Digital Media in Kosovo: In Check of Drawing a Balance Between Freedom of Expression and Reputation

Executive Summary

The rise of digital media embodies of what is called the *democratization* of freedom of expression. It sees no information boundaries, in a sense that it consents anyone to be a writer, broadcaster or publisher. With vastly more stakeholders involved in digital communications, there is the increased potential of expression that can violate the rights to privacy and reputation! The right to privacy in the context of this study is defined as *the right to be let alone*, and it is attributed for protecting the reputation of individuals.

In Kosovo, freedom of expression is a constitutional right, defined according the general principles of United Nations (UN) and European Convention for the Protection of Human Rights. However, it is not an absolute right, meaning that human rights may not be exercised in a manner that threaten the rights of others. This is a general perspective the study claims to support by arguing that digital media in Kosovo is increasingly turning into a threat – of being exploited for purposes of defaming and insulting others. It does so by putting emphasis on defamation in the context of digital media which as a concept draws a thin line between law and practice or good and bad journalism.

In fact, defamation represents an interface between freedom of expression and right to privacy. The question is how these mutually reinforcing rights can be balanced. Namely, to what extent can digital media be held to account for using harmful content? As this study claims, it ultimately depends on the level of the accountability of respective institutions and integrity of digital media. While the national legislation is largely favorable to freedom of expression and media, it does not assign clear guidelines or set of institutional responsibilities when it comes to regulating digital media or online press. This is to suggest that certain dispositions and rules of the legislation should be amended to require special liability from the Independent Media Commission (IMC) for overseeing online content, considering that currently it remains largely unregulated.

In practice, as the main findings indicate, media and judicial authorities are deemed ineffective in holding media accountable for producing harmful content. Regulatory authorities are biased to some extent and lack human and financial capacities to exercise their monitoring authority to control and dissuade digital media from harming the reputation of individuals. When systems of regulation or accountability do not work effectively, it should be the concern of the judiciary to draw a balance between the freedom of expression and reputation. However, for the judiciary to issue a court decision following a lawsuit, it lacks the know-how and self-initiative to judge whether the reputation of an individual has been damaged, in light of a jurisdiction which is greatly more tolerable of freedom of expression.

In the absence of effective accountability mechanisms, the conduct of digital media is of a special concern. As the main findings indicate, there is lack of digital media independence and integrity! In Kosovo, there is a serious struggle to maintain standards of ethical journalism. In an adverse economic situation, financial interests and benefits are considered a priority for digital media in order to make ends meet and advance their advertising profits. Certainly, this puts the Press Council and Association of Journalists at difficulty when it comes to protecting the reputation of individuals at the expense of freedom of expression, now

that no longer they have funding support they once received from the international community. The need for them to become self-sustainable is more important than ever, and stepping up their efforts of holding to account and educating digital media against defamation and insult.

Terms & Definitions

Digital media, for purposes of this report, consists of "digital platforms (e.g. websites and applications), digitized content (e.g. text, audio, video and images) and services (e.g. information, entertainment and communication) that can be accessed and consumed through different digital devices."[1]

Defamation is a generic term which according to the Law Against Defamation and Insult (Law No. 02/L-65) means "the publication of an untrue fact or statement and the publisher knows or should know that the fact or the statement is untrue, the meaning of which injures the reputation of another person."[2] The subject matter, "reputation of other/s," is the exact term used in ICCPR (Article 19) and ECHR (Article 10) as a legitimate ground for limiting the right to freedom of expression. The two most recognized legal terms which define defamation and its threat of undermining the reputation of other/s are libel and slander. Since the distinctions between the two have largely disappeared and are not defined according to the current legislation, they will be used interchangeably.

Libel is defined more as a defamatory statement that is published either in a written form or some other forms such as broadcasting.[3] Slander, however, is defined more as spoken or oral defamatory statement and not preserved in any permanent form. Of the two terms, "libel is considered more damaging because it is fixed and can be circulated broadly."[4] Insult is another form of defamation which does not fall within the international definitions of protection of reputation. But in the local context, it is regulated according to the legislation against defamation, defined as a statement or behavior aimed at humiliating other/s (e.g. officials, state symbols, institutions).[5]

The concept reputation is an important term given that is used on the basis of limiting freedom of expression. It can be argued that defamation is a matter of individual's right to reputation. Some rhetorical questions arise when defining reputation. Does it refer to individuals who are more publicly known than others? If yes, does that mean that they have greater reputation if compared to ordinary citizens? The presumption here is that public figures are more vulnerable of being defamed or insulted. ECHR has frequently emphasized that public figures must be subject to greater liberty of criticism than others. However, the Media Legal Defense Initiative (MLDI) and the International Press Institute (IPI) define the term "reputation" equally applicable to all and define it with human dignity as a basic human right.[6] Accordingly, this means that an ordinary person is worthy of protecting as the public figure whose activities are reported every day.

Thus, any individual is worthy of protecting his/her reputation according to the principles of ICCPR and ECHR. In the Article 12 of the Universal Declaration of Human Rights, it states, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor

[1] World Economic Forum. Digital Media and Society. January 2016, p. 5.
[2] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 3. May 2008, p. 2.
[3] MLDI & IPI. Freedom of Expression, Media Law and Defamation. February 2015, p. 6.
[4] Packard, Ashley. Digital Media Law. Wiley-Blackwell. 2010, p. 180.
[5] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 3. May 2008, p. 2.
[6] MLDI & IPI. Freedom of Expression, Media Law and Defamation. February 2015, p. 21.

and reputation."[7] This resonates with Article 17 of ICCPR and Article 8 of ECHR defining reputation as a trait of personal identity and psychological integrity that fall within the scope of the privacy of the individual's life. Privacy is another concept that is protected and defined with reputation. Respect for privacy can be viewed as a way of protecting reputation, which indicates that privacy as a right can be strengthened by anonymity.[8] Defamation as a violation of reputation may arise through speech that violates the right to privacy. However, not all violations to privacy amount to violation of reputation and the other way around.[9]

Introduction

The significant growth of online media has in recent years been a success in Kosovo. Kosovars are spending more and more time online, using social media and digital media from mobile devices, which undoubtedly has resulted in improved access to news and information. Internet penetration per household has reached almost 76 percent – two percent increase in the last two years according to the last European Commission (EC) Progress Report (2016).[10] While digital media from laptops and desktops is dominant, mobile telephone penetration has also increased, reaching 97 percent of active users.[11]

Despite the fact that traditional and digital media continue to dominate information space, they are no longer the only operators. The rise of social media has brought significant change to the news industry. In Kosovo, there are more than 860,000 Facebook users as of June 2016 reaching a penetration rate at almost 50 percent.[12] Hence, no longer the public looks only to the power of dominant online portals such as Gazeta Express or Indeksonline. Social media is increasingly adjusting to the rising power of users themselves as information distributors.

Given the rise of information availability, public opinion polls indicate that there is a sense of progress when it comes to freedom of expression and media. According to the Public Pulse survey of the United Nations Development Programme (UNDP), public perception on to whether media in Kosovo enjoys the freedom of expression has reached 47 percent in April 2016, if compared to 29 percent in November 2010![13] That is a relatively high percentage of trust and a substantial improvement with media far exceeding other institutions (e.g. the government, judiciary, etc.).

Recently, digital media has gained significant popularity at the expense of traditional press for being able to offer fast, responsive, and diverse news information at no cost. This, in return, has hurt the profession of journalism! From the perspective of Agron Demi, a civil society activist from GAP Institute, "news in our time is fueled by speed rather than content and accuracy."[14] The term "speed" is referred to digital media's means of producing fast and eye-catching headlines, which are not based on well-researched facts and are only targeted for boosting internet click revenues.

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[7] United Nations General Assembly. Universal Declaration of Human Rights (UDHR). December 1948. Article 12, p. 12.
[8] Berger, Guy. Freedom of Expression, Privacy and Defamation on the Internet. University of Malta. February 2016.
[9] Berger, Guy. Freedom of Expression, Privacy and Defamation on the Internet. University of Malta. February 2016.
[10] European Commission (EC). Kosovo 2016 Progress Report. November 2016, p. 41.
[11] European Commission (EC). Kosovo 2016 Progress Report. November 2016, p. 61.
[12] Internet World Stats. Kosovo. June 2016. [Accessed on April 23, 2017]
[13] United Nations Development Programme (UNDP). Public Pulse. May 2016, p. 8.
[14] Demi, Agron. Fast and False. Prishtina Insight. April 28, 2017.

In the context of this study, digital media offers unlimited space to freedom of expression by allowing individuals to be content creators, and enabling them to engage in acts of defamation and insult. Hence, if freedom of expression is not rightly controlled, digital media wields too much power and can easily undermine the privacy and reputation of individuals. The European Commission (EC), in its last Progress Report, has restated that freedom of expression has not been monitored well by regulatory authorities, in reference to the Independent Media Commission (IMC) and Press Council of Kosovo (PCK).[15]

Since there is a regulatory void when it comes to monitoring online press, both IMC and PCK hold back from their moral responsibility of protecting the privacy rights of individuals from harmful online content. Neither institution is held liable for online press! IMC, on the one hand, functions as a state regulatory body, and it is legally responsible only for broadcasting mediums. PCK, on the other hand, functions as a self-regulatory body and is entitled to promote freedom of expression without legal authority to hold to account digital media for act of misbehavior that may be insulting to others.

In Kosovo, restricting freedom of expression presents a challenge since it is not clear how much authority should be applied, as there are "no means of regulating content internationally, nor any consensus on the norms that need to be applied."[16] Efforts to decriminalize defamation offenses have been successful in 2012. Recently, the government introduced a failed policy initiative for the amendment of the Criminal Code by which anyone, including media, would be held criminally liable for use of defamation and insult. In particular, Article 134/D of the proposed amendment, resembling the legal provisions of the German model, held that whoever defames a constitutional body, including President, Parliament, Government, and Constitutional Court, can be punished with three months to five years of imprisonment.[17]

Finally, the government withdrew from this policy proposal due to the rising pressure from civil society and international community. The initiative was viewed as a step forward to limiting freedom of expression and media. From the perspective of many legal experts and media activists, adopting the German model did not make logical sense, mainly because of weak accountability mechanisms that exist in Kosovo. Take for instance the judicial system! Since the judiciary in Kosovo is thought of being politically influenced and professionally incompetent, there is a likelihood that the Criminal Code can be used to repress media. In Germany, there is almost a perfect judiciary where judges and prosecutors go through countless levels of education and vetting.[18]

In light of regulatory challenges in Kosovo identified by EC, and judiciary's ineffectiveness to deal with defamation cases, this study intends to incite an ongoing debate on to what extent can there be a balance between freedom of expression and right to privacy. The main questions addressed in the study include the following: How effective are accountability mechanisms in practice? To what extent are judicial institutions trained and responsive in dealing with defamation cases? Do journalists act according to the rules of their codes of conduct? The questions raised are seen in the list of a number of interviews conducted with journalists and representatives of respective institutions.

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[15] European Commission (EC). Kosovo 2016 Progress Report. November 2016, p. 41.
[16] Puddephatt, Andrew. Freedom of Expression Rights in Digital Age. OSF. April 2011, p. 9.
[17] Limani, Lura. Defamation Draft Amendment Draws Criticism in Kosovo. Prishtina Insight. April 27, 2017.
[18] Limani, Lura. Defamation Draft Amendment Draws Criticism in Kosovo. Prishtina Insight. April 27, 2017.

Research Methodology

The research approach consists of a qualitative analysis of the impact digital media has on the freedom of expression and right to privacy. This research puts a lot of emphasis on the importance of the subjective experience of individuals who are involved in media. It is process oriented and gives an insider perspective through standard research techniques including desk research and fieldwork. These methods help the report get a broad picture of digital media implication on human rights.

Deskwork

Deskwork consisted of a thorough literature review of local and international sources being presented in *Appendix 1*. These sources have been researched online and interpreted while doing the research and writing the report. They have brought new knowledge, diversity and broader perspective to the research. With its action-oriented approach, the report intends to contribute to the ongoing debate on digital media and its potential threats to individuals' rights and freedoms. All the sources are explored for purposes of identifying most important issues in the area of digital media from the perspective of defamation and insult.

Fieldwork

Fieldwork involved a process of collecting data information from interviews and requests filed to respective institutions on the data of third party complaints pertaining to defamation cases. In total, eight interviews were conducted with media experts and representatives of respective institutions using a structured questionnaire established during the research design and development. See *Appendix 2* for the list of respondents. This part of research is concerned with collecting data and analyzing information in non-numerical format. For more information on the content, refer to the structure of the research questionnaire in *Appendix 3* and findings section.

Requests of Information

In addition, a number of requests of information have been submitted to the media regulatory authorities (i.e. Independent Media Commission and Press Council of Kosovo) and the Kosovo Judicial Council (KJC) or Academy of Justice for purposes of assessing their readiness as far as addressing third party complaints against defamation and insult. In addition, a request for information has been sent to the Kosovo Judicial Institute (KJI) on the number of training modules designed and delivered for judges in the area of defamation and insult.

Legal Analysis

In general, the current legislation is conducive to digital media and communications. Certain legal safeguards are guaranteed by law pertaining to freedom of expression, independent media, and right to privacy. The Constitution guarantees the freedom of expression and media according to Article 40 and 42, which permit anyone "to disseminate and receive information, opinions and other messages without impediment."[19] There is an exception to this provision in a case if it is necessary to prevent any threat of violence and hostility on grounds of race, nationality, ethnicity or religion.[20]

[19] The Constitution of the Republic of Kosovo. Article 40 and 42, p. 12.
[20] The Constitution of the Republic of Kosovo. Article 42, p. 12.

The right to privacy is as important according to the Constitution of the state defined as a natural right essential to the pursuit of life and liberty. It is an absolute right and applies uniformly to all situations and all class of persons. Article 36 of the Constitution says, "Everyone enjoys the right to have her/his private and family life respected."[21] While there is not a distinct law on privacy, the Constitution, in addition, guarantees every person the right of protection of personal data,[22] which is regulated by the Law on Protection of Personal Data. This Law has an overall bearing on the personal information of individuals and affects different policy areas. Accordingly, personal data consists of any information relating to identified/identifiable natural persons "by a reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity."[23]

While there is not a distinct law on media, there are a number of legal safeguards that regulate media. The Law on Protection of Journalism Sources (Law No. 04/L-137) regulates how sources of information are to be protected and how media cannot be denied from the protection of their rights and privileges. The basic right mandated in the Law, in line with certain provisions of the Criminal Code, is the "right to remain silent regarding their [media's] sources of information."[24] It refers to the identity, origin, author and content of the information.[25] In the context of defamation cases, media reports are used to relying on confidential sources, and are protected from disclosing those sources, with the exception when a court requests that information is necessary to be disclosed in order to prevent a serious threat. The court may only "require the defendant in a defamatory or insulting action under this law [Law Against Defamation and Insult] to disclose information relevant to determining the truth of published material but without identifying the source."[26]

Digital media is governed by a set of laws and regulatory rules, some of which are related to defamation and insult. In any case an offense is made through publishing defamatory information, it shall under the category of civil liability. Freedom of expression and its limitations are more explicitly regulated according to the Civil Law Against Defamation and Insult (Law No. 02/L-065) in accordance with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Three important provisions set in the Law on threats and consequences of defamation and insult include: (a) rules to not place unreasonable limits to the freedom of expression on matters of public interest, (b) compensation to be made to individuals harmed due to defamation and insult, (c) media to exercise its role as a watchdog and source of information.[27]

Privacy is a concept that is protected and defined with reputation. The Law Against Defamation and Insult permits individuals who consider that their reputation has been, or may be harmed, by statements made by others, to sue for damages or to prevent the making of those statements. The Law applies to any person in charge of the content and dissemination of a defamatory statement for which media outlets to a large extent take the weight of responsibility.[28] In the online world, as it is the case in Kosovo, "the

[21] The Constitution of the Republic of Kosovo. Article 36, p. 9.
[22] The Constitution of the Republic of Kosovo. Article 36, p. 10.
[23] Official Gazette. Law No. 03/L-172 On the Protection of Personal Data. Article 2. April 2010, p. 1.
[24] Official Gazette. Law No. 04/L-137 on the Protection of Journalism Sources. Article 4. August 2013, p. 2.
[25] Official Gazette. Law No. 04/L-137 on the Protection of Journalism Sources. Article 4. August 2013, p. 2.
[26] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 18. May 2008, p. 7.
[27] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 1. May 2008, p. 1.
[28] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 5. May 2008, p. 3.

original author or creator of unlawful content is almost always liable."[29] In this case, authors, editors or publishers or whoever is in control of harmful content, is not immune from liability.

The Law against Defamation and Insult, however, does not recognize any special protection of public authorities when it comes to criticism which may or may not be defamatory or insulting. A special clause is set in the Law which "barres" the public authorities from filing any compensation request of harm due to defamation or insult.[30] This goes in line with the principles of ECHR who offers a number of good reasons why they stand behind less protection of public officials: (1) freedom of political debate as the core democratic value, (2) less limitations to politicians than to private individuals, and (3) more tolerance of criticism should be weighted on politicians.

Meanwhile, according to Article 11 on the scope of liability, persons or entities that distribute or possess unlawful content that they did not create are not held liable.[31] Internet providers and websites as sources for providing technical access to internet are excluded from the scope of liability, providing immunity to prevent lawsuits against them. This means that all users who post harmful material on websites and social media platforms such as Facebook are responsible for what they write; websites and internet operators of these sites are not. More importantly, Article 11 excludes anyone "who had no reason to believe that what he or she did contribute to the dissemination of the defamatory and insulting statement."[32] This is also referred to the "innocent publication" principle which indicates that any digital media would not be held liable unless they were aware of defamatory content.

Defamation and insult are defined as a civil wrong and thus it is not a criminal offense as it is in most countries in the region![33] In Kosovo, once a civil claim is filed, the civil court determines whether the individual has been defamed/insulted according to the Law Against Defamation and Insult (Law No. 02/L-65) and Law on Contested Procedure (Law No. 03/L-006). Based on proof of evidence, the judge may reject the case, compel a financial compensation or decide in favor of some other form of remedy (e.g. statement of correction or apology). The principle of proportionality applies to the compensation rule of defamation and insult. For any defamatory or humiliating statement, "compensation shall be proportional to the harm caused and shall be awarded solely with the purpose of redressing the harm done to the reputation of the person or to compensate for any demonstrable actual financial loss or material harm."[34] The Law also recognizes the right of any public official holding a public office or anyone running for a public office to file a request for compensation of harm in a privately and exclusively manner.

Chapter V of the Law Against Defamation and Insult sets the obligations to mitigate harm and the right to reply in instances of defamation and insult. The injured person has the right to request a correction of the statement from the publisher who has allegedly caused the harm.[35] This action may include (a) filing a claim to regulatory authorities, i.e. IMC for audio and television and PCK for press including online news, and (b) requesting a correction of the statement be made from the publisher who has allegedly caused the harm. The principle of the right to reply is an important legal provision. It can be exercised anyone

[29] Wong, Cynthia & James X. Dempsey. The Media and Liability for Content on the Internet. OSF. May 2011, p. 13.
[30] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 5. May 2008, p. 3.
[31] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 11. May 2008, p. 4.
[32] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 11. May 2008, p. 4.
[33] Mushkolaj, Imer. Press Council of Kosovo (PCK). Interview. February 14, 2017.
[34] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 5. May 2008, p. 3.
[35] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 12. May 2008, p. 5.

and any medium, for the purpose of correcting the facts concerning the person who has been harmed/humiliated by a statement.[36]

The Law requires that the medium in question shall make public the reply at the request of the complainant. Certain exceptions are to this rule in terms of refusing the reply or editing the statement on the grounds of the following:[37] (a) if request not addressed within seven days since the day the complainant was aware of the publication, (b) if the length of the reply exceeds what is necessary to correct inaccurate information claimed by the party, (c) if the reply is not limited to a correction of the facts challenged, (d) if the reply constitutes a punishable offense, (e) if it is considered contractor to legally protected interests of a third party, and (f) if the individual concern cannot show the existence of a legitimate interest.

Some restrictions to the freedom of expression are prescribed by the Law Against Defamation and Insult (Law No. 02/L-65). If defamation and insult involve a truthful and reasonable statement of public concern, exceptions from liability and its limits are guaranteed according to Articles 6, 7 and 8 of the Law.[38] The law is clear and non-retrospective – compliant to the principles of ICCPR and ECHR – when it comes to limiting the freedom of expression for the purpose of safeguarding the *rights and reputation of others*. Defamation refers only to the facts and statements which are not truthful.[39] It also refers to opinions while humor as another form of defamation which is not regulated according to the Law. Proofing the truth of an allegation should be an absolute defense to a defamation lawsuit as regulated by ECHR and the country legislation.

The Law rules that "the defendant [not the claimant] shall carry the burden of proving [burden of proof principle] the veracity of an impugned statement."[40] In matters of public concern, the defendant shall prove that he/she has acted responsibly, unless he or she knew that the statement was false or acted in reckless disregard of its veracity. Yet what if the defamatory statement is untrue? In the case of Kosovo, in practice, a defamatory statement is not sanctioned even if it is not completely accurate. The article in the Law on reasonable publication protects the idea that the author has taken reasonable steps to publish a statement in good faith, only if taking into account the importance of the freedom of expression with respect to matters of public concern to receive timely information relating to such matters."[41] ECHR refers to the principle of public interest when weighting against the restrictions on freedom of expression – often citing the importance of media's role in contributing in the making of the democratic society.[42]

Institutional Structure

The institutional framework concerning digital media consists of the state regulator such as the Independent Media Commission (IMC), self-regulatory institution (i.e. the Press Council of Kosovo), and a number of membership organizations, including the Association of Journalists of Kosovo (AJK) and the Association of Independent Electronic Media of Kosovo (recognized as AMPEK). Other than media related

[36] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 13. May 2008, p. 5.
[37] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 13. May 2008, p. 5.
[38] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 6-8. May 2008, p. 3.
[39] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 3. May 2008, p. 2.
[40] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 6. May 2008, p. 3.
[41] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 7. May 2008, p. 3.
[42] European Court of Human Rights. European Convention on Human Rights (ECHR). Article 10, p. 11.

mechanisms, there are institutions that responsible for protecting the right to freedom of expression and privacy including the Ombudsperson, National Agency for Protection of Data, and the Judiciary.

The Independent Media Commission (IMC) is defined according to the Constitution (Article 141) and the Law on Independent Media Commission. IMC as an independent institution is responsible for "regulation, management and supervision of broadcasting frequency spectrum."[43] IMC has seven (7) Board Members who are directly appointed by the Parliament, to whom IMC reports in annual basis.[44] In total, there are 186 licensed broadcasters (i.e. 20 TV stations, 78 radio stations, 34 cable operators and 54 programme service providers).[45] The three most popular TV stations are the public Radio Television of Kosovo (RTK), privately owned Kohavision (KTV) and cable TV Klan.

The PCK or the Press Council functions as a self-regulatory and non-profit organization since 2005 and it is in charge of regulating print and online press (respectively online portals). Unlike IMC, PCK does not have any licensing powers, it is not regulated by the state, and receives no state funding. It is member-based organization comprised of chief editors representing in total 27 media outlets.[46] In Kosovo, there are no legal norms of regulating the performance of journalists, nor journalists are issued a working license.

Some of the most recognized and frequented online mediums include Indeksonline, Gazeta Express, Telegrafi, Kallxo.com, and Koha Ditore.[47] To a large extent, these are digital media outlets that are frequented through many social media platforms. Reportedly, according to Alexa Internet, Inc., a company that provides commercial web traffic data and analytics, about 9 to 11 percent of people visit Facebook and 4 to 6 percent visit YouTube immediately before visiting the main online portals.

Certain membership groups also play an important role in the media industry. The two leading groups are the Association of Journalists of Kosovo (AJK), and Association of Independent Electronic Media of Kosovo (recognized in the local language as AMPEK). The AJK is the largest and most proactive membership organization representing the interests of journalists in the country and advocating for media freedom issues. Journalists may join AJK on a voluntary basis. AJK members do not receive any benefits from AJK in terms of social security. It does not offer any financial support to members, for instance, if they lose their jobs.

AJK is recognized for promoting the rights and profession of journalists across the country. AJK issues annual rewards to journalist who best perform in certain media areas. In June 2016, AJK has become a member of the International Federation of Journalists (IFJ) which is one of the largest trade unions in the world which aims to strengthen the rights and freedoms of journalists.[48]

In addition, AMPEK functions as an NGO and represents the interests of ten 83 commercial broadcasters in the country (including radio and television broadcasters),[49] making approximately 70% of electronic

[43] IMC. Regulation 12/1 on the Rules of Procedure of the Independent Media Commission. September 18, 2012, p. 2.
[44] IMC. Regulation 12/1 on the Rules of Procedure of the Independent Media Commission. September 18, 2012, p. 3.
[45] Independent Media Commission (IMC). Annual Report 2014. March 2015.
[46] PCK. http://presscouncil-ks.org/members/ [Accessed on February 11, 2017].
[47] The Press Council of Kosovo (PCK). Members. http://presscouncil-ks.org/members/ [Accessed on February 19].
[48] Ministry of Foreign Affairs. AJK has Become a Member of the International Federation of Journalists. June 2016.
[49] Zejnullahu, Ardita. Association of Independent Broadcast Media of Kosovo (AIBM). Interview. March 23, 2017.

media in the country[50]. In addition to membership fees, AMPEK also receives foreign funds.[51] AMPEK is mostly involved in drafting legislation related to the audio-visual media sector and advocating for media freedom issues in general.

In Kosovo, there are enough legal provisions which ensure that digital media is answerable for its actions. However, the state has not yet extended broadcast-type regulations to online or digital media as it is the case in many developed countries. Media regulators have their Codes of Ethics/Conduct which consist of a set of guidelines on how digital media ought to respect certain rights when it comes to privacy and reputation of individuals (e.g. protecting the identity of children). Both the Media Commission and Press Council must ensure that media organizations do not fail to comply with their Codes of Conduct. The Codes provide that everyone has the right to privacy and that editors must provide reason for intrusion to a person's privacy on behalf of public interest.

Part of IMC's role is to report on any violation and evaluate third party complaints. The IMC or the Media Commission initiates, receives and investigates complaints in order to ensure that audiovisual media operators do not fail to comply with the conditions of the license, code of conduct and other legal acts.[52] IMC either initiates ex-officio complaints or accepts third party complaints. The preliminary evidence obtained from IMC is initially reviewed to determine if the laws and conditions have been violated. Upon completion of an investigation, it issues a decision giving consideration to all facts and circumstances of the relevant case.[53] For any violation, the IMC issues a warning in writing and/or levies a financial fee.

In addition, if IMC comes to conclusion that the regulation has been violated, it will seek work a remedy or settlement that satisfies both the media and person or organization who filed a complaint, without the need for formal sanctions. Potential remedies include: (a) a clarification or correction from the media, (b) a right to reply granted to the complaining citizen, and (c) a public apology from the media.[54] IMC in general issues warnings, and in case the violation is serious, it issues a sanction. The quality and severity of the decisions of IMC on licensing have been highly criticized.[55]

In addition, the IMC ensures protection of children and minors from harmful program content.[56] Harmful content for children and minors is also regulated according to the Regulation, which defines it something that negatively affect their physical, mental or moral development, or reveal their identity.[57] No program should be allowed to "publish information revealing the identity of a child up to 18 years of age involved in a case of any type of violence, regardless of the child's status as witness, victim or perpetrator, or in cases of attempted suicide or committed suicide, as well as to introduce details of a child's family affairs and private life."[58]

The PCK's main role is to advocate for the freedom of expression and ensure compliance with the principles of the Code of Conduct which has been amended in 2010 and it up to date to suit the needs

[50] UNESCO. Kosovo: Associations and Unions. [Accessed on April 8, 2017].
[51] IREX. Media Sustainability Index Kosovo. 2016, p. 76.
[52] Official Gazette. Law No. 04/L-044 on the Independent Media Commission (IMC). April 2012. Article 29, p. 15.
[53] Official Gazette. Law No. 04/L-044 on the Independent Media Commission (IMC). April 2012. Article 29, p. 15
[54] Independent Media Commission (IMC). http://www.kpm-ks.org/?faqe=309&gjuha=3 [Accessed on February 10].
[55] Kosovo 2.0, COHU & PCK. Freedom of Expression, Media and Information in Kosovo. May 2016, p. 31.
[56] IMC. Code of Ethics of Media Service Providers. October 2016. Article 4, p. 2.
[57] IMC. Regulation on the Protection of Children and Minors in Audio Visual Media Services. May 2013. Article 1, p. 1.
[58] IMC. Regulation on the Protection of Children and Minors in Audio Visual Media Services. May 2013. Article 4, p. 3

and ethical standards of online portals. In fact, the moral force behind the Press Council is to secure a responsible media. The Press Code of Conduct recognizes defamation as an act in Article III. It has the same tenor of IMC's Code. It discourages print and online press and any news agency to instigate crime through publishing information that is denigrating to any individual or group based on ethnicity, religion, sexual orientation, gender, race, marriage, age or physical disability.[59] There are other provisions regulated according to the Code when it comes to defamation and insult, which include the right to reply, protection of children and minors, and the right to privacy.[60]

More importantly, PCK's Code of Conduct addresses the issue of privacy, recognizing it as an inviolable human right which does not depend on circumstances and persons concerned. Accordingly, the press is required to "avoid intrusions and enquiries into an individual's private life, unless such intrusions or enquiries are necessary due to the public interest."[61] The protection of children and minors is also protected by the Code of Conduct. Journalists should not interview or photograph children under the age of 18 on matters involving the child's family without the consent of a parent or other adult responsible for the child. They should also not "identify children under the age of 18 who are involved in criminal cases as victims, witnesses or defendants."[62]

One of the most important functions of the Press Council is to administer the complaints regarding defamation and insulting statements made by third parties. It decides on the measures if the complaint is considered justified.[63] Complaints are made within one month from the date of publication of the content which is reviewed and determined whether it falls under the scope of PCK's responsibilities.[64] The Press Council takes complaints filed against both members and non-members for which it issues opinions [no sanctions] as defined in the Rules of Procedure.[65] If the complaint is eligible for the Press Council to address, efforts are made to settle and resolve the dispute between the parties within a month since the start of the proceedings. Finally, the case is referred to the Board for the final decision to take within a timeline of three months since the complaint was received.[66]

Research Findings

The main findings of this study indicate that media regulatory authorities and judicial institutions fail to define the balance between the right to freedom of expression and the right to privacy/reputation. Special emphasis is put on defamation and insult to see how media carries out with rules of engagement as far as using defamatory content against individuals. Little information could the project obtain from judicial institutions to examine more closely the accountability measures set against digital media that misbehave. For instance, no court rulings and attorney representations of defamation cases have been reported despite a number of requests being made to them.

[59] PCK. Press Code of Conduct. No date. Article 3, p. 3.
[60] PCK. Press Code of Conduct. No date. Article 4-7, p. 3-4.
[61] PCK. Press Code of Conduct. No date. Article 7, p. 4.
[62] PCK. Press Code of Conduct. No date. Article 6, p. 4.
[63] PCK. Press Council of Kosovo Statute. No date. Article 3, p. 2.
[64] Speller, Catherine. A Needs Assessment of the Media Councils in South East Europe. June 2015, p. 29.
[65] PCK. Press Council of Kosovo Statute. No date. Article 4, p. 3.
[66] Speller, Catherine. A Needs Assessment of the Media Councils in South East Europe. June 2015, p. 29.

Institutional Accountability

The government tends to rely on media regulatory authorities to regulate online content for the purpose of protecting freedom of expression and other respective rights guaranteed by the Constitution. However, thus far, the traditional media – both press and broadcasting – have not adjusted to the emergence of online media. The findings of this study indicate that media regulatory authorities are widely ineffective and biased in exercising their regulatory role. The same claim has been reported in many studies including the recent one conducted by Kosovo 2.0, Cohu, and PCK in 2016.

These regulatory authorities lack institutional independence and resources to identify terms that capture defamatory content and hold liable digital media that do so. The IMC and public media are in a better financial position than the PCK, although they experience budget cuts each year. The PCK and online press are run as private entities and most of them must rely on business support in a form of commercial advertising. Bearing in mind the differences of institutional structures, the Commission is viewed as being more politically biased whereas the Press Council more dependent of the private sector.

In Kosovo, digital media are not held enough to account by respective institutions. The Media Commission is not as effective in exercising its role since it relies heavily on political decision-making. Often, it has been criticized for being inconsistent in sanctioning its final decisions, mainly due to political pressures coming from outside.[67] IMC is predisposed to political influence since the Board Members are directly nominated by the Parliament.[68] The course of electing and appointing the Board of IMC has been criticized in the past, in reference to a number of conflict of interests and resignation incidents due to political interferences and delays of appointing new Members. It has been reported in the EC Progress Report (2014) that the appointment of the IMC "favored political affiliation rather than independence."[69] For years, the Commission has struggled to consolidate the board, which has caused delays on a number of issues (e.g. digitalization of analogue broadcasts).

In Kosovo, efforts to self-regulate the media industry have been forthright, where the support from international community has been crucial in putting together regulations and institutions that would support the cause. For instance, the Press Council of Kosovo (PCK) has been established in 2005 with the technical and international support of international community following the adaptation of the Press Code.[70] Its membership is comprised of media outlets which are financially dependent on the private sector. Now that there is less funding from the international community, digital media tend to depend more on the private sector for advertising profits (public media has an advantage since approximately 80 percent of their budget is state-financed).[71]

Hence, the business community exerts enormous control and through corruption influences news on behalf of their interests. It is difficult to conceptualize the business influence on digital media since their financial statements are not publicly available. This is particularly more problematic when it comes to digital media which is largely criticized for lacking financial transparency.[72] Digital media outlets or online

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[67] Sutaj, Visar & Artan Canhasi. National Integrity System (NIS) Assessment – Kosovo. KDI. October 2015, p. 192.
[68] Kosovo 2.0, COHU & PCK. Freedom of Expression, Media and Information in Kosovo. May 2016, p. 30.
[69] European Commission (EC). Kosovo Progress Report. October 2014, p. 17.
[70] White, Aidan. The Trust Factor. Ethical Journalism Network. 2016, p. 2.
[71] International Research & Exchange Board (IREX). Media Sustainability Index Kosovo. 2016, p. 75-76.
[72] International Research & Exchange Board (IREX). Media Sustainability Index Kosovo. 2016, p. 71-72.

portal are registered as private business in the Kosovo Business Registration Agency of the Ministry of Trade and Industry (MTI). They do not report to any institution with the exception to the tax authorities for income tax and to the Press Council (if they are a voluntary member).

The experience of regulatory authorities of regulating digital media has not been effective. In addition to having internal management problems, IMC and PCK lack required resources to monitor what gets reported and potentially violated through online content. This is of special importance since internet companies, who also play a self-regulatory role when it comes to harmful content, cannot filter harmful content due to language barriers or limitations of translating content from Albanian or Serbian into English.

The Media Commission has not been so proactive in handling defamation cases, largely due to a small number of monitoring officials. For 2010-2016, the IMC has received in total 45 defamation complaints. The Code defines what consists of harmful and humiliating content – from any material that instigates criminal activities and general threats to individuals and property to material that is defamatory, discriminatory and insulting to human dignity.[73] In 2016, nine complaints were filed to IMC for the violation of the Code of Ethics for Media Service Providers.[74] The complaints relate to media threats on territorial and personal integrity, misinterpreting of statements, publishing of denigrating text or video footage, and discriminatory statements made against certain minority communities. Three (3) complaints were addressed to the medium Klan Kosova, while for other three mediums – RTK, KTV and TV Dukagjini – two (2) complaints per medium were filed to IMC.

By law, the Media Commission is not specifically required to oversee online press. But since today's digital media journalists work on video, audio and internet simultaneously, it would make sense for the Media Commission to work more closely with the Press Council in addressing the third-party complaints when it comes to defamation and insult. However, that has not been the case thus far.[75] The Media Commission has not shown enough support or willingness in exercising its moral responsibility in helping the Press Council address defamation cases which fall under its scope of work of audio and visual content. IMC rather choses to take off as much responsibility as possible. However, the Media Commission in relations to applicable regulations regarding adverts and protection of minors has been far more efficient in monitoring media content by sending warnings although not as tough in terms of issuing penalties.

The Press Council has been ineffective as a self-regulatory organization in disciplining and improving the irresponsible behavior of digital media outlets for engaging in defamatory and insulting language. Unlike the Media Commission, the Press Council does not have a licensing and sanctioning authority of regulating media which prohibits it to become a powerful censor. There are no legal norms of regulating the performance of journalists. Hence, the Council as a non-profit organization does not have a strong legal authority of protecting the rights of others that may have been infringed by another source of medium. In total, the Press Council administers 55 to 65 complaints in yearly basis.[76] These complaints

[73] IMC. Code of Ethics of Media Service Providers. October 2016. Article 3, p. 2.
[74] Information obtained from IMC through the Request for Access to Public Documents. February 9, 2017.
[75] Mushkolaj, Imer. Press Council of Kosovo (PCK). Interview. February 14, 2017.
[76] Mushkolaj, Imer. Press Council of Kosovo (PCK). Interview. February 14, 2017.

are reviewed and recommended to the Board by a Legal Advisor.[77] The advisor also assists, if necessary, third parties to the courts of law, but who fail to adhere to adjudication in almost all cases.[78]

In 2016, 47 decisions were taken on complaints addressed to PCK. Nine (9) out of those decisions were related to defamation and insult (Chapter II of the Code).[79] These are defamation and insult cases addressed to the members of PCK. The Press Council also administers complaints addressed to mediums which are not members of the Council.[80] In total, 20 decisions relate to the irresponsible behavior of non-member mediums of PCK.[81] In essence, PCK is not effective because it is restricted due to the nature of its operations. Not only that it is deprived of licensing powers but also it does not have a monitoring unit that oversees the performance of its members like the IMC does.[82] Moreover, its rulings have not been effectively used by courts due to lack of judicial interest and expertise to deal with defamation cases.

In Kosovo, the state does not seek to block or filter internet content deemed harmful. Instead, besides relying on media regulatory institutions such as IMC and PCK, the state relies on internet companies, such as host service providers, search engines and social networks, to filter out harmful content. According to the policies of most of these internet engines, they are required to voluntarily remove content if given a valid court order ruling that content is defamatory. The main local internet service providers (ISPs) in Kosovo are IPKO and Kujtesa covering almost a 50-50 percent broadband internet provision (although IPKO has been making more progress in terms of expanding its coverage for the last four years).

ISPs are bound by existing national laws and act as internet intermediaries where complaints can be directed to have harmful content removed. To what extent do the local ISPs possess the technical capability to carry out targeted filtering content and web-pages is not clear yet. Despite the fact that a number of requests have been made to IPKO and Kujtesa about the number of requests made for removal of content, no nationwide filtering has been reported thus far. No user guidelines are published online in official websites of either ISP which states what content will be considered a violation of privacy or reputation, and therefore is eligible for removal. Even the main digital media outlets do not have a set of guidelines for removing defamatory information for their websites to expect that users abide by when posting content.

To be able to remove something voluntarily (without a court order), for instance, from Google's search results, the content must be initially removed from the original source. Therefore, it ultimately depends how an individual makes a convincing argument or have a good reason to force or persuade a website to remove content. Once a piece of content is taken down, Google and other search engines will naturally filter it out of search results. But if the Google's search results still reflect the old content for whatever reasons, the Google URL Removal Tool can be used to fix it. Or the author of the defamatory information can be confronted with a threat of legal action to remove the information voluntarily (assuming the website allows the author to remove the content).

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[77] Mushkolaj, Imer. Press Council of Kosovo (PCK). Interview. February 14, 2017.
[78] Gashi, Krenar. Nations in Transit 2015. Freedom House. June 2016, p. 331.
[79] Information obtained from PCK through the Request for Access to Public Documents. February 14, 2017.
[80] Mushkolaj, Imer. Press Council of Kosovo (PCK). Interview. February 14, 2017.
[81] Information obtained from PCK through the Request for Access to Public Documents. February 20, 2017.
[82] Mushkolaj, Imer. Press Council of Kosovo (PCK). Interview. February 14, 2017.

But what happens if the author of defamatory information posted on a website is unable and the website is unwilling to voluntarily remove the content? In this case, if a valid court order is not obtained, websites and internet engines have the right to deny the removal requests. The claimant or the party whose reputation has been damaged sues the individual that authorized the information and obtain a court decision declaring the content illegal. This court decision is presented to the website or even search engine such as Google. This can be more complicated if the identity of the author is anonymous, in which case additional efforts of due diligence must be arranged to reveal the identity.

By law, hosting companies and websites are not under any legal obligation to remove defamatory content without the court's decision. Without the court's ruling in favor of removing harmful content, it would be impossible for websites and hosting companies to manage thousands of defamation claims. While the Law Against Defamation and Insult does not set any rule for removing content, it is in the discretion of the judge to do so to meet the unique circumstances of the case. As far as privacy rights, in the case of social media, such as Facebook and Twitter, all the sites have the privacy settings option to enable users to control who can have access to private information, although this does not guarantee full protection since they are open to the public. In addition, they often respond far too slow in removing content in a timely and efficient manner.

International internet companies, in regular basis, make requests from courts and government institutions to remove content from their products, if it violates the national laws and policies of the corporations. The transparency reports issued by these companies which disclose statistics on the requests for user data, records, or content depict the scope and authority of content regulation for online media. (Google was the first internet company to publish the Transparency Report in 2010 including data on the number of government requests it receives for content restriction and removal).[83] In the case of Kosovo, the law enforcement agencies have requested twice from Google that YouTube videos are removed.[84] The last request made in 2013 involved two videos showing minors fighting which were removed since they violated the Google community guidelines. However, the other request made in 2012 which involved videos that allegedly violated the privacy of politicians were not removed. The latter case shows that internet companies may choose to not comply with government restriction requests.

Judicial Adjudication

When systems of regulation do not work effectively, it is the concern of the law enforcement, respectively the *judiciary*, to ensure that irresponsible media are held accountable for any act of misbehavior. Civil offenses with regards to defamation and insult are undertaken by private lawsuit. That means that if a public official believes to have been defamed or insulted by a digital media or journalist, he can file a lawsuit against the offender (digital media/journalist) but the prosecutor's office cannot prosecute *ex officio* the offender.

However, in Kosovo, the freedom of expression and right to privacy present a serious legal challenge in the judicial community. In Kosovo, the media jurisdiction is extremely tolerable of the freedom of expression on internet. Kosovo is not a place where media can easily be sued for defamation not only because the weight the country puts on the freedom of expression as a relatively new democracy, but also because courts and judges are not prepared and trained enough to handle defamation cases. But to

[83] MacKinnon, Rebecca, Elonnai Hickok, Allon Bar, and Hae-in Lim. Fostering Freedom Online. UNESCO. 2014, p. 123.
[84] Google Transparency Report. Kosovo. [Accessed on April 9, 2017].

the general public knowledge, there is lack of data on court judgements for cases relating to defamation and insult.

Defamation involves non-pecuniary and pecuniary cases directly targeted at remedying the wrong caused by the defamation statement. The non-pecuniary cases are conducted in a form of apology or correction. The problem is that remedies imposed are rather soft although there is no publicly available official data on the number of cases involving defamation and insult being administered in the courts of law. Thus far, the Kosovo Judicial Council (KJC) has not offered any data on civil defamation lawsuits filed to the courts in as far as awards, damages or apologies despite numerous requests of information being made.

Even the Human Rights Watch (HRW) could not document civil defamation lawsuits against journalists in Kosovo.[85] The Association of Journalists of Kosovo (AJK) has reported that there have been 20 defamation lawsuits.[86] However, AJK has not published any report analysis that is based on monitoring of the court cases against digital media or journalists accused of defamation and insult. As far as general statistics that were obtained, only the Ombudsperson reports in annual basis on the number of cases being investigated for violations of constitutional rights. Accordingly, only two cases related to freedom of expression were investigated in 2016 while 19 cases were related to right to privacy.[87] However, these statistics are broad and do not provide any details to whether digital media has been subject of these cases.

The court is required by Law to determine whether correction, retraction, or apology is a sufficient remedy to satisfy the complainant.[88] Non-pecuniary damages are more problematic in the judiciary. This refers to financial awards that are to be made to compensate losses that cannot be exactly calculated in monetary terms (e.g. the loss of reputation). The impact of penalties or rewards often made against the media is an important reason why lawsuits on defamation and insult are so feared in the judiciary! This is also referred to as the chilling effect which is defined as any legal action that would cause individuals to hesitate to exercise a legitimate right such as freedom of expression or speech for the fear of legal repercussions.[89] This effect dissuades judges to take any decision that could potentially infringe the freedom of expression. In this case, penalties and/or awards are a concern not only for media but also for restrictions that the Law Against Defamation and Insult can pose to journalism.

National courts seem reluctant to try cases involving the issue of freedom of expression, and the backlog of these cases is increasing. [90] The law has not been tested properly by the courts, while many lawsuits are still pending.[91] It has been indicated in many research studies that courts are not educated enough to deal with complaints that come from the IMC, PCK or directly by the parties when it comes to defamation and insult. Judges lack the expertise and professional confidence in the field of media law, and thus, are not inclined to deal with cases which involve freedom of media and expression.[92] Findings indicate that not enough training has been conducted for judges as far as the application of Article 10 of the European

[85] Human Rights Watch (HRW). A Difficult Profession: Media Freedom Under Attack in Western Balkans. July 15, 2015.
[86] Collaku, Petrit. Indicators for the Level of Media Freedom and Journalists' Safety in Kosovo. December 2016, p. 20.
[87] Ombudsperson Institution. Annual Report 2016. Prishtina 2017, p. 186.
[88] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 13. May 2008, p. 6.
[89] Law Dictionary. http://law.yourdictionary.com/chilling-effect [Accessed on February 11, 2017].
[90] Gashi, Krenar. Nations in Transit 2015. Freedom House. June 2016, p. 332.
[91] Collaku, Petrit. Indicators for the Level of Media Freedom and Journalists' Safety in Kosovo. December 2016, p. 6.
[92] International Research & Exchange Board (IREX). Media Sustainability Index Kosovo. 2016, p. 72.

Convention of Human Rights (ECHR). This article provides the right to freedom of expression and information.

To that effect, the courts are not competent enough to balance the protection of the freedom of expression with other rights such as privacy and reputation. Freedom of expression is taken as something that should always trump the right of reputation. This goes against the principles of the UN Human Rights Committee, which requires that balancing should maintain the essence of all rights involved, to the greatest extent possible. There is not a court precedence which could inform a judge how public interest may or may not be protected against defamation and insult. This dissuades the public at large to report any defamatory or insulting statement being made by media and thus file a lawsuit, particularly since the cost of filing a civil case is high and discouraging.[93]

Despite a number of requests made to the Academy of Justice (formally recognized as the Kosovo Judicial Institute), who is responsible for training and educating judges and prosecutors, there has not been any response from them regarding the number of training modules on issues of human rights relating to defamation and insult. Judicial protection in cases of defamation and insult is certainly part of the Academy's Training Program. The content of this training program consists of (a) protection of human rights, (b) liability and exclusion from liability, (c) compensation, and (d) deadlines, protection of sources and competent court.[94] However, there are no information on the number of judges who have benefited from this program nor there is an evaluation of the training impact, which makes it difficult to comprehend to what extent judges are able to implement standards and requirements in line with the European Convention for the Protection of Human Rights.

The public institutions, in particular the judiciary, do not respond well to citizens' complaints when it comes to violation of privacy rights and reputation. The level of enforceability of the legislation remains problematic. There are no financial consequences of being sued for defamation. According to the field observations and interviews, there is not a digital media outlet in the country that has paid a heavy fine due to defamation. Therefore, individuals are not inclined to sue in a jurisdiction where there is not a good chance of success. One of the key findings indicates that until now courts in Kosovo have rarely applied or referred to the practices of the European Convention for the Protection of Human Rights when trying to reach a verdict.

In addition, the fines in defamation civil cases are not targeted to either punish the defamer or readdress the wrong to the defamed. Kosovo is overall not friendly to defamation plaintiffs, including government officials, as it is the case in many Western Balkan countries where public officials and powerful businesses often linked to the political elite, "attempt to silence critical media and journalists by repeatedly suing them for defamation."[95] In these cases, defamation is exploited to curtail the right to freedom of expression and media.

In Kosovo, thus far, there have been a number of failed attempts to silence critical media. The most controversial case involved Adem Grabovci, a former Chairman of the Parliamentary Group of the Democratic Party of Kosovo (PDK), a ruling political party, who filed a lawsuit against the online medium "Insajderi" for publishing a series of taped telephone conversions which he claimed to have violated his

[93] Nimoni, Genc. Cohu! Interview, February 13, 2017.
[94] Academy of Justice. Training Program. Official Website. [Accessed on April 30, 2017].
[95] Human Rights Watch (HRW). A Difficult Profession: Media Freedom Under Attack in Western Balkans. July 15, 2015.

privacy and constitutional rights. These conversations reveal high-level corruption affairs inside the government. Mr. Grabovci has requested from the Basic Court of Prishtina to issue an interim order against "Insajderi" to not continue publishing the leaked conversations claiming that his privacy has been violated.[96] According to the Law Against Defamation, "a person has the right to demand to stop the defamation and insult and to demand that it will not be repeated in the future."[97]

However, the Basic Court ruled against the claimant, citing that the lawsuit was groundless and that it did not constitute any privacy violation. The Court rejected violation of privacy claim on the "grounds that he is a public figure and the revelations were in the public interest." [98] In this case, the Basic Court has interpreted the right to privacy not as an absolute right, but as a limited right to be considered in special circumstances. The interpretation goes in line with the Constitution, which upholds that the "secrecy of correspondence, telephony and other communication is an inviolable right, which may be limited temporarily by a court decision if it is necessary for criminal proceedings or defense of the country as defined by law."[99]

Nonetheless, the lower court's decision was overturned by the Court of Appeals. According to the media non-profit organization, *Reporters without Borders* (RSF), the decisions has imposed a threat to journalism, the way the higher Court has sided with the plaintiff by giving him advice on how to put together his case and improve his chances of winning the lawsuit. In the words of the Pauline Ades-Mevel, the Head of RSF for Europe-Balkan Desk, "The Fact that the Appel Court's judges supported a plaintiff [Mr. Grabovci] casts doubts on its [judiciary's] credibility and independence." [100] The controversy behind this case and how it was handled is a clear indicator how unprepared and biased is the judiciary in representing defamation cases. It can It can easily go as far as being used for purposes of silencing media and creating a bad precedence which did not exist before in Kosovo (as it does in many other countries in the region). That may further inspire self-censorship and harm media independence.

Professional Integrity

The right to freedom of expression and right to privacy are affected in the absence of effective regulatory and judiciary authorities, in which case the integrity of digital media comes into question. How professional are digital media organizations in protecting the basic public rights? Here the level of media integrity is critical in preventing digital media from violating people's rights to privacy, which is to suggest that journalists must rely on their professional judgment. In the course of the research study, main findings reveal the extent digital media can reach a balance between the right to freedom and right to privacy.

In Kosovo, digital media is not so concerned about violating the right to privacy and confidentiality. The lack of media independence and professional capacity indicate that digital media struggles to maintain standards of ethical journalism and good governance (i.e. use of multiple sources, publishing of high quality editorials, and protecting of copyrights and privacy rights). In general, digital media is relatively more predisposed to institutional dishonesty and conflicting dependence (be it political or financial). The increasing use of defamation as a political weapon against others exemplifies how far can digital media go to earn political power or earn a stipend and maximize advertising profits. Editors and journalists tend

[96] Insajderi. Adem Grabovci Loses His First Court Battle with Insajderi. August 23, 2016. [Accessed on April 19, 2017]
[97] Official Gazette. Law No. 02/L-065 Against Defamation and Insult. Article 4. May 2008, p. 2.
[98] Reporters Without Borders. Kosovo Prishtina Appeal Court Takes Sides Against Investigative Website. October 2016.
[99] The Constitution of the Republic of Kosovo. Article 36, p. 10.
[100] Reporters Without Borders. Kosovo Prishtina Appeal Court Takes Sides Against Investigative Website. October 2016.

to disregard the risks that come with defamation. It is not because the prefer to insult certain individuals. It is because their proprietors demand that they do so for political or financial reasons.

Journalists report according to what their editors and media proprietors approve of, in terms of what type of story should be published that fits within their preferences. From the perspective of the International Federation of Journalists (IFJ), "competition and commercial pressures [worldwide] are inflicting deep wounds on the body of journalism."[101] Inherent tensions between the demand for profit and ethical journalism puts journalists on "uncomfortable and unsustainable position,"[102] considering the adverse economic situation in the country and poor employment conditions in the media industry. For instance, journalists in Kosovo are poorly paid, work long hours and are not entitled to insurance benefits. This makes them more vulnerable to self-censorship and inclined to surrender to political or financial influence.

The rise and power of social media can no longer be ignored to the extent delivering personalized news information. The increased use of mobile devices has helped improve access to social media which is being used within the media profession as a platform to communicate news directly to a larger set of audiences. What gets posted in Facebook is easily tracked and disseminated through online media in Kosovo. This makes it difficult for digital media to separate information boundaries between personal and professional use or rumor and truth. In practice, social media can easily be misused as an information tool for manipulating public opinion considering the low level of media literacy in the country.

Social media is an interactive and internet-based application which is increasingly being used in Kosovo as in other countries for creating and broadcasting fake news. These are entirely fabricated news stories and their intent is to increase online sharing and internet click profits. According to *The Guardian*, "fake news is written and published with the intent to mislead in order to gain financially or politically, often with sensationalist, exaggerated, or patently false headlines that grab attention."[103] Fake news usually cover issues which appeal to people's emotions, but, in reality are completely disconnected from the truth which may often be an insult to certain individuals. Two recent fake news stories related to (1) how Donald Trump's election would lead to a reversal of United States support for the independence of Kosovo and (2) speculations in February 2017 regarding the early elections in Kosovo.[104]

The findings indicate that – while media in general claims that they represent public interest – very often they act on behalf their self-interest and aim to maximize their readership audience. Most of the time the audience in Kosovo is interested to read or hear about stories which are not of public interest. Instead, they look for stories which are more entertaining and appealing to their self-interest. Kosovo as a small country has turned into a surveillance society where the right to privacy is often put at jeopardy. Certainly, there are exceptions, since a number of media organizations have grown more aware of sensitivity and confidentiality issues of publishing certain content. More professionally recognized organizations (e.g. kallxo.com) apply the basic ethical standards of truth telling, fact-checking and good understanding of issues prior to publishing them.

However, in general, digital media are not capable enough to reach a balance between private and public interest. For one reason, there are not clear legal parameters about what is considered a private interest

[101] White, Aidan. The Trust Factor. Ethical Journalism Network. 2016, p. 138.
[102] Collaku, Petrit. Indicators for the Level of Media Freedom and Journalists' Safety in Kosovo. December 2016, p. 7.
[103] Hunt, Elle. What is Fake News? How to Stop It and What You Can Do to Stop It. December 2016. [Accessed on April 28, 2017]
[104] Balkan Insight. Fake News and Controversial Coups [in the Balkans]. March 2017 [Accessed on April 26, 2017]

and public interest. Findings indicate that digital media is not well equipped to make the distinction between private and public settings [e.g. whether a public figure photographed in distance kissing a woman is of private or public concern]. Therefore, it is not rare to see digital media, in the name of public interest, intrude an individual's right to privacy. More importantly, digital media is reluctant to clarify and teach more precisely what is meant by private and public settings. For instance, nowhere in the internal rules and regulations of any of the media organizations, including the Media Commission and the Press Council, is space defined (e.g. closed spaces versus public spaces). Even the code of ethics of the Media Commission and Press Council fail to make the distinction between public and private space.

When it comes to invading the privacy rights of children and victims (in times of grief and distress, or just exposing some type of behavior), digital media is relatively more careful in publishing photos or videos. In particular, the Independent Media Commission (IMC) is fast and responsive in making a judgment and taking a decision, mostly in a form of warning, that a specific broadcaster is unfit. If compared to online media, broadcasting entities are more cautious in this area,[105] since they have more content discretion and enable less audience interaction.

Broadcasting mediums often seek approvals from parents – in cases of distress – for transmitting a program for educational or charity purposes as valuable information to the general public. However, it is the IMC's responsibility to confirm the approval but also to determine whether the view was justifiable for the public interest. They often report a number of challenges of determining whether someone wants to come out after a distressful event or not. Digital media or online press is less careful since they share a wider notion of public interest and, on its behalf, tend to intrude into people's privacy since it gives them a competitive advantage of publishing fast and perhaps defamatory information via internet.

For the last fifteen years, media training has received increased attention in Kosovo. In addition to media institutions, international and local organizations have played an important role in training programs. The international community has helped a lot in terms of capacity-building, and local counterparts were the main beneficiaries such as the Kosovo Media Institution and the Press Council of Kosovo (PCK). KMI has been established as an independent media center for streamlining training activities in the country. The Council has also been established with the support of the international community. To date, it is functional and runs each year a training program on ethics and journalism,[106] tailored for students of journalism and those who have recently entered the profession.

However, with time the international involvement has progressively declined. This led to modest spending allocations and weak coordination in capacity-building. Local media organizations have suffered the most as a consequence with the declining quality and impact of the training on the integrity of journalism. The Press Council has failed to update the training program, and to date, the program does not meet the specific needs of digital media. It is not sufficiently focused on practical issues. For instance, it does not educate and train journalists enough on special subjects such as defamation and insult. Nor are the right to privacy and data protection part of the program. Similar in kind, the Association of Journalists does not have the financial and human resources to craft the profession by promoting the principles of

[105] Zejnullahu, Ardita. Association of Independent Broadcast Media of Kosovo (AIBM). Interview. March 23, 2017.
[106] Mushkolaj, Imer. Press Council of Kosovo (PCK). Interview. February 14, 2017.

integrity. It is not only that ethics are not taught enough in training but also not enforced through the code of conduct.[107]

In Kosovo, there is lack of awareness among journalists about the importance and responsibilities of mass communications as far as respecting the right privacy and reputation. As a result, digital media is not capable of fair and accurate reporting of legal proceedings, mainly because they do not receive enough legal training by lawyers on cases related to issues such as privacy and reputation. Given the limited opportunities for professional development and in addition to weak judiciary mechanisms, digital media are inclined to overstep the law in matters concerning the right to privacy and reputation. As long as the digital media industry is "extremely" unregulated, meaning that no one can be held to account, there will be continuous violations of human rights.

Recommendations

This study concludes that digital media falls short in terms of accountability and integrity. By all means, this is to suggest that primary legislation should be amended or that certain provisions and rules added to law or institution (e.g. licensing online mediums). Thus far, the report has only praised the national legislation for setting the ground rules in favor of freedom of expression. However, there needs to be some limitations or greater oversight over online content, which could fall under the responsibility of the Independent Media Commission (IMC). In Kosovo, the balance has not yet been reached between freedom of expression and right to privacy/reputation for a number of reasons:

(a) the fact that digital media is unregulated due to weak accountability mechanisms of media regulators and judicial institutions, and
(b) there is lack of media independence and integrity to promoting ethical standards of professional journalism against defamation and insult.

How to overcome these challenges, it takes practical solutions framed according to a number of recommendations dedicated for media and judicial institutions as in the following.

Media Institutions

The media institutions including the Independent Media Commission, the Press Council of Kosovo, and the Association of Journalists of Kosovo to respect, protect and promote mutually reinforcing human rights such the right to freedom of expression and right to privacy. Keeping digital media honest is worth the effort for public at large and democracy development.

- By law, Media Commission to be assigned the responsibility of monitoring online press (without licensing powers) and hold to account online content that is harmful to reputation of individuals.
- Media Commission to become more proactive in sanctioning broadcasting mediums which produce and disseminate harmful content.
- Press Council to take greater charge in handling and helping represent defamation cases in the courts of law in coordination with the Media Commission.
- Press Council to promote the Code of Ethics and persuade journalists to work harder based on a priceless passion that is indispensable to report on behalf of public interest.

[107] Collaku, Petrit. Association of Journalists of Kosovo (AJK). Interview. February 7, 2017.

- Press Council to update and organize more frequently the modular training program and make it mandatory to train journalists (old and new) on ethics and journalism.
- Journalist associations (i.e. AJK) to initiate or join any ethical journalism initiative or project on how to create and maintain ethical standards in the profession of journalism.

Judicial Institutions

Self-regulation of digital media is a reliable model of media accountability. In fact, it is highly recommended in post socialist countries that are reluctant to have state regulation, which they almost consider a relic of the past. However, in order to put into effect democratic accountability as it is the case with self-regulation, there must be rule of law.

- Kosovo Judicial Council (KJC) to support capacity-building programs through Judicial Institute and/or media organizations for training of judges on defamation and insult.
- KJC to design and launch a public information campaign about legal rights citizens have against potential media threats as far as defamation and insult.
- KJC to prepare and sign a Memorandum of Understanding (MoU) with the Press Council which will require that courts of law treat defamation cases with the highest priority.

At the center of any initiative or action that builds on the stated recommendations lies the fundamental respect for, and protection of, individuals' ability to live freely and with dignity. If freedom of expression is limited or threatened in any way, individuals would not be able to grow their sense of self. But without privacy, they would not be able to develop a sense of their own voice. Finally, this report is a call from journalists and their organizations to ignite a positive ethic for the profession of journalism. It is also an invitation to policymakers and public at large to join the debate of how we should shape digital media in the future for the benefit of protecting and promoting basic human rights.

Appendices

Appendix 1 | Literature Review

A short list of literature sources used to examine digital media and draw best practices are presented in the following sub-sections. All the sources have been hyperlinked for online accessibility purposes and they are presented in a chronological order. Officials websites of each regulatory authority and official gazette have been consulted in regular basis to access key legal document and reports of institutions.

Local Sources

(1) Sheremeti, Furtuna. Despite Ambiguities, Media Should Hold Uphold Professional Standards. 2017.
(2) Collaku, Petrit. Indicators for the Level of Media Freedom and Journalists' Safety in Kosovo. Dec 2016.
(3) European Commission (EC). Kosovo 2016 Progress Report. Nov 2016.
(4) International Research & Exchange Board (IREX). Media Sustainability Index Kosovo. 2016.
(5) Gashi, Krenar. Nations in Transit 2015. Freedom House. Jun 2016.
(6) Kosovo 2.0, COHU & PCK. Freedom of Expression, Media and Information in Kosovo. May 2016.
(7) Thompson Foundation. Manual on the Main Cases in ECHR. May 2016.
(8) United Nations Development Programme (UNDP). Public Pulse. May 2016.
(9) Independent Media Commission (IMC). Annual Report 2014. Mar 2015.
(10) OSCE. Freedom of Media and Safety of Journalists in Kosovo. Jun 2014.

International Sources

(1) Law Dictionary. http://www.yourdictionary.com. [Accessed on Feb 2017].
(2) White, Aidan. The Trust Factor. Ethical Journalism Network. 2016.
(3) Speller, Catherine. A Needs Assessment of the Media Councils in South East Europe. Jun 2015.
(4) MLDI & IPI. Freedom of Expression, Media Law and Defamation. Feb 2015.
(5) Petkovic, Brankica. Media Integrity Matters. Peace Institute. 2014.
(6) Wong, Cynthia & James X. Dempsey. The Media and Liability for Content on the Internet. May 2011.
(7) Packard, Ashley. Digital Media Law. Wiley-Blackwell. 2010, p. 180.
(8) Aidan, White. To Tell You the Truth. International Federation of Journalists. 2008.
(9) United Nations General Assembly. Universal Declaration of Human Rights (UDHR). Dec 1948.

Legal Sources

(1) Independent Media Commission (IMC). Code of Ethics of Media Service Providers. Oct 2016.
(2) Official Gazette. Law No. 04/L-137 on the Protection of Journalism Sources. Aug 2013.
(3) IMC. Regulation on the Protection of Children and Minors in Audio Visual Media Services. May 2013.
(4) Independent Media Commission (IMC). Regulation 12/1 on the Rules of Procedure. Sep 2012.
(5) Official Gazette. Law No. 04/L-044 on the Independent Media Commission (IMC). Apr 2012.
(6) Official Gazette. Law No. 02/L-065 Against Defamation and Insult. May 2008.
(7) PCK. Press Council of Kosovo Statute. No date.
(8) The Constitution of the Republic of Kosovo. Jun 2008.

Appendix 2 | List of Respondents

The names and last names of individuals who have been interviewed for the research are listed in the following order.

Name/SurnameJob	Position/Title	Institution/Organization
Albert Avdiu	Former Director	Kosovo Judicial Council
Ardita Zejnullahu	Executive Director	Association of Independent Electronic Media
Driton Zhubi	Executive Director	Lens
Flutura Kusari	Independent Expert	Former BIRN Associate
Genc Nimoni	Project Coordinator	COHU/Preporter
Imer Mushkolaj	President of the Board	Press Council of Kosovo
Naile Krasniqi	Executive Director	Independent Media Commission
Petrit Collaku	Project Researcher	Association of Journalists of Kosovo

Appendix 3 | Structured Questionnaire

The structure of the questionnaire consists of basic questions about the legal and regulatory framework and specific questions on liability risks and integrity threats.

Law & Regulations

To what extent are there legal safeguards to freedom of expression, right to privacy and media?

Sub-questions: What do laws say about the right to privacy, freedom of speech and media?

To what extent does the legislation provide an environment conducive to digital communications?

Sub-questions: Are there ambiguities in the law? Are there certain inconsistent legal provisions?

Which institutions are in charge of regulating digital media?

Institutional Accountability

To what extent can digital media outlets be held accountable in law and practice?

What is the experience of such institutions in regulating digital media?

How can certain videos and photos be removed if there is a legitimate complaint?

Judicial Adjudication

What are some of the law enforcement mechanisms in place in addressing digital media disputes?

Are public institutions responding well to citizens' complaints?

Profession Integrity

Is digital media concerned about violating the right to privacy, defamation, and confidentiality?

Are media capable of reaching a balance between private information and public interest?

How careful is digital media about the privacy rights of children and victims (e.g. publishing photos, etc.)?

How well educated and trained are they on issues of defamation and insult?

Are media capable of fair and accurate reporting of legal proceedings?