Funded by
the European Union

Kingdom of the Netherlands

Protection of Media Freedoms in Bosnia and Herzegovina

Steps Towards European Integration

MEDIACENTAR SARAJEVO

REFORME
ZA INTEGRITET MEDIJA I SLOBODU GOVORA

Protection of Media Freedoms in Bosnia and Herzegovina

Steps Towards European Integration

Authors:

Anida Sokol and Lejla Gačanica

Mediacentar Sarajevo

Sarajevo, 2025

Impressum

Title:
Protection of Media Freedoms in Bosnia and Herzegovina: Steps Towards European Integration

Publisher:
Mediacentar Sarajevo

Address:
Koševo 26, 71000 Sarajevo

Authors:
Anida Sokol and Lejla Gačanica

Reviewers:
Sanela Hodžić and Brankica Petković

Copy Editing:
Amela Šehović

DTP:
Jasmin Leventa

Year of Publication:
2025

The publication is part of the project "Reforms for Media Integrity and Freedom of Speech," funded by the European Union and the Embassy of the Kingdom of the Netherlands in Bosnia and Herzegovina, and jointly implemented by Mediacentar Sarajevo, the Press and Online Media Council in BiH, and the organization "JaBiHEU."

The content of this publication is the sole responsibility of the Mediacentar Sarajevo Foundation and does not necessarily reflect the views of the European Union and the Embassy of the Kingdom of the Netherlands in BiH.

Contents

1.	**Introduction**	**5**
1.1.	About the Study	8
1.2.	International Obligations of BiH and Obligations in the EU Integration Process	9
2.	**Protection of Freedom of Expression in BiH**	**12**
2.1.	Constitutional Protection of Freedom of Expression	13
2.2.	Protection of the Right to Freedom of Access to Information	14
2.3.	Protection against Defamation	17
2.4.	Amendments to the Criminal Code in the Republika Srpska	19
2.5.	Regulating Hate Speech	23
2.6.	Disinformation and Fake News in the Laws on Public Peace and Order	26
3.	**Legal Framework for Media and Protection of Media Freedoms**	**30**
3.1.	Communications and Electronic Media Legislation	31
3.2.	Rules and Regulations of the Communications Regulatory Agency	34
3.3.	BiH Law on the Public Broadcasting System	36
3.4.	Law on Transparency of Media Ownership and Promotion of Media Pluralism	39
3.5.	Laws on Public Information in the Cantons	43
3.6.	Institutional Protection of Journalists	44
4.	**Legislation on Media and Freedom of Expression in the EU**	**48**
4.1.	Digital Services Act	49
4.2.	European Media Freedom Act	51
4.3.	Directive against Strategic Lawsuits against Public Participation	52
5.	**Concluding Considerations and Recommendations**	**54**
References		**58**
About the authors		**67**

1.
Introduction

Bosnia and Herzegovina (BiH) significantly lags behind in improving the legal and institutional frameworks for the protection of freedom of expression and media freedoms. Even though, over two decades ago, it was recognized in the region as a country with progressive legislation in this area and an independent, highly professional regulatory body, thanks also to international pressure, recent years have seen stagnation in the reform of legislation that would keep pace with trends and challenges in the media sector and align with the acquis communautaire of the European Union (EU).

Freedom of expression is a fundamental pillar of any democratic society, as it allows citizens to freely express their opinions, participate in public debate, and stay informed. While freedom of expression applies to all participants in public debate, the media play an important role in relation to the right to freedom of expression. Whether online, via radio, television, or print, they are the means through which the vast majority of people receive news and information on issues of public interest.

To ensure the fundamental exercise of this right, states must establish a range of legal provisions that protect the right to freedom of expression. Such legislation includes adequate protection of freedom of expression and the right to access information, protection for journalists, and regulation of defamation and hate speech, as well as laws on public broadcasters and transparency of media ownership, which are crucial for media pluralism and ensuring impartial, diverse, and reliable information for citizens. Furthermore, such legislation should be complemented by policies promoting media pluralism, such as incentives for producing content aimed at minority groups and support for the financial sustainability of media that contribute to the public interest.

The strengthening of freedom of expression and media freedoms has been highlighted as one of the key priorities in the Opinion on the BiH application for EU membership from 2019, with particular emphasis on ensuring appropriate judicial prosecution of cases of threats and violence against journalists and media professionals, as well as ensuring the financial sustainability of the public broadcasting system. These priorities have been reiterated for years in the reports of the European Commission on the progress of BiH, alongside the recommendation to introduce a law on transparency of media ownership, which is important for both protecting media freedoms and promoting media pluralism. The European Commission's report for 2024 also emphasized the need for defamation to be decriminalized in the entire country.

By signing the Stabilization and Association Agreement, BiH has undertaken the obligation to align all laws and future legislation with the EU acquis, which includes laws in the area of media freedoms and freedom of expression. Aligning with the EU acquis is not only a formal obligation but also an opportunity to improve legislation in BiH in the area of freedom of expression and media freedoms.

The improvement of legislative frameworks in the area of freedom of expression and media freedoms is generally progressing slowly, encountering numerous challenges, among which the lack of political will stands out as key. The fact that the same recommendations are reiterated in the European Commission's reports reflects the absence of political will and agreement to fulfil these conditions and strengthen the protection of media freedoms and freedom of expression. Although there has been formal work on drafting new laws for years, such as the law on electronic communications and the public broadcasting (RTV) system, they have still not been adopted and the public has no insight into the processes of their drafting or the content of the drafts. The absence of proactive transparency and inclusivity in the creation of legal frameworks, along with the exclusion of the civil society sector and experts in the field, could have negative consequences for enacting quality legislation that protects media freedoms and human rights.

In recent years, there have been increasing proposals for legislation that could negatively impact freedom of expression. In the Republika Srpska, despite opposition from civil society and the international community, defamation was criminalized again in 2023, which has been assessed as a major setback for freedom of expression and media freedoms. At lower levels of government in the Federation of BiH, legal provisions aimed at combating harmful content and misinformation on the internet are being proposed, which could lead to negative consequences for freedom of expression and media freedoms. Legislation at the state level aligned with the EU acquis and international standards for freedom of expression is therefore even more necessary, as it would serve as a standard for those at lower levels of government.

This report highlights the urgent need for legal and institutional reforms in the area of media, media freedoms, and freedom of expression. Such reforms are becoming increasingly urgent due to the ongoing deterioration of media freedoms in BiH, challenges related to digitalization and the use of new technologies facing the media sector, and legislative initiatives that could further threaten freedom of expression. By implementing these reforms, the authorities in BiH would demonstrate their commitment to protecting media freedoms and the country's European path. Although provisions and recommendations already exist, political will remains the key factor for their adoption and implementation.

Urgent reforms

This report highlights the urgent need for legal and institutional reforms in the area of media, media freedoms, and freedom of expression. Such reforms are becoming increasingly urgent due to the ongoing deterioration of media freedoms in BiH, challenges related to digitalization and the use of new technologies facing the media sector, and legislative initiatives that could further threaten freedom of expression.

1.1. About the Study

The study provides an analysis of the legal framework for the media and legislative regulations for freedom of expression in BiH, as well as their compliance with international standards and the acquis of the EU. It consists of three parts: a) an overview of the legislative framework for the protection of freedom of expression in BiH and its compliance with international standards and the standards of the European Court of Human Rights; b) an overview of the legal framework for the media and institutional protection of media freedoms, particularly regarding the recommendations of the European Commission and their alignment with the acquis of the EU; and c) a review of the latest EU legislative frameworks related to media and freedom of expression, which also considers the possibility of their future implementation in BiH.

The introduction also provides a brief overview of the obligations that BiH, as a signatory to international conventions, has undertaken regarding the protection of freedom of expression, as well as regarding alignment with the acquis of the EU. In the first part, which analyses the legal framework for the protection of freedom of expression, reviews are provided of laws on protection of freedom of expression, laws on protection against defamation, including the recent criminalization of defamation in the Republika Srpska (RS), and regulations for the protection of public order and peace, along with their compliance with international standards and the standards of the European Court of Human Rights. The second part examines laws relevant to the operation of the media, such as the Law on Communications, the rules and regulations of the Communications Regulatory Agency, the Law on the Public Broadcasting System of BiH, and institutional frameworks for the protection of journalists. This section also presents the current state of the absence of regulations on transparency in media ownership and explains the importance of adopting such a legal framework to protect media pluralism and freedoms. Each section

mentions specific initiatives for legal reforms, as well as the current status of the processes of drafting new laws.

The third part is a brief overview of legislative acts at the EU level, with particular focus on the Digital Services Act, the European Media Freedom Act, and the Directive against Strategic Lawsuits against Public Participation (SLAPP), considering their possible implementation in BiH. Finally, the report provides recommendations for necessary steps that should be taken to enhance media freedoms, protect journalists and freedom of expression, and meet the requirements of the EU integration process. The report is based on a legal analysis of the legislative framework, a review of secondary literature, and twelve interviews with legal experts and representatives of the media and institutions.

BiH has an obligation to apply the European Convention on Human Rights, including its article on the protection of freedom of expression (Article 10), which is a constitutional obligation

This study represents the first part of a three-part series of reports dedicated to monitoring legislative and institutional reforms in the area of freedom of expression and media freedoms in the EU integration process. This first study analyses the existing legislation and the current steps in legislative reforms on media freedoms and freedom of expression, identifying key priorities and risks. Subsequent studies will follow the process of drafting legal provisions with a specific focus on priority areas, such as transparency in media ownership and laws regarding the public broadcasting system. The study is intended for all actors involved in the protection of freedom of expression and media freedoms, including government institutions, decision-makers, regulators, the media sector, civil society, and the international community. We hope it will contribute to encouraging effective legislative and institutional reforms, as well as a better understanding of the current state and challenges in the area of freedom of expression and media freedoms in BiH.

1.2. International Obligations of BiH and Obligations in the EU Integration Process

Through international conventions, BiH has undertaken a series of obligations for the protection of freedom of expression and regulation of the legal framework for the media. These obligations include not only negative obligations, i.e. the state's duty not to interfere with the exercise of the right to freedom of expression, but also "positive obligations" that states must undertake to maximize the realization of the right to freedom of expression.[1]

Regarding the obligations that BiH has assumed through international conventions and is required to implement in BiH, significant are the International Covenant on Civil and Political Rights[2] (1966) and its Optional Protocols (1966 and 1989), which prohibit interference based on opinion and guarantee the right to freedom of expression. This right pertains to the freedom of citizens "to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice" (Article 19).

1 Jean-François Akandji-Komb, *Positive Obligations under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights* (Council of Europe, 2007), https://rm.coe.int/168007ff4d

2 International Covenant on Civil and Political Rights, https://www.mhrr.gov.ba/pdf/medunarodnipakt%20b.pdf

BiH has an obligation to apply the European Convention on Human Rights, including its article on the protection of freedom of expression (Article 10)[3], which is a constitutional obligation since the Constitution of BiH stipulates that the European Convention on Human Rights and its protocols take precedence over all other laws in the country (Article II, 2).[4]

By signing the Stabilization and Association Agreement, BiH has undertaken the obligation to align its entire legislation with the EU acquis.

The Framework Convention for the Protection of National Minorities of the Council of Europe protects the rights of every member of a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience, and religion, which includes the right of every member of a national minority to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers (Article 9, 1). It is the state's obligation to ensure that members of national minorities have access to the media without discrimination, including sound radio and television broadcasting or establishing cinema enterprises, as well as creating and using printed media by members of national minorities. In the legal framework of sound radio and television broadcasting, the state is obliged to ensure, as far as possible, that members of national minorities are granted the possibility to create and use their own media (Article 9, 3).[5]

By signing the Stabilization and Association Agreement[6], BiH has undertaken the obligation to align its entire legislation with the EU acquis, which involves not only aligning provisions but also their effective implementation, with freedom of expression holding one of the most prominent positions. Ensuring this freedom, with emphasis on the protection of journalists and the financial sustainability of the public broadcasting system, represents one of the 14 key priorities defined in the European Commission's Opinion on BiH's membership from 2019.[7] Although BiH was granted candidate status at the end of 2022 and the green light to open negotiations with the European Union in 2024, progress in the area of freedom of expression has not been achieved.

3 European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/convention_bos

4 Constitution of Bosnia and Herzegovina, https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf

5 Framework Convention for the Protection of National Minorities, https://rm.coe.int/okvirna-konvencija-za-zastitu-nacionalnih-manjina/168094dfe6

6 Stabilization and Association Agreement, https://www.dei.gov.ba/uploads/documents/sporazum-o-stabilizaciji-i-pridruzivanju_1604320186.pdf

7 European Commission, *Commission Opinion on Bosnia and Herzegovina's Application for Membership of the European Union* (European Commission, 2019), https://neighbourhood-enlargement.ec.europa.eu/document/download/6cbf9fa7-a288-4497-9e4a-17527bcbafc5_en?filename=20190529-bosnia-and-herzegovina-opinion.pdf

2.

Protection of Freedom of Expression in BiH

The legal framework for freedom of expression in BiH has a solid foundation and is largely aligned with international standards and the European Convention on Human Rights. Freedom of expression is guaranteed by the Constitution of BiH and the entity constitutions, while laws on freedom of access to information ensure the right to access information held by public authorities. Laws on protection against defamation balance the right to freedom of expression with the right to protection of reputation, which is an integral part of the right to private life, pursuant to Article 8 of the European Convention on Human Rights.[8]

However, the application of the laws and the development of case law in the area of freedom of expression remain challenging, while the fragmentation and inconsistency of certain legal provisions contribute to legal uncertainty. Some legal provisions, such as those regarding protection against defamation, do not meet contemporary European Union standards. The recriminalization of defamation in the Republika Srpska represents a major setback for freedom of expression, while initiatives at the cantonal level to introduce sanctions for spreading false news online may further threaten freedom of expression in BiH.

To align with Directive 2019/1024 of the European Parliament and Council on Open Data and the Reuse of Public Sector Information, BiH adopted a new Law on Freedom of Access to Information at the Institutional Level in 2023. However, the Law has significant shortcomings and has not led to improvements in access to information.

2.1. Constitutional Protection of Freedom of Expression

According to the Constitution of BiH (Article II-3, Enumeration of Rights), all individuals on the territory of BiH enjoy human rights and freedoms, including the right to freedom of expression.[9] Following the European Convention on Human Rights, which takes precedence over the Constitution itself,[10] freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (Article 10).[11] This article of the European Convention on Human Rights does not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

The Constitution of the Republika Srpska guarantees freedom of thought and orientation, conscience and conviction, as well as of public expression of opinion (Article 25). It also guarantees freedom of the press and other communication media, stating that the free establishment of newspaper and publishing houses, publishing of newspapers, and public information by other media are lawful, and censorship of the press and other public information media is forbidden. Public media are obliged to inform the public on time, truthfully and impartially, and guarantee the right to correction of incorrect information to anyone whose right or

8 Svjetlana Milišić-Veličkovski, "Tužbe za zaštitu od klevete protiv medija" (Lawsuits for Protection From Defamation Against Media), In *Medijsko pravo: Okvir za slobodno i odgovorno djelovanje medija* (Media Law: A Framework for Free and Responsible Media Operation), edited by Amer Džihana (CPCD, 2022), 125, https://2am-objavi-ba.s3.amazonaws.com/wp-content/uploads/2022/03/21085603/Medijsko-pravo-Okvir-za-slobodno-i-odgovorno-djelovanje-medija.pdf

9 Constitution of Bosnia and Herzegovina, https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf

10 European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/convention_bos

11 Ibid.

legally determined interest has been violated, as well as the right to compensation for damage arising therefrom (Article 26).[12]

The Constitution of the Federation of BiH guarantees fundamental rights, including free speech and press, and freedom of thought, conscience, and belief (Article II, Article 21),[13] while the Statute of Brčko District states that all individuals in the District enjoy the rights and freedoms accorded to them by the European Convention on Human Rights and Fundamental Freedoms (Article 13, 4).[14]

Journalists and media professionals face various types of pressure, including political and economic pressure, verbal and online attacks, and restrictions on their free access to information.

Despite constitutional provisions protecting freedom of expression, studies show that in some cases, citizens encounter obstacles in exercising their right to freedom of expression. Some citizens completely refrain from expressing their opinions on social media due to fear of reprisals, inability to find employment, or other consequences, while activists are particularly exposed to organized online campaigns of discreditation.[15] Journalists and media professionals face various types of pressure, including political and economic pressure, verbal and online attacks, and restrictions on their free access to information.[16]

2.2. Protection of the Right to Freedom of Access to Information

The right to freedom of access to information is an integral part of the right to freedom of expression and is realized through state and entity laws, as well as the Instruction on Implementation of the Law on Freedom of Access to Information in Brčko District of BiH. The laws at the entity level were adopted in 2001, while in 2023 BiH adopted a new Law on Freedom of Access to Information (LFAI) at the Institutional Level of BiH[17], although it was not part of the priorities in the EU integration process.

The aim of the new Law was to enhance freedom of access to information, particularly regarding proactive transparency, which was not part of the previous Law, and to align the Law with Directive 2019/1024 of the European Parliament and of the Council on Open Data and the Reuse of Public Sector Information.[18]

The Directive on Open Data, which establishes a legal framework for the reuse of public sector information, is based on the principle that public and publicly funded data should be available for reuse for both

12 Constitution of the Republika Srpska, https://www.narodnaskupstinars.net/sites/default/files/upload/dokumenti/ustav/lat/ustav_republike_srpske.pdf

13 Constitution of the Federation, https://www.ustavnisudfbih.ba/bs/dokumenti/ustav_precisceni_tekst.pdf

14 Statute of Brčko District, https://skupstinabd.ba/images/dokumenti/ba/statut-brcko-distrikta.pdf

15 Vanja Stokić, Mladen Bubonjić and Anida Sokol, *Restricting Freedoms Online. From Crimes to Criminal Investigations for Online Content* (Balkan Investigative Reporting Network, 2024), https://balkaninsight.com/wp-content/uploads/2024/06/Restricting-Freedoms-Online.pdf

16 UN, *The Right to Freedom of Opinion and Expression: The Safety of Journalists and Access to Information in Bosnia and Herzegovina* (UN, 2022), https://bosniaherzegovina.un.org/sites/default/files/2022-09/Report%20-%20Safety%20of%20journalists%20and%20access%20to%20information%20in%20Bosnia%20and%20Herzegovina%20-BHS.pdf

17 Law on Freedom of Access to Information at the Institutional Level of Bosnia and Herzegovina, http://www.sluzbenilist.ba/page/akt/fRNPvuRCliQ=

18 Directive 2019/1024 of the European Parliament and of the Council on Open Data and the Reuse of Public Sector Information, https://eur-lex.europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32019L1024

commercial and non-commercial purposes. Its goal is to increase the socioeconomic potential of public sector information in the European Union.[19]

The Law on Freedom of Access to Information at the Institutional Level of BiH is the only new law adopted in recent years in BiH aimed at protecting freedom of expression, but one year after its implementation, it has not led to the necessary improvements. A year after the new Law was enacted, institutions have not fulfilled all obligations required by the new Law. A central portal for public information has not been established, whose organization and management is prescribed by a rulebook that was to be adopted by the Council of Ministers of BiH within nine months of the new Law's entry into force, which was intended to enhance transparency at the state level.[20]

One positive element of the Law is that it contains provisions on proactive transparency and a list of the types of information that institutions are obliged to publish on their websites whenever possible and appropriate, in a machine-readable form, within 15 days from the creation of the information (Article 14, 1). This includes information about the organization, operations, decision-making processes, financing, grants provided by institutions, public procurement, and public competitions (Article 14, 2). The Law also mandates that institutions ensure public access to their work and inform the public about meetings, agendas, times of meetings, and opportunities for direct insight into their work (Article 14.2). The Law provides for the establishment of a central portal for public information where BiH institutions are required to publish and update data for their permanent availability (Article 15).

Article 19 of the new LFAI contains a long list of exceptions or possible limitations on access to information held by public authorities, thereby leaving room for discretionary denial of requests for access to information. Access to information may be restricted to protect privacy,[21] if it can reasonably be expected that serious harm would be incurred to national security and international relations, public order and peace, commercial and other economic interests, economic, monetary, and exchange rate policies, and the environment (Article 19). Access may also be restricted in cases of tax secrecy, during inspection, control and supervision by BiH institutions, and in the case of information which is in the process of preparation by working groups or committees, the publication of which before its completion could seriously undermine the process of its creation (Article 19).

The Law largely follows the Council of Europe Convention on Access to Official Documents,[22] which BiH ratified in 2012, including the exceptions, but experts indicate that BiH was not obliged to transpose all

19 The Directive aims to maximize the potential of public sector information for the European economy and strengthens the principle that public sector content, available under national legislation, should be free for reuse. Public sector institutions, according to the Directive, may only charge marginal costs for the reuse of their data, except in very limited cases. This can enable a larger number of small and medium-sized enterprises, as well as startups, to access new markets through the development of data-based products and services. The Directive also includes public companies from the transport and utility sectors that generate significant data. Directive 2019/1024 of the European Parliament and of the Council on Open Data and the Reuse of Public Sector Information, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32003L0098

20 Edina Šečerović, "Godina dana novog ZOSPI-ja" (One Year of the New LFAI), *Media.ba,* 9 September 2024, Accessed: December 2024, https://www.media.ba/bs/magazin-novinarstvo/godina-dana-novog-zospi-ja

21 The limitation regarding personal data protection does not apply to information about the names of employees, executives, and other individuals involved in public affairs, their salaries, other income paid from budgetary funds, costs related to public activities of those individuals, and existence of conflicts of interest, as well as their professional qualifications.

22 Council of Europe Convention on Access to Official Documents, https://rm.coe.int/acces-aux-documents-publics-serbian-version/1680a2b4d6

exceptions, only those that are necessary.[23] Furthermore, decisions on exceptions must be subject to a proportionality and public interest test, and institutions may choose to disclose information if justified by public interest (Article 20). The listed exceptions are not unusual in other countries, but they are limiting in the context where the appeals body is not independent and functional, and in the context where exceptions have previously been misused in BiH without conducting a public interest test. The body for settling appeals in the second-instance procedure is the Appeals Council at the Council of Ministers, which has been criticized by civil society representatives who believe that this role should belong to an independent institution.[24]

Difficulties in accessing information

The media community and civil society also point to additional difficulties in accessing information that they could previously obtain under the old Law. Institutions refuse to provide certain aggregate data, for example, on the number of court and prosecution cases, as they consider such data to be the creation of analysis or new data, which under the new Law is not considered a request for access to information

Additionally, an expert group from the Council of Europe assessed that the Law is not in line with all the provisions of the Council of Europe Convention on Access to Official Documents, in particular those related to the processing of requests for access to information. The Law does not require the institution holding the requested information to assist the applicant in identifying the requested document, which represents a retrograde step compared to the Law that was previously applicable at the state level. The expert group assessed that the obligation of BiH institutions to proactively publish a wide range of information cannot replace the duty to assist each applicant individually regarding their requests for access to information.[25]

The media community and civil society also point to additional difficulties in accessing information that they could previously obtain under the old Law. Institutions refuse to provide certain aggregate data, for example, on the number of court and prosecution cases, as they consider such data to be the creation of analysis or new data, which under the new Law is not considered a request for access to information (Article 23, 6).[26] The Law on Freedom of Access to Information at the Institutional Level points to the risk of adopting quick legal provisions without considering the comments of civil society and the expert community and without ensuring that all measures prescribed by the Law are taken.

In accordance with Directive 2019/1024 of the European Parliament and of the Council on Open Data and the Reuse of Public Sector Information, the Law protects the right to reuse documents for commercial and non-commercial purposes (Article 30), and mandates that BiH institutions publish documents available for

23 Dejan Lučka, attorney, interview.

24 Nejra Hasečić, "Novi ZOSPI bi mogao dodatno ograničiti slobodan pristup informacijama u BiH" (The New LFAI Could Further Limit Freedom of Access to Information in BiH), Media.ba, 29 March 2021, Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/novi-zospi-bi-mogao-dodatno-ograniciti-slobodan-pristup-informacijama-u-bih

25 Council of Europe, *Baseline Evaluation Report on the Implementation of the Council of Europe Convention on Access to Official Documents* (Council of Europe, 2024), https://rm.coe.int/baseline-evaluation-report-bosnia-herzegovina/1680b1dfee, https://rm.coe.int/baseline-evaluation-report-bosnia-herzegovina/1680b1dfee

26 In response to an inquiry about the number of cases related to journalists registered in the CMS and TCMS, the High Judicial and Prosecutorial Council stated that they do not have the requested information as it requires additional analysis and the creation of an information report, which, in accordance with the Law on Freedom of Access to Information at the Institutional Level of BiH, they are not obliged to prepare. Response from the High Judicial and Prosecutorial Council, 27 December 2024. https://media.ba/bs/magazin-novinarstvo/godina-dana-novog-zospi-ja

reuse in an easily searchable manner (Article 31). However, in this case too, the Law provides for numerous limitations, some of which are not precisely defined, thus allowing for discretionary denial of requests. Institutions are not obliged to provide for reuse confidential statistical data, information for which the user must prove the existence of a legal interest, information held by bodies that have specific competences, information held by bodies providing public services of radio, television and electronic media, and information that is not collected for the purpose of performing public duties (Article 32, 6). Additionally, institutions may, in justified cases, set conditions for reuse (Article 33, 2).

Entity laws have a number of shortcomings, such as the lack of a proactive transparency obligation, deficiencies in the appeals process, and an undefined method for conducting the public interest test.

The adoption of the new Law at the state level has also led to greater inconsistency with the entity laws, the application of which, more than twenty years after their adoption, is not at an adequate level. Entity laws have a number of shortcomings, such as the lack of a proactive transparency obligation, deficiencies in the appeals process, and an undefined method for conducting the public interest test.[27] There are numerous challenges in the implementation of these laws, particularly regarding misunderstanding and non-implementation of the public interest test, improper application of exceptions, inadequate conduct of the appeals proceeding in cases of denial of requests for access to information, administrative silence, and failure to comply with deadlines for responding to requests.[28] Journalists encounter difficulties in accessing information, and the exercise of this right depends on the type of institution to which the request is sent, the topic the journalist is reporting on, and the nature of contact with the staff of the institution from which the information is requested.[29]

2.3. Protection against Defamation

The laws on protection against defamation in the Entities and the Brčko District regulate civil liability for harm caused to the reputation of a natural or legal person by the making or dissemination of an expression of false fact identifying the legal or natural person to a third person. The Law on Protection against Defamation in the Republika Srpska was adopted in 2000, in the Federation in 2001, and in Brčko District in 2023, and they were considered to be progressive legislation, particularly important for the journalist community.[30] The laws are based on the standards and principles developed through the case law of the European Court of Human Rights, and strike a balance between Article 10 of the European Convention on

27 Anida Sokol, "Sloboda pristupa informacijama" (Freedom of Access to Information), In *Medijsko pravo: Okvir za slobodno i odgovorno djelovanje medija* (Media Law: A Framework for Free and Responsible Media Operation), edited by Amer Džihana (CPCD, 2022), 223, https://2am-objavi-ba.s3.amazonaws.com/wp-content/uploads/2022/03/21085603/Medijsko-pravo-Okvir-za-slobodno-i-odgovorno-djelovanje-medija.pdfU

28 Selma Učanbarlić, *Zakon o slobodi pristupa informacijama BiH. Prednosti i mane postojećeg Zakona, (ne) transparentnost institucija i analiza predloženih izmjena zakona* (The Freedom of Information Act in BiH. Its Advantages and Disadvantages, An Analysis of Proposed changes and the (Lack of) Transparency of Public Authorities) (BH Journalists Association, 2021), https://bhnovinari.ba/wp-content/uploads/2021/09/Analiza_ZoSPI-FINAL.pdf

29 UN, *Right to Freedom of Opinion and Expression. Safety of Journalists and Access to Information in Bosnia and Herzegovina* (UN, 2022), https://bosniaherzegovina.un.org/sites/default/files/2022-09/Report%20-%20Safety%20of%20journalists%20and%20access%20to%20information%20in%20Bosnia%20and%20Herzegovina%20-BHS.pdf

30 Boro Kontić, "Zakon o kleveti prvih dvadeset godina" (Law on Defamation – The First Twenty Years), *Media.ba,* 7 March 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/zakon-o-kleveti-prvih-dvadeset-godina

Some examples point to the practice of filing strategic lawsuits against public participation (SLAPP), which have been designed to intimidate journalists, discourage them and expose them to unwarranted financial costs

Human Rights, which guarantees the right to freedom of expression, and the right to protection of reputation, which is part of the right to respect for private life, under Article 8 of the European Convention.[31]

These laws aim at protecting the right to freedom of expression, including the right to those expressions that may be shocking, offensive or disturbing (Article 2). They also recognize the essential role of the media in the democratic process as public watchdogs and transmitters of important information to the public (Article 2).[32] The laws provide for the protection of journalistic sources, and bolster the professional standards of journalism and dispute resolution by mediation, i.e. self-regulation. The laws obligate the injured party to take all measures to mitigate the harm, in particular to request correction (Article 8), while in making a determination on compensation, the court is obliged to have regard for all measures undertaken by the person who allegedly caused the harm to mitigate the harm, including the issuance of a correction or an apology (Article 10).

Challenges in the implementation of this law are numerous, including frequent misuse of the law as a tool for retribution or intimidation of journalists. According to an analysis conducted by the OSCE Mission, which between 2016 and 2019 collected and analysed almost one thousand cases against journalists and the media, most of those lawsuits were filed by officials and politicians. The Mission has also noted that a significant number of those lawsuits were eventually withdrawn, but that some of them point to the practice of filing strategic lawsuits against public participation (SLAPP), which have been designed to intimidate journalists, discourage them and the media from reporting about issues of public importance, and expose them to unwarranted financial costs.[33] In a large number of cases such lawsuits are filed by persons in positions of power and their objective is not necessarily to win the case before a court, but to intimidate those who report on issues of public interest. The lawsuits constitute a threat to the freedom of expression and media freedoms for they discourage journalists and the media from reporting about issues of public importance.[34]

Besides, also noticeable is the unbalanced jurisprudence in defamation cases, with insufficient knowledge and application of the standards set forth in the European Court of Human Rights. This particularly relates

---

31 Svjetlana Milišić-Veličkovski, "Tužbe za zaštitu od klevete protiv medija" (Lawsuits against the Media Concerning Protection from Defamation), In *Medijsko pravo: Okvir za slobodno i odgovorno djelovanje medija* (Media Law: A Framework for Free and Responsible Media Operation), edited by Amer Džihana (CPCD, 2022), 125. https://2am-objavi-ba.s3.amazonaws.com/wp-content/uploads/2022/03/21085603/Medijsko-pravo-Okvir-za-slobodno-i-odgovorno-djelovanje-medija.pdf

32 Law on Protection from Defamation of the Federation of Bosnia and Herzegovina, https://fbihvlada.gov.ba/bosanski/zakoni/2003/zakoni/13bos.htm; https://www.parlament.ba/data/dokumenti/press-kutak/zakon_o_zastiti_od_klevete_republike_srpske_hr.pdf

33 OSCE data have been rendered available for the purpose of conducting an analysis of safety of journalists, published by the UNBiH agency. UN, *The Right to Freedom of Opinion and Expression: The Safety of Journalists and Access to Information in Bosnia and Herzegovina* (UN, 2022), https://bosniaherzegovina.un.org/sites/default/files/2022-09/Report%20-%20Safety%20of%20journalists%20and%20access%20to%20information%20in%20Bosnia%20and%20Herzegovina%20-BHS.pdf

34 Harun Išerić, SLAPP postupci protiv medija: *Analiza izabranih primjera* (SLAPP Proceedings against the Media: Analysis of Selected Cases) (Association BH Journalists, 2022), https://bhnovinari.ba/wp-content/uploads/2024/06/SLAPP-postupci-protiv-medija-u-Bosni-i-Hercegovini-analiza-autora-Haruna-Iserica.pdf

to the cases in which it was politicians or public persons that filed lawsuits, to imposing adequate fines, and to balancing between the right to a private life and to freedom of expression. In addition, cases conducted upon defamation lawsuits are often prolonged, with an average duration of four to five years, which renders the work of journalists much more difficult. However, the persons we interviewed noted that over the past five years there has been case law stabilization and improvement, also thanks to the decisions of the Constitutional Court of BiH in individual cases concerning defamation.[35]

There have been no amendments to the legislation on protection against defamation that would prevent its abuse and improve the application of the standards of the European Court of Human Rights. In 2020 there was an initiative before the House of Representatives of the Parliamentary Assembly of BiH to amend the relevant entity legislation so as to introduce various standards of acceptability and tolerance and standards of proof when it comes to public persons in relation to private ones, but the initiative has not yielded the adoption of the amendments sought.[36]

In light of the newly adopted *Anti-SLAPP* Directive – Directive of the European Parliament and of the Council 2024/1069 on Protecting Persons who Engage in Public Participation from Manifestly Unfounded Claims or Abusive Court Proceedings ('Strategic lawsuits against public participation') (Chapter 4.3) – it will be necessary to amend the legislative framework on protection from defamation in the future so as to provide protection from manifestly unfounded claims or abusive court proceedings.

The persons we interviewed during this research project claim there is great interest among civil society and media professionals in the solutions that would accompany the directive, particularly because of strategic lawsuits against public participation, faced by journalists and environmental activists.[37] Unfortunately, according to the information collected during our research, the directive is currently not a priority in the process of harmonization with the European Union legislation, and there are also no plans for its harmonization in the upcoming period.[38]

2.4. Amendments to the Criminal Code in the Republika Srpska

Contrary to the need to improve the legal framework on protection from defamation, the amendments to the Criminal Code of the Republika Srpska, made in 2023, which, *inter alia*, criminalize defamation, constitute a major step backwards with regard to media freedoms and the right to freedom of expression.

In July 2023, the Republika Srpska National Assembly adopted the Proposed Law on Amendments to the Criminal Code of the Republika Srpska (RS), which criminalizes defamation, making one's personal and family situation public, and unauthorized publication and display of other people's writings, portraits and recordings.

Step backwars in Republika Srpska

The amendments to the Criminal Code of the Republika Srpska, made in 2023, which, inter alia, criminalize defamation, constitute a major step backwards with regard to media freedoms and the right to freedom of expression.

35 Aleksandar Jokić, attorney, interview.

36 Association BH Journalists, "Političari moraju prihvatiti kritiku u medijima kao dio slobode izražavanja a ne kao klevetu" (Politicians Must Accept Criticism in the Media as Part of Freedom of Expression, Not as Defamation), Association BH Journalists, 17 March 2022. Accessed: December 2024. https://bhnovinari.ba/bs/2020/03/17/politicari-moraju-prihvatiti-kritiku-u-medijima-kao-dio-slobode-izrazavanja-a-ne-kao-klevetu/ https://bhnovinari.ba/wp-content/uploads/2024/02/BiH-Index-sigurnosti-novinara-za-2022-BHS-jezik.pdf

37 Aleksandar Jokić, attorney, interview.

38 Directorate for European Integration, interview.

In the part concerning the criminal offences against honour and reputation (Chapter XVII.a), the RS Criminal Code provides for fines ranging between BAM 1,000 and 3,000 for knowingly saying or spreading something untrue about another person, which causes harm to his/her honour and reputation (Article 208.a, 1). Higher fines, ranging from BAM 2,000 to 6,000, are envisioned if defamation was committed in the media, on the internet, at public gatherings, or through other means of public expression (Article 208.a, 2), and if it has led or could have led to serious consequences for the injured party (BAM from 3,000 to 6,000) (Article 208.a, 3).[39]

Besides, the amendments also criminalized the dissemination of information from another person's private or family life, which may harm his/her honour or reputation, and is not of justifiable public interest, providing for fines ranging from BAM 1,000 to 3,000 (Article 208.b, 1). Higher fines, ranging from BAM 2,000 to 5,000, are envisioned if the offence is committed through the media, on the internet, at public gatherings, or through other means of public expression (Article 208.b, 2). If such acts have caused or could have caused serious consequences for the injured party, the fine ranges from BAM 3,000 to 6,000 (Article 208.b, 3).[40]

Most of the adopted amendments do not recognize public interest nor the test of proportionality, while numerous provisions are imprecise, which may lead to possible misuse and may be used against those who criticize the authorities.

The amendments also introduced the criminal offence of unauthorized publication and display of another person's writings, portraits and recordings (Article 156.a), carrying a sentence of up to two years of imprisonment. This criminal offence is related to any publication or display of writings, portraits, photographs, video recordings, films or phonograms of personal character, without the consent of the person to whom those documents pertain, which may have detrimental consequences for that person's private life (Article 156.b, 1). If such an offence was committed against a member of the family or family community or against any other person with the intent to cause harm to that person's reputation, the perpetrator shall be sentenced to between six months and three years' imprisonment (Article 156.b, 2). Prison sentences ranging from one to five years are envisioned if such offences caused deterioration of the health of the person whose writing, portrait or recording has been published, and from one to ten years if that has brought about lethal consequences (Article 156.b, 3).[41]

Legal experts have pointed to numerous problems, illogicalities, imprecision and risks related to all adopted amendments.[42] Most of the adopted amendments do not recognize public interest nor the test of proportionality, while numerous provisions are imprecise, which may lead to possible misuse and may be used against those who criticize the authorities. Legal experts have, for instance, noted that the notion of writings is imprecise, and as such may be used against publishing documents of public interest.[43] Also, formulations such as that subject to punishment will be

39 Criminal Code of the Republika Srpska, https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html

40 Ibid.

41 Ibid.

42 Jovana Kisin Zagajac, "Analiza izmjena Krivičnog zakona Republike Srpske i njihov uticaj na slobodu izražavanja" (Analysis of Amendments to the Criminal Code of the Republika Srpska and Their Effect on Freedom of Expression), *Press and Online Media Council,* 28 October 2023. Accessed: December 2024. https://vzs.ba/analiza-izmjene-krivicnog-zakonika-republike-srpske-i-njihov-uticaj-na-slobodu-izrazavanja/

43 Dejan Sladojević, "Da li je kažnjivo objavljivati lažne diplome političara?" (Is it Punishable to Make Public Politicians' Fake Diplomas?), *Nezavisne novine,* 26 August 2023. Accessed: December 2024. https://www.nezavisne.com/novosti/bih/Da-li-je-kaznjivo-objaviti-lazne-diplome-politicara/786206

any unauthorized publication and display of another person's writing, portrait and recording, which has had or "could have" detrimental consequences for the person's private life, may be problematic in terms of their application and interpretation.[44]

Although certain objections were heeded in the process of consultations on the draft of the proposed amendments, such as that insult should be removed as a criminal offence from the proposed amendments to the Criminal Code, and that it should remain in the domain of the Law on Public Peace and Order, and also the amounts of fines have been reduced,[45] the fact that these acts have been criminalized has a significant discouraging effect on freedom of expression. Also, the reduced fines cannot be seen as an excuse for adopting such legal provisions, especially bearing in mind that defamation has already been defined through civil law, so the need for its criminalization is unwarranted. Criminal convictions carry a certain stigma and may lead to one's having a criminal record, which may limit his/her right to employment, while mere questioning of citizens in their capacity as suspects may lead to their self-censorship and their being discouraged from expressing opinions.[46] Also, suspects and accused persons may be remanded in custody and a prison sentence may replace a fine in the case that the person in question is not able to pay the fine.[47]

To avoid fear of the sanctions

The Constitutional Court went on to say that the relevant authorities should avoid using legal means that might discourage the public, especially journalists, from presenting critical views and opinions on the issues of public interest on account of their fear of criminal and other sanctions.

In early 2024, the BiH Constitutional Court established that criminalization of defamation is in line with the BiH Constitution, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms, but also noted that the relevant authorities in the RS should proceed carefully in cases of criminal prosecution related to the amendments to the Criminal Code, and that the provisions should be applied in conformity with the standards applied at the European Court of Human Rights.[48] The Constitutional Court went on to say that the relevant authorities should avoid using legal means that might discourage the public, especially journalists, from presenting critical views and opinions on the issues of public interest on account of their fear of criminal and other sanctions.[49]

Although Article 10 of the European Convention does not rule out criminal prosecution for defamation, the position taken by the European Court of Human Rights is that criminal punishment is the most serious form of jeopardizing freedom of expression and may lead to censorship.[50] UN human rights experts have stated

44 Dejan Lučka, "Manje kazne, isti problemi" (Lesser Penalties, Same Problems), *Media.ba,* 17 July 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/manje-kazne-isti-problemi-kleveta-kao-krivicno-djelo

45 Ibid.

46 Ibid.

47 Senad Pećanin, "Dramatične posljedice planirane kriminalizacije klevete u RS-u" (Dramatic Consequences of the Planned Criminalization of Defamation in the RS), *Media.ba,* 14 March 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/dramaticne-posljedice-planirane-kriminalizacije-klevete-u-rs

48 Constitutional Court, Decision on Constitutionality and Merits, https://www.ustavnisud.ba/uploads/odluke/_sr/U-21-23-1401076.pdf

49 Dejan Lučka, "Pravna analiza odluke Ustavnog suda BiH o kriminalizaciji klevete" (Legal Analysis of the BiH Constitutional Court's Decision on Criminalization of Defamation), *Media.ba,* 7 February 2024. Accessed: December 2024. https://media.ba/bs/mediametar/pravna-analiza-odluke-ustavnog-suda-bih-o-kriminalizaciji-klevete

50 Banja Luka Center of Human Rights, "Predani amandmani na nacrt zakona kojim se mijenja KZRS" (Amendments to Draft Law Amending the CC RS Submitted), *Banja Luka Center of Human Rights,* 7 May 2023. Accessed: December 2024. https://www.blchr.org/predani-amandmani-na-nacrt-zakona/

Data show that numerous reports concerning the criminal offence of defamation have been filed against citizens but also against journalists, and that several criminal proceedings have been instituted.

publicly that the adoption of the amendments goes against the global trend of decriminalizing defamation, including in Europe, where several European Union Member States and candidate members have repealed criminal defamation or have taken steps towards abandoning it.[51] At this point it is also important to refer to the position taken by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, which is that criminal libel laws are a legacy of the colonial past and have no place in modern democratic societies and that, as such, they should be repealed.[52]

In their joint statement, the UN, the OSCE, the Council of Europe and the European Union said clearly that this move contravenes the international human rights commitments of Bosnia and Herzegovina and is inconsistent with its European path as it is not in line with the 14 key priorities of the European Commission's Opinion, in particular key priority 11 on an enabling environment for civil society, and key priority 12 on freedom of expression.[53]

Primarily because of the criminalization of defamation and its effect on freedom of expression, BiH has significantly regressed with regard to the protection of media freedoms and freedom of expression during 2023 and 2024. The World Press Freedom Index, compiled and published by Reporters Without Borders, for example, shows that in 2024 BiH dropped 17 spots in the ranking.[54] Calls to withdraw these amendments from the parliamentary procedure have been made from numerous international organizations, civil society organizations and the media. The Office of the High Representative labelled the re-criminalization of defamation an attack on the rights of the RS citizens,[55] while the UN, OSCE, the Council of Europe and the European Union have said that the amendments represent a major step backwards in the protection of fundamental rights and undermine the effective functioning of democracy in the Republika Srpska.[56]

Data show that numerous reports concerning the criminal offence of defamation have been filed against citizens but also against journalists, and that several criminal proceedings have been instituted.[57] Multiple

51 UN, "UN Experts Alarmed by Re-Criminalization of Defamation in the Republika Srpska Entity", *UN BiH,* 25 July 2023. Accessed: December 2024. https://bosniaherzegovina.un.org/bhs/240237-eksperti-un-uznemireni-ponovnom-kriminalizacijom-klevete-u-entitetu-republika-srpska

52 OHCHR, "Statement Made by Irene Khan, Special Rapporteur for the Promotion and Protection of Freedom of Expression at the 47th Session of the Human Rights Council", *OHCHR,* 2021, https://www.ohchr.org/en/press-briefing-notes/2021/07/statement-irene-khan-special-rapporteur-promotion-and-protection

53 OSCE, "Joint UN, OSCE, CoE and EU in BiH Statement Regarding the Republika Srpska Criminal Code Amendments Re-Criminalizing Defamation", *OSCE,* 20 July 2023. Accessed: December 2024. https://www.osce.org/hbs/mission-to-bosnia-and-herzegovina/548941

54 MCOnline Newsroom, "Indeks medijskih sloboda 2024: BiH nazadovala za sedamnaest mjesta" (2024 Media Freedom Index: BiH Drops Seventeen Positions), *Media.ba,* 3 May 2024. Accessed: December 2024. https://media.ba/bs/vijesti-i-dogadaji-vijesti/indeks-medijskih-sloboda-2024-bih-nazadovala-za-sedamnaest-mjesta

55 OHR, "Ponovna kriminalizacija klevete napad je na prava građana RS-a" (Re-Criminalization of Defamation is an Attack on the Rights of RS Citizens), *OHR,* 21 July 2023. Accessed: December 2024. https://www.ohr.int/recriminalization-of-defamation-is-an-attack-on-the-rights-of-rs-citizens-2/

56 OSCE, "Joint UN, OSCE, CoE and EU in BiH Statement Regarding the Republika Srpska Criminal Code Amendments Re-Criminalizing Defamation", *OSCE,* 20 July 2023. Accessed: December 2024. https://www.osce.org/hbs/mission-to-bosnia-and-herzegovina/548941

57 Slađan Tomić, "Osam krivičnih prijava za klevetu protiv novinara i urednika u okružnim tužilaštvima RS-a" (Eight Criminal Reports for Defamation against Journalists and Editors at District Offices of Prosecutors in the RS), *Media.ba,* 23 April 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/osam-krivicnih-prijava-za-klevetu-protiv-novinara-i-urednika-u-okruznim

journalists have already been questioned in police stations in their status as suspects on account of the reports filed against them.[58] Such practice not only undermines their professional activities, but also creates an environment of pressure, which may lead to self-censorship, reduction of freedom of expression, and the feeling of insecurity.

Criminal codes (BiH, FBiH and Brčko District) limited themselves to prohibiting the inciting and spreading of hatred on ethnic, racial and religious grounds, while failing to encompass other protected categories such as colour of skin, gender, sexual orientation, disability and other grounds envisioned by international standards.

2.5. Regulating Hate Speech

Freedom of expression is not an absolute right and, according to international legal standards, may be limited in order to prevent detrimental consequences such as violence, discrimination or infringement on other people's rights. In BiH criminal offences that represent forms of hate speech are regulated in the four criminal codes – state, entity, and the Brčko District levels. The criminal codes of BiH (Article 145.a, 1), the Federation of BiH (Article 163,1) and Brčko District (Article 160, 1) all prohibit public incitement and spreading of ethnic, racial and religious hatred, discord or intolerance among the constituent peoples and others who live in BiH, the Federation, and Brčko District.

In addition, the amendments imposed by the High Representative in 2021 also prohibit public incitement to violence and hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent, or national or ethnic origin (Article 143.a, 2). The FBiH Criminal Code codified the criminal offence of jeopardizing public order through radio or TV stations, which is committed by whoever, in severe violation of the standards of professional conduct of media and journalists, uses inciting or hate speech that obviously calls for or incites to violence, national or ethnic conflicts, and thereby brings public peace and order in danger (Article 363).

The three criminal codes (BiH, FBiH and Brčko District) limited themselves to prohibiting the inciting and spreading of hatred on ethnic, racial and religious grounds, while failing to encompass other protected categories such as colour of skin, gender, sexual orientation, disability and other grounds envisioned by international standards.[59] In its 2016 Report for BiH, the European Commission against Racism and Intolerance (ECRI) *inter alia* recommends the inclusion of language, colour, citizenship, sexual orientation and gender identity as grounds of inciting and spreading hatred. It also recommends criminalizing racist slurs, defamation and threats, as well as public expression of ideologies advocating superiority or demeaning persons on the grounds of race, colour, language, religion, nationality or ethnic background.[60]

The Criminal Code of the Republika Srpska, on the other hand, prescribes sentences of up to three years' imprisonment against those who, using the press, radio, television, a computer system or social network, or at a public gathering or in a public place or in any other way publicly call for, incite or encourage or

58 MCOnline Newsroom, "Urednica Spininfo saslušana u policijskoj stanici zbog krivične prijave" (Spininfo Editor Questioned in Police Station over Criminal Report), *Media.ba,* 10 October 2024. Accessed: December 2024. https://media.ba/bs/vijesti-i-dogadaji-vijesti/urednica-spininfo-saslusana-u-policijskoj-stanici-zbog-krivicne-prijave

59 Anida Sokol and Maja Ćalović, *Regulacija štetnog sadržaja na internetu: Između slobode izražavanja i štete po demokratiju* (Regulating Harmful Content Online: Between Freedom of Expression and Harm to Democracy) (Mediacentar Sarajevo, 2022), https://media.ba/sites/default/files/bos_regulacija_stetnog_sadrzaja_na_internetu_-_web_pages.pdf

60 European Commission against Racism and Intolerance, *ECRI Report on Bosnia and Herzegovina. Fifth Monitoring Cycle* (European Commission against Racism and Intolerance, 2017), https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602

make publicly available any leaflets, pictures or any other materials that call for violence or hatred against a specific person or groups because of their national, racial, or religious or ethnic affiliation, skin colour, gender, sexual orientation, disability, gender identity, origin or any other characteristics (Article 359, 1). The 2023 Amendments to the RS Criminal Code introduced a new article providing for fines of between BAM 2,000 and 6,000 for publicly exposing a person or a group to derision or disdain on the grounds of their race, religion, nationality, ethnic background, colour or gender.[61] During public consultations, legal experts proposed that this amendment be removed, noting that it represents duplication of the offence already defined in Article 359: "Public incitement to violence and hatred".[62]

Amendment to the Criminal Code of Bosnia and Herzegovina from 2021

It is forbidden publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes, if such conduct is directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

The regulation of hate speech and the prescribed penalties are not harmonized with the criminal codes and with all international standards. Although the Criminal Code of the RS also recognizes other protected characteristics, the same Code, for instance, does not provide heavier sanctions if the criminal offence is committed by the abuse of office, or if the perpetrator is an employee in a government institution or in some other public body.[63] Cases of prosecution of hate speech in BiH remain rare at all levels and judicial decisions inconsistent.

The ECRI proposes the sanctioning of founding or running racism-promoting groups, providing support to such groups and participation in their activities, and a ban on public dissemination, sharing, production and storage of racist material for the purpose of its public distribution.[64]

One of the ECRI recommendations was criminalization of publicly denying, trivializing, justifying or condoning, for racist purposes, the crimes of genocide, crimes against humanity or war crimes, which was done by the High Representative's Decision imposed in 2021, making amendments to the BiH Criminal Code. The amendments prohibit publicly condoning, denying, trivializing or justifying genocide, crimes against humanity and war crimes established by a final adjudication, if directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. Such acts are punishable if they could cause violence or hatred against such groups or individuals.[65]

61 Criminal Code of the Republika Srpska, https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html

62 Banja Luka Center of Human Rights, "Predani amandmani na nacrt zakona kojim se mijenja KZRS" (Amendments to Draft Law Amending the CC RS Submitted), *Banja Luka Center of Human Rights,* 7 May 2023. Accessed: December 2024. https://www.blchr.org/predani-amandmani-na-nacrt-zakona/

63 Enis Omerović and Amna Hrustić, "Sloboda izražavanja i govor mržnje: Odgovor države Bosne i Hercegovine" (Freedom of Expression and Hate Speech: Response by the State of Bosnia and Herzegovina), School of Law, University of Zenica, 13: 25 (2020).

64 European Commission against Racism and Intolerance, *ECRI Report on Bosnia and Herzegovina. Fifth Monitoring Cycle,* (European Commission against Racism and Intolerance, 2017), https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602

65 OHR, *High Representative's Decision Enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina,* 23 July 2021. https://www.ohr.int/odluka-visokog-predstavnika-kojom-se-donosi-zakon-o-dopuni-kaznenog-zakona-bosne-i-hercegovine/

Besides, the legal amendments provide for prison sentences for committing the following offences: giving a recognition, award, memorial, any kind of memento, or any privilege or similar to a person sentenced by a final judgment for genocide, crimes against humanity or a war crime, or naming a public object after or under a name of a person sentenced by a final judgment for such crimes, or whoever glorifies such a person in any way (Article 145.a, 6). The amendments are in line with the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. The Decision stipulates that the Member States shall make sure that the following conduct is punishable: publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes, if such conduct is directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.[66]

The BiH prosecutorial authorities seem to have generally refrained from prosecuting denial of genocide and other war crimes until recently, which was also noted by the European Commission against Racism and Intolerance in its 2024 Report.

Despite the amendments to the Criminal Code, BiH is still facing a large number of cases of denial of war crimes and glorification of war criminals. The BiH prosecutorial authorities seem to have generally refrained from prosecuting denial of genocide and other war crimes until recently, which was also noted by the European Commission against Racism and Intolerance in its 2024 Report.[67] The first indictment for glorifying a convicted war criminal was not issued until January 2024.[68]

The definition of hate speech was made part of the Election Law by the amendments to the BiH Election Law of 27 July 2022, imposed by the High Representative.[69] According to the amendments, hate speech shall mean "any form of public expression or speech that provokes or encourages hatred, discrimination or violence against any person or group of persons, based on race, skin colour, nationality, sex or religion, ethnic origin or any other personal characteristic or orientation that incites to discrimination, hostility and violence". The Election Law provides that political subjects and their supporters, and those employed or those otherwise hired in the election administration are not allowed to "use hate speech and/or publish or use pictures, symbols, audio and video recordings, SMS messages, Internet communications, social networks and mobile applications or any other materials that could have such effect" (Article 7.3, para. 1.7).[70]

66 Council Framework Decision 2008/913/JHA of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32008F0913

67 European Commission against Racism and Intolerance, *ECRI Report on Bosnia and Herzegovina. Fifth Monitoring Cycle,* (European Commission against Racism and Intolerance, 2017), https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602

68 Nermina Kulogija Zolj, "Tri stvari koje trebate znati o prvom optuženom za veličanje ratnog zločinca" (Three Things You Should Know about the First Person Accused of Glorifying a War Criminal), *Detektor.ba,* 31 January 2024. Accessed: December 2024. https://detektor.ba/2024/01/31/tri-stvari-koje-trebate-znati-o-prvom-optuzenom-za-velicanje-ratnog-zlocinca/

69 OHR, *Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina,* 27 July 2022. https://www.ohr.int/odluka-kojom-se-donosi-zakon-o-izmjenama-i-dopunama-izbornog-zakona-bosne-i-hercegovine-4/

70 Election Law of Bosnia and Herzegovina, https://www.paragraf.ba/propisi/bih/izborni-zakon-bosne-i-hercegovine.html

Hate speech on the internet

Passing quick legal provisions to counter detrimental contents online may have a negative effect on freedom of expression, which is why it is necessary to take a multisectoral and inclusive approach, in line with the international standards

The High Representative's amendments of 26 March 2024 expanded the prohibition of using hate speech so as to cover the period of premature election campaign.[71] This stresses the importance of stopping hate speech during the election process, especially bearing in mind that, as also stated by the ECRI in their latest report on BiH, periods before elections are particularly prone to an intensification of hate speech.[72] Research has shown that during 2024 there was a decrease in hate speech during election period, which may be a result of the tightened legal provisions.[73]

It is important to note that hate speech is defined and prohibited in the Communications Regulatory Agency's Code on Programme Content.[74] The Law on the Prohibition of Discrimination does not have a separate provision on hate speech, but contains a prohibition of discrimination and harassment, which is also read in the context of hate speech.[75]

In order to prevent dissemination of hate speech online, an initiative was launched to prepare a draft law on countering illegal hate speech online, inspired by legal provisions set forth in certain EU countries. The persons we interviewed during our research warn that passing quick legal provisions to counter detrimental contents online may have a negative effect on freedom of expression, which is why it is necessary to take a multisectoral and inclusive approach, in line with the international standards in protecting freedom of expression, but also with the latest directives in the European Union. They argue that the legislation that would encompass the online space must remain within the content-managing processes, which implies a systemic approach, co-regulation and participation of other actors instead of classical regulation. Such an approach must ensure a high level of protection when it comes to media freedoms and freedom of expression.[76]

2.6. Disinformation and Fake News in the Laws on Public Peace and Order

The laws on public peace and order in BiH, applied at the entity level, the Brčko District level and the level of the ten cantons in the BiH Federation, in some cases encompass sanctions against disinformation or "fake news" disturbing public peace and order. Such provisions give room for arbitrary punishment under the pretext of countering disinformation, which may lead to violation of the right to freedom of expression.

71 OHR, *Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina,* 26 March 2024. https://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-election-law-of-bosnia-and-herzegovina-17/

72 European Commission against Racism and Intolerance, *ECRI Report on Bosnia and Herzegovina. Sixth Monitoring Cycle,* (European Commission against Racism and Intolerance, 2024), https://rm.coe.int/fourth-ecri-report-on-bosnia-and-herzegovina/1680b0661f

73 Matea Jerković, "Govor mržnje tokom izbora: Političari na mrežama oprezniji" (Hate Speech During Elections: Politicians more Careful on Networks), *Media.ba,* 12 November 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/govor-mrznje-tokom-izbora-politicari-na-mrezama-oprezniji

74 Code on Programme Content, Communications Regulatory Agency, http://sluzbenilist.ba/page/akt/ohz4nh78h775VWvyVoK30=

75 Law on Prohibition of Discrimination, https://www.osce.org/files/f/documents/1/1/378877.pdf

76 Maida Ćulahović, Policy Development Coordinator, Association Zašto ne (Why Not), interview.

- Article 10 of the Law on Public Peace and Order of Brčko District provides that: "whoever spreads or conveys fake news, rumours or claims that could cause public upset or jeopardize public peace and order, shall be fined with between BAM 100 and BAM 500".[77]
- Article 3 of the Law on Public Peace and Order of the Una-Sana Canton provides that "whoever spreads or disseminates fake news or claims that could cause public upset or jeopardize public peace and order" commits a minor offence against public order. The minor offence carries a fine ranging from BAM 50.00 to BAM 500.00 or a sentence of imprisonment of up to 30 days.[78]
- The Law on Public Peace and Order of the Tuzla Canton provides that "whoever spreads or disseminates fake news or claims that cause public upset or jeopardize public peace and order" commits a minor offence. The minor offence carries a fine ranging from BAM 100 to BAM 1,000, i.e. a sentence of up to 60 days of imprisonment.[79]
- The Law on Misdemeanours against Public Peace and Order in the territory of Posavina Canton provides for fines ranging from BAM 200.00 to BAM 600.00 for a minor offence in the case when someone "makes up or spreads fake news disturbing peace and quiet".[80]
- Article 8 of the Law on Misdemeanours against Public Peace and Order of Central Bosnia Canton provides that whoever "spreads or conveys fake news or claims that could cause public upset or jeopardize public peace and order" commits a minor offence, which carries a fine ranging from BAM 200.00 to BAM 1,000.00.
- Article 18 of the Law on Public Peace and Order of Canton 10, adopted in 2023, provides for a fine ranging from BAM 300 to BAM 800 for spreading fake news or claims "which disturb public peace and order and jeopardize civil peace". In addition, a fine of between BAM 500 and BAM 1,000 is envisioned for whoever "by a report/complaint he/she knows is false disturbs the operations of state bodies, units of local self-government, public institutions, legal entities with public powers or their official persons or disturbs public rallies, public transport or citizens' staying in public places". This law is particularly problematic as it also treats as a minor offence an act committed via means of communication, electronic media and social networks.[81]

77 Law on Public Peace and Order of Brčko District, https://skupstinabd.ba/index.php/ba/zakon.html?lang=ba&id=/Zakon%20o%20javnom%20redu%20i%20miru

78 Law on Public Peace and Order of Una-Sana Canton, https://www.sluzbeniglasnikusk.com/files/sl_glasnik_2010/sl_br_15_2010.pdf

79 Law on Public Peace and Order of Tuzla Canton, https://vladatk.kim.ba/Vlada/Dokumenti/Zakoni/2008/zakon_o_javnom_redu_i_miru.pdf

80 Law on Public Peace and Order of Posavina Canton

81 Law on Public Peace and Order of Herceg-Bosna Canton, https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/117882

The scope of prescribing misdemeanour liability and the practice in its application have been rather uneven, which poses a challenge, with regard to punishability as well as the restrictiveness the particular regulations bring about.

These legal provisions are particularly problematic because supervision over their implementation has been entrusted to police officers. Besides, most of these provisions are not clearly defined, which leaves broad room for their discretion to decide what exactly is considered "fake news". The laws do not take into account the case law of the European Court of Human Rights that publishing fake news or claims, including those that shock the public, is not always unwarranted.[82] Also, the scope of prescribing misdemeanour liability and the practice in its application have been rather uneven, which poses a challenge, with regard to punishability as well as the restrictiveness the particular regulations bring about. Particularly problematic is that certain offences carry prison sentences, and there is also the possibility that people could be punished for posting content online. Most of the laws do not recognize the internet as a public space, with the exception of the Law on Public Peace and Order of Canton 10, adopted in 2023, which also treats as a minor offence those acts that were undertaken in the electronic media and on social networks.

In April 2023, the Sarajevo Canton Government adopted a Draft Law on Misdemeanours against Public Peace and Order in the Sarajevo Canton territory,[83] which defines the internet as a public space and introduces disproportionate sanctions for online spreading of "fake news", as well as offending public feelings out of hatred.[84] Although the law has not actually been adopted, it points to a trend of introducing sanctions against disinformation and testifies to the lack of understanding of the complex set of issues that should not be addressed within the law on public peace and order, especially not in the manner in which supervision over its implementation is entrusted to police officers.[85]

82 Besides, the cantonal laws on public peace and order in the Federation of BiH prescribe minor offences in which the act of misdemeanour includes "disparaging or offending state bodies, companies, or some other legal entity performing public duties" or "their official persons, or responsible persons in performing or in relation to performing their official tasks and duties." These regulations are also not in conformity with the European Convention for the Protection of Human Rights, because a country's or a nation's honour and reputation do not represent legitimate goals that warrant reducing the freedom of expression. Aleksandar Ivanović, *Studija mapiranja institucionalnog kršenja ljudskih prava u Bosni i Hercegovini* (A Study of Mapping Institutional Breaches of Human Rights in Bosnia and Herzegovina) (School of Law in Lukavica: 2021), https://pravnifakultet.edu.ba/wpcontent/uploads/2021/08/Studija-mapiranja-institucionalnog-krsenja-ljudskih-pravau-Bosni-i-Hercegovini_23082021.pdf

83 Draft Law on Misdemeanours against Public Peace and Order of Sarajevo Canton, https://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/2023-05/nacrt_zakona_o_prekrsajima_protiv_javnog_reda_i_mira_na_podrucju_kantona_sarajevo.pdf

84 Lejla Gačanica, "Tendenciozni zakonski zalogaj u Kantonu Sarajevu" (A Tendentious Legal Endeavor in Sarajevo Canton), *Media.ba,* 12 June 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/tendeciozni-zakonski-zalogaj-u-kantonu-sarajevo

85 Ibid.

It is also important to note that the European Union's policy in combating online disinformation is not based on sanctioning "fake news", but on encouraging self-regulation and co-regulation, collaboration of multiple actors and on the Code of (Good) Practice on (Online) Disinformation.[86] The Digital Services Act (Chapter 4.1) does not directly prohibit disinformation, but imposes a series of obligations in order to reduce its impact, such as the obligation for very large online platforms[87] to assess the systemic risks and take specific measures for their reduction.[88] The voluntary Code of (Good) Practice on (Online) Disinformation, adopted in 2018 and revised in 2022, encourages demonetization of disinformation on online platforms, cooperation of online platforms with fact-checkers and media literacy.[89]

86 Code of Practice on Disinformation, 2022, https://digital-strategy.ec.europa.eu/hr/policies/code-practice-disinformation

87 Digital services with more than 45 million users in the European Union, e.g. Facebook and X.

88 Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), https://www.eu-digital-services-act.com/

89 Code of (Good) Practice on (Combating) Disinformation, 2022, https://digital-strategy.ec.europa.eu/hr/policies/code-practice-disinformation

3.

Legal Framework for Media and Protection of Media Freedoms

Although BiH has a solid legal framework for the protection of freedom of expression, its legal framework for media is still insufficiently developed and does not meet the actual needs of the sector. Current legislation does not provide an adequate response to the challenges posed by digital changes, does not ensure harmonization with the EU acquis communautaire, and does not ensure the transparency of media ownership. BiH lacks three key pieces of legislation – a law on electronic media, a law on electronic communications, and a law on transparency of media ownership. These laws would enable harmonization with the EU acquis communautaire, protection of media freedoms, pluralism of information, and the strengthening of regulatory bodies' independence. Besides, a new law on the public broadcasting system is also necessary to ensure their financial stability and political independence, which is crucial for providing information of public interest, but is also one of the important priorities in the process of accession to the EU.

Despite long-time efforts to set up new legal frameworks, the political blockades, slow administration, disagreement and lack of political will have slowed down the adoption of these laws, whereby the opportunity has been missed to strengthen the media sector and journalism in BiH, but also to secure the fulfilment of key requirements in the EU accession process. The only area where there has been partial harmonization with the EU acquis communautaire relates to the byelaws adopted by the Communications Regulatory Agency, yet for a more significant level of harmonization it is necessary to adopt or harmonize laws at the state level. This is particularly important because legal initiatives at lower levels, especially with regard to regulating harmful contents, often result in such proposals that may have a discouraging effect on the freedom of expression. Some progress has been made in the area of institutional protection of journalists by setting up contact points for journalists in courts and offices of prosecutors, but it will only be possible to evaluate the efficiency of this network in the forthcoming period.

3.1. Communications and Electronic Media Legislation

The Law on Communications of BiH, which was adopted in 2003, and amended in 2006, 2010 and 2012, regulates the area of communications and establishes the Communications Regulatory Agency as the regulator whose scope of responsibilities includes broadcasting, telecommunications, and the planning and allocation of the radiofrequency spectrum.[90] The basic regulatory principles in the broadcasting sector are defined in Article 4 of the Law, and include the protection of freedom of expression and diversity of opinion, the development of professional and viable commercial and public broadcasters, and separating and protecting broadcasters from political control and manipulation. The regulatory principles also pertain to awarding licences on the basis of a process by which appropriate professional standards of programme content, technical operation and financing are ensured, as well as creating an appropriate regulatory framework that will make sure that the programme content, including advertising, is consistent with best European practice.

The Law on Communications is based on the 1998 EU regulatory framework and has not been updated and harmonized with the EU acquis communautaire developed after that period, such as Directive (EU) 2018/1972 on the European Electronic Communications Code[91] and Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 on audiovisual media services.[92] Representatives of

90 Law on Communications, https://docs.rak.ba//articles/da724391-4a61-429b-8859-14d77fbfbf43.pdf

91 Directive (EU) 2018/1972 on the European Electronic Communications Code, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=LEGISSUM:4379983

92 Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 on Audiovisual Media Services, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:32018L1808

Delays in the adoption of the law on electronic communications in BiH have been caused by political blockades, the changes towards the drafting of legal provisions, and the slow state-level procedures.

the regulator maintain that the Law on Communications, although outdated, still provides a possibility to upgrade the broadcasting rules through byelaws, as it gives the Communications Regulatory Agency the power to set the rules in the field of broadcasting and telecommunications and to make sure that they are complied with. They believe that is "the only way to catch up with the ever-changing market in this digital context" and that byelaws remain "the only powerful tool" for the regulator to keep up with the market trends and honour the commitments ensuing from the European legislative framework.[93] It is exactly in this manner that the regulator has partly harmonized its codes and rules with Directive 2018/1808 on audiovisual media services. Representatives of the regulator find it important that the principle is maintained in the new law on electronic communications, which in late 2024 was at the drafting stage.

Pursuant to Article 104 of the Stabilization and Association Agreement, which addresses electronic communications networks and services, BiH had an obligation to harmonize the area of electronic communications networks and electronic communications services with the regulatory framework of the European Union one year after its entry into force.[94] The regulatory framework for this area was supposed to have been adopted by 1 June 2016, which did not happen, although multiple working groups have been set up since 2012, and a draft law on electronic communications has been prepared. The European Union has repeatedly urged BiH to, without further delay, adopt the new law on electronic communications, harmonized with the EU acquis communautaire.[95]

Delays in the adoption of the law on electronic communications in BiH have been caused by political blockades, the changes towards the drafting of legal provisions, and the slow state-level procedures.[96] In the beginning, it was a uniform law on electronic communications, and the first working group, set up in 2012, was in charge of its preparation. Later on, in 2018, another working group was formed to begin working on a uniform law on electronic communications and media. The law was supposed to regulate parts of the area of electronic communications and electronic media that had not been regulated or had not been regulated in an adequate manner in the current Law on Communications, such as universal services and the protection of end-user rights. The two pieces of legislation were subsequently separated, which has led to the formation of new working groups for each law.

The bill drafting process is often faced with numerous challenges, including a large number of working group members from various institutions, cities and levels of government, which makes coordination more difficult and slows down the entire operation, then there are logistical and organizational problems, a waiting period for the appointment of members and for providing opinions, frequent removal of members, and individual members' lack of expertise in the areas covered by the law.[97] Finally, the key reasons for not

93 Azra Maslo, Head of Programme Content and Complaints Sector, and Amela Odobašić, Assistant Director for Broadcasting, Communications Regulatory Agency, interview.

94 Tamara Zablocki, "Dugo čekanje na zakon o elektronskim komunikacijama i elektronskim medijima" (A Long Wait for the Law on Electronic Communications and Electronic Media), *Media.ba,* 13 December 2024. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/dugo-cekanje-na-zakon-o-elektronskim-komunikacijama-i-elektronskim-medijima

95 Ibid.

96 Milanka Sudžum, Head of Communications Department, BiH Ministry of Communications and Transport, interview.

97 A representative of the Ministry of Communications and Transport says that no funds have been set aside for the overnight stay of working group members, which is why it is not possible to organize several-day meetings. Enabling such support would significantly facilitate the operation of working groups.

adopting the law are political blockades and lack of political will. For instance, the Draft Law on Electronic Communications has been repeatedly withdrawn from the agenda of the BiH Council of Ministers due to the opposition put up by the Republika Srpska authorities, who claimed that the proposed legal provisions essentially transfer responsibilities from the entity to the state level, which they found unacceptable.[98]

According to the Mid-Term Work Programme of the Council of Ministers, the drafting of a law on electronic communications and electronic media had been planned for 2024, including its harmonization with the EU acquis communautaire.

Participating in the working groups tasked with drafting a law on electronic communications and a law on electronic media are representatives of state-level and Entity ministries, of the Brčko District Government, the Communications Regulatory Agency and the Directorate for European Integration. The Directorate for European Integration provides opinions on whether such laws are in compliance with the EU acquis communautaire, but, according to the representatives of this institution whom we have interviewed, following an opinion on compliance there may be changes to the wording of the law before the bill reaches the Council of Ministers. Additionally, these opinions are not binding, which leaves room for deviation.[99] Making the assessment of good compliance more difficult are some of the provisions that often contain formulations such as that the regulation has been harmonized with the relevant EU document, without providing the specific assessment of the level of compliance.[100] The representatives we interviewed also stress the importance of including civil society and the expert community as well as representatives of international organizations, such as the OSCE, in the process of drafting and adopting the laws.[101]

According to the Mid-Term Work Programme of the Council of Ministers, the drafting of a law on electronic communications and electronic media had been planned for 2024, including its harmonization with the EU acquis communautaire.[102] In late 2024, drafts of these laws were still not available to the public, which is why there is no information about the areas to be regulated by the laws, nor on the method by which it would be done. The Ministry of Communications and Transport has said that the law on electronic media has to a large extent been prepared and harmonized with Directive 2018/1808 on Audiovisual Media Services.[103] To that end, previous harmonization of the Communications Regulatory Agency's byelaws with the Directive has facilitated the whole process.[104] The Ministry's intention is to include online media in the law on electronic media and the law on transparency of media ownership, noting that such decisions depend on the working group members.[105]

---

98 Tamara Zablocki, "Dugo čekanje na zakon o elektronskim komunikacijama i elektronskim medijima" (A Long Wait for The law on Electronic Communications and Electronic Media), *Media.ba,* 13 December 2024. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/dugo-cekanje-na-zakon-o-elektronskim-komunikacijama-i-elektronskim-medijima

99 Directorate for European Integration, interview.

100 Ibid.

101 Maida Ćulahović, Policy Development Coordinator, Association *Zašto ne* (Why Not), interview.

102 Council of Ministers, Mid-Term Work Program, https://www.dep.gov.ba/sredprograda/sprvm2024/SPRVM_24-26_korekcija%2017042024.pdf

103 Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 on Audiovisual Media Services, https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32018L1808

104 Milanka Sudžum, Head of Communications Department, Ministry of Communications and Transport, interview.

105 Milanka Sudžum, Head of Communications Department, Ministry of Communications and Transport, interview.

Ensure media freedom

The 2024 Report on Progress in BiH states that the Communications Regulatory Agency still does not have full political and financial independence, and that the procedure to appoint its management, which could be regulated through the Law on Communications, does not guarantee pluralistic representation and independence from political influence.

The phase in which these drafts currently are is conducive to making efforts to include therein, to the extent possible, the provisions of new directives, primarily the European Media Freedom Act (Chapter 4.2.)[106] The Act sets forth provisions for the protection of media freedoms, including the Member States' obligation to secure functional independence of regulatory bodies from governments or from any other public or private body. Securing political and financial independence of the Communications Regulatory Agency is one of the important priorities in terms of securing media freedoms. The 2024 Report on Progress in BiH states that the Communications Regulatory Agency still does not have full political and financial independence, and that the procedure to appoint its management, which could be regulated through the Law on Communications, does not guarantee pluralistic representation and independence from political influence.[107]

Finally, it should be noted that in 2023 the Republika Srpska Government announced the adoption of a new law on the media, whose drafting may be expected during 2025. The civilian sector has warned that such legislation might restrict media freedoms, especially by way of introducing the announced media register in the Republika Srpska.[108] Such unharmonized legal provisions at different levels of government would surely bring about legal uncertainty and would render its implementation more difficult.

3.2. Rules and Regulations of the Communications Regulatory Agency

The first Broadcast Code of Practice was adopted in 1998 by the Independent Media Commission. The Code comprised basic provisions pertaining to, inter alia, false, misleading and deceptive material, rules of equitability and impartiality, and the ban on transmitting content that may be conducive to violence on ethnic and religious grounds.[109]

The High Representative's Decision of 2001, by merging the responsibilities of the Independent Media Commission and the Telecommunications Regulatory Agency, established the Communications Regulatory Agency.[110] The agency has introduced a number of rules and has repeatedly amended codes for broadcasting and commercial content intended for radio and television broadcasters in compliance with international standards, BiH commitments as a Council of Europe member, and its commitments within the EU integration

106 Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 Establishing a Common Framework for Media Services in the Internal Market and amending Directive 2010/13/EU (European Media Freedom Act), https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A32024R1083

107 European Commission, *Bosnia and Herzegovina Report 2024,* (European Commission, 2024), https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2024_en

108 Đorđe Vujatović, "Novi zakon o medijima u RS, novi udar na medijske slobode" (A New Law on the Media in the RS, a New Attack on Media Freedom), *Media.ba,* 30 October 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/novi-zakon-o-medijima-u-rs-u-jos-jedan-udar-na-medijske-slobode

109 Anida Sokol, *Dobre osnove, ograničena primjena. Samoregulacija medija u Bosni i Hercegovini* (Solid Foundation, Limited Implementation. Media Self-Regulation in Bosnia and Herzegovina) (SEENPM, Mediacentar Sarajevo and Peace Institute, 2022), https://media.ba/sites/default/files/ourmedia_bih_23-11-21_final.pdf

110 Amila Grbo. "Razvoj profesionalnog novinarstva u BiH" (Professional Journalism Development in BiH). *Adult Education: Journal for Adult Education and Culture,* 16, 35-36 (2016). https://ccu.bkc.ba/wp-content/uploads/2021/09/Casopis_1_2016-35-56-Grbo.pdf

process, but also in line with the situation in the field, where necessary. The amendments also comprised those that pertain to the protection of minors, the introduction of a definition of hate speech, reporting on criminal offences involving minors, and provisions related to reality programmes.

Broadcasting contents may not glorify, justify and incite the commission of criminal offences of terrorism.

In 2023, the Agency harmonized the regulations and codes with Directive 2018/1808 on Audiovisual Media Services, which was a prerequisite for accessing the Creative Europe programme, which provides funding for numerous projects that are important for broader communities in BiH.[111]

The Code on audiovisual media services and radio media services has been amended by new provisions, such as the obligation that broadcasting contents may not glorify, justify and incite the commission of criminal offences of terrorism, so the Code was then given a new title – Code on Programme Content.[112] In 2023, the Agency issued the Rule on the Provision of Video-Sharing Platform Services[113], the first such act in BiH, which required certain measures from video-sharing platforms for the purpose of protecting minors and the public from communications that incite hatred and from such contents that constitute the commission of criminal offences. Although there are no such platforms registered in BiH, the Agency now has the responsibility to monitor whether such platforms, once set up in BiH, abide by the measures laid down in the Directive. The Communications Regulatory Agency has noted that, in the framework of this amendment, it is important to work on public media literacy in using such platforms, such as in what way to report certain content and what the procedures in the process of reporting them are.[114]

The Agency also made amendments with regard to public and private TV stations' obligations to broadcast programmes intended for persons with disabilities. According to the new Rule on the Provision of Audiovisual Media Services,[115] adopted in June 2023, in the framework of the process of harmonizing the regulatory framework with the EU regulation, now both public and private TV stations have an obligation to facilitate access to programme contents for persons with disabilities, and to increase the share of such content on an annual level. Such content includes adjustments such as sign language interpretation, subtitles and audio description, with a particular focus on persons with hearing or vision impairment, children included. Some media have faced certain obstacles in meeting these requirements due to the lack of sign language interpreters and professional staff.[116]

By amending the byelaws BiH has partly transposed Directive 2018/1808 on Audiovisual Media Services. The regulator explains that certain provisions are practically impossible to transpose into byelaws, notably

111 Azra Maslo, Head of Programme Content and Complaints, and Amela Odobašić, Assistant Director for Broadcasting, Communications Regulatory Agency.

112 Code on Programme Content, http://sluzbenilist.ba/page/akt/ohz4nh78h775VWvyVoK30=

113 Rule 96/2023 on the Provision of Video-Sharing Platform Services, http://www.sluzbenilist.ba/page/akt/WTPfvyN9BbM=

114 Azra Maslo, Head of Programme Content and Complaints, and Amela Odobašić, Assistant Director for Broadcasting, Communications Regulatory Agency.

115 Rule 95/2023 on the Provision of Audiovisual Media Services, http://www.sluzbenilist.ba/page/akt/ox9IeWT6ohz4nh78h77gw=

116 Senita Petković, "(Ne) pristupačnost medijskih sadržaja osobama sa oštećenjem sluha i vida" ((Non)Accessibility of Media Contents to Persons with Hearing and Visual Impairment), *Media.ba,* 12 December 2024. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/nepristupacnost-medijskih-sadrzaja-osobama-sa-ostecenjem-sluha-i-vida

those that pertain to regulator independence, because those provisions need to be regulated by a new law on electronic communications.[117] This has established a practice of transposing parts of EU directives into byelaws, but not into the umbrella act, which will be important for higher-level compliance with the EU acquis communautaire.

3.3. BiH Law on the Public Broadcasting System

Public broadcasting systems play an important role in the context of media freedoms, because by virtue of their function they have a strong mission of public interest, enabling participation to various social groups in public communication and public access to information of public significance.

The three public broadcasting services – BHRT, FTV and RTRS – have been regulated through four pieces of legislation, one umbrella Law on the Public Broadcasting System of BiH, which regulates relationships among the three public broadcasting services and the funds distribution method, as well as three special laws for each of the three public broadcasting services. The Law on the Public Broadcasting System of BiH, which was imposed in 2005 by the High Representative in BiH, recognizes editorial independence and institutional autonomy of the public services (Article 4) and stipulates that the basic purpose of the public services is to present diverse and factual information (Article 5) and support democratic processes. Besides, the public services shall ensure impartial broadcasting of news, cultural, artistic, educational, children's, sports and entertainment programmes.[118]

The Law provides that the RTV Tax collected in the territory of the Entities and Brčko District shall be held in a designated single account, after which it will be distributed:

25%
RTVFBiH

25%
RTRS

50%
BHRT

The Law provides that the RTV Tax collected in the territory of the Entities and Brčko District shall be held in a designated single account, after which it will be distributed so that 25% of the amount will belong to RTVFBiH and 25% to RTRS, while 50% of the total amount will belong to BHRT (Article 23). However, this provision has not been complied with in practice: in the Federation of BiH the tax is collected through the *Elektroprivreda* (Electric Utility Company) of BiH, and in the Republika Srpska through the *Elektroprivreda* of the RS, wherein the funds are paid to separate accounts.[119] RTRS has not been transferring revenues from the RTV Tax and advertising onto BHRT for years, while FTV also has debts towards BHRT, which puts the public service at the state level in a difficult financial position, due to which lawsuits have been filed. The 2005 Law on the Public Broadcasting System of BiH provides for the formation of a corporation as a jointly run structure among the three broadcasting services, yet this legal provision has never been complied with either (Article 12).

117 Azra Maslo, Head of Programme Content and Complaints, and Amela Odobašić, Assistant Director for Broadcasting, Communications Regulatory Agency.

118 Law on the Public Broadcasting System in BiH, https://www.paragraf.ba/propisi/bih/zakon-o-javnom-radio-televizijskom-sistemu-bosne-i-hercegovine.html

119 Sadeta Bajrović, "Politi(č)ka uređivanja javnog RTV-sistema u BiH" (Editorial Policy (Politics) of the Public Broadcasting System in BiH), *Media.ba,* 26 December 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/politicka-uredivanja-javnog-rtv-sistema-u-bih

Besides, the legislation on public services did not provide adequate mechanisms for the protection of the public broadcasters from political influence. The BiH Parliamentary Assembly appoints members of the BHRT Board of Governors from a ranking list of short-listed candidates provided to it by the Communications Regulatory Agency (Article 26),[120] the Federation Parliament appoints members of the FTV Board of Governors from a list of candidates provided to it by the Committee for Selection and Appointments of both houses of the Federation Parliament (Article 25),[121] and the National Assembly of the Republika Srpska appoints members of the Board of Governors from a list of candidates provided by the relevant working body of the National Assembly of the Republika Srpska (Article 46).[122]

Securing financial stability of the public broadcasting services is one of the 14 key priorities the European Commission listed in its Opinion on Bosnia and Herzegovina's Application for Membership in the EU.[123] Civil society's reports warn of political pressure on the public services, especially concerning RTRS's biased reporting and the lack of reaction from the Communications Regulatory Agency.[124] Professional associations and civil society recommend that the laws on public broadcasting services be amended with the aim of reducing political influence on the appointment of managerial structures so as to reduce the influence of the Entity parliaments and set up independent committees.[125]

Lack of a lasting solution affects the work of employees, especially at BHRT, who work in difficult working conditions, with irregular salaries, unpaid (health and pension) contributions, and with outdated equipment[126]. Relations among the public services took a turn for the worse in 2023, which is when FTV and BHRT directors failed to reach an agreement with the *Elektroprivreda* on the collection and distribution of the RTV Tax, which resulted in delays in the payment of salaries to the employees and their protests.[127] As a transitional solution, in 2024 the BiH Council of Ministers

The law has not yet been adopted

Despite years-long efforts to prepare a new law on the public broadcasting system, which is supposed to solve the issue of RTV Tax collection and distribution, regulate relations among the public services in BiH and reduce the possibility of their politicization, the law has yet to be adopted, while the public still does not have access to the materials. Although there has been a consensus that the new law on public services is necessary, the positions taken by the three public services differ.

120 Law on the Public Broadcasting System in BiH, https://www.paragraf.ba/propisi/bih/zakon-o-javnom-radio-televizijskom-sistemu-bosne-i-hercegovine.html

121 Law on the Public Broadcasting Service of the Federation of BiH, http://www.rtvfbih.ba/loc/template.wbsp?wbf_id=206

122 Law on the Public Broadcasting Service of the Republika Srpska, https://lat.rtrs.tv/comp/zakon_rtrs.php

123 European Commission, *Commission Opinion on Bosnia and Herzegovina's Application for Membership of the European Union,* European Commission, 2019. https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-bosnia-and-herzegovina-opinion.pdf

124 Mladen Bubonjić, "Otkako je bivši direktor RTRS-a na mjestu direktora RAKA nema objavljenih kazni za RTRS" (Ever Since Former RTRS Director Became CRA Director there have been no Announced Penalties for RTRS), *Media.ba,* 24 February 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/otkako-je-bivsi-direktor-rtrs-na-mjestu-direktora-rak-nema-objavljenih-kazni-za

125 Zarfa Hrnjić Kuduzović, *Zajedno ka boljim medijskim zakonima: Analize medijske legislative u BiH sa preporukama za unapređenje* (Together towards Better Media Laws: Analysis of Media Legislation in BiH, with Recommendations for Improvement) (Association BH Journalists, 2022), https://bhnovinari.ba/wp-content/uploads/2021/07/Zajedno-ka-boljim-medijskim-zakonima-analiza-medijske-legislative-u-BiH-sa-preporukama-za-unapredjenje-1.pdf

126 Slađan Tomić, "Radnici BHRT-a i FTV-a kolateralna šteta odnosa menadžmenta" (BHRT and FTV Employees are a Collateral Damage Caused by the Relationship between Managements), *Media.ba,* 31 May 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/radnici-bhrt-i-ftv-kolateralna-steta-odnosa-menadzmenta

127 Ibid.

Affecting the possible finding of a solution are political blockades and the lack of political will to resolve the issue of financial sustainability and political independence of the public services.

allocated BAM 10 million to the three public services,[128] while a provisional agreement was also reached with the *Elektroprivreda* of BiH. Yet, the lack of a lasting solution and relying on funds from public budgets, without adequate mechanisms of protection from political influence, do not guarantee long-term financial sustainability and increase the risk of interference with editorial decisions.

Despite years-long efforts to prepare a new law on the public broadcasting system, which is supposed to solve the issue of RTV Tax collection and distribution, regulate relations among the public services in BiH and reduce the possibility of their politicization, the law has yet to be adopted, while the public still does not have access to the materials. Although there has been a consensus that the new law on public services is necessary, the positions taken by the three public services differ. A new working group tasked with drafting the law, which comprises representatives of all three public services, was established in September 2023, but the proposal of the law has yet to be agreed upon. The key issue in the new law is the RTV Tax distribution, because BHRT insists on compliance with the existing legislation and opposes proposals to reduce their share to the benefit of the Entity broadcasters, given its legal obligations as the state-level broadcaster, whereas RTRS, on the other hand, demands a decentralized system.[129]

Also affecting the possible finding of a solution are political blockades and the lack of political will to resolve the issue of financial sustainability and political independence of the public services. Reaching an agreement seems rather difficult, which is why associations in BiH believe that the relevant ministry and the international community should be applying more pressure. The EU Delegation maintains that it will insist on several key principles such as financial independence and depoliticization of the public services.[130]

These principles are also included in the European Media Freedom Act (Chapter 4.2), which imposes on the Member States an obligation to secure such a legal framework that would guarantee an independent functioning of public media services, including their autonomy and editorial independence from governmental, political, economic or private influence. Also, the Act obliges them to base the appointment and dismissal of the managers and managerial staff on transparent, objective, non-discriminatory and proportional criteria defined beforehand by the national legislation.[131] Member States are, in addition, obligated to secure adequate, sustainable and predictable funding for public media services in multiple annual budgets, which protects editorial independence and enables development of media services in accordance with public interests, new media forms and technical development.

---

128 BHRT, "BiH Council of Ministers Approves Four Million to BHRT and Three Million Each to Entity Broadcasters", BHRT, 9 February 2024. Accessed: December 2024. https://www.bhrt.ba/savjet-ministara-bih-odobrio-%C4%8Detiri-miliona-bhrt-u-i-po-tri-za-entitetske-emitere

129 Lejla Babović, Head of Department of International Affairs, BHRT, interview; Slađan Tomić, *"Umjesto jedne tri verzije novog zakona o javnom RTV-sistemu"* (Instead of One, Three Versions of the New Law on the Public Broadcasting System), *Media.ba,* 26 December 2024. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/umjesto-jedne-tri-verzije-novog-zakona-o-javnom-rtv-sistemu

130 Danijel Kovačević, Political Advisor, Delegation of the European Union in BiH, interview.

131 Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 Establishing a Common Framework for Media Services in the Internal Market and amending Directive 2010/13/EU (European Media Freedom Act), https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A32024R1083

3.4. Law on Transparency of Media Ownership and Promotion of Media Pluralism

The European Commission recommends in its reports the adoption of legislation on transparency of media ownership in BiH as one of the key steps in promoting freedom of expression and media freedoms. The Law would provide the public with insight into who is behind the media, facilitate the identification of potential conflicts of interest, and reveal possible political and economic influences on the media. This would contribute to greater transparency, accountability and strengthening of media pluralism, a key element of freedom of expression.

Despite long-standing calls by civil society and the European Commission to introduce regulation of transparency of media ownership, BiH still does not have such a normative framework. Data on the nominal owners of media companies registered in BiH can be found through the business registers of municipal and district courts, but this data is not easily searchable or easily available. The registers do not have a consistent categorization of media and they do not provide information on beneficial owners and interests, nor on related interests.[132] Data on associations are available only upon request, in the register of the Ministry of Justice of the Federation of BiH or the administration of the canton in which the association operates (in the Federation of BiH), or in the Ministry of Administration and Local Self-Government of the Republika Srpska.[133]

In cases where media outlets are not registered as business entities or associations, ownership information is not publicly available. Media outlets usually do not proactively publish ownership information, which is especially the case with online media. The Communications Regulatory Agency maintains a register of broadcasting licence holders, but the regulator does not have data on the ownership structure of the legal persons that own the broadcasters, only information on the direct owners, and does not publish information on the ownership of the broadcasters.

Media ownership concentration is also not specifically regulated in BiH, but the Law on Competition of BiH prohibits the abuse of a dominant position for all business entities. Indirect foreign ownership in the media is not prevented and laws on foreign investments stipulate that foreign ownership of business entities whose activity is "public information" (in the Republika Srpska) or "media affairs" (in the Federation of BiH)

Transparent financing of the media

There is no specific regulation or specific transparency requirements for financing the media from public budgets, although significant amounts of money from public budgets are allocated to the media through regular subsidies, grants, commercial contracts with the media for covering the work of local governments or for advertising public institutions and enterprises.

132 Sanela Hodžić, *U potrazi za boljom regulacijom transparentnosti vlasništva i finansiranja medija iz javnih budžeta* (Looking for Better Ownership Transparency Regulation and Media Financing from Public Budgets) (Association BH Journalists, 2018), https://bhnovinari.ba/wp-content/uploads/2019/10/U-potrazi-za-boljom-regulacijom-transparentnosti-medijskog-vlasni%C5%A1tva-i-finansiranja-medija-iz-javnih-bud%C5%BEeta.pdf

133 Ibid.

may not exceed 49% of the capital.[134] In addition, there is no specific regulation or specific transparency requirements for financing the media from public budgets, although significant amounts of money from public budgets are allocated to the media through regular subsidies, grants, commercial contracts with the media for covering the work of local governments or for advertising public institutions and enterprises. This data is often not transparent or easily accessible and in certain cases its real purpose is questionable.[135]

Full transparency

The Law on Transparency should ensure transparency, not only in terms of direct owners and ownership shares, but also through the publication of data on indirect and beneficial owners, media organizations' interests in other companies, political and business affiliations of owners, interests of related persons, and main sources of income, as well as management structures and key editors.

There have been several initiatives to improve the transparency of media ownership in BiH. In 2017, the Communications Regulatory Agency launched an initiative to collect data and publish a register of direct and indirect owners of broadcasters. In this context, in 2017, the regulator requested the opinion of the Personal Data Protection Agency in BiH on the publication of such a register, but the response was negative.[136]

The negative position was based on Article 8 of the European Convention on Human Rights, which allows state interference with the right to privacy and the processing of personal data only if three preconditions are met: the existence of legal regulation, a legitimate aim and being a necessity in a democratic society. Given this opinion, the Communications Regulatory Agency points out that it is necessary to adopt a legal framework for the transparency of media ownership in order to enable the collection and publication of the register.[137]

Media associations – "BH Journalists", Press and Online Media Council, Mediacentar, JaBiHEU – with financial support from the EU, prepared in 2018 the Draft Law on Transparency of Ownership and Protection of Media Pluralism and the Draft Law on Advertising. As part of the project, a detailed analysis was conducted and recommendations were prepared on what the Law on Transparency of Media Ownership should contain. The author, Sanela Hodžić, guided by examples of good practice from other countries, states that the Law on Transparency of Media Ownership in BiH should encompass all media sectors, including radio and TV broadcasters, print and online media, and news agencies, as well as related industries such as companies for measurement of viewership, listenership, readership and visitorship. The Law should ensure transparency, not only in terms

134 Although the media sector in BiH is fragmented and there is a large number of media outlets, Balkan Research Network BiH research conducted for the Media Ownership Monitor assessed the risk to media pluralism posed by media audience concentration, media market concentration and cross-media ownership concentration as high. The biggest owners of television, radio, print and online media own significant shares of the audience and total revenues, which indicates the need to regulate media ownership concentration in order to reduce these risks and ensure greater media pluralism. See: Media Ownership Monitor, https://www.mom-gmr.org/en/countries/bosnia-and-herzegovina/

135 Hodžić, Sanela and Anida Sokol, *Transparentnije i legitimnije finasiranje iz javnih budžeta: Smjernice za javne organe u BiH* (Transparent and Legitimate Media Financing from Public Budgets: Guidelines for Public Bodies in BiH) (Mediacentar Sarajevo, 2018). https://www.media.ba/sites/default/files/transparentnije_i_legitimnije_finansiranje_medija_iz_javnih_budzeta_-_smjernice_za_javne_organe_u_bih_-_bhs.pdf

136 Sanela Hodžić, *U potrazi za boljom regulacijom transparentnosti vlasništva i finansiranja medija iz javnih budžeta* (Looking for Better Ownership Transparency Regulation and Media Financing from Public Budgets) (Association BH Journalists, 2018), https://bhnovinari.ba/wp-content/uploads/2019/10/U-potrazi-za-boljom-regulacijom-transparentnosti-medijskog-vlasni%C5%A1tva-i-finansiranja-medija-iz-javnih-bud%C5%BEeta.pdf

137 Azra Maslo, Head of Programme Content and Complaints Sector, and Amela Odobašić, Assistant Director for Broadcasting, Communications Regulatory Agency, interview.

of direct owners and ownership shares, but also through the publication of data on indirect and beneficial owners, media organizations' interests in other companies (especially advertising agencies and major advertisers), political and business affiliations of owners, interests of related persons (such as family members or board members), and main sources of income, as well as management structures and key editors. The report suggested that the Law should authorize and empower a specific institution responsible for collecting, publishing and monitoring data through a centralized and searchable electronic database, while providing for sanctions for media outlets that fail to submit data in full and in a timely manner. The Law should also regulate excessive concentration of ownership to preserve media pluralism and prevent corrupt practices, as well as conflict of interest, in order to make media ownership incompatible with positions in regulatory bodies, public broadcasters and state institutions.[138]

A working group for drafting legislation on transparency of media ownership was formed in 2024. Although it was initially planned that the regulation of transparency of media ownership would be part of the Law on Electronic Media, due to the complexity and importance of the issue, it was decided to enact a separate law.

The Draft Law on Transparency of Ownership and Protection of Media Pluralism was prepared as part of the project and submitted to the Ministry of Communications and Transport. The Draft regulates the establishment of media records, data on all legal and natural persons who have shares and stakes in the media, which the media must submit to the competent institution, prevention of conflict of interest and protection of market competition. The Draft includes rules on preventing horizontal and diagonal concentration of media in order to limit the influence of dominant owners on the market. It also introduces obligations for the media to submit reports on financial operations, including revenues from public sources. The Draft further envisages the establishment of a fund for protection of media pluralism and diversity, the aim of which is to support media content of public interest. Penal provisions foresee fines for violations, such as failure to report ownership data or failure to comply with transparency obligations. In addition to the Draft, an explanation of the Draft has been prepared, which recommends institutions that would be responsible for collecting data on transparency of media ownership, such as the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption and the Communications Regulatory Agency.

The third initiative concerns amendments to the Election Law, which were imposed by the High Representative in BiH in March 2024. In order to prevent the operation of anonymous portals during elections, in 2024 the High Representative amended the Election Law, requiring online media that want to report on election campaigns to have information about their ownership published. The Rulebook on Media Representation of Political Subjects During the Election Period[139] explains that online media shall contain, in an appropriate place, the ownership structure of the media, the name, address, telephone number, email address and contact information of the responsible publisher and editor, to whom complaints and objections regarding online media reports can be addressed. Jurisdiction over online media remained in

138 Sanela Hodžić, *U potrazi za boljom regulacijom transparentnosti vlasništva i finansiranja medija iz javnih budžeta (Looking for Better Ownership Transparency Regulation and Media Financing from Public Budgets)* (Association BH Journalists, 2018), https://bhnovinari.ba/wp-content/uploads/2019/10/U-potrazi-za-boljom-regulacijom-transparentnosti-medijskog-vlasni%C5%A1tva-i-finansiranja-medija-iz-javnih-bud%C5%BEeta.pdf

139 Central Election Commission, *Pravilnik o medijskom predstavljanju političkih subjekata u periodu od dana raspisivanja izbora do dana održavanja izbora* (Rulebook on Media Representation of Political Subjects During the Election Period), https://www.izbori.ba/Documents/Izbori_2022/Pravilnik_o_medijskom_predstavljanju-bos.pdf

Although the members of the working group emphasize their commitment to drafting the Law, they point out that these problems slow down the process and may negatively affect the efficiency of the work. The adoption of the Law ultimately depends on political will and political agreement.

the hands of the self-regulatory body – the Press and Online Media Council. Despite these amendments, a significant number of anonymous portals were noted during the 2024 Local Elections, which indicates that the standardization of a specific legal obligation will not bring results without the provision of adequate sanctions and institutions authorized to impose them.

A working group for drafting legislation on transparency of media ownership was formed in 2024. Although it was initially planned that the regulation of transparency of media ownership would be part of the Law on Electronic Media, due to the complexity and importance of the issue, it was decided to enact a separate law.[140] The group includes representatives of various institutions and ministries from all levels of government, including the Communications Regulatory Agency, Directorate for European Integration, responsible ministries at the state and entity levels, and representatives of Brčko District.

The Draft Law on Transparency of Ownership and Protection of Media Pluralism, prepared by civil society organizations, is the initial working material for the working group. The Ministry of Communications and Transport of BiH emphasizes the importance of civil society expertise, but indicates that their inclusion would be challenging due to the large number of mandatory members of the working group.[141] The Directorate for European Integration adds that the inclusion of civil society representatives in working groups is not common practice, but emphasizes the importance of the portal eKonsultacije as a tool for submitting comments on texts once they are published. However, according to them, the number of comments they receive on drafts is quite limited.[142]

The Ministry of Communications and Transport further emphasizes that comments from civil society and the expert public will be crucial in finalizing the Law on Transparency of Media Ownership.[143] However, some interviewees believe that the civil sector should be involved at an early stage of drafting the Law, as subsequent changes to the draft are often more complex and less efficient.[144] Such considerations indicate the need for a more inclusive approach, as well as strengthening the capacity of civil society organizations and the expert public for advocacy.

The work of the working groups on the preparation of the Law faces challenges, including changes in members, logistical difficulties in organizing meetings, lack of budget, and limited professional capacities of some institutions. Although the members of the working group emphasize their commitment to drafting the Law, they point out that these problems slow down the process and may negatively affect the efficiency of the work.[145] The adoption of the Law ultimately depends on political will and political agreement.

140 Milanka Sudžum, Head of Communications Department, Ministry of Communications and Transport of BiH, interview.

141 Ibid.

142 Directorate for European Integration, interview.

143 Milanka Sudžum, Head of Communications Department, Ministry of Communications and Transport of BiH, interview.

144 Maida Ćulahović, Policy Development Coordinator, Association Zašto ne (Why Not), interview.

145 Milanka Sudžum, Head of Communications Department, Ministry of Communications and Transport of BiH, interview.

In addition to the adoption of legislation on transparency of media ownership, the interviewees emphasize that it is important to ensure the conditions for its implementation, including strengthening the capacities of institutions. Also, in addition to transparency of media ownership, it is necessary to regulate concentration of media ownership and introduce incentives for media pluralism, as is already the practice in many European countries.[146]

3.5. Laws on Public Information in the Cantons

In BiH, there are also outdated, inconsistent cantonal Laws on Information, whose goal was to regulate the right to information, protection of freedom of expression, and establishment and registration of media outlets.

The Law on Public Information of the Una-Sana Canton from 1998 regulates the exercise of freedom of information through public information media, the establishment and registration of public media, the rights, obligations and responsibilities of the participants in information, and compensation for damage caused by the publication of information (Art. 1)[147]. The Law recognizes press, radio, television, and news agency programmes as public media. It regulates the rights and obligations of public media, including the obligation to publish accurate, complete, and timely information, have an imprint and an editor-in-chief, publish corrections, and establish rules for publishing advertisements and sponsorship. The Law also regulates the rights and obligations of journalists, as well as monetary compensation for causing material and non-material damage due to the publication of information. Although the Law contains some of the basic journalistic standards, it, like others, is outdated and does not recognize the role of regulatory and self-regulatory bodies and it gives the responsible ministry the authority to impose fines on the media, which is contrary to the standards of the profession.

In recent years, there have been increasing initiatives to revise such outdated laws in order to regulate online content and include online media and social networks. In 2022, the Government of the Una-Sana Canton initiated amendments to the 1998 Law on Information, due to the need to "bring online media into the legal framework" and prescribe penal provisions.[148] Representatives of the working group state that the adoption of such a law is necessary to regulate the online space, protect the profession and citizens from harmful content, such as hate speech, and sanction unprofessional media reporting.

Endangered media freedoms

Representatives of the working group argue that the legal proposals follow international standards, while the expert community warns that such solutions may jeopardize media freedoms and enable arbitrary decisions on what constitutes a violation of journalistic standards or hate speech. They state that media regulation and self-regulation should remain within the competence of regulatory and self-regulatory bodies.

146 Maida Ćulahović, Policy Development Coordinator, Association Zašto ne (Why Not), interview.

147 Law on Public Information of Una-Sana Canton, https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf

148 Proposed Law on Amendments to the Law on Public Information of Una-Sana Canton, https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf

The proposed legal provisions would, for example, impose an obligation of self-regulation on online media, including appointing a person responsible for removing comments containing hate speech within 24 hours. In case of non-compliance with this provision, misdemeanour fines are foreseen, and the procedure would be carried out by the Inspectorate of the Ministry of Education, Science, Culture and Sports of Una-Sana Canton. If the publication of false information threatens public interest or security, operators and local providers could block sites or users following the Ministry's procedure. The Law also focuses on protection of children and minors in the media, regulating the rules for reporting on minors, including cases of their participation in events and exceptions to the obligation of parental consent for such reporting.[149]

Representatives of the working group argue that the legal proposals follow international standards, while the expert community warns that such solutions may jeopardize media freedoms and enable arbitrary decisions on what constitutes a violation of journalistic standards or hate speech. They state that media regulation and self-regulation should remain within the competence of regulatory and self-regulatory bodies. The differences in regulations further point to the need for a single state law that would establish standards and ensure consistency across lower levels of legislation.[150]

Contact points for journalist safety

In the Safety of Journalists section of the official Portal of the Judiciary in BiH of the High Judicial and Prosecutorial Council, it is possible to find the names, positions and contact information of the persons responsible for providing information to journalists regarding their cases — prosecutors in prosecutor's offices and inspectors, as well as spokespersons in ministries of internal affairs.

3.6. Institutional Protection of Journalists

Institutional and systematic monitoring of cases of attacks and threats against journalists, conducting timely, effective and impartial investigations, and their effective prosecution are important for the protection of media freedom and safety of journalists. Ensuring appropriate prosecution of the use of violence and threats against journalists is one of fourteen key priorities in the European Union Opinion on BiH's EU membership application.[151] Taking appropriate measures to end impunity for crimes against journalists in order to guarantee the safety of media professionals is also part of BiH's international obligations under OSCE Ministerial Council Decision 3/18.[152]

There is no specific legal framework in BiH to protect journalists from criminal acts or misdemeanours – criminal codes prohibit physical and verbal threats, but do not contain specific provisions regulating cases directed at journalists. Journalists in BiH face different types of political and economic pressure, verbal attacks, threats, online harassment and restrictions on access to information.[153] Records of verbal

149 Darmin Hadžić, "Unsko-sanski kanton priprema novi zakon o informisanju" (Una-Sana Canton Prepares New Law on Information), *Media.ba,* 6 January 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/unsko-sanski-kanton-priprema-novi-zakon-o-informisanju

150 Ibid.

151 European Commission, *Bosnia and Herzegovina Report 2024* (European Commission, 2024), https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2024_en

152 Decision No. 3/18 on Safety of Journalists, https://www.osce.org/files/mcdec0003%20safety%20of%20journalists%20en.pdf

153 UN, *Right to Freedom of Opinion and Expression. Safety of Journalists and Access to Information in Bosnia and Herzegovina* (UN, 2022), https://bosniaherzegovina.un.org/sites/default/files/2022-09/Report%20-%20Safety%20of%20journalists%20and%20access%20to%20information%20in%20Bosnia%20and%20Herzegovina%20-BHS.pdf

and physical attacks on journalists, as well as other forms of violations of their rights, are kept by the Association BH Journalists and the Safejournalists.net platform. Research often highlights that the police respond adequately to reports of threats and attacks on journalists, but investigations and prosecution are very slow, and prosecutors often dismiss cases on the grounds that they do not contain elements of a criminal offence. Very few cases of threats to the safety of journalists end with a court verdict in favour of the journalist, while an additional problem is journalists' distrust in the work of institutions, which is why attacks and threats are often not reported.[154]

26

From 2022 to the end of 2024, 26 cases involving journalists were registered. Most of these cases involve threats to journalists via the internet.

Some progress has been made in the process of institutional and systemic monitoring of attacks and threats against journalists, but largely through the actions of the international community, in cooperation with judicial institutions and journalist associations. In 2023, a joint initiative of the OSCE and the Delegation of the European Union established a network of contact points for journalists in prosecutor's offices and police agencies with the aim of more efficiently processing attacks on journalists and improving the safety of journalists in BiH.[155] The contact points were established in the Prosecutor's Office of BiH, ministries of internal affairs of the entities, ten cantonal prosecutor's offices and ten ministries of internal affairs, six district prosecutor's offices in the Republika Srpska, and Prosecutor's Office and Ministry of Internal Affairs of Brčko District.[156] In the Safety of Journalists section of the official Portal of the Judiciary in BiH of the High Judicial and Prosecutorial Council, it is possible to find the names, positions and contact information of the persons responsible for providing information to journalists regarding their cases – prosecutors in prosecutor's offices and inspectors, as well as spokespersons in ministries of internal affairs. The High Judicial and Prosecutorial Council states that it is planned to regularly update information on contact persons and publish statistical data and accompanying documents related to threats and attacks against journalists and media professionals.[157]

Guidelines for Chief Prosecutors, adopted by the High Judicial and Prosecutorial Council in April 2024, provide a description of duties of contact persons for safety of journalists.[158] According to them, chief prosecutors are advised to ensure full efficiency in handling cases involving journalists and media professionals, which includes establishing a procedure for handling the case, communication between the contact person and assigned prosecutor, and proactive exchange of information with the contact person in

154 Association BH Journalists, *Indeks sigurnosti novinara Zapadnog Balkana* (The Western Balkans Journalists' Safety Index) (Association BH Journalists, 2023), https://bhnovinari.ba/wp-content/uploads/2024/02/BiH-Index-sigurnosti-novinara-za-2022-BHS-jezik.pdf

155 Selma Fukelj, "Uspostavljanje kontakt tačaka za sigurnost novinara u tužilaštvima i policiji" (Establishing Contact Points for Safety of Journalists in Prosecutor's Offices and Police), *Media.ba,* 2 November 2023. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/uspostavljanje-kontakt-tacaka-za-sigurnost-novinara-u-tuzilastvima-i-policiji-u; MCOnline Newsroom. "Predstavljena mreža kontakt tačaka za sigurnost novinara u tužilaštvima i policiji" (Network of Contact Points for Safety of Journalists in Prosecutor's Offices and Police Presented), *Media.ba,* 9 July 2024. Accessed: December 2024. https://media.ba/bs/vijesti-i-dogadaji-vijesti/predstavljena-mreza-kontakt-tacaka-za-sigurnost-novinara-u-tuzilastvima-i

156 Portal of the BiH Judiciary, https://pravosudje.ba/vstvfo/B/10001/kategorije-vijesti/122916

157 The activities are included in the Proposed Plan for the Implementation of the HJPC Reform Programme for 2024-2026. Response by the High Judicial and Prosecutorial Council, 27 December 2024.

158 Draft Description of Duties of Contact Points for Safety of Journalists in Prosecutor's Offices, 17 May 2024, https://pravosudje.ba/vstvfo/B/10001/kategorije-vijesti/122916

the police. It is also envisaged to keep a special record of the number and type of cases in order to make it easier to monitor their status and to regularly inform the High Judicial and Prosecutorial Council.

The Guidelines call on prosecutor's offices to more promptly include the position of the journalist/media professional when entering cases concerning journalists and media professionals in the automated case management system in courts and prosecutor's offices – CMS/TCMS, which would enable easy search, identification and count of cases against media/journalists. The document also emphasizes the importance of ongoing coordination among prosecutor's offices, police bodies and journalist associations, as well as raising the issue of safety of journalists in meetings between police and prosecutor's offices. The role of contact persons also includes advising spokespersons of prosecutor's offices on cases of attacks on journalists in order to ensure that the public is given accurate and timely information on these cases. Chief prosecutors are instructed to enable contact persons to participate in training programmes, conferences and workshops in order to improve their competences regarding protection of journalists.[159]

Attacks on journalists

Although a slight increase in the efficiency of investigations and prosecution of criminal offences against journalists was reported in 2024, the Association BH Journalists warns that the number of convictions in favour of journalists is still very low and that attacks and threats by senior state officials, presidents of political parties and public servants are still not prosecuted.

The first contact point in BiH was established in the Sarajevo Canton Prosecutor's Office in 2022 at the initiative of the OSCE and served as a model for the establishment of the entire network. The initiative prioritized cases involving journalists and the Sarajevo Canton Prosecutor says that this contributed to a relationship of mutual trust between the journalistic and judicial communities, strengthened communication between journalist associations and the Prosecutor's Office, as well as communication between the Prosecutor's Office and police in cases involving journalists.[160] Since the system was established, the number of cases involving journalists in the Sarajevo Canton Prosecutor's Office has increased.[161] From 2022 to the end of 2024, 26 cases involving journalists were registered. Most of these cases involve threats to journalists via the internet, most often on platforms such as Facebook and Instagram, as well as DDOS attacks on online media, which are a form of cyberattacks in which the attacker floods the targeted server, network or system with a large number of requests, causing an outage or significant slowdown of the service.[162]

The Prosecutor's Office faces difficulties in processing such cases due to difficult communication with platforms, i.e. the companies that run social networks, but also the restrictive legislative framework in BiH. The Prosecutor's Office says that collecting evidence involves the process of sending requests for international legal assistance, which makes the process quite lengthy and uncertain, since the owners of online platforms very often protect users and refuse to provide the necessary information, stating that the platforms are protecting freedom of speech.[163]

159 Ibid.

160 Darko Martinčević, Prosecutor, Sarajevo Canton Prosecutor's Office, interview.

161 Ibid.

162 Ibid.

163 Ibid.

An additional challenge lies in the legal requirements for the qualification of an action that endangers safety, because communication that is reported often contains offensive or semi-threatening content, but does not always meet all legal elements necessary for the prosecution of a criminal offence. The Prosecutor's Office believes that, for these reasons, amending the criminal code should be considered in order to recognize journalists as a specific category and afford them additional protection, which would enable the processing of cases that currently do not meet the legal criteria, but clearly threaten the safety of journalists.[164]

The Special Report on the Situation and Threats to Journalists of the Institution of Human Rights Ombudsman of BiH recommends that the criminal legislation define attacks on journalists as a separate criminal offence or as a more serious form of criminal offence, and that the criminal offence of "attack on journalists" also be defined in the laws on public order and peace.[165] A conclusion on the need to amend the criminal legislation was adopted by both houses of the Parliamentary Assembly of BiH in 2022, but there has been no effort leading to the laws being amended.[166]

Despite these legal restrictions, the interviewees consider it important that all attacks and threats against journalists are reported and that journalists have direct contact with the prosecutor and police.[167]

Although a slight increase in the efficiency of investigations and prosecution of criminal offences against journalists was reported in 2024, the Association BH Journalists warns that the number of convictions in favour of journalists is still very low and that attacks and threats by senior state officials, presidents of political parties and public servants are still not prosecuted.[168] The real effects of establishing the network of contact points will only be able to be assessed in the future.

164 Ibid.

165 Jasminka Džumhur, Nives Jukić and Ljubinko Mitrović, *Specijalni izvještaj o položaju i slučajevima prijetnji novinarima u BiH* (Special Report on the Situation and Threats to Journalists in BiH) (The Institution of Human Rights Ombudsman of BiH, 2017), https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017082415202346bos.pdf

166 Association BH Journalists, "BH NOVINARI: Samo 5 presuda protiv napadača na novinare i novinarke u BiH" (BH JOURNALISTS, Only 5 Convictions against Attackers on Journalists in BiH), *Association BH Journalists,* 2 November 2024. Accessed: December 2024. https://bhnovinari.ba/bs/2024/11/02/bh-novinari-samo-5-presuda-protiv-napadaca-na-novinare-i-novinarke-u-bih/

167 Zlatan Musić, Programme Officer, Media Freedom and Human Rights, OSCE Mission, interview.

168 BH Journalists reported 49 cases of threats and endangerment of safety to judicial institutions from 1 January 2022 to 31 October 2024, of which only 5 cases ended with convictions against the attackers.

4.

Legislation on Media and Freedom of Expression in the EU

Freedom of the media is one of the fundamental values of the European Union acquis and has a special role in countries in the accession process. The European Union recognizes freedom of expression as a fundamental right that potential candidate countries must ensure and promote in the accession process (Article 49 of the Treaty on the European Union). Freedom of the media is particularly important in this context because it creates trust in future Member States and contributes to strengthening good governance in countries in the accession process.

Although this sector in the European Union has traditionally been regulated by national laws that differ significantly among the Member States, the response to modern challenges has led to the introduction of common laws and instruments, in accordance with the principle of subsidiarity. In recent years, the European Union has introduced a number of measures and legislative frameworks to protect media freedom and pluralism. For the purposes of this analysis, three key EU documents in the field of media were examined, which will bring numerous obligations in the harmonization of Bosnia and Herzegovina's national legislation: Digital Services Act, European Media Freedom Act and Directive against Strategic Lawsuits against Public Participation.

4.1. Digital Services Act

The Digital Services Act, or Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC,[169] lays down the liability of digital service providers who act as intermediaries between consumers and connect consumers with goods, services and content. It aims to better protect users of digital services and their fundamental rights online, establish a strong legal framework for transparency and accountability of online platforms, and ensure a single and uniform legal framework at EU level.

The Regulation is important for the media with regard to protecting media pluralism and freedom of expression, which are stated as freedoms that should not be endangered by the regulations introduced by this act. Furthermore, the Regulation deals with the concept of "illegal content", which should generally reflect existing rules in the offline environment and should be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is itself illegal, such as illegal hate speech. The Regulation brings a new set of rules and introduces a broad range of obligations for digital service providers and new rights for users, including: measures to tackle illegal content online, including goods and services, increased transparency requirements for online platforms, obligations to protect minors, new restrictions on targeted advertising, increased rights for users, including challenging content moderation decisions.

The Regulation also provides for the introduction of additional obligations for "very large" online platforms and very large online search engines, considering their impact on society and the extent of the societal risks they may generate. Very large online platforms and very large online search engines are considered to be those providers of digital intermediary services whose number of users on a monthly basis exceeds 45 million, i.e. 10% of the EU population. These include Google, Facebook, X, Instagram, TikTok, Amazon, etc. Additional obligations relate to the prevention of risks arising from their format design and the way

169 Regulation (EU) 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), https://www.eu-digital-services-act.com/

they are used, such as: dissemination of illegal content, endangerment of fundamental human rights and freedoms, negative effects on democratic (electoral) processes and public security.

In August 2022, the Council of Ministers of BiH adopted a conclusion initiated by the House of Representatives of the Parliamentary Assembly of BiH, which tasked the Directorate for European Integration to watch the activities of the EU Council's working groups regarding the adoption of the Regulation on a Single Market for Digital Services and, upon its adoption, to inform the Ministry of Justice of BiH. At the same time, the Ministry of Justice was instructed to, in cooperation with the Ministry of Transport and Communications, Ministry of Human Rights and Refugees and Directorate for European Integration, upon the adoption of the Regulation at EU level, proceed with the development of a normative act on the prevention of illegal hate speech online, in line with the provisions of the Regulation.[170]

Adapt the legal frame

For BiH, in the process of harmonization of regulations, it is necessary to establish a legal basis for adapting the national legal framework to the requirements of the Regulation in order to precisely regulate specific issues by the national regulations.

With regard to the Regulation, the Directorate for European Integration says that the authorized proposer has not initiated any legislative process as they are currently working on other priorities. Although no formal plans have been made as yet, the Ministry has expressed its intent to include the preparation and adoption of the Digital Services Act in the mid-term work programme of the Council of Ministers of BiH for 2025–2027.[171] The Directorate for European Integration emphasizes that there is no need to rush with harmonization, but rather to wait to see how this process will be implemented in the European Union.[172]

According to data from a study by Partners Serbia on feasible implementation of the Digital Services Act in the Western Balkans, the need to initiate legislative processes towards harmonization of regulations has been emphasized only informally so far, mostly by the regulators at various meetings with the representatives of competent authorities and the international community, as well as during different gatherings and conferences on a wider topic of the prevention of illegal and harmful online content.[173]

For BiH, in the process of harmonization of regulations, it is necessary to establish a legal basis for adapting the national legal framework to the requirements of the Regulation in order to precisely regulate specific issues by the national regulations. Given the scope, specificity and innovativeness of the changes in relation to existing laws, as well as the establishment and competences of bodies such as the Digital Services Coordinator, responsible for the implementation and competences of the Digital Services Act, the interviewees argue that it will likely be necessary to adopt a new comprehensive implementing regulation. This regulation would address key issues related to the division of competences, organizational and

170 Minutes of the 55th session of the Council of Ministers of Bosnia and Herzegovina, 25 August 2022. https://www.vijeceministara.gov.ba/saopstenja/sjednice/zakljucci_sa_sjednica/default.aspx?id=38815&langTag=bs-BA

171 Danche Danilovska-Bajdevska et al, *Towards a Feasible Implementation of the Digital Services Act in the Western Balkans: Study of the Regulatory and Institutional Preparedness for Harmonization with DSA in the Western Balkans,* (Partners for Democratic Change Serbia: 2024), https://partners-serbia.org/public/news/dsa-wb-new.pdf

172 Directorate for European Integration, interview.

173 Danche Danilovska-Bajdevska et al, *Towards a Feasible Implementation of the Digital Services Act in the Western Balkans: Study of the Regulatory and Institutional Preparedness for Harmonization with DSA in the Western Balkans,* (Partners for Democratic Change Serbia: 2024). https://partners-serbia.org/public/news/dsa-wb-new.pdf

procedural issues, and establish rights, obligations and sanctions related to the implementation of laws upon harmonization with the Regulation.

The independence of the bodies responsible for implementing the legal provisions is important for the protection of freedom of expression and the media.

In a narrower sense, certain areas, such as illegal hate speech, could be regulated through existing laws, such as criminal laws, or integrated into laws that are in the drafting phase, such as laws on broadcasters. However, the interviewees emphasize that the bulk of the Regulation cannot be transposed into the national legislation of BiH because it relates to issues that fall within the competence of the EU common market and are directly implemented by the European Commission.[174] In this segment, the process will be more complex and it will be necessary to proactively ask the European Commission, in cooperation with decision-makers in BiH, to find the best solution for the integration of these provisions into domestic legislation.[175] Furthermore, it is necessary to ensure adequate institutional capacities, improve expertise within institutions, civil society and professional associations, and encourage regional cooperation and creating a multi-sectoral approach.[176] In this case too, the independence of the bodies responsible for implementing the legal provisions is important for the protection of freedom of expression and the media.[177]

4.2. European Media Freedom Act

The European Media Freedom Act – Regulation (EU) 2024/1083 of the European Parliament and of the Council Establishing a Common Framework for Media Services in the Internal Market and amending Directive 2010/13/EU[178] represents a new set of rules for the protection of pluralism and media independence and has been applicable since 8 September 2025. It requires Member States to protect editorial independence and journalistic sources, ensure the independent functioning of public media, increase the transparency of media ownership, provide safeguards in situations where large online platforms unjustifiably remove media content, introduce the right to the adaptation of the media offering on devices, guarantee the transparency of state advertising for media service providers and online platforms, and ensure that Member States provide an assessment of the impact of key concentrations in the media market on media pluralism and editorial independence. The Act also prescribes strong measures to protect the confidentiality of journalistic sources and communications, which, among other things, relate to the use of intrusive surveillance software to monitor the media, journalists and those who have a regular or professional relationship with the media or journalists.

The Delegation of the European Union lists five key elements that BiH should take into account when adopting new legislation: reduction of political influence, legal regulatory framework, stable funding, protection of

174 Maida Ćulahović, Policy Development Coordinator, Association Zašto ne (Why Not), interview.

175 Ibid.

176 Bojana Kostić, Researcher, Pen to Paper, interview; Deirdre Kevin and Asja Rokša-Zubčević, *Coregulation of Harmful Content Online: Study* (Council of Europe, 2022), https://rm.coe.int/co-regulation-of-harmful-content-online-study-bhs/1680adeee3

177 Bojana Kostić, Researcher, Pen to Paper, interview.

178 Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 Establishing a Common Framework for Media Services in the Internal Market and amending Directive 2010/13/EU (European Media Freedom Act), https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A32024R1083

journalists and improvement of professional standards. This will particularly apply to the Communications Regulatory Agency, as the Act envisages the creation of a fairly robust regulatory framework with a Coordinating Body at the EU level, which will bring together regulatory agencies from the Member States,[179] thus strengthening the capacities and competences of the regulators.

In accordance with the Stabilization and Association Agreement, BiH has an obligation to transpose the provisions of this Regulation into its domestic legislation. Part of the harmonization can be achieved through laws currently in the drafting phase, with a particular emphasis on transparency of media ownership and concentration of media ownership, independence and financial sustainability of regulatory bodies and public service broadcasters.[180] According to the Regulation, all media will have an obligation to publish their ownership structure, while Member States will have an obligation to assess the impact of media concentration on media pluralism. In addition, it is essential to ensure the sustainability and political independence of public service broadcasters, an important factor for maintaining media pluralism and democratic values.

Sustainability and political independence of public broadcasters

According to the Regulation, all media will have an obligation to publish their ownership structure, while Member States will have an obligation to assess the impact of media concentration on media pluralism. In addition, it is essential to ensure the sustainability and political independence of public service broadcasters, an important factor for maintaining media pluralism and democratic values.

4.3. Directive against Strategic Lawsuits against Public Participation

The Anti-SLAPP Directive – Directive 2024/1069 of the European Parliament and of the Council on Protecting Persons who Engage in Public Participation from Manifestly Unfounded Claims or Abusive Court Proceedings (Strategic Lawsuits against Public Participation) – provides safeguards against manifestly unfounded claims or abusive court proceedings in civil or commercial matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation.[181] The Directive sets minimum standards and is intended to protect journalists and the media from malicious litigation.

SLAPP stands for strategic lawsuits against public participation. It is a form of legal harassment used to intimidate or silence those who speak out in the public interest and is most often directed against the media, journalists, civil society and activists.

179 Danijel Kovačević, Political Advisor, European Union Delegation, interview.

180 Maida Ćulahović, Policy Development Coordinator, Association Zašto ne (Why Not), interview.

181 Directive 2024/1069 of the European Parliament and of the Council on the Protection of Persons Involved in Public Participation against Manifestly Unfounded or Malicious Court Proceedings (Strategic Actions against Public Participation), https://eur-lex.europa.eu/eli/dir/2024/1069/oj?locale=hr

The most important solutions brought by the Directive refer to:

- accelerated procedure for dismissing cases at the earliest stage. Courts in the Member States can declare a court proceeding malicious and determine legal remedies or make a decision on early dismissal, in whole or in part. It is up to the Member States to determine the time limits for exercising the right to apply for early dismissal, which should be proportionate so that the exercise of the right is not impossible or difficult. The application for early dismissal is decided in an accelerated procedure.
- third-party support to defendants during court proceedings. This applies to persons such as non-governmental organizations that protect the rights of persons involved in public participation – either in support of the defendant or in support of the source of information. This provides the possibility of involving third parties, who are not parties to the proceedings or their legal representatives, to help the defendant. The important thing here is that it opens up the possibility of putting the sued media in a "more favourable position" instead of being left all alone when the lawsuit happens.
- penalties for claimants and compensation for damage for victims. The court has the authority to require the claimant to provide security for the costs of the proceedings or the costs of the proceedings and compensation for damage if it considers such security appropriate.

The biggest task of preparing effective anti-SLAPP legislation now lies with the Member States. National legislation needs to adopt new laws or align existing laws with the binding framework that this Directive brings. Member States have an obligation to transpose the Directive no later than two years after its entry into force by 2026.

BiH would have to amend a number of laws (especially procedural, criminal and civil laws, at all levels) and eliminate the effects of existing laws that create a climate of fear around media reporting on certain topics. Furthermore, it will be necessary to establish mechanisms for implementing early dismissal of SLAPP cases and to prescribe protective measures in national legislation on compensation for damage with specific criteria. In addition to the legislative aspect, it will be necessary to work on raising awareness and developing expertise, especially among legal professionals and the judiciary, in order to ensure support for those who become SLAPP targets. It is necessary to affirm full respect for the right to a fair trial and the right to freedom of expression (which, of course, is not related in the narrowest sense to cases involving the media), without which the integration of legislation against strategic lawsuits against public participation cannot achieve its purpose.[182]

The interviewees in the study point out that there is significant interest from civil society and media professionals in solutions that will be aligned with the Directive, but that alignment is currently not among the priorities.[183] Nevertheless, the introduction of anti-SLAPP protection is very important for the preservation of media freedoms, especially given the examples of abuse of defamation laws for the purpose of intimidating and silencing journalists.

182 Lejla Gačanica, "Šta donosi Direktiva protiv SLAPP tužbi" (What does the Directive against SLAPP Lawsuits Bring), *Media.ba,* 4 April 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/sta-donosi-direktiva-protiv-slapp-tuzbi-u-eu

183 Aleksandar Jokić, Attorney, interview.

5.

Concluding Considerations and Recommendations

Bosnia and Herzegovina faces serious challenges in the process of improving the legislative framework for freedom of expression and media freedom. International standards for freedom of expression have been adopted in the highest legislative acts of BiH, but their implementation and institutionalization have not been carried out in a systematic and efficient manner. Key laws that would contribute to the protection of media pluralism, ensure financial stability and political independence of public service broadcasters, and improve the transparency of media ownership are missing.

A crucial problem, recognized by almost all interviewees in this study, is the lack of political will to regulate this area. Of particular concern is stagnation in the adoption of laws on electronic communications, broadcast media and law on the public broadcasting system, which are important for advancing the legal framework for media, protecting media freedoms and harmonizing legislation with the EU acquis. Although the authorities in BiH do not treat the adoption of media legislation or its harmonization with the EU acquis as a priority, it is clear that the lack of these laws significantly limits the democratic processes. Lengthy processes of adopting laws in the field of media have a negative impact on the media, threatening their independence and work security. In addition, the lack of up-to-date and effective regulation affects citizens' trust in the media, regulators, judicial institutions and democracy as a whole.

Modernization of legislative frameworks and adoption of contemporary regulatory approaches are necessary to respond to technological changes that are changing the way media content is produced, distributed and consumed. While in the European Union regulation is developing towards a systematic management approach, which includes coregulation and the participation of various stakeholders, BiH still lacks the basic legislative frameworks to achieve these goals.

On the other hand, initiatives are emerging in BiH that seek to address these shortcomings in the wrong way, such as proposals for legal regulation of disinformation. Criminalization of defamation in the Republika Srpska and proposed solutions for regulating online disinformation may have a deterrent effect on journalists and citizens, encouraging self-censorship and limiting critical public debate.

The introduction of modern laws in line with the acquis communautaire is essential for strengthening the media sector and improving media freedoms. Although the process of harmonization with European legislation is complex and demanding, it is important to avoid unnecessary delays, as further postponement of harmonization with European documents makes future amendment processes more difficult. The current process of adopting a range of media laws should be used to harmonize them with all relevant European documents. Some documents, such as the Directive against Strategic Lawsuits against Public Participation, also require amending other laws, such as procedural laws. Therefore, initiatives and preparatory activities for making these amendments should already be launched, with the active involvement of the expert public in consultations and development of legal texts.

Law-making procedures still remain non-transparent and exclude the expert public. Although representatives of some institutions argue that transparency in the law-making process is ensured through the public consultation portal, practice shows that it is difficult to amend legislative proposals after they have left the working groups. Civil society organizations, experts and the media rarely have the opportunity to participate in the drafting of laws, while consultative processes are often carried out in a superficial manner. As a result, laws are perceived as "imposed" rather than developed in democratic and transparent conditions. The involvement of the local civil sector and the expert public, as well as experts from international organizations, is crucial to ensure quality legal solutions that are in line with international standards.

According to the Directorate for European Integration, by receiving a "green light" from the European Union to start negotiations, activities on drafting laws have intensified. Although the time frames are ambitious, a positive momentum has been created for harmonization, especially in the area of media regulation. However,

the long stagnation has left consequences that need to be compensated for in order to use the current momentum for real reforms and progress on the European path. Obligations towards the European Union and the need to strengthen democratic processes in BiH provide an opportunity to focus on reforms in the area of freedom of expression and media freedoms. Progress in this area is necessary not only to meet the requirements for EU membership, but also to ensure the long-term development of a democratic society in Bosnia and Herzegovina.

Recommendations

Adoption of priority legislation

– Laws on electronic communications and electronic media should be prepared and adopted without delay and harmonized to the greatest extent possible with the EU acquis, especially Directive 2018/1808, as well as the European Media Freedom Act.

– A law on transparency of media ownership should be adopted that ensures public insight into the ownership structure of media, regulates concentration of ownership, foreign ownership and conflict of interest, while also including measures to encourage media pluralism. Such a law should ensure full transparency of ownership in all media sectors, including data on direct, indirect and beneficial owners, details of a media organization's interests in companies, political affiliations of owners, sources of income and management structures. The law should also regulate concentration of ownership and conflicts of interest and stipulate that media owners cannot hold positions in regulatory bodies, public service broadcasters, or in the executive, legislative and judicial branches, with mandatory oversight of the implementation of these rules. The law could also cover related areas, such as companies for measuring viewership, listenership and readership.

– A law on the public broadcasting system should be prepared and adopted urgently and without delay, which would enable financial sustainability and political independence of public service broadcasters and prevent political interference in the selection of management and editorial decisions. Given the disagreements among the public service broadcasters, it is recommended to ensure more involvement of the international community and the expert public in order to find an appropriate solution.

– Law-making processes should be inclusive and transparent. Relevant ministries should ensure that law-making processes include civil society and the expert public, which is one of the basic principles in the process of preparing and adopting laws at the level of the European Union. Also, relevant ministries should improve communication on the law-making processes, the creation of working groups and holding meetings, in accordance with the principles of proactive transparency, which are an integral part of the new Law on Freedom of Access to Information at the Institutional Level of BiH.

– Work should be put into strengthening the expertise of all actors involved in the process of drafting and adopting laws on media and on developing knowledge about the EU's acquis and international standards for media freedoms and freedom of expression. Professional assistance is especially important with regard to the latest directives of the European Union, such as the Digital Services Act. The possibility of hiring experts from the European Union and countries of the region should be considered.

– The civil sector and media sector should take on an important role in monitoring the law-making process. Support should be provided to the work of civil society in this process, including ensuring their participation in working groups and considering recommendations coming from the civil society and the expert public in the area of protection of media freedoms and freedom of expression during all law-making stages.

– Civil society organizations should strengthen their capacities and expertise in the area of legislative and regulatory frameworks for media and freedom of expression, with a particular focus on the latest European Union directives. They should also develop advocacy skills in order to more effectively advocate for the protection of media freedoms and freedom of expression.

– Legislative reforms should include capacity building of institutions for adequate implementation of laws. Harmonization with the EU acquis must not be just a technical process, but substantive implementation of relevant regulations in order to protect media freedoms and freedom of expression.

– Organizational and logistical difficulties in the operation of working groups for drafting laws should be reviewed and eliminated in order to make their work more efficient and to prepare legislation within the stipulated time frames.

Other recommendations

– Amendments to the Criminal Code of the Republika Srpska that criminalize defamation should be repealed as soon as possible and without delay and adoption of similar laws in the future should be prevented.

– The adoption of partial laws for the regulation of harmful online content at the cantonal level that are not in line with international human rights standards or aligned with the EU acquis should be prevented.

– Legislation covering the internet, in particular illegal hate speech, should be guided primarily by content management processes and use a multi-sectoral approach, and it should ensure a high level of protection when it comes to freedom of expression and media freedoms.

– Amending laws in line with the Directive against Strategic Lawsuits against Public Participation should be considered in order to enhance the legal security of journalists. Although harmonization with the Directive is not a priority, legal reforms aimed at protecting journalists from unfounded lawsuits are important for the protection of media freedoms, given the large number of such cases.

– Institutions should implement all measures envisaged by the Law on Freedom of Access to Information at the Institutional Level of BiH, such as the obligation of proactive transparency. A public discussion should also be opened on the implementation of specific provisions that make access to information through this law more difficult, such as the one according to which institutions do not provide information because, according to the Law, it is considered that this is not information in the possession of institutions, but new information that institutions have yet to prepare.

– The legal framework should be improved in order to more efficiently process attacks and threats that endanger the safety of journalists, especially online, given the difficulties that occur when such cases are processed.

– Amending criminal laws should be considered so that the provisions prohibiting public provocation and incitement to national, racial and religious hatred, discord and intolerance include other protected characteristics, such as language, skin colour, citizenship, sexual orientation and gender identity. The introduction of other recommendations of the European Commission against Racism and Intolerance (ERCI) from 2016 should also be considered.

– It is important to promote the work of the network of contact points for the safety of journalists in prosecutor's offices and police agencies and to encourage media and journalists to report attacks, while considering legal amendments that enable better prosecution of attacks.

References

Analyses and analytical articles

- Akandji-Kombé, Jean-François. *Positive obligations under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights.* Council of Europe, 2007. https://rm.coe.int/168007ff4d
- Bajrović, Sadeta. "Politi(č)ka uređivanja javnog RTV-sistema u BiH" (Editorial Policy (Politics) of the Public Broadcasting System in BiH). *Media.ba*, 26 December 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/politicka-uredivanja-javnog-rtv-sistema-u-bih
- Banja Luka Center of Human Rights, "Predani amandmani na nacrt zakona kojim se mijenja KZRS" (Amendments to Draft Law Amending the CC RS Submitted). *Banja Luka Center of Human Rights,* 7 May 2023. Accessed: December 2024. https://www.blchr.org/predani-amandmani-na-nacrt-zakona/
- BHRT. "Savjet ministara BiH odobrio četiri miliona BHRT-u i po tri za entitetske emitere" (BiH Council of Ministers Approves Four Million to BHRT and Three Million Each to Entity Broadcasters), *BHRT*, 9 February 2024. Accessed: December 2024. https://www.bhrt.ba/savjet-ministara-bih-odobrio-%C4%8Detiri-miliona-bhrt-u-i-po-tri-za-entitetske-emitere
- Bubonjić, Mladen, "Otkako je bivši direktor RTRS-a na mjestu direktora RAKA nema objavljenih kazni za RTRS" (Ever Since Former RTRS Director Became CRA Director there have been no Announced Penalties for RTRS). *Media.ba*, 24 February 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/otkako-je-bivsi-direktor-rtrs-na-mjestu-direktora-rak-nema-objavljenih-kazni-za
- Danilovska-Bajdevska, Danche et al. *Towards a Feasible Implementation of the Digital Services Act in the Western Balkans: Study of the Regulatory and Institutional Preparedness for Harmonization with DSA in the Western Balkans.* Partners for Democratic Change Serbia, 2024. https://partners-serbia.org/public/news/dsa-wb-new.pdf
- Džumhur, Jasminka, Nives Jukić and Ljubinko Mitrović. *Specijalni izvještaj o položaju i slučajevima prijetnji novinarima u BiH* (Special Report on the Situation and Threats to Journalists in BiH). The Institution of the Human Rights Ombudsman of BiH, 2017. https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017082415202346bos.pdf
- Fukelj, Selma. "Uspostavljanje kontakt tačaka za sigurnost novinara u tužilaštvima i policiji" (Establishing Contact Points for Safety of Journalists in Prosecutor's Offices and Police). *Media.ba*, 2 November 2023. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/uspostavljanje-kontakt-tacaka-za-sigurnost-novinara-u-tuzilastvima-i-policiji-u
- Gačanica, Lejla. "Šta donosi Direktiva protiv SLAPP tužbi" (What does the Directive against SLAPP Lawsuits Bring), *Media.ba*, 4 April 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/sta-donosi-direktiva-protiv-slapp-tuzbi-u-eu
- Gačanica, Lejla. "Tendenciozni zakonski zalogaj u Kantonu Sarajevu" (A Tendentious Legal Endeavour in Sarajevo Canton), *Media.ba*, 12 June 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/tendeciozni-zakonski-zalogaj-u-kantonu-sarajevo
- Grbo, Amila. "Razvoj profesionalnog novinarstva u BiH" (Professional Journalism Development in BiH). *Adult Education: Journal for Adult Education and Culture*, 16, 35–36 (2016). https://ccu.bkc.ba/wp-content/uploads/2021/09/Casopis_1_2016-35-56-Grbo.pdf
- Hadžić, Darmin. "Unsko-sanski kanton priprema novi zakon o informisanju" (Una-Sana Canton Prepares New Law on Information), *Media.ba*, 6 January 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/unsko-sanski-kanton-priprema-novi-zakon-o-informisanju

- Hasečić, Nejra. "Novi ZOSPI bi mogao dodatno ograničiti slobodan pristup informacijama u BiH" (The New LFAI Could Further Limit Freedom of Access to Information). *Media.ba*, 29 March 2021. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/novi-zospi-bi-mogao-dodatno-ograniciti-slobodan-pristup-informacijama-u-bih
- Hodžić, Sanela. *U potrazi za boljom regulacijom transparentnosti vlasništva i finansiranja medija iz javnih budžeta* (Looking for Better Ownership Transparency Regulation and Media Financing from Public Budgets) Association BH Journalists, 2018. https://bhnovinari.ba/wp-content/uploads/2019/10/U-potrazi-za-boljom-regulacijom-transparentnosti-medijskog-vlasni%C5%A1tva-i-finansiranja-medija-iz-javnih-bud%C5%BEeta.pdf
- Hodžić, Sanela and Anida Sokol. *Transparentnije i legitimnije finasiranje iz javnih budžeta: Smjernica za javne organe u BiH* (Transparent and Legitimate Media Financing from Public Budgets: Guidelines for Public Bodies in BiH). Mediacentar Sarajevo, 2018. https://www.media.ba/sites/default/files/transparentnije_i_legitimnije_finansiranje_medija_iz_javnih_budzeta_-_smjernice_za_javne_organe_u_bih_-_bhs.pdf
- Hrnjić Kuduzović, Zarfa. *Zajedno ka boljim medijskim zakonima: Analize medijske legislative u BiH sa preporukama za unapređenje* (Together towards Better Media Laws: Analysis of Media Legislation in BiH, with Recommendations for Improvement) Association BH Journalists 2022. https://bhnovinari.ba/wp-content/uploads/2021/07/Zajedno-ka-boljim-medijskim-zakonima-analiza-medijske-legislative-u-BiH-sa-preporukama-za-unapredjenje-1.pdf
- Išerić, Harun. *SLAPP postupci protiv medija: Analiza izabranih primjera* (SLAPP Proceedings against the Media: Analysis of Selected Cases). Association BH Journalists, 2022. https://bhnovinari.ba/wp-content/uploads/2024/06/SLAPP-postupci-protiv-medija-u-Bosni-i-Hercegovini-analiza-autora-Haruna-Iserica.pdf
- Ivanović, Aleksandar. *Studija mapiranja institucionalnog kršenja ljudskih prava u Bosni i Hercegovini* (A Study of Mapping Institutional Breaches of Human Rights in Bosnia and Herzegovina). School of Law in Lukavica, 2021. https://pravnifakultet.edu.ba/wpcontent/uploads/2021/08/Studija-mapiranja-institucionalnog-krsenja-ljudskih-pravau-Bosni-i-Hercegovini_23082021.pdf
- Jerković, Matea. "Govor mržnje tokom izbora: Političari na mrežama oprezniji" (Hate Speech During Elections: Politicians more Careful on Networks), *Media.ba*, 12 November 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/govor-mrznje-tokom-izbora-politicari-na-mrezama-oprezniji
- Kevin, Deirdre and Asja Rokša-Zubčević. *Coregulation of Harmful Content Online: Study*. Council of Europe, 2022. https://rm.coe.int/co-regulation-of-harmful-content-online-study-bhs/1680adeee3
- Kisin Zagajac, Jovana. "Analiza izmjene Krivičnog zakonika Republike Srpske i njihov uticaj na slobodu izražavanja" (Analysis of Amendments to the Criminal Code of Republika Srpska and Their Effect on Freedom of Expression), *Press and Online Media Council*, 28 October 2023. Accessed: December 2024. https://vzs.ba/analiza-izmjene-krivicnog-zakonika-republike-srpske-i-njihov-uticaj-na-slobodu-izrazavanja/
- Kontić, Boro. "Zakon o kleveti prvih dvadeset godina" (Law on Defamation – The First Twenty Years), *Media.ba*, 7 March 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/zakon-o-kleveti-prvih-dvadeset-godina
- Kulogija Zolj, Nermina. "Tri stvari koje trebate znati o prvom optuženom za veličanje ratnog zločinca" (Three Things You Should Know about the First Person Accused of Glorifying a War Criminal), *Detektor.ba*, 31 January 2024. Accessed: December 2024. https://detektor.ba/2024/01/31/tri-stvari-koje-trebate-znati-o-prvom-optuzenom-za-velicanje-ratnog-zlocinca/

- Lučka, Dejan. “Manje kazne, isti problem” (Lesser Penalties, Same Problem), *Media.ba*, 17 July 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/manje-kazne-isti-problemi-kleveta-kao-krivicno-djelo
- Lučka, Dejan. “Pravna analiza odluke Ustavnog suda BiH o kriminalizaciji klevete” (Legal Analysis of the BiH Constitutional Court’s Decision on Criminalization of Defamation), *Media.ba*, 7 February 2024. Accessed: December 2024. https://media.ba/bs/mediametar/pravna-analiza-odluke-ustavnog-suda-bih-o-kriminalizaciji-klevete
- MCOnline Newsroom. “Indeks medijskih sloboda 2024: BiH nazadovala za sedamnaest mjesta” (2024 Media Freedom Index: BiH Drops Seventeen Positions), *Media.ba*, 3 May 2024. Accessed: December 2024. https://media.ba/bs/vijesti-i-dogadaji-vijesti/indeks-medijskih-sloboda-2024-bih-nazadovala-za-sedamnaest-mjesta
- MCOnline Newsroom. “Urednica Spininfo saslušana u policijskoj stanici zbog krivične prijave” (Spininfo Editor Questioned in Police Station over Criminal Report), *Media.ba*, 10 October 2024. Accessed: December 2024. https://media.ba/bs/vijesti-i-dogadaji-vijesti/urednica-spininfo-saslusana-u-policijskoj-stanici-zbog-krivicne-prijave
- MCOnline Newsroom. “Predstavljena mreža kontakt tačaka za sigurnost novinara u tužilaštvima i policiji” (Network of Contact Points for Safety of Journalists in Prosecutor’s Offices and Police Presented), *Media.ba*, 9 July 2023. Accessed: December 2024 https://media.ba/bs/vijesti-i-dogadaji-vijesti/predstavljena-mreza-kontakt-tacaka-za-sigurnost-novinara-u-tuzilastvima-i
- Milišić-Veličkovski, Svjetlana. “Tužbe za zaštitu od klevete protiv medija” (Lawsuits Against the Media Concerning Protection from Defamation), In *Medijsko pravo: Okvir za slobodno i odgovorno djelovanje medija* (Media Law: A Framework for Free and Responsible Media Operation), edited by Amer Džihana. CPCD, 2022. https://2am-objavi-ba.s3.amazonaws.com/wp-content/uploads/2022/03/21085603/Medijsko-pravo-Okvir-za-slobodno-i-odgovorno-djelovanje-medija.pdf
- Omerović, Enis, and Amna Hrustić. “Sloboda izražavanja i govor mržnje: Odgovor države Bosne i Hercegovine” (Freedom of Expression and Hate Speech: Response by the State of Bosnia and Herzegovina), School of Law, University of Zenica, 13: 25 (2020). https://www.prf.unze.ba/Docs/Anali/Anali25god13/1.pdf
- Pećanin, Senad. “Dramatične posljedice planirane kriminalizacije klevete u RS-u” (Dramatic Consequences of the Planned Criminalization of Defamation in the RS), *Media.ba*, 14 March 2023. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/dramaticne-posljedice-planirane-kriminalizacije-klevete-u-rs
- Petković, Senita. “(Ne)pristupačnost medijskih sadržaja osobama sa oštećenjem sluha i vida” ((Non) Accessibility of Media Contents to Persons with Hearing and Visual Impairment), *Media.ba*, 12 December 2024. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/nepristupacnost-medijskih-sadrzaja-osobama-sa-ostecenjem-sluha-i-vida
- Sladojević, Dejan. “Da li je kažnjivo objavljivati lažne diplome političara?” (Is it Punishable to Make Public Politicians’ Fake Diplomas?), *Nezavisne novine*, 26 August 2023. Accessed: December 2024. https://www.nezavisne.com/novosti/bih/Da-li-je-kaznjivo-objaviti-lazne-diplome-politicara/786206
- Sokol, Anida. *Dobre osnove, ograničena primjena. Samoregulacija medija u Bosni i Hercegovini* (Solid Foundation, Limited Implementation. Media Self-Regulation in Bosnia and Herzegovina). SEENPM, Mediacentar Sarajevo and Peace Institute, 2023. https://media.ba/sites/default/files/ourmedia_bih_23-11-21_final.pdf

- Sokol, Anida. "Sloboda pristupa informacijama" (Freedom of Access to Information). In *Medijsko pravo: Okvir za slobodno i odgovorno djelovanje medija* (Media Law: A Framework for Free and Responsible Media Operation), edited by Amer Džihana. CPCD, 2022. https://2am-objavi-ba.s3.amazonaws.com/wp-content/uploads/2022/03/21085603/Medijsko-pravo-Okvir-za-slobodno-i-odgovorno-djelovanje-medija.pdf
- Stokić, Vanja, Mladen Bubonjić and Anida Sokol. *Restricting Freedoms Online. From Crimes to Criminal Investigations for Online Content.* Balkan Investigative Reporting Network, 2024. https://balkaninsight.com/wp-content/uploads/2024/06/Restricting-Freedoms-Online.pdf
- Šečerović, Edina. "Godina dana novog ZOSPI-ja" (One Year of the New LFAI). *Media.ba*, 9 September 2024. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/godina-dana-novog-zospi-ja
- Tomić, Slađan. "Osam krivičnih prijava za klevetu protiv novinara i urednika u okružnim tužilaštvima RS-a" (Eight Criminal Reports for Defamation against Journalists and Editors at District Offices of Prosecutors in the RS), *Media.ba*, 23 April 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/osam-krivicnih-prijava-za-klevetu-protiv-novinara-i-urednika-u-okruznim
- Tomić, Slađan. "Radnici BHRT-a i FTV-a kolateralna šteta odnosa menadžmenta" (BHRT and FTV Employees are a Collateral Damage Caused by the Relationship between Managements), *Media.ba*, 31 May 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/radnici-bhrt-i-ftv-kolateralna-steta-odnosa-menadzmenta
- Tomić, Slađan. "Umjesto jedne tri verzije novog zakona o javnom RTV-sistemu" (Instead of One, Three Versions of the New Law on the Public Broadcasting System) *Media.ba*, 26 December 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/umjesto-jedne-tri-verzije-novog-zakona-o-javnom-rtv-sistemu
- Association BH Journalists, *Indeks sigurnosti novinara Zapadnog Balkana* (The Western Balkans Journalists' Safety Index). Association BH Journalists, 2023. https://bhnovinari.ba/wp-content/uploads/2024/02/BiH-Index-sigurnosti-novinara-za-2022-BHS-jezik.pdf
- Association BH Journalists. "Političari moraju prihvatiti kritiku u medijima kao dio slobode izražavanja a ne kao klevetu" (Politicians Must Accept Criticism in the Media as Part of Freedom of Expression, Not as Defamation), Association BH Journalists, 17 March 2022. Accessed: December 2024. https://bhnovinari.ba/bs/2020/03/17/politicari-moraju-prihvatiti-kritiku-u-medijima-kao-dio-slobode-izrazavanja-a-ne-kao-klevetu/
- Association BH Journalists, "BH NOVINARI: Samo 5 presuda protiv napadača na novinare i novinarke u BiH" (BH JOURNALISTS, Only 5 Convictions against Attackers on Journalists in BiH), *Association BH Journalists*, 2 November 2024. Accessed: December 2024. https://bhnovinari.ba/bs/2024/11/02/bh-novinari-samo-5-presuda-protiv-napadaca-na-novinare-i-novinarke-u-bih/
- Učanbarlić, Selma. *Zakon o slobodi pristupa informacijama BiH. Prednosti i mane postojećeg Zakona, (ne)transparentnost institucija i analiza predloženih izmjena zakona* (The Freedom of Information Act in BiH. Its Advantages and Disadvantages, An Analysis of Proposed Changes and the (Lack of) Transparency of Public Authorities). Association BH Journalists, 2021. https://bhnovinari.ba/wp-content/uploads/2021/09/Analiza_ZoSPI-FINAL.pdf
- UN. *The Right to Freedom of Opinion and Expression. The Safety of Journalists and Access to Information in Bosnia and Herzegovina.* UN, 2022. https://bosniaherzegovina.un.org/sites/default/files/2022-09/Report%20-%20Safety%20of%20journalists%20and%20access%20to%20information%20in%20Bosnia%20and%20Herzegovina%20-BHS.pdf

- Vujatović, Đorđe. "Novi zakon o medijima u RS, novi udar na medijske slobode (A New Law on the Media in the RS, a New Attack on Media Freedom)", *Media.ba*, 30 October 2024. Accessed: December 2024. https://media.ba/bs/magazin-novinarstvo/novi-zakon-o-medijima-u-rs-u-jos-jedan-udar-na-medijske-slobode
- Zablocki, Tamara. "Dugo čekanje na zakon o elektronskim komunikacijama i elektronskim medijima" (A Long Wait for the Law on Electronic Communications and Electronic Media). *Media.ba*, 13 December 2018. Accessed: December 2024. https://www.media.ba/bs/magazin-novinarstvo/dugo-cekanje-na-zakon-o-elektronskim-komunikacijama-i-elektronskim-medijima

Reports

- European Commission. *Bosnia and Herzegovina Report 2024*. European Commission, 2024. https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2024_en
- European Commission. *Commission Opinion on Bosnia and Herzegovina's Application for Membership of the European Union.* European Commission, 2019. https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-bosnia-and-herzegovina-opinion.pdf
- European Commission against Racism and Intolerance. *ERCI Report on Bosnia and Herzegovina. Fifth Monitoring Cycle.* European Commission against Racism and Intolerance, 2017. https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602
- European Commission against Racism and Intolerance. *ERCI report on Bosnia and Herzegovina. Sixth Monitoring Cycle*. European Commission against Racism and Intolerance, 2024. https://rm.coe.int/fourth-ecri-report-on-bosnia-and-herzegovina/1680b0661f
- Council of Europe. *Baseline Evaluation Report on the Implementation of the Council of Europe Convention on Access to Official Documents.* Council of Europe, 2024. https://rm.coe.int/baseline-evaluation-report-bosnia-herzegovina/1680b1dfee

Statements by international organizations

- OHCHR. *Statement Made by Irene Khan, Special Rapporteur for the Promotion and Protection of Freedom of Expression at the 47th Session of the Human Rights Council,* OHCHR, 2021. https://www.ohchr.org/en/press-briefing-notes/2021/07/statement-irene-khan-special-rapporteur-promotion-and-protection
- OHR. "Re-Criminalization of Defamation is an Attack on the Rights of RS Citizens". *OHR*. 21 July 2023. Accessed: December 2024. https://www.ohr.int/recriminalization-of-defamation-is-an-attack-on-the-rights-of-rs-citizens-2/
- OSCE. "Joint UN, OSCE, CoE and EU in BiH Statement Regarding the Republika Srpska Criminal Code Amendments Re-Criminalizing Defamation". *OSCE*, 20 July 2023. Accessed: December 2024. https://www.osce.org/hbs/mission-to-bosnia-and-herzegovina/548941
- UN BiH. "UN Experts Alarmed by Re-Criminalization of Defamation in the Republika Srpska Entity". UN BiH, 25 July 2023. Accessed: December 2024. https://bosniaherzegovina.un.org/bhs/240237-eksperti-un-uznemireni-ponovnom-kriminalizacijom-klevete-u-entitetu-republika-srpska

Constitutions, laws and conventions

- European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/convention_bos
- International Covenant on Civil and Political Rights, https://www.mhrr.gov.ba/pdf/medunarodnipakt%20b.pdf
- Council of Europe Convention on Access to Official Documents, https://rm.coe.int/acces-aux-documents-publics-serbian-version/1680a2b4d6
- Decision No. 3/18, Safety of Journalists, https://www.osce.org/files/mcdec0003%20safety%20of%20journalists%20en.pdf
- Framework Convention for the Protection of National Minorities, https://rm.coe.int/okvirna-konvencija-za-zastitu-nacionalnih-manjina/168094dfe6

Constitutions, laws and rules in BiH

- Central Election Commission, *Rulebook on Media Representation of Political Subjects During the Election Period*: https://www.izbori.ba/Documents/Izbori_2022/Pravilnik_o_medijskom_predstavljanju-bos.pdf
- Election Law of Bosnia and Herzegovina: https://www.paragraf.ba/propisi/bih/izborni-zakon-bosne-i-hercegovine.html
- Code on Programme Content, Communications Regulatory Agency: http://sluzbenilist.ba/page/akt/ohz4nh78h775VWvyVoK30=
- Criminal Code of Republika Srpska: https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html
- Draft Law on Misdemeanours against Public Peace and Order of Sarajevo Canton: https://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/2023-05/nacrt_zakona_o_prekrsajima_protiv_javnog_reda_i_mira_na_podrucju_kantona_sarajevo.pdf
- Rule 95/2023 on the Provision of Audiovisual Media Services: http://www.sluzbenilist.ba/page/akt/ox9leWT6ohz4nh78h77gw=
- Proposed Law on Amendments to the Law on Public Information of Una-Sana Canton: https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf
- Statute of Brčko District: https://skupstinabd.ba/images/dokumenti/ba/statut-brcko-distrikta.pdf
- Constitution of Bosnia and Herzegovina: https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf
- Constitution of the Federation: https://www.ustavnisudfbih.ba/bs/dokumenti/ustav_precisceni_tekst.pdf
- Constitution of Republika Srpska: https://www.narodnaskupstinars.net/sites/default/files/upload/dokumenti/ustav/lat/ustav_republike_srpske.pdf
- Law on Public Information of Una-Sana Canton: https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf
- Law on the Public Broadcasting Service of the Federation of BiH: http://www.rtvfbih.ba/loc/template.wbsp?wbf_id=206

- Law on the Public Broadcasting Service of the Republika Srpska: https://lat.rtrs.tv/comp/zakon_rtrs.php
- Law on the Public Broadcasting System of BiH: https://www.paragraf.ba/propisi/bih/zakon-o-javnom-radio-televizijskom-sistemu-bosne-i-hercegovine.html
- Law on Public Peace and Order of Brčko District: https://skupstinabd.ba/index.php/ba/zakon.html?lang=ba&id=/Zakon%20o%20javnom%20redu%20i%20miru
- Law on Public Peace and Order of Herceg-Bosna Canton: https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/117882
- Law on Public Peace and Order of Posavina Canton
- Law on Public Peace and Order of Tuzla Canton: https://vladatk.kim.ba/Vlada/Dokumenti/Zakoni/2008/zakon_o_javnom_redu_i_miru.pdf
- Law on Public Peace and Order of Una-Sana Canton: https://www.sluzbeniglasnikusk.com/files/sl_glasnik_2010/sl_br_15_2010.pdf
- Law on Communications: https://docs.rak.ba//articles/da724391-4a61-429b-8859-14d77fbfbf43.pdf
- Law on Freedom of Access to Information at the Institutional Level of BiH: http://www.sluzbenilist.ba/page/akt/fRNPvuRCliQ=
- Law on Prohibition of Discrimination: https://www.osce.org/files/f/documents/1/1/378877.pdf
- Law on Protection against Defamation of the Federation of Bosnia and Herzegovina: https://fbihvlada.gov.ba/bosanski/zakoni/2003/zakoni/13bos.htm;
- Law on Protection against Defamation of the Republika Srpska: https://www.parlament.ba/data/dokumenti/press-kutak/zakon_o_zastiti_od_klevete_republike_srpske_hr.pdf

Decisions

- OHR. *Decision of the High Representative Enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina*, 23 July 2021. https://www.ohr.int/odluka-visokog-predstavnika-kojom-se-donosi-zakon-o-dopuni-kaznenog-zakona-bosne-i-hercegovine/
- OHR. *Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina*, 27 July 2022. https://www.ohr.int/odluka-kojom-se-donosi-zakon-o-izmjenama-i-dopunama-izbornog-zakona-bosne-i-hercegovine-4/
- OHR. *Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina*, 26 March 2024. https://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-election-law-of-bosnia-and-herzegovina-17/
- Constitutional Court, Decision on Constitutionality and Merits, 18 January 2024. https://www.ustavnisud.ba/uploads/odluke/_sr/U-21-23-1401076.pdf

Guidelines, strategies and minutes

- Draft Description of Duties of Contact Points for Safety of Journalists in Prosecutor's Offices, 17 May 2024. https://pravosudje.ba/vstvfo/B/10001/kategorije-vijesti/122916
- Council of Ministers, Mid-Term Work Program. https://www.dep.gov.ba/sredprograda/sprvm2024/SPRVM_24-26_korekcija%2017042024.pdf

- Minutes of the 55th session, Council of Ministers of Bosnia and Herzegovina, 25 August 2022. https://www.vijeceministara.gov.ba/saopstenja/sjednice/zakljucci_sa_sjednica/default.aspx?id=38815&langTag=bs-BA

European Union laws and codes

- Directive EU 2019/1024 of the European Parliament and of the Council on Open Data and the Re-Use of Public Sector Information, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32003L0098
- Directive (EU) 2018/1972 on the European Electronic Communications Code, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=LEGISSUM:4379983
- Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 on Audiovisual Media Services, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:32018L1808
- Regulation (EU) 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), https://www.eu-digital-services-act.com/
- Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 Establishing a Common Framework for Media Services in the Internal Market and amending Directive 2010/13/EU (European Media Freedom Act), https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A32024R1083
- 2022 Code of Practice on Disinformation, https://digital-strategy.ec.europa.eu/hr/policies/code-practice-disinformation
- Council Framework Decision 2008/913/JHA of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32008F0913
- Stabilization and Association Agreement, https://www.dei.gov.ba/uploads/documents/sporazum-o-stabilizaciji-i-pridruzivanju_1604320186.pdf

Interviews

- Aleksandar Jokić, Attorney
- Amela Odobašić, Assistant Director for Broadcasting, Communications Regulatory Agency
- Azra Maslo, Head of Programme Content and Complaints Sector, Communications Regulatory Agency
- Bojana Kostić, Researcher, Pen to Paper
- Danijel Kovačević, Political Advisor, European Union Delegation in BiH
- Darko Martinčević, Prosecutor, Prosecutor's Office of Sarajevo
- Dejan Lučka, Attorney
- Directorate for European Integration
- Lejla Babović, Head of Department of International Affairs, BHRT
- Maida Ćulahović, Policy Development Coordinator, Association Zašto ne (Why Not)
- Milanka Sudžum, Head of Communications Department, Ministry of Communications and Transport of BiH
- Zlatan Musić, Programme Officer, Media Freedom and Human Rights, OSCE Mission

About the authors

Anida Sokol is the editor and head of research at Mediacentar Sarajevo. She is the author of numerous studies in the field of freedom of expression and media freedoms. Her studies cover topics such as journalist safety, media financing, regulation of harmful content and audience media habits. She works as the editor of the specialized magazine for media and journalism Media.ba. She has taught Politics and Media and Political Communication at the International Burch University and the University of SSST in Sarajevo. She holds an MA in English Language and Literature from the Faculty of Philosophy in Sarajevo and a PhD in European History from the Faculty of Political Sciences at the Sapienza University in Rome.

Lejla Gačanica is a PhD candidate in law, with 15 years of experience in the field of law and social research. Her areas of interest are human rights, media, transitional justice, and dealing with the past with a focus on the culture of memory. She is the author of published articles and analytical, scientific, and research papers in these fields.

MEDIACENTAR
SARAJEVO

REFORME
ZA INTEGRITET MEDIJA
I SLOBODU GOVORA