

## Figures of criminal offences that are committed through mass media

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### Abstract

The rapid development of information technology created endless possibilities for the information and communication between people in the world. This made possible that within few seconds information could be elaborated. In the meantime that freedom of speech and opinion are protected with all international conventions and laws, this freedom and together with it also the possibilities and actual standards endanger to put in service of the persons which in one form or another, damage the general interest. The study seeks to explain cases, forms and methods of how the presence in media can be misused. Based in the Criminal Code of Republic of Kosovo there are the range of criminal offenses which can be committed through mass communication in general and sometimes also through more serious media, written or electronic. The major number of them has to do with such acts that help terrorism, encourage race and religious hatred and in different forms, the use of children for pornography, risking in this manner the greater values of humanism anywhere in the world. The fact of abolition of special dispositions for criminal offences that are committed through media does not mean that the danger from committing these acts does not exist. It is based in the fact that criminal responsibility lays directly on the crime committer and not on the director or publisher of certain media, in the meantime the last ones should be careful not to be in the service of crime instigators by giving space to publication.

**Keywords:** criminal offenses, Criminal Code, mass media, law, terrorism.

### Introduction

Special dispositions for penal acts committed through media have been in force in Kosovo.<sup>1</sup> These dispositions were transferred also to the New Criminal Code re-drafted after the announcement of Independence. The changes violated the freedom press and because of the systematic reaction of media, the legislation of the country approved the law for amending the law (no.04/L-82) by which the above-mentioned dispositions were abolished. Nevertheless it should not be thought that persons that work in media will be amnestied for any illegal action that is connected to the media. Furthermore knowing that the number of media today is high, the direct or indirect possibilities to misuse them are also high. In the meantime the use of social networks and different forums is creating also the negative effect in society, because the internet today is the main source of recruitment for terrorism, collection of funds used for terrorism, blackmail, intimidation and other criminal acts foreseen in the criminal code of Republic of Kosovo.

<sup>1</sup> Articles 28-33, Provisional Criminal Code of Kosovo, 2004.

## The offenses foreseen in the Criminal Code of Kosovo which can also be done through media

Some of the criminal acts that can occur also through media are:

**Facilitating the commission of terrorism, article 138.** This criminal act can be carried out in the form of call to contribute to fundraising for humanitarian action and in fact these funds were used for terrorism. The offense is committed with direct intent, with a single action or with numerous and successive action.

**Recruiting for terrorism, article 139** - It can be done by publishing texts that directly or indirectly appeal for a war against an ethnicity or other faith through the transmission in electronic form.<sup>2</sup> Such wars today are in Iraq and Syria while the call for jihad is the most dangerous propaganda of modern times.<sup>3</sup>

**Incitement to Commit Terrorist Acts, Article 141-** Forms of action through media or internet are: publishing or broadcasting of articles and different videos that proclaim "heroic actions" for eventual committers, honor, respect, glory,<sup>4</sup> obligation towards a faith or ideology, sacred duty<sup>5</sup> etc. The motive of this act is the will to destroy in large extent and cause many victims. Committed intentionally. Acting through media or internet, stimulate, create or strengthen obedience for the committing of terrorist acts.

**Inciting hatred, discord and national, ethnic, religious, racial intolerance, article 147.** This act is often committed through media, whether printed or electronic and especially in social networks. It is committed with direct intent, while motive is hatred, of a community belonging to another nation, a different religion or a different race. The hatred goes till the wish for death of the others, for their disappearance. Because of racial, religious or ethnical reasons, many wars took place during history. Actually what worries the whole world is war in the name of Islam, a misuse of religion and faith that leads to extreme radicalism.

**Incitement for aggressive war or armed conflict, Article 162.** It can be done through the publication or publishing of materials which directly or indirectly call for conflict. Such call can be done offering different examples, making comparisons or also mentioning reasons why this should be done. The time of committing the offense is the moment when through the script or recording was committed the act, which has elements of a criminal act of intimidation.

**Violation of equal status of citizens and residents of the Republic of Kosovo, article 193.** This offense has to do with the violation of rights guaranteed by the Constitution of the Republic of Kosovo. It can be carried out through media, denying, hampering or preventing to the other the simple right of free expression, especially when the same person was attacked precisely by the same media.

**Photographing and other unauthorized recordings, Article 203.** Journalists but also

<sup>2</sup> <http://www.indeksonline.net/?Page=2&NewsID=194429>.

<sup>3</sup> <http://albanian.com/kosova/2727/albanian-from-kosova-that-fights-in-Syria-makes-call-for-jihad-182090.html>, <http://www.journaldita.al/in-confiscated-cd-call-for-jihad-and-bin-laden>.

<sup>4</sup> <http://politiko.net/road-trip-for-new-jihadists/>.

<sup>5</sup> <http://www.telegrafi.com/news/jihadists-of-isil-message-in-albanian-who-dies-in-ramazan-blessed-4-19648.html>

other citizens often make photos even in places where it is forbidden, like the areas of private property and anywhere else where other privacy expectations are reasonable. They break this rule often in order to detect any corruption or sexual affair, especially when linked with the position of a senior state official. This article is based on claims that reveal negative phenomena in society, using highly sophisticated tools to penetrate even in the most intimate human life (Sahiti & Zhitija & Hasani, 2014, 562). Offense is considered as committed in the moment of recording or photographing regardless of whether it is done or not. The illegality was made in the case of recording or photographing of another person during his passive stay. Another form of this criminal act is done by issuing, distributing or transferring the material to a third party. This criminal offense is committed only with direct intent.

**Offering of pornographic material to persons under the age of 16, Article 237.** Provision of these materials now can be done in multiple forms and various brochures, such as: CD, DVD, or USB. When we talk about the Internet, children today have the option of downloading by themselves these materials. Due to the impossibility of controlling the websites on the Internet, it is impossible even to address criminal liability.

**The abuse of children in pornography, Article 238.** Under this disposition of the Criminal Code of Kosovo, all those who produce, distribute, promote or offer child pornography, will be punished. The offense becomes even more serious when such recording materials or even the production of live performances is offered to children. In both cases, the object of protection is the child. Even the mere possession of such materials constitutes a criminal offense, and criminal attempt is also punishable. Paragraph 5 of this article explains the meaning of the expression "live show", which specifies that the sanction has to do with the tools of information and communication technology. However, the performance of such works through the media is difficult to do, while the actions which make up the image of this offense are obvious. The offense can be done by misusing the name or the advantages that give the work in the media. The advancement of information technology creates tremendous opportunities for such actions which seriously damage the integrity and sexual education of children.

**Violation of copyright, Article 296.** This is an offence, that has to do with the public presentation of copyright of the author, proclamation in whatever means of work protected by copyrights, with partially or whole presentation of somebody else, of the protected work with the copyright of the author. All these actions are carried out with appearance in public because the media are those that have to do with the publishing of works; this can be the criminal act that is often committed by the media.

**Blackmail, Article 341.** The offense of blackmail is usually carried out with a threat that will reveal something that will damage the honor or its authority or the family against which the blackmail is done. The threat can be linked also with a criminal offense which the person committed before the blackmail was implemented, but that remained unrevealed. In exchange of not undertaking of such action, the perpetrator of blackmailing requests money or some other material good. The blackmail can be done with direct threat or through third parties.

These are some of the offenses that are carried out mainly through the internet, but

also can be done through the media. Considering the figure of the offense and the ability to meet this figure, it appears that through media can be performed more offenses related to terrorism, intimidation, incitement to hatred, discord and national, religious and racial intolerance.

### **Legal qualifications and penal responsibility for actual offences that are committed through media**

Living in a time when terrorism is a big problem and danger, we evaluate that it should not be neglected neither the possibility that comes from the influence of media in this direction. This can be linked especially with the penal act of incitement on national hatred, racial, ethnic and religious, by indirect influence in inducement and incentive for terroristic acts and call for other different forms of resistance. Freedom of the press affords to the public one of the best means of discovering and forming an opinion on the ideas and attitudes of political leader's (Lingers v. Austria, 1986, 13), therefore as an individual, media and politics are responsible for sanctioned actions by law.

Penalties for these offenses are set out in each section separately and depending on the degree of responsibility, impose also the sanction against the defendants for such offenses.

For many journalists sometimes it was not clear the fact that they can be criminally responsible for their writings. No doubt that the approval of civil law for defamation and insult, gave them more opportunities to exercise the profession and in addition the right to freedom of expression. However, this does not mean that journalists and the media generally, are inviolable. Despite their skills in the profession, they may be to some extent, secular to the interpretation of legal norms. Thus known journalist Tim Judah, who had testified in the case of J. Xh. (damaged party), had admitted by himself before the court of law, that he is not able to define where the criminal law ends and where civil law begins.

Freedom of expression contains obligations and responsibilities, therefore its exercise may be subject to those formalities, conditions, limitations or penalties overseen by law and that are necessary in one democratic society, in the interest of national security, territorial integrity or public safety, for protecting the order and prevention of crimes, for the protection of health and morals, for the protection of dignity or the rights of the others, to prevent spreading of confidential data or to guarantee authority and impartiality of the judiciary.<sup>6</sup>

It is the responsibility of media to give messages and it is the responsibility of society and politicians to be faced with this information (Brand, 2011, 6). Legal qualification of the offense will be made by the prosecutor, based on the investigations, but this may change later. To come to the decision, the judge cannot use evidence other than those accepted by the court and presented at the hearing.

Indictment filed against the defendant has more elements than one criminal act. Therefore in criminal case S.L.,R.X.,A.A.,R.H.,Q.M., the defendants were accused of penal act of violation of equal status of Kosovo citizens in violation of article 158, of

<sup>6</sup> Article 10 par.,2 of European Convention on Human Rights.

Provisional Criminal Code of Kosovo (now article 193) and criminal offence of intimidation in violation of article 161 of the same code (now article 185). However Basic Court took a verdict for release and found the defendants innocent. The Court held that the offense of which were accused the defendants, did not constitute a criminal offense. Such case should be examined in civil proceedings based on civil law against defamation and insult.

The media should respect the code of ethics, laws and court decisions, especially when dealing with what can be published and what not.

Insouciance of court includes a wide range of different actions. In theory, this is called "scandalizing of judiciary" implying criticism of judicial authorities abusively (Delmas- Marty & Spencer, 2005, 693).

There would be no sense, that the above mentioned offenses which are foreseen in the Criminal Code currently in force can be sanctioned in a selective manner. This would mean the legalization of any criminal action in the media in the name of freedom of expression and the penalty for the same actions, the people who would undertake the following actions in the classical form.

### Conclusions

From the above analysis, it seems that a considerable number of criminal acts except in other circumstances and possibilities can be committed through media. I consider that this does not have to do with special dispositions which were abolished with law no. 04/L-82, respectively articles 37, 38 and 39 of the Criminal Code. Abolition of these dispositions has to do more with cascade responsibility and with the protection of freedom of speech of persons that deal with journalism but also ordinary citizens, until the committed acts do not in fact constitute the a criminal offence. In the contrary responsibility lays directly at the person that commits those actions and that means that we have to do with its individualism.

The internet has become part of the life of any modern family. All that can be done is parental care. For an increased caution, I consider that country television programs offer programs and scenes that adversely affect morale, education and health of children of this age.

On behalf of informing the public and the right to protest, the media often unconsciously, do such things which make up the image of a criminal offense calling for resistance, whereas in cases of offenses related to terrorism it should be responsible among other actions also for the space given to people who can do so, if this could be prevented.

Finally, actions hat comprise any of the figures of the aforementioned offenses and other offenses envisaged in the Criminal Code of Kosovo, are punishable when committed through the media. This has nothing to do with freedom of expression and therefore any moment should not be considered as such.

Therefore every person that undertakes such actions which constitute the image of above mentioned criminal act and not only, should be punished based to the law, even when if this was done through media or also through social networking which despite the fact that does not have the status of licensed media, they have an

extraordinary role in the quick spreading of information.

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