

HANDBOOK

RIGHT OF REPLY **AND** RIGHT OF CORRECTION

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Introduction

The right of reply and correction constitutes an important legal instrument in the exercise of freedom of expression. This legal mechanism ensures the presence of the “other side” in public communication, provides a legal guarantee for adherence to the principle of *Audi alteram partem* (that the other side must also be heard), and protects the reputation of a natural or legal person to whom information that may prejudice their rights or interests pertains. Furthermore, the right of reply and correction enables the rectification of inaccurate information disseminated in the public sphere.

The right of reply refers to the right of a person or legal entity to contest, supplement, or correct false, incomplete, or inaccurately disseminated information, as well as to present their own version of events and, where necessary, provide additional context, so that the public is informed in a comprehensive manner and the reputation and dignity of the person to whom the original publication referred are protected. The right of correction refers to the legal possibility of ratifying

false, incomplete, or inaccurately disseminated information. It is important to emphasize that this right protects not only the individual interest of the person about whom inaccurate information has been published, but also the broader public interest in ensuring that information in the public sphere is accurate, complete, and reliable. Respect for the right of reply and correction is a prerequisite for the media to responsibly perform their function in a democratic society, which relies on the ability and freedom to make choices based on all necessary and accurate information.

The manner in which the right of reply and correction is formulated in national legislation enables the prompt and free correction of errors and omissions, or the introduction of a new, additional perspective that provides an opportunity for a more adequate understanding of the subject matter of reporting or discussion. Timely action upon a request for the exercise of this right is one of the prerequisites for its effectiveness. For this reason, the Media Law of Montenegro prescribes short and precise time limits for submitting requests and for media action, thereby ensuring that protection is effective and genuine.

The exercise of the right of reply and correction is particularly important in the digital environment, given that false, incomplete, or inaccurately disseminated information spreads rapidly through online portals and social networks, and that the damage caused by a single erroneous or partial publication is practically impossible to remedy through individual corrections alone. Therefore, it is of crucial importance that a reply or correction be published in a timely manner, while public debate is still ongoing and while it remains possible to effectively remedy the consequences of inaccurate or incomplete information.

With the aim of assisting citizens in exercising this right, as well as editorial teams in receiving substantive responses formulated in accordance with legal provisions, at the end of the Handbook we have provided a draft Form for submitting requests for the publication of a reply and correction, which may be further developed and amended as necessary. The recommendation of the authors' team is that editorial offices provide an electronic form available on the official website of the media outlet, acknowledge receipt of the request, and make a decision within a reasonable period, while providing the applicant with feedback, whether by deciding to publish the response or by explaining the reasons for any refusal. The proposed template was developed on the basis of responses obtained through structured interviews conducted for the purposes of this publication with the most experienced Montenegrin editors, to whom we would like to express our sincere gratitude.

1. International Legal Framework of the Right of Reply and the Right of Correction

1.1. The Right of Correction and the Right of Reply in the UN Legal System

The right of reply and the right of correction should always be considered in the context of the human right to freedom of expression, as established in international instruments, particularly the Universal Declaration of Human Rights (UDHR)¹ of 10 December 1948 and the International Covenant on Civil and Political Rights (ICCPR)² of 16 December 1966. These rights are addressed in Article 19 of the ICCPR and Article 19 of the UDHR.

Article 19 of the UDHR provides: “Everyone has the right to freedom of opinion and expression; this right includes free-

1 Available at: <https://www.ohchr.org/en/human-rights/universal-declaration/translations/serbian-latin-srpski>

2 Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

dom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”³

Article 19 of the ICCPR states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security, or of public order (ordre public), or of public health or morals.⁴

The right of reply and correction in the mass media is therefore connected with the “special duties and responsibilities” of those who exercise the right to freedom of expression, including the media. Consequently, this right may entail certain restrictions on freedom of expression, provided that such restrictions are prescribed by law and necessary for respect of the rights or reputations of others. On the other hand, the right of reply is also recognized as a human right linked to freedom of information.

³ Available at: <https://www.ohchr.org/en/human-rights/universal-declaration/translations/serbian-latin-srpski>

⁴ Available at: https://www.ombudsman.co.me/docs/Medjunarodni_pakt_o_gradjanskim_i_politickim_pravima.pdf

In the early 1950s, a French initiative aimed at combating the spread of false news and international propaganda resulted in the adoption by the UN General Assembly of the Convention on the International Right of Correction (1953), whose objective was to maintain peace and friendly relations among states. The Convention provided that states had the right to submit their own version of facts where inaccurate or distorted information threatened their international relations or their “national prestige and dignity.” However, this Convention was rarely applied, and its practical usefulness remained questionable.⁵

Unlike the Convention on the International Right of Correction, which protected states, subsequent international instruments adopted in the following period were aimed at protecting individuals. Thus, the American Convention on Human Rights (1969), in Article 14 (“Right of Reply”), expressly provided that: anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communication outlet.⁶

1.2. Normative Framework of the Council of Europe

1.2.1. Resolution (74) 26 – Position of the Individual in Relation to the Press (1974)

When it comes to European legislation, the pioneering document in this field is the Council of Europe Resolution 26 of 1974 on the *Position of the Individual in Relation to the Press*. This was the first time that the right of reply was introduced in a systematic manner, although the text of the Resolution

5 Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVII-1&chapter=17&clang=en

6 Available at: <https://www.oas.org/en/iachr/mandate/basics/3.american%20convention.pdf>

clearly indicates that, at that time, this right was equated with the right of correction.⁷ The purpose of this Resolution was to protect individuals from inaccurate or harmful information published in the press, on television, and on radio. The document emphasizes that the procedure should be rapid, simple, and without significant costs, and that the reply should be published in the same medium and with a similar degree of prominence as the original text. Although it was not legally binding, this Resolution established standards that later served as a basis for legal instruments in member states.

Member states are recommended, as a minimum, to ensure that the position of the individual in relation to the media complies with the following principles:

“In relation to information concerning individuals published in any medium, the individual concerned shall have an effective possibility for the correction, without undue delay, of incorrect facts relating to him which he has a justified interest in having corrected, such corrections being given, as far as possible, the same prominence as the original publication.”⁸

The Resolution further states that a person about whom certain information has been published in any medium shall have an effective legal remedy against the publication of facts and opinions which constitute:

- i. an interference with his privacy except where this is justified by an overriding, legitimate public interest, where the individual has expressly or tacitly consented to the publication or where publication is in the circumstances a generally accepted practice and is not inconsistent with law;
- ii. an attack upon his dignity, honour, or reputation, unless the

7 Available at: <https://rm.coe.int/16805048e1>

8 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16414>

information is published with the express or tacit consent of the individual concerned or is justified by an overriding, legitimate public interest and is a fair criticism based on accurate facts.”⁹

This Resolution further specifies the circumstances in which the media are under no obligation to publish a reply:

- i. if the request for publication of the reply is not addressed to the medium within a reasonably short time;
- ii. if the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate;
- iii. if the reply is not limited to a correction of the facts challenged;
- iv. if it constitutes a punishable offence;
- v. if it is considered contrary to legally protected interests of a third party;
- vi. if the individual concerned cannot show the existence of a legitimate interest.

The reply must be published without undue delay and must be given, as far as possible, the same prominence as was given to the information containing the facts claimed to be inaccurate.”

The impact of Resolution (74) 26 on the practice of member states was significant:

- **France** introduced a statutory right of reply in the press shortly after the adoption of the Resolution, which became one of the most developed systems in Europe.
- **Germany**, through its media laws (*Landespressegesetze*), enabled citizens to request the publication of replies in newspapers.
- **Austria** incorporated the right of reply into its Media Law, emphasizing the importance of proportionality and procedural speed.

⁹ *Ibid.*

1.2.2. European Convention on Transfrontier Television (1989)

Fifteen years later, the Council of Europe adopted the **European Convention on Transfrontier Television (1989)**, which guarantees every natural and legal person, regardless of nationality or place of residence, the right of reply relating to television programmes broadcast under the jurisdiction of the signatory states (Article 8 of the Convention).¹⁰ This instrument builds upon the Council of Europe Resolution of 1974, which established the basic rules for the right of reply in the press, radio, and television.

The Convention was adopted at a time when television was the dominant form of mass communication and when it became clear that cross-border broadcasting required international regulation. As already noted, Article 8 of the Convention guarantees the right of reply to all persons or organizations whose rights have been infringed in any part of a television programme. Since conventions, unlike resolutions, are legally binding, this instrument established that member states are required to put in place effective national mechanisms for its implementation.

“Each transmitting Party shall ensure that every natural and legal person, regardless of nationality or place of residence, shall have the opportunity to exercise a right of reply or to seek other comparable legal or administrative remedies relating to programmes transmitted by a broadcaster within its jurisdiction, within the meaning of Article 5. In particular, it shall ensure that timing and other arrangements for the exercise of the right of reply are such that this right to be effectively exercised. The effective exercise of this right or other compa-

¹⁰ Available at: <https://rm.coe.int/168007b0d8>

able legal or administrative remedies shall be ensured both as regards the timing and the modalities.”¹¹

1.2.3. Resolution 1003 of the Parliamentary Assembly of the Council of Europe on the Ethics of Journalism (1993)¹²

Recognising the fundamental distinction between news, which must be based on accurate facts, and opinions, which are by their nature partly subjective, the Resolution on the Ethics of Journalism emphasises that media organisations always have a responsibility to correct false or inaccurate statements. The document identifies the “right of reply” as a key, though often underused, instrument for individuals seeking to protect their reputation, and recommends that such complaints be handled by self-regulatory bodies (such as press councils).

1.2.4. Council of Europe Recommendation Rec(2004)16 – The Right of Reply in the New Media Environment

The 2004 Council of Europe Recommendation adapts the right of reply to the new media environment, including the internet and digital media. The Recommendation states that media outlets must ensure the rapid and effective exercise of the right of reply and that it must be free of charge. At the same time, it emphasizes that this right applies exclusively to inaccurate statements of fact, while the expression of opinions remains outside its scope. The Recommendation also sets out the minimum principles that member states should observe with regard to the right of reply:

11 Available at: <https://www.coe.int/en/web/conventions/-/council-of-europe-european-convention-on-transfrontier-television-ets-no-132-translations>

12 Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?file-id=16414>

“Scope of the right of reply. Any natural or legal person, irrespective of nationality or place of residence, should be given a right of reply or an equivalent remedy offering a possibility to react to any information in the media presenting inaccurate facts about him or her and which affect his/her personal rights.

Promptness. The request for a reply should be addressed to the medium concerned within a reasonably short time from the publication of the contested information. The medium in question should make the reply public without undue delay.

Prominence. The reply should be given, as far as possible, the same prominence as was given to the contested information in order for it to reach the same public and with the same impact.

Free of charge. The reply should be made public free of charge for the person concerned.

Exceptions. By way of exception, national law or practice may provide that the request for a reply may be refused by a medium in question in the following cases:

- if the length of the reply exceeds what is necessary to correct the contested information;
- if the reply is not limited to a correction of the facts challenged;
- if publication would involve a punishable act, would render the content provider liable to civil law proceedings, or would transgress standards of public decency;
- if it is considered contrary to the legally protected interests of a third party;
- if the individual concerned cannot show the existence of a legitimate interest;

- if the reply is in a language different from that in which the contested information was made public;
- if the contested information is a part of a truthful report on public sessions of the public authorities or the courts.“

1.2.5. Case-law of the European Court of Human Rights on the Right of Reply

The extensive case-law of the European Court of Human Rights (ECtHR), which is responsible for interpreting the European Convention on Human Rights, has significantly influenced national standards governing the right of reply and the right of correction, particularly through the interpretation of Article 10 of the Convention (freedom of expression) and the principle of proportionality of restrictions. These standards require national courts, self-regulatory bodies and media actors to interpret and apply domestic legislation – such as the Constitution of Montenegro (Article 49), the Media Law (Articles 61–67), and the Code of Ethics of Montenegrin Journalists (hereinafter referred to as: the Code) – in accordance with European standards, ensuring a fair balance between freedom of journalism and the protection of honour and reputation.

The following section analyses two ECtHR judgments selected because they provide a representative illustration of these standards and highlight the key aspects of the legislative framework governing the right of reply and the right of correction: *Melnychuk v. Ukraine* and *Eker v. Türkiye*. In the first case, the Court recognised that the right of reply may legitimately be restricted if the proposed reply contains insulting language. In the second, it confirmed the legal obligation of the media to publish a reply if it does not contain personal or

gratuitously offensive statements. Together, these judgments establish the core principles governing this area of law, which national courts and other competent authorities must take into account when interpreting and applying domestic legislation. They also define the essential elements required for harmonising Montenegro's media practice with European standards.

In *Melnychuk v. Ukraine* (2005)¹³, the Court delivered an important judgment concerning the limits of the right of reply under Article 10 of the European Convention on Human Rights and confirmed the broad margin of appreciation enjoyed by national courts where a proposed reply contains offensive language. Writer Oleksandr Melnychuk criticised a local newspaper after it published an unfavourable review of his literary works in 2002, accusing its journalists of having “questionable literary taste” and acting out of personal motives. He requested publication of his full reply, but the Ukrainian courts refused, finding that the text was excessively offensive because it contained personal attacks and defamatory statements directed at the journalists. The ECtHR upheld the domestic courts' decisions, concluding that the newspaper's refusal to publish the applicant's reply was justified because the proposed text contained abusive and insulting remarks about the reviewer. The Court further held that there had been no violation of Article 10 of the Convention, since the interference with the applicant's freedom of expression was prescribed by law, pursued the legitimate aim of protecting the reputation of the media outlet and the journalists, and was “necessary in a democratic society”.¹⁴

13 *Melnychuk v Ukraine* (ECtHR, App. no. 28743/03, 5 October 2005), available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-70089%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-70089%22]})

14 More details available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-3781%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-3781%22]})

This judgment makes it clear that the European Court of Human Rights recognizes a wide margin of appreciation for national courts when balancing competing rights. At the same time, it establishes that a reply must directly refute the factual assertions contained in the original publication and that personal attacks are not permissible. The Court concluded that the right of reply must not undermine the media's freedom of expression and cannot be regarded as an absolute right requiring the publication of every proposed response.

Eker v. Türkiye (2018)¹⁵ is one of the Court's leading judgments on the right of reply as an instrument for safeguarding media pluralism. The Court held that the Turkish authorities had not violated Article 10 of the Convention (freedom of expression) when they ordered newspaper publisher Mustafa Eker to publish the reply submitted by the Sinop Journalists' Association in response to one of his articles.

Mustafa Eker had published an article criticising the Sinop Journalists' Association, accusing its members of corruption and unprofessional conduct. The Association requested publication of a reply, which Eker refused on the grounds that it was offensive and insufficiently connected to the article concerned. The Turkish courts ordered publication of the reply. The ECtHR found that the domestic courts had struck a fair balance between Mr. Eker's right to freedom of expression and the Association's right to protect its reputation. According to the Court, the reply did not exceed the limits of acceptable criticism, and the order requiring its publication was proportionate to the legitimate aim of protecting the reputation and rights of others and was therefore "necessary in a democratic society".¹⁶ In reaching its decision, the ECtHR relied on prin-

¹⁵ *Eker v Turkey* (ECtHR, App. no. 24016/05, 24 April 2018), see: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-177928%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-177928%22]})

¹⁶ More details available at: [https://hudoc.echr.coe.int/eng#{%22itemd%22:\[%22002-11876%22\]}](https://hudoc.echr.coe.int/eng#{%22itemd%22:[%22002-11876%22]})

ciples previously established in its case-law: a reply must address and refute the statements contained in the article to which it relates; it should be published in the same place and be of the same length as the original article; and it must not contain insulting language. The Court reiterated that the right of reply is of fundamental importance in a democratic society, even where it limits editorial freedom, and that it is capable of applying not only to inaccurate statements of fact but also to opinions expressed in a newspaper article.

1.3. The Right of Reply and the Right of Correction in the EU Legal System

Directive 2010/13/EU of the European Parliament and of the Council on Audiovisual Media Services, as amended by Directive (EU) 2018/1808,¹⁷ requires Member States to ensure that all natural and legal persons have a right of reply in relation to television broadcasts or access to equivalent legal remedies. Article 28(1) of the Directive provides: “Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.”

¹⁷ Available at: <https://eur-lex.europa.eu/HR/legal-content/summary/audiovisual-media-services-directive-avmsd.html>

The same Article emphasises that the right of reply or equivalent remedies must be available in relation to all television broadcasters under the jurisdiction of a Member State. It further requires Member States to adopt the measures necessary to establish the right of reply or equivalent remedies and to determine the procedures to be followed for the exercise thereof. In particular, Member States must ensure that sufficient time span is allowed for exercising the right and that the applicable procedures enable natural and legal persons resident or established in other Member States to exercise the right of reply or equivalent remedies appropriately.

The Directive specifies the circumstances in which a request for the exercise of the right of reply or equivalent remedies may be refused, namely where the request is not justified under the conditions laid down in Article 28(1); where publication of the reply would involve a punishable act; would render the broadcaster liable to civil-law proceedings; or would transgress standards of public decency. In addition, the Directive requires Member States to establish procedures ensuring that disputes concerning the exercise of the right of reply or equivalent remedies are subject to judicial review.

2. National Legislative Framework Governing the Right of Reply and the Right of Correction

The applicable normative framework in Montenegro, in principle, provides an adequate legislative response to the need for regulating the right of reply and the right of correction. These legal instruments are regulated by the Constitution of Montenegro, relevant statutory provisions, as well as by so-called soft law instruments, such as the Code of Ethics of Montenegrin Journalists (hereinafter: the Code). Although these are related legal concepts, there is a theoretical distinction between the right of reply and the right of correction, which has been extensively analysed by Professor Vodinelić in his book on mass media law,¹⁸ one of the most prominent regional works on the subject. The right of reply enables a person to whom published information relates to present their own perspective, rebuttal or comment on the media content, challenging the claims made and thereby ensuring the presence of “the

¹⁸ Vodinelić, V. Vladimir, *Mass Media Law*, Belgrade 2003.

other side” in public communication. In contrast, the right of correction is a legal mechanism aimed at removing or correcting inaccurate, incomplete or incorrectly conveyed facts contained in published media content, where the inaccuracy of the information has been established by a final decision of a competent authority or otherwise credibly confirmed.¹⁹

2.1. Constitution

The most important legal act in Montenegro, the Constitution of Montenegro,²⁰ equates the right of reply and the right of correction in Article 49. This Article guarantees “the right to reply and the right to correct false, incomplete or inaccurately conveyed information by which someone’s right or interest has been violated, as well as the right to compensation for damage caused by the publication of inaccurate data or information”, which is consistent with the relevant Council of Europe standards. While the 1974 Constitution of the Socialist Federal Republic of Yugoslavia guaranteed the right to correct published information that caused harm to the rights or interests of an individual, organisation or authority,²¹ the 1992 Constitution of the Federal Republic of Yugoslavia introduced a distinction between the right of reply and the right of correction.²² Article 37 of that document guaranteed “the right to correct published inaccurate information by which someone’s right or interest has been violated. The right to compensation for damage resulting from such violation shall be guaranteed.”²³ The following paragraph of the same Article guaranteed the right of reply in the public information media.

19 Vodinić, *ibid*, page 39.

20 The Constitution of Montenegro, *Official Gazette of Montenegro*, Nos 1/2007 and 38/2013, available at: <https://www.paragraf.me/propisi-crnegore/ustav-crne-gore.html>.

21 The Constitution of SFRY, available at: https://www.yuhistorija.com/serbian/doc/USTAV_SFRJ_iz_1974.pdf

22 *Ibid*

23 *Ibid*, page 4

2.2. Laws

Since 2002, Montenegro has adopted three overarching media laws: the Media Law of 2002,²⁴ the Media Law of 2020,²⁵ and the Media Law of 2024.²⁶ In order to ensure the effective and proper exercise of the right of reply and the right of correction, all three laws establish minimum standards for the adequate legal regulation of this matter. The 2002 Media Law made the clearest distinction between the right of reply and the right of correction. Under this legislation, a correction was defined as information (content) intended to correct inaccurate or false statements, whereas a reply referred to information containing reasoned statements aimed at refuting, substantially correcting or supplementing claims made in the published media content.²⁷

Unlike the 2002 legislation, the definitions of the right of reply and the right of correction provided in the current Media Law (2024) do not establish a clear distinction between these two legal concepts. Therefore, there is a basis for improving and clarifying the existing legislative provisions, although Council of Europe standards do not provide specific guidance in this regard, as their relevant documents recognise only the concept of the right of reply.

²⁴ Articles 26–35 of the Media Law, available at: Article 88, point 2, of the Constitution of the Republic of Montenegro.

²⁵ Articles 61–68 of the Media Law, *Official Gazette of Montenegro*. No. 54/2024, available at: <https://www.gov.me/dokumenta/cc005aca-4b08-4d6a-b0b5-8d127d2382bc>

²⁶ Articles 48–55 of the Media Law, *Official Gazette of Montenegro*. No. 82/2020, available at: <https://www.gov.me/dokumenta/cc005aca-4b08-4d6a-b0b5-8d127d2382bc>

²⁷ Media Law, *Official Gazette of the Republic of Montenegro*, Nos 051/02 of 23 September 2002, 062/02 of 15 November 2002; *Official Gazette of Montenegro*, Nos 046/10 of 06 August 2010, 073/10 of 10 December 2010 and 040/11 of 08 August 2011.

According to the 2024 Media Law, a person to whom information that may infringe their right or interest relates has the right to request the editorial office of a media outlet to publish, free of charge, a reply that refutes, supplements or corrects false, incomplete or inaccurately conveyed information. If the editor-in-chief fails to publish the reply and none of the legally prescribed grounds for refusal apply,²⁸ or if the reply is not published in the manner prescribed by law, an action may be brought against the editor-in-chief seeking publication of the reply.²⁹ In addition to the right of reply, a person who considers themselves to have suffered harm has the right to request, free of charge, that the editor-in-chief of a media outlet publish a correction of false, incomplete or inaccurately conveyed information by which one of their rights or interests has been violated.³⁰ However, if the editor-in-chief has already published a correction of the inaccurate information by the date on which the request for correction was submitted, the person concerned does not have the right to request publication of a correction, unless they consider that the correction was not published in the manner prescribed by law. If the editor-in-chief fails to publish the correction, an action may be brought against them seeking publication of the correction. Efforts should be made to ensure that future amendments to the legislation contain a clearer and more precise normative solution for this area, thereby significantly facilitating the exercise of these rights by media content users and those entitled to invoke this procedural instrument, which is also the primary objective of this handbook.

Under Montenegrin law, identical procedural rules apply to the exercise of the right of reply and the right of correction. These rules are defined by the Media Law and are therefore present-

28 Article 65 of the Media Law.

29 Article 61 of the Media Law.

30 Articles 62 and 65 of the Media Law.

ed jointly below. As provided in Article 63 of the Media Law, a request for publication of a reply or correction may be submitted within 30 days from the date of publication of the media content, or from the date on which the person submitting the request became aware of the publication, if they were unable to become aware of it within the prescribed period for objective reasons.

Article 64 stipulates that a reply or correction must be published “without amendments, except for spelling corrections that do not alter the meaning, on the same page of the print media, with the same layout, or in the same audiovisual media programme in which the media content was published, so that its placement in the media corresponds to the placement of the media content to which it relates, with an indication that it concerns a reply or correction.” The same Article provides that a reply or correction must be published in the first, and no later than the second, edition of the media outlet or media content following receipt of the reply or correction. In the case of online publications, the reply or correction must be published no later than 12 hours after receipt and must be linked to the media content to which it relates. It is further stipulated that a reply or correction must not be disproportionately longer than the media content to which it relates and must be written in the same language as that media content. It is not permitted, in the same edition or within the same media content, to publish a comment on the reply or correction together with the reply or correction concerning previously published media content. Publication of a reply or correction may also be requested where the disputed media content was published through a media outlet that has subsequently ceased operating.³¹

31 In that case, the person submitting the reply or correction may request the founder of the media outlet that has ceased to operate (or its legal successor) to ensure, at their own expense, the publication of the reply or correction in another media outlet that, in terms of the scope and quality of distribution of media content, corresponds to the media outlet that has ceased to operate.

Pursuant to Article 65, editors-in-chief of media outlets are obliged to publish a reply or correction to published media content, except in the following cases: 1) if the reply or correction does not relate to the media content for which its publication is requested, or if it does not contain information related to the allegations made in the disputed media content; 2) if the reply or correction disputes facts contained in the published media content whose accuracy has already been established by a final decision of a competent authority; 3) if the request for a reply or correction has been submitted by a person whose right or interest has not been violated within the meaning of the Media Law; 4) if a reply or correction concerning the same media content has already been published, or if a reaction with the same content as the submitted reply or correction has already been published in the same media outlet, in another media content, at the request of the same person; 5) if the content of the reply or correction is such that its publication would result in a prohibition on the dissemination of the media content, criminal or misdemeanour liability, or civil liability of third parties; 6) if the person submitting the request for publication of a reply or correction has not provided their full name, address or identity card number, or, in the case of a legal person, its name and registered office; 7) if the reply or correction is disproportionately longer than the media content to which it relates and the applicant refuses the editor-in-chief's written request to shorten the text; 8) if the reply or correction is not written in the same language as the media content to which it relates, nor subsequently translated into that language; 9) if the reply or correction disputes information that has been accurately reported from a public event. If the editor-in-chief refuses to publish a reply or correction, they are obliged, within seven days from the date of receipt of the request for publication, to notify the applicant of their decision and provide reasons for the refusal.

2.3. Proceedings for the Publication of a Reply or Correction

Proceedings concerning an action for the publication of a reply or correction are urgent.³² A lawsuit must be filed within 30 days from the expiry of the deadline for publishing the reply or correction. The lawsuit must be accompanied by a copy or reproduction of the printed text, or, where possible, an audio or video recording of the programme in which the media content was published. The lawsuit is not served on the defendant for a response, and no preparatory hearing is held. The first hearing for the main proceedings in a lawsuit for the publication of a reply or correction must be held within eight days from the date of filing the lawsuit, and each subsequent hearing must be held within eight days from the date of the previous hearing. Upon delivery of the lawsuit, the editor-in-chief of the media outlet in which the media content was published is obliged, at the request of the court, to immediately provide the disputed media content. Failure to do so without justified reasons may result in the court deciding against the editor-in-chief.

The parties may appeal the first-instance court decision within five days from the date of its adoption or from the date of delivery of the written copy of the judgment. The first-instance court shall forward a timely, complete and admissible appeal, together with all case files, to the second-instance court no later than two days thereafter. The second-instance court is obliged to render a decision within five days from the date of receipt of the appeal.³³ Pursuant to Article 68, proceedings concerning the publication of a reply or correction are governed by the provisions of the law regulating civil procedure, unless otherwise provided by the Media Law.

³² Article 66 of the Media Law.

³³ Article 67 of the Media Law.

The Law on Audiovisual Media Services³⁴ provides in Article 14 that “the right of reply and correction in relation to information published within an AVM service shall be exercised in accordance with the law governing the field of media”, meaning that it is exercised in accordance with the previously presented provisions of the Media Law.

2.4. Code of Ethics of Montenegrin Journalists

The Code provides that all media outlets must respect and ensure the exercise of the right of reply and the right of correction in accordance with the law, including the timely and free-of-charge publication of a reply aimed at refuting, supplementing or correcting inaccurate, incomplete or incorrectly conveyed information, in order to avoid the initiation of judicial proceedings. A media outlet that has published such content may be required to publish a reply and correction of inaccurate statements. Unlike the previous version, the new Code stipulates that a difference of opinion, in itself, does not constitute sufficient grounds for exercising the right of reply, unless it is based on inaccurate facts. A correction or reply must not be longer than the text or programme item to which it relates. All other criteria and procedures prescribed by law must be observed. The Code further highlights the obligation of media outlets to update their archives, documentation and databases following the publication of a correction. This ensures that inaccurate information does not remain available in digital or physical repositories, thereby preventing long-term harm and promoting transparency.

34 Law on Audiovisual Media Services, *Official Gazette of Montenegro*, No. 54/2024 of 11 June 2024, available at: Law on Audiovisual Media Services

2.5. Standards of Montenegrin Courts in the Interpretation of the Right of Reply

With regard to case law in Montenegro, the right of reply and the right of correction constitute key safeguards for media pluralism and the protection of reputation. The publicly available online register of judgments of Montenegrin courts contains only a limited number of decisions relating to this matter, and most of them do not refer to the applicable legislation but rather apply previously valid legal frameworks (for example, the Media Law of 2002 and the Media Law of 2020). Since the *ratio decidendi* (the reasoning underlying the decision) of the analysed judgments refers to legal solutions that are identical or very similar to those retained in the current Media Law, these judgments have been considered relevant for the purposes of this analysis.

In this regard, two relevant cases from the case law of the Basic Court in Podgorica were selected. In one case, the court upheld the claimant's request for publication of a reply, while in the other it rejected such a request. The cases date from 2023 and 2016, respectively.³⁵ The first judgment emphasises the obligation to publish a reply, with strict application of statutory deadlines and formal requirements. The second judgment confirms that a court may reject a request where the submitted response does not constitute a genuine reply to the disputed text, but rather contains generalised or offensive allegations that do not contribute to public debate.

2.5.1. Company v. Editor-in-Chief of a Daily Newspaper (2023)

In 2023, the Basic Court in Podgorica issued a judgment in civil proceedings initiated by a company against the edi-

³⁵ The judgments of Montenegrin courts presented here have been anonymized.

tor-in-chief of a daily newspaper and its online portal in Montenegro. The judgment upheld the claimant's request for the publication of a reply to an article published on 24 March 2022.³⁶ The court ordered the defendant to publish, in full, the response of the claimant's executive director in the next printed edition and on the online portal within 12 hours, and to reimburse the costs of the proceedings.

The dispute arose after the claimant submitted, via an official email address, a request to the editor-in-chief for publication of a reply, invoking the Media Law,³⁷ together with a response disputing the allegations contained in the article concerning the alleged failure of the claimant to comply with legal requirements and professional obligations. The defendant failed to publish the reply within the statutory deadlines and did not notify the applicant within seven days of the reasons for refusing publication.

The court established that the lawsuit had been filed within the prescribed time limit and rejected the defendant's objections concerning the alleged deficiencies in the request and the claimant's lack of active identification. In its reasoning, the court stated that the disputed article directly concerned a legal entity whose interests had been affected, and that the identity of the applicant and the capacity of the executive director were clearly evident from the content of the electronic correspondence and the attached response. The court also noted that previous communication between the parties confirmed the identity of the applicant, without the need for formal requirements such as a stamp or handwritten signature, as argued by the defendant.

36 Basic Court in Podgorica, P 2030/2023, 24 July 2023, available at: <https://sudovi.me/osp/odluka/537344>.

37 Article 48 and 50 of the Media Law, *Official Gazette of Montenegro*, No. 82/20.

The key issue in the proceedings concerned whether there were statutory exceptions that would exempt the editor from the obligation to publish the reply. The court found that the formal requirements relating to the identification of the applicant had been fulfilled: the email address was provided, the capacity of the applicant was indicated, and the context of the previous communication was clear. The court particularly emphasised that the defendant had failed to comply with the statutory obligation to notify the applicant within seven days of any reasons for refusing publication of the reply. The judgment underlines the need to balance freedom of expression with the right of reply as an instrument for implementing the principle *audi alteram partem*, while insisting that the reply must be published without amendments, in the same language, and within the deadlines prescribed by law.³⁸

2.5.2. Company v. Media Outlet (2016)

In 2016, the Basic Court in Podgorica issued a judgment in civil proceedings between a company and a media outlet,³⁹ rejecting the claimant's request for publication of a reply to an investigative article published in a daily newspaper and on its online portal. The court found that the claimant's response did not meet the statutory requirements for publication and ordered the claimant to reimburse the costs of the proceedings.

The dispute arose after the claimant's public relations department submitted a response to the published article, stating that the article was an attempt to discredit the company and was based on media speculation. The article concerned a financial transaction involving the repayment of debt through

³⁸ Article 49, paragraph 3 of the Constitution of Montenegro.

³⁹ Basic Court in Podgorica, P 879/2015, 1 April 2016, available at: <https://sudovi.me/ospg/odluka/181126>

the transfer of real estate of significant estimated value, including an analysis of the ownership structure, assets and business relationships of the relevant entities. The defendant failed to publish the claimant's response, considering that it did not contain a reasoned challenge to the facts presented in the article, but rather consisted of value judgments, accusations and statements that were not directly connected to the content of the published text. The court based its decision on the statutory obligation to publish a reply, an analysis of the original article, the submitted response and the statement of the editor-in-chief. Although the timeliness of the request was not disputed, the court concluded that the response did not satisfy the statutory definition of a reply, as it neither disputed, corrected nor supplemented specific facts contained in the published article.⁴⁰ The reasoning of the judgment emphasises that certain statements in the response remained at the level of general allegations, directed towards personal criticism of the journalist and the media outlet, and included qualifications exceeding the purpose of the right of reply.

In interpreting the concept of the right of reply,⁴¹ the court emphasised that the protection afforded by this right concerns the challenge or supplementation of published information and facts, rather than the publication of polemical or offensive reactions. The *ratio decidendi* of the judgment is based on the position that the right of reply does not constitute a general right to a rebuttal, but rather a legal instrument for correcting or challenging specific facts published by the media. In this regard, the court found that the original article primarily concerned certain business transactions and assessments of the value of real estate, while the claimant was mentioned only in the context of ownership relations,

40 Article 30, paragraph 1, point 1 of the Media Law.

41 Pursuant to Article 32, paragraph 1 of the Media Law (*Official Gazette of the Republic of Montenegro*, No. 51/02).

which had not been disputed in the response. The judgment further concludes that the submitted response was not proportionate to the content of the original article, but instead contained unrelated accusations, unsupported claims and offensive qualifications, contrary to the requirement of a reasoned approach necessary for achieving the purpose of the right of reply.

The judgment highlights the need to establish a balance between two rights – the right of reply and freedom of expression – and particularly points to the importance of investigative journalism in matters of public interest. The court also referred to the case-law of the European Court of Human Rights, noting that freedom of the press allows for a certain degree of exaggeration, provocation and criticism, and that media outlets are not obliged to publish responses that do not contribute to public debate or pluralism of views. The judgment emphasises that the *ratio decidendi* of the case is based on the principle that the right of reply is not an absolute right, but a legal mechanism subject to certain limitations.

The analysis of these two judgments shows that Montenegrin courts apply relatively consistent standards in interpreting the right of reply and the right of correction. On the one hand, courts insist on the strict application of statutory deadlines and procedural obligations of editors when the conditions for publication of a reply are fulfilled. On the other hand, case-law clearly confirms that the right of reply is not unconditional and that a response must be relevant, reasoned and directly connected with the disputed statements.⁴²

42 More details available at: <https://sudovi.me/ospg/odluka/181126>

3. How Self-Regulatory Bodies Resolve Complaints Concerning Violations of the Right of Reply and the Right of Correction – Case Studies

With regard to the methodology used in preparing the case studies, the selection of cases was limited to the practice of the self-regulatory bodies whose representatives participated in the preparation of this publication – the Media Self-Regulation Council (through its Complaints Commission), the Ombudsperson of ND Vijesti, and the Ombudsperson of Dan. For this reason, the decisions of the Ombudsperson of the public service broadcaster and those of other media outlets that have opted for an individual ombudsperson model of self-regulation were not included in the analysis.

As regards the period covered, the analysis focuses on the five-year period from 2021 to 2025. This period was selected

because it reveals a clear increase in the number of complaints concerning the right of reply and the right of correction. It is also significant as it reflects changes in both the institutional framework and the functioning of media self-regulation in Montenegro. Following the adoption of the amendments to the Code of Ethics of Montenegrin Journalists in 2016, the Media Self-Regulation Council amended its Statute and ceased to adjudicate complaints concerning content published by media outlets that were not members of this body.

The analysis sought to include complaints with different outcomes, namely decisions upholding complaints in full, upholding them in part, rejecting them on the merits, or dismissing them on procedural grounds. Hopefully, this approach provides a sufficiently comprehensive overview of the decision-making practice concerning complaints relating to the right of reply and the right of correction.

A total of seven decisions issued by media self-regulatory bodies were analysed: three decisions of the Media Self-Regulation Council and four decisions of the Ombudsperson of ND Vijesti. (The Ombudsperson of Dan did not receive any complaints on these grounds during the period under review.)

3.1. Placement of a Correction or Reply

The Montenegrin Electricity Transmission System (CGES) submitted several complaints to the Monitoring and Complaints Commission of the Media Council for Self-Regulation concerning the manner in which the daily newspaper Pobjeda responded to its requests for the exercise of the right of correction and the right of reply.

The first complaint examined here was submitted by CGES on 25 September 2022. In its complaint, relating to articles published in *Pobjeda* on 27 May and 17 June 2022, CGES stated:

“...for a prolonged period, the daily newspaper *Pobjeda* has been informing the Montenegrin public about the work of the Montenegrin Electricity Transmission System in an inappropriate manner, thereby damaging the reputation of both the company and its employees. By continuously publishing blatant falsehoods, half-truths and disinformation in a malicious context, without any factual basis, it creates a distorted public perception of our company’s work. (...) The culmination of such reporting is the failure to comply with Article 51(1) of the Media Law.”

CGES was dissatisfied with the manner in which its responses to the articles of 25 May (“One Million Euros for Housing Solutions for Favoured CGES Personnel”) and 16 June (“Kuzman: Mijuskovic Unlawfully Influenced the Public Procurement Procedure”) had been published. Both replies appeared in *Pobjeda* on the same pages as the original articles, but not in the same position: the first was published at the top of page two, while the second occupied most of page three. CGES also objected to the fact that the original articles had been announced on the newspaper’s front page, whereas the replies had not received similar front-page references. As the editorial board did not submit observations in response to the complaint, the members of the Commission⁴³ considered the case without the newspaper’s position. The Commission decided to uphold the complaint in part, finding that the replies prepared by CGES had not been “published in full compliance with the Media Law, to which Principle 3 of the Code of Ethics of Montenegrin Journalists refers.” The decision further ob-

43 Aneta Spajić, Sonja Drobac, Danilo Burzan, Branko Vojičić and Ranko Vujović.

served that: "...it is a frequent occurrence in our journalism that replies to published articles are presented in an inappropriate manner and are often concealed on unsuitable pages or in barely noticeable corners of those pages."

Although both replies had been published on the same pages as the articles to which they related, the Commission found that their placement was inadequate because it did not correspond to the prominence of the original articles. While acknowledging that the replies were considerably shorter than the articles themselves and recognising that this might have posed layout constraints, the Commission nevertheless concluded that there had been a partial violation of Principle 3, Guideline 3.1. On the other hand, the Commission did not consider the absence of a front-page reference to the replies to constitute a violation of the Code, holding instead that this fell within the editorial discretion of the newspaper and was unrelated to the principle governing corrections and replies.

Approximately eighteen months later, the complainant submitted a second complaint containing almost identical arguments, and the Commission reached the same conclusion, using substantially the same reasoning. The difference in the second case was that the complainant challenged not only the position of the reply on the page but also the page on which it appeared: the reply had been published on page five, whereas the disputed article had appeared on page four. With regard to the complaint concerning the absence of a front-page reference, the Commission maintained its earlier position, reiterating that the design and content of the front page are matters of editorial policy.

A somewhat different approach can be observed in the decisions of the Ombudsperson of ND *Vijesti*, as illustrated by

the complaint submitted by the gambling company “Džek Pot”. The complainant challenged the manner in which its correction, titled “Silence in Response to Our Requests”, relating to the article “Brano and Džigi Still Stronger than the State”, had been published in the print edition and on the *Vijesti* website on 10 March 2022. The complainant alleged multiple violations of Principle 3, Guideline 3.1 (Correction and Reply), which guarantees the exercise of the right of correction and the right of reply in accordance with the law. The principal objection concerned the placement of the correction. Although it was published on the same pages (pages 6 and 7) as the article to which it related, it did not appear in the same position: the article occupied the upper part of the pages, while the correction was placed in the lower part. The complainant further argued that the reply had not been announced on either the front page of the print edition or the homepage of the online edition, which they also regarded as a violation of Guideline 3.1. Finally, the complaint alleged that the correction had been “altered” through the addition of an introductory paragraph containing the phrase “as they claim”, which, according to the complainant, diminished the credibility of the response.

Following unsuccessful mediation, the Ombudsperson decided to uphold the complaint in part. She accepted the objection concerning the placement of the correction, specifically the absence of a front-page reference, but rejected the complaint regarding its position on the relevant pages. Taking the view that the requirement of equivalent placement had been satisfied by publication on the same pages, she observed that the exact position of a text largely depends on page layout, which does not always permit a correction to appear in precisely the same location as the article to which it relates. In addition, the Ombudsperson considered that the front page

forms an integral part of the newspaper and therefore of the overall placement governed by the relevant legal provisions. Consequently, if the original article had been announced on the front page, the corresponding reply should have received the same treatment. She rejected the remaining allegations, finding no merit in the claim that the use of the phrase “as they claim” had undermined the credibility of the correction. Likewise, she dismissed the complaint concerning the homepage of the online edition, noting that it operates in a fundamentally different manner from the front page of the printed newspaper.

3.2. Integrity of Corrections and Replies

When the Chairman of the Council for Civilian Control of Police Work submitted a complaint concerning an article published in *Vijesti* on 16 May 2021 (“Round Table on the Issue of Rooster Shooting: What Is the Intent Behind Abolishing a Centuries-Old Tradition?”), he argued that the publication of his response (“It Is Not True That Čelebić Conducted Himself in the Manner of a Character from a Živko Nikolić Film or in a Rigid and Inflexible Police Manner”) constituted a violation of Principle 3, Guideline 3.1 of the Code.⁴⁴ Specifically, after he had shortened his correction or reply at the request of the editorial staff, the published version was subsequently further shortened. The Ombudsperson agreed that Principle 3, Guideline 3.1 (Correction and Reply) had been violated, finding that the complainant’s response had been published in an abridged form, thereby compromising the integrity of the correction and reply as guaranteed by law. Accordingly, the complaint was upheld in its entirety.

⁴⁴ The complaint also alleged violations of Principles 1, 2 and 3 of the Cod. However, only the allegations relating to Principle 3 are analysed here.

The Complaints Commission of the Media Council for Self-Regulation reached a similar conclusion in a comparable case when examining a complaint submitted by the United Reform Action (GP URA) alleging a violation of Principle 3, Guideline 3.1.⁴⁵ The complaint concerned an article titled “The Dangerous Triangle: ‘Curly’ Abaz, Daka the ‘Vampire’ and Stiv the ‘American’”, published in *Pobjeda* on 7 June 2024. With regard to the part of the complaint relating to the publication of GP URA’s response, the Commission unanimously found that Principle 3 of the Code had been violated. The response had not been published in its entirety. Instead, it was partly reproduced through direct quotations and partly paraphrased by the journalist. This was also found to be contrary to Article 64(1) of the current Media Law, which provides:

“A reply or correction shall be published without amendments, except for spelling corrections that do not alter its meaning, on the same page of the printed publication, with the same layout, or in the same audiovisual media programme in which the media content was published, in such a manner that its placement corresponds to that of the media content to which it relates, accompanied by a note indicating that it is a reply or correction.”

Accordingly, with respect to the publication of incomplete corrections and replies, the practice of the self-regulatory bodies whose decisions were analysed for the purposes of this publication appears to be consistent.

⁴⁵ This complaint also alleged violations of Principles 1, 2 and 3 of the Cod. However, only the allegations relating to Principle 3 are analysed here.

3.3. Rejected and Dismissed Complaints Concerning the Right of Correction and Reply

In the practice of the *Vijesti* Ombudsperson, rejected and dismissed complaints account for approximately half of all decisions. A significant number of complaints alleging a violation of Principle 3 of the Code were dismissed because the complainants discontinued their participation in the process.⁴⁶ This was, for example, the case with the complaint submitted by B. Z. concerning the non-publication of a reply to the article titled “Spajki, Watch Out for the Bullet. Thank You, Raško”. Along with the complaint, the complainant submitted a rebuttal of the published article, which the editor of *Vijesti* refused to publish, explaining the reasons for the decision in their correspondence. The complaint, having met the formal requirements, was forwarded to the editorial board for its response. Subsequently, the editorial board’s statement regarding the allegations raised in the complaint was forwarded to the complainant, who failed to respond within the deadline prescribed by the Rules of Procedure of the *Vijesti* Readers’ Rights Protector (Ombudsperson). As the complainant ceased to participate in the mediation process, the complaint was dismissed pursuant to Article 5 of the Rules of Procedure.

With regard to decisions rejecting complaints based on an alleged violation of Principle 3 of the Code, we selected as an example the complaint submitted by A. D. concerning the non-publication of his response to the article titled “Council: Functional Video Surveillance in Police Stations Is in the Public Interest” (*Vijesti*, 3 March 2025). The complainant argued

46 For example, five of the eight complaints filed in 2023 concerned alleged violations of Principle 3 of the Code, and all five were dismissed because the complainant withdrew from the mediation process. In the following year, 2024, this was the case with one of the nine complaints submitted, while in 2025, three of the ten complaints were dismissed for the same reason.

that *Vijesti* was obliged to treat his response as a correction or reply within the meaning defined by the Media Law and to publish it in accordance with the relevant legal provisions. He submitted the response as an attachment to the complaint, stating that it had been published by all media outlets that had published the statement of the Council for Civilian Control of Police Work. In its response to the complaint, the editorial board pointed out that the article in question did not state anywhere that the Council supported violations of the law, which was the allegation emphasised by the complainant in his response. The editorial board further stated:

“The case of Mr. A. D. and his allegations that he was unlawfully recorded was covered in detail by *Vijesti* in several articles. We consider this sufficient, irrespective of the fact that Mr. A. D., in his response, also addresses issues that were not mentioned in the Council’s statement, including his political views, the manner of selecting the Council (...), repetitions of his previously expressed and published statements, etc. In addition, his reply is considerably longer than the Council’s published statement.”

Taking into account that a significant part of the response had already been addressed in previously published articles, while the elements not covered in those articles – namely, the complainant’s allegation that the Council was violating the law – constituted a serious accusation, the *Vijesti* Ombudsperson agreed with the editorial board’s decision not to publish the response. This was particularly justified given that the response was almost twice as long as the article to which it referred, thereby exceeding the limits prescribed by law.

The Ombudsperson also noted that the fact that other media outlets which published the Council’s statement had also

published the complainant's response did not oblige *Vijesti* to do the same. She particularly emphasised that the right of reply and correction guarantees readers the right to “a reply challenging, supplementing or correcting an untrue, incomplete or inaccurately conveyed piece of information”, but does not confer upon them the role or authority of journalists and media editors.

3.4. Limits of the Right to Correction and Reply – The Unequal Positions of Media Professionals and Their Audiences

A particular challenge in understanding and exercising the right of correction and reply arises from the asymmetrical position of media professionals, on the one hand, and their audiences, on the other. There is no doubt that the right of correction and reply cannot “transform” readers/viewers into media professionals, nor grant them the powers and responsibilities vested in journalists. At the same time, it is beyond dispute that a fair relationship must be ensured between those for whom the media exist and those who create media content. Although, as stated in the preamble to the Code, a journalist “must be a critical observer of those who hold social, political and economic power when reporting on them in the public interest”, this does not mean that the right to criticism is absolute. The right to express criticism should also imply the right to an adequate response to such criticism. However, what constitutes an adequate response in this context, and where should the boundary be drawn, that would be accepted by both sides?

Readers clearly recognise the imbalance of power that journalists and editors hold in this relationship and which, in their view, is sometimes abused. This is also illustrated by the example of the complaint analysed above from the practice of

the *Vijesti* Ombudsperson. Namely, one day after the publication of the complainant's response, which had first been amended and shortened at the suggestion of the editorial board and then further shortened by the newsroom during editing, *Vijesti* published a response by the journalist. According to the complainant, that response did not have to meet the same requirements that the editorial board had imposed on him as a reader. "In his reaction, [the journalist] did not clearly state what exactly he was clarifying in his intervention," the complainant argued.

The example cited above is not an isolated case. Similar situations had occurred previously as well.⁴⁷ When a journalist's or editor's response contains elements that would not be permissible in a reader's/viewer's correction or reply – such as provocations, *ad hominem* attacks, negative characterisations, value judgments, or references to matters that were not included in the response to which they are replying – journalists/editors thereby assume a privileged position in public debate. Such an approach does not contribute to maintaining confidence in responsible public dialogue, nor in the credibility of the media and their willingness to ensure reasoned debate under equal conditions. An article in which a journalist responds to a reader's correction or reply should, to the greatest extent possible, be free from offensive remarks and provocative characterisations, and should remain focused on facts and fair comment. This can only contribute to improving the quality and impact of public debate within Montenegro's media landscape.

47 Cases from an earlier period, which falls outside the scope of the methodology used in this analysis.

4. Survey on the Right of Reply and the Right of Correction

In order to gain a better understanding of the practice concerning the publication or non-publication of replies and corrections, interviews were conducted for the purposes of this study with the editors-in-chief of leading Montenegrin media outlets. The first question that arose concerned the most common reasons for not publishing a reply/correction.

Mihailo Jovović, Editor-in-Chief of the daily newspaper and portal *Vijesti*, stated that “the most common reasons for not publishing a reply/correction are cases where the reply, correction, ‘reaction’, ‘rebuttal’, etc. are not in line with the definition of a reply or correction under the Media Law”. According to him, “in their submissions, people address different issues that have nothing to do with the published article. Sometimes, in addition to disputing, supplementing or correcting information from the article, they also state, for example, everything they have done in their life and/or professional career (sometimes without even addressing the allegations

contained in the article).” “In their submissions, they often criticise the journalist,” Jovović further explained, “or the persons interviewed in the article, or all of them, in which case we refer to Article 65, paragraph 1, point 5 (‘...criminal or misdemeanour liability or civil liability towards third parties’).” He also includes among the reasons for non-publication cases where the submissions “contain no arguments whatsoever for disputing, supplementing or correcting the information”. In such situations, he stated, reference is made to Article 65 of the Media Law, paragraph 1, point 1, which provides that “the reply or correction (...) does not contain information related to the allegations made in the media content”. “And if the submission is longer than the published article, I request that it be shortened, which happens in the vast majority of cases. If they refuse to shorten it, then I do not publish it,” Jovović stated.

Mili Prelević, Acting Assistant Editor-in-Chief of the daily newspaper *Dan*, identifies as legal grounds for not publishing a reply/correction: failure to meet the deadline (submission after the 30-day period), lack of legal interest on the part of the applicant, and situations where the reply/correction does not relate to the allegations contained in the article. He also emphasises that a reply is not published if it is offensive, disproportionately longer than the original article, or contains manifestly false claims.

Nenad Zečević, Editor-in-Chief of *Pobjeda*, believes that, in addition to the above reasons, “a problem may also arise from the lack of precise indication of what the reply refers to”.

Similar reasons were cited by Radomir Kračković, Editor-in-Chief of TV *Vijesti*. In his view, the most common reason for not publishing a reply or correction is that they “do not

relate to the published media content, namely to the facts, views or claims presented in that media content". Instead, he argues, replies or corrections often contain facts, views or claims that have no connection with the disputed media content.

"If a correction or reply is drafted in accordance with the Media Law, there is no reason not to publish it," stated Draško Đuranović, Editor-in-Chief of Television E. However, he warned that in practice it often happens "that replies or corrections essentially constitute threats against journalists, thereby violating the Media Law".

Rosanda Mučalica, Editor-in-Chief of *Portal Analitika*, noted: "The most common reason why we do not publish a correction or reply is that what is submitted to us is, in fact, not a reply/correction." She explained that these are very often "political reactions, comments or attempts at discreditation, formally referred to as rebuttals, but which do not provide any concrete factual correction of the published information".

Almost all editors stated that they always provide reasons for their decision not to publish a reply/correction. Mihailo Jovović described the procedure in detail: "If the submission comes from a lawyer, a state authority or an institution, I inform them that the submission is not in accordance with the law (sometimes I also inform them that terms such as 'reaction', 'rebuttal', etc. do not exist in the law). If the submission is sent by a so-called unrepresented party, I provide a detailed explanation of the reasons for non-publication, citing the relevant legal provisions. In both cases, I always leave open the possibility of submitting a new document in accordance with the law, so that I can publish the correction or reply, even though the law does not provide for this." In most cases, he

stated, “this is what happens, and the submission is subsequently published”.

Mili Prelević stated that *Dan* always specifies the reasons for non-publication, as this is both a professional and legal obligation. “If it is decided that a reply will not be published,” Prelević explained, “the applicant is provided with a written explanation within the period prescribed by law (usually within 48 hours of receipt), so that the party can understand the reasons and, if necessary, seek judicial protection.” The same practice exists at *Pobjeda*, according to Nenad Zečević: “In all cases where a reply or correction is not published, the applicant is provided with an explanation clearly stating the reasons, in accordance with the Media Law and internal editorial rules.” Radomir Kračković also stated that “TV *Vijesti* always specifies and explains the exact reasons why a reply or correction has not been published”.

That the same principle is applied by Radio Television of Montenegro was confirmed by the Director General of the national public service, Boris Raonić. “In practice, we insist on transparency and professional communication, and we always provide applicants with a clear and precise explanation of the reasons for any potential non-publication, referring to the applicable legal provisions and internal editorial standards,” he stated.

The Editor-in-Chief of *Monitor*, Milena Perović, informed us that this media outlet also always explains why it has decided not to publish a particular reply/correction.

“When we do not publish a correction or reply, we generally clearly state the reasons for such a decision,” Rosanda Mučalica said, emphasising the importance of open and pro-

fessional communication. For this reason, she noted, the editorial board always specifies “that the request does not meet the legal criteria, does not contain a factual correction, or exceeds the scope of the right to reply”. “In this way, we protect our own credibility,” she added, “as well as the public’s right to accurate and relevant information.” According to Aleksandra Obradović, Deputy Editor-in-Chief of *CdM*, they have not encountered such situations.

Most of our interlocutors have no experience with court proceedings arising from the non-publication of replies/corrections. They did, however, mention that such lawsuits had occurred, but either long ago or during a period when they were not holding their current positions.

Nevertheless, Radomir Kračković stated that he had faced a lawsuit of this type and the consequences it entailed: “In the past three years, there was one lawsuit against me as Editor-in-Chief of TV *Vijesti*, concerning an incompletely published reply or correction. The outcome was that I was found liable and the court ordered me to publish the reply and correction in full and to pay the claimant €400 in legal costs.”

Boris Raonić informed us that RTCG has so far had no cases of judicial proceedings initiated on this basis. “This is a point we note with pride, as it indicates good practice in resolving such issues between the media and the interested party. This is, after all, one of our most important obligations as the Public Service Broadcaster,” Raonić emphasised.

The editors were also asked whether they publish corrections on their own initiative, once they become aware that they have published inaccurate or incomplete information, or only after the affected party requests such action. All respondents

stated that they apply both approaches – publishing corrections both proactively and upon a request from the affected party. Some editors noted that, when correcting inaccurate or supplementing incomplete information, they also publish an apology, while Aleksandra Obradović stated that proactive publication of corrections is rare in her newsroom. “CdM generally publishes them when contacted by the affected party,” she explained.

We also requested more detailed responses from the editors⁴⁸ to the following questions: “What must a reply/correction not contain?” and “What must a reply/correction contain?”

Nenad Zečević stated that a reply and correction “must not contain hate speech, insults, defamation, false claims, or content that is not directly related to the article in question”. He added that they “must not be contrary to the law or basic professional standards”. Other editors largely reiterated his views. Draško Đuranović stated that a reply and correction “must not contain defamatory statements or insults directed at the author of the article or the editorial board”, and that they must be “written in accordance with the rules defined by law”.

Radomir Kračković believes that replies and corrections must not contain qualifications that insult or discredit the media outlet whose content is being addressed, or other persons or legal entities referred to in the article. Rosanda Mučalica added that “a correction or reply must not contain political propaganda or new allegations that were not the subject of the original article”. She also noted that they “cannot serve as a platform for settling disputes with third parties or for present-

48 Although we have already addressed these issues to some extent in the context of the first question raised.

ing views unrelated to the specific publication”. For Milena Perović, it is unacceptable for a reply or correction to “contain insults, hate speech, or other content (grounds) for which no article would be published in *Monitor*”.

According to Boris Raonić, “a reply or correction cannot serve as a platform for additional accusations or the dissemination of new, unverified claims. It must also not be disproportionately long compared to the original content, nor go beyond the scope of correcting specific information.”

The editors were also almost unanimous regarding what a reply and correction must contain.

Mihailo Jovović believes that replies and corrections “must contain information/arguments relating to the allegations made in the media content, as well as the full name, address and ID card number of a natural person, or the name and registered office of a legal entity”. According to Mili Prelević, a reply and correction must be clearly labelled as such (reply or correction), contain information about the applicant, and precisely identify the article and the claims to which they relate. Their essence must be the denial or supplementation of facts, presented in a civilised and reasoned manner that enables readers to obtain a complete picture. According to Nenad Zečević, “a reply and correction must clearly and specifically identify inaccurate or incomplete statements in the published content, be factually substantiated, formulated in a respectful manner, and linked to the specific article to which they refer”.

Radomir Kračković stated that “a reply and correction must contain facts that correct the media content, as well as statements disputing the claims and views expressed in the media

content being addressed”. Draško Đuranović summarised his view of what a reply and correction should contain as follows: “Pursuant to the Media Law, it is necessary to precisely identify inaccuracies in the article or programme and provide the correct information.” For Rosanda Mučalica, “a correction must clearly refer to the article to which it relates, precisely identify what is inaccurate or incomplete, and provide a concrete factual correction”. Without this, she stated, “the request cannot be treated as a correction in the legal sense”. According to Aleksandra Obradović, “a reply or correction must clearly indicate what it is responding to and must be supported by facts”.

With the aim of considering possible ways to facilitate and accelerate the exercise of the right to reply and correction, the editors were asked the following question: “Do you believe that a standardised form for submitting a reply/correction would improve existing practice?”

All editors agreed with this proposal, which should be noted positively. Mihailo Jovović believes that a standardised form would improve existing practice and would be particularly important for so-called unrepresented parties. Mili Prelević believes that a standardised form “could be a useful tool for citizens who lack legal knowledge, as it would reduce the number of formally deficient requests”. However, he notes that such a form “must not become an administrative barrier that would make it more difficult for those who cannot easily access it to exercise their right to correction”. Nenad Zečević believes that “the introduction of a standardised form could contribute to greater clarity and efficiency of the procedure, both for media outlets and applicants, particularly by specifying the mandatory elements of the request”.

5. Recommendations

Based on the analysis of the survey responses, as well as the review of relevant case law in the field of the right of reply and the right of correction, it is evident that the existing normative framework and its application continue to give rise to certain dilemmas and practical difficulties for citizens, media outlets and other users of these legal mechanisms. In particular, there is a clear need for a more precise distinction between the right of reply and the right of correction, a clearer definition of the substantive requirements that a response must meet, as well as improvements in the accessibility and comprehensibility of procedures for exercising these rights.

According to the survey results, a significant number of respondents consider that the existing forms and procedures are not sufficiently clear to average media consumers, particularly with regard to distinguishing facts from value judgments, deadlines for submitting requests, and the formal elements that such requests must contain. In addition, case law confirms that the right of reply cannot be used as an instrument for insults, political debates or the discrediting of media

outlets, but exclusively as a means of correcting or challenging specific facts published in media content.

In this context, it is recommended that the existing forms and procedures be improved through their simplification, standardisation and clearer normative differentiation between the right of reply and the right of correction, accompanied by additional public information on how these rights may be exercised.

Recommendations

Clearer normative distinction between the right of reply and the right of correction

It is necessary to define more precisely the distinction between these two legal instruments, particularly with regard to the content of requests and the legal purpose of each. The right of correction should be linked to inaccurate or incomplete factual information, while the right of reply should be defined as the possibility to submit a relevant response to published content affecting the rights or interests of the person concerned.

Standardisation of forms for citizens and legal entities

It is recommended that uniform, simple and publicly available forms be developed for submitting requests for a reply and correction, in order to reduce the number of procedurally deficient requests and facilitate the exercise of these rights.

Introduction of clarifications regarding value judgments

The forms should contain a brief note explaining that the right of correction primarily concerns factual claims, rather than opinions, comments or value judgments, unless such judgments are based on manifestly inaccurate facts.

Possibility of submitting evidence with the request

Applicants should be enabled and encouraged to submit relevant documentation or evidence supporting the claims contained in their request.

More precise definition of the link between the request and the specific content

The forms should contain a mandatory field in which the applicant precisely identifies the disputed part of the content to which the reply or correction relates (title, date of publication, quotation or link).

FORM FOR EXERCISING THE RIGHT OF REPLY OR THE RIGHT OF CORRECTION

(This form may be used to request the publication of a reply or a correction to information published in the media if you believe that the published content has infringed your rights or interests.)

1. Applicant Information

Full name/ Name of legal entity:

.....

Residential address / Registered office:

.....

Telephone:

.....

Email:

.....

2. Information on the Published Content

Name of the media outlet:

.....

Title of the article/programme/report:

.....

Date and time of publication:

.....

Mode of publication:

- ☐ Print
- ☐ Online portal – link to the content:
- ☐ Television
- ☐ Radio
- ☐ Other:

Link to the content:

3. Type of Request

- ☐ Request for the publication of a reply
(To protect the reputation of the natural or legal person to whom the published information relates where that information may adversely affect a right or legitimate interest, or where you wish to present your account and challenge the statements contained in the published content.)
- ☐ Request for the publication of a correction
(To correct information that is untrue, incomplete or inaccurately reported, where you consider that the published information is inaccurate or incomplete.)

4. Statements Being Challenged

Statements being challenged	Why is the statement inaccurate or incomplete?

5. Text of the Reply/Correction

(The text must refer directly to the published content and must not be disproportionately longer than the part of the content to which it responds. Please note that the content of the reply or correction must not be such that its publication would result in a prohibition on the dissemination of the media content or give rise to criminal, misdemeanour or civil liability of third parties.)

6. For Online Portals

- ☐ I request that the reply/correction be linked to the original content.

7. Supporting Documentation (Optional)

(If you have documentation supporting the statements contained in your reply or correction, you may attach it to your request.)

- ☐ Documents
- ☐ Photographs
- ☐ Official documents
- ☐ Court decisions
- ☐ Audio/video material
- ☐ Other

Date:

Applicant's signature:

Imprint

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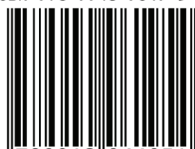
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