

# Freedom of Expression, Media and Information in Kosovo An Assessment Based on Council of Europe Indicators for Media in a Democracy

Implementing partners:



Këshilli i Mediave të Shkruara të Kosovës  
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## **List of Abbreviations**

AJK	Association of Journalists of Kosovo
AMPEK	Association of Independent Electronic Media of Kosovo
BIRN	Balkan Investigative Reporting Network
CoE	Council of Europe
EULEX	European Union Rule of Law Mission in Kosovo
IMC	Independent Media Commission
KEC	The Kosovo Energy Corporation
KEDS	Kosovo Energy Distribution Services
KIA	Kosovo Intelligence Agency
KTV	KohaVision
PCK	Press Council of Kosovo
RTK	Radio Television of Kosovo
UGK	Union of Journalists of Kosovo

## **Executive Summary**

Freedom of expression, media and information are rights that are firmly entrenched in the international and national legal framework. Such rights are fundamental in order to ensure that citizens are informed, impart information, learn about crucial processes affecting their lives, and ultimately hold public officials to account.

Having laws on the statute book does not guarantee a free media environment by itself; additional measures that provide for continuous monitoring, assessment and improvement are crucial. With such an aim in mind, the Parliament of the Council of Europe adopted the “Indicators for Media in a Democracy”<sup>1</sup> in 2008, which includes 27 indicators to measure and evaluate freedom of speech, freedom of information and freedom of media. Moreover, it suggested that its member states and national parliaments conduct periodic reports based on this list.

The indicators establish a range of principles in order to facilitate analysis of national media environments in respect of media freedom, which may identify potential problems or shortcomings so as to enable member states to discuss problems and possible solutions at the European level. Although Kosovo is not a member of the Council of Europe, it has unilaterally accepted that it will adhere to all internationally recognized standards with regard to human rights, including freedom of expression, media and information.

In 2015, Kosovo 2.0, Çohu!, and Press Council of Kosovo (PCK) undertook this project to apply “The Indicators for Media in a Democracy,” in order to measure and evaluate the conditions of media freedom in Kosovo. The indicators have been organized within three overarching themes: Freedom of Expression and Information, The Legislative and Regulatory Framework, and Independence, Security and Transparency. As journalists are fundamental to the process of receiving and imparting information, this project included a large-scale survey of journalists and focus group discussions, as well as in-depth interviews with journalists and media experts, to uncover their perceptions of, and experiences with, the entire framework, including the associated processes and procedures. Therefore, this report does not provide a grading scale for each indicator. It offers a look at the overarching issues identified for each indicator by emphasizing the main concerns, challenges and problems as identified by journalists and media experts. As such, the aim of this report is to provide a preliminary assessment and serve as the basis upon which periodic assessments can be undertaken.

On the whole, the legal framework has been consolidated over the years and does provide for the essential rights to freedom of expression, media and information.

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<sup>1</sup> Parliamentary Assembly of the Council of Europe, Resolution 1636 (2008).

For example, Kosovo has made progress in ensuring that it does not provide enhanced protection for public officials against defamation or insult. However, the level of enforceability of overall legislation remain problematic. Enhanced transparency is required, especially in access to information requests, where privacy and state secrecy are sometimes unjustifiably used as grounds for blocking access to information.

Additional concerns identified in this regard include the influence that is exerted through different means, particularly intervention from individuals in politics and businesses. The former was identified as the main hindrance to freedom of expression and information by journalists across the media sector. While in general, journalists perceive a level of independence from media owners, interference continues to be present in daily editorial work, compromising impartial journalism and leading to self-censorship. Moreover, the government and the courts are not open to the media in a fair and equal way, which infringes on the rights of media outlets to inform their respective audiences.

Media ownership continues to remain an area subject to vague disclosure of information. This is particularly so with regard to online media. Greater efforts are required to ensure that journalists are provided with the protection they need — both with regard to the judiciary as well as within their media outlets. On one hand, cases of threats toward journalists are not always treated with priority by relevant institutions. On the other hand, a lack of adequate implementation of working contracts fails to offer journalists social protection, as such compromising their impartiality and independence.

With regard to regulative frameworks, the Independent Media Commission (IMC) and self-regulatory mechanism of the PCK are generally perceived as functioning effectively. However, the continuous politicization of the IMC's board infringes upon its independence and capacities; and the PCK should engage in greater efforts to contribute toward the ethical regulation of online media.

Ultimately, the Kosovo Assembly should embrace a more proactive role and approach in ensuring collation of media-related legislation and its proper implementation, drafting systematic assessments reports, and ensuring a free media environment.

## Introduction

Freedom of expression, freedom of media and freedom of information are cornerstone rights of any democratic society, whereby citizens are able to receive and impart information on a range of topics, and in particular regarding matters of public importance, and any government of the day is held to account. The European Court of Human Rights has recognized that “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.”<sup>2</sup>

At the same time, it is inherent that not everyone will be pleased by the information that is received or imparted. As such “freedom of expression is 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. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no democratic society.”<sup>3</sup>

It has also been recognized that freedom of expression and media is not only about receiving and imparting information or informing the public in relation to matter of public importance. It in fact goes further than this as “the notion of ‘freedom to receive information’ embraces a right of access to information.”<sup>4</sup> The latter is particularly significant because “in the world of the Internet the difference between journalists and other members of the public is rapidly disappearing. There can be no robust democracy without transparency, which should be served and used by all citizens”<sup>5</sup> and access to information is an integral aspect.

Therefore, freedom of expression, media and information is of critical importance to a democratic society, and the role of media in countries that are transitioning to such a system is even more so. Apart from the legal framework established at the international and national level, including jurisprudence by the European Court of Human Rights, in the last few years there have been other initiatives to measure the availability of these rights in different societies.

The Parliamentary Assembly of the Council of Europe, an institution that has set the standard in media freedom for Europe through Article 10 of the European Convention on Human Rights, in 2008 decided to provide a more practical component through the establishment of “Indicators for media in a democracy” (the indicators).<sup>6</sup> The indicators seek to establish a range of principles in order to facilitate analysis of national media environments in respect of media freedom, which may identify potential problems or shortcomings so to enable member states to discuss problems and possible solutions at the European level.

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<sup>2</sup> Handyside v The United Kingdom, Application No. 5493/72, 7 December 1976.

<sup>3</sup> Ibid 2.

<sup>4</sup> Youth Initiative for Human Rights v Serbia, Application No. 48135/06, 25 September 2013.

<sup>5</sup> Ibid 4.

<sup>6</sup> Parliamentary Assembly of the Council of Europe, Resolution 1636 (2008).

Also of relevance to Kosovo's situation are the European Commission's Guidelines for EU Support to media freedom and media integrity in enlargement countries 2014-2020.<sup>7</sup>

At present Kosovo is not a member of the Council of Europe, although it has unilaterally accepted that it will adhere to all internationally recognized standards with regard to human rights including freedom of expression, media and information.<sup>8</sup> The indicators established are only a form of soft law, which means that it is a recommendation to states as to its implementation. However, the Parliamentary Assembly does invite its national parliaments to analyze the national media landscape by using the indicators as basic principles.

This report uses the indicators with the aim to consider and analyze the media landscape in Kosovo. Once the methodology used has been elaborated on and a brief update on the current media landscape provided, the report is split into three parts. In the first part, it considers all those indicators that specifically focus on freedom of the media and information by looking at the rights, possible restrictions, differential treatment and coverage of these issues by relevant institutions. In the second part, the report focuses on the legislative and regulatory framework by considering regulation of media including self-regulation, regulatory authorities and codes of conduct for journalists. The third part of the report delves into independence, security and transparency, which cover the freedoms and protections for journalists, working conditions for journalists, as well as the role of private media and state media. Following comprehensive analysis of the situation in Kosovo by focusing on the indicators, a number of conclusions are drawn and recommendations provided.

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<sup>7</sup> Available at [http://ec.europa.eu/enlargement/pdf/press\\_corner/elarg-guidelines-for-media-freedom-and-integrity\\_210214.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/elarg-guidelines-for-media-freedom-and-integrity_210214.pdf) accessed on 01/12/2015

<sup>8</sup> Article 22 and Article 53, Constitution of the Republic of Kosovo.

## Methodology

Using the indicators, Kosovo 2.0, Çohu!, and the Press Council of Kosovo developed a comprehensive approach to collate all relevant information in order to analyze the national media environment in Kosovo.

The approach taken consists of:

- o Survey: perceptions of journalists;
- o Focus Groups;
- o Individual in-depth interviews; and
- o Desk Research;

Perceptions of journalists in respect of the indicators were surveyed through interviews with 175 journalists of which 55 percent were female and 45 percent were male. Further information in relation to the sample includes that 81 percent were Kosovo Albanian, 14 percent were Kosovo Serbian and 5 percent represented other minority communities. More than half of the respondents (59 percent) were under the age of 35 and 7 percent were over the age of 55. The sample was also representative of the different regions in Kosovo and the different media outlets as can be seen from the table below.<sup>9</sup>

Media type	Region							Total
	Pristina	Mitrovica	Prizren	Peja	Ferizaj	Gjakova	Gjilan	
TV	30	6	11	6	8	4	4	69
Radio	16	9	6	4	1	2	8	46
Newspaper	21	2	2	1	2	2	1	31
Portal	19	2	1	1	2	2	2	29
<b>Total</b>	<b>86</b>	<b>19</b>	<b>20</b>	<b>12</b>	<b>13</b>	<b>10</b>	<b>15</b>	<b>175</b>

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<sup>9</sup> For limitation of the sample please see the full report “Media Indicators 2015” available at <http://presscouncil-ks.org/wp-content/uploads/2015/05/Media-Indicators-2015.pdf> Last accessed December 12, 2015.

Two focus group discussions were organized in Pristina with journalists from media outlets at the national and local level; 10 journalists participated from national media and 9 journalists participated from local media. To facilitate the focus groups, guidelines were developed based on the indicators. The issues covered include: freedom of expression and information; regulation and legislation; and media independence. Discussion in the groups was developed on the basis of anonymity.

An additional component of the research consisted of individual interviews with journalists, editors, media institutions, assembly members and other media professionals, who have an awareness and understanding of the national media environment in Kosovo according to the issues covered by the indicators. A total of 16 in depth interviews were conducted, reflecting on the issues covered by the indicators, in order to enhance the analyzes of the national media situation in Kosovo. While the number of interviewees is relatively small, this was intentional in order to allow for in depth discussion so that their knowledge and experience, as well as the positions that they have, can be considered and add value to the analyses conducted of the national media framework in Kosovo.

## **Media Landscape**

The media landscape in Kosovo during the last decade has seen exceptional developments going from a few state sponsored media outlets to many, including private outlets and media houses run by NGOs. Such developments in the media sector took place as a result of international financial support and technical assistance, which in recent years has significantly decreased. As a result, one of the key issues facing this sector is sustainability, especially in light of the fact that promotion of media development by local actors is lacking. In addition to the financial constraints, media outlets and journalists also face political pressure and at times are forced to self-censor.

According to the Independent Media Commission (IMC), as of January 2012 there were 105 electronic media in Kosovo consisting of 84 radio and 21 TV stations. From IMC's registration data, there are radio stations serving all communities in Kosovo with 48 broadcasting in Albanian, 26 in Serbian, one bilingual Albanian/Serbian, three in Bosnian, two in Gorani, two in Turkish and one in Roma. Additionally, out of these radio stations four broadcast nationally, two of which are private (Radio 21 and Radio Dukagjini) and two are state owned (Radio Blue Sky and Radio Kosova), all broadcasting in Albanian. However, most radio stations do not produce information programs. With regard to the Serbian community, an association of radio stations has been formed, known as KOSMA, which produces some information programs covering the whole territory of Kosovo. Although, as the statistics demonstrate, there isn't a genuine multilingual approach, rather it is to ensure funding or complying with legislation.

In relation to television, out of the 21 TV broadcasters, 15 broadcast in Albanian, five in Serbian and one in Turkish. Radio Television Kosovo (RTK) is the national state broadcaster, which broadcasts news and some programs in different languages (Albanian, Serbian, Turkish and Roma). It has also launched a number of other channels including one broadcasting in the Serbian language. However, RTK has faced difficulties in ensuring funding and collecting license fees and from time to time faces political pressure. Two further private national TV stations exist (KTV and RTV21), broadcasting in Albanian, although not without difficulties relating to external pressure.

Print media in Kosovo is dominated by daily newspapers that are printed in Albanian language only, currently consisting of five dailies, with an estimated circulation of 35,000. There are no newspapers being printed in the Serbian language.

A great number of media outlets have emerged online as well. Many of the printed dailies maintain websites to inform, although not all newspaper articles appear simultaneously.

The usage of the Internet to inform the public and generate debate is also used by a number of news portals. Currently, there are a number of portals operating in Kosovo with only 12 being members of the Kosovo Press Council. Whilst this provides instant news, they do not always produce content, rather they utilize stories and content from either printed dailies or online newspapers, and at times not respecting copyright legislation. Additionally, such portals through certain titles and allowing for comments by readers to be published without sufficient checks may provide a space for hate speech. Following the decision of the European Court of Human Rights in *Delfi AS v Estonia*<sup>10</sup> and a number of unfavorable decisions from the Kosovo Press Council, some of the online portals withdrew the opportunity to comment entirely. However, the latter does not necessarily reflect the Court's decision, which held that contracting states may be entitled to impose liability on news portal only in circumstances where there is hate speech and direct threats are made to the physical integrity of individuals, as understood by the Court's case law.

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<sup>10</sup> Application No. 64569/09, Grand Chamber, 16 June 2015.

## Part I Freedom of Expression and Information

### 8.1 The Right to Freedom of Expression: Guaranteed and Enforceable

Indicator 8.1 provides:

*“the right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable. A high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice.”*

The right to freedom of expression,<sup>11</sup> media freedom<sup>12</sup> and access to public documents<sup>13</sup> are guaranteed by the Constitution of the Republic of Kosovo. Additionally, Kosovo has unilaterally undertaken to respect international human rights standards by directly applying a range of human rights instruments<sup>14</sup> and requiring its judicial system to align its decisions with those of the European Court of Human Rights.<sup>15</sup>

Freedom of expression is also guaranteed through the Civil Law against Defamation and Insult,<sup>16</sup> which provides for a balance to be struck between freedom of expression and establishing a system that is effective in providing appropriate compensation to those who are harmed by defamation or insult. Despite the abovementioned law being in force, defamation was also on the statute book as a criminal act until 2012. Kosovo’s Supreme Court provided a direction to the lower courts whereby it required all defamation cases to be treated as civil matters in 2012, although it was only with the amendment of the Criminal Code<sup>17</sup> that defamation was fully decriminalized.

Other specific legislation provide further details of the constitutional guarantees, such as the Law on Access to Public Documents,<sup>18</sup> the Law on the Independent Media Commission,<sup>19</sup> the Law on Protection of Journalists Sources,<sup>20</sup> the Law on

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<sup>11</sup> Article 40, Constitution of the Republic of Kosovo, 15 June 2008, available at <http://www.assembly-kosova.org/common/docs/Constitution1percent20ofpercent20thepercent20Republicpercent20ofpercent20Kosovo.pdf> Last accessed December 12, 2015.

<sup>12</sup> Article 42, Ibid

<sup>13</sup> Article 41, Ibid

<sup>14</sup> Article 22, Ibid

<sup>15</sup> Article 53, Ibid

<sup>16</sup> Law No. 02/L-65

<sup>17</sup> Code No. 04/L-082

<sup>18</sup> Law No. 03/L-215

<sup>19</sup> Law No. 04/L-044

<sup>20</sup> Law No. 04/L-137

Informants,<sup>21</sup> and self-regulation of newspapers and online media are subject to general obligations, such as prohibition of incitement of hatred.<sup>22</sup>

Different assessments, which have considered whether freedom of expression, media and the right to information are guaranteed, have recognized that there is a sound legal framework in place in Kosovo. However, the enforceability of these rights is an area that remains a concern. For example, Freedom House rates Kosovo partly free and cites implementation as a key obstacle due to reports by journalists of frequent harassment and intimidation and occasional physical attacks.<sup>23</sup> The latest Progress Report by the European Commission on Kosovo points out that freedom of expression, media and the right to information are constitutionally guaranteed, and legislation on libel, hate speech and defamation are in line with European standards. However, it also notes that a continuous limitation is implementation of such standards, which in turn creates space for the intimidation of journalists, and as a framework it is ineffective.<sup>24</sup>

Based on the survey, perceptions of journalists indicate that slightly more than half (53 percent) believe that Kosovo's legislation guarantees freedom of expression, another 26 percent believe that it does to a certain degree, whereas 22 percent do not believe so - either because they did not think it does entirely or they firmly said no or they did not know. It was more common among Kosovar Albanian journalists to hold the perception that such guarantees are found in Kosovo's framework, as opposed to Kosovar Serbian journalists. Additionally, it was more common for those working in newspapers and online media to answer that such guarantees exist, compared to their colleagues in radio or television.

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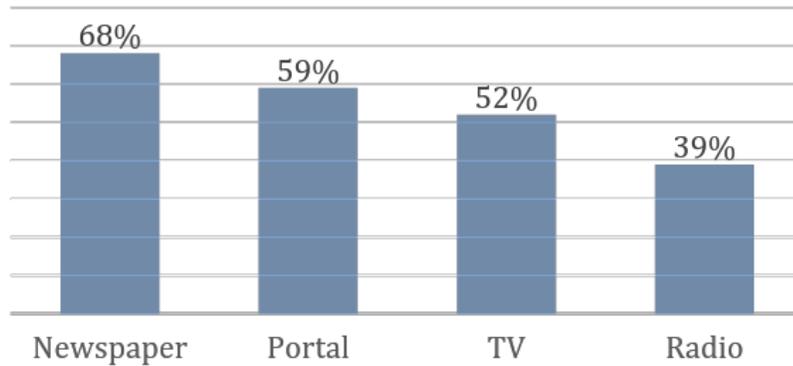
<sup>21</sup> Law No. 04/L-043

<sup>22</sup> Article 147, Criminal Code

<sup>23</sup> Freedom House, 'Freedom in the World 2015 – Kosovo', available at <https://freedomhouse.org/report/freedom-world/2015/kosovo> Last accessed December 15, 2015.

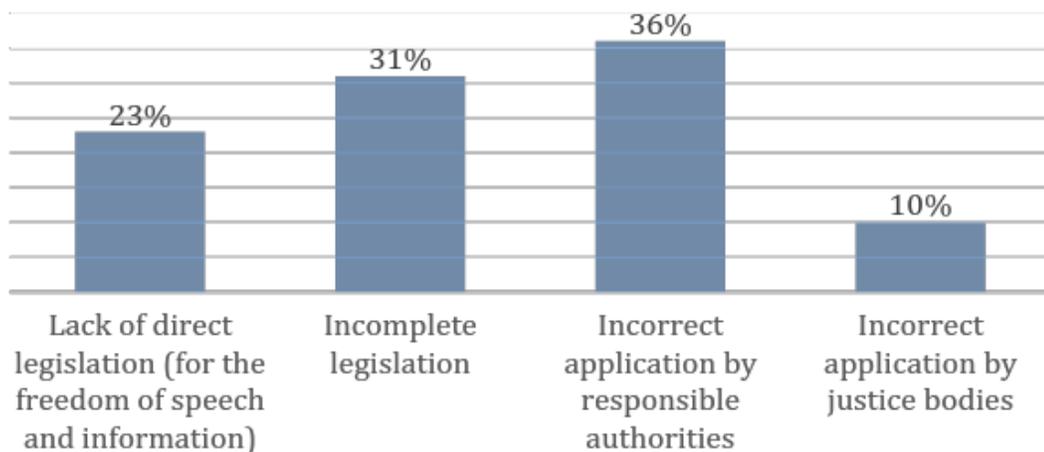
<sup>24</sup> European Commission, Kosovo Progress Report 2015, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_kosovo.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf) Last accessed December 16, 2015.

*According to you, is freedom of expression guaranteed with Kosovo's constitution?  
"Yes, completely" answers. Cross tabulation with medium types.*



In terms of implementation, journalists were of the general opinion that implementation was not being achieved to a desirable level. Of those who are not entirely certain, or believe that the Kosovo constitution does not guarantee freedom of expression, 36 percent state that their reason is "incorrect application of the law by responsible authorities," 31 percent state it is because of "incomplete legislation" and 23 percent because of "lack of direct legislation (for freedom of expression and information)." Only a few respondents (10 percent) believe their previous answer was based on the fact that there is an "incorrect application by justice bodies."

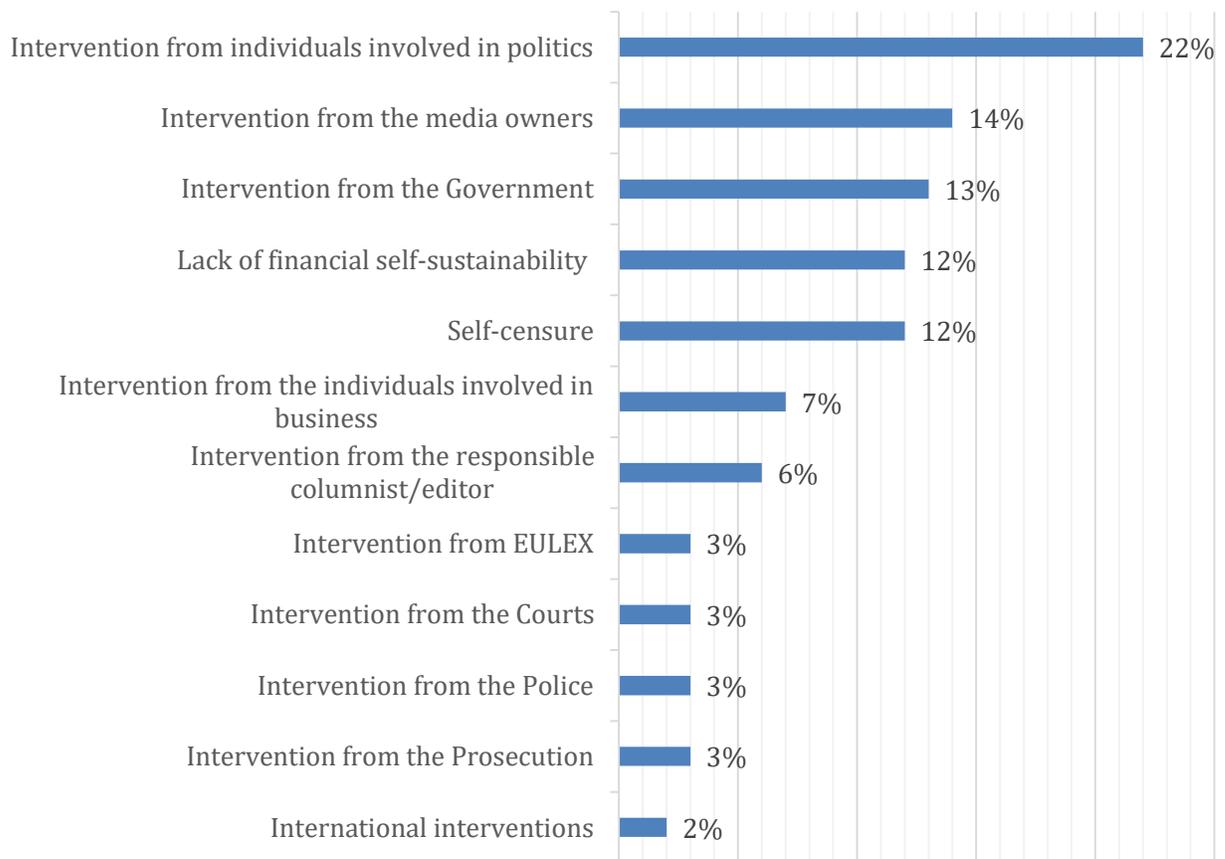
*Could you please tell us the reason why you believe freedom of expression is not fully guaranteed, or not guaranteed at all?*



With regard to lack of implementation, some of the reasons that journalists perceived for the current situation include:

- “intervention from individuals in politics” (22 percent);
- “intervention from media owners” (14 percent);
- “intervention from the Government” (13 percent);
- “lack of financial self-sustainability” (12 percent);
- “self-censure” (12 percent); and
- Other reasons such as intervention from those in business, editorial intervention, intervention from law enforcement including police, prosecution, EULEX and the courts.<sup>25</sup>

*Could you please tell us why you believe the legal guarantees regarding freedom of expression are not fully being implemented, or not being implemented at all?*



<sup>25</sup> These range between 7 percent and 2 percent.

A specific question was also asked in the survey in relation to the right to information, whereby the majority indicated that it is either fully guaranteed (46 percent) or guaranteed to a certain degree (28 percent). It was only 18 percent of journalists who perceived the right not to be guaranteed and of that, 7 percent were of the view that it was not guaranteed entirely, whereas 11 percent believed it were not guaranteed at all.

With regard to those who do not perceive this right as guaranteed, some stated that this is due to an incorrect application of the law in respect of this issue (38 percent), others stated lack of adequate legislation (23 percent) or incorrect application by the judicial system (10 percent). Perceptions relating to implementation of the right to information were also considered. Of those journalists taking part in the survey, who were asked to indicate on a scale from 1 (no implementation) to 10 (effective implementation), only an average of 4.94 was reported. This indicates that on average, journalists do not perceive implementation as being particularly effective.

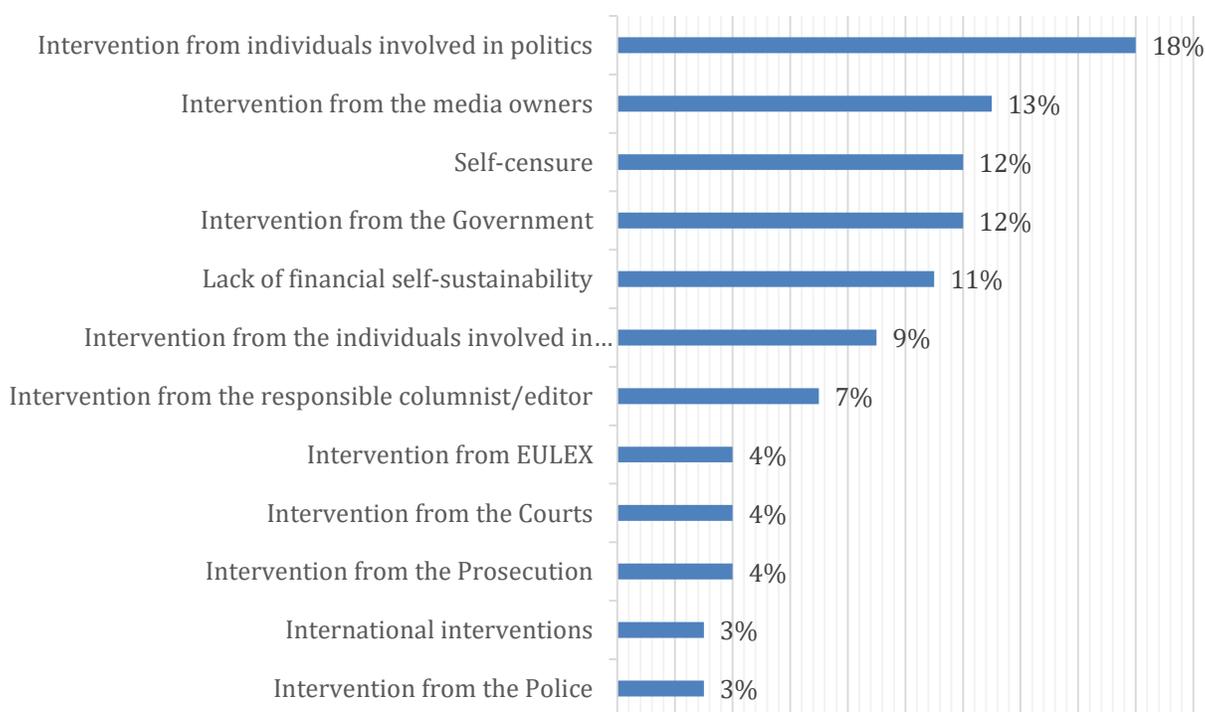
Similar to freedom of expression being guaranteed, journalists working for certain outlets share their perception in relation to freedom of information. As such, those working in radio and TV are more likely to perceive that legal guarantees relating to freedom of information are not fully implemented, whereas those journalists working for newspapers and online portals are more likely to have the opposite perception. Additionally, it was more common for Kosovar Albanian journalists to hold the perception that the right to information is implemented (5.36 on a scale of 1 to 10) compared to Kosovar Serbian journalists (2.13).

Another distinction that appears relates to the topic that a journalists covers, and whether that influences their perception about implementation of freedom of information. Those journalists covering the field of economics, politics and/or social issues appeared more likely to have the perception that there is implementation of this right, compared to those journalists covering justice or culture, who were more likely to have the opposite perception. However, on a scale of 1 (no implementation) to 10 (effective implementation), the average perception of implementation is of 4.20, meaning that journalists across areas/topics of coverage do not have a particularly high perception that the right to information is being implemented.

Journalists who had an average or below average view of the implementation of the right to information cited the following as the main obstacles:

- Interventions from “individuals involved in politics” (18 percent);
- Interventions from “media owners” (12 percent);
- Interventions from “government” (12 percent);
- Lack of financial self-sustainability (11 percent);
- Interventions from individuals involved in business (9 percent);
- Interventions from the responsible columnist or editor (7 percent);
- Interventions from the courts (4 percent), the prosecution (4 percent), EULEX (4 percent), the police (3 percent) and internationals (3 percent).

*Could you please tell us why you believe the legal guarantees regarding freedom of information are not fully being implemented, or not being implemented at all?*



Freedom of expression and information was also discussed in the focus groups with local and central level journalists. In general, journalists recognized the existence of the legal framework, but cited inadequate implementation as a key concern. Freedom of information was particularly discussed along the lines of Access to Public Documents and the implementation, or lack thereof, of the law. In this regard, local level journalists specifically reported hindrances to being granted information – according to them, in 90 percent of the cases, institutions do not respond to the requests on the basis that the documents requested are unofficial.<sup>26</sup>

The Balkan Investigative Reporting Network (BIRN) sent around 300 official requests for access to public documents and information to Kosovo institutions<sup>27</sup>, political parties, and international missions in the time period between January 2012 and March 2013. The requests focused mainly on “public expenditure made during official travels abroad, documents proving suitability and implementation of public contracts awarded to public companies, final disciplinary decisions against judges, prosecutors and attorneys, various minutes of meetings, including those

<sup>26</sup> Focus group discussion with local and central level journalists.

<sup>27</sup> Requests were sent to all ministries of the Kosovo Government, Office of Prime Minister, Independent Media Commission, Kosovo Judicial Council, Kosovo Prosecutorial Council, Kosovo Statistics Agency, Office of the Auditor General, Kosovo Business Registration Agency, Independent Commission for Mines and Minerals, Kosovo Privatization Agency, Kosovo Cadastral Agency and Kosovo Chamber of Advocates.

from Kosovo-Serbia negotiations and meetings of independent agencies, donation registers, contributes to political parties, and similar.”<sup>28</sup> According to the report, “from the overall number of requests sent to all institutions, only around 100, or 30 percent, were answered, including positive, partially positive and negative responses.”<sup>29</sup>

One of the greatest concerns cited by the journalists was the manner in which institutions handle requests. On one hand, they cited the fact that often institutions and agencies tend to handle requests based on internal regulations that are not harmonized with the legislation in force. On the other hand, establishing contact with the relevant official tasked to handle requests was often difficult. Moreover, journalists noted that requests are generally delayed, or when approved tend to be limited in information provided. As such, journalists emphasized these as continuous barriers to being able to conduct their investigations and /or reporting on time.

One interviewee noted “This shows that there is a discrepancy between the law that is on paper and implementation in practice. [...] If a journalist understands that wrongdoing has taken place in an institution and if he has to wait two weeks to get an answer,”<sup>30</sup> there is a risk that the news article is no longer newsworthy. Such examples were largely repeated during focus group discussions and with the interviewees.

### ***The case of Kosovo Energy Distribution Services (KEDS) privatization***

*The Kosovo Energy Corporation (KEC) issued a tender to privatize its distribution of electricity. It was understood that this was the only aspect being privatized, however, it later came to light that certain buildings owned by KEC were to be included. There was no further information in relation to which buildings or to the valuation of those buildings. A journalist made a request based on the Law on Access to Public Documents to view the contract. This was denied by the respective institution, but the journalist was invited to review a draft version of the contract. According to the journalist, this was not satisfactory as the draft did not include the buildings privatized and for a document of 300 pages to be reviewed in 30 minutes, it did not provide meaningful access.*

In general, journalists during the focus group discussions pointed to the need to amend the existing legal framework, particularly with regard to the Law on Access to Public Documents, so that clearer guidelines are established as to what constitutes, or does not, official public documents. Nevertheless, the fact that

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<sup>28</sup> “Shteti 30% i qasshëm për qytetarët.” Balkan Investigative Reporting Network. 2013. [http://jetanekosove.com/repository/docs/English\\_Final\\_444848.pdf](http://jetanekosove.com/repository/docs/English_Final_444848.pdf) Last accessed March 3, 2016.

<sup>29</sup> Ibid 28.

<sup>30</sup> Interview with Bekim Kupina, editor at Koha Ditore daily. August 2015.

“journalism must not become a hostage of legal proceedings” was also recognized.<sup>31</sup> As such, recommendations for amending the law for the purposes of its effectiveness were generally grounded on recommendations to shorten response times of officials, as well as to introduce specific penalties for officials who refuse to abide by it.

### **8.3 Restrictions to Freedom of Expression: Necessity and Proportionality**

Indicator 8.3 provides:

*“penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed.”*

The Criminal Code of Kosovo contains a specific offence in relation to incitement of hatred, discord or intolerance based on nationality, race, religion or ethnicity.<sup>32</sup> As an offence, it is sufficiently defined not to interfere with freedom of expression. As such, the existing legislation properly balances legislation on freedom of expression with legislation that prevents hate speech and that for the protection of public order and national security. To date, there have not been substantial cases where such rights have collided, which could better show the extent to which they are properly implemented. The only case involved the attack on the Kosovo 2.0 magazine, on the occasion of the December 2012 event launch of a magazine issue on the topic of “Sex,” which included articles on the LGBT community:

“there have not been cases in Kosovo where penalties for incitement of hatred, public order or national security have conflicted with freedom of expression. With regard to hate speech, the relevant article was only used in the Kosovo 2.0 case.<sup>33</sup> It has not reached the point in Kosovo where a media outlet was closed down or for an article to be removed because it is inciting hatred; I think Kosovo is fairly tolerant in some respects. It is true that in relation to certain communities, such as LGBT and the Serb community, often there are elements of hate speech, but we should also know that there aren’t organized campaigns by media outlets against these groups, which is a

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<sup>31</sup> Ibid 30.

<sup>32</sup> Article 147, Kosovo Criminal Code.

<sup>33</sup> This is a case brought by EULEX against three individuals who were convicted in relation to a number of offences including violating the equal status of citizens of Kosovo, preventing or hindering a public meeting and damage to movable property. Despite the accused being indicted for inciting national, racial, religious or ethnic hatred, discord, or intolerance, this was withdrawn at trial as it was covered by the Law on Amnesty.

development that is exceptionally positive as in other countries there are groups that publicly denounce another group.”<sup>34</sup>

## **8.5 Fair and Equal Access to the Media: Political Parties, Candidates and Election Campaigns**

Indicator 8.5 provides:

*“political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns.”*

The legal framework in Kosovo requires audio-visual media to provide fair and equal access to all parties, especially in facilitating election campaigns.<sup>35</sup> The Independent Media Commission is the responsible body for monitoring audio-visual media during elections.

In 2014, the IMC monitored parliamentary election coverage of 24 audio-visual media outlets, which included three national televisions, 17 regional and local televisions, and four providers of programming services. The monitoring focused on the news editions, election programs, interviews, debates and political advertising during primetime (16:00-24:00). Moreover, it focused on issues such as: balance in terms of space offered to political subjects, overall time dedicated to political subjects, as well as analysis of election coverage content (although, the latter was more limited in analysis). The IMC’s report generally found that media ascribed to dispositions as foreseen in the law. In general, it noted that six televisions broadcasters violated dispositions as foreseen with the law by failing to identify political advertising; in these instances, IMC notified the respective media and the cases were addressed based on mutual understanding.

In general, journalists from the focus group discussions and interviewees believe that fair and equal access during elections is provided and monitored by the IMC, as well as editorial boards within media outlets to ensure that equal access is maintained.<sup>36</sup>

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<sup>34</sup> Interview with Flutura Kusari, PhD Research Fellow in media law at the Human Rights Centre, Ghent University. August 2015.

<sup>35</sup> Law No. 03-L073.

<sup>36</sup> Interview with Adriatik Kelmendi, journalist at Koha Vision television, and interview with Ardita Zejnnullahu, Executive Director of The Association of Independent Broadcast Media of Kosovo. August 2015.

## **8.6 Non-Discrimination of Foreign Journalists**

Indicator 8.6 provides:

*“foreign journalists should not be refused entry or work visas because of their potentially critical reports”*

There have been no reported cases of impediment of foreign journalists to enter or carry their work in Kosovo as a result of their potentially critical reports. However, during the focus group discussions, one particular example was mentioned – foreign journalists; investigations into the report of Dick Marty, Swiss senator and former Council of Europe (CoE) Special Rapporteur, which he presented to the Parliamentary Assembly of the CoE. This report considered inhuman treatment of people and illicit trafficking in human organs and alleged that a number of prominent Kosovar Liberation Army leaders were involved.<sup>37</sup>

According to the journalists participating, the Guardian journalist was considered to be meddling into issues of no concern for the public. Journalists also stated a case of a BBC journalist who investigating into the “Yellow House” (a building in Albania where some of the alleged crimes are alleged to have taken place), was also questioned during the course of his research.

## **8.7 Media to Disseminate Content in Language of Choice**

Indicator 8.7 provides:

*“media must be free to disseminate their content in the language of their choice.”*

Media in Kosovo are free to disseminate content in their language of choice. As such, this indicator was not further examined.

## **8.9 Exclusive Reporting Rights Must Not Interfere with Right to Information**

Indicator 8.9 provides:

*“exclusive reporting rights concerning major events of public interest must not interfere with the public’s right to freedom of information.”*

The extent to which media have exclusivity over topics and issues of coverage generated great discussion during the focus groups with journalists, as generally the majority held that fair and equal access is not applied. The latter was particularly

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<sup>37</sup> Available at [http://assembly.coe.int/CommitteeDocs/2010/20101218\\_ajdoc462010provamended.pdf](http://assembly.coe.int/CommitteeDocs/2010/20101218_ajdoc462010provamended.pdf). Last accessed February 21, 2016.

prevalent for journalists working for local media, who noted that often they are deprived of information on major events of public interest.

However, journalists also linked such exclusivity to the professionalism and credibility that a particular media outlet holds, which was particularly mentioned with regard to daily Koha Ditore and BIRN. Once central level journalists said, “I think that Koha Ditore and BIRN are given the exclusivity to cover more events of great public interest [...] since they are believed to have a greater impact on the citizens’ lives and to be more credible in this regard;” on the same reference to these two media, another journalist believed they enjoy exclusivity “since they are more persistent and people are more afraid of their critical reporting.”

However, being critical does not necessarily always translate into exclusivity. During the in-depth interviews, one TV journalist explained how the previous and current Prime Minister have refused to attend the broadcaster’s programs, which he believed to be based strictly on the fact that the station is more critical in its coverage.<sup>38</sup> In this regard, many representatives of broadcasters held the same opinion that the public broadcaster, RTK, enjoys greater access to government activities, specifically to the Prime Minister, whereas not necessarily guaranteeing independent coverage.

Some interviewees noted that although television broadcasters have access to covering extraordinary assembly sessions, regular ones are generally restricted only to RTK.<sup>39</sup> The imbalance that this creates was referred to by another interviewee who stated “there shouldn’t be restrictions permitting only RTK, especially since it is the taxpayers that are paying [for the broadcaster]...there should be distribution” so that each medium can enable access for their audience.<sup>40</sup>

Moreover, another issue discussed was the memorandums of cooperation that certain media have established with institutions, which foresee monitoring and reporting on the institution from the side of the media. These were described as “favoritism of certain media in relation to access to information. There are media outlets that have access to all of the prosecution’s cases and court cases, whereas other media outlets, even with requests for access to public documents, can’t have those documents. Illegal memorandums, for me they are illegal [...]. Other media, in order to obtain an indictment from the prosecution or a court decision must wait for weeks on end.”<sup>41</sup>

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<sup>38</sup> Interview with Adriatik Kelmendi, journalist at Koha Vision television. August 2015.

<sup>39</sup> Interview with Gazmend Sylja, Director of Information at Klan Kosova television. August 2015.

<sup>40</sup> Interview with Imer Mushkolaj, Board Chairman of the Press Council of Kosovo. August 2015.

<sup>41</sup> Interview with Visar Duriqi, journalist at Gazeta Express, online newspaper. August 2015.

## 8.10 Privacy and State Secrecy and the Right to Information

Indicator 8.10 provides:

*“privacy and state secrecy laws must not unduly restrict information.”*

In a general context, freedom of information is considered average according to the journalists who participated in the survey. On a scale from 1 to 10, with 1 being “not endangered at all” and 10 being “completely endangered,” journalists’ evaluation averaged at 5.99. Of respondents who believed that freedom of information is endangered, most of them believe that influence came directly from “individuals from politics” (31 percent), “media owners” (17 percent) and “individuals from businesses” (16 percent). Only a few respondents see the “prosecution” (5 percent), “EULEX” (4 percent) or “police” (4 percent) as exercising such influence.

According to the focus group discussions, journalists have more often been denied access to information or documents on the basis of privacy, and less so on the basis of state secrecy. As institutions generally tend to apply internal regulations for Access to Public Documents, which are not harmonized with the law in force, journalists are denied access on the basis that disclosure would violate the protection of the third party’s personal data.

According to the 2015 report of the Prime Minister’s Office<sup>42</sup> on the implementation of the Law on Access to Public Documents across institutions, a total of 2,123 requests were made. Out of them access was granted to 1,960, access was refused to 116, restricted access was granted to 56.<sup>43</sup> However, the report offers a general look at the data; it states that information will be restricted or refused due to privacy, trade secrets or information classified on the basis of security. A breakdown of how many requests were refused or restricted based on the different natures is not provided.

An important example in this regard is when BIRN send a request to the Prime Minister’s Office for expenses made in the time period February 2011 to August 2012. BIRN’s request was denied on the basis that it might reveal the Prime Minister’s diet or potentially information about his health. BIRN challenged the Prime Minister’s office response in court, where it was ruled that such expenses constitute public money, and as such, needed to be available in the public domain.

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<sup>42</sup> Public institutions are obliged to send yearly reports on number of requests filed to the Prime Minister Office.

<sup>43</sup> Comprehensive Report on Public Institution implementation of the right of access to public documents. Office of the Prime Minister. 2015. [http://www.kryeministri-ks.net/repository/docs/2015\\_SHQ.pdf](http://www.kryeministri-ks.net/repository/docs/2015_SHQ.pdf) Last accessed April 20, 2016.

It is important to note that journalists can file complaints with respective authorities when their requests are refused. However, during focus groups discussions, the majority of journalists stated that such procedures do not necessarily yield results. Moreover, journalists can also file complaints with the Ombudsperson Institution. The latter is also rarely applied, as journalists viewed such an undertaking time consuming, stating that it would result in having to file up to four complaints a week, thus consequently impact their job.

Although instances when journalists were denied access to information on the basis of state secrecy are reported as more rare, one interviewee offered an example of such an occurrence:

“With regard to state secrets, the chances that you can have access are either minor or non-existent, and this is a problem since it requires challenging through the courts. The Youth Initiative for Human Rights in Serbia in 2005 requested from the Serbian intelligence agency information relating to the number of people they had intercepted during the year, a request that was denied. This was sent to the European Court of Human Rights, which ruled that this information should be provided. I have requested the same information from the Kosovo Intelligence Agency (KIA), and KIA still mocks me about it. In this regard, I think the implementation of the law is not seen in the spirit that you may have access to information.”<sup>44</sup>

### **8.17 Access to Foreign Print Media and the Internet**

Indicator 8.17 provides:

*“the state must not restrict access to foreign print media or electronic media including the Internet.”*

The state does not restrict access to foreign print media or electronic media, including the Internet. As such, this indicator was not further examined.

### **8.24 The Media and Government, Parliament and the Courts**

Indicator 8.24 provides:

*“government, parliament and the courts must be open to the media in a fair and equal way.”*

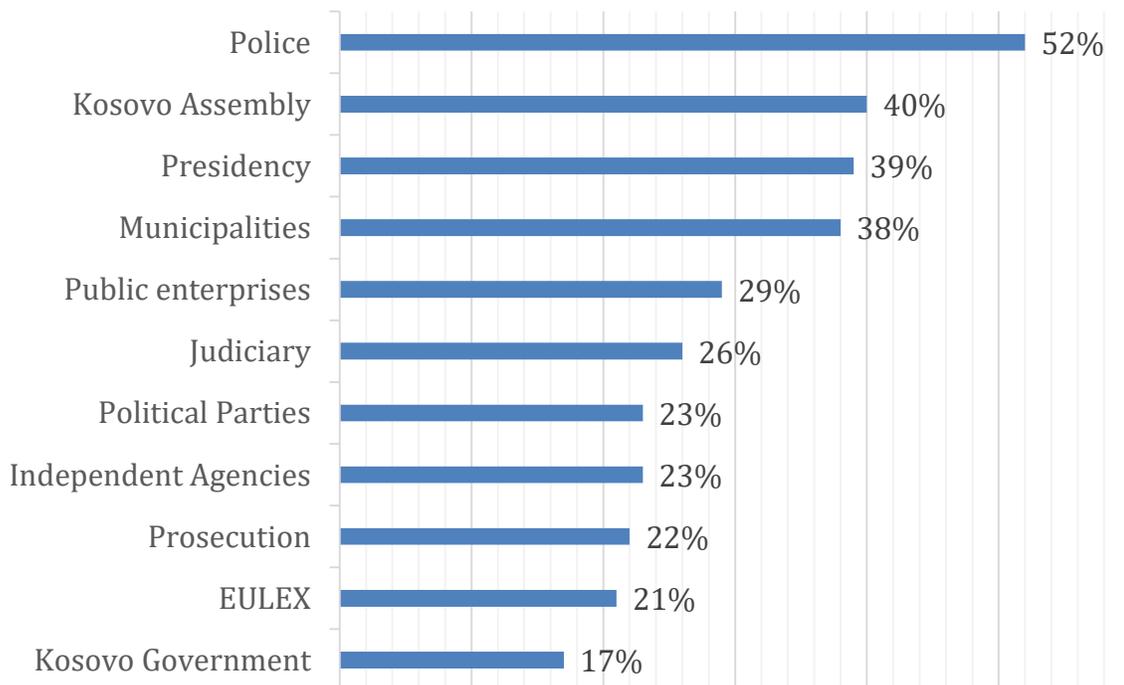
According to the survey conducted with journalists, public institutions and various agencies are not particularly open toward the media. Out of many institutions listed, only the “police” and “municipalities” were perceived as being somewhat open toward the media. The rest of them, fall close to the median or below average with

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<sup>44</sup> Ibid 34.

the least open institution being “EULEX” (3.94 average). Furthermore, the journalists believed that not all institutions are equally and fairly open to all media. According to them, the most fairly open and transparent institution is the “Police” (52 percent), which is closely followed by the “Kosovo Assembly” (40 percent), “Presidency” (39 percent) and “Municipalities” (38 percent). One of the least trusted institutions with regard to equal treatment and fairness to all media is the “Kosovo government.”

*Are the following institutions equally and fairly open to all media?*



Similarly, journalists who participated in the focus group discussions were of the view that out of the three branches, the government was the least fair and equally open to the media. In this regard, the fact that the Minister of Labor and Social Welfare simultaneously holds the position as government spokesperson was discussed as a major hindrance to having sufficient access when covering the government.<sup>45</sup>

The journalists explained that based on their experience, the government on different occasions has excluded journalists from certain parts of meetings. Similarly, at times the government will give greater access to certain media outlets based on its preferences.

<sup>45</sup> Interview with Xhemajl Rexha, journalist at Koha Vision television. August 2015.

Journalists also cited barriers that prevent them from accessing information relating to government decisions. In particular, some of the journalists said that government decisions that are published are not regularly updated. This is problematic as it hinders access to such information and is not particularly open on the part of the government. One journalist explained this further by stating “once, I have asked for an overview of the decisions carried out by the Prime Minister for a certain period of the time, and the response to that request was that I had to say precisely which document I need.”

In general, journalists during the focus group discussions rated the parliament as the most transparent institution when it comes to being equal and impartially open to all media, as opposed to with the government and the courts. However, the level of equality and openness of these institutions is not considered to be of a satisfactory level. Meanwhile, the courts were positively rated by a number of journalists due to the fact that most hearings are held in public, and anyone is permitted to participate in these sessions.

As reported above, journalists ranked the Kosovo Police as the most fair and equally open institution during the survey. Nevertheless, during the in-depth interviews, several interviewees also commented that the Kosovo Police can also often apply a selective approach towards journalists, and in manners of inner Police functions, the institution will generally be less cooperative. As one interviewee put it, “where there is criticism of the police, there is zero transparency [...]. The police do not like being criticized; they like to have journalists that publish [their] information.”<sup>46</sup> The same interviewee pointed out that while the Kosovo courts have until recently been closed off to media, they now apply a more open approach but one that tends to be selective and favor certain outlets. However, journalists also greeted the fact that the regional courts have appointed spokespersons.<sup>47</sup>

## **8.27 Periodic Report on Media Freedom by Parliament**

Indicator 8.27 provides:

*“national parliaments should draw up periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level.”*

As noted earlier in this report, the Parliamentary Assembly of the Council of Europe in 2008 established the “Indicators for media in a democracy,” which seek to establish a range of principles in order to facilitate analysis of national media environments in respect of media freedom. Although Kosovo is not a member of the Council of Europe, it has unilaterally accepted that it will adhere to all

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<sup>46</sup> Ibid 41.

<sup>47</sup> Ibid 45.

internationally recognized standards with regard to human rights including freedom of expression, media and information.

However, these indicators have not been previously used as the basis of measuring media freedom in Kosovo. Moreover, journalists generally held the belief that the parliament has fallen short of assuming a more active role and approach in ensuring a free media environment; the parliament also rarely ensures that media related legislation is rightfully implemented. Journalists noted that to date, media assessment reports produced by international organizations tend to be the only pieces of documentation referenced when commenting upon the state of media freedom in the country. In this regard, besides parliamentary debates on the public broadcaster RTK, the need to better monitor and supervise the implementation of the defamation law, the laws for the protection of whistleblowers, respect of copyright, were particularly noted.<sup>48</sup> Moreover, journalists were of the opinion that the Assembly should be particularly more vocal and proactive in supervising implementation of media related laws and drafting reports.

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<sup>48</sup> Ibid 34.

## Part II The Legislative and Regulatory Framework

### 8.12 Journalists and their Freedom of Association

Indicator 8.12 provides:

*“journalists must not be restricted in creating associations such as trade unions for collective bargaining.”*

Journalists are not restricted in creating associations in Kosovo. Currently, there are two professional associations for journalists. The first one is the Association of Journalists of Kosovo, which is considered more of the leading non-governmental organization with the aim of promoting, encouraging and working to improve the position of journalists in society. The second one is the Union of Journalists of Kosovo (UGK). There is also the Association of Independent Electronic Media of Kosovo (AMKEP), which represent private television stations

In 2014, the AJK was reported on having 240 journalist members<sup>49</sup>; the organization went through a reregistration process at the end of 2014 and beginning of 2015, however data are not available in its official website. Since its establishment, the association has undergone various organizational disruptions. While in 2012, the association began functioning more efficiently and was greeted for appointing board and director through its assembly, in 2013 a change in these structures was largely seen as turning it into a political tool.<sup>50</sup> Currently, the association has another director who is largely respected within the community of journalists. However, the extent to which the AJK is effective in fulfilling its role was an issue of concern. Many journalists described it as falling short of better representation or protection, and that it mainly focuses on issuing statements without following up on the cases. Local level journalists, who feel less represented than those working at the central level, particularly noted the latter; their general sentiment was that the AJK was not as inclusive and assessable to representing them in an equal manner.

Meanwhile, journalists' trade unions are more so less existent. Even in the case of the AJK, when journalists report cases of violations of rights, the AJK refers them to a lawyer.<sup>51</sup>

However, during in-depth interviews, several issues that tend to prevent the establishment and effective functioning of trade unions were raised. Firstly, trade unions as organizations that negotiate on behalf and advocate for workers' rights were described as weak socio-economic concepts in the country, generally absent

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<sup>49</sup> “The State of the Media in Kosovo.” INDEP, 2014.

[http://www.indep.info/documents/74366\\_INDEP\\_Gjendja%20e%20Mediave%20n%C3%AB%20Kosov%C3%AB%202014.pdf](http://www.indep.info/documents/74366_INDEP_Gjendja%20e%20Mediave%20n%C3%AB%20Kosov%C3%AB%202014.pdf) Last Accessed March 25, 2016.

<sup>50</sup> Ibid 49.

<sup>51</sup> Focus group discussions with local and central level journalists.

across sectors.<sup>52</sup> Secondly, the fear factor, such as of loosing their jobs or lack of belief in institutional help, discourages journalists from organizing in unions.<sup>53</sup> And thirdly, lack of encouraging examples in society deters them from establishing or believing that trade unions can serve as a platform for collective bargaining.<sup>54</sup>

In 2015, the Independent Union of RTK became vocal in one of the first times in years. In March of that year, 12 newsroom editors held a protest against the appointment of new editors in chief on the alleged basis that two appointed names had exercised pressure and censorship. The Union supported the protests, and moreover asked for an investigation to be launched into the spending of public money for RTK's senior management; they also requested from the Assembly to discharge the responsible managers. However, RTK instead decided to discharge the president and vice-president of the Union, which in return stirred protests supported by the newsroom editors and journalists. Despite the fact that this case was shortly seen as a possible change, both within RTK and the role of the Union, the case was quietly shut down – the union leaders were reinstated and the editor-in-chiefs continue to hold their positions.

However, by and large, associations and unions have so far fallen short of advocating for and protecting journalists' work rights or in serving as platforms collective bargaining.

### **8.15 Regulatory Authorities: Broadcast Media, Print Media and Internet-based Media**

Indicator 8.15 provides:

*“regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licenses. Print media and Internet-based media should not be required to hold a state license which goes beyond a mere business or tax registration.”*

The main authority responsible for regulating audio-visual media is the Independent Media Commission (IMC). The Constitution of the Republic of Kosovo specifically provides for the IMC to be an independent authority with the responsibility of regulating the Range of Broadcasting Frequencies, issuing licenses to public and private broadcasters and establishing and implementing broadcasting policies.<sup>55</sup> Similarly, it provides that its “members shall be elected in a transparent way.”<sup>56</sup>

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<sup>52</sup> Interview with Dukagjin Gorani, journalist and media expert. August 2015.

<sup>53</sup> Interview with Xhevahire Izmaku, Member of the Assembly Committee for Public Services, Local Administration and Media. August 2015.

<sup>54</sup> Ibid 52.

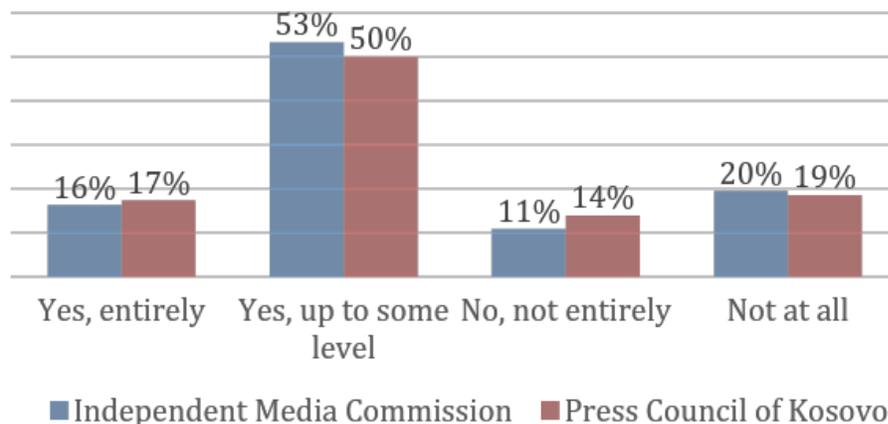
<sup>55</sup> Article 141, Constitution of the Republic of Kosovo.

<sup>56</sup> Ibid 55.

The IMC’s competencies extend only to broadcast and audio media; print media and internet-based media are not required to have a state license, but are registered as businesses. With regard to print media, it functions on a self-regulatory basis through the Press Council of Kosovo (PCK), a member-based organization that has a code of ethics and provides a complaint mechanism for anyone who feels their rights have been affected by information printed or published online relating to them.<sup>57</sup> Similarly, some internet-based media, in particular news portals, participate in the self-regulatory regime through membership of the PCK.

With regard to the survey findings, there is a common ground in opinion about the IMC’s and PCK’s functionalization, effectiveness, and legislature and code applicability. Respondents widely believe that media (self)-regulatory mechanisms function effectively and without bias. Specifically, regarding the Independent Media Commission, 16 percent believe it “entirely” functions effectively and without bias, 53 percent “up to some level”, 11 percent “not entirely” and 20 percent “not at all.” On the same note, regarding Press Council of Kosovo, 17 percent believe it functions “entirely,” 50 percent “up to some level,” 14 percent “not entirely” and 19 percent “not at all.”

*Do media (self) regulatory mechanisms (Independent Media Commission and Press Council of Kosovo) function effectively and without bias?*



Journalists at the focus group discussed the effectiveness and impartial functioning of the IMC and PCK as well. However, the IMC was considered more likely to be prone to political influences due to the fact that its board members are appointed through the Assembly. As one journalist put it, “having into consideration the fact that the members of the Independent Media Commission are chosen and confirmed by the parliament i.e. by political subjects, we cannot say that this Commission is completely independent.” Moreover, the journalists commented on the fact that

<sup>57</sup> Kosovo Press Council Code, available at [http://presscouncil-ks.org/wp-content/uploads/2015/04/Press-Code-for-Kosovo\\_alb.pdf](http://presscouncil-ks.org/wp-content/uploads/2015/04/Press-Code-for-Kosovo_alb.pdf). Last accessed January 12, 2016.

board appointees have generally been political appointees, thus restricting the IMC's possibility to function in an unbiased and effective manner.

Political interference in the IMC has been a point of continuous deliberation, and particularly with regard to the appointment of its board. The IMC board comprises of seven members, who following public nominations are elected by the Assembly. However, this process has generally been politically oriented. For example, in 2012, all of the board appointees lacked any background or professional preparations in the field of media; in 2013, two board members were dismissed as they held political posts at the same time.<sup>58</sup> The current president of the IMC board was a Democratic Part of Kosovo (PDK) deputy candidate in the 2007 national election, and he was elected in this position while PDK led the government. The latter examples were also provided during the focus groups discussion when discussing reasons hindering the independence of the institution.

With regard to licensing for audio-visual media, the general view amongst the journalists was that it is an open process that all interested parties can access. Additionally, it is a technical one that allows for equality, meaning that if a media fulfills the basic criteria then it qualifies to be licensed. However, the quality of licensing decisions by the IMC was more so criticized, and recommendations were given so as for the process to be stricter in order to ensure higher professional quality.<sup>59</sup> There have also been instances when the license was withdrawn, as in the case with TV Mitrovica and TV Meni in Gjilan, which was described as a sign that "licenses are not for life and media outlets have obligations they must fulfill as determined by regulatory bodies such as IMC."<sup>60</sup>

The IMC was also described as efficiently fulfilling its responsibility of monitoring media content. It does so by sending cautions and penalties where appropriate in relation to applicable regulations regarding adverts, protection of minors and trademark protection. Its monitoring mechanism functions well in individuals conducting this monitoring use it to take the necessary action.<sup>61</sup>

Meanwhile, with regard to the PCK, it was largely described as free of political influences, however recommendations were provided for overall more effective functioning. The PCK will be elaborated on more in the specific indicator on Self-regulation.

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<sup>58</sup> Ibid 49.

<sup>59</sup> Focus groups discussion with local and central level journalists.

<sup>60</sup> Interview with Ardita Zejnullahu, Executive Director of The Association of Independent Broadcast Media of Kosovo. August 2015.

<sup>61</sup> Ibid 60.

## 8.16 Media Access to Distribution Channels

Indicator 8.16 provides:

*“media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services).”*

In general, media have fair and equal access to distribution channels. The Information Communication Technology is considered as meeting current needs of the industry, however it will become problematic with the digitalization process, which has stalled. Also, the government does not interfere in distribution channels, such as kiosks, cable, and the Internet.<sup>62</sup>

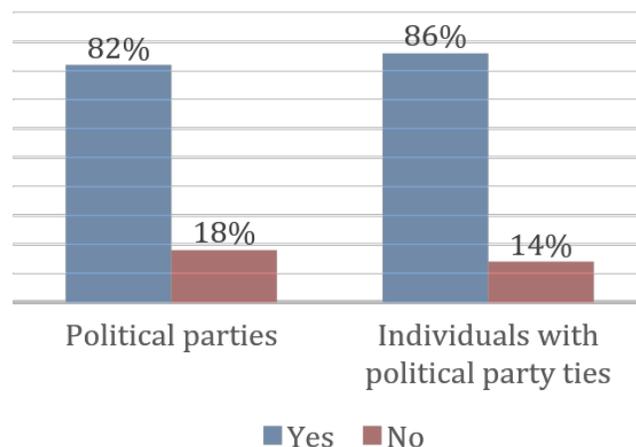
## 8.18 Media Ownership, Economic Influence and Dominant Market Position

Indicator 8.18 provides:

*“media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism.”*

The survey data shows that respondents strongly believe there are political parties or individuals with political party ties that directly or indirectly operate media. Over 82 percent of them believe so for political parties, whereas 86 percent of them believe so for individuals with political party ties.

*Are there political parties or individuals with political party ties that directly or indirectly operate their media?*



<sup>62</sup> “Kosovo Media Sustainability Index 2015.” IREX. <https://www.irex.org/sites/default/files/2015-msi-kosovo.pdf> Last accessed April 16, 2016.

With regard to media ownership, newspapers offer greater transparency by publishing information about ownership and editorial staff. Meanwhile, television and online media remain heavily problematic.

With regard to television broadcasters, the IMC does not cover media ownership or concentration rules; although there have been some attempts to formalize the latter that have yielded no results.<sup>63</sup> As such, this issue has been continuously repeated as an issue of concern. Currently, the only information provided is the IMC media database, which “usually contains the names of owners. Sometimes, only the names of contact persons are given instead. Therefore, in some cases, media analysts have raised questions about who exactly lies behind the nominal owners.”<sup>64</sup>

Television ownership has been described along three patterns: “hidden ownership or nominal owners as a cover for real owners,” meaning that “both political and business groups have used this pattern to infiltrate the ownership structure of existing media, or to launch new media in order to use them for their own interests;” family ownerships, which are registered as private businesses; and big companies or corporations as media owners, meaning that “there have been cases of media takeovers, or of the establishment of media outlets by large companies or corporations that operate outside the media sector” and generally with the aim of having media serve business interests.<sup>65</sup>

With the explosion of online media outlets, the issue of ownership has only augmented. The majority of online media lack any information of the kind. In fact, a study conducted in 2014 that examined online media transparency of eight news portals, found that none of the news portals offered information about the owner or owners, only two published the names of the editor-in-chiefs, two had information about the professional staff working in the media, and six offered information as to the physical address of the media.<sup>66</sup>

During focus groups discussion, journalists also pointed to the fact that not only has lack of transparency exacerbated among along media, but that often even the identity of journalists who publish is withheld. As one journalist put it, “there are cases when a particular person or a company is attacked by a media, but the author of the article is not published, so they don’t know whom to address in order to defend themselves.”

The above mentioned patterns of media ownership also extent to how economic influences are exerted – be it political or business. This influence originates from

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<sup>63</sup> Ibid 60.

<sup>64</sup> “Media Integrity Report: Media Ownership and Financing in Kosovo.” Southeast European Media Observatory. 2015. <http://mediaobservatory.net/radar/media-integrity-report-media-ownership-and-financing-kosovo> Last accessed February 15, 2016.

<sup>65</sup> Ibid 64.

<sup>66</sup> “Revista Media 5-6.” Alban Zeneli. University of Prishtina. 2013-2014.

media outlets' dependency on commercials, because "while some outlets have started to rely more on their own revenues from advertising, most remain financially unstable, and very few are able to operate without support from the government or businesses associated with public officials."<sup>67</sup> This in turn presents an opportunity whereby businesses, including public enterprises, paying for such commercials exert economic and editorial influence over particular outlets.

As this indicator considers dominance within the market and measures promoting media pluralism, these were also considered. While there is pluralism in terms of number of media outlets and editorial policies, media favoritism, whether in terms of exclusivity or financial support, was largely echoed during focus group discussions and in-depth interviews.

## 8.25 Media Self-Regulation

Indicator 8.25 provides:

*"there should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognized legally by the courts."*

The Press Council of Kosovo was founded in 2005 for and by the press sector. Its statute provides that it is a non-governmental organization enabling membership for daily newspapers, online news portals, periodic newspapers, magazines and news agencies.<sup>68</sup> Its mandate is to promote and implement the Code of Conduct of the Press, which requires journalists and publishers to respect the right of citizens to be informed promptly, fully and impartially. Similarly, the Law against Defamation and Insult recognizes it as one of the bodies where an affected party may seek redress in the first instance; in fact the courts require this to mitigate harm and/or damages for defamation and insult.<sup>69</sup> Overall, it provides a mechanism for anyone to seek a remedy, including the right of reply, correction or apology.

Journalists surveyed were asked whether they believe the PCK functions effectively and without bias. 17 percent stated that they believe this to be entirely the case, whereas 50 percent thought this to be the case up to a level. 14 percent stated that they did not entirely believe this to be the case and 19 percent reported this not to be the case at all.

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<sup>67</sup> Ibid 23.

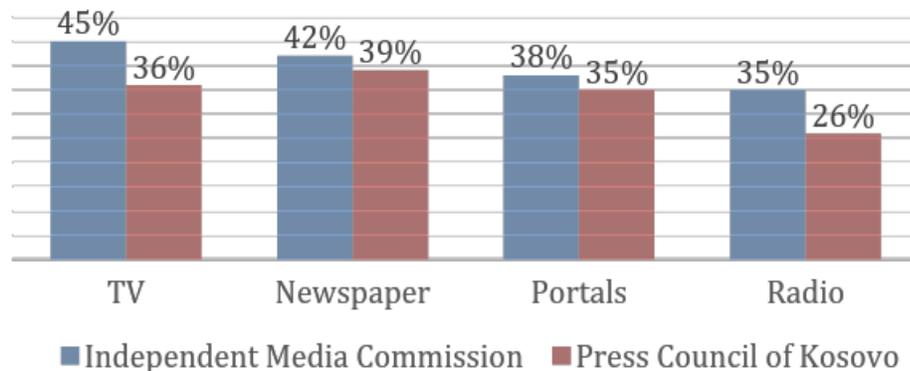
<sup>68</sup> Statute of Kosovo Press Council, 10 August 2005 (amended in February 2013), available at [http://presscouncil-ks.org/wp-content/uploads/2015/04/Statuti\\_KMSHK\\_shqip\\_FINAL3.pdf](http://presscouncil-ks.org/wp-content/uploads/2015/04/Statuti_KMSHK_shqip_FINAL3.pdf). Last accessed on January 10, 2016.

<sup>69</sup> Article 12, 14 and 15, Law against Defamation and Insult.

Journalists taking part in the focus group discussions were asked whether they believed that the PCK was impartial and efficient in fulfilling its mandate. Half of the journalists taking part were of the view that it is an impartial and effective mechanism. In particular, some of the journalists stated that as a self-regulatory body, the PCK is responsive in that it reacts when it is supposed to. Similarly, it was noted that as a mechanism it has made some very effective decisions, including recommendations relating to the removal of comments of hate speech and discrimination on online portals.

With regard to whether the courts take into consideration decisions made by the PCK, 34 percent of journalists surveyed stated that they believe so; while over 40 percent of journalists did not have any information in relation to this matter.

*Are the decisions by self-regulatory bodies (IMC and PCK) taken into account by the justice bodies? "Yes" answers. Cross tabulation based on media type.*



During focus group discussions, journalists were divided over the extent to which the courts taken into consideration the PCK’s decisions. Some said that they are used as additional proof in relation to a particular claim rather than as final decisions. Other journalists claimed that the courts do not take into consideration decisions by the PCK. It was also noted that there aren’t many cases that have been dealt by the courts in relation to journalists, and as such it is difficult to state whether the courts do take decisions into account.

However, one interviewee noted that in general, a good practice has developed in that before claimants take a case to court, they will bring it to the PCK so that they can get a decision or professional opinion. If they are not satisfied, they may choose to go to court. Recently PCK has had a case where a claimant initiated the case at court, but brought it to the PCK as well. At the same time, PCK does not have statistics to show how many people who bring their case to the PCK go on to seek other remedies.<sup>70</sup>

<sup>70</sup> Ibid 30.

Many journalists during focus group discussions and in-depth interviews noted that the PCK's effectiveness is restricted due to the nature of its operations, and that most often, not much more occurs following the closing of a complaint. In this regard, one interviewee noted,

“If we want a regulatory body, then we need a law through which sanctions can be imposed as is the case with IMC. If we want a self-regulatory body, this is more of an ethical issue and a matter of the relationships developed between media outlets and their willingness for implementing decisions made [...] it is not the competence of the PCK to sanction media.” At the same time, no one is required to be a member of the PCK. It is voluntary and if a media chooses membership, it should respect the Code.<sup>71</sup>

However, the PCK was also criticized for not being more assertive in its position toward complaints, as well as in the manner it composes complaint responses. In this regard, one interviewee noted,

“whilst it is independent from politics, it is dependent on the media outlets themselves, and often, one or two media outlets determine PCK's policies, which is wrong. Similarly, its decisions are of a very technical language, and this should be addressed in order to be user-friendlier. However, often this is done on purpose so that each party that reads the decision is under the impression that they won, which is intentional so that both parties come away satisfied.”<sup>72</sup>

## **8.26 Journalists Professional Codes of Conduct**

Indicator 8.26 provides:

“journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism.”

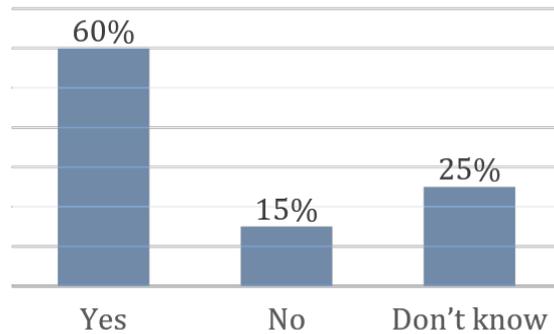
According to journalists surveyed, 60 percent believe that Kosovar media have a code of ethics in place, with 15 percent believe that it was the opposite and 25 percent did not have any information.

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<sup>71</sup> Ibid 30.

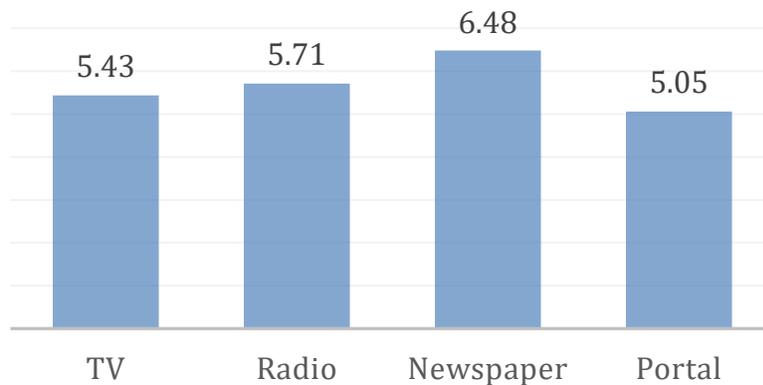
<sup>72</sup> Ibid 34.

*Do media have a code of ethics?*



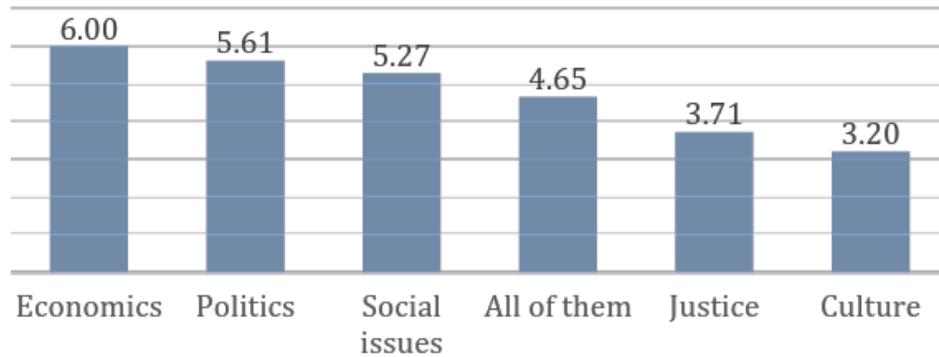
Those who stated that a code of ethics exists were also asked about its implementation. On a scale from 1 to 10, (with 1 being “not at all” and 10 being “completely,”) the mean turned out at 5.64. This figure shows that respondents do not believe the code of ethics in media is applied in full, and that an average implementation is not seen as sufficient.

*In case you believe media has a code of ethics, how much is this code applied? On a scale from 1 to 10, 1 = “not at all” and 10 = “completely”. Cross tabulation based on medium type.*



Journalists surveyed were also asked how they perceived the professionalism of journalists and the result was an average of 5.30 (between 1 and 10). It is also interesting to note that journalists who cover the economy tended to have the perception that there was more professionalism compared to those covering cultural issues, whose perception of professionalism was quite low.

*Personally, how do you evaluate journalists' level of professionalism in Kosovo media?  
On a scale from 1 to 10, where 1 = "very unprofessional" and 10 = "excellent." Cross  
tabulation based on major field of operation.*



In general, printed dailies and online portals that are PCK members are supposed to abide by its code of ethics ascribed; audio-visual media are supposed to abide by regulations and codes of conduct prescribed by the IMC. Few media outlets have their own inner code of conducts. As discussed during the focus groups, if such codes do exist within media organizations, they rarely serve as the basis for debate between editors and journalists. Moreover, particular criticism was directed toward online publications, where the majority upheld that rarely do they call upon ethical standards in their coverage and reporting.

With regard to the declaration of any personal interest, whether political or financial, many journalists were of the opinion that such conflicts are rarely disclosed.

### **Part III Independence, Security and Transparency**

#### **8.2 Freedom to Criticize Public Officials**

Indicator 8.2 provides:

*“state officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment”*

Kosovo’s legal framework does not provide specific provisions whereby state officials are protected from criticism nor provide for the imprisonment of journalists and/or closure of media outlets engaged in critical comment. The amendments to the Criminal Code of Kosovo discussed during the period of 2012 contained the possibility of criminal penalties for editors, media outlets and even printing businesses, but these did not materialize as they were not included once the law [Criminal Code] was approved the following year. Additionally, the Constitutional Court has confirmed that deputies of the Kosovar Assembly enjoy only functional immunity, meaning that if they engage in any act in their personal capacity resulting in a criminal offence or where they can be sued for damages, they cannot rely on their position to evade [penal] prosecution or civil court proceedings.<sup>73</sup> This position was echoed in the focus group discussions where the respondents stated that Kosovo’s legislation treats all equally irrespective of position.

However, during focus group discussions and in-depth interviews, it also became apparent that the prevalent opinion is that state officials enjoyed some privilege during the proceedings. Therefore, a key issue here is how the law is implemented. Although the legislation treats all Kosovar citizens equally, in practice there are cases of double standard practice when state officials are in questions. In this regard, several examples were provided.

One journalist explained that the institutional framework is likely to respond much more quickly when a state official is involved while being rather slow when dealing with cases from ordinary citizens. The journalist said, “usually when an ordinary citizen sues a media, the procedure takes too long. Whereas when the damaged party is an influential person, for example, as we recently had the case with the prime minister’s son [he was publicly threatened by a citizen], the relevant institutions reacted immediately. We know that within three days, that person was identified and arrested.”

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<sup>73</sup> Judgment of 20 September 2011 on Case KO98/11 Concerning the immunities of the Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and Members of the Government of the Republic of Kosovo.

At the same time, the status of the claimant and respondent also seem to have an impact as to how the courts deal with a particular case. One journalist recalled a private lawsuit that was initiated by a Member of the Assembly against a former Prime Minister. The journalist emphasized that the weakness of the justice system and lack of impartiality when dealing with state officials is seen through analysis of key cases. The example the journalist gave was “the case between Mr. Florin Krasniqi [former deputy] and Mr. Hashim Thaçi [former Prime Minister]. When Mr. Krasniqi sued Mr. Thaçi for slander, the municipal court called EULEX to deal with the case. I do not think they were not able to deal with the case, but they were not willing to do justice, thus they passed the case to EULEX.”

Another case potentially of significance is that of obtaining an injunction by the President of Kosovo. One of the online portals, Indeksonline, had taken a picture of the President during an official function as she was kneeling down, which showed her in a compromising position. Following publication, the President applied for an injunction to withdraw and stop further publishing, which was approved by the Pristina Municipal Court. The essence of an injunction is for a court to render a decision quickly, which happened in the latter case. Whether this was because of the status of the claimant is not clear, especially since it is not known whether such a case came before the courts previously. It is important to consider this further in the future as it creates a precedent for any claimant to use in such proceedings, and which would prove whether the status of the claimant was an important consideration.

With regard to protection offered to state officials, one interviewee said:

“[the current] law on defamation does not create a specific offence for those who hold public office. But the main problem with this law is how cases involving public figures are adjudicated. It is quite worrying that the Kosovo Judicial Council, the Kosovo Judicial Institute or the courts do not have statistics on the number of cases involving journalists that have been initiated by persons in public office. This has created uncertainty because there are often reports in the media from public officials that they are bringing an action to sue a journalist, and the public has the perception that journalists are forever getting sued [...] I have the perception that judges fear to adjudicate cases involving journalists. All of this has contributed to a situation where there are claims against journalists, the public is aware of this, and as a result you have the perception that journalists sometimes do not write the truth. But we do not have judges that adjudicate such cases to clear the journalist’s name.”<sup>74</sup>

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<sup>74</sup> Ibid 34.

## 8.4 Freedom to Work as Journalists

Indicator 8.4 provides:

*“journalists must not be subjected to undue requirements by the state before they can work.”*

In Kosovo, journalists are not subjected to any requirements whatsoever by the state prior to engaging as journalists.

## 8.8 Confidentiality of Journalists’ Sources

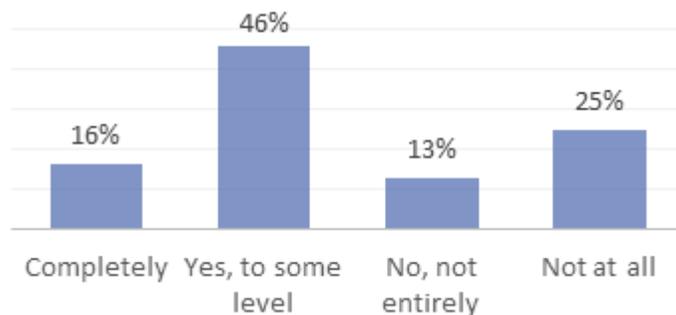
Indicator 8.8 provides:

*“the confidentiality of journalists’ sources of information must be respected”*

Prior to the amendments to the Criminal Code, protection of journalists’ sources was provided through this legal act. The proposed amendments did raise concerns for journalists, especially since an offence was to be included that was not sufficiently defined. In terms of protection of journalists’ sources, this was also provided for but later removed. This led to a new initiative that resulted in the 2013 Law on Protection of Journalists Sources. The current law mandates that “journalists cannot be obliged to reveal their sources without a court order, and protects journalists and media outlets from property searches.”<sup>75</sup>

Journalists’ perception of this law and the confidentiality of journalists’ sources being respected is that only 16 percent believe this to be the case and 46 percent having the perception that the current framework respects this principle to a certain degree. Meanwhile, 13 percent perceive that it does not entirely and 25 percent perceive it as not at all.

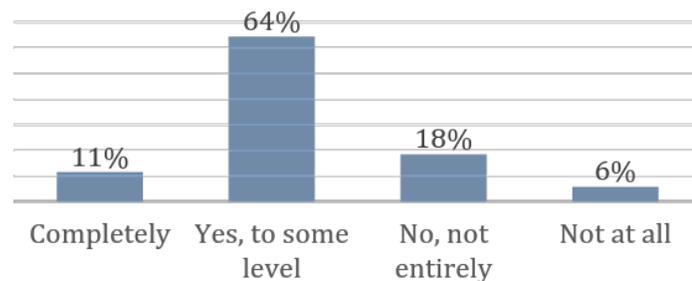
*Are journalists’ sources of information protected with the current legislation?*



<sup>75</sup> Ibid 23.

Moreover, according to journalists' perception, legal measures regarding the protection of journalists' sources are only applied at "some level" – as the majority (64 percent) of respondents stated so. Only a small percentage of respondents – 11 percent – state that such measures are "completely" executed whereas those who state they are "not executed entirely" or "not executed at all" stand at 6 percent and 18 percent respectively.

*Are the legal measures regarding the protection of 'journalists' sources' executed?*



During focus group discussions and in-depth interviews, sporadic cases of journalists being pressured to reveal their sources, without court order, were mentioned. However, by and large, they stated such measures are not taken regularly.

Some participants also pointed to the fact that a challenge remains the extent to which relevant institutions, such as the police and prosecution, are truly informed of what the law ascribed. For example, the following case was described:

“In 2014, an article was published relating to dismissals of employees within the Kosovo Intelligence Agency (KIA). The prosecution ordered for the editor to be interviewed and provide the source of the story, although this was resisted. In another case, a newspaper published an article relating to Aleksander Lumezi [State Prosecutor] and documented a number of financial transactions. This resulted in the police interviewing the journalist and editor and demanding that they reveal their sources. Whilst they attended the interview, they did not disclose their sources, but clearly there are problems with this in that the police request sources and that circumstances for disclosure are not fulfilled since threats to life are not made out.”<sup>76</sup>

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<sup>76</sup> Ibid 34.

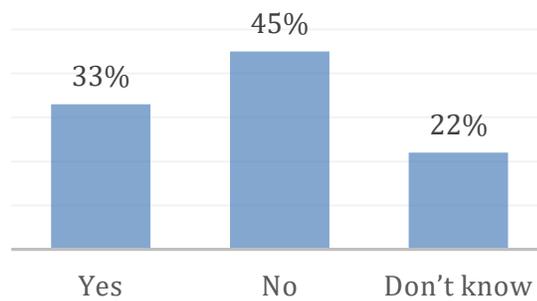
### 8.11 Journalists Working Conditions: Impartiality and Independence

Indicator 8.11 provides:

*“journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence”*

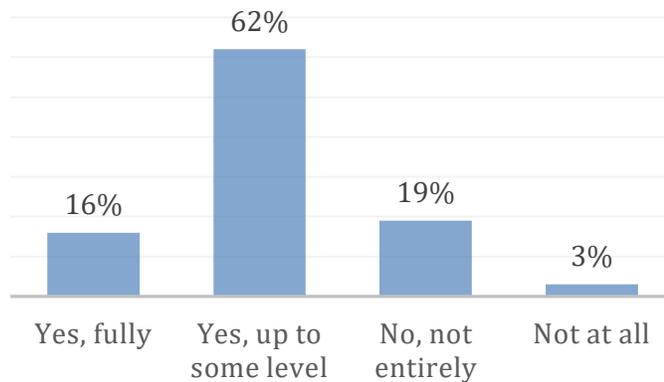
The majority of journalists surveyed believe that 45 percent of journalists do not have employment contracts, with 33 percent answering that they did and 22 percent did not know whether they did or not.

*According to you, do journalists have regular employment contracts?*



However, even for those with contracts, it is the perception of the respondents that only 16 percent enjoy full implementation and 62 percent are implemented to a certain level.

*In case you believe journalists have regular employment contracts, do you think these contracts are being implemented?*



At the same time, these employment contracts seem to provide average financial stability. When respondents were asked how much financial sustainability the employment contracts provide, on a scale from 1 to 10, with 1 being “not at all” and 10 being “completely,” the average value came at 5.77. This result shows that some sustainability is provided although not at satisfactory levels – slightly advantageous of those who see it as closer to “completely” satisfactory.

Journalists participating in the focus group discussions very much agreed that having adequate working contracts was important to ensure impartiality and independence.

However, even having a contract does not provide security, as one journalist stated, “In relation to your relationship with your employer, you are worthless. He will tell you write this for me, and the rest is not your business. Being in this condition, the journalist gets used to the wrong norms, and thus betrays the profession of journalism.” Another one said, “the only difference that the contract makes is the payment of the personal contributions - that is all. As for the working conditions and your working relationship with your employer, there is no difference whether you have a contract or not.”

At the end of 2014 and beginning of 2015, AJK conducted a reregistration of its members, according to which,

“nearly 50 percent reported not having contracts of employment. The majority of these are from the national level, almost 90 percent. As such the position in relation to contracts is extremely difficult. [...] Whilst the Association does not have information in relation to salaries, what is also concerning is journalists not being paid on time or experiencing extreme delays in obtaining salaries. [...] This happens with the majority of media since many of them are in financial crises and often they employ journalists for a fixed period, in a way they use young journalists and don’t pay them.”<sup>77</sup>

Therefore, even when contracts are place, implementation suffers; payments are not always transferred on time, and the majority of journalists, especially entrants to the field, are reluctant to take their cases to the courts. As one journalist put it:

“I have worked for five media outlets and only with two of them I had a regular contract. For other media outlets that I have worked for, the contracts are not in order, often there is no contract, journalists are mistreated, and most of what is written in a contract is not respected.” In one instance the interviewee said, “I was given a contract only two days before I was asked to leave my job.”<sup>78</sup>

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<sup>77</sup> Interview with Zekirija Shabani, Director of the Association of Journalists of Kosovo. August 2015.

<sup>78</sup> Ibid 41.

The fallout of this situation is that journalists' independence is circumscribed, and often leads to self-censorship. As one interviewee put it:

“a businessman or politician can easily buy information in the sense that she or he can orientate it to the way most convenient to him or her. This has meant that journalists don't report objectively because of their personal interests, they depend on their income to support their family and would think twice before writing something or doing investigative journalism.”<sup>79</sup>

### **8.13 Media Outlets, Media Ownership and Impartial Journalism**

Indicator 8.13 provides:

*“media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism.”*

Journalists' perceptions are that media does have a fair-share level of independence from owners. Results from the survey show that on a scale from 1 to 10, with 1 meaning “no independence at all” and 10 meaning “complete independence,” the average evaluation stands at 6.02. In short, this value means that respondents believe there is “higher than average” editorial independence levels from media owners.

Respondents who stated that there is barely any editorial independence from owners were then asked how they are censored. The most common answer among journalists was that there are a variety of business, individual, financial or political interests that affect media. According to them, there is an intertwined share of interest among people involved in politics and individuals who run businesses, which in turn asserts their perspective and pressure toward journalists on particular issues. Careful word-analysis processing reveals that the most common words used to answer this question were “politics,” “financial dependence,” and “interventions.”

At the same time however, when asked whether there is influence from media owners in journalists' professional work, on a scale from 1 to 10, with 1 being “not at all” and 10 being “completely,” the average evaluation came at 5.33. This shows that influence from owners is present in journalists' professional work, with particularity and sensitivity on subjects.

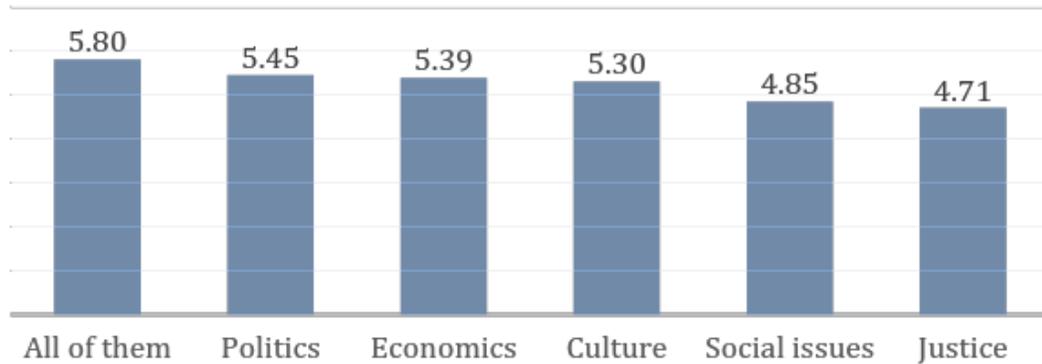
Specifically, respondents whose field of coverage is politics or a blend of all topics are more likely to declare there is more influence from media owners during their

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<sup>79</sup> Interview with Dr. Remzije Hoxha, University of Prishtina, Faculty of Philology, Department of journalism. August 2015.

professional activities. Respondents who cover the justice sector were less likely to declare that media owners influence their professional activities.

*Is there influence from media owners in journalists' work during their professional activities? On a scale from 1 to 10, where 1 = "not at all" and 10 = "completely". Cross tabulation based on major field of operation.*



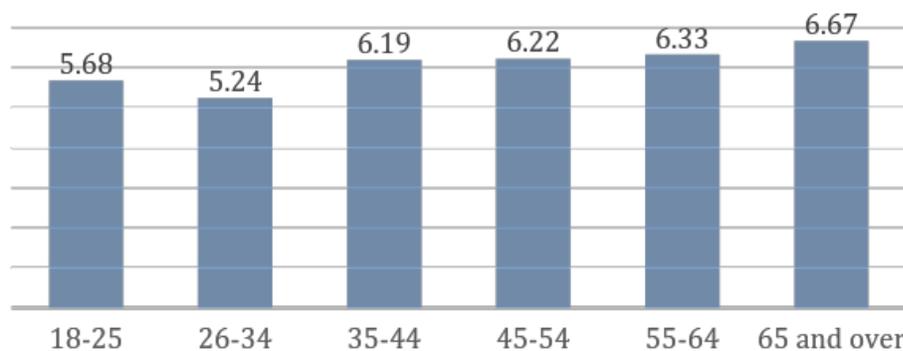
Similarly, the media editor has particular influence in journalists' work during their professional activities. The average evaluation of the same scalar system<sup>80</sup> stands at 5.71, implying that the level of influence is higher than the average. Below are the results for each influence evaluation average for "editorial independence from owners," "owner influence in journalists' work" and "media editor in journalists' work."

<sup>80</sup> Scale of 1 to 10, 1 meaning "not at all" and 10 meaning "completely."

	Editorial independence from owners	Owner influence in journalists' work	Media editor influence in journalists' work
Average evaluation from 1 to 10, where 1 = "not at all" and 10 = "completely"	6.02	5.33	5.71
Standard deviation (spread)	2.2	2.5	2.4

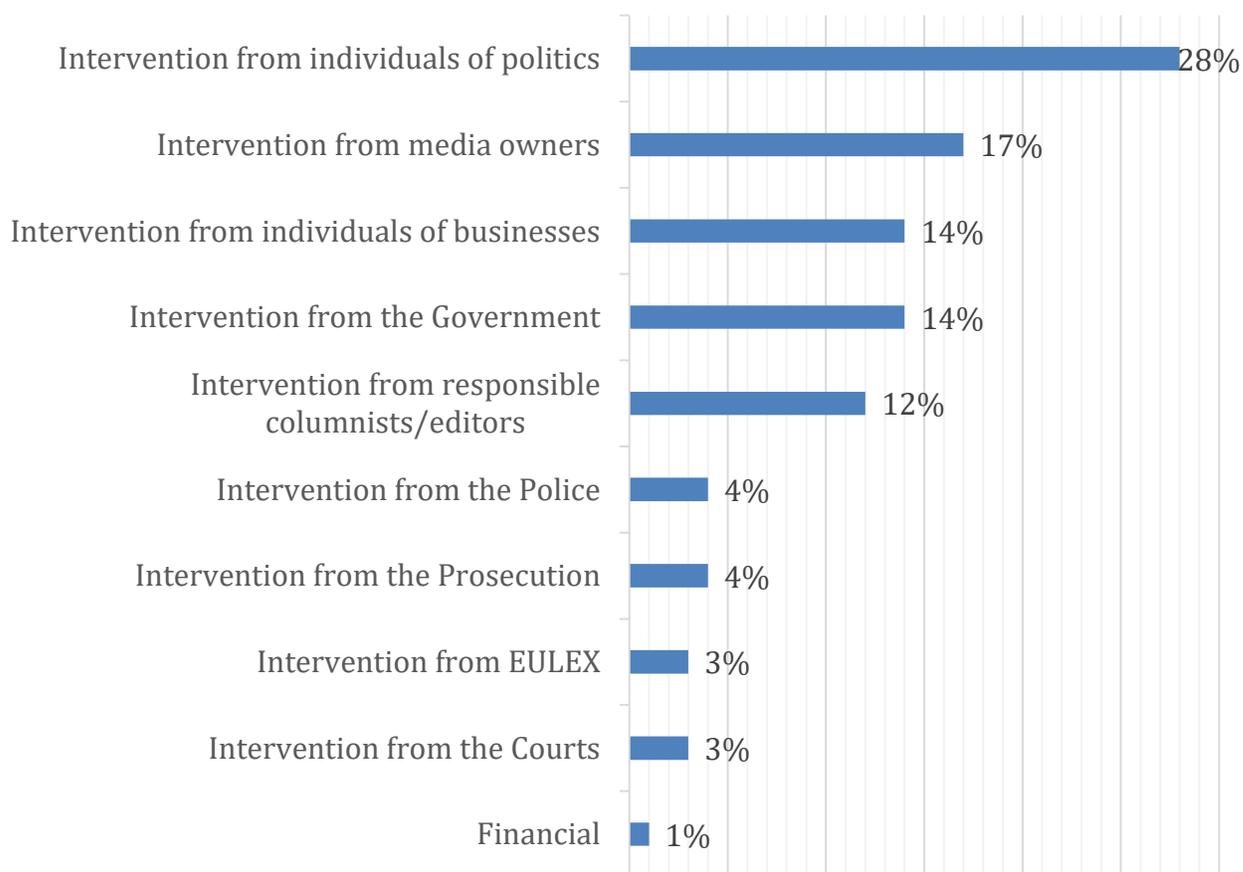
Meanwhile, older age groups are more likely to believe that there is influence on journalists' professional activities by media editors than younger age groups.

*Is there influence from media editor in journalists' work during their professional activities? On a scale from 1 to 10, where 1 = "not at all" and 10 = "completely." Cross tabulation based on age groups.*



According to survey results, the biggest obstacles in exercising the profession of journalism are "intervention from individuals of politics" (28 percent), "intervention from media owners" (17 percent), "intervention from individuals of businesses" (14 percent) and "intervention from the government" (14 percent). The least obstructive turned out to be "EULEX" and the "Courts" each with just over 3 percent of respondents' answers.

*From your perspective as a journalist, what are the biggest obstacles in exercising the profession of journalism?*



During focus groups discussions, instances of media ownerships interference in daily editorial work were further elaborated. Participating journalists in the focus groups discussions were also asked to outline what the reasons were for lack of independence. Some of the concerning issues included:

- Lack of sufficient and/or stable finance;
- Interference of politics; and
- Difficult environment for journalist to operate, such as prohibiting access to information.

In general, during focus groups and in-depth interviews, the inclination of journalists was to point toward limited independence from media owners. Journalists tended to state that politics and businesses are extremely intertwined and that choosing to working for a media outlet implies having to also align oneself with the editorial policies that are largely directed by media owners;<sup>81</sup> that rarely

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<sup>81</sup> Interview with Artan Mustafa, PhD candidate at the at the Department of Political Science, Wien University. August 2015.

can journalists investigate an issue that interferes with the interests of the media owners;<sup>82</sup> that entry-level journalists are more vulnerable and subject to such interference.<sup>83</sup>

In one case, media owners have even resorted to violence as highlighted by the experience of one journalist explained below.

“I had a very bad experience with my boss; I was physically attacked by him at work. This took place when I refused to sign a document, which would result in my dismissal and have a negative impact on my rights as an employee. At midday, I was invited to a meeting to sign this document and when I explained that I would not, the owner of the newspaper started to insult me and physically attack me. He also threatened me.”

The general opinion among journalists and in-depth interviewees is that the code of conduct for editorial independence does not find proper implementation in order to ensure that interference from media owners is deterred.

#### **8.14 Protecting Journalists: Physical Attacks and Threats**

Indicator 8.14 provides:

*“journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked.”*

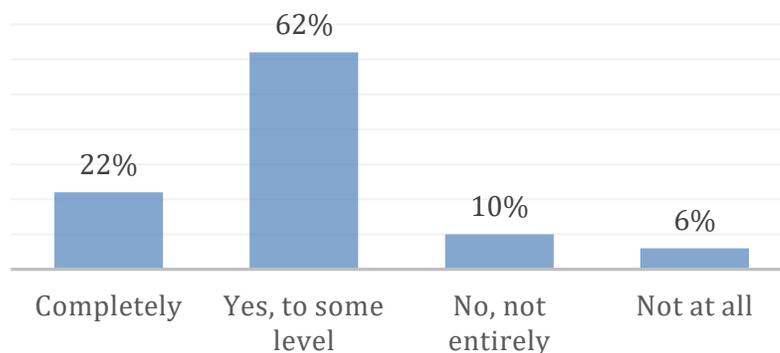
More than half of journalists surveyed reported that they feel threatened with violence to a certain level (more than 62%). However, this figure is reduced to 22% of journalists who said they feel “completely” threatened. Such results indicate that the professionals surveyed view their profession as a risky one.

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<sup>82</sup> Interview with Mentor Shala, General Director of RTK public broadcaster. August 2015.

<sup>83</sup> Ibid 39.

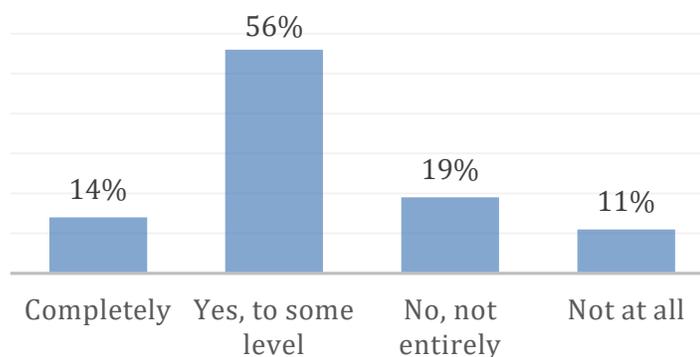
*According to you, are journalists threatened by physical violence during their daily work?*



During focus groups discussions, journalists noted that threats vary from physical to verbal ones, and the majority of threats tend to come from business enterprises. According to the AJK, in 2015 there were 27 cases of threats against a journalists reported to the organization.<sup>84</sup>

The journalists were also surveyed as to whether the police officers offer protection to journalists when most required. Only 14% said that they believed that the police offered protection and 56% said only to a certain level. However, 19% were not entirely convinced that sufficient protection would be afforded and 11% had the view that they do not offer sufficient protection at all.

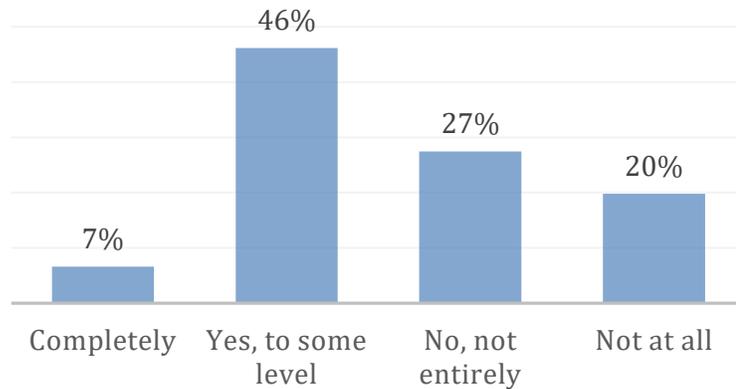
*Does the police offer protection to the journalists in cases when it is needed?*



<sup>84</sup> Association of Journalists of Kosovo. 2016. <http://www.dw.com/sq/gazetar%C3%ABt-n%C3%AB-kosov%C3%AB-p%C3%ABrballen-me-k%C3%ABrc%C3%ABnim-edhe-presione/a-19183560> Last accessed April 18, 2016.

These figures are also reflected in relation to the justice system. Only 7% of journalists surveyed reported that they believed the justice system would process their case adequately and 46% were of the view that this would be done to a certain extent. However, 27% thought that the justice system's response would not be entirely adequate and 20% believed that they would not be treated adequately.

*Do the justice bodies/institutions treat journalist threat cases adequately? (fairly and quickly)*



During focus group discussions and in-depth interviews, the overarching opinion was that the Kosovo Police does offer protection. However, they also noted that the response tends to be insufficient as threat cases are not always treated with priority or followed up for further investigation.

“They [the Kosovo Police] are not interested in offering protection. I can speak about my case. They issued a press release [guaranteeing] that they would protect me from threats [I received] from radical Islamic groups [...] But when I went to the [Police station], the level of protection [they] offered was laughable. They said ‘the level of danger you face officially is zero, but we can offer you to wear a bulletproof vest’. How can an 8kg of bulletproof material be carried around all day to media conferences? The way they offer protection realistically is laughable and offensive.”<sup>85</sup>

With regard to the effectiveness of the courts in dealing with cases of threats toward journalists, similar opinions are withheld – that such cases are not addresses in a timely manner. In this regard, two examples were provided. The first one referred to when an individual was arrested for making threats via Facebook towards the Prime Minister Isa Mustafa and the Government Spokesperson Arban Abrashi; in this case, the judiciary took steps to ensure that the indictment was accepted and the individual punished. But as one example was provided:

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<sup>85</sup> Ibid 41.

“Meanwhile, there are many other cases, for example, of journalists who have also been threatened or have faced problems in their jobs; such cases are rarely processed further after being reported to the police. This is one of the areas where there isn’t equal treatment, even though the law is the same. It cannot be only a matter of politics influencing the judiciary; rather it seems that the judiciary feels inferior opposite politics, in the sense that when there are cases related to political officials [they need] to treat them with priority.”<sup>86</sup>

Moreover, another argument made was that while the AJK issues yearly reports on the number of threats toward journalists, the nature of such remains largely undocumented. As such, not substantiating what a threat is makes it difficult, because it can be from something as stopping a journalist from recording during a protest, all the way to threats against one’s integrity or life. “It is important for threats to be investigated so that more information can come to light as to what kind of threats are we talking about.”<sup>87</sup>

### **8.19 Direct or Indirect Subsidies to Media: Fairness and Neutrality**

Indicator 8.19 provides:

*“if media receive direct or indirect subsidies, states must treat those media fairly and with neutrality.”*

Media do not receive direct or indirect subsidies from the state. Until 2011, central institutions provided for indirect subsidies. It was brought to a halt by a government decision. However, the government continues to be an important advertiser.

### **8.20 Public Service Broadcasters and Political Influence**

Indicator 8.20 provides:

*“public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations”*

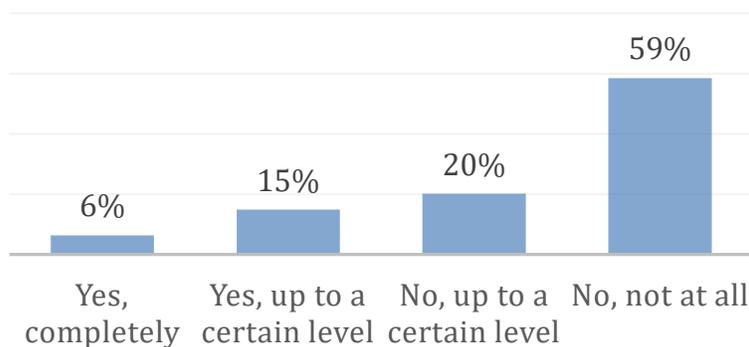
Journalists surveyed regarding editorial policies and daily operations of the state broadcaster RTK, 59% were of the view that it is not at all independent and 20% believed that it was not independent up to a certain level.

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<sup>86</sup> Ibid 30.

<sup>87</sup> Ibid 34.

*From the perspective of editorial policies and daily operations, is the public transmitter (RTK) independent and unbiased from political interventions (influence)?*



Political influence over the RTK is continuously confirmed through local media, civil society reports, as well as international media assessment reports. The 2015 European Commission progress report for Kosovo noted that the fact that RTK remains dependent on state financing undermines its editorial independence.<sup>88</sup>

The same position was reconfirmed through focus group discussions and in-depth interviews. In this regard, the main forms of interferences were described as ranging from: appointment of politically affiliated individuals in management and high editorial position, appointment of politically-affiliated members of board, as well as hiring based on nepotism. The 2015 protest by 12 newsroom editors against the appointment of new editors in chief on the alleged basis that two appointed names had exercised pressure and censorship is considered as one of the first time such criticism was articulated publically in an organized manner from within the broadcaster. (This case was further elaborated above, in Indicator “8.12 Journalist and their Freedom of Association”).

### **8.21 Public Broadcasters: Codes of Conduct for Journalists and Editors**

Indicator 8.21 provides:

*“public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides.”*

The public broadcaster RTK does have an in-house code of conduct for journalistic work and editorial independence. However, the general opinion among journalists and in-depth interviewees is that the code of conduct for editorial independence

<sup>88</sup> Ibid 24.

does not find proper implementation in order to ensure that interference from politics is deterred.

## **8.22 “Private Media”**

Indicator 8.22 provides:

*“private’ media should not be run or held by the state or state-controlled companies”*

There are no private media that are run or held by the state or state-controlled companies.

## **8.23 Members of Government and Professional Media Activities**

Indicator 8.23 provides:

*“members of government should not pursue professional media activities while in office”*

Officially, members of government do not pursue media-related activities while in office. However, during focus groups discussions with journalists, concerns were raised that there are cases when media correspondents also serve as spokespersons at municipal levels or own their own online news portals. In 2014, one such case was reported, when during IMC’s election coverage, the media manager of Top Kosova Radio to resign from the position, following inclusion in political activities.

## Conclusion

Freedom of expression, media and information remain fundamental rights for the development of Kosovar society. While some progress has been made over the years, overall challenges remain with regard to freedom of expression and information, the legislative and regulatory framework, and independence, security and transparency. In general, Kosovo offers a sufficient legal framework to ensure freedom of expression, information and media. Also, there is freedom to work as journalists, there is no discrimination prohibiting foreign journalists from conducting their work and media outlets are free to disseminate content in the language(s) of choice. However, within each section of this report, a handful of issues remain and should be addressed.

The first part, “Freedom of Expression and Information,” included a range of issues, such as an overview of the existing legislation, its enforceability, and potential restrictions; the extent to which media uphold their journalistic principles of fairness and objectivity when covering elections; the extent to which media have equal access to reporting on matters of public interest; and the extent to which government, parliament and the courts are open in a fair and equal way to the media.

Within this section, several conclusions can be drawn. While a comprehensive and coherent legislative framework is in place, there is no collation of such legislation. An issue of concern that repeatedly emerged was the weak implementation of the Law on Access to Public Documents, which journalists identified as hindering their access to information; this was particularly reported by smaller media and by those working at the local level.

In this regard, one of the greatest concerns cited by the journalists was the manner in which institutions handle requests. On one hand, they cited the fact that often institutions and agencies tend to handle requests based on internal regulations that are not harmonized with the legislation in force. On the other hand, establishing contact with the relevant official tasked to handle requests was often difficult. Moreover, journalists noted that requests are generally delayed, or when approved tend to be limited in terms of the information provided. As such, journalists emphasized these as continuous barriers to being able to conduct their investigations and/or reporting on time. While the law foresees that information can be restricted or refused due to privacy, trade secrets or information classified on the basis of security, no breakdown of when and how these exceptions can be applied exists. Such guidelines would provide for greater transparency and consistency in application of the law, and would help to prevent information being withheld based on the arbitrary discretion of institutions or individuals.

Public institutions and various agencies are not particularly open toward the media. Out of many institutions listed, only the Kosovo Police and municipalities were

perceived as being somewhat open toward the media, whereas the government and judiciary fall below the average. The government is also perceived as the least trusted institution with regard to equal treatment and fairness to all media.

Intervention from individuals in politics remains the greatest barrier toward implementation of freedom of expression and information. This was reported by journalists across media sectors.

The Kosovo Assembly has a crucial role in monitoring how the various pieces of legislation are being implemented and in scrutinizing the government's actions. With regard to media, it cannot be said that this has been a priority and so engaging with this issue, especially at committee level, is necessary.

Within the "Legislative and Regulatory Framework," issues examined ranged from journalists' rights to freedom of association and professional codes of conduct, to the effectiveness of the regulatory framework, including licensing, distribution channels and media ownership.

While journalists are not restricted from forming associations and unions, by and large, associations and unions have so far fallen short of advocating for and protecting journalists' working rights, or in serving as platforms for collective bargaining.

With regard to media ownership, newspapers offer greater transparency by publishing information about ownership and editorial staff. Meanwhile, television and online media remain heavily problematic. With regard to television broadcasters, the Independent Media Commission (IMC) does not cover media ownership or concentration rules; although there have been some attempts to formalize the latter, they have yielded no results. As such, this issue was continuously repeated as an issue of concern. With the explosion of online media outlets, the issue of ownership has only augmented. The majority of online media lack any information on professional staff or ownership.

The IMC, as an audiovisual regulatory institution, and the Press Council of Kosovo (PCK), as a self-regulatory mechanism, are generally perceived as functioning effectively and in an unbiased manner. However, the IMC's effectiveness was repeatedly called into question due to politically appointed members of the board. The Assembly's involvement in appointing board members and/or their political affiliation, needs addressing. The Assembly has a duty to fulfil and political priorities should not supersede this. During any nomination process to ensure transparency, there should be enhanced scrutiny of the candidates, including their political views and party affiliation, and journalists/media should be provided with unfettered access as the process is being conducted.

Meanwhile, the PCK is perceived as being somewhat effective in handling complaints made against the press. However, it should consider ways in which it can

work with other organizations and institutions, for example with the Kosovo Judicial Institute, in relation to sharing good practice with judges who deal with cases that may have initially gone before the PCK.

In general, printed dailies and online portals that are PCK members are supposed to abide by its ascribed code of ethics; audio-visual media are supposed to abide by regulations and codes of conduct prescribed by the IMC. Few media outlets have their own inner codes of conduct. Even where they do exist, they rarely serve as the basis for debate between editors and journalists. The latter is particularly so with regard to online media, which rarely adhere to ethical standards in their coverage and reporting.

Within the “Independence, Security, and Transparency” section, a positive assessment is that Kosovo’s legal framework does not provide specific provisions whereby state officials are protected from criticism, nor does it provide for the imprisonment of journalists and/or the closure of media outlets engaged in critical comment. However, although the legislation treats all Kosovar citizens equally, in practice there are cases of double standards for state officials, who tend to receive more privileged treatment.

Similarly, the Law on Protection of Journalists’ Sources provides sufficient guarantees, and in general journalists perceive the law as providing sufficient protection and application. However, cases of journalists being pressured to reveal their sources, without court orders, persist.

While it must be recognized that journalists in Kosovo do not receive death threats on a daily basis, it is not the case that they are not threatened or intimidated as they are trying to operate in what remains a challenging environment. In this regard, the response of institutions, such as the police and courts, leaves room for improvement.

Political influence over the RTK is continuously confirmed through local media and civil society reports, as well as by international media assessment reports. Similar opinions have been echoed in this report. A string of protests commenced in 2014 and continued in 2015, as editors and journalists from within the broadcaster accused management of political bias, corruption and nepotism. While this was seen as some of the first mobilized and vocal criticism from within the public broadcaster, the political influences have largely remained intact.

Lastly, the conditions within media outlets themselves also restrict the profession of journalism. Inadequate working contracts, which lack sufficient social protection, compromise the impartiality and independence of journalists. Interference from media owners in editorial policies persists, and inner codes of conduct should clearly state editorial policies so as to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism.