

UNDER PRESSURE

RESEARCH REPORT ON THE STATE OF MEDIA FREEDOM IN BOSNIA AND HERZEGOVINA

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Content

1. Introduction.....	3
2. Analytical Framework.....	4
3. Methodological Framework.....	7
4. Legal and Institutional Framework of Freedom of Speech and Freedom of the Media in B&H.....	8
5. Pressures and Assaults on Journalists and the Media in Bosnia and Herzegovina.....	13
6. Censorship and self-censorship.....	21
7. Availability of Public Information.....	24
8. Labor Rights of Journalists.....	27
9. Solidarity among Journalists in B&H.....	29
10. Credibility and Quality of Journalism.....	32
11. Concluding Remarks.....	34
12. Recommendations.....	37
Bibliography.....	41

1. Introduction

Several available reports dealing with the freedom of the media in Bosnia and Herzegovina¹ show that it has considerably improved. At certain points in time the freedom of the media was considered to be highly respected. However, recent developments indicate that this level of respect has decreased over the past several years.² Different pressures on media,³ open conflicts, and, in extreme situations, physical assaults on journalists, indicate that the freedom of the media in B&H is frequently violated.

The main purpose of this research report is to examine the nature of these pressures and assaults and the possible effects they might have on the quality and credibility of journalism. Moreover, we shall analyze different factors that limit freedom of speech and the media, and thus affect the quality and credibility of journalism. This research on the current situation of the freedom of the media, and the possible sources of its violation, will help us identify which possible prevention measures can be taken by relevant organizations and individuals. This knowledge will foster work towards the goal of ensuring freedom of the media, as well as improving the quality of journalism in B&H.

First, we will introduce the analytical framework for this report's basic research concepts and problems, including the general principle of freedom of expression and the media. After that we shall deal with legislation regarding media and possible problems with its implementation. We shall focus on different threats, assaults and pressures on journalists and their protection. We shall also introduce several concepts important for discussing these issues, including libel, access to public information, labor rights, their solidarity, and the issue of quality and credibility of journalism.

All the issues mentioned above are connected, since freedom of the media can be violated by withholding information, exposing journalists to social and political pressure when they publish certain information, lack of active support for journalists, and the marginalization of B&H journalists, which makes them vulnerable to potential pressures.

Finally, respect for the freedom of the media also implies responsibility on the part of journalists. Therefore, we shall examine the issue of the quality and credibility of journalism and the reasons behind violations of professional standards by journalists themselves.

1 Press Freedom Index, Reporters without borders. Information available on: <http://www.rsf.org/en-classement298-2002.html>; Irex MSI; Haraszti 2007; the US Ministry of Foreign Affairs report , 2008; EC BiH 2009 Progress report, Jusić, 2004.

2 One recent example was the police incursion into the premises of BN Television. This action has been interpreted as a form of pressure (more information on the website of Radio Sarajevo: <http://www.radiosarajevo.ba/content/view/18642/60/>). Another recent case was BH Telecom's announcement of the termination of its contract with Federal Television broadcasting house (FTV) on paying the RTV fee included in telephone bills. While some have explained this as a business move on the part of BH Telecom, others have interpreted it to be political pressure on the Federal Television broadcasting house (see Hadžiarapović, A, article "BH Telecom wants to free itself from the RTV fee", Dnevni Avaz, January 2., 2010).

3 See more on the website of BH journalists: <http://bhnovinari.ba/?ID=179>

2. Analytical Framework

At the beginning we shall deal with how the concept of freedom of speech is understood and how freedom of the media is integrated into it. Freedom of speech is one of the fundamental human rights; its significance comes from citizens' right to access information important for them. Freedom of expression is a concept that integrates the right to communicate ideas and express thoughts.⁴ Accordingly, the freedom of the media is a very important aspect of freedom of speech, because it allows for both the public expression of a pluralism of ideas and comment on information of public interest. Freedom of the media is guaranteed in liberal democracies; however, several speech categories are excluded from this principle, above all hate speech.⁵ Media is also considered responsible (when reporting on criminal or civil procedures) for publishing false information or in cases of libel.

When we talk about the freedom of the media, we are actually talking about several key elements:

- structural conditions (especially the legal freedom to transmit/publish);⁶
- operating conditions (real independence from economic and political pressures, and the relative autonomy of journalists and other "communicators" within media organizations)
- opportunities for "voices" in society to gain access to channels;
- and the benefits of quality of provisions for 'receivers'- according to the criteria of relevance, diversity, reliability, interest, originality and personal satisfaction (McQuail, 2000, p 167)

Structural Conditions

Structural conditions or legal and regulatory guarantees for media freedom in Bosnia and Herzegovina are rather well defined and are in accordance with the highest international standards (IREX, 2009; Dzihana, 2006). Based on this assessment, we can conclude that legally, the primary structural requirement for media freedom, which implies the absence of censorship, instrumentalization of a permission granting system, and other potential structural measures of control by the government, have been satisfied.

Taking into account these formal prerequisites, we shall discuss the regulatory frame for freedom of expression and media freedom, and examine the progress of its implementation. We are interested in finding out the positive and negative implications of these standards on the work of journalists. Furthermore, it needs to be discussed how the issue of libel is treated and how the protection of media freedom and its limitation are balanced in cases of libel.

4 See Youm, Kyu. 2007

5 See Attias, B. 2004

6 We can include legal guarantees of access to information of public significance

Another prerequisite for media freedom related to the ‘freedom of publishing’ concerns acquiring necessary information from relevant sources (McQuail, 167). Therefore we shall investigate to what degree the legal framework allows for free information access. According to the contemporary regulation of free access to information, information owned by public institutions is treated as an important resource available to all citizens.⁷

Operative Conditions

It needs to be kept in mind that the legal and regulatory frame of the freedom of the media is based on the assumption that it is necessary to ensure ‘negative’ freedom to media, or to ensure that media are free from interventions by the government. The focus of legal regulations is not regulation of the media market. The media market imposes conditions that influence production greatly and can obstruct journalists in achieving their social responsibility (Thorgeirsdottir, 2004, p 385).

In examining the operative conditions for freedom of the media, we shall consider the extent to which media are really independent of political and economic influence. Media in B&H are financially dependent on the government or on advertising contracts. The question raised is: to what degree does this dependence influence media reporting, perspectives and attitudes expressed in media content? Does it negatively influence media freedom? Furthermore, we are interested in finding out how the professional community and government institutions react to assaults on journalists, whether proper measures for sanctioning these sorts of actions exist, and whether these institutions help and protect journalists exposed to assaults and different pressures.

Operative conditions for the freedom of the media should include ‘the relative autonomy of journalists’ within media houses, including the absence of both managerial censorship in media houses and the self-censorship of journalists in order to adjust content that is published to satisfy the political and economic interests of those in power. However difficult it is to detect it, we are going to try to determine whether these practices exist in B&H media and whether it is a considerable obstacle for achieving freedom of the media. Another prerequisite for journalists’ autonomy within media houses regards their legal rights. We shall also discuss that issue, as well as the socioeconomic status of journalists.

The operative conditions for freedom of the media should also include solidarity within civil society, especially at the professional community level and in cases of media freedom violation. Solidarity should ensure adequate help and support to journalists in cases of obstruction of their work or violation of the freedom of the media. There are several levels at which solidarity can be of great help: announcements and reactions in cases of pressure or assaults on journalists, advocating for the legal rights of journalists, or covering controversial issues simultaneously in order to avoid exposing only a few journalists to potential pressure.

Media Approach

Even though this aspect of media freedom is not the main focus of our research, it is necessary to mention that the formal obstacles in B&H that would prevent media from expressing different voices and social perspectives do not exist. The electronic media codes referring to program content define program standards, which, especially in the case of

7 See Bishop, Cheryl. 2009

public radio and television broadcasters, include representing different points of view in media content.⁸ The Press Code, relevant for the print media, defines the standards of fair and balanced reporting, as well as presents different points of view on controversial issues. Jusić suggests that there is a lack of media space for different political, social and cultural groups, except during election campaigns. Women and other minority groups (religious or ethnic) are particularly marginalized (Jusić, 2006, p 279.-281).

Quality of Media Program Content

The last aspect of freedom of the media refers to the quality of program content. Even though we shall not deal with program content directly, we shall discuss the issue of credibility and the quality of media in B&H when it comes to the level of responsibility journalists have when invoking freedom of the media. We shall deal with the issue of credibility and responsibility of journalists when their role and their work are threatened by different pressures. According to McQuail, the functions of mass media include:

- maintaining a constant surveillance of events, ideas and persons active in public life, leading both to a flow of information to the public and exposing violations of moral or social order;
- providing an independent and radical critique of the society and its institutions
- encouraging and providing the means for access, expression and participation by as many different actors and voices as is necessary or appropriate;
- contributing to shared consciousness and identity and real coherence of the community as a whole as well as its component groups (McQuail, 2000, p 161).

We cannot expect different media to perform these functions identically, yet they nevertheless represent the basic ideas about how media should contribute to democratic society, and create an analytical framework for assessing the role and work of media in society.

3. Methodological Framework

Our research is based on a qualitative methodological approach that included conducting thorough interviews with representatives of key groups, such as employees in media houses, representatives of regulatory bodies and institutions, agencies for the implementation of laws, non-governmental organizations, politicians and members of the academic community. Forty-three interviews were conducted, including two with the executives of media houses, two with program executives, and 15 with editors and journalists. Three of our subjects were interviewed as members of a different category,⁹ being editors and journalists at the same time (see Table 1). Other interviews were conducted with a representative of CRA, a representative of Press Council, and a representative of the Ombudsman for media FBiH, with four members of different non-governmental organizations, one member of the academic community, three public sector employees, a marketing agency executive, a lawyer (a participant in court proceedings concerning media) and a representative of a journalist association.

The research sample was structured in order to include as much territory and ethno-religious distribution in B&H as possible. It includes persons from different media organizations (private and public media houses, radio and TV broadcasters, press media, web portals).

The results of our primary research were supplemented by data from secondary sources, including available reports and analyses of freedom of the media and current trends in this area. Later on, an additional six informal interviews were conducted with a representative of the association of journalists, a member of the inspectorate, a representative from the legislature, a member of the Press Council, as well as two interviews with journalists and editors. We have also used information we received in the form of written answers to the questions we had sent to different institutions and organizations, including media houses, investigative bodies, courts of law, public organizations and the Press Council.

Table 1. Subjects divided according to the sectors they work in and entity distribution

	B&H	FB&H	Republika Srpska	Total
Representatives from regulatory bodies	2*	1	0	3
Media executives	0	1	1	2
Office and program executives	0	1	2	3
Editors	0	5	4	9
Journalists	0	4	2	6
Non-governmental organizations	0	1	3**	4
Members of academic community	0	0	1	1
Politicians and public figures	2	1	0	3
Journalist association representatives	0	1*	0	1
Marketing agency representatives	0	1	0	1
Lawyers	0	1	0	1
TOTAL	4	17	13	34

* Two of the subjects in these categories are journalists

** One subject in this category is the editor at a radio station

9 First as the representative of regulatory body, second as a representative from a journalists' association, and third as the representative of a non-governmental organization.

4. Legal and Institutional Framework of Freedom of Speech and Freedom of the Media in B&H

Freedom of speech in Bosnia and Herzegovina is defined in accordance with the Constitution, current international covenants and specific legal regulations. National and entity constitutional regulations provide for freedom of speech (Article II/3h of the Constitution of B&H, Article II/A2 of the Constitution FB&H and Article 32 and 34 of the Constitution of RS). Article II/3h of the Constitution of B&H regarding freedom of expression states: 'All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and freedoms listed in act 2 of this Article', which includes freedom of expression.¹⁰

8

Freedom of speech is guaranteed by international laws, such as the International covenant on civil and political rights¹¹ and the European Convention for the Protection of Human Rights and Fundamental Freedoms¹² (hereon referred to as the European Convention). It is also given in the national and entity constitutions of B&H, and is directly applicable in B&H.¹³ It is stated in Article II/2 of the Constitution of B&H that regulations from the European Convention are directly applicable in B&H. Article III/3b states that general principles of international law are integrated into the constitutional order of B&H.¹⁴

The third group of normatives is a group of specific laws and regulations on freedom of the media. Principles of freedom of expression and the protection of differences of opinion, as well as development of a professional and sustainable radio and television broadcasting sector free of political control and manipulation, are all defined in the Law on Communications (Article 4).¹⁵ Article 4 of the Law on the Public RTV system of B&H¹⁶ guarantees editorial independence and the institutional autonomy of public broadcasting houses (BHRT, FTV and RTRS). Their freedom is also guaranteed by the mode of appointing members to the board of directors and the position of executive manager.¹⁷ The RTV sector

10 In a similar manner, Article II/a2 of the Constitution of the Federation of B&H states: 'The Federation will ensure the highest level of internationally recognized rights and freedoms... (1) all persons within the territory of the Federation shall enjoy the right to: 1) fundamental freedoms: freedom of speech and the media'; the Constitution of the Republika Srpska, Article 32 defines freedom of the media more precisely: 'All citizens have the right to publicly express their opinions about the work of government institutions and other bodies and organizations, make initiatives, petitions and suggestions, and receive answers...'

11 The International Covenant on Civil and Political Rights (Article 19), text available on: <http://www.bayefsky.com/treaties/ccpr.php>

12 See Human Rights in Bosnia nad Herzegovina, p 31-41

13 The European Convention on Human Rights, (1950), Article 10, available on: <http://www.hri.org/docs/ECHR50.html>.

14 In the context of protecting freedom of expression the Universal Declaration on Human Rights (1948), or more precisely, Article 19, is also relevant, as a part of Customary Law. Text available at: <http://www.un.org/en/documents/udhr/index.shtml#a19>

15 Official Gazette BiH No 31/03 i 75/06

16 Official Gazette BiH No. 78/05 i 35/09

17 Editorial independence is guaranteed by the financial independence of a media house; regular production cannot be subsidized. Financing is based on RTV fees, advertising and sponsorship. The government budget can be directed for constructing transmission network, program projects of national importance, broadcast by satellite, archive preservation. See Jusić, 2005, p 261 - 263

is regulated by the Communication Regulatory Agency (hereon referred to as CRA) whose independence is guaranteed by its financial independence, and its mode of appointing executive managers and members of the CRA.¹⁸ The CRA has the authority and means to assign penalties in cases of violation of the regulations regarding electronic media.

The ethical code and the rules of the CRA define programming principles. The Broadcasting code of practice for radio and television programs¹⁹ defines the basic principles of programming, the conditions necessary to ensure the rights of freedom of expression, and general²⁰ and specific program standards.²¹

The abovementioned laws and regulations ensure the structural conditions for freedom of the media and the necessary prerequisites for electronic media independence. However, it is difficult not to doubt the level of freedom of the media in B&H at a time when the financial self-sustainability of public broadcasting houses is questionable for the following reasons: RTV fee problems and low advertising profit, 15 public TV broadcasting houses and 65 radio stations that are financially dependent on the budgets of municipal and cantonal institutions,²² private broadcasting houses that are financially dependent on their key advertisers, and certain pressures to which the CRA (as we shall see later on) is subject.

Press media are free of institutional influence on editorial policy and are based on self-regulatory principles. Professional standards were adopted through the Press Code and implemented by a non-governmental organization - the Press Council.²³ The Press Council does not have executive powers; however, it can in certain cases suggest the press media allow the right for responses and to publish a correction or apology.

The research results show that, at a normative level, protection of media freedom does exist. The legal framework for protecting freedom of expression and the media has been positively evaluated as progressive and in accordance with the highest international standards (Haraszti, 2007), which was confirmed by all the persons interviewed during this research. However, in reality, problems in implementing legal regulations are present. The research showed that all of the persons mentioned above believed they were familiar with the regulations necessary for their work. However, knowing constitutional regulations, international conventions and legal regulations on protecting freedom of speech is not considered to be of great importance in the work of journalists. On the other hand, several subjects mentioned lack of information about legal regulations and their disuse by journalists, which results in a decrease in their positive effects. The results also suggest that their workloads prevent journalists from referring to these regulations more often. Journalists and editors refer to the regulations only when necessary, mostly in cases of investigative stories; one even said that he never refers to legal regulations, and four of the subjects said that they

18 Article 36 of the Law on Communication defines CRA independence in decision making; Article 9 of the Law on the Financing of Institutions in B&H states that the Committee of the Ministry which defines the annual budget for CRA, cannot reduce it by more than 20%. See Jusić. 2006. p 260-261

19 The text of the Code is available on the website of RAK: <http://www.rak.ba/bs/legal/rules-codes/broadcast/codes/default.aspx?cid=4796>.

20 Such as decency, impartiality, ban of hate speech, publishing false and untruthful material, pornography, etc.

21 By which the issues of religious programs, reporting on judicial trials, paranormal abilities, occult activities, alternative medicine, etc. are regulated

22 Their privatization has proved to be problematic because of discrepancies in the legal regulations on privatization for different administrative levels, as well as insufficient determination for when the privatization process is to be ended, partially because of attempts to ensure the sustainability of these media on an unstable media market, and because of efforts of cantonal and municipal bodies to maintain control over them to a certain degree. See Jusić, *Media in Democratic Society*, 2005

23 Including truthful and proper reporting, editorial responsibility, possibility of agreement, privacy protection, protection of minors, banning discrimination and hate speech, etc. The text is available on the website of the Press Committee: <http://www.vzs.ba/ba/?ID=2>

do not on a regular basis (N = 15 journalists interviewed + 3 journalists in different categories + 2 journalists/editors contacted by phone). All of them mention that they usually invoke the Free Access to Information Act (hereon referred to as FOIA).

The results also indicate that, for some journalists, it is important when working in electronic media to know and work within the legal frame of freedom of speech, in accordance with the codes and regulations of the CRA. Being familiar with the Libel Law is important for avoiding potential lawsuits. It is interesting that none of the six journalists and editors interviewed working in press media mentioned that they work and act in accordance with the Press Code.

Their answers also suggest the lack of relevant analysis of media freedom and absence of judicial practice which would show positive examples of trying anyone in violation of the laws on freedom of the media, as well as the absence of public discussions about the issue of freedom of the media. All of this prevents benefits that would accrue from these laws.

An indication of the shortcomings in implementing the regulations on freedom of the media is the fact that in the report on freedom of the media by Reporters Without Borders in 2009, B&H was listed 39th out of 175 countries in terms of media freedom. This ranking showed progress by comparison to the country's ranking of 42nd place in 2002. However, the fact that B&H was in 21st and 19th place in 2004 and 2006, respectively, shows a negative trend in the last couple of years when it comes to implementing legal and social standards and respect for freedom of the media.²⁴ The reports on the sustainability of the media (MSI, IREX, 2001-2009)²⁵ show that after improvement in 2001 the situation in the media sector has worsened recently, especially with regard to the issue of respect for the freedom of the media.

Libel Law

The responsibility of the media for publishing false information is regulated by entity Libel Laws.²⁶ The issue of libel used to be defined by the Criminal Law, but in 2003 it fell under the authority of the Civil Law, a transition considered to mark significant progress concerning freedom of speech.²⁷ In accordance with the new regulations, prison sentences for journalists were no longer possible.

In this research, we covered the issue of complaints against media for libel, specifically in the context of abuse of the Libel Law, as a possible means for imposing pressure on media, as well as in the context of a large number of lawsuits possibly suggestive of the fact that journalists frequently publish false information and violate their own professional standards.

It should be mentioned that the Libel Law states that the right of freedom of speech also includes those expressions 'that can insult, shock or disturb', and defines the obligation to interpret this law in a way as to 'follow the principles of freedom of speech in the best possible way' (Article 2 – RS and Article 3 – FB&H). The law also defines the responsibilities upon journalists in a case of the publication of false information, specifically whether it is

24 Press Freedom Index, Reporters Without Borders. Available on: <http://www.rsf.org/en-classement298-2002.html>; See B&H 2009 Progress report, p. 52.

25 Reports available on: http://www.irex.org/programs/MSI_EUR/index.asp

26 Official Gazette of Republika Srpska, No 37/01; Official Gazette of Federation of B&H, No 59/02, 19/03 i 73/05.

27 In European countries there is a trend of decriminalization of libel, but more on the level of court practice, where journalists are tried in civil suits. Prison sentences for journalists in the last two decades were reported just for two journalists in Poland and Hungary before EU accession. For comparison with the regulation of libel in B&H, see for example Halilović, Mehmed, "Kleveta u evropskim zakonima: Najviše štite kraljeve, a ponegdje i naciju i zastavu" (Libel in European Laws: They Protect Kings Most of All and Sometimes the Nation and Flag Too), 2005.

done because of negligence or intentionally. Even if journalists do publish false information, they can defend themselves by proving that they were justified in believing that the information they published was true; that they used multiple sources, asked the person they were writing about for an opinion about the matter, etc. One thing that can prove a journalist's good intentions is a published retraction.

After analyzing the Libel Law and taking into account the opinions of our subjects, we come to the conclusion that this law is defined so as to both encourage media freedom, and limit that freedom in cases where individuals or organizations have had their privacy violated or their reputations tarnished.

However, as two interviewees state, since libel fell under the authority of the Civil Law, the number of lawsuits and rulings against the media has increased. In the first two years there were 350 lawsuits against journalists or media outlets, three times more compared to the period before this regulation was adopted (Implementation of the New Libel Law, Halilovic, 2005). During the first ten months of 2009, 450 lawsuits were submitted to the Municipal Court in Sarajevo (Start, November 11, 2009, p 18). The data is possibly indicative of frequent violations of professional standards, as well as possible abuse of the Libel Law by limiting the freedom of the media.²⁸

There were a small number of participants interviewed who experienced abuse of the Libel Law in the sense that they were exposed to financial or psychological pressure or that the credibility of the media outlet was endangered, by the legal action taken in the interests of the suitor.

Political and other social actors submitted the most lawsuits. Often lawsuits were submitted by a competing media house.²⁹

It is not uncommon that the possibility of mediation by the regulatory bodies, and the publication of a retraction, are ignored (according to the resolution of the Complaints Commission of the Press Council), allowing for the direct submittal of lawsuits.³⁰ As Dražen Zubak states, the Complaints Commission of the Press Council receives a little less than 100 complaints annually, and about 30 of them refer to libel (Muhamed Halilović, 2005), while hundreds of lawsuits are submitted to courts. This indicates that the potential of self-regulation in print media is not used to its full capacity when it comes to processing libel complaints. Besides that, disregarding the decisions of the Press Council in certain cases shows that journalists are not dedicated enough to promoting the self-regulation system. However, the executive manager of the Press Council notes that there is a positive trend in accepting the self-regulation system in the professional community, and court employees advise mediation prior to considering lawsuits (Ljiljana Zurovac, phone interview, February 15, 2010).

The results also show that there is significant progress in court proceedings, especially when it comes to assessment of emotional suffering. Emotional distress used to be implied, but today it has to be assessed in each case individually. In addition, a significant improvement has been achieved when it comes to reducing compensation for emotional suffering. Dražen Zubak, a solicitor who has represented media in different libel cases, notes that it is not possible to talk about abusing the Libel Law based solely on previous verdicts, because some of these verdicts were against and some in favour of the media.

28 Four subjects.

29 Four subjects.

30 Faruk Borić, president of the Board of Directors of the Press Committee/ deputy editor at *Oslobodjenje*

Subjects who have had experience with complaints and libel lawsuits list the following specific flaws of court proceedings in cases of libel:

- Persistently high compensation for causing emotional distress (especially when compared to different cases)³¹
- Possibility of proving emotional distress even several years after the material that prompted the lawsuit was published
- Absence of defined criteria for estimation of emotional distress in these cases
- Insufficient competencies of judges and lack of interest in some court cases
- In some cases, the verdicts against journalists are made even if there was no malicious intention, or a journalist could not have possibly known that certain information or even legal documents were false³²
- Long judicial procedures and hearings that are not scheduled in the same order the lawsuits were submitted³³

Most of the lawsuits mentioned during the interviews were against print media³⁴ and it is believed that the CRA's developed practices of processing the complaints contributed to the decreased number of lawsuits against electronic media.

12

Vladimir Trišić, the executive manager of RTV BN, notes that there has been only one libel complaint against this media house. However, this complaint was related to a certain comment a viewer made in a program with the viewer's participation, and it had nothing to do with the journalists working at this media house. Nevertheless, the media house had to pay compensation for emotional suffering in the amount of 8,000 KM. Trišić believes that these verdicts limit the freedom of the media and can make journalists avoid controversial topics that might lead to potential lawsuits, and consequently decrease the quality and relevance of media programs.

In the end it has to be emphasized that, besides paying compensation for causing emotional suffering, media are in some cases asked to publish the verdict. The possibility of publishing the whole text of a verdict is not exploited enough, which reduces the possible positive effects of legal procedures on libel lawsuits.

31 Dražen Zubak, a lawyer, is of the opinion that the compensations for causing emotional suffering (1,000 – 10,000 KM) are inappropriate, compared compensations in different cases (7,000 – 8,000 KM for inflicting serious body injuries). Mirsad Behrem, editor of the web portal of RTV Mostar, believes that the ompensations for causing emotional suffering should be even higher, in order to promote better responsibility among journalists

32 Three subjects have had experiences of this kind. False information were published based on: a. public statements, b. official documents, c. the statement of a viewer of a program with the viewer's participation
33 Problems of this nature were identified based on an interview with Vildana Selimbegović, the Editor in Chief of Oslobodjenje, Adi Hadzarapović, the editor of web portal of Dnevni Avaz and Dražen Zubak, a lawyer.

34 Five out of 23 employees in media say that they have been exposed to libel lawsuits; two of the journalists in electronic media were exposed to them only once and three journalists in print media have been exposed to them many times.

5. Pressures and Assaults on Journalists and the Media in Bosnia and Herzegovina

Political or economic pressures on the media exist in different societies, but the consequences of those pressures are rather serious in societies where the advertising market is poor, the economic status of the media and journalists is very low and the overall safety situation is unstable. These pressures can come from political, religious or economic institutions, which are perceived as the centres of power and criminal circles, and whose main motive is control over the media.

These pressures come in different forms.³⁵ Some are open and involve physical threats and assaults on journalists, as well as speaking publicly against them because of their reports on 'sensitive' issues. Some pressures are not public and include economic and political pressures, such as limiting budgets for media houses, or cancelling advertising, which is a very important financial resource for the media. Pressure on journalists can be imposed by the owner of a media house or the editor; even if a journalist himself conforms to the owner's interests (self-censorship), this is still considered a form of pressure.

Threats and assaults on journalists in Bosnia and Herzegovina have increased over the past couple of years.³⁶ According to the records of Help Line for Journalists,³⁷ in 2008 the number of reported assaults was doubled compared to 56 cases in 2007. In 2009, 40 cases of assault on journalists and violations of media freedom were recorded. Reported cases included six death threats and 17 verbal and physical assaults.

The US Ministry of Foreign Affairs report in 2008,³⁸ states that the level of respect for freedom of speech and the media decreased, and journalists and the media criticizing the government became targets of institutional retaliation.³⁹

35 In B&H, examples include: the boycott of BHRT by the members of the RS government, 2007, SDS members' accusation against RTRS for being biased in favor of SNSD, 2006, Reis ul Ulema Mustafa ef. Cerić's accusation against FTV and Oslobodjenje journalists, etc. They indicate that strong and public pressures on the media by political and other social figures do exist. See: Halilović, Mehmed. Politics, politicians and the media: some like boycott, some cause boycott, 2007; see Help Line for journalists report, 2008 on the website: <http://bhnovinari.ba/?ID=179>; see the examples of assaults on journalists in Human Rights in B&H, 2008, p 475-481.

36 Recent cases of assaults on journalists were extreme cases of physical assaults; one of those was the assault in front of the building of the Court of B&H (Oslobodjenje, April 23, 2009, p 6-7); an official of Assembly of Unsko-Sanski Canton deliberately drove his car at three journalists on September 23, 2009 (Oslobodjenje, September 24, 2009, p 4); a female journalist was not allowed to attend the conference held in the premises of the RS Government – explanation: she was not dressed appropriately (Nezavisne novine, September 25, 2009 p 2). Other examples of assaults on journalists, which include phone threats, physical assaults, etc. are documented in the Help Line Announcement for Journalists (<http://www.bhnovinari.ba/>).

37 Service within BH Journalists Association offering legal help to journalists.

38 Report on Human Rights in 2008, available at: <http://bosnian.sarajevo.usembassy.gov/ljudska-prava-2008.html>

39 Especially evident is the case of political pressures on public broadcasting houses (by members of the RS government on the BHRT broadcasting house). It has also been stated that the RTRS broadcasting house represents the opinion of the leading party in the RS, and that most of the media in RS are biased concerning the government of the RS. In the F BiH, the political bias of the media is based on religious views, and in certain cases certain media houses publicly support certain political parties.

The results of our research show that journalists in B&H are exposed to pressure almost on a daily basis,⁴⁰ and most of the journalists personally were exposed to pressure at least once.⁴¹

We have identified several types of pressure journalists are exposed to, with different motives and means by which they are imposed:

- Physical assaults on journalists; not very common, but most often covered by all media⁴²
- Threats (by phone, or anonymous letters) for reporting on 'delicate' issues. These kinds of threats are the most common and are imposed by different social institutions. Verbal threats are most common in criminal circles.
- Pressures by political figures, religious institutions or other public figures;⁴³ there are three cases of journalists being accused for betraying their ethnic or religious interests, or for being hostile to religious communities.⁴⁴ Overall, different forms of pressures on journalists include the following:
 - a) phone calls and requests for a public apology
 - b) public reactions against journalists, public criticism and public statements against journalists
 - c) public assaults, insults and hate speech against certain journalists
 - d) increased financial control and inspections without previous notice
 - e) telephone tapping and monitoring journalists
- Pressures imposed by certain media houses (which show competing media houses in a bad light) and lawsuits against competing media houses. These situations expose journalists to psychological pressure, require additional time to deal with, and create negative attitudes towards journalists and their credibility.
- Pressures imposed by different actors, which are based both on the financial dependence of media on centres of power, and the financial dependence of journalists on their current engagements with those media:
 - a) threatening to terminate advertising contracts (commercial media houses)
 - b) limiting budgets for public media houses
 - c) submitting legal complaints for libel

40 About half of the interviewed subjects say that journalists are exposed to different pressures on a daily basis

41 Only three interviewed journalists say they haven't had such an experience

42 At the Centre for Civil Security in Banja Luka, in 2009, there was only one case of assault on journalists registered. The incident happened during a football match in Prnjavor. A football supporter threw a plastic bottle at a reporter's camera and the reporter responded by insulting him. Both the supporter and the reporter were charged, but the charges were dropped (Centre for Civil Security, memo December 15, 2009)

43 An example of this is a situation when a certain religious institution in B&H tried to influence advertisers to terminate contracts with a media house where one of the journalists we interviewed worked. Damir Đapo, executive editor of RTV Slon says that on one occasion a certain politician came into the editorial office and verbally assaulted one of the journalists. Dunja Mijatović, executive of the broadcasting department at CRA mentioned the 'black list', a list of personae non-grata for the media in RS. She described it as a return to medieval witch hunts. The fact that two newspapers published the list and helped impose it on journalists and civil society is mind-boggling and demoralizing.

44 Vildana Selimbegović has reported on one of such cases. Željka Mihaljović says that she was accused of betraying national interests (the accusations were printed on leaflets). Dario Pušić was in 2000 accused of the same thing (over the phone).

d) different social figures imposing pressure on journalists through editors and owners of media houses in order to make media content suit their interests. Influence of this kind can be achieved by:

- censorship by editor or the owner
- self-censorship by journalists in order to avoid potential risk and to act in accordance with the interests of the figures exerting pressure

e. attempts of bribery

For example, public insults against journalists include: insults based on their gender roles (female journalists), attacks on their personality, etc. However, most of the pressures imposed on journalists are invisible to the public.

In consequence, it is very often the case that journalists and editors doubt whether to publish certain information if it can bring safety or financial risk, or if a journalist can be labeled as 'an alcoholic, junky, lesbian, islamophobe...' (Faruk Borić, president of the Board of Directors of the Press Council and deputy executive editor of *Oslobođenje*).

Pressures on CRA

The Law on Communication in B&H guarantees the formal and legal independence of the CRA (Communication Regulatory Agency). However, the Agency is exposed to both political and financial pressure. The Council of Ministers blocked the independent procedure of electing the executive manager of CRA, which was politically motivated. Appointing members of the Committee was scheduled for April 2009, but it has yet to be done (B&H 2009 Progress Report, p 52). In consequence, several regulations prepared by the CRA have not yet been adopted, administrative efficiency has been reduced and further support for electronic media has been obstructed. Political pressures undermine the reputation of the CRA within the media sector, as well as in the public eye (see Halilović, *Disciplining Independent Regulators*, 2008 and B&H 2009 Progress Report, p 52).

Dunja Mijatović, executive manager of the broadcasting department at CRA notes that we can regard public reactions of political and other figures to decisions on complaints regarding media content by the CRA as a certain type of pressure. The only legitimate way of questioning the work of CRA is through the B&H Court.

Especially problematic with regard to CRA's independence is the new Law on Ministries and Other Bodies of Administration in B&H, passed on 30 December 2009, which treats CRA as an organization of administration, meaning that it is placed within the competence of the Council of Ministers of B&H, which would be authorized to appoint and remove the CRA director and to adopt or reject CRA reports and programs of activities ("Dani", 19 February 2010). In a session of the Constitutional and Legislative Committee of the B&H Parliament House of Representatives held on 23 February 2010,⁴⁵ it was decided that a letter will be sent to the Ministry of Justice with the goal of changing and amending the law. It remains to be seen whether these processes will lead to changes in the provisions of the Law which threaten CRA's independence.

45 Data available on the website of the Constitutional and Legislative Committee of the B&H Parliamentary Assembly House of Representatives: <http://www.parlament.ba/vijesti/1/0/1417.html>

Pressures or Lack of Support for the Press Council

According to information given by the Press Council (further on addressed as the Council), this institution was exposed to direct political pressures, as well as to indirect public criticism, by certain public figures (Ljiljana Zurovac, executive director of the Council, phone interview, February 5, 2010). The worst pressures came from the professional community. This includes avoiding paying the membership fee,⁴⁶ even though it is rather low and does not burden the media budget. These actions can be interpreted as politically motivated and can be the result of lack of interest in supporting a self-regulatory system (Faruk Borić, president of the Board of Directors of the Council). It is also necessary to mention the recent cases of *Dnevni Avaz* freezing its membership and *Novi Reporter* seceding from the Press Council.⁴⁷ The case of *Novi Reporter* is not considered a form of pressure, as there was no intention of influencing the work of the Press Council. However, Ljiljana Zurovac is of the opinion that the Council was exposed to certain pressures by *Dnevni Avaz*, because their withdrawal came after considering the appeal submitted to the Appeals Council of the Press Council.⁴⁸ The executive director of the Press Council notes that there has been progress nevertheless and that the self-regulatory system has been increasingly accepted. The editors are aware of the fact that it is much better to respect the mediation procedures than to take part in legal processes. However, publishing decisions of the Appeals Council still haven't become common practice (Ljiljana Zurovac, phone interview, February 2, 2010).

16

Judicial Investigation and Court Processing of Threats and Assaults on Journalists

Police protection has the most important role when journalists are exposed to physical assaults. The majority of journalists interviewed were not in a situation to ask for help from the police, so they cannot evaluate their efficiency. It is, however, believed that police forces do their job correctly, investigate the case and provide protection when necessary. There are positive examples of police actions: police protection for Bakir Hadžiomerović, the editor of '60 minuta', a political show on FTV. Bakir Hadžiomerović says he is satisfied with his police protection and the way the Ministry of Internal Affairs in Canton Sarajevo processed his case.

46 According to information given by the executive manager of the Council, two out of the 12 members of the Press Council didn't pay the membership fee in 2009

47 In May, 2009, *Novi Reporter* from Banja Luka withdrew from the Press Council. The two main reasons according to *Novi Reporter* were: 1. a representative of the Press Council from Kosovo attending the regional conference in Sarajevo (perceived as politicizing the work of the Council, even though the Press Committee from Kosovo was accepted to the Alliance of Independent Press Councils of Europe AIPCE) 2. inability of the Press Council to deal with the complaints on the work of print media on the self-regulatory level which caused additional burdens to their financial situation caused by paying compensations for 'emotional distress' and their need to revise their budget, which included ceasing to pay the membership fee to the Council (written answer, February 11, 2010)

48 Their membership was frozen in 2009 after the Complaints Commission of the Press Council had accepted to review the complaint submitted by Mujo Selimović, the owner of *Oslobodjenje*, concerning a series of articles published in *Dnevni Avaz*. The executive manager of the Press Council believes that this action can be considered an attempt at endangering the Council's independence. On the other hand, the Editor in Chief of *Dnevni Avaz* is of the opinion that the reasons for freezing the membership are legitimate, and notes that the complaints submitted to the Complaints Commission are 'incomplete and obsolete'. Later on, he claims, in some of the media there were certain manipulations regarding the decisions of the Council and the Council did not react to those (Sead Numanović, written answer, February 10, 2010). Ljiljana Zurovac, executive director of the Press Council notes that everything was done in accordance with the procedures. She states that *Dnevni Avaz* did not publish the decisions of the Council, and publishing decisions in other media is possible, because they are public and should be available to everyone. Two months prior to freezing the membership, there had been an intention on behalf of *Dnevni Avaz* to appoint their own representative as the president of the Board of Directors for the second time in a row. According to Zurovac, this could also be considered a form of pressure for this kind of practice is not acceptable (Ljiljana Zurovac, February 15, 2010)

Dragan Mioković, the head of the police commissar's Office, Ministry of Internal Affairs, Canton Sarajevo, notes that processing the reported assaults on journalists resulted in 'a series of activities'⁴⁹ conducted by cantonal police, with the help of the cantonal prosecutor's office and the court (written answer, February 8, 2008).

There were negative comments on police work, but they were not common.⁵⁰ Lejla Bičakčić, the executive director of the Centre for Investigative Journalism (CIN), mentions one example; a death threat to one of the journalists at CIN was reported to the police, but no action was taken. There were no negative consequences in this case, but it raises the issue of the validity of the criteria for deciding what constitutes a real threat to journalists. Dragan Mioković (Ministry of Internal Affairs, Canton Sarajevo) notes that the police, together with the district attorney's office, evaluate every case, based on the evidence, information about the victim, and motive of the perpetrator and take the necessary actions to eliminate the threat. It is possible to submit a complaint in a situation when citizens are not satisfied with police work. The complaint is directed to the Internal Investigations Department, Ministry of Internal Affairs, Canton Sarajevo.

Several of the journalists interviewed, however, said that the investigations of threats, pressures and assaults on journalists in most cases do not end in proceedings against the perpetrators. The reasons for this may be lack of interest, insufficient human resources, different pressures or the inefficiency of the institutions.⁵¹

One of the journalists interviewed said that about three years ago, after being threatened by a police officer, he submitted a legal complaint to the Cantonal Attorney's Office, but the investigation was never conducted.

Rulings against the persons accused of making threats, pressure or assaults on journalists are not common, and most of the existing verdicts are unknown to the journalists we interviewed.⁵²

However, there have been verdicts in cases like these. We shall mention two of these:

- April 18, 2008, Sadik Bahtić, SBiH delegate in the BiH Parliament, physically assaulted an FTV crew, and prevented them from attending a SBiH press conference in Bihać. In March 2009, he was found guilty and was ordered to pay the maximum 500KM penalty (*Oslobodjenje*, March 20, 2009, p 7).
- April 21, 2009, a physical assault on a person by Tasim Kučević, in front of the Court of B&H, just before he was sentenced for charges related to organized crime. At that moment, Enver Spahić, his bodyguard, pushed Vildana Duran, a journalist from FTV, and kept her against the fence so she couldn't help the victim. In June 2009, Tasim Kučević was sentenced to 2 years and 4 months in prison (*Dnevni Avaz*, June 17, 2009, p 15), and Enver Spahić was sentenced to 6 months in prison in July 2009 (*Nezavisne novine*, July 8, 2009, p 4)

49 He notes that in the last couple of years six cases of assaults on journalists and the media have been processed in the Ministry of Internal Affairs, Canton Sarajevo. Four cases have been solved (three cases of endangering personal safety of a journalist and a felony theft), the operative material for one case has been forwarded to another cantonal MUP, and a case of activating a hand grenade in front of a media house (December 2008) is under investigation.

50 Kenan Ćerimagić, editor of news program at NTV Hayat, mentions processing the case of activating a hand grenade on NTV Hayat 's editorial office premises. He notes that the police didn't take all the necessary measures in disclosing the perpetrator.

51 Pejičić, Osmanagić, Šimić, Ćerimagić, Malić, Barbarić, Behram, Trišić.

52 Pejičić, Osmanagić, Šimić, Ćerimagić, Malić, Barbarić, Behram, Trišić

These verdicts are positive examples of proceedings against physical assaults and send a message that this kind of behaviour will not be tolerated; some of the journalists interviewed say that the punishment for assaulting a journalist is mild.⁵³ The roles and positions of journalists are specific, but assaults on them while they are working are treated the same as assaults on civilians.⁵⁴

In April 2009, the Federal Parliament adopted a draft of a proposition to amend the Criminal Law Act, which stated that preventing journalists from carrying out their work would be dealt with in a separate Article of the Criminal Law and appropriate sanctions would be provided (Oslobođenje, April 4, 2009, p 7). The proposition for amending the Criminal Law Act, however, was rejected in a later procedure.

Court employees refused to provide us with information on court proceedings in cases of assaults on journalists.⁵⁵ However, journalists and citizens believe that the institutions haven't done enough and haven't shown the determination to deal with these issues. Six of the journalists say that institutions often fail in disclosing, processing and adequately sanctioning these assaults.⁵⁶

Support and assistance to journalists in cases of threats and assaults

Research results point to the conclusion that internal newsroom support is very important in cases of threats, pressure and assaults⁵⁷ and that support outside the media organization is primarily based on personal contacts with other journalists and media.

The majority of interviewees maintain that support from the professional community in the form of press releases and condemnation does not have much of a social effect. Others, however, maintain that reactions from the professional community are insufficient, but may be important in the sense of raising awareness of assaults on media, in terms of moral support, as well as in providing insight into a specific case for all institutions and individuals who are able to help a journalist subjected to pressure. Further, interviewed respondents suggest that fragmentation of the professional community along ethnic and entity lines, as well as other political and interest lines, results in divided, selective and inconsistent reactions and that massive solidarity and provision of adequate support are the exception rather than the rule.

Interviewed respondents to a lesser extent mention that if they experience threats or assaults they can go to journalist associations and the Help Line for Journalists.⁵⁸ The majority

53 Ramo Abidović, a journalist who was physically assaulted in May 2008, expresses his indignation with the sentence. The first was a 700 KM penalty, after the appeal to the Cantonal Court in Tuzla it was lowered to the amount of 300 KM (Dnevni Avaz, March 29, 2009, p 15).

54 Three interviewees believe these assaults should be qualified differently

55 We could not get the exact number of processed cases in Municipal Court in Sarajevo because it is possible to search the files only by names of defendants or the Article of the Criminal Law FB&H (written answer by Amra Karacić, PR associate of Municipal Court in Sarajevo, February, 2010). Slobodan Nikolić, Secretary of the Cantonal Court in Sarajevo (December 16, 2009) said that there had been no cases of this kind in this Court. According to the information given by him, the Cantonal Court processes cases of homicide and robbery. Municipal Courts processes cases of physical assault.

56 One of the examples was the attempted murder of Željko Kopanja (Nezavisne novine). Even 15 years later nothing has been done.

57 For example, Adi Hadžiarapović, Editor of the Dnevni Avaz web-portal, says that his media organization has developed a system according to which threats and pressure are reported to the organization's legal team, which takes all necessary measures, including reports to the police.

58 Two respondents also mention the Helsinki Human Rights Committee as an organization that can provide support to journalists who have been subjected to assaults.

of interviewed journalists and editors, as well as two journalists contacted by telephone, stated that they had not needed this kind of support. The fact that several interviewed journalists said they had experienced pressure, but had not gone to any associations for help, shows that this kind of support in some cases is considered insufficient or that journalists lack adequate information on possible forms of support from associations. An interviewed media employee stated that associations' reactions may even increase tensions and that it is sometimes better to "tone down" the situation and try to solve it internally or by using personal capacities. One form of blackmail includes the understanding that requesting this kind of help in certain cases would mean giving unnecessary attention to those who are exerting the pressure and the achievement of some of their goals, whereas in other cases it may be extremely important and productive (journalist Rubina Čengić, Start, February 2010).

A specific suggestion for advancing support provided by associations was made by Lejla Bičakčić, Director of the Center for Investigative Journalism, who said that concrete help could be provided to journalists in cases of security threats by helping relocate journalists to a safer location or making changes in their movement routines to the work place.

In short, the prevalent perception of the efficiency of institutions, organizations and individuals in the protection of journalists from pressure and assaults may be summed up in the following view:

"Practically, functionally efficient protection of journalists does not exist. In principle, it does exist. We have journalist associations, we have courts (...), international organizations, but I think that (...) their power (...) to present themselves to journalists as strong enough protectors is not high."

(Interview, Đorđe Tomić, Master of Arts in Political Science, November 2009)

In addition, an interviewed civil society representative maintains that media organizations themselves to a small extent follow cases of pressure and assaults on journalists and that consequently the public is generally aware of extreme incidents, but lacks full insight into the prosecution of assaults on journalists and the efficiency of institutions of the system in protecting journalists, which prevents potential public reactions if protection afforded to journalists is insufficient.⁵⁹

Influence of political and economic centers of power on media content

According to some assessments of the media system in B&H, media content are to some extent subordinated to the interests of economic and political centers of power.⁶⁰ Financial dependence of media on political and economic centers of power raises serious doubts regarding editorial independence. An additional problem is the phenomenon that political structures largely control the advertising market and that in addition to advertisers' interests, media often promote the interests of political structures connected with them. In such circumstances, there is even the opposite phenomenon, in that media themselves seek sponsors in political centers of power. As an interviewed respondent said:

59 Lidija Živanović, Helsinki Citizens Assembly, Banja Luka.

60 See, for example, BH Journalists report for 2008. Available at: <http://www.bhnovinari.ba/?ID=179>; also see: "The Stumbling of the Media in Times of Transition", Media Plan Institute, Sarajevo, 2005.

"I think that it is mutual. As much as politics goes toward media, unfortunately the media, usually due to the poor economic situation, increasingly often go toward some of these centers of power, either economic, or (...) political ones".

(Adnan Osmanagić, Director of Radio "Stari Grad").

Financial dependence on economic and political centers of power may have considerable effects on the quality of journalism, whereas potentially reduced public insight into information of public importance⁶¹ may have a particularly devastating effect on B&H society in transition. Dependence on political and economic centers of power is also especially problematic in light of the unregulated labor market and lack of security in exercising labor rights, making journalists and editors susceptible to censorship and self-censorship practices.

Practically all interviewed respondents state that the content of information in many media outlets to a lesser or greater degree are determined by the interests of ruling structures, political parties and economic centers of power. The majority of the respondents interviewed state that based on media content it is possible to establish which political option many media organizations favor and some believe that this is especially true of print media. The most frequently given example of potential influence on media content is related to most media in the Republika Srpska, to which government institutions allocated a total of five million marks. This practice is assessed as debatable, especially in a pre-election period, and the allocation criteria for these funds are also questionable.⁶²

A number of respondents maintain that systematic influence on content in all media and at all times does not exist, but that such influence is rather occasional and that there are significant differences among media in the degree to which they serve different centers of power.

Conformance to the interests of centers of power may be a result of direct pressure on media and journalists, a consequence of the ideological division of media, as well as of news practices in which centers of power are the most common sources of information for media.⁶³

It is evident that the media system is strongly divided politically. Practically all interviewed respondents maintain that media are largely a mirror of political divisions in B&H, primarily divisions on an ethnic and entity level, which is manifested in completely different interpretative keys in reporting on the same events, depending on which ethnic group a particular media organization is closer to geographically and ideologically. This situation results in opposed media discourses on key social issues.⁶⁴

61 Faruk Borić, journalist and Press Council Board President, gives the example of articles published in a daily on loan-sharking in connection with a bank. However, after the bank purchased significant advertising space in the media outlet, the critical tone about the bank's operations was greatly reduced.

62 As examples of content which are evidently in the service of government structures in the RS, respondents mentioned a campaign against Dragan Lukač, SIPA official who filed reports against 15 RS officials to the B&H Prosecutor's Office.

63 Damir Đapo, Editor-in-Chief of RTV "Slon", mentions an example when RTV "Slon" offered an item to a public television station, but the television refused to broadcast it because it was critical of an important advertiser for that media outlet.

64 Some of the abovementioned examples have to do with media treatment of constitutional changes and the question of facing up to the past and war crimes. A respondent gives the example of "distribution of public funds among cantons (...) when it was clear that media organizations were divided into two camps – conditionally speaking a Bosniak one and a Croat one, with Croat media emphasizing the story of money again being seized from cantons. On the other hand, Bosniak media argued that this is how the Federation budget must be filled. It was clear that they were divided on this issue" (Dario Pušić, *Dnevni List*)

6. Censorship and self-censorship

Political and economic pressure in transitional societies often rests upon mechanisms of censorship and self-censorship.⁶⁵ Censorship and self-censorship are the adjustment of media content to the interests of owners or structures which are an important source of funding for media, either by owners and editors or by journalists themselves. The result of this practice is the avoidance of certain issues and placing emphasis on others, either by softening the tone of some stories or a critical interpretative framework toward other stories or simply by avoiding “undesirable” issues.

Research carried out by “Mediacentar” Sarajevo in 2008 shows that 18% of respondents who participated in the research maintain that labor relations in the media actually require some censorship or self-censorship, whereas 40% allege that there are occasional cases of censorship or self-censorship. A total of 41% respondents had no insight into the existence of such practices.⁶⁶ The research results suggest that censorship and self-censorship are primarily influenced by employers’ commercial interests and that politically motivated censorship is weakening. However, as we mentioned earlier, marketing contracts are often conditioned by the promotion of interests of political elites.

Possible reasons for avoiding particular news stories, based either on censorship or on self-censorship, are: perceived lack of public interest in a story (regardless of its importance), potential loss of considerable advertising revenue in the case of the publication of negative stories about advertisers (or centers of power associated with them), avoidance of possible negative reactions or pressure from political and economic elites accompanying the publication of information which is not in their favor, as well as avoiding potential security threats and physical assaults.⁶⁷

Censorship

The previous chapters laid out the legislative framework which regulates the media system in B&H and formally protects the media from unjustified state interference in media content and from media content censorship practices according to the interests of ruling structures.

However, one must bear in mind that these legislative norms do not mean that censorship does not exist. Quite the contrary, censorship, in the new circumstances of market-driven logic, may be “privatized” by numerous social actors. In such circumstances, direct or indirect pressure is aimed at journalists so that they do not report negatively about any actors who are important to owners and editors.

65 See more in: Francis and Angel, 2006; also see: Kazen, 1999.

66 See: Hodžić, 2008. A participant in this research, a journalist freelancing for several media outlets, says he had clear orders not to report critically or negatively about certain local levels of government.

67 See for example: “Self Censorship: How Often and Why Journalists Avoiding the News”, 2000.

The research results suggest that censorship practices, due to the existence of different pressures, are present in media in B&H, which is reflected in the neglect of particular issues and perspectives in some media. Just three out of 15 interviewed journalists and editors⁶⁸ said they had personal experiences when they were subjected to censorship by media owners or editors. However, these experiences are related to earlier journalistic engagements or earlier management of a particular media organization.

For example, Adis Karadža, journalist for the portal “Sarajevo-x”, presents his experience from an earlier job as a journalist for a print media organization, where obvious favoring of certain political actors and negative attitudes toward others was present to such an extent that nothing negative “dared to be” written about certain politicians, whereas others were “gladly exposed to fire” and that “orders for an attack on a politician came from the editor”. The media organization provided lobbying support to a candidate during the election of the president of the Party of Democratic Action. The same respondent said there was no way the young journalists who are mostly employed by the media organization could defend themselves from such editorial requests.

However, all interviewed media employees⁶⁹ report that such practices are not present in media where they were currently employed. This research finding may be an indicator that censorship practices are rare, but it may also mean that respondents do not want to speak publicly about such practices, especially considering that most of the interviewed media employees belong to management structures.

Yet the majority of participants maintain that editorial practices which may be considered censorship generally do exist in media.⁷⁰ However, according to suggestions by some of the interviewed respondents, extreme examples in which the publication of certain information is absolutely prohibited are probably rare, but there is a tendency for editorial intervention, suggestion and direction which conforms to the interests of a media outlet and the centers of power connected with it, which some respondents consider a customary and integral part of the business operations of private media, but is considered especially problematic if public services act pursuant to such influences.

Self-censorship

The results of this research, however, show that the practice of self-censorship is a more dominant problem in journalism in B&H.⁷¹ According to Thorgeirsdottir (2004): “Self-censorship for a long time has been one of the biggest dangers in journalism” (383). The main motivations identified by interviewed respondents which lead to self-censorship are

68 Plus three journalists/editors who were primarily interviewed as representatives of a regulatory body, NGO and journalist association.

69 Including two media executives, two program executives, two media portal editors, four program editors and five journalists, as well as two media employees contacted by telephone.

70 A concrete example of censorship is mentioned by two of our interviewees, whose colleagues could not publish an article with relevance and arguments due to close ties between the media owners and one of the sides in the story. Another example of potential censorship is a phenomenon reported by Dunja Mijatović, Director of the CRA Broadcasting Sector, who concludes that reporting on the Regulatory Agency in some media is uniform and thus likely directed from one center, which tries to portray the agency in a poor light. She also says that a couple of times journalists who participated in this kind of “campaign” against the CRA later came to the institution to apologize for unfair presentation of the Agency and explain that it had been requested by the media outlet’s management.

71 For example, Vladimir Trišić, Director of RTV BN, maintains that censorship in commercial media, regardless of its reliance on marketing, does not exist, but he says that he did have experiences which show that there is a tendency among journalists to avoid stories which would expose them to potential threats and criticism, even if the director and editor try to produce content which include important issues and critical attitudes.

journalists' need to ensure their existence, especially in conditions of poor economic status, limited labor market and a poor security situation.⁷²

In the context of censorship and self-censorship, one must also bear in mind the influence of ideological positions on media content. For example, Catherine MacKinnon emphasizes that censorship occurs less through direct state policies (we might add: as well as other social actors and also through self-censorship) than through privileging powerful groups and socially dominant viewpoints.⁷³ In this sense, we may assume that even in the absence of censorship and self-censorship practices, it does not necessarily mean that we have high adherence to professional standards and freedom of journalism. It may also mean an a priori division of the professional community and a division of the labor market according to ethno-national and other ideological criteria,⁷⁴ which ensure conformance with specific political and economic structures, without the need for censorship or self-censorship. In other words, in conditions of socio-political division, there is already some kind of segregation of media staff according to ideological and political positions, and by taking up jobs in specific media, journalists place themselves in the service of specific political or economic interests.

72 "Simply (...) certain frameworks are imposed in which you are supposed to act so as not to jeopardize your existence. If we know that journalists' wages are very low, it is very hard to expect them to expose major scandals where big money is involved, where your head is simply worth nothing" (Aleksandar Trifunović, Editor of media portal "Buka").

73 MacKinnon, 1993, p. 77.

74 See more in: Hodžić, 2008.

7. Availability of Public Information

The right to free access to information falls in the third generation of human rights and has evolved from the right to freedom of thought and expression, to the right to be informed, to the right to freedom of access to information (according to: Džihana, 2006, p.14). The European Convention for the Protection of Human Rights and Fundamental Freedoms (more precisely, Article 10) implies the right of citizens to access information and the obligation of public bodies to provide that information. Council of Europe Recommendation no. R (81)19 also recognizes the right of every citizen of the member states to receive information held by public bodies.

Interpreting constitutional provisions in B&H in light of the European Convention, the Freedom of Access to Information Act was passed at entity and state levels (hereinafter referred to as FOIA).⁷⁵ Legislation was thus harmonized with the practice of the European Court of Human Rights, which has in several cases confirmed the right to access information. The FOIA is intended for all citizens and defines their right to request and receive information held by public bodies.

The FOIA, however, does not make it easier for journalists to get information in every day news production⁷⁶ due to timeframes prescribed for delivery of requested information,⁷⁷ but it does enable access to information and insight into documents in cases of more long-term investigative stories, which are not faced with the imperative of fast production.

The FOIA defines exceptions from institutions' obligation to provide requested information, which are primarily related to protection of national security and international relations, right to privacy, etc. However, it should be noted that the FOIA requires the application of the "public interest" test on the potential harmfulness of providing insight into requested information in light of the defined exceptions in each individual case.⁷⁸ This practice enables the publication of information which is of great interest to the public, even if it belongs to one of the categories of defined exceptions.⁷⁹

Consistent application of the "public interest" test has been thwarted by the legislative authorities in B&H with the subsequent passing of a number of laws (Law on Tax Administration, Law on Criminal Procedure, etc.). Although the FOIA specifies that laws passed after its adoption may not limit the rights and obligations prescribed by it, the newly-adopted laws enable automatic refusal of access to certain information that is the subject of these laws.⁸⁰

75 Official Gazette of B&H no. 28/00 and 45/06; Official Gazette of B&H Federation no. 32/01; Official Gazette of RS no 20/01. All three laws regulate freedom of access to information in a similar way and will therefore not be discussed separately in this research.

76 See for example Halilović, "Misconceptions of the Freedom of Access to Information Act", 2005.

77 Eight days, or 15 days in the RS.

78 The Freedom of Access to Information Act at the level of the RS does not include requests for individual consideration of public interest, see more in: Halilović, "Access to Information in B&H: One Law Gives, Another Denies", 2005.

79 See more in: Džihana, p. 20.

80 Halilović (2008) says that some of the laws which may thwart the implementation of the FOIA in practice are:
 - At the level of the B&H Federation: Law on Criminal Procedure, Law on Tax Administration, Law on Securities, and laws on internal affairs services
 - At the state level: Law on Protection of Classified Information, Law on Protection of Personal Information and laws on intelligence services (Halilović, Mehmed, "Access to Information in B&H: One Law Gives, Another Denies", 2008).

The findings of this research show that when the law is invoked, experience in the majority of cases is positive, but that violations of provisions of the FOIA on the part of public bodies are also present.⁸¹ Research carried out by “Mediacentar” Sarajevo in 2006 showed that many institutions (51.7% of the total 240 requests submitted) failed to provide access to information pursuant to obligations defined by the FOIA or failed to provide any response to the requests received. After requests were re-submitted, a total of 68.7% responses were received (Džihana, 2006). Some of the problems identified in implementation of the law are lack of response, inadequate response, failure to refer to other organs which may provide the response requested, or late response to requests for access to information. Reasons cited by respondents related to problems with access to information concern lack of willingness, interest, capacity and efficiency in providing responses on the part of public bodies.

Complaints procedures in cases of denial of access to information in B&H include, first of all, filing complaints with the institution of the ombudsmen, as well as the possibility of processing such cases in court.⁸² According to reports by respondents who did not instigate complaints on procedures in cases of denial of access to information, the potentials offered by these procedures are not used to the full extent. With regard to the results of complaints filed with the institution of the ombudsmen, it should be noted that the ombudsmen’s decisions are not binding for public bodies. However, in the experience of Mehmed Halilović, Deputy Ombudsman on Media of FB&H, in as many as 95 percent of cases the ombudsmen’s intervention resulted in access to requested information.⁸³ In the remaining 5% of cases, denial of information was justified by invoking other laws, such as the Law on Tax Administration or Law on Criminal Procedure. Two of the respondents interviewed (N=34) said that even after using the complaints procedure they did not receive the information they wanted.

Lack of court practice in cases of denial of information by public bodies based on invoking the provisions of other laws (such as the criminal, misdemeanor and administrative laws) shows that the potential of such complaints procedures has not been used in B&H. In addition, it is not very likely that complaints procedures pursuant to these laws would lead to positive decisions for complainants.⁸⁴ Lejla Bičakčić, Director of the Center for Investigative Journalism (CIN), says that CIN filed a suit before the Sarajevo Cantonal Court

81 Analyses of application of the FOIAs have shown differences in results depending on the level on which a particular institution operates, development of a particular area, readiness and capacity of individual institutions, etc. Most shortcomings in responses to requests pursuant to the FOIA were identified in the case of public enterprises, public institutions, agencies and institutes, whereas municipal administration bodies received the most positive marks. Information is denied most commonly in cases of requests for insight into financial documents (Halilović, 2006).

82 In addition, there is the possibility of filing complaints against officials from a specific public body for denial of information, which envisions internal disciplinary measures if it is established that the person violated the FOIA. However, we have no insight into whether these procedures are used in practice, and if so, how much they are used.

83 Mehmed Halilović, Deputy Ombudsman on Media of the B&H Federation, says that the number of complaints filed by journalists related to implementation of the FOIA has generally declined over the years.

84 Although violations of the FOIA may be sanctioned pursuant to the criminal, misdemeanor and administrative laws, there are difficulties in getting positive decisions for complainants in each of these laws. Amira Krehić of the Center for Freedom of Access to Information emphasizes that the criminal law requires the proving of abuse of office, which is proven if one can demonstrate that denial of requested information caused harm for the complainant (at least 1,000 KM). In cases of violation of the FOIA, something like that is hard to prove. The misdemeanor law also defines procedures for establishing a violation, but it does not define what it means by violation in cases of denial of information requested pursuant to the FOIA (Amira Krehić, in the conference: “Biggest Obstacles to Implementation of the Law on Freedom of Access to Information and Proposals on Changes to the Law”, “Mediacentar”, Sarajevo, 12 December 2006).

against a public enterprise, but two years after filing the suit, CIN has not yet received any kind of summons from the Court.⁸⁵ The director of the Center also says that this is the only example that such a suit was filed and that the court's inefficiency in processing the case discourages the instigation of similar suits in the future.

It is important to note that with regard to violation of provisions of the FOIA, until recently the law had not envisioned sanctions for public bodies. This was considered one of the most significant shortcomings in its implementation and made its implementation dependent on a public body's policy and communication practices. Initiatives for changes and amendments to the FOIA, including the definition of sanctions, have existed since 2006 at the state level (Džihana, 2006).⁸⁶ However, the Law on Changes and Amendments to the Law on Freedom of Access to Information of B&H was passed in December 2009.⁸⁷ The law envisions sanctions for public bodies ranging from 1,000 to 15,000 KM, and for individuals' responsible for failure to act pursuant to the FOIA – from 200 to 5,000 KM.⁸⁸

Another shortcoming identified in implementation of the FOIA is lack of a monitoring system for its application. Although the FOIA prescribes that all public institutions and enterprises should deliver information on the number of requests received in relation to the FOIA and how they were settled to the institution of the media ombudsman, that system has not yet become operational.⁸⁹

Research results suggest that the FOIA has contributed to raising awareness of the importance of the right to access information and that it has generally improved the transparency of the work of public institutions. However, even in the case of investigative, more long-term stories when journalists can use the FOIA, if institutions are not willing to provide requested information or if there is an interest in denying it, invoking the FOIA does not help journalists get information, especially as institutions are able to deny that information, even after complaints procedures, without any sanctions. Therefore, we can assume that the abovementioned changes to the law at state level, which include sanctions against public bodies and officials if they act contrary to the FOIA, will facilitate greater implementation of the law and contribute to the greater transparency of public bodies.

Along with shortcomings in the implementation of the FOIA, the underdeveloped communication capacities of public institutions and slow procedures in requesting information are a limiting factor in access to information.⁹⁰ In addition, three interviewed journalists and editors say they have experienced absolute denial of information and refusal to give interviews on the part of a number of social actors, primarily political officials, whom they had previously written about critically.

85 The CIN Director says this information concerns project documentation for procurement of equipment for the Public Railway Enterprise of the B&H Federation. We asked representatives of the Public Railway Enterprise about this and they said that the administrative dispute was related to "non-delivery of documents possessed by the Public Railway Enterprise which is marked as a business secret" (written answer signed by the information advisor to the Director General, 2 February 2010).

86 Mirjana Malić, member of the SDP Caucus in the B&H Parliamentary Assembly House of Representatives, says that the first attempt to amend the FOIA was rejected due to objections over the high monetary sanctions (according to the proposal, sanctions were to range from 1,000 to 25,000 KM). Failure to adopt the proposal was interpreted as lack of willingness on the part of legislative bodies to advance the implementation of the FOIA.

87 Official Gazette of B&H, no. 102/09.

88 We learned that the Proposed Law on Changes and Amendments to the FOIA, which is pending approval at the level of FB&H, does not contain provisions related to sanctions (telephone conversation with Ante Baotić, Secretary of the FB&H Parliament House of Representatives, 15 February 2010). On the RS National Assembly website, there is no information on similar initiatives at the level of this entity.

89 National laws in different countries also prescribe routine publication of certain information, such as internal rules and decisions, lists of key employees, annual reports, etc. Some national laws also require the publication of information registers kept by an institution, as well as availability of information over the internet (according to: Džihana, 2006, p. 17).

90 According to experiences of some of the interviewees; also according to: Jusić, 2006, p. 281.

8. Labor Rights of Journalists

The results of this research demonstrate that violations of labor rights and insecure jobs due to untypical employment – with temporary service contracts or without any contracts – make the practice of censorship or self-censorship more likely, that is to say they make journalists more susceptible to different kinds of pressure.

The results of research carried out by “Mediacentar” Sarajevo from 2008 show⁹¹ that violations of journalists’ labor rights most often have to do with payment of wages (43% respondents; N = 122), work hours (39%) and overall working conditions (33%), whereas violations of other labor rights are less common. Along with these violations of labor rights, research results show that violations of labor rights are also present in terms of failure to register employees, “false” freelancing or temporary and occasional employment, by which the employer evades paying contributions which he would be obliged to do with an employment contract⁹², as well as violations of labor rights in the form of unpaid and unregulated overtime work, and, less commonly, unjustified dismissal from work and performing work unregulated by contract.

All respondents maintain that violations of journalists’ labor rights are common. However, as reported by interviewed media officials (including journalists, editors and executives), in the media organizations where they work – all or most journalists are registered with employment contracts, whereas a small number are registered with temporary service contracts. Just one interviewed journalist says he currently does not have a signed employment contract, although he has considerable experience in journalism. In addition, an interviewed editor reports that at his media organization there are a number of freelancers, although these journalists actually perform work which as a rule is regulated by an employment contract. Another interviewed journalist says that in his previous job as a journalist, along with a large number of young journalists, he worked without signing any kind of contract. Research findings from 2008 show that 78.7 (N = 122) percent of respondents say they have signed an employment contract which they believe offers them some security, at least in the form of higher protection from unjustified dismissal from work and a higher chance to collect their dues (salaries and honoraria).

However, employment contracts usually do not contain a precise job description and they do not provide a lot of protection to journalists from other violations of their labor rights. Particularly important in the context of this research is that employment contracts do not protect journalists in the sense of giving them autonomy and the opportunity to publish information contrary to the interests of the ownership structures and centers of power connected with them.

91 Hodžić, 2008.

92 Status regulated by a temporary or occasional service contract often exceeds the legally permitted 90 days and may be extended for years. In addition, the practice of pressuring journalists to work as freelancers, although they are actually performing regular work, is a strategy employers often use to avoid paying contributions and social insurance. Further, work which is formally registered as freelance work often does not differ in practice from full employment: it is performed on the employer’s premises and is not related only to performing work defined by the contract, but rather to performing all journalistic work. See more in: Hodžić, 2008.

Young journalists on their first jobs, without signing an employment contract, or any contract, are a particularly vulnerable category, which, as the results of the abovementioned research from 2008 show, are often subjected to extreme exploitation by employers. An interviewed respondent similarly identified the problem, remarking that appointment of young and unestablished journalists to positions of responsibility raises the possibility of manipulation over them for the purpose of achieving the interests of political and economic centers of power (Mirjana Malić, B&H Parliamentary Assembly House of Representatives).

Although institutional protection of labor rights in B&H is flawed, there are positive examples of efforts to protect media employees' labor rights on the part of judicial and inspection bodies. The first example is a case when the court ordered Federal Television to reinstate in their jobs four previously dismissed employees as the legally prescribed procedure for their dismissal had not been adhered to (*Nezavisne Novine*, 14 July 2009, p. 3). The second case is the example of a labor inspection's reaction to violations of labor rights at Tuzla Television (*Dnevni Avaz*, Supplement, 16 May 2009, p. 5). The labor inspection's reaction consisted of pronouncing administrative measures and issuing a decision on the removal of shortcomings related to the payment of salaries and overtime work. However, the Cantonal Administration of Inspection Works does not yet have any information on whether the above shortcomings were removed, as the inspection's capacities are overburdened and regular inspection controls are possible in roughly three-year intervals (Džemal Hrustić, Chief Inspector, Tuzla Canton Administration of Inspection Works, telephone conversation, 3 February 2010).

Among the reasons identified for inefficient implementation of labor rights are: unclear formulation of labor rights and obligations, commercial pressure, tendency toward nepotism in making decisions on employment and labor relations, as well as the inefficiency of the institutions which are supposed to control the implementation of the Law on Labor.⁹³

It must also be noted that the research suggests that some journalists are not very familiar with employment rights.⁹⁴

93 For more information, see: "Analysis of Regulations and the Situation in the Field of Labor Law", Association "Vaša Prava", 2006, pp. 7-8.

94 A respondent openly admits that he is not familiar in detail with rights ensuing from employment and expresses doubt that an employment contract would enable these rights to be respected. He is not convinced his rights would be protected by an employment contract. In addition, inconsistency in qualifying his job by another interviewed journalist indicates unfamiliarity with issues related to job status. Also see: Hodžić, 2008.

9. Solidarity among Journalists in B&H

By professional solidarity we mean different forms of support within the professional community for the purpose of the protection of journalists' interests and advancement of the status of media freedom, credibility and quality of journalism. Solidarity, therefore, means cooperation at the level of protection of journalists' rights, as well as different forms of support and help in cases of assaults and pressure on media and journalists. Professional solidarity includes inter-journalist and inter-media support, as well as support from professional associations and unions.

Support within the professional community in cases of assaults on journalists was discussed in the fifth chapter of the report. Basically, respondents maintain that the potentials of solidarity in the protection of media freedom are not used to their full capacity. Solidarity is based primarily on journalists' individual contacts, mainly among colleagues from the same newsroom.

Faruk Borić, journalist and Press Council Board President, points out that it is hard to expect mutual solidarity among media outlets (and their employees), which are ideologically divided and moreover vastly differ in socio-economic status and journalistic credibility.

This is probably the reason why not a single interviewed respondent mentions the possibility of expressing solidarity among media in a form that would be especially important, meaning that if one media outlet suffers pressure and assaults for raising controversial issues, another media outlet as a sign of support would publish the same information in order to protect the outlet under attack and share the burden of pressure.

By solidarity, further, we also mean continuous activities, within unions and journalist associations, toward creating preconditions for media freedom, including the promotion of labor rights and socio-economic status of journalists, speaking up collectively in cases of violation of labor rights and media freedom, and advocating the advancement of the regulatory framework for media freedom and its implementation.

The right to organize independent unions in B&H is defined and guaranteed by entity laws and is also a constitutional category. Three unions currently operate in B&H and include branch unions of graphic, publishing and media workers. In addition, according to information received in a telephone interview with Amer Toskić, President of the Union of Graphic, Publishing and Media Workers (hereinafter referred to as the Union), a Conference of these three unions exists "on paper" today, but is not operational. Separate union organizations also exist at the level of public broadcasters (FTV and RTRS) and there are also unions at the level of private companies.⁹⁵

The results of "Mediacentar" research from 2008, however, show that 31% of surveyed respondents (N=122) are members of branch unions, whereas surveyed journalists working for private media organizations were not union members (Hodžić, pp. 120-121). Only four surveyed

95 Such as the syndicate of the daily "Oslobodjenje", which is based on the owner's business activity (agricultural and food industry) rather than the branch it belongs to.

respondents (N = 122) believed that unions were efficient and 19 thought unions were sometimes efficient. Amer Toskić says that employers' interests and their political connections lead to poor institutional support for union activities and to flaws in procedures for sanctioning employers in cases of disrespect of workers' rights (telephone interview, 9 February 2010). On the other hand, the inactivity of members, as well as the denial of support in the form of paying membership fees, leads to a reduction in the potential of collective organizing. However, the Union president says that the branch union today has 2,800 members, employees of private and public media organizations, as well as publishing and printing companies.⁹⁶ In cases of pressure and assaults on journalists, reports Amer Toskić, the branch union reacts through press releases.

In addition, six journalist associations are presently registered in B&H:

1. Association BH Journalists
2. Society of Journalists of B&H
3. Association of Journalists of RS
4. Association of Young Journalists of RS
5. Association of Croat Journalists in B&H
6. Associations of Reporters from the B&H Parliament.

Another association, Association of Reporters from the Court of B&H, is not registered separately and operates within BIRN (Balkan Investigative Reporting Network). The association focuses on advancing communication between journalists and court officials.⁹⁷

It certainly needs to be mentioned that journalist associations, with the exception of Association BH Journalists, do not have their own websites and that three of the six registered associations are not registered among telephone service subscribers.⁹⁸ Only the Association BH Journalists has a website (<http://www.bhnovinari.ba/>), which provides information on its activities, projects and press releases, as well as contact details.

Thus, half of the registered journalist associations have not provided basic communication preconditions and only one association has a website. In such circumstances, access to most associations is difficult to say the least, and their potential activities in cases of violations of media freedom are limited. Equally, insight is diminished and doubts are raised regarding the existence of activities of such associations and the effects of their operations.

We managed to talk over the telephone with the President of the RS Association of Journalists, Branislav Božić (in January 2010), who says that in the last few years the association has not received significant complaints related to pressure.⁹⁹ According to his interpretation, this is an indicator of relative improvement in the regulation of the media sector. However, that does not mean that pressure does not exist, but rather that it has refined and less visible forms.

This research confirms that there is considerable skepticism regarding the efficiency of unions and journalist associations. Some respondents view these associations as a way of

96 As well as another 400 who do not pay membership fee and against whom court cases are pending.

97 See more in: Ahmetašević, 2008.

98 We were not able to talk to representatives of the Society of Journalists even after repeated attempts to make telephone contact in the course of two work days.

99 He says that several complaints they received in the last few years are related to journalists' labor status. The association on several occasions participated in meetings with media organizations' editorial boards to try to solve such status issues.

promoting their employees or they believe that they are in the service of various centers of power rather than working to promote the professional community. Other respondents base their skepticism of journalist associations on evaluations of their helplessness and lack of capacity and mechanisms for important activity. Such negative views of collective organizing are probably partly conditioned by the real inefficiency of most of these associations, as well as by respondents' unfamiliarity with positive examples and the results of their work.

In addition, skepticism results from inconsistency in these associations' operations, due to divisions of the professional community on ethnic¹⁰⁰ and other interest foundations.¹⁰¹ As the names of three of the six journalist associations demonstrate, they are based on the principle of the ethno-territorial division of society and the media system. Fragmentation of the professional community (not excluding professional associations) along ethnic, entity, territorial and other ideological and interest lines was pointed out as the reason for inconsistent and selective reactions of media outlets and associations, whereas solidarity of the whole professional public is considered an exception rather than a rule.¹⁰²

Association BH Journalists is mentioned most often by respondents and two respondents (N = 32) affirmatively assessed its operations. This association is not based on ethno-national criteria and has bureaus in Banja Luka, Sarajevo and Mostar and members from all parts of B&H. However, a view expressed by the interviewed respondents illustrates that not even this association is perceived by the whole professional public as consistent or as an association which overcomes ethnic divisions.¹⁰³ Additionally, several respondents say that the association's credibility was hurt by a case of theft of money paid by members for retirement and health insurance. Although the interviewed journalists do not mention how the scandal was resolved, according to information from BH Journalists, a criminal case is pending against the association's secretary for the theft of money.

Solidarity in the professional community in cases of assaults on journalists is expressed usually in the form of declared support, press releases and public condemnation by individual media organizations and associations. According to respondents, such reactions may provide some kind of moral satisfaction for journalists, but ultimately they lack important social or political effect. In order to achieve better effects, the research suggests that associations, as well as media organizations, need to continuously follow cases of pressure and assaults on journalists and give the public constant insight into cases of violations of media freedom.¹⁰⁴

100 Tanja Topić, Manager of the Friedrich-Ebert Stiftung Office in Banja Luka, illustrates the division of the professional community with the example of reactions to the Republika Srpska Government's boycott of BHT, which occurred in 2008: "The Republika Srpska Association of Journalists management, in a way, stood up in (...) defense of the Republika Srpska Government's stand, whereas the entire professional public stood up in defense of the profession".

101 For example, Kenan Ćerimagić, News Program Director of NTV "Hayat", suggests that such divisions are not just a result of ethnic divisions. He believes that associations do not react with the same speed and force to cases of pressure and threats, depending on their ties with the assaulted media. In addition, Ilko Barbarić, President of the Association of Croat Journalists, said the creation of a large number of associations, as was the case with his association, was the result of lack of communication, lack of interest and lack of promotion on the part of professional associations concentrated in Sarajevo and Banja Luka.

102 See for example: Hodžić, 2008, p. 118.

103 Mira Lolić-Močević, RTRS Program Director, says this was the reason she left the association. As an example of inconsistency in the association's work, she mentions the lack of any kind of reaction to continuous tendentious journalism and the stirring up of national tensions by several FTV journalists.

104 Senad Zaimović, Director of the marketing agency "Fabrika", for example, makes this suggestion.

10. Credibility and Quality of Journalism

Perkins (2002) points out that international legal norms which protect freedom of expression and journalism imply ethical principles and potentials of journalism in the democratization of society, whose promotion is basically supposed to justify efforts directed toward the protection of media freedom (202).

The role of the media as a corrective for society, which includes monitoring events, pointing to violations of the social order and facilitating independent criticism (McQuail, 2000), is potentially jeopardized in circumstances of multiple pressures on media and journalists. In the Bosnian-Herzegovinian transition context, the intertwinement of economic and political pressures on the media may have particularly significant negative consequences in the form of diminishing the credibility, quality and relevance of journalism.¹⁰⁵

Failure to accomplish the abovementioned role of journalism, both on the level of the professional community, and in individual media outlets, as well as individual journalists, is not wrong in terms of the legal norms, but it is important to identify to what degree neglect of journalists' responsibilities is present in the use of media freedom, how often and how grave the forms of violation of professional ethical standards are and what the potential effects are on society.

It is important to note that in media sustainability reports (MSI Irex), evaluations of professional standards are generally lower than evaluations of protection of media freedom in B&H.¹⁰⁶ Neglect of professional norms and development of sensationalistic journalism at the expense of serious journalism are among the tendencies identified in B&H journalism (Jusić, 2006). Primary research results also demonstrate that in B&H media, freedom is abused by journalists and there is a lack of responsibility to the public. Interviewed representatives of regulatory bodies also state that violations of professional norms are present and everyday. A characteristic of journalism in B&H is that not infrequently it fuels exclusivist political views and uses exclusively ethno-nationalistic interpretative frameworks and ultimately even hate speech.¹⁰⁷ Especially alarming is that in 2008, according to a B&H Journalists report,¹⁰⁸ a trend in the declining quality of journalism was identified.

The national report on the implementation of the International Covenant on Civil and Political Rights (hereinafter referred to as CCPR in the report) from 2005 states that disrespect of ethical standards exists and is especially present in print media. The most common violations of ethical standards identified in the report are one-sided presentation of information, unjustified conclusions (particularly with regard to guilt of indictees in court cases), failure to respect the need for protection of identity of minors (when they are victims

105 See for example: Babić, D., "The Stumbling of the Media in Times of Transition", Media Plan, Sarajevo, 2005.

106 See more in MSI Irex reports at: http://www.irex.org/programs/MSI_EUR/2009/bh.asp.

107 According to the views of some of the interviewed respondents. Also see BH Journalist report for 2008, available at: <http://www.bhnovinari.ba/?ID=179>.

108 See more at: <http://www.bhnovinari.ba/?ID=179>.

or witnesses of crimes), and so on (100). Interviewed respondents assess that violations of the Press Code are an everyday occurrence.¹⁰⁹ According to respondents, the existence of the Press Council is important, but the print media self-regulation system has not fully taken root as a result of a lack of capacities as well as not being fully accepted in the community.

On the other hand, the majority of the respondents interviewed believe the Communication Regulatory Agency has contributed to the credibility and quality of journalism. Few respondents maintain that lack of a continuous and consistent system for monitoring and regulating media content reduces the potential positive effects on broadcasters' content.¹¹⁰ According to Dunja Mijatović, Director of the CRA Broadcasting Sector, progress is visible in broadcasters' adherence to professional norms because drastic violations of the Broadcast Code of Practice are no longer present as they were 10 years ago. To illustrate, in 2008 CRA did not register a single case of the presence of hate speech in the media.¹¹¹

Interviewed respondents believe that the existing legal and professional norms which promote quality of journalism are adequate, but the implementation of these norms is flawed. Among the reasons identified for the poor quality of media content and the failure to respect legal and professional norms on the part of journalists are:

- Tendency toward sensationalistic journalism,
- Commercialization of content,
- Low level of know-how and competence of journalists,
- Focus on the interests of media outlets and centers of power connected with them rather than on informing the public
- Avoidance of threats and pressure,
- Lack of resources in media newsrooms and too much burden on journalists through various assignments, etc.

We may conclude that financial, ownership and political interests, as suggested by the interviewed respondents, are placed before the public's interest and need for professional and objective information. According to one of our interviewees: "Economic and financial interest is stronger than the interest (...) of the media public" (Ilko Barbarić, President of the Association of Croat Journalists). In light of the dominance of market-driven logic and the race for profit, as suggested by Gurevitch and Blumer (1995), the integrity, credibility, ability and commitment of journalists to serve public interests are drastically jeopardized (according to Thorgeirsdottiru, 386).

Respondents also believe that there is a lack of critical reaction from the public, including civil society and the academic community, to media content, which would lead to the advancement of the quality and credibility of journalism.

109 Dražen Zubak, lawyer and member of the Press Council Complaints Committee, says the Council receives fewer than 100 complaints from citizens each year related to print media reporting. The most common violations of the Press Code which he mentions are tied to the fact that journalists do not distinguish between assumptions and facts or that they make accusations of crimes without accompanying their allegations by valid court decisions or at least indictments.

110 For example, Boris Nogo, a SRNA Agency journalist, says that according to his interpretation, obvious violations of professional norms are present in the content of some media outlets, without any reaction from the CRA. Three more respondents said that the CRA insufficiently uses its powers and that in some cases of serious violations of professional norms they have not reacted at all.

111 2008 Human Rights Report, US Department of State.

11. Concluding Remarks

Therefore, it may be concluded that freedom of expression and freedom of the media are largely protected at the level of legal norms. Protection of freedom of speech is part of the constitutional matter, international conventions in effect in B&H, as well as specific laws and media regulations. However, shortcomings have been identified both in the content and in the implementation of legislative and professional norms.

With regard to the Libel Law, shortcomings have been identified in the practice of processing libel lawsuits. They primarily have to do with insufficient use of mediation mechanisms provided by the Press Council before filing lawsuits. In addition, the issue of standards for proving mental anguish (mainly related to the determination of criteria and timeframes for evaluation) and the adequacy of compensatory damages for mental anguish should be reviewed. It is important to note that potential abuse of the law must be prevented. What must also be prevented is the negative effect of the large number of lawsuits and verdicts on the quality and relevance of media content related to the avoidance of issues and types of programs which carry any kind of risk of libel lawsuits and possible compensatory damages for mental anguish.

For that reason, instead of compensatory damages for mental anguish, court practices should be directed more at publishing the whole verdict in the media outlet against which it is pronounced. This would provide some kind of moral satisfaction to the persons filing the suit. On the other hand, the public would be properly informed about the contentious information and the omission and fault of the specific media outlet for publishing untrue information would be pointed out, whereas the media and journalists would be encouraged to exercise more responsibility in the future. In addition, suggestions have been made to work additionally on educating judges who try libel lawsuits and on boosting court capacities to make the processing of these cases better, more efficient and faster.

The research results show that different kinds of pressure on media and journalists are present in B&H, and that the pressure is common. We may conclude that there are three basic types of pressure, according to the type of the social actor who exerts it: a) economic, b) political and c) pressure from criminal circles. Such pressures are often intertwined. Mechanisms through which pressure is exerted also differ, including: physical assaults, threats, verbal pressure in the form of public criticism, insults, labeling, accusation of betrayal of national interests and media boycott, i.e. denial of information to particular journalists, etc. More subtle and less visible forms of pressure are also present, such as conditioning financial support on the part of advertisers or government bodies, censorship on the part of owners or editors with the aim of conforming media content to their interests and the interests of various centers of power, increased financial controls, unannounced inspections, etc. Particularly alarming are indicators which show that pressure on journalists and violations of media freedom in general have been on the rise in the last few years.

Although based on research, we cannot make final evaluations of institutionalized and social protection of journalists in cases of assaults and pressure; we may conclude, however, that considerable skepticism is present, both in terms of finding and sanctioning

perpetrators and in terms of support from the professional and general public. Reactions from the professional community are perceived as divided and inconsistent and their effects are considered modest.

Interviewed respondents assess that media content are to a lesser or greater extent in the service of the interests of owners and the centers of political and economic power connected with them. In addition, practically all the interviewed respondents maintain that the media largely reflect political divisions in B&H, primarily those on an ethnic and entity level, which is manifested in entirely different interpretative frameworks in reporting on the same events, depending on which ethnic group a media outlet is closer to geographically and ideologically. Further, even among media which, conditionally speaking, belong to the same ethno-national camp, there are important political and ideological differences. Censorship is not perceived as a regular practice in the B&H media, but self-censorship and an a priori division of the labor market along ethnic and ideological lines are considered a major problem with serious consequences for the quality of media content and adherence to professional norms.

With regard to access to information, practice has shown that public bodies, as a result of the lack of harmonization of subsequently passed laws with the FOIA and lack of sanctions, as well as shortcomings in complaints procedures, are able to avoid providing insight into requested information. As sanctions are envisioned under the Law on Changes and Amendments to the FOIA, passed at the level of B&H in December 2009, practice will show to what extent the removal of this most frequently identified shortcoming of the FOIA will lead to its better implementation and an increased availability of public information at the state level.

Solidarity among journalists, solidarity among media and solidarity in the conduct of journalist associations is perceived as flawed, inconsistent and sporadic. Skepticism toward journalist associations and unions shows that the results of collective associating are modest or that the professional public and general public know little about it. The poor financial status of media, as well as violations of journalists' labor rights, make both the former and the latter vulnerable to different kinds of pressure.

In this context, the credibility and quality of journalism are significantly jeopardized. Media credibility in IREX media sustainability research was generally evaluated even more poorly than the situation with media freedom. Shortcomings in the implementation of ethical and professional norms, as well as the lack of relevant journalism in the sense of broader social critique and drawing attention to cases of violation of the social order, has the result that citizens in some cases are likely deprived of information of public importance. The credibility of journalism is additionally jeopardized by general trends in journalism, including commercialization of content, low level of journalists' competence, too much burden on journalists in their work assignments and generally greater orientation toward profit instead of public interest.

The research results show that the operation of the Press Council has not received sufficient support from the print media because there are cases of disrespect of Complaints Committee decisions, walking out of the Council on the part of individual media outlets in cases when the Complaints Committee agreed to examine specific complaints, as well as cases of lateness in paying membership fees. In addition, everyday violations of the Press Code, as well as a large number of libel cases in courts (compared to the smaller number of libel complaints made to the Council), demonstrate that the Press Council is often bypassed by different social actors as the body that can perform mediation in such cases.

On the other hand, the majority of respondents gave a positive evaluation of the operation of the CRA. Results in boosting the credibility of broadcasters and uprooting hate speech from broadcasters were particularly emphasized. The CRA, however, is faced with considerable institutional pressure which threatens its independence.

The effects of journalist associations on the development of credibility of journalism are considered modest and their operation is deemed disunited and inefficient. Unfamiliarity with education projects, labor rights promotion projects, and assistance provided by these associations in cases of assaults on journalists, point to a possible lack of such projects or their insufficient public promotion.

At the level of media audiences and the general public, there is also a division along ethnic lines and trust is given primarily to media from the same ethnic camp.¹¹² Each medium is read/viewed/heard among members of the ethnic category which is in the majority in the region where they are seated. Thus, the public supports the existing political parallelism in the media and the media support the ethnically specific interpretations and divisions of the public. In such circumstances, skepticism is present regarding the current influence of the public on media credibility, but important potentials are also recognized in the sense of public influence on media credibility and strengthening of media freedom.

112 According to data from the GfK BH Market Research Center from 2006, "Broadcasting Media in BiH" (Press Release), in regions where Bosniaks make up the majority population the most viewed TV channels are FTV, BHT1 and OBN; in regions where Croats make up the majority the most viewed are channels from neighboring Croatia (HRT 1 and 2, HR RTL and Nova TV); in regions with a Serb majority the most viewed channels are PINK BH, BN and RTRS (see more in: Isanović, 2008; on the fragmentation pattern among print media readers, see for example: Jusić, 2004; Jusić, 2005). Among the respondents interviewed, very few evaluations (2 respondents out of the total 34) were made that such divisions are not visible and that unconditional trust in media categorized in "one's own" ethnic camp does not exist. According to this interpretation, for example, HRT's viewership ratings in all parts of B&H overcome the principle of ethnic division of society.

12. Recommendations:

Legislative, Institutional and Regulatory Framework

Reactions from the professional community and the general public to current institutional pressure on the Communication Regulatory Agency, including promotion of initiatives related to changes to the Law on Ministries and other Organs of Administration of B&H, which will ensure CRA's institutional independence.

Reopening the issue of media in cantonal and municipal authorities and of obstacles in their privatization.

Encouraging the financial self-sustainability of media and setting up funds for special programs of public importance, which would enable some independence from financial centers of power and advance the quality and credibility of journalism.

Promoting the system of self-regulation in the media community and consistent adherence to decisions of the Press Council Complaints Committee.

Libel Law

Promoting the possibility of filing complaints with the Press Council and CRA before filing libel lawsuits. This includes developing the practice of having court officials point out the existence of this possibility.

Developing standards for proving mental anguish, i.e. defining criteria and time frames for the evaluation of mental anguish.

Developing court practices oriented primarily toward publishing the whole verdict in the media outlet against which the verdict is pronounced instead of compensatory damages for mental anguish.

Advancing the capacities of courts and competences of all judges who try libel cases.

Institutional Protection in Cases of Assaults and Pressure on Journalists

Acting in the direction of specific legal qualification of assaults on journalists, which will be harmonized with journalists' specific responsibilities and which will lead to criminal sanctions different from those applied to assaults on persons in the capacity of private citizens.

Advancing the capacities of police and investigative bodies and courts in relations with the public for the purpose of developing journalists' confidence in the system of society's protection and creating a general climate in which the profession will consider itself better protected.

Strengthening the capacities of the police and investigative bodies and courts in processing assaults on journalists and advancing technical and human capacities, which will enable the sanctioning of perpetrators of threats and assaults on journalists.

Analysis of judicial investigation and court processing of cases of assaults and pressure on journalists, its course and effects.

Public presentation of the results of judicial investigations and court proceedings. Monitoring the effects of the proceedings of cases of assaults on journalists would enable the evaluation of the work of institutions of the system in this regard and public reactions to potential omissions or, on the other hand, development of trust in the work of these institutions and the encouragement of journalists to report cases of threats, assaults and pressure.

Support of the Professional Community to Journalists Subjected to Assaults and Pressure

Strengthening the professional community's practices in speaking up and reacting to assaults and pressure on journalists and media. This includes press releases and letters sent to institutions of the system which are supposed to process these cases.

Professional associations should especially set up a system of reaction which will have an important place in media contents and in public space.

Promoting professional associations, i.e. increasing the insight of members of the professional community into forms of support which professional associations can give them (public support in cases of assaults, reactions toward institutions, legal assistance).

Reinforcing associations' capacities in performing these functions and primarily developing associations' communication practices.

Developing associations' capacities in providing assistance in relocating journalists who received threats.

Support of the Public in Cases of Assaults, Threats and Pressure

Civil society organizations should step up reactions in cases of assaults, pressure and threats to journalists. These reactions would include public support, as well as reactions toward institutions of the system which are supposed to process such cases.

Launching public dialogue on different forms of pressure to which media and journalists are subjected, in order to give the whole public insight into difficulties in the exercise of media freedom, as well as the development of credibility and quality of journalism.

Drawing attention to omissions in the work of judicial investigation and court bodies in processing cases of pressure, threats and assaults on journalists and media, as well as pointing out positive examples for the purpose of developing trust in the institutions of the system.

Censorship and Self-censorship

With regard to censorship and self-censorship practices, there are no specific recommendations for their prevention, but advancement of the security situation and the general socio-economic status of journalists and promotion of their labor rights would be long-term measures that would make journalists less susceptible to such practices.

Access to Information:

Passing changes and amendments to laws which envision sanctions for public bodies and individuals within them in cases of failure to act pursuant to the FOIA at entity levels.

At the legislative level, harmonizing subsequently passed laws (such as, at the state level, the Law on the Protection of Classified Information, the Law on Protection of Personal Information, and laws on intelligence services) with the text of the FOIA in order to prevent automatic refusal to provide access to information by invoking these laws, which is contrary to the principles of the FOIA. This should ensure the application of the “public interest” test and the publication of information in every case when public interest exists.

Advancing complaints procedures, by using the new opportunity for sanctioning public bodies, strengthening the institution of the media ombudsman¹¹³ or establishing the institution of an information commissioner whose decisions would be binding for public bodies.

Promoting public bodies’ practices to enable insight into information in their possession in as short a time as possible, especially when requests are made by journalists. These practices on the part of public bodies should be promoted not just as a way of respecting the laws, but also as a way of advancing the public reputation of public bodies.

Familiarizing officials of public bodies with the recently passed Law on Changes and Amendments to the FOIA at the state level.

Setting up a system of monitoring the implementation of the FOIA in order to provide more insight into the degree of its implementation.

Following the results of the implementation of the FOIA in the media, particularly cases of failure to abide by the provisions of the law.

Reactions of civil society organizations in extreme cases when public institutions deny information.

Labor Rights

Advancing the capacities of labor inspections and courts in processing and sanctioning violations of labor rights.

Registering cases of violations of labor rights at professional associations and unions and providing support and assistance to journalists.

Advancing journalists’ existential security in the sense of financial support and providing alternative employment in cases of pressure in the form of censorship imposed by owners and editors.

Public reactions to violations of journalists’ labor rights.

113 The institution of ombudsmen at the level of the Federation is closing by the end of February 2010 (interview with Mehmed Halilović, Deputy Ombudsman on Media) and it is uncertain whether there will be political willingness and when such a body will be established at the state level.

Solidarity within the Professional Community

Promoting solidarity in the sense of having as many media outlets as possible - at the same time raise controversial issues over which specific media outlets experience pressure and assaults, in order to share the burden of pressure among media.

Promoting the potentials of collective organizing in the professional community.

Using media space for continuous monitoring of cases of assaults on journalists and media in order to provide more insight into problems in the exercise of media freedom and facilitate greater public reaction.

Greater promotion of professional associations and the Help Line for Journalists within the professional community. This would primarily mean disseminating information on how to contact the associations and promoting associations' activities and especially the results of their work so far.

Developing joint projects of different journalist associations (related to the promotion of labor rights, protection of journalists in cases of assaults, lobbying for introduction of previously mentioned changes at the level of legal norms and their consistent implementation) in order to develop the media community's coherence in the exercise of interests which are common to all media and journalists in B&H.

Using media space for continuous monitoring of cases of assaults on journalists and media in order to provide more insight into problems in the exercise of media freedom and facilitate greater public reaction.

Credibility and quality of journalism

Organizing training, education and seminars in order to raise journalists' and editors' awareness of socially relevant issues or of promoting neglected social perspectives and interests.

Launching dialogue in the public and especially within the professional community on the present degree of journalists' responsibility in using media freedom. This would include drawing attention to positive examples of journalistic work, but also to violations of professional norms in media content.

Continuous reactions from the public, citizens or interest and minority groups to media content which promote the quality and credibility of journalism. This may include public opinion research, the activities of lobby groups of media consumers, filing complaints with regulators over media content, launching debates on media contents, often even within the media space (as suggested by McQuail, 2000, p. 186).

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