



Analysis

**Macedonia in the digital age
– between the rights and responsibilities
while communicating on Internet**





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ANALYSIS: Macedonia in the digital age – between the rights and responsibilities while communicating on Internet



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СОДРЖИНА

INTRODUCTION	5
1. SUBJECT AND CONTENT OF THE STUDY, METHODOLOGICAL APPROACH	7
1.1. SUBJECT AND CONTENT OF THE STUDY	7
1.2. METHODOLOGY OF DATA COLLECTION	8
1.3. SUMMARY OF THE STUDY	9
2. GENERAL OVERVIEW OF THE SITUATION WITH THE INTERNET MEDIA AND COMMUNICATION IN MACEDONIA	10
2.1. LEGAL REGULATIONS AND INTERNET MEDIA IN MACEDONIA	13
2.2. LEGISLATION THAT APPLIES TO PUBLISHING OF CONTENTS	13
2.2.1. INTERNATIONAL CONVENTIONS AND THE CONSTITUTION	13
2.2.2. CRIMINAL CODE	13
2.2.3. LIABILITY FOR DEFAMATION AND INSULT FOR PUBLISHED INFORMATION ON INTERNET MEDIA AND SOCIAL NETWORKS	16
2.2.4. PERSONAL DATA PROTECTION AND THE INTERNET MEDIA	21
2.2.5. IMPLEMENTATION OF THE LAW ON PREVENTION AND PROTECTION FROM DISCRIMINATION	23
2.1.6. INTERNET MEDIA AND THE LAW ON COPYRIGHT AND OTHER RELATED LAWS	24
2.1.7. FREE ACCESS TO PUBLIC INFORMATION	25
2.1.8. INTERNET MEDIA AND MEDIA LAW	27
2.3. BUSINESS AND LABOR RELATIONS	27
2.3.1. ESTABLISHMENT OF INTERNET-MEDIA BY COMPANIES	27
2.3.2. INTERNET MEDIA ESTABLISHED BY CIVIL SOCIETY ORGANISATIONS	28
2.3.3. REGISTRATION OF A DOMAIN	29
2.3.4. LABOR LAW AND INTERNET MEDIA	30
2.3.5. IMPLEMENTATION OF THE LAW ON ARCHIVAL MATERIAL	34
2.4. SELF-REGULATION	35
2.4.1. COUNCIL OF HONOR OF AJM	35
2.4.2. COUNCIL OF MEDIA ETHICS – CMEM	36
2.4.3. OTHER FORMS OF PROFESSIONAL ASSOCIATION OF INTERNET-MEDIA	37
3. PERCEPTIONS OF INTERNET-AUDIENCE FOR IMPLEMENTATION OF LEGISLATION AND SELF-REGULATION ON THE INTERNET (POLL)	38
4. CONCLUSIONS AND RECOMMENDATIONS	40

INTRODUCTION

ABOUT THE STUDY AND THE PROJECT

The Macedonian Institute for Media (MIM) prepared this study as part of the Project “Macedonia in the digital age – between the rights and responsibilities while communicating on Internet”, financed by the US Embassy in Skopje. The main objective of this Project is to support a more accountable and a more democratic discourse in the public communication online in Macedonia.

As part of the activities being implemented within the Project, the production of this study has an objective to contribute to the start of an essential debate on the institutional and legal framework in which the online media operate, as well as the electronic communication by citizens in general.

In this regard, it is of particular importance to identify the main parts of the legislation in Macedonia that create the legal framework for the massive communication over the Internet, but also the trends, challenges and breaches which relate to the implementation of the legal regulations in the area

of online communications and Internet media. At the same time, the study provides an overview of part of the activities undertaken by the social actors - institutions, the media or other bodies/organizations aimed at solving of the situation, their efficiency and balance in relation to freedom of expression and other fundamental human rights.

This study is based on a previous research work and monitoring of a media content conducted in relation to this aspect by various media and civil society organizations and experts, including analyses, research and monitoring of a media content carried out by the Macedonian Institute for Media, the School of Journalism and Public Relations, professional media associations and organizations, as well as other relevant social and professional actors that work in this area. It also includes all latest relevant information in relation to the existing legislation and judicial practice, as well as in relation to the work and activities of the state institutions which are related to the electronic communication.

1. SUBJECT AND CONTENT OF THE STUDY, METHODOLOGICAL APPROACH

1.1. SUBJECT AND CONTENT OF THE STUDY

The analysis is conducted in compliance with the methodology that provides guidelines on the structure of the situation analysis of the laws implementation in the area of online communication, through the following segments:

General overview of the situation in relation to the observance of the legislation in the area of online media and communications in Macedonia

At the beginning, the study provides a brief context related to the media atmosphere and the role of online-media and social networks in the public debate, starting from access to new technologies and the Internet, the manner of use of the new vis-a-vis traditional media and technologies, prevalence of use of the services on Internet and the emergence of new media, as well as the level of media literacy of the population and journalists; in this section, the study provides a general overview of the situation regarding the observance of the legislation in the communication and in the publishing of contents on Internet. In addition, the study focuses on that part of the legislation in the country which enables the legal operation of entities in the internet communication and which is intrinsically connected both with their action and the contents they publish.

We refer to the Constitution, the European Convention on Human Rights, the Criminal Code, the Law on Civil Liability of Defamation and Insult, the Law on Personal Data Protection, the Law on Prevention of and Protection against Discrimination and the Law on Copyright and Related Rights, the Law on Free Access to Information of Public Character as important laws that affect the contents and the work of Internet media and the communication. At the same time, we also refer to the Law on Media and the Law on Audiovisual Media Services and the exclusion of Internet media, as well as the Law on Labor Relations and the laws related to the payment of honoraria, the Law on Trade Companies, the Law on Civil Society Organizations and Foundations, to the registration of domain on Marnet and the Law

on Archiving. The study includes important segments of these laws that relate to the daily basic operation of the Internet media.

Legal framework and scope of the legal regulations that affect the online media

The aim of this study is to research, systematize and summarize the more significant legal regulations or parts of them that create the legal framework in the area of online-media and online-communication. We set aside the following general legal acts as most significant and relevant to the subject of interest to this study:

- Legal acts related to the contents - those that guarantee the freedom of expression and contain restrictions for publishing contents that may disrupt the rights of others
- Laws related to the business – legal operation of the entities in the Internet communication, starting from the opportunity to establish an entity to the regulation of working relations and the functioning of the market of information
- The legal mechanisms and procedures, court practice, mechanisms and procedures, criminality and responsibility

The study presents the way the legislation works and the mechanisms that can be used for exercise and protection of the rights of citizens and entities that participate in online communications. By pointing out specific cases, while observing the presumption of innocence and privacy and without commenting verdicts or cases in progress, the study looks at the judicial practice and the practice of other state bodies in relation to implementation of all these laws. At the same time, the legal and administrative procedures that were used in those cases are identified by using concrete examples.

It is not relevant for the analysis itself to provide information about the ones who benefited from the decisions of court or the state bodies. Instead, it is sufficiently if the public and the stakeholders concerned are aware that a judicial or other procedure determined by law started, which involves a website or a post on the social networks, that the law also applies to the online-sphere and includes media and citizens who use Internet as a platform for launching information to the broader audience.

At the same time, it is important that all stakeholders who produce and place contents on the Internet know what can be expected if they breach the legal provisions of the legislation which is relevant to the internet. Part of the analysis includes the legal consequences and penalties related to the disrespect of the relevant legal provisions.

Experiences and perceptions of stakeholders and the audience

Besides providing overview of the legislation and the manners of its implementation by presenting concrete examples, this study goes through researches, observations, perceptions and experiences of the stakeholders concerned (owners, editors and journalists in online-media, professional associations and part of the Internet audience), obtained through qualitative semi-structured interviews and an online-survey.

Self-regulation and professional standards

The study also documents part of the practice of our self-regulation ethical bodies in cases where they processed cases related to the online media, but also other forms of self-regulation (through activities of existing civil society movements and organizations, informal groups, forums, social networks), as well good practices and standards which should be upheld by all media, regardless of the platform for transmission of information they use.

Recommendations

Another purpose of the study is to identify the “bottlenecks”, especially with regard to the implementation of the legislation which guarantees human rights and media freedoms equally to all participants in the Internet communication. The analysis also contains recommendations on the manners of improvement of the situation in certain areas where breaches and backlogs are identified.

1.2. METHODOLOGY OF DATA COLLECTION

The following methodological approaches were used in the development of the study:

Gathering of statistical and other secondary data

During the preparation of the study, the key legal acts regulating the relations in this sphere were taken into account, including the Constitution, various laws and bylaws, case law and procedures for exercising the rights by the entities that use Internet communication as a means of expression or a business activity, as well as the mechanisms of self-regulation.

As sources of relevant data, examples and cases in the context of this study, data from state institutions were used, including publicly available information from the State Statistical Office, Official Gazette, the Central Registry, judicial newsletters, international regulations (conventions, resolutions, etc.), case law of the European Court of Human Rights in Strasbourg, the acts and practices of the Commission on Free Access to Public Information, acts and practice of the Commission for Personal Data Protection, acts and practice of the Commission for Prevention of and Protection against Discrimination, as well as websites of other institutions, professional media organizations, civil society organizations and the media.

Interviews with stakeholders and target groups

In order to arrive to more substantial knowledge on the situation, needs and challenges faced by the online media and the public communication on the Internet in its current legal and social environment, a field research was conducted and interviews with 20 prominent members of key target groups, including: owners of online media; editors of online media; journalists; representatives of professional media organizations (including self-regulatory bodies); lawyers representing online media in trials; representatives of state institutions (*see Annex 1, questionnaire for survey and interview*).

Public perceptions of the legal framework and its applicability in the online sphere (online – survey for the public)

In terms of informing and perceptions of the public (audience) on the legal framework and mechanisms to protect the rights in the Internet sphere,

an online survey was conducted within the study through direct electronic communication and a post published on the social networks, and it was answered by 135 respondents focusing on experiences and perceptions in terms of the abovementioned areas which are subject to analysis (legal framework, mechanisms to protect the rights, judiciary and case law, penal provisions, self-regulation). The findings of this survey are also analyzed in the study (*Annex 2, survey*).

1.3. SUMMARY OF THE STUDY

Following the adoption of new media laws that do not apply to the Internet, there is, unfortunately, a general fallacy often caused by some media, institutions and public actors that Internet media and communication are “excluded from all laws and responsibility” which is, simply, not true. On the contrary, many general laws in the country refer to the communication via the Internet in many aspects - human rights, freedom of expression, crime, commercial behavior - buying and selling goods and services, copyright, privacy, etc.

There is a new Law on Defamation and Insult, which places responsibility in cases of defamation and insult on Internet or social networks; The Criminal Code has provisions on hate crime through computer systems and, more recently, surveillance on digital communication in cases of organized crime; the country also has a Law on Protection of Personal Data, which also shows its functionality in practice; the country has ratified the Convention on Cybercrime¹ more than a decade ago and shows results in the struggle against it; Macedonia has labor laws, laws on obligations and contracts, procedural law etc., which, same as in the other economic and social spheres, regulates relations among the subjects at the market of information. All these parts of the legal framework, which are universally applicable to all citizens, are applicable also in the online sphere.

The Internet in Macedonia and the forms of online communication are developing very rapidly, and the ways in which the contents reach the audience change on a daily level. Key factors in this enormous progress are the accessibility and the less expensive technology, but also the good infrastructure for Internet communication. The use of social networks is enormous - there are over 1,000,000 profiles on

Facebook (1,004,680 people, according to FB), but probably if fake, duplicate and commercial profiles are removed it has around half a million individual users. 69.4% of households had access to Internet at home. 93.5% of businesses with ten or more employees have a broadband internet access (via fixed or mobile connection). Half of businesses use social media and have a website. In 2014, 7.7% of enterprises with 10 or more employees had e-commerce, i.e. were buying or selling goods or services via computer networks.²

According to MARnet, which is an authorized institution for registration of domains in the country, 23,937 domains have been registered in Macedonia (7.965 .com.mk; 13.615 .mk; 614.mkd 821 .org.mk; 167 .net.mk; 15 .inf.mk; 340 .gov.mk; .edu.mk 259 domains).³

How do our Internet subjects operate in this context, particularly the Internet media? Besides the online editions of traditional media (national, regional and local TV and radio stations, newspapers and magazines), which are still adapting to the digital age, where they no longer appear as exclusive custodians of information, there is a growing and dynamic scene of media that are present only on the Internet.

On the other hand, technology development and marketing potential did not properly reflect in the expansion of the newsroom's structures. Most of the media that exist only on Internet (web-indigenous media or web-native media) that produce serious informative content have small newsrooms, employ small teams of few people, and provide modest salaries, mostly 100-200 euros per month.

The newsrooms with adequate staffing are very rare. As a consequence, the content is often at a very low professional level. Many websites do not have customized rules or privacy policies. There is often a lack of information about the owner (s) of the page, about the editor or the author of the article.

Internet media become mainstream source of information, second by consumption and impact (behind TV), but for most of the journalists, experts, educated and adult audience, many of them are unreliable and offer its audience a number information

1 <http://www.pravo.org.mk/documentDetail.php?id=5616>

2 Use of information – communication technologies in enterprises, State Statistical Office, November 20, 2015, <http://www.stat.gov.mk/PrikaziSooptenie.aspx?rbtxt=76>

3 MARnet, statistics of domains <http://marnet.mk/domeni/operacii-so-domeni/statistika/>

away from ethics and proper public discourse, and are closer to propaganda and hate speech. Breaches most dominantly prevail on social networks, but are also often present in the user generated content and, to some extent, in the contents produced by not so large but vocal number of media and journalists.

In terms of implementing legislation, there are parts that work well, parts of the legislation function, but have deficiencies, while there is also part with serious problems in its implementation, which produces a culture of impunity and serious violations and discouraging of citizens and entities to use legislative instruments, hence making the laws “a dead letter”. Another general impression is that there is a tendency of over-regulation in our country, or putting everything in the laws, which then become overly complex laws that are almost unenforceable.

The study notes that the laws concerning the establishment of an entity, domain registration and most of the laws relating to the business and financial operations of the entities on the Internet perform well and there are actually very little remarks by the stakeholders. This primarily refers to the Law of Founding Companies and the Law on Associations and Foundations, as well as to the possibility of registering a domain. On the other hand, serious shortcomings are detected in the implementation of the Labor Law, with media professionals on the Internet (except for those in the IT sector) being considered as one of the most vulnerable categories of precarious workers.

There is an ambivalent experience for part of the legislation – it is obvious that the law in some cases works well, mechanisms for its implementation have been established, but anomalies occur occasionally. Such is the case with the protection of personal data, which works well, but sometimes does not. The main remarks of the stakeholders are in relation to the non-implementation, impunity or selective enforcement of the Criminal Code, the Law on Defamation and Insult, no practice in the implementation of the Law on Protection from Discrimination on the Internet, the daily and obvious violations of Copyright Law. Although there are examples when the legislation is implemented, still the number of examples when there is no institutional response on the breaches of the rules is far bigger.

2. GENERAL OVERVIEW OF THE SITUATION WITH THE INTERNET MEDIA AND COMMUNICATION IN MACEDONIA

Internet and online media environment in Macedonia develop with a galloping pace. We witness new sites and new services offered online every day, as well as new ways of reaching users, i.e. audience. The market of contents and services became more vibrant in the past 4-5 years.

Key factors in this are the easy access and the cheap technology, as well as the good infrastructure for Internet communication. According to the data by the State Statistical Office on the use of information and communication technologies in households and by individuals, published on October 30, 2015, 69.4% of the households had access to Internet at home, while the share of households with broadband Internet in the total number of households reached 69.0% in 2015. Almost all (99.5%) of households with Internet access had a broadband (fixed or mobile) Internet connection.

Out of the total population aged 15 to 74 years, 69,2%, used a computer, while 70.4% used Internet. Internet was mostly used by pupils and students, i.e. 94.7%. 71.2% of Internet users in the first quarter of 2015 used a mobile phone or a smart phone to access the internet while being away from home or from office. According to the Office, 15.4% of those who ever used the Internet ordered/bought goods or services online in the past 12 months. Out of the persons who did not shop via the Internet in the last 12 months, 28% did not buy anything because of security concerns in payment or privacy (e.g., when providing data from a credit card or personal information online)⁴.

The use of social networks has also bloomed - there are over 1,000,000 profiles on Facebook (1,004,680 people as reported by FB), but most probably it has somewhere around half a million individual users⁵.

In relation to the use of information and communication technologies in enterprises, the State Statis-

4 Use of information – communication technologies in households and by individuals, State Statistical Office, 30 October 2015 <http://www.stat.gov.mk/PrikaziSoopstenie.aspx?rbrtxt=77>

5 Group of authors, “Hate speech in online media in South East Europe”, Albanian Media Institute 2014, pg 101, <http://www.institutemedia.org/Documents/PDF/Hate%20speech%20in%20online%20media%20in%20SEE.pdf>

tical Office announced in October 2015 that 93.5% of the enterprises with ten or more employees have had a broadband access to the Internet (via fixed or mobile connection). 59.1% of the enterprises have had access to the Internet via portable device, by using mobile telephone networks (3G / 4G). Half of the enterprises (49.8%) used social media (e.g., Facebook, LinkedIn, Twitter, Presently, YouTube, Flickr, Picasso, Viki-tools, etc.), i.e. have had a user profile, account or license to use certain social media. Approximately 52% of the enterprises have had a website or home page, out of whom 79% had a description of the products/services, price lists, 40.2% had indicated links/references to their profiles on social media, and 16.4% provided online-ordering, reservation. During 2014, 7.7% of the enterprises with 10 or more employees had e-commerce, i.e. bought or sold goods or services through computer networks⁶.

In accordance with the data from MARnet, which is an authorized institution for registration of domains in the country, 23,937 domains were registered in Macedonia (7,965 .com.mk; 13,615 .mk; .mkd 614, 821 .org.mk; 167 .net.mk; 15 .inf.mk; 340 .gov.mk; 259.edu.mk domains)⁷.

Besides the online editions of traditional media, there is a growing and dynamic landscape of media that are only present on the Internet (web native media). By looking at the statistics of different news aggregators, more than 200-300 of them are able to reach a daily audience of more than 10,000 readers, but most of them deal with entertainment and perhaps only a tenth of them deal with an independent production of a content related to political, economic, educational and other issues of public interest, which is no exception of the global trend of "tabloidization" of the media.

Internet media become mainstream source of information, but for most of the journalists, experts, educated and adult audience they are unreliable and offer its audience a lot of information which is far from ethics and proper public discourse, and are closer to propaganda and hate speech. Political, ethnic and religious divisions are replicated in the online sphere, most dominantly on social networks,

but they are also often present in the contents generated by users/ audience (User Generated Content - UGC), and to some extent also in content produced by journalists.

Most of the media that are only web based (web-Indigenous media or web-native media) that produce serious information content have small newsrooms, employ small teams of few people and provide modest salaries, mostly 100-200 euros per month. The newsrooms with adequate staffing are very rare. As a consequence, the content is often at a very low professional level. Many websites have not yet customized users' rules or privacy policies. There is often a lack of information about the owner (s) of the page, about the editor, or the one who wrote the text.

One of the more striking phenomena is the repetition of almost identical content (the content of news or opinions of prominent public figures) on several online media simultaneously, suggesting that sometimes there is an informal (political and/or business motivated) cooperation among groups on the web pages and that the contents that these 'groups' of websites publish is controlled by certain centers of political and economic power.

Moreover, the media have very repetitive news from news agencies or other contents that is not created by the newsroom (such as press releases, reactions, etc. by non-media creators of content) and many trivial content, which in most cases is illegally translated or "collected" from someone else (usually foreign, but also national media), which is just taking advantage of the fact that the Law on Copyright is poorly implemented. Investigative journalism or citizen journalism, which can be developed within the online media, are almost absent, and they have been recently funded mainly through projects and competitions of civil society organizations.

Internet media use the unique advantages of the Internet, such as interactivity and multimedia methods, which are reduced to a basic and not the creative level of use. There are rare examples of hyperlocal method used in the Internet editions and these are usually with a short duration. There are often no RSS-links with the contents (RSS feeds), hyperlinks, and the tags, i.e. the labeling and referencing of other contents with keywords are rarely and inadequately used.

Although most of the popular websites are present in the viral media and have their own pages and

⁶ Use of information-communication technologies in enterprises, State Statistical Office, 20 October 2015, <http://www.stat.gov.mk/PrikaziSooptenie.aspx?rbtxt=76>

⁷ MARnet, statistics of domains <http://marnet.mk/domeni/operacii-so-domeni/statistika/>

profiles on social networks in the recent years, there is an obvious lack of strategy for their use, while the presentation of social networks is mainly reduced to copying links from the website profile. The newsrooms are still mostly divided by platforms and they are not integrated.

The services offered by the web media are still trying to get out of the rudimentary stage of an accompanying marketing. Internet advertising is still evolving, although compared with the potential and the audience, it seems that the money in the online media and advertising are invested in an unstructured and slow manner, which is a consequence of the difficult economic situation, the instrumentalized and distorted market, but also the lack and underdevelopment of the marketing structures and sections in the Internet media themselves.

Media literacy between the population and journalists

In terms of media literacy of the general population, MIM is one of the few organizations working in this area. In 2009, the Institute has initiated and implemented a three-year project to introduce media literacy in education. Within this Project, which was implemented in cooperation with the Ministry of Education and the Bureau for Development of Education, 60 trainings were held for 1,200 professors and teachers from primary and secondary schools in Macedonia. The experts from MIM and the School of Journalism and Public Relations produced a Handbook for media literacy for teachers, as well as web pages and numerous electronic materials focused on this subject, two conferences were held that brought together stakeholders - the media, teachers, educational institutions and experts on media literacy.

MIM continues to work in this area, delivering training for school staff and students for practical production of contents and incorporating of media literacy elements in the context of inter-ethnic integration in the educational process, as part of the five-year USAID funded Interethnic Integration in Education Project that began in 2011, and whose goal is to improve and promote interethnic integration in the education system in the country.

There are also several other organizations that indirectly work with media literacy - with a narrower

focus or specific target audiences. For example, the Youth Education Forum organizes training and educational activities to develop critical thinking among young people, debating and multimedia skills, and has a specific interest in raising awareness, in particular about hate speech on the Internet. The Metamorphosis Foundation works for many years especially in the field of digital and Internet literacy, as well as on privacy protection.

After the initial engagement of the Ministry of Education several years ago, media literacy has been recently put on the agenda of the Agency for Audio and Audiovisual Media Services, which held several training sessions and meetings focused on the subject and started a public debate about adopting of a national program on media literacy, which as part of its activities envisaged raising awareness and informing citizens about this topic by online tools⁸. However, it is obvious that media literacy is a neglected topic by the institutions, the public and the creators of public opinion and that the engagements in this direction are occasional and insufficient.

The constant degradation of the quality of public discourse, where many prominent public figures (even representatives of institutions) use inappropriate language in the public without any consequence, the degradation of the educational system and other social factors produce public which is not able to debate in a decent manner for almost any issue of public interest. Most of the audience becomes captive of this propaganda discourse and is unable to resist the subtle forms of manipulation and is unable to critically monitor media content. This results with reinforcement of stereotypes and explosion of hate speech, which is especially visible on social networks or pages where the content is created by users (Crowd-sourcing pages)⁹.

8 http://avmu.mk/images/Nacrt-_programa_zamediumska_pismenost.pdf

9 Hate Speech In Online Media In South East Europe, AMI 2013, <http://www.institutemedia.org/Documents/PDF/Hate%20speech%20in%20online%20media%20in%20SEE.pdf>

2.1. LEGAL REGULATIONS AND INTERNET MEDIA IN MACEDONIA

Legal regulations concerning online media in Macedonia are covered by several material laws, based on which online media exercise their activity.

Within this study, legal regulations will be presented that are crucial for the functioning of the online media. The existence and application of legal legislation will be considered from several aspects: in terms of content and freedom of expression versus restrictions; but also in terms of freedom of establishment of Internet media, methods of operation and management, rights and obligations arising from the current legal framework and in terms of business and labor relations and market environment.

The idea of this study is not to analyze all laws that mention “Internet” or “electronic communication”, because if that is a case it would mean an analysis of hundreds of pieces of legislation conducted to come to the same conclusion - the rules *offline* or in real life also apply *online*, i.e. in the virtual world. That also goes both for placing content and in terms of business relations of the entities that use Internet for business - with all the rights and obligations arising from relationships with customers and the state.

2.2. LEGISLATION THAT APPLIES TO PUBLISHING OF CONTENTS

As concluded in the reports of the European Commission in relation to the media in the past few years, legal requirements and restrictions on freedom of expression generally do not hinder public debate, and the reasons for the observed violations of media freedom are mainly of a political nature. Similar conclusions from international institutions and professional organizations also refer to the implementation of legislation in the country.

Such an assessment can be also given in the context of the legal framework and online communication and online media. There are good provisions, but there is a lack of will (mostly political, but also, among other stakeholders, for example courts) for immediate law enforcement in non-selective manner.

In the opinion of a longtime journalist and activist in professional media organizations, who currently works in online media, our practice does not respect the legal level. According to her, there is no

perfect law and there is no law that would prevent deviation if someone intends to do something illegal. In her opinion, and according to most interviewed journalists, owners and editors, we have overregulation. And wherever there is an overregulation, says this journalist, it stinks of corruption. According to her, we have façade institutions and in the political speeches we hear about referring to such institutions, which in fact serve only as an argument or justification. Behind them, in her opinion, something is hidden, or a clientelism and a selective application of laws.

2.2.1. INTERNATIONAL CONVENTIONS AND THE CONSTITUTION

Macedonia is a signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms; hence this document is directly applicable in the country. Namely, in accordance with article 118 of the Constitution, international treaties ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. Hence, in Macedonia, article 10 of the European Convention, and the other international standards ratified by the Macedonian Parliament are directly applicable. This fundamental right and its possible limitations are prescribed by the Constitution and other laws that directly or indirectly regulate certain areas.

Freedom of press and expression is guaranteed, and censorship is explicitly prohibited (art. 16), but also in accordance with the Constitution, freedoms and human rights can be restricted during states of war or emergency and restriction of freedoms and rights cannot be discriminatory on grounds of sex, race, color, language, religion, national or social origin, property or social status (article 54).

2.2.2. CRIMINAL CODE

In the context of the Criminal Code (CC), this important part of the legislation in Macedonia covers the area of public communication on public platforms on the Internet that contain speech or incitement to violence and hatred. ‘Mainstream’ online media usually refrain from open hate speech. Hate speech is rarely explicit, but often occurs in hidden form, combined with information from unidentified sources and information that are offered as facts, insult, slander and so on. Implicit hate speech is not a regular practice, though it often appears on some

online media, and is particularly visible in viral media/social networks, forums, as well as in user generated contents (for example, comments to texts at websites, Facebook posts).

Most of the public, including a good portion of the educated public in the country, does not know the true meaning and definition of hate speech and it often confuses it with other forms of breaches committed by means of public communication (e.g., mostly with defamation and insult).

The Criminal Code provides punishment for offenses related to hate in several articles – incitement of violent change of the constitutional order (article 318), hate speech (art. 319, 417) and penalty against the person who by using the information system publicly denies, roughly minimizes, approves or justifies genocide, crimes against humanity or war crimes (art. 407-a).

Hate speech in the Criminal Code is explicitly regulated in article 319, which stipulates the crime of inciting hatred, discord or intolerance on national, racial, religious or other discriminatory basis as follows:

A person who by force, mistreatment, endangering of security, ridicule of national, ethnic, religious and other symbols, burning, destroying or otherwise damaging the flag of the Republic of Macedonia or flags of other countries, by damaging other people's objects, by desecration of monuments, graves or in some other discriminatory manner, directly or indirectly, causes or incites hatred, discord or intolerance based on race, color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status, or on any other grounds provided by law or by a ratified international agreement shall be punished with imprisonment of one to five years.

Paragraph 2 of the article quoted provides that: *A person who commits a crime from paragraph (1) of this article by misusing his position or authority, or if because of these crimes, riots and violence were caused among people or property damage of large-scale shall be punished with imprisonment of one to ten years.*

The Law further prescribes restrictions against “a person who exposes another person to ridicule through an information system, due to his or her membership in a group of different race, color, na-

tionality or ethnic origin, or if a group of people with such characteristics are exposed to ridicule shall be punished by a fine or imprisonment of up to one year” (amendments to the Criminal Code of 2009, article 173).

Out of the provisions cited, it is evident that hate speech through online media is not specifically incriminated, although there are some arguments that it should be taken into consideration as a more severe, qualified form of the primary offense. Such arguments are the susceptibility of the media itself for dissemination of hate speech, the rapid dissemination of hate speech through the Internet, the possibility of anonymous posts etc.

A crime that contains certain elements of hate speech is the approval or justification of genocide, crimes against humanity or war crimes from art. 407-a of the Criminal Code: Whoever through an information system publicly denies, grossly minimizes, approves and justifies the crimes stipulated in articles 403 to 407 shall be punished with imprisonment of one to five years. Paragraph 2 of art. 407-a of the Criminal Code reads: If the denial, minimization, approval or justification is performed with the intention of inciting hatred, discrimination or violence against a person or group of persons because of their national, ethnic or racial origin or religion, the offender shall be sentenced to imprisonment of at least four years.

In relation to hate speech on Internet, it is of particular importance to mention the offense under paragraph 4 of art. 144 of the Criminal Code - Endangering safety: *He who, through an information system, will threaten to commit a crime which is punishable with imprisonment of five years or more against a person because of their belonging to a particular sex, race, color skin, gender, marginalized group, ethnicity, language, nationality, social background, religion or belief, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status, or any other grounds provided by law or by ratified international agreement, shall be punished with imprisonment of one to five years.*

The Criminal Code also prescribes a fine for those that express or spread something about the personal or family life of a person that is harmful to his/her reputation (art. 174 of the Criminal Code).

In terms of penal policy, it is important to mention that the amendments to the Criminal Code of 2009, in the provisions for sentencing (general rules for sentencing) a new circumstance is prescribed which the court should consider when it determines the sentence. More specifically, article 39, paragraph 5, states that in determining the severity of the crime and the sentence, the court will in particular consider the offense committed against a person or group of persons or property, directly or indirectly and identify whether it was done because of his or their national and social origin, political and religious beliefs, property and social status, gender, race or skin color. According to prominent legal experts, the aim of the legislator is clear: for an offense under whatever circumstance, such discrimination should be accepted as an aggravating circumstance in determining the penalty. It is a circumstance that should result in a sentence that is closer to the maximum penalty prescribed for the offense, rather than the minimum¹⁰.

Implementation of the Criminal Code in the area of hate speech

When it comes to making the final step, the implementation, it appears that Macedonia lacks proper, consistent and non-selective implementation of the legislation.

Although hate speech is sanctioned by the Criminal Code, it is very present in the media and sometimes it has serious consequences, and the Macedonian courts have not yet designated anyone guilty of such an act. The complaints for hate speech about several websites and authors are so far ignored or rejected by prosecutors and the police.

It is also obvious that the authorities responsible to act in relation to this form of crime (Ministry of Interior, the Public Prosecutor's Office) have not taken any initiative for filing of criminal charges about cases of hate speech.

Moreover, a significant factor that affects the habit of failing to establish compliance with these statutory provisions is resignation and mistrust towards the system from the citizens that were subject or witnesses of hate speech. Most of the interviewed actors, although they themselves have been victims of hate speech, did not file criminal charges to the

relevant authorities. In their opinion, main reasons are the political domination of the judiciary and its bias towards the ruling party, which protects certain media figures and houses that promote speech that is inappropriate for public communication.

Case law and the functioning of legal mechanisms, experiences of stakeholders

The only case of criminal charges for inciting national, racial or religious hatred (article 319 from the Criminal Code) is the case of burning the national flag in a village near Struga (January 2012), part of a chain of events (Vevcani Carnival and the mockery of the Koran, burning of the Macedonian flag and churches, ethnic hate during sports games of the national teams of Macedonia, murders in Gostivar and Smiljkovci), which are discussed in greater detail in one of the studies by the School of Journalism and Public Relations, which clearly depicts the scope of influence of the online media and the situations that may be caused by irresponsible and unprofessional reporting¹¹.

Case 1: Civic activist constant subject of hate speech, after he filed a criminal charge – the police reprimands

In summer 2015, a famous TV presenter began to publish photos of a famous TV and Internet journalist on his Facebook profile. The photographs were accompanied by derogatory comments, requests for her phone number, which is a violation of the Law on Personal Data, personal harassment. The journalist reported to the police, and she was told they will proceed with the case. According to the findings of the journalist, the TV host was called for a police questioning, where he was only reprimanded and asked to stop publishing such content. Not only that he did not stop, but continued with even faster pace by stating false allegations that the journalist took fees from one political leader, while insulting her and using sexist expressions, in his columns, which are being shared by several portals and social networks.

10 Acad.Vlado Kambovski, PhD Mirjana Lazarova Trajkovska "Legal analysis of the concept of the offence of hatred and hate speech"

11 SJPR First and Second Report From the Watchdog Mechanism of the Media Reporting at the UNESCO Chair on Media, Dialogue and Mutual Understanding, available on: http://www.unescochairvs.edu.mk/index.php?option=com_content&view=article&id=102&Itemid=37&lang=mk

Case 2: Several public personalities with charges of hate speech, the Public Prosecution rejects the charge

In the spring of 2014, several eminent public figures (politicians, journalists, citizen activists) were subject to explicit hate speech on the Internet site owned by a famous TV host. In his article, full of insults towards them, the TV-host called the people to deal with these persons, if the institutions do not manage to cope with the problem. The persons who were mentioned by the TV host filed a criminal charge to the state public prosecutor, which they did at a press conference. They also reported the case in a police station. Later on, the charge was discarded by the basic public prosecutor as unfounded.

Case 3: Articles of activities pointed out as “betrayal”, the calls for violence against him went unsanctioned

In relation to the texts of an activist published at an international Internet page, in particular web-media and by profiles on social networks, he and his articles were referred to as an example of “betrayal”, as an example of someone who should be “killed, raped”, etc., and a famous TV host was among the ones who dominated his posts on the social networks.

According to the activists, the posts contained extreme disqualifications both in relation to his activism and in relation to his belonging to particular groups that have been marked as “unwanted” in the society. Recently, a popular site contained a text which is part of the polemic of this activist and another public figure active on social networks. The activist tried to talk with the editor concerning the text written by the public figure, because he is a columnist of that page. He was told that there was already a notice for a published status on the Facebook profile of that public figure, being approximately 120-130 rows and intended to completely discredit the activist, both professionally and personally, precisely in the context of his social engagement and belonging to certain groups.

Cases of violence against members of Internet media

Several physical attacks of owners and editors of Internet media were registered in 2015. Some of those attacks were brutal with physical consequences for the attacked persons.

Until the release of this analysis, there is no specific information for any of these cases or results of

investigations by law enforcement authorities. There is also no specific information for suspected persons or for bringing specific charges and court procedures for these cases of violence.

2.2.3. LIABILITY FOR DEFAMATION AND INSULT FOR PUBLISHED INFORMATION ON INTERNET MEDIA AND SOCIAL NETWORKS

After successfully implemented decriminalization couple of years ago and the removal of defamation and insult from the Criminal Code, citizens’ responsibility for the damage inflicted to the honor and reputation of an individual or a legal entity by insult and libel is regulated by the Law on Civil Liability for Libel and Insult. The Law also guarantees freedom of expression and information as one of the important foundations of democratic society. The restrictions on freedom of expression and information are legally regulated by strict conditions for civil liability for insult and libel, in accordance with the European Convention for the protection of human rights and fundamental freedoms (Article 10) and the case law of the European Court of Human Rights.

The Law considers every official, military person, responsible person of a legal entity or a person that performs activities of public interest as a holder of a public function, according to the significance of these terms stipulated in the Criminal Code. In article 5, paragraph 2, the Law has identified the areas of public interest, such as: all forms, institutions and activities in the exercise of state power and public institutions, local governments, social activities as health, culture, art, education, science, sport, the media, the legal system and the application of law, the economic system and economic relations and environmental management.

Article 5, paragraph 3 of the Law also provides that the rules of professional journalistic profession include rules for collecting, analysis and publishing of information provided by the professional organizations of journalists.

Insult

Insult is defined in article 6 of the Law on Civil Liability for for insult and defamation¹².

There are no elements of civil liability for insult if one internet portal conveys a statement which is given in the work of the Parliament of the Republic of Macedonia, in the work of the councils of the municipalities and the City of Skopje, in administrative or judicial proceedings or to the Ombudsman, transferred opinion contained in an official document of the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, the administrative organs, courts or other public authorities, announcement or other documents from international organizations or conferences, announcement or any other document for informing the public issued by competent state organs, institutions or other legal entities, announcement or other official documents from the investigation for committed criminal offense or violations, if the statement transfers opinions expressed on public gatherings, in a court proceeding or other public manifestations of activities of state bodies, institutions, associations or legal entities or there is a coverage of statements that were publicly announced by others.

In accordance with the professional journalistic standards, the spreading of particular statement by

12 (1) Those who are held responsible for insult are the ones who have an intention to belittle, with a statement, behavior, publish or otherwise give expressions with a humiliating opinion for the others, which infringes their honor and reputation. (2) There is responsibility for insult and if there is such an action that detracts the reputation of the legal person, group of persons or deceased person. (3) For an insult made through means of public information (newspapers, magazines and other types of print media, programs on radio and television, electronic publications, teletext and other forms of editorial programme content, which is published or broadcast daily or periodically in a written form, sound or image, in a manner available to the general public) there may be responsibility found by the author, the editor or the person that replaces him in the media outlet and the legal entity. The plaintiff in the submission of charges is free to decide against which of the persons he/she will file a lawsuit for identification of liability and compensation of damages for insult. (4) The publisher, editor or the person who replaces him/her in the media outlet and the legal entity that has issued the media are responsible for the insult committed by the journalist in that media where the statement is made on the basis of a presumed responsibility. (5) In the cases of paragraphs (3) and (4) of this article, the journalist as an author of the statement is not responsible for insult if he proves that the publication of the offensive statement was ordered by the editor or the person that replaces him or that the contents of his statement is substantially modified by the editor or the person that replaces him. (6) The journalist as an author of the statement is not responsible if the statement received an abusive character with its equipping by putting titles, subtitles, photos, selecting parts of the statement, with announcements or other means used by the editor or the person that replaces him.

others must be attributed, i.e. it should be specified who gave that statement in the title or in the text which conveys certain news.

According to the Law for Civil Liability for Insult and Defamation, the internet portal shall not be considered responsible if the insult is made in a serious criticism, in the exercise of the journalistic profession, in the defense of the freedom of public expression of opinion or other justified rights, or in the protection of the public interest or other legitimate interests, and if in the coverage of the humiliating opinion for the other it is concluded that:

- 1) from the manner of expression or from its other circumstances it turns out that it has no meaning of an insult;
- 2) it has not caused any significant damages to the honor and reputation of the person and
- 3) it has not been disclosed exclusively in order to humiliate the personality of others or to belittle his honor and reputation.

Also, the Law foresees that there is no responsibility for insult if someone expresses a humiliating opinion for a holder of public function in the public interest and if he proves that this is based on truthful facts, or if he proves that he had reasonable cause to believe in the veracity of such facts, or if the statement contains a justified critique or encourages a discussion of public interest or it is given in accordance with the professional standards and ethics of the journalistic profession.

Defamation

Liability for defamation shall be determined in accordance with the article 8 of the Law on Civil Liability for Insult and Defamation¹³.

In relation to civil liability for defamation, the one who is sued in a court procedure will need to prove the truthfulness of the facts contained in the assertions or in the text with an author. In the case of transferred news, text or other content, if it is at-

13 A person is hold responsible for libel if he has an intention to make a damage to a person with a determined or obvious identity with an intention to harm his honor and reputation in front of a third party by making or transferring of false facts which are harmful and if he knows or was responsible to know that these statements are not true.

There is responsibility for defamation if the inaccurate assertion contains facts which are harmful to the reputation of the legal entity, group of persons or of the deceased person.

tributed, the internet portal which is sued will need to prove that it had been transferred and that it is not its author. In relation to providing evidence it is sufficient to prove that there is a basic reason to believe in the veracity of the claims. By exception, it is not permissible to prove the truthfulness of facts which are related to the private life of the plaintiff, unless the exposure of such facts was made in scientific, a literary or artistic work, in a serious critique, in the exercise of official duty, of the journalistic profession, political or other social activity, in defense of the freedom of public expression, of thoughts or other rights or in the protection of the public interest. If the defamation is consisted of a public statement that someone else did a criminal offense or that he has been convicted of such an offense, the responsibility is excluded if the statement is given in the public interest and if the person that gives it will prove its truthfulness or will prove that he had a reasonable cause to believe in the truthfulness of these facts.

In article 10, the Law foresees exemption of responsibility for civil liability for defamation¹⁴.

The Law also regulates the protection of the source of information as a basis of the principles of journalistic work. Therefore, it is foreseen that it cannot be required from a journalist or other individual who performs a professional activity of informing the public to disclose his secret source of information who provides the facts that he needs to prove,

14 Beside the reasons for exemption from responsibility for defamation from article 9 paragraphs (2), (3) and (4) of this Law, there is an exemption from responsibility for claiming of facts that cause damage to the honor and reputation of other person that is given in a scientific, literary or artistic work, in a serious critics, in the exercise of official duty, of the journalistic profession, political or other social activity, in defense of the freedom of public expression, of thoughts or other rights or in the protection of the public interest or other justified interests, if: 1) there is a claim expressed or it is transferred from a press release, a decision or other document of a state body, institution or a legal entity, or it is stated at a public gathering, in a lawsuit or other public manifestation of the activity of state bodies, institutions, associations or legal entities or there is a claim that is announced by someone else publicly; 2) the person who expresses or transfers this claim is forbidden to exercise his right for access to information of public character opposite to the provisions for free access to information, which he calls upon in his defense; 3) the inaccurate facts, contained in the claim have a secondary significance in relation to the truthful facts to which the claim refers and they do not significantly change the meaning of a truthful claim or 4) there are facts in the mass media that refer to issues of public interest by calling upon serious sources of insights about their accuracy, which were treated by the pontiff with the required extent of attention in compliance with the professional standards of the journalistic profession.

in a court proceeding for identification of civil liability for insult or defamation in accordance with the law. But the court may request from the sued person to disclose the relevant information in order to determine the veracity of the announced information, without identifying the source of information. In case the journalist or the individual who performs a professional activity of informing the public refuses to reveal the identity of the secret source of information, this cannot be taken as his recognition of guilt or to make a conclusion based on this that he did not prove the truthfulness of the basis for the belief that they are accurate.

The Law regulates the responsibility of the electronic publications, although it does not explain what is meant by the notion of electronic publications. In accordance with the Law on Media, the electronic publication is not a media outlet; therefore the Law on Civil Liability for insult and defamation is unclear in relation to this issue.

Compensation of damage and other legal consequence from the responsibility for defamation and insult

Before submission of the claim for compensation of damages, the individual or legal entity who suffer the damages inflicted by insult or defamation measures are undertaken for compensation of the damage by sending of a request for an apology and public removal of the contents considered as defamatory or insulting.

The one who is sued will need to publish the apology or public removal of the contents at the same place and in the same scale in the print media or at the Internet page, or at the same time and within the same volume in the electronic media or internet page, as well as information to which it responds (title, headline, subtitle, text in print media or web pages, announcement in news programs, item). The apology or public removal of the statement shall be published in the media or internet-page in a period of 48 hours from the date of submission of the reaction.

If the insult or defamation is made by a media outlet or a computer system, the one who suffered the damage (meaning the individual or the legal entity which considers that a particular contents aimed at him is a defamatory or insulting) has the right to submit a request for publishing of a reply, denial or

correction within seven days since the day he found out it is published, but not later than one month from its publishing. The media outlet which published the defamatory or insulting content (text or etc.) publishes the denial, the reply or correction within two days from the submission of the request, in the first next edition, if it is a matter of periodic editions or in other media outlet if it is a matter of non-periodical publications. The denial, reply or correction shall be published at the same place or time and within the same scope as the information to which it responds (title, headline, subtitle, text in print media or web pages, announcement in news programs, items).

The publishing of a denial, reply or a correction can be refused if:

- 1) the request is not submitted within 7 days from the date when the person learned that the contents is published, but not later than one month since its publishing;
- 2) the reply contains defamation or insult and
- 3) the reply is contrary to the protected interests of third parties by the law.

Another important circumstance provided for by the Law for Civil Liability for Defamation and Insult, and in view of the civil responsibility for insult, is the situation that the court can award a certain amount of non-material damage because of certain insulting contents only in a case if the person against whom court proceedings were initiated did not apologize publicly and he did not revoke the insulting statement or if the insult was repeated after the court decision which prohibits this repeating. This means that in order to start a court procedure against an individual or a legal entity for civil liability for insult, the plaintiff (the person who thinks that a certain statement, behavior, published opinion or an activity in some other way contained a humiliating opinion that offended his honor and reputation) should first submit a request for an apology or public withdrawal of a particular statement, content published, behavior or offensive activity.

The amount of cash compensation for defamation and insult is proportional to the damage done to the reputation of the victim and in its designation the court takes into account all the circumstances of the case, in particular the assets of the defendant, and whether the plaintiff has taken all actions for

mitigation of the sentence provided for in articles 13 and 14 of the Law on Civil Liability for Defamation and Insult. The party who suffered the damage may also request compensation for material damage consisting in actual damages and lost profits. In terms of defamation, for the purpose of reducing the damage, the defendant can prove that he apologized, offered an apology or otherwise made a serious attempt to eliminate the harmful consequences of defamation.

The Law on Civil Liability has a certain novelty in the sense that the maximum amount is designated that may be awarded in a case against a journalist, editor and the legal entity on insult or defamation. The maximum amount for a journalist is 2,000 euros in denars; for the editor or the person replacing him an amount up to 10,000 euros in denars; and for the legal entity up to 15,000 euros in denars.

Initiation of court proceedings

The individual or legal entity (including an internet portal) that considers a certain person or entity (including a web portal as a legal entity) committed an insult or defamation can initiate judicial proceedings for civil liability for defamation and insult, as well as require compensation or non-pecuniary damage resulting from insult or defamation. The deadline for initiating proceedings for civil liability for insult or defamation is 3 months from the date the plaintiff learned or should have learned about offensive or defamatory content, statement, etc., as well as about the identity of the person who caused the damage, but not later than one year from the date the statement was given in public. In any case, if a web portal wants to sue, it should respect the deadline of 3 months. The competent court for initiation of a lawsuit is actually the basic competent court according to the place of execution of insult or defamation. This means that if a certain person or entity has its head office in Bitola and gave defamatory or offensive statement in Skopje, the competent court will be the Basic Court Skopje 2.

The complainant may also request from the court to order publishing of the judgment for the established liability for insult or defamation at the request of the plaintiff and the assessment of the court, in a daily newspaper at the expense of the defendant, in a space not less than one-eighth of a page, from the first to the fifth page of the print media.

Case law regarding the application of the Law on Insult and Defamation, experiences of stakeholders

A longtime editor who currently works on a non-profit news site, and who is also often the target of personal and direct public attacks from internet portals and social networks, says that through ignorance of his multiple efforts to address the institutions and use judicial mechanisms after the violation of his rights he lost confidence in the judiciary. "I learned I have to survive the insults. But, these were direct defamations, like claims that we are taking money, working for foreign agencies, and even amounts of money were mentioned, people with whom we allegedly cooperated, specific foreign intelligence services- Greek etc. We lost all cases, with explanations that were totally non-legal, shameless. And when it came to decriminalization of defamation and insult, I decided that I would not go with proceedings for defamation and insult because I have no more confidence and trust in this Court and the judiciary", the editor said.

It is obvious that this is the prevailing sentiment among most of the interviewed persons regarding the application of the Law on Civil Liability for Defamation and Insult. The enormous presence of defamation and insult on one hand, impunity and selective justice on the other hand, causes tremendous distrust in the judicial system.

At the several public debates and discussions on this topic, judges talk about the public and hidden pressure that comes with the cases of defamation and insult. During public debates, judges often prefer to blame the media and politicians for these pressures. The analysis of a significant part of the case law related to the implementation of the Law on Defamation and Insult shows that legislation is applied consistently and indiscriminately and some judges even began to refer to the practice of the Strasbourg Court. Still it is obvious that, in some cases, judges face pressures and work in a biased way when the procedure involves politicians, especially those in the Government, but also in some other trials that receive political dimensions. It is also obvious that a significant part of the cases are among journalists and media themselves.

As far as the court proceedings involving online media are concerned, the courts face a dilemma of

applying the principle of cascading accountability for the media, editors and journalists, which is included in the Law. The dilemma arises due to the exemption of online media of the Law on Media, which some judges use as an argument for non-application of the cascade liability and limitation of damages that can be designated to any Internet media, editor or a journalist. On the other hand, such a court decision may be affected by the actual situation regarding the disputed content, for example, if the text has no author, and the site does not have an impressum or clear information about the ones who carry the editorial and authorial responsibility. In such cases, individual or legal entity (i.e. the responsible person designated by that legal entity) is responsible for defamatory or insulting content.

Case 1: Official sues for defamation for improper spending of budget money

A person in the official state administration has initiated legal proceedings to establish civil liability for defamation against a particular person claiming that he presented false facts, according to which the official inappropriately spent a certain amount of taxpayers' money for sports pants and shirts in a period of three months. This was published in a particular media outlet, but no legal proceeding was started. The Basic Court Skopje 2, after holding preparatory and preliminary hearings for the main hearing, decided to reject the claim of the plaintiff. The Court stated the reasons for this by explaining that the defendant published an excerpt from the Public Procurement Bureau, which in this particular case meant that the Court found that the requirements of Article 9 paragraph 2 were met - because the defendant had grounds and sufficient factual basis in the written evidence i.e. the cited contracts for public procurement which then became the subject of this lawsuit for defamation. According to the findings, the documents that the defendant had at his disposal at the moment when he gave the statements dated from the previous period and are published at the website of the Bureau for Public Procurement, thus they are accessible to the general public. The more so because, as previously set out, the evidence of the defendant show that she did not have an intention to expose false facts in order to harm the reputation of the plaintiff, but to inform the public about issues related to the work of the municipality and the mayor, that affected citizens and is a matter

of public interest.¹⁵

In addition, the statements of the defendant may be in part qualified as her subjective judgment that has a sufficient factual basis. Namely, the defendant was entitled under this evidence to form and express her subjective opinion, and under no circumstances the presented evidence confirmed that she intended to harm the personal rights of the plaintiff's honor and reputation. Instead, she expressed an opinion as a current advisor and a political activist, based on freedom of public and political expression, without an intention to expose offensive and defamatory statements to the plaintiff in order to damage his personal rights to honor and reputation.

Case 2: A senior state official sues for defamation and insults on Facebook, the Court partially adopted the complaint and designated damages¹⁶

A person published false information and a humiliating opinion on his personal Facebook profile which were harmful to the honor and reputation of the plaintiff, who was a senior civil servant. After the court proceedings, the Court found a partial violation of the Law done through multiple releases by the defendant on the social network Facebook, which were later published by other portals and cited by other public actors. The Court awarded non-pecuniary damages of 500,000 denars, that the defendant should pay to the plaintiff and, in addition, the defendant is obliged to compensate the legal costs¹⁷. In the explanation of the judgment it is stated that all the evidence presented during the proceed-

15 Operative part of the judgment of the Basic Court Skopje 2 on determining civil liability for defamation upon the claim of the plaintiff SJ from S, to determine civil liability for defamation by the defendant MN from S, based on the fact that on 15/02/2014, false facts were stated in the electronic media mk that "SJ spent euros from taxpayers' money for sport shorts and shirts in a period of three months," thus violating the honor and reputation of plaintiff. The defendant is asked to pay non-pecuniary damages for the damage of the honor and reputation of the plaintiff in the amount of denars, with a penalty interest as determined by the reference rate of the Central Bank, all within 15 days after receipt of the judgment and under fear of forced execution. THIS CASE IS REJECTED AS UNFOUNDED.

16 The procedure is still not enforceable

17 Operational part of the judgment of the Basic Court Skopje 2, and in order to establish civil liability for defamation committed through the social network Facebook: the claim of the plaintiff BB from S partially accepted.

The defendant BF is obligated to pay the plaintiff BB from S. a compensation for non-pecuniary damage amounting to 500.000,00 denars for damaged honor and reputation, with penalty interest from the date of adjudication - 08.05.2014 at the height of the reference rate of the Central Bank and to reimburse the procedural costs amounting to 73,321.00 denars, all within 15 days of receipt of the judgment, under fear of forced execution.

ings unquestionably establishes that the defendant repeatedly expressed or published false facts that are harmful to the honor and reputation of the plaintiff, and knew or was obliged to know that they are false; therefore the Court decided to establish civil liability for defamation and insult.

2.2.4. PERSONAL DATA PROTECTION AND THE INTERNET MEDIA

Upon publishing of a story, interview or investigative story about a person or persons, the legal entity must be careful to protect their personal data.

According to the Law on Protection of Personal Data, a "personal data" means any information relating to an individual or legal entity that can be identified, and the person that can be identified is a person whose identity can be determined directly or indirectly, especially based on personal identification number of the citizen or based on one or more characteristics specific to his physical, physiological, mental, economic, cultural or social identity.

The term "processing of personal data" means any operation or set of operations which is performed upon personal data, automatically or otherwise, such as collection, recording, organization, storage, adaptation or alteration, withdrawal, consultation, use, disclosure by transmitting, publishing or otherwise making available, aligning, combining, blocking, erasure or destruction.

"A subject of personal data" means any individual to whom the processed data refer.

The Directorate for Personal Data Protection, at the request of citizens, most often acted in these cases, and for the protection of personal data:

- Publishing of photos without consent;
- Publishing of someone else's personal data in the section advertisements;
- Identity theft;
- Misuse of a password; and
- Creating fake profiles.

There are other violations in the context of publication of photos by web portals without the prior consent of the person whose photograph is published. This refers to individuals who are not public figures and who have an absolute right to privacy,

which is both applicable for traditional and online media. It is also forbidden to take photos of Facebook and publish them on a web portal.

The rules on protection of minors are valid both for the online communication and the Internet media. If a photograph of a minor is published, there must be a consent by the parent / guardian.

With regard to criminal provisions, the fines for the legal entities range from 1,000 to 2,000 euros and for the responsible person from 250 to 600 euros in denars.

Practice of the competent bodies in the implementation of the Law, experiences of the parties concerned

It seems that the implementation of this Law progresses. The Directorate has established a functional mechanism through which it shows that it has the capacity to respond to the needs of citizens. However, in certain cases, as noted by the stakeholders interviewed, the reaction of the Commission was slow or stalled.

The competence of the Directorate refers to the erasing of fake profiles created on FB and on social networks in general, and reactions in case of hacked accounts. Typically, citizens submit a complaint to the Directorate or a request for deletion of fake profiles on FB. As representatives from the Directorate say, they are the only institution in the region that has made direct communication with the headquarters of FB in Dublin for this purpose. The person who is responsible directly communicates with the administrator of FB in Dublin and they solve the challenges on a daily basis. The Directorate has established a team for rapid response, which immediately responds to such requests from citizens, since most of the complaints, about 60%, are reactions to the abuse of personal information on social networks or online portals.¹⁸

Case 1: Publishing of photos without consent, complaint to the Directorate, photos removed

A person started a procedure with the Directorate for publishing of his photographs without consent at one of the websites with entertaining and marketing character, which publishes photos of nightlife of

many cities in the country. The person addressed his complaint at the e-mail address listed at the website and requested removal of the photos, but did not receive a reply. In this case it is about a domain that is registered abroad, but the administrator of the website performs the processing in the country. The Directorate has taken all appropriate measures and the photos had been removed during the procedure.¹⁹

Case 2: Photo with comments reaches the Constitutional court

A legal entity is punished by the Directorate for Personal Data Protection because photos were published with comments from others at an Internet portal owned by a legal entity. The Directorate for Personal Data Protection requested removal of the photos and comments. A legal entity has filed a request to the Constitutional Court of the Republic of Macedonia for protection of freedoms and rights of citizens under Article 110 paragraph 3 of the Constitution concerning freedom of public expression. The legal entity stated that the Directorate for Personal Data Protection has violated the right to public expression, i.e. the Directorate requested removal of comments and photos that were of public interest, which exceeded its authority and suggested what can be said and what does not, which put it in the role of a censor of public data published in the media. Thus, in the opinion of the legal entity, the Directorate took part in a censorship of free expression of thought. The claim was dismissed with an explanation that, according to the Constitution of the Republic of Macedonia, protection of freedom of expression may be required exclusively from citizens-individuals who consider that the freedom of public expression was violated.

Case 3: Published ID numbers and addresses at the website of Association

Another case that was processed by the Directorate for Personal Data Protection is the following: certain civil society association published on its website the full text of a lawsuit that its member submitted to the competent court. However, the personal identification number and the address of its member, the lawyer and other participants in the proceedings were not edited. Hence, the Directorate for Personal Data Protection has found a violation of the right to protection of personal data and obliged

¹⁸ Interview with a Head in the Directorate for Protection of Personal Data, August 2015

¹⁹ http://www.dzlp.mk/mk/temi_6

the president of the association to refrain from processing (publishing) personal data in an unfair manner in the future, without legal basis and to take into account the identification number of the citizen and to avoid its publishing, printing or taking from the collection of personal data in accordance with the Law.²⁰

Case 4: Telephone number of a journalist published on Facebook, without consequences for the offender

Following the announcement of the telephone number of a journalist at the FB profile of a known TV presenter, she addressed the Directorate for Protection of Personal Data. According to her, there was a strange answer from there, i.e. a promise that they would write to Facebook and ask for its removal. In her opinion, that was something that everyone who has a Facebook profile can do - to report to Facebook that this is personal data and it should be removed. The Directorate explained that this is all they can do. Furthermore, according to the journalist, the Directorate contacted Facebook, and she did the same, wrote a request to the administrators of Facebook (made "report"), but it was not approved and there were no results. On the other hand, as the journalist says, the moment she addressed the Directorate the son of a senior official had a similar case at the same time and his case was resolved within 2 days. "They were all engaged about this case and Facebook immediately removed all images. So, obviously when you want to do something it can easily be done, but when they do not want then they tell you to 'report' the personal data that is made public," the journalist said.

2.2.5. IMPLEMENTATION OF THE LAW ON PREVENTION AND PROTECTION FROM DISCRIMINATION

The responsibility for discriminatory contents published on the Internet can be viewed through the prism of the Law on Prevention and Protection against Discrimination, which is part of the Macedonian legal system since 2010.

When publishing contents, downloading of text from another internet portal, it is forbidden for the text to contain discriminatory content. "Discrimination", as defined by the Law, is any unjustified legal or factual, direct or indirect distinction or unequal treatment or omission (exclusion, restriction or

preference) with regard to individuals or groups that is based on gender, race, color skin, gender, belonging to a marginalized group, ethnicity, language, nationality, social background, religion or religious belief, education, political affiliation, personal or social status, mental and physical disability, age, family or marital status, property status, health status or any other basis.

The Law, in its principles (Article 3), prohibits any direct or indirect discrimination, calling and inciting discrimination and assisting in discriminatory treatment. The Law defines as discriminatory behavior and actions (Article 5 paragraph 4) any active or passive behavior of any person, public authority, a legal entity and individuals from the private and public life, which creates the basis for granting privileges or under privileges of a person unduly or exposes a person to injustice and degrading treatment in comparison with others in a similar situation, based on any of the discriminatory grounds.

Also, the Law indicates to the degrading treatment (Article 7) as a form of discrimination and harassment, defined as a violation of the dignity of a person or group of persons resulting from a discriminatory basis, which has the purpose or result of breaching the dignity of a person by creating or exposing to a threat with a hostile, humiliating or offensive environment, approach or practice. The Law also explicitly points out to the calls and incitement to discrimination (Article 9) - and says that as discrimination will be considered any activity that by a person who, directly or indirectly, invites, encourages, instructs or encourages another person to discrimination.

The competence of the Commission for Protection against Discrimination (Article 24) is to treat complaints of discrimination cases and undertake initiatives for action by the authorities for violation of the law. The Law provides a remedy, namely, any person who considers that his rights have been violated because of discrimination may file a case to the competent court (Article 34). Legal liability is provided for activities that call or encourage discrimination and assist discriminatory treatment on discriminatory grounds (Article 42), for damage to the dignity or establish a threatening, hostile, humiliating or offensive environment, approach or practice (43).

20 <http://dzlp.mk/sites/default/files/u4/Up1%20br.%20007-217.pdf>

The case law and functioning of the legal mechanisms, experiences of the parties concerned

By the time of issuing of this publication, the Commission for Prevention of and Protection from Discrimination did not initiate any proceedings against Internet portal for publishing of discriminatory text, nor has duly completed proceedings against Internet portal. According to the available data published by the Commission, there were eight complaints of discrimination in media in 2012 and two complaints in 2013.²¹

Based on the discrimination, there has not been a formal proceeding for infringement of the provisions of this Law by an entity on the Internet.

2.1.6. INTERNET MEDIA AND THE LAW ON COPYRIGHT AND OTHER RELATED LAWS

Copyright work, under this Law, is an intellectual and individual work in the area of literature, science and art, expressed in any way or form.

As copyright works, in particular, the following is being considered:

- 1) written work (book, editorial, article, manual, booklet, hearing and other works of the same nature);
- 2) computer program, as written work;
- 3) voice work (lecture, speech, sermon and other works of the same nature);
- 4) musical work with or without words;
- 5) dramatic, dramatic-musical, choreographic and pantomime works;
- 6) photographic works created in a process analogous to photography;
- 7) audiovisual works (cinematographic and other work expressed in moving images);
- 8) works of fine art (painting, drawing, graphics, sculpture, etc.);
- 9) works of architecture;
- 10) works of applied art and design and
- 11) cartographic work, plan, sketch, technical drawing, project, table, plastic work and other work of the same or similar character in the field of geography, topography, architecture and science.

As a copyright work, editing of copyright work is also considered if it meets the conditions specified in the Law. An author is considered the individual who has created a copyright work and he owns the copyright over with the creation of the work itself. Each author has the following exclusive moral rights:

- 1) the right to claim authorship (the author is entitled to have his name, pseudonym or other designation placed on each sample and at any public use of the work);
- 2) the right of first publication (the right of first publication of the copyright work and the right to determine the conditions of disclosure);
- 3) the right to protect the integrity of the work (the author has the right to resist changing, deforming or mutilation of the work that might harm his personality, honor and reputation, as well as destruction of the work);
- 4) the right to withdraw (the author may withdraw the right for use of the work from the holder of the material right if its further use harms his/hers personality, honor and reputation).

The material rights that the author has are the following:

- 1) the right to reproduce the work;
- 2) the right to release the works;
- 3) the right of public announcement of the work and
- 4) the right of editing of the work.

Except for an individual, a legal entity can appear as an author of the work, as well as an Internet portal, and this is considered a copyright work from employment. In cases where the copyright work is created by an employee during his/her duties or upon instructions of the employer (hereinafter: copyright work of employment), it is considered that the material rights of the author of that work are exclusively transferred to the employer for a period of five years after the completion of the work. An exception of this may occur if stipulated in a collective agreement or employment contract.

The internet portal, in case of transferring of an individual photo, audio - visual work, works of art, written work, musical work and other works, must indicate the author and the origin of the transferred copyright work (hyperlink from the web portal or otherwise).

²¹ Annual report of the CPD for 2013, page 8, available at <http://www.kzd.mk/mk/dokumenti/2013>

Regarding this issue, the Center for Media Development (MDC) has published a manual on copyright and related rights of electronic media, which are further elaborated in several aspects related to the legislation itself and its application on the Internet.²²

According to the interviewed experts from organizations dealing with the media and copyright rights, none of the web portals is “clean” to initiate measures to protect their copyright products. Even those who think they are “clean” in terms of observance of the copyright of local stakeholders in Macedonia, they absolutely do not respect the copyrights of foreign authors. The copyright is such an issue that permission is needed and a good knowledge of all related aspects.

Besides the culture of impunity, there is a noticeable lack of trust of the stakeholders and their reluctance to use the available legal mechanisms.

Case law and the functioning of the legal mechanisms based on the experience of stakeholders

Regarding the pervasive unauthorized copying of content of foreign internet portals, there have been only a few cases where the world-famous media have reacted to domestic sites for copying of texts and their translation, stealing the points and so on. So far there are no court prosecutions on this basis, but several processes taking place in the region announced that copyright rights are to become present in our courtrooms.

Case 1: partial texts, but also whole series of articles are copied without any consequences

A journalist argues that to this day she finds whole excerpts from her writings that are embedded into another subject, but, as she says, her style and language can be recognized. When several colleagues conducted extensive research of the portals on media ownership, the whole research was taken from another portal including the graphics processing - presentations and patterns, photographs, without having a prior approval. The journalist says she and her colleagues did not file a lawsuit, but they have contacted the desks of these media which, in turn, claimed that thus they promote and disseminate the text. The fact that the sources are not stated is not of their concern, though, after the reaction, as

22 <http://mdc.org.mk/avtorsko-pravo-i-srodni-prava-za-elektronski-mediumi>

the journalist says, the texts are often changed and the source is placed but at the end of the text.

Case 2: they published information copied from a website of a newspaper and then received an invoice

There are media outlets that prohibit copying of news and when they notice this tendency, even when the source is quoted, an invoice is immediately sent to the person who took the news without a prior request for an apology or removal of the text. An activist informs of such a case when an informative portal from the civil society sector published information seen from a newspaper. Even though a different wording was used, and the text was not just copied, while containing a note that the information was obtained from the website of the newspaper, an invoice was received at the address of the NGO for payment of the content that was prohibited for copying by the media, without any prior reaction. As the activist informs, the company was not willing to negotiate, and offered option to charge the amount or to resolve this dispute in the court.

2.1.7. FREE ACCESS TO PUBLIC INFORMATION

In the research area of the internet portal, and in order to obtain certain information, the portal may address state authorities and other bodies and organizations as defined by the law, the municipal authorities, the City of Skopje and municipalities in Skopje, institutions and public services, public enterprises, legal entities and individuals exercising public powers defined by law (hereinafter: the holder of the information) and request free access to information. That access can be provided through insight, transcript, copy or electronic record.

The request / form of access to public information is available at almost all web sites of the state institutions. In case the form is not available, it can be downloaded from the website of the Commission for Protection of the Right to Free Access to Public Information²³. There is also a list of public information at the website of the Commission.

If the request is not complete and therefore the holder of information cannot react, the applicant will be required to supplement the request, pointing out the consequences if this is not done. The applicant is obliged to supplement the request within three days after the notification or within three days

23 <http://www.komspi.mk/>

of receipt of notification. If the applicant does not act according to the directions of the holder of the information a conclusion is made that the request was revoked. The applicant has the right of appeal to the Commission for Protection of the Right to Free Access to Public Information against this conclusion.

The information holder is obliged to respond to the request of the applicant within 30 days of receipt. If the applicant considers that the received information is not the requested information, a requirement may follow to the holder of the information to enable familiarization with the information that was stated in the request not later than ten days after the repeated request to the holder of the information.

The applicant is entitled to an appeal within 15 days after the decision was received from the Commission for Protection of the Right to Free Access to Public Information. The Commission for Protection of the Right to Free Access to Public Information decides upon the applicant's request within 15 days of receipt.

If the applicant is not satisfied with the decision of the Commission for Protection of the Right to Free Access to Public Information, he/she has the right to initiate an administrative dispute to the Administrative Court of Republic of Macedonia within 30 days.

Implementation of this Law, the role of the Commission and experience of stakeholders

In 2014 the Commission, as an appellate body which decides on appeals from the applicants, received a total of 849 complaints. During the eight years of Commission's work, the number of complaints received each year varied. This change is evident in 2014, when there was an increase in the number of appeals - 849 compared to 564 complaints in 2013. Out of the total number of complaints filed, 136 were from individuals, while 713 complaints from associations and foundations. Most of the complaints were submitted in June, July and August by the Association ESE Skopje - 498, the Foundation Open Society - Macedonia - 89, Center for Civil Communications, Skopje - 35. However, we should emphasize the fact that in 2014 the number of complaints submitted by citizens seekers of information increased compared to 2013.

The Commission marks success of its work in the reports submitted. According to the Commission, based on the above data it can be concluded that the

Commission has positive opinion in favor of the applicants in many cases and adopted 222 decisions for acceptance of the appeals, while obliging the holder to provide the requested information. There are 30 cases when the complaint was accepted and the case is returned for re-examination to the first instance authority. The Commission continuously mediates with the holders of information, and this is also confirmed with the 406 conclusions for cease of the proceedings based on an appeal for submission of the requested information²⁴.

However, practice presents another reality. More specifically, journalists and media, including those who work online have great difficulties in benefiting from this Law. Primarily due to the period of 30 days, which is dysfunctional in the media context, followed by a lack of will to truly receive an answer from the institutions that often, when responding to requests for information, are doing it incorrectly and formally, quoting parts from the law and from the request itself, but avoiding to answer on what is actually asked. Nevertheless, there is also responsibility on the side of journalists and media themselves, who often have lack of knowledge on how to exactly formulate the request, thus leaving a space for "maneuver" by the institution. This is then followed with a period of "blame game", submission of a complaint to the Commission, which will impose to the institution to respond and then there is a repeated request and a response, which can also provide unclear information at the end. Thus a vicious circle is made which discourages media and citizens to request information to which they have the right as in compliance with the Law.

Case 1: A year for response based on request for information from an institution

A journalist from an internet portal has submitted requests to the Secretariat for the Implementation of the Framework Agreement for an access to information and she waits for an answer to 2-3 requests for one year already. She submitted a complaint to the Commission, which asked the Secretariat to respond. The whole process takes too long, says the journalist, and de-motivates those who seek information from the institutions. "You lose the will, ultimately, you have more important current events," she says.

²⁴ Annual report 2014, page 5, 9, <http://komspi.mk/wp-content/uploads/2014/07/%D0%93%D0%9E%D0%94%D0%98%D0%A8%D0%95%D0%9D-%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88-2014-%D0%9A%D0%9E%D0%9D%D0%95%D0%A7%D0%9D%D0%9E.pdf>

Case 2: The law is dysfunctional for the media, hence some media ignore it

In one Internet media there was a practice to ask questions to an institution, and then wait for a response for 30 days. In that sense, they say, they are consciously ignoring the Law. “What kind of journalism is this when we receive information after 30 days? We are directly calling and asking for the information, and we are often avoided with no answers”.

2.1.8. INTERNET MEDIA AND MEDIA LAW

Common questions are whether the internet media as a kind of platform that publishes content is a media outlet based on the Media Law.

With the amendments to the Law (Official Gazette of the Republic Macedonia No.13/2014), media outlets are considered all means of public informing or any kind of communication like newspapers, magazines, radio programs and television, teletext and other tools for daily or periodic disclosure shaped with editorially shaped content, sound or image, in order to inform and satisfy cultural, educational and other needs of the general public.

Media outlets are not considered newsletters, catalogues and other forms of publications, regardless of the means of publication, designed exclusively for advertising, the educational system or correspondence concerning the operation of companies, institutions, associations, political parties, government and judicial authorities, public enterprises, legal entities with public authorities and religious organizations.

Media outlets are also not considered newspapers and bulletins of educational institutions, the “Official Gazette”, publications of the local government, posters, leaflets, brochures and banners.

Hence, according to the above said, the web portals, according to the current Media Law, are not considered a media and the provisions of this Law, that apply to all media, do not apply for its regulation.²⁵

²⁵ The laws on media and audiovisual media services can be accessed at www.avmu.mk

2.3. BUSINESS AND LABOR RELATIONS

2.3.1. ESTABLISHMENT OF INTERNET-MEDIA BY COMPANIES

First, if the goal is to profit from the internet media, a company must be established, through which the internet media will operate at the market. The company is established in accordance with the Law on Companies and may be based in one of the following forms:

- Public Limited Partnership (PLP);
- Limited Partnership (LP);
- Partnership with Limited Liability ²⁶ (PLL and PL) (if based on one person with limited liability);
- Joint Stock Company (JSC); and
- limited Partnership with Shares (LPS).

In the legal market in Macedonia, individuals that perform commercial activity via internet portal almost always decide to establish a company in the form of Partnership with Limited Liability (PLL/PL). The most common reason for this is that PLL/PL are forms of companies where the founder/founders are responsible for the liabilities of the company to the amount equivalent of their deposit or the liability of the founders in respect of the obligations of the company is limited.

The partnership (firm) is established with a deposit based on the input by the member/members with a previously agreed nominal capital of the company. The company's equity is at least 5,000.00 Euros in denars. The stake in the share capital may be monetary or non-monetary deposit. The in-kind contribution is consisted of items owned by the founder/the partner's input. The individual investment cannot be less than 100 Euros in denars. The stakes must be expressed by a number that is divisible by 100. The firm may be established without payment of the share, but the founders/partners are then obliged to introduce their stake in the main capital within 1 - one year after the day the firms were registered at the website of the Central Register of Republic of Macedonia.

Article 29 of the Law on Companies of the Republic Macedonia lists entities that may not establish

²⁶ The difference between the PLL (limited liability firm) and PL (limited liability firm of one person) in the number of natural or legal persons who are the founders. If one is the founder then it is a PLL, while if there are two or more founders, then it is a PLL.

a company.²⁷

In the National Classification of Activities, the Group 72.40/0 “Databases”, the internet portals are subgroup number 63.12, thus allowing a profit in this business activity.

The establishment of PLL / PL is possible by submitting the following documents to the registrar authorized for establishing companies:

1. Declaration of establishment/Treaty for establishment²⁸ - documents which must be referring to the name of the company, address, founder, manager and other provisions standards for regulation of relations between the company, founder / founders and manager;
2. Statement of the founder of Article 29 and 32 of the Companies Law;
3. Statement by the manager of the company by a member of 29, 32, 183 and 231, point 4 of the Law on Companies;
4. Statement on Article 7 of the Regulation on the authorization of the Registered Agent, signed by the member;
5. Statement on Article 7 of the Regulation on the authorization of a transfer agent signed by the director.

27 1) Companies whose account opened with any payment operations is blocked and people who are members of the board, the supervisory body, i.e. the managers of such companies as long as the blockade of the account of the company exists or while a procedure is opened for liquidation or bankruptcy; 2) companies over which bankruptcy proceedings are ongoing during the procedure; 3) persons who are members of the board, the supervisory body, i.e. the managers of companies in which the procedure prescribed by law bans a performance of the profession, activity or duty, until the prohibition; 4) a person who is a partner in a limited liability company (LLC) or limited liability company founded by (LLC) whose account is blocked during the blockade of the account of the company or until a process of liquidation or bankruptcy against the company is not opened 5) shareholders, managers and members of the management and the supervisory board of companies, in accordance with Article 552-b of this law, during a procedure for deletion and for a period of three years from the publication date for removal of the company from the web site of the Central Register, unless the founders or partners that are international financial organizations are approved by the Republic of Macedonia and whose share in the company's equity is less than 50% 6) persons who committed a crime of fraudulent bankruptcy, causing bankruptcy by negligence, abuse of bankruptcy procedure, damaging or privileging creditors and who have been imposed ban on performing profession, activity or duty, as long as the legal consequences of prohibition are valid.

28 Statement shall be signed if the founder is a person (PLL); Agreement shall be signed when two or more founders (PLL).

Management of the Partnership (firm)

One or more managers can manage with PLL/PL firms, who are elected by the member/partners. The director may be elected only if he has the legal capacity. The director may be a founder of the company. The powers of the director shall be determined by the firm's agreement. If the firm's agreement does not stipulate the scope of the work of the director, he/she can take all legal and actions related to common conduct of activities and in the interest of the company. In relations with third parties, the director is empowered to act in all circumstances on behalf of the company, with the exception of the powers that the partners have, under this Law.

If there is more than one director, all of them have equal powers and rights in relation to the conduct of affairs of the firm, unless the firm agreement does not specify otherwise.

The firm is represented by the director in relations with third parties. The director sign in a way that, after the name of the firm is stated, his status as director is mentioned and a signature is placed. If the firm has more than one director, the firm is represented by all directors unless the firm agreement does not specify otherwise. The statement of confidence towards the firm expressed to one of the directors is applied to all directors. The director is bound to respect the limits of power of advocacy as set out in the firm agreement, in the decision made at the meeting of shareholders or in the decision made by a correspondence. The director who is aware that he takes an action on behalf of the company without authorization is personally responsible for the damage resulting from it.

The legal entity shall for each past business year from 01 January to 31 of December submit an annual account of the firm.

2.3.2. INTERNET MEDIA ESTABLISHED BY CIVIL SOCIETY ORGANISATIONS

Another form of managing an internet media is by establishing a civil society organisation in compliance with the Law on Associations and Foundations.

Unlike firms (PLL / PL), where the founders are establishing the entity in order to make a profit for themselves, the internet portals as associations aim to promote specific purposes for which the association believes there is a need in the society. One of the prin-

ciples of civil society organization is the non-profit principle set out in Article 12 of the Law on Associations and Foundations. It implies that the association cannot be established for gaining profit. But it can gain profit if the activity is related to the objectives set out in the Association's statute. If the association gains profit, it must be used to achieve the objectives set out in the Association's statute. The profit cannot be distributed among the founding members, board members, directors, employees or any other persons connected with them. But that does not mean that the profit cannot cover current expenses, such as salaries for employees, because the staff is employed for accomplishment of the objectives of the association.

Civil society organization can be established by at least 5 - five individuals that have legal capacity and 3 - three of them must have residence or domicile or headquarters on the territory of the Republic of Macedonia. Priority action/main revenue code of the NGOs is: 94.99 - Activities of other organizations based on membership that are not mentioned in other areas.

The association is established at a founding assembly where a founding act, a program, statute are adopted and bodies of the association are elected. The Law on Associations and Foundations more comprehensively states what should be included in each of the acts of the association. In all of these documents, the main objectives of the association are stated. The objectives shall not be contrary to the Constitution and laws of the Republic of Macedonia. In terms of internet-portals, common objectives of associations is the protection and development of democracy, civil society and public opinion; development of ethics and morality; development of inter-ethnic relations; promotion of European standards; improving the journalistic profession in Republic of Macedonia etc.

Bodies of the association are:

- Assembly;
- A representative of the association (often referred as president);
- Board (optional, depends on the way the organizational - hierarchical structure that the association wants to establish);
- Supervisory Board (optional, depends on the way organizational - hierarchical structure that the association wants to establish).

The sources of funding of the association are stipulated in Article 48 of the Law, which states: *"The organizations funds for financing are to be acquired from fees, initial deposits, contributions, donations, gifts (money, goods, property rights), bequests, legacies, activities that generate income, rents and leases, and income from investments, dividends, interest, loans and other income in accordance with law and statute."*

The legal entity is obliged to submit annual accounts for the association for each passing year from 1st of January to 31st of December.

2.3.3. REGISTRATION OF A DOMAIN

The internet portal, the firm/association must purchase an internet domain from one of the authorized agents for internet domain registration. All individuals and legal entities have the right to register. MK domain. Non-profit organizations, associations and foundations have the right to register org.mk domain. All firms and legal entities registered to perform economic activity have the right to register com.mk, net.mk and inf.mk domain.

When registering a domain name, the firm/association must specify an administrative contact and technical contact. The request for domain name registration can be downloaded from web pages of the agents that offer a domain name and registration and the list of the agents is available at the web site of MARnet²⁹.

Implementation of rules, experiences of stakeholders

MARnet is a public institution that performs activities of public interest. It is founded with the adoption of the Law on Establishing of the Macedonian Academic Research Network. MARnet is having a status of legal entity registered in the Central Register of the Republic of Macedonia. With the appointment of the director, MARnet officially started its work.

Among other things, MARnet is responsible for maintenance and management of the national DNS, international representation and membership; politics and development of the national academic network.

MARnet management is carried out by the Board. Board members are appointed and dismissed by the Government of the Republic of Macedonia. Board members are appointed on the principle

29 <http://marnet.mk/domeni/registrari/lista-na-registrari/>

of professionalism and competence and on the principle of equitable representation³⁰.

In Macedonia, 19 companies have signed a contract with MARnet to perform the function of domain registrars. Information about the system of domain registrars in the country is available at the website of MARnet³¹.

Based on Article 10, point 1 line 8 and 9 of the Law on Establishing of the Macedonian Academic and Research Network MARnet ("Official Gazette" No. 124/10 of 20/09/2010), the Management Board of MARnet, at the meeting held on 21.05.2014, adopted the Regulation on organization and top management .mk and .mkd domain³². This Regulation shall regulate the issues of the organization and management of the top Macedonian .MK domain and the top Macedonian .MKD domain, types and subdomains in .MK and .MKD domains and their use, the names of domains, registration and deletion of domains in .MK and .MKD domain names, rights and obligations of users of subdomains, the method of reference for the resolution of disputes and other issues relating to the conduct of top Macedonian registered domains and subdomains in .MK and .MKD domains as well.

Based on Article 5 of this Regulation, the following is organized in the top MK domain:

- Primary Domain. MK , and
- Secondary domains: 1. gov.mk 2. edu.mk 3. org.mk 4. com.mk 5. net.mk 6. inf.mk

In the following articles of the Regulation, there is an explanation about the categorization of the domains and sub-domains and the way they are received and registered on the site under a particular name.

It is relatively easy to open a site and register a domain in Macedonia and it is an opportunity that is used each year by thousands of new sites that appear in the Macedonian Internet space. The request for domain name registration or for changing the registration data is readily accessible and visible on the web page of MARnet³³.

According to MARnet, 23,937 domains are registered in Macedonia (7.965 .com.mk; 13.615 .mk; .mkd 614, 821 .org.mk; 167 .net.mk; 15 .inf.mk; 340 .gov.mk; 259 .edu.mk domains). However, this does not mean that the country has over 23,000 web pages equally as the number of registered domains because there media and other companies, individuals and legal entities who own two or more domains. For example, a good deal of media which earlier used the addresses with extension .com.mk later on opened domains with the extension .mk, and both of the domains lead to the same website, i.e. location on the Internet. In addition, there are many domains that are not active, which earlier operated as part of partial and project activities of different individuals and legal entities in the country or it is planned to operate in this way in the future, but they are still not active.

In regard to the procedures for registration of a domain, none of the interviewees expressed observations on the functioning of the competent bodies and mechanisms.

2.3.4. LABOR LAW AND INTERNET MEDIA

Establishment of an employment

Regarding the regulation and responsibilities of all employees in internet media the provisions of the existing Labor Law are applied.

First issue that arises is the question of establishment of an employment. By signing the employment contract an employment is established between the employee and the employer. The rights, obligations and responsibilities start to be exercised at the day of entry of the employee at work, as agreed in the employment contract.

The employer is obliged to submit a registration / deregistration (electronic form M1 / M2 printed out from the system of the Employment Agency of the Republic of Macedonia) of the employee for compulsory social insurance (pension and disability, health and insurance in case of unemployment), in accordance with special regulations in the Employment Agency of the Republic of Macedonia, electronically or directly at the Agency by submitting a form with a list of persons who are registered/deregistered, by stating their name, surname and the ID number,

30 The Law, competencies and mission of MARnet are available at : <http://marnet.mk/za-nas/>

31 <http://marnet.mk/domeni/registrari/sistem-za-registracija/>

32 <http://marnet.mk/doc/pravilnik-mk-mkd.pdf>

33 <http://marnet.mk/doc/baranje-za-domen.pdf>

the number of the employment contract, the date of signing of the employment contract, a day before the worker came to work and, in urgent cases, at least one hour before the worker came to work.

Certified photocopy of the registration or extract from the recording computer information system of the Agency shall be handed to the employee within three days from the date of entry. The Employment Agency of the Republic of Macedonia, the Pension and Disability Insurance and the Health Insurance Fund of Macedonia are obliged to keep and permanently hold a record of the applications and log into social insurance system, at the request of the person, to publish data of the status concerning the social security of the employee.

The Employment Agency of the Republic of Macedonia, the Pension and Disability Insurance and the Health Insurance Fund of Macedonia, perform data exchange concerning social insurance.

If the start date at work is not specified in the employment contract, the date of start is considered the day after the employment contract was signed and the worker was registered with the Employment Agency of the Republic of Macedonia.

The employee cannot come to work prior to conclusion of an employment contract and before the employer registers him/her for compulsory social insurance. The rights, obligations and responsibilities based on the employment contract are to start being valid the day the employee starts working, but also in case when the worker has justified reasons not to start working that day. Justified reasons for absence from work at the date when the employee is expected to start are the ones specified by law, collective agreement and the employment contract. If the employee does not come to work the first day because of unjustified reasons it will be deemed that the employment was not established. If after termination of the employment the employer does not log out the employee of the compulsory social insurance, this termination can be performed at the request of the employee on the basis of previously submitted minutes of labor inspector to the Employment Agency of the Republic of Macedonia, within eight days from the date of termination of employment.

The employment contract may be definite and indefinite. If a contract is concluded for a definite time, with or without interruption, it lasts up to 5

years. An employment contract for a definite time in order to replace the temporarily absent employee may be concluded until the temporarily worker is absent. With an exception, the established employment based on an employment contract for a definite time can be transformed into employment for an indefinite time before the expiry of 5 years, if the employee works more than two years at job that is released on the basis of a retirement or other grounds for which funds are provided if the employer finds a permanent need for employees under the conditions and manner specified by law.

Content of Employment Agreement

An employment contract stipulates the relationship between employer and employee, and the elements the agreement must contain are the following:

- 1) Data of the agreed parties, their home address or residence ;
- 2) date of establishment of the employment
- 3) job title or data for the type of the work for which the employee made an employment contract with a brief description of the work to be performed;
- 4) provisions for the obligations of the employer to inform the employee about risks and special professional qualifications or skills or special medical supervision, according to the law ;
- 5) place of the work performance. If the exact location is not specified, it is considered that the employee will perform the work at the headquarters of the employer;
- 6) The duration of employment when definite contract is signed;
- 7) provision of whether the employment is full-time or shorter;
- 8) provision for daily or weekly regular working hours and distribution of working hours;
- 9) provision of the salary that is expressed in monetary terms, which belongs to the worker to perform the work according to the law, the collective contract and the contract of employment;
- 10) provision for other benefits belonging to the worker to perform the work according to the Law and the collective agreement;

- 11) provision for annual leave or the manner of using annual holiday and
- 12) an indication of the general acts of an employer in which certain conditions of the employee are placed.

Amendments to the contract of employment may be proposed by the employer or by the employee. Amendments to the employment contract are made by an annex to the employment contract. Annex of the employment contract is made in the same form as the employment contract, in accordance with the law. Amendments to the employment contract are made if both parties agree to it.

Obligations of Employee

The employee is obliged to conscientiously carry out the work for which he has concluded a contract of employment, at a time and place designated, while respecting the organization of work and business of the employer.

The employee is obliged to respect and implement regulations on safety at work, to protect his life and health, and the health and life of others. The right and duty of every employee to take care of their own safety and the safety of other people working with him is in accordance with the training and instructions given by the employer.

Employees are entitled to refuse performance of the work if they are exposed to immediate danger to their health or life when there are no safety measures and their removal is required.

Obligations of the Employee about Confidentiality

It is especially important for employees in internet media (as well as in media) to protect the confidentiality. Thus, the employee shall not use for his own benefit or give confidential data to a third party, especially data which is identified as such with a special act by the employer. The employee is responsible for breaching the confidentiality if he was aware or should have known in his / hers capacity.

Every employee who comes into contact with materials, information and data that are classified is obliged to keep them in a confidential manner. The representatives of the workers and all the experts that help may not disclose to employees or third parties any information from the business interest of

the employer, which were clearly gathered in confidence. This obligation shall remain valid beyond the end of their mandate.

In certain cases and under conditions and limits set forth by law, it might be determined that the employer is not obliged to transfer information or have consultations when the nature of that information or consultation is such that, according to objective criteria, would seriously affect or endanger the operation of the employer.

Competitive Prohibition (Legal Prohibition of Competitive Activity) and Competitive Clause (Contractual Prohibition for Competitive action)

Competitive Prohibition

For the duration of the employment the employee shall not, without the consent of their employer or third party's account, perform things that belong to the business of the employer or might mean competition to the employer. The employer may ask for compensation of damages arising from the conduct of the employee within three months from the day when an information was obtained about the execution of the work, or within two years of completion of the work.

Competitive Competition

If the employee obtains technical, production oriented or business knowledge and business connections the employee and the employer may agree to a ban on performing competitive action after the termination of employment (competitive clause). The competition clause can be negotiated for a period of two years after termination of the employment contract, but only in cases when the employee terminates the employment contract at his own will or fault. The competition clause must not exclude the possibility of employment. If the competition clause is not in written it shall be deemed as not agreed.

Obligations of the Employer

The employer is obliged to provide the employee work for which the parties have agreed in their employment contract. Unless agreed otherwise, the employer is obliged to provide all the tools and working material for an uninterrupted work and to allow a free access to the premises. The employer is obliged to provide the worker with adequate financial compensation for their work.

For the safety of life and health of employees, the employer must provide and take the necessary measures to ensure that every employee is given sufficient training that is appropriate to the particular characteristics of the work, while taking into account the qualifications and experience of the employee. The employer should assess the risk in terms of a systematic review of all aspects of the work, in order to identify possible causes of injuries or damage to the health of the employee.

After receiving notification that an employee is pregnant, the employer is obliged to introduce multiple assessment of the risks that could be affecting the pregnant woman, or her unborn or newborn child. After proper consultation and consent by the employee, depending on the nature, severity and duration of the risk, the employers should introduce measures to improve the health and safety at work of pregnant employees or ones who have recently given birth, are breastfeeding etc.

If in the process of risk assessment there is no risk detected, the employers should inform the employees about the potential risks. The employer should also explain what will be done to ensure that newly pregnant employees are not exposed to risks that could cause damage to their health and safety.

Obligations for Compulsory Social Insurance

Compulsory social insurance contributions include:

- 1) pension and disability insurance based on current payments;
- 2) compulsory capital pension insurance;
- 3) service insurance considered as increased lifetime;
- 4) health insurance
- 5) insurance in case of unemployment

Tax payer for compulsory disability and pension insurance is: 1) an employee employed by a legal entity, a self-employed person, institution, other legal entity functioning as a public service, state bodies and local self-government and the City of Skopje; 2) a citizen of the Republic of Macedonia employed by foreign and international bodies in the Republic of Macedonia, organizations and institutions, foreign diplomatic and consular offices, personal service of

foreign diplomatic and consular missions or in personal service of foreigners, as provided in international treaty ratified by the Republic of Macedonia if not determined otherwise; 3) Macedonian citizen is employed abroad, carries on business abroad or sent to work abroad if they have not necessarily provided with the foreign insurance if an international agreement ratified by the Republic of Macedonia does not define it differently; 4) Macedonian citizen employed abroad in a state where the insurance is compulsory, but in which the rights of pension and disability insurance may not be realized or cannot be used outside the country; 5) self-employed person; 6) Holder of a family farm in first, second and third category under the Law on Agriculture and Rural Development; 7) religious official; 8) temporarily unemployed person that receives compensation insurance in case of unemployment, in accordance with the law; 9) disabled employee during the usage of the right of professional rehabilitation in accordance with the law; 10) independent artist that has received status based on criteria, procedures with an act of the Minister of Culture; 11) status of top athlete that has acquired the status under the criteria, procedures and relevant regulations of the Agency for Youth and Sports; 12) foreign employee in the Republic of Macedonia or in the service of foreign individuals and legal entities, international organizations and institutions and foreign diplomatic and consular missions, unless determined otherwise with international agreement ratified by the Republic of Macedonia.

In terms of hiring people with a temporary service contract, copyright contract or other agreements that are not covered by the Law on Contributions for Compulsory Social Insurance, several changes that took place in 2015 caused confusions and doubts both among the employees and the employers in relation to the payment of benefits and taxes for persons engaged with temporary service contracts. This was particularly obvious in the area of Internet media, where there is large range of part time workers. The changes caused a big revolt in the public and sparked mass protests.

After the abolition of these changes in August 2015 when signing copyright contracts and services contracts it is an obligation of the legal entity to pay tax on personal income.

Experiences with Implementation of the Legislation on Labor Relations in the Internet Media

Working relationships within online media are largely problematic. Although the market and the number of users has grown, this is not properly reflected within the Internet media –having bigger, better and more professional desks, higher salaries, better conditions. On the contrary, in the most promising and most encouraging part of the media industry in Macedonia there is least money in the companies and advertising.

According to trade unions and professional associations, employees' rights in online media are at the lowest level in the media industry. In terms of union organizing in internet media things go very hard too, and it is harder in comparison to the mainstream - media, as union officials say. The specificity of the profession in the Internet media has its own influence because the news desks are not as in the mainstream media and journalists usually do not physically go to their newsrooms: while employees are under temporary contracts. They have no security and cannot fight for rights at their job, since some of them do not have a job position, instead they have temporary engagements, which, as said by the trade union, can be terminated with SMS- messages.

Although the Labor Law provides mechanisms for the employees to work from home, for a work of 2 hours, 4 hours, work for several employers, none of these options are used by employers.

A research of the Independent Union of Journalists shows that if the precarious work in the media is present in 1/3 of them, in the internet portals this number is 80%. The Union claims that they received many complaints from journalists working in internet portals, but they also did not approach the media owners since they were refusing a discussion.

Case 1: freelance in a portal who works the same and even more than other employees

Journalist in an online - portal, who insisted on anonymity, says that she has the same responsibilities as the employed journalists, even to an extent that she has more working hours than some of the other employees. She works every day, sometimes on Sunday, has two weeks of vacation, which is given by the employer upon his/her own good will. She is a freelancer all the time, she has not a single day

of service, no health insurance, and she visits the doctor privately. The agreement is not the same as what actually happens in reality, since the working time stipulated in the contract is a third of what she really spends while working. Her employment is completely uncertain and she is aware that can be expelled from work without any obstacle³⁴.

2.3.5. IMPLEMENTATION OF THE LAW ON ARCHIVAL MATERIAL

An archival material is the overall authentic and reproduced (written, cartooned, printed, photographed, filmed, audiovisual, electronic, digital, optical or otherwise noted) documentary material of permanent value that is of importance to the country, culture, holders and for other purposes;

Document / record is recorded information produced or received during the initiation, conduct or completion of an activity of one specific body, legal entity or an individual and includes sufficient content, context and structure, so that regardless of the form or medium, it gives evidence of that activity.

Key features of the document / record is authenticity, reliability, integrity and usability:

- a) authentic document is the one for which it can be proved that is what it claims to be, that it was created or sent by the one for whom it is claimed that created or sent it and that it was created or sent at the time claimed
- b) credible is the document whose content can be trusted that completely and accurately expresses actions or facts that constitute the content;
- c) "whole document" is the document when it is completed and unaltered and
- d) "usable" is the document that allows to identify, locate, to search, to present and interpret.

Office operation means receiving, viewing and arrangement of document / record, recording the document / record, submitting the document / record in operating, administrative - technical processing of the document / record, sending the document / record, separating and classification of the document / record and disposal solutions document / record in office.

34 SSNM – Precarious work in the media industry, page 14
<http://ssnm.org.mk/wp-content/uploads/2014/11/Prekarna-rabota-vo-mediumskata-industrija-fin.pdf>

Archive working is selection of the archive of the documentary material, collating archival and documentary material, recording (inventory and description) of archival material, categorization of archival material, inventory of documentary material on which the deadline for storage was expired, destruction of the proposed documentary material, accommodation, storage, protection, provision and use of archival and documentary material in the appropriate space, standard equipment, technical - technological means and transfer of archival material to permanent storage in the State Archives.

The electronic archive covers storage of electronic documents in their primary form in which they were created, sent, received and archived, a form that does not change the primary source. Electronic documents are stored in their original form in the information system of media that provide durability of the electronic record as part of an electronic archive. Data recorded in digital databases and digital images of documents obtained by digitalization of conventional documents are kept in a way that are secured from unauthorized access, deletion, alteration or loss of data, in accordance with the law and other regulations by management and protecting information systems (daily backup on CD, DVD, magnetic tape, mobile hard drive or server from a provider that provides services to store the database in accordance with the law).

Holders of private archival and documentary material are obliged to keep basic or own records for archival and documentary materials, to adopt a plan of archival signs with a list of archival and documentary material, to perform ongoing selection of archival material from the documentary and to permanently keep the material in accordance with this law.

With an exception, the holders of private archival material that have up to 49 employees are obliged to adopt a plan of archival signs with a list of archival and documentary material, and if they possess archival material to archive it and store it permanently.

2.4. SELF-REGULATION

Media self-regulation is the commitment of media professionals to voluntarily establish and uphold basic professional and ethical standards in journalism through ethic codes and bodies to implement the standards.

The models of self-regulation mechanisms are different and vary from state to state, depending on local and historical peculiarities. The best known and most widespread forms are collective assemblies (media councils, committees for appeals, courts of honor). Just over half of the national councils in Europe govern the behavior of all types of media, while others only print media.

2.4.1. COUNCIL OF HONOR OF AJM

The Council of Honor of AJM can impose only moral sanctions (public statements) based on its Code, both mechanisms created and adopted in 2001 with broad support of media community until recently were the only self-regulatory mechanisms of the media in Macedonia. Their primary task is to protect and promote the ethical principles, criteria and standards of professional and responsible journalism, as stipulated in the Code of Ethics of the journalists in Macedonia. All parts of the Code are applicable to the internet media and journalists.

The Code has articles that relate specifically to hate speech and discrimination, which are among the most often violations by the media. Namely, Article 10 of the Code of Journalists says: "Journalists shall not consciously create or process information to violate the human rights and freedoms, and will not use hate speech and shall not incite discrimination of any kind (ethnic, religious, gender, social class, language, sexual orientation, political orientation...)." Furthermore, Article 11 states that "A journalist shall observe the general social standards of decency and respect the ethnic, cultural and religious differences in the Republic of Macedonia".

As years went by, the Council of Honor has become more and more improved, and its limited success so far is associated with three reasons: the political divisions among journalists, the limited resources to work on cases of breaches of ethics and lack of partnership with others media players, management, officials, civil society, experts in these fields of media ethics.

2.4.2. COUNCIL OF MEDIA ETHICS – CMEM

The new experiences in the media self-regulation recommend the integrative “three - party” models of self-regulatory bodies, composed of representatives of the most important players in the media: media owners, journalists and customers - the public. With this structure it is emphasized that journalists and publishers (owners) have a responsibility towards their profession, but also to the public. Given that self-regulation should serve the public interest this is the best regarded model of mutual control and influence of the partners. This model exceeds the potential lack of transparency, or even isolationism and self-sufficiency, and significantly increases the overall credibility of these bodies. That is why, such model is used when the Council of Media Ethics in Macedonia was established, an organization whose establishment was supported with the preparatory activities organized by MIM and AJM several years in the period 2010 - 2014.

The Council of Media Ethics in Macedonia was established in early 2014. It is a nongovernmental, nonpolitical and nonprofit organization, and the principle of free will brings together its members for the realization of the goals and activities determined by the Statute of the CMEM³⁵.

The Council based its work on the principles of transparency and publicity and freely promotes their views and opinions, launches initiatives and participates in building and upgrading, protecting and improving professional standards and ethics in the media in the country.

The Press Complaints Committee of the CMEM, based on its Rulebook³⁶ handles complaints of citizens, and if it determines that there is a violation of the Code of journalists, it sentences moral sanctions. In potential breach of the Code, CMEM decides upon complaints of citizens and imposes moral condemnation. Media who are members of CMEM are bound to respect and publish the decisions of the body.

Case 1: A non-governmental organization vs. internet-media content related to a content about sexual orientation

One civil society organization for human rights initiated a complaint to the Press Complaints Com-

mittee of the CMEM about a controversial content in relation to members of sexual minorities. In its decision the Council found violations of Articles 9, 10, 11, 13 and 15 of the Code of journalists and concluded that the complaint of the NGO was justified.

Case 2: TV editor vs. Internet-media for offensive content

A TV - editor in a national private television raised a complaint to the Complaints Committee of the CMEM about a content published in two Macedonian internet portals that published insulting content about the editor. In its decision the Council found violations of Articles 10, 15 and 16 of the Code of journalists and concluded that the complaint of the NGO was justified.

Case 3: MP against internet portal for offensive content

MP from Parliament filed a complaint to the Press Complaints Committee of the CMEM regarding content published in Albanian language internet portals, which published content in which insulting elements and qualifications regarding the MP were placed. The MP demanded a withdrawal of the text and a public apology from the portal. The Council began a process of mediation, contacted the responsible persons in the internet portal, who claimed that their text was satirical and should not be a subject under evaluations of professional and ethical standards. However they did agree with some of the allegations of the complaint but did not agree to remove the text nor thought that an apology is needed. CMEM further contacted the MP to announce the position of the editorial board at the portal and asked about his future intentions concerning the procedure, but the MP did not further contact the CMEM for this complaint.

Decisions and opinions of the Commission concerning the SEMM are published on the website of the Council of Media Ethics³⁷. Under the scope of the work, it can be said that this body is starting to perform its function, and that significant social actors (government officials, politicians, media and journalists, civil society organizations) are beginning to use this mechanism. The turnout is, as other similar bodies in the early years of its establishment that the individual complaints from citizens are less.

³⁵ Statute of CMEM <http://semm.mk/sovet-za-etika/statut>

³⁶ Rulebook of the Press Complaints Committee <http://semm.mk/komisija-za-albi/delovnik>

³⁷ <http://semm.mk/komisija-za-albi/odluki-i-mislenja>

The key issues that the Council for Media Ethics faces is rejection of the body by the media community and the media, non-publication of the decisions by the offenders, thus losing the effect of moral sanction, and lack of public awareness and citizens about the existence and functioning of this mechanism. The potential risk in the future is the model of financing of CMEM whose recognition by citizens in the future may be increased, but it should be followed with appropriate financial support, technical and human resources that would respond to the needs of citizens and the media.

2.4.3. OTHER FORMS OF PROFESSIONAL ASSOCIATION OF INTERNET-MEDIA

In August 2013, as published at some websites, several Macedonian Internet portals have joined the Association of Internet Portals of Macedonia for improving the status of the web journalists, protection of the copyright and social rights and improving the business terms in the online sphere. The association, as reported by the same informative internet portals, was established in the period when the new media law was announced in order to fit in the provisions that are sufficient guarantee of the rights and obligations in this new media sector³⁸.

The online media did not become part of the law, and this association, apart of it participating in the public debate on media legislation, has not organized nor conducted any other visible public activity.

A similar initiative for associating of the internet portals took place in the civil sector through a project of the Foundation Metamorphosis, but after the initial activities no other activities happen in this direction.

38 <http://www.maxim.mk/formirano-prvoto-zdruzhenie-na-makedonskite-internet-portali>

3. PERCEPTIONS OF INTERNET-AUDIENCE FOR IMPLEMENTATION OF LEGISLATION AND SELF-REGULATION ON THE INTERNET (POLL)

As part of this study, in terms of the awareness and perception of the public about the legal framework and the mechanisms to protect the rights of citizens and other entities in the sphere of the Internet, an on-line survey was conducted through direct electronic communication with owners, editors and journalists in the internet media, civil society activists and through open calls published on the social networks designed for general audiences. 135 individuals responded to the survey.

Although the sample is not demographically representative of the general population, it is a survey of active and qualified target audience online, which creates daily and active content and deliver its opinion by placing it on the internet, so this survey with a qualified audience can be considered valid in detecting trends and perceptions of skilled and professional public regarding the questions.

The questionnaire focuses on experiences and perceptions of the surveyed population in terms of legislative areas that are subject to this analysis (legal framework, mechanisms to protect the rights, judiciary and practice, penal provisions, self-regulation).

The findings of this survey indicate several trends. There is a visible rise in hate speech and abusive discourse, but also in its acknowledgement.

In relation to the question whether they were subject of hate speech on the internet, 38 or 28, 1% of respondents answered with “Yes”, and 97, or 71,9% of respondents answered with “no”. In terms of the questions if they witnessed hate speech on the Internet, there were 105 or 77, 8% of respondents who answered “yes”, and 30, or 22,2% of respondents answered “no”. On the question whether they were subject of insult or defamation on the internet, 38 responded affirmatively or 28.6%, and negative 95, or 71, 4% of respondents. The fact that the defamation in online media was recognized arises from the fact that 60.9% percent responded affirmatively. These percentages clearly indicate a growing tendency and point out to the ubiquity of discriminatory speech in the online sphere.

Respondents perceived problems with copyright issues too. For 28, or 8% of the respondents, their copyright was violated, and 45.9% of the respondents have witnessed a violation of authorship on the internet. 26.2% of respondents have witnessed a violation on the Law on protection of personal data through published content on the Internet.

There is apparent lack of information and lack of trust of respondents in the institutions and mechanisms that have been set, among other things, for regulating the internet communications but also for the content. Of all respondents, only 1 person has sued, 2 were sued because of content published on the internet. Asked if they know where to report legal violations relating publishing on the internet or online communication, 25% answered “no” and 75% or three-quarters of respondents did not know which authorities to address when there are breaches of the rights on the internet.

Respondents were asked which laws apply in the Internet field, at the same time giving them the opportunity to choose from a number of laws or to add other laws. According to the answers, obviously they are mostly informed regarding the Law on Protection of Personal Data, while 116 respondents, i.e. 94, 3%, consider that this law applies to the Internet. 71, 5% of respondents believe that regarding the internet communications the Law of Electronic Communications applies as well. The Law of Civil Liability for Insult and Defamation is mentioned by 63, 4% of respondents, Copyright Law and related rights by 55, 3%, the Law on Free Access to Information of Public Character by 48, 8%). 40, 7% of respondents think that the Criminal Code has its own application over the internet communication.

51, 2% of respondents believe that the Media Law is also applicable for the internet, and 36, 6% believe that the Law of Audio and Audiovisual Media Services also applies to online media, although according to current legal definitions this is not the case. On the other hand, it is indicative that only 15% of respondents believe that the Labor Law applies in the Internet sphere. The same applies to the laws concerning the business, as the Law of Obligations (6, 5% of respondents), or the Law for Companies - only 5, 7% of respondents believe that it applies to the Internet - entities.

Regarding the use of the mechanisms for self-regulation, among respondents there is also a lack of knowledge, but also modest use of these mechanisms. On the question if they filed a complaint or have been a subject of a complaint to the media self-regulatory bodies, affirmative answers came only from 3.8% of respondents.

4. CONCLUSIONS AND RECOMMENDATIONS

Macedonia has a good legislation, which is applicable in the Internet field, and there is no need for additional regulation of the internet communication. Although not being covered by the Law on Media and Audio Visual Media Services, there is a sufficient legal framework established for the internet communication by the laws that are subject of analysis of this study and other legal regulations that generally apply to all citizens of Macedonia. The syndrome “overregulated” should be overcome through qualitative and expert analysis based on arguments and professionalism and not through political preferences, and with quality public debates through which solutions will be facilitated that will not burden the legal relations between the citizens in the internet communication. The legal solutions should not be adopted in rush and not to be changed often, but should include long-term solutions.

The culture of impunity must end. The legislation must be enforced indiscriminately, fairly and proportionately to all actors in the public communication on the internet. This especially applies for the implementation of the Criminal Code provisions on hate speech and the Law on defamation, Law on Prevention and Protection against Discrimination, but also in the Labor Law and the Copyright Law. There are few examples of enforcement in this direction, however, confirm that the rule exists and that the media and public communications, whether online or not, should not be used to violate human rights and dignity.

This requires a multidimensional and inter-sectorial action by all stakeholders - institutions, the media, civil society organizations and all others. It takes more financial resources and more projects and activities to improve the capacity of the media and society to meet the challenges of the digital era, which will enable citizens to information, data and facts and will help them to bring better choices and conclusions, but also to exercise their rights.

Significant improvements are desirable and possible in the implementation of the Law on Access to Public Information, in particular the implementation of the law by the holders of information, but also in the education of the media and the public about the methods and procedures how to reach the

requested information, and institutions to be more transparent and accountable in its operations.

Media literacy should be incorporated in the media and in the education system. Media and media organizations should take their share of responsibility and strengthen the educational dimension of the media, which is almost forgotten, and educational institutions to provide financial and other support for projects and activities in the field of media and digital literacy and to include as an obligatory part of teaching, not only in extra-curricular activities.

All social partners in the media system, who are able to work and contribute to the promotion of professional, ethical standards and reputation of journalism, should aim to stimulate self-regulation. The institutions should encourage self-regulation through cooperation with the self-regulatory bodies and the media to adhere to professional and ethical standards. Media should significantly improve their content, through investment and improvements in the conditions of their staff through continuous education of media workers.