



Note  
on the  
draft Law on Protection from Defamation  
and Insult of Kosovo

London  
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## 1. INTRODUCTION

This Note analyses the draft Law on Protection from Defamation and Insult of Kosovo (the draft Law). We examine the draft Law against international standards on the right to freedom of expression, particularly as developed under the *International Covenant on Civil and Political Rights* (ICCPR)<sup>1</sup> and the *European Convention on Human Rights* (ECHR)<sup>2</sup>. Under Chapter 3 of UNMIK Regulation 2001/9, both instruments are binding on the Kosovo authorities and are directly applicable in Kosovo.<sup>3</sup>

We broadly welcome the draft Law, which has clearly been written with the intention to strike a fair balance between the right to freedom of expression and the protection of reputation. We particularly welcome the intention of draft Law to maximise freedom of expression, as stated in Article 2, and the express requirement, also in Article 2, that the Law must be interpreted in accordance with the European Convention on Human Rights and the case-law of the European Court of Human Rights.

However, we do have serious concerns with regard to two aspects that are at the heart of the law: the very vague and subjective definition of ‘insult’, and the definition of ‘defamation’ as including publication of a true statement that harms a person’s reputation. We are also concerned that the draft Law fails to specify whether the burden of proving the falsity of an allegation lies with the claimant or with the defendant, and that the draft Law proposes a cause of action to sue for defamation of a deceased person. We briefly elaborate on these concerns in the following paragraphs and outline our recommendations.<sup>4</sup>

## 2. ANALYSIS OF THE DRAFT LAW

### 2.1. Definition of ‘insult’ and ‘defamation’

The definition of the terms of ‘defamation’ and ‘insult’ is at the heart of law, determining what forms of expression may result in liability under civil law. Article 3 of the draft Law provides the following definitions:

- a) defamation shall mean the statement, publication or dissemination of an injurious untrue fact pertaining to another person or a true fact used with a deceptive intent that harms the reputation of this person;
- b) insult shall mean the behavior or statement, publication or dissemination by which another person is humiliated.

Under Article 4 of the draft Law, the heir of a deceased person may bring an action for defamation if the impugned statement also damages the reputation of the heir. Under Article 5, public authorities may not sue for defamation or insult, and public officials may only sue in

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<sup>1</sup> UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

<sup>2</sup> Adopted 4 November 1950, in force 3 September 1953.

<sup>3</sup> Constitutional Framework for Provisional Self-Government, UNMIK/REG/2001/9, 15 May 2001. Available online at: <http://www.unmikonline.org/regulations/2001/reg09-01.htm>.

<sup>4</sup> We have not had the opportunity to carry out a full and exhaustive analysis of the draft Law. This Note states our main concerns in summary form.

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their personal capacity; while an insult or defamatory statements regarding a public official or on a matter of public concern is actionable only if the author knew that the statement was false or acted with reckless disregard for the truth.

#### Analysis

We welcome the heightened protection granted to statements on matters of public concern or that regard public officials. This guarantee, together with the statement in Article 1(b) protecting public debate, is a positive feature that should be retained in future drafts. However, we have serious concerns with part of the definition of defamation, with the inclusion of ‘insult’ as actionable under civil law, and with the fact that an heir may sue in the memory of a deceased.

The second part of the definition of ‘defamation’ provides that publication of a true fact is actionable if it has been issued with ‘deceptive intent’ and results in harming the reputation of a person. This conflicts with established human rights jurisprudence and is internally inconsistent with Articles 4(1) and 6 of the draft Law. International human rights courts including the Human Rights Committee and the European Court of Human Rights have held that ‘truth’ should be a defence to a charge of defamation.<sup>5</sup> Also, under Articles 4(1) and 6 of the draft Law, ‘truth’ is a defence. It follows that publication of a true fact cannot be declared defamatory under Article 3.<sup>6</sup> We are also concerned about inclusion of ‘deceptive intent’ as an operative term. This is a vague concept which might be understood to apply in a range of circumstances; for example, when a journalist publish a true story revealing corruption with the evident intent of ending the political career of the corrupt person. Preventing such a publication would clearly not be in the public interest. We therefore urge that this part of the definition is removed.

Our second concern relates to the proposal that ‘insults’ should be rendered actionable, defined as any statement that humiliates another person. First, this definition is very vague and subjective; whether a person is ‘humiliated’ will depend to a large extent on his or her own sensitivity. This cannot serve as a basis for liability under civil law. We emphasise the European Court of Human Rights has repeatedly held that tolerance and broadmindedness are at the heart of democracy, and that the right to freedom of expression protects not just those forms of speech that are broadly considered acceptable, but exactly those statements that others may find shocking, offensive or unpalatable.<sup>7</sup> Second, the definition of ‘insult’ may well capture true statements. For example, a revelation of corruption is likely to be highly humiliating to the person involved, but it is clearly in the public interest that stories regarding such matters are published. Third, an insult is often couched in the form of an opinion. For example, in *Oberschlick v. Austria (no. 2)*, the applicant had been convicted by domestic courts for referring to a politician as an ‘idiot’; the European Court of Human Rights held that this conviction violated his right to freedom of expression because he was expressing an

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<sup>5</sup> E.g. *Rafael Marques de Morais v. Angola*, 29 March 2005, Communication No. 1128/2002, para. 6.8; *Castells v. Spain*, 26 March 1992, Application No. 11798/85, para. 48.

<sup>6</sup> Publication of a true fact may, however, constitute a breach of confidence or otherwise impinge on the right to privacy (see, for example, the judgment of European Court of Human Rights in *Krone Verlag GmbH & Co. KG v. Austria*, 26 February 2002, Application No. 34315/96). However, it is important to understand that this is a different issue altogether from ‘defamation’.

<sup>7</sup> E.g. *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

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opinion.<sup>8</sup> This is reflected to an extent in Article 8 of the draft Law, which confers absolute protection to statements of opinion. For all these reasons, we urge that a simple ‘insult’ should not be actionable under civil law and the overall terms of the draft Law should be revised to reflect this.

Our third concern is that an heir may sue for defamation of a deceased person, if the statement also harms the reputation of the heir. We do not believe this is appropriate. The harm from an unwarranted attack on someone’s reputation is direct and personal in nature. Unlike property, it is not an interest that can be inherited; any interest surviving relatives may have in the reputation of a deceased person is fundamentally different from that of a living person in their own reputation. Furthermore, a right to sue in defamation for the reputation of deceased persons could easily be abused and might prevent free and open debate about historical events. For these reasons, we also recommend that the right of an heir to continue an action that was started by the deceased should be removed from the draft Law.

### **Recommendations:**

- The publication of a true fact should not be actionable under defamation law.
- ‘Insults’ should not be actionable in law and all references to ‘insult’ should be removed from the draft Law.
- Heirs should not be allowed to sue in the memory of a deceased person.

## **2.2. Defences and exemptions from liability**

Chapter IV of the draft Law envisages a number of defences to defamation, including ‘truth’<sup>9</sup> and ‘reasonable publication’,<sup>10</sup> and provides a number of circumstances under which any statement is exempt from liability.<sup>11</sup> Article 6(2) specifically provides that where the impugned statement concerns a matter of public concern, truth “shall be presumed ... unless and until the plaintiff proves they are false”. Article 10 provides a ‘qualified privilege’ for a number of statements, such as fair and accurate reports of legal public meetings or fair and accurate reports of official proceedings or documents, unless “made with malice in the sense of ill-will or spite”. Article 11, finally, protects innocent disseminators of information, such as Internet Service Providers.

### Analysis

We welcome the clear statement of the defences of ‘truth’ and ‘reasonable publication’, as well as the exemption from liability in the circumstances stated in Article 9. We particularly welcome the reversal of the burden of proof, as stated in Article 6(2). These are all positive and progressive features that should be retained in future drafts of the Law.

<sup>8</sup> 25 June 1997, Application No. 20834/92.

<sup>9</sup> Article 6.

<sup>10</sup> Article 7, which defines ‘reasonable publication’ as “a statement on a matter of public concern if they establish that it was reasonable in all the circumstances for a person in their position to have disseminated the material in good faith, taking into account the importance of freedom of expression with respect to matters of public concern to receive timely information relating to such matters.”

<sup>11</sup> Article 9 protects statements such as those made in parliament, court, before a public defender or ordered to be published by an international organisation.

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We are concerned, however, by qualified privilege for ‘fair and accurate reports’ of various matters unless the claimant can show ill-will or spite. We simply fail to understand why a report that is fair and accurate should be actionable, even if it has been made with malice. For example, a journalist may report on the proceedings of a far-right political party with the intent to expose racist policies. Such a report may well be interpreted as having been made with malice, yet as long as it is fair and accurate, it should not be actionable.

### Recommendations:

- Fair and accurate reports on any matter should not be actionable, even when made with ill will or spite.

### 2.3. Right of reply

Under Article 13, any person who claims that ‘inaccurate’ facts have been published regarding them may exercise the right of reply. The reply must be published unless it is disproportionately long, is not addressed to the mass media outlet within a ‘reasonably short time’, is not limited to the facts challenged, constitutes a punishable offence or is contrary to the interests of a third party (for example, because it is defamatory) or if the individual concerned cannot show a legitimate interest.

#### Analysis

The right of reply or refutation is a highly disputed area of media law. Some see it as a low-cost, low-threshold alternative to expensive lawsuits for defamation for individuals whose rights have been harmed by the publication of incorrect factual statements about them; others regard it as an impermissible interference with editorial independence.

Because of its intrusive nature, in the United States a mandatory right to reply with regard to the print media has been struck down on the grounds that it is an unconstitutional interference with the First Amendment right to free speech. In *Miami Herald Publishing Co. v Tornillo*, the Supreme Court held:

[A mandatory right of reply] fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.<sup>12</sup>

On the other hand, the *American Convention on Human Rights*, covering the entire continent, requires States to introduce a right of reply<sup>13</sup> and in Europe, the right of reply is the subject of a Recommendation of the Committee of Ministers of the Council of Europe,<sup>14</sup> while many

<sup>12</sup> 418 U.S. 241 (1974), p. 258.

<sup>13</sup> Note **Error! Bookmark not defined.**, Article 14. See also the Advisory Opinion of the Inter American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

<sup>14</sup> Recommendation R(2004) 16 of the Committee of Ministers to member states on the right of reply in the new media environment, adopted 15 December 2004.

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countries guarantee some form of a right of reply in law.<sup>15</sup> However, a legally enforceable right of reply constitutes a restriction on freedom of expression as it interferes with editorial decision-making.<sup>16</sup> As such, it must meet the strict three-part test set out in Article 10(2) of the European Convention on Human Rights and a number of minimum requirements should apply.

A right of reply is quite different from a right of correction or refutation, which is normally limited to pointing out erroneous information published earlier, with an obligation on the publication itself to correct the mistaken material. A right of reply, on the other hand, requires the publication to grant space to an individual whose rights have been harmed by a publication based on erroneous facts, to ‘set the record straight’. As such, it is a more intrusive interference with editorial freedom than the right to correction.

ARTICLE 19, together with other advocates of media freedom, suggests that a right of reply should be voluntary rather than prescribed by law. In either case, certain conditions should apply, namely:<sup>17</sup>

- (a) A reply should only be in response to statements which are false or misleading and which breach a legal right of the claimant; it should not be permitted to be used to comment on opinions that the reader/viewer doesn’t like or that simply present the reader/viewer in a negative light.
- (b) A reply should not be available where a correction or refutation suffices.
- (c) A reply should receive similar, but not necessarily identical prominence to the original article.
- (d) The media should not be required to carry a reply unless it is proportionate in length to the original article/broadcast.
- (e) The media should not be required to carry a reply which is abusive or illegal.
- (f) A reply should not be used to introduce new issues or to comment on correct facts.

Set against these standards, we have some concerns about the proposed right to reply/retraction scheme in the draft Law. First, the procedures are statutory. This is heavy-handed from the media’s point of view, but in the case of the Civil Code, which requires a court order to be obtained, also presents a high-threshold procedure for a claimant. For both reasons, we recommend that a self-regulatory right of reply or correction scheme be explored.

Second, the right of reply is available in response to any statement that is inaccurate, not just those that also breach a legal right of the complainant. As a result, the right of a reply will be available to respond to trivial errors. We do not believe that this is proportionate. This is linked to our third concern, which is that a reply should not be available when a simple correction, published by the newspaper itself, would suffice.

### **Recommendations:**

- The right to reply should ideally be provided through a self-regulatory regime.

<sup>15</sup> This is the case, for example, in France, Germany, Norway, Spain and Austria.

<sup>16</sup> See *Ediciones Tiempo S.A. v. Spain*, 12 July 1989, Application No. 13010/87 (European Commission of Human Rights).

<sup>17</sup> See also the conditions elaborated in Resolution (74)26, note 14.

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- If a self-regulatory regime is not immediately possible, the right of reply should be available only in response to statements which are false or misleading and which breach a legal right of the claimant.
- The right of reply should not be available when a simple correction suffices.

## **Draft Law on Protection from Defamation and Insult**

Assembly of Kosovo,

Based on UNMIK Regulation Nr. 2001/9 - 15th of May 2001 - of the Constitutional Framework of the Provisional Government of Kosovo, articles 9.1.26(a), 9.3.2, 5.4.a, and 5.7.

In order to promote a tolerant and democratic society in Kosovo in accordance with international standards of human rights and freedom of expression as specified by article 19 and 29 of the Universal Declaration of Human Rights and Article 6, 8, 9 and 10 the European Convention on Human Rights and Fundamental Freedoms and its Protocols for the prevention of the language of Defamation and Insult.

Adopts:

### **Law on Protection from Defamation and Insult**

#### **Chapter I**

#### **General Provisions**

##### **Article 1 Objective of the law**

1. The objective of this law is to regulate civil liability for defamation and insult while ensuring:
  - a) the right to freedom of expression, as guaranteed by UNMIK Regulation 2001/9 dated 15 May 2001 for the Constitutional Framework on Provisional Self-Government in Kosovo and the European Convention for the Protection of Human Rights and Fundamental Freedoms;
  - b) that the rules relating to defamation and insult do not place unreasonable limits on freedom of expression and, in particular, the publication and discussion of matters of public interest and importance;
  - c) effective and appropriate compensation for persons whose reputation was harmed by the publication of defamatory material.
  - d) the essential role of media in the democratic process as public watchdogs and transmitters of information to the public.

##### **Article 2**

##### **Interpretation of the law**

This Law shall be interpreted so as to ensure that the application of its provisions maximizes the principle of freedom of expression<sup>18</sup> in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, as elaborated in the case law of the European Court of Human Rights.

##### **Article 3**

##### **Definitions**

The terms used in this Law have the following meaning:

- a) defamation shall mean the statement, publication or dissemination of an injurious untrue fact pertaining to another person or a true fact used with a deceptive intent that harms the reputation of this person<sup>19</sup>;
- b) insult shall mean the behavior or statement, publication or dissemination by which another person is humiliated;
- c) child shall mean a person up to the age of 18 years;

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<sup>18</sup> BiH Law

<sup>19</sup> Hungarian and Federation of Bosnia and Herzegovina Law



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- d) person shall mean a physical person or legal entity;
- e) author shall mean the person making the expression of information in points (a) and (b) of this article;
- f) publication shall mean disseminating an expression of information to one or more persons, whether in written or spoken form, whether in print or broadcast media or by other means;
- g) publisher shall mean the person who makes a publication;
- h) public authority shall mean a legal person exercising public authority;
- i) public official shall mean any person who exercises public authorization for a public authority;
- j) matter of public concern shall mean all matters of legitimate public interest including but not limited to all branches of government, politics, public health and safety, law enforcement, administration of justice, consumer and social interest, the environment, economic matters, the exercise of power, science, art and culture, and matters relating to public figures and public officials.<sup>20</sup>

## Chapter II

### Measures for protection from Defamation and Insult

#### Article 4 Action against Defamation and Insult

1. A person has the right to demand to stop the defamation and to demand that it will not be repeated in the future, the refutation of defamatory information concerning his/her person and compensation for moral and material damage caused by the defamation, through a court proceeding, unless the author proves the accuracy of the information.<sup>21</sup>
2. A person has the right to demand through a court proceeding, the termination of insults and the refutation of insulting information concerning his/her person as well as the promise that the insult will not be repeated in the future<sup>22</sup>.
3. If defamation is made through a mass medium, it shall be refuted in the same mass medium. A document containing defamatory information shall be replaced<sup>23</sup>. The refutation shall be published within eight (8) days of receipt of the relevant demand in the case of daily newspapers, in the next issue of a periodical or a telegraph agency and within eight (8) days in the same manner or at the same time of day in case of broadcast information<sup>24</sup>.
4. Where the defamation or insult identifies a child, the parent or legal guardian may bring a request under this Law.
5. Where the defamation identifies a deceased person, the first-degree heir of that person may bring a request under this Law, under the condition that the defamation caused harm to the reputation of the heir<sup>25</sup>.

## Chapter III

### Responsibility

#### Article 5 Responsibility for Defamation and Insult

1. A person is responsible for defamation or insult if he/she willfully made or disseminated the expression of defamation or insult.
2. For defamation or insult made through media outlets the following may be held jointly or individually responsible: author, editor or publisher or someone who otherwise exercised control over its contents.
3. Where the defamation or insult relates to a matter of public concern or the injured person is or was a public official or is a candidate for public office, there may only be responsibility for defamation or insult if the author knew that the information was false or acted in reckless disregard of its veracity.

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<sup>20</sup> Georgian Law

<sup>21</sup> Estonian Law

<sup>22</sup> Greek Law

<sup>23</sup> Estonian and Latvian Laws

<sup>24</sup> Hungarian Law

<sup>25</sup> BiH Law

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4. Public authorities are barred from filing a request for compensation of harm for defamation or insult. Public officials may file a request for compensation of harm for defamation or insult privately and exclusively in their personal capacity<sup>26</sup>.

#### **Chapter IV**

#### **Exemptions from liability and its limits**

##### **Article 6**

##### **Proof of truth**

1. In all actions for defamation, a finding that an impugned statement of facts is substantially true shall absolve the defendant of any liability.
2. In defamation actions involving statements on matters of public concern, any statements or imputations of fact alleged to be defamatory shall be presumed to be true unless and until the plaintiff proves they are false.

##### **Article 7**

##### **Reasonable publication**

No one shall be liable for defamation for a statement on a matter of public concern if they establish that it was reasonable in all the circumstances for a person in their position to have disseminated the material in good faith, taking into account the importance of freedom of expression with respect to matters of public concern to receive timely information relating to such matters.

##### **Article 8**

##### **Opinions and Information**

1. No one shall be liable for the expression of an opinion on the condition that the expressed opinion is identified as an opinion.
2. No one shall be liable for true expressed information unless used with a deceptive intent.

##### **Article 9**

##### **Absolute Privilege**

The following statements shall not be liable under this law:

- a. Any statement made in the course of proceeding at legislative bodies including by elected members both in open debate and in committees, and by witnesses called upon to give evidence to legislative committees;
- b. Any statement made in the course of proceedings at local authorities by members of those authorities;
- c. Any statement made in the course of any stage of judicial proceedings-including interlocutory and pre-trial processes – by anyone directly involved in that proceeding –including judges, parties, witnesses, counsel and members of the jury-unless it can be shown that the statement in question is totally unrelated to that judicial proceeding;
- d. Any statement made before a public defender;
- e. Any document ordered to be published by a legislative body;
- f. Any notice or matter issued for the information of the public by an international organization or international conference;
- g. Any notice or matter issued for the information of the public by any authority performing governmental or statutory functions, including the police;
- h. A fair and accurate report of any material described in paragraphs (a) –(g) of this Article; and

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<sup>26</sup> BiH Law

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- i. A fair and accurate report of any material which is contained in an official document where the status of that document justifies the dissemination of the material, such as official documentation issued by a public inquiry or foreign court or legislature.

#### **Article 10**

##### **Qualified Privilege**

No one shall be liable for defamation for the following types of statements, unless the statement can be shown to have been made with malice in the sense of ill-will or spite:

- (a) a statement made in the performance of a legal, moral or social duty or in their interest;
- (b) a fair and accurate report of proceedings at any legal public meeting in Kosovo;
- (c) a fair and accurate report of official proceedings or documents of a public authority; or
- (d) a fair and accurate of any finding or decision of an association with formal powers of adjudication and/or control with the purpose of promoting art, science, religion, learning, trade, business, industry, any profession, sports, pastimes, or charitable objects.

#### **Article 11**

##### **Scope of Liability**

1. No one shall be liable for defamation for a statement of which he or she was not the author, editor, or publisher and where he or she did not know and had no reason to believe that what he or she did contributed to the dissemination of the defamatory statement.
2. Persons whose sole function in relation to a particular statement is limited to providing technical access to Internet, to transporting data across the Internet or to storing all or part of a web site should not be liable for defamation in relation to that statement unless in the circumstances they can be said to have adopted the relevant statement.
3. a person should not be deemed to have adopted a statement for purposes of paragraph 2 of this Article simply because someone has alleged that the statement is defamatory.
4. paragraph 2 of this Article should not apply in the context of a defamation action, to any court order which covers the person in question and requires it to take action to prevent further publication of a statement.
5. for media which can be said to publish on a continuous basis, such as web sites on the internet, publication at one location, in one form shall be considered to be a single publication.

## **Chapter V**

### **Obligation to Mitigate Harm and Right of Reply**

#### **Article 12**

##### **Obligation to Mitigate Harm**

Prior to filing a complaint under this law, an allegedly injured person shall undertake all reasonable measures to mitigate any harm caused by the expression. In particular the complainant shall request a correction of that expression from the person who allegedly caused the harm.<sup>27</sup> The complainant shall as well make a claim to any appropriate regulatory or self-regulatory body including a Press Council responsible for the mass medium in which the expression was made.

#### **Article 13**

##### **Right of reply**

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<sup>27</sup> BiH Law

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1. Any person, irrespective of nationality or residence, mentioned in a newspaper, a periodical, a radio and television broadcast, or in any other medium of a periodical nature, regarding whom or which facts have been made accessible to the public which the person claims to be inaccurate, may exercise the right of reply in order to correct the facts concerning that person.
2. At the request of the person concerned, the medium in question shall be obliged to make public the reply which the person concerned has submitted.
3. By way of exception, the publication of the reply may be refused by the medium in the following cases:
  - a) if the request for publication of the reply is not addressed to the medium within a reasonably short time;
  - b) if the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate;
  - c) if the reply is not limited to a correction of the facts challenged;
  - d) if it constitutes a punishable offence;
  - e) if it is considered contrary to legally protected interests of a third party;
  - f) if the individual concerned cannot show the existence of a legitimate interest.
4. Publication of the reply must be without undue delay and must be given, if there is a possibility, the same prominence as was given to the information containing the facts claimed to be inaccurate.
5. Interpretation of the provisions in this Article for right of reply shall be in accordance with recommendations adopted by the Council of Europe.

## Chapter VI

### Compensation for defamation and insult

#### Article 14

##### Compensation for defamation

1. Compensation shall be proportional to the harm caused and shall be awarded solely with the purpose of redressing the harm done to the reputation of the person or to compensate for any demonstrable actual financial loss or material harm. In making a determination of compensation, the court is obliged to have regard for all of the circumstances of the case, particularly any measures undertaken by the author to mitigate the harm.
2. Compensation for actual financial loss or material harm caused by a defamatory statement shall be awarded by the court only where that loss is specifically established.
3. Compensation for non-material harm, or harm which cannot be quantified in monetary terms, caused by a defamatory statement shall be subject to the fixed ceiling of one hundred minimal per diems, which ceiling shall be applied only in the most serious cases.
4. Compensation which goes beyond compensating for harm to reputation for a defamatory statement shall be a highly exceptional measure, which may be applied only where the plaintiff had proven that the defendant acted with knowledge of the falsity of the statement and with the specific intention of causing harm to the plaintiff.
5. Courts shall, in assessing the quantum of compensation pursuant to points 2 and 3 of this Article, have due regard to any voluntary or pecuniary remedies, as well as the potential chilling effect of the award on freedom of expression.
6. The author may in mitigation of damages prove that he/she made or offered to make an apology or correction for any defamation before the commencement of action for damages or as soon afterwards as he/she had an opportunity. Compliance with remedial orders or instructions by a Press Council or relevant regulatory body shall be considered as a mitigating circumstance in determining any non-material compensation.

#### Article 15

##### Compensation for insult

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1. Compensation for insult may only be awarded in case the author does not meet an obligation to refute the information or repeats insulting information following a court order prohibiting such repetition.
2. The author may, in mitigation of damages, prove that he/she made or offered to make an apology for any insult before the commencement of action for damages or as soon afterwards as he/she had an opportunity.

#### Article 16

##### Injunctions

1. Preliminary court orders to prohibit disseminating or further disseminating of information may only be issued where publication has already occurred and the allegedly injured person can make probable with virtual certainty that the information caused harm to his or her reputation and that the allegedly injured person will suffer irreparable harm as a result of further dissemination.
2. Permanent court orders to prohibit the dissemination or further dissemination may only be applied to the specific expression found to be defamatory and to the specific author or mass medium making or disseminating the expression<sup>28</sup>.

#### Chapter VII

##### Limitation Periods, Protection of sources and Competent Court

#### Article 17

##### Limitation Periods

1. The limitation period for filing a request for compensation under this Law is three (3) months from the day that the allegedly injured person knew or should have known of the expression and the identity of the author, and shall in any event not exceed one (1) year from the day that the expression was made public.
2. Should the allegedly injured person die after the commencement but before the termination of the proceedings, his or her first-degree heir may continue the proceedings on behalf of the deceased if the heir files a request to the court, within three (3) months from the day of the death of the allegedly injured person<sup>29</sup>.

#### Article 18

##### Protection of sources

1. No defendant in a defamation action under this law shall be required to reveal a confidential source of information.
2. No adverse inference shall be drawn from the fact that a defendant in a defamation action under this law refuses to reveal a confidential source of information.
3. The court may require the defendant in a defamation action under this law to disclose information relevant to determining the truth of published material but without identifying the source.

#### Article 19

##### Competent Court

The Municipal Court shall be competent for claims for compensation of harm caused by defamation and insult in accordance with this Law.

#### Chapter VIII

##### Transitional and Final Provisions

#### Article 20

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<sup>28</sup> BiH and Georgian Law

<sup>29</sup> BiH Law

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A procedure that relates to the matter regulated by this Law that has been commenced and not disposed in a legally valid manner upon the date of the entry into force of this Law shall be continued in accordance with the law that was in force at the time when the proceeding was commenced.

### **Article 21**

Entry Into Force

This Law enters into force after the adoption by the Kosovo Assembly and promulgation by Special Representative of the Secretary-General.