

Rok ČEGERIN, Melita POLER\*

## **JOURNALISTIC CODE OF ETHICS AND JOURNALISTS' LIABILITY FOR DAMAGES: ANALYSIS OF THE CASE LAW OF THE SUPREME COURT OF THE REPUBLIC OF SLOVENIA**

*Abstract. The authors examine the position of the Supreme Court of the Republic of Slovenia regarding the relationship between violations of a journalistic ethics code and journalists' liability for damages. The analysis of its case law confirms that the court considers a journalist's (non-)compliance with the provisions of a journalistic code of ethics as one of the criteria for determining the acceptability of conduct as an element of liability for damages. However, the court has been inconsistent regarding its reference to the code. The authors argue that only clear, well-reasoned and uniform case law in this area will ensure greater legal certainty with respect to these legal questions.*

**Keywords:** *journalism, code of ethics, media self-regulation, liability for damages, Supreme Court of the Republic of Slovenia, case law*

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### **Introduction**

The framework of media accountability in established democracies is formed by three factors: legislation, public control, and self-regulation (Lauk, 2009: 72). Benefits of self-regulation include preserving the media's independence and protecting it from government interference, as well as encouraging greater compliance through peer pressure and driving up professional standards (Puddephatt, 2011: 12). The principle of voluntary compliance is crucial for self-regulation. Journalism codes of ethics, which are among the basic self-regulatory mechanisms, are voluntarily adopted by journalists, but carry no sanctions if breached (Puddephatt, 2011: 13), which is considered one of the biggest problems of news media self-regulation and its (in)efficiency.

According to Buchanan (2005: 11), law courts "play no role in adjudicating or enforcing the standards set and those who commit to them do

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\* Rok Čeferin, PhD, Assistant Professor, Faculty of Social Sciences, University of Ljubljana, Slovenia; Melita Poler, PhD, Professor, Faculty of Social Sciences, University of Ljubljana, Slovenia.

so not under threat of legal sanction, but for positive reasons, such as the desire to further the development and credibility of their profession". However, in some cases codes of ethics have been used in legal proceedings. Tannenbaum (2003) pointed out that "journalism ethics can be a factor in lawsuits brought against the press". One argument against adopting an ethics code is the fear it will be used against journalists in legal battles to prove they "have behaved negligently in violating their own standards of ethical deportment" (Day, 2000: 45).

If a journalist in their reporting violates the provisions of a journalistic code of ethics, this cannot only attract moral condemnation from a press council or honorary court of arbitration, but also holds the legal consequences reflected in the obligation to pay compensation. Therefore, the goal of this article is to research whether and how Slovenian courts refer to journalistic ethical standards when determining a journalist's legal responsibility. To examine the position established in the case law concerning the relationship between violations of a journalistic code of ethics and journalists' liability for damages, we will analyse the decisions of the Supreme Court of the Republic of Slovenia.

### **The Unlawfulness or Unacceptability of Conduct as an Element of the Liability for Damages**

In terms of Article 131 of the Slovenian Code of Obligations, any person inflicting damage on another (the injured party) shall be obliged to reimburse them for it. According to the same statutory provision, the person causing the damage can be relieved of that obligation if they can prove the damage was incurred without their culpability.

The obligation of the person causing damage to reimburse the injured party thus arises where (1) the injured party suffered damage (2) as a consequence of the conduct of the person causing the damage.

The jurisprudence emphasises that the person causing the damage cannot be held liable, even if their conduct caused harm to another person, if their conduct was not unlawful or unacceptable (e.g., Jadek Pensa, 2003: 670). Unlawfulness of the conduct of the person causing the damage means that through their conduct they violated a specific legal norm. To establish liability for damages of the person causing the damage, it is not required that through their conduct they directly breached a specific legal norm. It is sufficient that their conduct is contrary to the usual norms of behaviour and morality, and that it is considered "generally unacceptable" (Strohsack, 1990: 23).

Jadek Pensa similarly notes (2003: 670) that to establish the unacceptability of the conduct of the person inflicting the damage it is important that they "exceeded the limits of freedom of conduct defined by the inevitable

mutual interdependence of people and their situations and resources". However, Cigoj recalls that the grounds for the conduct could also be a violation of moral norms when causing the damage, and states the conduct can be deemed unacceptable when it is already "at least morally unacceptable" (Cigoj, 1984: 515).

Liability for damages by the person inflicting damage in relation to the injured party emerges when the following assumptions are met: the unlawfulness or unacceptability of the conduct by the person inflicting the damage, that the damage was in fact inflicted, and that a causal link between the unlawful or unacceptable conduct and the damage can be established (Strohsack, 1990: 22).

The injured party is not entitled to compensation for just any kind of injury suffered, but only for a so-called legally recognised injury. The latter is defined as those negative interferences in the legal sphere of the injured party for which the law prescribes compensation as a sanction for the inflicted damage (Plavšak, 2003: 756). Therefore, a legally recognised type of damage is not just any negative interference with the legal rights of the injured party, but only that designated as such by a legal norm. Another form of legally recognised damage is mental distress caused by defamation of one's good name and reputation. Article 179 of the Code of Obligations thus provides, *inter alia*, the injured party's right to monetary compensation for mental distress suffered upon the defamation of one's good name or reputation if the circumstances of the case so justify.<sup>1</sup> Accordingly, if someone defames another person, the defamed/injured party has the right to claim damages for mental distress suffered from the person who defamed him or her (the person causing the injury).

Also in this case, like all other compensation proceedings, the injured party must prove the existence of all elements of the liability for damages – i.e., unlawfulness or unacceptability of the conduct by the person causing the damage, infliction of a legally recognised type of damage, and the existence of a causal link between the unlawful conduct and the damage inflicted.

In court proceedings dealing with compensation claims for defamation of good name or reputation, the most difficult part for the courts is to identify the unlawfulness or unacceptability of the conduct by the person causing the damage (Čeferin, 2014). In practice, it is relatively straightforward to determine whether a person suffered any distress (a legally recognised injury) due to words written or spoken by the person causing the damage

<sup>1</sup> In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention) provides that freedom of expression may be restricted, *inter alia*, for the protection of "the reputation or rights of others" (Article 10(2) of the Convention).

(existence of a causal link). However, it is significantly more challenging to answer the question of whether the conduct causing the damage was unlawful or unacceptable.

Namely, in the defamation of good name or reputation the person causing the damage interferes with the legal sphere of the injured party by exercising their right to freedom of expression guaranteed to everyone by Article 39 of the Constitution of the Republic of Slovenia (hereinafter: the Constitution). By giving effect to this human right, the person causing damage infringes upon the injured party's right to personal dignity, guaranteed to everyone by Article 34 of the Constitution. Therefore, with such conduct by the person causing the damage, there is no clear and obvious breach of a legal norm by him or her, but a constitutionally guaranteed exercise of their human right by which, however, he or she transgresses its acceptable frame or abuses it (Pavčnik, 2015: 174). Yet the boundary between the still-permissible exercise of the right to freedom of expression and its abuse is not normatively defined; therefore, a court deciding on the dispute between the parties in such a case has to be guided by the criteria that has been developed in case law.<sup>2</sup>

Another criterion the courts may apply when determining whether in a particular case the conduct is unlawful or unacceptable is by assessing the compliance of that conduct with moral norms. In journalism, (some) moral norms are listed in professional codes of ethics and thereby form part of the system of news media self-regulation.

## Journalism Codes of Ethics and News Media Self-Regulation

Media self-regulation can be defined as “a joint endeavour by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public” (Haraszti, 2008: 9). Self-regulation is one of the criteria for the sociological definition of true professions and is embodied in a formal code of conduct (Splichal and Sparks, 1994: 49).

Written codes of ethics are lists of “rules which media professionals have discussed and/or agreed upon with, preferably, input by the public” (Bertrand, 2005: 11). They form part of a broader system of media regulation, which extends from legal imperatives to cultural conventions (Christians and Nordenstreng, 2004: 18). Adherence to a code of ethics shows commitment to acknowledged ethical standards and principles; a code of ethics is “a declaration, announcing to both professionals and the public that there is a commitment to quality” (Belsey and Chadwick, 2001: 128).

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<sup>2</sup> For more on the case-law criteria allowing for defining the tolerance limits for exercising the right to freedom of expression, see Harris, O'Boyle and others (2009).

According to Bertrand (2002: 42), ethics codes inform the public about the rules of conduct and thus increase credibility, generate solidarity within the group, and preserve the prestige of the profession; they can provide a feeling of collective strength and aim to avoid state intervention. They are therefore “invaluable as an instrument of self-reflection” (Christians and Nordenstreng, 2004: 19), which helps journalists understand the nature of their work and relates their practice to broader ethical values. The codes can serve “as vehicles of professionalization, as means of professional education, or as instruments of consciousness raising” (Christians and Nordenstreng, 2004: 17). However, they can also be perceived negatively as “mere rhetorical devices” (Christians and Nordenstreng, 2004: 17–18). Namely, compared to laws and market forces, self-regulation has been a weak form of regulation, which “tends to remain cosmetic window-dressing of the media industry and its professionals – a repertoire of good intentions with little or no impact on practical media operation and performance” (Nordenstreng, 2000: 79).

Whatever the position on the significance of codes of ethics may be, codified morality has several inevitable limitations. Even the best of codes cannot assure ethical judgements and practices, for at least two reasons. First, several written rules need to be vague and even ambiguous to some degree. This is necessary because rules cannot cover all situations and specific circumstances. Abstract rules must leave some latitude for judgement and potentially for disagreement (Klaidman and Beauchamp, 1992: 41). This enables different understandings and applications of particular rules among practitioners. Second, even when the rules are clear and explicit, in practice they are (frequently) not followed. Breaching a code of ethics often goes hand in hand with a lack of autonomy, due to media competing in the market and/or depending upon political elites; it can also be caused by a lack of professional knowledge given that journalism can be practised without a specific education or licence; and sometimes it is linked to inefficient disciplinary mechanisms. The two problems that have to be resolved after a code of ethics has been adopted are its interpretation and enforcement, according to Bertrand (2002: 59).

At present, the system of new media self-regulation in Slovenia chiefly consists of mechanisms implemented by three professional organisations. Journalists join these organisations on a voluntary basis because membership is not a precondition for working as a journalist. The Association of Journalists of Slovenia (AJS) and the Union of Journalists of Slovenia (UJS) have a joint self-regulatory body called the Journalistic Honorary Arbitration Court (JHAC). It is composed of nine journalists/editors and two members of the public, whose task is to be concerned with journalists' respect for the Code of Journalists of Slovenia (see NČR). The JHAC performs procedures

regarding complaints that a journalist has violated the Code: if the accused journalist is a member of the AJS or the UJS, the procedure can be completed by an adjudication on whether the Code has been violated or not; if he/she is not a member, only an opinion can be issued; another possibility is a settlement between the journalist and the complainant, while in the most serious cases the journalist can be expelled from the AJS and/or the UJS (NČR, 2015b: Article 3). Adjudications and opinions are sent to all participants in the procedure and to the Slovenian mass media with a request to publish them, and they are also published on the JHAC's website. However, the media is under no obligation to publish these decisions. In her last report (for 2015), the former president of the JHAC wrote there is still an unfulfilled task which should be resolved in the future, namely, how to make the media publish the decisions concerning the conduct of their journalists at least on their websites (Ivelja, 2015).

As explicitly stated by the JHAC (see NČR), its decisions are not judgments able to impose sanctions or decide on an individual's rights in some official procedure (*ibid.*). Article 9 of its Rules specifies that the JHAC dismisses the complaint if a procedure regarding the same case has already started in a court within the Republic of Slovenia; the complainant has to submit a statement that the case is not in any proceedings before a regular court, and that they will not file a motion or a lawsuit in a court in the Republic of Slovenia until the case is completed by the JHAC (NČR, 2015b). The JHAC (NČR, 2015a) explained that such an approach is in accord with the spirit of self-regulation, which anticipates that ethical dilemmas and conflicts will be resolved within self-regulatory bodies, based on ethical and professional standards, as an alternative to legal and judicial mechanisms.

The third professional organisation – the Association of Journalists and Commentators (AJC) – was founded in 2007. Its members do not need to follow the Code of Journalists of Slovenia, but have adopted their own code and also have their own Court of Honour (see ZNP). The Court of Honour passes judgements on complaints regarding violations of the Rules of the AJC and completes its procedures by taking measures similar to those of the JHAC (Častno razsodišče ZNP, 2011a: Article 3).

In Slovenia, media owners and publishers are not part of the self-regulatory bodies described above and are therefore not obliged to respect the codes of conduct adopted by the three professional organisations. Some would consider this a deficiency. For example, Buchanan (2005: 11) claimed that self-regulation “is not a matter only for journalists”, but has to involve all who share the responsibility, including media owners. Even though ethics is practised by an individual and guided by the profession, self-regulation “must operate at the level of the sector, with each media outlet committing to the standards and the relevant enforcement mechanism” (*ibid.*).

## Methodology

In the USA, journalists' ethical breaches occasionally make their way into the courtroom, often as evidence in defamation or invasion-of-privacy cases. According to Tannenbaum (2003), in certain cases lawyers have used journalism ethics codes arguing that their client could not be liable without having even violated one industry rule; such a tactic can be effective when the standard for liability is negligence.

Examining the liability of journalists for defamation and breach of privacy under Belgian law, Van Besien (2013) found that courts often take journalism ethics rules into account to concretise the concept of 'fault', which may lead to liability: "The reasoning behind this is that respect for one's own rules is considered an important element under the general standard of care concept of a 'bonus pater familias' and under the specific standard of care concept of a 'normally careful and observant journalist'" (ibid.). However, even though they quite easily accept a journalist's fault if it is proven they manifestly violated journalism ethics, the courts always have to check whether a legal rule has also been violated, so it is not enough to prove that a journalist committed a violation of journalism ethics: "A breach of ethical rules will often be a criterion amongst other criterions taken into account by a civil court when deciding on whether a journalist has committed a fault, and whether he or she needs to compensate for damages caused by this fault" (ibid.).

The demarcation lines between judicial regulation and self-regulation were recognised as a major topic in the debate on media ethics by Nordenstreng and Heinonen (2006). The authors discussed the case of the Finnish journalism ethics code called the Guidelines for Journalists. The Guidelines state that they "have been drafted specifically for the purpose of self-regulation" and "are not intended to be used as grounds for criminal liability or damages" (Council for Mass Media, 2014). This clause was added to the revised version of the Guidelines because in the early 2000s there was a trend in the lower courts to refer to the professional codes when dealing with media cases in Finland (Nordenstreng and Heinonen, 2006). In some of these cases, direct references were made to the code. The courts have based their verdicts against the media partly on the Guidelines, stating that journalists have been guilty of violating their own standards. Although these verdicts have been by and large altered in the higher courts, they have triggered a heated debate, according to Nordenstreng and Heinonen (2006): "It was pointed out that courts of law can only base their adjudications on law, not on some voluntary guidelines of this or that profession".

Research into whether and how journalistic codes of ethics have been used in law court adjudications is scarce. To fill this research gap, we are



going to investigate the use of journalism ethics codes in legal proceedings before Slovenian courts. To establish the liability element, it is not necessary that the person inflicting the damage violates a certain legal norm, but it is sufficient that their conduct is “generally unacceptable” (Strohsack, 1990: 23) or “at least morally unacceptable” (Cigoj, 1984: 515). Thus, if the person inflicting the damage with their conduct breaches moral or ethical norms, this can mean that the element of unacceptability in their conduct is present, even though no legal norms were violated. This also applies to journalists’ liability for violating the right to the personal dignity of individuals reported on by the journalists. The condition of unlawful or unacceptable conduct as an element of the liability of journalists is met if during the course of their journalistic work they act immorally or unethically. Therefore, our research question is: *What position has been established in the case law of the Supreme Court of the Republic of Slovenia regarding the relationship between violations of journalistic ethical standards and journalists’ liability for damages?*

Since the Supreme Court of the Republic of Slovenia is the highest court in the country, we think its decisions most reliably indicate the relationship of Slovenian case law to the subject. The Supreme Court ruled on 434 compensation claims based on Article 179 of the Code of Obligations between 1997 and 2017.<sup>3</sup> From publicly available case law databases, it is not evident how many of these decisions relate to the compensation proceedings for defamed good name or reputation, and how many to court proceedings against the media and journalists. In those cases, the Supreme Court mentioned the code of journalistic ethics<sup>4</sup> in 28 of its rulings, and only in ten of these did either party or the court take a position on the relationship between the breach of the code of journalistic ethics by a journalist and the unacceptability of their conduct. In the next chapter, we will analyse these judicial decisions.

## Unacceptable Conduct of Journalists as a Violation of the Code of Journalistic Ethics of Slovenia in Case Law

In the case under reference number II Ips 304/2013,<sup>5</sup> the plaintiff alleged that a journalist employed by the defendant had caused him mental distress

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<sup>3</sup> Source: Legal information portal Ius-info, website address [www.iusinfo.si](http://www.iusinfo.si) (25 April 2017). All the decisions referred to in this article are available on this website.

<sup>4</sup> The Supreme Court refers to “the code of journalistic ethics” without specifying which code it has in mind. It seems that the term is used to denote a set of (presumably universal) journalistic ethical standards written in (any?) code of journalism ethics. To avoid confusion, we will use the same term in the analysis of the Supreme Court’s decisions.

<sup>5</sup> Judgement and Decision of the Supreme Court ref. no. II Ips 304/2013 of 21 January 2016.



by untrue reporting. The plaintiff justified his allegations concerning the unacceptability of the journalist's conduct employed by the defendant by referring to the code of journalistic ethics, whose provisions the journalist was alleged to have violated in the course of his work. The plaintiff maintained that a higher court should have already established the unlawfulness of the journalist's conduct and the violation of the code of journalistic ethics. The defendant replied that in its decision the higher court had not been required to take account of the code of journalistic ethics because it is not part of the applicable law. The Supreme Court allowed the revision (a legal remedy available to the parties) on the grounds that "journalistic freedom of expression cannot protect consciously false statements about facts which affect the reputation of a person". In doing so, it explicitly avoided the question of whether the conduct of the defendant's journalist was unacceptable relative to the alleged breach of the code of journalistic ethics. Namely, in its decision, the Supreme Court stated that the plaintiff's appeal for a revision was justified for other reasons; therefore, the Supreme Court did not need to identify potential violations of the code of journalistic ethics by the journalist or to take a position on the question of whether the higher court should have ascertained violations of the code.

In the case under reference number II Ips 230/2015,<sup>6</sup> the court at first instance partially upheld the plaintiff who had alleged he was offended by the defendant's (a journalist's) report. The court had based its decision, *inter alia*, on the argument that the defendant's words in his article "blur the boundary between fact and opinion of the author and thus create an impression with the reader that it is a true fact, though these claims did not meet the standard to verify the information that related to the work of journalists prescribed by the code of journalistic ethics". The higher court upheld the defendant's appeal and changed the first-instance court's judgement whereby it dismissed the plaintiff's claim. Against this judgement, the plaintiff appealed to the Supreme Court and in its appeal, *inter alia*, alleged a breach of the code of journalistic ethics by the defendant. The Supreme Court dismissed the appeal for revision; however, in its *ratio decidendi* it did not elaborate on the alleged violation of the code by the defendant.

In the case under reference number II Ips 97/2015,<sup>7</sup> the plaintiff filed an action against a newspaper publisher to pay compensation because the defendant's newspaper had published a photo that was deemed offensive by the plaintiff. The court at first instance dismissed the claim; however, the higher court granted the appeal and changed the judgement so that the defendant was ordered to publish the judgement in its newspaper

<sup>6</sup> Judgement of the Supreme Court ref. no. II Ips 230/2015 of 5 November 2015.

<sup>7</sup> Judgement of the Supreme Court ref. no. II Ips 97/2015 of 10 September 2015.

and apologise to the plaintiff. The defendant appealed against this judgement to the Supreme Court and asked that the condemnatory judgement be reversed. In his reply, the plaintiff filed a motion with the Supreme Court to dismiss it as unfounded, claiming the defendant in the present case had acted unacceptably. The plaintiff justified his position, *inter alia*, by the fact that the Journalistic Court of Honour had held that the editor-in-chief of the newspaper, which published the controversial photographs that were offensive to the plaintiff, had violated Article 19 of the code of journalistic ethics. The Supreme Court dismissed the appeal for revision; however, it did not state its position on the alleged breach of the code by the defendant's journalist.

In case II Ips 110/2013,<sup>8</sup> the plaintiff filed an action against the editor-in-chief of a medium that had published defamatory statements about the plaintiff, demanding that the publication issue a correction pursuant to the provisions of the Media Act. The court at first instance found for the plaintiff; however, the higher court granted an appeal to the defendant and changed the first-instance court's judgement so that it dismissed the plaintiff's claim. The plaintiff then filed an appeal for a revision with the Supreme Court. The plaintiff stated that, *inter alia*, his statements were true that in the demanded text of correction that the controversial journalistic piece was sensationalistic, and that it constituted a violation of the code of journalistic ethics. The Supreme Court dismissed the appeal for revision. In its judgement, it stated, *inter alia*, that sensationalistic writing "is best uncovered by correcting the false statements and stating and exposing other or opposite facts and circumstances, rather than giving negative value judgements about the journalist and his writing. The finding of any violation of the code of journalistic ethics is reserved for the competent authority".

In case II Ips 340/2011,<sup>9</sup> the plaintiff filed an action for compensation against the journalist, editor and publisher of a newspaper. The court at first instance partly found for the plaintiff, and in its judgement determined that "the author [...] created an impression in reader that it is a true fact, even though his claims did not meet the standard for double-checking the information which is in connection to journalistic work prescribed by the code of journalistic ethics". The higher court upheld the defendant's appeal and reversed the first-instance judgement, thereby dismissing it. In its judgement, it took the view that the article was not objectively an attack on the plaintiff; moreover, the journalist wrote his subjective opinion and not untrue facts. The higher court did not state its position on the alleged infringement of the code of journalistic ethics. The Supreme Court granted an appeal filed

<sup>8</sup> Judgement of the Supreme Court ref. no. II Ips 110/2013 of 13 June 2013.

<sup>9</sup> Decision of the Supreme Court ref. no. II Ips 340/2011 of 17 July 2014.

by the plaintiff and reversed the higher court's judgement. In the reasoning of its judgement, it stated, *inter alia*, that in the controversial article the defendant unacceptably infringed on the plaintiff's reputation and good name. However, the Supreme Court did not state its position regarding the infringement of the code of journalistic ethics as alleged by the defendant.

In case II Ips 179/1998,<sup>10</sup> the plaintiff commenced proceedings against a journalist and a newspaper publisher seeking compensation because the newspaper had published an article deemed offensive by the plaintiff. The court at first instance partly upheld the claim, the higher court dismissed the defendant's appeal, while the Supreme Court granted an appeal to the defendant only with respect to the amount of damages awarded and reduced it. It found that the journalist (the defendant) had acted unacceptably because he had breached his duty to convey truthful information to the public, as required by the code of journalistic ethics.

In case II Ips 143/1998,<sup>11</sup> the Supreme Court recalled the obligation of journalists as defined in the code of journalistic ethics to respect the presumption of innocence in their reports. In this context, it stated that "a journalist who reports in the field of justice, must take into account that no one is guilty until convicted with a final judgement. The presumption of innocence in criminal proceedings therefore requires particularly mindful journalistic reporting".

The Supreme Court also referred to the code of journalistic ethics in its judgement given in II Ips 300/1998.<sup>12</sup> In this case, the plaintiff filed an action against a journalist and a publisher because he had been dishonoured on a television show. The court at first instance dismissed the claim, and the court of appeal dismissed the plaintiff's appeal. The Supreme Court did not grant the plaintiff's appeal, stating the defendant had suitably reported on a matter in the public interest; therefore, the controversial show on which the offensive statements were alleged to have been made remained within the permissible limits of the right to freedom of expression. According to the Supreme Court, the defendant reported on facts and was bound by neither the Constitution nor the law nor the code of journalistic ethics to present all the views of all individuals involved in the reported incident. The Supreme Court therefore believed that in the course of his journalistic work the defendant had violated neither the Constitution nor the law nor the code of journalistic ethics, and therefore had not acted unlawfully or unacceptably.

In case II Ips 660/2005,<sup>13</sup> the court at first instance dismissed the plaintiff's claim for compensation for damage allegedly caused by an allegedly

<sup>10</sup> Judgement of the Supreme Court ref. no. II Ips 179/1998 of 28 May 1999.

<sup>11</sup> Judgement of the Supreme Court ref. no. II Ips 143/1998 of 16 July 1998.

<sup>12</sup> Judgement of the Supreme Court ref. no. II Ips 300/1998 of 30 June 1999.

<sup>13</sup> Judgement of the Supreme Court ref. no. II Ips 660/2005 of 15 February 1999.

offensive journalistic piece. The higher court dismissed the plaintiff's appeal, and the Supreme Court rejected the plaintiff's appeal for revision. In his appeal for revision, the plaintiff referred to the alleged violation of the code of journalistic ethics by the journalist, although the Supreme Court did not indicate its position on this allegation.

The Supreme Court found in its decision in II Ips 233/2000 that the journalist had not acted unacceptably since in his report he had complied with the provisions of the code of journalistic ethics.<sup>14</sup> The plaintiff filed an action seeking compensation against several persons, including the publisher of the newspaper, its editor-in-chief, and the journalist because the latter had allegedly offended the plaintiff in a published article. The court at first instance partly upheld the claim; however, the higher court partly upheld the appeals by the defendants and reduced the amount of damages awarded by the lower court. The Supreme Court partly granted the defendant's appeal for revision. In its *ratio decidendi*, it stated, *inter alia*, that the journalist in this case had respected the "requirement from the code of journalistic ethics that a journalist reporting on judicial matters always has to bear in mind that no one is guilty until convicted by a final judgement".

In case II Ips 90/2003,<sup>15</sup> the court at first instance dismissed the plaintiffs' claim for compensation against a journalist. The *ratio decidendi* of its judgement stated the journalist had not acted unlawfully and had also not violated the rules of professional ethics. The higher court dismissed the plaintiff's appeal, and the Supreme Court dismissed the revision. In the reasoning of its judgement, it stated, *inter alia*, that "the first defendant wanted to double-check the received information and he also interviewed the President of the Court, who was responsible for public relations", and therefore "the filed application for revision alleging that the defendant did not do everything he was supposed to according to legal regulations and the code of journalistic ethics is unfounded". The Supreme Court added: "Also, the revision court considers that both courts correctly assessed the journalist's duty to verify the information and its diligence in this regard. The code of journalistic ethics is not a legislative act; however, both courts properly considered it as guidance in assessing the conduct of the journalist and his diligence".

## Conclusion

In democratic societies, the news media should be free from excessive political and judicial interference (Gore, 2008: 34). However, it should also be responsible and uphold certain ethical standards (Martin, 2009: 1273),

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<sup>14</sup> Judgement of the Supreme Court ref. no. II Ips 233/2000 of 28 February 2001.

<sup>15</sup> Judgement of the Supreme Court ref. no. II Ips 90/2003 of 18 March 2004.

which is why effective self-regulatory instruments are necessary. The lack of efficient sanctions has been considered one of the biggest flaws of news media self-regulation. Some scholars and practitioners have insisted that the codes of ethics need enforcement powers (Watson, 2006: 65), and some have even questioned if self-regulation is really compulsory enough, as there is “no guarantee that self-imposed rules will indeed be enforced and that non-compliance will be sanctioned” (Puppis, 2007: 333), which raises the dilemma of involving the state in self-regulation. Some experts suggest the statutory recognition of self-regulation in law to improve its performance (see Hulin, 2014).<sup>16</sup>

Since journalists are not licensed, they cannot be disbarred or fined and are therefore subject only to public recriminations (Martin, 2009: 1276). Yet our analysis indicated that a journalist violating a journalistic code of ethics can also be held legally responsible for their unethical practices. Given the decisions of the Supreme Court of the Republic of Slovenia, it is evident that the Court considers (non)compliance with the provisions of journalists’ code of ethics one of the criteria for determining the acceptability of conduct as an element of journalists’ liability for damages.

In case II Ips 110/2013, the Supreme Court took the view that the determination of a breach of the code of journalistic ethics is reserved for the competent authority. From such a view, one might conclude that the Supreme Court believes that a violation of the code by a journalist has no legal impact, only an ethical impact. We believe, however, that such a conclusion is insufficiently justified. Namely, in several of its decisions the Supreme Court has justified the unacceptability of journalists’ conduct by explicitly referring to the code of journalistic ethics.

In this regard, let us draw attention to the decision in II Ips 179/1998 where the Supreme Court held that a journalist had acted unacceptably because he had violated his duty as prescribed in the code of journalistic ethics to provide truthful information to the public. The Supreme Court ruled similarly in its judgement in II Ips 300/1998 where it stated that a journalist had acted acceptably because he had acted in accordance with the Constitution, the laws, and the code of journalistic ethics. Also, any violation of the code by journalists would therefore mean the a journalist had acted

<sup>16</sup> Ideas to replace self-regulation with some kind of co-regulation have also appeared in Slovenia. In the draft version of the media strategy in Slovenia for the period 1917–2025, the Slovenian Ministry of Culture (Ministrstvo za kulturo, 2017) suggested that the law should be given part in establishing a new self-regulatory body. The journalistic community rejected this proposal. The president of the JHAC (Bervar, 2016) emphasised that introducing a new body, as proposed in (several drafts of) the strategy, would be against the basic principles of self-regulation, which is a voluntary self-restriction that arises from outside the structures of power and where journalists and media owners decide by themselves how violating ethical standards should be dealt with.

unacceptably. The Supreme Court ruled similarly in case II Ips 233/2000, in which it justified the acceptability of a journalist's conduct through the compliance of the reporting with the provisions of the code of journalistic ethics. In case II Ips 90/2003, the Supreme Court held that, although the code is not a set of legal provisions, when considering the acceptability of a journalist's conduct the courts are nonetheless obliged to consider it.

Another issue needing to be considered is whether codes of ethics as self-regulatory mechanisms should serve to determine the acceptability of a journalist's conduct in a court of law at all. Namely, "law and self-regulation are two distinct systems /.../ with different functions" (Korpisaari, 2014). The essence of self-regulation is primarily not to punish, but to educate and to enlighten; self-regulation calls for a critical analysis and stimulates (self-) reflection about the profession, all with the aim of improving journalistic practices in the future and thus raising the level of professionalism, credibility and trustworthiness of news media. According to Korpisaari (2014), using journalism ethics standards in court cases as an argument in support of conviction might endanger the willingness to maintain higher ethical standards.

Further, journalists adhere to a code of ethics voluntarily. Not all Slovenian journalists are obliged to follow the best known Slovenian journalistic code – the Code of Journalists of Slovenia, which has also been revised several times over the last 25 years (see Poler Kovačič et al., 2012). There is no universal code of journalism ethics (see Poler Kovačič, 2015). Nevertheless, it could be argued that some values, whether codified or not, are universal. Such are human dignity, truth-telling and nonviolence, for example (Christians and Nordenstreng, 2004). These values could be considered as binding on all journalists (not only as professionals, but as human beings as well). As such, they transcend a journalist's voluntary commitment to a particular code and may be rightfully used by courts when assessing whether a journalist's conduct complies with moral norms, regardless of whether they have been written down in a code or not. This is not disputable in cases referring to (presumably) universal values. Yet several journalistic values, norms and duties are not commonly accepted, or are differently interpreted within a journalistic community, making it questionable whether they should be used as a reference for assessing the compliance of a journalist's conduct with the 'moral norms'. However, it should be pointed out that the Supreme Court uses the code merely as an additional argument in its decisions, as our analysis showed. If the court finds that a journalist's conduct is prohibited by a code of ethics, it will refer to the code; but even if the conduct in question is not mentioned in the code, the court may still find it unacceptable. In court, a code's provisions (or lack of them) are not decisive when assessing whether particular conduct is unacceptable, but

merely serve as an indicator of a journalist's (un)ethical conduct. The courts may use these provisions, but are not bound by them when making decisions.

According to the Supreme Court, therefore, in proceedings involving damages against journalists, the element of unacceptability of their actions can be determined by assessing the compliance of that conduct with the code of journalistic ethics. In doing so, it should be noted that the Supreme Court has been inconsistent regarding its reference to the code; in most of its case law, the code is not even mentioned. We believe it would be just for the Supreme Court, at least in those cases in which the parties raise the issue of the compliance of a journalist's conduct with the code, to take a position. Only clear, well-reasoned and uniform case law in this area will ensure greater legal certainty with respect to these legal questions.

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