

Guidelines for understanding and implementing journalistic due diligence

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Table of Contents

1. The meaning and significance of the principle of due journalistic diligence	2
2. Theoretical approaches to due journalistic diligence.....	3
3. Legislative framework of the principle of due journalistic diligence through the Council of Europe resolutions and Montenegrin legislation	5
4. Comparative analysis of solutions of the EU member states and the Council of Europe member states	7
5. Examples from Montenegrin self-regulatory practice	9
5. 1 Due journalistic diligence– two examples from the practice of the ombudswoman of “Vijesti”	9
5. 1 Due journalistic diligence– two examples from the practice of the ombudswoman of “Dan”	11
5. 3 Due journalistic diligence – two examples from the practice of the Appeals Commission of the Media Council for Self-Regulation	12
6. GUIDELINES FOR DUE JOURNALISTIC DILIGENCE.....	14

1. The meaning and significance of the principle of due journalistic diligence

The development of new technologies and the emergence of new online media have greatly impacted the media environment worldwide. While the Internet and social media have contributed to increased access and sharing of information, it has also increased the potentials of abusing freedom of expression. This is best illustrated by the heated debates over the past years around the concepts of false news, alternative facts, or post-truths. This context gave rise to intensive searches globally for effective responses to these challenges. As a part of the answers, a special emphasis is placed on the responsibility of journalistic work and the further strengthening of media self-regulation. Due diligence exercised to avoid harm to other persons is considered to be a central element of journalists' professional standards and a central element of their work.

A recent survey by the Dutch company ING shows that 45% of international journalists publish articles as quickly as possible and correct mistakes later [1]. According to this research, only 20% of international journalists practice journalistic due diligence before publishing a text. ING also researched the impact of social media on journalism. Only one-third of these journalists think that the information on social media is unreliable. On the other hand, as many as 50% of them state that most news and information come directly from social media [2].

The primary professional obligation of journalists concerning any information s/he receives, regardless of whether the source is anonymous, especially if it is, includes checking the information's origin, truthfulness, and completeness. This measure is defined by the term "journalistic due diligence," whereby the attention expected from journalists increases in proportion to the importance of the data being checked, i.e., the damage that untrue information could cause to someone. The principle of journalistic due diligence, analysed in these guidelines, implies attention that journalists should apply in their work to protect themselves and others from harm by engaging more sources and insisting on the rule of the other party. It constitutes a journalistic obligation to publish information about a particular event, phenomenon or person, in such a way that its processing is approached with attention appropriate to the circumstances – checking its origin, truthfulness, and completeness in each specific case. False and incomplete information does not contribute to the public's perception and participation in the processes and reality they live and witness [3].

Although journalistic diligence is, in essence, an issue that is assessed case-by-case, it is necessary to significantly narrow the field of arbitrariness by presenting the circumstances that are the subject of consideration. This document represents an attempt to bring as much clarity as possible to the issue of journalistic due diligence through research efforts conducted jointly by the Media Council for Self-Regulation in Montenegro and two media ombudspersons, notably the ombudsman of daily Dan and ombudswoman of daily Vijesti and weekly Monitor. In the end of the document, a set of recommended guidelines is given to help journalists achieve the standard of due journalistic diligence in specific situations. The recommendations have been developed based on research of the following:

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- The legal doctrine of writers who have dealt with this concept,
 - Analysis of the documents dealing with due diligence, developed by the Council of Europe,
 - Legislative framework principles of due journalistic diligence through the resolution of the Council and Montenegrin legislation,
 - Comparative analysis of solutions of members states of the EU and the Council of Europe,
 - Examples from Montenegrin self-regulatory practice.

[1] See more: <http://www.adweek.com/digital/why-are-journalists-publishing-before-checking-facts/>

[2] See more: <https://www.ing.com/Newsroom/All-news/NW/2014-Study-impact-of-Social-Media-on-News-more-crowdchecking-less-factchecking.htm>

[3] Vladimir V. Vodinelić, *Medijsko pravo*, Fakultet za poslovno pravo, 2003, p. 109

2. Theoretical approaches to due journalistic diligence

Journalistic due diligence is the subject of domestic and foreign authors. For these guidelines, the relevant legal doctrine on the principle of journalistic due diligence is considered through the works of Danilo Nikolić [4], Vladimir Vodinelić [5], and Jan Oster [6].

Media theorist Danilo Nikolić believes that the principle of journalistic due diligence should be called the "principle of autonomy." He claims that in the information profession, this principle implies that the independence of journalists and editorial responsibility are assessed through "the truth and the relevance of information for the public, the balance between the right of the public to know and the right of a legal or private person not to publish certain information, to adhere not only to legal obligations but also to professional canons and principles in this assessment." [7] Journalists and editors have a great responsibility: journalists collect journalistic material and deal with assessing the truthfulness of the information, while, according to his position, the editor verifies the journalistic product and shares destiny with the "life of a journalistic child." According to Nikolić, the most reliable way of acting is based on the proper action – respect for the law and the code of ethics of one's profession. The independence of media representatives is a building block based on adequate selection and processing of information, which is influenced by various factors. Thus, Nikolić states that "independence implies the behaviour of journalists or editors-in-chief that is in accordance with a conscious understanding of the matter out of which s/he composes and publishes information, while being protected from any influence, persuasion, pressure, threats or opinions at any time, and does it independently from any reason." [8] Nikolić emphasizes the need to increase the role and power of a media representative that, by acting – checking the truthfulness of information, placing information in the proper context, and resisting pressure/influence of the masses, contributes to the democratization of society.

Defining the notion of journalistic due diligence, Prof. Vladimir Vodinelić states that media freedom does not mean that the media may publish only established truths – "factual statements for which there is proof of their truthfulness (accuracy), that is for which mass media have a proof of their truthfulness or accuracy." Responsible publication of information also means the procedure of "prior verification of its veracity with the care that is appropriate to the circumstances of the specific case (so-called journalistic diligence)." Vodinelić adds that the information that could not have been determined to be untrue (incorrect) should be considered to have been published with due diligence (verification appropriate to the given circumstances). This means that "if subsequently, upon its publication, it turns out that the information is untrue (inaccurate), its publication does not violate the freedom of the mass media if it had been checked with due diligence before its publication."

"Information for which doubts remain as to whether they are true can be published when there is a justified interest in publishing them, provided that there is an obligation to point out the doubt to the public, i.e., the reasons for it: not only should a journalist refrain from presenting an information that is not certain as certain but s/he must not keep silent about it being uncertain, and other information must not build upon he information as if it is a proven information, in respect of which the matter has not been expelled." [9] Unfortunately, in practice, the most common reasons for disclosing false information are not related to public interest and or presence of a suspicion following properly conducted due diligence process, but commercial reasons, sensationalism, or some third goal. He further claims that untrue and incomplete information violates the individual's rights – the right to honour and reputation, privacy, and identity.

[4] Danilo L. Nikolić, *Medijsko pravo*, Beograd, Službeni glasnik, 2010.

[5] Vladimir V. Vodinelić, *Medijsko pravo*, Fakultet za poslovno pravo, 2003.

[6] Jan Oster, *European and International Media Law*, Cambridge University Press, 2016.

[7] Danilo L. Nikolić, *Medijsko pravo*, Beograd, Službeni glasnik, 2010, p. 47.

[8] *Ibidem.*, p. 47.

[9] *Ibidem.*, p. 89.

Vodinelić writes: “The untruthfulness of information is a common condition for the violation of the right to identity and defamation, as a kind of violation of the right to honor and reputation. Only untrue information can violate the right to identity and present defamation as a violation of the right to honor and reputation. Incomplete information is equated with untrue information. It is always considered so in cases when what has been stated is true, but due to non-citation, omission of something else (part of the information), a wrong, untrue image of a person is created. [10] ” Vodinelic further claims that it is not allowed to publish information that has been carefully determined to be untrue (inaccurate) as well as information that is known to be false. [11] We start from the general determination that the condition for the admissibility of publishing is that the data is checked with due care, which is required by the deontic rules of the journalistic profession (codes of ethics). The question of the existence of due journalistic attention is determined in each specific case, and it has the status of a *questio facti*. Therefore, adequate and necessary measures of journalistic due diligence must be considered from case-by-case and determined according to the circumstances concerning specific information.

Defining and describing the nature and content of the obligations arising from the principle of journalistic due diligence, Jan Oster highlights the need to differentiate between journalists, and thereby the protection they should be provided, and other creators of messages for mass dissemination as essential in understanding the obligation for journalists to act with due diligence. He implicitly talks about journalistic due diligence pointing to these difference in the status and responsibilities of each creator and disseminator of messages to an unlimited number of recipients (journalists and others). He states that what differentiates professional journalism from other forms of amateur reporting to a mass audience (bloggers and others) is respect to the ethics and the principles of responsible journalism, which are based on taking adequate measures of verifying published information. In this regard, he further states that non-disclosure of a journalistic source is a journalistic privilege, the existence of which can only be justified if journalists are a source of reliable, credible, and verified information. If a blogger or even a person with access to internet had that kind of privilege, the exception would become the rule that jeopardizes access to justice. Therefore, it is essential to distinguish between professional journalists and individuals looking for a platform that will provide privileged treatment.

Oster emphasizes that due journalistic diligence is significant in understanding the professionalism of journalists in comparison to other amateur journalists. Moreover, the condition of professionalism for the privileged protection of the media under Article 10 of the European Convention implies a more substantial and greater incentive to communicate the truth, not a lie; resorting to the latter could result in a loss of audience and then funding [12] .

In his work “European and International Media Law,” Oster provides a more explicit explanation of the notion of “due diligence” indicating that acting with due diligence means taking all reasonable measures to avoid violating the rights of others or breaking the law. In journalism, this implies the obligation of journalists to communicate accurate, well-verified information, portray the truth, and present them in a balanced way. Oster states that journalists must adhere to professional and ethical rules which, inter alia, include:

1. basing their work on facts and reliable sources,
2. providing professional distance, as trained, neutral observers: excluding the personal interests of journalists as well as the interests and desires of others,
3. confirmation of the main facts of specific media content by at least two sources,
4. explicit acknowledgment when reports or journalistic observations are not products of research and/or when they are not confirmed by at least two credible sources,
5. not inciting or provoking or aggravating the conflict,
6. adequate presentation of all parties,
7. protection of a journalistic source, especially when the source has disclosed information that may jeopardize if the source requested anonymity and the journalist agreed,
8. uses relevant information only for the needs of journalistic work,
9. identification of the journalist and the media house before the journalist announces the information about the story s/he is specifically processing. [13]

[10] Ibidem., p. 87.

[11] Ibidem., p. 31.

[12] Jan Oster, *European and International Media Law*, Cambridge University Press, 2016, p. 8.

[13] *Shortcuts to Journalism: The Basic of Prints, Online and Broadcast Reporting*, str. 10, Media in Cooperation & Transition MICT gGmbH, Berlin, 2012.



3. Legislative framework of the principle of due journalistic diligence through the Council of Europe resolutions and Montenegrin legislation

The overall efforts of European democratic legislators are related to creating a media ecosystem that provides an environment of trustworthy, accurate, and complete information. In this regard, the Council of Europe has adopted two legal acts that refer to the content of journalistic due diligence, Resolution 2066 (2015) Responsibility and ethics of the media in a changing media environment and Resolution 2143 (2017) Online media and journalism: challenges and responsibility. [14]

Resolution 2066 (2015) Responsibility and ethics of the media in a changing media environment [15] recalls that media freedom is accompanied by duties and responsibilities and welcomes the Declaration on the Principles of Journalistic Conduct [16] as well as the codes of ethics adopted by journalists and media in the Council of Europe member states. Such codes are a voluntary expression of due diligence by professional journalists and the media to correct their mistakes and expose themselves to the public, as well as of journalists' and their professional organizations' initiatives aimed at promoting high ethical standards [17]. Given the vast growth of online media and the related changes in the structure of media outlets, the resolution calls on media outlets to make an effort to define and maintain the professional standards of journalists, as well as those who in some way create media content. In this context, media outlets should establish codes of ethics, ombudspersons, and mechanisms for complaints or other reactions from their readers, listeners, or viewers regarding compliance with such codes [18]. To this end, the Alliance of Independent Press Councils of Europe (AIPCE) is also called upon to strengthen coordination among its members, raise ethical standards throughout Europe, facilitate cross-border complaints, and increase awareness among European media users.

The increase of online media is a particular challenge for the global media community, so in 2017 the Council of Europe adopted Resolution 2143 (2017) Online media and journalism: challenges and responsibility, which deals with online media that need to cooperate in order to establish guidelines – codes of conduct countering hate speech online. In this regard, the Resolution calls on the members of the European Federation of Journalists and the Association of European Journalists to ensure compliance with editorial standards in their online publications concerning content and advertising, third party content, content posted by users, and to inform citizens about the possibilities of filing complaints about the published content. It also urges the European Internet Service Providers Association to develop ethical standards for transparency and due diligence in providing their media services. They can do it by empowering their users to report false information to service providers, making them known to the public through the voluntary correction of inaccurate content or the publication of responses following the right of reply or the removal of false content, and finally by creating warning mechanisms against users who regularly publish offensive or inflammatory texts.

Until the new Media Law entered into force in 2020 [20], the Montenegrin legal system, like most comparative democratic legal systems, did not offer a strict definition of journalistic due diligence. Although the overall Montenegrin legal framework, binding and non-binding instruments, indicated its meaning and significance, the first reference to legal obligations related to this term is only associated with the new Media Law. A detailed analysis of the relevant norms of the Constitution of Montenegro, the Law on Media, the Law on Electronic Media, and the Code of Journalists points to different dimensions of this concept. Still, it does not reflect the issue of establishing a demarcation line, after which a journalist is not in the domain of journalistic responsibility. Apart from the recently adopted Law on Media, no other legal text explicitly mentions journalistic due diligence. Yet, each underlines that untrue or incomplete information, as the end product of journalists' omitted diligence, violates personal rights – and these are the violation of honor and reputation, the right to privacy, and the right to identity.

[14] Rezolucija 2143 (2017) Onlajn mediji i novinarstvo: izazovi i odgovornost, <https://pace.coe.int/en/files/23455>

[15] Rezolucija 2066 (2015) Odgovornost i etika medija u medijskom okruženju

[16] The International Federation of Journalists (IFJ) has adopted a Declaration on the Principles of Journalistic Conduct.

[17] The Ethical Journalism Initiative of the IFJ, adopted by the World Congress in Moscow in 2007 and supported by the EU and the CoE, recalls its Resolution 1003 (1993) on journalistic ethics, noting that not all journalists adhere to codes of ethics.

[18] Journalists and the media are urged to respect the ethics codes and mechanisms for analyzing their violations, with the aim of providing adequate legal protection to those who have been harmed by such violations.

[19] It also states that in cases of conflicts of commercial, political, or other interests regarding the neutrality of media content, providers of such services should be transparent regarding those interests and they should establish self-regulatory mechanisms to monitor standards.

[20] See more: <https://aemcg.org/wp-content/uploads/2011/08/Zakon-o-medijima-1.pdf>

With regard to the broadest legal framework of the Constitution of Montenegro, Article 49 stipulates that "the guarantee of this right is provided by the protection of the right of the subjects of lesion information to the right of reply and the right to correction." This article "guarantees the right to reply and to correct untrue, incomplete and incorrectly transmitted information that violates someone's right or interest and the right to compensation for damage caused by the publication of incorrect information or notification." [21]

Furthermore, the Constitution stipulates that inaccurate or incomplete information must be corrected when requested by the subject of such information. This constitutional norm does not mention the term journalistic due diligence but implicitly refers to its essential part – the principle of *audiatur et altera pars*. The meaning of this principle "observe the other side" implies two dimensions of the same – balanced reporting and neutrality of the journalistic position. It obliges to determine the opinion of both sides of the journalistic story, place information checked with due care, determine its (un)truthfulness, and present it to the public with all the elements.

For the first time, the new Media Law inaugurates the notion of "journalistic due diligence" *de verba*. It stipulates that "a journalist is obliged to check its origin, truthfulness, and completeness with due journalistic attention before publishing information about a certain event, phenomenon, or person." Article 32 explicitly stipulates that the founder of the media, the editor-in-chief, and the journalist will not be liable for damages if they acted under due journalistic diligence. Furthermore, the same article stipulates that a journalist shall be deemed to have acted by due journalistic diligence if the media content by which the damage was done is: 1) Faithfully transmitted from the discussion at the session of legislative, executive, or judicial authorities, state administration local bodies, from a public meeting or transferred from the acts of state administration bodies, i.e., local government bodies, public institutions, and other legal entities entrusted with public authorities, 2) Of public interest and transmitted as a quotation from another medium or published within an interview, unless certain parts of the quotation or interview contain blatant insults or defamation, 3) Based on the information that the journalist and the editor-in-chief had good reason to believe were complete or accurate, and there was a legitimate interest in the public being informed." When determining the responsibility for generating harmful media content, all circumstances of the case will be considered, especially the manner, form, and time of presentation of media content, reasons for the urgency of publication, as well as whether the damage would occur if media content were not published.

The Law on Electronic Media stipulates that "the broadcaster is obliged to contribute to free, truthful, complete, impartial, and timely informing of the public about events in the country and abroad." [22] This article refers to the imperative of truthfulness, but it does not specify the procedure that releases the journalist from responsibility in case of lesional media content. Publication of false information might damage the reputation or interest of individuals to whom the information relates, insult their honor or integrity, make or transmit false allegations about their life, knowledge, and abilities, or otherwise insult their dignity. The law further stipulates that the individuals thus affected are guaranteed the right to sue the competent court for damages against the author, editor-in-chief, founder, or publisher of the media. Therefore, the Law on Electronic Media does not explicitly regulate journalistic due diligence. Still, the above obligations prescribed by the umbrella Law on Media, the grounds for release from liability of journalists, media founders, and the editor-in-chief, are relevant for electronic media.

The Code of Journalists of Montenegro does not explicitly state the definition of due journalistic diligence. However, almost all aspects of the professional conduct of journalists are elaborated throughout the text of the Code. The Code preamble states that journalists are obliged to "defend the freedom and the right to unhindered collection and communication of information, as well as free comment and criticism." The preamble adds that "the credibility of the journalistic profession is based on professional honesty, integrity, and knowledge." It implicitly prescribes the basic content of journalistic due diligence by specifying that the primary duty of journalists is to "respect the truth and persevere in it, always bearing in mind the public's right to know and the human need for justice and humanity." The guidelines elaborate on this issue and clarify that journalists must cultivate "the highest professional and ethical standards and that, in a professional sense, they are obliged to take all measures to ensure that they publish only accurate information and that their comments are honest."

[21] Skupština Crne Gore, www.skupstina.me/index.php/me/ustav-crne-gore

[22] Službeni list Crne Gore, br. 46/10, 40/11, 53/11.

The guidelines also include obligations: to take all measures to verify the accuracy of the information, to publish a complete report without concealing the information, to prohibit placing it outside the context in which it occurred, to publish information without distorting it by exaggerating or inadequately emphasizing one aspect of the story or one-sided reporting. The Code specifically refers to the procedure for dealing with information sources and the obligations that constitute journalistic due diligence, prescribing that journalists use as many sources as necessary to confirm the facts and provide accurate information. The source should be clearly identified, and, where necessary, references should be given that make the source relevant to a particular story. In preparing the report, journalists are required to properly assess the choices and interests of their sources, while the use of indirect sources is “acceptable only if additional sources or other methods of fact-finding are used.” The Code also refers to the process of establishing the veracity of information if the source provides information that accuses someone and the journalist is unable to verify its accuracy: “then this must be made clear, especially when using unconventional sources of information” (social media, online blogs, or other atypical online sources) when there is an increased need to verify facts. The Code prescribes the obligation to resort to legally permitted and professionally acceptable methods of gathering information, protecting privacy and minors, and respecting the presumption of innocence. The Code’s principles end with an invitation to journalists to voluntarily accept the presentation to the court of an impartial body that cares about protecting the profession’s reputation.

4. Comparative analysis of solutions of the EU member states and the Council of Europe member states

For adequate presentation and understanding of the different experiences of the EU member states and the Council of Europe, we should start with their common denominator: the declaration of freedom of media, expression, and information. Nevertheless, the constitutional and legal declaration of these freedoms deviates significantly from their practical application. The realization of these essential freedoms usually depends on the professional standards of editorial offices, which shape the work of journalists and the final product – the news. The prevailing view is that strict sanctions for violations and neglect of these freedoms should not be prescribed. Even when defined, they have chilling effects on forming an awareness of the responsibility and importance of professional and responsible journalism.

In the analysed press codes of some countries of the European Union and the Council of Europe – Sweden, Norway, the Netherlands, Croatia, and Serbia – the term due journalistic diligence is absent. Still, through different principles, the journalistic community commits to specific actions that can be considered as due journalistic diligence. Namely, in addition to the predominant approach of declaring the role of media and their mission as accurate, complete, and timely informing of the public, each of the analysed codes, as the Montenegrin code, prescribes the principles of accuracy, truthfulness, the presumption of innocence, protection of minors, etc. Thus, the Swedish Code of Ethics for Press, Radio, and Television urges the journalistic community to carefully check the facts in the light of the context in which the events took place, distinguish facts from comments, equip the text with adequate tools (titles, subtitles, and selected parts/quotations of the text), ensure the authenticity of images, graphic illustrations, journalistic integrity, and prohibit their (mis)use. [23] Furthermore, it underlines the importance of the right to correction, respect for the right to privacy, and the principle of “hearing both sides of the story.” The last part lists the rules that prohibit surreptitious advertising. [24]

In the same generical way, stating the various principles of journalistic conduct, the Norwegian Code of Journalists prescribes the role of the media in society, regulates the integrity of journalists, specifies the treatment of journalistic sources. It declares freedom of the media – open debate, free flow of information, and free access to media sources. It is the media’s duty to show objectivity, generate critical news about society, faces, phenomena, and reveal facts that should be left to a critical court of public opinion. [25]

[23] Kodeks novinara Švedske, see more: http://ethicnet.uta.fi/sweden/code_of_ethics_for_the_press_radio_and_television

[24] Ibidem.

[25] Ibidem, Article 1.

The Code of Journalists of the Netherlands implicitly devotes significant space to different segments of the institute of due journalistic diligence. Thus, this Code states that a journalist must report truthfully so that based on the information, the reader can form a complete and credible image of persons, events, phenomena, institutions, societies and thus responsibly participate in decision-making procedures. The right of journalists to freely, following their professionalism, assess the predominance of the public interest concerning the harmful consequences that the news will cause is regulated. In their reports, journalists must behave in a balanced, non-abusive manner, distinguishing between facts, allegations, and opinions, considering the representation of both parties and the right to privacy. [26]

Like the previously analyzed codes of ethics, the Code of Honor of Croatian Journalists does not explicitly state the institute of due journalistic diligence. However, it does make provisions that can be subsumed under this term. The Code obliges respect to professional, ethical principles and emphasizes the responsibility of journalists for their work before the public, the law, and their professional organization. Journalists should present accurate, complete, and verified information. A journalist must not abuse the trust established with the source of information. As a rule, the sources of information are cited. At the same time, the journalist has the right not to disclose the source of information, but then s/he is responsible for the published news. Also, the journalist is obliged to respect the ethics of public speech, the culture of dialogue, and the honor, reputation, and dignity of the persons or groups with whom s/he argues. When reporting on topics on which there are various relevant views, especially when accusatory allegations are made, the journalist seeks to present all these views to the public. Journalists should protect a person's intimacy from sensationalism and any other unjustified disclosure in public, and s/he is obliged to respect everyone's right to privacy. Violation of someone's privacy beyond their will and knowledge is only allowed if an exceptional public interest justifies it.

Unlike the previously mentioned codes, the Code of Journalists of Serbia, in accordance with their primary law, Law on Public Information and Media, mentions journalistic due diligence as a standard of responsibility of journalists. Chapter VI of the Code is dedicated to the more detailed standardization of due journalistic diligence. The chapter begins by stating the journalist's obligation to act with due professional care.

Journalists are reminded not to "blindly trust the information source" and to take into account that these often "follow their interests or the interests of social groups to which they belong, adapting their statements to those interests." This message is the subject of the Guideline, which explains that "information sources demand special scrutiny so that real or apparent bias, arising from close personal relationships, can be avoided." The Code regulates journalists' obligation to indicate the source of information they transmit, act with due professional care, stand with their professional authority behind the information, and be responsible for its accuracy in case the source does not want to be disclosed. If the statement refers to a severe crime, violation of the constitutional order, and state security, the editorial office is obliged to report it to the competent authorities. The same Code chapter states that "the concealment of facts that may significantly affect the public's opinion of an event is equal to (their) deliberate distortion or telling of lies." The Code also prohibits discrimination, stating that "a journalist must be aware of the dangers of discrimination that can be spread by the media and should do everything to avoid discrimination based on, among others, race, gender, age, sexual orientation, language, religion, political and other opinions, national or social origin." Also, the Guidelines refer to and imperatively denote the obligation of journalists to avoid phrases with chauvinistic, sexist, or in any other way discriminatory connotations.

[26] Kodeks novinara Holandije, available at:
http://ethicnet.uta.fi/netherlands/guidelines_from_the_netherlands_press_council

The Serbian Law on Public Information and Media provides a complete definition of due journalistic diligence in its Article 9, entitled "Due Journalistic Diligence." [27] The article specifies that "an editor and a journalist are obliged to check origin, truthfulness, and completeness of information with due diligence, before publishing information containing facts about a certain phenomenon, event, or person. The editor and the journalist are obliged to convey the downloaded information, ideas, and opinions credibly and completely. If the information is taken from another media, they should state the name of that media." Furthermore, the notion of suspension of journalistic responsibility is regulated by the exhaustive enumeration of exemptions from liability – grounds for exclusion of liability (Article 116) which states that a journalist and other persons responsible for the work and production of the media will not be liable for damages if the information is: "1) faithfully transferred from a public parliamentary debate or a public debate in a parliamentary body; 2) faithfully transferred from court proceedings, under this Law; 3) faithfully transferred from a public gathering, and the journalist acted with due journalistic diligence; 4) contained in a document of a public authority to which the law governing free access to information of public importance applies, and the public has a justified interest in knowing about it; 5) published in a show that is broadcast live, and the journalist acted with journalistic due diligence." The law stipulates that the Republic of Serbia, an autonomous province, or a local government unite a state body, regardless of guilt, is liable for the damage caused by publishing untrue or incomplete information originating from a public authority.



5. Examples from Montenegrin self-regulatory practice

5.1 Due journalistic diligence– two examples from the practice of the ombudswoman of “Vijesti”

The two decisions from the first half of 2021 will illustrate how various decisions were formulated concerning reported violations of the Code of Journalists of Montenegro (Kodeks novinara Crne Gore, KNCG), which deal with journalistic due diligence most straightforwardly. This is the 1st principle of the KNCG, which with its guidelines, first of all – 1.1. General standards, 1.2. Accuracy, and 1.3. Dealing with sources – defines professional and ethical criteria of due diligence. In the practice of media self-regulation, this standard is inevitably accompanied by numerous dilemmas and assessed on a case-by-case basis depending on the specific circumstances and contexts. In this sense, two different illustrative decisions are presented – one by which the appeal against the violation of the principle related to due journalistic diligence was rejected and the other by which the appeal with similar content was accepted.

[27] Zakon o javnom informisanju Srbije is available at: http://www.paragraf.rs/propisi/zakon_o_javnom_informisanju_i_medijima.html.

The first example concerns Decision 12021 rejecting an appeal alleging a violation of Principles 1 and 2 of the KNCG as unfounded. The decision determined that although the journalist did not adequately present the cause of the problem she was reporting on, she had no reason to doubt the veracity of the information obtained from mutually independent sources. Apart from this, she did not receive answers to questions from the party who later filed the complaint due to “conscious placement of untrue information.” According to the findings of the decision, the journalist assumed in good faith the accuracy of the information obtained and made a reasonable effort to obtain the statements of all parties involved, thus ensuring compliance with the standard of due journalistic diligence.

The complainant, the legal representative of the Montenegrin businessman Zoran Bećirović, considered that the text “Ski Center Kolašin is waiting for the beginning of the season in the dark: Snow has fallen, but now there is no electricity” violated KGNC’s principles 1 and 2 by “knowingly placing untrue information” (reported violations of guidelines 1.1. and 1.2.a) that created a perception of his client “as the culprit for the fact that the state ski center” Kolašin 1600 “had no electricity.” In other words, the publication of false information created an inadequate context for understanding the event to which the text in question referred (reported violation of principle 2).

The text discussed the problems in the state ski resort “Ski Center Kolašin 1600,” which had been without electricity for over a month before the winter season. Thus, the text has dealt with the question of how it happened and whose responsibility it was. Several sources were used in drafting the text – Government decisions, cadastre data, the statement of the director of the “Ski Center Kolašin 1600,” the statement of the owner of a neighboring plot, as well as additional “unofficial” and “reliable” sources. Also, information was published that the adjacent ski resort “Ski Resort Kolašin – 1450,” owned mainly by Bećirović, did not answer the journalist’s questions. However, the state ski resort director described the private resort as the cause of the problems. Decision 12021 found that although the text did not adequately present the reason for the suspension of electricity to the state ski resort – the failure of state authorities to remove cables from surrounding privately owned plots, the journalist could not have known that the state authorities were responsible for the lack of electricity, nor did she have any reason to verify further the allegations obtained from other sources, as the real reasons became evident only during the appeal process. As the complainants did not answer the submitted questions, the journalist could not assume that there was a problem with the information at her disposal and that it was necessary to check its accuracy from other sources and finally ensure the integrity of the published information. In addition, the decision included a recommendation to the editorial board of “Vijesti” to publish a new text on this topic or to supplement the existing one based on the information they became aware of during this appeal process. The decision was met by publishing a new text dealing with this issue.

In contrast to this decision respecting journalistic due diligence, decision 42021 on the article “Hrapović illegally distributed hundreds of thousands of euros to some NGOs” largely upheld the appeal of two NGOs – Juventas and CAZAS. The NGOs complained about violations of the same principles as in the previous case and the sensationalist reporting, especially emphasized in the equipment of the text, i.e., in its subtitle: “Selected in galore.” The complainants argued that this performance formed an incorrect or inappropriate context, violating Principle 2, its Guideline 2.1 addressing comment use. Their complaint also referred to Guideline 1.3 Dealing with sources. Namely, in the context of the omissions determined by the Commission of the Ministry of Health, these two organizations were mentioned without being given the opportunity to state or comment on problematic events on this issue. The decision found that the published text did not ensure compliance with the standard of journalistic due diligence because there was a failure in dealing with the sources, and the party directly mentioned in a negative context did not have the opportunity to express its position and comment on the event.

5.1 Due journalistic diligence– two examples from the practice of the ombudswoman of “Dan”

From the decisions of the Ombudsman of “Dan,” two decisions were singled out to illustrate the conduct of journalists with journalistic due diligence and when the journalist did not approach the task with due diligence. The former Minister of Sustainable Development and Tourism, Branimir Gvozdenović, addressed the Ombudsman of “Dan” on June 4, 2014. In his appeal, Gvozdenović claimed that the text “Millions in Corruption Business with Gvozdenović” was trying to deceive the public by linking his personality and the Ministry of Sustainable Development and Tourism with the proceedings of the Italian judicial authorities against Korad Klinija, former Minister of Environmental Protection. He said that such writing was “extremely malicious and unfounded” and asked the ombudsman to state a violation of principles 1, 2, 3, 4, 6, and 10 of the Journalists’ Codex (the complaint was filed under the code that was valid before the existing Code, so the ombudsman acted under it in making the decision).

In a statement on Gvozdenović’s complaint, the editorial board found that “nowhere in the mentioned text is any criminal act for Minister Branimir Gvozdenović indicated in the allusion, but that a third party committed corruption by concluding deals with the state body on whose behalf Gvozdenović signed contracts, for which the Italian prosecutor’s office charges him.” It was only somewhat acceptable to the Ombudsman, but the fact that the journalist did not address Gvozdenović and asked him for a statement was sufficient confirmation that the journalist did not act with journalistic due diligence opting for a headline that leaves room for ambiguous interpretation. The Ombudsman stated that this could have logically led to a violation of some other principles of the Codex, but not of all from Gvozdenović’s appeal, and he detailed his decision. He accepted Gvozdenović’s appeal and ordered that the decision be published in “Dan,” which was done on June 15, 2014.

Unlike the first case, the decision on the second example determined that the journalistic due diligence was respected. It concerns the article “The government gave free business premises to the Trade Union,” published in “Dan” on January 11, 2020. On January 15, 2020, the Secretary-General of the Union of Free Trade Unions of Montenegro, Srđa Keković, complained to the Ombudsman of “Dan” about the text, convinced that the text wanted to present this organization in a bad light and did not create a realistic picture “on the subject.” He corroborated this by saying that not all of his answers to the journalist’s questions were presented. He requested publishing the reaction he had sent before the complaint, inviting the Ombudsman to “determine the responsibility of the journalists and the newsroom.”

The journalist rejected Keković’s accusations, claiming that he acted professionally. Precisely, to create a realistic picture of the “subject in question,” he quoted from an official Government document and at the same time contacted Mr. Keković, from whose answers, he stated, he used those that should have further contributed to the publication of the accurate information. The ombudsman was convinced of this, concluding that the journalist acted with due journalistic diligence, that he complied with the Code of Journalists of Montenegro, and that the text did not distort the context, as claimed in the complaint, but clearly indicated and explained the reason for which the Union of Free Trade Unions was allocated business premises. The text unequivocally explains that this organization does not have “adequately resolved the issue of workspace,” despite the fact that “it has been a representative social partner at the national level for 10 years.” The complainant also found controversial the headline “USSCG, headed by Srđa Keković, a tenant with the executive for the next five years.” However, the Ombudsman stated that the use of such a “lively” and more picturesque formulation, which remained in the domain of permissible attention grabber for readers, did not jeopardize the objectivity of the text, nor could it have harmed the reputation of this organization. For all these reasons, the ombudsman rejected this complaint.

5.3 Due journalistic diligence– two examples from the practice of the Appeals Commission of the Media Council for Self-Regulation

The first example from Media Council for Self-Regulation practice refers to the text "I cried by the field, and they want to 'offset' the damage," published on June 20, 2017, in "Dnevne novine." Namely, the Council received a complaint from Željka Vuksanović, President of the Municipality of Kolašin, claiming the violation of Principle I of the Journalists Code in the mentioned text. It claimed that the journalist did not do everything to make sure she used only accurate information when she published that the mayor had proposed to "offset" the damage caused by the city to farmers and property taxes. Vuksanović also complained that "the journalist denied herself in the text because the agricultural advisor, Boro Bulatović, a member of the Commission for Natural Disasters, stated that he was not aware of the part for "offsetting" the damage through property taxes, which shows that President Vuksanović has never headed such a proposal by the local government."

Having inspected the disputed text, the Complaints Commission stated that the article contained contradictory information. The text begins with the news that the residents of the village of Đuđevina are dissatisfied with the municipal administration's decision to compensate for the damage caused by weather disasters through the real estate tax, without mentioning the source of this information. Then, the reactions of the locals who are indignant with this decision of the Municipality are presented, while their information source remains unmentioned. Finally, the text ends with a municipal official claiming that he knows nothing about offsetting the damage through taxes.

The Complaints Commission noted that the journalist published contradictory information without citing any source. Furthermore, it remained unclear what criteria the journalist followed when she decided to give priority to the information that the municipality decided to compensate the damage with the real estate tax, while, at the same time, the local government representative denied it. Summarizing all the elements of the disputed text, the Complaints Commission concluded that the author of the text, "I cried by the field, and they want to 'offset' the damage," had not taken all actions to check the accuracy of the information she published. It was especially strange that the journalist did not make additional efforts to examine which of the two opposing information was correct. It was also unclear why the journalist decided on the headline that supports the information for which no sources were given, not even how she came to it. The Commission also notes that the journalist did not turn to the local government to resolve the dilemma. In the decision, the Commission specifically noted that the journalist did not comply with the principle of journalistic due diligence to check which of the two published and contradictory information was correct. Based on all the above, the Appeals Commission stated in the decision that the text "I cried by the field, and they want to 'offset' the damage" violated principle I of the Journalists' Code, guidelines 1.2 Accuracy and 1.3 Treatment of sources.

Another example from the Media Council for Self-Regulation practice relates to the case in which due journalistic diligence was respected. The Media Council for Self-Regulation received a complaint from Nataša Nelević, who complained that in the text "The idea of founding a museum remained on paper," information was collected illegally, i.e., that principle VI of the Journalists' Code was violated.

On December 22, 2015, an article entitled "The idea of founding a museum remained on paper" was published in "Pobjeda." The author informs the public that the intention to establish a Museum of Women in Montenegro – which was promoted by Maria Alyokhina, a former member of the group "Pussy Riot" during a visit to Podgorica – "remained on paper." The author refers to the "organizers of Maria Alyokhina's visit to Podgorica" as her source. After the publication of this article, the Human Rights Action and Nataša Nelević sent two separate statements to "Pobjeda" to inform the public that they are not the source of information placed in the text. In response to these statements, a text entitled "If a journalist lies, the record does not" was published in "Pobjeda" on December 24, 2015. Here, the author of the disputed text denies the objection that the mentioned statement was fabricated, referring to the telephone recording of a conversation with Nataša Nelević.

In the complaint, among others, Nataša Nelević says: “Without entering into the accuracy of the allegations and their interpretation on this occasion, I send a complaint to the Media Council for Self-Regulation due to the unauthorized way of gathering information used by the author of the text. As I did not know that the journalist was recording the conversation, I could not even consent for the conversation to be recorded. On the contrary, everything I said in the telephone conversation was to explain why I could not give him an official statement (the fact that my name is not even mentioned in the text clearly indicates this). I believe that by using the secret recording as a means of gathering information, the author violated Article 6 of the Code of Journalists of Montenegro, which states that ‘under normal circumstances, journalists should use open methods of gathering information, which implies their clear professional identification’ (Guideline 6.1 b). It also says that ‘secret information can be used only when it cannot be obtained through open methods while being of great importance to the public’ (Guideline 6.1 b).”

The statement of “Pobjeda,” signed by the editor-in-chief Draško Đuranović and the author of the text, Jovan Nikitović, argues: “the journalist from the editorial office and from the official phone called Nataša Nelević, introduced himself, and asked for an explanation of Maria Alyokhina’s announcement that a new Balkan women’s museum would be established in Montenegro. When journalists gather information, they note down or record everything that is said. They usually do both, as the journalist of ‘Pobjeda’ did when he talked to Nelević. As a former journalist and editor in the Montenegrin media, Nataša Nelević should know that journalists write notes and record only to preserve the truth and not offend their interlocutor and information if they decide to use the allegations from the conversation.

Therefore, there is no place for the statement that this is a secret recording because the journalist did not falsely present himself or place a hidden microphone or camera in Nataša Nelević’s office, car, or apartment but collected information from his editorial office by technical means. In this case, those technical means, which are not disputed by law, were a telephone, a pen, and a dictaphone. The ‘Pobjeda’s’ interlocutors know this when we call them from the official phone. It was assumed that the former journalist Nataša Nelević also knew this. This is why it was not decisively said that the conversation was noted down with a pencil and recorded. Moreover, not a single sentence of that conversation was used in the controversial text ‘The idea of founding a museum remained on paper.’ The journalist only recounted what he had already heard from several sources and what Nataša Nelević confirmed in a telephone conversation, answering a direct question. During the conversation, she obviously did not forbid the journalist of ‘Pobjeda’ to officially quote her in the text, which, in the end, the journalist did not do but referred to anonymous sources.

The so-called ‘secret recording’ was used only at the moment when Nataša Nelević, in her first reaction, tried to deny the journalist, dispute the truthfulness of the information and thus damage his reputation and the reputation of the editorial office with these untruths. As a defense of the reputation and truthfulness of the information, as well as the professional attitude towards the profession, the journalist only had notes and a recording of the conversation. In his response to Nelević on the following day, the journalist ultimately proved the truth of the information and refuted the untrue claims that she tried to place as the only truth.”

Considering this case, the Complaints Commission of the Media Council for Self-Regulation stated that it is not uncommon for journalists to record telephone conversations in the newsroom when talking on the phone with their interlocutors. The reason for using this technique is to convey as objective information as possible. This method is common and is not considered among the illicit means, although the Journalists’ Code is not explicit in that sense and does not list what illicit means would be, i.e., what is meant by “secretly obtained information.”

In this case, the intention was not to harm the other party but to provide complete information – a statement or as objective information as possible. The Complaints Commission considers that the journalist acted with due journalistic diligence and did not commit the offense “with intent,” but that he recorded the conversation to ensure the quality of the information. The Complaints Commission stated that there was no violation of the principles of the VI Code of Journalists in this case.

GUIDELINES FOR DUE JOURNALISTIC DILIGENCE

The first legal text in Montenegro that explicitly refers to the notion of "journalistic due diligence" is the new Media Law 2020. Although referring to this term in Art 32 and 33, the text does not provide a clear definition of what is considered journalistic due diligence. Whether it is explicitly mentioned and or defined or not, all deontic documents that regulate professional and ethical standards of journalism refer to journalistic due diligence.

In the light of the Media Law 2020, to bring more clarity about what is considered journalistic due diligence, joint efforts have been established within the UNESCO EU-funded project "Building Trust in Media in South East Europe and Turkey - Phase 2." Notably, a working group has been established to develop the present guidelines, composed of representatives from the Council for Media Self-Regulation in Montenegro, Ranko Vujovic and Aneta Spajic, and two media ombudspersons, the ombudsman of daily Dan, Ilija Jovicevic, and ombudswoman of daily Vijesti and weekly Monitor, Paula Petricevic. The working group has collected, adapted, and formulated a set of recommended guidelines for journalists that can help journalists achieve the standard of journalistic due diligence in specific situations.



Dealing with sources

- While developing the text, especially before its publication, journalists are obliged to double-check the data, names and surnames, titles, and whether the quotations were correctly transmitted and accurately reflect what sources said and thought. Journalists should ask the question: Is something missing, and is the story biased?
- Journalists should have a fair and careful attitude toward the sources. They should not be promised that their statement (allegation) will not be checked elsewhere, nor that no other writing will be written on a specific topic.
- Journalists should always keep in mind that there are sources whose sole purpose is to harm the people or groups that journalists write about.
- When a source addresses a journalist on the condition that what they say is "not for publication," journalists should refuse to publish and listen to what such a source planned to tell them.
- Information that does not have a source should not be published and can only be used as a starting point in further research, verification, and confirmation of existing sources.
- With prior agreement with the editor, a source may be given the status of an anonymous source provided that it has previously factually confirmed its statement.
- The credibility of a source is based on its knowledge or experience related to a given area and/or the fact that it will not benefit from discovering the truth.
- Journalists must inform at least one editor about the source of the information they publish.
- If the source asks the reporter to keep their name unknown to the editor, journalists must clarify that the information thus offered cannot be published.
- Sources should not be allowed to change official statements. Instead, the rules should be followed: the statement given officially remains official.
- Journalists never accept the conditions set by the source of information regarding the publication or non-publication of some information.

- The use of one source is allowed only in exceptional situations, with the editor's approval, when the source's reliability and value of the information are especially appreciated in virtue of the principle of accuracy assumptions. Requesting a statement from the person addressed in the article should be done within a reasonable timeframe, clearly stating the reasons for the statement. It is inadmissible to do this last minute, except with the prevailing public interest at stake, or to contact persons on non-working days for texts whose publication can wait and for which the public interest is not at stake.

Performance of journalists

- Insufficient knowledge of the Code provisions cannot be an excuse for non-compliance, and this will be considered an even greater violation of the Code.
- Journalistic ethics is based on the conscience of journalists, their responsibility is complete, and they must not transfer it to the editor, with the pretext that they obeyed the editor.
- Journalists should not work for anyone except the main editorial office without the prior written approval of the editor.
- Journalists are not allowed to express their political affiliation while at work.
- Journalists should present themselves to their information source and explicitly identify the media for which they are working at the time. However, concealment of identity is an exception and must always be firmly proven by a strong public interest to be informed.
- Journalists should have a special understanding when talking to people who accidentally and unplanned become the subject of reporting, who are unfamiliar with journalistic work and therefore are not sufficiently aware of the consequences of public appearances. They should be clearly explained that their statement will be published and that they should not be surprised because of that.
- Journalists should satisfy the reasonable desire of their interlocutors to know in advance when their statements will be published and in what way.
- It is the duty of journalists to convey other people's words accurately, while direct quotations must be word for word, especially when it comes to an interview.
- Quotes are not used when retelling words.
- To avoid inconvenience due to their interlocutor's grammatically insufficient statement, journalists can paraphrase it, preserving the original information. It should be clear that a paraphrase is not the same as a quote, so sometimes, for the sake of credibility and complete accuracy, it is allowed to use simple words.
- If journalists have promised not to publish something, they should not disclose it publicly or privately or entrust it to a person who could publish it.
- Journalists should resist any attempt by the government and state officials to interfere in the work of the media under the pretext of defending national interests because the government's interests are not necessarily national, just as the public interest does not have to be the interest of the community.
- A difference of opinion is not always a sufficient basis for exercising the right of reply.
- Unlike the right of reply, publishing a correction is an obligation that journalists voluntarily impose on themselves. And when they deem it necessary, they are obliged to issue an apology.

- Journalists have the right to reveal the identity of the person who gave them false information intending to deceive them, and the identity of the person who denies the previously given statement.
- When a person named in the text, or by his position in society, is invited to state something, refuses to give his statement or comment on the occasion, it should be published truthfully.
- Professional ethics requires that the journalist be aware of all relevant provisions in international conventions, declarations, and resolutions.



Editorial processing

- Title blocks, captions, and captions below photographs and images must be justified in the text, must not conflict with its substance, and must be subject to the same ethical principles as the text.
- When shortening the text, journalists should take care of its harmony, paying particular attention not to remove those parts of it that are counterbalanced by other views expressed.
- The editor must have the consent of the journalist on all interventions in the text and photographs.
- The editor should inform journalists about the interventions made in their text.
- Everything that applies to the text's authenticity also applies to the photograph's authenticity, which should be verified the same way as the statement and any other document.

Reporting on events

- When covering an event, journalists must not leave it until it is over.
- If journalists did not attend the event they are reporting on, it must be identifiable from the text.
- Silencing facts that may significantly affect the public's view of an event is tantamount to intentionally distorting or telling lies. (Taken from the Code of Journalists of Serbia, from the section on journalistic diligence).
- Journalists should always clearly recognize what the public interest is. The public interest is not the same as the interest of the community or part of the community.
- Just as journalists need to distinguish between news and commentary clearly, they should also make a clear distinction in the text between what they have personally seen and what they have learned through their sources.

Reporting on investigations and trials

- When reporting on crime, investigations, and trials, journalists must use clear and precise terminology to avoid making gross mistakes, such as mixing reconnaissance, detention, imprisonment, grounds of suspicion, suspect, accused, etc., which often happens in practice.
- When reporting on court proceedings, a journalist will not publish anything that could directly or indirectly seriously impede the proceedings, disable them or affect their outcome. Also, it will not publish what is essentially an ongoing comment, discussion, or findings of the journalists themselves, speculations, reflections, or comments on issues that could be understood as appropriation of court jurisdiction.

- Journalists will not publish or comment on evidence gathered during the investigative work of journalists after a suspect has been arrested and convicted, that is, when the court has taken jurisdiction, and will not disclose, comment on or evaluate the alleged confession of the accused.
- Although they may engage in moderate criticism of court proceedings or judgments in the public interest, journalists must not slander a judge or accuse them of improper motives or bias. In addition, they may not raise scandals concerning the court or the judiciary in general or personal opinions about the ability or integrity of judges.
- The media will carefully avoid unfair and unnecessary criticism that insinuates that judges are guided by inappropriate interests in their work, although such criticism does not strictly fall under contempt of court.

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