



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No. 02/L-65

CIVIL LAW AGAINST DEFAMATION AND INSULT

Assembly of Kosovo,

Based on Chapter 5.4 (a) and 9.1.26 (a) of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation Nr. 2001/9 15th of May 2001)

In order to promote a tolerant and democratic society in Kosovo through respect of international standards of human rights and freedom of expression and for the prevention of the language of Defamation and Insult,

Hereby adopts the following:

CIVIL LAW AGAINST DEFAMATION AND INSULT

Chapter I
GENERAL PROVISIONS

Article 1
Objective of the law

The objective of this law is to regulate civil liability for defamation and insult while ensuring:

- a) the right to freedom of expression, as guaranteed by the Constitutional Framework on Provisional Self-Government in Kosovo (UNMIK Regulation 2001/9 dated 15 May 2001) and the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- b) that the rules relating to defamation and insult do not place unreasonable limits on freedom of expression including and the publication and discussion of matters of public interest and importance;
- c) effective and appropriate compensation for persons whose reputation was harmed by defamation and insult;
- d) the essential role of media in the democratic process as public watchdogs and transmitters of information to the public.

Article 2 Interpretation of the Law

2.1. This Law shall be interpreted so as to ensure that the application of its provisions maximizes the principle of freedom of expression in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, as elaborated in the case law of the European Court of Human Rights.

2.2. In the case of any conflict between this Law and the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention and legal practice of the European Court of Human Rights shall be applied.

Article 3 Definitions

The terms used in this Law have the following meaning:

- a) **defamation** shall mean the publication of a untrue fact or statement and the publisher knows or should know that the fact or the statement is untrue, the meaning of which injures the reputation of another person;
- b) **insult** shall mean the statement, behavior, or publication of a statement directed at another person that is humiliating;
- c) **publication** shall mean disseminating an expression, whether in written or spoken form, whether in print or broadcast media or by other means, which is heard or read by at least one third person;
- d) **publisher** shall mean the person who makes a publication;
- e) **author** shall mean the person making the expression in points (a) and (b) of this article;
- f) **editor** shall mean a person appointed by the publisher who is responsible for exercising control over the contents of a publication;
- g) **child** shall mean a person up to the age of 18 years;
- h) **person** shall mean a physical person or legal entity;
- i) **public authority** shall mean a legal person exercising state powers;
- j) **public official** shall mean any person who exercises public authorization for a public authority;
- k) **matter of public concern** shall mean any matter on which it is in the interest of the public to be published, including but not limited to matters concerning all branches of government, politics, public health and safety, law enforcement, administration of justice, consumer and social interest, the environment, economic matters, the exercise of power, science, art and culture.

Chapter II
MEASURES FOR PROTECTION FROM DEFAMATION AND INSULT

Article 4
Action against Defamation and Insult

4.1. A person has the right to demand to stop the defamation and insult and to demand that it will not be repeated in the future, the refutation of defamatory or insulting information concerning his/her person and compensation for moral and material damage caused by the defamation and insult, through a court proceeding, unless one of the exemptions to liability is established in accordance with this Law.

4.2. If defamation and insult is made through a mass medium, compulsory, it shall be refuted in the same mass medium and be given the same prominence. The refutation shall be published within eight (8) days of receipt of the relevant demand in the case of daily newspapers on the same page where the defamation and insult was published, in the next issue of a periodical or a telegraph agency and within eight (8) days in the same manner or at the same time of day in case of broadcast information.

4.3. Where the defamation or insult identifies a child, the parent or legal guardian may initiate the procedure against defamation and insult before the competent court according to this Law.

4.4. Where the defamatory or insulting information identifies a deceased person, the first-degree heir of that person may initiate the procedure against defamation and insult before the competent court according to this Law, under the condition that the defamation and insult caused harm to the reputation of the heir.

Chapter III
RESPONSIBILITY

Article 5
Responsibility for Defamation and Insult

5.1. A person is responsible for defamation or insult if he/she made or disseminated the expression of defamation or insult, unless one of the exemptions to liability is established in accordance with this Law.

5.2. For defamation or insult made through media outlets the following may be held jointly or individually responsible: author, editor or publisher or someone who otherwise exercised control over its contents.

5.3. Where the defamation or insult relates to a matter of public concern or the injured person is or was a public official or is a candidate for public office, there may only be responsibility for defamation or insult if the author knew that the information was false or acted in reckless disregard of its veracity.

5.4. Public authorities are barred from filing a request for compensation of harm for defamation or insult. Public officials may file a request for compensation of harm for defamation or insult privately and exclusively in their personal capacity.

Chapter IV
EXEMPTIONS FROM LIABILITY AND ITS LIMITS

Article 6
Proof of truth

6.1. In all actions for defamation and insult, except those involving matters of public concern, the defendant shall carry the burden of proving the veracity of an impugned statement, and a finding by the court that the statement of facts is substantially true shall absolve the defendant of any liability.

6.2. In defamation and insult actions involving statements on matters of public concern, the defendant shall carry the burden of proving that he/she acted responsibly in publishing the impugned statements. A finding by the court that the defendant acted responsibly in publishing the impugned statements, unless the defendant knew that the impugned statement was false or acted in reckless disregard of its veracity, shall absolve the defendant of any liability.

Article 7
Reasonable publication

No one shall be liable for defamation and insult for a statement on a matter of public concern if they establish that it was reasonable in all the circumstances for a person in their position to have disseminated the material in good faith, taking into account the importance of freedom of expression with respect to matters of public concern to receive timely information relating to such matters.

Article 8
Opinions

No one shall be liable for defamation and insult for a statement which the court assesses to be a statement of opinion, on the condition that the opinion is expressed in good faith and has some foundation in fact.

Article 9
Immunity

Given statements shall not be liable under this law if the defendant shows that they were made in any of the following circumstances:

- a) any statement made in the course of proceeding at legislative bodies including by elected members both in open debate and in committees, and by witnesses called upon to give evidence to parliamentary committees;
- b) any statement made in the course of proceedings at local authorities by members of those authorities;
- c) any statement made in the course of any stage of pre-trial processes, and judicial or administrative proceedings, by anyone directly involved in that proceeding, unless it can be shown that the statement in question is totally unrelated to that judicial or administrative proceeding;

- d) any statement made before a public defender;
- e) any document ordered to be published by a legislative body;
- f) any notice or matter issued for the information of the public by an international organization or international conference;
- g) any notice or matter issued for the information of the public by any authority performing governmental or statutory functions, including the police;
- h) a fair and accurate report of any material described in paragraphs (a) –(g) of this Article; and
- i) a fair and accurate report of any material which is contained in an official document where the status of that document justifies the dissemination of the material, such as official documentation issued by a public inquiry or foreign court or legislature;
- j) a fair and accurate report of proceedings at any legal public meeting in Kosovo;
- k) a fair and accurate report of official proceedings or documents of a public authority; or
- l) a fair and accurate report of any finding or decision of an association with formal powers of adjudication and/or control with the purpose of promoting art, science, religion, learning, trade, business, industry, any profession, sports, pastimes, or charitable objects.

Article 10 Conditional Immunity

No one shall be liable for defamation and insult for a statement made in the performance of a legal, moral or social duty relating to a matter in respect of which the defendant and those to whom the defendant published the statement had a common corresponding interest, unless the claimant can show that the statement was made with malice.

Article 11 Scope of Liability

11.1. No one shall be liable for defamation and insult for a statement of which he or she was not the author, editor, or publisher and where he or she did not know and had no reason to believe that what he or she did contributed to the dissemination of the defamatory and insulting statement.

11.2. Persons whose sole function in relation to a particular statement is limited to providing technical access to Internet, to transporting data across the Internet or to storing all or part of a web site should not be liable for defamation and insult in relation to that statement, on the condition that the court determines that those persons have taken reasonable care to avoid publishing the material.

11.3. A person should not be deemed to have adopted a statement for purposes of paragraph 2 of this Article simply because someone has alleged that the statement is defamatory and insulting.

11.4. Paragraph 2 of this Article should not apply in the context of a defamatory or insulting action, to any court order which covers the person in question and requires it to take action to prevent further publication of a statement.

11.5. For media which can be said to publish on a continuous basis, such as web sites on the internet, publication at one location, in one form shall be considered to be a single publication.

Chapter V OBLIGATION TO MITIGATE HARM AND RIGHT OF REPLY

Article 12 Obligation to Mitigate Harm

Prior to filing a complaint under this law, an allegedly injured person shall undertake all reasonable measures to mitigate any harm caused by the expression. In particular the complainant shall request a correction of that expression from the person who allegedly caused the harm. Such actions may include seeking a remedy from the publisher of an allegedly defamatory or insulting expression and filing a claim with any appropriate regulatory body (The Independent Media Commission) or self-regulatory body (Press Council).

Article 13 Right of reply

13.1. Any person, irrespective of citizenship or residence, mentioned in a newspaper, a periodical, a radio and television broadcast, or in any other medium of a periodical nature, regarding whom or which facts have been made accessible to the public which the person claims to be inaccurate, may exercise the right of reply in order to correct the facts concerning that person.

13.2. At the request of the complainant, the medium in question shall be obliged to make public the reply which the complainant has submitted.

13.3. By way of exception, the publication of the reply may be refused or edited by the medium in the following cases:

- a) if the request for publication of the reply is not addressed to the medium within seven (7) days from the day on which the complainant became aware of the publication;
- b) if the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate;
- c) if the reply is not limited to a correction of the facts challenged;
- d) if it constitutes a punishable offence;
- e) if it is considered contrary to legally protected interests of a third party;
- f) if the individual concerned cannot show the existence of a legitimate interest.

13.4. Publication of the reply shall be without undue delay and shall be given the same prominence as was given to the information containing the facts claimed to be inaccurate.

13.5. Interpretation of the provisions in this Article for right of reply shall be in accordance with recommendations adopted by the Council of Europe.

13.6. The court shall determine whether the offer or provision by the defendant of a right of reply, correction, retraction, or apology was a sufficient remedy to satisfy the complaint, and whether such remedy may constitute a mitigating circumstance in any assessment of amount of damages.

Chapter VI COMPENSATION FOR DEFAMATION AND INSULT

Article 14 Compensation for defamation

14.1. Compensation shall be proportional to the harm caused and shall be awarded solely with the purpose of redressing the harm done to the reputation of the person or to compensate for any demonstrable actual financial loss or material harm. In making a determination of compensation, the court is obliged to have regard for all of the circumstances of the case, particularly any measures undertaken by the persons referred to in Article 5.2 of this Law to mitigate the harm.

14.2. Compensation for actual financial loss or material harm caused by a defamatory statement shall be awarded by the court only where that loss is specifically established.

14.3. The amount of compensation for non-material harm, or harm which cannot be quantified in monetary terms, caused by defamation shall be determined by the court taking into account the seriousness of the defamation and the financial resources of the defendant.

14.4. Courts shall, in assessing the amount of compensation pursuant to points 2 and 3 of this Article, have due regard to any voluntary or pecuniary remedies, as well as the potential chilling effect of the award on freedom of expression.

14.5. The persons referred to in Article 5.2 of this Law may, in mitigation of damages, prove that they made or offered to make an apology or correction for any defamation before the commencement of action for damages or as soon afterwards as they had an opportunity. Compliance with remedial orders or instructions by a Press Council or relevant regulatory body shall be considered as a mitigating circumstance in determining any non-material compensation.

Article 15 Compensation for insult

15.1. Compensation for insult may only be awarded in case the persons referred to in Article 5.2 of this Law do not meet an obligation to refute the information or repeats insulting information following a court order prohibiting such repetition.

15.2. The persons referred to in Article 5.2 of this Law may, in mitigation of damages, prove that they made or offered to make an apology for any insult before the commencement of action for damages or as soon afterwards as they had an opportunity. Compliance with remedial orders or instructions by a Press Council or relevant regulatory body shall be considered as a mitigating circumstance in determining any non-material compensation.

Article 16
Injunctions

16.1. A person has the right to demand through a court proceeding, the termination of defamations and insults and the refutation of defamatory and insulting information concerning his/her person as well as the promise that the defamation and insult will not be repeated in the future, unless one of the exemptions to liability is established in accordance with this Law.

16.2. Preliminary court orders to prohibit disseminating or further disseminating of information may only be issued where publication has already occurred and the allegedly injured person can make probable with virtual certainty that the information caused harm to his or her reputation and that the allegedly injured person will suffer irreparable harm as a result of further dissemination.

16.3. Permanent court orders to prohibit the dissemination or further dissemination may only be applied to the specific expression found to be defamatory or insulting and to the specific author or mass medium making or disseminating the expression.

Chapter VII
LIMITATION PERIODS, PROTECTION OF SOURCES AND COMPETENT COURT

Article 17
Limitation Periods

17.1. The limitation period for filing a request for compensation under this Law is three (3) months from the day that the allegedly injured person knew or should have known of the expression and the identity of the author, and shall in any event not exceed one (1) year from the day that the expression was made public.

17.2. Should the allegedly injured person die after the commencement but before the termination of the proceedings, his or her first-degree heir may continue the proceedings on behalf of the deceased if the heir files a request to the court, within three (3) months from the day of the death of the allegedly injured person.

Article 18
Protection of sources

18.1. No defendant in a defamatory or insulting action under this law shall be required to reveal a confidential source of information.

18.2. No adverse inference shall be drawn from the fact that a defendant in a defamatory or insulting action under this law refuses to reveal a confidential source of information.

18.3. The court may require the defendant in a defamatory or insulting action under this law to disclose information relevant to determining the truth of published material but without identifying the source.

Article 19
Competent Court

The Competent Court shall decide for claims for defamation and insult filed in accordance with this Law.

Chapter VIII
TRANSITIONAL AND FINAL PROVISIONS

Article 20

A procedure that relates to the matter regulated by this Law that has been commenced and not disposed in a legally valid manner upon the date of the entry into force of this Law shall be continued in accordance with the law that was in force at the time when the proceeding was commenced.

Article 21
Entry into Force

The present law shall enter into force after adoption by the Assembly of Kosova on the date of its promulgation by the Special Representative of the Secretary-General.

Law No. 02/L-65
15 June 2006

President of the Assembly

Kolë Berisha