Marko Milosavljević, PhD, Associate Professor, Faculty of Social Sciences, University of Ljubljana, Slovenia. E-mail: marko.milosavljevic@fdv.uni-lj.si (corresponding author)

Melita Poler, PhD, Professor, Faculty of Social Sciences, University of Ljubljana, Slovenia. E-mail: melita.poler-kovacic@fdv.uni-lj.si

Rok Čeferin, PhD, Assistant Professor, Attorney, Law Firm Ceferin and Partners, Slovenia. E-mail: rok.ceferin@ceferin.si

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Abstract:

The goal of this study is to explore the implications for digital journalism of new media regulations applying to the right to be forgotten (RTBF). We will address the issue of freedom of expression within digital news media in cases of requests to unpublish news items from online media archives because they contain embarrassing, irrelevant and/or outdated (yet truthful) content. We researched the editorial policies and practices employed at five Slovenian online news media in their responses to unpublishing requests that cited the RTBF, as well as the legal foundations within Slovenian and EU policies. We used the methodological approach of legal analysis, combining semi-structured interviews and document-based legal analysis. Our research showed that there are no clear guidelines or internal policies on the procedures and criteria for dealing with unpublishing requests. Different practices have evolved, leading to inconsistent decisions. News editors are generally opposed to removing news items from online archives, and are prepared to do so only in exceptional circumstances. The legal foundations for unpublishing online news items are non-existent or vague, and this vagueness encourages new requests and opens the door to limiting freedom of expression. To avoid additional potential for the manipulation of media history and the erosion of journalistic authenticity and credibility, both legal and self-regulatory frameworks need to be updated.

Key Words: right to be forgotten; digital journalism; news websites; unpublishing requests; freedom of expression; news editors; media policy; legal analysis

The Right to Erase News Stories in Digital News Media: The Use of the Right to Be Forgotten as a New Legal and Policy Tool for the Suppression of News Items on News Websites

INTRODUCTION

The issue of censorship and freedom of expression in the digital ecosystem has been evolving within the wider framework of "a conceptual reevaluation of a new communication technology" (Bollinger 1990, 103). This is how Bollinger defined the need to re-think the key postulates of media paradigm(s) when faced with disruptive technologies. The development of new policy framework for digital journalism calls for such reevaluation, as the new ICT on which digital journalism is based presents a number of challenges to freedom of expression, a key component of democratic governance (Council of the European Union 2014, 3). In particular, it calls for adequate adaptation of media and ICT regulation, self-regulation and policy, on national and international levels.

The new ICT has nurtured the popular belief that it opens an array of possibilities, including increased citizen control over the political system (Splichal 1995, 5). Some see the Internet as "reinvigorating democracy, enabling active citizenship and forging new connections across old frontiers within news" (Fenton 2010, 14), thus providing new opportunities for the fulfilment of human rights. However, concerns have been expressed that policy makers have yet to seriously grapple with the repressive implications of new technologies (Feldstein 2019, 42). A senior director of PEN America states that "the use of the internet to track individuals is facilitating oppression and paving the way towards authoritarianism" (Rolley 2019). This dual relationship between positive and negative aspects is reflected in Zelizer's definition of digital journalism: it is a practice of newsmaking that "embodies a set of expectations, practices, capabilities and limitations relative to those associated with pre-digital and non-digital forms", while its rhetoric "heralds the hopes and anxieties associated with sustaining the journalistic enterprise as worthwhile" (Zelizer 2019, 349). These anxieties are additionally seen and felt because of new legal issues and pressures, such as requests to delete a journalistic story from digital media.

Within this new environment, new forms of censorship and repression have developed, relating to digital tools utilized by contemporary digital journalists and editors. In this regard, the Right to Be Forgotten (RTBF) represents a crucial policy development. As one "of the key elements of the institute of personal data" (Andryushchenko 2016, 16), the RTBF refers to "the right of an individual to erase, limit, or alter past records that can be misleading, redundant, anachronistic, embarrassing, or contain irrelevant data associated with the person, likely by name, so that those past records do not continue to impede present perceptions of that individual" (Kelly and Satola 2017, 3). With online archives "the fleeting snapshots of our past lives [have turned] into permanent records that may follow us forever" (Lasica 1998), and individuals request the removal of online content for various reasons (Acharya 2015, 88). The Internet has thus become a "site of furious tension between data privacy and freedom of expression" (Post 2018, 983), particularly in the EU where the protection of personal information is highly prized.

One of the challenges related to the RTBF is the issue of unpublishing error-free news items from online media archives upon an individual's request. When deciding whether to grant such requests, news editors are faced with an ethical dilemma arising from the clash of free expression, historical integrity and accountability on one side, and harm reduction, privacy and redemption on the other (Shapiro and Rogers 2017, 1101). Online media face important decisions about how they should respond to such requests while still upholding journalistic principles and best practices (Acharya 2015, 89), as removing truthful information from digital news archives involves a "conflict between the traditional ethical values of reporting the truth while at the same time not causing harm" (McNealy and Alexander 2018, 401).

The goal of this study is to explore the implications of new media regulations applying to the RTBF for digital journalism (particularly those involving freedom of expression within digital media) in cases of RTBF requests by individuals to unpublish truthful information. The current editorial policies and practices at five Slovenian online news media outlets will be analyzed, along with the legal foundations within Slovenian and EU framework and policy. We will use the methodological approach of legal analysis, combining semi-structured interviews and document-based legal analysis.

ERASING MEDIA CONTENT – ANALYSIS OF LEGAL AND RELATED MEDIA THEORY AND RESPONSES

The foundation of the RTBF in Europe was laid in 1995, in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data, and on the free movement of such data (the so-called Data Protection Directive) (Andryushchenko 2016, 16). The RTBF was established by the Court of Justice of the European Union (CJEU) in the 2014 case of *Google Spain SL v. Agencia Española de Protección de Datos* (*Google Spain* judgement)[1] (for more information, see Alessi 2017, 145–146), as the right of individuals to request search engine providers to remove links to personal information about them. According to the CJEU ruling, de-linking of search results can be granted when the data "appear to be inadequate, irrelevant or no longer relevant, or excessive in relation to those purposes and in the light of the time that has elapsed". The introduction of the General Data Protection Regulation (GDPR), applicable throughout the EU from May 2018, represented the first time European legislation recognized the existence of the RTBF, which had until then been rooted in case law (Di Ciommo 2017, 623–624).

The complainant in the *Google Spain* case also requested a newspaper to withdraw published news, yet this part of his request was not granted. According to the CJEU judgment, "the processing of personal data carried out in the context of the activity of a search engine can be distinguished from and is additional to that carried out by publishers of websites". Nevertheless, the *Google Spain* judgement led to "wide-reaching implications for freedom of expression on the Internet" (Youm and Park 2016, 284) by empowering individuals and states to censor content (Oghia 2018). Since then, there have been signs of the RTBF being applied directly to news websites (e.g. Matthews 2016).

In 2016, the highest court in Italy upheld a ruling that after a period of two years an article in an online news archive had expired; thus, the RTBF became "the right to remove inconvenient

[1] Judgment of the Court of Justice of the European Union (Grand Chamber) in Case C-131/12, *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González*, 13 May 2014.

journalism from archives after two years" (Matthews 2016). In Belgium, the Court of Cassation found in 2016 that *Le Soir* had been properly ordered to anonymize an article containing information about the applicant, who had been convicted of a drink-driving offense that led to a fatal road traffic accident. Since the conviction had been spent the court argued that twenty years later continued publication of this offense was likely to cause him disproportionate damage, outweighing the strict respect for freedom of expression (Agate 2018; Tomlinson 2016).

As news organizations have been receiving more and more requests from individuals asking that their names be removed from news stories (Santín 2017, 305), they have gradually become increasingly willing to grant unpublishing requests (Shapiro and MacLeod Rogers 2017, 1101). However, while some news media comply with these requests, others openly oppose the practice. For instance, according to *The Independent's* executive editor Will Gore (2018), "it is important to note the right to be forgotten applies specifically to search engines, not to individual publishers". *The Independent* considers removing content from public view only rarely, in exceptional cases, to protect the integrity of its archive. Opponents of unpublishing often argue that a generalized RTBF "would lead to the rewriting of history in ways that impoverish our insights" (De Baets 2016, 64). However, journalistic responsibilities continue after publication, which means that journalistic work is subject to subsequent addition or correction (for more, see Shapiro and MacLeod Rogers 2019, 330–331).

The *Google Spain* judgement has prompted diverse reactions and discussions (for an overview see Villaronga et al. 2018, 307), mostly related to removing links on search engines. While previous studies have focused mainly on theoretical foundations, legal frameworks and controversies regarding the RTBF and search engines (e.g. Andryushchenko 2016; Alessi 2017; Kelly and Satola 2017; Post 2018; Villaronga et al. 2018), the application of the RTBF in digital journalism and its understanding in news media policy have received less attention. Research on the issue of unpublishing, including individuals' reasons for filing requests, as well as the media policies and procedures for resolving them, has been scarce, particularly in the EU-context and related to EU personal data protection policies. In 2009, English conducted a survey of editors from North American news organizations and found "little news industry consensus on how to handle and respond to public requests to unpublish news content from

online news sources" (English 2009, 4). The Canadian Association of Journalists (English 2010) recommended ten best practices for handling requests to unpublish digital content, but internal media guidelines have been rare. The BBC, for example, adopted specific guidelines for the removal of its online content, emphasizing that it "should only be done in exceptional circumstances".

McNealy and Alexander (2018) provided a theoretical framework for news organizations to make unpublishing decisions, weighing the sensitivity of information against its news value. To reconcile conflicting principles in this dilemma, Shapiro and MacLeod Rogers (2017) suggested distinguishing between truthfulness and relevance, and between the availability of information and the ease of its searchability. English's study (2009; 2010) identified various reasons for unpublishing requests; however, as it was not conducted within the EU's legal framework, policies and practices, its results are unrelated to the European concept of the RTBF.

METHODOLOGY

Recent developments in the news media in Slovenia – a member of the EU and thus part of the EU legal framework – demonstrate a shift in the application of RTBF affecting digital journalism, thus representing a significant research issue. In 2018, the Journalistic Honorary Arbitration Court adopted recommendations regarding unpublishing news articles in online media (NČR 2018). These stated that as a rule media outlets should not remove news items, but are permitted to do so in exceptional circumstances. In such cases, the reasons for removal should be explained to the public. To this end, media outlets should prepare, and make publically available, clear unpublishing guidelines.

To research how Slovenian online news media outlets respond to unpublishing requests implying the RTBF, we used the methodological approach of legal analysis, combining semi-structured interviews and document-based legal analysis to provide a complex investigation of the research issue (Milosavljević and Poler 2019). We adopted the following definition of an unpublishing request implying an individual's right to be forgotten: An unpublishing request is a request to unpublish a news item from an online media archive because of

embarrassing, irrelevant and/or outdated (yet truthful) content about an individual, regardless of whether the applicant explicitly refers to the right to be forgotten. Requests referring to allegedly false, incomplete, misleading or offensive information are thus excluded from our study.

The research questions are:

RQ 1: *What are the policies and practices of online news media for dealing with unpublishing requests implying an individual's right to be forgotten?*
We will examine the decision-making process for resolving unpublishing requests, in particular: whether any written or informal procedures have evolved within newsrooms; who in a news organization is involved in the process of deciding whether to grant a request; who makes the final decision; what arguments applicants make for unpublishing; what criteria decision makers use; and which particular circumstances of a case justify unpublishing.

RQ 2: *What are the legal foundations within Slovenian and EU frameworks and policies for unpublishing online news items that result from requests implying an individual's right to be forgotten?*
We will establish whether unpublishing requests that fit our definition, and the media practices for handling them, are in compliance with Slovenian and EU legal frameworks and policies.

To answer RQ 1, we conducted semi-structured interviews with editors of five Slovenian online news media outlets: Kaja Jakopič from *rtvslo.si*, the news website of the Slovenian public service broadcaster (*Editor A*); Jure Tepina from *24ur.com*, the news website of Slovenia's biggest commercial broadcaster (*Editor B*); Robert Schmitzer from *slovenskenovice.si*, the news website of Slovenia's biggest daily tabloid newspaper (*Editor C*); Uroš Urbas from *delo.si*, the news website of Slovenia's biggest daily broadsheet newspaper (*Editor D*); and Jurij Šimac from *finance.si*, the news website of Slovenia's biggest daily business newspaper (*Editor E*). We interviewed these editors as key gatekeepers, responsible for both publishing media content and erasing it. All editors were interviewed in person, in

their offices, and all interviews were recorded and then transcribed.[2] When we first approached the editors, we asked them whether anyone else in or outside their newsrooms had a relevant role in the process of resolving unpublishing requests, and could therefore give us additional information about the procedure. Based on their answers, we performed one more interview with Tanja Picek, a data protection officer (DPO) at *Pro Plus*, the media company that publishes *24ur.com* (*DPO A*).

The qualitative method of semi-structured interviews was considered appropriate because it is "sufficiently structured to address specific topics related to the phenomenon of study, while leaving space for participants to offer new meanings to the study focus" (Galletta 2013, 24). Although we prepared an interview guide it was the flow of the interview that determined when and how the questions were asked, rather than the order specified in the guide (Bailey 2007, 100).

Before conducting the interviews, we asked interviewees to provide documentation on their media outlet's unpublishing cases. This information was to be as complete as possible, including individual requests, the news items in question, decisions made by the media outlet, and all other correspondence related to the case. Since unpublishing cases are not systematically archived, the interviewees had to search their correspondences, which resulted in a relatively random sample of cases, some of which contained incomplete documentation. Altogether, we acquired documentation on over 30 cases that corresponded to our definition of unpublishing requests, which did not allow us to make any general statements on the issue. Nonetheless, the material that we gathered was useful, as it provided valuable insights and helped us prepare an interview guide.

To answer RQ 2, we performed a legal analysis of documents from Slovenian and EU legal frameworks and policies.

RESULTS

[2] The interviews were conducted by Marko Milosavljević in February and March 2019.

Online News Media Policies and Practices for Dealing with Unpublishing Requests

The decision-making procedure for the unpublishing of a particular news item begins upon an individual's request: the applicant contacts the newsroom independently or through a lawyer, either by e-mail or phone. *Editor B* stated that he is sometimes contacted through a common acquaintance asking for a favor. Some of these requests are genuine, polite and reasonable ("These are above all attempts; they just try and send them, they don't make threats" – *Editor A*), while others are sharper, and threaten legal action in case of noncompliance ("high-profile people, usually assisted by their law firms, warn us that if their requests are not granted, we will be confronted with legal procedures" – *Editor F*).

Requests often lack a legal grounding, proceeding rather from a place of common sense and a strong belief that it is the applicant's right to get the news item in question removed. Some requests refer explicitly to the RTBF, as the *Google Spain* case applying to search engines has made it well known, while others state that deleting a news item containing their personal data is their right according to the GDPR: "They have heard about the GDPR and then everything is mixed-up … They even think that court reporting falls under the GDPR …" (*Editor C*). Some applicants do not mention a specific legal source, but just request deletion: "One lady did not refer to any articles or directives … she just said that she had been acquitted in court and asked if we could remove [the articles]." (*Editor A*)

Whether they use legal argumentation or not, all applicants claim that the continued publication of the offending news item is damaging to them. Yet their reasoning is often modest and superficial: "They request and explain. They don't give a lot of detail, they just write that it's harmful to them now, when they're looking for a job." (*Editor A*). Applicants usually find the news items embarrassing, and detrimental to their professional career and/or personal life. As *Editor A* established, "they mainly plead that in their present lives [continued publication] damages them, mostly when they're looking for a job". In some cases, they do not even try to present a cogent argument of presumed harm, they just ask that the publication be removed without specifying a reason for their request: "Occasionally we have cases involving photographs, when, for instance, people don't like how they look" (*Editor A*).

In some cases, the applicant's appearance in a news item they now want removed was consensual, even helpful to them at the time. This request was from an individual who appeared in a news article ten years ago: "There was a column 'this is my work, this is my education, this is my profile, I am looking for a job, and I am ready to do any job'. He claims that he has changed his job twice in the meantime, that he is now successful, but this article prevents him from progressing in his career, as people see him as a loser because he was looking for a job in 2009" (*Editor D*). Another situation involves giving consent once, but now wanting to withdraw it: "The most typical case that I have at *Novice*, at least once or twice a month, is a girl who at the age of 18 to 20 agreed to be photographed in a bikini, /…/ and it was written that she was a hot Taurus, who liked to go to the cinema and was in love with Leonardo DiCaprio. Now this Taurus is all grown up, she got a job, became a mother, but this publication is still among the top hits under her name. I have several requests to withdraw such publications." (*Editor C*)

In other cases, the applicants' past media appearances were not voluntary. They became objects of reporting based on their newsworthiness and the public interest recognized by journalists. These include court reports, particularly when an applicant has either been found innocent or has already finished serving his/her sentence. The applicants cite not being convicted in court, and assert that the publication "is irrelevant today or not in the public interest" (*Editor B*).

There are no written guidelines or clear internal policies on procedures and criteria for dealing with unpublishing requests within the media outlets analyzed. The decisions are usually made by the editor or the editorial team, based on professional opinions prepared by their legal advisers and/or data protection officers. However, the procedure is not precisely defined and leaves space for editors to decide using their conscience, friendship, or other personal or subjective criteria, rather than official proceedings within the media company. Different practices have thus evolved, without definite criteria for granting or rejecting a request, which leads to somewhat inconsistent decisions. The interviewees shared a general opposition to the removal of news items from online archives, and were prepared to do so only in exceptional circumstances, although some were more indulgent than others. *Editor D*, for example, said: "Our standpoint is that we interfere with the digital archive only when /…/ a

court decides that an article must be removed. But certain life situations can fall into a grey area."

The main argument for refusing an unpublishing request is public interest. For example: "They [an Austrian agency] wanted us to remove some articles from *24ur.com*, about a gentleman from Styria who has been somewhat misleading his workers. We said that it is in the public interest …" (*DPO A*). However, finding an adequate solution when balancing the public interest on one side and the RTBF on the other is not always easy or without doubt. *Editor C* cited cases involving rehabilitation: "We have many convicted killers or more serious criminals who were in jail /…/ and then they write, for instance, that in 2010 he cut someone's throat, but now he is a rehabilitated member of society and he demands that [the old articles about his crime] are removed. Here we have a very big dilemma, and we don't yet know how to deal with such cases."

The dilemma of whether the public interest outweighs an individual's RTBF also appears in cases where individuals have undergone one or several investigative or legal procedures, yet have never been found guilty in court. *Editor E* explains: "We have a banker, for instance, who has been involved in a series of weird businesses /…/ legal procedures were taken against him, including in court, but they later failed, or were stopped for different reasons. This man is legally completely clean. /…/ And then this person contacted us through his lawyer, saying 'you mentioned me in 30 news articles, in a negative context, and I demand that you erase them' /…/, and we decided not to erase the articles, as we will also not go to the national university library to burn old copies of *Finance*. The most we can offer is some kind of compromise: that is, we send a request to Google to remove the articles from their index."

In situations where the continued publication of a news item cannot, in the editor's opinion, be justified by the public interest (i.e. when information is deemed irrelevant and/or outdated) it is usually removed. As *Editor B* explains: "If someone was involved in an investigation five, four or ten years ago, if his house was searched and the police still did not charge him, I think it is not correct that this person can still be found by search engines. There is no public interest there." *Editor C* tries to be empathetic in situations where a news item is outdated and irrelevant to the public: "If it is a completely human request, such as 'they tease

my children because three years ago there was an article about us needing help, and now my children are upset', this we absolutely grant."

Unpublishing Requests from the Standpoint of Slovenian and EU Frameworks and Policies

Individuals who request Slovenian media outlets to erase news items from their online archives often cite the *Google Spain* judgment (Zakonjšek 2019, 35) to support their claims. However, this judgment is not relevant to the subject in question, as it applies only to the obligations of search engines, and not to online media. In Slovenian legislation, this issue is regulated by two normative acts: the GDPR and the Personal Data Protection Act (ZVOP-1).

The GDPR in Article 17(1) specifies that the data subject has the right to obtain from the controller the erasure of personal data concerning him or herself without undue delay, and the controller is obliged to erase personal data without undue delay where one of the grounds applies, including, *inter alia*, in the event that "the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed" (Article 17(1)(a) of the GDPR). Article 17(3)(a) provides that erasure within the context of paragraphs 1 and 2 of the same article shall not apply to the extent that processing is necessary for "exercising the right of freedom of expression and information".

In its decision, the Slovenian Information Commissioner (2019) stated that the GDPR provision could also be applied to requests to erase journalistic contributions from online archives. The Commissioner took the view that, on the basis of Article 17(1)(a) of the GDPR, a person who participated in an interview nine years ago could request its removal from the company owning the website on which it was published if the information it contained ceased to be relevant or essential due to time elapsed. At the same time, the Commissioner warned that the data controller can reject such a request if, for example, it can prove that by posting the content it is exercising its right to freedom of expression and information: "[t]he media enjoy a special status by law because they act in the public interest, and informing the public is part of their freedom of expression."

ZVOP-1 contains a similar provision in Article 32(1), which stipulates: "upon the request of the data subject, the personal data controller shall supplement, correct, block, or erase personal data which the individual proves to be incomplete, inaccurate or not up to date". This is a rather vague formulation, and it is thus questionable whether the provision can be applied to cases in which interested individuals require the media to erase news from their respective online archives. However, we can conclude that the Slovenian legislature, which states that it is possible to request the erasure of the controversial data if they are "not up to date", wanted to resolve the issue in a similar manner to that stipulated by Article 17 of the GDPR.

Therefore, on the basis of the GDPR and ZVOP-1, interested parties could in principle require a media outlet to erase journalistic contributions from their online archives if these contributions encroach on their personal rights, and if they are no longer current. However, due to the protection of the right to freedom of expression and the public's right to information, such requests can be justified only exceptionally. It is specified neither in the GDPR nor ZVOP-1 when such exceptions occur. These criteria, however, were established by the European Court of Human Rights (ECtHR) in its (scant) case law on the subject. To date, the ECtHR has adjudicated on the right to erase journalistic contributions from online archives in *Wegrzynowaki and Smolczewski v. Poland* [3] and *ML and WL v. Germany*[4].

In *Wegrzynowski and Smolczewski v. Poland*, the ECtHR decided on an application by two Polish lawyers who won their action for compensation and an apology from the media for untruthful statements in a journalistic article before the Polish court, but lost the subsequent action demanding the erasure of published articles from the newspaper's online archive. The ECtHR upheld the findings of the Polish courts and dismissed the application. It is clear from the reasoning of the ECtHR judgment that online media archives are protected within the context of freedom of expression. According to the ECtHR, it is not the task of the judicial authorities to rewrite history by removing published articles from online archives.

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[3] Judgment of the ECtHR in the case of *Wegrzynowaki and Smolczewski v. Poland*, Application no. 33846/07, 16 July 2013.

[4] Judgment of the ECtHR in the case of *M.L. and W.L. v. Germany, Application* nos. 60798/10 and 65599/10.

In *M.L. and W.W. v. Germany*, the ECtHR adjudicated on a case in which the applicants were convicted in 1993 of the murder of a famous actor. In 2007, they filed an action against several media outlets with a request for the anonymization of personal data. The court in the first instance and the court of appeal both upheld their claims, on the grounds that their interest in not being confronted with their past convictions prevailed over the public's interest in being informed of the applicants' criminal offences. However, the federal court reversed this decision on the grounds that the previous courts did not adequately protect the right to freedom of expression.

The applicants lodged an appeal with the ECtHR against these judgments, which the ECtHR subsequently rejected. It concurred with the findings of the German federal court, stating that the media is tasked with participating in the creation of a democratic opinion by providing the public with old news items stored in their archives. A decision to ban the publication of information about individuals could have a detrimental effect on the media's freedom of expression. Regarding the request for the renewal of criminal proceedings, both applicants contacted the media themselves, and gave them information for publication. This is another reason the court did not find their application admissible.

In this case, the ECtHR did not deviate from its established position that the protection of the right to freedom of expression is an essential human right that can only be limited in exceptional cases (Harris et al. 2009, 443). As is clear from *Wegrzynowaki and Smolczewski v. Poland*, the ECtHR upholds that media can also keep journalistic articles that constitute an abuse of press freedom in their online archives. This includes, for example, contributions that contain untruthful references to individuals, and thus constitute an unlawful interference with their human rights.[5] The limits of freedom of expression must be set considering two factors: whether the journalist was reporting on a topic in the public interest;[6] and the status of the

[5] From this, it can be concluded that requests for the erasure of contributions containing genuine data, or of material published with the consent of persons who requested an erasure over time, are manifestly unfounded.

[6] See e.g. ECtHR *Giniewski v. France*, Application no. 64016/00, 31 January 2006 and

person reported on by the journalist.[7] These criteria were supplemented by the ECtHR in *Wegrzynowaki and Smolczewski v. Poland* and *M.L. and W.W. v. Germany* in view of the changed social circumstances brought about by the development of digital media technology.

DISCUSSION AND CONCLUSION

Our interviews with five news editors and one DPO showed a lack of consistent procedure for handling unpublishing requests, and a large maneuvering space for editors to use their discretionary powers when deciding whether to remove certain content. Procedures are not defined in internal documents, and there is no way for the public to know who is making decisions, on what criteria they are based, and what the options for further action or complaints are. It is not clear whether an editor decides alone or with advice from a media company's legal office. Nor are the criteria explicitly set, particularly regarding the balance of public interest (informing the audience) and private interest, whereby an individual wants to restore her/his reputation, advance his/her professional career, or address a personal issue.

These blank spaces within the editorial decision-making process (including informing the public about such cases) increase news editors' influence and power, as well as the potential for abuse and manipulation of information through the non-transparent erasure of potentially controversial or negative (yet truthful) news items about themselves.

As with many other aspects of digitalization, the (attempts to achieve) unpublishing of news items in digital media confirm the "dual-use" approach to new digital technologies, and to digital journalism: the schism in the perception of the potential and role of digital media and digital journalism. This schism has existed since the early 1990s, when some argued that "computer-mediated communication will lead to a flowering of a new Athenian democracy" (Splichal 1995, 5), while others, such as Roszak (1994, xvi) concurred with techno-scepticism

Thorgeirson v. Iceland, Application no. 13778/88, 25 June 1992.

[7] See e.g. the ECtHR judgments in *Lingens v. Austria*, Application no. 9815/82, 8 July 1986 and *Von Hannover v. Germany*, Application no. 59320/00, 24 June 2004.

and neo-luddism: “Information technology has the obvious capacity /…/ to create new forms of social obfuscation and domination.”

Twenty-five years later, these digital technologies have created new legal and self-regulatory issues for journalists and the media, and for the legal system a whole. This has led to updated concerns regarding freedom of expression when digital media face attempts by various stakeholders to delete unpleasant news stories. While digital tools enable news media to enhance their key journalistic aspects (collection, production, distribution), they also pose new threats to its authenticity and credibility, while potentially decreasing public trust and endangering public interest as a general principle of journalistic work. This confirms the old schism and presents new examples of dual use of new technologies, not only by showing their empowering potential within newsrooms, but also by confirming claims that they can “be deployed for beneficial purposes as well as exploited for /…/ repressive ends” (Feldstein 2019, 50).

The legal foundations within Slovenian and EU frameworks and policies for unpublishing online news items upon requests implying an individual’s RTBF are vague at best, and often non-existent. This is dangerous, because any vagueness (or perceived vagueness, seen in attempts to apply the RTBF not only to search engines, but also to news media) makes room for new requests, and opens the door to potential limits on freedom of expression. This could have a chilling effect on digital media and digital journalism.

This paper shows that according to the ECtHR, the storage of journalistic contributions that are made accessible to the public for an extended period – one of the key features of digital journalism – is not affected by the relationship between freedom of expression and colliding rights.[8] In this context, the ECtHR draws attention to the negative effect on the media of judgments requiring the erasure of articles from online archives and the risk of rewriting history, which could have occurred if the courts had ordered the press to erase data from their online archives.

[8] The ECtHR’s problems in adapting to the changes brought about by the introduction of digital technology are highlighted by, e.g. Szeghalmi (2018, 255).

In order to avoid the possibility of manipulating media history and eroding journalistic authenticity and credibility, both legal and self-regulatory frameworks need to be updated. Given the modest ECtHR case law on the issue, it is likely that the ECtHR will further define the content and scope of the right of the media to keep news items in its archives as part of the right to freedom of expression. A new, more precise framework is required that will sufficiently and efficiently support journalistic autonomy and editorial independence, and prevent further non-transparent digital manipulation of the past. Clear criteria for the eventual removal of news content need to be defined and made available to the public. In addition, related procedures and stakeholders/decision-makers also need to be adequately defined, to make the public aware of these (potential) erasures, and of the circumstances that might warrant them. This is needed to ensure media transparency and responsibility, as well as to prevent arbitrary interventions by either the state or individuals, through their networks and through their personal (economic, political) influence. If not, freedom of expression in the digital eco-system will be under threat, and the potential for new forms and shapes of digital manipulation will continue to develop.

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