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experience of several European
countries**

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FOREWORD

Freedom of expression is a key human right and plays an important role in achieving democracy, which is confirmed by several international, European and state documents. For instance, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides for the following “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”¹ Furthermore, the European Court of Human Rights has repeatedly confirmed the importance of freedom of expression for building a democratic society, thus in the case *Handyside v. United Kingdom*², stated the following: “Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every person. Pursuant to paragraph 2 Article 10, it applies not only to 'information' or 'ideas' that are favorably received ... but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there can be no "democratic society.”³ In this context, in regards to the Case of *Bergens Tidende and others v. Norway*⁴, the Court emphasised that “Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest”⁵. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.⁶

However, the Court further observes that Article 10 of the Convention does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. The exercise of this freedom carries with it “duties and responsibilities” which also apply to the press. Therefore, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the provision that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see the *Goodwin v. the United Kingdom* judgment of 27 March 2006).⁷

¹ Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda, član 10, stav 1 http://www.echr.coe.int/Documents/Convention_ENG.pdf,

² *Handyside protiv Ujedinjenog Kraljevstva*, 7. decembar 1976, serija A br. 24, stav 49

³ Ditertr, Žil, Izvodi iz najznačajnijih odluka Evropskog suda za ljudska prava, Službeni glasnik, Beograd, 2004, the following link was used for the purpose of citation of the original text of the case in English http://www.hrcr.org/safrica/access_information/ECHR/Handyside.html

⁴ *Bergens Tidende i drugi protiv Norveške*, 2. maj 2000. godine

⁵ Ditertr, op. Cit, the following link was used for the purpose of citation of the original text of the case in English [http://hudoc.echr.coe.int/eng?i=001-58797#{"itemid":\["001-58797"\]}](http://hudoc.echr.coe.int/eng?i=001-58797#{)

⁶ *Prager i Oberschlick protiv Austrije*, 26. april 1995. godina, serija A, broj 33, stav 38, the following link was used for the purpose of citation of the original text of the case in English [http://hudoc.echr.coe.int/eng?i=001-58797#{"itemid":\["001-58797"\]}](http://hudoc.echr.coe.int/eng?i=001-58797#{)

⁷ Ditertr, op cit., the following link was used for the purpose of presentation of the original text of the case in English <http://hudoc.echr.coe.int/>

Therefore, the right to freedom of expression is not absolute and is subject to several limitations set by international and national legislation, wherein the limitations must be strictly defined. Article 10, respectively paragraph 2 provides for the following: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Mindful of the fact that freedom of expression also means responsibilities and duties, it is necessary to strike a certain balance between the right to freedom of expression and the right to respect for private and family life, as set out in Article 8 of Convention for the Protection of Human Rights and Fundamental Freedoms.

In order to present comparative experience of countries in the region, and of certain EU member states, as well as international organisations standards in the area of criminalisation and decriminalisation of the libel, the Research Centre, through the analysis of legislation and other documents, collected and presented the data involving the regulation of the aforementioned subject in several countries.

This paper focuses on international standards involving the freedom of expression and libel, followed by the data on criminalisation and decriminalisation of libel in: Belgium, Bosnia and Herzegovina, Czech Republic, Estonia, Finland, Cyprus, Croatia, Macedonia, Romania, Slovakia, Slovenia, Serbia and United Kingdom.

The complete document in Montenegrin language can be found at:

<http://www.skupstina.me/images/dokumenti/biblioteka-i-istrazivanje/dokument2.pdf>