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## The Right of Reply: A Tool For an Individual to Access the Media<sup>2 3</sup>

### *Abstract*

This paper aims to analyze the right of reply as one of the rare tools that allows an individual direct access to media. It will present the scope of the right of reply from historical point of view to the contemporary regulatory framework; its understanding and protection in the European Union Member States, the Council of Europe countries and the current legal framework in the Republic of Serbia and its harmonization with the European legacy. Various applications of the right of reply will be further examined, such as its existence during the election campaign, in combating „hate speech“, or the implementation of right of reply by media. The expected impact of the paper is the higher awareness raising of the importance of the right to right of reply as well as contribution to academic and professional debate on this issue, as the literature on this topic is very limited.

### *Keywords:*

Right of Reply, Media, Council of Europe, European Union, Election Campaign, Hate Speech, Media Law, Constitution, Public Information

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## INTRODUCTION

The right of reply is one of the rare tools that an individual has towards media if his/her reputation is damaged by the media. As Goldberg, Suter and Walden say, the right of reply is “one means by which media law addresses our ability to obtain access to the media through rules offering a person a right of reply<sup>4</sup>”. They continue by stating that the right of reply can be, on one hand, “an element of an individual’s right to freedom of expression<sup>5</sup>”, or on the other hand, a “derogation from that right, in terms of protecting the reputation or rights of others<sup>6</sup>”.

In practice, media do not like strict rules on right of reply and try to avoid it whenever they can.

Another characteristic of the right of reply is that it is an immediate right. That means that if the right of reply is not published within the reasonable time, the purpose of the reply may be lost.

The main reason for the existence of right of reply is to hear the other side. The media has a power to completely change someone’s life by only one allegation and therefore an individual has to have a right to respond to something that he/she considers false, or simply inadequate information about him/herself.

Whoever enters the public arena may sometimes experience the need to reply to something written/published about him/her. But the right of reply is even more important for ordinary persons who would not otherwise be able to access media sphere.

This article will deal with right of reply in traditional media (radio, television, press), while the analysis of the scope of the right of reply on the Internet will be the topic of another paper. In addition, the defamation, that is one of the often reasons for the right of reply of an individual, is also not the part of the analysis within this paper<sup>7</sup>.

## THE RIGHT OF REPLY

Historically, the right of reply was established in relation to the press, but has evolved with the development of film, radio, television and other media. But it is still used more with respect to the information in the press than to any other

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<sup>4</sup> David Goldberg, Gavin Sutter, Ian Walden, *Media Law and Practice*, Oxford University Press, Oxford, 2009, p. 47.

<sup>5</sup> *Ibidem*.

<sup>6</sup> *Ibidem*.

<sup>7</sup> In many Council of Europe countries the defamation is decriminalized, while in some it is still part of the Criminal code. This paper examines the right of reply from the civil law and human rights law point of view, while defamation is not dealt with from any perspective.

media<sup>8</sup>. A reply does not have a function of telling the truth to the public, but for the public to have the opportunity to hear the other side and then decide whom to believe (the principle *audiatur at altera pars*)<sup>9</sup>.

The right of reply originates from France (known there as *droit de réponse*). The 1789 Declaration of the Rights of Man and of the Citizen introduced the free communication of ideas and opinions as one of the most valuable of the rights of man. “Consequently, every citizen may speak, write and print freely; yet, he may have to answer for the abuse of that liberty in the cases determined by law”<sup>10</sup>. The right of reply was for the first time proposed in the Council of Five Hundred in the Year VII of the French Revolution and passed in 1822<sup>11</sup>. The form of the right of reply as we know it today was incorporated into French Press Law in 1881<sup>12</sup>. After the French revolution, the so called “French model” of the right of reply further developed and expanded to Italy, Luxemburg, Belgium, Turkey and South American states. It was still called “absolute right” – *droite absolu* because it was enough for the person only to be mentioned in the press (e.g. could be praised, not criticized) to gain the right of reply, the allegations to which an individual replies may have been completely accurate and correct and there was no requirement for a person to demonstrate a legitimate interest<sup>13</sup>. The right of reply includes the literary or scientific criticism, as well as court’s judgments and parliamentary debates<sup>14</sup>. The only items exempted from the right of reply in France are notifications published in the Official Gazette<sup>15</sup>.

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<sup>8</sup> Vladimir V. Vodinelic, Vladimir Djerić, Sasa Gajin, Dusan Stojkovic, Milos Zivkovic, *Pravo medija s modelom Zakona o javnom informisanju*, Beogradski centar za ljudska prava, 1998 (Hereinafter referred as Vladimir V. Vodinelic, Vladimir Djerić, Sasa Gajin, Dusan Stojkovic, Milos Zivkovic, *Media Law with the Model Law of Public Information* Belgrade Centre for Human Rights, 1998), p. 175.

<sup>9</sup> *Ibidem*, pp. 177–180.

<sup>10</sup> *Declaration of the Rights of Man and the Citizen*, Article 11, Approved by the National Assembly of France on 26 August 1789; available at: [www.hrcr.org/docs/frenchdec.html](http://www.hrcr.org/docs/frenchdec.html) (accessed 20 September 2014).

<sup>11</sup> Matevz Krivic, Simona Zatler, *Freedom of the Press and Personal Rights*, Right of correction and right of reply in Slovene legislation, Open Society Institute Slovenia, Mediawatch, 2000, p. 17.

<sup>12</sup> French Press Law of 29 July 1881, see more at: [www.france.fr/en/institutions-and-values/freedom-press-fundamental-legal-cornerstones.html](http://www.france.fr/en/institutions-and-values/freedom-press-fundamental-legal-cornerstones.html) (accessed 20 September 2014).

<sup>13</sup> Matevz Krivic, Simona Zatler, *Freedom of the Press and Personal Rights*, Right of correction and right of reply in Slovene legislation, Open Society Institute Slovenia, Mediawatch, 2000, p. 18.

<sup>14</sup> *Ibidem*.

<sup>15</sup> *Ibidem*.

A second strand of the right of reply in Europe developed in Germany which right has been characterized as “less liberal”<sup>16</sup> than that of France. In Germany, the person needs to be hurt by the information published to gain the right of reply<sup>17</sup>. Just a simple mentioning of that person, as in the French model, is not enough. Also, contrary to the French model, a person can reply to factual allegations only, not to an opinion<sup>18</sup>. German legislation introduced other limitations to the right of reply, for example that the person cannot exercise this right if the media has already corrected disputed allegations (before the right of reply was requested) or if the original Article has already included the different opinion of the party concerned<sup>19</sup>. Reply to a true allegation is permitted, but the media can reject to publish a reply when it contains an apparent false assertion<sup>20</sup>. As the French legislation, Germany’s requires that the reply must be printed in the same type size and in the same part of the newspaper. The law is equally applied to electronic media<sup>21</sup>.

In Spain, a magazine published an article stating irregularities in the management of a public company. The Spanish court, in “*Ediciones Tiempo SA v Spain*”, applied the statutory provision for a right of reply and ordered the magazine to publish the reply by one of the managers of the company attacked. Although the Commission recognized that the order amounted to a hindrance with the magazine’s freedom of expression, the complaint was found “inadmissible on its facts<sup>22</sup>”.

Because of its nature, which requires immediate protection, the right of reply is mostly dealt with by the national tribunals. For a long time the European Court on Human Rights did not deal with any claim of infringement of the right of reply under Article 10<sup>23</sup>. One of the reasons for that may be the urgency that entails to be at all meaningful and which cannot be deferred until the exhaustion of all legal remedies at national courts, a precondition for an individual

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<sup>16</sup> *Freedom of the Press and Personal Rights*, supra note 11, p. 19.

<sup>17</sup> *Ibidem*.

<sup>18</sup> *Ibidem*.

<sup>19</sup> *Ibidem*.

<sup>20</sup> *Ibidem*.

<sup>21</sup> *Ibidem*.

<sup>22</sup> Andrew Nicol QC, Gavin Millar QC, Andrew Sharland, *Media Law & Human Rights*, Blackstone Press Limited, London, 2001, p. 67.

<sup>23</sup> For example, during the research made for the purpose of this paper, although the right of reply was used as an argument or contra-argument in few cases of the European Court related to the Freedom of expression, there was no case dealing with the right to reply only.

to bring the case to the European Court of Human Rights<sup>24</sup>. Rather, in addition to the Court's dicta in "*Prager and Oberschlick v Austria*"<sup>25</sup> that some minimum obligation to allow a response exists, one can only infer that it is considered a viable human right from the extent of the European instruments that treat this as an accepted premise both *de jure* and *de facto*.

The case *Melnychuk v. Ukraine*<sup>26</sup> concerned a newspaper review that had described the applicant's book of poetry as "the theatre of the absurd"<sup>27</sup> and "of dubious quality"<sup>28</sup>. The applicant submitted a reply in written form to the newspaper asking for it to be published. The applicant described the reviewer as an "alcoholic" and "subhuman" and the newspaper declined to publish the response. However, the European Court on Human Rights "arguably conceded that a positive obligation arises for the State to protect the right to freedom of expression by ensuring a reasonable opportunity to exercise a right of reply and an opportunity to contest a newspaper's refusal suing for a right to reply in courts"<sup>29</sup>. The Court concluded that "a fair balance had been struck between the competing interests, and the State had not failed to comply with its positive obligations under Article 10"<sup>30</sup>.

## PROTECTION OF RIGHT OF REPLY WITHIN THE EUROPEAN UNION'S REGULATORY FRAMEWORK FOR MEDIA

The "Audiovisual Media Services Directive"<sup>31</sup> (further on referred as AVMSD) is one of the most important documents that regulate the open transmission

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<sup>24</sup> Detailed explanation on how to make a valide application to the European Court on Human Rights can be found at: [www.echr.coe.int/Pages/home.aspx?p=applicants](http://www.echr.coe.int/Pages/home.aspx?p=applicants) (accessed 29 September).

<sup>25</sup> (1995) 21 EHHR 1, Para 37.

<sup>26</sup> *Melnychuk v. Ukraine*, no. 28743/03, ECHR 2005-IX.

<sup>27</sup> See more at: Ronan O Fathaigh, "The Recognition of a Right of Reply under the European Convention", in: *Journal of Media Law*, Hart Publishing Ltd., Oxford, 2012, p. 324.

<sup>28</sup> *Ibidem*.

<sup>29</sup> *Ibidem*.

<sup>30</sup> *Ibidem*.

<sup>31</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), *Official Journal of the European Union*, 15. 4. 2010.

of audio and audiovisual services throughout the European Union. It applies to the broadcasting and distribution of audio and audiovisual services as part of a more general principle of the Community law, namely the freedom of expression as protected in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>32</sup> and ratified by all Member States". One of the most important characteristics of this right – its urgent matter – is very well defined through the AVMSD, by obliging member states to make sure that the right of reply "is not hindered by the imposition of unreasonable terms and conditions"<sup>33</sup>. The Directive also recognize the importance that the reply is "transmitted within a reasonable time"<sup>34</sup>, as a very essential condition, following the valid request and "at a time and in a manner appropriate to the broadcast to which the request refers"<sup>35</sup>. Furthermore, the Directive does not distinguish among broadcasters, stating that the right of reply and rules on equivalent remedies have to apply to all broadcasters<sup>36</sup>. Member States of the European Union have the obligation to incorporate the relevant procedures establishing the right of reply or the equivalent remedies and their adequate exercising in their national legislation, ensuring the permission for satisfactory duration of the right of reply for any natural or legal person residing or being established in other Member State<sup>37</sup>. The request for exercising of the right of reply may be rejected only when a reply is not justified<sup>38</sup>, or is not in accordance with the civil, administrative or criminal law of the Member States, or when it could possibly indicate a punishable act, cause the broadcaster to be liable to civil law proceedings or would disobey the public decency standards<sup>39</sup>. Any possible dispute related to exercising of the right of reply or equivalent remedies will be subject to judicial review<sup>40</sup>.

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<sup>32</sup> It was opened for signature by the Member States of the Council of Europe in Rome, on 4 November 1950; Entered into force on 3 September 1953.

<sup>33</sup> Article 28, Para 1 of the AVMSD.

<sup>34</sup> Point 30, *Ibidem*.

<sup>35</sup> *Ibidem*.

<sup>36</sup> Article 23, point 2 of the 89/552/EEC Directive.

<sup>37</sup> Article 23, Point 3, *Ibidem*.

<sup>38</sup> "In accordance with the paragraph 1 of the Article 28" which means that the legitimate interest of the applicant have not been "damaged by an assertion of incorrect facts in a television programme".

<sup>39</sup> Article 23, Point 4, *Ibidem*.

<sup>40</sup> Article 23, Point 5, *Ibidem*.

## THE PROTECTION OF THE RIGHT OF REPLY WITHIN THE COUNCIL OF EUROPE'S REGULATORY FRAMEWORK

The European Convention on Transfrontier Television<sup>41</sup> is the most significant legal instrument of the Council of Europe in the broadcasting sector. The Convention prescribes that “every natural or 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”<sup>42</sup>. In addition, “the timing and other arrangements for the exercise of the right of reply have to be such that this right can be effectively exercised”<sup>43</sup>. The name of the programme service or of the broadcaster responsible for the programme shall be identified in the programme service itself, at regular intervals by appropriate means, for the purpose of exercising the reply<sup>44</sup>.

The Resolution on the right of reply – position of the individual in relation to the press<sup>45</sup> provides the individual with adequate means of protection against the publication of information containing inaccurate facts about him/her. Also, the individual should have a remedy against the publication of information (including opinions) that constitutes an intrusion in his/her private life or an attack on his/her dignity, honour or reputation<sup>46</sup>. The information may be delivered to the public through the press, radio, television or any other mass media of a periodical nature<sup>47</sup>. The proposed measure has to be published in a medium, without undue delay<sup>48</sup>. The correction should be given the same importance as to the original publication<sup>49</sup>. However, media usually try to avoid this particular

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<sup>41</sup> *European Convention on Transfrontier Television*, Strasbourg, 5 May 1989, amended according to the provision of the protocole (ETS No.171) which entered into force on 1 March 2002; available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/132.htm> (accessed 30 August 2014).

<sup>42</sup> *Ibidem*, Article 8, Para 1 of the Convention.

<sup>43</sup> *Ibidem*.

<sup>44</sup> *Ibidem*, Article 8, Para 2 of the Convention.

<sup>45</sup> Council of Europe *Resolution on the Right of Reply – Position of the Individual in Relation to the Press*, Adopted by the Committee of Ministers on 2 July 1974; available at [www.coe.int/T/E/Human\\_Rights/media/4\\_Documentary\\_Resources/CM/Res%281974%29026\\_en.asp#TopOfPage](http://www.coe.int/T/E/Human_Rights/media/4_Documentary_Resources/CM/Res%281974%29026_en.asp#TopOfPage) (accessed 30 August 2014).

<sup>46</sup> Para 1–4 of the Resolution; *Ibidem*.

<sup>47</sup> Para 5 of the Resolution; *Ibidem*.

<sup>48</sup> Para 7, Point 1; *Ibidem*.

<sup>49</sup> *Ibidem*.

requirement and, if really necessary, accept to publish the reply but do not give it the same importance as to the original item. There are no researches available in Serbia about the implementation of right of reply by the media<sup>50</sup>. The only available data was published in the research paper lead by Matic<sup>51</sup>, where results showed that „the right of reply and correction is mostly respected“. It was „illustrated by the statistics according to which out of 242 court proceedings launched in 2011 before the Higher Court in Belgrade in only 7% of all these cases the plaintiffs requested the publication of reply or correction (3% in 2010)“<sup>52</sup>. However, this only shows the statistics of those who were not granted the right of reply and who decided to file a law suit for that. It still does not show the way media treat the right of reply, even when publishing it. For example, the reply will most probably end up in a corner of newspapers, even though the reason for reply was published on front page. The same goes for audio and audiovisual media – the reply will most probably be “hidden” within the less important news and almost never given it within the headlines, even though the news referred to was a headline. The research carried in Croatia about the right of reply and of correction, may be used here as an illustration of media behavior towards this right in the region. Hebrang<sup>53</sup> “analyzed the frequency of publication marked with correction and reply in leading Croatian newspapers *Vecernji list*, *Jutarnji list*, *Nacional* and *Globus*”<sup>54</sup> During the research period<sup>55</sup> there were 72 requests for right of reply and/or correction, of which none was published fully in accordance with the Croatian Media Law<sup>56</sup>. *Vecernji list* was publishing the requested replies and/or corrections in “Corrections and Explanations” part of newspapers, “but all the other conditions prescribed by the law – that the correction is published at the same or equally valid place, without shortening, in unchanged condition and in the first issue – were not fulfilled”<sup>57</sup>. Also,

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<sup>50</sup> To the knowledge of the author.

<sup>51</sup> Jovanka Matic, *Serbian Media Scene vs European Standards, Report Based on Council of Europe's Indicators for Media in a Democracy*, available at: [www.anem.rs/en/aktivnostiAnema/AktivnostiAnema/story/13442/Publication+%22Serbian+Media+Scene+VS+European+Standards%22.html](http://www.anem.rs/en/aktivnostiAnema/AktivnostiAnema/story/13442/Publication+%22Serbian+Media+Scene+VS+European+Standards%22.html) (accessed on 20 August 2014).

<sup>52</sup> *Ibidem*.

<sup>53</sup> Vladimira Hebrang, “The Right of Correction of the Media Announcement, Media”, in: *Medianali*, Vol 4, No. 8, 2010, pp. 43–63.

<sup>54</sup> *Ibid.*, p. 44: The research was trying to answer the question related to the level of implementation of Croatian Media law when it comes to right to reply and a correction. The various research methods were used: quantitative and qualitative, comparative analysis, case studies, participant observer, to name few.

<sup>55</sup> January 1<sup>st</sup> – June 31<sup>st</sup> 2009, *ibid.*, p. 55.

<sup>56</sup> See more: *Ibid.*, pp. 55–56.

<sup>57</sup> *Ibidem*, p.57.



many responses were published with the comments by editors, although that was also not in accordance with the law<sup>58</sup>. Finally, none of the reactions was published on the front page, even though some of them referred to the front page<sup>59</sup>.

In the case "*Handyside v. UK*"<sup>60</sup> the European Court on Human Rights declared that the „freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man“. It also said that the freedom of expression should be „applicable not only to „information“ or „ideas“ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population<sup>61</sup>“. Sometimes the editors do not publish the reply with the argument that it is too offending, shocking or disturbing, while even that kind of reply should be protected hence, as the Court says, there is no democratic society without it.

The Recommendation on measures concerning media coverage of election campaigns<sup>62</sup> pays special attention to the right of reply during the election campaign because of the short period of time in which these last. In order to allow anyone, whether a candidate or a political party, who is entitled to exercise a right of reply under national legislation, every State should prescribe the best possible procedure to ensure urgency of the right of reply during the election campaign within their national legislation. Any candidate or political party who is entitled to a right of reply under national law or system<sup>63</sup> should be able to use this right during the period of campaign, especially knowing the short duration of an election campaign<sup>64</sup>. The exercise of the right of reply during the election campaign shall include the day of the election if there is no other way to implement this right<sup>65</sup>.

The Recommendation on "hate speech"<sup>66</sup> obliges the governments of its members „to establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech“ that would allow administrative and judicial authorities to reconcile in each case respect for freedom

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<sup>58</sup> *Ibidem.*

<sup>59</sup> *Ibidem.*

<sup>60</sup> „*Handyside v UK*“ (1976) 1 EHRR 737, Para. 49.

<sup>61</sup> *Ibidem.*

<sup>62</sup> Adopted by the Committee of Ministers on 9 September 1999.

<sup>63</sup> Acknowledging that the right of reply is ensured in most countries by press, broadcasting or other legislation as well as by professional codes of practice.

<sup>64</sup> Point 3, *Ibidem.*

<sup>65</sup> Point 58, *Ibidem.*

<sup>66</sup> The Council of Europe Recommendation No. R (97) 20 on "hate speech", adopted by the Council of Europe Committee of Ministers on 30 October 1997.

of expression with respect for human dignity and the protection of the reputation or the rights of others. Governments should examine ways and means to, provide the compensations for victims of hate speech as well as to provide for the possibility of court orders to allow the victims a right of reply or to order the retraction<sup>67</sup>.

As it is shown above, the scope of the right of reply is very broad – from protecting individual rights in everyday life, through a special attention given to specific situations such as during the election campaign or for victims of hate speech. The right of reply is stronger protected during the election campaign, by e.g. prescribing shorter deadlines for media to publish the reply. Also, the victims of hate speech are given the right that can be protected by administrative, civil and criminal procedures. Nevertheless, both the right of reply during the election campaign and the one for victims of hate speech would deserve the paper for themselves.

### THE LEGAL PROTECTION OF RIGHT OF REPLY IN SERBIA

The Republic of Serbia has incorporated the main principles of the European Union and Council of Europe regulatory framework in its legislation. The Constitution of the Republic of Serbia<sup>68</sup> in its Article 50 that promotes the freedom of the media explicitly says that the implementation of the right to correct any “untrue, incomplete or incorrectly transmitted information that infringes someone’s right or interest”<sup>69</sup> as the “right to reply to information published in the media”<sup>70</sup> shall be regulated by the law.

Therefore, the newly adopted Law on Public Information and Media<sup>71</sup> regulates<sup>72</sup> the right to reply, by specifically prescribing that the right of reply is granted to “a person to whom the information personally refers to and may breach his/her right or interest”<sup>73</sup>. That person may request of the responsible editor to publish, free of charge, a reply in which that person states that the information

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<sup>67</sup> Principle 2 of the Appendix to Recommendation No. R (97) 20. This Principle could also be a good base for a research on whether this rule has been implemented in practice in European countries.

<sup>68</sup> The Constitution of the Republic of Serbia, *Official Gazette of the RS*, 98/2006.

<sup>69</sup> Article 30, para 3, *Ibidem*.

<sup>70</sup> Article 30, Para 4, *Ibidem*.

<sup>71</sup> The Law on Public Information and Media, *Official Gazette of the RS*, 83/2014; in addition to this, “umbrella” law, on the same day were adopted the Law on Electronic Media and the Law on Public Media Services.

<sup>72</sup> In its Chapter XIII, Articles 83 – 100 of the Law on Public Information and Media.

<sup>73</sup> Article 83 of the Law on Public Information and Media.

is inaccurate, incomplete or incorrectly imparted<sup>74</sup>. If a natural or legal person is incapable of looking after his/her own interests, the right of reply shall be submitted by the natural person's legal representative or by a body in charge of the legal person<sup>75</sup>. A request for the publication of a reply shall be submitted to the responsible editor within 30 days from the date of the publication of information in a daily newspaper/broadcast or within 60 days from the publication of the information in a printed or broadcast periodical. The 60 days deadline for the submission of the reply also applies to a person permanently or temporarily residing abroad<sup>76</sup>. Although the 30 or 60 days may not sound to meet the immediacy criteria explained above, this period applies to *a person seeking a reply* and not to media to publish it. Once the reply is submitted to media, all the criteria from the law shall apply: to be published in the next edition, without any delay, with the same prominence and others. This period is given to individuals to think whether they want to reply or not, to calm down and think about the consequences of their response and then react.

One of the question often raised by editors-in-chief at the many public events on media law is related to the problem of the submission of multiple replies within the above mentioned deadlines and how should they recognize, decide on and publish the most relevant one. This issue was solved by the Law that prescribes that in case that an authorized person presents several replies contradictory in their content, the responsible editor shall publish the one marked as authoritative. If no reply has been marked as authoritative, the responsible editor shall publish the reply last received, and if the replies had arrived simultaneously, the editor shall publish the one that is the most comprehensive<sup>77</sup>. This provision gives responsible editor the freedom to decide on a case by case basis. Regarding the deadlines for publishing a reply, the Serbian Law on Public Information and Media has made an effort to follow the Council of Europe's Resolution on the Right of Reply<sup>78</sup> by imposing the obligation towards the responsible editor to publish the reply without delay, in the very next or following issue of the daily newspaper or in the very next or following daily broadcast upon arrival of the reply<sup>79</sup>. The Law is also in accordance with the Council of Europe Recommendation on Measures Concerning Media Coverage of Election Campaigns<sup>80</sup> by

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<sup>74</sup> *Ibidem*.

<sup>75</sup> Article 84, Para 1 of the Law.

<sup>76</sup> Article 86 of the Law.

<sup>77</sup> Article 95 of the Law.

<sup>78</sup> Resolution (74) 26 on the Right of reply – Position of the individual in relations to the press" adopted on 2 July 1974, Point 1: "without undue delay".

<sup>79</sup> Article 87, Para 1 of the Law.

<sup>80</sup> Appendix to Recommendation No. R (99) 15, Chapter III, Point 3 and Explanatory Memorandum, Points 58–59.

guaranteeing that when the information the reply is related to concerns a candidate in an election campaign, the reply shall be published in the very next issue or in the very next broadcast programme upon arrival of the reply<sup>81</sup>.

And finally, the legislature specifies nineteen reasons<sup>82</sup> where the responsible editor would not be obliged to publish a reply as well as stipulates situations when the editor wants to avoid publishing of the part of the reply: When “the reply has been submitted by a person to whom the information does not personally refer or by another unauthorized person; when the reply is same in content to that already been published by an authorized person; if the reaction is same in content to that already published in the same media outlet in another, equally valid form (an interview, statement, etc.) by an authorized person; if there is a lawsuit on the publication of a reply to the same piece of information submitted previously commenced has not yet been completed;”<sup>83</sup> - to name just few of them. These reasons for the non-publication of a reply shall also apply to the non-publication of a part of the reply<sup>84</sup>. If the responsible editor does not publish the reply and none of the reasons for not publishing the reply mentioned above are met, or if the responsible editor publishes the reply in an unprescribed manner, the holder of the right of reply may bring charges against the responsible editor over the publication of the reply<sup>85</sup>.

Although the stating of nineteen reasons for rejecting the publication of a reply may be characterized as unnecessary<sup>86</sup>, this list of reasons for not publishing the right of reply appears to the author to be in accordance with the Council of Europe Resolution on the Right of Reply as indicated in its Appendix on Minimum Rules Regarding the Right of Reply<sup>87</sup>. It is also adjusted to the Serbian legal system that does not have very well established case-law related to media and especially to the relation between media and individuals. As it is important for all the parties to know their rights and obligations – injured persons, responsible editors as well as authorized tribunals. It allows the responsible editor to decide whether the reply falls under any of these exemptions but also leaves the remedy to the party that requires a response to claim his/her right in front of the court.

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<sup>81</sup> Article 87, Para 2 of the Law.

<sup>82</sup> Article 98, Para 1 of the Law.

<sup>83</sup> *Ibidem*, points 1–4.

<sup>84</sup> Article 98, Para 2.

<sup>85</sup> Article 83, Para 2.

<sup>86</sup> See more: Jovanka Matic, “Serbian Media Scene vs European Standards”, Report Based on Council of Europe’s Indicators for Media in a Democracy, p. 76.

<sup>87</sup> Point 3, Para i–vi; available at: [www.coe.int/T/E/Human\\_Rights/media/4\\_Documentary\\_Resources/CM/Res%281974%29026\\_en.asp#TopOfPage](http://www.coe.int/T/E/Human_Rights/media/4_Documentary_Resources/CM/Res%281974%29026_en.asp#TopOfPage)

## CONCLUSION

There were two options on how to approach the right of reply in this paper. First that the right of reply is looked at from the Republic of Serbia point of view only. Or the second – to present the origin of the right of reply in Europe and then, from that perspective, compare the current regulation in the Republic of Serbia to the European regulatory framework. The second option was chosen.

The paper also explains the nature of the right of reply and its evolution from the purely media law foundation to a modern human right, acknowledged by international bodies in adopting their treaties.

The right of reply in Serbia is protected by the Constitution and under the Law of Public Information and Media. Having legislation in place, the greatest concern can be its proper implementation.

The right of reply is one of the issues that the responsible editors have to deal with almost on a daily basis, without always being sure about its extent. What every editor should know is when to publish the right of reply, how to avoid attacking someone's honor, dignity or reputation and still disclose unpleasant information that is important for public to know, what to do with the reply when the deadline for it has passed or if received in another language<sup>88</sup>. The latter is important for multilingual environment and media that broadcast in more than one language, which is a common case in Serbia.

To conclude, the protection of right of reply is fully protected under Article 10 of the ECHR as freedom of expression. Its publication can be restricted in limited number of cases, listed in advance and usually defined in national legislations of Council of Europe and European Union Member States. And finally, the right of reply is one of the few measures that an individual can use against media in case he/she feels that his/her reputation is damaged. As shown, this right is recognized and protected in most of the countries in Europe.

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<sup>88</sup> Article 98, point 10 states that one of the reasons for not publishing the right of reply is when the reply has not been composed in the language in which the information it refers had been published or has not been subsequently translated into that language.

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