MEDIJSKI SAVJET ZA SAMOREGULACIJU

RIGHT TO BE FORGOTTEN

in the Montenegrin media landscape with an overview of comparative practices

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LIST OF ABBREVIATIONS

ECHR – European Court of Human Rights
CJEU – Court of Justice of the European Union
ECHR – European Convention on Human Rights
GDPR – General Data Protection Directive
CEMJ – Code of Ethics of Montenegrin Journalists

INTRODUCTION

"*If something is to stay in the memory it must be burned in: only that which never ceases to hurt stays in the memory.*"

On the Genealogy of Morality by Friedrich Nietzsche

Memory, whether individual or collective, is simultaneously a gift and a curse, it is what enables the continuity of self but also doesn't cease to wound it, prolonging and renewing the impact of what has been, what has happened, but which, thanks to memory, does not pass but continues to influence the present and shape it to a certain extent. Therefore, it can sometimes be healing to forget, as the only way to survive, move forward, and escape from the constant reiteration of mistakes, pain, trauma, or guilt.

However, we can now forget about the way memory and forgetting functioned in the past. The internet has radically transformed the temporality of the public sphere and redefined privacy, ensuring something akin to an "electronic eternity" for our mistakes. How can we escape from this "immortality" of our oversights, errors, and negative publicity, which ensure the most attention, views, visibility, and are the first to appear in search engines? Do we have the right to be forgotten? Can we demand protection of rights that previous generations, not recognizing it as such, simply took for granted and enjoyed, without dreaming that a time would come when forgetting would not be possible? Ultimately, what does the right to be forgotten entail?

We sought to find answers to these questions through an analysis of the European regulatory framework and the (self-)regulatory frameworks of certain national systems, through case law, interviews with editors and experts in this field, as well as through the analysis of selected case studies from the practice of media self-regulatory bodies in Montenegro. In the final part of the study, we formulated recommendations – guidelines for handling cases invoking the right to be forgotten in a country where this issue is neither regulated by laws nor by the Code of Ethics of Montenegrin Journalists.

1. Concept and legal nature of the right to be forgotten

The right to be forgotten is part of the right to privacy and is considered a highly complex issue that defines the conditions under which individuals are allowed control over their personal data online. This right enables individuals to request the erasure or removal of links to published content that is no longer relevant or outdated. The right to be forgotten may be regulated by data protection laws or the right to privacy. An individual's right to be forgotten and the right of the public to remember are in correlation with other rights derived from conventions and important principles, such as freedom of speech and the right to remember, as confirmed by the case law of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU). The right to be forgotten often involves balancing the rights of the data subject to privacy, guaranteed by Article 8 of the European Convention on Human Rights (ECHR), and the rights of data controllers to freedom of expression, rooted in Article 10 of the ECHR.

The right to be forgotten implies an individual's right to request the removal of their personal data from records. One of the reasons why an individual might want to do so is to protect their reputation and interests. This practice was first established in Argentina, which enacted a law in 2006 allowing for requests to remove harmful content from the internet. The case before the Court of Justice of the European Union (CJEU) – Google Spain v. AEPD and Mario Costeja Gonzalez[1] – marked the first official confirmation that the right to be forgotten is formally recognized in the European Union, while also delineating privacy data protection in laws. Since this judgment was rendered, Google has received millions of requests for data erasure. Out of 5.4 million URLs whose deletion was requested, nearly half have been removed from search results on sites like Facebook, Twitter (X network), and YouTube. Google now has a standardized online form to simplify the process of submitting erasure requests[2], but this procedure is only available to EU citizens. Namely, a 2019 decision by the CJEU clarified that Google is not required to respond to all erasure requests but only to those from EU Member States. In some cases, courts have supported individuals' rights to remove truthful but outdated information about them from the internet, while this has not been the case in others. As regards judgments of national European courts, erasure requests were initially mostly denied, but recent judgments from the same courts indicate a contrary trend. For example, in November 2019, a German court ruled that the name of a person convicted of the murder of two people and sentenced to life imprisonment must be removed from internet search results. In light of the argument that criminals should not be allowed to have their crimes erased from public memory, this decision has been widely controversial in Europe and beyond.

1. See: https://globalfreedomofexpression.columbia.edu/cases/google-spain-sl-v-agencia-espanola-de-pro¬teccion-de-datos-aepd/.
2 See: *https://reportcontent.google.com/forms/rtbf.*

2. Legal concept, comparative legislative framework, and European and national jurisprudence

2.1. OVERVIEW OF THE EUROPEAN REGULATORY FRAMEWORK

The right to be forgotten or the right to erasure of personal data is one dimension of the right to data privacy outlined in the General Data Protection Regulation (GDPR). It provides a framework for addressing individuals' requests for the erasure of their personal data from the internet. With the enactment of the GDPR in 2016, the European Union established a binding legal framework, defining the legal obligation for organizations to limit the processing of personal data, protect individuals' right to privacy, and develop comprehensive privacy policies to avoid significant fines and other legal consequences[3].

The GDPR restricts the processing of personal data of all EU residents. According to Article 17 of this regulation, individuals have the right to submit an ***erasure request***[4], and the organization or search engine must employ appropriate methodologies to determine the legitimacy of the request. If the request is deemed legitimate, the organization must erase the personal data without "undue delay" and "at no cost to the individual". Furthermore, anyone receiving an erasure request must inform those with whom the individual's data has been shared, using all available means and appropriate measures.

EU citizens can now submit requests for data removal to any organization holding their data, including large technology companies. In 2014, the CJEU ruled that individuals could demand the removal of search engine results if they linked to articles containing data that was either inaccurate or truthful but inadequate, irrelevant or no longer relevant, or whose processing was excessive in relation to the purpose for which they had been collected and processed. Exceptions to the principle established by this judgment include cases where there is an overriding public interest in keeping search results public – for scientific, historical research purposes, or to defend legal claims.

The right to be forgotten has the potential to limit access to information, and as such, it may be susceptible to misuse. For example, governments could use this right for censorship purposes or to delete information necessary for journalistic, medical, or legal purposes. Laws guaranteeing the right to be forgotten provide individuals with greater control over their personal data, which is particularly important in cases of data misuse. With the enforcement of these laws, individuals have access to clear, structured procedures for requesting organizations to erase inaccurate, unwanted, or harmful information about them.

3. Although some U.S. states have enacted data privacy laws, federal legislation does not recognize the right to be forgotten as defined in the GDPR.
4. The GDPR applies to the rights of individuals, specifically to natural persons, and does not extend to legal entities.

2.2. OVERVIEW OF (SELF-)REGULATORY FRAMEWORKS IN INDIVIDUAL NATIONAL SYSTEMS – RIGHT TO BE FORGOTTEN IN CODES OF ETHICS IN EUROPEAN COUNTRIES AND THE REGION

In line with its goal, this study provides a comparative overview of available positive legal (self-)regulatory systems regarding the issue of defining legal norms applying to the right to be forgotten.

Codes of ethics in countries of the region do not generally mention the right to be forgotten. Exceptions are Serbia and North Macedonia, which have done so within separate ethical documents.

Serbia has fully transposed the GDPR into its legal system, and its Law on Personal Data Protection recognizes and acknowledges the right to be forgotten[5]. Recently, Google enabled citizens of Serbia to submit requests for the removal of content containing their personal data from search results on the Google.rs domain by filling out a simple form available in the Serbian language[6].

The Press Council of Serbia addresses the right to be forgotten in the publication titled *"Guidelines for the Application of the Serbian Journalists' Code of Ethics in the Online Environment"*[7]. According to the guidelines, editors of online media and online publications can decide to remove content or personal data within specific content upon the request of individuals whose individual rights have been compromised, provided that the publication of such data is not in the public interest or if (for any reason) the right of the public to be informed about matters of public interest overrides the right to privacy. When deciding on the request of individuals whose data is published in media content, editors of online media and online publications will specifically consider:

1) the nature and relevance of the topic being reported – considering whether the media content was published in the public interest and whether the topic is still relevant, i.e., whether over time, the public interest continues to override the rights of the individuals concerned;

2) the character of the individual whose personal data is published in the media content being reported and who requests the removal of content – considering whether it is an official, former official, public figure with a legitimate public interest in being informed about, a person for whom there is no legitimate public interest in being identifiable, etc.; if the published personal data is no longer necessary to achieve a public interest or is not necessary to the extent it was published, and there is a public interest in the media content remaining accessible, editors of online media and publications may, in accordance with technical capacities, decide to remove personal data, some or all, or to anonymize them without removing the complete media content (in the case of removing articles or parts of articles due to requests for erasure of personal data, the rules of the Guidelines relating to the withdrawal of content apply).

5. See: https://www.sharefoundation.info/sr/kako-nestati-sa-interneta-1-deo-pravo-na-zaborav/.
6. See: https://www.sharefoundation.info/sr/kako-nestati-sa-interneta-2-deo-pravo-na-zaborav-u-srbiji/.
7. Publication is available at: https://savetzastampu.rs/publikacije/smernice-za-primenu-kodeksa-novinara-srbije-u-onlajn-okruzenju-2-0/.

The guidelines for the application of the Serbian Journalists' Code of Ethics in the Online Environment also include other rules pertaining to online media. The same applies to the Recommendations for Ethical Reporting by Online Media in North Macedonia, which detail different instructions journalists should adhere to when reporting. In terms of the right to be forgotten, Article 18 of this document ("Storing and Permanent Recording of Published Content") states: "Online media are obligated to regularly store and archive published texts and other content on their websites, making them accessible through search engines. When republishing stored material, online media should consider the change in context in which the material was published and specify that it is material from the archives. Online media will permanently delete material from the archives that is accessible through search engines if it contains hate speech, discrimination, or other content prohibited by law and/or if there is a court order to do so. In the case of permanent deletion of content from the archives, online media are required to publish an announcement on the link where the deleted content was published, stating that the content has been removed and the reason for it, the title, date of publication, author's name, and date of withdrawal or deletion. Online media will retain the deleted or withdrawn content, as well as other relevant data regarding the specific case, in their internal archives[8]."

In European countries, only a few press councils address the right to be forgotten in their ethical documents.

The Flemish Press Council (Belgium) addresses this right in the document Digital Archives and Reuse of Archival Materials, where guideline for Article 22 states: "A journalist must consider the rights of all individuals mentioned in their report. They must balance the individual's right to privacy against the right of the public to know. There is a public interest in having complete archives that faithfully reproduce what has been published; the right to information, in principle, overrides the interests of individuals who wish to remove, anonymize, or block access to data, or to modify archived articles, images, audio recordings, or broadcasts. Therefore, when considering requests, the editorial staff must weigh the importance of the archives to the public and the right of the public to information against the individual's right to erasure[9]." The text underlines that the same assessment must later be made by the journalist who reuses information, images, and/or audio recordings from the archives, taking into account the original context in which the information, images, and/or audio recordings were published.

In the Netherlands, the right to be forgotten is mentioned in the chapter of the Code of Ethics relating to retrospective responsibility: "If journalists are requested to anonymize archived articles or remove them, then only in exceptional cases will the public interest in the existence of an archive of the highest degree of completeness and reliability be overridden by the private interests of those requesting it."

8. Recommendations for Ethical Reporting by Online Media in North Macedonia
9. Guideline for Article 22 of the document Digital Archives and Reuse of Archival Materials

The Code of Ethics of Catalonia (Spain), in the section "Retention of Online Documents," states: "Unlimited retention of documents and audiovisual materials online can lead to undesirable or unpleasant situations for 'affected' individuals". In case they request data erasure, the request should balance public interest with individual rights. In any case, invoking the right to be forgotten "should not be a reason for the immediate destruction of items that are in certain way part of the general archives or living memory, which is a collective heritage and may be of interest to historians and social science researchers[10]."

In the same chapter, the attitude towards archival documents is further elaborated in several segments:

- General rule: A request for the destruction of online traces of individuals or legal entities should not be perceived as an obligation when the reason cited is a change of opinion, image, or any other entirely personal reason.
- The persistence of certain documents should not infringe upon the fundamental rights of individuals, i.e., it should not lead to situations that are offensive or harmful to them.
- Responsible publishers should prevent or mitigate harm that may be inflicted on individuals who have been portrayed - by image, voice, and/or documentation – due to the continuity, ease of access to content, reproduction, and manipulation of material on the internet. This approach is particularly important when children or young people who do not have the ability to defend themselves or are exposed to the risk of misuse on the internet are concerned.
- The nature of the internet, as a global, permanent, and virtually universally accessible repository of all types of content, makes it practically infeasible to make discretionary decisions about removing systematic, currently present, and extensive material deemed inappropriate or harmful to individuals, companies, or institutions.

2.3. COURT OF JUSTICE OF THE EUROPEAN UNION – GOOGLE SPAIN V. AEPD AND MARIO COSTEJA GONZALEZ, 2014

On 13 May 2014, the Court of Justice of the European Union ruled that search engines (such as Google, Yahoo) must consider individuals' requests to remove links to web pages that appear in search results for their name if those pages contain information that is "inadequate, irrelevant, or no longer relevant, or excessive (...) having regard to all the circumstances of the case[11]". This followed a legal proceeding before national courts initiated by a Spanish businessman, who was disturbed by the fact that the most common search results for his name were related to a bankruptcy he had undergone over 10 years before. After a ruling in his favour at the national level, the case was brought before the Court of Justice of the

10. Etički kodeks Španije
11. Više o tome vidjeti na: https://globalfreedomofexpression.columbia.edu/cases/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos-aepd/.

EU – a case known as Google Spain v. AEPD and Mario Costeja Gonzalez 2014[12] which inaugurated the concept of the right to be forgotten.

However, the standard established by the CJEU on that occasion has not clearly and precisely defined all dimensions, conditions, and criteria for determining the right to be forgotten. From 2014 to the present day, numerous national judicial and self-regulatory bodies have dealt with the right to be forgotten, and particularly interested are the judgments of the national courts of the Netherlands and France[13].

In 2016, the European legislators adopted the GDPR, which applies to citizens of the European Union. In recent years, courts in several European countries have ruled on cases involving clarification of the circumstances under which someone can request the removal of certain search results related to their name.

12 Ibid

13. The Human Rights Action (NGO Action for Human Rights) describes these cases in a bulletin dedicated to the right to be forgotten: "In the case of Arthur van M. v. Google Netherlands and Google Inc., a convicted criminal known as Arthur van M. requested Google to remove data about his criminal conviction from its search engine index. The plaintiff was convicted of attempted incitement to assassination in 2012 but appealed the decision and was released from custody pending the outcome of the appeal. Records of his conviction were still available online and were among the top search results on Google when searching for the plaintiff's name. He requested that these links be removed from Google's index, but Google refused to do so. He then sued Google. The Amsterdam District Court dismissed his request for removal on 18 September 2014. Arthur van M. subsequently appealed. The Amsterdam Court of Appeals confirmed on 31 March 2015 that everyone has the right to correct personal data, have it erased, or removed when the processing of such data is unlawful according to the European Data Protection Directive. However, the Court underlined that it was essential to consider whether the person in question was a public figure and whether the broader public had a legitimate interest in receiving such information. Considering the facts of this case, the Court concluded that Arthur van M.'s conviction resulted from his actions. The Court also found that the public had an interest in receiving information about the serious criminal offenses, such as the one committed by Arthur. Additionally, the Court noted that several websites had only published his initials, not his full name. For these reasons, the Court upheld the decision of the Amsterdam District Court and determined that the convicted criminal did not have the 'right to be forgotten'. In another Dutch case, Ewald van Hamersveld v. Google Inc., Ewald had sued a construction company and lost the case, and the construction company changed the lock on his house and forced him to live in a container on his property. In his request, he sought the removal of news reports about the case from Google search results for his name. The plaintiff, an accountant for the KPMG firm, withdrew a payment of €200,000 because he was dissatisfied with the quality of the works delivered. After media reports about this, the accountant requested Google to remove reports of this case from searches for his name, as well as from searches for some other words. The Amsterdam District Court ruled that newspaper articles that included words other than the accountant's name could not be removed from search results because such searches did not involve 'personal data'. Regarding the request to remove the accountant's name from search results, the Court considered, first and foremost, that services like Google had an important social function, and any imposition of restrictions required strict and careful examination. While results considered inadequate, irrelevant, and/or excessive can be removed, here it was necessary to balance this with the public's right to information. The Court stated that it could not decide on the content of articles appearing in Google search results and that the request regarding the 'right to be forgotten' should not be used as an alternative to defamation lawsuits against the authors of newspaper articles. Furthermore, the Court found that the events reported had occurred recently, and therefore, this request significantly differed from that in the 'Google Spain' case. For these reasons, the Court determined that Google could not be required to remove the results. In the French case of Marie-France M. v. Google France and Google Inc., the Paris Regional Court (Tribunal de Grande Instance), in expedited proceedings, considered the request of a woman convicted of fraud, Marie-France, addressed to Google, to remove links to web pages mentioning her conviction for fraud from search results for her name. The Court believed it was necessary to balance the protection of personal data on the one hand, and the right to freedom of information on the other. Reports of fraud from 2006 were justified, and at that time, Marie-France did not object to their publication. However, the plaintiff claimed that in 2014, several years after the conviction, the constant inclusion of information about the fraud conviction in search results for her name had hindered her attempts to find employment. The Court agreed, especially considering that more than eight years had passed since the conviction and that the conviction had been expunged from her criminal record. This meant that the plaintiff's appeal took precedence over the public's right to information. Another French case, Franck J. v. Google France and Google Inc., involved a man who was dismissed for harassment and demanded that information about it be removed from search results for his name. The dismissal proceedings, which were still ongoing, were the subject of consideration by the Toulouse Regional Court (Tribunal de Grande Instance) in expedited proceedings. The Toulouse Court noted that the information on the disputed links was related to complaints from Franck's employer that had led to the dismissal proceedings. The verdict in this case, which resulted in dismissal, was pronounced in a public hearing, was available to the broader public, and was reported by the media. The facts of the case were not old, dating back to 2011, and it could not be argued that the articles were inaccurate, inadequate, irrelevant, or excessive. Although the appeal process was ongoing, it did not mean that the previous judgment was incorrect or that harassment did not occur. In 2015, the Court found that the public's right to information about ongoing proceedings took precedence over the 'right to be forgotten', and dismissed the request for removal." (HRA, Bulletin No. LVIII: Right to be Forgotten, 2015) For more information, see: https://www.hraction.org/hra-bilteni-sloboda-izrazavanja/.

2.4. OVERVIEW OF THE TWO LATEST CASES OF THE EUROPEAN COURT OF HUMAN RIGHTS

Hurbain v Belgium, 2021

In the absence of national regulations and considering the evident need for an adequate, consistent, and balanced approach regarding the dilemma of which right takes precedence (the right to freedom of expression or the right to be forgotten), Montenegro's self-regulatory bodies should consider and review the latest judgments of the European Court of Human Rights.

Their latest decision adopted in the case of Hurbain v. Belgium, 2021 was published in the ECHR registry on 4 July 2023. In this decision, a publisher of the magazine is instructed to anonymize the details of the convicted offender, based on the right to be forgotten[14].

This case was related to a judgment against Mr. Hurbain, the publisher of the daily newspaper Le Soir. Citing the right to be forgotten, the Court ordered the publisher to remove from the digital archive an article containing the full name of a driver involved in a traffic accident in 1994[15].

ECHR noticed that national courts had coherently taken into account three important circumstances:

- the nature and seriousness of the facts reported in the article in question;
- the fact that the article is not relevant, lacking historical or scientific significance;
- the fact that the driver was not a public figure.

ECHR concluded that national courts had considered the seriousness and accuracy of the allegations covered by the disputed article, as well as the fact that the driver was not a public official and that the article was not relevant, nor did it have historical or scientific value in that sense. The courts also took into account the significant harm suffered by the driver due to the constant, unrestricted availability of the article online, which had the potential to establish a "virtual criminal record," with particular attention paid to the time elapsed since the article was published. Moreover, after reviewing the measures that could be taken to achieve a balanced protection of rights, in accordance with the procedural standards applicable in Belgium, they considered that anonymizing the article did not impose an excessive burden on the applicant, while, on the other hand, it was the most effective means of protecting the driver's privacy.

14. Grand Chamber of the ECHR ruled, with 12 out of 17 votes, that the decision of the national judicial instances of Belgium had not violated the right to freedom of expression. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-13318%22]}.

15. The applicant, Patrick Hurbain, is a Belgian citizen residing in Genappe and the publisher of one of the leading Belgian daily newspapers in the French language - Le Soir. The print edition of these newspapers from 1994 contained a story about a car accident in which two people died and three were injured. The story also revealed the full name of the driver, who was found guilty in 2000. He served his sentence in 2006 and was rehabilitated. Two years later (2008), a free electronic version of their archives from 1989 appeared on the Le Soir website, which included the mentioned article. In 2010, the driver contacted the newspaper and requested that the article be removed from their online archive or at least anonymized. The request pertained to information about his profession and the fact that the mentioned article appeared in search engine results when his name was entered.

Therefore, taking into account the margin of free assessment by the state, the ECHR concluded that national courts had carefully balanced the rights guaranteed by the Convention, that the interference with freedom of expression manifested through the anonymization of the text had been limited to what was strictly necessary, and that as such, this measure could be considered proportionate and necessary in a democratic society[16].

As regards the "additional burden" imposed on press freedom by the obligation of publishers to anonymize an article that had been originally published lawfully, the Court considered that it did not imply that this obligation had a negative impact on press freedom and the freedom to perform journalistic tasks. The ECHR noted that national courts had comprehensively considered the nature and seriousness of the facts, established that the article had no historical or scientific significance, and that the driver was not a well-known/public figure. A particularly significant fact highlighted was the harm suffered by the driver due to the constant and unrestricted availability of the article online, creating a "virtual criminal record," especially considering the length of time elapsed since the initial publication of the article[17].

Biancardi v Italy, 2022

In the judgment of the ECHR in the case of *Biancardi v. Italy, 2022,* the scope of the right to be forgotten has been expanded. This court, in the case of *Hurbain v. Belgium, 2021,* determined that the order to anonymize the person responsible for a traffic accident in the online archives of newspapers did not violate freedom of expression. Given that the test established in the case of *Axel Springer AG v. Germany, 2012*[18] was crucial in balancing the right to privacy and the right to freedom of expression, the Court, in its decision in the case of *Biancardi v. Italy*, which dealt with a similar request, provided guidelines for the application of the Springer test in the online context, further expanding the scope of the right to be forgotten[19]. This was done in the following manner: firstly, the Court confirmed that journalists and newspapers operating online are liable for de-indexing articles when requested to do so; secondly, in the balancing act of the right to freedom of expression and the right to private life, the latter gains greater weight when the case concerns de-indexation. That weight is reinforced by a seemingly shorter period in which an article can be considered 'newsworthy', especially when the claimant is relatively unknown to the public. It will be interesting to see whether the line of case law established in *Hurbain and Biancardi* will expand further in the future [20]."

16. ECHR, The order of the publisher of the newspaper Le Soir to anonymize the details of the convicted offender on grounds of the right to be forgotten did not breach his freedom of expression, 2023. Available at: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7694998-10619728&filename=Grand%20Chamber%20judgment%20Hurbain%20v.%20Belgium%20-%20%22Le%20Soir%22%20newspaper%20ordered%20to%20anonymise%20identity%20of%20an%20offender%20to%20respect%20his%20right%20to%20be%20forgotten.pdf.
17. Ibid
18. See: https://globalfreedomofexpression.columbia.edu/cases/axel-springer-ag-v-germany/.
19. The court established criteria for balancing freedom of expression and the right to privacy by focusing on the following questions: (1) whether the publication contributes to a debate of general interest; (2) how well known is the person concerned and what is the subject of the report; (3) the prior conduct of the person concerned; (4) the method of obtaining the information and its veracity; (5) the content, form, and consequences of publication; (6) the severity of the sanction imposed. For more information, see: https://globalfreedomofexpression.columbia.edu/cases/axel-springer-ag-v-germany/.
20. Jakob van de Kerkhof, Biancardi v Italy: A broader right to be forgotten, 1922. Available at: https://strasbourgobservers.com/2022/01/07/biancardi-v-italy-a-broader-right-to-be-forgotten/.

In the commentary on the case Biancardi v. Italy, 2022, it is noted that the right to be forgotten can take different forms:

- Request for anonymization;
- Request for erasure and removal of data;
- Other ways to reduce the dissemination of certain pieces of information.

The question posed in the case of Biancardi v. Italy is: can the obligation to de-index material be extended to administrators or journalists rather than being limited to search engines (as in the case of *Google Spain v. AEPD and Mario Costeja Gonzalez*). To answer these questions, the Court first needed to determine the scope of the obligation to de-index. The precise meaning of that term (as well as similar terms such as de-listing), can only be drawn from the specific context in which it appears. In the context of this decision, the Court defined de-indexing as *"the activity of a search engine consisting of removing from the list of displayed results (following a search made on the basis of a person's name)*[21]." In this particular case, the operator was a journalist, adding another dimension to the request for the de-indexing of the article.

In this case, the ECHR found that journalists can be considered liable for refusing to de-index content. Additionally, the Court applied the Springer criteria[22] more flexibly and favoured the right to private life over the right to freedom of expression in the balancing of interests.

In the case of Biancardi v. Italy, the Court considered the following criteria: (1) the length of time the article remained online after the request; (2) the sensitivity of the data involved; (3) the severity of the sanction imposed. The case also raised the question of whether it is appropriate for journalists, whose primary activity is reporting rather than de-indexing, to censor content in this manner. Therefore, it was deemed more appropriate "for the search engine operator to be responsible for this and for journalists to only have the right to request the operator to remove articles from search results, rather than removing content themselves from search engines and websites."

Up until this case, de-indexing cases had been focused on search engines. Biancardi is the first case where the de-indexing request was granted against the primary source. It was considered that the de-indexing request was still a less drastic legal remedy than an order to remove the article.

21. See: https://globalfreedomofexpression.columbia.edu/cases/axel-springer-ag-v-germany/.
22. For more details about the case of Axel Springer AG v Germany see: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-109034%22]}.

3. Right to privacy in the Montenegrin legal system as the basis for the right to be forgotten

Finding a balance between an individual's interest in protecting their privacy and the interest of the public in accessing information about others is one of the most complex ethical and legal issues of our time. The digital era has enabled faster and easier dissemination of information but has also led to numerous violations of rights, especially the rights to privacy and the right to be forgotten. The issue of the right to be forgotten, as a segment of the right to privacy, requires a clear regulatory framework and criteria that would facilitate the removal of content that is not of public interest by journalists, editorial offices, and operators.

Although the Montenegrin legal framework does not provide an answer to the question of criteria and standards for determining the right to be forgotten, the right to privacy is regulated by certain legal acts. This right is protected by the constitutional norm set forth in Article 40, which stipulates: "Everyone shall have the right to respect for private and family life[23]." The Criminal Code of Montenegro includes a provision for the protection of the individuals' right to privacy, and its Article 197 (Disclosure of personal and family circumstances) prescribes: "Whoever discloses or disseminates anything from the personal or family life of a person that may harm his honour or reputation shall be punished by a fine ranging from three thousand to ten thousand euros (paragraph 1)[24]." The Code further stipulates that, if this offence "is committed using the media or similar means or at a public gathering, the offender shall be punished by a fine ranging from five thousand to fourteen thousand euros (paragraph 2). If what is disclosed or disseminated has led or could lead to serious consequences for the injured party, the offender shall be punished by a fine of at least eight thousand euros (paragraph 3). For the disclosure or dissemination of personal or family circumstances that are made in the performance of official duty, journalistic profession, in defence of a right, or in protection of legitimate interests, the offender shall not be punished if they prove the veracity of their allegations or if they prove that they had a well-founded reason to believe in the veracity of what they were disclosing or disseminating (paragraph 4). The veracity or falsity of what is disclosed or disseminated from the personal or family life of a person cannot be proven except in cases referred to in paragraph 4 of this Article (paragraph 5)[25]."

While the Media Law does not regulate the protection of the right to privacy[26], the Electronic Media Law, in Article 55, imposes obligations on broadcasters regarding programme content, as well as the duty "to respect the privacy and dignity of citizens and protect the integrity of minors [27]". The Code of Ethics of Montenegrin Journalists, in principle 7, prescribes: "The journalist is obliged to treat people's private lives with utmost care, and the right to privacy is inversely proportional to the importance of the public function performed by the individual, but even in those cases, it is necessary to respect human dignity."

23. Media Law ("Official Gazette of Montenegro", No. 82/2020 of 6 August 2020)
24. Criminal Code of Montenegro ("Official Gazette of Montenegro", No. 70/2003, 13/2004 and 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017, 49/2018 and 3/2020).
25. Ibid.
26. Media Law ("Official Gazette of Montenegro", No. 82/2020 of 6 August 2020)
27. Electronic Media Law ("Official Gazette of the Republic of Montenegro", No. 46/2010, 40/2011, 53/2011, 6/2013, 55/2016, 92/2017 and 82/2020).

4. Experiences and challenges of Montenegrin self-regulatory bodies when responding to (un)formalized requests for data deletion

Since Montenegro is not a member of the EU and has not transposed the provisions of the General Data Protection Regulation into its legal system (as, for example, Serbia has done), the right to be forgotten is not available to our citizens. This right is not ensured and protected in the manner in which it is done by the GDPR and other relevant regulatory acts, guidelines, and court judgments mentioned earlier. Therefore, it is not surprising that the application of this "emerging right" in Montenegro is spontaneously divided between judicial practice and the practice of media self-regulatory bodies. In the following text, we will present several illustrative cases that have been brought before media self-regulatory bodies and those in which media outlets have been ordered by court judgment to remove certain content from their online portals.

A complaint was filed with the Media Self-Regulation Council (MSRC) regarding the mention of individuals in a negative context[28]. The complaint was filed by a paediatrician from a primary health centre, citing violations of Principles 1, 2, and 4 of the Code of Ethics of Montenegrin Journalists (CEMJ), and requesting the removal of contentious articles from two web portals. The request was justified by tendentious dissemination of falsehoods aimed at discrediting the individuals mentioned in the articles, as well as handling sources in a manner contrary to professional standards, i.e., journalists failing to obtain statements from direct participants in the events mentioned in a negative context (Principle 1 of CEMJ). The complaint also stated that the comments in the articles were presented as undisputed facts (Principle 2 of CEMJ), and that the articles contained insults and libel (Principle 4 of CEMJ) against individuals mentioned by their full name in one article and by initials in another.

One web portal provided a statement responding to the allegations from the complaint to the MSRC's Monitoring and Appeals Commission, emphasizing that the editorial staff contacted the primary health centre where the described event had occurred before publishing the article and sought a statement from the director of that institution, but without success. According to them, their obligation to seek a statement from the other party was fulfilled. The statement from the second portal outlined the following circumstances: "The article did not mention the name of the employee whose conduct the parent of the sick child had complained about; the identity of the parent is undisputed, we recorded their audio statement, and the reason why they had contacted us, in our assessment, required prompt journalistic reaction, with the aim of ensuring timely healthcare services for children, as a particularly vulnerable category of the population. Since we did not disclose the identity of the person the complaint referred to, nor did we pretend to investigate the case from the perspective of potential disciplinary or more serious responsibility, we considered it professionally acceptable to publish the parent's statement, hoping to contribute to resolution of this problem." The complainant accepted this portal's explanation, while the other web portal agreed to remove the name of the person who lodged the complaint from the article.

The practice of ombudspersons as separate self-regulatory bodies in this regard varies both among them and in comparison with the practice of the MSRC.

28. Members of this collective self-regulatory body are: Pobjeda, Pobjeda web portal, Radio Elmag, TV Teuta, TV Teuta web portal, TV E, Radio Antena M, Antena M web portal, Radio DUX, Radio Mir, M Portal, RTV Cetinje, Portal Analitika, TV Nova M, CDM web portal, TV Boin. See: https://www.medijskisavjet.me/index.php/o-nama.

Ombudswoman of *Vijesti* occasionally receives requests from readers for content removal from the web portal and requests for anonymization. According to the past practice of the *Vijesti* portal, which was launched in 2011, requests invoking the right to be forgotten are typically submitted by private individuals who do not hold public positions and do not have a significant role in public life. These are mainly individuals about whom certain articles were published that are still accessible through online search, harming their businesses, diminishing or restrict business opportunities, and also complicating their everyday life circumstances, such as renting an apartment, disrupting relationships with neighbours, reputation in their community, etc. Although the Rules of Procedure for the Protector of *Vijesti* Readers' Rights envisage content removal as one of the possible measures in the mediation process between the complainant and the media (Article 3), such decisions are made very rarely in order to protect the integrity of the archives and ensure respect for the principle of the legitimate public interest.

The Ombudswoman of *Vijesti* proactively proposed the removal of an article in 2018 in order to protect the privacy of a minor who was a victim of violence. The Ombudswoman's proposal was based on a complaint from the parents, and the editorial board accepted it, promptly removing the contentious article on the same day.

Several requests for the removal of articles were submitted by individuals who had been lawfully sentenced and had served their sentences. In some of these cases, the requesters were asked to provide confirmation that they had not been under investigation or subject to judicial proceedings that from the moment the sanction was served until the submission of the request, which they failed do, so the content in question remained accessible on the web portal. In other cases, efforts were made to resolve the issue by removing tags, or de-indexing the content published on that media outlet.

In a case from 2021, a request was made by an individual who was mentioned by full name in the article as a witness to an event involving a public figure that had taken place in 2016. The requester asked for her full name to be replaced with initials in the article. In the request, she stated that the mention of her full name violated their privacy, tarnished her reputation at work and among friends, and emphasized that she was not a public figure. She added that the mention of her full name in such a context negatively affected her emotional state, as well as her overall mental health and well-being. As a result of mediation with the editorial team, the reader's request was granted, and her name was replaced with initials in the article. However, the reader contacted the publication again, informing them that the tag with her full name was still present below the article. After a repeated request to the editorial team, the tag was also removed. The whole process lasted just under two months.

The Ombudsman of *Dan* has not received requests based on the right to be forgotten so far. However, upon the request of a lawyer representing a Montenegrin businessman, this media outlet removed contentious articles from its website (at that time, the *Dan* web portal did not exist), without the request for removal being addressed to the ombudsman. The same request was sent to the editorial boards of two other daily newspapers and web portals, but they did not accept to remove of the content, which led to judicial proceedings against them. The Basic Court in Kolašin issued a judgment in 2021, obligating these two daily newspapers to remove three and six articles covered by the complaint from their respective web portals, which neither of them has done to this day.

The practice of self-regulatory bodies shows that, in the absence of applicable legislation and specific provisions of the CEMJ, it is necessary to establish minimum guidelines for handling specific situations involving requests based on the right to be forgotten. When formulating these guidelines, the provisions of the General Data Protection Regulation (GDPR), the Guidelines on the Implementation of the CJEU Decision of 2014[29], guidelines, recommendations, and best practices of the European Data Protection Board[30], as well as the case law of the CJEU and the ECHR, should be taken into consideration, as these are the instruments on the basis of which the general understanding of EU data protection law is reasoned[31].

5. An overview of interviews with editors and exerts

Based on interviews with journalists, editors, and experts, we can conclude that the right to be forgotten is relatively unknown in Montenegro. Some of the interviewees have heard of this concept but are not familiar with it in detail and do not know what the right to be forgotten actually entails. The fact that the GDPR is not transposed into Montenegrin legislation has certainly contributed to this right being less known, not only to the general public but also to media professionals. Almost all respondents from the media community agree that the right to be forgotten should be implemented in Montenegro, both through legislation and through self-regulation.

According to the experiences of the interviewed representatives of the Data Protection Agency, this institution relies on the Data Protection Law and primarily deals with the removal of personal data (ID numbers, home addresses) from the internet to protect the privacy of individuals. On the other hand, they are completely unfamiliar with the issue of removing personal data from web search engines.

The interviewees from the media community mentioned several sporadic situations where editors removed certain content upon individuals' requests. For example, the editor of one media outlet independently decided to remove the disputed content, based on a request from individuals who claimed that information from certain articles was causing them problems in their daily lives even after a certain period of time had elapsed. The editor made this decision based on their own judgement, without relying on any legal basis or being aware that there was European legislation in this field. On the other hand, there are cases where articles were removed only after binding court judgments. Certain media outlets have partially anonymized the names of participants in the events reported after the mediation involving the media self-regulation mechanism. This was done after a certain period of time had elapsed and with the decline in the relevance of the published content, at the request of the immediate participants in the events whose names were mentioned in the articles.

29. See: https://ec.europa.eu/justice/article-29/documentation/opinion- recommendation/files/2014/wp225_en.pdf.
30. See: https://edpb.europa.eu/our-work-tools/general-guidance/guidelines-recommendations-best- practices_hr.
31. See: https://support.google.com/legal/answer/10769224?hl=hr#zippy=%2Cva%C5%A1a-uloga-u- javnom-%C5%BEivotu%2Codakle-potje%C4%8Du-informacije%2Cstarost-sadr%C5%BEaja%2Cu%C4%8Dinak-na- googleove-korisnike%2Cistinitost-ili-neistinitost%2Cosjetljivi-podaci.

Some of the experts we interviewed caution that the right to be forgotten defined by the GDPR does not cover the media and is not related to them. Marko Milosavljević, a regular professor at the Faculty of Social Sciences at the University of Ljubljana, believes that the European Commission has implemented this right for online search engines, not for the media. In the context that the GDPR applies to, search engines like Google are relevant because individuals can request them to remove personal data from search results. On the other hand, data removal services cannot be requested from Facebook, Platform X, and other social media platforms. According to Milosavljević, internal search engines of media outlets are usually not used for searches, and users typically go to Google to find the content they are interested in. The possibility to request media to delete certain personal data or remove an entire article is not provided for in national laws. Such situations are defined through self-regulation, and only in some European countries.

Milosavljević points out that some European countries have implemented the right to be forgotten through self-regulation due to pressure from citizens. As a result of numerous requests for the removal of personal data, some self-regulatory bodies have incorporated the right to be forgotten into their codes of conduct. The requests vary, Milosavljević emphasizes, as do the approaches of their submitters and the nature of the requests. Some people aggressively demand respect for the right to privacy through lawyers, while others simply ask for certain articles or photos to be removed. Some requests are problematic, while others are not. Experiences are very different. For instance, a politician who had been in prison requested the removal of an article about it because five or ten years had passed since then. A businessman who had been accused of fraud and served time in prison or paid a fine asked a media outlet to remove a text about him five or ten years after the event because it interfered with his current business interests. However, there is no legal basis for such requests, according to Milosavljević.

According to Snježana Milivojević, an expert and Regular Professor of Public Opinion and Media Studies at the Faculty of Political Sciences, University of Belgrade, the right to be forgotten in the context of European legislation builds, to some extent, on the protection that individuals enjoyed in the world of traditional media in terms of the right of correction or reply, which has been transferred to the digital environment. In her opinion, this right is not a particularly effective tool for restraining the power of the largest technology companies, but it does give individuals the opportunity to at least partially control the flow of data about themselves. Milivojević emphasizes that the balance between citizens' requests for the erasure of personal information and the right of the public to know certain information is well regulated through the General Data Protection Regulation (GDPR), and that this regulation, in a broader sense, protects individuals' rights to have "knowledge about themselves". She believes that it is very important to establish the foundations of this epistemic equality in circumstances where there is a huge power imbalance between large platforms and citizens. The possibility of collecting and processing personal data, as well as disposing of them, leads to the concentration of such data in databases owned by digital platforms, search engines, and different government organizations. The misuse of personal data is at least minimally counterbalanced by the individuals' right to request their removal when justified. According to S. Milivojević, the purpose of protecting personal data, consent obligation, and even the right to erasure is to protect individuals from powerful corporations or government bodies, rather than to restrict freedom of expression and the public's right to know.

In Article 17 of the General Data Protection Regulation (GDPR), specific cases in which data withdrawal/erasure can be requested are exhaustively listed, but exceptions are also provided. It clearly establishes that public interest – protection of scientific truth, freedom of expression, and medical or legal procedures – requires limitations to the right to be forgotten, meaning that cases protecting values that are considered to be in the public interest constitute legitimate exceptions to the application of this right.

As regards European legislation regulating the right to be forgotten, we must distinguish between two things, argues Đorđe Krivokapić, an Associate Professor at the Faculty of Organizational Sciences, University of Belgrade, and one of the founders of the Share Foundation, which is involved in research, protection, and improvement of human rights in the digital environment. On the one hand, there is the right to be forgotten arising from the decision of the Court of Justice of the European Union (CJEU) – the so-called right to de-indexing. The right to be forgotten regulated within the GDPR is the so-called right to erasure. As for the CJEU, the most significant decision is the *Google Spain v. AEPD and Mario Costeja Gonzalez case*[32], which concerns the individual's right to de-indexing/delisting. Namely, if enough time has passed since the event reported and if the information is no longer relevant, Google should respond to a person's request to remove search results related to their name and facilitate this through the de-indexing process.

Unlike the CJEU decision, where the right to be forgotten is exercised through de-indexation, the GDPR provides a whole range of different rights to individuals whose data is processed. One of these rights is the right to erasure, which is actually a colloquial term for the right to be forgotten, says Krivokapić. The fundamental principle of processing personal data is the restriction in terms of purpose. The GDPR sets rules for those processing personal data, and as their key duty, it specifies the obligation to delete personal data as soon as the purpose of their processing is achieved. Every data controller should determine the moment when the purpose for which the data was collected is achieved, and then, through technical measures (*privacy by design and default*), incorporate automatic deletion of this data into information systems.

Krivokapić agrees with the previously mentioned view of S. Milivojević that the GDPR and data protection laws apply to the media to a much lesser extent. There is, in fact, a journalistic exemption, which means that data processed within journalistic research and publication are not subject to the regular rules of processing personal data. These data are under a special regime, which means that media are exempt from many obligations. On the other hand, media have a range of specific obligations arising from media legislation and media self-regulation. The conflict between the right to privacy and the right to freedom of expression, between the protection of personal data and media freedom, is compared and weighed in each specific case, meaning that in the context of specific circumstances of the case, it is always assessed whether the public interest prevails or not. There are no strict or universal rules, Krivokapić says, adding that there is no *silver bullet* that would provide a simple answer or solution to this complex problem.

32. See: https://globalfreedomofexpression.columbia.edu/cases/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos-aepd/.

As we know, Krivokapić continues, the more of a public figure you are, the more the public interest prevails. And vice versa – if your presence in the public eye has little public significance, you can become a public figure and be reported on only in connection with specific events in which you are involved, such as a traffic accident or a house fire. Even that case, there are differences. If your house burns down, there is no reason to disclose your identity, but if it's a traffic accident you have caused, then there may be an interest in doing so. He adds, however, that although there may be a public interest in disclosing someone's personal data in reporting on a current event at a certain point in time, i.e. this public interest overrides the right to privacy, as time passes, this data and the initially published private information are no longer necessary for the story, the public interest no longer overrides the right to be forgotten. A particular problem is that media articles often appear very high in search results, says Krivokapić.

Asked whether the right to be forgotten could interfere with some of the fundamental principles of journalism, Mili Prelević, deputy editor-in-chief of the daily newspaper Dan, says that this is indeed the problem and the biggest dilemma. He believes that the right to be forgotten can not only interfere with the basic principles of journalism but can also be in direct contradiction with the fundamental imperative of the profession – the right of the public to know. Therefore, some see this right as a form of censorship, says Prelević, adding that the right to be forgotten should certainly be regulated – both by legal acts and by ethical codes, as has been done, for example, in the case of the right of reply or correction.

Professor Milosavljević says that media generally do not accept requests from politicians and businessmen. Cases where the media comply mostly involve events involving ordinary people or children. Often, these are ordinary people who did something foolish when they were younger, he says[33]. They are not aggressive in their approach, they politely ask editors to remove controversial photos or articles. Editors, in most cases, comply with their requests, so that Google search engine no longer recognizes the unwanted content. These are usually editorial decisions that have no basis in laws or codes if a particular country has not implemented the right to be forgotten even at the level of self-regulation, says Milosavljević.

Finding a balance between citizens' requests for erasure of personal data and the public's right to know is a question that is not precisely addressed in national laws or in GDPR, says Milosavljević. It all depends on the context. For example, it is not the same whether the right to be forgotten is requested by an active politician or by the child of a politician who has been dead for 15 years. If the unwanted information is still important even 15 years after the death of a certain public figure, it should remain available. As regards judicial proceedings, the situation is delicate when a lawsuit "falls through", for example, due to procedural reasons. In such cases, the removal of all information about the case is sought because the person is officially innocent. In such situations, even a falsification of history can occur if requests to remove articles related to the roles of individuals in historical events are accepted.

33. Professor Milosavljević cites the example of young girls "who pose for tabloids in swimsuits, and later in life, when they want to obtain a more important position in a company, such photos can cause problems in their career".

The situation becomes particularly complex when it comes to publishing and removing personal data related to the commission of criminal offenses. As an expert with PhD in Law, Krivokapić believes that criminal law clearly prescribes when data about an offender should be erased from criminal records. From a legal perspective, for example, in the case of job applications, if the offense is erased from the criminal record, the offender receives a document stating that they have not been convicted. However, this does not mean that the media should accept this legal fact despite ethical and social principles, nor they are fully bound by it. According to Krivokapić, the media have no obligation of that kind if the editor and journalist believe that there is still a public interest in keeping the information available. It is precisely for these reasons, he says, that the *Guidelines for the Implementation of the Serbian Journalists' Code of Ethics in the Online Environment* include a provision that news should not be deleted or removed from the archives. It is only important to find a way to reduce the impact of that news on the individual's reputation and public opinion about them while preserving the integrity of the archives and not altering history.

Every change in media content requires a responsible attitude towards the public. It is necessary to inform readers that there has been a change in media content and to state the reason and method by which this was done. For example, Krivokapić suggests that in the case of partial anonymization, where the full name of a person is replaced by initials, the media should display a notice like: "With the passage of time and the exercise of the right to be forgotten by [name], this news item was modified on [date], and the full name has been removed, leaving only the initials. If you have any inquiries for research purposes, please contact the editorial staff".

In the abovementioned judgment of CJEU in the case *Google Spain v. AEPD and Mario Costeja Gonzalez*[34], , the Court concluded that in the process of balancing the rights and freedoms of individuals with the interests of internet users to access information through web search engines, the rights of the individuals whose data were processed prevailed, said Iva Rolović, a legal expert from the law firm Harrisons, in a discussion on this topic. However, she added that in specific situations, achieving balance depended on the nature of personal data, their sensitivity in terms of the privacy of the individuals whose data were processed, and the public interest in having that data accessible. The public interest is not always the same; it can significantly vary from case to case, primarily depending on the role the individual in question plays in public life. Consequently, making a decision on whether a particular link should be removed from search results should be based on four key criteria: (1) the individual's role in public life; (2) the nature of the personal data; (3) the source and motivation for publication; (4) the passage of time.

Additionally, the right to erasure of personal data can be suspended even when there is a basis for removal, claims Rolović. The reasons for suspension require careful assessment of interests in each individual case, for the purpose of striking a balance between different rights. For example, the right to erasure cannot be exercised when the processing of personal data is carried out for the purpose of

34. See: https://globalfreedomofexpression.columbia.edu/cases/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos-aepd/.

journalistic research and publication of information in the media (the so-called media privilege). The exercise of the right to be forgotten will also not be acceptable when the processing of personal data is necessary for the performance of tasks in the public interest, the protection of public health interests, scientific or historical research, or the submission, exercise, or defence of a legal claim.

One of the shortcomings of ethics is that you cannot describe all the situations that a journalist will face, says Nataša Ružić, head of the Media Studies and Journalism programme at the Faculty of Political Science, University of Montenegro, responding to the question of how to find a balance between citizens' requests for erasure of personal data and the public's right to know certain information. In her opinion, Aristotle's theory of the golden mean should be applied, finding that middle ground depending on the situation. The golden mean is not sought, explains N. Ružić, in situations involving property or violent crimes, i.e., more serious criminal offenses. For example, if a person commits premeditated murder or evades taxes causing harm to the state, deleting data from the internet would certainly not be ethical. If someone gets behind the wheel, drives under the influence, and kills another person, it would not be fair to the victim's family to expect data deletion. This leads to the relativization of crimes. Therefore, it all depends on the situation, but we should be aware that we are responsible for every action we take. The basic principles of moral virtues are integrity, civility, and credibility, she says, but integrity is key, as it distinguishes good from bad behaviour.

Concerning the dilemma of whether the right to be forgotten should be regulated by law or code of ethics in non-EU member states, almost all of our collocutors agree that a combination of these two regulatory instruments would be the best solution. They believe that in Western Balkan countries, both regulatory and self-regulatory instruments of protection should be developed. Professor Milivojević firmly believes that data protection laws, where enacted, provide for this type of protection. On the other hand, professional and ethical codes are there to regulate more precisely the standards that apply to specific activities, where there may be abuse or sharing of data with third parties. She argues that, in most cases, information that is important to the public can be published without disclosing private or identifying characteristics of individuals, even when they are important actors in the process. Public action, public interest, and the protection of freedom of expression, as well as the right of the public to know, can be specified by a code of ethics, guidelines, or other self-regulatory acts that further elaborate on existing legal provisions. It would be good, according to S. Milivojević, for countries outside the European Union to regulate this right in accordance with EU regulations because these standards are currently the highest in the world.

According to Krivokapić, improving the legal framework for personal data protection through the GDPR enables the right to privacy and the protection of personal rights to be further strengthened in Western Balkan countries and to follow European practices. However, for this right to truly function in practice, it is necessary for it to be regulated by codes of ethics or addressed through internal media policies and user rights on the platforms used.

Decision on whether to regulate the right to be forgotten by law or by code of ethics in non-EU countries can depend on different factors, says Iva Rolović. One of the key factors is the legal system of the country. In countries with a continental legal system, legal matters are usually regulated by laws, so the right to be forgotten could be governed by a data protection law or a privacy law. In contrast, in countries with an Anglo-Saxon legal system, legal matters are often regulated by general legal principles and case law, so it would be expected that the right to be forgotten would be regulated through a code of ethics. In Montenegro, supervisory authorities for data protection, such as the Agency for Personal Data Protection and Free Access to Information, could play a crucial role in providing guidelines for regulating the right to be forgotten through law.

The right to be forgotten should be regulated by both law and a code of ethics because both documents are drafted on the basis of moral obligations, believes Professor Ružić. The law carries "more weight" than the code of ethics. In Montenegro, media laws and the Code of Ethics partially overlap, but it would be better for the right to be forgotten to be regulated by law, she says, because morality is what is considered obligatory, and ethics is what is considered right. The degree of adherence to professional and ethical standards depends on the constraints imposed by the media outlet itself, specifically the conditions, production goals, and the staff. If an editor who does not respect ethical standards is at the helm of the media outlet, the journalists are likely to behave similarly. The Code of Ethics, through principle 7, already regulates citizens' right to privacy if they are victims of certain crisis situations in which they did not find themselves by their own will. Professor Ružić believes that, in such situations, if a journalist violates the Code of Ethics, the victim has the right to be forgotten.

Experts agree that there are significant challenges in exercising the right to be forgotten in the regional context, whether it involves de-indexing or deleting data. Emphasizing the importance of timely establishment of communication and cooperation between the countries of the Western Balkans and major technology companies, as well as the significance of communication and collaboration between readers and media, they also propose the development of specific measures that include concrete proposals.

Milan Jovanović, a digital media expert, believes that it is crucial for Western Balkan countries to develop a clear legislative framework and strengthen the capacities of institutions to ensure the enforcement of defined rules. In order for the right to be forgotten to be effectively applied, active efforts are needed to strengthen the legal framework, institutional capacities, and awareness of privacy.

He believes that cooperation with relevant international organizations and adherence to European standards in this field can certainly be very beneficial. It is important to regularly update legislation to keep pace with changes in technology and societal norms that affect privacy and data protection issues. Cooperation between Western Balkan countries and major technology companies in the field of data protection and privacy depends on several factors. These include the legislative framework, institutional capacities, and the willingness of companies to cooperate. It is important to note, says Jovanović, that the terms and conditions of cooperation can vary from company to company. Therefore, it is useful to establish dialogue and engage in consultations with relevant technology companies, as a way to identify common interests and find sustainable long-term solutions.

Snježana Milivojević shares a similar view. Western Balkan countries need to understand that they must participate in global discussions and regulatory initiatives now, while new standards are being created. This cannot be postponed for later, she says, "when we solve more important issues" or when it becomes a priority. Later, our starting positions will be worse, and certain practices will likely already be established, making it difficult to correct them after the fact. Therefore, it is important for everyone – civil society, academic communities, decision-makers, and technology companies – to work together on protecting digital rights, including the right to be forgotten. Their interests may differ, but they share the same task.

Krivokapić believes that the right to be forgotten in terms of de-indexing, or removal from results of a search engine like Google, is a difficult right for citizens of Western Balkan countries to exercise. He says that it technically exists, but it is challenging to exercise in practice. On the other hand, de-indexing at the media level is very limited in scope[35]. What a portal can do and control is to exclude some news from search within its website and remove tags. However, this is not sufficient, Krivokapić argues, as actual user habits and the media environment are specific. Namely, searches are mostly not conducted through the website but through Google, which brings us back to the beginning of the story.

Unlike him, Professor Milosavljević argues that cooperation with Google is not a problem and should not be seen as an aggravating factor. Montenegro would not be the first to seek such cooperation, and Google already has an established methodology in place, so there would be no additional costs for the company. Certainly, cooperation will be easier if Montenegro establishes it after the adoption of a new legal framework for personal data protection incorporating the principles of the GDPR.

Krivokapić highlights the importance of a proactive approach by the media outlets and the media community. He believes that the media should have a specific form for requests, where basic information such as the link to the news article and the full name would be entered, and most importantly, the reason or explanation from the requester why they believe their right to privacy overrides the legitimate public interest to know and why they are seeking the right to be forgotten. Such a procedure would not be overly demanding, but neither too easy. Namely, the requester would have to justify the conditions for considering the request, prove their motivation, and provide a strong reason for the removal.

35. De-indexing involves removing search results, which, from the perspective of media, is limited to removing tags from their websites. Anonymization retains the content of the text while removing the personal data of the individual concerned.

Krivokapić believes that it would be excellent if every media outlet possessed such a clearly formulated mechanism.

The views of experts are largely confirmed by the practice of editors in Montenegro. Similarly to what Professor Krivokapić stated in his remarks on content removal, Srdan Kosović, a long-time editor of the most popular Montenegrin web portal Vijesti and until recently the editor-in-chief of the daily newspaper Vijesti, argues that there cannot be a one-size-fits-all solution. It is necessary to establish a set of rules and criteria to be applied to each individual case, evaluating the general as well as local significance of the information in the context of public interest and making decisions accordingly. Kosović believes that the process might be designed to go both ways, allowing certain information to be "restored" if future events show that there is an interest in it. Regarding the dilemma of whether the right to be forgotten should be subject to regulation or self-regulation, based on experience, he believes that a code of ethics is a better approach, but it is challenging to ensure the effective application of its principles without a clear legal basis. On the other hand, experiences from our legal system indicate that such a legislative solution could lead to abuses. Additionally, Kosović is sceptical about the possibility of developing a good law, given the overall context, the quality of political elites and legislators, and their understanding of the right to be forgotten.

6. Proposed guidelines for self-regulatory bodies

When deciding on requests based on the right to be forgotten, whether it concerns de-indexing, anonymization, partial anonymization, or removal of content from a media portal, the following aspects should be taken into account in each individual case:

6.1. WHETHER THE INDIVIDUAL IN QUESTION IS A PUBLIC FIGURE

In accordance with the basic principle that the right to privacy is inversely proportional to the importance of the public function performed by an individual, when deciding on requests from the corpus of the right to be forgotten, it is important to consider whether the person in question is a public figure and whether the broader public has a legitimate interest in knowing that information in order to enjoy the right to informed choice.

6.2. WHETHER THE INFORMATION IS INAPPROPRIATE

Inappropriate information – content stored on the internet that can be characterized as inappropriate and/or harmful to the dignity of an individual, the image of a company or institution, and does not contribute to the freedom of exchange of information, ideas, and opinions – may be considered a legitimate subject of the right to be forgotten.

6.3. WHETHER IT IS RELEVANT OR NOT

The irrelevance and/or obsolescence of information over time and/or due to other circumstances constitute grounds for requests for erasure or removal of links to published content. An exception to this principle is any case where there is an overriding public interest for search results to remain public due to their scientific or historical value and/or for research purposes.

6.4. WHETHER THE INFORMATION IS ACCURATE

The accuracy of published information is an obligation also ensuing from the Code of Ethics of Montenegrin Journalists (CEMJ). According to Principle 1 of this code, the duty of every journalist is "to respect the truth and persistently seek it, always bearing in mind the right of the public to know and the human need for justice and compassion". Principle 3 of the CEMJ prescribes: "It is the duty of journalists to complete incomplete and correct incorrect information. This particularly applies to information that may harm someone. The correction must be displayed in an appropriate manner". Therefore, it is easiest to meet requests for erasure or correction of published content that is inaccurate, of course, with notification of the date and nature of the intervention made in the text.

6.5. WHETHER IT IS EXAGGERATED

The answer to this question largely depends on the specificity of the context and the particular circumstances, both of each individual case and the journalistic genre of the published article. For example, distinctions should be made regarding whether exaggeration occurred in a news report or in a column. In general, any exaggeration that turns into sensationalism should be avoided, and the provisions of the Code of Ethics that regulate this aspect should be followed (1.2.b).

6.6. WHETHER THERE IS A JUSTIFIED PUBLIC INTEREST FOR THE INFORMATION TO REMAIN ACCESSIBLE

This is the fundamental question when it comes to the right to be forgotten and meeting requests based on this right. If the published information lacks historical or scientific significance, there are better odds that the individual's right to be forgotten will prevail. On the other hand, public interest prevails if the published information pertains to a public figure or the activities still carried out by the requester. In this and similar cases, it is in the public interest for the published information to remain accessible.

6.7. WHETHER THE INFORMATION WAS COLLECTED WITHOUT CONSENT

This aspect should not be significant when considering requests to be forgotten, especially in the media context. In order to protect freedom of expression, media outlets have the right to collect information without the knowledge or consent of the individual concerned – if there is a public interest in doing so. The collection of information becomes contentious if there is no public interest. Another contentious aspect of collecting personal information is when it's done by large technological platforms without individuals' approval or consent.

6.8. WHO IS THE SOURCE OF INFORMATION

When assessing requests to be forgotten, attention should also be paid to the source of information. In this regard, it will be considered that there is an overriding public interest in accessing certain information if it is published as part of a media report that adheres to professional standards of journalism. The credibility of information and its sources is crucial in the implementation of the right to be forgotten. If the information is unreliable and comes from unreliable sources, it is easier to exercise the right to be forgotten.

6.9. HOW OLD THE INFORMATION IS

The passage of time since the publication of certain information is one of the key factors when considering requests related to the right to be forgotten. The older the information, the greater the likelihood that the request will be accepted if other requirements influencing the exercise of the mentioned right are met. The facts that the information is old, not current, and lacks public significance contribute to a positive resolution of requests for its removal.

6.10. WHETHER THE INFORMATION IN QUESTION IS SENSITIVE

If the information pertains to sensitive details about an individual who is considered to be the damaged party, or if the information violates their right to privacy, reveals the victim's identity, or increases the likelihood of reliving psychological trauma caused by a distressing event, the victim can exercise the right to be forgotten. On the other hand, if a serious criminal offense has been committed, the convicted individual should not expect to exercise the right to be forgotten regarding their identity, but details related to the committed crime should be erased.

Additional guidelines that can help media outlets strike the right balance between the right to be forgotten and the need to preserve the integrity of archives:

- If a reader's request is deemed grounded and justified, tags should be deleted (de-indexing), and personal data should be removed from articles and search results.

- When making any intervention in texts – such as anonymizing personal data or removing parts of the text – it is necessary to leave a notice about the removal, the reasons for removal, and how this information can still be accessed for research purposes. For example, in the case of anonymization, the notice could be formulated as follows: "With the passage of time and the exercise of the right to be forgotten, this news article has been modified on (dd. mm. yyyy.), and the full name has been removed and replaced with initials. If you have any inquiries for research purposes, please contact the editorial office".

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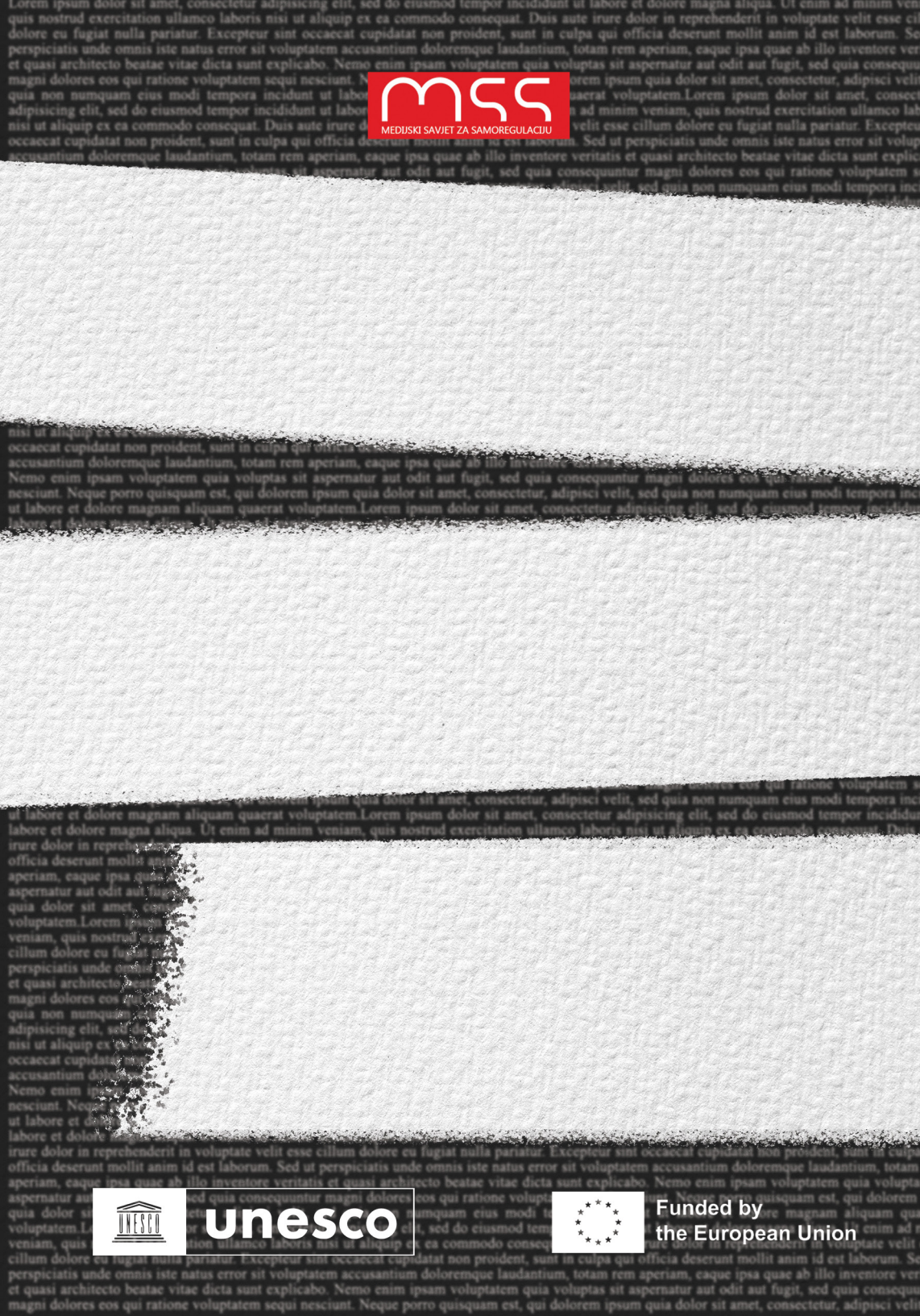
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