

FIRST SHADOW REPORT FOR BOSNIA AND HERZEGOVINA

Done on the basis of

INDICATORS FOR ASSESSMENT OF MEDIA FREEDOMS IN THE MEMBER COUNTRIES OF THE COUNCIL OF EUROPE

	IDENTIFIED PROBLEMS OR LEGAL OBSTACLE FOR THE FREEDOM OF EXPRESSION	PROPOSALS FOR CHANGE	LEGAL ACT / RESPECTIVE PROFESSIONAL RULE
1	It is not a rare case that public and private media in Bosnia and Herzegovina, following the interests of their owners, politicians or parties currently in power, report one-sidedly and in a politically biased way, without hiding the political option they favour.	It should be prohibited to private media should be prohibited, by special legal provisions and rulebooks, particularly at the time of political campaigns, to do politically exclusive reporting and should be bound to report professionally providing equal treatment of all political entities.	Amendments to the existing laws, a special rulebook, or amendments to the legislation that relates to election process.
2	Working conditions of the majority of journalists are poor, many of them formally work only half time, their wages are low, and social contributions are not paid for them. This research has shown that there is no systemic analysis of the real situation and shortcomings in the domain of labour rights and working conditions for journalists and media employees. These problems occur due to the division of competences between entity and cantonal inspections, so that trade unions and workers often do not know whom to turn to. Tax inspections control only the payment of contributions and the cases of "moonlighting", while labour inspections, which are supposed to protect the rights of employees, are mostly ineffective.	Systemic and regular surveys and analyses of the working conditions for journalists and of the degree of respect of labour rights of media employees should be regulated by law. There should be legal provisions to expand the competences, and to strengthen the role of labour inspections; inspectors should be granted more competences so that they can, if they undoubtedly find that a labour contract is detrimental for an employee, issue an act, i.e. decision annulling such a contract. Amendments to legal regulations in this segment must provide the possibility for workers, who do not have contracts, to seek protection from labour inspection, i.e. that inspection can collect evidence aimed at realising the labour-related rights, which is currently the exclusive competence of courts.	Labour Code, and laws or rulebooks regulating the work of inspections. It is hard to harmonise the work of inspections, since they are in the competence of cantons; it is almost impossible to ask for their coordination and mutual exchange of information. There are cases where individuals are employed in one canton, while they are registered in another, which causes chaos and numerous problems in the implementation of regulations.
3	Journalists are not sufficiently protected institutionally from verbal threats that are often made public figures and politicians. At the same time, there is a problem of providing evidence that a journalist was a victim of physical attack.	The Criminal Code provisions need to be improved so that journalists and their profession in general must be protected, and that every attempt to obstruct their work, threats, denial of information, and particularly physical violence, is sanctioned drastically. Judges need to be educated about the cases of attacks on journalists that differ from fights of other kind, or physical clashes, so that they take their decisions in accordance with it.	Amendments to the Criminal Code of BiH.
4	There are no relevant and updated statistical data on the number of court cases relating defamation that are held against the media.	Electronic data processing on trials for defamation needs to be amended by introducing new software, or upgrading the existing one. Court clerks tasked with statistics need to undergo training, or at least get a clear instruction on the method of keeping this statistics.	N / a
5	There are no sanctions for denial of information in the legal acts at the entity and Brčko District level.	The existing entity and Brčko District Laws on Free Access to Information need to be amended following the model of the Law on Free Access to Information of Bosnia and Herzegovina.	The Law on Free Access to Information of the Federation of BiH The Law on Free Access to Information of Republika Srpska The Law on Free Access to Information of Brčko District Information
6	There is a problem of implementation of legal provisions on defamation, when media are concerned.	Laws or special acts and rulebooks need to define clearly a method that would enable an efficient implementation of the Laws on Protection against Defamation. This implies, inter alia, education of judges and provision of legal aid to media outlets.	Law on Protection against Defamation of the Federation of BiH Law on Protection against Defamation of Republika Srpska Law on Protection against Defamation of Brčko District Laws on Litigation Procedure of Republika Srpska and the Federation of BiH Laws of Executive Procedure of FBiH and RS
7	One of the major dilemmas in the application of defamation legislation, when media are concerned, is whether the person who gives an interview or a statement to the media is to be considered the author of that statement, and whether he/she can be held responsible for it, in addition to the journalist, the editor-in-chief and other persons who have controlled the content of such an expression in some other fashion?	It is necessary to define, clearly and precisely, who bears the responsibility for defamation in media reporting. In this respect, we need to follow the model of legislation and jurisprudence of other European countries, where it is deemed that an act of defamation is "primarily the responsibility of the person who gives a statement, and only after him/her, persons who hold responsible positions in the media that published the statement". In case of responsibility of journalists, there needs to be a clear and precise definition of conditions, which need to be harmonized at the level of entities of Bosnia and Herzegovina.	Amendments to the existing entity Laws on the Protection against Defamation.
8	An almost absolute absence of programmes in the languages of national minorities in the broadcasts of public services. Absence of will, desire, capacities, and finances for the production of such programmes, as well as of mechanisms that would sanction public media for their failure to respect this obligation.	There is a legal obligation that is clearly defined, but there are no sanctions for the violation of law.	Laws on Public Service Law on the Protection of Members of National Minorities
9	Internet journalism and the operation of web portals and other online media in Bosnia and Herzegovina, are not regulated.	Following the example of printed media, self-regulation needs to be introduced in online media as well.	The Press Council in Bosnia and Herzegovina works on the introduction of self-regulation in online media, as well as on raising awareness on the need to have professional reporting, which is a process that requires time and the cooperation of editors of portals. The Press Council has completed the amending of the Press Code of BiH in relation to online media, while currently there is the process of adoption of a separate set of Recommendations related to non-journalistic content in online media, e.g. visitors' comments that essentially define the profile of online media and have a great influence on public.
10	Allocation of funds from public budgets for the media is not transparent and is regulated according to special criteria. It is not subject to public competition to which public media could apply.	We need to organize the possibility to submit application with projects that would be decided upon by the Commission for Allocation of Funds, comprising persons who are not linked to political parties. Public funds could be allocated, e.g. to the media that participate in competition to produce series of stories on a specific theme in the sector in which the Government has been active and has achieved results, but in which it fails to make its own assessment of those results; or, for the research of the impact of major infrastructural projects; or for objective promotion of projects; but the criteria for allocation of these funds must be clear and the work of the Commission for Allocation of Funds should be transparent. The Government should in no way influence the choice of information that would be published.	A rulebook regulating the allocation of public funds for the media and the modus operandi of the Commission for Allocation of Funds needs to be defined and adopted.
11	In Bosnia and Herzegovina, there are no special and harmonised criteria forms the employment of journalists; there is no system of licencing, as it is the practice in other professions, e.g. layers, who have to pass a bar exam, or public administration officers who need to pass a professional exam, or medical profession that requires specialisation and professional exam.	Professional journalistic association, together with specialized regulatory agencies and a team of experts need to harmonise the principles, the content and the method of professional exam for all those who wish to join the journalistic profession.	This needs to be regulated by a rulebook or a code that would be agreed upon by professional associations, in cooperation with institutions that educate future journalists.
12	The concentration of ownership in the media in Bosnia and Herzegovina is not transparent.	With the adoption of a special Law on Prohibited Concentration of Ownership in the Media, diversity and balance of information would be secured, inter alia. It could not happen if that is provided for, that, within a large media corporation, because it owns both printed and electronic media, information are selective and "editorially doctored" in one single editorial headquarters, since all information in that case would be identical, irrespective of whether they are published in a newspaper, on TV, or on the radio. This is something that currently happens in BiH.	The rule on media concentration and ownership over the electronic and printed media, adopted by the Regulatory Communication Agency of Bosnia and Herzegovina (RCA), was put into force in April 2004 and was valid for 18 months, now needs to be "revived".
13	Institutions at different levels of government in Bosnia and Herzegovina do not conduct analyses or assessments of the state of media freedoms in the country.	Parliaments need to conduct periodic reporting on media freedoms, since they have administrative resources enabling them to produce concrete data to be analysed by parliamentarians. What is good, should be adopted, what is bad, should be corrected, deficits in media freedoms, if they exists, should be rectified and improved in the work process. It is a two-way process that needs to be carried out, without any dilemmas, at different levels of government, both at the state level and in the two entities. This would not mean that there could be any interference of the government in the operation of the media, but a democratic method of analysis of the state of media freedoms in order to get an insight into the omissions and shortcomings for the purpose of their elimination. It would secure more favourable conditions for the development of free journalism and media freedoms.	We need to incorporate an obligation for the Parliament to conduct periodic analyses of media freedoms in BiH into some of the existing laws, or adopt a special Parliament Rulebook relating this matter. The Parliament and the Government of BiH need to secure conditions and circumstances in the state for the development of free and independent media.

REQUESTS FOR CHANGES

SHORT-TERM

MID-TERM

LONG-TERM

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