PRIVACY IN THE DIGITAL ERA
LAWS IN PLACE AND IMPLEMENTATION

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INTRODUCTION

This paper intends to gather the legal framework on both privacy protection and freedom of speech. While they prominently are seen as two different concepts, in reality they are two sides of the same coin. And yet, both areas display individual characteristics, particularly with regard to the codification, that justify the separate treatment in this paper.

Based on this understanding, in the first section focused on privacy, this paper will primarily address the following laws as focal elements of the relevant legal framework: The applicable secondary European Union Law, the Law on Personal Data Protection, the Criminal Code and Criminal Procedure Code, the Law on Access to Public Documents, the Law on Electronic Surveillances and the Law on Electronic Communications.

The second section will be dedicated to the issues of freedom of speech and press and analyse the following essential laws: the Law on Confidentiality of Sources, the Civil Law on Defamation and Insult, the Law on Whistleblowing Protection, the Law on the Independent Media Commission and Kosovo's Printed Press Code.

While the issue of privacy is a complex one, stretching beyond the legislative perspective, in social, cultural, and political dimensions, in this paper only the legal perspective will be reviewed and debated, with a section taking a closer look at the stakeholders' approach, including the aspect of accessibility of stakeholders in this legislation.

LEGAL FRAMEWORK – PRIVACY

On the national level in Kosovo, since 2010, the main law dealing with the protection of citizens' personal data and thus their privacy is the Law on Personal Data Protection. However, there is a number of other laws and regulations, which to a differing extent govern the right to privacy and its protection. Since regardless of Kosovo not being a member of the EU all those laws derive from European Union Legislation, the respective sources of law constitute the foundation for the national laws in Kosovo and therefore our analysis will first address the EU data protection framework before examining the national legal framework.

THE EUROPEAN UNION AND PERSONAL DATA PROTECTION

The EU has marked the origins of codified personal data protection through the Directive on Personal data Protection 95/46 EC, which served also as a basis for the creation and harmonization of related laws in the EU member states. It can be considered the most important legal act among the various legislative content concerning privacy and protection of data offered by the EU. Having entered into force on October 24th 1995, it offers a regulating framework through which the fundamental rights and freedoms of natural persons are protected, especially the right to privacy regarding the processing of personal data[1]. Besides this, it urges the member states to establish independent institutions which oversee personal data processing, as well as securing the free movement of data between the member states.

An important source of law in this context was Article 8 of the European Convention on Human Rights which guarantees everyone the right to privacy with no intervention from the authorities except for finally specified justification cases as laid out in Article 8.2 (a provision used as foundation for Article 28 of the Kosovar LPPD as well).

However, the Directive 95/46 EC has been replaced recently with additions and reforms, most importantly the General Data Protection Regulation 2016/679 (GDPR) and the Directive 2016/680 for data protection in the police and justice sectors, which continue to promote and strengthen the control of the subjects over the privacy of their data. Alongside the fast technological advancements of recent years came the imperative need to amend and reform the current regulations so they can reflect proportionately the problems that have risen or have been highlighted as a result of advancements in technology. In this regard, in January 2012, the European Commission proposed the reformation of the European regulations on data protection, an approach which has then developed into a general regulation and a directive on the protection of personal data. Both legal acts aim to "return the control over personal data to their subjects". While the regulation has come into force on May 24th 2016 and will begin implementation from the year 2018, the Directive has come into force on May 5th 2016 with a 2 year term for the member states to transform it into national law. Both of them repeal the previous applicable laws and continue the promotion of legal, impartial and transparent data processing[2], without exceeding the purposes for which it is realized, safeguarding them from unauthorized or illegal access.

The reformed regulations continue to build upon the basis set in place by the Directive 95/46/EC and to fill gaps created by the leeway granted to the member states regarding the implementation of the latter, allowing for certain differences in regulatory approach on the national level. As such, they serve the purpose of harmonization of internal laws so that natural persons enjoy the same level of rights and protection in the entire Union. However, the member states are at liberty to issue legislation with a higher level of protection than foreseen in the new regulations. Besides improvements to existing provisions, the reform also brings entirely new regulations to further strengthen the subject's control over its personal data. With respect to the material scope of application, the new GDPR and the directive 2016/680 apply "to the processing of personal data wholly or partly by automated means and to the

[1] Article 1, 95/46/EC

[2] Article 5, Regulation 2016/679; Article 4, Directive 2016/680

processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system."[3]

The practical relevance of these provisions is higher than ever and continuously growing. According to the Special Eurobarmeter 431 on the Protection of Data since 2015, more than 6 out of 10 Europeans don't trust the telephone companies and internet services. They feel like they don't have full control over their personal data, a concern that influenced the decision to introduce a so called "right to be forgotten." According to this regulation, if an individual doesn't agree to continued processing of their personal data, the respective data has to be deleted by the controller, provided there is no legal basis for keeping it. This was done to protect an individual's privacy, not as a way of deleting previous events or to restrict freedom of press. To give an example, if an individual who has chosen to disclose personal data on social media, the moment they don't want to be included in that network anymore, by deleting their account they should be able to make sure that all the data related to them is permanently deleted. However, this is not an absolute right and there are limitations related to relevant previous events and freedom of speech. Accordingly, a politician can for example not simply demand his utterances be deleted from a network, so as to not compromise the functioning of online newspapers or other informative portals.

Furthermore, 71% of Europeans say that they have no other choice but to give their data as a result of the use of products and services. Therefore, it is foreseen that data protection is to be implemented in all the services and products, be that social networks, smart phones, phone apps etc. This protection will be predetermined and will apply with no exceptions since the early stages of their development so that an individual's privacy will be a general norm.

The Eurobarmeter also states that half of the Europeans are concerned about the abuse of their personal data, and almost everyone demands that they be informed in case of loss or theft of their data. As a result, it is now provided that in case of violations and unauthorized accesses which present high risk of data abuse, companies and organizations which offer these products or services are obliged to notify the overseeing national authority. If they do not comply with these obligations, the relevant data protection authorities may fine them with up to 4% of their annual income. However, only 1/3 of the Europeans are aware of the existence of an authority responsible for the protection of their data, therefore awareness continues to be a problematic issue all over Europe.

While we can see that the European Union has enacted a number of laws that have paved the way for the legislation in Kosovo, the following part of this paper will reflect on the legal framework in our country, including first and foremost the Law on Personal Data Protection as well as the Criminal Code, Criminal Procedure Code and the rest of the laws mentioned in the beginning. It must be taken into consideration, however, that in this part a detailed analysis of laws and codes has not been made and this is just their reflection in the context of personal data protection as well as freedom of speech.

Shortly

1. Directive 95/46/EC was the the pivotal EU legal act with respect to the protection of personal data and served as a basis for the harmonization of respective laws in the EU member states.
2. This directive has been replaced by Regulation 2016/679 and Directive 2016/680, which continue to promote and strengthen the control of the data subjects over their personal data.

[3] Article 2.1 Regulation 2016/679 (see also Article 2.2 of Directive 2016/680 with the restriction to processing by specific competent authorities in 2.1).

NATIONAL LEGISLATION

THE LAW ON PERSONAL DATA PROTECTION

The law no. 03/L-172 on Personal Data Protection, which came into force on June 15th 2010, repeals and substitutes the seventh part of the Law no. 02/L-23 on Information Society Service on the processing of personal data and protection of their confidentiality[4]. This law's provisions regulate "the rights, responsibilities, principals and measures" of protection of privacy in the form of personal data, alongside the establishment of the overseeing institution, specifically, the State Personal Data Protection Agency[5].

The Law on Personal Data Protection is related with Article 36 of Kosovo's Constitution which guarantees everyone the right to privacy and protection of personal data. In contrast, if those data are being processed, this is done according to the law. As such, the Law on Personal data Protection defines the impartiality of personal data collection and also prohibits overcoming their exploitation beyond the predefined purposes, with the exception when the law says otherwise[6]. Data processing, defined according to this law, is generally done with the subject's consent, as long as it acts on the subject's interests and the legal obligations undertaken by the subject, when the subject itself publishes them with no restrictions and when it is done for crucial public interest[7].

However, data collection might not always come directly from the subject. In such cases, when the subject is not aware for such collection of data, the data controller is obliged to, among other things, notify the subject on the origin of the data, the purpose of its processing, as well as offer them information on the rights of data access and processing[8]. At the same time these data can be obtained in accordance with Article 22 which guarantees every subject, whose data have been processed, to consult the data file catalog that has to do with him or her. Besides the aforementioned data, the data collectors, time, legal base as well as technical procedures behind the verdict are also included.

The request to obtain these information can be made verbally, in written or in electronic form. Once the request is accepted by the data controller, within 15 days, he must confirm it or otherwise provide a letter on the impossibility of its realization[9]. Furthermore, the subject has the right to file a request in which case the controller must edit, correct, block, destroy, delete, eliminate personal data for which the subject of the data proves that are incomplete, not accurate, or not up to date, or whether they are collected or processed contrary to the law. The procedure and timeline remain the same as in the request for access in information, which means that requests and objections are reviewed within 15 days, which in case of refusal are notified in written.

Otherwise, if the data controller doesn't act in accordance with procedural provisions on these requests, the subject of data may direct the State's Personal Data Protection Agency[10]. In cases of violations of the rights, the law makes it possible for everyone to make the request orally, in written, or electronically, in which case the Agency notifies the subject on the verdict immediately[11].

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[4] Article 95, LPPD

[5] Article 1, LPPD

[6] Articles 3.1;3.2;3.3 LPPD

[7] Article 6.1 LPPD

[8] Article 10.3 LPPD

[9] Article 23 LPPD

[10] Article 24.1; 25.1; 25.2; 25.3 LPPD

[11] Article 42 LPPD

If the rights which are guaranteed with this law are violated, the subject may request legal protection which has the same duration as the violation. If the violation ceases and the subject has not received other legal protection, he may file a lawsuit in the relevant court to prove the existence of the violation[12].
There are exceptions when these rights can be limited by the law, among others, when because of national security, public safety, criminal persecution cases or the protection of the data's subject or other people's rights and freedoms. These measures stay in force until the purpose for which they have been established is realized[13].

The main body: Within LPPD the establishment of State Personal Data Protection Agency is provided. Its status is regulated according to Article 29 of the Law on Protection of Personal Data, according to which it is defined as an "independent agency, charged with overseeing the implementation of data protection rules". Regarding the organizational adjustment, the Agency is led by the Council which acts independently, and consists of the Chief State Supervisor which heads and represents the agency, as well as from the Chief Supervisor. Its activity consists of advising of public and private bodies on personal data protection, decision making on the subject's complaints, inspection and controls, informing the public on developments regarding personal data protection[14].
As such, the Agency has a mutual relationship with the Kosovo Parliament, the latter must inform the Agency on the new legal and administrative measures before their ratification[15]. On the other side, besides advising, the agency must submit a yearly report to the parliament which should be published at the latest by the 31st or March of the following year[16].
Secondly, the Agency also has the possibility to start inspections and controls with self-initiative, which have to be in accordance with the rules on data protection[17]. This processes are done by the supervisors who are limited to act within the competences given to them by the law. Supervisors, besides being obliged to be identified, something that can be done through ID cards which are issued by the Kosovo Government,[18] they also need to keep the subject's confidentiality be that during the process, or after the process has ended.[19]
Looking at this from a legal standpoint, the Agency legally has advanced support when it comes to organizing and functioning in data protection. However, regardless of this, it continued to be faced with multiple problems where the opinions awareness remains one of the most challenging.[20] Another problem remains the complete implementation of the law, the Agency's own capacities and other obstacles with training of its own staff.
Within the Agency's activities to improve the situation in this direction, through 2015 the Agency has increased its presence in the social media, and has also organized "Privacy Week" in the major municipalities of the country where flyers, leaflets and other information have been distributed through stands who were put for this purpose[21]. Flyers on central and local training of staff have also been published, such as the Manual on Personal Data Protection for

[12] Article 26 LPPD

[13] Article 28 LPPD

[14] Article 29 LDDP

[15] Article 39 LDDP

[16] Article 44 LDDP

[17] Article 46 LDDP

[18] Article 47 LDDP

[19] Article 50 LDDP

[20] Florian Qehaja, Discussion material in relation to personal data protection, pg.1

[21] State Personal Data Protection Agency, Annual Report (2015) pg. 34-35

Municipal Officials, as well as the General Plan on Officials' Personal Data Protection Training alongside a series of trainings held during the year.[22]
In regards to the number of officials, the Agency operates only with 18 of them from the 37 that have been originally planned. Seeing as the small number represents a problem for the full functioning of the Agency, it has requested that for this year the number be increased by 9, something that remains to be done.

Shortly

1. The Law on Personal Data Protection foresees the implementation of a supervisory body, the State Personal Data Protection Agency, whose competences are explained above.
2. A citizen that has any suspicions in regards to any issues of privacy can file a request for a clarifying opinion in this Agency.
3. The Agency's response does not exclude the possibility to be directed to the court.

CRIMINAL CODE

In Kosovo's Criminal Code, which entered into force in January 2013[23] the word privacy is mentioned three times. First in Article 70, paragraph 5 where it is expressively said:

The publication of the sentence shall not be ordered if such disclosure jeopardizes confidentiality, personal privacy or morale.

And two more times in Article 205 where unauthorized photography and recording is dealt with. In this part it is expressively stated:

Whoever takes unauthorized pictures, films, records videos or in any other way records another person in his personal apartment or in any other place where the person has reasonable expectations for privacy and this way fundamentally violates the others' privacy, shall be fined or imprisoned from (1) to (3) years.

However, it is worth mentioning that the Criminal Code's primary role is to define criminal offenses, and consequently has very little detail in regards with whatever procedure, not only for privacy. The procedures are defined by the Criminal Code as will be explained in the following section of this paper.

Unlike the old Criminal Code, the new Criminal Code who has come into force in 2013, defines picture taking and unauthorized recording as a criminal offense, not only in personal spaces but even in those places where a person has reasonable expectations for privacy.

Considering this change, the Criminal Code in its entirety offers good legal coverage for privacy.

Further on, the code contains an entire chapter regarding the freedom of speech and press where it defines special provisions on penal responsibilities for criminal acts committed through the media. The code in total contains 4

[22] State Personal Data Protection Agency, Annual Report (2015) pg. 5; 15-16

[23] http://www.kuvendikosoves.org/common/docs/ligjet/Kodi%20penal.pdf

articles (Articles 37, 38, 39, and 40) in regard to penal responsibility of physical and legal entities (3 of which have been repealed with the Law 04/L-129[24]

Article 37 defines the hierarchical penal responsibility for a criminal offense committed through the media (first comes the author, then the editor in chief, the publisher, and finally the producer).

Article 38 is directly connected with the protection of sources and defines that the media has no penal responsibility if they refuse to give the source of the information, except in the case where the court considers that disclosure of information is crucial to prevent an attack that poses an inevitable threat to the life or physical integrity of a person. Meanwhile, Article 39 simply defines the applicability of general provisions for penal responsibilities.

All three of these articles have been repealed after the great furor that was made by both the media and civil society in regards with the decriminalization of these criminal offenses. Consequently, the only one remaining is Article 40, which defines penal responsibility of legal entities. This Article expressively defines that:

The legal person is responsible for the criminal offense of the responsible person, who has committed a criminal offense acting in the name of legal person within his authorizations, with the intent of gaining benefit or causing harm to that legal entity. A legal person's responsibility exists also when the actions of the legal person were inconsistent with the business policies or with the orders of the legal person[25].

The legal person is also responsible for the criminal offense in case when the person who has committed a criminal offense is not sentenced for that criminal offense, the legal person's responsibility is also based on the responsible person's guilt.

Leaving this article in the code and the removal of the other three is interesting because there is no consistency in penal responsibility. The code keeps the legal entities criminally responsible but removes the responsibility from physical persons, from whose responsibility in fact the penal responsibility of the legal entities derives.

With that being said we come to the conclusion that the Criminal Code has good and sufficient coverage of these two issues, that of privacy and that of freedom of speech and media. It should be noted and remembered that the code naturally does not define defamation and insult since these to offenses are now civil and not penal and as such are regulated with the Law on Defamation and Insult (which will be addressed later).

CRIMINAL PROCEDURE CODE

Kosovo's Criminal Procedure Code which has entered into force in January 2013[26] talks about privacy as a concept in Article 19, paragraph 1.11[27]. This definition is of importance because it clearly defines the requirements for the government's interference in a person's privacy. Further on, in the receiving information section, in Article 84 that

[24] https://gzk.rks-gov.net/ActDetail.aspx?ActID=2852

[25] Article 40, PCK.

[26] http://www.kpk-rks.org/assets/cms/uploads/files/Kodi_i_procedures_penale.pdf

[27] 1.11. Real possibilities – the basis for a control order or to justify the government's intervention in an entity's privacy. Possession of acceptable evidence that would convince an objective observer that a criminal offense has occurred, is occurring or there is a possibility of occurring and the person at hand may have committed a criminal offense.

provides the undertaken measures before the criminal procedure begins, in paragraph 5 it is expressively defined that:

If the undercover or technical measures of the surveillance or the investigation are authorized in accordance with paragraph 1 of this article, the state's prosecutor undertakes reasonable measures to protect the data of persons who are not involved in a criminal offense.

Further on, in the psychological analyses part it is defined that the person who has been evaluated may oppose the call of previous procedure's judge if there are any privacy concerns which do not exceed the importance of criminal proceeding. [28]

However, besides directly dealing with privacy, CPC also deals with it in a very indirect way. E.g. in Article 22, paragraph 1, item 64, CPC defines the violation of ballot confidentiality as a grave crime. Further on, this code defines that the court has the right to store the data without the consent of the respective side, but cannot make them public and must preserve its confidentiality[29].

CPC also defines that the police, the state persecution, and other public bodies are obliged to proceed carefully in collection and providing of data, taking care that not to violate the dignity and reputation of the person to whom those data are referred to[30].

It is natural to determine the right to an undercover investigation, same as it is determined in the codes of the other countries in the continental system. But nevertheless an undercover investigation referred to in article 88 has its own rules within which it functions. For example there is Article 96 which determines that personal data taken through measures which no longer are relevant for the purpose of persecution or for other reviews from the court will be deleted with no further delays. Any reasons for delays should be documented. As long as the deletion of data is done simply because of the measure's review by the court, the data will not be used for other purposes without the consent of the person at hand; access to data should be limited accordingly. Further, the state prosecutor shall notify promptly in writing by registered mail any person of any order, that he or she has been the subject of that order and that they have the right to file a lawsuit in the competent court within six (6) months from the date of notification[31].

However, in regard to the acceptability of the evidence taken this way, CPC defines that the evidence which is taken through undercover surveillance of conversations in private places, searching of postal items, telecommunication surveillance, surveillance of computer communications, controlled delivery of postal items, application of tracking devices, simulated purchase of items, simulation of an act of corruption or undercover investigation is allowed only with the criminal proceeding related to the criminal act defined in Article 88, paragraph 3 of CPC. Meanwhile par. 3 Article 88 sets out two scenarios:

1. The information that could be obtained from the ordered measures is likely to help the investigation of the criminal act would not have been able to undertake other investigative action without causing unreasonable difficulties or potential dangers to others.

[28] Ibid

[29] Article 67

[30] Article 83

[31] Article 96

2. There is reasonable suspicion that the place or thing will be used for committing an offense or the person has committed, or in the case of punishable attempts, has attempted to commit a crime under Article 90 of the CPC.

Article 90 defines more than 100 criminal offenses which can be found here. http://www.kpk-rks.org/assets/cms/uploads/files/Kodi_i_procedures_penale.pdf

Persons who have been subject to undercover investigation have the right of complaint and this is done before the Surveillance and Investigation Review Panel. When deciding on the appeal, this Panel concludes that the measure is against the law or the order for such a measure is against the law, or it may decide to terminate the order if said order is still in force, or it can order the destruction of the collected materials or reimburse the person or persons who have been subject to that order. Which means that the possibility to compensate the persons has been left open.

In regards with freedom of speech and media, CPC normally defines special provisions. This code recognizes the media as an institution that can direct information to the state prosecution, through which the latter can commence investigations[32].

The Criminal Proceedings Code also defines an important part that has to do with freedom of speech and media and the reputation of arrested persons who have afterwards been acquitted. For this issue, the code foresees that in cases when an unreasonable sentence or un-based arrest of a person has been published in the media, in which case the person's reputation has been violated, the court, with its own request, makes the announcement in the newspaper or another medium of public information for the verdict in which it is clear that the sentence was unreasonable and the arrest un-based. When the case hasn't been shown in public information mediums, on the person's request, the announcement is sent to his employer. After the sentenced person's death, the right to make this request goes to their spouse, their partner, their children, parents, or siblings.

All things considered, it is our conviction that the Criminal Proceedings Code offers sufficient assurance and protection for both privacy and freedom of speech and media in Kosovo.

As it has been argued many times before, it is a general belief that the problem doesn't stand in the legal framework, but in its practical implementation. The problems relating with implementation mostly have to do with the high number of cases, low capacities to address those cases, insufficient and improper training of staff and the issues of privacy and freedom of speech being new occurrences after the period of communism under ex-Yogoslavian regime.

Main bodies: For better clarification and given the fact that the Persecution and the Court are the main addresses in connection with these codes, it should be clarified how these two institutions function and are divided. Kosovo's Court System consists of: the Basic Court, Court of Appeals, and the Supreme Court. The branches are established within the territory of a Basic Court, and with the intent to be more efficient, within the Court of Appeals and the Basic Courts Departments and divisions may be established.

[32] Article 6 CPC

Seeing as our interest in the cases of privacy and freedom of speech begin in the basic courts, it should be made clear that these courts are courts of the first instance in the territory of the Republic of Kosovo. Seven (7) basic courts are established as follows:

a) Prishitna Basic Court based in Prishtinë is established for the territory of the municipality of Prishtina, Fushe Kosova, Obiliq, Lipjan, Gllogovc and Graçanicë.
b) Gjilan Basic Court based in Gjilan is established for the territory of the municipality of Gjilan, Kamenicë, Novobërd, Ranillug, Partesh, Viti, Kllokot, and Vërboc.
c) Prizren Basic Court based in Prizren is established for the territory of the municipality of Prizren, Dragash, Suharekë, and Mamushë.
d) Gjakove Basic Court based in Gjakove is established form the territory of the municipality of Gjakove, Rahovec, and Malishevë.
e) Peja Basic Court based in Pejë is establishes for the territory of the municipality of Pejë, Deçan, Junik, Istog, and Klinë.
f) Ferizaj Basic Court based in Ferizaj is established for the territory of the municipality of Ferizaj, Kaçanik, Shtime, Han I Elezit, and Shtërpc.
g) Mitrovicë Basic Court based in Mitrovicë is established for the territory of the municipality of South Mitrovica, North Mitrovica, Leposaviq, Zveçan, Zubin Potok, Skenderaj, and Vushtrri.

In regards with the State Persecution, we should clarify what this term means. The State Prosecutor is the independent institution competent and responsible for persecuting people who have been accused of committing criminal offenses and other offenses that are specified in the law and in itself it withholds: Basic Persecutions, the Appeal Persecution, Special Persecution, the State Prosecutor's Office, and any other organizational unit which may be created to exercise persecution functions.

The State Prosecutor in the Republic of Kosovo is organized and functions in accordance with the Law on the State Prosecutor and is organized with the following persecutions:

a) Basic Prosecution which consists of the General Department, Department for Minors, and the Serious Crimes Department.
b) Appeal Prosecution which consists of the General Department and the Serious Crime Persecution Department.
c) Special Persecution Court.
d) The Office of the State Prosecutor.

Cases that have to do with privacy and freedom of speech are under the competence of the basic Persecution, in case it is needed the Basic Persecutions are divided and function same as the Courts (as explained above).

Shortly

1. The main bodies where the citizen should be directed regarding issues related to the Criminal and Criminal Procedure Code, are the Basic Persecution and the Basic Court (depending on the town)
2. The Criminal Code only defines the types of criminal offenses, including here violation of privacy as one of those crimes.
3. The Criminal Proceedure Code defines the procedures regarding the prosecution of these offenses.
4. Defamation and insult are not criminal offenses in the Republic of Kosovo.

THE LAW ON ACCESS TO PUBLIC DOCUMENTS

The Law no. 03/L-215 on access to public documents has come into force on the 10th of December 2010 and contains legal provisions through which it is regulated the right of every physical and legal person, with no discrimination on whatever bases, to have access, after the request, in held documents, drafted or received from public institutions.[33]

This law repeals the Law no. 2003/12 on access to official documents; the Administrative Directive no. 3/2006 on the implementation of the law on access to official documents, the Administrative Directive no. 05/2006 for the organization and operation of Complaints and Requests Offices, the Table for communication with citizens. The Administrative Directive no. 07/2008-MSHP for transparency strengthening and standardization of the internet pages of the Republic of Kosovo, and every provision of the legislation which contradicts with this law that deals with the right of access to public documents[34].

The right of access to Public Documents is a guaranteed right with the Constitution of the Republic of Kosovo. In the practice of democratic societies, everyone has the right to freedom of speech, and this includes the right and the freedom to request information. The right to access documents is fundamental in achieving the protection of other rights, in guaranteeing democracy, as well as the country's development. This is everyone's right, this is regulated and protected with multiple conventions of human rights. The most important of which is considered the Universal Declaration of the Human Rights, where it is stated "Everyone has the freedom of expression and thought; this right includes the freedom to express one's points of view without interventions and to demand, obtain and give information and ideas through any medium regardless of the borders". Meanwhile Article 41 of the Constitution of the Republic of Kosovo defines: "1. Every person has the right of access to public documents", "2. The documents which are kept by the public institutions and governing bodies of the state, are public, with the exception of the information which are limited by law because of privacy, trade secrets or classified security information".

Maximal transparency and privacy protection remain the fundamental principles of the public document access legislation, based on international standards. Article 4 of this law guarantees access in public documents, according to which all the information that the institutions contain, must be public, and should be accessible for everyone, and this right may be restricted only when one of these data is part of the group of data excluded by law. These exclusions are provided expressively in Article 12 according to which those documents may be rejected for the protection of:

1.1 National security, protection and international relations;

1.2 Public safety;

1.3 Prevention, investigation and persecution of criminal activities

1.4 Disciplinary investigations

1.5 Inspection, control and monitoring by the public institutions

1.6 Privacy and other legitimate private interest

1.7 Commercial and other economic interests

[33] Article 1, LAPD

[34] Article 28, LAPD

1.8 Economical, monetary and currency exchange policies

1.9 Equality of the sides in a court procedure and efficient justice administration

1.10 Environment , or

1.11 Discussions within or between public institutions relating to the reviewing of any issues.

Article 5 of this law compels all the public institutions to appoint a unit of official who are responsible for the initial receiving and reviewing of requests for access to those documents. The request has to be simple, quick, and cheap. The request for access to documents may be denied, however, the refusal should be justified[35]. Article 7 of this law says that if the institution at hand does not provide the requested public documents and has knowledge for another institution, immediately, or at the latest of five (5) working days, from the day of the requests acceptance in written from the applicant, is obliged to forward the request to the respective body or its sector, who possesses, has it available or oversees the information. In case of total or partial refusal, the applicant may, within fifteen (15) days after receiving the response from the public institution, to submit the request for reconsideration of the issue, which should be reviewed within seven (7) days from the time of the requests registration for reconsideration[36]. The institutions irresponsiveness to the request within the scheduled time is considered as e negative response and gives the applicant the right to start the procedures before the Institution of the Ombudsman, other public institutions, the competent court, in accordance with the law[37].

This law also makes it possible to have direct access to documents electronically. Furthermore, the law obliges public institutions to publish electronically through the publishing of the Official Gazette of the Republic of Kosovo all the publishable documents that they will draft, in accordance with the Constitution and the Law on the Official Gazette of the Republic of Kosovo. Every respective public institution must have an email address where that can be addressed by the citizens. To be more efficient a person is charged to refresh, secure access and the credibility of the information in the web pages of public institutions. Article 13 secures personal data protection "Until the law on personal data protection enters into force, the institutions may issue such data only based on the prior and clear consent of the person at hand." To assure full transparency every public institution is obliged to draft an annual report for the previous year, where the number of cases in which the institution has denied access to documents and the reasons of these refusals. Every public institution sends the report to the respective unit of the Government of the Republic of Kosovo/the Prime Minister's Office, the latest at the end of January of the respective year[38]. Viewing of public documents within the premises of the institution is free of charge. A fee might be asked from the applicant for a copy of the document, which is reasonable and this is regulated by the bylaw issued by the Ministry of Finance and are unique for every public institution. All of these have to be published. The public institution which contrary to this law's provisions, prevents, impedes, or restricts the exercise of rights of access to public documents, will be fined with a fee of five thousand (5000) to ten thousand (10 000) Euros.

Main body: This law doesn't provide a specific body but defines that all the public institutions are compelled to appoint a unit or official who are responsible for receiving and initial examination of the requests for access to documents. As a result, all the requests for access to documents are addressed to the unit or the officer for

[35] Article 6, LAPD

[36] Article 9, LAPD

[37] Article 10, LAPD

[38] Article 20 LAPD

communications with the citizens of the respective institution. The public institution is obliged to issue a decision to grant access in the requested document or give a written response to justify the total or partial refusal and informs the applicant of his right to file a request for re-examination within seven days from the time of the registration of the request.

Meanwhile in case of total or partial refusal, the applicant may, within fifteen (15) days, after the issue of the response from the public institution, to file a request for re-evaluation of the issue requesting from the institution to review the decision. The request for the re-evaluation of the issue should be reviewed within seven (7) days from the time of the registration of the request for the re-evaluation of the issue.

The applicant's request refusal, as well as irresponsiveness of the public institution within the described period is considered as a negative response and gives the applicant the right to begin the procedure before the Institution of the Ombudsman, second degree (depending on from which institution comes the request) as well as the Basic Court.

Shortly:

1. The ombudsman is the second instance that attends to complaints about request refusal for access to public documents.

2. If a citizen is interested in obtaining a document which does not fall under one of the exclusions provided by Article 12 of the law, it will suffice to send the request to the respective institution (via telephone, email, or mail).

3. The respective institution must respond within seven (7) days of the initial request.

4. After the institution's final decision (in case of refusal) or administrative silence, the citizen has the right to initiate the procedure for administrative conflict within 30 days from the day of the decision in the Basic Court.

THE LAW ON TELECOMMUNICATIONS (ELECTRONIC COMMUNICATIONS)

The Law no. 04/L-109 for electronic communications has entered into force on the 24th of November 2012 which repeals the Law no. 2002/7 on Telecommunications of the date 12.05.2003, as well as the Law no. 03/L-085 for amending the Law on Telecommunication of the date 13.06.2008. "This law regulates the social relationships that have to do with electronic networks and services, accompanying services and provisions, the usage of resources for electronic communications, as well as social relationships that have to do with radio-equipment, terminal equipment and electromagnetic compatibilities, assures an equal level of the rights of personal data protection, especially the right to privacy of personal data processing in the sector of electronic communications."

Every entrepreneur has the right to offer networks and public electronic communication services in the Republic of Kosovo, in accordance with the requirements of the Law, with no prior individual permission from the state institutions. The issuing of the right to use the frequencies and numeration is done in accordance with the provisions of Chapter VII and VIII of this law. Article 85 of this law assures that the electronic communication service provider should take adequate technical and organizational measures to protect the service security. The public electronic communication service providers should inform the subscribers of their rights to choose for the inclusion or exclusion of personal data in the phone books and for the kind of data the law talks about, as well as EU's legislation for protection of data and electronic communication privacy.

This law's objectives protect the interest of the users of electronic communication services to protect their personal data and privacy. The signed contract between the costumer and the entrepreneur who offer electronic

communication networks may also contain whatever information for restrictions that the electronic communication networks to be used in illegal activities or for distribution of harmful content, as well as methods of protection against the dangers of personal safety, privacy and personal data.

Main bodies: The competent bodies in the field of electronic communications are the respective ministry (Ministry of Economic Development) and the Regulatory Authority of Electronic and Postal Communications (ARKEP). Among their duties are: coordination and overseeing of the implementation of the government's national policies and strategies on electronic communications, coordination and overseeing of the development of state investments programs in the field of electronic communications, economic, financial and technical evaluations of such programs and exercises control over their implementation.

Also, the Regulative Authority of Electronic and Postal Communications (from here on RAEPC) is the regulative national authority in the field of electronic and postal communications services, which performs the duties assigned to them by this law and other legislation in force, and also implements national policies and strategies of the electronic communications sector, assigned to them by the Ministry.

At the end of each year, RAEPC presents to the parliament within the first six months of the following year, the annual report on the activities of the previous year. One of the competences of the authority is to publish every necessary information for the development of an open and competitive market. The rules of publishing such information, including its purpose, are defined by the authority, taking into consideration the legal norms that regulate the protection of confidential information, including state, business, or commercial secrets, or personal information relating to a physical person. The cooperation between the authorities within this law is very important, the State Agency for Data Protection cooperates with RAEPC in the field of personal data and privacy protection.

Meanwhile, when it comes to complaints, this possibility is foreseen only for terminal users. The latter are users who do not offer networks or public electronic communication services, available for the public. In case of disagreements between the electronic communication service provider and the user, the latter has the right to address RAEPC for the solution of the disagreement before the case goes in a court proceeding. The user also has the right to address the court directly. RAECP after the attempt to put the two sides in accordance issues the decision, which the user can appeal within 30 days in the Basic Court.

Shortly

1. The main bodies according to this law are the Ministry of Economic Development and the RAECP.
2. The role of these bodies is further from the citizen, the ministry defines the policies and strategies, while RAECP implements the national strategies of the electronic communication sector.
3. The right to complaint according to this law is provided only to the terminal user, but not to the simple one.

THE LAW ON ELECTRONIC SURVEILLANCE (ELECTRONIC COMMUNICATION SURVEILLANCE)

The Law no. 05/L-030 on electronic communications surveillance has come into force on 28th of July 2015. This law regulates the procedures and conditions on electronic communication surveillance which is done for the needs of the criminal proceedings by the state institution established by the law, this law also defines the obligations and authorization of the institution that has been established by the law to guarantee the respect of human rights and freedoms in the process of legal surveillance, as well as the control and implementation of surveillance procedures. It refers to the respect of human rights and freedoms acknowledged and guaranteed by the Constitution and by the European Convention on Human Rights and Freedoms (including here the European Court of Human Rights).

According to the law, a legal surveillance is considered only the one for which a legal order has been issued by the competent court to authorize the surveillance. Surveillances for purposes of the security of the Republic of Kosovo and its citizens are done in accordance with the Law on Kosovar Agency of Intelligence, after the issuance of the court order by a judge from the Supreme Court, in accordance with Article 4 on the basic principles of surveillance which are defined by the law. in case of a surveillance the competent court assumes responsibility to guarantee the fundamental rights and freedoms of the persons who will be monitored, and is also obliged to protect the journalists' rights to protect the source of information and not to discover the protected source of the information which is defined by the law in force with international conventions.

According to the law, specific persons may be intercepted in two occasions, for criminal proceedings needs (where the right to file a request belongs only the Prosecutor) and for national security needs. According to Article 6, a surveillance is considered legal if it goes through three stages: filing of the request for surveillance by the authorized institution, analyses, approval and submission of request for surveillance and the judge's order for surveillance, otherwise the surveillance is illegal. The authorized surveillance officer is compelled to make sure that no surveillance is done without a surveillance order issued by the relevant court in accordance with Article 11 of this law. All legal surveillances which are made possible by respecting the principle of confidentiality and the procedures provided by this law, should be done in such a way that neither the target of the surveillance, nor any other unauthorized person will be aware of this surveillance, unless it is demanded by law. Every collected information, stored or submitted in relation with a surveillance should be protected in such a way to prevent and prohibit unauthorized or illegal usage of such information, and it should be treated according to the standards of this law and other applicable laws.

Every employed or contracted person by the responsible surveillance bodies, including here the persons who treat or may be made aware, need to have a security clearance issued by the KAI in accordance with the law no. 03/L-178, this applies for everything else that is used during the surveillance. after reaching the main tasks and goals of the authorized institutions and other relevant authorities within the competencies provided by law and their scope, the data from the surveillance should be destroyed in accordance with the obligations provided by KPPK and the law on KAI.

In regards to the data protection, the law defines that access to data obtained through legal surveillance will be strictly restricted only for those individuals who are part of the investigation of the issue with which data is linked, as well as with the individuals who are useful for the technical implementation of the legal surveillance order. Only data that are directly important for the investigation and following investigations may be stored.

Main bodies: Through this law the mechanism of the Overseeing of Communication Surveillance Process Commissioner (the Commissioner) is introduced. This body is a mechanism put in place within the institutional structure of Kosovo's Judicial Council and is responsible for the annual control of the legality of communication surveillances. The Commissioner also reports to KJC and the State Prosecutor on the found violations on a yearly basis (afterwards, the Prosecutor has the right to start investigations ex officio).

The Commissioner as a body acts on a special budget within the annual operating budget of KJC. Head of this body is the commissioner who has a 4 year mandate and is appointed by the KJC. The mechanism of the Commissioner besides identifying violations also monitors the legal standards of court decisions on legal surveillance, verifies whether the authorized persons within the authorized legal surveillance institutions have exercised their mandate and whether collected information from the legal process is being deleted as provided by the law.

However, it is very important to note that the conclusions and possible violations found by the Commissioner don't have legal effects in the criminal proceedings of court decisions.

Shortly:

1. The main body according to this law is the Commissioner.

2. The data collected throughout the surveillance is restricted to individuals who are directly involved in the investigations.

3. There are only two general cases where surveillance is permitted: for legal proceedings needs and for national security needs.

Conclusions:

Considering everything that has been said above in relation to the legal framework in the category of privacy we come to the conclusion that the main input is taken from the Directives of the European Union. Meanwhile, the Criminal Code and the Criminal Procedure Code contain regulations relevant for the protection of personal data, but the pivotal legislative act in this regard it is the Law on Personal Data Protection which is dedicated to the subject entirely. However, there are considerable problems with regards to the synchronization of this law and the law on Access to Public Documents. Consequently, both these laws are about to be amended.

LEGAL FRAMEWORK – FREEDOM OF SPEECH AND MEDIA

Beside the aforementioned laws, which already in parts touch on the subjects of freedom of speech and media, in the following part we will analyze some additional laws and regulations which directly regulate this field and in particular print media.

As such, there is the Law on Protection of Sources, the Law on the Protection of the Informant, the Law against Defamation and Insult, the Law on the Independent Media Commission and the Ethical Code of the Printed Media in Kosovo.

Up to now, as far as can be seen, there hasn't been a substantial discussion about or a similar analysis of the connection of the two categories which are subject of this paper: privacy and the freedom of speech and media. In an ideal situation, freedom of speech and media should be tightly connected with respect for privacy. In Kosovo, in many cases, these two categories are not interconnected but function as mutually exclusive, and this is the problem. Often this exclusion comes as a result of improper information in regards to the legal framework in the country. Therefore, in this paper we aim to explain the legal framework of both categories and examine their interconnection through theory and practical examples.

THE LAW ON THE PROTECTION OF SOURCES

This law has entered into force on the 23rd of March 2013 and is one of the shortest laws in the country. It only has 10 articles, defining the cases where media entities have the freedom to protect their sources. The law is applicable for all journalists and other media professionals, who are engaged in collecting, preparing, and spreading information through media, which are under the jurisdiction of the Republic of Kosovo and to which cannot be denied the protection of rights and privileges guaranteed by this law, and the other laws and bylaws that regulate different issues of freedom of media.

However, the law should be read in line with the Criminal Code and not separate from it, since the Criminal Code also addresses the issue of journalism sources.

Article 5 of the Law on the Protection of Sources stipulates exemption cases where sources may be made known:

Journalists and other media professionals are compelled to discover the source of information as it is referred by Article 4 of this law, only on request by the competent court and only if: the discovery of the identity of the source of information is necessary to prevent a serious threat of physical integrity which may cause the death of one or multiple persons.

This means the law enables the media to exercise their freedom of speech while protecting their anonymous sources, except when these sources may help the court to prevent a serious threat and that cannot be secured in any other way.

However, this article is frequently invoked by law enforcement, making it very difficult for the media to protect their information and sources.

Shortly:

1. The body that has the right to demand disclosure of sources from journalists is the court.
2. The law is directed specifically at journalists, therefore regular citizen are not affected.
3. By law, disclosure of a source's identity can only be demanded under exceptional circumstances to prevent a serious threat.

THE LAW ON PROTECTION OF INFORMANTS

This law has entered into force on the 9th of September 2011 and is currently in the process of being amended. According to this law an "informant" is any person, who as a citizen or employee informs in trust the respective authority within a public institution on the local or central level as well as public or private enterprises regarding any reasonable suspicion of an illegal act.

The connection between this law and freedom of speech is substantial. The informant has the right to give information to a public institution as it is defined by law, and the media is one of them. However, the informant reserves the right to keep his/her anonymity.

This law causes several problems, starting from the term "informant", which in the Albanian language has a negative connotation, being associated with being a "spy" or "an officer of secret services" and therefore considered wrong. Beyond that, the law doesn't foresee proper mechanisms for the processing of the information nor does it adequately provide for the situation of an official wanting to inform on his superior.

The law, however, defines expressively the institutions to which an informant can be directed:

a. The higher institutions of the Republic of Kosovo (The Parliament, the President, and the Constitutional Court)

b. Judicial and persecution authorities (Judicial Council, Prosecutorial Council, the Courts, Persecutions)

c. The higher administrations of state administrations (the Government, the Prime Minister, Ministers, and deputy Ministers)

d. The central bodies of the state administration

e. The local bodies of the state administration

f. The independent bodies of the state administration

g. The independent institutions as provided by Chapter XII of the Constitution[39]

As we can see from this, political parties are not listed as potential recipients of such information.

Shortly

1. Since no competent body has been appointed to address complaints and protect citizens or officials whose identity has been revealed or against whom discriminatory measures have been taken, any party harmed in such way may direct the court.

2. Every person may inform regarding the reasonable suspicion of an illegal action.

3. There is no body where the citizen/employee may be directed to give information if their superior remains inactive after receiving the respective information.

4. For employees, legally the notification for such affairs is to be directed to the superior of the institution where they work.

THE CIVIL LAW AGAINST DEFAMATION AND INSULT

This law has entered into force on 1st of May 2008, immediately after the declaration of independence and has never been amended. The law is tightly connected with freedom of speech and the media because it defines the terms "insult" and "defamation" and therefore provides information on the legal boundaries of freedom of expression.

However, despite these definitions, the law also provides the cases of exclusion from responsibility and the limits of responsibility in cases when we have to deal with public interest. In these cases the law defines that the defendant holds responsibility of the burden of proof that they have acted righteously. The court's verdict that the defendant has acted responsibly in the publication of the statement will exclude the defendant from every responsibility, unless the defendant was aware that the statement was false or has acted with immature disregard towards its authenticity.

The law also defines that nobody will be responsible for defamation and insult for a statement for an issue of public interest, if they prove that it was reasonable in all the circumstances for a person of their position to spread the material in good will, taking into consideration the importance of freedom of speech in connection with the issues of public interest that they have taken the information in time for those kinds of issues. (Article 7)

[39] The ombudsman, the general audit, CEC, CBK, the Independent Media Commission and Independent Agencies

Shortly:

1. According to this law the main body that decides on the lawsuits for defamation and insult is the court.

2. The requests for compensation may be submitted within 3 months from the day when the person has been harmed, not exceeding the deadline of 3 years.

3. There is no defined deadline within which the court is compelled to treat the claim.

THE LAW ON THE INDEPENDENT MEDIA COMMISSION

The law on the Independent Media Commission has entered into force on the 5th of April 2012 and thus has repealed the old law on the independent media and transmission commission[40]. The law at had intends to defined the competences of the Independent Media Commission with the intent to promote the development of a healthy audiovisual media services market which serves every citizen of the Republic of Kosovo.

The IMC is an independent body which is competent for the regulation, management and overseeing of the specter of transmission frequencies. The ICM regulate the rights, obligations and responsibilities of physical and legal persons who offer audio and audiovisual medial services.

It is a duty and responsibility of the ICM to promote and hold a fair and open system for licensing and regulation of audiovisual media services and the management of the specter of frequencies and transmissions in accordance with the best international standards.

In general the law on ICM defines in detail the competences and duties of the head of the ICM and its members as well as the functions of the executive office. Further on this law expressively regulates the licensing procedure of audiovisual media servers. The law normally also defines the category of sanctions but without expressively defining anything relating to privacy or freedom of speech.

The only article that mentions and refers to freedom of speech is Article 18, paragraph 1, which expressively defines: the transmission policy defined by the ICM must be in accordance with the accepted international transmission standards and human rights, the respective EU legislation and especially with the European Commission Directive AVMS respecting thus the democracy and rule of law as well as protecting freedom of speech.

Taking into consideration the nature of the law on ICM, the latter doesn't have anything to do with privacy nor freedom of speech, but simply with the internal regulation of audiovisual media, which afterwards regulate the

Shortly:

1. Besides the Commission as a unit, another relevant body according to this law is the Basic Court.

2. The Law on the Independent Media Commission is dedicated mainly to audiovisual media.

[40] https://gzk.rks-gov.net/ActDetail.aspx?ActID=2809

THE PRINTED MEDIA CODE

The Printed Media Council of Kosovo is a self-regulating body formed for and from the printed media sector. Its mission is based on the Printed Media Code of Kosovo. PMC was formed with the help of the OSCE in Kosovo in September of 2005, while the office of the PMC began its activities in December of 2005[41].

Kosovo's Printed Media Council momentarily has 17 regular members, from the newspapers, web portals, and news agencies. KPMC has three independent members, its president, and vice president. The board consists of representatives of the newspapers, web portals, and news agencies.

The documents based on which this council functions and self-regulates are the statute and the Media Code. However, the statute only regulates the procedure of decision making within the Council and other details of the Board, while the code serves as a basis for the self-regulating system, which is considered professionally and morally mandatory for journalists, reporters, editors, owners and newspaper publishers, web portals and news agencies.

This code expressively defines that the newspapers, web portals, and news agencies will avoid interventions and researches in an individual's private life, unless such interventions or researches are necessary for the public interest.

While in regard to freedom of speech, the entire existence of the council is depended on this freedom, but it is very important to mention that one of the documents with which the council operates is also the Law against Defamation and Insult, which means that the council operates with the maxim that the right of one person stretches up to where the right of another begins.

The council is the second body where the citizen may be directed of there is a problem with an article in the printed media. The first one is always the publishing house.

Shortly:

1. Besides the Council itself, a relevant body with respect to issues governed by this law is the Basic Court.
2. The Basic Court serves as a second degree body, after the complaint that a citizen may file to the Council.
3. Citizens can file complaints to the Council relating to an article, then the Board of the Council decides on the issue.
4. Regardless of the Council's decision, the unsatisfied party has the right to send the case to court afterwards.

Conclusions:

In regards to the legal framework in the category of freedom of speech and media, the legal content is rather simple and to the point. As a result, it is very easy for the relevant stakeholders to know their rights and obligations. It is characteristic for this field that beside the legal framework the aspect of self-regulation plays an important role. Here we deal with the printed media council which regulates from within and not expressively through legislation. The main difference here lies in the fact that the institutions that are regulated through legislation (e.g. IMC) are accountable to the Parliament, while the self-regulating institutions respond only to their members.

[41] http://presscouncil-ks.org

THE STAKEHOLDERS' APPROACH

Everyone in this country is affected by and, to some extent, interested in issues of privacy and freedom of speech. However, because they can offer a particularly accurate and clear perception of the relevant issues, the interconnection of privacy and freedom of speech and the approach of relevant stakeholders in this case, we have collected opinions of several key functionaries, who deal with privacy and freedom of speech on a daily basis.

As such, one of the interviewees is Arbana Xharra, a journalist from Zëri.

According to her, in the Law on Personal Data Protection the articles on the filing system and classification of personal data leave a lot of space for misapplication. They have been taken as templates of foreign laws but there isn't a clear definition of the procedures of extermination and anonymization of personal data. She says that this assessment is confirmed by several prosecutors and judges, stating that the wording of these articles leaves room for misapplication of personal data.

Regarding the events on privacy protection, she says that as a newspaper they started to intensively deal with this issue when they were informed that the law on telecommunication surveillances was being prepared to pass in the parliament. Initially it was demanded that surveillance be allowed to be conducted at any time and without the signature of a prosecutor. And the only operator that has objected to this law in writing was the private operator IPKO, who considered that the client's privacy is violated and that this may gravely harm the company. There have also been other reactions and objections by the media, leading to the amendment of the law and a judicial decision being made prerequisite to conduct surveillance.

When it comes to Kosovo's capacities to implement the laws in force, Ms. Xharra says that there are enough capacities, but there is no political will. She adds that in the key sectors we have implications fro the stakeholders and their easy access in the sectors that make up the network spread in central and local levels make it impossible to proper and independent implementation of the legislation in force.

Asked about the awareness of the legislation that protects the freedom of speech and media and their interconnection, she says that the legislation that protects the freedom of speech and media is very much connected to privacy. She also states the concern that privacy violation and the law implementing capacities are in an unprogressive stage. She adds that we're dealing with a stagnation which silently has been admitted by both parties; the media and judicial bodies. Also the misinterpretation of freedom of speech and privacy protection has enabled abuse of media space and vice versa while not receiving consistent legal treatment for concrete cases. So the increase of media irresponsibility, and impunity from the courts and persecutions have resulted in the continuous denigration and abuse of freedom of speech.

The next interviewee is the director of the Independent Electronic Media Association in Kosovo, Ardita Zejnullahu. According to her the protection of privacy in Kosovo, is not regulated with a specific law, but the majority of laws in the Republic of Kosovo have articles where protection of privacy is addressed. Starting from Constitution, the Criminal Code, Criminal Proceedings Code, the Minor's Right Code, the Law on Access to Public Documents, Law on Family, the Law on War Victims, the Law on Personal Data Protection etc. She also says that there is a number of specialized institutions within which protection of privacy is regulated, such as the Independent Media Commission with the regulations for Minors Protection and Ethic Code for Emitters, as well as the Kosovo's Printed Media Council with the regulation for Printed Media Ethics Code.

She states that she can't remember a specific event with a considerable impact, this issues has been mostly treated in discussion tables, as an integral part of some other topic. She adds that in the media sphere this issue has been actualized and discussed the most in the year 2011, during the time of the election of the President, the Dell/Pacolli case, SMSes published in the media, the discussion on privacy vs public interest.

Zejnullahu raises the concern that Kosovo does not have sufficient capacities to implement the legislation in force even in this segment, starting from the leading institutions to the courts. She suggests that even in the absence of a specific law that regulates tis field, we necessarily need to depend and strengthen the legislation in force, always following the standards of the Council of Europe and the European Court of Human Rights in this area.

She comments that freedom of speech in Kosovo is guaranteed with the Constitution, and there also are a series of laws that protect and promote the freedom of speech and media in general. She explains that the law on the Independent Media Commission and the law for the Radio and television of Kosovo are to key laws that regulate the field of media in general. The Law on the Protection of Sources, the Law on Access to Public Documents, the Law on the Author's Rights, the Law against Defamation and Insult, the Criminal Proceedings Code, the Law on Digitalization of Transmissions etc.

She lays the problem that even though the legal framework exists, this fact does not guarantee proper implementation of these laws. The freedom of speech and freedom of media, are often jeopardized by the weak implementation of the laws, un-functional judicial system, politicized public institutions, etc.

She supports her stance that there should be a connection between privacy protection and freedom of speech and media, for the fact that these two segments complete each other and in many places are regulated within a single law. She suggests that we need to depend on the best practices for privacy protection, always taking into consideration the public interest for specific issues and the balance between these two categories.

Besa Luci from Kosovo 2.0 as an initiative that has changed the media trajectory in Kosovo, also considers that in general people have little knowledge in relation with the legal framework that regulates privacy in Kosovo. She mentions the Law on Personal data Protection as the main law that regulates this issue.

Among others, Luci mentions that she can't remember a specific event that relates to privacy in Kosovo. In relation to this she says that In general Kosovo does not have a meaningful discussion in relation with this issue and neither does it have sufficient social awareness on the legislation in force.

Luci, like the other interviewees, considers that there are inconsistencies between the laws in force and the institutions often use one law to avoid implementing another. This mostly happens with the law for personal data protection and the law on access to public documents.

Imer Mushkolaj as the head of the board of Kosovo's Printed Media Council recalls two events that were organized in relation with privacy and its protection in Kosovo, and those are "Privacy in the digital era" and another activity organized last year which distributed leaflets. Both these organized from the State Agency on Personal Data Protection.

Mr. Mushkolaj mentions the fact that regardless of the sufficient laws, Kosovo, however, does not have sufficient capacities for the implementation of the legislation in force.

Nonetheless, Arianit Dobroshi from FLOSSK has been one of the most vocal in the issues of privacy and especially for electronic communications surveillance[42].

He considers that the Criminal Code and the Criminal Procedure Code offer sufficient material for appropriate surveillance, while the law on electronic communication surveillance is only made to store data and to continue KIA possibilities of surveillance.

Conclusions: From the interviews conducted with relevant stakeholders, three common recommendations stand out:

1. We should work on increasing the level of knowledge with respect to the legal framework related to freedom of speech and particularly privacy.

2. Capacities for the implementation of this legislation should be built.

3. Privacy protection and freedom of speech and media should be seen as two complementary fields that complement each other and not be considered exclusive.

[42] https://arianit2.wordpress.com/2014/05/01/why-kosovos-new-draft-law-on-interception-is-still-wrong/

POTENTIAL FOR IMPLEMENTATION

The crucial question is: "Can these laws find practical applications?" In jurisprudence there are the two Latin terms de lege lata and de lege feranda. De lege lata means under the law in force, while de lege ferenda means of the law that is to come in force. In our reality the question should not be "can these laws find practical application?" but "are they in reality finding practical application?" Because it is clear that they can be applied anytime, but whether they are in fact being applied is a different issue altogether.

The Agency for Personal Data Protection has a crucial role here. The statute of the Agency is regulated with Article 29 of the law on Personal Data Protection, according to which it is defined as an "independent agency, to which it is assigned to oversee and implement of the regulations on data protection". In regards to the organizational regulations, the agency is led by the Council which acts independently and consists of the Chief State Supervisor which heads and represents the agency, as well as Chief Supervisor [Article 30; 35 LPDP]. Its activities include advising of the public and private bodies as well as promoting the right to data protection [Article 29, LPDP). On the other side, besides advising, the agency must submit an annual report to the parliament which should be published at the latest on the 31st of March of the following year [Article 44, LPDP].

Secondly, the agency can also with self-initiative start inspections and controls which should be in accordance with the rules pm data protection [Article 46, LPDP]. These processes are done by the Supervisor which are limited to act within the competencies given to them by the law. The Supervisors besides being obliged to be identified, something that can be done by the ID cards issued by the Kosovo Government [Article 47, LPDP], they must also respect the confidentiality of the subjects throughout the entire process, as well as after its conclusion [Article 50, LPDP].

At the same time, besides cooperating with the state bodies, the agency is connected with international bodies as well as those of the European Union, in issues that have importance on personal data protection. One of the most important initiatives of the European Union on this issue is in the Directive 95/46/EC.

➔ **Violation of privacy vs freedom of speech – 3 failures of the combination**

In the first and major part of this paper, the theoretical part of privacy and freedom of speech was examined. However, to supplement this theoretical part with a more practical illustration, at this point three cases will be elaborated. While they are certainly not the only ones and probably not the most impactful, they were chosen nevertheless because of their sensitive nature.

HAMDI SOPA'S CASE

Hamdi Sopa's case is one of the most sensitive cases, with extensive media coverage utterly failing to respect the privacy of the family and at the same time severely violating the principle of presumption of innocence. This is a striking example of a failure of the concordance of privacy and freedom of speech. In this case that has happened in 2013, thousands of articles by various media (with no exceptions) in Kosovo reported endlessly how the late Hamdi Sopa was pushed from the balcony by his two daughters and his wife. Some media go as far as to presuppose the motives to why the daughters and the wife wanted their father, and husband respectively, dead.

Despite the fact that later new evidence came to light (with the case still ongoing to this date), showing that the case most likely didn't have anything to do with homicide but seems to have in fact been a suicide, still the damage has been done. The last article written in relation to this case dates from August 2013, despite the fact that there have been new developments. Media did not hesitate to violate the privacy of the family, to presuppose the result, to

violate the presumption of innocence for months, but has only written 1 or 3 articles in regards to the fact that the daughters have been released from custody after almost 200 days in prison.

Hamdi Sopa's case is a major indicator of the abuse of freedom of speech and of the non-functioning of the system which should prevent such events from occurring. Today, 3 years later, looking back we can note how the media has destroyed the lives of an entire family.

THE FIRST LIFE SENTENCE

The second case has to do with the first sentence to life in prison that has been rendered in the republic of Kosovo. For the first time since the new Code on Criminal Procedure that foresees a sentence of life in prison entered into force, one such sentence was given in Kosovo on the 11th of September 2015. The sentence was given for aggravated murder. In this case a minor was also involved, whose name went to the media in full after the communique issued by the Basic Court in Prishtinë, completely bypassing the Code on the Rights of Minors.

To avoid harm and because of the exceeded publicity or labels, the right of the child to privacy must be respected in all the stages. In principle, no information on the minor perpetrator is published[43].

As could be expected, after the publication of the statement, almost all the media published the full name of the minor, thus violating her privacy rights.

This case is of paramount importance because it shows the other side of the coin and it shows that not only the media can abuse the freedom of speech, but the very state institutions sometimes violate basic legal principles. This case is also another illustration of the failure of the concordance of privacy and freedom of speech in Kosovo.

ALBULENA HAXHIU'S CASE

The third case has to do with the latest scandal of the publication of the medical records of one of the MPs of Vetevendosje in the parliament, Albulena Haxhiu. In the course of this year's turmoil over parliamentary blockade and tear gas incidents inside the parliament, with continuous failure to clarify how the teargas was snuck in, Albulena Haxhiu ended up in the hospital with several physical injuries.

One of the mediums in Kosovo obtained an x-ray picture of the MP which it published without hesitation and even interpreted it, stating that the tear gas had been found inside the MP's genitals.

This news (if it can be called such) was adopted by the majority of the media in the country and despite the fact that it was entirely inaccurate, violated privacy rights of the MP and severely harmed her reputation, it continues to spread quickly.

This is one of the major difficulties of living in the digital era, no one has sufficient control over the dissemination of information the moment it appears online. It is very easy to publish something, but it's extremely difficult to stop the impact of the publication and its dissemination.

This is probably the most blatant case of violation of privacy by the media with complete disregard for the most basic of professional ethics.

[43] http://www.kosovopolice.com/repository/docs/2010-193-alb.pdf

As a conclusion, these are three of many cases that have happened and continue to happen in our country concerning violations of privacy and imbalance of privacy and freedom of speech and media. This should not be taken as an indicative that there is no proper journalism or that the media always misinterprets freedom of speech. However, these cases illustrate that despite the fact that in Kosovo there are numerous professional media, significant uncertainties persist regarding the concept of privacy, the laws regulating it and the scope and boundaries of freedom of speech. This paper tries to shed some light on these issues, however theoretical it may be. However, even if a perfect legal framework can be provided, it will be largely futile if the system implementing it remains dysfunctional.

RECOMMENDATIONS

From the observations explained above it can be concluded that in Kosovo privacy and freedom of speech and media still function as exclusive and isolated fields. However, to find a functioning balance and to improve both privacy and effective reporting based on freedom of speech, several steps have to be taken by all the stakeholders. Improvements and change needs to come from the legislative, the executive, the judicial system and the media.

- The law on Personal Data Protection needs to be amended to reflect the updated standards and regulations of the new applicable secondary EU Law.
- The State Agency of Personal Data Protection needs to continue to take steps towards raising awareness of the general public and the institutions alike, not only with respect to privacy rights, but to the agency itself.
- Pressure should be put on the parliament to approve new officials for the agency as a necessary condition to raise its efficiency.
- The application of the law on access to public documents remains unsatisfactory. The Government of Kosovo needs to review the organization of public administration on the local level, especially in delegating competencies and appointing of directors.
- Simplification and reorganization: laws, relevant regulations as well as internal acts are very disorganized and complex, making it difficult for businesses to understand their obligations and for individuals to know their rights. A fundamental restructuring is needed.
- The Civil Law on Defamation and Insult needs to be updated and a period of time within which the cases should be concluded should be defined.
- The Law on the Protection of the Informant needs to be amended in such way that it guarantees anonymity for the informant and to create safe mechanisms for the submission of information as well as precise dispositions on the procedure when the anonymity of informants is being violated.
- The scope of work of media/web portals should be regulated by law in the context of treatment of the integrity of sensitive personal data during their activities.
- Endangering of privacy from the online world: mobile phones, tablets or similar gadgets not only offer entertainment but fulfil numerous other functions. Mobile apps enable users to read books, listen to music, take photos or videos, but also to monitor their heart beats, turn on the engine from distance in a dark night, to find a nearby restaurant and make online payments. With their plethora of functions mobile phones harbor substantial threats to the privacy of their carriers. A crucial step in the protection of privacy is the awareness of the data subjects, which needs to be raised through information campaigns.

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