

"Right to be Forgotten" in Kosovo – A Case Study on Citizens' Awareness of This Right

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Abstract

"Right to be forgotten", as a legal right that allows individuals to request the removal of personal information from the internet search results, has recently gained particular importance due to the development of the internet and exposure of personal data to the media. In this context, this paper aims at analyzing the practical and theoretical aspects of the respective topic and the level of citizens' knowledge over the "right to be forgotten". In practical terms, the study analyzes decisions of the competent institutions regarding this right, based on the complaints they have received. This will help to understand how the respective right is being implemented in practice. In theoretical terms, the paper argues different perspectives of this right. Moreover, citizens' knowledge about the "right to be forgotten" is presented and analyzed through a survey carried out with 513 respondents in seven regions of Kosovo. The results of the research show that only a small part of the respondents is familiar with the right to be forgotten on the internet. The majority said that they were not informed and had no idea where to address the issue in case their personal data are published without their permission, or not removed when there is no interest and the data would no longer be necessary vis-a-vis the purposes they had been collected.

Keywords: Right, Forgotten, Citizens, Media, Information, Personal

INTRODUCTION

The discussion about the right to be forgotten on the internet, which also includes online media, is one of the topics facing two very important issues in the studies of communication and media. Beyond the legal aspect, discussions about this right take place between two different poles that defend their arguments be it over the right to privacy and/or the public interest to be informed, while the aim of this right is to balance these two factors. In Kosovo, the right to be forgotten has recently been introduced into the legislation, and given the data on the high use of the internet and online media, the audience appears to be little informed about this legal right. Currently, in Kosovo, the Business Registration Agency counts 457 registered web portals where portals (online media) are also registered (Kosovo Business Registration Agency (KBRA), 2023). Regarding internet access, according to IWS, (Internet World Stats - Usage and Population Statistics, 2023), over 90 percent of the population has access to internet. Previous research shows that young people in Kosovo use online media six times more than the average of their peers in the European Union. (Zeneli, 2020, p.68) Based on these facts, the discussion about the "right to be forgotten" is important since many people have an easy access to the internet which allows them publish and receive information with personal data. The "right to be forgotten" includes the right of people to request the removal of their personal data from the internet if they are false, incomplete or inaccurate, or are no longer serve the purposes for which they were collected.

Since January 2019, the "right to be forgotten" has been included in the legislation of Kosovo, which is connected with the "right to removal", as in the same article and the definition there is the "right to be forgotten" as the "right to removal". Article 16 of the Law on Protection of Personal Data defines all requirements arising from the "Right to removal ('right to be forgotten)". The Constitution of Kosovo also defines the right to correct, false, incomplete, and inaccurate published information but the "right to be forgotten" is not mentioned. However, in Article 22 of the Constitution, Kosovo has taken the obligation to implement international agreements and instruments, including the "European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols"(Kosovo Constitution, 2008) which includes "the right to be forgotten".

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The paper theoretically deals with the aspect of the "right to be forgotten" on the internet, which includes the online media in Kosovo. Considering the key theoretical deliberations on this issue, the paper includes main theories of the respective right, which offer different perspectives on what freedom of expression and media freedom are, contextualizing it with the "right to be forgotten" on the internet. In addition, the paper deals with the context of Kosovo as a new country that applies the "right to be forgotten" on the internet. In Kosovo, the first case on removal of data on the internet was recorded based on a decision of the relevant authority for the implementation of the "right to be forgotten". The implementation of this right was done by the Information and Privacy Agency (IPA), without any judicial process as in some other cases in the countries of the European Union. The results of the research of Kosovo's audience about this right show lack of knowledge over the "right to be forgotten", including the meaning, ways and responsible institutions for its implementation.

The origin of the "right to be forgotten" and its context in Kosovo

Although the "right to be forgotten" has been mentioned before, it finally took the form of an official legal document in 2014, when the European Court of Justice (ECJ) (*Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González*, Case C-131/12, ECJ, 2014) forced internet search engines to remove the personal data of a Spanish citizen. Hence, the whole discussion starts from the idea that the "right to be forgotten" is part of the fundamental rights of people not to be prejudiced constantly for a certain action that they have performed in the past and that now does not constitute a public interest. In this context, Mario Costeja González, according to the explanations given in the judgment of the ECJ, had problems with the Spanish state regarding the payment of social security obligations. González's apartment had been put up for sale at an auction to pay off the debt. While the *La Vanguardia* newspaper had published the announcement, González had asked the editorial office of the newspaper and Google Spain to delete the data, rationalizing that it no longer represented any public interest as he had completely solved the problem with his property. The newspaper rejected his request in 2009. He complained to the Spanish Authority AEPD which dismissed the complaint against the newspaper and in July 2012, AEPD accepted the complaint against "Google Spain", asking the company to remove the data. In return, Google appealed the case to the Supreme Court of Spain. Following it, in 2012, the Supreme Court of Spain referred the case to the European Court of Justice in Luxembourg. The ECJ found that internet search operators responsible for the processing of personal data displayed on the internet by third parties, which granted González the right to have his personal information removed. The decision balanced the right to privacy with the public interest.

It is required to review each request to erase/forget information on the internet. The main argument why his name was removed from search engines was that the information published about him no longer presented any public interest. The information was requested to be removed for González because it was out of date and he did not want people to know about his bankruptcy whenever they searched for his name.

"The right to be forgotten" is included in Article 17 of the General Data Protection Regulation (2016/679 of April 27, 2016). (Regulation (EU) 2016/679 of the European Parliament and of the Council, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, 27 April 2016).

On May 31, 2014, the "Google" platform set up an "Online" form, (Personal Data Removal Request Form; 22.04.2023) (related to implementation of the ECJ decision, and within one day, 12, 000 requests were filed.

Since 2019, Kosovo has regulated the legal basis for the "right to be forgotten". The "right to be forgotten" and the "right to removal" are included in Article 16 of the Law on Protection of Personal Data. The description within this article reads that each person has the right to request data removal if certain criteria are met. The first criterion on which data can be erased is that "the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed". The second criterion to delete the information is when the person withdraws from the consent he/she had given earlier to publish the data. The law has made the balance between the right to be informed and the right to have information forgotten. According to the law, the "right to be forgotten" does not apply if it is necessary for exercising the right to freedom of expression and information. In addition, the law specifies that information cannot be hidden/forgotten if such information

is in the public's interest and it concerns official authorities. Moreover, the law provides that information cannot be hidden/forgotten if it is of public interest for scientific or historical purposes.

The first case, when the IPA faced a citizen's request for the "right to be forgotten" is one that IPA made a decision about (on 27.12.2022), ordering the Judicial Council of Kosovo to remove A. A's personal data published on 10.08.2018 in relation to a case of recruitment for the legal officer position in the Office of Disciplinary Prosecutor.

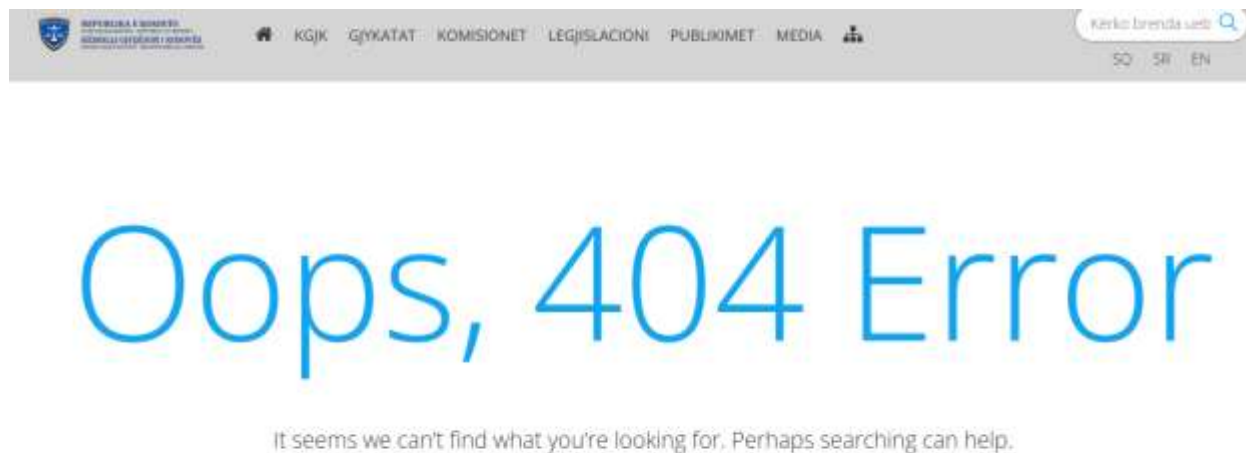


Figure 1: The website of the Judicial Council of Kosovo, where the first case of data erasure in Kosovo was implemented based on the decision of the IPA.

This case at the IPA started on 26.05.2022 when A. A (Decision of the Information and Privacy Agency, 22.05.2023). filed a complaint, explaining that on 10.08.2018, the Secretariat of the Judicial Council of Kosovo published names of the candidates who passed/failed the competition for the position of the "Legal Officer" in the Office of the Disciplinary Prosecutor. The complainant explained that while searching for his name on "Google" he noticed that in 2018, the list was published, and he asked the Agency to take action against the Judicial Council in order to remove the results of the competition with the names of the candidates, particularly his name. Following that, the Agency ordered the Judicial Council to remove the lists with the personal data of the candidates who participated in the recruitment procedures from the official website, because the purpose of personal data processing had ended. The Agency's decision mentions the "right to be forgotten" and quotes the part of the law that personal data must be deleted when they are no longer necessary in relation to the purpose for what they were collected.

THE THEORETICAL CONTEXT

The nature of the data that are published on the internet could often affect the personal data of individuals that for a certain period of time there may be any public interest in them. However, considering that the "right to be forgotten" on the internet is relatively new in terms of its development as a legal act and judicial precedent, the theories about it are also relatively new. Respective theories can be divided into two main groups: i) researchers who provide evidence regarding decisions of the ECJ and the legal framework of the EU, and other countries that online data can be erased; ii) researchers who constantly call for caution in cases of decisions by the regulatory or legal authority of the states, in order not to interfere with the freedom of expression and the media where personal data are often subject of discussion. Professor of the International School of Social and Business Studies in Ljubljana, Maja Ovcak Kos, in her paper "The Right to be Forgotten and the Media", explains that the "right to be forgotten" does not mean permission for an individual to erase an article simply because he/she does not like being part of media coverage or does not want that coverage. She argues that the

"right to be forgotten" in relation to the media should be used only when the request can be justified with strong, well-argued reasons that can be applied in rare and exceptional cases.

"The right to be forgotten is a legal concept still at the beginning of its development, and case law will have to play a decisive role in shaping its content". (Kos, M. O. (2019, p. 211)

The author of the book "Ctrl + Z: the Right to be Forgotten", Meg Leta Jones, reasons that the "right to be forgotten" is actually in the service of the truth, since an "expired" information no longer represents the individual it represented, and as such is inaccurate and out of context. According to her, this right helps to increase the quality of information, and in this regard, she offers three factors based on which the "right to be forgotten" or the deletion of data from the internet can be decided.

"When the prerequisites to legal forgiveness have been satisfied, analysis reveal three key elements of legal approaches to forgiveness: (1) time, (2) oversight, and (3) relief from accountability". (Leta, J. M. 2016, p. 143).

In light of this, she continues the argument arguing that time is one of the deciding factors for removing data from the internet, just like the data of minors that are erased after they had entered the adult world (Jam et al., 2010). In addition, Jef Ausloos, argues that it will be very important to define the rules when the "right to be forgotten" is applied.

"It will therefore be important to clearly define the scope of application of the right. Furthermore, it will often be economically undesirable to put the burden of decision-making on the actual data controller (company). A clear set of rules should be put in place, on which erasure depends. With all of this in mind, the right merely enables the consent regime to be more effective". (Ausloos, J., 2012, p.8-9).

On the other hand, Gabriela Zafir while addressing this problem calls for the courts of different countries to take into account other social values when deciding on the "right to be forgotten", thus establishing a balance.

"The national courts will also have an important part in striking the balance between the right to be forgotten and the other rights or values". (Zafir, G., 2014).

Athalie Matthews, the lawyer of the Guardian has written about the danger the journalists face when the "right to be forgotten" is applied, as in a case in Italy when the local courts asked to set a deadline for when the news should be available. A two-year deadline was set for the news to be accessible. In fact, the media was punished even after they deleted the news, but it was delayed for six months. Matthews had ironized this decision by comparing the news to food products that expire after a while.

"Highest court in Italy recently upheld a ruling that, after a period of two years, an article in an online news archive had expired, "just like milk or yogurt" (Mathews, A. 2016).

Authors of the book "Privacy, Freedom of Expression and Transparency" Joseph A. Cannatacil, Bo Zhao, Gemma Torres Vives, Shara Monteleone, Jeanne Mifsud Bonnici, Evgeni Moyakine foresee "intended or unintended, direct or indirect consequences on industry and other rights of freedom of expression and information". (Privacy, freedom of expression and transparency, Media Institute, pages 128-129)

Janice Richardson and Elizabeth Milovidov J in the "Manual for digital citizenship", in the section about "Online rights", write that the protection of privacy and personal data is a basic human right. They cite the European Union's General Data Protection Regulation (GDPR) of 2018, stating that citizens are increasingly gaining more control over their personal data. According to them, some of these rights were neither feasible nor necessary before the huge development of the internet. In addition to the other rights, they also mention the "right to be forgotten" as one of the rights that European citizens have acquired through legal means.

"The right "to be forgotten" means that you can request for your personal data to be deleted if you do not want it to be processed further. In this way, companies have no legitimate reason to retain them". (DIGITAL CITIZENSHIP EDUCATION MANUAL, Media Institute, page 88)

However, the general attorney of the Supreme Court had concluded that the "right to be forgotten" should be balanced.

METHODOLOGY

In order to analyze a relatively new topic in the world and particularly in Kosovo, several methods of scientific research were used, as the purpose of the methodological approach of this paper was to cover the problem in multiple ways. Firstly, analysis of the legal framework in the case of Kosovo was carried through desk analysis, where all the laws and other by-laws dealing with the "right to be forgotten" were selected and then analyzed in terms of their actual functioning. In addition, the methodology included measurement of the audience completed through an online survey which consisted a total of 15 variables, of which six were focused on demographic data (age and sex), geographic data (region and residence), and social data (education and employment). Nine other questions were focused on the knowledge and experience of the Kosovo audience about the "right to be forgotten" in the Kosovo media. The sample of the survey consisted of a total of 513 respondents distributed in seven (7) regions of Kosovo, through the random "snowball" method, when one person to whom the questionnaire is sent is asked to distribute it to three other persons, thus achieving a representative distribution. The results obtained from this survey were placed in the IBS SPSS program to be processed and cross the variables for the derived results.

The first hypothesis suggested that *the media audience in Kosovo has no knowledge of the "right to be forgotten", as it is a new right and not much discussed in public*. This may present a problem, as the public does not know how to enjoy this right and protect their personal data on the internet, including the online media.

The second hypothesis supposed that *audiences do not know where to ask if their rights are violated by publishing their data on the internet or by not deleting them whenever they lose interest in the purposes they were collected*.

Research on Citizens' Knowledge of the "Right to be Forgotten"

"The right to be forgotten" has entered the legal and institutional language in Kosovo, but in practice, this right has been applied only in one case. According to the findings, one of the factors that have influenced non-implementation of this right in the field of the online media in Kosovo is the fact that the public of Kosovo is not sufficiently informed about this legal guarantee. The research has precisely measured the knowledge, experiences, and practices of the "right to be forgotten" among the Kosovo public, conducted through a "snowball" sample, with 52.3 percent of female respondents and 47.7 percent of male; 67.3 percent of respondents stated to live in the city, while 32.7 percent in rural areas. Other demographic data include participants on group age basis, divided into six groups: i) 18-25 years old who make up 27.7 percent; ii) 26-35 years old or 32.2 percent; iii) 36-45 years old or 20.9 percent; iv) 46-55 years old or 10.7 percent; v) 56-65 years with 3.9 percent, and vi) over 65 years old with 4.7 percent. The citizens who participated in this research were also asked about their employment status, which showed the following results: i) 40.7 percent were employed in the private sector; ii) 28.7 percent in the public sector while iii) 30.6 percent were unemployed.

The results of the research on the public's experience over the respective right show that the majority of respondents have not had their personal data published on the internet. To the question on whether any personal data has ever been published on online media, 67.3 percent of respondents answered "no", while 32.7 said "yes and that their data were published on online media. Although the scale of 67.3 percent shows that non-publication of personal data on the internet, still the percentage of 32.7 of respondents who have had an experience with the publication of their data appears quite high. Out of them, 74.1 percent said that the online media did not receive prior consent to publish their data, while only 25.9 percent stated that they had prior consent for their publication. Considering that a large number of reports that include personal data can emerge from court proceedings, the same does not result as a practice in the case of Kosovo, bearing in mind that out of the total number of respondents, only 4 percent have stated to have been part of court proceedings earlier. Moreover, from the total number of respondents whose personal data were published, only 0.05 percent had a judicial proceeding developed by them.

From the results, we can conclude that in the case of Kosovo, personal data, including name and surname, initials, photos, or other related data, are published and consequently available to the citizens of Kosovo, regardless of whether they have been involved in judicial processes or not.

Regarding the knowledge of the respondents about the "right to be forgotten", it resulted that 78.9 percent of them had never heard of the respective right, while only 21.1 percent of them said to have heard about it. This finding also supports the fact that thus far there had been only one case of implementation of this right in Kosovo, which shows that on average only 2 out of 10 respondents have heard about the "right to be forgotten".

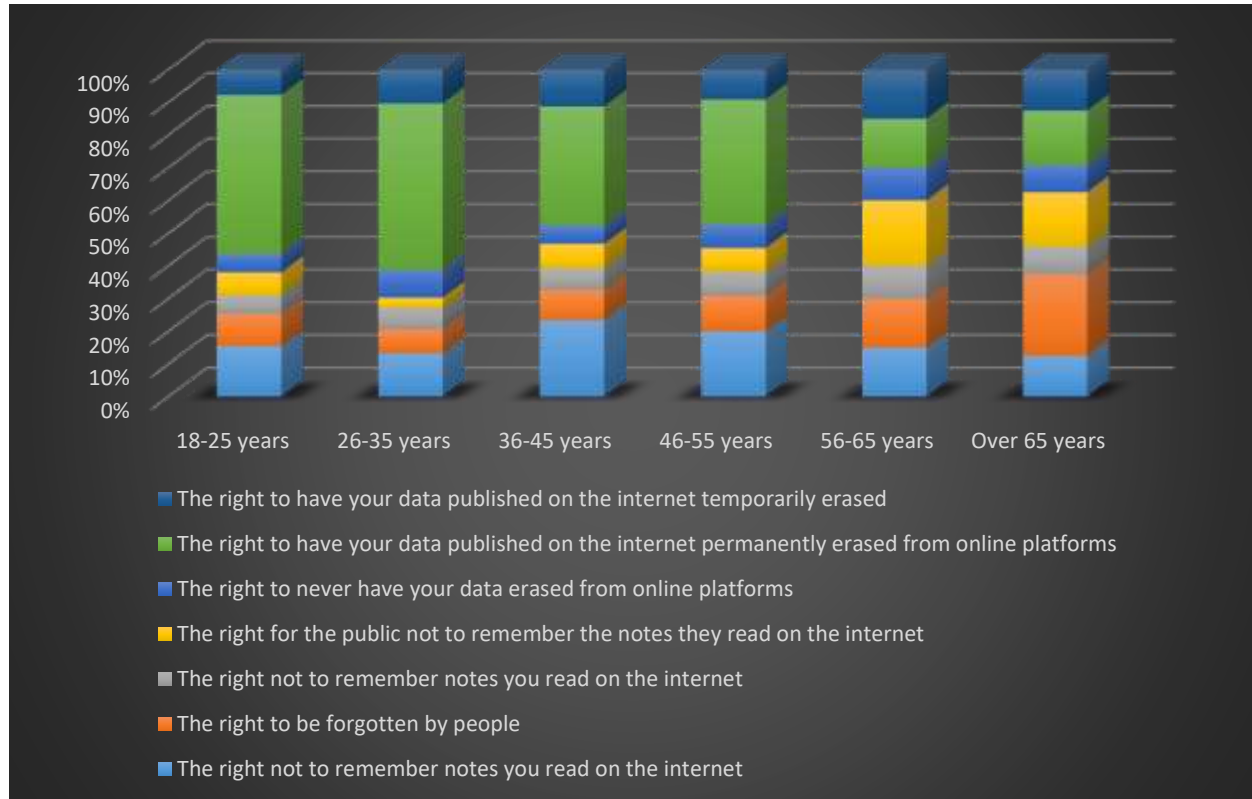


Table 1: Responses of respondents based on age to the question: In your opinion, what does the "right to be forgotten"?

To the question "In your opinion, what does the 'right to be forgotten' include?" 16.8 percent of the respondents answered correctly, saying: "The right to have your data published on the internet permanently deleted from online platforms", while 83.2 percent answered incorrectly. As shown on Table 1, the group age respondents, namely young people of 26-35 years old to the question of what this right includes have correctly answered, while the age group over 55 showed to have the least knowledge about the "right to be forgotten" on the internet. Most of those who correctly answered, "What is the "right to be forgotten"?" are women. Alternatively, expressed in a percentage, 55.9 percent of the respondents who answered correctly were women, while 44.1 percent were men. Based on the division of residence, it appears that respondents living in cities have more knowledge about this right, as 74.1 percent of the correct answers derived from the respondents living in the city, while 25.9 percent of those who knew about the "right to be forgotten" live in the rural areas.

The results of the research show that employees in the private sector have more information about the "right to be forgotten", as 45 percent of the employees in the private sector chose the correct answer; 30 percent were unemployed, and 25 percent were employed in the public sector.

The obtained data regarding respondents' experience with the publication of personal data in online media in Kosovo show that 32.8 percent of them have stated that their personal data include name and surname, photos, videos, or other personal data, that have been published on the internet by the online media. On the other hand, the majority of respondents, or 67.2 percent have not had such experiences. Moreover, from the answers of the respondents who have had experiences with the publication of their personal data, it can be understood that most of them requested the media to remove the data. However, most of them have not appealed their

legal right to have the data erased from the media. In fact, 66 percent of the respondents did not have a problem with the publication of the data based on their declaration, because they chose the answer option "I did not have a problem with the publication of the data"; only 7 percent of the respondents who answered this question, chose the option to delete their data, based on the reference to the relevant law applicable in Kosovo; 9 percent asked the media to erase their data because they are not of any public interest, and 18 percent stated that they based their request to the media to erase their personal data on the option "I asked the media to erase them because they damaged my and my family's image".

The research also measured the way the media responded in relation to the request of the persons whose data were published, but, for whatever reason, they asked for their personal data to be removed. From the overall results of those who have requested their personal data be erased from online media, 35 percent of the respondents said that they were erased immediately. From the stated experience of the respondents, the media did not respond at all to their request in 32 percent of cases, while in 19 percent of cases they responded but did not give any justification for not having deleted personal data. However, according to the respondents, in only 14 percent of cases the media answered that personal data are not removed from their online platforms, since those data constitute a public interest.

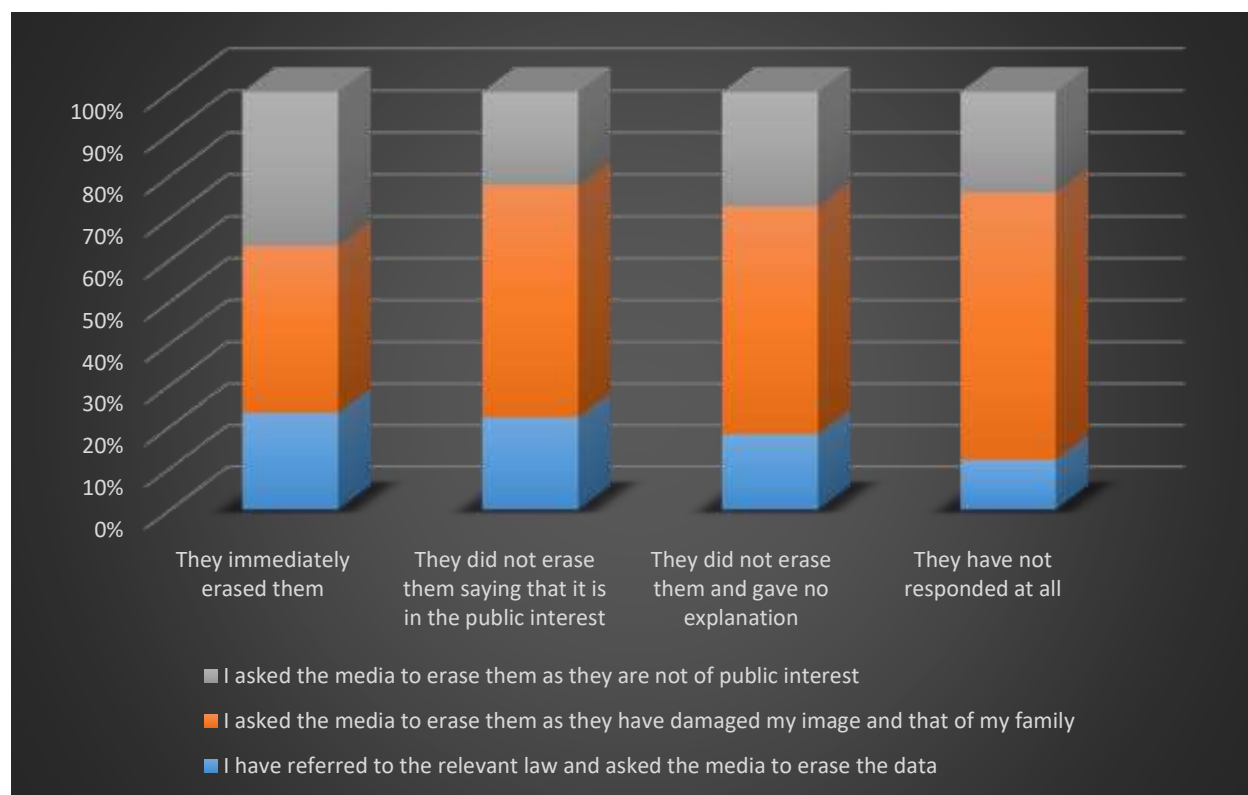


Table 2: Responses of online media based on the request for the removal of personal data

The data of the respondents were cross-referenced on how the respondents who wanted their personal data to be removed in the media formed their request. Because of this combination, it appeared that the media paid more attention to the requests that were not referring to the law to remove the data immediately, rather than the requests referring to the law. The data show that the respondents who have based their request on the relevant law, had found the application in the Kosovo's online media in only 23.33 percent of cases, while the request that is based on damaging the image of the person or the family by publishing the respective data, has been applied in 40 percent of the cases where the data were immediately removed from the online media. In addition, data were erased based on the request that they do not constitute a public interest in 36.66 percent of cases. This media response is also related to the above-mentioned fact that such a legal rule of the "right to be forgotten" on the internet has only just begun to be implemented in Kosovo and the first case was decided

through the request of AIP at the end of the 2022, the time this survey was being conducted. To this end, Kosovo is continuously criticized by international reports in terms of the rule of law adherence. Whereas, in civil trials in Kosovo, within which the "right to be forgotten" falls, according to the report of the Kosovo Law Institute, it takes approximately 5.3 years from the moment the lawsuit is filed to the final decision. (KLI, Kosovo Law Institute, *Regression of civil justice (Monitoring report of civil court cases during 2021)*, page 9, KLI, Pristina).

The respondents of this research were also asked about the hypothetical situation of what would they do if their personal data were published. The received answers received show that the majority of respondents, or 28.5 percent replied that they would address the case to the IPA, which according to the current legislation in force is the right thing to do. However, the current applicable law that includes the "right to be forgotten" on the internet, does not exclude the possibility that the complainants contact the media, as the aforementioned practice with the case of González VS Google was (where they first contacted the authority that published their data). In this regard, 14.8 of the respondents said that they would call the media and ask for the news to be deleted, which presents a short way of implementing this right that is not excluded in the relevant law. Moreover, 24.2 percent of the respondents answered that they would contact the police that actually does not have the legal mandate to deal with the issue. Finally, 9.7 percent said that they would do nothing, a result showing that a small part of the respondents are not ready to take an action in case of violation of their privacy online.

CONCLUSIONS

Countries in transition, such as Kosovo, have announced their aspirations for integration into the EU, and in light of this, they have begun to adapt their laws to the legal norms of this union. In this vein, Kosovo has also adopted specific laws that regulate the aspect of privacy and the protection of personal data on the Internet. In other words, five years after the first case of the Spanish citizen (who won the right in the ECJ for his personal data to be erased), the "right to be forgotten" entered into the legal framework of Kosovo and in order to ensure implementation of this law, in 2021, the Agency for Information and Privacy was established. The agency has the legal responsibility for supervising the legitimacy of personal data processing and access to public documents. (Agjencia për Informim dhe Privatësi; retrieved from: <https://aip.rks-gov.net/per-ne/misioni-dhe-vizioni/>).

The research findings on the "right to be forgotten" show that Kosovo has regulated the legal aspect of the related right, but in practical terms there has been no significant progress. In fact, there is only one case where this right has been applied, namely the case when the Judicial Council of Kosovo was forced to remove from their website the data of a candidate who had applied to become part of the Office of Disciplinary Prosecutor. Thus, with the exception of this case only, within the period of three years that the law regulating the issue of "right to be forgotten" has been into force, citizens of Kosovo have not used their right to ask institutions or establishment that process personal data to remove their data. The results of the research show that citizens of Kosovo have experienced publication of their personal data by the online media too. However, to date, there has not been a case when the media have erased personal data based on the request addressed to the AIP as per Law No. 06/L-082 on Personal Data Protection. It is worth mentioning that the law clarifies certain conditions that must be met (including the loss of public interest in personal data published in online media) in cases where this right is applied. This fact shows that in the case of Kosovo, related court decisions are also lacking, since procedurally, the parties who complain about the "right to be forgotten" must first try all the legal possibilities within the AIP, and then refer the case to court.

The theoretical discussions that the "right to be forgotten" endangers the freedom of expression as another human freedom, cannot be assumed to be applicable in the case of Kosovo, since thus far, the AIP has only made only one decision approved on the grounds that the data no longer constituted public interest. To this end, this data removal did not involve the online media, but a state agency.

The first hypothesis "media audience in Kosovo has no knowledge of the "right to be forgotten", has been proven as a good postulate because 83.3 percent of respondents answered the wrong options. This is most probably due to the fact that it is a new right and not much discussion has taken place in public. Taking into

account the respondents' replies on the issue of the personal data protection (32.7 percent of the respondents stated that their personal data were published in the media; 56 percent said that they previously agreed with the media editors to publish the data; 44 percent said that they did not have such an agreement), it appears that online media have potentially violated citizens' right to protect their personal data from publication. In this regard, the audience of Kosovo, measured through the survey of this research, stated that the media have not responded at all to the respondents' request for the removal of personal data from the online platforms.

The second hypothesis (audiences do not know where to address if their rights are violated by publishing their data on the internet or by not removing it whenever they lose interest for the purposes for what they were collected), is partially proven, because, 28.5 percent of respondents said that they would address the case to the AIP, 14.8 percent would address the request to the media. Both percentages constitute 43.3 percent of the respondents who would go to the appropriate addresses for implementation of this right.

The research completed through desk analysis and measurements of the audience's experiences and knowledge about the "right to be forgotten", highlights the fact that there is a fast adaptation and operationalization of the respective law of the law in Kosovo. Moreover, the paper reflects the experience, knowledge, and audience's behavior vis-à-vis this right in the country's online media.

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https://github.com/LanzSteff/the-right-to-be-forgotten/blob/master/Mike_Wagner_and_Yun_Li-Reilly%2C_The_Right_To_Be_Forgotten%2C_72_Advocate_82._._._.pdf
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