



**ETHICAL CHALLENGES IN TERMS OF  
RESPECTING THE PRESUMPTION OF  
INNOCENCE IN THE MEDIA REPORTING  
ON CRIME, INVESTIGATION AND COURT  
PROCEEDINGS**

**Do media adjudicate before the court?**

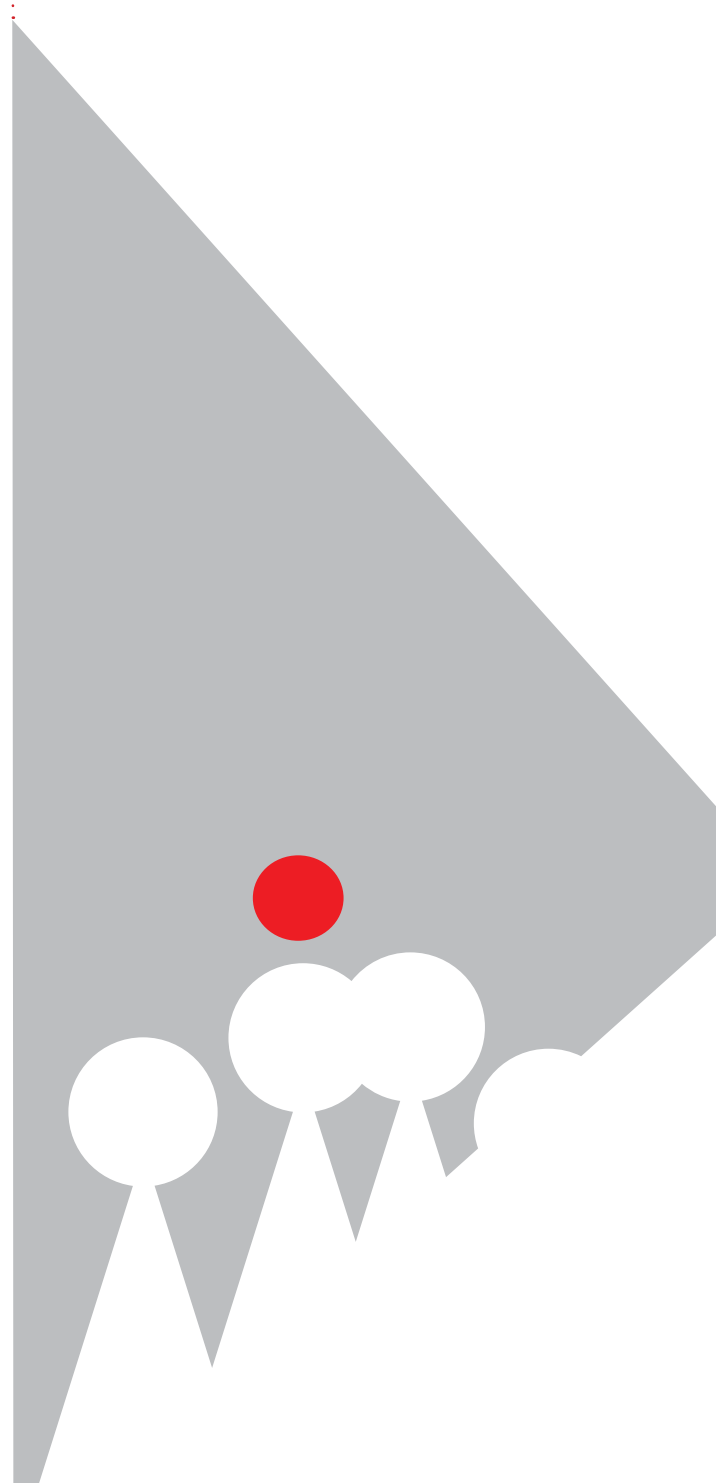


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## ETHICAL CHALLENGES IN TERMS OF RESPECTING THE PRESUMPTION OF INNOCENCE IN THE MEDIA REPORTING ON CRIME, INVESTIGATION AND COURT PROCEEDINGS

### Do media adjudicate before the court?

#### 1. DESCRIPTION OF THE PROBLEM AND THE CONTEXT

Out of all the principles prescribed by the Code of Montenegrin Journalists, media most frequently violate the presumption of innocence (principle 9.1). This is the conclusion of the research conducted in Montenegro from September 2012 until September 2014 by the NGO "Human Rights Action".<sup>1</sup> In the nutshell, the presumption of innocence means everyone is innocent until proven guilty. If they do not respect this principle, media are taking on the role of investigation bodies, prosecutors and judges. Except for the judiciary, state officials, citizen associations and public figures, this legal principle has to be upheld by media, which is of the utmost public interest. This does not mean investigative journalists should not give detailed accounts in terms of their research about the abuse of power and data which may be incriminating for certain individuals, but this means the ethical standards of the profession have to be respected. In situations when the media accuse somebody of fraud or corruption, they should be aware that the person is *de jure* innocent and they should treat that person as innocent until proven guilty by a court. Sometimes journalists forget this principle and transpose their own beliefs or public expectations to their texts declaring guilty those whose guilt has not been proven yet. It is particularly problematic when journalists write about claims or allegations that a person has committed a criminal offense, before the police or the competent court has even had the opportunity to investigate. In such a way they presume the guilt of the suspect or the accused and they are publicly punished in advance because the media are used as a tool for public embarrassment. At the same time, the motive for such behaviour can be sensationalism and the wish of the media to increase their readership or viewership. Informal communication with our colleagues shows it is hard to clamp down on and eliminate the subjective feeling which, before the official verdict, stigmatises the alleged perpetrator in the media, especially when it comes to aggravated forms of some criminal acts, such as murder, child abuse, which lead to disgust, anger and condemnation. But this is precisely the point of the presumption of innocence and by respecting this principle we show our respect for human dignity and reputation, support the independence of the judiciary and make media more professional and impartial.



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<sup>1</sup> Vuković, D., Buljan, M. (2015). *Monitoring of journalistic self-regulatory bodies in Montenegro 2012-2014*. NGO Human Rights Action. Available at: [http://www.hracion.org/wp-content/uploads/2014/06/HRA\\_Monitoring\\_2012-14.pdf](http://www.hracion.org/wp-content/uploads/2014/06/HRA_Monitoring_2012-14.pdf)



## 2. THE PRESUMPTION OF INNOCENCE – LEGAL REGULATIONS

The presumption of innocence is one of the fundamental conditions pertaining to the right to a fair trial and the basic tool that promotes the confidence in the principles of the rule of law. This is the conclusion of the legal experts dealing with this field. The presumption of innocence that exists within the framework of the right to a fair trial is connected to two other rights – freedom of expression and the public’s “right to know”. In order to delineate these two rights and see where they collide, we will analyse pertinent legal regulation.

### a) Domestic legislation

In the domestic legislation, the presumption of innocence is embedded into numerous legal documents, although there are no sanctions for its violation. Minister of Justice, Zoran Pažin, said that Montenegro did not foresee any measure against the violation of the presumption of innocence and the Minister explained the media could report on judicial proceedings, but that kind of reporting must not presume the guilt of the suspect.<sup>2</sup>

Article 35 of the Constitution of Montenegro prescribes that everyone shall be deemed innocent until the guilt thereof has been established by an enforceable court decision. The Code of Criminal Procedure treats the question of the presumption of innocence almost identically to the Constitution, but extends the definition by enumerating all the parties that have to respect the presumption of innocence: state authorities, media, citizen associations, public figures and other persons.

The Media Law does not explicitly mention the presumption of innocence, but there are several articles related to this legal principle. Article 25 states that both the media and journalists are obliged to report on the court proceedings in an objective and true manner. Furthermore, if media report that criminal charges have been brought against a certain person, that person shall have the right to demand the publication of information on the final suspension of criminal proceedings. At the same time, Article 43 provides that a media founder shall be fined in the amount from twenty-fold to fifty-fold amount of minimum salary if it fails to report the information about the result of criminal proceedings based on the final judgement. According to Radomir Prelević, a lawyer, sanctions against the violation of the presumption of innocence are possible, according to Article 20 of this Law, when the journalist and the

<sup>2</sup> Portal analitika. The presumption of innocence, privacy and responsible reporting of media (October 15<sup>th</sup> 2013). Available at: <https://portalanalitika.me/clanak/119245/arhiv>

founder in question have to compensate the damage somebody had suffered because of them.<sup>3</sup>

The new draft Media Law defines the presumption of innocence. Article 46 prescribes that no one can be labelled as the perpetrator of a punishable act, i.e. declared guilty before the final decision of the court. At the same time, no sanction has been defined for the violation of this provision.

The Code of Montenegrin Journalists, in Principle 9, states that a person is presumed innocent until proven guilty by a court and that an accused person cannot be portrayed as guilty within the meaning of a court judgment until a verdict has been handed down.

Although this document is not a law, it should be highlighted that the Council for Civil Control of Police has recently reacted and recommended the Police Administration to stop the practice of publicly releasing video recordings of police activities in order to ensure the protection of human rights and ensure a high degree of protection of privacy and the presumption of innocence.<sup>4</sup> Lazar Aković, a lawyer, pointed out that public releases of police activities published in electronic media violate the right to privacy and the presumption of innocence.<sup>5</sup>

### b) International legislation

The importance of the presumption of innocence is exemplified by the fact it was incorporated into the Declaration of the Rights of the Man and of the Citizen of 1789 which says that all persons are held innocent until they shall have been declared guilty.

One of the most important international documents that regulate this field is the European Convention on Human Rights. Article 6 paragraph 2 prescribes that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. Virtually identical provision is found in the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the European Union. Věra Jourová, the European Commissioner for Justice stated: “Presumption of innocence is a fundamental right and must be respected in practice everywhere in Europe.”<sup>6</sup>

<sup>3</sup> Gorjanc-Prelević, T. (Ed.). (2013) *Training of journalists in the field of human rights, fundamental freedoms and professional ethics*. Human Rights Action. Page 41. Available at: [http://www.hraccion.org/wp-content/uploads/Obuka\\_novinara\\_iz\\_domena\\_ljudskih\\_prava\\_2013.pdf](http://www.hraccion.org/wp-content/uploads/Obuka_novinara_iz_domena_ljudskih_prava_2013.pdf)

<sup>4</sup> RTCG. *Do not publish the recordings of police actions* (September 10<sup>th</sup> 2018). Available at: <http://www.rtcg.me/vijesti/drustvo/214171/ne-objavljivati-snimke-policijskih-akcija.html>

<sup>5</sup> RTCG. “Dvogled” Talk Show. Available at: <http://www.rtcg.me/tv/emisije/informativni/dvogled.html>

<sup>6</sup> European Commission. *New rules guaranteeing the right to presumption of innocence and the right to present at trial apply since 1 April*. Available at: [https://ec.europa.eu/luxembourg/news/new-rules-guaranteeing-right-presumption-innocence-and-right-be-present-trial-apply-1-april\\_fr](https://ec.europa.eu/luxembourg/news/new-rules-guaranteeing-right-presumption-innocence-and-right-be-present-trial-apply-1-april_fr)



It should be noted that the Universal Declaration of Human Rights and its Article 11 say that anyone who is charged with a criminal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which s/he has been provided all the guarantees necessary for her/his defence.

In addition to the European Convention on Human Rights, Recommendation of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings is of particular importance to Montenegro. Principle 2 which refers to the presumption of innocence, explains that respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

### c) The practice of the European Court and the presumption of innocence

Since media often quote officials, it is important to explain the position of the European Court in terms of this issue. For the European Court, the presumption of innocence is so important that in one verdict, the Court noted the presumption of innocence should be respected not only by the judges, but by all state officials as well. In this regard, the Court explains: “The Court recalls that the presumption of innocence will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. In this regard the Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence.<sup>7</sup> The European Court has also ruled it inappropriate even for the police to make statements implying that an individual is guilty of a crime before the guilt had been established in a due process. In *Alenet De Ribemont v. France*, a case from 2005, the European Court found a violation of the presumption of innocence in the oral statement given by the director of the Paris criminal investigation department during a press conference, in which it was stated that “[t]he haul was complete and the people involved in the case were under arrest”. France, as the respondent State, was therefore found responsible and ordered to pay to the applicant in compensation of the pecuniary and non-pecuniary damages caused

7 The OSCE Mission to Bosnia and Herzegovina. *The presumption of innocence: Instances of violations of internationally recognised human rights standards by courts of Bosnia and Herzegovina*. Available at: <https://www.osce.org/bs/bih/110248?download=true>

by the contested statement.<sup>8</sup> The actions of judges are, however, of particular importance since, in addition to their obligation to observe the presumption of innocence, they are also under the obligation to preserve the appearance of impartiality.

In the publication “Training of journalists in the field of human rights, fundamental freedoms and professional ethics” published by the NGO “Human Rights Action”, a lawyer from London specialising in media law, Peter Noorlander, explained the practice of the European Court using practical examples. Noorlander explained that journalists must bear in mind that the ministers in the Government have the right to a fair trial and the right to be presumed innocent until a court declares them guilty. He also warned that journalists, when writing about allegations or claims not yet investigated by the police, should carefully choose their words and try to be reasonably balanced. He explained that one should not write “Mr X is a thief”, but the wording should be “There are allegations or claims Mr X stole public money.” Noorlander insists that even when writing about allegations containing accusations, media cannot “adopt” those allegations, but media must clearly state they are just reporting them. Speaking about transferring or copying texts from other media that violate the presumption of innocence, this British lawyer emphasises that media must point out that those are the allegations circulating through other media or the internet and journalists must also ask for the statement of the other side.<sup>9</sup>

### 3. DEFAMATION AND INSULT IN MONTENEGRO AS THE OTHER SIDE OF THE PRESUMPTION OF INNOCENCE

The question of (dis)respecting the presumption of innocence in media reports on suspicions and accusations in terms of violations of law is connected to the risk that such media, editors and journalists are accused of defamation. That is why we will turn our attention to this topic.

Although the Convention on Human Rights does not define the notion of “Defamation”, the practice of the European Court implies defamation, in essence, is a civil wrong (insult or tort). A defamatory statement is a false statement of fact that ruins the reputation of a person in the eyes of reasonable members of a society. Reputation is the respect of others towards

8 Case of *Alenet de Ribemont v. France* – Application no. 15175/89; 10 February 1995. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57914%22%5D%7D>

9 Gorjanc-Prelević, T. (Ed.). (2013) *Training of journalists in the field of human rights, fundamental freedoms and professional ethics*. Human Rights Action. Page 41. Available at: [http://www.hraccion.org/wp-content/uploads/Obuka\\_novinara\\_iz\\_domena\\_ljudskih\\_prava\\_2013.pdf](http://www.hraccion.org/wp-content/uploads/Obuka_novinara_iz_domena_ljudskih_prava_2013.pdf)



that person. In the previous Montenegrin law defamation and insult were criminal acts, and the burden of proof was on the defendant, although this is contrary to the presumption of innocence. Historically, this served as a means of persecution against opponents and quashing debate on the issues of importance to the public. In 2011, defamation and insult were decriminalised in Montenegro after some public pressure and the explanation of the non-governmental sector that the existence of these criminal offenses negatively affect the freedom of expression. When the Parliament was in the procedure of adopting the amendments to the Criminal Code of Montenegro, thus removing defamation and insult from the list of criminal offences, the then Minister of Justice and the current Prime Minister Duško Marković, supporting this solution, said that it remained to be seen if this was the best response to the social environment in Montenegro. Marković was clear: «If this turns out to be wrong, we will return defamation to the Criminal Code.»<sup>10</sup> But, from time to time, there were requests to reintroduce defamation to the Criminal Code. Some political parties that used to support the removal of defamation from the Criminal Code, in 2014 and 2015, asked for defamation to be recriminalised, because, as they said, decriminalisation did not improve public communication in Montenegro. However, they swiftly gave up on that. But in 2017, the Government sought to make a criminal offense when somebody shows disrespect to a court or State Prosecutor's Office. Many have claimed this was an attempt to surreptitiously recriminalise defamation and that this would prevent anybody from criticising the judiciary and limit the freedom of expression. The proposed sanctions ranged from a fine to prison. After the public pressure, the Ministry of Justice remove disrespect from the draft Criminal Code and defamation remained within the domain of civil law.

Although this is contrary to the values and standards of the EU and the Council of Europe, there have been attempts to restrict the freedom of expression and criminalise defamation in Montenegro. The most eager proponents were public officials and politicians who should have the highest tolerance for criticism. This is why it is of utmost importance that the European Convention and the practice of the European Court have widespread application in order to serve as the protection against similar requests in the future.

The European Court has extensive practice in connexion with the freedom of expression and defamation. From that practice it can be concluded the laws protecting against defamation that are overly protective in terms of one's reputation, may have negative, deterrent effect on the freedom of expression and public discussion. The European Court emphasises the difference between civil defamation and criminal defamation which is of key importance

<sup>10</sup> Mondo. Insult and defamation to be deleted (June 8<sup>th</sup> 2011). Available: <http://mondo.me/a99505/Info/Crna-Gora/Brisu-se-uvreda-i-kleveta.html>

from the point of view of the freedom of expression. While the excessive or unpredictable amounts of damages (compensation) in civil cases may have a negative effect on the freedom of expression, the imposition of criminal penalties (fines and/or deprivation of liberty) or threat to institute criminal proceedings may have even stronger negative, deterrent effect.

The Court has also, on several occasions, pointed out that the institution of criminal proceedings for defamation or insult implies the risk of deprivation of liberty. In the same vein, the Court reminds that “the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence”. Although the Court did not unambiguously call on decriminalisation of defamation, it has on several occasions noted “the Parliamentary Assembly of the Council of Europe, recalling its Recommendation 1577 (2007) exhorted states whose laws still provide for prison sentences, although prison sentences are not actually imposed, to abolish them without delay”.<sup>11</sup>

#### 4. RESEARCH AIM AND CONCEPT

The aim of the research is to look at how the media in Montenegro report on the presumption of innocence and how they treat this question, from the first appearance of allegations pertaining to somebody's guilt and early actions taken by the police until the final judgment after the completion of a due process. We want to give our contribution so to help the media identify the problems related to the presumption of innocence and consistently apply the ethical norms from the Code of Montenegrin Journalists, in order to protect the dignity and reputation of all individuals and in order for the media to demonstrate responsibility, accuracy and impartiality in reporting.

Principle 9 of the Code of Montenegrin Journalists states that when journalists report on investigations and court proceedings, they have to respect the fact that a person is presumed innocent until proven guilty by a court, even if he or she has confessed and even in cases where guilt is obvious to the public.

<sup>11</sup> Resolution 1577 (2007); Towards decriminalisation of defamation. Available at: <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNveG1sL1hSZWYyWDJlURXLWV4dHluYXNwP2ZpbGVpZD0xNzU4OCZsYW5nPUVO&xsl=aHR0cDovL3NlbnVudGJlcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE3NTg4>



Guideline 9.1, which is related to reporting on crime, investigation and court proceedings, prescribes that prejudicial portrayals and allegations violate the constitutional protection of human dignity, which also applies to the people who may be found guilty of a criminal offence. It is also added that the aim of court reporting must not be to publicly punish convicted criminals by using the media as a “pillory”. Moreover, criticism and comment on a case must be easily distinguishable from reporting on court proceedings.

It also provides that where a media has started reporting a criminal case, it should follow up and report subsequent developments in the case. If the media has reported on an accused, it has named the accused or that person is identifiable to larger audience, it should also report an ensuing acquittal or a marked lessening of charges. This also applies to the dropping of an investigation. It is important to note that before the amendments of the Code in 2016, instead of “should” was “must”, which represents stricter obligation implying the absolute obligation for the media to do as stipulated by the Code. The current wording of these guidelines in the Code, as interpreted by the media within the framework of their self-regulatory mechanisms, does not mean that the media must report, but should report, which opens the possibility for the violation of the presumption of innocence.

Reporting on crime, investigation and court proceedings according to Guideline 9.1 requires certain knowledge and education in this area, which is not always the case in the Montenegrin media. Due to a small number of employees in the media, there are less opportunities for the specialisation of journalists for a particular area, which affects the quality of reporting. However, regardless of all the difficulties, the obligation of journalists is to respect both international and domestic legislation as well as the Code of Montenegrin Journalists by creating professional reports and respecting ethical norms.

This research does not want to evaluate the state of ethics in terms of respecting the presumption of innocence in media reports, nor to judge who violates this presumption and so increases its readership or viewership. Our intention is to initiate a public debate on the challenges in terms of respecting the presumption of innocence in the media, to contribute to raising the awareness about the important role of the media and on how journalists, with their ethical reporting, can contribute to the responsible attitude of the whole society towards the implementation of justice and provision of a fair trial.

The analysis of the respect of ethical standards in the media in terms of the presumption of innocence will be conducted using two methods: study of cases with judgements handed down by courts and a one-day monitoring of crime news.

Within this research, we have analysed the reporting on the case which gained significant public attention over the past year. The analysis was conducted by using three online media: *CDM*, *Vijesti* and *RTCG Portal*. In this case, S.V. was convicted of attacking a judge in the Kotor Court and this was very interesting for the public from August 2018 until January 2019. There were 57 pertinent texts.

The one-day monitoring of crime news was conducted on March 12<sup>th</sup> 2019 and we monitored three newspapers: *Vijesti*, *Dan* and *Pobjeda*. In these three newspapers there were 26 pertinent texts. Our analysis revealed certain quantitative indicators and we also dealt with the most common type of problems and practices related to the ethical challenges in respecting the presumption of innocence. Crime news was not the only newspaper column where challenges related to the respect of this ethical principle may arise, but the column with crime news contains the largest number of articles about different criminal offenses.

We also interviewed the people belonging to one of the following categories: journalist, editor-in-chief, ombudsman and expert for media and journalism ethics.

## 5. RESEARCH RESULTS

### 5.1 Case study analysis

The case of S.V. who was sentenced to prison because she had attacked the judge of the Court in Kotor is distinct because of the comments of the Montenegrin and Serbian officials and the representatives of the judiciary while the criminal proceedings were still on-going. Apart from inherent challenges in terms of respecting the presumption of innocence, the statements of politicians and the judiciary, worsened the situation regarding the respect of the presumption of innocence and made this woman publicly guilty before the final judgment.

#### a) Respect of the presumption of innocence in terms of the content of the texts

Headlines are of particular importance because readers or viewers spot them first and they provide initial information about an event. Therefore, they are easily memorised and affect not only the decision of the readers whether they read the text or not, but they also form their attitudes and opinions.



At the beginning of the reporting in the case of S.V., who had already been convicted for traffic violation in a previous procedure, the headlines did not respect the presumption of innocence and she was declared guilty although her guilt had not been proven in the court. “A woman from Belgrade arrested immediately after she attacked a judge in Kotor”, “Convict’s girlfriend attacks a judge in Kotor”, “Incident in Kotor: judge attacked by the convict’s girlfriend”, were some of the headlines which tried to attract the attention of the readership. It is obvious the media must not report by implying that the suspect had committed a criminal offense for which s/he is charged. Besides the problems with the presumption of innocence, the headlines utilised sensationalism which violated ethical norms and professional standards. In addition to the fact the headlines led to the wrong conclusion the facts had already been established and that the court proved how the offense had been committed and who is responsible, they also contained a certain amount of nationalism and animosity.

The animosity towards S.V. was shown by placing an emphasis on the fact she is from Belgrade, thus of Serbian nationality, which is in contradiction with the guidelines from the Code of Montenegrin Journalists. Somebody’s nationality is relevant only if it is necessary for the provision of full information in the public interest. Since we live in the society that is ethnically and religiously divided, emphasising somebody’s religious affiliation, race, ethnicity, gender or sexual affiliation is not in the public interest and can quickly trigger public condemnation and imply the accountability of the individual. By highlighting the fact that woman is from Belgrade, media could have incited national hatred. This could be seen from the statements of different politicians who used her national affiliation to attack some state bodies and to deepen the ethnic distance.

The overlines were neutral and generally did not question the presumption of innocence.

In the text, however, the presumption of innocence was not fully respected. This is mostly related to the time before the indictment. In their first reports, certain media referred to this woman as if her guilt were already established. Also, there were texts where only the title was problematic, but the content of the article respected the presumption of innocence. It is known that the headlines are mainly determined by the editors and in such circumstances, the responsibility could be attributed to them.

The analysis shows that the texts mostly disrespected the presumption of innocence at the time S.V. was sent to the competent prosecutor, from the detention until laying of an information which begins a criminal proceeding in the courts. Even though S.V. was just the suspect the media treated her as if she were a convict. Additionally, there is the dilemma if the journalists consistently used the terminology appropriate to a certain stage of the pro-

ceedings, which implies the accountability of S.V. in relation to the criminal offense she was charged with. After the information has been laid and during the trial, the media treated her as the defendant and generally respected the presumption of innocence. This means the challenges pertaining to the presumption of innocence were present particularly before the beginning of the trial.

The reports that did not respect this ethical principle, often fail to indicate the source or to mention something to the effect of “according to our sources” or “we have learnt”, and the information about how and who committed a criminal were communicated as irrefutable facts.

The police, in their statements, mention that S.V. was arrested on suspicion of attacking a judge and the statements did not imply her guilt. However, there were some exceptions. While paraphrasing police reports, it is very difficult to determine whether a state body respected the presumption of innocence and whether the media failed to do so. However, such statements were included in some articles, sometimes under the headline which is problematic in terms of respecting the presumption of innocence. The analysis showed that in the same day and in the same media we could find articles which respected the presumption of innocence and which failed to do so.

For the duration of her detention, media have used various sources in order to obtain information, sometimes in accordance with their attitude towards the ruling political structure, which may be problematic in terms of impartiality or the fair presentation of all the relevant facts and the involved parties. So, some media mainly used the statements and the texts from the daily newspapers that described S.V. as guilty of attacking the judge, while others were predominantly requesting the information from her lawyer or her mother who blamed for the incident the judge from Kotor Court. Some media published the texts containing the statement of both sides.

This case is specific because certain Montenegrin state officials and heads of the judiciary, immediately after the arrest of S.V., made public statements about that case. They condemned “the attack on the judge in Kotor” and urged the competent state authorities to punish the perpetrator of that “unacceptable and primitive attack”, although the court did not even have any information, let alone a binding verdict. This brings us to the dilemma if this created public perception and gave the judiciary a suggestion in what direction the proceedings should go and who is in fact guilty for the offence. The drastic example of this is the press release of the Montenegrin Association of Judges in which they pinpointed the perpetrator, described the way in which the attack occurred, specified the injuries sustained



by the judge and appealed to the competent authorities to pronounce the verdict as soon as possible. According to the practice of the European Court, if the presumption of innocence is not respected, especially if it is not respected by a representative of a court, the whole notion that criminal proceedings must be fair becomes pointless. Except for the obligation to respect the presumption of innocence, judges also have the obligation to uphold impartiality. On the other hand, the media published such statements of the officials, that it is highly questionable whether they respected the presumption of innocence, upheld impartiality and whether this violated the right of the suspect to a fair trial, which is the primary means by which the confidence in the principles of the rule of law is achieved. According to the practice of the European Court, the media that were publishing the statements of officials only, cannot be held responsible. Since these statements were sent immediately after the apprehension of S.V., media got the signal that she can be perceived as the perpetrator responsible for the attack on the judge, which is violating the constitutional principle of protection of human dignity. Among other things, this is precisely why we may safely assume the first media reports were full of examples that violated the presumption of innocence, which became rarer as the procedure went on.

Together with our local officials, this case prompted the involvement of the President of Serbia, the Serbian Ministry of Foreign Affairs, the Embassy of Serbia in Montenegro and some other politicians, including the Alliance of Serbs from the region, which politicised this case. This was the topic of both the Serbian and Montenegrin media: *“Attack on the judge Stanišić takes on a political tone”*.

### **b) The presumption of innocence and right to privacy**

Respect for the presumption of innocence is linked to the right to privacy. The Code’s ethical standards provide for the protection of identity, primarily of the victim, except in the case of a public figure or in the event of special circumstances. The media should also avoid publishing the identity of relatives or friends of the defendant or convicted of crime unless it is necessary for a comprehensive, fair and accurate reporting of crime or legal proceedings. The protection of the identity of a suspect is not strictly provided for but stems from the Code’s principle of protecting the presumption of innocence. This provision, suggesting caution, stipulates that when reporting on the defendant whose name is claimed, the public should be informed of the acquittal, mitigation of the indictment or cancellation of the investigation. The possibility of disclosing the identity of the victim, whose protection is strictly envisaged by the ethical standards, by publishing the identity of the suspect, also indicates caution.

In the case of S.V. it was pointless to talk about hiding identity because the media had published her full name with a clear indication of her guilt and described how the incident in the court happened without indicating that it was a matter of suspicion. The identities of her mother and boyfriend were disclosed in public, but also of the judge who was the victim of the attack, as the media reported. Immediately after the detainment, the initials of the suspect were published first, while the full name of the judge was known from the first moment. The day after the detainment, the media published full identity of the suspect. The police, however, issued in their statements the initials of the persons involved in the incident and suspected S.V. of attacking the judge. In the first articles following the incident in the Kotor Court, illustrations were usually published, and photographs displayed state officials and heads of judiciary who made statements or announcements about this case. Several days later, almost every article contained a photo of S.V. – from those with her receiving medical care or her being brought with handcuffs to the Basic Court, to photographs taken from her Facebook profile or her *selfies* from private archives.

Reporting on a case in which there is a suspicion of an attack on a person holding a judicial office is certainly of public interest. However, the ethical challenge for the media was whether disclosing the identity of S.V. before the indictment was filed, with a clear indication of her guilt immediately after the arrest, constituted a violation of the presumption of innocence and of her right to privacy.

### **c) A clear distinction between criticism and comments and reporting on the court procedure**

The Code of Journalists prescribes that the comments are clearly separated from reporting on the court proceedings. After the state authorities of Serbia began to actively represent the interests of the suspect, some of the observed media published articles containing at the same time the author’s comment and reporting on the court proceedings, indicating a lack of their clear separation. The comments openly accused Serbian media and some Serbian officials of turning this case into a political problem, or the author of the report on the trial stated in the same article that the Serbian chief of diplomacy “has unscrupulously attacked the Montenegrin judiciary”.

### **d) Reporting in continuity**

The media followed the case of S.V. to epilogue and provided information to the public in continuity. Citizens have exercised their right to be informed of the various stages of the





proceedings until the verdict became final. First, the media reported on detaining S.V. and determining the detention, then on the indictment filing and confirmation of the indictment, the contents of the witnesses' testimonies and the details of the trial, the judgment of the Basic Court in Kotor by which S.V. was found guilty of attacking the judge at the Kotor Court and sentenced to four months in prison. The media also wrote about her departure to Serbia after three weeks of detention and the defence and prosecution's withdrawal from the appeal, after which the verdict became final. Sources used by the media in the reporting were lawyers, the mother and boyfriend of the defendant, state officials from Montenegro and Serbia, Montenegrin Ombudsman, the police, the Basic Court in Kotor and the Prosecutor's Office, although journalists had not always referred strictly to these sources.

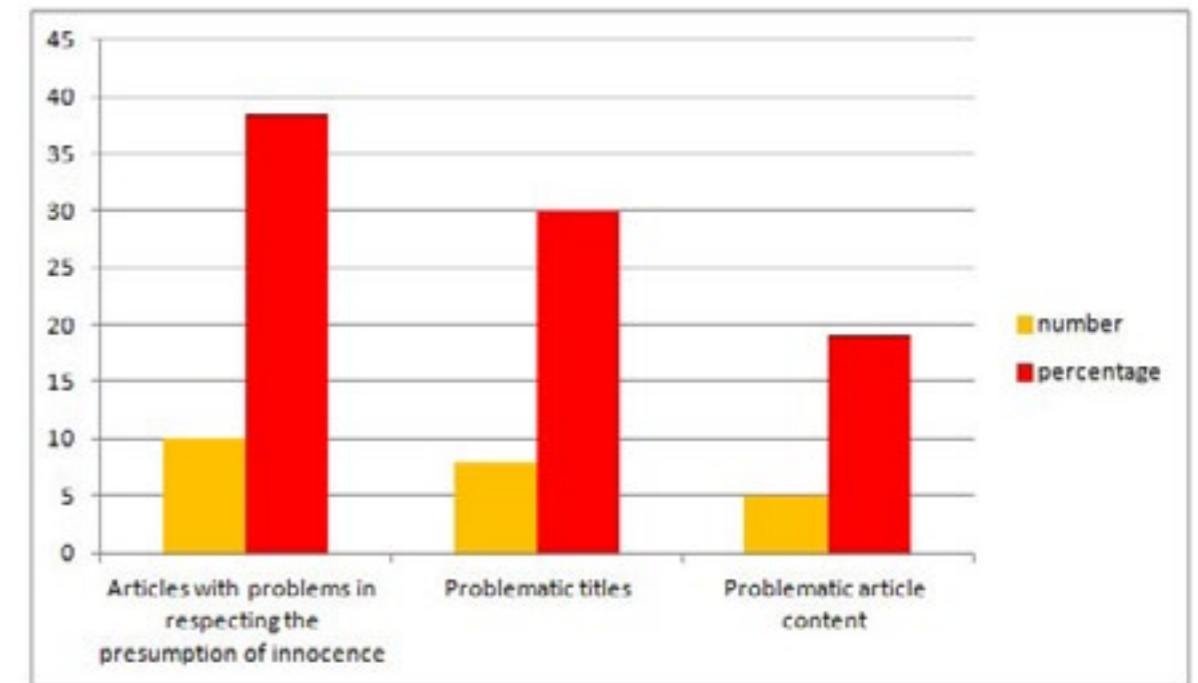
In the end, the observed Montenegrin portals shared the Serbian media reporting referring to unnamed sources that the High Court in Belgrade ruled to reduce the sentence to S.V. to one month of imprisonment. This news remained unconfirmed and it was not clarified that the offender would serve the remaining seven days in prison. This suggests that the epilogue of the case that the media followed was not based on official information.

**5.2 One day monitoring of the crime and accidents section – quantitative and qualitative analysis**

Through a one-day monitoring of the articles from the crime and accidents section, we conducted a simple quantitative analysis with certain elements of qualitative analysis, noting questionable practices, problems and challenges that relate to the ethical norm of respecting the presumption of innocence.

In the observed daily newspapers, a total of 26 articles was published in the crime and accidents section on 12th March. In 10 articles there were problems in respecting the presumption of innocence. Challenges in the application of this ethical principle were observed in eight titles and in the content of five articles, while there were generally no problems in headings and subheadings.

**Structure of the articles that contain problems in respecting the presumption of innocence in the crime and accidents section of the three daily newspapers on 12 March 2019**



Six articles were announced on the front page respecting the ethical standards. In the crime and accidents section of that day, most of the published articles was about theft, illegal possession of weapons and small-scale crime, while stories about persons from the warrants, suspected of shooting and stories about signing a plea agreement with the accused for international drug smuggling took more space. There were generally no comments in the articles, thus there was no problem of their clear separation from reporting on court proceedings. There were no statements by officials, and the media mostly cited or paraphrased statements from the prosecution and the police.

The qualitative analysis shows results similar to those in the case study.

In some titles the arrested in police actions were labelled guilty of illegal actions. Some of the titles assuming the suspects' responsibility were "They have beat up a fellow citizen with a wooden baton", "Sold the same apartments twice". At the same time, in some headings and subheadings, which usually reveal initials and places of events, there were challenges in the application of ethical standards. Also, there was a problem with respecting the presumption of innocence in the content of some articles, mainly until the beginning of the trial.



A questionable practice is also reflected in the fact that the articles mentioned filing of criminal charges against a particular person, but the formulation “it is suspected” was not used in the description of the way the unlawful act was committed and the person was not qualified as a suspect. The media quoted or paraphrased the statements of the police, which sometimes had challenges in respecting the presumption of innocence which was reduced after the indictment and the beginning of trial. We noted that, for example, it was stated in one article that the police resolved a theft, arrested and identified T.S.K. from Bulgaria as a perpetrator. In addition to press releases, the media also used unnamed sources that provided them information, and it also happened that the source indication was missing, which was usually followed by the problem of applying ethical standards. The practice that the state authorities’ statements, mainly of the police, where the presumption of innocence is not respected, increased the media’s coping with problems in applying this ethical principle was reaffirmed. With their own challenges, most often through titles, the media has not always treated suspects as innocent, as prescribed by this ethical standard. After the news of the indictment and the start of the trial, the number of challenges in respecting the presumption of innocence reduced, although it happened even then that the journalist quoted the fragments that described the way the crime was committed, without recalling that those were allegations in the indictment.

At the same time, the media also emphasized the nationality of the suspects: “A Bulgarian woman arrested for stealing”, which is contrary to the Code of Journalists and does not represent a matter of public interest. This increases the ethnic distance and it can cause an easier and faster judging from a social aspect.

## 6. VIEWS AND EXPERIENCES OF THE MEDIA, INTERNAL SELF-REGULATION AND EXPERTS

In the second part of the research, we asked for additional answers and explanations from the media representatives - journalists and editors, ombudswoman of daily newspaper and media expert, of why there are problems in applying ethical provisions on respecting the presumption of innocence. All interviews were conducted by e-mail in April. The interviewees showed desire to participate in the research and actively contribute to improving the application of ethical standards of the Code of Journalists of Montenegro.

### 6.1. The media choose between ethics and sensationalism

The experiences and attitudes of journalists and editors of the crime and accidents section, where the articles related to the perpetration of illegal activities are most often published, contribute to a more complete examination of the challenges that the media are faced with in applying ethical standards on respecting the presumption of innocence. Interviews by e-mail were given by a journalist of the crime and accidents section of the daily newspaper *Vijesti* Ivan Čađenović and editor of the same section in *Dan* Mitar Rakčević.

We asked them if they were faced with the challenges in respecting the presumption of innocence, what caused the dilemma if the person who was not convicted would be labelled guilty and if there were internal decisions that were considered sufficient for such an approach. Since the titles are mostly determined by editors, we were interested in their relationship with journalists when there is a disagreement in determining titles or formulations in the article, and whether they discussed these issues at editorial meetings. We also asked them to tell us whether they had ever published a correction regarding the presumption of innocence and how to improve its respect.

Journalist Ivan Čađenović considers that the media often do not comply with Article 9 of the Code of Journalists which prescribes that everyone is innocent until proven otherwise. He sees sensational titles with the presumption of innocence not respected as the biggest problem, then the lack of language indicating that it is a matter of suspicion and often use of unofficial information and unnamed sources. He said that he had the dilemma several times, how to treat the suspect who admitted committing the crime, but that he nevertheless respected the presumption of innocence. He added that he had repeatedly given up exclusivity to protect the right to privacy of the actors of his stories, especially the victims and the deceased, and that he could write that someone was guilty only after a court judgment. Čađenović explained that the editors not only determine the title, but also write passages and sometimes the entire story based on information from a journalist’s article that serves them only as a base, and that the article written by the editor is published and signed by the name of the journalist.

„Most often, when I express any disagreement with the title, editors reluctantly accept it. In the last few years, my mechanism has been to refuse signing the text if the editor does not accept my suggestion. Without a great discussion. The stories that I wrote have been published often without my signature, for these reasons exactly.”<sup>12</sup>

12 Interview with Ivan Čađenović, a journalist of the crime and accidents section of the daily newspaper *Vijesti*.



Ivan Čađenović said that he pointed out the omissions in the application of this ethical principle by referring to the Code at editorial meetings where the presumption of innocence was discussed more than once. He emphasized that he has never received a correction or reaction to his articles; he discusses dilemmas in the application of ethical standards with editors, colleagues and experts in the media profession. Ivan Čađenović concluded that we cannot talk about respecting the Code as long as journalists are mere executors of editors' orders and editors are mere executors of orders of the management that wants to sell the product by violating ethical principles and sensationalism. He hopes that journalists will get organized and work together to promote professionalism and ethics.

The editor of the crime and accidents section in the daily newspaper *Dan* Mitar Rakčević believes that in most cases the Montenegrin media respect the presumption of innocence, especially in the content of the articles, and that this ethical principle is violated in print media more than in electronic media. He explained that he is faced with these challenges on a daily basis, but that there is a problem with titles when this principle cannot be fully applied due to lack of space and technical possibilities.

“For example, we often have to write about persons suspected of criminal offense attempted aggravated homicide in concurrence with the criminal offense of causing general danger and unlawful possession of weapons and explosive substances”. In order to respect the presumption of innocence, we should put the full term of the criminal offense in the title, which, as you would agree, is not technically feasible. Therefore, as a solution or unwritten rule, a question mark in the title has recently become established in the print media. It seems to be a middle ground that could reasonably satisfy both sides.”<sup>13</sup>

Mitar Rakčević pointed out that the person mentioned in the context of the commission of a criminal offense who has not yet been convicted, can be marked as a perpetrator in the text “when it is obvious and unequivocally established according to eyewitnesses”. He added that this principle is often discussed at editorial meetings, and that journalists consult with him on the necessity of respecting the presumption of innocence in case the suspect confesses the criminal offense. The Editor of the crime and accidents section stated that they have issued corrections several times due to disregarded presumption of innocence, and emphasized that it was neither more nor less often than in any other printed media. He concludes that ombudsmen in the media are one of the ways to overcome problems related to technical possibilities and to a model that would satisfy both sides.

13 Interview with Mitar Rakčević, editor of the crime and accidents section of the daily newspaper *Dan*.

## 6.2 Negligible number of complaints about violations of the presumption of innocence

External and internal self-regulation is of utmost importance as it is a mechanism that should be activated when journalists do not respect ethical standards, as well as to influence the promotion of professionalism and ethics in the media. We asked the Ombudswoman of the daily newspaper *Vijesti* Paula Petričević about the most frequent problems in applying the principle of the presumption of innocence, complaints about non-compliance with it in the last two years and whether there should be sanctions in the event of its violation.

Petričević considers that the accompanying content carries the greatest risk of violating the presumption of innocence. She pointed out that the question mark at the end of the title or subheading is not omnipotent, and that more adequate solutions need to be sought to attract the attention of the audience. She sees sensationalism as the main reason for reporting the suspect as offender. In the last two years, she has not have own initiative interventions, and during that time, two complaints against the violation of this principle were filed. In the first complaint, the complainant complained that the media did not continue to report on his case, that is, that the criminal complaint against him was dismissed. Petričević rejected this complaint, since the media was not obliged to continue reporting on this case, as she pointed out. Her decision was based on the norm of the Code which does not represent an absolute obligation for the media, as she explained, because the guideline 9.1 prescribed that the media should continuously report on a particular criminal case, which does not imply that it must do so, as it was normally foreseen by the Code before its amendments in 2016. She recalled that these changes were made because the practice showed that it was physically impossible to follow every process the public was informed about, and this guideline was modified in that sense. The Ombudswoman rejected the other complaint on formal grounds, applying the Rules of Procedure. As she explained, the allegation in the complaint was not related to the complainant or his family, but entirely to his late father. The Ombudswoman of *Vijesti* said that journalists have never consulted her in regards to the presumption of innocence, and she had no knowledge of the editorial board's discussions about it. Petričević is against sanctions for non-compliance with ethical standards, but added that the media should be sanctioned if it violated any legal requirement. She emphasized that in order to improve the application of ethical standards and in particular the presumption of innocence, it is primarily necessary to educate, but also to seriously treat media self-regulation. She concluded that the existence of a single self-regulatory body is not a condition for improving the application of ethical norms, but its integrity, autonomy and credibility.<sup>14</sup>

14 Interview with Paula Petričević, Ombudswoman of the daily newspaper *Vijesti*.



### 6.3 Ethics in the hands of editors

Nataša Ružić, a professor teaching Journalistic Ethics at the Faculty of Political Sciences of the University of Montenegro, tries daily to show students the importance of ethical standards in practicing journalistic profession. It was therefore interesting to learn what she sees as the biggest challenges in respecting the presumption of innocence in the media and how to improve the application of this principle.

Ružić believes that disregarding the presumption of innocence is a frequent ethical problem when the media disclose the identity of the suspect by publishing full name, often with visual identification. She added that sensationalist and bombastic titles that cross the line of good taste in a race for rating are also a great problem.

In her opinion, the key challenge in applying this ethical principle is the situation on the market i.e. the fight for audience and the editors' pressure on journalists.

“One should not forget that journalists are the weakest link in the media chain, and that the editors are pressuring them to discover and publish some information, believing that it will increase the portals' traffic. Editors often change accompanying content or title, in order to attract audience. However, some journalists are ready to trample all ethical rules for a quick advancement and “adulation” of the editor.”<sup>15</sup>

Ružić said that, when reporting about a crime that raises public attention, by giving out the excessive details and judging in advance the media particularly satisfy human need for curiosity. She believes that in such circumstances, when the verdict has not yet been issued, the media should set certain ethical boundaries and questions about what they want to achieve with the article, and if it is of public interest that the audience learns about all the details of the tragedy. She warned that non-compliance with the presumption of innocence can ruin the suspect's life as the audience automatically perceives him/her as an offender.

“Montenegrin media go unpunished and for this reason they do not care whether they will ruin someone's life by writing. They go unpunished and are blaming it on audience seeking this kind of content. Since no one reacts until hit by the media writing, it is clear that the problem will not disappear overnight.” (Nataša Ružić)

Ružić still believes that sanctions are not a solution, because ethics is a matter of conscience, but that citizens need to be protected more effectively through a media legislative framework in which, as she says, huge damage done to a suspect cannot be compensated by a

fine. She also suggested increasing the level of editors' responsibility because they are responsible for the content and have the opportunity to correct a mistake of a journalist. She notes that ombudsmen hired by the media react only after the publication of the article, or when the Code of Journalists has already been violated. She advised journalists and editors to contact ombudsmen in case of ethical dilemmas before publishing the articles to show that they strive for the journalism that is accountable.

Nataša Ružić emphasized that the application of ethical standards would improve by education and raising awareness and responsibility of the journalists, but primarily editors. At the same time, she noted that the media did not send journalists to additional trainings because it was generally perceived as an unnecessary cost due to a lack of workforce. Once again, she emphasized that respect of ethical standards depends on the editor and the atmosphere in the team. Ružić concluded that if a journalist - a beginner got into the wrong hands – “a great damage is inflicted to him/her because the instilled habits are difficult to correct”.

## 7. COMPARATIVE PRACTICES

In order to better shed light on challenges of the Montenegrin media in the application of ethical standards and how to solve them, with an emphasis on respecting the presumption of innocence, we looked at a case from Slovenia.<sup>16</sup>

Article 18 of the Code of Journalists of Slovenia stipulates that when reporting on issues in the field of judiciary, the journalist acknowledges that no one is guilty until finally convicted. The same Article adds that a journalist must be careful when mentioning names and publishing photographs and footage of perpetrators, victims and their relatives in reports of accidents and investigative procedures.

In two reports published a few years ago, a reporter of Slovenian POP TV reported on a case in which money embezzlement allegedly occurred in one kindergarten. The subheadings were: “Director and Accountant “took” a third of a million” and “Director who inflicted damage to the kindergarten was first dismissed and then re-elected”. Prior to submitting a complaint to the journalists' Honour Court, the Accountant in the kindergarten requested the publication of a denial and an opportunity to explain the relevant facts, but the journalist,

15 Interview with Nataša Ružić, professor at the Faculty of Political Science, University of Montenegro.

16 We chose Slovenia because the Peace Institute in Ljubljana, a partner organisation participating in the project, is located there.



despite the fact that she was familiar with the request for publication of the correction, did not try to obtain her response. The complainant to the Honour Court stated that the journalist had violated the presumption of innocence because, among other things, she used the word “take”, which unambiguously represents the synonym for the word “steal”.

The Honour Court found that the journalist violated several articles of the Code of Journalists, *inter alia*, Article 18. The Court concluded that the story was published in a form that leaves no doubt, and according to content and subheadings, the Director and the Accountant were found guilty before it was confirmed in the court proceedings. Even though editing, titles and subheadings are not subject to journalistic work, the Honour Court reminded that the journalist was responsible for the overall contribution, including the image, because it also sends a message.<sup>17</sup>

## 8. CONCLUSIONS

The media in Montenegro are inclined to meet the human need for curiosity by presenting excessive details about the crime and judging the suspect before the judicial epilogue. The challenges in respecting the presumption of innocence are most common in the titles of articles and are mostly the product of editorial decisions. Many agreed that sensationalism is the reason for reporting on the suspect as an offender, while on the other hand editors indicated the lack of space in the accompanying content as justification. Nevertheless, the impression is that sensational titles are more important for the media to attract more audience than to protect the right of an individual to be presumed innocent until proven guilty in court. Problems in the application of this ethical principle in the content of the articles are mostly encountered until the indictment enters into force, after which the cases of violation become less frequent. At the same time, due to insufficient education and specialization of journalists, the terminology used by the media in reporting on various stages of the proceeding is questionable, which can also lead to the mislabelling of the suspect and violation of his rights. The use of anonymous sources or their absence contributes to it as well.

In the statements of state authorities, problems are sometimes also seen in respecting the presumption of innocence, although it is sometimes difficult to determine whether their fail-

ure or omission is due to paraphrasing. The statements made by the heads of the judiciary and state officials by which they assume the guilt of the suspect are a special challenge in ethical reporting. The question arises whether such statements send signals to the media that they can perceive him/her as an offender by which he/she is punished from a social aspect and the constitutional principle of the protection of human dignity is violated. Disclosure of the identity and nationality of the suspect, and visual identification, contribute to his/her public embarrassment. The analysis also found that reporting on court proceedings is not always clearly separated from comments by the author of the article. In the case that we investigated, the public’s right to be informed of the various stages of the proceedings before the judgment becomes final is commonly respected. But this is not always the case, as demonstrated by the reaction of internal self-regulation after complaints were filed for non-compliance with the presumption of innocence. A dilemma arose whether the formulation of certain ethical standards in the Code of Journalists (“should”) imposes a clear obligation on the media to follow the cases they began to report on until its epilogue or it is only a recommendation.

Our research pointed to the suspicion that editors sometimes put pressure on journalists to publish information that violate ethical standards, in order to increase the circulation or portals traffic, and it also happens that they change the text with the signature of a journalist without his/her consent. Such behaviour of editors also implies possible application of a sanction against a journalist who does not agree with the non-compliance with the Code. Currently, solutions that provide certain levels of journalistic autonomy in relation to editors are only in sight, but it has not yet been ensured that these will be included in national legislation. Unlike the existing one, the new Draft Media Law that has not yet been finalized stipulates, in the section dealing with the protection of the author’s reputation, that the program content with the sense changed in the editorial process cannot be published under the name of the author without his/her consent. It also states that if the reputation of the author is violated this way, he/she may claim damages. According to the same Draft Law, a journalist has the right to refuse to prepare, write or participate in the design of the content that is contrary to the law and the Code, with a written explanation to the editor in chief, and he/she cannot be put in an unfavourable position on this basis, his/her employment cannot be terminated or his/her earnings reduced. At the same time, it is important to emphasize that regulations in Montenegro do not contain mechanisms for protecting journalists and editors from the influence of media owners. There is no obligation for the owners and journalists to sign an appropriate internal act to ensure that owners do not interfere in the media content editing.

<sup>17</sup> Journalist Court of Honour is a joint body of the Association of Journalists and Union of Journalists of Slovenia providing that the members of the journalists’ community work in accordance with the ethical standards and professional rules contained in the Code of Journalists of Slovenia.



The editors and owners' pressure on journalists, whose mutual relations have not been clearly arranged and defined so far, is also reflected in some colleagues' withdrawal from answering our questions in interviews that were part of the research. Although they did not explain the reasons for this, it is likely that pointing to omissions and mistakes in the media they work with could trigger negative consequences for their further work engagement or position.

Most interviewees agree that sanctions for non-compliance with the Code are not necessary, but that the responsibility of editors for the content and accompanying content should be increased compared to journalists who sign the article, as they have the ability to correct the mistakes of the journalist. Education and serious treatment of media self-regulation was also pointed to as necessary.

## 9. RECOMMENDATIONS

- Professional associations, non-governmental organizations, self-regulatory bodies and the media themselves should organize continuous education of journalists, especially editors on the respect of presumption of innocence and other ethical principles of the Code of Journalists of Montenegro in order to raise the level of responsibility and the importance of respecting the Code.
- Professional associations, self-regulatory bodies, media and experts in Montenegro and the region should open a broad debate on the importance of respecting the Code of Journalists and the most common problems and challenges in its application.
- Internal acts or an editorial decision should define the advisory role of internal self-regulation in the media as a preventive measure before publishing an article containing challenges in respecting ethical principles.
- The legal and internal acts of the media (for example, the Statute of the media) should define the relationship between journalists, editors and media owners in order to enable the "conscience clause" and protect journalists and editors from the pressure, and clearly define the competences and responsibilities of the editors for the published content.
- Professional associations, non-governmental organizations and self-regulatory bodies should organize an expert and professional discussion on possible amendments to the Code of Journalists of Montenegro in the part referring to the re-establishment of the obligation of the media to follow the case they are reporting on in continuity to the epilogue (Principle 9.1).
- Professional associations, non-governmental organizations and self-regulatory bodies should regularly monitor and carry out analyses and indicate ethical problems in media reporting on crime, investigation and judicial proceedings.
- Professional associations, non-governmental organizations and self-regulatory bodies should publicly promote positive examples of ethical reporting, while respecting the presumption of innocence and other ethical principles. Annual awarding of the ethics award in media reporting would also contribute to this.



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## LIST OF INTERVIEWS

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Interview with Ivan Čađenović, a journalist of the crime and accidents section of the daily newspaper *Vijesti*. Interview by e-mail, 7 April 2019.

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Interview with Nataša Ružić, professor teaching Journalistic Ethics at the Faculty of Political Sciences of the University of Montenegro. Interview by e-mail, 23 April 2019.

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