



Media Responsibility for Illegal Comments



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ABOUT KLI

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1. Foreword

Comments on news articles published by the media on social networks have become a significant source of hate speech, insults, public shaming, threats, and calls for violence. In Kosovar public discourse, this issue is frequently highlighted and discussed. However, no measures have been taken so far to address or prevent this phenomenon.

It is generally understood that commenters are responsible for the content they post. However, in cases where comments containing hate speech, insults, or public shaming appear on media-published news, are the media also accountable? According to European Court of Human Rights jurisprudence, the answer is clear: the media hold responsibility for monitoring and managing illegal comments posted on the news they publish on social networks.

ECtHR jurisprudence highlights that, while commenters are not exempt from responsibility, publishers also bear accountability for illegal comments posted under certain conditions, even if the original content is lawful. Media outlets are required to take prompt and adequate measures to remove illegal comments from their publications. These European Court of Human Rights standards, which are binding within Kosovo's constitutional framework, form the focus of this paper.

2. Legal regulation of the media in Kosovo

In Kosovo, media freedom is a right protected by the Constitution of the Republic of Kosovo. Article 42.1 states, “The freedom and pluralism of the media is guaranteed.” Additionally, Article 40.1 of the Constitution ensures freedom of expression, affirming that “Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment”.

Media accountability in Kosovo is structured in two ways, based on the type of media outlet. Audio and audiovisual media providers, such as television and radio stations, are regulated by the Independent Media Commission, an independent constitutional¹, institution that operates under a specific legal framework.²

For media outlets not regulated by the Independent Media Commission, Kosovo has established a self-regulatory body known as the Independent Media Council of Kosovo. This Council, created by and for the print media sector, serves as a self-regulatory authority.³

With the rise of social media, all media outlets have expanded to distribute their content on these platforms. However, media content shared on social networks falls outside any formal regulatory oversight, as neither the Independent Media Commission nor the Independent Print Media Council of Kosovo has authority over social media content. This reflects a gap in regulation and control mechanisms, though judicial protections do still apply to media content on social networks.

3. Comments on news published on social networks

Insults and hate speech have almost become normalized on social media, posing a significant challenge for media in Kosovo given the vast number of internet users.⁴ The rise in social media use is likely a key factor in the growth of this phenomenon. Consequently, disinformation, misinformation, sexist and racist hate speech, insults, foreign influence, and other harmful trends have spread, shaping public opinion, fueling political divides, and misleading citizens.⁵ Comments containing hate speech continue to circulate on social networks⁶ which many citizens now consider a primary information source.

¹ Constitution of the Republic of Kosovo, article 141.

² Law no. 04/1-44 on the Independent Media Commission.

³ The official website of the Council of Print Media of Kosovo, (See: https://presscouncil-ks.org/?page_id=101).

⁴ Kosovo 2.0, “Comments that leave a mark”, 27.12.2023. (See: <https://kosovotwopointzero.com/komentet-qe-lene-vrage/>), (Last accessed 07.09.2024).

⁵ Democracy for Development, “Fighting hate speech, sexist and racist language”, page 4; Pristina, December 2022 (See: [D4D Raporti-vjetor SHQ 02.pdf \(d4d-ks.org\)](https://d4d-ks.org/D4D_Raporti-vjetor_SHQ_02.pdf)), (Last accessed 07.09.2024).

⁶ Telegrafi, “Hate speech targeting women on social networks has increased, with the law prescribing penalties of up to 10 years in prison for such offenses”, 2024, (See: <https://telegrafi.com/shtohet-gjuha-e-urrejtjes-ndaj-grave-ne-rrjete-sociale-ligji-parashikon-denime-deri-10-vite-burg/>), (Last accessed 07.09.2024).

Comments containing hate speech⁷ offensive remarks, and public shaming have become common on social networks. Frequently, these comments are unrelated to the topic being discussed, yet openly employ offensive, defamatory, and shaming language against individuals involved in a given report. Even private citizens without any public role are often targeted by hate speech.⁸

In this context, social media comments, particularly on articles published by the media, have become a primary source of hate speech, defamation, insults, and public shaming.

4. Media obligations regarding submitted comments

Commenters are legally liable for their posts, regardless of where they appear. According to Civil Law No. 02/L-65 Against Defamation and Insult [Article 3 (c)]. “publication shall mean disseminating an expression, whether in written or spoken form, whether in print or broadcast media or by other means, which is heard or read by at least one third person”. Therefore, individuals who are subjects of defamation or insults may invoke this law to seek compensation.

On the other hand, it is important to note that in some cases, comment content may also entail criminal liability. Comments that incite discord or intolerance constitute a criminal offense.⁹

Until now, responsibility for such comments has applied only to those who post them, rather than to the publisher of the original content where these comments appear. Although this issue has been raised periodically, there has yet to be an examination of the accountability of media outlets that publish lawful content but receive illegal comments from others containing hate speech, insults, or defamation.

However, ECtHR jurisprudence establishes that in these cases, under certain conditions, responsibility for illegal comments also extends to the publishers of the original posts, even if the content itself is lawful. These European Court of Human Rights standards, which are binding within Kosovo’s constitutional framework¹⁰, will be explored further in this paper.

5. The context of ECtHR rulings

In 2014, the European Court of Human Rights (ECHR) accepted its first case regarding third-party comments posted on certain social platforms. In the [Delfi AS vs Estonia](#) case, the Court examined, for the first time, media liability for comments made by others.¹¹

⁷ Dukagjini, “Hate speech against women in social networks, punishable by the Criminal Code”, 28 April 2024, (See: <https://www.dukagjini.com/gjuha-e-urrejtjes-ndaj-grave-ne-rrjete-sociale-e-denueshme-me-kod-penal/>), (Last accessed 07.09.2024).

⁸ Kosovo 2.0, “Comments that leave a mark”, 27.12.2023. (See: <https://kosovotwopointzero.com/komentet-qe-lene-vrage/>), (Last accessed 07.09.2024).

⁹ Criminal Code 06/1-074 of the Republic of Kosovo, article 141.

¹⁰ Constitution of the Republic of Kosovo, article 53.

¹¹ Judgment of the European Court of Human Rights in the case of Delfi AS v. Estonia, “CASE OF DELFI AS v. ESTONIA (Application no. 64569/09)”, Strasbourg, 16 June 2015, (See:

The Delfi platform allowed open commenting by anyone. The specific case reviewed by the ECtHR involved a 2006 publication where numerous unregistered users posted illegal comments (see Chapter 6 of this analysis for the definition of "illegal comments"). In this case, the Estonian court held Delfi liable for third-party comments, finding that the platform had not responded adequately to the illegal content. The penalty imposed was deemed lawful, proportionate, and necessary in a democratic society. Thus, in this ruling, the ECtHR concluded that holding media accountable for illegal third-party comments does not violate Article 10 of the European Convention on Human Rights (ECHR), thereby establishing a media obligation to monitor such comments.¹²

The Delfi case occurred in a less technologically advanced context. While the foundational principles from that case still apply today, the arguments presented do not fully align with our current technological landscape. In light of recent technological developments, the ECJ issued a ruling in September 2021 in the case of [Sanchez vs France](#), which addressed the responsibility of content producers for comments made by third parties. This case involved a parliamentary candidate who posted on his Facebook profile, where he received a flood of racist comments directed at a community, specifically Muslims. The court concluded that the publisher of the post is responsible for the illegal comments, not because the content of the post was unlawful, but because he failed to adequately monitor the illegal comments on his post.¹³

Therefore, based on the jurisprudence of the ECtHR, a standard has been established that every publisher on social networks is responsible for monitoring third-party comments on their platforms.

6. Illegal comments

The ECtHR underscored that fostering free political debate is a crucial aspect of a democratic society. It places great importance on freedom of expression within the realm of political discourse, asserting that significant justification is required to impose restrictions on political speech. Imposing broad limitations on political discussions in specific instances would undoubtedly undermine the overall respect for freedom of expression. Nonetheless, the ECJ noted that the freedom of political debate is not absolute.¹⁴

¹² Ibid, paragraph 11-20 and 162.

¹³ The judgment of the European Court of Human Rights in the case of Sanchez v. France, "CASE OF SANCHEZ v. FRANCE (Application no. 45581/15)", paragraphs 2-24 and 104, Strasbourg, 2 September 2021, (See:

¹⁴ Ibid, par.84.

Not every comment qualifies as an "illegal comment," even though a thorough legal analysis or court proceeding might determine it as such. The ECtHR clarified that "illegal comments" are those that are "clearly" illegal and do not necessitate legal or linguistic analysis. Therefore, it is possible to identify, on a case-by-case basis, which comments are evidently illegal, violate the rights of others, or constitute hate speech or incitement to violence.¹⁵

Thus, based on the definition provided by the ECtHR, the media in our case are not obligated to assess the authenticity and legality of every comment. Their responsibility encompasses only those comments that are clearly illegal without requiring a legal or linguistic analysis.

To illustrate this situation, we can examine some of the comments published on the "Betimi per Drejtesi" portal, which are deemed illegal: Comments such as: "I will f... your wife", "...Serbian bird", "Go away little boy", "Poor you, for your stupidity", "Did that idiot get on the stage!" etc. In these cases, the comments are clearly illegal without requiring any legal or linguistic analysis. Comments containing content such as: "Oh I can't bear to watch this show", "Since you are all philosophers and clever. Why haven't you fixed everything because you've had enough time to do it", "So, according to you sir, northern Mitrovica must be part of Serbia".

7. The media's responsibility for illegal comments

When discussing media responsibility for comments posted on published news, it is essential to differentiate between the news content itself and the comments made. Regarding the published news, media outlets have a direct responsibility to ensure that it is balanced and meets journalistic standards. However, this aspect of responsibility is not the focus of this analysis.

In addition to their obligations concerning the content of published news, according to ECtHR jurisprudence, media are also accountable for illegal comments (see Chapter 6) appearing in their publications. Therefore, even if the published news is accurate, balanced, and adheres to journalistic criteria, it does not relieve the media of their responsibility for illegal comments.¹⁶

When the media are held accountable for comments posted in their publications, it is important to note that the responsibility of the authors of those illegal comments, namely the commentators, is not excluded. However, the ECtHR pointed out that due to the challenges in

¹⁵ Judgement of the European Court of Human Rights in the case *Delfi AS v. Estonia*, "CASE OF DELFI AS v. ESTONIA (Application no. 64569/09)", paragraph 117, Strasbourg, 16 June 2015, (See: <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2264569/09%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%5D,%22itemid%22:%5B%22001-155105%22%5D%7D>), (Last accessed 07.09.2024).

¹⁶ Judgments of the European Court for Human Rights, "CASE OF DELFI AS v. ESTONIA (Application no. 64569/09)", paragraph 144, Strasbourg, 16 June 2015, (See: <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2264569/09%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%5D,%22itemid%22:%5B%22001-155105%22%5D%7D>), (Last accessed 07.09.2024); "*CASE OF SANCHEZ v. FRANCE (Application no. 45581/15)*", paragraph 90 Strasbourg, September 2 2021, (See: <https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2245581/15%22%5D,%22documentcollectionid%22:%5B%22CHAMBER%22%5D,%22itemid%22:%5B%22001-211777%22%5D%7D>), (Last accessed 07.09.2024).

identifying comment authors and the absence of clear mechanisms for doing so, it is justified to hold the media responsible for not adequately monitoring the comments on their platforms.

Regarding comments posted on news articles published by the media, it is evident that monitoring illegal comments can pose significant practical challenges for media outlets. Given the vast amount of published news and the numerous comments generated, it can be concluded that the media may struggle to implement mechanisms for the prompt removal of comments.

However, in addressing this issue, the ECtHR emphasized that individuals affected by hate speech have less capacity to monitor the internet consistently compared to the media's ability to swiftly manage and remove illegal comments¹⁷. According to the ECtHR, it is easier for the media to oversee the comments on their published news than for individuals to track all platforms for illegal comments made against them.

Thus, the ECtHR stated that the state does not violate Article 10 [Freedom of Expression] of the European Convention on Human Rights by holding the media accountable for illegal comments if the media fail to take prompt action to delete comments that are clearly illegal, even without a notification from the alleged victim or third parties.¹⁸

Thus, according to ECtHR jurisprudence, media outlets are required to establish effective mechanisms for monitoring illegal comments. These mechanisms should be capable of identifying illegal comments associated with their published news. They must also allow for the prompt removal of illegal comments, even in the absence of notification from an alleged victim. In the *Delfi* case, the ECtHR noted that the media did not entirely disregard this issue. However, the desired outcomes were not achieved, as illegal comments were not removed swiftly. Consequently, the media was not absolved of responsibility in this instance.¹⁹

Regarding the mechanisms to be implemented, there are no specific measures prescribed for media outlets to identify and remove illegal comments promptly. It is up to the media to determine the appropriate methods for achieving this objective. Such measures may involve hiring personnel to monitor comments, utilizing artificial intelligence technology, or a combination of both approaches. The ultimate goal remains clear: to ensure that illegal comments associated with media publications are deleted without delay.

As for the timeframe between the publication of a comment and its removal, no specific deadline is established. The ECtHR uses the term "without delay," which suggests two important aspects concerning the timeframe: the media must act urgently, and the timeframe is contingent upon the specific circumstances of each situation. For instance, if a media outlet has assigned staff to monitor illegal comments, a response should ideally occur within the same

¹⁷ Judgment of the European Court of Human Rights in the case *Delfi AS v. Estonia*, "CASE OF DELFI AS v. ESTONIA (Application no. 64569/09)", paragraph 158, Strasbourg, 16 June 2015, (See: <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2264569/09%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%5D,%22itemid%22:%5B%22001-155105%22%5D%7D>), (Last accessed 07.09.2024).

¹⁸ *Ibid*, par. 159.

¹⁹ *Ibid*, par.156.

day, provided there are no reports or comments exceeding normal levels. In cases where comments are posted late at night, a response by the following day would be considered reasonable. A delay of several days may be justified if there is an overwhelming number of comments and reports significantly higher than usual. Therefore, it is essential to note that the timeframe for deleting comments is dependent on the specific circumstances of each situation, within which the media must act with urgency.

8. Media responsibility in the Kosovar legal system

Regarding the legal responsibility of media for illegal comments on news published on social platforms, there has yet to be a court case in Kosovo testing this type of accountability. According to ECtHR jurisprudence, this responsibility constitutes an interference with freedom of expression, a right protected under Article 10 of the European Convention on Human Rights. Therefore, to apply such responsibility, conditions allowing for this interference must be met. The primary condition is that this type of intervention be established by law. Beyond this legal basis, the intervention must also pursue a legitimate aim and be necessary in a democratic society.²⁰

The primary law in Kosovo addressing liability for defamation and insult is Civil Law No. 02/L-65 Against Defamation and Insult. This law defines what constitutes "publication" of defamatory or offensive content. According to this law, "publication shall mean disseminating an expression, whether in written or spoken form, whether in print or broadcast media or by other means, which is heard or read by at least one third person". Additionally, this law outlines provisions regulating the mechanisms and procedures for compensating individuals who are subjects of defamation or insult.

Meanwhile, Law No. 04/L-077 on Obligational Relationships outlines various provisions related to the infliction of harm.²¹ This law includes numerous clauses on cases where one person causes harm to another, covering types of liabilities, exceptions, and related matters.

None of the aforementioned laws specifically defines the media's responsibility for comments posted on their social media publications. Similarly, in the ECtHR's *Delfi* case, there was no precise legal basis detailing media responsibility for third-party comments on their platforms. However, the ECtHR deemed the application of the Civil Code and Law on Obligational

²⁰ Judgment of the European Court for Human Rights, "CASE OF DELFI AS v. ESTONIA (Application no. 64569/09)", paragraphs 118-119, Strasbourg, 16 June 2015, (See: <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2264569/09%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%5D,%22itemid%22:%5B%22001-155105%22%5D%7D>), (Last accessed 07.09.2024); "CASE OF SANCHEZ v. FRANCE (Application no. 45581/15)", paragraphs 68-75, Strasbourg, 2 September 2021, (See: <https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2245581/15%22%5D,%22documentcollectionid%22:%5B%22CHAMBER%22%5D,%22itemid%22:%5B%22001-211777%22%5D%7D>), (Last accessed 07.09.2024).

²¹ Law NO. 04/L-077 on Obligational Relationships, Chapter II.

Relationships appropriate, concluding that, in this instance, holding the media accountable for comments on their publications constituted a lawful intervention.²²

In Kosovo, the Constitution stipulates that "[human rights and fundamental freedoms guaranteed by this Constitution are interpreted in harmony with the judicial decisions of the European Court of Human Rights]." Therefore, existing legal provisions in Kosovo can also be interpreted in line with ECtHR jurisprudence to establish responsibility for comments posted on media publications on social networks.

However, this has not yet been tested in practice. A practical case is needed to determine whether the Courts in Kosovo, applying ECtHR interpretations, will consider the current legal basis sufficient to assign responsibility to media outlets for third-party comments on their platforms.

The Government and Assembly of the Republic of Kosovo should establish a clear legal framework to define, in alignment with ECtHR jurisprudence, media responsibility for illegal comments posted on their social media publications. This law should be carefully drafted to address media accountability in this area while preserving media independence and avoiding excessive restrictions that could disproportionately interfere with freedom of expression. The drafting process must be inclusive, applying ECtHR standards appropriately to Kosovo's media market context.

Furthermore, the Kosovo Law Institute (KLI) recommends that media outlets take proactive measures to prevent illegal comments. Even in the absence of court rulings or specific legislation, media organizations should not allow their platforms to become sources of hate speech, insults, or incitement. The media should lead by example, acting in line with ECtHR standards voluntarily, regardless of any court decisions or pending legislation.

KLI also suggests that the Kosovo Press Council should address this issue by including media responsibility for illegal comments within its regulatory framework.

9. Operational approach of "Betimi për Drejtësi"

Editors of "Betimi për Drejtësi" after reviewing ECtHR standards concerning illegal comments, has evaluated how to apply these standards within its operations. Considering various approaches, "Betimi per Drejtesi" has determined that, at this stage, it is not currently feasible to implement mechanisms that can promptly and effectively monitor comments on its social media publications to ensure that illegal comments are removed without delay.

²² Judgment of the European Court of Human Rights in the case *Delfi AS v. Estonia*, "CASE OF DELFI AS v. ESTONIA (Application no. 64569/09)", paragraphs 127-128, Strasbourg, 16 June 2015, (See: <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2264569/09%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%5D,%22itemid%22:%5B%22001-155105%22%5D%7D>), (Last accessed 07.09.2024).

In light of the surge in illegal comments, "Betimi per Drejtesi" has decided to temporarily disable the option to post comments on its news shared via social networks. This decision is made with the understanding that limiting comments should be a last resort, as it impacts citizens' freedom to express their opinions. However, given the current inability to establish effective monitoring mechanisms promptly, "Betimi per Drejtesi" has chosen to restrict commenting on its social media publications at this time.

10. Recommendations

1. Media outlets in Kosovo should implement effective measures to monitor and manage illegal comments in their social media publications.
2. The Independent Council of Print Media of Kosovo should, within its regulatory framework and authority, establish clear responsibilities for media regarding illegal comments on news they publish.
3. The Government and Assembly should initiate the legislative process to draft a law defining media responsibility for illegal comments on their social media platforms.
4. This law should be crafted with careful consideration through a comprehensive process that preserves media independence, avoids excessive restrictions, and aligns with ECtHR standards within Kosovo's media landscape.