number of issues, such as the summary about the existing legislation, its applicability, and possible limitations; the extent to which the media upholds its principles of journalism for fairness and objectivity during election coverage; the extent to which the media have equal access in reporting on matters of public interest; and the extent to which the government, parliament and courts are fairly and equally open to the media. A number of conclusions can be drawn within this section.

While comprehensive and coherent legislative framework is in place, there is no review of such legislation. A worrying issue that has repeatedly appeared is the weak implementation of the Law on Access to Public Documents, which was identified by journalists as an obstacle in their access to information; this has been reported in particular by smaller media outlets and by those working at the local level.

2. IMPORTANCE AND PROTECTION OF PRIVACY

Self-regulation is defined as *“An organization within the profession of a journalist, when journalists themselves determine their ethical standards, expressed in the code of wine producers”*. Norms that journalists determine to themselves, through self-regulation, are not laws, therefore courts are not bothered when failing to respect them, but are journalistic organizations, press councils, etc.; therefore, sanctions for irresponsible behavior of media employees do not exist, but there is the weight of moral, not punishment.

The importance of self-regulation is reflected in the fact that it is more important for a journalist to perform his function in society based on the rules of conduct and the ethical standards, defined and accepted by the profession of a journalist and based on which he is protected, contributes to the profession of a journalist in achieving independence, independent adoption of the principles, but also brings along a certain responsibility.

Dennis McQuail (MCQUAIL, 2013) states that, despite efforts to develop it and the application of a universal code of conduct for journalists, there is no agreement on core values in different nations and media. The introduction and observance of the code has been mostly left to the self-governance of different associations or national institutions. Although in a country, but also internationally, there are several journalistic codes of different associations, none is different from the other, and there is no hierarchy in the sense that an individual media code has less power than the code of associations. Codes are important because they allow journalists to see in writing what is expected of them, but, on the other hand, code opponents believe that they are a form of self-censorship, giving up independence and autonomy, and unable to cope with the details of the arising ethical disputes, due to their generality and inaccuracy. Finally, it is feared that codes could be used in court cases as evidence that the journalist has violated the principles and standards of ethical behavior (Dej, 2004: 68).

New communication channels and their development have greatly changed the traditional unilateral way of disseminating information through the media, as well as the media organization itself (Press Council, 2016). "Although the Code of Journalists of Kosovo is equally applicable to all media, it is not necessary to give interpretation and appropriate instructions for the successful and correct implementation of professional standards in the online environment.

This document is intended primarily to journalists and media available online, but is also applicable to other forms of expression over the Internet, where editorially designed media content is placed on different platforms. The aim is to clarify the numerous doubts regarding the implementation of the standards of proper journalistic attention, attitudes towards information sources, the method of transmission of media content, respect for privacy, respect for authorship and other important matters regulated by the Code.

The guidelines document for the implementation of Code of Journalists of Kosovo in the online environment (Press Council, 2016) is broken down into chapters, in the same way as the Code of Journalists of Kosovo and follows the same structure. Code of Journalists of Kosovo specifies the protection of privacy by newspapers during reporting.

It elaborates issues that more closely determine the behavior of journalists towards different groups, whose privacy can be more or less violated:

- 1) The journalist respects the privacy, dignity and integrity of the people he writes about." The right to privacy is limited when it comes to public figures, especially for bearers of public functions. Although public figures are preliminary aware that their right to privacy is somewhat limited, that does not mean that the media can violate it for no reason or explanation;

- 2) Journalists and editors should especially avoid speculation and conveying insufficient verifiable views when reporting about accidents and tragedies involving victims or when material and other interests of citizens are seriously affected;

3) In reporting the events involving personal pain and shock, the journalist is obliged to tailor his questions to reflect a spirit of compassion and maturity;

4) The journalist is obliged to take care that the child is not endangered or exposed to danger due to publication of his name, photograph or video with his face, home, community where he lives or familiar surroundings. As a clarification of the last point, there is also an instruction stating that: ***"Representatives of state and public institutions dealing with the protection of children are sometimes not aware of the influence of the media and their working method"***.

Therefore, the information they provide to journalists often involves disclosure of the identity of minors. A journalist should not abuse one's goodwill or ignorance. Information obtained from doctors, social workers, educators, and the like, that directly or indirectly refers to the identity of minors, cannot be published".

3. CONCLUSION

Freedom of journalism, through freedom of expression, as a human right is not realized exclusively by publishing all available information. On the contrary, the journalist is not allowed to publish information which will in some way threaten the rights and freedoms of individuals, who are subject to the news, or if this information can be misused.

Therefore, limitations are imposed on the journalist when there is a possibility that certain information can violate someone's right, such as the right to privacy. Based on the analysis of the reporting of two internet portals in the context of the violation of the right to privacy and compliance with the Code of Journalists of Kosovo and the Guidelines on the Implementation of the Code of Journalists of Kosovo in the online environment, the conclusion is that the privacy and the private life of persons, in a number of pieces of news, is not respected.

The largest number of violations of the Code and Guidelines has occurred in the Chronicle column, on the portals, by revealing names, surnames, characters, addresses and other data from personal life, showing lack of respect for pain, mental suffering and lack of compassion and respect for the dignity of persons when reporting about accidents and criminal offences.

The privacy of perpetrators is respected more than the privacy of victims. Victims are exposed to a greater intervention in their private lives, without the public's real interest to know about this information. In many pieces of news, the dignity of the victims was violated by the detailed reporting of how the assault/murder happened. In doing so, we come to the conclusion that there is no prior thought about how the impact could be within the family and victim's close people with the publication of news with such information.

In the news in which the identity of the suspects was revealed, in most cases there was also a violation of the presumption of innocence, where these persons are "convicted in advance" by journalists, before the final judgment has been rendered.

Despite the Code's clear guidelines on protection of the identity of minors, as persons who are not independent, but are dependent on adults and the environment and therefore represent the most sensitive group, in both portals there was a violation of minors' privacy.

The violation of the child's privacy during both monitoring occurred only in the Chronicle section, when reporting about accidents and criminal acts, when maximum attention of journalists is required, especially when reporting about sensitive groups.

Texts do not show compassion in this group either and lack increased attention of journalists.

Absence of the Press Council is reflected in the fact that for any failure to comply with the Code and Guidelines there is no sanction other than the moral sanction.

We reach to the conclusion that moral punishment (requesting the media in the event of a decision on violation of the Code to publish that decision) is not sufficient while more liabilities must be imposed to journalists in order to achieve professionalism in the true meaning of the word.

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