

THE CONCEPT OF CRIMINAL RESPONSIBILITY IN NORTH MACEDONIAN MEDIA LAW IN THE PERSPECTIVE OF FREEDOM OF THE PRESS AND MEDIA

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ABSTRACT

The main duty of the press law, which is the duty of transmitting information to people objectively, and the principle of respecting the dignity, dignity and private life of the person within the scope of basic human rights and dignity, and especially the widespread crimes of insult and slander, at this point, the European Union law attaches importance and therefore it is in question. violations will be punished. The ways in which these regulations are regulated within the legal framework and especially within the framework of the press and media law will be examined in this scientific study.

Although the privacy of private life is regulated in many laws and international conventions, there is no clear definition of what the private life is. However, with the rapidly developing technology and the use of social media, it has become quite difficult to surround the privacy of private life with concrete and clear rules. Although the terms "family", "housing", "communication" in paragraph 1 of Article 8 of the ECHR also constitute different elements of "private life", which constitute a whole, regulations have been made by the legislator in order to protect the principle of privacy in the domestic law of North Macedonia. From the point of view of Public Law, Criminal Responsibility for any interference with the principle of privacy is regulated in Article 11 of the Press Law of North Macedonia.

It has been seen that the press and the media, which some scientists see as the fourth power, reach large masses today, and that the written and visual media bring along the sharing of information that harms the dignity of individuals and other basic human rights and freedoms, especially the crime of insult and slander, so the legislator takes every effort to prevent these violations and makes legal arrangements.

Keywords: Media law, press law, legal order of North Macedonia, criminal responsibility, freedom of the press and media.

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1. Introduction

Situations such as living in a freedom and fearless life within the boundaries drawn by the legal order, living, moving, traveling anywhere, thinking as wishes, believing, expressing thoughts and opinions, able for free engagement in economic initiatives, as well having all reflections of freedom. It has been ruled that the freedom of the media and press, which is considered within the scope of freedom of expression in the European Convention on Human Rights, is not absolute and can be limited for several reasons.

According to the second paragraph of Article 10 of the Convention, *“...these freedoms are necessary measures for a democratic society, such as the protection of national security, territorial integrity or public safety, the maintenance of law and order and the prevention of crime, the protection of health and morals, the reputation and rights of others, confidentiality may be subject to certain ceremonies, restrictions or sanctions prescribed by law in order to prevent the disclosure of information or to ensure the authority and impartiality of the judiciary.”*

The freedom is included in Article 16, Article 17, and Article 18 of the Constitution of the Republic of North Macedonia. In this way, freedom of belief, conscience, freedom of thought and expression are guaranteed. The freedom to inform the public and the establishment of public information institutions, the necessary funding for information exchange, and the prohibition of censorship are constitutionally guaranteed. Article 17 of the Constitution deals with the freedom and confidentiality of the transmission and reproduction of texts.

It is stated that this principle can be abandoned only if the court decision and the interests of the Republic of Macedonia are in question. In this

context, the next article is important, as Article 18 guarantees the confidentiality and security of personal information of a person.

We can see that the Media law in the Republic of Macedonia has just begun to deepen and be corrected with special laws. The limited number of academic studies on this subject also puts us in a difficult situation. Media Law in the Republic of Macedonia is handled through five laws (act of parliament). At the beginning of these, of course, the general framework is drawn by the Constitution, then the Criminal Code (2010 law regulation) ¹, Media (Press) Code (30 July 2013) ², Visual Broadcasting Code (2014), Broadcasting Rights Code (2005), Liability for Defamation and Slander Civil Code (2012)³. The purpose of the Media Law of the Republic of Macedonia (30 July 2013) is to regulate the freedom of the press and the use of this freedom, or rather its conditions. From this point of view, it cannot be said that the media is basically free.

If we look at the opinions of the academicians, it is said that the current situation in the media field in Macedonia is not optimistic, but the media ignores the creative and public interest. On the contrary, they stated that their freedom should be put under question mark. (Весна Шопар, 2016).

A. LEGAL AND CRIMINAL RESPONSIBILITY ACCORDING TO THE MACEDONIAN MEDIA (PRESS) LAW

When we consider it in terms of Public Law, according to the Press Law in the Republic of Macedonia, the Criminal Responsibility is

¹ Кривичен Законик на Република Македонија („Службен весник на Република Македонија“ бр. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13 и 82/13, 2010 година)

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³ Законот за граѓанска одговорност за навреда и клевета (Сл. весник на РМ, бр. 143 од 14.11.2012 година)

regulated in Article 11 of the Law. Accordingly, crime committed through printed works occurs at the time of publication. The author is responsible for crimes committed through periodicals and non-periodical publications. In cases where the author of the work is not known in the periodicals, or does not have a criminal capacity at the time of publication, or cannot be tried in Macedonia because he is abroad, or if the penalty to be imposed does not affect the penalty for which the author is convicted with a final sentence for another crime, the responsible director and editor-in-chief, editor-in-chief, editor The responsible manager, such as a press consultant, becomes responsible. However, in the event that this work is published despite the objections of the responsible editor and the responsible manager, the responsibility arising from this belongs to the publisher.

In cases where the author of the work is not known in the indefinite publications, or he cannot be tried in Macedonia because he does not have a criminal capacity at the time of publication or he is abroad, or if the penalty to be imposed does not affect the penalty to which the author is convicted with a final sentence for another crime; In cases where the publisher is not known, does not have a criminal capacity at the time of printing, or cannot be prosecuted in Turkey due to being abroad, the publisher is liable. (Republic of Macedonia. Press Law, articles 11, 12 and 13).

In the 1st paragraph of the 3rd article of the Press Law, the freedom of the press was guaranteed, and in the 12th article, it recognized the right of the journalist to keep the source of the news confidential. The limit of the right to be used by the press in the field of private law while fulfilling its function of reporting is determined by the rules of a) Reality b) Public

Interest and Social Interest c) Timeliness d) Intellectual Commitment between the Subject and Expression.

As long as the right to inform remains within these limits, it is legal. The last of the above-mentioned restrictive basic rules stipulates that even if the news reflects the truth, the language and expression to be used, the interpretation to be made, must be in the form and extent required and necessitated by the delivery of the news.

Article 2, paragraph 1 of the Press Law explains what the term press covers when used, i.e., media or such newspapers, magazines, radio and television programmes, electronic publications, teletext, and other means used in daily writings, editorial content shaped by sound and image. It is expressed as means used in all kinds of communication, to inform and to meet the needs of the public, culture, education, and other needs. Article 2, paragraph 6 of the law. stated that the regulatory and supervisory authority belongs to the Sound and Audio-Visual Media Services Authority. What is important for us is the guarantee of freedom of expression and press in paragraph 1 of article 3 of the Press Law. The scope of freedom of the press is broadly covered in paragraph 2 of Article 3 of the Law, that is, freedom of thought, independence of the media, collection of information to inform the public, the right to research, publish and distribute, to produce and discuss ideas in line with this information, to obtain information, to disseminate, to criticize, to interpret and to create works, such freedoms are given place in both written and visual media (the important point here is the existence of the public interest, that is, the Law prohibits suing the journalist when the public interest is in question). In addition to the freedoms specified in the Press Law, restrictions on freedoms were also made. In this context, the exercise of freedom of the press can only be exercised in accordance with the requirements of a democratic society; In order to protect the reputation

and rights of others, public health and morals, national security, public order, public security and territorial integrity, preventing the disclosure of state secrets or committing a crime, and ensuring the authority and impartiality of the judiciary are included. (In the Macedonian Penal Code, art. 305-327). In Articles 11 and 12 of the Press Law, under the title of freedom of journalists, the journalist has the right to keep the source of the information used in his broadcast confidential and not to disclose (in fact, this law deals with the written and electronic press and makes legal arrangements in terms of media and administration).

Republic of Macedonia Visual Media (Broadcasting) Law (2014) In this context, the general broadcasting principles of mass media are determined as follows:

Article 48:

- a) the existence and independence of the State of the Republic of Macedonia, the indivisible integrity of the state with its territory and nation,*
- b) It cannot incite the society to hatred and enmity, or create feelings of hatred in the society, regardless of race, language, religion, gender, class, region, and sect.*
- c) The rule of law, justice and impartiality cannot be contrary to the principle.*
- d) It can't be contrary to the principle of respecting human dignity and the privacy of private life area, and individuals or organizations it may not contain humiliating, humiliating, or slanderous statements that go beyond the limits of criticism.*
- e) It can't praise or promote terrorism, can't show terrorist organizations as strong or justified, it can't reflect the frightening and intimidating characteristics of terrorist organizations.*

- f) *It can't be contrary to the national and moral values of the society, and general morality and the principle of protecting the family.*
- g) *It can't be praising crime, criminals, and criminal organizations, and cannot be instructive in crime techniques.*
- h) *Upon the principles of impartiality, truth and accuracy must not interfere with the free formation of opinion in society, news, the investigation of which is possible within the framework of the professional principles of the press, cannot be published without investigation or without being sure of its accuracy; exaggerated sound and image in the delivery of the news, no effects or music other than natural sound, thus it is obligatory to indicate the archive or animation nature of the images and the source of the news received from the agencies or another media source.*
- i) *Can't promote violence and can't involve abuse, against to the people with disabilities, to the weakless (helpless), to the children.*
- j) *It cannot be one-sided or taking sides with respect to political parties and democratic groups.*

In radio and television broadcasting services, programs that contain content that may harm the physical, mental, or moral development of children and youth, in the time periods that they can follow and watch and can't be published without the protective symbol.

Visual Media (Broadcasting) Code, in Article 147 deals with criminal liability. Such that, not complying with the Obligation of Not Showing the Mandatory Information for the crimes regulated in the Media Code, continuing the Stopped Broadcast, Not Publishing Reply and Correction, Influencing the Judiciary, Sexual Assault Murder and Suicide Encouragement, Non-compliance with the Prohibition of Disclosure of Identity, Prevention of Destruction and Corruption of the Printed Work, Non-Compliance with the Distribution Obligation in Periodicals and We

can collect it under ten main titles in the form of Broadcast Repetition. In case of violation of the above-mentioned conditions, the media organization will be liable to pay a fine of 10.000-20.000 Euros.

On the freedom, independence and impartiality of the press and media, according to the Freedom House Reports, Macedonia, which is in the partially free group, belongs to the non-free country group. (<https://freedomhouse.org/report/freedom-press/2016/macedonia>). In 2018 and 2019 Freedom House Reports, it is seen that North Macedonia is evaluated as Limited Freedom (partly free) with 3 points. (<https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral>, 2019).

In the last and most recent report of this organization, just like the previous period, Macedonia was ranked with 3 points out of a total of 4. The detailed annual report states that: The media landscape is deeply polarized along political lines, and private media outlets are often tied to political or business interests that influence their content. However, a wide collection of critical and independent outlets operates, mainly online. A June 2021 report from the Association of Journalists of Macedonia were counted 14 threats and physical attacks against journalists in 2020, while only 4 such incidents were recorded in 2019. More than half of the targets were female journalists. (<https://freedomhouse.org/country/north-macedonia/freedom-world/2022>, 2022).

B. LEGAL AND CRIMINAL RESPONSIBILITY ACCORDING TO THE MACEDONIAN MEDIA (PRESS) LAW

Although the concept and definition of honor and dignity is included as a protected personality value in the Macedonian Civil Code, there is not to definition in the general law and the definition is made by the doctrine. Such that, honor and dignity, which is another important personal value

within the scope of the right to personality, refers to all the moral values given to the person by the society. (Aslı, 2009, s. 45-46.). Also, honor and dignity is a concept that emerges and differentiates in society, everyone has a minimum of honor and dignity due to being human and can demand that it be protected. Since the concept of honor and dignity is a relative concept, it can change from person to person or over time. (Tufan, 2002, s. 119).

In every concrete case, the judge makes an objective evaluation while evaluating honor and dignity. Honor and dignity refer to the objective value given to them by the society, in accordance with the moral values of people according to their behavior and lifestyle in society. (Kılıçoğlu Ahmet, 1982., s. 62).

Moral, honor and dignity are the honor which one is born with as a human being. In fact, that people are human, they don't want to lose their innate values, regardless of their place in the society. For example, a murderer or thief may not be addressed or treated in a manner incompatible with human dignity; such an address or treatment means a violation of his values because he is human. The Macedonian Criminal (Penal) Code has included the concept of Honor and Dignity in its 18th Title and explained in articles 178-182.

Article 182 - It is stated that if a journalist practicing the profession of journalism is given a defense of responsibility, derogatory opinion, thought or other freedom of expression, his right or public interest or other legitimate interests or opinions cannot be held responsible for this offense in good faith.

The feature of the crime committed through the press differs in terms of the moment of occurrence of the crime, responsibility, and judgment due to the use of the press as a tool. An important part of general crimes can

also be committed through the press. In our criminal law system, the commission of a crime through the press is generally seen as an aggravating reason for the punishment to be increased to a certain extent. This discussion on the subject has become more serious, especially after the tragedy of Diana Spencer, Princess of Wales, in her chase with the paparazzi regarding the disclosure of her privacy. The incident in question prompted the Council of Europe to act on the issue and to issue a "Decision" containing the necessary arrangements in this area. This Decision referred to the provision of the ECHR on the protection of the privacy of the private and family life of the person (art. 8) and called upon the European countries to give due importance to this legally. Instead of preparing a new convention, the Council of Europe warned the member states to make the necessary legal arrangements in the field of the right to privacy in their legal systems, in line with the principles set forth in the said Decision. (Yaşar, 2007, pp. 59-60). It is undoubted that countries should take the relevant provisions of the ECHR and the point of view on the subject in the case-law created by the ECHR as a basis in the new regulations they will make in their domestic laws. In the recent decisions of the ECHR, it is noteworthy that the approach that the privacy of private life is guaranteed in cases where freedom of the press interferes with the right to privacy is increasingly adopted. In the context of this important change, the verdict regarding Princess Caroline of Monaco ("Princess") is of particular importance. (Von Hannover v. Germany) (<http://hei.unige.ch/~clapham/hrdoc/docs/echrvonhannovercase.doc>). In the Macedonian Penal Code, the following acts are among the acts that can also be committed through the press. Suicide incitement and incitement (art. 84), threats, (art. 258), blackmail (art. 259), insults, violation of confidentiality of communication, violation of privacy, praising crime and criminal, slander, etc. countable.

C. LEGAL AND CRIMINAL RESPONSIBILITY ACCORDING TO THE MACEDONIAN MEDIA (PRESS) LAW

The Republic of North Macedonia handled the Defamation and Slander Crime within the framework of a special law, that is, a law was introduced under the name of the Civil Code of Liability for Defamation and Slander. In Article 2 of this code, it is aimed to ensure the freedom of thought and the flow of information. Pursuant to this article of the code, if a person makes a derogatory statement, article or post that harms the dignity of another person, it will insult the honor and dignity of the person. This situation can be seen in a natural person, as well as a legal person and a deceased person. According to the 3rd paragraph of Article 6 of the Code, the crime of insult is a crime that can also be committed through the press. If this crime is committed through the press (such as newspapers, magazines, radio and TV programs, electronic and internet media), the owner of the work or the editor will be held responsible.

The plaintiff (the insulted party) has the right to choose whether to file a lawsuit against the author or against the editor. If there is an interference with the article by the editor, this may be in the form of headlines, subtitles, adding images and distorting the words with their expressions partially cut, in which case the journalist does not bear any responsibility.

In the paragraph 2 of article 7, the situations in which the journalist cannot be held responsible for the crime of insult are included. So, if the public interest, goodwill and informing the public are at stake, the journalist will not be held responsible regardless of the way this is expressed. At this point, the principles of Freedom of Expression and Public Interest were taken into consideration. Likewise, the responsibility of the journalist is eliminated due to negative thoughts and critical comments. It was stated

that the journalist cannot be asked to present the source of the article she published in the Court as evidence. These conditions must be examined by the Court in accordance with the requirements of the European Declaration of Human Rights. In the case before the court, the proof of defamation must be made by the Defendant, as stipulated in Article 9. In the case of defamation and slander, within 48 hours of filing an Apology and Retraction of Letter, presented as alternative criminal liability. (Press (Media) Law 2013, art. 13). Subsequently, the right to Deny, Respond and React was also granted. The victim has the right to respond, deny and express his/her reaction to the slanders directed against him within 7-30 days from the moment he/she learns about the incident. (Press (Media) Law 2013, art. 14). The court may fine the Journalist a minimum of 2,000 Euros, the Editorship of 10,000 Euros, and the Broadcasting Company a fine of 15,000 Euros as non-pecuniary damages.

In the report published by the Macedonian Journalists Union, it was stated that in the Republic of Macedonia, there are usually lawsuits filed by politicians against journalists and this law aims to prevent this. In this way, it has been pointed out that more than half of the 700 cases currently pending are journalists, and it is aimed to reduce this number. (Report of the Macedonian Journalists Union, September 2015/ http://znm.org.mk/?page_id=1357).

Article 11 of the Law examines the publications in the electronic environment. The editor making the publication is held responsible for the published content. Violation of Confidentiality of Communication Macedonian Criminal (Penal) Code (article 379-a) and Telecommunication Law have foreseen these crimes in the article of the law. Everyone except those who communicate becomes the perpetrator of the crime. Those who communicate cannot be the perpetrators of the

crime. Victims of crime are both senders and recipients. Since the law restricts communication to being "between people", the victims of the crime are individuals. However, since the person is also understood as a legal person, the victim of the crime may be a legal person. "Anyone who violates the confidentiality of communication between people is punished with imprisonment from one year to three years. If this privacy violation occurs by recording the contents of the communication, the penalty to be imposed is increased by one-fold, and the same penalty will be imposed if this disclosed data is published through the press and broadcasting."

D. VIOLATION OF THE PRIVACY OF PRIVATE LIFE

Criminal Code also regulates the crimes of violation of privacy in two paragraphs. In the first paragraph, violation of the privacy of private life in the first sentence, and in the second sentence, the violation of privacy by recording images and sounds is punished. In the second paragraph, disclosing images and sounds related to the private life of individuals is punished. Anyone who violates the privacy of individuals' private life is sentenced to imprisonment from one year to three years. In case of violation of confidentiality by recording images or sounds, the penalty to be imposed is increased by one-fold. (Criminal code, article 120). Anyone who unlawfully discloses the images and sounds related to the private life of individuals is punished with imprisonment from two to five years.

If this disclosed data is published through the press and broadcast, the same penalty will be imposed. Macedonian journalist Tomislav Kezarovski, who disclosed the secret witness in her column and publicly revealed her identity in a court case, was found guilty by the Skopje 1st Criminal Court and sentenced to 4.5 years in prison. Macedonian Journalists Union stated that this should be evaluated within the

framework of the principles of freedom of thought and public interest and that the journalist should be released.

CONCLUSION AND EVALUATION

From October 2014 to June 2015, 106 hearings were held with the Macedonian Journalists' Union and 39 case follow-up hearings, where slander and insult journalists took place as defendants and journalists as plaintiffs. The purpose of these activities is to analyse the implementation of the Civil Code by the 2nd Magistrate's Court in Skopje. The main purpose of monitoring these cases was to see to what extent this court enforces the law of the European Court of Human Rights in Strasbourg. 17 of 39 court cases were filed on charges of defamation and slander against journalists. The most important step was taken in 2012 with the introduction of the Civil Law on Liability for Defamation and Slander, which is included in an article in the Criminal Code. Legal regulations have been developed in accordance with the general standards of the European Union, but in current life, especially against journalists, lawsuits for compensation are brought against journalists, and it is an expression of a kind of censorship in informing the public in the public interest press world.

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